



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 22.01.2026

1. RSA-1141-1992 (O&M)
Ladha Ram and others

...Appellant(s)

Vs.

Joginder Bai and others

...Respondent(s)

AND

2. RSA-1476-1992 (O&M)
Karnail Singh and others

...Appellant(s)

Vs.

Joginder Bai and others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Davinder Singh Khurana, Advocate and
Mr. Zorawar Mavi, Advocate for the
appellant No.1 in RSA-1141-1992 and
for respondent No.10 in RSA-1476-1992.

Mr. Gurmeet Singh Saini, Advocate for
Mr. S.C.Chhabra, Advocate for
respondents No. 10 to 15 in RSA-1141-1992.

Mr. Arshdeep, Advocate for respondent No. 13
in RSA-1476-1992

NIDHI GUPTA, J.

RSA-1141-1992 (O&M)

Present second appeal has been filed by defendants No. 13,
14 and 17 against the judgment and decree of reversal dated 04.01.1992



passed by Id. Additional District Judge, Ferozepur; whereby suit filed by the plaintiffs/respondents for declaration as owners of land measuring 17K 14M and for joint possession of the same, has been decreed.

RSA-1476-1992 (O&M)

Present second appeal has been filed by defendants No. 6 to 11 against the judgment and decree of reversal dated 04.01.1992 passed by learned Additional District Judge, Ferozepur; whereby suit filed by the plaintiffs/respondents for declaration as owners of land measuring 17K 14M and for joint possession of the same, has been decreed.

2. Both the above said appeals are being disposed of by this common judgment as both arise out of common judgments and decrees; in respect of the same suit land; between the same parties; and facts and issues involved in both the appeals are identical. For the sake of facility, facts are being drawn from ***RSA-1141-1992*** titled as ***“Ladha Ram and others vs. Joginder Bai and others”***.

3. The parties shall hereinafter be referred to as per their status before the learned trial Court

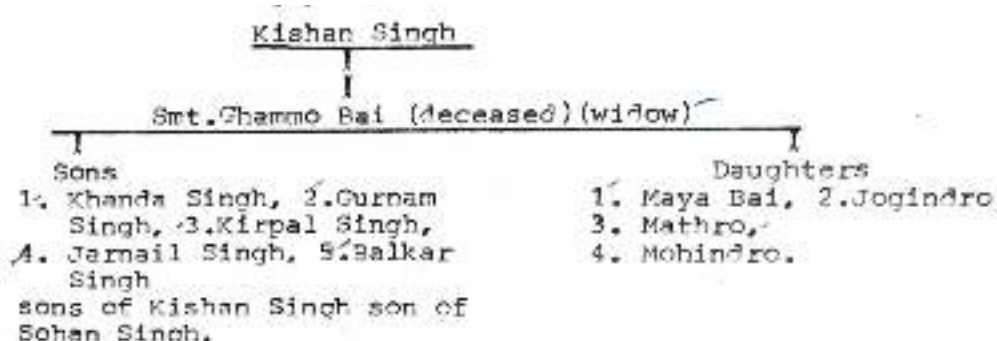
4. The facts as pleaded in the plaint are that:-

- Kishan Singh was owner of land measuring 131K 8M.
- Kishan Singh was survived by five sons and four daughters and his wife.
- Thereafter, Ghammo Bai had also died.
- Of the above land measuring 131K8M, Ghammo Bai had transferred

7K 19M.



- As such plaintiffs and other heirs of Kishan Singh were owners of the remaining land measuring 123K 9M.
- All the 9 heirs of Kishan Singh and Ghammo had sold land measuring 18K 4M in favour of Harbans Singh/defendant No.11 vide Sale Deed dated 23.11.1982.
- They also sold another piece of land measuring 16 K vide Sale Deed dated 23.11.1982.
- Another piece of land measuring 15K 12M was transferred in favour of Jarnail Singh.
- Thereafter defendants No. 6 to 8 vide Sale Deed dated 23.11.1982 had sold land measuring 19K 2M in favour of Balwant Singh/defendant No.9. It was pleaded by the plaintiffs that Balkar Singh, Mohinder as also Maya Bai, Khanda Singh, Gurnam Singh/defendants No.4A, 18, 1, 3, 4 respectively, had sold away the landed property more than their share in the joint properties, which they were not competent to do.
- The plaintiffs claimed that they still owned 17K14M of land in joint property and they are entitled to possess the same.
- In order to correctly appreciate the dispute at hand, following pedigree table shall be useful: -



4. Accordingly, present suit for declaration as owners of land measuring 17K 14M and for joint possession of the same, was filed on 26.05.1981.

5. Upon notice, defendants had put in appearance and contested the suit. Appellants/defendants No.13, 14 and 17 had filed their separate written statement claiming that they had purchased some portion of land from Khanda Singh and others. They further pleaded that Ladha Ram/defendant No.12 had purchased property from Balkar Singh and Mohinder Kaur vide Agreement dated 9.06.1980 and Sale Deed regarding the land was executed under the orders of the Court. Averments made in the plaint were denied. Dismissal of suit was prayed for.

6. On the basis of pleadings of the parties, following issues were framed:-

- "1. Whether the plaintiffs are owners of the disputed land and are entitled to its possession? OPP.*
- 2. Whether the plaintiffs did not execute any sale deed in respect of the suit land?OPP*
- 3. Whether the suit is not maintainable in the present from? OPD.*



4. Whether Balkar Singh, Mohinder Kaur, Gurnam Singh and Maya Devi were the sale owners of the land in suit and they sold the suit land with defendants Nos. 13,14 and 17 vide Sale deeds dated 1.4.74 and 23.12.86? OPD.

5. Relief.”

7. Upon appraisal of the pleadings and the evidence led by the parties, the learned Sub Judge, 1st Class, Ferozepur had partly decreed the suit of the plaintiffs vide judgment and decree dated 09.05.1989 in the following manner:-

“In view of my findings, on the afore-mentioned issues, the suit of the plaintiffs must succeed to the limited extent that the plaintiffs are co-sharers in the disputed property within their rights to seek partition if so desired. I, therefore, pass a decree for declaration in favour of the plaintiffs to the effect that the plaintiffs are co-sharers in the disputed land measuring 131 Kanals 8 Marlas situated in village Dhab Gharyal alongwith other co-sharers within their rights to seek partition, if so advised. The parties are left to bear their own costs. Decree sheet he prepared accordingly. File be consigned to the record room.”

8. Against the said judgment and decree dated 09.05.1989, the plaintiffs had filed Civil Appeal; which was allowed by the learned Additional District Judge, Ferozepur vide judgment and decree dated 04.01.1992 in the following manner:-

“10. In view of the foregoing discussion there is a merit in the appeal and the same is partly allowed and a decree for declaration is passed in favour of the plaintiffs and against the defendants to the affect that the plaintiffs are the owners



of agricultural land measuring 18 kanals instead of 23 kanal 8 marlas out of the agricultural land measuring 131 kanals 8 marlas as detailed in the head note of the plaint. Decree is passed with a consequential relief to the effect that the plaintiffs are also entitled to the joint possession of the land left behind by Kishan Singh and in view of the special nature of the case the parties are left to bear their own costs. Appeal file be consigned to the record room after its completion and the record of the trial court be sent back with quick despatch.”

9. Hence, present Second Appeals.

10. It is *inter alia* submitted by learned counsel for the appellants/defendants No.13, 14 and 17 that they are the subsequent purchasers from Balkar Singh and Mohinder Kaur by way of a registered Sale Deed Ex.D1. Therefore, the appellants having share in the suit land, learned Trial Court had rightly decided that the plaintiffs are the co-sharers with the other co-sharers and that the revenue court will decide the correct shares of the parties which can only be determined in a suit for partition. It is submitted that the Id. First Appellate Court erred in giving the specific shares of the plaintiffs which is against law.

11. It is further submitted that the Plaintiffs had filed suit seeking declaration as owner only in respect of 17K 14M. However, First Appellate Court had decreed the suit of the plaintiffs for 18K which was more than what was prayed for by them.



