



RSA-362-1994 (O&amp;M)

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

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**RSA-362-1994 (O&M)**  
**Reserved on:-04.12.2025**  
**Pronounced on:- 19.12.2025**  
**Uploaded on:-22.12.2025**

*Whether only operative part of the judgment is  
Pronounced or the full judgment is pronounced:*

*operative part/full judgment*

Mohan Lal (since deceased) through LRs  
and Another

....Appellants

VERSUS

Ruldu Ram and Others

....Respondents

**CORAM : HON'BLE MS. JUSTICE MANDEEP PANNU**

Present: Mr. Vijay Lath, Advocate and  
Mr. Ajay S. Dhiman, Advocate for the appellants.

Ms. Mahima Dogra, Advocate (Amicus Curiae)  
for respondent No.1.

Respondents No. 3 to 7, proceeded against *ex parte*  
Vide order dated 10.09.2025.

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**MANDEEP PANNU, J.**

1. Present Regular Second Appeal has been filed challenging the judgment and decree dated 17.12.1993 passed by the learned Lower Appellate Court, whereby the appeal filed by the plaintiff Ruldu Ram was allowed, the judgment and decree dated 03.04.1991 passed by the learned Trial Court were set aside and the suit of the plaintiff was decreed, whereas the learned Trial Court had dismissed the suit of the plaintiff Ruldu Ram.

**Brief Facts**

2. The plaintiff had instituted the suit for possession of half share by way of partition of the property in dispute, shown by letters ABCD in the site plan attached with the plaint, and bounded as under:

East: House of Shaheeda (now house of Ram Lal)

West: Thorough fare

North: House of Kaka (now Sohan Lal son of Umra)

South: House of Sarda Ram (now house of Mata Bux)

The suit property is situated within the limits of Municipal Committee, Ropar.

3. The plaintiff further sought the relief of permanent injunction for restraining the defendants from alienating the property in dispute and from raising any construction over it. It was averred that the disputed property was purchased by Mata Bux and Devi Dayal vide sale deed dated 26.08.1925 from Smt. Ralli wife of Kheva, resident of Ropar, for a consideration of Rs.99/-. It was pleaded that Mata Bux was the father of the plaintiff Ruldu Ram and that Devi Dayal was the predecessor-in-interest of defendants-respondents No.1 to 6. It was further pleaded that after the death of Mata Bux, the plaintiff inherited his half share in the disputed property, whereas the defendants also inherited the remaining half share in the disputed property from Devi Dayal. According to the plaintiff, the property in dispute was still joint. It was pleaded that the defendants intended to raise construction over the disputed property and that defendant No.7 Mohan Lal alleged to have purchased some portion out of the disputed property. On these pleadings,

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the plaintiff prayed for partition of the disputed property for its better use and enjoyment.

4. The suit was contested by the defendants by filing written statement. Several preliminary objections were raised. Firstly, it was pleaded that the plaintiff had no locus standi to file the suit. Secondly, it was pleaded that the suit was not maintainable in the present form, as defendant No.7 Mohan Lal was its exclusive owner in possession. Thirdly, it was pleaded that the plaintiff was estopped by his own act and conduct from filing the suit. Fourthly, it was pleaded that the suit was bad for misjoinder and non-joinder of necessary parties.

5. On merits, it was pleaded that Mata Bux and Devi Dayal had purchased property adjacent to the property in dispute vide sale deed dated 26.08.1925, and that the site plan produced by the plaintiff was not correct. It was pleaded that the disputed property shown by letters ABCD was not purchased vide sale deed dated 26.08.1925. It was further pleaded that the plaintiff had no concern with the disputed property and that he had not inherited the same from his father. According to the defendants, the property in dispute was exclusively owned by Devi Dayal, who gave it to Faqir Chand, his son, during his lifetime. Faqir Chand raised construction over the disputed property in the year 1955-56 and remained in possession as its exclusive owner. It was pleaded that the plaintiff never raised any objection at the time when the construction was made.

6. It was further pleaded that Sheela Devi, defendant-respondent No.8, wife of Mohan Lal defendant-respondent No.7, purchased the disputed property from Banti Devi and other defendants-respondents vide sale deed dated 11.04.1985 for a consideration of Rs.20,000/-, and since then defendant No.7 Mohan Lal along



with his family members had been residing in the disputed property. It was pleaded that the plaintiff had no right to seek partition of the disputed property.

