

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

RSA-175-1992 (O&M)
Reserved on: 07.05.2025
Pronounced on: 12.05.2025

INDRAJ

. . . . Appellant

Vs.**NIRANJAN AND OTHERS**

. . . . Respondents

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Argued by: - Mr. Jagdish Manchanda, Advocate, for the appellant.

Mr. Parit Aggarwal, Advocate, for respondent No.1.

DEEPAK GUPTA, J.

Suit for declaration regarding property in dispute filed by plaintiff Indraj (*appellant herein*) was partly decreed by Ld. trial Court vide its judgment dated 28.09.1990. Both the parties went in appeal. Plaintiff filed appeal claiming that entire suit was liable to be decreed; whereas defendant No.1-Niranjan (*contesting respondent herein*) filed the appeal seeking dismissal of the suit in toto. Both these appeals were heard together. Learned First Appellate Court vide judgment dated 13.09.1991 dismissed the appeal of the plaintiff; whereas, appeal filed by the defendant was accepted and consequently, the suit was dismissed in toto.

2. Against the aforesaid dismissal of his suit, the plaintiff has now approached this court by filing the present Regular Second Appeal.

3. In order to avoid confusion, the parties shall be referred as per their status before the trial Court.

4.1 Defendant No.4 - Nanwa son of Bhule was recorded to be owner of the suit land measuring 29 kanal 18 marla, situated in Village Alduka, Tehsil Nuh, District Gurugram. He sold the said land to defendant

No.1-Niranjan by virtue of a sale deed dated 05.06.1984 for consideration of ₹49,500/-. Plaintiff and proforma defendant Nos 2 & 3 are the sons of vendor Nanwa.

4.2 Plaintiff assailed the abovesaid sale deed dated 05.06.1984 contending that it was not binding on his reversionary rights and that of defendant Nos. 2 & 3, as the suit property was ancestral in nature in the hands of defendant No.4 qua the plaintiff and defendant Nos. 2 & 3. According to him, parties are governed by agricultural custom of Punjab & Haryana and District Gurugram in the matters of alienation and succession, according to which, a male proprietor cannot alienate his ancestral agricultural land without consideration and legal necessity. It was further the case of the plaintiff that defendant No.1 did not have any legal necessity so as to sell the suit property and that sale in question was without consideration and also opposed to the custom governing the parties. He prayed for necessary declaration in this regard.

5.1 Defendant Nos. 2 to 4 i.e., brothers and father of plaintiff admitted his claim.

5.2 Suit had been contested by defendant No.1, who in his written statement denied the ancestral nature of the suit property in the hands of his vendor Nanwa. He further alleged that plaintiff along with his brother Deep Chand and sister had earlier filed a suit seeking pre-emption of the sale in question, which has already been dismissed and as such, present suit was not maintainable, as plaintiff is estopped from filing the same. Defendant No.1 further denied that parties are governed by any agricultural custom as claimed by the plaintiff or that defendant No.1 sold the suit land without any necessity or without any consideration. As per defendant No. 1, the vendor-defendant No.1 owed debts to several persons, bank and other organizations and required money for the construction of his house and personal necessity for the marriage of his daughter and sons and that he (vendee-defendant No.1) had made necessary enquiries before the purchasing the suit land and thus, he is the bona fide purchaser for valuable

consideration. With this stand and controverting all other averments of the plaint, defendant No.1 prayed for dismissal the suit.

6. Necessary issues were framed. Evidence produced by both the parties were taken on record.

7. Trial Court came to the conclusion that half share of the suit property was ancestral in the hands of Nanwa; whereas the remaining $\frac{1}{2}$ share was non-ancestral in his hands. It was further held that defendant No.4 Nanwa did not have any pressing necessity so as to sell the ancestral land and that the same could not have been sold by him as per the agricultural custom prevalent amongst the parties. Accordingly, trial Court partly decreed the suit of the plaintiff to the effect that the impugned sale deed dated 05.06.1984 was illegal and not binding on the plaintiff and defendants Nos.2 & 3 qua the half share.

8. As stated earlier that both the parties went in appeal. Plaintiff filed the appeal seeking decretal of the entire suit, whereas defendant No.1 filed the appeal seeking dismissal of the entire suit in toto.

