

PUNJAB AND HARYANA HIGH COURT

SINGLE BENCH

(Before : Pankaj Jain, J.)

CHANDER SINGH (DECEASED) THROUGH HIS LRS AND OTHERS

Vs.

BALBIR AND OTHERS

RSA-3541-2023 (O&M)

Decided on : 16-07-2026

A. Hindu Succession — Mutation of inheritance — Partial mutation excluding co-heirs — Effect — Where the propositus's estate in one village was mutated in favour of all his legal heirs but his estate in another village was mutated only in favour of some heirs to the exclusion of others, the excluded heirs' claim to a share cannot be defeated merely on the strength of the exclusionary mutation, once it is conceded that the same class of heirs was recognised in respect of the estate in the other villages. [Para 14]

B. Suit for declaration — Identification of suit property with ancestral estate — Effect of intervening settlements and consolidation — Multiple revenue settlements and consolidation proceedings intervening between the death of the propositus and the filing of the suit do not, by themselves, bar a claim for share in the substituted holdings, but they do heighten the plaintiff's burden to establish, through cogent evidence, that the property now claimed is in fact the land that came in lieu of the original ancestral holding. [Paras 10, 16]

C. Evidence Act, 1872 — Documentary evidence — Witness incompetent in the script of the original record — Weight — A witness who prepares an excerpt from revenue records but admits inability to read or write the script (Urdu) in which the original records are maintained cannot be treated as a competent witness to prove that the excerpt is a true and correct transcription — Testimony of such a witness does not satisfy the standard of proof required for reliance on the excerpt. [Para 19]

D. Civil Procedure Code, 1908 (CPC) — Second Appeal — Substantial question of law — Concurrent findings resting on inadmissible/unproved evidence — Concurrent findings of fact are ordinarily not disturbed in second appeal, but where such findings rest on a document that remained legally unproved, and the courts below

failed to record any finding connecting the suit land to the estate actually left by the propositus, a substantial question of law arises warranting interference and setting aside of the decree. [Paras 20-23]

Counsel for Appearing Parties

Mr. B.R. Mahajan, Sr. Advocate with Mr. Bharat Bhushan, Advocate, Mr. Prateek Mahajan, Advocate, Mr. Vikram Singh, Advocate, Mr. Nikita Goel, Advocate, Mr. Mohit Kumar Sharma, Advocate, Ms. Devika Kamboja, Advocate and Ms. Vanshika Singh, Advocate for the Appellants; Mr. Akshay Kumar Jindal, Sr. Advocate with Mr. Pankaj Gautam, Advocate and Mr. Yashvardhan Goyal, Advocate for appellant No.6(i); Mr. Ritesh Tomar, Advocate for respondent No. 1(i). Mr. Kamal Sehgal, Sr. Advocate with Mr. Charanji Lal, Advocate and Mr. Ravinder Pankaj, Advocate and Mr. Anurag Mor, Advocate for respondents No.1 (iii) & 1(iv). Mr. Naveen S. Bhardwaj, Advocate, Mr. Lokendra Singh, Advocate and Ms. Preeti Jha, Advocate for respondents No.2 to 5 and 7 & 8.

JUDGMENT

Pankaj Jain, J. - Defendants are in second appeal.

2. The parties to the lis are legal heirs of Ram Sahai s/o Sahib Ram. Ram Sahai had land in three villages namely Kaliawas, Baghanki and Nainwal. Ram Sahai died in the year 1906. Ram Sahai had seven sons namely Jai Ram, Deegh Ram, Kallu, Purna, Bihari, Bohru and Mangal. His elder son Jai Ram pre-deceased him leaving behind a son namely Likhma.

3. Plaintiffs are LR's from the branch of Mangal. The dispute relates to estate left by Ram Sahai in Kaliawas. Plaintiffs claim that Ram Sahai was owner of two parcels of land in the revenue estate of village Kaliawas as per jamabandi for the year 1903-04. One parcel of land measured 15 bigha 7 biswa. The other measured 18 bigha 15 biswa. Though after death of Ram Sahai, his mutation of inheritance was mutated among his legal heirs qua estate left by him in Baghanki and Nainwal, estate left by him in village Kaliawas was wrongly mutated only in favour of Likhma son of Jai Ram, Kallu and Purna to the extent of 1/3 share excluding Deegh Ram, Bihari, Bohru and Mangal-the other four sons of Ram Sahai. The plaintiffs accordingly claimed share in the estate left by Ram Sahai in the village Kaliawas being his legal heirs.

