

2026:PHHC:095984



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

103

**(1) RSA-1207-1997 (O&M)
Date of decision :15.07.2026**

KARNAIL SINGH

... APPELLANT

VERSUS

JARNAIL SINGH AND OTHERS

...RESPONDENTS

(2) RSA-3040-2016 (O&M)

KARNAIL SINGH

... APPELLANT

VERSUS

JARNAIL SINGH AND ORS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

**Present: Mr. Deep Inder Singh Walia, Advocate,
for the appellant (in both appeals).**

**Mr. Abhimanyu Kalsy, Advocate and
Mr. A.K. Kalsy, Advocate
for respondent No. 1 (in both appeals)**

**Ms. Pallavi Bahre, Advocate for
Mr. A.P. Kaushal, Advocate,
for respondent No. 3. (in both appeals).**

PARMOD GOYAL, J. (ORAL)

RSA No. 1207 of 1997

1. Present appeal has been preferred by appellant-plaintiff being aggrieved by the judgment and decree dated 05.02.1990 passed by the then learned Sub Judge, First Class, Ludhiana, whereby suit for partition preferred by appellant-plaintiff was dismissed and by judgment and decree dated

13.11.1996 passed by the then learned Additional District Judge, Ludhiana
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integrity of this document

whereby his first appeal was also dismissed.

2. In the present case, appellant-plaintiff had asserted that by virtue of Will dated 17.05.1973, he has become the owner of 1/5th share in the suit property and, accordingly, sought partition and separate possession of his 1/5th share in the immovable property described in the plaint. During pendency of suit he also claimed share of defendant Nos. 2 and 3 on the basis of relinquishment of their right in favour of appellant-plaintiff in view of settlement with them.

3. In the present case, there is no dispute regarding the due execution and validity of the Will dated 17.05.1973, as both the plaintiff and the defendants have relied upon the same. The only dispute pertains to the interpretation of the Will, particularly with regard to its enforceability and the respective rights of the plaintiff and the defendants during the lifetime of respondent No. 5, Ravail Kaur, the widow of the testator.

4. Perusal of the Will dated 17.05.1973 reveals that the testator, namely Kundan Singh, had contemplated two eventualities:

- (i) in the event his wife, Ravail Kaur, predeceased him; and
- (ii) in the event he died during the lifetime of his wife.

Admittedly, Ravail Kaur survived Kundan Singh as he died on 15.05.1977, whereas Ravail Kaur died on the intervening night of 14.04.2002 and 15.04.2002. While executing the Will dated 17.05.1973, Kundan Singh had specifically declared that in the event his wife predeceased him, the entire insurance compensation along with all his properties would devolve upon and be divided amongst his five sons, i.e., appellant-plaintiff and respondents-defendant Nos. 1 to 4. However, in the eventuality of his wife, Ravail Kaur, surviving him, the insurance amount was to be received by Ravail Kaur and a

lifetime interest was created in her favour in respect of the properties. After her death, the said properties were to devolve upon their five sons, i.e., appellant-plaintiff and respondents-defendant Nos. 1 to 4.

5. The suit for partition was instituted in the year 1984, which was much prior to the death of his mother-respondent No. 5, Ravail Kaur. Both the learned Courts below have concurrently held that the suit for partition filed by the appellant-plaintiff was premature, as during the lifetime of respondent No. 5-Ravail Kaur, the suit property could not have been partitioned since she had been granted a life interest therein under the Will executed by Kundan Singh. Consequently, the suit filed by the plaintiff was held premature and was dismissed.

6. On consideration of the matter, I do not find any error in the interpretation of the Will by both the Courts below with regard to its contents and effect. Admittedly, since respondent No. 5 Ravail Kaur survived Kundan Singh, she was conferred with right to enjoy the suit property during her lifetime, including the right to let out the property as she deemed appropriate and to receive the rent and income accruing therefrom.

7. Therefore, the intention of the testator was clear that during the lifetime of Ravail Kaur, the suit property could not have been partitioned amongst the beneficiaries. However, it is an admitted fact that Ravail Kaur died subsequently in the year 2002, and with her death, the provisions of the Will dated 17.05.1973 became operative. Both the parties are now in agreement that they have no objection to the implementation of the Will and to partition being effected in accordance with the terms of will dated 17.05.1973.

