

**Rajinder Kaur (Deceased) Through Legal Heir Usha
v.
Gurbhajan Kaur (Deceased) Through Lrs. Upinder
Kaur and Others**

(Civil Appeal Nos. 7946-7947 of 2024)

23 July 2024

[C.T. Ravikumar and Rajesh Bindal,* JJ.]

Issue for Consideration

Suit for partition of the joint property was filed by the appellant-plaintiff. High Court whether justified in passing the impugned judgment holding that defendant No.3(a) and defendant Nos.15 to 19 (subsequent buyers) were not liable to render any accounts.

Headnotes[†]

Suit – Rendition of accounts by co-sharers – Defendant No.3(a) and defendant Nos.15 to 19, if were liable to render accounts:

Held: Yes – Admittedly, defendant No.3(a) had rented out a portion of the property and collected rent therefrom, thus, there was no good reason for the High Court to have absolved him from rendition of accounts – However, as the plea sought to be raised by the defendant No.3(a) regarding rent notes produced by him were prima facie found to be sham transactions, as the market rate of the rent of the portion in control of the defendant No.3(a) was much more at that time, the Trial Court will hold an inquiry on this aspect and fix appropriate rent to which the defendant No.3(a) would be liable to contribute to the common kitty for appropriation amongst all the co-sharers – High Court erred in finding that the defendant No.3(a), being in self-occupation of the part of the property, being a co-sharer, will not be liable to render any accounts to arrive at such a conclusion – Reference was made to the fact that his vendor (defendant No.3) had contested litigation with the tenant (defendant No.10) and spent huge amount thereon – But the fact remains that the Defendant No.3(a) had purchased the property from defendant no.3 after it was already vacated by the tenant and he was handed over vacant physical possession thereof – Further, defendant Nos.15 to 19 were absolved from rendering account on the ground that the portion in their possession was to the extent of their share in the property – However, this issue has not been

* Author

Digital Supreme Court Reports

determined by any authority – High Court erred in holding that defendant No.3(a) and defendant Nos.15 to 19 were not liable to render any accounts – Impugned judgments set aside – Defendant No.3(a) and defendant Nos.15 to 19 to render accounts and/or liable to contribute rent as assessed by the Trial Court during the course of passing of final decree for the portions in their respective possession. [Paras 20, 21, 21.2, 22, 23]

Case Law Cited

Resident's Welfare Association and Another v. Union Territory of Chandigarh and Others [\[2023\] 1 SCR 601](#) : (2023) 8 SCC 643 : 2023 INSC 22 – referred to.

List of Acts

Chandigarh (Sale of Sites and Buildings) Rules, 1960.

List of Keywords

Rendition of accounts by co-sharers; Suit for partition; Joint property; Co-sharers of the suit property; Subsequent buyers; Furnishing accounts of rent collected; Tenants; Preliminary decree; Final decree; Auction.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 7946-7947 of 2024

From the Judgment and Order dated 05.04.2018 of the High Court of Punjab & Haryana at Chandigarh in RSA No. 6076 of 2015 and RSA No. 2761 of 2016

Appearances for Parties

Samar Pratap Singh, Karanvir Singh Khehar, Ashok K. Mahajan, Advs. for the Appellant.

Dama Seshadri Naidu, Sanjeev Anand, Sr. Advs., M/s. Delhi Law Chambers, Rajiv Kataria, Ms. Debjani Das Purkayastha, Shurya Bhalla, Santosh Krishnan, Ms. Sonam Anand, Ms. Deepshikha Sansanwal, Ms. SI Soujanya, Ankit Goel, Nikhil Sharma, Sahil Patel, Siddharth Batra, Rhythm Katyal, Chinmay Dubey, Ms. Shivani Chawla, Ms. Archana Yadav, Pratyush Arora, Yuvraj Chhabra, Advs. for the Respondents.

