



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

(102)

RSA No:- 1925-1995 (O&M)

Reserved on: 18.03.2026

Pronounced on: 30.03.2026

Uploaded on: 02.04.2026

Makhan Singh (Since Deceased Through LRs)

....Appellant

Versus

Piara Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by: Mr. Amit Jain, Senior Advocate with
Ms. Nikita Sharma, Advocate
for the appellant.

Mr. Sandeep K. Sharma, Advocate for
Mr. Sandeep Vermani, Advocate
for the respondent nos. 2 to 4.

VIRINDER AGGARWAL, J

1. The present Regular Second Appeal has been preferred by the appellant–plaintiff, being aggrieved by the judgment and decree dated 11.08.1995 passed by the learned First Appellate Court whereby the appeal filed by the respondents-defendants was allowed and the well-reasoned judgment and decree dated 14.06.1989 passed by the learned Trial Court decreeing the suit of the plaintiff was set aside.

Background Facts

2. The appellant-plaintiff, Makhan Singh, a minor suing through his mother as next friend, instituted the present suit for declaration to the effect that the land along with the residential house (fully detailed in the headnote of the plaint) is ancestral coparcenary joint Hindu family property in the hands of



defendant no. 1 as karta and plaintiff is owner in possession of the same as coparcenar. It was further prayed that the entries in the Jamabandi showing defendants No.2 to 6 as owners are illegal, be declared as null and void, and therefore not binding upon the plaintiff's share. A consequential relief of permanent injunction restraining the defendant no. 2 to 7 from alienating the suit land and house and from forceful dispossession of the plaintiff except in the due course of law.

3. It was pleaded that the property in dispute descended from the common ancestor and retained its character as ancestral coparcenary property. The genealogy forming the basis of the claim is as under:

Uttam Singh (common ancestor)

↓

Ram Singh

↓

Piara Singh (defendant No.1)

↓

Avtar Singh (defendant No.8)

↓

Makhan Singh (plaintiff)

On the strength of the aforesaid lineage, it was asserted that the plaintiff, being a coparcenar by birth, acquired an interest in the suit property. On the aforesaid foundation, the plaintiff claimed that he was entitled in law to challenge the alienations made by defendant No.1, being the Karta, on the ground that the same were not supported by legal necessity or benefit of estate and, therefore, were not binding upon his share. It was further asserted that such right accrued to the plaintiff independently, by birth, in the coparcenary property, and on that basis, the present suit seeking declaration and



consequential injunction is maintainable.

4. Upon notice, the suit was contested by the defendants, who filed a joint written statement raising preliminary as well as substantive objections. It was, inter alia, pleaded that the parties are governed not by Hindu law but by custom applicable to agriculturist Jat Sikhs, under which the holder of the property was competent to alienate the same without being fettered by the restrictions of coparcenary law. On that premise, it was asserted that defendant No.1 Piara Singh was fully competent to execute the impugned alienations, and that the sale deeds in favour of defendants No.2 to 6 were valid, for consideration, and binding upon all concerned. The defendants further denied that the property was coparcenary in nature or that the plaintiff had any enforceable right to challenge the transactions. It was also specifically pleaded that the suit was not maintainable and was liable to be dismissed on account of the bar of res judicata, inasmuch as earlier litigation had been instituted by Avtar Singh, father of the present plaintiff, challenging alienations made by defendant No.1, which stood dismissed up to the High Court. On the strength of the said earlier adjudication, it was contended that the present proceedings were an attempt to re-agitate the same cause of action and were hit by the principles of constructive res judicata. The defendants further asserted that the plaintiff had no independent cause of action and that the present suit, having been filed through the mother as next friend, was collusive in nature and intended to circumvent the binding effect of the earlier judgments. On these pleadings, dismissal of the suit was prayed for.

5. On the basis of the pleadings of the parties, the learned Trial Court framed the following issues on 24.2.1986:-



1. *Whether the disputed property is joint Hindu family/ancestral property of the plaintiff and defendant No.1 alongwith other coparcenars? OPP.*
2. *Whether the defendant No.1 executed a valid sale deed in favour of defendants No.2 to 6 for valid consideration, if so, its effect? OPD.*
3. *Whether the suit is collusive between plaintiff and defendant No.8? OPD.*
4. *Whether the plaintiff is entitled to the declaration and injunction as prayed for? OPP.*
5. *Relief.*

Thereafter, the parties amended their pleadings and the learned Trial Court framed the following additional issue on 6.8.1987:-

