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

101-2

RSA-1720-1994 (O&M)

Date of decision: 17.07.2026

Surinder Pal Kaur (Deceased) Through LRs. and another

....Appellants

Vs.

Rattan Singh and others

....Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Vijay Kumar Jindal, Senior Advocate assisted by
Mr. Abhishek Shukla, Advocate
for the applicants/appellants.

Respondents No.1 to 4 – proceeded against *ex parte*.

HARSH BUNGER J.

1 Present regular second appeal, has been filed by appellants/plaintiffs seeking setting aside of the judgment and decree dated 09.11.1993 passed by learned Additional District Judge, Jalandhar, whereby, the learned First Appellate Court has set aside the judgment and decree dated 29.10.1988 passed by learned Trial Court in favour of the plaintiffs and further dismissed the suit for declaration filed by the plaintiffs.

2. For convenience, the parties are being addressed as per their status in the original suit.

3. Plaintiffs filed a suit for declaration that they are owners in possession of land comprised in khatoni Nos.233, 246, 246/1, Rectangle No. 90 Killa No.25(8-0), Rectangle No.102 Killa No.10(8-0), Khatoni No.246/1, Rectangle No.103 Killa No. 4(8-0), 5(8-0), 6(8-0), 7(8-0), Rectangle No. 90,

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Killa No.24/2(6-0), with all rights in the tubewell, paths, water channels, trees and all other rights appurtenant thereto situated in village Gannapind, Tehsil Phillaur (as per jamabandi for the year 1981-82).

3.1 It was further averred that above-referred suit land was previously owned and possessed by defendant No.4 – Amarjit Singh, who sold the same to the plaintiffs vide two separate registered sale deeds dated 28.12.1984 and 27.12.1984 for consideration of Rs.37,500/- (each). Accordingly, it was averred that both the plaintiffs have become the owners of the suit property and have entered into possession of the same since the day of their purchase, and are continuing as exclusive owners.

3.2 It was further contended that the defendants have got no right, title or interest in the suit property, however, one day prior to the presentation of the suit, defendant No.2 (Gurbachan Singh) and defendant No. 3 (Mohan Singh), along with their associates, came to the suit property, and attempted to take forcible possession from the plaintiffs; however, the situation was averted with the timely intervention of the respectables of the village. It was pleaded by the plaintiffs that, upon inquiry, it was revealed that the defendants were alleging, some documents of title in their possession. Accordingly prayer was made, that the said documents of title alleged by the defendants are illegal, null and void, and the plaintiffs be declared the exclusive owners of the suit property.

4. Upon notice being issued in the suit, the defendants No.1 (Rattan Singh) and defendant No.2 (Gurbachan Singh), appeared in the court and filed a joint written statement, wherein the averments made in the plaint

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were denied and controverted. It was denied that the defendant No.4 was the previous owner in possession of suit property. Rather it was claimed that defendant No.1 – Rattan Singh was the owner of the suit property and he was in possession thereof, through his pattedar-Vijay Maini. It was pleaded that the power of attorney being claimed by defendant No.3 (Mohan Singh) in his favour from defendant No.1 (Rattan Singh) was illegal and without any right and defendant No.3 (Mohan Singh) had sold the suit property to defendant No.4 (Amarjit Singh) illegally and fraudulently, without the knowledge of defendant No.1 (Rattan Singh) and that the defendant No.1 had filed a suit in the Court of learned Sub-Judge 1st Class, Phillaur against defendants No.3 (Mohan Singh) and defendant No.4 (Amarjit Singh), wherein they had been restrained from alienating the suit property. Accordingly, it was stated that defendant No.4 was not competent to execute any sale deed regarding the suit property and the alleged sale, in favor of the plaintiffs, was hit by Section 52 of the Transfer of Property Act. It was further pleaded that a decree in favor of defendant No.2, and against defendants No.3 and 4, had already been passed by the learned Civil Court on 08.01.1985, declaring defendant No.2 to be the owner of the suit property with further declaration that defendants No.3 and 4 have got no right therein. The other allegations of the plaintiffs made in the plaint were also denied and prayer for dismissal of the suit was made.

