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(26) Resultantly, we confirm the death sentence and dismiss the appeal.

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S.C.K.

*Before M.L. Singhal, J*

MUKHTIAR SINGH,—Appellant

*versus*

TARA SINGH AND OTHERS,—Respondents

R.S.A. No. 2047 of 1999

25th July, 2000

*Code of Civil Procedure, 1908—Joint property—Exclusive possession of the co-owners—Whether a co-owner can raise construction on the portion of his own share without getting the property partitioned—Held, yes—However, such construction will be subject to partition and liable to be removed if required on partition without any demur.*

*Held*, that a co-owner in exclusive possession of the property can raise construction and enjoy the property and if he raises any construction thereon and the raising of construction does not amount to ouster and further that construction will be subject to partition and if on partition any portion of the property on which he has raised construction falls to the share of other co-sharer, he will remove that construction without any demur.

(Para 11)

S. L. Chandershekhar, Advocate, *for the appellant.*

A.K. Kalsi, Advocate, *for the respondent.*

### JUDGMENT

*M.L. Singhal, J*

(1) Harbans Singh and Mukhtiar Singh filed suit for permanent injunction against Tara Singh and others restraining the latter from making any sort of construction over joint property bearing khewat khatauni No. 247/293 Khasra No. 250 shown in red in the plan attached to the plaint situated in village Buzurg, tehsil Jagraon as per jamabandi for the year 1990-91 without getting it partitioned. It was alleged in the plaint that they are co-sharers in the suit property bearing khasra No. 250 measuring 14 Marlas *ibid*. Tara Singh and others defendants No. 1 to 4 are co-sharers in the suit property and are in

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possession as co-sharers. So far the suit property has not been partitioned and the defendants are taking steps to raise construction on the suit property without getting it partitioned.

(2) Defendants contested the suit of the plaintiffs. It was urged that Mukhtiar Singh plaintiff No. 2 had adjoining his property abutting the suit property on the northern side. He sold that property along with share in the suit property to the sons of Sodagar Singh a few years ago. After purchase the sons of Sodagar Singh merged the share of Mukhtiar Singh in the suit property by raising a boundary wall. In this manner, Saudagar Singh's sons are in possession of the share of suit property. Harbans Singh plaintiff No. 1 exchanged his share in the suit property with the defendants. It was an oral exchange followed by delivery of possession about 15 years ago. In that exchange, Harbans Singh delivered his share in the suit property into the possession of the defendants. Defendants in turn gave their share in khasra No. 14R/26 to the plaintiff. Harbans Singh too had thus no share in the suit property and the defendants have become owners in possession of his share in the suit property. Defendants have been in possession of the suit property not as co-sharer but in their own right for the last about 50 years. The other property of the defendants abuts the suit property on western and southern sides. There are spouts of the houses of the defendants through which the water of the houses of the defendants finds outlet through the suit property. Suit property is enclosed by walls. Defendants tether their cattle and also keep their fodder. They are in adverse possession. Their possession is uninterrupted, hostile, open and continuous for the last more than 12 years. Plaintiffs are no longer co-sharers.

(3) On the pleadings of the parties, the following issues were framed :—

1. Whether the plaintiffs are entitled to permanent injunction prayed for ? OPP
2. Whether the plaintiffs are estopped by their acts and conduct from filing the present suit ? OPD
3. Whether the suit is not maintainable in the present form ? OPD
4. Whether the site plan filed by the plaintiff is wrong, if so, its effect ? OPD
5. Whether the suit of the plaintiffs is barred by time ? OPD

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6. Whether the plaintiffs have no *locus-standi* to file the present suit? OPD

7. Relief.

(4) Plaintiffs suit was decreed by Civil Judge, Junior Division, Jagraon,—*vide* order dated 19th February, 1997 for permanent injunction restraining the defendants from raising any construction over the joint property bearing khewat khatauni No. 247/293 khasra No. 250 as detailed in the heading of the plaint without getting the same partitioned, in view of his findings, that the property is joint, in which the plaintiffs and defendants No. 1 to 4 are co-sharers and as such without partition, the defendants cannot raise any construction. It was found that Mukhtiar Singh plaintiff has not sold his share in the suit property and he was lying shown in jamabandi for the year 1991-92 as co-sharer to the extent of 1/6 share in the suit property comprising khasra No. 250. It was found that no exchange had taken place between Harbans Singh and the defendants. Plaintiffs suit was found within limitation. Defendants plea as to adverse possession was negated and the suit was found to be within time.

