



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

RSA-3310-1996 (O&M)

Reserved on :- 04.02.2026

Date of Pronouncement:-09.02.2026

Uploaded on:- 9.2.2026

Kirpal Kaur @ Palo

... Appellant

Versus

Tara Singh and Others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :-

Mr. Avnish Mittal, Advocate with
Mr. Aparna Singhal, Advocate
for the appellant.

Mr. L.S. Sidhu, Advocate
for respondent No.1.

VIRINDER AGGARWAL, J.

1. The present Regular Second Appeal (hereinafter referred to as “RSA”) has been preferred by the appellant–defendant assailing the judgment and decree dated 14.08.1996 passed by the learned Additional District Judge, Amritsar, whereby the findings recorded by the learned Trial Court were affirmed in their entirety. The learned Trial Court, vide judgment and decree dated 31.07.1989 rendered by the learned Sub Judge, Patti, had decreed the suit instituted by the respondents–plaintiffs seeking possession of the suit property. Aggrieved by the concurrent judgments

and decrees of both the Courts below, the appellant has approached this Court contending that the impugned findings are legally unsustainable and vitiated by errors apparent on the face of the record.

2. The factual backdrop of the case, briefly delineated from the pleadings on record, is as under:-

That Tara Singh and Amrik Singh, respondents No. 1 and 2, instituted a suit for possession in respect of land measuring 65 kanals and 4 marlas, situated in village Sito Meh Jhuggian, Tehsil Patti, fully detailed and described in the heading of the plaint, against the appellant and other respondents. It was averred that the suit land was owned and possessed by Narain Singh, defendant No. 1, who, acting through his attorney, defendant No. 2, executed a registered sale deed dated 12.02.1986 in favour of the plaintiffs for a consideration of ₹48,500/-, and delivered possession thereof to them. The plaintiffs further pleaded that the appellant and other defendants had forcibly dispossessed them from the suit land approximately two months prior to the institution of the suit on 07.03.1987. Despite repeated requests to restore possession, the defendants failed to do so, thereby constraining the plaintiffs to institute the present suit.

3. Upon issuance of notice, defendant No. 7, Parsin Kaur, admitted the plaintiffs' claim and raised no objection to the decree of the suit. Only defendants No. 3 and 13, namely Kirpal Kaur and Bali Singh, contested the suit; the remaining defendants, despite service, were proceeded against ex parte. In their joint written statement, the contesting defendants raised preliminary objections regarding lack of locus standi, invalidity of the alleged sale deed, non-joinder of necessary parties, estoppel, and limitation. On merits, they denied the plaintiffs' averments,

asserted Gian Singh's ownership, relied upon a registered Will dated 18.05.1975 in favour of Kirpal Kaur, and pleaded due sanction of mutation thereon. They further denied delivery of possession and execution of the sale deed, praying for dismissal of the suit.

4. Tara Singh and Amrik Singh, the plaintiffs, filed a replication to the written statement submitted by the appellant and Bali Singh, respondent, wherein they specifically controverted the assertions made therein and reaffirmed, in entirety, the averments set out in the plaint. On the basis of the pleadings of the parties, the learned Trial Court proceeded to frame the following issues for determination:—

1. *Whether defendant No.1 has formally appointed defendant No.2 as his general attorney as alleged ? OPP.*
2. *Whether the plaintiffs have purchased the suit land from defendant No.1 through his attorney defendant No.2 through a registered sale deed dated 12.2.1986 for a consideration of ₹48,500/- and got possession of the land? OPP.*
3. *Whether the plaintiffs have no locus standi to file the suit on account of the fact that the alleged sale deed is without jurisdiction and fraud as alleged ? OPD*
4. *Whether the suit is bad for non-joinder of necessary parties? OPD.*
5. *Whether the plaintiffs estopped by their act and conduct from filing the present suit? OPD*
6. *Whether the suit is not within time ? OPD*
- 6-A. *Whether Gian Singh deceased executed a valid will dated 18.5.1975 in favour of defendant No.3? OPD*
- 6-B. *If issue No.6-A is proved whether the findings about the will have become resjudicta between the parties ? OPD.*
7. *Relief.*

5. Both parties were afforded full and adequate opportunity to lead evidence upon the framing of issues. Upon a comprehensive appraisal of the material available on record, the learned Trial Court decreed the suit in favour of the respondent–plaintiff. The appeal preferred by the appellant–defendant was dismissed by the learned First Appellate Court. Aggrieved by the concurrent findings and judgments rendered by the Courts below, the appellants have invoked the jurisdiction of this Court by filing the present Regular Second Appeal.

