

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

-:-

**RSA No.1476 of 2021 (O&M)
Date of Decision :15.03.2022**

Smt. Kamla & Anr.

....Appellants

VERSUS

Jasbir & Anr.

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Ms. Manpreet Dhaliwal, Advocate for the appellants.

ALKA SARIN, J.

Heard in physical mode.

CM-5868-2021 :

This is an application for condonation of 628 days delay in filing the present regular second appeal. It is averred that after dismissal of their appeal by the Lower Appellate Court the plaintiff-appellants applied for legal aid to file the appeal and that the appeal was being filed on them being provided a Legal Aid counsel. This, alongwith the prevalence of the Covid-19 Pandemic, resulted in a delay of 628 days in filing the present regular second appeal.

For the reasons mention in the application the same is allowed.

Delay in filing the present regular second appeal is condoned.

RSA-1476-2022 :

The plaintiff-appellants are in second appeal against the decisions by both the Courts below whereby their suit for permanent injunction has been dismissed.

The facts in brief are that Jage Ram son of Tek Chand was the owner in possession of a residential plot comprised in Khewat No.177/154, Khata No.214, Plot No.185 measuring 3 Kanal 8 Marla situated within the revenue estate of Village Sidipur. On 4.10.1990 Jage Ram expired and the suit property was inherited by the plaintiff-appellant No.1 and her brother Leelu Ram in equal shares being the Class-1 legal heirs of Jage Ram. Both the plaintiff-appellant No.1 and her brother Leelu Ram started residing in the family house constructed on the suit property. Leelu Ram died on 4.3.2014 leaving behind defendant-respondent No.2 who inherited his half share in the suit property. On 1.7.2015 the defendant-respondent No.2 sold her share in the suit property in favour of the defendant-respondent No.1 vide a registered sale deed.

On 3.10.2015 the plaintiff-appellants filed the present suit for permanent injunction against the defendant-respondents for restraining them from dispossessing the plaintiff-appellants from the suit property. The defendant-respondents filed written statement contesting the suit. The following issues were framed by the Trial Court :

1. Whether the plaintiff is entitled for relief of permanent injunction as alleged in the plaint?OPP
2. Whether the plaintiff has no locus standi to file the present suit? OPD
3. Whether the suit is not maintainable in the present form?OPD
4. Whether the plaintiff has suppressed the material facts from the Court?OPD
5. Whether the plaintiff are estopped to file the present suit by their own act and conduct?OPD
6. Relief.

Both sides led their respective evidence and after appraisal of the same the Trial Court decided issue no.1 against the plaintiff-appellants. The defendant-respondents did not press issue nos.2 to 5 which were decided against them. Vide judgement and decree dated 25.8.2017 the Trial Court dismissed the suit but also directed the plaintiff-appellants and the defendant-respondents to maintain joint possession of the suit property, being co-sharers to the extent of 1/2 share each, till it is partitioned by metes and bounds. The plaintiff-appellants filed an appeal against the decision by the Trial Court. However, vide judgement and decree dated 16.5.2018 the Lower Appellate Court dismissed the appeal. Hence, this regular second appeal by the plaintiff-appellants.

The counsel for the plaintiff-appellants has contended that the judgements passed by the Courts below are illegal and erroneous in as much as the suit property has not yet been partitioned but still the defendant-respondent No.2 had sold her share in the suit property to defendant No.1 though the plaintiff-appellants were having a preferential right in the suit property. She further contended that the defendant-respondent No.2 had sold a specific portion of the suit property which was illegal as she being a co-sharer had no right to sell any specific portion. Learned counsel further submitted that the defendant-respondent No.1 cannot take the possession of the suit property without getting the same partitioned through the competent court and that the possession of the plaintiff-appellants deserved to be protected. Reliance was placed upon the decision by the Division Bench in the case of **Bachan Singh vs. Swaran Singh [2001(1) ILR Punjab 340]**.

A co-sharer can claim injunction against another co-sharer if he is in exclusive possession. Remedy of the other co-sharer not in possession

is not ousting him forcibly but his remedy is to go in for partition and to claim mesne profits. In the present case the plaintiff-appellants are not in possession of the suit property. As noticed by the Courts below, Rajesh son of Ramphal while appearing as PW1 admitted in his cross-examination that his maternal uncle Leelu Ram and his wife Kavita (defendant-respondent No.2) were permanently residing in village Sidipur and were using the suit property themselves. He also admitted that his mother Kamla (plaintiff-appellant No.1) had never remained in possession of the suit property at the spot. Rakesh PW2 also admitted in his cross-examination that Kamla (plaintiff-appellant No.1) was residing with her in-laws since the time of her marriage and that the rooms in the suit property were constructed by Leelu Ram. These candid admissions make it amply clear that the plaintiff-appellants were not in possession of the suit property and thus cannot pray for grant of an injunction to protect their possession. It was inter-alia held by a Full Bench of this Court in **Bhartu vs. Ram Sarup [1981 PLJ 204]** as follows:

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

(2) Possession of joint property by one co-owner, is 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 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 no 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 by the other co-owner, it is not open to anybody to disturb the arrangement without the consent of others except by filing a suit for partition.

8. A co-sharer in possession can certainly ask for injunction against a co-sharer not in possession restraining the latter from resorting to force and ousting him.”

In the case of Bachan Singh (*supra*) relied upon by counsel for the plaintiff-appellants, a Division Bench of this Court, on a consideration of the judicial pronouncements on the subject, held as under :

“(1) 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.

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

(3) 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.

(4) 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.”

The counsel for the plaintiff-appellants has been unable to point out any act by the defendant-respondents which are detrimental to their interest as co-sharers. She has also been unable to point out any act by the defendant-respondents by which the value or utility of the suit property has been or is being diminished. Thus, the plaintiff-appellants have failed to make out a case for grant of an injunction in their favour. Though the Trial Court dismissed the suit of the plaintiff-appellants, it safe-guarded their share by directing the parties *“to maintain joint possession of suit land, being co-sharers to the extent of 1/2 share each, till it is partitioned by metes and bounds”*.

No question of law much less any substantial question of law arises for determination by this Court in the present case. The concurrent findings of fact recorded by both the Courts below warrant no interference. The present appeal, being without any merit, is dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

March 15, 2022
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(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO