

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

RSA-162-2025 (O&M)
Date of decision: 05.03.2026**Pankaj** Appellant**Vs.****Smt. Devi and others** Respondents

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. M.S. Kundu, Advocate, for the appellant

DEEPAK GUPTA, J.**CM-504-C-2025**

This is an application under Section 5 of the Limitation Act, 1963 for condonation of delay of 04 days in filing the appeal.

2. For the reasons mentioned in the application, the same is allowed and the delay of 04 days in filing the appeal is hereby condoned.

RSA-162-2025(O&M)

The defendant in the suit has approached this Court in the present Regular Second Appeal challenging the judgment of reversal passed by the First Appellate Court. The suit filed by the plaintiffs (*respondents herein*) for possession by way of partition was dismissed by the learned Trial Court vide judgment and decree dated 01.12.2021. However, the appeal preferred by the plaintiffs was allowed by the learned First Appellate Court on 27.09.2024 and a decree for partition along with consequential relief of permanent injunction was passed in their favour.

2. The facts, in brief, are that Rajender Singh was the owner in possession of two houses situated within the abadi deh of village Kasandi, Sub Tehsil Khanpur Kalan, District Sonipat, as described in paragraph No.1 of the plaint and depicted in the site plans placed on record. Upon the death of Rajender Singh, the said property devolved upon his legal heirs. Plaintiff No.1 is the widow of Rajender Singh, plaintiff No.2 is his daughter



and plaintiff No.3 as well as the sole defendant are his sons. Thus, all the parties are Class-I legal heirs of the deceased Rajender Singh.

3. The plaintiffs filed the suit claiming that after the death of Rajender Singh, the property was inherited jointly by all the legal heirs and the plaintiffs together were entitled to a 3/4th share in the suit property. It was further alleged that the defendant, being a strong-headed person, had broken open the lock of one of the houses and had removed certain articles lying therein. Since the defendant had refused to partition the property amicably, the plaintiffs sought a decree for possession by way of partition along with permanent injunction restraining the defendant from interfering with their rights.

4. The suit was contested by the defendant. The primary defence raised was that the property had already been partitioned amongst the parties in the past and each of them was in possession of their respective shares. It was further pleaded that plaintiff No.1 (mother) was residing with plaintiff No.3, whereas plaintiff No.2 was residing in her matrimonial home, and therefore, the present suit was not maintainable.

5. On the basis of the pleadings of the parties, the learned Trial Court framed the necessary issues and after appreciating the evidence led by the parties came to the conclusion that the plaintiffs had failed to prove the joint nature of the suit property and consequently dismissed the suit.

6. Aggrieved against the said judgment, the plaintiffs preferred an appeal. The learned First Appellate Court, being the final Court of facts, re-appreciated the entire evidence on record and came to the conclusion that the findings recorded by the Trial Court were not sustainable in law. The First Appellate Court noticed that it was not disputed that Rajender Singh was the owner in possession of the suit houses and that the parties to the litigation were his legal heirs. Therefore, on the death of Rajender Singh, the property devolved upon his Class-I heirs in equal shares.

7. The First Appellate Court further observed that the defendant had taken a specific plea that the property had already been partitioned



through a family settlement. Once such a plea of prior partition was raised by the defendant, the burden to prove the same squarely lay upon him. However, the defendant failed to produce any cogent or convincing evidence to establish the alleged family settlement or prior partition.

8. The contention raised by the defendant that the plaintiffs had failed to prove the ownership of late Rajender Singh over the disputed house was also found to be untenable. The First Appellate Court rightly noticed that the defendant himself had neither disputed the relationship between the parties nor denied that Rajender Singh was the owner of the property. On the contrary, his defence was premised on the assertion that the property had already been partitioned amongst the family members. Thus, once the ownership of Rajender Singh and the relationship of the parties as his legal heirs stood admitted, the finding of the Trial Court that the plaintiffs had failed to prove ownership of Rajender Singh was clearly unsustainable.

9. The First Appellate Court also dealt with the argument that the defendant was in exclusive possession of a portion of the house measuring about 142 square yards and therefore, no injunction could be granted against him. Rejecting the said contention, the Appellate Court relied upon the settled principle of law that possession of one co-sharer is deemed to be possession on behalf of all co-sharers unless there is clear evidence of ouster. In the absence of proof of exclusive ownership or valid partition, a co-sharer cannot claim exclusive rights to the exclusion of the others.

10. This Court finds that the reasoning adopted by the learned First Appellate Court is in consonance with the settled principles governing partition suits. Once it stood established that the suit property belonged to Rajender Singh and after his death the parties inherited the same as his Class-I legal heirs, the property necessarily remained joint unless a valid partition was proved. Since the plea of prior partition was specifically taken by the defendant, the burden was upon him to establish the same through reliable evidence. In the absence of such proof, the presumption of joint ownership amongst the co-heirs continues to operate.



11. It is also well settled that in a suit for partition, every co-sharer has a right to seek partition of the joint property unless such right is barred by a valid and proved partition or relinquishment. The defendant having failed to establish any prior partition or exclusive ownership, the plaintiffs were clearly entitled to seek partition of the property in accordance with their respective shares.

12. Furthermore, the scope of interference in a Regular Second Appeal under Section 100 of the Code of Civil Procedure is confined to substantial questions of law. The findings recorded by the First Appellate Court are based upon proper appreciation of the pleadings and evidence on record and do not suffer from any perversity or misreading of evidence. Learned counsel for the appellant has not been able to point out any substantial question of law arising for consideration by this Court.

13. In view of the aforesaid facts and circumstances, this Court does not find any reason to interfere with the well-reasoned judgment and decree passed by the First Appellate Court.

14. Consequently, finding no merit in the present appeal, the same is hereby dismissed.

05.03.2026

Vivek

(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned
Whether reportable

Yes
No