

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Regular Second Appeal No.5564 of 2015 (O&M)
Date of decision:30.10.2015

Charan Singh

... Appellant

versus

Kewal Krishan alias Kewal Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Abhay Kumar Sharma, Advocate,
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ?No.
3. Whether the judgment should be reported in the digest ?No.

K.Kannan, J. (Oral)

CM No.13433-C of 2015

For the reasons stated in the application, delay of 138 days in filing the appeal is condoned.

Application stands disposed of.

Regular Second Appeal No.5564 of 2015 (O&M)

1. The second appeal is at the instance of the defendant who has been restrained from putting up further construction in the property which he is in possession of. Admittedly, the defendant is not the exclusive owner of the property of which he is in possession of but co-owner with the plaintiff. It would appear that the

proceedings of partition are also pending before the revenue authorities. The defendant's contention is that he cannot be prevented from putting up construction and the remedy for the plaintiff is only to sue for partition. The courts below have allowed for an injunction to be issued from putting up further construction and the defendant has challenged the correctness of the order and placed reliance on the judgment of this court in **M/s DCM Shriram Consolidated Limited Versus Jai Singh-AIR 2007 (Punjab) 17.**

The counsel would also make reference to Section 41(h) of the Specific Relief Act to contend that efficacious remedy would be only to sue for partition and cannot be merely an action for injunction.

2. If the co-owners are in possession of various parcels of land, for the sake of convenience, any person, who is not satisfied with the temporary arrangement, may not be able to disturb the arrangement and such a party may be compelled to file a suit for partition and predicate for himself the specific share that is allotted. The same would also apply to cases where a co-owner in exclusive possession does acts consistent with the temporary arrangement. If the division has not become final and anyone party in possession of a particular share for the sake of convenience does some act on the property which threatens to exclude the other or that which might cause a detriment to the other, a relief of injunction shall alone be

the most efficacious remedy. Even the judgment relied on by the counsel spells out these exceptions, namely, of an act of a party/co-owner which would threaten an ouster or exclusion of another co-owner or a situation of a detriment to the interest of other co-owner. If the defendant was only attempting to make such repairs which are necessary for his convenient living, there would be no difficulty. However, if the attempt is to make elaborate improvements which can threaten the other co-owner from exercising his own right for partition and he could be thwarted on issues of allotment on special equities pleaded by a co-owner who has allowed for extensive improvements to come upon the property, then such a co-owner cannot be put to prejudice by accepting a forced partition that gives the benefit of retention of a property possessed on a temporary arrangement. The issue of what would constitute a detriment is invariably a question of fact and if the lower appellate court had allowed the relief of injunction considering the fact that the proceedings for partition are also pending, it was perfectly justified for the court to issue the relief of injunction as well. The argument by the counsel is that the remedy ought to have been to apply for partition by the plaintiff himself is a course that has been admittedly adopted by the plaintiff already. If proceedings for partition are pending, the revenue authorities will not be competent to order injunction for that relief would fall within the exclusive domain of a

civill court and the plaintiff was justified in seeking for such a relief.

The case was correctly rejected and the relief of injunction granted by the appellate court would require no intervention.

3. Second appeal is dismissed on the above terms.

(K.KANNAN)
JUDGE

30.10.2015
sanjeev