

**IN THE COURT OF GURPREET KAUR, PCS,
CIVIL JUDGE (JUNIOR DIVISION),
SRI MUKTSAR SAHIB
(UID NO.PB0676)**

CIS No. CS/657/2022

CNR No.PBSM02-000835-2022

Date of order: 11.04.2023

Next date:08.05.2023

Jaswinder Singh	Versus	Naib Singh and another
Plaintiff-applicant		Defendants-respondents

***Application under Order 39 Rules 1 and 2 read with section 151 of
CPC***

Present : Shri Manjinder Singh Brar, Advocate counsel for
plaintiff/applicant.
Shri Jagroop Singh Sivia, Advocate, counsel for defendant No.1
to 3 and 5.
Defendant no.4 exparte.

ORDER :

Vide this order I shall be disposing off an application for ad-
interim injunction restraining the defendants/respondents from alienating
the suit property by way of sale, mortgage, transfer, lease, or in any other
manner whatsoever and from changing the nature of the land and also
from raising any kind of permanent construction over the same before the
actual partition by way of metes and bounds of land measuring 5 Kanals
17 Marlas comprising in Khewat no. 259, Khatauni no. 433, Rect. No.7,
Killa no. 5/1(0-9), Rect. No.8, Killa no.1/5(0-9),2/2(0-4), Rect. No.97,

CNR No.PBSM02-000835-2022

Killa no. 5/1(0-8), Khasra no. 372(1-19), 373(2-2), 511(0-6) as per copy of jamabandi for the year 2017-2018, situated within the revenue estate of village Khokhar, hadbast no.71, tehsil Sri Muktsar Sahib.

2. The brief facts of the case of the plaintiff/applicant are that plaintiff/applicant is owner of 1/4 share out of the land measuring 5 Kanal 17 Marla as fully detailed in the headnote of the plaint. The said land is gair mumkin land. The defendants/respondents are co-sharers in the suit land. The suit land is the joint land of the plaintiff/applicant and defendants/respondents and no partition has taken place. That due to mutual differences, the attitude of the defendants/respondents has become harsh toward the plaintiff/applicant. Now, the plaintiff/applicant has come to know that the defendants/respondents are planning to alienate their respective shares in the suit land by way of sale or lease to some others by putting them in possession of the entire suit land. The defendants/respondents are openly inviting people for selling their shares in the suit property. So many persons have visited the suit property to strike a deal to purchase the same, the defendants/respondents have no right to sell or to alienate the suit property or to change the nature of the land, or to raise permanent construction on the same without getting the same partitioned by way of metes and bounds from the plaintiff/applicant but the defendants/respondents are threatening to alienate the suit property to some other persons without getting the same partitioned to defeat the ownership and possessory rights of the plaintiff/applicant. That the suit land is very valuable as it is abutting rasta, the plaintiff/applicant has

equal right to have his separate share out of the suit land in the partition to get possession of his respective share. The defendants/respondents want to change the nature of the land and to raise construction; for which they have no right, title, or interest. As stated earlier no partition took place between the parties. As such the defendants/respondents have got no right to forcibly raise construction over the entire suit land and to completely change the nature of the land. That the plaintiff/applicant has requested the defendants/respondents many times to get the suit property partitioned and to deliver possession according to his share with the help of common persons and respectable of the village and also not to change the nature of the land, raising any kind of construction and to alienate by way of sale or lease any portion of the suit property unless the same is partitioned, but they did not accede to the genuine requests of the plaintiff/applicant and are adamant to carry out their evil intentions and a week back the defendants/respondents refused to get the land partitioned. Hence the present suit is filed by the plaintiff/applicant alongwith application under Order 39 Rule 1 and 2.

3. Upon notice the defendants/respondents appeared and filed written statement raising pre-liminary objections that the suit of plaintiff/applicant is not maintainable in the present form, plaintiff/applicant has no locus-standi and cause of action to file the present suit, plaintiff/applicant has concealed material facts from this Court. That the plaintiff/applicant is barred by his act and conduct to file the present suit. The plaintiff/applicant is not owner of the suit property.