6. The appellants have instituted the present appeal assailing the concurrent judgments and decrees passed by the learned Courts below. Upon being found to raise arguable questions, the appeal was admitted to regular hearing and notice was duly issued to the respondent. Respondent No. 1 entered appearance through counsel and contested the appeal.

6.1. With a view to ensuring a thorough, informed, and effective adjudication of the issues arising for consideration, the entire record of the Courts below was requisitioned and placed before this Court for careful perusal.

7. I have heard learned counsel for the appellants at considerable length and have bestowed anxious and thoughtful consideration upon the submissions advanced. The pleadings of the parties, the evidence adduced on record, and the concurrent findings returned by the Courts below have been meticulously examined. The entire record has been subjected to comprehensive scrutiny to determine *‘whether the impugned concurrent judgments and decrees suffer from any jurisdictional error, manifest*

perversity, misappreciation of evidence, or any other legal infirmity warranting interference in the exercise of appellate jurisdiction’.?

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 appearing on behalf of the appellant contended that the judgment and decree passed by the learned First Appellate Court are founded on mere surmises and conjectures and suffer from serious legal infirmities. It was submitted that the learned First Appellate Court failed to appreciate the material fact that Bali Singh, husband of Smt. Pallo, stood recorded as a mortgagee under Gian Singh, that the suit land had never been redeemed, and that the possession of Bali Singh as mortgagee was expressly admitted by Narain Singh and Sardul Singh.

9.1. It was further argued that the learned First Appellate Court overlooked the settled legal position that a simpliciter suit for possession is not maintainable where the title of the alleged owner is in dispute. The

ownership of Narain Singh was specifically contested by the appellant–defendant, yet no issue regarding his title was framed or adjudicated. In the absence of proof of Narain Singh’s ownership, no valid title could pass to the respondent–plaintiff on the basis of the alleged sale deed, rendering the suit for possession untenable. In this regard, reliance was placed upon the authoritative pronouncement of the Hon’ble Supreme Court in ***Anathula Sudhakar v. P. Buchi Reddy (Dead) by LRs and Others, AIR 2008 SC 2033.***

9.2. Learned counsel further contended that the findings returned on issues No. 6-A and 6-B, pertaining to the execution of a Will by Gian Singh in favour of appellant–defendant No. 3 and its operation as res judicata on the basis of a prior suit, were erroneously recorded. It was emphasised that the respondent–plaintiff was not a party to the earlier proceedings and, therefore, could not be bound by any findings recorded therein. Additionally, it was submitted that the learned First Appellate Court failed to comply with the mandatory requirements of Order XLI Rule 31 of the Code of Civil Procedure, inasmuch as all the issues were not independently reconsidered and adjudicated upon after a reappraisal of the pleadings and evidence on record.

9.3. On these premises, it was prayed that the impugned judgment and decree be set aside, the findings recorded by the learned Courts below be quashed, and the appeal be allowed.

10. Per contra, learned counsel appearing on behalf of the respondent submitted that the findings recorded by the learned First Appellate Court suffer from no illegality or infirmity. It was contended that

the mere non-framing of a specific issue with regard to the title of Narain Singh is not, by itself, sufficient to vitiate or set aside a well-reasoned judgment and decree passed by a court of competent jurisdiction, particularly when the parties were fully aware of the pleadings, evidence was led on the relevant aspects, and categorical findings regarding the ownership of Narain Singh were recorded by the learned Court.

10.1. It was further submitted that the suit for possession was rightly held to be maintainable and that the issue relating to the Will stood duly adjudicated upon in earlier litigation between the appellant–defendant and Narain Singh, through whom the respondent–plaintiff claims title. Consequently, the findings returned in the previous proceedings were binding upon the parties in the present suit. Learned counsel also contended that the learned First Appellate Court had fully complied with the requirements of Order XLI Rule 31 of the Code of Civil Procedure and had recorded its findings after a proper reappraisal of the pleadings and evidence, as mandated by law. On these grounds, it was urged that the impugned judgment does not warrant interference and that the appeal is liable to be dismissed.

