

2026:PHHC:064404



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

RSA-2760-1995

Reserved on : 17.03.2026

Pronounced on : 29.04.2026

JOGINDER SINGH AND OTHERS

...Appellants

Versus

KESAR SINGH

...Respondent

**CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL**

Present: Mr. J.S. Virk, Advocate  
for the appellants (Through VC).

Mr. Sanjiv Gupta, Senior Advocate with  
Mr. Aayush Bansal, Advocate  
for the respondent.

**PARMOD GOYAL, J. (ORAL)**

Present regular second appeal has been preferred by appellants/plaintiffs being aggrieved by judgment and decree dated 31.03.1993, passed by learned Senior Sub Judge, Kurukshetra vide which suit of appellants/plaintiffs for possession and permanent injunction was dismissed and also by judgment and decree dated 11.08.1995, passed by learned Additional District Judge, Kurukshetra, whereby first appeal preferred by appellants/plaintiffs was also dismissed.

2. Appellants/plaintiffs by their suit for possession and permanent injunction had sought possession of land measuring 24 kanals 1 marla situated within the revenue estate of Village Sura, Tehsil Thanesar, District Kurukshetra on the ground that Phool Singh/defendant No.2 was owner in possession of half share of land measuring 104 kanals 10 marlas, however,

he was in possession of specific khasra numbers. He had mortgaged the land measuring 48 kanals in favour of respondent/defendant No.1-Kesar Singh vide mortgage deed dated 06.11.1981. Subsequently, he sold land measuring 24 kanals 1 marla vide sale deed dated 01.07.1983 to respondent/defendant No.1. Mortgage as well as sale was challenged by appellants/plaintiffs on the ground that suit property was joint Hindu family property and Phool Singh/defendant No.2 had no rights to alienate the said co-parcenary land. It was asserted that transfer/alienation by way of mortgage and sale made by Phool Singh/defendant No.2 was without legal necessity, merely to fulfil personal desires and bad habits. That Phool Singh/defendant No.2 was addicted to drinking, gambling and other vices. That earlier also appellants/plaintiffs No.2 to 4 had filed suit for permanent injunction against Phool Singh/defendant No.2 on 23.06.1983, wherein Court had restrained him from alienating the land. Appellants/plaintiffs were granted injunction in their favour, however, despite said injunction, Phool Singh/defendant No.2 had sold away land in favour of respondent/defendant No.1. It was asserted that Phool Singh/defendant No.2 was duly served in the suit and had notice of the same. Accordingly, possession of suit land was sought.

3. Respondent/defendant No.1 contested the suit by taking preliminary objections with regard to maintainability of the suit. It was asserted that suit land was not in possession of respondent/defendant No.1 but was under mortgage with Mehar Singh and Mohinder Singh for a consideration of Rs.63,000/- vide mortgage deed dated 06.11.1981. It was further asserted that Phool Singh/defendant No.2 was absolute owner of suit land and suit land stood partitioned and Phool Singh/defendant No.2 had already given one share each to appellants/plaintiffs. It was further asserted

that mortgage was for legal necessity and for consideration as Phool Singh/defendant No.2 was under debt and land was alienated to repay the same. It was asserted that in absence of mortgagees, Mehar Singh and Mohinder Singh mortgage cannot be set aside. That the other half share of the suit land was mortgaged with Phool Singh/defendant No.2 for paying installment of loan for purchase of tractor. It was claimed that only 24 kanals 1 marla land was sold for consideration of Rs.1,05,000/- vide sale deed dated 01.07.1983. The sale in question was also stated to be for legal necessity. Phool Singh/defendant No.2 was to pay antecedent debt and was requiring money for purposes of marriage of his two daughters and for raising construction of additional accommodation at his house. Phool Singh/defendant No.2 had also disclosed that he wanted to purchase some agricultural equipments. Respondent/defendant No.1 had purchased the suit land after making reasonable inquiries, and found that two daughters of Phool Singh/defendant No.2 were of marriageable age and marriage was solemnized after the sale in question. Phool Singh/defendant No.2 had also purchased agricultural equipments and had paid off his debts. That Phool Singh/defendant No.2 was under debt as he was to redeem 6 acres of land and accordingly, dismissal of suit was prayed claiming suit land to be self-acquired property of Phool Singh/defendant No.2.