- 1A. *Whether the parties are governed by customary law, if so, its effect? OPD.*

6. The learned Trial Court, upon a detailed and meticulous appreciation of the oral as well as documentary evidence led by both sides, returned cogent and well-reasoned findings on all issues. On the interlinked Issues No.1 and 1A, the Court held that the suit property (land and house) is ancestral joint Hindu family coparcenary property in the hands of defendant No.1 (Piara Singh) as Karta, and the parties are governed by Mitakshara Hindu law, not by any custom. The plaintiff proved the ancestral character through oral testimony (PW1 Gural Kaur and PW2 Fagir Singh) showing joint residence, mess and funds, and inheritance from great-grandfather Uttam Singh, corroborated by



Jamabandis (Ex.P-12 to P-16). The learned Trial Court held that the defendants failed to prove any custom allowing free alienation by the recorded owner, as their witnesses gave vague statements without instances, Riway-i-am or proof of antiquity/continuity. Relying on *Pritam Singh v. Assistant Controller of Estate Duty Patiala (1976 CLJ (Civil) 193) (P&H FB)* and Section 4 of the Hindu Succession Act, 1956, the Court held that no custom at variance with Hindu law was established, and coparcenary restrictions apply.

7. The learned Trial Court on Issue No.2 found that the sale deeds (Ex.D-1 & D-2) were executed and registered but not supported by legal necessity. Piara Singh (DW5) admitted in cross-examination that he received no sale consideration in hand and that the proceeds were spent on the marriages of his daughters which had already been performed years earlier; other DWs pleaded ignorance. Defendants failed to discharge the burden of proving necessity and bona fide enquiry by purchasers, rendering the alienations voidable and non-binding on the plaintiff's share. The suit was decreed declaring that the suit land along with the house in dispute is ancestral joint hindu family coparcenary property. The suit was decreed with costs in favour of the plaintiff and against the defendants.

8. Aggrieved against the judgment and decree passed by the learned Trial Court, the defendants preferred an appeal before the learned Additional District Judge, Jalandhar. The learned First Appellate Court reversed the findings of the Trial Court primarily on two grounds. Firstly, it held that the parties (being Jat Sikhs of certified agricultural tribe of Jalandhar District) were governed by custom and not by Hindu law, and that under the prevailing custom the recorded owner (Piara Singh, defendant No.1) had an absolute and



unimpeachable right to alienate the suit property. The Court observed that the 1973 Amendment to the Punjab Custom (Power to Contest) Act had retrospective effect and had taken away the right of any reversioner to challenge such alienation. Secondly, the Court held that the present suit was barred by principles akin to constructive res judicata. It heavily relied upon the additional evidence permitted on 28.07.1995 - certified copies of pleadings and judgments in the two earlier suits filed by the plaintiff's father Avtar Singh (defendant No.8) - which showed that Avtar Singh had challenged the very same sale deeds (Ex D1 and D2) on identical grounds and had lost right up to the Hon'ble High Court in 1986. Treating Avtar Singh as the "next reversioner", the First Appellate Court held that once the father had failed, the son (minor plaintiff) had no independent right to re-agitate the same matter. Reliance was placed on *Jagat Singh and another v. Tarsem Singh and others (1984 PLR 55)*, *Gurdeep Singh v. Kartar Singh and others (1985 PLR 165)* and *Surya Nath Singh and others v. Khedu Singh (dead) by Lrs. and others (1994 Supp (3) SCC 561)*. The Court further observed that the plaintiff's mother had filed the suit in collusion and that Piara Singh (DW5) had admitted the sales were for legal necessity. On these grounds, the First Appellate Court concluded that the plaintiff had no locus standi and the suit was liable to be dismissed and resultantly the appeal was allowed.

9. Disputing the determinations of the learned Additional District Judge, appellants-plaintiffs filed the present appeal. Upon its admission, notices were issued, following which the respondents, through their counsel, appeared and opposed the appeal.