11. As regards the finding pertaining to the applicability of the doctrine of res judicata in relation to the Will, learned counsel for the appellant contended that the said Will was never adjudicated upon in the earlier litigation, inasmuch as the appellant was unable to produce the Will in those proceedings. Consequently, it was urged that the findings recorded therein cannot operate as res judicata. It was further submitted that the plaintiff in the present suit was not a party to the earlier litigation and,

therefore, the essential ingredients required to attract the bar under Section 11 of the Code of Civil Procedure are not satisfied.

12. Per contra, learned counsel appearing on behalf of the respondent submitted that the earlier litigation was decided on merits and that the issue relating to the execution of the Will by Gian Singh in favour of the appellant–defendant No. 3 was directly and substantially in issue in the said proceedings. It was, therefore, contended that the findings recorded therein would operate as res judicata. In this context, reliance was placed upon the provisions of Section 11 of the Code of Civil Procedure, which are reproduced hereunder:—

“11. Res judicata.—No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I.—The expression “former suit” shall denote a suit which has been decided prior to a suit in question whether or not it was instituted prior thereto.

Explanation II.—For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be

deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.—Any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused.

Explanation VI.—Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating .

Explanation VII.—The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII. —An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.”

13. The findings recorded on issues No. 6-A and 6-B by the learned Sub Judge, First Class, demonstrate that the judgment Ex. P-4 and decree sheet Ex. P-5 contain a categorical adjudication regarding the Will propounded by the appellant–defendant, Smt. Palo. The earlier suit had been instituted by Narain Singh, Harbans Kaur, Persen Kaur, and Mohinder Kaur seeking a declaration against the appellant–defendant, wherein, by way of defence, the appellant–defendant set up a Will allegedly executed

by Gian Singh in her favour. However, she failed to produce the said Will, and the issue was consequently decided against her. The learned Sub Judge, First Class, rightly concluded that the question as to whether Gian Singh had executed a Will in favour of Smt. Palo was directly and substantially in issue and stood finally decided in the earlier proceedings.

14. It was further correctly observed that the appellant–defendant and Narain Singh, both parties to the present litigation, were also parties to the earlier suit, and that the respondent–plaintiff in the present proceedings claims title through Narain Singh, alleging execution of a Will in his favour by Narain Singh through his attorney, Sardul Singh. The respondent–plaintiff, therefore, litigates under the same title as Narain Singh. Consequently, the findings relating to the alleged Will executed by Gian Singh in favour of the appellant–defendant have attained finality and cannot be re-agitated. The findings recorded by the learned Trial Court in this regard are legally sound and have been rightly affirmed by the learned First Appellate Court.

14.1. Learned counsel for the appellant further contended that the learned First Appellate Court was obliged to strictly comply with the mandate of Order XLI Rule 31 of the Code of Civil Procedure and to independently decide all the issues after a fresh reappreciation of the pleadings and evidence on record. In support of this submission, reliance was placed upon the judgments of the Hon’ble Supreme Court in ***Malluru Mallappa (D) through LRs v. Kuruvathappa and Others, AIR 2020 SC 925, and G. Saraswathi and Another v. Rathinammal and Others, AIR***

2018 SC 949. In Malluru Mallappa (D) through LRs (supra), the Hon'ble Apex Court has held as under:—

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.

15. Keeping in view the law as authoritatively laid down by the Hon'ble Supreme Court, a careful perusal of the judgment passed by the learned First Appellate Court clearly reveals that all the issues were examined and adjudicated upon in detail. The learned First Appellate Court duly considered the rival contentions advanced by the parties and, upon an exhaustive analysis of the pleadings and the evidence on record, affirmed the findings recorded by the learned Trial Court. Thus, there has been substantial compliance with the mandate of Order XLI Rule 31 of the Code of Civil Procedure, and the judgment and decree cannot be interfered with on this ground alone.

15.1. Learned counsel further contended that the sale deed relied upon by the respondent–plaintiff was not proved in accordance with law. In support of this submission, reliance was placed upon the judgment of the Hon'ble Supreme Court in ***Samiullah v. The State of Bihar and Others***, ***Law Finder Document Id No. 2805225***, wherein the Hon'ble Apex Court has held as under:—

“The Registration Act mandates registration of documents, not the title and this distinction is the fundamental character of our country's presumptive titling system through registration. Thus, registration of a document recording purchase of immovable property does not confer guaranteed title of ownership, instead it only serves as a public record of the transaction having presumptive evidentiary value, but it is never a conclusive proof of ownership.”

16. It is no doubt well settled that a registered sale deed, by itself, does not constitute conclusive proof of title, as its validity is contingent upon, inter alia, the vendor possessing a lawful and subsisting title to the property sought to be conveyed. Learned counsel for the appellant contended that, in the present case, the appellant–defendant and defendant No. 13 specifically disputed the title of Narain Singh in respect of the suit property and categorically pleaded that he was not the owner thereof. On the other hand, the respondent–plaintiff claims title through Narain Singh on the basis of a sale deed executed by him. Although the execution of the sale deed and the receipt of consideration were acknowledged by Narain Singh through his attorney, Sardul Singh, it was argued that the appellant was prejudiced as no specific issue regarding the title of Narain Singh, the alleged predecessor-in-interest of the respondent–plaintiff, was framed by the Trial Court.

16.1. It is true that in the written statement defendants No. 3 and 13 denied the title of Narain Singh and set up ownership in Gian Singh, and that no distinct issue specifically relating to the title of Narain Singh was framed. However, a careful perusal of the issues framed demonstrates that issue No. 2 impliedly and substantially encompassed the question of

Narain Singh's title to the suit property. Issue No. 2 pertained to the plaintiffs having purchased the suit land from defendant No. 1 through his attorney, defendant No. 2, by means of a registered sale deed dated 12.02.1986 for a consideration of ₹48,500/- and had obtained possession thereof. This issue was comprehensive in nature and necessarily required adjudication of the vendor's title. In order to establish that the sale deed in favour of the plaintiffs conveyed valid title, it was incumbent upon them to prove that Narain Singh, defendant No. 1, had a lawful title to the suit property. The findings with regard to the title of Narain Singh were, in fact, duly recorded by the learned Courts below. In this regard, paragraph 11 of the judgment passed by the learned First Appellate Court reads as under:—

“The revenue record fully supports the case of the plaintiffs to the extent that Narain Singh vendor from whom they had purchased the land in dispute was joint owner of the same. The sale deed EX.PI dated 12.2.1986 executed by the attorney of Narain Singh in favour of the plaintiffs stands fully proved. When Narain Singh had a valid title in the suit land, the same automatically stood transferred in favour of the plaintiffs in execution of the sale deed EX.PI.”

16.2. Jamabandies Ex. P-3 for the year 1983–84 and Ex. RX for the same period were duly placed on record during the course of evidence, wherein the suit land is recorded as jointly owned by Narain Singh and Gian Singh, who are brothers and sons of Ishar Singh. A statutory presumption of correctness attaches to the entries in the jamabandi under Section 44 of the Punjab Land Revenue Act, 1887, and the said presumption has remained un rebutted. The learned Courts below, therefore, rightly concluded that the sale deed was validly executed by defendant No.

1 through his attorney in favour of the plaintiffs. The findings recorded on issue No. 2 are, accordingly, correct and are hereby affirmed.

17. Learned counsel for the appellant further contended that the suit, in its present form, was not maintainable, as it stood established on record that the suit property was mortgaged in favour of Bali Singh, husband of the appellant-defendant, and that the said mortgage had not been redeemed, with the possession of Bali Singh continuing to be reflected in the revenue record. It was further argued that both the Courts below had concurrently held that the respondent-plaintiffs were never delivered possession of the suit land and that, by virtue of the sale deed Ex. P-1, they could at best be treated as co-owners in joint possession to the extent of the share purchased by them out of the share of Narain Singh.

17.1. Learned counsel submitted that such a finding was wholly unwarranted, as the suit instituted by the respondent-plaintiffs was a simpliciter suit for possession, without seeking any relief of declaration. It was urged that the learned Courts below committed a material illegality in granting declaratory relief which had never been claimed.

