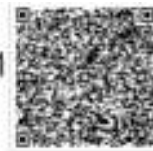


2025.PHHC.178501



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

RSA-5211-2015 (O&M)
Reserved on:-10.11.2025
Pronounced on:-23.12.2025
Uploaded on:-23.12.2025

Smt. Hussaini (since deceased) thr. her LRs and othersAppellants..

vs.

Parmina @ JanshidaRespondent.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr.Rajinder Goel, Advocate for the appellants.

Mr. Vishal Sharma, Advocate with
Mr. Himanshu Rao, Advocate for the respondent.

HARKESH MANUJA J. (Oral)

1. By way of present appeal, challenge has been laid to the judgments and decrees dated 21.01.2015 and 28.07.2025 passed by the Courts below, whereby, a suit for declaration as well as joint possession preferred at the instance of respondent-plaintiff was decreed in her favour.

2. Briefly stating, a suit for declaration and joint possession was filed at the instance of respondent-plaintiff (Parmeena @ Janshida), claiming herself to be co-owner to the extent of ½ share in respect of 34 kanals of land situated within the revenue estate of Village Nijampur, Tehsil Tauru, District Mewat as well as ½ share out of land measuring 57 kanals 14 marlas situated in Village Chundika, Tehsil Tauru, District Mewat. It was alleged that one Malook Singh who happened to be the father of plaintiff had two wives namely, Akina and Hussaini and the respondent-plaintiff being daughter of the pre-deceased widow-Akina was entitled

to inherit the estate of said Malook Singh jointly with appellant No.1-defendant No.1. It was also alleged that Malook Singh owned land in Villages Goal and Sherpur Jat, Tehsil Tijara, District Alwar and the same was mutated in favour of appellant no. 1 and the plaintiff in equal Shares. It was further pleaded that appellant No.1-defendant No.1 with the help of her brother's son and in collusion with revenue official by taking undue advantage of absence of respondent-plaintiff got entered two mutations bearing No.1332 and 997, exclusively in her favour qua the entire suit property which were, thus, wrong and illegal. It was further pleaded that appellant No.1-defendant No.1 also got executed two gift deeds dated 24.02.2006 bearing vasika Nos.2595 & 2594 in favour of appellants No.2 to 6/defendants No.2 to 6, and the same were thus illegal, null and void qua the share of plaintiff. Hence, the present suit.

3. Upon notice, the appellant(s)-defendant(s) appeared and filed their joint written statement taking preliminary objections regarding locus standi, proper court fee, estoppel and maintainability of the suit. It was disputed and denied that the respondent-plaintiff was co-owner to the extent of $\frac{1}{2}$ share in the suit lands or that Malook Singh purchased the land detailed in para 2 of the plaint. It was pleaded that the entire suit land was ancestral in the hands of Malook Singh. It was also denied that Malook Singh was governed by agricultural custom or that according to agricultural custom, on the death of son-less proprietor, his both widows were to inherit equally or that inheritance was by way of representation in Meo's. It was denied that in case of death of one widow her heir(s) may be son or daughter was to inherit as representative or that in case of non-ancestral land, the daughters were having right of succession. It was pleaded that the daughter was having no right of inheritance in Meo's of Districts Gurgaon and Mewat. It was

further denied that the respondent-plaintiff was a daughter of pre-deceased widow of Malook Singh or she was even entitled to inherit the estate of Malook Singh. It was also denied that Malook Singh had two wives or that Akina was his wife or that respondent-plaintiff was daughter of Akina from the loins of Malook Singh. It was pleaded that the mutation qua land situated in Villages Goal and Sherpur Jat, Tehsil Tijara, District Alwar, based on inheritance were wrong and incorrect. However, it was stated that mutation number 1332 and 997 in favour of appellant no. 1 were valid and consequently the two gift deeds dated 24.02.2006 were legal. It was thus prayed that the plaintiff-respondent had no right to assail those gift deeds and therefore, the suit was liable to be dismissed.

3.1 Based on the pleading of the parties, the following issues were framed by the learned Trial Court on 14.03.2011:-

- “1. Whether the plaintiff is co-owner in joint possession of the suit property? *OPP*
2. If issue no.1 is proved, then whether the plaintiff is entitled to be recorded co-owner in possession in the revenue record by way of mutation? *OPP*
3. Whether the suit is not maintainable in the present form? *OPD*
- 4 Whether the plaintiff has no cause of action to file the present suit? *OPD*
5. Whether the plaintiff has concealed the true and material facts from this court? *OPD*
6. Relief.”

