



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

RSA-1768-2003 (O&M)

Reserved on :-17.10.2025

Pronounced on :-19.11.2025

Uploaded on : 20.11.2025

Mihan Singh

... Appellant

Versus

Balkar Singh (Since Deceased) Through His LRs and Others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :-

Mr. Keshav Pratap Singh, Advocate with
Mr. Nitin Sansanwal, Advocate and
Mr. Satbir Mor, Advocate
for the appellant.

Dr. Surya Parkash, Advocate with
Mr. Vikram Amarnath Garg, Advocate
for respondents.

VIRINDER AGGARWAL, J.

1. The appellant/plaintiff, being aggrieved and dissatisfied with the judgment and decree dated 29.03.2003 passed by the learned Additional District Judge, Kurukshetra in Civil Appeal No. 321 of 21.10.1997, whereby the well-reasoned judgment and decree dated 21.05.1997 passed by the learned Additional Civil Judge (Senior Division), Pehowa in Civil Suit No. 849 of 05.08.1992 was erroneously reversed, most respectfully invokes the jurisdiction of this Court under Section 41 of the Punjab Courts Act, 1918, by way of the present Regular Second Appeal ("RSA"), seeking restoration



of the partly decreed judgment of the learned Trial Court and redressal of the substantial injustice thereby caused to the appellant.

1.1. It is respectfully submitted that the impugned judgment and decree are manifestly perverse, being founded upon fundamental errors of law, misappreciation of evidence, and grossly erroneous findings, culminating in a palpable miscarriage of justice. In these circumstances, the appellant humbly prays for the intervention of this Court to set aside the impugned judgment and decree and restore the well-reasoned and lawful decree passed by the learned Trial Court.

2. For the sake of clarity and convenience, the parties shall hereinafter be referred to as the *plaintiffs* and *defendants*, corresponding to their respective positions before the learned Trial Court. The material facts giving rise to the present proceedings are delineated below:-

“The plaintiff has instituted this suit seeking a decree for rectification of the Sale-Deed dated 05.11.1979 in his favour against Defendants Nos. 1 to 7. The plaintiff alleges that Puran, represented by the defendants, had transferred land measuring 6 Kanals 9 Marlas (129/897 shares) in Khewat No. 319, Khatoni No. 466, Rect. No. 87, Khasras 14, 15, 16, Rect. No. 88, Khasra 20, Khatoni No. 467, Rect. No. 138, Khasras 13 and 17/2, totaling 44 Kanals 17 Marlas, and 1 Kanal 11 Marlas (31/538 shares) in Khewat No. 320, Khatoni Nos. 468, 469, 470, Rect. Nos. 99, 87, 138, Khasras 12/13, 6/1, 17/1, 18, 19, totaling 26 Kanals 18 Marlas, situated in Village Sarsa, Tehsil Pehowa, District Kurukshetra, as per Jamabandi for 1989-90. In the



alternative, the plaintiff seeks a declaration that the entries recorded in favour of Puran, through his legal representatives, are illegal, null-&-void and do not bind the plaintiff's rights. He further claims to be the owner in possession of the land in accordance with the shares mentioned in the Sale-Deed dated 05.11.1979.

The plaintiff states that Defendant No. 7, Khazani Devi, being a minor, is represented by her mother, Smt. Sariyan Devi, who has no adverse interest on her behalf. The plaintiff alleges that Puran, now deceased, was the predecessor-in-interest of Defendants Nos. 1 to 7 and, according to Jamabandi for 1974-75, was recorded as owner in possession to the extent of 1/2 share, i.e., 54 Kanals 7 Marlas out of total 108 Kanals 14 Marlas, across Khewats 245 and 246, comprising Khasras 6/1, 11-18, 20, Rect. Nos. 87, 99, 138, and Khatonis 301-303.

The plaintiff further alleges that Puran had transferred 8 Kanals of land in his favour, representing a 1/2 share, through the Sale-Deed dated 05.11.1979 for a consideration of ₹13,000/-, and had submitted the deed to the Revenue Officer for sanction of Mutation No. 2224. However, this mutation was allegedly not incorporated in the subsequent Jamabandi after 1979-80 because Puran had already transferred his share in Khasra No. 11, Rect. No. 138, to Defendants Nos. 8 and 9 via Sale-Deed dated 02.06.1977 under Mutation No. 1938.



The plaintiff contends that Puran is now illegally recorded as owner of land measuring 22 Kanals 8 Marlas (1/2 share) in Khewat No. 319, Khatoni No. 466, and land measuring 5 Kanals 12 Marlas (112/538 shares) in Khewat No. 320, Khatonis 468–470, Rect. Nos. 87, 99, 138, as per Jamabandi 1989-90. He alleges that no notice was issued prior to the cancellation of Mutation No. 2224, thereby denying him an opportunity to be heard.