12. It is submitted by learned counsel for the appellants that the findings on issue No.4 are also illegal and not sustainable in the eyes of law. The appellants have purchased the land in dispute from Balkar Singh, etc. who were the lawful owners of the land in dispute and they sold the land to the appellants for a valuable consideration vide registered sale-deeds. The respondents-plaintiff has no cause of action against the appellant. The findings on this issue deserve to be reversed in appeal.

13. Learned counsel for the appellants further submits that the evidence led by the appellants has not been discussed or gone into by the First Appellate Court which has based its findings on mere assumptions and on mere conjectures and surmises. Learned counsel submits that the impugned judgment of the First Appellate Court is non-speaking and does not consider any of the evidence, issues or other facts raised by the parties as required under Order 41 Rule 31 CPC.

14. It is further submitted by learned counsel for the appellants that the trust worthy and reliable evidence lead by the appellants has wrongly and illegally been ignored by the court below and that the respondents-plaintiffs are not entitled to any relief against the appellants. The findings being illegal deserve to be reversed in appeal.

15. It is accordingly prayed that the present appeals be allowed; and the impugned judgment and decree dated 04.01.1992 be set aside.

16. *Per contra*, learned counsel for the plaintiffs submits that the judgment of learned First Appellate Court does not suffer from any error



as the same only quantifies the share of the plaintiffs. It is pointed out that the learned First Appellate Court was in no error in decreeing suit of the respondents for 18K as the application filed by the plaintiffs for amendment of plaint had been allowed; and which order had gained finality. It is submitted that therefore, judgment of learned First Appellate Court suffers from no error and the present Second Appeals deserve to be dismissed.

17. Learned counsel for the appellants controverts submissions made on behalf of the plaintiffs and submits that once amendment of suit has been permitted then matter ought to have been remanded back to the learned Trial Court to enable parties to lead evidence. However, learned First Appellate Court had remained silence on the specific issues framed in the matter and therefore cannot be upheld. It is accordingly prayed for setting aside of the judgment of learned First Appellate Court.

18. No other argument is raised on behalf of the parties. I have heard learned counsel and perused the case file in great detail. I find merit in the submissions advanced on behalf of the appellants.

19. Admittedly plaintiffs and defendants No. 1 to 5 are sons and daughters of Kishan Singh. As such, they are co-sharers in the disputed property. Admittedly, parcels of suit property have been sold from time to time by the said parties to various persons, including to the appellants. The appellants had purchased the suit land from Balkar Singh etc. vide registered Sale Deeds. It has come on record that appellants

had to file civil suit for specific performance of Agreement entered into



between the appellants and Balkar Singh etc; and with the interference of the Court, Sale Deed was registered and appellants/subsequent purchasers came into possession of the suit property. Thus, appellants are bona fide purchasers of the suit land for valuable consideration. In this scenario, share of only the plaintiffs could not have been determined by the Id. First Appellate Court. It is trite law that definitive shares can only be determined in a suit for partition in the presence of all the co-sharers. As such, the proper and prudent recourse open to the plaintiffs would have been a partition suit. Learned First Appellate Court has taken a myopic view in holding that plaintiffs cannot seek partition of agricultural land till their share in the agricultural land is decided. On the contrary, no partition can be accomplished without first determining the shares. However, legitimate shares in any disputed property, including in the agricultural land, can only be definitively decided in partition proceedings. It is also my view that in declaring the share of the plaintiffs the Id. First Appellate Court has taken upon itself the power assigned to the Revenue Authorities in the first instance.

20. It is also to be appreciated that it is the case of the appellants that the plaintiffs had sold more than their share and as such had no right to seek further declaration with regard to some more land. A determination in this regard can only be made in a partition suit in the presence of and in respect of all the co-sharers.

