



RSA-992-1993 (O&M)

-1-

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

(137)

RSA-992-1993 (O&M)2024

Date of decision: - 21.08.2024

Raj Singh and another

....Appellants

Versus

Jage Ram and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Sandeep, Advocate, for the appellants.

Mr. Adarsh Jain, Advocate, and
Mr. Nitin Kumar, Advocate (Through VC)
for the respondents.

VIKAS BAHL, J. (ORAL)CM-5144-C-2024

1. Present application has been filed under Order 22 Rule 2 & 4 read with Section 151 of CPC and the Punjab High Court Rules and Orders, Volume V, Chapter 1-C, Rule 4, for bringing on record legal representative of deceased respondents No.1 and 2 in the above mentioned appeal.

2. For the reasons mentioned in the application, the same is allowed and the legal representative of respondents No.1 and 2 as detailed in para 4 and para 5 of the application respectively are brought on record, subject to all just exceptions. The amended memo of parties is taken on record.

3. It is made clear that the present order would not be construed



RSA-992-1993 (O&M)

-2-

as an adjudication with respect to the fact that the persons who have been impleaded as the legal representatives are entitled to the estate of respondents No.1 and 2 but are only impleaded for the purpose of continuation of the present case on behalf of respondents No.1 and 2.

RSA-992-1993

1. Defendants No.1 and 2 have filed the present appeal challenging the judgment and decree dated 07.04.1993, vide which the judgment of the trial Court dated 22.07.1992 has been set aside and the suit filed by the plaintiffs (respondents No.1 to 5 herein) for possession by way of pre-emption of the suit land has been decreed, subject to the payment of Rs.68,000/-

2. Present Regular Second Appeal has been filed under Section 41 of the Punjab Courts Act, 1918.

3. Brief facts of the case are that the plaintiffs (respondents No.1 to 5 herein) had filed a suit for possession by way of pre-emption on the plea that defendants No.1 and 2 had purchased the suit land measuring 8 kanals vide registered sale deed dated 02.03.1990 for a consideration of Rs.60,000/- and that the plaintiffs were co-sharers and had a preferential right of pre-emption qua the same. It is further averred that the suit land had actually been sold for Rs.50,000/- but rest of the amount had been shown fictitiously in the sale deed just to defeat the pre-emptive right of the plaintiffs. Notice was issued in the suit and the counsel for the plaintiffs, vide his separate statement dated 11.05.1992 had given up defendants No.3 to 5 being unnecessary parties. Defendants No.1 and 2



RSA-992-1993 (O&M)

-3-

had filed the written statement controverting the averments made in the plaint and in the said written statement, it was stated that the suit land was purchased by defendants No.1 and 2 for Rs.60,000/-, which was the market value of the suit land and it was denied that the plaintiffs were co-sharers in the suit land. Further, additional legal pleas were taken to the effect that the defendants had incurred stamp and registration charges and also an amount of Rs.20,000/- on account of improvement on the suit land after its purchase. It was further averred that the plaintiffs had waived their pre-emptive right because defendants had purchased the suit land with the consent of the plaintiffs and that the defendants had also come to know that the plaintiffs had not put their signatures on the plaint and thus, the suit is not maintainable.

4. On 16.01.1992, the trial Court had framed the following issues: -

- “1. Whether plaintiffs have preferential right to pre-empt the sale in question? OPP
2. Whether sale price was fixed in good faith and actually paid to the vendor? OPD
3. If issue No. 2 is not proved, what was the market value of the suit land at the time of its sale/OP Parties
4. Whether defendants are entitled to stamp and registration charges? OPD
5. Whether plaintiffs have waived their pre-emptive right as alleged in para no.3 of the additional pleas? OPD
6. Whether defendants are entitled to recover Rs.20000/- on account of improvement made on the suit land after its purchase? OPD
7. Relief”



RSA-992-1993 (O&M)

-4-

5. On 06.04.1992, additional issue No.6-A was also framed, which is reproduced herein below: -

“6-A Whether suit of the plaintiffs is liable to be dismissed as alleged in para no.4 of the additional pleas of the amended written statement?OPD”

