



**RSA-4385-2018 (O&M)**

**Sr.No.254**

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

**RSA No.4385 of 2018 (O&M)**

**Reserved on : 17.09.2025**

**Pronounced on : 09.10.2025**

Inderbir Singh and another

....Appellants

Versus

Dr. Kirpal Singh (Dead) Through LRs and others

....Respondents

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

**Present:-** Mr. Sunil Chadha, Sr. Advocate with  
Ms. Arash Deep Kaur, Advocate and  
Ms. Tara Dutt, Advocate  
for the appellants.

Mr. M.L. Sarin, Sr. Advocate with  
Ms. Hemani Sarin, Advocate  
for respondent No.1.

Mr. Anil Chawla, Advocate  
for respondent No.2.

Ms. Kavita Arora, Advocate  
for respondent No.3.

None for respondent No.4.

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**PANKAJ JAIN, J.**

Defendants are in appeal aggrieved of judgment and decree passed by Lower Appellate Court, whereby the suit filed by the plaintiff has been ordered to be decreed reversing the findings recorded by the Court of First Instance. For convenience, the parties are being referred to by their original position in the suit before the Court of First Instance, i.e. the appellants as defendants No.1 & 2, respondent No.1 as plaintiff, respondents No.2 & 3 as defendants No.4 & 5 and respondent No.4 as defendant No.3.

2. Plaintiff filed suit seeking decree of declaration to the effect that the sale deed executed on 21.05.1999 by defendant No.5-Amritsar Improvement Trust in favour of plaintiff as well as defendants No.1, 2 and 4 needs to be corrected in terms of Will dated 30.03.1984. Plaintiff also prayed for decree of permanent injunction restraining defendants No.1, 2 and 4 from alienating any portion of the suit property.

2.1. As per the plaintiff, the suit property measuring 1331 sq. yards, bearing No.37-A, Kennedy Avenue, Amritsar, was allotted by defendant No.5-Improvement Trust, in favour of his father Dr. Kartar Singh by way of Memo dated 24.11.1960. Dr. Kartar Singh, during his lifetime, executed registered Will dated 30.03.1984, bequeathing all properties including the property in dispute in favour of plaintiff and defendants No.1, 2 and 4. After the death of Dr. Kartar Singh, the plaintiff became owner of the portion admeasuring 500 sq. yards. Defendant No.4 became owner to the extent of 500 sq. yards. Defendants No.1 & 2, sons of defendant No.3-Harkrishan son

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of Dr. Kartar Singh, were given area admeasuring 331 sq. yards as per Will dated 30.03.1984. All the four beneficiaries under Will i.e. plaintiff, defendants No.1 & 2 and defendant No.4 applied to defendant No.5 for execution of sale deed in terms of Will dated 30.03.1984. Sale deed was however executed *qua* equal shares i.e. not as per Will of Dr. Kartar Singh.

2.2. Defendant No.4 sold his rights, title and interest in the property by executing sale deed *qua* 331 sq. yards and Agreement to Sell *qua* rest of 169 sq. yards of land in favour of Surinder Singh. He delivered possession of 500 sq. yards of land to Surinder Singh. Accordingly, the defendant No.4 sold his entire share of 500 sq. yards in the property in favour of Surinder Singh. Plaintiff purchased entire 500 sq. yards of property from Surinder Singh and accordingly became owner in possession of 1000 sq. yards of property. Plaintiff is residing in USA. He came to Amritsar in the month of September, 2004 and came to know that there is a mistake in the sale deed dated 21.05.1999 executed by defendant No.5-Improvement Trust in favour of plaintiff, defendants No.1 & 2 and defendant No.4, which is not as per Will dated 30.03.1984. Instead of specifying the shares of plaintiff, defendants No.1 & 2, defendant No.4, as specified in Will, all of them have been sold equal share. He accordingly sought correction of sale deed.

2.2. Defendants No.1 and 2 contested suit. Ownership of Dr. Kartar Singh is not disputed. However, it is claimed that Dr. Kartar Singh was Karta of HUF of which all his sons were members. Funds for the purchase was provisioned from the nucleus of the HUF. Property in hands of

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Dr. Kartar Singh was a Joint Hindu Family property. After death of Kartar Singh, a family settlement was arrived amongst the legal heirs of Dr. Kartar Singh. Sale deed dated 21.05.1999 was executed as per the family settlement.

2.3. Defendant No.3 filed separate written statement. He reiterated the stand of there being a Joint Hindu Family and Dr. Kartar Singh holding the property as a Joint Hindu Family property. Plea raised by defendants No.1 and 2 regarding there being a family settlement was adopted. Defendant No.4 was proceeded ex-parte. As per stand of defendant No.5-Improvement Trust, the Will was executed by Dr. Kartar Singh during his lifetime. Sale deed was executed on the basis of Will and as per the decision of the Court in proceedings for issuance of succession certificate *qua* estate left by Dr. Kartar Singh.

2.4. Suit filed by plaintiff was put to trial by the Court of First Instance framing following issues:-

1. *Whether the plaintiff is entitled to declaration as prayed for? OPP.*
2. *Whether the sale deed dated 21.05.1999 executed by Amritsar Improvement Trust in favour of plaintiff as well as defendants No.1, 2 and 4 is not correct and liable to be set aside ? OPP.*
3. *Whether the sale deed has to be got executed from Amritsar Improvement Trust as per Will dated 30.03.1984 executed by deceased Kartar Singh in favour of plaintiff as well as defendants No.1, 2 and 4? OPP.*
4. *Whether the plaintiff is entitled to permanent injunction, as prayed for? OPP.*

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5. *Whether the property in question is Joint Hindu Family Property in the hands of Dr. Kirpal Singh ? OPD.*
6. *Whether the parties to the suit constituted a Hindu Undivided Family ? OPD.*
7. *Whether there was any oral family settlement amongst the legal heirs of Dr. Kirpal Singh after his death ? OPD.*
8. *Whether the present suit is not maintainable ? OPD.*
9. *Whether the suit of the plaintiff is not within limitation ? OPD.*
10. *Whether the plaintiff has suppressed the material facts from the court ? OPD.*
11. *Whether the plaintiff has no cause of action to file the present suit ? OPD.*
12. *Whether the plaintiff is estopped by his own act and conduct from filing the present suit ? OPD.*
13. *Whether the suit of the plaintiff is bad for mis-joinder and non-joinder of necessary parties? OPD.*
14. *Whether the suit is not properly valued for the purpose of Court fee and jurisdiction? OPD.*
15. *Relief.*

2.5. Court of the First Instance held that the suit seeking declaration that the sale deed dated 21.05.1999 is null and void has been filed on 13.06.2006 i.e. after 6 years and thus the suit is barred by time. On merits, the Court of First Instance while deciding Issues No.1 to 7 concluded that the plaintiff admitted in his cross-examination that Dr. Kirpal Singh purchased property as Karta of Joint Hindu Family and also admitted that after death of Dr. Kartar Singh, there was a family settlement. Thus, the

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defense raised by defendants having been admitted by plaintiff, the suit deserves to be dismissed.

2.6. Unsuccessful plaintiff preferred appeal. The Lower Appellate Court reversed the findings recorded by the Court of First Instance. While reversing findings on the issue regarding limitation, the Lower Appellate Court held that the plaintiff successfully proved that he came to know of the discrepancy in the sale deed only when he purchased 331 sq. yards sold by his nephew -defendant No.4 on 17.01.2005. The suit filed in June, 2006 is thus within limitation. Presence of wife of plaintiff in India does not prove that he was in the knowledge of the discrepancy in the sale deed. Rather the affidavits as well as indemnity bonds filed by the parties at the time of execution of sale deed prove that the intent was to get the sale deed executed as per the shares assigned to the parties by virtue of Will dated 30.03.1984.

2.7. While deciding Issue Nos.1, 2, 3, 5, 6 & 7, the Lower Appellate Court found that the defendants though pleaded that the suit property was Joint Hindu Family property in the hands of Dr. Kartar Singh, but failed to prove any nucleus. No challenge was ever made to Dr. Kartar Singh's act of bequeathing the property by way of Will dated 30.03.1984. Rather all the parties submitted their affidavits as well as indemnity bonds before the Improvement Trust praying that the sale deed be executed in terms of Will, Ex.P30, left by Dr. Kartar Singh. The Lower Appellate Court accordingly decided Issues No.1 to 3 and 5 to 7 in favour of plaintiff and against the defendants. Appeal preferred by plaintiff stands allowed. Suit filed by

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plaintiff has been ordered to be decreed. The Improvement Trust, i.e. defendant No.5 has been ordered to correct the sale deed and to assign the shares of the parties in terms of Will dated 30.03.1984.

3. Ld. Senior Counsel for the appellants has assailed the findings recorded by the Lower Appellate Court. It has been submitted that the sale deed dated 21.05.1999 was put to challenge by instituting suit on 13.06.2006. As per Article 58 of the Limitation Act, the suit seeking declaration against the sale deed is required to be filed within three years of the date of execution of the sale deed. The suit filed after six years is hopelessly barred by time and thus the Lower Appellate Court erred in reversing the findings recorded by the Court of First Instance on Issues No.8 & 9. Mr. Chadha submits that Dr. Kartar Singh, father of parties, was holding the property in dispute as Karta of Joint Hindu Family. The same was admitted by plaintiff. Plaintiff also admitted that there was a settlement prior to execution of the sale deed. Despite there being clear admission made by plaintiff, the Lower Appellate Court reversed the findings recorded by the Court of First Instance. He submits that admission is the best piece of evidence, yet the same has been ignored by the Lower Appellate Court.

4. *Per contra*, Ld. Senior Counsel for respondent No.1 submits that it is not a case where decree of declaration was sought against the sale deed claiming that the same was result of forgery. It is a case wherein the declaration has been sought to correct the sale deed in terms of Will Ex.P30. Mr. Sarin submits that all the parties applied to the Improvement Trust

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seeking execution of the sale deed in terms of Will Ex.P30. Indemnity bonds were tendered by all the beneficiaries before the Improvement Trust. *Qua* moveable properties left by Dr. Kartar Singh parties applied for succession certificate. They were held entitled for equal share. While relying upon succession certificate, Improvement Trust wrongly executed sale deed *qua* equal shares, which is against the Will expressed by Dr. Kartar Singh Ex.P30. The mistake in the sale deed needs to be corrected, and the sale deed needs to be executed in terms of Will Ex.P30. He submits that presumption raised regarding knowledge of the sale deed by the Court of First Instance is rebuttable. On 21.05.1999 when the sale deed was executed, neither the plaintiff nor his wife was present in India. The sale deed was signed only by defendant No.3- Harkrishan Singh and defendant No.1- Inderbir Singh. Plaintiff came to know of the discrepancy in the sale deed only when he purchased 331 sq. yards of the property by one Surinder Singh vide Ex.P20 on 17.01.2005. The prayer is only for the rectification in the sale deed and is not for seeking annulment thereof. He relies upon ration of law laid down by this Court in *Subedar Darshan Singh and others vs. Lal Singh and others, 2015(9) RCR (Civil) 906; Gajjan Singh vs. Virsa Singh and others, 2007(3) PLR 634* and *Amrik Singh @ Jasbir Singh vs. Jasvir Singh and others, 2018(1) PLR 247*. He further relies upon judgment of Supreme Court in the matter of *Deity Pattabhiramaswamy vs. S. Hanymayya and others, AIR 1959 SC 57*.

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4.1. Mr. Sarin further contends that the Will executed by Dr. Kartar Singh is not in dispute. Rather, all the parties applied to the Improvement Trust to execute sale deed in terms of Will executed by Dr. Kartar Singh. Property in dispute was never the Joint Hindu Family property. Defendants failed to discharge their onus to prove the property to be a Joint Hindu Family property. He further submits that even the plea regarding family settlement is without basis. Family settlement propounded by defendants has not seen light of the day.

5. I have heard Ld. Counsels for the parties and have carefully gone through records of the case.

6. Parties to the *lis* are successors-in-interest of Dr. Kartar Singh, who died on 09.08.1987, leaving behind three sons i.e. Dr. Kirpal Singh-plaintiff, Harkrishan Singh-defendant No.3 and Surinderjit Singh (father of defendant No.4-Inderjit Singh). Defendants No.1 and 2 are sons of defendant No.3 – Harkrishan Singh. Defendant No.4 sold his share to one Surinder Singh, from whom plaintiff purchased the same. Defendant No.4 having left with no interest in the property opted not to appear and was proceeded ex-parte before the Court of First Instance. Will Ex.P30 executed by Dr. Kartar Singh is not under challenge. All the parties rely upon the same. Plaintiff claims that the sale deed was to be executed by Improvement Trust as per the Will executed by Dr. Kartar Singh. Defendants have propounded family settlement claiming property to be a Joint Hindu Family

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property and the reliance is being placed upon the admission made by plaintiff regarding family settlement.

7. It has gone undisputed that all the parties applied to the Improvement Trust executing affidavits and indemnity bonds. The prayer was to execute sale deed in favour of plaintiff, defendant No.4 and defendants No.1 & 2 as per Will dated 30.03.1984. In these circumstances, this Court finds that since the defendants do not challenge the right of Dr. Kartar Singh to bequeath the property by way of Will Ex.P30, the plea raised by them regarding the property being a Joint Hindu Family property *sans* merit and cannot be accepted. That apart, there is no evidence of any nucleus of HUF or provisioning of any such nucleus to acquire property in question.

8. Mr. Chadha is not in position to dispute that though defendants claim that plaintiff admitted of family settlement, but there is no document to prove the family settlement. The terms of the family settlement were neither spelled out by the propounders of the family settlement nor were ever put to plaintiff. Even today defendants are unable to disclose terms of the family settlement claimed by them.

9. In view thereof, this Court finds that bogey of there being a family settlement between the parties, as pleaded by defendants, cannot be accepted and deserves to be rejected.

10. On to the issue of limitation, this Court finds that Mr. Sarin is right in contending that the issue is squarely covered by ratio of law laid





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12. Resultantly, finding no merits in the present appeal, same is ordered to be *dismissed* with no costs.
13. Pending application(s), if any, shall also stand disposed off.

**( PANKAJ JAIN )  
JUDGE**

**October 09, 2025**  
*ashish*

Whether speaking/reasoned: Yes/No

Whether reportable : Yes/No