



RSA No.5318 of 2019 (O&M)

1

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

**RSA No.5318 of 2019 (O&M)
Date of Decision: 27.03.2025**

Sada Ram and others

...Appellants

Vs

Suresh Chand and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Randhir S.Hooda, Advocate
for the appellants.

VIKRAM AGGARWAL, J (ORAL)

This is defendants' second appeal against the judgment and decree dated 21.08.2019 passed by the Court of learned Additional District Judge, Nuh (Mewat), dismissing the appeal filed by the defendants against the judgment and decree dated 03.10.2018, passed by the Court of learned Civil Judge (Junior Division), Mewat, vide which the suit for partition and possession with consequential relief of permanent injunction filed by the plaintiffs-respondents was decreed.

2. For the sake of convenience and clarity, parties shall be referred to as per their original status.

3. The plaintiffs (Suresh Chand and Hawa Singh) filed a suit for partition, possession and permanent injunction qua land comprised in Khasra No.244, 245, 246 and 247 measuring 04 kanals 01 Marla to the extent of ½ share which came to 02 kanals (one kanal in each Khasra



RSA No.5318 of 2019 (O&M) -2-

number), situated in Village Hasanpur, Tehsil Tauru, District Nuh (hereinafter referred to as 'the suit property').

4. One Ram Lal was the original owner of the entire property measuring 04 kanals. He had four sons namely Suraj Mal, Ghasi Ram, Ganpat and Raja Ram. After the death of Ram Lal, all four sons inherited the suit property in equal shares i.e. 1/4th share each. After the death of Raja Ram, his widow Bharto and daughter Roshani sold their share to the plaintiffs. As a result of the same, the plaintiffs, who are the sons of Ganpat became owners of half share in the suit property whereas the defendants who are the legal representatives of Suraj Mal and Ghasi Ram became owners of 1/4th share each.

5. The case set up by the plaintiffs was that the land comprised in Khasra No.247 was more valuable as it was adjoining the road. Defendant No.1 (Sada Ram), in collusion with other defendants was intending to raise construction over the entire land comprised in Khasra No.247 despite the fact that the suit property was joint between the parties and it had not been partitioned by metes and bounds or by any other mode. It was averred that though, the ancestors of the parties had raised four boundary walls on the whole of the suit property and construction had also been raised, the defendants were adamant to occupy more than their share leading to the filing of the suit.

6. The defendants filed a joint written statement raising certain preliminary objections as regards maintainability, cause of action, locus standi, the plaintiffs having concealed true and material facts etc. It was



RSA No.5318 of 2019 (O&M) -3-

averred that the land had already been partitioned by way of a settlement between the forefathers of the parties and defendants No.1 to 3 had constructed their boundary walls and residential houses over Khasra No.247 (marked as ABJK) in the site plan. It was averred that the portion BDHJ shown in the site plan and comprised in Khasra No.246 had fallen to the share of the father of defendants No.4 to 7 namely Ghasi Ram. Thereafter defendant No.6 had constructed his residential house depicted as BCIJ in the site plan and defendant No.7 had constructed his residential house depicted as CDHI in the site plan. It was also averred that the plaintiffs were also in occupation of their own share depicted as DEFH in the site plan in Khasra Nos.244 and 245 wherein they had constructed their residential houses and had installed a tubewell. On merits also, a similar stand was taken and dismissal of the suit was prayed for.

7. From the pleadings of the parties, the trial Court framed the following issues:-

- 1. Whether the plaintiffs are entitled for preliminary decree of possession by way of partition as prayed for ? OPP**
- 2. Whether the plaintiffs are entitled for a decree of permanent injunction as prayed for ? OPP**
- 3. Whether the plaintiffs are entitled for decree of possession by directing the defendants to hand over the possession of the suit property in case defendants succeed in getting encroach upon the suit property ? OPP**
- 4. Whether the suit of the plaintiffs are maintainable or not ? OPD**
- 5. Relief.**

**RSA No.5318 of 2019 (O&M) -4-**

8. Parties led their respective evidence.

9. The trial Court decreed the suit filed by the plaintiffs and the appeal filed against the said decision was dismissed, leading to the filing of the present regular second appeal.

10. I have heard learned counsel for the appellants.

11. Learned counsel for the appellants submits that both the Courts have gravely erred in decreeing the suit filed by the plaintiffs. He submits that on account of an oral settlement having been arrived at between the parties long ago, parties were in possession of their respective shares and had even constructed their residential houses over the same. Learned counsel has referred to the judgments under challenge and submits that the same are not sustainable. Learned counsel has also referred to the oral evidence especially the statement of PW1 Suresh Chand and has tried to convince this Court that the factum of a settlement having been arrived at between the parties was duly admitted by PW1 Suresh Chand.

12. I have considered the submissions made by learned counsel for the appellants but find the same to be devoid of merit.

13. Both the Courts passed a preliminary decree for partition of the suit property and the defendants were also restrained from interfering in the peaceful possession of the plaintiffs or from raising any sort of construction over any portion of the suit property. They were further restrained from alienating the suit property. The plaintiffs, with a view to prove their case, placed on record jamabandi for the year 2012-13 (Ex.P1) which duly depicted that the suit property was jointly owned and possessed by the



RSA No.5318 of 2019 (O&M) -5-

parties. The shareholdings were duly mentioned in the said jamabandi. There is no reference in the revenue record about any mutual settlement/partition having taken place. All co-sharers would, therefore, be in joint possession of the suit property.

14. It is well settled that a co-owner has an interest in the whole property and possession of joint property by one co-owner is possession of all. Merely because one of the parties is in occupation of a particular or a larger portion or even the entire property would not necessarily amount to ouster of the other co-sharer. It is also equally well settled that every co-owner has a right to use the joint property in a husband like manner not inconsistent with similar rights of other co-owners. Reference in this regard can be made to the celebrated judgment of a Division Bench of this Court in the case of *Sant Ram Nagina Ram vs. Daya Ram Nagina Ram A.I.R. 1961 Punjab 528*. Though, there are numerous judgments on the said issue, reference to the aforesaid judgment would be sufficient for the purpose of the decision of the present appeal. I have gone through the oral evidence as well. There is not even a single line in the statement of PW1 Suresh Chand that any settlement had ever been arrived at or that under the said settlement, parties were in exclusive possession of their shares. On the contrary, he denied a suggestion to this effect which was duly put to him by learned counsel for the defendants. No doubt, he admitted that there were boundary walls and construction had been raised. However, keeping in view the settled law on the subject, as noticed above, merely because some construction had been raised or merely because parties were in possession



RSA No.5318 of 2019 (O&M) -6-

of specific portions would not mean that partition by metes and bounds was not required to be carried out.

In view of the aforementioned facts and circumstances, I do not find any illegality in the concurrent findings of facts and law recorded by the Courts. The appeal is, therefore, found to be devoid of merit and is accordingly dismissed.

Pending application(s) if any, stand(s) disposed of accordingly.

27.03.2025

mamta

**(VIKRAM AGGARWAL)
JUDGE**

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