

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****227****RSA-844-2015 (O&M)****Date of decision: 06.11.2025****Leela Ram deceased through his Legal representative ...Appellant(s)****Vs.****Ramji Lal (deceased) through his Legal representatives ...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Ms. Pratibha Yadav, Advocate for the appellants.

Mr. Munish Gupta, Advocate for respondent No.10.

Mr. Sandeep Kumar Yadav, Advocate with
Ms. Sangeeta Yadav, Advocate for respondent No.11.Mr. Ajay Mahajan, Advocate for performa respondents
No. 12 and 13.

NIDHI GUPTA, J.

Present Second Appeal has been filed by the plaintiff against the concurrent judgments and decrees of the learned Courts below, whereby suit filed by the appellant for permanent injunction, has been dismissed by both the Courts below.

2. Learned counsel for the appellant/plaintiff submits that the plaintiff and defendants are co-sharers in the suit property which had not been partitioned by metes and bounds. It is submitted that due to mistake of revenue officers, there is entry of 'owner in possession' in some part of the suit property; whereas in actual fact, both the parties are co-sharers in



the suit property. It is contended that accordingly, defendants had no right to raise any construction over any respective share of the suit property. Accordingly, injunction could not have been denied to the appellant. It is accordingly prayed that the impugned judgments and decrees of the learned Courts below deserve to be set aside.

3. Learned counsel for the respondents/defendants vehemently oppose submissions made on behalf of the appellant and submits that it is established position in law that no injunction can be granted against a co-sharer. Thus, judgments and decrees of the learned Courts below suffer from no error. They accordingly pray for dismissal of the present appeal.

4. Heard.

5. It is the own case of the plaintiff that the suit property is joint in nature and has not been partitioned by metes and bounds. It is trite law that injunction cannot be granted against a co-sharer. In this situation, the efficacious remedy for the appellant would have been to file suit for partition. Relevant findings of the Additional Civil Judge (Senior Division), Narnaul as recorded in its judgment dated 01.10.2011 are as under:-

*“12. After hearing the rival contention of learned counsel for the parties and perusal of record very carefully, it has been observed by this Court that stand taken by the defendant is that suit property has already been partitioned. Hon'ble Punjab & Haryana High Court has held in case titled **Darbara Singh and ors. Vs. Gurdial Singh and ors., Reported in 1994 (2) LJR 175** that private partition has to be reflected in revenue record. Plea of partition cannot be taken into account till implementation of partition - No severance of*



*states of co-sharer. On perusal of revenue record shows that both the parties are co-sharers in the suit property. As per plea of defendant no. 10, he has purchased specific killa number out of the suit property, therefore, he is in possession of the specific killa number is not tenable in the eyes of law as it is settled law that if defendant no. 10 who has purchased specific killa number out of suit property, even then it cannot be said from any stretch of imagination that he is in possession of specific killa number as his purchase land is to be deemed to the share of his vendor. According to section 41 (h) of Specific Relief Act if an efficacious remedy is available then no injunction can be granted. Reference to be made in case titled **Kishan Singh Vs. Sucha Singh, reported in 2008-2, Latest Judicial Reports 663**, wherein it has been held by Hon'ble Punjab & Haryana High Court that suit for injunction is not maintainable where the plaintiff has equally efficacious remedy available - Remedy for getting share in joint property is partitioned and not injunction. Moreover, Full Bench of Hon'ble Punjab & Haryana High Court in case titled **Ram Chander Vs. Bhim Singh and others 2008 (4) Civil Court Cases 2 (P&H) (FB)** has held that a co-owner has an interest in the whole property and also is every parcel of it (2) Possession of 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 by the other owners, it is not open to anybody to disturb the arrangement without the consent of other except by filing a suit for partition.”

6. Keeping in view the undisputed position in law, I find no ground is made out to interfere in the impugned judgments and decrees of the learned Courts below. The present Regular Second Appeal is hereby **dismissed.**

7. Pending applications, if any, stand disposed of.

06.11.2025

Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No