

2026:PHHC:051375



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

Date of Decision: 07.04.2026

[1] **RSA-1960-2025 (O&M)**

<u>Om Parkash and others</u>	Appellants
<u>Versus</u>	
<u>Bharat Pal and another</u>	Respondents

[2] **RSA-1967-2025 (O&M)**

<u>Om Parkash and others</u>	Appellants
<u>Versus</u>	
<u>Bharat Pal and another</u>	Respondents

[3] **RSA-2233-2025 (O&M)**

<u>Smt. Sunita and others</u>	Appellants
<u>Versus</u>	
<u>Smt. Shashi</u>	Respondent

CORAM : HON’BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Tejinderbir Singh, Advocate,
for the appellants.

Mr. Sumit Gupta, Advocate, for
for respondent No.1 in RSAs-1960 & 2233-2025
and for the respondents in RSA-1967-2025.

VIKRAM AGGARWAL, J. (Oral)

This order shall dispose of the above titled three
appeals arising out of the common judgment and decree
dated 07.04.2025 passed by the Court of Additional District

Judge, Palwal, whereby three appeals filed by the defendants, against the decision dated 05.09.2023 rendered by the Court of Civil Judge (Sr. Division), Palwal, passing final decrees for partition, were dismissed.

2. For the sake of convenience and clarity, parties shall be referred to as per their original status.

3. The facts, as emanating from the record, are that in three separate suits filed by the plaintiffs for partition and permanent injunction, with regard to plots bearing Khasra Nos. 126/1(2-0), 126/2(1-17) and 126/3(1-17), preliminary decrees for partition, were passed on 28.03.2017. The defendants challenged the same by way of appeals, which were dismissed by the first Appellate Court on 12.10.2018. Thus, the judgments and decrees dated 28.03.2017 having attained finality, the plaintiffs had filed three separate applications for drawing up final decrees for partition.

4. The defendants filed their reply taking preliminary objections regarding *locus-standi*, estoppel, cause of action, maintainability etc. On merits, it was claimed that the appeals filed by the defendants against the judgment and decree dated 12.10.2018 passed by the first Appellate Court, were decided by the High Court vide order dated 13.11.2019, observing therein that the case of the defendants would be considered and relief would be granted at the time of the final partition. It was further averred that the judgments and decrees dated 28.03.2017 were not executable as each of the

parties, were entitled to have ingress and egress to their residential houses.

5. Vide order dated 23.08.2022, the trial Court after hearing the parties, appointed a Local Commissioner to suggest the mode of partition. The Local Commissioner submitted his report on 11.01.2023. The defendants filed their objections to the said report. The trial Court passed the final decrees for partition on 05.09.2023. The appeals filed by the defendants were dismissed by the first Appellate Court on 07.04.2025. Still aggrieved, the defendants have filed the present appeals.

6. I have heard learned counsel for the parties and have also perused the record.

7. It is argued by learned counsel for the appellants that the Local Commissioner appointed by the trial Court did not give notice to all the parties before demarcation, which resulted into grave injustice. Reference has been made to the report of the Local Commissioner and the attendance sheet annexed thereto. It is submitted that the attendance sheet duly shows that notice for demarcation had been given for 15.12.2022, whereas the report states that the demarcation was carried out on 02.01.2023. Learned counsel submits that under the circumstances, no reliance could have been placed upon the said report.

8. Learned counsel further submits that even otherwise, the Local Commissioner did not keep in mind the existing position at the spot and erroneously altered the

same. Learned counsel submits that the Local Commissioner also did not keep in mind the fact that construction had been raised by all the parties at the spot and that it would have been in the interest of justice to maintain the possession of the parties as it existed at the spot.

9. *Per contra*, learned counsel for the respondents submits that there is no illegality in the impugned decision. It has been argued that there was a common path/passage leading to Khasra Nos. 126/1, 126/2 and 126/3. It is submitted that had the existing position at the spot been maintained, the passage would have led to only one portion of the land and the remaining three portions would have been left without any passage. Learned counsel submits that under the circumstances, the Local Commissioner suggested the best possible way out and divided the shares in a most fair manner.

10. It is argued that due notice of demarcation was given to all sides, which is borne out from the attendance sheet and only the report was given subsequently. Learned counsel submits that the objection is being raised only for the sake of raising an objection. It has been argued that the objections to the report of the Local Commissioner had duly been filed, which were considered by both Courts and were rightly rejected.

11. Learned counsel for the respondents submits that both Courts have recorded concurrent findings based upon

the factual position at the spot and, therefore, no interference is called for in the instant Regular Second Appeals.

12. I have considered the submissions made by learned counsel for the parties and have also perused the record.

13. It may be noticed that objections to the report of the Local Commissioner were submitted, which were duly considered and rejected by the trial Court. In the said objections, it had nowhere been stated that notice of demarcation had not been given. The said argument has been raised for the first time before this Court. Be that as it may, a perusal of the report of the Local Commissioner and the attendance sheet annexed thereto, shows that due notice of demarcation had been given to all sides. The only difference is that the notice was for 15.12.2022 and the report shows that the demarcation was carried out on 02.01.2023.