5. Even defendant No.3 in the suit, filed a separate written statement controverting the claim of the plaintiffs, as pleaded in the suit. It was pleaded that sometime ago, defendant No.3 had transferred some

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property belonging to defendant No.1 – Rattan Singh, in favor of defendant No.4 – Amarjit Singh, although no consideration was passed, as the same was merely an arrangement to solve the family dispute. It was stated that defendant No.4 did not acquire any right or interest in the suit property and he also never entered into possession of the same. It was further stated that defendant No.4 had no right to execute the sale deed, and the alleged sale deed in favor of the plaintiffs, was null and void, having no effect on the rights of the defendants. It was asserted that defendant No.1 – Rattan Singh was in possession of the suit property through Vijay Maini (pattedar). All other averments in the plaint were also denied by defendant No.3 (Mohan Singh).

6. Defendant No.4 (Amarjit Singh) filed a separate written statement, wherein he admitted the claim of the plaintiffs to be true and correct. The execution of the sale deed qua the suit property in favor of the plaintiffs was admitted. It was also admitted that the possession of suit property was given to the plaintiffs, however, he denied that he ever tried to take forcible possession of the suit property from the plaintiffs. The defendant No.4, took a categorical stand that previously, he was the owner in possession of the suit property, which he had transferred by virtue of the sale deed in question in favor of the plaintiffs. It was stated that he has no objection if the suit of the plaintiffs is decreed.

7. It appears that the plaintiffs filed replication to the written statement filed on behalf of the defendant No.1 and 2 as well as defendant No.3, wherein the averments made in the plaint were reiterated.

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8. From the pleadings of the parties, following issues were framed on 03.05.1985 by the then Sub Judge Ist Class, Phillaur:-

1. *Whether the plaintiffs are owners in possession of the land in dispute as claimed in the plaint? OPP*
2. *Whether the defendants have got no right, title or interest in the land in dispute? OPP*
3. *Whether the plaintiffs are entitled to the injunction prayed for? OPP*
4. *Whether the plaintiffs have got no locus-standi to file the present suit OPD*
5. *Whether the suit is not maintainable in the present form? OPD*
6. *Whether plaintiffs are barred by their acts and conducts from filing the present suit? OPD*
7. *Whether the sale deeds in favour of the plaintiffs are barred by the provisions of Sec. 52 of the Transfer of Property Act? OPD*
8. *Whether suit is bad for misjoinder and nonjoinder of necessary parties?OPD*
9. *Whether suit is not properly valued for the purpose of court fee and jurisdiction? OPD*
- 10 *Relief.”*

9. In support of their assertions plaintiff examined Tej Pal Singh as PW1, Balbir Singh as (PW2), Bhag Singh as (PW3), Bhajan Singh as (PW4), Sushil Kumar as (PW5), Puran Singh as (PW6) and closed their case by tendering documents Ex.P7 into evidence.

10. On the other hand defendants had examined Mohan Singh as (DW1), Gian Singh as (DW2), Gurbachan Singh DW3, Didar Singh (DW4),

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Joginder Singh DW5 and closed their case. In rebuttal plaintiff has examined defendant No.4 as PW7 and Amarjit Singh Ahlmad as (PW6).

11. The learned Trial Court vide judgment and decree dated 29.10.1988, decreed the suit of the plaintiffs by declaring them to be the owners in possession of the suit property and further restraining the defendants from dispossessing the plaintiffs from the suit land illegally and forcibly, except in due course of law.

11.1 Feeling aggrieved against the aforesaid judgment and decree dated 29.10.1988, defendant No.1 – Rattan Singh as well as defendant No.2 – Gurbachan Singh preferred an appeal before the learned District Judge, Jalandhar, which came to be entrusted to the learned Additional District Judge, who, vide the impugned judgment and decree dated 09.11.1993, allowed the appeal by setting aside the Trial Court judgment and decree dated 29.10.1988 and further dismissed the suit filed by the plaintiffs.

12. In the aforementioned circumstances, the plaintiffs have filed the present regular second appeal before this court.

13. A perusal of the order sheets would reveal that on 29.07.2025, a co-ordinate Bench of this Court has passed the following order:-

“It is submitted by learned counsel for the appellants that vide last order the appellants were directed to furnish the latest and correct address of the LRs of the contesting respondent No.1. Learned counsel submits that since the said LRs are stated to be residing abroad, therefore, he could not procure their latest and correct addresses; and also could not furnish the Foreign Registered Acknowledgements.

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Learned counsel for the appellants again seeks some more time and permission of this Court to effect service upon LR's of respondent No.1 through publication on their last known address. Learned counsel further informs that respondents No.2 and 3 have already been proceeded against ex-parte by this Court; whereas respondent No.4 is a proforma respondent.

Heard.

Learned counsel for the appellants is permitted to serve LR's of respondent No.1 by way of publication, as prayed for, on furnishing of necessary publication charges etc. within two weeks from today in the Registry.