CONTENTIONS



10. Learned counsel for the appellant–plaintiff vehemently contended that the judgment and decree dated 11.08.1995 passed by the learned First Appellate Court suffer from grave and patent errors of law and fact, are perverse, contrary to settled principles of Hindu law, and warrant interference in the present Regular Second Appeal. It was argued that the First Appellate Court has committed a fundamental mistake in reversing the well-reasoned findings of the Trial Court by wrongly applying customary law to the parties without there being any strict, cogent or reliable proof thereof. It was submitted that after the coming into force of the Hindu Succession Act, 1956, and particularly in view of the overriding effect of Section 4 thereof, all earlier customs or usages inconsistent with the provisions of the Act cease to have effect in matters governed by the Act, including succession, joint family property and alienation of ancestral property. The parties, being Jat Sikhs of Jalandhar District, are governed by Mitakshara Hindu law unless a specific custom at variance with Hindu law is pleaded with precision and strictly proved by clear, unambiguous and unimpeachable evidence showing its antiquity, certainty, continuity, reasonableness and invariable observance in the family or locality. The defendants miserably failed to discharge this heavy burden. Their witnesses (DW2, DW3 and DW5) gave only bald assertions without producing even a single instance of the alleged custom being followed, without documentary proof, and without establishing the essential attributes required for a valid custom. Learned counsel further argued that the Trial Court rightly relied upon the authoritative Full Bench judgment of this Hon’ble Court in ***Pritam Singh v. Assistant Controller of Estate Duty Patiala (1976 CLJ (Civil) 193*** and held that no such custom was proved, and therefore Hindu law applies. The First



Appellate Court erred in assuming the applicability of custom merely on the basis of vague statements and the 1973 Amendment to the Punjab Custom (Power to Contest) Act, which only bars challenges to alienations “contrary to custom” by reversioners and does not extinguish the independent birth-right of a coparcenar under Hindu law when custom itself is not proved.

11. Learned counsel for appellant further contended that the finding of the First Appellate Court that the suit is barred by principles akin to constructive res judicata is legally unsustainable and contrary to settled law. The plaintiff (minor Makhan Singh), as a coparcenar by birth, has an independent and personal right to challenge the alienations made by the Karta (grandfather Piara Singh) without legal necessity. This right arises by birth in the coparcenary and is not derivative through or subordinate to his father (Avtar Singh, defendant No.8). The earlier suits filed by the father were not instituted in a representative capacity, the minor plaintiff was neither a party nor represented therein, and there is no privity of estate or title between father and son for the purpose of Section 11 CPC in such matters. Each coparcenar has a distinct cause of action and can impugn the alienation independently. The principle laid down in ***(Kintali) Chandramani Prushti v. Jambeswara Rayagaru (AIR 1931 Mad 550)*** (approved by the Hon’ble Supreme Court in ***Guramma Bhratar Chanbasappa Deshmukh v. Malappa, AIR 1964 SC 510***) squarely applies: a coparcenar claiming by birth is not bound by a decree obtained against or suffered by his father. No constructive res judicata or abuse of process arises here. It was also submitted that the alienations in question (sale deeds Ex.D-1 and Ex.D-2) were not proved to be for any legal necessity or benefit of the estate. Piara Singh (DW5) himself admitted in cross-examination that he



received no sale consideration in hand and that the alleged proceeds were spent on marriages of his daughters which had already been performed years earlier. The other defence witnesses pleaded complete ignorance about any pressing family need. The burden to prove legal necessity and bona fide enquiry by the purchasers lay squarely on the defendants and they failed to discharge it. The necessity to sell the suit land was not even mentioned in the sale deeds (Ex.D1 and D2). Under Hindu law, such alienations without necessity are voidable at the instance of any non-consenting coparcenar, and the Trial Court rightly held so.

12. Per contra, learned counsel for the respondents–defendants vehemently supported the judgment of the learned First Appellate Court dated 11.08.1995 and contended that the same is based on a correct and proper appreciation of both facts and law and does not call for any interference in the present Regular Second Appeal. It was strenuously argued that the parties, being Jat Sikhs of the certified agricultural tribe of Jalandhar District, are governed by custom prevailing amongst the Jats of Jalandhar and not by Hindu law. Under the said custom, the recorded owner (defendant No.1 – Piara Singh) possessed an absolute and unimpeachable right of alienation over the ancestral property without any legal necessity, without consent of coparcenars, and without the same being challengeable by sons, grandsons or any other reversioner. Learned counsel further contended that the suit filed by the minor plaintiff (through his mother as next friend) is wholly barred by principles akin to constructive res judicata and is nothing but an abuse of the process of law. The plaintiff's father, Avtar Singh (defendant No.8), had earlier instituted two separate suits challenging the very same sale deeds (Ex D1 and D2) on identical grounds i.e.,



that the property was ancestral coparcenary property and that the alienations were without legal necessity and had lost the litigation right up to the Hon'ble High Court in RSA in the year 1986. The additional evidence (certified copies of pleadings and judgments Ex.X1 to Ex.X14) validly brought on record by the appellants before the First Appellate Court conclusively established this fact. Once the father, being the next reversioner had failed, the son had no independent right to re-agitate the same cause of action. It was also submitted that the two sale deeds (Ex.D-1 and Ex.D-2) were executed for valuable consideration and for legal necessity (marriage expenses of daughters), were duly proved by the scribe and attesting witnesses. The First Appellate Court had correctly appreciated the entire evidence, including the additional evidence, and had rightly dismissed the suit therefore, it did not warrant any interference in second appeal.

