



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

**RSA-559-1997 (O&M)
Reserved on :-29.01.2026
Date of Pronouncement:-03.02.2026
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Jagannath (Deceased) through his LRs

... Appellants

Versus

Suresh Kumar and Others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :-

Mr. Aryaman Thakur, Advocate with
Mr. Vishal Sharda, Advocate
for the appellants.

None for the respondents.

VIRINDER AGGARWAL, J.

1. Invoking the appellate jurisdiction of this Court, the appellants–respondents assail the judgment and decree dated 02.12.1996 passed by the learned Additional District Judge, Kurukshetra, whereby the well-reasoned judgment and decree dated 17.01.1994 rendered by the learned Additional Senior Sub-Judge, Pehwa, came to be reversed. Through the present Regular Second Appeal (hereinafter referred to as “RSA”), the appellants seek restoration of the decree lawfully and correctly granted by the learned Trial Court and redressal of the grave miscarriage of justice occasioned by the impugned appellate decision. It is



respectfully submitted that the judgment and decree under challenge suffer from manifest perversity, patent errors of law, and a fundamentally flawed appreciation of the evidence on record, thereby giving rise to substantial questions of law warranting interference by this Court. The appellants, therefore, humbly pray that the impugned judgment and decree be set aside and the well-considered decree of the learned Trial Court be reinstated.

2. The factual and procedural chronology leading to the institution of the present appeal, delineated in brief for the sake of clarity, is set out hereinafter: -

“The genesis of the present appeal, shorn of unnecessary detail, lies in the institution of a suit for partition by the plaintiffs, wherein it was pleaded that the immovable property comprising three rooms along with the entire area measuring 42' × 46', as fully described in the plaint and situated in Village Bakhli, was originally owned and possessed by one Atma Ram. The lineage of the parties was duly pleaded and stands reflected in the pedigree table reproduced in paragraph 2 of the impugned judgment.

It was further asserted that the suit property is ancestral in nature, having descended from one Ram, and that the parties to the suit derive their respective rights and interests therein through Atma Ram. The plaintiffs specifically pleaded that the respective shares of the parties in the said house are as under:-

Plaintiffs — 1/6th share

Defendants No.1 to 7 — 1/3rd share

Defendants No.8 and 9 — 1/3rd share

Defendant No.10 — 1/6th share



It was categorically averred that the aforesaid property has never been subjected to partition and continues to remain joint. The plaintiffs further alleged that the parties had merely permitted Ram Kishan, son of Atma Ram, to use the suit property; however, the said Ram Kishan, acting in collusion with defendant No.1, subsequently began to deny and repudiate the ownership rights of the plaintiffs, thereby giving rise to the present lis.

Proceeding further with their case, the plaintiffs pleaded that they are residing away from the suit property, whereas defendant No.1, taking undue advantage of their absence, has allegedly procured certain judicial pronouncements asserting exclusive ownership over the suit property and has been extending threats to assume exclusive possession thereof. It was asserted that such unilateral claims and conduct on the part of defendant No.1 have cast a cloud upon the lawful rights and interests of the plaintiffs, thereby compelling them to seek partition of the joint holding.”

3. Pursuant to service of summons, the defendants contested the suit, placed their respective submissions on record as under:-

“Defendant No.1 entered appearance and contested the suit by filing a written statement.

Defendant No.10, on the other hand, filed a written statement admitting the claim of the plaintiffs, whereas the remaining defendants failed to appear despite due service and were, accordingly, proceeded against ex parte.

Setting up a defence in clear opposition to the plaintiffs’ claim, defendant No.1 challenged the maintainability of the suit on multiple grounds, including misjoinder and non-joinder of necessary parties, lack of jurisdiction of the Civil Court, and absence of any cause of action. It was further alleged that the suit had been instituted by



suppressing and concealing material facts and that the plaintiffs have no subsisting right, title, or interest in the suit property. Defendant No.1 specifically asserted that the suit property never belonged to Atma Ram and that he himself owns no ancestral property traceable to Atma Ram. According to him, the suit property originally belonged to Smt. Tulsan, the maternal grandmother of Radha Krishan, son of Atma Ram and father of defendant No.1, who was a resident of Village Bakhli. It was claimed that defendant No.1 inherited the suit property through his father, who, in turn, had inherited the same from Smt. Tulsan. It was emphatically denied that Ram Kishan owned any property whatsoever in Village Bakhli.

Elaborating further upon the defence, it was pleaded that Ram Kishan had merely taken the suit property on rent from defendant No.1 for a period of six months, commencing from 19.10.1981 and ending on 18.04.1982, at a monthly rent of ₹50/-, and had executed a rent note to that effect. It was categorically asserted that the plaintiffs have no concern, right, or interest in the suit property in any manner whatsoever.”

4. In **rejoinder** to the written statement, the plaintiffs filed a replication, emphatically traversing and controverting the assertions raised by the defendants and reiterating the averments contained in the plaint. Upon a comprehensive and circumspect examination of the pleadings, the documentary material placed on record, and the rival submissions advanced by the parties, the learned trial Court, finding it necessary for the just and effective adjudication of the controversy, proceeded to frame the issues for determination, which are delineated hereinafter:-

1. *Whether the plaintiffs and defendant no.1 to 10 are the joint owners in possession of the suit property? OPP.*



2. *If, issue No.1 is proved what are the share of the parties? OPP*
3. *Whether the suit is not maintainable ? OPD*
4. *Whether the suit is bad for the non-joinder of necessary parties?
OPD*
5. *Whether the suit is bad for the purposes of court fee and
jurisdiction ? OPD*
6. *Whether the plaintiffs have facts suppressed the true and material
from the court, if so its effect ? OPD*
7. *Relief*

5. The parties having fully availed themselves of the opportunity to adduce evidence, and the matter having been heard at length, the learned Trial Court dismissed the suit by a reasoned judgment, observing as under:-

*“For the reasons aforestated and in view of the conclusions arrived at on the issues under consideration, the suit instituted by the plaintiffs fails and is hereby **dismissed** with costs ”*

6. Dissatisfied with the judgment and decree rendered by the learned Trial Court, the respondents–appellants preferred an appeal before the learned First Appellate Court. *Upon due consideration of the record and the submissions advanced*, the learned First Appellate Court allowed the appeal, recording, *inter alia*, the following observations:-

“Accordingly, to the aforesaid extent, the findings returned by the learned Trial Court are hereby set aside and reversed. A preliminary decree for partition is ordered to be drawn, declaring that the suit property is jointly owned and possessed by the parties to the decree. The respective shares of the parties are declared as under:-

- ***Plaintiffs — 1/6th share***
- ***Defendant No.1 — 1/3rd share***



- ***Defendants No.8 and 9 — 1/ 3rd share***
- ***Defendant No.10 — 1/ 6th share***

*Consequently, the appeal preferred by the plaintiffs stands **allowed** to the aforesaid extent, and the suit is decreed accordingly.”*

6.1. Challenging the determinations rendered by the learned First Appellate Court, the appellants–respondents instituted the present appeal. Upon its admission, notices were duly issued to the respondents, who, despite proper service, abstained from appearing before this Court. The records of the learned Courts below are available on the DMS and have been carefully examined for the purposes of thorough scrutiny and adjudication.

7. Having heard learned counsel for the parties and examined their submissions, I have considered the pleadings, documentary evidence, and oral testimony alongside the findings recorded by the courts below. The entirety of the record has been meticulously perused with a view to determining whether the impugned judgment and decree suffer from any legal infirmity, procedural irregularity, or misappreciation of evidence that would warrant interference by this Court.

8. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are to be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 CPC. Reference in this regard can be made to the judgment of the Supreme Court in the case of ***Pankajakshi (Dead) through LRs and others V/s Chandrika and others, (2016)6 SCC 157***, followed by the judgments in the case of ***Kirodi (since deceased) through his LR V/s Ram Parkash and others, (2019) 11 SCC 317*** and



Satender and others V/s Saroj and others, 2022(12) Scale 92. Relying upon the law laid down in the aforesaid judgments, no question of law is required to be framed.

9. Learned counsel appearing on behalf of the appellants has vehemently contended that the learned First Appellate Court has misdirected itself in law by misreading and misconstruing the pleadings of the parties and, in the process, has proceeded to make out an entirely new case which was neither pleaded nor set up by the respondents-plaintiffs. It has been submitted that the specific plea sought to be introduced by way of amendment in the replication was expressly declined to the respondents-plaintiffs, and therefore, the learned First Appellate Court could not have founded its decision upon a plea which was never part of the pleadings.

9.1. It has further been argued that the learned First Appellate Court failed to appreciate the settled principle of law that parties are bound by their pleadings and cannot be permitted to travel beyond the same. The relief to be granted must strictly flow from the pleadings and the evidence led in support thereof, and a plaintiff cannot be allowed to derive any advantage from the alleged weakness in the defence of the opposite party.

10. It has been further contended that the learned First Appellate Court has erroneously set aside the well-reasoned findings recorded by the learned trial Court. The learned First Appellate Court has recorded its conclusions in paragraph No. 12 of the impugned judgment, which reads as under:-

12. *“The counsel for the appellants could not dislodge the findings recorded by the learned trial court. to the effect that the suit land is*



not held to be ownership of Atma Ram predecessor-in-interest it of the has come in evidence that Tulsan However, maternal grandmother defendant no.1 as Predecessor-in-interest of well Radha Krisha, as and Kishan Ram parties. Was the father of Bansi of plaintiffs and defendants No..8,9 and 10 as admitted by defendant no.1 while appearing in the witness box. There was no will or further mode of succession of the property of said Tulsan. The natural succession would, therefore, devolve upon al the three brothers namely Bansi, Ram Kishan Krishan. to That being so the parties shall be the share as detailed in the plaint. counsel for replication and Radha entitled However, the respondent has submitted that the plaintiffs the in the have not. admitted the allegation of the defendants that the property was owned by Tulsan. Now they cannot claim this right. In Dr. Mahesh Chand Sharma vs. Smt. Kumari Sharma and others, AIR 1946 (SC) 869 cannot they support, he has placed reliance upon Sharma I have perused this authority very carefully and find that the same is of no help to the respondents. that case, a specific plea was raised but was in the labour court and in those circumstances, it not allowed to raised be in I In abandoned whereas Was the appeal, authority Firm Srinivas Ram Kumar Vs. Mahabir Prasad and others, A.I.R. (38) 1951 Supreme 177 by that relied upon counsel for the appellants is fully applicable. In case, the plaintiffs filed suit for specific performance of the contract alleging that they have made payment as earnest money. The learned trial of reversed the Rs.30,000/- dismissed the suit for specific performance but the suit for Rs.30,000/- although there was no prayer to that effect. That decree was set aside by the Hon'ble High Court. In appeal the Hon'ble Supreme Court, findings of the Hon'ble High Court and court decreed held that the trial court was justified in



granting the relief. Because, there is nothing in the Civil Procedure Code to debar the plaintiff from seeking alternative plea. Simply because the plaintiffs have not taken alternative plea, it does not mean that the relief cannot be granted. Now in the present case when the parties have entered into issues and have adduced evidence, and if it is proved on the file, that the land belonged Tulsan, then unless there is some special mode of succession of property from Tulsan is proved, by the defendants, natural succession would follow. In that circumstances all the plaintiffs become co-shares in the suit land as per share detailed in the plant. That being so, by holding that the land originally belongs to Tulsan, the plaintiffs are entitled to 1/6th share of the land, as claimed by them.”

