

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

208

CR-399-2024 (O&M)

Date of decision : 24.10.2024

Diljinder Singh @ William Singh Sandhu

..... Petitioner

versus

Chandan Ram and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

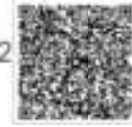
Present: Mr. G.S. Dhaliwal, Advocate
for the petitioner.

Mr. Mayank Mathur, Advocate
for the respondents.

PANKAJ JAIN, J. (Oral)

1. Petitioner is the defendant in the original suit. Respondents-plaintiffs filed suit for permanent injunction seeking decree of restrain against the defendant and his agents, servants from interfering or dispossessing the plaintiffs from land described in the head note of the plaint admeasuring 111 bighas 18 biswas situated at village Passiana, Teshil and District Patiala in any manner except by way of partition.

2. It was claimed by the plaintiffs that the suit land is a joint land. Defendant claims to have purchased a share thereof admeasuring 28 bighas 1 ½ biswas vide sale deed dated 04.07.2002. On the strength of the said sale deed, the defendant-petitioner intends to dispossess the plaintiffs. Alongwith plaint, plaintiffs filed application under Order 39 Rule 1 and 2 seeking interim injunction. The suit is being contested by

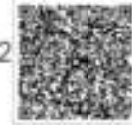


the defendant. Defendant asserted that he purchased part of the suit land vide sale deed dated 04.07.2002. He being co-sharer in joint possession of the suit land, simple suit for permanent injunction by a co-sharer against the co-sharer is not maintainable.

3. Trial Court vide order dated 12.12.2022 allowed the application filed by the plaintiffs restraining defendants from dispossessing the plaintiffs from the suit land except in accordance with law.

4. In an appeal preferred by the defendant, the order stands affirmed. Lower Appellate Court held that the remedy available to the petitioner-defendant is to seek separate possession by way of partition. He being vendee under a co-sharer, cannot be allowed to interfere in possession of the appellants until he shows that his vendor was in exclusive possession of his share of land.

5. Counsel appearing for the petitioner while assailing the impugned order submits that the impugned orders passed by the Courts below are in teeth of settled canon of law that “injunction cannot be granted against a co-sharer”. He asserts that even as per the averments made in the plaint, the plaintiffs-respondents are not in exclusive possession of the suit land and thus simpliciter suit for permanent injunction was not maintainable at their behest against the petitioner who is a co-sharer in the suit property. In order to hammer-forth his contention, he relies upon law laid down by Full Bench of this Court in the case of **Bhartu vs. Ram Sarup** reported as **1981 PLJ 204** and the law laid down by 5 Judges Bench in the case of **Ram Chander vs. Bhim Singh and others** reported as **2008(3) RCR (Civil) 685**. Further

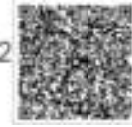


reliance is being placed upon ***T. Ramalingeswara Rao (Dead) Thr. LRs. & Anr. vs. N. Madhava Rao & Ors.*** reported as ***2019(2) RCR (Civil) 770.***

6. *Per contra*, counsel for the respondents submits that defendant-petitioner is a purchaser of an undivided share. There is no denial to the fact that the property still is joint. Thus, petitioner-defendant cannot claim to have been put in possession by his vendors. A purchaser of a share in a joint property can only claim possession by getting the property partitioned by metes and bounds. The plaintiffs being in possession of the suit property filed suit for permanent injunction seeking decree of restrained against defendant from dispossessing the plaintiffs except by way of partition. Reliance is being placed upon ***Ramdas vs. Sitabai & Ors. 2009(7) SCC 444, Gajara Vishnu Gosavi v. Prakash nanasahed Kamble & Ors. 2009(10) SCC 654, Ram Murti Sharma and another vs. Prem Kumar and others 2001(2) PLR 13, Amarjit Kaur vs. Bikaram Singh & Anr. 2016(2) Law Herald 1343, Bhupinder Singh & others vs. Roop Singh & Another 2010(8) RCR (Civil) 788.***

7. I have heard counsel for the parties and have carefully gone through the records of the case.

8. It is not denied that the plaintiffs purchased share out of a joint holding. The *inter se* rights and liabilities of co-sharer as were settled by the Division Bench of this Court in ***Sant Ram Nagina Ram vs. Daya Ram Nagina Ram, AIR 1961 PB. 528*** stand reiterated by Full Bench of this Court in ***Bhartu's case (supra)***. The Full Bench observed as under:-



“(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.

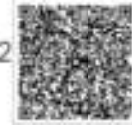
(6) Every co-owner has a right to use the joint property in a husband like manner not inconsistent with similar rights of other co-owners.

(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.”

The aforesaid ratio stands further reiterated by Larger Bench in the case of ***Ram Chander (supra)***.

9. There is no denial to the fact that the defendant-petitioner in fact has become co-sharer in the suit property which is a joint khewat. He being a vendor under a co-sharer, asserts his possession over the share of property be purchased to resist claim of the plaintiff.

The question is:-



(i) *Whether the petitioner can claim to have been put in possession by his vendor?*

10. The issue is no more *res integra*. The same has been answered in the case of ***Ramdas (supra)***, wherein the Supreme Court observed as under:-

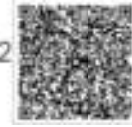
“15. Without there being any physical formal partition of an undivided landed property, a co-sharer cannot put a vendee in possession although such a co-sharer may have a right to transfer his undivided share. Reliance in this regard may be placed to a decision of this Court in ***M.V.S. Manikayala Rao Vs. M. Narasimhaswami & Ors. [AIR 1966 SC 470]***, wherein this Court stated as follows:

“Now, it is well settled that the purchaser of a co-parcener's undivided interest in the joint family property is not entitled to possession of what he had purchased. His only right is to sue for partition of the property and ask for allotment to him of that which, on partition, might be found to fall to the share of the co-parcener whose share he had purchased.”

