



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(208)

RSA-3069-1997 (O&M)
Reserved on:- 07.05.2026
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PARKASH CHAND AND OTHERS**....Appellants****Vs****KARTAR CHAND AND OTHERS****....Respondents****CORAM:- HON'BLE MR. JUSTICE VIRINDER AGGARWAL**

Present: Mr. Sanjay Majithia, Senior Advocate with
Mr. R.P. Daaria, Advocate
for the appellants.

Mr. Sudeep Mahajan, Senior Advocate with
Ms. Saachi Mahajan, Advocate
Mr. Shiv Charanjit, Advocate
for the respondents.

VIRINDER AGGARWAL, J. (Oral)

The present Regular Second Appeal has been filed against the judgment and decree dated 09.05.1997 passed by the learned District Judge, Hoshiarpur, whereby the appeal preferred by the appellants/plaintiffs came to be dismissed.

2. Briefly stated, the appellants/plaintiffs instituted a suit for declaration through their attorney, Kehar Singh, asserting that the plaintiffs along with defendant No.3 are the lawful owners in possession of the suit land, fully detailed and described in the headnote of the plaint. The plaintiffs sought a declaration to the effect that the sale deed dated 16.06.1987 allegedly executed in favour of defendant No.1, and the subsequent sale deed executed by defendant No.1 in favour of defendant No.2, are forged, fictitious, illegal, null and void documents, having no binding effect upon the rights and



ownership of the plaintiffs and defendant No.3. Consequential relief was also sought to the effect that the mutations and revenue entries sanctioned on the basis of the aforesaid sale deeds be declared ineffective and non-binding upon the rights of the plaintiffs, along with a decree for possession of the suit land.

The case of the plaintiffs, in brief, was that Rasila, Banka, Gopi and Hoshnak, sons of Khushala, and Jeewan, Jaggu, Pheru @ Faggu and Moti, sons of Jawala, were the predecessors-in-interest of the plaintiffs and defendant No.3.

It was specifically pleaded that Moti, Banka, Gopi and Hoshnak had died in Pakistan; Moti died unmarried; Jaggu died in the year 1974 at Lahauri Chack; Pheru @ Faggu died at Pathankot during the Indo-Pak war of 1971; Rasila died on 26.01.1974; and Gian Chand died in the year 1972 at Pathankot.

According to the plaintiffs, the suit land had originally been allotted to their predecessors as evacuee property and, during consolidation proceedings, the same was re-allotted in lieu of the original allotment. Upon the demise of the original allottees/predecessors, the plaintiffs and defendant No.3 succeeded to the estate and became owners of the suit land by inheritance.

2.1 It was further alleged that defendant No.1, taking undue advantage of the absence of the plaintiffs from the village, managed to fabricate and forge the sale deeds dated 16.06.1987 pertaining to the suit property. The plaintiffs specifically averred that the alleged executants/vendors of the sale deeds had already died long prior to the execution and registration of the impugned documents and, therefore, the sale deeds were wholly forged, fabricated and non est in the eyes of law. On these broad allegations, the present suit came to be filed.



2.2 Upon notice, defendant Nos.1 and 2 appeared and contested the suit by filing a joint written statement raising various preliminary objections. It was pleaded that the suit had not been instituted by a duly authorised attorney and that Kehar Singh was neither competent nor authorised to file and prosecute the present proceedings on behalf of the plaintiffs. The General Power of Attorney relied upon by Kehar Singh was alleged to be forged and fabricated. A further objection regarding limitation was also raised.

2.3 On merits, however, the defendants admitted that Rasila, Banka, Gopi and Hoshnak, sons of Khushala, and Jeewan, Jaggu, Pheru @ Faggu and Moti, sons of Jawala, were the original owners of the suit land. Nevertheless, the defendants specifically denied the allegation that the said persons had died prior to the execution of the impugned sale deeds. It was pleaded that the sale deeds dated 16.06.1987 had been validly and lawfully executed by the original owners in favour of defendant No.1 for valid consideration and that the said transaction was legal, genuine and binding. The defendants further contended that the plaintiffs and their attorney, Kehar Singh, were fully aware of the execution of the sale deeds and that the present suit had been instituted falsely, unlawfully and with mala fide intention to harass the answering defendants. It was thus asserted that defendant Nos.1 and 2 had acquired a complete and lawful title in respect of the suit property and that the plaintiffs had no cause of action to challenge the same. From the pleadings of the parties, the learned trial Court framed the necessary issues for adjudication of the controversy involved between the parties, which are as follows:

1) Whether the plaintiffs and defendant No.3, are the owners of the property in dispute? OPP.