8. In view of the above-noted facts and the changed circumstances, the suit filed by the appellant-plaintiff is hereby decreed. It is held that the

appellant-plaintiff shall be entitled to 1/5th share in the suit property, along with his other brothers, who shall also be entitled to 1/5th share each in terms of the Will dated 17.05.1973. The preliminary decree of partition be prepared, and the learned Court of first instance shall proceed to draw the final decree of partition in accordance with law.

9. The second issue raised by learned counsel for the appellant-plaintiff relates to the share of Kirpal Singh and Manjit Singh, i.e., respondent-defendant Nos. 2 and 3. It is the case of the appellant-plaintiff that, subsequent to the filing of the suit, both his brothers had relinquished their respective shares in favour of appellant-plaintiff. On the basis of the said subsequent development, the appellant-plaintiff moved an application for amendment of the plaint so as to incorporate and establish the aforesaid facts regarding the relinquishment of shares by respondent-defendant Nos. 2 and 3 in his favour.

10. Application for amendment of the plaint was filed by the appellant-plaintiff on 20.04.1991. The said application, however, was dismissed vide order dated 08.06.1991. Aggrieved against the dismissal of his application, the appellant-plaintiff had approached the Revisional Court by filing Civil Revision No. 2587 of 1991. Vide order dated 20.11.1991 passed by this Court, the aforesaid revision petition filed by the appellant-plaintiff was allowed, and the amendment sought in the plaint was permitted. Consequent thereto, additional issues No. 5-A to 5-E were framed for adjudication.

11. The learned Appellate Court, vide order dated 06.02.1992, framed additional issues on the basis of amended plaint, which are reproduced as under:

“5.A. A. Whether the suit is liable to be dismissed before pre-mature OPD

- 5.B. Whether the plaintiff has got cause of action, against the defendants? OPP (objected to).
- 5.C. Whether the suit is properly valued for the purpose of court fee and jurisdiction? OPP
- 5.D. Whether the plaint is vague and evasive and liable to be ejected under order 7 rule 1 CPC? OPD
- 5.E. Whether the defendants nos. 2 and 3 have compromised and agreed to relinquish their share in the property in dispute in favour of the plaintiff, if so its effect? OPP”

12. Issue No. 5-E was specifically framed to determine whether defendant Nos. 2 and 3 had entered into a compromise and agreed to relinquish their respective shares in favour of the appellant-plaintiff. After framing of the additional issues on 06.02.1992, the learned First Appellate Court sought a report from the learned Trial Court, directing it to record the evidence of the parties on the said issues. The requisite report was thereafter submitted by the learned Trial Court on 06.09.1994.

13. As regards Issue No. 5-E, which is relevant for adjudication of the present appeal, the learned Court of first instance, while submitting its report, had recorded its findings as under:

“Issue No. 5-E

It is submitted by counsel for the plaintiff that defendant no.2 entered into agreement mark C1 with plaintiff, whereas defendant no.3 alongwith his wife entered into compromise through Ex.PW2/A with the plaintiff under which, the defendants no.2 and 3 have relinquished their shares in favour of the plaintiff and as such plaintiff has not 3/5 share in the property. For proving the compromise deed Ex.PW2/A plaintiff has examined himself as PW1 besides examining Satish Kumar an attesting witness of the compromise deed Ex PW2/A as PW2 and Shri Bajinder Singh Clerk

