



(105)

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

RSA-1687-1993 (O&M)

Reserved on:- 12.08.2025

Pronounced on:- 21st August, 2025

Gurdit Singh and another

...Appellant(s)

Versus

Balwinder Singh

...Respondent(s)

RSA-2234-1993 (O&M)

Balwinder Singh

...Appellant(s)

Versus

Gurdit Singh and others

...Respondent(s)

COCP-245-1995 (O&M)

Gurdit Singh

...Petitioner(s)

Versus

Balwinder Singh and another

...Respondent(s)

CORAM: **HON'BLE MR. JUSTICE VIRINDER AGGARWAL**

Present:- Mr. Som Nath Saini, Advocate,
for the appellants in RSA-1687-1993,
for the respondents in RSA-2234-1993,
and for the petitioner in COCP-245-1995.

Mr. Sandeep Punchhi, Advocate,
for the appellant in RSA-2234-1993,
respondent No. 1 in RSA-1687-1993 and COCP-245-1995.

* * * *

VIRINDER AGGARWAL, J.

1. Plaintiff (Gurdit Singh) claims that he was owner of the suit property as suit property was allotted to him in lieu of property left by him in

Pakistan after partition of the country and he being owner of the property has executed sale deed of 1/2 share in favour of plaintiff No. 2 (Sadhu Singh) on 01.01.1988 and before that he has executed sale deed in favour of defendant (Balwinder Singh) and his brother (Gurmit Singh) in 1969. Defendant (Balwinder Singh) is claiming to have purchased the suit property vide sale deed dated 08.01.1988. The same is bogus, fabricated and sham transaction. The defendant never came into possession of the suit land. The plaintiffs are in possession of the entire land as per revenue entries. Mutation sanctioned in favour of the defendant on 29.06.1988 is wrong and the appeal before the revenue authorities is pending. The defendant is threatening to dispossess the plaintiffs. Hence the suit.

2. Upon notice, defendant (Balwinder Singh) filed written statement contesting the claim on the grounds that the suit is not properly framed and is not maintainable in the present form. The plaintiff is Gurdit Singh son of Sadhu Singh son of Jaimal Singh resident of village Arian, Tehsil Karanpur, District Sri Ganga Nagar, whereas the defendant has purchased the suit property from Gurdit Singh son of Sadhu Singh son of Budha Singh and Jaimal Singh had no alias in the name of Budha Singh. The suit is bad for non-joinder of Gurdit Singh son of Sadhu Singh son of Budha Singh who is the necessary party. It was denied that the plaintiff was allotted the land or that the plaintiff is the owner of the land and it is alleged that the defendant had purchased the suit land from real owner vide registered sale deed dated 08.12.1987 registered on 08.01.1988. Plaintiff (Gurdit Singh) is an imposter. No conveyance deed was ever issued in favour of plaintiff (Gurdit Singh). Even in pedigree table, the name of owner of the land is Gurdit Singh son of Sadhu Singh son of Budha Singh. Plaintiff (Gurdit Singh) had no land in village Bholewala, Bahawalpur (now in Pakistan) and was not allotted any land in lieu of that land and

preferred dismissal of the suit. The plaintiffs filed replication controverting the pleas raised by the defendant in written statement and reiterated the contents of plaint.

3. From pleadings of the parties, the following issues were framed by the learned Sub Judge, First Class, Zira:-

“1. Whether the plaintiff No. 1 and 2 are owners of the suit land? OPP

2. Whether the plaintiff and Gurdit Singh son of Sadhu Singh son of Budha Singh is the one and same person? OPP

3. Whether the suit is not properly valued for purposes of court fee and jurisdiction? OPD

4. Whether the suit is not maintainable? OPD

5. Whether the suit is bad for non-joinder of necessary parties? OPD

6. Whether the defendant had purchased the suit land from Gurdit Singh son of Sadhu Singh son of Budha Singh vide registered sale deed dt. 8.1.88? If so, its effect? OPD

7. Relief.”

4. Parties were afforded opportunity to lead respective evidence.

5. Learned Civil Judge decreed the suit by taking up issues No. 1, 2 and 6 together and decided these issues in favour of the plaintiffs and issues No. 3, 4 and 5 were decided against the defendant. In first appeal, the learned Additional District Judge, Ferozepur vide judgement and decree dated 04.05.1993 set aside the judgement and decree dated 05.02.1992 passed by the learned Sub Judge, 1st Class, Zira and also reversed the findings on issues No. 1, 2 and 4, inadvertently written as issue No. 3, whereas finding on issue No. 6 was upheld and sale deed in favour of the defendant was declared as a sham document.

