

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

CR No. 4336 of 2014(O&M)

Date of decision: 18.02.2015

Saroj

..... Petitioner

versus

Sanjay and others

..... Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

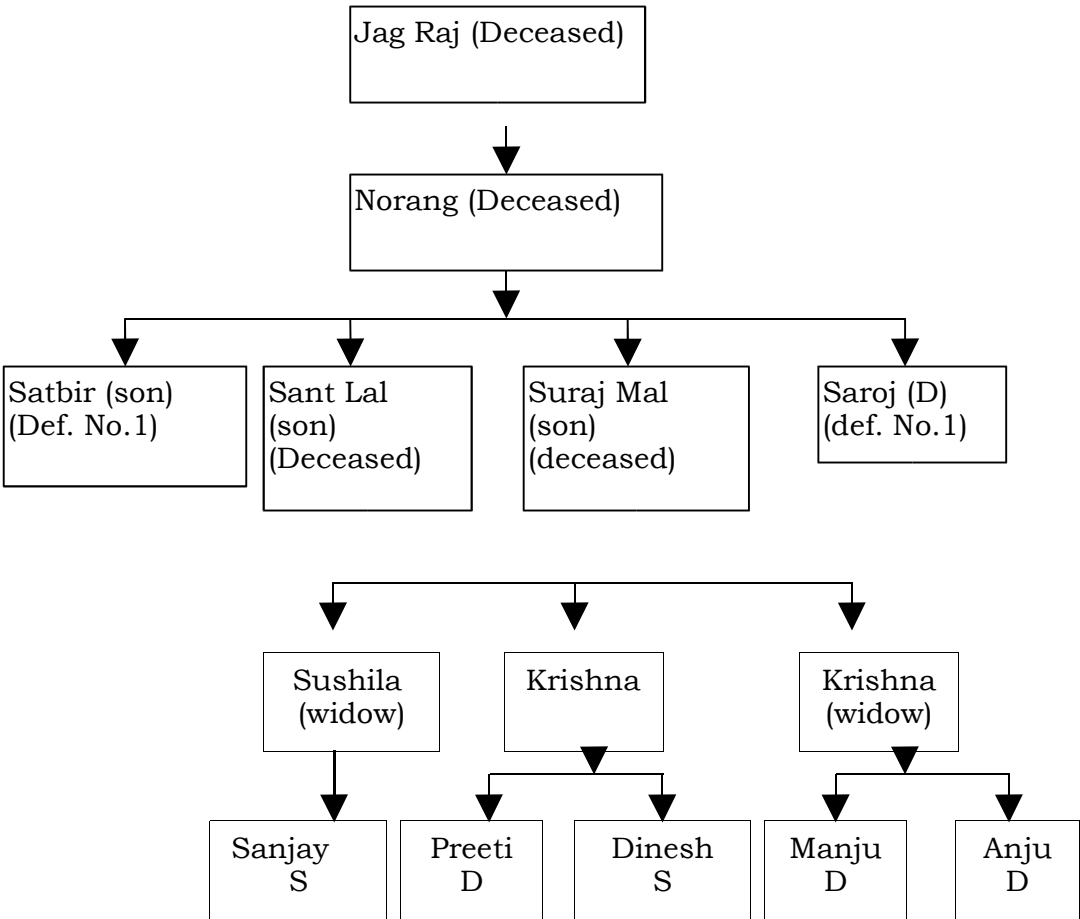
Present: Mr. Sanjay Vashisth, Advocate
for the petitioner.

Mr. Ashwani Bakshi, Advocate
for the respondents.

RAKESH KUMAR JAIN, J.(ORAL)

This petition is against the order dated 21.04.2014 by which an application by the petitioner for framing an additional issue under Order 14 Rule 5 CPC has been declined.

To begin with, it would be relevant to refer to the pedigree-table as the parties to the lis are related to each other.



Basically the dispute is regarding the release deed dated 23.01.2001, alleged to have been executed by Norang in favour of his daughter Saroj, of the property in dispute.

