

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****247****RSA-3119-2019 (O&M)****Date of decision: 30.04.2026****Ramoutar****...Appellant(s)****Vs.****Hari Singh (since deceased) through LR's and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Munish Gupta, Advocate with
Mr. N.S.Gill, Advocate
for the appellant.

Mr. Keshav Pratap Singh, Advocate with
Mr.Nitin Sansanwal, Advocate
for the respondents.

NIDHI GUPTA, J.

Present Second Appeal has been filed by plaintiff No.2 against the concurrent judgments and decrees of the learned District Courts, whereby suit filed by the plaintiffs for permanent injunction, has been dismissed by both the District Courts.

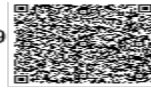
2. It was pleaded in the plaint that plaintiffs are owners in possession to the extent of 1/3rd share. Defendants No. 1 & 2 are also owners in possession to the extent of 1/3rd share in the suit land; and defendants No. 3 & 4 are also owners to the extent 1/3rd share. It was pleaded that plaintiff No.2 remained out of station. As such, defendants in collusion with each other wanted to raise construction on the front side of the road and wanted to take exclusive possession of the suit property and oust the plaintiffs. Hence, present suit was filed on 08.10.2010.



3. Upon appraisal of the pleadings and the evidence led by the parties, the learned Civil Judge (Junior Division), Narnaul had dismissed the suit of the plaintiffs with costs vide judgment and decree dated 24.08.2015. The Civil Appeal filed by the plaintiffs was dismissed by the learned Additional District Judge, Narnaul vide judgment and decree dated 04.12.2018. Hence, the present second appeal by plaintiff No.2.

4. It is *inter alia* submitted by Id. counsel for the appellant that the District Courts were in error in non-suiting the appellant as they failed to appreciate that defendants had nowhere proved that the construction was raised by them upon the suit property in the year 1990. Even otherwise, out of the suit property measuring 4 bigha, construction was existing only upon 1 bigha of land. Plaintiffs had duly proved this fact in their evidence. Which was not controverted by the defendants. However, the said evidence of the appellant has been totally ignored by learned District Courts. Therefore, as the suit property is joint, defendants ought to have been enjoined from raising any further construction to the extent of what has already been done till partition proceedings are finalized.

5. It is further submitted by learned counsel for the appellant that a number of issues were raised at the time of filing of appeal, but perusal of the impugned judgment would show that Id. Appellate Court, in a summary manner, has passed the impugned judgment and has not considered the points raised in the grounds of appeal. Merely because partition proceedings are pending, is no ground to decline the injunction to a co-sharer, against the other co-sharer, who admittedly is raising construction in

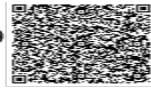


the property in question. It is contended that in terms of Section 96 of the Civil Procedure Code, judgment of the learned First Appellate Court is unsustainable as it has failed to consider and/or deal with the issues raised by the plaintiffs.

6. In support, learned counsel for the appellant relies upon judgment of Hon'ble Supreme Court in **Vinod Kumar vs. Gangadhar Civil Appeal No. 9681 of 2014, decided on 13.10.2014, (2015) 1 Supreme Court Cases 391;** and **Madhukar and others vs. Sangram and others, Civil Appeal No. 2918 of 2001, decided on 20.04.2001, (2001) 4 Supreme Court Cases 756;** wherein it is held as under:-

“Civil Procedure Code, 1908 S. 96 First appeal Duty of court Court of first appeal must record its findings only after dealing with all issues of law as well as of fact and with the evidence, oral as well as documentary, led by parties The court must give reasons in support of its findings- If court does not fulfil its obligations the parties would not get the true benefit of a first appeal, which is a valuable right on the basis of which parties have the right to be heard on questions of law as well as of fact Held, High Court erred in allowing respondent-plaintiff's first appeal without even considering the grounds on which the trial court had dismissed the suit and without discussing the evidence on record.”

