

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****277****Date of decision: 19.11.2025****RSA-1658-2019(O&M)****Simranpreet Kaur minor through her mother & Anr****...Appellant(s)****Vs.****Rajender Singh & Others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. S.S. Sahu, Advocate
for the appellants.

Mr. Amit Singla, Advocate
for the respondents.

NIDHI GUPTA, J.

The plaintiffs are in second appeal against the concurrent judgments and decrees of the Id. Courts below whereby suit of appellants for declaration and injunction, has been dismissed by both the Courts below.

2. Brief facts of the case as pleaded by the appellants in the plaint are that defendant No.1 is grandfather of plaintiff No.1 and father-in-law of plaintiff No.2. Gurpreet Singh predecessor-in-interest of the plaintiffs and son of defendant No.1 had died on 27.12.2009. Plaintiff No.1 is the only child of Gurpreet Singh. It was contended that the suit property was coparcenary in nature. As such, the plaintiff No.1 being the only child of Gurpreet Singh became coparcener to the extent of 1/3rd share in the suit land along with



defendants No.1 and 2. It was further pleaded that Gurpreet Singh was owner in possession of land measuring 2 kanal 2 marla which was self-acquired property; which was therefore, to be inherited by the plaintiffs along with defendant No.3 mother of Gurpreet Singh as per succession. As such, the plaintiffs were also entitled to get their names incorporated in respect of the said property in the Revenue Record. However, the defendants turned the plaintiffs out from the home and threatened to grab the suit land after the death of Gurpreet Singh. The plaintiffs have repeatedly asked the defendants to admit their claim but to no avail. Hence, present suit was filed on 13.01.2011, seeking a declaration that plaintiffs are owners in possession of land measuring 1 kanal 8 marla along with residential house constructed therein being 2/3rd share of total measuring 2 kanal 2 marla.

3. Upon appraisal of pleadings and oral & documentary evidence adduced by the parties, the learned trial Court dismissed the suit of the plaintiffs vide judgment and decree dated 11.02.2015. The Civil Appeal filed by the plaintiffs was also dismissed by the learned Additional District Judge, Fatehabad vide judgment and decree dated 11.09.2018. Hence, present second appeal by the plaintiffs.

4. It is inter alia submitted by learned counsel for the appellants that the plaintiffs had led cogent oral and documentary evidence to prove on record that the suit properties were ancestral in nature. As such, plaintiffs were entitled to their share in the same. It is submitted that even otherwise,



the plaintiffs being the daughter-in-law and only grandchild of the defendants No.1 and 3 are entitled to some share in the property of Gurpreet Singh/son of defendants No.1 and 3. It is reiterated that after the death of Gurpreet Singh plaintiff No.1 is entitled to 1/3rd share of the land measuring 131 kanal 10 marla of the coparcenary property.

5. It is submitted that the plaintiffs have successfully proved that the land measuring 131 kanal 10 marla was inherited by Sher Singh from his father and was ancestral property in the hands of Sher Singh. Sher Singh admitting the nature of suit land as ancestral coparcenary property who had transferred the same in favour of his two sons Rajinder Singh/defendant no.1, and Balbir Singh in equal share and the transfer in favour of Rajinder was in direct acceleration of successors and by transfer of land in favour of Rajinder Singh and Balbir Singh the nature of property remained intact i.e. ancestral coparcenary property. The Ld. Trial Court has also failed to understand that Gurpreet Singh and Gursewak Singh were two sons of Rajinder Singh and both by birth got right in the ancestral coparcenary property and as such Gurpreet Singh who was predecessor in interest of the plaintiffs was having birth right in the land measuring 131 kanal 10 marla to the extent of 1/3 share. The plaintiff/appellant no. 2 was married with Gurpreet Singh S/o Rajinder Singh and the plaintiff no. 1 is the only child born from the wedlock of appellant no. 2 with Gurpreet Singh S/o Rajinder Singh and as such the plaintiff no.1 had also got birth right in the ancestral property i.e. 131 kanal



10 marla land. After the death of Gurpreet Singh the plaintiff no.1 is entitled to 1/3 share of the land measuring 131 kanal 10 marla.

6. It is submitted that the lower court further failed to consider that the land measuring 2 kanal 2 marla alongwith constructed house was self acquired property of the predecessor- in- interest of the plaintiff namely Gurpreet Singh and after his death the plaintiffs are entitled to inheritance of this property and also to get mutation of inheritance sanctioned in their favour in the revenue record. The Revenue Authority is yet to sanction mutation of inheritance in favour of the plaintiff which they were duty bound to do. However, first Appellate Court has again misread the evidence laid by the appellant and dismissed the appeal filed by the appellant while wrongly observing that the appellant has failed to prove the nature of the property i.e. coparcenary property in the hands of the respondents.

