



RSA-2706-2019 (O&M)

-1-

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

(117)

RSA-2706-2019 (O&M)
Date of decision:- 27.03.2025

ASHA KUMARI AND OTHERS**... APPELLANTS****VERSUS****JARAM SINGH AND OTHERS****... RESPONDENTS****CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL**

Present:- Mr. Munish Puri, Advocate
for the appellants.

SUVIR SEHGAL, J. (ORAL)**CM-7481-C-2019**

1. Counsel for the appellants states that the deficit court fee has been made good.
2. Accordingly, application is allowed.
3. Period for affixation of the requisite court fee is extended till the date of actual deposit.

Main case

4. Appellants-plaintiffs are in second appeal assailing concurrent finding recorded by the two Courts below.
5. Pleaded case of the plaintiffs is that they are co-owners in joint possession of the suit land, which they purchased from the original co-owner, Vakil Singh, brother of the defendants. The defendants were having an equal

**RSA-2706-2019 (O&M)****-2-**

share with Vakil Singh. One, Roop Singh, had $\frac{1}{2}$ share in the total suit land, which was spread over a vast area. A part of the suit land was under cultivation. Some part of it, was under thick forest with large number of fruit bearing and valuable trees. An orchard was raised by Vakil Singh, who sold his share to the plaintiffs. Being co-sharers, plaintiffs have right over every inch of the suit land and they are entitled to enjoy the fruit crop. Plaintiffs filed a suit for permanent injunction restraining the defendants from alienating or mortgaging any specific portion of the suit land or from raising any construction thereon or from felling the trees. Upon notice, there was no representation on behalf of defendants No.1 to 4, who were proceeded against ex-parte. Later on, suit qua defendant No.5 was withdrawn by the plaintiffs vide order dated 10.04.2014. After the plaintiffs led evidence and were heard, Trial Court dismissed the suit by judgment and decree dated 17.03.2017. Plaintiffs remained unsuccessful in the first appeal, which was rejected by the learned District Judge, Pathankot, vide judgment dated 28.03.2018 resulting in the institution of the present appeal.

6. I have heard counsel for the appellant and considered his submission, besides analysing the requisitioned record.

7. The admitted case of the plaintiffs is that along with the co-defendants, they are co-owners of the suit land, which has not been partitioned. Apprehending that the defendants may alienate or mortgage a specific portion of the suit land or raise construction thereon, plaintiffs have filed the instant suit. Admittedly, plaintiffs had purchased the suit land from Vakil Singh, who is the brother of the defendants. Vakil Singh was in possession of



an undivided share in the land and the plaintiffs have stepped into his shoes. They are not entitled to claim possession without getting the suit land partitioned. In case, the defendants sell any portion of the land, it will be deemed to be a sale out of their respective share. A restraint order cannot be passed against a co-sharer from alienating his share in the land. A Full Division Bench of this Court in **Bhartu Versus Ram Sarup, 1981 PLJ 204** has held that a co-sharer is entitled to continue in possession till the joint holding is partitioned and he can transfer that portion subject to adjustment at the time of partition. There is no illegality or infirmity in the judgments passed by the Courts below, which are affirmed.

8. Appeal being bereft of merit, is dismissed, though with no order as to cost.

27.03.2025
Kamal

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No