6. Aggrieved by the judgement and decree so passed, both plaintiff (Gurdit Singh) and defendant (Balwinder Singh) filed separate appeals i.e. RSA-1687-1993 and RSA-2234-1993.

7. Petitioner (Gurdit Singh) also filed one contempt petition i.e. COCP-245-1995 against Balwinder Singh and Halqa Patwari on the ground that status-quo order passed by this Court was violated as mutation in favour of respondent No. 1 (Balwinder Singh) was sanctioned by the revenue authorities and Balwinder Singh had attempted to interfere in the possession of petitioner (Gurdit Singh). The order of status-quo was passed on 24.11.1993 in the presence of learned counsel for the parties and respondent No. 1 was having full knowledge of the orders passed by this Court. Hence the petition.

8. Notice of the petition was served upon the respondents.

9. Respondent No. 1 (Balwinder Singh) contested the petition by filing a written reply by way of affidavit that there was no violation of status-quo order passed by this Court. In fact, the mutation was sanctioned by the revenue authorities initially on 29.06.1988. Sadhu Singh alongwith Gurdit Singh filed an appeal before Collector, Zira which was dismissed vide order dated 31.07.1989 and the appeal filed before Commissioner, Ferozepur Division, Ferozepur was withdrawn by the petitioner and after rejection of the appeal mutation was sanctioned in favour of the answering respondent and the same was recorded in Jamabandi in the remarks column. Necessary correction was accordingly made in the revenue record. Answering respondent was already in possession of the suit property. So, there was no intentional violation of injunction order and the petition be dismissed.

10. In appeal, appellant (Gurdit Singh) challenged the findings recorded by the learned first Appellate Court on issues No. 1, 2 and 4 and appellant (Balwinder Singh) has assailed the finding recorded on issue No. 6.

11. Notice of the appeal was served upon the opposite party.

12. Record was requisitioned.

13. I have heard learned counsel for the appellants.

14. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are to be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 CPC. Reference in this regard can be made to the judgement of the Supreme Court in the case of ***Pankajakshi (Dead) through LRs and others Vs Chandrika and others*** (2016) 6 SCC 157 followed by the judgements in the case of ***Kirodi (since deceased) through his LR Vs Ram Parkash and others*** (2019) 11 SCC 317 and ***Satender and others Vs Saroj and others*** 2022(12) Scale 92. Relying upon the law laid down in the aforesaid judgements, no question of law is required to be framed.

15. The question that arises for consideration is as to whether the Courts below have wrongly placed onus upon the plaintiff to prove that the name of grand-father of Gurdit Singh was Budha Singh also?

16. The whole case revolves around the fact that the owner of the land was Gurdit Singh son of Sadhu Singh. The only dispute which is required to be settled is as to if the grand-father of Gurdit Singh, owner of the land, was Budha Singh or Jaimal Singh or the plaintiff and Gurdit Singh son of Sadhu Singh son of Budha Singh are two different persons. There is ample evidence on record in the shape of allotment record Exhibits P1 to P6 which was proved by official of Director, Land Record, Jalandhar, Punjab that the land was allotted in the name of Gurdit Singh son of Sadhu Singh by Rehabilitation Department in lieu of the land left behind by Gurdit Singh son of Sadhu Singh in village Bholewala, Bahawalpur, Pakistan. Exhibit P1 is copy of application and Exhibits P2 to P4 are allotment orders, whereby Gurdit Singh son of Sadhu Singh was allotted agricultural land in village Bhoranwali, Tehsil Zira in lieu of the land left by him in Pakistan. Exhibit P6 is sanad allotment issued in the

