

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

**RSA No.2023 of 2016 (O&M)
Date of Decision: 10.11.2017**

Jangsher Singh

.....Appellant

Vs

Balbir Singh and others

....Respondents

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

Present: Mr. Jagdish Manchanda, Advocate
for the appellant.

RAJ MOHAN SINGH, J.

[1]. Plaintiff/appellant is in Regular Second Appeal against the concurrent judgments and decrees passed by the Courts below in a suit for permanent injunction.

[2]. Brief facts are that the plaintiff filed a suit for permanent injunction against the defendants on the ground that the plaintiff was co-sharer in the suit land along with the defendants and the land had not been partitioned between the parties. The plaintiff was in possession of the suit land and the defendants wanted to raise construction on the prime portion of the joint land forcibly and illegally. The intended act of the defendants would change the nature of the property.

[3]. The defendants contested the suit and took the stand that the land was partitioned between the co-sharers at the time of sale of the suit land in favour of the defendants by metes and bounds and the said fact was incorporated in the *jamabandis* for the years 2000-01, 2005-06 and 2010-11. The defendants claimed themselves in exclusive possession of the suit property since the year 1996 i.e. the time when the same was purchased vide sale deed dated 30.05.1996.

[4]. No replication was filed. Trial Court dismissed the suit by observing that as per *jamabandis* for the years 2010-11, 1995-96, 1990-91 and mutation No.619 Ex.D-5, the land was proved to be joint between the parties. The defendants had purchased the share of Bishna s/o Mukha vide sale deed dated 30.05.1996 and the defendants became co-sharers in the suit land. The factum of partition was not proved for want of any material document to that effect. In view of joint status of the parties in the suit land, the injunction at the instance of one of the co-sharers was held not sustainable as the plaintiff was not proved to be in exclusive possession of the suit land. The ratio laid down in **Bachan Singh vs. Swaran Singh (DB) 2000(3) RCR (Civil) 70** was relied to observe that the construction raised by one of the co-sharer was not sufficient to presume ouster of other co-sharers. No injunction can be granted in

favour of one of the co-sharer as against the other co-sharers as the joint land would be deemed to be in possession of all the co-sharers unless and until the same is partitioned by metes and bounds. A co-sharer in exclusive possession can oust the other co-sharers till partition of the land. The exclusive possession of the plaintiff was not proved on record, therefore, the suit was dismissed.

[5]. The judgment and decree passed by the trial Court was upheld by the lower Appellate Court. No exception can be made out from the pleadings and evidence led by the plaintiff on record. The concept of co-sharership as evolved in **Sant Ram Nagina Ram vs. Daya Ram Nagina Ram, AIR 1961 528 (DB)** which was subsequently approved by the Full Bench judgment of this Court in **Bhartu vs. Ram Sarup, 1981 PLJ 204 (FB)** and further reiterated in **Ram Chander vs. Bhim Singh and others, 2008(3) RCR (Civil) 685 (FB)** can be relied in the present context.

[6]. Since the plaintiff was not proved to be in exclusive possession, therefore, the plea of partition raised by the defendants, even if not proved would bring the defendants to be in the category of co-sharers. In view of joint status of the parties in the suit land and the plaintiff being not in exclusive possession, no injunction can be granted in favour of the

plaintiff.

[7]. In view of above, this appeal is found to be totally devoid of merits and the same is accordingly dismissed.

November 10, 2017

(RAJ MOHAN SINGH)
JUDGE

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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No