as PW3 for proving that affidavit regarding the correctness of the agreement namely Ex.PW3/A was got attested from the Notary Public. PW4 Shri H.5. Mahal Advocate also examined for proving that he put his signatures on agreement Ex.PW2/A and that affidavit Ex. PW3/A confirming about the taking pleas of the agreement also bears signatures of defendant no.3. The existence of the agreement Ex.PW2/A has not been denied by defendant no.3 Manjit Singh while stopping in the witness box as DW1 because he admits taking place of such agreement as well as his signatures on Ex. PW2/A, but he has denied that this compromise was given affect to because DW1 claims that plaintiff has not given by him any money and i.e. why compromise deed was not produced on the record on the day of its execution. As testimony of DW1 as well as of PW4, PW1 and PW2 establishes that signatures of defendant no.3 are there on agreement Ex. PW2/A and no such certainly the taking place of this agreement between the plaintiff and defendant no.3 is proved. While going through the contents of Ex. PW2/A there remains no doubt that defendant no.3 alongwith his wife relinquished their 1/5th share in the suit property in favour of plaintiff subject to receipt of amount of Rs.40000/- as price of their share. Testimony of the witnesses of the plaintiff is totally silent regarding the payment of this Rs. 40000/- to defendant no.3 or by his wife and be such even if testimony of the witnesses of the plaintiff speaks to taking place of agreement Ex. PW2/A, but despite that testimony of witnesses of the plaintiff does not establish the passage of consideration as per terms of Ex.PW2/A to defendant no.3 and as such in such circumstances the testimony of DW1 can not be disbelieved that infact the agreement was arrived at but it has not been acted upon. If DW1 has not lodged any complaint in the Court or before any official regarding the circumstances in which agreement was arrived at, despite that the agreement can not be held to be for consideration. The bare execution of the agreement is distinct fact than that of the proof of the agreement being for

consideration. As plaintiff is claiming relinquishment of share of defendants no.2 and 3 under the agreement in question and as such it is for the plaintiff to prove that all the terms of the agreement mark C and Ex.PW2/A were carried out. PW4, a witness of the plaintiff claims that the agreement was not signed in his presence by any of the parties and even he claims that no money was paid in his presence and as such it is obvious that even a witness of the plaintiff is alleging specifically the non-passage of the consideration at the time of execution of agreement Ex.PW2/A. Even if the affidavit Ex.PW2/A showing the passage of consideration is held to be proved by testimonies of PW3 and PW4, despite that the passage of consideration can not be said to be proved because the testimony of witnesses of plaintiff is silent. DW1 has not been put any question in cross-examination for disproving his version in examination-in-chief that he has not been paid the money. Besides this specific plea regarding the taking place of this agreement is not taken in the amended plaint but in replication only and this also shows that plaintiff in fact want to conceal certain facts regarding the taking place of this agreement and i.e. why the plea was not taken in the plaint but through back door in the replication. As per ratio of case Mahant Mala Ram Chela Mahant Inder Dass. Vs. Shiromani Gurudwara Parbandhak Committee, Amritsar AIR 1992 Punjab & Haryana 252 and a party should put to each of opponent's witness so much of his case as concerns that witnesses and failure to do so may lead the Court to presume that the witness 's account is accepted. In the case before me no question is put to DW1 that he has received consideration amount under Ex.PW2/A, even though DW1 denies that receipt of such consideration in examination-in-chief and as such it is obvious that in view of the ratio of the above cited authority Court may presume that testimony of DW1 is correct that agreement Ex.PW2/A is without consideration. Another attesting witness Avtar Singh is examined as DW2 for proving that his signatures obtained in the

agreement Ex.PW2/A in the Court compound but no money passed from plaintiff to defendant no.3 in his presence because he claims that the talk regarding the consideration was to take place inside the Court Room. So bare existence of the signatures of defendant No. 3 on agreement Ex. PW2/A is not enough to prove that due execution of the agreement Ex.PW2/A is proved, rather evidence on the record referred above establishes that agreement is without consideration and as such even though the taking place of the agreement between defendants no.2 and 3 proved but despite that as mark C and Ex.PW2/A are without consideration and as such in view of the provisions of section 25 of the Indian Contract Act the agreement is void. Section 25 of the Indian Contract Act provide that, “nudumpactum”, promises are unforceable and as such on proof of the execution of the agreement alone it can not be inferred that the defendants no.2 and 3 have relinquished their share in favour of the plaintiff. My findings on issue no.5-E are that the agreement mark C and Ex.PW2/A being without consideration are unforceable and defendants no.2 and 3 can not be said to have been relinquished their share in the property in dispute in favour of the plaintiff. So share of the plaintiff in my view is not more than 1/5th in the suit property. Issue no.5-E accordingly adjudged against the plaintiff.”

14. Therefore, as per the report submitted by the learned Court of first instance, which had recorded evidence on the various additional issues, it was held that as far as the alleged relinquishment by respondent No. 3 is concerned, the same could not be proved for want of proof regarding payment of consideration as agreed between the parties.