**Rajinder Kaur (Deceased) Through Legal Heir Usha v.
Gurbhajan Kaur (Deceased) Through Lrs Upinder Kaur and Others**

Judgment / Order of the Supreme Court

Judgment

Rajesh Bindal, J.

1. Leave granted.
2. The present appeals arise out of a suit for partition¹ filed by the appellant for partition of the property jointly owned at that time by the appellant-plaintiff and respondents-defendant Nos.1 to 9. Defendant Nos.10 to 14 were impleaded in the suit as they were stated to be tenants on the part of the property. During the pendency of the suit before the Trial Court² respondent-defendant No.3, Bhupinder Singh, having sold his share to S.C. Bhalla, he was impleaded as defendant No.3(a). Further, defendant Nos.6 to 9 having sold their shares to the subsequent buyers, who were impleaded as defendant Nos.15 to 19.
3. After the amendments were carried out in the plaint, considering the subsequent events and impleadment of subsequent buyers, the final prayer was for partition of the suit property by metes and bounds and in case not possible, sale thereof by open auction and distribution of the sale proceeds amongst the co-sharers. Prayer was also made for directing the defendant Nos.3 to 9 to furnish accounts of rent collected by them from tenants and a direction to the tenants (defendant Nos.10 to 14) to deposit the rent in the court. Further, the plaintiff sought direction against defendant No.3-Bhupinder Singh to pay mesne profit at the rate of ₹150/- per square ft. per month for the area under his occupation. The present litigation is at the stage of passing of preliminary decree. The percentage of shares of the plaintiff and the defendants originally impleaded in the suit, to which no dispute has been raised by the parties before this Court, have been noticed by the High Court³ in the impugned judgment dated 05.04.2018.⁴ The same is extracted below:

1 Civil Suit No. 4406 of 2005

2 Civil Judge (Junior Division), U.T. Chandigarh

3 High Court of Punjab and Haryana at Chandigarh

4 Passed in RSA No. 6076 of 2015

Digital Supreme Court Reports

S. NO.	NAME OF OWNER	SHAREHOLDING
1.	Rajinder Kaur (Plaintiff)	25%
2.	Gurbhajan Kaur (Defendant No. 1)	12.5%
3.	Prabhasharan Singh Sandhu (Defendant No. 2)	12.5%
4.	Bhupinder Singh (Defendant No. 3)	1%
5.	Ajay Aggarwal (Defendant No. 4)	17%
6.	Neelam Aggarwal (Defendant No. 5)	17%
7.	Amarnath Singla (Defendant No. 6)	3.75%
8.	Laxmi Devi (Defendant No. 7)	3.75%
9.	Meena Singla (Defendant No. 8)	3.75%
10.	Seema Rani (Defendant No. 9)	3.75%

4. The aforesaid position was before the sale of their respective shares by defendant No.3-Bhupinder Singh to defendant No.3(a)-S.C. Bhalla and by defendant Nos.6 to 9 to defendant Nos.15 to 19. Preliminary decree for partition of the suit property to the extent of 25% share was passed by the Trial Court on 10.10.2012 in favour of the plaintiff. As the property could not be partitioned on account of legal bar under the Chandigarh (Sale of Sites and Buildings) Rules, 1960,⁵ the same was directed to be auctioned. The preliminary decree was also passed for rendition of accounts against the defendants wherein all the co-sharers of the suit property were directed to render accounts. Defendant Nos.4 & 5 having inducted tenants in some portion of the suit property in their possession were directed to submit the accounts of rent collected by them. The market rate of the rent of the portions in possession of defendant no.3(a)-S.C. Bhalla and defendant Nos.15 to 19 were to be determined while passing the final decree. Defendant No.3(a) having stepped into the shoes of defendant No.3, defendant Nos.4 & 5, and defendant Nos.15 to 19, having stepped into the shoes of defendant Nos.6 to 9, were restrained from creating charge or encumbrances on the suit property.
5. Challenging the aforesaid preliminary decree passed by the Trial Court, two appeals were filed. Civil Appeal No. 857 of 2012 was filed by defendant No.3(a), and Civil Appeal No. 850 of 2012 was filed

⁵ Hereinafter referred to as 'the 1960 Rules'

**Rajinder Kaur (Deceased) Through Legal Heir Usha v.
Gurbhajan Kaur (Deceased) Through Lrs Upinder Kaur and Others**

by defendant Nos.15 to 19, the subsequent buyers from defendant Nos.6 to 9.

