

Bhupinder Singh Vs. Puran Singh etc¹⁰
CIS No. CS-617-2024 PB0404, Civil Judge /Junior Division, Batala.
**IN THE COURT OF SH. GAGANDEEP SINGH, PCS, CIVIL JUDGE
(JR.DIVN.), BATALA.(PB0404)**

Date of Institution	10.05.2024
Date of Order	04.07.2026
Next date of hearing	21.08.2026

BHUPINDER SINGH VS PURAN SINGH ETC

**SUIT FOR POSSESSION AND PERMANENT INJUNCTION
APPLICATION UNDER ORDER-39 RULE-1 & 2 READ WITH
SECTION-151 CPC FOR THE GRANT OF AN AD-INTERIM
INJUNCTION DURING THE PENDENCY OF THE SUIT.**

Present:- Sh. T.S Lalli, Advocate counsel for plaintiff/applicant.
Sh. Arvind Gupta, Advocate counsel for defendant No.1
Defendant No. 2 to 10 exparte vide order dated 06.05.2025

ORDER

The indulgence of this court has been sought for adjudication of application under Order-39 Rule-1 & 2 read with Section-151 CPC for the grant of an ad-interim injunction during the pendency of the suit. The following factual matrix given in the pleadings is necessary to appreciate the real controversy and cause of the present litigation.

2. According to the plaintiff, he is the co-sharer/co-owner in possession of land in dispute, as fully detailed and described in the head note of the plaint along-with defendants in the share and ratio mentioned in the revenue record. That property/land in dispute is uncultivable and Gair-Mumkin land/Abadi etc and plaintiff is co-sharer/co-owner in possession over the land measuring 5 Marlas, which is surrounded on East property of others, on West by Rasta, no North by Puran Singh and on South by property of others out of the entire land measuring 3 Kanals 19 Marlas. It is next submitted that a dispute amongst the parties regarding the utilization of the land in dispute and parties are unable to pull with the joint possession and

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plaintiff wants to get his share separated from the share of the defendants by metes and bounds. It is grouse of the plaintiff that defendants are threatening to change the nature of the land in dispute by raising construction or making any addition or alterations in the land in dispute or alienate by way of sale etc any part or portion of the land/property in dispute. It is claimed that defendant No. 3 tried to dispossess the plaintiff from his land/property and filed a civil suit for permanent injunction titled as “Bhupinder Singh Vs Puran Singh” and hence, the present case along-with the stay application was filed.

3. The prayer has been opposed by the defendant No.1 through his written statement preliminary on the ground that the suit is not maintainable; plaintiff has concealed and suppressed the material facts from the Court; plaintiff has no cause of action to file the present suit; suit of the plaintiff is bad for non-joinder of necessary party and plaintiff has got no locus-standi to file the present suit. Upon merits, it is denied that plaintiff is co-sharer/co-owner in possession over the land/property in dispute along-with defendants. It is replied that previously defendant No. 1 along-with his brother Joginder Singh purchased 10 Marlas out of land measuring 3 Kanal 19 Marlas, but Joginder Singh was never in possession over any part or portion of the same and never sold or handed over the possession of property to the plaintiff. It is next replied that plaintiff was never in possession over any part or portion of the suit property nor become the co-sharer. That defendant is in exclusive possession over the land measuring 10 Marlas out of the suit property, which is in the form of residential house as well as shop the defendant is doing the business of wood and carpenter in the shop

situated, on the front portion of the said 10 marlas and using the remaining portion for his residence. It is also submitted that electric connection is also installed in the said property on the name of the defendant i.e. vide A/c. No. A12AC120541M and voter card, adhaar card and ration card of the defendant and his family is also issued on the address of said property. That defendant has made the oral settlement with his brother Joginder Singh soon after the purchase of the property and in the oral family settlement the said Joginder Singh give up all his rights in the property in dispute and in lieu which he was adjusted in the land on the name of their mother Kartar Kaur and The entire construction was raised by the defendant and the electric connection was also taken by the defendant and the defendant is exclusively in possession over the said and always claimed himself as exclusive owner over the property in dispute since soon after the purchase of the property to the knowledge of everybody including Joginder Singh his brother. With these submissions, dismissal of the application was prayed for. Remaining defendants failed to appear and were proceeded against exparte by the Court orders.

4. I have heard the submissions of learned counsel for plaintiff/applicant as well as defendants and have perused the material on record very carefully with their able assistance. This Court is of the view that before passing any injunction order, the court is required to consider three basic ingredients i.e.

- (i) whether there exists prima-facie case in favor of plaintiff,**
- (ii) whether the balance of convenience lies in favor of plaintiff for passing the order of injunction, and**

(iii) whether plaintiff will suffer irreparable loss and injury which can not be compensated in terms of costs if order of injunction is not passed.

