

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****215****Date of decision: 18.11.2025****RSA-2633-2000(O&M)****Baldev Singh & Others****...Appellant(s)****Vs.****Ajit Singh & Others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Advocate Rupinder K. Thind,
Advocate Navdeep K. Bhullar,
Advocate Tejasvi Luthra, Advocate
for the appellants.

Mr. Avnish Mittal, Advocate
Ms. Aparna Singhal, Advocate
for respondent No.1.

Mr. N.S. Gill, Advocate
Mr. Munish Gupta, Advocate
for respondents No.2 to 4, 7 to 10, 14, 19, 20.

Mr. D.K. Sharma, Advocate
for respondents No.15, 16, 17, 19, 22, 23, 24 and 26.

NIDHI GUPTA, J.**CM-7181-C-2019**

This is an application under Section 151 CPC for fixing the actual date of hearing in the present appeal.

After going through the contents of the application, which is supported by affidavit of Dayal Singh s/o Gurbakhsh Singh, the same is



allowed subject to all just exceptions and main appeal i.e. RSA-2633-2000 is taken on board today itself.

MAIN CASE

Present second appeal has been filed by the defendants No.2 to 9, 10, 11, and 17 to 21 against the concurrent judgments and decrees of the learned Courts below whereby suit filed by the plaintiff for declaration and permanent injunction, has been decreed by both the Courts below.

2. Brief facts of the case are that Plaintiff Bhajan Singh filed the present suit. It was pleaded in the plaint that previously, the plaintiff along with Kahla Singh, Gurbax Singh, Gurdev Kaur, Baldev Kaur, Bachan Kaur (daughters of Chhannan Singh), Bachan Singh (son of Ram Rakha), Tej Kaur (wife of Rattan Singh), Jaswinder Singh (son of Balwant Singh), and Gurdev Kaur (wife of Balwant Singh) were joint owners and joint possessors of the agricultural land in dispute mentioned in the head note 'E' of the plaint total land measuring 667 kanal 16 marla i.e. about 83 killas, in which land the plaintiff has $\frac{1}{6}$ th share. In April 1972, a dispute had arisen between the plaintiff and Kalha Singh/predecessor-in-interest of some of the defendants, and others, with respect to the partition of the agricultural land mentioned in head note 'E' of the plaint. With the intervention of respectables of the village, relatives and friends, the said dispute was settled between the parties by way of oral partition dated 13.04.1972, in which agricultural land mentioned in head note 'A' of the plaint fell to the share of the plaintiff and



plaintiff was declared to be absolute owner in possession of the same. The said Partition was in respect of total land measuring 667 kanal 16 marla i.e. about 83 killas of which plaintiff would have $1/6^{\text{th}}$ share i.e. about 112 kanals which is equal to 13 killas 16 marla. It was further pleaded that as the TAK of the agricultural land that fell to the share of the plaintiff was TIRCHA and the same was full of pits, low level and as the land was of inferior quality, certain extra land, total measuring 131 kanal 16 marla came to the share of the plaintiff, as per the Oral Partition dated 13.04.1972. It was pleaded that the plaintiff had spent valuable amount of about Rs.1 lakh from the date of the Partition for the improvement and betterment of the land that fell to his share and made it fit for cultivation. The plaintiff had also got installed two electric meters in the suit land. Kalha Singh and others were also declared to be absolute owners in possession of their respective shares and were shown to be in the cultivation column of the Revenue Record. The TAK that fell to the share of the others was of better quality. Plaintiff's land was also far away from the well and not fit for the cultivation at that time. The above-said Oral Partition had taken place on the basis of quality and soil of land; and was acted upon between the parties and Kalha Singh and others.

3. It was further alleged that after passing of the judgment and decree dated 12.01.1978 in respect of the land detailed in head note 'B' in favour of the defendants No.25 to 28 and in respect of land detailed in head note 'C' of the plaint in favour of defendants No.1 to 29, the plaintiff was



