

**Ram Singh etc. v. Sonu etc.**

**UID No. HR-0465**

**Date of decision: 26.04.2017**

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**In the Court of Jitender Kumar, Civil Judge (Junior Division),  
Faridabad.**

CNR No.               .:     HRFB02-000155-2013  
CIS No.               .:     CS/56948/2014  
Civil Suit No.       .:     345  
Date of Institution .:     24.09.2013  
Date of Decision   .:     26.04.2017

1.     Ram Singh  
2.     Jagdish  
Both sons of Sh. Ranjan,  
Residents of Village Chandpur, Tehsil Ballabgarh,  
Distt. Faridabad.

-----Plaintiffs.

Versus

1.     Sonu  
2.     Jalesh  
       both sons of Sh. Bishan Singh  
3.     Rahubir  
4.     Jaswant  
5.     Dharambir  
       sons of Sh. Dal Chand,  
       All r/o Village Chandpur, Tehsil Ballabgarh,  
       Distt. Faridabad.

-----Defendants.

**SUIT FOR PERMANENT INJUNCTION.**

**Present:**     Sh. R.K. Bhati, counsel for the plaintiff.  
                  Sh. Ravinder Gupta, counsel for the defendants No.1 and 2.  
                  Sh. Amit Sain, counsel for the defendants No.3 to 5.

**JUDGMENT:**

Through this suit plaintiffs have sought a decree for permanent prohibitory injunction restraining the defendants from interfering into the peaceful possession of plaintiffs and dispossessing the

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plaintiffs from the land, fully detailed and described in the para no. 1 of the plaint (hereinafter referred as the “**suit land**”).

2. Brief facts of the present suit are that plaintiffs along-with defendants no.1 and 2 are joint owner-in-possession over the suit land measuring 202 sq. yards continuously, without any break and interference, since the time of their ancestors. It is also pleaded the suit land is used for keeping cattle and their manure and the defendant no. 3 to 5 have the property in adjacent to suit land. But the defendants want to dispossess the plaintiffs from the suit land and wants to raise construction over the same. Even, the plaintiffs made several request not to dispossess but the defendants have paid no heed. Hence, the present suit.

3. The plaintiffs have also pleaded about the jurisdiction and proper valuation of the suit for the purpose of court fee.

4. On notice, the defendant no. 1 and 2 appeared and filed the admitted suit, whereas the defendant no. 3 to 5, appeared and contested the case by filing written statement wherein they have taken various preliminary objections regarding maintainability, cause of action, locus-standi and not coming to the court with clean hands & suppression of material facts etc. It is further averred that the suit land has already been orally partitioned about 30-40 years back and also produced the pedigree table of the parties. It is further averred by the defendant no. 3 to 5 that as their forefathers have gave up their rights in the *haveli*, in favour of forefathers of the plaintiffs and defendant no.1 and 2 and the suit land

came to the share of their forefather, hence, they have prayed for dismissal of the suit.

5. From the pleading of the parties, the following issues were framed by Ms. Neha Goyal, learned Civil Judge (Junior Division), Faridabad on 22.04.2015:-

1. *Whether the plaintiffs are entitled to decree of permanent injunction as prayed for?OPP.*
2. *Whether the suit of plaintiffs is not maintainable? OPD.*
3. *Whether the plaintiffs have no locus standi and cause of action to file the present suit?OPD.*
4. *Whether the suit is bad for want of concealment of material facts by the plaintiff from the court?OPD.*
5. *Relief.*

6. In order to prove his case, the plaintiffs have examined Jagdish as PW1, who tendered his affidavits as Ex. PW1/A. PW2 Amar Singh, Draftsman, who stated that he has prepared the site plan as Ex. P6. Plaintiffs have also examined Sh. Tejbir as PW3, who tendered his affidavits as Ex. PW3/A, Sh. Bal Singh as PW4, who tendered his affidavits as Ex. PW4/A. In order to substantiate their claim, plaintiffs have placed on record following documents:-

- |        |   |                                        |
|--------|---|----------------------------------------|
| Ex. P1 | : | Copy of jamabandi for the year 2006-07 |
| Ex. P2 | : | Copy of jamabandi for the year 2001-02 |
| Ex. P3 | : | Copy of jamabandi for the year 1991-91 |
| Ex. P4 | : | Copy of <i>Aksh Sizra</i>              |

Ex. P5 : Copy of khasra girdawari for the  
year 2007-12  
Ex. P6 : Site plan  
Mark "A"  
to : Photographs  
Mark "B"

Thereafter, learned counsel for the plaintiff closed evidence on behalf of plaintiff, vide his separate statement on dated 05.11.2015.