name of Gurdit Singh son of Sadhu Singh. It is also admitted fact that in the allotment record, the name of grand-father of allottee Gurdit Singh son of Sadhu Singh is not recorded. It is also admitted that the name of grand-father of allottee Gurdit Singh son of Sadhu Singh appeared in the Jamabandis Exhibit P10 for the year 1969-1970, Exhibit P11 for the year 1984-1985 and that name was Budha Singh. Now the learned Sub Judge, 1st Class, Zira after appreciating the evidence has recorded categorical findings that Gurdit Singh son of Sadhu Singh son of Jaimal Singh and Gurdit Singh son of Sadhu Singh son of Budha Singh is one and the same person and on that basis issues No. 1, 2 and 6 were decided in favour of the plaintiffs, whereas the learned first Appellate Court held that the plaintiff has failed to prove that his grand-father was Budha Singh and Gurdit Singh son of Sadhu Singh son of Jaimal Singh and Gurdit Singh son of Sadhu Singh son of Budha Singh is one and the same person. The learned Additional District Judge, Ferozepur has recorded findings that the plaintiff has failed to produce the evidence as to how the name of Budha Singh had appeared in the revenue record when Budha Singh was not mentioned in the records maintained by the Rehabilitation Department. He has further recorded a finding that the land in dispute is owned by Gurdit Singh son of Sadhu Singh son of Budha Singh and that in sale deed Exhibit P7 of 13.06.1968 executed by Gurdit Singh son of Sadhu Singh son of Jaimal Singh it is not mentioned that Jaimal Singh had an alias Budha Singh. Similarly, in power of attorney Exhibit PW3/A dated 12.11.1987, the name of Jaimal Singh has not been mentioned as alias Budha Singh. The Jamabandis do not indicate that Budha Singh has any alias name and the learned first Appellate Court has observed that no case has come to the notice of the Court where one person may be having one grand-father of two names. This observation of learned first Appellate Court is clearly absurd as it is very common that persons carry two names and any person

carrying two names with the passage of time can be a grand-father also. The learned first Appellate Court discarded the testimony of PW4 (Mohar Singh) who was a co-villager of the plaintiff in village Bholewala, Bahawalpur, Pakistan also. It is in evidence that Mohar Singh was a co-villager in Bholewala, Pakistan and after partition of the country, he was also allotted land in the village Bohranwali where the suit land is located. The learned first Appellate Court has recorded the finding that his testimony is not based upon the ingredients of section 50 of the Indian Evidence Act, 1872. It was further held that since Gurdit Singh is not residing in the village Bohranwali for the last 20-25 years and he has admitted that there is no person in the name of Gurdit Singh son of Sadhu Singh son of Budha Singh in village Bohranwali, so the plaintiff is not in possession of the suit land. Recitals in the sale deed Exhibit P8 dated 23.12.1969 executed by the plaintiff in favour of defendant (Balwinder Singh) and his brother (Gurmit Singh) with regard to 9 kanals of land has been ignored on the ground that attesting witness of the sale deed has not been examined and on that basis the learned first Appellate Court recorded a finding that the plaintiff has failed to prove that Gurdit Singh son of Sadhu Singh son of Jaimal Singh and Gurdit Singh son of Sadhu Singh son of Budha Singh is one and the same person. So, it was recorded that the plaintiff has no title in the suit land and he is not in possession of the suit land and the sale deed in favour of plaintiff No. 2 (Sadhu Singh) is a sham document. The learned first Appellate Court has upheld the finding recorded by the learned Sub Judge, 1st Class on issue No. 6 with regard to sale deed set up by the defendant (Balwinder Singh) as sham on the ground that the appellant-defendant has failed to prove on record that the sale deed was executed by the owner of the land. The findings recorded by learned first Appellate Court appear to be contradictory findings. If the plaintiff is not owner of the suit land and

Gurdit Singh son of Sadhu Singh son of Budha Singh is a different person, then sale deed in favour of defendant (Balwinder Singh) should have been upheld. But, considering the fact that it is the defendant who has set up the sale deed from Gurdit Singh son of Sadhu Singh son of Budha Singh, the onus should have been upon defendant (Balwinder Singh) to prove that Gurdit Singh son of Sadhu Singh son of Budha Singh is the allottee of the land and that the plaintiff is an imposter. But, instead of placing the onus upon the defendant, onus was wrongly placed upon the plaintiffs to prove that Gurdit Singh son of Sadhu Singh son of Budha Singh and Gurdit Singh son of Sadhu Singh son of Jaimal Singh are one and the same person. The approach of the learned first Appellate Court is certainly not correct. The learned first Appellate Court has ignored the material evidence and has based findings on surmises and conjectures. The previous sale deed executed by plaintiff - Gurdit Singh son of Sadhu Singh son of Jaimal Singh in favour of the defendant and his brother which was produced as Exhibit P8 was not taken into consideration by the learned first Appellate Court in order to observe that the defendant has got executed a sale deed of part of the suit property from the plaintiff on 23.12.1969. If the plaintiff has executed a sale deed of part of the suit property in favour of the defendant on 23.12.1969, then it is clear that the defendant has admitted the plaintiff to be owner of the suit property and due to that reason the sale deed from the plaintiff was got executed. The sale deed is Exhibit P8.

