



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

**RSA No.832 of 1991 (O&M)
Reserved on : 07.04.2025
Pronounced on : 21.04.2025**

Ram Piari through her LRs and another

.....Appellants

Vs.

Maya Devi through her LRs and others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. A.K. Garg, Advocate for appellant No.1(i).

Mr. Tarunveer Vashisht, Advocate for appellant
No.1(ii) and appellant No.2.

Mr. S.S. Salar, Advocate for respondents No.1
through LRs, 1(a) to (c).

DEEPAK GUPTA, J.

Two of the defendants, namely, Ram Piari and Nirmala Devi are before this Court in the present Regular Second Appeal against judgment & decree dated 19.11.1990 of the First Appellate Court of learned Additional District Judge (III), Sangrur declaring sole plaintiff – Maya Devi to be owner of the suit property to the extent of 7/9th share, by setting aside the judgment & decree dated 02.11.1988 of the trial Court of learned Additional Senior Sub Judge, Sangrur, whereby the share of the plaintiff- Maya Devi was held to be only 1/36th.

2. Trial Court record was called. The same has been perused. In order to avoid confusion, parties shall be referred as per their status before the trial Court.

3. Parties are real siblings. Dispute is regarding 47 bighas 14 biswas of land situated in revenue estate of Village Deh Kalan, Tehsil and District Sangrur, fully detailed & described in head-note of the plaint, which



was once owned by Balasa Ram son of Jeona Ram, the father of the parties. On the death of Balasa Ram, he was succeeded by his widow - Smt. Kartar Kaur, five daughters, namely, Maya Devi, Surjit Kaur, Ram Piari alias Piari Devi, Nirmala Devi and Gurdev Kaur; and three sons, namely, Hukam Chand, Hari Chand and Bhim Chand. After the death of Balasa Ram and prior to death of his widow Kartar Kaur, one of their daughters, namely, Gurdev Kaur had expired unmarried.

4. Civil Suit bearing CS No.334 of 1985 was filed by Maya Devi against her three sisters, namely, Surjit Kaur, Ram Piari & Nirmala Devi – defendants No.1 to 3, by claiming that all three of them had relinquished their share in the suit property in her (plaintiff's favour). She claimed to be owner in possession of $\frac{3}{9}$ th share i.e. $\frac{1}{9}$ th share each of her three sisters on the basis of relinquishment and by also asserting that even by way of adverse possession, she had become owner of their share. It was further claimed by the plaintiff that by virtue of Mutation No.1177, $\frac{2}{9}$ th share of her mother – Kartar Kaur had been inherited by her.

5. Later on, three brothers, namely, Hukam Chand, Hari Chand and Bhim Chand were also impleaded as defendants No.4 to 6.

6. Defendants No.1 to 3 i.e. three sisters of the plaintiff filed written statement admitting entire claim of the plaintiff. They also made a statement to that effect before the Court on 01.02.1986. Two of the brothers, namely, Hari Chand and Bhim Chand also admitted the claim of the plaintiff by filing written statement to that effect.

7. Suit was contested only by one of the brothers – defendant Hukam Chand, who denied any relinquishment of share by the three sisters in favour of plaintiff – Maya Devi. He denied that plaintiff- Maya Devi inherited the share in the suit property of their mother – Smt. Kartar Kaur and assailed the validity of the Mutation No.1177. He also claimed the suit property to be ancestral and co-parcenary in nature in the hands of Balasa Ram. He prayed for dismissal of the suit.



8. It may be noted here itself that on 09.09.1986, an application was moved by one of the defendants – Piari Devi, i.e., the sister of the plaintiff claiming that she had not signed any document nor had made any statement and that her thumb impression and that of her two sisters had been forged. Though the said application was taken on record but no order was passed on the same.

9. Necessary issues were framed. Evidence produced by the parties was taken on record.

10. Trial Court held the suit property to be ancestral in nature; that plaintiff failed to prove any relinquishment of their share by her sisters i.e. defendants No.1 to 3 in her favour; and that mutation in itself did not prove inheriting of the share of mother – Kartar Kaur by the plaintiff in the absence of any document supporting the mutation. With these findings, the trial Court held that plaintiff was entitled to 1/36th share in the suit property, which she inherited in her own rights. Suit was accordingly partly decreed vide judgment dated 02.11.1988.

