



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

204

**RSA-1447-2021 (O&M)
Date of decision : 17.11.2025**

Dilbagh Gulati

..... Appellant

versus

Kasturi Lal Gulati and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Mukesh Rao, Advocate
for the appellant.

Mr. Ajay Jain, Advocate
for respondent No.1.

Ms. R.K. Grewal, Advocate and
Ms. Amandeep Kaur, Advocate
for respondents No.3 to 7.

PANKAJ JAIN, J. (Oral)

1. Defendant is in appeal aggrieved of the judgment and decree passed by the Courts below.
2. Plaintiff filed suit claiming himself to be co-sharer in the suit properties to the extent of 1/6 share. He further claimed to be in possession of the first floor of property No.3, i.e. Shop No.23, New Anaj Mandi, Rewari.
3. Suit was contest by the appellant-defendant No.1 claiming that the property already stands partitioned by way of oral partition and all the parties are in exclusive possession of their respective shares. Defendants No.2 to 7 did not dispute the claim of the plaintiff.



4. Suit filed by the plaintiff was put to trial framing following issues:-

“1. Whether the plaintiff is entitled to a decree for possession by way of partition by metes and bounds as prayed for on the ground mentioned in the plaint? OPP.

2. Whether the suit is not legally maintainable in the present form? OPD.

3. Relief.”

5. Both the Courts below concurrently found that the defendant No.1 having failed to prove oral partition as pleaded in the written statement, plaintiff was entitled to decree of partition by metes and bounds and accordingly decreed the suit.

6. Counsel for the appellant has assailed the findings recorded by both the Courts below. He submits that the plaintiff himself pleaded and admitted to be in exclusive possession of first floor of property number No.3, i.e. Shop No.23, New Anaj Mandi, Rewari which comes out to be 1/6 share. Further he refers to statement of DW3 Kishore Kumar to submit that even DW3 Kishore Kumar admitted that his share was under lock and key and was lying vacant, to contend that the inference can be drawn is that the parties had already partitioned the properties and were in exclusive possession of their respective shares. He submits that there being no cause of action in favour of the plaintiff instead of decreeing the suit, the plaint ought to have been rejected. Reliance is being placed upon ***Dahiben vs. Arvinbhai Kalyanji Bhanusali 2020(7) SCC 366, Shasidhar and others vs. Smt. Ashwini Uma Mathad and another, 2015(1) RCR (Civil) 616, Kale and others vs. Deputy Director of Consolidation and others 1976(3) SCC 119, Ranganayakamma and another vs. K.S. Prakash (D) by LRs and***



others.

7. *Per contra*, counsel for the respondents submits that once defendant No.1 claimed that the parties have partitioned the properties by way of oral partition, impliedly it stands admitted that the properties are joint. The burden thereafter shifted upon defendant No. 1 to prove the oral partition. Defendant No.1 having failed to lead any evidence to prove oral partition, no fault can be found with the findings recorded by the Courts below in decreeing the suit filed by the plaintiff.

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

9. In the considered opinion of this Court, the jointness of the properties which constitutes subject matter of the suit, is not disputed. Entitlement of each of the parties to the extent of 1/6 is not in dispute. The only issue that needs to be decided by the Courts is:-

(i) whether the properties already stand partitioned orally and the parties are in exclusive possession of their respective shares thereafter?

10. Even though, counsel for the appellant has made an effort to persuade the Court to infer from the testimonies of the witnesses, that they are in exclusive possession of their respective shares, but from the evidence, it can be inferred that even if it is held that each of the parties are occupying some portion of the properties, there is no evidence to prove oral partition as claimed by the appellant.

11. In view of above, this Court finds no fault in the findings recorded by the Courts below holding that the properties to be still joint.

In the absence of there being any evidence suggesting oral partition, no



fault can be found with impugned judgment and decree whereby the suit filed by the plaintiff stands decreed.

12. Finding no merits in the present appeal, the same is ordered to be dismissed.

13. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

17.11.2025
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No