

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

**RSA No.97 of 2014 (O&M)
Date of Decision: 28.04.2016**

Jai Bhagwan

....Appellant

Vs.

Rameshwar and others

....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Bhag Singh, Advocate
for the appellant.

Amol Rattan Singh, J (Oral)

The appellant-plaintiff has appealed against the judgments and decrees of the learned Civil Judge (Jr. Div.), Karnal and the learned Additional District Judge, Karnal, dated 22.01.2011 and 26.07.2013 respectively, dismissing his suit and appeal.

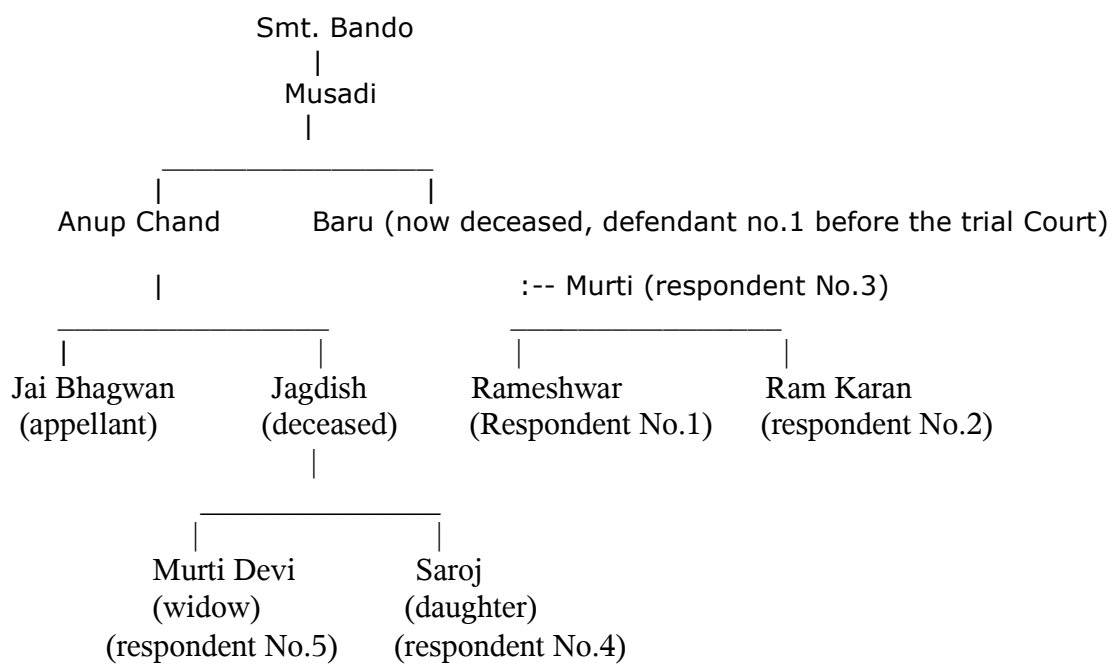
He had filed a suit seeking a decree of declaration, with consequential relief of permanent injunction and joint possession, against the five respondents who are his family/kinsmen.

The dispute is qua 214 kanals, 16 marlas of land, comprised in 2 Khewats, situated in village Kamalpur Roran, Tehsil Indri, District Karnal, which the appellant claimed to be in

joint possession of, along with respondents No. 1 and 2, who are his half brothers (sons of his mother but from a different father, Baru). Baru is the brother of the appellants' late father, Anup Chand. His mother, Murti (respondent No.3), married Baru after the death of Anup Chand.

It was contended by the appellant-plaintiff, that the suit land devolved from a common ancestor of the parties, namely Mussadi, i.e. the grand-father of the appellant and respondents No. 1 and 2.

2. The following genealogical table would clarify the relationship between the parties, as is necessary for the purpose of deciding this appeal:-



The appellants' contention in the plaint filed was that his father Anup Chand and uncle Baru (father of respondents No.1 and 2) constituted a joint Hindu family and that he

(appellant) is the successor of his father Anup Chand and also his brother Jagdish, who died at a young age, leaving behind his widow and daughter, i.e. respondents No.5 and 4 respectively.

Baru, having become the head of the family after the death of Anup Chand, looked after the entire property but the appellant became owner in possession of it to the extent of the share of Anup Chand.

In the plaint, the property was described as 'joint Hindu coparcenary property', in which the appellant was a share holder by birth.

