

Date of decision:19.01.2026

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Appellants-plaintiffs are aggrieved by concurrent finding of facts recorded by Courts below vide impugned judgment and decree dated 21.12.2013 passed by Civil Judge (Junior Division) Yamuna Nagar vide which suit for declaration preferred by appellants-plaintiffs was dismissed and also by judgment and decree dated 24.01.2018 passed by the Additional District Judge, Yamuna Nagar vide which first appeal preferred by appellants-plaintiffs was also dismissed.

2. Appellants-plaintiffs vide their suit for declaration had claimed to be exclusive owners in possession to extent of equal share of land measuring 5 kanals 16 marlas. It was asserted that appellants-plaintiffs are joint owners-in-possession of land measuring 9 kanals 2 marlas, having 3/4th share in land, described in paragraph (ii) of the head note of the plaint, as per registered will dated 09.11.1998 executed by their father namely, Kalu Ram. Appellants-plaintiffs had claimed that mutation No.947 and 952 as well as release deed No.4950 dated 30.09.2009 executed by defendant Nos.2 and 3 in favour of defendant No.1 are illegal, null and void. Apart from relief of declaration,



appellants-plaintiffs had also sought relief of permanent injunction. Appellants-plaintiffs had asserted that their father Kalu Ram was owner-in-possession of suit land; that defendant No.1 separated long ago and is living separately for more than 35 years from the joint family; that their father had suffered a decree dated 06.11.1993 passed by Court of Sh. S.P. Singh, Senior Sub-Judge, Jagadhari in Civil Suit No.830 of 1993 and appellants-plaintiffs were declared owner-in-possession of land measuring 12 kanals 03 marlas, comprised in khasra No.32//8/2/2 and 7//19/2 and 20/1. The said decree was challenged by defendant No.1 and same was set aside by the Court of Sh. Jagjit Singh, Sub Judge Jagadhari. Appellants-plaintiffs and defendant No.1 were held co-sharers in possession of 1/4th share each and remaining 1/4th was stated to be of Kalu Ram. The appeal preferred by appellants-plaintiffs against judgment and decree dated 28.09.1998 was dismissed by first appellate Court vide judgment and decree dated 08.05.2000.

3. It is the case of appellants-plaintiffs that father of appellants-plaintiffs had died on 29.07.2002 after executing a registered Will in favour of appellants-plaintiffs on 09.11.1998, leaving all his movable and immovable properties to appellants-plaintiffs. However, no mutation was executed on the basis of said Will. That defendants, in collusion with each other, succeeded in getting mutation No.947, whereby all the legal heirs of Kalu Ram were shown to be owners in equal shares. Defendant Nos.2 and 3 had released their share in favour of defendant No.1 and a Mutation No.952 was entered in favour of defendant No.1. By suit for declaration, appellants-plaintiffs claimed entire suit property on the basis of Will by declaring mutation dated 947 and 952 as well relinquishment deed dated 30.09.2009 to be illegal, void and not binding



on the rights of appellants-plaintiffs.

4. Defendants claimed that co-parcenary suit property in the hands of Kalu Ram was held to joint family property in the suit filed by defendant No.1. Appellants-plaintiffs and defendants were declared owners in possession to the extent of 1/4th share each in the suit property. Further, it was asserted that the alleged registered Will in favour of appellants-plaintiffs is forged, fabricated and vexatious document. It was claimed that defendant Nos.2 and 3 were the lawful owners of the suit property and therefore, they out of their free will, executed relinquishment deed and therefore, dismissal of suit was prayed for.

5. Following issues were framed by the Court of first instance:-

- i) Whether plaintiffs are entitled to relief of declaration as prayed for?OPP
- ii) Whether plaintiffs are entitled to relief of permanent injunction, as prayed for?OPP
- iii) Whether suit of the plaintiffs is not maintainable?OPD
- iv) Whether plaintiffs have not approached this Court with clean hands?OPD
- v) Whether plaintiffs have no cause of action to file the present suit?OPD
- vi) Whether plaintiffs have no locus standi to file the present suit?OPD
- vii) Whether plaintiffs are stopped from filing the present suit?OPD
- viii) Relief.

6. Learned counsel for appellants-plaintiffs has argued that in present case, suit property was joint Hindu family property/ancestral/co-



parcenery property in the hands of Kalu Ram, who died in 2002 before 2005 amendment, whereby daughters have been given right to be co-parceners and since succession had opened up prior to amendment, therefore, the daughters had no right over the suit property and the property of Kalu Ram would have devolved only in favour of co-parceners, who were appellants-plaintiffs and defendant No.1 alone and therefore, the learned Courts below have erred in holding suit property to be self-acquired property of Kalu Ram which defendant Nos.2 and 3 succeeded on account of natural succession. Learned counsel for appellants-plaintiffs has also challenged finding of learned Courts below, whereby Will dated 09.11.1988 set up by appellants-plaintiffs was rejected.

