



(125)

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

RSA-2698-2025 (O&M)

Date of Decision:- 12.08.2025

Shashi Kant Doda

...Appellant(s)

Versus

Yashpal Doda and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present:- Mr. Viranjeet Singh Mahal, Advocate,
for the appellant.

* * * *

VIRINDER AGGARWAL, J. (ORAL)

1. Concurrent judgements and decrees passed by learned Civil Judge (Senior Division), Fazilka dated 03.05.2019 and learned Additional District Judge, Fazilka dated 29.03.2025 with regard to suit for partition and separate possession of suit property having been decreed in favour of respondent No. 1-plaintiff (Yashpal Doda) have been assailed in the present appeal.

2. The relationship between the parties is that of brothers. The appellant-defendant No. 2 (Shashi Kant Doda) is claiming sole ownership of the suit property, whereas case of the respondent No. 1-plaintiff was that the suit property was once owned by their father and both brothers are joint owners of the property in dispute. The appellant-defendant No. 2 is in possession of the property as licensee. The respondent No. 1-plaintiff has revoked the license of appellant-defendant No. 2. So, use and occupation of the shop in dispute is illegal and unauthorized. The plaintiff is entitled to recover a sum of

Rs. 10,000/- per month as mesne profits and the plaintiff does not want to keep the property joint with the appellant-defendant No. 2.

3. Notice of the suit was served upon the defendants.
4. They contested the suit by denying the ownership of the plaintiff and alleged that the suit has been filed just by taking undue advantage of the name of the plaintiff appearing in the assessment register and that the appellant-defendant No. 2 is running the business of pesticides since 1986. The plaintiff has no concern with the suit property and that the appellant-defendant No. 2 is owner in possession of the shop in dispute.
5. From the pleadings, the following issues were framed:-
 1. Whether the plaintiff is entitled to partition and for separate possession as prayed for? OPP
 2. Whether the plaintiff is entitled to ejectment of defendant No. 2 from the shop in dispute? OPP
 3. Whether the plaintiff is entitled to recovery of Rs. 10,000/- as rent/mesne profits from defendant No. 2 for use and occupation of the disputed shop? OPP
 4. Whether the plaintiff is entitled to perpetual injunction against the defendants? OPP
 5. Whether the plaintiff has no cause of action or locus standi to file the present suit? OPD
 6. Whether the plaintiff has concealed the material and patent facts from the Court? OPD
 7. Whether the plaintiff is stopped from filing the present suit by his own act and conduct? OPD
 8. Relief.
6. Both the parties led evidence and the learned Civil Judge decreed the suit of the respondent No. 1-plaintiff as he is proved to be co-owner to the extent of 1/2 share in the suit property on the basis of judgement and decree dated 02.04.1981 copies of which are Exhibits PA and PB, but the relief for

mesne profits was declined. The appeal of the appellant-defendant No. 2 was dismissed by the learned first Appellate Court.

7. Aggrieved by both the judgements and decrees, the present appeal has been filed.

8. Learned counsel for the appellant has assailed the judgements of both the Courts below on the ground that the respondent No. 1-plaintiff has already received amount equal to his share during the lifetime of father of the parties. So, he was not left with any interest in the suit property. Undue weightage was given to judgement and decree (Exhibits PA and PB), whereas the same was not referred in the pleadings and this fact has been wrongly ignored by both the Courts below. Furthermore, the judgement and decree was not got registered as per the provisions of the Registration Act, 1908. The description of the shop in dispute is not properly shown in site plan (Exhibit P1).

9. After going through the well reasoned judgements of both the Courts below, it is clear that there is valid judgement and decree copies of which are Exhibits PA and PB, whereby the respondent No. 1-plaintiff was held to be co-owner to the extent of 1/2 share in the suit property and that judgement and decree has never been challenged by the appellant-defendant No. 2.

10. As regards non-pleading of the judgement and decree dated 02.04.1981 is concerned, the learned Civil Judge has rightly concluded that only material facts are required to be pleaded and not the evidence. Plaintiff has taken a specific plea of his being co-owner to the extent of 1/2 share and the judgement and decree is relied upon by the respondent No. 1-plaintiff to prove his ownership.

11. As regards non-registration of the judgement and decree is concerned, since the appellant-defendant No. 2 has not challenged the validity of the judgement and decree anywhere and it is not proved on record that the judgement and decree has created any right, title or interest in immovable property of more than Rs. 100/- in favour of the respondent No. 1-plaintiff and the appellant-defendant No. 2 for the first time, so this question was not touched by both the Courts below and was not required in view of the non-challenge to the validity of the judgement and decree dated 02.04.1981 (Exhibits PA and PB).

12. As regards, mis-description of the property in Exhibit P1 is concerned, the learned Civil Judge has rightly concluded that the property is clearly identifiable from the Municipal number and there is no dispute with regard to identity of the property in dispute. So, no ground is made out to interfere in the well reasoned judgements and decrees of both the Courts below.

13. As such, finding no merit, the appeal is dismissed.

(VIRINDER AGGARWAL)
JUDGE

12.08.2025

Amodh Sharma

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