Finally, the plaintiff asserts that a numerical mistake occurred in the Sale-Deed at the time of execution due to mutual error. Accordingly, he claims entitlement to rectification of the Sale-Deed, and in the alternative, seeks a declaration of his ownership and rights over the land as detailed above.”

3. Upon notice, the defendants contested the suit, defendants Nos. 1 to 7, in their joint written statement, have raised several preliminary objections, asserting that the suit filed by the plaintiff is barred by limitation, is not maintainable in its present form, and that the plaintiff has no cause of action against them. They have further contended that the suit is collusive in nature and that it has not been properly valued for the purposes of Court fee and jurisdiction, thereby questioning the very competence of the court to entertain the suit.

3.1. On the merits, defendants Nos. 1 to 7 have specifically denied that the father of defendant No. 8, as well as the father of defendants Nos. 1 to 7, ever transferred the land in question to the plaintiff along with possession through the alleged registered sale-deed referred to in paragraph



3 of the plaint. They contend that the narrative presented by the plaintiff is fabricated, and that at no point was possession of the land delivered by Puran, the deceased predecessor-in-interest. According to these defendants, the plaintiff's claims are false and legally untenable. In contrast, Defendants Nos. 8 and 9, in their separate Written Statement dated 17.08.1993, have admitted the plaintiff's claim, thereby partially corroborating the plaintiff's contention regarding ownership and entitlement over the land.

4. The plaintiff filed a replication, wherein all material averments contained in the plaint were reiterated and unequivocally reaffirmed, while the defence and contentions raised by the respondents were specifically traversed and categorically denied. Upon meticulous examination of the pleadings, documents, and oral submissions, the Court was pleased to frame the following issues for adjudication, with a view to effectively determine the rival claims and contentions between the parties, as enumerated hereunder:-

- 1) Whether the Sale Deed in question does not convey the real intention of the parties to sale? OPP.
- 2) Whether Puran, predecessor of defendants Nos. 1 to 7 had transferred 8 Kanals land vide Sale Deed dated 05.11.79 for consideration in favour of the plaintiff? OPP.
- 3) Whether the numerical mistake in the Sale Deed in question had occurred at the time of execution as mutual mistake of the parties to the sale? OPP,
- 4) Whether the revenue entries in the name of Puran regarding the suit land are liable to be corrected in the name of the plaintiff? OPP.
- 5) Whether the suit of the plaintiff is within time? OPD.



- 6) Whether the suit of the plaintiff is not maintainable in the present form? OPD.
- 7) Whether the plaintiff has no cause of action against the defendant? OPD.
- 8) Whether the suit has been filed by the plaintiff with collusion of defendants Nos. 8 and 9? OPD.
- 9) Whether the suit of the plaintiff is not properly valued for the purposes of Court Fee and Jurisdiction? OPD.
- 10) Relief

5. Both parties were afforded full and adequate opportunity to lead evidence in substantiation of their respective pleadings. Upon the culmination of the trial proceedings, and after due consideration of the submissions advanced by learned counsel for the parties, the learned Additional Civil Judge (Senior Division), Pehowa was pleased to partly decree the suit in favour of the appellant/plaintiff, rendering a well-reasoned and judicious determination of the issues in controversy.

5.1. However, aggrieved by the said decree, the respondents/defendants preferred an appeal before the learned Additional District Judge, Kurukshetra, which was allowed with costs, thereby setting aside and reversing the reasoned judgment and decree of the learned Trial Court in its entirety. The learned Appellate Court, in its judgment, held that *“the judgment decree of the learned trial Court is set-aside and that that of plaintiff Mihan Singh is dismissed with costs.”*

6. In assailing the judgment and decree rendered by the learned First Appellate Court, the appellants have instituted the present RSA, which, upon due consideration, was admitted to hearing. Pursuant thereto, notice was duly issued and served upon the respondents, who have entered



appearance through learned counsel. The records of the Courts below were thereafter summoned for perusal, to facilitate a comprehensive and judicious adjudication of the matters in controversy.

7. I have heard learned counsel and considered their submissions in conjunction with the pleadings, evidence, and the findings of the lower courts. The record has been scrutinized to determine '*whether the impugned judgments and decrees are vitiated by any legal error or infirmity warranting interference*'?