4. Suit was contested by the defendants. As per defendants, the suit filed by the plaintiffs after more than 100 years was barred by time. The defendants claimed that their possession being long, continuous and hostile, they have become owners by way of adverse possession. As per defendants, several settlements of land have taken place including the consolidation of holdings in village Kaliawas. Proceedings under East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 having attained finality, the Court has no jurisdiction to try and entertain the present suit. On merits, the defendants denied that Ram Sahai had seven sons as alleged by the plaintiffs. It is denied that Bohru, the alleged son of Ram Sahai died without any male issue in the year 1914 or that his share was inherited by his widow Saran. It is denied that Saran widow of Bohru contracted kareva marriage with Mangal.

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

"1. Whether plaintiffs are co-sharers in possession of the suit property as mentioned in para 14 of the plaint to the extent of their sharers as detailed in para 9 of the suit? OPP.

2. Whether defendants are co-sharers of the remaining share of the land in question as detailed in para no.10 of the plaint? OPP

3. Whether mutation no 40 of inheritance of deceased Ramesh was wrongly sanctioned? OPP

4. Whether the suit is not maintainable in the present form? OPD.

5. Whether the plaintiffs have no locus standi are cause of action to file the present suit? OPD

6. Whether the suit of the plaintiff is barred by limitation? OPD

7. Whether the plaintiffs are estopped from filing the present suit by their own act and conduct? OPD.

8. Whether the present suit is bad for mis-joinder and non joinder of necessary parties? OPD.

9. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD.

10. Relief."

6. Issues No.4 to 9 were not pressed by the defendants. On issues No.1 to 3, the Court of First Instance found that the only issue that was required to be considered by the Court was legality of mutation of inheritance of Ram Sahai impugned in the present suit. Rejecting the plea raised by the defendants of having become owners by way of adverse possession or the suit being barred by time, the Court of First Instance decided issue No.1 to 3 in favour of the plaintiffs and decreed the suit.

7. In appeal, Lower Appellate Court affirmed the findings recorded by the Court of First Instance.

8. Mr. Mahajan, senior counsel appearing for appellants No.1 to 5 and appellant No.7 to 15 submits that the Courts below erred in decreeing the suit which is apparently barred by limitation. Mr. Mahajan submits that Ram Sahai died on 24.02.1906. The impugned mutation was sanctioned in the same year. Settlement of the estate of the village was effectuated in the year 1907 and 1937. Proceedings for consolidation under 1948 Act were completed in the year 1964. Part of land was acquired in the year 1988. During all these years, plaintiffs remained silent. It took more than 100 years for them to file the present suit. Multiple interests have been created in the estate based upon mutation impugned in the present lis. Courts below erred in ignoring that the present suit seeking decree of declaration was barred by time. He further submits that the Courts failed to appreciate that Bohru son of Ram Sahai died in the year 1914. As per the pleadings, he left behind widow namely Saran. Saran effected kareva marriage with

Mangal. She bore three sons from loins of Mangal. Estate of Bohru would thus revert back to the collaterals and will not be succeeded by her widow having remarried.

9. Mr. Mahajan further submits that the suit is bad for non-joinder of parties. Legal heirs of Bihari have not been impleaded to the lis. Specific plea was raised before the Courts below which has been brushed aside. He has drawn attention of this Court to the observations made by Lower Appellate Court in para 24 of the impugned judgment.

10. Mr. Jindal counsel for appellant No.6 submits that even as per the pleadings raised in the plaint, Ram Sahai died leaving behind only 15 bigha 7 biswa of land situated within the revenue estate of Kaliawas, whereas the present suit has been filed seeking share out of more than 514 kanals of land which even includes self-acquired land of the defendants. He contends that more than one settlement and consolidation of the holdings in the village since death of Ram Sahai have been effected. It was incumbent upon the plaintiffs to connect the land detailed out in para 14 of the plaint to the estate left by Ram Sahai. Plaintiffs having failed to connect the same, Courts below erred in decreeing the suit filed by the plaintiffs. He has drawn attention of this Court to the excerpt Ex.PW-1/B and statement of PW-1 Ved Pal who prepared the excerpt. He submits that Ved Pal Mohrar Patwari PW-1 admitted in his cross-examination that he can neither read nor write Urdu, yet in the excerpt prepared by him has been relied upon by the Courts below. It has been contended by learned senior counsel that even if the claim of the plaintiffs has to be decreed, the same can be decreed only with respect to the estate left by Ram Sahai and not beyond that.

