



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

1. RSA-4666-2001 (O&M)
Reserved on :- 07.11.2025
Pronounced on:-17.11..2025
Date uploaded on :18.11.2025

Narain Singh (Since Deceased) through his LR's and others

... Appellants

Versus

Bachna Ram and others

... Respondents

2 RSA-4729-2001 (O&M)

Hari Singh (Since Deceased) through his LR's and others

... Appellants

Versus

Bachna Ram and others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

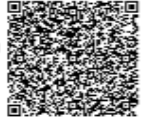
Argued by :-

Mr. Avnish Mittal, Advocate with
Ms. Ishika Jain, Advocate
For the appellants in **RSA-4666-2001**.

Mr. Bhag Singh, Advocate
for the appellants in **RSA-4729-2001**.

VIRINDER AGGARWAL, J.

1. This composite order shall regulate the adjudication of the above-captioned Regular Second Appeals (here-in-after to be referred as "RSAs"), each of which emanates from an identical matrix of facts and law.



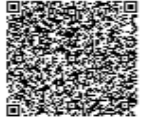
Inasmuch as the parties in both matters are the same, the impugned judgment and decree is are common, and learned counsel for the respective parties have consented to a unified consideration, these appeals are being disposed of conjointly in furtherance of judicial economy, consistency, and procedural efficiency.

2. At the behest of learned counsel for the appellants in both RSAs, the factual matrix for the purposes of this composite order is being culled from **RSA-4666-2001**, titled **Narain Singh (since deceased) through his LRs and Others v. Bachna Ram and Others**, as it furnishes the most comprehensive and faithful narrative of the material facts. Since the issues arising in both appeals are identical, the facts delineated therein shall be adopted as the representative factual foundation for adjudication of the present matters.

3. The appellants/defendants in **RSA-4666-2001**, as well as those in **RSA-4729-2001**, have instituted the present RSAs impugning the concurrent judgments and decrees rendered by the Courts below and seeking appellate correction of the findings and directions encapsulated therein.

4. A distilled account of the essential facts giving rise to both appeals is set out below. The narrative represents a careful distillation of the circumstances materially relevant to the issues presently before this appellate forum, ensuring that the factual background is presented with both precision and adequate comprehensiveness: -

“The plaintiffs, non-proprietors of backward and scheduled caste communities, claim that 55 kanals 5 marlas of charand land in Village Durala has long been used by villagers, including them, for cattle

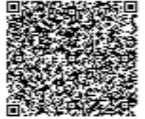


grazing without fee or obstruction. They challenged the proprietors' partition of this common land, ordered by the Assistant Collector on 22.04.1991, as illegal and non-binding. They seek annulment of the order and a permanent injunction restraining interference with their continued grazing rights."

5. Pursuant to service of summons of the civil suits, the defendants appeared and contested the suit in full, filing two sets of written statements one by defendants Nos. 1-4, 12, 17, 25 and 30, and another by defendants Nos. 21, 23 and 24. They challenged the plaintiffs' *locus standi*, asserted proprietors' ownership, justified the partition and resultant possession, and denied the land's use as grazing ground. Defendants Nos.18 and 20 died during the proceedings where as defendant No.7 was dead before filing of suit; the remaining were proceeded *ex-parte*.

6. The respondent/plaintiffs filed a replication wherein the material averments of the plaint were reiterated and reaffirmed, while the assertions and defenses raised by the appellants/respondents were specifically traversed. Upon consideration of the pleadings and documents on record, the Civil Court framed the following issues for adjudication, with a view to comprehensively determining the respective claims and defenses arising in the present matter:-

1. Whether the judgement dated 22.4.1991 passed by Assistant Collector 1st Grade, Ambala vide which he ordered the partition of the land in dispute is wrong, illegal, null and void and is not binding upon the rights of plaintiff on the grounds taken in the plaint? OPP
2. Whether the plaintiffs are entitled to decree for permanent injunction on the grounds taken in the plaint ? OPP

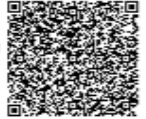


3. Whether the plaintiffs have no locus-standi to file and maintain this suit? OPD
4. Whether the suit is not maintainable in the present form? OPD
5. Whether the suit is barred under Section 158 of the Punjab Land Revenue Act? OPD
6. Whether the suit is bad for non-joining of necessary parties? OPD
7. Whether the suit is barred under Order 2 Rule 2(1) of CPC? OPD
8. Relief..

7. Both parties were afforded full and adequate opportunity to adduce evidence in support of their respective claims. Upon conclusion of the trial, and after hearing learned counsel for the parties, the learned Additional Civil Judge (Senior Division), Ambala, decreed the suits, holding that *‘the plaintiffs’ suit stands decreed, the partition order is set aside, and the defendants are permanently restrained from altering the suit land’*. The defendants’ appeal was thereafter dismissed, with the learned First Appellate Court observing, in essence, as under:-

‘Affirming all findings and rejecting all objections, the impugned judgment is upheld and the appeal dismissed with costs’.

7.1. Assailing the concurrent judgments and decrees rendered by the Courts below, the appellants/defendants have preferred the present appeals, which were duly admitted to regular hearing. Though notice was duly served upon the respondents and Mr. B.S. Saini, Advocate, initially entered appearance for respondents No.1 to 6 in both the appeals, learned counsel thereafter ceased to appear, resulting in an unrepresented respondents side at the stage of final arguments. Consequently, the complete records of the

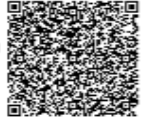


Courts below were requisitioned and placed before this Court for an exhaustive scrutiny and a considered adjudication.

8. I have heard learned counsel for the appellants in their respective appeals and appraised their submissions in light of the pleadings, evidence, and concurrent findings of the Courts below. The entire record has been subjected to rigorous judicial scrutiny to assess ‘*whether the impugned judgments and decrees disclose any jurisdictional error, legal infirmity, or perversity necessitating the exercise of appellate corrective jurisdiction*’?

9. Learned counsel for the appellants contended that the Courts below failed to properly appreciate the pleadings and evidence on record, and that their findings rest upon mere surmises and conjectures. It was urged that the jurisdiction of the Civil Court is barred under Section 158-A of the Punjab Land Revenue Act, as the plaintiffs have directly challenged the partition order and proceedings, a matter which the Civil Court is incompetent to examine. Counsel further argued that the suit, having been instituted against a deceased person, is a nullity, and that the Courts below erred in holding it maintainable despite respondent No. 7 having pre-deceased the filing of the suit.

9.1. It was additionally submitted that the suit is barred by limitation, and that the challenge to the partition affecting 177 kanals 16 marlas and involving approximately 117 proprietors was improperly directed against only 32 proprietors, rendering the suit bad for non-joinder of necessary parties. Counsel further argued that the plaintiffs purported to institute a representative suit on behalf of all non-proprietors of the village claiming grazing rights, yet failed to comply with the mandatory requirements of

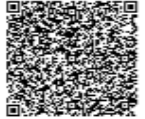


Order I Rule 8 CPC. It was also argued that the Courts below erroneously admitted the *Wazib-ul-Arz* into evidence, despite it not being duly proved and allegedly containing interpolations, particularly the substitution of the word “*Bashindgaan*” for “Malkaan.” On these grounds, it was prayed that the impugned judgment and decree be set aside.

10. Conversely, learned counsel for the respondents submitted that the findings of the Courts below suffer from no illegality or infirmity and that all necessary parties were duly impleaded. He contended that the suit was not rendered defective merely because one of several defendants was found to be dead, as the proceedings could validly continue against the remaining defendants. It was further urged that the Civil Court’s jurisdiction was rightly upheld, since the respondents/plaintiffs were not parties to the partition proceedings and, therefore, lacked any locus to challenge the same before the Revenue Authorities. Counsel additionally argued that the partition was not conducted in accordance with the mandatory provisions of the Punjab Land Revenue Act, particularly Section 112, and that the *Wazib-ul-Arz* was rightly relied upon, being part of the record of rights to which a statutory presumption of correctness attaches.

11. The present appeal engenders the following *quaestiones juris substantiales* for adjudication by this Court:-

- i. Whether the suit is vitiated by non-joinder of necessary parties?
- ii. Whether proceedings instituted against a deceased defendant are legally maintainable?



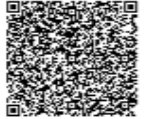
iii. Whether the suit stands barred by virtue of Section 158 of the Punjab Land Revenue Act?

iv. Whether the *Wazib-ul-Arz* was duly and lawfully proved on record?

12. **Whether the suit is vitiated by non-joinder of necessary parties:-** It is an admitted position that not all parties to the partition proceedings by which the suit land was divided have been impleaded in the present litigation. While the partition proceedings involved all village proprietors, the instant suit is directed against only 32 defendants. The learned First Appellate Court addressed this lacuna in paragraph 28 of the impugned judgment, the relevant passage of which is reproduced below:-

“This arguments has been very ably met by learned counsel for respondent-plaintiff clarifying that area reserved for Charand was limited, recipients of the said land, pursuant the only to the impugned order are the persons against whom the relief persons is claimed and hence only those have been made parties to the litigation. The suit thus cannot be said to be barred by non-joinder of necessary parties. No necessary party has been left out.”

12.1. At first glance, the finding recorded by the learned First Appellate Court may appear persuasive; however, when its practical consequences are examined, it leads to an untenable and anomalous situation. The partition proceedings involved more than 177 kanals of land distributed among all village proprietors. Certain proprietors were allotted portions of the suit land now claimed by the plaintiffs as part of the *bachat* land. If, in accordance with the Appellate Court’s reasoning, those proprietors are divested of their allotted portions, the remaining proprietors

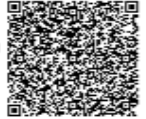


who received land elsewhere as per their respective shares would continue to enjoy their allotments undisturbed, while the affected defendants alone would suffer deprivation. This would effectively defeat their claim to their legitimate share in the *bachat* land.

12.2. In such circumstances, all proprietors who were parties to the original partition proceedings constitute necessary parties to the present suit. If the partition is flawed qua any of the proprietors, it is flawed in its entirety and must be re-conducted, thereby directly impacting the rights of those not impleaded herein. Consequently, the finding of the learned Civil Judge that all proprietors were not necessary parties is manifestly erroneous and cannot be sustained.

13. **Whether a suit instituted against a deceased person is maintainable:-** The learned Civil Judge, while deciding Issue No. 4, held that the suit was not vitiated merely because it had been instituted against a defendant who was already deceased. It stands admitted by the plaintiffs that defendant No. 7, Hardit Singh, had died prior to the institution of the suit; however, it was asserted that he was not a party to the partition proceedings. Relying upon the judgment of the Hon'ble Lahore High Court in **Roop Chand vs. Sardar Khan and others, AIR 1928 Lahore 359**, the learned Civil Judge observed that where a suit is filed against multiple defendants, the fact that some among them were deceased at the time of institution does not render the suit a nullity, and that the legal representatives of such deceased defendants may be duly impleaded.

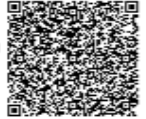
13.1. It was further noticed that the suit had been filed against defendants Nos. 1 to 32, and only defendant No. 7 was deceased at the



material time. The learned First Appellate Court, however, did not advert to or examined the findings on Issue No. 4 as recorded by the Civil Court. The fact remains that defendant No. 7 had predeceased the filing of the suit, and the learned Civil Judge correctly held that in a multi-defendant action, the demise of one defendant does not nullify the entire proceeding; rather, his legal heirs may appropriately be substituted. The Hon'ble Supreme Court, in **'Puran Singh and others v. State of Punjab and others'**, has also affirmed this principle, which are as under:-

"A personal action dies with the death of the person on the maxim "action personalismoritur cum persona". But this operates only in a limited class of actions ex delicto, such as action for damages for defamation, assault or other personal injuries not causing the death of the party, and in other actions where after the death of the party the granting of the relief would be nugatory. (Girja Nandini v. BijendraNarain, 1967 (1) SCR.

