

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-3731-1997 (O&M)

Reserved on :-04.11.2025

Date of Pronouncement:-10.11.2025

Beant Singh (Since Deceased) Through His LRs

... Appellant

Versus

Sucha Singh (Since Deceased) through his LRs and others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :-

Mr. G. S. Punia, Senior Advocate with
Ms. Manleen Kaur, Advocate
for the appellant.

Mr. Sushant Mahajan, Advocate with
Mr. Vinjay Kumar Mahajan, Advocate
for the respondent Nos.1 and 2.

VIRINDER AGGARWAL, J.

1. The appellant/plaintiff, aggrieved by the judgment and decree dated 23.08.1997 of the learned District Judge, Hoshiarpur, which erroneously reversed the well-reasoned judgment and decree dated 09.01.1995 of the learned Sub-Judge IInd Class, Hoshiarpur, respectfully invokes the appellate jurisdiction of this Court under Section 41 of the Punjab Courts Act, 1918, through the present Regular Second Appeal (here-in-after to be referred as "RSA"). The appellant seeks restoration of the decree rightly rendered by the Trial Court and appropriate relief for the substantial injustice suffered.



1.1. It is respectfully submitted that the impugned judgment and decree are palpably perverse, premised on fundamental errors of law and a manifestly flawed appraisal of evidence, resulting in a gross miscarriage of justice. In these circumstances, the appellant earnestly prays for this Court's intervention to set aside the impugned judgment and decree and restore the lawful, well-reasoned decree of the learned Trial Court.

2. For clarity and precision in the ensuing discussion, the parties shall hereinafter be referred to as the plaintiffs and defendants, consistent with their designation before the learned Trial Court. The material and salient facts giving rise to the institution of the present proceedings are summarized as follows:-

“The plaintiff seeks a declaration that the order dated 2.2.1990 of the Financial Commissioner (Appeals), Punjab, sanctioning Mutation No. 2190 in favour of defendants Nos. 1 and 2, is illegal, void, and infringing upon his ownership rights. Ganda Singh, the plaintiff's uncle and co-purchaser of the 35 kanals 8 marlas of land and a house, was unmarried and lived with the plaintiff until his death on 15.2.1984. In recognition of the plaintiff's care, he executed a registered will dated 7.10.1980 bequeathing all his property to him. The defendants forged an unregistered will dated 15.12.1983 to claim the estate. Despite prior validation of the plaintiff's mutation, the impugned order unjustly clouds his title and emboldens the defendants to threaten his lawful possession.”

3. Upon notice, defendants Nos. 1 and 2 appeared and filed a joint written statement contending that the suit is not maintainable, as mutation



confers no title and cannot be independently challenged. They asserted that the cause of action arose on Ganda Singh's death on 15.2.1984, and the plaintiff's earlier Civil Suit No. 181 of 1986, based on the same will and property, was withdrawn on 29.4.1988 without liberty to refile, thus barring the present suit under Order 23 Rule 1(4) CPC. They denied the plaintiff's possession, affirmed the genuineness of the unregistered will dated 15.12.1983, and contended that no fresh cause of action exists post the order dated 2.2.1990.

4. The plaintiff filed a replication, reiterating and expressly reaffirming all material allegations set forth in the plaint, while specifically controverting and refuting the defenses and contentions advanced by the respondents. Upon meticulous examination of the pleadings, documentary evidence, and oral arguments, the Court has accordingly framed the following issues for determination to facilitate a focused and comprehensive adjudication of the rival claims and defenses, as detailed hereunder: -

- 1) Whether the Ganda Singh had executed a will dated 7-10-1980, in favour of the plaintiff?OPP.
- 2) Whether order dated 2.2.1990 of Financial Commissioner (Appeals) Punjab regarding mutation No.2190, as detailed in the head-note of the plaint is wrong and illegal?OPP.
- 3) Whether the plaintiff is owner in possession of the property in dispute?OPP.
- 4) Whether the plaintiff is entitled to the permanent injunction as prayed for? OPP.
- 5) Whether suit is not maintainable in the present form? OPD.
- 6) Whether suit is barred under order 23, Rule 1(4) CPC?OPD.
- 7) Whether the suit is properly valid for the purposes of court-fee and jurisdiction? OPP.



8) Whether Ganda Singh had executed a will dated 15-12-1983, in favour of the plaintiff and defendants Nos. 1 and 2? OPD.

9) Relief.

