



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-3046-1994 (O&M)

Bharat Singh (since deceased)
Through His LRs and Ors.

...Appellants

Versus

Zile Singh and others

...Respondents

Reserved on 17.02.2026

Pronounced on: 24.02.2026

Pronounced fully/operative part: Fully

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued by: Mr. M.L. Sarin, Sr. Advocate with
Ms. Hemani Sarin, Advocate for the appellants.

Mr. Gaurav Rana, Advocate
for respondents No.1 to 9.

Mr. Kartar Singh, Advocate and
Mr. Robin Dutt, Advocate for respondent No.17.

DEEPAK GUPTA, J.

Out of thirteen defendants before the trial Court, defendants No.2 and 3 have preferred the present appeal challenging the judgment & decree dated 26.08.1994 passed by the learned Additional District Judge, Sonipat, whereby the appeal of the plaintiffs was allowed and a preliminary decree for partition was directed to be drawn. The said judgment reversed the judgment & decree dated 20.10.1992 of the learned Sub Judge-III Class, Sonipat, whereby the suit for possession by way of partition had been dismissed.

2. For the sake of convenience and to avoid confusion, the parties shall be referred to as per their status before the trial Court. The trial Court

record was requisitioned and has been carefully examined.

3.1 **Plaintiffs’ Case** : The case set up by the plaintiffs is that seven co-sharers were jointly allotted 2255 square yards of abadi land comprising plots Nos. 1, 2, 7, 14, 15 and 72 in partition proceedings arising out of Civil Suit No.707 of 1938 titled ‘*Harkishan etc. vs. Ramsarup etc.*’

3.2 The succession of parties from the original allottees is as follows:

Original Allottee	Present Successors
• Hari Singh	• Plaintiffs No.1 to 3
• Devi Singh	• Plaintiff No.4
• Tara Chand	• Plaintiffs No.5 to 9
• Surat Singh	• Defendants No.1 to 11
• Hira Singh & Khiali	• Defendant No.12
• Tek Ram	• Defendant No.13

3.3 It is further pleaded that the allotment of abadi land was made on *Hasab-Rasad-Rakba-Khewat* basis, i.e. proportionate to the agricultural holdings of the co-sharers. The agricultural holdings of the predecessors were stated to be as under:

Branch	Agricultural Holding (Bigha – Biswa)
• Plaintiffs’ predecessors (Hari Singh, Devi Singh, Tara Chand)	• 59 - 7
• Surat Singh (<i>defendants No.1–11</i>)	• 11 - 11
• Hira Singh & Khiali (<i>defendant No.12</i>)	• 21 - 11
• Tek Ram (<i>defendant No.13</i>)	• 11 - 9
Total (Actual)	• 103 B – 18 B

Total (pleaded & reflected in evidence)	• 102 B - 12 B
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3.4 On the strength of the above, it is alleged that though allotment of plots was joint, the defendants are occupying area in excess of their legitimate share, thereby necessitating partition.

4.1 **Defence of the Defendants :** The defendants resisted the suit primarily on the plea that the property already stood partitioned and each branch was in exclusive possession of specific plots. Their stand regarding allotment was:

Plot No.	Alleged Exclusive Allottee
• 14 & 15	• Surat Singh (<i>defendants No.1–11</i>)
• 1 & 2	• Tara Chand, Devi Singh & Hari Singh (<i>Plaintiffs’ predecessors</i>)
• 7	• Hira Singh & Khiali (<i>defendant No.12</i>)
• 72	• Tek Ram (<i>defendant No.13</i>)

4.2 Thus, according to the defendants, the earlier allotment itself constituted final partition and the suit was not maintainable.

5. **Findings of the Trial Court :** The trial Court, upon appreciation of evidence, recorded a finding that the suit property was joint between the parties and liable to partition. However, the suit was dismissed on the ground that the plaintiffs had failed to plead and establish the precise shares of the parties, and in absence of determination of shares, an executable decree for partition could not be passed.

6. **Findings of the First Appellate Court :** In the appeal filed by plaintiffs, the First Appellate Court affirmed the finding regarding jointness of the property but reversed the conclusion of the trial Court on the issue of shares. It held that in a suit for partition, the Court is competent to determine the respective shares of co-sharers on the basis of evidence on



record even in absence of specific pleadings. The Appellate Court further held that the 2255 sq. yards abadi land, having been jointly allotted, was liable to be partitioned pro rata in proportion to agricultural holdings. On this basis, the plaintiffs were held entitled to 1300 sq. yards, leading to passing of a preliminary decree.

7. ***Submissions of the Appellants*** : Assailing the above reversal, Learned Senior Counsel for the appellants contends that the Appellate Court misconstrued the earlier decree by treating agricultural land as partitioned; that the trial Court rightly dismissed the suit due to absence of pleading of shares; and that exclusive possession pursuant to earlier allotment amounted to completed partition. He prayed for restoration of trial court judgment.

8. ***Submissions of the Respondents*** : Per contra, learned counsel for the plaintiffs – contesting respondents submits that there is concurrent finding that the six plots were jointly allotted; that the earlier decree establishes joint ownership over 2255 sq. yards; and that determination of shares by the Appellate Court on *Hasab-Rasad-Rakba-Khewat* basis is legally justified and based on evidence on record. He accordingly prayed for dismissal of the appeal.

9. This Court has considered the rival submissions and carefully perused the record.

10. ***Consideration by this Court*** : Having carefully examined the findings recorded by the Courts below and the submissions advanced on behalf of the appellants, the controversy essentially revolves around appreciation of documentary evidence relating to the earlier partition decree of the year 1940, the nature of possession of the parties, and determination of shares on the basis of agricultural holdings. These aspects are purely factual in nature. The First Appellate Court, being the final Court



of facts, has re-appreciated the entire evidence and has recorded well-reasoned findings holding the suit property to be joint and liable to partition.

11. For clarity, the jointly allotted suit property is summarized below:

Sr. No.	Plot No.	Area (Sq. Yards)
1	1	69
2	2	67
3	7	207
4	14	580
5	15	766
6	72	566
Total Area		2255

12. It is well settled that concurrent findings of fact recorded by the Courts below are not open to interference in second appeal, unless shown to be perverse, based on misreading of evidence, or suffering from exclusion of material evidence.

13. In the present case, both the Courts below, upon appreciation of the decree dated 14.05.1940 (Ex.P-12) and the attendant evidence, have consistently held that the six plots were jointly allotted to the predecessors of the parties and continue to retain the character of joint property.

14. The appellants have failed to point out any infirmity in the appreciation of evidence or application of law so as to attract the jurisdiction of this Court under Section 100 CPC. The submissions advanced merely seek re-evaluation of factual findings, which is impermissible in Regular Second Appeal. Accordingly, the concurrent finding regarding

jointness of the suit property calls for no interference and gives rise to no substantial question of law.

15. Though not pointed out by any of the parties, but this court notices discrepancy in the total agricultural holdings reflected in the jamabandi. However, minor variation in old revenue entries is not uncommon and cannot defeat substantive rights flowing from a binding decree. The proportional adjustment undertaken by this Court is only to operationalize the *Hasab-Rasad-Khewat principle* and to ensure equitable distribution of the abadi land without creating excess entitlement.

16. As noted earlier, the agricultural holdings forming the basis of proportion are:

Branch	Agricultural Holding (Bigha – Biswa)
Plaintiffs’ predecessors (Hari Singh, Devi Singh, Tara Chand)	59 - 7
Surat Singh (<i>defendants No.1–11</i>)	11 - 11
Hira Singh & Khiali (<i>defendant No.12</i>)	21 - 11
Tek Ram (<i>defendant No.13</i>)	11 - 9
Total (Actual)	103 B – 18 B
Total (pleaded & reflected in evidence)	102 B - 12 B

17. Accordingly, the 2255 square yards of abadi land comprising six plots is required to be partitioned *Hasab-Rasad-Khewat*, i.e. in proportion to the respective agricultural holdings of the parties and their predecessors out of the total holding of 102 bigha 12 biswa, as borne out from the evidence on record. However, the revenue entries reflect the aggregate holding as 103 bigha 18 biswa, resulting in an excess of 26 biswa, which is required to be proportionately adjusted amongst the parties while

determining their respective shares.

