

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****Reserved on: February 14, 2025****Pronounced on: February 21, 2025****RSA No.446 of 2015 (O&M)****Raj and others****. . . . Appellants**

Vs.

Dulla (Deceased) through LRs

. . . . Respondent

* * * *

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA**Present:-** Mr. Madan Pal, Mr. Mohinder Singh and
Ms. Priyanka Chaudhary, Advocates for the appellants.Mr. Ravinder Malik and Mr. Anuj Malik, Advocates
For the respondent.**DEEPAK GUPTA, J.**

Suit for permanent injunction filed by plaintiff –Dulla (*respondent herein*) regarding the property in dispute was dismissed by the trial Court of learned Addl. Civil Judge (Sr. Divn.), Assandh vide judgment & decree dated 21.02.2013. However, appeal filed by the said plaintiff – Dulla has been accepted by the First Appellate Court of learned Addl. District Judge, Karnal vide judgment & decree dated 03.12.2014 by restraining the defendants from interfering in the possession of the plaintiff in the suit property till the joint land is partitioned by metes and bounds. Against this reversal, defendants of the case have approached this Court by way of present regular second appeal.

2. Plaintiff is co-sharer to the extent of 17 kanals 17 marlas in the total land measuring 124 kanals 17 marlas comprised in Khewat No.96/93 situated in village Ballah, Tehsil Ballah, District Karnal, as per Jamabandi for the year 2004-05. Dispute is with regard to the land measuring 04 kanals

comprised in Rect. No.131 Killa No.18/2 of the said Khewat. Plaintiff claims to be in exclusive possession thereof and alleged that defendants having purchased 02 kanals 10 marlas out of the total land in the same Khewat, had started interfering in the possession of the plaintiff and wanted to dispossess the plaintiff from the same forcibly and illegally.

3. The stand of the defendants is that they are the co-sharers to the extent of 50/2497 share in the total land, of which Rect. No.131 Khasra No.18/2 Min (South 2-10) is a part. According to them, they purchased the said land by virtue of a registered sale deed dated 25.10.2007 from their vendors, who are the real nephews of the plaintiff and that no legal partition had ever taken place regarding the joint Khewat and that plaintiff was estopped from filing the suit for permanent injunction against the co-sharers.

4. Necessary issues were framed. The trial Court dismissed the suit. However, the First Appellate Court reversed the finding and decreed the suit.

5. The sole contention raised by Ld. Counsel for the appellants is that suit filed by one co-sharer against another, seeking decree of permanent injunction is not maintainable.

6. This court has considered submissions of Ld. Counsels for both the sides and have perused the record.

7. Before proceeding further, it will be apt to reproduce the observations made by the First Appellate Court regarding the factual aspect. Relevant portion reads as under:

“9. A perusal of the revenue record relied upon by the appellant-plaintiff on the case file shows that in the jamabandi for the year 2004-05 Ex.P1, although the land has been shown as joint but in Khasra no. 131/18/2(4-0) i.e. the suit property, the plaintiff has been shown to be in exclusive possession. Even in the Khasra Girdawari for the year 2008-09 Ex.P2, appellant-plaintiff has been shown to be in exclusive possession of the suit property being co-sharer. In the copy of jamabandi for the year 2009-10 Ex.P8 also, the plaintiff has been shown to be in exclusive possession of the

suit property. In the Khasra Girdawari from the year 2005 till 2012 Ex.P11 and Ex.P12 relied upon by the appellant-plaintiff, the appellant-plaintiff was shown in exclusive possession of the suit property being co-sharer. The respondent-defendants had purchased 2 kanals 10 marlas of land out of the total land measuring 124 kanals 17 marlas vide a sale deed Ex.D1 from Dilawar and Balinder Singh on 25.10.2007. However, while executing the sale deed, the vendors of respondents-defendants had mentioned in it that the possession of Khasra no. 131 Killa no. 18/2 min south (2-10), has been delivered to the respondent-defendants. However, the revenue record does not show that the vendors of the respondent-defendants had ever remained in exclusive possession of the said Khasra no. at any point of time. The said Khasra no. being in exclusive possession of the appellant-plaintiff, the possession of the same could not have been delivered by Dilawar etc. to the respondent-defendants. Thus, the respondent-defendants cannot claim their exclusive possession over the suit property on the basis of endorsement in the sale deed Ex.D1. Furthermore, it is settled law that a person cannot transfer better title than he himself has. Even if the vendors of respondent-defendants had mentioned in the sale deed regarding delivery of exclusive possession of the suit property in favour of respondents-defendants, the same shall amount to sale of share only and their possession as co-sharers only. On the other hand, the appellant plaintiff being in exclusive possession of rect.no. 131 Killa no. 18/2(4-2) out of the total joint land is entitled to protect his possession until the joint property is partitioned by metes and bounds. Hence, the appellant-plaintiff was entitled to the decree of injunction against the respondent-defendants. Learned trial court had declined the relief to the appellant-plaintiff merely on the ground that the appellant-plaintiff had claimed his possession over rect.no. 131//18/2 (4-0) on the basis of family settlement but said family settlement has not been produced on the record. However, I do not agree with the findings given by learned trial court. In the plaint, the appellant-plaintiff had specifically mentioned that he came in exclusive possession of this Khasra no. on the basis of oral family settlement. He had nowhere pleaded that the family settlement was ever reduced into writing. Regarding oral family settlement, he had mentioned in his evidence also. Although it is true that in his cross-examination, plaintiff had stated that a family