8. The present appeal propounds the following *quaestio juris substantialis* for authoritative determination and adjudication by this Court:-

- i. **Whether the suit is vitiated by the bar of limitation under the governing statutory provisions?**
- ii. **Whether a simpliciter suit for declaration, sans the consequential relief of possession, is legally maintainable in the present circumstances?**
- iii. **Whether the learned First Appellate Court has committed a manifest error of law or fact by misappreciating or misconstruing the sale deed, Ex.P2?**

9. Learned counsel for the appellants contended that the learned First Appellate Court erred in holding the suit to be barred by limitation by erroneously treating it as one for rectification of sale deeds. It was argued that, as per the plaint, the appellants–plaintiffs became aware of the cancellation of mutations only on 01.10.1991, whereas the Court incorrectly presumed that the alleged mistake in the sale deeds came to their knowledge merely two to three months prior to the filing of the suit on 05.08.1992. Counsel further submitted that the suit was instituted on the basis of ownership and title, for which no limitation period is prescribed, and thus the



finding of the learned First Appellate Court on limitation is legally unsustainable.

10. Conversely, learned counsel for the respondents/defendants contended that the findings of the learned First Appellate Court are fully justified in law and on facts. It was urged that under the settled legal position, a limitation period of three years is prescribed for seeking rectification of any instrument executed between the parties, reckoned from the date when the alleged error or defect becomes known to the aggrieved party. Since the appellants–plaintiffs admittedly acquired knowledge of the purported mistake well before the institution of the suit, the same was hopelessly time-barred. Hence, the learned First Appellate Court rightly dismissed the claim as barred by limitation.

11. Upon meticulous examination of the record, it emerges that the principal relief sought by the appellants–plaintiffs pertain to rectification of the sale deed, Ex.P2. In the alternative, they have sought a declaration that the revenue entries recorded in the *Jamabandies* for the year 1989-90, reflecting ownership in favour of the legal representatives of Puran Singh in respect of 8 kanals of land, and in favour of defendant No.8 concerning 10 kanals 4 marlas, are illegal, null and void, and not binding upon their rights.

12. Since the plaintiffs predicate their claim for declaration upon the sale deeds executed in their favour, and as both Courts below have concurrently held that the relief of rectification of the said sale deeds is barred by limitation and otherwise also untenable, the next question that necessarily arises is whether the alternative relief of declaration is itself within limitation.



12.1. It is a settled principle of law that mutation entries do not create, extinguish, or transfer title; they are maintained solely for fiscal purposes. Consequently, the rejection of mutation effected on the basis of the plaintiffs' sale deeds does not in any manner divest or diminish the title flowing from those instruments. Both Courts below have recorded a categorical finding that the sale deeds in question were duly proved to have been executed by Puran and Phulla, the predecessors-in-interest of the defendants.

12.2. A suit seeking declaration of co-ownership on the strength of a validly executed and proved sale deed is, in essence, a suit based on title. Such a suit is not governed by any period of limitation unless the defendants plead and establish acquisition of title by adverse possession. In cases involving co-ownership, the law imposes an even higher threshold: the defendant must specifically plead and conclusively prove ouster and open, hostile, and unequivocal assertion of exclusive ownership to the knowledge of the co-owner before adverse possession can even be considered.

12.3. In the present matter, the defendants have neither pleaded nor proved ouster, nor have they set up a legally sustainable claim of adverse possession. The relationship of co-ownership thus continues unabated. Accordingly, the alternative relief of declaration claimed by the plaintiffs, being one founded upon title and not met with any plea of adverse possession, is well within limitation and legally maintainable..

13. With respect to sale deed Ex.P2, the record reveals that the plaintiffs purchased land measuring 8 kanals, with possession delivered from Khasra Nos. 138/12 and 138/13. It is specifically recited in the deed that the purchasers were already in possession of the said land under a registered



mortgage deed dated 25.09.1978. Accordingly, through Ex.P2, the ownership of the land previously mortgaged with the plaintiffs stood duly conveyed to them.

14. The learned Additional Civil Judge (Senior Division), Pehowa, therefore, correctly held that the relief of rectification of the sale deeds was unwarranted, as the documents were validly executed and conveyed title. However, the Court was competent to consider the alternative relief of declaration sought by the plaintiffs.

14.1. In paragraph 13 of the judgment, the learned Civil Judge rightly observed that under sale deed Ex.2, a 284/2174 undivided share out of land measuring 108 kanals 4 marlas was sold by Puran and Phulla, and under Ex.2, land measuring 16 kanals from Rectangle No.138, Khasra Nos.12 and 13, was conveyed. It was further correctly held, in light of the Full Bench decision in **Bhartu v. Ram Sarup, 1981 PLJ 204**, even if a co-sharer sells a specific Killa number, such alienation in law constitutes a transfer of share only, not of any defined portion, relevant portion of para No.13 is reproduced as under:-

“13. As is clear from the copy of Jamabandi Ex.P-3, which the plaintiff has placed on record, Mihan Singh, plaintiff is one of the co-owners in Khewat No. 320/227, but his name does not figure in Khewat No. 319/278. However, the name of Mihan Singh again appeared in Khewat No. 322, Khatoni No. 472 and Mihan Singh is in cultivating possession over land bearing Rect. No. 138, Khasra No. 14, 15/2, 16 and 17/1. When the copy of Jamabandi for the year 1974-75 Ex.P-4 is seen in respect of Khewat No. 245 Min, Khatoni No. 301 Min, Rect. No. 138/11 Puran and his brother Phullu are in joint cultivation and further in respect of Khewat No.

