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

Date of decision: 15.05.2026

1. **RSA-1582-2026 (O&M)**

**HARI KISHAN SINCE DECEASED THROUGH LRS AND
OTHERS** **....Appellants**

Versus

JASWANT SINGH AND OTHERS **...Respondents**

2. **RSA-1596-2026 (O&M)**

**HARI KISHAN SINCE DECEASED THROUGH HIS LRS AND
OTHERS** **....Appellants**

Versus

JASWANT SINGH AND OTHERS **...Respondents**

CORAM:- HON'BLE MR. JUSTICE YASHVIR SINGH RATHOR

Present:- Mr. Prince Kumar, Advocate and
Mr. Sarun Hans, Advocate for the appellants.

Yashvir Singh Rathor, J. (Oral)

This judgment shall dispose of above noted two appeals, as the same have emanated out of the same occurrence.

**CM-5731-C-2026 IN RSA-1582-2026 AND
8/CM-5817-C-2026 IN RSA-1596-2026**

Prayer in these applications under Order 22 Rule 3 CPC is for impleading the legal representatives of appellant No.1 namely Hari Kishan (since deceased).

For the reasons mentioned in the applications, the same are allowed and legal representatives of appellant No.1 namely Hari Kishan (since deceased) are ordered to be impleaded as appellants in the present appeals.

Applications stand disposed of.



RSA-1582-2026(O&M) AND RSA-1596-2026 (O&M)

1. RSA No.1582 of 2026 has been preferred against the judgment and decree dated 30.01.2026 passed by learned Additional District Judge, Hisar vide which appeal preferred by the plaintiffs/respondents has been accepted and counter-claim filed by the appellants/defendants has been dismissed and the judgment and decree passed by the trial Court dated 31.08.2018 has been set aside vide which the suit for partition of the suit property instituted by the plaintiffs had been dismissed while the counter-claim instituted by the defendants has also been dismissed and consequently, the suit filed by the plaintiffs for partition of the joint holding has been decreed and a preliminary decree for partition has been passed.

2. RSA No.1596 of 2026 has been preferred against the judgment and decree dated 30.01.2026 passed by learned Additional District Judge, Hisar vide which appeal preferred by the plaintiffs/respondents has been accepted and the judgment and decree passed by the trial Court dated 31.08.2018 has been set aside vide which the suit for partition of the suit property instituted by the plaintiffs had been dismissed and the suit filed by the plaintiffs for partition of the joint holding has been decreed and a preliminary decree for partition has been passed.

3. As per version of plaintiffs, their father namely Udmi had taken half share in Khasra No.758 (1 Kanal 2 Marla) on eastern side on lease from Gram Panchayat while remaining half share was taken on lease by one Molar Ram. Defendants had purchased the leasehold rights from the son of Molar Ram qua his share but now they have illegally raised construction on the open space lying on the eastern side of the house of plaintiffs. Plaintiffs instituted a suit for permanent injunction against them but vide order dated 06.02.2017, the Court of Civil Judge, (Junior Division), held that the suit land is jointly owned by the parties and no



injunction can be issued against co-sharer and the remedy with the plaintiffs is to seek partition of the joint property. It is further submitted that the defendants in their written statement had admitted that they are in possession over land measuring 391 Square Yards instead of 330 Square Yards i.e Eastern line 32.6', Western line 66.3', Northern line 68.6' and Southern line 74.3'. By way of present suit, plaintiffs sought partition of the joint holding.

