

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

**Regular Second Appeal No.3830 of 1987 (O&M)
Date of Decision: July 21, 2016.**

Chand Rup (deceased) through LRs and others

.....APPELLANT(s).

VERSUS

Smt. Parsanni (now died) through LRs and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. R.K. Gupta, Advocate
for the appellant (s).

Mr. Sandeep Singh, Advocate
for the respondents No.5, 6 & 8.

SURINDER GUPTA, J.

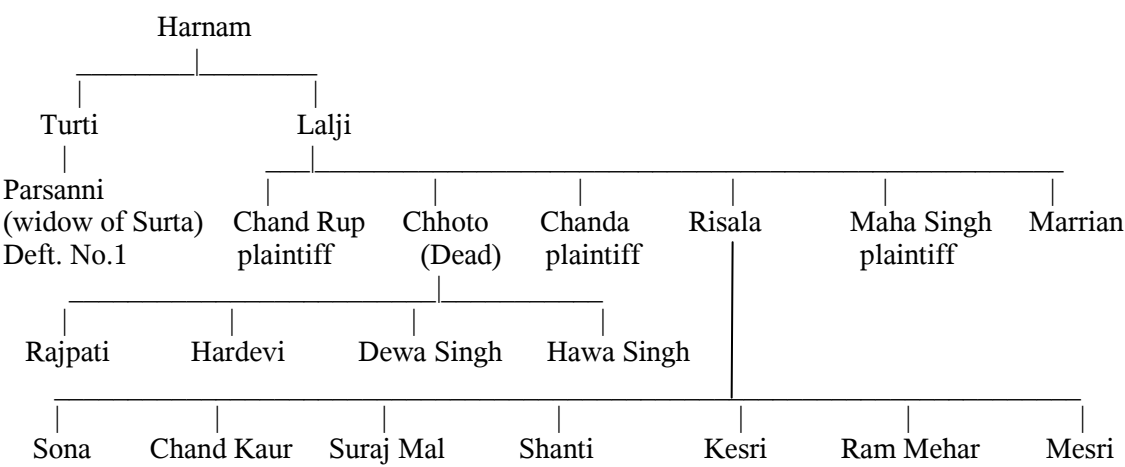
Appellants-plaintiffs filed suit claiming the relief of declaration
and permanent injunction as follows:-

“It is, therefore, prayed that a decree for declaration to the effect that the lease deed dated 28.1.81 and sale deeds dated 6.2.81 and 6.3.81 may kindly be set aside and to declare them as null and void, not binding on the plaintiffs as being ultra-virus, wrong, illegal and against law and natural justice, may kindly be passed in favour of the plaintiffs and against the defendants, or in the alternative a decree for declaration to the effect that the plaintiffs are the owners in possession of the suit land by way of their being in adverse possession as is mentioned in para No.15-A of the plaint and according to the revenue entries, be passed in favour of the plaintiffs and against the defendants.

It is, therefore, requested that a decree for permanent injunction as a consequential relief be also passed in favour of plaintiffs and against the defendants restraining them to alienate or to dispose of the suit land in any way or

manner and also not to take forcible possession of the suit land from the plaintiffs except in due course of law.”

2. Pedigree table as given in para 2 of the plaint will help in understanding the plea of plaintiffs and the relationship of the parties, is as follows:-



3. The case of the plaintiffs, in brief, is that Smt. Parsanni, defendant No.1 widow of Surta son of Turti is recorded as owner of land measuring 84 kanals 14 marlas as described in para 1 of the plaint. Plaintiffs are the sons of Lalji son of Harnam, common ancestor of the parties. Parsanni, defendant No.1 inherited the suit property from Smt. Maro, her mother-in-law. She used to get the suit land cultivated through plaintiffs as she was their real cousin's brother's wife (*Bhabhi*) and was issueless. There was a dispute regarding cultivation and crops over the suit land and *Panchayat* was convened in the year 1961 in village Bhuran and a family settlement was arrived at between the plaintiffs and defendant No.1, the terms of which are as follows:-

- “(i) Plaintiffs will cultivate the suit land owned by defendant No.1 Parsanni, throughout her life time.
- (ii) Defendant No.1 Parsanni will receive (get) Rs.200/- per year from the plaintiffs throughout her life as her maintenance.
- (iii) Besides this, plaintiffs will also provide residential house for living for her life time.

- (iv) Defendant No.1 will not be entitled to transfer or alienate the suit land and residential house by way of sale, mortgage, lease or any other way during her life time.
- (v) The amount of Rs.200/- will be paid to defendant No.1 in the month of Phagan(March) every year against receipt.”

4. This family settlement was reduced in writing on 13.04.1961. Plaintiffs paid ₹1,000/- to defendant No.1 as maintenance for five years in the presence of witnesses and thereafter sent ₹200/- per year by money orders till 1980 but she did not receive the same. Defendant No.1 filed an application in the year 1965 in the Court of Assistant Collector 1st Grade, Jind seeking partition of her share in the suit land but failed in view of the family settlement dated 13.04.1961 as is apparent from order dated 22.12.1965 passed by Collector, Jind. The parties were directed to get the question of their title decided from the competent Court. Thereafter, Smt. Parsanni filed civil suit in the Court of then Senior Sub Judge, Jind seeking declaration of her 1/2 share in the suit land but that suit bearing No.315 of 1970 got abated due to death of Smt. Chhoto. Thereafter, Smt. Parsanni neither filed any suit seeking declaration of title of 1/2 share in the suit property nor she could seek any such declaration in view of settlement dated 13.04.1961 which has attained finality and is binding on defendant No.1.