14. It appears that the objection has been raised now only. However, in the considered opinion of this Court, this objection has no merit since even as per the report of the Local Commissioner, the parties had consented to the mode of partition suggested by him.

15. Now, coming to the merits of the issue, both Courts examined the matter from the right perspective. As per the report of the Local Commissioner and as was rightly noticed by the trial Court, the portion given to all parties abutted the same rasta on the eastern side and, therefore, it could not be said that there was a difference in the value of

the land given to either of the parties or that the mode of partition was unfair.

16. It was also rightly held by the trial Court that since the suit property was joint between the parties, none of the parties could have been said to be in exclusive possession of a specific portion. The plea of mutual partition had been taken before the Courts at the time of drawing up of preliminary decree also, but the same had been rejected. It was also rightly held by the first Appellate Court that even if a co-sharer raises any construction over the joint property, he does so at his own risk. The first Appellate Court noticed that the plea of exclusive possession and mutual partition had been rejected by the Courts, when the preliminary decree had been drawn up.

17. The relevant extract from the judgment of the first Appellate Court, reads as under:-

“15. In the present case, the lower court has passed a final judgment and decree dated 05.09.2023 in terms of preliminary decree dated 28.03.2017 which has attained finality after dismissal of the appeals filed against the said decree by First Appellate Court as well as Hon’ble High Court, vide which the lower court has allotted the respective shares to the parties in terms of report of local commissioner dated 11.01.2023. As per the said report, the land comprised in khasra No. 126/1, 126/2, 126/3 which has been jointly owned by the parties to the suit, who are co-related to each other has been partitioned between the parties in accordance with their shares from East to West so that “Rasta” is made available to all the co-sharers as there is only one ingress and egress

in the suit property which is abutting land comprised in khasra no. 126/1 on the Eastern side and remaining khasra No. i.e. 126/2 and 126/3 have no ingress and egress. It was so done by the Local Commissioner so that no land is wasted in providing "rasta" to all the co-sharers. The site plan attached with the report of Local Commissioner also shows that all the four shares divided by the Local Commissioner, have been given rasta on Eastern side. The perusal of the site plan also shows that the shares of all the appellants have been kept together and the share of the plaintiff has been kept in the last. The said partition is also appropriate so as to maintain peace and harmony between the parties because the appellants have been together since inception. If the share of the plaintiff is given in between the appellants then there are chances that dispute may arise in future between the parties.

16. The stand taken by the appellant that the LC has not taken into account the exclusive possession of appellant Om Parkash over the suit property and the construction of boundary wall and trees planted by him over his share while preparing the partition report, does not hold merit as no evidence has been placed on file so as to show exclusive possession of appellant Om Parkash on any portion of the suit property. Some photographs have been placed on record showing boundary wall and trees but on the basis of the said photographs, exclusive possession of appellant Om Parkash cannot be inferred. Even for the sake of arguments, it is presumed that boundary wall was constructed and some trees were planted by appellant Om Parkash then also exclusive possession of appellant Om Parkash is not established because it is settled principle of law that if any co-sharer makes any construction over the joint property then he does so as his own risk. Moreover, the plea of exclusive

possession has already been dismissed by the Appellate Court vide judgment dated 12.10.2018.

17. Further, the ground taken by the appellants that the shares of the parties have been changed while preparing the report by LC and were not allotted shares as per their registered sale deeds. This argument does not hold merit. Though the shares of the parties have been changed by the local commissioner while preparing the partition report but that has been done so as to provide 'rasta' to all the co-sharers and shares reduced in one shares of all the co-sharers have remained same in the suit property.

18. Further, the objections taken by the appellants that the report has been prepared as per the order dated 13.11.2019 of Hon'ble High Court whereby it has been directed to provide passage to all co-sharers. This argument also does not hold good as all the co-sharers have been provided rasta by partitioning the property from East to West.

19. Further, the objection raised by the defendants that LC has prepared his report in the absence of defendants, does not hold merit because notice attached ends with the report of LC bears signatures of appellant Om Parkash and, therefore, it cannot be said that demarcation was conducted by LC on the back of the defendants when all the appellants have been contesting the suit together right from the beginning. The authorities so referred by the learned counsel for the appellant/ defendants regarding local commissioner are not applicable to the facts of the present case as in the present case, report of local commissioner has been accepted after considering the objections of the defendants/appellants. Further the authority titled as "Punjab National Bank Vs. Sahu Jain Charitable Society & Others. (Supra) is not applicable to the facts of the present case because the suit property has been conveniently

**partitioned between the parties, by providing rasta
to all co-sharers.”**

18. I do not find any illegality in the findings recorded by both Courts warranting interference by this Court in the instant Regular Second Appeals. Accordingly, finding no merit in the present appeals, the same are hereby dismissed.

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

(VIKRAM AGGARWAL)
JUDGE

07.04.2026
ds

Whether speaking/reasoned:	Yes/No
Whether reportable :	Yes/No