

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

**X Obj No.33-C of 1988 and
RSA No.1655 of 1988 (O&M)
Date of Decision.21.05.2019**

Dharam Singh and others

...Appellants

Vs

Ujagar Singh and others

..Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Gagandeep Wasu, Advocate and
Mr. N.S. Vashist, Advocate
for the appellants.

Mr. Ashok Singla, Advocate and
Mr. Ankush Singla, Advocate
for the respondents.

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AMIT RAWAL J.

The appellants-plaintiffs have assailed judgment and decree of the lower Appellate Court whereby while setting aside judgment and decree of the trial Court, suit for possession as owners of 6/28th share of land measuring 111 kanals 3 marlas i.e. 91 kanals 18 marlas, 3 kanals 5 marlas, 16 kanals and 14 marlas as described in the head note of the plaint, has been partly decreed, by granting 1/6th share in the land measuring 46 kanals 11 marlas and rejected other claims.

The plaintiffs Dharam Singh son of Uttam Singh, Karnail Singh son of Dharam Singh, Gurmukh Singh son of Ganesha, Charanjit Singh and Ranjit Singh sons of Karnail Singh through their father and Paramjit Singh son of Gurmukh Singh through his father filed suit against Ujjagar Singh son of Uttam Singh and many other persons for possession as owners of land detailed in the head note of the suit by setting aside the judgment and decree dated 28.2.1974 passed in Civil Suit No.26 of 1974 titled as 'Karam Singh

Man Singh Vs. Uttam Singh’, judgment and decree dated 15.6.1978 in suit titled as ‘Ujagar Singh and others vs. Uttam Singh’, mutation No.288 of 14.5.1974 and 459 of 2.8.1979 being illegal and null and void. In para No.3 of the plaint, relationship of plaintiffs with defendants is given as under:-

Plaintiffs No.1	Sons of Uttam Singh son of Ganesha
Plaintiffs No.2 and 3	Grandsons of Uttam Singh son of Ganesha
Plaintiffs No.4 to 6	Great Grandsons of Uttam Singh son of Ganesha.
Defendants No.1, 9, 16 and 19	Sons of Uttam Singh son of Ganesha
Defendants No.2 to 5, 10 to 14, 17, 18, 20 & 21	Grandsons of Uttam Singh son of Ganesha
Defendants No.6, 7,8, 15 & 15-A	Great Grandsons of Uttam Singh son of Ganesha

It was alleged that properties at the hands of Uttam Singh were coparcenary and in terms of alienation and succession were governed by Hindu law. Defendant No.22, Uttam Singh was the Karta and all the aforementioned parties were coparceners. The properties described in the head note of the plaint were coparcenary and all the plaintiffs and defendants had equal right by birth and thus, could not be alienated and disposed of the property except for legal necessity. Defendant No.22 in connivance with defendants No.1, 9, 16 and 19 obtained collusive decree passed in Civil Suit No.26 of 1974 titled as ‘Karam Singh Man Singh Vs. Uttam Singh’ decided by trial Court on 28.2.1974 (hereinafter called the ‘first decree’) and civil suit of 1978 decided on 15.6.1978 titled as ‘Ujagar Singh and others Vs. Uttam Singh’ (hereinafter called the ‘second decree’). By virtue of first decree, defendant No.22 alienated 39 kanals 5 marlas comprising of various khasra numbers situated in area of village Haveli Kalan, Hadbast No.45, Tehsil and District Rupnagar alleging gift in favour of Karam Singh and Man Singh made in June, 1952 on the premise that Karam Singh and Man

Singh had been in continuous possession of the suit property and by “second decree” land measuring 46 kanals 11 marlas situated in village Haveli Kalan and 14 marlas of Khasra No.26/2/2 situated in area of village Bara Phul alleging to be part of family settlement of May, 1955. Aforementioned alienations were stated to be not valid in law for want of legal necessity, thus, sought to be declared null and void.