7. It is accordingly prayed that the present Appeal be allowed; and the impugned judgments and decrees of the Id. District Courts be set aside.



8. *Per contra*, learned counsel for the respondents/defendants vehemently opposes submissions advanced on behalf of the appellant and submits that plaintiff himself has admitted in his evidence that construction is existing upon suit property since the early 1990. Whereas the present suit has been filed by the appellant only on 08.10.2010. It is submitted that therefore, plaintiffs are estopped from their own conduct in seeking injunction against the defendants.

9. As regards contention of the appellant under Section 96 CPC, learned counsel submits that under Order 41 Rule 31 CPC points of the determination are to be assessed; and if the Appellate Court agrees with the evidence and findings of the learned Trial Court, it is not required as per law to reiterate the reasons given by the learned Trial Court.

10. It is further contended that as per Section 41H of the Specific Relief Act when the appellant has already availed alternative remedy of partition, then the plaintiff can seek relief of injunction in those proceedings only. In any event, it is established position in law that co-sharer cannot seek injunction against another co-sharer unless he is in exclusive possession. Moreover, defendants have proved their exclusive possession over the entire suit property measuring 4 bigha from the photograph Mark B which duly reflects a boundary wall over the suit property. He accordingly prays for dismissal of the present Appeal.

11. No other argument is raised on behalf of the parties. I have heard learned counsel and perused the case file in detail. I find merit in the submissions advanced on behalf of learned counsel for the respondents.



12. A perusal of the record of the case shows that all the four plaintiff witnesses have admitted that construction raised by the defendants upon the suit property has been existing since the past 10–15 years at least.

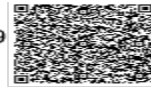
PW1 Ramchander has admitted in his cross-examination as follows: -

“I am 8th pass. I know the defendant Hari Singh; I also know Prem Kumar. I do not know the numbers of the disputed land. In the disputed land, Hari Singh and Prem Kumar have built a hotel in their share in the disputed land. It is built on approximately 1 Bigha. It has been about 15 years since it was built. It is also correct that the plaintiffs are aware of the hotel being built. It is incorrect that I am giving false testimony.”

13. Even plaintiff no.2 Ramautar, while appearing as PW2 has admitted in his cross-examination as follows:-

“In the dispute land, upon defendant's share, the defendant has built Chandni Hotel. This hotel is built on about one bigha. I do not remember how many years ago the hotel was built. It might have been 10-15 years since it was built. I retired in February 2011. I used to come home after six months or one year. It has been 10-15 years since the hotel was built, which they (defendants) built in their own share. For the said reason, I did not raise any objection. It is incorrect that the disputed property was partitioned in 1990, and that after the partition, defendants no. 1 to 2 built a hotel on 4 bighas of land comprised in Khasra No. 208/1/3. It is incorrect that I am giving false testimony.”

14. Dharampal, while appearing as PW3 has admitted in his cross-examination that “.... The disputed land is 4 Bigha. It is correct that



the defendant has built a hotel on the disputed land. It has been about 10 years since the hotel was built. The hotel is operational.....”

15. Even plaintiff No.1 while appearing as PW4 has admitted in his cross-examination as follows:-

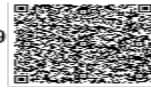
“In the land, Ramautar, Jagmal, and Hari Singh are co-sharers. The land number is 208. The defendant has not built any hotel on the disputed land. Our land is vacant. It is valuable land, situated on Singhana Road. He wants to take possession forcibly. The land where the hotel is built is 4 bighas. I do not know how many rooms are built in the hotel. I visit the disputed site daily. I do not know when the hotel was built. I do not know if it has been 20-30 years since the hotel was built. I do not know upon how much area the hotel is built on. Our application for stay was dismissed. Voluntarily stated the remaining land is lying vacant. Our land measuring 1-1/4 bighas is lying vacant. The defendant has built a hotel in his share. I know the defendant. It is incorrect that the plaintiff is in exclusive ownership and possession of the disputed property. Voluntarily stated today that the hotel is built on separate land. The measurement (demarcation) of the disputed property was not conducted. It is incorrect that I am giving false testimony.”

