

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.4227 of 2023

Pronounced on: 27.09.2023.

Hari Dass and another

....Petitioners

Versus

Davinder Pal Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWALPresent: Mr. Sanjeev Kumar Bawa, Advocate
for the petitioners.

VIKRAM AGGARWAL, J.

1. The present revision petition is directed against the order dated 24.11.2022 (Annexure P-8) passed by the Additional District Judge, Jalandhar, vide which the appeal filed by the respondent against the order dated 03.11.2022 (Annexure P-5) passed by the Civil Judge (Jr. Division), Phillaur was allowed. The Court of Civil Judge (Jr. Division), Phillaur had vide order dated 03.11.2022, dismissed the application filed by the respondent-plaintiff under Order 39 Rules 1 and 2 CPC for the grant of ad-interim injunction.

2. The facts, as emanating from the revision petition are that the respondent-plaintiff filed a suit (Annexure P-1) for permanent injunction restraining the petitioners-defendants from raising any construction or any specific valuable portion of the land in dispute or changing the nature of the same. The land in dispute is land situated in Village Haripur, Tehsil Phillaur, District Jalandhar (fully described in the plaint).

3. The case set up by the respondent-plaintiff was that the parties were co-owners in the land in dispute and the petitioners-defendants were threatening to raise construction on a specific valuable portion of the land which was in fact in

the cultivating possession of the respondent-plaintiff. The petitioners-defendants had collected bricks and sand at the spot for raising construction. It was averred that the suit land was joint and had not been partitioned and, therefore, no co-sharers could raise construction on any specific valuable portion of the said land.

4. Along with the suit, an application (Annexure P-2) under Order 39 Rules 1 and 2 CPC was filed for the grant of ad-interim injunction.

5. The suit was opposed by way of a written statement (Annexure P-3). Preliminary Objections with regard to *locus standi*, maintainability, the suit being bad for mis-joinder and non-joinder of necessary parties, the respondent-plaintiff not having come to the Court with clean hands etc. were raised. On merits, it was admitted that the parties were co-owners. However, a case was set up that the petitioners-defendants had purchased land by way of different sale deeds in the year 1973 and 2017. The respondent-plaintiff wanted to take forcible possession of the suit land and that he had not filed any suit for partition. It was also averred that no injunction could be granted against a co-sharer.

6. In the replication, the averments made in the written statement were denied and those made in the plaint were reiterated. It was averred that parties were in separate possession of their shares of land but the petitioners-defendants were threatening to raise construction over valuable portion of land which was in exclusive possession of the respondent-plaintiff.

7. The trial Court dismissed the application for the grant of ad-interim injunction vide order dated 03.11.2022. It was held that the respondent-plaintiff had failed to show as to how raising of construction would change the nature of the property or impair the value of the joint holding or that the same would amount to ouster. Reliance was placed upon the decision of this Court in the case of ***Bachan Singh Vs. Swaran Singh (2000) 3 PLR 416***. Reference was also made

to the admission in the replication that both parties were in exclusive possession of their shares. It was also noticed that exclusive possession was reflected in the Jamabandi also. Under the circumstances, the application for the grant of ad-interim injunction was dismissed.

8. In appeal, however, the First Appellate Court reversed the decision of the trial Court and granted the ad-interim injunction. It was held that the nature of the land was agricultural and since the parties were co-sharers, no construction could be raised on any portion and the only remedy would be to seek partition.

9. I have heard learned counsel for the petitioners.

10. Learned counsel for the petitioners-defendants submitted that the First Appellate Court had erred in allowing the appeal and granting the injunction while reversing the well-reasoned judgment passed by the trial Court. Learned counsel submitted that the trial Court had rightly held that mere raising of construction would not affect the rights of the parties and that parties were in exclusive possession of different parcels of land. Learned counsel submitted that the First Appellate Court decided the appeal on the basis of assumptions and presumptions. It lost sight of the fact that if the petitioners-defendants were restraint from raising construction over land which was in their exclusive possession, they would suffer an irreparable loss.

11. I have considered the submissions made by learned counsel for the parties.

12. Before coming to the merits of the case, it would be essential to examine the law on the subject. In the case of **Bhartu Vs. Ram Sarup, (supra)**, a Full Bench of the Hon'ble Punjab and Haryana High examined the rights and liabilities of co-sharers. It referred to the decision of a Division Bench of the

Hon'ble Punjab and Haryana High Court in the case of **Sant Ram Nagina Ram**

Vs. Daya Ram Nagina Ram, AIR 1961 Punjab 528, in which it was held as under:-

4. The *inter se* rights and liabilities of the co-sharers were settled by a Division Bench of this Court in a very detailed judgment in ***Sant Ram Nagina Ram v. Daya Ram Nagina Ram, A.I.R. 1961 Pb. 528***, and the following propositions, *inter alia*, 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."

