

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

**RSA-5381-2019 (O&M)
Reserved on : 15.07.2022
Date of decision : 25.07.2022**

Tarsem Singh (deceased) through his LR ...Appellant

versus

Major Singh (deceased) through his LR's & Others ...Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rajinder Sharma, Advocate for the appellant.

ALKA SARIN, J.

CM-15294-C-2019 and CM-15295-C-2019

The present applications have been filed for impleading the legal representatives of the original plaintiff and the original defendant No.1 who are stated to have died during the pendency of the appeal before the lower Appellate Court.

For the reasons mentioned in the applications, the same are allowed and the legal representatives of the original plaintiff and the original defendant No.1 are impleaded as parties in the present appeal, subject to all just exceptions.

RSA-5381-2019

The present regular second appeal has been preferred by the plaintiff-appellant against the judgements and decrees passed by both the Courts below whereby his suit for permanent injunction has been dismissed.

The case of the plaintiff-appellant is that he along with his brothers, Harbans Singh and Jarnail Singh, are in exclusive possession as co-sharers in land measuring 14 Marlas in the area of Village Chak Guru, Tehsil Garhshankar comprised in Khata No.48/76, Khasra Nos.1857/1469 (0-14). The brothers of the plaintiff-appellant are residing in England and the plaintiff-appellant is cultivating their share in the suit land. It is further the case that the plaintiff-appellant and his brothers are in exclusive possession of the suit land for the last more than 30 years as co-sharers but the suit land along with other land is joint of the owners as recorded in the jamabandi. It is alleged that the defendant-respondents have started threatening the plaintiff-appellant that they will interfere into the lawful, peaceful and exclusive possession of the plaintiff-appellant in the suit land, illegally and forcibly, to which they have no right except in due course of law and till the partition of the suit land. Hence, the present suit.

Upon notice, the defendant-respondents contested the suit and filed written statement. Apart from the preliminary objections raised, on merits it was averred that plaintiff-appellant, his brothers, the defendant-respondents and their brothers along with other co-sharers are co-owners in land measuring 6 Kanals 1 Marla comprised in Khewat No.48, Khatauni No.72 to 76, Khasra Nos.1460/1211 (0-11), 1584/1 to 1211 (2-12), 1667/1 to 1211 (0-4), 1739/1443 (0-19), 1938/1858 (0-13), 1937/1858 (0-18), 1857/1469 (0-14). It was also submitted that while Khasra Nos.1460, 1584, 1667 and 1739 are situated in different places whereas the land comprised in Khasra Nos.1938, 1937 and 1857 is situated in one 'tak' and that the land comprised in Khasra Nos.1938, 1937 and 1857 has approach from the eastern and as well as southern side through a public passage which connects

the said land on the eastern, southern corner. By way of mutual adjustment, the defendant-respondents and their brothers are in possession of Khasra Nos.1937, 1938 wherein they have constructed their residential houses and that the defendant-respondents and their brothers have been approaching their residential houses through Khasra No.1857 from its southern portion. It was also stated that the defendant-respondents have kept a 2 Karam wide space from the eastern portion of land comprised in Khasra Nos.1937 and 1938 in the eastern side in which the gates of the residential houses of the defendant-respondents open and that the defendant-respondents are using 3 Karams x 4 Karams wide space out of southern portion of Khasra No.1857 for approach as passage to their residential house existing in Khasra No.1937 and 1938 without any sort of obstruction for the last more than 20 years as a matter of right and by way of easement of necessity as there is no other passage to their residential houses in Khasra Nos.1937 and 1938. It was further stated that the plaintiff-appellant is not in possession of the said portion and rather the same is being used as passage by the defendant-respondents.

The defendant-respondents also filed a counter-claim for a decree of permanent injunction so as to restrain the plaintiff-appellant from raising any sort of construction or putting any sort of obstruction in the site measuring 3 Karams x 4 Karams being southern portion of Khasra No.1857 so as to block the land/site in their possession comprised in Khasra Nos.1937 and 1938. The plaintiff-appellant contested this counter-claim and filed written statement. Replication and rejoinder was filed by the respective parties in the suit and the counter-claim.

The following issues were framed by the Trial Court :

1. Whether plaintiff is entitled for permanent injunction as prayed for ? OPP
2. Whether the plaintiff is estopped from filing the present suit by his own act and conduct ? OPD
3. Whether the plaintiff has not come to the Court with clean hands ? OPD
4. Whether the suit is bad for non-joinder of necessary parties ? OPD
5. Whether the suit is not maintainable in the present form? OPD
6. Whether the site plan produced by the plaintiff is not as per the existing position ? OPD
7. Whether the defendants/counter claimants are entitled for the relief of permanent injunction as prayed for ? OPCC
8. Relief

On the basis of the pleadings of the parties and the evidence on the record, the Trial Court vide judgement and decree dated 31.08.2015 dismissed the suit of the plaintiff-appellant as well as the counter-claim of the defendant-respondents. Aggrieved by the said judgment and decree, an appeal was preferred by the plaintiff-appellant. The defendant-respondents filed objections. Vide judgment and decree dated 15.07.2019 the lower Appellate Court dismissed both the appeal as well as the objections. Hence, the present regular second appeal by the plaintiff-appellant.

Learned counsel for the plaintiff-appellant has contended that the plaintiff-appellant is in exclusive possession of the suit land and the defendant-respondents are trying to illegally and forcibly interfere in his possession and, as such the plaintiff-appellant is entitled to the injunction as prayed for. Reliance was also placed on the entries of the *khasra girdawri* wherein, as per counsel, the plaintiff-appellant and his brothers are shown cultivating the suit land.

Heard.

In the present case both the Courts below have concurrently found that the suit land is joint. Once the suit land is not partitioned and the parties to the suit are co-sharers and co-owners, each and every co-sharer is in possession of every inch of land. A joint owner cannot prevent by injunction the usage of a portion of the joint property by another co-owner unless this amounts to wastage or destruction or injury to the other co-owners. 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. The plaintiff-appellant failed to establish that he was in exclusive possession of the suit land. The counsel for the plaintiff-appellant placed reliance on the jamabandi Ex.P3 and the khasra girdawri Ex.P4 to contend that the plaintiff-appellant was in possession of the suit land. However, the Courts below have found that the evidence of the plaintiff-appellant was rebutted by the defendant-respondents and that even the Local Commissioner had submitted a report to which no objections were filed. Learned counsel placed reliance on the Full Bench decision in the matter of **Bhartu vs. Ram Sarup [1981 PLJ 204]**. In Bhartu's case (*supra*) the Full Bench noted the earlier decision by a Division Bench in the case of **Sant Ram Nagina Ram vs. Daya Ram**

Nagina Ram [AIR 1961 Pb. 528] wherein the following propositions 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 arrangement 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.

In Bachan Singh vs. Swaran Singh [2000(3) RCR (Civil) 70]

the Division Bench *inter-alia* held that :

“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.”

This Court is unable to apply the ratio in Bhartu’s case to the facts of the present case when the plaintiff-appellant has failed to establish his exclusive possession over the suit land and there being no finding that any act by the defendant-respondents was detrimental to the interests of the other co-owners in the joint land.

In view of the discussion above, I do not find any illegality or infirmity in the judgements and decrees passed by both the Courts below. No question of law, much less substantial question of law, arises in the present regular second appeal. The appeal is accordingly, dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

25.07.2022
Yogesh Sharma

(ALKA SARIN)
JUDGE

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