17. The learned first Appellate Court has not discussed the testimony of Balwinder Singh. Balwinder Singh appeared as DW2 and in cross-examination when the factum of this sale deed dated 23.12.1969 was put to him he has not denied the sale deed in his favour and in favour of his brother Gurmit Singh. Rather, he has admitted the same.

18. The relevant portion of his cross examination reads as under:-

“I do not know as to if he and his brother Gurmit Singh has purchased 9 kanals of land from Gurmit Singh on 23.12.1969. This land was purchased by our father in our names and I do not know that in the sale deed Gurdit Singh plaintiff had recorded the name of his grand-father as Jaimal Singh, whereas in Jamabandi the name is recorded as Budha Singh. I do not know that the land which was purchased on 23.12.1969 and the land in dispute was allotted to plaintiff. I do not know that at the time of sanctioning of mutation of land purchased by them in 1969, the plaintiff has got recorded the name of his grand-father as Budha Singh”

19. From this part of the cross-examination of the appellant-defendant (Balwinder Singh), it is clear that the appellant-defendant alongwith his brother Gurmit Singh had purchased the land from the plaintiff (Gurdit Singh) and in the sale deed the name of grand-father of the plaintiff is recorded as Jaimal Singh, while at the time of sanctioning of mutation, the name was recorded as Budha Singh. The learned first Appellate Court has discarded the contents of the sale deed only on the ground that witness of the sale deed was not examined, whereas the sale deed was proved on record by the plaintiff who has executed the sale deed and the beneficiary of the sale deed i.e. defendant (Balwinder Singh) has not denied the sale deed in his favour. So, in such circumstances, the sale deed Exhibit P8 was duly proved on record and its contents can be read into evidence.

20. Furthermore, it was put to plaintiff (Gurdit Singh) in cross-examination by appellant-defendant (Balwinder Singh) that he has signed the documents of Rehabilitation Department in connivance with officials of the Department. This clearly is admission on part of defendant that plaintiff is allottee of land.

21. Now, the learned first Appellate Court has ignored the well reasoned findings of the learned Sub Judge, 1st Class that all the allotment documents are coming out of the custody of the plaintiff. It is not denied by the defendants that the documents were signed by the plaintiff, but it has been put to the plaintiff that the documents were signed by the plaintiff in connivance

with officials of the Revenue Department. When it is proved on record that original allotment orders and conveyance deed is coming from the custody of the plaintiff and in those documents the name of grand-father of the plaintiff is not recorded either Jaimal Singh or Budha Singh, the learned first Appellate Court has lost sight of the fact that allotment letters and conveyance deed are the documents of title and not the entries in the revenue record. It is settled that entries in the revenue record are maintained only for the purpose of maintaining record as to who is to pay the land revenue assessed to the land and are not documents of title. It is on record that the documents of title are coming out of possession of the plaintiff and the name of his grand-father is not there on these documents. In case, the name of grand-father of the plaintiff was recorded as Budha Singh in copies of Jamabandis, then the right title of the plaintiff would not be affected particularly when the documents of title are in possession of the plaintiff and the plaintiff is dealing with the suit property since long as owner as he has executed the sale deed Exhibit P7 in the year 1968 and the sale deed Exhibit P8 in favour of defendant (Balwinder Singh) and his brother (Gurmit Singh) in 1969 much before the present controversy arose. In view of the evidence on record, it can safely be assumed that it is the plaintiff who is allottee of the land and as allottee, he is owner in possession of the land.

22. It is appellant-defendant (Balwinder Singh) who is claiming the sale-deed in his favour from one Gurdit Singh son of Sadhu Singh son of Budha Singh. It was for defendant (Balwinder Singh) to prove that the sale deed has been executed by the real owner of the property. It is concurrent finding of both the Courts below that the sale deed has been executed by an imposter. The defendant while appearing in the witness box on 31.08.1989 has undertaken to produce Gurdit Singh son of Sadhu Singh son of Budha Singh, if he is able to find him. But, on the next day, he produced a death certificate of

Gurdit Singh obtained on 29.08.1989 two days prior to his appearing as witness in the case and making statement that in case he is able to find Gurdit Singh, then he would produce him in the Court and both the Courts below have rightly concluded that either the death certificate is fabricated in order to avoid producing Gurdit Singh in the Court or the defendant has made a false statement and he was aware of death of Gurdit Singh on 29.08.1989 well before he stepped into the witness box on 31.08.1989. The marginal witness of the sale deed Darshan Singh has deposed that the vendor of defendant (Balwinder Singh) has died in Pakistan and the testimony of Darshan Singh was disbelieved by both the Courts below. There is nothing wrong in the findings recorded by both the Courts below on issue No. 6. But, I am of the considered opinion that the learned Courts below have wrongly placed onus on the plaintiff to prove that his grand-father was also known by name of Budha Singh and the learned first Appellate Court has mis-appreciated the evidence on wrong principles of law of evidence. As such, findings on issues No. 1 and 2 as recorded by the learned first Appellate Court are not correct.