5. Both parties were afforded adequate opportunities to lead evidence in support of their respective claims. Upon the conclusion of the trial and after hearing learned counsel for the parties, the learned Sub-Judge IInd Class, Hoshiarpur decreed the suit in favour of the appellant/plaintiff, observing that *“In light of the findings, the suit is decreed with costs. The order dated 2.2.1990 of the Financial Commissioner (Appeals), Punjab, in Baldev Singh v. Beant Singh, sanctioning Mutation No. 2190, is declared illegal, void, and inoperative against the plaintiff. The plaintiff is confirmed as exclusive owner in possession of the suit property, and the defendants are permanently restrained from interference.”*.

5.1. Aggrieved by this decree, the appellants/respondents preferred an appeal before the learned District Judge, Hoshiarpur and the appellants/respondents did not impugn the Trial Court’s findings *exceptio probat regulam* save for issue No. 6, which alone was re-examined and duly reversed by the learned Appellate Court *sub silentio* with its observations that *“The finding on Issue No. 6 is reversed. The plaintiff, as PW2, denied withdrawing the prior suit due to mutation, asserting it was decided in his favour. No other contention was urged. Accordingly, the appeal is allowed, the impugned judgment and decree are set aside, and the plaintiff’s suit is dismissed with costs.”*

6. Dissenting from the judgment and decree of the learned First Appellate Court, the appellant/plaintiff instituted the present appeal. Upon its admission, notice was duly served upon the respondents; however, only



respondents Nos. 1 and 2 entered appearance and contested the matter. The records of the subordinate courts were thereafter summoned for comprehensive scrutiny and adjudication.

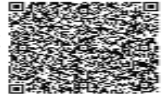
7. I have heard learned counsel and carefully examined their submissions in conjunction with the pleadings, evidence, and the findings recorded by the courts below. The record has been meticulously reviewed to determine *‘whether the impugned judgments and decrees suffer from any legal error or infirmity warranting interference by this Court’*.

8. The instant appeal raises the following *‘quaestio juris substantialis’* for adjudication and determination before this Court:-

“Whether the subject matter of the present proceedings is *‘idem per idem’* with that of the prior suit.”

9. Learned counsel for the appellant-plaintiff submitted that in the present suit, the plaintiff challenges the order of the Financial Commissioner as illegal, null, and void. In contrast, the prior suit did not impugn this order, as it did not exist at the relevant time. Consequently, the present suit arises from a distinct subject matter and an independent cause of action.

10. Conversely, learned counsel for the respondent contended that the findings of the learned First Appellate Court are entirely correct, as the subject matter of both suits is identical. The plaintiff asserts rights, title, and interest in the suit property under the Will dated 07.10.1980 while challenging the purported Will dated 15.12.1983. It was further submitted that, as a matter of settled law, mutation does not confer title. Accordingly, the learned First Appellate Court’s conclusions merit affirmation, and the appellant’s appeal should be dismissed.



11. For decision of the question involved in this appeal, provisions of Order 23 Rule 1 of CPC are relevant, which are reproduced as under:-

“1. Withdrawal of suit or abandonment of part of claim.

(1) *At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim: Provided that where the plaintiff is a minor or other person to whom the provisions contained in rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.*

(2) *An application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other person.*

(3) Where the Court is satisfied,

- (a) *that a suit must fail by reason of some formal defect, or*
- (b) *that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of suit or part of a claim,*

It may, on such terms as it thinks fit grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.

(4) Where the plaintiff

- (a) *abandons any suit or part of claim under sub-rule (1),*
- or*



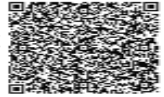
- (b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3), he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.*
- (5) Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1), or to withdraw, under sub-rule (3), any suit or part of a claim, without the consent of the other plaintiff.”*

12. It is an admitted fact that the appellant-plaintiff earlier instituted a civil suit for declaration on 12.05.1986, a copy of which is on record as Ex.DW4/A, and that the suit was dismissed as withdrawn on 29.04.1988, vide order Ex.DX/2. It is further admitted that no permission of the Court was sought or obtained to file a fresh suit on the same subject matter. In this context, Sub-Rule 4 of Rule 1, Order 23, bars the plaintiff from instituting any subsequent suit in respect of such subject matter or part of the claim. The term “subject matter” is not defined in the CPC but was interpreted by the Hon’ble Apex Court in **Vallabh Das vs. Dr. Madanlal & Ors., AIR 1970 SC 987**, where in para 5, the Court held as follows:-

“5. Rule 1, Order 23, Civil Procedure Code entitles Courts to permit a plaintiff to withdraw from the suit brought by him with liberty to institute a fresh suit in respect of the subject-matter of that suit on such terms as it thinks fit. The term imposed on the plaintiff in the previous suit was that before bringing a fresh suit on the same cause of action, he must pay the costs of the defendants. Therefore, we have to see whether that condition governs the institution of the present suit. For deciding that question we have to see whether the suit from which this appeal arises is in respect of the same subject-matter that



