

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

**CR No. 4245 of 2013 (O&M)
Date of decision: 12.01.2016**

Kitabo Devi and another ... Petitioners
versus
Kartar Singh and others ... Respondents
CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Swaran Singh, Senior Advocate, with
Mr. N.S. Rapri, Advocate for the petitioner.

Mr. Udeyveer Singh, Advocate, for
Mr. Partap Singh, Advocate for the respondents.

K.Kannan, J. (ORAL)

The defendant who is the purchaser of undivided share of the land from one of the brothers is put to resisting action for injunction brought at the instance of yet another brother who claims to have obtained a release in respect of the very same property subsequent to the purchase. It is admitted that the plaintiff had himself sold his own share of the property which he inherited from his father. The virtue of the case pleaded by the plaintiff is that the defendant's purchase did not identify specific items of property but merely referred to the extent of property as half of whole of the property which the vendor had.

In normal circumstances, the stranger purchaser who purchases undivided share of land will not be able to disturb the joint possession of the vendor with his co-owner and his remedy will only be to sue for general partition and ask for allotment of specific items of properties relatable to the share of the vendor. If a non-alienating co-owner is shown to be in possession of any property, the relief of injunction would be possible. Here is a situation where admittedly the plaintiff has sold his own share and put his purchasers in possession although the specific items of property of what he has sold are not available. He shall be entitled to secure relief of injunction against the

stranger purchaser, if only he has held any portion of the property jointly along with his brother which was purported to have been sold. If he had denuded himself of the right of the property of what he has owned, he shall be incompetent to prevent the purchaser from entering upon the land.

I asked the counsel for the respondent, was to specify the property that he is actually in possession of for which he claims injunction. He is unable to identify any portion of the property as being in his possession or show any proof of such possession. The normal principle of stranger purchaser cannot disturb the joint possession of the co-owner already in possession cannot apply if the plaintiff cannot show his own possession of the property. In every suit for injunction, the plaintiff must prove his own prima facie case of his possession and title before he can seek for injunction. The weakness in defence ought not be construed as the plaintiff's own strength for maintaining the action for injunction. Though I will not find any particular merit in the revision petitioner's plea that his purchase was of a half share of the whole of the property without specifying which half share, I will give the benefit to the defendant in the application and on the failure of the plaintiff to show the prima facie case, I would find fault that the Lower Appellate Court granted the relief of injunction.

These observations are for the purpose of disposal of the civil revision petition and will have not have bearing to the final adjudication that would be rendered in the suit.

The order of injunction is set aside and the revision petition is allowed on the above terms.

(K.KANNAN)
JUDGE

12.01.2016

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