



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(106)

RSA No. 1556 of 1994(O&M)
Reserved on : 13.10.2025
Pronounced on:27.10.2025

Amarjit Singh and Others

... Appellants

Versus

Rattan Singh and Others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present: Mr. Kanwaljit Singh, Senior Advocate
with Mr. Raghav Agnihotri. Mr. Ishaan Bhardwaj
and Mr. Gagandeep Singh, Advocate for the appellants.

Mr. Gurbachan Singh Bhatia, Advocate
with Mr. Manoj K. Sharma, Advocate for the respondents.

VIRINDER AGGARWAL, J.

1. This appeal is directed against the judgment and decree dated 24.12.1993 passed by the learned Additional District Judge, Ludhiana, whereby the judgment and decree dated 27.10.1987 of the learned Sub Judge Ist Class, Samrala, were set aside and the suit filed by the plaintiffs-appellants was dismissed.

BACKGROUND FACTS

2. The brief facts necessary for adjudication are that the plaintiffs, Amarjit Singh and others, filed a suit for the joint possession of agricultural land



measuring 217 kanals 1 marla, situated in village Garhi Tarkhana, Tehsil Samrala, District Ludhiana. The plaintiffs are the sons of defendant no.1, Rattan Singh, and claimed that the land in dispute was ancestral, constituting Joint Hindu family coparcenary property in the hands of Rattan Singh, who as Karta had no right to alienate the same without legal necessity. They challenged three sale deeds executed by Rattan Singh in favour of defendants Mohinder Singh and Sukhdev Singh as being void and not binding on their rights. The learned Trial Court partly decreed the suit, holding two of the sale deeds (Ex.D3 and Ex.D4) to be without legal necessity and declaring them void, while upholding one sale deed (Ex.D2) as valid. The learned First Appellate Court, however, reversed the decree and dismissed the suit, holding that the property devolved upon Rattan Singh under Section 8 of the Hindu Succession Act, 1956, as his separate property, and therefore, the plaintiffs had no locus to challenge the alienations. Aggrieved by the same, the plaintiffs filed the present regular second appeal.

CONTENTIONS

3. Learned counsel for the appellants contented that the property in question was ancestral in nature, having descended from Chanan Singh, the grandfather of the plaintiffs, to his sons including defendant no.1-Rattan Singh, and thus retained its character as coparcenary property. It was urged that Rattan Singh, being only the Karta of the family, could not have alienated the suit land without proving legal necessity or benefit to the estate. The learned Trial Court, upon appreciation of evidence, had rightly recorded a finding that the sale deeds Exhibit-D3 and Exhibit-D4 were without legal necessity, which could not have been disturbed by the First Appellate Court. Learned counsel relied on the



judgments of the Hon'ble Supreme Court in *Arshnoor Singh v. Harpal Kaur, 2020 (14) SCC 436 and Vineeta Sharma v. Rakesh Sharma and others, 2020 (9) SCC 1*, contending that the ancestral character of the property was not extinguished merely because succession took place under the Hindu Succession Act. It was argued that the First Appellate Court erred in misapplying the provisions of Section 8 of the Hindu Succession Act (hereinafter referred as "The Act") and in reversing a well-reasoned decree passed by the learned Trial Court.

4. *Per contra*, learned counsel for the respondents supported the impugned judgment and submitted that the appeal is devoid of merit. It was contended that Chanan Singh died after the commencement of the Hindu Succession Act, 1956, and his estate devolved under Section 8 of the Act. The said provision provides for devolution upon the heirs specified in Class I of the Schedule, namely, the widow and sons, who take as tenants-in-common and not as coparceners. Consequently, the property that came to Rattan Singh under Section 8 of the Act became his separate and self-acquired property. It was further argued that the plaintiffs, being sons of Rattan Singh, did not acquire any right by birth in such property and therefore lacked locus to challenge the alienations made by their father. Learned counsel urged that the First Appellate Court had correctly appreciated the evidence and applied settled law, leaving no scope for interference in second appeal.

OBSERVATIONS AND FINDINGS

5. I have heard the learned counsel for both sides and perused the record of the case.



6. The sole issue that arises for determination in this appeal is:

“Whether the property inherited by Rattan Singh from his father, Chanan Singh, retained its ancestral/coparcenary character, or became his separate/self-acquired property under Section 8 of the Hindu Succession Act, 1956 ?”