6. The trial Court decided issue No.1 in favour of defendants No.1 and 2 and against the plaintiffs. It was observed that undisputedly, the suit land had already been partitioned, which fact was apparent from the certified copy of the order of partition dated 19.06.1992 (Ex.D3) and also from the certified copy of Naksha Jeem dated 30.06.1992 (Ex.D4) and since the plaintiffs had ceased to be co-sharers in the joint khewat of the suit land, thus, they had no preferential right to pre-empt the sale in question. Issue No.2 was also decided against the plaintiffs and in favour of defendants No.1 and 2 and it was observed that the sale consideration was Rs.60000/- and that the plaintiff Dharambir while appearing as PW3 had not testified that the suit land was sold for Rs.50,000/- and not for Rs.60,000/- and that the entire sale price was fixed in good faith and was actually paid to the vendor. With respect to issue No.3, it was observed by the trial Court that in view of the findings on issue No.2, the findings on the said issue had become redundant. Issue No.4 was also decided in favour of defendants No.1 and 2 and against the plaintiffs. Issues No.5, 6 and 6-A were decided against the defendants. In view of the findings on the aforesaid issues, suit of the plaintiffs was dismissed.

7. Aggrieved against the judgment and decree dated



RSA-992-1993 (O&M)

-5-

22.07.1992, the plaintiffs filed the appeal before the 1st Appellate Court and the 1st Appellate Court vide judgment and decree dated 07.04.1993 set aside the judgment of the trial Court and decreed the suit of the plaintiffs as has been stated hereinabove.

8. The fact that 'naksha bey' had been prepared and accepted by the Assistant Collector 1st Grade on 19.06.1992 (Ex.D2) and also the fact that 'naksha jeem' had been prepared on 30.06.1992 (Ex.D-4) were taken note of in para No.8 of the judgment of the 1st Appellate Court. The 1st Appellate Court however relied upon the judgment of this Court in the case of “**Pritam Singh Vs. Jas Kaur Singh, reported as 1991 PLJ 435** in which it was held that till the time the instrument of partition is not drawn up, the status of the parties was joint and there was no severance of status. The judgment of the Division Bench in the case of “**Har Devi Vs. Ram Jas and others**”, ***reported as 1974 PLJ 345***, in which it was held that on the preparation of 'naksha jeem' the pre-emptor ceases to be a co-sharer, was taken note in para 10, but the judgment of the Division Bench in the case of **Pritam Singh (supra)** was relied upon and accordingly, the suit of the respondents was decreed.

9. Challenging the judgment of the 1st Appellate Court, the present Regular Second Appeal has been filed.

10. On 05.05.1993, a Co-ordinate Bench of this Court was pleased to pass the following order: -

“Present: Mr. I.S. Balhara, Advocate.

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RSA-992-1993 (O&M)

-6-

*Notice.**Dispossession of the appellants is stayed.**May 5, 1993”*

11. Thereafter, on 14.07.1993, on an application filed by the respondents, a Co-ordinate Bench of this Court had passed the following order: -

*“C.M. No.1758-C-93 in
RSA No.992 of 1993*

*Present: Mr. Nitin Kumar, Advocate, for
the appellants.
Mr. I.S. Balhara, Advocate, for
the respondents.*

Heard. Without commenting on the merits of the case or effecting the rights of the parties, it is directed that the pre-emptor may withdraw the 1/5th pre-emption money if already deposited.

July 14, 1993.”

12. Learned counsel for the appellant has argued that the law laid down in the case of ***Pritam Singh (supra)*** which has been relied upon by the 1st Appellate Court had in effect been over ruled by the Hon'ble Supreme Court in the case of ***“Jhabbar Singh (Deceased) Through Legal Heirs & others Vs. Jagtar Singh”***, (along with the connected appeal), reported as 2023 AIR (Supreme Court) 2074. It is submitted that the ratio as laid down in the case of ***Pritam Singh (supra)*** to the effect that till the time the instrument of partition is drawn-up, the joint



RSA-992-1993 (O&M)

-7-

status of the parties continues is no more good law and once the 'naksha bey' had been finalized and even 'naksha jeem' had been prepared prior to the passing of the final judgment and decree of the trial Court, there was severance of the status and the plaintiffs were no more co-sharers with the defendants No.1 and 2 and thus, their right of pre-emption had been lost. It is further submitted that as per the said judgment in the case of ***Jhabbar Singh (supra)***, the pre-emptor was required to prove his right to pre-empt on the date of the sale, on the date of filing of the suit and on the date of the passing of the decree by the Court of the first instance and since the plaintiffs have not proved the same, thus, the judgment of the 1st Appellate Court deserves to be set aside and the judgment of the trial Court deserves to be upheld.

