



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

(104)

CM-4099-C-2026 in/and
RSA-3242-1996
Date of Decision: **09.04.2026**

Pari (Deceased) Through Her LRs and Others

... Appellants

Versus

Ram Kumar and Others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

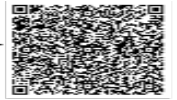
Present:- Mr. Jitender Dhanda, Advocate
for the applicants/appellants.

Mr. Rajesh Sethi, Advocate and
Mr. Anshuman Sethi, Advocate
for the non-applicants/respondents.

VIRINDER AGGARWAL, J. (Oral)

CM-4099-C-2026

1. The instant application has been preferred under Order XLI Rule 19 read with Section 151 of the Code of Civil Procedure, 1908 (for short, "CPC") by the applicants/appellants, seeking restoration of the main appeal.
2. Notice of the application was issued.
3. At the very outset, Mr. Rajesh Sethi, Advocate accepted notice on behalf of the non-applicants/respondents and fairly stated that he has no objection in case the application is allowed and the appeal is restored to its original number.



4. In view of the aforesaid statement and the circumstances noticed hereinabove, the present application is allowed, subject to all just exceptions. Consequently, the main appeal is restored to its original number and position.

5. On the joint request made by learned counsel for the parties, the main appeal is taken up on Board today itself for final disposal.

Main Appeal

1. The present Regular Second Appeal (for short, “RSA”) has been instituted by the appellants–plaintiffs to assail the judgment and decree dated 14.09.1995 passed by the learned Additional District Judge, Sirsa, whereby the findings recorded by the learned Trial Court were affirmed. The learned Senior Sub-Judge, Sirsa, vide judgment and decree dated 24.08.1992, had dismissed the suit filed by the appellants/plaintiffs seeking a decree of declaration. Aggrieved by the concurrent findings of both the Courts below, the appellants have approached this Court.

2. The factual matrix of the case, as set up by the plaintiffs, has been delineated in the pleadings and may briefly be summarized as follows:-

“The plaintiffs, along with their mother Smt. Phukhi (since deceased), were joint owners to the extent of 1/2 share in land measuring 420 kanals 17 marlas situated in village Kumharia, as reflected in the revenue record and based upon a civil court decree and consequent mutation. Out of the said joint holding, land measuring 37 kanals stood transferred in favour of Ram Rikh and others. The plaintiffs asserted that



they retained 1/2 share in the remaining land measuring 383 kanals 17 marlas, i.e., 191 kanals 18 marlas.

However, in the Jamabandi for the year 1983-84, the plaintiffs were shown to be owners of only 108 kanals 13 marlas, thereby reflecting a reduction of 83 kanals 5 marlas from their holding. The plaintiffs alleged that the said Jamabandi was erroneous and the result of incorrect incorporation of mutations. It was further pleaded that the defendants had been wrongly shown as exclusive owners of the remaining land without any lawful partition having taken place. Upon refusal of the defendants to acknowledge the plaintiffs' claim, the present suit was instituted seeking declaration and consequential injunction."

3. Upon service, the defendants entered appearance and filed their written statement, controverting the averments made in the plaint. It was, inter alia, pleaded that Surinder and Subhash were owners to the extent of 1/4th share in land measuring 680 kanals and had transferred their share measuring 170 kanals through specific killa numbers to Amar Singh and Bharat Singh pursuant to an order dated 10.10.1972 passed by the Assistant Collector First Grade under Section 18 of the Punjab Security of Land Tenures Act. Mutation No.768 was sanctioned accordingly. The defendants claimed to be subsequent transferees of the said land and asserted their ownership and possession over the same.



3.1 It was further pleaded that Birbal and Krishan had inherited 1/4th share in the land from their predecessor-in-interest through a valid title. Special costs were also claimed.

