



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

122)

RSA No.1941 of 2024 (O&amp;M)

Date of decision: 13.05.2025

Dr. Ravi Gupta

...Appellant

V/s

Nutan

....Respondent

**CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL**

Present: Mr. Amit Kumar Jain, Advocate, for the appellant.

Mr. Aayush Gupta, Advocate for the caveator-respondent.

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**VIKRAM AGGARWAL, J. (ORAL)**

Defendant is in appeal against the judgment and decree dated 22.05.2024 passed by the Court of learned Additional District Judge, Kurukshetra, dismissing his appeal against the judgment and decree dated 09.10.2017, passed by the Court of learned Civil Judge (Jr. Divn.), Kurukshetra, vide which the suit of the plaintiff for partition was decreed.

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

3. Plaintiff (Nutan) instituted a suit for partition and *mesne* profits. Plaintiff and defendant were joint owners in possession of a three storey building to the extent of ½ share each in portion in red colour marked as ABCD in the site plan dated 28.09.2015 (fully described in the plaint) situated in Kurukshetra (hereinafter to be referred to as the “suit property”). Consequential relief of permanent injunction was also sought.

4. The case set up by the plaintiff was that plaintiff and defendant, who are real brother and sister, purchased the suit property vide registered sale deeds dated 05.05.1998 and 14.07.1998. In the month of May, 2014,



plaintiff approached the defendant to get the suit property partitioned and also asked for the documents regarding ownership of the property. The defendant refused to supply the same. Plaintiff then approached the office of the Sub-Registrar, Thanesar and obtained the certified copies of the sale deeds on 27.05.2014. In the month of June, 2015, plaintiff again requested the defendant to get the suit property partitioned by metes and bound but the defendant again refused to accept the genuine and *bona fide* request of the plaintiff. Rather, he threatened the plaintiff that he would dispose off the suit property as a result of which, the plaintiff filed the suit.

5. The suit was resisted by the defendant. In the written statement, preliminary objections regarding maintainability, *locus standi*, cause of action, estoppel and concealment of true and material facts etc. were raised. On merits, it was admitted by the defendant that the plaintiff is his real sister. It was averred by the defendant that the suit property was purchased by him exclusively out of his own funds and the name of the plaintiff was added in the sale deeds only on the asking of his mother in order to elevate her status in her in-laws as the plaintiff was a house-wife. The mother of the defendant expired on 15.01.2015. It was averred that before her death, she asked the plaintiff to get the share recorded in her name but the plaintiff did not pay any heed. It was averred that the sale deeds were executed on 05.05.1998 and 14.07.1998 and the plaintiff remained silent for a long period of 17 years. It was averred that the defendant raised construction over the suit property upto double storey out of his own funds and the suit property was in his actual physical possession. A plea of adverse possession was also taken stating that the defendant was in possession of the suit property since May 1998. Replication was filed by the plaintiff denying the



averments made in the written statement and reiterating those made in the plaint.

6. From the pleadings of the parties, following issues were framed by the trial Court:-

- “1. Whether the plaintiff is entitled to decree for partition by metes and bounds as prayed for?OPP**
- 2. Whether the plaintiff is entitled to decree for permanent injunction along with mesne profit for use and occupation charges of building in question @ Rs.15000/- per month as prayed for?OPP**
- 3. Whether the plaintiff got no locus standi and casue of action to file and maintain the present suit?OPD**
- 4. Whether the plaintiff are stopped by their own act and conduct from filing the present suit?OPD**
- 5. Whether the plaintiff have concealed the true and material facts from the Court?OPD**
- 6. Whether the present suit is not maintainable in the present form?OPD**
- 7. Whether the suit of the plaintiff is false, fictitious and vexatious and has been filed only in order to harass and humiliate the defendant?OPD**
- 8. Whether the plaintiff has not affixed proper Court fee on the plaint?OPD**
- 9. Whether the suit is hopelessly time barred?OPD**
- 10. Relief.”**

7. Parties led their respective evidence. The trial Court decreed the suit in favour of the plaintiff and the appeal preferred by the defendant against the said judgment and decree was also dismissed by the first Appellate Court. However, the first appellate Court modified the preliminary decree passed by the trial Court to the extent that plaintiff had no right to claim *mesne* profits from the defendant. Under the circumstance,



the present regular second appeal has been filed by the defendant.

