



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 2262 of 2023 (O&M)
Date of decision: 11.03.2026

Gurcharan Singh Appellant
Vs.
Gurbachan Singh & Anr. . . . Respondents

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Sukhmeet Singh, Advocate,
for the applicant-appellant.

DEEPAK GUPTA, J.

The present appeal has been filed by the defendant–appellant against the concurrent findings recorded by the Courts below, whereby the suit filed by the plaintiff–respondent for possession by way of partition and permanent injunction has been decreed.

2. The learned Civil Judge (Junior Division), Budhlada, vide judgment and decree dated 03.08.2016, decreed the suit holding the plaintiff entitled to 1/3rd share in the suit property and separate possession thereof, and restrained the defendants from alienating or changing the nature of the joint property. The appeal filed by the defendant–appellant was dismissed by the learned District Judge, Mansa, vide judgment dated 14.09.2022.

3. The appeal is accompanied by an application bearing CM-7665-C of 2023 under Section 5 of the Limitation Act seeking condonation of delay of 135 days in filing the appeal.

4. In the application, it has been averred that the appellant had engaged a counsel to file the appeal but the said counsel failed to institute the appeal in time. Thereafter, the appellant engaged another counsel and obtained the record from the previous counsel, which resulted in the delay. The application is supported by an affidavit of the appellant.

RSA No. 3095 of 2023 (O&M)

5. Even though the explanation offered does not constitute a satisfactory ground to condone the delay merely on the basis that a new counsel had to be engaged, however, even if the aspect of limitation is ignored, this Court finds that the appeal does not raise any substantial question of law and is liable to be dismissed on merits.

6. The dispute pertains to a Gair Mumkin land measuring 10 marlas, comprised in rectangle and killa Nos.118//2/1/1 (0-4) and 9/1 (0-6), situated within the Abadi of Budhlada. The property was purchased by the parties vide registered sale deed dated 29.07.1982, whereby the plaintiff Gurbachan Singh and the defendants, who are real brothers, acquired the property jointly, each having 1/3rd share therein.

7. The case set up by the plaintiff was that the suit property remained joint and unpartitioned, and the defendants had started asserting exclusive rights therein and were threatening to alienate a specific portion of the joint holding besides intending to demolish the existing construction and raise new construction. Consequently, the plaintiff filed a suit seeking separate possession by way of partition of his 1/3rd share, and permanent injunction restraining the defendants from alienating any specific portion of the joint property or changing its nature.

8. The defendants contested the suit primarily on two grounds. Firstly, it was pleaded that a family settlement dated 01.09.1990 had taken place between the brothers, whereby the entire suit property fell to the share of defendant No.1. Secondly, it was pleaded that defendant No.1 had been in open, continuous and hostile possession of the suit property since the said date and had thus become owner thereof by way of adverse possession.

9. On the pleadings of the parties, the trial Court framed several issues including whether the plaintiff was entitled to possession by way of partition; whether the suit property had already been partitioned by way of family settlement dated 01.09.1990, and whether the defendants had become owners by adverse possession.

RSA No. 3095 of 2023 (O&M)

10. Upon appreciation of the evidence on record, the trial Court recorded the findings that the joint purchase of the property vide sale deed dated 29.07.1982 and the 1/3rd share of each brother was not in dispute; that the defendants failed to produce any cogent evidence to prove the alleged family settlement dated 01.09.1990; that a co-sharer cannot claim adverse possession against another co-sharer, as possession of one co-owner is deemed to be possession on behalf of all; and that the possession of defendant No.1 over the suit property was attributable to the joint title arising from the sale deed and not to any independent hostile title. On the basis of these findings, the trial Court decreed the suit and held the plaintiff entitled to 1/3rd share and separate possession thereof, besides granting injunction against alienation or change of nature of the property.

11. The appeal preferred by the defendant was dismissed by the learned District Judge, Mansa. The Appellate Court reaffirmed all the above findings and observed that the defendants had failed to explain what property, if any, fell to the share of the plaintiff and the other brother in the alleged family settlement, which rendered the plea wholly improbable. Consequently, the judgment and decree of the trial Court were upheld.

12. Assailing the above findings, Learned counsel for the appellant contends that the Courts below have failed to properly appreciate the evidence on record. It is argued that defendant No.1 has been in exclusive possession of the property for a long period and has raised construction thereon, which substantiates the plea of family settlement.

13. Having heard learned counsel and perused the judgments of the Courts below, this court finds no merits in the appeal.

14. It is an admitted position that the suit property was purchased jointly by the plaintiff and the defendants vide registered sale deed dated 29.07.1982, whereby each party acquired 1/3rd share therein. The entire defence of the appellant rests upon the plea of a family settlement dated 01.09.1990.

RSA No. 3095 of 2023 (O&M)

15. However, both the Courts below have concurrently found that the alleged family settlement has not been proved by any documentary evidence or reliable testimony. Mere assertion of such settlement without proof of the terms thereof or without showing what property fell to the share of the other co-sharers cannot be accepted.

16. Furthermore, the plea of adverse possession raised by the appellant is legally untenable. It is a settled principle of law that possession of one co-owner is presumed to be on behalf of all co-owners, and a co-sharer cannot claim adverse possession against another co-sharer unless there is clear evidence of ouster and hostile assertion of title, which is conspicuously absent in the present case.

17. The fact that defendant No.1 may have raised construction over the property or obtained an electricity connection in his name does not extinguish the ownership rights of the other co-sharers, particularly when the property admittedly remained joint.

18. It is also well settled that in a Regular Second Appeal under Section 100 CPC, interference by this Court is permissible only where the case involves a substantial question of law. Concurrent findings of fact recorded by the Courts below cannot be disturbed unless shown to be perverse or based on misreading of evidence.

19. In the present case, the findings recorded by both the Courts below are based on proper appreciation of evidence and correct application of legal principles relating to co-ownership and partition. No perversity or illegality has been pointed out so as to warrant interference by this Court.

20. In view of the above discussion, this Court finds that the appellant has failed to raise any substantial question of law for consideration in the present appeal. The concurrent findings recorded by the Courts below are well-reasoned and call for no interference.

RSA No. 3095 of 2023 (O&M)

21. Consequently, the present Regular Second Appeal is dismissed, being devoid of merit.

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

11.03.2026
Jiten

(DEEPAK GUPTA)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>