5. Despite having knowledge of settlement dated 13.04.1961, Smt. Parsanni, defendant No.1 sold the suit land vide registered sale deeds dated 06.02.1981 and 06.03.1981 to defendants No.2 to 8 and 20(i)(ii) for a fictitious amount of ₹40,000/- each. There is every possibility that some fictitious lady was produced to get the sale deed registered as defendant No.1 never visited Safidon to get the sale deed executed and registered. However, if it is proved that Smt. Parsanni appeared before the Sub

Registrar in that case, no title can pass to the vendees as Smt. Parsanni was

not having any alienable interest in the suit land under the family settlement dated 13.04.1961. Smt. Parsanni also got executed lease deed dated 28.01.1981 in favour of Ram Chander and Darshan Singh of Safidon (defendants No.20(i) and (ii)) for a period of 20 years, but the same were without any force as the possession of the land was with plaintiffs. The terms of the lease deed are not binding on the plaintiffs. In the event of family settlement dated 13.04.1961 being discarded, the plaintiffs claimed title over the suit land by way of adverse possession.

6. Defendants No.1, 2 and 3, in their joint written statement, contested and controverted the averments in the plaint, inter-alia pleading that the plaintiffs have no locus standi to file the suit as they are not owners in possession of 1/2 share, 1/7 share and 1/16 share of defendants No.1, 2 and 3 in suit land respectively. The suit land is still joint and no partition had ever taken place. Plaintiff No.3 Maha Singh is a *Patwari* and got recorded fictitious entries in *khasra girdawaries* in collusion with *halqa patwari* . Earlier, suit bearing No.137 of 25.03.1976 titled as *Maha Singh and others Vs. Smt. Parsanni* was dismissed as withdrawn with permission to file fresh suit on the same cause of action between the same parties with costs of ₹250/- but the plaintiffs did not deposit the costs before filing the present suit. The averments of the plaintiffs regarding family settlement vide writing dated 13.04.1961 were refuted. It was also denied that the plaintiffs ever gave ₹200/- per year to defendant No.1. Sale deeds executed by her in favour of defendants No.2 to 8 and defendants No.20(i) and (ii) and also the execution of lease deed in favour of Ram Chander and Dalbir Singh were admitted by defendant No.1. They alleged that the plaintiffs never claimed ownership of the share of defendants in the suit land. In fact, they have been claiming themselves as tenant. The suit filed by defendant

No.1 bearing No.315 dated 16.04.1970 claiming declaration of her 1/2 share in the suit land, was dismissed as it got abated. Defendant No.1, however, filed appeal against that order, which was set aside in appeal by the Additional District Judge, Jind and the plaintiffs filed regular second appeal against that judgment, in which defendant No.1 was never issued any notice.

7. Defendants No.4 to 8 and 20(i) and 20(ii) in their joint written statement contested the claim of plaintiffs with the pleas as taken by defendants No.1 to 3 in their written statement and defended the sale deeds executed by defendant No.1 as legal and valid.

8. Defendants No.19, 20 and 53 to 56 filed written statement, partly admitting the claim of plaintiff but seeking dismissal of the suit.

9. Defendant No.9, 14 to 18, 21 to 29, 31 to 52, 57 to 69 filed separate written statement on the similar lines as filed by defendants No.19, 20 and 53 to 56.

10. Plaintiffs re-asserted their case in the replication. Pleadings of the parties led to the framing of issues as follows:-

- (1) Whether the plaintiffs and defendant no.1 are related inter se as mentioned in para no.2 of the plaint, if so its effect? OPP
- (2) Whether there was any family settlement in between the plaintiffs and defendant no.1, if so its effect? OPP
- (3) If issue No.2 is proved, what were the terms and conditions of the said family settlement? OPP
- (4) Whether sale deeds dated 6.2.81 and 6.3.81 in favour of defendants no.2 to 8 vendees/defendants are null and void and are not binding on the plaintiffs as mentioned in para no.12 and 13 of the plaint? OPP
- (5) Whether the lease deed dated 28.1.81 in favour of the defendants no.20(i) & (ii) as mentioned in para no.15 of the plaint is null and void and not binding upon the rights of the plaintiffs? OPP
- (6) Whether the plaintiffs are in possession of the suit land on the basis of the said family settlement? OPP
- (7) Whether the plaintiffs have no locus standi to file the present suit?

OPD

- (8) Whether the suit is not maintainable in the present form? OPD
 - (9) Whether the plaintiffs are stopped from filing the present suit? OPD
 - (10) Whether the suit is bad for mis-joinder of the necessary parties? OPD
 - (11) Whether the suit is time barred? OPD
 - (12) Whether the suit has not been properly valued for the purpose of Court fees and jurisdiction? OPD
 - (13) Whether the suit is barred under the principle of res judicata? OPD
 - (14) Whether the plaintiffs have no cause of action, if so to what effect? OPD
 - (15) Whether the plaintiffs have filed this suit after withdrawing the previous suit on the same cause of action and without permission or without payment of the costs imposed upon him, if so to what effect? OPD
 - (16) Relief.
11. After the death of Smt. Parsanni, following additional issue was framed vide order dated 28.05.1983:-
- 1(i) Whether the plaintiffs and defendant no.9 are the LRs of deceased Parasni, if so to what effect?OPP
12. Vide order dated 19.04.1984, another issue No.1-A, was framed as additional issues as follows:-
- 1(A) Whether the plaintiff has become owner of the property in dispute by way of adverse possession, if so to what effect? OPP
13. Relationship of the parties as mentioned in the pedigree table given in para 2 of the plaint was not disputed and learned Sub Judge, Safidon recorded finding admitting the contention of plaintiffs to this effect. On issues No.2 and 3, learned Sub Judge concluded that settlement dated 13.04.1961 is not proved to have been entered by Smt. Parsanni, defendant No.1 and even if this agreement is considered to be validly executed, still it has no effect so far as the alienation of the suit property by defendant No.1 is