11. A plain and holistic reading of the aforesaid observations unmistakably demonstrates that the learned First Appellate Court proceeded on the premise that the suit land originally belonged to Tulsa. However, the learned First Appellate Court fell into patent error in holding that, in the absence of proof regarding any special mode of succession from Tulsa on the part of the defendants, the property would devolve by natural succession, thereby rendering the plaintiffs co-owners of the suit land in accordance with the shares delineated in the plaint.

11.1. The law on the subject is well settled that adjudication of a lis must rest strictly upon the pleadings of the parties and the issues arising therefrom. A court is not empowered to found its decision on a case not pleaded or on assumptions dehors the pleadings. This settled principle has been authoritatively enunciated by the Hon’ble Supreme Court in **Messrs**



Torjan and Co. vs. R.M.N.N. Nagappa Chettiar, AIR 1953 SC 235,
wherein it has been held as under:-

“It is settled that the decision of a case cannot be based on the grounds outside the pleadings of the parties and it is the case pleaded that has to be found without an amendment of the plaint, the Court was not entitled to grant the relief not asked for and no prayer was ever made to amend the plaint, so to incorporate in it in alternative case.”

12. In ***Ram Sarup Gupta (since deceased) through his legal representatives vs. Bishun Narain Inter College and others, reported as AIR 1987 SC 1242,*** the Hon’ble Supreme Court reiterated the settled position of law in the following terms:-

“The object and purpose of pleading is to enable the adversary party to know the case it has to meet. In such a case it is duty of the Court to ascertain the substance of the pleadings to determine the question.”

13. In ***Gajanan Krishanji Bapat and another vs. Dattaji Raghobaji Meghe and others, AIR 1995 SC 2284,*** the Hon’ble Supreme Court held that *“the Court cannot take into consideration any fact which travels beyond the pleadings of the parties. It was further held that the parties are required to raise proper pleadings and establish, by leading cogent evidence, that on account of a particular irregularity or illegality, the result of the election has been materially affected.”*

14. In ***Kalyan Singh Chouhan vs. C.P. Joshi, AIR (2011) SC 1127,*** the Hon’ble Apex Court has held as under:-

It is settled legal preposition “that as a rule, relief not founded on the pleadings should not be granted”.



15. In the present case, it becomes imperative to closely examine the pleadings of the parties in order to ascertain whether the relief granted by the learned First Appellate Court legitimately emanates from the pleadings set forth by the respondents-plaintiffs. In this context, reference is required to be made to paragraph No. 3 of the plaint, wherein the plaintiffs have specifically pleaded as under:-

“That the property detailed in para No.1 of the plaint is ancestral of the parties and has been in ownership of Atma Ram. ”

16. The appellants-defendants, while responding to the plaint, have specifically set out their defence in paragraph No. 2 of the written statement under the heading “Reply on Merits,” wherein appellant-defendant No. 1 has pleaded as under:-

“Aatma Ram had no property in his own name. Suit property was originally belong to Smt. Tulsa (Nani) maternal grandmother of Radha Krishan son of Aatma Ram i.e. father of the answering defendant, who was resident of village Bakhil, Tehsil Pehowa and defendant No.1 has inherited or succeeded suit property from his father who has inherited the same from Nanni i.e. Smt. Tulsan.”

16.1. In their replication to the written statement filed by defendant No. 1, the respondents-plaintiffs have specifically articulated their stand in paragraph No. 2 thereof, pleading as under:-

“Para No.2 of the written statement is wrong and that of the plaint is correct, the property was in ownership of Aatma Ram. It is wrong that property is ownership of Tulsan.”

17. It has been pleaded by plaintiff in replication that defendant No. 1 inherited property from his father; however, the allegation that no particulars thereof were furnished is emphatically denied. It has further



been specifically pleaded that there exists no provision of law under which a son-in-law can inherit the property of his mother-in-law, thereby rendering the contrary assertion legally untenable.