11.1 In the appeal filed by plaintiff - Maya Devi, the finding to the effect that suit property was ancestral in nature was not disturbed. It was further held that defendants No.1 to 3 had admitted the claim of the plaintiff and had also made statement to that effect before the Court and so, no further proof regarding the relinquishment in favour of the plaintiff was required.

11.2 During pendency of the above appeal, Hukam Chand also transferred his share in favour of plaintiff- Maya Devi and as such, the Appellate Court vide its judgment dated 19.11.1990 held that plaintiff was owner to the extent of 7/9th share (1/9th share of her own; 2/9th share inherited from her mother on the basis of a Will; 3/9th share relinquished by three sisters in her favour, and 1/9th share as sold by Hukam Chand in her favour). Accordingly, while setting aside the judgment & decree dated 02.11.1988 of the trial Court, the Appellate Court held the plaintiff- Maya



Devi to be owner of 7/9th share in the suit property.

12.1 Against the above-said judgment dated 19.11.1990 of the First Appellate Court, two of the defendants, Ram Piari and Nirmala Devi, i.e. two sisters of plaintiff- Maya Devi filed the present Regular Second Appeal, contending that plaintiff had claimed declaration only regarding 1/3rd share in the suit property and that Appellate Court wrongly declared the plaintiff to be owner to the extent of 7/9th share.

12.2 Still further, it is contended that there was neither any pleading nor any evidence in respect of any Will of Smt. Kartar Kaur in favour of plaintiff- Maya Devi and so, the Appellate Court wrongly held the plaintiff to be owner of 2/9th share of Kartar Kaur in her favour at its own.

12.3 Another contention raised by the appellants is that the appeal has been decided by the First Appellate Court based upon the admission of defendants- appellants, namely, Nirmala Devi and Ram Piari despite the fact that an application dated 09.09.1986 had been moved to withdraw from that admission. It was claimed that the appellants had not assailed the judgment dated 02.11.1988 of the trial Court because by that judgment, their (appellants') rights were not affected but their rights have now been affected in view of the judgment of the First Appellate Court.

12.4 With these submissions, prayer is made to set aside the judgment and decree as passed by the First Appellate Court.

13. During pendency of the present appeal before this Court, appellant No.1 – Ram Piari; contesting respondent- plaintiff- Maya Devi; and respondents Surjit Kaur & Hari Chand expired. Their respective legal representatives were brought on record.

14. An application bearing **CM No.13887-C of 2014** was moved by respondent- Maya Devi under Order 41 Rule 27 read with Section 151 CPC to place on record documents Annexures R.1 to R.5 pertaining to Civil Suit No.393 of 1986 filed by one of the defendants of the present case, namely,



Hukam Chand, i.e., one of the brothers of the plaintiff against the other siblings. Vide order dated 12.12.2014, this Court had directed to hear the said application along with the main case.

15. During further proceedings, application bearing **CM No.3387-C of 2023** has been moved by both the legal representatives of appellant No.1 – Ram Piari to place on record their respective affidavits so as to withdraw this appeal.

16. At the time of arguments before this court, learned counsel for the appellants made two fold submissions. The first submission is that decree for declaration was sought by Maya Devi only regarding 1/3rd share in the suit property and so, Appellate Court committed error in declaring the plaintiff to be owner to the extent of 7/9th share. The second submission is that as First Appellate Court has decreed the claim of the plaintiff based upon the written statement; and the statements as made by the appellants before the trial Court, so the Appellate Court could not have ignored the application dated 09.09.1986, which was moved for withdrawal of the admission. With these submissions, prayer is made to set aside the judgment & decree passed by the First Appellate Court.

17. Refuting the afore-said contentions, it is argued by learned counsel for contesting respondent No.1 – plaintiff Maya Devi that there is no scope for interference in the impugned judgment. Attention is drawn towards the fact that in the judgment dated 04.04.1989 (*Annexure R.3*) in the other litigation, which was initiated by one of the brothers, Hukam Chand, it had been held that plaintiff- Maya Devi had received 2/9th share of Smt. Kartar Kaur on the basis of registered Will. Besides, in present case, three sisters i.e. defendant Nos.1 to 3, who included the present two appellants, had admitted the entire claim of the plaintiff not only by filing written statement to that effect but also by making a statement before the Court on 01.02.1986 and that they were duly identified by their Advocate and so, it does not lie in their mouth that admission had been withdrawn



simply by moving an application on 09.09.1986. With these submissions, prayer is made for dismissal of the appeal.

