

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.113

Case No. : RSA-4194-2019 (O&M)

Date of Decision : October 17, 2023

Chet Ram (now deceased) through his LRs
and others Appellants
vs.
Sajjan Singh and others Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Parveen Kumar, Advocate
with Abhimanyu Singh, Advocate
for the appellants.

* * *

GURBIR SINGH, J. :

1. This is Regular Second Appeal against the concurrent judgments of both the Courts below, whereby suit filed by the plaintiffs/appellants was dismissed by the learned Trial Court and appeal filed against the judgment of learned Trial Court was dismissed by learned Appellate Court.
2. The plaintiffs filed suit for permanent injunction stating that the plaintiffs and proforma defendants were owners in possession of the suit land. Defendants have no concern with the suit land in question and accordingly, they be restrained from interfering in the peaceful possession of the plaintiffs over the said suit land.
3. The case of the plaintiffs is that the plaintiffs and proforma defendants are recorded as owners in possession of land measuring 121

kanals, out of total land measuring 223 kanals 18 marlas, as mentioned in the head note of the plaint.

4. Case of defendants no.5 and 6 is that the plaintiffs have never remained in possession of any portion of the suit property. They are not even residents of the village in question. The vendor of defendants no.5 and 6 had given the possession of specific khasra numbers measuring 96 kanals 02 marlas to them and since the time of purchase, they are in continuous possession of said khasra numbers.

5. Case of defendant no.8 is that he is co-sharer in the total joint land and he is *gair marusi* tenant under the other co-sharers over the land measuring 75 kanals 04 marlas, as per *jamabandi* for the year 2010-11. The plaintiffs never remained in possession over this land.

6. On the basis of evidence led on the file, the learned Trial Court has held that in the *jamabandi* for the year 2010-11 (Ex.P-1), the plaintiffs, defendants and proforma defendants are recorded as co-sharers in the land measuring 223 kanals 18 marlas. In none of the documents brought on the file, plaintiffs are recorded in exclusive possession of any portion of the joint land. In all the *jamabandis* prepared before and after the consolidation, the plaintiffs are recorded as co-sharers in the total land. Since the parties to the suit are co-sharers in the suit property, so the plaintiffs are not entitled for any relief of injunction against the defendants.

7. The afore-said finding has been affirmed in appeal.

8. Learned counsel for the plaintiffs/appellants has submitted that the plaintiffs did not seek relief of declaration that plaintiff is owner in possession of the suit property. The suit was filed only for permanent

injunction but the Courts below lost sight of the head note and relief clause of the plaint and gave finding regarding declaration. A person cannot sell better title than he himself has in the property. The finding regarding share of defendants no.5 and 6 with regard to whole land is wrong. A person cannot be treated as a tenant as well as co-sharer.

9. I have heard learned counsel for the appellants and perused the case file.

10. The law regarding inter se rights of co-sharers is settled by this Court in case **Sant Ram Nagina Ram vs. Daya Ram Nagina Ram** reported as **AIR 1961 Punjab 528** and this Court was pleased to lay down the following principles :-

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

(2) Possession of the 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 to by the other co-owners, it is not open to any one to disturb the arrangement without the consent of others except by filing a suit for partition.

(8) The remedy of a co-owner not in possession, or not in possession of a share of the joint property, is by way of a suit for partition Or for actual joint possession, but not for ejectment. Same is the case where a co-owner sets up an exclusive title in himself.

(9) Where a portion of the joint property is, by common consent of the co-owners, reserved for a particular common purpose, it cannot be diverted to an inconsistent user by a co-owner; if he does so, he is liable to be ejected and the particular parcel will be liable to be restored to its original condition. It is not necessary in such a case to show that special damage has been suffered.”

11. The learned Lower Appellate Court has relied upon the aforesaid case and a Full Bench judgment of this Court in **Bhartu vs. Ram Sarup** reported as **1981 PLJ 204 (P&H)** and also on a judgment of Hon’ble Supreme Court in **Kochkunju Nair vs. Koshy Alexander and others** reported as **III. 1999 SLT 183**.

12. It has been held that the co-sharers are shown to be in joint possession of the suit property whereas the plaintiffs are claiming that they are owners in exclusive possession of land measuring 121 kanals comprised in khewat no.107, total measuring 223 kanals 18 marlas. The Courts below have rightly held that in the *jamabandis*, the suit property is shown as joint and all the co-sharers are in joint possession of the entire land. It is not the case of the plaintiffs that other co-sharers are excluded from the possession

of property which is in possession of the plaintiffs. So, the plaintiffs are not

entitled for seeking relief of permanent injunction. In the head note and prayer clause of the plaint, it is mentioned that suit for permanent injunction that the plaintiffs are owners in possession of the suit property. When in the heading as well as prayer clause of the plaint, a person is seeking that he is owner in possession, then the finding of the learned Courts below, that the plaintiff has also sought declaration, cannot be, in any way, considered against the heading of the plaint.

13. In view of the above discussion, there is neither any misreading nor misappreciation of evidence by both the Courts below. The concurrent finding recorded by both the courts below is based on proper appreciation of evidence and does not suffer from any perversity or illegality. No question of law, much less substantial question of law, arises for determination in the instant second appeal. The appeal is without any merit and is accordingly dismissed in limine.

14. Pending applications, if any, shall stand disposed of along with this judgment.

October 17, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.