4. Defendants in their written statement have refuted the contents of the plaint and opposed the same preliminarily on the grounds of maintainability, Court fees and that suit is barred under Order II Rule 2 CPC. On merits, it has been admitted that father of the plaintiffs had taken half share in Khasra No.758 from Gram Panchayat on lease. One Molar Ram had constructed pucca gher and cattle shed before the consolidation proceedings and after consolidation, said Molar Ram had taken half share of the said plot on lease in Khasra No.758. There was no street towards southern side of the land taken on lease by Udmi-predecessor of plaintiffs, whereas there was a street towards southern side of the land taken on lease by Molar Ram. Accordingly, Udmi requested Molar Ram to permit him to use a portion on the eastern side of Molar Ram's plot for installing a gate and in lieu thereof, he gave land to Molar Ram on northern side. In this way, Molar Ram came in possession of Ghair measuring Eastern line 32.6', Western line 66.3', Northern line 68.6' and Southern line 74.3'. Thereafter, Molar raised pucca boundary walls and constructed pucca room, kitchen, water tank and one cattle shed in the northern-western corner. After his death, his son Abhey Ram sold the aforesaid plot along with construction to defendant No.1 vide Bahi writing dated 30.05.1998 which is in the knowledge of plaintiffs. Thereafter, defendant No.1 also raised some more construction and defendants are in possession over the



same as owners since 30.05.1998. It is further submitted that Gram Panchayat is recorded as owner as per revenue record. Along with the written statement, counter-claim was filed to the effect that finding in the judgment and decree dated 06.02.2017 passed by the Court of Civil Judge (Junior Division), Hansi that the plaintiffs have the remedy to seek partition is wrong, against law and facts and same is not binding upon the rights of defendants and is liable to be set aside.

5. From the pleading of the parties, following issues were framed on 03.08.2017:-

- “1. *Whether the plaintiffs are entitled for possession of the suit property as detailed in head note of the plaint?OPP*
 2. *Whether the plaintiffs are entitled for injunction restraining the defendants from raising any construction and from changing the nature of the suit land?OPD*
 3. *Whether the plaintiffs have no locus standi and cause of action to file be present suit?OPD*
 4. *Whether the present suit is not maintainable in the present form?OPD*
 5. *Whether the defendants are entitled to the relief as claimed in the counter-claim?OPD*
 6. *Relief.”*
- **** *It is important to mention here that issue no.1 has not been completed framed, hence, re-framed.*
1. *Whether the plaintiffs are entitled for possession of suit property by way of partition as detailed in head note of the plaint? OPP.”*

6. Plaintiffs, in support of their case, have examined PW1 Hari Kishan, Clerk from the Record Room, Hansi. Plaintiff No.1-Jaswant Singh, himself stepped into the witness box as PW2 and Sh. Devender Bisla, Advocate was



examined as PW3 and they have led in evidence documents Ex.P1 to Ex.P9 and Ex.PW3/A to Ex. PW3/I.

7. On the other hand, defendants have examined Umed Singh Dahiya, Draftsman as DW1. Defendant No.1-Hari kishan himself stepped into witness box as DW2 and have also examined Satyawar as DW3 and Ramesh Kumar as DW4. They have led in evidence Ex.D1 to Ex.D13.

8. After hearing the parties and on going through the material on file, learned trial Court held that the Gram Panchayat, which is the owner of the land, should have been impleaded as a party and plaintiffs/lessees cannot seek partition of the leasehold rights and the suit preferred by the plaintiffs as well as counter-claim filed by the defendants were dismissed.

9. Feeling aggrieved, plaintiffs preferred appeal while defendants also preferred cross-objections under Order 41 Rule 22 CPC and learned First Appellate Court, after hearing the parties and on going through the material on record, accepted the appeal and set aside the judgment and decree passed by the trial Court and suit for partition was decreed with cost while cross-objections filed by defendants were dismissed and it was further held that the counter-claim has also been rightly dismissed. Feeling aggrieved, the present appeals have been preferred.

10. Learned counsel for the appellants argued that the impugned judgment and decree is based on conjectures and surmises. The pleadings of parties and material on file have not been appreciated in the correct perspective which has resulted in miscarriage of justice. Learned counsel further argued that the suit for partition of tenancy rights is not maintainable in law and same was barred under Order II Rule 2 CPC as well as by the principle of res judicata.



Learned counsel next contended that under Section 110 of the Punjab Land Revenue Act, 1887, a petition for partition of tenancy rights lies before revenue authorities and not the Civil Court. Learned counsel prayed that the appeals in hand be accepted and judgment and decree be set aside.