13. Learned counsel appearing on behalf of respondents No.1 to 5/plaintiffs has opposed the present appeal and has submitted that subsequent to the passing of the order dated 19.06.1992, vide which the 'naksha bey' had been sanctioned, respondent Nos.1 to 5 had filed an appeal against the said order and the Collector had allowed the appeal on 05.11.1992 and set aside the partition proceedings and had directed the proceedings to commence from the stage of preparation of the mode of partition.

14. Learned counsel for the appellants in rebuttal has submitted that no such order dated 05.11.1992 is part of the record and although the 1st Appellate Court had decided the appeal on 07.04.1993, yet, no such plea had been taken before the 1st Appellate Court. It is further submitted



RSA-992-1993 (O&M)

-8-

that since no such order dated 05.11.1992 has been placed on record, thus, even the present appellants have not placed on record subsequent orders passed by the revenue officer which would further demolish the case of the respondents.

15. This Court has heard learned counsel for the parties and has perused the paper-book and the record of the trial Court.

16. The substantial question of law which arises for consideration in the present case is **“as to whether in a suit for pre-emption, the severance of status of co-sharership would take place on the date when the 'naksha bey' has been sanctioned or on the date when the instrument of partition is drawn up.”**

17. The said preposition of law has now been authoritatively answered by the Hon'ble Supreme Court in the case of ***Jhabbar Singh (deceased) Through Legal Heirs and others (supra)***. In the said case, the Hon'ble Supreme Court after taking into consideration the provisions of the Punjab Land Revenue Act, 1887 and also the Haryana Land Records Manual as also the Punjab Pre-emption Act, 1913 had observed that the right of pre-emption is a very weak right and could be defeated by all legitimate methods and that for a pre-emptor to succeed in a suit, he had to establish that he had the right to pre-empt on the date of sale, on the date of the filing of the suit and on the date of the passing of the decree by the Court of the first instance and in case the plaintiff/pre-emptor loses that right or the vendee improves his right equal to or above the right of the claimant before the adjudication of the suit, then, the suit for pre-



RSA-992-1993 (O&M)

-9-

emption would fail. It was further observed that when a decision is taken by the Revenue Officer under Section 118 of the Punjab Revenue Act, 1887, the partition would be deemed to be completed and the joint status of the parties would stand severed and the parties would remain no more joint and the consequential act of drawing an instrument of partition would only be an executory or ministerial act to be carried out for disposing of the partition case. In the facts and circumstances of the case before the Hon'ble Supreme Court, the Hon'ble Supreme Court found that since the "naksha bey" had already been accepted prior to the date of the judgment of the trial Court, the joint status of the parties stood severed and merely because the instrument of partition was not prepared, the same would not show that there was no severance of status of the co-sharers. The relevant portion of the said judgment is as under: -

"1. Both the appeals arise out of the common judgment and order dated 17.08.2007 passed by the High Court of Punjab and Haryana at Chandigarh, in RSA No.1470/1983 and RSA No.1557/1983, whereby the High Court, while allowing the said appeals filed by the original plaintiff Jagtar Singh (predecessor of the present respondent) decreed the Civil Suits no. 420/1981 and 421/1981, filed by him, seeking decree for the possession of the suit lands, claiming right of pre-emption against the original defendants Jhabbar Singh and others (the predecessor of the present appellants). The present appellants and respondent have been substituted as the legal heirs of the original defendant Jhabbar Singh and original plaintiff Jagtar Singh respectively.

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9. Section 118 pertaining to the disposal of other questions and to the Appeal reads as under: -

"118. Disposal of other question: -(1) When there is a



question as to the property to be divided, or the mode of making a partition, the Revenue-officer shall, after, such injury as he deems necessary, record an order stating his decision on the question and his reasons for the decision.

(2) An appeal may be preferred from an order under subsection (1) within fifteen days from the date thereof, and, when such an appeal is preferred and the institution thereof has been certified to the revenue-officer by the [authority to whom the appeal has been preferred] the Revenue-officer shall stay proceeding pending the disposal of the appeal.

