



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

RSA-791-1996 (O&M)

Date of decision :- 08.12.2025

Khanzani Devi @ Sajani and others

... Appellants

Versus

Nav Bharat and others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :-

Mr. Kulvir Narwal, Advocate with
Ms. Perna Aggarwal, Advocate
for the appellants.

Mr. Kuldeep Khandelwal, Advocate
for the respondent No.1.

VIRINDER AGGARWAL, J.(Oral)

1. The appellants/defendants, being aggrieved by the judgment and decree dated 19.12.1995 passed by the learned Additional District Judge (II), Jind whereby the well-reasoned judgment and decree dated 09.03.1992 of the learned Additional Senior Sub-Judge, Narwana was unjustifiably overturned, most respectfully invoke the appellate jurisdiction of this Court through the present Regular Second Appeal (for short “RSA”). The appellants seek restoration of the decree rightly granted by the Trial Court and appropriate redress for the substantial miscarriage of justice that has resulted.



1.1. It is most respectfully submitted that the impugned judgment and decree are vitiated by manifest perversity, substantial errors of law, and a fundamentally flawed appreciation of the evidentiary record, culminating in a grave miscarriage of justice. The appellants therefore earnestly pray that this Court be pleased to set aside the impugned judgment and decree and to reinstate the lawful and well-reasoned decree rendered by the learned Trial Court.

2. The circumstances precipitating the present appeal may be succinctly stated thus:-

“Respondent Basau, father of the appellant Nav Bharat, was a substantial Bisweddar holding exclusively ancestral property, over which he lacked authority to alienate except for legal necessity. However, being habitually intoxicated, of dissolute habits, and a confirmed spendthrift, he effected several alienations while under the influence of liquor and without any necessity for the estate.

He mortgaged 48 kanals (960/7500 share of 75 kanals 9 marlas) to Respondents 1, 2, and 2A for ₹42,000 vide Mortgage Deed No. 2788 dated 1.1.1985, and another 40 kanals (800/7509 share of 375 kanals 9 marlas) to Respondents 3 and 4 for ₹35,000 by Mortgage Deed No. 794 dated 14.6.1985. He thereafter executed a 99-year lease of 42 kanals 7 marlas in favour of Respondent 5 and the predecessors of Respondents 7 and 8 for ₹20,000. Finally, he sold 84 kanals 5 marlas, as per Jamabandi 1980-81, to Respondents 9 to 13 for ₹2,63,281.25 through Sale Deed No. 67 dated 9.4.1987.

Alleging that these transactions were wholly without legal necessity and detrimental to the ancestral estate, the appellant instituted the suit leading to this appeal seeking a declaration that the mortgage



deeds, lease deed, and sale deed are illegal, void, and non-binding on his coparcenary rights. Hence the suit.”

3. Upon issuance of summons, the defendants entered appearance and submitted three distinct sets of written statements. Respondents 1, 2, and 2-A contended that Basau was of sound character and that the mortgages were executed for *bona fide* legal necessity, with genuine consideration duly paid, including at the time of the challenged sale deed.

3.1. Respondents 3 to 13 adopted the same defence, asserting that the mortgages, lease, and sale were all for legal necessity and beneficial to the estate. They further claimed that the property was Basau’s self-acquired land and that the consideration was used to discharge bank loans and redeem earlier mortgages.

3.2. Respondent Basau aligned himself with the other respondents, denied the appellant’s allegations, and reiterated that the land was his self-acquired property acquired prior to the appellant’s birth. He further pleaded that the suit was undervalued, not maintainable, suffered from misjoinder of causes of action, lacked cause of action, and was barred by res-judicata.

4. Upon a careful scrutiny of the pleadings, documents, and submissions of both sides, the Court proceeded to frame the following issues for adjudication on ‘13.12.1988’, so as to ensure a precise and comprehensive determination of the parties’ competing claims and defenses, as enumerated below:-

1. *Whether the mortgage deed No. 2788 dated 01.01.1985 mortgage deed No. 794 dated 14.06.1985, lease deed no. 1094 dated*



29.7.1986 and sale deed No.67 of 09.04.1987, of the suit property were without consideration and are liable to be set aside as alleged? OPP

