



RSA-2117-1990 (O&M)

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

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RSA-2117-1990 (O&M)
Reserved on:-02.12.2025
Pronounced on:- 10.12.2025
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*Whether only operative part of the judgment is
Pronounced or the full judgment is pronounced:*

operative part/full judgment

Seeta Bai (Since Deceased) through LRs

....Appellant

VERSUS

Sadha Nand (Since deceased) through LRs

....Respondent

CORAM : HON'BLE MS. JUSTICE MANDEEP PANNU

Present: Mr. Ajay K. Gupta, Advocate and
Mr. Hritik Gupta, Advocate for the appellants.

Mr. Mani Ram Verma, Advocate
Mr. Surinder Dhull, Advocate and
Mr. Nipun Verma, Advocate for the respondents.

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MANDEEP PANNU, J.

1. This Regular Second Appeal has been filed by the appellant/defendant against the findings of the learned Lower Appellate Court dated 04.06.1990 whereby the suit of the plaintiff was decreed while modifying the judgment and decree of the learned Trial Court dated 21.03.1989, which had partly decreed the suit of the plaintiff.

Brief facts

2. In brief, the facts of the case are that the plaintiff claimed to be the joint owner in possession of the house in dispute bearing Municipal No.YA-124, Bhiwani, to the extent of 1/2 share. During the pendency of the suit, defendant No.1 Sita Bai died and her legal representatives were brought on record. The plaintiff is the son and defendant No.6 is the daughter of deceased Ram Kishan



from his first wife. After the demise of their mother, their father Ram Kishan married again with deceased defendant No.1 Sita Bai and from this wedlock defendants No.3 to 5 were born. It was averred that deceased Ram Kishan had purchased the plot vide registered sale deed dated 29.11.1957 and constructed the house in question. Upon his death in 1965, the house was inherited by the plaintiff and deceased Sita Bai in equal shares, but since it was not possible for the plaintiff to remain joint in possession, he shifted to another house though his symbolic possession continued. Alleging that Sita Bai was attempting to alienate the suit property by fabricating an adoption deed dated 21.01.1985 in favour of defendant No.2, which the plaintiff alleged to be false and invalid, the suit for declaration was filed. Defendant No.6 admitted the claim of the plaintiff.

3. The contesting defendants denied the entitlement of the plaintiff, pleaded that the plaintiff had already sold his share in the suit property, and claimed that the entire house was bequeathed to deceased Sita Bai under a Will executed by Ram Kishan. They further pleaded that Sita Bai had adopted defendant No.2 according to Hindu rites and thus he was entitled to the property.

4. The stand of the defendants was that the plaintiff had no concern with the suit property as he had already sold his share during the lifetime of Sita Bai. They contended that the answering defendants were in exclusive possession of the property and that deceased Sita Bai had legally adopted defendant No.2. They raised the pleas of estoppel, mis-joinder of parties and lack of locus standi. It was further asserted that the house was not joint property as claimed by the plaintiff, and that the suit was false and frivolous.

5. The following issues were framed by the learned Trial Court:

1. Whether the plaintiff is joint owner in possession of 1/2 share in the house as fully described in the heading of the plaint? OPP



2. Whether defendant No.2 is not adopted son of deceased defendant No.1 as alleged? OPD
 3. Whether the plaintiff is entitled to the partition of the suit land? OPP
 4. Whether the plaintiff is entitled to the injunction prayed for? OPP
 5. Whether the plaintiff is estopped from filing the suit by his act and conduct? OPD
 6. Whether the suit is bad for mis-joinder of parties? OPD
 7. Whether the suit has not been valued properly for the purpose of court fee and jurisdiction? OPD
 8. Whether the suit is false and frivolous and the defendants are entitled to special costs? If so, how much? OPD
 9. Relief.
6. Both the parties have led oral and documentary evidence.