(5) Not satisfied with the judgment and decree dated 19th February, 1997 of Civil Judge, Junior Division, Jagraon, defendants went in appeal, which was allowed by Additional District Judge, Ludhiana,—*vide* order dated 4th May, 1999. It was found that property was joint but the defendants were in exclusive possession and as they were in exclusive possession, they had a right to use the property. They had right to raise construction on the property to the extent to which their share extends. Construction raised by them will, however, be subject to adjustment at partition and the construction raised by them will be liable to be removed at their expense in case that portion of the property falls to the share of some other co-sharers. Defendants being co-sharers were allowed to raise construction on the property in their exclusive possession to the extent of their share.

(6) Not satisfied with the judgment and decree of Additional District Judge, Ludhiana dated 4th May, 1999, plaintiff Mukhtiar Singh has come up in this Regular Second Appeal to this Court.

(7) I have heard both the sides and have gone through the record.

(8) In this appeal, the short question that arises is “whether a co-sharer can raise construction on that portion of the property, which is in his exclusive possession but within the limits of his own share without getting the joint property partitioned.” In this case, defendants have been found to be in exclusive possession of some portion of khasra

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No. 250, which is joint property of the plaintiffs and defendants Tara Singh, Kartar Singh, Surjan Singh and Chand Singh.

(9) Learned counsel for the appellants-plaintiffs submitted that defendants-respondents should not be allowed to raise construction as the property is joint between the parties without getting the same partitioned. It was submitted that if they raise construction on the joint property without getting the same partitioned, complications will arise if on partition, the portion of the property on which they raise construction falls to the share of the plaintiffs. In my opinion, there can be no manner of doubt that if a co-sharer is in exclusive possession, he can use that portion, raise construction thereon without getting the joint property partitioned and the construction raised by him will be subject to adjust of the rights of other co-sharers at partition. In *Satish Chander Sethi v. M/s Chunilal Shyam Sunder* (1), it was held that a co-sharer has full right to enjoy the use and the fruit of the property under his exclusive possession to the extent of his share. However, this right is still subject to partition and a co-sharer is liable to remove the structure if required on partition. No allegation that the purchaser from one co-sharer has not become co-sharer or was in possession of excess of his share. Vendee of co-sharer steps into the shoes of original co-sharer. He can raise construction even before partition. Since every co-sharer has a right on every inch of land before partition, every one has a right to raise construction on the land in their exclusive possession." In *Sant Ram Nagina Ram v. Daya Ram Nagina Ram and others* (2), it was held that "where a co-owner is in possession of separate parcels under an arrangement consented to by the other co-owners, it is not open to any one to disturb the arrangement without the consent of others except by filing a suit for partition. The remedy of a co-owner not in possession, or not in possession of a share of the joint property, is by way of a suit for partition or for actual joint possession, but not for ejection. Same is the case where a co-owner sets up an exclusive title in himself. Possession of the 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. A mere occupation of a larger portion or even of an entire joint property does not necessarily amount to ouster as the possession of one is deemed to be on behalf of all, In *Jiwan Singh and others v. V.R. Kant and another* (3), the Court was considering as to whether a co-sharer in exclusive possession of the site has a right to raise construction upon the land held that raising of construction upon the disputed land could not be said to cause any injury as rights of other

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(1) 1996 (1) RRR 143

(2) AIR 1961 Punjab 528

(3) 1985 PLJ 193

co-sharers stand protected by making suitable adjustments at the time of partition. While taking this view, the Court relied upon *Sukh Dev v. Parsi and others* (4), and *Pishora Singh v. Smt. Lajo Bai etc.* (5). In *Bhartu v. Ram Sarup*, 1981 PLJ 204 the Full Bench laid down the same principles as to the rights and liabilities of the co-sharer *inter-se* as have been laid down in *Sant Ram Nagina Ram's case* (*supra*). In para 9 of *Satish Chander Sethi's case* (*supra*), it was observed as follows:-

“Each one of the three owners were in possession of separate portions and had been enjoying its profits though the property has not been partitioned yet. It is precisely for this reason that one of the owners has sold the property in his exclusive possession to the respondent by two sale deeds. Examined thus, any such person who comes in the foot-steps of a co-sharer has a right to enjoy the property which is in his possession till it is partitioned which will also include, to effect all necessary improvements, especially when the other party does not stand to lose in view of the specific undertaking given by the party.”