8. I have heard learned counsel for the parties.

9. Learned counsel for the appellant submits that both Courts erred in decreeing the suit filed by the plaintiff. Learned counsel has strenuously urged that the judgments passed by the first appellate Court and the trial Court are not sustainable, for, the matter was not examined from the correct perspective. Learned counsel submits that the suit property was purchased by the appellant exclusively out of his own funds. Learned counsel submits that it is quite strange that after the sale deeds dated 05.05.1998 and 14.07.1998 having been executed, the suit was filed only on 05.10.2015 i.e. more than 17 years after the execution of the sale deeds. It is unacceptable that somebody would keep on waiting for more than 17 years. Learned counsel submits that both Courts have failed to appreciate the fact that the appellant was in actual possession of the suit property and the house/municipal taxes were being paid by the appellant. Even the electricity connection was in the name of the appellant. Learned counsel submits that the sale consideration was paid by the appellant and construction was raised by the appellant only.

10. *Per contra*, learned counsel representing the respondent submits that the suit property was jointly purchased by the parties for a total sale consideration of Rs.3,60,000/- (Rs.1,80,000/- each) vide registered sale deeds dated 05.05.1998 and 14.07.1998. Learned counsel submits that the respondent had spent sufficient funds for raising the construction of the suit property. Learned counsel has referred to a letter dated 18.10.2000 written by the appellant to the husband of the respondent, in which he informed the respondent that the construction work was still going on and would take 6



more months to complete, to submit that if the respondent was not contributing, there was no point for the appellant to write such letter to the respondent. Learned counsel submits that there is no illegality in the judgments and decrees passed by both the Courts and, therefore, no interference is called for in the second appeal.

10. I have considered the submissions made by learned counsel for the parties.

11. It is an admitted fact that the appellant-defendant and the respondent-plaintiff are real brother and sister. It is also an admitted position that the sale deeds dated 05.05.1998 and 14.07.1998 are in the joint names of parties. Both Courts discussed the matter in view of the factual position and arrived at a conclusion that the plaintiff had duly proved the execution of the sale deeds and held the same to be legal and valid. It is true that the appellant-defendant was in actual possession of the suit property. However, merely because the plaintiff was residing separately does not mean that she has no right over the suit property. Execution of the sale-deeds in the joint name itself has been admitted by the appellant-defendant. The defendant has taken two contradictory pleas. On one hand, he is stating that he is the exclusive owner in possession of the suit property and on the other, he is stating that he has become owner of the suit property on the basis of adverse possession, he having been in possession of the suit property since May 1998. The plea of adverse possession taken by the appellant-defendant itself admits the title of the respondent-plaintiff. It is settled law that each and every co-sharer is in possession of the joint land and each co-sharer can seek partition of the property at any time. It is further well settled that each and every co-sharer has right to enjoy the joint land. In view



thereof, both Courts rightly passed the preliminary decree.

12. In the considered opinion of this Court, there is absolutely no illegality in the judgments and decrees passed by the Courts below warranting any interference in second appeal. Nothing has been brought to the notice of the Court which could have led this Court to interfere in the impugned judgments. In fact, pure findings of facts have been recorded by the Courts below and, therefore, no occasion arises for this Court to interfere with the same in second appeal.

13. In view thereof, I do not find any merit in the present appeal and the same is accordingly dismissed.

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

**(VIKRAM AGGARWAL)**  
**JUDGE**

**May 13, 2025**

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No