



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

(115)

RSA-2235-2023 (O&M)
Date of Decision:-**29.01.2026**

SURESH KUMAR

... Appellant

Versus

KHARGA RAM AND OTHERS

... Respondent

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present:- Mr. J.P. Sharma, Advocate
for the appellant.

VIRINDER AGGARWAL, J. (Oral)

1. By way of the present Regular Second Appeal (hereinafter referred to as “RSA”) the appellant–defendant has approached this Court, seeking to impugn and set aside the judgment and decree dated 25.04.2023 rendered by the learned Additional District Judge, Narnaul, whereby the judgment and decree dated 21.2.2016 passed by the learned Additional Civil Judge (Senior Division), Kanina was affirmed. The learned trial Court had decreed the suit filed by the respondents–plaintiff, directing possession of the suit property by way of partition. The appellant has challenged the concurrent findings of the Courts below on the grounds that the same are manifestly erroneous, legally unsustainable, and bereft of evidentiary support.



2. On a meticulous consideration of the factual matrix as articulated in the plaint, the case of the plaintiff stands delineated with precise clarity, and may be succinctly summarized as follows:-

“The brief facts of the present suit, as set forth by the plaintiffs, are as follows: The immovable property in dispute, measuring 4 kanal 18 marlas, bearing Killa No. 4//14/2 (2-0) Gair Mumkin Khadda and Khasra No. 61/1 (2-18) Gair Mumkin Abadi, comprised in Khewat No. 30, Khatoni No. 31, as per the Jamabandi for the year 2006-07, situated in Village Gomli, Sub-Tehsil Kanina, District Mahendergarh, stands recorded as the joint property of the parties to the suit. The plaintiffs, together with the proforma defendants, claim a 50/153 share therein. It is averred that no formal partition of the said land has been effected either by any court of competent jurisdiction or by amicable family settlement, and the property continues to remain joint in nature.

It is further contended that disputes have consistently arisen between the parties with respect to the management and possession of the property. The plaintiffs and proforma defendants, therefore, seek separate possession of their respective shares. The land in question abuts the main road, constitutes village abadi, is commercial in nature, and possesses significant market value. The defendants, it is alleged, intend to undertake construction over a specific portion exceeding their share and have already amassed



construction material for this purpose. The plaintiffs and proforma defendants repeatedly requested that separate possession be accorded to them and that the defendants refrain from unauthorized construction, but all such requests have proven futile. It is in light of these circumstances that the present suit has been instituted.”

3. Upon due service of notice, defendants No. 2, 3, 4, 5, and 6 appeared and filed their respective written statements, whereas defendant No. 1 failed to appear and was proceeded against *ex-parte*, as recorded in the order dated **30.11.2012:-**

“It is the case of defendant No. 2, as set forth in the written statement, that the land in question had already been partitioned between the parties in a brotherhood manner. According to defendant No. 2, on 26.05.1993, the suit land and other lands comprised in Khewat No. 34, Khatoni No. 37, bearing Khasra No. 49 (6-18) gair mumkin abadi, as per the Jamabandi for the year 2006-07 of village Gomli and under possession of the parties as gair morusi, were mutually divided among the co-sharers. Pursuant to this brotherhood partition, defendant No. 2 was allotted certain portions of Khasra No. 61/1 and Khasra No. 49, as depicted in the site map dated 15.10.2012 marked ABCDEFGH and JKLM. The defendant has since constructed a pucca house along with a tin shed and chappar on the allotted land, utilizing the



premises for residential purposes and for tethering animals, and possesses electricity and water connections therein.

According to defendant No. 2, the plaintiff and proforma defendant No. 2 were allotted portions of Khasra No. 49, demarcated as PRSTLKHN in the site map, upon which the plaintiff has constructed a pucca house and continues to reside. To complete the respective share of the plaintiff and proforma defendant in Khasra No. 61/1, they were also given equivalent land in Khasra No. 49. A joint pathway, marked IHKK in the site map, was left for common use, with gates and windows accessible to both defendant and plaintiff. The land measuring 2 kanal 0 marla, bearing Khasra No. 4//14/2, being gair mumkin khadda and situated at a significant distance from Khasra No. 61/1 and Khasra No. 49, is stated to be practically unusable and was, therefore, left as joint property among all co-sharers. A writing to this effect was executed on 26.05.1993, bearing the signatures of defendants No. 1 and 2, the mother of the plaintiff and proforma defendant No. 6, along with the attestations of Naurang Lal Sarpanch, Lala Ram, and Ram Singh as witnesses. In view of the foregoing, it is contended that all co-sharers have been in lawful possession and have made improvements to their respective shares, and therefore the plaintiff is not entitled to any relief of partition. Defendant No. 2 accordingly prays for dismissal of the suit.



