



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

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RSA-32-2022 (O&M)**Date of decision : 08.07.2025****Mahender Singh and another****..... Appellants****versus****Ram Kumar and others****..... Respondents****CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Rajesh Duhan, Advocate
for the appellants.

PANKAJ JAIN, J. (Oral)

1. Admittedly, parties are co-sharers. The appellant claimed to have purchased land out of a joint khewat. Partition proceedings are pending. The appellant seeks injunction against a co-sharer without proving his exclusive possession. It is in these circumstances that the Appellate Court observed as under:-

“13. Perusal of jamabandi for the year 2009-10 Ex.P5 reveals that the parties to the suit are in joint possession of the suit land and it is admitted case of the parties that an application for partition of the suit land is still pending for decision before the court of Assistant Collector IInd Grade, Narnaund. Moreover, learned Addl. Civil Judge (Sr. Divn.), Hansi appointed Halqa Kanongo as Local Commission vide order dated 03.11.2014 to demarcate the suit land. The Local commission in his report Ex.D1 has mentioned that trees are standing in khasra No. 138//17 and three trees have fallen down in khasra No. 138//16. Thus, report of Local Commission further belies the stand of appellants-plaintiffs that trees are standing in khasra No. 138//16 which is in their possession. They have not disputed the fact that the khasra No. 138//17 is in possession of the respondents-defendants and the report of Local Commission further clarifies that the



trees are standing in khasra No. 138//17. Otherwise also, the suit land is still in joint possession of the co-sharers including appellants-plaintiffs and respondents-defendants and the appellants-plaintiffs have failed to prove themselves to be in exclusive possession thereof. Therefore, they are not entitled to injunction against the respondents-defendants who are co-sharer in joint possession of the suit land. The efficacious remedy to resolve the dispute is partition of the suit land by the court of competent jurisdiction. The appellants-plaintiffs have admittedly filed an application for partition before Assistant Collector IInd Grade Narnaund which is still pending. Thus, in such circumstances, injunction can be granted against the respondents-defendant Therefore, I find no reason to differ with the learned trial court and its finding on issue No.1 stands affirmed.”

2. In the considered opinion of this Court, the findings recorded by the Lower Appellate Court are in conformity with the settled position of law related to the rights of the co-owners as laid down by Division Bench of this Court in ***Sant Ram Nagina Ram vs. Daya Ram Nagina Ram, AIR 1961 Pb. 528*** and reiterated by Full Bench in ***Bhartu vs. Ram Swarup***, reported as ***1981 PLJ 204'***, observing as under:-

- “1) A co-owner has an interest in the whole property and also in every parcel of it.
- (2) Possession of the 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 to by the other co-owners, it is not open to any one to disturb the arrangement without the consent of others except by filing a suit for partition.”

3. In view thereof, this Court does not find any reason to interfere in the present appeal and the same is ordered to to be dismissed.

4. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

08.07.2025

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Whether speaking/reasoned : Yes

Whether Reportable : No