



RSA-4257-2017 (O&M) -1-

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

241

RSA-4257-2017 (O&M)

**Judgment Reserved on 11.08.2025
Judgement Pronounced on 22.08.2025**

KAPOOR SINGH AND OTHERS**... APPELLANTS****VERSUS****ATTAR SINGH AND OTHERS****...RESPONDENTS****CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL**

Present: Mr. Sandeep Singal, Advocate
for the appellants.

PARMOD GOYAL, J. (ORAL)

Aggrieved by the impugned judgment and decree dated 08.01.2016 passed by the Court of Civil Judge (Junior Division), Rohtak and judgment and decree dated 17.12.2016 passed by the Additional District Judge, Rohtak, defendants-appellants have approached this Court by way of Regular Second Appeal. Vide impugned judgments and decrees dated 08.01.2016 and 17.12.2016 suit of plaintiffs for possession by partition and for permanent injunction was decreed and appeal preferred by defendants-appellants was dismissed with cost.

2. Plaintiffs-respondents had claimed that land comprised in Khewat No. 177 min/170, Khatoni No. 201 min, Khasra no. 1896 min, measuring 10 Biswa Pukhta and Khatoni No. 202 min and Khasra No. 1896 min, measuring 10 Biswa Pukhta total measuring 1 Bigha Pukhta i.e. 3025 sq yards situated within Firmi outside Lal Dora of village Ghillore Kalan Tehsil and District Rohtak bounded by East: Plot of Shri Jagbir S/o Shri Ramdiya: 20 gatha i.e. 165 feet. West: Street 8'-3" wide: 20 gatha i.e. 165 feet. North: Plot of Ude Singh and Karan



RSA-4257-2017 (O&M) -2-

Singh: 20 gatha i.e. 165 feet: and North: 33' wide Road: 20 gathba i.e. 165 feet.

3. Plaintiffs had claimed that they had 1/6th share in the suit property whereas defendant Nos. 5 and 6 have 1/6th share in equal share i.e. 1/12 share each and defendant Nos. 1 to 4 had 1½ share i.e. 1/8th share each in his suit property.

4. Reliance was placed on jamabandi as well as mutation No. 2318 dated 15.02.2011 and mutation No. 2203 dated 15.10.2008 and mutation No.214 dated 16.10.2006. It is asserted that suit property used to be agriculture property but now is surrounded by houses, residential plots and falls within abadi of village. That suit land was ancestral property which they have inherited from their forefathers. That suit property is enclosed by four walls and was being jointly used by family members of plaintiffs and defendants for their domestic purpose i.e. collecting manure and for collecting fuel, etc. The defendants without getting the suit property partitioned are threatening to raise construction over front southern side portion of the suit property adjoining 33 feet wide Road which is more valuable than the rear portion of suit property which falls on 8'-3" wide street as shown in site plan and thereby depriving plaintiffs of their valuable rights. Despite request of plaintiffs that they be given 1/3rd share in suit property as per map by giving excess to 33 feet road equally to all parties, defendants have failed to partition suit property. On failure of defendants suit was preferred by plaintiffs.

5. Defendants on their appearance took number of preliminary objections as regards to *locus standi*, cause of action, jurisdiction, estoppel etc. and on merits claimed that Khasra No. 1896 stood partitioned between the ancestors of parties in 1951 and is no more joint. Claim of plaintiff that suit property fell in abadi was also denied. It was claimed that suit property is described as agriculture property in revenue records and Civil Courts have no jurisdiction to affect partition.



6. Following issues were framed:

- “1. *Whether the plaintiffs are entitled to decree for possession by partition on the grounds as averred in the plaint? OPP.*
2. *If issue no.1 is decided in favour of plaintiffs, whether the plaintiffs are further entitled to decree for permanent injunction on the grounds as prayed for? OPP*
3. *Whether the plaintiffs have no locus standi and cause of action to file the present suit? OPD*
4. *Whether the plaintiffs are estopped by their own act and conduct in filing the suit? OPD*
5. *Whether the jurisdiction of court to entertain and adjudicate the present suit? OPD*
6. *Relief.”*

7. Learned Trial Court after considering respective contention raised by parties decided issue Nos. 1 and 2 in favour of plaintiffs and against the defendants. Issue Nos. 3, 4 and 5 were decided against the defendants. Decree of partition of suit property was passed in favour of plaintiffs. Appeal preferred by defendant Nos. 1 to 4 was also dismissed.

8. Ownership over the suit property is not in dispute. On the one hand, claim of plaintiffs-respondents is that the suit property is joint and defendant Nos. 1 to 4 are trying to take possession of valuable part of suit property without any partition by metes and bounds. On the other hand, it is the claim of defendants that the suit property stood partitioned by ancestors of parties in 1951. It was asserted that northern portion measuring 10 Biswa came to ancestors of plaintiffs and defendant Nos. 5 and 6 whereas southern portion measuring 10 Biswa came to the share of ancestor of defendant Nos. 1 to 4. It is asserted that portions of both the parties divided by a pucca wall and both the parties have made respective improvements in their respective parts and using the property exclusively to the



extent of their share. Appellants-defendants have further taken objection as regards to maintainability on the ground that suit land is agriculture property and cannot be partitioned by Civil Courts in view of Section 158(2) of Punjab Land Revenue Act, 1887. They have also claimed that suit is not maintainable as suit land stands partitioned. On the other hand, it is a case of plaintiffs that suit land is not partitioned and since suit land is not being used for the agriculture purpose, therefore, Civil Court has jurisdiction.

