

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

**RSA-1243-2012 (O&M)
Reserved on: 09.09.2022**

Date of Pronouncement: November 4, 2022

Subhash Chander and ors. Appellants/Defendants
Versus
Amarjit and ors. Respondents/Plaintiffs

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr.Vijay Lath, Advocate and
Mr. Naveen Sharma, Advocate
for the appellant No.1 (appeal stands withdrawn by
appellants No.2 & 3 vide order dated 06.09.2018).

Mr. J.S. Virk, Advocate for respondent No.1.

HARKESH MANUJA, J.

Present second appeal has been filed against the impugned judgment and decree dated 03.02.2011 passed by the Court of learned Additional District Judge, SBS Nagar; whereby the first appeal filed at the instance of respondent No.1/plaintiff (hereinafter referred to as 'respondent No.1') has been allowed, resultantly suit for permanent injunction filed at his instance has been decreed, restraining appellant No.1/defendant (hereinafter referred to as 'appellant') from alienating specific portion of the suit property or demolishing/ constructing the suit property except in due course of law.

The facts in brief are that a suit for permanent injunction was filed at the instance of respondent No.1 with a prayer for restraining the appellant and other defendants from alienating specific portion or demolishing as well as raising construction over the suit property, which was allegedly joint between the parties, without even seeking partition.

In the plaint, respondent No.1 pleaded that the property shown as 'ABCD' situated within the abadi of Village Rahon was owned by the predecessor-in-interest of the parties, namely, Kishori Lal and after his death, the same was inherited by all being sons and daughters qua $1/8^{\text{th}}$ share each. It was further pleaded that the suit property was lying joint and un-partitioned. The portion marked by word 'D' happened to be in possession of respondent No.1; whereas portion marked by word 'A' was in possession of the appellant. It was also pleaded that the appellant had been threatening to alienate the specific portion of suit property, thus, the same led to filing of the suit.

On notice, two separate written statements were filed i.e. one at the instance of appellant and the other by respondents No.2 & 3/ defendants No.4 & 6 (hereinafter referred to as 'respondents No.2 & 3') besides defendants No. 5 & 7, against whom the suit had been withdrawn by respondent No.1. As per the written statement filed by appellant, the properties marked by words 'B' & 'C' was never owned by Kishori Lal. Further, the suit was even contested on the ground of locus standi of respondent No.1, besides its maintainability as well. In the written statement filed on behalf of other defendants, it was submitted that the portions marked by words 'B' & 'C' were not owned by Kishore Lal. It was further submitted that the portion marked as 'A' was in occupation of respondent No.1; whereas the portion marked by work 'D' was in possession of Darshana Devi i.e. defendant No.3.

Learned trial Court vide its judgment and decree dated 15.01.2011 dismissed the suit by holding that the suit property was joint between the parties having been inherited through their common

ancestor Kishori Lal and sale of specific portion was in fact sale of share only and as such, the suit for permanent injunction was not maintainable in the absence of prayer for partition. It was also held that as the properties marked by words 'B' & 'C' was not admitted to be joint between the parties, relief of declaration was also required to be sought for.

Aggrieved against the judgment and decree dated 15.01.2011 passed by the trial Court, respondent No.1 filed first appeal, which was allowed by the Court of learned Additional District Judge, SBS Nagar, by granting decree for permanent injunction against appellant, restraining him from alienating specific portion of the suit property or demolishing / constructing the same except in due course of law. Learned first Appellate Court though held that all the properties marked by words 'ABC&D' situated in Rahon were joint between the parties and as such, it would be detrimental to the interest of other co-owners in case any portion of the same was sold without partition.

Learned counsel for the appellant submits that admittedly suit property was joint between the parties and even if a specific portion of it is to be sold, the same would be regarded as a sale of share only and has to be considered subject to partition. Learned counsel further submits that in the absence of any prayer for partition, a simplicitor suit for permanent injunction filed at the instance of one of the co-sharers could not have been entertained.

On the other hand, learned counsel for respondent No.1 submits that keeping in view the value of the property in dispute, alienation of specific portion or even construction/ demolition at the

hands of appellant would be detrimental to the interest of the other co-sharers, accordingly, the learned first Appellate Court has rightly granted injunction against the appellant and thus, the impugned judgment warrants no interference.

I have heard learned counsel for the parties and gone through the paper-book. The following point of law is involved in the present appeal:-

- (i) *WHETHER a co-sharer can seek injunction restraining the other co-sharer from alienating specific portion or from raising construction/ demolition of the suit property in the absence of any evidence to show that the alienation or construction/ demolition would be detrimental to his interest and that too without seeking partition?*

Admittedly, respondent No.1 prayed for injunction, claiming the parties to be co-sharers in the entire suit property. Thus, it is not in dispute that the appellant also happened to be one of the co-sharers. It is more than settled that a sale, even of a specific portion or specific number out of the joint land/ property amounts to sale of share only and is always considered subject to adjustment by way of partition proceedings. Accordingly, I am unable to subscribe to the findings recorded by learned first Appellate Court, restraining the appellant who happens to be one of the co-sharers, from making alienation qua the joint property. Further, the finding recorded by learned first Appellate Court to the effect that any alienation or construction of joint property at the hands of appellant would be detrimental to the interest of other co-sharers has not been based on any oral or documentary evidence and thus, cannot be sustained. Reference in this regard can be made to the

judgment of this Court in **Bachan Singh Vs. Swaran Singh** reported as 2000 (3) RCR (Civil) 70; wherein in para 15, it has been held as under:-

“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.”

Still further, the parties being co-sharers, a suit for injunction was not even maintainable in the light of Section 41 (h) of the Specific Relief Act, as respondent No.1 had an equally efficacious remedy available for getting his share in the joint property by way of partition. The aforesaid view is also derived from the judgment of the Hon'ble Supreme Court in **Sakhahari Parwatrao Karahale and another Vs.**

Bhimashankar Parwatrao Karalhe, 2002 (9) SCC 608 and relevant para 3 of the same is reproduced hereunder for reference:-

“3.In the absence of this, once a finding is recorded there was no partition between the members of the joint family, each member of the joint family is co-sharer and possession of one is the possession for all. Even if there be exclusive possession of the plaintiff- respondent before partition it would be possession on behalf of all. Thus it cannot disentitle the defendant- appellant’s claim against the suit property. In view of this it is inconceivable that injunction could be granted against another co-sharer of the joint Hindu property as has been done in the present case....”

In view of the above, the point of law framed in the present appeal is thus, answered accordingly.

In view of the discussion made hereinabove, the present appeal is allowed. Judgment and decree dated 03.02.2011 passed by learned first Appellate Court, SBS Nagar, is hereby set aside upholding the judgment and decree passed by the trial Court, dismissing the suit filed by respondent No.1.

Pending application(s), if any, shall also stand disposed of.

November 4, 2022
sanjay

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>