

[107] **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Reserved on 29.07.2024
Pronounced on 29.08.2024

...Appellants

versus

....Respondents

Coram : **HON'BLE MR. JUSTICE PANKAJ JAIN**

Mr. Neeraj Yadav, Advocate
for respondent No.8.

PANKAJ JAIN, J. (ORAL)

[1] Defendant Nos.1 to 5 are in appeal.

[2] For convenience, parties are hereinafter referred by their original positions in the civil suit i.e. the appellants as defendants and the respondents as plaintiffs.

[3] Plaintiff Banwari Lal son of Mangal filed a suit, seeking declaration to the effect that all parties to the suit are owners in possession of the suit property as detailed in para No.1 of the plaint.

[4] It was further claimed that the plaintiff alongwith defendant No.12 is owner in possession of 1/4th share of the suit land.

[5] The dispute in the present case relates to estate left by Chandrawali widow of Thakar Singh, who died issueless. Plaintiff claims that after her death, estate of Chandrawali was inherited by the ancestors of the parties. During life-time of Chandrawali, there was a *lis* with respect to her estate. Father of the plaintiff and defendant No.12-deceased Mangal alongwith defendant No.1-Phusal and Ganpat, predecessor-in-interest of defendant Nos.6, 8, 9, 10 & 11 contributed to the expenses of the *lis*. It was agreed that Mangal will also get 1/4th share. However, at the time of mutation on the basis of decree, the estate of Chandrawali was mutated to the extent of 1/3rd in the name of Phusal. 1/3rd in the name of Shukdai and 1/3rd in the name of Ganpat to the exclusion of Mangal in violation of the agreement dated 26.09.1982 defendant Nos.6 to 8 admitted the claim of the plaintiff.

[6] Defendant Nos.9 to 12 were proceeded *ex parte*. The suit was contested primarily by defendant Nos.1 to 4. The contesting defendants in their written statement attacked the maintainability of the suit, claiming that the plaintiff was out of possession. It was further claimed that since Mangal expired during the life-time of Chandrawali and thus the plaintiffs have no right, title or interest over the disputed property left by Chandrawali. Initially, defendant Nos.6 to 8 filed contested written statement but on 27.02.1986 through their counsel made a statement that the matter has been compromised and the suit be decreed against them. On the basis of the pleadings of the parties, trial Court framed the following issues:-

“1. Whether the plaintiff and defendant No.12 are owners in possession of 1/4th share of the land in dispute? OPP

2. *Whether the parties are entered into an agreement on 26.09.1982 if so to what effect?*
3. *Relief. ”*

[7] Trial Court came to the conclusion that since Mangal pre-deceased Chandrawali, document (Exhibit PW1/1) cannot confer the title for want of registration on the plaintiff and dismissed the suit filed by the plaintiff.

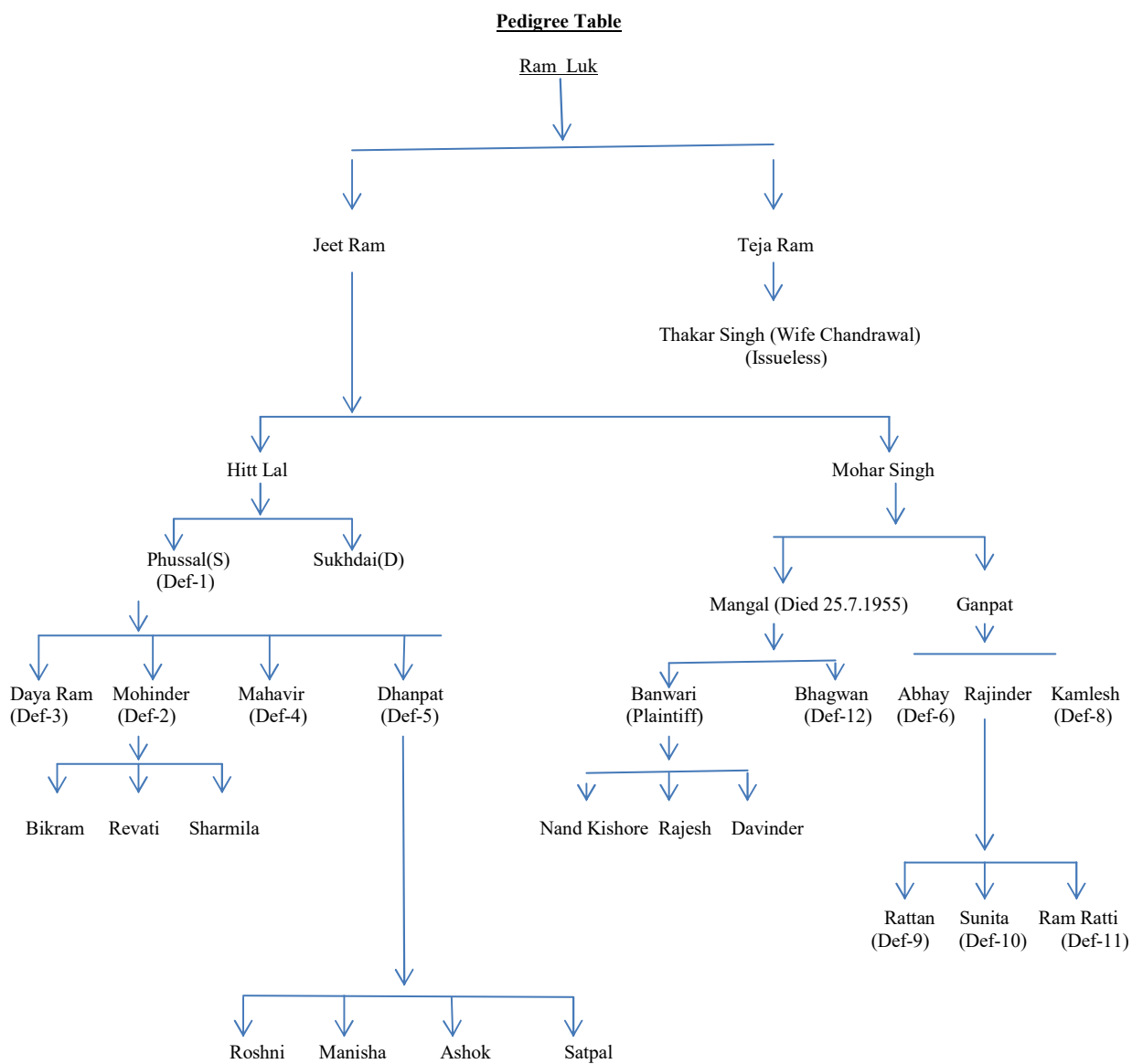
[8] Lower Appellate Court based upon the admission made by defendant Nos.6 to 8 decreed suit of the plaintiff *qua* them and declared plaintiff to be in possession of $1/8^{\text{th}}$ share in land measuring 215 kanals 11 marlas and owner in possession to the extent of $1/48^{\text{th}}$ share of the total suit land.

