



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 28.10.2025

1. RSA-1982-2014 (O&M)

Ran Singh

...Appellant(s)

Vs.

Ramphal and others

...Respondent(s)

AND

2. CR-3131-2014 (O&M)

Ran Singh

...Appellant(s)

Vs.

Ram Autar and another

....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. R.A.Sheoran, Advocate for the appellant(s).

NIDHI GUPTA, J.

RSA-1982-2014 (O&M)

Present Second Appeal has been filed by the plaintiff No.1 against the judgment of reversal dated 09.01.2014 passed by the District Judge, Bhiwani; whereby first Appeal filed by the defendants/respondents No.1 to 3 has been accepted and suit of the appellant/plaintiff has been dismissed.

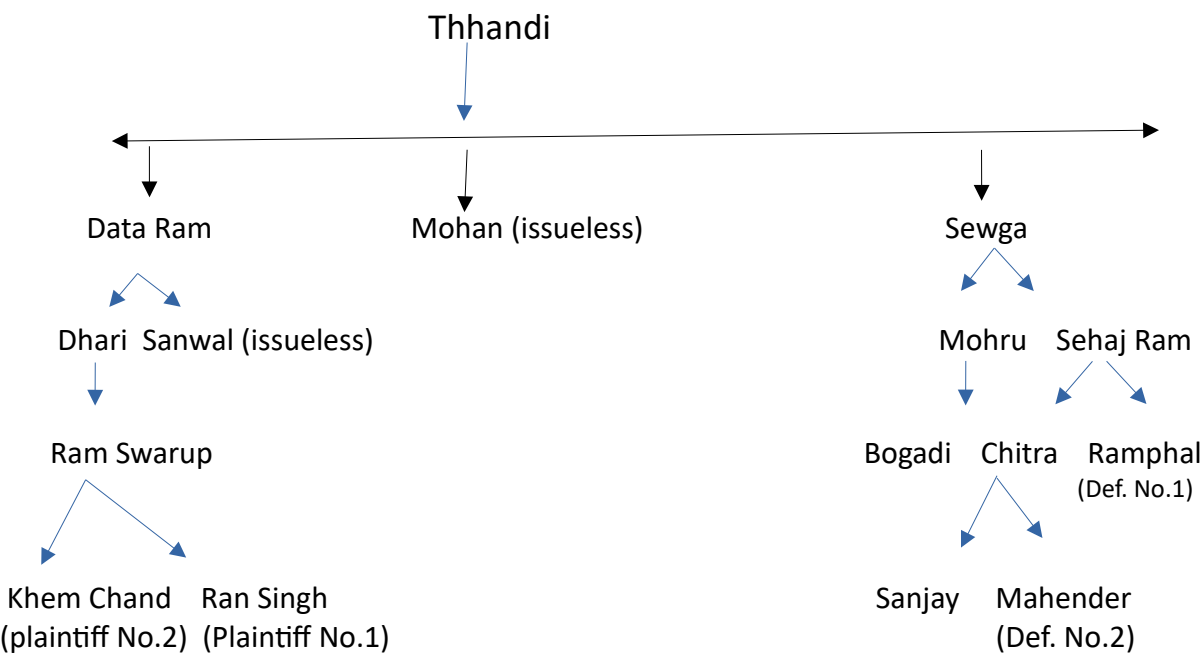
CR-3131-2014 (O&M):

Present Civil Revision Petition under Article 227 of Constitution of India has been filed by the plaintiff against the order

dated 15.05.2012 (Annexure P-1) passed by Id. Civil Judge (Junior Division), Charkhi Dadri and the judgment dated 09.01.2014 passed by Id. District Judge, Bhiwani; whereby application filed by the petitioner/plaintiff under Order 39 Rule 2A CPC for awarding punishment to the respondents for violation of status quo order dated 15.10.2005 passed by the learned Trial Court, has been dismissed.

2. Both, the above said Regular Second Appeal and Civil Revision Petition, are being heard together and disposed of by this common order, as both proceedings emanate from the same civil suit and are between the same parties and issues involved in both cases are identical. For the sake of brevity, facts are being taken from the RSA, and parties are being referred to as per their status in RSA-1982-2014.

