



**RSA No. 1369 of 1983 (O&M) 1**

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

**RSA No. 1369 of 1983 (O&M)  
Reserved on : 23.09.2025  
Date of Pronouncement :- 26.09.2025**

**Sital Singh**

**...Appellant**

**Versus**

**Jamna Bai and others**

**...Respondents**

**CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL**

**Present:-** Mr. Yogesh Aneja, Advocate for the appellant.

Mr. Rahul Jaswal, Advocate for respondent No. 3(a).

Mr. Manu Loona, Advocate for respondent No. 6.

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**VIRINDER AGGARWAL, J.**

1. This Regular Second Appeal was disposed of by this Court vide judgment dated 21.04.2004.
2. Gulab Chand-respondent No. 3 being aggrieved filed SLP which was allowed and Hon'ble Supreme Court allowed the Civil Appeal No. 5705 of 2006 and case was remanded vide judgment dated 24.10.2013 for decision afresh after framing substantial question of law.
3. Briefly, Kartar Singh and Gurdit Singh were co-owners in land measuring 149 kanals 9 marlas. Kartar Singh was having two sons i.e. appellant Sital Singh and respondent No. 6 Harmit Singh. Kartar Singh sold 2 kanal 9 marla land to Gulab Chand respondent No. 3 vide registered sale deed dated 11.04.1975. 9 kanal 1/2 marla land was sold to Jagga Singh respondent No. 2 vide sale deed dated 25.7.1977. He suffered a collusive

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decree regarding his half share in favour of his wife Jamna Bai respondent No. 1 on 02.02.1978. Sital Singh challenged the alienations on the grounds that suit property was ancestral and coparcenary property in the hands of Kartar Singh and plaintiff along with defendants No. 4 to 6 constituted a joint Hindu Family governed by Mitakshara School of Hindu Law. The plaintiff has birth right in the suit property and alienations made by Kartar Singh were without any legal necessity and are not for the benefit of estate. Suit was contested by defendants. Defendants No. 1 and 2 claimed that suit land is self acquired property of Kartar Singh and that plaintiffs and defendants No.4 to 6 are Rai Sikhs and are not governed by Hindu Law and are governed by customary law. The alienations were made by Kartar Singh to meet with the marriage expenses of his daughter and were for legal necessity. The learned Civil Court decreed the suit by recording findings that suit land is ancestral property in the hands of Kartar Singh and parties are Hindus governed by Mitakshara School of Hindu law and that alienations were made by Kartar Singh without any legal necessity.

4. Aggrieved by the judgment and decree so passed, Jamna Bai filed appeal before the First Appellate Court. Only one contention was raised on the basis of judgments passed by this Court in '**Jawala Singh and another versus Lachhman Dass and others**' AIR 1974 Punjab and Haryana 188 and '**Mohinder Singh and others versus Ishar Singh and others**' 1979 H.L.R 307 that alienations effected by Kartar Singh be protected upto the extent of his share in the ancestral property. The judgment and decree passed by the learned Civil Court was modified and the alienation upto the extent of 1/3rd share were protected and suit qua 1/3rd share of the suit property was dismissed.



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5. Appellant plaintiff assailed the judgment and decree by filing Regular Second Appeal whereas defendants No. 1 and 2 filed cross objections that alienations made by Kartar Singh are valid. The sole substantial question of law which arises for consideration of this Court is as under :-

“Whether alienation of ancestral property by Karta if found to be without legal necessity or for the benefit of estate would be valid to the extent of share of Karta in ancestral property.?”