concerned as Smt. Parsanni was absolute owner of the suit property under Section 14(i) of Hindu Succession Act, 1956. Consequently, the sale deeds and lease deed executed by Smt. Parsanni were held as legal and valid. On issue No.6, it was held that the plaintiff never came in possession of the suit land on the basis of family settlement (Ex.P1) and the plea raised by the plaintiffs that they have become owners in possession of the suit land by way of adverse possession was discarded for want of evidence. While deciding issue No.8 and 15, learned Sub Judge held that the present suit filed by the plaintiffs is maintainable as the subject matter of the earlier suit filed by them, which was ordered to be dismissed with permission to file fresh suit, was different than the subject matter of this suit. The plaintiffs with defendant No.9 were held to be legal heirs of Smt. Parsanni and findings on issue No.1(i) were recorded to this effect. The suit of the plaintiffs was ultimately dismissed.

14. The plaintiffs filed appeal, which was also dismissed. Not satisfied, the plaintiffs filed the regular second appeal.

15. I have heard learned counsel for the parties and have perused the paper-book and record of the Courts below with their assistance.

16. Learned counsel for the appellants has tried to build up a new case for the appellants raising a number of pleas including one that Smt. Parsanni was not the owner of the suit land as under the law prevalent at the relevant time, Smt. Maro, mother-in-law of Smt. Parsanni, defendant No.1 could not inherit the suit land and it (suit land) could not travel to the hands of Parsanni on death of Smt. Maro.

17. Before looking into the submissions raised by learned counsel for the appellants, it will be relevant to have a look on the pleas raised by the plaintiffs in their plaint regarding their possession over the land owned by

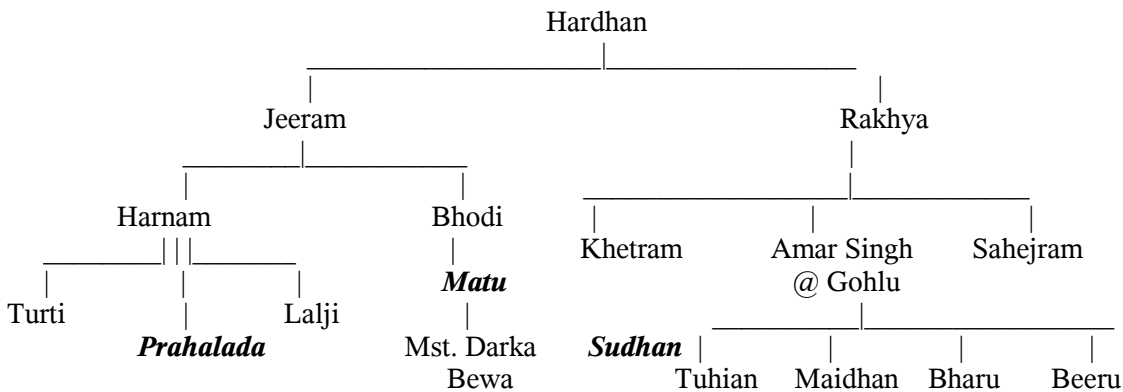
Smt. Parsanni, defendant No.1:-

- (i) In para 1 of the plaint, plaintiffs described the ownership right of Smt. Parsanni as follows:-

“1. That Shrimati Parsanni Defendant No.1 is recorded to be the owner of Agricultural land measuring 84 Kanals 14 Marlas comprised in Khewat No.30, Khatauni No.113 to 118, measuring 157 kanals 11 marlas i.e. defendant No.1 share being 1/2 in this Khewat (b) Khewat No.31 Khatauni No.119, 119/1 measuring 32 Kanals 12 Marlas i.e. defendant No.1 share being 1/7th share (c) Khewat No.42, Khatauni No.138, measuring 20 Kanals 12 Marlas i.e. defendant No.1 share being 1/6th share according to the jamabandi for the year 1978-79, the same is attached herewith. Similarly the remaining land out of these Khewats is owned by the plaintiff, defendants No.9 to 20 and defendants No.21 to 69 according to their share shown in the Jamabandi attached.”
- (ii) In para 3 of the plaint, the plaintiffs have alleged that after the death of Mst. Maro, this property was inherited by Smt. Parsanni, defendant No.1.
- (iii) In para 5 of the plaint, it is mentioned that there used to remain dispute on crops and cultivation etc. of the suit land, which was ultimately settled vide settlement deed dated 13.04.1961.
- (iv) Besides their claim based on settlement dated 13.04.1961, plaintiffs claimed title over the suit land by way of adverse possession.

18. From the above discussion, it is evident that plaintiffs have never challenged the inheritance of property by Smt. Maro or by Smt. Parsanni, defendant No.1 from Smt. Maro.

19. Learned counsel for the appellants has placed on file pedigree table (Annexure A-1), which is as follows:-



20. He has argued that Smt. Maro, mother-in-law of Smt. Parsanni, inherited the suit land after the death of Turti as per mutation No.55 dated 14.06.1937. Turti had died in February/March 1937 leaving behind Maro, his wife and widow of his pre-deceased son namely Smt. Parsanni, defendant No.1. Smt. Maro died in the year 1946 i.e. much prior to coming into force of Hindu Succession Act, 1956. On the death of Smt. Maro, the property reverted to heirs of last male heir of Turti and a mutation No.92 dated 15.06.1946 was sanctioned in favour of appellants-plaintiffs but later on that mutation was set aside and was entered in the name of Smt. Parsanni. Widow of pre-deceased son got right in the property of male holder vide Hindu Women's Right to Property Act, 1937(later referred to as 'Act of 1937'), which came into force on 14.04.1937. At the time of death of Turti in February/March, 1937, the Act of 1937 was not in force, as such, Smt. Parsanni did not inherit the suit property. Appellants-plaintiffs filed an application before the first Appellate Court seeking amendment of the plaint but that application was not decided by the first Appellate Court.

21. Learned counsel for the appellants has argued that the amendment sought was very material and would decide the fate of inheritance of estate left by Turti in favour of appellants-plaintiffs.

22. During the course of arguments, learned counsel for the appellants addressed complete arguments even on plea sought to be incorporated by way of amendment of plaint. Keeping in view the fact that the suit pertains to the year 1981 and the parties are litigating for the last 35 years and they want the matter fully and finally decided in this appeal, learned counsel for the appellants opted to address complete arguments on merits as per the plea raised in the amendment application moved before

first Appellate Court with the submission that if it is found that the case of the plaintiff improves or has merits on the amendment being allowed, the application may be allowed at this stage as the entire evidence is already on record and the opportunity may be given to defendant(s) to file written statement. Attention of this Court was also drawn to *Nirma Ram Vs. Sita Ram & Ors* 2007 AIR (H.P.) 2; *Jatinder Singh & Anr. Minor through Mother Vs. Mehar Singh and Others* 2009(1) R.C.R. (Civil) 253; *Hakam Singh Vs. State of Haryana and Others* 2008(4) RCR (Civil), 422; *Ashok Kumar Vs. Surinder Kumar* 2005(2) R.C.R. (Civil) 557; *Tehal Singh Vs. Harnam Singh* 2000(1) PLR 260; *Mahant Gauri Shankar Vs. Surjit Kumar and another* 2011(4) PLR 757; *Sham Lal & Sons Etc. Vs. Rajiv Kumar* 2010(1) PLR 661; and *Rajbir Singh Vs. Virender Singh and others* 1996(1) PLR 703.

23. Application under Order 6 Rule 17 CPC filed by appellants-plaintiffs was not decided by the first Appellate Court. However, perusal of the file shows that this application was not pressed before the first Appellate Court at the time of final arguments. On filing of the application on 25.03.1985, notice was given to the counsel for respondent for 06.04.1985 on which date, reply was filed and it was fixed for 03.05.1985 for arguments. On 03.05.1985, counsel for the applicants(appellants) was not ready with the arguments and sought adjournment and the date was fixed as 27.05.1985 for arguments on the application. The case could not be taken up on 27.05.1985 and again it was taken up on 07.08.1985 and was adjourned for arguments on the application for 10.09.1985, on which date, it was ordered that arguments on the application will be heard at the time of arguments on merits and the case was adjourned time and again till it was finally decided on 21.11.1987. Perusal of the judgment of learned first

Appellate Court shows that learned counsel for the applicants-appellants confined the arguments only with regard to the finding of learned trial Court on issues No.2 to 5, 8 and 15 as is evident from perusal of para 13 of the judgment which is reproduced as follows:-

“13. The learned counsel for the parties were fair enough to state at the time of arguments that challenge in the appeal is only with regard to the findings of the learned trial court under issues No.2,3,4,5, 8 and 15. The learned counsel for the appellants stated that the fate of issues No.4 and 5 shall turn up on the findings under issues No.2 and 3. He agreed that if validity of the impugned family settlement is up-held, issues No.4 and 5 shall have to be disposed of in favour of the appellants. He further agreed that if the findings were otherwise, the finding of the learned trial court under those issues shall have to be upheld. The findings of the learned trial court under other issues shall stand upheld thus.”

24. Mr. R.K. Gupta, Advocate, learned counsel for the appellants in this appeal was also counsel for the appellants before the first Appellate Court and in the grounds of appeal, the observations in para 13 above, have not been challenged. This shows that appellants did not press the application before the first Appellate Court at the time of final arguments.

25. As arguments have been addressed keeping in view amendment sought to be added, before proceeding to look into the merits of the application and examine the case as per the plea raised in the application, it will be relevant to look into the other grounds raised by appellants to challenge the title of Smt. Parsanni. Firstly, I take the plea raised by appellant based on the agreement dated 23.04.1961. Without going into this controversy as to whether this agreement was validly executed or not, I find on perusal of this document that vide this settlement deed, no right was

conferred in the property owned by Smt. Parsanni in favour of appellants. This agreement was signed by only one of the plaintiffs namely Chand Rup. Though he has stood guarantor for his other brothers Chanda and Maha Singh yet admittedly, he was not their attorney or was having any authority to enter any agreement on their behalf. The English translation of agreement (Ex.P1) supplied by learned counsel for the appellants is reproduced as follows:-

“I, Chandrup s/o Lalji Caste Jatt is Nambardar/Bisweddar/ shareholder of village Bhuran, Tehsil Jind, District Sangrur, whereas land measuring 60 Bighas, which include irrigated and non-irrigated land of village Bhuran is owned by us – **Chandrup, Chanda and Maha Singh sons of Lalji, real brothers half share and Smt. Parsanni widow of Surta Jatt r/o village Bhuran 1/2 share** whereas I Chandrup and my brothers named above are cultivating the land in question since a long time and husband of Parsanni died long back and she is widow having no issue and no other LRs. **Therefore, it is settled in the village Panchayat that half share of Smt. Parsanni measuring 30 Bighas will be cultivated by me- Chandrup and my brothers Chanda and Maha Singh** and we are paying an amount of Rs.1000/- (half share of which comes to Rs.500/-) profit for five years from 2014 to 2018 (Samvat) to Smt. Parsanni today and in future we will keep on paying Rs.200/- as profit throughout her life for her maintenance, every year in the month of Fagun without any default or fault and we will keep on cultivating the land of Smt. Parsanni throughout her life. In case we fail to pay the profit to her in that case Smt. Parsanni will be entitled to get the land of her share vacated but she will not be entitled to alienate the land by way of sale, mortgage or in any way to anyone else. We will pay profit against receipt and without receipt payment will not be accepted. In addition to it, we have given her a residential

house single storey which is called as shop for her residential purpose and she will reside therein throughout her life.

(2.) That Smt. Parsanni widow of Surta caste Jatt, resident of village Bhuran, Second party heard the above said agreement which is correct and is acceptable to her and she agreed that she will not alienate the agricultural land and residential house to anyone else by way of sale, mortgage, etc. and will keep on receiving profit @ Rs.200/- every year in the month of Fagun. Today, an amount of Rs.1000/- is received as profit for five years w.e.f. Sammat 2014 to 2018 and in future will receive in the month of Fagun Purnamasi and will issue receipt. In case we do not pay the above said amount of Rs.200/- as profit to her then she will be entitled to get the land vacated. I Chandrup is the exclusive owner of house in question and after the death of Parsanni, the house will be returned back to me or to my LRs and my other brothers will have no right in the said house.

3. Chanda and Maha Singh sons of Lalji are my real brothers and I Chandrup is guarantor on their behalf in all respect. We constitute joint Hindu family and I am the member of the joint Hindu family. Therefore, I am guarantor on their behalf and Parsanni have also agreed that she will live peacefully throughout and will not transfer her agricultural and non-agricultural land in any way, therefore, this agreement is being reduced into writing in the presence and with the consent of both the parties as a token of evidence so that it can be used at the relevant time. We both the parties will be bound by the terms of this agreement dated 13.4.1961, Baisakh Badi Trodsi, Sammat 2018.”

26. Perusal of the above agreement shows that the settlement between Chandrup and Smt. Parsanni was regarding the cultivation of the land owned by Smt. Parsanni on payment of Rs.200/- per year as profit from

the land. Though there is a recital in the agreement that Smt. Parsanni will not get the land of her share vacated or alienate the same but she never agreed to devolve the title of land of her share on Chandrup or his brothers. As per the provisions of Section 14 of Hindu Succession Act, 1956, she being absolute owner of the property owned by her, continued to be the owner and any recital in the agreement that she will not get her share vacated or alienated, would not put any restriction or legal impediment on her absolute title over suit land. The possession of plaintiff under the agreement was undisputedly permissive possession, hence, no right, title or interest accrued to the plaintiffs, adverse or hostile against the true owner Smt. Parsanni. Both the Courts have rightly rejected the plea raised by the appellants-plaintiffs on this score.

27. The entire thrust of learned counsel for the appellants is on the plea sought to be set up by way of amendment. After a lapse of three decades of moving the application and keeping in view the arguments of learned counsel for the appellants, who humbly and fairly agreed to address the complete arguments on merits of case, as well as on plea sought to be incorporated by way of amendment, if the application is allowed. I deem it appropriate to examine the case of the appellants-plaintiffs as per the amended plaint instead of remitting it to the first Appellate Court on technical grounds as per citations referred by learned counsel for the appellant.

28. By way of amendment, appellants-plaintiffs want to set up a case that the mutation of the estate of Turti was wrongly sanctioned in favour of his widow Smt. Maro vide mutation No.55 dated 14.06.1937 and after the death of Smt. Maro, property instead of being reverted to the heirs of last male holder was wrongly mutated in the name of Smt. Parsanni.

29. During the course of arguments, learned counsel for the appellant in order to make out that the proposed amendment is based on true facts and is necessary for adjudication of the matter in controversy, placed on record the document to support the averments made in the application. These documents are the copies of mutation, pedigree table etc. but no document could be produced to make out that the property in the hands of Turti was joint Hindu family coparcenary property. This point has also not been pressed during the course of arguments, as such, the matter is to be looked upon as if the suit property in the hands of Turti was his self-acquired property.

30. After the death of Turti, mutation of his estate was sanctioned in favour of his widow Smt. Maro and rightly so. A widow after the death of her husband, as per Hindu Law, before coming into force of Hindu Succession Act, 1956, had right to inherit the estate of her husband, though she could inherit only limited interest during her life time. The interest of the reversioners in the estate inherited by her from her husband is contingent and mere spes successionis. Here two questions arise for consideration. Firstly, what is the effect of the legislation which came into existence after the death of her husband on the right of the widow and the right of the reversioners; and secondly, on the death of widow, whether the reversioners inherit the property held by her as limited owner as per the relevant law prevailing at the time of her death or law which was in force at the time of death of her husband.

31. Both the above questions have already been answered in a catena of judgments. I first refer to a Division Bench judgment of this Court in case of *Smt. Banso and others Vs. Charan Singh and others AIR 1961*

Punjab 45, where one As Kaur had inherited the estate of her husband and

executed gift deed dated 17.04.1954 in favour of her daughters of the entire ancestral and non-ancestral property left by her husband. That gift deed was set aside on a suit filed by collaterals. After coming into force of Hindu Succession Act, 1956 she again executed a gift deed which was also challenged by the collaterals. While examining the law on the point, the Division Bench of this Court in para 7, 8, 8A and 8B held as follows:-

“7. As Kaur defendant No. 1 is a holder of widow's life estate and during her life-time the interest of the reversioners in her estate is contingent and mere spes successions. Succession will open on the death of As Kaur and the property will devolve on the heirs of the last male holder i.e. of Banta Singh. Irrespective of the validity or invalidity of the gift made by the mother in favour of the daughters, the donees incontestably are the next heirs with respect to the entire ancestral and non-ancestral property in view of the provisions of the [Hindu Succession Act](#). Succession in a case like the present cannot be said to have opened out on the death of Banta Singh who died very many years ago.