- 5.1. Inter alia the ground raised by defendant No.3(a)-S.C. Bhalla regarding the mesne profit was that the assessment of the rent by the Trial Court was not appropriate as material evidence placed on record was not considered. Rent being given by a tenant for a small area cannot be made the basis of assessment of rent of the complete building. There was no denial as such regarding his liability to pay the rent. He had even admitted the fact that certain tenants had been inducted by him.
- 5.2. The defendant Nos.15 to 19/appellants before the First Appellate Court are in possession of part of the suit property on the ground floor, in which they are carrying on business. The appeal was filed primarily on two grounds, firstly, that the property was sold to them while concealing the fact of pendency of the civil suit regarding partition of the property and passing of restraint order. Another objection raised by them was for rendition of accounts claiming that they were in possession of less than 15 % share of the suit property and had not been collecting any rent, hence, no accounts are to be rendered.
- 5.3. The First Appellate Court⁶ allowed the appeal filed by the defendant Nos.15 to 19 holding that they, being in possession of the share of the suit property to the extent of their ownership, were not liable to render accounts to other co-sharers.
- 5.4. As far as the appeal filed by the defendant No.3(a) is concerned, the judgment and decree of the Trial Court was upheld and the appeal filed by him was dismissed.
6. Aggrieved against the judgment and decree of the First Appellate Court, two appeals were preferred before the High Court.
 - 6.1. R.S.A. No.6076 of 2015 was filed by the plaintiff impugning the judgment and decree passed in the appeal preferred by the defendant Nos.15 to 19, which was allowed by the First Appellate Court.

Digital Supreme Court Reports

- 6.2. R.S.A. No.2761 of 2016 was filed by the defendant No.3(a) impugning the judgment and decree of the First Appellate Court whereby the judgment and decree of the Trial Court qua him was upheld.
- 6.3. Both the appeals were taken up together and decided vide judgment⁷ dated 05.04.2018. Second appeal⁸ was disposed of by a short order in terms of judgment passed in R.S.A. No.6076 of 2015. The appeal preferred by the plaintiff challenging the judgment and decree in favour of the defendant Nos.15 to 19 was dismissed, whereas appeal filed by defendant No.3(a) was allowed. The High Court held that defendant No.3(a) cannot be asked to render accounts. He got the possession of the property after purchase from the earlier co-sharer Bhupinder Singh (defendant No.3), who got the same vacated after protracted litigation. Even if he was owner of the 1% share, he was not in wrongful possession.
- 6.4. As far as the appeal pertaining to defendant Nos.15 to 19 is concerned, it was opined that they being the co-sharers in possession having no income are not liable to render any accounts.
7. In the aforesaid factual matrix, the matter is before this Court at the stage of preliminary decree in a partition suit. The plaintiff has challenged the judgment of the High Court.
8. Learned counsel for the appellant-plaintiff submitted that with the impugned judgment passed by the High Court an anomalous situation has been created. In the suit property at present there are 11 co-sharers, which was originally owned by 10 co-sharers. Judgment and decree of the Trial Court regarding sale of the property by way of auction was not challenged by any of the co-sharers to the extent of 84%. Challenge was made on the issue of rendition of accounts by the co-sharers. Dispute was sought to be raised only by co-sharers to the extent of 16% by filing two separate appeals. One by a co-sharer who owns only 1% share and another by a set of five co-sharers who own 15% shares.

