



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

**RSA-1580-1991 (O&M)**

**Reserved on :- 15.10.2025**

**Pronounced on :-27.10.2025**

Jai Gopal and Another

... Appellants

Versus

Jagdish Chander

... Respondent

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

Argued by :-

Mr. Sandeep Jasuja, Advocate,  
for the appellants..

Mr. Ashwani Kumar Chopra, Senior Advocate, with  
Mr. Brahmjot Singh Nahar, Advocate,  
for the respondent.

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**VIRINDER AGGARWAL, J.**

The appellants/plaintiffs, being aggrieved by the judgment and decree dated 16.04.1991 passed by the learned Additional District Judge, Ferozepur, in Civil Appeal No. RBT-191-1989, whereby the well-reasoned judgment and decree dated 19.01.1989 of the learned Sub-Judge 1st Class, Fazilka, in Case No. 128 of 14.07.1984, was erroneously reversed, most respectfully invoke the jurisdiction of this Court under Section 41 of the Punjab Courts Act, 1918, by way of the present Regular Second Appeal (to be referred as “RSA”). The appellants seek restoration of the decree rightly passed by the learned Trial Court and appropriate redress for the substantial injustice suffered.



1.1. It is respectfully submitted that the impugned judgment and decree are manifestly perverse, being founded upon fundamental errors of law and a grossly flawed appreciation of evidence, resulting in a palpable miscarriage of justice. In these circumstances, the appellants humbly pray for the intervention of this Court to set aside the impugned judgment and decree and to restore the lawful and well-reasoned 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:-

“The plaintiffs aver that Devi Dass, father of *plaintiff no. 2* and the *defendant*, had three sons, including Devi Dial (since deceased). Upon his demise, Devi Dial was survived by his widow Smt. Radha Piari and sons Jai Gopal, Jugal Kishore, and Om Parkash. It is stated that all three sons of Devi Dass migrated from Pakistan to India and were allotted land in lieu of their ancestral shares by the Rehabilitation Department.

The disputed property is alleged to be joint, with plaintiff No.2, the defendant, and the heirs of late Devi Dial each holding a one-third share. The defendant, by an arbitration agreement dated 29.10.1983 and an affidavit of the same date, acknowledged his one-third interest. The Arbitrator subsequently awarded the disputed property exclusively to *plaintiff no. 2*; however, as the award was not made a rule of the



court, the defendant legally retains his one-third share. It is further alleged that the defendant has now threatened to alienate the said property by relying upon revenue record entries, necessitating the institution of the present suit.”

3. Upon notice, the defendant contested the suit, asserting that the disputed land was initially leased to him by the Government in 1951 and subsequently purchased in 1961, thereby conferring exclusive ownership upon him. He denied the plaintiffs’ claim of any right, title, or interest in the property. The alleged arbitration agreement and affidavit dated 29.10.1983 were described as forged and fabricated. The defendant further averred that, being aged and physically infirm, he was subjected to undue influence and coercion by the plaintiffs and their associates, who allegedly confined and intimidated him into signing certain English documents and blank papers relating to House No. 1/274, near Arya Samaj, Fazilka. He maintains that any signatures obtained were without his knowledge, consent, or comprehension of their contents, and as such, the documents are invalid and non-binding. Accordingly, he prayed for dismissal of the suit.

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

1. Whether the plaintiff is estopped to file the present suit by his act and conduct?OPP



2. Whether the suit in the present form is not maintainable?OPD.
3. Whether the plaintiffs are entitled to the relief of declaration as prayed for?OPP
4. Whether the defendants are entitled to the relief of permanent injunction as prayed for ?OPP
5. Whether the defendant is entitled to special costs under section 35-A of C.P.C.?0PD
6. 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 Sub-Judge 1<sup>st</sup> Class, Fazilka decreed the suit in favour of the appellants/plaintiffs, observing that “*as the defendant has failed to establish his case, he is not entitled to special costs under Section 35-A, and the plaintiffs’ suit is decreed as prayed*”. Aggrieved by this decree, the appellants/respondents preferred an appeal before the learned Additional District Judge, Ferozepur, which was allowed, resulting in the reversal of the well-reasoned judgment and decree of the learned Trial Court. The learned Appellate Court, in its judgment, held that “*the plaintiffs’ suit is not maintainable, and they are not entitled to declaration or permanent injunction. Issues 1 to 4 are decided against the plaintiffs, setting aside the Trial Court’s findings.*”