The joint Hindu family, after the death of Anup Chand and Jagdish, as per the plaint, consisted of Baru ('Karta'), his (the appellants') half brothers Rameshwar and Ram Karan and the appellant himself. Thus, as per the appellants' suit, his brothers' widow and daughter did not form part of the joint Hindu family.

3. Baru mutated land measuring 14 kanals 02 marlas in the year 1985, in favour of the appellant, on the basis of a civil court decree in favour of the appellant. It was contended that Baru also agreed that the appellant was entitled to a 1/3rd share of the land (being one of 3 surviving brothers- sons of Murti and grandsons of Musadi), and that he would mutate the suit land in equal shares between the appellant and respondents Nos. 2 and 3, as per an oral family settlement arrived at in December 2003.

Thus, according to the appellant, a 1/3rd share of the property was falling to him in the suit land comprising 214 K – 16 M, came to 71 K – 12 M.

However, the whole 1/3rd share of the land was not mutated in the appellants' name and eventually respondents No.2 and 3 disclosed, in May 2004, that they had obtained civil Court decrees in their favour, in Civil Suit No. 549 of 1984 and Civil Suit No. 413 of 2001, titled as **Rameshwer vs. Baru and others.**

4. The appellants' contention, therefore, also was that the late Baru (who died during the pendency of the first appeal from which this 2nd appeal arises), could not have suffered a civil Court decree in favour of his sons, respondents No. 2 and 3, as he was not owner of the entire suit land in the first place, the land being ancestral property in which the appellant was entitled to a 1/3rd share.

He, therefore, filed the suit out of which these proceedings arise, contending that the collusive decrees relied upon by the respondents were not binding upon him and that he be declared to be owner in joint possession of the suit land.

5. It needs to be noticed from a perusal of the plaint filed, that it had also been stated by the appellant, that respondents No.1 and 2 had taken a plea of adverse possession against respondents No.4 and 5 in the suit filed by them earlier

and subsequently they had got a 'forged family settlement' and collusive decree in their favour. However, as to in which litigation such plea of adverse possession was taken, is not forthcoming and no evidence in that regard seems to have been led at all before the trial Court. Even so, as would be presently seen, for the purpose of determining the share falling to the appellant, any plea of adverse possession taken in any litigation between respondents No.1 and 2 on the one hand and respondents No.4 and 5 on the other hand, would make no difference, qua the appellant.

6. In the reply filed by respondents No. 1 to 3, in the civil suit in the present proceedings, along with the late Baru, they pleaded that the suit land was not part of any joint Hindu family coparceny and was not in fact ancestral property.

It was further pleaded that the appellant had no concern with the property of his late brother, Jagdish, as Jagdish's share devolved upon his wife and daughter, i.e. respondents No. 4 and 5 herein, who became full owners of the property under the Hindu Succession Act, 1956.

It was further contended by the replying respondents-defendants, that respondent No. 5, i.e. Murti Devi, widow of Jagdish, had remarried in the year 1982, after which respondents No. 4 and 5, i.e. the daughter and widow of Jagdish respectively, suffered a civil Court decree in favour of respondents No. 1 and

2, in lieu of the services rendered by the latter respondents, inasmuch as they and their father had looked after Jagdish's minor son and daughter after the remarriage of Jagdish's widow, i.e. respondent No. 5. (Respondent No.5, Murti Devi, widow of Jagdish, bears the same name as her mother-in-law, i.e. respondent No.3).

The alleged oral family settlement with the appellant was also denied by respondents No.1 to 3 and the late Baru (defendants No.1 to 4 before the learned Civil Judge).

Respondents No. 4 and 5 herein, though had appeared before the Court of the learned Civil Judge, did not file any written statement.

7. The following issues were framed by the first Court:-

"1. Whether the 2 Civil Court decree passed in civil suit No. 459/84 and civil suit No. 413/01 are null and void and not binding upon the rights of the plaintiff?OPP

2. Whether the plaintiff is owner in possession of the suit land to the extent of 1/3rd share? OPP

3. Whether the suit of the plaintiff is not maintainable? OPD

4. Whether the suit of the plaintiff is time barred? OPD

5. Relief."

8. The appellant examined only himself as PW-1 and tendered his affidavit, reiterating what he had stated in the

plaint. He tendered copies of the judgment and decree dated 06.03.1985, passed in Civil Suit No. 93 of 1985, as Exs. P-1 and P-2 respectively (on the basis of which the late Baru had mutated 14 kanals 2 marlas of land in favour of the appellant). He also relied upon a judgment and decree dated 22.10.2007, passed in Civil Suit No. 380 of 2007 (Exs. P-3 and P-4), a copy of judgment and decree dated 18.04.2002, passed in Civil Suit No. 413 of 2001 (Exs. P5 and P-6). He also subsequently tendered a copy of a decree dated 05.04.1984, passed in Civil Suit No. 409 of 1984, by way of additional evidence.

