

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

RSA-484-1992 (O&M)
Reserved on: 25.03.2025
Pronounced on: 27.03.2025

SURAJ BHAN (SINCE DECEASED) THROUGH HIS LRS.

... APPELLANT

Vs.

LAL SINGH AND OTHERS

... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued by:- Mr. Jai Vir Yadav, Sr. Advocate, with
Mr. Aman Gautam, Advocate, for the appellant.

Mr. P.R. Yadav, Advocate, for respondents No.2(ii), 3(i), 4(i)(2),
4(iii)(i), 5(i)(2), 5(iii)(i), 6(i)(2), 6(ii)(2), 7(ii)(2) and 7(iii)(i).

DEEPAK GUPTA, J.

Suit seeking decree of permanent injunction regarding property in dispute filed by the plaintiff - Ram Deen through his legal representatives (*now respondents through his LRs*) was dismissed by learned Additional Senior Sub Judge, Narnaul vide his judgment dated 06.05.1988. However, the appeal filed by the said plaintiff through his LRs was accepted by learned Additional District Judge, Narnaul, who vide his judgment dated 05.12.1991 set aside the judgment of trial Court and decreed the suit. Against this reversal, one of the defendants of the suit namely Suraj Bhan-appellant (*now through his LRs*) has approached this Court.

2. Trial Court Record was called. Same has been perused. In order to avoid confusion, parties have been referred as per their status before the Trial Court.

3. Land in dispute is khasra 468 (0-19) comprised in Khewat no.122/118 Khatauni No.166 situated in Village Begpur, District Narnaul as per the jamabandi for the year 1978-79 (Ex.P-1). It is not disputed amongst the parties that both of them along with others are co-sharers in the said

land. The grievance of the plaintiff is that though parties to the suit along with other co-sharers are joint owners in possession, but defendants are bent upon to raise construction in the suit property by putting stones therein and by doing fencing etc., without having any right to do so, as defendants cannot take exclusive possession of the suit property by excluding the plaintiff and other co-sharers. It was also alleged by the plaintiff that by colluding with the Patwari Halka, defendant had succeeded in getting his name incorporated in the khasra Girdawari to show his exclusive possession over the suit property, without consent of the other co-sharers. With these averments, plaintiff prayed for decree of permanent injunction.

4. Defendant No.1-Suraj Bhan (*appellant herein through his LRs*) contested the suit and claimed his exclusive possession over the suit property since the time of consolidation. He further claimed that his boundary wall and chappar exist in the suit land, where he tethers his cattle and that nobody else is in possession of the suit property. Defendant also raised objection that plaintiff did not have the right to file the suit and to seek the decree of permanent injunction against the other co-sharer. He accordingly prayed for dismissal of the suit.

5. Necessary issues were framed. Evidence produced by the parties was taken on record. Trial Court dismissed the suit by holding that defendant-appellant was in exclusive possession of the suit property, but the First Appellate Court reversed the said finding and decreed the suit.

6. Challenging the aforesaid reversal, it is contended by Id. counsel for the contesting defendant-appellant that the First Appellate Court has miss-appreciated the evidence on record to set aside the well-reasoned judgment passed by the trial Court. Learned counsel has drawn attention towards Jamabandi for the year 1983-84 (Ex.D7) in order to contend that defendant-appellant (Suraj Bhan) is recorded to be in exclusive possession over the suit property. He further draws attention towards the report of the Local Commissioner (Ex.D4) to be read with the site plan (Ex.D5) prepared by him, revealing the exclusive possession of the defendant on the suit property.

It is argued that since defendant is in exclusive possession of the suit property, the other co-sharers have no right to seek the injunction. The contention is that when co-sharers are in possession of separate portions of the entire land by mutual consent and arrangement, their possession cannot be disturbed. Ld. counsel further submits that defendant-appellant is prepared to get the construction raised by him demolished at his own cost, in case plaintiff succeed in the partition to get the property in dispute.

