



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

125-1

CR-3968-2018 (O&M)
Reserved on : 15.01.2026
Pronounced on : 11.03.2026
Uploaded on : 11.03.2026

Whether only operative part of the judgment is pronounced? No

Whether full judgment is pronounced? Yes

Rakesh Pal Kaushik and others **Petitioners**

versus

Brij Bhushan and others **Respondents**

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. D.P. Kaushik, petitioner No.2 in person (V.C.).

PANKAJ JAIN, J. (Oral)

1. Petitioner No.2, who appeared in person on 15.01.2026 through V.C. sought time to submit written arguments. He was granted time. He, however, has failed to submit any written arguments till date.
2. The present petition is directed against order dated 19.12.2017 passed by Civil Judge (Junior Division) SAS Nagar (Mohali) whereby application filed by the petitioner under Section 144 CPC has been dismissed.
3. Petitioner is a plaintiff in a suit for separate possession by way of partition. Application was filed under Section 144 CPC wherein the plaintiff prayed as under:-

“In view of the above facts and circumstances this hon'ble Court may in restitution and variation of the decree appearing at Pages 103-105 of Replication of the plaintiffs to



the written statement of Defendant Nos. 1-3 kindly be pleased to pass in favour of the applicant and against Defendant Nos. 1-3 a money decree in the sum of eight crore rupees.”

4. The pleadings raised in the application are as under:-

“2. That a look at the replications filed by the Plaintiffs would show that a judgment deserved to be passed in favour of the plaintiffs and against Defendant Nos. 1-3 in respect of all the reliefs prayed for in the plaint on the admissions of all the contesting defendants under Order XII Rule 6 of CPC if the contesting defendants had not set up the proposition that on account of four other properties being joint between the parties to the suit, partition of the suit property without inclusion of the other four properties for partition is not permissible. This proposition of the contesting defendants/non-applicants (that on account of four other properties being joint between the parties to the suit, partition of the suit property without inclusion of the other four properties for partition is not permissible) was false and fraudulent, set up by concealing from both the written statements the previous pieces of litigation showing lack of jointness in respect of those four properties.

3. That the plaintiffs like Defendants Nos. 1-3 and 9-10 are merely legal representatives of the original owners of the suit property. The Defendant Nos. 1-3 fraudulently and repetitively and too in collusion with Defendant Nos. 9-10 set up themselves as joint with the plaintiffs for four other properties.

4. That if the four properties or any of them was joint with the contesting defendants, the Defendant Nos. 1-3 ought to have sought partition in their first suit against the father of the applicants/plaintiffs. But that would have been contrary to the case set up by them in that suit. The Defendant Nos. 1-3 did not set up any jointness in their second suit the suit for possession as well.

5. That in the foregoing scenario and in the event of Defendant Nos. 1-3 not filing a written surrejoinder, a judgment under Order XII Rule 6 deserves to be passed in favour of the plaintiffs and against the Defendant Nos. 1-3 with the variation that the entire suit property including the



share of the fraudulently satisfied defendants (Defendant Nos. 9-10) has become liable to be partitioned amongst all the otherwise eligible parties other than Defendant Nos. 9-10 in proportion to their so enhanced respective shares.

6. That for repetitively and fraudulently setting up four properties as joint contrary to the findings of the pieces of litigation concealed by the contesting defendants, the decree of possession obtained by Defendant Nos. 1-3 needs to be varied for restitution under Section 144 of CPC.

7. The Plaintiff No. 1 spent an amount of six lakh rupees in improving the suit property before Defendant Nos. 1-3 obtained a decree for possession. The suit property forming the subject matter of the suit for possession was in the form of a khola. It was levelled with the help of JCB machines and earth from outside to raise the pre-existing low level of the property. Thereafter a high boundary wall was constructed on the subject property and two huge iron gates were set up at the open ends of the subject property. Thereafter a room was constructed in the rear end of the property when seen from the main street.

8. That at the time of obtaining of the physical possession by Defendant Nos. 1-3, the market value of the subject suit property was over four crore rupees. Had that property not been taken away from the plaintiffs by suit for possession, the plaintiffs would have sold it for that price of four crore rupees. And with passage of time from obtaining of possession by Defendant Nos. 1-3 those over four crore rupees would have by now grown to at least to double that amount i.e. eight crore rupees. In other words it may be said the applicant's loss till date on account of losing the suit property to Defendant Nos 1-3 comes out to be well over eight crore rupees.

9. That in these circumstances the defendants wish this hon'ble Court pass a money decree restitution in favour of the applicants/plaintiffs and against the Defendant Nos. 1-3 in the sum of eight crore rupees.

10. That the Defendants 1-3 may attempt to retract their fraudulent plea of jointness of four other properties for saving themselves from grant of the prayer made by this application. In the eyes of law it will be untenable for the simple reason that a party having taken a benefit in one suit cannot set up in



a subsequent suit a plea destructive of the maintainability of the previous suit brought by such party. The case in hand is not one of simple destructive plea. Defendant Nos. 1-3 are plainly guilty of repetitively and knowingly taking the plea of jointness of four other properties when they knew all along that no other property was joint as is discernible from contesting defendant no. 1-3's concealed pieces of litigation.”

5. Trial Court dismissed the application holding that application seeking restitution under Section 144 CPC is maintainable only where a decree or order passed in favour of one party has been varied or reversed in any appeal, revision or other proceedings. The applicant having failed to place on record any judgment, decree or order which has been varied or modified, the application for restitution is not maintainable.

6. Having heard the plaintiff in person, this Court finds that the application is totally misconceived. The plaintiff by way of present application wants to demonstrate that defendant No.1 to 3 in collusion with defendant No. 9 to 10 are taking false defence. They have not filed any surrejoinder to the replication filed by the plaintiff and thus judgment under Order XII Rule 6 deserves to be passed in favour of the plaintiff and against defendant No.1 to 3.

7. On being repeatedly asked as to under which earlier order or decree a party was granted any benefit which now stands reversed, reviewed or modified that can call for restitution of rights, plaintiff has failed to respond. That being the situation, this Court finds that the present application filed under section 144 CPC and the revision are totally misconceived.



8. Consequently, the revision petition is ordered to be dismissed.

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

(PANKAJ JAIN)
JUDGE

11.03.2026
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No