6. Aggrieved by the judgment and decree of the learned First Appellate Court, the appellants instituted the present appeal, which was duly admitted. Notice was issued to the respondents, who appeared through their counsel, and the records of the lower courts were requisitioned for detailed scrutiny and adjudication.



7. I have heard learned counsel and carefully examined their submissions in conjunction with the pleadings, evidence, and the findings recorded by the courts below. The record has been meticulously reviewed to determine *‘whether the impugned judgments and decrees suffer from any legal error or infirmity warranting interference by this Court’*.

8. 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 judgment of the Supreme Court in the case of **Pankajakshi (Dead) through LRs and others V/s Chandrika and others, (2016)6 SCC 157**, followed by the judgments in the case of **Kirodi (since deceased) through his LR V/s Ram Parkash and others, (2019) 11 SCC 317** and **Satender and others V/s Saroj and others, 2022(12) Scale 92**. Relying upon the law laid down in the aforesaid judgments, no question of law is required to be framed.

9. The learned counsel for the appellants emphasized that the judgment and decree of the learned Additional District Judge, Ferozepur which set aside the well-reasoned and lawful judgment of the trial court, is manifestly erroneous, wholly illegal, and contrary to the facts and evidence on record, and is therefore untenable in law. The appellants instituted a suit seeking a declaration of ownership of a one-third share in the disputed land, together with consequential relief restraining the respondent from alienating, mortgaging, or otherwise dealing with the property. The approach of the learned Appellate Authority in overturning the learned trial Court’s decree is arbitrary, perverse, and capricious. It is undisputed on record that a partition



agreement (Ex.P.1) was executed between the parties, whereby the respondent was allotted a one-third share in the disputed property. The learned Appellate Authority's failure to consider this undisputed document alone renders the judgment liable to be set aside.

9.2. It is further urged by the learned counsel for the appellants that the learned Appellate Court further ignored and sidelined the appellants' evidence (Ex.PW1/7–39, Ex.P.40, Ex.PW6/1–21) establishing their co-sharership, reversing the trial court's findings on Issues 1 to 3 on mere technicalities without due appreciation of the documentary and oral evidence adduced. The record establishes that the parties migrated from Pakistan, and the disputed land was allotted in lieu of ancestral property. The appellants and respondent are members of a Joint Hindu Family, and allotment in the name of the '*Karta*' cannot and does not affect the appellants' lawful rights or shares in the property.

9.3. The learned trial Court correctly held that the respondent failed to produce receipts for the lease or sale of the property, a fact wholly ignored by the appellate authority. It was also rightly observed that the respondent was not entitled to permanent injunction, confirming that he was never in possession of the disputed land. Further, the respondent had abandoned Fazilka, rendering him incapable of managing the property. Narain Singh, a purported witness, never cultivated the land and was not employed by the respondent, confirming that he was merely a hired witness. The Appellate Court's judgment is therefore founded on conjecture and speculation, without proper evaluation of the evidence.

9.4. In view of the foregoing, the learned counsel for appellants respectfully prayed that this Court may be pleased to set aside the judgment



and decree of the learned Additional District Judge, Ferozepur, and restore the well-reasoned and lawful judgment of the trial Court while allowing the instant RSA.

