

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

(203)

RSA No. 2213 of 1996(O&M)

Reserved on : 12.11.2025

Pronounced on : 18.11.2025

Om Parkash (Since Deceased) Through Lrs and Others

... Appellants

Versus

Dharam Pal and Others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present: Mr. Amarjit Singh Virk, Advocate
for the appellants

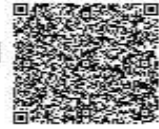
Mr. Som Nath Saini, Advocate
for the Respondent No. 1

VIRINDER AGGARWAL, J.

1. This Regular Second Appeal has been preferred by the plaintiff-appellant against the judgment and decree dated 05.12.1995 passed by the learned Additional District Judge, Karnal, whereby the appeal filed by him was dismissed and the judgment and decree dated 01.02.1995 passed by the learned Sub Judge IInd Class, Karnal, dismissing his suit for declaration, was affirmed. The appellant seeks to challenge the legality of the sale deed dated 30.04.1987(Ex.P) executed by respondent No.2/Defendant no.1 in favour of respondent No.1/Defendant no.2 in respect of land measuring 11 Kanals-0 Marlas, on the ground that the vendor did not possess sufficient share to alienate such land.

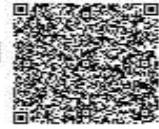
2. The parties are co-sharers in joint agricultural land situated in village Phoosgarh, Sub. Tehsil Indri, District Karnal comprised in Khewat Nos. 61 and

62. Respondent No.1/Defendant no.2, Hari Chand, is shown to be owner of



1/5th share, which after adjusting mortgaged land comes to 8 Kanals 8 Marlas in Khewat No.61. Before the impugned sale, certain land measuring 27 Kanals 12 Marlas,(out of shared land as 55 Kanals 5 Marlas alongwith appellant-plaintiff), was mortgaged by Respondent no.2/Defendant no.1 with possession vide deed dated 23.05.1983(Ex.PX). According to the appellant, most of the mortgaged land fell to the share of respondent No.1/Defendant no.2 and, after adjusting the mortgaged area, he was left with only 8 Kanals 8 Marlas of land out of his total share of 1/5th from entire land of 180Kanals under two Khewats no.61 and 62. Despite this, respondent No.1/Defendant no.2 executed a registered sale deed dated 30.04.1987(Ex.P2) in favour of respondent No.2/Defendant no.1, alienating 11 Kanals 9 Marlas, representing the land to be free from all encumbrances. The plaintiff, asserting that the sale was in excess of the vendor's share and thus void, instituted the suit for declaration.

3. On Notice, respondents/defendants contested that suit by assertion that sale deed is valid and has not been executed in excess of share of respondent No.2/defendant No.1 The learned Trial Court, after examining the jamabandis for the relevant years and considering the evidence led by both sides, found that respondent No.2/Defendant no.1 was in possession of the specific land mentioned in the sale deed. It held that in joint holdings, a co-sharer is competent to transfer even specific khasra numbers and such a transfer cannot be declared void merely because it exceeds his fractional share, for the reason that adjustment of equities can always be made at the time of partition. The Court further found that the mortgaged land was entirely separate from the killa numbers sold and that the plaintiff's remedy, if any, lay in seeking partition rather than a declaration that the sale deed was void. Consequently, the suit was dismissed.

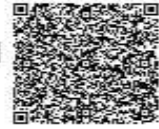


4. The First Appellate Court reappraised the evidence and concurred with the conclusions of the learned Trial Court, holding that the vendee stepped into the shoes of the vendor and the alienation remained subject to partition. It affirmed that no illegality or perversity existed in the findings of the learned Trial Court.

CONTENTIONS

5. Learned counsel for the appellant argued that respondent No.2/Defendant no.1 had no legal right to transfer land in excess of 8 Kanals 8 Marlas, which was the only area left with him after adjusting the mortgage land vide deed dated 23.05.1983 (Ex.PX). He submitted that the very foundation of the sale deed was incorrect because the land was represented to be free from encumbrances when in fact the vendor's share was already depleted by the mortgage. Learned Counsel argued that since the land was joint and no partition had taken place, giving specific khasra numbers in the sale deed was impermissible, and therefore the alienation deserved to be declared void.

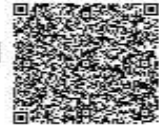
6. Learned counsel appearing for respondent No.1/Defendant no.2 supported the judgments of the Courts below and submitted that the law is well settled that a co-sharer in joint khata can validly transfer specific killa numbers and such a transfer remains operative, though subject to adjustment of shares at the time of partition. He contended that the jamabandi entries clearly demonstrated the possession of respondent No.1 over the land alienated and that the mortgage pertained to entirely different khasra numbers. It was submitted that mutation entries and jamabandi records support the sale deed. Thus, it was urged that the findings of the learned Courts below are well-reasoned, supported by evidence, and do not suffer from any perversity warranting interference.

**OBSERVATIONS AND FINDINGS**

7. I have considered the submissions of learned counsel for the parties and have carefully examined the judgments delivered by the learned Trial Court and the First Appellate Court, along with the documentary exhibits placed on the record. The learned Courts below have returned concurrent factual findings relating to the share of respondent no.2/defendant no.1 (Hari Chand), the distribution of land in two blocks, the mortgage dated 23.05.1983, the sale deed dated 30.04.1987 (Ex. P-2), and the relevant revenue entries.