Adjourned to 14.1.2026.

Photocopy of this order be placed in the file(s) of connected matter(s)."

14. In pursuance to the aforesaid order dated 29.07.2025, the publication was duly carried out, however, since nobody appeared on behalf of respondents on the date fixed i.e. 14.01.2026, accordingly, the matter was adjourned to 26.02.2026. On 26.02.2026, the legal heirs of the deceased-respondent No.2 in RSA-1720-1994 and deceased-respondent No.1 in RSA-1598-984 were proceeded against ex parte, and the matter was listed for final arguments.

15. I have heard learned Senior Counsel appearing on behalf of the appellants and perused the paperbook with his able assistance.

16. The question which arises for consideration before this Court is:-

"whether in the peculiar facts and circumstances of this case and also in the light of evidence available on record, the

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Appellant(s)/Plaintiff(s) are entitled to a decree of declaration that they are owner in possession of suit property?”

17. Having considered the matter in its entirety it is observed that originally defendant No.1 - Rattan Singh was the owner of the suit property and defendant No.3 - Mohan Singh (being the attorney of his brother Rattan Singh) sold the land in favour of defendant No.4 (Amarjit Singh) vide sale deed dated 08.04.1981, although the said power of attorney was revoked in the year 1976. Thereafter, defendant No.1 (Rattan Singh) filed a Civil Suit No.281 of 1983, seeking declaration that he is owner of the land in question and the sale deed dated 08.04.1981 executed by Mohan Singh in favour of Amarjit Singh (on the basis of alleged power of attorney) is illegal, null and void, ineffective, bogus, without jurisdiction and is not binding on its rights.

18. It has come on record that in the Civil Suit No.281 of 1983, an order dated 24.08.1983 (Exhibit D-1) was passed against Mohan Singh and Amarjit Singh, whereby they were restrained from alienating the suit land. It has also come on record that vide order dated 03.11.1983 (Exhibit D-2), written statements were filed by defendants in the Civil Suit No.281 of 1983.

18.1 In fact, the sale deed dated 08.04.1981, on the strength of which Amarjit Singh claimed to be the owner of the suit property; was subject matter of adjudication in the aforesaid Civil Suit No.281 of 1983. The learned First Appellate Court has clearly recorded in para No.13 of its judgment dated 09.11.1993 that Amarjit Singh was duly served in Civil Suit No.281 of 1983, wherein, he was restrained from alienating the land.

18.2 It is not disputed that during the pendency of the aforesaid Civil Suit No.281 of 1983, Amarjit Singh executed sale deeds dated 27.12.1984



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and 28.12.1984 in favour of Saranjit Kaur (plaintiff No.2) and Surinder Paul Kaur (plaintiff No.1) respectively.

18.3 Subsequently, Civil Suit No.281 of 1983 came to be decreed in favour of Rattan Singh vide judgment and decree dated 08.01.1985 (Exhibit D-3) on the basis of a compromise. A copy of the judgment dated 08.01.1985 rendered in Civil Suit No.281 of 1983, reads as under:-

*“In the court of Shri S.S. Sandhu Sub Judge Ist Class Phillaur
Civil Suit no. 281 of 1983*

Date of Institution: 23.8.1983

Date of Decision: 8.1.1985

*"Rattan Singh son of Shri Dhanna Singh son of Chanya Singh
resident of Village Ganapind tehsil Phillaur at present U.K.
through Shri Gurbachan Singh son of Dhanna Singh r/o
Ganapind Tehsil Phillaur as his attorney Plaintiff*

Versus

- 1. Mohan Singh son of Shri Dhanna Singh r/o Village
Ganapind Tehsil Phillaur*
- 2. Amarjit Singh son of Bir Singh r/o H/No. 1276/1, Azad
Nagar Ludhiana Defendants*

*Suit for declaration to the effect that the plaintiff is the
owner of the land detailed as below and the sale deed
executed by defdt no. 1 in favour of defendant no. 2 dated
8.4.81 is illegal, null and void, in effective bogus without
jurisdiction and is not binding upon the plaintiff on the
basis of the alleged power of attorney alleged to be
executed is the plaintiff in favour of defdt no. 1 of the
land detailed below:*

*5/9 share of khewat no. 188, khatoni no, 222, khasra Nos.
Rect 90, killa no. 24/2(6.0), 25/2(8.0), Rect 102 killa no.
10(8.0) Rect 103 killa no. 4(8.0) 5(8.0) 6(8.0) 7(8.0) total
measuring 54 kanals situated in the area of Village
Ganapind teh. Phillaur according to the jamabandi for
the year 1976-77 with all rights appertinent thereto and
for setting aside the sale deed dt. 8.4.81 for the above
land executed by defdt no. 1 in favour of defendant no. 2.*

Present: Counsel for the parties.