OBSERVATIONS AND FINDINGS

13. I have heard learned counsel for the parties and considered their submissions in conjunction with the pleadings, evidence, and the findings recorded by the courts below. The entire record has been carefully examined to determine whether the impugned judgment and decree suffer from any legal infirmity or error justifying interference by this Court.

14. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are to be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 CPC. Reference in this regard can be made to the judgment of the Supreme Court in the case of *Pankajakshi (Dead) through LRs and others V/s Chandrika and others, (2016)6 SCC 157*, followed by the judgments in the



case of *Kirodi (since deceased) through his LR V/s Ram Parkash and others, (2019) 11 SCC 317 and Satender and others V/s Saroj and others, 2022(12) Scale 92*. Relying upon the law laid down in the aforesaid judgments, no question of law is required to be framed.

Nature of Property and Applicability of Law

15. The controversy in the present appeal essentially turns upon three interrelated questions: (i) the nature of the suit property, (ii) the applicability of customary law vis-à-vis Mitakshara Hindu law, and (iii) the validity of the alienations in question. The core issue that falls for determination in this Regular Second Appeal is whether the suit property comprising the agricultural land and the residential house (fully detailed in the headnote of the plaint) situated in Village Rurka Kalan is ancestral coparcenary joint Hindu family property and, if so, whether the alienations effected by defendant No.1 (Piara Singh) as Karta vide sale deeds dated 22.08.1980 and 21.10.1980 (Ex.D-1 & Ex.D-2) in favour of defendants No.2 to 6 are binding upon the undivided share of the plaintiff (Makhan Singh), a coparcenar by birth. The learned Trial Court returned a firm and categorical finding that the property in dispute is ancestral in character and retains its coparcenary nature in the hands of defendant No.1. This finding rested on: (i) the undisputed pedigree showing descent from the common ancestor Uttam Singh through Ram Singh to Piara Singh; (ii) the oral testimony of PW1 (Gurpal Kaur, mother and next friend of the minor plaintiff) and PW2 (Fagir Singh) establishing that the parties were joint in residence, mess and funds; and (iii) the consistent revenue entries in the Jamabandis for the relevant years (Ex.P-12 to Ex.P-16), which clearly reflected the ancestral



descent and joint holding. These materials were neither effectively rebutted nor discredited in cross-examination. The finding of the Trial Court on the ancestral and coparcenary character of the property is therefore founded on cogent, unimpeachable evidence and has not been demonstrated to be perverse, arbitrary or vitiated by any misreading, non-consideration or distortion of the record.

16. The defence of the respondents-defendants is premised entirely on the existence of a local custom applicable to Jat Sikhs of the certified agricultural tribe of Jalandhar District, which allegedly confers upon the recorded owner/Karta an absolute and unfettered power to alienate ancestral property without liability to challenge by sons or other reversioners. It is, however, a well-established principle of law that a custom, being in derogation of the ordinary Hindu law, must be pleaded with specificity and proved with the strictest evidence. The party asserting the custom bears the burden of establishing its antiquity, certainty, continuity, invariability, reasonableness and uniform observance within the family, community or locality concerned. In the present case, the defendants' evidence in support of the alleged custom consisted solely of vague, general and interested oral statements by DW2 (Bhajan Singh), DW3 (Sarwan Singh) and DW5 (Piara Singh himself). These witnesses failed to cite even a single concrete instance of the custom having been followed, produced no documentary evidence, no family pedigree or mutation record reflecting such practice, and no other authoritative or independent documentary proof. In the complete absence of strict and reliable proof, the plea of custom must necessarily fail. It is equally well settled that a custom is never presumed; it must be proved as a matter of fact, and any



ambiguity or doubt operates against the party asserting it.