When the case was remanded, the following additional issues were framed by the Id. Appellate Court:-

- “1A Whether the suit land was non-ancestral in the hands of Malook Singh as alleged? *OPP*
- 1B Whether the parties are governed by customary law being Meo or by law of succession governing Mohammedans? *OPP*

- 1C Whether plaintiff Parmeena was born out of the wedlock of Smt. Akina and deceased Malook Singh? OPP*
- 1D If issue No.1C is proved in affirmative, whether of deceased Malook Singh on the basis of survivor-ship or on the basis of theory of representation under Customary Law? OPP*
- 1E Whether gift deed bearing vasika No.2595 dated 24.06.2006 in respect of the suit land vasika no.2594 dated 24.02.2006 are illegal, null and void and not binding upon the plaintiff as alleged? OPP*
- 1F Whether the plaintiff has not affixed proper court fee as alleged, if so what is court fee to be affixed on the plaint? OPD*
- 1G Whether the plaintiff is estopped from filing the suit? OPD.”*

4. The Trial Court vide judgment and decree dated 21.01.2015 decreed the suit in favour of respondent-plaintiff. Aggrieved against the same, the appellant(s) filed first appeal, however, the same was dismissed vide judgment and decree dated 28.07.2015 passed by the learned District Judge, Mewat. Hence, the present appeal.

5. Learned counsel appearing on behalf of the appellants submitted that the respondent was not to be permitted to wriggle out of her pleadings made in para 4 of the plaint, wherein her entire case was based on the customs prevalent in the Mewat area among the Meo's. Learned counsel pointed out that once the observations made by the learned trial Court decreeing the suit in favour of the respondent-plaintiff were reversed by the learned First Appellate Court, the appeal preferred at the instance of appellant(s)-defendant(s) was required to be allowed, thereby resulting into dismissal of the suit filed at the instance of respondent-plaintiff.

5.1 Learned counsel for the appellant(s) also contended that once the entire claim in the suit was based on customs and the personal law applicable to the

parties was never even pleaded in the plaint, the suit filed at the instance of respondent-plaintiff could not have been decreed while relying upon the personal law applicable to them and therefore, suit filed by the respondent-plaintiff could not have been decreed. No other argument has been addressed.

6. On the other hand, learned counsel appearing on behalf of respondent-plaintiff submitted that the appellants-defendants were estopped from raising any such plea at this stage to contend that the rights of the parties could not be determined on the basis of their personal law especially once a specific objection was raised in their written statement before the learned Trial Court stating that the customary law was not applicable between the parties. He also pointed out that in view of the pleadings of the parties about the applicability of the customary law or the personal law of succession, even a specific issue; 1(B) to the following effect was framed by the learned trial Court:-

“1B Whether the parties are governed by customary law being Meo or by law of succession governing Mohammedans? OPP”

6.1 Learned counsel for the respondent further pointed out that even if the relief with respect to the declaration as claimed in the plaint was based on customary law which the respondent-plaintiff failed to prove, the rights of the parties were still required to be adjudicated upon, backed by the law of succession governing personal law and as such, no interference was called for with the findings recorded by the learned First Appellate Court. In support, he placed reliance upon judgment passed by the Hon’ble Apex Court in “**Ujjagar Singh vs. Jeo**”, reported as **1959 A.I.R. (SC) 1041**, as well as the judgment passed by the Lahore High Court in “**Fatima Bibi and another vs. Shah Nawaz and others**”, reported as **1921 AIR (Lah) 180**.

Relevant paras 37 and 38 of **Ujjagar Singh's case** (supra) are reproduced hereunder:-

"37. We think it also right to say that even if it had been held that the respondent was not able to establish a custom entitling her to succeed she would get the properties under the Hindu law. The parties are Sikhs to whom the Hindu law applies. Since the Hindu Law of Inheritance (Amendment) Act, 1929, a sister is an heir under the Hindu law in, preference to collaterals and that Act would be applicable to the devolution in this case. It is however said that as the respondent had not made any claim in the plaint on the basis of Hindu law but on the contrary relied on custom, it was not open to her to fall back on the Hindu law on failing to establish the custom.

38. We do not think that this is the correct position. Section 5 of the Punjab Laws Act, 1872, provides that in questions regarding succession, the rule of decision shall be (a) any custom applicable to the parties; (b) the personal law of the parties except in so far as modified by custom or legislation. In the Full Bench case of Daya Ram v. Sohil Singh (1) Robertson, J., said at p. 410:

"It therefore appears to me clear that when either party to a suit sets up " custom " as a rule of decision, it lies upon him to prove the custom which he seeks to apply. If he fails to do so clause (b) of section 5 of the Punjab Laws Act applies and the rule of decision must be the personal law of the parties subject to other provisions of the clause."

