



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

-.-

**RSA-3018-2012 (O&M)  
Reserved on:-25.08.2025  
Date of Decision : 01.09.2025**

Baldev Kaur alias Jangir Kaur and Others

....Appellants

VERSUS

Gurdev Singh alias Sukhdev Singh and Others

....Respondents

**CORAM : HON'BLE MS. JUSTICE MANDEEP PANNU**

Present: Mr. Ankush Singla, Advocate for the appellants.

Mr. I.S.Brar, Advocate for contesting respondent No.1.

-.-

**MANDEEP PANNU,J.**

1. The present Regular Second Appeal has been directed against the judgment and decree dated 28.08.2009 passed by the learned Additional District Judge, Faridkot, whereby the appeal filed by the plaintiff-respondent No.1 was allowed, the judgment and decree of the learned trial Court dated 17.03.2009 was set aside, and the suit of the plaintiff-respondent No.1 for partition to the extent of one-half share was decreed.

**Brief facts**

2. The facts in brief are that the plaintiff-Gurdev Singh instituted a suit for partition and separate possession of his one-half share in joint property measuring 46 kanals 16 marlas, being Gair Mumkin Abadi land situated in Patti Sada Thula Umra, Tehsil Jaitu, District Faridkot, as per Jamabandi for the year 1999-2000. The case of the plaintiff was that he was co-sharer to the extent of half share, while the remaining half belonged to Jang Singh. It was alleged that Jang Singh had sold more land than his recorded share to several vendees and that such



sales could not bind the plaintiff beyond Jang Singh's half share. The plaintiff sought separation of his half share by metes and bounds.

3. The suit was contested by defendants no. 2 and 41. They raised preliminary objections that the suit was not maintainable on account of non-joinder of necessary parties, as all transferees from Jang Singh and their legal representatives had not been impleaded. It was also pleaded that the suit was bad for partial partition, as the entire joint khata had not been brought into hotchpotch. On merits, the plaintiff's entitlement was denied and it was pleaded that Jang Singh had not sold more than his share.

4. On the pleadings of the parties, the trial Court framed the following issues:-

1. Whether the plaintiff is entitled to the separate possession by way of partition? OPP
2. Whether the defendant is entitled to counter claim for partition? OPD-2.
3. Whether the suit is not maintainable? OPD
4. Whether the suit is not valued properly for the purpose of court fee and jurisdiction? OPD
5. Whether the suit is bad on account of non-joinder of parties and partial partition? OPD
6. Relief.

5. Both the parties have led their respective evidence.

#### **Findings of the trial Court**

6. The learned trial Court, upon appreciation of evidence, held that although the plaintiff had proved his half share, he could not be granted a decree because necessary parties had not been impleaded. It was noticed that several



transferees had died and their heirs were not impleaded. The suit was therefore held not maintainable for non-joinder of necessary parties, though the objection of partial partition was rejected. Consequently, the suit was dismissed on 17.03.2009.

### **Findings of the Appellate Court**

7. On appeal, the learned Additional District Judge, Faridkot, reversed the finding of the trial Court. It was held that defendants no. 1 to 3, being the heirs of Jang Singh, adequately represented his estate and the interests of his transferees. Placing reliance upon *Jaskirat Datwani vs. Vidyawati, AIR 2002 SC 2180*, the lower appellate court held that the absence of individual transferees would not render the suit incompetent. Accordingly, the appeal was allowed and the suit was decreed to the extent of one-half share in favour of the plaintiff.

8. Feeling aggrieved, the present appeal has been filed by the appellants, namely, Baldev Kaur alias Jangir Kaur, Tarsem Singh and Harjinder Kaur.

9. Upon notice, contesting respondent No.1 appeared and contested the appeal.

### **Submissions on behalf of the appellants/LRs of defendant No.2**

10. Before this Court, learned counsel for the appellants has argued that the decree of the lower Appellate Court cannot be sustained. It is contended that in a suit for partition, all co-sharers are necessary parties, and the subsequent purchasers from Jang Singh, having stepped into his shoes, were co-sharers in the joint khata. Their legal representatives, in the event of their death, were also indispensable parties. It is submitted that without impleading such subsequent vendees, no executable decree could be passed. Reliance has been placed on *Prafulla Chorone Requite vs. Satya Chorone Requite, AIR 1979 SC 1682*, and *Ali Amad vs. Sindhi Ebrahim Kasam, AIR 1983 Gujarat 156*, to urge that the absence of necessary parties is fatal and the suit cannot be maintained.

**Submissions on behalf of contesting respondent No.1/plaintiff**

11. On the other hand, learned counsel for respondent No.1/plaintiff has argued that the presence of defendants No. 1 to 3, who are the heirs of Jang Singh, is sufficient representation of his estate and the decree passed would bind all transferees under them. Reliance is placed on *Razia Begum vs. Anwar Begum, AIR 1958 SC 886*, and *Jaskirat Datwani vs. Vidyawati (supra)*, to argue that non-impleadment of alienees is not necessarily fatal if their interest is represented. It is also urged that substantive rights cannot be defeated on technical pleas, as reiterated in *Life Insurance Corporation of India vs. Sanjeev Builders (P) Ltd., (2022) 10 SCC 401*.

**Findings of this Court**

12. Having considered the rival submissions, this Court is of the view that the trial Court was correct in dismissing the suit for non-joinder of necessary parties, and the lower Appellate Court erred in reversing that finding. It is not in dispute that the plaintiff is a co-sharer to the extent of one-half share in the joint khata. However, once Jang Singh had sold portions of his share to several transferees much prior to the filing of the present suit, such transferees became co-sharers in their own right. Upon their death, their heirs also stepped into their shoes. In a suit for partition, all co-sharers are necessary parties, because any decree of partition must bind every co-owner and allot separate possession accordingly. The non-impleadment of such subsequent purchasers and their heirs renders the suit defective.

13. The reliance placed by the respondent on *Razia Begum and Jaskirat Datwani (supra)* is misplaced, because in that case, the original parties on record sufficiently represented the interest of transferees. In the present case, however, the evidence itself shows that several transferees had died and their legal



representatives were not impleaded. The plaintiff, during cross-examination, candidly admitted that he was unaware of the status of many vendees and had not taken steps to implead their heirs. In such circumstances, the absence of necessary parties is fatal. The principle laid down in *Ali Amad's case (supra)* squarely applies to the facts of the present case, as it was held therein that all the persons entitled to share in property by inheritance are necessary parties and non-impleading of any necessary party renders the suit liable to be dismissed. In view of the ratio of the law cited above, the suit is bad for non-joinder of necessary parties.

### **Conclusion**

14. This Court, therefore, holds that the suit as instituted was not properly constituted and was not maintainable for non-joinder of necessary parties. The decree of the lower Appellate Court cannot be sustained and is liable to be set aside.

15. Accordingly, the present appeal is allowed. The judgment and decree dated 28.08.2009 passed by the learned Additional District Judge, Faridkot, are set aside and the judgment and decree dated 17.03.2009 of the trial Court dismissing the suit are restored.

16. Pending application(s), if any, also stands disposed of.

September 01, 2025  
tripti

(MANDEEP PANNU)  
JUDGE

Whether speaking/non-speaking : Speaking  
Whether reportable : Yes/No.