4. Following issues were framed from the pleadings of parties :-
- 1) Whether the plaintiff No.3 is minor and plaintiff No.4 is dumb and suit has been filed through proper person on their behalf ?  
OPP
  - 2) Whether impugned mortgage vide mortgage deed dated 06.11.1981 was for consideration and legal necessity ? OPP

- 3) Whether the impugned sale vide sale deed dated 01.07.1983 was for consideration and legal necessities ? OPD
- 4) Whether plaintiffs and defendant No.2 constitute joint Hindu family ? OPD
- 5) Whether the suit land is ancestral land of plaintiffs and defendant No.2, if so, to what effect ?h OPD
- 6) Whether the plaintiffs are entitled to possession of the suit land ? OPD
- 7) Whether the plaintiffs have no locus standi to file the suit ? OPD
- 8) Whether the suit is not maintainable in the present form ? OPD
- 9) Whether the plaintiffs are estopped from filing the suit ? OPD
- 10) Whether the suit is bad for non-joinder of necessary parties ? OPD
- 11) Whether there was any partition between the plaintiffs and defendant No.2. If so, to what effect ? OPD
- 12) Whether impugned mortgage cannot be challenged in this suit for non-joinder of all mortgagees ? OPD
- 13) Whether the suit is barred by Order 2 Rule 2 C.P.C. ? OPD
- 14) Relief.

5. Learned Trial Court decided issues No.1, 4, 5 and 11 in favour of appellants/plaintiffs, issues No.2, 3, 6, 7, 8 and 12, were decided in favour of respondent/defendants and against appellants/plaintiffs and issues No.9 and 10 were decided in favour of appellants/plaintiffs being not pressed, however, suit was dismissed and learned Appellate Court had affirmed the finding of judgment of learned Court of first instance.

6. Learned Court of first instance had duly taken into consideration excerpt and revenue record from 1904-05 to 1984-85 (Ex.P2), jamabandi for the year 1979-80 (Ex.P3), jamabandi for the year 1944-45 (Ex.P4), khatoni istemal for the year 1954-55 (Ex.P8), copy of mutation of inheritance (Ex.P9) and copy of jamabandi for the year 1959-60 (Ex.P12). Learned Court of first instance also took into consideration evidence of PW1-Joginder Singh, PW2-Ajit Singh and PW3-Phool Singh and duly took note of the fact that appellants/plaintiffs are sons of Phool Singh/defendant No.2. It was also found that Phool Singh/defendant No.2 had succeeded estate owned by his father vide mutation dated 30.05.1939 (Ex.P9) and during consolidation he had received suit land in lieu of old khasra numbers which was owned by his father Shardha. Learned Court of first instance accordingly held suit property to be ancestral property. Learned Court of first instance has also concluded that action of Phool Singh/defendant No.2 to give 7.5 acres to each of his son was not a partition by meets and bounds but was only a mutual arrangement. The first defence taken by defendants that suit property is not ancestral property was found against them by both the Courts. On consideration, I do not find any error with the conclusion drawn by the Courts below which is based upon correct appreciation of revenue record proved and evidence of witnesses.

7. The second defence taken by respondent/defendant No.1 was that mortgage as well as sale in favour of respondent/defendant No.1 was result of legal necessity as Phool Singh/defendant No.2 was in need of money for marrying his two daughters, for redeeming mortgage for paying tractor loan, for purchasing agricultural equipments and also for construction of additional accommodation at his house. This argument was duly accepted

by learned Court of first instance as well as learned First Appellate Court. On the basis of this finding in favour of respondent/defendant No.1 suit as well as first appeal preferred by appellants/plaintiffs were dismissed.

8. Learned counsel for appellants/plaintiffs has challenged the findings of learned Courts below on this aspect of the case. The moot question which arises in the present appeal is if the alienation by way of mortgage and sale was for legal necessity and was made rightly by Phool Singh/defendant No.2.