*was in litigation in the previous suit. The expression "subject-matter" is not defined in the Civil Procedure Code. It does not mean property. That expression has a reference to a right in the property which the plaintiff seeks to enforce. That expression includes the cause of action and the relief claimed. Unless the cause of action and the relief claimed in the second suit are the same as in the first suit, it cannot be said that the subject-matter of the second suit is the same as that in the previous suit. Now coming to the case before us in the first suit Dr. Madan Lal was seeking to enforce his right to partition and separate possession. In the present suit he seeks to get possession of the suit properties from a trespasser on the basis of his title. In the first suit the cause of action was the division of the status between Dr. Madan Lal and his adoptive father and the relief claimed was the conversion of joint possession into separate possession. In the present suit the plaintiff is seeking possession of the suit properties from a trespasser. In the first case his cause of action arose on the day he got separated from his family. In the present suit the cause of action, namely, the series of transactions which formed the basis of his title to the suit properties, arose on the death of his adoptive father and mother. It is true that both in the previous suit as well as in the present suit the factum and validity of adoption of Dr. Madan Lal came up for decision. But that adoption was not the cause of action in the first nor is it the cause of action in the present suit. It was merely an antecedent event which conferred certain rights on him. Merely identity of some of the issues in the two suits do not bring about an identity of the subject-matter in the two suits. As observed in *Rukma Bai v. Mahadeo Narayan*, ILR 42 Bombay 155 the expression "subject-matter" in Order 23, Rule 1, Civil Procedure Code means the series of acts or transactions alleged to exist giving rise to the relief claimed. In other words*



"subject-matter" means the bundle of facts which have to be proved in order to entitle the plaintiff to the relief claimed by him. We accept as correct the observations of Wallis, C.J., in Singa Reddi v. Subba Reddi, ILR 39 Madras 987 that where the cause of action and the relief claimed in the second suit are not the same as the cause of action and the relief claimed in the second suit are not the same as the cause of action and the relief claimed in the first suit, the second suit cannot be considered to have been brought in respect of the same subject matter as the first suit."

13. The same was relied upon by the Hon'ble Gujarat High Court in **Kurji Jinabhai Kotecha vs. Ambalal Kanjibhai Patel, AIR 1972 Guj 63** and whereas in **Vimala vs. Narayanaswamy, 1996(1) RCR (Rent) 192**, the Hon'ble Karnataka High Court has held as under:-

"The spirit behind the bar enunciated in Order 23 Rule 1 is basically to put a stop to frivolous, wanton and repeated litigations which are vexatious in character. The Case Law as far as this aspect of the matter is concerned has made a lot of headway in recent times and the principle that has effectively emerged is that a fresh proceedings on the same cause of action will be barred on the principle of constructive res judicata provided it is demonstrated that the issue involved has effectively been agitated and decided on the earlier occasion. This has been the crystallisation of the Case Law on this point and applying that principle to the present case, to my mind, it would be incorrect to hold that the suit in question was not maintainable"

14. In that case the Hon'ble Karnataka High Court has held that *"Fresh proceedings on the same cause of action would be barred on the principle of constructive res-judicata provided it is demonstrated that the issue involved has effectively being agitated and decided on the earlier occasion"*.



15. The authority of the Hon'ble Apex Court in **Vallabh Das vs. Dr. Madanlal and other's** case (**supra**) was also relied upon by the Division Bench of Delhi High Court in **Inderpal Singh vs. Inder Kaur, 1991(44) DLT 399**.

16. From the foregoing precedents, it is evident that the term "subject matter" in Order 23, Rule 1 CPC encompasses the entire series of acts or transactions alleged to have occurred, giving rise to the claim for relief. In essence, "subject matter" denotes the composite set of facts which the plaintiff must establish to substantiate and obtain the relief sought.