Further relevant para 4 of **Fatima Bibi's case** (supra) is reproduced hereunder:-

"4. We do not consider that any general rule can be deduced from these judgments. We hold therefore that no special custom was proved in the present case and that there is no general rule so widely accepted among the agricultural tribes of the Punjab that would justify us in coming to any definite conclusion based on custom. We agree therefore with Counsel for the appellants that although the plaintiffs themselves relied in their plaint on Customary Law, the Court should have fallen back upon the personal law of the parties for the decision of this case. This is clearly provided for in Section 5 of the Punjab Laws Act. This principle has been widely followed by the Chief Court even though the plaintiff has based his case upon custom (see Sardar Bibi v. Sayad Ali Shah (1888) 4 P.R. 1888, Khanan v. Jatti (1892) 116 P.R. 1892 and Khuda Bakhsh v. Fatteh Khatun (1919) 13

P.R. 191946 I.C. 679-140 P.W.R. 1918. Moreover in the present case, although the plaintiffs themselves came into Court basing their claim upon custom, and although they failed to prove any specific custom in their favour, the defendant-respondents can have no complaint against our decision that the question in issue must be decided by Muhammadan Law as the issues were so widely framed by the lower Appellant Court that they had every opportunity to tender all the possible evidence in their favour. For the above reasons we accept the appeal and decree the plaintiffs case without costs in all the Courts.”

No other argument has been addressed.

7. I have heard learned counsel for the parties and gone through the paper book.

8. The substantial question to be decided before this Court in the present case is:-

“Whether Muslim personal law or customary law governs the devolution of the property in dispute between the daughter from first wife who predeceased the husband and the second wife of the deceased Muslim man belonging to Meo Community of Mewat area qua his property-estate?”

Before that it is essential to look into the relationship between the respondent-plaintiff and the deceased Malook Singh. Both the learned Courts below have come to record the finding that Malook Singh had agricultural land in Villages Nizampur and Chundika, Tehsil Tauru, District Mewat, Haryana as well as in Villages Goal and Shahpur Jat, Tehsil Tizara, District Alwar, Rajasthan and further the property situated in Rajasthan was even recorded in the name of appellant-widow Hussaini and respondent-daughter Parmina in equal shares, yet the same was never assailed by the appellant(s) by way of instituting any suit or application. While it is well-settled that mutation does not create any title but it is also true that even after 15 years of death of Akina and 9 years of death of Malook

Singh, respectively, the said mutations stand unchallenged by the appellant(s) and in such circumstances, the learned Courts below rightly held that the respondent-plaintiff was the daughter of Malook Singh. Moreover, no serious challenge to the finding of relationship between the plaintiff and deceased Malook Singh was laid at the time of making submissions by the appellant(s) in the present appeal.

9. Furthermore, another significant question that this Court needs to address before concluding whether customary law or personal law is to be taken recourse to, is whether the property of Malook Singh in the present case was ancestral or self-acquired property. Despite the fact that appellant(s)-defendant(s) had taken the consistent stand before the learned Courts below that the property in question was ancestral in the hands of deceased Malook Singh, yet they were not able to produce any evidence whatsoever to support this contention. The burden to prove that the suit land was ancestral in the hands of Malook Singh was upon the appellant(s)-defendant(s). They could have easily produced revenue records to show that Malook Singh inherited the disputed property from his father who got it from his grandfather or from a common ancestor of deceased Malook Singh and his collateral. Even before this Court, no effort was made to establish any such fact, rather learned counsel for the appellant(s) argued that the nature of the property was immaterial to the application of the customary law. Thus, both the learned Courts below have rightly concluded that the suit property in the hands of Malook Singh could not be held to be ancestral in nature especially in wake of law laid down by this Court in ***Mst. Sham Kaur vs. Hari Singh*** and others reported as ***1973 AIR (P&H) 71*** and further similar view taken in the decision of this Court in ***Hawa Singh vs Daya Nand*** and others reported as ***2010(2) PLR (PH) 567*** whereby it was held that the presumption for nature of the land has to be non-

ancestral as the onus of proving the same to be ancestral heavily rests on the person asserting it.