It was further alleged that defendant No.22 illegally exchanged land comprised in Khewat/Khatoni No.119/104/166 bearing khasra No.19/10/2 as per jamabandi for the year 1960-61 in village Bari Haveli with land comprised in Khasra No.26/2/2 situated in village Bara Phul, Tehsil and District Rupnagar, to be, illegal and null and void and at the back of plaintiffs. The alienations were alleged to be *void ab initio* on the ground being part and parcel of the coparcenary property. Even it could not be gifted away in the manner and mode as reflected in the revenue record and sought 6/28th share.

Defendants No.1, 4, 9, 10, 11, 13, 19, 21 and 22 contested suit. Defendant No.1, 9, 16 and 19 filed joint written statement and opposed suit by raising objections qua maintainability, locus standi and other permissible objections. On merits, denied nature and character of the property to be ancestral. It was alleged that after death of Uttam Singh, property left by him vested in Karam Singh and Man Singh defendants in equal shares vide Will dated 9.9.1997 registered on even date. Will was executed by his own volition and free will. Decrees passed in first and second suit had legal, binding and enforceable right against Uttam Singh and persons claiming under him. Defendants had also been in possession as owners much before the decree and it was only title which was acquired on the basis of long

possession. The defendants' possession was stated to be continuous, open and in the knowledge of Uttam Singh for more than 12 years, which was never opposed and the land derived by defendants Ujagar Singh, Prem Singh, Karam Singh and Man Singh through the second decree was on account of family settlement of May, 1955 and possession was also open to the knowledge of Uttam Singh for more than 12 years. Alienation was not on account of first and second decree but it was of 1952 and 1955.

Defendants No.6, 7, 8, 14, 15 and 15-A and 18 also filed the written statement.

Replication to the written statement filed on behalf of defendants No.1, 9, 16 and 19 was also filed.

Since parties were at variance, trial Court framed the following issues:-

“1. Whether the plaintiffs are entitled to possession of the suit land? OPP

1-A. Whether Sh. Uttam Singh executed valid Will dated 9.9.1977 as alleged? OPD

2. Whether the suit land is joint Hindu Family property? OPP

3. Whether the alleged decrees are void as alleged? OPP

4. Whether the parties are governed by customary law, if so its effect? OPP

5. Whether the suit is within limitation? OPP

6. Whether the plaintiffs have locus standi to file the suit? OPP

7. Whether the suit is bad for mis joinder of parties? OPD

8. Relief.”

Plaintiffs in support of aforementioned averments in pleadings examined PW1 Piara Singh, plaintiff himself as PW2, Kashmiri Lal PW3 and tendered documents Ex.P1 to P25 i.e. revenue excerpt, jamabandies, copies of various orders and decrees, *sajra nasab*, mutations and copy of *naksha hakdar* etc. On the other hand, defendants examined four witnesses, DW1 Amar Nath, DW2 Gurdial Singh, DW3 Gulzara Singh and Karam Singh as DW4.

The trial Court returned the finding on issues No.1-A qua execution of the Will propounded by defendants, in favour of defendants and against plaintiffs. As regards nature and character of the property, non-suited the plaintiffs on the premise that plaintiffs failed to connect the aforementioned khasra numbers having fallen from the common ancestors in the revenue excerpt and found that as per revenue excerpt Ganesha and Jaati were shown to be two brothers in 1889-90 whereas in 1893-94 Uttam Singh son of Ganesha to be minor and in possession through mother Thakri and thereafter, the entries continued but as per the provisions of Mulla's Hindu Law and if property is found to be mixture of ancestral and self-acquired property, it cannot be adorned character as ancestral and dismissed the suit. In appeal, the lower Appellate Court, as noticed above, partly decreed the suit granting 1/6th share in land measuring 46 kanals 11 marlas.

