

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 658 of 2008

Reserved on: 19.09.2026

Date of Decision: 01.10.2026

Mani Chand (deceased) through LRs & Ors

...Appellants

Versus

Khoob Raj & Ors.

...Respondents

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ No

For the Appellants : Mr Digvijay Singh, Advocate.

For the Respondents No.1 : Mr Rajesh Mandhotra, Advocate
and 3

None for Respondent No.2.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment and decree dated 11.09.2008 passed by learned Additional District Judge Mandi, District Mandi, camp at Karsog (learned Appellate Court) vide which the judgment and decree dated 12.01.2006, passed by learned Civil Judge (Senior Division) Karsog, District Mandi (learned Trial Court) were upheld. *(The parties shall hereinafter be*

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

referred to in the same manner as they were arrayed before the learned Trial Court for convenience.)

2. Briefly stated, the facts giving rise to the present appeal are that the plaintiff filed a civil suit before the learned Trial Court for seeking a declaration that registered sale deed No. 126 dated 12.05.1983 executed by defendant Kanshi Ram in favour of defendant Mani Chand regarding the land mentioned in para 1 of the plaint was null and void as Kanshi Ram was not competent to execute the sale deed. It was asserted that the suit land was recorded in the ownership of Dhungal, Sohan Lal, Kanshi Ram and Amar Nath in the revenue record but in exclusive possession of Dhungal. Dhungal died in the year 1976, leaving behind the plaintiff, proforma defendants and others as legal heirs. A family partition took place between the legal heirs of the deceased Dhungal in the year 1976. Khasra Nos. 274, 276, 304 and 310 were allotted to the plaintiff. The plaintiff remained in possession of these Khasra numbers after the partition. He also planted an apple orchard over the portion of the land allotted to him. The defendant Mani Chand tried to paste lime over the apple trees of the plaintiff on 10.01.2005. The plaintiff enquired from Mani Chand as to why he was applying the lime to the plaintiff's apple trees, and he

disclosed that he had purchased the land from Kanshi Ram in the year 1983. The plaintiff searched the revenue record and found that a sale deed was executed by Kanshi Ram in favour of Mani Chand on 12.05.1983. Kanshi Ram was not competent to execute the sale deed. Hence, the suit was filed for seeking the declaration mentioned above.

3. The suit is opposed by filing a written statement taking preliminary objections regarding lack of maintainability and locus standi, the suit having not been properly valued for court fees and jurisdiction, the suit being barred by limitation, and the suit being bad for non-joinder and misjoinder of parties. The contents of the plaint were denied on merits. However, it was admitted that Dhungal had died in the year 1976 and was survived by the plaintiff and other legal heirs. It was asserted that the suit land is in exclusive possession of defendant No. 1. The plaintiff was aware of the registration of the sale deed. He has no locus standi to challenge the sale deed. It was specifically denied that any family partition had taken place between the parties. Hence, it was prayed that the suit be dismissed.

4. A replication denying the contents of the written statement and affirming those of the plaint was filed.

5. The learned Trial Court framed the following issues on

14.09.2005: -

- (i) Whether the suit land has fallen in the share of the plaintiff at the time of family partition and arrangement in the year 1976 and since then the plaintiff is the exclusive owner in possession of the suit land? OPP
- (ii) Whether the plaintiff is entitled for the decree of declaration that sale deed No. 126 dated 12.05.1983 executed by defendant No.2 in favour of defendant No.1 regarding the suit land is liable to be declared null and void? OPP
- (iii) Whether the revenue entries are also liable to be declared null and void as they are not as per the factual position on the spot? OPP
- (iv) Whether the plaintiff has no locus standi to file the present suit? OPD
- (v) Whether the plaintiff has not assessed the suit for the purpose of court fee and jurisdiction? OPD
- (vi) Whether the suit is time-barred? OPD
- (vii) Whether the present suit is bad for non-joinder and mis-joinder of necessary parties? OPD
- (viii) Whether the defendant No.1 was put into possession by the defendant No.2 in the year 1965-1966 and defendant No.2 planted the apple orchard over the suit land? OPD
- (ix) Relief.