3. In order to correctly appreciate the dispute at hand, following pedigree table shall be useful: -





4. Brief facts of the case are that the appellant/plaintiff No. 1 had filed the present suit for declaration that the registered Sale Deed No. 3070 dated 05.10.2005 executed by defendants No. 1 and 2 in favour of defendant No.3 is illegal, null and void. It was the case of the plaintiffs that the suit property is ancestral in nature, and joint property of the plaintiffs and defendants No.1 and 2, which has not yet been partitioned. The plaintiffs and defendants No.1 and 2 have a common ancestor, namely, Thhandi, who was the owner in possession of the suit property. After him, the property came to the shares of his 3 sons namely (1) Data Ram; (2) Mohan; and (3) Sewga in equal shares. After the death of Data Ram, his share was inherited by his two sons, namely, Dhari and Sanwal in equal shares. One son of Thhandi, namely Mohan had died issueless. It was the case of the plaintiffs that entire share of the said Mohan was received in equal shares through mutation by Dhari and Sanwal. This way, the entire land of Thhandi came to the share of Dhari and Sanwal in equal shares upto the extent of 2/3rd share; whereas 1/3rd share was received by Sewga. After the death of Sewga, his property was divided in equal shares between Mohru and Sahaj Ram. Sanwal had died issueless and his entire share vested in Dhari and thereafter Ram Swarup son of Dhari got 2/3rd share out of total land. The share of Sahaj Ram i.e. 1/6th share vested into his LRs namely Chitra and Ramphal in equal shares i.e. 1/12th share each. The share of Chitra i.e. 1/12th share was vested into his two sons namely Sanjay and



Mahender (defendant No.2) in equal shares i.e. 1/24th share each. Defendant No.1 got 1/12th share; whereas defendant No.2 had got 1/24th share i.e. equal to 1/8th share from the total land which he had received from Sahaj Ram. It was alleged that defendants in collusion with each other, made a plan to grab the suit land of the plaintiffs, and defendants No.1 and 2 showing themselves as the owners of 1/2 shares of suit land, executed impugned Sale Deed No. 3070 dated 05.10.2005 in favour of defendant No.3, which was witnessed by defendants No. 4 and 5. Accordingly, it was contended that the Sale Deed was based upon fraud and misrepresentation. It was averred that the defendants had clear knowledge that defendants No.1 and 2 had no such share in the property to the extent of 1/2 share inspite of this fact, they executed Sale Deed just to grab the property of the plaintiffs. Accordingly, Sale Deed was liable to be set aside. The defendant No.3 was claiming himself as owner of the land measuring 201 sq. yds. i.e. 1/2 share in the total land and wanted to further alienate the land. The plaintiffs requested again and again to get the Sale Deed 05.10.2005 to be declared null and void but to no avail. Accordingly, present suit was filed on 11.10.2005.

5. Upon notice, defendants No.1 to 3 had appeared and contested the suit by filing written statement; whereas defendants No. 4 and 5 were proceeded against ex parte. Defendants No. 1 to 3 had stated in their written statement that suit land was ancestral property of



the plaintiffs and defendants No.1 and 2 and of Sanjay/brother of defendant No.2. It was pleaded that defendants No.1 and 2 had executed registered Sale Deed dated 05.10.2005 as they had half share of the suit land. Defendant No.3 had claimed that for the past more than 20 years, he had been using the suit land for tethering his cattle, parking his tractor, and as Nohra and also stored building material and bricks etc. for raising construction. Defendant no.3 therefore, claimed adverse possession over part of the suit land; and further that he has become sole owner in possession of suit property since execution of Sale Deed i.e. 05.10.2005. It was further stated that late Mohan had died issueless and after his death his entire share was vested into his brother Sewga who had become the owner in possession of land up to 2/3 share (including the share of Sewga). After the death of Sanwal, his 1/3 share was vested in Dhari. After the death of Dhari, it was Ram Sawrup who had become the owner of 1/3rd share. After the death of Ram Sawrup, the plaintiffs got his 1/3rd share and thus the share of Ram Sawrup was 1/3rd; instead of 2/3 share. In the total suit land three persons namely Sahaj Ram, Ramphal and Chitra were owners in possession of 2/3rd share in equal shares wherein defendant No.1 was having 1/3rd share and the defendant No.2 and his brother Sanjay were having 1/3rd share. Sahaj Ram had become the owner in possession of the land measuring 2/3 share after the death of Mohru as the widow of Mohru was married with Sahaj Ram. Thus, impugned sale deed had been rightly executed as



per law and plaintiffs have only 1/3rd share in the total suit land which is now possessed by the plaintiffs and thus, the question of dispossessing the plaintiffs by the defendants does not arise. Rest of the averments have been denied.

6. Replication was filed refuting the submissions/claim made by the defendants and reiterating those made in the plaint.

7. On the basis of pleadings of the parties, following issues were framed vide order dated 26.07.2007: -

“1) Whether impugned sale deed dated 05.10.2005 is illegal?OPP

2) Whether plaintiffs are owners in possession of suit property?OPP

3) Whether plaintiffs are entitled for injunction as prayed for?OPP

4) Whether plaintiffs have no locus standi to file the present suit? OPD

5) Whether suit is not maintainable in the present form? OPD

6) Whether suit is bad for mis-joinder and non-joinder of necessary party? OPD

7) Whether plaintiffs have not come to the Court with clean hands? OPD

8) Whether suit is false and frivolous? OPD

9) Relief.”

8. Vide judgment and decree dated 24.08.2011, learned Trial Court had decreed the suit of the plaintiffs primarily on the ground that by claiming adverse possession of suit property defendant No.3 had



admitted ownership of the plaintiffs over the suit land. The impugned Sale Deed qua share of the plaintiffs was held to be illegal, null and void. However, learned Trial Court further held that in respect of share of defendants No.1 and 2, the said Sale Deed shall remain intact i.e. only upto 1/8th share which they had received from the total share of Sewga. Defendants No. 1 and 2 were further restrained from interfering in the peaceful possession of the plaintiffs as plaintiffs have proved their 2/3rd share in the total suit land. Therefore, defendants will not further alienate the share of the plaintiffs. Trial Court held that 1/3rd share of Mohan in the total suit land had come to Dhari and Sanwal in equal shares not by inheritance but by way of contested mutation in case file No. 187 dated 15.03.1902 as mentioned in Jamabandi Ex.P4 (at pg. 151 of LCR); and respondents had not challenged the said mutation.

9. The Appeal filed by defendants No. 1 to 3 was accepted by the learned District Judge, Bhiwani vide judgment and decree dated 09.01.2014; and suit of the plaintiffs was dismissed with costs. Hence, present Second Appeal by plaintiff No.1.

10. Learned counsel for the appellant *inter alia* submits that respondents No.1 and 2 were having 1/3rd share in the suit land however by virtue of impugned Sale Deed dated 05.10.2005, they had sold the half share i.e. more than their share, to respondent No.3. It is submitted that in the year 1902, mutation was sanctioned in favour of the plaintiffs that plaintiff was having 2/3rd share of the suit land. By



taking plea of adverse possession, defendant No.3 had also admitted ownership of plaintiffs over the suit property. From these facts, it was clear that defendants No.1 and 2 had sold more than their share.

11. It is further submitted that suit land is a plot situated within Abadi Deh. It is contended that if the agricultural land has come to the plaintiffs in the share of $2/3^{\text{rd}}$, with $1/3^{\text{rd}}$ share to the defendants, therefore present suit land/plot will also be divided in the same manner i.e. $2/3^{\text{rd}}$ share to the appellant and $1/3^{\text{rd}}$ share to defendants No.1 and 2. Moreover, revenue records have not been challenged by the respondents. Therefore, mutation of 1902 has been accepted by the defendants. Even possession of respondent No.3 is not proved over the suit land. It is accordingly prayed that the present Appeal be accepted; and the impugned judgment and decrees dated 09.01.2014 passed by learned District Judge, Bhiwani be set aside.

12. *Per contra*, learned counsel for the respondents/defendants No.1 to 3 vehemently opposes submissions made on behalf of the appellant, and submits that no doubt defendant No.3 had stated that he was in adverse possession of the suit land. It is however contended that the defendants would also inherit share of Mohan to equal extent and would also be entitled to half share of the suit property. It is submitted that therefore, defendants No.1 and 2 have not sold more than their share in the suit property. It is contended that the argument of the plaintiff that merely because agricultural land was divided in



above said manner, the suit property would also be divided in equal share of 2/3rd and 1/3rd, is baseless. It is reiterated that admittedly, Mohan had died issueless and defendants No. 1 and 2 also being his legal heirs, would be entitled to equal share in his property. Learned counsel accordingly prays for dismissal of the Appeal.

13. No other argument is raised on behalf of the parties. I have heard learned counsel and perused the case file in great detail. I find merit in the submissions made on behalf of the respondents.

14. The case of the plaintiff/appellant is based on mutation dated 15.03.1902, consequent to which in the successive jamabandis for the years 1921-1922, 1928-1929 and 1952-1953 Ex.P6 to Ex.P8 respectively, plaintiffs have been shown to be owners to the extent of 2/3rd share in agricultural land. It is the case of the plaintiffs that as they are shown to be owners to the extent of 2/3rd share in the agricultural land, therefore, it would also follow that they would be owners to the extent of 2/3rd share in the suit plot. I find no basis for such presumption on the part of the plaintiffs; for the reason that plaintiffs are unable to make out their claim even in respect of the agricultural land. The plaintiffs have based their claim by relying upon the mutation dated 15.03.1902. However, the said mutation has not been brought on record by the plaintiffs. As order dated 05.03.1902 has not been brought on record, therefore, there is nothing to show as to how and in what manner and for what reason, the mutation of share of Mohan was sanctioned only in



favour of Sanwal and Dhari sons of Data Ram; and not to the sons of Sewga. It has also come on record that Sewga and Data Ram had died, therefore, the share of Mohan would naturally be transferred in equal shares in favour of Sanwal and Dhari, sons of Data Ram, as well as Sahaj Ram and Mohru sons of Sewga. Ld. Counsel for the appellant is unable to explain this.

15. Perusal of the Trial Court judgment dated 24.08.2011 also shows that suit of the plaintiffs has been decreed by placing reliance upon mutation dated 15.03.1902. As per the Trial Court, the order dated 05.03.1902 came to be passed after the death of Mohan in case No. 187 titled as Mohan vs. Dhari and Sanwal. Trial Court has recorded that *"It is clear on the case file that the share of Mohan had come to Dhari and Sanwal through the result of case file No. 187 that the share of late Mohan had come to Dhari and Sanwal not by way of inheritance but by way of a contested mutation in case file No. 187 on 15.03.1902"*. However, it is not clear as to how the Trial Court derived this conclusion in the absence of the order dated 5.3.1902. In my view, the same could not have been done as the said mutation has not even been placed on record by the plaintiffs. For this reason, the argument of the plaintiffs that revenue record/mutation of 1902 has not been challenged by the defendants, is also not tenable.

16. Moreover, Trial Court failed to appreciate that in any event, mutation dated 15.03.1902 pertained only to the agricultural land and



not to the suit plot. There is no dispute with regard to the fact that the suit property is situated in Abadi Deh. As such, in any event, there is no connection with the order dated 05.03.1902 which pertained only to the agricultural land. Thus, merely on the basis of revenue entries in favour of the plaintiffs, it cannot be presumed (especially in the absence of order dated 05.03.1902) that plaintiffs or their predecessors had inherited entire share of Mohan in the suit property.

17. To recapitulate, it is summed up as follows that in the Jamabandi Ex.P6 Sanwal and Dhari sons of Data Ram have been shown as owners to the extent of 2/3rd share; and Sehja, Mohru sons of Sewga have been shown as owners to the extent of 1/3rd share. This entry of ownership came in view of order dated 05.03.1902 passed after death of Mohan Lal. Admittedly, copy of order dated 05.03.1902 has not been produced on record showing in which manner after death of Mohan, mutation of his share was sanctioned only in favour of Sanwal and Dhari sons of Data Ram. In absence of any order, it cannot be assumed and presumed merely on basis of revenue entries recorded in remark column. Moreover, if Sewga and Data Ram had already died, then naturally share of Mohan Lal must have been and ought to have been transferred in equal share in favour of Sanwal and Dhari as well as Sehja and Mohri. Perusal of reference of order dated 05.03.1902 made in jamabandi Ex.P6, does not reflect that sons of Sewga were party or



heard at the time of passing of this order. Therefore, from the record, there are no reasons for coming for the exclusion of the sons of Sewga.

18. From revenue record, it is also established that disputed property situated in Abadi Deh was not a part of order dated 05.03.1902. Moreover, even in plaint as well as in his statement as PW2 (plaintiff No.1) has not mentioned that present plaintiffs have inherited the entire share of Mohan vide order dated 05.03.1902 passed by revenue authorities; and at the end after taking advantage of remark entry of Jamabandi they are intended to take share of Mohan in abadi despite the fact that there is no documentary evidence regarding ownership. Thus, Plaintiffs have no locus standi to challenge the Sale Deed No. 3070 dated 05.10.2005 Ex.P9.