2. *Whether the suit property was the ancestral property in the hands of defendant No.15, if so Its effect? OPP*
3. *Whether the plaintiff and defendant no.15 are governed by the customary law as alleged? OPP*
4. *Whether the suit has not been properly valued for the purposes of Court fee and jurisdiction? OPP*
5. *Whether the suit is not maintainable in the present form? OPD*
6. *Whether the suit is bad for mis-joinder of causes of action? OPD*
7. *Whether the plaintiff has got no cause of action to file the present suit? OPD*
8. *Whether the suit property has been alienated by defendant No.15 for legal necessity as alleged? OPD*
9. *Whether the suit is bad on the principle of res-judicata? OPD*
10. *Relief.*

Issues No.1 and 2 mentioned above were re-framed on 25.01.1991, which is as under:-

1. *Whether the impugned deeds were executed for consideration and for legal necessity? OPP*
 2. *Whether the land in dispute was ancestral in the hands of mortgagor qua the plaintiff? OPP*
 3. *Relief.*
5. Both parties were afforded adequate and meaningful opportunity to lead evidence in support of their respective claims. Upon culmination of the trial and after hearing learned counsel for both sides, the



learned Additional Senior Sub-Judge, Narwana proceeded to dismiss the suit.

5.1. Aggrieved by the said judgment and decree, the appellant/plaintiff carried the matter in appeal before the learned Additional District Judge (II), Jind, who allowed the appeal and decreed the suit, making the following observations:-

“For the reasons discussed, the trial Court’s findings on Issue No. 1 (as amended on 25.1.1991) are reversed insofar as they uphold the impugned lease deed. The findings on Issue No. 11 concerning Mortgage Deeds Nos. 2788 (1.1.1985), 794 (14.6.1985), and Sale Deed No. 67 (9.4.1987) are affirmed, the appellant having raised no challenge to them at the hearing.

The appeal accordingly succeeds to this limited extent. Lease Deed No. 1094 dated 29.7.1986, relating to 42 kanals 7 marlas in Rect. No. 75, Killa Nos. 18/2, 19/2, 20/2, 21, 22 and 23 (Khewat/Khata No. 98/98, Jamabandi 1980–81), executed by Basau in favour of Ram Kumar, is declared illegal, void, and non-binding on the appellant, and is hereby set aside. Intimation of its cancellation shall be sent to the Sub-Registrar, Narwana, and an endorsement made on Ex. D-1. Parties shall bear their own costs. Decree-sheet be prepared and records transmitted accordingly.”

6. Dissenting from the judgment and decree rendered by the learned First Appellate Court, the appellants/defendants preferred the present appeal. Upon admission, notice was duly issued, whereafter respondent No. 1 entered appearance and contested the proceedings. The records of the Courts below were thereafter requisitioned and are available on the DMS for thorough examination and adjudication.



7. I have heard learned counsel for the parties and perused their submissions in conjunction with the pleadings, evidence, and the findings recorded by the learned Courts below. The record has been meticulously examined to determine *‘whether the impugned judgment and decree are vitiated by any legal infirmity or error warranting interference by this Court’?*

8. The instant appeal raises the following *‘quaestio juris substantialis’* for adjudication and determination before this Court:-

- “i. Whether the learned Additional District Judge erred in holding that the suit property constituted ancestral property forming part of a Joint Hindu Family estate?*
- ii. Whether the First Appellate Court misappreciated or misinterpreted the testimony of the guardian representing the minor plaintiff?*
- iii. Whether any custom pertaining to the alienation of ancestral property, alleged to be prevalent among the Jaats of Jind District, has been duly proved on the record?*

9. *Whether the learned Additional District Judge erred in holding that the suit property constituted ancestral property forming part of a Joint Hindu Family estate:-* With respect to the issue of whether the suit property constituted ancestral and coparcenary property of a Joint Hindu Family, the First Appellate Court concluded that it was ancestral in nature. This finding was premised on the sequence of inheritances: Kehar Singh died issueless on 06.08.1959, and his estate was mutated in favour of Mehar Singh vide Ex. P16. Upon Mehar Singh’s death, his share devolved equally upon defendant No. 15, his sisters Bohti and Rajni, and his mother



Phulma through mutation Ex. P17. Thereafter, Mehar Singh's share was gifted to Basu, Bohti, Rajni, and Phulma under gift deed Ex. P18. It is, therefore, undisputed that defendant No. 15 acquired his father Mehar Singh's share by virtue of gift, and that Mehar Singh himself had inherited the share of his brother, Kehar Singh, which was then further inherited by defendant No. 15 along with his sisters and mother.