9. The respondents-defendants examined four witnesses.

Sh. Rajiv Gupta, Advocate at the District Courts at Karnal, appeared as DW1 and deposed in respect of the summoned record in a case titled as **Saroj Bala vs. Murti Devi and others**. He stated that the plaint dated 02.06.1997 bore the signatures of his father, Sh. Kamlesh Gupta, Advocate and he also proved a copy of the plaint as Ex. D-2.

Puran Chand, District Record Keeper of the District Record Room, Karnal, appeared as DW-2 and produced a copy of the plaint decided on 06.03.1985, titled as **Jai Bhagwan vs. Baru**. Respondent No. 1, Rameshwar, son of Baru Ram, stepped into the witness box as DW3 and tendered his affidavit in support of the stand taken in the written statement. One Jai Singh, Clerk

of Sh.D.K.Diwan, Advocate at the District Courts, Karnal, appeared as DW-4 and testified that the copy of the plaint, titled as **Jai Bhagwan** vs. **Baru** (Ex. D-1), bears the signatures of Sh. K.L. Khanna, Advocate, with whom he had worked earlier as a Clerk.

Copies of mutation No. 377, of an order dated 06.11.2006, passed in Civil Suit No. 231 of 2004, and of the statement of Saroj, respondent No. 4 in the said civil suit, were also tendered in evidence by the defendants as Exs. D-3 to D-5. To rebut the additional evidence (judgment and decree dated 05.04.1984, Exs. P-7 and P-8), the defendants also examined Sh. Harish Gupta, another Advocate at the District Courts, Karnal, as DW-5, who proved certified copies of the plaint filed in the said civil suit No. 409 of 1984.

10. After hearing arguments and appraising the evidence, the learned trial Court came to the conclusion that of the land measuring 214 K – 16 M, 136 kanals 15 marlas (equivalent to 102 bighas 01 biswa before consolidation), was owned by Mussadi, i.e. grandfather of the appellant and respondents No. 1 and 2, to the extent of "1/2 share" (actually 2/3rd) and the remaining was owned by one Mansa, son of Ramanand.

The trial court also held that 78 kanals and 01 marla of the suit land (equivalent to 26 bighas 04 biswas) was also owned by Mansa to the extent of 1/3rd share, as per the

'Jamabandi' (Record of Rights) for the year 1955-56. Thus, Mansa was found to be the owner of $1/3^{\text{rd}}$ share of the total suit land measuring 214 kanals 16 marlas.

11. There seems to be a factual error of calculation by the learned Civil Judge because if the total suit land was 214 K – 16 M and 136 K – 15 M was owned by Mussadi, his share would thus be slightly less than $2/3^{\text{rd}}$ and Mansas' would be slightly more than $1/3^{\text{rd}}$. Also, out of a total 214 K – 16 M, (i.e. approximately 215 Kanals), if Mansa was $1/3^{\text{rd}}$ owner thereof, his share would come to slightly over 73 Kanals. The learned Civil Judge however, stated that he was a $1/3^{\text{rd}}$ share owner in what remained out of 214 K 16 M, after deducting 136 K 15 M falling to the share of Mussadi and further held that Mansa also owned another 78 K 1 M to the tune of $1/3^{\text{rd}}$ share, i.e. another 26 Kanals in a different Khewat, of which again the $2/3^{\text{rd}}$ owner was Mussadi. If calculated as above, the total land falling to the share of Mansa would be 78 K 1 M plus 73 K, i.e. 115 K – 1 M, thereby leaving only 63 K – 15 M to the share of Mussadi, which in any case, was nobodys' case in the suit filed.