Defendants have also filed cross-objections bearing No.33-C of 1988 vis-à-vis partial decretal of the suit on the ground that plaintiffs miserably failed to connect khasra numbers of the suit property to be of common ancestors. Revenue record including the excerpt reflected Ganesha and Jati to be brothers. On the other hand, defendants proved the family partition whereas five acres of land was gifted to Dharam Singh and Man

Singh vide Ex.D5 and D8, therefore, there was a separation of the property and could not retain its character as ancestral.

This Court vide order dated 23.06.1988 in the meantime while admitting the appeal restrained the respondents from alienating the suit property. When the matter was taken up for hearing, though it was taken up on many occasions but in February, 2019 after hearing argument at some length, Mr. Gagandeep Wasu, learned counsel appearing on behalf of the appellants sought short accommodation to place on record translation of the Urdu documents i.e. revenue record as noticed above and accordingly through misc. application bearing No.3909-C of 2019 placed on record translated copies as Annexure A-1 (colly), copy thereof was given to the counsel appearing for the respondents.

Mr. Wasu, learned counsel appearing on behalf of the appellant submitted that the entire revenue record i.e. jamabandi, khatoni istemal and revenue excerpt, which has been proved in accordance with law and as per High Court Orders and Rules established on record that the property was ancestral. Even attention of this Court was drawn to goshwara of khasra numbers of the year 1915-16, 1886-87 and 1852. Entries in jamabandi established that Kura and Rulda ancestors of the parties were owners of the property and were in self-cultivation of old khasra numbers prevailing in year 1852 and on demise of Kura, share in khasra numbers was mutated in favour of his son Kanha and Naudha son of Kanhya son of Kura and they were shown to be in self-cultivation. In 1882-83, Ganesha and Jaati sons of Kanha were recorded as owners in the parcels of land having old khasra number i.e. pre-consolidation prevailing in the year 1852. It is matter of record that pre-consolidation khasra number were in bighas and biswas but

thereafter i.e. post-consolidation, measured in terms of kanals and marlas. In 1884-85, Ganesha and Jaati sons of Kanha were also shown in equal shares. As Jaati died, Uttam son of Ganesha was recorded as owner in jamabandi for the year 1909-10 and thereafter, his name continued till 1945-46 where in column No.13 (remarks) reflected mutation No.544 of exchange by Uttam as owner of land with regard to Khasra No.612/3/0-12 against land bearing Khasra No.1036 from its owner. Khatauni Paimaish for the year 1951-52 reflected the previous khasra numbers and areas while allotting new khasra numbers. Jamabandi for the year 1960-61 reflected ownership of Uttam Singh son of Ganesha with new allocation of khasra numbers, rectangular numbers and remarks column also reflected the redemption of land measuring 45 kanals 8 marlas from mortgage.

By referring to aforementioned arguments, his long and short argument was that as per Para 221 of 21st Edition of Mulla Hindu Law, the property had devolved upon Uttam Singh from more than three generations and plaintiffs were thus having right in the property by birth and both the Courts below abdicated in not referring to the aforementioned documents. The translation would reveal that nothing new has been brought on record. Misreading and mis-direction itself gives a cause for formulation of substantial question of law. Decrees No.1 and 2 and other alienations do not reflect any iota of legal necessity for sustaining in law. In support of aforementioned submissions, reliance was laid to judgment rendered by Rajasthan High Court in **Prakash Chand Lunia Vs. Tax Recovery Officer 2000(244) ITR 324;** judgment rendered by Hon'ble Supreme Court in **State Bank of India Vs. Ghamandi Ram (dead) by his legal representative Gurbux Rai 1969(2) SCC 33** (para 7), **Adivappa and others vs. Bhimappa**

and another 2017 (4) RCR (Civil) 364; AIR 2017 SC 4465 (para 22) and
Yudhister Vs. Ashok Kumar 1987 (1) PLJ 11; AIR 1987 SC 558.

It was next contended that the decrees could not be said to be obtained for valid reasons or in recognition of previous statement to wriggle out from the wrath of registration. Reliance was laid to the judgment rendered by Hon'ble Supreme Court in **Smt. Badami (deceased) by her LR VS. Bhali 2013 (1)RCR (Civil) 821; AIR 2012 SC 2858** wherein nature of the aforementioned transactions and devolution of interest/acquisition of right by family settlement has been extensively pondered upon.

