

PUNJAB AND HARYANA HIGH COURT

SINGLE BENCH

(Before : Harsh Bunker, J.)

KARNAIL AND OTHERS

Vs.

JAGIR AND OTHERS

RSA-1443-2021 (O&M)

Decided on : 15-07-2026

Partition — Suit for possession by way of partition — Ancestral property — Burden to prove inheritance and identity of suit property — Plaintiffs claiming partition of house situated in abadi deh as ancestral property inherited from common ancestor failed to establish date of death of the ancestor, chain of inheritance, or that the property was ever owned by him — Mere oral assertion of a plaintiff-witness, unsupported by documentary proof such as sale deed, held insufficient to establish ancestral character of property. [Paras 12, 13, 19, 20]

Partition — Identification of suit property — Vague site plan — Effect — A decree for partition cannot be passed on the basis of a vague site plan; plaintiffs failed to identify the specific property earlier owned by the common ancestor, failed to state its total area, dimensions or boundaries, and admitted that the site plan was not prepared to scale and that the property was never got demarcated. [Paras 13, 14]

Evidence — Solitary witness statement — Unsupported claim of ownership — Effect of admission regarding prior oral partition — Plaintiff-witness's solitary testimony, without corroboration, held insufficient to prove ancestral ownership; witness's admission of an earlier oral partition among the legal heirs, coupled with non-production of any sale deed and failure of a plaintiff witness to appear for cross-examination, further weakened the plaintiffs' case. [Paras 14, 19]

Evidence Act, 1872 — Section 101 — Burden of proof — Party asserting existence of facts must prove them — Party seeking a judgment as to a legal right dependent upon existence of facts asserted by it must prove such facts; plaintiffs having failed to discharge this burden regarding ancestral nature and inheritance of the suit property, findings against them on the issue of partition were upheld. [Para 14]

Civil Procedure Code, 1908 — Suit held false and frivolous — Modification of finding by appellate Court — First Appellate Court, upon affirming dismissal of the partition claim, further held that the suit was false and frivolous to the plaintiffs' knowledge, modifying the trial Court's finding on the relevant issue accordingly, and dismissed the appeal with costs. [Para 14]

Civil Procedure Code, 1908 — S. 100 — Regular Second Appeal — Concurrent findings of fact — No substantial question of law — Concurrent findings of fact recorded by both Courts below, based on proper appreciation of pleadings and evidence, held free from illegality, perversity or misreading of evidence; no substantial question of law arising, appeal dismissed for want of merit. [Paras 15, 16]

Counsel for Appearing Parties

Mr. Ashok Kumar Khubbar, Advocate for the appellants.

JUDGMENT

Harsh Bunger, J. (Oral) - For convenience, parties herein are being addressed as per their status in the original suit.

2. The instant Regular Second Appeal has been filed by the plaintiffs, challenging the judgment and decree dated 29.03.2016 passed by the learned Civil Judge (Junior Division), Naraingarh, whereby the suit, filed by the petitioner, seeking possession of the suit property by way of partition, has been dismissed.

2.1 A further challenge has been laid to the judgment and decree dated 14.03.2019 passed by the learned Additional District Judge, Ambala, whereby the appeal preferred by the plaintiffs against the aforesaid judgment and decree dated 29.03.2016 passed by the learned trial Court, has been dismissed.

3. Briefly, the plaintiffs instituted a suit seeking possession by way of partition of the suit property, i.e. a house situated within the abadi deh of Village Barouli, Tehsil Naraingarh, District Ambala (as described in the plaint), along with a consequential relief of permanent injunction restraining defendant No.1 - Jagir, from raising any construction over the suit property.

3.1 The pleaded case of the plaintiffs was that they, along with defendants No.1 to 12, are descendants and legal heirs of late Sh. Mukhtiara. It was pleaded that the plaintiffs and defendants No.2 to 5 are real brothers and had inherited two residential properties/houses from their father - late Sh. Jiju Deen. It was further averred that late Sh. Jiju Deen, along with his four brothers, namely Telu, Mam Raj, Ajit and Dayal, had inherited the properties of late Sh. Mukhtiara in equal shares.

