

In the High Court of Punjab and Haryana, at Chandigarh

1. Regular Second Appeal No. 1461 of 2023 (O&M)

Harbhajan Singh and Others

... Appellant(s)

Versus

Gurmail Singh (Now Deceased) through his Legal Heirs and Others

... Respondent(s)

2. Execution Second Appeal No. 43 of 2022 (O&M)

Harbhajan Singh and Others

... Appellant(s)

Versus

Gurmail Singh (Now Deceased) through his Legal Heirs and Others

... Respondent(s)

AND

3. Execution Second Appeal No. 20 of 2023 (O&M)

Surjit Singh (Now Deceased) through his Legal Heirs and Others

... Appellant(s)

Versus

Gurmail Singh (Now Deceased) through his Legal Heirs and Others

... Respondent(s)

Reserved On: 18.10.2023
Pronounced On: 16.11.2023

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Chetan Mittal, Senior Advocate
with Mr. Kunal Mulwani, Advocate
for the appellants (In RSA-1461-2023 and ESA-43-2022).

Mr. H.S.Sehgal, Advocate
for the appellants (In ESA-20-2023).

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Mr. R.S.Rangpuri, Advocate
for the respondents.

Anil Kshetarpal, J.

1. With the consent of the learned counsel representing the parties, three connected appeals i.e. Regular Second Appeal No. 1461 of 2023, Execution Second Appeal No. 43 of 2022 and Execution Second Appeal No. 20 of 2023, shall stand disposed of.

2. It would be noted here that in Regular Second Appeal No. 1461 of 2023, formal notice of motion has not been issued. However, on 18.08.2023, Mr. R.S.Rangpuri, Advocate, entered appearance for all the respondents. The learned counsels were requested to come prepared for arguments. Thereafter, the hearing of the appeal was adjourned on two different occasions. Again on 11.10.2023, the learned counsel representing the parties undertook to come prepared for the final arguments. On 18.10.2023, they not only addressed oral arguments, but also filed their written synopsis along with the gist of their arguments. The learned counsel representing the parties are also *ad idem* that all the relevant record is part of the paper-books of three appeals and the requisitioning of the lower Courts' record is not necessary.

3. After having heard the learned counsel representing the parties, the following issues require adjudication in these cases:-

- i) Whether an individual, who has no independent right except a possibility of inheritance to the property of his predecessor-in-interest, can file a suit for possession without seeking the relief of setting aside or annulling or

declaration that such decree is illegal, which was passed against his predecessor-in-interest?

ii) Whether the doctrine of *lis pendens* would be applicable even if it is proved that the previous judgment was the result of collusion?

4. In order to understand the relationship between the parties, a genealogical tree of the family reads under:-

Deep Singh					
Ghumand Singh					
Inder Singh (Son)		Joginder Singh (Son)		Karam Singh (Son)	
Harnek Singh (Son)	Gurcharan Singh (Son)	Kikkar Singh (Son)	Bohar Singh (Son)	Gurmail Singh (Son)	Bachan Kaur (Wife)

5. In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed. On the enactment of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 (hereinafter referred to as “the 1952 Act”), late Sh. Ghumand Singh became the owner of the property measuring 81 kanals and 6 marlas of land (half share of 162 kanals and 12 marlas, located in village Sotha, Tehsil and District Muktsar). On 20.01.1968, he bequeathed the entire property he had in his share i.e. 81 kanals and 6 marlas of land, by way of a registered Will, in the name of his two grandsons, namely Harnek Singh and Gurcharan Singh sons of late Sh.Inder Singh.

6. Harnek Singh and Gurcharan Singh filed a Civil Suit No. 288 of 1975 (hereinafter referred to as “the 1st suit”) against late Sh.Ghumand Singh, their grandfather, seeking declaration that they are the owners in

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his grandsons, which resulted in a judgment and decree dated 04.08.1975. On 22.10.1975, Bachan Kaur and Gurmel Singh, widow and son of late Sh.Karam Singh, respectively, son of late Sh.Ghumand Singh, filed a suit for the grant of decree of declaration (hereinafter referred to as “the 2nd suit”) that they are the owners in possession of the suit land measuring 12 kanals located in village Sotha, Tehsil Muktsar, by virtue of a family settlement dated 13.03.1975 between late Sh.Ghumand Singh and the plaintiffs in the 2nd suit and hence, the decree dated 04.08.1975, obtained by Harnek Singh and Gurcharan Singh holds no ground and, thus, is said to be null and void and ineffective against the plaintiffs in the 2nd suit. From the pleadings of the parties in the aforesaid suit, the following issues were framed:-

