

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****230****RSA-1141-2018 (O&M)****Date of decision: 02.09.2025****Aamin Khan****...Appellant(s)****Vs.****Mohammad Israil and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Munfaid Khan, Advocate for the appellant.

Mr. Sukhandeep Singh, Advocate for
Mr. Lokesh Sinhal, Advocate for the respondents.

NIDHI GUPTA, J.**CM-2807-C-2018**

Prayer in this application filed under Section 5 of Limitation Act is for condonation of delay of 37 days in filing the accompanying appeal.

2. For the reasons mentioned in the application which is duly supported by an affidavit of the applicant/appellant the same is allowed and delay of 37 days in filing the appeal is condoned.

RSA-1141-2018 (O&M)

Present Regular Second Appeal has been filed by the plaintiff against the judgment of reversal dated 09.10.2017 passed by learned Additional District Judge, Mewat; whereby Appeal filed by the respondent/defendants has been accepted and suit of the plaintiff for permanent injunction has been dismissed with costs.



2. It is submitted by learned counsel for the plaintiff/appellant that the learned first Appellate Court was in error in setting aside the well reasoned judgment of the learned trial Court on conjectures and surmises. It is submitted that learned trial Court had given a categorical finding that the plaintiff is in possession of the suit property. The learned trial Court has categorically held *“That if the defendants are permitted to raise further construction over the suit property then it would amount to ouster of the plaintiff from the suit property because it is a matter of common knowledge that the property situated near the road is always more valuable than the one situated away from the road. If the defendants succeed in raising further construction over the suit property then it would amount to ouster of the plaintiff from the valuable portion of land and would adversely affect their rights.”* Yet, the First Appellate Court has dismissed suit of the plaintiff.

3. It is further submitted that the Ld. First Appellate Court while passing the impugned judgment and decree has failed to consider that a co-sharer in exclusive possession of a part of joint land cannot raise construction on the land as every co-sharer is a joint owner of every inch of the whole land; and if the respondents/ defendants are not restrained from changing the nature of joint property by raising construction over it, then it will amount to give rise to the multiplicity of the litigations. As such impugned judgment and decree dated 09.10.2017 passed by Ld. First Appellate Court is not sustainable in eyes of law and liable to be set aside.



4. It is accordingly prayed that the present Regular Second Appeal be allowed; and the impugned judgment and decree be set aside.

5. *Per contra*, learned counsel for the respondent/defendants opposes submissions made on behalf of the appellant and submits that admittedly, the defendants have raised construction over the suit property. However, even the plaintiff had raised construction over the suit property. It is submitted that in actual fact, suit property is not joint in nature and the same has been mutually partitioned between the parties about 30 years back; and it is only after the partition that the defendants had raised construction over the suit property coming in their share. Accordingly, dismissal of the present Second Appeal is prayed for.

6. No other argument is raised on behalf of the parties. I have heard learned counsel and perused the case file in detail. I find no merit in the submissions made on behalf of the appellant/plaintiff.

7. Although, it is the contention of the defendants that the property was partitioned 30 years back, however admittedly, the same is not reflected in the revenue record. On the contrary, as per the Jamabandis Ex.P1 and Ex.P2, produced by the plaintiff, suit property is shown to be joint in nature. Notwithstanding the above, it is to be taken note of that the plaintiff in his cross-examination as PW1 has admitted that parties were cultivating their separate shares. PW1 has further admitted that although partition had not taken place yet, mutual Agreement in respect of the suit property had been reached between the parties; in pursuance to which khasra No. 25//2 and 25//9 had fallen to



the share of the defendants. As per the plaint, defendants No.1 and 3 have raised construction on front portion of khasra No. 25//2; whereas defendant No.4 has raised construction on khasra No. 25//9. Thus, for all intents and purposes, partition between the parties stands proved even though same may not be reflected in the revenue records. PW2 has also made similar admission. In these circumstances, plaintiff can raise no objection to the construction being raised by the defendants. It has also not been denied by the plaintiff that he, too, had raised construction over the suit land.

8. Further, assuming for the sake of argument that the property has not been partitioned, it is established position in law that injunction cannot be granted against co-sharer/co-owner. Even further, plaintiff cannot object to raising of construction by the defendants on the ground that it would diminish value or utility of the joint property or would imply ouster by another co-sharer. In this regard, reference is made to a judgment passed by a Coordinate Bench of this Court in **Jangir Singh v. Naranjan Singh and others (P&H): Law Finder Doc Id # 633172**; wherein it is held in para 11 as under: -

“11. The matter does not end here. Admittedly, during pendency of the suit, one Shri Om Parkash Gupta, Advocate was appointed as a Local Commission by the learned trial Court and was directed to visit the spot and report about the factual position existing at the spot. He stepped into the witness box as PW5 and proved his report Ex.PW5/A and the rough site plan Ex.PW5/D prepared by him. According to the



report of the Local Commission Ex.PW5/A, he visited the spot on 27.04.1981 and found some construction already in existence on a portion of the suit land as was shown by him in the site plan Ex.PW5/D prepared by him. The remaining suit land was said to be lying vacant. He added that the construction on a portion of the suit land was reported to be of defendant Jangir Singh. Both the Courts below consistently accepted the factum of existence of construction of the defendant on a portion of the suit land. In other words, admittedly the defendant is in exclusive possession of a portion of the suit land. Being in exclusive possession, he is legally entitled to protection of his possession until the joint land is partitioned. The plaintiffs on the basis of their claim of being co-sharers cannot restrain him from using the portion of the joint land in his possession in the manner he likes. The only remedy which the plaintiffs have is to seek partition of the suit land. The amount being spent by the defendant in raising construction on a portion of the land in his exclusive possession is at his own risk. When the plaintiffs have an equally efficacious remedy available to them as provided under Section 41 of the Specific Relief Act, their suit for a permanent prohibitory injunction against the defendant is not maintainable.”

9. Reference is made to another judgment passed by Coordinate Bench of this Court in **Akhtar Hussain vs. Irfan and others (P&H), 2017(1) PLR 855**; wherein it is held in para 10 of the judgment as under: -

“10.....As per the aforesaid ratio of law laid down by the Division Bench of this Court, mere making of



construction or improvement in the joint property does not amount to the ouster of the other co-sharer. Learned counsel for the appellant has not been able to show that raising of the construction by respondents-defendants will diminish the value of the utility of the property in dispute and it will be detrimental to his interest or to the interest of any other co-sharer. So, no injunction can be issued to restrain the defendants from raising the construction in the portion of the suit property in their possession. Learned First Appellate Court has categorically mentioned that as the partition proceedings are pending, certainly the construction raised will be subject to partition. So, the aforesaid observations of the learned First Appellate Court that the construction if any raised by defendants-respondents will be subject to partition is sufficient to take care of the rights of the appellant-plaintiff."

10. Learned counsel for the appellant is unable to controvert or dispute the above said factual and legal position.

11. The present Regular Second Appeal is accordingly, hereby **dismissed.**

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

02.09.2025

Divyanshi

**(NIDHI GUPTA)
JUDGE**

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