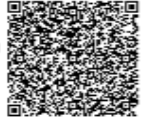
93). But there are other cases where the right to sue survives in spite of the death of the person against whom the proceeding had been initiated and such right continues to exist against the legal representative of the deceased who was a party to the proceeding. Order 22 of the Code deals with this aspect of the matter. Rule 1 of Order 22 says that the death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives. That is why whenever a party to a suit dies, the first question which is to be decided is as to whether the right to sue survives or not. If the right is held to be a personal right which is extinguished with the death of the person concerned and does not devolve on the legal representatives or successors, then it is an end of the suit. Such suit, therefore, cannot be continued. But if the right to sue survives against the legal representative of the original defendant, then procedures have been prescribed in Order



22 to bring the legal representative on record within the time prescribed. In view of Rule 4 of Order 22 where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole Defendant dies and the right to sue survives, the Court, on an application being made in that behalf, It cause the legal representatives of the deceased defendant to be made a party and shall proceed with the suit. If within the time prescribed by Article 120 of the Limitation Act, 1963 no application is made under sub-rule (1) of Rule 4, the suit shall abate as against the deceased defendant. This Rule is based not only on the sound principle that a suit cannot proceed against a dead person, but also on the principle of natural justice that if the original defendant is dead, then no decree can be passed against him so as to bind his legal representative without affording an opportunity to them to contest the claim of the plaintiff. Rule 9 of Order 22 of the Code prescribes the procedure for setting aside abatement."

82. In the case of Hira Lal Patni v. Kali Nath²¹, the Supreme Court held that the validity of the decree can be challenged on the ground that a suit had been initiated against the dead person. The relevant paragraph of the said decision reads as under:-

"The validity of a decree can be challenged in execution proceedings only on the ground that the court which passed the decree was lacking in inherent jurisdiction in the sense that it could not have seisin of the case because the subject-matter was wholly foreign to its jurisdiction or that the defendant was dead at the time the suit had been instituted or decree passed, or some such other ground which could have the effect of rendering the court entirely lacking in jurisdiction in respect of the subject-matter of the suit or over the parties to it,"

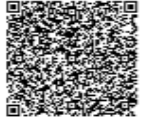


83. *The Supreme Court in the case of Ashok Transport Agency vs. Awadhesh Kumar & Anr.*²² while setting aside the impugned judgment held that the Executing Court correctly followed the law as the suit filed against the dead person is a nullity in law and thus, could not be executed.

14. In the present case, it stands admitted on record that defendant No. 7 had pre-deceased the very institution of the suit. Despite this undisputed factual position, no steps whatsoever were taken by the plaintiffs to bring his legal representatives on record neither by invoking the procedure prescribed under Order XXII CPC, nor by filing an application under Order I Rule 10 CPC for impleading the legal heirs in their independent capacity as successors-in-interest of defendant No. 7.

14.1. At the very outset, it merits emphasis that the concept of substitution under Order XXII CPC becomes operative only when a party dies *pendente lite*. The provision presupposes that the party was alive at the time of the institution of the suit and died during its pendency. Conversely, where a party had already died prior to the filing of the suit, the mechanism of bringing legal representatives on record under Order XXII is wholly inapplicable, for a suit cannot be continued against a person who was not alive on the date of its institution. The principle *actus curiae neminem gravabit* has no application in such a scenario, because the defect is inherent and incurable.

14.2. A suit cannot be instituted against a dead person, for such a proceeding is a nullity, being *void ab initio*. A dead person is a juridical non-entity, and the law does not recognize the institution of a suit either by or against a party who ceased to exist prior to its filing. The only legally



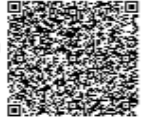
permissible course in such a situation is to implead, the legal heirs or successors-in-interest in their own independent capacity, failing which the suit suffers from a foundational defect.

14.3. In the present matter, since defendant No. 7 had already expired before the suit was filed, the plaintiffs' omission to implead his successors strikes at the root of the maintainability of the suit. The legal representatives cannot be added subsequently as "LRs," because *substitutio* presupposes the prior existence of a valid party. The law does not permit what would essentially amount to reviving a non-existent defendant, as this would offend the maxim *ex nihilo nihil fit* (nothing can arise from nothing).

14.4. Consequently, the inevitable legal consequence is that no suit, in the eye of law, was ever instituted against the successors of defendant No. 7, who were admittedly the owners of the portion of the suit land allotted to them in the partition proceedings. Notwithstanding this, the Courts below proceeded to pass decrees which, in effect, nullified or impaired their proprietary rights, and that too, behind their back and without affording them any opportunity of hearing a course of action clearly violative of the principles of *audi alteram partem*. A decree passed against a person who was neither a party to the proceeding nor represented in any lawful manner is, by settled doctrine, a nullity.