7. From the pleadings of the parties, the learned Trial Court framed the following issues:

1. Whether the father of the plaintiff and Devi Dayal purchased the suit property on 26.08.1925? OPP.
2. Whether the plaintiff is a co-sharer to the extent of 1/2 share in possession of the suit property with the defendants? OPP.
3. Whether the suit is not maintainable in the present form? OPD.
4. Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD.
5. Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPD.
6. Whether the suit is not valued properly for the purposes of court fee and jurisdiction? OPD.
7. Relief.

### **Findings of the Trial Court**

8. The learned Trial Court took up Issues No.1 to 4 together, being interlinked. Upon appreciation of the oral and documentary evidence, the Court held that although a vacant site was purchased by Mata Bux and Devi Dial to the extent of ½ share each vide sale deed dated 26.08.1925 (Ex.P2), the said vacant site had already been partitioned between them. It was found that the southern portion of the property came to the share of Mata Bux, whereas the northern portion, which is the property in dispute, came to the share of Devi Dial.



9. The Trial Court further held that the disputed property was inherited by Faqir Chand son of Devi Dial, who raised construction over it in the year 1955–56. After the death of Faqir Chand, the property devolved upon his legal heirs, who subsequently sold it to Sheela Devi (defendant No.8) vide sale deed Ex.D1 dated 11.04.1985. The execution of the said sale deed was duly proved through the statements of DW3 Bant Devi, DW2 Gurdayal Singh (attesting witness), and DW5 Sheela Devi. The Court also noticed the admission of the plaintiff as PW1 that the construction was raised by Faqir Chand in 1955–56 and that he never objected to the same.

10. On comparison of the site plan Ex.P1 relied upon by the plaintiff with site plan Ex.P3 attached with the sale deed Ex.P2, the Trial Court found that the dimensions and boundaries did not tally, thereby holding that the plaintiff had failed to establish that the disputed property formed part of the joint property purchased under sale deed dated 26.08.1925. The Court concluded that the plaintiff was not a co-sharer in the disputed property and had been seeing Faqir Chand and thereafter his legal heirs and Sheela Devi in possession of the disputed property since 1955. Consequently, the plaintiff was held to be estopped by his act and conduct from filing the suit.

11. Accordingly, Issues No.1 to 4 were decided against the plaintiff and in favour of the defendants, holding that the plaintiff was neither a co-sharer nor entitled to seek partition and that the suit was not maintainable.

12. Issue No.5 relating to misjoinder and non-joinder of parties was held to have become redundant, as Sheela Devi had already been impleaded as defendant No.8 pursuant to amendment allowed on 10.08.1989.



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13. Issue No.6 regarding valuation for court fee and jurisdiction was decided against the defendants and in favour of the plaintiff, as no evidence was led by the defendants to substantiate the said objection.

14. On the basis of the findings on Issues No.1 to 6, the learned Trial Court dismissed the suit of the plaintiff .

**Findings of the Lower Appellate Court**

15. The learned Lower Appellate Court, after hearing learned counsel for the parties and re-appreciating the entire oral and documentary evidence on record, found that the learned Trial Court had erroneously decided Issues No.1 to 4 against the plaintiff. The Lower Appellate Court held that it stood admitted on record that the property was purchased jointly by Mata Bux and Devi Dayal vide sale deed dated 26.08.1925 (Ex.P2) and that the execution of the said sale deed was not in dispute. The plea taken by the defendants that the property purchased vide sale deed dated 26.08.1925 was only adjacent to the disputed property was found to be incorrect and evasive.

16. The Lower Appellate Court further held that there was no pleading or evidence on behalf of the defendants to show that the property purchased vide sale deed dated 26.08.1925 was ever partitioned between Mata Bux and Devi Dayal, and therefore the learned Trial Court was not justified in constructing a theory of partition on its own. On comparison of the site plan Ex.P1 with the site plan Ex.P3 attached with the sale deed Ex.P2, and in view of the admissions made by the defendants' witnesses, including DW2 Gurdial Singh, DW3 Banti Devi and DW4 Sadhu Ram, the Lower Appellate Court held that the boundaries of the disputed property tally with the property purchased vide sale deed dated 26.08.1925.

