

[204] IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

[1] RSA-4152-2006 (O&M)  
Reserved on 04.12.02024  
Pronounced on 16.01.2025

Pirithi ...Appellant  
**versus**  
Surja and others ....Respondents  
[2] RSA-4273-2006 (O&M)  
Surja and others ...Appellants  
**versus**  
Pirithi ....Respondent

Coram : Hon’ble Mr. Justice Pankaj Jain  
Present : Mr. J.C. Malik, Advocate for the appellant in RSA-4152-2006  
and for the respondent in RSA-4273-2006.  
Mr. Kartar Singh Malik, Advocate for the appellants in RSA-  
4273-2006 and for the respondents in RSA-4152-2006.  
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**Pankaj Jain, J.**

[1] These 02 cross-appeals are directed against the same judgment  
and decree passed by the learned Additional District Judge, Jind whereby,  
appeal preferred by the defendants against judgment and decree dated  
15.09.2003 passed by the learned Civil Judge (Senior Division), Safidon  
(Jind) has been partly accepted.  
[2] RSA-4152-2006 is at the behest of the plaintiff and RSA-4273-  
2006 has been preferred by the defendants.  
[3] For convenience, parties are hereinafter referred to by their  
original positions i.e. appellant as plaintiff and respondents as defendants.  
[4] With the consent of the parties, RSA-4152-2006 is taken as the  
lead case.

[5] Plaintiff filed suit for declaration to the effect that he is owner in possession of land measuring 0 Kanal and 15 marlas situated within revenue estate of Village Ramnagar comprised in *khasra* No.324 (0-15). Plaintiff claimed to have purchased 0 Kanal and 16 marlas of suit land comprised in *khasra* No.324 from co-sharer Chander Singh son of Pokar Singh vide sale deed bearing document No.423 dated 02.07.1982. Out of total land measuring 1 kanal comprised in *khasra* No.324, 4 marlas land was acquired vide Award No.313 dated 09.01.1990 by the State. Compensation of Rs.1309-60 paise was to be awarded. The co-sharers consented that out of compensation payable, compensation *qua* 0 kanal 3 marlas be awarded to the defendants and proportionate compensation of 01 marla be paid to the plaintiff. Plaintiff claims that it is a consequence of payment of compensation, defendants lost their rights in the suit land and plaintiff remained owner to the extent of 0 kanal 15 marlas. To the surprise of plaintiff, land measuring 4 marlas out of 16 marlas now again stands mutated in favour of the defendants.

[6] Suit was contested by the defendants.

[7] Sale in favour of plaintiff by Chander Singh, co-sharer, was admitted but only to the extent of  $\frac{1}{2}$  share. A counter-claim was filed by the defendants, claiming that suit land is owned and possessed by defendants to the extent of  $\frac{1}{2}$  share.

[8] Suit as well as counter-claim was put to trial, framing the following issues:-

- “1. *Whether the plaintiff is entitled to the declaration as prayed for? OPP.*
2. *Whether the suit of the plaintiffs is not maintainable in the present form? OPD*
3. *Whether the plaintiff is estopped from filing the present*

*suit by his own act and conduct? OPD*

4. *Whether the suit of the plaintiff is bad for non-joinder and mis-joinder of necessary parties? OPD.*

5. *Whether the suit of the plaintiff is hopelessly time barred? "*

[9] Learned Trial Court while deciding Issue No.1 based its finding on statement made by defendant-Zora Singh to the effect that after acquisition of the land, the plot which remained balance be given to the plaintiff after deducting share of the defendants and they have no objection to the same. Plaintiff also pleaded no objection. Resultantly, the learned Trial Court decreed the suit filed by the plaintiff.

[10] In appeal preferred by the defendants, learned Appellate Court came to the conclusion that the land comprised in *khasra* No.325 ad-measures 1 kanal. 5 marlas out of the same stands acquired. The balanced area in *khasra* No.324 is 15 marlas. As per revenue record, 4 marlas of land was owned by Surja etc. i.e. defendants 16 marlas of land was purchased by plaintiff-Pirthi from Chander Singh. State acquired 5 marlas of land out of joint *khata* and thus, the same has to be discounted proportionately *qua* share of both the parties. Consequently, the learned Lower Appellate Court held that plaintiff is entitled to be declared as owner in possession of land measuring 0 kanal 12 marlas whereas remaining area of 3 marlas vests in defendants.

