



131 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-1144-2023 (O&M)
Date of decision : 17.07.2025

Satvinder Singh & ors. Petitioners

Versus

Harpreet Kaur Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. B.S.Saini, Advocate
for the petitioners.

Mr. Randeep Singh Dhakla, Advocate
for the respondent.

PANKAJ JAIN, J. (ORAL)

1 For convenience parties hereinafter are referred to by their original position in the suit i.e. the petitioners as defendants and the respondent as plaintiff.

2 Petitioners-defendants are in revision aggrieved of the order dated 06.01.2023 (Annexure P-7) passed by Additional District Judge, Kurukshetra whereby appeal preferred by them against order dated 04.03.2022 passed by Civil Judge (Junior Division) Kurukshetra has been affirmed allowing the application filed by plaintiff under Order XXXIX Rule 1 & 2 read with Section 151 CPC granting temporary injunction against them from raising construction.

3 Plaintiff filed suit seeking decree of mandatory injunction with the consequential relief of permanent injunction.



4 Plaintiff claimed that she along with her children is owner in possession of land measuring 4 kanals 12 marlas along with other co-sharers. After death of her husband she along with her children inherited the said property. Defendants No.1 & 2 in collusion with defendant No.3 are raising construction over the portion of the joint land shown with letters ABEF in the site plan attached to the plaint. Plaintiff claims that she is being forcibly dispossessed from the suit land by the defendants. Accordingly, she prayed for decree of mandatory injunction directing defendants from removing construction raised over the portion marked as ABEF in the site plan and also prayed for decree of permanent injunction restraining defendants from raising construction over the suit property. Along with the plaint, plaintiff filed application under Order XXXIX Rule 1 & 2 read with Section 151 CPC seeking temporary injunction during the pendency of the suit.

5 Suit is contested by the defendants. They claim themselves to be co-sharers. As per defendants they constructed their houses over the suit land without there being any objection from the plaintiff. Defendant No.1 claims to have purchased the land from Balbir Singh and Jagdish, both brothers-in-law of the plaintiff. Jagdish is none else but elder brother of husband of plaintiff. Trial Court though held that the plaintiff and defendants are co-sharers and have right to enjoy each and every inch of the land, yet restrained defendants from raising construction. In appeal preferred by the defendants Lower Appellate Court vide impugned order held that a co-sharer has no right to change the nature of the suit property.



Construction raised by the defendants shall amount to ouster of the plaintiff. Appellate Court thus held that the defendants have been rightly restrained by the Trial Court from raising construction over the suit property till the decision of the case.

6 In the considered opinion of this Court there is hardly any dispute between the parties with respect to status of both of them being co-sharers. Lower Appellate Court has restrained defendants from raising construction holding that the same shall amount to change in the nature of property and ouster of the plaintiff. In order to hold so, reliance has been placed upon *Nazar Mohd. Khan Vs. Arshad Ali Khan & ors., 1996 PLJ 33*. The issue as to ‘*Whether construction by one of the co-sharers amounts to alteration in the nature of property and ouster of the other co-owner*’ is no more *res-integra* and has been answered by Division Bench of this Court in *Bachan Singh Vs. Swaran Singh, 2000(3) RCR (Civil) 70*. Division Bench relying upon ratio of law laid down in *Bhartu Vs. Ram Sarup, 1981 PLJ 204* after considering *Nazar Mohd. Khan (supra)* 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. In this view of the matter, we are unable to agree to the propositions laid down by the learned single Judge of this Court in Nazar Mohd. Khan v. Arshad All Khan and Ors. (supra) wherein his Lordship broadly stated that there is no denying the fact that a co-sharer has no right to raises construction until the land is partitioned by metes and bounds and so even when one of the co-sharers is in exclusive possession of a particular piece of land any other person can seek injunction restraining the other co-owner from raising construction. We accordingly overrule the said decision of the learned single judge of this Court and also the decisions in Mst. Parsini alias Mono v. Mahan Singh, 1982 P.L.J. 280, Om Parkash and Ors. v. Chhaju Ram, (1992-2) 102 P.L.R. 75 and Daulat Ram v. Dalip Singh 1989(1) Rev, L.R. 523.”

7 In view of above this Court finds that the order passed by the Lower Courts being based upon law which stands overruled by Division Bench cannot be sustained.

8 The orders thus passed by both the Courts below are set aside. It is held that the defendants being co-owners in the land in dispute cannot be restrained from raising construction over the joint land.



9 Needless to say, the construction raised shall always remain subject to partition and the same does not amount to ouster of the plaintiff. It means that, in the event of partition, if any part of the land beneath the construction raised by defendants falls to the exclusive share of the plaintiff, the defendants shall not be able to enure any benefit on the basis of the construction raised by them.

10 Accordingly, the present revision petition is allowed. Application filed by the plaintiff under Order XXXIX Rule 1 & 2 CPC is ordered to be dismissed.

11 Needless to say, anything observed herein shall not be construed as an expression on the merits of the case. The main case shall be decided by the Courts below without being prejudiced by the observations made by this Court.

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

17.07.2025
Pooja Sharma-I

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No