6. Learned counsel for the appellant contended that the findings by the learned Additional District Judge are based upon the decision of '**Jawala Singh and another versus Lachhman Dass and others**' (supra) and '**Mohinder Singh and others versus Ishar Singh and others**' (supra) whereby it was held that the sale deed executed by Karta of joint Hindu Family without any legal necessity and consent by other coparceners would bind the Karta and the alienation would be protected upto the extent of share of Karta in joint family. The learned counsel for the appellant contended that the judgment of '**Jawala Singh and another versus Lachhman Dass and others**' (supra) has been over ruled by the Full Bench of this Court in the case of '**Manohar Lal and another versus Diwan Chand and others**' **1985 PLR 689**, so, the modification in the judgment of the trial Court is liable to be set aside and suit of the appellant/plaintiff be decreed in toto.

7. I have heard learned counsel for the parties and gone through the record carefully.

8. The learned counsel for the contesting respondent/cross-objector failed to rebut the position of law laid down by the Full Bench of



this Court in the case of '*Manohar Lal and another versus Diwan Chand and others*' (supra).

9. As regards the contention of counsel for the contesting respondent that parties to the suit are governed by customary law is concerned, it is settled law that the party which pleads custom has to prove it by leading evidence. There is no evidence on record to prove that parties to the suit i.e. plaintiff and defendants No. 4 to 6 are governed by the customary law as prevalent among Rai Sikhs of Punjab. The First Appellate Court has modified the judgment and decree passed by the trial Court by recording finding in para No. 5 of the impugned judgment which reads as under :-

*“5.The learned counsel for the appellants have made little efforts to assail the findings of any of the issues. Their sole contention was that as has been held by our own High Court on more than one occasions, the allegations may be recognised as valid in respect of the share of the vendor in the land alienated by him. Two authorities, which operate on all fours, have been pressed into service. These are '**Jawala Singh and another Vs. Lachhman Das and others**' A.I.R. 1974 Punjab and Haryana 188 and '**Mohinder Singh and others vs. Ishar Singh and others** 1979 H.L.R.307. It was held that alienation to the extent of share of father, in a case like the one before me would be binding. Sh. Gupta did not have any reply to this submission raised on behalf of the appellants. Accordingly, despite the fact that the two sales are held to be without legal necessity, the same being obviously true of the tram for by collusive decrees, the suit of the Sital Singh respondent could be decreed to the extent of 2/3 rd share.”*



10. Whereas the judgment relied upon by the Court below has been over ruled by a Full Bench of this Court in the case of '***Manohar Lal and another versus Diwan Chand and others***' (supra) and it was held as under :-

*“5. Though this question was not directly involved but the Full Bench of this Court in the Commissioner of Gift Tax v. Tej Nath, while determining the nature of the alienation by way of gift and the power of the manager in this regard observed that the rule in both cases (i. e. gift and other alienation) is firmly established that alienation of Hindu undivided family property not permitted by the context of Hindu law does not even bind the share of the Karta though in the application of this rule, estoppel prevents the Karta from avoiding the alienation. It is therefore, apparent that except the discordant note struck in Jawala Singh's case (supra) the proposition of law that under Mitakshra School of Law, the alienation if otherwise void, does not even bind the share of the alienor has been invariably accepted and holds the field in this Court since more than five decades. Accordingly the question referred to us is answered in the negative and the decision in L. P. A. No. 692 of 1973 (Supra) overruled.”*

11. Learned counsel for the respondents has failed to assail the legal position as laid down in the case of '***Manohar Lal and another versus Diwan Chand and others***' (supra). So the alienations made by Karta of ancestral property without any legal necessity or the benefit of a estate would not be protected even upto the extent of share of Karta in ancestral property.

12. Therefore, the findings recorded by the learned First Appellate Court are not sustainable. In view of the aforesaid discussion the appeal is



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allowed and impugned judgment and decree is set aside and judgment and decree passed by Sub Judge First Class, Fazilka is restored.

13.            Since the main appeal stands decided, the miscellaneous application(s), if any, stand disposed of accordingly.

**(VIRINDER AGGARWAL)  
JUDGE**

**26.09.2025**

*P.Singh*

Whether speaking/reasoned      Yes/No

Whether Reportable              Yes/No