



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

RSA-818-1992

Judgment reserved on 31.10.2025

Judgment pronounced on 01.12.2025

BIHARI LAL

... APPELLANT

VERSUS

PARTAP SINGH AND ORS.

...RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL**

Present: Mr. Ajay Jain, Advocate  
for the appellant.

Mr. Sanjay Mittal, Advocate  
for respondent Nos. 1 to 5.

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**PARMOD GOYAL, J.**

1. Plaintiff–appellant is aggrieved by the judgment and decree dated 05.06.1989 passed by the Sub Judge IInd Class, Mahendergarh, whereby the suit for possession by way of partition filed by the plaintiff–appellant was dismissed and also by the judgment and decree dated 07.02.1992 passed by the Additional District Judge, Narnaul, whereby the first appeal preferred by the plaintiff–appellant was also dismissed.

2. The plaintiff–appellant had sought possession of the suit property by way of partition, claiming that the suit property is joint property in which the plaintiff–appellant and the proforma defendants have 1/3<sup>rd</sup> share, and that the plaintiff–appellant along with defendant Nos. 6 and 7 intended to raise construction over their share in the joint property. Proforma defendant Nos. 6 and 7, however, were given up before Court of first instance.



3. The suit was contested by defendant Nos. 1 to 5, who took multiple preliminary objections. On merits, it was asserted that the suit property had already been partitioned in the year 1969. It was stated that in that partition, Khasra Nos. 343/1-1 and 344/1-1 had fallen to the share of the defendants, where they had constructed their houses. It was further asserted that Khasra Nos. 341/0-11 and 169/0-3 were allotted to the plaintiff–appellant and the proforma defendants. The suit for partition was thus resisted on the ground that the suit land was no longer joint after the 1969 partition.

4. From the pleadings of the parties, the following issues were framed:

1. *Whether the plaintiff and proforma defendants are co-sharer in the land in dispute? If so to what effect? OPP.*
2. *Whether the suit is not maintainable in the present form? OPD*
3. *Whether the suit is time barred? OPD.*
4. *Whether the plaintiff has no locus standi to file the present suit? OPD.*
5. *Whether the defendants are entitled for special costs? OPD*
6. *Whether the suit is bad for partial partition? OPD*
7. *Relief.”*

5. Issue Nos. 1 and 6 were decided against the plaintiff. It was held that the plaintiff–appellant was not entitled to seek partition as he had not joined all the parties having an interest in the joint property. Issue Nos. 2, 3, 4, and 5 were decided against the defendants, yet the suit was dismissed accordingly. The First Appellate Court affirmed the findings of the learned trial Court.

6. The simple case of the plaintiff–appellant is that the suit land, measuring 2 kanals 13 marlas, is joint property owned by the plaintiff–appellant, his brother, and his mother to the extent of 1/3rd share, and that the defendants



have encroached upon the suit property falling to share and, therefore, they had sought partition and possession of suit property to their share.

7. Perusal of the evidence shows that both PW-1 (plaintiff–appellant) and PW-2, who were examined by the plaintiff–appellant, admitted that it is the defendants who have constructed a house after raising a boundary wall over the property in dispute.

8. In order to prove their case, the defendants examined four witnesses. Through their evidence, the defendants attempted to assert that Khasra Nos. 343/344 had fallen to the share of Mangru and Kanha, the predecessors-in-interest of the defendants. However, it is the own admission of defendant No. 1, Partap Singh, while appearing as DW-4, that he had not purchased any specific Khasra number but only a share in the suit land. Therefore, the plea that the suit land stood partitioned in 1969 was neither pressed nor proved.

9. As far as the jointness of the suit property is concerned, the same is not in dispute. The only ground on which the suit has been dismissed is that plaintiff-appellant are seeking partial partition, as neither all the co-sharers nor all the land jointly owned by the appellant and the defendants was included in the present suit.

10. From the pleadings and the evidence on record, the factual aspects of the case are not in dispute. It stands clearly proved that apart from defendant Nos. 1 to 5, proforma defendant Nos. 6 and 7—who were given up by the plaintiff–appellant—were also co-owners of the suit property. It is further established that besides the suit property for which partition is sought, the plaintiff–appellant and the defendants are also co-owners of Khasra No. 169,



and the said land was not included in the present partition proceedings.