17.1. It is the specific case set up by the respondents-plaintiffs that the suit property was ancestral property of Aatma Ram; however, it stands admitted that the said plea could not be substantiated by any cogent evidence on record. The respondents-plaintiffs have categorically denied the pleadings of the appellants-defendants to the effect that the suit property belonged to Tulsa and was inherited by the father of the appellants-defendants. This denial has been unequivocally reiterated in the replication. Consequently, the burden squarely lay upon the respondents-plaintiffs to establish their title to the suit property through Aatma Ram, which burden they have admittedly failed to discharge.

18. On the contrary, the evidence on record conclusively establishes that Tulsa was the owner of the suit property. It was never the pleaded case of the respondents-plaintiffs that they had succeeded to the estate of Tulsa. Rather, they had expressly denied the very ownership of Tulsa over the suit property. During the pendency of the first appeal, the respondents-plaintiffs sought to amend the replication by introducing an alternative plea to the effect that, in the event the plea of defendant No. 1 regarding ownership of the suit land by Tulsa was proved, the plaintiffs and other defendants, being heirs of the two other maternal grandsons, would be entitled to the relief claimed in the plaint. The said amendment was specifically declined, a fact duly recorded in the judgment of the learned First Appellate Court.



18.1. Once it was never the pleaded case of the respondents-plaintiffs that they inherited the property from Tulsa, and they had, in fact, expressly denied such ownership, they cannot be permitted to take advantage of any alleged weakness in the case of the appellants-defendants, particularly on the premise that the appellants-defendants failed to prove as to how the father of defendant No. 1 alone succeeded to the estate of Tulsa. In the facts and circumstances of the present case, and considering the nature of the pleadings, it was not incumbent upon the appellants-defendants to establish exclusive inheritance from Tulsa, as the respondents-plaintiffs had denied Tulsa's ownership altogether and had set up an entirely different case tracing the property to Aatma Ram.

18.2. Having failed to prove their pleaded case, the respondents-plaintiffs cannot be permitted to make an about-turn and seek relief on a foundation neither pleaded in the plaint nor in the replication. Such a course is impermissible in law, particularly when the prayer for amendment of the replication to introduce such a plea had been expressly rejected. The learned First Appellate Court, therefore, clearly transgressed the settled boundaries of pleadings by travelling beyond the case set up by the parties and by making out a new case in favour of the respondents-plaintiffs, which was not only never pleaded but was specifically denied in the replication.

18.3. The learned First Appellate Court thus fell into grave legal error, contrary to the law laid down by this Court in ***Ved Parkash vs. Surinder Singh and another, 2009(3) RCR (Civil) 46***, wherein, relying



upon the authoritative pronouncements of the Hon’ble Supreme Court, it was held as under:-

Bachhaj Nahar v. Nilima Mandal and another, 2009(1) RCR (Civil) 855: 2009(1) RAJ 574: JT 2008 (13) SC 255 has held that a Court cannot make out a case not pleaded. The court should confine its decision to the question raised in pleadings. Nor can it grant a relief which is not claimed and which does not flow from the facts and the cause of action alleged in the paint.

19. Upon an overall reappraisal of the record and for the reasons recorded here-in-above, this Court finds merit in the present appeal. Accordingly, the appeal filed by the appellants-defendants is **allowed**. The judgment and decree passed by the learned First Appellate Court is hereby set aside, and those rendered by the learned Trial Court is **restored**.

20. As a necessary corollary to the final adjudication of the main appeal, all pending miscellaneous applications, if any, arising out of or in connection with the present proceedings, shall stand disposed of. In view of the conclusions reached herein, no separate orders are required to be passed thereon, the same having been rendered infructuous.

03.02.2026
Gaurav Sorot

(**VIRINDER AGGARWAL**)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No