6. The parties were called upon to produce the evidence and the plaintiff examined himself (PW1), Tej Ram (PW2), Jai Gopal (PW3) and Braham Dev (PW4). The defendants examined

defendant No. 1, Mani Chand (DW1), Harish Chander (DW2), Kanshi Ram (DW3) and Param (DW4).

7. The learned Trial Court held that defendant No. 2 had executed a sale deed in favour of defendant No. 1. The plaintiff had failed to prove that any partition had taken place between the co-sharers and that he was in exclusive possession of the suit land. The plaintiff had a locus standi to file the suit. The suit was within limitation. Hence, the learned Trial Court answered issues No. 1, 2 and 3 in the affirmative, issues No. 4 to 9 in the negative and declared that the sale of specific numbers was void and the revenue entry showing the defendants to be in exclusive possession was also illegal, null and void.

8. Being aggrieved by the judgment and decree passed by the learned Trial Court, the defendants filed an appeal which was decided by the learned Additional District Judge Mandi, Camp at Karsog (learned Appellate Court). The learned Appellate Court concurred with the findings recorded by the learned Trial Court that a co-sharer could not have executed a sale deed of specific Khasra numbers. The plaintiff had failed to prove the partition or his exclusive possession. Mani Chand stepped into the shoes of Kanshi Ram after the execution of the sale deed. There was no

infirmity in the judgment and decree passed by learned Trial Court. Hence, the appeal was dismissed.

9. Being aggrieved by the judgment and decree passed by learned Courts below, defendant No.1 has filed the present appeal which was admitted on the following substantial questions of law on 10.12.2008:

- (i) Whether Sale Deed No. 126 dated 12.05.1983 (Ext.PW1/E) could not be assailed by the plaintiff by filing a suit for declaration on 05.03.2005 and the suit was barred by limitation and thus not maintainable?
- (ii) Whether there is no legal bar for sale of specific Khasra Numbers in a joint Khata and the validity of such transaction of sale is subject to adjustment of the share as sold at the time of regular partition in accordance with law?
- (iii) Whether findings on Issue No.1, 2 and 9 are erroneous and illegal because these issues could not be clubbed together for just and proper determination of the controversy. Hence, jurisdiction has not been exercised in accordance with law?

10. I have heard Mr Digvijay Singh, learned counsel for the appellants/defendant, and Mr Rajesh Mandhotra, learned counsel for respondents No. 1 and 3.

11. Mr Digvijay Singh, learned counsel for the appellants/defendant, submitted that the sale deed was executed in the year 1983. The civil suit was filed on 05.03.2005 after the lapse of more than 22 years from the date of the execution of the sale

deed. The limitation to set aside the sale deed is 3 years, and the suit was hopelessly barred by limitation. Learned Courts below erred in holding that the sale of specific Khasra number was bad. Therefore, he prayed that the present appeal be allowed and the judgments and decrees passed by learned Courts below be set aside.

12. Mr Rajesh Mandhotra, learned counsel for respondents no. 1 and 3, submitted that a co-sharer out of possession cannot sell a specific portion of the land co-owned by him. Learned Courts below had rightly held that the sale deed was bad regarding the specific Khasra numbers of the suit land. There is no perversity in the findings recorded by the learned Courts below. Hence, he prayed that the present appeal be dismissed.

13. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

Substantial Questions of Law No. 1 and 2:

14. It is undisputed that the parties were the co-owners of the suit land. This fact was not disputed in the written statement. Defendant Mani Chand stated that he, Dhungal, Hari Saran, and Param Ram were four brothers. He was residing at Chindi. He had cultivated the land. All the brothers had separated in the year 1976. He denied in his cross-examination that the brothers had

separated in the year 1956-57. He admitted that a settlement had taken place and no objection was raised regarding the entries recorded during the settlement.

