

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

**Reserved on 29<sup>th</sup> January, 2025  
Pronounced on 29<sup>th</sup> of April, 2025**

**RSA No.575 of 1998**

Yudhister now deceased through his LRs and another ....Appellants

Versus

Jai Dev son of Gopi Chand (since deceased) through LRs and others  
.....Respondents

**CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN**

Present : Mr. M.L. Sarin, Senior Advocate with  
Mr. Ritesh Aggarwal, Advocate  
for the appellants

Mr. Shailender Jain, Senior Advocate with  
Ms. Richa Sharma, Advocate  
for respondent No.1.

**PANKAJ JAIN, J.**

LRs of the defendants are in appeal.

2. For convenience, the parties hereinafter are referred to by their original position in the suit i.e. the appellants as contesting defendants No.1 & 2 (represented herein through their LRs), respondent No.1 as plaintiff and respondents No.2 to 17 as defendants No.3 to 16.

3. Plaintiff filed suit for permanent injunction. Further seeking decree of mandatory injunction directing defendants No.1 and 2 to demolish construction raised by them shown by letters A, B, C, D, E & F in red colour

in site plan Exhibit P-1 and to restore the disputed property to its original position.

4. As per the pleaded case of the plaintiff, forefathers of both the parties namely Harna Mal and Sham Lal were co-sharers to the extent of equal shares in the residential property i.e. *haveli* as shown in site plan (Exhibit P-1). Grandfather of defendant No.1 filed suit for partition. Civil Suit No.81 of 1896 culminated in a compromise between the parties. Both the parties, partitioned the *haveli*. Portion marked by letters A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R & S was left as common. The same was to be used by both the parties for enjoying their respective partitioned shares. On death of Harna Mal, his share was inherited by Mahabir Prashad. Share of Sham Lal was inherited by Mathra Dass. On death of Mathra Dass, plaintiff Gopi Chand along with proforma defendants No.3 to 10 came in possession of share of deceased Sham Lal, as owners. In the year 1962, father of defendant No.1 namely Mahabir Prashad filed suit for partition of common portion. The same was dismissed as withdrawn with permission to file a fresh suit on the same cause of action vide order 10.09.1963. Mahabir Prashad raised some construction against which plaintiff along with proforma defendants No.4 to 10 raised protest. Defendant Mahabir Prashad filed second suit for partition *qua* common portion i.e. Civil Suit No.429 of 1963. The suit filed by Mahabir Prashad was dismissed by the Civil Court holding that the common portion marked in site plan by letters A to S, is a common property and is impartible. The judgment passed by the Court of

the First Instance was impugned in the appeal preferred by Mahabir Prashad. In appeal, Mahabir Parshad withdrew his suit vide order dated 31.07.1965 with permission to file a fresh suit on the same cause of action. After Mahabir Parshad died, his share was succeeded by defendants No.1 and 2 in equal shares. Plaintiff Gopi Ram in his old age settled in Delhi with his sons. Proforma defendants No.4 to 10 also settled outside Hisar. Defendants No.1 and 2 taking benefit of the absence of the plaintiff and the proforma defendants, raised construction marked as A, B, C, D, E & F in the common portion. Plaintiff claimed that the construction being illegal, deserves to be removed and the property needs to be restored to its original condition.

5. Suit was contested by defendants No.1 and 2. Defendants no.1 and 2 claimed that plaintiff and defendants No.4 to 10 are not the owners of property in dispute having already sold their share to one Gian Chand on 18.03.1934. Partition between Harna Mal and Sham Lal was admitted. However, the details of the partition as claimed by the plaintiff, were denied. Defendants claimed that the construction was very old and the same was raised in the year 1965. It was denied that the portion, on which the construction subject matter of the suit has been raised, is impartible as claimed by the plaintiff.

6. On the basis of the pleadings, following issues were framed:

*“1. Whether the square in dispute was not partitioned as alleged in para 2 of the plaint? OPD (Onus objected to)*

2. *Whether the defendant was not entitled to raise any construction over the square in dispute? OPP*
3. *Whether the suit is not maintainable in the present form? OPD*
4. *Whether the plaintiff has no locus standi to file the present suit? OPD*
5. *Whether the suit is out of limitation? OPD*
6. *Whether the suit is bad for non-joinder of necessary parties? OPD*
7. *Relief.”*

7. While deciding issues No.1 and 2, Trial Court found that in view of judgment dated 16.12.1964 (Exhibit P-8) passed in the second suit filed by Mahabir Prashad, disputed portion A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R & S, is impartible. However, the Court found that since the suit itself was allowed to be withdrawn in appeal, the judgment has been rendered non-est and the same cannot be used as cogent piece of evidence. The Court of the First Instance after appreciating the evidence, found that defendant No.1 successfully proved that building raised on portion A, B, C, D, E, & F was constructed in the year 1965. The Court of the First Instance decided both the issues No.1 and 2 against the plaintiff and in favour of the defendants. Issue No.3 was also decided against the plaintiff. Issues No.4, 5 & 6 were decided against the defendants. On the basis of the findings recorded on issues No.1 and 2, Court of the First Instance dismissed the suit filed by the plaintiff.

8. Unsuccessful, plaintiff filed appeal.

9. Lower Appellate Court re-appreciated the evidence and came to the conclusion that from the earlier litigation between the parties, it is evident that the disputed portion marked as A to F along with other portion in red colour was held joint in the partition suit of 1896. The portion being impartible and the construction raised by the defendants amounting to change in the nature of property, the suit filed by the plaintiff was ordered to be decreed by the Lower Appellate Court.