7. To support his contention, Id. counsel for the appellant has relied upon following authorities: -

(i) Jangir Singh Vs. Naranjan Singh and others, 2015(1) RCR (Civil) 149

(ii) Amar Nath Vs. Dr. Tejender Singh and others, 2010(4) RCR (Civil) 749

(iii) Sardul Singh Vs. Jagjit Singh and others, 2015(61) RCR (Civil) 271

(iv) Mukhtiar Singh Vs. Tara Singh and another, 2000(4) RCR (Civil) 379

(v) Pahalwan Chand Vs. Hans Raj and others, 2011(38) RCR (Civil) 79

(vi) Tarsem Singh Vs. Gurdeep Singh, 2015 (47) RCR (Civil) 759; and

(vii) Karam Singh and another Vs. Lakhbir Kaur and others, 2010 (50) RCR (Civil) 972

8. The ratio of the above authorities as has been cited by Id. counsel for the appellant is that in case defendant is in exclusive possession of the portion of the joint land, he is legally entitled to protection of his possession until the joint land is partitioned and that a suit for prohibitory injunction against the defendant is not maintainable, as plaintiffs have an equally efficacious remedy available under Section 41 of the Specific Relief Act to seek partition of the suit property before the appropriate form. Further, a co-sharer in exclusive possession of a specific portion with the consent of other co-sharers can use that portion according to his own requirements and wishes and cannot be restrained by the other co-sharers. If any other co-sharer has any grievance against other co-sharers raising construction on the property for any exclusive possession or arrangement,

then he cannot file suit for injunction as he has the remedy to file a suit for partition. It has also been held that if a co-sharer in possession is raising any construction, it does not amount to ouster of the other co-sharers and that any such construction would be subject to the partition and removal without any demur, if found on any part in excess to his share but the other co-sharer cannot restrain him from enjoying and raising construction on the portion in his exclusive possession over the joint property.

9. Refuting the aforesaid contentions, it is argued by Id. counsel for the respondents-plaintiffs that the First Appellate Court has rightly come to the conclusion because defendant has not been found to be in exclusive possession over the suit property. Ld. counsel has drawn attention towards jamabandi for the year 1978-79 (Ex.P1), wherein '*Jumla Mushtarka Malkan Wa-Digar Hakdaran Arazi Hasab Rasad Kabza*' is recorded to be owner in self-occupation of the suit land. It is argued that both the parties are biswedars of the village and as such, they are co-sharers in the suit property. Ld. counsel has then drawn attention towards khasra girdawari entries contained in Ex.P3/A and Ex.D8, which reveal that from 28.10.1979 till 28.03.1983, all the co-sharers are reflected to be in joint possession of the suit property, but during the period 28.03.1983 to 25.10.1983, defendant-Suraj Bhan succeeded in getting his name incorporated to be in exclusive possession over the suit property in collusion with the Halka Patwari. Ld. counsel contends that First Appellate Court has rightly observed that the said entry cannot be relied upon so as to hold the exclusive possession of the defendant, as no order was passed by any competent authority to make this change and no notice was given to the other co-sharers and that the said exclusive possession, as pleaded by the defendant, is not under an arrangement consented to by the other co-sharers. Ld. counsel for the respondent further submits that Local Commissioner was never appointed to report about the possession of any of the party. Even otherwise, the report simply shows that stones were lying and chappar had been built and some kuradi etc. were lying. Ld. counsel contends that simply by putting stones or placing chappar and kuradi and fuel etc. does not amount to possession to

the exclusion of the other co-sharers in the suit property. With these submissions, Id. counsel prayed for dismissal of the appeal by relying upon ***Bhartu Vs. Ram Sarup, 1981 PLJ 204.***

