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

**RSA-5863-2015 (O&M)**

Date of decision : 29.07.2025

Harpal Singh & ors.

..... Appellants

Versus

Dhan Singh (deceased) thr. LRs. & ors.

..... Respondents

**CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN**

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Present :- Mr. Kulbhusan Sharma, Advocate  
for the appellants.

Mr. Ajay Jain, Advocate  
for the respondents.

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**PANKAJ JAIN, J. (ORAL)**

1 Defendants are in second appeal.

2 Plaintiff filed suit for possession by way of partition with the further relief of grant of decree of permanent injunction. The suit stands decreed by passing the preliminary decree by both the Courts below.

3 The counsel for the appellants has assailed the findings recorded by the Courts below raising two fold plea. He submits that it is a case of partial partition and thus the suit ought not have been decreed. Total land of joint holding in the khewat owned and possessed by the parties is 3 kanal 16 marlas. The present suit has been filed only with respect to 3 kanal



3 Marlas. 13 marlas of land has been left out. Further contention is that land measuring 3 kanal 3 marlas the subject matter of the present *lis* is impartible and cannot be partitioned.

4 *Per contra*, Mr. Jain, Advocate has referred to jamabandi for the year 2002-2003 to submit that even though the total joint holding is 3 kanal 16 marlas, however, 13 marlas thereof, is *chahi* land whereas the rest of the land is *gair-mumkin*. He submits that the agricultural land which is cultivable has to be partitioned by the revenue authorities. The present suit has been filed only with respect to *gair-mumkin* land. He further submits that at this stage wherein only preliminary decree has been passed by the Courts below, the issue with respect to the land being impartible is premature.

5 Mr. Sharma, Advocate relies upon judgments passed in ***Mohan Lal Vs. Purshotam Kumar and others 2017 (3) RCR (Civil) 467, Raghu Nath & ors. Vs. Commissioner, Rohtak Division, Rohtak & ors.***, passed in CWP No.18977 of 2009 decided on 14.02.2013

6 I have heard learned counsel for the parties and have gone through the records of the case.

7 In order to appreciate the contentions raised by the counsels representing rival parties it will be apt to peruse the jamabandi for the year 2002-2003 Ex.P1 which describes the land as under :-



क्र. सं. विवरण के अंतर्गत खसरा सं. सं.	खसरा सं. सं. के अंतर्गत खसरा सं. सं.	खसरा सं. सं. के अंतर्गत खसरा सं. सं.	खसरा सं. सं. के अंतर्गत खसरा सं. सं.
	134 1/2	0-13	चिह्न
	297	0-14	चिह्न चिह्न
	298	0-13	चिह्न चिह्न
	309	1-8	चिह्न चिह्न
	796	0-8	चिह्न चिह्न
	5	3-16	चिह्न चिह्न चिह्न 3-3

8 Bare perusal thereof, would reveal that the land comprises of 5 different khasra numbers which includes Khasra No.134 ½. The said land has been shown to be *chahi* land i.e. cultivable. The rest of the land comprised in khasra Nos. 297, 298, 309, 796 admeasruing 3 kanal 3 marlas has been shown to be *gair-mumkin* plots.

9 The rule requiring inclusion of the entire joint estate in a suit for partition is not a rigid and inelastic rule. Though it is desirable to include all the joint properties and implead all the interested co-sharers but the rule is not without exception. Reference can be made to following observations made by Supreme Court in *Mst. Hateshar Kuer & ors., Vs. Sakaldeo Singh & ors., 1969 (2) SCWR 414* observing as under :-

*“The rule requiring inclusion of the entire joint estate in a suit for partition is not a rigid and inelastic rule which can admit of no exception. This rule aims at preventing multiplicity of legal proceedings which must result if separate suit were to be instituted*