11. After hearing learned counsel for the appellants, I am of the considered opinion that the appeals in hand are meritless and are liable to be dismissed for the reasons discussed hereinafter.

12. The operative portion of the judgment passed by the First Appellate Court whereby the judgment and decree passed by the trial Court has been set aside is reproduced as under:-

“27. Needless to say, by way of the present suit, the plaintiffs have sought possession by way of partition of khasra No.758, claiming themselves to be lessees of the eastern half portion of khasra No.758, being the legal representatives of Udmi. Before advertng to the contentious issues involved, it would be apposite to notice certain admitted facts, as the same would considerably narrow down the controversy. In paragraph No.2 of the written statement on merits, the defendants have admitted that the plaintiffs’ father had taken half portion of khasra No.758 on lease from the Gram Panchayat. It is further admitted that Molar had taken the remaining half portion of khasra No.758 on lease from the Gram Panchayat and had constructed a gher, etc., on the said portion. It is also undisputed that the defendants purchased the lease rights from Abhey Ram, son of Molar, vide Bahi entry dated 30.05.1998 (Ex.P12). It is further not in dispute that the plaintiffs are occupying the eastern half portion of khasra No.758, whereas the defendants are occupying the western half portion thereof. Their status as co-lessees of khasra No.758 is further established from the copy of the lease register of Shamlat land (Ex.P5). Thus, the parties are not at loggerheads with respect to



the aforesaid facts. The controversy has arisen on account of the fact that the defendants are admittedly occupying 391 square yards of land out of khasra No.758, whereas, being lessees of only half share, they are entitled to occupy only 332 square yards. The defendants have themselves admitted that they are in possession of 391 square yards of land, having the following boundaries: Eastern line 32.6', Western line 66.3', Northern line 68.6', and Southern line 74.3'. So, in the given admitted facts, it is for the defendants to put forth their justification of their possession over the excess area.

28. *The defendants have, at the outset, raised the objection that the plaintiffs cannot seek partition of tenancy rights and that the suit is not maintainable. However, this argument is manifestly erroneous, as it is no longer res integra that the law does not prohibit partition of tenancy rights. In this regard, reference may be made to the judgment titled **Laxman Das Sindhi v. Ganesh Prasad Sen, 2022 (01) ILR A88**, wherein it has been held that joint tenants have a right to seek partition of tenancy rights. The mode of such partition would depend upon the nature of the tenanted property, which can be appropriately examined at the stage of final decree proceedings. Reference may also be made to the judgment of the Hon'ble Delhi High Court in **Dalip Kumar v. Om Parkash and others, RFA No.73 of 2010 decided on 13.08.2015**, wherein the Hon'ble High Court made the following observations in the relevant paragraphs:*

“13. I am unable to concur with the reasoning aforesaid of the learned ADJ. A tenancy right, specially in a premises governed by the Rent Act and from which the landlord cannot evict save on the grounds provided in the Statute, is a valuable asset and there is no bar in any law whatsoever to partition thereof. Of course, the said partition has to be in accordance with law and the Court cannot direct partition in a manner prohibited by the Rent Act. Thus, the assumption by the learned ADJ, of the tenancy rights being per se impartible, is found to be erroneous.



14. I have already recorded hereinabove, one of the manners in which the tenancy premises can be partitioned. Similarly, if the tenancy premises and the number of heirs permit, partition can also be by devising modalities for use thereof by the heirs, without infringing the law governing the tenancy premises or the terms and conditions of the agreement, if any, of tenancy. Just like it has been held in judgments supra vis-a-vis constructions on leasehold land, that the bar to subdivision of the leasehold rights in land is not a bar to subdivision of superstructure constructed thereon, with leasehold rights in land continuing to jointly vest in all the heirs, the tenancy rights in a premises can be partitioned by allocating exclusive use of different portions thereof (if possible) to different heirs, with the tenancy rights jointly vesting in all the heirs.