15. He claimed that the parties had separated in the year 1976; however, there is no proof of this fact. Kanshi Ram (DW3) stated that he had a dispute with Dhungal over 4 khasra numbers and he was in possession; hence he sold these Khasra numbers to Mani Chand, defendant No. 1. Mani Chand etc. had partitioned the land after the purchase. He admitted in his cross-examination that 3 brothers had purchased 3 shares together. He admitted that no objection was raised at the time of *Girdawari*.

16. Kanshi Ram did not corroborate the statement of defendant no. 1 that there was a partition between Dhungal and his brothers; rather, he stated that Mani Chand etc. had partitioned the land after the purchase. Further, the partition was never reported to any Revenue Officer, and even if the brothers had agreed to cultivate the land separately for better enjoyment, the same does not amount to a partition as is understood in law. It was laid down in *Janku v. Nagnoo*, 1985 SCC OnLine HP 12= AIR 1986 HP 10 that mere occupation of the property separately by a co-sharer in a family arrangement does not amount to partition. It was observed:

“14. In the written statement, the defendants allege that a private partition took place about 47 years back, that is, in or about 1921. No deed/writing of partition was produced by the defendants, and there is also no evidence to prove as to when this private partition took place between them or their ancestors. It is also not proved as to what property was put in the hotchpot in the partition and which portions of the property were allotted to each of the co-sharers/co-owners. No report was given to the revenue authorities, with the result that no mutation of partition was sanctioned. There is also no entry in the revenue records to prove that any co-sharer is in possession of a separate parcel of land on account of partition; the entries, on the contrary, show that separate possessions are recorded in the capacity of a co-sharer.

15. In the case of co-sharers, every co-sharer has an interest in the whole property and also in every parcel of it and possession of the joint property by one co-sharer is, in the eyes of the law, possession of all even if all but one are actually out of possession. A mere occupation of a larger portion or even of an entire joint property cannot necessarily amount to an ouster, as the possession of one co-sharer is deemed to be the possession on behalf of all. If, however, the co-sharers are in possession of separate parcels of land under some arrangement, then such an arrangement cannot be disturbed except by filing proceedings for partition and during these proceedings, the proper mode of partition can be framed, and respective possession of the parties/co-sharers can be respected to the extent to which it is possible.”

17. It was held in *Leetho Versus Chamelo and Others 2001*(2) *ShimLC* 238, that mere arrangements regarding the cultivation of the land cannot be termed as a partition. It was observed:

“12. So far, the second substantial question of law is concerned, the learned Counsel for the plaintiff has taken this Court through the pleadings and evidence on record,

oral as well as documentary, but has not been able to show that any part thereof has been misread and misinterpreted by the first appellate Court to come to the conclusion that the land in dispute stood already partitioned. In para 7 of the plaint, there is mention of family settlement without giving further particulars thereof, whereas the oral evidence pertains to partition, which is not supported by the revenue record produced by the plaintiff. Partition, whether by way of family settlement or family arrangement or by the Revenue Officer by giving effect to the family partition or settlement by metes and bounds, should be such which may conclusively establish the respective shares of the parties so as to stop further dispute in between them. Vague assertions in regard to the share of one party, and that too which is not proved from the evidence, cannot be said to be sufficient to hold that a partition had taken place. Further, mere arrangement in regard to the cultivation of the land cannot be termed as partition, though such arrangement at the time of final partition by the Revenue Officer should be given due consideration in order to maintain possession of the parties intact. Therefore, the First Appellate Court has rightly set aside the findings of the trial court to hold that the land in dispute was not partitioned as alleged by the plaintiff. The Substantial Question of Law No. 2 is answered accordingly.”