- “1. *Whether the plaintiffs are the owners in possession of the land in dispute?*
2. *Whether the decree dated 04.08.1975 as mentioned in the plaint is illegal and void and ineffective against the rights of the plaintiffs?*
3. *Whether the plaintiffs are entitled to the injunction prayed for?*
4. *Whether the suit is bad for non-joinder of parties?*
5. *Relief.”*

7. The plaintiffs (in the 2nd suit) were proved to be in possession of the land measuring 8 kanals comprised in the rectangle No. 123 and Killa No. 6. While answering the issue No.2, the Court held that the present plaintiffs are not the parties to the decree dated 04.08.1975, therefore, it is not effective against them. Ultimately, the suit filed by the plaintiffs (in the

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2nd suit) (Bachan Kaur and Gurmel Singh) was dismissed on 29.09.1978.

The first appeal filed by the plaintiffs (in the 2nd suit), namely Bachan Kaur and Gurmel Singh, was also dismissed on 03.10.1979. The Court held that Bachan Kaur is in possession of the property only as a trespasser and not in lawful possession.

8. On 19.11.1979, Gurmel Singh, son of late Sh.Karam Singh, filed yet another suit (hereinafter referred to as “the 3rd suit”) for the grant of decree of possession of the land measuring 33 kanals i.e. 1/3rd share of the land measuring 99 Kanals against Harnek Singh, Gurcharan Singh, Kikar Singh, Bohar Singh, Sher Singh and Kishan Singh. In the aforesaid suit, on the appreciation of the pleadings, the trial Court had framed the following issues:-

- “1. Whether the plaintiff is the son of Karam Singh son of Ghamand Singh? OPR
2. Whether the suit is bad for non-joinder of necessary parties? OPD
3. Whether the suit is barred by resjudicata? OPD
4. Whether the suit is not maintainable in the present form as alleged in Para 5 of the preliminary objections of the written statement? OPD
5. Whether defendants No.5 and 6 are bonafide purchasers? If so, its effect? OPD 5 and 6.
6. Whether Ghamand Singh deceased executed a valid Will dated 10.01.1963 in favour of defendants 1 and 2? If so, its effect? OPD 1 and 2.

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7. *Relief.”*

9. In the 3rd suit, Sher Singh and Kishan Singh sons of Ram Singh were defendants No.5 and 6. The Civil Court, while answering issue No. 3, held that the defendants had not led any evidence, therefore, the suit is not barred by the principle of *res judicata*. While answering the issue No.4, the Court held that the suit is not liable to be dismissed merely on the ground that the plaintiffs have not claimed the setting aside of the judgment and decree dated 04.08.1975. The trial Court, in para 20 of the judgment, held that the property in dispute in the hands of late Sh. Ghumand Singh was not his ancestral property because he was previously in possession of the property as an occupancy tenant and he became the owner after making the payment in accordance with the 1952 Act. The Court relied upon the judgment rendered in *Fagoria and Others v. Mst. Rajo and Another 1956 PLR 194*. Thus, the suit was dismissed.

10. Gurmel Singh filed the first appeal. The First Appellate Court held that the Will executed on 20.01.1968 by late Sh.Ghumand Singh is surrounded by ambiguities and suspicious circumstances. However, the appeal filed by Gurmel Singh was dismissed as findings of the trial Court on the remaining issues were upheld.

11. Gurmel Singh filed the regular second appeal. On 13.08.1985, the time of preliminary hearing, the appeal against the defendants No.5 and 6, namely Sher Singh and Kishan Singh was dismissed with the following order:-

“Admitted as against respondents No.1 to 4. The appeal

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against respondent No.5 and 6 is dismissed in limine.”

12. However, at the time of final hearing, the learned counsel representing the respondents No. 1 to 4 did not contest the appeal and the Court, while allowing the appeal, observed as under:-

“Learned counsel for the respondents has fairly conceded that no appeal or cross-objections has been filed against the findings recorded by the First Appellate Court on issue No.6.

Nothing has been argued even before this Court on behalf of the respondent.”

