



**RSA-940-2000 (O&M)**

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

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**RSA-940-2000 (O&M)**  
**Reserved on:-01.09.2025**  
**Date of Decision : 05.09.2025**

Attar Singh and Another

....Appellants

VERSUS

Jagan Nath and Others

....Respondents

**CORAM : HON'BLE MS. JUSTICE MANDEEP PANNU**

Present: Mr. N.C.Kinra, Mr. Harsh Kinra and  
Ms. Apoorva Kinra, Advocates for the appellants.

Mr. Pritam Singh Saini and Mr. Deepak Singh Saini, Advocates  
For respondents No.1 and 2.

Service of respondents No.3 to 5 and 7 to 9, dispensed with.

Mr. Prashant Singh Chauhan, Advocate for respondent No.6.  
(Appeared through video conferencing)

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**MANDEEP PANNU,J.**

1. The present Regular Second Appeal has been filed by Attar Singh and Shiv Dayal, appellants/defendant Nos. 2 and 3, against respondent No.1/plaintiff and respondent No.2/defendant No.4, and respondent No. 3 to 9/legal heirs of defendant No. 1, Shanti, challenging the judgment and decree dated 29.11.1999 passed by the learned Additional District Judge, Rewari.

**Brief Facts**

2. Brief facts, as pleaded by the plaintiff - Jagannath, are that he filed a civil suit against defendant No. 1, Shanti, and defendant No. 2, Chokh Raj, for declaration and permanent injunction. During the pendency of the suit, the present appellants, Attar Singh and Shiv Dayal, minor sons of Jhabar, were impleaded as

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defendant Nos. 2 and 3, thereby shifting the status of defendant No. 2, Chokh Raj, as defendant No. 4.

3. It was alleged by the plaintiff that there was joint Hindu family property belonging to the plaintiff, his father Banshi Dhar, and original defendant No. 2, Chokh Raj. Banshi Dhar owned 81 kanals 12 marlas of land, which was joint Hindu family property of the aforesaid three persons. As Banshi Dhar was the father of the parties to the suit, he had given the property falling to his share in a family settlement to the plaintiff and original defendant No.2-Chokh Raj, and since then, the plaintiff and original defendant No.2 had been owners in possession of the suit property.

4. It is further alleged that Banshi Dhar died on 29.08.1977, and at the time of his death, he was not the owner of the disputed property on account of the family settlement. In case the family settlement was not established, even then deceased Banshi Dhar was owner of only 1/3rd share in the disputed property, as the remaining 2/3rd share already belonged to the plaintiff and original defendant No.2. After the death of Banshi Dhar, defendant No.1, being a family member, was entitled to only 1/3rd of the 1/3rd share of Banshi Dhar, and thus, defendant No. 1 Shanti was entitled to get only 1/9th share in the suit property.

5. It was further the case of the plaintiff that Defendant No. 1 had never been in possession of any portion of the suit property. It was the plaintiff and original defendant No.2 who were in peaceful possession and had also become owners of the 1/9th share of defendant No.1 by way of adverse possession. The defendants had no right, title or interest in the suit property, but in the revenue record, defendant No.1 had been wrongly recorded as owner of 1/3rd share. The plaintiff, feeling aggrieved, had requested defendant No.1 multiple times to admit the rightful claim of the plaintiff and defendant No. 2, but in vain.



6. It was further pleaded that after the institution of the suit, the newly added defendants, Attar Singh and Shiv Dayal, moved an application to be impleaded as parties, which was allowed. When the amended plaint was filed, the newly added defendants were arrayed as defendant Nos. 2 and 3, whereas original defendant No. 2 was arrayed as defendant No. 4. Later on, original defendant No.1 expired and was represented through her legal heirs.

7. Upon notice, defendant No. 4 did not put in appearance, whereas newly added defendants No. 2 and 3 filed their separate written statement, and the legal heirs of defendant No.1 filed their separate written statement.

8. It was alleged by the legal heirs of defendant No. 1 in their written statement that the suit was not maintainable. They further took preliminary objections regarding cause of action and the suit being barred. On merits, it was alleged that the relationship between the parties was admitted, but deceased Banshi Dhar was owner in possession of the entire property and no family settlement, as alleged, ever took place. It was pleaded that after the death of Banshi Dhar, the property was rightly succeeded by all his legal heirs, and original defendant No.1 rightly succeeded to 1/3rd share therein. Accordingly, it was prayed that the suit deserved to be dismissed.