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17. The Lower Appellate Court also took note of the admissions of the defendants' witnesses that on the eastern side of the disputed property was the house of Ram Lal, on the western side was a thoroughfare, on the northern side was the house of Sohan Lal and on the southern side was the house of Mata Bux, thereby fully supporting the site plan Ex.P1 produced by the plaintiff. On this basis, the Court held that the disputed property is the same which was jointly purchased by Mata Bux and Devi Dayal.

18. On the question of estoppel, the Lower Appellate Court held that the mere fact that Faqir Chand had raised construction in 1955–56 and that the plaintiff did not object at that time, did not divest the plaintiff of his title. It was held that inaction or silence does not amount to acquiescence unless it results in fraud or deprivation of legal right. The plea of estoppel accepted by the Trial Court was thus held to be legally unsustainable, particularly when Faqir Chand and thereafter Sheela Devi derived title with full knowledge that the property was joint.

19. Consequently, the Lower Appellate Court held that the plaintiff is a co-sharer to the extent of half share in the disputed property, that the suit was maintainable, and that the findings of the Trial Court on Issues No.1 to 4 were liable to be reversed. The appeal was accordingly allowed, the judgment and decree of the Trial Court were set aside, and the suit of the plaintiff was decreed by passing a preliminary decree for partition, holding the plaintiff and defendant No.8 Sheela Devi to be co-owners to the extent of half share each, with a direction for appointment of a Local Commissioner for effecting partition by metes and bounds.

20. Aggrieved by the judgment and decree of the lower Appellate Court, the defendant No.7-Mohan Lal and his wife approached this Court by way of the



present regular second appeal for setting aside the same. Respondent No.1, being contesting respondent, chose to contest the appeal. Respondents No.3 to 7 being proforma respondents proceeded against ex-parte.

**Submissions on behalf of the Appellants**

21. Learned counsel for the appellants submitted that the judgment and decree passed by the learned Lower Appellate Court suffer from serious errors of fact and law and deserve to be set aside. It was contended that the learned Trial Court had rightly dismissed the suit after a proper appreciation of oral and documentary evidence, but the learned Lower Appellate Court reversed the well-reasoned findings merely on conjectures and surmises.

22. It was argued that the identity of the suit property itself is doubtful, and the plaintiff has failed to establish that the disputed property is the same as the one purchased vide sale deed dated 26.08.1925. According to the appellants, the site plan Ex.P1, relied upon by the plaintiff, does not mention clear and reliable dimensions or measurements, and therefore cannot form the basis for identifying the suit property. It was submitted that the plaintiff took inconsistent stands regarding measurements, as on one hand he was unable to specify the dimensions of the property claimed by him, while on the other hand he asserted certainty regarding the dimensions of another property allegedly purchased under the same sale deed.

23. Learned counsel further contended that the dimensions shown in Ex.P1 do not tally with the dimensions emerging from the site plans Ex.D2 and Ex.D3, which were proved on record by the defendants. It was argued that the property purchased in 1925 was a vacant site, whereas the property presently in

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possession of the appellants is a constructed house, raised long ago in 1955–56 by Faqir Chand, and the plaintiff admittedly never raised any objection at that time. The long lapse of nearly 35 years before the institution of the suit clearly shows that the plaintiff never treated the disputed property as joint.

24. It was also submitted that the sale deed dated 11.04.1985 in favour of Sheela Devi has never been challenged by the plaintiff, and once the title of the appellants stands established through a registered sale deed, the suit for partition cannot be sustained. According to learned counsel, even if the preliminary decree as passed by the Lower Appellate Court is upheld, it would be incapable of execution, as the identity and measurements of the suit property remain uncertain.

25. Learned counsel emphasized that the learned Lower Appellate Court ignored the vital admissions of the plaintiff regarding construction raised in 1955–56 and failed to attach due weight to the defendants' site plans, which were supported by measurements and municipal record. It was submitted that the reversal of the Trial Court judgment has resulted in grave miscarriage of justice and the findings of the Trial Court deserve to be restored.