17. The next point for determination is as to what is the 'subject matter' of both the present and the prior suit filed by the appellant-plaintiff, a copy of the plaint of which is marked Ex.DW4/A. It is evident that in the present suit, the plaintiff has sought to disguise the original subject matter under the pretext of challenging the Financial Commissioner's order, specifically assailing its legality and validity. Hon'ble Apex Court in **Jatinder Singh vs. The State of Madhya Pradesh and others, 2021(3) Apex Court Judgments (SC) 173** has held as under:-

"5. It is not in dispute that the dispute is with respect to mutation entry in the revenue records. The petitioner herein submitted an application to mutate his name on the basis of the alleged will dated 20.05.1998 executed by Smt. Ananti Bai. Even, according to the petitioner also, Smt. Ananti Bai died on 27.08.2011. From the record, it emerges that the application before the Nayab Tehsildar was made on 9.8.2011, i.e., before the death of Smt. Ananti Bai. It cannot be disputed that the right on the basis of the will can be claimed only after the death of the executant of the will. Even the will itself has been disputed. Be that as it may, as per the settled proposition of law, mutation entry does not



confer any right, title or interest in favour of the person and the mutation entry in the revenue record is only for the fiscal purpose. As per the settled proposition of law, if there is any dispute with respect to the title and more particularly when the mutation entry is sought to be made on the basis of the will, the party who is claiming title/right on the basis of the will has to approach the appropriate civil court/court and get his rights crystalised and only thereafter on the basis of the decision before the civil court necessary mutation entry can be made.

6. *Right from 1997, the law is very ery clear. In the case of Balwant Singh v. Daulat Singh (D) By Lrs., reported in (1997) 7 SCC 137, this Court had an occasion to consider the effect of mutation and it is observed and held that mutation of property in revenue records neither creates nor extinguishes title to the property nor has it any presumptive value on title. Such entries are relevant only for the purpose of collecting land revenue. Similar view has been expressed in the series of decisions thereafter.*

6.1 *In the case of Suraj Bhan v. Financial Commissioner, (2007) 6 SCC 186, it is observed and held by this Court that an entry in revenue records does not confer title on a person whose name appears in record-of-rights. Entries in the revenue records or jamabandi have only "fiscal purpose", i.e., payment of land revenue, and no ownership is conferred on the basis of such entries. It is further observed that so far as the title of the property is concerned, it can only be decided by a competent civil court. Similar view has been expressed in the cases of Suman Verma v. Union of India, (2004) 12 SCC 58; Faqrudin v. Tajuddin (2008) 8 SCC 12; Rajinder Singh v. State of J&K, (2008) 9 SCC 368; Municipal Corporation, Aurangabad v. State of Maharashtra, (2015) 16 SCC 689; T. Ravi v. B. Chinna Narasimha, (2017) 7 SCC 342; Bhimabai Mahadeo Kambekar v. Arthur Import & Export Co., (2019) 3 SCC 191; Prahlad Pradhan v. Sonu Kumhar,*



(2019) 10 SCC 259; and Ajit Kaur v. Darshan Singh, (2019) 13 SCC 70.”

17.1. It is manifest that mutation entries in revenue records do not confer any title, as such entries neither create nor extinguish proprietary rights, nor carry any presumptive evidentiary value regarding ownership. In the present case, the plaintiff asserts ownership of the suit property based on the registered Will dated 07.10.1980, while contesting the validity of the unregistered Will executed in favor of the respondent-defendants.

18. It is evident that the plaintiff in the present suit can succeed only upon establishing that the testator executed the registered Will dated 07.10.1980, that its execution was free from any suspicious circumstances, and that the alleged Will propounded by the respondent-defendants is tainted by fraud or fabrication or is surrounded by suspicious circumstances. Only upon such proof could the mutation order sanctioned by the Financial Commissioner (Appeals) be declared illegal, null, and void.

19. This was precisely the subject matter of the earlier suit filed by the plaintiff, which was also predicated on the Will dated 07.10.1980, with the plaintiff claiming ownership, right, title, and interest in the suit property, challenging the validity of the Will in favor of the respondents-defendants. In essence, the core subject matter of both suits is identical: the plaintiff's claim to succeed the deceased under the registered Will of 07.10.1980 and the assertion that the respondents' Will is invalid and fabricated.

19.1. Since the appellant-plaintiff voluntarily withdrew the previous suit on 29.04.1988, as evidenced by Ex.DX/2, the provisions of Order 23 Rule 1(4)(b) CPC preclude the filing of a fresh suit on the same subject matter. The learned First Appellate Court rightly concluded that the present



suit is barred as it pertains to the same subject matter as the withdrawn suit. Consequently, there is no infirmity or illegality in the appellate court's findings. The present appeal lacks merit and is, accordingly, dismissed, with the judgment and decree of the learned First Appellate Court being upheld in full.

20. Consequent upon the final adjudication of the main case, all pending miscellaneous applications, if any, filed in connection with or arising out of the present proceedings, stand disposed of in view of the decision rendered herein. No further orders or directions are deemed necessary in respect of such applications, and they are accordingly disposed of in the light of the conclusions reached in the main case.

10.11.2025
Gaurav Sorot

(VIRINDER AGGARWAL)
JUDGE

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No