10. Mr. M.L. Sarin, Learned Senior Counsel for the appellants has drawn attention of this Court to the pedigree table to show that the plaintiffs belong to branch of Sham Lal and defendants belong to branch of Harna Mal, both sons of Chunni Lal. Mr. Sarin submits that the reliance placed by the Lower Appellate Court upon Exhibit P-8, is misplaced. The said suit having been withdrawn by Mahabir Prashad, the findings recorded therein cannot be relied upon. He submits that admittedly the property is joint in possession. The suit filed by co-sharer seeking injunction against the other co-sharer, is not maintainable. Defendants/appellants being in possession of the suit property are within their right to enjoy the same as per their convenience. Plaintiff, if aggrieved, was required to file suit for partition and not suit for injunction. Reliance is being placed upon law laid down in the case of **Jiwan Singh and others vs. R. Kant and another 1985 PLJ 193, Kala and others vs. Suraj Bhan and others, 1958(1) PLR 219, Maman Chand vs. Smt. Kamla, 1996(2) PLR 147, Satish Chander Sethi vs. M/s. Chuni Lal Shyam Sunder, 1995(3) PLR 685, Bachan Singh vs.**

**Swaran Singh, 2000(2) PLJ 143, Mukhtiar Singh vs. Tara Singh and others, 2000(2) PLJ 284 and Sukumar Banerjee vs. Dilip Kumar Sarkar and others, AIR 1982 Calcutta 17.**

11. Per contra, Senior Counsel representing the respondent No.1/plaintiff submits that Mahabir Prashad, predecessor-in-interest of the defendants filed suit for partition of the suit property. The same was dismissed vide judgment dated 16.12.1964 holding that the property in dispute, is impartible. Even though the suit was withdrawn with permission to file a fresh suit, the fact remains that in the said judgment the joint property including the one in dispute, was held to be impartible. Statement of Mahabir Prashad, the predecessor of the defendants, Exhibit P-9 proves that the suit property was joint and the same was agreed to be kept joint by the parties in terms compromise (Exhibit PW3/B) in the civil suit between Harna Mal and Sham Lal, in the year 1896. The construction in question was raised in the year 1985. The same stands duly proved by the statements of PWs and the house tax records (Ex.PW5/A to Ex.PW5/E). Counsel relies upon law laid down by High Court of Rajasthan in the case of '**Chhaganlal vs. Kesarlal and others**', 1959 AIR Rajasthan 97 to submit that the building raised by the defendants being an impediment in the user of the property by the plaintiff, deserves to be demolished. He submits that the property being a vacant portion of *haveli*, the defendants cannot be held to be in exclusive possession of the same.

12. I have heard counsel for the parties and have carefully gone through records of the case.

13. In the considered opinion of this Court, the finding recorded by the Appellate Court w.r.t. the property marked as letters A to S being joint and impartible, are pure findings of fact and the same need to be maintained. Lower Appellate Court rightly found that from the suit filed by Mahabir Prashad, predecessor-in-interest of defendants No.1 and 2 and compromise (Exhibit PW3/B) effected in the suit between forefathers of the parties in civil suit of the year 1896, the portion of the property was kept joint. Lower Appellate Court relying upon documentary evidence related to house tax assessment also rightly found that construction in question was raised in the year 1985/1986. This calls for no interference.

14. In the background of the aforesaid findings of fact, the only question that needs to be considered by this Court is:

*“Whether the plaintiff is entitled to maintain the suit for injunction?”*

15. In the considered opinion of this Court, the plea raised by Mr. M.L. Sarin, Learned Senior Counsel for the appellant to submit that the suit of injunction was not maintainable relying upon the principle that suit for injunction against a co-sharer is not maintainable, sans merit and deserves to be rejected.

16. It is admitted case of both the parties that a composite residential property in form of *haveli* was partitioned between their forefathers. Their forefathers in order to enjoy the respective portions found that the portion of *haveli* marked by letters A to S was impartible and the same was thus kept joint. Vide Exhibit P-8, the portion was held to be impartible. Though the said findings recorded by the Trial Court after withdrawal of the suit, in appeal, may not operate as *res judicata*, the same however still serves as a cogent piece of evidence. Mahabir Prashad himself filed suit for partition *qua* the same land. This leads to the inference that there can't be any quarrel that the land was kept joint despite partition by metes and bounds.

17. The principle of the suit for injunction filed by a co-sharer against other co-sharer being barred, would not be applicable to the present case. The reason is that the main property already stands partitioned. The land, in question, was kept joint with an intent to facilitate both the co-sharers to enjoy their exclusive shares. Thus, the impartible portion which was kept joint, forms part of both the shares and is inseverable *qua* both the shares. Without the property in question the parties cannot enjoy their respective properties. Each of them is in possession of the impartible share as owner. Both of them need to recognize rival's right to have unrestricted access and enjoyment of the vacant portion to enjoy his own exclusive portion in *haveli*. The situation is akin to the one addressed by Section 30 of the Indian Easements Act, 1882. Once dominant part of the property stands

divided, the impartible portion necessary to enjoy the each portion get annexed to each of the shares. None of the co-sharers whose relationship qua dominant part of the property got snapped has right to obstruct user of the other by altering the nature of the annexed impartible portion.

18. In view of above, this Court finds that the question of law framed by this Court in Para 14 *ibid*, needs to be answered in favour of the respondent No.1/ plaintiff.

19. As a sequel of the discussion held hereinabove, this Court finds that there is no reason to interfere in well reasoned findings recorded by the Lower Appellate Court. Resultantly, the instant second appeal is ordered to be dismissed. The suit filed by the plaintiff is ordered to be decreed. Judgment and decree passed by the Lower Appellate Court is ordered to be maintained.

**April 29, 2025**

**Dpr**

**(Pankaj Jain)  
Judge**

Whether speaking/reasoned : Yes

Whether reportable : Yes