

RSA-143-1990 (O&M)
COCP-1016-2017 (O&M)
COCP-1034-2001 (O&M)

-1-

2025.PHHC.061738 

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

**Reserved on: 24.03.2025
Pronounced on: 30.04.2025**

1. RSA-143-1990 (O&M)

Pal Singh and others ...Appellants

Vs.

Karnail Singh and others ...Respondents

2. COCP-1016-2017 (O&M)

Karnail Singh and another ...Petitioners

Vs.

Pal Singh and others ...Respondents

**3. CM-26413-CII-2016 in
COCP-1034-2001 (O&M)**

Karnail Singh and another ...Petitioners

Vs.

Megh Singh and others ...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. M.S. Khaira, Sr. Advocate (through v.c.)
with Mr. Daljit Singh Batth, Advocate
for the appellant(s).**

**Mr.Avnish Mittal, Advocate
Ms. Aparna Singhal, Advocate
for respondent No.1 to 7.**

**Mr. Anupam Sharma, Advocate
for respondent No. 5 to 8.**

**Mr. Karan Jund, Advocate
for respondent No. 7 (in COCP-1016-2017).**

ANIL KSHETARPAL, J.

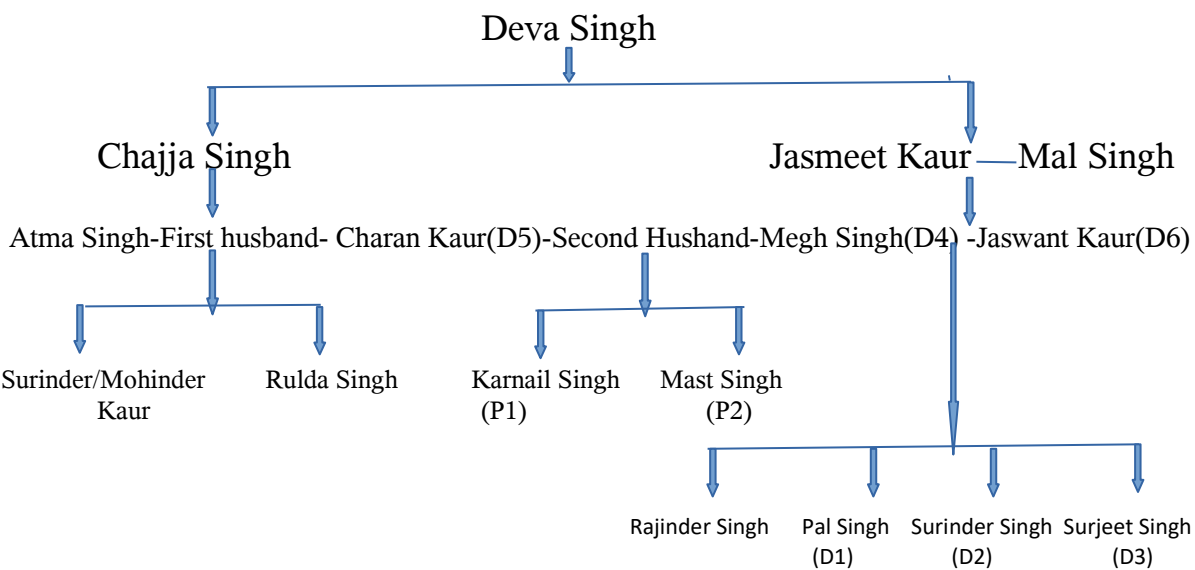
CM-26413-CII-2016 in
COCP-1034-2001

This application has been filed for revival of he contempt petition.

The application is allowed as prayed for.

Main case

1. With the consent of learned counsel representing the parties, three connected cases, namely, RSA-143-1990, COCP-1016-2017 and COCP-1034-2001 shall stand disposed of by this common order.
2. In regular second appeal, the defendants assail the correctness of the First Appellate Court's judgment which in turn has modified that of the trial Court.
3. The following genealogy will illustrate the relationship between the parties:-



4. Sh. Karnail Singh and Sh. Mast Singh, the plaintiffs filed a suit for declaration that the judgment and decree passed on 10.02.1983 in Civil Suit No. 30 of 1983 is null and void and the plaintiffs and defendants be declared

coparceners and proprietors in the suit land, which is located in two different villages, namely, Balhari Khurd and Balhari Kalan. In fact, by judgment and decree dated 10.02.1983, Sh. Megh Singh transferred his property situated in these two villages in favour of his three other sons, namely, Sh. Pal Singh, Sh. Surinder Singh and Sh. Surjeet Singh.