9.1. However, the First Appellate Court failed to appreciate that the succession to Mehar Singh opened after the commencement of the Hindu Succession Act, 1956. At the time of his death, Mehar Singh was survived by Class I female heirs namely, his daughters and his wife. Under the proviso to Section 6 of the unamended Hindu Succession Act, 1956, where a male Hindu dies after the Act's enforcement leaving behind any Class I female heir, or a male heir claiming through such female heir, his interest in ancestral property devolves by succession under Section 8, and not by survivorship as in the case of co-parcenary property. It is well-settled law that any property inherited by a male Hindu under Section 8 becomes his self-acquired property, in which his heirs do not acquire any birthright. This principle has also been affirmed by this Court in *Amarjit and others v. Rattan Singh and others*, 2025 NCPHHC14 6221. Moreover, the remaining half share was subsequently acquired by Basu through the gift deed.

9.2. Consequently, the suit property in Basu's hands cannot be characterised as ancestral property belonging to a Joint Hindu Family. Basu, therefore, had full authority to deal with the property in any manner he deemed fit, and during his lifetime, his son the respondent-plaintiff had no right to challenge his alienation. The findings of the learned Additional



District Judge holding the suit property to be ancestral and co-parcenary are thus unsustainable in law and liable to be set aside. Accordingly, the findings on Issue No. 2 stand reversed.

9.3. *Whether the First Appellate Court misappreciated or misinterpreted the testimony of the guardian representing the minor plaintiff:-* With respect to the proof of custom, the learned First Appellate Court has addressed this issue in paragraph 14 of its judgment. Therein, the Court noted that Smt. Bohti, the guardian of the minor on whose behalf the present suit has been instituted, stated in her cross-examination that the parties are Hindus and are governed by Hindu law. Despite this clear admission, the First Appellate Court proceeded to hold that the appellants-defendants ought to have further questioned the witness regarding the specific aspects in which Hindu law was being followed, and only thereafter could it be ascertained whether the parties were governed by Hindu law in matters relating to alienation of property. The relevant extract of the findings recorded by the learned First Appellate Court is reproduced as follows:-

“16. So far as the findings of the ld. trial court on issue no.2 are concerned, the ld. trial court hold that the property in dispute was not the ancestral, rather it was the self acquired property of respondent Basau. The ld. trial our relied upon Ex. P1 and hold that at page no.11 of this document the entry made in red ink goes to show that respondent Basau got the land through gift and partly through inheritance from his uncle Kehar Singh. Thus, it was held that the entire land in dispute with respondent Basau was not inherited from his father Mehar Singh. This finding of the



*Id. trial court is al so without any merit. From the perusal of the pleadings and evidence of the parties, it is clear that the appellant and respondent Basau are descendents of one Mauji. The property in dispute has once owned and possessed by Mauji. Mauji died and his estate was inherited by his two sons namely Kehar Singh and kis Mehar Singh vi de mutation of which Ex. P14 is the copy and Ex. P14/A is the Hindi translation of this copy. Kehar Singh died issueless on 6.8.1959 and his estate was inherited by Mehar Singh vide mutation of which Ex. P. 16 is the copy. Mehar Singh died and that share was inherited by Basau, the son, Bohti and Rajani daughters and Fhulma the widow of Mehar Singh in equal shares vide mutation of which Ex. P. 17 is the copy. on the other hand Mehar Singh had gifted his own 1/2 share vide gift deed Ex. F. 18 in favour of Basau to the extent of 1/4 share; Bohti and Rajani to the extent of 1/2 share in equal shares and Smt. Phulma to the extent of 1/4 share. In that manner what ever the share was inherited by Basau from Mehar Singh and Kehar Singh was owned by him at present. In view of the law laid down in **Khijar Hayat and another Vs. Alayar Shah, AIR 1926 Lahore-171**, the share of the property of Mehar Singh received by Basau respondent through gift was also liable to be held as ancestral because in this authority it was held that where the fift is to a person who will succeed to it by inheritance apart from the gifted property originally ancestral does not become the self acquired property of the donee. This view was also supported by the Divn. Beach of Hon'ble High Court of Punjab and Haryana in 1963 Cr. L.J.335. In the same way, in view of the law laid down in Bakhtawar Singh etc. Vs. Smt. Sohbi etc. 1963 Cr. L.J.17 it can be said that the property in dispute was the ancestral property in the*



hands of the respondent Basau because in this authority it was held that the rule is firmly settled, that, that property is ancestral which has come from the common ancestor by the descendent, and the ancestral property does not necessarily cease to be ancestral, nor become the self-acquired or non-ancestral on partition.”

