



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

RSA-1236-1991 (O&M)

Ram Nath (since deceased) thr LRs and Others Appellants

Vs.

Bhagwan Singh and Others Respondents

Reserved on: 27.01.2026

Pronounced on: 03.02.2026

Pronounced fully/operative part: Fully

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Argued by:- Mr. Jaivir Yadav, Senior Advocate with
Mr. Ashutosh Sharma, Advocate for the
appellants in RSA-1236-1991.

Mr. Rajinder Goel, Advocate for the
appellants in RSA-1087-1999.

Mr. Mahabir Singh Tanwar, Advocate for respondent
Nos.1 to 6, 8, 9, 13, 17, 19 and 20 and also on behalf of
Mr. Jagat Singh, Advocate for respondent Nos.7,
10 to 12, 14 to 16 and 18.

Service of respondent Nos.21 to 23 dispensed with
vide order dated 13.12.1991.

DEEPAK GUPTA, J.

This judgment disposes of two Regular Second Appeals, which arise out of identical facts and raise common questions of law and fact.

2. For convenience, the facts are taken from RSA No.1236 of 1991 titled '*Ram Nath & Others v. Bhagwan Singh & Others*', which arose out of Civil Suit No.475 of 1989 titled '*Sheoraj Singh & Others v. Ram Nath & Others*'; and Civil Appeal No.82/13 of 1989 titled '*Sheoraj Singh & Others v. Ram Nath &*



Others’.

3. **Background** : Plaintiffs (*who are respondents herein*) claimed title and possession to 04 Kanal 16 Marla of agricultural land described in paragraph 1 of the plaint. The suit land formerly formed part of an undivided joint holding of Shamlat Patti Ram Singh in Village Jatoli, in which both the parties were also the co-sharers. The plaintiffs assert that the joint holding was partitioned by mutation No.3173 dated 25.09.1973, pursuant to which the suit land fell to their share. Defendants were allotted other land out of the joint holding. As per plaintiffs, after partition, defendants continued in possession of that land despite its allotment to the plaintiffs and refused to surrender possession on demand. The plaintiffs therefore sued for possession on the basis of title / partition allotment and consequential reliefs.

4. Defendants (*appellants herein*) admitted that the plaintiffs were recorded as owners in the post-partition jamabandi but pleaded that they themselves had been tenants of the suit land for over 30 years (since 1956 according to DW-2 Mahipal). They relied heavily on continuous revenue entries in the jamabandi and khasra/girdawari showing them as tenants and the existence of a fixed chakota/lagan. In the alternative, they pleaded ownership by adverse possession. Preliminary objection as to jurisdiction of the Civil Court under Section 77 of the Punjab Tenancy Act was also raised.

5. **Findings of trial court:** Issues material to the controversy were framed and evidence was recorded. The Trial Court accepted the defendants’ case that they were tenants and that the revenue entries were correct and, on that basis, held that the Civil Court lacked jurisdiction under Section 77 of the Punjab Tenancy Act. The suit was dismissed by judgment of Sub-Judge 2nd Class dated 05.06.1989.

6.1 **First Appellate Court’s findings** : The learned First Appellate Court undertook a detailed re-appreciation of the pleadings, oral evidence and revenue record, including jamabandis and khasra girdawaris for the period from



1961 to 1988. It noticed that the consistent stand of the defendants was that the alleged tenancy in their favour had been created by the plaintiffs alone and not by the Shamlat Patti, and DW-2 Mahipal specifically asserted that such tenancy commenced in the year 1956.

6.2 However, the pre-partition revenue record depicted the defendants as tenants under *Shamlat Patti Ram Singh* and not under the plaintiffs. The post-partition jamabandis, on the other hand, recorded the plaintiffs as owners and the defendants as tenants, which was found to be a conventional change occasioned by partition. The Appellate Court further found that there was no reliable evidence of payment of rent either to the plaintiffs or to all co-sharers of the Patti, nor was any material produced to establish a bilateral agreement evidencing the relationship of landlord and tenant between the plaintiffs and the defendants.

6.3 The Appellate Court further noticed that the settled practice, reflected in precedent as well as in revenue administration, is that where, at the time of partition, land allotted to one co-sharer is found to be in possession of another, the person remaining in possession is often recorded as a tenant. Such entries are frequently conventional in nature and do not necessarily create a legal tenancy. Relying upon this principle, the Appellate Court held that the presumption of correctness attached to the jamabandi entries stood rebutted on the admitted evidence.

6.4 Applying settled law, the Appellate Court held that a valid tenancy affecting joint land, prior to partition, can be created only by all co-sharers acting collectively and that one or some of the co-sharers cannot create a tenancy in respect of the entire joint holding so as to bind others. On facts, it was found that the defendants neither pleaded nor proved that all co-sharers had created tenancy in their favour.

6.4 The Appellate Court placed reliance upon the judgment of the Federal Court in *Hasil Singh v. Dhani Ram, 1941 LLT 31 (FC)*, wherein it was held



that where, at the time of partition, land allotted to one co-sharer is in possession of another, the allottee is recorded as owner and the co-sharer continuing in possession is recorded as tenant in will, with or without a note in the red column. It was observed that in such circumstances, no presumption of tenancy arises from the revenue record, as such entries are merely conventional and do not establish a jural relationship of landlord and tenant.