Findings of the trial Court

7. On issue No.1, the learned Trial Court held that deceased Ram Kishan had purchased the plot and constructed the house in dispute and that the plaintiff and defendant No.6 were admittedly the children of deceased Ram Kishan from his first wife. It was further held that Sita Bai, the second wife, was also alive at the time of the death of Ram Kishan and, therefore, she along with the plaintiff and defendant No.6, as well as her own daughters (defendants No.3 to 5), inherited the property in accordance with Hindu Succession Act and were each entitled to 1/6th share. The Trial Court, therefore, concluded that the plaintiff was a joint owner in possession of the house.



8. On issue No.2, the Trial Court found that the alleged adoption of defendant No.2 was not proved in accordance with law. There was no evidence to show that deceased Sita Bai had the competence to adopt or that defendant No.2 had actually been taken in adoption. The adoption deed was held inadmissible for want of proof. The issue was, therefore, decided against the defendants.

9. On issue No.3, the Trial Court held that although the plaintiff was found to have 1/6th share in the property, the question of partition of a dwelling house could not arise since the female heirs had no right to claim partition so long as the male heirs chose to keep the property joint. The issue was accordingly decided in favour of the plaintiff to the extent of recognising his share, but the prayer for partition was not granted.

10. On issue No.4, in view of the finding that the plaintiff was co-owner in possession of the house and that the defendants had no right to alienate the suit property to the exclusion of the plaintiff, the Trial Court granted injunction in favour of the plaintiff restraining the defendants from alienating the suit property.

11. Issues No.5 to 8 were decided against the defendants as they failed to lead any evidence in support of their objections.

12. On the relief issue, the learned Trial Court decreed the suit of the plaintiff to the extent that he was declared owner in possession of 1/6th share of the house described in the head note of the plaint and restrained defendants No.3 to 5 from alienating the suit property.

Findings of the lower Appellate Court

13. Feeling aggrieved by the judgement and decree of trial court, the plaintiff filed an appeal before the lower appellate court.

14. The Lower Appellate Court examined the judgment of the learned Trial Court and the evidence on record. It noted that the Trial Court had decreed



the suit of the plaintiff partially by granting a declaration of 1/6th share and injunction against alienation, while declining the relief of partition. The Lower Appellate Court re-evaluated these findings.

15. The Court observed that the learned counsel for the appellant assailed the judgment of the Trial Court primarily on Issue No.3 regarding partition and Issue No.1 concerning share of the plaintiff, asserting misreading of evidence and misconception of law. From the discussion of the Trial Court, it appeared to the Appellate Court that the Trial Court treated the suit incorrectly as having been filed by female heirs, whereas the present suit was filed by Sadha Nand, a male heir, for partition. The Trial Court had held that Sadha Nand had 1/6th share and therefore was entitled to partition and possession. The Appellate Court confirmed that defendants No.3 to 6 were female heirs of Ram Kishan.

16. Regarding Section 23 of the Hindu Succession Act, the Appellate Court held that female heirs cannot seek partition of a dwelling house so long as male heirs choose to keep it joint. However, this prohibition applies only to female heirs. Since the present suit for partition was filed by the male heir, Sadha Nand, the bar under Section 23 did not apply. Therefore, the Trial Court committed an error by treating the suit as if filed by female heirs. The Appellate Court observed that the house in dispute was in possession of defendants No.3 to 6 and during the lifetime of Sita Bai, she also resided in the house. Sadha Nand apprehended that Sita Bai would alienate the property, therefore, he filed the suit for declaration, permanent injunction and partition. The suit was, therefore, held maintainable.

17. The Appellate Court referred to *Janabai Ammal alias Gunabooshani vs. TAS Palani Mudaliar and Others AIR 1981 Madras 62*, holding that a female heir has no right to claim partition of a dwelling house when male heirs choose to keep it joint. It also cited *Saroj Kumar Mondal (minor) vs Anil Kumar Mondal*



and Others 1979 Hindu Law Reporter 237, supporting that Section 23 is a special provision restricting only female heirs, not male heirs, from seeking partition. Applying these precedents, the Court concluded that Sadha Nand, being the male heir, could maintain the suit for partition.

