



130 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-9530-2025

Date of decision : 24.02.2026

CHARAN SINGH

....Petitioner

Versus

MAHABIR SINGH ETC.

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Ritesh Aggarwal, Advocate
for the petitioner.

Mr. Naveen S. Panwar, DAG, Haryana.

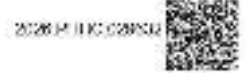
Mr. Rakesh Dhiman, Advocate for
respondents No.10, 23 and 24.

Mr. Amit Jain, Advocate
for the respondent(s).

PANKAJ JAIN, J. (ORAL)

Present revision petition is directed against orders passed by the Courts below dismissing the application filed under Order XXXIX Rules 1 and 2 CPC by the petitioner/plaintiff.

2. The plaintiff filed suit seeking partition with the consequential relief of permanent injunction and mandatory injunction. Along with the suit, an application was filed under Order XXXIX Rules 1 and 2 CPC seeking interim injunction against defendants No.1 to 25 in form of restrain order to injunct them from raising construction during the pendency of the suit.



3. Defendants No.1 to 9, 11 to 18, 22, 26 and 27 contested the suit. In reply to the application filed under Order XXXIX Rule 1 and 2 CPC, it was claimed that the estate already stands partitioned in the year 1999. All co-sharers including the plaintiff are in possession of their respective shares. Plaintiff has already raised construction over his share in the suit property and thus he has no *locus* to seek injunction against the defendants.

4. Defendants No.10, 23 to 25 suffered statement pleading no objection to grant of *status quo*.

5. Trial Court dismissed the application filed under Order XXXIX Rule 1 and 2 CPC holding that as per the pleaded case of the plaintiff, the parties are co-sharers. The jointness of the property being admitted, the plaintiff has failed to prove *prima facie* case and the same is covered against him in view of the Division Bench judgment of this Court rendered in the case of **Bachan Singh vs. Swaran Singh, 2000 (3) RCR Civil 70**.

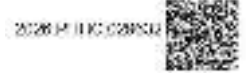
6. The aforesaid findings and the order passed by the Court of the First Instance stand affirmed by the Appellate Court.

7. Mr. Aggarwal, counsel for the petitioner/plaintiff has assailed the orders passed by the Courts below. He submits that even though the partition proceedings are pending before the Revenue Court as well as in the present suit, yet in order to derive unlawful benefits, the defendants are trying to construct the frontal portion of land which is of more value and the same would cause irreparable loss to the plaintiff. He further submits that



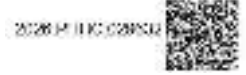
defendants have leased out portion of their land in favour of defendants No.26 and 27. Under the garb of lease deed, the lessees are being allowed to raise construction. He submits that the Courts below have wrongly relied upon dictum of law laid down in ***Bachan Singh's*** case (supra) and have ignored the ratio of law laid down by the Supreme Court in the case of **Maharwal Khewaji Trust (Regd.), Faridkot vs. Baldev Dass, (2004) 8 SCC 488.**

8. Mr. Aggarwal further submits that the principle of law that injunction cannot be granted against a co-sharer, is not absolute. If the acts of a co-sharer are prejudicial or detrimental to the interest of other co-sharer and the same has an effect of diminishing the value and utility of the property, the other co-sharer is entitled for injunction. Reliance is being placed upon ratio of law laid down in **Mohan Lal vs. Preet Kumar, 2008(3) LandLR 41.** He further submits that balance of convenience is in favour of plaintiff. Granting liberty to raise construction to one of co-sharers, shall create multiple litigation. He places reliance upon ratio of law laid down in the case of **Avtar Singh vs. Sukhwinder Singh and others, 2019(1) PLR 134.** Further reliance is being placed upon **Jaspal Kaur and another vs. Harbans Singh and others, 2020 AIR CC 2933, Balbir Singh vs. Lamber Singh, 2004(2) RCR(Civil) 843** and **Ved Paul vs. Prakash Chand and others – RSA-294-2007 decided on 28.09.2016.**