The plaintiff/applicant has filed the present suit just to harass and humiliate the answering defendants/respondents. The real facts are that father of the plaintiff/applicant had made oral exchanged of land measuring 1 Kanal 3 Marlas with husband of the defendant no. 2 and father in law of the defendant no. 1 and grandfather of the defendant no. 4. The suit land is situated within Abadi Area and they sold the said land to Seeta Singh and exchanged agriculture land measuring 2 Kanal 6 Marlas, but Bachittar Singh was in need of money then they sold the land which was taken in oral exchange to Seeta Singh, as the mutation was not sanctioned of land which was sold in oral exchange and the said land is on the name of said Seeta Singh. So, rupees 93722/- was taken from Seeta Singh of land measuring 2 Kanal 6 Marlas and in this regard a hib writing was written on dated 24-11-1996. This writing was written by S. Gurmeet Singh son of Mohinder Singh resident of village Guri Sangar. Said Gurmeet Singh is son in law of Bachittar Singh and is also brother in law/Jeeja of the plaintiff/applicant. So, from the date of oral exchange, the answering defendants/respondents are in possession of suit land. It is appropriate to mention here that two arms of Bachittar Singh were cut due to electric shock. So, his signatures or thumb impression cannot be taken. It is also important to mention here that the answering defendants have built house in the suit land after spending huge amount and they are residing in the said house, water and electric connections are running in the name of the answering defendants in the suit land. The defendant no.5 had purchased land measuring 1 Kanal 2 Marlas the suit land and form

Darshan Singh, Ajaib Singh, Suba Singh sons of Gurdeep Singh son of Gian Sing in equal share on dated 27.02.2015 vide sale deed no.4247 and the answering defendant no.5 shown as owner of 3/16 share in the jamabandi. The plaintiff wrongly written in the plaint that he is owner of $\frac{1}{2}$ share, whereas as per oral exchange the plaintiff is not owner of any suit land and he is not in possession of the suit land. So, the suit of the plaintiff is not maintainable in the present form and the same is liable to be dismissed.

4. During the course of arguments, the counsels have made submissions in line with the averments of the application and reply filed thereto which are not reproduced here for the sake of brevity.

5. I have heard learned counsel for the parties and have also gone through the case file properly. On perusal of documents on record it is clear that suit property is joint and plaintiff/applicant and defendants/respondents are co-sharer in suit land. The law with regard to alienation of joint property and right and utility of a co-sharer has been very well described by Full Bench of Hon'ble Punjab and Haryana High Court in **Bhartu Vs. Ram Sarup 1981 P.L.J. Page 204 (P&H)(FB)**

Wherein it has been held that :

Co-Sharer- Rights and liabilities of Co-sharers inter se are :

- (i). A co-owner has interest in the whole property and also in every parcel of it
- (ii). Every co-owner has a right to use the joint property in a husband like manner not inconsistent with similar rights of others co-owners.

(iii). Where a co-owner is in possession of separate parcels under an arrangement consented by the other co-owners, Can transfer that portion subject to adjustment at the time of partition- Transferee under section 44 Transfer of Property Act gets right of transferor to joint possession and to enforce partition whether property sold is fractional share or specified portion- Sale of specific portion of land out of joint holding by one of the co-owners is nothing but a sale of a share out of joint holding.

Further, in **Ram Chander v. Bhim Singh, 2008 (3) R.C.R. (Civil) 685 (P&H) (F.B.)**, Hon'ble Punjab and Haryana High Court while upholding the law settled by Full Bench in Bharthu (Supra), held that:- *A joint owner/co-owner, just as an individual owner, has an inherent right to alienate the joint property, limited to the extent and the nature of his share holding. Upon transfer of his share or a part thereof, a co-sharer transfers only such rights as vest in him as a joint owner, namely, his specified share or a part thereof in the community of joint owners with commonality of possession.*

Therefore in view of above stated judgements it is clear that a co-sharer in joint property has right to alienate his share in the joint property. In the present case plaintiff/applicant and defendants/respondents being co-sharer has right to alienate their respective share and therefore the defendants/respondents cannot be restrained from alienating their respective share in the joint property. At this stage it appears to this Court that prima facie case is not made out in favor of the plaintiff/applicant and balance of inconvenience also does not

in his favor and as such the present application under Order 39 rule 1 & 2 CPC stands dismissed. Any observation made while disposing off the application shall have no bearing on the merits of the case.

Pronounced in open Court:-

Date of order 11.04.2023
(Manjot Singh Steno G.II)

(Gurpreet Kaur)
Civil Judge (Junior Division)
Sri Muktsar Sahib
UID No.PB0676