

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

RSA-2576-2022 (O&M)
Reserved on: 06.05.2025
Pronounced on: 08.05.2025

RATNA DEVI @ RATNI AND OTHERS

. . . . Appellants

Vs.**KARAN SINGH AND OTHERS**

. . . . Respondents

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Argued by: - Mr. Mani Ram Verma, Advocate, for the appellants.

DEEPAK GUPTA, J.

Defendants No.1 to 3 of the case are before this Court in the present Regular Second Appeal against the concurrent findings of the Courts below, inasmuch as suit for declaration regarding property in dispute filed by plaintiffs Karan Singh and others (*contesting respondents herein*) was decreed by the trial Court on 16.09.2016 and the appeal filed by the defendants No.1 to 3 (*appellants herein*) was dismissed by the First Appellate Court on 25.02.2022.

2. Learned counsel for the appellants has been heard at considerable length. Paper-book has been perused.

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

4.1 As the record reveals, parties are closely related to each other, inasmuch as one Sobha was the common ancestor of the parties, who had four sons namely Laxman, Sheo Karan, Molar and Lala Ram. As per plaintiffs, Molar was married with Smt. Sarvan and from that wedlock, two sons namely, Ram Sarup and Amar Chand; and two daughters namely, Patori Devi and Chando were born. Molar died about 80 years back and his property

was inherited by his two sons namely Ram Sarup and Amar Chand. On the death of Molar, his widow Smt. Sarvan performed *Karewa* marriage with Lala Ram i.e., real brother of Molar and out of this wedlock, one son namely Gugan was born. In 1954, Lala Ram expired and his $\frac{1}{3}$ share in the land measuring 103 Bighas 19 biswas was inherited by his widow Smt. Sarvan and son Gugan in equal share i.e., $\frac{1}{6}$ th share each. This way, Sarvan became owner in possession of the suit land measuring 103 bigha 19 biswas to the extent of $\frac{1}{6}$ th share. Sarvan expired in the year 1983 and her mutation of inheritance bearing No.442 was sanctioned on 30.08.1990 in favour of her three sons namely Ram Sarup, Amar Chand and Gugan in equal shares i.e., $\frac{1}{18}$ th share each. Plaintiffs No.1 to 4 are the successors-in-interest of Amar Chand; whereas plaintiffs No.5 to 11 are the successors-in-interest of Ram Sarup. Contesting defendants No.1 to 8 are the successor in interest of Gugan son of Lala Ram, whereas proforma defendants No.9 to 23 are the legal heirs of Patori Devi and Chando.

4.2 As per the case pleaded by the plaintiffs, their predecessors Ram Sarup and Amar Chand are the owners of the suit land to the extent of $\frac{1}{18}$ th share each as rightly sanctioned vide mutation No.442 on 30.08.1990, but the settlement officer reviewed this mutation vide an order dated 05.12.2013 and set aside the same. After setting aside the said mutation No.442 dated 30.08.1990 (Ex.P7) by way of the order dated 05.12.2013, the said settlement officer sanctioned mutation No.844/851 (Ex.D1) in favour of Gugan and then mutation No.845/852 (Ex.D2) of the same date in favour of the contesting defendants No.1 to 8 regarding the share of said Gugan.

4.3 Plaintiffs challenged the aforesaid order of the settlement officer and the consequent mutations Exs.D1 and D2 to be null, illegal and void and not binding on their rights by submitting that these mutations were sanctioned without notice to them and without any jurisdiction and after expiry of the period of limitation. Plaintiffs claimed that they along with proforma defendants be declared as owners in joint possession of the suit property as per their respective shares as shown in mutation Ex.P7 and that

the contesting defendants be restrained from alienating the suit land to the extent of more than their share.

5.1 Contesting the suit, defendants denied that Smt. Sarvan was ever married to Molar, or that after his death, she performed *Karewa* marriage with Lala Ram. According to them, Sarvan was married only to Lala Ram and that from the said wedlock, Gugan was born, who is the only legal heir, entitled to inherit and succeed her property. Denying all other averments of the plaint, they prayed for dismissal of the suit.

5.2 Proforma defendants, admitted the claim of the plaintiffs and prayed for decreeing the suit.

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

7.1 Trial Court found that Smt. Sarvan was originally married to Molar and after his death, she had performed *Karewa* marriage with his brother Lala Ram. It was further found that from the wedlock of Molar, Sarvan had given birth to two sons namely Ram Sarup & Amar Chand, and two daughters namely Patori Devi & Chando; whereas from the wedlock of Lala Ram, Sarvan had given birth to son Gugan. It was found further that on the death of Lala Ram, his property was inherited by Sarvan jointly with Gugan and that she had become absolute owner of the inherited property. It was further held that after the death of Sarvan, her three sons namely Ram Sarup, Amar Chand and Gugan had rightly inherited the estate of Sarvan as per the provisions of Hindu Succession Act, 1956 [for short 'the Act'] and therefore, the settlement officer had wrongly reviewed the mutation of inheritance Ex.P7. Suit was accordingly decreed on 16.09.2016.

