



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

(221)

RSA-3551-2000 (O&M)
Date of Decision:-**11.02.2026**

MAM RAJ (DECEASED) THROUGH LR

... Appellants

Versus

OM PARKASH AND OTHERS

... Respondents

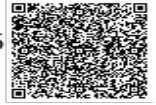
CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present:- Mr. Rohit Nagpal, Advocate
for the appellant.

Mr. Hemen Aggarwal, Advocate
for the respondents **(through video conferencing)**.

VIRINDER AGGARWAL, J. (Oral)

1. The present Regular Second Appeal (hereinafter referred to as “RSA”) has been preferred by the appellant–plaintiff assailing the judgment and decree dated 17.05.2000 passed by the learned Additional District Judge, Jagadhri, whereby the findings recorded by the learned Trial Court were affirmed. The learned Additional Civil Judge (Senior Division), Jagadhri, vide judgment and decree dated 17.09.1996, had dismissed the suit instituted by the appellant–plaintiff seeking a decree of permanent injunction. The appellant now calls in question the concurrent findings of both the learned Courts below as being legally unsustainable and factually erroneous.
2. The plaintiff instituted a suit for permanent injunction, asserting co-ownership to the extent of one-half share in the suit property,

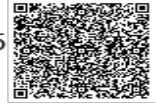


having purchased the same in a Court auction held on 10.10.1965. It was pleaded that the defendants–respondents, who are co-owners to the extent of one-fourth share, were threatening to raise construction over the suit property, thereby necessitating the institution of the suit.

3. Upon service of notice, the defendants appeared and contested the suit by filing a written statement, wherein they denied the ownership of the appellants–plaintiff and further pleaded that the plaintiff was not in possession of any part of the suit property. It was averred that their father, Shankar, had purchased one-half share of the suit land measuring 1 Kanal 5 Marlas vide registered sale deed dated 23.08.1966 and had raised construction of a residential house thereon in June 1967. It was further asserted that they are in continuous possession since then, claiming the same to be hostile in nature.

4. Thereafter, the plaintiff filed a replication, specifically traversing the pleas and objections raised in the written statement and reiterating the averments made in the plaint. Upon a careful consideration of the pleadings and the rival contentions of the parties, the learned trial Court, with a view to clearly delineate the matters in controversy, proceeded to frame the following issues for adjudication.

1. Whether the plaintiff and defendants are co owners in possession of the *bara* in dispute to the extent of half share?OPP.
2. Whether the suit is not maintainable in the present form?OPD.
3. Whether the plaintiff has no cause of action to file the present suit? OPD.
4. Whether the defendants are entitled to special costs, if so, to what amount?OPD.
5. Relief.



5. The learned Trial Court dismissed the suit upon recording a categorical finding that the appellant–plaintiff had failed to establish his ownership and possession over the suit property, and that the respondents–defendants had perfected their title thereto by way of adverse possession.

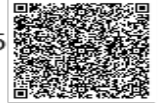
5.1. In appeal, the learned First Appellate Court reversed the finding relating to perfection of title by adverse possession. However, it concurrently held that the respondents–defendants were owners of 13 marlas of land, constituting the entire share of the Chohal, on the strength of the registered sale deed Ex.D1/1, a document more than thirty years old, which carried a statutory presumption of genuineness. The revenue entries in the Jamabandi were accordingly held to stand rebutted, the appellant–plaintiff having failed to substantiate his asserted title.

6. Aggrieved thereby, the appellant has instituted the present appeal assailing the judgments and decrees rendered by the learned Courts below. Notice was issued to the respondents, who have appeared through counsel and contested the appeal strenuously

6.1. To facilitate a comprehensive and effective adjudication of the issues arising herein, the complete record of the Courts below was requisitioned and has been made available on the Digital Management System for meticulous examination and consideration.