11. It is worth noticing that Piru, the ancestor of the plaintiff-appellant, had three sons, namely Tota, Mangal, and Ram Dutt. Tota had two sons, Mangitya and Kanha. Mangal had two issues, namely Kanha (adopted son) and Sarwan. Ram Dutt had two issues, namely Bihari (plaintiff) and Bahadur. After the death of Bahadur, he was succeeded by his son Jaswant and his wife Smt. Murti (defendant-respondent Nos. 6 and 7), who were given up by the plaintiff-appellant.

12. Admittedly, it is not in dispute that Khasra Nos. 343, 344, and 341, comprised in Khewat No. 181, Khatauni No. 234, total measuring 2 kanals 13 marlas, are jointly owned by the parties. Similarly, Khasra No. 169, comprised in Khewat No. 179, Khatauni No. 232, measuring 0 kanal 3 marlas, is also jointly owned by both the parties. It is also an admitted fact that defendant Nos. 1 to 5 purchased the suit property from Mangita and Kanha, sons of Tota, and from Kanha (adopted son) and Smt. Sarwan, son and daughter of Mangal, to the extent of 2/3rd share.

13. In Khasra No. 169, apart from the plaintiff, defendants, and the proforma defendants who were given up by the plaintiff, Hira Lal, Smt. Phusi, Sarbara, Mankaur, and Smt. Minni, the sons, daughters, and widow of Ram Dutt, have also been shown as co-sharers. In fact, the plaintiff and the sons, daughter, and wife of Ram Dutt have succeeded the share of Ram Dutt son of Piru.

14. Therefore, the original co-sharers in the suit property were Tota, Mangal, and Ram Dutt. The LRs of Tota and the LRs of Mangal have sold their shares in both the khewats to defendant Nos. 1 to 5. In view of these facts, it is



clearly established that Khasra No. 169 also belongs to the same set of co-sharers and ought to have been included in the present partition proceedings. All the LRs of Ram Dutt were required to be impleaded in the present case, which has not been done by the plaintiff–appellant. Therefore, both the Courts below have rightly concluded that the suit of the plaintiff–appellant is not maintainable, being a partial partition.

15. The argument of learned counsel for the plaintiff–appellant that, since the defendants had purchased a share in Khasra No. 169, they cannot be treated as co-sharers in the khewat, cannot be accepted. A person purchasing a share in joint land simply steps into the shoes of the original co-sharer and becomes entitled to seek partition whenever such partition is sought either by the purchaser or by any other co-sharer.

16. In the present case also, by purchasing 2/3rd share of the suit property in Khasra No. 169, the defendants stepped into the shoes of the co-sharers. Therefore, the learned Courts below have rightly held that the plaintiff–appellant was required to include Khasra No. 169 in the partition proceedings and to implead all the co-sharers in both the khewats jointly owned by the plaintiff–appellant, the defendants, and the other persons who are joint owners of the joint property.

17. Learned counsel for the appellant has relied upon the following judgment in support of his arguments:

***Sapinder Singh Vs. Jang Singh*, 2013 (6) RCR (Civil) 696.**

18. Learned counsel for respondent Nos. 1 to 5 has relied upon the following judgements in support of his arguments:

(i) ***Smt. Rajwanti (deceased) and Anr. Vs. Smt. Phoola***



*(deceased) and Anr.* in RSA-1950 of 2025, decided on 21.07.2025.

(ii) *Bhim Singh and others Vs. Bhagwan and others*, 2011 (1) Law Herald 599.

19. The judgment relied upon by learned counsel for plaintiff/appellant has no applicability in the present case as in the cited case both the properties had different set of co-sharers and, therefore, it was concluded that partition amongst one set of co-sharer in absence of second property and its co-sharer is valid partition. However, in the present case the co-sharers in both the properties namely Tota, Mangal and Ram Dutt (predecessors of plaintiff and defendants) are same, therefore, the cited judgment is not applicable. The judgments cited by learned counsel for respondents No.1 to 5 are fully applicable. Present is a case of partial partition, therefore, relief sought by plaintiff-appellant was rightly rejected by both the Courts below. No fault with the concurrent findings of facts can be found. No substantial question of law arises, hence, appeal is dismissed being without merit.

01.12.2025  
chiranjeev

(PARMOD GOYAL)  
JUDGE

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|---------------------------|--------|
| Whether speaking/reasoned | Yes    |
| Whether reportable        | Yes/No |