

RSA-1394-2017 (O&M)

2025-PHHC-115054



259 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1394-2017 (O&M)

Date of decision : 27.08.2025

Chander Bhan

..... Appellant-defendant No.1

Versus

Rajbir & ors,

..... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Sandeep Singal, Advocate
for the appellant.

Mr. Manoj Chahal, Advocate
for the respondents No.2 to 5.

PANKAJ JAIN, J. (ORAL)

1 Appellant-defendant No.1 is in second appeal. For convenience parties hereinafter are referred to by their original position in the suit i.e. the appellant as defendant No.1 and respondents No.1 to 5 as plaintiffs.

2 Challenge is to judgment and decree dated 03.11.2016 passed by Additional District Judge, Rohtak, whereby the appeal filed by the appellant stands dismissed, thereby affirming the judgment and decree dated 05.03.2013, passed by the Additional Civil Judge (Senior Division), Maham.

3 Plaintiffs filed suit seeking a decree of declaration with the consequential relief of permanent injunction and mandatory injunction. Challenge was laid to mutation No.5667 dated 20.11.1954 and subsequent revenue record claiming that the plaintiffs are co-owners to the extent of 1/6 share. As per the case of the plaintiffs, Pirthi son of Ramlal i.e father of the



plaintiffs and Desha son of Aash Ram i.e. grandfather of defendants No.1 to 5 purchased suit land to the extent of 1/6th share and 5/6th respectively from Mai Dayal, son of Lala Bhala Nath vide registered sale deed bearing document No.494 dated 20.06.1954. However, mutation was sanctioned only in the name of Desha son of Aash Ram i.e. grandfather of defendants No.1 to 5. Inadvertently name of father of the plaintiffs was ignored. Plaintiffs claimed that they along with defendants continued to be owners in possession of the suit land, which is still joint and has not been partitioned.

4 Suit was contested by the defendants and the joint ownership between Pirthi and Desha was admitted. However, the defendants claimed that Pirthi relinquished his ownership rights in favour of Desha, who was mutated as sole owner of the land in question.

5 Suit filed by the plaintiffs was put to trial by the Court of the First Instance framing following issues :-

“1. Whether mutation no.5667 dated 20.11.1954 and subsequent revenue entries are illegal, null and void and liable to be set aside?

OPP

2. Whether the plaintiffs are entitled for decree of mandatory injunction directing defendant no.6 to correct the revenue record?

OPP

3. Whether the plaintiffs are entitled for decree of permanent injunction as prayed for? OPP

4. Whether suit of the plaintiff is not maintainable? OPD

5. Whether plaintiff has no cause of action to file the present suit?

OPD

6. Relief.”



6 Sale deed dated 29.06.1954 was proved on record as Ex.P1. Court found that as per the same both Pirthi and Desha became owners of the suit land to the extent of 1/6th and 5/6th shares respectively. The Defendants failed to prove relinquishment of the rights of Pirthi-father of the plaintiffs. Holding that as per sale deed Ex.P1, Pirthi became owner to the extent of 1/6th share of the suit land and the mutation was thus illegal, null and void, the Court decreed the suit filed by the plaintiffs. The aforesaid findings stand affirmed by the Lower Appellate Court in appeal preferred by the defendants.

7 Counsel for defendant No.1 has assailed the findings recorded by the Courts below. He submits that the plaintiffs not being in possession of the suit land on the date of filing of the suit, present suit filed seeking decree of declaration without seeking further relief of possession would be hit by proviso appended to Section 34 of the Specific Relief Act, 1963 (for short 'the 1963 Act'). In order to hammer forth his contentions he relies upon ***Jeeto Vs. Santa Singh, 2006(2) RCR (Civil) 547 and Ballabgarh Co-op. Marketing Society Vs. Haryana Co-op. Supply & Marketing Federation, 2011 (4) PLR 396.***

8 *Per contra*, learned counsel for the plaintiffs submits that, since the land was purchased jointly by Pirthi and Desha, they continued to be co-owners in joint possession of the same as the land still is joint and has not been partitioned.

9 I have heard learned counsel for the parties and have gone through the records of the case.



10 In order to appreciate the contention raised by counsel for defendant No.1, it will be apt to peruse Section 34 of the 1963 Act, which reads as under :-

Section 34. Discretion of court as to declaration of status or right.

Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation.--A trustee of property is a "person interested to deny" a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee."

11 As per the mandate of provision, where the plaintiff is entitled to any relief beyond a mere declaration of title he must claim the same. In the absence of such further claim suit merely for declaration merits dismissal. Applying the parameter to the frame of the present suit, this Court finds that the prayer has been made for grant of decree of declaration along with the permanent injunction. Accordingly, the plea raised by counsel for defendant No.1 cannot be accepted as the present suit is not merely a suit for declaration, but prayer is for consequential relief of permanent injunction as well.

12 From sale deed Ex.P1, it is amply clear that both Pirthi and Desha jointly purchased the land in question. The Courts below rightly held them to be co-owners. In the considered opinion of this Court, the findings recorded by the Lower Appellate Court are in conformity with the settled position of law related to the rights of the co-owners as laid down by Division Bench of



this Court in *Sant Ram Nagina Ram vs. Daya Ram Nagina Ram, AIR 1961 Pb. 528* and reiterated by Full Bench in *Bhartu vs. Ram Swarup, reported as 1981 PLJ 204'*, observing as under:-

“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.”

13 In view of the aforesaid ratio of law, the defendants and plaintiffs, being co-sharer, are in possession of the property as agency of each other. Possession of one co-sharer over joint land is deemed to be possession on behalf of the other co-sharer.



14 In view thereof, this Court finds that the suit cannot be said to be barred by the mandate of Section 34 of the 1963 Act.

15 No other point has been argued.

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

17 Pending miscellaneous application, if any, also stands disposed off.

27.08.2025
Pooja Sharma-I

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No