



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

RSA-3535-1997 (O&M)

Reserved on :- 03.02.2026

Date of Pronouncement:-09.02.2026

Uploaded on:-12.02.2026

Mohinder Singh (M.S. Sahota)

... Appellant

Versus

Sohan Singh and Others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :-

Mr.G.S. Punia, Senior Advocate with
Mr. Harveen Kaur, Advocate for
Mr. K.S. Cheema, Advocate
for the appellant.

Mr. Sandeep Bansal, Advocate,
Mr. Sameer Kumar, Advocate
Mr. Nishtha, Advocate for
for the respondents.

VIRINDER AGGARWAL, J.

1. The instant Regular Second Appeal (for short to be referred as “RSA”) has been instituted by the appellant–plaintiff to impugn the judgment and decree dated 08.08.1997 rendered by the learned District Judge, Hoshiarpur, whereby the findings of the trial Court were unequivocally affirmed. The trial Court, vide its judgment and decree dated 08.01.1996 passed by the learned Civil Judge (Senior Division), Hoshiapur, had dismissed the suit instituted by the appellant/plaintiff seeking a declaratory decree. The appellant now challenges the concurrent



findings of both Courts below as being legally unsustainable and factually erroneous.

2. The brief case set up by the plaintiff before the learned Trial Court is delineated as under:-

The plaintiff challenged the sale deed dated 01.10.1993 executed by Amar Singh in favour of defendants No. 2 to 4 on the ground that the suit property, being joint Hindu Family coparcenary property, was alienated without legal necessity or consideration. The sale, having been effected during the pendency of an earlier declaratory suit wherein the property was held to be joint Hindu Family property, was pleaded to be invalid, non-binding, and liable to be set aside, entitling the plaintiff to declaration and joint possession.

3. Upon issuance of notice, defendant No. 1, who is the father of the plaintiff, entered appearance through his attorney but was proceeded against ex parte upon failure of counsel to receive instructions. Defendant No. 2, despite due service, failed to appear and was accordingly proceeded against ex parte. Defendants No. 3 and 4, stated to be residing abroad, were summoned through substituted service by publication and, upon non-appearance, were likewise proceeded against ex parte.

4. The plaintiff was afforded adequate opportunity to lead ex-parte evidence in support of his claim. Upon a comprehensive consideration of the pleadings and material on record, the learned Trial Court dismissed the suit. The appeal preferred by the plaintiff was also dismissed by the learned First Appellate Court. Aggrieved by the concurrent findings and judgments of the Courts below, the appellant has invoked the jurisdiction of this Court by filing the present RSA.



5. The appellant has instituted the present appeal assailing the concurrent judgments and decrees rendered by the learned Courts below. Upon being found to raise arguable issues, the appeal was admitted to regular hearing and notice was duly issued to the respondents, who entered appearance through counsel and contested the appeal. The matter was thereafter heard at length on the submissions advanced by learned counsel for the parties.

6. With a view to ensuring a complete, 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 appellant 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 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 learned Courts below failed to properly appreciate the pleadings and evidence on record, and further erred in overlooking the fact that the sale deed in question was executed neither for any legal necessity nor for valid consideration. It was additionally submitted that two of the vendees were duly served through substituted service, which had been properly and lawfully resorted to.

9.1. Learned counsel further argued that, having categorically recorded a finding that the learned Civil Court at Hoshiarpur lacked territorial jurisdiction, the learned First Appellate Court ought to have set aside the judgment and decree passed by the trial court and returned the plaint for presentation before the court of competent jurisdiction, instead of proceeding to adjudicate the matter on merits.

10. Per contra, learned counsel appearing on behalf of the respondent contended that the findings recorded by the learned Courts below suffer from no illegality or infirmity whatsoever. It was submitted that the suit was rightly dismissed upon a proper appreciation of the pleadings and evidence on record, that the appeal is devoid of merit, and that the same is liable to be dismissed.



10.1. In the present case, the learned First Appellate Court has categorically recorded a finding that two of the defendants were not duly and properly served, and that the proceedings before the learned Trial Court appear to have been vitiated by procedural irregularities. The learned First Appellate Court has further held that the learned Civil Court at Hoshiarpur lacked territorial jurisdiction to entertain and try the suit, and that the Trial Court ought to have returned the plaint for presentation before the court of competent jurisdiction. The relevant observations and findings in this regard are contained in paragraph 9 of the impugned judgment, which reads as under:—

“Another glaring circumstance which is to be noted is that the property in dispute falls within the jurisdiction of Dasuya Courts and the fact was also brought to the notice of the trial court by making an application but no order was passed on that application and even then the suit was decided. The trial court had not territorial jurisdiction to try the suit and therefore, the trial court should have returned the plaint to be presented before a proper court.”

11.1. So far as the issue of improper service upon defendants No. 3 and 4 is concerned, it has been duly noted that the said defendants had proceeded abroad, and no addresses of their place of residence in the foreign country were furnished by the plaintiff. In such circumstances, the learned Civil Court was required to strictly resort to and comply with the provisions of Order V Rules 25, 26, and 26-A of the Code of Civil Procedure. However, without invoking or adhering to the said statutory provisions, the learned Civil Court proceeded further. The relevant



provisions, which were required to be complied with, are reproduced hereunder:—

25. *Where defendant resides out of India and has no agent.—Where the defendant resides out of 5[India] and has no agent in 5[India] empowered to accept service, the summons shall be addressed to the defendant at the place where he is residing and sent to him 3 3[or by post or by such courier service as may be approved by the High Court, by fax message or by Electronic Mail service or by any other means as may be provided by the rules made by the High Court], if there is postal communication between such place and the place where the Court is situate: 1[Provided that where any such defendant 2[resides in Bangladesh or Pakistan], the summons, together with a copy thereof, may be sent for service on the defendant, to any Court in that country (not being the High Court) having jurisdiction in the place where the defendant resides : -*

Provided further that where any such defendant is a public officer 3[in Bangladesh or Pakistan (not belonging to the Bangladesh or, as the case may be, Pakistan military, naval or air forces)] or is a servant of a railway company or local authority in that country, the summons, together with a copy thereof, may be sent for service on the defendant, to such officer or authority in that country as the Central Government may by notification in the Official Gazette, specify in this behalf.]

26. *Service in foreign territory through Political Agent or Court.—Where—(a) in the exercise of any foreign jurisdiction vested in the Central Government, a Political Agent has been appointed, or a Court has been established or continued, with power to serve a summons, issued by a Court under this Code, in any foreign*



territory in which the defendant actually and voluntarily resides, carries on business or personally works for gain, or (b) the Central Government has, by notification in the Official Gazette, declared in respect of any Court situate in any such territory and not established or continued in the exercise of any such jurisdiction as aforesaid, that service by such Court of any summons issued by a Court under this Code shall be deemed to be valid service, the summons may be sent to such Political Agent or Court, by post, or otherwise, or ifso directed by the Central Government, through the Ministry of that Government dealing with foreign affairs, or in such other manner as may be specified by the Central Government for the purpose of being served upon the defendant; and, if the Political Agent or Court returns the summons with an endorsement purporting to have been made by such Political Agent or by the Judge or other officer of the Court to the effect that the summons has been served on the defendant in the manner hereinbefore directed, such endorsement shall be deemed to be evidence of service.

26A. Summonses to be sent to officers to foreign countries.—Where the Central Government has, by notification in the Official Gazette, declared in respect of any foreign territory that summonses to be served on defendants actually and voluntarily residing or carrying on business or personally working for gain in that foreign territory may be sent to an officer of the Government of the foreign territory specified by the Central Government, the summonses may be sent to such officer, through the Ministry of the Government of India dealing with foreign affairs or in such other manner as may be specified by the Central Government; and if such officer returns any such summons with an endorsement purporting to have been



made by him that the summons has been served on the defendant, such endorsement shall be deemed to be evidence of service].

11.2. However, no such attempt was made by the learned Civil Court. Instead, the Court proceeded directly to order substituted service under Order V Rule 20 of the Code of Civil Procedure, which, in the facts and circumstances of the case, did not constitute valid service. Consequently, defendants No. 3 and 4 were not duly served in accordance with law.

11.3. Further, it is evident that there existed inherent and fundamental defects in the approach adopted by the learned Civil Court. Despite lacking territorial jurisdiction, the learned Civil Court assumed jurisdiction over the matter. Findings to this effect were expressly recorded by the learned First Appellate Court, and the same were neither assailed nor disputed, thereby attaining finality. In such a situation, the procedure contemplated under Order VII Rule 10 of the Code of Civil Procedure was mandatorily required to be followed.

11.4. Once this jurisdictional defect came to the notice of the learned First Appellate Court, it was incumbent upon the said Court to set aside the judgment and decree passed by the learned Civil Court, particularly when the application filed by the defendants objecting to the assumption of territorial jurisdiction had not been adjudicated upon by the Trial Court. The learned First Appellate Court, therefore, ought to have set aside the judgment and decree and remanded the matter to the learned Civil Judge. Additionally, having found that two of the defendants were not duly served and is wrongly proceeded against ex parte, the impugned



judgment and decree is rendered legally unsustainable and liable to be set aside, with the matter requiring remand to the learned Civil Judge for fresh consideration in accordance with law.

12. At the very outset, although a cursory examination of the record may suggest that the judgments and decrees passed by the learned Courts below warrant interference and that the matter ought to be remanded to the learned Trial Court for a fresh adjudication in accordance with the procedure prescribed under the Code of Civil Procedure, a deeper scrutiny reveals otherwise. It appears that the suit having been dismissed, and the procedural defects not having occasioned any prejudice to the respondents-defendants who were not duly served, it would be wholly inequitable to set aside the impugned judgments and grant the appellants a second innings, thereby affording them an unwarranted “second bite at the apple,” to the manifest detriment of the respondents-defendants. Further deeper evaluation of evidence and findings would **not** alter the position.

13. Both the learned Courts below have concurrently held that the sale deed executed in favour of the respondent-defendants is not vitiated by the doctrine of *lis pendens*. The said finding is legally sound and unexceptionable, inasmuch as there was no restraint or injunction operating against Amar Singh prohibiting alienation of the suit land. The doctrine of *lis pendens* merely postulates that a transferee pendente lite takes the property subject to the outcome of the litigation and does not, by itself, invalidate a transfer made during the pendency of a suit. Consequently, in the absence of any prohibitory order restraining Amar Singh from alienating the suit property, the sale deed executed in favour of



the respondent-defendants cannot be invalidated solely on the ground that it was effected during the pendency of the earlier suit.

14. In the earlier suit, the Court had categorically recorded a finding that the suit property therein constituted ancestral and co-parcenary property in the hands of Amar Singh. The respondent-defendants, in whose favour the impugned sale deed was executed and which is under challenge in the present suit, being transferees claiming title through Amar Singh, are unquestionably bound by the findings so recorded. The determination that the property was ancestral and co-parcenary property of the Joint Hindu Family is, therefore, binding upon them.

15. It then becomes necessary to ascertain whether the suit property in the present case formed part of the subject matter of the earlier litigation. A perusal of the judgment in the previous suit clearly reveals that Khasra Nos.13, 18/1 were the subject matter of that litigation and were held to be ancestral and co-parcenary property of the Joint Hindu Family in the hands of Amar Singh. The sale deed in favour of the respondent-defendants in the present suit pertains to Khasra Nos. 13, 18/1, which were also included in the earlier suit. Accordingly, the suit property stands duly proved to be ancestral and co-parcenary property in the hands of Amar Singh.

16. Amar Singh, being the *Karta* of the Joint Hindu Family, was competent to alienate the suit property only for *bona fide* legal necessity and/or for the benefit of the estate. The onus to establish that the sale deed was executed for such legal necessity or benefit of the estate lay squarely



upon the vendees, namely, the respondent-defendants as held by the Hon'ble Supreme Court in ***Dastagir Sahib v. Sarnappa alias Shivasarnappa (dead) by LRs and others, 2025 INSC 1120***, wherein, in paragraph 16, it has been held as under:-

"We are conscious that the onus to prove that a sale made by the Karta on behalf of other coparceners of HUF for legal necessity lies on the alienee/purchaser. The 5th defendant- purchaser, through deft cross examination of the plaintiff and other evidence, has established a clear nexus between the sale transaction and the expenses undertaken for Kashibai's marriage and has thereby discharged the onus. In these circumstances, his case cannot be disbelieved on the score that all the coparceners had not received the sale consideration. This fact is in the special knowledge of the plaintiff and other coparceners. Onus of proof on the stranger-purchaser cannot run counter to the principle of reverse burden enshrined in Section 106 of the Evidence Act, 1872 and saddle him with the liability to prove facts which are within the special knowledge of the coparceners of the HUF."

16.1. It has, however, been found that respondents-defendants No.3 and 4 were not properly served and were proceeded against *ex parte*, thereby depriving them of an effective opportunity to discharge the said burden and to prove that the sale in their favour was supported by *bona fide* legal necessity or was for the benefit of the estate.

17. In these circumstances, if the appeal were to be allowed outright and the suit of the appellant-plaintiff decreed, it would result in respondents-defendants No.3 and 4 being condemned unheard, causing them serious and irremediable prejudice. Viewed thus, the judgments and decrees passed by both the Courts below cannot be sustained. Accordingly,



the appeal is allowed, the impugned judgments and decrees are set aside, and the matter is remanded for fresh adjudication in accordance with law.

18. In view of the fact that the principal appeal has been duly adjudicated and finally disposed of on merits, all ancillary, interlocutory, or pending application(s), if any, appearing on the record shall, by necessary implication, also stand disposed of. No separate or further orders are required to be passed in that regard.

09.02.2026
Gaurav Sorot

(VIRINDER AGGARWAL)
JUDGE

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