These requirements are the basic requirements which the plaintiff is supposed to fulfill or make out before getting the order of temporary injunction in his or her favour. This settled law has also been reiterated by the Hon'ble apex court of India in **M/s. Best Sellers Retail (India) Pvt. Ltd. vs. M/s Aditya Birla Nuvo Ltd. reported in 2013 (1) Civil Court Cases page 92**, apart from plethora of other judgments.

5. Now as per the plaint, the plaintiff has filed a suit for possession by partition and injunction stating therein that he is co-sharer over the suit property. It has also been alleged there is dispute regarding the utilization of suit property and thus, plaintiff intends to get his share separated. This fact is denied by the defendant No. 1 who is the only contesting defendant. It is claimed that defendant No. 1 is in exclusive possession over 10 marlas of land out of suit scheduled property. The revenue record shows that parties are co-sharers over the suit property. The law regarding the rights of the co-owners for the joint land has been well settled by our own **Hon'ble Punjab and Haryana High Court by constituting a Full Bench in Bhartu versus Ram Sawroop, reported in 1981 Punjab Law Journal, page 204**, in which our Hon'ble High Court has laid down in elaboration the rights and liabilities of a co-owner i.e. :-

“Right and liabilities of co-sharers as settled by court inter se are :

(1) A co-owner has interest in the whole property and also in every parcel of it.

(2) Possession of 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 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 right of other co-owners.

(7) Where a co-owner is in possession of separate parcels under an arrangement consented by the other co-owners, it is not open to anybody to disturb the arrangement without the consent of others except by filing a suit for partition. Co-sharer in possession exclusively of some portion of joint holding not more than his share.

Entitled to continue in possession till joint holding partitioned and can transfer that portion subject to adjustment at the time of partition - Transferee under Section 44 Transfer of Property Act gets right of transfer to joint possession and to enforce partition irrespective of the

fact whether property sold is fractional share or specified portion.”

In other words every co-owner is having interest in every parcel of the joint property and can use the property in a husband like manner. Also possession of one co-owner will be considered to be the possession of all and the land will be presumed to be joint. The presumption of jointness can only be rebutted by proving ouster which can be established by proving exclusive possession of one co-owner, which exclusive possession is open and hostile to the knowledge of other co-owner. Further, the possession of co-owners can be disturbed only by way of partition. The afore-discussed rights and liabilities of the co-sharer has been again reiterated by yet another **Full Bench of our own hon'ble High court constituted for case titled Ram Chander versus Bhim Singh and others, reported in 2008 (4) Civil Court Cases 002**

6. Now, in the present case, as stated above the plaintiff is claiming himself to be one of the co-owner along with the defendants and he has filed suit for partition and suit for permanent injunction restraining the defendants from raising the construction and from interfering into the share which is in his peaceful possession along-with relief for restricting alienation by defendants . Regarding the relief of restraining the defendants from raising construction, it is the case of the plaintiff that the property is still joint. Therefore, as per the rights and liabilities of the co-owners as discussed above the defendants being co-owners with the plaintiff is having every right over each inch of the property and can use the same in a husband like manner and if the plaintiff is feeling aggrieved with the act of construction being raised by the defendants over the joint land then the

remedy available with the plaintiff is partition. As is also observed by our

own Hon'ble High Court in Jai Karan Sharma vs. Ram Kumar, 2009(2)

Civil Court Cases 083 (P&H) that, *“mere making of construction in a common property would not amount to ouster of the other and that, in such cases, a co-owner cannot seek injunction for restraining from another co-owner from raising construction.”*

Therefore, at this stage the parties being co-sharers, all co-owners have equal rights over each inch of the property and if by act of one co-owner other is feeling ousted from his rights then the remedy available to the co-owner is partition. Otherwise also, since the land is not yet partitioned, any construction raised by the defendants over the joint land will be subject to the partition and the defendants will be raising the same at their own risk without claiming exclusive right or compensation over the same at the time of partition because the same is not raised with the consent of the plaintiff, therefore, since the construction will be deemed to have been raised jointly the question of irreparable loss to the plaintiff also does not arise. This view of the court finds its strength on the basis of law discussed above i.e. Jangir Singh versus Naranjan Singh and others, reported in 2015 (1) Civil Court Cases 315, and also our Hon'ble High Court in Joginder Singh vs Ajit Singh reported in 2010 (2) Civil Court Cases page 179, has held that, *“Civil Procedure Code, 1908, Order 39, Rules 1 and 2 - Unpartitioned property - Co-sharers - Temporary injunction - Construction raised - Restraining sought - Held, a co-owner cannot seek injunction restraining another co-owner from raising construction - However, defendant cannot raise any claim qua the property just on*

the basis of his raising construction.”

