



RSA-962-1990(O&M)

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

RSA-962-1990(O&M)
Reserved on : 10.01.2025
Date of decision: 28.04.2025

Harpal Singh and others

..Appellants

Versus

Satwant Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kanwal Goyal, Advocate
Ms. Sheena Dahiya, Advocate for the appellants

Dr. Mohinder Singh Mann, Advocate for respondent no.13(iv)

Mr. Mohit Saini, Advocate for
Mr. Mohit Garg, Advocate
for respondent no. 22 and 23

ANIL KSHETARPAL, J.

1. Brief facts of the case:-

1. Legal representatives of defendant no.1 assail the correctness of the concurrent findings of fact arrived at by the courts below while decreeing the plaintiffs' suit for possession of 50 kanals 18 marlas land and declaring that the instrument of partition issued by the revenue authorities on 18.02.1980 is illegal null and void.

2. In order to comprehend the issues involved in the present case, some relevant facts, in brief, are required to be noticed.

3. Amrik Singh son of Narain Singh filed an application on 17.10.1973, before the Assistant Collector First Grade, Sunam for partition of his 1/6th share in the land measuring 1503 kanals 14 marlas and 1/12th share in land measuring 331 kanals 1 marla located in Village Changaliwala.



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The instrument of partition was prepared and issued on 18.02.1980, and warrants of possession were issued on 18.03.1980. The plaintiffs namely Satwant Singh, Rajwant Singh, Sukhwant Singh @ Sukhdev Singh and Harbant Singh sons of Gurdev Singh filed a suit claiming that they have purchased 80 kanals land from Sukhdev Singh son of Bant Singh vide sale deed dated 14.02.1972 for Rs.30,000/-. They also claimed that they were tenant in possession of 50 kanals 18 marlas land as they were tenants at Will on payment of Batai (share of the crop). Primarily the suit was filed on the ground that Satwant Singh was not impleaded as a party in the partition proceedings. Ajit Singh etc also died during the pendency of the partition proceedings but their LRs were not brought on record. Only defendant no.1 contested the suit while claiming that the joint property has been partitioned as per law and appeal against the order of partition was dismissed. It was denied that the plaintiffs were in possession of 50 kanals 18 marlas land as tenant at Will.

4. Replication was filed and the trial court culled out the following issues:-

- “1. Whether the order of AC Ist Grade Sunam dated 18.2.80 about the partition of suit land is illegal and void and has no effect on the rights of plaintiffs?OPP.*
- 2. Whether the plaintiff were tenants in possession of the suit land measuring 50 kanals 18 marlas? OPP*
- 3. Whether the plaintiffs are entitled to possession of 50 kanals 18 marlas? OPP*
- 4. Whether the plaintiffs are entitled to injunction as prayed for? OPP*
- 5. Whether the plaintiff purchased on 14.2.72 80 kanals of land out of the disputed land from Sukhdev Singh for Rs.30,000/-, if so, its effect? OPP*
- 6. Whether plaintiffs have no locus standi to file the present suit? OPD*
- 7. Whether the plaintiffs have no cause of action? OPD*



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- 8. *Whether the suit is not maintainable in the present form? OPD.*
- 9. *Whether Civil court has no jurisdiction to try this suit? OPD*
- 10. *Whether the plaintiffs are estopped to file the present suit by their act and conduct? OPD.*
- 11. *Relief.”*

II. Evidence adduced:-

5. In oral evidence, the following witnesses were examined by the plaintiffs:-

PW1	Ramesh Chand, Clerk
PW2	Sukhwant Singh (Vendor of sale deed)
PW3	Gian Singh (A/W of sale deed)
PW4	Baldev Singh

6. On the other hand, the following witnesses were examined by the defendants in oral evidence:-

DW1	Gurdial Kaur
DW2	Ajaib Singh
DW3	Bhushan Lal (Record Clerk)
DW4	Darshan Singh (Patwari)
DW5	Kaur Jain (Patwari)
DW6	Harjit Singh (Naib Tehsildar)

III. Reasons recorded by the courts below:-

7. The trial court decreed the plaintiffs’ suit for the following reasons:-

- a) Satwant Singh was a co-sharer but he was not made a party to the partition proceedings.
- b) Instrument of partition does not specify the date when the partition will become effective.
- c) Ajaib Singh ‘DW2’ admitted that the plaintiffs cultivated 50 kanals land.



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- d) As per report no.332, 'Ex.D2' dated 22.03.1980 proves that the defendants were delivered possession of 50 kanals 18 marlas land.

