

Before Vinod S. Bhardwaj, J.

SUNDRI DEVI AND OTHERS—Appellant

versus

SANTOSH AND OTHERS—Respondent

CR No.1294 of 2022

April 11, 2022

Constitution of India, 1950—Art.227—Code of Civil Procedure, 1908—O.39 Rl.1 and 2—Grant of injunction against co-sharer and co-owner Petitioner/ Lessee/ Defendants restrained from interfering in exclusive and cultivating possession of predecessor-in-interest of Respondents/Plaintiffs—Challenged contending injunction could not have been granted against co-sharer and co-owner—Held, Petitioners/ Defendants cannot be permitted to claim denial of right to co-sharer to enter into land especially when such co-sharer is already in possession of land to the extent of his share—Petition Dismissed.

Held that, with due reference to the judgment of the Hon'ble Supreme Court relied upon by the learned counsel for the petitioner, it is evident from the perusal of para no.18 of the said judgment that “the co-sharer could not prove concurrently before the Courts below of being in exclusive possession of the suit land.” Hence, a definite finding of fact had been recorded before the Court that the co-sharer, who had instituted the proceedings, could not establish his exclusive cultivating possession of the suit land. No such finding of fact is available in the instant case. As a matter of fact, it is not even the case set up by the petitioners that they are in exclusive cultivating possession to the exclusion of other co-sharers of the suit property. No khasra, jamabandi or revenue record has been relied upon by the petitioners to establish their cultivating possession of the land. They have placed sole reliance on a web-portal uploaded by the petitioners on the website of the Haryana State Agriculture Marketing Board namely “*meri fasal mera byora*” which is not a revenue document to reflect possession. The same, at best, is a self declaration by a person with regard to the crop which he has sown. The same does not in any manner establish possession or is regarded as a document of possession in law.

(Para 6)

Further held that, for the purposes of ascertaining an application for interim injunction, a triple test is required to be satisfied by a person. The requirements of the said triple test are:

- (i) a prima facie case,
- (ii) balance of convenience and
- (iii) irreparable loss and injury.

(Para 11)

Further held that, the petitioners-defendants having failed to establish their sole, exclusive and cultivating possession over the suit land and the respondents-plaintiffs having been able to show documents to establish their prima facie possession coupled with balance of convenience and an irreparable loss and injury caused to them on account of not being permitted to enjoy their holdings, denial of any such interim injunction is likely to deprive the respondent-plaintiffs of their use, occupation and enjoyment of the property.

(Para 12)

Further held that, the acknowledgment of the possession of the respondents-plaintiffs by the petitioners through their own earlier documents estops them from pleading to the contrary. Possession being a question of fact and the plaintiffs being able to demonstrate their possession, the defendants cannot be permitted to claim denial of right to the co-sharer to enter into the land especially when such co-sharer is already in possession of land to the extent of his share.

(Para 13)

Manish Bhasin, Advocate and
Ritesh Aggarwal, Advocate, *for the petitioners.*

VINOD S. BHARDWAJ, J. (ORAL)

(1) The present revision petition has been filed under Article 227 of the Constitution of India raising a challenge to the order dated 27.01.2022 passed by the Additional District Judge, Kurukshetra vide which the appeal filed by the respondents against the order passed on an application under Order 39 Rule 1 and 2 read with Section 151 of the C.P.C. for grant of ad-interim injunction has been allowed and the order dated 22.10.2021 passed by the Civil Judge (Junior Division), Kurukshetra has been set aside.

(2) As per the facts involved in the instant case, Dharam Pal, the predecessor-in-interest of respondents-plaintiffs was recorded as

owner in possession of the land measuring 08 kanal 06 marla out of total land comprising in khewat no.154, 155, 156 and 157 situated at village Doda Kheri, Tehsil Thanesar, District Kurukshetra. The ownership of said land was duly reflected in the jamabandi for the year 2016-17. It is contended in the said suit that the alleged predecessor being owner and co-sharer was in actual, physical and cultivating possession of the said land to the extent of his share. Unfortunately, Dharam Pal, the predecessor-in-interest of the respondents-plaintiffs died on 16.04.1998 leaving behind the respondents-plaintiffs as his only Class-I legal heirs. Upon death of Dharam Pal, respondent No.1 re-married with one Lachhman, resident of village Jalalaveeran, District Karnal and accordingly, the respondents-plaintiffs started residing at the said village. However, the ancestral property and household articles of the respondents-plaintiffs were also retained at village Doda Kheri, Tehsil Thanesar, District Kurukshetra.

