



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

RSA-1947-1995 (O&M)

Reserved on :-20.04.2026

Date of Pronouncement:-29.04.2026

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Tej Kaur (Deceased) through her LRs and Another

... Appellants

Versus

Gurdev Singh (Since Deceased) through his LRs

... Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :-

Mr. J.S. Brar, Advocate
for the appellants.

Mr. Akshay Bhan, Senior Advocate with
Mr. Santosh Sharma, Advocate;
Mr. Varun Sandhu, Advocate and
Mr. Ashutosh Dhankar, Advocate
for the respondent.

VIRINDER AGGARWAL, J.

1. The appellants-defendants have preferred this Regular Second Appeal (here-in-after to be referred as “RSA”) challenging the judgment and decree dated 22.02.1995 passed by the Additional District Judge, Faridkot, which reversed the findings of the Sub-Judge Ist Class, Giddarbaha. The appellants seek restoration of the Trial Court’s decree, contending that the First Appellate Court’s judgment is vitiated by patent perversity and a misappreciation of evidence, resulting in a manifest miscarriage of justice.

2. The factual matrix, shorn of unnecessary detail, is that the respondent instituted Civil Suit No. 953-1 on 18.10.1985 seeking a declaration that he is the owner in possession of agricultural land measuring 80 Kanals 6 Marlas situated in Village Khudian Mahan Singh, Tehsil Muktsar, as reflected in the Jamabandi for the year 1981–82. He further sought a declaration that the judgment and decree dated 05.05.1984 passed in Civil Suit No. 283 titled *Tej Kaur vs. Gurdev Singh*, along with the mutation sanctioned pursuant thereto, are null, void, and inoperative qua his rights, coupled with a consequential relief of permanent injunction restraining the appellants from interfering with his possession or alienating the property.

2.1. It is the further case of respondent that appellant, though legally married to one Dyal Singh, had been residing with him for several years without any valid matrimonial tie (*Karewa*), and was merely a concubine. It is alleged that, under the guise of securing maintenance of ₹150/- per month, the appellant induced the respondent to participate in purported legal proceedings, falsely representing that any decree obtained would be merely formal and non-enforceable. However, taking undue advantage, appellants are alleged to have procured the decree dated 05.05.1984 by practising fraud, misrepresentation, and impersonation, as the respondent neither appeared nor made any statement before the Court.

2.2. The respondent further challenges the said decree as void and inoperative on multiple grounds, including its procurement by fraud, its purported effect of transferring immovable property in contravention of the provisions of the Transfer of Property Act and the Registration Act, and the absence of any lawful entitlement or family settlement in favour of

appellant No.1. It is further pleaded that even if construed as an agreement arising out of illicit cohabitation, the same would be void as being opposed to public policy and morality. The claim of appellant No.2, based on a subsequent collusive decree, is also impugned as conferring no valid title.

2.3. It is lastly averred that the respondent became aware of the impugned decree only shortly prior to the institution of the suit, upon inspection of revenue records, and apprehending dispossession and alienation, instituted the said suit.

3. Upon service, both appellants appeared and contested the suit by filing separate yet substantially similar written statements, raising preliminary objections *inter alia* as to lack of *locus standi*, absence of cause of action, improper valuation for purposes of court fee and jurisdiction, non-maintainability of the suit in its present form, and deficiency in particulars of the alleged fraud.

3.1. On merits, appellant No.1 traversed the respondent claim of ownership and possession, asserting instead that, following dissolution of her earlier marriage with Dayal Singh, she had entered into a valid marital relationship with the respondent and resided with him as his legally wedded wife. Defendant-Tej Kaur further averred that her son Balbir Singh was brought up jointly by them, and denied the allegation of her status as a concubine.

3.2. Defendant-Tej Kaur also refuted any plea of misrepresentation or inducement, contending that no question of maintenance ever arose, as she remained with the appellant till December 1985. It was asserted that the respondent was duly served in Civil Suit No. 283 dated 03.05.1984, voluntarily engaged counsel, admitted her claim, and made a statement in

Court. The plea of fraud was thus denied, and the impugned decree was asserted to be lawful, valid, and binding.