Per contra, Mr. Ashok Singla, learned counsel appearing on behalf of the respondents-defendants submitted that it was not a case of continuous succession as extracted khasra numbers if compared do not tally with old khasra numbers. Plaintiffs miserably failed to discharge onus as revenue excerpt did not come on record. In support of submissions relied upon judgment of this Court in **Banta Singh Vs. Phuman Singh 1972 PLJ 275.** The alleged Goshwara and khatoni paimaish did not reflect previous khasra numbers, much less, allocation from biswas to kanals. The alleged decree to the extent of 1/6th share in respect of 46 kanals 11 marlas was allegedly based upon admission in previous suit, acknowledgment of the nature and character of the property to be ancestral. Mere admission in suit would not acquire or confer the status of coparcenary in the absence of discharge of onus under Section 101 of the Indian Evidence Act. In support of aforementioned submissions, relied upon judgments passed by Hon'ble Supreme Court in **Mara and others Vs. Mst. Nikko alias Punjab Kaur and another AIR 1964 SC 1821; Kura and another Vs. Jag Ram and others AIR 1954 SC 269** and judgments passed by this Court in **Balihar Singh Vs.**

Sarabjit Kaur and others 2017 (2) PLR 226; Tehal Singh and another Vs. Shamsher Singh(D) through LRs 2015(81) RCR (Civil) 676; Jal Singh and another Vs. Chunni Lal and others 2019 (1) RCR (Civil) 210; Tara Wanti and another Vs. Shanti and another 2007 (1) RCR (Civil) 808; Taro Devi Vs. Raunak Singh and others 2013(5) RCR (Civil) 59 and Kulwant Singh Vs. Harbhajan Singh and others 2016 (3) PLR 271. In order to

buttress his arguments submitted that in all the above cited judgments on appreciation of direct and cogent evidence original excerpt has not been proved, thus, urges this Court to uphold the finding of fact and law as there is no illegality and perversity.

In rebuttal, Mr. Wasu drew attention of this Court to the zimni orders wherein vide order dated 28.09.1982, trial Court noticed non-preparation of the excerpt and summoned Kashmiri Lal, Kanungo for 21.10.1982. On the adjourned date, he did not come present, however, order dated 01.10.1982 reflected the direction of the Court to plaintiff. Plaintiff was directed to deposit the excerpt fee of ₹147/- in the treasury on 13.12.1982 and while adjourning the case to 13.12.1982 summoned Mohinder Singh, Niranjana Singh, Sohan Singh and Joginder Singh on old process fee. Kashmiri Lal, Kanungo appeared on 01.12.1982 and stated that he had prepared the excerpt.

I have heard learned counsel for the parties, appraised the paper book, records of the Courts below and the judgments cited at bar and of the view that following substantial questions of law arise for determination by this Court:-

“(i) Whether both the Courts below have abdicated in not reading and appreciating contents of the documents in correct perspective resulting into perversity?

(ii) Whether the nature of land at the hands of Uttam Singh was ancestral?”

I would be failing in my duty in not extracting the zimni orders and as well as statement of Kashmiri Lal, Kanungo, which are as under:-

“PW3 on SA

Shri Kashmiri Lal Excerpt Clerk, D.C. Office, Ropar, Ambala at Kharar.

I have prepared the excerpt Ex.P1 containing 26 sheet) correctly according to revenue record. These are in my hand and are correct. The plaintiff may be directed to deposit ₹147/- as excerpt fee in the Govt. treasury.”

Zimni Orders:-

28.09.1982 Present: Counsel for the parties.

Excerpt not prepared. Kashmiri Lal Kanungo Moharrir be summoned on 21.10.1982 by the order of the Court.

*Sd/-
A.S.S.J.*

16.11.1982 Present: counsel for the parties.

PWs be produced for 1.12.1982 on old P.F. Excerpt be also got prepared.