[11] Learned counsel for the appellant-plaintiff assails the aforesaid findings and submits that while coming on to the aforesaid conclusion, learned Lower Appellate Court has totally ignored Exhibit P-3 whereby, all the co-sharers made joint request before the Land Acquisition Officer, that *qua* 5 marlas acquired by State, compensation of 4 marlas be paid to

defendants and acquisition *qua* 1 marla be paid to plaintiff by ignoring the

aforesaid documents, the Appellate Court has passed the judgment which has led to gross injustice to the plaintiff. Defendants have claimed compensation of 4 marlas of land i.e. their share and now have been further re-awarded with another 3 marlas of land.

[12] *Per contra*, counsel for the defendants submits that there is no proof that the compensation *qua* 4 marlas of land was paid to the defendants. From documents placed on record Exhibits P-5 & P-6, it is evident that the compensation was paid jointly and not proportionately as claimed by the plaintiff.

[13] I have heard counsel for the parties and have carefully gone through records of the case.

[14] Taking up the objection raised by counsel for the respondent with respect to scope of second appeal, it needs to be pointed out that instant appeal is an appeal filed under Section 41 of Punjab Courts Act, 1918. It is now settled proposition of law that in Punjab and Haryana, the second appeals preferred are to be treated as appeal under Section 41 of the Punjab Courts Act, 1918 and not Section 100 of the Code of Civil Procedure. Reference can be made to a judgment of Supreme Court in the case of *Pankajakshi (dead) Through LRs and others vs. Chandrika and others, (2016) 6 SCC 157*, wherein it has been held as under:-

“xxxx                      xxxxx                      xxxxx                      xxxxx

23. *Shri Viswanathan also relied upon a Division Bench judgment of this Court in Kulwant Kaur v. Gurdial Singh Mann [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262] , to submit that this decision is an authority for the proposition that there is no need to expressly refer to a local law when the legislative intent to repeal local laws inconsistent with the Code of Civil Procedure is otherwise clear.*

#### 24. The judgment in Kulwant Kaur case [Kulwant

*Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262]* raised a question which arose on an application of Section 41 of the Punjab Courts Act, 1918. This section was couched in language similar to Section 100 of the Code of Civil Procedure as it existed before the Code of Civil Procedure (Amendment) Act, 1976, which amended Section 100 to make it more restrictive so that a second appeal could only be filed if there was a substantial question of law involved in the matter. The question this Court posed before itself was whether Section 41 stood repealed by virtue of Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976, which reads as under :

*“97. Repeal and savings.—(1) Any amendment made, or any provision inserted in the principal Act by a State Legislature or a High Court before the commencement of this Act shall, except insofar as such amendment or provision is consistent with the provisions of the principal Act as amended by this Act, stand repealed.”*

*This Court concluded that Section 41 of the Punjab Courts Act was repealed because it would amount to an amendment made or provision inserted in the principal Act by a State Legislature. This Court further held that, in any event, Section 41 of the Punjab Courts Act being a law made by the Legislature of a State is repugnant to a later law made by Parliament, namely, Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976, and that therefore, by virtue of the operation of Article 254 of the Constitution of India, the said provision is in any case overridden. In arriving at the aforesaid two conclusions, this Court held [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262.*

*“27. Now we proceed to examine Section 97(1) of the Amendment Act and the amendment of Section 100 CPC by the said 1976 Act. Through this amendment, right to second appeal stands further restricted only to lie where, ‘the case involves a substantial question of law’. This introduction definitely is in conflict with Section 41 of the Punjab Act which was in pari materia with unamended Section 100 CPC. Thus, so long there was no specific provision to the contrary in this Code, Section 4 CPC saved special or local law. But after it comes in conflict, Section 4 CPC would not save, on the contrary its language implied would make such special or local law*

*inapplicable. We may examine now the submission for the respondent based on the language of Section 100(1) CPC even after the said amendment. The reliance is on the following words:*

*‘100. Second appeal.—(1) Save as otherwise expressly provided ... by any other law for the time being in force....’*

*These words existed even prior to the amendment and are unaffected by the amendment. Thus, so far it could legitimately be submitted that, reading this part of the section in isolation it saves the local law. But this has to be read with Section 97(1) of the Amendment Act, which reads:*

*‘97. Repeal and savings.—(1) Any amendment made, or any provision inserted in the principal Act by a State Legislature or a High Court before the commencement of this Act shall, except insofar as such amendment or provision is consistent with the provisions of the principal Act as amended by this Act, stand repealed.’  
(Noticed again for convenience.)*

*28. Thus, language of Section 97(1) of the Amendment Act clearly spells out that any local law which can be termed to be inconsistent perishes, but if it is not so, the local law would continue to occupy its field.*

