

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on 22nd of January, 2026
Pronounced on 20th of April, 2026
Uploaded on 20th of April, 2026

Whether only operative part of the judgment is pronounced? No
Whether full judgment is pronounced? Yes

RSA No.76 of 1993 (O&M)

Bara Singh and othersAppellants

Versus

Jai Kaur and othersRespondents

CORAM: HON'BLE MR JUSTICE PANKAJ JAIN

Present: Mr. Suraj Kaundal, Advocate
for the appellants.

Mr. Sumit Sinha, Advocate
for respondent No.1.

Mr. Sukhdeep S. Brar, Advocate
for respondents No.12 to 14.

PANKAJ JAIN, J.

Defendants No.2 and 8 are in second appeal.

2. For convenience, the parties hereinafter are referred to as by their original position before the Court of the First Instance i.e., the appellants as defendants No.2 and 8, (since deceased and thus are being represented by their LRs), respondents No.1 to 5 as 'plaintiffs', respondent No.6 as 'defendant No.1', respondents No.7 to 19 as defendants No.3 to 16.

3. Plaintiffs filed suit seeking decree of joint possession of 1/2 share of land measuring 77 Kanal 12 Marlas, as detailed out in the head-note of the plaint.

3.1. Plaintiff No.1 namely Jai Kaur and predecessor-in-interest of plaintiffs No.2 to 5 Dhan Kaur, are daughters of Chand Kaur, who are asserting to be in joint possession of the estate left by brother of Chand Kaur, namely Sarwan Singh.

3.2. As per the plaintiffs, Jai Kaur and Dhan Kaur are owners to the extent of 1/2 share in the suit land. Defendants No.1 and 2 sold specific *khasra* numbers in favour of defendants No.3 to 8 even though they had no right to sell the land. Defendants No. 1 and 2 further sold 32 Kanals of land in favour of fathers of defendants No.9 to 11 and also sold 15 Kanal 14 Marlas of land in favour of defendants No.13 and 14. As per plaintiffs, defendants No.1 and 2 had no right to sell the specific land without getting the same partitioned. Defendants No. 1 and 2 having sold area more than their share, the sale deeds are not binding upon the rights of the plaintiffs.

4. Suit was contested by the defendants. As per them, defendants No.1 and 2 earlier filed a Civil Suit No. 13 of 1964 against plaintiff Jai Kaur and her sister Dhan Kaur. The suit was decreed vide judgment and decree dated 09.02.1965. It was held that Jai Kaur and Dhan Kaur have no concern with the suit land. The appeal preferred by Jai Kaur and Dhan Kaur was dismissed vide judgment dated 21.03.1966. As per defendants, Kishan Singh and Sarwan Singh, sons of Kahla Singh, were owners of the land, in

dispute, in equal shares. Kishan Singh died on 06.08.1957. He was succeeded by Sarwan Singh. Sarwan Singh during his lifetime sold 8 Kanals 19 Marlas of land vide sale deed dated 01.07.1960 in favour of Ujjagar Singh, Nazar Singh, and Bhag Singh. Sarwan Singh bequeathed the suit land in favour of defendants No.1 and 2 vide two WILLS dated 05.01.1962 and 25.09.1962. Mutation of inheritance of Sarwan Singh in favour of Jai Kaur and Dhan Kaur was sanctioned. The same was held to be bad. Defendants No.1 and 2 were declared to be the owners of the suit land in question. Defendant No.1 sold 15 Kanals 14 Marlas of land in favour of defendants No.13 and 14. They sold 6 Marlas of land in favour of defendants No.15 and 16 vide sale deed dated 09.01.1984. Defendants No. 10, 11, and 12 purchased 64 Kanals of land from defendants No.1 and 2 vide sale deed dated 01.07.1969. Defendants being *bonafide* purchasers for a valuable consideration are in possession as exclusive owners of specific parcels of land. Thus, the present suit deserves to be dismissed.

5. Suit filed by the plaintiffs was put to trial by the Court of the First Instance, framing following Issues:

1. Whether the plaintiffs are the owners of 1/2 share in the suit land? OPP
2. Whether the plaintiffs No.2 and 3 are successors in interest of Smt. Dhan Kaur deceased? OPP
3. Whether the plaintiffs are entitled to joint possession to the extent of 1/2 share in the suit land as the sale are not binding on the rights of the plaintiffs? OPP

4. Whether the suit is barred by limitation? OPD.
5. Whether the present suit is barred by principle of *resjudicata*? OPD.
6. Whether the plaintiffs have got no locus standi to file the present suit? OPD.
7. Whether the deft. No.3 to 8, 10 to 12 and 13 to 16 are bonafide purchasers for consideration and without notice? OPD.
8. Whether defendant No. 10 to 12 have become the owners of the suit land by way of adverse possession? OPD.
9. Whether Jagrup Singh, defendant is minor, if so, its effect? OPD.
10. Whether the plaintiffs are estopped from filing the present suit? OPD.
11. Whether the defendants are entitled to specific costs as alleged? OPD.
12. Relief.

6. Relying upon judgment, Exhibit D-5, passed in Civil Suit No.13 of 1964, the Court of First Instance found that Jai Kaur and Dhan Kaur having lost their right and title in the property in the earlier suit, cannot claim joint possession. The suit was accordingly, dismissed by the Court of the First Instance.