16. Thus, from a bare reading of the evidence noted above, it is clear that all 4 witnesses examined by the appellant have admitted the fact that hotel exists on the suit property since the year 1990/1992. Whereas the present suit has been filed only on 08.10.2010. No reason whatsoever has been given by the appellant to explain the said delay in filing the suit. On a Court query, learned counsel for the appellant has



submitted that the present suit was filed by the appellant only to protect his possession. However, said contention of the appellant is misleading as, from the above evidence it is rather clear to the contrary that it is the defendants who are in possession of the suit property; and the plaintiffs are not in possession of the suit property. It is also clear that the plaintiffs raised no objection when the construction was initiated by the defendants in the year 1990. Even thereafter, no objection was raised by the plaintiffs while hotel was running from 1992 till the year 2010 for a period of almost 20 years. Moreover, nothing has been brought to the notice of this Court that rights of the plaintiffs have been endangered in any manner by the defendants to compel the plaintiffs to file the suit at this belated stage.

17. Be that as it may, it has been contended on behalf of the appellant that hotel is constructed only in one bigha land out of total land measuring 4 bigha; and therefore, the suit property being joint in nature, the plaintiffs are also in possession as co-sharers. There is no disputing, the fact that the parties are Co-sharers over the suit property. However, plaintiffs have brought no evidence to show that the remaining suit land is not in use of the hotel. Rather, it is not disputed that the respondents have raised a boundary wall of barbed wire around the hotel, which is evident from the photographs Mark-A to Mark-H produced by the defendant to show that the remaining suit area is being used for parking and as some open space alongwith the hotel. Thus, exclusive possession of the plaintiffs over the suit property is not proven to entitle them to



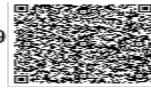
seek injunction. Rather, this would indicate exclusive possession of the defendants over the suit property.

18. Exclusive possession of the defendants over the suit property is also evident from the Site Plan Ex.DW3/A. As such, co-sharer in exclusive possession of the specific portion of the joint Khata is entitled to protect his possession till partition takes place. The very fact that the defendants had raised construction over the suit property in 1990 and were operating hotel thereafter for long time without any objection from the plaintiffs, is sufficient to prove their exclusive possession over the suit property.

19. Further, Defendants had also placed on record a copy of the judgment Ex.D4 rendered in FIR No. 82 of 2000 which was registered against defendant No.1 by the plaintiffs for raising construction upon the suit property. Admittedly, defendant no.1 was acquitted in the said case by holding that construction was raised prior to the year 1992. However, plaintiffs have failed to disclose this fact in the civil suit.

20 Moreover, as per Jamabandi Ex.P6, parties to the suit are shown to be joint on the suit property. Defendants had relied upon mutual family settlement vide which they were stated to be in possession. However, defendants were unable to prove the same. As such, suit property was considered to be joint.

21. In this situation, the defendants being admitted co-sharers, plaintiffs could not have sought injunction against them. I am supported



by Full Bench Judgment of this Court passed in **Bhartu v. Ram Sarup, (P&H) (F.B.): Law Finder Doc Id #70625**; wherein it is held as under:-

*“4. The inter se rights and liabilities of the co-sharers were settled by a Division Bench of this Court in a very detailed judgment in **Sant Ram Nagina Ram v. Daya Ram Nagina Ram, AIR 1961 Pb. 528**, and the following propositions, inter alia, 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.”



23. As such, injunction cannot be sought against a co-sharer. The plaintiffs have remedy of getting share in the joint suit property by way of partition and not injunction. Admittedly, suit for partition is already pending.