13. Thereafter, the Court culled out the following substantial questions of law and decreed the plaintiff’s (Gurmel Singh) suit against the respondent No.1 to 4, namely Harnek Singh, Gurcharan Singh, Kikar Singh and Bohar Singh.

“...whether the suit for possession on the basis of inheritance could have been dismissed by the Courts below when the Will set up by the defendants to exclude the plaintiff from natural succession, was not held to be valid.”

14. Two Execution Second Appeals have been filed to challenge the correctness of the dismissal of the objection petitions, which were filed by the purchasers of the property through registered sale deeds from Harnek Singh and Gurcharan Singh. It would be noted here that in the 3rd suit, Sher Singh and Kishan Singh were held to be the bonafide purchasers of the land measuring 32 kanals and 18 marlas and hence, their rights were protected.

15. Execution Second Appeal No. 43 of 2022 has been filed by Harbhajan Singh, Balraj Singh and Baltej Singh sons of Jarnail Singh, who purchased the land measuring 16 kanals vide sale deed dated 09.01.1980, whereas Execution Second Appeal No. 20 of 2023 has been filed by late Sh.Surjit Singh through his legal representatives. Late Sh.Surjit Singh purchased the land measuring 14 kanals from Harnek Singh vide sale deed dated 09.01.1980.

16. Regular Second Appeal No. 1461 of 2023 has been filed by Harbhajan Singh, Balraj Singh and Baltej Singh sons of Jarnail Singh son of Sher Sigh, They have sought decree of declaration (hereinafter referred to as “the 4th suit”) that they are in possession of the land measuring 46 kanals excluding the land measuring 32 kanals and 18 marlas. They further claim that the decree of declaration dated 27.02.2008 passed by the High Court in Regular Second Appeal No. 1537 of 1985 is ineffective, inoperative and against the plaintiffs with the consequential relief of permanent injunction. The aforesaid suit has been dismissed by both the Courts below.

17. At this stage, it would be appropriate to take note of the various sale deeds executed by Harnek Singh and Gurcharan Singh. At the first instance, Gurcharan Singh sold the land measuring 32 kanals and 18 marlas, which has been compiled in the following manner:-

<i>Sr.No.</i>	<i>Date of Sale Deed</i>	<i>Seller</i>	<i>Purchasers</i>	<i>Area</i>
1.	04.04.1979	Gurcharan Singh	Sher Singh Kishan Singh	32K-18 M
2.	09.01.1980	Harnek Singh	Jarnail Singh	16K
3.	09.01.1980	Harnek Singh	Surjit Singh	14K
4.	28.06.1983	Gurcharan Singh	Surjit Singh	5K-2M

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18. The Executing Court as well as the First Appellate Court and the Courts below in the regular second appeal, while dealing with the objection petitions and the 4th suit filed by the appellants, have recorded the following reasons:-

- I) The objectors/the plaintiffs in the 4th suit are not proved to be the bonafide purchasers as they had the knowledge of the suit filed on 19.11.1979. In the 3rd suit, Sher Singh, father of Surjit Singh and grandfather of Harbhajan Singh, Balraj Singh and Baltej Singh, was not only party but was served with a notice to appear in the Court on 25.01.1980.
- II) The objectors/purchasers were required to file the Letters Patent Appeal or Special Leave Petition before the Supreme Court. Since the judgment and decree passed by the High Court has become final, therefore, it is required to be implemented.
- III) The objectors/the plaintiffs in the 4th suit have failed to prove that the decree of the High Court is a result of fraud played by the decree holder.
- IV) It was not necessary for the decree holder to get the judgment and decree dated 04.08.1975 set aside because he was not a party to the same.
- V) In execution petition, the Executing Court cannot reopen the decree passed by the Court of competent jurisdiction cannot be reopened in the execution petition.

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VI) Late Sh.Ghumand Singh was the owner of the land measuring 99 kanals and the objection of the appellants that he was the owner of the land measuring only 81 kanals and 6 marlas is without any basis.

VII) The objectors are not bonafide purchasers because various sale deeds executed in their favour are governed by the rule of *lis pendens*.

