

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

**RSA No.5673 of 2019(O&M)
Date of Decision: 12.12.2019**

Ishwar Singh

.....Appellant

Versus

Kulwant Singh and others

.....Respondents

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

Present:Mr. S.K. Yadav, Advocate
for the appellant.

RAJ MOHAN SINGH, J.

[1]. Plaintiff is in regular second appeal against the concurrent judgments and decrees passed by the Courts below in a suit for permanent injunction.

[2]. Plaintiff filed a suit for permanent injunction against the defendants on the ground that the plaintiff, defendant No.1 and proforma defendants No.2 and 3 are joint owners in possession of the property as shown in the site plan with red colour and the same has not been partitioned so far. Plaintiff alleged that defendant No.1 is owner in possession only to the extent of 92.9 sq. feet, but he is adamant to raise construction over more than

his share. To that extent, the plaintiff sought restraint against defendant No.1 from raising construction over the suit property beyond his share i.e. 92.9 sq. feet.

[3]. Defendant No.1 contested the suit by taking plea of partition between plaintiff and proforma defendants No.2 and 3 in the life time of their father namely Hari Singh. Defendant No.3 sold his share to defendant No.1 vide sale deed No.159 dated 12.04.2004.

[4]. Both the parties went to trial on specific issues.

[5]. Both the Courts below have held that defendant No.3 sold his share to defendant No.1 on 12.04.2004 and the sale deed has not been assailed by the plaintiff. According to the aforesaid sale deed, entitlement of defendant No.1 came out to be more than 92.9 sq. feet as alleged by the plaintiff. According to the defendants, the plaintiff and proforma defendants No.2 and 3 were owners in possession to the extent of 130 sq. yards each and defendant No.3 had sold his share to defendant No.1. In any case, in the absence of any challenge to the sale deed dated 12.04.2004, the plaintiff cannot question the title of defendant No.1, which was conferred upon him on the strength of document of title i.e. sale deed dated 12.04.2004.

[6]. Admittedly, both the parties are co-sharers. Plaintiff seeks to injunct defendant No.1 by restraining him from raising

construction beyond his share of 92.9 sq. feet. In the absence of any challenge to the sale deed dated 12.04.2004, the share of defendant No.1 cannot be presumed to be 92.9 sq. feet at the first instance. Even if, no such observation is to be made on this aspect, the concept of co-sharership has to be appreciated on the basis of rights and liabilities of the co-sharers which have been defined in **Sant Ram Nagina Ram Vs. Daya Ram Nagina Ram, AIR 1961 Punjab 528**, which was endorsed by the Full Bench of this Court in **Bhartu Vs. Ram Sarup, 1981 PLJ 204** and also by another Full Bench of this Court in **Ram Chander Vs. Bhim Singh and others, 2008(3) RCR (Civil) 685**. The rights and liabilities of the co-sharers are settled to the following effect:-

“(i) A co-owner has interest in the whole property and also in every parcel of it.

(ii) Possession of 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.

(iii) A mere occupation of a larger portion or even of entire joint property does not necessarily amount to ouster as the possession of one is deemed to be on behalf of all.

(iv) The above rule admits of an exception when there is ouster of a co-owner by another. But in order to negative the pre-emption 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.

(v) 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.

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

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

(viii) Co-sharer in possession exclusively of some portion of joint holding not more than his share is entitled to continue in possession till joint holding partition and can transfer that portion subject to adjustment at the time of partition.

(ix) Transferee under Section 44 of Transfer of Property Act gets right of transfer to joint possession and to enforce partition irrespective of the fact whether property sold is fractional share or specified portion.”

[7]. It is a settled principle of law that a mere occupation of larger portion of the joint property does not necessarily mean ouster as the possession of one of the co-sharers would be deemed to be possession on behalf of all the other co-sharers, unless and until, ouster is proved by way of exclusive and hostile possession of the co-sharer to the very knowledge of

others and the said co-sharer openly asserts his own title by denying the title of others.

[8]. In the instant case, even the plaintiff could not prove the exact entitlement of defendant No.1 i.e. whether the same would be confined to 92.9 sq. feet or as per sale deed dated 12.04.2004 which was never assailed by the plaintiff.

[9]. In view of law laid down in **Jangir Singh vs Naranjan Singh and others, 2015(1) R.C.R. (Civil) 49**, mere making of construction of common land would not amount to ouster of other co-sharers. A co-sharer cannot seek injunction against other co-sharers from raising construction. The only remedy available to the aggrieved is to file a suit for partition. The view expressed in Full Bench of this Court in **Bachan Singh vs. Swaran Singh, 2003(3) R.C.R. (Civil) 70** can be appreciated, wherein following observations were made in para 15.

“15. On a consideration of the judicial pronouncements on the subject, we are of the opinion that:

(i) a co-owner who is not in possession of any part of the property is not entitled to seek an injunction against another co-owner who has been in exclusive possession of the common property unless any act of the person in possession of the property amounts to ouster, prejudicial or adverse to the interest of co-owner out of possession.

(ii) Mere making of construction or improvement of, in the common property does not amount to ouster.

(iii) If by the act of the co-owner in possession the value or utility of the property is diminished, then a co-owner out of possession can certainly seek an injunction to prevent the diminution of the value and utility of the property.

(iv) If the acts of the co-owner in possession are detrimental to the interest of other co-owners, a co-owner out of possession can seek an injunction to prevent such act which, is detrimental to his interest.

In all other cases, the remedy of the co-owner out of possession of the property is to seek partition, but not an injunction restraining the co-owner in possession from doing any act in exercise of his right to every inch of it which he is doing as a co-owner.”

[10]. Admittedly, no suit for partition has been filed by any of the parties. In the absence of challenge to the sale deed dated 12.04.2004, the plaintiff could not prove the exact entitlement of defendant No.1 on which construction is being raised by defendant No.1.

[11]. Both the Courts below have appreciated the controversy on the basis of material available on record. Re-

appreciation in regular second appeal cannot be done, particularly when no substantial question of law is involved in the present appeal. This appeal is found to be totally devoid of merits and is accordingly dismissed in *limine*.

12.12.2019
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No