(10) In *Civil Revision No. 4549 of 1997 Bachan Singh v. Swaran Singh*, the Division Bench was also confronted with this proposition “whether a co-owner of the property is entitled to seek an injunction against the other co-owner, who has been in exclusive possession of the entire or part of the property restraining him making any construction in that part of the property.” It was held that “in the case of common property, the joint tenants and tenants in common, all of them are entitled to the said property and are entitled to enjoy the same. If one of them alone holds or occupies the entire this property or part of it, his possession cannot be said unlawful. His physical possession is that of a owner of his own interest and also that of an agent as to the other co-owners. Possession of one of the co-sharers is the possession of all of them. At the same time, it cannot be said that the person, who has been in possession of the property is holding the property not only for himself but also in favour of other co-sharers. A co-sharer who is in possession of the property is also entitled to the enjoyment of the same. The possession of one of them is possession of all in the eye of law unless the person who has been in exclusive possession asserts his title, in himself to the exclusion of the other co-sharers which may amount to ouster. The Court interposes to restrain the party in possession in the case of coparceners, joint tenants and tenants-in-

(4) AIR 1940 Lahore 473

(5) 1974 CLJ 626

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common, unless the act of co-sharer in possession amounts to destruction, waste or spoilation or unless the wrong doer is insolvent or incapable of paying to the other the excess of the value beyond his own share. If one tenant-in-common is doing merely what any other co-owner might do, the other cannot have an injunction merely on the ground that he does not choose to do so, since each tenant-in-common has a right to enjoy as he pleases. Therefore, a joint owner cannot prevent by injunction the carrying out of the necessary work by another co-owner in property held in common. But if the act amounts to destruction, the Court will interfere since the destruction of the thing itself is (or amounts to) an ouster." It was held that "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. Mere making of construction or improvement of, in, the common property does not amount to ouster. 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. 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) On survey of these authorities, it emerges quite clearly that a co-owner in exclusive possession of the property can raise construction and enjoy the property and if he raises any construction thereon and the raising of construction does not amount to ouster and further that construction will be subject to partition and if on partition any portion of the property on which he has raised construction falls to the share of other co-sharer, he will remove that construction without any demur. Faced with this position, learned counsel for the appellants submitted that the appellants Harbans Singh and Mukhtiar Singh and Tara Singh etc. defendants are co-sharers. If Tara Singh etc. raise construction that will be negating the principle that every co-sharer is co-sharer in every inch of the joint land and if a co-sharer is in exclusive possession, he shall be deemed to be in possession on behalf of the other co-sharers. In *Sant Ram Nagina Ram's* case (supra), it was clearly laid down that inspite of protests by one co-owner, if another co-owner raises building not exceeding his own share thereon, the aggrieved co-owner cannot obtain a decree for demolition of that building without proving special damage or substantial injury to him unless the other co-owner who has raised the building has done so by asserting an excluding title in himself and by denying that of the other co-owners."

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(12) In this case, the joint property measures 14 Marlas in which the share of the appellant is insignificant. It is owned jointly by numerous persons. It is not disputed that Tara Singh etc. are in exclusive possession and they have enclosed it.

(13) In my opinion, the learned First Appellate Court had refused injunction to Harbans Singh and Mukhtiar Singh plaintiffs on well defined judicial principles governing the domain of grant of injunctive relief.

(14) For the reasons given above, this appeal fails and is dismissed.

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**S.C.K.**

*Before T.H.B. Chalapathi, J.*

AMRIK SINGH,—*Petitioner*

*versus*

STATE OF PUNJAB AND OTHERS,—*Respondents*

*Criminal Misc. No. 21873/M of 1999*

The 29th July, 1999

*Code of Criminal Procedure, 1973—Ss. 50 and 57—Constitution of India, 1950—Arts. 21 and 22—Right to liberty—Harassment and illegal detention by the police—Art. 22 provides that no person shall be detained in custody beyond 24 hours without authority of the Magistrate—S. 57 of the Code mandates the police to produce the person before the Magistrate within 24 hours—Violation of the provisions of law—Directions issued to the authorities of the States of Punjab, Haryana and U.T. Chandigarh so as to prevent the violation of the rights of the citizens.*

*Held*, that the right to liberty is the most crystalised right. Article 21 of the Constitution guarantees the protection of life and personal liberty. No person can be deprived of his personal liberty except according to procedure established by law. Article 22 protects the right of the persons arrested or detained to be produced before the nearest Magistrate within a period of 24 hours from such arrest excluding the time that is required for the Police to report the arrest of the person. It also provides that no person shall be detained in custody beyond 24 hours without authority of the Magistrate. Thus the constitutional guarantee has been provided to the citizens of India that they should not be kept in detention by the Police for more than 24 hours. Even the procedural law mandates the police to produce the person arrested or