11. Per contra, counsel for the respondents submits that the Courts below have returned concurrent findings of fact holding plaintiffs entitled for the estate left by Ram Sahai. Mr. Sehgal, senior counsel for the respondents No.1(iii) & 1(iv) would submit that non-impleadment of legal heirs of Bihari will not render the suit bad. He submits that no relief has been claimed against legal heirs of Bihari. They may be proper parties, but cannot be held to be necessary parties. Mr. Sehgal has drawn attention of this Court to issue No.8 framed by the Court of First Instance and the findings recorded thereupon to contend that the defendants themselves having given up the issue, they cannot be allowed to raise the same again in appeal.

12. Mr. Sehgal and Mr. Bhardwaj further submits that excerpt was allowed to be exhibited without raising any objection and thus the appellants cannot be allowed to raise objection qua them for the first time in the second appeal.

13. I have heard counsel for the parties and have carefully gone through the records of the case.

14. It being conceded position that estate left by Ram Sahai in village Baghanki and Nainwal was entered in favour of all his legal heirs including the predecessor-in-interest of the present plaintiffs, this Court finds that the defendants cannot claim their exclusion from the mutation of inheritance of Ram Sahai qua estate left in village Kaliawas to be valid. The plaintiffs in the plaint seek share out of 514 kanal 13 marlas of land pleading as under:-

"14. That there had been 2/3 settlements and consolidations of holdings since after the death of Ram Sahai and thus in lieu of the land detailed above, the land

bearing Khewat no. 66 khata no. 66 rectangle no. 11 killa no. 2/2/1(1-2) 2/2/3(1-4), 9(8-0), 13/2/1(5-19), 17/2(3-16), 24/1/1(2-13), Rectangle no. 13 killa no. 23/1/2(2-0), Rect no. 16 killa no. 7/1 (5-2), Rect. No. 17 killa no. 3/1(0-2), Rect no. 30 killa no. 11/2(3-16) 12/2(4-5), 20/1(4-0), Rect. No. 99 killa no. 4(0-6), Rect. No. 147 killa no. 2(1-1), Khewat no. 67, khata no. 77, Rect no. 11 killa no. 8/1/2(1-7), Khata no. 78, Rect. No. 22 killa no. 16/2/1(0-7), total measuring 44 kanals 6 marlas, Khewat no. 69 khata no. 79, Rect. No. 11, killa no. 3/2/1/2(0-11), 4/1/2/2(0-16), 11/2 (2-15), 12/2(7-11), 13/2/2(2-0), 8/2(3-15), 18/2(4-16), 18/2/1(1-), Rect. No. 16 killa no. 7/2(2-9), 8/1/1(3-7), Rect. No. 17 killa no. 3/1(3-10), 3/12(0-2), Rect. No. 29 killa no. 16(8-16), Rect. No. 30 killa no. 12/1(2-13), Rect no, 99 killa no. 1(0-3), 3(0-7), Rect no. 47 killa no. 1(0-19), total measuring 46 kanals, khewat no. 70 khata no. 80 Rect. No. 22, killa no. 16/2/2(0-6), khewat no. 71 khata no. 81 Rect. No. 11, killa no. 21/1(0-11), 22/3(2-5), 22/1(0-13), Rect no. 12 killa no. 25(7-12), Rect no. 13 killa no. 22/3(5-4), 23/1/1(2-0), Rect no. 16 killa no. 8/1/2(2-10), 13(7-18), 14/1(2-4), Rect. No. 17 killa no. 3/12(0-2), Rect no. 19 killa no. 2/1(4-6), 3/2(3-7), 6(5-2), 7(8-0), 8/1(0-12), Rect No. 22 Killa No.6(0-9), 14/2(3-5), 15/1(1-10), 24/2(0-10), 25/1(2-18), 25/2(3-0), 24/3/1 (0-15), Rect No. 29 Killa No. 15/2(3-17), Rectangle no. 30 Killa No. 11/1(3-11), 19 (7-10), 20/2(4-0), 21/1(4-9), 100(0-15) 147/4(1-0), 148(1-0), total ensuring 99 Kanals 6 malras, Khewat No.74 Khata No. 84 Rect No. 11 Killa No. 27(0-17), Khewat No.75 Khata No. 85 Rect No. 22 Killa No. 29 Khewat no.76, Khata No. 86 Rect. No. 11 Killa No. 3/1/3(0-6), Rect. No. 8 Killa No. 2/2(5-9), 12/1(0-8), 13/1, Rect. No.17 Killa No. 14/3(0-2), 14/4(0-2), 14/5(0-2), 14/6(0-2), 14/7(0-2), Rect. No. 21 Killa No. 15/2(3-8), Rect No. 31 Killa No. 17/1(5-7), Rect. No. 36 Killa No. 14/2(4-4), 15(7-4), 16/1(3-7), 17(8-0), 24 min (1-4), 27(0-6), Rect No.79 Killa No. 16 (0-15), Khata No.87 Rect No. 35 Killa No.5(7-11), Rect No. 33 Killa No. 1(9-13), Rect No. 36 Killa No. 23(6-16), Khata No. 88 Rect No. 21 Killa No.6(8-0), Khata No. 89 Rect No. 20 Killa no. 2(2-2), 11(5-12), 20(7-16), 21(98), Rect. no.21 Killa No. 16/1(3-8), 25/2(3-8), Reef No.42 Killa No.4/1(6-0), Khewat No.77 Khata No.90 Rect no. 11 Killa No. 3/1/1(0-7), Khewat No.78 Khata No.91 Killa No. 141 141(1-0), 188(1-0), 189(1-0), Khewat No.79 Khata No.92 Rect no.31 Killa Killa No.7/1(3-8), 14(7-8), Khewat No.80 Khata No.93 Rect no. 10 Killa No. 20(0-7), Rect No. 11 Killa No. 16/1(4-4), Khewat No. 81 Khata No.94 Rect. No.11 Killa No. 4/4/1(0-18), 6/1(0-9), 7/1/1(3-3), Rect No. 11 Killa No. 15/2(6-1), Rect No. 10 Killa No. 11 (0-4), Rect No. 17 Killa No. 14/8(0-2), Rect No.42 Killa no.2/3(4-12), 9/1(6-16), 137(1-0), Khewat No.82 Khata No.95 Rect no. 11 Killa No.7/2/2(1-13), 14(8-0), 17/1(4-4), Rect No. 18 Killa No.7/3(0-2), Rect No.42 Killa No. 3/2(1-7), 8(8-0), 12(8-0), 19(8-0), 109(1-1), Khewat No. 83 Khata No.96 Killa No.77 (1-9), Khewat No. 84 Khata No. 97 Rect No. 18 Killa No. 18/3(0-5), Ract No. 32 Killa No.6(7-0), 7(7-14), Rect No. 33 Killa No.9(2-16), 10(8-0), 11/1(2-13), 12(2-14), Rect no.42 Killa No.6/3(1-1), 7/2(5-7), 120 (1-18), 182(1-1), 184(2-0), Khewat No. 136 Khata No.152 Rect No. 35 Killa No. 11(8-0), 18/2(2-14), 19(8-0), 20(8-0), 21(8-0), 23/1(5-0), Rect No.43 Killa No. 1(3-0), Rect. No. 36 Killa no. 16/2(4-13), 25(8-0), Rect No.42 Killa No. 3(8-0), Khawat no.72 Khata no. 83 Rect no. 22 Killa No.16/2/3(0-13), Khewat No.73 Khata No. 83 Rect no. 17 Killa no. 27(0-3), Rect. No. 30 Killa No. 27 (019), 99/2(0-2)2, 99/5(0-17), 147/3(0-8), total

measuring 514 kanals 13 marlas situated with in the revenue estate of village Kaliawas Teh. & District Gurgaon was allotted."

15. Defendants in their written statement responded to the same as under:-

"14. Para No.14 of the plaint is admitted upto the extent that there had been 2-3 settlements and consolidation of holding have also taken place, since the year 1905. However, it is not admitted that the land detailed in this para of the plaint, is in lieu of the land detailed in para No.2,3 of the plaint. The plaintiffs are put to the strict proof that the land detailed in this para of the plaint is the same which is alleged to have been owned and possessed by the fore-fathers of the plaintiffs. There had been sale, mortgage, lease and acquisition of the land, owned and possessed by the defendants further some lands have been purchased by the answering defendants and their fore-fathers, the details of which are given in the revenue records, that is in the jamabandies of the year 1992-93 and the jamabandi of the year 1997-98 of village Kaliawas."