9. The Appellate Court with the help of pedigree table of the parties with their ancestors and the revenue excerpt in respect of the of the suit land, discussed the matter in detail and came to the conclusion that suit land was non-ancestral in the hands of Nanwa. Appellate Court further found that as per the custom prevalent in the Jat community in District Gurgaon, Rohtak and Karnal, as per the Rattigan's Digest on Customary Law, a male proprietor of ancestral property has full power to alienate the property by sale, even if there is no necessity, and that such an alienation can be impeached only on the ground that it was made for immoral purpose. It was concluded that in the circumstances, plaintiff did not have the locus standi to assail the impugned sale deed. Appellate Court further found that sale deed in question had been executed by Nanwa for consideration and for legal necessity and that it was also an act of good management. Not only this, it was found that brother of the plaintiff along

with his sister had earlier sought to pre-empt the sale in question and since the plaintiff used to reside together with his brothers, sister and father, therefore, he was estopped from bringing the present suit so as to assail the impugned sale deed executed by his father. With all these findings, the First Appellate Court vide its judgment dated 13.09.1991 set aside the judgment & decree passed by the trial Court and accepted the appeal filed by the contesting defendant and dismissed the suit in toto; whereas, the appeal as filed by the plaintiff, was dismissed.

10. Assailing the aforesaid judgment dated 13.09.1991 of the First Appellate Court, the principal contention raised by learned Senior advocate for the appellant-plaintiff is that the First Appellate Court has wrongly held the nature of the suit property to be non-ancestral. Learned counsel submits that trial Court had rightly found that half of the property was the ancestral in the hands of Nanwa and as such, the nature of entire suit property was liable to be taken as ancestral and therefore, the suit was liable to be decreed, since plaintiff failed to prove any legal necessity for defendant No.4 to execute the sale deed.

11. The aforesaid contentions have been refuted by learned counsel for the contesting respondent-defendant.

12. This Court has considered submissions of both the sides and have appraised the record carefully.

13. Although the suit has been dismissed by the First Appellate Court for various reasons, but the decision of the appeal mainly hinges on solitary point, as to whether the suit property was ancestral in the hands of Nanwa, or whether it was non ancestral. The First Appellate Court has referred to the pedigree table of the parties, as per which one Tonda had two sons namely Siksian and Dallu. Nanwa is the grandson of Dallu being the son of Bhule; whereas the share of Siksian was succeeded by Smt. Bhuri widow of Gokal.

14. In the light of the above pedigree table (Ex.P3) and the revenue entries contained in excerpt Ex.PW3/1, the First Appellate Court has observed as under: -

“18. The first short and significant question though important for determination in the present appeal is, that whether the property in dispute is ancestral in the hands of defendant No.4 qua plaintiff and defendant No.2 and 3. It will not be out of place to mention here that the trial court while deciding issue No.1 held that half share of the suit land was ancestral and remaining half was non-ancestral. Shri K.S.Jain, learned counsel for defendant No. 1, vehemently contended that the trial court fell in error even in holding half share of the land as ancestral in the hands of defendant No. 4 qua the plaintiff and defendants No.2 and 3. His argument is that both the portions of the land were mixed in the hands of Nanwa vendor defendant No.4 at the time of consolidation proceedings and it was not discernible as to which particular field number were ancestral and which particular field numbers were non-ancestral. In that eventuality, the whole land has to be treated as non-ancestral. The argument further proceeds that the plaintiff has badly failed to prove by adducing any cogent evidence that any part of the property in dispute was ancestral in the hands of defendant No.4. He has placed reliance on the judgments ***Smt. Piar Kaur and others Vs. Harbans Kaur and others, 1983 P.L.R. 354; Mara and others Vs. Mst. Niko alias Panjab Kaur and others, AIR 1964 S.C. 1821; Chhaju Ram Vs. Kapuria 1987 S.L.J. 727; and Jhanda Singh and others Vs. Mst. Banto and others, AIR 1927 Lahore 477.***

19. Faced with the situation, Shri D.R. Lakhani, learned counsel for the plaintiff, contended with some amount of vehemence that the property in dispute is proved to be ancestral in the hands of defendant No.4 qua the plaintiff and defendant Nos 2 and 3. His argument is that the plaintiff has proved by adducing evidence in the shape of excerpt Ex.PW3/1 that the property in dispute was owned jointly at the time of first settlement by the ancestors of defendant No.4 and the same shares at the land in lieu of the earlier land would be ancestral property and the trial court has at least rightly held that half share of the suit land was ancestral. Continuing his

argument, the learned counsel for the plaintiff half-heartedly contended that even the entire property in dispute has been proved to be ancestral. He has placed reliance in this regard to the judgments in ***Jatti and others Vs. Girja Singh AIR 1937 Lahore 917; Bakshish Singh and others Vs. Mohd. Khan, AIR 1931 Lahore 266; Samand Singh Vs. Rakhe Ram, AIR 1943 Lahore 22 and Bhole Ram and others Vs. Bishna and others, 1957 PLR 50.***

