



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-4737-1999 (O&M)

Reserved on :-19.11.2025

Date of Pronouncement:-21.11.2025

Uploaded on :-21.11.2025

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... Appellant

Versus

Shanti Devi (Since Deceased) through her LRs

... Respondent

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :-

Mr. Satvik Bansal, Advocate with
Mr. Amitabh Tiwari, Advocate
for the appellant.

Mr. Sandeep Vermani, Advocate along with
Mr. Sandeep K. Sharma, Advocate,
Mr. Aditya Vermani, Advocate and
Mr. Ajay Pal Singh Gill, Advocate
for the respondent.

VIRINDER AGGARWAL, J.

1. The appellant/defendant, being aggrieved by the judgment and decree dated 28.08.1999 passed by the learned Additional District Judge, Gurgaon whereby the well-reasoned judgment and decree dated 22.03.1997 of the learned Additional Civil Judge (Senior Division), Gurgaon was erroneously reversed respectfully invokes the appellate jurisdiction of this Court through the instant Regular Second Appeal (for short to be referred as "RSA"). The appellant seeks restoration of the decree rightly rendered



by the Trial Court and appropriate redressal for the substantial injustice occasioned.

1.1. It is most respectfully submitted that the impugned judgment and decree are vitiated by palpable perversity, foundational errors of law, and a manifestly flawed appreciation of evidence, culminating in grave miscarriage of justice. The appellant, therefore, earnestly prays for the setting aside of the impugned judgment and decree and for reinstatement of the lawful and well-considered decree of the learned Trial Court.

2. For the sake of coherence and continuity, the parties shall, hereinafter, be described as the plaintiff and defendant, in accordance with their respective positions before the learned Trial Court. The essential and relevant facts underpinning the initiation of the present proceedings are succinctly delineated below:-

“The plaintiff, having purchased the suit property through a valid sale deed and holding Mutation No. 17776 dated 16.01.1999 in her favour, asserts lawful ownership and peaceful possession of a 147 sq. yard residential plot delineated in red and green within site plan ABCD, forming part of Khasra No. 1168/1, Baldev Nagar, Gurgaon. She alleges that the defendant, lacking any right, title, or interest, has threatened unlawful encroachment by attempting construction and depositing building material with the intent to forcibly dispossess her. She further submits that, if the defendant takes possession of any portion during the pendency of the suit, it must be restored through mandatory injunction.”



3. Notice of the suit was issued, prompting the defendant to file a written statement raising preliminary objections regarding maintainability, *locus standi*, estoppel, and alleged suppression of material facts, thereby disputing the plaintiff's entitlement to equitable relief.

3.1. On merits, the defendant claimed independent right, title, and interest in the suit property, asserting that the plaintiff's predecessor was not owner of the entire land and had executed a sale deed beyond her legitimate share. She maintained that, as owner in possession of land comprising Khewat No. 2295, Khasra No. 1168/1, she had constructed a pucca house and a 3½-foot boundary wall, with a right to increase it to six feet. Alleging that the plaintiff sought to encroach upon her lawful share, she denied the plaintiff's title and possession and contended that the suit lacked cause of action and deserved dismissal with costs.

4. The plaintiff filed a replication, unequivocally reiterating and reaffirming the material averments contained in the plaint, while expressly denying and disputing the objections and assertions raised by the defendants. Upon a careful scrutiny of the pleadings, documents, and submissions of both sides, the Court proceeded to frame the following issues for adjudication, so as to ensure a precise and comprehensive determination of the parties' competing claims and defenses, as enumerated below:-

1. Whether the plaintiff is owner in possession of the disputed 147 sq. yards plot fully described in para No.1 of the plaint ? OPP
2. Whether the plaintiff has no *locus standi* to bring this suit? OPD
3. Whether the suit is not maintainable in the present form? OPD
4. Whether the plaintiff is estopped by his own acts and conduct from bringing this suit? OPD

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integrity of this document



5. Relief.

5. Both parties were granted sufficient opportunity to adduce evidence in support of their respective stands. Upon conclusion of the trial and after hearing learned counsel on both sides, the learned Additional Civil Judge (Senior Division), Gurgaon dismissed the suit, recording findings in favour of the appellant/defendant and observing that *“In light of the findings recorded on the foregoing issues, the plaintiff’s suit is devoid of merit and is accordingly dismissed. No order as to costs”*.