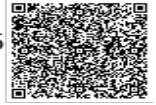
7. I have heard learned counsel for the parties at considerable length and have bestowed anxious and thoughtful consideration upon their submissions, keeping in view the pleadings of the parties, the evidentiary material brought on record, and the findings returned by the Courts below.

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.

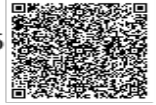
9. Learned counsel appearing for the appellants–plaintiff assailed the concurrent findings of the Courts below, contending that the evidence on record has been misappreciated and misconstrued. It was urged that the suit was one simpliciter for permanent injunction and that the appellants had duly established their co-ownership in the suit land by producing copies of the *Jamabandis* for the years 1986–87 (**Ex.P1**) and 1991–92 (**Ex.P2**), wherein they are recorded as co-sharers to the extent of one-fourth share. Emphasis was laid on the statutory presumption of correctness attached to revenue entries, which, according to learned counsel, was erroneously discarded by the Courts below. It was further contended that the learned First Appellate Court misinterpreted the recitals of the sale deed Ex.D1/1 and wrongly concluded that the predecessor-in-interest of the respondents–defendants had purchased 13 marlas out of the total land measuring 1 kanal 5 marlas. On these premises, it was prayed that the impugned findings be set aside and the appeal be allowed.



10. Conversely, learned counsel for the respondents–defendants supported the judgments under challenge, asserting that the findings recorded by the learned Courts below suffer from no illegality or infirmity. It was submitted that the learned First Appellate Court has correctly held that the father of respondents–defendants purchased 13 marlas out of the total land measuring 1 kanal 5 marlas and that the evidence on record unequivocally establishes their long-standing possession and residential occupation of the suit property after raising construction thereon. On these grounds, dismissal of the appeal was sought.

11. The appellants–plaintiffs have placed on record copies of the jamabandis Ex.P1 and Ex.P2, wherein they are reflected as co-owners in joint possession to the extent of one-fourth share in the suit land. Entries in the jamabandi carry a statutory presumption of correctness under Section 44 of the Punjab Land Revenue Act, 1887. The learned First Appellate Court erred in holding that such presumption stood rebutted merely on the ground that the appellants–plaintiff had failed to produce an independent document of title. Once a document enjoys a presumption of truth, the burden lies upon the party disputing its correctness to rebut the same. In the present case, it was the respondents–defendants, who were asserting exclusive title over the entire share of Chohal on the strength of sale deed Ex.D1/1, upon whom such burden squarely rested.

11.1. The learned First Appellate Court further fell into error in construing sale deed Ex.D1/1, executed by Chohal in favour of Shankar, as conveying title to the extent of 13 marlas of land. A plain reading of the document reveals that Chohal described himself as owner of 13 marlas out



of the total land measuring 1 kanal 5 marlas and conveyed only one-half share of his ownership to Shankar. Consequently, the sale deed transferred merely a half share in 13 marlas and not the entirety thereof. The finding that Shankar, predecessor-in-interest of the respondents–defendants, acquired title to the full extent of 13 marlas is, therefore, a misreading of the document.

11.2. In the above factual and legal backdrop, the respondents–defendants can only be treated as co-owners in settled possession of the suit property. It is well settled that a co-owner in settled possession is entitled to raise construction, and the appropriate remedy available to the appellants–plaintiff is to seek partition of the joint property for carving out their share. Accordingly, while the dismissal of the suit and the appeal by the Courts below calls for no interference, the findings to the extent that the appellants–plaintiff failed to establish their one-fourth ownership and that the respondents–defendants are owners of 13 marlas of land are erroneous and warrant modification. Subject to the aforesaid modification in the findings recorded by the learned First Appellate Court, the appeal stands **dismissed**.

12. In the wake of the final adjudication of the principal matter, all pending miscellaneous applications, if any, are hereby disposed of. No further directions or orders are necessitated in this regard.

11.02.2026
Gaurav Sorot

(**VIRINDER AGGARWAL**)
JUDGE

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No