(3).....

(4)..... ”

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15. Now, so far as the right of pre-emption is concerned, it may be noted that it is a very weak right and could be defeated by all legitimate methods. This Court as back as in 1958, in case of Bishan Singh and Others vs. Khazan Singh & Another (supra), had set-forth the contours of the right of pre-emption. It was opined therein by the four-Judge Bench that-

“11.....The right of pre-emption is not a right to the thing sold but a right to the offer of a thing about to be sold. This right is called the primary or inherent right. (2) The pre-emptor has a secondary right or a remedial right to follow the thing sold. (3) It is a right of substitution but not of re-purchase i. e., the pre-emptor takes the entire bargain and steps into the shoes of the original vendee. (4) It is a right to acquire the whole of the property sold and not a share of the property sold. (5) Preference being the essence of the right, the plaintiff must have a superior right to that of the vendee or the person substituted in his place. (6) The right being a very weak right, it can be defeated by all legitimate methods, such as the vendee allowing the claimant of a superior or equal right being substituted in his place.”

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17. At this juncture, it would be also apt to mention that



apart from the fact that the right of pre-emption is very weak right and capable of being defeated by all legitimate methods, the pre-emptor must establish that he had the right to pre-empt on the date of sale, on the date of the filing of the suit and on the date of the passing of the decree by the Court of the first instance. The pre-emptor or the claimant-plaintiff who claims the right to pre-empt the sale on the date of sale, has also to prove that such right continued to subsist till the passing of the decree of the first court. If the claimant-plaintiff loses that right or the vendee improves his right equal or above the right of the claimant before the adjudication of the suit, the suit for pre-emption would fail.

18. This proposition of law has been well settled by this Court since 1971, in case of [Bhagwan Das \(Dead\) by LRS and Others vs. Chet Ram 1971 \(1\) SCC 12.](#) In the said case, this Court had approved the full bench decision of Punjab High Court in **Ramji Lal and Another vs. The State of Punjab and Others 1966 P&H 374**, which had ruled that a pre-emptor must maintain his qualification to pre-empt upto the date of the decree.

19. The Constitution Bench in case of [Shyam Sunder and Others vs. Ram Kumar and Another \(2001\) 8 SCC 24](#) also while examining the issues whether in a suit for pre-emption, the pre-emptor should possess his right to pre-empt on the date of sale and on the date of the decree of the First Court, and whether the loss of that right after the date of decree either by his own act or by an act beyond his control or by any subsequent change in the legislation which is prospective in operation during the pendency of the appeal filed against the decree of the Court of First instance, would affect the right of the pre-emptor or not, has laid down certain principles, after making analysis of various decisions including the decision of the Full Bench rendered by the Punjab and Haryana High Court in [Ramji Lal vs. State of Punjab](#) (supra).

“10. On an analysis of the aforesaid decisions referred to in first category of decisions, the legal principles that emerge are these:



1. *The pre-emptor must have the right to pre-empt on the date of sale, on the date of filing of the suit and on the date of passing of the decree by the Court of the first instance only.*

2. *The pre-emptor who claims the right to pre-empt the sale on the date of the sale must prove that such right continued to subsist till the passing of the decree of the first court. If the claimant loses that right or a vendee improves his right equal or above the right of the claimant before the adjudication of suit, the suit for pre-emption must fail.*

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25. *The High Court while passing the impugned order had followed its earlier judgment in [Pritam Singh vs. Jaskaur Singh 1992 SCC Online P&H 676](#).*

26. *In our opinion, it is difficult to subscribe the view taken by the High Court in the impugned order that since no instrument of partition was drawn on the date of passing of the decree by the trial court, the joint status of the parties had not come to an end.....*

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31. *The first part of [Section 121](#) of the Land Revenue Act states that “when a partition is **completed**”. Meaning thereby, when the issue with regard to the properties to be divided and the mode of making partition stand decided and rights of the parties stand determined by the Revenue Officer, the latter part of Section 121 for preparing the instrument of partition and recording the date of partition would come into play. Such actions required to be taken as contained in the latter part of Section 121, would be only an executory work or administrative act to be carried out for completely disposing of the partition case instituted by the party before the Revenue Officer. Just as in case of a decree in civil suit, the adjudication conclusively decides the rights of the parties with regard to the matter in controversy, however the decree would be preliminary when further proceedings have to be taken before the suit can be completely disposed of. **In the same way, when the***



decision is taken by the Revenue Officer under Section 118, the partition would stand completed, the joint status of the parties would stand severed and would remain no more joint, after the period of limitation prescribed under the Act. The further proceeding to draw an instrument of partition would be only an executory or ministerial work to be carried out to completely dispose of the partition case.