Since the admitted position is that the total suit land was 214 K – 16 M, then $2/3^{\text{rd}}$ of that would be approximately 143 K, falling to the share of Mussadi. Factually, however, the learned Civil Judge found, on the basis of an 'Intekhab' (Excerpt Report) relied upon by the appellant himself, that Mussadis' share came

to 136 K- 15 M, which before consolidation was 102 B-1 B.

Thus, the factual finding by the learned Civil Judge was that 136 K and 15 M fell to the share of the grandfather of the appellant and respondents No.1 and 2, i.e. to the share of Mussadi, and the remaining to the share of Mansa. Therefore, what fell to the share of Mansa was only 78 kanals in all, and not 78 plus any other share holding.

12. Subsequently, it was recorded as a finding by the learned Civil Judge, that 78 K – 1 M of land was mutated in favour of Baru, father of respondents No.1 and 2, vide mutation of inheritance bearing No.377 and Baru was shown to be owner in possession of the said chunk of land, in the record of rights (Jamabandis) from the year 1960-61 till the year 2001-02.

That Court also recorded a finding that as per the revenue record, the mutation of inheritance from Mussadi, bearing mutation No. 337, showed that the suit land was entered in favour of the appellants' father, Anup Chand and the father of respondents No. 1 and 2, Baru, in equal shares. After the death of the appellants' brother, Jagdish, son of Anup Chand, mutation no. 659 was entered in favour of Jagdish's widow, Murti Devi (respondent No. 5) and his daughter Saroj (respondent No. 4) and his then living son, Sunil. After Sunil's death, mutation no. 708 was entered in favour of respondent No. 5, i.e. his mother, widow of late Jagdish.

14. Having recorded the above factual position, the learned Civil Judge first held that as regards the appellants' claim to any further share in the total land holding of 214 K – 16M, he was estopped from raising any such claim, he having earlier filed Civil Suit No.93 of 1985 on the basis of a family settlement entered into between him and Baru, by which he obtained 14 K- 2 M of land.

He was also held to be estopped from raising any objection to Civil Court decrees in favour of respondents No.1 and 2 and their father Baru, against respondents No.4 and 5, in Civil Suits No.459 of 1984 and 413 of 2001. The appellants' contention that since he was not a part of the family settlement entered into between respondents No.1 and 2 and respondents No.4 and 5, and thus it was not binding on him, was rejected by the learned Civil Judge, on the ground that the earlier suit filed by the appellant, i.e. Civil Suit No.93 of 1985, was also on the basis of a family settlement which did not include respondents No.4 and 5 and was only between himself and Baru. Thus, any settlement between Baru and his sons (respondents No.1 and 2) on the one side, with respondents No.4 and 5, i.e. the widow and daughter of Jagdish on the other hand, qua the land falling to Jagdish's share, could not be objected to by the appellant.

15. All in all, it is seen that actually the Civil Court, on the principle of *res-judicata* alone, held to be non-maintainable, the

claim of the appellant qua the remaining suit land (other than 14 K – 2 M for which he had entered to an agreement with Baru and for which Baru suffered a civil court decree in the appellants' favour).

This was held applicable also in relation to the 78 K and 1 M of land mutated in favour of Baru in the year 1960-61, holding that since the revenue record showed Baru to be the owner in possession of the said land, even at the time of filing of Civil Suit No.93 of 1985 by the appellant, he obviously had forgone any claim to the share in the said chunk of land.

16. Though, as already noticed, the appellants' claim qua the entire chunk of the remaining land (i.e. 214 K 16 M minus 14 K - 2 M, obtained by him pursuant to the family agreement and court decree in Civil Suit No.93 of 1985), was held to be non-maintainable on the principle of *res-judicata*, the learned Civil Judge still separately dealt with the appellants' claim qua his deceased brother Jagdish's share.

It was held that the share falling to Jagdish, after the coming into force of the Hindu Succession Act, 1956, would devolve upon his widow and children, in terms of Section 8 thereof, which provides that when a Hindu male dies intestate, his share in would devolve firstly upon his heirs as are specified in Schedule I of that Act. Thus, Jagdish's widow and daughter, alongwith his then alive son Sunil, all being Class-I heirs, were

held entitled to his share in the property and after the death of Sunil, Sunils' share would fall to his sister and mother, i.e. respondents No.4 and 5 respectively. Hence, in any case, the appellant, *de hors* any claim to land falling to the share of Baru and respondents No.1 and 2, could also not lay any claim to the share falling even to his late brother Jagdish, the succession qua such land having opened well after the coming into force of the Hindu Succession Act, 1956.