7. At the outset, it is apposite to distinguish between the **pre-1956** and **post-1956** legal positions under Hindu law. Before 1956, coparcenary property devolved primarily by **survivorship**, whereas the *Hindu Succession Act, 1956* introduced **succession** as the mode of devolution, particularly under Section 8. In this context, it is necessary to briefly examine the concepts of *survivorship* and *succession* before proceeding to decide the issue involved in the present appeal, as the same is significant in determining the mode of devolution, to determining the character of the property and the rights of heirs.

Pre-1956: Classical Hindu Law - Concept of Survivorship

8. Under the classical Mitakshara law, the rule of *survivorship* governed the devolution of coparcenary property, wherein a coparcener acquired an interest in the joint family property by birth itself, as ancestral coparcenary property. Such property is regarded as *unobstructed heritage*, since the right to ownership is not dependent upon the death of any person, but arose by mere virtue of birth in the coparcenary. Upon the death of one coparcener, his interest in the joint property passed automatically to the others by survivorship. The coparcenary is a narrower body within the joint Hindu family, consisting of a common male ancestor and his lineal male descendants up to three degrees. Property that was once part of the coparcenary retained its ancestral character in the hands of



every coparcener. Further, the Karta, as the senior-most male member and head of the coparcenary, could alienate or manage family property only for purposes of legal necessity, the benefit of the family, or with the consent of other coparceners. The Karta's powers were **representative and fiduciary in nature**, and he was bound to act in the interest of the coparcenary rather than for personal gain. Any unauthorized alienation or self-dealing could be questioned and got set aside by the other coparceners.

Post-1956: Statutory Scheme under the Hindu Succession Act, 1956

9. The Hindu Succession Act, 1956, brought a decisive shift from the concept of **survivorship** under classical Mitakshara law to a statutory scheme of **succession**. The Act was enacted to codify and reform Hindu law of intestate succession, which until then had been governed by divergent schools such as Mitakshara and Dayabhaga. Its object was to bring uniformity, to remove the uncertainty and inequality that prevailed under the traditional system and to confer uniform and absolute rights of inheritance, both upon male and female heirs.

10. It is important to note that the Act did not entirely abrogate the rule of survivorship. Under **Section 6** (as originally enacted), the general rule continued to be that when a male Hindu, having an interest in Mitakshara coparcenary property, died after the commencement of the Act, his interest would **devolve by survivorship** upon the surviving coparceners. This preserved the traditional operation of the Mitakshara coparcenary even after 1956. However, the **proviso to Section 6** carved out a vital statutory exception. It expressly provided that if the deceased left surviving him any female relative specified in Class-I of the Schedule, such as a widow or daughter, or a male



relative claiming through such female, his interest in the coparcenary property would **not devolve by survivorship** but by **succession** under the Act.

11. For ready reference, Section 6 of the Hindu Succession Act, 1956 (as it stood prior to its amendment by Act 39 of 2005) is reproduced as under:

***“6. Devolution of interest in coparcenary property.-** When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act:*

Provided that, if the deceased had left him surviving a female relative specified in Class I of the Schedule or a male relative specified in that Class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.”

12. Thus, in post-1956 law, two distinct situations arise as per section 6 of the Hindu Succession Act, 1956:

1. **Where no female Class-I heir exists:** Devolution continues by survivorship among the remaining coparceners, as per the traditional Mitakshara principle.
2. **Where a female Class-I heir (or a male claiming through her) exists:**
The proviso to Section 6 operates, displacing survivorship. In such a case, the deceased’s interest devolves by **succession** governed by **Section 8 of**



13. For reference, Section 8 of the Hindu Succession Act, 1956, which prescribes the general rules of succession in the case of a male Hindu dying intestate, is reproduced as under:

***“8. General rules of succession in the case of males.-** The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter:-*

(a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;

(b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;

(c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and

(d) lastly, if there is no agnate, then upon the cognates of the deceased.”

14. Hence, **Section 8 of the Act** lays down the general rules of succession for males dying intestate, providing that the property shall devolve upon the heirs enumerated in Class I, including the widow, sons, daughters, and mother, who take in equal and independent shares as tenants-in-common and not as coparceners. The Succession under the Hindu Succession Act, 1956, opens at the moment of the death of the deceased. In other words, the estate of the deceased is deemed to open upon his death, and the rights of the heirs crystallize at that time. Unlike pre-1956 Mitakshara survivorship, where a coparcener acquired rights by birth, post-1956, the heirs acquires the property **only upon the death of the predecessor** in cases property devolves under section 8 of the Act. The property in which the right of an heir accrues only



upon the death of the owner is treated as *obstructed heritage*, since ownership remained suspended during the lifetime of the deceased.