[9] The defendant Nos.1 to 4 are in appeal before this Court, challenging the said decree.

[10] Defendant No.12 has also filed cross-objections, claiming that though Banwari Lal-plaintiff was declared to be owner in possession to the extent of $1/8^{\text{th}}$ share but defendant No.12-Bhagwana/the cross-objector, was not granted any relief.

[11] At the outset, learned Senior Counsel representing the appellants has drawn attention of this Court to order dated 19.04.1995 to submit that the cross-objections have already been found to be not maintainable by this Court and thus, the same need not be entertained. He further submits that learned lower Appellate Court though held that Mangal having pre-deceased Chandrawali could not be her legal representative and

Dhanpat cannot be treated as family settlement yet has decreed the suit filed by the plaintiffs. It has been further asserted by him that the appellants however has no objection, if defendant Nos.6 to 11 wish to share their part of 1/3rd property of the suit land with plaintiff or defendant No.12 as observed by the lower Appellate Court in its judgment. In order to appreciate the controversy between the parties, it will be apt to peruse the pedigree table, which reads as under:-



[12] It seems that during the life-time of Chandrawali, there was a litigation *qua* her estate. According to the plaintiff, name of his father Mangal could not be impleaded as LR's of Chandrawali, though, he was

has propounded agreement PW1/1, claiming that the same was executed and the plaintiff along with defendant No.12 contributed in litigation expenses under explicit agreement that they will also get 1/4th share in the suit property. Plaintiff asserts his right on the basis of an agreement, which finds mention in Exhibit PW1/1. Courts below have ignored the aforesaid compromise, as the same was not signed by Daya Ram, Mahabir, Dhanpat sons of Phusal i.e. defendant Nos.3, 4 and 5.

[13] From whole of the record, it is not discernible as to when Chandrawali died. Lower Appellate Court decreed the suit filed by the plaintiff only on the admission made by defendant Nos.6 to 11, who undisputedly inherited estate of Chandrawali to the extent of 1/3rd share. Lower Appellate Court specifically held plaintiff to be entitled to 1/8th share of 1/6th share of defendant Nos.6 to 8. Para No.14 of the judgment reads as under:-

“14. Defendant Nos.6 to 11 had stepped into shoes of Ganpat who was owner of 1/3rd share of the total land. Defendant Nos.6 to 8 being three out of 6 heirs, they were, therefore, owners to the extent of 1/6th share of the suit land. They had admitted the plaintiff's claim to the extent of 1/8th share in the total land in suit and so 1/8th share in respect of their own share. In view of the admission of the suit by them, the plaintiff is also, therefore, entitled to be declared as owner in respect of 1/8th share of 1/6th share of defendant Nos.6 to 8. As a result, plaintiff Banwari Lal is held to be in possession of 1/8th share in land measuring 215 kanals 11 marlas and he is held to be owner in respect of 1/48th share of the total suit land. ”

[14] The plaintiff has not preferred any appeal against the said findings. In view thereof, decree passed by the lower Appellate Court is thus clarified to the extent that the plaintiff is declared to be the owner in respect of 1/8th share of 1/6th share of defendant Nos.6 to 8 inherited by defendant Nos.6 to 8.

[15] Since defendant No.12 never preferred any appeal against the judgment passed by the trial Court, dismissing the civil suit, this Court does not find any reason to entertain cross-objections at his behest. In view of the above, the cross-objections are ordered to be **dismissed**. Decree passed by the Appellate Court is *modified* to the extent as held hereinabove.

[16] Appeal stands **disposed off**.

(PANKAJ JAIN)
JUDGE

29.08.2024
'R. Sharma'

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