



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

**RSA-3342-1999 (O&M)
Date of decision : 22.01.2025**

ZORA SINGH AND ANR

...Appellants

Versus

BHINDER SINGH

...Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Arihant Jain, Advocate with
Mr. Kanish Jindal, Advocate
for the appellants.

Mr. S.S. Salar, Advocate
for the respondent.

PANKAJ JAIN, J. (ORAL)

Instant appeal is at the behest of defendants.

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

3. Plaintiff filed suit for mandatory injunction and for the consequential relief of prohibitory injunction against the defendants.

4. It is not in dispute that the parties are co-sharers and are still joint in estate. Plaintiff preferred suit claiming that the defendants being co-sharers are raising construction over the part of the suit land and are thus



altering the nature of the suit land without there being partition and they need to be restrained.

5. Courts below have decreed the suit holding that the defendants were not in their right to raise construction. The land was joint and defendants cannot be allowed to alter the nature of property by raising construction.

6. Ld. Counsel for the appellants relies upon ratio of law laid down by Division Bench of this Court in the case of '**Bachan Singh vs. Swaran Singh – CR No.4549 of 1997** *decided on 6th of March, 2000*, wherein Division Bench held as under:

“17. 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.”



7. Counsel for the respondent does not dispute the aforesaid proposition but submits that the construction raised by the appellants be not utilized by them to claim equity during the partition proceedings.
8. The aforesaid prayer made by counsel for the respondent is also in terms of the ratio laid down in *Bachan Singh's* case (supra).
9. In view of above, the present appeal is allowed.
10. Judgment and decree passed by the Courts below are hereby set aside. However, it is made clear that any construction raised by appellants/defendants shall not entitle them to claim equity at the time of partition. The same shall remain subject to partition between the parties by metes and bounds.
11. Ordered accordingly.
12. Pending application(s), if any, shall also stand disposed off.

January 22, 2025

Dpr

**(Pankaj Jain)
Judge**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No