Relying upon the propositions settled by the Division Bench in the case of **Sant Ram Nagina Ram Vs. Daya Ram Nagina Ram (supra)**, the Hon'ble Full Bench laid down as under:-

"It is evident from the said propositions that when a co-sharer is in possession exclusively of some portion of the joint holding, he is in possession thereof as a co-sharer and is entitled to continue in its possession if it is not more than his share till the joint holding is partitioned. It is also undisputed that a vendor cannot sell any property with better rights than he himself has. Consequently when a co-sharer sells his share in the joint holding or any portion thereof and puts the vendee into possession of the land in his possession, what he transfers is his right as co-sharer in the said land and the right to remain in its exclusive possession till the joint holding is partitioned amongst all the co-sharers. It was on this basis that a Division Bench of the Lahore High Court in ***Sukhdev v. Parsi plaintiff and others, A.I.R. 1940 Lah. 473***, held that a co-sharer who is in exclusive possession of any portion of a joint *khata* can transfer that portion subject to adjustment of the rights of the other co-sharer therein at the time of partition and that other co-sharer's right will be sufficiently safeguarded if they are granted a decree by giving them a declaration that the possession of the transferees in the lands in dispute will be that of co-sharers, subject to adjustment at the time of partition. As is well-known, a declaratory decree is nothing but a judicial

recognition of the existing rights and such a decree does not tend to create any rights. The passing of the declaratory decree, therefore, shows beyond doubt that what the vendee gets in the transfer from a co-sharer is the right of that co-sharer and not exclusive ownership of any portion of joint land. It is also undisputed that the right of pre-emption is available not only when a co-sharer sells the whole of his share but also when he sells a portion thereof. When a co-owner describes the land sold out of his share not in terms of a fractional share of the holding but in terms of measurement and *khasra* numbers even then he sells nothing but his rights as co-sharer in the joint holding i.e. a portion of his share therein. The share in the joint holding according to the dictionary meaning also does not mean a fractional share and instead means a definite portion of property owned by a number of persons in common.”

Relying upon the Full Bench Judgment in the case of **Bhartu Vs. Ram Sarup, (supra)**, a Division Bench of the Hon'ble Punjab and Haryana High Court also examined issue in the case of **Bachan Singh Vs. Swaran Singh, 2000 (2) RCR (Civil) 70 (P&H)**. After examining the entire law on the subject, the Hon'ble Division Bench laid down 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.”

The Hon'ble High Court of Punjab and Haryana was examining the issue again in the case of **Bal Kishan Vs. Ram Singh, 2001 (3) RCR (Civil) 491**. Relying upon the Judgment of the Hon'ble Full Bench in the case of **Bhartu Vs. Ram Sarup, (supra)**, and the Judgment of a Division Bench of the Hon'ble Punjab and Haryana High Court in the case of **Bachan Singh Vs. Swaran Singh (supra)**, it was held as under:-

“12. In this case also when the Hindustan Petroleum Corporation Ltd. was put in

possession of the land sold by its vendor, the Hindustan Petroleum Corporation Ltd. can raise construction. Before the Hindustan Petroleum Corporation Ltd. had set up petrol outlet on this land, co-sharers Navrattan Singh, Laxmi Narain, Jai Narain, Smt. Nathi and others furnished declaration cum undertaking to the Hindustan Petroleum Corporation Ltd. whereby they declared that co-sharer Ram Singh is in exclusive possession of the khasra Nos. 31/4 (4-10), 31/6 (3-4), 31/7 (8-0), 21/23 (0-6) khata No. 11, Khatauni No. 11 and they have no objection to these khasra numbers being sold by Rm Singh to Hindustan Petroleum Corporation Ltd. and possession being given of these khasra numbers to Hindustan Petroleum Corporation Ltd. In this case, there is another difficulty in the way of Bal Kishan claiming injunction. Bal Kishan has not become co-sharer in land measuring 726 kanal 12 marla from the mere fact that decree for specific performance in their favour. It is an *ex parte* decree. There is an application filed for setting aside the *ex parte* decree. If the *ex parte* decree is set aside, there will be *de novo* trial of the suit for specific performance and no wonder the suit for specific performance is dismissed altogether or only a money decree is granted. Bal Kishan and Jagdish Parshad will not acquire the status of co-sharer till sale deed is executed in their favour in pursuance of agreement of sale dated 11.6.96.

