

2025:PHHC:088577



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

RSA-1950-2025 (O&M)
Reserved on : 01.07.2025
Pronounced on : 21.07.2025

Smt. Rajwanti (deceased) through her LRs & Anr.Appellants

VERSUS

Smt. Phoola (deceased) via her LRs & Ors.Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vaibhav Narang, Advocate for the appellants.

ALKA SARIN, J.

1. The present regular second appeal has been preferred by the plaintiff-appellants against the judgements and decrees dated 05.01.2023 and 05.03.2025 passed by the Trial Court and the First Appellate Court dismissing their suit for possession by way of partition.

2. The suit was filed by the plaintiff-appellants averring that the parties were co-owners of the suit land, the plaintiff-appellants having purchased 1/4 share from Smt. Phoola vide sale deed dated 22.08.2006. It was stated that there remained a dispute between the parties over the use and occupation of the suit land being as it had never been partitioned by metes and bounds either by the Courts or by mutual settlement. It was alleged that the defendant-respondents were strong headed persons and wanted to occupy the land abutting the road, which was more valuable compared to the remaining suit land. Hence, the suit. Separate written statements were filed

by different sets of defendant-respondents wherein preliminary objections regarding maintainability, locus standi, non-joinder of necessary parties, etc. were raised. On merits it was pleaded that the partition of the suit land had taken place in the lifetime of Smt. Phoola and after the mutual partition the parties were in exclusive possession of their respective shares and had even raised construction of their residential houses. The title of the plaintiff-appellants in the suit land was also denied.

3. From the pleadings of the parties following issues were framed :

1. Whether, the plaintiffs are co-sharer in joint possession of the suit properties detailed in para no.1 of the plaint ? OPP
2. If issue no.1 is proved, whether, the plaintiffs are entitled to seek separate possession of land respective to their shares, out of the suit properties, by way of partition of the same ? OPP
3. Whether, the plaintiffs are entitled for a decree for permanent prohibitory injunction, as prayed for ? OPP
- 3-a. Whether, Khushi Ram is the adopted son of Rajwanti or not ? OPP
4. Whether, the sale deed in favour of the plaintiffs in respect of the suit properties, is a forged and fabricated document ? OPD
5. Whether, the suit of the plaintiffs is not maintainable in the present form ? OPD

6. Whether, the plaintiffs have no locus standi or cause of action to file the present suit ? OPD

7. Relief.

4. Vide judgement and decree dated 05.01.2023 the Trial Court dismissed the suit of the plaintiff-appellants. The appeal of the plaintiff-appellants was also dismissed by the First Appellate Court vide judgement and decree dated 05.03.2025. Hence, the present regular second appeal by the plaintiff-appellants.

5. Learned counsel for the plaintiff-appellants has contended that both the Courts have erred in dismissing the suit on the ground on non-joinder of necessary parties. It is urged that the plaintiff-appellants were co-owners in the suit land having purchased 1/4 share from Smt. Phoola vide sale deed dated 22.08.2006 and were hence entitled to their separate possession by way of partition. It is contended that the adoption of Khushi Ram by Smt. Rajwanti was proved on the record and the Courts have erred in not accepting the same.

6. Heard counsel for the plaintiff-appellants.

7. In the present case the suit of the plaintiff-appellants has been dismissed on inter-alia the ground on non-joinder of necessary parties. All the co-owners in the suit land were not impleaded. The First Appellate Court found that *“In absence of impleading the parties in their respective position and status, it has not been possible to calculate correct respective shares of the parties in the suit property to pass preliminary decree of partition. The concept of impleading every necessary party is based upon the aspect that*

without presence of necessary party in his/her own correct position and status, passing of preliminary decree of partition by determining the respective shares, do not remains possible and probable and thereafter in the light of settled proposition of law on this aspect, such suit, where all necessary parties have not been rightly and correctly impleaded, deserves to be dismissed only on this score”. Before this Court also learned counsel for the plaintiff-appellants has been unable to show how the suit land can be ordered to be partitioned in the absence of all the co-owners. A specific objection regarding the suit being bad for mis-joinder and non-joinder of parties was taken in the written statements. All the co-owners have not been joined as parties to the suit in their capacity of being co-owners though they were necessary parties to the partition suit. Consequently, the suit is bad for non-joinder of necessary parties. The partition suit cannot be decreed when some of the co-owners are not party to the partition suit because the partition decree would affect the rights of the co-owners who are not party to the partition suit. Interests of the unimpleaded co-owners cannot be adversely affected by decreeing the partition suit in their absence. Further, the adoption of Khushi Ram by Smt. Rajwanti is also not proved by any cogent and reliable evidence available on the record. Learned counsel for the plaintiff-appellants is unable to point to any substantial and reliable evidence on the record to dislodge the concurrent findings recorded by both the Courts. In the absence of such reliable evidence, the findings recorded by both the Courts cannot be faulted. No other point was argued.

8. In view of the above, no mistake or error of law or facts can be found with the judgments and decrees passed by both the Courts. No question of law, much less any substantial question of law, arises in the present case. The appeal being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

21.07.2025

Ankur

**(ALKA SARIN)
JUDGE**

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No