



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No.216 of 2025

Date of Decision : 05.01.2026

Bal Krishan (deceased) through LRs. and others

..... Appellants

Versus

Bhagat Ram and others

.....Respondents

Coram:

The Hon'ble Mr. Justice Bipin Chander Negi, Judge

Whether approved for reporting?¹

For the Appellants : Mr. H.S. Rangra, Advocate.

For the respondents : Mr. G.R. Palsra and Mr. J.L. Thakur, Advocates, for respondents No.1 and 18.

Respondents No.2, 3, 4 to 7, 8(a), 8(b) 8(c), 9 to 12, 13, 14 to 17 & 19 proceeded against ex parte vide orders dated 05.06.2025 & 20.08.2025.

Bipin Chander Negi, Judge (oral)

The Appellant, by filing this appeal under Section 100 of the Code of Civil Procedure (for short, CPC), has assailed the judgment and decree dated 30.11.2024, passed by learned Additional District Judge, Sundernagar, District Mandi, Himachal Pradesh, in Civil Appeal (Registration) No.93 of 2015, titled *Bal Krishan (deceased) through legal heirs and others vs. Bhagat Ram and others*, whereby the judgment and decree dated 30.08.2014, passed by learned Civil Judge (Junior Division),



Court No.2, Sundernagar, District Mandi, Himachal Pradesh, in Civil Suit No.25/2006, have been affirmed.

2. For the sake of convenience, hereinafter in this judgment, the parties shall be referred in the same manner in which they were referred before learned Trial Court.

3. The brief facts necessary for understanding the plaintiff's case are that the parties to the suit are joint owners in possession of the land comprised in Khewat No. 163, Khatauni Nos. 273, 274, 275, 276, 277, 278, 279, Khasra Nos. 952, 955, 960, 958, 965, 969, 953, 956, 957, 964, 962, 959, 961, 967, 968, 970, 966, 946, 947, 948, 949, 951, 954, 963, Kita-24 measuring 975.13 Sq. meters situated in muhal Purana Nagar/26/5, Tehsil Sundernagar, District Mandi, Himachal Pradesh, hereinafter called the suit land. The plaintiff claims half share in the suit land. The residential houses of the parties are situated over the suit land. The plaintiff and defendants No.12 & 13 have a joint ancestral house, which the plaintiff has renovated. It is alleged that defendants No.12 and 13 are forcibly trying to demolish the said old house with a motive to grab the plaintiff's share. Several litigations are pending between the parties regarding this joint property, and the parties are unable to enjoy their respective shares or develop their property.

4. Despite repeated requests, the defendants have refused to partition the suit property. Defendants No.12 & 13, by taking undue advantage of the jointness, are attempting to raise construction on its better portion, have demolished a major portion of the joint house, and



have caused damage to the plaintiff's house. Hence, the present suit for partition was filed with a prayer for a preliminary decree, claiming the cause of action accrued on 30.08.2006 when the defendants refused the plaintiff's claim and forcibly tried to demolish the old house.

5. The suit was contested by defendants No.14 to 19, raising preliminary objections regarding maintainability, estoppel, limitation, valuation, and jurisdiction. Their case is that the suit land was already partitioned amongst the co-shares prior to the settlement, with the revenue records wrongly reflecting the plaintiff's share. They contended that the joint ancestral house was partitioned in a family partition in 1950, wherein the replying defendants were given no share in the house but were allotted vacant land of inferior quality, for which they received a larger area, and upon which they constructed their own houses. They asserted that separate possessions were recorded during settlement and that the plaintiff, in collusion with other defendants, has tried to encroach upon the best portion of land. They further challenged the valuation of the suit, arguing that the existence of seven Pucca houses on the land means the Court lacks pecuniary jurisdiction. Other defendants filed separate written statements, some admitting the plaintiff's contents and others adopting the objections raised. The plaintiff filed a replication denying the averments in the written statement.

6. From the pleadings of the parties, learned Trial Court framed the following issues on 25.02.2008:

“(1) Whether the plaintiff is entitled for the decree of partition by metes and bounds, as prayed? OPP



- (2) *Whether the suit land has been already partitioned between the co-shares by family partition in the year, 1950, as alleged? OPD*
- (3) *Whether the suit is not maintainable, as alleged? OPD*
- (4) *Whether the plaintiff is estopped by his act and conduct, as alleged? OPD*
- (5) *Whether the plaintiff is barred by limitation, as alleged? OPD*
- (6) *Whether the suit is not properly valued for the purpose of Court fee and jurisdiction, as alleged? OPD*
- (7) *Relief. ."*

7. After recording evidence and hearing learned counsel for the parties, the Trial Court partly decreed the suit. The defendants/appellants, feeling aggrieved, filed the first appeal contending that the Trial Court failed to appreciate the facts and law correctly. It was argued that the Trial Court omitted to notice that the suit land, including the ancestral house, was already partitioned, with the appellants receiving more land due to its (old house) inferior quality. It was further submitted that the Trial Court gave no finding on how the old house could be partitioned when it is in possession of different co-shares, and that its findings were arbitrary, fanciful, erroneous, capricious, and based on surmises. The First Appellate Court, however, dismissed the appeal, leading to the present second appeal.

8. Heard Counsels for the parties and perused the impugned judgements.

9. The plaintiff successfully established through the Jamabandi (Ext.P-1), a document carrying a presumption of truth that the suit land



comprised in the specified Khasra numbers, is joint property. The separate possession entries cited by the appellants do not demonstrate a legally concluded partition but are more indicative of a family arrangement for convenience. A crucial distinction exists between separate enjoyment and a formal partition, the latter requiring mutation of the revenue records to reflect a severance of the joint khewat. The admission by the appellants' witness that no such mutation was ever reported or attested firmly negates the plea of a prior partition in 1950. Consequently, the plaintiff, as a co-sharer in joint possession, was fully entitled to seek the relief of partition.

10. Regarding the issue of Court fee and jurisdiction, the legal position is well-settled. Where a co-sharer in joint possession institutes a suit for partition, it is governed by Article 17(iv) of the Second Schedule of the Court Fees Act, 1870, requiring only a fixed Court fee. The *ad valorem* Court fee under Section 7(iv)(b) of the Act applies only in cases where the plaintiff has been excluded from possession as has been held in ***Hushan Kaushal and others Vs. Bal Rajand others, 2001 (2) Shim. LC 223***, and rightly relied upon by the Trial Court. The appellants' own case and the evidence on record confirm the plaintiff's status as a co-sharer in joint possession. Therefore, the valuation and the Court fee paid by the plaintiff were in accordance with law, and the Trial Court was vested with the requisite pecuniary jurisdiction to try the suit.

11. The appellants have not challenged the specific apportionment of shares as determined by the learned Trial Court and



affirmed by the First Appellate Court. In the absence of any demonstrable error in the calculation or distribution of shares, which was based on the evidence of the parties' respective holdings, the said determination is upheld. Any grievance pertaining to constructions raised during the pendency of the suit is incidental and does not impugn the validity of the preliminary decree; such matters are expressly left to be considered at the stage of the final decree proceedings.

12. In view of the aforesaid, there arises no question of law much less a substantial question of law for the consideration of the Court. Accordingly, the appeal being devoid of merit is dismissed.

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

January 05, 2026 (KS)

(Bipin Chander Negi)
Judge