8. The First Appellate Court affirmed the findings for the following reasons:-

- a) Notice to all the co-sharers was necessary in the partition proceedings but all the co-sharers were not made party. Plaintiffs have been allotted 60 kanals land thus, plaintiff no.1 has suffered a loss of 5 kanals
- b) The delivery of possession of 50 kanals 18 marlas land to the defendants is illegal because the plaintiffs were in possession as tenants.

IV Analysis and Discussion:-

9. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook, alongwith the requisitioned record. On the permission granted, the learned counsel representing the appellants has also filed his written note of submissions.

10. In the considered opinion of the Court, the following two questions require adjudication:-

- a. Whether any prejudice was caused to plaintiff no.1, particularly when his three other brothers contested the partition proceedings?
- b. Whether the plaintiffs have proved that they were tenants in possession of the land measuring 50 kanals 18 marlas?



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11. As per the plaint, the plaintiffs have claimed possession of 50 kanals 18 marlas being tenant of Sukhdev Singh. The relevant khasra numbers are reproduced below:-

29//21 (8-0); 44//4 (4-4); 5 (8-0); 45//1 (8-0); 32//3 (8-14); 8 (8-18); 33//5(2-18); 6 Min (2-8) = Total = 50-K 18-M

12. As per the sale deed dated 14.02.1972, the plaintiffs purchased the following parcel of land:-

“Khewat No.40 Khatoni No.119 Killa No.30//24 (8-0); 25 (8-0); 62//12(8-0); 13 (8-0); 32//9 (8-0); 10 (8-0), 1(8-0), 2(8-0); khewat No.49 Khatoni no.193 55//7/2 Min (0-13), 8(7-7), 62//6 (8-0)= Total= 80-K

13. It may be noted here that // signifies the Rect. No. which signifies a unit of agricultural land measuring 25 acres of land (5x5) . From a perusal of the record, it is evident that following land was not included in the partition of the land by Amrik Singh as he was not a co-sharer:-

“55//7/2 Min (0-13), 8 (7-7), 62//6 (8-0)

Total = 16-K”

14. The plaintiffs have been allotted land measuring 64 kanals comprised in the following khasra numbers in the partition proceedings:-

“30//24(8-0), 25 (8-0); 62//12 (8-0), 13(8-0); 32-K

32//1(8-0), 2(8-0), 9 (8-0), 10(8-0) 32-K

Total = 64-K (This is a separate Khewat)”

15. Thus, the plaintiffs continue to be in possession of 80 kanals land which was purchased by them by virtue of the sale deed dated 14.02.1972 because they were allotted 64 kanals land in the partition proceedings whereas 16 kanals land was not a subject matter of partition.



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Hence, they continue to be in possession. Consequently, the findings of the First Appellate Court that there was deficiency of 20 kanals land while dividing the property is factually incorrect.

16. The plaintiffs, the four brothers claim to be tenants in possession of the land measuring 50 kanals 18 marlas land under Sukhdev Singh, one of the co-sharers, who later on sold 80 kanals by virtue of a registered sale deed 14.02.1972 in their favour. Hence, the tenancy, if any, under Sukhdev Singh would stand merged in the ownership of 80 kanals land, which was purchased by them. The plaintiffs were tenants under Sukhdev Singh on some part of the land in the undivided share. Hence, they cannot claim possession from other co-sharers. They may seek remedy against Sukhdev Singh.

17. Moreover, both the courts have failed to examine as to whether any prejudice was caused to plaintiff no.1, particularly when his three other brothers namely Rajwant Singh, Sukhwant Singh and Harbant Singh contested the partition proceedings. They were respondents no.13, 14 and 15 in the partition application. The interest of all the plaintiffs was common. The plaintiff no.1 Satwant Singh filed the present suit alongwith his remaining three brothers namely Rajwant Singh, Sukhwant Singh and Harbant Singh. They have not led any evidence to prove that any prejudice was caused to them. The interest of Satwant singh was common with the remaining plaintiffs. The partition proceedings were contested by the three remaining brothers of plaintiff no.1. Plaintiff no.1 has not led any evidence to prove that he suffered any prejudice.



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18. As per Section 158, of the Punjab Land Revenue Act, 1887, the jurisdiction of civil court is excluded. Preparation of instrument of partition is an administrative act as held by the Supreme Court in a recent judgment **Jhabbar Singh (deceased) through Legal Heirs and others vs. Jagtar Singh 2023 AIR (SC) 2074**. Failure to specify the date on which the instrument of partition will come into effect is not a ground to nullify the entire partition proceedings.

V Decision:-

19. Keeping in view the aforesaid discussion, the judgments passed by both the courts are not sustainable. Hence, they are set aside. The Regular Second Appeal is allowed. The suit filed by the plaintiffs shall stand dismissed.

20. All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

28.04.2025

rekha

Whether speaking/reasoned Yes/No

Whether reportable Yes/No