7. On the other hand, defendant Jashwant appeared as DW1, who tendered his affidavit as Ex. DW1/A in his examination-in-chief. Defendants have got examined Ramsharan as DW2, who tendered his affidavit as Ex. DW2/A in his examination-in-chief and Rati Ram as DW3, who tendered his affidavit as Ex. DW3/A in his examination-in-chief. Sh. Datta Ram also appeared as DW4, who tendered his affidavit as Ex. DW4/A in his examination-in-chief. Sh. Vinod also appeared as DW5, who tendered his affidavit as Ex. DW5/A in his examination-in-chief and proved the receipt as DW5/1, photographs as Ex. DW5/2 to Ex. DW5/6. The defendants have relied on the following documents:-

Ex. D1 : Affidavit  
Ex. D2 : Affidavit  
Ex. DW5/1 : Receipt  
Ex. DW5/2  
to : photographs  
Ex. DW5/6

Thereafter defendants evidence was closed by the court order vide order dated 21.10.2016, as defendants failed to conclude the same despite availing sufficient opportunities.

8. No evidence in rebuttal is produced despite availing sufficient opportunities. Hence, rebuttal was closed by court order on 12.04.2017.

9. I have heard learned counsel for the parties and have also gone through the case file thoroughly and carefully. My issue-wise findings are as under:-

**ISSUES NO.1**

10. The burden of proving this issue was upon the plaintiffs. They in order to prove these issues have examined have examined Jagdish as PW1, who tendered his affidavits as Ex. PW1/A. PW2 Amar Singh, Draftsman, who stated that he has prepared the site plan as Ex. P6. Plaintiffs have also examined Sh. Tejbir as PW3, who tendered his affidavits as Ex. PW3/A, Sh. Bal Singh as PW4, who tendered his affidavits as Ex. PW4/A. Plaintiffs have relied on bunch of documents. On the other hand, the defendant no. 3 to 5, have got examined five witnesses and also produced the photographs of the disputed site. himself as DW1.

11. Starting with the arguments, Ld. Counsel for the plaintiffs submits that the as per the jamabandi, the plaintiffs and defendant no.1 & 2 are joint owner over the 1/3rd share of suit land and the defendant no. 3 to 5, have no right over the suit property and they want to forcibly

dispossess the plaintiffs and want to raise the construction. He has also argued that the Bhajan Lal and Ram Sharan have already raised construction over their respective shares and the area shown as A,B,C,D in the site plan as Ex. P6 is in exclusive possession of the plaintiffs. Hence, he prayed that suit of the plaintiffs be decreed.

12. On the other hand Ld. Counsel for the defendant no. 3 to 5 has argued that partition has already been effected by the parties among the forefathers of the parties around 40-50 years ago and the disputed land falls in the share of defendant no. 3 to 5. He has also argued that, even otherwise also the suit is for permanent injunction is not maintainable against the co- share, as the defendants are co- sharer over the suit land. Hence, he has prayed that the suit be dismissed.

13. In the present suit, the plaintiffs have claimed the relief of permanent injunction to the effect that the defendants be restrained from interfering into the peaceful possession of the plaintiffs as plaintiffs are co-shares and are in exclusive possession over the suit land, as per the revenue record and therefore defendants be restrained from dispossessing them from the suit land. In order to prove their possession over the suit land the plaintiffs have relied on the various revenue entries reflected in the jamabandis and khasra girdawari. The Jamabandi as Ex. P1 for year 2006-07, Copy of Jamabandi pertaining to year 2001-02 as Ex. P2 and Copy of Jamabandi pertaining to year 1991-92 as Ex. P3 clearly depict that the plaintiffs along-with defendant no. 1 & 2, are owner-in-possession

as co-sharer over the 1/3 share of the suit land comprised in Khasra no. 75 along-with other co-shares. Same is also supported by the entries contained in the khasra Girdawari from 2007 to 2012 as Ex. P5.