7 Passed in R.S.A. No. 6076 of 2015.

8 Passed in R.S.A. No. 2761 of 2016 dated 05.04.2018

**Rajinder Kaur (Deceased) Through Legal Heir Usha v.
Gurbhajan Kaur (Deceased) Through Lrs Upinder Kaur and Others**

- 8.1. The party which owned 1% share in the suit property has in his possession half portion of the ground floor in a three-story building. Whereas another set of persons who were owners to the extent of 15% of shares are in possession of another half on the ground floor. The first and second floors of the building were under the control of the defendant Nos.4 & 5 which were let out to the tenants. They have no objection to render accounts of the rent collected.
9. As far as defendant No.3(a)-S.C. Bhalla, who is owner to the extent of 1% share and in possession of half portion of the ground floor, is concerned even if he had not let out the property, still he is liable to make good the loss suffered by the other co-sharers. The reasoning given by the High Court to absolve him from rendering accounts cannot be legally sustained as he had purchased the property from the erstwhile owner defendant No.3-Bhupinder Singh and got the vacant physical possession. There is nothing on record to suggest that after purchasing the property, he litigated and got the possession from the tenants.
- 9.1. Insofar as another set of co-sharers to the extent of 15% shares is concerned, they are using half portion of the ground floor for their business, hence liable to pay for use and occupation of the property. They cannot, of their own, claim that the portion in their possession is to the extent of their ownership in the suit property. This is to be determined by the Court. In case they are found to be in possession of the property to the extent of their share and they do not contribute to the common kitty for use and occupation of the premises, they will not be entitled to any share out of the amount collected from the balance 85%. This exercise can very well be done at the time of passing of final decree.
10. Learned counsel for the respondents-defendant nos.15 to 19, set of co-sharers having 15% share in the property, submitted that they are in possession of only 9.48% of the property, on the ground floor. It was purchased during the pendency of litigation. There was no relief claimed for rendition of accounts qua them in the suit. There was no prayer made in the suit for a direction to the defendant Nos.15 to 19 to render accounts. They may be liable to render accounts if they are in possession of area more than their share. In fact, they

Digital Supreme Court Reports

are in possession of area less than their share. In the alternative, regarding the rate of rent to be calculated in such circumstances, it was submitted that in case the said defendants are required to render accounts, the rent should not be calculated at the market rate. In fact, the defendant No.3(a)-S.C. Bhalla is in possession of the area of the property more than his share.

11. Insofar as the co-sharer, defendant No.3(a)-S.C. Bhalla, to the extent of 1% share is concerned, the argument is that issue no.3 framed by the Trial Court was regarding direction to furnish the accounts of rent collected from the tenants. In the case in hand, the portion in possession of the present co-sharer was never let out. Rendition of accounts and mesne profits are two different concepts. It was further argued that when the matter was pending before the High Court, defendant No.3(a) offered to give possession of the suit property with him to other co-sharers. An application⁹ in the paper book at page no.343 was referred to. The same is dated 27.09.2017. The argument raised is that he having offered possession cannot now be made liable to render accounts or mesne profits. He had purchased the property from defendant No.3-Bhupinder Singh. Whatever possession was available with him was given to defendant No.3(a)-S.C. Bhalla. Issue of mesne profits will come in only if the defendant No.3(a) is found to be in wrongful possession and the same was not given to other owners when asked for.
12. As far as the respondents-defendant Nos.4 & 5 are concerned, the arguments raised by the learned counsel are that when partition of an immovable property is to take place, Order XX Rule 18(2) of C.P.C. will be applicable. Sub-rule (2) clearly provides that at the time of passing of preliminary decree declaring the rights of several parties interested in the property, the Court may give such further directions as may be required. The Trial Court had rightly directed all the parties to render accounts either for the rent collected by them or for the portion in their possession for which the rent was assessed at the rate of ₹107/- per square ft. per month. It was pertaining to the defendant No.3(a) and the defendants Nos.15 to 19. For the portion under the control of the defendant Nos.4 & 5,

**Rajinder Kaur (Deceased) Through Legal Heir Usha v.
Gurbhajan Kaur (Deceased) Through Lrs Upinder Kaur and Others**

which was let out, they have already furnished the accounts. It is only the defendant No.3(a) and defendant Nos.15 to 19 who are reluctant to do the same. A simple suit for partition is pending for about two decades despite the direction issued by this Court, when the matter came at the stage of interim direction, on 10.01.2012¹⁰ to decide the suit within nine months.

