

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**RSA-2796-2025 (O&M)
Date of decision: 11.05.2026

Jai Singh and others

...Appellants

Versus

Ravinder Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTAPresent: Mr. Sunil Kumar Chaudhary, Advocate for
Mr. Pradeep Virk, Advocate for the appellants.

DEEPAK GUPTA, J. (ORAL)

Suit for partition regarding the property in dispute filed by the appellants – plaintiffs was decreed by the trial Court on 23.02.2015, but the appeal filed by some of the defendants was accepted by learned Additional District Judge, Gurgaon on 14.11.2024. The principal reason for dismissing the suit for partition is that the parties are also co-sharers in the land comprising in Khasra No.385, which had not been included in the subject of the suit and as such, the suit was bad for partial partition.

2. Against the aforesaid reversal, the present appeal was filed. However, on the previous date of hearing, statement was made by learned counsel for the appellants seeking permission to withdraw the main suit itself with liberty to file a fresh suit for same cause of action by including all the joint properties of parties including Khasra No.385.

3. Learned counsel for the appellants has referred to ***Om Dutt and others vs. Leela Wati and others***, CR No.5701-2013, decided by a co-ordinate Bench of this Court on 19.09.2013, wherein permission to withdraw the appeal was allowed in the same circumstances. Reliance has also been placed upon ***Thakur Balaram Singh vs. K. Achuta Rao and others***



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4. Learned counsel further refers to Order 23 Rule 1 (3) CPC as per which in case the Court is satisfied that a suit must fail by reason of some formal defect, the Court may grant permission to withdraw from such suit with liberty to institute a fresh suit in respect of the subject matter of such suit or such part of the claim.
5. Since, non-joining of all the joint properties of parties is a formal defect, as has been noticed by the First Appellate Court, therefore, the prayer of the appellants is accepted. The main suit itself is permitted to be withdrawn with liberty to institute a fresh suit on the same cause of action by including all the joint properties.
6. Accordingly, the aforesaid appeal is hereby disposed of by granting necessary permission to withdraw the suit with the aforesaid liberty.

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

11.05.2026
Yogesh

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned:-
Whether reportable:-

Yes/No
Yes/No