



126 IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH  
RSA-3116-2024(O&M)  
Date of order: 07.01.2025

Rattan Singh

.....Appellant(s)

Vs.

Sarita Devi & Another

.....Respondent(s)

**CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Man Mohan, Advocate  
Mr. Pronoy Srivastava, Advocate  
for the appellant.

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**Nidhi Gupta, J.**

Challenge in the present appeal is to the judgment and decree dated 13.09.2024 passed by the learned Additional District Judge, Bhiwani in Civil Appeal No.676 of 2017; and it is prayed that the judgment and decree dated 15.11.2017 passed by the learned Civil Judge (Senior Division), Bhiwani in Civil Suit No.9415 of 2014 may be affirmed.

2. Learned counsel for the appellant/defendant submits that there was no occasion for the learned lower Appellate Court to reverse the well-reasoned judgment dated 15.11.2017 of the learned trial Court wherein in Para 11 it has been categorically recorded and admitted that the suit land already stood partitioned between the parties. It is submitted that accordingly, there was no cause or occasion for fresh partition to take place between the parties. Learned counsel contends that the act of construction of houses by the parties upon their respective shares of the suit land, amounts to the parties acting upon the mutual private partition without



any kind of opposition since long. It is argued that any fresh partition would only be a formality. Thus, the suit land having already been partitioned, no fresh partition of the same can be ordered. It is reiterated that the Suit land had been mutually partitioned between the parties long ago and the co-sharers are in the possession of their respective shares and had even constructed their houses upon their respective shares. It is accordingly prayed that the impugned judgment and decree dated 13.09.2024 passed by the Id. Additional District Judge, Bhiwani be set aside; and the judgment and decree dated 15.11.2017 passed by the learned Civil Judge (Senior Division), Bhiwani in Civil Suit No.9415 of 2014 may be affirmed.

3. No other argument is made on behalf of the appellant.
4. I have heard learned counsel for the appellant and perused the case file in great detail.
5. The brief facts of the case are that parties to the suit have been jointly owners in possession of Gair Mumkin plot comprised in Khewat No.85/74, Khatoni No.105, Khasra No.91//17/3/1 measuring 3 Kanal 4 Marla situated within the revenue estate of Village Kharak Kalan, Tehsil and District Bhiwani, wherein respondent no.1/plaintiff No.1 is having  $9/64^{\text{th}}$  share, respondent no.2/plaintiff No.2 is having  $7/64^{\text{th}}$  share and the appellant/defendant is having  $3/4^{\text{th}}$  share. It is the admitted case of the parties that no legal partition of the suit property has taken place, even though separate houses have been constructed on the suit property by the parties. Consequentially, the Plaintiffs wanted the suit land to be



partitioned as per law; and had accordingly, filed a Suit for Partition bearing Civil Suit No.9415 of 2014, which was dismissed by the Id. Civil Judge (Senior Division), Bhiwani vide judgment dated 15.11.2017. The plaintiffs had filed Civil Appeal No.676 of 2017, which has been allowed by the Id. Additional District Judge, Bhiwani vide impugned judgment dated 13.09.2024.

6. A perusal of the judgment dated 15.11.2017 passed by the learned trial court reveals that the suit of the respondents/plaintiffs was dismissed solely on the ground that *"...the suit land stands privately partitioned between the parties. The act of construction of houses in fact amounts to the parties having acted upon mutual private partition without any kind of opposition since long. No doubt Jamabandi Ex.PW1/A does not reflect the said partition, but, the aforesaid reflection would only be a formality, the groundwork already having been done as observed hereinbefore. Thus, the suit land having already been partitioned, no fresh partition of the same can be ordered."*The Id. Trial Court further opined that judgment Ex.D16 *"... the said judgment does not in any way operate as res judicata to the present suit which is qua one khewat number only, as was permitted by the Court in Ex. D16."*

7. It is the considered view of this Court that in opining as above, the learned trial court lost sight of the fact that it is the admitted case of both the parties that no formal partition of the suit property has taken place. No doubt, there was an informal mutual partition of the suit



land whereupon separate houses have also been constructed on the suit property. However, admittedly, no formal partition of the suit property has taken place. Further, admittedly, even as per the latest Jamabandi for the year 2011-12 (Ex.PW1/A), the property is reflected as joint property. Even as per the sale deed no. 2076 dated 31.5.2011/ Ex. P-3, the respondents/plaintiffs are shown to be purchasers of share to the extent of 1 kanal 16 Marlas in the suit property. Further, as per sale deed no. 563/1 dated 20.4.2011 reflected in mutation no. 6521 dated 5.9.2011/ Ex. P-2, the respondent/plaintiffs are shown to be having share in the suit property. As per the record, the appellant/defendant was unable to rebut this evidence to show that property had been partitioned. No doubt, the appellant had also produced documentary evidence to reflect sale of share in his favour. However, it has been rightly observed by the Id. lower Appellate Court that *“The facts of partition have to be specifically pleaded and proved and merely contending that the suit property has been partitioned, is not sufficient.”*

8. Thus, after considering the pleadings and oral and documentary evidence in extenso, the reasoning as recorded in Para 18 of the impugned judgment is as under: -

*“18. Defendant in the present case has merely asserted the property to be mutually partitioned but between whom the alleged mutual partition took place and when it took place has not been mentioned by him. Merely asserting the partition would not disprove revenue entries which reflect the property*



*comprising in Khewat No.85/74 pertaining to the suit property to be joint in which plaintiff No.1 is having 9/64 share, plaintiff No.2 is having 7/64 share and 3/4<sup>th</sup> share is recorded in the name of the defendant. Jamabandi Ex.PW1/A reflects the property to joint property which presumption defendant has failed to rebut.”*

9. In passing the impugned judgment, the Id. Lower Appellate Court below has also relied upon judgment of the Hon’ble Supreme Court in **“Kattukandi Edithil Krishnan & Another Vs. Kattukandi Edathil Valsan & Others” Civil Appeal No.6406-6407 of 2010 decided on 13.06.2022**, in which it has been held that:

*“Once preliminary decree is passed by Trial Court, court should proceed with case for drawing up final decree suo motu. ....A. Civil Procedure Code, 1908, Order 20, Rule 18 - Evidence Act, 1872 Section 114 Setting aside of decree for partition - Challenged - Once preliminary decree is passed by Trial Court, court should proceed with case for drawing up final decree suo motu - After passing of preliminary decree, Trial Court has to list matter for taking steps under Order 20, Rule 18 of CPC - Courts should not adjourn matter sine die - No need to file separate final decree proceedings - In same suit, court should allow concerned party to file appropriate application for drawing up final decree - Suit comes to end only when final decree is drawn - Therefore, direction to Trial Courts to list matter for taking steps under Order 20, Rule 18 of CPC soon after passing of preliminary decree for partition and separate possession of property, suo motu and without requiring initiation of any separate proceedings.”*



10. In view of the above, no ground is made out to interfere in the impugned order. Present appeal accordingly stands **dismissed**.

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

**07.01.2025**  
Sunena

**(Nidhi Gupta)**  
**Judge**

**Whether speaking/reasoned**  
**Whether reportable**

**Yes/No**  
**Yes/No**