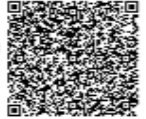
14.5. Thus, viewed from every legal angle, the suit, having been instituted against a deceased defendant, was inherently defective and non-maintainable, and any decree founded thereon is inexorably rendered *coram non judice* and unenforceable.

Bar of Jurisdiction under Section 158 of the Punjab Land Revenue Act, 1887.



15. The second issue, which is of equal if not greater legal significance, pertains to the maintainability of the suit. The plaintiffs' own pleadings disclose that they had requested defendant No. 32 (Gram Panchayat) to file objections before the Assistant Collector 1st Grade, Ambala, or to prefer an appeal against the order dated 22.04.1991. Only upon the Panchayat's refusal did they approach the Civil Court. Far from assisting their case, this plea unequivocally demonstrates their knowledge and awareness of the appropriate statutory remedies available under the Punjab Land Revenue Act. Once the plaintiffs were conscious that objections or appeals lay before the Revenue Authorities, their direct resort to the Civil Court bypassing the statutory hierarchy was wholly impermissible, offending the well-established maxim '*expressum facit cessare tacitum*' (when a statute expressly provides something, it impliedly excludes everything else).

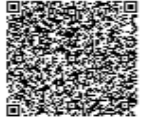
15.1. Section 158(1)(xvii) of the Punjab Land Revenue Act expressly bars the jurisdiction of Civil Courts in respect of matters concerning partition, correction, challenge, or supervision of proceedings undertaken by Revenue Officers. Furthermore, the Act provides a complete and self-contained code for such matters contained in Sections 111 to 121 for partition proceedings and Sections 13 and 16 for the remedies of appeal and revision. If the plaintiffs were genuinely aggrieved, the statutory route under the Act was the '*sine qua non*' for redress, and their failure to adopt it is fatal to the present suit. Their attempt to invoke the jurisdiction of the Civil Court, in conscious disregard of the statutory framework, amounts to a clear



circumvention of the legislative scheme. A suit instituted in violation of such a statutory bar is not merely irregular but fundamentally unsustainable.

15.2. When a statute expressly creates rights, prescribes obligations, and provides a special forum for adjudication, the jurisdiction of Civil Courts stands ousted by necessary implication. In such a scenario, the principle of '*ubi jus ibi remedium*' operates only within the contours of the statutory framework, and parties must exhaust the remedies provided therein. Any decree passed by a Civil Court in derogation of such statutory bar is '*void ab initio*', attracting the maxim '*coram non judice*' an act done by a court lacking jurisdiction is a nullity in the eyes of law. The plaintiffs' conscious awareness of the statutory mechanism, coupled with their deliberate omission to invoke it, renders the suit inherently non-maintainable under Section 158 of the Act.

15.3. This position is fortified by the binding precedents of this Court. In **Chuhar Singh vs. Jaswinder Singh, CR-1187-2018**, decided on **09.11.2022**, it was categorically held that when the Punjab Land Revenue Act provides a complete and efficacious mechanism for adjudication of disputes arising out of partition proceedings, "the jurisdiction of the Civil Court is barred by Section 158 of the Act." Similarly, in **Nirmal Singh vs. Kesar Singh, CR-5089-2011**, decided on **01.02.2022**, this Court held that "a party aggrieved by an order passed by a Revenue Officer must avail the statutory remedy of appeal or revision under the Act, and a civil suit challenging such proceedings is not maintainable." These authoritative

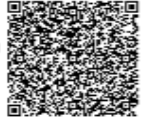


pronouncements apply ‘*mutatis mutandis*’ to the present case and leave no room for doubt regarding the bar of jurisdiction.

15.4. In the present case, the plaintiffs were well within their rights⁵ and indeed statutorily obliged to file objections before the Assistant Collector or prefer an appeal before the Collector, as expressly contemplated under the Punjab Land Revenue Act. Their failure to do so, despite being fully aware of the prescribed procedure, reveals that the suit was instituted in conscious disregard of the statutory prohibition. The Courts below thus misdirected themselves in entertaining and decreeing a suit that was *ex facie* barred under Section 158. Moreover, as persons interested in the partition within the meaning of Section 112 of the Act, the plaintiffs could have asserted their claimed right of grazing cattle over the portion of the suit land in the appropriate revenue proceedings. Their failure to adopt the lawful channel renders the civil suit wholly unsustainable, attracting the maxim *sublato fundamento cadit opus* when the foundation is removed, the entire superstructure falls.