*29. Since Section 41 of the Punjab Act is expressly in conflict with the amending law viz. Section 100 as amended, it would be deemed to have been repealed. Thus, we have no hesitation to hold that the law declared by the Full Bench of the High Court in Ganpat [Ganpat v. Ram Devi, AIR 1978 P&H 137] cannot be sustained and is thus overruled.”*

*25. We are afraid that this judgment in Kulwant Kaur case [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262] does not state the law correctly on both propositions. First and foremost, when Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 speaks of any amendment made or any provision inserted in the principal Act by virtue of a State Legislature or a High Court, the said section refers only to amendments made and/or provisions inserted in the Code of Civil Procedure itself and not elsewhere. This is clear from the expression “principal Act” occurring in Section 97(1). What Section 97(1) really does is to state that where a State Legislature makes an amendment in the Code of Civil Procedure, which amendment will apply only within the four*

*corners of the State, being made under Schedule VII List III Entry 13 to the Constitution of India, such amendment shall stand repealed if it is inconsistent with the provisions of the principal Act as amended by the Parliamentary enactment contained in the 1976 Amendment to the Code of Civil Procedure. This is further made clear by the reference in Section 97(1) to a High Court. The expression “any provision inserted in the principal Act” by a High Court has reference to Section 122 of the Code of Civil Procedure by which High Courts may make rules regulating their own procedure, and the procedure of civil courts subject to their superintendence, and may by such rules annul, alter, or add to any of the rules contained in the First Schedule to the Code of Civil Procedure.*

*26. Thus, Kulwant Kaur [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262] decision on the application of Section 97(1) of the Code of Civil Procedure (Amendment) Act, is not correct in law.*

*27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision in Kulwant Kaur case [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262] . Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80-A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason*

*that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force. Shri Viswanathan's reliance upon this authority, therefore, does not lead his argument any further.*

xxxx                      xxxx                      xxxx”

[15] In terms of ratio of law laid down by Constitution Bench in ***Pankajakshi's case (supra)***, it is evident that regular second appeal needs to be decided as per Section 41 of Punjab Courts Act, 1918 and not in terms of Section 100 of CPC. Meaning thereby, the test shall be as was prior to the amendment of 1976. The appellants in order to persuade this Court to interfere in regular second appeal, is required to show question of law even though it may not be a substantial question of law.

[16] In terms of settled law, misreading or ignoring cogent piece of evidence leads to perversity in the findings and the same shall be a substantial question of law. Thus, once the Courts below have ignored the documentary evidence brought on record by plaintiffs, the consideration thereof would not amount to re-appreciation of evidence but would be a ground to interfere.

[17] Defendants do not dispute document (Exhibit P-3), which reads as under:-

“ Scheme: -        Ram Nagar to Hadwa Road  
                             Hadbast No.29 31 J- 09.01.90

File No.73  
Date of filing: 12/89  
Date of decision: 09.01.90  
Village Ramnagar (Safidon)



To

The L.A.O,  
Hisar.

Sub:    Application for making share-wise payment.

Sir,

The request is as under:-

It is submitted that the plot of applicants had come on Ram Nagar to Hadwa Road. Out of it, Chander Singh s/o Pohkar sharer has sold his entire share to Pirthi s/o Sudhan. The 'Tatima' (supplement) of it is not prepared. Out of this land, the applicants are agreed to give the amount of money of one 'Marla' to Pirthi and amount of money of remaining four 'Marlas' to heirs of Lahari. In such manner, we all applicants are in agreement.

Applicants

Sd/- Hari Singh s/o Lahari (In Hindi)  
Sd/- Pirthi Singh s/o Sudhan (In Hindi)  
Sd/- Surja (L.T.I)  
Sd/- Chander s/o Pohkar Singh (L.T.I)  
Sd/- Mehar Singh (In English) and another”

[18]       As per admitted position,  *khasra*  No.324 comprises of 20 marlas of land, out of which, plaintiff purchased 16 marlas and defendants were owner to the extent of 4 marlas. 5 marlas of land was acquired. All the parties agreed that defendants be paid compensation *qua* 4 marlas and the plaintiff be paid compensation for 1 marla. The aforesaid being the situation, defendants at this stage, cannot be allowed to re-claim their share *qua* which they have already received compensation.

[19]       In view of the above, suit filed by the plaintiff is ordered to be decreed. He is held to be owner in possession of land measuring 15 marlas.

[20]       RSA-4152-2006 stands **allowed**. RSA-4273-2006 is ordered to be **dismissed**. Decree be drawn.

[21]       Photocopy of this order be placed on the file of connected case.

(Pankaj Jain)  
Judge

16.01.2025  
'R. Sharma '

Whether speaking/ reasoned       :       Yes/No  
Whether reportable                   :       Yes/No