17.2. A perusal of the plaint clearly demonstrates that the suit was confined to a claim for possession of land measuring 65 kanals and 4 marlas, without any prayer for declaration or injunction. The learned Courts below, having categorically concluded that the plaintiffs were not entitled to possession of the suit land without first seeking partition, ought to have dismissed the suit in its entirety. No decree granting a relief not prayed for could have been passed. There is considerable force in the submission advanced by learned counsel for the appellant. A perusal of the

relief clause as recorded by the learned Trial Court and affirmed by the learned First Appellate Court reads as under:-

“21. Relief

It has only a repitition to mention again that the plaintiffs have filed this suit for possession of suit land 65 K 4Marlas and allegations that they have purchased it from "Narain Singh defedant through his attorney Sardool Singh on 12.2.1986 for a consideration of Rs. 48500/- They also got the actual possession of the suit land. According to them, the defendants took forcibly possession of the suit land subsequently. The suit has been contested by the defendants on the pleat that the plaintiffs are not vendees i.e. they (plaintiff-s) have not purchased the suit land nor they ever got its possession. On the other hand Smt. Palo defendant claims to be inpossession as co-sharer the extent of 1/2 share of the land in dispute on the basis of will dated 18.5.1975. As already held while deciding the aforesaid issues that the claim of Smt. Palo defendant on the suit land and others fails on account of principle of res-judicata. However, still Smt. Palo is a co-share in the land as admitted by the kamixasxa plaoitiffs and Narain Singh and Sardool Singh defendants. In this situation, the plaintiffs at the most have stepped into the share of Narain Singh and have become the Co.-sharer, therefore, he could not sell the suit land i.e. land of specific khasra number to the plaintiff even otherwise it is proved that the possession of the suit land in which Bali Singh as mortgagee and others and some of the land is in possession of the vendees, who have purchased it from Smt. Palo in this manner the plaintiffs have become co-sharer to the extant land measuring 65 K-4 Marlas. It has been denied by the defendants that they have taken forcible possession of the suit land as alleged by the plaintiffs. According to

them, the possession of was not taken by the plaintiffs at many stage and that Smt. Palo is in possession of the suit land as co-sharer.

22. *The contention of the learned coundel for the plaintiffs that since plaintiffs were in actual physical possession of the suit land a nd dispossessed by the defendants forcibly therefore, they (Plaintiffs) were entitled to its possession, is not maintainably Smt. Palo is admittedly as a co-sharer, although she has failed to set her claim on the basis of will. The land is proved to be still joint and has not been partitioned amongst the co-sharer. The plaintiffs have stepped into the shoes of Narain Singh. So they have become the co-sharers in the joint khata including the suit land So both the parties are co-sharers in the suit land. That being the plaintiffs will be entitled to take physical possession of the land measuring 65K-4 Marlas after partition. Reference in this regard is made to, Punjab Law Reporter, 1987 (1) 333, Gurbax Singh Vs Darshan Singh and others' So the plaintiffs are entitled to the possession of the land after partition which falls to the share of Narain Singh. The suit is accordingly decided and the parties have left to bear their own costs. Decree-sheet be prepared and the file is ordered to be consigned to the Records Room."*

18. A plain reading of the relief clause unmistakably reveals that a decree for declaration was granted by the learned Courts below in favour of the respondent–plaintiffs, despite the fact that no such relief was ever sought in the plaint. The learned Courts below concurrently held that the plaintiffs were not entitled to actual physical possession of the suit land, as it was not established that they had been forcibly dispossessed by the defendants. In these circumstances, the suit instituted by the plaintiffs ought to have been dismissed in its entirety. The grant of a declaratory

relief, which was neither prayed for nor pleaded, is legally unsustainable. Consequently, the appeal preferred by the appellant is **allowed**, and the judgments and decrees passed by the learned Courts below are hereby set aside.

19. Consequent upon the final adjudication of the principal matter, all pending miscellaneous applications, if any, arising out of or connected with the present proceedings, shall, by necessary implication, also stand disposed of. In view of the conclusions recorded herein, no separate or independent orders are required to be passed in respect of such applications, as they have been rendered wholly infructuous and academic.

09.02.2026
Gaurav Sorot

(VIRINDER AGGARWAL)
JUDGE

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