



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

RSA-2070-2004 (O&M)

Reserved on :-09.04.2026

Date of Pronouncement:-17.04.2026

Uploaded on:-18.04.2026

Ishwar Singh (Since Deceased) through His LRs and Others

... Appellants

Versus

Dilbagh Singh and Others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :-

Mr. M.L. Sarin, Senior Advocate with
Ms. Himani Sarin, Advocate
for the appellants.

Mr. Vipin Pal Yadav, Advocate
for respondent No.1.

None for respondent No.2.

Mr. Jaskaran Singh Sohal, Advocate
for respondent No.4.

VIRINDER AGGARWAL, J.

1. The present Regular Second Appeal (hereinafter referred to as “RSA”) has been instituted assailing the concurrent judgments and decrees rendered by the learned Courts below, whereby the learned Lower Appellate Court, vide judgment and decree dated 23.01.2004, affirmed the findings and conclusions recorded by the learned Civil Judge vide judgment and decree dated 30.04.2003.

2. The factual matrix, as emerging from the record, is that the appellants–plaintiffs, being husband and wife, claim to have purchased the suit land measuring 287 kanals 3 marlas, situated in Village Naurangpur, vide sale deed dated 22.07.1997.

2.1. The appellants–plaintiffs instituted a suit for declaration with consequential relief of permanent injunction, asserting that both the plaintiffs and the defendants were co-owners in possession of the suit property in equal shares, i.e., 1/6th share each, as fully detailed in the headnote of the plaint. It was pleaded that initially the suit land belonged to the plaintiffs; plaintiff No.1 was owner in possession of $\frac{3}{4}$ share out of 166 kanals 7 marlas, out of which he transferred 76 kanals 16 marlas to the defendants in equal shares. Similarly, plaintiff No.2 was owner in possession of 120 kanals 16 marlas, out of which she transferred 130 marlas and 14 marlas to the defendants in equal shares. In this manner, both the plaintiffs and defendants became owners in possession of 27 kanals 16 marlas each, constituting 1/6th share in the suit land.

2.2. It was further pleaded that a civil court decree dated 08.03.1991 passed in Civil Suit No.262 of 1991 titled Dilbagh Singh etc. versus Ishwar Singh etc. was acted upon, however, inadvertently, mutation No.2399 dated 28.08.1991 was sanctioned only in favour of the defendants, without reflecting the share of the plaintiffs. It was alleged that the defendants, taking undue advantage of the incorrect mutation entries, intended to alienate the suit property, thereby necessitating the institution of the suit.

3. Defendant No.1 contested the suit by filing a written statement, raising preliminary objections regarding maintainability, locus standi, and estoppel. On merits, it was admitted that the plaintiffs were earlier owners in possession of the suit land and that a valid civil court decree dated 08.03.1991 had been passed in favour of the defendants. It was asserted that, in pursuance thereof, the defendants had become owners in possession of the suit property. The allegation regarding incorrect sanction of mutation No.2399 was specifically denied, and it was contended that the mutation was rightly sanctioned in accordance with the decree. Dismissal of the suit was thus prayed for.

3.1. Defendants No.2 and 3 admitted the claim of the plaintiffs by filing their written statements on the basis of admission. Defendant No.4, being a minor, was represented through a Court Guardian appointed vide order dated 16.09.1999, who adopted the written statement filed on behalf of defendant No.1.

4. Subsequently, the plaintiffs moved an application for amendment of the plaint, which was allowed vide order dated 22.04.2002. By way of amendment, the nature of the suit was altered into one for possession, and it was pleaded that plaintiff No.1 was owner of $\frac{3}{4}$ share and plaintiff No.2 was owner of $\frac{1}{4}$ share in the suit property. It was further alleged that the decree dated 08.03.1991 had been obtained by the defendants through fraud, misrepresentation, and undue influence, and was thus illegal, void, and without jurisdiction. It was also pleaded that the said decree was bad for want of registration and that mutation No.2399 was not in conformity with the terms of the decree. Consequently, a prayer was

made for setting aside the decree and mutation and for delivery of possession.

4.1. Despite the amendment of the plaint, the defendants failed to file any amended written statement and were ultimately proceeded against ex parte vide order dated 11.09.2002. It is pertinent to note that although the plaintiffs had led evidence prior to the amendment, no further ex parte evidence was adduced subsequent thereto.

4.2. Upon consideration of the pleadings and evidence on record, the learned Civil Judge dismissed the suit. The appeal preferred against the said judgment and decree also met with the same fate, whereupon the appellants–plaintiffs have approached this Court by way of the present RSA, which was admitted for hearing vide order dated 15.01.2007.

4.3. Upon issuance of notice, the respondents entered appearance through counsel and contested the appeal.

5. I have heard learned counsel for the parties at considerable length and have bestowed anxious and thoughtful consideration upon their submissions, while carefully examining the pleadings, the evidence brought on record, and the concurrent findings returned by the Courts below.

6. With regard to the scope of the present second appeal, it is now a well-settled proposition of law that in the States of Punjab and Haryana, second appeals are to be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 of the Code of Civil Procedure. Reference in this regard may be made to the judgments of the Hon'ble Supreme Court in *Pankajakshi (Dead) through LRs and*

others versus Chandrika and others, (2016) 6 SCC 157, followed by *Kirodi (since deceased) through his LRs versus Ram Parkash and others, (2019) 11 SCC 317*, and *Satender and others versus Saroj and others, 2022 (12) Scale 92*. In view of the law so enunciated, no substantial question of law is required to be framed in the present appeal.

7. Learned counsel for the appellants has contended that the judgment and decree dated 08.03.1991 are illegal, null and void, being the result of fraud, undue influence, and misrepresentation. It is further contended that the Courts below have failed to properly appreciate the ex parte evidence on record and have rendered findings based on conjectures and surmises.

8. It is also urged that one of the plaintiffs in the earlier proceedings was a minor, and it is a settled principle of law that any contract entered into by a minor is void. In support of this contention, reliance has been placed upon the judgment of the Hon'ble Supreme Court in *Krishnaveni versus M.A. Shagul Hameed and another*, arising out of *SLP (C) No.23655 of 2019, wherein reliance was placed upon Mathai Mathai versus Joseph Mary alias Marykutty Joseph, (2015) 5 SCC 622*, wherein it was held as under:-

19. As per the Contract Act, 1872 it is clearly stated that for an agreement to become a contract, the parties must be competent to contract, wherein age of majority is a condition for competency. A deed of mortgage is a contract and we cannot hold that a mortgage in the name of a minor is valid, simply because it is in the interest of the minor unless she is represented by her natural guardian or guardian appointed by the court. The law cannot be read differently

for a minor who is a mortgagor and a minor who is a mortgagee as there are rights and liabilities in respect of the immovable property would flow out of such a contract on both of them. Therefore, this Court has to hold that the mortgage deed, Ex.A-1 is void ab initio in law and the appellant cannot claim any rights under it. Accordingly, the first part of first point is answered against the appellant.

8.1. It has been contended that a transaction entered into by a minor, even if ostensibly for his benefit, cannot be held to be legally enforceable, in view of the settled position of law.

8.2. It is further argued that the judgment and decree impugned in the present proceedings purport to create, for the first time, rights, title, and interest in immovable property of a value exceeding ₹100/- in favour of the respondent-defendants. Consequently, it is urged that such a decree necessarily required compulsory registration under the provisions of the Registration Act, and in the absence thereof, the same cannot confer any valid title upon the respondents. It has also been contended that the suit property was the self-acquired property of the appellant-plaintiffs, having been purchased through duly executed sale deeds, and since the respondents-defendants did not possess any antecedent title, no valid family settlement could have arisen inter se the parties.

9. Per contra, learned counsel appearing on behalf of the respondents-defendants has refuted the aforesaid submissions, contending that the findings recorded by the learned Courts below are well-reasoned and legally sustainable, suffering from neither illegality nor perversity. It is submitted that the appellants-plaintiffs have miserably failed to establish that the impugned judgment and decree is the result of fraud,

misrepresentation, or undue influence. It is further contended that neither the requisite particulars of fraud were pleaded with specificity nor were they substantiated through cogent evidence.

9.1. It is additionally argued that the impugned judgment and decree do not create any new right, title, or interest in favour of the respondents-defendants, but rather constitute a formal recognition and declaration of rights flowing from a prior family settlement arrived at in the year 1989, well before the institution of the suit. It has also been urged that the suit instituted by the appellants-plaintiffs is barred by limitation, and thus the appeal deserves outright dismissal.

10. There is no dispute inter se the parties that the suit property was the self-acquired property of the appellant-plaintiffs, having been purchased vide sale deeds Ex.P1 and Ex.P2. The learned First Appellate Court has, in paragraph No.28 of the impugned judgment, meticulously examined and adjudicated upon the plea raised by the appellants-plaintiffs regarding the alleged fraud and misrepresentation in relation to judgments and decrees Ex.P4 and Ex.P5.

11. Learned counsel for the appellants-plaintiffs has placed reliance upon the judgment of the Hon'ble Supreme Court in ***Bhoop Singh versus Ram Singh Major, AIR 1998 SC 196***, wherein it has been held that *“where a compromise decree confers right, title or interest in immovable property of the value of ₹100/- or upwards in favour of any party to the suit, the decree or order would require registration”*.

11.2. It is well settled that the applicability of the aforesaid principle is contingent upon the specific facts and circumstances of each

case, particularly as to whether the decree in question creates, for the first time, a right, title, or interest in immovable property of a value exceeding ₹100/- in favour of a party to the suit. In the case under consideration of the Hon'ble Apex Court, the decree itself expressly conferred such rights from the date of its passing. The relevant portion of the decree, as reproduced in paragraph No.2 of the said judgment, reads as under:-

It is ordered that a declaratory decree in respect of the property in suit fully detailed in the heading of the plaint to the effect that the plaintiff will be the owners in possession from today in lieu of the defendant after his death and the plaintiff deserves his name to be incorporated as such in the revenue papers, is granted in favour of the plaintiff against the defendant, in view of the written statement filed by the defendant admitting the claim of the plaintiff to be correct. Pleader's fee fixed Rs. 16/-. It is further ordered that there is no order as to costs.

11.3. Thus, in the aforesaid case, the decree itself was the source of creation of rights in immovable property in favour of the plaintiff for the first time, thereby necessitating compulsory registration. Learned counsel for the appellants has sought to draw parity with the present case by contending that the respondents-defendants herein did not possess any antecedent title in the suit property, which admittedly was the self-acquired property of the appellants-plaintiffs, having been purchased vide sale deeds Ex.P1 and Ex.P2. It is, therefore, argued that no valid family settlement could have been entered into between the parties.

11.4. However, this contention does not merit acceptance. The Hon'ble Supreme Court, in the celebrated judgment of ***Kale versus Deputy Director of Consolidation, (1976) 3 SCC 119***, has authoritatively

expounded the legal principles governing family settlements, holding as under:-

9. “The object of the arrangement is to protect the family from long-drawn litigation or perpetual strifes which mars the unity and solidarity of the family and create hatred and bad blood between the various members of the family. Today when we are striving to build up an egalitarian society and are trying for a complete reconstruction of the society, to maintain and uphold the unity and homogeneity of the family which ultimately results in the unification of the society and, therefore, of the entire country, is the prime need of the hour. A family arrangement by which the property is equitably divided between the various contenders so as to achieve an equal distribution of wealth instead of concentrating the same in the hands of a few is undoubtedly a milestone in the administration of social justice. That is why the term "family" has to be understood in a wider sense so as to include within its fold not only close relations or legal heirs but even those persons who may have some sort of antecedent title, a semblance of a claim or even if they have a spes successionis so that future disputes are sealed for ever and the family instead of fighting claims inter se and wasting time, money and energy on such fruitless or futile litigation is able to devote its attention to more constructive work in the larger interest of the country.
12. In light of the aforesaid authoritative pronouncement of the Hon’ble Apex Court, it is manifest that a family settlement is not circumscribed to parties possessing an existing legal title in the property. The law recognizes that such a settlement may validly be arrived at even amongst persons having a semblance of a claim, a possible expectancy, or

a mere chance of succession. It has been unequivocally held that even a prospective or contingent right to succeed to property constitutes a sufficient juridical basis for entering into a family arrangement.

12.1. In the present case, the respondents-defendants are the children and grandchild of the appellants-plaintiffs, and thus, by virtue of their relationship, they possessed a legitimate expectation or chance of succession in the event of intestate devolution. Consequently, the existence of such a potential claim furnishes an adequate legal foundation for the family settlement said to have been effected inter se the parties.

12.2. As regards the contention advanced on behalf of the appellants-plaintiffs that the judgment and decree Ex.P4 and Ex.P5 created rights, title, or interest in immovable property in favour of the respondents-defendants for the first time, a careful perusal of the pleadings in the earlier suit belies such an assertion. The plaint Ex.P3 clearly and categorically records that a family settlement had already been arrived at between the parties in the year 1989, pursuant to which the suit property stood partitioned into equal shares amongst them.

12.3. It is further evident from the record that the present appellants-plaintiffs had appeared in the said proceedings and had filed a written statement unequivocally admitting the claim of the plaintiffs therein. It was on the basis of such unequivocal admission that the decree dated 08.03.1991 came to be passed in favour of the respondents-defendants.

12.4. Therefore, it cannot be said that the said judgment and decree created any right, title, or interest in immovable property for the

first time. On the contrary, the decree merely formalized and recognized the pre-existing rights which had already accrued to the respondents-defendants pursuant to the family settlement effected in the year 1989. In such circumstances, the decree falls within the category of declaratory recognition of antecedent rights and, therefore, does not attract the requirement of compulsory registration.

12.5. The finding recorded by the learned First Appellate Court in this regard is founded upon a correct appreciation of the pleadings and a sound application of the settled principles of law, and thus does not warrant any interference by this Court.

12.6. Insofar as the contention of the appellants-plaintiffs that the judgment and decree dated 08.03.1991 is vitiated by fraud, misrepresentation, and undue influence is concerned, it is a settled principle of law that such allegations must be pleaded with specificity and particularity. The mandate of Order VI Rule 4 of the Code of Civil Procedure requires that full particulars of fraud, undue influence, and misrepresentation be clearly set out in the pleadings.

Order VI Rule 4 CPC lays down as under:-

Order VI, Rule 4 of the Code of Civil Procedure reads as under:-

"4. Particulars to be given where necessary In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading."

13. The Hon'ble Apex Court in ***Varanasaya Sanskrit Vishwavidyalaya v. Dr. Rajkishore Tripathi and Anr. AIR 1977 SC 615***, enunciated the following principle:-

We, however, think that the first Appellate Court had much too lightly believed that the plaintiff-appellant had been a victim of some kind of fraud, when no such particulars of that fraud or collusion were given as would satisfy the requirements of Order VI, Rule 4, Civil Procedure Code, which lays down:

"In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms, aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading".

We do not think it is enough to state in general terms that there was "collusion" without more particulars. This Court said in *Bishundeo Narain & Anr. v. Seogeni Rai & Ors. C)* (at p.556) as under:

"General allegations are insufficient even to amount to an averment of fraud of which any Court ought to take notice, however strong the language in which they are couched may be, and the same applies to undue influence and coercion".

14. The Hon'ble Supreme Court in ***Ranganayakamma & Anr. v. K.S. Prakash (D) by LRs & Ors. (2008) 15 SCC 673***, observed as follows:-

35. When a fraud is alleged, the particulars thereof are required to be pleaded. No particular of the alleged fraud or misrepresentation has been disclosed.

36. We have been taken through the averments made in the plaint. The plea of fraud is general in nature. It is vague. It was alleged by the plaintiffs that signatures were obtained on several papers on one pretext or the other and they had signed in good faith believing the representations made by the respondents, which according to them appeared to be fraudulent representation. When such representations were made, what was the nature of representation, who made the representations and what type of representations were made, have not been stated.

15. In the present case, it is evident from the record that, at the initial stage, the appellants-plaintiffs did not raise any allegation of fraud, misrepresentation, or undue influence against the respondents-defendants in relation to the procurement of judgment and decrees Ex.P4 and Ex.P5. On the contrary, in the original plaint, the appellants-plaintiffs expressly acknowledged and admitted the said judgment and decrees, thereby unequivocally recognizing that the same had been validly suffered by them.

15.1. It is only by way of subsequent amendment of the plaint that the appellants-plaintiffs sought to introduce allegations of impropriety. In paragraph No.2 of the amended plaint, it was averred *“that on false representation and due to undue influence of defendant plaintiff suffered decree”*, and in paragraph No.2-A it was pleaded that *“judgment and decree is wrong, illegal, collusive, fraudulent void without jurisdiction and is liable to be ignored”*.

16. A careful perusal of the amended plaint reveals that the allegations so introduced are wholly vague and bereft of the requisite

particulars mandated under Order VI Rule 4 of the Code of Civil Procedure. It is trite that allegations of fraud, misrepresentation, and undue influence must be pleaded with precision and specificity, detailing the manner, circumstances, and particulars thereof. A bald and omnibus assertion, devoid of material particulars, does not satisfy the statutory requirement.

16.1. Moreover, such allegations are required to be substantiated by cogent, convincing, and reliable evidence. In the present case, both the Courts below have concurrently recorded a finding that the appellants-plaintiffs failed to adduce any evidence whatsoever in support of the amended pleadings. It is of significance that, even after amendment of the plaint, the appellants-plaintiffs did not step into the witness box, nor did they lead any evidence to establish the alleged fraud, misrepresentation, or undue influence.

16.2. In the absence of any evidentiary foundation, the Courts below have rightly concluded that the appellants-plaintiffs have miserably failed to discharge the burden of proving that the judgment and decree dated 08.03.1991 is vitiated on the aforesaid grounds. The findings so recorded are based on a proper appreciation of the pleadings and evidence on record and constitute plausible conclusions, which do not call for any interference in the exercise of appellate jurisdiction.

16.3. It has, however, been further contended by learned counsel for the appellants-plaintiffs that the impugned judgment and decree are founded upon a family settlement in which defendant No.4, being a minor, was a party, and that any contract involving a minor is void ab initio under

the provisions of the Indian Contract Act, 1872. Reliance in this regard has been placed upon the judgment of the Hon'ble Apex Court in ***Mathai Mathai's case (supra)***, to contend that the said family settlement was incapable of being acted upon.

17. However, in its subsequent and more recent pronouncement, the Hon'ble Supreme Court has had occasion to consider the issue pertaining to transfer of immovable property in favour of a minor in ***Neelam Gupta versus Rajendra Kumar Gupta, 2024 INSC 769***, wherein it was held as under:-

Section 6(h) of the Transfer of Property Act provides inter alia, that no transfer can be made “to a person legally disqualified to be a transferee.” Section 7 of the Transfer of Property Act deals with persons competent to transfer. It provides that every person competent to contract is competent to transfer property to the extent and in the manner allowed and prescribed by any law for the time being in force. Section 11 of the Indian Contract Act, 1872, provides as to who are competent to contract and it provides that every person is competent to contract who is of the age of majority according to the law to which he is subject (of course the reference is to the Indian Majority Act, 1875) and who is of sound mind and is not disqualified from contracting by any law to which he is subject.

30. Though an agreement to sell is a contract of sale, going by its definition under Section 54 of the Transfer of Property Act, a sale cannot be said to be a contract. Sale, going by the definition thereunder, is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. The conjoint reading of all the aforesaid relevant provisions would undoubtedly go to show that they would not come in the way of transfer of an immovable property in favour of a

minor or in other words, they would invariably suggest that a minor can be a transferee though not a transferor of immovable property.

18. In view of the authoritative pronouncement of the Hon'ble Apex Court in its latest judgment, it is now well settled that a family settlement, wherein a minor member of the family is conferred a share in immovable property, cannot be rendered null and void merely on account of the minority of such beneficiary. The jurisprudential foundation of a family settlement is fundamentally distinct from that of a contractual arrangement inter se parties. A family settlement, being an arrangement intended to preserve harmony, avoid disputes, and secure equitable distribution of property within the family, cannot be invalidated solely on the ground that one or more beneficiaries had not attained the age of majority at the relevant time.

18.1. The contention raised on behalf of the appellants-plaintiffs in this regard, therefore, does not merit acceptance.

18.2. It has, however, been further contended by learned counsel for the appellants-plaintiffs that both the Courts below have failed to advert to the material aspect that, as per judgments and decrees Ex.P4 and Ex.P5, the respondents-defendants were entitled only to 1/6th share each in the suit property, whereas, at the time of sanctioning mutation dated 28.08.1991, the entire suit land was mutated in favour of the respondents-defendants. It is urged that the mutation ought to have been sanctioned strictly in conformity with the terms of the judgment and decree.

18.4. There is substance in the aforesaid contention. It is beyond dispute that mutation entries are required to reflect and conform to the rights declared under a valid judgment and decree. In the present case, the

mutation sanctioned on 28.08.1991 is evidently not in consonance with the terms of the judgment and decree dated 08.03.1991 passed in Civil Suit No.262 of 1991. Instead of mutating only the share falling to the respondents-defendants, the entire suit land has been reflected in their favour, which is clearly contrary to the decree and, therefore, unsustainable in law.

18.5. It is, however, equally well settled that mutation entries, being fiscal in nature, neither confer nor extinguish title. The respondents-defendants derive their title not from the mutation, but from the judgment and decree passed in Civil Suit No.262 of 1991. Consequently, any error in the mutation entries does not, ipso facto, divest the appellants-plaintiffs of their rightful share in the property.

18.6. It is further a settled proposition that there is no limitation for seeking possession on the basis of title. Upon suffering the judgment and decree dated 08.03.1991, the appellants-plaintiffs were left with 2/6th share in the suit property. To that extent, their title remains intact and enforceable.

19. Accordingly, suit land of the appellants-plaintiffs is decreed to the extent that they are entitled to possession of 2/6th share in the suit property and respondents-defendants are restrained from alienating the suit land in excess of their share. The appeal, therefore, deserves to be **partly allowed**, and the judgments and decrees of the Courts below are liable to be set aside to the aforesaid extent.

20. 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 stand disposed of by necessary implication. In view of the conclusions recorded hereinabove, no separate or independent orders are required to be passed in respect of such applications, as the same have been rendered wholly infructuous and academic.

17.04.2026
Gaurav Sorot

(VIRINDER AGGARWAL)
JUDGE

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