*Sd/-
ASSJ*

1.12.1981 Dharam Singh Vs. Ujagar Singh

Present: Counsel for parties.

One PW examined. Plaintiff is directed to deposit the excerpt fee of Rs.147/- in the Treasury on 13.12.82. Mohinder Singh, Niranjana Singh, Sohan Singh and Joginder Singh be summoned on old P.F. for 13.12.82.

*Sd/-
Addl. SSJ, Ropar.”*

A cumulative reading of the aforementioned zimni orders and as well as the statement of the excerpt clerk renders the objection of Mr. Singla of having not complied with provisions of High Court Orders and Rules as noticed in the judgment of **Phuman Singh’s cass** (supra) unsustainable, argument qua non production of original excerpt must fail.

Now coming to the translated copy of khatoni istemal Ex.P1, copy of Goshwara, khatoni paimaish and jambandies, name of common ancestors Kura, Rulda, Kanha, Naudha, Jatti, Uttam Singh are not in dispute. Khasra numbers pre-consolidation and post-consolidation are already part and parcel of the record. It would be in the fitness of things to extract the same:-

“Goshwara of khasra numbers

Village Bari Haveli Hadbast No.45 Tehsil Ropar District Ambala

<i>Year 1915-1916</i>	<i>Year 1886-87</i>	<i>Year 1852</i>	<i>90</i>
<i>37</i>	<i>445</i>	<i>1150 min</i>	
<i>133</i>	<i>583</i>	<i>792 min – 793 min</i>	
<i>139</i>	<i>585</i>	<i>792 min – 793 min</i>	
<i>147</i>	<i>590</i>	<i>791 min</i>	
<i>162</i>	<i>635 min</i>	<i>755 min – 771 min</i>	
<i>163</i>	<i>635 min</i>	<i>755 min – 771 min</i>	
<i>461</i>	<i>204</i>	<i>141</i>	

466	199	138	
475	88	154	
479	77	162	
1036	538	859 min	
1047	500	918-920	
1098	483	1032-1034	
1139	327	1182 min	
1287	389	1234 min	

The total holding of the land is not also increased or decreased.

As per Para 221 of 21st Edition of Mulla’s Hindu Law in order to claim coparcenary right by birth, one has to be 4th generation in lineage and by claiming inheritance within three degrees. Defendants have not placed on record any material to non-suit plaintiffs that all the aforementioned alienation/transfers and bequeathing claiming of Will were on account of legal necessity. There is no dispute that Karta can always alienate and part with the property but for legal necessity. The beneficiaries of the transfer are few in numbers other sons and grandsons of Uttam Singh. As noticed above (in the preceding paragraphs of the judgment), there is no doubt that they have right by birth. This Court is totally bewildered and intrigued as both the Courts below, particularly the lower Appellate Court being the last court of fact and law, did not make earnest effort in translation of the aforementioned documents to compare with the khasra numbers for forming an opinion in discharging obligation in accordance with law. Such an approach in my view would not finding on fact and law, much less, not in accordance with the provisions of Order 41 Rule 31. The lower Appellate Court is obliged in law to formulate the points of determination.

There is no dispute to the ratio decidendi culled in the judgments. All the judgments recognize the established law with regard to succession of the interest by a person asserting right that he has to be 4th

generation seeking inheritance within three degrees i.e. there has to be three generations in lineage.

In view of aforementioned circumstances, it is a fit case where judgments and decrees of the Courts below cannot be permitted to be sustained in law and hereby set aside. The substantial questions of law are determined in favour of the appellants-plaintiffs and against the respondents-defendants. The civil suit is decreed as per relief claimed therein. Resultantly, the second appeal is allowed and the cross objections are dismissed. Decree sheet shall be prepared accordingly.

**(AMIT RAWAL)
JUDGE**

May 21, 2019
Pankaj*

Whether speaking/reasoned	Yes
Whether reportable	No