20. I have considered the rival contentions of both the parties in this regard and I have also gone through the judgments cited at the bar by the learned counsel for the parties. A brief resume of the relevant entries in the excerpt Ex.PW3/1 and the pedigretable Ex.P.3 is essential to understand whether the suit land was ancestral in the hands of defendant No.4 qua the plaintiff and defendant No.2 and 3. The whole history of the revenue record has to be traced back to the year, in which the property had devolved from the common ancestor Tunda of defendant No. 4. A bare perusal of the excerpt Ex.PW3/1 would suggest that in the jamabandi for the year 1885-86 and 1888-89, one Dallu son of Tunda and Gokal son of Sh. Kishan were recorded as owners in equal shares, of the land. In the jamabandi for the year 1885-86, Jokhi and Bhuley sons of Dallu and Gokal s/o Siri Kishan were recorded as owners while in the jamabandi for the year 1892-93, Jokhi and Bhuley sons of Dallu and Mst. Bhuri wife of Gokal have been recorded as owners. In the jamabandi for the year 1902-03 is of great importance in this regard. A bare perusal of the entry in the jamabandi for the year 1902-03, Nanwa son of Bhule and Mst. Goda wife of Mola had been shown to be owners in equal shares, but there is an entry in the excerpt Ex.PW3/1 that Bhule son of Dallu died and mutation No.1085 of his inheritance was sanctioned in the name of Mst. Devalia, his widow on 28.2.1902. Further perusal of the entry in the excerpt Ex.PW3/1 would suggest that mutation No. 1144 of inheritance of Mst. Devalia widow of Bhule was entered in the name of Nanwa son of Bhuley, defendant No.4. Here the link disappeared. It is now well settled that ancestral nature of the land has to be counted from the common male ancestor. A bare perusal of mutation No.1985 which was sanctioned on 28.2.1902, would suggest that the land of Bhule son of Dallu was inherited and mutated in the name of Devalia widow of Bhule. In other words, the entire land was inherited by

Devalia widow and not by any male members delinking the line of male ancestors. A bare perusal of entry in mutation No. 1144, which was sanctioned on 22.5.1903 further suggested that after the death of Devalia, widow of Bhule, the land was inherited by defendant No. 4. So, in the absence of continuity of continuous said that (*sic male lineal descendants*) the land in dispute was ancestral in the hands of defendant No.4 qua the plaintiff and defendant Nos 2 and 3. In other words, it is proved on record that Nanwa, defendant No.4 had not inherited the property in dispute directly from male ancestor Bhule, but he has inherited the land from Devalia, widow of Bhule, vide mutation No.1144, sanctioned on 22.5.1903. The trial court has held the half share of the property in dispute as ancestral only on the ground that as half share each was inherited by Dallu and Siri Kishan from Tonda, and from Dallu, the property in half share was devolved upon Bhule and Dhani to the extent of half share each and from Siri Kishan, it devolved upon Gokal in half share. The trial court has further relied upon the jamabandi for the year 1902-03 to mean that in half share, Nanwa, defendant No.4 was shown as owner in possession of the land, but the trial court has lost sight of the fact that Nanwa defendant No.4 had inherited the property from Devalia, widow of Bhule, as indicated earlier. In the absence of continuity of male lineal descendant, in my opinion, it cannot be said that any part of the property in dispute was ancestral in the hands of defendant No.4 qua the plaintiff and defendant Nos 2 and 3. Reliance in this regard can be placed to ***Piar Kaur's case (supra)***, where it was held that if the land in dispute has not devolved from the common ancestor, the land has to be treated as non-ancestral.

