

**RSA-5231-2015 (O&M)****-1-**

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

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**RSA-5231-2015 (O&M)
Reserved on:-10.09.2025
Date of Decision : 15.09.2025**

Ram Kumar and Others

....Appellants

VERSUS

Dillo (deceased) through LRs and Others

....Respondents

CORAM : HON'BLE MS. JUSTICE MANDEEP PANNU

Present: Mr. Rahul Vohra, Advocate and
Mr. Aditya Jain, Advocate for the appellants.

None for respondent Nos. 4 to 8.

Mr. S.K.Panwar, Advocate
For respondents No.12, 13 and 14.

Respondent Nos. 1, 2, 3 & 9 were proceeded ex parte
Vide order dated 28.03.2025

Respondents No.10 and 16 were proceeded ex parte
Vide order dated 24.07.2019

Name of respondents No. 11 and 15 were struck off
Vide order dated 20.09.2019

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MANDEEP PANNU,J.

1. The present Regular Second Appeal has been filed by the appellants-plaintiffs challenging the judgment and decree dated 13.09.2013 passed by the Court of Civil Judge (Jr. Division), Faridabad whereby their suit for declaration and injunction was dismissed, as well as the judgment and decree dated 13.04.2015



passed by the learned Additional District Judge, Faridabad affirming the findings of the learned trial court and dismissing their appeal.

Brief Facts

2. The appellants-plaintiffs instituted a civil suit for declaration and injunction claiming that they are co-owners in possession of land comprised in Khasra No.64(1-3), situated in village Basantpur, Tehsil and District Faridabad, to the extent of 1/6th share. It was their pleaded case that Ghusan, predecessor-in-interest of defendants No.1 to 8, and Nathua, predecessor-in-interest of defendants No.9 to 11, were co-sharers along with Ram Chand, the predecessor of the plaintiffs, each having one-third share. It was alleged that Ghusan and Nathua illegally and without authority alienated the entire khasra number by executing a sale deed dated 19.03.1962 in favour of defendants No.13 to 15 and also executed a lease deed dated 12.03.1962 in favour of defendant No.13 to 15. On the basis of these transactions, mutation Nos.100 and 101 were sanctioned in their favour. The plaintiffs asserted that since Ghusan and Nathua could not alienate more than their respective shares, the sale deed and lease deed are illegal, null and void and not binding upon their rights, title and interest, and consequently the entries of mutation are also liable to be set aside. Along with declaration, they sought injunction restraining interference in their possession.

3. Upon notice, defendants No.12 to 14 appeared and filed their joint written statement alleging therein that they are owners in possession of the suit property on the basis of the sale deed dated 19.03.1962 executed in their favour. They further alleged that the suit filed by the plaintiffs is time barred. Denying rest of the contents of the plaint, they have prayed for dismissal of the suit.



4. From the pleadings of the parties, the following issues were settled by the learned trial Court on 19.09.2012:

1. Whether the plaintiff is entitled for a decree of declaration as prayed for? OPP
2. Whether the plaintiff is entitled for a decree of permanent injunction as prayed for? OPP
3. Whether the suit of the plaintiff is not maintainable in the present form? OPD
4. Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD
5. Whether the suit is time barred? OPD

5. In order to prove their case, plaintiff Ram Kumar himself appeared in the witness box as PW1 and reiterated the averments of the plaint. The plaintiffs relied upon documentary evidence including Jamabandi for the year 2002–03 (Ex.P1), Jamabandi for the year 1963–64 (Ex.P2), Jamabandi for the year 1959–60 (Ex.P3), copy of lease deed dated 12.03.1962 (Ex.P4 and Ex.P5), copy of sale deed dated 19.03.1962 in Urdu and Hindi (Ex.P6 and Ex.P7), memo of presence (Ex.P8), demarcation report (Ex.P9), documents in Urdu language (Ex.P10 and Ex.P11), and mutation Nos.100 and 101 (Mark A and B).

6. On the other hand, the defendants examined Birpal as DW1, Mahesh as DW2, Gyanender Singh ARC as DW3 and Rajesh Patwari as DW4. They produced on record copy of sale deeds dated 18.09.1963 (Ex.D1 and Ex.D2), Jamabandis for the years 2006–07 and 2007–08 (Ex.D3 to D5), copy of Jamabandi for 1963–64 (Ex.DW4/2), copy of Jamabandi for 1967–68 (Ex.DW4/3), copy of



sale deed dated 23.09.1963 (Ex.DW3/1) and another Urdu document (Ex.DW3/2).