17. On the issues of the suit being beyond limitation and not maintainable, the respondents not having raised any serious plea on the same, these issues were held in favour of the appellant.

However, the main relief claimed not having found to be of any merit, the suit was dismissed.

18. The learned Additional District Judge, Karnal, before whom the appellant filed his first appeal, held that after the mutations of inheritance in favour of, first the appellants' father Anup Chand and Baru (father of respondents No.1 and 2) upon the death of Mussadi, bearing mutation No.337, and thereafter, upon the death of the appellants' brother Jagdish, mutation No.659 entered in favour of Jagdishs' wife and daughter, i.e. respondents No.5 and 4 respectively, alongwith his late son Sunil, and finally, after mutation No.708 entered in favour of Jagdishs' widow Murti Devi (respondent No.5), upon the death of her and

Jagdishs' son, Sunil Kumar, the appellant became owner of 1/4th share of the property, Murti Devi respondent No.5 became owner of 1/6th share and Saroj, daughter of Jagdish (respondent No.4) became owner of 1/12th share. The father of respondents No.1 and 2, Baru, became owner in possession of the remaining 1/2 share, as per the jamabandi for the year 1986-87.

It was also noticed by the 1st appellate court, that out of the total 214 K – 16M land, the appellant was shown to be owner of a 1/4th share as per the Jamabandi for the year 2006-07.

The factum of 78 K and 1 M of land having been mutated in favour of Baru, father of respondents No.1 and 2, vide mutation of inheritance bearing No.377, and his ownership and possession of the said land having been reflected from the revenue record from the years 1960-61 to 2001-02 was also noticed by the learned lower Appellate Court.

It was also noticed that Baru had suffered a Civil Court decree in favour of the appellant qua 14 K – 2 M of land, in Civil Suit No.93 of 1985.

19. Having noticed above, the learned lower Appellate Court, however, agreed with the finding of the learned Civil Judge, that on the principle of constructive *res-judicata*, the appellant was barred from filing the present suit, having not raised any issue qua land more than 14 K – 2 M, in Civil Suit

No.93 of 1985.

Hence, it was held by that Court also, as it was by the learned Civil Judge, that the judgments and decrees dated 05.04.1984, passed in Civil Suit No.459 of 1984 and dated 18.05.2002, passed in Civil Suit No.413 of 2001, between respondents No.1 and 2 and their father Baru on the one hand, and respondents No.4 and 5 on the other hand, are binding upon the appellant also and as such he cannot be declared to be owner in possession of 1/3rd in the suit land. Consequently, his prayer for declaration as such, was rejected by the learned 1st appellate court also and his appeal also dismissed.

20. When this second appeal had first come up for hearing on 14.01.2016, learned counsel for the appellant had submitted that after having gone through the case again, he had no real argument to make against the judgments of the Courts below. This Court had, therefore, dismissed the appeal on that date itself, upholding the view taken by the Courts below, that the suit was barred by the principle of *res judicata*, in view of the fact that in the earlier civil suit filed by the appellant, i.e. Civil Suit No. 93 of 1985, he had raised no plea for any additional land other than 14 kanals and 2 marlas, which eventually was decreed in his favour, the respondent (therein) Baru, i.e. the appellants' uncle, not having opposed the claim.

Yet the appeal had been put up for rehearing by this

Court before the judgment was signed to determine the following things:-

"i) that it was not clear as to whether the decree passed in the aforesaid Civil Suit No.93 of 1985 was only qua a specific parcel of land or was qua the entire suit land of comprising 214 kanals and 16 marlas;

ii) that if the answer to the above is that the earlier decree was only qua specific land and not with regard to the appellants' rights in the entire suit land, then, prima-facie, he would have acquired at least a 1/5th share in the suit land, with the same share falling to his late brother Jagdish, his uncle Baru (fathers' brother, who is now stated to have deceased but was defendant No.1 before the learned Civil Judge), as also the two sons of Baru, i.e. presently respondents No.1 and 2;

iii) that if the principle of constructive res-judicata is not applicable, in view of (i) above, at least qua the shares of respondents No.4 and 5 (daughter and widow of the appellants' late brother Jagdish), the appellant cannot have a grievance but may possibly still have a claim qua respondents No.1 and 2 and/or their late father Baru."