**Submissions on behalf of Respondent No.1**

26. *Per contra*, learned counsel for the respondent-plaintiff supported the judgment and decree passed by the learned Lower Appellate Court and submitted that the same is based on a correct and lawful appreciation of evidence. It was argued that the execution of the sale deed dated 26.08.1925 is admitted, and it is not disputed that the property was purchased jointly by Mata Bux and Devi Dayal to the extent of half share each.



27. It was contended that the sole defence of the appellants was that the property purchased in 1925 was adjacent to the disputed property, but no cogent evidence was led to support this plea. On the contrary, the site plan Ex.P3, which was attached with the sale deed, clearly mentions the boundaries, and the same substantially tally with the boundaries reflected in Ex.P1, notwithstanding minor variations attributable to passage of time.

28. Learned counsel submitted that no evidence of partition between Mata Bux and Devi Dayal was ever produced by the defendants, and therefore the learned Trial Court committed an error in assuming partition on its own. It was argued that the Lower Appellate Court correctly held that the Trial Court could not invent a case of partition in the absence of pleadings or proof.

29. With regard to dimensions, it was argued that minor discrepancies in measurements, especially in old properties purchased nearly a century ago, are natural and do not defeat substantive rights. The emphasis, according to learned counsel, must be on identity through boundaries, which stands established from the admissions of defendants' witnesses themselves. It was pointed out that the defendants admitted that on the eastern side of the disputed property was the house of Ram Lal, on the western side was a thoroughfare, on the northern side was the house of Sohan Lal and on the southern side was the house of Mata Bux, which fully corroborates the plaintiff's site plan.

30. Learned counsel further submitted that the construction raised by Faqir Chand in 1955–56 does not extinguish the plaintiff's title, as mere inaction or silence does not amount to abandonment of ownership. It was contended that the



defendants derived title with full knowledge of the joint nature of the property and therefore cannot claim any equity on the basis of construction or lapse of time.

31. It was lastly submitted that the learned Lower Appellate Court rightly held the plaintiff to be a co-sharer to the extent of half share, and the decree for partition is perfectly executable through appointment of a Local Commissioner. No perversity or substantial question of law arises warranting interference by this Court.

**Findings of this Court**

32. After giving my anxious consideration to the judgments passed by both the courts below, the pleadings of the parties, the documentary as well as oral evidence on record and the rival submissions advanced, I am of the considered view that the judgment and decree passed by the learned Trial Court call for interference neither on facts nor in law and deserve to be upheld, though for reasons which require to be clarified and elaborated.

33. At the outset, it is to be noticed that the entire controversy between the parties revolves around the identity of the suit property, and not merely around the question as to whether Mata Bux and Devi Dayal were joint owners or whether any partition had taken place inter se between them. In a suit for partition, the first and foremost obligation of the plaintiff is to establish, with certainty and precision, that the property sought to be partitioned is the very same property in which he claims co-ownership. This foundational requirement cannot be diluted.

34. The plaintiff has relied primarily upon the sale deed dated 26.08.1925 (Ex.P2) and the site plan Ex.P1 prepared by him to contend that the property shown by letters ABCD is the same property which was purchased jointly by Mata



Baksh and Devi Dayal. However, a careful scrutiny of the record reveals that while the sale deed Ex.P2 and the site plan attached thereto (Ex.P3) contain specific measurements and dimensions, the plaintiff's site plan Ex.P1 does not mention any dimensions at all. The absence of dimensions in Ex.P1 assumes critical significance, as it renders the site plan incapable of precise identification or comparison with the title document. This omission is not a minor defect, but a serious lacuna which goes to the root of the plaintiff's claim.

35. It is true that boundaries of a property may change with the passage of time, owing to subsequent constructions, transfers and urban development. A house which was once adjacent to an open courtyard may later about a constructed building, and names of adjoining owners may also change. However, measurements and dimensions do not ordinarily change with time. The length and width of a plot, unless lawfully altered, remain constant. Therefore, where the title document contains measurements, but the site plan relied upon by the plaintiff is completely silent on dimensions, the court is left without any reliable means to correlate the two. In the present case, this very absence of dimensions in Ex.P1 is fatal to the plaintiff's case.