3.2 It was stated by the plaintiffs that they and defendants No.2 to 5 reside outside Village Barouli, whereas the remaining defendants are trying to take forcible possession of their share; and especially defendant No.1 is trying to raise construction over the suit property without getting the same partitioned. It was further stated that defendant No.1

along with defendants No.6 to 12 were in possession of property in excess of their due share. The plaintiffs further pleaded that an earlier civil suit for permanent injunction instituted by them against defendant No.1 had been dismissed vide judgment dated 13.08.2010. Since their request for partition of the property did not yield any response, accordingly, they were constrained to institute the present suit for possession by way of partition along with consequential relief of permanent injunction.

4. Upon notice, defendants No.2 to 5 and defendant No.9 filed a joint written statement admitting the claim of the plaintiffs. However, defendant No.1 contested the suit by filing a separate written statement, raising various preliminary objections.

4.1 On merits, defendant No.1 denied that the plaintiffs or defendants No.2 to 5 were residents of Village Barouli or that they had inherited the suit property. It was pleaded that the plaintiffs and defendants No.2 to 5 had been residing in Village Kurali since long, as their father had shifted to that village. It was further denied that the plaintiffs or defendants No.2 to 5 had any share in the suit property. According to defendant No.1, the house in question had been constructed by him and he was residing there as its owner. Reliance was also placed upon the judgment dated 13.08.2010, whereby the earlier suit for permanent injunction instituted by the plaintiffs had been dismissed. It was, thus, asserted that the suit property was exclusively owned by defendant No.1.

4.2 On the other hand, the remaining defendants claimed that a partition had already taken place in the year 1977 amongst the five sons of late Sh. Mukhtiara. They asserted that they had no concern with the dispute amongst the legal heirs of late Sh. Jiju Deen and had been unnecessarily impleaded as parties to the suit.

5. The plaintiffs did not file any replication to the written statements filed by the defendants.

6. From the pleadings of the parties, learned Civil Judge (Junior Division), Naraingarh, framed the following issues:-

(1) Whether plaintiffs are entitled for relief of partition of the property situated in abadi deh of Village Barouli, Tehsil Naraingarh, Distt. Ambala? OPPs

(2) If Issue No.1 is proved, whether the plaintiffs are entitled to permanent injunction as prayed for? OPPs

(3) Whether the plaintiffs have filed false and frivolous suit? OPDs

(4) Relief

7. The parties in the suit led their respective evidence (oral as well as documentary) in support of their pleadings on the aforesaid issues.

8. Upon appreciation of the facts/pleadings as well as the evidence available on record, the learned trial Court dismissed the suit for possession by way of partition, filed by the plaintiffs, vide its judgment and decree dated 29.03.2016.

9. Feeling aggrieved against the aforesaid judgment and decree dated 29.03.2016, the plaintiffs preferred an appeal before the learned Additional District Judge, Ambala, which came to be dismissed vide judgment and decree dated 14.03.2019.

10. In the aforementioned circumstances, the appellants/plaintiffs have filed the present Regular Second Appeal before this Court.

11. I have heard learned counsel for the appellants/plaintiffs and perused the paper book with his able assistance.

12. In the present case, the pleaded case of the appellants/plaintiffs was that the suit property, i.e. a house situated within the abadi deh of Village Barouli, Tehsil Naraingarh, District Ambala, is the ancestral property inherited by them along with the defendants from their common ancestor, late Sh. Mukhtiara.

13. Upon appreciation of the pleadings and the evidence led by the parties, the learned trial Court came to the conclusion that the appellants/plaintiffs had failed to establish that the suit property was ancestral in nature or that it was inherited by them from late Sh. Mukhtiara, so as to entitle them to seek partition of the same. Even the date of death of Sh. Mukhtiara was not proved. The learned trial Court further observed that in order to claim partition of the suit property, the same was required to be properly identified, which the plaintiffs failed to do. Even the site plan produced by the plaintiffs was found to be vague. Since the suit property was situated within the abadi deh of Village Barouli and the plaintiffs had neither produced any sale deed in favour of late Sh. Mukhtiara or late Sh. Jiju Deen nor adduced any other proof to establish the ancestral nature of the property; the learned trial Court concluded that no case for partition was made out.