15. The devolution contemplated under Section 8, therefore, is one of **inheritance** and not of survivorship. The effect of such devolution is that the property **loses its ancestral or coparcenary character** in the hands of the heir. Each heir takes an **individual, self-acquired share** in the property, which is divisible and capable of alienation independently. Any alienation, partition, or inheritance thereafter is to be treated with respect to self-acquired property. Further, Under post-1956 succession, the traditional role of the Karta is substantially curtailed for property that devolves under Section 8. A son may continue to be the Karta of his own coparcenary for pre-existing ancestral property, but in respect of property inherited under Section 8, he holds it as **individual self-acquired property**. He is **not holding property as a Karta in the Mitakshara sense** vis-à-vis his own children with respect to such property. His powers of alienation are not restricted by coparcenary limitations, unlike a pre-1956 Karta.

16. Therefore, a conjoint reading of the above provisions makes it evident that this statutory scheme ensures that **after 1956**, the rule of survivorship qua the coparcenary property in the hands of deceased operates only in a limited way and stands displaced by succession whenever the proviso to Section 6 comes to be attracted. The nature of devolution of property thereafter depends entirely on whether the deceased left behind a female Class-I heir. Thus, when a male Hindu dies after the commencement of the Act leaving behind any female Class I heir, the coparcenary property in his hands devolves by succession under Section 8, and not by survivorship. When a son inherits property from his father under such circumstances, he takes it as a successor under Section 8 in



his **individual and absolute capacity**. The property in his hands ceases to be ancestral and does not give rise to coparcenary rights in favor of his own sons; it is treated as **self-acquired property**. This interpretation has been consistently affirmed by the Hon'ble Supreme Court in *Commissioner of Wealth Tax v. Chander Sen, (1986) 3 SCC 567*, and *Yudhishter v. Ashok Kumar, (1987) 1 SCC 204*, wherein it has been held that property devolving upon a son under Section 8 after the commencement of the Act is his separate property, and not as joint family property vis-a-vis his sons.

17. *Significantly*, the statutory succession under Section 8 ensures that **pre-1956 survivorship principles cannot be intermingled** with post-1956 succession of property. It is often seen that in cases of property devolving after 1956, courts have occasionally erred by applying principles of pre-1956 survivorship, treating property as ancestral though it had actually devolved by succession under Section 8 on account of applicability of proviso to Section 6 of the Act. Such an intermingling is impermissible. To clarify this position, it is necessary to bifurcate the legal consequences: that **prior to 1956**, devolution of the coparcenary property was governed by survivorship; but **after 1956**, where devolution takes place under Section 8 of the Hindu Succession Act, the nature of the property changes from ancestral to self-acquired in the hands of the heir. This distinction is crucial to prevent misapplication of the old law to post-1956 successions.

Application of legal position to the Present Case

18. Although the precise date of Chanan Singh's death was not provided, it stands established from the record and as admitted by the parties that Chanan Singh died intestate somewhere 1960s, that is, after the commencement of the



Hindu Succession Act, 1956. Further, at the time of his death, he left behind his widow, three sons (including the defendant no.1-Rattan Singh), and a daughter, Chinti. These persons fall squarely within **Class I heirs** under the Schedule to the Act. Therefore, Applying the foregoing legal position to the facts of the present case the operation of **proviso to Section 6** comes into play. Consequently, his interest in the property **did not devolve by survivorship**, but by **succession** under Section 8 of the Act, which prescribes that the property of a male Hindu dying intestate shall devolve first upon the heirs specified in Class I of the Schedule. Therefore, on Chanan Singh's death, his estate devolved equally upon his widow, three sons, and daughter, all taking as *tenants-in-common* and not as *coparceners*.

19. The effect of this statutory devolution is that the property so inherited by each son, including Rattan Singh, became his **individual and separate property**, losing all characteristics of coparcenary or ancestral property. This interpretation is fortified by the authoritative pronouncements of the Hon'ble Supreme Court in *Commissioner of Wealth Tax, Kanpur v. Chander Sen (Supra)* and *Yudhishter v. Ashok Kumar (Supra)*, wherein it was held that property devolving under Section 8 is the separate property of the heir and does not constitute joint family property in his hands vis-à-vis his own sons.

20. Accordingly, it follows that after the death of Chanan Singh in 1960s, the devolution of his estate was governed by the **proviso to Section 6**, leading to application of **Section 8**, and the property in the hands of **Rattan Singh** (defendant no.1) stood converted into **self-acquired property**. Hence, the plaintiffs, being his sons, did not acquire any birthright or coparcenary interest therein and thus had **no locus** to challenge the alienations made by him.