23. As regards finding on issue No. 4 is concerned, the learned first Appellate Court has recorded the finding against the plaintiff. Issue No. 4 was decided by the learned first Appellate Court against the plaintiff on the grounds that since the plaintiff was not found in possession, so his simplicitor suit for declaration is not maintainable.

24. Learned counsel for the appellant-defendant (Balwinder Singh) has contended that the finding recorded by the learned first Appellate Court is correct and that in view of the proviso to Section 34 of the Specific Relief Act, 1963, since the plaintiff was not found in possession of the suit land, his suit for declaration without seeking consequential relief of possession is not maintainable. He placed reliance upon the judgements of Apex Court in

Executive Officer, Arulmigu Chokkanatha Swamy Koil Trust Virudhunagar Vs Chandran and others, 2017(2) RCR Civil 1; ***Venkataraja and others Vs Vidyane Doureradjaperumal (D) through LRs and others***, 2013(3) RCR Civil 176 and ***Ram Saran and another Vs Smt. Ganga Devi***, AIR 1972 SC 2685.

25. There is no doubt in the proposition of law that without seeking consequential relief simplicitor suit for declaration is not maintainable. But, since in the present case, the plaintiff is owner in possession of the suit land. Finding of the learned first Appellate Court that the plaintiff is not owner in possession and he has not cultivated the land for the last 20-25 years as per his own testimony, he cannot be held to be in possession is not correct as the findings of learned first Appellate Court with regard to the plaintiff not being owner of the suit property have already been set aside. Testimony of the plaintiff is to the effect that he is in possession over suit property through his tenant Darbara Singh and he has cultivated the land himself 20-25 years ago. So, mere fact that he himself has not cultivated the land would not be sufficient to record a finding that the plaintiff is not in possession of the suit land particularly when the defendant is claiming ownership and possession of the suit land from Gurdit Singh son of Sadhu Singh who is none other than the plaintiff and it is proved on record that the plaintiff is owner in possession of the suit land. As such, there was no necessity for the plaintiff to seek possession of the suit land. Since plaintiff (Gurdit Singh) is owner of the suit land, he was competent to execute the sale deed in favour of the plaintiff (Sadhu Singh) to the extent of 1/2 share. As such, findings on issue No. 4 recorded by the learned first Appellate Court are not sustainable. The same are set aside and issue No. 4 is decided against the defendant and in favour of the plaintiff.

26. In view of these observations, RSA-1687-1993 filed by appellant (Gurdit Singh) is allowed and RSA-2234-1993 filed by the appellant (Balwinder Singh) is dismissed.

27. The judgement and decree dated 04.05.1993 passed by the learned first Appellate Court is set aside and the judgement and decree dated 05.02.1992 passed by the learned Sub Judge, First Class, Zira is restored.

28. As regards, COCP-245-1995 is concerned, it is admitted case of the parties that respondent No. 1 (Balwinder Singh) is a co-owner in the suit land as 9 kanals out of the suit land has been transferred to respondent No. 1 (Balwinder Singh) and his brother Gurmit Singh vide sale deed Exhibit P8 as has been proved on record by the petitioner himself. Sanctioning of Mutation of the sale deed is an official act which was discharged by the revenue officials in discharge of their official duties after withdrawal of the appeal by the petitioner from the Court of Commissioner, Ferozepur and giving effect to that mutation in Jamabandi is not a contemptuous act. Respondent No. 1 (Balwinder Singh) being a co-sharer in joint possession has right to cultivate the land to the extent of his share and it is not proved on record that respondent No. 1 (Balwinder Singh) has exceeded his right. So, no case for contempt is made out against respondent No. 1 (Balwinder Singh) as well as respondent No. 2 - Revenue Patwari. As such, COCP-245-1995 is dismissed.

(VIRINDER AGGARWAL)
JUDGE

21st August, 2025
Amodh Sharma

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