



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

RSA-3589-2000

Date of decision : 08.05.2025

PIARE LAL

....Appellant

Versus

BHARAT SINGH AND ANR.

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Sandeep K. Sharma, Advocate with
Ms. Saroj Kumari, Advocate for
Mr. Gurinder Pal Singh, Advocate for the appellant.

Mr. Sudhir Aggarwal, Advocate for the respondents.

PANKAJ JAIN, J. (ORAL)

Plaintiff is in second appeal. For the convenience, the parties hereinafter are referred to by their original position before the Trial Court i.e. appellant as plaintiff and the respondents as defendants.

2. Parties are real brothers. Plaintiff filed suit for partition w.r.t. property comprising of Khasra No.236 as detailed out in plaint, claiming that property in dispute is joint between brothers. Defendants are threatening to raise construction. They have no right to do so without there being partition of the property by metes and bounds.

3. Suit was contested by the defendants claiming that there was a mutual partition between the parties. The other property i.e. old ancestral house, fell to the share of the plaintiff. The plot, in dispute, fell to the share

of the defendants. The parties having already partitioned, they are no more joint in property. The suit was not maintainable.

4. Both the Courts below dismissed the suit holding that even though plaintiff admitted in his cross-examination that old ancestral house is in his possession, yet the same has not been made subject matter of the suit and thus the suit is bad for partial partition. Apart from that, the Courts below also opined on the merits of the case holding that the defendants were raising construction, which proves that the parties have already partitioned their property.

5. I have heard counsel for the parties and have carefully gone through records of the case.

6. In the considered opinion of this Court, once the suit filed by the plaintiff was dismissed by the Courts below for being bad for partial partition, the Courts ought to have restrained themselves from opining on the merits of the case.

7. In view of above, liberty is granted to the plaintiff/appellant to file fresh suit for partition. In case, such suit is filed, the same shall be decided. The findings recorded in the present *lis* shall not operate as *res judicata*.

8. The instant appeal is disposed off accordingly.

May 08, 2025

Dpr

(Pankaj Jain)

Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No