

2025:PHHC:146594



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

RSA-1139-2022 (O&M)

Reserved on : 22.09.2025

Pronounced on : 28.10.2025

Gurpreet Singh & Anr.

....Appellants

VERSUS

Nirmal Kaur

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Amardeep Singh Gill, Advocate for the appellants.

ALKA SARIN, J.

1. The present regular second appeal has been preferred by the plaintiff-appellants against the judgements and decrees dated 04.12.2018 and 15.02.2022 passed by the Trial Court and the First Appellate Court dismissing the suit for permanent injunction.

2. The suit for permanent injunction was filed by the plaintiff-appellants averring that the parties being joint owners along with other co-shares were in possession of their respective shares of the suit property and were cultivating the same. The suit property had not been partitioned by metes and bounds and the defendant-respondent wanted to change the nature of suit property without getting it partitioned and also wanted to install wire on the valuable portion of the suit property. Hence, the suit for permanent injunction. In the written statement the defendant-respondent took the plea that the suit property was orally partitioned whereby possession was

exchanged and construction was raised by the plaintiff-appellants on their own share and therefore the plaintiff-appellants could not restrain the defendant-respondent from raising construction over the suit property which was in her possession and she was also competent to install the wire.

3. On the basis of the pleadings of the parties, the following issues were framed by the Trial Court :

1. Whether the plaintiff has concealed true and material facts from the court ? OPD
2. Whether the plaintiff is entitled for the relief of permanent injunction as prayed for ? OPP
3. Relief.

4. Vide judgement and decree dated 04.12.2018 the Trial Court dismissed the suit of the plaintiff-appellants. The plaintiff-appellants filed an appeal against the judgement and decree of the Trial Court. However, the said appeal of the plaintiff-appellants was also dismissed by the First Appellate Court vide judgement and decree dated 15.02.2022. Hence, the present regular second appeal by the plaintiff-appellants.

5. Learned counsel for the plaintiff-appellants has contended that both the Courts have erred in dismissing the suit of the plaintiff-appellants. It is urged that the suit property was joint and the defendant-respondent had no right to raise construction and put a wire around the valuable portion of the suit property and therefore their suit for permanent injunction deserved to be decreed.

6. Heard counsel for the plaintiff-appellants and perused the paperbook.

7. In the present case the suit of the plaintiff-appellants has been dismissed by both the Courts. It has been found by the Courts that the plaintiff-appellants had themselves raised construction over part of the suit property and were also cultivating portions of the suit property and thus they could not restrain the defendant-respondent from raising construction or putting a wire around the suit property in her possession. The suit property has been found to be still joint. A Full Bench of this Court in the case of **Bhartu vs. Ram Sarup [1981 PLJ 204]** has held as under :

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

(2) Possession of joint property by one co-owner, is 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 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 no 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-owner, it is not open to anybody to disturb the arrangement without the consent of others except by filing a suit for partition.

8. A co-sharer in possession can certainly ask for injunction against a co-sharer not in possession restraining the latter from resorting to force and ousting him.”

8. A Division Bench of this Court in the case of **Bachan Singh vs. 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.”

9. In view of the above and keeping in view the law laid down by this Court in the cases of **Bhartu** (supra) and **Bachan Singh** (supra), no fault can be found with the judgments and decrees passed by both the Courts. In the face of the findings recorded by both the fact finding Courts that the suit

property is still joint, there is no scope for any interference by this Court. No cogent and reliable evidence has been highlighted by the counsel for the plaintiff-appellants for this Court to take a contrary view from the one taken by both the Courts. No other point was argued.

10. No question of law, much less any substantial question of law, arises in the present case. The appeal being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

28.10.2025

Ankur Goyal

(ALKA SARIN)
JUDGE

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