



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

CR No. 5361 of 2025 (O&M)

Reserved on : 22.09.2025

Date of Pronouncement :- 30.09.2025

Rajesh and others

...Petitioners

Versus

Smt. Babli and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present:- Mr. Parveen Sharma, Advocate for the petitioners.

Mr. Sahir Singh Virk, Advocate for respondent No. 1.

VIRINDER AGGARWAL, J.

1. The civil revision is filed under Article 227 of the Constitution of India assailing the order dated 28.07.2025 passed by learned Additional District Judge, Sonapat vide which appeal filed by respondent No. 1 Babli against injunction order dated 28.07.2022 has been allowed.

2. Briefly, petitioners No. 1 to 4-plaintiffs filed suit for declaration and permanent injunction claiming that petitioner-plaintiffs are co-owners in possession of the suit property having been inherited the same from their predecessor Sanjay and petitioner No. 5 is co-owner in possession to the extent of her share as detailed in para No. 3 of the plaint. Respondent-defendants No. 2 to 4 being co-owners in the suit land sold land measuring 11 kanal 19 marlas 6 Sarsahi to defendant No. 1 vide registered sale deed No. 2492 of 23.06.2021. Defendants No. 2 to 4 were not in possession of any specific portion of suit land but they are wrongly and illegally sold



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specific portion of the suit property in killa No. 35//6/2 (min south) (0-19), 7 (7-18), 8 min East (3-3). They claimed themselves to be in possession on the basis of oral family settlement and they wrongly delivered the possession to defendant No. 1. Defendant No. 1 is threatening to dispossess the plaintiffs from suit land and to change the nature of suit land into a commercial unit. She is threatening to carve out plots and alienate the specific portion, hence the suit. Along with the suit an application under Order 39 Rule 1 and 2 of CPC was filed seeking restraint order against respondent-defendant restraining them from dispossessing the plaintiffs from suit land without partition changing the nature of suit land or from carving out the plots or from alienating specific portion of the suit property or taking out earth from the suit land or raising any construction without getting the suit land partitioned. Defendant No. 1 contested the suit as well as injunction application by filing written statement and reply to the stay application and alleged that suit land has already been partitioned among the co-sharers several years ago by way of family settlement and all the co-sharers are in physical possession of their respective shares and are using the same as per their choice since long. Number of co-sharers including the plaintiffs have already transferred the suit land to various purchasers and has delivered the exclusive possession of specific killa numbers and that plaintiffs are estopped by their own act and conduct from filing the present suit on the ground that the plaintiffs have constructed their own house on specific portion of suit property shown red in the site plan attached and that other co-sharers have also constructed their houses and boundary walls specifically shown in red colour in the site plan. Defendants No. 3 and 4 also contested the suit as well as application by filing written statement and pleaded that



sale deed dated 23.06.2021 is result of fraud committed by defendant No. 2 in collision with defendant No. 1.

3. After hearing augments, the learned Civil Judge, Sonipat allowed the injunction application and restrained the defendants from interfering in the joint possession of plaintiff over suit property or for taking out any soil from the suit property or raising any construction and alienating the suit land to any other person. Respondent-defendants preferred appeal against the injunction order. The learned District Judge, Sonipat vide impugned order allowed the appeal and vacated the stay.

4. I have heard learned counsel for the parties and perused the record.

5. Learned counsel for the petitioners assail the order on the grounds that the Additional District Judge, Sonipat has passed the orders on surmises and conjunctures and has not taken into consideration that the construction raised by some of the co-sharers over portion of the suit land is used by the co-sharers for residential purpose whereas respondent No. 1 wants to carve out the plots in order to sell them without getting CLU from the concerned department; the learned Additional District Judge further committed an illegality by observing that defendant No. 1 was handed over the possession of specific portion by defendants No. 2 to 4. Learned Additional District Judge has not taken note of the fact that sale deed of killa numbers is not permissible under law and it is settled proposition of law that if any co-sharer sells any specific killa number out of joint land without getting it partitioned the same shall be deem to be sale of share only; the learned District Judge has not considered the fact that right of subsequent purchaser is only to seek possession by way of partition and the subsequent



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purchaser cannot interfere in the joint possession of co-sharers. Learned counsel for the petitioners relied upon the law laid down by Hon'ble Apex Court in the case of '*Sidheshwar Mukherjee vs. Bhubneshwar Prasad Narain Singh and others*' AIR 1953 (Supreme Court) 487 wherein the Hon'ble Apex Court has held that a purchaser in execution petition of undivided interest of the coparceners in the joint property would not acquire title to any defined share in property and was not entitled to joint possession; his only right is to claim partition and in the case of '*Ramdass versus Sitabai and others*' AIR 2009 (SCW) 4365 it was concluded that appellant having purchased only undivided share in the suit property could not have purchased more than 1/2 share or could not have claim the possession in respect of entire property. He has also relied upon the judgment passed by this Court in the case of '*M/s Orient Carft Infrastructure Ltd. vs. Subhadra and others*' 2010 (4) PLR 643 wherein this Court has held that a co-sharer can transfer his undivided share but no possession would be handed over to vendee unless the property is partitioned by metes and bounds amicably and mutual settlement or by a decree of the Court.