9.4. This portion of the findings recorded by the learned First Appellate Court clearly reveals that its conclusions rest on mere conjectures and unfounded assumptions. Once the witness deposing as the guardian of the minor plaintiff unequivocally admitted that the parties are governed by Hindu law, the matter stood concluded. The appellants-defendants were under no obligation to further interrogate the witness regarding the specific areas in which Hindu law was followed; it was for the witness to clarify any such distinction if it existed. Her categorical admission was sufficient to undermine her credibility concerning the alleged custom said to prevail among the parties. Accordingly, the findings of the learned First Appellate Court are vitiated by a gross misreading and misappreciation of the guardian's testimony on the issue of the existence of any such custom within the plaintiff's family.

9.5. *Whether any custom pertaining to the alienation of ancestral property, alleged to be prevalent among the Jaats of Jind District, has been duly proved on the record:-* With respect to the alleged custom prevailing among the Jaats of District Jind, the learned First Appellate Court has addressed the issue in paragraph 15 of its judgment, which reads as follows:-



“15. No doubt in 1992 L.J.R. 521 (Supra) cited by the 1d. counsel for the respondents it was held that in order to prove the existence of the custom it was necessary to establish that the alleged culter was uniformly and continuously Eolbwed from the time imemorial and not oppose to public policy, but this authority does not help the respondents because nothing has come on the record which can go to show that the appellant and respondent Basau have ceased to be governed by customary law and the customary law was against the public policy. In 1965 Cr.L.J. 567 (supra)cited by the Id. counsel for the appellant the full Bench of Hon'ble High Court of Punjab and Haryana hold that the customary law in the matters of alienation was not completely abrogated by the passing of Hindu succession Act. Thus it is clear that even after the passing of the Hindus succession Act, customary law still existing in the matters of alienation in Punjab and Haryana, In 1961 P.L.R. 537 (Supra) the Single Bench of the Hon'ble High Court of Punjab and Haryana hold that the Hindu succession Act has brought a revolutionary change as far as the respective heirs under the Hindu law and customary lav are concerned. The rules of succession under Hindu law as well as the customary law live base abrogated and the succession is now governed by the rules laid down in the Act. The Act provides a lat of heirs who would inherit to a male on list of heirs who sold inherit to female. It was further held in this authority that no provision has been made in the Hindu succession Act enlarging the estate of male owners and the restrictions on the disposal of certain property have continued as such. No where under the act any restriction attaching to the powers or male proprietor governed by the customary law of Punjab in respect of alienating of ancestral immovable property have been abrogated.



Therefore, in view of the law laid down by the Hon'ble High Court in this authority, it can be said that by passing of the Hindu succession Act, the customary law in the matters of alienation was not abrogated and in view of the law laid down by the Hon'ble High Court of Punjab and Haryana in 1982 P.L.R. 237 (Supra) cited by the ld. counsel for the appellant, it can be said that courts have recognised the custom under a particular matter for a long time and this being so, there was no necessity to prove that fact. The court can take judicial notice of such fact. It was further held that the Jats in the State of Haryana which was earlier a part of Erstwhile State of Punjab are governed by the customary law. Thus, in view of all these authorities I have no hesitation to hold that the id. trial court fell into error in appreciating the pleadings of the parties and wrongly held that there was no clinching evidence to prove that the appellant and respondent Basau were not governed by the customary law in the matters of alienation. Therefore, I hereby reverse the findings of the ld. trial court on issue no.3 and hold that the appellant and respondent Basau are governed by customary law of this area in the matters of alienation and this being so, respondent Basau was not competent to alienate his ancestral property without any legal necessity and if he had alienated the same, the appellant being his son has got the right to challenge that alienation, but this finding of mine would help the appellant if the appellant proves that the property in dispute was ancestral property in the hands of respondent Basau and the appellant and this thing was to be proved under issue no. 2.”

