

**RSA-4308-1999(O&M)****IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(104)

RSA-4308-1999(O&M)
Reserved on 25.09.2025
Pronounced on 30.10.2025

Manmohan Singh

.....Appellant

Versus

Dharam Singh and Another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AMARINDER SINGH
GREWAL**

Present: Mr. I.P. Singh, Advocate,
for the appellant.

None for respondent No.1.

Mr. R.K. Chauhan, Advocate,
for respondent No.2 (i to iii).

AMARINDER SINGH GREWAL, J. (Oral)

1. The present appeal has been filed by the appellant/plaintiff assailing the judgment and decree dated 23.07.1999 passed by the learned Additional District Judge, Rupnagar, whereby the judgment and decree dated 05.09.1995 passed by the learned Sub Judge IInd Class, Anandpur Sahib (Ropar), were set aside and the suit was dismissed.

2. Brief facts of the case are that the appellant/plaintiff filed a civil suit seeking exclusive possession by way of partition to the extent of 1/3rd share in the *Abadi* (residential) premises, fully described as Property

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No. A and Property No. B in the head note of plaint, situated within the Lal *Lakir* of Village Agampur, Tehsil Anandpur Sahib, District Ropar.

2.1 It was pleaded that the appellant and respondents Nos. 1 and 2 are real brothers and that their father had executed a valid Will dated 16.12.1979 bequeathing his estate equally among them. The agricultural land of the deceased father was mutated equally in their names on the basis of the said Will. It was further alleged that the residential house within the *Abadi Deh* was also part of the same estate, and when the respondents refused to partition of the same, the present suit was filed. Respondent No. 1 admitted the claim, while respondent No. 2 contested the suit.

2.2 On the pleadings of the parties, issues were framed and the parties led evidence in support of their respective claims.

2.3 After hearing learned counsel for the parties, the learned Court below decreed the suit of the plaintiff. This was so done vide judgment and decree dated 05.09.1995.

2.4 Feeling aggrieved by the said judgment and decree, the defendant-Pritam Singh (Respondent) filed an appeal in the Court of learned Additional District Judge, Rupnagar, who, vide judgment and decree dated 23.07.1999, set aside the judgment and decree dated 05.09.1995 and dismissed the suit of the plaintiff (appellant) on the ground that the suit was bad for non-joinder of necessary parties, as all the necessary co-sharers were not arrayed as defendants.

2.5 Dissatisfied by the same, the plaintiff (appellant) has knocked the door of this Court by way of filing a regular second appeal praying that the same be accepted, the judgment and decree dated 23.07.1999, passed by

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the Court of learned Additional District Judge, Rupnagar, be set aside and his suit be decreed.

3. Learned counsel for the appellant, *inter alia*, contends that the learned Lower Appellate Court erred in setting aside the well-reasoned decree of the learned Trial Court on a mere technical ground. It is submitted that there was no specific plea in the written statement regarding non-joinder of necessary parties and no issue was framed on that point. It is further submitted that only the three brothers had any interest in the suit property. It is further argued that the Trial Court correctly evaluated the oral and documentary evidence including admissions and site plans and the fact of entries and electricity bills in the name of the deceased father.

4. *Per contra*, learned counsel for the respondent No.2 (i to iii) supports the judgment of the learned Lower Appellate Court and contends that the Will dated 16.12.1979 was not proved in accordance with law and that no attesting witnesses were examined. He further submits that the appellant deliberately omitted to implead other legal heirs/co-sharers, in particular daughters and other persons recorded in the jamabandi (Ex.P16), whose rights would be directly affected by any decree of partition, rendering the suit liable to be dismissed for non-joinder of necessary parties

5. I have heard learned counsel for both the parties and perused the paper book with their able assistance.

6. At the outset, it would be appropriate to reproduce the deliberation and findings of the learned trial Court in the impugned Judgment. The relevant extract of the judgment and decree dated 05.09.1995 is set out below:

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8. *“After hearing the learned counsel for the parties on these issues I am of the considered opinion that defendant Pritam Singh has himself admitted the fact that the property in suit was owned and possessed by the father of the parties. He has also admitted the Will Ex. P2 produced by the plaintiff. The only point to be decided in the present suit that whether the property as alleged by the defendant Pritam Singh is his exclusive ownership or not. To this effect I would like to mention here that the entire documents produced by the plaintiff i.e. electricity. bills from Ex. P4 to Ex. P15 are in the name of Raja Ram the father of the parties. Similarly the documents i.e. jamabandis pertaining to khasra No.268/82 are also in the name of Raja Ram and other co-sharers. No where the name of defendant appears as exclusive owner of the property in dispute. Coming to the oral evidence of DW2 I am of the opinion that though it has been stated by him that the property in suit was constructed by him from his own income but I failed to understand that defendant has been residing while he was serving outside during the life time of his fath in Haryana and how it is possible that he became exclusive owner of the property in dispute in the presence of his father, when no partition ever took place. Apart from this he has not produced any receipt to the effect that he has spent amout for constructing the construction over the property in dispute. Not only this there is a PW3 Kashmir Devi who is the mother of the parties. She has also denied the fact that Pritam Singh the defendant has been incorporated in the revenue paper as owner in the revenue papers regarding the property in dispute. Though the learned counsel for defendant No.2 has argued that since PW3 the mother of plaintiff and defendants is having not good relations with defendant No.2, so she has deposed against defendant No.2 Pritam Singh, but I do not agree with the learned counsel for the defendant No.2 because no mother would ever like to discriminate amongst her sons and daughters regarding the property which has been left by her late husband. Apart from this the partition has not been taken place between the parties, though it is stated by contesting defendant Pritam Singh that oral partition has been taken place but only this version has not been believed. DW2 himself has admitted that so long the father of the parties Raja Ram remained alive he i.e. Raja Ram was the owner of the property. I have perused the site plan Ex. D1. There is admission on the part of defendant Pritam Singh that the*



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portion shown in site plan Ex.D1 with green colour in having a electricity meter in the name of their father. I have also compared the site plan produced by the parties which are Ex. D1 and Ex.P1 and the site plan Ex.P1 almost is identical in the material particulars regarding directions situations etc. So the correctness of the site plan Ex.P1 is also proved with the help of site plan Ex. D1. Another fact which can be infer from these site plans is that this property was constructed by the owner Raja Ram who was the father of the parties. Apart from this there is an admission made by Pritam Singh defendant to the effect that he was under service in Haryana and has retired from service in the year 1991 from Faridabad and his family shifted to his native village after 1991. Apart from this the defendant Pritam Singh is changing his stand from one end to another because in the written statement he has stated the fact that the property in dispute was constructed by him, whereas in his cross-examination he has stated that the property was raised and constructed by his father but he has given Rs.5,000/- in cash to his father apart from 8 tolas Gold and 1/2 kgs. Silver, but these avernments are not alleged in the written statement by defendant Pritam Singh So this is clear that the defendant is trying to make a new case to which he has not succeeded. There is another statement of DW4 Malkiat Singh who is independent witness. He has stated that the disputed property was constructed in the year 1968 by Raja Ram and the electricity meter is also in the name of Raja Ram. He has gone to the extent that Raja Ram never partitioned any property and Raja Ram has constructed two rooms one kitchen one baranda in the disputed place, so this means that DW4 has also supported the case of the plaintiff. I do not find any force in the arguments of the learned counsel for the defendant that the suit of the plaintiff is not maintainable for non-joinder of other co-sharers of khasra No.268/82 the reason for the same is that because it is not disputed that the property in dispute was not owned and possessed by Raja Ram the father of the parties, so the question of joining any other persons which is not least concerned with this property is having no relevancy. Moreover no specific objection was taken by the defendant to this effect nor any issue has been framed in this respect at all. So this submission of the learned counsel for the defendant stand discarded. Keeping in view the above mentioned discussions I have come to the conclusion that the property in dispute has



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not been partitioned, so for and the same is joint and each of the parties is entitled to 1/3 share. I decide these issues accordingly.”

ISSUE NO.3

9. The onus to prove this issue was placed on the defendant. As I have discussed that defendant No.2 has miserably failed to prove that he is exclusive owner in possession of the land comprised of khasra No.268/82, rather the entries in the jamabandi are in favour of Raja Ram, so for this khasra number is concerned. So keeping in view the discussion this issue is decided against the defendant No.2 and in favour of plaintiff.