7. In rebuttal, plaintiffs tendered photographs Mark A and Mark B.

Findings of the Trial Court

8. The learned trial Court, after examining the oral and documentary evidence, held that Jamabandi for the years 1959–60 and 1963–64 reflected that Ram Chand, the predecessor of the plaintiffs, had share in the suit land. The plaintiffs also produced certified copies of lease deed dated 12.03.1962 and sale deed dated 19.03.1962, which showed that Ghusan and Nathua had alienated the entire khasra number 64(1-3). The Court observed that there was no revenue record suggesting exclusive share of Ghusan and Nathua in the entire khasra and the sale deed showed that more than their share was alienated. However, the learned trial Court held that even if the sale deed was declared null and void qua plaintiffs, such declaration would not be beneficial unless plaintiffs sought partition of the joint khata. The property in question being joint, remedy available to the plaintiffs was to institute a suit for partition and not for mere declaration. Consequently, issues No.1 and 2 were decided against the plaintiffs. On issues No.3 to 5, the learned trial Court noted that though the onus was upon the defendants, during arguments these issues were not pressed, and no evidence was led. Thus, findings were recorded against the defendants. Ultimately, the learned trial Court dismissed the suit on 13.09.2013 holding that the plaintiffs had failed to establish entitlement to declaration and injunction.

Findings of the First Appellate Court

9. Aggrieved, the plaintiffs filed Civil Appeal No.12 of 2014 which was heard by the learned Additional District Judge, Faridabad. The learned Appellate Court, while re-appreciating the evidence, reiterated that the Jamabandi for 1959–



60 clearly proved possession of Ghusan and Nathua as co-sharers and sale deed dated 19.03.1962 and lease deed dated 12.03.1962 transferred their possession and interest. The court observed that the documents Ex.P2 and Ex.P3, though over 30 years old, supported the possession of Ghusan and Nathua and there was presumption of genuineness attached to them. It further held that the demarcation report Ex.P9 and the report of the Local Commissioner also went against the plaintiffs by showing that they were not in possession of the suit land. The learned Appellate Court relied upon the law laid down in *Bhartu v. Ram Sarup* 1981 PLJ 204, that possession of one co-owner is in the eyes of law possession of all, unless ouster is pleaded and proved. It also referred to *Ram Das v. Sita Bai* 2009 (4) *Civil Court Cases* 259, to hold that even if a co-sharer transfers a portion in his possession, such transfer is subject to partition and does not confer exclusive title on the vendee.

10. The learned Appellate Court further examined the question of limitation in light of *Khatri Hotels Private Limited v. Union of India* 2012(1) *RCR (Civil)* 676, and held that limitation runs from the date when the right to sue first accrues. Since the sale deed was executed in 1962, the suit filed in 2007 was hopelessly barred by limitation. The learned Court also noticed that plaintiff Ram Kumar admitted in his cross-examination that his father Ram Chand was alive at the time of filing of the suit. The LRs, therefore, had no locus standi to file the suit during the lifetime of Ram Chand, and on this ground also the suit was held to be incompetent. On cumulative consideration, the appeal was dismissed on 13.04.2015, affirming the judgment of the learned trial Court.

11. Aggrieved by the judgment and decrees passed by both the Courts below, the appellants-plaintiffs filed the present Regular Second Appeal.



12. Upon notice, respondents No.12 to 14 appeared and contested the appeal.

Submissions of learned counsel for the appellants

13. Learned counsel for the appellants has argued that both the Courts below have committed patent illegality in dismissing the suit. It is submitted that the trial court itself recorded a finding that Ghusan and Nathua had no right to alienate the entire khasra in which Ram Chand also had a share, yet dismissed the suit on the erroneous ground that declaration would not benefit the plaintiffs without partition. It is contended that unless the sale deed dated 19.03.1962 and lease dated 12.03.1962 are first declared null and void, the appellants' right to their 1/6th share cannot be protected, and hence relegating them to file a suit for partition without first deciding the validity of the sale deed and lease deed was legally untenable.