9.6. The finding of the learned First Appellate Court regarding the alleged custom prevailing among the Jaats of Haryana stands in direct



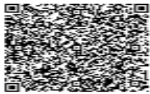
contradiction to the law laid down by the Hon'ble Supreme Court in **Sube Singh and Another v. Kanhaya and Others, 1964 (2) SCR 899**. In that case, the issue before the Court was whether a custom existed among the Jaats of Jhajjar Tehsil, District Rohtak, empowering the holder of ancestral agricultural land to transfer such land for consideration. The Hon'ble Supreme Court, while addressing this question, recorded its conclusions in paragraphs 7 and 8 of the judgment, which read as under:-

“7. We are unable to accept this contention. We find nothing in the *Riwaj-i-am* entries which would show that the decisions were not justified. In *Joseph's Manual* it is said that “a sonless proprietor has full power to alienate his property by sale or mortgage even if there is no necessity”. It is true that it has also been said there that “whether a proprietor with sons has the same power is a more doubtful case.” In spite of this, however, the Courts have since 1913 consistently held that the power of a holder even where he has sons to alienate ancestral property for consideration is unrestricted. It is not now possible nor would it be right to upset the law settled by these decisions on the slender ground of the doubt expressed in *Joseph's Manual*. In *Tupper's Statements of Customary law* vol. 2, dealing with Rohtak District, it has been said at p. 178 that “it is quite common for people to sell or mortgage their land. In cases of sale, the right of pre-emption is observed” : (paragraph 25). This statement makes no distinction between the cases of a man with a son and one without a son. We find nothing in the records if custom to which our attention has been drawn to justify the view that the case of the holder of an ancestral property having a son is different in this regard from that of a holder without one. Furthermore, it would be strange if



the existence of sons made any difference that the point was not noticed in any of the very large number of cases dealing with the custom. We think that there is a great deal to be said in favour of the contention of Mr. Achhru Ram that the restriction on the power to alienate where it exists is based on the agnatic theory and therefore, no distinction can be made between a sonless holder and a holder having a son : see Gujar v. Sham Das [107 P.R. 1887.].

8. *We come now to the only case which takes a different view and on which the appellant naturally laid great stress, namely, Budal v. Kirpa Ram [76 P.R. 1914.]. That was a case of a sonless holder. It was held that among Jats in the Rohtak District there was no unlimited power in holders of ancestral property to alienate it. This case has however not been followed in any of the subsequent decisions and in most cases its authority has been discounted. That we think is enough to prevent us at this distance of time from reviving the view taken in that case. Furthermore, as was pointed out, this case does not refer to the earlier authorities, for example, Telu v. Chuni [231 P.L.R. 1913.]. The only authority to which it refers is Tupper's Customary Manual, but the view expressed there was not accepted as sufficient authority because in the introduction Tupper said (p. 173), that Mr. Purser who gave him the paper from which he prepared his record "did not consider that it can be relied on in doubtful points". This is hardly any reason for there was nothing to show that the customary power was doubtful. It would thus appear that the decision in Budal v. Kripa Ram [76 P.R. 1914.] was not a satisfactory one."*



9.7. The Hon’ble Supreme Court ultimately concluded that the learned Courts below had correctly held that a Jaat proprietor possessed unrestricted authority to alienate his ancestral land for consideration.

10. In light of the settled legal position laid down by the Hon’ble Supreme Court, the findings recorded by the learned First Appellate Court cannot be sustained. No evidence has been produced to establish any custom among the Jaats that is contrary to the aforesaid authoritative pronouncement. Accordingly, the appeal is allowed, the judgment of the learned First Appellate Court is set aside, and the appeal filed by the appellants stands allowed.

11. Consequent upon the final adjudication of the main matter, all pending miscellaneous applications, if any, arising from or incidental to the present proceedings, shall stand disposed of by necessary implication. No separate orders are required, as their consideration does not survive in view of the conclusions reached in the principal case.

08.12.2025

Gaurav Sorot

Whether reasoned / speaking?

Whether reportable?

Yes / No

Yes / No

(VIRINDER AGGARWAL)

JUDGE