ISSUE NO.4

10. The onus to prove this issue was placed on the defendant No.1. It has been amply proved from the statement of Dharam Singh DW and his written statement fully corroborated by the statement of the plaintiff and PW3 the mother of the parties that the property shown by letters AJKD was raised and constructed by defendant No.1 but the defendant No.2 has not rebutted these contentions of the defendant No.1 to any extent by producing any other cogent evidence. So in the light of discussion while deciding Issues No.1 and 2 I hold that defendant No.1 has constructed the property as shown by letters AJKD in the site plan of the plaintiff, so the issue is TED decided accordingly.

RELIEF

11. In view of the findings and discussions made above while deciding the above issues, the suit of the plaintiff stands decreed with costs. Decree sheet be prepared.

7. The only objection raised by the defendant in his written statement was that the suit was not maintainable on account of non-joinder of other co-sharers in Khasra No. 268/82. However, the learned Trial Court rejected this contention, holding that the property in dispute was owned and possessed by Raja Ram, the father of the parties. Therefore, the question of impleading other persons, who had no concern with the suit property, did

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not arise. Except for this objection, no other substantial issue was raised by the defendant in the suit. While appreciating the evidence on record, the learned Trial Court observed that there was no dispute regarding the ownership of Raja Ram over the property in question. The electricity bills (Ex. P4 to Ex. P15) and *jamabandis* pertaining to *Khasra* No. 268/82 stood in the name of Raja Ram and other co-sharers, clearly indicating that the property belonged to him. Since no partition had taken place during his lifetime or thereafter, the learned Trial Court held that the property continued to be joint, and there was no question of any party being in exclusive possession. Accordingly, each of the three brothers i.e. the plaintiff and defendants were held entitled to 1/3rd share each in the property. On the basis of the above findings, the learned Trial Court decreed the suit of the appellant/plaintiff, vide judgment and decree dated 05.09.1995.

8. In continuation of the discussion on the findings of the learned Trial Court, it would now be appropriate to reproduce the deliberation and findings of the learned Appellate Court in the impugned Judgment. The relevant extract of the judgment and decree dated 23.07.1999 is set out below:

7. *“First of all, it is to be seen that the trial Court simply decreed the suit, whereas in the partition suit, a preliminary decree should have been passed first. In any case, this is not going to effect the result of the appeal. It is alleged by defendant No. 2 in the written statement that the disputed property shown in hecad note 'A' of the plaint bears khasra No.268/83. This fact was conceded by the plaintiff in the replication in para No.1. However, the plaintiff had not given the khesra number of the property shown in head note A. A*



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look at the copy of jamabandi Ex. P16 would show that land bearing khasra No.268/82(0-10) is gair mumkin abadi in which Raja Ram had 2/11 shares. There are so many other co-sharers recorded in the janabandi as shown in Ex.P16. But none of the co-sharers have been arrayed as defendants by the plaintiff. A partition cannot be ordered without the presence of all the co-sharers. Even if, the plaintiff or defendant is in possession of property shown in head note A, but this does not extinguish the right of other co-sharers to get the share at the time of partition. Therefore, the suit for partition is patently bad for non-joinder of necessary parties regarding the property shown in head note A of the plaint, And if property shown in head note A was not taken into account, the suit becomes bad on account of partial partition. Therefore, no partition can be ordered by the Court. The admission of defendant as DW2 that property shown in head note 'B' of the plaint was purchased by father of the parties, is of no help to the plaintiff. Therefore, the suit is liable to fall on this technical ground.”

8. *Accordingly, the judgment and decree of the trial Court is hereby set aside and the suit of the plaintiff stands dismissed, leaving the parties to bear their own costs.*

9. The learned First Appellate Court observed that the suit filed by the plaintiff was one for partition, in which it was first necessary to pass a preliminary decree. Upon perusal of the record, it was noticed that land bearing Khasra No. 268/82 (0–10), owned by Raja Ram to the extent of 2/11 share, was classified as *gair mumkin abadi land*. The jamabandi reflected that several other co-sharers were also recorded as owners of the said land. However, the appellant/plaintiff had failed to implead those co-sharers as defendants in the suit. The learned First Appellate Court further held that even if the plaintiff was in possession of a portion of the property, such possession did not extinguish the rights of other co-sharers. No effective partition could be ordered without impleading all co-sharers being

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necessary parties to the proceedings. On the basis of the above findings, the learned First Appellate Court set aside the judgment and decree dated 05.09.1995 passed by the learned Trial Court and consequently dismissed the suit of the appellant/plaintiff vide judgment and decree dated 23.07.1999.