13. Heard learned counsel for the parties and perused the relevant referred record. As far as the percentage of shares of different co-sharers in the property in-question is concerned, though partly sold during the pendency of the suit, there is no dispute. As on today it stands as under:

S. NO.	NAME OF PARTIES	SHARE	TRIAL COURT	SUPREME COURT
1.	Rajinder Kaur (Died on 01.12.2006)	25%	Plaintiff	<ul style="list-style-type: none"> Appellant (Thr. LR Usha) in SLP (C) No. 12198 of 2018. Appellant (Thr. LR Usha) in SLP (C) No. 12199 of 2018.
2.	Gurbhajan Kaur	12.5%	Defendant No. 1	<ul style="list-style-type: none"> R. No. 1 in SLP (C) No. 12198 of 2018. R. No. 5 in SLP (C) No. 12199 of 2018.
3.	Prabhsharan Singh Sandhu	12.5%	Defendant No. 2	<ul style="list-style-type: none"> Respondent No. 2 (Thr. LR) in SLP (C) No. 12198. Respondent No. 6 (Thr. LR) in SLP (C) No. 12199 of 2018.
4.	SC Bhalla (impleaded on 01.11.2008)	1%	Defendant No. 3(a)	<ul style="list-style-type: none"> Respondent No. 3(a) (Thr. LR) in SLP (C) No. 12198 of 2018. Respondent No. 1 (Thr. LR) in SLP (C) No. 12199 of 2018.

Digital Supreme Court Reports

5.	Ajay Aggarwal	17%	Defendant No. 4	<ul style="list-style-type: none"> Respondent No. 4 in SLP (C) No. 12198 of 2018. Respondent No. 8 in SLP (C) No. 12199 of 2018.
6.	Neelam Agarwal	17%	Defendant No. 5	<ul style="list-style-type: none"> Respondent No. 5 in SLP (C) No. 12198 of 2018. Respondent No. 9 in SLP (C) No. 12199 of 2018.
7.	Kailash Chand Gupta	3%	Defendant No. 15	<ul style="list-style-type: none"> Respondent No. 15 in SLP (C) No. 12198 of 2018. Respondent No. 19 in SLP (C) No. 12199 of 2018.
8.	Indu Bala	3%	Defendant No. 16	<ul style="list-style-type: none"> Respondent No. 16 in SLP (C) No. 12198 of 2018. Respondent No. 20 in SLP (C) No. 12199 of 2018.
9.	Sahil Gupta	3%	Defendant No. 17	<ul style="list-style-type: none"> Respondent No. 17 in SLP (C) No. 12198 of 2018. Respondent No. 21 in SLP (C) No. 12199 of 2018.
10.	Pratik Gupta	3%	Defendant No. 18	<ul style="list-style-type: none"> Respondent No. 18 in SLP (C) No. 12198 of 2018. Respondent No. 22 in SLP (C) No. 12199 of 2018

**Rajinder Kaur (Deceased) Through Legal Heir Usha v.
Gurbhajan Kaur (Deceased) Through Lrs Upinder Kaur and Others**

11.	Ankita Gupta	3%	Defendant No. 19	<ul style="list-style-type: none"> Respondent No. 19 in SLP (C) No. 12198 of 2018. Respondent No. 23 in SLP (C) No. 12199 of 2018.
-----	--------------	----	---------------------	--