17. Once the custom is not established by the required standard of proof, the parties are governed by Mitakshara Hindu law, more so in light of the overriding effect of Section 4 of the Hindu Succession Act, 1956. Section 4 expressly provides that any text, rule or interpretation of Hindu law, or any custom or usage as part of that law, in conflict with the provisions of the Act shall cease to have effect in respect of matters governed by the Act. The Full Bench of this Court in *Pritam Singh v. Assistant Controller of Estate Duty* (1976 CLJ (Civil) 193) has authoritatively held that, post-1956, customs at variance with Hindu law (including in matters of succession and joint family property) must be strictly proved; in the absence of such proof, the parties revert to the principles of Mitakshara coparcenary, under which a male descendant acquires an interest by birth in ancestral property, and the Karta's power of alienation is restricted to cases of legal necessity, benefit of the estate or consent of all coparcenars.

18. The learned Trial Court, therefore, correctly applied the principles of Mitakshara coparcenary law and held that the alienations in question could not bind the plaintiff's undivided share unless supported by legal necessity - a requirement the defendants failed to satisfy. The learned First Appellate Court, however, committed a serious error of law by proceeding on the erroneous premise that the existence and applicability of the custom could be presumed or inferred merely from the oral assertions of the defence witnesses, the self-serving statement of Piara Singh, and passing references to custom in the pleadings of the earlier suits filed by Avtar Singh. Such an approach is wholly contrary to the settled principles governing the proof of custom as laid down in



a long line of binding authorities, including the aforementioned Full Bench decision in Pritam Singh (supra), and cannot be sustained. The reversal of the Trial Court's finding by First Appellate Court on this vital aspect is therefore perverse and liable to be set aside.

Effect of 1973 Amendment

19. The reliance placed by the learned First Appellate Court on principles akin to customary reversionary rights is wholly misplaced. The Punjab Custom (Power to Contest) Amendment Act, 1973 (Punjab Act No.12 of 1973) merely restricts the right of a reversioner or collateral to challenge an alienation on the ground that it is "contrary to custom". It does not, and cannot, take away the independent and personal right of a coparcenar under Mitakshara Hindu law to impugn an alienation made without legal necessity or consent. The amendment operates only in the realm of custom; it has no application once the plea of custom itself fails, as has happened in the present case. Once the defendants failed to prove the alleged custom by the strict standard of evidence required, the rights of the parties fell to be determined exclusively under Mitakshara Hindu law. Under this law, the plaintiff (Makhan Singh), as a coparcenar by birth, possesses an independent right to challenge the alienations effected by the Karta (Piara Singh) without legal necessity. The 1973 Amendment, being limited to customary reversionary challenges, has no bearing on this birth-right. The plaintiff was therefore fully entitled to maintain the present suit, and the First Appellate Court erred in extending the amendment beyond its statutory scope to bar the suit.

Alienation by Karta and Legal Necessity



20. Under Mitakshara Hindu law, the Karta of a joint Hindu family has limited power to alienate ancestral coparcenary property. Such alienation is valid only if made for legal necessity (urgent family need that cannot otherwise be met), for the benefit of the estate, or with the consent of all adult coparcenars. The alienees must further establish either the existence of actual legal necessity or that they made bona fide enquiries and acted in good faith before entering into the transaction. Absent these conditions, the alienation is voidable at the instance of any non-consenting coparcenar and does not bind his undivided share. The burden to prove legal necessity lies squarely on the alienees (defendants No.2 to 6). Significantly, neither the sale deeds (Ex.D-1 & Ex.D-2) nor the joint written statement of the defendants mentioned any specific legal necessity. The defendants merely made a bald assertion without pleading particulars such as antecedent debt or pressing need. In evidence, Piara Singh (DW5) admitted he received no sale consideration in hand and that the alleged proceeds were spent on marriages of his daughters which, by his own admission, had already been solemnized prior to the alleged sales. Other defence witnesses (DW2 & DW3) pleaded ignorance. No accounts, receipts or corroborative proof was produced. Legal necessity was neither pleaded with particulars nor proved.

21. The learned Trial Court correctly held that the alienations were unsupported by legal necessity or benefit to the estate and were not binding on the plaintiff's undivided share. This finding is sound and in line with settled Hindu law. The learned First Appellate Court, having wrongly assumed custom permitted unfettered alienation (without strict proof), did not examine the issue of legal necessity on merits at all. It confined itself to res judicata and custom,



thereby committing a material irregularity and vitiating its judgment. Had it applied Mitakshara principles correctly, it would have upheld the Trial Court's finding on absence of necessity. The reversal is unsustainable and liable to be set aside.