15. XXX

16. If a valuable asset as tenancy rights is held to be impartible, it would lead to the heir in control thereof appropriating the same to himself / herself, to the detriment of others. Physical impartibility of an asset does not make it impartible as the asset can always be permitted to be appropriated by an heir who bids the maximum for the same.

*17. This Court, in **Iresh Duggal Vs. Virender Kumar Seth MANU/DE/3068/2014** also held that tenanted premises can always be partitioned for inter se use among the tenants and merely because there is an inter se division amongst the tenants, for convenience of use of the tenanted property, the same will not amount to subletting, assigning or parting with possession of the tenanted premises inter se the tenants. It was further held that mere inter se division amongst co-tenants, for the purpose of user of the tenanted premises, will not amount to subletting qua the landlord. It was yet further held that tenanted premises are bound to be partitioned for inter se use, without destroying the common tenancy rights. Reference in*



*this regard can also be made to **Bharat Insulation Co. Vs. Suraj Parkash 221 (2015) DLT 216.***

29. *So, in view of these legal precedents, there is no dispute about the law that the tenancy rights are also subject to partition.*

30. *Learned counsel for the defendants has further argued that the defendants have not encroached upon any portion belonging to the plaintiffs; rather, the excess portion was given to the predecessor-in-interest of the defendants, namely Molar Ram, by the plaintiffs in lieu of land earlier given by Molar Ram on the eastern side of his property. However, this contention of the learned counsel for the defendants is not convincing, as there is no evidence whatsoever to substantiate the same. As per the pleadings contained in the written statement, the said arrangement is alleged to have taken place in the year 1997. However, not even a single member of the BiradaIri Panchayat has been examined by the defendants to prove such an arrangement. Moreover, no documentary evidence has been produced in support thereof. In the absence of any cogent oral or documentary evidence, it cannot be believed that the defendants are lawfully occupying 59 square yards of excess land beyond their half share, i.e. 332 square yards. Accordingly, this contention raised by the defendants is also not tenable.*

31. *Learned counsel for the defendants has next argued that the suit filed by the plaintiffs is not maintainable as being barred under Order II Rule 2 CPC and by the principle of res judicata, on the ground that the plaintiffs had earlier filed a suit which was dismissed. He further submitted that in the said suit, the plaintiffs had moved an application for amendment of pleadings (Ex.D11), which was subsequently withdrawn by making a statement (Ex.D10), and the Court permitted withdrawal of the said application vide order (Ex.D9). In support of his submissions, learned counsel has placed reliance upon the judgments titled **Deva Ram and another v. Ishwar Chand and another, 1996(1) LJR 23; Vithal Yeshwant Jathar v. Shikandarkhan Makhtumkhan Sardesai, AIR 1963 SC 385; and***



Pawan Kumar Gupta v. Rochiram Nagdeo, AIR 1999 SC 1823.

However, this Court is not convinced with the said arguments. The earlier suit filed by the plaintiffs was a simplicitor suit for injunction, whereas the present suit has been filed seeking partition of tenancy rights. Both suits are based on distinct and separate causes of action, and therefore, the present suit cannot be held to be barred either by the principle of res judicata or under Order II Rule 2 CPC. Merely because the plaintiffs withdrew their application for amendment of pleadings in the earlier suit does not bar them from filing a subsequent suit based on a different cause of action. The judgments relied upon by the defendants are distinguishable on facts and circumstances and are, therefore, not applicable to the present case.

32. *Learned counsel for the defendants has further contended that the suit is bad on account of misjoinder and non-joinder of necessary parties, as the Gram Panchayat has not been impleaded as a party to the suit. In support of this contention, reliance has been placed upon **Harnek Singh v. Jangir Singh, 1997(1) LJR 94 and Mohan Lal and others v. Kailash Rani, 2014(3) PLR 591.** This Court is also not persuaded by the said argument. In the present case, issues were framed on 24.08.2017, and no issue regarding misjoinder or non-joinder of necessary parties was framed. In such circumstances, it was incumbent upon the defendants to raise this objection prior to the framing of issues. Failure to do so amounts to waiver of such objection in view of Order I Rule 13 CPC. Even otherwise, the Gram Panchayat, at best, could be termed as a proper party and not a necessary party as the plaintiffs have not sought any relief against the Gram Panchayat. Therefore, the suit cannot be held to be bad for non-joinder of a proper party. Consequently, this objection is also not tenable. The authorities relied upon by the defendants are based on different facts and circumstances and are thus not applicable.*

