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

RSA-3056-2019 (O&M)

Date of Decision : 17.02.2026

SHIV BHAWAN THAPAR

.... Appellant

VERSUS

TRIBHAWAN THAPAR AND ORS

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Kulbhushan Raheja, Advocate for the appellant.

Mr. Akhil Kashyap, Advocate for
Mr. P.K. Kataria, Advocate for respondents No.1 and 2.

ALKA SARIN, J. (ORAL)

1. The present appeal has been filed by defendant No.1-appellant herein challenging the concurrent findings of facts returned by the Trial Court vide judgment and decree dated 27.11.2014 and by the First Appellate Court vide judgment and decree dated 20.02.2019.

2. Brief facts relevant to the present *lis* are that the plaintiff-respondents No.1 and 2 herein filed a suit for separate possession by way of partition by metes and bounds to the extent of 1/4th share each in Bungalow No.H.M.17, Housing Board Colony, Green Avenue, Amritsar measuring 200 square yards as also for permanent injunction. It was the case set up that Jagdish Mohan Thapar son of Dewan Dasonda Singh, father of the plaintiff-respondents No.1 and 2 and defendants No.1 and 2 (appellant and respondent No.3 herein) was the owner of the suit property. It was averred that the father

of the plaintiff-respondents No.1 and 2 and defendants No.1 and 2 (appellant and respondent No.3 herein) expired on 04.01.2011 at Amritsar at the age of about 90 years. His wife, namely, Kailash Rani Thapar, predeceased him on 17.01.2010. It was further the case set up that the father of the plaintiff-respondents No.1 and 2 and defendants No.1 and 2 (appellant and respondent No.3 herein) had retired as Assistant Excise and Taxation Commissioner, Amritsar in the year 1979 and he owned various movable and immovable properties. The house in dispute was allotted to him by Punjab Housing Board on 12.06.1979 and possession was delivered on 20.06.1979. After the allotment, the father of the plaintiff-respondents No.1 and 2 and defendants No.1 and 2 (appellant and respondent No.3 herein) raised construction thereon after getting the site plan sanctioned from Punjab Housing Board and the installments were also paid by him. Intkal was executed on 13.06.1995 in favour of the father of the plaintiff-respondents No.1 and 2 and defendants No.1 and 2 (appellant and respondent No.3 herein). Jagdish Mohan Thapar died on 04.01.2011, who is stated to have executed a registered Will dated 08.03.2006 and as per the said registered Will the plaintiff-respondents No.1 and 2 and defendants No.1 and 2 (appellant and respondent No.3 herein) were to inherit the property in equal shares i.e. 1/4th share each. Since a dispute was raised by defendant No.1-appellant herein, the present suit was filed.

3. On notice defendant No.1-appellant herein filed his written statement raising various preliminary objections. It was the case set up that the plaintiff-respondents No.1 and 2 were not in possession of the suit property and that the suit was based upon false and frivolous facts. It was

further the stand taken that the suit property was in the name of the father of the plaintiff-respondents No.1 and 2 and defendants No.1 and 2 (appellant and respondent No.3 herein) only in a fiduciary relation and defendant No.1-appellant herein had got the construction done from his own funds. It was further the stand that Jagdish Mohan Thapar was not the owner of the property and that he was just a *benaamidar*. The execution of the registered Will dated 08.03.2006 was also denied.

4. Replication was filed. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the plaintiff is entitled to separate possession by way of partition by metes and bounds as prayed for in the head note of the plaint ? OPP

2. Whether the plaintiff is entitled to permanent injunction as prayed for ? OPP

3. Whether the plaintiff is entitled to mandatory injunction as prayed for ? OPP

3-A Whether a legal and valid Will dated 08.03.2006 was executed by. Sh. J.M. Thapar in sound and disposing mind, if so, its effect ? OPP

4. Whether the suit of the plaintiff is not legally maintainable ? OPD1 and 2

4-A. Whether J.M. Thapar was not the owner of suit property and was simply a *benamidaar* as stated in para

No.7 of preliminary objections of written statement filed by defendant No.1 ? OPD1

5. Whether the plaintiffs have got no *locus standi* to file the present suit ? OPD1

6. Whether the plaintiffs have suppressed the material facts from the court ? OPD1

7. Whether the suit is not properly valued for the purpose of court fee and jurisdiction ? OPD1

8. Whether the plaintiffs have got no cause of action to file the present suit ? OPD1

9. Whether the defendant No.1/Counter Claimant has got good *prima facie* case to succeed and balance of convenience also lies in his favour ? OPD1/Counter-Claimant

10. Whether the counter-claim filed by the defendant No.1/Counter claimant is legally not maintainable ? OPD1

11. Whether the present counter-claim is a counter-blast to the filed by the plaintiffs/respondents ? OPD1

12. Whether the counter-claimant has no cause of action to file the present counter-claim ? OPP

13. Whether the counter-claimant is estopped by his own act or conduct from filing the present counter-claim ?
OPP

14. Whether the counter-claimant has suppressed the material facts from the notice of the Court ? OPP

15. Whether the counter-claim is not properly valued for the purpose of court fee and jurisdiction ? OPP

16. Relief.

5. The Trial Court decreed the suit vide judgment and decree dated 27.11.2014. Aggrieved by the same an appeal was preferred by the defendant No.1-appellant herein which appeal was dismissed by the learned First Appellate Court vide judgment and decree dated 20.02.2019. Hence, the present regular second appeal by the defendant No.1-appellant herein.

6. The only argument raised by the learned counsel for the defendant No.1-appellant is that proper court fee was not affixed in the suit and as such issue No.7 has wrongly been decided by both the Courts concerned.

7. *Per contra*, learned counsel for the plaintiff-respondents No.1 and 2 has pointed out that issue No.7 though was decided against defendant No.1-appellant herein, however in his grounds of appeal before the learned First Appellate Court no specific ground was raised by defendant No.1-appellant herein qua the *ad valorem* court fee and that no argument was raised by the learned counsel for defendant No.1-appellant herein qua the same.

8. The said argument is countered by the learned counsel for defendant No.1-appellant herein submitting that the counsel had raised and argued, however, the learned First Appellate Court never considered the said argument.

9. Learned counsel for the plaintiff-respondents No.1 and 2 has pointed out that the said statement is belied by the facts that firstly there was no ground raised specifically qua the court fee and it was a general ground which was raised; secondly there was no argument raised and thirdly no review was filed by the defendant No.1-appellant herein stating therein that his argument qua *ad valorem* court fee had not been dealt with. In support of his contention, learned counsel for defendant No.1-appellant has relied upon the judgment of the Hon'ble Supreme Court in the case of **Kinny Kapur & Anr. V/s Gunveer Kapur & Ors.** [Law Finder Doc ID #902650].

10. Heard.

11. In the present case, the only argument raised by the learned counsel for defendant No.1-appellant is qua the assessment of *ad valorem* court fee. The matter regarding the court fee is one between the plaintiff and the Court. Both the Courts have concurrently found issue No.7 to be in favour of the plaintiff-respondents No.1 and 2. There has been no challenge to the finding that the property is joint between the parties. Once the property is joint between the parties, even if it was the case set up by the plaintiff-respondents No.1 and 2 that they were in exclusive possession of the suit property, even then a co-owner is deemed to be an owner in every inch of the land.

12. The reliance of the learned counsel for defendant No.1-appellant upon the case of **Kinny Kapur** (supra) would not come to his aid as the issue which has been canvassed by the learned counsel for defendant No.1-appellant was not the issue in the said case.

13. The suit was for separate possession by way of partition being co-owners. Once all the other findings have been returned against defendant No.1-appellant and the plaintiff-respondents' No.1 and 2 suit for partition had been decreed and they had been held to be the co-owners, the ground qua *ad valorem* court fee would no longer be a ground to challenge the impugned judgments and decrees. Further still, learned counsel for the plaintiff-respondents No.1 and 2 has informed the Court that the final decree had been passed on 23.12.2025 and the property was directed to be auctioned through Court auctioneer and till date the said order has not been challenged by defendant No.1-appellant herein.

14. In view of the above, I do not find any merit in the present appeal. No question of law, much less any substantial question of law, arises for determination in the present case. The appeal being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

17.02.2026
Aman Jain

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No