8. The Hindu widow inherits her husband's estate in the character of being the surviving half of her husband, and this is left in no doubt in the following text from Brihaspati:

A lawfully wedded wife, patni, acquires from the moment of her marriage a right to everything, belonging to the husband so as to become co-owner with

her husband though her right is not co-equal to that of her husband being of a subordinate character. On the death of the husband the property devolves on his widow or widows and in the latter case, with the right of survivorship inter se. The succession does not open out till

the last of the widows is dead. On her demise the next heir of the full owner inherits the property.

During her lifetime the entire estate is vested in her which she represents completely. The inheritance thus devolves on the death of the widow upon the next heir of the last male holder and not upon her heir. That event in this case has not yet taken place. On As Kaur's death the estate of her deceased husband Banta Singh will devolve upon his heirs as specified in [Section 8](#) of the Act read with the Schedule. No doubt before coming into force of the Act, the Customary Law of Punjab governed the rules of succession and if the succession had opened before the enactment of the [Hindu Succession Act](#), the collaterals would have a prior claim to the ancestral property though as to the non-ancestral property the daughters would be considered to be preferential heirs. But now [Section 4](#) of the Act overrides the rules of succession under the Punjab Customary Law in cases where succession opens after coming into force of this Act.

8a. [The Case of Duni Chand v. Mt. Anar Kali](#), *AIR 1946 P. C. 173* is in point. In that case the last full owner died in 1922 and on his death his mother Chaman Devi succeeded to a widow's estate. She died in 1936 leaving daughters who became heirs to the last male holder as the latter's sisters. The plaintiff as one of the sisters of the deceased claimed partition of her share. The contesting defendants in that case claimed that they had succeeded to the property as heirs to the deceased and their right to succession was governed by the law in force at the time of his death in 1922 and not as in 1936 when his mother had died. In between these two deaths an important change in the law of succession had taken place. The Hindu Law of Inheritance (Amendment) Act, 1929, was passed, and it came into operation in February 1929.

This Act had materially altered the order of succession of certain persons mentioned in the Act, namely, son's daughter, daughter's daughter, sister and sister's son and they ranked as heirs next after a father's father and before a father's brother. **This Act** gave to certain relatives of the deceased a preferential place in the order of succession over other relatives. **The question that came up for decision in that case was whether the devolution of the properties on the demise of the widow Chaman Devi in 1936 was governed by rule of succession as specified by Act No. 2 of 1929 or in accordance with the law in force in 1922 when Dharam Das, the last full owner had died. It was held by the Judicial Committee of the Privy Council that :**

"during the lifetime of the widow, the reversioners in Hindu Law have no vested interest in the estate but have a mere spes successionis or a chance of succession, which is a purely contingent right which may or may not accrue, that the succession would not open out until the widow died, and that the person who would be the next reversioner at that time would succeed to the estate and the alteration in the rule of the Hindu Law brought about by the Act would then be in full force."

8b. The Privy Council further observed;

"The succession does not open to the heirs of the husband until the termination of the widow's estate. Upon its termination, the property descends to those who would have been the heirs of the, husband if he had lived up to and died at the moment of her death.

There is no vesting as at the date of the husband's death, and it follows that the question of who is the nearest reversionary heir or what is the-class of reversionary heirs, falls to be settled at the date of the expiry of the ownership for life or lives. The death of a Hindu female owner opens

the inheritance to the reversioners, and the one most nearly related at the time to the last full owner becomes entitled to possession. In her lifetime, however, the reversionary right is a mere possibility; or *spes successionis*, but this possibility is common to them all for, it cannot be predicated who would be the nearest reversioner at the time of her death, The Indian Law, however, permits the institution, of suits in the lifetime of the female owner to remove a common apprehended injury to the interests of all the reversioners, presumptive and contingent alike. The reversioner's rights during the lifetime of the female heir are merely of a protective character and nothing more, and whenever action is taken by the presumptive reversioner it is in a representative capacity and on behalf of all the reversioners, and not on the footing that the person taking the action is in fact the next reversioner at the date of the suit".

32. Hon'ble Division Bench also took note of the observations in case titled ***Taro Vs. Darshan Singh AIR 1960 Punjab 145***, wherein another Division Bench of this Court had held that succession to the state of last male holder opens on the demise of the intervening female heir and not on the death of last male holder.

33. Hon'ble Apex Court in case of ***Daya Singh(Dead) through LRs and Another Vs. Dhan Kaur (1974)1 Supreme Court Cases 700*** also dealt with similar question in para 6 of the judgment, which reads as follows:-

"6. Now if this proposition is correct, as we hold it is, that where a female heir succeeds to an estate, the person entitled to succeed on the basis as if the last male holder had lived up to and died at the death of the limited owner, succession to Wadhawa Singh's estate in the present case opened when his widow died and it would have to, be decided on the basis that Wadhawa Singh had died in 1963 when his widow died. In that case the succession to his

estate would have to, be decided on the basis of Section 8 of the Hindu Succession Act. The various High Courts which have held otherwise seem to have been oppressed by the feeling that this amounted to giving retrospective effect to Section 8 of the Hindu Succession Act whereas it is only prospective. As the Privy Council pointed out it means no such thing. The accepted position under the Hindu Law is that where a limited owner succeeds to an estate the succession to the estate on her death will have to be decided on the basis that the last full owner died on that day. It would be unreasonable to hold that in such a circumstance the law as it existed at the time when the last male holder actually died should be given effect to. If the person who is likely to succeed at the time of the limited owner's death is not, as happens very often, likely to be the person who would have succeeded if the limited owner had not intervened, there is nothing unreasonable in holding that the law as to the person who is entitled to succeed on the limited owner's death should be the law then in force and not the law in force at the time of the last full owner's death."