6. All the authorities relied upon by counsel for the petitioners are distinguishable as in the present case respondent defendant No. 1 has not purchased any interest in coparcenary property rather vide sale deed he has purchased specific portion of suit land from co-sharers in the suit land and he is not claiming right, title or interest over entire holding of the co-sharers rather it is specific stand that other co-sharers are in possession over exclusive portion of the holding which fell to their share in family partition and they had raised construction as is suitable to them. It has come on record that predecessor in interest of the plaintiffs Sukhvir has sold part of the suit



land to different persons and the learned Additional District Judge, Sonipat has specifically detailed the same in para No. 19 of the impugned order which reads as under :-

“19.Further, the defendant No. 1 has also relied upon the photographs showing the construction of the houses and boundary walls and laying of foundation of the respective plots over the land by different persons. Sazra relied by her would also suggest that specific portions have been occupied by various persons in settled possession as per sale deeds. Inter-alia, following sale deeds have been relied:-

<i>Sale deed No.</i>	<i>Dated</i>	<i>Executed by</i>	<i>In favour</i>	<i>Specific portion of land</i>
7300	07.12.2010	Adesh Kumar s/o Singh Sukhbir	Pushpa Devi and others	1 kanal 14 maria of specific killa number
10893	10.02.2015	Smt.Saroj w/o Raj Singh	Sumitra w/o Shri Subhash	200 sq. yards
3888	12.06.2013	Smt.Savita Tyagi w/o Siyanand Tyagi	Smt.Kusum w/o Manoj Kumar	10 maria (purchased from Brijesh son of Sukhbir)
7354	08.12.2010	Brijesh Kumar s/o Sukhbir Singh	Savita Tyagi w/o Siyanand Tyagi	5 kanal 2 marla (of specific number) killa
19005	27.12.2011	Adesh Kumar s/o Sukhbir Singh	Smt.Sunita w/o Shri Bijender Singh	514 sq. yards (with rasta)
7304	07.12.2010	Smt.Shanti Devi wd/o Sukhbir Singh	Smt.Parkash Devi w/o Shri Dayanand	17 marla (specific killa on the basis of oral partition)



7. The learned Additional District Judge has interfered in the injunction order by recording a cogent and convincing finding that plaintiffs have not disclosed complete facts and details with respect to entire property allegedly owned jointly by petitioners and other co-sharers and the learned First Appellate Court in para No. 24 of the impugned order has specifically stated that petitioners has failed to prima-facie establish as to how and in which manner rights and interests of the plaintiffs are going to be effected adversely when they themselves had indulged in selling the specific portion and delivering possession as plots. Accordingly, on account of construction being raised by defendant No. 1 has not been reflected by any cogent material. The case of irreparable loss is also not established. The possession of defendant No. 1 over specific portion is established from photographs and Sazra relied upon by defendant No. 1 and it has been further held that a co-owner cannot injunct and restrain the other co-owners and that mere raising construction of common land by a co-sharer would not amount to ouster of other co-sharers. The learned Additional District Judge has specifically subjected the any alienation or construction made by respondent No. 1 during the pendency of the suit subject to final outcome of the partition between the parties.

8. Now considering the fact that predecessor in interest of the petitioners i.e. Sukhvir has sold specific portion out of the alleged joint holding to different persons and petitioners along with alleged co-sharers has raised constructions over specific portion of the land which petitioners are alleged to be joint holding. It is settled law that a party who seeks equity must do equity and in the present case when alienation of specific portions has been made by the predecessor in interest of the petitioners and



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petitioners themselves has raised construction over specific portion of the suit land no injunction can be granted restraining the respondent defendant No. 1 from indulging in the similar act which has been done by the petitioners themselves. The learned Additional District Judge has not committed any illegality or irregularity by vacating the injunction order and allowing the appeal. Finding no merit in the petition, the same stands dismissed.

9. Since the main petition stands decided, the miscellaneous application(s), if any, stand disposed of accordingly.

**(VIRINDER AGGARWAL)
JUDGE**

30.09.2025

P.Singh

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No