Defendants No. 3 to 5 have stated in their written statements that the land in question is joint property among the parties. They have expressed no objection to partition in accordance with the respective possession and location of the land and have confirmed that they are not raising any construction thereon. They have accordingly prayed that separate possession be granted to the parties by decreeing the suit.

Proforma defendant No. 6, through an admitted written statement, has expressed that she has no objection to the grant of the relief sought by the plaintiff.”

4. Upon a thorough and painstaking scrutiny of the pleadings, documents, and submissions advanced by the parties, learned trial Court has framed the following issues for adjudication, thereby ensuring a structured, precise, and comprehensive resolution of the controversies between the parties, which are as under:-

1. *“Whether the plaintiff is entitled for the relief of possession by way of partition as prayed for ?OPP*
2. *Whether the plaintiff has no cause of action to file the suit? OPD*
3. *Whether the suit of the plaintiff is not maintainable? OPD*
4. *Whether the plaintiff has no locus standi o file the present suit? OPD*
5. *Whether the plaintiff has not affixed the proper Court fees on the plaint ? OPD*
6. *Whether plaintiff is estopped by his act and conduct to file the present suit? OPD*



7. *Whether the present suit is bad for non-joinder and mis-joinder of necessary parties ? OPD*
8. *Whether the suit of the plaintiff is time barred? OPD*
9. *Whether the defendants are entitled for special cost under Section 35A of CPC ?OPD*
10. *Relief”*

5. Subsequent to the framing of issues, both parties were granted full and unfettered opportunity to adduce their respective oral and documentary evidence. Following a thorough and exhaustive appraisal of the entire evidentiary record, the learned Trial Court concluded the proceedings by decreeing the suit in favour of the respondents–plaintiff. The appeal filed by the appellant–defendant before the learned First Appellate Court was likewise dismissed, thereby affirming the concurrent findings of the Trial Court. It is against these consistent, reasoned, and well-founded determinations that the appellant has invoked the appellate jurisdiction of this Court by way of the present RSA.

6. In seeking redress, the appellant has invoked the appellate jurisdiction of this Court to impugn the judgments and decrees rendered by the Courts below. In the considered view of this Court, it was prudent to first scrutinize the merits of the appellant’s contentions before issuing notice to the respondents. Accordingly, the appeal was subjected to preliminary examination and heard in full on the submissions advanced exclusively by learned counsel for the appellant.

7. This Court has heard learned counsel for the appellant at length and has applied careful, reasoned, and judicious consideration to the submissions, in the context of the parties’ pleadings, the evidentiary record,



and the concurrent findings of the Courts below. The record has been subjected to a comprehensive, scrupulous, and penetrating analysis to determine “*whether the impugned judgments and decrees disclose any jurisdictional error, manifest perversity, misappreciation of evidence, or any other substantive legal infirmity that would warrant interference in the exercise of this Court’s appellate jurisdiction.*”?

8. At the forefront of the submissions advanced on behalf of the appellant, learned counsel contended that the learned Courts below have manifestly failed to appreciate that the mutual partition dated 26.05.1993 stood duly proved on the record. It was urged that once the suit property had already been partitioned, the very foundation for passing a preliminary decree for partition ceased to exist. According to the appellant, the judgments and decrees rendered by the learned Courts below are vitiated by a clear misappreciation of material facts and, therefore, warrant appellate interference.

9. Having bestowed anxious consideration upon the rival submissions and the material available on record, it is evident that the document marked as Mark-A, being the alleged partition deed dated 26.05.1993, was concurrently disbelieved by both the learned Courts below for cogent and legally sustainable reasons. The said document, purporting to effect partition of immovable property valued at more than ₹100/-, was held to be compulsorily registrable under Section 17 of the Indian Registration Act, 1908, and admittedly suffers from the vice of non-registration. Furthermore, the suit property continues to be recorded as joint in the revenue records, demonstrating that no partition has ever been

acted upon or reflected therein. At best, the document can be construed as a mere family arrangement between the parties; however, it falls far short of establishing a lawful partition by metes and bounds. Upon an overall assessment of the record, this Court finds no merit in the contention that the concurrent findings suffer from any misreading of evidence or misappreciation of pleadings. The learned Courts below have meticulously evaluated the pleadings and evidence and have recorded plausible and well-reasoned conclusions. Consequently, upon an overall conspectus of the facts, pleadings, and the settled principles governing appellate interference, this Court finds no justifiable ground to interfere with the impugned judgments. The appeal, being wholly devoid of merit, is accordingly dismissed.

10. The principal matter having attained finality, all pending miscellaneous applications, if any, stand disposed of. Nothing further survives for consideration.

29.01.2026
Gaurav Sorot

(**VIRINDER AGGARWAL**)
JUDGE

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