7. The First Appellate Court though maintained the judgment & decree passed by the Court of the First Instance, but held that the land in dispute is 81 Kanal and 13 Marlas. Judgment Exhibit D-7 relates to 64 Kanal 12 Marlas of land. The suit regarding the same is barred by principles of *res judicata*. 8 Kanal 19 Marlas of land was sold by Sarwan Singh during

his lifetime by way of registered Sale Deed dated 01.07.1960. However, regarding residual 8 Kanal 2 Marlas of land, the judgment cannot operate as *res judicata*. The First Appellate Court accordingly modified the findings recorded by the Court of the First Instance on Issue No.1 and decreed the suit filed by the plaintiffs w.r.t. 1/2 share in the land measuring 8 Kanal 2 Marlas.

8. Ld. Counsel for the appellants submits that the First Appellate Court travelled beyond the pleadings. The present suit was filed by the plaintiffs seeking joint possession in 77 Kanal 12 Marlas of land. The First Appellate Court wrongly presumed that the land in dispute is 81 Kanal 13 Marlas travelling beyond the pleadings. 64 Kanal 12 Marlas of land was decreed in favour of defendants No.1 & 2 vide judgment and decree, Exhibit D-7. 8 Kanal 19 Marlas of land was sold by Sarwan Singh during his lifetime. Rest of 4 Kanals of land was gifted by Sarwan Singh during his lifetime to Gurudwara Sahib and the said fact is impliedly admitted in the plaint as Gurudwara Sahib has been impleaded as one of the defendants. He thus submits that the Lower Appellate Court has misread the pleadings as well as the evidence on record which has resulted in a perverse judgment.

9. Per contra, counsel for the respondents has drawn attention of the Court to the concession given by counsel appearing for the appellants before the First Appellate Court, stating that he has nothing to argue on the said aspect.

10. I have heard counsel for the parties and have carefully gone

through records of the case.

11. Exhibit D-7 is a judgment passed in Civil Suit No.1-T of 1966, dated 21.03.1966 against the judgment & decree dated 09.02.1965 passed by Senior Sub Judge, Barnala. It is not in dispute that originally Kishan Singh and Sarwan Singh sons of Kahla Singh, were owners of land in dispute. Kishan Singh died on 06.08.1957. His 1/2 share was mutated in the name of his brother Sarwan Singh. Sarwan Singh died on or before 26.11.1962. The entire property was mutated in the name of Dhan Kaur and Ajaib Kaur, daughters of Sarwan Singh. Plaintiff Natha Singh etc. propounded a WILL in their favour by Sarwan Singh. Dhan Kaur and Jai Kaur lost title over the suit land measuring 64 Kanal 12 Marlas. Thus, there is no dispute w.r.t. land measuring 64 Kanal 12 Marlas which was subject matter of the earlier *lis*.

11.1. It is also not in dispute that Sarwan Singh during his lifetime sold away 8 Kanal 19 Marlas of land. The First Appellate Court modified the decree passed by the Court of the First Instance holding that the suit land measures 81 Kanal 13 Marlas. However, as per plaint, the suit was instituted for 77 Kanal 12 Marlas of land. The same is also evident from *Jamabandi* for the year 1983-1984, Exhibit P-2, a document brought on record by the plaintiffs.

12. In these circumstances, this Court is of the view that the Lower Appellate Court tried to make out a case in favour of the plaintiffs which was not only beyond pleadings but also beyond evidence. Thus, the finding recorded by the Lower Appellate Court to the extent that the suit was

instituted for 81 Kanal 13 Marlas, cannot be sustained and is hereby set aside.

13. Now the dispute remains w.r.t. 4 Kanal 1 Marla of land.

14. Bare perusal of Exhibit P-2 would reveal that Gurudwara Sahib is in possession of 4 Kanals of land comprised in Khasra No.73//8/2 on the basis of oral exchange *qua* which Mutation No.2089 was sanctioned. The aforesaid fact also stands admitted by the plaintiffs by impleading Gurudwara Sahib as one of the defendants.

15. In view of above, this Court finds that the plaintiffs having lost their battle for title over the estate left by Sarwan Singh, cannot claim joint possession over the suit property by way of present suit. Exhibit D-7 is *qua* land measuring 64 Kanal 12 Marlas. 8 Kanal 19 Marlas of land was sold by Sarwan Singh during his lifetime. 4 Kanals of land was put under the possession of Gurudwara Sahib. Thus, the entire 77 Kanals 12 Marlas of land for which the suit was instituted, stands explained and the Lower Appellate Court erred in reversing well reasoned findings recorded by the Court of the First Instance.

16. Needless to mention that the Second Appeals before this Court are to be treated and dealt with in accordance with Section 41 of the Punjab Courts Act. There is no requirement for framing of substantial question of law. Reference can be made to the observations made by Five Judges Bench in the case of '**Pankajakshi vs. Chandrika**' (2016) 6 SCC 157, which reads as under:

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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.

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17. Misreading of evidence and going beyond pleadings breeds perversity. The same constitutes substantial question of law. The question

of law having been answered in favour of the appellants, the present appeal is accepted.

18. Judgment & decree passed by the Lower Appellate Court is hereby reversed.

19. Suit filed by the plaintiffs/respondents is ordered to be dismissed in terms of the judgment & decree passed by the Court of the First Instance, which is ordered to be restored.

20. No order w.r.t. costs as the defendants remained in possession of the suit land throughout.

21. Accordingly, the instant appeal is allowed.

22. Pending application(s), if any, shall also stand disposed off.

April 20, 2026
Dpr

(Pankaj Jain)
Judge

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