2) *Whether the original sale-deed dated 16.6.87, and 25.9.1990 are forged and fabricated and has no effect on the rights of the plaintiffs? OPD.*

3) *Whether the suit is not maintainable in the present form? OPD.*

4) *Whether the suit is not properly valued for the purposes of court fee and jurisdiction? OPD.*

5) *Whether the suit has been filed by the authorised attorney? OPP.*

6) *Whether the suit is barred by limitation? OPD.*

7) *Whether the suit is bad for misjoinder and non-joinder of necessary parties? OPD.*

8) *Whether defendant No.2, is a bonafide purchaser with consideration without notice ?OPD.*

9) *Whether the plaintiffs are entitled to the declaration and possession prayed for? OPD.*

10) *Relief.*

2.4 After a full-fledged contest and appreciation of the evidence led by the parties, the learned trial Court dismissed the suit filed by the plaintiffs. Aggrieved against the judgment and decree passed by the learned trial Court, the appellants/plaintiffs preferred an appeal before the learned lower Appellate Court. However, the said appeal also came to be dismissed vide judgment and decree dated 09.05.1997 passed by the learned District Judge, Hoshiarpur. Dissatisfied with the concurrent findings and judgments rendered by both the Courts below, the appellants/plaintiffs instituted the present Regular Second Appeal before this Court. The appeal was admitted for hearing vide order dated 24.03.1998. Upon notice, the respondents put in appearance through Sudeep Mahajan, learned Senior Advocate, assisted by Saachi Mahajan and Shiv Charanjit, Advocates. The lower Court record was summoned and has been made available on the file.



3. 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.

4. Learned counsel appearing on behalf of the appellants contended that both the Courts below have failed to properly appreciate the pleadings as well as the evidence available on record and have recorded findings based merely on surmises and conjectures. It was argued that it is an admitted position that the suit property had been allotted to the predecessors-in-interest of the plaintiffs as evacuee property and that the appellants/plaintiffs are the lawful successors-in-interest of the original allottees. Learned counsel further submitted that the learned lower Appellate Court gravely erred in not drawing an adverse inference against the respondents/defendants for their failure to produce any of the alleged vendors/executants of the suit land. According to the appellants, the non-production of the vendors clearly establishes that the impugned sale deeds were never executed by the predecessors-in-interest of the plaintiffs and were forged and fabricated documents.

4.1 It was further contended that the Courts below failed to properly appreciate the affidavit furnished by the son of Pheru @ Faggu son of Jawala,



wherein it was specifically stated that Pheru @ Faggu had died in the year 1971. In such circumstances, there could arise no question of the alleged sale consideration having been received by Faggu at his residence.

4.2 Learned counsel also argued that the learned first Appellate Court committed a serious error in drawing an inference that since the lands had been allotted in the names of the predecessors-in-interest of the appellants/plaintiffs, they must necessarily have been alive at the time of allotment and, therefore, the plea regarding their death in Pakistan could not be accepted. Elaborating the submission, learned counsel contended that under the provisions and practice prevailing under the Land Settlement Manual, 1952, evacuee properties were often allotted in the names of the original landowners even if they had died by that time, so as to avoid the possibility of false and fictitious claims. It was thus submitted that the reasoning adopted by the learned Appellate Court on this aspect was legally unsustainable. Learned counsel further argued that the learned Appellate Court had also erred in discarding the death certificates Ex.P-5 and Ex.P-6 without any cogent basis.

5. Per contra, learned counsel appearing on behalf of the respondents supported the judgments and decrees passed by the Courts below and contended that the same suffer from no illegality, perversity or infirmity warranting interference by this Court. It was argued that both the Courts below have rightly concluded, on the basis of the evidence available on record, that the original owners were alive at the time when the allotment of land was made in their favour. Learned counsel submitted that there exists a legal presumption regarding continuance of life and the burden squarely lay upon the appellants/plaintiffs to prove that the concerned persons had died prior to



the execution of the sale deeds. However, the appellants had miserably failed to discharge such burden.

5.1 It was further contended that the appellants/plaintiffs failed to establish any connection between death certificate Ex.P-5 and Rasila and, therefore, the Courts below rightly declined to place reliance upon the same. Learned counsel also submitted that the plaintiffs had deliberately withheld the best possible evidence, inasmuch as Smt. Maya wife of Gopi, who could have thrown material light upon the controversy, was not examined as a witness.

5.2 Further reliance was placed upon the testimony of PW-4 Sain Dass, who admitted during cross-examination that he had resided with Rasila, Banka, Gopi and Hoshnak in refugee camps after migration, thereby falsifying the plea that they had died in Pakistan prior thereto.

5.3 Learned counsel for the respondents further argued that the execution of the General Power of Attorney in favour of Kehar Singh itself appeared to be highly doubtful and suspicious. It was pointed out that the executants of the Power of Attorney were allegedly identified by Bachan Singh, whereas PW-2, one of the executants, categorically stated that he did not know any Bachan Singh. Similarly, PW-4 Sarwan Singh deposed that he did not know Sh. G.S. Banga, Advocate, who had allegedly identified him while executing the Power of Attorney Ex.P-3. On the strength of these discrepancies, it was contended that the learned first Appellate Court rightly concluded that the entire litigation had in fact been engineered and initiated at the instance of Kehar Singh and that the plaintiffs were merely set up as dummies for the purpose of the present proceedings.



6. A careful perusal of the General Power of Attornies on the basis of which Kehar Singh has instituted the present suit reveals that one such power of attorney is stated to have been executed by Ch. Prakash Chand, Ch. Puran Chand, Gian Chand, Ram Chand and Baryam Singh, whereby Kehar Singh was appointed as their attorney for all purposes connected with the land situated within Hadbast No. 425, Village Dehra. The said document was executed on 07.12.1990 at Jammu in the presence of attesting witnesses. Another power of attorney has been executed by plaintiffs Samitro Devi, daughter of Hoshnak, and Sansar Chand, son of Banka, again in respect of immovable property situated in Punjab falling within Hadbast No. 425, Village Dehra, Tehsil and District Hoshiarpur. The said power of attorney was registered on 04.01.1991. A third power of attorney has been executed on behalf of Mela Tarsem Singh, son of Pheru @ Faggu, son of Jawala, and Swaran Singh, son of Gian Chand, son of Jeewan, son of Jawala. This document also pertains to land stated to be situated at Village Dehra within Hadbast No. 425, including land already allotted as well as land yet to be allotted to the predecessors-in-interest of the executants. The said power of attorney was executed on 11.12.1990. Significantly, all these power of attornies relate to land situated in Hadbast No. 425, Village Dehra, Tehsil and District Hoshiarpur. However, the sale deed Ex. P-4, which is stated to have been executed by Faggu, pertains to Khata No. 21/31, Khasra No. 17//3/2 falling within the revenue estate of Dehra 432, Tehsil Hoshiarpur. Likewise, sale deed Ex. D-1 executed by defendant No.1 in favour of defendant No.2, and sale deed Ex. D-3 executed by Rasila, Banka, Gopi, Hoshnak, Jeewan, Jaggu, Pheru and Moti, relate to land measuring 17 kanals 4 marlas comprised



in Khata No. 22/32, Khasra No. 17//3/3 (1-4, 5-8-0). None of these sale deeds indicate that the transactions pertain to any land forming part of Hadbast No. 425, Village Dehra, in respect of which the aforesaid power of attorney were allegedly executed in favour of Kehar Singh and on the basis whereof the present suit has been instituted.

7. It is further noteworthy that all the aforesaid power of attorney are stated to be irrevocable in nature and were executed much after the execution of the disputed sale deeds dated 16.06.1987 in favour of defendant No.1. If the intention of the plaintiffs had, in fact, been to challenge the validity of the sale deeds dated 16.06.1987 executed by their predecessors-in-interest, one would have expected a clear reference to the said transactions in the powers of attorney. However, the documents in question make no such mention or indication of any intent to assail the said sale deeds as being illegal, null and void. On the contrary, they appear to be confined specifically to land situated in Hadbast No. 425.

8. In these circumstances, the learned First Appellate Court was justified in entertaining serious doubt regarding the authority of Kehar Singh to institute the present proceedings on behalf of the plaintiffs. The conclusion that his authority to file the suit was doubtful cannot be said to suffer from any illegality or perversity. The learned First Appellate Court also relied upon other surrounding circumstances casting doubt on the version put forth by the appellants/plaintiffs. It was the case of the plaintiffs that some of their predecessors-in-interest, in whose names evacuee land was allotted, had died in Pakistan prior to the partition. However, despite having such alleged knowledge, the plaintiffs remained silent for an inordinately long period and



did not take any steps to seek mutation of the land in their favour. This unexplained delay and inaction was also taken into consideration by the learned Appellate Court while assessing the credibility of the plaintiffs' version.

9. The learned Courts below have rightly held that there exists a legal presumption in favour of continuance of life, and not of death, and accordingly the burden lay heavily upon the plaintiffs to prove that the persons concerned had died prior to the execution of the disputed sale deeds. It was further observed that the suit land continued to be recorded in the revenue record in the name of the predecessors-in-interest of the plaintiffs up to the year 1988, which circumstance itself runs contrary to and negates the plea raised by the plaintiffs regarding their prior death in Pakistan.

10. With regard to death certificate Ex. P-6, the learned first Appellate Court has correctly held that the same is of no assistance to the plaintiffs, as Gian Chand was not one of the vendors of the impugned sale deeds and had not executed any of the transactions in question. Consequently, his death, even if proved, would have no bearing on the outcome of the present case. As regards death certificate Ex. P-5, stated to pertain to Rasila, one of the predecessors-in-interest of the appellants/plaintiffs, the learned first Appellate Court has found that the said document was not duly connected or correlated by the plaintiffs with Rasila in question. It was further noted that none of the sons of Rasila entered the witness box to depose regarding the date of his death, although they were the most natural and competent witnesses to establish the same and to link the death certificate Ex. P-5 with their predecessor-in-interest. In the absence of such foundational evidence, the



Courts below were justified in declining to place reliance upon the said certificate.

11. Learned counsel for the appellants contended that, as laid down by this Court in *Sham Lal and another v. Muni Lal and another*, 1972 PLR 67, certified copies of extracts from the register of births and deaths maintained by a Municipal Committee under bye-laws framed under Section 188(c) of the Punjab Municipal Act, 1911, are admissible in evidence as records of official acts performed by public servants in discharge of their official duties. It was further submitted that such documents are admissible under Section 35 of the Indian Evidence Act, 1872, without requiring formal proof as contemplated under Section 77 of the said Act.

12. In the present case, the learned First Appellate Court has not discarded death certificate Ex. P-5 on the ground of its being not proved, rather the same was duly taken into consideration. However, it was observed that the appellants/plaintiffs failed to establish a proper link between the said certificate and Rasila, who is claimed to be their predecessor-in-interest. It was incumbent upon the appellants/plaintiffs to prove on record that the death certificate pertained specifically to their predecessor Rasila and not to any other person bearing the same name. The Court rightly held that mere production of a copy of the death certificate, without establishing its identity with the concerned individual, is not sufficient to prove its applicability to the case of the plaintiffs. It was further noticed that Ex. P-5 was in Urdu language, which is not the Court language, and no authenticated translation thereof was placed on record. In the absence of a proper translation, the learned First



Appellate Court was justified in declining to place reliance upon the said document.

13. The learned First Appellate Court has rightly drawn an adverse inference against the appellants/plaintiffs on account of non-production of material witnesses, particularly Smt. Maya Devi, widow of Gopi, who would have been the best person to depose with regard to the exact date and circumstances of death of Gopi and, more specifically, whether he had died in Pakistan prior to the partition of the country. The withholding of such a material witness, who was the most competent to testify on this crucial aspect, justifiably led the Court to draw an adverse inference against the plaintiffs. However, the observation of the learned First Appellate Court that the land could not have been allotted in the name of the predecessors-in-interest of the plaintiffs if they had died in Pakistan prior to partition, does not appear to be entirely correct. In ***Gurdev Singh v. Jagroop Singh, 1993 (1) PLR 86***, this Court has relied upon paragraph 17 of Chapter VIII of the Land Resettlement Manual, 1952, which clarifies the position in this regard and reads as under:

“17. Even where a disposal landholder in whose name land stands in the records received from West Punjab has died, the allotment is made in the name of the deceased. In the fard taqsim, therefore, the entry will be in the name of the deceased landholder. Possession is ordinarily given to the heirs but there must be regular mutation proceedings before the entry in column 3 of the fard taqsim is altered in favour of the heirs.”

14. Thus, even if the predecessors-in-interest of the plaintiffs had died prior to the partition of the country, the allotment of land was nevertheless required to be made in the names of the persons in whose favour the land stood recorded in West Punjab prior to partition. To that extent, the finding recorded by the learned First Appellate Court is not fully sustainable



and is accordingly modified. Even if it is accepted that land was to be allotted in favour of dead owners, but nothing prevented plaintiffs from getting mutations sanctioned in their name by proving that allottee has died. Same was not done for decades till sale deeds were not executed.

15. In view of the overall facts and circumstances of the case, the appeal does not merit acceptance. It stands established that the suit has not been instituted by a duly competent person, as the alleged power of attorney, Kehar Singh, was not shown to have been validly and properly authorised by the appellants/plaintiffs to institute the suit on their behalf for challenging the sale deeds executed in favour of defendant No.1 by their predecessors-in-interest. Further, the appellants/plaintiffs have also failed to conclusively establish that the executants of the sale deeds were not alive at the time of execution thereof. In these circumstances, finding no illegality or perversity in the ultimate conclusions arrived at by the Courts below, the appeal filed by the appellants/plaintiffs is dismissed.

16. Pending applications, if any, shall stand disposed of.

(VIRINDER AGGARWAL)
JUDGE

14.05.2026

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<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>