32. So far as the facts of the present case are concerned, the Assistant Collector i.e., **concerned Revenue Officer vide the order dated 25.05.1982 had rejected the objections raised by the plaintiff Jagtar Singh and others with regard to the mode of partition and had confirmed the mode of partition accordingly.** On that day, the “Naksha Be” was already annexed to the file and the case was listed on 31.05.1982 for hearing the objections as to the “Naksha Be”. On 31.07.1982, the Assistant Collector passed the order stating inter alia that the Patwari and Kanungo were present, and they had explained the parties about the passage and the boundaries of the plots, and **that as per “Naksha Be”, the partition was accepted.** The details of the number of khasras allotted to both the parties i.e., to Jhabbar Singh and others and to Jagtar Singh were also mentioned in the said order. The partition having been accepted as per the said “Naksha Be”, the joint status of the parties had stood severed.”

The judgment in the above-said case has conclusively laid down the law on the issue in hand and the above-said judgment squarely governs the present case.

18. In the present case, it is not in dispute that the judgment of the trial Court was passed on 22.07.1992. A perusal of Ex.D2 would show that 'naksha bey' had been sanctioned on 19.06.1992 and the said 'naksha bey' clearly shows the specific khasra numbers, which have been allotted to the different co-sharers. Defendants No.1 and 2 had been allotted



RSA-992-1993 (O&M)

-14-

specific khasra numbers with respect to total land measuring 7 kanals 19 marlas. Further the plaintiffs along with other co-sharers had also been allotted specific khasra numbers. A perusal of the order dated 19.06.1992 (Ex.D3) would further show that 'naksha bey' had been sanctioned by the Assistant Collector 1st Grade on the said date. Ex.D4 is the 'naksha jeem' dated 30.06.1992 clearly depicting the separate khasra numbers which had been allotted to the defendants No.1 and 2 and the plaintiffs and the other co-sharers. Thus, in the present case, prior to the passing of the judgment and decree by the trial Court dated 22.07.1992, not only the 'naksha bey' had been sanctioned but even the 'naksha jeem' had been prepared and thus, on the date of the judgment and decree dated 22.07.1992, as per the law laid down by the Hon'ble Supreme Court, there was severance of the relationship of co-sharers between the plaintiffs and defendants No.1 and 2 and thus, the plaintiffs had no right of pre-emption on the date of the passing of the judgment by the trial Court. The 1st Appellate Court has relied upon the judgment in the case of ***Pritam Singh (supra)*** to hold that since, on the date of passing of the judgment by the trial Court, the instrument of partition had not been drawn up, thus, the final partition had not taken place and on the said count, there was no severance of status of co-sharership and has thus, decreed the suit of the plaintiffs. The said reasoning adopted is contrary to the law laid down in the judgment of the Hon'ble Supreme Court in the case of ***Jhabbar Singh (deceased) Through Legal Heirs and others (supra)*** as the Hon'ble Supreme Court in its judgment had specifically observed that the



RSA-992-1993 (O&M)

-15-

impugned order therein had been passed by the High Court after taking into consideration the law laid down in the case of *Pritam Singh (supra)* and it was further observed by the Hon'ble Supreme Court that it was difficult to subscribe to the view taken by the High Court to the effect that since no instrument of partition had been drawn on the date of passing of the decree by the trial court, the joint status of the parties had not come to an end. Thus, the question of law as framed in para 16 is answered in favour of the present appellant and against the respondents and **it is held that in a suit for pre-emption, the severance of the status of co-sharership would take place on the date when the 'naksha bey' has been sanctioned and for the severance of the said status, it is not necessary that the instrument of partition should have been drawn up.** In view of the same, the plea raised on behalf of the appellants is meritorious and deserves to be accepted.