(3) It is further contended that for the management and cultivation of their agricultural land, the same was given under the lease agreement in favour of one Sham Lal son of Punna Ram resident of Village Rattan Dera, Tehsil Thanesar, District Kurukshetra (respondent No.4 herein) and he had remained in cultivating possession thereof. The suit for Permanent Injunction was accordingly instituted by the respondents-plaintiffs to protect their possession through the lessee and from being illegally and forcibly dispossessed from the land, which was in exclusive and cultivating possession of their predecessor-in-interest. Alongwith the suit, an application under Order 39 Rule 1 and 2 read with Section 151 of the C.P.C. was also filed. However, the same was dismissed vide order dated 22.10.2021 passed by Civil Judge (Junior Division), Kurukshetra. Aggrieved thereof, an appeal was filed before the Court of Addl. District Judge, Kurukshetra. Vide judgment dated 27.01.2022, the said appeal was allowed and the respondents-plaintiffs were restrained from interfering in the suit property and from destroying the crops standing therein.

(4) Learned counsel appearing on behalf of the petitioners assailed the said order passed by the Addl. District Judge, Kurukshetra to contend that an injunction could not have been granted against a co-sharer and co-owner. In support thereof, he places reliance on the judgment of Hon'ble Supreme Court passed in the matter of ***T. Ramalingeswara Rao versus N. Madhava Rao*** bearing Civil Appeal No.3408 of 2019 decided on **05.04.2019** as well as Full Bench Judgment of this Court in the matter of *Bhartu versus Ram*

Sarup passed in RSA No.886 of 1969 decided on **26.03.1981**.

(5) I have heard the learned counsel for the petitioners and have gone through the documents appended with the instant petition.

(6) With due reference to the judgment of the Hon'ble Supreme Court relied upon by the learned counsel for the petitioner, it is evident from the perusal of para no.18 of the said judgment that "the co-sharer could not prove concurrently before the Courts below of being in exclusive possession of the suit land." Hence, a definite finding of fact had been recorded before the Court that the co-sharer, who had instituted the proceedings, could not establish his exclusive cultivating possession of the suit land. No such finding of fact is available in the instant case. As a matter of fact, it is not even the case set up by the petitioners that they are in exclusive cultivating possession to the exclusion of other co-sharers of the suit property. No khasra, jamabandi or revenue record has been relied upon by the petitioners to establish their cultivating possession of the land. They have placed sole reliance on a web-portal uploaded by the petitioners on the website of the Haryana State Agriculture Marketing Board namely "*meri fasal mera byora*" which is not a revenue document to reflect possession. The same, at best, is a self declaration by a person with regard to the crop which he has sown. The same does not in any manner establish possession or is regarded as a document of possession in law.

(7) It is also evident from the perusal of the judgment passed by the lower Appellate Court that the respondents-plaintiffs had also submitted a complaint before the police authorities on the basis whereof, proceedings under Sections 107/151 Cr.P.C. had been initiated. Statement of the petitioner No.1 being defendant no.1 in the Civil Suit was recorded on 09.09.2019 wherein she has herself acknowledged that the respondent- plaintiff No.1 Santosh had given the suit land on lease to Sham Lal (plaintiff No.4) Similarly, in FIR No.239 of 2020 dated 11.05.2020 registered under Section 323 and 506 of IPC, the petitioner no.1 (who was the complainant in the said FIR) had also stated that the plaintiff-respondent No.1 Santosh Devi had given the suit land on lease to Sham Lal and Jai Ram. The said aspect stands further crystalized from the report of the Local Commissioner dated 12.03.2021, as per which the respondents-plaintiffs were found in cultivating possession of khasra no.14/12 (suit land) and the petitioners- defendants chose not to be present at the time of spot inspection and demarcation of the suit land by the Local Commissioner, despite notice being sent to them. It is needless to point

out that the said Local Commissioner was appointed by the competent Revenue Authorities on the application made by the respondents-plaintiffs.

(8) It is important to consider that certain judgments passed by this Court. In the matter of *Bachan Singh versus Swaran Singh bearing Civil Revision No.4549 of 1997 decided on 06.03.2000*, a Division Bench of this Court noted the following:

“7. In a recent decision in *Kochkunja Rair v. Koshy Alexander and Ors.*, III. 1999 S.L.T. 183, The Apex Court held as follows:-

"Ownership imports three essential rights namely (i) right to possession,(ii) right to enjoy, and (iii) right to dispose. If an owner is wrongly deprived of possession of his property he has a right to be put in possession thereof. All the three essentials are satisfied in the case of co-owner of a land. All co-owners have equal rights and co-ordinate interest in the property though their shares may be either fixed or indeterminate. Every co-owner has a right to enjoyment and possession equal to that of the other co-owner and co-owners. Each co-owner has, in theory, interest in every infinite small portion of the subject matter and each has the right irrespective of the quantity of his interest, to be in possession of every part and parcel of the property jointly with others(Vide *Mitra's Co-ownership and Partition*, Seventh Edn.)"