*Case taken up today on an application moved by the
parties. The parties have compromised and they have filed
written compromise EX, PX. As per the contents of the said
compromise, it is agreed that the plaintiff is owner of the*



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disputed property and the alleged sale deed dt. 8.4.81 executed by defendant no. 1 in favour of defendant no. 2 is illegal, null and void and has no legal force and it not binding on the plaintiff. Recorded the statement of Mohan Bingh defendant no. 1 on his own behalf and as general attorney of defendant no. 2 Amarjit Singh (vide a certified. copy of the general power of attorney. In view of the contents of the written compromise EX.PX and the statement of defendant no. 1 Mohan Singh the suit of the plaintiff for declaration to the effect that the plaintiff is the owner of the disputed measuring 54 kanal fully detailed in the head note of the plaint is decreed and it is further decreed that the sale deed dt. 8.4.81 executed by defendant no. 1 in favour of defendant no. 2 is illegal void and has no legal force and is not binding on the plaintiff. The written compromise EX.PX would form part of the decree and both the parties would be bound by the contents of the said compromise In the circumstances of the case. the parties are left to bear their own costs. Decree sheet be drawn accordingly. File be consigned to the record room.

*Sub Judge 1st Class
Phillaur”*

*Pronounced
08.01.1985*

19. Therefore, from the above-mentioned facts it is apparent that the sale deed(s) were executed by Amarjit Singh (Defendant No.4) in favour of the plaintiffs during the pendency of the Civil Suit No.281 of 1983 and therefore, the same were hit by the rule of *lis pendens*, as laid down under Section 52 of the Transfer of Property Act, 1882. Further, the sale deed dated 08.04.1981, which was executed by Mohan Singh (defendant No.1) by claiming himself to be an attorney of the original owner of suit land Rattan Singh, was set aside vide judgment and decree dated 08.01.1985.

20. It is well-settled that although Section 52 of the Transfer of Property Act, 1882, does not create a bar in dealing with the property, which is subject matter of litigation, however, it renders any sale of the suit property during the pendency of the suit as subservient to the rights of the parties to the litigation and also the final outcome thereof. Any party

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purchasing a property which is a subject matter of litigation, during the pendency of the litigation, is bound by the judgment that may be ultimately rendered between the parties and the same is binding on the subsequent purchasers as well, who may not be a party to the litigation.

20.1 In the present case, Amarjit Singh executed a sale deed in favour of the plaintiffs during the pendency of the Civil Suit No.281 of 1983 and that too in the teeth of the order dated 24.08.1983 (Exhibit D-1) passed in Civil Suit No.281 of 1983 whereby the defendants in the said Civil Suit No.281 of 1983 i.e. Mohan Singh as well as Amarjit Singh were restrained from alienating the suit land.

21. Before the learned First Appellate Court, as well as before this Court, it has been contended on behalf of the plaintiffs that the decree dated 08.01.1985 was a collusive decree and, therefore, not covered within the scope of the Section 52 of the Transfer of Property Act, 1882, therefore, the decree dated 08.01.1985 is not binding on the plaintiffs. The aforesaid plea on behalf of the appellants/plaintiffs that the decree dated 08.01.1985 is a collusive decree has been considered and rejected by the learned First Appellate Court by observing as under:-

“20. This submission has been considered by me and I find it to be of no avail to the plaintiffs. Similar submission had come up for consideration before the Hon'ble High Court of Punjab & Haryana, Chandigarh in a judgment reported as Pritam Singh and others Vs. Virsa Singh and others 1990 (1) Shimla Law Journal 197. After referring to the provisions of section 52 of Transfer of property Act, the Hon'ble High Court held that plea of the plaintiffs that their vendor had suffered a collusive



decree and therefore, the said decree was not binding on them cannot be accepted for the simple reason that when a person purchases a property during the pendency of the litigation, he steps into the shoes of his vendor and is bound by result of litigation. It was also held in Amar Nath's case discussed above that a decree passed upon a compromise is just as much binding as a decree founded upon a decision on merits. Since decree dated 8.1.1985 in favour of Rattan Singh appellant had left no right in the suit land in favour of Amarjit Singh, therefore, the plaintiffs did not acquire any right in the suit land through their vendor Amarjit Singh and the plaintiffs are equally bound by the judgment dated 8.1.1985 as Amarjit Singh himself,”

22. I have gone through the above-extracted findings returned by the learned First Appellate Court and I see no reason to differ from the same.

