

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

**RSA-3618-1998 (O&M)  
Reserved on :-11.03.2026  
Date of Pronouncement:-18:03.2026  
Uploaded on:-18.03.2026**

Dial Singh and Another

... Appellants

Versus

Darbara Singh and Others

... Respondents

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**CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL**

Argued by :-

Mr. Ashok Singh, Advocate with  
Mr. Dheeraj Singh, Advocate  
for the appellants.

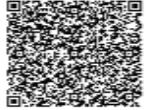
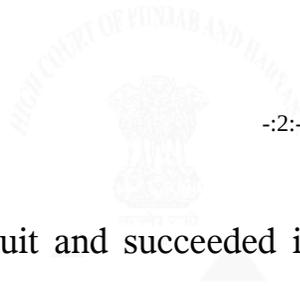
Mr. S.S. Siao, Advocate  
for the respondents.

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**VIRINDER AGGARWAL, J.**

1. The present Regular Second Appeal (here-in-after referred to as 'RSA') has been preferred against the judgment and decree dated 26.02.1998 passed by the learned Additional District Judge, Sangrur, whereby the appeal filed by the appellants–defendants came to be dismissed.

2. Briefly stated, the respondent–plaintiff instituted a suit for mandatory injunction on the averment that the parties are co-owners in the suit land. It was pleaded that the plaintiff had moved an application seeking partition of the suit land; however, defendants No.1 and 2

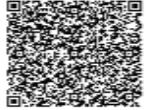
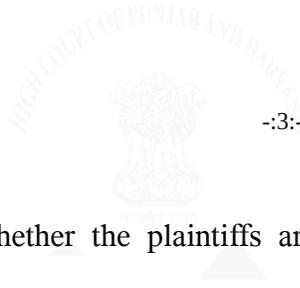


instituted a civil suit and succeeded in obtaining a stay of the partition proceedings. It was further alleged that the defendants were threatening to raise construction over the joint land and had already raised construction up to a height of approximately 7–8 feet. According to the plaintiff, the defendants had no legal right to raise any construction over the joint property without the same being partitioned. Consequently, the suit was filed seeking a decree restraining the defendants from raising construction over the suit land without prior partition and for issuance of a mandatory injunction directing the defendants to demolish the construction already raised upon the joint land.

3. The defendants, in their joint written statement, contested the suit by asserting that they were in exclusive possession of the suit land as owners. It was further pleaded that an electric motor had been installed on the land about 10–12 years earlier and that they had also constructed a room and a manger for cattle. On this premise, it was contended that, being in exclusive possession, they were fully entitled to raise construction on the suit land.

4. The plaintiff filed replication controverting the assertions made in the written statement. Upon a careful and comprehensive examination of the pleadings, documents, and submissions of the parties, the learned Trial Court framed the following issues for adjudication so as to facilitate a proper and effective determination of the controversy between the parties:-

1. Whether the plaintiffs are entitled for injunction, as prayed for?  
OPP.

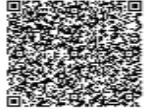


2. Whether the plaintiffs are entitled for mandatory injunction, as prayed for? OPP.
3. Whether the plaintiffs have no locus-standi to file the present suit? OPD.
4. Whether the instant suit is not maintainable in the present form? OPD.
5. Relief.

5. The parties were afforded adequate opportunities to adduce evidence in support of their respective claims. Upon appreciation of the evidence and after hearing the arguments advanced by learned counsel for the parties, the learned Additional Senior Sub-Judge, Sunam partly decreed the suit and restrained the defendants from raising any further construction over the suit land without first obtaining its partition or without the concurrence of the plaintiff.

5.1. The appeal preferred against the aforesaid judgment and decree came to be dismissed. Aggrieved by the concurrent findings and judgments rendered by the Courts below, the present appeal has been instituted.

6. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are to be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 CPC. Reference in this regard can be made to the judgment of the Supreme Court in the case of ***Pankajakshi (Dead) through LRs and others V/s Chandrika and others, (2016)6 SCC 157***, followed by the judgments in the case of ***Kirodi (since deceased) through his LR V/s Ram Parkash and others, (2019) 11 SCC 317*** and



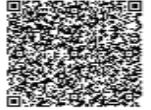
***Satender and others V/s Saroj and others, 2022(12) Scale 92.*** Relying upon the law laid down in the aforesaid judgments, no question of law is required to be framed.