18. This Court has considered submissions of both the sides at depth and have also appraised the entire record with the able assistance provided by counsel for both the sides.

19. **CM No.13887-C of 2014**: Seven siblings i.e. four sisters and three brothers are in the present application, which was initiated by plaintiff- Maya Devi. All these seven siblings were also party to another litigation bearing Civil Suit No.393 of 1986, which was initiated by one of the brothers, Hukam Chand and which was also regarding the same property. *Annexure R.1* is the copy of the plaint of that Civil Suit No.393 of 1986. In that suit, Hukam Chand had claimed suit property to be ancestral and that his share in the property was 72/252. Except for one of the brothers, Bhim Chand, all other siblings had contested that suit by filing written statement, copy of which is *Annexure R.2*. Trial Court decided that litigation vide judgment dated 04.04.1989, copy of which is *Annexure R.3*. Hukam Chand had filed appeal against that judgment but later on withdrew the same and copy of the final order is *Annexure R.4*. No reply to this application was filed by the appellants so as to contest this application or to produce any document in rebuttal.

20. Since the documents Annexures R.1 to R.4 pertain to the judicial record and regarding the litigation, which was between the same parties and in respect of the same property, so, application is allowed and documents Annexures R.1 to R.4 are taken on record.

21. Proceeding further, the trial Court vide judgment dated 02.11.1988 held the suit property to be ancestral in nature. The Appellate Court did not disturb this finding. In another Civil Suit No.393 of 1986, which was filed by Hukam Chand also, the suit property was held to be ancestral in nature as per judgment dated 04.04.1989 (*Annexure R.3*). Appeal against that judgment was withdrawn as per order dated



17.11.1990 (Annexure R.4). These documents Annexures R.3 and R.4 have been placed on record by the respondent – Maya Devi (plaintiff) herself in the additional evidence and as such, there remains no dispute in holding that suit property was ancestral in nature in the hands of Balasa Ram, the father of the parties.

22. Although the First Appellate Court did not disturb the finding of the trial Court to the effect that the suit property was ancestral in nature, but decided the share of the parties, as if the suit property was self-acquired in the hands of Balasa Ram by holding that after the death of Balasa Ram, $1/9^{\text{th}}$ share each was inherited by his nine legal heirs; that on the death of Gurdev Kaur, her $1/9^{\text{th}}$ share was inherited by mother – Kartar Kaur, who thus became owner of $2/9^{\text{th}}$ share; that Kartar Kaur by way of a Will bequeathed her share in favour of Maya Devi and in this way, Maya Devi – plaintiff became owner of $1/3^{\text{rd}}$ share. The First Appellate Court held that the other three sisters i.e. defendants No.1 to 3 had relinquished their $1/9$ share each and besides, during pendency of the appeal before the First Appellate Court, Hukam Chand had sold $1/9^{\text{th}}$ share to Maya Devi and in this way, Maya Devi had become owner of $7/9^{\text{th}}$ share. The First Appellate Court did not do any exercise regarding the correct share of the parties based upon the finding that suit property was ancestral in nature.

23. This exercise i.e. finding the correct share, based upon the ancestral nature of suit property, has been done by the trial Court in its judgment dated 04.04.1989 (Annexure R.3) in Civil Suit No.393 of 1986. It will be apt to reproduce the relevant findings to that effect:-

“17. There is no dispute between the parties about the facts of this case. When Balasa Ram expired, he left behind him widow Kartar Kaur, his three his sons, namely, Hukam Chand (plaintiff), Hari Chand and Bhim Chand (defendants) and five daughters, namely, Surjit Kaur, Maya Devi, Nirmala Devi and Piari Devi (defendants) and Gurdev Kaur. It is also proved that later on Gurdev Kaur (now deceased) daughter of Balasa Ram expired and thereafter, Kartar Kaur (mother of the parties) expires. Now the question



arises as to what property was inherited by Hukam Chand plaintiff at the time of death of his father Balasa Ram.