23. Furthermore, in my considered view, another issue which would arise here is as to whether it is permissible for a party to treat a judgment as null and void without getting it set aside from the competent Court. In my considered view, answer to the said issue has to be in negative i.e. NO. I say so for the reason that in the present suit, the plaintiffs have not laid any challenge to the judgment and decree dated 08.01.1985 despite the fact that the details thereof were clearly brought on record in the written statement filed on behalf of defendant No.1 (Rattan Singh).

24. Once defendant No.1 (Rattan Singh) had clearly detailed the factum of pendency of Civil Suit No.281 of 1983 between Rattan Singh and Amarjit Singh (vendor of the present plaintiffs) and also the passing of the judgment and decree dated 08.01.1985; the plaintiffs should have amended their suit by making appropriate pleadings in the plaint, especially as regards

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the plea of collusion. Concededly, no such recourse was taken by plaintiffs in the present case. Here, it would be beneficial to refer to few judicial pronouncements rendered by Hon'ble Supreme Court:

24.1 The Hon'ble Apex Court in the case titled as “**Meghmala & Others Vs. G. Narasimha Reddy & Others**”, reported as (2010) 8 SCC 383 has considered the aspect that as to whether it is permissible for a party to treat the judgment and order as null and void without getting it set aside from the competent court. The Hon'ble Apex Court held that the said issue is no more res-integra and has been settled by a catena of decisions i.e.,

- (i) State of Kerala Vs. M.K. Kunhikannan Nambiar Manjeri Manikoth Naduvil (dead) & Others, reported as AIR 1996 SC 906;
- (ii) Tayabbhai M. Bagasarwalla & Another Vs. Hind Rubber Industries Pvt. Ltd., reported as AIR 1997 SC 1240;
- (iii) Sultan Sadik Vs. Sanjay Raj Subba & Others, reported as AIR 2004 SC 1377.

24.2 The Hon'ble Apex Court in the case of **Tayabbhai M. Bagasarwalla (supra)** has held that for setting aside such an order, even if void, the party has to approach the appropriate forum.

24.3 The Hon'ble Apex Court in **Sultan Sadik (supra)** held that even if an order is void or voidable, the same requires to be set aside by the competent court.

24.4 The Hon'ble Apex Court in the case titled as “**M. Meenakshi & Others Vs. Metadin Agarwal (dead) by Lrs. & Others**”, reported as (2006) 7 SCC 470 has considered the issue in extenso and observed that if the party feels that the order passed by the court or a statutory authority is

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non-est/void, it should question the validity of the said order before the appropriate forum by resorting to the appropriate proceedings. The findings of the Hon'ble Apex Court in the said decision were thereafter quoted with approval as hereunder:

"It is well settled principle of law that even a void order is required to be set aside by a competent Court of law, inasmuch as an order may be void in respect of one person but may be valid in respect of another. A void order is necessarily not non-est. An order cannot be declared to be void in collateral proceedings and that too in the absence of the authorities who were the authors thereof."

24.5 The Hon'ble Apex Court also took note of its earlier decision in the case titled as ***"Sneh Gupta Vs. Devi Sarup & Others"***, reported as ***(2009) 6 SCC 194*** reiterating the similar view. The said decision was restated by the Hon'ble Apex Court in ***"Union of India and Others Vs. Major S.P. Sharma and Others"***, reported as ***(2014) 6 SCC 351***. Paragraph 70 of the said decision assumes relevance in this context and it reads as under:

"A decision rendered by a competent Court cannot be challenged in collateral proceedings for the reason that if it is permitted to do so there would be "confusion and chaos and the finality of proceedings would cease to have any meaning."

24.6 The essence of the decision is that even if a decree or an order is non-est or void in the estimation of a party, the party who is entertaining such a feeling should approach the appropriate forum in appropriate proceedings and get it set aside and unless the court of competent jurisdiction set aside such decree or an order over which the party



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entertained such a feeling it could not be said to be non-est whilst it has to be treated as valid.

25. In view of the above discussions, I see no illegality or perversity in the judgment and decree dated 09.11.1993 passed by learned Additional District Judge, Jalandhar, whereby the suit filed by the appellants/plaintiffs was dismissed. Resultantly, the instant regular second appeal is accordingly *dismissed*.

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

17.07.2026
ankit

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No