

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

**CR No.1655 of 2016
Date of Decision: 05.08.2016**

Joginder Singh and another

.....Petitioners

Vs

Parmeshwari Dass

.....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Abhinav Sood, Advocate for
Mr. Vikram Singh, Advocate
for the petitioners.

RAJ MOHAN SINGH, J.

[1]. Petitioners have assailed order dated 05.01.2016 passed by Additional District Judge, Hoshiarpur and order dated 27.08.2015 passed by Additional Civil Judge (Senior Division), Mukerian whereby application under order 39 Rule 1 and 2 CPC filed by the petitioners was declined and the same was upheld by Additional District Judge, Hoshiarpur.

[2]. In a suit for permanent injunction, plaintiffs-petitioners claimed that the defendant Parmeshwari Dass be restrained from interfering in their possession and enjoyment over the suit land and also be restrained from removing the bricks of the plaintiffs-petitioners from the suit land till lawful partition

between the parties. Along with the suit, an application under Order 39 Rule 1 and 2 CPC read with Section 151 CPC was also filed for seeking an ad interim injunction against the defendant-respondent.

[3]. Petitioners-plaintiffs claimed that having purchased the suit land vide various sale deeds dated 02.12.2002, 20.10.2004, 20.10.2004 and 10.07.2006, they were in exclusive possession of the suit property. Feeling apprehension of interference at the instance of the defendant, suit was filed along with the application.

[4]. Defendant contested the claim of the plaintiffs-petitioners on many counts. He claimed that a mutual family partition was effected between the parties and the same was reduced into writing on 15.06.1947. The suit property originally belonged to Bhagwan Singh and was succeeded by his sons Suchet Singh, Dharma and Sher Singh. The plaintiffs had purchased share of Dharma and Sher Singh only and therefore, they were not entitled to interfere in the possession qua remaining land. Defendant alleged that under the garb of suit, plaintiffs intended to interfere in the possession of the defendant.

[5] Since the parties were co-sharers, the concept of co-sharer has to be followed in the context of verifying as to

whether plaintiffs-petitioners were in exclusive possession of the suit land even if the suit land was joint. It was the onerous obligation on the plaintiffs-petitioners to prove that their vendors were in exclusive possession of the suit property at the time of execution of the sale deeds. The copies of sale deeds produced would reveal that only a joint possession was given to the vendees/plaintiffs/petitioners. Even the recital of the plaint would show that they were in the joint possession over the suit property, for which a suit for partition has already been filed before the Assistant Collector, First Grade, Talwara.

[6]. It is a settled principle of law that in case of co-sharership over the joint land, each of the co-sharer would be deemed to be in possession of every inch of land unless and until the joint land is partitioned by metes and bounds. The co-sharer can injunct other co-sharers only in case he is found to be in exclusive possession of defined share to the ouster of other co-sharers, however that would also be subject matter of final partition between the parties.

[7]. In the instant case, there is no evidence on record suggesting that the petitioners were in exclusive possession of the suit property, rather as per pleadings and recital in the sale deeds, only a joint possession was delivered to them. It means that all the co-sharers including the plaintiffs and the defendant

would be co-sharers in joint possession of the land in question.

[8]. Concededly, a suit for partition is pending for consideration before the Revenue Officer, therefore, till such decision, the joint status of co-sharers cannot be ousted by means of any injunction particularly when the plaintiffs are not proved to be in exclusive possession of the suit land and no plea would oust all other co-sharers like the defendant.

[9]. In considered opinion of this Court, the order dated 27.08.2015 passed by Additional Civil Judge (Senior Division), Mukerian and order dated 05.01.2016 passed by Additional District Judge, Hoshiarpur cannot be faulted with. Consequently, this Court finds no ambiguity in the impugned judgments passed by the Courts below and this revision petition is accordingly dismissed.

05.08.2016

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**(RAJ MOHAN SINGH)
JUDGE**

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No