19. In the case of “*Shyam Sunder and another Vs. Ram Kumar and another*”, ***reported as 2001(8) SCC 24***, the Hon'ble Supreme Court had taken note of the fact that the right of pre-emption was characterized as archaic, feudal and out-moded. It would also be relevant to note that at the time of issuance of notice of motion, the Co-ordinate Bench of this Court vide the order dated 05.05.1993 had stayed the dispossession of the present appellants and the said stay has been continuing till date and thus, the present appellants are in possession of the suit property. Moreover, a right was given to the respondents No.1 to 5 to withdraw the 1/5th pre-emption money as per the order dated 14.07.1993. The said factors also



RSA-992-1993 (O&M)

-16-

go in favour of the present appellants.

20. The argument raised on behalf of the respondents to the effect that subsequent to the passing of the judgment of the trial Court dated 22.07.1992, the subsequent order dated 05.11.1992 had been passed vide which the earlier order in the partition had been set aside, cannot be accepted for the following reasons: -

- (i) The said order dated 05.11.1992 had neither been placed on record before the 1st Appellate Court nor has been placed on record before this Court. The judgment of the 1st Appellate Court is dated 07.04.1993 and is subsequent to the alleged order dated 05.11.1992 and a perusal of the judgment of the 1st Appellate Court would show that no reference much less argument had been raised on behalf of the respondents with respect to the said order dated 05.11.1992. The appeal before the 1st Appellate Court was filed by respondents No.1 to 5 and nothing has been urged on behalf of respondents No.1 to 5 with respect to the said order dated 05.11.1992. In view of the fact that the said order had neither been placed on record nor any argument qua the same had been raised before the 1st Appellate Court, nor the same has been placed on record before this Court, thus, the argument raised before this Court for the first time, has no basis.
- (ii) The 1st Appellate Court has in para No.8 taken into consideration the sanction of 'naksha bey' dated 19.06.1992



RSA-992-1993 (O&M)

-17-

(Ex.D2) as well as preparation of 'naksha jeem' dated 30.06.1992 (Ex.D4) and had not taken into consideration any order dated 05.11.1992. Thus, the argument raised on behalf of the respondents No.1 to 5 is beyond the reasoning given by the 1st Appellate Court in allowing the appeal of respondents No.1 to 5.

- (iii) It has been held by the Hon'ble Supreme Court in the case of ***Jhabbar Singh (supra)*** that the relevant date on which the pre-emptor is to establish his right of pre-emption, is the date of sale, the date of the filing of the suit and the date of the passing of the decree by the Court of the first instance. In the present case, since on the date of the passing of the judgment and decree dated 22.07.1992, 'naksha bey' had been sanctioned and the 'naksha jeem' had also been prepared, thus, there was severance of status as per the said latest judgment of the Hon'ble Supreme Court. It is not in dispute that there were no other proceedings which had taken place up to the judgment of the trial Court dated 22.07.1992, thus, the arguments raised on behalf of respondents No.1 to 5 cannot be accepted.

21. It would be relevant to note that the present Regular Second Appeal has been filed under Section 41 of the Punjab Courts Act, 1918 and not under section 100 of CPC and in paragraph 27 of the judgment of the Constitutional Bench (Five Judges Bench) of the Hon'ble Supreme



RSA-992-1993 (O&M)

-18-

Court in the case of Pankajakshi (dead) through legal representatives and others v. Chandrika and others and other connected matters reported as (2016) 6 SCC 157, it was observed that section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976, has no application to Section 41 of the Punjab Courts Act, which provision would necessarily continue as a law in force. Section 41 of the Punjab Courts Act provides that an appeal would lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court on any of the grounds mentioned therein and one such ground i.e. ground No.(a) is the decision being contrary to law or to some custom or usage having the force of law.

22. The judgment of the 1st Appellate Court is contrary to the judgment of the Hon'ble Supreme Court in the case of ***Jhabbar Singh (deceased) Through Legal Heirs and others (supra)*** and thus, the same deserves to be set aside.

23. Keeping in view the above-said facts and circumstances, the present appeal being meritorious deserves to be allowed and is accordingly allowed and the judgment and decree dated 07.04.1993 of the 1st Appellate Court is set aside and the judgment and decree of the trial Court dated 22.07.1992 is upheld and the suit filed by the plaintiffs is dismissed.

August 21, 2024
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes