



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1767-2003 (O&M)

Reserved on :- 17.10.2025

Pronounced on :-19.11.2025

Uploaded on : 20.11.2025

Jita and Another

... Appellants

Versus

Balkar Singh (Since Deceased) Through His LRs and Others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :-

Mr. Keshav Pratap Singh, Advocate with
Mr. Nitin Sansanwal, Advocate and
Mr. Satbir Mor, Advocate
for the appellants.

Dr. Surya Parkash, Advocate with
Mr. Vikram Amarnath Garg, Advocate
for respondents.

VIRINDER AGGARWAL, J.

The appellants/plaintiffs, being aggrieved by the judgment and decree dated 29.03.2003 rendered by the learned Additional District Judge, Kurukshetra in Civil Appeal No. 251 of 17.07.1997, whereby the well-reasoned judgment and decree dated 21.05.1997 passed by the learned Additional Civil Judge (Senior Division), Pehowa in Civil Suit No. 843 of 05.08.1992 was erroneously reversed, most respectfully invoke the appellate jurisdiction of this Court under Section 41 of the Punjab Courts Act, 1918 by way of the present Regular Second Appeal ("RSA" for short). The appellants

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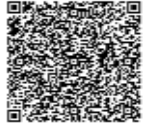
seek restoration of the decree rightly and lawfully passed by the learned Trial Court, and redressal of the substantial injustice occasioned by the impugned reversal.

1.1. It is respectfully submitted that the impugned judgment and decree suffer from patent perversity, being vitiated by errors apparent on the face of the record, misapplication of settled principles of law, and gross misappreciation of evidence, thereby culminating in a manifest miscarriage of justice. In these circumstances, the appellants humbly beseech the intervention of this Court to set aside the impugned judgment and decree and to restore the well-reasoned and legally sustainable decree of the learned Trial Court.

2. To ensure clarity and convenience in the course of this discussion, the parties will hereinafter be referred to as the plaintiffs and defendants, consistent with their status before the learned Trial Court. The essential facts leading to the institution of the present proceedings are set out below:-

“Jita and Dharam Pal (plaintiffs) filed Civil Suit No. 843 of 1992 seeking rectification of Sale Deeds dated 13.02.1980 and 14.05.1980 executed by Puran (predecessor of Defendants No. 1–7) and Phulla (defendant No. 8), or in the alternative, a declaration of ownership and possession over the suit land.

The plaintiffs contended that Puran and Phulla had sold them a total of 38 Kanals 4 Marlas through three registered Sale Deeds dated 02.06.1977, 13.02.1980, and 14.05.1980, after receiving full consideration and delivering possession.



However, in the *Jamabandi* for the years 1989–90, the land continued to be shown in the names of Puran and Phulla due to the cancellation of *Mutations* No. 2059 and 2206 without notice to the plaintiffs.

It was further pleaded that clerical errors in *Khasra* numbers had occurred in the Sale Deeds due to mutual mistake, entitling the plaintiffs to rectification. In the alternative, they sought a declaration that the revenue entries showing ownership of Puran and Phulla were illegal, null, and void, and that the plaintiffs were the owners in possession of the suit land situated in Village Sarsa, Tehsil Pehowa, District Kurukshetra.”

3. Upon notice, the defendants No.1 to 8 contested the suit by filing joint written statement and raised several preliminary objections, asserting that the plaintiffs’ suit is not maintainable, is barred by limitation, and that the plaintiffs lack a cause of action. They further contended that the suit has been improperly valued for purposes of court fee and jurisdiction, and alleged that it was filed in collusion with certain defendants.

3.1. On merits, defendants No. 1 to 8 denied the plaintiffs’ claim in entirety. They asserted that neither defendant No. 8 nor Puran, the predecessor of defendants No. 1 to 7, ever sold or delivered possession of the suit land to the plaintiffs. The execution and validity of the sale deeds dated 13.02.1980 and 14.05.1980 were specifically denied, and it was contended that even if proved, such deeds were void and not binding on their rights. They maintained that Puran and defendant No. 8 were rightly recorded as owners of their respective shares and that the plaintiffs’ version was false and



fabricated. It was further alleged that no notice regarding the sanction or cancellation of the alleged mutations was ever served upon Puran or defendant No. 8. The defendants also denied that any possession had been delivered under the said sale deeds and contended that any revenue record showing plaintiffs' possession was incorrect and contrary to facts. Defendant No. 9, however, in his separate written statement dated 17.08.1993, admitted the plaintiffs' claim in toto.

4. The plaintiffs filed a replication, reiterating and expressly reaffirming all material allegations contained in the plaint, while specifically traversing and refuting the defenses and contentions advanced by the respondents. Upon careful consideration of the pleadings, documents, and oral submissions, the Court has framed the following issues for determination in order to adjudicate the competing claims and defenses, which are detailed below:-

- 1) Whether the Sale Deeds in question do not convey the real intention of the parties to sale? OPP.
- 2) Whether Puran, predecessor of defendants Nos. 1 to 7 and Phulla had transferred 30 Kanals 4 Marlas land vide Sale Deeds in question for consideration in favour of the plaintiffs? OPP.
- 3) Whether the numerical mistake in the Sale Deeds in question had occurred at the time of execution as mutual mistake of the parties to the sale? OPP.
- 4) Whether the revenue entries in the name of Puran regarding the suit land are liable to be corrected in the name of the plaintiffs? OPP.
- 5) Whether the suit of the plaintiff is within time? OPD.
- 6) Whether the suit of the plaintiff is not maintainable in the present form? OPD.



- 7) Whether the plaintiff has no cause of action against the defendant?
OPD.
- 8) Whether the suit has been filed by the plaintiff with collusion of defendants Nos. 8 and 9? OPD.
- 9) Whether the suit of the plaintiff is not properly valued for the purposes of Court Fee and Jurisdiction? OPD.
- 10) Relief.

5. Both parties were afforded adequate opportunities to lead evidence in support of their respective claims. Upon the conclusion of the trial and after hearing learned counsel for the parties, the learned Additional Civil Judge (Senior Division) Pehowa partly decreed the suit in favour of the appellants/plaintiffs. Aggrieved by this decree, the appellants/respondents preferred an appeal before the learned Additional District Judge, Kurukshetra, which was allowed, resulting in the reversal of the well-reasoned judgment and decree of the learned Trial Court and suit of the plaintiff was dismissed.

6. Challenging the learned First Appellate Court's judgment and decree, the appellants filed the instant appeal, which was admitted. Notice was served on the respondents, who appeared through their counsel, and the lower Court records were requisitioned for careful examination and adjudication.

7. I have heard learned counsel and considered their submissions in conjunction with the pleadings, evidence, and the findings of the lower Courts. The record has been scrutinized to determine '*whether the impugned judgments and decrees are vitiated by any legal error or infirmity warranting interference*'?



8. The present appeal propounds the following *quaestio juris substantialis* for authoritative determination and adjudication by this Court:-

- i. **Whether the suit is vitiated by the bar of limitation under the governing statutory provisions?**
- ii. **Whether a simpliciter suit for declaration, sans the consequential relief of possession, is legally maintainable in the present circumstances?**
- iii. **Whether the learned First Appellate Court has committed a manifest error of law or fact by misappreciating or misconstruing the sale deeds, Exhibits PW6/1 and PW5/1?**

9. Learned counsel for the appellants contended that the learned First Appellate Court erred in holding the suit to be barred by limitation by erroneously treating it as one for rectification of sale deeds. It was argued that, as per the plaint, the appellants–plaintiffs became aware of the cancellation of mutations only on 01.10.1991, whereas the Court incorrectly presumed that the alleged mistake in the sale deeds came to their knowledge merely two to three months prior to the filing of the suit on 05.08.1992. Counsel further submitted that the suit was instituted on the basis of ownership and title, for which no limitation period is prescribed, and thus the finding of the learned First Appellate Court on limitation is legally unsustainable.

10. Conversely, learned counsel for the respondents/defendants contended that the findings of the learned First Appellate Court are fully justified in law and on facts. It was urged that under the settled legal position, a limitation period of three years is prescribed for seeking rectification of any instrument executed between the parties, reckoned from the date when the alleged error or defect becomes known to the aggrieved party. Since the



appellants–plaintiffs admittedly acquired knowledge of the purported mistake well before the institution of the suit, the same was hopelessly time-barred. Hence, the learned First Appellate Court rightly dismissed the claim as barred by limitation.

11. Upon meticulous examination of the record, it emerges that the principal relief sought by the appellants–plaintiffs pertain to rectification of the sale deeds, Ex.PW5/A and Ex.PW6/1. In the alternative, they have sought a declaration that the revenue entries recorded in the *Jamabandies* for the year 1989-90, reflecting ownership in favour of the legal representatives of Puran Singh in respect of 20 kanals of land, and in favour of defendant No.8 concerning 10 kanals 4 marlas, are illegal, null and void, and not binding upon their rights. The appellants further claim declaration of ownership and possession over their respective shares as detailed in paragraphs 4(B) and 4(C) of the plaint specifically, 15 kanals 19 marlas (319/897 share) out of 448/897 share of defendants No.1 to 7, legal representatives of Puran Singh, and 1 kanal 14 marlas (34/897 share) out of 449/897 share of defendant No.8 comprising Khewat No.319, Khatoni Nos.466 and 467, Rectangles Nos.87, 88, and 138, with specific Khasra numbers detailed therein, aggregating 44 kanals 17 marlas. Additionally, they assert ownership in equal shares of 4 kanals 1 marla (81/538 share out of 112/538 share) of defendants No.1 to 7, along with proportional rights in the land described in paragraphs 1(b), 1(c), and 1(d) of the relief clause of the appeal.