6.5 The Appellate Court further noticed that it was an undisputed fact that earlier *Shamlat Patti Ram Singh* was the owner of the suit land as well as other joint land and that the joint holding stood partitioned vide mutation No.3174 dated 25.09.1973 (Ex.P5). As per the said mutation, the suit land was allotted to the plaintiffs, while other land was allotted to the defendants. Consequently, the plaintiffs became exclusive owners of the suit land and were legally entitled to seek possession thereof on the basis of title. This conclusion was found to be fully supported by the law laid down in ***Hasil Singh v. Dhani Ram (supra)*** and ***Partap Singh v. Harnam Singh, 1961 Supplement LLT 57.***

6.6 The Appellate Court also took into consideration the judgment dated 10.04.1986 (Ex.P2) passed by the learned Additional District Judge, Gurugram, in Civil Appeal No.122 of 1985 titled “Dalip and others v. Ram Kumar and another”, wherein, in similar circumstances, the suit had been decreed, and the said decree was upheld by this Court while dismissing the second appeal vide order dated 28.05.1986 (Ex.P7). The said decision was held to lend further support to the plaintiffs’ entitlement to possession once the land stood allotted to them in partition.

6.7 It was further observed that every co-sharer has a right in every parcel of the joint land and, therefore, tenancy in respect of the whole or any part of joint land cannot be created by one or some of the co-sharers, but only by all the co-sharers acting together. While a co-sharer may create tenancy in respect of his own share, he cannot create tenancy concerning the entire joint holding so as to bind other co-sharers.



6.8 In the present case, the defendants' own version was that the alleged tenancy in their favour was created at a time when the suit land was still joint property of the Patti and that such tenancy was created by the plaintiffs alone. The Appellate Court rightly held that the plaintiffs, not being exclusive owners prior to partition, could not have created a valid tenancy in respect of the entire suit land. At best, they could have created tenancy in respect of their undivided share, which was not the defendants' case.

6.9 The Appellate Court was conscious of the settled position that in certain circumstances a co-sharer may become a tenant of joint land; however, such tenancy must necessarily be created by all co-sharers. Reliance in this regard was placed upon ***M/s India Automobiles v. Life Insurance Corporation of India, 1978 (1) MLJ 178***, affirmed by the Hon'ble Supreme Court in ***1990 (2) RLR 168***, and ***H.M. Podar v. S.N. Podar, 1979 (1) RLR 219***.

6.10 Applying the ratio of the aforesaid judgments, the Appellate Court concluded that no valid tenancy had come into existence in favour of the defendants. It was held that prior to partition the defendants were in possession as co-sharers and such possession was on behalf of all co-sharers, and after partition, once the suit land stood allotted to the plaintiffs, they were entitled to recover possession thereof.

6.11 On a cumulative consideration of the evidence and settled legal principles, the Appellate Court categorically held that the defendants were not tenants over the suit land; that the revenue entries showing alleged tenancy were wrong, illegal and void; and that the plaintiffs were entitled to possession of the suit land on the basis of title. The findings of the Trial Court were accordingly reversed.

6.12 It was further held that since no relationship of landlord and tenant existed between the parties, the jurisdiction of the Civil Court was not barred under Section 77 of the Punjab Tenancy Act. Consequently, vide judgment dated 17.05.1991, the appeal was allowed and the suit was decreed.



7. ***Contentions before this Court*** : Assailing the judgment of reversal, learned counsel for the appellants–defendants has confined his challenge to a solitary contention, namely, that continuous revenue entries since the year 1961–62 depict the appellants to be in possession of the suit land in the capacity of tenants on payment of a fixed *lagan* and, therefore, the learned First Appellate Court committed a legal error in discarding such entries and reversing the findings of the Trial Court.

8. ***Consideration by this Court*** : This Court is unable to accept the afore said submission.

9. The learned First Appellate Court has undertaken a comprehensive and detailed re-appreciation of the entire evidence, including pleadings, oral testimony and the revenue record spanning more than two decades. The Appellate Court has recorded clear and reasoned findings that the presumption attached to the jamabandi entries stood rebutted on the defendants’ own pleadings and admissions, and also on account of the inherent inconsistency between the revenue record and the defendants’ version regarding creation of tenancy.

10. It has been clearly found that while the defendants asserted that tenancy in their favour was created by the plaintiffs alone, the pre-partition revenue entries showed the alleged tenancy under the Shamlat Patti, thereby demolishing the defendants’ own case. Further, the absence of any reliable evidence of payment of rent or existence of a bilateral agreement establishing a landlord–tenant relationship has been duly noticed. The Appellate Court has also correctly applied the settled legal position that entries in the revenue record, particularly those made at the time of partition, are often conventional in nature and do not, by themselves, create or prove a legal tenancy.

11. The finding of the Appellate Court that a valid tenancy in respect of joint land could have been created only by all co-sharers acting collectively, and that such tenancy was neither pleaded nor proved, is fully in consonance with

settled law. The conclusion that after partition the plaintiffs, as allottees of the suit land, were entitled to recover possession thereof on the basis of title is also founded on sound legal principles.

12. The contention raised before this Court essentially seeks re-appreciation of evidence and substitution of the findings of the First Appellate Court with those of the Trial Court. Such an exercise is impermissible in the jurisdiction under Section 100 of the Code of Civil Procedure, particularly when the findings recorded by the First Appellate Court are neither perverse nor based on misreading of evidence, nor shown to be contrary to any settled principle of law.

13. This Court finds that the impugned judgment does not suffer from any illegality, infirmity or perversity warranting any interference. No substantial question of law arises for consideration in the present appeals.

14. Consequently, the appeals are held to be devoid of any merit and are dismissed. Parties are left to bear their own costs.

15. Pending application(s), if any stands disposed of.

(DEEPAK GUPTA)
JUDGE

03.02.2026
Neetika Tuteja

Whether speaking/reasoned?	Yes
Whether reportable?	Yes

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