19. The relevant findings of the learned first Appellate Court in this regard as contained in judgment dated 09.01.2014, are as under: -

“.....As per perusal of reference of order dated 5.3.1902 made in Jamabandi Ex. P6 in remarks column, it does not reflect that the sons of Sewga were party or heard at the time of passing of this order dated 5.3.1902. Therefore, on the basis of pleadings mentioned in para no. 4 of the plaint, it cannot be said that the present plaintiffs have got entire share of Mohan Lal in the present suit properties situated in abadi area in view of order dated 5.3.1902. Admittedly order dated 5.3.1902 has not been placed on record by the plaintiffs. Even one of the plaintiffs has come in witness box as PW2 Ran Singh and he has supported the averments made in the plaint. Even in plaint as well as in his



statement as PW2 Ran Singh, he has not mentioned that the present plaintiffs have inherited the entire share of Mohan vide order dated 5.3.1902 passed by revenue authorities and at the fag-end after taking advantage of remarks entry of Jamabandi Ex. P6, they are intended to take the share of Mohan Lal in abadi area despite the fact that there is no documentary evidence regarding ownership of this abadi area but both the parties have admitted that they have inherited the same from their ancestors. Therefore, claim of the plaintiffs in the suit property to the extent of 2/3rd share is not sustainable and they have become owners to the extent of 1/2 share as per averments made in para no. 4 of the plaint. Judgment Mahajan and another's case (supra) referred on behalf of the respondents-plaintiffs has no bearing on the facts of the present case, as the entries reflected in Jamabandi in favour of respondents-plaintiffs are not pertaining to the present suit property and not corroborated with the pleadings mentioned in para no. 4 of the plaint and hence, even this judgment is distinguishable on facts.

17. Keeping in view the above position, if the appellants-defendants have alienated 1/2 share out of the suit properties in favour of defendant no. 3, in those circumstances, the plaintiffs have no locus standi to challenge the impugned sale deed Ex. P9 bearing no. 3070 dated 5.10.2005, because as per averments of para no. 4 of plaint, if after the death of Mohan Lal who died issueless, his share in abadi area is transferred, that comes in equal share in favour of Dhari, Sanwal sons of Data Ram and Moharu, Sehaj sons of Sewga and the plaintiffs were having 1/2 share. Therefore, the plaintiffs still having their 1/2 share intact and



in this manner, if they have sold away excess area as per sale deed Ex. P9, that is pertaining to Sanjay, brother of defendant no. 1 but he has not challenged the present sale deed and hence, the impugned sale deed Ex. P9 cannot be held illegal, null and void and the learned Lower Court on the basis of reflected entry in remarks column of Jamabandi Ex. P6 pertaining to agricultural land only, has concluded 2/3rd share of the plaintiffs and ignored the averments of the plaintiffs mentioned in para no. 4 of the plaint and hence, the suit of the respondents-plaintiffs in assailing the impugned sale deed is not sustainable and the same is liable to be dismissed.

18. In the present case, defendant no. 3 who has purchased 1/2 share from vendors Ramphal and Mahender claimed that even prior to purchase of the suit property, he was continuing in possession for more than 20 years and claimed his adverse possession as alternative plea. When defendants no. 1 and 2 have been established as owners of the suit property and this sale deed cannot be held illegal on the basis of suit filed by the plaintiffs who have failed to prove that the alienation made by the vendors includes their share, in such circumstances, even alternative plea of adverse possession does not affect the title of defendant no. 3 and from sale deed Ex. P9 it is established that after purchase, defendant no. 3 has become owner in possession and suit of the respondents-plaintiffs is not maintainable. In judgment Mohan Lal (deceased) through his LRs Kachru and other's case (supra) it was held by Hon'ble Apex Court that alternative plea of adverse possession cannot be allowed to be taken on the basis of inconsistent pleas. In judgment Rama Kanta Jain's case (Supra) it was held that a hostile assertion which is expressly and impliedly in denial of the title of the



true owner, a person who traces his possession to a lawful title can never become owner by way of adverse possession.”

20. Thus, when defendants No.1 and 2 have been established as owners of suit property, Sale Deed cannot be held to be illegal. The plaintiffs failed to prove that the alienation made by vendors includes their share. In such circumstances, plea of adverse possession does not affect the title of defendant No.3. Defendant No.3 has become owner in possession vide Sale Deed dated 05.10.2005 and suit of plaintiffs is not maintainable. It is further established that the suit property purchased vide Sale Deed Ex.P9 is in possession of defendant No.3. In fact, it was also proved on record that defendant No.3 was in possession of the suit property even prior to the execution of Sale Deed dated 05.10.2005 Ex.P9.

21. Learned counsel for the appellant is unable to controvert or dispute the above said facts and findings.

22. Accordingly, the Regular Second Appeal no. 1982 of 2014 stands **dismissed**; whereas, the Civil Revision Petition no.3131 of 2014 stands **dismissed** as having been rendered infructuous.

23. Pending application(s) if any also stand(s) disposed of.

28.10.2025
Divyanshi

(NIDHI GUPTA)
JUDGE

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

RSA No. 1982-2014 and
CR-3131-2014 (O&M)

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