

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

RSA No. 3128 of 2018 (O&M)
Date of decision : September 20, 2018

Balbir Singh

..... Appellant

v.

Pawan Kumar and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. V.K Jindal, Sr. Advocate
with Ms. Janya Sirohi, Advocate
for the appellant.

Mr. MR Verma, Advocate
for the respondents.

Ajay Tewari, J (Oral)

This appeal has been filed against the concurrent judgments of the Courts below dismissing the suit for declaration and injunction filed by the appellant.

The case set up by the appellant was that he and the proforma respondents were exclusive owners of the property in dispute and that the sale by another brother in favour of respondents No.1 and 2 was ineffective against their rights since in a family settlement the vendor had relinquished his share in their favour and they were in exclusive possession of the property. The case of the defendants, on the other hand, was that their vendor was a co-sharer in the property in dispute and voluntarily transferred his share to them.

Both the Courts below held that the appellant was not able to prove the alleged settlement/relinquishment deed dated 1.10.2002 primarily because it was mentioned therein that the relinquishment of the property in dispute was in lieu of the fact that some agricultural land was transferred to the brother but there was no evidence as to which agricultural land was transferred and rather in his cross examination, the appellant had to admit that no land was ever given by him to his brother. Consequently, the suit was dismissed.

Before me, the only argument raised is that once the appellant was in exclusive possession, atleast 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.

Since the main case has been decided, the pending C.Ms, if any, also stand disposed of.

September 20, 2018
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(AJAY TEWARI)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No