9. Facts in the present case are not much in dispute. The respective shares as claimed by plaintiffs and defendants in suit property is not disputed. Similarly, fact that suit property was inherited by plaintiffs and defendants from their fore-fathers is also not in dispute. Both the parties admits that they are co-sharers. Revenue records i.e. Jamabandies Ex. P1 and copy of Asmai Malkhan of Khewat No. 177 for the year 2004-05 Ex. P2 in fact goes to show that both the parties are depicted as co-owners/co-sharers in suit property. Plaintiffs have claimed that suit property was never partitioned and the suit property is being shown in revenue record as joint property. On the other hand, defendants had claimed that suit property was partitioned in 1951.

10. Onus to prove partition was rightly held by Courts below upon defendants. In view of pleadings of parties, it was on defendants to show that suit property was partitioned as claimed by them in 1951 between their ancestors.

11. As far as first objection raised on behalf of appellants is concerned that Civil Courts have no jurisdiction over the subject matter is concerned, the same is without any merit.

12. Admittedly, from the evidence led by both the parties, it is clearly proved that property is not being used for agriculture purposes, it is surrounded by other residential properties. It has also come on record that four walls have



constructed by both the parties and both the parties are in possession of specific portions of suit properties which are duly depicted in revenue record as suit property is having two khataunies, one in possession of defendants-appellants to the extent of their share i.e. half share and remaining in possession of plaintiffs-respondents to the extent of remaining half portion along with defendant Nos. 5 and 6. It is also admitted fact that a common separate wall exists between properties of both the parties. Both the parties have also made improvements over the suit property according to their needs.

13. In these circumstances, suit property has, therefore, lost its agriculture nature as the same is not being used for agriculture purposes. Learned Courts below have rightly relied upon judgments titled as ***Roop Chand and others Vs. Smt. Murti and others, 2013 (3), RCR Civil 94*** and '***Jai Singh Vs. Smt. Banti' 2002 (3) RCR Civil 435***, to conclude jurisdiction over subject matter.

14. The findings of learned Courts below i.e. suit property was not being used for agriculture properties and was being used as Abadi land is based upon the evidence on record and cannot be faulted and accordingly, it is held that Civil Courts have got jurisdiction over the suit property.

15. The only question left and which requires adjudication is whether suit property stood partitioned as claimed by defendant Nos. 1 to 4-appellants, it is worth noticing that Ex. P5 jamabandi depicts the suit land in two khataunies i.e. Khatauni No. 201 and Khatauni No. 202.

16. Learned counsel for the appellants by referring to Ex. P5 asserted that separate khataunies indicate that suit property between the parties have already been partitioned as both the parties are in possession of separate Khataunies. Cross examination of PW1 goes to show that PW1 had admitted that a common wall through the disputed property exists and same was constructed by plaintiffs and



defendants. PW1 in his cross examination also admitted that both the parties have made improvements in their respective portion shown in separate Khataunies. It is the argument of learned counsel for the appellants that suit land is depicted by two separate khataunies, one showing possession of defendants-appellants exclusively and another showing exclusive possession of plaintiffs and defendant Nos. 5 and 6, and this goes to prove that suit land stood partitioned between the parties and thereafter they have also raised common wall over the suit property separating their properties from each other and had made improvements in their respective shares. It is the case of appellants that separate possession, as per share over the suit property duly recorded in the revenue record clearly proves their plea of oral partition between the parties and learned Courts below had erred in ignoring separate possession in accordance with share and respective improvements made by the parties.

17. I find merit in the contentions raised on behalf of appellants. Once defendants have succeeded in proving that both the parties i.e. plaintiffs and defendants are in possession of separate areas as per their share and they have already raised boundary walls constructed common boundary walls between their properties and having made improvements on respective properties, this goes to corroborate claim of defendants-appellants regarding partition having been affected by their ancestors. The claim of defendants-appellants further finds support from fact that separate possession stands duly recorded by way of separate khataunies in possession of each set of parties. The khataunies have never been challenged by plaintiffs-respondents which goes to show that parties had agreed to have separate possession as per this share from each other which duly corroborates claim of defendants-appellants regarding family partition. Oral partition between the parties is fully admissible in evidence and has to be found



RSA-4257-2017 (O&M) -7-

out by the Courts by the conduct as well as specific possession of parties over the disputed property. In the present case, both the parties are in specific portion of suit property as per their shares. Their separate possession stands duly recorded in revenue record. The settled possession, therefore, cannot be disturbed easily which has been arrived by the parties by mutual consent and had never been challenged.

18. From the evidence placed on record, it is clearly made out that both the Courts below have misread the evidence and have wrongly concluded that no partition had taken place between the parties.

19. In view of above discussion, it is held that defendants-appellants have succeeded in proving oral partition of suit land and in pursuance of said oral partition, both the parties are already in possession of specific areas as per their share over the suit property raised common wall and have made improvements in their respective areas. Therefore, findings of both the Courts below need to be set-aside, it is held that plaintiffs have failed to prove issue Nos. 1 and 2 in their favour and accordingly finding of learned Courts below on issue Nos. 1 and 2 is set-aside and both the issues have been decided against the plaintiffs. Accordingly, suit of plaintiffs is liable to be dismissed. Appeal deserves acceptance. Appeal is accordingly allowed. Impugned judgments and decrees dated 08.01.2016 and 17.12.2016 passed by Courts below are set-aside. Parties to bear their own costs.

20. Pending miscellaneous application(s), if any, shall also stand disposed of.

22.08.2025
manoj

(PARMOD GOYAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No