



**RSA-1371-1991 (O&M) and
CR-2349-1991 (O&M)**

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

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**Reserved on :- 17.09.2025
Pronounced on : 22.09.2025**

1. RSA-1371-1991

Kheti and Others

....Appellants

VERSUS

Arjan (now deceased) through LRs

....Respondent

2. CR-2349-1991

Arjan (now deceased) through LRs

....Petitioner

VERSUS

Keshla (Deceased) S/o Sh. Sehoji through LRs.

....Respondent

CORAM : HON'BLE MS. JUSTICE MANDEEP PANNU

Present: **In RSA**

Mr. M.L.Sarin, Sr. Advocate with
Ms. Hemani Sarin, Advocate for the appellants.

Mr. A.P.S.Sandhu, Advocate and
Mr. Ashish Kaushik, Advocate for the respondent.

In CR

Mr. A.P.S.Sandhu, Advocate and
Mr. Ashish Kaushik, Advocate, for the petitioner.

Mr. M.L.Sarin, Sr. Advocate with
Ms. Hemani Sarin, Advocate for the respondents.



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MANDEEP PANNU,J.

1. This Regular Second Appeal has been preferred by the appellants—plaintiffs against the judgment and decree dated 25.02.1985 passed by the learned Sub Judge, Narnaul dismissing their suit, and the judgment and decree dated 05.03.1991 passed by the learned Additional District Judge, Narnaul, dismissing the appeal.

2. Along with this appeal, Civil Revision Petition No. 2349 of 1991 titled as “Arjan (now deceased) through LRs Keshla (Deceased) S/o Sh. Sehoji through LRs.” filed by Arjun, since deceased and now represented by his legal representatives, challenging the order dated 05.03.1991 of the lower Appellate Court refusing to implead him as legal representative of deceased defendant Gugan, has also been taken up together, both matters arising out of the same controversy.

Brief Facts

3. In the year 1980, plaintiff-Keshla filed a suit against defendant Gugan seeking declaration that he alone was entitled to succeed to the property of absentee Sedhu, resident of Kotwal Kalan, who had not been heard of for the last 60 years. It was pleaded that the mutation sanctioned in favour of Gugan was illegal. Keshla asserted that he, being collateral of Sedhu, was the rightful heir.

4. The defendant contested the suit on the ground that he was the real son of Smt. Sukhma, real sister of Sedhu, and thus entitled to inherit Sedhu’s property as sister’s son. He further contended that the mutation had been rightly sanctioned in his favour.



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5. Replication was filed by the plaintiff reiterating his stand.
6. On the basis of pleadings, the following issues were framed:
 1. Whether the plaintiff is the only legal heir of Sedhu and owner as well as in possession of the suit property? OPP
 2. Whether Smt. Sukhma was the real sister of Sedhu and defendant is her son? If so, its effect? OPD
 3. Whether the suit is barred by limitation? OPD
 4. Whether the plaintiff has no locus standi to file the present suit? OPD
 5. Whether the suit is not maintainable in the present form? OPD
 6. Relief.
7. The plaintiff examined six witnesses and relied upon documents including the pedigree table, mutation orders, and Jamabandi extracts.
8. The defendant examined six witnesses including himself and produced documentary evidence such as revenue records and mutation entries.

Findings of the Trial Court

9. The trial Court decided Issue No. 2 in favour of the defendant, holding that he had proved himself to be the son of Smt. Sukhma, who was the real sister of Sedhu. On Issue No. 1, the plaintiff was held to be only a collateral but not entitled to succeed in preference to the defendant. The other issues were also decided against the plaintiff. Consequently, the suit was dismissed vide judgment and decree dated 25.02.1985.
10. During the pendency of the suit, plaintiff-Keshla had died. Thereafter, his wife and his children went in appeal before the Lower Appellate Court.

**Findings of the First Appellate Court**

11. In appeal, the learned Additional District Judge, Narnaul affirmed the findings of the trial Court . During pendency of the appeal, defendant Gugan died on 01.02.1990. Arjun moved an application seeking impleadment as legal representative of Gugan on the basis of a Will dated 31.12.1985.

12. The lower appellate Court decided this application separately impugned vide order dated 05.03.1991, holding that the Will was surrounded by suspicious circumstances, rejecting Arjun's prayer for impleadment. Thereafter, without substituting any other legal representative of Gugan, the lower appellate Court dismissed the appeal on merits on 05.03.1991.

