

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

135

RSA-169-2025 (O&M)
Date of decision : 25.02.2025

Harjit Kaur**..... Appellant**

versus

Jasbir Singh**..... Respondent****CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Ramesh Sharma, Advocate
for the appellant.

PANKAJ JAIN, J. (Oral)

1. Plaintiff is in second appeal.
2. Plaintiff filed suit seeking decree of permanent injunction. Plaintiff claimed to be exclusive owner in possession of land measuring 20 kanal 19 marlas as detailed out in the headnote of the plaint. As per the plaintiff, she purchased suit land from Gurbax Singh and Rattan Kaur vide sale deed dated 01.03.2006. It has been claimed by the plaintiff that she was put in exclusive possession of the specific khasra number purchased by her. She claimed that defendant is trying to interfere in the peaceful possession of the plaintiff. Plaintiff being exclusive owner in possession of the suit property, is entitled for decree of permanent injunction. Defendants contested the suit claiming himself to be owner in possession of 15 kanal 19 marlas of land. It was claimed that the sale deed in favour of the plaintiff was act of fraud by Amarjit Singh, Rattan Kaur and Piara Singh qua which FIR under Section 420, 467, 468, 471 and 120-B IPC, Police Station Sadar



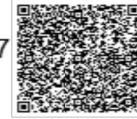
Phagwara has already come into being.

3. Suit filed by the plaintiff was put to trial by the Court of first instance framing following issues:-

- “1. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP
2. Whether the 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 is estopped to file the present suit by his own act and conduct or admission and deeds? OPD
5. Whether the plaintiff has not approached the Court with clean hands and has suppressed the true and material facts from the Hon'ble Court? OPD.
6. Whether the suit is barred U/s 11 CPC and U/o 9 rule 9 CPC?
7. Whether the suit is also barred U/o 2 rule 2 CPC? OPD
8. Relief.”

4. Deciding issue No.1, the Court of the first instance found that the plaintiff failed to prove title of her vendors. Possession of 15 kanal, 10 marlas of land already stood transferred by Gurbachan Singh to Jasbir Singh at the time of execution of sale deed dated 11.06.1990. Mutation in favour of defendant-Jasbir Singh was sanctioned on the basis of sale deed dated 11.06.1990. Plaintiff having failed to prove her exclusive ownership and possession was held not entitled for decree of injunction by the Court of first instance.

5. Unsuccessful plaintiff preferred appeal. Lower Appellate Court after re-appreciating the evidence, came to the conclusion that Gurbachan Singh s/o Kartar Singh, Sumittar Kaur d/o of Kartar Singh, Rattan Kaur d/o Kartar Singh and Gurbax Singh s/o Kartar Singh have been depicted as owners in possession of total land measuring 80 kanal



10 marlas as per jamabandi for the year 2011-2012. Property is still joint between all the co-sharers. Plaintiff claims exclusive possession on the basis of sale deed dated 01.03.2006 Ex.P-1. Defendant claimed to have purchased specific portion on the strength of sale deed dated 11.06.1990. Plaintiff having failed to establish exclusive possession over the suit property, was not entitled for grant of decree of permanent injunction. Instead of maintaining suit for injunction, plaintiff has a remedy to seek partition by meets and bonds.

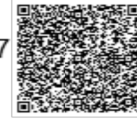
6. I have heard counsel for the appellant and have carefully gone through the records of the case.

7. Counsel for the appellant is not in a position to dispute that even if the case of the plaintiff is taken on its face value, the plaintiff would at the most become co-sharer along with the defendant. Full Bench of this Court in ***Ram Chander vs. Bhim Singh and others, reported as 2008(4) RCR (Civil) 685***, dealt with the issue of purchase of specific khasra number out of joint khata observing as under:-

“17. In order to lend weight to our conclusions, we draw upon the observations of a Division Bench judgment of this Court, relied upon and referred to in both the Full Bench Judgments, that we are called upon to interpret. While considering the nature of joint property and the *inter se* rights and liabilities of co-sharers, a Division Bench in ***Sant Ram Nagina Ram v. Daya Ram Nagina Ram, AIR 1961 Punjab 528*** set out in detail the *inter-se* rights and liabilities of co-sharers in the following terms:-

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

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

18. It is, therefore, apparent that a co-owner has an interest in the entire property and also in every parcel of the joint land. When a co-sharer alienates his share or a part thereof in the joint holding what he brings forth for sale is what he owns i.e. a joint undivided interest in the joint property. A sale, therefore, of land from a specific khasra/killa number, forming part of a specific rectangle number, but being a part of a joint khewat, would, in view of the nature of the rights conferred upon a co-sharer, be deemed to be the sale of a share from the joint khewat and such a vendee would be deemed to be a co-owner/co-sharer in the entire joint khewat, irrespective of the artificial divisions of the joint land into different rectangles, khasra and killa numbers.”



8. In view of above, this Court finds that the plaintiff having failed to establish her exclusive possession over any khasra number and being a co-sharer, cannot be held to be in possession of any specific khasra number. That being the position, she is not entitled for grant of permanent injunction.

9. Finding no merits in the present appeal, the same is ordered to be dismissed.

10. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

25.02.2025
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No