continuing to be absolute owner in possession of the agricultural land detailed in head note 'D'; and revenue entries showing the defendants to be co-owner in this land, are wrong and liable to be corrected as defendants have no concern or connection with any property as detailed in head note 'D'. It was contended that on the basis of false entries in the Revenue Record, the defendants were threatening to dispossess the plaintiff from the suit land. Hence, present suit was filed on 12.01.1995 seeking decree of declaration that on the basis of oral partition dated 13.04.1972, he has become owner and in possession of the agricultural land detailed in head note 'A' of the plaint; **and** after the passing of the judgment and decree dated 12.01.1978 in respect of the land detailed in the head note 'B' of the plaint in favour of defendants No.25 to 28; **and** in respect of the land detailed in head note 'C' in favour of defendant No.29, he is still continuing to be absolute owner in possession of the agricultural land detailed in head note 'D' of the plaint; **and** the revenue entries showing the defendants to be co-sharers in the suit land detailed in head note 'D' are liable to be corrected; **and** a decree for permanent injunction restraining the defendants, their servants and agents from dispossessing him from the suit land detailed in the head note 'D' of the plaint and from interfering in his peaceful possession and also from alienating the same in any manner.

4. Upon appraisal of pleadings and oral & documentary evidence adduced by the parties, the learned Additional Civil Judge, Fatehgarh Sahib



had decreed the suit of the plaintiff with costs vide judgment and decree dated 05.12.1997. The Civil Appeal filed by defendants No.2 to 11, 17, 18, 19, 21, 23 and 24, was dismissed with costs by the learned Additional District Judge, Fatehgarh Sahib, vide judgment and decree dated 03.02.2000. Hence, present Second Appeal by the defendants No.2 to 11, and 17 to 21.

5. It is inter alia submitted by learned counsel for the appellants that it is settled proposition of law that when documentary evidence is on the record then oral evidence does not prevail. In the present case revenue record i.e. Khasra Girdawari and Jamabandi since 13.04.1972 i.e. from the date when the plaintiff alleged this family partition to have taken place, it nowhere figures that there was ever any partition. Thus, material issue is whether any family partition has been effected between the parties. It is contended that if the alleged oral family partition did not figure in the revenue record, then there is not any family partition in the eyes of law. But in the present case both the Courts below grievously erred in not appreciating this legal proposition of law.

6. It is further submitted that both the Courts below erred in not appreciating the evidence led by the defendant side. Merely because parties are in possession separately in the land in question would not imply that the land shall be deemed to be partitioned. It is contended that this finding is based on a total misreading of evidence. It is submitted that first of all onus to prove regarding the oral partition was upon the plaintiff which was failed



to prove because documentary evidence was otherwise. DW1 Dayal Singh has nowhere stated either this land ever been partitioned rather he has specifically stated that this land never been partitioned and he has having 1/9th share along with other brothers. But the Courts below did not appreciate this evidence led by the appellant side. DW1 only stated that plaintiff side is in possession of some specific land and this fact does not prove that this joint khata has been partitioned. So much so if any person purchased some specific land from the joint khata even then it cannot be proved that this land has been partitioned. Moreover, if other co-sharer admits any fact, then that admission can not bind the appellants.

7. Ld. Counsel further submits that the plaintiff has nowhere stated in his plaint as to when the partition has been effected and who were present. It is contended that the partition has been admitted on the statement of the plaintiff that oral family partition has been affected. It is argued that both the Courts below have ignored the fact that plaintiff has not produced any evidence from revenue official to prove that there has ever been any alleged partition; nor has any independent witness been examined.

8. Learned counsel accordingly prays that the present appeal be allowed and the impugned judgments and decrees of the learned Courts below be set aside by dismissing the suit of the plaintiff.

9. Per contra, learned counsel for respondent No.1/plaintiff vehemently opposes the submissions made on behalf of the appellants and



submits that judgments and decrees of the learned Courts below suffer from no error. It is contended that the Oral Partition dated 13.04.1972 was not only affected between the parties, but was also duly acted upon as is proved from the evidence on file. This fact has been admitted by defendant witness DW1 Dial Singh himself. Moreover, out of about 46 defendants, about 30 defendants have admitted the claim of the plaintiff and have admitted the Oral Partition. Ld. counsel accordingly prays for dismissal of present appeal.

10. No other argument is made on behalf of the parties. I have heard learned counsel for the parties and perused the case file in detail. I find merit in the submissions advanced on behalf of the respondent No.1/plaintiff.

