



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-109-2000 (O&M)

Ram Singh and others

. . . . Appellants

Vs.

Swaran Singh and others

. . . . Respondents

Reserved on: 13.03.2026

Pronounced on: 17.03.2026

Pronounced Fully/Operative Part: Fully

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Amit Singh Sethi, Sr. Advocate with
Mr. Parminder S Kaul, Advocate, for the appellants.

Mr. Rajesh Punj, Advocate, for respondent No.2.

DEEPAK GUPTA, J.

The present Regular Second Appeal has been preferred by defendants No.3, 5 and 6 against the concurrent findings recorded by both the Courts below. The suit filed by the plaintiffs (*respondents No.1 to 6 herein*) seeking declaration regarding the suit property along with a decree of permanent injunction was decreed by the learned Sub Judge 1st Class, Ludhiana vide judgment & decree dated 29.09.1995. The appeal preferred by defendants No.3, 5 and 6 (*appellants herein*) was dismissed by the learned Additional District Judge, Ludhiana on 11.09.1999, thereby affirming the findings recorded by the trial Court.

2. For the sake of convenience and to avoid confusion, the parties shall be referred to according to their status before the trial Court. The record of the trial Court has been summoned and perused.

3. The dispute relates to land measuring 4 Biswa 11 Biswansi (91/1600 share) out of total land measuring 4 Bigha comprised in Khasra

No.141, Khata No.253/302, as reflected in the Jamabandi for the year 1987-88, situated in village Three ke, Tehsil Ludhiana (*hereinafter referred to as the suit property*), which is claimed by the plaintiffs to be passage left for approaching their respective plots.

4.1 The case of the plaintiffs is that defendants Mukhtiar Singh and Nirmal Singh (*defendants No.1 and 2*), along with their brother Ram Singh (defendant No.3) and their mother Smt. Basant Kaur, were co-owners in possession of the aforesaid land. Out of their respective shares, defendants No.1 and 2 & Basant Kaur executed several sale deeds (Ex.P-2 to Ex.P-7) in the year 1984 in favour of the plaintiffs through their General Power of Attorney holder Ram Prakash. Vide sale deeds dated 19.04.1984 and 24.04.1984, Mukhtiar Singh sold portions of land measuring 1400 square yards each to plaintiffs Bachittar Singh and Swaran Singh, while Nirmal Singh similarly sold portions of 1400 square yards each to plaintiffs Raj Kaur, Karamjit Kaur and Paramjit Kaur. Subsequently, another sale deed dated 16.05.1984 was executed regarding land measuring 884 square yards in favour of plaintiff Swaran Singh. Possession of the respective plots was delivered to the plaintiffs at the time of execution of the said sale deeds.

4.2 The plaintiffs further pleaded that while carving out the aforesaid plots, an area measuring 4 Biswa 11 Biswansi was intentionally left as a passage to provide access to the plots purchased by the plaintiffs. The said passage existed at the spot and was being used by the plaintiffs to approach their plots. It was further pleaded that the said arrangement also stood acknowledged in a compromise dated 11.08.1988 (Ex.P-8) arrived at between Mukhtiar Singh, Nirmal Singh and their mother Smt. Basant Kaur. According to the plaintiffs, they also acquired a right of easement of necessity over the said passage.

4.3 It was alleged that as the suit land meant for passage continued to remain recorded in the names of defendants No.1 and 2 in the revenue record, taking benefit thereof, they subsequently executed a sale

deed dated 29.09.1988 (Ex.D-1) in favour of their brother Ram Singh (defendant No.3) with respect to the aforesaid passage, on the basis of which Mutation No.3541 was sanctioned. According to the plaintiffs, the said sale deed was executed only to defeat their rights and the same illegally transferred the passage meant for access to their plots.

4.4 With above averments, the plaintiffs filed the present suit seeking a declaration that the suit property is a passage meant for access to their plots and that the sale deed dated 29.09.1988 and the consequential mutation are null, illegal and void, along with a decree of permanent injunction restraining defendant No.3 from alienating the same.

5. Defendants No.1 and 2 filed a written statement admitting that the land measuring 4 Bigha in Khasra No.141 was jointly owned by them along with defendant No.3 and their mother Smt. Basant Kaur. They also admitted the execution of the sale deeds in favour of the plaintiffs and further acknowledged that the disputed land measuring 4 Biswa 11 Biswansi had been left as a passage for access to the plots sold to the plaintiffs and that no other passage existed for the said purpose. The compromise dated 11.08.1988 was also not disputed by them. They further stated that the sale deed dated 29.09.1988 was null and void.