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. From the revenue record, particularly the jamabandi for the year 1981-82, it stands established that the total land in the joint khewats measured 180 Kanals 0 Marla. The respondent No.1 was entitled to 1/5th share out of this total land, which comes to 36 Kanals 0 Marla. The land was divided into two blocks, one block measuring approximately 138 Kanals 2 Marlas, and another block measuring approximately 41 Kanals 18 Marlas, and the share of the co-sharers, including respondent No.2/defendant No.1, extended across both

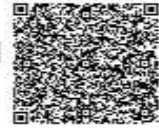


blocks. The jamabandi for 1981-82 relating to Khewat No. 61, Khatoni No. 84, shows total land measuring 35 Kanals 17 Marlas, owned jointly by the co-sharers, but in the exclusive cultivating possession of Hari Chand, thereby confirming that he held and possessed specific killa numbers from which he later made the impugned sale deed.(Ex.P2)

10. With respect to the mortgage, it is found that the mortgage deed dated 23.05.1983 (Ex. P-X) is related to a different portion of the joint holdings. The mortgaged land measured 55 Kanals 5 Marlas and fell in Khewat No. 61, Khatoni No. 80. In respect of it, Mutation No. 388 (Ex. P-Y) was sanctioned on 18.12.1984. The mutation of mortgage was not reflected in that jamabandi for year 1986-87. Consequently, when the sale deed dated 30.04.1987 (Ex. P-2) was executed, Hari Chand had acted on the basis of the then-existing jamabandi entries of 1981-82, which indeed showed him in possession of the land described in sale deed(Ex. P-2) and did not reflect the mortgage entry.

11. As regards the sale deed, the impugned sale deed (Ex. P-2), executed on 30.04.1987, covers 11 Kanals 9 Marlas. Thus, the 11 Kanal share was within the 36 Kanal share to which Hari Chand was entitled as 1/5th co-owner in the entire 180 Kanals of joint land. It was further found that the land sold under Ex. P-2 pertains to Khewat No. 61 / Khatoni No. 84, and therefore clearly falls within the block of land which was not mortgaged. It was also noticed that mutation No. 484 pertaining to Ex. P-2 was sanctioned later on 04.03.1992, indicating that the sale deed had been executed prior to it and the later sale deeds of year 1990- 1991 relied upon by the appellant and other co-owners.

12. Therefore it is evident that respondent no.2/defendant no.1 had sold only 11 Kanals out of the 36 Kanals which comprised his admissible 1/5th share in the total joint land and that the land conveyed was specifically out of the



portion he held and possessed in Khewat No. 61. The argument advanced by the appellant that respondent no.2/defendant no.1 had no saleable interest on account of the mortgage dated 23.05.1983 is not borne out from the record. Since the mortgaged land pertained to Khewat No. 61 / Khatoni No. 80 (55 Kanals 5 Marlas), and the land conveyed by sale deed (Ex. P-2) pertains to Khewat No. 61 / Khatoni No. 84, the two parcels are distinct. Hence, it cannot be said that the impugned sale deed is effected on account of mortgage of land. There is no overlap between the mortgage of land and the alienated land. The vendor's right to transfer land which is not under mortgage, remained intact. The assertion that respondent No.2/defendant No.1 had only 8 Kanals 8 Marlas of "unencumbered land" is therefore requires to be tested only at the time of partition of joint holding and cannot affect the legality of the transfer.

13. It is settled law that a co-owner has a right in every inch of the joint property and is legally competent to transfer specific killa numbers. Such alienation is not void; it merely vests the vendee with the transferor's interest subject to adjustment of shares in partition proceedings. In light of the concurrent factual findings, it is evident that respondent No.2/defendant No.1 transferred only that portion of the land which was in his exclusive possession being part of his undivided 1/5th share. Therefore, the impugned sale deed dated 30.04.1987 cannot be declared void or void ab initio at this stage. Rights, title and interest of respondent No.1/defendant No.2 would only be ascertained at the time of final partition of joint holding and he would step into the shoes of Respondent No.2/defendant No.1. The share of vendee under (Ex. P-2) shall subject to the ultimate determination of shares during partition. Further, the subsequent sale deeds relied upon by the appellant and other co-owners were executed in the years 1990 and 1991, i.e., after the execution of impugned sale



deed(Ex. P-2) in 1987. Those later transactions, as the learned Courts below noted, have no bearing on the legality of sale deed(Ex. P-2) and shall likewise remain subject to the final determination of shares in partition and the equities that may be worked out therein. In view of the above discussion, I find no ground to interfere with the concurrent findings recorded by the learned Courts below.

14. For the foregoing reasons, the present appeal is **dismissed**. The sale deed dated 30.04.1987 shall remain valid and operative, subject to adjustment of equities between the parties at the time of partition.

15. Since the main case has been decided, pending miscellaneous application(s), if any, stands also disposed of.

18.11.2025
Saurav Pathania

(VIRINDER AGGARWAL)
JUDGE

- (i) Whether speaking/reasoned : Yes/No
- (ii) Whether reportable : Yes/No