Distinction from the Authorities Relied Upon by Counsel for the Appellants

(i) Arshnoor Singh v. Harpal Kaur (2019) 14 SCC 436:

21. The present case stands materially distinguishable from *Arshnoor Singh v. Harpal Kaur* (supra), where succession to the property opened in 1951 upon the death of Lal Singh, i.e., prior to the commencement of the *Hindu Succession Act, 1956*. In that case, the property inherited by his son, Inder Singh, **retained its coparcenary character**, as the devolution was governed by the pre-1956 *Mitakshara* law, under which the male descendants acquired an interest by birth through the doctrine of survivorship.

22. In contrast, in the present case, **Chanan Singh**, the father of defendant No. 1, **Rattan Singh**, died intestate in the 1960s, i.e., after the enforcement of the 1956 Act. Consequently, the devolution of his property is governed not by the rule of survivorship but by the **statutory scheme of succession** embodied in Section 6 (proviso) read with Section 8 of the Act. Chanan Singh left behind his widow and a daughter, both being **female Class I heirs**, and therefore the proviso to Section 6 would be attracted, and the property accordingly devolved by **succession under Section 8**, under which Class I heirs inherit as **tenants-in-common**, each taking an independent and separate share. As a result, the property, though ancestral in the hands of Chanan Singh, **lost its coparcenary character** upon his death and became the **self-acquired or separate property** of Rattan Singh, in which his own sons could not claim any birthright. The relevant part of the *Arshnoor Singh(Supra)* is reproduced as following :

“7.7. In the present case, the succession opened in 1951 on the death of Lal Singh. The nature of the property inherited by his son Inder Singh was coparcenary in nature. Even



though Inder Singh had effected a partition of the coparcenary property amongst his sons in 1964, the nature of the property inherited by Inder Singh's sons would remain as coparcenary property qua their male descendants upto three degrees below them.”

7.8. The judgment in **Uttam v. Saubhag Singh (supra)** relied upon by the Respondents is not applicable to the facts of the present case. In Uttam, the appellant therein was claiming a share in the coparcenary property of his grandfather, who had died in 1973 before the appellant was born. The succession opened in 1973 after the Hindu Succession Act, 1956 came into force.

The Court was concerned with the share of the appellant's grandfather in the ancestral property, and the impact of section 8 of the Hindu Succession Act, 1956. In light of these facts, this Court held that after property is distributed in accordance with section 8 of the Hindu Succession Act, 1956, such property ceases to be joint family property in the hands of the various persons who have succeeded to it. It was therefore held that the appellant was not a coparcener vis-a-vis the share of his grandfather.

7.9. In the present case, the entire property of Lal Singh was inherited by his son Inder Singh as coparcenary property prior to 1956. This coparcenary property was partitioned between the three sons of Inder Singh by the court vide a decree of partition dated 04.11.1964. The shares allotted in



partition to the coparceners, continued to remain coparcenary property in their hands qua their male descendants. As a consequence, the property allotted to Dharam Singh in partition continued to remain coparcenary property qua the Appellant.

.....(emphasis supplied)

23. Moreover, It is necessary to note that authority relied upon by learned counsel for the appellants also elucidates the distinction between property devolving before and after the commencement of the Hindu Succession Act, 1956. In ***Arshnoor Singh(Supra)***, the Hon'ble Supreme Court observed that where succession had opened prior to 1956, the property inherited by a male Hindu from his paternal ancestor would remain coparcenary in nature vis-à-vis his male descendants (Para 7.3 & 7.6). However, where succession opens after 1956, the property devolving under Section 8 of the Act would no longer be coparcenary but would be the separate property of the heir (Para 7.4 & 7.5). Since Chanan Singh died after 1956, the present case falls squarely under the latter category. The relevant part of the ***Arshnoor Singh(Supra)*** is reproduced as following:

“7.3. Under Mitakshara law, whenever a male ancestor inherits any property from any of his paternal ancestors upto three degrees above him, then his male legal heirs upto three degrees below him, would get an equal right as coparceners in that property.”



7.4. In ***Yudhishter v. Ashok Kumar, (1987) 1 SCC 204***, this Court held that :

"11. This question has been considered by this Court in Commissioner of Wealth Tax, Kanpur and Ors. v. Chander Sen and Ors. [1986] 161 ITR 370 (SC) where one of us (Sabyasachi Mukharji, J) observed that under the Hindu Law, the moment a son is born, he gets a share in father's property and become part of the coparcenary. His right accrues to him not on the death of the father or inheritance from the father but with the very fact of his birth. Normally, therefore whenever the father gets a property from whatever source, from the grandfather or from any other source, be it separated property or not, his son should have a share in that and it will become part of the joint Hindu family of his son and grandson and other members who form joint Hindu family with him. This Court observed that this position has been affected by section 8 of the Hindu Succession Act, 1956 and, therefore, after the Act, when the son inherited the property in the situation contemplated by Section 8, he does not take it as Karta of his own undivided family but takes it in his individual capacity."