6.1 The suit, however, was contested by defendants No.3 to 6, namely Ram Singh, his wife and sons. They challenged the locus standi of the plaintiffs to question the sale deed and alleged that the suit was collusive between the plaintiffs and defendants No.1 and 2. It was further pleaded that Smt. Basant Kaur, being a co-sharer, had not been impleaded as a party and therefore, the suit was bad for non-joinder of necessary parties. It was also alleged that another suit for declaration regarding the same property was pending between the parties and, therefore, the present suit was liable to be stayed under Sections 10 and 11 CPC.

6.2 On merits, it was contended that the other property had already been partitioned amongst the co-sharers through a partition

agreement dated 17.11.1984 and that the suit land was agricultural land, on which no plots or passage existed, particularly when no permission had been obtained from the Government for carving out plots under any urban estate scheme. It was also alleged that Ram Prakash, the attorney of defendants No.1 and 2, was a property dealer and had fabricated the alleged compromise dated 11.08.1988 in collusion with the plaintiffs and defendants No.1 and 2. Defendant No.3 claimed to be a bona fide purchaser of the suit land under the sale deed dated 29.09.1988 and asserted that mutation had already been sanctioned in his favour. Reference was also made to a separate suit for injunction filed by defendant No.3 in which an order of status quo had been granted. Prayer was accordingly made for dismissal of the suit.

7. The plaintiffs filed replication reiterating the averments made in the plaint and denying the allegations raised in the written statement.

8. On the basis of the pleadings of the parties, the trial Court framed necessary issues and the parties led their respective evidence. Upon appreciation of the material on record, the learned trial Court came to the conclusion that the sale deed dated 29.09.1988 (Ex.D-1) executed by defendants No.1 and 2 in favour of defendant No.3 was null, illegal and void, as the land in dispute had in fact been left as a passage for access to the plots sold to the plaintiffs through the sale deeds Exhibits P-2 to P-7. Accordingly, the suit was decreed vide judgment & decree dated 29.09.1995, declaring the disputed land measuring 4 Biswa 11 Biswansi to be a passage meant for the plaintiffs and also declaring the impugned sale deed and the consequential mutation to be null and void.

9. Aggrieved by the said judgment & decree, defendants No.3, 5 and 6 preferred an appeal. Learned Additional District Judge, Ludhiana i.e., the First Appellate Court re-appreciated the entire evidence on record and, finding no infirmity in the reasoning of the trial Court, dismissed the appeal

vide judgment dated 11.09.1999, thereby affirming the decree passed by the trial Court.

10.1 Assailing the concurrent findings recorded by both the Courts below, learned counsel appearing for the appellants (*defendants No.3, 5 and 6*) contends that the revenue record clearly establishes that Khasra No.141 measuring 4 Bigha is joint and unpartitioned land belonging to defendants No.1 to 3 along with their mother Smt. Basant Kaur. It is argued that the land has never been partitioned by metes and bounds and therefore, no specific portion of the land could have been validly sold or earmarked as a passage by some of the co-sharers.

10.2 Learned counsel further submits that both the Courts below have committed a serious error in ignoring the judgment dated 30.11.1994 (Ex.D-3), whereby Khasra No.141 was held to be joint and unpartitioned land. The said judgment has attained finality and was based upon an earlier judgment dated 16.10.1993 passed by the learned Additional District Judge, which also stood affirmed by this Court in RSA No.3802 of 1998 decided on 20.12.1996. According to the learned counsel, once the land has been held to be joint, the alleged carving out of a passage by some of the co-sharers is legally impermissible.

10.3 It is further argued that the plaintiffs derived their title through Mukhtiar Singh and Nirmal Singh and thus, stepped into their shoes as co-sharers. Until the joint Khata is partitioned by metes and bounds and duly reflected in the revenue record, the parties continue to remain co-sharers, as held by the Five-Judge Bench of this Court in ***Ram Chander v. Bhim Singh, 2008 (3) RCR (Civil) 685.***

10.4 Learned counsel also submits that appellant Ram Singh was neither a party to the sale deeds allegedly executed in favour of the plaintiffs nor to the compromise dated 11.08.1988 (Ex.P-8), whereby the existence of the alleged passage was acknowledged. The said passage does not find mention in the Jamabandi, Khasra Girdawari or the Aksh Shajra

pertaining to Khasra No.141. Had any such passage existed, the revenue authorities would have reflected the same as “Gair Mumkin Rasta” in the revenue record and appropriate entries would have been made through Rapat Roznamcha or demarcation proceedings, which is not the case here.

10.5 It is further contended that the Courts below erred in holding the existence of an easement of necessity despite the admission of the plaintiffs’ own witness Pritpal Singh that another passage existed for access to the land. According to the learned counsel, the very concept of easement of necessity arises only when no other access is available.

10.6 It is also argued that reliance placed on the criminal proceedings against appellant Ram Singh is misplaced, as evidence recorded in criminal proceedings cannot be relied upon in civil litigation. In any case, the appellant was extended the benefit of probation owing to his advanced age and therefore, the said proceedings have no bearing on the present case.

10.7 Learned counsel submits that the Courts below have fundamentally erred in treating the joint agricultural land, as if it had already been converted into plotted land.

10.8 On the basis of the aforesaid submissions, prayer is made for setting aside the judgments and decrees passed by the Courts below and for dismissal of the suit filed by the plaintiffs.

11.1 *Per contra*, learned counsel appearing for the respondents-plaintiffs has fairly conceded that as per the revenue record, Khasra No.141 continues to be joint land and has not yet been partitioned. It is also not disputed that appellant Ram Singh was not a party to the sale deeds (Ex.P-2 to P-7) or to the compromise dated 11.08.1988 (Ex.P-8). However, learned counsel submits that the present controversy is a result of collusion between the brothers, namely Ram Singh, Mukhtiar Singh and Nirmal Singh.

11.2 It is argued that appellant Ram Singh had already separated his share measuring 1 Bigha from Khasra No.141, leaving 3 Bigha of land with Mukhtiar Singh, Nirmal Singh and their mother Basant Kaur. Out of this land, the said co-sharers executed several sale deeds in favour of the plaintiffs and other purchasers, including a sale deed dated 31.01.1985 (Ex.P-11) in favour of Pritpal Singh. In this manner, approximately 8300 square yards of land was sold in the form of plots, leaving only a small portion of land measuring 4 Biswa 11 Biswansi, which was kept as a passage for providing access to the plots so carved out. The existence of this passage was also acknowledged in the compromise dated 11.08.1988 (Ex. P-8).

11.3 It is further submitted that the judgment dated 30.11.1994 (Ex. D3), heavily relied upon by the appellants, is not binding upon the plaintiffs, as all of them were not parties to the said proceedings. By the time the said suit was instituted in the year 1988, the plaintiffs had already purchased portions of land in Khasra No.141 and had thus become co-sharers, yet they were not impleaded as parties therein.

11.4 Learned counsel further argues that after executing sale deeds in favour of the plaintiffs and carving out the passage, defendants Mukhtiar Singh and Nirmal Singh subsequently colluded with their brother Ram Singh and executed the impugned sale deed dated 29.09.1988 in his favour with respect to the land which had been left as passage.

11.5 To support this collusion, it is pointed out that although defendants No.1 and 2 initially supported the plaintiffs by admitting the passage in their written statement, they later appeared as witnesses (DW4 and DW5) and supported the case of defendant Ram Singh, which clearly demonstrates collusion amongst the brothers aimed at depriving the plaintiffs of access to their plots.

11.6 It is also pointed out that criminal proceedings were initiated against the defendants in connection with the same transaction. Although

Ram Singh was initially acquitted by the trial Court, he was subsequently convicted by the Appellate Court and the said conviction has been upheld by this Court in CRR-1427-2016 and CRR-1446-2016 decided on 04.07.2025.

11.7 On these premises, learned counsel submits that the Courts below have rightly appreciated the evidence on record and recorded concurrent findings in favour of the plaintiffs and therefore, no interference is warranted in the present Regular Second Appeal. Prayer is accordingly made for the dismissal of the appeal.

12. This Court has heard learned counsel for the parties and carefully perused the record.

13. ***Consideration by this Court :*** Having heard learned counsel for the parties and after carefully perusing the record, the following substantial question of law arises for consideration in the present appeal:

- “Whether the Courts below were justified in declaring a specific portion of joint and unpartitioned land as a passage and in holding the sale deed dated 29.09.1988 executed in favour of defendant Ram Singh to be null and void, despite the admitted position that the land comprised in Khasra No.141 remained joint and unpartitioned and that Ram Singh was a co-sharer therein?”

14. It is not disputed that land measuring 4 Bigha comprised in Khasra No.141 was jointly owned by Ram Singh, Mukhtiar Singh, Nirmal Singh and their mother Smt. Basant Kaur, each having one-fourth share. It is also not in dispute that Mukhtiar Singh, Nirmal Singh and Basant Kaur executed a General Power of Attorney (Ex.P-1) in favour of Ram Parkash authorising him to deal with their share in the land measuring about three bighas. In pursuance thereof, several registered sale deeds (Ex.P-2 to P-7) were executed during the years 1984-85 through the said attorney in favour of the plaintiffs, whereby different portions of land were sold to them. The plaintiffs relied upon these sale deeds along with the site plans

appended thereto to assert that while carving out the plots, an area measuring 4 Biswa 11 Biswansi was left as a passage for access to the plots.

15. The controversy, however, arises because Khasra No.141 continues to be recorded as joint and unpartitioned land in the revenue record, a fact which has also been fairly conceded by learned counsel for the respondents. It is equally admitted that Ram Singh, the appellant, continues to be a co-sharer in the joint Khata and was neither a vendor in the sale deeds executed in favour of the plaintiffs nor a party to the compromise dated 11.08.1988 relied upon by the plaintiffs.

16. The legal position governing such situations is well settled. A co-sharer in joint property is entitled to transfer his undivided share, and the transferee merely steps into the shoes of the vendor and becomes a co-sharer in the joint holding. However, no co-sharer can claim exclusive ownership or earmark a specific portion of joint land unless the property is partitioned by metes and bounds.

17. Thus, although the sale deeds in favour of the plaintiffs may validly convey the share of the vendors in the joint Khata, the vendees cannot claim that a specific portion of the joint land stands exclusively reserved as a passage binding upon another co-sharer, who was neither party to the transaction nor consenting to the arrangement.

18. In the present case, both the Courts below have proceeded on the premise that the land measuring 4 Biswa 11 Biswansi had been left as a passage while carving out the plots and on that basis declared the said portion to be a passage and further held the sale deed dated 29.09.1988 executed in favour of Ram Singh to be null and void.

19. However, once it is admitted that the land forming part of Khasra No.141 remains joint and unpartitioned, the declaration of a specific portion of such land as an exclusive passage cannot legally be sustained against another co-sharer. Likewise, the sale deed dated 29.09.1988

executed by Mukhtiar Singh and Nirmal Singh in favour of Ram Singh cannot be declared void, since a co-sharer is legally competent to transfer his undivided share in the joint property.

20. At the same time, the record clearly shows that the plaintiffs purchased the land through registered sale deeds executed by the co-sharers and have been in possession of the respective plots. The site plans and oral evidence led before the trial Court indicate that the plots have been carved out on the ground and that access to those plots has been used in a particular manner over the years.

21. Therefore, while the plaintiffs cannot claim a declaration of ownership of a specific portion of joint land as a passage, the equities arising out of the transactions cannot be ignored altogether.

22. It is well settled that a co-sharer in joint property is deemed to be in possession of every inch of the joint holding, and disputes relating to specific portions of the property are ordinarily required to be resolved through partition proceedings. The proper remedy available to the parties in such circumstances is to seek partition of the joint property by metes and bounds, whereupon the respective rights and access arrangements can be appropriately worked out.

23. Consequently, while the findings of the Courts below regarding the existence of a specific passage over the joint land cannot be sustained in law, the plaintiffs cannot be deprived of the protection of their possession over the land purchased by them through registered sale deeds.

24. Accordingly, the decree passed by the Courts below is liable to be modified to the extent that the declaration of the suit property as an exclusive passage is set aside; and the sale deed dated 29.09.1988 executed in favour of Ram Singh cannot be treated as void. However, the possession of the plaintiffs over the land purchased by them shall remain protected, and the parties shall be at liberty to seek partition of the joint property,

whereupon their respective rights including access to the plots can be determined in accordance with law.

25. At this stage, it also requires consideration as to how the plaintiffs shall approach the plots purchased by them till partition is effected. The evidence on record shows that the plaintiffs have purchased various portions of land through registered sale deeds and have been using the disputed strip of land as access to their respective plots. If such access is abruptly denied, the plaintiffs would be rendered incapable of enjoying the property purchased by them.

26. It is a settled principle that a co-sharer in joint property is deemed to be in possession of every inch of the joint holding, and each co-sharer is entitled to make reasonable use of the joint land so long as such use does not amount to exclusion of the other co-sharers. Therefore, the use of a particular portion of joint land for purposes of access cannot be restrained merely because the property remains unpartitioned.

27. In these circumstances, while the plaintiffs cannot claim exclusive ownership of the suit property as a passage, the existing user of the disputed strip as a means of access to the plots purchased by the plaintiffs deserves protection until the joint property is partitioned by metes and bounds.

28. Accordingly, it is clarified that the parties shall maintain the existing arrangement regarding access to the plots of the plaintiffs, without creating any exclusive or proprietary rights in favour of either party, and the same shall remain subject to final adjustment in appropriate partition proceedings.

29. The parties shall be at liberty to seek partition of the joint property, and at the time of partition, the competent Court shall determine the rights of the parties including the question of access to the respective portions falling to their shares.

30. Subject to the above modification, the appeal stands partly allowed. The judgments and decrees of the Courts below are modified to the aforesaid extent.

31. Any pending application(s), if any, shall also stand disposed of.

(DEEPAK GUPTA)
JUDGE

17.03.2026

Vivek

<i>Whether Speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>

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