



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

RSA-1872-2000 (O&M)

Reserved on :- 03.02.2026

Date of Pronouncement:-11.02.2026

Uploaded on:-12.02.2026

Jaspal Singh and Another

... Appellants

Versus

Mohinder 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 appellants.

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

VIRINDER AGGARWAL, J.

1. Appellants-defendants institute this Regular Second Appeal (here-in-after to be referred as “RSA”) to assail the concurrent findings of the Courts below, culminating in the judgment and decree dated 18.01.2000 rendered by the learned District Judge, Hoshiarpur whereby the Trial Court’s judgment and decree dated 09.10.1996 passed by learned Civil Judge (Junior Division) Hoshiarpur was upheld. It is alleged that learned First Appellate Court has perpetuated a declaratory judgment founded upon conjectures rather than the material on record. The Appellants respectfully submit that the impugned judgments and decrees



are vitiated by patent perversity, thereby presenting substantial questions of law that warrant a *de novo* examination by this Court.

2. The quintessential facts constituting the claim of the Respondents-Plaintiffs before the learned Court of first instance are as follows:-

Plaintiff-Mohinder Singh instituted the present suit seeking a declaration that the sale deed dated 16.04.1993, purportedly executed by defendant No.1, his father, in favour of defendants No.2 to 4, is null, void, and inoperative, the suit property being joint Hindu family coparcenary property and the sale having been effected without legal necessity or consideration. Consequential relief of joint possession of the land measuring 6 kanals 4 marlas, as detailed in the plaint, was also sought. It was averred that an earlier suit for declaration regarding the joint Hindu family nature of the property, instituted on 24.05.1989, was pending, rendering the impugned sale hit by the doctrine of lis pendens.

3. Upon service of notice, defendants No.2 to 4 entered appearance and filed a joint written statement, whereas defendant No.1 was proceeded against *ex parte*. The pleadings set forth by defendants No.2 to 4 are summarized as under:- :-

The contesting defendants raised preliminary objections regarding improper valuation, want of locus standi, and estoppel. On merits, they asserted that the sale deed was for valid consideration, denied knowledge of prior litigation, claimed bona fide purchase, and affirmed their peaceful possession of the suit property.

4. The defensive stance adopted by defendants No. 2 to 4 was met with a categorical **replication**, wherein the plaintiffs effectively neutralized the defendants' averments while concurrently reinstating the integrity of the original plaint. With the pleadings thus complete and the



contest between the parties fully crystallized, the learned Trial Court proceeded to settle the triable issues on 07.10.1995 as follows: :-

- (1) *Whether the plaintiff is entitled to declaration as prayed for? OPP.*
- (2) *Whether the suit property is joint Hindu Family Coparcenary property? OPP.*
- (3) *Whether the plaintiffs entitled to a consequential relief of joint possession? OPP*
- (4) *Whether the suit is not property valued for the purpose of consequential relief of possession ?OPD.*
- (5) *Whether the plaintiff has no locus standi file the present suit? OPD.*
- (6) *Whether the plaintiff is estopped from filing the present suit by his act and conduct ? OPD.*
- (7) *Whether the defendants are bona fide purchaser of the suit property for a valuable consideration ? OPD.*
- (8) *Whether the defendants are in peaceful possession of the suit property? OPD.*
- (9) *Relief.*

5. Post-crystallization of the triable issues, both parties were afforded a plenary opportunity to adduce evidence in substantiation of their respective contentions. On a holistic and discerning appreciation of the evidentiary matrix, the learned Trial Court '**decreed**' the suit in favour of the respondents-plaintiffs. This adjudication was subsequently assailed by the appellants-defendants; however, the learned First Appellate Court, on a de novo evaluation of the record, found the findings of the Court of first instance to be impregnable and '**dismissed**' the appeal.

5.1. Constrained by the concurrent findings of the Courts below, which the appellants/defendants contend are fundamentally divorced from



the legal and factual realities of the case, the present RSA is preferred to invoke the corrective mandate of this Court.

6. This appeal is instituted to scrutinize the tenability of the concurrent findings arrived at by the learned Courts below, which the appellants contend are vitiated by jurisdictional errors and a failure to grapple with the core legal controversy. Recognizing that the appeal presented substantial questions for determination, it was formally admitted for a regular hearing. The respondents, upon service of notice, entered their appearance through counsel and have vehemently contested the maintainability and merits of the appeal.

6.1. In the pursuit of an effective and legally sound resolution to the dispute, this Court requisitioned the exhaustive record of the learned Courts below, subjecting the same to a rigorous and discerning examination.

7. Adopting a meticulous approach, I have heard the learned counsel for the parties and applied an anxious consideration to the contentions raised, scrutinizing their tenability within the broader framework of the pleadings and the totality of the evidentiary material. The entire record has been subjected to a rigorous and comprehensive scrutiny to determine whether the impugned concurrent judgments are vitiated by any jurisdictional error, manifest perversity, or a fundamental misappreciation of evidence. The primary question before this Court is *‘whether the findings below suffer from any such patent legal infirmity as would necessitate interference in the exercise of the limited appellate jurisdiction vested under Section 100 of the Code of Civil Procedure’?*



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. At the outset, learned counsel for the appellant submitted that the findings returned by the learned First Appellate Court are vitiated by surmises and conjectures and suffer from a manifest failure to properly appreciate the evidence on record. It was contended that the Appellate Court overlooked material facts demonstrating that the suit had been instituted by suppressing and concealing relevant particulars with a view to mislead the Court. In this regard, it was urged that the plaintiff, Mohinder Singh, projected himself as the owner of the entire property of Amar Singh, despite the fact that the appellant Mohinder Singh is one of the legal heirs, and that the Will relied upon by the plaintiff was never duly proved in accordance with law.

9.1. It was further argued that the application for amendment of the written statement filed by the appellants was erroneously dismissed. The learned Court below failed to appreciate that the proposed amendment neither introduced a new case nor altered the nature of the defence, but was



merely clarificatory in nature and intended to elucidate and fortify the stand already taken by the appellants-defendants in their written statement.

On this premise, it was prayed that the amendment be permitted and the matter be remanded after setting aside the impugned judgment and decree.

9.2. Lastly, it was contended that even assuming, *arguendo*, that Amar Singh was a coparcener holding a share in the ancestral and coparcenary property of the Joint Hindu Family, the sale executed by him was well within the ambit of his own share and, therefore, legally valid and liable to be protected in law.

9.3 At the very threshold, learned counsel for the appellant assailed the concurrent findings of the learned Courts below holding the impugned sale to be hit by the doctrine of *lis pendens*, contending that such a conclusion is wholly erroneous and unsustainable in law. It was accordingly prayed that the judgment and decree passed by the Courts below be set aside and the appeal be allowed.

10. Per contra, learned counsel appearing for the respondents supported the impugned judgments and submitted that the Courts below had rightly held the suit property to be ancestral and coparcenary property of the Joint Hindu Family. It was urged that the appellants-defendants had failed to adduce any cogent evidence to establish that the sale in question was effected for legal necessity. In the absence of such proof, the sale was rightly held to be beyond the competence of defendant Amar Singh and was, therefore, correctly set aside. On these grounds, it was prayed that the appeal be dismissed and the judgments and decrees passed by the Courts below be affirmed.



11. At the very threshold, it merits emphatic reiteration that the application seeking amendment of the written statement was rightly declined, having been moved at a grossly belated stage with the evident intent of introducing an entirely new plea which was admittedly available to the appellants even during the pendency of the suit. The learned First Appellate Court declined the said application on the cogent ground that no plea of legal necessity or act of good management had been taken in the written statement filed before the Trial Court and that the application had been preferred after an inordinate lapse of nearly five years. It was further observed that permitting such an amendment would inevitably result in reopening the entire controversy and that the proposed amendment was founded on an afterthought, there being no question of explanation or elucidation when no such plea had been pleaded in the original written statement.

12. The circumstances attending the filing of the amendment application further reinforce the correctness of the impugned order. The application was moved during the pendency of the appeal, that too after nearly three years of its pendency, which clearly demonstrates that the proposed amendment was conceived only after the learned Trial Court had conclusively held the sale deed in favour of the appellants-defendants to be invalid on the ground that the *Karta* had executed the same without any legal necessity. Significantly, no such application was filed along with the memorandum of appeal, and the appeal itself remained pending for almost three years before the amendment was sought. Although it was sought to be contended that no new plea was being introduced and that the amendment was merely clarificatory or elucidatory in nature, the learned First



Appellate Court categorically recorded that there was no plea in the original written statement capable of being clarified or elucidated. On the contrary, by way of the proposed amendment, the appellants-defendants sought to introduce a wholly new defence which ought to have been raised at the time of filing of the initial written statement. Allowing such an amendment would have the effect of reopening the entire proceedings and relegating the parties to the very stage of pleadings. This application has been filed with an intention to fill up lacuna in case of applicants which has been duly noticed by trial Court and has been made a ground to decree the suit. This plea by way of amendment is being sought to nullify those findings recorded by the learned trial Court which was rightly declined.

12.1. As regards the question of the suit property being ancestral and coparcenary property of the Joint Hindu Family, the learned Courts below have concurrently recorded that the plaintiff Mohinder Singh had earlier instituted a suit against Amar Singh, defendant No.1 in the present suit, along with Joginder Singh and Krishan Kant, asserting the suit property therein to be ancestral and coparcenary property of the Joint Hindu Family and challenging the sale deed executed by defendant No.1 in favour of defendant No.3 as illegal, null, and void for want of legal necessity. Upon a full-fledged trial, the learned Sub-Judge declared the suit property in that suit to be ancestral and coparcenary property of the Joint Hindu Family. Both the Courts below have further held that since the sale deed in favour of the present appellants-defendants was executed during the pendency of the said suit, they would be bound by the outcome thereof in view of Section 52 of the Transfer of Property Act, and consequently



concluded that the suit property in the present case stood proved to be ancestral and coparcenary property.

13. The first and foremost question that arises is whether the sale deed executed in favour of the appellants-defendants becomes illegal, null, and void merely on account of its execution during the pendency of litigation initiated by the plaintiff of the present suit. The answer to this is unequivocally in the negative. The doctrine of *lis pendens* does not render all transactions relating to the suit property void *ipso facto* merely because they were effected during the pendency of the suit. The settled principle is that such transactions remain subject to, and are bound by, the final outcome of the litigation. Any person acquiring an interest in the suit property during pendency does so at his own peril, but it is entirely possible that the ultimate decision may enure to the benefit of his vendor, in which event the transferee would acquire a valid title notwithstanding the pendency of the proceedings.

14. In the present case, the decree-sheet Ex.P-2 reveals that the earlier suit was decreed only to the limited extent of declaring the plaintiff therein to be in joint possession of the suit property, except the land sold to defendant No.3. There was no injunction or restraint order operating against defendant No.1 Amar Singh, nor was he prohibited from alienating the suit land. Nevertheless, the declaration that the suit land constituted ancestral and coparcenary property of the Joint Hindu Family is binding upon the appellants-defendants by virtue of Section 11 of the Code of Civil Procedure, as the issue was directly and substantially in issue in the earlier suit and stood finally adjudicated. The appellants-defendants, claiming right, title, and interest through defendant Amar Singh, who was himself a



party to the earlier suit culminating in decree Ex.P-2, are bound by the findings recorded therein and are precluded from re-agitating those issues in the present proceedings.

15. Judgment Ex.P-1 and decree Ex.P-2 further demonstrate that in the earlier suit, land measuring 30 Kanal 14 Marlas situated at Village Ballal, comprising Khasra Nos. 21//2/1, 21//2/3, 5//4/2, 6//1/3, 15/2, 10/2, 11, 2, 28/2, 29/2, 35/1, 36/1, and 65/2, was the subject matter of dispute. In the present suit, the sale deed in favour of the appellants-defendants pertains to Khasra Nos. 27/2, 28/2, 29/2, and 65/2 of Village Ballal. Except for Khasra No.27/2, all the remaining Khasra numbers formed part of the suit property in the earlier litigation. Consequently, the land comprised in Khasra Nos. 28/2, 29/2, and 65/2 was rightly held to be ancestral and coparcenary property in view of the binding findings recorded in judgment Ex.P-1 and decree Ex.P-2.

15.1. *“However, the finding of the Courts below that the entire suit property, including Khasra No.27/2, stood proved to be ancestral and coparcenary property, cannot be sustained.”* Khasra No.27/2 was not the subject matter of the earlier suit, and there is no finding therein declaring it to be ancestral or coparcenary property of the Joint Hindu Family. The respondent-plaintiff has also failed to adduce any independent evidence to establish the ancestral nature of Khasra No.27/2. Accordingly, the land comprised in Khasra No.27/2 cannot be held to be ancestral and coparcenary property, and the findings of the Courts below to that extent are unsustainable.

16. Once part of the suit property is held to be ancestral and coparcenary property of the Joint Hindu Family, the burden squarely lies



upon the appellants-defendants, being purchasers from the *Karta*, to establish that the sale in their favour was effected for bona fide legal necessity. In this regard, reliance is aptly placed upon the judgment of 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."

17. In view of the aforesaid legal position, the burden squarely lay upon the appellant-defendants to establish that the sale in their favour was effected for bona fide legal necessity, a burden which they have manifestly failed to discharge, there being neither any specific pleading nor any cogent evidence on record to that effect. Consequently, the concurrent findings recorded by the Courts below, to the extent that the sale in favour



of the appellant-defendants was not proved to have been executed for bona fide legal necessity, call for no interference. It follows that the respondent-plaintiffs were legally entitled to challenge the alienation made by the *Karta*. However, such sale would be invalid only to the extent it affects the ancestral and coparcenary property of the Joint Hindu Family. In the present case, it stands established on record that Khasra No.27/2, out of the land sold to the appellant-defendants, was not proved to be ancestral and coparcenary property.

18.1 The contention advanced by learned counsel for the appellants that the sale ought to be upheld at least to the extent of the *Karta's* share is devoid of merit. The settled position of law is that a *Karta* possesses only a limited power to alienate ancestral and coparcenary property of a Joint Hindu Family, and such power can be exercised only in cases of bona fide legal necessity or for the benefit of the estate. There exists no exception in law permitting a *Karta* to alienate his notional share in coparcenary property during his lifetime by way of sale or any other inter vivos transfer. While Section 30 of the Hindu Succession Act confers upon a coparcener the right to bequeath his share by testamentary disposition, no corresponding right exists to effect such transfer during his lifetime through a sale deed. Accordingly, the sale deed executed in favour of the appellant-defendants was rightly held to be null and void to the extent it pertains to the ancestral and coparcenary property of the Joint Hindu Family.

18.2. At the same time, the sale deed, insofar as it relates to property not proved to be ancestral and coparcenary, is liable to be protected, Amar



Singh being the recorded owner thereof and thus competent to alienate such property. Consequently, the appeal preferred by the appellants is partly allowed. The judgment and decree passed by the learned Courts below is set aside to the extent it declare the sale deed in favour of the appellant-defendants to be null and void insofar as it pertains to Khasra No.27/2, while the findings recorded with respect to the remaining land forming the subject matter of the sale deed are upheld. Decree to be drawn accordingly.

19. With the pronouncement of the final judgment in the main appeal, all interlocutory and miscellaneous applications, if any, pending as on date are deemed to have been disposed of *inter alia*. Given that the primary dispute has reached its legal quietus, the ancillary applications have lost their substratum and require no further judicial consideration. By virtue of the conclusions arrived at herein, all such pending matters stand formally consigned to the record as redundant.

11.02.2026
Gaurav Sorot

(VIRINDER AGGARWAL)
JUDGE

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