2026:PHHC:116886

S. No.103

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA No.1834 of 1995 (O&M) and
RSA No.2084 of 1995 9O&M)
Date of Decision:20.08.2026

1. RSA No.1834 of 1995 (O&M)

Gurdev Singh (since deceased) through LRs and others ....Appellants
Vs.
Shri Jagtar Singh (since deceased) through LRs .....Respondent

2. FAO No.2084 of 1995 (O&M)

Shri Jagtar Singh (since deceased) through LRs ....Appellants
Vs.
Gurdev Singh (since deceased) through LRs and others ....Respondents

CORAM:- HON'BLE MR. JUSTICE YASHVIR SINGH RATHOR

Present:- Mr. G.S. Dhaliwal, Advocate for the appellants
in RSA No.1834 of1995 and for the respondents
in RSA No.2084 of 1995.

Mr. M.L. Sarin, Senior Advocate with
Ms. Hemani Sarin, Advocate for the appellants
in RSA No.2084 of 1995 and for the respondents
in RSA No.1834 of 1995.

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Yashvir Singh Rathor, J. (Oral)

1. Both these appeals have been instituted against the judgment and decree dated 31.05.1995 passed by Additional District Judge, Ludhiana vide which the appeal instituted by the plaintiff- appellant against the judgment and decree dated 19.05.1992 passed by the Sub Judge III Class, Ludhiana was partly accepted and judgment and decree passed by the trial Court was modified accordingly.

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2. By way of Civil Suit bearing No.159 dated 13.08.1991, plaintiff-Jagtar Singh had challenged the sale deed dated 13.06.1991 executed by his father- defendant No.1- Gurdev Singh in favour of defendants No.3 to 5 who are sons of defendant No.2- Harbhajan Singh, brother of plaintiff vide which 40 kanals land was sold in favour of defendants No.3 to 5. Case of plaintiff is that the suit property was ancestral, joint Hindu family, co-parcenary property in the hands of Gurdev Singh and he could not have sold the same except for legal necessity and consideration.

3. Defendants filed their written statement and controverted the contents of the plaint and denied that suit property was ancestral, joint Hindu family, co-parcenary property in the hands of Gurdev Singh.

4. Following issues were framed by the trial Court:-

1. Whether the plaintiff and defendant from a joint Hindu family? OPP

2. Whether the land in suit is a coparenary property?OPP

3. Whether the sale deed dated 13.6.1991 is for consideration and legal necessity?OPD

4. Whether the plaintiff has no locus standi to challenge this alienation of land?OPD

5. Whether the plaintiff has concealed the material facts in his plaint, as alleged in written statements by defendants.OPD.

6. Whether this suit is not maintainable.OPD.

7. Relief.

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5. After the parties led their evidence, learned trial Court under Issue No.1 held that plaintiffs and defendants do not constitute a Joint Hindu Family and this issue was decided against plaintiff. Under Issue No.2, it was held that plaintiff has failed to prove the suit property to be coparcenary in nature and Issue No.2 was also decided against the plaintiff. Under Issue No.3, it was held that plaintiff has failed to prove that suit land was sold without legal necessity and consideration and Issue No.3 was also decided against plaintiff. Under Issue No.4, it was held that plaintiff has no locus standi to file the present suit and Issue No.4 was also decided against plaintiff. Under Issue No.5, it was held that plaintiff has concealed true facts and this issue was decided in favour of defendants and against plaintiff. Under Issue No.6, suit was held to be not maintainable and this issue was decided in favour of defendants and the suit was dismissed.

6. Feeling aggrieved, appeal was instituted which was partly accepted by Ld. Additional District Judge, Ludhiana by way of impugned judgment and decree dated 31.5.1995. Learned Appellate Court held that the sale deed dated 15.06.1991 was without legal necessity and consideration but finding on remaining issues were affirmed and the appeal was partly accepted and judgment and decree was modified.

7. Feeling aggrieved, plaintiff as well as defendants have preferred the present second appeals.

8. At the very outset, it is pertinent to mention that learned First Appellate Court has not given finding on any issue except Issue No.3. However, it is well settled principle of law that a right to file first appeal against the

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judgment and decree passed by the trial Court under Section 96 of CPC is a valauble legal right of a litigant. The jurisdiction of first Appellate Court while hearing first appeal is very wide like that of trial Court and it is open to the appellant to attack all findings of fact or/ and of law in first appeal and it is the duty of the First Appellate Court to appreciate entire evidence and arrive at its own independent conclusion, for reasons assigned, either of affirmation or difference. As such, the First Appellate Court was required to give a finding on all the issues and has committed a grave error while disposing of the appeal by giving finding on only one issue whereas Appellate Court was required to appreciate entire evidence and arrive at its own independent conclusion. In holding so, I have relied upon (2018) 1 Supreme Court Cases 604 – **C. Venkata Swamy Vs. H.N. Shivanna (dead) by Legal Representative and another.**

9. As a result of afore-said discussion, the appeals in hand are allowed and the judgment and decree dated 31.5.1995 passed by the Appellate Court is set aside and matter is remanded to the First Appellate Court for a decision afresh. Parties are directed to appear before the successor Court of Shri S.S. Grewal, Additional District Judge, Ludhiana on 30.09.2026. Appeal files and trial Court record be returned along with a copy of this order.

10. Pending applications, if any, stand disposed of accordingly.

11. A photocopy of this order be placed on the file of connected case.

(Yashvir Singh Rathor)
Judge

August 20, 2026
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Whether Speaking/reasoned Yes/No
Whether Reportable Yes/No

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