

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****115****RSA-3373-2023 (O&M)****Date of Decision : 31.01.2025**

Pal Singh

....Appellant

VERSUS

Gurbachan Singh and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Dr. Naresh Kaushik, Advocate for the appellant.

ALKA SARIN, J. (Oral)

1. Present appeal has been preferred by the plaintiff No.1 – Pal Singh (plaintiff-appellant) challenging the judgment and decree dated 02.12.2019 passed by the Trial Court and the judgment and decree dated 28.08.2023 passed by the First Appellate Court.

2. The brief facts relevant to the present *lis* are that plaintiff-appellant herein alongwith plaintiff-proforma respondent Nos.3 and 4 herein filed a suit for permanent injunction for restraining the defendant-respondent Nos.1 and 2 from dispossessing them by raising construction or in any other manner from the land comprised in Kh/Kh No.309/321 Khasra No.228 (0-11) *Gair Mumkin Bara* situated within the revenue limits of village Soonk, Hadbast No.344, Tehsil Kharar, District SAS Nagar (Mohali). It was averred that the *Bara* alongwith other properties comprised in Kh/Kh Nos.309/321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334 and 335 measuring 118 Kanals 7 Marlas was owned and possessed by a number of people including plaintiff No.3-proforma respondent No.3 herein. It was

further averred that plaintiff No.3-proforma respondent No.3 herein was having a share to the extent of 19/7131, which measures about 7.8 Marlas, however, the same had been in possession of plaintiff-appellant No.1 and plaintiff-proforma respondent No.4 herein with the consent of plaintiff No.3-proforma respondent No.3 herein. The plaintiff-appellant and plaintiff-proforma respondent No.4 had been using the Khasra numbers in the suit property as *Bara* for tethering their cattle and for preparing dung cakes and had kept a big manure heap because they owned about 20 buffaloes. The plaintiff No.3-proforma respondent No.3 herein sold his share to the plaintiff-appellant and plaintiff-proforma respondent No.4 vide two separate sale deeds in equal shares for an amount of Rs.2,45,500/- each and also acknowledged the possession of the plaintiff-appellant and plaintiff-proforma respondent No.4 over the Khasra No.228 (0-11) *Gair Mumkin Bara*. It was further the case set up that defendant-respondent Nos.1 and 2 wanted to purchase the said Khasra number and they were annoyed by the sale in favour of the plaintiff-appellant and plaintiff-proforma respondent No.4 and started threatening that they would dispossess them by raising illegal construction. Hence, the present suit. On notice the defendant-respondent Nos.1 and 2 appeared and filed their written statement raising various preliminary objections. On merits it was the case set up that the plaintiff No.3-proforma respondent No.3 herein had no specific portion out of the joint land being a co-sharer. It was further the case set up that the plaintiff No.3-proforma respondent No.3 herein could have only sold his share. It was further the case that Khasra No.228 (0-11) was in possession of

defendant-respondent Nos.1 and 2 and they had raised a boundary wall around it and placed a big manure heap and they tethered their cattle in the same. It was further the stand taken that the suit land was joint land and no partition had taken place. Replication was filed. On the basis of pleadings of the parties the following issues were framed :

1. Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for ? OPP
2. Whether the suit of the plaintiffs is not maintainable in the present form ? OPD
3. Whether the plaintiffs have not come to the Court with clean hands and have suppressed the true and material facts from the Court ? OPD
4. Relief.

3. The Trial Court vide judgment and decree dated 02.12.2019 dismissed the suit. Aggrieved by the same an appeal was preferred by all the three plaintiffs (plaintiff-appellant, plaintiff No.3-proforma respondent No.3 and plaintiff-proforma respondent No.4 herein) which appeal was also dismissed by the First Appellate Court vide judgment and decree dated 28.08.2023. The present appeal has been filed only by plaintiff No.1 (plaintiff-appellant herein).

4. Learned counsel for the plaintiff-appellant would contend that both the Courts have erred in dismissing the suit. It is urged that the plaintiff-appellant is in possession of the suit property being a co-sharer and being in exclusive possession, he is entitled to injunction in his favour.

5. Heard.

6. In the present case the sale deeds in favour of the plaintiff-appellant qua the sale of a share was produced on the record, though no specific Khasra number has been mentioned. It is an admitted case that the property is still joint and that the plaintiff-proforma respondent No.3 and defendant-respondent Nos.1 and 2 are also co-sharers in the suit property. Both the Courts have observed that in the Jamabandi for the year 2009-10, the plaintiff-proforma respondent No.3 was shown as a co-sharer in joint possession alongwith co-sharers including defendant-respondent Nos.1 and 2. No exclusive possession of Khasra No.228 (0-11) was depicted in the Jamabandi (Ex.P3). There is no evidence on record to even remotely suggest that the plaintiff-proforma respondent No.3 was in exclusive possession of Khasra No.228. Even otherwise, a Division Bench of this Court in 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."

7. Further, a Full Bench of this Court in the case of **Bhartu vs. Ram Sarup [1981 PLJ 204]** held that a co-sharer is owner of every inch of land till the partition of the same is affected and that the possession of a joint property by one co-owner in the eyes of law is the possession of all.

8. It was further held by the Hon'ble Supreme Court in the case of **T. Ramalingeswara Rao (Dead) through LRs & Anr. vs. N. Madhava Rao & Ors. [2019 (2) RCR (Civil) 770]** as under :

“17. In our view, even assuming that the plaintiffs claimed to be in possession of the suit property (which the two Courts below did not find in their favour) for claiming injunction, yet they were not entitled to claim injunction against the other co-sharers over the suit property. It is a settled principle of law that the possession of one co-sharer is possession of all co-sharers, it cannot be adverse to them, unless there is a denial of their right to their knowledge by the person in possession, and exclusion and ouster following thereon for the statutory period.”

9. In view of the above, I do not find any merit in the present appeal. 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.

31.01.2025
jk

(ALKA SARIN)
JUDGE

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