10. Learned counsel for the respondent urges that for the purpose of clarity, the parties are referred to in their original positions in Suit No. 1, i.e. '**appellants**' as '**plaintiffs**' and the '**respondent**' as '**defendant**'. It is pertinent to note that the original defendant, Thakar Dass, passed away during the pendency of the first appeal, and his son, Jagdish, was duly impleaded in his place. It is further argued that the plaintiffs' case rests on the contention that the property in question was allotted in lieu of ancestral property left in Pakistan, and that notwithstanding the revenue records reflecting exclusive ownership and possession by Thakar Dass, he held only a one-third share. They further rely on an alleged Agreement and Affidavit dated 29.10.1983 (Ex.P1 and Ex.PW5/1) and a purported Arbitration Award (Ex.PW1/1), claiming recognition of only a one-third share in favor of the defendant. Notably, Plaintiff No. 2, Ram Sarup, acted as an arbitrator in his own cause, rendering the arbitration process inherently biased and tainted. Moreover, the purported Award was never made rule of the court, further underscoring its defective and self-serving character.

10.1. It is further contended that the respondent, as established on record, is the lawful owner of the disputed property. The land was allotted on lease in 1954 (Ex.DW3/1) and subsequently purchased in 1961 through a valid conveyance deed (Ex.DW5/1). The plaintiffs' evidence is replete with contradictions and inconsistencies, and Plaintiff No. 1 could not substantiate any claim regarding properties left in Pakistan or any receipt of claim money. The First Appellate Court correctly observed that there is no



pleading or evidence to support the plaintiffs' allegations. The conveyance deed and accompanying revenue records (*Jamabandis & Khasra Girdawri*) incontrovertibly establish that the respondent has been in exclusive possession and lawful ownership of the property since 1954. The plaintiffs have never been in possession, nor have they produced any documentary evidence to substantiate possession. The alleged Agreement, Affidavit, and Arbitration Award are demonstrably fabricated, as revealed by cross-examination, which exposed inconsistencies regarding drafting, execution, and awareness of the property details. The purported Award, drafted in English by a witness who knew only Hindi, further underscores the fraudulent nature of the documents.

10.2. It has further been emphasized by the learned counsel for the respondent that the arbitration process itself was fundamentally flawed, and the plaintiffs failed to challenge the entries in the revenue record as required under Sections 44 and 45 of the Punjab Land Revenue Act, rendering the suit untenable and devoid of merit. At the last it is submitted that in light of the foregoing, it is submitted that the plaintiffs' suit is wholly unsustainable. The findings of the learned Appellate Courts in favuor of the respondent are correct, lawful, and just, and deserve to be upheld in their entirety and instant appeal be dismissed.

11. The contention of the learned counsel for the appellants/plaintiffs that the learned First Appellate Court overlooked documentary evidence establishing that the parties migrated from Pakistan and that the disputed land was allotted in lieu of ancestral property as Joint Hindu Family property fails to withstand scrutiny. The learned Appellate Court correctly held that the appellants failed to prove that any land was





allotted in the name of Thakar Dass following their families' migration after Partition or that such allotment was in lieu of property owned by their families.

11.1. It was rightly observed that the respondent-defendant was initially inducted on the suit land as a tenant, and subsequently purchased the same in 1961. The Court correctly concluded that the case pleaded by the appellants-plaintiffs remained unproven, and the oral evidence adduced by them was contrary to the written pleadings. While the plaintiffs contended that the suit land was allotted in the name of Thakar Dass in lieu of ancestral property, PW-7 deposed that Thakar Dass purchased the land from the claim amount received by the families, a fact nowhere pleaded in the plaint.

11.2. The learned First Appellate Court also correctly noted that there is no evidence on record regarding the receipt of any claim amount by the families, the source, or the department involved remains unproven. Moreover, the plaintiffs admitted the ownership of the defendant-Thakar Dass by acknowledging that he purchased the land, which is inconsistent with the pleaded case that the land was allotted in his name in lieu of property held by their families in Pakistan before partition. It is settled law that evidence beyond the pleadings cannot be considered. In the present case, the plaintiffs have failed to establish their pleaded case, and the evidence led is extraneous to the pleadings, which cannot be taken into account.