13. Aggrieved thereby, the present Regular Second Appeal has been filed by the plaintiffs. Arjun also filed a Civil Revision challenging the order dated 05.03.1991 refusing to implead him. During pendency of the revision, Arjun has also died and is now represented by his legal representatives.

Submissions of learned counsel for the parties

14. Learned counsel for the appellants–plaintiffs argued that once the sole defendant Gugan had died, the appeal could not be dismissed on merits in his absence. A decree against a dead person is a nullity. It was further contended that since Arjun was not impleaded, the estate remained unrepresented, and the lower appellate Court erred gravely in proceeding with the appeal.

15. On the other hand, learned counsel for Arjun (through his LRs) submitted that the appellate Court acted illegally in going into the question of genuineness of the Will at the stage of substitution under Order XXII CPC. At that stage, the only requirement is to bring some person on record to represent the



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estate, leaving the question of validity of the Will to be decided in appropriate civil proceedings. It was further submitted that the appeal was wrongly decided without any defendant being represented.

Questions for Consideration

16. The controversy is confined to:
1. Whether Arjun, who claimed to be LR of deceased defendant Gugan on the basis of a Will, ought to have been impleaded without adjudicating the genuineness of the Will?
 2. If not impleaded, whether the appeal could have been decided on merits in absence of any defendant?
17. After going through the findings of the learned lower appellate Court and suspective submissions of learned counsel for the parties, this Court is of the considered opinion that the lower appellate Court committed a manifest error in law while dealing with the application filed by Arjun for impleading himself as legal representative of deceased defendant Gugan. The settled principle is that at the stage of substitution under Order XXII CPC, the Court is not required to and indeed should not go into the genuineness or validity of a Will or any other document on the basis of which the applicant seeks impleadment. Substitution proceedings are summary in nature, and the Court's sole concern is to ensure that the estate of the deceased party is adequately represented so that the lis does not abate or remain undefended. Any adjudication on genuineness of the Will can only take place in a properly instituted civil suit. By rejecting Arjun's application on the ground of suspicious circumstances in the Will, the lower appellate court travelled far beyond its jurisdiction.



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18. Once the substitution application was rejected, the inevitable consequence was that the sole defendant Gugan remained unrepresented before the appellate court. The judgment and decree dated 05.03.1991 were thus rendered against a dead person without any legal representative on record. A decree passed against a deceased person is a nullity in the eyes of law. The appellate court could not have proceeded to decide the appeal on merits in such circumstances.

19. Arjun, therefore, ought to have been impleaded as LR of deceased Gugan for the limited purpose of representing his estate in the proceedings. During the pendency of the present revision, Arjun has also passed away and is now represented by his legal representatives. Accordingly, his legal representatives are ordered to be substituted in his place, who shall represent defendant Gugan in this litigation.

20. It is clarified that the impleadment of Arjun (through his legal representatives) is only for the limited purpose of defending the estate of Gugan in this litigation. This does not amount to a judicial recognition of the validity of the Will dated 31.12.1985. That question remains entirely open and, if necessary, can be gone into in separate civil proceedings.

21. The contention raised by learned counsel for the plaintiffs that in the absence of any LR of Gugan, the estate of Sedhu must automatically devolve upon them is without merit at this stage. The very question of inheritance of Sedhu's property is still the subject matter of the first appeal. It would not be proper for this Court, in the present Regular Second Appeal and Civil Revision, to record any finding on the substantive rights of inheritance. It will be open to the first appellate court to re-examine the matter on merits after impleadment of the legal



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representatives of Gugan. Further, if the appellate court ultimately affirms claim of Gugan to Sedhu's estate, the devolution of Gugan's own estate thereafter, including the rights claimed by Arjun or his legal representatives under the Will, would remain open to be litigated in separate proceedings if need be.

Conclusion

22. In view of the above, the revision petition is allowed and the order dated 05.03.1991 rejecting Arjun's substitution application is set aside, and the impugned judgment and decree dated 05.03.1991 dismissing the plaintiffs' appeal is also set aside. The matter is remanded back to the lower appellate court to rehear the first appeal on merits after impleading Arjun (through his legal representatives) as the legal representative of deceased defendant Gugan.

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

September 22, 2025
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(MANDEEP PANNU)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No.