12. Since the plaintiffs predicate their claim for declaration upon the sale deeds executed in their favour, and as both Courts below have concurrently held that the relief of rectification of the said sale deeds is



barred by limitation and otherwise also untenable, the next question that necessarily arises is whether the alternative relief of declaration is itself within limitation.

12.1. It is a settled principle of law that mutation entries do not create, extinguish, or transfer title; they are maintained solely for fiscal purposes. Consequently, the rejection of mutation effected on the basis of the plaintiffs' sale deeds does not in any manner divest or diminish the title flowing from those instruments. Both Courts below have recorded a categorical finding that the sale deeds in question were duly proved to have been executed by Puran and Phulla, the predecessors-in-interest of the defendants.

12.2. A suit seeking declaration of co-ownership on the strength of a validly executed and proved sale deed is, in essence, a suit based on title. Such a suit is not governed by any period of limitation unless the defendants plead and establish acquisition of title by adverse possession. In cases involving co-ownership, the law imposes an even higher threshold: the defendant must specifically plead and conclusively prove ouster and open, hostile, and unequivocal assertion of exclusive ownership to the knowledge of the co-owner before adverse possession can even be considered.

12.3. In the present matter, the defendants have neither pleaded nor proved ouster, nor have they set up a legally sustainable claim of adverse possession. The relationship of co-ownership thus continues unabated. Accordingly, the alternative relief of declaration claimed by the plaintiffs, being one founded upon title and not met with any plea of adverse possession, is well within limitation and legally maintainable.

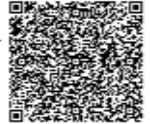


13. With respect to sale deed Ex.PW6/1, the record reveals that the plaintiffs purchased land measuring 16 kanals, with possession delivered from Khasra Nos. 138/12 and 138/13. It is specifically recited in the deed that the purchasers were already in possession of the said land under a registered mortgage deed dated 25.09.1978. Accordingly, through Ex.PW6/1, the ownership of the land previously mortgaged with the plaintiffs stood duly conveyed to them.

14. The learned Additional Civil Judge (Senior Division), Pehowa, therefore, correctly held that the relief of rectification of the sale deeds was unwarranted, as the documents were validly executed and conveyed title. However, the Court was competent to consider the alternative relief of declaration sought by the plaintiffs.

14.1. In paragraph 15 of the judgment, the learned Civil Judge rightly observed that under sale deed Ex.PW5/1, a 284/2174 undivided share out of land measuring 108 kanals 4 marlas was sold by Puran and Phulla, and under Ex.PW6/1, land measuring 16 kanals from Rectangle No.138, Khasra Nos.12 and 13, was conveyed. It was further correctly held, in light of the Full Bench decision in **Bhartu v. Ram Sarup, 1981 PLJ 204**, even if a co-sharer sells a specific Killa number, such alienation in law constitutes a transfer of share only, not of any defined portion.

15. Both the Courts below have concurrently held that the execution of sale deeds Ex.PW5/1 and Ex.PW6/1 stands duly proved on record. A comprehensive appraisal of the evidence establishes beyond doubt that the said documents were validly executed. The learned Civil Judge rightly concluded that the plaintiffs, by virtue of these sale deeds, had acquired the



status of co-owners in joint possession to the extent of their purchased shares, and consequently, the Revenue Authorities were bound to sanction the corresponding mutations in consonance with the transfers effected by Puran and Phulla.

15.1. As regards the finding of the learned First Appellate Court that the suit was not maintainable as a simplicitor suit for declaration without seeking consequential relief of possession under the proviso to Section 34 of the Specific Relief Act, 1963, the same is legally unsustainable. Given that the plaintiffs, by virtue of Ex.PW5/1 and Ex.PW6/1, became co-owners in joint possession, the question of seeking possession did not arise, as possession of a co-owner is deemed joint and indivisible unless partitioned. Hence, the suit for declaration simpliciter was maintainable in law as separate possession can only be sought by seeking partition of the property not as a consequential relief with declaration prayed for.

15.2. Accordingly, the appeal is allowed. The judgment and decree of the learned Additional District Judge, Kurukshetra, are hereby set aside, and those of the learned Additional Civil Judge (Senior Division), Pehowa, are restored.

16. In consequence of the final determination of the principal appeal, all pending miscellaneous application(s), if any, arising therefrom or incidental thereto, stand disposed of in accordance with the findings and conclusions recorded herein. No further directions are necessitated.

(**VIRINDER AGGARWAL**)
JUDGE

19.11.2025
Gaurav Sorot

Whether reasoned / speaking?
Whether reportable?

Yes / No
Yes / No

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