4. The plaintiffs filed replication, reiterating the averments made in the plaint and denying those contained in the written statement. On the basis of the pleadings, the learned Trial Court framed the following issues for adjudication:-

1. Whether the plaintiffs are joint owners in possession to the extent of 1/2 share in the land in dispute as alleged in the plaint, if so its effect?OPP.
2. Whether the suit is bad for non-joinder of necessary parties, OPD.
3. Whether the civil court has no jurisdiction to try the present suit OPD.
4. Whether the suit is barred by time ?OPD.
5. Whether the defendants are bona-fide and prior transferees of valid title ?OPD.
6. Relief

5. Both parties were afforded adequate opportunity to lead evidence. Upon a comprehensive appreciation of the material on record, the learned Trial Court dismissed the suit. The appeal preferred by the appellants/plaintiffs was also dismissed by the learned First Appellate Court. Aggrieved by the concurrent findings, the present appeal has been filed.

6. The appeal was duly admitted for hearing vide order dated **16.09.1998**, and notice was issued to the respondents, who appeared through counsel and contested the appeal.



6.1 The entire record of the Courts below was requisitioned and has been perused to facilitate a comprehensive adjudication of the controversy involved.

7. I have heard learned counsel for the parties at length and have given my thoughtful consideration to the submissions advanced, in the backdrop of the pleadings, evidence, and concurrent findings recorded by the Courts below.

8. At the outset, it is pertinent to note that, in the States of Punjab and Haryana, second appeals are governed by Section 41 of the Punjab Courts Act, 1918 and not strictly by Section 100 CPC. In view of the law laid down by the Hon'ble Supreme Court in ***Pankajakshi (Dead) through LRs and others vs. Chandrika and others***, (2016) 6 SCC 157, followed in ***Kirodi (since deceased) through LRs vs. Ram Parkash and others***, (2019) 11 SCC 317, and ***Satender and others vs. Saroj and others***, 2022(12) Scale 92, no substantial question of law is required to be framed.

9. Learned counsel for the appellants has contended that the judgments and decrees passed by the Courts below suffer from patent illegality and material irregularity. It is argued that reliance placed upon the order dated 10.10.1972 (Ex.D-28) passed by the Assistant Collector is misplaced, as the same was allegedly based on a compromise involving a minor, without compliance of Order XXXII Rule 7 CPC. It is further contended that the Courts below failed to properly appreciate the revenue record, including mutations and Jamabandis.

9.1 It has further been argued that the Jamabandi for the year 1983-84 was prepared without any legal basis and resulted in unauthorized



reduction of the plaintiffs' share. It is asserted that no lawful partition had taken place and that the plaintiffs continued to be joint owners. On these premises, it is prayed that the appeal be allowed.

10. Per contra, learned counsel appearing for the respondent has vehemently opposed the submissions advanced on behalf of the appellants and has supported the impugned judgments and decrees passed by the learned Courts below, contending that the same are well-reasoned, legally sound, and based upon a proper appreciation of the pleadings and evidence on record. It is further submitted that no illegality, perversity, or material irregularity is discernible in the findings recorded by the Courts below, and as such, the present appeal, being wholly devoid of merit, deserves to be dismissed.

11. The pivotal question that arises for consideration is as to how the extent of the plaintiffs' holding came to be reduced during the relevant period. This issue stands duly elucidated from the material available on record. A perusal of the jamabandis for the years 1968–69 (Ex.D5) and 1973–74 (Ex.D6) reveals that the total joint holding measured 680 kanals. However, as reflected in the jamabandi for the year 1978–79, the total joint holding stood reduced to 420 kanals 17 marlas, thereby indicating a diminution of 259 kanals 3 marlas.

11.1. This reduction is attributable to the transfer of land comprised in specific killa numbers from the joint holding to various transferees. Notably, Ranjit purchased land measuring 135 kanals 19 marlas vide order dated 07.10.1974 passed by the Assistant Collector Ist Grade, Sirsa under Section 18 of the Tenures Act, pursuant to which Mutation No. 805



(Ex.D10) was sanctioned. Similarly, Tulsi Ram acquired 69 kanals 12 marlas vide Mutation No. 817 (Ex.D11), based on the order dated 06.01.1975 passed under Section 13 of the Tenures Act. In the same vein, Lakhi purchased 53 kanals 12 marlas vide order dated 29.12.1975, leading to the sanction of Mutation No. 836 (Ex.D13). Collectively, these transactions account for the transfer of 259 kanals 3 marlas, thereby explaining the reduction in the joint holding.