9. As far as facts are concerned, the following facts are not in dispute :-

- a) Initially some of the land owned by Phool Singh/defendant No.2 was mortgaged with possession to one Bishna on 28.12.1978 for Rs.42,000/-.
- b) Thereafter, vide mortgage deed dated 06.11.1981 (Ex.DW4/A) the suit land along with some other land was mortgaged for Rs.63,000/- and the said mortgage was executed in favour of Kesar Singh, Mehar Singh and Mohinder Singh.
- c) Thereafter, vide sale deed dated 01.07.1983 (Ex.P1) the suit land was sold by Phool Singh/defendant No.2 in favour of respondent/defendant No.1 for consideration of Rs.1,05,000/-.

10. Admittedly, there is no challenge to mortgage dated 28.12.1978. It is also worth noticing that though the mortgage (Ex.DW4/A) dated 06.11.1981 was in favour of Kesar Singh, Mohinder Singh and Mehar Singh, but Mohinder Singh and Mehar Singh were not made party to the present suit.

11. It was the case of respondent/defendants that while executing

mortgage deed dated 06.11.1981 (Ex.DW4/A) which was duly registered before Sub Registrar for a total consideration of Rs.63,000/- out of which Rs.6,000/- were paid in advance, Rs.42,000/- were set apart for redeeming the earlier mortgage, whereas Rs.15,000/- were received by Phool Singh/defendant No.2 at the time of execution of mortgage before Sub Registrar.

12. DW2-Kesar Singh and DW4-Harbans Singh both have stated that Phool Singh/defendant No.2 had purchased tractor trolley measuring 12 feet x 6.5 feet amounting to Rs.10,400/-. He had also purchased one TD Harrow for Rs.3,550/-, one tractor tiller for Rs.1,300/- vide Ex.DW4/A, Ex.DW4/B and DW/4/C. Further DW5-Manager, Punjab National Bank had duly proved and asserted that Rs.9,000/- was deposited in Punjab National Bank, Methana for payment of instalment of loan for tractor after execution of mortgage deed dated 06.11.1981. Fact that land was already mortgaged for Rs.42,000/- and previous mortgage was redeemed also stands established from evidence of parties. Learned Courts below on consideration of above noted facts led by appellants/plaintiffs and respondent/defendants had concluded that mortgage deed was duly executed for legal necessity and also held that in absence of mortgagees namely Mohinder Singh and Mehar Singh as party to the suit, mortgage deed cannot be challenged and accordingly, rejected the challenge of appellants/plaintiffs to mortgage deed dated 06.11.1981.

13. On reconsideration, I do not find any error in appreciation of evidence by both the Courts below. Both the Courts have rightly appreciated the evidence of DW2 and DW5 who have successfully proved utilization of money for payment of tractor loan as well as previous mortgage amount of

Rs.42,000/-. Perusal of contents of registered mortgage deed Ex.DW4/A goes to show that recital regarding payment of Rs.42,000/- as well as requirement of money for purchasing agricultural equipments was duly stated by Phool Singh/defendant No.2 while executing the mortgage deed. The assertions have been duly proved by evidence of DW2, DW4 and DW5. Therefore, conclusion of learned Trial Court that mortgage was for legal necessity cannot be faulted with. I am also in agreement with conclusion of Courts below that in absence of co-mortgagees namely Mohinder Singh and Mehar Singh the mortgage deed cannot be challenged by appellants/plaintiffs. Suit is bad for non-joinder of necessary parties with regard to mortgage deed dated 06.11.1981. It is worth noticing that Phool Singh/defendant No.2 father of appellants/plaintiffs was examined as PW3 and had admitted that mortgage under mortgage deed dated 06.11.1981 was redeemed on sale of suit property and out of 6 acres land under mortgage, 3 acres land was sold and 3 acres land was redeemed and is under cultivation and possession of Phool Singh/defendant No.2. Therefore, no fault with the conclusion drawn by Courts below on the validity of mortgage deed dated 06.11.1981 can be made.

14. Appellants/plaintiffs have also challenged sale deed Ex.P1 dated 04.07.1983. As per Ex.P1, Phool Singh/defendant No.2 had sold land measuring 24 kanals 1 marla for total consideration of Rs.1,05,000/-. As per case of respondent/defendant No.1, Phool Singh/defendant No.2 had made representation that he had to pay antecedent debt and also required money for marrying his two daughters and for raising construction of additional accommodation at his house and had to purchase agricultural equipments. Learned Courts below have again appreciated the evidence led by parties

and concluded that the same was also made for legal necessity by karta and upheld the same.

