

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****219****RSA-4002-2013(O&M)****Date of decision: 12.11.2025****Roop Lal & Others****...Appellant(s)****Vs.****Mohinder Pal****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Vishal Aggarwal, Advocate
Mr. G.S. Sarao, Advocate
for the appellants.

Mr. Arvind Kashyap, Advocate
for the respondent.

NIDHI GUPTA, J.

The plaintiffs are in second appeal against the judgment of reversal dated 13.08.2013 passed by learned District Judge, Pathankot whereby Civil Appeal filed by the respondent/defendant against the trial Court judgment dated 06.12.2010, decreeing the suit of the plaintiffs, has been reversed and suit of the plaintiffs has been dismissed.

2. The plaintiffs/appellants had filed suit for separate possession by way of partition. The facts as pleaded in the plaint are that Gopal Chand, father of the plaintiffs and brother of the defendant Mohinder Pal, had purchased suit land measuring 4 marlas as described in the plaint, vide Sale



Deed dated 03.10.1979. At the time of purchase, out of love and affection, Gopal Chand had added name of the defendant as purchaser to the extent of $1/5^{\text{th}}$ share. The defendant was a 14-year-old minor at the time of purchase and plaintiffs were in age group of 3 to 10 years. Subsequently, Gopal Chand had laid the foundations for construction of shops and had purchased the adjoining site measuring 1 marla from Bhikham Singh vide Sale Deed dated 26.08.1986 in the name of Gurdev Raj, his fifth son. In 1987-88, Gopal Chand constructed a building in the suit land measuring 4 marla along with another plot of 1 marla on the northern side. It was pleaded by the plaintiffs that the suit property is joint property of parties, in which the plaintiffs have $4/5^{\text{th}}$ share and defendant has $1/5^{\text{th}}$ share. In the Sale Deed dated 03.10.1979, it was recorded that $1/5$ share of the defendant would be on the western side of the plot measuring 4 marlas. In 1990, the defendant had requested Gopal Chand to give him his separate portion and his separate accommodation. Gopal Chand with the consent of his sons had given separate western portion to the defendant. It was agreed orally between the parties that staircase shall remain in joint use with the parties. The defendant has not constructed any part of the building constructed by Gopal Chand. He is in occupation of the ground floor; whereas the remaining building, including first floor, is in the use of the plaintiffs. About two years back, the defendant had started proclaiming the staircase to be his exclusive property and threatening to obstruct the plaintiffs from using the staircase. As such, the plaintiffs did not



wish to keep the property joint with the defendant and wanted to separate their shares. The plaintiffs had requested the defendant to separate the share by partition by metes and bounds but the defendant had not agreed. Hence, the present suit was instituted on 11.05.2007.

3. Upon appraisal of pleadings and oral & documentary evidence adduced by the parties, the learned trial Court vide judgment and decree dated 06.12.2010 had decreed the suit of the plaintiff with costs. However, the Civil Appeal filed by the defendant was accepted by the learned First Appellate Court vide the impugned judgment and decree dated 13.08.2013. Hence, present second appeal by the plaintiffs.

4. It is inter alia submitted by learned counsel for the appellants that the Ld. District Judge has totally misinterpreted the evidence on record and given contradictory findings altogether. It is submitted that the Ld. District Judge has wrongly held the temporary adjustment between the parties as a presumption to be the partition of the property which is totally incorrect. The Ld. District Judge has wrongly held that since the parties and are residing separately, therefore they are deemed to be in separate possession as well. It is submitted that merely being in possession cannot given inference of partition; and specially when the revenue records clearly states that the parties are in joint possession of the land. Moreover, the same have never been challenged and therefore presumption of truth which is



attached to the said record cannot be ignored by mere averments of the defendant without any substantive evidence in support.

5. It is further submitted that the Ld. District Judge has allowed the appeal by stating that the dispute has arisen due to the stairs and therefore the suit cannot be decreed. It is submitted that in an unpartitioned land the dispute can be for any reason and the only way to sort out the same is by partitioning the same. Therefore, the reasoning given by Ld. District Judge is totally erroneous and deserves to be set aside. It is reiterated that the present dispute can only be sorted out by partitioning the property by metes and bounds and in the absence of the same it would only invite further litigation at the instance of both the parties.