3.3. Defendant No.2, while adopting similar objections, further claimed ownership and possession of the suit property on the basis of a decree dated 01.08.1985 passed in Civil Suit No. 636-1, which, according to him, remained unchallenged. He also alleged collusion between the appellant No.1 and respondent and sought dismissal of the suit with compensatory costs, while endorsing the defence set up by defendant No.1.

4. The plaintiff filed a replication controverting the averments made in the written statements and reiterating the assertions contained in the plaint. Upon a careful consideration of the pleadings and material on record, the learned Trial Court framed the following issues for adjudication:-

1. *Whether the plaintiff has got no locus-standi or cause of action to file the present suit?OPD.*
2. *Whether the suit is properly valued for the purposes of court fee and jurisdiction?OPP*
3. *Whether the suit is not maintainable in the present form?OPD*
4. *Whether the plaintiff has not disclosed the ingredients of fraud?If so, its effect?OPD*
5. *Whether the plaintiff is owner in possession of the suit land?OPP*
6. *Whether the suit is filed by the plaintiff in collusion with defendant No.1?OPD2*
7. *Whether defendant No.2 is entitled to special and compensatory costs u/s 35-A CPC?If so,how much?OPD.*
8. *Whether the decree in civil suit No.283 dt.3.5.83 passed on 5.5.1984 titled Tej Kaur Vs. Gurdev Singh is null, void etc?OPP*

9. *Whether the plaintiff is entitled to declaration and perpetual injunction as prayed for?OPP*

10. *Relief.*

5. Both parties were afforded adequate and meaningful opportunity to lead evidence in substantiation of their respective claims and defences. Upon culmination of the trial, and after hearing learned counsel for the parties, the learned Trial Court proceeded to dismiss the suit, recording the following findings and observations:-

That the suit instituted by the plaintiff was devoid of merit and not maintainable in the eyes of law. Consequently, the suit was dismissed with costs.

6. Aggrieved by the judgment and decree passed by the learned Trial Court, the plaintiff/respondent preferred an appeal before the learned First Appellate Court, which, upon reappraisal of the evidence on record, allowed the same and *upon a comprehensive reappraisal of the evidence and material on record, the learned First Appellate Court arrived at a contrary conclusion. It held that the appeal merited acceptance. Accordingly, the judgment and decree passed by the learned Trial Court were set aside, and the suit of the appellant-plaintiff was decreed for declaration and permanent injunction as prayed for.*

6.1. Assailing the aforesaid judgment of reversal, the appellants-defendants have instituted the present appeal. Upon admission, notice was issued to the respondent, who entered appearance through counsel and contested the same. The record of the Courts below has been requisitioned and perused.

7. I have heard learned counsel for the parties at considerable length and have given anxious and thoughtful consideration to their

respective submissions in the backdrop of the pleadings, the evidence on record, and the findings returned by the Courts below.

8. 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.

9. Learned counsel for the appellants has contended that the learned First Appellate Court has committed a material illegality in law by travelling beyond the pleadings and, in effect, setting up an altogether new case in favour of the respondent–plaintiff.

10. It is further submitted that a bare perusal of the impugned judgment unmistakably demonstrates that the findings recorded by the learned First Appellate Court are founded on conjectures and surmises rather than on cogent evidence. Learned counsel has contended that the appellant–plaintiff was unable to produce the record of the previous suit on account of the fact that the entire record of the civil and revenue Courts was destroyed in a fire in the record room. Notwithstanding the said circumstance, it stands established on record that Tej Kaur was residing

with Gurdev Singh and that a consent decree had been suffered by him in her favour. It is, therefore, contended that the said decree, having attained finality, could not have been set aside in the absence of any substantive proof of impersonation. It is further urged that the subsequent judgment and decree allegedly suffered by Tej Kaur in favour of appellant–Balvir Singh was never impugned by Gurdev Singh in the present proceedings, and, therefore, the same could not have been nullified.

11. Per contra, learned counsel for the respondent has argued that the impugned judgment is based upon a correct and judicious appreciation of the pleadings and evidence on record and does not suffer from any illegality or infirmity warranting interference. It is contended that once the respondent–plaintiff categorically deposed that he neither appeared in Court nor engaged any counsel, nor filed any written statement admitting the claim of Tej Kaur, the initial burden stood discharged, thereby shifting the onus upon the appellant–defendant to prove affirmatively that the consent decree had indeed been validly suffered by Gurdev Singh. It is further contended that the decree in question, being a consent decree purporting to create or extinguish rights in immovable property exceeding the value of Rs.100/-, mandatorily required registration, and in the absence thereof, could not confer any right, title, or interest upon the appellant–defendants.