15. Parties are in agreement that co-parcenary property can only be sold by karta if legal necessity is proved, therefore, learned counsel for appellants/plaintiffs has argued that learned Courts below have erred in accepting the claim of respondent/defendant No.1 that suit land was sold for legal necessity as evidence led by respondent/defendants is not cogent and reliable and Courts below ought to have rejected the evidence and set aside the sale deed.

16. In the present case no question of law arises. Fate of present appeal is dependent upon pure appreciation of evidence. Learned Court of first instance had appreciated evidence regarding legal necessity led by respondent/defendants. Learned Courts below have duly taken into consideration that while executing sale deed respondent/defendant No.3 had clearly stated that money is required for payment of mortgage of Rs.63,000/- which was encumbrance upon the land. He had also stated that money is required for repayment of tractor loan and to meet domestic expenses. Learned Court of first instance had duly taken note of evidence of PW1- Joginder Singh-appellant/plaintiff that two of his sisters got married 2 ½ years ago, whereas another sister was married about 6-7 years ago. His statement was recorded on 22.07.1987, suit was filed in the year 1985 and sale was made on 04.07.1983. On the basis of above admission by PW1 it was found that marriage of two daughters of Phool Singh/defendant No.2 was contemporaneous with the execution of sale deed (Ex.P1) and substantiated the claim of respondent/defendant No.1 that the suit land was sold for legal necessity. Marriage of daughters by karta is a pious obligation

and is fully covered by term legal necessity.

17. Learned Court of first instance has also duly noticed and had taken into consideration Bahi entries relied upon by appellants/plaintiffs i.e. Ex.P5, P6 and P7 which goes to show that appellant/plaintiff-Joginder Singh was married on 09.03.1974. Daughters of Phool Singh/defendant No.2 namely Mahindro and Jarnailo were married on 19.05.1979 and Dyalo and Shimla were married on 14.06.1985. However, even this evidence duly noticed by learned Courts below is of no help to the case of appellants/plaintiffs. Admittedly, sale was made on 04.07.1983. While making sale, Phool Singh/defendant No.2 had clearly stated that he wanted money for marrying his daughters. The fact that daughters of Phool Singh/defendant No.2 were of marriageable age, itself is sufficient to show legal necessity for money. Marriages can be performed only after arranging money. Even if marriage had taken place in 1985 as being claimed vide Bahi entries, even then it would be sufficient to show that Phool Singh/defendant No.2 needed money for marrying his daughters and accordingly, for the purposes of legal necessity had sold the suit land vide sale deed dated 04.07.1983.

18. Furthermore, DW1-Vikram from M/s Friends Auto Traders, Ladwa had duly proved bills Ex.D1 to Ex.D4 vide which Phool Singh/defendant No.2 had purchased certain agricultural equipments. He had duly identified his signatures on the bills produced before the Court. No rebuttal was made by appellants/plaintiffs.

19. Learned Courts below have duly noticed the fact that Phool Singh/defendant No.2 had not filed his written statement and then had appeared as PW3 to support the case of appellants/plaintiffs and had tried to

wriggle out from sale deed. The evidence of PW3 is very relevant as he was not only defendant No.2 but was also a witness examined and relied by appellants/plaintiffs. Perusal of his cross-examination goes to show that he had sold his orchid to get tractor for his sons. He has also asserted that he had taken loan from Punjab National Bank, Methana. He also admitted that land was mortgaged with Sushil, then it was mortgaged with Bishna and subsequently, it was mortgaged with Kesar Singh, Mohinder Singh and Mehar Singh for Rs.63,000/-. He also admitted that out of 6 acres of land mortgaged on 06.11.1981, he had sold 3 acres of land and 3 acres which were redeemed, were being cultivated by him. He also admitted that he had already given 7 ½ acres of land to each of his sons and presently he has got no land in his hands. He also admitted that he has got four daughters and had married off two of his daughters around 10 years back. From above noted evidence of PW3 (Phool Singh/defendant No.2) it is, therefore, clearly made out that vide mortgage deed dated 06.11.1981 he had mortgaged 6 acres of land in favour of Kesar Singh-respondent/defendant No.1, Mehar Singh and Mohinder Singh. After selling the suit land vide registered sale deed dated 04.07.1983 he had redeemed balance 3 acres of land which was in possession of appellants/plaintiffs and it is they who were cultivating the said land. This fact goes to prove that out of sale consideration of Rs.1,05,000/-, Rs.63,000/- was duly paid to discharge the mortgage and to redeem 3 acres of land which was mortgaged.