5.1. Aggrieved by this decree, the appellant/respondent preferred an appeal before the learned Additional District Judge, Gurgaon and the appellant/respondent, which was allowed, decreeing the suit of the respondent/plaintiff with following observations:-

“Given the circumstances, the trial court’s observation that neither party proved ownership or possession of specific portions is untenable, as both stand in undisputed possession of defined areas. The appeal is accordingly allowed, and the plaintiff’s suit for mandatory injunction is decreed, directing removal of the encroachment measuring 6' × 4" × 54' on the western side of the boundary marked OR in site plan Ex. PW3/C1. Parties shall bear their own costs.”

6. Dissenting from the judgment and decree of the learned First Appellate Court, the appellant/defendant instituted the instant appeal. Upon its admission, notice was duly served upon the respondents; respondent entered appearance and contested the matter. The records of the learned lower Courts were thereafter summoned for comprehensive scrutiny and adjudication.



7. I have heard learned counsel for the parties and carefully examined their submissions in conjunction with the pleadings, evidence, and the findings recorded by the learned Courts below. The record has been meticulously reviewed to determine *‘whether the impugned judgments and decrees suffer from any legal error or infirmity warranting interference by this Court’*.

8. The instant appeal raises the following *‘quaestio juris substantialis’* for adjudication and determination before this Court:-

“Whether a claim for mandatory injunction, predicated upon alleged exclusive possession of an undivided joint estate, can be sustained in law when the relief is sought against a co-owner.”

9. Learned counsel for the appellant–defendant submits that the learned First Appellate Court erred both in its appreciation of the evidence and in the weight, it attached to the report of the Local Commissioner. Counsel argues that the court mis-interpreted the documentary and oral evidence on record and unduly relied upon the Local Commissioner’s findings to reach its conclusions. Crucially, it is contended that the suit property is admitted to be joint land of the parties; in that factual matrix a suit seeking a mandatory injunction against a co-sharer is not maintainable. Accordingly, the First Appellate Court’s reliance on the Local Commissioner’s report and its consequent findings represent a material misdirection of law and fact.

10. Conversely, learned counsel for the respondent–plaintiff submits that the judgment of the learned First Appellate Court is free from any illegality or infirmity. He contends that the First Appellate Court correctly held that the joint property had already been partitioned among



the co-sharers, and therefore the plea of joint ownership is misconceived. It is further argued that the existing revenue entries carry no determinative value in the present context, as a residential colony has been carved out over the suit land as well as the adjoining parcels, and the original owners had left passages and demarcated portions accordingly. The respondent–plaintiff, having purchased a specific, identifiable portion of the property, is thus entitled to seek protection of his possession and the relief granted by the First Appellate Court was rightly upheld.

11. A plain reading of the plaint filed by the respondent–plaintiff unequivocally reveals that the suit has been instituted for a decree of permanent injunction on the assertion that she is the owner in possession of a plot measuring 147 square yards, fully delineated in the head-note of the plaint and forming part of Khasra No.1168/1. The plaintiff has further pleaded that Mutation No.17776, dated 16.01.1989, was duly sanctioned in her favour. Significantly, the plaint is bereft of any averment suggesting that a residential colony had been carved out by the previous owners, or that the suit land being part of a larger joint holding had been partitioned among co-owners, thereby vesting exclusive ownership and possession of the suit property in the plaintiff’s vendor.

11.1. During cross-examination, the plaintiff, Shanti Devi, candidly admitted that she purchased the plot from Smt. Rajwati, daughter of Yukti. She further conceded that defendants Jeeto and Raju were co-sharers in the joint khewat and that, at the time of her purchase, one room belonging to Jeeto already existed on the property. Mutation No.17776, which forms the very foundation of the plaintiff’s claim, clearly records that Smt. Rajwati was a co-owner to the extent of a 1/24th share in land measuring 1 Bigha 2



Biswa. The mutation reflects that she transferred only her fractional undivided share to the plaintiff, and that possession continued in the same manner as it existed prior to the sale. Crucially, the mutation does not record that the plaintiff was ever placed in exclusive possession of any specific, demarcated portion of the joint holding.

