

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

CR No.3489 of 2015

Date of Decision: 14.07.2017

Perminder Singh Grewal Th Sukhjinder Singh

.....Petitioner

Versus

Gurmeet Kaur and others

... Respondents

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

Present: Mr. Om Pal Sharma, Advocate
for the petitioner.

Mr. Onkar Rai, Advocate
for respondent No.1.

Mr. Deepak Goyal, Advocate for
Mr. Yogesh Goel, Advocate
for respondent No.2.

RAJ MOHAN SINGH, J.(ORAL)

[1]. Petitioner has assailed the order dated 25.03.2015 passed by Civil Judge (Junior Division), Ludhiana vide which an application under Order 7 Rule 11 CPC filed by defendant No.1 was allowed.

[2]. As per pleadings of the plaintiff, he along with defendants are co-sharers in the joint property for which a suit for separate possession by way of partition was filed by the plaintiff. The separate possession was sought by way of partition by metes and bounds to the extent of 1/3rd share in the property bearing No.75-C, Bhai Randhir Singh Nagar, Ludhiana.

[3]. Learned counsel for the petitioner states that since both

the parties are co-sharers in the joint property, therefore, possession of one of the co-sharer would be deemed to be on behalf of all the co-sharers unless and until, the land is partitioned. No plea of exclusive possession can be entertained without there being any material on record. At the stage of proceedings under Order 7 Rule 11 CPC, only averments made in the plaint are to be seen. The plaint discloses a fact that the suit is still joint property and has not been partitioned.

[4]. Learned counsel for respondent No.1 has vehemently opposed the contentions of learned counsel for the petitioner on the ground that the plaintiff is a non-resident Indian and is not in possession of the property.

[5]. Having heard learned counsel for the parties, I am of the view that even if, a co-sharer is not in possession of the joint property, he would be deemed to be in possession of the property unless and until the property is partitioned by metes and bounds. A co-sharer can oust the other co-sharer only if he is proved to be in exclusive possession of the property.

Reference can be made to **Bhartu Ram Vs. Ram Sarup, 1981 PLJ 204 (Full Bench)** in the aforesaid context.

[6]. In view of above, the impugned order dated 25.03.2015 passed by Civil Judge (Junior Division), Ludhiana is not legally sustainable and the same is accordingly set aside. The present

revision petition is allowed in the aforesaid terms.

14.07.2017
prince

(RAJ MOHAN SINGH)
JUDGE

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No