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

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Date of Decision: 06.03.2024.

Sapna and another

...Petitioners.

Versus

Phool Kumar and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Ms. Suman Chaudhary, Advocate for the petitioners.

Sukhvinder Kaur, J.

By way of present revision petition, the petitioners have challenged order dated 29.07.2023 (Annexure P-3) passed by learned trial Court, vide which application filed by the petitioners under Order 39 Rules 1 and 2 read with Section 151 of CPC was dismissed and further the petitioners have challenged order dated 12.02.2024 (Annexure P-6) passed by the First Appellate Court, vide which the appeal preferred by the petitioners against order dated 29.07.2023 has been dismissed.

2. The brief facts relevant for the adjudication of the present revision petition are that the petitioners and respondents are co-sharers in the suit land (ancestral) from their forefathers and till date no partition has been effected orally as well as by any Court of law. The father of petitioner No.1 and husband of petitioner No.2 had died since long and since then, the respondents are continuously trying to grab the land of the petitioners, as petitioner No.2 is having only two daughters.

3. The plaintiffs/ petitioners filed a suit for permanent injunction before the trial Court for restraining the defendants from claiming exclusive

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ownership and possession on any specific killa number, from raising any kind of construction and changing nature of specific killa numbers, from taking forcible or illegal possession of any specific kill numbers and from alienating, transferring, mortgaging, gifting, leasing out and parting with the possession of any specific killa numbers above their actual shares in the suit land.

4. The petitioners had also filed an application under Order 39 Rules 1 and 2 CPC alongwith the suit and notice of the suit as well as the said application was issued to the respondents/ defendants. The said application filed by the petitioners under Order 39 rules 1 and 2 CPC was dismissed by the trial Court vide order dated 29.07.2023.

5. Thereafter, the petitioners approached this Court by filing CR-4890-2023, against the abovesaid order. Notice of motion was issued by this Court and parties were directed to maintain status quo vide order dated 29.08.2023. Thereafter, vide order dated 31.10.2023, the said petition was dismissed as withdrawn with liberty to file an appeal before the learned District Judge, Hissar, as per the provision of Order 43 of CPC.

6. Then the petitioner filed a civil miscellaneous appeal before the learned Appellate Court, Hissar by challenging the aforesaid order dated 29.07.2023, which was dismissed vide order dated 12.02.2024. Hence the petitioners knocked the doors of this Court by way of filing the present revision petition.

7. Learned counsel for the petitioners has contended that the respondents have mislead the Courts below by saying that the partition

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regarding the suit land had already been final, but no documentary proof regarding the same has been produced on record. It has also not been considered that the petitioners have also challenged the 'Naksha Kha' before the revenue authorities. The Appellate court has wrongly observed that some arrangements have been done between the parties. The Courts below have failed to appreciate this fact that the suit land has not been partitioned till now between the parties and both the parties have their right on every inch of land and without any partition nobody can raise construction on the suit land. He has submitted that the petitioners have proved that both the parties are having their respective shares in the suit land, which is not partitioned till now and the partition proceedings are still pending before the Revenue Court. The respondents want to grab the valuable, fertile land from the suit land and have started raising construction on the suit land adjoining to the road/ rasta and they want to give share of the petitioners at the backside. He has further contended that though the lower Court has considered the parties to be co-sharers in joint possession, but even then the relief of injunction has been denied to the petitioners and has contended that both the impugned orders are liable to be set aside.

8. I have heard learned counsel for the petitioners and have gone through the relevant record.

9. The jamabandi for the year 2016-17 has been placed on record which shows that the plaintiffs and defendants are joint owners in possession over the said land and nobody has been shown to be in the exclusive possession over the suit land. It is trite law that the no injunction is to be granted against the other co-sharer. Reliance in this regard can be

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placed upon the judgment of Division Bench of this Court in case titled as **Bachan Singh v. Swaran Singh AIR 2001 P&H 112** wherein the Hon'ble High Court has culled out following principles after having discussed the earlier precedents on the subject including **Sant Ram Nagina Ram v. Daya Ram Nagina Ram AIR 1961 PB.528 and Bhartu v. Ram Sarup 1981 PLJ 204 (FB)**:

- “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.”*

10. Thus the co-sharer cannot be restrained from raising construction over the joint land except when co-sharer results in ousting of other co-sharer or is detrimental to the rights of other co-sharers. Nothing has been brought on record that in what manner the act of the respondents would be detrimental to their rights or would amount to their ousting from the joint land. The possession of one co-sharer is possession of all in the eyes of law. So, even if the respondents raise construction over some

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portion, it will be subject to partition and respondents cannot claim any preferential right over a particular chunk of land due to raising of construction over it. Admittedly, the partition proceedings are pending before AC-II Grade, Hansi.

11. As such, no prima facie case is made out in favour of the plaintiffs. The balance of convenience is also not in their favour and the plaintiffs/ petitioners are not likely to any irreparable loss if the injunction as prayed for is not granted in their favour.

12. Thus, there being no illegality or infirmity in the impugned order no interference therewith is called for while exercising the revisional jurisdiction. The present revision petition being bereft of any merits stands dismissed.

13. All pending applications, if any, also stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

06.03.2024.

komal

Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No