16. It may be mentioned herein that the aforesaid findings and the conclusions were recorded by the Supreme Court by placing reliance upon an earlier judgment of this Court in ***Sidheshwar Mukherjee Vs. Bhubneshwar Prasad Narain Singh & Ors. [AIR 1953 SC 487]***, wherein this Court held as under:-

“All that (vendee) purchased at the execution sale, was the undivided interest of co-parcener in the joint property. He did not acquire title to any defined share in the property and was not entitled to joint possession from the date of his purchase. He could work-out his rights only by a suit for partition and his right to possession would date from the period when a specific allotment was made in his favour” (Emphasis added)

17. In view of the aforesaid position there could be no dispute with regard to the fact that an undivided share of co-sharer may be a subject matter of sale, but possession cannot be



handed over to the vendee unless the property is partitioned by metes and bounds amicably and through mutual settlement or by a decree of the Court.”

11. The aforesaid ratio of law was reiterated by Supreme Court in the case of *Gajara Vishnu Gosavi’s case (supra)* observing as under:-

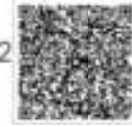
“In *Kartar Singh v. Harjinder Singh*, AIR 1990 Supreme Court 854, this Court held that where the shares are separable and a party enters into an agreement even for sale of share belonging to other co-sharer, a suit for specific performance was maintainable at least for the share of the executor of the agreement, if not for the share of other co-sharers. It was further observed:

As regards the difficulty pointed out by the High Court, namely, that the decree of specific performance cannot be granted since the property will have to be partitioned, we are of the view that this is not a legal difficulty. Whenever a share in the property is sold, the vendee has a right to apply for the partition of the property and get the share demarcated.”

In recent judgment in *Ramdas v. Sitabai & Ors.* JT 2009 (8) SC 224 to which one of us (Dr. B.S. Chauhan J.) was a party placing reliance upon two earlier judgments of this Court in *M.V.S. Manikayala Rao vs. M. Narasimhaswami & Ors.* AIR 1966 SC 470; and *Sidheshwar Mukherjee vs. Bhubneshwar Prasad Narain Singh & Ors*, AIR 1953 Supreme Court 487, this Court came to the conclusion that a purchaser of a co-parcener's undivided interest in the joint family property is not entitled to possession of what he had purchased. He has a right only to sue for partition of the property and ask for allotment of his share in the suit property.”

12. The aforesaid dictum was followed by this Court in *Ram Murti Sharma and another vs. Prem Kumar and others* reported as 2011(2) PLR 13 observing as under:-

“6. From the above dictum of the Apex Court in the matter



of Ramdas (supra), I am of the view that co-sharer can transfer his undivided share but no possession can be handed over to the vendee unless the property is partitioned by metes and bounds amicably or through mutual settlement or by a decree of the court. Vendee from the co-owner shall be entitled for possession through the partition only.”

13. While dealing with the similar question in ***Amarjit Kaur vs. Bikram Singh and Anr (supra)***, Coordinate Bench of this Court held as under:-

“7. This fact is not disputed that in the Jamabandi for the years 2008-09, the plaintiff has been shown to be in exclusive cultivating possession of the suit land measuring 06 Kanals 16 Marlas comprised in Khasra No.85R/23. The petitioner-defendant No.2 is claiming to be in possession of the suit property on the ground that she has purchased the share of Sulakhan Singh son of Ajaib Singh. She has purchased the land measuring 02 Kanals 05 Marlas out of the total property measuring 258 Kanals 04 Marlas. She has only purchased the share of her vendor out of the big chunk measuring 258 Kanals 4 Marlas. So, no specific Killa number has been purchased by her. There is nothing on record to show that any specific Tatima has been carved out on the basis of sale deed in favour of the petitioner. The learned first Appellate Court has specifically observed that there is nothing on record to show that Sulakhan Singh was in possession of the property which he sold to the petitioner. The Hon'ble Supreme Court in case ***Ramdas v. Sitabai and others 2009(4) Civil Court Cases 259*** has held that the undivided share of co-sharer may be a subject-matter of sale but possession cannot be handed over to the vendee unless the property is partitioned by metes and bounds amicably through mutual settlement or by a decree of court. Same ratio of law has been laid down by this Court in case ***M/s Orient Craft Infrastructure Ltd. v. Smt. Subhadra and others 2011(1) Civil Court Cases 323.***”

14. Counsel for the petitioner is not in a position to demonstrate that vendor of the petitioner was in exclusive possession of any specific share of the joint land and thus, was in position to handover



the possession to him. There is no tatima appended to sale deed to show as to which portion of the land was handed over to the petitioner to possess.

15. In view of the afore-settled proposition of law, the petitioner-defendant being a vendee under a co-sharer can only claim possession by seeking partition of the joint land. Till the petitioner-defendant seeks separate possession, plaintiffs have a right to protect their possession. The same has been so recognized by the Courts below.

16. Finding no merits in the present petition, the same is ordered to be dismissed.

(PANKAJ JAIN)
JUDGE

24.10.2024
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No