

2026:PHHC:008437



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

RSA-2096-2022 (O&M)
Date of decision: 19.01.2026

Jagdish

.....Appellant

Versus

Sheo Chand deceased through LRs and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Ms. Sangeeta Yadav, Advocate and
Mr. Sandeep Kumar Yadav, Advocate,
for the appellant.

VIKRAM AGGARWAL, J.

Appellant-Jagdish (defendant No.2), is in appeal against the judgment and decree dated 24.11.2021 passed by the Court of Additional District Judge, Narnaul, dismissing the appeal filed by him against the judgment and decree dated 28.09.2016 passed by the Court of Additional Civil Judge (Sr. Division), Kanina, whereby the suit filed by the plaintiffs as well as the counter claim filed by defendants No.1 and 2, was decreed.

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

3. Plaintiff (Sheo-Chand) filed a suit for injunction restraining defendants No.1 and 2 from raising construction upon specific portion of more than their share without

partition of land measuring 1 Kanal (fully described in the plaint), situated in Village Karira (hereinafter referred to as 'the suit land'). In the alternative, the plaintiff also sought mandatory injunction directing the defendants to demolish any construction raised during the pendency of the suit.

4. It was claimed that the suit land was a co-parcenary property and had not been partitioned by any Court of competent jurisdiction. The parties were co-sharers. It was asserted that defendants No.1 and 2 were quarrelsome persons and they wanted to raise construction on a specific portion of the suit land without getting the same partitioned.

5. The suit was contested by defendants No.1 and 2 by filing a written statement. It was asserted by them that they had been in possession of land measuring 12 marlas, which was partitioned in a brotherhood manner and they had raised four-wall and a tin shed, which was in the knowledge of the plaintiff. It was further asserted that the said defendants had planted a *kikar* tree in their land, which was felled by the plaintiff. It was also asserted that in an application filed by defendant-Jagdish to the police, a compromise had been effected between the parties and they were bound by the said compromise.

6. Defendants also filed a counter claim asserting therein that if the Court came to the conclusion that the land had not been partitioned between the parties, then both parties be restrained from raising construction upon the suit land.

7. From the pleadings of the parties the following issues were framed:-

- 1. Whether the plaintiff is entitled to the relief of injunction as prayed in the plaint?OPP**
- 2. Whether the defendant is entitled to relief of injunction as prayed in the counter claim? OPD**
- 3. Whether the suit/counter claim of the plaintiff/defendant is not maintainable in the present form?OPD/OPP**
- 4. Whether the plaintiff/defendant has no locus standi to file the present suit/counter claim? OPD/OPP**
- 5. Relief.**

8. Parties led their respective evidence.

9. The trial Court, vide judgment and decree dated 28.09.2016, decreed the suit of the plaintiff as well as the counter claim filed by defendants No.1 and 2, by restraining both parties from raising any construction upon the suit land, without getting the same partitioned. The appeal filed by defendant No.2 (Jagdish) was dismissed by the Court of Additional District Judge, Narnaul, vide judgment and decree dated 24.11.2021, leading to the filing of the instant appeal.

10. I have heard learned counsel for the appellant.

11. Learned counsel for the appellant submits that while passing the impugned judgments and decrees, both Courts did not take into consideration the testimony of the witnesses of the plaintiff and the documentary evidence, through which, it was proved on record that the partition

proceedings were pending before Assistant Collector, 1st Grade. It is also argued that settlement (Mark-1) arrived at between the parties was wrongly discarded by both Courts. It is further argued that once the counter claim filed by the defendants was decreed, there was no occasion for decreeing the suit filed by the plaintiff and rather, the suit ought to have been dismissed. It is also argued that the factum of the plaintiff having already transferred his entire share in the suit land in favour of his grandson much prior to the filing of the suit, was also not taken into consideration by both Courts. It is further argued that though the appellant had moved an application under Order 41 Rule 27 CPC for additional evidence yet the same had been wrongly dismissed by the first Appellate Court.

12. I have considered the submissions made by learned counsel for the appellant, but find the same to be devoid of merit.

13. Admittedly, the parties are co-sharers. The suit filed by the plaintiff was for injunction restraining the defendants from raising any construction upon the suit land. The defendants, along with written statement, also filed a counter claim and prayed therein that if the Court came to the conclusion that the suit land had not been partitioned between the parties, both parties be restrained from raising construction upon it. It is well settled that a co-sharer cannot seek injunction against another co-sharer and the only remedy is to seek partition. The learned trial Court recorded a

finding that since the suit for partition had already been filed by the plaintiff, the interests of justice would be met, if both parties were restrained from raising construction upon the suit land without getting the same partitioned.

14. While affirming the said findings of the trial Court, the first Appellate Court observed as under:-

“14. Till the partition of the suit property is taken place by metes and bounds through procedure established by law, the suit property as per the revenue record would be presumed to be joint in its share holders i.e., parties to this lis. Accordingly, till its partition every share holder cannot claim his exclusive possession over any portion thereof being not proved on record rather all the share holders have been shown to be in joint possession as per jamabandi Ex.P1 for the year 2006-07. Hence, the trial court did not commit any mistake while restraining both the parties from raising any construction upon the land without getting it partitioned considering it to be under joint possession of the parties.”

14. Both Courts recorded concurrent findings of facts and law on the basis of evidence on record. It could not be pointed out that any evidence has been misread or not taken into consideration. No fault, therefore, can be found with the findings recorded by both Courts, which may warrant interference in the present appeal.

15. In view of the above, finding no merit in the present appeal, the same is hereby dismissed.

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

(VIKRAM AGGARWAL)
JUDGE

19.01.2026

ds

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