11. It is the contention of learned counsel for the appellants that the Oral Partition has no validity as the Revenue Records do not reflect said Partition and as the revenue entries are still carried in the name of the defendants. However, the said argument of the learned counsel for the appellants is liable to be outrightly rejected in view of the Division Bench judgment of this Court in **Harbhajan Singh v. Financial Commissioner, Co-operation, Punjab, (P&H) (DB) : Law Finder Doc ID # 192708**, wherein it is held that:-

“Punjab Land Revenue Act, 1887, Section 11 - Punjab Land Revenue Act, Section 123 - Mode of partition of land between co-sharers in Family arrangement - Partition of land between co-sharers - Family partition of land between co-sharers - Co-sharers in possession of their respective shares - Model of



partition prepared by Revenue Authorities affirming the private partition mode of partition upheld-revenue authorities will now give sanction in terms of Section 123 of Act 2006(2) RCR (Civil) 541 and 1997(1) RCR (Civil) 565 relied.

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*5. Section 123 of the Act has already been interpreted by the learned Single Judge of this Court in Regular First Appeal titled as '**Ajmer Singh v. Dharam Singh**', 2006(2) RCR (Civil) 541 in the following terms :-*

"16. A perusal of the said provision would show that Section 123 of the Act is a provision for affirmation of partition privately affected. Chapter IX of the Act deals with both situation, i.e., where intervention is sought of the revenue authority for partition of the land and for a situation where the parties effect partition privately. A further reading of Section 123 of the Act shows that liberty is given to any party who "may" apply to a revenue officer for an order confirming partition. Sub-section (2) contemplates an enquiry to find out whether the partition, in fact, has been made. If partition has been made, the revenue officer has to distribute the revenue and the rent after partition and draw the instrument of partition.

18. In view of the above binding precedents, it is apparent that the revenue record by itself neither create or extinguish title. Since co-owners by mutual consent have entered into separate portions of land and are in the enjoyment of their respect portions, merely the said private partition has not been formally affirmed will not relegate the parties to pre-partition status. The role of the



revenue officer in section 123 of the Act is that of "affirmation" of partition. The said affirmation is subject to verification of the factum of partition only. The inquiry in terms of sub-section (2) of Section 123 of the Act is restricted to the effect to point out that, in fact, partition has been made. Therefore, non affirmation of partition by the revenue officer will not render a private partition redundant but such affirmation will only determine the rights of an owner in respect of their obligations to pay land revenue to the State in terms of the provisions of the Act."

While holding the same, learned Single Judge has relied upon judgements rendered by Hon'ble Supreme Court in the cases of 'Sankalchan Jaychandbhai Patel and others v. Vithalbhai Jaychandbhai Patel and others', (1997) 1 RCR (Civil) 565 and 'Baleshwar Tewari (dead) by Lrs and others v. Sheo Jatan Tiwary and others,' (1997) 5 SCC 112." (Emphasis added)

12. Reference may also be made to judgment of this Court in **Babu Ram v. Banarsi Dass (Punjab and Haryana) : Law Finder Doc ID # 635284**, wherein it is held as under:-

"Punjab Land Revenue Act, 1887, Section 123 - Family partition - Requirement of - Revenue record by itself neither creates nor extinguishes title - If the co-sharers by mutual consent have entered into separate portions of land and are in enjoyment of their respective portions, then, merely because the said private partition has not been formally affirmed in terms of Section 123, will not relegate the parties to pre-partition status - Once the deed of private partition is proved to be signed by parties,



appellant cannot be permitted to ignore such settlement - Appeal dismissed - 2006(2) PLR 25, relied upon .

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*4. Learned counsel for the appellant has vehemently argued that the private partition is not permissible as it is the revenue authorities alone, who have been conferred jurisdiction to effect partition of the joint holding. Such aspect has been considered by this Court in **Ajmer Singh v. Dharam Singh, 2006(2) PLR 25**, wherein it has been held that the revenue record by itself neither creates nor extinguishes title. If the co-sharers by mutual consent have entered into separate portions of land and are in enjoyment of their respective portions, then, merely the said private partition has not been formally affirmed in terms of Section 123 of the Punjab Land Revenue Act, 1887, will not relegate the parties to pre-partition status. It was held that affirmation of partition by the revenue officer will only determine the rights of the owners in respect of their obligations to pay land revenue to the State, in terms of the provisions of the Act. In view of the said judgment, in the present case once the deed of private partition is proved to be signed by the parties, the appellant cannot be permitted to ignore such settlement. Such settlement gives details of Khasra Numbers falling to the share of each of the co-owners.”*

13. Thus, argument of learned counsel for the appellant that the partition is rendered redundant as it was not reflected in the revenue record, is without merit.

