

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****241****Date of decision: 26.11.2025****RSA-6414-2016(O&M)****Nasib Singh****...Appellant(s)****Vs.****Labh Singh****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Hardip Singh, Advocate
for the appellant.

Mr. Nitin Jain, Advocate
Mr. Parv Ahluwalia, Advocate
Mr. Khushan Dutta, Advocate
for the respondent/defendant.

NIDHI GUPTA, J.

The plaintiff is in Second Appeal against the concurrent judgments and decrees of the Id. Courts below whereby suit of the appellant for possession by way of partition of suit land and for permanent injunction, has been dismissed by both the Courts below.

2. It is inter alia submitted by learned counsel for the appellant that the defendant is the cousin brother of the appellant. The plaintiff and his brother Sampuran Singh and the defendant had purchased the suit property shown in the site plan. Subsequently, the appellant had purchased the share of Sampuran Singh also vide Sale Deed dated 13.07.1999. It is



submitted that therefore, now the plaintiff is co-owner in joint possession over $2/3^{\text{rd}}$ share of the suit property. The defendant had constructed his house towards northern side and house of the plaintiff is towards southern side. A passage of 5 feet wide was left towards the eastern side. The defendant is occupying more than his $1/3^{\text{rd}}$ share and is threatening to raise construction over more than his share. Therefore, the plaintiff was entitled to get his $2/3^{\text{rd}}$ share partitioned by metes and bounds and get his separate possession over the same. It is submitted that suit property has not yet been partitioned by metes and bounds. Due to jointness of the suit property, the parties are not able to use the suit property properly. However, the learned Courts below have failed to appreciate these facts and have non-suited the plaintiff on spurious considerations. It is accordingly prayed that the judgments and decrees of the learned Courts be set aside.

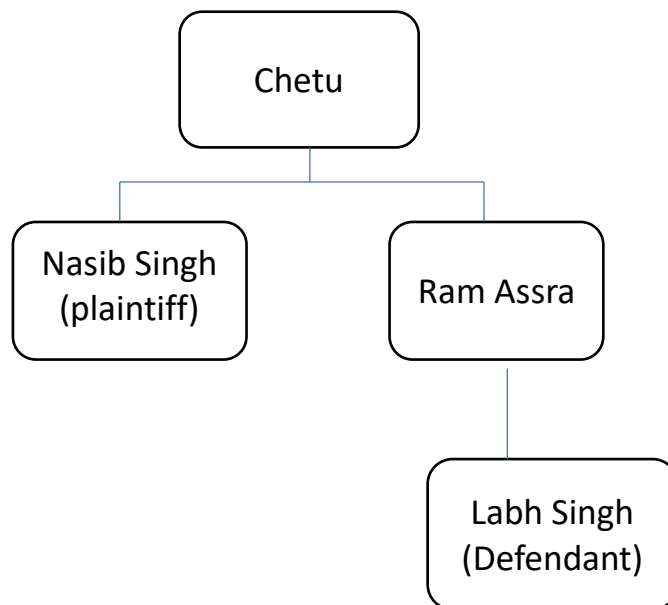
3. Per contra, learned counsel for the respondent/defendant opposes submissions made on behalf of the appellant and submits that the impugned judgments and decrees suffer from no error. It is further submitted that plaintiff has concealed the material facts from the learned Courts below. Learned counsel accordingly prays for dismissal of the present second appeal.

4. No other argument is made on behalf of the parties.

5. I have heard learned counsel for the parties and perused the case file in great detail. I find no merit in the submissions advanced on behalf of learned counsel for the appellant/plaintiff.



6. The pedigree table of the parties is as under:-



7. The appellant filed present suit for possession by way of partition and consequential relief of permanent injunction on 05.05.2010. He claimed to separate his alleged 2/3rd share (which he himself depicted as letters ABCD in the Site plan annexed with the plaint). He claims to have purchased 2/3 share of the suit property vide sale deed dated 13.07.1999.

8. Before dealing with the contentions raised by the appellant, it is first necessary to appreciate that plaintiff had concealed material facts in his plaint; inasmuch as plaintiff concealed that he had earlier filed 02 Civil Suits being:

(1) 1st Civil Suit No. 348 dated 10.06.1992 (Ex. DA Page 42 LCR) filed by present plaintiff seeking injunction against the defendant; which was withdrawn by him vide order dated 06.12.1993 (Ex. DD @, Pg 51 LCR).



(2) 2nd C.S. No. 147 dated 20.10.1992 (Ex. DE at Pg 52 LCR), in which plaintiff admitted construction of the defendant in the suit land. The suit was dismissed as the counsel pleaded no instructions from Nasib Singh/appellant, vide order dated 10.5.1994 (Ex DJ at Page 65 of the LCR).

9. Record reveals that plaintiff has admitted in his cross-examination that previously a Partition Suit had been filed by him; and that this fact has not been disclosed by the plaintiff in the present plaint. The plaintiff has also admitted in his cross-examination that there are several joint properties in the village which have not been included in the present suit for partition. Therefore, partial partition is not permissible as per law.

10. Furthermore, it is the own averment of the plaintiff in the plaint that suit property is *“situated within the abadi/firni of village Kumbhara, Tehsil and District Mohali”*. The appellant does not dispute that as the suit land falls in Abadi, partition by metes and bounds is not possible.

11. The defence taken by the defendant was that the mutual family partition has already taken place and both cousins have made their separate house alongwith separate passages. It has undisputedly come on record that the parties are in occupation of their respective shares since the past almost 20 years and that the respective shares of the properties are separated by a common wall between the house of the plaintiff and the defendant. Plaintiff purchased specific share, and it is mentioned as gair mumkin makaan, which he himself in his site plan Ex. P-3 (Pg 33 LCR) is



showing to have a common wall between the houses of the plaintiff and the defendant. Therefore, the parties are in separate possession since long. It has been admitted by the plaintiff that both parties are residing separately, and defendant had raised construction. Therefore, there is no joint possession. Due to construction of house in suit property, no presumption is attached to the Jamabandis produced by the plaintiff.

12. The appellant in his cross examination as PW1, has admitted that: (i) When the defendant parted ways with him, he had constructed his house and after separation both cousins raised separate construction of their respective houses and carved out a separate passage, which is in existence for over 20 years; (ii) He had earlier filed earlier suit for partition, which he did not mention in the plaint; (iii) There are other lands in the village which are also joint which have not been included in the present suit.

13. Both the courts therefore, held that the suit is bad for partial partition as well. Both the Courts have also held that plaintiff has made material concealments and suppressed filing/dismissal of earlier suits.

14. Relevant findings returned by learned First Appellate Court vide judgment and decree dated 28.07.2016 in Para 15 are as follows:-

“15. Perusal of the cross-examination of the plaintiff, it is crystal clear that he himself stated that when the defendant has parted from him, he had constructed his house and when the separation was made between them, they have raised the construction of their respective houses and carved out a separate passage



and this possession is in existence from the last 20 years. The partition suit has already been filed by him is very much admitted by him. He has also stated that some other land in the village between the parties is joint, but plaintiff has not added the other property of the village. So, partial partition could not be allowed. Meaning thereby as per the statement of plaintiff, both the parties are in possession of their respective shares as per mutual arrangement and defendant has constructed his house, so that partition is not reflected in the revenue record. Moreover, the plaintiff has not disclosed the previous litigation. So, it is admission on the part of the plaintiff that both the parties are residing separately and defendant has raised construction, so, they are not in joint possession. Hence, the present suit is not maintainable. So, the citation referred by the appellant is not directly applicable while deciding the present suit, as they are qua distinguishable from the present suit in hand.”

15. Thus, both the judgments and decrees are based upon sound reasoning and un-rebutted documents placed on record.
16. In view of the above, present appeal stands **dismissed**.
17. Pending application(s) if any also stand(s) disposed of.

26.11.2025
Sunena

(Nidhi Gupta)
Judge

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