10. Since the necessary questions of fact have been dealt with, this Court would now discuss the applicability of customary or personal law and the extent thereof. Firstly, it is not disputed that Malook Singh was a resident of Village Nizampur; an agriculturist and belonged to Meo community. Meo Mohmmedens of Mewat area constitute one of the predominant agriculturist tribe and are governed by agricultural customs. However, for a custom to be applicable, it is well-settled principle of law that those should be ancient and invariable; and it is further essential that the custom should be established to be so by clear and unambiguous evidence. It is only by means of such evidence that the Courts can be assured of their existence and that those possess the conditions of antiquity and certainty on which alone their legal title to recognition depends. The appellant(s)-defendant(s) have relied upon Rattigan's Digest of Customary Law to prove the custom in this regard. The recourse has been taken to the aforesaid provisions:

Para 6 states that sons are first entitled to the inheritance i.e. the general rule of inheritance under customary law in Punjab states that succession first goes to the direct male lineal descendants and in their absence, to some extent to the female heirs. Para 7 states that the general rule in Punjab is that sons whether by same or different wives, share equally. Para 8 states that the share of a son who pre-deceased his father, descends to his son, and the son of such son. Para 11 states that in the absence of lineal male descendants, the widow of the deceased ordinarily succeeds to the life estate. Para 12 states that if there are two or more widows, they succeed jointly. Para 22 states that in default of male descendants and of a widow, the mother of the deceased succeeds to life interest provided she has

not remarried. Para 23 states that daughter only succeeds the ancestral landed property of her father, if an agriculturist by occupation, in default of the heirs mentioned in the preceding paragraph i.e. the lineal male descendants and the widows of father.

11. From the perusal of Rattigan's Digest, it is clear that the peculiar circumstances of the present case where the widow of the father and the daughter claiming share in non-ancestral property of the husband/father have not been dealt with. The sons would be first entitled to the inheritance to the exclusion of all, under the general custom rule of Punjab and in circumstances, if there are no direct male descendants, the inheritance rights of widows come into picture. Further, the property would be succeeded jointly by two or more widows although in the present case, Akina pre-deceased Malook Singh and succession of Malook Singh could not be opened at that time when Akina was alive, thus, the rule of two or more widows surviving is not applicable. Similarly, the rule in para 23 which states that the right to daughter only succeed to the ancestral land-property in default of the linear male descendants and the widow of father, is not applicable in the present case either, as it is clear from the discussion hereinabove that the burden of proving the nature of land being ancestral was on the appellant(s)-defendant(s) and the same has not been discharged by them. Therefore, it can be inferred that there exists no express provision pertaining to the daughters being excluded from inheriting non-ancestral property of the father and the whole of the property is to be inherited by the widow of the deceased only.

12. Although, there is no doubt that Rattigan's Digest is of the highest authority on questions of the customs of the Punjab but judicial notice of a statement of custom therein contained can be taken only if it has been well-

recognized by decisions of Courts of law. In the present case, the appellant(s)-defendant(s) have not been able to produce any cogent evidence in this regard. Neither have they been able to produce any legal precedent that the Courts have taken judicial notice of such custom nor have they been able to specifically point out any expressed exclusion of inheritance of daughter in case the widow of father (step-mother) survives, in Rattigan Law's Digest itself. Evidence in proof of a custom in derogation of personal law should be unambiguous. However, the custom as stated by Rattigan's Digest cannot be said to be well-established and well-recognized so as to enable the Courts to take judicial notice of it but was a custom which had to be pleaded and proved by cogent evidence and further for the reasons aforementioned, cannot be regarded as free from ambiguity and clearly establishing a custom where total exclusion of the daughters from inheritance is in question.

13. Further, the contention of learned counsel for the appellant(s) before this Court is that it was immaterial as to whether the property is ancestral or not in the present case and the customary law was applicable nevertheless, thus, the daughter had no right to succeed. Even for the sake of the arguments if we consider that the customary law is applicable irrespective of the nature of the land, a bare reading of Digest shows that the peculiar circumstances of the present are not covered by the law laid down as it does not deal with a case whereby the dispute is with respect to devolution of property between the daughter and father's widow. In such circumstances, where the law itself is silent, in a post-Constitutional era even by a stretch of imagination, an interpretation contrary to the right of daughter to succeed father's property cannot be taken in the humble opinion of this Court.

Similar principle has been followed by this Court in ***Kanwar Khan and others***

versus Khatoni and others reported as **2005 (3) RCR(Civil) 243** whereby it was held that any custom or Rewaj-i-am restricting the right of a woman to use and alienate her property inherited from her husband would be unconstitutional. The relevant paragraph thereof is extracted hereunder:-

“8. Still further, this Court has held in the judgment reported as C. Masilamani Mudaliar v. The Idol of Sri Swaminathaswami Thirukoli, 1996(2) RRR 161 (SC) : AIR 1996 Supreme Court 1697. In view of the said judgment, the restrictive right to woman to deal with the property inherited from her husband negates the right of equality before law. The plaintiffs are fifth degree collaterals depriving the widow the right to enjoy the fruits of the property inherited by her husband is concept of remote past. Such principle does not satisfy the touchstone of equality and fair play under the Constitution of India.”