9. The newly added defendant Nos. 2 and 3, in their separate written statement, also raised preliminary objections. They further alleged that mutation was rightly sanctioned in favour of the plaintiff, defendant No.1, and defendant No. 4 after the death of Banshi Dhar in the presence of the plaintiff. It was further alleged that defendant No.1 had been rightly entered as owner in possession of 1/3rd share of Banshi Dhar. It was also pleaded that there had never been a joint Hindu family and no family settlement ever took place. The properties of the deceased were inherited according to natural succession, and original defendant

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No.1-Shanti, being owner of 1/3rd share, executed an agreement to sell in favour of the newly added defendants Nos. 2 and 3. In the end, it was prayed that the suit deserved dismissal.

10. The plaintiff filed replication to the written statements, controverting the allegations contained therein.

11. From the pleadings of the parties, the following issues were framed:

1. Whether the plaintiff is entitled to the relief of declaration and permanent injunction as prayed for? OPP
2. Whether the suit is not maintainable in the present form? OPD
3. Whether the plaintiff is estopped by his act and conduct from filing the present suit? OPD
4. Relief.

12. An Additional Issue No. 3A was also framed, which reads as under:

*“3A. Whether the suit of the plaintiff is time barred one? OPD”*

13. Both the parties led their evidence.

**Findings of the trial Court**

14. Thereafter, the learned trial Court heard the counsel for the parties and, after going through the oral and documentary evidence and the arguments advanced by both the parties, decided Issue No. 1 against the plaintiff and in favour of defendant No.1 by holding that the plaintiff was not entitled to declaration and permanent injunction as claimed, as the mutation of inheritance of deceased Banshi Dhar was rightly attested under the Hindu Succession Act, 1956. The plea of ownership by way of adverse possession was also rightly rejected.

15. Issues Nos. 2, 3, and 3A were taken up together and decided in favour of the plaintiff and against the defendants, being not pressed by the defendants.

Accordingly, the suit of the plaintiff was dismissed.

**Findings of the Lower Appellate Court**

16. Feeling aggrieved by the aforesaid judgment and decree dated 13.09.1996 passed by the learned trial Court, an appeal was filed before the learned Lower Appellate Court of the learned Additional District Judge, Rewari, by the plaintiff Jagan Nath. The learned Lower Appellate Court observed that Banshi Dhar, father of the parties, was admittedly owner in possession of the disputed land and that he, along with his sons and daughter, constituted a joint Hindu family. It was further observed that the property in dispute was coparcenary property amongst them. The learned Court also observed that in the present case, there was no satisfactory evidence which could establish separation of the joint Hindu family, and therefore, the presumption of joint Hindu family was stronger in favour of deceased Banshi Dhar and his sons, namely the plaintiff and original defendant No.2.

17. The learned Lower Appellate Court further observed that the main controversy between the parties was regarding the 1/3rd share of Banshi Dhar and its devolution. It was held that Banshi Dhar had 1/3rd share initially, while plaintiff Jagan Nath had 1/3rd share and original defendant No.4 also had 1/3rd share. Defendant No.1-Shanti, had no share prior to the death of Banshi Dhar. After the death of Banshi Dhar, defendant No.1-Shanti, got 1/9th share out of the 1/3rd share of Banshi Dhar, whereas the plaintiff – Jagan Nath and defendant No. 2 – Chokh Raj got 4/9th share each in the disputed property.

18. Accordingly, the learned Lower Appellate Court partly decreed the suit of the plaintiff and held that the mutation of inheritance attested in the name of defendant No.1-Shanti to the tune of 1/3rd share be corrected in accordance with the shares as observed above. The appeal was, thus, partly allowed.



19. Feeling aggrieved by the aforesaid judgment and decree passed by the learned Lower Appellate Court, the present appeal has been filed by defendant Nos.2 and 3, namely, Attar Singh and Shiv Dayal. They claim their interest in the suit property on the basis of an agreement to sell allegedly executed by Shanti Devi (since deceased) regarding her 1/3rd share in the suit property.

20. Upon notice, respondents No.1 and 2- Jagan Nath and Chokh Raj and respondent No.6-Nafe Singh, chose to contest the present Regular Second Appeal. Service of respondents No.3 to 5 and 7 to 9, dispensed with.

**Submissions on behalf of the Appellants**

21. It was argued by learned counsel for the appellants/defendant Nos. 2 and 3 that the learned Lower Appellate Court had wrongly held the suit property to be joint Hindu family and coparcenary property, whereas no such evidence was led to prove the same. No excerpt prepared by the revenue officials had come on record. During his lifetime, Banshi Dhar had been dealing with his 1/3rd share in the suit property by mortgaging his land. Exhibit P2 is the mutation of inheritance of Banshi Dhar after his death, which shows that the plaintiff, defendant No.1- Shanti (since deceased), and original defendant No. 2 Chokh Raj inherited the property of Banshi Dhar in equal shares, i.e., 1/3rd share each.