14. No dispute has been raised regarding partition of the property by the Trial Court by any of the co-sharers. It is not a matter of dispute that in terms of law laid down by this Court in [Resident's Welfare Association and Another vs Union Territory of Chandigarh and Others](#)¹¹ interpreting the 1960 Rules, there cannot be partition of property by metes and bounds at Chandigarh. Hence, the only solution was for sale of property by way of auction. This was the decree passed by the Trial Court, which was not challenged by any of the co-sharers on this issue.
15. It has now come on record that defendant No.3(a), who purchased 1% share from the defendant No.3, is in possession of half portion of the ground floor which according to him has not been let out. Another half portion of the ground floor is stated to be in possession of the respondents-defendant Nos.15 to 19, who purchased 15% shares from the defendant Nos.6 to 9 during the pendency of the civil suit and are utilizing the same for their own business. Defendant Nos.4 & 5 are stated to be in control of the first and second floor of the property which are under the tenancy of different tenants. They do not have any grievance against the direction issued by the Trial Court regarding rendition of accounts of the rent collected by them. In fact, they have already rendered the accounts.
16. The effect of the judgment of the High Court is that the co-sharers in the property to the extent of 16% are not liable to render accounts.
17. Firstly, we deal with the issue regarding rendering of accounts by the defendant No.3(a), who had stepped into the shoes of defendant No.3 as he had purchased his share during the pendency of this suit. It is not in dispute that the defendant No.3 was owing only 1% of the share in the property in question, whereas he had possession of a substantial part thereof and handed over the possession of the same to the defendant No.3(a).

Digital Supreme Court Reports

18. Defendant No.3(a), when appeared as a witness before the Trial Court for his examination-in-chief, filed affidavit dated 01.06.2012. He admitted that he had stepped into the shoes of defendant No.3, having purchased his share by way of a registered sale deed dated 02.06.2006. In paragraph 8 of the affidavit, he stated that he had inducted five tenants in the property, namely Sushma Kanwar, Santosh Chauhan, Deepak Sagar, Inder Pal and Gurusharan Singh. The monthly rent received therefrom was ₹1,500/-, ₹1,000/-, ₹1,500/-, ₹1,000/- and ₹800/-, respectively was also mentioned. This information was furnished by the defendant No.3(a) in compliance with an order passed by the Trial Court on 04.04.2006, the relevant parts thereof as contained in paras 23 and 26 of the said order are extracted below:

“23.In the eventuality of the partition, the plaintiff and the other co-owners shall be entitled to a share in the rent and profits so, it will be in the fitness of the things if the defendant No.3 is directed to keep the proper accounts of the amount so realized by him regarding the property in question. He is hereby directed accordingly.

xxx

xxx

xxx

26. As a result of the above detailed discussions, both the applications are disposed of accordingly. The application for receiver stands dismissed and the application under Order 39 rule 1 & 2 r/w 151 CPC stands disposed of with the directions to defendant No.3 and the remaining defendants to keep the proper accounts of the amount so realized by them regarding the property in dispute, like rent etc., and in case, the defendant No.3 lets out the demised premises to anyone after obtaining the possession, he will intimate the court in advance with complete particulars of the person and will also intimate such person that he will be bound by the final outcome of the partition proceedings, and defendant No.3 and the other co-owners will not create any kind of charge on the property in dispute, so as that the rights of the parties after partition can be protected.”

- 18.1. To put the record straight with reference to the amount of rent claimed to have been received by the defendant No.3(a), it is relevant to refer to the fact that the learned Additional District Judge vide order dated 24.05.2010 had appointed the receiver.

