



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

160

**RSA-3005-1994**

**Date of decision : 12.05.2025**

**Rajbir Singh**

**..... Appellant**

**versus**

**Dalip Singh and others**

**..... Respondents**

**CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Hariom Sharma, Advocate  
for the appellant.

Mr. Neeraj Sharma, Advocate  
for respondent No.1.

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**PANKAJ JAIN, J. (Oral)**

1. Plaintiff is in second appeal.
2. Plaintiff filed suit for joint possession claiming the suit property to be ancestral and coparcenary property. Plaintiff raised challenge to registered sale deed dated 15.05.1978 executed by their father defendant No.6 in favour of defendant No.1 to 5 claiming that the sale was without any legal necessity. Defendant No.6 is a man of bad vices. Plaintiff thus, claimed that he being coparcener, is in joint possession of the coparcenary property and is entitled to his share in the suit land.
3. Suit was contested by defendants. Defendant No.1 to 5 and defendant No.7 to 13 in their joint written statement pleaded that defendant No.6 was the exclusive owner of the suit land measuring 15



kanal 10 marlas. The land was not ancestral or coparcenery or joint hindu family property as claimed. Defendant No.6 being absolute owner was competent and well within his right to sell the suit land. The suit land was sold by defendant No.6 in their favour as an act of good management. Defendant No.6 being father of two daughters of marriagable age, sold the property being in need of money. Defendants further claimed that they have spent Rs.40,000/- to improve the land in question and in the event of sale deed in their favour being set aside, they are entitled for the same apart from the sale consideration.

4. On the basis of the pleadings, following issues were framed:-

*“1. Whether the property in dispute is joint Hindu Family coparcenery and ancestral property of the plaintiff and defendant No.6 ? OPP.*

*2. Whether the plaintiff is the son of defendant No.6 and was in existence at the time of impugned sale ?. OPP.*

*3. Whether the sale in dispute by defendant No.6 in favour of the defendant No.1 to 5 was made for legal necessity and for consideration ? OPD*

*4. Whether the plaintiff has got no locus standi to maintain the present suit ? OPD*

*5. Whether the plaintiff is estopped by his own act and conduct ? OPD*

*6. Whether the defendants are entitled to any amount on account of improvement on the land in dispute ? OPD*

*7. Whether the defendants are entitled to special costs u/s 35A C.P.C.? OPD*

*8. Relief.”*

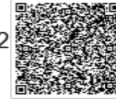
5. After analysing evidence threadbare, Court of the first instance found that the plaintiff miserably failed to connect the khewat numbers owned and possessed by Dharambir Singh-defendant No.6 with the



property owned by Bhagwati Parshad and thus, failed to prove the ancestral nature of the suit property. While deciding issue No.3, the Court of the first instance found that defendant No.1 to 5 successfully proved that defendant No.6 sold the suit land to marry his two daughters. This fact has been admitted by Rulia Ram, who was examined as PW-1. The sale deed was executed on 15.05.1978. It is only in the year 1978, that the elder daughter of defendant No.6 i.e. sister of plaintiff migrated to England. It is after the sale of the land that the younger daughter of defendant No.6 was married. The Court further found that as per evidence, defendant No.6 shifted to Yamuna Nagar in the year 1955. Thereafter, the land was lying vacant and thus, the act of sale in question by defendant No.6 was rather an act of good management and not an act of waste as claimed by the plaintiff. The Trial Court thus, dismissed the suit filed by the plaintiff.

6. The aforesaid findings have been affirmed by the Lower Appellate Court.

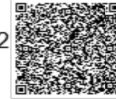
7. Counsel for the appellant submits that the Lower Appellate Court wrongly dismissed the application filed by the plaintiff under Order XLI Rule 27 to lead additional evidence. He submits that the land in dispute at the hands of family was inherited from Bhagwati Parshad vide mutation Ex.P-4. There is no evidence that Dharambir ever purchased the suit land. He thus, submits that Courts below have wrongly ignored documentary evidence in form of Exs.P-4, P-5, P-6 P-7 and P-17.



8. *Per contra*, counsel for the respondent submits that pure finding of facts have been recorded by the Courts below after analysing the entire evidence threadbare. Re-appreciating evidence for the third time, is beyond the scope of the second appeal. The appeal being bereft of any question of law, deserves to be dismissed.

9. I have heard counsel for the parties and have carefully gone through the records of the case.

10. The case of the plaintiff-appellant is based upon the land being ancestral in the hands of Dharambir Singh-defendant No.6. As per plaintiff, Dharambir Singh inherited land from Bhagwati Parshad. From the evidence on record, the details of the land owned by Bhagwati Parshad do not tally the description of the land sold by Dharambir Singh to defendant No.1 to 5. In order to provide the missing link, plaintiff filed application under Order XLI Rule 27 Code of Civil Procedure. The same stands dismissed by the Lower Appellate Court vide order dated 09.09.1994 holding that the provision as contained under Order XLI Rule 27 CPC cannot be allowed to be invoked to fill the lacuna. In order to claim benefit under Order XLI Rule 27 CPC the plaintiff was required to prove that he could not bring the evidence despite being diligent. There being no reason assigned as to why the documents could not be produced before the Trial Court, no case was made out in favour of the applicant-appellant to allow application under Order XLI Rule 27 CPC permitting him to bring on additional evidence in appeal.



11. In the considered opinion of this Court, even if for the sake of argument, the case of the appellant-plaintiff regarding the land being ancestral in nature is taken on its face value, there is no evidence to dislodge the findings recorded by the Courts below regarding the sale of the suit land by defendant No.6 in favour of defendant No.1 to 5 being backed by legal necessity of the family. It has come on record that plaintiff has two sisters. The elder daughter of defendant No.6 i.e. elder sister of plaintiff migrated to England in the year 1978. The marriage of second daughter was performed thereafter. Thus, the Courts below rightly found that the act of selling land by defendant No.6 in favour of defendant No.1 to 5 was not an act of waste, but an act of good management. That apart, it is matter of record that the land was lying vacant since the year 1955 when defendant No.6 migrated from village to Yamuna Nagar. The land was sold after 23 years in 1978.

12. Counsel for the appellant has not been able to show any evidence that can dislodge the aforesaid findings recorded by the Courts below. The only plea raised is that the said findings are based on surmises. The contention raised is misplaced. The findings are based on facts admitted by PW-1.

13. The collusion between the plaintiff and defendant No.6 is evident from the fact that defendant No.6 appeared and supported the case of the plaintiff admitting himself to be man of bad vices. The conduct of the parties, i.e. the plaintiff as well as defendant No.6 itself proves that the suit has been designed as a ploy to defeat the rights of



defendant No.1 to 5 who are bonafide purchasers of land in question for a valuable consideration.

14. This Court finds that pure finding of facts have been recorded by the Courts below and there being to evidence pointed out by the counsel for the appellant which can be said to have been ignored or misread, there is no scope for interference in the second appeal in the absence of any question of law. Resultantly, the same is ordered to be dismissed.

**(PANKAJ JAIN)**  
**JUDGE**

**12.05.2025**  
Dinesh

Whether speaking/reasoned	Yes
Whether Reportable :	No