20. Similarly, DW1 vide Ex.D1 to D4 has succeeded in establishing sale of tractor implements to Phool Singh/defendant No.2. It is also clearly established from the admissions made by DW1 to DW3 that marriage of two daughters of Phool Singh/defendant No.2 were also solemnized after sale

deed was executed. All these facts cumulatively in fact goes to prove that sale made vide sale deed dated 04.07.1983 was for legal necessity.

21. It is worth noticing that prior to execution of sale deed dated 04.07.1983, Phool Singh/defendant No.2 had duly taken permission from income tax authorities and it was only after taking the permission, sale deed was executed. Seeking permission prior to sale which could only be got by Phool Singh/defendant No.2 in fact clearly shows voluntary nature of execution of sale deed, which as noted above was for legal necessity to redeem earlier mortgage worth Rs.63,000/- for marriage of his daughters and also for purchase of tractor equipments. Furthermore, respondent/defendants have succeeded in proving that Phool Singh/defendant No.2 has been mortgaging his land repeatedly initially to Sushil, then to Bishna and then to Kesar Singh, Mehar Singh and Mohinder Singh jointly, every time with increased loan after redeeming previous mortgage. This fact also shows that Phool Singh/defendant No.2 was in need to discharge legal debts which he had taken. Mortgage created in 1978 which was not challenged goes to show that same was prior to marriage of daughters of Phool Singh/defendant No.2 in 1979. There is no challenge to previous mortgage deeds executed in favour of Sushil or Bishna. This in fact corroborates the case of respondent/defendant No.1 that suit land was sold for legal necessity in a valid manner. Therefore, I do not find any error in appreciation of evidence recorded by Courts below. Courts below have rightly appreciated the evidence led by parties and have rightly concluded mortgage as well as sale deed, both were executed for legal necessity by Phool Singh/defendant No.2 and, therefore, are valid transactions.

22. Faced with above conclusion, learned counsel for

appellants/plaintiffs has argued that execution of sale deed at Delhi instead of Kurukshetra and execution despite injunction order against Phool Singh/defendant No.2 passed by learned Civil Court goes to show that execution of sale deed is not genuine. However, learned Courts below have rightly held that though appellants/plaintiffs had filed suit for permanent injunction on 23.06.1983 and injunction order was passed by learned Civil Courts, Kurukshetra restraining Phool Singh/defendant No.2 from alienating the suit land, however, there is no evidence led by appellants/plaintiffs that injunction order was known to Phool Singh/defendant No.2 or that for violation of injunction order, appellants/plaintiffs have taken any steps against Phool Singh/defendant No.2. Admittedly, as noted above, sale deed was executed after seeking income tax clearance from income tax department by Phool Singh/defendant No.2. Seeking income tax clearance for sale of suit land in fact goes to prove that Phool Singh/defendant No.2 had actively participated in execution of sale deed. Once Phool Singh/defendant No.2 had been examined as PW3 and had not claimed that sale deed was result of force, fabrication or fraud and had admitted the execution, the appellants/plaintiffs are estopped from raising question on the validity of sale. Since appellants/plaintiffs have not raised any evidence that Phool Singh/defendant No.2 was aware about injunction order and had not taken any action against Phool Singh/defendant No.2 for violating injunction order in fact goes to show that pre-emptive action was taken only to raise false defence.

23. In view of appreciation of evidence made by learned Courts below which cannot be held to be erroneous or perverse and which is based upon evidence led by parties no interference in the present appeal can be

justified. No issue of law or facts arise in the present case. Appeal is without any merit, hence is dismissed.

24. Pending application(s), if any, is/are disposed of accordingly.

29.04.2026  
chiranjeev

**(PARMOD GOYAL)**  
**JUDGE**

Whether Speaking/Reasoned : Yes/No  
Whether Reportable : Yes/No