



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

117

CR-912-2024 (O&M)

Date of Decision : 07.03.2025

SANTOSH DEVI AND ANR

.... Petitioners

VERSUS

PREMWATI AND ORS

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ajay Kumar Gupta, Advocate for the petitioners.

ALKA SARIN, J. (ORAL)

1. The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 17.06.2023 passed by the learned Additional District Judge-cum-Vacation Judge, Bhiwani and order dated 18.05.2023 passed by the learned Civil Judge (Junior Division), Bhiwani whereby the application filed by the plaintiff-petitioners herein under Order 39 Rules 1 and 2 CPC seeking *ad interim* injunction for restraining the defendant-respondents from interfering in their cultivating possession was dismissed.

2. It was the case set up by the plaintiff-petitioners that Puran, Balbir and Balwan sons of Chanda residents of Village Dhirana Kalan were co-sharers of land measuring 26 Kanals 4 Marlas situated in the revenue estate of Dhirana Kalan, Hadbast No.101, Tehsil and District Bhiwani according to Jamabandi for the year 2019-20. It was further claimed that they were in exclusive possession of land comprised in Khasra No.82//3 (7-

19) 78//7min (4-0) 18 (7-8) 78//23 (7-8) and they have been recorded to be in exclusive possession in the column of cultivation in Khewat No.312/307 Khatoni No.422 to 424. Said Puran, Balbir and Balwan sold their land to the plaintiff-petitioners vide registered sale deed No.19714 dated 09.03.2022 and delivered the possession of land comprised in Khasra No.82//3 (7-19) 78//7min (4-0) 18 (7-8) 78//23 (7-8), which was in their exclusive possession and duly recorded in the column of cultivation as well as in the Khasra Girdawari, to the plaintiff-petitioners on the spot. Mutation No.2324 dated 02.04.2022 on the basis of the aforesaid sale deed was also sanctioned in favour of the plaintiff-petitioners. They claimed themselves to be in possession as co-sharers since 09.03.2022 i.e the date of the sale deed in their favour. It was the case set up that the defendant-respondents, who are co-sharers, were interfering in their possession.

3. Defendant-respondents took the stand that the purchase by the plaintiff-petitioners was in Khewat No.310 Khatoni No.418 Kite 2 total land measuring 14 Kanal 2 Marla and land comprised in Khewat No.312 Khatoni No.421 to 424 total land measuring 68 Kanal 19 Marla from Puran, Balbir and Balwan out of which the plaintiff-petitioners have purchased land comprised in specific Killa No.82//3 (7-19) 78//4min (4-0) 18// (7-8) and 23 (7-0) total land measuring 26 Kanal 15 Marla out of Khewat No.312 Khatoni No.422, 423 and 424. However, the plaintiff-petitioners wanted to get the land comprised in Khewat No.312 and not in Khewat No.310.

4. Both the Trial Court and the First Appellate Court dismissed the application on the ground that no injunction can be granted against co-sharers. Aggrieved by the same the present revision petition has been filed.

5. Learned counsel for the plaintiff-petitioners would contend that the plaintiff-petitioners are in exclusive possession of the area sold to them by their vendors. However, learned counsel has candidly admitted that till date there is no partition and the partition proceedings are pending. *Naksha khe* has also been prepared. Learned counsel would further contend that certain police complaints were also filed regarding the dispute and hence both the Courts erred in not granting *ad interim* injunction.

6. Heard.

7. In the present case it is an admitted position that no partition has taken place and the plaintiff-petitioners and the defendant-respondents are co-sharers. The plaintiff-petitioners herein have purchased a share in Khewat No.310 and 312.

8. A Full Bench of this Court in the case of **Bhartu vs. Ram Sarup [1981 PLJ 204]** noted the earlier decision by a Division Bench in the case of **Sant Ram Nagina Ram vs. Daya Ram Nagina Ram [AIR 1961 Pb. 528]** wherein the following propositions were settled :

“(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.”

9. Further, a Division Bench of this Court in the case of **Bachan Singh V/s Swaran Singh [2000(3) RCR (Civil) 70]** has 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.”*

10. Keeping in view the law laid down by this Court in the cases of **Bhartu** (supra) and **Bachan Singh** (supra) and in view of the facts discussed above, I do not find any merit in the present revision petition and the same being devoid of any merit is according dismissed. Pending applications, if any, also stand disposed off.

07.03.2025
Aman Jain

(ALKA SARIN)
JUDGE

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