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integrity of this document



246 Min, Khatoni No. 303 Min, Puran and Phullu are owners but Devtia mortgagee has been shown in possession. However, when the Sale-Deed Ex.P-5 is seen, Khasra No. 18 was got redeemed and the same was sold in favour of Rati Ram son of Devtia. Further, as is clear from the copy of 'Intkaal' Ex.P-1, Puran has sold land measuring 16 Kanals in favour of Jita and Dharam Pal as per registered Sale-Deed No. 562 dated 02.06.77 in Khewat No. 245. When the evidence led by the plaintiff is perused, when Harphool Singh whom the plaintiff has got examined a PW-3 has deposed that the registered Sale-Deed Ex.P-2 bore his signature and the Sale-Deed was read over to Puran and he had signed the Sale-Deed after reading the same and Mihan Singh, plaintiff has also deposed to this effect that the Sale-Deed E.P-2 stand duly proved. Once the Sale-Deed Ex.P-1 is perused when Khasra No. 11/8, measuring 8 Kanals stood already sold and in the Sale-Deed Ex.P-1, it stands mentioned that purchaser Jita and Dharam Pal were to be in possession over land bearing Rect. No. 138, Khasra No. 11/8 but when the suit land stood not partitioned and when Puran was not in specific possession of Khasra No. 11/8, through registered Sale Deed Ex.P-1, Jita Ram and Dharam Pal had become only co-sharers in the suit land. Otherwise too, when the Sale Deed, Ex.P-1 is perused share was sold by Puran out of Khewat No. 236/260 bearing Rect. No. 138/11/8, 12/8 as per copy of Jamabandi for the year 197-71/When in the Sale-Deed Ex.P-2, there is mention of sale of land measuring 6 Kanals 9 Marlas out of Khewat No. 245 Min, Khatoni No. 301, Rect. No. 138, Khasra No. 11 (8-0) and 17 Min and further there is mention of sale of land measuring 1 Kanal 11 Marlas out of Khewat No. 246 Min, Khatoni No. 138/18 Min measuring 3 Kanals 2 Marlas as per copy of Jamabandi for the year 1975-76 and when it is an admitted fact that the suit land



stood not partitioned, even if the land was described by any particular Khasra number as held in "Bhartu Versus. Ram Sarup" (supra), the sale of specific portion of land out of joint holding by one of the co-owners is nothing but a sale of a share out of joint holding. However, when Khasra No. 11 (8-0) stood already sold in favour of Jita and Dharam Pal, the Sale-Deed Ex.P-2 certainly did not convey the real intention of the parties to the sale and Issue No. 1 is decided in favour of the plaintiff."

15. Both the Courts below have concurrently held that the execution of sale deed Ex.P2 stands duly proved on record. A comprehensive appraisal of the evidence establishes beyond doubt that the said documents were validly executed. The learned Civil Judge rightly concluded that the plaintiffs, by virtue of these sale deeds, had acquired the status of co-owners in joint possession to the extent of their purchased shares, and consequently, the Revenue Authorities were bound to sanction the corresponding mutations in consonance with the transfers effected by Puran and Phulla.

15.1. As regards the finding of the learned First Appellate Court that the suit was not maintainable as a simplicitor suit for declaration without seeking consequential relief of possession under the proviso to Section 34 of the Specific Relief Act, 1963, the same is legally unsustainable. Given that the plaintiffs, by virtue of Ex.P2, became co-owners in joint possession, the question of seeking possession did not arise, as possession of a co-owner is deemed joint and indivisible unless partitioned. Hence, the suit for declaration simpliciter was maintainable in law as separate possession can only be sought by seeking partition of the property not as a consequential relief with declaration prayed for.



15.2. Accordingly, the appeal is allowed. The judgment and decree of the learned Additional District Judge, Kurukshetra, are hereby set aside, and those of the learned Additional Civil Judge (Senior Division), Pehowa, are restored.

16. In consequence of the final determination of the principal appeal, all pending miscellaneous application(s), if any, arising therefrom or incidental thereto, stand disposed of in accordance with the findings and conclusions recorded herein. No further directions are necessitated.

19.11.2025
Gaurav Sorot

(**VIRINDER AGGARWAL**)
JUDGE

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