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

RSA-579-2018 (O&M)

Date of Decision : 06.03.2025

Mukhtiar Singh & Ors

... Appellant(s)

Versus

Gulab Singh

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Nakul Sharma, Advocate for the appellants.

ALKA SARIN, J. (Oral)

1. The present appeal has been preferred by the plaintiff-appellants challenging the judgment and decree dated 21.05.2012 passed by the Trial Court and the judgment and decree dated 16.08.2014 passed by the First Appellate Court. The present appeal has been filed alongwith an application (**CM-1416-C-2018**) for condonation of delay of 725 days.

2. Brief facts relevant to the present *lis* are that the plaintiff-appellants set up a case that Khushal Singh through his attorney Gurmukh Singh had sold land measuring 5 kanals 0 marla i.e. 2 marlas being 2/3622 share of land measuring 181 kanals 2 marlas of Khewat No.378 plus 1 kanal 5 marlas being 25/731 share of land measuring 36 kanals 11 marlas of Khewat No.380 plus 1 kanal 9 marlas being 29/805 share of land measuring 40 kanals 5 marlas comprised of Khewat No.381 plus 2 kanals 4 marlas being 44/1229 share of land measuring 61 kanals 9 marlas of Khewat No.382 of village Hazara Singh Wala, Tehsil and District Ferozepur to the

plaintiff-appellants vide a registered sale deed dated 23.10.2006 and the possession was also alleged to have been delivered. It was further the case that the plaintiff-appellants are actually in physical possession of the suit property since they purchased it and the defendant-respondent had no right or concern with the suit land.

3. Notice was issued to the defendant-respondent who filed his written statement raising the objection that the defendant-respondent is a co-sharer in the joint khewat and, therefore, the suit for permanent injunction was not maintainable against him. The other averments in the plaint were also denied.

4. Replication was filed. On the basis of the pleadings of the parties, the following issues were framed :

1. Whether the plaintiffs are in possession of suit land as alleged ? OPP
2. Whether the plaintiffs are entitled to permanent injunction as prayed for ? OPP
3. Whether the plaintiffs have not come to the Court with clean hands ? OPD
4. Relief.

5. The Trial Court vide judgment and decree dated 21.05.2012 dismissed the suit holding that no suit for injunction was maintainable against a co-sharer. Aggrieved by the same, an appeal was preferred which appeal was also dismissed by the First Appellate Court vide judgment and decree dated 16.08.2014. Hence, the present Regular Second Appeal.

6. Learned counsel for the plaintiff-appellants has vehemently contended that the plaintiff-appellants had purchased specific khasra numbers of the suit property and were in possession and further that the vendor of the defendant-respondent had sold more than his share in favour of the defendant-respondent.

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

8. In the present case both the Courts concurrently held that the defendant-respondent was a co-sharer in the suit property. The argument of the learned counsel for the appellants that since specific khasra numbers had been purchased, hence, the suit for permanent injunction would be maintainable against a co-sharer deserves to be rejected in view of the law laid down by a Full Bench of this Court in the case of **Bhartu vs. Ram Sarup** [1981 PLJ 204]. In **Bhartu's** case (*supra*) the Full Bench noted the earlier decision by a Division Bench in the case of **Sant Ram Nagina Ram vs. Daya Ram Nagina Ram** [AIR 1961 Pb. 528] wherein the following propositions were settled :

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

(2) Possession of joint property by one co-owner, is in 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 an 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 an 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-owners, it is not open to any body to disturb the arrangement without the consent of others except by filing a suit for partition.”

9. 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.”

10. Learned counsel for the appellants has candidly admittedly that till date there is no partition which has been effected between the parties.

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. No question of law, much less any substantial question of law, arises in the present case. Even on the grounds of delay, there is a delay of 725 days in filing the appeal for which no cogent reason is forthcoming. The present appeal being devoid of any merit as well as being barred by limitation is dismissed. Pending applications, if any, also stand disposed off.

06.03.2025
Yogesh Sharma

(**ALKA SARIN**)
JUDGE

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