

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

CR No.5847 of 2022

Date of Decision:14.12.2022

Gurjant Singh and others Petitioners
Vs.
Lalit Mohan Chugh and another Respondents

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Sushil Kumar Verma, Advocate
 for the petitioners.

DEEPAK GUPTA, J.

Defendants of the case are in this revision against order dated 01.11.2022 passed by learned Additional District Judge, Sirsa in CMA 73/2022 [CNR N: HRSI01-010053-2022], whereby an application of the respondent- plaintiff No.1 – Lalit Mohan Chugh under Order 39 Rules 1 and 2 CPC for temporary injunction, has been allowed, by reversing the order dated 25.07.2022 of the Court of learned Additional Civil Judge (Senior Division), Ellenabad.

2. As is revealed from the paper book, two plaintiffs (now respondents) Lalit Mohan Chugh & other filed suit for permanent injunction submitting that land measuring 17 kanal 19 marlas comprised in Khewat/ Khatouni No.2595 is owned by various co-sharers. However, Shri Nand Kishore, the father of plaintiff No.1 Lalit Mohan is recorded to be in physical possession of 11 kanal 6 marlas of land comprised in Rect. No.291 killa No.1/1 (3-18), 10(7-08) and after the death of said Nand Kishore, plaintiff No.1 is in cultivating possession thereof. Plaintiff No.2 was stated to be in possession of 1 kanal 5 marlas of land as comprised in Rect. No.290, Killa

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No.16/2/1. It was alleged that defendants had purchased share from other co-sharers not in possession of any parcel of the joint land, apart from the land of other khewats by virtue of sale deed dated 25.04.2022 and on the basis of recital regarding delivery of possession, started interfering in the possession of the plaintiffs. Plaintiffs prayed for decree of permanent injunction and along with that, moved an application under Order 39 Rules 1 and 2 CPC for temporary injunctory relief.

3. Defendants in their written statement claimed to be co-owners in possession of the suit land on the basis of sale deed dated 25.04.2022 and prayed for dismissal of the suit.

4. Learned Trial Court found that plaintiff No.2 had already sold his share and thus, he was no longer a co-sharer but as this fact had been concealed from the Court, so for this reason, injunctory relief was declined. However, the appeal filed by plaintiff No.1 Lalit Mohan Chugh, was allowed by the first appellate court, after prima-facie finding his possession on the basis of entry in the revenue record in favour of his father.

5. Assailing the above said order dated 01.11.2022, it is contended by the defendants- petitioners that they are the co-sharers in the suit land and so, in view of Full Bench judgment in ***Bhartu Vs. Ram Sarup, 1981 PLJ 204***, every co-owner has interest in whole of the property and possession of joint property by one co-sharer is to be presumed in the eyes of law to be in possession of all, even if all but one is actually out of possession. Still further, it is contended that the learned First Appellate Court wrongly relied upon the entry in the revenue record in the name of father of plaintiff No.1, as said Shri Nand Kishore had already expired. Learned counsel referred to ***Uttam Singh Vs. Des Raj, 1990(1) RRR 52***,

wherein it was held by this High Court that when entries in the revenue record were in the name of the deceased, whose name continued for 17 years in the revenue record, such entries have no evidentiary value.

6. Having considered the submissions of learned counsel for the petitioners and having perused the paper book, I find no merit in this revision.

7. As per the Jamabandi entries for the year 2017-2018 (Annexure P.6) Shri Nand Kishore, admittedly the father of plaintiff No.1 Lalit Mohan Chugh, is recorded to be in exclusive possession of land comprised in Rect. No.291 Killa No.1/1 (3-18) and 10(7-8). Said Nand Kishore being in exclusive possession of the said land, could not be dispossessed except in due course of law by seeking partition by other co-sharers. No doubt that entries in the revenue record in the name of deceased have no evidentiary value but this does not mean that on the death of Nand Kishore deceased, the other co-sharers will automatically be presumed to have come into possession of that portion of the land, on which Nand Kishore was in exclusive possession. Plaintiff Lalit Mohan Chugh being his son, so it is to be presumed that on the death of Nand Kishore, said plaintiff is continued to be possessing the said land. In ***Bhartu v. Ram Sarup*** (supra), apart from explaining other rights and liabilities of the co-sharers, it has been held that a co-sharer, who is in possession exclusively of some portion of the joint holding, is in possession thereof as a co-sharer and is entitled to continue to be in possession till the joint holding is partitioned.

8. In view of the above, it is held that there is no merit in the appeal. Learned First Appellate Court rightly appreciated the factual & legal position and correctly allowed the application under Order 39 Rules 1 and 2 CPC by granting injunctory relief to plaintiff No.1- respondent No.1.

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9. Revision is accordingly dismissed.
10. Nothing observed in this order be taken as an expression on the merits of the case.

December 14, 2022	(DEEPAK GUPTA)
renu	JUDGE
Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No