14. It is further submitted that the learned Lower Appellate Court erred in upholding the findings of learned trial Court by holding the suit to be barred by limitation. According to the appellants, the cause of action arose only in 2007 when they acquired knowledge of the sale deed and entries in the revenue record, and therefore the suit was within limitation. It is also argued that the findings of the Lower Appellate Court that the suit was technically incompetent because Ram Chand was alive is wholly perverse, as the plaintiffs being his sons and wife are also co-sharers and entitled to protect their independent share. The judgments of both courts below are assailed as being contrary to law, facts and evidence on record, based on conjectures and surmises, ignoring admissible evidence and thus liable to be set aside.

Submissions of learned counsel for respondent Nos. 12 to 14



15. *Per contra*, learned counsel appearing for respondents No.12 to 14 has supported the concurrent findings of both courts below. It is argued that the property was joint and unpartitioned, and in law the possession of one co-owner is possession of all, as laid down in ***Bhartu v. Ram Sarup 1991 PLJ 204***. It is contended that even if Ghusan and Nathua executed a sale deed and lease deed for more than their share, the transfer would remain valid subject to partition, and the only remedy available to the plaintiffs was to seek partition and not declaration. Reliance is also placed on ***Ram Das v. Sita Bai 2009 (4) Civil Court Cases 259***, to submit that a vendee from a co-sharer acquires valid rights to the extent of vendor's share, though subject to adjustment at partition. It is argued that the findings of the courts below that plaintiffs were not in possession stand fortified from the report of Local Commissioner as well as Jamabandis of subsequent years.

16. On limitation, learned counsel submits that Article 58 of the Limitation Act, 1963 clearly prescribes three years for a suit for declaration from the date of first accrual of cause of action. The sale deed being of 1962, the suit filed in 2007 was ex facie barred, as held in ***Khatri Hotels Pvt. Ltd. v. Union of India 2012(1) RCR (Civil) 676***. It is further urged that the suit was not maintainable as Ram Chand, predecessor of the plaintiffs, was admittedly alive at the time of filing of the suit and was not impleaded. In view of the above, no substantial question of law arises for determination and the appeal deserves to be dismissed.

Findings of this Court

17. Having heard learned counsel for the parties and perused the records, this Court finds that the following aspects are not in dispute that the sale deed dated 19.03.1962 and lease deed dated 12.03.1962 were executed by Ghusan and



Nathua and that Ram Chand, predecessor of the plaintiffs, was also co-sharer and that the property in question was never partitioned. The crucial question is whether the plaintiffs could maintain a suit for declaration simplicitor and whether the courts below committed an error in dismissing their claim.

18. The learned trial Court as well as the Appellate Court have concurrently held that in case of joint property, alienation made by one co-sharer may not bind the other co-sharers beyond his share, yet the vendee steps into the shoes of the vendor as a co-sharer. The remedy of the aggrieved co-sharer is to institute a suit for partition and not merely for declaration. This reasoning is firmly supported by the principles laid down in *Bhartu v. Ram Sarup (supra)* and *Ram Das v. Sita Bai (supra)*. The argument of the appellants that declaration of sale deed is a necessary pre-condition before filing partition is misconceived. Even if such declaration is granted, the plaintiffs would not derive possession or specific share without partition proceedings.

19. On limitation also, the concurrent findings deserve acceptance. The sale deed having been executed in 1962, the suit filed in 2007 is clearly barred. The plea of knowledge arising in 2007 is without merit in view of the sanctioned mutations and revenue entries. The reliance placed by the Lower Appellate Court on *Khatri Hotels Pvt. Ltd. (supra)* is apt and applicable.

20. Additionally, the finding that the suit was incompetent as Ram Chand was alive at the time of institution cannot be faulted. The plaintiffs claiming as his legal representatives had no right to maintain the suit during his lifetime. This technical defect strikes at the very root of maintainability.

21. Thus, the concurrent findings of fact recorded by both the Courts below are based upon proper appreciation of evidence and correct application of

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law. The judgments cannot be said to suffer from perversity or illegality so as to warrant interference under Section 100 CPC.

Conclusion

22. In view of the above detailed discussion, this Court holds that both the Courts below have correctly held that the plaintiffs' remedy lay in seeking partition and not in filing a suit for declaration and that the suit was barred by limitation, and further that the same was incompetent as it was filed during the lifetime of Ram Chand. The concurrent findings being based on evidence and settled principles of law, call for no interference.

23. The present Regular Second Appeal is, accordingly, dismissed

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

September 15, 2025
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(MANDEEP PANNU)
JUDGE

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