34. Hon'ble Apex Court also took note of the law settled by the Privy Council in para 5 of the judgment which reads as follows:-

"That position may now be considered. It was authoritatively laid down by the Privy Council in its decision in *Moniram Kolita v. Keri Kaliteni* (ILR 5 Calcutta 776 at 789) that :

"According to the Hindu Law, a widow who succeeds to the estate of her husband in default of male, issue, whether she succeeds by inheritance or survivorship — as to which see the *Shivagunga case* (9 Moore's IA 604) (1)-does not take a mere life-estate in the property. The whole estate is for the time vested in her absolutely for some purposes, though in some respects for only a qualified interest. Her

estate is an anomalous one, and has been compared to that of a tenant-in-tail. It would perhaps, be more correct to say that she holds an estate of inheritance to herself and the heirs of her husband. But whatever her estate is, it is clear that, **until the termination of it, it is impossible to say who are the persons who will be entitled to succeed as heirs of the husband** (*Ibid.*, 604).

The succession does not open to the heirs of the husband until the termination of the widow's estate. **Upon the termination of that estate the property descends to those who would have been the heirs at the husband if he had lived up 'to and died at the moment of her death** (*Ibid* 601)."

In the subsequent decision in *Duni. Chand v. Anar Kali* (*AIR 1946, PC 173*) the Privy Council observed:

"..... during the lifetime of the widow, the reversioners in Hindu Law have no vested interest in the estate but have a mere **spes successionis** or chance of succession, which is a purely contingent right which may or may not accrue, **that the succession would not open out until the widow died**, and that the person who would be the next reversioner at that time would succeed to the estate and the alteration in the rule of the Hindu Law brought about by the Act would then be in full force.

In the argument before their Lordships, reliance was placed upon the words "dying intestate" in the Act as connoting the future tense, but their Lordships agreed with the 'view of the Lahore High Court in *17 Lah 356(1) at p. 367*, that the words are a description of the status of the deceased and have no reference and are not intended to have any reference to the time of the death of a Hindu male. **The expression merely means "in the case of intestacy of a Hindu male"**. To place this interpretation on the Act is not to give a retrospective effect to its

provisions, **the materials point of time being the date when the succession opens, namely, the death of the widow.**

On the position of reversioners in Hindu Law, opinions have been expressed by this Board from time to time with which the views of the learned Chief Justice in *Mt. Rajpali Kunwer v. Surju Rai* 58 All. 1041(2) mentioned above, are in agreement. It was said, for instance, that until the termination of the widow's estate, it is impossible to say who are the persons who will be entitled to succeed as heirs to her husband; *Katama Natchiau v. Rajah of Shiva Garga* 9 M.I.A. 539 (3) at p. 604. **The succession does not open to the heirs of the husband until the termination of the widow's estate. Upon its termination, the property descends to those who would have been the heirs of the husband If he had lived up to and died at the moment of her death; *Moniram Kolita v. Kerry Kolutany* 7 I. A.115 (4) at 154."**

It would be noticed that the Privy Council interpreted the words "dying intestate" as merely meaning "in the case of intestacy of a Hindu male" and said that to place this interpretation on the Act is not to give retrospective effect to its provisions. Those are the very words found in s. 8. These may be contrasted with the words of s. 6 "where a male Hindu dies after the commencement of this Act." Here the reference is clearly to the time of the death. In section 8 it is only to the fact of intestacy. The material point of time, as pointed out by the Privy Council, is the date when the succession opens, namely, the death of the widow. It is interesting to note that the Privy Council was interpreting the provisions of the Hindu Law of Inheritance (Amendment) Act, 1929 where the two contrasting expressions found in the Hindu Succession Act, 1956 are not found.' The case for the interpretation of the words "dying intestate" under the Hindu Succession Act is stronger. The words "where a

male Hindu dies after the commencement of this Act" in section 6 and their absence in section 8, are extremely significant. Thus two propositions follow: (1) Succession opens on the death of the limited owner, and (2) the law then in force would govern the succession."

35. In view of above settled proposition of law, both the questions, as referred in para 30 above, which arise for consideration in this appeal (as per the amendment sought by the appellants), have been duly answered and set at rest in the above referred citations.

36. Now, taking the facts of this case, succession to the estate of Turti opened on the death of Smt. Maro and had to open as per the law in force at the time of death of Maro and not as per the law in force at the time of death of Turti (***Daya Singh(Dead) through LRs and Anr. Vs. Dhan Kaur {supra}***). Smt. Maro died in the year 1946. By that time Act of 1937 had come into force. Section 3 of the above Act reads as follows:-

"3. Devolution of property.—(1) When a Hindu governed by *Daayabhaga* School of Hindu law dies intestate leaving any property, and when a Hindu governed by any other school of Hindu law or by customary law dies intestate leaving separate property, his widow, or if there is more than one widow, all his widows together, shall subject to the provisions of sub-section (3), be entitled in respect of property in respect of which he died intestate to the same share as a son:

Provided that the widow of a predeceased son shall inherit in the like manner as a son if there is no son surviving of such predeceased son, and shall inherit in like manner as a son's son if there is a surviving son or son's son of such predeceased son:

Provided further that the same provision shall apply *mutatis mutandis* to the widow of a predeceased son of a predeceased son.