Discussion after Analysis of the Court

Question No.(ii)

19. Both the Courts below have overlooked the fact that the judgment and decree passed by the High Court was the result of collusion between the decree holder Gurmel Singh and his cousins, namely Harnek Singh, Gurcharan Singh, Kikar Singh and Bohar Singh. On a careful reading of the judgment passed by the High Court, it is evident that the regular second appeal against Sher Singh and Kishan Singh was dismissed *in limine*. Therefore, they were not expected to defend the appeal. In the appeal arising from the 3rd suit, respondent No.1 to 4 were Harnek Singh, Gurcharan Singh, Kikar Singh and Bohar Singh. The High Court has specifically noticed that the learned counsel representing the respondent did not address any argument. He further conceded that no appeal or cross objection has been filed against the findings of the First Appellate Court on issue No. 6.

20. Moreover, it is evident from the reading of the judgment passed by the High Court in ***Gurmel Singh v. Harnek Singh and Others (Regular Second Appeal No. 1537 of 1985, decided on 27.02.1985)*** that neither the

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major part of the suit property had already been sold during the pendency of the suit before the trial Court. The respondent No. 1 to 4 neither contested the appeal nor did they care to disclose the correct facts before the High Court. The parties at the time of final hearing also did not bring the judgment and decree passed on 04.08.1975 to the notice of the High Court. In these circumstances, the judgment passed by the High Court cannot be used to take away the property of the objectors/the plaintiff in the 4th suit which has been purchased vide the registered sale deeds on the payment of the sale consideration.

21. Now, let us turn our focus to Section 52 of the Transfer of Property Act, 1882 (hereinafter referred to as “the 1882 Act”), which governs the doctrine of *lis pendens* as applicable in the country. The same is extracted as under:-

“52. Transfer of property pending suit relating thereto.—
During the pendency in any Court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government, of any suit or proceeding which is not collusive and in which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

Explanation.—For the purposes of this section, the pendency of

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a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order, has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.”

22. It is evident that the rule of *lis pendens* is not an absolute rule. It admits certain exceptions including the fact that if the judgment in the previous suit is collusive. The provision of Section 52 of the 1882 Act was not meant to enable the party who had no right, title or interest to snatch away the property from the hands of the purchaser's pendente lite if the judgment has been obtained on the basis of the collusion. The rule of *lis pendens* is a rule of equity so as to protect the rights of the parties during the pendency of the suit, however, it would not be appropriate to hold that such right can be snatched away by the concealment of material facts from the Court or by a collusive decree.

Question No. (i)

23. On the careful perusal of the judgment passed by the First Appellate Court on 08.02.1985, it is evident that the First Appellate Court only declared that the registered Will executed by late Sh.Ghumand Singh on 20.01.1968 is surrounded by the suspicious circumstances. However, the

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passed on 04.08.1975 has not been either declared illegal or is declared to be the result of fraud. In fact, on the reading of the judgment passed by the High Court, it is evident that the attention of the High Court was not drawn to the judgment and decree passed against late Sh.Ghumand Singh on 04.08.1975. It was also not brought to the notice of the High Court that Gurmel Singh, at the most claims to be one of the legal heir of late Sh.Ghumand Singh. He is successor-in-interest of late Sh.Ghumand Singh. He had no independent right except a possibility of inheritance if Sh.Ghumand Singh died intestate. However, on 04.08.1975, Harnek Singh and Gurcharan Singh were granted a decree of declaration that they are owners in possession of the land measuring 81 kanals and 6 marlas in which late Sh.Ghumand Singh was one of the defendants. Unless the aforesaid decree is declared to be null, void, illegal or without jurisdiction, the same is not only binding on late Sh.Ghumand Singh, but also on his successor-in-interest, the respondents, in the Execution Second Appeal or Regular Second Appeal, are not entitled to any share in the land measuring 81 kanals and 6 marlas in which late Sh.Ghumand Singh was the defendant. The aforesaid decree is not only binding on late Sh.Ghumand Singh, but also on his successor-in-interest, the respondents herein in Execution Second Appeals and Regular Second Appeal. Hence, the respondents herein are not entitled to any share in the land measuring 81 kanals and 6 marlas.

24. Undoubtedly, the judgment and decree passed on 04.08.1975 is a judgment in personam. However, such judgment and decree would be binding between the parties and on their representative to the suit. The

parties would include their representatives as well as the successor-in-

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interest. Once, late Sh. Ghumand Singh was bound by the decree, Gurmel Singh being his heir was also bound by the decree. In this respect, reliance is placed on the judgment in *Mohd. Masthan v. Society of Congregation of the Brothers of the Sacred Heart and Another (2006) 9 Supreme Court Cases 344*.