21. The matter in this regard can be looked from other angle. The plaintiff has filed the suit for declaration of the agricultural land measuring 29 kanals 18 marlas, comprised in Khewat No.71, Khata No.113, Rect. No.35, Killa Nos 16(6-19), 17(6-19), 24 (8-0), 25/1(5-17) and 25/2(2-3) situated in village Alduka, Tehsil Nuh, Distt. Gurgaon. The present land in dispute is alleged to have been allotted during the consolidation proceedings in lieu of the land mentioned in the jamabandi for the year 1957-58. The killa Nos. are 220, 358, 356, 361, 364, 366, 385, 704, 705, 706 and 707, measuring 33 pucca bighas and 33 biswas. That comes to about 165

kanals. In other words, would suggest that the total land was 165 kanals (33 pucca bighas and 33 biswas) and the plaintiff has filed the present suit of the land measuring 29 Kanals 18 Marlas. That means there is not even an iota of evidence to connect the 29 Kanals 18 Marlas of land, which is the land in dispute, as compared to the land measuring 33 Pucca bighas 33 Biswas 165 Kanals, as mentioned in the jamabandi for the year 1957-58. In other words, the entire land measuring 165 kanals inter-mingled during the consolidation proceedings and the plaintiff is alleging that the land in dispute i.e., 29 Kanals 18 Marlas was allotted in lieu of the land mentioned above. There is no evidence that the land is in lieu of the land mentioned above. There is no evidence that the land in dispute was allotted in lieu of which land which is a small portion, then the entire land mentioned in the jamabandi for the year 1957-58, prior to the consolidation. Thus, it would be seen that the land in dispute has so mixed up that ancestral and non-ancestral portion cannot be separated. In such a situation, the entire land must be regarded non-ancestral, unless it is separated and proved by cogent evidence. Reliance in this regard can be placed to a judgment of Hon'ble Supreme court in ***Mara's case (supra)***. Otherwise also, it is not proved on the record by cogent evidence that at the time of settlement, the ancestors of the parties held the land in equal shares and it cannot be presumed by any stretch of imagination that the land in dispute allegedly allotted in lieu of the land before the consolidation was ancestral. Reliance in this regard can be placed on ***Sobha Sinch Vs. Gurbarshi, 1960 P.L.R.440***. Again, it was held in ***Jhanda Singh's case (supra)*** that the pedigree-table prepared during the settlement is presumptive proof of relationship but not of the nature of the property owned. In this regard, it may be mentioned that oral evidence brought on record by the parties is not sufficient to hold that the property in dispute was ancestral. It was held by our own Hon'ble High court in ***Mst. Sham Kaur Vs. Hari Singh and others, AIR 1973 Pb.& Hr. 71*** that the property held by members of family has to be presumed to be non-ancestral or self-acquired in the hand of owner, unless proved otherwise by adducing cogent evidence. The heavy onus lies on that party, who alleges it to be so that it was ancestral property. In this view of the matter, it was the duty of the plaintiff to prove that the property devolved in inheritance from each male member. It was held by

our own Hon'ble High court in *Chhaju Ram's case (supra)* that if the mutation of inheritance was not produced and it has to be proved beyond doubt that the property was inherited from common ancestors, then in that eventuality, the property has to be held to be non- ancestral.”

15. Learned senior counsel for the appellant could not assail the abovesaid findings, as returned by the First Appellate Court, which are based upon proper appreciation of evidence, particularly the pedigree table of the parties and the revenue excerpt and which prove in the light of legal position that the entire property was to be held as non-ancestral in the hands of Nanwa.

16. Once it is so that suit property was non-ancestral in the hands of Nanwa, the plaintiff did not have the right to assail the sale deed in question on the ground that it was sold without any legal necessity or consideration. Even otherwise, based upon the evidence on record, the First Appellate Court has rightly come to the conclusion that suit property was sold for consideration and as an act of good management, as the brother of the plaintiff along with his sister had themselves sought to pre-empt the sale by claiming that actual sale price was only ₹40,000/-, whereas the land had been sold for ostensible consideration of ₹49,500/-, clearly indicating that Nanwa had sold the land as an act of good management.

17. On account of the entire discussion as above, this Court does not find any ground whatsoever to interfere in the well-reasoned judgment as passed by the First Appellate Court, holding the suit property to be ancestral in the lands of defendant No.4-Nanwa. It has been rightly held that plaintiff did not have the locus so as to assail the sale deed.

18. Consequently, holding the present appeal to be devoid of any merit, the same is hereby dismissed.

12.05.2025
Vivek

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned?	Yes
Whether reportable?	Yes