18. The Court further held that Ram Kishan had left two dwelling houses, one in possession of Sadha Nand and another forming the subject matter of the dispute. Since the suit was filed by Sadha Nand and not by female heirs, the suit for partition along with the declaratory relief and injunction was legally maintainable. The Trial Court's findings declining partition were, therefore, erroneous.

19. On the objection of the respondents that Ram Kishan had sold half share of the house to one Ram Chander, the Court held that a mere agreement does not amount to a completed sale, and since no sale deed was executed and no suit for enforcement was filed by Ram Chander, such a claim had no merit. Hence, non-joinder of Ram Chander was not fatal to the suit.

20. As regards cross-objections filed by the defendant-respondents, the Lower Appellate Court noted that these were dismissed, and in view of the observations in *State of Bihar Vs. Jehal Mahto and Others AIR 1964 Patna 207*, respondents who filed cross-objections unsuccessfully could not dispute the findings now.

21. After considering the entire matter, the Lower Appellate Court held that the Trial Court erred in denying partition. The declaration and permanent injunction granted by the Trial Court were maintained, but the findings declining partition were set aside. Consequently, the appeal was accepted, and a preliminary decree for partition was ordered. No order was made regarding costs.



22. Aggrieved by the judgment of learned Lower Appellate Court, the appellants/defendants approached this Court by way of the present regular second appeal, which was contested by the plaintiff/respondent.

Submissions of learned counsel for the appellant

23. Learned counsel for the appellant assailed the findings of the learned Lower Appellate Court by submitting that the judgment dated 04.06.1990 suffers from serious legal and factual infirmities. It was argued that the learned Lower Appellate Court erred in reversing the well-reasoned findings of the Trial Court on the issue of partition, particularly Issue No.3, where the Trial Court had correctly held that the suit was not maintainable in view of Section 23 of the Hindu Succession Act and that the property being a dwelling house, the daughters had no right of partition. It was further contended that the Trial Court had rightly treated the suit to be in the nature of a partition claim brought by daughters, whereas the Lower Appellate Court misdirected itself in holding that the suit was filed by a male heir and therefore maintainable, although the entire pleading and conduct of the plaintiff showed that he was seeking a declaration for himself alone and not for all heirs.

24. Learned counsel further argued that the suit itself was not maintainable as the plaintiff sought a declaration of joint ownership only in respect of one property, whereas the pleadings admitted existence of two houses owned by deceased Ram Kishan. Since a person seeking declaration of joint ownership or partition must include all joint properties left by the deceased, the present suit, which related only to one property, was bad for partial partition. The plaintiff did not plead that the other house was exclusively in his possession nor did he allege that he was occupying more than his share in any property. The omission to include all the properties of the deceased rendered the suit defective in law and



contrary to the settled principle that a co-sharer cannot seek partition of only one of several properties.

25. It was also argued that the plaintiff deliberately withheld material facts. The plaintiff had himself, in an earlier litigation titled *Sadha Nand vs. Sita Bai*, made admissions regarding alienation by him or his father, and that certain sale deeds or agreements existed concerning portions of the suit property in favour of Ram Chander, who was not impleaded as a necessary party. Once the plaintiff pleaded joint ownership and other persons were claiming independent possession, non-joinder of Ram Chander constituted a fatal defect. The appellant argued that the Trial Court had rightly observed that an agreement to sell is not a sale deed, but the fact that such agreement was executed and acted upon made Ram Chander a necessary party to a proper adjudication of the matter. The Lower Appellate Court, however, failed to consider this and erred in rejecting the plea of non-joinder.