14. The next argument of the appellant is that the oral partition is not proved on record. However, both the learned Courts below have



returned concurrent findings of fact, that plaintiff has been able to prove the factum of oral partition. The same is based upon the evidence led by the parties; including the evidence of present respondent Ajit Singh. It is to be noted that after the death of the plaintiff Bhajan Singh, his only son/LR Ajit Singh/PW4 is in possession of the suit land. Respondent/Ajit Singh has deposed that he had obtained loan for tractor thrice from the Bank by mortgaging the suit land and defendants never objected to the same as defendants knew about the absolute ownership of the plaintiff Bhajan Singh over the suit land. Even from the evidence of PW3 Sampuran Singh, it was proved that parties are in separate possession of the land as absolute owner of their respective share.

15. What to say, even defendant no.11 Dial Singh DW1 who had although denied in his examination-in-chief that no partition ever took place, however, in his cross-examination has admitted that Oral Partition between plaintiff Bhajan Singh and other co-sharers had taken place on 13.04.1972. DW1 has specifically admitted in his cross-examination (at page 64 of the LCR) that *"It is correct that plaintiff Bhajan Singh is in separate possession of suit land since 13.04.1972."* It is to be noted that this is the date on which plaintiff is asserting the oral partition. This admission of DW1 in itself is sufficient to prove that Oral Partition had taken place between the original co-sharers. Dial Singh has also admitted the separate possession of the plaintiff over his share. DW1 has also admitted that the



parties are further mortgaging and selling the land only out of their specific shares; that plaintiff had got installed two electric engines, two bores, etc. on his share of the land. Thus, Dial Singh has admitted that the oral partition has also been acted upon.

16. Even defendant no.21/DW2/Joginder Singh has spoken about the Oral Partition and in his cross-examination (at page 67 of the LCR) has admitted that he has sold 2-and-a-half killas of land out of specific khasra number to one Surjit Singh being absolute owner of the said 2.5 killas of land out of total land of 667 kanals. DW2 has also admitted that Bhajan Singh is absolute owner of land in his possession. Thus, the above-said admissions made by the defendants as DW1 and DW2 is sufficient to show that parties to the suit were not treating the entire land to be their joint property. Rather, each co-sharer was treating himself to be exclusive and absolute owner of his own respective share. Even original co-sharers have admitted the factum of Oral Partition in their written statement which was further proved from the testimony of DW1 Dial Singh and DW2 Joginder Singh. Needless to say, admission is the best piece of evidence. There is nothing on record to indicate that the said admissions of DW1 and DW2 were stray admissions. Rather, same are positive statements of fact.

17. Furthermore, the defendants No.12 to 16 have also admitted the Oral Partition in their written statement. The said defendants had further sold their share to defendants No.25 to 44 who are the subsequent



purchasers and who have also filed written statement admitting the claim of the plaintiff. Thus, the mere fact that the said Partition though acted upon, was never entered in the Revenue Record, cannot be held to imply that the suit property was still joint between the parties. Moreover, presumption attached to the Jamabandis (Ex.P1, Ex.P5 to Ex.P9) is rebuttable; which duly stands rebutted from the evidence of DW1 and DW2.

18. Even otherwise, from the above facts it is established that the Oral Partition dated 13.04.1972 has been duly acted upon. Ex.P12 which is a consent decree dated 12.01.1978 (Page 106 LCR) between other co-sharers further proves that parties have acted upon the ownership and oral partition. Moreover, till date none of the co-sharers have ever challenged the Sales/Mortgages executed by different co-owners in respect of their individual shares received by them in pursuance to the Oral Partition dated 13.04.1972, proving that all parties have duly acknowledged their separate ownership and possession. Even otherwise, but for few contesting respondents, all the other respondents (def. 12-16, 25-44) have categorically admitted the claim of the plaintiff by way of admission in the Written Statement. This fact further shows that the oral partition dated 13.04.1972 was rightfully conducted and is duly proved and parties are enjoying their respective shares.

19. Learned counsel for the appellants is unable to dispute or controvert the aforesaid facts and findings.



20. In view of the above, present appeal is **dismissed**.
21. Pending application(s) if any also stand(s) disposed of.

18.11.2025

Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No