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

RSA-2232-2018 (O&M)

Date of Decision : 18.11.2025

LAKHWINDER SINGH

.... Appellant

VERSUS

RAM KUMAR AND ANR.

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Jaswinder Singh Grewal, Advocate for the appellant.
(joined through hybrid mode)

ALKA SARIN, J. (ORAL)

1. The present regular second appeal has been preferred by the plaintiff-appellant challenging the judgment and decree dated 25.08.2015 passed by the learned Trial Court and the judgment and decree dated 26.09.2017 passed by the learned First Appellate Court.

2. Brief facts relevant to the present *lis* are that the plaintiff-appellant herein filed the present suit claiming himself to be the co-owner of land measuring 20 Kanals 01 Marla out of total land measuring 136 Kanals 08 Marlas comprised in Khewat No.128/116 Khatoni Nos.237 to 240 as per jamabandi for the year 2005-06 situated in the revenue estate of Village Kundal, Tehsil Abohar. It was the case set up by the plaintiff-appellant that previously co-sharers, namely, Sheo Karan etc. sold the suit property and handed over the possession of the same to the plaintiff-appellant and since the time of purchase of the same the plaintiff-appellant is in exclusive possession

of the suit property at the spot. The defendant-respondents allege that they had purchased land including the suit property and that the other co-sharers have no concern with the suit property or with the exclusive possession over the same. The defendant-respondents are influential people and they were threatening to cause interference into the peaceful possession and further gave threats to dispossess the plaintiff-appellant from the suit property illegally and forcibly. Hence, the suit.

3. The defendant-respondents appeared and filed their written statement stating that they have purchased land measuring 56 Kanals 06 Marlas i.e. land measuring 33 Kanals 04 Marlas 664/2732 share out of total land measuring 136 Kanals 12 Marlas Khewat No.127 and 23 Kanals 02 Marlas 462/2728 share out of total land measuring 136 Kanals 08 Marlas as per jamabandi for the year 2005-06 situated at Village Kundal, Tehsil Abohar vide sale deed dated 02.11.2010 bearing Vasika No.3719 from Charanjit Singh etc. and at the time of purchase the possession of land measuring 33 Kanals 04 Marlas comprised in Rect. No.35 Killa No.16 (8-0), 17 (8-0) 18 min (2-4) 23 (7-0) 24 (8-0) and 23 Kanals 02 Marlas comprised in Rect. No.36 Killa No.21 min (6-0) 22 (8-0) 23 min (2-0) 21 min (2-0) 23 min (5-2) Khewat No.128 situated at Village Kundal, Tehsil Abohar was given to the defendant-respondents. It was further averred that Dulia Ram @ Dula Ram was in possession of Rect. No.36 Killa No.21 min (6-0) being co-sharer and over Rect. No.36 Killa No.22 (8-0) Killa No.23 min (2-0) being *Gair Marusi*. Dulia Ram has since expired and mutation No.4327 of his inheritance has been sanctioned in favour of his daughter Taro Devi and son Badhu to the extent of

half share and Lichma Devi etc. on the basis of a Will. Badho Devi widow of Dulia Ram and Taro Devi daughter of Dulia Ram filed a suit for permanent injunction against Jagdish etc. regarding the land comprised in Rect. No.36 Killa No.21 min (6-0) 22 (8-0) 23 min (2-0) 21 min (2-0) which was accepted on 20.05.2011 by the learned Civil Judge (Junior Division), Abohar whereby Jagdish etc. were restrained from interfering in the possession of Taro Devi and Badho Devi. Thereafter, as mutation was sanctioned in favour of Smt. Taro Devi upto half share, Taro Devi vide agreement dated 27.02.2012 sold her share to Ram Kumar defendant-respondent No.1 for consideration of ₹25,75,000 and possession was also handed over to him.

4. No replication was filed. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the plaintiff is in peaceful and exclusive possession over suit property as prayed ? OPP
2. Whether the plaintiff is entitled for permanent injunction as prayed for in the plaint ? OPP
3. Whether the plaintiff has no cause of action and locus standi to file the present suit ? OPD
4. Whether the suit of the plaintiff is not maintainable in the present form ? OPD
5. Whether the plaintiff has not approached the court with clean hands ? OPD
6. Whether the plaintiff is estopped by his act and conduct from filing the present suit ? OPD

7. Relief.

5. The Trial Court dismissed the suit vide judgment and decree dated 25.08.2015. Aggrieved by the same an appeal was preferred by the plaintiff-appellant before the learned First Appellate Court which appeal was also dismissed vide judgment and decree dated 26.09.2017. Hence the present regular second appeal by the plaintiff-appellant.

6. Learned counsel for the plaintiff-appellant would contend that the Khasra Girdawari and the sale deed had been produced on the record to show that the plaintiff-appellant was in possession of the suit property. It is further the contention of the learned counsel for the plaintiff-appellant that the Khasra Girdawari clearly shows the name of the previous owners as being in cultivating possession.

7. Heard.

8. In the present case, learned counsel for the plaintiff-appellant in order to show the possession of the plaintiff-appellant over the suit property, which is a pre-requisite for maintaining a suit for permanent injunction, has relied upon the Khasra Girdawari wherein the name of the previous co-sharers has been shown. Both the Courts concurrently found that it was a stray entry that had been relied upon. While appearing as PW-1 the plaintiff-appellant admitted that qua the suit property no application for correction of the Khasra Girdawari had been made by the plaintiff-appellant in his own name before the AC 2nd Grade Abohar. He admitted that he had not seen the jamabandi at the time of purchasing the suit property. It was further admitted by him that he had purchased a share in the suit property and that he had not filed any

application for partition before the revenue authorities till date. The plaintiff-appellant further went on to admit that the suit property was joint of all the co-sharers. The plaintiff-appellant being a co-sharer had to show his exclusive possession of the suit property to the exclusion of the other co-sharers which he woefully failed to prove.

9. 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.”

In the absence of any evidence having been led by the plaintiff-appellant to show that he was in exclusive possession of the suit property, no injunction could have been granted in his favour. Further still, even if the plaintiff-appellant is possession of some portion of the property which is held by him along with other co-owners, the remedy would be to file a suit for partition. In view thereof, no fault can be found with the impugned judgments and decrees passed by both the Courts concerned.

10. No question of law, much less any substantial question of law, arises in the present regular second appeal. This Court does not find any ground to interfere with the concurrent findings of fact recorded by both the Courts concerned. In view thereof, the present regular second appeal, being devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

18.11.2025
Aman Jain

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No