

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

RSA No.485 of 1999 (O&M)

Date of Order:02.05.2025

Smt. Mohinder Kaur and others

.Appellants

Versus

Smt. Daro and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. H.S.Dhandi, Advocate
for the appellants.**

**Mr. Kuldip Sanwal, Advocate
for respondent nos.5, 7 to 16.**

Dr. D.S.Lamba, Addl.A.G., Punjab.

ANIL KSHETARPAL, JUDGE (Oral)

1. The plaintiffs assail the correctness of the concurrent findings of fact arrived at by the courts below while partly dismissing the plaintiffs' suit. In fact, the entire dispute is the result of a wrong entry made by the revenue authorities with regard to succession of property left behind by Pritam Singh.

2. In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed.

3. Gurbax Singh had four sons, namely, Pritam Singh, Dayal Singh(Dial Singh), Mehma Singh and Dara Singh. These four brothers were owners of land measuring 63 kanals and 16 marlas. In other words, each brother, namely, Pritam Singh, Dayal Singh(Dial Singh), Mehma Singh and Dara Singh were owner of 15 kanals and 16 marlas each. Initially, all the

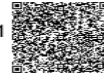


four brothers sold 11 kanals land in favour of Tara Singh and others. Subsequently, Pritam Singh sold 9 kanals land. Thus, Pritam Singh during his life time, sold the land measuring 12 kanals and 13 marlas land (he sold 3 kanals and 13 marlas land jointly with his three brothers, whereas he sold 9 kanals individually, thus he was left with only 3 kanals and 3 marlas land). However, the revenue authorities committed a blunder. Pritam Singh died issueless. Ignoring the sale deed executed by Pritam Singh during his life time, the entire $1/4^{\text{th}}$ share in the land measuring 63 kanals and 16 marlas were mutated in favour of his three brothers and a sister, namely, Daro.

4. Subsequently, Mehma Singh and Santo executed two sale deeds in favour of Sohan Singh, Bhag Singh, Bhagat Singh and Jaswant Singh with respect to 16 kanals and 17 marlas. Daro also sold 2 kanals and 6 marlas in favour of plaintiff no.2-Surjit Kaur widow of Malkiat Singh.

5. In fact, on the death of Pritam Singh, his mother was alive. She was the only Class-I heir of late Sh. Pritam Singh. In the presence of Class-I heir, the mother of Pritam Singh, mutation of the land in favour of Class-II heirs was wrong. The First Appellate Court correctly found that the entire property left behind by Pritam Singh would be inherited by Smt. Santo, mother of Pritam Singh. In fact, Smt. Santo will inherit 3 kanals and 3 marlas land after the death of Pritam Singh. Hence, she could sell only 3 kanals and 3 marlas land. Mehma Singh would not inherit any property from Pritam Singh. Hence, the sale deed executed by Mehma Singh with respect to the property inherited from Pritam Singh would not effect the rights of the plaintiffs because it was in excess of his share.

6. The First Appellate Court has erred in observing that the sale



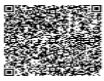
deed in favour of Sohan Singh, Bhag Singh, Bhagat Singh and Jaswant Singh executed by Mehma Singh and Santo are legal because they are bonafide purchasers and hence protected under Section 41 of the Transfer of Property Act, 1882 (hereinafter referred to as 'the 1882 Act'). It is evident that Section 41 of the 1882 Act is not applicable because for applicability of Section 41, the Supreme Court in **Hardev Singh vs. Gurmail Singh (dead) by LRs , (2007) 2 SCC, 404**, laid down the following four requirements:-

- (i) *the vendor should be an ostensible owner*
- (ii) *the sale is for valuable consideration*
- (iii) *he is so by express or implied consent of the actual owner is projected as owner.*
- (iv) *The transferee has taken reasonable care to ascertain the title of his vendor.*

7. Moreover, it is well settled that an individual cannot transfer title better than what he owns and possesses. In other words, no one can transfer better title than he has.

8. Smt. Daro, sister of late Sh. Pritam Singh also executed the sale deed in favour of Surjit Kaur on 13.05.1987, with respect to property inherited from Pritam Singh, which shall also liable to be ignored for the reasons recorded in paragraphs 5 and 6.

9. Since, the entire mess has been created by the revenue authorities, hence, the appeal is disposed of with a direction to the revenue authorities to correct the revenue record. The property sold by Pritam Singh shall be adjusted while sanctioning the mutation in favour of Smt. Santo, the mother. The sale deed executed by her to the extent of 3 kanals and 3



marlas in favour of Sohan Singh, Bhag Singh, Bhagat Singh and Jaswant Singh shall be valid. Similarly, if any part of the property was mutated in favour of Mehma Singh, sold by him, the same shall be ignored.

10. The Financial Commissioner (Revenue), Punjab, is directed to ensure that directions issued by this court are carried out in letter and spirit, within two months, from today, with report to this court under his signatures.

11. Registry is directed to forward a copy of this order to the Chief Secretary, Punjab, for compliance.

12. All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

May 02, 2025
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No