



RSA-728-1999 (O&M)

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

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**RSA-728-1999 (O&M)
Reserved on:-29.09.2025
Date of Decision : 09.10.2025**

Balvinder Kaur and Others

...Appellants

VERSUS

Amrik Singh (since deceased) through LRs & Others

...Respondents

CORAM : HON'BLE MS. JUSTICE MANDEEP PANNU

Present: Mr. Dheeraj Singla, Advocate for
Mr. Ashok Singla, Advocate for the appellant.

Respondents No.1 to 3 proceeded against ex parte
vide order dated 11.09.2025

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MANDEEP PANNU, J.

1. The present Regular Second Appeal has been filed by the plaintiffs—appellants challenging the judgment and decree dated 12.12.1998 passed by the learned Additional District Judge, Jagadhri whereby the judgment and decree dated 05.11.1996 passed by the learned Civil Judge (Junior Division), Jagadhri decreeing the suit of the plaintiffs for partition, was set aside and the suit was dismissed.

Brief Facts

2. The facts in brief are that Uttam Singh, owner of the house in dispute situated in Chhachhrauli, District Yamuna Nagar, expired leaving behind his legal heirs, namely his sons Jaswant Singh, Amrik Singh, Dhanwant Singh and his daughters, besides the present plaintiffs being legal representatives of deceased Jaswant Singh. The plaintiffs' case was that the suit property continued to be joint



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and had never been partitioned. It was further pleaded that they were in possession of specific portions as shown in the site plan and that defendants had refused to effect partition and were threatening to alienate the property, thus necessitating the suit.

3. The defendants admitted that plaintiffs were LRs of Jaswant Singh, but denied that they had any share in the property. They alleged that Jaswant Singh had been separated in the lifetime of Uttam Singh and was living separately since his marriage in 1982, and therefore, neither he nor his heirs had any right in the house.

4. From the pleadings of the parties, following issues were framed:-

1. Whether the property in dispute, detailed in the heading of the plaint, is owned by the defendants and plaintiffs jointly as alleged in the plaint. If so, whether the plaintiffs are entitled to the separate possession by way of partition, to the extent of their share? OPP

2. Whether the present suit is not maintainable? OPD

3. Whether the present suit being false, frivolous and vexatious, is liable to be dismissed with special costs? OPD

4. Relief.

5. Both the parties have led their evidence.

Findings of the trial Court

6. The learned trial Court, on appreciation of oral and documentary evidence, held that there was no proof of any partition ever having taken place between Uttam Singh and Jaswant Singh. The site plan (Ex. P1) and Local Commissioner's report (Ex. P2 to P4) established that the plaintiffs were in



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possession of certain portions. It was further held that as per law of succession, upon the death of Uttam Singh, his estate devolved equally upon his five legal heirs, and consequently the plaintiffs, being LRs of Jaswant Singh, were entitled to his 1/5th share. The suit was accordingly decreed and a preliminary decree for partition was passed.

Findings of the Lower Appellate Court

7. The learned Additional District Judge, Jagadhri reversed the decree mainly on the ground that in terms of Section 23 of the Hindu Succession Act, 1956, female heirs could not seek partition of a dwelling house until male heirs chose to divide the same. The Court also observed that Devinder Singh, minor son of Jaswant Singh, could not sue for partition until he attained majority.

8. Feeling aggrieved, the appellants preferred the present Regular Second Appeal.

9. Upon notice, respondents have not caused appearance and finally they were proceeded ex-parte, vide order dated 11.09.2025.

Submissions of learned counsel for the appellants

10. In the present appeal, learned counsel for the appellants has argued that the approach of the Lower Appellate Court is wholly erroneous. It is urged that Devinder Singh, plaintiff no.4, is a male heir of deceased Uttam Singh and being represented through his natural guardian, could competently claim partition. Once a male heir sought partition, Section 23 of the Succession Act, could not be invoked to bar the suit. It is further contended that the learned Additional District Judge misdirected himself by ignoring settled law that female heirs cannot be



deprived of their proprietary rights in the dwelling house and that Section 14 of the Hindu Succession Act confers absolute ownership on them.

Findings of this Court

11. I have considered the matter. The respondents were duly served but have chosen not to appear and were proceeded against ex parte.

12. In the considered view of this Court, the judgment and decree of the learned Additional District Judge cannot be sustained. The Lower Appellate Court misdirected itself by invoking Section 23 of the Hindu Succession Act, 1956 to non-suit the appellants. The said provision, even as it stood prior to its repeal, did not extinguish the proprietary rights of female heirs in a dwelling house; it merely postponed the actual delivery of possession until such time that a male heir sought partition. In the present case, plaintiff-appellant no.4, Davinder Singh, being the son of deceased Jaswant Singh and thus a male Class I heir of deceased Uttam Singh, had undeniably joined as a co-plaintiff. Once a male heir claimed partition, the embargo of Section 23 stood automatically lifted and there was no legal impediment in granting a decree of partition. The approach of the learned Lower Appellate Court in holding that Davinder Singh could not exercise his right until attaining majority is equally misconceived. The law is well settled that a minor can enforce his proprietary rights through his natural guardian, and therefore, the institution of the suit on his behalf was perfectly valid.

13. Equally unsustainable is the finding that the female heirs were disentitled to partition of the residential house. Section 14 of the Hindu Succession Act confers absolute ownership on female heirs in respect of property inherited by them, and their share cannot be curtailed or whittled down by invoking Section 23.



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The Additional District Judge failed to appreciate this settled legal position and travelled beyond the pleadings to raise a bar which had no foundation in fact or in law. On the other hand, the trial court had rightly appreciated the evidence, including the local commissioner's report, and held that no partition was ever effected during the lifetime of Uttam Singh. The bald plea of separation set up by the defendants remained wholly unproved and could not defeat the statutory rights of inheritance vested in the plaintiffs.

Conclusion

14. Thus, the findings of the Lower Appellate Court are perverse, contrary to the express provisions of law and based on misreading of Section 23 of the Act. The trial court's decree was fully justified on facts as well as in law.

15. Accordingly, this Court holds that the plaintiffs, being legal representatives of Jaswant Singh, are entitled to his one-fifth share in the suit property by way of partition, and the trial court's judgment and decree dated 05.11.1996 deserves to be restored.

16. In view of the above, the judgment and decree dated 12.12.1998 passed by the learned Additional District Judge, Jagadhri, are set aside and the judgment and decree dated 05.11.1996 passed by the learned Civil Judge (Junior Division), Jagadhri are restored. The present Regular Second Appeal is accordingly allowed.

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

October 09, 2025
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(MANDEEP PANNU)
JUDGE

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