18. Both the parties relied upon the provisions of Section 8 of Hindu Succession Act and submitted that notional partition has to be presumed at the time of death of Balasa Ram. But (*sic By*) this notional partition, $\frac{1}{5}$ th share came to the share of Balasa Ram, $\frac{1}{5}$ th share each came to the share of his three sons, namely, Hukam Chand, Hari Chand and Bhim Chand and $\frac{1}{5}$ th share came to the share of Kartar Kaur widow of Balasa Ram. $\frac{1}{5}$ th share of Balasa Ram devolved on his widow, three sons and five daughters in equal share and each of them acquired $\frac{1}{9}$ th share out of the estate left by Balasa Ram. Hukam Chand plaintiff, therefore, became the owner of $\frac{1}{5}$ th share + $\frac{1}{45}$ th share i.e. $\frac{2}{9}$ th share. Hukam Chand, Hari Chand and Bhim Chand became the owner of $\frac{2}{9}$ th share each, while the five daughters of Balasa Ram, namely, Surjit Kaur, Maya Devi, Gurdev Kaur, Nirmala Devi and Piari Devi became the owners of $\frac{1}{45}$ th share each.”

24. It was, thus, held that Hukam Chand on the death of his father Balasa Ram had become owner to the extent of $\frac{2}{9}$ th share i.e. $\frac{1}{5}$ th share in his own rights on the basis of notional partition plus $\frac{1}{45}$ th share out of share of Balasa Ram. It has been further found that on the death of Gurdev Kaur, her $\frac{1}{45}$ th share received by her in the notional partition went to her mother – Smt. Kartar Kaur. In this way, Kartar Kaur had become owner of $\frac{11}{45}$ th share i.e. $\frac{1}{5}$ th share of her own out of the ancestral property based upon notional partition + $\frac{1}{45}$ th share inherited out of the share of Balasa Ram on his death + $\frac{1}{45}$ th share inherited from deceased daughter – Gurdev Kaur. Trial Court in its judgment dated 04.04.1989 (Annexure R.3) also held that by virtue of registered Will, Smt. Kartar Kaur had bequeathed her share in the suit property in favour of plaintiff- Maya Devi.

25. The afore-said findings were not assailed by the present appellants, Smt. Ram Piari and Smt. Nirmala Devi, despite the fact that they too were party to that litigation initiated by Hukam Chand and had even filed the contested written statement.



26. As such, it is held that it does not lie in the mouth of the appellants to contend that the First Appellate Court wrongly held the plaintiff – Maya Devi to be entitled to the share of Kartar Kaur based upon a Will. The finding of the First Appellate Court to the effect that Maya Devi had inherited the share of Kartar Kaur based upon registered Will is upheld.

27. The First Appellate Court in its judgment dated 19.11.1990 has also found that three sisters of Maya Devi i.e. Surjit Kaur, Nirmala Devi and Ram Piari had admitted to have relinquished their rights in the suit property in favour of plaintiff Maya Devi. In this regard, contention raised on behalf of appellant No.2 – Nirmala Devi that an application was moved to withdraw this admission on 09.09.1986 is found to be factually incorrect. Perusal of the application dated 09.09.1986 available at Page No.31 of the trial Court record would reveal that that application was moved only by defendant- Piari Devi alias Ram Piari; and not by Nirmala Devi. The order passed on 09.09.1986 in the margin of this application would reveal that Piari Devi had appeared in person for moving that application and the trial Court had directed to put up the application with the main case.

28. It is no doubt true that the trial Court did not decide the said application i.e. 09.09.1986 and even the First Appellate Court did not take cognizance thereof but at the same time, it is important to notice that both the legal representatives of the appellant – Ram Piari (*who only had moved application dated 9.9.1986*) have moved application bearing **CM No.3387-C of 2023** to take on record their respective affidavits so as to withdraw the appeal, as their predecessor – Ram Piari had not only filed written statement admitting the claim of plaintiff- Maya Devi but had also made a statement to that effect before the Court on 01.02.1986. Both the affidavits are taken on record.