15. No specific finding, however, were recorded by the learned Additional District Judge, i.e. the First Appellate Court, on this aspect. On

reproduced above, and the appreciation of evidence led by the parties on additional Issue No. 5-E, it is apparent that respondent-defendant No. 3 along with his wife had agreed to relinquish his share in favour of the appellant-plaintiff subject to payment of Rs. 40,000/- as consideration.

16. The learned Trial Court, after appreciating the evidence led by the appellant-plaintiff as well as of respondent-defendant No. 3, concluded that the appellant-plaintiff had failed to prove payment of the aforesaid consideration amount of Rs. 40,000/-. In order to establish that the consideration had actually been paid to respondent-defendant No. 3, the appellant-plaintiff placed reliance upon affidavit regarding correctness of the agreement Ex. PW-3/A, allegedly executed by respondent-defendant No. 3. However, the said affidavit was not accepted by the learned Court of first instance after considering the entire evidence on record.

17. The said finding recorded by the learned Court of first instance, on an overall appreciation of the evidence, cannot be said to be erroneous or perverse. The onus to prove that the consideration amount of Rs. 40,000/- had been paid to respondent-defendant No. 3 was upon appellant-plaintiff. The appellant-plaintiff, while appearing as PW-1, remained completely silent regarding payment or passing of the said consideration PW-4 witness to compromise also stated that no consideration was paid/exchanged in his presence.

18. Furthermore, when respondent-defendant No. 3, stepped into the witness box as DW-1, he was neither confronted with the issue of payment of consideration nor any suggestion was put to him that the consideration amount had already been paid. He was also not confronted with the alleged affidavit

relied upon by the appellant-plaintiff.

19. In these circumstances, the conclusion drawn by the learned Court of first instance in its report dated 06.09.1994 cannot be held to be erroneous, as the same is based upon appreciation of evidence available on record. The appellant-plaintiff has failed to prove that the amount of Rs. 40,000/-, stated to be the consideration for relinquishment of rights by respondent-defendant No. 3, was actually paid to him. In the absence of proof of payment of consideration, the alleged agreement of relinquishment cannot be enforced against respondent-defendant No. 3.

20. Accordingly, Issue No. 5-E is decided against the appellant-plaintiff *qua* respondent-defendant No. 3.

21. As regards to respondent-defendant No. 2, there is no report or contest by respondent-defendant No. 2 regarding relinquishment of his share in favour of appellant-plaintiff. Therefore, in the present case, the appellant-plaintiff shall be entitled to 1/5th share falling to his own share as well as the share of respondent-defendant No. 2, which stands relinquished in his favour. Respondent-defendant Nos. 1, 3 and 4 shall also be entitled to 1/5th share each in terms of the Will dated 17.05.1973. The learned Trial Court shall proceed to pass the final decree expeditiously, preferably within a period of three months.

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22. Appellant-plaintiff, who is also the appellant-plaintiff in the present appeal bearing RSA No. 1207 of 1997, had by another suit sought decree of permanent injunction in respect of his alleged share, which was stated to be in his possession, as well as regarding the common areas on the ground floor.

23. In view of the fact that the suit for partition filed by the appellant-

plaintiff has been allowed and directions have been issued to the learned Court of first instance to draw the final decree of partition, the relief sought by the appellant-plaintiff in the aforesaid appeals has become infructuous and no further adjudication is required. The injunction already granted by the learned Court of first instance in suit from which RSA No. 1207 of 1997 had arisen shall continue till the partition is effected by the Court. At the time of effecting partition, the learned Court shall be at liberty to adjudicate upon the issue relating to the common areas in accordance with law.

24. With the aforesaid observations and directions, the present appeals are disposed of. The judgments and decrees passed by the Courts below are modified to the extent indicated above. The appellant-plaintiff shall be entitled to partition of the suit property in terms of the Will dated 17.05.1973 and the shares determined hereinabove.

25. The learned Trial Court shall proceed to draw the final decree expeditiously, preferably within a period of three months from the date of receipt of a certified copy of this order.

26. Pending miscellaneous application(s), if any, also stand(s) disposed of accordingly.

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

15.07.2026
manoj

(PARMOD GOYAL)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes/No