

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

**Civil Revision No.4137 of 2017(O&M)  
Date of Decision: 07.10.2017**

**Parkash and others**

**.....Petitioners**

**Vs**

**Janeshwar and others**

**....Respondents**

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

Present:Mr. Raghav Sharma, Advocate  
for the petitioners.

Mr. Lakshay Bajaj, Advocate  
for respondent Nos.1 and 2.

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**RAJ MOHAN SINGH, J.**

[1]. For the purposes of decision of this revision petition, only respondent Nos.1, 2 and 4 are the necessary parties. Respondent No.3 being D.S.P. Samalkha, Distt. Panipat cannot be considered to be necessary party for decision of this case, therefore, service *qua* respondent No.3 is dispensed with.

[2]. Petitioners are aggrieved of the order dated 01.05.2017 passed by the Civil Judge (Jr. Divn.) Panipat whereby application filed by them under Order 21 Rule 32 read with Section 151 CPC was dismissed.

[3]. Brief facts are that the plaintiffs/petitioners filed a suit for permanent injunction restraining the defendants from trespassing or interfering in the possession of the plaintiffs over the suit property i.e. half share of the plaintiffs in the agricultural land comprising in Khewat No.305/285, Khatoni No.3498, Rectangle No.29, Khasra No.18(8-9) situated within the revenue estate of village Jalmana, Distt. Panipat. It was pleaded by the plaintiffs that Sh. Massadi was owner in possession of 32 Kanals agricultural land in village Jalmana. In the year 1975, a family partition took place between the children of aforesaid Massadi. According to the settlement, half share of the land in Killa No.29//18 came to the share of the father of the plaintiffs and the remaining half share came to the share of the defendants i.e. other sons of Massadi. In the year 1976, father of the plaintiffs physically partitioned his half share by constructing a boundary wall around the land and constructed room and Kotha therein. Electric meter was also installed in the share of the plaintiffs. The portion so earmarked was shown by the letters 'ABCD' in the site plan. In the suit the grievance projected by the plaintiffs was that the defendants were bent upon to oust the plaintiffs from their half share in Killa No.29//18.

[4]. The suit was tried by the trial Court. Plaintiff No.1 Parkash appeared as PW-3 and the site plan of the property

was tendered as mark 'B'. He admitted that the land comprised in khewat No.305/2385 was a joint land where all the co-sharers have right title and interest in the land. The plaintiff could not produce any evidence of family partition in the year 1975, nor any such family partition was ever given effect in the revenue record. The plaintiffs admitted that the defendants were also co-sharers in the suit property.

[5]. Defendant No.1 Janeshwar while appearing as DW-1 contested the suit and pleaded that the entire land was joint, but he stated in his cross-examination that he along with his brother were in exclusive possession over Killa No.29//18 since the year 1976. He further admitted that the plaintiffs have also constructed boundary wall to separate their houses. The factum of family partition as well as exclusive possession of the plaintiffs over specific portion of disputed Killa No.29//18 was a conceded position.

[6]. With the aforesaid admission on record in respect of family partition, exclusive possession of the plaintiffs over half share in the disputed Killa No.29//18 which was jointly owned and possessed by the parties and other co-sharers, the correctness of the entry in the *jamabandi*, presumption in the light of admission by the defendant Janeshwar, the suit was partly decreed by the trial Court vide judgment and decree

dated 18.10.2016 whereby defendants were directed not to oust the plaintiffs from their share in the joint land.

[7]. I have heard learned counsel for the parties.

[8]. Violation of the decree has been alleged by the plaintiffs/decreed-holders. The implementation of the judgment and decree dated 18.10.2016 was sought. It is a settled principle of law that in case of a joint land, every co-sharer would be deemed to be in possession of every inch of land till the land is partitioned by metes and bounds. Killa No.29//18 is proved to be a joint land by the parties. The factum of oral settlement of the year 1975 could not be proved on record, but by virtue of statement of defendant Janeshwar, the trial Court held that the parties are in separate possession of shares in the joint land bearing Killa No.29//18. In the statement of plaintiff No.1 Parkash, the site plan of the suit property which was simply marked on record as mark 'B', the factum of family partition could not be proved on record with reference to any evidence. Simply on the basis of admission of defendant No.1 Janeshwar that the parties were in separate possession of the share in Killa No.29//18, the suit was partly decreed.

[9]. Now the violation of the decree is being alleged on behalf of the defendants. Evidently, no partition has taken place

between the parties/co-sharers. Killa No.29//18 is still a joint property of the parties. Separate/specific possession in terms of oral settlement could not be brought on record by the parties. In view of above only a site plan would have led the Court to earmark the distinct portion in separate entitlement of the parties. The site plan could not be proved on record with reference to any evidence. Mere alleging violation of the decree dated 18.10.2016 is not sufficient to attract action in terms of Order 21 Rule 32 CPC, but it has to be intentional. The parties are proved to be co-sharers in Killa No.29//18. The overt act on behalf of the judgment-debtors has to be culled out with reference to specific earmarked portion belonging to the decree-holders. Admittedly, the decree is also of half share.

[10]. In view of attending facts and circumstances of the case, I find no reason to differ with the impugned order dated 01.05.2017 passed by the Civil Judge (Jr. Divn.) Panipat. This revision petition is found to be totally devoid of merits and the same is accordingly dismissed.

October 07, 2017

*Atik*

Whether speaking/reasoned

Whether reportable

**(RAJ MOHAN SINGH)**  
**JUDGE**

Yes/No

Yes/No