33. *Learned counsel for the defendants has further argued that in view of Section 110 of the Punjab Land Revenue Act, 1887, a tenant cannot seek partition without the consent of the landlord, and such*



an application can be moved only before the revenue authorities under Section 111 of the Act. This argument is also devoid of merit. The suit property is admittedly gair mumkin land, and the right to seek partition of gair mumkin land always vests with the Civil Court and not with the Revenue Courts. Hence, this contention is also not tenable.

34. No other point has been raised before this Court.

35. In view of the aforesaid discussion, this Court is of the considered view that the plaintiffs have successfully proved that joint leaseholders have a right to seek partition. The plaintiffs have also established that they are entitled to lease rights to the extent of half share of khasra No.758, whereas the defendants have failed to justify their possession over the excess area beyond their half share. Consequently, issues No.1 to 4 are decided in favour of the plaintiffs and against the defendants.”

13. The reasons recorded by first Appellate Court while reversing the findings as well as judgment and decree passed by the Trial Court are well reasoned. The trial Court had wrongly held that the tenancy rights cannot be partitioned amongst the tenants and the finding of learned trial Court was thus contrary to settled law that the tenancy rights are also subject to partition. Admittedly, the leasehold rights in favour of defendants are in respect of 332 Square Yards of land and they admittedly are in possession of 391 Square Yards of land i.e. they are in possession of 59 Square yards of land beyond their share. Defendants have also failed to lead any evidence and establish that the predecessor of plaintiffs had given excess land to them as there was no rasta/passage on the eastern side of his property as no cogent and convincing evidence has been led in this regard except the self-serving statement of the



defendants. Learned First Appellate Court has thus rightly held that the defendants are in unlawful occupation of excess area measuring 59 square yards of land.

14. The earlier suit filed by the plaintiffs was a simplicitor suit for permanent injunction restraining the defendants from raising construction but vide judgment and decree dated 06.02.2017, the Civil Judge (Junior Division) had held that both the parties are co-sharers and as such, no injunction can be issued against the other co-sharer and the remedy with the plaintiffs is only to sue for partition and thereafter, the present suit was instituted and as such, the suit in hand cannot be termed as bad under Order II Rule 2 CPC or on the principle of *res judicata* as both the suits are based on distinct cause of action as the earlier suit was instituted simplicitor for permanent injunction while the present suit has been instituted for partition of the joint holding. Likewise, presence of Gram Panchayat was not at all essential for proper adjudication of the present suit as both the parties are in possession over the suit land as lessees/tenants and presence of Gram Panchayat was not essential in a suit for partition *inter se* co-sharers. Learned First Appellate Court has rightly observed that the Gram Panchayat at the most is a proper party and it is not a necessary party in whose absence the suit cannot be properly adjudicated.

15. Another contention raised by defendants is that Section 110 of Punjab Land Revenue Act, 1887 bars partition without the consent of the landlord i.e. Gram Panchayat and such an application can be moved only before the revenue authorities under Section 111 of the Act as suit property is admittedly Gair Mumkin land over which construction has already been raised. However, the partition of any land over which construction has already been raised can be



ordered only by the Civil Court and not by the Revenue Courts and this contention has also been rightly repelled by the First Appellate Court.

16. No other point has been argued before this Court.

17. As a result of aforesaid discussion, I am of the considered opinion that there is no merit in the appeals and the impugned judgment and decree does not suffer from any material illegality and irregularity and the same are dismissed.

18. Pending misc. applications, if any, shall also stand disposed of.

19. A photocopy of this order be placed on the file of other connected case.

(YASHVIR SINGH RATHOR)
JUDGE

15.05.2026
Priyanka Thakur

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No