

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

2025:PHHC:127709



Regular Second Appeal No. 3558 of 2002 (O&M)

Reserved on : 08.09.2025

Pronounced on : 11.09.2025

Ram Murti

.....Appellant.

versus

Jit Singh and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RAMESH KUMARI.

Present : Mr. B.R.Mahajan, Senior Advocate with
Ms. Prerna Malhotra, Advocate and
Mr. Daanish Mahajan, Advocate, for the appellant.

Ms. Mrigank Sharma, Advocate, for the respondents.

RAMESH KUMARI, J.

This is a Regular Second Appeal against the judgment and decree dated 30.03.2002 rendered by learned Additional District Judge (1), Panchkula, in Civil Appeal No. 211 dated 15.09.1999 vide which findings rendered by learned trial Court vide judgment dated 10.08.1999 in Civil Suit No. 136 of 1989 instituted on 08.06.1989/03.06.1996 were upheld and it was further ordered "*that under the Will Ex. D1 only the property to the extent of share of Jawala Ram presuming as that the share of the parties are separated and Jawala also getting one share on such fictional partition and the Will Ex.D1 transfers only to the extent of the share of Jawala on such partition which was 1/5th share.*"

2. By way of filing the second appeal, the prayer is made for ascertaining the share of parties as per the judgment dated 30.03.2002 rendered by learned Additional District Judge (1), Panchkula.

3. The undisputed facts of the case are that Jawala son of Ram Dass was owner in possession of the land to the extent of 1/4 share of the land measuring 120 Kanals, having khewat/Khatoni Nos. 285/294, situated in village Saketri as per jamabandi Ex.P5 and to the extent of ½ share of land measuring 132 Bighas 17 Biswas having Khewat No. 358, Khatauni Nos. 910, 911 and 912, situated in village Bhoj Mataur (Baas Thapali), District Panchkula as per jamabandi Ex.P6. Jawala Ram died on 02.09.1983. Jawala Ram had four sons, namely, Matu Ram, Jit, Rachna and Ram Murti and four daughters, namely, Parbati, Sito, Soma and Amro, respectively. After his death, Jawala Ram was survived by his four sons, four daughters, named above and wife, namely, Yashoda.

4. The case of plaintiff-respondent No.1 Jit was that the suit property was joint Hindu coparcenary property and Jawala had no right to execute the Will in question qua the property where as case of defendant No.1-appellant Ram Murti is that Jawala had executed the Will Ex.D1 dated 13.01.1983 in his favour as well as in favour of his three sons, namely, Jit, Matu Ram and Rachna in equal shares and mutation was also sanctioned on the basis of said Will vide mutation No. 1878 and 1734.

5. Learned trial Court upheld that the property is joint Hindu coparcenary and the learned trial Court also upheld the legality of the Will Ex.D1 dated 13.01.1983 and decreed the suit of the plaintiff-respondent No.1 Jit that he is absolute owner and in possession of 1/18th share of the suit land

situated in village Saketri and also owner in possession of 1/9th share in the suit land situated in village Bas Thapali.

6. On filing the first appeal by appellant-Ram Murti, learned first Appellate Court vide judgment dated 30.03.2002 held that the suit property is joint Hindu coparcenary property and since the legality of the Will Ex.D1 was also accepted, by invoking Section 30 of the Hindu Succession Act, 1956, learned first Appellate Court rendered the findings in para-17 of the judgment which are to the following effect:-

“17. Accordingly, the findings of the trial Court are upheld holding that under the Will Ex.D1, only the property to the extent of share of Jawala presuming as that the share of the parties are separated and Jawala also getting one share on such fictional partition and the Will Ex.D1 transfers only to the extent of the share of Jawala on such partition which comes to be as 1/5th share.”

7. Being aggrieved with the observations made by learned First Appellate Court vide judgment dated 30.02.2002, this Regular Second Appeal is filed by appellant Ram Murti on the ground that the learned trial Court had committed error by holding that the suit property at village Bas Thapal Balku, Tehsil Kalka, District Panchkula, is ancestral property. This property was purchased by Jawala and it is separate property and he is entitled for 1/4th share in this property. He also prayed that the share of parties to the litigation are not determined by the learned First Appellate Court.

8. I have heard learned counsel for the parties at length.

9. During the course of arguments, learned counsel for the appellant conceded that both the properties are joint Hindu coparcenary properties and since legality of the Will Ex. D1 is upheld by the learned trial Court as well as by the learned First Appellate Court, therefore, the share of the parties be

determined since the suit property has been acquired by the State of Haryana and compensation is already deposited and disbursed to the respective parties.