6. It is lastly submitted that the defendant is already in possession of land more than his share and therefore, even otherwise the plaintiffs are entitled to be in possession of their shares of land. It being so the order passed by the Ld. District Judge deserves to be set aside and that of the trial court be restored.

7. Per contra, it is submitted by learned counsel for the defendant that admittedly the share of the defendant as recorded in the Sale Deed is to the extent of 1/5th on the western side. It is submitted that the stairs in dispute fall on the western side of the suit property. As such, the defendant has exclusive right over them. It is submitted that the suit for partition is not warranted as the parties are already in separate possession. It is admitted



that Gopal Chand, father of the plaintiffs and real brother of the defendant, had purchased the land measuring 4 marlas 6 Sarsai vide Sale Deed dated 03.10.1979 in the name of the plaintiffs and the defendant. It is contended that defendant had contributed for one-and-a-half marla of land. However, the same had been misused by Gopal Chand in connection with the officials and he got the Sale Deed registered in the name of defendant for only 1 marla. It is contended that the suit land or the construction thereupon is not joint amongst the parties. The Sale Deed itself speaks of the portion purchased by the defendant on the western side and the plaintiffs on the eastern side. It is accordingly submitted that the impugned judgment and decree of the First Appellate Court suffers from no error and the present appeal be dismissed.

8. No other argument is made on behalf of the parties. I have heard learned counsel and perused the case file in great detail. I find no merit in the submissions advanced on behalf of respondent/defendant.

9. Reasoning of the learned First Appellate Court in dismissing the suit of the appellant is that the share of the defendant in the Sale Deed was 1/5th on the western side, therefore, even in the building, he will get 1/5th on the western side of the building. However, the said reasoning is ill-founded, in view of the fact that admittedly, no formal partition has taken place between the parties. Revenue entries show the parties to be co-sharers. As per the Jamabandi for the year 2003-04 (Ex.P4) brought on record by the plaintiffs, the suit property is shown to be joint in nature. It is duly established



on record that there is a common sale deed, one common building, and even as per revenue entries parties are co-sharers. The suit property has never been partitioned. Even the defendant as DW1 has admitted in his cross-examination that the Sale Deed was joint and mutation was also entered jointly in the name of the parties. DW1 has further admitted that no written partition was ever affected between the parties. The Revenue Record does not depict any alleged prior partition with regard to the suit property. Revenue Record clearly shows the suit property to be joint in nature, of which the parties are co-sharers, and are in joint possession of the same. Merely the fact that the parties were residing separately for any length of time, cannot lead to the inference that partition has taken place. It is the settled position in law that private partition can be taken into consideration only if the same is duly reflected in the Revenue Record. As such, reasoning of the first Appellate Court is unsustainable.

10. Moreover, the First Appellate Court has failed to appreciate that the Sale Deed of 1979 was only regarding the plot. In the interregnum changes have taken place inasmuch as in 1987-88, Gopal Chand has constructed 2 rooms and 5 shops on the ground floor and 5 shops on the first floor which are exclusively in the possession of the plaintiffs. The Plaintiffs are residing in the back portion of the property and have shops on the front side and first floor. In the construction raised upon the suit plot by the plaintiffs, the defendant was given 2 rooms and one shop on the western side



as reflected in the site plan (Ex.P3). However, the staircase remained common for accessing first floor which is the only way to access first floor of the property. Admittedly there is only one staircase for access to first floor and if either party gets exclusive right over the same, it will block the access to the first floor to the other party which in itself proves that the property is joint. Thus, merely because in the Sale Deed the defendant was given 1/5th share on the western side of the property, would not in any manner imply that the suit building cannot be partitioned by way of metes and bounds.

11. What is important to appreciate is that plaintiffs are in possession of the five shops on the first floor on the suit property as part of their 4/5th share. As per the site plan Ex.P-3, stairs leading up to the first floor are on the western side of the property abutting the portion of 2 rooms and one shop given to the defendant. Merely because the defendant has been exclusively occupying the 2 rooms and one shop on the western side would not entitle him to exclusive usage of the stairs as well. In fact, it cannot be held that the defendant has any exclusive right over the stairs as he has no use for the same as admittedly, he is occupying only the portion on the ground floor. Needless to say, the 5 shops on the first floor in the ownership and possession of the plaintiffs can only be accessed through the stairs. The portion of the defendant is only on the ground floor. As such, in actual fact, he has no usage of the stairs. From this it would appear that defendant is only attempting to cause obstruction to the plaintiffs.