25. While deciding issue No.2 in the judgment dated 04.08.1975, the Court below declared that Bachan Kaur and Gurmel Singh were not the parties, therefore, it does not affect their rights. However, the suit filed by them was dismissed. Hence, late Sh.Ghumand Singh, Harnek Singh, Gurcharan Singh had no right to file any appeal against the aforesaid findings. Whereas, Gurmel Singh and Bachan Kaur filed an appeal against the aforesaid decree which was dismissed by the First Appellate Court on 03.10.1979. This decree became final. It is also evident that in the subsequent suit filed by Gurmel Singh on 19.11.1979, the Court, while deciding the issue No.4, held that the plaintiff was not required to seek the setting aside of the judgment and decree dated 04.08.1975, however, still the suit was dismissed. Hence, the defendants had no right to file an appeal. The First Appellate Court also upheld the findings, but dismissed the suit. Thus, it is well settled that no appeal against the finding is maintainable. Consequently, such findings will not operate as *res judicata* in the subsequent proceedings. On this aspect, the reliance is placed on the judgments in *Ganga Bai v. Vijay Kumar and Others (1974) 2 Supreme Court Cases 393* and *Banarsi and Others v. Ramphal (2003) 9 Supreme Court Cases 606*.

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Procedure, 1908 (hereinafter referred to as “CPC”), the first appeal and the second appeal is maintainable from every decree passed by the Court. In other words, unless and until there is a decree passed against the aggrieved party, he cannot file an appeal. In this case, though a finding was arrived at in the judgment dated 15.01.1992 passed by the Civil Judge in suit No. 3 filed by Gurmel Singh, still the suit was dismissed. In these circumstances, Sher Singh and Kishan Singh or the remaining defendants had no right to file an appeal.

27. Moreover, the Executing Courts have overlooked the fact that the actual delivery of the possession of the property is not possible particularly when the decree is only with respect to the undivided 1/3rd share in the total land measuring 99 kanals. Unless and until the property is partitioned by metes and bounds, the decree holder could only be ordered the delivery of symbolic possession.

28. As far as the reason No. (I) is concerned, it would be noted that the plaintiffs in the 4th suit or the objectors may not be proved to be the bonafide purchasers on account of the fact that the sale deeds in their favour were executed, during the pendency of the 3rd suit, still the judgment and decree passed by the High Court suit is a result of collusion and hence, the rule of *lis pendens* is not applicable.

29. With respect to the reason No. (II), it would be noted that the appellants are not required to file an appeal as the judgment in the 3rd suit is the result of collusion, therefore, a separate suit was maintainable. The High Court before accepting the appeal arising from the 3rd suit did not issue notice

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30. Further, the reason No. (III) recorded by the Courts below is the result of misreading of evidence and failure to examine the case in the proper perspective

31. With respect to the reason No. (IV), it is evident that Gurmel Singh, the plaintiff in the 3rd suit, had no independent right in the property in dispute except a possibility of inheritance after the death of late Sh.Ghumand Singh. Thus, Gurmel Singh is representative of late Sh.Ghumand Singh. Consequently, he was required to challenge the decree passed on 04.08.1975.

32. With respect to the reason No.(V), it would be noted that this Court has come to a conclusion that the decree passed by the High Court in 3rd suit is the result of collusion. Consequently, the rule of *lis pendens* is not applicable.

33. As regards the reason No. (VI), it would be noted that the extent of the land owned and possessed by late Sh.Ghumand Singh cannot be decided solely on the basis of the pleadings. The Courts should have decided the issue considering the revenue records as well. In any case, this Court does not wish to express any final opinion because these appeals are confined to the area of land which was subject matter of the sale deeds.

34. It is clarified that the decree holders shall be entitled to execute the decree in accordance with law against the respondent No.1 to 4, namely Harnek Singh, Gurcharan Singh, Kikar Singh and Bohar Singh, with respect to the land which is beyond the land that has already been sold in favour of the appellants herein.. However, they shall not be entitled to adversely

impact either the rights of the appellants or dispossess them from the

property.

35. Hence, the regular second appeal is allowed and whereas both the Execution Second Appeals are disposed of.

36. The miscellaneous application(s) pending, if any, in all the three appeals, shall stand disposed of.

November 16, 2023

“DK”

(Anil Kshetarpal)

Judge

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No