

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

**Date of Decision: March 20, 2025
RSA No.4340 of 2018 (O&M)**

Satya Devi**. . . . Appellant**

Vs.

Mohan Lal

. . . . RESPONDENT

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA**Present:-** Mr. Gursharan Singh, Advocate for the appellant.**DEEPAK GUPTA, J.**

This appeal is filed by the plaintiff against reversal, inasmuch as her suit seeking decree of permanent injunction against defendant – Mohan Lal (*respondent herein*) was though decreed by the trial Court on 04.05.2017, but the appeal filed by the defendant was accepted by the First Appellate Court on 03.02.2018, thus dismissing the suit of the plaintiff-appellant.

2. Admittedly, parties to the suit are recorded to be co-sharers in the suit property. It was claimed by the plaintiff that no partition had taken place and that defendant was threatening to alienate, transfer and mortgage specific valuable portion of the suit property and was further threatening to raise construction thereon. She prayed for decree of permanent injunction. Defendants resisted the suit by submitting that partition had already been effected and that parties are in separate possession of their respective shares. Defendant claimed that he was exclusive owner in possession of 73 marlas of the land, wherein plaintiff has no right and interest. He prayed for dismissal of the suit.

3. After framing issues and taking evidence, the trial Court decreed the suit, but the Appellate Court reversed the findings, as has been noted above.

4. The sole contention made by learned counsel for the appellant is that even the Appellate Court has conceded that as per the revenue record, the suit property is joint property and therefore, the well-reasoned judgment passed by trial Court has been wrongly reversed.

5. Appellant-plaintiff herein was respondent before the first appellate court. Before commenting on the contention of learned counsel for the appellant, it will be apt to reproduce the observations made by the First Appellate Court, which read as under:-

“19. The dispute in the present case revolves around the fact that after the death of Pritam Dass, the respondent became co-owner with the appellant and others and the suit property is joint amongst the co-owners and no proper partition has been effected amongst them. The appellant [*defendant*] on the other hand alleged that though the property in the revenue record was joint but the property stood already partitioned. The co-owners have been in possession of their respective portions and enjoying the specific portions. The question which arises for consideration is “whether the respondent has been able to prove that the suit property is joint and unpartitioned?”. The appellant on the other hand admitted in his written statement that as per the revenue record, the suit property is joint, but in fact the partition has been effected and the parties have been in separate possession. The respondent while appearing as PW1 has admitted in her cross-examination that in 1987-88 the property was partitioned in four shares and all the co-sharers came in separate possession and she further exchanged 1 kanal land with Mohan Lal and Mohan Lal appellant has been cultivating his land since then and all the co-sharers have been in separate possession since 1987-88 and she further stated that she filed the suit only for taking the possession of 1K-1M land. She further admitted that the appellant has been in possession of 19 Marlas land in khasra no.78 and further admitted that the appellant has been in possession of 40 marlas land in khasra no.72 and 10 marlas land in khasra no.47. Once the respondent herself has admitted the appellant to be in specific portion of 69 marlas land of the suit property, the question arises “whether the respondent can be granted the relief of permanent injunction?”. The answer is in the negative.

Hon'ble Punjab & Haryana High Court in case **Bachan Singh Vs Swaran Singh 2000 Vol (3) RCR (Civil) 70** has reviewed the earlier law on the subject of right of co-owner to raise the construction and has held that a co-owner can raise construction in the joint property, in respect of the area which is in his share. At this stage, it would be proper to refer to the principles, extracted by the Hon'ble Division Bench after due consideration of various details passed by the Hon'ble Punjab and Haryana High Court:

(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 taking 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 the 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.

20. Taking up the facts in hand, the version of the appellant has been admitted by the respondent PW1 Satya Devi that the family partition was effected. After partition she exchanged one Kanal land with Mohan Lal. PW1 Satya Devi admitted the possession of Mohan Lal on 19 marlas in khasra no.78, 40 marlas in khasra no.72 and 10 marlas in khasra no.47. Therefore, the remedy of the co-owner out of possession of the property is to seek partition but not an injunction restraining the co-owner from doing any act

in exercise of his right to every inch of it, which he has been doing as a co-owner.”

6. It is evident from the aforesaid observations that although the suit property is recorded to be joint in the revenue record, but it had already partitioned amongst the parties, who are in separate possession of their respective shares. Even plaintiff – Satya Devi examined as PW1, candidly admitted the partition to have been effected in 1987-88 and that all the co-sharer came in separate possession. Not only this, she admitted to have exchanged 01 kanal of land with defendant – Mohan Lal, who is cultivating the same since long. It was found further that as per own admission of the plaintiff, defendant was in possession of 19 marla of land in khasra No.78, 40 marla of land in khasra No.72 and 10 marla of land in khasra No.47. Thus, possession of the defendant on 69 marla of the specific portion of the land was admitted by the plaintiff herself. The Appellate Court has rightly relied upon a Division Bench judgment of this Court in **“Bachan Singh v. Swaran Singh”, 2000 Vol(3) RCR(Civil) 70**, wherein it was held that a co-owner in exclusive possession can raise construction on the joint property, which is in his exclusive possession. The remedy for the co-owner out of possession is to seek partition and not an injunction so as to restrain 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.

7. In the face of aforesaid facts and circumstances, this Court does not find any merit in the contention as raised by learned counsel for the appellant. There is no ground to interfere in the findings of facts as recorded by the First Appellate Court. As such, holding the present appeal to be devoid of any merit, the same is hereby dismissed.

March 20, 2025

Sarita

(DEEPAK GUPTA)

JUDGE

Whether speaking/reasoned?

Yes/No

Whether reportable?

Yes/No