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

RSA-4126-2018 (O&M)**Reserved on : 11.02.2025****Date of Decision : 18.02.2025**

Jagdish Kumar

... Appellant(s)

VERSUS

Shital Singh & Ors.

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. S.S. Panag, Advocate for
Mr. K.S. Dhillon, Advocate for the appellant.

ALKA SARIN, J.**CM-10895-C-2018**

1. This is an application for condonation of delay of 9 days in refiling the appeal.

2. For the reasons stated in the application, delay of 9 days in refiling the appeal is condoned. CM stands disposed off.

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3. The present appeal has been preferred by the plaintiff-appellant challenging concurrent findings returned by the Trial Court vide judgment and decree dated 27.11.2015 and the First Appellate Court vide judgment and decree dated 29.09.2017.

4. Brief facts relevant to the present *lis* are that the plaintiff-appellant herein filed a suit for permanent injunction averring in the plaint that he alongwith his brothers, sister and real uncle Madan Lal and Bihari Lal, was joint owner in possession of the suit land situated in the revenue estate of

Village Maheru, Tehsil Phagwara, District Kapurthala as fully described in the heading of the plaint as per the jamabandi for the year 2008-09 and that he inherited the disputed land from his late father Shiv Raj Kumar, who was also joint owner to the extent of land measuring 27 kanals 04 marlas being 1/3rd share of the total disputed land measuring 81 kanals 12 marlas. It was further averred that Shiv Raj Kumar had died on 12.12.2006 and after his death, the plaintiff-appellant had become the joint owner in the suit land. According to the plaintiff-appellant the land had been partitioned and the suit land fell to his share. It was further the case set up that there was a tubewell and an electric connection in the name of one Vikram Singh son of Chanan Singh who was the original owner of the electric connection and tubewell on the disputed land. The said Vikram Singh sold land measuring 108 kanals 16 marlas to Baru Ram, the plaintiff-appellants' grandfather, and his father, Shiv Raj Kumar, and to Madan Lal, Manohar Lal and Bihari Lal. It was further the case that Baru Ram purchased the property vide the sale deed dated 02.07.1969 alongwith tubewell and electric connection and the defendant-respondents had no concern with the same. On notice, the defendant-respondent Nos.1 and 2 filed their written statement raising various preliminary objections. On merits it was averred that the suit property was not joint although the same was shown as joint property in the revenue record. It was the case set up by the defendant-respondent Nos.1 and 2 that originally their grandfather, namely, Chanan Singh, was owner in possession of the suit land measuring 216 kanals 0 marlas. Chanan Singh died and after his death, the land was mutated in the name of his two sons, namely, Balwant Singh and Vikram Singh. Vikram Singh sold his share to Baru Ram. Vide a sale deed dated 10.06.2010 the defendant-respondent No.2 is stated to have sold his

exclusive share to the defendant-respondent No.3 and that Madan Lal and Bihari Lal, the uncles of the plaintiff-appellant, also sold their exclusively owned and possessed share to the defendant-respondent No.3 who was in possession of the same. A separate written statement was filed by the defendant-respondent No.3. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for ? OPP
2. Whether suit of the plaintiff is not maintainable in the present form ? OPD
3. Whether the plaintiff has got no locus-standi or cause of action to file the present suit ? OPD
4. Whether the plaintiff has not come to the court with clean hands and has suppressed the true and material facts from the Hon'ble Court ? OPD
5. Relief.

5. The Trial Court vide judgment and decree dated 27.11.2015 dismissed the suit. Aggrieved by the same, an appeal was preferred before the First Appellate Court which appeal was also dismissed vide judgment and decree dated 29.09.2017. Hence, the present regular second appeal by the plaintiff-appellant.

6. Learned counsel for the plaintiff-appellant would contend that both the Courts have erred in dismissing his suit. It is urged that the property was partitioned, and that the plaintiff-appellant is in exclusive possession of his share of the property and that the defendant-respondents had no right, title

or interest in the same and, hence, both the Courts have erred in non granting the relief to the plaintiff-appellant.

7. I have heard the learned counsel for the plaintiff-appellant.

8. In the present case both the Courts concurrently found that there was not an iota of evidence on the record to even remotely suggest that the land had ever been partitioned. It was further the finding returned by both the Courts that the plaintiff-appellant and the defendant-respondents were in possession as co-sharers. In the absence of any evidence led by the plaintiff-appellant that he was in exclusive possession of the property and that there had been a partition, both the Courts have rightly held that the only remedy for the plaintiff-appellant would be to seek partition of the suit land and that the suit for injunction qua a co-sharer would not be maintainable.

9. A Full Bench of this Court in the case of **Bhartu vs. Ram Sarup [1981 PLJ 204]** has held as under :

“(1) A co-owner has interest in the whole property and also in every parcel of it.

(2) Possession of joint property by one co-owner, is 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 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 no 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 co-owner, it is not open to anybody to disturb the arrangement without the consent of others except by filing a suit for partition.

8. A co-sharer in possession can certainly ask for injunction against a co-sharer not in possession restraining the latter from resorting to force and ousting him.”

10. A Division Bench of this Court in the case of **Bachan Singh V/s 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.”

11. In view of the above and keeping in view the law laid down by this Court in the cases of **Bhartu** (supra) and **Bachan Singh** (supra), no fault can be found with the judgments and decrees passed by both the Courts. In the face of the findings recorded by both the fact finding Courts, there is no scope for any interference by this Court. No cogent and reliable evidence has been highlighted by the counsel for the plaintiff-appellant for this Court to take a contrary view from the one taken by both the Courts. No other point was argued.

12. No question of law, much less any substantial question of law, arises in the present case. The appeal being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

18.02.2025
Yogesh Sharma

(**ALKA SARIN**)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO