



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

**CM No.2941-C of 2025 in/and
RSA No.1068 of 2020 (O&M)
Date of Decision: 20.03.2025**

Sukhdev Singh

.....Appellant

Versus

Kishan Singh and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Kanwal Goyal, Advocate
for the applicant/appellant.

PANKAJ JAIN, J. (ORAL)

CM No.2941-C of 2025

This is an application filed under Order XLI Rule 19 CPC for restoration of the above mentioned regular second appeal.

For the reasons recorded in the application, the same is allowed.

Main appeal is restored to its original number and taken on Board today itself.

RSA No.1068 of 2020 (O&M)

Defendant is in second appeal. For convenience, the parties hereinafter are referred to by their original position before the Court of the First instance i.e. the appellant as the defendant and the respondents as the plaintiffs.



2. Plaintiffs filed suit for declaration to the effect that the transfer deed dated 29.10.2003 in favour of the defendant and the consequential mutation, are illegal and bad. Further challenge was raised to the judgment and decree dated 23.07.2012 passed in Civil Suit No.166 of 2011, dated 23.07.2012 claiming that the same was obtained by fraud.

3. Parties are brothers. Their father Chanchal Singh was owner of the land measuring 68 Kanals 17 Marlas including the suit property. As per the plaintiffs, defendant by playing fraud and misrepresentation, got transfer deed executed in his favour on 29.10.2003. Specific Khasras bearing Nos.2//17 and 2//24/1 got transferred in his favour. Plaintiffs claimed that whole of the property being a joint property owned by plaintiffs and defendant, the two khasra numbers could not have been transferred specifically in favour of the defendant by their father Chanchal Singh. It was further claimed that the defendant earlier filed suit bearing No.166 of 2011 seeking decree of permanent injunction. In the said suit, counter-claim was filed by the present plaintiffs challenging transfer deed dated 29.10.2003. The counter-claim preferred by the plaintiffs, was dismissed. The finding recorded in injunction suit w.r.t. ownership being not binding, the plaintiffs are entitled for decree of declaration, as prayed for.

4. Suit was contested by the defendant. Defendant appeared and filed written statement. As per defendant, the dispute between the parties already stands adjudicated in the earlier *lis*. Counter-claim filed by the



plaintiffs in the said suit, stands rejected and thus the present suit is not maintainable in the present form.

5. The suit filed by the plaintiffs was put to trial by the Court of the First Instance, framing the following issues:

- “1. *Whether the plaintiff is entitled for the decree of declaration as prayed for? OPP*
2. *Whether the plaintiff is entitled for permanent injunction as prayed for? OPP*
3. *Whether the plaintiff has no locus standi to file the present suit? OPD*
- 3A. *Whether the judgment and decree dated 23.07.2012 granted by the Court of Ms. Harreet Kaur Ld. Additional Civil Judge Sr. Division, Jalandhar passed in civil suit no. 166/2011 decided on 23.07.2012 is wrong and contrary to the basis principle of law?*
4. *Whether the plaintiff has concealed material facts from the Court? OPD*
5. *Whether the plaintiffs are estopped to file the present suit? OPD*
6. *Whether the suit is barred by the principle of res judicata? OPD*
7. *Whether the suit is barred under the provisions of Order 23 Rule 1 CPC? OPD*
8. *Whether the plaintiffs have not complied with the mandatory provision of Order 7 Rule 1(j) CPC? OPD*
9. *Relief.”*

6. Deciding issues No.1, 2, 3A and 6 together, Court of the First Instance relied upon the observations made by the competent court in the earlier *lis vide* judgment dated 23.07.2012 holding that the counter-claim



raising the same plea which already stands decided against the plaintiffs, the present suit was barred by *res judicata*. The plaintiffs having not assailed the findings recorded in the earlier *lis* by filing appeal before the competent Court, the findings recorded in the earlier suit have attained finality. Trial Court thus dismissed the suit filed by the plaintiffs.

7. Unsuccessful, plaintiffs preferred appeal.

8. Lower Appellate Court held that the transfer deed dated 29.10.2003 having already been held to be legal and genuine, the plaintiffs are precluded from seeking relief of declaration *qua* the same transfer deed. However, Lower Appellate Court held that Chanchal Singh being joint owner was not competent to transfer specific khasras out of the joint property. The Lower Appellate Court further held that in the earlier *lis*, it was the validity of the transfer deed which was under challenge but no finding w.r.t. possession of the parties over the joint property, was returned. The Lower Appellate Court thus held that respondents having not been able to claim exclusive possession over specific portion of the suit land, the parties are held to be co-sharers in the entire suit land, which is still joint and their respective share is subject to partition.

9. Mr. Goyal has assailed the findings recorded by the Lower Appellate Court. He submits that vide judgment and decree dated 23.07.2012, the issues w.r.t. ownership as well as possession have already been decided. Chanchal Singh, who was exclusive owner of the property, transferred specific khasra numbers to the appellant. Thus, he having



become exclusive owner of the said khasra numbers, Lower Appellate Court erred in reversing the findings recorded by the Trial Court.

10. I have heard counsel for the appellant and have carefully gone through records of the case.

11. In the considered opinion of this Court, in view of the findings recorded in the earlier *lis vide* judgment & decree dated 23.07.2012 passed in Civil Suit No.166 of 2011, the transfer deed in favour of the appellant/defendant, is beyond challenge. The finding recorded by the Lower Appellate Court to the extent that Chanchal Singh was not competent to transfer specific khasra numbers in favour of the plaintiffs, cannot be sustained. However, the issue is :

'Even if specific khasra numbers were transferred in favour of the defendant/appellant, can he claim exclusive ownership thereof or has to be held co-sharer along with the plaintiffs?'

12. The issue is no more *res integra* and has been decided by 5 Judges Bench of this Court in the case of **Ram Chander vs. Bhim Singh, 2008(3) RCR (Civil) 685 (P&H)**, holding that sale of specific khasra numbers out of the joint property amounts to sale of share out of joint estate and not of specific khasra number. Full Bench observed as under:

“17. In order to lend weight to our conclusions, we draw upon the observations of a Division Bench judgment of this Court, relied



upon and referred to in both the Full Bench Judgments, that we are called upon to interpret. While considering the nature of joint property and the inter se rights and liabilities of co-sharers, a Division Bench in *Sant Ram Nagina Ram v. Daya Ram Nagina Ram, AIR 1961 Punjab 528* set out in detail the inter-se rights and liabilities of co-sharers in the following terms :-

"(1) A co-owner has an interest in the whole property and also in every parcel of it.

(2) Possession of joint property by one co-owner, is in the eye of law, possession of all even if all but one are actually out of possession.

(3) A mere occupation of a larger portion or even of an entire joint property does not necessarily amount to ouster as the possession of one is deemed to be on behalf of all.

(4) The above rule admits of an exception when there is ouster of a co-owner by another. But in order to negative the presumption of joint possession on behalf of all, on the ground of ouster, the possession of a co-owner must not only be exclusive but also hostile to the knowledge of the other as, when a co-owner openly asserts his own title and denies that of the other.

(5) Passage of time does not extinguish the right of the co-owner who has been out of possession of the joint property except in the event of ouster or abandonment.

(6) Every co-owner has a right to use the joint property in a husband like manner not inconsistent with similar rights of other co-owners.

(7) Where a co-owner is in possession of separate parcels under an arrangement consented by the other co-owners, it is not open to any body to disturb the arrangement without the consent of others except by filing a suit for partition."

18. It is, therefore, apparent that a co-owner has an interest in the entire property and also in every parcel of the joint land. When a co-sharer alienates his share or a part thereof in the joint holding



what he brings forth for sale is what he owns i.e. a joint undivided interest in the joint property. A sale, therefore, of land from a specific khasra/killa number, forming part of a specific rectangle number, but being a part of a joint khewat, would, in view of the nature of the rights conferred upon a co-sharer, be deemed to be the sale of a share from the joint khewat and such a vendee would be deemed to be a co-owner/co-sharer in the entire joint khewat, irrespective of the artificial divisions of the joint land into different rectangles, khasra and killa numbers.

19. Another attribute of joint property is that where a co-owner in possession of a specific portion of the joint holding and recorded as such in the revenue record, transfers any right, title or interest, from the portion in his specific possession, his vendee would be entitled to protect the portion so transferred, without, however, asserting exclusive ownership to the portion so transferred and possessed, till such time as the joint estate is not partitioned.

20. In order to place our above conclusion in perspective, we deem it appropriate to reproduce a paragraph from the judgment in *Bhartu v. Ram Sarup's* case (supra) that succinctly explains our opinion, as under :-

"6. Take another example where 'A' and 'B' jointly own a khewat in equal shares measuring 200 bighas. 'B' is in separate possession of 100 bighas of land comprised of specific khasra numbers and transfers it to 'C'. This is not disputed that in spite of this sale, 'A' continues to be a co-sharer in the land transferred by 'B'. If that is so how can it be disputed that 'C' would necessarily be a co-sharer in the remaining 100 bighas of land in possession of 'A' as otherwise it would mean that 'A' is exclusively owner of 100 bighas of land in his possession and also a co-sharer with 'C' in the remaining 100 bighas which obviously is not possible. The matter can further be illustrated by another example. 'A' and 'B' are co-sharers in the joint khewat, say



of 100 bighas of land in equal shares. 'B' who is in exclusive possession of land measuring 40 bighas of land comprised of khasra Nos. 1, 2, 3 and 4 transfers two khasra numbers, that is, 1 and 2, measuring 20 bighas to 'C' specifically stating in the deed that he is in possession of these khasra numbers as a co-sharer and is transferring his interest as such. Can it be said on these facts that 'C' has purchased anything except a co-sharer's interest in khasra Nos. 1 and 2 in spite of the fact that the sale is of specific numbers and of the specified area. The answer obviously would be in the negative and if so then the sale is obviously of a share by the cosharer out of the joint land and nothing else."

21. As a result of the above discussion, we express our complete agreement with the opinion, recorded in the Full Bench in *Bhartu v. Ram Sarup's* case (supra) and are sanguine in our understanding of the law so as to hold that the Full Bench judgment in *Lachhman Singh's* case (supra) does not lay down the correct position in law, as while considering the rights of a vendor/cosharer, flowing from his status as a co-sharer/joint owner, the Full Bench in *Lachhman Singh's* case (supra) disregarded the nature of joint property and the status of joint owners, and placed undue significance upon artificial divisions of land, made by revenue authorities intended to identify land, namely: rectangle numbers, killa/khasra numbers etc.

22. Revenue entries reflect the rights of the parties as opposed to conferring rights and raise rebuttable presumptions as to their correctness. They reflect an existing state of affairs, namely, an existing title or a state of possession. Entries in revenue records neither confer nor deprive a person of his title, whether joint or separate. Rectangle numbers and Killa numbers are revenue measures, used by revenue authorities to identify and describe fields that constitute the ownership of a land owner. A holding may be divided into different Khewats, Khataunis, rectangles and



killas/khasras all bearing different numbers. Where parties are joint owners or co-sharers, the land would comprise of a Khewat or khewats, different khataunis, rectangles and/or khasra/killas numbers. Thus, where a group of land owners holds land in joint ownership and are reflected as owners in common of the khewat, commonly known as the joint khewat, they would continue to remain owners in possession of the land, though described as being situated in different khataunis, rectangles and khasra/killas numbers. Division of land into different rectangles, khasra or killas numbers does not alter the nature of property held in common or the rights of co-sharers flowing therefrom. The Full Bench in Lachhman Singh's case (supra), disregarded the nature of joint property and by placing undue reliance upon artificial divisions of land meant to identify land, erred while holding that a vendee, who purchases land from a joint khewat by reference to specific rectangles and khasra numbers, does not become a co-sharer in the entire joint khewat.”

13. So far as the issue of findings recorded in the earlier *lis*, being binding and operating as *res judicata* in the present suit are concerned, it cannot be lost sight of the fact that the earlier suit was suit for permanent injunction and not a title suit. Trite it is that finding recorded in injunction suit, cannot operate as *res judicata* in the title suit. Thus, even though the reasoning recorded by the Lower Appellate Court is found to be unsustainable, yet the conclusion arrived by the Lower Appellate Court that the parties are co-sharers despite there being transfer deed in favour of the defendant *qua* specific khasra numbers, cannot be faulted with.



14. In view of above, this Court does not find any merit in the present appeal. The same is ordered to be dismissed.

March 20, 2025

**(Pankaj Jain)
Judge**

Dpr

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No