



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(208)

CR NO.2043-2021(O&M)

DATE OF DECISION: 19.11.2024

Jainpal

.....Petitioner

VERSUS

Kuldeep and others

.....Respondents

CORAM HON'BLE MR.JUSTICE PANKAJ JAIN

Present Mr. Abhinav Sood, Advocate, for
Mr.Vikram Singh, Advocate,
for the petitioner.

Mr.Kanwaljit Singh, Sr.Advocate,
with Ms. Navyug Geet Brar, Advocate,
for respondent no.1.

Mr. Parminder Singh, Advocate,
for respondent no.2.

PANKAJ JAIN J, (ORAL)

1. On 28.09.2021, the following order was passed:-

*“Relies upon **Nazar Mohd. Khan vs. Arshad Ali Khan and others 1996 P.L.J. 33** to submit that a co-sharer can be restrained from changing the nature of joint property and from raising construction thereupon.*

Notice of motion for 22.02.2022.

Meanwhile, defendants-respondents are restrained from raising any construction over part of the joint land, which is in their possession.”

2. Counsel for the petitioner is not in position to dispute the judgment passed in **Nazar Mohd. Khan v. Arshad Ali Khan and others 1996 PLJ 33**, stands expressly over ruled by a Division Bench in **Bachan Singh versus Swaran Singh, (P&H) (DB) Law Finder Doc ID 18843**, observing 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.

*16. In this view of the matter, we are unable to agree to the propositions laid down by the learned single Judge of this Court in **Nazar Mohd. Khan v. Arshad Ali Khan and others (supra)** wherein his Lordship broadly stated that there is no denying the fact that a co-sharer has no right to raise construction until the land is partitioned by metes and bounds and so even when one of the co-sharers is in exclusive possession of a particular piece of land any other person can seek injunction restraining the other co-owner from raising construction. We accordingly overrule the said decision of the learned single Judge of this Court and also the decisions in **Mst. Parsini alias Mano v. Mahan Singh, 1982 P.L.J. 280, Om Parkash and others v. Chhaju Ram, 1992 P.L.J. 546 and Daulat Ram v. Dalip Singh, 1989 R.L.R. 523.**”*

3. Faced with the situation, counsel for the petitioner submits that the trial Court be directed to expedite the trial.



4. Prayer made is not opposed by the counsel representing the respondent.
5. In view thereof, present revision petition is disposed of with the direction to the trial Court to make an endeavour to dispose of the trial expeditiously in accordance with law.

19.11.2024
mamta

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No