7. On first look, argument raised by learned counsel for appellants-plaintiffs appears to be attractive, however, learned Courts have rightly taken in consideration filing of previous suit whereby the joint properties in the hands of Kalu Ram were duly partitioned. It is worth noticing that land measuring 12 kanals 03 marlas comprised in khasra No.32//8/2/2, 20/1 and 7//19/2 were only claimed to be joint property and suit for partition, claiming said property to be co-parcenery/ancestral property, was preferred by defendant No.1.

8. It is also worth noticing that prior to filing of said suit, defendant No.1-father of appellants-plaintiffs had suffered a decree dated 16.11.1993 passed by Sh. S.P. Singh, the then learned Senior Sub-Judge, Jagadhri in Civil Suit No.830 of 1993, whereby appellants-plaintiffs were declared owners-in-possession of land measuring 12 kanals 03 marlas which was subject matter of judgment and decree dated 28.09.1998 and 08.05.2000. The said decree



dated 06.11.1993, however was set aside in civil suit preferred by defendant No.1 culminating into judgment and decree dated 28.09.1998. The judgment and decree, whereby appellants-plaintiffs and their father Kalu Ram were found entitled to 1/4th share each, has attained finality as appeal preferred against judgment and decree dated 28.09.1998 preferred by appellants-plaintiffs was also dismissed by first appellate Court vide judgment and decree dated 08.05.2000. From judgment and decree dated 28.09.1998 and judgment and decree date 08.05.2000, it is clearly made out that Kalu Ram had only 12 kanals 02 marlas land, which was joint in nature and was duly partitioned amongst all the three sons and father to the extent of 1/4th share being co-parceners. In said joint family/co-parcenary property, no share was given to defendant Nos.2 and 3, who are daughters of Kalu Ram, as at that time only male co-parceners were entitled to have the co-parcenary property. Said judgment and decree has attained finality between the parties. At the time of filing suit, the suit land which is subject matter of present appeal was not added as joint/ancestral/co-parcenary property.

9. Furthermore, there is no evidence on record to conclude that present suit property was co-parcenary property along with other co-parcenary properties, which were subject matter of earlier suit as well as judgment and decrees dated 28.09.1998 and 08.05.2000. Failure of appellants-plaintiffs to show that suit land is co-parcenary property in fact goes to show that suit property was self-acquired property of Kalu Ram and could have been succeeded either by way of will or by way of natural succession. Appellants-plaintiffs have also placed on record Will dated 09.11.1998 stated to have been executed by Kalu Ram. However, attesting



witness of said Will examined by appellants-plaintiffs have not stood the vigour of cross-examination and his evidence has been rightly appreciated by the Courts below to conclude that appellants-plaintiffs have failed to prove due execution of Will dated 09.11.1998.

10. I do not find any error in the conclusions drawn by learned Courts below on appreciation of evidence placed on record. Once, it is held that suit property was self-acquired property in the hands of Kalu Ram then on the day of succession, in absence of any will, the same would be succeeded by his class-I heirs as per Hindu Succession Act i.e. all the three sons and two daughters. Therefore, in the present case, the Courts have rightly held both the daughters i.e. defendant Nos.2 and 3 to have 1/5th share in the suit property and out of their own free will, they had executed relinquishment deed in favour of defendant No.1, which cannot be faulted with merely because appellants-plaintiffs have not found favour with their sisters.

11. Finding of learned Courts below have been arrived at after due appreciation of evidence led by parties. Faced with this, learned counsel for appellants-plaintiffs have tried to argue and rely upon alleged partition, Ex.D1, wherein 18 kanals land was agreed to be divided by Kalu Ram amongst himself and three sons, however, said intention of Kalu Ram as shown in Ex.D1 is liable to be ignored for two reasons:-

- i) That the particulars of land which is subject matter of present proceedings was not given in said compromise/partition as being claimed by appellants-plaintiffs.
- ii) That Ex.D1 cannot be relied upon to conclude that partition in 1993 as vide Ex.D1 only intention to divide the land



in four parts, was expressed. However, this was never acted upon, rather, in the same year in 1993, Kalu Ram had suffered a judgment and decree in favour of appellants-plaintiffs giving entire joint property measuring 12 kanals 03 marlas in favour of appellants-plaintiffs.

However, said judgment and decree was subsequently held to be illegal and was set aside vide judgments and decrees dated 28.09.1998 and 28.05.2000 and it was held that the suit property to the extent of 12 kanals 03 marlas was co-parcenery properties, which Kalu Ram along with his three sons were entitled to.

12. Therefore, in present case, it is clearly made out that Ex.D1 was never acted upon, neither suit land was divided nor its possession was handed over to the parties, whose names are mentioned in Ex.D1. No ground for interference is made out. Concurrent finding of learned Courts below is based upon appreciation of evidence. No substantial question of law arises.

13. Appeal is accordingly dismissed.

14. Pending application(s), if any, stand disposed of.

(PARMOD GOYAL)
JUDGE

19.01.2026
Sunil Chander

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No