settlement was arrived at 30 years back and regarding this, writing was executed in the Bahi but merely because the said family settlement allegedly entered in the Bahi has not been produced, the version of appellant-plaintiff cannot be disbelieved. When the revenue record reflects the possession of appellant-plaintiff over the said specific Khasra no., his plea mentioned in the plaint stands fortified. Thus, the findings of Id. Trial court are liable to be interfered with. Id. trial court had wrongly observed that as there is mention of delivery of exclusive possession of this Khasra no. in favour of defendants, the defendants are entitled to enjoy the said Khasra no. till the suit land is partitioned. As has been held above, when the vendors of the respondent-defendants were not in exclusive possession of the suit property, they could not have transferred exclusive possession of any specific number in favour of the defendants. Moreover, the revenue record also does not support the version of defendants that they are in exclusive possession of the suit property. Hence, the findings of Id. trial court are not valid and legal and the same are reversed and it is held that the appellant-plaintiff being in exclusive possession of the Khasra no. 131//18/2 (4-0), in the capacity of co-sharer is entitled to protect his possession from the respondents-defendants till the joint property is partitioned by metes and bounds. ”

8. It is clear from the aforesaid findings of the First Appellate Court, based upon the appreciation of revenue record produced in evidence that it is the plaintiff, who is recorded to be in exclusive possession of the suit land comprised in Khasra No.18/2 Rect. 131 at least since 2004-05. No doubt, that family partition as claimed by the plaintiff is not reflected in the revenue record, but at the same time, it cannot be disputed that plaintiff is in exclusive possession of the said suit property. Defendants purchased 02 kanals 10 marlas out of the joint Khewat, and claimed to have been delivered possession of land comprised in Rectangle No.131, Khasra No.18/2 (Min. South) on the basis of entry in sale deed dated 25th October, 2007 from Dilawar and Balinder. However, it has been rightly observed by the First Appellate Court that there is absolutely no evidence which came to show that vendors of the defendants were in exclusive possession of the said

property and as such, they were not in a position to deliver the possession thereof to the defendants.

9. As far as contention raised by learned counsel for the appellants before this Court that by virtue of the purchase in the same Khewat, defendants-appellants have become co-sharers in the same Khewat and therefore, the suit filed by one co-sharer against the other co-sharers seeking permanent injunction is not maintainable, this Court does not find any merit in this contention, considering the factual position of this case.

10. A Division Bench of this Court in "***Bachan Singh v. Swaran Singh***", reported as 2000(3) R.C.R.(Civil) 70 has held 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 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."

11. It is clear from above legal position that a co-owner, who is not in possession of any part of the suit property, is not entitled to seek any injunction against another co-owner in exclusive possession thereof, unless any act of the co-sharer in possession of the property amounts to ouster prejudicial or adverse to the interest of co-owner out of possession. As a necessary corollary, if possession of a co-sharer in exclusive possession is interfered with by co-sharer out of possession, then co-sharer in exclusive possession has a right to protect his possession and to seek injunction till the joint land is partitioned.

12. In the present case, no doubt by virtue of the purchase in 2007, defendants also became co-sharers in the same Khewat and so, they are deemed to be in possession of every inch of land, but in the garb of this deemed possession, they cannot be allowed to disturb the exclusive possession of plaintiff over the suit property, as vendor of defendants was not in a position to deliver the same to the defendants.

13. On account of the entire discussion as above, this Court does not find any merit in the present appeal. There is no illegality or perversity in the judgment passed by the First Appellate Court. As such, present appeal is hereby dismissed.

Pending application(s), if any also stand(s) disposed of.

February 21, 2025

Sarita

(DEEPAK GUPTA)

JUDGE

Whether speaking/reasoned?

Yes/No

Whether reportable?

Yes/No