13. If by virtue of sale executed by Ram Singh in favour of Hindustan Petroleum Corporation Ltd., Hindustan Petroleum Corporation Ltd. has appropriated a more valuable piece of land to itself, other co-sharers are not without any remedy. They can ask for partition of the joint land. As partition, the rights and liabilities of the co-sharers *inter-se* shall be adjusted. If at partition, Hindustan Petroleum Corporation Ltd. is allowed to retain possession of this land measuring 16 kanal, it will be called upon to compensate the other co-sharers in terms of money for retention of more valuable piece of land by it. If at partition, this land measuring 16 kanal falls to the share of other co-sharer/co-sharers, then also adjustment will take place. Sale by a co-sharer of property which is in his exclusive possession is subject to adjustment of the rights of other co-sharers at partition. Possession of Hindustan Petroleum Corporation Ltd. in land measuring 16 kanal is only that of a co-sharer. In this case, there is no equity in favour of Bal Kishan petitioner so that injunction could be granted in his favour. Hindustan Petroleum Corporation Ltd. has purchased land measuring 16 kanal from Ram Singh for a valuable consideration. It has set up petrol outlet. Prior to the purchase of land, the Hindustan Petroleum Corporation Ltd. through its counsel Shri Prem Nath Gupta, advocate had given public notice in "Hindustan Times" and "Punjab Kesri" that the Hindustan Petroleum Corporation Ltd. is going to purchase land measuring 16 kanal comprising in Khasra No. 31/4 (4-10), 31/6(3-4), 31/7 (8-0) and 21/23 (0-6) khewat No. 11 khata No. 11 and if any body has any objection, he may do so within 10 days from the date of publication. Bal Kishan did not raise any objection pursuant to the publication of the public notice dated March 16, 2000. So, this revision fails and is dismissed."

The Hon'ble Punjab and Haryana Court examined this issue in a recent Judgment titled as **Satnam Singh Vs. Gursher Singh and others, 2016 (4) Law Herald 3337** and held as under:-

"18. It is also a settled principle that mere raising construction by one of the co-sharer in established/exclusive possession would not amount to ouster of other co-sharer, nor the same would diminish the value and utility of the property. The ratio laid down in Bachan Singh's case (supra) fully applies to the facts of the instant case."

13. Reverting to the facts of the present case, admittedly parties to the lis are co-owners. As noticed by the Courts below, as per the Jamabandi for the year

2018-19, the respondent-plaintiff is shown as a co-sharer in property falling in some Khasra numbers whereas the petitioners-defendants are shown to be in possession of some land in some different Khasra numbers. The Jamabandi also reveals that the land is agricultural land. It is, therefore, clear that the respondent-plaintiff and the petitioners-defendants are co-sharers, both being in possession in some parcels of land along with other co-sharers. It has nowhere come on record that either of the parties have raised some construction earlier. It has also not come on record that some other construction exists at the spot, having been raised by some other co-sharer. Admittedly, partition proceedings have not taken place. If one goes through the principles laid down by the Hon'ble Full Bench in the case of **Bhartu Vs. Ram Sarup, (supra)**, by the Division Bench in the case of **Sant Ram Nagina Ram Vs. Daya Ram Nagina Ram, (supra)** and by another Division Bench in the case of **Bachan Singh Vs. Swaran Singh, (supra)**, it emerges that if construction is raised by the petitioners-defendants, it would prove to be detrimental to the interest of the other co-sharers. No doubt, mere raising of construction or improvement in the common property does not amount to ouster. However, once the specific allegation is that the petitioners-defendants are trying to raise construction over valuable portion of the land, the same cannot be permitted to be done. Such an act will definitely affect the rights of other co-owners and shall also diminish the value and utility of the land in dispute. The appropriate remedy, as rightly held by the First Appellate Court would be to seek partition of the joint land and then to raise construction over the land which would fall to the share of the co-owners. The First Appellate Court, therefore, rightly allowed the appeal and consequently the injunction application. I do not find any illegality in the same warranting interference in revisional jurisdiction.

In view of the aforementioned facts and circumstances, I do not find any merit in the present revision petition and the same is accordingly dismissed.

Pronounced on: 27.09.2023
Rekha

(VIKRAM AGGARWAL)
JUDGE

<i>Whether speaking/reasoned :</i>	<i>Yes/No.</i>
<i>Whether reportable :</i>	<i>Yes/No.</i>