



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

CR-7876-2023 (O&M)
Date of Decision: -**29.05.2024**

Ved Pal Mann and Another

... Petitioners

Versus

Gurdeep Singh and Others

... Respondents

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CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

-.-

Argued by :- Mr. Harsh Aggarwal, Advocate
for the petitioner(s).

Mr. Raghav Sharma, Advocate
for the respondents No.1 to 3.

Respondents No.4 to 7 (proforma respondents).

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RITU TAGORE, J.

1. This revision is directed against the judgment dated 22.12.2023 (Annexure P-11), passed by learned Additional District Judge, Kurukshetra in C.M.A No.62 of 2023, which allowed the application filed by respondents No. 1 to 3 (plaintiffs before the learned trial Court) under Order 39 Rules 1 and 2 read with Section 151 of Code of Civil Procedure, 1908 (in short 'CPC') in Civil Suit No.222 of 2019 titled as Gurdeep Singh and Others vs. Sunil and Others, thereby reversing the order of dismissal of the application,



rendered by learned Additional Civil Judge (Senior Division), Kurukshetra vide order dated 09.11.2023 (Annexure P-10).

2. For the convenience of discussion, the parties are referred to as per their original status before the learned trial Court.

3. Relevant facts necessary for adjudication of this appeal are that, plaintiffs instituted a civil suit for permanent injunction (Annexure P-6), on the material averments that parties to the *lis* are co-owners in possession of the suit land detailed in the plaint, which is a joint holdings of the parties and has not yet been partitioned among them by metes and bounds.

4. It is further pleaded that suit land falls on the Southern side of Pipli to Ladwa Road. The defendants, in order to undermine the plaintiffs' valuable rights as co-sharers in the suit land, intend to encroach upon and sell a valuable portion of the suit land abutting the main road as detailed in the plaint, having no right to do so unless the suit land is partitioned.

5. It is alleged by plaintiffs that defendants wants to oust them from the joint possession of the suit land and intend to change its nature, prejudicing the rights of the plaintiffs as co-sharer/co-owners. Therefore, the defendants should be restrained from acting against the interests of the plaintiffs as co-owners/co-sharers of the suit land. On the above material assertions, prayed for grant of permanent injunction.

6. Along with the main suit, plaintiffs also filed an application for interim injunction (Annexure P-7), relying on the pleadings taken in the main



suit, asserted a *prima facie* case, balance of convenience in their favour and irreparable loss to them, if, interim injunction is declined to them. They prayed that defendants be restrained from selling or alienating any specific portion of the suit land as detailed, unless the suit land is partitioned by metes and bounds.

7. Petitioners (defendants No.5 and 6) contested the application, by pleading that they are *bona-fide* purchasers of a part of the suit land as detailed in their sale deed. They are co-sharers in the suit land and no suit for injunction is maintainable against a co-sharer, and prayed for dismissal of application for grant of interim injunction. The learned trial Court, finding no existence of basic three material ingredients; a *prima facie* case, balance of convenience in their favour and irreparable loss to plaintiffs, dismissed the application of interim injunction vide order dated 09.11.2023 (Annexure P-10). However, learned Appellate Court, after appraising the record indicating that suit property is still joint and that petitioners (defendants No.5 and 6) action of setting up an industrial unit as prejudicial to the rights of the plaintiffs (respondents No.1 to 3) as co-sharers, reversed the findings by allowing the application.

8. Learned counsel for the petitioners (defendants No.5 and 6) contends that learned Appellate Court erred in upsetting a well reasoned order of the learned trial Court, which was passed after appreciation of all the material facts and settled provisions of law that a suit for permanent injunction is not maintainable against other co-sharer(s), and an appropriate, alternative and efficacious remedy available to petitioners (defendants No.5



and 6), as co-sharer(s) is to file a suit for partition. To support his arguments, learned counsel for the petitioners (defendants No.5 and 6) referred to the provisions of Section 41(h) of the Specific Relief Act, 1963.

9. Learned counsel further submits that learned Appellate Court failed to note that although suit land has a joint *Khatta* and has not been formally partitioned, but same is in possession of co-sharers in separate chunks of land, bearing separate *Khautani* number. The parties to the *lis*, possesses land in separate *Khautani*. The learned counsel urged that learned Appellate Court erred in over-looking the fact that nature of the suit land has already been changed, as some of the co-shares have already raised construction and a milk plant is already running in the suit land. To support his contentions, learned counsel referred to the photographs (Annexure P-3 to P-5), placed on the paper-book, showing that a milk plant already exists.

10. Learned counsel further submits that concerned Department gave No Objection Certificate in favour of the petitioners (defendants No.5 and 6), having no objection if land is used for running a unit by raising construction. The learned counsel submits that learned Appellate Court failed to note that respondents (plaintiffs) have no *prima facie* case and balance of convenience in their favour. Contra, the petitioners (defendants No.5 and 6) shall suffer loss if they are estopped from using the land purchased by them. Stating that impugned order is legally and factually unsustainable in the eyes of law, pleaded to set it aside. In support referred to **Parkash Chand vs. Malkiat Singh, 2021(4) PLR 538; Mohinder**



Kumar vs. Kalu Ram and Ors. 2021(2) Law Herald 1718 and Satnam Singh vs. Gursher Singh and Others 2016(4) Law Herald 3337.