11.1. It is also contended that there existed no lawful matrimonial relationship between Gurdev Singh and Tej Kaur, as both parties had subsisting spouses at the relevant time, and no valid custom of divorce has been proved on record. Consequently, Tej Kaur could not claim any pre-

existing right in the suit property. It is further submitted that although the learned Trial Court dismissed the suit, holding that the decree had been validly suffered, the learned First Appellate Court, upon a detailed reappraisal of the pleadings, evidence, and applicable legal principles, rightly concluded that the decree could not be sustained, particularly when the respondent–plaintiff had specifically pleaded impersonation and denied his appearance in Court. He further contended that appeal be dismissed.

12. The respondent–plaintiff, Gurdev Singh, stepped into the witness box as PW-1 and categorically deposed on oath that he had neither appeared in Court nor made any statement in favour of Tej Kaur, thereby discharging the burden cast upon him. The onus, therefore, shifted upon the appellant–defendant to establish the due execution and validity of the consent decree.

12.1. In order to discharge the said burden, the appellant–defendant examined Santa Singh (DW-5), a Member of the Panchayat, who deposed that approximately three and a half years prior, he had accompanied Gurdev Singh to the Court complex at Gidderbaha, where Gurdev Singh appeared in connection with litigation between himself and Tej Kaur, and that he identified him before the Court at that time. In the absence of the original judicial record, which stood destroyed in the fire, the testimony of Santa Singh, an independent and respectable witness from the locality, assumes evidentiary significance. His deposition unequivocally indicates that Gurdev Singh did, in fact, appear in Court in the said proceedings and was duly identified.

12.2. However, the learned First Appellate Court has brushed aside the said testimony without assigning cogent or convincing reasons, primarily on the ground that the original record, including the written statement and the statement allegedly bearing the signatures of Gurdev Singh, was not produced, and that the counsel purportedly engaged by the appellant–defendant was not examined. It was further observed that even the photostat copy of the judgment and decree was not admissible in evidence.

12.3. In the considered view of this Court, such an approach is not entirely sustainable, particularly in the peculiar facts where the original record stood destroyed and the parties were constrained to rely upon secondary evidence. The testimony of Santa Singh, who holds the status of a Panchayat Member and belongs to the same village as the respondent–plaintiff, cannot be lightly discarded, especially in the absence of any material to discredit his veracity.

12.4. As regards the nature of the relationship between the parties, the learned First Appellate Court has rightly concluded that no valid marriage subsisted between Gurdev Singh and Tej Kaur, inasmuch as both were having living spouses at the relevant time and no legally recognized custom of divorce has been established. Even assuming such a custom existed, Gurdev Singh, having a subsisting marriage, was legally incompetent to contract a second marriage. Consequently, Tej Kaur cannot be accorded the status of a legally wedded wife and, at best, could be treated as a concubine.

13. Learned counsel for the respondent–plaintiff has contended that Tej Kaur had no pre-existing right in the suit property and, therefore, any decree purporting to create a right, title, or interest in immovable property exceeding the value of Rs.100/- for the first time would mandatorily require registration, in terms of the law laid down by the Hon’ble Supreme Court in ***Bhoop Singh v. Ram Singh, AIR 1996 SC 196***. There can be no quarrel with the settled proposition that a decree which, for the first time, creates or extinguishes rights in immovable property of the value exceeding Rs.100/- is compulsorily registrable and, in the absence of such registration, cannot confer any enforceable right, title, or interest.

13.1. However, the pivotal issue that arises for determination is whether the judgment and decree in question operated as an instrument creating rights in favour of the appellant–defendant for the first time, or whether it merely embodied or recognized a pre-existing right inter se the parties. The learned First Appellate Court, in paragraph No.15 of the impugned judgment, has observed that Tej Kaur had alleged that Gurdev Singh, out of love and affection, had earlier transferred the suit land in her favour and had agreed to have the mutation sanctioned, but subsequently resiled from the said assurance. But the learned First Appellate Court concluded that such an arrangement did not partake the character of a family settlement, but rather amounted to a gratuitous transfer or gift of immovable property, which could only be effected through a duly registered instrument.