11.2. It is, however, evident that the aforesaid mutations (Ex.D10, Ex.D11, and Ex.D13) were recorded against the shares of all co-sharers, including Surinder Kumar and Subhash. Significantly, Surinder Kumar and Subhash had already divested themselves of their entire share in the joint holding in favour of Amar Singh and Bharat Singh vide order Ex.D28 dated 10.10.1972. Consequently, they retained no subsisting interest in the joint holding at the time of the subsequent transactions.

11.3. Since the transfers reflected in Mutations Ex.D10, Ex.D11, and Ex.D13 were effected pursuant to orders passed subsequent to Ex.D28, Amar Singh and Bharat Singh, being prior transferees in point of time, acquired valid title to the share originally held by Surinder Kumar and Subhash. The subsequent transferees under Ex.D10, Ex.D11, and Ex.D13, therefore, could not derive any valid title from the already transferred share of Surinder Kumar and Subhash, notwithstanding the entries made in the revenue record.

11.4. Thus, the inclusion of such transfers against the share of Surinder Kumar and Subhash did not impair the title of Amar Singh and Bharat Singh, predecessors-in-interest of the present defendants. Rather,



the impact of such entries fell either upon the subsequent transferees or upon the shares of other co-sharers. It is further discernible that the 1/4th share of Surinder Kumar and Subhash amounted to 64 kanals 16 marlas, and the said extent forms a discernible lacuna in the plaintiffs' case, having materially contributed to the reduction in their holding.

12. The plaintiffs themselves have pleaded that land measuring 37 kanals was transferred out of the joint holding in favour of Ram Rikh and others vide decree dated 30.03.1983, followed by Mutation Ex.P6. However, this transfer was again reflected against the shares of all previous co-sharers, including Surinder Kumar and Subhash as well as Birbal and Krishan.

13. It is pertinent to note that Surinder Kumar and Subhash had already alienated their shares vide order Ex.D28 and Mutation Ex.D8. Similarly, Birbal and Krishan had transferred their respective shares vide decree dated 12.10.1981, followed by Mutation Ex.D17. Consequently, the subsequent transfer effected vide decree dated 30.03.1983 could not, in law, affect the rights of the prior transferees, namely the defendants.

13.1. Therefore, the attribution of 1/2 share measuring 18 kanals 10 marlas (out of the aforesaid 37 kanals) to the account of Surinder Kumar and others was clearly erroneous, as they had already divested themselves of their interest. This misattribution accounts for the remaining reduction of 18 kanals 10 marlas from the plaintiffs' holding.

14. In view of the foregoing analysis, it stands established that there was a lawful and duly accounted reduction of 64 kanals 16 marlas



and 18 kanals 10 marlas, aggregating to approximately 83 kanals 5/6 marlas, from the holding of the plaintiffs. This reduction is fully explained by the mutations Ex.P6, Ex.D10, Ex.D11, and Ex.D13.

14.1. The present defendants were not parties to the aforesaid transactions, and for this reason as well, they cannot be bound by the same. Accordingly, the diminution in the plaintiffs' holding stands satisfactorily accounted for, and no sustainable case is made out by the plaintiffs.

14.2. As a consequence of the findings recorded hereinabove and the comprehensive discussion undertaken on the various issues arising for adjudication, this Court is of the considered view that the appeal preferred by the appellants is wholly devoid of merit. Accordingly, the same is hereby **dismissed**.

15. In view of the fact that the principal matter stands finally adjudicated, all pending miscellaneous applications, if any, also stand disposed of accordingly. No further orders are required to be passed in that regard.

09.04.2026
Gaurav Sorot

(**VIRINDER AGGARWAL**)
JUDGE

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