10. After a careful and thorough consideration of the entire record and submissions advanced by learned counsel for the parties, this Court finds no merit in the present Regular Second Appeal. The learned Trial Court decreed the suit primarily on the basis of the Will dated 16.12.1979, without properly examining its due execution and attestation in accordance with the statutory requirements contained in Section 63 of the Indian Succession Act, 1925, and Section 68 of the Indian Evidence Act, 1872.

10.1 Section 63 of the Indian Succession Act prescribes the manner of execution of unprivileged Wills, requiring attestation by two or more witnesses. Section 68 of the Indian Evidence Act further mandates that where attestation is required by law, at least one attesting witness must be called to prove the execution, if such a witness is alive, subject to the process of the Court, and capable of giving evidence.

11. The learned Trial Court had observed that the suit property had not been partitioned and that each of the three brothers was entitled to 1/3rd share. Reliance was placed on documentary evidence such as electricity bills, site plans (*Ex. P1* and *Ex. D1*), and oral testimony of PW3-the mother of the parties, along with other independent witnesses, to disbelieve the claim of exclusive ownership set up by defendant No. 2. The reliance

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placed by the Trial Court on ancillary documentary evidence such as electricity bills or site plans, cannot substitute the mandatory proof of a Will. When a document that is required by law to be attested is relied upon as the foundation of title or partition, the absence of proof of attestation by an attesting witness constitutes a fatal defect in the plaintiff's case.

12. The learned First Appellate Court, however, upon re-appreciation of the record, took a contrary view, holding that (i) the Will had not been proved in accordance with law, and (ii) the suit suffered from non-joinder of necessary parties. It is evident from the record that the decree of the Trial Court was substantially founded on the Will dated 16.12.1979. A careful scrutiny of the record reveals that the due execution and attestation of the Will were not proved in the manner required by law. No attesting witness was examined to establish the Will, nor is there any cogent or reliable evidence on record to satisfy the statutory requirements of attestation.

13. Furthermore, a decree for partition necessarily affects the rights of all co-sharers. It is a well-settled proposition of law that a decree for partition passed in the absence of all persons who are co-sharers as per the revenue record or who are otherwise necessary parties is not binding upon such non-parties. A decree passed without arraying all co-sharers results in a partial partition and is liable to be set aside if it prejudicially affects the rights of non-arrayed co-owners. The presence of all co-sharers reflected in the *jamabandi* is, therefore, a material and indispensable requirement for a valid and binding decree.

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14. The *jamabandi* (*Ex. P16*) on record clearly shows that the land comprising *Khasra* No. 268/82 (0–10) was recorded as *gair mumkin abadi* and reflected the ownership of the deceased Raja Ram to the extent of 2/11 shares, along with several other co-sharers. The learned First Appellate Court rightly considered the fact that the plaintiff had failed to implead these recorded co-sharers in the suit. In such circumstances, any decree of partition passed without their joinder would amount to a partial partition and could adversely affect the rights of non-impleaded co-owners.

15. The contention of the appellant that no specific plea regarding non-joinder of parties was taken in the written statement does not hold much weight and the question of impleading necessary parties in a partition suit goes to the root of the matter and affects the maintainability of the proceedings. The Court is not precluded from considering this aspect even *suo motu*, in order to prevent the multiplicity of litigation and to safeguard the rights of absent co-sharers. It is further pertinent to note that the record indicates that the deceased Raja Ram left behind other legal heirs, including daughters, who would be entitled to succeed in the absence of a validly proved Will. Since the Will has not been proved in accordance with law, the rights of such heirs remain intact and could be adversely affected by any decree passed without their participation.

16. The appeal does not raise any substantial question of law. The findings of fact recorded by the First Appellate Court are based on evidence and are binding in second appeal unless shown to be perverse, which is not the case here.



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17.

For the reasons stated above, this Court finds no illegality or perversity in the findings recorded by the Lower Appellate Court. The impugned judgment and decree dated 23.07.1999 passed by the learned Additional District Judge, Rupnagar are well-reasoned and based on proper appreciation of facts and law.
18.

No substantial question of law or fact arises in this appeal.
19.

The appeal stands dismissed accordingly.
20.

Since the main appeal stands dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

(AMARINDER SINGH GREWAL)
JUDGE

30.10.2025
Shubham

Whether speaking/reasoned:-	Yes/No
Whether Reportable:-	Yes/No