5. The plaintiff claims that the suit property is joint Hindu family ancestral coparcenary property, which is denied by the defendants. The trial Court on the basis of excerpt prepared by PW/3-Sh. Babu Singh, came to a conclusion that the suit property was relied upon the excerpt and the Court came to the conclusion that originally, the property was owned by Sh. Deva Singh in the years 1912-13. It was inherited by Sh. Mangat Singh in the year 1917. Subsequently, it was inherited by Sh. Chajja Singh and Sh. Mal Singh as per the revenue record for the years 1924-25. The estate of Sh. Chajja Singh devolved upon Sh. Rulda Singh, whereas, the estate of Sh. Mal Singh devolved upon Sh. Megh Singh. Hence, the Court came to the conclusion that the suit property is proved to be ancestral property, in which, the plaintiffs acquired right by birth. Hence, the decree is not binding on the plaintiff's rights.

6. The defendants filed the first appeal, which was partly allowed. It was held that the land located in village Balhari Kalan is proved to be ancestral and coparcenary property. Hence, the judgment and decree dated 10.02.1983 shall not be binding on the plaintiffs right, however, it was held that with respect to property located in village Balhari Khurd, it is not proved to be ancestral coparcenary property.

7. This appeal has been filed only by the defendants. The plaintiffs are now claiming that this Court should exercise powers under Order 41 Rule 33 of the Code of Civil Procedure, 1908 (CPC) to set aside the First Appellate Court's finding with regard to property located in village Balhari Khurd, although, they have neither filed any appeal nor cross-objections.

8. Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book alongwith the requisitioned Lower Court Record.

9. Learned senior counsel representing the defendants while referring to the judgment of the Supreme Court in 'Govindbhai Chhotabhai Patel vs. Patel Ramanbhai Mathurbhai', 2020(16) SCC 255, contends that the property could not be held to be ancestral coparcenary property.

10. *Per contra*, learned counsel representing the respondents who has also filed synopsis contends that the entire property is proved to be ancestral coparcenary property and hence, the First Appellate Court has erred in modifying the judgment. He also contends that with respect to the land located in village Balhari Khurd, the judgment of the Courts below be upheld.

11. From perusal of record, it becomes evident that the property has devolved upon from Sh. Deva Singh, who was the common ancestor, thereafter, it came to his son Sh. Mangat Singh and subsequently, the property came in hands of his two sons, namely, Sh. Chajja Singh and Sh. Mal Singh. It is evident from excerpt that the property located in village Balhari Kalan is proved to be ancestral coparcenary property because originally, it was owned by Sh. Deva Singh. After his death, it was inherited by his son Sh. Mangat

Singh. After the death of Sh. Mangal Singh, it was inherited by his two sons, namely, Sh. Chajja Singh and Sh. Mal Singh. After their death, the share of Sh. Chajja Singh devolved upon Sh. Rulda Singh, whereas, Sh. Mal Singh's share devolved upon his son Sh. Megh Singh. Thus, there is no error in the finding of the First Appellate Court qua the property located in village Balhari Kalan. With respect to property located in village Balhari Khurd, the First Appellate Court has found that Sh. Karnail Singh and Sh. Mal Singh failed to produce any evidence to show that the same was held by Sh. Mangat Singh. In absence thereof, there is no error in the finding of the First Appellate Court in this regard. In fact, the trial Court failed to notice this distinction.

12. Though, learned counsel representing the respondent has made an attempt to impress upon this Court to exercise powers under Order 41 Rule 33 of the CPC, however, in absence of evidence the Court cannot declare that the property located in village Balhari Khurd was also joint Hindu family ancestral coparcenary property.

13. This Court has carefully read the judgment passed in ***Govindbhai Chhotabhai Patel' case*** (supra). The property was gifted by Ashabhai Patel, in favour of his son Chotobhai Ashabhai Patel. There is also a reference to the gift deed. The Supreme Court held that the property which has been gifted and came by way of gift deed would be self acquired property. This judgment does not help the appellants.

14. In COCP-1034-2001 and COCP-1016-2017, violation of injunction order passed on 18.12.1998, which was confirmed on 18.01.1999, directing the parties to maintain status quo with regard to alienation has been

alleged. Sh. Megh Singh is alleged to have executed his sale deed during the pendency of the appeal despite status quo order.

15. In COCN-1034-2001, Sh. Pal Singh, Sh. Surinder Singh and Sh. Surjeet Singh are alleged to have executed a sale deed on 20.12.2000 with respect to land measuring 03 bigas 17½ biswas located in village Balhari Khurd to Sh. Tarsem Lal. Sh. Tarsem Lal has further sold the property vide sale deed dated 31.01.2017, which led to filing of COCN-1016-2017. It is evident that Sh. Tarsem Lal was not a party to the litigation. Now, in view of the judgment passed in regular second appeal, the property at village Balhari Khurd will be inherited by natural succession. Hence, the parcels of land which have been sold will be adjusted towards the share of the vendors.

16. Moreover, learned counsel representing the respondent did not press Civil Original Contempt Petitions.

17. Consequently, the regular second appeal as well as COCNs are dismissed.

18. All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

30.04.2025
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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No