22. On the basis of her 1/3rd share, Shanti had entered into an agreement to sell with the appellants. Her 1/3rd share is reflected in the Jamabandi (Ex. D1) for the year 1981–82. Subsequent Jamabandis also reflect the same position. After the agreement to sell, the father of the appellants, Jhabar, was shown in possession in the Khasra Girdawaris (Ex.D2 and D5) and Girdawari (Ex.D4), as possession had also been delivered by Shanti Devi to the vendees. It was further contended that the parties were not living together, as the sons of Banshi Dhar were paying Chulla tax, showing that they were living separately.



23. It was argued that the impugned judgment of the learned Lower Appellate Court was illegal, perverse, and without any basis. The mutation of inheritance on the basis of natural succession had been rightly sanctioned and recorded in the revenue record. The judgment of the learned trial Court was correct, legal, and based on due appreciation of evidence and law. Hence, the appeal filed by the appellants deserve to be accepted.

**Submissions on behalf of the respondents**

24. On the other hand, learned counsel for respondents No. 1 and 2 (plaintiff and LR No. 6 of Shanti) argued that the only contention raised was regarding the maintainability of the appeal filed by the appellants, who were not the legal heirs of Banshi Dhar, whose property was in dispute. They alleged to have acquired interest and right in the property on the basis of one agreement to sell alleged to have been executed by Shanti regarding her 1/3rd share in the suit property. However, it was argued that an agreement to sell does not confer any title.

25. It was further pointed out that the appellants had already filed a suit for specific performance, which had been adjourned *sine die*. The appellants could claim their rights in that suit for specific performance, but they could not challenge the devolution of the share of Banshi Dhar upon his legal heirs. Since the appellants had no locus standi to file the present appeal, it was argued that the same was liable to be dismissed on this sole ground.

**Findings**

26. Having heard learned counsel for the parties and after considering the record, this Court is of the view that the present appeal is not maintainable. The admitted position is that the impugned judgment and decree of the learned Lower Appellate Court partly decreed the suit of the plaintiff Jagan Nath by reducing the



share of Shanti Devi from 1/3rd to 1/9th, holding that the remaining shares would go to the plaintiff and original defendant No. 2. Thus, it was only Shanti Devi, or after her demise her legal representatives, who could be said to be aggrieved by the said judgment and decree. The present appeal, however, has not been filed by Shanti or her legal representatives. Instead, it has been filed by Attar Singh and Shiv Dayal, who claim themselves to be purchasers on the basis of an agreement to sell said to have been executed by Shanti Devi.

27. This Court finds merit in the objection raised on behalf of the respondents regarding locus standi. An agreement to sell does not confer any title, right, or interest in the immovable property. It is only an executory contract, which at best entitles the agreement holder to seek enforcement of the contract by way of a suit for specific performance. The appellants themselves admit that they have already filed such a suit, which has been adjourned sine die. Their remedy lies therein and not in challenging the devolution of the share of Banshi Dhar upon his legal heirs.

28. It is well settled in law that the dispute regarding succession and inheritance of property can only be contested by the legal heirs inter se and not by strangers claiming through an agreement to sell. The appellants cannot be said to have stepped into the shoes of Shanti Devi merely by virtue of an agreement to sell. They have no independent right to assail the correctness of the shares allotted by the learned Lower Appellate Court, as the dispute is purely inter se between the legal heirs of Banshi Dhar.

29. The contention raised by learned counsel for the appellants that the property was not joint Hindu family/coparcenary property, and that mutation was rightly sanctioned, is of no avail to them, since they lack locus standi to question

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the findings. Once it is held that they are not aggrieved persons, this Court cannot enter into the merits of their arguments.

30. Reliance is placed on the settled principle that an appeal at the instance of a person who is not an aggrieved party is not maintainable. A stranger to the family, claiming only on the basis of an agreement to sell, cannot challenge the distribution of shares of coparcenary or joint family property amongst the heirs. The appellants are at liberty to pursue their independent suit for specific performance, but they cannot maintain the present appeal.

**Conclusion**

31. Accordingly, this Court holds that the present Regular Second Appeal, filed by the appellants, the persons who have no locus standi, is not maintainable and is, hereby, dismissed.

32. Pending application(s), if any, also stands disposed off.

September 05, 2025  
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**(MANDEEP PANNU)**  
**JUDGE**

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