

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****232****RSA-6197-2015(O&M)****Date of decision: 04.09.2025****Gobind Lal****...Appellant(s)****Vs.****Mohan Lal & Others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Vijay Singh Kajla, Advocate
for the appellant.

Mr. Nitin Jain, Advocate
for respondent No.1.

Mr. Yagsimant Attri, Advocate
for respondent No.2.

NIDHI GUPTA, J.

Present appeal has been filed by defendant No.1 against the concurrent judgments and decrees of the learned Courts below whereby the suit filed by the plaintiff/respondent No.1 herein for separate possession by way of partition of ½ share Kothi Nos. 7, 8, and 9, has been decreed by both the Courts below.

2. The only argument raised on behalf of learned counsel for the appellant in laying challenge to the concurrent judgments and decrees of the learned Courts below is that by way of the impugned judgments and decrees, the learned Courts below have only partially partitioned the subject



properties, which is not permitted as per law. It is submitted that 4 properties being Kothi Nos.7, 8, 9 and 17 were included in the Compromise Decree dated 03.01.1984; whereas by way of the present decree for partition, only 3 properties being Kothi Nos.7, 8 and 9 have been partitioned. It is submitted that it has been proved that the properties bearing No.7, 8, 9 and 17 are the joint properties of the parties. Neither of the parties are in exclusive possession of any portion of the suit property; and thus, it was incumbent upon the learned Courts below to partition the above-said 4 properties bearing No.7, 8, 9 and 17. It is contended that Kothi No.17 could not have been excluded while passing the impugned decree, as partial partition is not permitted as per law.

3. Per contra, learned counsel for the plaintiff/respondent No.1 herein opposes the submissions made on behalf of the appellant and submits that it has been concurrently found by both the Courts below that Kothi No.17 already stood transferred vide Gift Deed dated 12.03.1998 (Ex.P3). Therefore, the same could not form subject matter of present partition proceedings. It is accordingly prayed that the present appeal be dismissed.

4. Learned counsel for respondent-defendant No.2/cross-objector in the present appeal submits that the cross-objections (being Cross Objections/Appeal No.6-C-2016) have been filed as the cross-objections of the defendant No.2 were dismissed by the learned lower Appellate Court because of unexplained delay of 11 months. It is submitted that the said



delay could not have been held to be fatal to the case of the cross-appellant as the main Civil Appeal filed by the defendant No.1 was already pending consideration and had to be decided on merits. It is further submitted by learned counsel for defendant No.2 that the specific objection had been taken by the defendant in the written statement that the suit land was ancestral; and therefore, the Gift Deed without sale consideration could not have been executed.

5. However, on a Court query, it is admitted by learned counsel for the appellant as well as cross-appellant that the Gift Deed dated 12.03.1998 (Ex.P3) was never challenged by the defendants.

6. No other argument is made on behalf of the parties.

7. I have heard learned counsel and perused the case file in great detail. I find no merit in the submissions made on behalf of the appellant as well as defendant No.2/cross-objector.

8. Brief facts of the case are that father of the plaintiff- Budhu Ram and Grandfather of defendants was owner of the suit properties. He executed a Will dated 07.02.1962 in favour of the present plaintiff and mother - Parmeshwari Bai, excluding Hari Krishan/father of the defendants/appellant. Hari Krishan father of the defendants/appellants filed suit in the year 1984 against Parmeshwari Bai and Mohan Lal (plaintiff) alleging that the said Will by Sh. Budhu Ram was illegal, null and void. The said suit was compromised between the parties; and per the said



compromise Smt. Parmeshwari Bai was held to remain as owner during her lifetime. Parmeshwari Bai died on 08.10.1997 and the property devolved upon her sons - Mohan Lal and Hari Krishan, in equal share. Both the brothers are having half share in the joint property comprising of 03 Kothis i.e. 7, 8 and 9 and five shops in Kothi No.17. Mohan Lal sought partition of all the said joint properties, except Kothi No. 17 which already stood transferred, and therefore, he ceased to be its owner.

9. The only opposition of the defendants against the partition was that the suit is bad for 'partial partition' as partition of Kothi No. 17 is not being sought. The only argument of learned counsel for the appellant and defendant No.2 before this Court is that partial partition could not have been affected by the impugned judgments and decrees as the same is impermissible by law. There can be no issue with regard to the said principle of law. However, both, the learned Trial Court (in para No. 12) and learned Lower Appellate Court (in para No. 15), of their respective judgments have categorically held that as said Kothi No. 17 already stood transferred, there was no question of seeking its partition when Mohan Lal (plaintiff) ceased to be its owner. Thus, in the present case, no partial partition has taken place in view of the admitted fact that the disputed Kothi No.17 already stood transferred vide Gift Deed dated 12.03.1998 (Ex.P3). It is also admitted that no challenge was made to the said Transfer/Gift Deed by the appellant and/or defendant No.2.



10. The Joint properties are liable to be partitioned. Seeking partition is a legitimate right of a co-sharer and the argument of partial partition is not available to the appellants in view of the concurrent findings referred to above. No one can seek partition of a property of which he is not the owner.

11. The observations of the learned lower Appellate Court in Para 15 of its judgment dated 17.10.2015 are relevant and same are reproduced as under:-

*“15. Though learned counsel for both sides made very lengthy arguments but issue for determination is merely with regard to nature of the property No.17 falling in Ward No.15 i.e. whether it was joint property of parties to suit or both parties have no concern therewith. During course of arguments, learned counsel for appellant as well as, counsel for respondent No.2 vehemently argued that in para No.3, plaintiff himself admitted Kothi No.17 to be joint property of Mohan Lal and sons of Hari Krishan. However, court cannot pick up a selected sentence or phrase. In later part of para No. 3 of the plaint, it has been clearly stated, **“the plaintiff has transferred his share in kothi No.17 and barrack No.15, Patel Nagar, Hisar including shop No.2 & 3 and half share in shop no.1 in favour of his two sons Vinod Kumar and Deepak Kumar vide registered gift deed dt.12.3.1998.”** Thus, I see no substance in the arguments of learned counsel for the appellant and counsel for respondent No.2 that property No.17 has been claimed by plaintiff in para No. 3 of the plaint, being joint property.”*



12. In view of the above, present appeal as well as Cross-Objections (Cross Objections/Appeal No.6-C of 2016) are **dismissed**.

13. Pending application(s) if any also stand(s) disposed of.

04.09.2025

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes