



RSA-139-1993 (O&amp;M)

-1-

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

-.-

**RSA-139-1993 (O&M)  
Reserved on:-25.09.2025  
Date of Decision : 29.09.2025**

Balwinder Singh

....Appellant

VERSUS

Kashmira Singh (since deceased) through LRs &amp; Others

....Respondents

**CORAM : HON'BLE MS. JUSTICE MANDEEP PANNU**

Present: Mr. Rahul Sharma-I, Advocate for the appellant.

Mr. K.S.Dadwal, Advocate and  
Ms. Neha Jain, Advocate for the respondents.

-.-

**MANDEEP PANNU, J.**

1. Present RSA has been filed by the appellant/defendant Balwinder Singh against the judgment and decree dated 16.10.1992 passed by the learned Lower Appellate Court, whereby the judgment and decree dated 24.11.1990 passed by the learned trial Court dismissing the suit of the plaintiffs was reversed and the suit of the plaintiffs came to be decreed.

**Brief Facts**

2. The brief facts of the case are that respondents/plaintiffs Kashmira Singh and Jasbir Singh sons of Karam Singh and Piar Kaur widow of Karam Singh filed a suit for joint possession against the defendants with respect to their alleged 1/3 share each in land measuring 24 kanals and 0 marla and 3/4th share of land measuring 32 kanals 0 marla comprised in Khewat No.102, Khatauni Nos.203, Rectangle No.9, Killa Nos.7 to 10, as entered in jamabandi for the year 1980-81

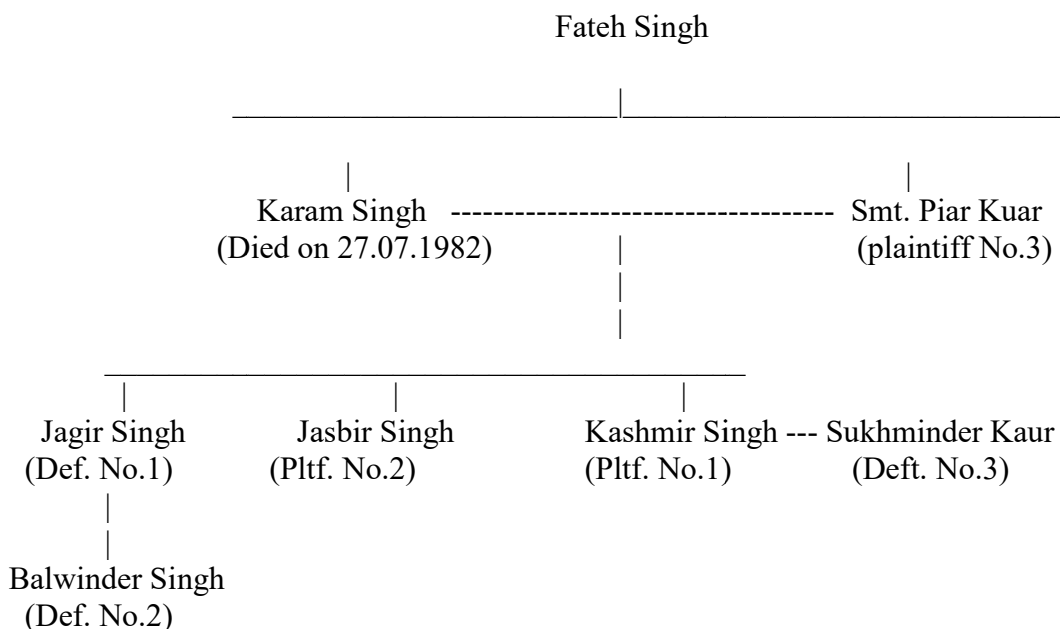


**RSA-139-1993 (O&M)**

-2-

situated in the revenue estate of Machhiwara Kham, Tehsil Samrala, District Ludhiana. The plaintiffs also sought cancellation of decree dated 12.01.1982 passed in Civil Suit No.308 of 1981, titled Balwinder Singh versus Karam Singh, on the ground that the said decree was collusive, illegal and inoperative qua their rights. Further prayer was for permanent injunction restraining appellants/defendant Nos.1 and 2 from alienating the suit land.

3. The following pedigree is not in dispute and is necessary to appreciate the controversy:



4. The case of the plaintiffs was that land measuring 123 kanals 0 marla had been allotted to their father Karam Singh in lieu of land owned by the family in Pakistan. According to them, the land was joint Hindu family coparcenary property and continued to be ancestral in nature. It was pleaded that on the death of Karam Singh on 27.07.1982, his estate devolved upon the plaintiffs and defendant No.1, they being his natural heirs, and as such they acquired rights in the property by birth. It was further pleaded that defendant No.2 Balwinder Singh, on the basis



**RSA-139-1993 (O&M)**

-3-

of a decree dated 12.01.1982 suffered by Karam Singh through his alleged attorney Jagir Singh, claimed 32 kanals of land exclusively in his favour. The plaintiffs alleged that the said decree was the result of fraud, collusion and misrepresentation, and was not binding on them in any manner. They also referred to an unregistered Will dated 20.02.1982 allegedly executed by Karam Singh but stated that the same was lost and had no legal effect. It was their case that the decree set up by defendant No.2 had no sanctity in law and was liable to be treated as non-existent.

5. Defendant No.1 Jagir Singh filed a separate written statement and contested the suit. He denied the ancestral or coparcenary nature of the land and asserted that the property was the self-acquired and absolute property of Karam Singh. He further submitted that the decree dated 12.01.1982 was perfectly valid and binding on the parties. It was pleaded that the suit was time-barred, that it was bad for misjoinder of parties and that the plaintiffs had no locus standi to file the same. He also asserted that he was the general attorney of Karam Singh till his death and the authority had never been revoked.

6. Defendant No.2 Balwinder Singh filed his separate written statement and reiterated that the decree dated 12.01.1982 was legal and valid and that the plaintiffs, being successors-in-interest of Karam Singh, were bound by the same. He contended that he was in actual and exclusive possession of the land decreed in his favour and that the relief of joint possession was incompetent. He denied the coparcenary nature of the property and asserted that the allotment was made to Karam Singh in his own right and not in lieu of any ancestral holdings. It was also pleaded that plaintiff Jasbir Singh himself had produced a copy of the alleged Will



dated 20.02.1982 before the revenue authorities at the time of mutation proceedings, and thus the plaintiffs were fully aware of the decree and the Will. Defendant Nos.3 and 4 did not contest the suit.

7. On the basis of the pleadings of the parties, the following issues were framed by the learned trial Court:

1. Whether the disputed property is joint Hindu family coparcenary property of the parties, as alleged in the plaint? OPP
2. Whether the decree dated 12.01.1982 passed in Civil Suit No.308 dated 12.12.1981 titled Balwinder Singh versus Karam Singh is null and void collusive qua the rights of the plaintiffs? OPP
3. Whether the suit is within limitation? OPP
4. Whether the suit is properly valued for the purposes of Court fee and jurisdiction? OPP
5. Whether the plaintiffs are estopped by their act and conduct from filing the present suit? OPD
6. Whether the plaintiffs are entitled to declaration and joint possession of the suit land as alleged? OPP
7. Relief.

8. In order to prove their case, respondent/plaintiff Kashmira Singh appeared as PW1 and deposed in support of the plaint. Besides him, Joginder Singh was examined as PW2, Jasbir Singh as PW3 and Amar Singh as PW4. After examining their witnesses and producing documents, the plaintiffs closed their evidence.

9. In rebuttal, the defendants examined Jawala Singh from the office of



Kanungo Samrala as DW1, Rattan Singh Patwari as DW2, Harnek Singh as DW3, Ram Saran Dass Advocate as DW4, Saudagar Singh as DW5, Satwant Puri, document expert as DW6, Jagir Singh as DW7, Balwinder Singh as DW8 and Jassa Singh as DW9. After producing their oral and documentary evidence, the defendants closed their case.

### **Findings of the Trial Court**

10. The learned trial Court, after hearing counsel for the parties and on consideration of the evidence led, observed that the suit land could not be held to be joint Hindu family, coparcenary or ancestral property of the plaintiffs. In respect of the challenge to the decree dated 12.01.1982, it was noticed that the burden to prove that the same was null and void lay upon the plaintiffs. Once it had already been held under issue No.1 that the property was not joint Hindu family property, the plea that Karam Singh was incompetent to suffer such a decree was rejected.

11. On the question whether defendant Jagir Singh was in fact attorney of Karam Singh and whether he had falsely suffered the decree in favour of his son, the trial Court examined the evidence in detail. The deed of attorney dated 20.10.1976 executed by Karam Singh in favour of his son Jagir Singh was proved through DW4 Ram Saran Das, Advocate, who identified the signatures and attestation on the document, as also by DW5 who had scribed the deed. DW3 Harneet Singh proved the relevant entry from his register, and the document was Ex.ed on record as Ex. D3. The deed was a registered instrument and was attested, inter alia, by Jasbir Singh, one of the plaintiffs. Although PW3 Jasbir Singh denied his signatures on Ex.D3, the report of the handwriting expert DW6 Satwant Puri, Ex. DW6/A, established that the signatures tally with his admitted signatures. On



this basis, the Court held that the execution of the general power of attorney in favour of Jagir Singh stood duly proved.

12. The trial Court further held that the terms of the power of attorney Ex. D3 conferred plenary powers upon Jagir Singh to act on behalf of Karam Singh, including the power to appear in Court, to compound and compromise cases, to confess judgment, to engage counsel, and to sell, mortgage or otherwise deal with the property. It was therefore held that there was no illegality in Jagir Singh suffering the decree on behalf of his father in favour of his own son Balwinder Singh. The plaint and written statement of that earlier suit were also produced as Ex. PX and PY, on the basis of which the decree had been passed.

13. With regard to the allegation of fraud and want of knowledge, the trial Court recorded a finding that the decree was very much in the knowledge of Karam Singh during his lifetime. The attestation of the power of attorney by one of the plaintiffs further demonstrated that they were not aware of the same. DW2 Rattan Singh, Patwari, deposed that Jasbir Singh himself had produced a copy of the Will before him during mutation proceedings, and Ex. D1 and D1/E as well as Ex. D2 also made reference to the decree in favour of Balwinder Singh. The Court, therefore, concluded that the plaintiffs were aware of the decree and no case of fraud or misrepresentation had been proved. It was also observed that a consent decree stands on the same footing as a decree passed after contest and no distinction can be made between the two. The mere fact that Karam Singh had made what might be termed an unnatural disposition of property would not by itself render the decree invalid.



14. On the question of limitation, the trial Court observed that although the defendants had argued that the suit was barred by time, since the plaintiffs were not parties to the decree, it was open to them to ignore the same and seek declaration or possession to the extent of their independent rights. In such a situation, the suit would be governed by a twelve-year limitation period and thus could not be said to be barred. However, since the decree had been found to be valid and binding, the plaintiffs could not succeed on merits.

15. Ultimately, the trial Court held that Balwinder Singh had become the absolute owner of the suit property by virtue of the valid decree passed in his favour, and therefore the plaintiffs were not entitled either to joint possession or to the relief of injunction. Consequently, by judgment and decree dated 24.11.1990, the suit of the plaintiffs was dismissed.

#### **Findings of the Lower Appellate Court**

16. The lower appellate Court, after reappraisal of the entire evidence, affirmed the findings of the trial Court on issues relating to valuation and limitation, holding that the suit being one for joint possession on the basis of title was governed by Article 65 of the Limitation Act and had been filed within twelve years of accrual of cause of action. However, on the question of the nature of the property, it was found that there was insufficient material on record to establish that the suit land was ancestral or coparcenary property. The mere fact that Karam Singh and his brother Dial Singh were recorded in the revenue record of 1946-47 as joint owners was held insufficient to raise a presumption of coparcenary, and no reliable evidence was produced to prove that the land left in Pakistan was ancestral. Thus, the trial Court's finding on issue No.1 was affirmed.



17. On the more substantial question regarding the decree dated 12.01.1982, the lower appellate Court disagreed with the trial Court. It examined the power of attorney executed by Karam Singh in favour of Jagir Singh and held that though the attorney had wide powers, the evidence fell short of showing that Karam Singh had ever intended to transfer or abdicate his rights in favour of Balwinder Singh. The Court noted several contradictions between the pleadings of Balwinder Singh in the earlier suit and the oral evidence adduced in the present proceedings. The pleadings in the earlier suit suggested that Karam Singh had orally transferred possession of the land to Balwinder Singh as early as 1980, while the evidence of Jagir Singh and Balwinder Singh pointed to different versions, including a family partition or a later transfer. These contradictions, along with the fact that Karam Singh was alive and residing with Jagir Singh at the relevant time, persuaded the Court to conclude that the decree had been engineered by Jagir Singh to benefit his own son and was not genuinely consented to by Karam Singh.

18. The appellate Court further observed that the conduct of Jagir Singh in confessing judgment in favour of his own son without clear proof of authority from his principal amounted to transgression of the power conferred by the attorney. Reliance on the alleged Will dated 20.02.1982 also did not help the defendants, as the Will was neither produced in original nor proved in accordance with law, and was thus discarded. The Court found that there was clear collusion between Balwinder Singh, his mother Mohinder Kaur and Jagir Singh in procuring the decree, and that it could not bind the heirs and successors of Karam Singh.

19. Accordingly, the appellate Court reversed the findings of the trial Court on issue No.2 and issue No.6, holding that the decree dated 12.01.1982 was



not binding on the plaintiffs and that they were entitled to seek declaration and joint possession. Consequently, the appeal was allowed, the judgment and decree of the trial Court dated 24.11.1990 was set aside, and the plaintiffs' suit was decreed with costs. They were granted a decree for joint possession of 24 kanals, being 3/4th share of 32 kanals, as detailed in the plaint, along with consequential reliefs.

**Submissions of Learned Counsel for the Appellant:**

20. Learned counsel for the appellant has argued that the impugned judgment of the Lower Appellate Court is erroneous in law and contrary to settled principles. It is submitted that the suit was barred by limitation, as the challenge was laid to the consent decree dated 21.01.1982 after more than three years, whereas Article 59 of the Limitation Act prescribes a limitation of three years for setting aside or cancellation of a decree on grounds of fraud or want of authority. Reliance has been placed on **Chanan Ram v. Gajjan Singh [2019(1) RCR (Civil) 648]**, wherein it was established that a decree cannot be challenged belatedly by raising grounds which were available from inception, and the suit filed 13 years thereafter was dismissed being barred by limitation. Similarly, in **Ram Singh v. Baldev Singh [2016(4) PLR 217]**, it was reiterated that limitation under Article 59 cannot be extended by alleging collusion at a later stage, and that inheritance disputes do not keep limitation in abeyance once possession is taken adversely. Learned counsel further argued that the lower appellate Court erred in holding that Article 65 of the Limitation Act applied and that limitation was 12 years, whereas in law, once a decree is to be set aside, Article 59 governs.



21. On merits, it is contended that Karam Singh had duly executed a registered power of attorney in favour of Jagir Singh, who was competent to confess judgment on his behalf, including in favour of his son. The lower appellate Court committed grave illegality in going behind the consent decree to see whether the underlying facts were correct, as the law is settled that a compromise or consent decree cannot be re-opened in a subsequent suit except on limited grounds of fraud, coercion, misrepresentation, or incapacity of a party. Reliance is placed on **Gurdev Kaur and Another v. Mehar Singh and Others [1989(2) RCR (Rent) 625]** and **Shanti Devi v. Mange Ram [2010(34) RCR (Civil) 53]**, wherein it was held that the Court cannot go behind the compromise decree to test whether the facts culminating in it were right or wrong. Reference is also made to **Tej Singh v. Jagrup Singh [1989(1) PLR 136]** and **Harpal Singh v. Ram Piari [1981 PLJ 492]**, where it was consistently held that the binding nature of a compromise decree cannot be unsettled on such grounds.

**Submissions of Learned Counsel for the Respondents:**

22. Per contra, learned counsel for the respondents has supported the findings of the lower appellate Court, urging that the decree dated 21.01.1982 was wholly collusive between father Jagir Singh and his son Balwinder Singh, to the detriment of the other heirs of Karam Singh. It is argued that the power of attorney given to Jagir Singh was only for purposes of management and did not empower him to transfer ownership rights in favour of his own son. The lower appellate Court rightly examined the pleadings of the earlier suit and the surrounding circumstances, and upon such examination, held that there was no intention of Karam Singh to alienate the suit property. Counsel has further contended that since



the property was ancestral in character and inherited from the forefathers in lieu of land left in Pakistan, the plaintiffs had a subsisting right by birth, and as such, their claim was governed by Article 65 of the Limitation Act prescribing 12 years, not by Article 59. Reliance is placed on **Mohinder Singh v. Kashmir Singh [1985 PLJ 82]** and **Bije Singh (since deceased) through LRs v. Banwari and Others [2020(1) RCR (Civil) 128]**, to submit that no limitation applies when the property is inherited, and that possession by one heir does not become adverse until clearly and unequivocally asserted.

23. Learned counsel for the respondents has also relied on **Gurdev Kaur and Another v. Mehar Singh and Others [1989(2) RCR (Rent) 625]** to argue that a decree obtained by fraud, collusion, or misrepresentation can always be set aside, and the Court is empowered to pierce the veil of a compromise to prevent injustice.

### **Findings of this Court**

24. Having carefully considered the rival contentions, the pleadings, the judgments cited at the bar and the findings recorded by the Courts below, two questions arise for determination:

- (i) whether the suit was within limitation, and
- (ii) whether the lower appellate Court was justified in going behind the consent decree dated 21.01.1982 to test its factual correctness.

25. On the question of limitation, the relief claimed by the plaintiffs was cancellation of the consent decree on grounds of collusion and want of authority. Such a prayer squarely falls under Article 59 of the Limitation Act, which prescribes three years from the date when the facts entitling the plaintiff to



challenge the decree became known. The plaintiffs were aware of the decree immediately after the death of Karam Singh on 27.07.1982, yet the suit was instituted in June 1987, well beyond three years. The reliance of the respondents on Article 65, prescribing 12 years for possession based on title, is misplaced. Article 65 governs suits where the plaintiff already asserts ownership and seeks recovery of possession from a trespasser or adverse possessor. In the present case, however, the decree of 1982 stood as a legal bar, and unless that decree was set aside, the plaintiffs could not claim title or possession. Hence the starting point of limitation was the decree itself, not mere possession.

26. The judgments cited by the respondents, including *Mohinder Singh (supra)*, *Bijje Singh (supra)*, and *Ram Singh (supra)* are distinguishable. Those cases dealt with suits based on inheritance or co-sharers' rights in joint family property, where no specific decree stood in the way of asserting possession, and the law rightly applied Article 65 by treating the possession of one heir as not adverse to another until openly denied. In contrast, the present case is not a simple suit for possession amongst co-heirs, but a challenge to a consent decree already passed. Once such a decree exists, limitation is governed not by the general right of inheritance but by Article 59, which requires the decree to be set aside within three years. Thus, the reliance on the principle of joint possession and 12 years' limitation is wholly misplaced.

27. On the second question, it is trite law that a consent decree is binding between the parties and can only be challenged on limited grounds, namely fraud, coercion, misrepresentation, or incapacity of a party. The jurisdiction of a subsequent Court does not extend to re-opening the factual pleas underlying the



compromise to test whether they were right or wrong. The lower appellate Court, however, embarked on a detailed re-examination of the earlier pleadings, evidence, and the surrounding circumstances of the decree, and virtually sat in appeal over the earlier compromise itself. This approach is legally impermissible. Judgments such as *Gurdev Kaur v. Mehar Singh (supra)*, *Shanti Devi v. Mange Ram (supra)*, *Tej Singh v. Jagrup Singh (supra)*, and *Harpal Singh v. Ram Piari (supra)* consistently hold that the Court cannot go behind a consent decree to test correctness of underlying facts, and that such decrees remain binding unless set aside on established grounds of fraud or want of authority.

28. In the present case, the plaintiffs failed to produce any cogent evidence of fraud or misrepresentation. The mere suspicion arising from the fact that Jagir Singh confessed judgment in favour of his son Balwinder Singh cannot, by itself, vitiate the decree. At best, it may raise doubt, but the law requires proof of fraud, which is absent here. The lower appellate Court, therefore, erred in law in venturing into the factual merits of the compromise and in holding that the decree was collusive. Its approach was contrary to settled principles and beyond its jurisdiction.

29. It also deserves to be noticed that the respondents sought to justify the findings of the lower appellate Court by urging that Jagir Singh had acted beyond the scope of the power of attorney and that the surrounding circumstances clearly established collusion. However, this contention cannot be accepted. The registered power of attorney Ex.D3, which stands duly proved on record, specifically authorised Jagir Singh to appear on behalf of Karam Singh, to compromise and to confess judgment. Once such express authority was conferred, the decree dated



21.01.1982 cannot be termed as collusive merely because the attorney happened to be the father of the beneficiary. The lower appellate Court's insistence on re-examining the earlier pleadings and drawing inferences of collusion was thus an error in approach, for it ignored the binding nature of the registered authority and travelled far beyond the permissible scope of judicial scrutiny of a consent decree. The reliance of the respondents on findings of suspicion and inference is therefore misplaced, and the reasoning adopted by the appellate Court cannot be sustained.

### **Conclusion**

30. For the foregoing reasons, this Court is unable to agree with the findings of the lower Appellate Court. The suit was clearly barred by limitation, and the decree dated 21.01.1982 could not have been reopened by going behind the consent decree. The judgments relied upon by the respondents are distinguishable on facts and inapplicable to the present controversy.

31. Consequently, the findings of the lower Appellate Court cannot be sustained and are, accordingly, set aside. The present Regular Second Appeal stands allowed.

32. Pending application(s), if any, also stands disposed of.

September 29, 2025  
tripti

**(MANDEEP PANNU)**  
**JUDGE**

Whether speaking/non-speaking : Speaking  
Whether reportable : Yes.