10. On the other hand, learned counsel for the respondents contended that since concurrent findings of learned trial Court and the First Appellate Court are that the suit property was ancestral in nature and therefore, Jawala had no right to execute the Will Ex.D1 in favour of his sons. DW4, PW2 and PW5 had categorically stated in their statements before the trial Court that Jawala had no source of income and therefore, Will Ex. D1 could not be executed qua the ancestral coparcenary property. Plaintiff and all the defendants before the trial Court are the shareholders in the suit land which is undivided and as such without partition clear share holding is not possible.

Learned counsel for respondents further contended that since the suit property is acquired by the State of Haryana, the share holding is bound to happen as per natural succession and the appellant has filed the present appeal claiming the land in question to be ancestral in nature and therefore, he cannot be permitted to add or subtract in pleadings at this stage. In support of his contentions, learned counsel for the plaintiff-respondent No.1 relied upon the following judgments:-

- i) *Sheela Devis vs. Lal Chand and another* 2006(8) RCR SCC 581;
- ii) *Mihan and another vs. Inder and another* 2008(3) RCR (Civil)124;
- iii) *Sher Singh and others vs. Sarja Singh and another* 2010(5) RCR (Civil) 64;
- iv) *Smt. Asha Rani vs. Controller of Estate Duty* 1997(4) RCR (Civil) 210;

11. Undisputedly, the suit property is already held to be a joint Hindu coparcenary property and the parties are governed by Mitakshara school of law. Jawala during his life time executed the Will Ex. D1 vide which he

bequeathed his property to the extent of 1/4th share each in favour of his four sons. The contention of learned counsel for respondents that Will Ex.D1 cannot be given effect to, since the nature of the suit property is ancestral coparcenary property cannot be accepted, for two reasons; firstly, no counter appeal is preferred by the contesting respondents against the findings of the learned first Appellate Court and secondly Section 30 of the Hindu Succession Act, 1956 is exception to the general Mitakshara school of law.

12. Section 4 of the Hindu Succession Act, 1956 has over riding effect over any text, rule or interpretation of Hindu law or any custom or usage. Section 4 of the Hindu Succession Act reads thus:-

“4. Over-riding effect of Act.—

*(1) Save as otherwise expressly provided in this Act,—
(a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;
(b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act.”*

13. Section 30 of the Hindu Succession Act, 1956 deals with testamentary succession which reads as under:-

“30. Testamentary succession.—

Any Hindu may dispose of by will or other testamentary disposition any property, which is capable of being so disposed of by him or by her, in accordance with the provisions of the Indian Succession Act, 1925 (39 of 1925), or any other law for the time being in force and applicable to Hindus.

Explanation.—The interest of a male Hindu in a Mitakshara coparcenary property or the interest of a member of a tarwad, tavazhi, illom, kutumba or kavaru in the property of the tarwad, tavazhi, illom, kutumba or kavaru shall

notwithstanding anything contained in this Act or in any other law for the time being in force, be deemed to be property capable of being disposed of by him or by her within the meaning of this section.”

14. Thus, by way of incorporating Section 30 of the Hindu Succession Act, 1956, inroads were made into Hindu law. Mitakshara system of Hindu law recognizes two modes of devolution of property i.e., by survivorship and succession. The rule of survivorship applies to the joint Hindu family property, whereas the rule of succession applies to the separate property of the members of joint Hindu family. Further, under the Mitakshara system, before 2005 amendment in Hindu Succession Act, every male member of the joint Hindu family (to the exclusion of female members of the family) had only one undivided interest in the joint property. However, by incorporating Section 30 of the Hindu Succession Act, 1956, an exception is made to Hindu law pertaining to Mitakshara coparcenary property and such property is capable of being disposed of by way of a Will. The citations (supra) relied upon by learned counsel for the respondents, do not apply to the facts of the present case.

15. In *Sheela Devi's* (supra), it was observed by the Apex Court that a son born to male Hindu after alienation, cannot object to alienation. In *Mihan's case* (supra), it was held by this Court that reversioners had right to challenge the alienation which they enjoyed under customary law and that Hindu Succession Act, 1956 has not taken away the rights of reversioners. In *Sher Singh's case* (supra), it was observed by this Court that ancestral property inherited by a person who was sole surviving male member, could be treated to be self-acquired property, but immediately on birth of his son the status of property stood revived to that of a joint Hindu family coparcenary property. In *Smt. Asha Rani's case* (supra), it was held by this Court that a sole surviving

