

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

**C.R No. 2007 of 2020 (O & M)
DATE OF DECISION : 05.03.2021**

Dinesh Goyal

...Petitioner

Versus

Mahabir and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Ajay Jain, Advocate,
for the petitioner.

Mr. Narender Kaajla, Advocate,
for respondents No.1 and 2.

(Presence marked through video conference).

ARUN MONGA, J. (ORAL)

CM NO. 7197-CII OF 2020

Allowed, as prayed for.

MAIN CASE

Grievance of the petitioner herein is qua an order dated 09.06.2020 (Annexure P-5) passed by the Appellate Court vide which the trial Court order dated 06.03.2020 (Annexure P-4) has been partly modified to the extent that respondents No.1 and 2 (defendants before the trial Court) have been permitted to raise construction on what is alleged to be joint land of plaintiffs and defendants qua which partition proceedings are pending.

2. I have heard rival contentions of learned counsel for parties and have perused the paper-book.

3. I see no ground to interfere in the order passed by learned Appellate Court as the same is self-explanatory and clearly states that the construction carried out by defendants No.4 and 5 shall be subject to partition of joint land and in case they are still willing to carry out the same at their risk and responsibility, it is for them

to take that risk even at the cost of losing the said construction in the event the land underneath does not come in their portion after partition.

4. Co-sharers of a joint land, qua which partition proceedings are pending, are deemed to be in joint possession and enjoyment of the entire land, subject of course to their portions being determined in the partition proceedings.

5. As regards the parties to the *lis* being co-sharers in the joint land, perusal of the pleadings filed in the Courts below as also appended with petition herein would reveal that, the same is not disputed. Concededly, the parties are already before revenue authorities seeking partition of their joint land. Being so, learned Appellate Court has rightly placed reliance on Full Bench judgment of this Court in **Ram Chander Vs. Bhim Singh**¹, wherein it has been held as below:-

“18. It is, therefore, apparent that a co-owner has an interest in the entire property and also in every parcel of the joint land. When a co-sharer alienates his share or a part thereof in the joint holding what he brings forth for sale is what he owns i.e. a joint undivided interest in the joint property. A khasra/killla number, forming part of a specific rectangle number, but being a part of a joint khewat would, in view of the nature of the rights conferred upon a co-sharer, be deemed to be the sale of a share from the joint khewat and such a vendee would be deemed to be a co-owner/co-sharer in the entire joint khewat, irrespective of the artificial divisions of the joint land into different rectangles, khasra and killa numbers

19. Another attribute of joint property is that where a co-owners in possession of a specific portion of the joint holding and recorded as such in the revenue record, transfers any right, title or interest from the portion in his specific possession, his vendee would be entitled to protect the portion so transferred, without however, asserting exclusive ownership to the portion so transferred and possessed, till such time as the joint estate is not partitioned.”

6. In the premise, it is made clear that in the event, land underneath in question does not fall in the share of defendants No.4 and 5/co-sharers after partition proceedings, on the request of co-sharer who gets the said land to restore the same to

him, the said land would be restored to its original position at the cost of defendants No.4 and 5. The defendants No.4 and 5 shall not claim any damages qua the same.

7. The writ petition stands disposed of with the aforesaid observations.

MARCH 05, 2021
Shalini/ Jiten

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No