

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

RSA-1090-2020 (O&M)
Reserved on : 28.07.2025
Pronounced on : 05.08.2025

Smt. Savitri Devi

...Appellant

VERSUS

Naresh Kumar and Another

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sandeep Kumar Yadav, Advocate for the appellant.

ALKA SARIN, J.**CM-3495-C-2020**

1. For the reasons mentioned therein, the application seeking condonation of 154 days delay in refiling the appeal is allowed. The delay in refiling the appeal is condoned.

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2. The present regular second appeal has been preferred by the plaintiff No.2 (plaintiff-appellant) against the judgements and decrees dated 24.05.2016 and 22.04.2019 passed by the Trial Court and the First Appellate Court dismissing the suit for permanent injunction.

3. The suit for permanent injunction was filed by the plaintiffs - Smt. Mitlesh Devi (plaintiff No.1-respondent No.2 herein) and Smt. Savitri Devi (plaintiff No.2-appellant herein) - averring that they were the owners in possession of the suit land and had raised a boundary wall around it by spending a huge sum of money. Though the defendant-respondent No.1 had

no concern with the suit land but he was forcibly bent upon to interfere in the peaceful use and possession of the plaintiffs by ousting them after taking forcible possession and raising construction as well as alienating the suit land. Though the plaintiffs had repeatedly requested the defendant-respondent No.1 not to interfere in their peaceful use and possession of the suit land by way of raising construction and taking forcible possession, but to no avail. Hence, the suit. The suit was contested by the defendant-respondent No.1 who in his written statement raised preliminary objections regarding maintainability, locus-standi, cause of action and concealment of true and material facts, estoppel, etc. The defendant-respondent No.1 set up his ownership over 100 sq. yards out of the suit land vide sale deed dated 30.07.2012 got executed through court in execution of a decree for specific performance. The competency of the vendors of the plaintiffs to sell them the suit land was also challenged. No replication was filed by the plaintiffs.

4. From the pleadings of the parties following issues were framed by the Trial Court :

1. Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for in the head note of the plaint ? OPP
2. Whether the suit is not maintainable in present form ? OPD
3. Relief.

5. Vide judgement and decree dated 24.05.2016 the Trial Court dismissed the suit of the plaintiffs. Only the plaintiff-appellant herein i.e. plaintiff No.2 filed an appeal against the judgement and decree of the Trial

Court. However, the said appeal of the plaintiff-appellant was also dismissed by the First Appellate Court vide judgement and decree dated 22.04.2019. Hence, the present regular second appeal by the plaintiff-appellant.

6. Learned counsel for the plaintiff-appellant has contended that both the Courts have erred in dismissing the suit of the plaintiffs. It is urged that the plaintiffs had purchased the suit land vide registered sale deed and were in possession thereof and therefore their suit for permanent injunction deserved to be decreed.

7. Heard counsel for the plaintiff-appellant and perused the paper-book.

8. In the present case the suit of the plaintiffs has been dismissed by both the Courts. It has been found by the First Appellate Court that the parties i.e. the plaintiffs and the defendant are co-sharers in the suit land. In the absence of any evidence led by the plaintiff-appellant that she was in exclusive possession of the suit land and that there had been a partition, the First Appellate Court has rightly held that the suit for injunction qua a co-sharer would not be maintainable.

9. 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.”

10. 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.”

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

12. 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.

05.08.2025
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO