

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

107

**RSA-3740-2016 (O&M)
Date of Decision : 24.09.2018**

Rakesh Kumar Appellant

Versus

Surjit Kumar and another Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present :- Mr. Nakul Sharma, Advocate
for the appellant.

AJAY TEWARI, J. (ORAL)

This appeal has been filed against the judgment of the lower appellate court reversing that of the trial court and thereby dismissing a suit for injunction filed by the appellant.

The case of the appellant was that he was a co-sharer in the land in dispute and was in exclusive possession and prayed that the respondents be restrained from interfering in his possession over the land in dispute.

The case of the respondents on the other hand was that admittedly the appellant and his brother were co-sharer in the land in dispute and they had validly purchased 3 kanals 7 marlas of land from the share of the brother of the appellant. This fact was not disputed by the appellant. The trial court decreed the suit but the lower appellate court held that once the appellant could not deny that earlier he and his brother were in joint possession in the land in dispute then he could not seek an injunction against the person who stepped into the shoes of his brother.

Hence, the present appeal.

Counsel for the appellant has argued that at one stage in the cross-examination the respondents admitted that the appellant was in possession and relied upon the judgment of the Supreme Court in the matter of ***Ramdas vs. Sitabai and others, 2009 AIR (SC) 2735*** and particularly paragraph 15 thereof which is quoted herein below:-

“15. Without there being any physical formal partition of an undivided landed property, a co-sharer cannot put a vendee in possession although such a co-sharer may have a right to transfer his undivided share. Reliance in this regard may be placed to a decision of this Court in M.V.S. Manikayala Rao Vs. M. Narasimhaswami & Ors. [AIR 1966 SC 470], wherein this Court stated as follows:

"Now, it is well settled that the purchaser of a co-parcener's undivided interest in the joint family property is not entitled to possession of what he had purchased. His only right is to sue for partition of the property and ask for allotment to him of that which, on partition, might be found to fall to the share of the co-parcener whose share he had purchased."

The facts of that case, however, are that Sudam and Sitabai were joint owners of various properties including Gat No.19. Sudam sold that entire land to Ramdas. Sitabai challenged that sale and also sought possession of her half share in Gat No.19 from Ramdas. It was with reference to Ramdas's possession over the entire property in Gat No.19 that the Supreme Court had made such observations and there can be no doubt about that proposition of law. However, here the case is that the appellant does not deny that earlier he and his brother were in joint possession of the land but claims that on having purchased the land from his brother the respondents can not dispossess him from even that portion

of land which fell to the share of his brother even though they had become co-sharers with him, having stepped into the shoes of his brother. In the judgment passed in ***RSA No.3128 of 2018, titled as Balbir Singh vs. Pawan Kumar and others, decided on 20.09.2018***, it was held as follows:-

“Before me, the only argument raised is that once the appellant was in exclusive possession, at least the suit for injunction should have been decreed. In support of his argument, learned counsel for the appellant has relied upon Gurmeet Kaur and others v. Surjit Singh and another 1989 PLJ 55 and M/S Orient Craft Infrastructure Ltd v. Subhadra & others, 2010(20) RCR(Civil) 257. Both these decisions are inapplicable to the facts of this case because they deal with temporary injunction. Learned counsel has further relied upon Ram Murti Sharma and another v. Prem Kumar and others, 2010(58) RCR (Civil) 788, which also deals with the case where the vendee had obtained possession from the tenant during the proceedings under the East Punjab Urban Rent Restriction Act, 1949, and consequently is not applicable to this case. He has further relied upon Santokh Singh and another v. Darshan Singh and others, 2009(4) RCR (Civil) 538. In that case, this Court had culled out the following principles laid down in an earlier case reported as Sant Ram Nagina Ram v. Deva Ram Nagina Ram and others, AIR 1961 Punjab 528 :-

- “(1) A co-owner has an interest in the whole property and also in every parcel of it.*
- (2) Possession of the joint property by one co-owner is in the eye of law, possession of all even if all but one are actually out of possession.*
- (3) A mere occupation of a larger portion or even of an entire joint property does not necessarily amount to ouster as the possession of one is deemed to be on behalf of all.*

(4) The above rule admits of an exception when there is ouster of a co-owner by another. But in order to negative the presumption of joint possession on behalf of all, on the ground of ouster, the possession of a co-owner must not only be exclusive but also hostile to the knowledge of the other, as, when a co-owner openly asserts his own title and denies that of the other.

(5) Passage of time does not extinguish the right of the co-owner who has been out of possession of the joint property except in the event of ouster or abandonment.

(6) Every co-owner has a right to use the joint property in a husband like manner not inconsistent with similar rights of other co-owners.

(7) Where a co-owner is in possession of separate parcels under an arrangement consented to by the other co-owners, it is not open to any one to disturb the arrangement without the consent of others except by filing a suit for partition.

(8) The remedy of a co-owner not in possession, or not in possession of a share of the joint property, is by way of a suit for partition Or for actual joint possession, but not for ejectment. Same is the case where a co-owner sets up an exclusive title in himself.

(9) Where a portion of the joint property is, by common consent of the co-owners, reserved for a particular common purpose, it cannot be diverted to an inconsistent user by a co-owner; if he does so, he is liable to be ejected and the particular parcel will be liable to be restored to its original condition. It is not necessary in such a case to show that special damage has been suffered.”

Learned counsel for the appellant has argued that in view of the exclusive possession of the appellant over the property in dispute, he is entitled to injunction because he was ouster of co-owner.

In my opinion, principle No.4 (supra) lays down that mere ouster will not be enough but it also has to be hostile. There is neither any plea nor any evidence that ouster of the respondent was ever hostile. It is trite to say that it is only in extreme circumstances that a co-owner can be allowed to deny possession of another co-sharer. Consequently, finding no merit this appeal is dismissed.”

Counsel for the appellant has not been able to cite any

contrary judgment and has not been able to persuade me that the findings

of fact recorded by the lower appellate court are either based on no evidence or based on such a perverse misreading of evidence so as to justify interference of this Court in second appeal.

Appeal is dismissed. No costs.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

September 24, 2018
ashish

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No