The respondent, namely, Sanjay and Dinesh, who are the sons of Sant Lal have filed the present suit for declaration with consequential relief of permanent injunction that the release deed in favour of respondent No. 1/ Saroj is illegal. When the suit was at the stage of arguments, respondent No. 1 filed an application dated 10.03.2014 under Order 41 Rule 5 CPC for framing some additional issues to the following effect:

“1. whether the suit of the plaintiffs is Barred by the Doctrine of Resjudicata?OPD”

This application has been dismissed by the learned trial Court and hence the present revision petition has been filed.

Learned counsel for the petitioner has argued that the release deed dated 23.01.2001 was earlier challenged in a Civil Suit No. 76 of 7.04.2006 by none other than the father of the present respondent, namely, Sant Lal but the said suit was withdrawn by him on the basis of compromise dated 29.07.2006. Thereafter, another suit was filed i.e. Civil Suit No. 44/1 of 26.05.2005 by children of another son of Norang namely Surajmal, challenging the same release deed but the said suit was also compromised, the order was passed by the Lok Adalat on 29.07.2006 and the said suit was also dismissed as withdrawn.

Still thereafter, the petition No. 8/5 of 2005 was filed by the children of Surajmal s/o Sant Lal under Section 22 of Hindu Adoption and Maintenance Act, 1956 and in that case the cause of dispute was the said release deed of 23.01.2001. This suit was also withdrawn on 29.07.2006.

Learned counsel for the petitioner has submitted that the suit filed by the respondents is barred by the principle of res judicata because matter has already been decided between the parties, namely, the father of the respondents and the present petitioner and therefore, the said order operates as res judicata. However, due to inadvertence and oversight, the relevant issue could not be framed initially by the learned Trial Court but since its a technical issue and goes to the root of the case, application was filed, though at a belated stage. It is submitted that the respondents can be compensated with costs for the

inconvenience caused to them in contesting the application upto this Court.

On the other hand, learned counsel for the respondents has argued that the application has rightly been dismissed by the learned Trial Court as the trial is at the fag end and the case is fixed for arguments. The respondents/plaintiffs had specifically averred in the plaint that it was in the notice of the defendants/petitioners but still they did not ask for these issues which are now being asked for an additional issue. Therefore, the issue framed at this stage would unnecessarily delay his suit and is not in the interest of justice.

I have heard learned counsel for the parties and after examining the record, am of the considered opinion that the order of the learned Court below is erroneous and is liable to be revised. It is an admitted fact that the parties to the release deed are closely related and petitioner is claiming her right over the property in dispute on the basis of the release deed dated 23.01.2001 purported to have been executed by her father who has faced many litigation's in the past, in as much as the father of the present respondents had also filed a suit to challenge the validity of the said release deed but could not succeed as there was a compromise between the parties. Therefore, he himself could not come forward either to file an appeal because no appeal is provided against the compromise decree nor he could have filed a fresh suit himself. Therefore, present suit has been filed by his children claiming their independent right on the basis that the suit land is ancestral in nature. The nature of the suit land is a pure question of fact which has to be

determined by the learned Trial Court on the basis of evidence led by the parties but it is also important to note that if the suit land is not found to be ancestral then children of Sant Lal would have no right to challenge the released deed, executed by the grandfather in favour of their Aunt/Saroj and then the order passed against Sant Lal would operate as res judicata. Therefore, it would be in the interest of justice, if directions are issued to the Trial Court to frame additional issue and allow parties to lead evidence but since the defendants are claiming additional issue and the suit is pending since long, therefore, the learned Trial Court is also directed to provide only two opportunities to both the parties to lead evidence and decide the lis as early as possible, preferably within a period of six months. The present revision petition, however, is allowed subject to payment of costs of ₹15,000/- as costs.

18th February, 2015
Shivani Kaushik

[Rakesh Kumar Jain]
JUDGE