18. This judgment was followed in *Mangat Ram Versus Gulat Ram (since deceased) through his LRs Jagdeep Kumar and others, Latest HLJ 2011(1)(HP) 274* and it was held that mere arrangement between the parties for the cultivation of the land does not amount to a formal partition, especially when the same is not reported to the revenue authorities. It was observed:

“19. Prior to the passing of the order by the competent authority, no partition by metes and bounds ever took place between the parties. The court below rightly came to the conclusion that private partition was actually an

arrangement for the purpose of cultivation of land. It was not a final partition of the land by metes and bounds so as to effect severances of joint holdings. Had it been so, parties would have definitely got this fact recorded in the revenue record and resorted to the mandatory provisions of Sections 35 and 135 of the Act. The Act is a complete code in itself. It provides a procedure for preparing revenue records. Under Section 35, any person acquiring a right in an estate as a landowner is required to report the same to the Patwari of the estate, who in turn is obliged to enter this fact in the register of mutations maintained by him. Whenever there is partition without the intervention of the Revenue Officer, the Private party is required to apply to the Revenue Officer for an order of confirmation/affirmation of partition. The Act provides that in such cases the Revenue Officer is mandatorily required to inquire into the fact as to whether in fact partition was ever effected or not. The Revenue Officer is required to comply with the statutory provisions laid down under Chapter 9 of the Act. Admittedly, in the instant case, the parties have not resorted to such measures. Partitions entered into in the years 1961 and 1972/74 are not partitions in the eyes of the law.

20. This Court in *Leetho vs. Chamelo & Ors. 2001 (2) Shim. L.C. 238*, while dealing with the question of jurisdiction of the Civil Court to entertain a suit filed by the plaintiff, assailing the order of partitioning the land, passed by the competent authority, has specifically held that partition, whether by way of family settlement or family arrangement or by Revenue Officer by giving effect to the family partition or settlement by metes and bounds, should be such which may conclusively establish the respective shares of the parties so as to stop further dispute in between them. Mere arrangement in regard to the cultivation of land cannot be termed as partition, though such arrangement at the time of final partition by Revenue Officer should be given due consideration in order to maintain possession of the parties intact.”

19. The parties are recorded to be the joint owners in possession in the Missal Hakiyat (Ext.PW1/A), jamabandi for the year 1980-81 (Ext.PW1/P) and Jamabandi for the year 2000-2001 (Ext.PW1/D). The entries in the jamabandi carry with them a presumption of correctness, and the evidence on record was insufficient to rebut the presumption. Hence, the learned Courts below have rightly held that the suit land was proved to be the joint land between the parties.

20. The learned courts below have concurrently held that a co-sharer cannot transfer a specific portion of the land co-owned by him. There is no infirmity in this finding. It was laid down by the Hon'ble Punjab & Haryana High Court in *Bhartu Versus Ram Swarup*, 1981 PLJ 204, that the sale of a specific portion of land amounts to the sale of a share and the land cannot be excluded from the partition on the grounds of sale. It was observed:

“5. The rights of a transferee from a co-owner are not entirely dependent on judicial decisions but are regulated by Section 44 of the Transfer of Property Act which provides that where one or two or more co-owners of the immovable property legally competent in that behalf transfer his share of such property or any interest therein, the transferee acquires as to such share or interest and so far as is necessary to give effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property and to enforce a partition of the same but subject to conditions and liabilities affecting at the date of