16. In view of rival stands of the parties to the lis, it was incumbent upon the plaintiffs to connect the suit property to the estate left by Ram Sahai. To discharge their onus, plaintiffs tendered excerpt Ex.PW-1/A in evidence. In order to prove the same, they examined PW-1 Ved Pal.

17. Chapter 9 of High Court Rules and Orders Vol.I deals with procedure for obtaining excerpts. It contains instructions regarding utilization of the services of Special Kanungo/Patwari Mukerian. Relevant provision read as under:-

"1. Procedure for obtaining excerpts. For the purpose of making the information contained in the revenue records accessible to the litigating public and to the Courts, a special Kanungo or Patwari Moharrir has been appointed in all the districts of the Punjab, except Simla. The procedure to be followed in such cases is that the Court in which the suit is pending issues a summons to the Special Kanungo or Patwari Muharrir, who, after preparing his excerpt, goes to the Court on the date fixed, taking with him the revenue records from which the excerpt has been compiled. He is then placed in the witness box. Counsel thus have the opportunity of comparing the excerpt with the originals, and of examining him on any points they choose.

4. Excerpt to be proved utilising of Kanungo or Patwari Muharrir by outlying Courts. The excerpt prepared by the special Kanungo or Patwari Muharrir is not evidence unless proved and proved and cannot be used as such. He cannot be allowed to go to outlying Courts because he cannot take the revenue records with him, and without them there would be no check over his excerpt. It is however, very desirable that outlying Courts should be able to utilize the Special Kanungo or the Patwari Muharrir, and as, the best practicable method of securing that object. Presiding Officers of outlying Courts may issue either interrogatories for the Special Kanungo or Patwari Maharrir on an open Commission to a senior official at Headquarters ordinarily and, unless there is some special reason to the contrary, the Senior Subordinate Judge. This official, who will have other duties and is described in the instructions appended as the officer-in-charge, will then comply with, the direction given, summon the Special Kanungo or Patwari

Muharrir, record his statement on oath and make the return to the Court. In this connection attention is drawn to Order XXVI Rule 18 (1), of the Code of Civil Procedure. The issue of a Commission should not become a source of unnecessary delay, and the officer-in-charge should in the absence of very strong reasons proceed in the absence of parties if they do not appear. Parties should be informed that their appearance at headquarters is optional if interrogatories are issued.

5. The following instructions have been issued for the guidance of the Courts and of the Special Kanungo or Patwari Muharrir and it will be the immediate duty of the officer-in-charge to see that these instructions are followed :-

xx xx xx

(v) Excerpt should be a true copy and should be proved. Court must remember that unless proved the excerpt of the Special Kanungo or Patwari Muharrir is not evidence and must not be treated as such. The Special Kanungo or Patwari Muharrir must, when he goes to Court always bring with him the original records from which his excerpt has been compiled, so that he may be available for comparison. He must always be put on oath, and be asked to say whether the excerpt is a true copy of a portion of the original records. The excerpts must be a correct copy of such portions of the records as are relevant and not merely a summary or paraphrase."

18. Thus, the excerpt EX.PW-1/A was not only to be tendered in original, but was also required to be proved as per law.

19. From the testimony of Ved Pal before the Court, it is evident that he admitted his inability to read or write Urdu. Excerpt PW-1/A when read in the light of testimony of its author PW-1, it is evident that the same remained unproved. The plea raised by senior counsel that the document was allowed to be tendered in evidence without any objection, cannot absolve the plaintiff of his duty to prove the document. Admissibility of document and mode of proof thereof are two different issues. Though the document brought on record by the plaintiffs was relevant and was thus admitted in evidence, but the same remained unproved. Reliance by Courts below on a document which remained unproved breeds substantial question of law.

20. In view of above, this Court finds that the plaintiffs though proved themselves to be legal heirs of Ram Sahai, but failed to connect the suit property to the estate left by Ram Sahai.

21. In view thereof, this Court finds that the Courts below erred in decreeing the suit filed by the plaintiffs without recording any finding whether the suit land was allotted in lieu of estate left by Ram Sahai or not.

22. Accordingly, the judgment and decree passed by the Courts below are found to be unsustainable and are hereby set aside. Suit filed by the plaintiffs is ordered to be dismissed.

23. Accordingly, the present regular second appeal is allowed.

24. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.