7.2 The appeal filed by widow and two sons of Gugan i.e., defendants No.1 to 3 was dismissed by the First Appellate Court on 25.02.2022, thus affirming the judgment of the trial Court.

8. Assailing the aforesaid concurrent findings, it is contended by learned counsel for the appellants-contesting defendants that Courts below wrongly held that Sarvan was earlier married to Molar in the absence of any cogent evidence to this effect. Learned counsel also contends that there was no evidence to show that Sarvan had performed *Karewa* marriage with Lala Ram. To the contrary, Sarvan had married once only with Lala Ram. Learned counsel contends further that appellants being the legal heirs of Gugan, born from the womb of Sarvan from the loins of Lala Ram were only entitled to inherit the suit property on the death of Sarvan and therefore, Courts below have wrongly decreed the suit. Learned counsel with these submissions has prayed for setting aside the judgments passed by the Courts below and to dismiss the suit.

9. This Court has considered submissions of learned counsel for the appellant and has appraised the entire record carefully.

10. While referring to the evidence brought on file, as to whether Sarvan was firstly married to Molar or not, trial Court observed in para-No.10 of the judgment as under: -

“10. Whether Smt. Sarvan was wife of Molar: It is the case of plaintiffs that Smt. Sarvan was firstly married to Molar son of Sobha. After death of Molar, Smt. Sarvan got remarried to Lala son of Sobha. On the other hand, it is the case of defendants that Smt. Sarvan was never married to Molar son of Sobha. Perusal of Ex.P1/B Discharge Book (Service in Army) of Amar Chand shows his father's name as Molar Singh and mother's name as Sarvan Devi. Meaning thereby, Amar Chand is son of Molar and Smt. Sarvan. Ex.P7 is Mutation No.442 of inheritance due to death Smt. Sarvan. It is reported in the Mutation itself that previously Smt. Sarvan was married to Molar. Ram Sarup and Amar Chand were sons of Smt. Sarvan and Molar. After death of Molar, Smt. Sarvan remarried to Lala by way of *karewa*. Gugan was son of Smt. Sarvan and Lala. It is also reported that Gugan had also given his affidavit in this regard. PW-2 Sarjan Nambardar of village aged about 80 years has deposed that Smt. Sarvan was previously married to Molar son of Sobha Ram. After death of Molar, Smt. Sarvan remarried to Lala son of Sobha Ram by way *karewa*. Testimony of this independent witness has much value being Nambardar and aged 80 years. DW-2 Randhir son of Gugan (defendant) has

deposed in his cross-examination that he does not know whether Smt. Sarvan was wife of Molar. He has not denied that Smt. Sarvan was not wife of Molar. It is pertinent to mention here that parties are closed related to each other being descendants of common ancestral Sobha. If Smt. Sarvan was not wife of Molar, then the defendants must have proved as to who was the wife of Molar. It thus appears from the evidence on record that plaintiffs by adducing the above noted oral and documentary evidence have discharged the burden to prove that Smt. Sarvan was wife of Molar.”

11. Learned First Appellate Court, apart from referring to the aforesaid evidence, also referred to the testimony of PW3 Maha Ram, who belongs to the family of the parties and who testified & proved the relationship of Sarvan having been married to Molar and after his death to Lala Ram. The First Appellate Court observed that since this witness i.e., PW3 Maha Ram belongs to the family pedigree of the parties, therefore, his version regarding this relationship is relevant and very material. First Appellate Court further observed that nothing substantial was put in cross-submission to this witness and as such, his version assumes importance on the aspect of proof relating to the relationship of Sarvan being the first wife of Molar and then her marriage with Lala Ram.

12. This Court does not find any reason whatsoever to interfere in the aforesaid concurrent findings of facts as recorded by the Courts below, which prove beyond doubt that Sarvan was earlier married to Molar, the brother of her second husband Lala Ram. There is absolutely no reason to discredit the testimony of Surjan Nambardar PW2, an 80 years old resident of the village, as well as PW3 Maha Ram belonging to the family of the parties, both of whom have stated in clear terms that Sarvan was earlier married to Molar and after his death, Sarvan had performed marriage with Lala Ram. Not only this, the discharge book Ex.P1/B reveals that Amar Chand was serving in the Army and in the Army record, his father's name is shown as Molar Singh and mother's name as Sarvan Devi. This evidence further supports the case of the plaintiffs-respondents. In these facts &

circumstances, this Court upholds the findings recorded by the Courts below to the effect that Sarvan was earlier married to Molar.

13. The contention of counsel for the appellants that it is not proved on record that Sarvan later on performed *Karewa* marriage with Lala Ram, is also without any merit. It is not disputed by the appellants-defendants that Sarvan was wife of Lala Ram. Once it is so, whether she performed marriage with him or whether she performed marriage in the form of *Karewa* becomes insignificant.

14. Once it is proved that Amar Chand & Ram Sarup were born to Sarvan from her previous husband Molar; whereas Gugan, the predecessor of the contesting defendants was born to Sarvan from her second husband Lala Ram, it goes without any dispute that all the legal heirs/children of Sarvan, whether born from the wedding of previous husband or from the second husband will be entitled to inherit her estate in accordance with Section 15 of the Act.

