

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

CR No.8579 of 2015 (O&M)
Date of decision: 3rd February, 2020

Manjit Inderpal Singh & others

... Petitioners

Versus

Santokh Singh & others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Amit Rana, Advocate for the petitioners.

Mr. Rajvinder S. Bains, Advocate for the respondents.

FATEH DEEP SINGH, J.

Plaintiff Manjit Kaur filed against defendants Mohinder Singh and 96 others a suit for separate possession of land measuring 72 Kanals 7 Marlas out of which she claims her share to be 10 Kanals 9 Marlas detailed in the head note of the plaint. The stand of the plaintiff is that she along with defendants is a co-sharer in the suit property and that on earlier occasions there has been civil litigation between them over the same in the Civil Courts as well as Revenue Courts, and threatened over the acts of the defendants she filed a suit for possession of this piece of land measuring 10 Kanals 9 Marlas. Along with the same, she filed an application for ad-interim injunction under Order 39 Rules 1 and 2 read with Section 151 CPC. The defendants took the stand admitting that the plaintiff as well as the defendants were co-sharers in the revenue record but claimed that they were in possession of their respective portion to the

learned Civil Judge (Jr. Divn.), Jagraon through its findings dated 13.12.2013 (Annexure P2) dismissed the application of the plaintiff applicant. In appeal, the Court of learned Additional District Judge, through impugned findings dated 02.09.2015 allowed the civil appeal of the appellant Manjit Kaur and directed the parties to maintain status quo regarding construction till final disposal of the case. It is against these findings, the present revision petition has come about.

Heard Mr. Amit Rana, Advocate for the petitioners; Mr. Rajvinder Singh Bains, Advocate for the respondents and perused the records of the case.

It is the common stand of the plaintiff as well as the defendants that the property is unpartitioned joint agricultural land. There is nothing substantial brought to the notice of the Court that since how long, as claimed by the defendants or the plaintiff, they were in possession of their respective shares of land and in the absence of which, being joint holding unpartitioned property, every co-sharer has a right to remain in its possession till the joint holding is partitioned among the co-sharers, for which this Court seeks support from a Full Bench view of this Court in '**Bhartu vs. Ram Sarup**' 1981 PLJ 204, wherein it has been held as under:

*"4. The inter se rights and liabilities of the co-sharers were settled by a Division Bench of this Court in a very detailed judgment in **Sant Ram Nagina Ram v. Daya Ram Nagina Ram**, AIR 1961 Pb. 528, and the following propositions, inter alia, were settled:-*

- (1) *A co-owner has an interest in the whole property and also in every parcel of it.*
- (2) *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.*
- (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 agreement consented by the other co-owners, it is not open to any body to disturb the arrangement without the consent of others except by filing a suit for partition.”*

Reverting back to the instant case, in the impugned findings, the Court below has passed orders holding that both parties are directed to maintain status quo regarding construction till final disposal of the case.

Learned counsel for the petitioners Mr. Amit Rana, Advocate could not convince this Court how there has been miscarriage of justice by such an order when apparently the parties are at loggerheads since long period of time and are resorting to various legal recourses from time to time and since the suit for partition is pending between the parties it would be appropriate and in the interest of justice to ensure that the parties continue with this position till final partition takes place and none of them is allowed to raise any sort of construction or alienate any specific portion to the detriment of the other co-sharer. It is with this end in view, the Court below has ordered the parties so to maintain status quo over construction till the final disposal of the case before the trial Court. This Court does not feel any illegality or perversity that has come about in the impugned order and thus do not necessitate any interference by this Court in this revision which is wholly without any merit and hence dismissed.

(FATEH DEEP SINGH)
JUDGE

February 3, 2020

rps

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No