Hence, in the present case, such interpretation that restricts the right of the daughter to inherit her father's property in the wake of ambiguous and unclear customs cannot be allowed.

14. Moreover, the contention of learned counsel for the appellant(s) that although the plaintiff herself has relied on customary law in her plaint, the Court cannot fall back upon the personal law of the parties for the decision of this case, does not find merit in the present circumstances. This is clearly provided for in Section 5 of the Punjab Laws Act, 1872 and the same is reproduced hereunder:-

“5 [5. Decisions in certain cases to be according to Native law.—In questions regarding succession, special property of females, betrothal, marriage, divorce, dower, adoption, guardianship, minority, bastardy, family relations, wills, legacies, gifts, partitions, or any religious usage or institution the rule of decision shall be—

(1) any custom applicable to the parties concerned, which is not contrary to justice, equity or good conscience, and has not been by this or any other enactment altered or abolished, and has not been declared to be void by any competent authority;

(2) the Muhammadan law, in cases where the parties are Muhammadans, and the Hindu law, in cases where the parties are Hindus, except in so far as such law has been altered or abolished by legislative enactment, or is opposed to the provisions of this Act, or has been modified by any such custom as is above referred to.]”

Although, in the present case, the plaintiff herself came to the Court basing her claim upon custom and she failed to prove any specific custom in her favour, the defendant(s)-appellant(s) can have no complaint that the question in issue cannot be decided by Muhammadan Law given that the issues were so widely framed by the learned Appellate Court that they had every opportunity to tender all the possible evidence in their favour as well as taking into account their own contradictory stand qua the applicability of customary law in their pleadings viz a viz their arguments.

15. Thus, for the reasons mentioned hereinabove, customary law is not applicable in the present case as no special custom was proved and there exists no general rule so widely accepted among the agricultural tribes of the Punjab that would justify coming to any definite conclusion based on custom. Rattigan's Digest of Customary Law is too broadly worded and is too unprecise to lay down any general and universally recognized rule of law completely excluding daughters from inheriting non-ancestral property of the father if the widow (step-mother) is alive. Since, it was for the party relying on such a custom in the present case to allege and prove it which the appellant(s)-defendant(s) have failed to do so, therefore, the devolution of the property in the present case would follow the course of principles of personal law in the wake of Section 5 of the Punjab Laws Act and the law laid down by the Hon'ble Apex Court in ***Ujjagar Singh case*** (supra) whereby it was held that if the party fails to prove the custom alleged by

him, recourse had to be taken to Hindu Law i.e. personal law and then the matter has to be decided according to the said law.

16. Accordingly, as per Muslim personal law, whereby daughter and widow are the surviving heirs, both would be entitled to equal respective share in the wake of law laid down by the Hon'ble Apex Court in ***Newanness alias Mewajannessa v. Shaikh Mohamad*** reported as ***1995 AIR (SCW) 4723***. The relevant paragraph thereof is reproduced hereinunder:-

“3. Section 61 in Chapter VII of the Mulla's principles of Mohammedan Law, edited by M. Hidayatullah, former Chief Justice of this Court, postulates three classes of heirs, namely, (1) sharers, (2) residuaries and (3) distant kindred. Sharers are those who are entitled to a prescribed share in inheritance; residuaries are those who take no prescribed share, but succeed to the 'residue' after the claims of the sharers are satisfied; and distant kindred are all those relations by blood who are neither sharers nor residuaries. The Table at page 72-A of the 18th Edition prescribes that a father who is under Item No. 1, gets 1/6th share, where there is child or children of son; and when there is no child or children of a son, the father inherits as residuary. Since Sabul Hassan left behind D-4 son, Kisabul Ali got 1/6th share. Out of this 1/6th share got from the estate of Sabul Hassan, his widow (P-1) and P-2 the daughter would get equal respective share under law, which would be determined by the Trial Court.”

In view of the above, finding no illegality or perversity in the impugned judgments and decrees passed by the learned Courts below holding the appellant-defendant Smt. Hussaini and respondent-plaintiff Parmina to be joint owner of share in the disputed property, the same is hereby, affirmed.

17. Consequently, finding no merit in the present appeal, the same is dismissed.

23.12.2025
sonika

(HARKESH MANUJA)
JUDGE

(i) Whether speaking/reasoned: Yes/No

(ii) Whether reportable: Yes/ No