7. I have heard learned counsel for the parties at considerable length and have bestowed anxious and thoughtful consideration upon their submissions, keeping in view the pleadings of the parties, the evidentiary material brought on record, and the concurrent findings returned by the Courts below.

8. Learned counsel for the appellants contended that since appellants are in exclusive possession of joint holdings, so they have every right to raise construction over the portion which is in their exclusive possession and the learned Courts below has misinterpreted and misread the pleadings and evidence and has wrongly concluded that respondents-plaintiffs are entitled to permanent injunction restraining defendants from raising further construction of the suit land till the suit land is partitioned by the competent Court of law and or without the concurrence of respondent-plaintiff.

9. Learned counsel for the respondents-plaintiff contended that there is no illegality, infirmity in the findings recorded by the learned Courts below. The learned Courts below have rightly appreciated the pleadings and evidence on record and come to a plausible conclusion that respondent-plaintiffs are entitled to injunction prayed for as it is appellants-defendants who are objecting to partition of the suit land.

10. Both the learned counsels have placed relied upon judgment of Division Bench of this Court in ***Bachan Singh vs. Swaran Singh, AIR***

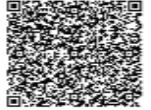
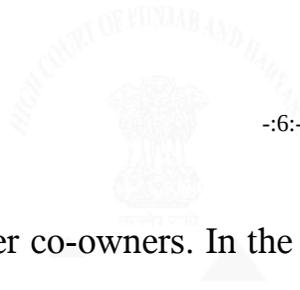


**2001 Punjab and Haryana 112**, wherein in that case after appreciating the entire law Division Bench of this Court has culled out certain guidelines, which are contained in para No.15 of the judgment, which reads as under:-

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.”

11. It has been observed that, in all other situations, the appropriate remedy available to a co-owner who is out of possession is to seek partition of the joint property and not to seek an injunction restraining a co-owner in possession from exercising his rights over every inch of the joint property, which he holds as a co-owner.

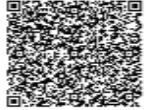
12. However, as per Clause IV of the principles laid down in the aforesaid judgment, a co-owner who is out of possession may seek an injunction against another co-owner who is in possession of the joint holding where the acts of the co-owner in possession are detrimental to the



interests of the other co-owners. In the peculiar facts and circumstances of the present case, the respondents–plaintiffs had initiated partition proceedings with respect to the joint holding. The appellants–defendants, however, obtained an injunction against the said partition proceedings and thereby prevented the partition of the suit land. Thereafter, having secured such interim protection, the appellants–defendants proceeded to raise construction over the portion allegedly in their exclusive possession.

13. It is the specific case of the respondents–plaintiffs that such construction would be detrimental to their interests in the eventual partition proceedings, as the appellants–defendants may subsequently assert that the more valuable portion upon which construction has been raised ought to be allotted to them during partition. Both the Courts below, upon appreciating the conduct of the appellants–defendants in resisting the partition proceedings and simultaneously attempting to consolidate their possession by raising construction over the suit land, have recorded a concurrent finding that such acts of the co-owners in possession are indeed prejudicial to the interests of the other co-owners.

13.1. It is well settled that the grant of an injunction is a discretionary relief, to be exercised by the Court upon consideration of the facts and circumstances of each case. In the present matter, the material on record clearly demonstrates that such discretion has been exercised by both the Courts below in a reasoned and judicious manner. The findings so recorded cannot be said to be arbitrary or perverse so as to warrant interference in the exercise of the jurisdiction of this Court in a RSA.



Consequently, finding no merit in the present appeal, the same is hereby **dismissed.**

14. Consequent upon the final adjudication of the principal matter, all pending miscellaneous applications, if any, arising out of or connected with the present proceedings, shall stand disposed of by necessary implication. In view of the conclusions recorded here-in-above, no separate orders are required to be passed in respect of such applications, as their adjudication has become wholly infructuous and academic.

**18:03:2026**  
Gaurav Sorot

**( VIRINDER AGGARWAL )**  
**JUDGE**

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No