36. The evidence of the plaintiff himself further weakens his case. In his oral testimony, he admitted that construction over the disputed portion was raised by Faqir Chand in the year 1955–56 and that he did not raise any objection at that time. He also admitted that the said construction continued to remain in possession of Faqir Chand and, thereafter, his successors. These admissions assume significance when examined in the light of the plaintiff's failure to produce a site plan with measurements. If the plaintiff was indeed a co-sharer in the specific



portion on which construction was raised, a clear demarcation supported by dimensions would have been the minimum requirement. The long silence of the plaintiff, coupled with the existence of a defined construction since 1955–56, casts a serious doubt on his present claim.

37. The defendants, on the other hand, produced the sale deed dated 11.04.1985 (Ex.D1) along with site plans Ex.D2 and Ex.D3. These documents, when read with the oral evidence of the defence witnesses, present a consistent picture regarding the location, dimensions and physical features of the disputed house. Importantly, the defence site plans correlate with the construction raised on the spot and with the historical fact that the construction dates back to 1955–56. The Trial Court was justified in placing reliance on this consistency, especially when contrasted with the plaintiff's site plan which lacks any measurements.

38. The learned Trial Court did commit an error in observing that the property purchased in 1925 had been partitioned between Mata Bux and Devi Dayal, as there was no pleading or evidence of such partition. However, this erroneous observation does not, by itself, vitiate the ultimate conclusion reached by the Trial Court. It is well settled that a judgment cannot be set aside merely because one of the reasons given is incorrect, if the conclusion is otherwise sustainable on the basis of the evidence on record. Once the assumption of partition is kept aside, the plaintiff still had to independently establish that the property shown in Ex.P1 is the same property purchased in 1925 and that he is a co-sharer in that very property. On this crucial aspect, the plaintiff failed.

39. The Lower Appellate Court rightly noticed that there was no evidence of partition, but in the process, it fell into a more serious error. It treated the



correction of the Trial Court's reasoning on partition as sufficient to decree the suit, without conclusively addressing the core issue of identity of the property. The Lower Appellate Court glossed over the fact that Ex.P1 does not disclose any measurements, and proceeded on the assumption that identity could be established solely on the basis of boundaries. This approach overlooks the settled principle that where identity is disputed, measurements provide the most reliable and objective test, particularly when the title document itself contains dimensions.

40. The Lower Appellate Court also attached undue weight to boundaries while underplaying the importance of measurements. As already noted, boundaries are susceptible to change, but dimensions are not. Where the plaintiff's own site plan is silent on dimensions, greater evidentiary value necessarily attaches to the documentary and oral evidence produced by the defendants, which is consistent with the dimensions of the constructed property on the spot.

41. Moreover, the Lower Appellate Court did not adequately deal with the plaintiff's admissions regarding long-standing construction and possession. These admissions, read in conjunction with the absence of dimensions in Ex.P1, create a serious dent in the plaintiff's claim that the disputed portion was joint and unpartitioned. The Trial Court rightly appreciated these aspects while assessing the overall credibility of the plaintiff's case.

42. Thus, even after correcting the Trial Court's erroneous assumption regarding partition, the conclusion remains inevitable that the plaintiff failed to discharge the initial burden of proof cast upon him. The dismissal of the suit by the Trial Court, therefore, stands on firm footing, though the reasoning requires to be refined by excluding the incorrect assumption of partition and by resting the



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decision squarely on the failure of the plaintiff to establish identity of the suit property through reliable measurements and dimensions, which are completely absent in Ex.P1.

**Conclusion**

43. For all these reasons, this Court holds that the learned Trial Court rightly dismissed the suit, and the Lower Appellate Court erred in reversing that well-founded judgment

44. Consequently, the present Regular Second Appeal is allowed and the judgment and decree dated 17.12.1993 passed by the learned Lower Appellate Court are hereby set aside, while the judgment and decree dated 03.04.1991 passed by the learned Trial Court dismissing the suit of the plaintiff are restored, with the modification that the observation and finding recorded by the learned Trial Court regarding an alleged prior partition between Mata Bux and Devi Dayal are held to be unsustainable and are accordingly set aside.

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

December 19, 2025  
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**(MANDEEP PANNU)**  
**JUDGE**

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