(2) When a Hindu governed by any school of

Hindu law other than *Dayabhaga* School or by customary law dies having at the time of his death an interest in a Hindu joint family property, his widow shall, subject to the provisions of sub-section (3), have in the property the same interest as he himself had.

(3) Any interest devolving on a Hindu widow under the provisions of this section shall be the limited interest known as a Hindu woman's estate, provided however that she shall have the same right of claiming partition as a male owner.

(4) The provisions of this section shall not apply to an estate which by a customary or other rule of succession or by the terms of the grant applicable thereto descends on a single heir or to any property to which the Indian Succession Act, 1925 applies."

37. As per Section 3 above, widow of a pre-deceased son shall inherit in the like manner as a son if there is no son surviving of such pre-deceased son. Smt. Parsanni being widow of the pre-deceased son of Turti, inherited his property as per the provisions of Section 3 of the Act of 1937. Though mutation of the estate of Smt. Maro was originally sanctioned vide mutation No.92 dated 15.06.1946 in favour of appellants but the same was rectified vide mutation No.136 dated 20.08.1957 in favour of Smt. Parsanni. She inherited the property left by Turti in the like manner as a son, subject to the provisions of Section 3(3) of the Act of 1937. After coming into force of Hindu Succession Act, 1956, she became absolute owner of the property acquired by her before the commencement of the above Act. The Courts below have rightly held that the provisions of Section 14(2) are not applicable to the property acquired by Smt. Parsanni before the commencement of Hindu Succession Act, 1956. The same was not acquired by her by way of a gift under a Will or any other instrument, decree, order of

property. She became absolute owner of the property which vested in her after the death of Smt. Maro and her absolute ownership was recognized by Section 14 of Hindu Succession Act, 1956.

38. Learned counsel for the appellants while referring to the Division Bench judgment in case of ***Suraj Mal and others Vs. Babu Lal and another 1985 AIR (Delhi) 95***, has argued that the right of maintenance acquired by a widow before coming into force of Act of 1937, would not matured into her title over property of her husband under Section 14 of Act of 1956. The above observation has been made by the Division Bench with regard to a case where the husband, whose interest was involved, died before coming into force of Act of 1937. As held in case of ***Daya Singh(Dead) through LRs and Anr. Vs. Dhan Kaur (supra)***, the inheritance of last male holder will be as per the law prevalent at the time of death of intervening female. As such, the observations made in the above referred case, have no application as Smt. Parsanni had acquired right in the suit property as per provisions of Section 3 of the Act of 1937, which was operative at the time of death of Smt. Maro in the year 1946.

39. Learned counsel for the appellants further argued that Smt. Parsanni was not having possession of the suit property, as such, her right has not matured into title under Section 14 of Hindu Succession Act, 1956 and as observed by Hon'ble Apex Court in ***Ram Vishal (Dead) by LRs and others Vs. Jagan Nath and others 2004(9) SCC 302***. In the above referred case also, the husband had died before the commencement of the Act of 1937. The appellants are admitting the possession of Smt. Parsanni over the suit property as they were paying and have agreed to pay the profit from the cultivation, which ultimately tantamount to taking the possession under the permission of Smt. Parsanni, as such, the facts of the above referred case are

distinguishable from the facts of the present case. The question in this case is not of recognising the right of maintenance but of limited right acquired by Smt. Parsanni under Section 3 of the Act of 1937, which matured into absolute ownership under Section 14 of Act of 1956.

40. On examination of plea sought to be raised by way of amendment, I find that the appellants-plaintiffs have tried to set up a plea which is not sustainable. Allowing such plea only on the score that law of amendment is quite liberal, particularly when the same has been examined thread bare, will not advance justice, rather enhance the agony of the parties to this case who are litigating for the last 35 years. The amendment sought by the appellants is declined.

41. As discussed above, the amendment sought by the appellants was neither material nor relevant for the decision of this case. In foregoing paras, I have considered the case of appellants-plaintiffs from the angle as if the amendment is allowed but found no merits or improvement in the case of appellants-plaintiffs. No right had accrued to the appellants in the suit property either on the death of Turti or on the death of Smt. Maro. The mutation of inheritance of the estate of Turti was rightly sanctioned in favour of Smt. Maro and this fact was candidly recognised, accepted and even acted upon by the appellants as they never challenged the mutation of the estate of Turti in favour of Smt. Maro which was sanctioned in the year 1937 till 1985 when they sought to raise this plea for the first time in the application for amendment. Perusal of the plaint shows that appellants had absolutely no grouse against the title of Smt. Parsanni. In para 1 of the plaint, they admitted that Smt. Parsanni is recorded to be owner of the suit land. They further admitted in para 3 of the plaint that on the death of Smt.

Maro this property was inherited by Smt. Parsanni. In the year 1961, the

plaintiffs entered into an agreement with Parsanni admitting her to be the owner of the suit property. All this reflects that the plaintiffs have always been treating Smt. Parsanni as owner of the suit property and now stood estopped from raising any plea challenging her title.

42. As a sequel of my above discussion, I find no legal or factual infirmity in the judgments of the Courts below calling for any interference.

43. No substantial question of law requiring determination arises in this appeal, which has no merits.

Dismissed.

July 21, 2016
Sachin M.

(SURINDER GUPTA)
JUDGE

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Whether to be referred to the Reporters: Yes/No