



IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

RSA-1201-2021  
Reserved on: 20.05.2024  
Date of decision: 23.05.2024

SANJAY SHARMA ..Appellant

Versus

KARANJEET AND ANR. ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajesh Sethi, Advocate  
Mr. Anuj Garg, Advocate  
and Ms. Preeti Bansal, Advocate  
for the appellant.

ANIL KSHETARPAL, J.

1. Before granting injunction temporary or permanent, the Court is required to apply the following three tests:-

- i. The plaintiff has a prima facie case;
- ii. The balance of convenience lies in his favour; and
- iii. He will suffer irreparable loss and injury if the injunction is not granted.

2. The plaintiff does not have a prima facie case because he is owner of 1/6th share, whereas, he prays for an issuance of direction to protect his possession over the entire property. He has no right to continue in possession of remaining 5/6<sup>th</sup> share of the property, which constitutes more than 80% share.

3. Moreover, If we apply the second test, the balance of convenience is also not in favour of the plaintiff-appellant, as he is not entitled to 5/6<sup>th</sup> share in the property. Similar is the position with regard to the next and last test. It may be noted here that the plaintiff filed the suit in



the year 2014. Ten years have elapsed. Both the Courts have dismissed his suit.

4. Additionally, a Division Bench in **Bachan Singh Vs. Swaran Singh, 2000 (3) R.C.R. (Civil) 70**, concluded 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.”*

5. The petitioner's case does not fall in any of these aforesaid categories. The appropriate remedy for the co-owner is to seek partition. The owner has an interest in the whole property and also in every parcel of it. The possession of joint property by one co-owner is, in the eyes of law, possession of all.

6. During the course of argument, learned counsel representing the appellant submitted that he is prepared to purchase remaining 5/6<sup>th</sup> share. On being asked to hand over vacant possession, the learned counsel representing the appellant refused.

7. If the property continues in possession of the exclusive possession of the appellant, the value which the property is likely to fetch would be significantly lower.



8. In the considered opinion of this Court, it is not appropriate to grant injunction in favour of the plaintiff.
9. Hence, dismissed accordingly.
10. All the pending miscellaneous applications, if any, are also disposed of.

May 23<sup>rd</sup>, 2024

(ANIL KSHETARPAL)

Ay

JUDGE

*Whether speaking/reasoned* : Yes/No  
*Whether reportable* : Yes/No