Having regard to the rights of the co-owners, qua the common property, the question for consideration is whether one co-owner restraining another from enjoying the property which has been in his possession can be interfered with by granting an injunction A Full Bench of the Allahabad High Court in *Chhedi Lal and Anr. v. Chhotey Lal*, AIR 1951 Allahabad 199 after considering the various decisions held as follows:-

"As a result of the foregoing decision, it appears to us that the question of the right of co-sharers in respect of joint land should be kept separate and distinct from the question as to what relief should be granted to a co-sharer, whose right in respect of joint land has been invaded by the other co-sharers either by exclusively appropriating and cultivating

land or by raising constructions thereon. The conflict in some of the decisions has apparently risen from the confusion of the two distinct matters. While, therefore, a co-sharer is entitled to object to another co-sharer exclusively appropriating land to himself to the detriment of other co-sharers, the question as to what relief should be granted to the plaintiff in the event of the invasion of his rights will depend upon the circumstances of each case. The right to the relief for demolition and injunction will be granted or withheld by the Court according as the circumstances established in the case justify. The Court may feel persuaded to grant both the reliefs if the evidence establishes that the plaintiff cannot be adequately compensated-at the time of the partition and that greater injury will result to him by the refusal of the relief than by granting it. On the contrary if material and substantial injury will be caused to the defendant by the granting of the relief, the Court will no doubt be exercising proper discretion in withholding such relief. As has been pointed out in some of the cases, each case will be decided upon its own peculiar facts and it will be left to the Court to exercise its discretion upon proof of circumstances showing on which side the balance of convenience lies. That the Court in the exercise of discretion will be guided by considerations of justice, equity and good conscience cannot be overlooked and it is not possible for the Court to lay down an inflexible rule as to the circumstances in which the relief for demolition and injunction should be granted or refused."

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.

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.

(9) Similar view has been discussed by this Court in the matter of ***Karam Singh & another versus Lakhbir Kaur & others, bearing RSA No.3818 of 2010, decided on 25.10.2010.*** The relevant extract of the said is reproduced as under:

“The relief of injunction can be sought by a co-sharer against other co-sharers when such a co-sharer happens to be in exclusive possession of the land to the exclusion of other co-sharers, but when the possession of all the co-sharers is joint, relief of injunction cannot be sought by either of the co-sharers and the only relief which is available to the co-sharer is to seek partition by metes and bounds. By purchasing share of land, out of joint khata from respondents No.1, respondents No.2 to 5 have become co-sharers in the joint khata along with plaintiffs and defendant No.1 and their status being equal and the possession being joint, the plaintiffs cannot seek permanent injunction restraining them from using the land in their joint possession because each co-sharer has a right and authority to use the joint property in the husband-like manner without causing obstruction to exercise of similar right by other co-sharers. Since, plaintiff/appellants have failed to prove their exclusive possession of the suit property, therefore, no fault can be found with the findings of the courts below.”

(10) This view was further followed by this Court in the matter of ***Gurjant Singh versus Jagdev Singh and others, RSA No.216 of 2018 decided on 10.12.2019,*** wherein it was held that suit for permanent injunction by a co-sharer against other co-sharer is not maintainable unless he is able to prove his exclusive possession. The

relevant extract mentioned in para no.8 of the said judgment is reproduced herein below:

“8. The appellant has not been able to prove that he is in exclusive possession of the property. Rather the appellant himself admitted that respondents are co-sharers in the suit property as reflected in the jamabandi Ex.P3 and Ex.D1. In view of Full Bench judgment of this Court in ***Bachan Singh versus Swaran Singh 2000(3) RCR (Civil) 70***, the suit for permanent injunction by a co-sharer against others co-sharers is not maintainable unless and until he is able to prove his exclusive possession. In the present case, appellant has miserably failed to prove that he is in exclusive possession of the suit property.

(11) That for the purposes of ascertaining an application for interim injunction, a triple test is required to be satisfied by a person. The requirements of the said triple test are:

- (i) a prima facie case,
- (ii) balance of convenience and
- (iii) irreparable loss and injury.

(12) The petitioners-defendants having failed to establish their sole, exclusive and cultivating possession over the suit land and the respondents- plaintiffs having been able to show documents to establish their prima facie possession coupled with balance of convenience and an irreparable loss and injury caused to them on account of not being permitted to enjoy their holdings, denial of any such interim injunction is likely to deprive the respondent-plaintiffs of their use, occupation and enjoyment of the property.

(13) The acknowledgment of the possession of the respondents-plaintiffs by the petitioners through their own earlier documents estops them from pleading to the contrary. Possession being a question of fact and the plaintiffs being able to demonstrate their possession, the defendants cannot be permitted to claim denial of right to the co-sharer to enter into the land especially when such co-sharer is already in possession of land to the extent of his share.

(14) In view of the above, I find no illegality or impropriety in the judgment dated 27.01.2022 passed by the lower Appellate Court. The instant petition is devoid of merits and the same is, accordingly, dismissed.

(15) Needless to mention that the expressions and observation made hereinabove are only for the purpose of deciding the instant petition at this stage, and the Trial Court shall decide the case/suit on the basis of evidences adduced before it by the respective parties.

Dr. Sumati Jund