

RSA-4804-2016 (O&M)

2025.PHHC.152264



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

RSA-4804-2016(O&M)

Date of decision : 04.11.2025

Sohan Singh

..... Appellant

Versus

Nahar Singh & ors.

..... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Ramandeep Singh, Advocate and
Mr. Onkar Rai, Advocate
for the appellant.

Mr. Arvind Mittal, Advocate
for respondent No.1.

None for respondent No.2.

PANKAJ JAIN, J. (ORAL)

1 Appellant-plaintiff is in second appeal. For convenience parties hereinafter are referred to by their original position in the suit i.e. the appellant as plaintiff and the respondents as defendants.

2 Plaintiff is in second appeal aggrieved of the judgment and decree passed by the Lower Appellate Court whereby suit filed by the plaintiff has been ordered to be dismissed reversing the findings recorded by the Trial Court.

3 Plaintiff filed suit seeking declaration to the effect that land measuring 1B-14B-0B as detailed out in the head note of the plaint is the ancestral coparcenary property wherein the plaintiff has equal right and



interest by birth and the sale deed/transfer deed dated 27.01.2009 registered vide document No.20482 dated 28.01.2009, executed by Nazar Singh in favour of Nahar Singh-defendant No.1, is illegal being without consideration and being without legal necessity. Further prayer was for grant of decree of permanent injunction.

4 Suit was contested by defendants. As per defendants, the suit land is the self acquired property of defendant No.2. The same was exclusively owned and possessed by Nazar Singh-defendant No.2-the father. Neither the plaintiff nor defendant No.1 had any right, title or interest thereon. Though it was admitted that the property came in the hands of Najar Singh from his father Bhagat Singh, but it was claimed that Bhagat Singh had three sons namely Nazar Singh, Harnam Singh and Gurnam Singh. The property was partitioned among the said three sons. Thus, on partition the property lost its ancestral character.

5 On the basis of the pleadings, suit filed by the plaintiff was put to trial by the Court of the First Instance framing following issues :-

- 1) Whether the plaintiff is entitled for decree for declaration as prayed for? OPP*
- 2) Whether the plaintiff is entitled for permanent injunction as prayed for? OPP*
- 3) Whether the suit is not maintainable in the present form? OPD*
- 4) Whether the plaintiff has not come to the Court with clean hands? OPD*
- 5) Whether the suit is bad for non-joinder of necessary parties? OPD*



- 6) *Whether the plaint is not properly valued for the purpose of Court fee and jurisdiction? OPD*
- 7) *Whether the suit is not properly verified and not supported by a legal and valid affidavit? OPD*
- 8) *Whether the plaintiff has no cause of action to file the present suit? OPD*
- 9) *Relief.”*

6 The Court of the First Instance found that the partition amongst the sons of Bhagat Singh prior to the year 1992 could not be proved. It being admitted case that the land in the hands of Najar Singh has travelled from his father. Therefore, the suit property is ancestral property and decreed the suit filed by the plaintiff.

7 Dissatisfied with the judgment and decree passed by the Court of the First Instance, defendants No.1 & 2 preferred appeal. The Appellate Court has reversed the findings recorded by the Court of the First Instance on issue No.1 & 2, holding that once it stands proved that the land was partitioned among the sons of Bhagat Singh and Nazar Singh came in exclusive possession of his share of 21 bighas of land therefore, the property lost its ancestral character and was self-acquired property in the hands of Nazar Singh.

8 Counsel for the appellant has assailed the findings recorded by the Lower Appellate Court. He submits that it was proved on record that the property in hands of Nazar Singh was a coparcenary property and that Nazar Singh executed transfer deed in favour of Nahar Singh-defendant No.1 without any consideration. Thus, the Lower Appellate Court ought not have reversed well-reasoned findings recorded by the Court of the First Instance.



9 *Per contra*, Mr. Arvind Mittal, Advocate for respondent No.1 submits that no evidence was led by the plaintiff to prove that the property in hands of Nazar Singh was ancestral. The property having been partitioned amongst Nazar Singh and his brothers, the same lost its ancestral character if there was any. He further submits that 21 bighas of land came to the share of Nazar Singh. It has come on record that he sold 20 bighas to various colonizers. At no point of time any objection was raised. Thus, competence of Nazar Singh being not in question *qua* the other sale deeds, no objection can be taken against the sale deed in favor of defendant No.1 impugned in the present suit.

10 Having heard learned counsel for the parties and after carefully going through records of the case, this Court finds that the issue germane to decide the *lis* is :-

“Whether property in the hands of Nazar Singh is coparcenary property or not?”

11 Counsel for the appellant has not been able to point out any evidence on record that would show that the property in the hands of Nazar Singh was an ancestral property. Apart from the pedigree table, there is nothing on record to show that the land in question travelled for four degrees for succession.

12 In view thereof, this Court finds that Nazar Singh having succeeded to the estate of Bhagat Singh under Section 8 of the 1956 Act, it is a case of succession and not survivorship. The issue being fully covered by the ratio of law laid down by Supreme Court in the case of ***Commissioner of***



Wealth-Tax v. Chander Sen, Supreme Court of India, 1986 AIR Supreme Court 1753, no fault can be found with the findings recorded by the Courts below.

13 That apart, competence of Najar Singh to sell 20 bighas of land was not challenged even in the present suit. Once plaintiff does not dispute power of Nazar Singh to sell major portion of land, there is no reason to allow him to challenge the sale deed in favour of defendant.

14 Finding no merits in the present appeal, the same is ordered to be dismissed.

15 Pending miscellaneous application, if any, also stands disposed off.

04.11.2025
Pooja Sharma-I

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No