



RSA No.436 of 2024 (O&M)

S. No. 122

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

RSA No.436 of 2024 (O&M)

Date of Decision: 02.04.2025

Rajinder Kaur

.....Appellant

Vs.

Hardev Singh and another

.....Respondents

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Ranbir Singh Sekhon, Advocate
for the appellant.

DEEPAK GUPTA, J. (Oral)

Defendant of the case is before this Court against the concurrent findings of the Courts below, inasmuch as suit for permanent injunction filed by plaintiff – Hardev Singh (*contesting respondent herein*) was decreed by the trial Court on 25.01.2023 and the appeal filed by the defendant i.e. *appellant herein* was dismissed by the First Appellate Court on 11.12.2023.

2. Concededly, parties are co-sharers in the land measuring 20 kanal 05 marlas. However, plaintiff sought injunction in respect of 08 kanals of land as comprised in Khewat No.38, Khatouni No.86 Rectangle No.18, Killa No.2 as detailed in the headnote of the plaint on the ground that he is in exclusive possession thereof. Defendant contested the suit on the ground that every co-sharer is deemed to be in possession of every inch of the property. She denied the exclusive possession of the plaintiff on the suit land.

3. After framing issues and taking evidence, both the Courts below found the plaintiff to be in exclusive possession of the suit land and as such, the judgment of the trial Court decreeing the suit has been upheld by the Appellate Court.

**RSA No.436 of 2024 (O&M)**

4. Assailing the afore-said finding, learned counsel contends that as the appellant- defendant is one of the co-sharers, so no injunction could be granted against her in favour of the plaintiff- respondent.

5. There is no merit in the contention of Id. counsel that the injunction cannot be granted in favour of one co-sharer against the other, in the facts and circumstances of present case.

6. The *inter se* rights and liabilities of the co-sharers have been discussed by Full Bench of this Court in the case of ***Bhartu Vs. Ram Sarup, 1981 PLJ 204***, in which the Full Bench noted the earlier decision of Division Bench in ***Sant Ram Nagina Ram Vs. Daya Ram Nagina Ram and Ors., AIR 1961 PUNJAB 528***, wherein the 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.

**RSA No.436 of 2024 (O&M)**

- (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 anyone 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 ejection. 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.”
7. Later, in ***Bachan Singh vs. Swaran Singh [2000(3) RCR (Civil) 70]***, the Division Bench of this court inter-alia 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, 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. authenticity of this order/judgment.

**RSA No.436 of 2024 (O&M)**

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."

8. It is evident from the aforesaid legal propositions that though every co-owner has an interest in whole of the property and also in every parcel of it and possession of joint property by one co-sharer is possession of all in the eyes of law, but in case the co-owner is in possession under an arrangement, then it is not open to anybody to disturb that arrangement, without the consent of others except by filing the suit for partition. If the acts of the co-owners in possession are detrimental to the interest of other co-owners, it is only in that case that a co-owner out of possession can seek an injunction to prevent such act, which is detrimental to his interest, otherwise 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-sharer.

9. In the present case, it has been found by the Courts below on the basis of evidence on record that plaintiff is proved to be in exclusive possession of the suit land. The entry in the jamabandi and also the Khasra Girdawari show the exclusive possession of the plaintiff on the suit land. The presumption of truth is attached to said entries, though the said presumption is rebuttable. Defendant could not rebut the said presumption.

10. In view of the legal position as has been discussed above, as the plaintiff i.e. *respondent herein* has been found to be in exclusive possession over the suit property, the remedy of a co-sharer out of possession i.e., appellant – defendant is to seek partition against the co-sharer in exclusive possession of the suit land. Therefore, the trial Court has rightly granted decree of permanent injunction in favour of plaintiff, which has been rightly affirmed by the First Appellate Court. The Courts below did not commit any error in decreeing the suit so as to protect the exclusive possession of the plaintiff on the suit land against his forcible dispossession.



RSA No.436 of 2024 (O&M)

11. As such, holding the present appeal to be devoid of any merit, the same is hereby dismissed.

April 02, 2025

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(DEEPAK GUPTA)

JUDGE

Whether Speaking/reasoned Yes/No

Whether Reportable Yes/No