

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****224****RSA-5690-2014 (O&M)****Decided on: 13.11.2025****Mahender Singh****...Appellant(s)****Vs.****Basant Kumar and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Azad Singh, Advocate for the appellant.

Mr. Ajit Sihag, Advocate for respondent No.1.

NIDHI GUPTA, J.

Plaintiff is in Second Appeal against the judgment of reversal dated 01.09.2014 passed by the learned District Judge, Bhiwani; whereby Civil Appeal filed by defendant No.3 against the judgment and decree dated 26.07.2012 passed by learned Civil Judge (Junior Division), Charkhi Dadri decreeing the suit of the plaintiff, has been accepted; and suit of the appellant has been dismissed.

2. Learned counsel for the appellant/plaintiff submits that the plaintiff is co-owner and co-sharer in the suit property, which is joint in nature. Appellant is in cultivating possession of the suit property. However, defendants are bent upon to oust the appellant from the suit land. In reversing the well-reasoned judgment of the learned Trial Court, the First Appellate Court has failed to appreciate this fact. It is submitted that this contention of the appellant that he is in cultivating possession of the joint property; and that the defendants were bent upon ousting him



from the said joint property has been proved on record from the evidence of the plaintiff witnesses PW1 to PW3, who have categorically attested to the above said facts in their evidence. On the other hand, defendants had failed to lead any evidence to the contrary. It is contended that accordingly in view of the evidence adduced by the appellant, suit could not have been dismissed. Therefore, impugned judgment and decree of the First Appellate Court is based on conjectures and surmises and on misreading of the evidence. In support of his contentions, learned counsel for the appellant relies upon a judgment passed by this Court in **CR-3414-2006** titled as **New India Construction Co. Ltd. and others vs. Desh Raj and others, 2007(1) RCR (Civil) 387, decided on 15.09.2006**; wherein it is held as under:-

“Civil Procedure Code, Order 39 Rules 1 and 2- Co-owners - Injunction against co-owner can be granted if the act of co-owner amounts to ouster or adverse to interest of co-owner out of possession - One co-owner cannot take exclusive possession of the property nor can commit an act of waste, ouster or illegitimate use, and if he - does so, he may be restrained by an injunction.”

3. He, accordingly, prays that the present Appeal be allowed; and the impugned judgment and decree dated 01.09.2014 passed by learned District Judge, Bhiwani be set aside.

4. *Per contra*, learned counsel for the respondents/defendants opposes submissions made on behalf of the appellant and submits that it is the admitted fact that the parties are co-sharers in the suit property. It



is submitted that it is established position in law that injunction cannot be granted against a co-sharer. It is contended that except for the bald statement made by the plaintiff, there is nothing on record whatsoever to indicate that defendants have done anything to oust the plaintiff from the suit property. He, accordingly prays for dismissal of the present Appeal.

5. No other argument is raised on behalf of the parties. I have heard learned counsel and perused the case file in great detail. I find no merit in the submissions advanced on behalf of the appellant.

6. It has been contended on behalf of the appellant that the defendants are bent upon ousting the plaintiff from the suit property; and which fact has been proved from the evidence of PW1 to PW3. A perusal of the record of the case shows that the onus to prove that no act of the defendant amounts to ousting or adverse to the interest of the plaintiff, was placed by the learned Trial Court upon the defendants. It is my view that the said onus was incorrectly placed, as the defendants cannot be called upon to lead negative evidence. It is the positive case of the appellant that the defendants are ousting him from the suit property. As such, the onus was upon the plaintiff to prove his assertion. The defendant could not have been called upon to prove that they were not doing anything adverse to the interest of the plaintiff. On a Court query, learned counsel for the appellant has been unable to describe to this Court as to how, in what manner, or on what date have the defendants sought to or attempted to oust him. On another Court query, it has been admitted by learned counsel for the appellant that no police complaint



has been filed by the appellant in respect of the alleged attempt to oust. Learned Trial Court has merely relied upon the oral testimony of the plaintiff's witnesses in holding that the case of the plaintiff stood proved. As such, the judgment relied upon by the learned counsel for the appellant in **New India Construction Co. Ltd. and others's case (supra)**, is distinguishable on facts and law and the appellant cannot derive any benefit from the said judgment.

7. The record further reveals that it has been alleged by the plaintiff that in an oral Family Settlement arrived at between the parties, the plaintiff has been granted exclusive possession of the suit land. However, plaintiff brought no evidence on record to prove that any such oral Family Settlement had ever taken place between the parties. The plaintiff has even failed to mention the date, month or year of the alleged Family Settlement.

8. Furthermore, it is established on record that the parties to the suit are co-sharers in the suit land; and that the suit land is still joint and has not been partitioned so far by metes and bounds. As per the revenue record, in particular Jamabandi for the year 2004-2005, shows that suit land is still joint between the parties and has not been partitioned so far. Even there are khasra girdawaris from the year 2004 to 2006 which reflect that all co-sharers are in joint possession of the suit land. In fact the joint nature of the suit land has been attested to by the plaintiff's witnesses themselves, the same being PW1 Rajender Singh and PW2 Attar Singh and the plaintiff himself as PW3 who have all in their



sworn Affidavits Ex.PW1/A, Ex.PW2/A and Ex.PW3/A respectively, stated that the plaintiff and defendants are co-sharers. Therefore, from the above facts and evidence, it is irrevocably established and even admitted on behalf of the appellant that the parties to the suit are co-sharers. 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 a suit for partition.

9. Reference is made to a judgment passed by this Court in **Karam Singh v. Lakhbir Kaur (P&H) : Law Finder Doc Id # 250001**; where it is held:-

“11. The relief of injunction can be sought by a co-sharer against other co-sharers when such a co-sharer happens to be in exclusive possession of the land to the exclusion of other co-sharers, but when the possession of all the co-sharers is joint, relief of injunction cannot be sought by either of the co-sharers and the only relief which is available to the co-sharer is to seek partition by metes and bounds. By purchasing share of land, out of joint khata from respondents No.1, respondents No.2 to 5 have become co-sharers in the joint khata along with plaintiffs and defendant No.1 and their status being equal and the possession being joint, the plaintiffs cannot seek permanent injunction restraining them from using the land in their joint possession because each co-sharer has a right and authority to use the joint property in the husband-like manner without causing obstruction to exercise of similar right by other co-sharers. Since, plaintiff/appellants have failed to prove their exclusive possession of the suit property, therefore, no fault can be found with the findings of the courts below.”

10. Further, plaintiff has failed to establish his exclusive possession over the suit property. In the above referred Jamabandis “self cultivating” has been recorded. Even in above referred Khasra Girdawaris, all the co-owners are shown to be in joint possession. Therefore, plaintiff was unable to establish exclusive possession of the suit land. Further, apart from the plaintiff and defendants No.1 to 3, admittedly there are other co-sharers to the suit land, who are in joint possession of the suit land. However, they have not been impleaded as parties in the suit. As such, suit of the plaintiff is bad for non-joinder of necessary parties.

11. Ld. counsel for the appellant is unable to dispute or controvert the above said facts and findings as recorded in the impugned judgment and decree dated 01.09.2014 passed by learned District Judge, Bhiwani.

12. Accordingly, I find no ground is made out to set aside the impugned judgment and decree dated 01.09.2014 passed by learned District Judge, Bhiwani. The present Second Appeal is hereby **dismissed**.

13. Pending applications, if any, stand(s) disposed of.

13.11.2025

Divyanshi

(NIDHI GUPTA)
JUDGE

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