21. Furthermore, it cannot be lost sight of that the plaintiffs had filed the instant suit for declaration as owners of 17K 14M of land. The



learned First Appellate Court has declared the plaintiffs as the owners in joint possession of agricultural land measuring 18 kanals against their claim of 17 Kanals 14 Marlas only. In permitting the plea of ownership with regard to 23 Kanals 8 Marlas at appellate stage by way of amendment of the plaint was not entertainable; and the order of First Appellate Court in allowing the said amendment has resulted in grave injustice with the Appellants; inasmuch as the appellants have been denied and deprived of an appropriate opportunity to defend the suit. The learned Lower Appellate Court should have remanded the case back to the Trial Court instead of deciding the same itself. For this reason as well the impugned judgment cannot be sustained.

22. Furthermore, the judgement passed by the learned First Appellate Court is non-speaking one and does not put forward all the relevant and material facts. A perusal of the impugned judgment shows that the First Appellate Court has intervened in the judgement of the Trial Court without assessing the evidence on record in a judicious manner. Perusal of the impugned judgment of the learned First Appellate Court also shows that the learned First Appellate Court has failed to discuss any of the evidence from the issues raised by the parties in the case and has passed the impugned judgment only by considering Issue No.1. As per Order 41 Rule 31 CPC, it was incumbent upon learned First Appellate Court to discuss the evidence in detail and give a finding on each issue framed by the learned Trial Court. That has not been done.



23. Reference is made to a judgment passed by Hon'ble Supreme Court in **C. Venkata Swamy v. H.N. Shivanna (D), (SC) : Law Finder Doc Id # 939933**, wherein it is held as under:-

"Civil Procedure Code, 1908 Section 96, Order 41 Rule 31 - First Appeal - Single Judge dismissed the appeals very cursorily and without undertaking any appreciation of evidence - Held that appeal not disposed of in conformity with the requirements of Section 96 read with Order 41, Rule 31 of the Code - It is the duty of the first Appellate Court to appreciate the entire evidence and arrive at its own independent conclusion, for reasons assigned, either of affirmance or difference - Case Remanded.

The relevant para of the said judgment is as under:-

"4.....The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court....."

24. Reference is made to another judgment passed by Hon'ble Supreme Court in **Malluru Mallappa v. Kuruvathappa (SC): Law Finder Doc Id # 1682729**; the relevant para of which reads as under:-

"19. It is clear from the above provisions and the decisions of this Court that the judgment of the first appellate court has to set out points for determination, record the decision thereon and give its own reasons. Even when the first appellate court affirms the judgment of the trial court, it is required to comply



with the requirement of Order 41 Rule 31 and non-observance of this requirement leads to infirmity in the judgment of the first appellate court. No doubt, when the appellate court agrees with the views of the trial court on evidence, it need not restate effect of evidence or reiterate reasons given by trial court. Expression of a general agreement with the reasons given by the trial court would ordinarily suffice.”

25. Moreover, Id. counsel for the appellants has rightly stated that possession of co-sharer is on every inch of land. As such, joint possession could not have been granted to the plaintiffs on various portions of land in lieu of their share in joint property. It is but trite law that every co-sharer has right over every inch of the land.

26. The relevant findings of the learned trial Court are as under:-

“9. As stated above, the plaintiffs and various other heirs of Kishan Singh and Ghammo deceased inherited the disputed land from them. The plaintiffs are co-sharers in the entire disputed land. Plaintiffs admittedly made certain alienations of some property alongwith other co-sharers. The effect and value of those alienations is to be determined when the partition takes place between the parties. Nevertheless, the plaintiffs continue to be co-sharers in the disputed property within their rights to seek partition if so desired. They are, however, not entitled to any specific portion of land in lieu of their shares in the joint property until and unless partition takes place. However, the suit filed by the plaintiff for establishing their rights in the joint property is quite competent and maintainable. This issue is accordingly sound



and decided in favour of the plaintiffs and against the defendants.”

27. In view of the above discussion, the present Regular Second Appeals are **allowed**; and impugned judgment and decree dated 04.01.1992 passed by learned Additional District Judge, Ferozepur is set aside. However, parties are at liberty to seek recourse to appropriate remedy as per law, including by way of partition suit.

28. Pending application(s) if any also stand(s) disposed of.

22.01.2026

Divyanshi

**(NIDHI GUPTA)
JUDGE**

**Whether speaking/reasoned:
Whether reportable:**

**Yes/No
Yes/No**