the transfer, the share or interest so transferred. According to this statutory provision also what the transferee gets is the right of the transferor to joint possession and to enforce a partition of the same, irrespective of the fact whether the property sold is a fractional share or a specified portion, exclusively in possession of the transferor. Again, it cannot be disputed that when a co-sharer is in exclusive possession of the specified portion of the joint holding, he is in possession thereof as a co-sharer and all the other co-sharers continue to be in its constructive possession. By the transfer of that land by one co-owner, can it be said that other co-sharers cease to be co-sharers in that land or to be in its constructive possession? The answer obviously would be in the negative because any of the other co-sharers can either seek a declaration from the Court, as held in Sukh Dev's case, that the vendee is in possession only as a co-sharer or can initiate proceedings for a partition of the joint holding, including the land transferred. If the other co-sharers continue to be co-sharers in the land transferred, even though comprised of specific khasra numbers, how can it be said that what is sold is something other than the share out of the joint holding? That the sale of a specific portion of land out of a joint holding by one of the co-owners is nothing but a sale of a share cut of the joint holding would be further elucidated if we take the example of a sale where a co-owner sells the land comprised of a particular khasra number which is not in his possession but is within his share in the joint holding. For example, A, who is a joint owner of one-fourth share in the joint holding measuring 100 bighas, sells the land measuring 10 bighas bearing khasra numbers 'X' and 'Y' which are not in his possession. On the basis of this sale, the vendee can neither claim himself to be a transferee of the said land nor can he claim its possession from other co-owners in possession thereof. The effect in law of such a transfer would be only that the vendee shall be entitled to 10 bighas of land out of the share of his vendor at the time of a partition or prior thereto to a decree for joint possession to the extent of the land purchased by him. Consequently, the effect in law of the sale, even of a

specified portion of joint land, is that it is only a sale of a portion of the share by one of the co-owners.

6. Take another example where 'A' and 'B' jointly own a khewat in equal share measuring 200 bighas. 'B' is in separate possession of 100 bighas of land comprised of specific khasra numbers and transfers it to 'C'. It is not disputed that in spite of this sale, 'A' continues to be a co-sharer in the land transferred by 'B'. If that is so, how can it be disputed that 'C' would necessarily be a co-sharer in the remaining 100 bighas of land in possession of 'A', as otherwise, it would mean that 'A' is the exclusive owner of 100 bighas of land in his possession and also a co-sharer with 'C' in the remaining 100 bighas, which obviously is not possible. The matter can further be illustrated by another example. 'A' and 'B' are co-sharers in the joint khewat, say of 100 bighas of land in equal shares. 'B', who is in exclusive possession of land measuring 40 bighas of land comprised of khasra Nos. 1, 2, 3 and 4, transfers two khasra numbers, that is, 1 and 2, measuring 20 bighas to 'C', specifically stating in the deed that he is in possession of these khasra numbers as a co-sharer and is transferring his interest as such. Can it be said on these facts that 'C' has purchased anything except a co-sharer's interest in khasra Nos. 1 and 2 in spite of the fact that the sale is of specific numbers and of the specified area. The answer obviously would be in the negative and if so then the sale is obviously of a share by the co-sharer out of the joint land and nothing else."

21. This judgment was approved in *Mange Ram vs. Ram Chander* 2001 (2) PLJ 441, and it was observed:

3. The only contention raised is whether a sale of a specific portion of Khasra is hit by the right of pre-emption under Section 15(1)(b) of the Punjab Pre-emption Act as applicable to the State of Haryana. A Full Bench of the Punjab and Haryana High Court in *Bhartu v. Ram Sarup*, 1981 PunLJ 204 held that a sale of a specific portion of the land described by the particular Khasra numbers by a co-owner out of the joint

Khewat would be a sale of share out of the joint Khewat and pre-emptible under Section 15(1)(b) of the Act.

4. We are in agreement with the view taken by the Full Bench of the Punjab High Court in *Bhartu v. Rain Sarup*. Consequently, the appeal fails and is accordingly dismissed. There shall be no order as to costs.

22. A similar view was taken in *Ram Chander v. Bhim Singh*, 2008 SCC OnLine P&H 754, and it was held that a co-sharer in possession can transfer a specific portion of the land and the transferee is entitled to remain in possession till the partition. It was observed:

"19. Another attribute of joint property is that where a co-owner in possession of a specific portion of the joint holding and recorded as such in the revenue record, transfers any right, title or interest, from the portion in his specific possession, his vendee would be entitled to protect the portion so transferred, without, however, asserting exclusive ownership to the portion so transferred and possessed, till the joint estate is partitioned."