**Rajinder Kaur (Deceased) Through Legal Heir Usha v.
Gurbhajan Kaur (Deceased) Through Lrs Upinder Kaur and Others**

The receiver visited the spot (property in question) and informed that none of the tenants as pointed by defendant No.3(a)-S.C. Bhalla was occupying the premises. The Trial Court in its order passed on 27.02.2012 found that the documents (rent notes as were available in the record of the Trial Court)¹² produced by defendant No.3(a)-S.C. Bhalla showing tenancy of the portion of the building in his possession has doubt of genuineness thereof. It was also noticed that the plaintiff was ready to pay ₹1,50,000/- per month as rent for the portion in possession of defendant No.3(a)-S.C. Bhalla. Hence, it would not be possible that he would rent out the same @ ₹5,800/- per month. Be that as it may, this matter will require examination by the Trial Court in the course of passing the final decree.

19. As far as defendant Nos.15 to 19 are concerned, admittedly they are purchasers of the property from defendant Nos.6 to 9 during the pendency of the suit. It is claimed by them that they are carrying on their own business in the portion in their possession and have not let out the same to anyone. Hence, not generating any income therefrom by way of letting out the property. The First Appellate Court held that they are owners to the extent of 15% share in the property and are stated to be in possession of front half portion on the ground floor of the show-room (property in question), stated to be about 1,050 sq. ft. The First Appellate Court had accepted their contention, relieving them from liability to render accounts on the ground that they are in possession of the suit property to the extent of their ownership, a fact yet to be determined. The value of the portion of different floors of the suit property may be different, hence, the value of shares.
20. As noticed earlier, the issue raised by the plaintiff seeking partition of the joint property before this Court is only with reference to rendition of accounts by the defendant No.3(a) and defendant Nos. 15 to 19. The opinion expressed by the High Court in the impugned judgment, that both of them are not liable to render any accounts, deserves to be set aside.

12 (i) Dated 10.10.2008 executed between S.C. Bhalla [D-3(a)] and Deepak Rai
(ii) Dated 15.10.2008 executed between S.C. Bhalla [D-3(a)] and Santosh Chauhan
(iii) Dated 18.10.2008 executed between S.C. Bhalla [D-3(a)] and I.P. Sharma
(iv) Dated 24.10.2008 executed between S.C. Bhalla [D-3(a)] and Gursharan Singh
(v) Dated 24.10.2008 executed between S.C. Bhalla [D-3(a)] and Sushma Kanwar

Digital Supreme Court Reports

- 20.1. As far as defendant No.3(a) is concerned, as noticed above, he, being in possession of part of the property on the ground floor, had claimed that he had let out that to five tenants @ ₹5,800/- per month. When the receiver was appointed, defendant No.3(a) wanted to deposit with him the rent collected from tenants. The receiver refused to accept the rent. An application filed by the defendant No.3(a)-S.C. Bhalla before the Trial Court for a direction to the receiver to receive a cheque dated 25.08.2011 for ₹87,000/- was disposed of with the observation that the receiver had rightly refused to receive the alleged rent as the alleged tenancies created by S.C. Bhalla were found to be *prima facie* not genuine. He shall be bound to render the accounts at the time of partition as observed by the High Court in its order dated 08.08.2011. The reference can be made to the order dated 27.02.2012 passed by the Trial Court while disposing of the applications filed by the receiver and the defendant No.3(a).
21. Since it is the admitted case of the defendant No.3(a) himself that he had rented out a portion of the property and collected rent therefrom, there was no good reason for the High Court to have absolved him from rendition of accounts. However, this is with a rider as the plea sought to be raised by the defendant No.3(a) regarding rent notes produced by him were *prima facie* found to be sham transactions, as the market rate of the rent of the portion in control of the defendant No.3(a) was much more at that time. Even plaintiff offered ₹1,50,000/- per month. Hence, Trial Court will have to hold an inquiry on this aspect and fix appropriate rent to which the defendant No.3(a) would be liable to contribute to the common kitty for appropriation amongst all the co-sharers.
- 21.1. As far as the argument raised by the learned counsel for the defendant No.3(a)-S.C. Bhalla regarding application filed in the High Court offering to hand over possession of the property in his possession is concerned, as annexed in the present paper book at page No.343, the application was traced out from the record and the same bears No.CM-12168-C-2017 in RSA-2761-2016. It is evident from the order passed by the High Court dated 30.01.2018 that the aforesaid application was directed to be heard with the main case. Meaning thereby that the defendant No.3(a) may not be serious about the prayer

