



RSA-2885-2025 (O&M)

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

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RSA-2885-2025 (O&M)

Date of decision :22.08.2025

PRITAM SINGH

... APPELLANT

VERSUS

JEET SINGH AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Ms. Manvi Singla, Advocate
for the appellant.

PARMOD GOYAL, J. (ORAL)

Appellant being dissatisfied by concurrent findings recorded vide impugned judgment and decree dated 30.09.2022 passed by learned Civil Judge (Junior Division), Barnala and judgment and decree dated 19.05.2025 passed by learned District Judge, Barnala has approached this Court by way of present second appeal.

2. Present appellant along with 3 other plaintiffs had preferred a suit for declaration and permanent injunction on the ground that Gujar Singh son of Sh. Tegu Singh @ Prem Singh, who was owner in possession to the extent of ½ share in suit property went missing 47-48 years ago. Since his whereabouts were not known to anybody after disappearance, he was considered civil dead in the eyes of law. It is asserted that Gujar Singh was close relative of father of plaintiff namely Chand Singh and grand-father of plaintiffs and, therefore, appellant and respondent Nos. 6 to 8 are entitled to inherit suit property. After the death of Chand Singh i.e. father of plaintiff and respondent Nos. 6 to 8. Plaintiff and defendant Nos. 6 to 8 became entitled to property owned by Tegu @ Prem Singh.



Respondent Nos. 1 to 5 are neither close and real (Agnate) relatives of Gujar Singh nor they have any right in the inheritance of Gujar Singh. However, respondent Nos. 1 to 3 filed a collusive suit bearing No. 76 dated 01.04.1999 against respondent Nos. 4 and 5 claiming themselves to be the only heirs of Gujar Singh. In the said suit, respondent Nos. 4 and 5 appeared in the Court and fraudulently contested the case but thereafter got themselves declared *ex-parte*. Respondent Nos. 1 to 3 procured illegal and fraudulent decree dated 05.12.2001 by suppressing true facts from the Court. The decree was not passed in favour of respondent Nos. 1 to 3 but was also passed in favour of respondent Nos. 4 and 5. However, mutation in revenue records on the basis of decree was sanctioned only in favour of respondent Nos. 1 to 3. It was claimed that decree as well as mutation on the basis of decree are not binding on the rights of appellant and respondent Nos. 6 to 8 and the same be declared illegal, fraudulent and nullity. It was asserted that on the basis of decree and mutation respondents are proposing to alienate the suit property to some third person and change the nature of the same, hence, suit for declaration and permanent injunction was preferred.

3. Respondent Nos. 1 to 3 took number of preliminary objections. It was claimed that suit of appellant is barred under Order 2 Rule 2 and plaintiffs-appellant have not approached the Court with clean hands. Appellant had filed a civil suit No. 54 of 08.02.2002 for declaration, which was dismissed by Civil Judge (Junior Division), Barnala in default vide order dated 24.03.2003 instead of getting the suit restored, a new civil suit bearing No. 105 dated 18.04.2003 for declaration against respondent Nos. 1 to 3 was filed and said suit of appellant was dismissed on 16.11.2011. Appellant had preferred an appeal against judgment dated 16.11.2011 vide Civil Appeal No. 31 of 31.03.2012 before the Court of learned Additional District Judge, Barnala. The said appeal was dismissed vide



judgment and decree dated 24.05.2012. Aggrieved by judgment and decree dated 24.05.2012, appellant had filed RSA No. 4171 of 2012, however, the same was also dismissed vide order dated 05.02.2018. On merits, it was asserted that Gujar Singh had gone missing about 70 years ago and appellant have no concern with property of Gujar Singh and it is respondent Nos. 1 to 3 who being legal heirs of Gujar Singh are owners in possession of the suit property. It was claimed that Gujar Singh had no relationship with respondents. Gujar Singh was stated to be real parental uncle (Chacha) of respondent Nos. 1 to 3 and they have already been declared as owners in possession vide judgment and decree dated 05.12.2001 passed in Civil Suit No. 76 of 01.04.1999. In second suit same facts were stated. Therefore, appellant-plaintiff have no right to claim suit property.

4. Following issues were framed from pleadings of parties:-

- “1. *Whether the plaintiffs are entitled to declaration as prayed for? OPP*
2. *Whether the plaintiffs are entitled to permanent injunction as prayed for? OPP*
3. *Whether the plaintiffs have no locus standi or cause of action to file the present suit? OPD*
4. *Whether the suit is bar under order 2 Rule 2? OPD*
5. *Whether the plaintiffs have not approached the Court with clean hands. If so its effect? OPD*
6. *Whether the plaintiffs are estopped by their won act and conduct from filing the present suit? OPD*
7. *Whether the suit is barred by principle of res judicata? OPD*
8. *Whether the suit is not within the limitation? OPD*
9. *Relief.”*

5. Issue Nos. 1, 2, 3, 5, 7 and 8 were decided in favour of respondents against the plaintiffs-appellant whereas issue Nos. 4 and 6 were decided in favour of appellant and against the respondents. The suit was dismissed by Civil Judge



(Junior Division), Barnala. Appeal against judgment and decree dated 30.09.2022 was also dismissed vide impugned judgment and decree dated 19.05.2025 passed by Court of learned District Judge, Barnala.