12. In fact, the record bears out that the defendant has rented out the suit shop, and is using the rear shop as a store, and his residence is 200 metres away from the suit property. However, this fact has been ignored by the learned first Appellate Court. It was in this view of the matter that the learned trial Court had decreed the suit in favour of the plaintiffs and passed preliminary decree. Needless to say, in the final decree it will be decided as to who will get what. By way of present suit only a preliminary decree is being drawn. The final decree will decide the partition finally whether it is to be done by metes and bounds or in any other manner and parties will have full right to contest and give objections. The preliminary decree does not prejudice any of the parties and only helps in resolving the dispute.

13. The relevant findings of the learned trial Court as contained in Paras 9 and 10 of judgment dated 06.12.2010 are reproduced hereinbelow:-

“9. After giving thoughtful consideration to the rival contentions raised by the learned counsel for the parties, it is admitted fact between the parties that Gopal Chand father of the plaintiffs and brother of the defendant purchased the property measuring 4 marlas 6 Sarsai. It is also admitted fact between the parties that both the parties have equal shares. It is also admitted fact between the parties that as per the sale deed, the share/partition of the defendant falls on the western side and share of the plaintiff's falls on the eastern side. In order to prove the joint ness of the property, plaintiffs have examined Pw-1 Gopal Chand, who has deposed as per the case of the plaintiffs. Plaintiffs have also placed on file copy of jamabandi for the year



2003-04 Ex.P4 which shows the suit property to be joint property of the parties.

10. Learned counsel for the defendant has contended that property has already been partitioned and no fresh partition is required, as parties are already in separate possession. In order to prove this fact, defendant Mohinder Pal appeared as Dw-1 and has deposed in terms of his case. In the cross-examination, this witness has specifically admitted that the suit property was purchased on 3.10.1979 from Pritam Chand through registered sale deed. This witness has further admitted in his cross-examination that he has 1/5 share in the property. This witness has further admitted in his cross-examination that sale deed was joint and mutation was entered jointly in the name of the parties. This witness has not denied the fact and shown his ignorance that he do not know whether as per the sale deed and mutation, he own $\frac{3}{4}$ Marla out of the suit property. This witness has further admitted in his cross-examination that no written partition was effected between the parties and has voluntarily stated that the property was partitioned by his father. Plaintiff has examined Pw-1 Gopal Chand who has specifically stated in his cross-examination that Mohinder Pal was having 1/5 share in the property and share of the defendant Mohinder Pal was on the western side. As a matter of fact the revenue record does not depict that there was any private partition with regard to the suit property. The revenue record clearly shows that the parties are co-sharers in the suit property and are in joint possession thereof. In these circumstances, the mere fact that the parties resided separately cannot lead to an inference that any partition has taken place between the parties. It is well settled law that a



private partition between the parties can only be taken into consideration and can be held to be binding only if the same is duly reflected in the revenue record. Admittedly, no such partition had been reflected with the revenue record. Reliance can be placed on Balwinder Singh and others. Versus Prem Singh and others 2006 (2) CCC 512 (P & H) , wherein it has been held by Hon'ble Punjab and Haryana High Court that merely residing separately does not lead an inference that any partition has taken place between the parties and only be considered when it is duly reflected in the revenue record. Under these circumstances, the contention raised by the learned counsel for the defendant is without any merits.”

14. Learned counsel for the respondent/defendant is unable to dispute or controvert the above-said facts and findings. In view of the same, the present Second Appeal is **allowed**; and the impugned judgment and decree dated 13.08.2013 passed by the learned District Judge, Pathankot is set aside; and Judgment of the Id. trial Court dated 06.12.2010 is restored.

15. Pending application(s) if any also stand(s) disposed of.

12.11.2025
Sunena

(Nidhi Gupta)
Judge

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