



CR No.5571 of 2023 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.203

Case No. : CR No.5571 of 2023 (O&M)

Date of Decision : May 28, 2024

Krishan Kumar

.... Petitioner

vs.

Bahadur Singh and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. J. P. Sharma, Advocate
for the petitioner.

Mr. Himanshu Munjal, Advocate
for Mr. P. S. Chauhan, Advocate
for respondent no. 5.

* * *

GURBIR SINGH, J. :

1. CM-18927-C-II-2023 : This application under Section 151 CPC has been filed by applicant/respondent no.5 for preponement of date of hearing. A bare perusal of this application shows that the applicant/respondent no.5 has relied upon Annexures A-1 to A-8 in support of his contentions. Therefore, Annexures A-1 to A-8 are ordered to be taken on record, subject to all just exceptions.

2. Main Case : Challenge in this revision petition is to the order dated 17.05.2023, passed by learned Civil Judge (Junior Division), Mohindergarh (fore brevity – Trial Court) whereby application filed by the petitioner under Order 39 Rule 1 & 2 CPC read with Section 151 CPC has

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been dismissed. Further challenge is to the order dated 24.08.2023, passed by learned District and Sessions Judge, Narnaul (for brevity – Appellate Court), whereby appeal preferred by the petitioner, against order dated 17.05.2023, has also been dismissed.

3. The parties hereinafter shall be addressed as per their original status in the suit before the Courts below.

4. The brief facts of the case, necessary for disposal of the revision petition in hand, are that the plaintiff/petitioner filed suit for permanent injunction against the defendants/respondents, submitting therein that the suit property is the joint property of the parties and the same has not been partitioned till date. The defendants had already constructed more than their share and they are still making further construction on the suit land. They had already constructed the boundary wall and are going to construct the house. The plaintiff is having possession of less land than his share and if the defendants succeed in their illegal motives, the plaintiff would suffer irreparable loss and injury.

5. The case of defendants no.1 to 8, 10 and 12 is that the suit land was mutually partitioned by the parties. Parties are using their share over the suit land. Defendants are making construction over their share and they are ready to give the statement that they would not construct more than their share. A Local Commissioner was appointed at the instance of the plaintiff, who made rough site plan and gave the report that the plaintiff is having a portion of the property, the front of which is more than front of property in



illegally possessed 369 sq. ft. of the land of the parties. The plaintiff has not filed any case against Gram Panchayat's possession and filed suit for permanent injunction against the defendants.

6. After hearing counsel for both the parties, the learned Trial Court dismissed the application filed by the plaintiff under Order 39 Rules 1 and 2 read with Section 151 CPC. The plaintiff filed appeal but the same was dismissed. Aggrieved against the said orders, the plaintiff has approached this Court by way of present revision petition.

7. Learned counsel for the plaintiff/petitioner has argued that partition proceedings are pending. The constructions is being raised by the defendants over specific and valuable land that could affect the partition proceedings and partition could not be properly conducted.

8. Learned counsel for the defendants/respondents has argued that defendant no.5 is in possession of the specific area i.e. a house, in which respondent no.5 is residing with his family and the said house is not fit for human habitation. As there is a marriage in the family, so, defendant no.5 has built a house which is almost near completion and some final work remains to be done. The photographs of the same have been attached for perusal. Defendant no.5 is making construction over the area, which is in his possession. As per report of the Local Commissioner, area in possession of defendant no.5 is less than the area in possession of the plaintiff.

9. I have heard learned counsel for the parties and perused the case file.

10. It is common case of the parties that they are co-sharers and suit



land has not yet been partitioned by any competent authority. On the asking of the plaintiff, Local Commissioner was sent to the site. The relevant extract of the Report, filed by Local Commissioner, reads as under :-

“2. That the area marked is ABCD, in which mark AC is the road coming from village Sigda to Mahendergarh and mark CD is the Firni of Village. Mark CD is in 5 parts, in which the 3 houses are built and 2 are vacant plots. The first house is marked as DE which is 53 feet broad which belongs to Vidyadevi wife of Guganram as told to me. The 2 house is marked as EF which is 30.10 foot broad which belongs to Shankuntala wife of Om Prakash as told to me. The 3rd plot is vacant, which is marked as PG and it is 47.3 put broad, which belongs to Kanwar Singh as told to me, in which cow dung and fuel for burning is kept there. The 4th house is marked as GH which is 39.5 foot broad and belongs to Sunda Ram son of Laxmi Narayan as told to me. The 5th corner plot is marked as HCI which is in south direction and is 115 foot broad and which is lying vacant and in which shuttering material is there and belongs to Bhadur Singh as told to me.

3. That the whole road which is marked AC is divided into 3 parts. The first part is marked as CI which is 90 foot broad from the site and belongs to Bhadur Singh as told to me and is a vacant plot in which shuttering material is there. The second part is marked as IJ which is 77.8 foot and is lying vacant and belongs to Krishan Kumar. The 3rd plot is marked as JA which is 70 foot broad and boundary wall of 3 foot height is there on the plot. That in this plot there is a



wall in the West direction in which 6 gates have been left and rest is filed with bricks. Similarly there is wall in the North Direction in which 4 gates have been left. In this plot, there is a path in the North direction.”

11. The *inter se* rights and liabilities of the co-sharers were settled by a Division Bench judgment of this Court in case **Sant Ram Nagina Ram vs. Daya Ram Nagina Ram – AIR 1961 Pb. 528**, which are as follows :-

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

(2) 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.

(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 by the other co-owners, it is not open to any body to disturb the arrangement without the consent of others except by filing a suit for partition.”

12. The aforesaid judgment was relied by Full Bench of this Court in case **Bhartu vs. Ram Sarup – Law Finder Doc Id # 70625.**

13. In case **Bachan Singh vs. Swaran Singh – 2000(3) RCR(Civil) 70**, it is held by a Division Bench of this Court that mere making of construction or improvement in the common property does not amount to ouster. The extract of judgment is 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.”

14. Since defendant no.5 has already constructed a house in the portion in the exclusive possession of defendant no.5, the plaintiff cannot restrain defendant no.5 from raising construction.

15. In view of the above discussion, this Court is of the view that there is no ground to interfere with the well reasoned orders passed by both the Courts below. It is hereby made clear that construction raised by defendant no.5, on the part of property, which is in his exclusive possession, is at his own risk and is subject to partition. Accordingly, the present revision petition, being devoid of any merit, is hereby dismissed.

16. However, since the case is at the stage of defendants' evidence, as submitted by the learned counsel for the plaintiff/ petitioner, the learned

Trial Court shall ensure that the case be disposed of expeditiously and no



unnecessary adjournment is granted.

16. Pending applications in the present revision petition shall stand disposed of along with this judgment.

May 28, 2024
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.