6. Learned Trial Court as well as learned Appellate Court both have non suited present appellant on the following grounds:-

- (1) Suit is barred by *res judicata* in view of previous suit bearing No. 105 dated 18.04.2003 vide Ex. D-1 and Ex. D-2, judgment and decree dated 16.11.2011 which was further affirmed by first Appellate Court and by Hon'ble High Court in Regular Second Appeal.
- (2) that appellant has failed to show that how they are related to Gurjar Singh and how they are entitled to succeed his estate
- (3) that appellant-plaintiff has concealed relevant facts, especially fact regarding filing of previous suit and its decision upto the High Court.
- (4) that suit is time barred as decree dated 05.12.2001 was sought to be set-aside by way of suit filed on 20.02.2019.

7. On consideration of judgments passed by both the Courts as well as evidence on record, there is no material to differ with the conclusions drawn by learned Courts below. Admittedly, appellant-plaintiff in his suit had claimed that Gurjar Singh was closely related to his father and his grand-father, however, there is neither any material nor any evidence to prove this fact. Plaintiffs-appellants have not even disclosed their relationship *qua* Gurjar Singh as to claim his estate. Neither by way of pleadings nor by way of evidence relationship between appellant-plaintiff and Gurjar Singh has been shown.

8. Similarly, it is admitted fact between the parties that plaintiff-



appellant had earlier preferred a suit bearing No. 105 dated 18.04.2003 which was decided by judgment and decree dated 16.11.2011 Ex. D-1 and Ex. D-2. The suit of plaintiff-appellant for declaration was dismissed and Civil Appeal bearing No. 31 of 31.03.2012 was preferred by plaintiff-appellant, which was also dismissed by judgment and decree dated 24.05.2012.

9. Admittedly, appellant-plaintiff has further challenged decree dated 24.05.2012 before Punjab and Haryana High Court by filing Regular Second Appeal No. 4171 of 2012, however, said Regular Second Appeal preferred by appellant-plaintiff was also dismissed vide order dated 05.02.2018 Ex. D-8. It is worth noticing that in suit bearing No. 105 dated 18.04.2003, appellant-plaintiff had sought declaration claiming decree dated 05.12.2001 Ex. P-4 in favour of respondent Nos. 1 to 5 to be bad in law. All the plaintiffs-appellant, defendant-respondent Nos. 1 to 3 as well as respondent Nos. 6 to 8 were parties in said proceedings. Only defendant No. 4 and 5 namely Jangiro and Basant Kaur daughter of Kaku Singh were not parties in previous suit. They have now been impleaded in present suit. Vide judgment and decree dated 05.12.2001, defendant Nos. 1 to 3 along with defendant Nos. 4 and 5 were held to be owners of suit property. Said suit was filed by defendant Nos. 1 to 3 as plaintiffs whereas defendant Nos. 4 and 5 were defendants. However, subsequently mutation was entered only in favour of defendant Nos. 1 to 3. Learned Appellate Court has rightly held that defendants/respondent Nos. 4 and 5 being real sisters of defendant No. 3 have not claimed suit property and have relinquished their rights in favour of their brother defendant No. 3. As they had never contested decree dated 05.12.2001 nor had enforced their right under the same by seeking mutation in their favour. Therefore, the learned First Appellate Court had rightly held that in previous suit, the interest of defendant Nos. 4 and 5 who have been made party



now in present suit, was duly taken care of by defendant No. 3 and accordingly, both the Courts below have concluded that the parties to previous and present suit were same and had prosecuted under the same title. Since in previous suit as well as in present suit, it is judgment and decree dated 05.12.2001, which is under challenge and plaintiffs had claimed themselves to be legal heirs of Gurjar Singh, the subject matter in both the suits is directly and substantially in issue. It is also matter of fact that the earlier suit preferred by plaintiff bearing No. 105 dated 18.04.2003 was duly contested and had attained finality after availment of right of filing two appeals upto High Court. The previous lis was duly decided on merits after due contest and the same was decided by Court of Competent Jurisdiction. All the ingredients to attract Section 11 CPC have been shown to be fulfilled by the defendants-respondents. Therefore, the conclusion drawn by learned Courts below that suit is barred by *res judicata* under Section 11 CPC cannot be faulted with.

10. Similarly, no exception with the findings of learned Court of first instance that suit is barred by limitation can also be found. Admittedly, in previous suit bearing No. 105 dated 18.04.2003 appellant had challenged judgment and decree dated 05.12.2001, which is also subject matter of the present lis. The challenge to judgment and decree dated 05.12.2001, therefore, clearly shows that appellant had knowledge of passing of judgment and decree dated 05.12.2001 at least on 18.04.2003 on the date of filing of previous suit. Present suit has been filed on 20.02.2019 about 16 years after date of knowledge. The limitation for challenging judgment and decree is 3 years from the date of its passing or at the most from the date of knowledge. In the present case, since suit was filed after 16 years from date of knowledge and 18 years from passing of decree, the conclusion of learned Courts below that suit is barred by limitation is also in accordance with



law. Plaintiff-appellant has, therefore, failed to show any defect in concurrent findings recorded by Courts below. Appeal is without any merit. Hence dismissed.

11. Accordingly, judgments of both the Courts below are hereby affirmed.

12. Pending miscellaneous application(s), if any, shall also stand disposed of.

22.08.2025
manoj

(PARMOD GOYAL)
JUDGE

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