

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****CR-2127-2024 (O&M)****Reserved on : 06.11.2024****Pronounced on : 19.11.2024**

Rakesh Kumar

....Petitioner

VERSUS

Chander Kanta & Ors.

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Krishan Singh, Advocate for the petitioner.

ALKA SARIN, J.

1. The present revision petition under Article 227 of the Constitution of India has been preferred by the plaintiff-petitioner against the orders dated 15.09.2023 and 13.03.2024 passed by the Trial Court and the First Appellate Court whereby his application for grant of ad-interim injunction was dismissed.

2. The plaintiff-petitioner filed a suit for declaration to the effect that the sale deeds executed by his sister, defendant-respondent No.1, in favour of defendant-respondent Nos.2 and 3 are illegal, null and void, ineffective, inoperative and not binding upon the rights of the plaintiff-petitioner and are liable to be set-aside along with consequential relief of permanent injunction restraining the defendant-respondents from raising any sort of construction over a specific portion and over more than their share in the suit land till it's partition in accordance with law. Along with the plaint an application for grant of ad-interim injunction was also filed. According to the plaintiff-petitioner the father of the plaintiff-petitioner and the defendant-

respondent No.1 and proforma defendant-respondent Nos.4 to 8 was the owner and in joint possession of the suit land and after his death the plaintiff-petitioner, defendant-respondent No.1 as well as proforma defendant-respondent Nos.4 to 8 had become owners of the suit land and are co-owners/co-sharers along with others. However, the defendant-respondent No.1 had sold specific portions and more than her share to defendant-respondent Nos.2 and 3 who wanted to grab the valuable front portion of the suit land. Hence, the suit. A prayer for restraining the defendant-respondents from raising any construction on the suit land was made in the application for grant of temporary injunction.

3. The suit was contested by the defendant-respondent Nos.2 and 3 (vendees) while defendant-respondent No.1 (vendor) was proceeded against ex-parte. Vide the impugned order dated 15.09.2023 the Trial Court dismissed the application for grant of temporary injunction. The appeal of the plaintiff-petitioner was also dismissed by the First Appellate Court vide impugned order dated 13.03.2024. Hence, the present civil revision petition.

4. Learned counsel for the plaintiff-petitioner has contended that both the Courts have erred in dismissing the application for grant of temporary injunction. It is urged that the plaintiff-petitioner is in exclusive possession of the front portion of the suit property and the defendant-respondent Nos.2 and 3 ought to be restrained from raising construction thereon. It is submitted that the act of raising construction by the defendant-respondent Nos.2 and 3 amounts to ouster of the plaintiff-petitioner.

5. Heard learned counsel for the plaintiff-petitioner.

6. Admittedly the plaintiff-petitioner, defendant-respondent No.1 and proforma defendant-respondent Nos.4 to 8 inherited the suit property on the death of their father. The defendant-respondent No.1 sold her share in the suit property to defendant-respondent Nos.2 and 3. Though those sale deeds are under challenge and it was argued that defendant-respondent No.1 has sold more than her share, the fact remains that defendant-respondent Nos.2 and 3 have now become co-owners in the suit land which is unpartitioned. The basic principle governing any unpartitioned property is that each and every co-sharer thereof owns and would be deemed to be in possession of every square inch of the land.

7. In **Bachan Singh V/s Swaran Singh [2000 (3) RCR (Civil) 70]** the Division Bench of this Court held 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” .

8. The suit is pending adjudication before the Trial Court. At the stage of consideration of an application under Order 39 Rules 1 and 2 CPC, the principles which need to be considered are the existence of a prima face case, balance of convenience, and irreparable loss and injury that may be suffered. The rights and liabilities of co-sharers have been judicially interpreted in several decisions including **Sant Ram Nagina Ram vs. Daya Ram Nagina Ram [AIR 1961 Punjab 528]**; **Bhartu vs. Ram Sarup [1981 PLJ 204 (FB)]** and in **Ram Chander V/s Bhim Singh and others [2008 (3) RCR (Civil) 685]**. The following principles stand culled out :

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

(ii) *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.*

(iii) *A mere occupation of a larger portion or even of entire joint property does not necessarily amount to ouster as the possession of one is deemed to be on behalf of all.*

(iv) *The above rule admits of an exception when there is ouster of a co-owner by another. But in order to negative the pre-emption 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.*

(v) *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.*

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

(vii) *Where a co-owner is in possession of separate parcels under an arrangement consented by the other co-owners, it is not open to anybody to disturb the arrangement without the consent of others except by filing a suit for partition.*

(viii) Co-sharer in possession exclusively of some portion of joint holding not more than his share is entitled to continue in possession till joint holding partition and can transfer that portion subject to adjustment at the time of partition.

(ix) Transferee under section 44 of Transfer of Property Act gets right of transfer to joint possession and to enforce partition irrespective of the fact whether property sold is fractional share or specified portion."

9. In the light of the facts of the present case and the judicial pronouncements mentioned above, the plaintiff-petitioner cannot seek a blanket injunction order against the defendant-respondent Nos.2 and 3 who are co-sharers with him. A co-owner cannot injunct and restrain the other co-owners from raising construction on portions of the joint land in the possession of the other co-owners. The remedy is to seek partition. In **Jangir Singh vs. Naranjan Singh & Ors. [2015(1) RCR (Civil) 49]** it has been held that where the defendant is in exclusive possession of a portion of the suit land, the plaintiffs on the basis of their claim of being co-sharers, cannot restrain him from using the portion of the joint land in his possession in the manner he likes. The only remedy which the plaintiff has is to seek partition of the suit land. The amount being spent by the defendant in raising construction on a portion of the land in his exclusive possession is at his own risk. It is also now well settled that mere raising of construction on common land by a co-sharer would not amount to ouster of other co-sharers.

10. The plaintiff-petitioner has been unable to show the existence of a prima face case in his favour or the balance of convenience being in his favour or him suffering any irreparable loss and injury if the ad-interim injunction is not granted in his favour. The construction raised by the defendant-respondent Nos.2 and 3 would in any event be subject to the outcome of the civil suit.

11. In view of the above, this Court finds no illegality or irregularity in the impugned orders. The present revision petition, which is devoid of any merit, is dismissed. It is however, made clear that any observation made above is only for the purpose of disposing of the present revision petition and is not to be construed as an opinion of this Court on the merits of the suit. Pending applications, if any, also stand disposed off.

19.11.2024
jk

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No