15. The relevant portion of the Section 15 (1) of the Act deals with the General rules of succession in case of female Hindus. It reads as under:-

“15. General rules of succession in the case of female Hindus.—(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,—

(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;

Xxxxx”

16. Section 16 of the Act talks of the order of succession and the manner in which the distribution is to take place amongst the legal heirs of female Hindu. This Section reads as under:-

“16. Order of succession and manner of distribution among heirs of a female Hindu.—The order of succession among the heirs referred to in section 15 shall be, and the distribution of the intestate’s property among those heirs shall take place according to the following rules, namely:—

Rule 1.—Among the heirs specified in sub-section (1) of section 15, those in one entry shall be preferred to those in any succeeding entry, and those included in the same entry shall take simultaneously.”

17. There is no dispute to the issue that the property in the hands of Sarvan inherited from her second husband Lala Ram was her absolute property. Once it is so, after her death, it will devolve upon her children/legal heirs as per Section 15 of the Act. As the provision would reveal, it does not make any distinction of sons and daughters born to female Hindu from different husbands.

18. A similar question was also dealt with by this Court in ***Surender Singh Vs. Pirthi Singh and others*** [RSA-40-2010 decided on 02.04.2019] reported in ***AIR 2020(NOC) 613***; and also, in ***Ram Kali Vs. Sohan Lal and others, AIR 1972 P&H (419)***.

19.1 In ***Surender Singh’s case (supra)***, similar facts were there as in the present case. In that case, one Ganesha was married with Daulatia and from this marriage two sons namely, Pirthi Singh and Kalu Singh were born. After the death of the Ganesha, Daulatia entered into *Karewa* marriage with his brother namely, Arjun Singh and from that marriage, Kamla and Kasturi were born. After the death of Daulatia, the property inherited by her from her husband Arjun Singh was mutated in the name of Kamla and Kasturi, which was assailed by Pirthi Singh and Kalu Singh i.e., the sons born from the first husband. After referring to the provisions of Section 15 of the Act, this Court observed as under:

“7. As per above provisions, the property of which a female Hindu was absolute owner, as per Section 15 (1) (a) of the Act shall fall upon her sons and daughters and son and daughter of pre-deceased son and daughter. This provision does not make any distinction of sons and daughters born to female Hindu from different husbands. The question is of succession to estate of Daulatia and not of her husband. The property, which she has inherited from her first husband, second husband or acquired by her from any other source will devolve as per provisions of Section 15 (1) (a) of the

Act, meaning thereby the sons and daughters born to her from her first and second marriage will inherit the property left by Daulatia in equal shares. To further understand this proposition, it will be relevant to look into an example. Suppose a lady is married to 'A' and from this marriage two children were born to her. On death of 'A' she married 'B' and no children was born from that marriage. After death of 'B', she became owner of entire property left by him. After her death intestate succession of that lady will devolve upon to her children from her first marriage and the property will not revert to heirs of 'B'."

19.2 Apart from above, this Court in ***Surender Singh's case (supra)*** also observed the impact of Section 16 of the Act and held as under:

"15. The legal provisions relating to rules of succession in case of female Hindu as incorporated in Section 15 of the Act clearly lay down that absolute property owned by a female, shall devolve according to rules as 9 of 11 laid down under Sections 15 and 16 of the Act. The words 'sons' and 'daughters' used in Section 15 (1) (a) of the Act include the children of a female whether born to her from first marriage or second marriage or even illegitimate. They are sons and daughters of the female for the purpose of succession of her absolute property, as such, observations of 1st Appellate Court calls for no interference on this score."

20. Similar view was taken by this Court in the case of ***Ram Kali (supra)***.

21. In view of the aforesaid consistent position of law, it is clear that on the death of Sarvan, her estate will be inherited by her Legal heirs/children as per Section 15 of the Hindu Marriage Act, 1955 amongst all the children irrespective of the fact that whether they were born from her first husband or the second husband and irrespective of the fact as to whether the property in question owned by Sarvan was inherited by her from her previous husband or the second husband.

22. One more contention raised by the learned counsel for the appellants is that suit was barred by limitation, inasmuch as mutation in

favour of Gugan had been sanctioned way back in 1990; whereas the present suit was filed in 2014. The contention is devoid of any merit, as it has been rightly found by the Courts below that though the mutation was rightly sanctioned in the year 1990 in favour of Ram Sarup, Amar and Gugan but the Consolidation Officer reviewed the said order on his own in 2013 without issuing any notice to the plaintiffs’ i.e., successors-in-interest of Amar and Ram Sarup and as such, suit filed in the year 2014 was well with limitation.

23. Consequent to the above discussion, this Court does not find any reason to disturb the well-reasoned concurrent findings of the facts as recorded by the Courts below, which are based upon proper appreciation of evidence as well as the legal position.

24. Consequently, the present appeal is held to be without any merit in absence of any illegality and perversity in the findings recorded by the Courts below. As such, the same is hereby dismissed.

08.05.2025 <i>Vivek</i>	(DEEPAK GUPTA) JUDGE
<i>Whether speaking/reasoned?</i>	Yes
<i>Whether reportable?</i>	Yes