29. As such, legal representatives of appellant – Ram Piari having filed affidavits to withdraw the appeal; and appellant – Nirmala Devi having not moved any application to withdraw from admission made in the written



statement and statement dated 1.2.1986 made before the trial court; non-decision on the application dated 09.09.1986 by the trial Court has become insignificant and, therefore, the appellants cannot get the benefit out of the same. Consequently, contention of Ld. counsel for the appellants to that effect is rejected.

30. Another contention of Id. counsel for the appellants to the effect that declaration was sought only regarding 1/3rd share in the suit property by the plaintiffs and so, First Appellate Court wrongly held her to be entitled for 7/9th share is also found to be mis-conceived. It is to be noticed that plaintiff had claimed share of her three sisters, Surjit Kaur, Nirmala Devi and Ram Piari on the basis of relinquishment by them, without touching her (Maya Devi – plaintiff’s) own rights. As such, the contention that the Appellate Court exceeded the relief is found to be devoid of any merit.

31. Proceeding further, the present Civil Suit No.334 of 1985 initiated by Maya Devi was decided by the trial Court on 02.11.1988; whereas, another Civil Suit No.393 of 1986 filed by one of the brothers, Hukam Chand was decided by the trial Court on 04.04.1989 vide judgment Annexure R.3. Maya Devi had filed appeal against judgment dated 2.11.1988; whereas Hukam Chand had filed appeal against judgment dated 04.04.1989 Annexure R3. During pendency of both those appeals, another development took place, inasmuch as Hukam Chand sold his share in the suit property to one of his sisters, Maya Devi i.e. plaintiff of the present litigation.

32. In the entirety of facts and circumstances as above, now it is required to be seen as to what will be the share of the parties. As suit property was ancestral in nature, so after the death of Balasa Ram, the trial Court in its judgment dated 04.04.1989 (Annexure R.3) rightly held the share of the parties as under:-

Hukam Chand	2/9 th (1/5 th inherited in his own rights + 1/45 th)
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	share of Balasa Ram)
Hari Chand	2/9 th share (1/5 th inherited in his own rights + 1/45 th share of Balasa Ram)
Bhim Chand	2/9 th share (1/5 th inherited in his own rights + 1/45 th share of Balasa Ram)
Kartar Kaur	1/5 th share inherited in his own rights + 1/45 th share inherited from Gurdev Kaur – deceased daughter + 1/45 th share inherited from Balasa Ram i.e. total - 11/45 th share.
Surjit Kaur, Nirmala Devi, Ram Piari and Maya Devi	1/45 th share each

33. As Smt. Kartar Kaur bequeathed her share in the suit property in favour of Maya Devi by way of a registered Will, therefore, the share of Maya Devi worked out to be $11/45^{th} + 1/45^{th}$ share i.e. $4/15^{th}$ share.

34. The three sisters - Ram Piari, Nirmala Devi and Surjit Kaur relinquished their $1/15$ share (i.e. $1/45^{th}$ share each) in favour of Maya Devi and as such, the share of Maya Devi became $4/15^{th} + 1/15^{th}$ i.e. $1/3^{rd}$.

35. Then, Hukam Chand sells his share i.e. $2/9^{th}$ in favour of Maya Devi and so, finally the share of Maya Devi in the suit property becomes to be $1/3^{rd} + 2/9^{th}$ share = $5/9^{th}$ share.

36. Consequently, it is held that final shares of the parties in the suit property are as under:-

- Defendant- Respondent No. 5 – Bhim Chand : $2/9^{th}$ share
 - Defendant- Respondent No. 4 – Hari Chand : $2/9^{th}$ share
 - Plaintiff – Respondent No. 1 – Maya Devi : $5/9^{th}$ share
 - Defendants – Respondents No. 2 & 3 and : NIL
- appellants - Ram Piari, Surjit Kaur,
Nirmala Devi and Hukam Chand

37. Consequent to the entire discussion as above, the present



appeal is hereby disposed of by holding that the appellants have no share in the suit property; that share of respondent No.1 – Maya Devi is 5/9th in the suit property and that of respondents – Hari Chand and Bhim Chand is 2/9th share each. Parties are left to bear their own costs.

38. Disposed of accordingly.

April 21, 2025

(DEEPAK GUPTA)
JUDGE

Renu

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No