13.2. In this context, it is apposite to note that the Hon'ble Supreme Court in ***Kale and Others v. Deputy Director of Consolidation and Others, AIR 1976 SC 807***, has authoritatively expounded the legal sanctity and binding nature of bona fide family settlements, entered into with the object of resolving disputes and preserving familial harmony. It has been held that such arrangements, even if not reduced to writing or formally registered, may nonetheless be enforceable, provided they are founded upon a pre-existing claim or a semblance of right and are intended to bring about a final settlement of disputes within the family. In paragraph No.9 of the said judgment, the Hon'ble Apex Court has, *inter alia*, observed as under:-

9. "The object of the arrangement is to protect the family from long-drawn litigation or perpetual strifes which mars the unity and solidarity of the family and create hatred and bad blood between the various members of the family. Today when we are striving to build up an egalitarian society and are trying for a complete reconstruction of the society, to maintain and uphold the unity and homogeneity of the family which ultimately results in the unification of the society and, therefore, of the entire country, is the prime need of the hour. A family arrangement by which the property is equitably divided between the various contenders so as to achieve an equal distribution of wealth instead of concentrating the same in the hands of a few is undoubtedly a milestone in the administration of social justice. That is why the term "family" has to be understood in a wider sense so as to include within its fold not only close relations or legal heirs but even those persons who may have some sort of antecedent title, a semblance of a claim or even if they have a spes successionis so that future disputes are

sealed for ever and the family instead of fighting claims inter se and wasting time, money and energy on such fruitless or futile litigation is able to devote its attention to more constructive work in the larger interest of the country.”

14. Thus, in light of the authoritative pronouncement of the Hon’ble Apex Court, it stands well-settled that even a semblance of a pre-existing right is sufficient to sustain a bona fide family settlement. In the present case, the decree allegedly suffered by Gurdev Singh clearly manifests an acknowledgment of the transfer of the suit property in favour of Tej Kaur pursuant to a prior understanding rooted in love and affection, thereby lending it the character of a settlement rather than a transaction creating rights for the first time.

14.1. Further, the jurisprudential recognition of the rights of a concubine, though not equivalent to that of a legally wedded spouse, cannot be entirely disregarded. The Full Bench of the Bombay High Court in *Appu Prahlad Kulkarni v. Ganesh Prahlad Kulkarni*, AIR 1945 **Bombay 217**, has held that a concubine is entitled to claim maintenance, emphasizing that the issue is grounded not merely in strict legal relationship but in equitable considerations, so as to prevent a woman, who has been maintained for a considerable duration and accorded a status akin to that of a wife, from being left destitute. Similarly, the Privy Council in *Bai Nagu Bai v. Bai Mogra Bai*, AIR 1926 SC 73, recognized the right of a concubine to maintenance under personal law principles.

14.2. In the present factual matrix, it is not disputed that Tej Kaur had been residing with Gurdev Singh for a considerable period at accommodation arranged by him at Dabwali, and had been maintaining

and serving him. Documentary material, such as the ration card, also reflects her status as his wife for all practical purposes. Furthermore, at the time of the marriage of Balvir Singh, son of Tej Kaur, Gurdev Singh is shown to have discharged paternal obligations, thereby reinforcing the inference that he treated Tej Kaur as his spouse in substance, though not in strict legal form.

14.3. In such circumstances, it would be inequitable to deny her the benefit of a settlement arrived at between the parties. The decree suffered by Gurdev Singh, therefore, cannot be construed as having been procured by impersonation, fraud, or misrepresentation. Rather, it embodies a recognition of a prior arrangement and does not operate to create any right, title, or interest in immovable property for the first time so as to attract the rigours of compulsory registration. The contrary findings recorded by the learned First Appellate Court are thus vitiated by a misappreciation of both the factual matrix and the governing principles of law, and cannot be sustained.

15. Accordingly, the present appeal is **allowed**. The judgment and decree passed by the learned First Appellate Court are set aside, and those of the learned Trial Court are restored.

16. Consequent upon the final adjudication of the principal matter, all ancillary, interlocutory, or pending application(s), if any, shall stand disposed of by necessary implication, as no separate orders are warranted in that regard.

29.04.2026
Gaurav Sorot

(VIRINDER AGGARWAL)
JUDGE

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