**Rajinder Kaur (Deceased) Through Legal Heir Usha v.
Gurbhajan Kaur (Deceased) Through Lrs Upinder Kaur and Others**

made in the application. It is further evident from the fact that at the time of the final argument of the appeal against the prayer made in the application was not pressed as there is no discussion on the same and the issue was not raised by defendant No.3(a) thereafter.

- 21.2. The High Court misdirected itself in recording the finding that the defendant No.3(a)-S.C. Bhalla, being in self-occupation of the part of the property, being a co-sharer, will not be liable to render any accounts to arrive at such a conclusion. Reference was made to the fact that his vendor (defendant No.3-Bhupinder Singh) has contested litigation with the tenant (defendant No.10-M/s. H.M. Traders) and spent huge amount thereon. But the fact remains that the defendant No.3(a)-S.C. Bhalla has purchased the property from defendant no.3-Bhupinder Singh after it had already been vacated by the tenant and he was handed over vacant physical possession thereof.
22. As far as defendant Nos.15 to 19 are concerned, there is no dispute that the portion in their possession has not been rented out to any third party. But it is also a fact admitted by them that they are carrying their own business in the portion in their possession. They have been absolved from rendering account on the ground that the portion in their possession is to the extent of their share in the property. However, this issue has not been determined by any authority. The fact remains that the defendant Nos.15 to 19 are carrying on their own business in the property in question in their possession and earning therefrom. Had their business been carried on in a rented premises, they would have certainly paid some rent. In case, during the course of proceedings for passing of final decree, the Court determines that the defendant Nos.15 to 19 were in actual physical possession of the property in question to the extent of their share, they may not be liable to contribute any amount in the kitty and subsequently will not be entitled to any share from the total amount in the kitty coming out of the amount collected from other portion of the property i.e. 85%. However, in case it was found that they are in possession of portion more than their share, there can be two options; either they contribute to the common kitty for the entire portion of the property in their possession and then get share therefrom or they may be held liable to contribute to the common kitty for the property in their possession beyond their share and subsequently they will not be

Digital Supreme Court Reports

entitled to any share from the common kitty. However, such an option will have to be exercised by the defendant Nos.15 to 19 before assessment of the rent, to be paid by the aforesaid defendants and not after the rent has been assessed by the Trial Court.

23. The appeals are accordingly allowed. The impugned judgments passed by the High Court are set aside. There shall be no order as to costs. It is directed that the defendant No.3(a)-S.C. Bhalla and defendant Nos.15 to 19, namely, Kailash Chand Gupta, Indu Bala, Sahil Gupta, Pratik Gupta and Ankita Gupta, respectively shall be liable to render accounts and/or liable to contribute rent as assessed by the Trial Court during the course of passing of final decree for the portions in their respective possession. This Court has already elaborated the course which needs to be adopted in para '22' hereinabove insofar as defendant Nos.15 to 19 are concerned.
24. It is further clarified that after the sale of the property if any of the co-sharers fail to contribute any amount to the common kitty for distribution amongst all the co-sharers as determined by the Trial Court, the distribution of the amount so collected after the sale of the property shall be reduced to that extent from the share of that co-sharer.
25. We may notice here that the suit for partition was filed way back in the year 2005. The matter is pending at the stage of passing of preliminary decree for the last about two decades that too in a case where the share of the parties is not in dispute. The only dispute was with reference to rendition of accounts by two of the co-sharers. Issues regarding whom have been dealt with in this Judgment we direct the Trial Court to expedite the proceedings and dispose of the same within a period of nine months from the date of receipt of this order.

Result of the case: Appeals allowed