24. As regards last submission of the appellant that under Section 96 CPC, in first Appeal, learned First Appellate Court is required to examine the evidence threadbare and deal with every aspect of the matter. The same is also misconceived in view of the 3-Judge Bench judgment of the Hon'ble Supreme Court in **Girijanandini Devi v. Bijendra Narain Choudhary, (SC): Law Finder Doc Id # 109840**; wherein it is held as under:-

"C. Civil Procedure Code, 1908, 41, Rule 31 and Section 107 - Appeal - Duty of appellate Court - When the appellate Court agrees with the Trial Court on evidence, it is not necessary to restate the effect of evidence or reiterate the reasons given by the Trial Court -Expression of general agreement with reasons given by the Court decision of which is under appeal would ordinarily suffice."

The relevant para of the said judgment is as under:-

"13. The Trial Court, as we have already observed, on a consideration of the entire evidence and the subsequent conduct of the parties came to the conclusion that there was no severance of Bijendra Narain from his uncle Bidya Narain and with that view the High Court agreed. It is true that the High Court did not enter upon a reappraisal of the evidence, but it generally approved of the reasons adduced by the Trial Court in support of its conclusion. We are unable to hold that



the learned Judges of the High Court did not, as is contended before us, consider the evidence. It is not the duty of the appellant Court when it agrees with the view of the Trial Court on the evidence either to restate the effect of the evidence or to reiterate the reasons given by the Trial Court. Expression of general agreement with reasons given by the Court decision of which is under appeal would ordinarily suffice.”

25. The aforesaid view has been reiterated by Hon’ble Supreme Court in subsequent judgment in **G. Amalorpavam v. R.C. Diocese of Madurai, (SC) : Law Finder Doc Id # 119620**; wherein it is held as under:-

“Judgment however will not vitiate if there is no specific indication of points for determination, but if there is substantial compliance of said provisions - Where Appellate Court discussed the evidence in detail and supported the judgment by reasons, then even though no point has been framed, there is substantial compliance with provisions of Order 41, Rule 31, 2001(3) RCR (Civil) 243 (SC) relied.”

The relevant para of the said judgment is as under:-

“8. The question whether in a particular case there has been a substantial compliance with the provisions of Order 41 Rule 31 Civil Procedure Code has to be determined on the nature of the judgment delivered in each case. Non-compliance with the provisions may not vitiate the judgment and make it wholly void, and may be ignored if there has been substantial compliance with it and the second appellate Court is in a position to ascertain the findings of the lower appellate Court. It is no doubt desirable that the appellate



court should comply with all the requirements of Order 41 Rule 31 CPC. But if it is possible to make out from the judgment that there is substantial compliance with the said requirements and that justice has not thereby suffered, that would be sufficient. Where the appellate court has considered the entire evidence on record and discussed the same in detail, come to any conclusion and its findings are supported by reasons even though the point has not been framed by the appellate Court there is substantial compliance with the provisions of Order 41 Rule 31 Civil Procedure Code and the judgment is not in any manner vitiated by the absence of a point of determination. Where there is an honest endeavour on the part of the lower appellate court to consider the controversy between the parties and there is proper appraisal of the respective cases and weighing and balancing of the evidence, facts and the other considerations appearing on both sides is clearly manifest by the perusal of the judgment of the lower appellate court, it would be a valid judgment even though it does not contain the points for determination. The object of the Rule in making it incumbent upon the appellate court to frame points for determination and to cite reasons for the decision is to focus attention of the Court on the rival contentions which arise for determination and also to provide litigant parties opportunity in understanding the ground upon which the decision is founded with a view to enable them to know the basis of the decision and if so considered appropriate and so advised to avail the remedy of Second Appeal conferred by Section 100 Civil Procedure Code.”



26. Learned counsel for the appellant is unable to controvert or dispute the above said facts, findings, and legal position.

27. In view of the discussion above, no ground is made out to interfere in the impugned judgments and decrees of the learned District Courts below. The present Regular Second Appeal is hereby **dismissed**.

28. Pending applications, if any, stand disposed of.

30.04.2026

Divyanshi

(NIDHI GUPTA)
JUDGE

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