Whether the Wazib-ul-Arz was duly and lawfully proved on record

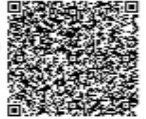
16. In view of the foregoing discussion, the inescapable and logical conclusion (*inevitabilis conclusio*) is that there is no basis to infer any interpolation or substitution of the word “*Malkaan*” with “*Bashindgaan*” in the Wazib-ul-Arz. A holistic and contextual reading demonstrates that if the term “*Malkaan*” were to be substituted in place of “*Bashindgaan*”, the succeeding expressions in the clause would be rendered wholly otiose and devoid of meaning, thereby violating the interpretative principle *ut res magis*



valeat quam pereat (a construction that upholds the validity and meaningfulness of the document should be preferred). Consequently, the findings recorded by the learned First Appellate Court are correct, well-reasoned, and call for no interference.

16.2. Learned counsel for the appellant party further contends that the Wazib-ul-Arz has not been proved in accordance with law. It is urged that, as per evidentiary requirements, the document ought to have been proved by examining an official competent to speak to its preparation, custody, and contents. In the present case, the official witness who entered the witness box candidly admitted that the Wazib-ul-Arz is written in Urdu and that he is not conversant with the Urdu language. Consequently, it is argued that his testimony falls short of the standard required the rule. Thus, according to the respondent, the deposition of PW-5, who is unable to comprehend or vouch for the contents of the document, cannot be treated as adequate proof, rendering the attempt to prove the Wazib-ul-Arz deficient.

16.3. Learned counsel for the appellant placed reliance upon the judgment of this Court in **Gurmail Singh v. Rajbir Singh and another, 2014(4) RCR (Civil) 397**. However, the said authority is wholly inapposite to the controversy at hand. That decision pertained to the evidentiary value of a revenue excerpt, which was held not to form part of the *record-of-rights* and, therefore, to carry no statutory presumption of correctness. It further held that such an excerpt must be duly proved by examining the official who prepared it on the basis of entries in the settlement record and Jamabandies.

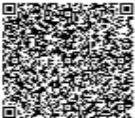


16.4. In contradistinction, the present *lis* concerns the Wazib-ul-Arz, and the legal position governing its evidentiary status stands on an entirely different footing. As held authoritatively by a Division Bench of this Court in **Gram Panchayat of Village Tulewal v. Joint Commissioner (IRD), Punjab and others, 2014(11) RCR (Civil) 2674**, the Wazib-ul-Arz constitutes an integral component of the record-of-rights prepared under the Punjab Land Revenue Act, 1887. Consequently, a statutory presumption of truth attaches to it under Section 44 of the said Act. In view of this binding pronouncement, the Wazib-ul-Arz produced on the record stands duly proved, and the contention that it required further formal proof, or that any interpolation had occurred, is devoid of substance.

16.5. When the matter is examined holistically, the suit itself is vitiated by inherent jurisdictional defects:-

- (i) the jurisdiction of the Civil Court to entertain a challenge to partition proceedings is expressly barred;
- (ii) the suit suffers from non-joinder of necessary parties, namely the successors of defendant No. 7 who predeceased the institution of the suit; and
- (iii) the suit was instituted against a dead party, rendering the proceedings fundamentally void insofar as that defendant is concerned.

16.6. Accordingly, and in view of the cumulative infirmities, the appeals filed by the appellant are allowed. The judgments and decrees of both the Courts below are hereby set aside.



17. In view of the final decision of the main appeals, all pending miscellaneous applications, if any, no longer surviving for independent consideration, shall accordingly stand disposed of.

18. A copy of this judgment shall be duly placed on the record of the connected matter to facilitate ready reference and to ensure its effective implementation and compliance in all consequential proceedings.

17.11.2025
Gaurav Sorot

(VIRINDER AGGARWAL)
JUDGE

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