23. Therefore, learned Courts below had rightly held that a co-sharer can alienate his share but he cannot alienate any specific portion of the land, and in case the specific portion is alienated, the same would amount to the sale of the share of the co-sharer.

24. The plaintiff had challenged the sale deed as null and void, but in substance he was aggrieved by the sale of a specific portion of the land. The plaintiff, being a co-sharer, could have claimed the partition of the land, ignoring the sale of the specific

portion of the land; therefore, the sale deed was not required to be set aside, and the suit filed by the plaintiff cannot be said to be barred by limitation. Hence, these substantial questions of law are answered accordingly.

Substantial Question of Law No. 3:

25. The learned Trial Court had considered issue nos. 1, 2 and 9 together in order to avoid repetition. These issues related to the family partition, entitlement of the plaintiff to a decree, and putting the defendant No. 1 in possession. All these issues related to the execution of the sale deed by a co-sharer. Therefore, all these issues were required to be considered together to avoid the repetition of the evidence and the findings recorded in respect of each of the issues. It was laid down by this Court in *Hiru vs. Mansa Ram 2003 (1) Curr. L.J. 133* that the judgment of the court is not bad simply because issues were taken together for discussion. It was observed:

“8. A bare perusal of this rule shows that the Court has to give a decision on each of the issues along with reasons thereof unless the findings upon any one or more of the issues are sufficient for the decision of the suit. There is nothing in the language of Rule 5 of Order 20 which indicates that two or more issues cannot be clubbed together for discussion and findings in the context of the evidence on record. What is required by Rule 5 is that the Court has to give its findings on all the issues unless the findings on any

one or more of the issues are sufficient for the decision of the suit. The provision is aimed at curbing unnecessary protraction of litigation. The true import of Rule 5 of Order 20, as pointed out by a Division Bench of the Patna High Court in *Ram Ranbijaya Prasad Singh v. Sukar Ahir*, AIR 1947 (34) Patna 334, is that the Courts of fact must decide all the issues of fact which arise between the parties so that if the appellate court takes a different view, the parties are saved from further harassment. However, clubbing most of the issues and writing a conclusion at the end of the judgment would not contravene Rule 5 of Order 20 of the Code, nor would it vitiate the findings for that reason.

9. It is true that sometimes Judicial Officers, as a convenience, club together all or most of the issues and write a judgment, though not often without applying their minds on a particular matter that has to be decided under each issue and then conclusions on several issues are given at the end of the judgment, but even such a judgment cannot be said to contravene the provisions of Rule 5 of Order 20 of the Code, which requires no more than that reasons should be given for the findings in respect of each issue. Such a judgment may be open to criticism, but it cannot be said to be no judgment in the eyes of the law.”

26. This position was reiterated in *Jagat Singh vs. Shanti Swaroop* 2007 HLJ 192, wherein it was held:

“13. Now coming to the question with regard to the discussion and decision by the learned trial court of issues Nos. 1, 3 and 6 together. As far as Issues No.1 and 3 are concerned, I am of the opinion that there was no error committed by the trial court in discussing or deciding these issues together because both issues overlap to some extent. Though normally, the trial court should endeavour to decide every issue separately, there is no bar to two or more issues being decided together. Issues that overlap or where the same evidence has to be considered, and where points to be decided are similar in nature, can always be decided together. In the present case, I find that issue No.1 is with

regard to the entitlement of the plaintiff to claim possession and issue No.3 is whether he was estopped by his acts, conduct and acquiescence from claiming possession. These could have been conveniently decided together by the learned trial court.”

27. Thus, the learned trial Court cannot be faulted for taking the issues together, and this substantial question of law is answered accordingly.

Final Order:

28. In view of the above, there is no infirmity in the judgment and decree passed by the learned Courts below. Hence, the present appeal fails, and it is dismissed.

29. The present appeal stands disposed of, and so also the pending miscellaneous applications, if any.

30. The record of the learned Courts below be returned along with a copy of this judgment.

(Rakesh Kainthla)
Judge

1st October, 2026
(Nikita)