10. This Court has considered submissions of both the sides and have appraised the record carefully.

11. Concededly, parties are co-sharers of the property in dispute. As per jamabandi for the year 1978-79 (Ex.P1), '*Jumla Mushtarka Malkan Wa-Digar Hakdaran Arazi Hasab Rasad Kabza*' is recorded to be owner in self-occupation of the suit land. It is revealed further from jamabandi for the year Ex.D9 that entire land in the Khewat is 150 kanal 12 marla, of which the suit property forms a part. It is revealed further that as per khasra girdawari entries Ex.P3, right from 27.10.1979 to 28.03.1983, it is all the co-sharers who are recorded to be in joint possession of the suit property. It is only during the period 28.03.1983 to 25.10.1983 that possession of the defendant-Suraj Bhan is reflected in the suit property. It is absolutely not explained as to how this entry has come in the revenue record, without any order of any competent authority and without any notice to the other co-sharers. As such, First Appellate Court has rightly come to the conclusion that this entry has been managed by the defendant in league with the Halka Patwari, without any justification and therefore, no reliance can be placed upon the said entry so as to hold the exclusive possession of the defendant on the suit property. It further appears that based upon the above entry, the possession of the defendant has been later on reflected in the next jamabandi for the year 1983-84 (Ex.D8), which cannot be relied.

12. Revenue record clearly establishes that the stand of the defendant to be in exclusive possession of the suit property since the time of consolidation, is absolutely not tenable. By raising boundary wall with the help of stones or putting chappar or tethering cattle or placing kuradi etc. as has been reported by the Local Commissioner in his report Ex.D4 to be read with the site plan (Ex.D5), cannot amount to the exclusive possession of the

defendant on the suit property as has been rightly held by the First Appellate Court.

13. As such, it is concluded that First Appellate Court has rightly concluded that the parties along with other co-sharers are joint owners in joint possession of the suit property and that defendant has failed to prove his exclusive possession over the suit property consented to or as per the arrangement with the other co-sharers, as was contended by him.

14. 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 Vs. Daya Ram Nagina Ram and Ors., AIR 1961 PUNJAB 528*** and following propositions were settled:

- (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.
- (8) The remedy of a co-owner not in possession, or not in possession of a 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 a 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, reserved 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.”

The abovesaid propositions have been reiterated by a Full Bench of this Court in the case of ***Bhartu Vs. Ram Sarup (Supra)***.

15. It is, thus, clear that possession of the joint property even by one co-owner is in the eyes of law possession of all even if all are actually out of possession, except when there is an ouster by a co-owner by the another, which is not the case of the defendant in the present case. Further, every co-owner has a right to use the property in a husband like manner not inconsistent with the similar rights of the other co-sharers.

16. Though where a co-owner is in possession of separate parcels under an arrangement consented by the other co-owner, it is not open to anybody to disturb the arrangement without the consent of others except by filing a suit for partition, but this proposition is not applicable to the facts of the present case, as defendant has not been found to be in exclusive possession of the property in dispute under any arrangement consented by the other co-owners, as was alleged by him. As defendant attempted to take exclusive possession of the suit property by putting stones and placing chappar etc. in the suit property, which is contrary to the user of the joint

property in a husband like manner not inconsistent with the similar rights of the other co-sharers, therefore, plaintiff has been rightly held by the First Appellate Court to have *locus standi* to seek a decree of permanent injunction against the defendant.

17. As far as the authorities cited by Id. counsel for the appellant are concerned, those are not applicable to the facts and circumstances of the present case, because in all those cases, defendants were found in exclusive possession of the property, which is not so in the present case.

18. On account of the entire discussion as above, it is held that there is absolutely no merit in the present appeal. learned First Appellate Court has rightly set aside the judgment of the trial Court and has rightly decreed the suit. Finding no illegality or perversity in the findings as recorded by the First Appellate Court, the present appeal is hereby dismissed.

27.03.2025

Vivek

(DEEPAK GUPTA)
JUDGE

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| <i>Whether speaking/reasoned?</i> | <i>Yes</i> |
| <i>Whether reportable?</i> | <i>No</i> |