26. With respect to the two applications filed in the present RSA, learned counsel argued that the appellant sought to lead additional evidence under Order 41 Rule 27 to bring on record property IDs recently created by the Municipal Authorities in Bhiwani. It was averred that the properties now bear new municipal numbers, property ID of H.No.26 (suit property) and property ID of H.No.25, Gandhi Nagar, Krishna Colony, Bhiwani (adjoining house), and that these documents contain complete description of the property. The appellant claimed that these property IDs were not available at the time of filing of the appeal in 1990 and, therefore, additional evidence was necessary to identify the properties correctly and to assist the Court in reaching a just decision.

27. The second application under Section 151 read with Order 41 Rule 2 was filed seeking permission to raise an additional plea that the suit was not maintainable because the plaintiff sought declaration only in respect of one house



and not the entire property left by the deceased, and, therefore, the present suit was bad for partial partition. It was submitted that this was a pure question of law which could be raised at any stage and that the interest of justice required the Court to permit the appellant to raise this additional ground.

Submissions of learned counsel for the respondent

28. Learned counsel for the respondent contended that the entire foundation of the appellant's case was beyond the pleadings and that the only controversy in RSA relates to the correctness of the findings of the Lower Appellate Court on Issue No.3. It was argued that the Trial Court clearly held that each legal heir had 1/6th share in the property left by Ram Kishan and that the plaintiff, being a male heir, had the right to claim partition under law. The Trial Court mistakenly treated the suit as one filed by daughters and wrongly applied Section 23 of the Hindu Succession Act, but the Lower Appellate Court corrected this error by applying the correct interpretation of Section 23, which prohibits only female heirs from seeking partition of the dwelling house but does not bar a male heir. The respondent argued that this legal position is well-settled, and the Lower Appellate Court rightly relied on judgments such as *Janabai Ammal's case (supra)* and *Saroj Kumar Mondal's case (supra)*, holding that where the partition is sought by a male heir, the bar under Section 23 does not apply.

29. Learned counsel for the respondent also submitted that the plea of partial partition is wholly misconceived. It was contended that no document was placed on record by the appellant to prove that the deceased owned any other property besides the suit house or that any other house was jointly owned and available for partition. Mere assertions without proof cannot make the suit defective. The respondent further argued that the burden lay on the appellant to prove existence of other joint properties, which he failed to discharge before the



Trial Court, before the Lower Appellate Court, and even at the stage of RSA. The additional plea now sought to be raised was neither supported by any evidence nor taken at any earlier stage, and thus cannot be allowed at this late stage.

30. On the question of identity of the property, it was argued that the suit property has always been clearly identified and described in the plaint and in the evidence. All along there has been no dispute that deceased Ram Kishan owned two houses and that the house in dispute is the one in occupation of defendants No.3 to 6. Whether the house number is recorded as YA-124 or YA-135 as mentioned in Mark B, the identity of the property remains the same and has never been contested by the defendants. Therefore, the additional evidence sought to be led by producing property IDs is wholly unnecessary and cannot change the nature of the property or the findings of the Lower Appellate Court. The respondent argued that the application under Order 41 Rule 27 is a misuse of the process of the Court because additional evidence cannot be permitted to fill lacunae or introduce new facts which were never an issue in the case.

31. The findings of the Lower Appellate Court are well-reasoned and based on evidence and correct application of law. The appellant's applications under Order 41 Rule 27 and Section 151 CPC do not satisfy the statutory requirements and deserve to be dismissed. It was prayed that both the applications as well as the RSA be dismissed.

Findings of this Court

32. It is the case for the appellant-defendants that the plaint does not disclose a proper cause of action and that the suit is not maintainable since it seeks a declaration as to joint ownership qua only one of the properties left by the deceased, and that the plaintiff has not included other properties while seeking a declaration. Learned counsel for the appellant points to evidence and documents or



agreements to contend that some portion of the estate had been the subject matter of an agreement/sale and that such persons are necessary parties.