18. The proportionate entitlement in the abadi land before adjustment worked out as:

Branch	Initial Area (Sq. Yards)
Plaintiffs’ predecessors (Hari Singh, Devi Singh, Tara Chand)	1304
Surat Singh (<i>defendants No.1–11</i>)	253
Hira Singh & Khiali (<i>defendant No.12</i>)	473
Tek Ram (<i>defendant No.13</i>)	251
Total	2281

19. Since the actual area available for partition is 2255 sq. yards, the excess of 26 sq. yards has been proportionately deducted, leading to the final workable shares:

Branch	Final Area (Sq. Yards)
Plaintiffs’ predecessors (Hari Singh, Devi Singh, Tara Chand)	1289
Surat Singh (<i>defendants No.1–11</i>)	250
Hira Singh & Khiali (<i>defendant No.12</i>)	468
Tek Ram (<i>defendant No.13</i>)	248
Total	2255

20. The above exercise merely quantifies the shares to make the decree executable and does not alter substantive rights.

21. Since the dispute relates to ancestral village abadi land jointly held by different branches of the same proprietary body for several



decades, therefore, partition in such circumstances is intended to secure peaceful enjoyment of property rather than to perpetuate technical objections. The decree merely separates existing rights without divesting any party of its legitimate entitlement.

22. Viewed from this equitable perspective as well, the decree promotes finality and minimizes future discord amongst co-sharers.

23. In view of the foregoing discussion, this Court finds no infirmity in the well-reasoned findings recorded by the First Appellate Court holding the suit property to be joint and liable to partition. The modification carried out herein is only to the limited extent of specifying the precise shares of the parties so as to render the preliminary decree workable and executable. No substantial question of law arises for consideration in the present appeal. Consequently, the appeal is disposed of with the modification of the preliminary decree to the extent indicated hereinabove. Pending miscellaneous applications, if any, also stand disposed of.

24. In order to give effect to the preliminary decree, the parties shall appear before the trial Court within a period of two months from the date of receipt of a certified copy of this judgment for initiation of final decree proceedings. The trial Court shall appoint a Local Commissioner/Revenue Expert, preferably conversant with village abadi partition, who shall visit the spot after due notice to all parties; prepare a proposed mode of partition strictly in accordance with the shares declared in the preliminary decree (*as per Para No. 19 of this judgment as above*); ensure, as far as practicable, compact allotment and preservation of existing residential structures; and submit a detailed report along with site plan indicating proposed allotments.

25. The trial Court shall thereafter consider objections, if any, and

proceed to pass the final decree in accordance with law.

26. It is clarified that while effecting partition by metes and bounds, the Local Commissioner and the trial Court shall keep in view the following principles:

- existing possession and residential constructions shall be respected to the extent feasible without disturbing the declared shares;
- access, passages, and common amenities, if any, shall be suitably preserved;
- minor variation in measurements arising out of on-site adjustment shall be compensated by equitable adjustment rather than reopening the shares; and
- the final decree shall clearly describe the allotted portions with boundaries so as to avoid ambiguity at the execution stage.

27. These safeguards are issued to ensure that the decree attains finality and to obviate multiplicity of proceedings amongst co-sharers in future.

28. A preliminary decree of partition be passed in above terms. This appeal is disposed of accordingly. All other miscellaneous applications stand disposed of.

24.02.2026
Yogesh

(DEEPAK GUPTA)
JUDGE

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

Uploaded on 24.02.2026