.....(emphasis supplied)



7.5. After the Hindu Succession Act, 1956 came into force, this position has undergone a change. Post-1956, if a person inherits a self-acquired property from his paternal ancestors, the said property becomes his self acquired property, and does not remain coparcenary property.

7.6. If succession opened under the old Hindu law, i.e. prior to the commencement of the Hindu Succession Act, 1956, the parties would be governed by Mitakshara law. The property inherited by a male Hindu from his paternal male ancestor shall be coparcenary property in his hands vis-a-vis his male descendants upto three degrees below him. The nature of property will remain as coparcenary property even after the commencement of the Hindu Succession Act, 1956.”

Therefore, in the present case, Chanan Singh died well after the commencement of the Act of 1956, sometime during the 1960s. Therefore, the latter part of the ratio in **Arshnoor Singh(supra)** squarely applies, namely that property devolving under Section 8 loses its ancestral character. The appellants’ attempt to extend the observations in **Arshnoor Singh(supra)** pertaining to pre-1956 succession to the present facts is misplaced and cannot be accepted. The factual and legal matrix here falls entirely within the post-1956 regime, wherein the heir (Rattan Singh) takes the property in his **individual capacity**.

(ii) Vineeta Sharma v. Rakesh Sharma (2020) 9 SCC 1:

24. The appellants also placed reliance on **Vineeta Sharma(Supra)** to argue that daughters and sons alike acquire coparcenary rights by birth and that,



therefore, the property in dispute should be treated as ancestral. This contention is wholly untenable for the reasons: **Firstly**, in the present case, the property devolved upon Chanan Singh under Section 8 of the Act **in the 1960s**, long before the enactment of the **2005 Amendment** to Section 6 and the decision in ***Vineeta Sharma(Supra)***. The said decision interpreted the amended Section 6 (post-2005) to clarify that daughters are the coparceners by birth in the same manner as sons. It operates retroactively on the amended provision but does not reopen or affect devolution that had already taken place under the original Act decades earlier. Hence, the principles laid down therein cannot be retrospectively applied to successions that had already concluded under Section 8 long before the amendment.

25. **Secondly**, Once a property loses its ancestral or coparcenary character by the devolution under Section 8, the doctrine of coparcenary and ancestral property no longer applies to it. ***Vineeta Sharma(Supra)*** deals with coparcenary properties and rights of daughters within them. It does not alter the settled law that when a property has already become a separate property (by statutory succession), it ceases to be ancestral or coparcenary. Thus, applying ***Vineeta Sharma(Supra)*** to a property that has already lost its ancestral character misconceives its scope. Because, once the property had devolved upon Rattan Singh under Section 8 in the 1960s, it became his **self-acquired property**, and any claim of coparcenary rights by his sons is legally unsustainable. The decision in ***Vineeta Sharma(Supra)*** is, thus, inapplicable to the present case, which concerns property that had already lost its ancestral character decades before the amendment or the judgment came into existence.



Findings

26. In view of the foregoing discussion, it is held that succession to the estate of Chanan Singh, the grandfather of the plaintiffs, opened after the commencement of the Hindu Succession Act, 1956, and the property devolved upon defendant no.1-Rattan Singh by **succession** under Section 8 of the Act, making it *obstructed heritage* and hence **self-acquired** in his hands. Consequently, he became its absolute owner. The plaintiffs, being his sons, acquired no coparcenary interest during his lifetime and had no legal right to challenge his alienations. The finding of the learned First Appellate Court, therefore, is in accordance with the settled legal position and warrants no interference. Consequently, the sale deeds (Ex.D2,Ex.D3 & Ex.D4) executed by him in favour of the vendees cannot be declared **void**. The learned First Appellate Court correctly reversed the decree of the learned Trial Court.

27. Accordingly, the present appeal is **dismissed**. The judgment and decree of the learned Additional District Judge, Ludhiana dated 24.12.1993 is affirmed.

28. Since the main appeal stands decided, any pending application(s), if any, also stand disposed of.

27.10.2025

Saurav Pathania

**(VIRINDER AGGARWAL)
JUDGE**

(i) Whether speaking/reasoned : Yes/No
(ii) Whether reportable : Yes/No