33. These preliminary contentions were raised before the Trial Court by the defendants in their written statement and were considered by that Court. The Trial Court recorded the factual position that Ram Kishan had purchased the plot and constructed houses, upon his death the property devolved upon his heirs, the plaintiff and defendants were legal heirs, the plaintiff's plea of having 1/6th share was accepted on the material on record and no convincing evidence was led to prove that the plaintiff had sold any portion of the property. The Trial Court also observed that no sale deed relevant to the disputed house was produced, where merely an agreement or alleged sale was not acted upon and no sale deed was executed, such assertion could not be treated as an effective alienation to oust the plaintiff from claiming his share. These findings were recorded after perusal of Ex.D1, Ex.D2 and other material and upon hearing the witnesses.

34. The Lower Appellate Court examined the pleading of non-joinder and the alleged sale in favour of one Ram Chander and concluded that mere agreement does not amount to a completed sale and that no sale deed had been executed nor any suit filed by the alleged purchaser. The Appellate Court therefore held that non-joinder of Ram Chander was not a ground to dismiss the appeal or disturb the rights of parties on the record.

35. On careful consideration of the entire material, this Court finds no reason to take a different view. Where the record discloses that no completed sale deed was produced and where the alleged purchaser has taken no step to assert his interest or seek to be made a party, the omission, does not in the circumstances go to the root of jurisdiction or maintainability. The Trial Court specifically considered and negated the plea that the plaintiff had sold his share. This finding



is supported by the absence of a sale deed and the evidence on record. The Lower Appellate Court's conclusion in this respect is not perverse nor is it vitiated by any mis-appreciation of evidence. Accordingly the preliminary objections on cause of action, non-joinder and maintainability, on the specific factual matrix, cannot sustain the present challenge.

36. A central plank of the appellant's case is the submission that the suit is bad for "partial partition". Learned counsel for the appellant argued that the plaintiff admitted in pleadings the existence of two houses left by Ram Kishan and that declaration of joint ownership should have been sought qua the entire properties and seeking relief qua only one property renders the plaint defective and not maintainable. This plea was formulated again as an additional ground sought to be raised in this RSA by way of application under Section 151 read with Order 41 Rule 2 CPC.

37. The Lower Appellate Court dealt with the scope of Section 23 of the Hindu Succession Act and the distinction between the rights of male and female heirs in respect of partition of a dwelling house. It relied on decisions recorded in the judgments *Janabai Ammal's case (supra)* and *Saroj Kumar Mondal's case (supra)* and held that Section 23 is a special provision designed to postpone the right of female heirs to seek partition of a dwelling house where male heirs elect to keep the property joint. It concluded that such restriction is applicable to female heirs and does not preclude a male heir from claiming partition. On that basis the Court found that the Trial Court erred in declining partition and therefore set aside that part of its order.

38. It is manifest from the language and legislative scheme of Section 23 that the statutory restriction is designed to protect the dwelling interest against fragmentation by married daughters, where the heir seeking partition is a male heir,



there is no statutory bar. The Trial Court's treatment of the matter as if the suit had been filed by daughters was, in this Court's view, based upon a misapprehension of the pleadings and of the identity of the claimant. The Lower Appellate Court rightly directed attention to this aspect and to the authorities which confine the operation of Section 23. On this legal proposition, this Court does not find fault with the view taken by the Lower Appellate Court.

39. On the second point the contention that a party cannot claim declaration qua one property when other properties remain unclaimed is not an absolute rule of law but depends on whether the property in question is properly described, whether the plaintiff pleaded his case consistently and whether the omission to include other properties adversely affects the rights of co-sharers. In the present case the plaint and evidence consistently describe the house in dispute and the plaintiff's possession and claim. There was no reliable proof placed before the Trial Court or the Appellate Court showing that other properties were being treated as joint property and that their omission would result in an injustice. Mere assertion that other properties exist is not enough to vitiate a suit where the dispute concerns a specifically described dwelling house. The appellant had the opportunity at the Trial Court and before the Appellate Court to produce proof of such other properties being joint and to press the non-joinder/partial-partition point, that opportunity was not successfully availed of. In these circumstances the raising of the objection for the first time in RSA cannot be permitted to overthrow the settled facts and findings of the courts below.