9. Per contra, Mr. Jain submits that earlier the part of the suit property in possession of the plaintiff, comprised in *Khasra* No.25/1, was the only portion of joint land abutting the road. The plaintiff raised construction over his portion and was enjoying fruits of the construction. Later on, subsequent to the acquisition of the land sector-road was carved out. As a result thereof, portion of the land comprised in *Khasra* No.4/1/1 and 5/1/2/1 which was in possession of the defendants/respondents has now abuts sector road. Defendants raised construction. Plaintiff under the garb of the present suit, is trying to obstruct the fruits of the land belonging to the defendants. He further submits that even as per the case of the plaintiff the partition proceedings are pending before the Revenue Court. Thus, any construction raised during the pendency thereof has no effect on the rights of the parties. So has been observed by the Appellate Court. In order to hammer-forth his contention, he relies upon ratio of law laid down in the case of **Vinod Kumar vs. Rajesh and others, 2024(3) PLR 425, Bachan Singh vs. Swaran Singh, 2000(3) PLR 416, Mandali Ranganna vs. T. Ramachandra, 2008 A.I.R. (SC) 2291, Gurnek Singh vs. Manjit Kaur and others, 2000(3) PLR 154, Kehar Singh and others vs. Joginder Kaur alias Jogindero and others, 2004 (3) R.C.R. (Civil) 37 and Sapna and another vs. Phool Kumar and others, 2024(1) PLR 452.**

10. I have heard counsel for the parties and have carefully gone through records of the case.



11. In order to decide upon application under Order XXXIX Rule 1 & 2 CPC, the case of applicant needs to be tested applying Tripod Test. The Court is required to see:

- (i) whether the applicant has made out a *prima facie* case;
- (ii) balance of convenience of the parties; and
- (iii) whether denial of injunction would cause irreparable loss to the applicant.

12. The present case relates to dispute between co-sharers. Before advertng to the facts of the present case, the settled legal proposition needs to be perused.

13. The Division Bench of this Court in the case of **Sant Ram Nagina Ram v. Daya Ram Nagina Ram, AIR 1961 Punjab 528**, while dealing with the rights of the co-owners in the joint property laid down the following principles:

- “(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. Butt 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.

(8) The remedy of a co-owner not in possession, or not in possession of share of the joint property, is by way of a suit for partition or for actual joint possession, but not for ejectment. Same is the case where co-owner sets up an exclusive, title in himself.

(9) Where a portion of the joint property is, by common consent of the co-owners, reserves for a particular common purpose, it cannot be diverted to an inconsistent user by a co-owner; if he does so, he is liable to be ejected and the particular parcel will be liable to be restored to its original condition. It is not necessary in such a case to show that special damage has been suffered.”

14. The aforesaid principles were approved by Full Bench of this Court in **Bhartu vs. Ram Sarup, 1981 PLJ 204** observing 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.”

15. The precise issue w.r.t. injunction against construction being raised by a co-sharer was evaluated and analysed by Division Bench of this Court in ***Banchan Singh*** case (supra) applying the approved test as laid down in ***Sant Ram Nagina's*** case (supra). The Division Bench observed 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.”

16. Mr. Aggarwal is right in contending that a co-sharer cannot seek injunction against the other co-sharer is not absolute rule and is subject to just exceptions. The exceptions have been carved out by Division Bench in the case of **Bachan Singh** (supra). Thus, the issue arises is:

“Whether raising of construction by a defendant amounts to ouster of the plaintiff?”

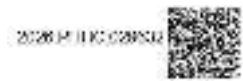


17. The issue has been answered by the Division Bench in ***Bachan Singh's*** case *ibid* against the plaintiff. There is no plea w.r.t. diminishing of value or utility of property in the plaint. Thus, plaintiff has no *prima facie* case in his favour.

18. During the course of arguments, counsel for the petitioner has admitted that the plaintiff is in possession of the construction raised over *Khasra* No.25/1. The same is in exclusive possession of the plaintiff. Granting injunction against defendants will lead to a situation where a co-sharer has been deprived from enjoying his estate even though the plaintiff who seeks injunction is enjoying constructed portion in un-partitioned land to the detriment of the other co-sharers. In such a situation, it is hard to hold that the balance of convenience lies in favour of the plaintiff. Rather, it is a case where granting injunction against the defendants shall cause them irreparable loss. Accordingly, this Court finds that the case of the plaintiff fails on the touchstone of 'Tripod test'. The Courts below thus rightly declined to grant injunction in his favour.

18.1. The only apprehension raised by Mr. Aggarwal is w.r.t. vesting of right in the defendant if he is allowed to raise construction during the pendency of the partition proceedings.

19. In order to allay the said fear, this Court deems it appropriate to observe that any construction raised shall not have an effect of vesting any



right in the parties. This observation shall operate *qua* whole construction raised on joint land including that on *Khasra* No.25/1.

20. With the aforesaid observation, the present petition is disposed off.

February 24, 2026
Dpr

(Pankaj Jain)
Judge

Whether speaking/reasoned : Yes
Whether reportable : Yes