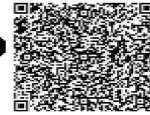
*in respect of fragments of joint estates. Normally speaking, it is more convenient to institute one suit for partition of all the joint properties and implead all the interested co-sharers so that all questions relating to the share of the various co-owners and the equitable distribution and adjustment of accounts can be finally determined. But this being a rule dictated by consideration of practical convenience and equity may justifiably be ignored when, in a given case there are cogent grounds for departing from it.”*

10           The issue regarding partition of joint properties of two different kinds and the plea of partial partition was addressed by this Court in ***Sucha Singh & ors. Vs. Balbir Singh, 1964 PLJ 160*** observing as under :-

*“3. So far as the first contention is concerned, namely that no suit for partial partition lies, it has no merit. Land which is part of an estate cannot be partitioned by a civil Court vide Section 158(2) of the Land Revenue Act. The mere fact that part of the property of joint owners is not agricultural property and with regard to it relief is necessarily to be obtained in civil Courts will not lay open the plea of partial partition to the defendants. The joint properties are of two kinds and, therefore, their division has to be in two forums i.e. with regard to non-agricultural property the division has to be made by the civil Courts and with regard to agricultural property the division has to be made by the revenue Courts. In this view of the matter there is no merit in the first contention either.”*

11           The same was followed in ***Rattan Vs. Ram Saroop, 1989 PLJ 7*** observing as under :-

*“4. It has been urged on behalf of the appellants by their learned counsel that in terms of sections 110 to `126 of Chapter IX of the Punjab Land Revenue Act, 1987, agricultural land could be partitioned by revenue officer alone. The claim for its possession by partition could not, therefore be filed in the Civil Court. Special*



*statute dealing with the agricultural lands would exclude the jurisdiction of the civil court in this behalf. Clause (xvii) of subsection (2) of section 158 of the Punjab Land Revenue Act, 1887 read :*

*"158. Except as otherwise provided by this Act,*

*(1) xx xx xx xx*

*(2) a Civil Court shall not exercise jurisdiction over any of the following matters, namely : (xvii) any claim of repartition of an estate, holding or tenancy, or any question concerned with, or arising out of proceedings for partition, not being a question as to title in any of the property of which partition is sought."*

*5. Since the claim for partition of agricultural land could not be included in the civil suit filed by plaintiff-appellant for possession by partition of Ghair Mumkin Bara and Ghaeir aforesaid, learned lower Appellate Court obviously erred in dismissing the suit for reasons of its being for partial portion. Assailed judgment and decree dated September 8, 1982, of the learned lower Appellate Court are, therefore, set aside and that of the learned trial Court dated November 19, 1979 are restored."*

12            Thus evidently as a practice the 'estate' within the meaning of 1887 Act been subject matter of partition proceedings before Revenue Authorities and 'gair mumkin' i.e. incultivable lands are being partitioned by decree passed by Civil Courts. In view of above, this Court finds that the plea raised by Mr. Sharma, Advocate regarding the suit being bad for partial partition cannot be accepted. Reliance placed upon ratio of law laid down in the case of **Mohan Lal (supra)** is misplaced. In the said judgment, finding was returned by the Court that the parties cannot segregate the partition proceedings with regard to *banjar zameen* and *gair-mumkin* i.e. both



incultivable lands. Herein the lands forming *gair-mumkin* and the cultivable land described as *chahi* land are different parcels of land. Keeping in view that the revenue authorities have the jurisdiction to partition the cultivable land, the suit cannot be said to be bad for partial partition.

13 The issue with respect to joint holding being impartible is yet to be decided by the Courts below. Preliminary decree is merely declaration of the rights of the parties. The separation of the shares is relatable to passing of the final decree. Once the Court before passing of the final decree calls for report from the Local Commissioner, it will be within the domain of the Court to return finding with respect to the land being partible or not.

14 In view of above, finding no merits in the present appeal, the same is ordered to be dismissed.

15 Pending miscellaneous application, if any, also stands disposed off.

29.07.2025

*Pooja Sharma-I*

( PANKAJ JAIN )  
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No