14. So, it is clear that the plaintiffs along-with the defendant no. 1 & 2 are shown as co-sharer over the suit land. Even the plaintiffs have stated in para no.1 of their plaint that they are joint owner-in-possession to the extent of 1/3rd share. Otherwise also, the presumption of truth is attached with the entries in revenues record. The Hon'ble P&H, High Court in the case of **Ajay v. Surender Singh, 2010(5) R.C.R.(Civil) 684**, has held that *Presumption of truth, is attached to entries, contained in the Jamabandies, whereas, presumption of correctness, is attached to the entries, contained in the Khasra Girdawari, the same having been prepared, by the officials in the discharge of their official duties. No doubt, the presumption attached to the entries, contained in the Jamabandi, and, the entries, contained in the Khasra Girdawari, is rebuttable.*

15. But defendants have not produced any cogent evidence to rebut or detract these revenues entries. However, the defendant no.3 to 5 claimed that partitioned has already been effected about 40-50 years but they could not prove the same. So, this court is of considered opinion that the suit land has not been partitioned so far.

16. Further this court is convinced with argument raised by Ld. Counsel for the defendants that plaintiffs claim themselves as co-shares,

hence they can not seek permanent injunction. As Plaintiff Jagdish, while appearing as PW1, has admitted the fact that the Raghubir, Dharambir and Jashwant (defendant no. 3 to 5) are legal heirs of the Vedi. As per the revenues record Jamabandi as Ex. P1 for year 2006-07, Jamabandi pertaining to year 2001-02 as Ex. P2 and Jamabandi pertaining to year 1991-92 as Ex. P3, clearly depict that the Ram Sharan is also co-sharer in the suit land. As per the pedigree table filed by the defendant no. 3 to 5 along with the written statement, Ram Sharan died issue-less. Hence, the defendant no. 3 to 5 are his collateral and have share in the suit land and by implication of inheritance, became the co-sharer over the suit land. So, defendant no. 1 and 2 on one hand and defendant no. 3 to 5 on the other hand, are the co-sharers over the suit property along-with the plaintiffs. The Hon'ble Punjab and Haryana High Court in the case title as **Karam Singh v. Lakhbir Kaur (P&H) " 2011 (2) PLR 698** 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.*

17. As the plaintiffs have failed to prove that they are in exclusive possession over the suit land and revenue record shows the suit land as joint land and plaintiffs and defendant are co -owners. Even the plaintiffs themselves pleaded in the plaint that the defendant no. 1 and 2 are the co-owner in the suit land, hence the plaintiffs are not entitled to discretionary relief of permanent prohibitory injunction restraining the defendants not to dispossess the plaintiffs, as it is the settled law that a co-sharer is not entitled to injunction against the other co-sharer, except on the certain circumstances. **The Hon'ble P&H, High Court in the case of Bachan Singh v. Swaran Singh, (2000) 126 PLR 416**, after consideration of the judicial pronouncements on the subject, held as under:

*(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.*

18. So, in the case in hand the plaintiffs are in possession over the part of the suit land and they have failed to bring anything on record to show that the defendants are doing an act, which is detrimental to their interest or going to diminish the value of the joint land. Hence, the proper course of action for the plaintiffs is to seek partition. Accordingly, this issue is decided against the plaintiffs and in favour of the defendants.

**ISSUES NO.2 to 4.**

19. The burden of proving these issues was on the defendants. However, learned counsel for defendants has not pressed these issues during the arguments. So, these issues are decided against the defendants being not pressed.

**ISSUE No. 5 (RELIEF):**

20. In view of my findings on the above issues, the suit of the plaintiffs fails and the same is hereby dismissed with costs. Decree sheet

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and memo of costs be prepared accordingly. File be consigned to the record room after due compliance.

**Announced in open Court:**

Dated 26.04.2017  
Jitender Kumar  
Civil Judge (Jr.Divn.),  
Faridabad. (UID: HR-0465)

**Note:** Certified that this judgment contains total eleven pages and all the pages have been duly checked and duly signed by me.

Dated: 26.04.2017  
Sagar (steno)  
Jitender Kumar  
Civil Judge (Jr.Divn.),  
Faridabad.(UID: HR-0465)