IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

101

1). RSA-2066-1995 (O&M)
Didar Singh (deceased) through LRs ...Appellant(s)

Vs.

Hardev Kaur (deceased) through LRs ...Respondent(s)

AND

2). RSA-2067-1995 (O&M)
Didar Singh (deceased) through LRs ...Appellant(s)

Vs.

Hardev Kaur (deceased) through LRs ...Respondent(s)

The date when the judgment is reserved:	12.03.2026
The date when the judgment is pronounced:	27.03.2026
The date when the judgment is uploaded on the website:	27.03.2026
Whether only operative part of the judgment is pronounced or whether the full judgment is pronounced:	Full judgment

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sukhandeep Singh, Advocate for the appellant(s).

Mr. Naresh Kaushal, Advocate for the respondent(s).

NIDHI GUPTA, J.

RSA-2066-1995 (O&M)

Present Second Appeal has been filed by the plaintiff against the judgment of reversal; whereby suit filed by the appellant for joint possession of suit land, although decreed by the learned Trial Court, has

been dismissed by the learned First Appellate Court; and Civil Appeal No. 58 dated 29.10.1988 filed by defendant No.1 has been allowed.

RSA-2067-1995 (O&M)

Present Second Appeal has been filed by the plaintiff against the judgment of reversal; whereby the suit filed by the appellant for joint possession of suit land, although decreed by the learned Trial Court, has been dismissed by the learned First Appellate Court; and Civil Appeal No. 27 dated 03.12.1988 filed by defendant No.2 has been allowed.

2. Both the above said Second Appeals are being decided by this common order as both emanate from the same impugned judgment and decree dated 10.03.1995, passed by the learned Additional District Judge, Ludhiana; both second appeals emanate from the same Civil Suit No. 75/334-RBT dated 13.03.1986 filed by the appellant; both the appeals are between the same parties; in respect of the same suit land; and facts and issues involved in both the appeals are identical. For the sake of convenience, facts are being drawn from **RSA-2066-1995** titled as **Didar Singh (deceased) through LRs vs. Hardev Kaur (deceased) through LRs.**

3. Brief facts of the case are that the appellant had filed civil suit for "*joint possession of suit land measuring 32K-5M out of land measuring 166K-2M situated at village Jatana Uncha, Tehsil Samrala, District Ludhiana by way of cancellation of Civil Suit decree dated 08.11.1985 passed by Ld. Sub-Judge Samrala in favour of defendant no.1 by defendant no.2 of the land measuring 16K-0M out of the total land measuring 122K13M as the plaintiff and defendant no.2 being the son &*

father constitute Hindu Joint Family/Coparcenary property and the decree is based on fraud/mis-representation, hence is void ab initio".

4. It was pleaded in the plaint that plaintiff is the son of defendant No.2 Jagir Singh son of Sucha Singh. Sucha Singh, grandfather of the plaintiff was owner of land measuring 166K 2M. Pursuant to a family arrangement, out of the said land measuring 166K 2M, Sucha Singh had retained land measuring 43K 8M with him; and had transferred the remaining land amongst his 5 sons equally i.e. 1/5th share each. Accordingly, out of the said land, defendant No.2 Jagir Singh had got land measuring 24K 12M. It was further averred that defendant No.2 and his brothers had purchased shares of land of their sister Jaswant Kaur with the income of the ancestral property. Thus, defendant No.2 was recorded as owner of land measuring 32K 5M out of joint Hindu family ancestral coparcenary property. It was further pleaded that Surjit Kaur, mother of the plaintiff had died on 10.10.1978 leaving behind plaintiff and defendant No.2. Therefore, plaintiff and defendant No.2 constitute joint Hindu family; and suit property is their coparcenary property; and that the plaintiff had acquired right in the same by virtue of his birth. It was further pleaded that Hardev Kaur/defendant No.1 is a Brahmin lady, who is married to one Prem Parkash. Prem Parkash is alive. Marriage of defendant No.1 with Prem Parkash has not been dissolved by decree of divorce. Therefore, defendant No.1 is legally wedded wife of Prem Parkash and has borne kids from the loins of Prem Parkash. Therefore, defendant No.1 has no relations with defendant No.2. Defendant No.1 had

previously filed Civil Suit No. 245 of 1985 against defendant No.2 claiming herself to be wife of defendant No.2 by misstating facts and also making false statement. In the said civil suit No. 245 of 1985, defendant No.2 had admitted the claim of defendant No.1; as a result of which collusive decree dated 08.11.1985 was passed, and 16K of suit land was transferred in the name of defendant No.1. It was contended that the said decree being collusive is void ab initio.

5. It was further pleaded that the plaintiff had also previously filed a Civil Suit No.223 of 1984 seeking permanent injunction restraining defendant No.2 Jagir Singh from alienating the suit property, which had been dismissed as withdrawn vide order dated 20.08.1985 on the statement made by Jagir Singh admitting the nature of the suit property as coparcenary, and undertaking that he will not alienate the same. Thus, Hardev Kaur, defendant No.1 and Jagir Singh, defendant No.2, had made a false statement to procure the Collusive Decree dated 8.11.1985, which was passed on fraud and misrepresentation. Accordingly, present suit for joint possession by way of cancellation of the said decree was filed on 13.03.1986.

6. Upon notice, defendants had appeared and filed separate written statements, although through same counsel, resisting the suit of the plaintiff. It was pleaded by the defendants that the disputed land was not joint Hindu family property nor copacenary and was self-acquired property of defendant No.2. It was further pleaded that defendant No.1 is the legally wedded wife of defendant No.2 as Kareva marriage had taken

place between them. It was further asserted that plaintiff had no locus to file the present suit and to challenge the decree dated 8.11.1985 as the plaintiff is living separately from defendant No.2 for the last 4 to 5 years and, therefore, it does not constitute joint Hindu family or coparcenary.

7. Plaintiff had filed joint replication to the separate written statements filed by the defendants; thereby denying the contentions raised in the written statements, and re-iterating those made in the plaint.

8. On the basis of the pleadings of the parties, following issues were framed by the Trial Court vide order dated 13.05.1986: -

> *"Issue No.1: Whether the suit is not maintainable in the present form ? OPP*
>
> *Issue No.2: Whether the plaintiff has no locus standi to challenge the decree, dated 8.11.1985, and whether the same is valid and legal? OPD.*
>
> *Issue No.3: Whether defendant No. 1 is the legally wedded wife of Jagir Singh? OPD.*
>
> *Issue No.4: Whether the suit is bad for non joinder of necessary parties? OPD.*
>
> *Issue No.5: Whether the plaintiff and defendant No. 2 form a joint Hindu Family and Co parcenary? OPP*
>
> *Issue No.6: Whether the suit land is joint Hindu Family Coparcenary property? If so its effect? OPP*
>
> *Issue No.7: Relief."*

9. Upon appraisal of the pleadings and the evidence led by the parties, the learned Sub Judge 1st Class, Samrala had decreed the suit of the plaintiff vide judgment and decree dated 07.09.1988. Against the said judgment, defendant No.1 Hardev Kaur had filed Civil Appeal No. 58 dated

29.10.1988 titled as **Hardev Kaur vs. Didar Singh and another**; and defendant No.2 had filed Civil Appeal No. 27 dated 03.12.1988 titled as **Jagir Singh vs. Didar Singh and another.** Vide the impugned judgment and decree dated 10.03.1995, the learned Additional District Judge, Ludhiana had accepted both the said appeals and reversed the Trial Court judgment. Hence, the present second appeals by the plaintiff.

10. It is *inter alia* submitted by learned counsel for the appellant that it is admitted fact on record that the plaintiff is the son of defendant No.2-Jagir Singh. Further it stands proved from judgment and decree Ex. D7 and Ex. D8 respectively, that Jagir Singh got land measuring 24 Kanal 13 marlas alongwith his brothers in a family settlement with his father Sucha Singh. From this it is proved that Sucha Singh did not treat the property in dispute as his own and treated the same to be Joint Hindu Family Property. Thus, the property which Sucha Singh gave in family settlement was Joint Hindu Family Property of which plaintiff was one of the coparcener. Thus, provisions of Section 8 of the Hindu Succession Act 1956 will not be applicable. The learned lower appellate court has not considered this aspect of the matter. The lower appellate Court has misread the plaint and evidence. In para 3 it specifically mentioned that property is inherited from father to son right from Uttam Singh as shown in the pedigree table reproduced in para 1 of the plaint.

11. Further plaintiff filed suit for permanent injunction restraining defendant Jagir Singh from alienating etc. the suit land as the suit land is ancestral property in the hands of Jagir Singh. The suit was

dismissed as withdrawn in view of the undertaking given by Jagir Singh that he will not alienate the suit land. Thus, it was admitted by Jagir Singh that suit property is Joint Hindu Family Property.

12. Learned counsel further submits that vide the decree dated 08.11.1985, Hardev Kaur had received 16K 0M out of the land measuring 122K 13M which Jagir Singh and his brother had got by way of family settlement. The learned trial Court has given a categoric finding that Hardev Kaur is not the wife of Jagir Singh; and this finding has not been upset by learned First Appellate Court. The decree dated 08.11.1985 has been obtained by mentioning that Hardev Kaur is the wife of Jagir Singh. In fact, this is the reason given by the defendant No.2 for giving the land to Hardev Kaur. Thus, the said decree has been obtained by playing fraud and mentioning incorrect facts which do not exist.

13. It is further submitted that Sucha Singh, father of Jagir Singh during his lifetime, had partitioned the property amongst his sons with the intention to give property to the family of each son. As such, the suit property was ancestral in the hands of Jagir Singh. It is contended that even as per the judgment and decree dated 02.02.1972 executed between Jagir Singh and his father Sucha Singh, it is gathered that the suit property was ancestral in nature.

14. Learned counsel vehemently submits that the ancestral nature of the suit property is proved from the statement made by Jagir Singh himself in the Civil Suit for permanent injunction bearing No.223 of 1984 filed by the appellant wherein Jagir Singh has admitted the nature of

the suit property as coparcenary and has also undertaken not to alienate the same. Consequentially, plaintiff has withdrawn the Civil Suit No. 223 of 1984 on 20.08.1985 Ex.P7 on the basis of the undertaking given by Jagir Singh and the statement Ex.P14 made by him not to alienate the suit property. It is contended that coparcenary nature of the suit property is also admitted from the evidence of the witnesses examined by the appellant. No doubt, the appellant had not produced any documentary evidence to establish the ancestral nature of the suit property, however in view of the voluminous oral evidence and witnesses examined by the plaintiff, it is undisputed fact on record that the suit property was proven to be Joint Hindu Family coparcenary. On the other hand, defendants had failed to lead any evidence whatsoever to discount the said voluminous evidence produced by the appellant. It is submitted that in fact, learned counsel representing the defendants has himself admitted the coparcenary nature of the suit property as noted in para 13 of the judgment dated 07.09.1988 passed by learned Trial Court. It is submitted that findings of the First Appellate Court holding that the suit land was not proved to be coparcenary in nature, is contrary to the evidence on record and passed in ignorance of the admission made by defendant No.2 himself. It therefore follows that the transfer of 16K of land made by Jagir Singh in favour of Hardev Kaur by way of collusive decree dated 08.11.1985 cannot be sustained.

15. Ld. Counsel argues that from the above facts, the locus of the plaintiff to maintain the present suit is also established. However, all of

the above said facts and evidence have been totally overlooked by Additional District Judge, Ludhiana, who has proceeded on conjectures and surmises by reading the evidence in piecemeal and by ignoring important evidence.

16. Learned counsel further submits that judgment of the learned First Appellate Court cannot be sustained also on account of the fact that no finding has been given in respect of marital status of defendant No.1. It is submitted that Prem Parkash husband of defendant No.1 had himself appeared as PW4 and had deposed that he is husband of defendant No.1 and is still married to her and that their marriage is not dissolved. It is contended that therefore, on the date of passing of impugned decree dated 08.11.1985, defendant no.1 was still legally married to Prem Parkash. The alleged Panchayati divorce Ex.D2 between defendant No.1 and Prem Parkash was categorically denied by Prem Prakash. It is submitted that evidence of PW4 when read alongwith undertaking of Jagir Singh to the effect that he will not alienate the suit land without legal necessity, amply establishes that suit land was ancestral in nature and that Jagir Singh was not competent to transfer the same by way of collusive decree in favour of defendant No.1. It is accordingly prayed that the present Appeal be allowed; and the impugned judgment and decree dated 10.03.1995 passed by learned First Appellate Court be set aside.

17. *Per contra,* learned counsel for the respondents opposes submissions made on behalf of the appellant and submits that very

detailed reasoning had been given by the Ld. Lower Appellate Court for setting aside the judgment and decree of the Ld. Court below. It is pointed out that the learned first Appellate Court has recorded in para 14 of its judgment that there is not iota of evidence on the record to prove the land held by Jagir Singh or Sucha Singh was ancestral/joint family or co-parcenery property. While passing the impugned judgment, ld. ADJ has also made reference to the judgment of the Hon'ble Supreme Court as well as Documents Ex. P15 that firstly no such admission qua nature of property has been made by Jagir Singh; thereupon in para 20 onwards the law has been referred to hold that even such type of admission is not binding on him under law, as according to section 31 of the Evidence Act the same are not the conclusive proof of the evidence. It is further recorded that Jagir Singh acquired the property partly under the court decree and partly by inheritance not as karta of his own family but as an heir being son of his father and the same cannot be said to ancestral or joint Hindu family property. It is also recorded that even if Hardev Kaur is not accepted to be legally wedded wife of Jagir Singh even then Jagir Singh being the sole owner of the suit property was competent to give a part of it to her for any reason and on any ground. It is well settled that every owner has a right to alienate his own property to any body he wishes. In nutshell admittedly the plaintiff/appellant being Dominus litus while pleading the property to be ancestral and Hindu joint family property was under legal obligation to prove by way of producing positive evidence in the form of documentation to prove the same. Having failed

to do so, the entire property, which has come to the legal heirs by way of judgment and decree Ex D7 dated 02.02.1972 and thereupon small piece of land by natural succession becomes the self acquired properties of the parties. Therefore, they are free to deal with the same without there being legal impediment.

18. It is further submitted that there is no ambiguity, even regarding the marital status of Hardev Kaur as the lower appellate court has recorded that decree of divorce dated 19.04.1990 was made in favour of Hardev Kaur by ld. ADJ Ludhiana. Even the marriage certificate dated 8.11.1994 issued by Registrar of Marriage depicting the marriage of Hardev Kaur and Jagir Singh is on record. Even the voter list depicting Hardev Kaur to be wife of Jagir Singh is also brought on record.

19. In the last it is submitted that the detailed/exhaustive judgment dated 10.03.1995 passed by Ld. ADJ is the complete answer for dismissing the suit where each and every aspect of the matter has been considered and taken care of. It is accordingly prayed that the present appeal is meritless and deserves to be dismissed.

20. No other argument is raised on behalf of the parties. I have heard learned counsel and given my thoughtful consideration to the rival submissions made on behalf of both the parties and perused the District Courts record in minute detail. I find merit in the submissions advanced on behalf of the appellant/plaintiff.

21. A perusal of the impugned judgment shows that the learned First Appellate Court has non-suited the appellant primarily on the ground

that the appellant was unable to prove that the suit land constitutes Joint Hindu Family /coparcenary property. However, in holding as above, learned First Appellate Court has ignored and/or misread vital evidence in this regard. It is firstly to be seen that in para 13 of the judgment dated 07.09.1988 passed by the learned Trial Court, it is categorically recorded that "*Sh. S.S.Guron Advocate, learned counsel for the defendants has argued that the present suit is not maintainable in the present form because no coparcenar or son is entitled to partition the land during the lifetime of his father. ……"* From the above submission of the defendants before the Trial Court it is clear that the two preliminary premises on which the suit is proceeding, have been admitted by the defendants *in-as-much* as it has been admitted that the suit land is coparcenary; and it has been argued/admitted that therefore, during the lifetime of father i.e. Jagir Singh, his son i.e. plaintiff Didar Singh could not have sought partition of the suit property. Thus, there is a clear-cut admission on behalf of the defendants themselves that the suit property being coparcenary could not be partitioned during the lifetime of the father. Needless to say, admission is the best evidence. It may also be clarified that the present suit is not for partition of the coparcenary or joint Hindu Family property. Rather, by way of the present suit, plaintiff has challenged the collusive decree whereby joint Hindu family coparcenary property had been transferred by defendant No.2 in favour of defendant No.1 without legal necessity. Thus, first Appellate Court has ignored, that even the arguments/submissions

put forth by the defendants is suggestive of the fact that the plaintiff and defendant no.2 are coparceners in joint Hindu family.

22. In holding that the suit land is not joint Hindu family coparcenary, learned First Appellate Court has ignored/misconstrued other very vital evidence in the form of admission made by defendant No.2 in the Civil Suit No. 223 dated 25.08.1984 titled as **Didar Singh vs. Jagir Singh** filed by the present plaintiff for permanent injunction restraining defendant/Jagir Singh from alienating and transferring the land in suit at village Jatana. It is to be noted that in the said suit, the plaintiff-appellant Didar Singh had filed an application under Order 39 Rule 2A CPC for initiating contempt proceedings against Jagir Singh for disobedience and breach of injunction. While dismissing the said application vide order dated 28.11.1986 **Ex.P9**, the learned Sub Judge First Class Samrala had recorded that the said contempt application was not maintainable as "*The record however shows that on 20.08.1985, defendant had made statement that he would not alienate the land in the suit and on the said statement of the defendant, the plaintiff has withdrawn the suit.*" In the aforesaid suit, defendant No. 2 Jagir Singh has made a statement dated 20.8.1985 **Ex.P14**, wherein he has admitted the claim of the plaintiff and has undertaken that he will not alienate the suit property '*without legal necessity*.' Statement dated 20.08.1985 Ex.P14 reads as follows: -

> *"Statements of the parties were recorded. The defendant has made a statement that he shall not alienate the suit land through sale, mortgage, etc., without legal necessity. In view of this undertaking given by the defendant, the plaintiff has*

withdrawn the suit. Accordingly, the suit is dismissed as withdrawn. File be consigned to the Record Room. The parties are left to bear their own costs."

23. On the basis of the said statement, the said Civil Suit No. 223 of 1984 was dismissed as withdrawn by the Civil Judge vide judgment/decree dated 20.08.1985 **Ex.P10**. Needless to say, Jagir Singh undertook not to alienate Suit land '*without legal necessity',* only because suit land was ancestral. It is but trite that in no other eventuality, will the occasion arise for such an undertaking of 'legal necessity', unless and until the suit land is ancestral.

24. Thus, the reasoning of learned First Appellate Court to the effect that in the said statement Jagir Singh "*never admitted ancestral, joint Hindu family or coparcenary nature of the property in his hand"*, is wholly incorrect. In this regard, the learned First Appellate Court has also ignored the fact that the statement dated 20.8.1985 was made by Jagir Singh in context of the suit land as mentioned in head note of the plaint of Civil Suit No. 223 of 1984. In the head note of the said Civil Suit No. 223 of 1984 plaintiff has categorically averred that the suit land is joint Hindu family and coparcenary. In the Head note of the CS-223-1984 prayer is for *"suit for permanent injunction restraining the defendant from alienating and transferring the land in suit by way of sale, mortgage, gift and in any other manner* ***as the suit property is ancestral qua property in the hands of Jagir Singh and forms Joint Hindu Family property being father and son"***. The entire headnote of Civil Suit No. 223 of 1984 reads as follows:-

> *"Suit for Permanent Injunction restraining the defendant from alienating and transferring the land in suit by way of sale, mortgage. by way of gift and in any other way the land measuring 24K-I0M out of total land 122K-13M i.e. 1/5th share out of total land comprised in Khewat No. 42 Khatauni No.65, Rect. No. 36 Killa Nos. 2/2(5-4), 3(8-0), 8(8-0), 9(8-0), 10(8-0), 11(8-0), 12(8-0), 13(8-0), 18(8-0), 19(8-0), 20(8-0), Rect, No. 37 Kills Nos. 6(8-0), 7(7-3), 8(0-7), 14(3-2), 15(8-0), 16(7-0), 17(0-3), 25(3-14) as per jamabandi for the years 1980-81, H.B. 298 situated at Village:Jatana Ucha Tehsil: Samrala Distt. Ludhiana as the suit property is ancestral qua property in the hands of Jagir Singh and forms a Joint Hindu Family property and the parties forms a Joint Hindu Family being the son and father."*
>
> (Emphasis added)

25. Thus, the First Appellate Court has totally failed to appreciate that in the Civil Suit No. 223 of 1984 plaintiff has sought relief of permanent injunction in respect of ancestral property; which claim has been admitted by the defendant no.2 vide his statement dated 20.8.1985 **Ex.P14;** whereby he has undertaken not to dispose of the suit property without legal necessity. Clearly, therefore, above observation of the First Appellate Court is based on patent misreading of the evidence.

26. Learned First Appellate Court has also failed to deal with the factum that Nirmal Singh real brother of Jagir Singh had appeared as PW3 and had also proved that some of the properties had been inherited by the brothers after death of their father Sucha Singh. PW3 had further stated that "*Jagir Singh is my real brother. Jagir Singh and all of us*

brothers have received land from our father. It is ancestral property of our father.". Learned first Appellate Court has also ignored that PW2 Bhupinder Singh Lambardar has also deposed to the same effect that suit land was ancestral in nature. PW2, as Lambardar of village of parties also admitted in his deposition '*that plaintiff and defendant no.2 are joint and no partition of their properties had taken place*.'

27. From the above evidence, it is clear that the suit property was ancestral in nature and could therefore, not have been transferred by Jagir Singh in favour of Hardev Kaur without legal necessity, and benefit of estate.

28. Relevant findings of the Trial Court in this regard are contained in para 15 of the judgment dated 07.09.1988, which reads as under: -

> *"15. It is no deny the fact that Didar Singh, plaintiff is the only son of Jagir Singh, defendant No. 2. The contention of the learned Counsel for the defendants is that Jagir Singh defendant No. 2 had separate his son Didar Singh in cultivation, mess and residence, and as such, he is no longer the member of the Joint Hindu Family of the defendant No. 2. Didar Singh has admitted that a house was given to him for residence. There is not an iota of evidence to prove that an inch out of Joint Hindu Family was given to Didar Singh. This fact was admitted by Jagir Singh, defendant No. 2 who stated that no document regarding partition was executed. The alleged partition took place some 12/13 years ago as deposed by Jagir Singh in his examination in chief while appearing as D.W.3 in the opening lines. He was examined on*

13.10.1987. Thus, the year of the alleged partition comes to 74-75. In the year of 1974-75, the mother of Didar Singh was alive. Perusal of her death certificate Ex. P7 reveals that she died on 10.10.1978 at the village of the parties. This means that the alleged partition took place during the life time of the mother of the plaintiff. But according to Jagir Singh, defendant No. 1 land held by the mother of the plaintiff was given to him, which land is situated at village Tunghrali, This statement of Jagir Singh, defendant No. 1 is incorrect. Jagir Singh, defendant No. 1 was married with Surjit Kaur at village Tunghrali, Didar Singh plaintiff inherited the estate of his mother on her death as one of the legal heir of Surjit Kaur deceased. Didar Singh plaintiff inherited that land in his own right. The said land had nothing to do with the Joint Hindu Family Property of Jagir Singh and his son Didar Singh, because Surjit Kaur inherited that land from her parents. This fact is proved from the Jamabandi for the year 1981-82 Ex. D13 and also from document Ex. D14 Plaintiff has a joint vote with Jagir Singh, defendant No. 1 as is evident from voter's list Ex. P8. A voter's list is prepared by a public official in the discharge of his duty and is presumed to be correct. A mere separate residence by one of the coparcener is not sufficient to hold that the coparcener living separately was separated from the Joint Hindu Family unless proved by cogent and convincing evidence. In AIR 1987 Madra 24, it has been held that separate enjoyment for sake of convenience is no partition. In AIR 1971 Supreme Court 1962 it has been held that the presumption that members of Hindu Family are joint is stronger in a case of a father and his sons. One who pleads that a member has separated himself from the family has to prove it satisfactorily. There is no evidence that the plaintiff was separated by Jagir Singh, and was given share out of the

joint Hindu Family property. Didar Singh, plaintiff has filed a civil suit No. 223 of 1984 on 25.8.84 against his father Jagir Singh, defendant seeking a decree for permanent injunction to restrain Jagir Singh, defendant from alienating the disputed property by way of sale or gift as the suit property is ancestral qua the disputed property in the hands of Jagir Singh and forms Joint Hindu Family property and the parties form a joint Hindu Family being the son and father as is evident from Ex. P10. copy of orders of the court of Shri K.S. Bhullar, Sub Judge Ist Class, Samrala dated 20.8.1985. Jagir Singh, defendant appeared in the above suit of the plaintiff on 20.8.85 and made a statement admitting the Claim of Didar Singh vide his statement certified copy of which is Ex. P14, and Ex. P15. Had the plaintiff been not joint with the defendant No. 2, he would not have made such a statement on 20.8.85. He would have definitely stated that he had separated Didar Singh and had not admitted him to be a member of his joint family and had also not admitted the nature of the property as co parcenery and Joint Hindu family property Didar Singh has stated that his father Jagir Singh inherited the property from his father and also got the same through a decree from his father-in-a family settlement as is evident from Ex. D7. Nirmal Singh PW3 is the real brother of Jagir Singh, defendant No. 1 He has also proved that Jagir Singh and he himself and their other brothers inherited some of the properties from their father after the death of S. Sucha Singh, their father. He has also stated that they also got the land in a family settlement from their father through a decree of the court which was the ancestral property of their father. Bhupinder Singh PW2 is a lambardar of the village of the parties. He has deposed that the plaintiff and defendant No. 1 are joint and no partition of their properties had taken

place. In view of my discussion, I hold that the plaintiff and defendant No. 2 forms a joint Hindu Family and coparcenary, and the suit land is their Joint Hindu Family and coparcenary property. All these three issues are, therefore, decided in favour of the plaintiff and against the defendants."

29. Furthermore, Jagir Singh and his brothers had brought Civil Suit no. 37 of 1972 for possession of land measuring 122K 13M in equal shares by way of family arrangement against their father Sucha Singh. The said suit was decreed uncontested in favour of the plaintiff therein i.e. Jagir Singh vide judgment and decree dated 02.02.1972 **Ex.D7** and **Ex.D-8** respectively; pursuant to which Jagir Singh had got 24K 10M of land. It is the claim of the plaintiff that the said land was ancestral in the hands of Jagir Singh. The said fact has been admitted by PW3 Nirmal Singh brother of Jagir Singh that this land measuring 24K 10M was ancestral. In this regard, the relevant findings of the First Appellate Court in the impugned judgment dated 10.03.1995, are as under: -

"16. No doubt during the life time of Sucha Singh, his sons including the present appellant Jagir Singh brought suit for possession of land measuring 122 Kanals 13 Marlas by alleging that it had been given to them in equal shares about 2-1/2 years back before the filing of that suit No. 37 of 1972, by way of family agreement and that suit was not contested by Sucha Singh. He admitted the claim of his sons. The court decreed that suit vide Judgment and decree dated 2.2.1972, the copy of which is Ex. D-7. But from this, no such inference can be drawn that property in the hands of Sucha Singh was ancestral or of Joint Hindu family. He even could give his self

acquired property under the family settlement, to his sons. The copy of the plaint filed by his sons including appellant Jagir Singh against Sucha Singh, has not been brought on the file in evidence. Moreover, even no copy of mutation has been produced to prove the acquisition of the suit land by Sucha Singh from his father or grand father.

17. Undoubtedly, appellant Jagir Singh got 24 kanals 10 Marlas of land under the court Judgment and decree copies of which are Ex. D7 and Ex. D8 dated 2.2.72 The mutation Ex. D12 dated 21.11.76 was also sanctioned in his favour on the basis of that Judgment and decree. The remaining 43 Kanals 9 marlas property has been acquired by him by inheritance on the death of his father Sucha Singh which took place on 13.8.84 and mutation was sanctioned in his favour on 13-9-1984. The property acquired by him under the court decree cannot be held to be ancestral in his hands qua his son, the respondent No. 1. Moreover, this acquisition has been made by him on 2.2.72 when the decree was passed in his favour and in favour of his other brothers, after enforcement of Hindu Succession Act. He got this property as a son under the family arrangement and not as Karta of his own family consisting of him his son, respondent. He otherwise was to get this property as an heir being son on the death of his father Sucha Singh, under section 8 of the Hindu Succession Act.

18. The part of the property as observed above, measuring 43 kanals 9 marlas had been acquired by appellant Jagir Singh by inheritance on the death of his father Sucha Singh on 13.8.1984, after enforcement of Hindu Succession Act. This acquisition has been made by him only as an heir being son of his father under Section 8 of the Hindu Succession Act and not as Karta of his own family.

19. It is now well settled that property acquired by a Hindu male from his own father after the enforcement of Hindu Succession Act as an heir of Class I under Section 8 of the Hindu Succession Act would be his self acquired and not ancestral or Joint Hindu Family property in his hand qua his own son. In this context reference may be made to ***Commissioner of Wealth tax, Kanpur etc. etc. versus xxxxxxxx Chander Sen etc. AIR 1986 Supreme Court 1753*** *wherein the Apex Court had been pleased to observe as under:-*

"Under the Hindu law the son would inherit the property of his father as Karta of his own family. But the Hindu Succession Act has modified the rule of succession. The Act lays down the general rules of succession in the case of males. The first rule is that the property of a male Hindu dying intestate shall devolve according to the provisions of Chapter II and Class 7 of the Schedule provides that if there is a male heir of Class I then upon the heirs mentioned in Class I of the Schedule. In interpreting provisions of Act it is necessary to bear in mind the preamble to the Hindu Succession Act. The Preamble states that if was an Act to amend and modify the law relating to intestate succession among Hindus. In view of the Preamble to the Act i.e. that to modify the law, it is not possible when Schedule indicates heirs in class I and only includes son and does not include sons's son but does include son of a predeceased son to say that when son inherits the property in the situation contemplated by S.B. he takes it as karta of his own undivided family. If a contrary view is taken it would mean that though the son of a predeceased son and not the son of a son who is intended to be excluded under S.S. to inherit, the letter could by applying the old Hindu Law get a right by birth of the said property contrary to the scheme outlined in S.B"

Therefore, the suit land held by appellant Jagir Singh cannot be legally said to be ancestral, Joint Hindu family or coparcenary property qua the respondent No. 1/plaintiff. No

doubt earlier to the filing of the present suit, respondent no. 1 brought one suit for permanent injunction on 25.8.1984 for restraining his father, appellant Jagir Singh from alienating the suit property by alleging it to be ancestral, joint Hindu family and coparcenary property to any third person and obtained initially even temporary injunction against him. The copy of the order is Ex. P12 dated 30.7.1986. However that injunction later on was vacated vide order dated 13.11.1986 copy of which is Ex. P11. In that suit appellant Jagir Singh, no doubt made statement, copy of which is Ex. P-15, But in that statement he never admitted the ancestral, Joint Hindu family or coparcenary nature of the property in his hand. He simply stated as is evident from the reading of his statement that he had not entered into any agreement for sale or mortgage regarding the land No suit against him on the basis of any agreement of sale is pending. He had got the suit land from his father through suit and that his father got the land from his own father through gift. This statement of his does not contain any admission on his part as contended by the learned counsel for the respondent no. 1. that the property in his hand is coparcenary or Joint Hindu Family property and as such is not of any help to the respondent No. 1 for proving the ancestral, coparcenary or Joint Hindu Family nature of the property."

30. Clearly therefore, the above findings/reasoning of the first Appellate Court are based on a piecemeal or misreading of the evidence on record. The learned first Appellate Court has totally ignored the evidence discussed hereinabove; including the headnote of the CS-223-1984 for permanent injunction brought by the plaintiff against Jagir Singh;

and the statement of Jagir Singh in the said CS-223-1984; as also the evidence of PW3 Nirmal Singh who stated that they had got the land in a family settlement from their father through a Court decree "*which was ancestral property of their father.*"

31. In fact, evidence of PW2 Bhupinder Singh Numberdar and PW3 Nirmal Singh has not been discussed at all by the first Appellate Court; and headnote, prayer-clause, and statement of Jagir Singh in CS-223-1984 have been totally misread. First Appellate Court has also ignored the admission made by ld. counsel for the respondents as noted in para 13 of the trial court judgment that the suit land being coparcenary cannot be partitioned during lifetime of Jagir Singh.

32. It needs no belabouring that first appeal is a valuable right being a continuation of the original proceedings. As such, the first Appellate Court is called upon to fully review the evidence and correct any errors of law and fact. Under Order 41 Rule 31 CPC it is incumbent upon the Court of first appeal to analyse all evidence in detail and give reasons for accepting or rejecting the same. However, in the present case, as noted above the first Appellate Court has ignored/misread vital evidence. The Hon'ble Supreme Court in case of **Somakka v. K.P. Basavaraj (SC) : Law Finder Doc Id # 1999232**, has held that:

> *"29.4 Very recently, this Court in 2022 (to which one of us, Brother Abdul Nazeer, J. was a member) in* ***Manjual and others v. Shyamsundar and Others, (2022) 3 SCC 90,*** *reiterated the same view in para 8 thereof, which is reproduced hereunder:*

"8. section 96 of the Code of Civil Procedure, 1908 (for short, `CPC') provides for filing of an appeal from the decree passed by a court of original jurisdiction. Order 41, Rule 31 of the CPC provides the guidelines to the appellate court for deciding the appeal. This rule mandates that the judgment of the appellate court shall state

(a) points for determination;

(b) the decision thereon;

(c) the reasons for the decision; and

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.

Thus, the appellate court has the jurisdiction to reverse or affirm the findings of the Trial Court. It is settled law that an appeal is a continuation of the original proceedings. The appellate court's jurisdiction involves a rehearing of appeal on questions of law as well as fact. The first appeal is a valuable right, and, at that stage, all questions of fact and law decided by the Trial Court are open for re-consideration. The judgment of the appellate court must, therefore, reflect conscious application of mind and must record the court's findings, supported by reasons for its decision in respect of all the issues, along with the contentions put forth and pressed by the parties. Needless to say, the first appellate court is required to comply with the requirements of Order 41, Rule 31CPC and nonobservance of these requirements lead to infirmity in the judgment."

30. From the above settled legal principles on the duty, scope and powers of the First Appellate Court, we are of the firm view and fully convinced that the High Court committed a serious error in neither forming the points for determination nor considering the evidence on record, in particular which had been relied upon by the Trial Court. The impugned judgment of the High Court is thus unsustainable in law and liable to be set aside.

31. The next question which arises is that where the judgment of the Appellate Court is being set aside on the ground of non-

consideration of the evidence on record, the matter would normally be required to be remanded to the First Appellate Court, whether in the facts and circumstances this case requires a remand. In the facts and circumstances of the present case, we find that the suit was instituted in the year 1991, more than three decades ago; the evidence discussed by the Trial Court is neither disputed nor demolished by the learned Counsel for the respondent. As such, we do not find any good reason to remand the matter to the High Court. We are of the view that in order to put a quietus to the litigation and relieve the parties from any further harassment, we set aside the judgment of the High Court and confirm the judgment and decree of the Trial Court to the extent it relates to item no. 3 of Schedule `A' property described in the plaint, i.e. to say that the appellant and the respondent would be entitled to V share each in the said property. The Trial Court shall accordingly proceed to draw out the proceedings for final decree of partition.

32. The appeal is accordingly allowed. There shall be no order as to costs."

33. Thus, judgment of the first Appellate Court cannot be sustained for the above reasons.

34. It has further been contended on behalf of the respondents that the impugned transfer of 16K 0M had been made *inter se* the defendants. It has been contended that the said transfer has been made by defendant No.2 in favour of defendant No.1 as the defendant No.1 was a wife of defendant no.2 through kareva marriage. Again, the ld. First Appellate Court has totally misread the evidence regarding this aspect of the matter; and has wholly, completely, and erroneously held that consent

decree dated 8.11.1985 was valid as decree of divorce dated 19.04.1990 was made in favour of Hardev Kaur; and marriage certificate dated 8.11.1994 was issued by Registrar of Marriage depicting the marriage of Hardev Kaur and Jagir Singh is on record. However, these are all subsequent events. It is to be seen that at the relevant time, viz at the time of passing of the impugned consent decree dated 8.11.1985, defendant no.1 Hardev Kaur was still legally wedded wife of Prem Prakash.

35. The first Appellate Court has not considered that the impugned consent decree dated 08.11.1985 **(Ex.D-9/Ex.D-10)** passed by Ld. Sub-Judge Samrala in CS-245-1985 is a result of fraud/misrepresentation committed upon the Court of law; and hence, amounts to nullity. The first Appellate Court has ignored that defendant No.1 had filed Civil Suit No. 245 of 1985 titled as **Hardev Kaur vs. Jagir Singh** against defendant No.2 for declaration *claiming herself to be the wife of Jagir Singh and thereby laying claim to the suit land on the basis of an Agreement dated 13.07.1985.* The said claim of defendant no.1 was completely incorrect as at time of filing of CS-245-1985, Hardev Kaur was very much still legally wedded to Prem Prakash.

36. Further, the suit/decree dated 8.11.1985 is collusive which is proved from the fact that in the said suit, Jagir Singh had filed written statement admitting the claim of defendant No.1. Resultantly, vide the impugned judgment and decree dated 08.11.1985 **Ex.D9** and **Ex.D10** respectively, suit of Hardev Kaur was decreed as a result of which 16K of suit land was transferred in her name. Thus, the decree dated 8.11.1985 is based on the incorrect premise that Hardev Kaur is the wife of Jagir Singh.

37. The first Appellate court has totally ignored the fact that Prem Parkash husband of defendant No. 1 had appeared as PW4 and had himself deposed that he is husband of defendant No.1 and still married to her and that their marriage is not dissolved. The alleged Panchayati divorce dated 9.8.1983 **Ex.D2** between defendant No.1 and Prem Parkash was categorically denied. PW4 has clearly stated that defendant No.1 is married to him; she had given birth to his 4 children; that his marriage with defendant no. 1 Hardev Kaur has not been dissolved so far and she is still his wife; that he had not signed the alleged writing Ex.D2; and further proved his affidavit Ex.P6. Therefore, on the date of passing of impugned decree dated 08.11.1985, defendant No.1 was still legally married to Prem Parkash. The decree of divorce dated 19.04.1990 made in favour of Hardev Kaur; and marriage certificate dated 8.11.1994 have all been obtained subsequently. Thus, consent decree dated 8.11.1985 was obtained by the defendants on the basis of a blatant misrepresentation by them.

38. Furthermore, Defendants have relied upon the writing dated 9.8.1983/**Ex.D2**, which is the alleged Panchayati divorce between Prem Prakash and Hardev Kaur, reduced in writing before Panchayat to contend that Hardev Kaur is not wife of Prem Parkash. However, as per provisions of Hindu Marriage Act, 1955, such writing has no legal binding. Moreover, Jagir Singh was member panchayat at the relevant time and Prem Parkash did not scribe/witness the said alleged dissolution deed. It is relevant to note that defendant No.2 while appearing as DW3 has admitted in his cross-examination that at the time of Panchayati writing Ex.D2, he was a member

of Panchayat. This factor casts a serious shadow of doubt on the credence of the Panchayati writing Ex.D2. Even otherwise, there is no legal value to the writing Ex.D2 as the marriage between Hardev Kaur and Jagir Singh had not been legally dissolved by any Court of law. As such, learned Trial Court had correctly concluded that Prem Parkash husband of Hardev Kaur is alive and lives in the village of the parties and that marriage between them is still subsisting and that the alleged document Ex.D2 is a forged document as Prem Parkash has denied his signatures on the same, which was prepared by Jagir Singh Panch with the connivance of Panchayat. Thus, Hardev Kaur was not found to be legally wedded wife of Jagir Singh as alleged. However, this aspect of the matter has not at all been dealt with by the first Appellate Court. As such, the impugned judgment is again hit by Order 41 Rule 31 CPC.

39. Contention of the respondents that plaintiff had no locus to challenge the decree dated 08.11.1985 is also misplaced in view of the fact that once the suit land is proved to be Joint Hindu Family and coparcenary property, plaintiff has a right in the same by virtue of his birth. Therefore, the plaintiff being coparcener has a right to challenge the alienation.

40. Last but not the least, vide the impugned decree dated 08.11.1985 **(Ex.D-9/Ex.D-10)** right/title/interest in 16K 0M land was created in favour of defendant No.1 for the first time and thus, the said decree was liable required to be compulsorily registered ***u/s 54 of the Transfer of Property Act*** and also ***u/s 17 of the Indian Registration Act***.

The said decree has no binding effect in the absence of compliance of aforesaid provisions of law. Further, the parties had not disclosed their true status before the Court of law and misrepresented themselves as husband/wife to claim collusive decree. Thus, as observed by Ld. Trial Court that as per ***Section 40 r/w S.41 & 42 of the Indian Evidence Act***, even a third party can show that the said judgment was obtained by fraud and collusion. However, even these aspects of the matter have not been considered by the learned first Appellate Court while passing the impugned judgment.

41. In this regard, relevant observations made by the ld. Trial Court are in para 20 of the judgment dated 07.09.1988, are as under: -

> *"20. Next question to be determined is as to whether the plaintiff has locus standi to challenge the decree dated 8.11.1985 suffered by his father, Jagir Singh, defendant No. 2 and in favour of Hardev Kaur, defendant No. 1 At the very outset, it is mentioned here that vide my detailed discussion on issue No. 1,5 and 6 it has been held that Didar Singh, plaintiff and S. Jagir Singh, defendant No. 2 forms a joint Hindu Family being the son and father respectively, and it has also been held that the suit land is their Joint Hindu Family and coparcenary property. Thus, I need not repeat the discussion on the above point. Each coparcener is entitled to joint possession and enjoyment of the family property. If any coparcener is excluded from the joint possession or enjoyment. he is entitled to enforce his right by a suit. In* ***A.I.R. 1988 Hon'ble Supreme Court page 576, Sunil Kumar and another Versus Ram Parkash and others,*** *has been held that a coparcener has got a right to challenge the alienation*

and getting it set aside in a suit subsequent to the completion of the alienation, but a coparcener has got no right to seek an injunction to restrain the karta from alienation of the property for legal necessity. Thus, in view of the above judgment, Didar Singh plaintiff, could challenge the alienation through the present suit. A certified copy of the judgment and decree under attack is Ex. D9 and D.10. A perusal of the judgment Ex. D9 reveals that Hardev Kaur alleging herself to be the wife of Jagir Singh, filed the suit for declaration on the basis of an agreement dated 13.7.1985 claiming the suit land. A dispute arose between them as per Ex. D9, and the said dispute was resolved through the intervention of the relatives of the parties, Jagir Singh, defendant filed written statement admitting the claim of Hardev Kaur and also made a statement to that effect. This led to the passing of the impugned decree and judgment, certified copies of which are ex. D10 and D9 respectively. Section 40 read with Section 44 of the India Evidence Act, 1988 makes it evident that Under Section 40 the previous judgments are relevant to bar a second suit or trial.

That would ordinarily be between the same parties. It is under Section 41 and 42 of the Indian Evidence Act, 1908 when the judgment is relevant that even a third party can show that the same was delivered by a court not competent to deliver it or that it was obtained by fraud or collusion. Next question will be as to what is collusion. Collusion in judicial proceedings is a secret arrangement between two persons that one should institute a suit against the other in order to obtain the decision of a judicial court for some sinister purpose. It was so held by the Hon'ble Supreme Court in AIR 1964 page 1839 *in a reported case titled as* ***'Rup Chand Gupta Vs. Raghvanshi (Private) Ltd. and another.*** *Thus, by*

applying the above law to the facts of the present case, it can be safely said that Jagir Singh, defendant No. 1 simply transferred the disputed property in the name of Hardev Kaur defendant No. 1 by mis-stating that they are husband and wife. The said transfer amounts to a gift of immoveable property for a consideration not permitted under the law. Transfer of immoveable property of the value of Rs.100/- or upwards can only be made through a registered documents, which has not been done in the present case. Thus, the decree under attack is also violative of the provisions of Section 54 of the Transfer of Property Act and also under Section 17 of the Indian Registration Act, 1908. Hardev Kaur, defendant No. 1 cannot claim herself to be the owner of the disputed property on the basis of the impugned decree Ex. D10 alone even there was no fraud or collusion in obtaining the decree. Besides, the above, in the present case, it has been fully proved that Hardev Kaur, defendant No. 1 and Jagir Singh, defendant No. 2 colluded with each other to deprive Didar Singh, plaintiff of his right in the disputed land. They mis stated the true facts regarding their relationship with each other before the court which passed the decree under attack.

In view of my above discussion, it is held that Hardev Kaur defendant No. 1 is not the legally wedded wife of Jagir Singh defendant No. 2 and the decree dated 8.11.1985 is the result of fraud and collusion between the them. Both these issues are, therefore, decided against the defendants and in favour of the plaintiff."

42. Thus, the Ld. First Appellate Court has reversed the findings on Issue-1 merely on whims and fancies and has not at all dealt with all the aforesaid findings/observations of the Ld. Trial Court.

43. In view of the above discussion, the present Regular Second Appeals are **allowed**; and the impugned judgment and decree dated 10.03.1995 passed by learned Additional District Judge, Ludhiana is set aside; and the judgment and decree dated 07.09.1988 passed by learned Sub Judge 1st Class, Samrala is restored. Resultantly, the suit of the plaintiff stands decreed.

44. Pending applications, if any, stand disposed of.

27.03.2026 **(NIDHI GUPTA)**
Divyanshi **JUDGE**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No