And further in **2001(1) Civil Court Cases 357, Mukhtiar Singh vs Tara Singh and another**, our hon'ble High Court has held, that

“Specific Relief Act, 1963, Section 38 - Injunction against co-sharer - Co-owner - A co-owner in exclusive possession of the joint property can raise construction and enjoy the property - If he raises any construction, it does not amount to ouster of other co-owners - Any such construction will be subject to partition and removal without any demur if found on any part in excess of his share.”

7. Therefore, in short the plaintiff cannot restrain the defendants from raising construction and as such, there cannot be any restraint order regarding construction made by co-owner. As far as the prayer for restraining the defendants from interfering into the possession of the plaintiff over his share is concerned, whether any cause of action accrued to the plaintiff for filing suit for injunction restraining the defendants from interfering in the possession will be a matter of evidence and it will be further matter of evidence that defendants are trying to interfere in the same. The cause of action is a bundle of facts which is required to be proved by way of leading evidence. As such, before there is any evidence that defendants are threatening to disturb the possession of the plaintiff, injunction order cannot be passed. Further, apart from the aforesaid discussion regarding possession of the plaintiff, he is co-sharer along-with the defendants, therefore, in case he wants his right of possession to be protected permanently, he is required to get his right/status as a co-sharer severed from the defendants because until and unless the suit property is partitioned, the same will be treated as

possession of all the co-sharers including the defendants in view of the law

laid down by full bench of our own Hon'ble High Court as discussed.

Accordingly, on the similar lines of reasoning rendered above, the question of granting temporary injunction qua possession does not arise.

8. In connection with the relief for restraining alienation of any portion of suit property, parties admittedly claim rights in the suit property as co-sharers. It is settled proposition of law that every co-sharer is competent to transfer or alienate his or her undivided share in the joint property. Such alienation does not confer any exclusive right upon the transferee over any specific portion of the joint property and the transferee merely steps into the shoes of the transferor, remaining bound by the rights of the other co-sharers and the result of partition, if any. Consequently, there is no prima-facie material to show that an irreparable loss shall be caused to the plaintiff if the injunction is not granted in their favour. Thus, this Court is of the considered conclusion that the case of the plaintiff do not fall in the three guiding principles for availing the relief of injunction. At this stage, there is no prima-facie material to show that balance of convenience lies in favour of the plaintiff. The Plaintiff remained unsuccessful to project his case under the three guiding principles of availing the relief of injunction and accordingly, in view of my aforementioned discussion, the application under Order-39 Rule-1 and 2 of CPC filed by the plaintiff is hereby dismissed. The application stands disposed off accordingly. Nothing observed herein shall however, have any bearing upon the outcome of instant suit upon merits.

Pronounced in open Court.
Dated: 04.07.2026

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Civil Judge (Jr. Division),
Batala (UID No. PB0404)

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Present:- Sh. T.S Lalli, Advocate counsel for plaintiff/applicant.

Sh. Arvind Gupta, Advocate counsel for defendant No.1

Defendant No. 2 to 10 exparte vide order dated 06.05.2025

Arguments heard, on the application under Order-39 Rule-1 & 2 CPC, Vide my separate detailed order, the said application filed by plaintiff/applicant stands dismissed and disposed off. Replication to the written-statement has already placed on record. From the pleadings of the parties following issues are ordered to be framed :-:

1. Whether the plaintiff is entitled to relief for possession by partition by metes and bounds?OPP
2. Whether the plaintiff is entitled to relief of permanent injunction as prayed for ?OPP
3. Whether the suit of the plaintiff is not maintainable in the present form?OPD
4. Whether plaintiff has concealed the material facts from the Court and has not come to the court with clean hands and?OPD
5. Whether the plaintiff has got no cause of action to file the present suit? OPD
6. Whether the suit of the plaintiff is bad for non-joinder of necessary party?OPD
7. Whether the plaintiff has got no locus-standi to file the present suit? OPD
8. Relief.

No other issue arises/pressed/claimed. Plaintiff is directed to file list of witnesses and deposit PF/DM well in advance and thereafter, PWs be summoned. Case is adjourned to **21.08.2026** for plaintiff's evidence. Plaintiff is also directed to supply copy of affidavits of the witnesses whom the plaintiff intend to examine legally, well before the date fixed so that defendant conduct cross examination on those witnesses. It is made clear that only three opportunities will be granted to the plaintiff to conclude the evidence as per Order-17 Rule-3 CPC.

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