12. The case of the plaintiffs rests upon the alleged admission of proprietary rights by the defendant-Thakar Dass, as reflected in Agreement Ex.P1, which referred the matter to arbitration, and the affidavit sworn by Thakar Dass in support of that agreement, marked as Ex.PW5/1. The



question before this Court is whether, assuming the entire version of the appellants-plaintiffs to be true, including the alleged admission by the defendant through Ex.P1 and Ex.PW5/1, such documents could confer any title upon the appellants-plaintiffs or extinguish the title of the respondent-defendant.

13. It is the considered opinion of this Court that a registered document is required to create or extinguish any right, title, or interest in immovable property of the value exceeding Rs. 100/-, in terms of Section 17 of the Registration Act, 1908. This position has been affirmed by this Court in **Roop Singh vs. Murti Sri Radha Krishan Ji, 2009 (3) RCR (Civil) 130**, where it was held as follows:-

“4. The Courts below was swayed by the fact that the original owner-cum-landlord, Sant Ram had disclaimed any interest in the property and had also given a letter in writing that he was gifting the property to the Mandir. The issue, which the Courts below have failed to see is that in relation to an immovable property of whose value was more than ₹100/-, no transfer of title is possible except through a registered instrument. Section 17 (1) (a) of the Registration Act refers to “instrument of gift of immovable property” as requiring registration. Section 49 of the Registration Act states that no document which is required to be registered under Section 17 of the Act could be received as evidence to affect any immovable property or received as evidence to any transaction affecting such property unless it has been registered. An oral release or a written letter of an original owner acknowledging another person as the owner has no value in the eye of law. A transfer of title to immovable property could never be made by mere admission. The Supreme Court has also in a decision in



**Ambika Prasad Thakur v. Ram Ekpai Rai AIR 1996 SC 605**, held that an admission cannot create title in respect of immovable property. Indeed, if title could be merely transferred by admission, then there is no requirement of either the provisions of the Stamp Act or even the Registration Act. There is no mode of transfer possible other than how the law envisages that a transfer could be effected.”

14. In the present case, there is no registered document extinguishing the right, title, or interest of the respondent-defendant in the suit property. In the absence of such a document, a mere admission contained in Agreement Ex.P1 or Affidavit Ex.PW5/1 is insufficient to divest the ownership rights of the respondent-defendant.

14.1. Furthermore, the learned First Appellate Court rightly observed that the execution of Ex.P1 and Ex.PW5/1 is suspect and has not been established through cogent and convincing evidence. It is on record that the agreement as well as the Arbitration Award were prepared on the same day by the same individual, and were dictated in the office of counsel Sh. S.K. Jasuja, which raises serious doubts as to the authenticity and genuineness of the documents.

15. In light of the foregoing observations and after a careful examination of the record, it is evident that the learned First Appellate Court was fully justified in rejecting Ex.P1 and Ex.PW5/1, having found that these documents are suspect in their execution and have not been substantiated by convincing and credible evidence. Considering the lack of a registered document to affect the ownership rights of the respondent-defendant and the attendant doubts regarding the authenticity of the documents relied upon by the appellants, the findings of the learned First Appellate Court stand well-



founded and unimpeachable. Consequently, the present appeal is entirely devoid of merit and is therefore hereby dismissed in its entirety.

16. Consequent upon the final adjudication of the main case, all pending miscellaneous applications, if any, filed in connection with or arising out of the present proceedings, stand disposed of in view of the decision rendered herein. No further orders or directions are deemed necessary in respect of such applications, and they are accordingly disposed of in the light of the conclusions reached in the main case.

27.10.2025  
Gaurav Sorot

( VIRINDER AGGARWAL )  
JUDGE

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|------------------------------|----------|
| Whether reasoned / speaking? | Yes / No |
| Whether reportable?          | Yes / No |