

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****129****CR-5583-2025(O&M)****Date of decision: 20.08.2025****Gulshan Kumar****...Petitioner(s)****Vs.****Balwinder Singh & Another****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Jitender S. Chahal, Advocate
For the petitioner.

*********NIDHI GUPTA, J.**

Present Revision Petition has been filed by the plaintiff seeking setting aside of order dated 02.08.2025 (Annexure P7) passed by learned Additional District Judge, Yamuna Nagar, thereby allowing the appeal of respondents against the order dated 09.02.2023 (Annexure P5) passed by learned CJ(JD), Yamuna Nagar accepting the application of the petitioner under Order 39 Rule 1 & 2 restraining the respondents from changing the existing nature of joint land by raising any construction over specific and prime portion without getting the same partitioned by metes and bounds.

2. Learned counsel for the petitioner submits that in reversing the well-reasoned order passed by the learned trial Court granting ad interim injunction to the petitioner/plaintiff, the lower Appellate Court failed to



appreciate that admittedly the defendants had purchased only some portion to the extent of 3 Marla from co-sharer of the petitioner namely Rajinder Kumar. The Ld. Appellate Court has committed illegality by setting aside the order of Ld. Trial Court restraining the respondents from changing the existing nature of joint land by raising any sort of construction over specific and prime portion without getting the same partitioned by metes and bounds as it is admitted fact that petitioner is co-sharer in suit land and respondents had purchased only 3 marla land out of joint land; and co-sharer of petitioner has sold the 3 marla being 3/20 share out of aforesaid land, who intentionally and deliberately mentioned the dimension in sale deed giving shape of plot abutted to the main road in order to oust the other co-sharers including the petitioner from the maximum prime portion of the land i.e. adjoining to the road, which is detrimental to the interest of petitioner with other co-sharer. Jamabandi of year 2018-19 reveals that the suit land is joint property and has not been partitioned among the co-sharers so far. Thus, the respondents by dint of sale deed have purchased share of the co-sharer. It is settled law that sale of specific portion of land would amount to sale of share in joint land and the vendor who is not in exclusive possession of any specific portion of joint land could not deliver the possession of any such portion.

3. Learned counsel further relies upon judgment of the Hon'ble Supreme Court in **Ramdas v. Sitabai, (SC) : Law Finder Doc ID # 202448**; to submit that it has been held therein that an undivided share of co-sharer may



be a subject matter of sale, but possession cannot be handed over to the vendee unless the property is partitioned by metes and bounds. It is submitted that in the present case also the suit property has not been partitioned by metes and bounds yet by way of the Sale Deed, specific portion of the suit property has been handed over by vendor/co-sharer to the vendee/respondent which is not permissible as per law. However, this fact has not been appreciated by the learned lower Appellate Court.

4. No other argument is made on behalf of the petitioner.

5. I have heard learned counsel and perused the case file in detail.

I find no merit in the submissions made on behalf of the petitioner.

6. Perusal of record reveals that the petitioner has filed suit for permanent injunction dated 23.01.2023 (Annexure P1) seeking to restrain the defendants/respondents from changing the existing nature of the joint land as described in the head note of the plaint by raising any sort of construction over specific and prime portion without getting the same partitioned by metes and bounds. It has been contended by the petitioner that specific portion of the suit land has been handed over by vendor Rajinder Kumar to the respondents which could not have been done until the suit property is partitioned by metes and bounds. However, it has not been brought to the notice of this Court as to whether the petitioner has challenged the Sale Deed executed by Rajinder Kumar in favour of the respondents/vendees or not. It is not the case of the petitioner that any suit



for partition has been filed. I am therefore, in agreement with the view taken by the learned lower Appellate Court that injunction cannot be granted against co-sharer as every co-sharer is joint owner over every inch of the land. Admittedly, the respondents are co-sharers of the petitioner in the suit land. Further, as per Jamabandi for the year 2017-18 relied upon by the petitioner, suit property is shown to be Gair Mumkin. In holding as above, the learned lower Appellate Court has relied upon judgment of this Court in **Sher Singh v. Pyare (P&H) : Law Finder Doc ID # 204070**. In this circumstance and in view of the established position in law that injunction cannot be granted against co-sharer, I find no ground is made out to interfere in the impugned order. Moreover, any construction being raised by the respondents would only improve the value and utility of the suit property. Admittedly in the present case, respondents have already laid the foundation and raised a wall to construct a shop on the land. Thus, loss and prejudice would be caused to the respondents in case interim injunction is granted to the petitioner.

7. In view of the above, present petition is **dismissed**.
8. Pending application(s) if any also stand(s) disposed of.

20.08.2025

Sunena

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

(Nidhi Gupta)
Judge