11.2. In these circumstances, the plaintiff's purchase of an undivided share in joint property cannot confer upon her the right to seek an injunction against other co-owners. It is well-settled that a suit for mandatory or prohibitory injunction at the instance of one co-owner against another is not maintainable in the absence of partition, as a co-owner in settled possession cannot be dispossessed on the strength of such relief claimed by another co-owner. This legal position stands fortified by the judgment of the Hon'ble Supreme Court in **SK. Golam Lal Chand v. Nandu Lal Shaw @ Nand Lal Keshri @ Nandu Lal Bayes and Others, Civil Appeal No. 4177 of 2024**, the relevant observations of which are reproduced hereinbelow for ready reference:-

Since the suit property has many co-owners including the plaintiff-respondent Nandu Lal and Brij Mohan, the defendant-appellant S.K. Golam Lalchand could not have acquired right, title and interest in the whole of the suit property solely on the basis of the sale deed dated 19.05.2006 executed by Brij Mohan. The said sale deed, if at all, in accordance with Section 44 of the Transfer of Property Act, 1882 may be a valid document to the extent of the share of Brij Mohan in the property and defendant- appellant S.K. Golam Lalchand is free to take remedies to claim appropriate relief either by suit of partition or by suit of compensation and damages against Brij Mohan.



11.1. In **Ramdas v. Sitabai and Others, (2009) 7 SCC 444**, the Hon'ble Supreme Court, while elucidating the governing principles relating to co-ownership and the nature of possession flowing therefrom, has authoritatively pronounced in paragraphs 16 and 17 as follows:-

16. It is settled law under the Transfer of Property Act, 1882 that a purchaser cannot have a better title than what his vender had. The possession which is claimed by Defendant 3 Ramdas (the appellant herein) in respect of the entire land bearing Gat No. 19 area admeasuring 2.56 H of Mouza Padoli was also illegal and without proper sanction of law. So long as the property is joint and not partitioned, Defendant 3 Ramdas (the appellant herein) is not entitled to get possession of the said land. Even otherwise, the appellant herein having purchased the land from Defendant 1 Sudam could be entitled to be declared at the most to the extent of half-share of the said piece of land having stepped into the shoes of his vendor and could not have asked for and claimed ownership and possession over the entire land of Gat No 19 admeasuring 2.56 H.

17. Without there being any physical formal partition of an undivided landed property, a co-sharer cannot put a vendee in possession although such a co-sharer may have a right to transfer his undivided share. Reliance in this regard may be placed to a decision of this Court in *M.V.S. Manikayala Rao v. M. Narasimhaswami*¹ wherein this Court stated as follows: (AIR p. 473, para 5)

"5. Now, it is well settled that the purchaser of a coparcener's undivided interest in joint family property is not entitled to possession of what he has purchased. His only right is to sue for partition of the property and ask for allotment to him of that which on partition might be found to fall to the share of the coparcener whose share he had purchased."



12. Accordingly, when the suit property indisputably forms part of an unpartitioned joint holding which continues to stand recorded as joint in the revenue entries, notwithstanding the fact that different co-owners may be in separate actual possession of distinct portions, the remedy of a co-sharer does not lie in instituting a suit for permanent or mandatory injunction against another co-owner. In such circumstances, the only appropriate and legally permissible course open to the respondent-plaintiff was to seek partition of the joint estate through due process of law.

13. Consequently, the appeal preferred by the appellant is hereby allowed. The impugned judgment and decree rendered by the learned First Appellate Court is set aside, and the well-reasoned judgment and decree of the learned Trial Court stands restored in its entirety.

14. In view of the final adjudication of the principal matter, all pending miscellaneous applications, if any, arising from or incidental to the present proceedings, shall also stand disposed of by necessary implication. No further orders are required to be passed thereon, as their adjudication no longer survives in light of the conclusions reached in the main case.

21.11.2025
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(**VIRINDER AGGARWAL**)
JUDGE

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