Hence, it was felt necessary to first determine the exact subject matter of Civil Suit No. 93 of 1985.

21. Consequently, learned counsel for the appellant had been asked to provide copies of the complaint and the written statement filed in the aforesaid Civil Suit No. 93 of 1985, as also the judgment in the said suit. Since the written statement had not been supplied, this Court had, *prima facie*, come to an opinion that the subject matter of that suit was only 14 kanals

and 02 marlas of land, not being part of 214 kanals and 16 marlas, i.e. the subject matter of the present *lis*. Hence, the matter was put up for re-hearing.

Thereafter, the records of the Courts below in the present *lis* had been summoned, vide a detailed order dated 19.02.2016, in which certain further doubts were expressed by this Court.

22. To elaborate further, on the doubt expressed by this Court; the doubt was essentially with regard to whether the appellant had consented to relinquish his rights to the entire suit property, other than to the extent of land measuring 14 kanals -2 marlas that was subject matter of Civil Suit No.93 of 1985, or only qua that land in respect of which a mutation of inheritance was entered in favour of his uncle Baru, qua the share of the aforesaid Mansa, who was joint owner to the extent of a 1/3rd share of 214 kanals 16 marlas along with Musadi, grand-father of the appellant (who was owner of 2/3rd share thereof).

23. Pursuant to the order dated 19.02.2016, the record of the Courts below has been received and with the very able assistance of the learned counsel for the appellant, has been gone through in detail.

A perusal of the same, as also of the judgment and decree passed in Civil Suit No.93 of 1985, decided on 06.03.1985 (Exs.P-1 and P-2 respectively before the Courts below), as also

the revenue record (excerpt-'intikhab'), makes it clear that the said civil suit was only qua land falling to Baru from Mansa and was not in respect of land which had devolved upon Anup, father of the appellant, and upon Baru, who were brothers.

As regards the said land, it is obvious from the 'jamanbandis' and excerpt pointed out by Sh. Bhag Singh, learned counsel for the appellant, from the record of the Courts below, that the share of Mussadis' land falling to Anup, had separately devolved upon the appellant-Jai Bhagwan and his brother Jagdish, whereas the suit property in question in these proceedings is only that which fell/devolved upon Baru from Mansas' share in the total suit land.

The appellant claimed that he was entitled to a 1/3rd share of the entire land comprising 214 kanals 16 marlas in the joint ownership of Musadi and Mansa, whereas the suit was contested on the ground that as regards the share falling upon Baru from Mansa, i.e. a 1/3rd share of the total suit land, the appellant had already given up his rights to that land, except to the extent of 14 kanals and 2 marlas, by way of the consent decree passed in his favour, vide the aforesaid Civil Suit No.93 of 1985.

It has also been re-asserted by learned counsel, that as regards the land that devolved from Mussaddi to Baru and Anup Chand (appellants' father), vide the mutation of inheritance

bearing No. 337 (not 377), the appellants' share therefrom already stood satisfied.

24. Thus, it is clear that the share of Anup Chand, as devolved upon him from his father, Mussaddi, thereafter devolved equally upon the appellant and his brother Jagdish, and as regards Jagdishs' share, the appellant in any case had no right to the same, that share devolving upon Jagdishs' widow and children after his death. The property definitely not being coparcenary property, it having been shown to have come into hands of Mussaddi from a female, i.e. Smt. Bando, obviously the appellant can have no coparcenary share in it. Hence, as regards the share of Jagdish, that went to his widow and children who, in turn, seem to have relinquished it in favour of respondents No. 1 and 2 and their father Baru, in lieu of services rendered by Baru and his family, to Jagdishs' widow and children. Consequently, the appellant has no right to claim any title to the share of the land that devolved upon his late brother Jagdish.

As regards the share of Mansa in the suit land, which devolved upon Baru, vide mutation No. 377, the appellant already having claimed only 14 kanals and 2 marlas of that land, which was decreed in his favour in Civil Suit No. 93 of 1985, obviously the Courts below did not err in holding that he would be deemed to have given up any further share in that part of the land.

25. Hence, I find the contention raised by the appellant in his suit to be wholly misconceived and as such, I find no error in the findings of the Courts below.

Accordingly, this appeal is dismissed in *limine*, with no order as to costs.

April 28 , 2016
vcgarg

(AMOL RATTAN SINGH)
JUDGE