11. In defence of the order, learned counsel for the respondents (plaintiffs) argues that suit land is jointly held, with parties as co-sharers. A co-sharer of a joint holding cannot act in a manner adverse to the rights of other co-sharer, amounting to his ouster. A co-sharer is also not permitted to change the nature of the suit land. Adverting to the entries of *Jamabandi* for the year 2018-19, learned counsel submits that entries indicate that suit land is jointly owned by several co-sharers, including the parties to the *lis*, and is an agricultural land. As per the pleaded case of the petitioners (defendants No.5 and 6), they seek to construct an industrial unit, this amounts to altering the nature of the suit land to the detriment of respondents (plaintiffs) and other co-sharers. It is stated that appropriate remedy for the petitioners (defendants No.5 and 6) is to seek partition but they under the garb of the alleged act, want to encroach upon the valuable piece of land adjoining the road. It is thus, urged that order impugned, herein, is valid in the eyes of law and a prayer is made to dismiss the petition, same being devoid of merits. In support of his contentions, learned counsel has referred to judicial pronouncements titled as **Sukhwant Singh and Ors. vs. Garja Singh and Ors. 2013(40) R.C.R. (Civil) 386; Jagmohan Singh vs. Balbir Singh another 2017(2) PLR 51; Maharwal Khewaji Trust (Regd.) Faridkot vs. Baldev Dass 2004(4) R.C.R (Civil) 760.**

12. I have heard learned counsel for the parties and gone through the record with their able assistance.



13. It is evident from the pleading of the parties and entries of *Jamabandi* for the year 2018-19 (Annexure P-2), that suit land is jointly held by the parties involved in this dispute and other co-sharers. This *Jamabandi* entries (*ibid*) would reveal that land has been allotted vide *Khautani* numbers namely No.182 and 183. The petitioners (defendants No.5 and 6) are shown to be in possession of land bearing *Khautani* No.182, measuring 31 kanals and 15 marlas with *Khasra* 25//8, 13, 18, 23/1 and 36//3, while the respondents (plaintiffs) are shown to be in possession of land bearing *Khatuni* No.183, measuring 57 kanals with *Khasra* No.37//2/2, 9,12,19,22, 45//2,9,12/1. The above position discloses that parties are in possession of separate chunks of land, as detailed above. Additionally, other evidence presented on record, and discussed by learned Courts below, indicates that a milk plant is already running on the part of the suit land. The photographs (Annexures P-3 to P-5), depict that construction of walls has commenced on the part of the suit land. The Courts below have adverted to the fact that concerned department(s) has granted No Objection Certificate in favour of the defendants, indicating that the department(s) have no objections if the unit of the petitioners (defendants No.5 and 6) is being run on the land purchased by them. The learned Appellate Court held that since land is joint, therefore, the act of petitioners (defendants No.5 and 6) of raising construction of an industrial unit would infringe upon the rights of the respondents (plaintiffs), the co-sharers and would amount ousting the respondents (plaintiffs) from the suit land, which is not permissible in law.



14. Based on the evidence discussed above, this Court is of the view that learned Appellate Court failed to notice that parties are already in possession of separate portions of land. The land possessed by parties does not fall in same *Khautani*. Furthermore, a milk plant is already operational on the part of the suit land. The nature of the land has already been put to change. Other co-sharers have not joined the respondents (plaintiffs) raising the plea of a change in the nature of land or their ouster due to the setting up of a unit by the petitioners (defendants No.5 and 6). Still further, learned trial Court has addressed the apprehensions of the respondents (plaintiffs) by observing that construction by the petitioners (defendants No.5 and 6) shall be at their own risk and responsibility. Furthermore, the setting up of the unit shall not give the petitioners (defendants No.5 and 6) any right to claim possession over a specific portion of land at the time of partition of the suit land, by metes and bounds. Therefore, in the given facts, a case for the ouster of the respondents No.1 to 3 (plaintiffs) is not made out as alleged. Consequently, no case of irreparable loss suffered by the respondents (plaintiffs) is made out. On the contrary, the petitioners (defendants No.5 and 6) shall suffer loss, as they will be deprived of using the land after obtaining all necessary permission(s) from the department(s) to set up a unit.

15. There is no dispute over the settled position of law as adumbrated in case titled **Sant Ram Nagina Ram vs. Daya Ram Nagina Ram, AIR 1961 Punjab 528** and **Bhartu vs. Ram Sarup, 1981 PLJ, 204** as cited by the learned Appellate Court that a co-owner has an interest in the whole property and every parcel of land, and mere occupation of larger



portion or even of an entire property does not amount to ouster of other co-sharer as possession of one is deemed to be on behalf of all.

16. It is well settled that a suit for permanent injunction is not maintainable by a co-sharer against other co-sharer. The course available, for a co-sharer to seek partition of land, to have his separate possession. In view of the above position, the respondents (plaintiffs) has no *prima-facie* case, balance of convenience in their favour and no irreparable loss shall be caused to them, if interim injunction is refused.

17. In view of the reasons recorded above, this Court finds that learned Appellate Court erred in properly appreciating the facts to assess the existence of three basic ingredients; namely *prima-facie* case, balance of convenience and irreparable loss while adjudicating the application for interim injunction. This Court finds that learned Appellate Court, materially erred in exercising the jurisdiction vested in it in proper manner, therefore, necessitating interference by this Court in its Revisional jurisdiction.

18. As a result of the discussion above, this is a fit case for accepting the revision petition and to set-aside the impugned order. Accordingly, revision is allowed, the impugned order is set aside, and interim injunction application is dismissed.

19. It is noted that observations made above should not be construed as an expression of opinion on the merits of the case. Same are purely confined to the present controversy and deliberations.



20. Since the main case has been decided, pending miscellaneous application(s), if any, are also disposed of accordingly.

29.05.2024
Gaurav Sorot

(RITU TAGORE)
JUDGE

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