Res Judicata and Independent Right of coparcenar

22. The next substantial question that arises for consideration is whether the present suit instituted by the plaintiff (Makhan Singh, minor through his mother as next friend) is barred by the principles of res judicata or constructive res judicata on account of the earlier civil suits filed by his father, Avtar Singh (defendant No.8), challenging the very same alienations. It is a settled proposition of Mitakshara Hindu law that every coparcenar acquires an interest in ancestral coparcenary property by birth, and this interest is independent, personal and inherent. The right to challenge an alienation made by the Karta without legal necessity or consent is not derivative through or subordinate to any other coparcenar (including the father), but arises directly from the plaintiff's status as a coparcenar by birth. Each coparcenar has a distinct and separate cause of action to impugn such alienation, and the exercise (or failure) of that right by one member does not extinguish or bind the right of another unless the latter was a party to the earlier proceeding or was duly represented therein in the same capacity and under the same title.

23. In the present case, the earlier litigation relied upon by the defendants consisted of two suits filed by Avtar Singh:

- Civil Suit No.231 of 1981 (for partition and possession of $\frac{1}{2}$ share as coparcenar), in which the plaint was ultimately returned by the appellate court under Order 7 Rule 10 CPC



after setting aside the trial decree, therefore did not result in any adjudication on merits.

- Civil Suit No.233 of 1981 (for declaration as owner/coparcener in possession of the residential house only), which was dismissed, with the appeal and subsequent RSA also dismissed. (This suit was confined to the residential house and did not encompass the agricultural land forming the subject matter of the present suit)

The plaintiff (minor son) was neither impleaded as a party in those suits nor represented therein in any representative capacity. There is no privity of estate or identity of title between father and son for the purpose of Section 11 CPC in matters of coparcenary birth-rights. The essential conditions of res judicata under Section 11 CPC - same parties (or litigating under the same title), same matter in issue, final decision on merits, and same cause of action - are therefore not satisfied. The principle that a coparcenar acquires an interest in ancestral coparcenary property by birth and possesses an independent right to challenge an alienation made by the Karta without legal necessity - a right which is personal and not derivative through the father - finds direct support in ***(Kintali) Chandramani Prushti v. Jambeswara Rayagaru (AIR 1931 Mad 550)***, which has been approved by the Hon'ble Supreme Court in ***Guramma Bhratar Chanbasappa Deshmukh v. Malappa (AIR 1964 SC 510)***. Since the plaintiff (minor Makhan Singh) was neither a party to the earlier suits filed by his father Avtar Singh nor represented therein in any representative capacity, the decrees passed against the father do not operate as res judicata against him.



24. The learned First Appellate Court fell into a grave error of law by treating the plaintiff as bound by the earlier proceedings merely because his father (as next reversioner under customary notions) had failed in those suits. The Appellate Court wrongly applied the doctrine of constructive res judicata by analogizing the son to a “next reversioner” whose right stands extinguished once the father’s challenge fails, an approach wholly inapplicable once custom is not proved and Mitakshara Hindu law governs. The reliance on cases such as *Jagat Singh v. Tarsem Singh (1984 PLR 55)* and *Gurdeep Singh v. Kartar Singh (1985 PLR 165)* is misplaced, as those dealt with reversionary rights under custom , not independent coparcenary rights by birth. The Appellate Court’s finding that the present suit is barred by res judicata is legally untenable, reflects a misapplication of the doctrine, and cannot be sustained. The plaintiff’s independent right to challenge the alienations remains unaffected by the earlier litigation instituted by his father.

25. A careful reading of the judgment of the learned Trial Court shows that the findings recorded therein are based upon proper appreciation of evidence and correct application of legal principles. The learned First Appellate Court, while reversing the said findings, has misdirected itself in law by accepting unproven custom, misapplying the doctrine of res judicata, and failing to examine the requirement of legal necessity. The impugned judgment of the First Appellate Court, therefore, suffers from legal infirmity and cannot be sustained.

26. In view of the foregoing discussion, the present appeal is **allowed**. The judgment and decree dated 11.08.1995 passed by the learned First Appellate Court are set aside and the judgment and decree dated 14.06.1989 passed by the learned Trial Court are hereby restored. Decree sheet be prepared accordingly.



27. Since the main appeal stands decided, any pending application(s), if any, also stand disposed of.

30.03.2026

Poonam

(VIRINDER AGGARWAL)
JUDGE

- (i) Whether speaking/reasoned : Yes/No
- (ii) Whether reportable : Yes/No