40. For these reasons this Court is not persuaded that the present suit is bad for partial partition in law or fact so as to warrant interference with the Appellate Court's judgment.



41. The appellant seeks to lead municipal Property ID documents now created for the urban properties and contends that these documents were not available in 1990 and are, therefore, fresh evidence. The appellant urges that the Property IDs bear comprehensive descriptions and would assist in correct identification of the suit property and the adjoining house.

42. The respondent's case is that identity of the suit property was never in dispute, that the Trial Court and the Appellate Court have properly identified the property from the evidence and marks relied upon at the trial, and that municipal numbering or the creation of property IDs in more recent times cannot alter the identity or the rights adjudicated upon. The respondent further contends that the production of these documents is unnecessary and will serve only to introduce peripheral technicalities.

43. Order 41 Rule 27 allows the Appellate Court to frame its own view on whether additional evidence is receivable, bearing in mind whether the evidence is fresh, could not be produced earlier with reasonable diligence, and whether it is relevant to the real controversy. In the present case the Property IDs admittedly post-date the original proceedings, however, it is also plain that the identification and description of the disputed house was always part of the trial evidence and was never the subject of a genuine controversy between the parties. The material on record establishes that the father, Ram Kishan, had constructed the house and that the house in dispute was in the possession of defendants No.3 to 6 and that plaintiff's symbolic possession remained. The Lower Appellate Court considered these aspects and came to the conclusion that the identity of the property is correctly established and that recent municipal numbering does not change the nature or identity of the property so as to affect substantive rights.



44. I have carefully considered the documents tendered as annexures to the petition for additional evidence. Even if the Court were to receive those documents, I am satisfied that they would not have any material bearing on the core question which decides the rights of the parties, namely whether the plaintiff, being a male heir, could maintain partition/declaration and whether the defendants had validly ousted the plaintiff by any proved alienation. The additional property ID evidence is therefore of cumulative or purely formal value and would not alter any finding of fact or law in the appeal. In such circumstances the Court should not exercise its discretion to permit additional evidence at this late stage. Accordingly the application under Order 41 Rule 27 CPC is dismissed.

45. The appellant sought leave to raise an additional plea that the plaintiff cannot claim declaration of joint ownership qua only a single property left by his father and that the suit is thus bad for partial partition. Section 151 and Order 41 Rule 2 are not a roving commission to permit the introduction of new and substantial pleas or grounds at a belated stage which could have been and ought to have been raised earlier. The Court must be satisfied that the proposed ground is one which arises inevitably on the record and that it would be in the interests of justice to permit it.

46. As noted earlier, the Trial Court and the Appellate Court had an opportunity to and in fact did consider the pleadings and the evidence with respect to the number of properties and the nature of the claim. The appellant cannot show sufficient cause why this distinct legal plea was not advanced and adduced at the proper stage. Even were the plea permitted, the fundamental difficulty for the appellant is absence of material to demonstrate that omission of other properties from the plaint caused any miscarriage of justice with respect to the suit property.

The record does not contain proof of any exclusive ownership claim over other



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properties by the appellant which could have fatal effect on the present suit. In short, the proposed additional ground is speculative and cannot succeed, allowing it would entail further remand and delay without any real prospect of changing the result.

47. Therefore the application under Section 151 read with Order 41 Rule 2 CPC for raising the plea of “partial partition” is refused.

Conclusion

48. For the foregoing reasons, this Court concludes as under:-

(a) The applications moved by the appellant in this High Court for receiving additional evidence under Order 41 Rule 27 C.P.C. and for leave to raise additional ground under Section 151 read with Order 41 Rule 2 are dismissed.

(b) The Regular Second Appeal is without substance and is dismissed. The judgment and decree dated 4.6.1990 of the learned Addl. District Judge, Bhiwani are hereby affirmed and shall stand.

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

December 10, 2025
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(MANDEEP PANNU)
JUDGE

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