14. The findings returned by the learned trial Court, vide its judgment and decree dated 29.03.2016, have been further affirmed by the learned First Appellate Court, vide judgment and decree dated 14.03.2019, by observing as under:-

"18. The appellants have also miserably failed to show that the suit property as shown in the site plan Ex.Pl was earlier owned by Mukhtiara or that it was inherited by his five sons in equal shares. No specific date, month or year has been mentioned as regards the death of Mukhtiara and the inheritance of the suit property by his five sons. No Decree for partition can be passed on the basis of a vague site plan. In the instant case, the identity of the suit property which was allegedly owned by Mukhtiara and inherited by his five sons could not be established by the appellants. On the other hand, the contention of respondent no.1 has been that the suit property bears khasra no. 104 which vests in the Gram Panchayat regarding which Petition under Section 7 of the Punjab Village Common Lands (Regulation) Act was filed by one Tej Pal son of Niranjana Singh of village Barouli.

19. The oral evidence led by the appellants also does not prove their joint ownership or possession over any part of the suit property. Apart from oral statement made by plaintiff no.1 Kamail as PW1, there is no iota of evidence to prove that the suit property as shown in the site plan Ex.Pl was owned by Mukhtiara and that it was inherited by his five sons in equal shares. PW2 Dilbar Khan did not enter the witness box for his cross-examination. So no reliance can be placed upon the statement made by him. PW1 Kamail Singh also could not tell the total area of the property owned by his grand-father Mukhtiara. He also admitted that an oral partition had taken place amongst legal heirs of Mukhtiara. He could not tell the description of the suit property regarding which the present

Suit was filed by him. He also could not tell the dimensions or the boundaries of the suit property. Although he stated that he was in possession of a sale deed showing his father and grandfather to be owner of the suit property but no copy of any such sale deed has been produced. He also admitted that he never got the suit property demarcated till today. He also admitted that the site plan Ex.P1 was got prepared by him from the Draftsman which was not according to scale. The appellants have miserably failed to prove that the suit property was either the ownership of Mukhtiara or the ownership of Jiju Deen and that it was inherited by them and defendants no.1 to 5 from their father Jiju Deen.

20. The appellants have miserably failed to prove that the suit property was ancestral properly in the hands of Mukhtiara or their father Jiju Deen qua them. In order to claim partition, it was incumbent upon the appellants to identify the property situated within the abadi of village Barouli which was earlier owned by Mukhtiara or by Jiju Deen. The solitary statement made by appellant no.1 by itself is not sufficient enough to prove that the suit property was ancestral property in the hands of Mukhtiara of Jiju Deen qua them. On the other hand the contesting respondent has examined as many as four oral witnesses of village Barouli who have specifically stated on oath that respondent no.1 raised the construction over specific portion of the suit property from his own funds and that appellants and respondents no.2 to 5 never came to reside in village Barouli. The appellant no.1 Kamail Singh has also not denied this fact that they have been permanently residing in village Kurali.

21. In view of the observations made above this Court does not find any justifiable reason to differ with the findings recorded by the learned lower Court on Issues no.1 and 2. Section 101 of the Evidence Act also says that whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. Accordingly findings recorded by teamed lower Court on Issues no.1 and 2 are hereby affirmed.

22. Since the appellants have failed to prove the facts which would have entitled them to the relief as sought by them, it is held that the Suit filed by the plaintiffs is false and frivolous to their knowledge. Therefore, findings on Issue no.3 are recorded in favour of the respondents/defendants and against the appellants/plaintiffs. The findings recorded by the learned lower Court on Issue no.3 stand modified accordingly.

23. Consequently this Court does not find any merit in the present appeal and the same is hereby dismissed with costs throughout. Decree Sheet be prepared accordingly. The lower Court record alongwith copy of the Judgment be sent back.

The appeal file be consigned to the record room after due compliance."

15. Before this Court, learned counsel for the appellants has been unable to show that the findings recorded by the learned Courts below suffer from any illegality, perversity or misreading/misappreciation of the material evidence on record, which may warrant interference by this Court. Having gone through the impugned judgments, I am of the

considered view that the findings returned by the learned Courts below are based upon proper appreciation of facts, pleadings as well as evidence on record. No question of law, much less a substantial question of law, is involved herein, so as to exercise appellate jurisdiction under Section 100 of Civil Procedure Code, 1908.

16. Resultantly, the present Regular Second Appeal, being devoid of any merit, stands dismissed.

17. All pending application(s), if any, shall also stand closed.