7. It is contented that both the courts below have rejected the claim of the appellants only on the ground that the appellant have failed to prove the nature of the property. The first Appellate Court has observed that the respondent no. 1 Rajinder Singh obtained the property from his father Sher Singh only through Ex-P11 (mutation of gift deed) and judgment and decree Ex. P-32 and Ex P-33. The appellants have not produced any documents to prove that the land in the hands of respondent no. 1 Rajinder Singh came through four male lineal descendants and the same was never partitioned among them. Therefore, it is wrong that the suit land in the hands



of respondent is coparcenary in nature. In the absence of any evidence the land in question came from four male lineal descendants the appellants cannot claim in the land in question on the basis of coparcenary property. However the appellants has proved that the land in question is not a self acquired property and it is coming in the hands of respondents from their forefathers as the suit land was earlier in the name of Sher Singh and which came through Ex. P-11 (mutation of gift deed) in favour of Rajinder and Balbir Singh and from Balbir and Rajinder Singh came in favour of Gurpreet Singh and Gursewak Singh and in favour of Sher Singh the land came from his father. Therefore, it is wrong to say that the property is not ancestral property because the nature of land cannot be changed by way of gift and consent decree. Thus, the observation given by both the courts are wrong and illegal and the same is liable to be set aside.

8. Learned counsel accordingly prays for setting aside of the impugned judgments and decrees.

9. Per contra, learned counsel for the respondents/defendants vehemently opposes the submissions made on behalf of the appellants and submits that judgments and decrees of the learned Courts below suffer from no error of law or fact. It is submitted that this Court has limited jurisdiction to interfere in the concurrent findings of fact returned by the learned Courts below. It is pointed out that both the Courts below have returned the concurrent findings on fact that the suit land was not ancestral in nature. The



Hon'ble Supreme Court in ***M/s. Shivali Enterprises v. Godawari (Deceased)***

(SC): Law Finder Doc Id # 2034559; has held as under: -

*"14. This Court, in the case of **Randhir Kaur v. Prithvi Pal Singh and Others (2019) 17 SCC 71**, after considering the scope of interference under the old section 100 of the Civil Procedure Code, 1908 (for short "CPC") and Section 41 of the Punjab Act, has observed thus:*

"15. A perusal of the aforesaid judgments would show that the jurisdiction in second appeal is not to interfere with the findings of fact on the ground that findings are erroneous, however, gross or inexcusable the error may seem to be. The findings of fact will also include the findings on the basis of documentary evidence. The jurisdiction to interfere in the second appeal is only where there is an error in law or procedure and not merely an error on a question of fact."

15. It could thus be seen that this Court has held that, even when a court exercises jurisdiction under Section 41 of the Punjab Act, it cannot interfere with the findings of fact in second appeal on the ground that the said findings are erroneous, howsoever gross or inexcusable the error may seem to be. It has been held that the findings of fact would also include the findings on the basis of documentary evidence. The jurisdiction under Section 41 of the Punjab Act would be available only when there is a substantial error or defect in the procedure provided by the CPC or by any other law for the time being in force."

(Emphasis added)

10. It is further submitted by learned counsel for the respondents that as has been noted by learned First Appellate Court in Para 17 of its



judgment, that defendants are still ready to keep plaintiff No.1 with them as she is their real granddaughter and are willing to take charge of her complete future. It is submitted that however, it is the plaintiff No.2 who has not come to the Court with clean hands as she has failed to disclose that she has remarried. Ld. counsel accordingly prays for dismissal of the present appeal.

11. No other argument is made on behalf of the parties. I have heard learned counsel for the parties and perused the case file in detail. I find no merit in the submissions advanced on behalf of the appellants.

12. It is the first contention of the appellants that they are entitled to 1/3rd share in the suit property as the suit land is ancestral in nature. To substantiate the said contention, the plaintiffs had placed on record documents (Ex.P1 to Ex.P6) which were objected to on ground of mode of proof and late production. The plaintiffs had also produced documents (Ex.P7 to Ex.P-40) and Mark 7 to Mark P-10 which were objected to by the other side being not taken proper fee. Padat Sarkar is per se admissible, but Padat Patwar/excerpt is per se not admissible. Nonetheless, these documents have been considered; and have been dealt with comprehensively and in detail as evident from Paras 19 and 20 of the judgment of the learned First Appellate Court wherefrom the finding of fact was given that the suit land was not ancestral in nature. Perusal of the documentary evidence reflects that plaintiff failed to prove their case by leading cogent and convincing evidence.



13. The record further establishes that Defendant No.1 obtained property from his father through Ex.P11, mutation of Gift Deed, and judgment and decree (Ex.P-32 and Ex.P-33). The plaintiffs have not produced any document to prove that the land in hands of defendant No.1 came through 4 male lineal descendants; and the same has never been partitioned among them. The learned First Appellate Court has taken note of the fact that the Revenue Record produced by the plaintiffs could be of no benefit to the appellants as they had not challenged the entries in the Revenue Record on the basis of Gift Deed, Civil Court judgments and decrees, etc. and the ensuing mutations. The documents (Ex.P7 to Ex.P-40) were rejected as the same were not certified by Patwari; and no sufficient legal fee was paid for obtaining copies of said documents. It was held that therefore, merely on the basis of oral evidence, the appellants were unable to prove the ancestral nature of the property.

14. As regards the self-acquired property of Gurpreet Singh, it is pleaded case by plaintiffs that they had never approached revenue authorities for mutation of inheritance of self-acquired property of deceased Gurpreet Singh; or that there is any obstruction caused by the Revenue Authorities. The plaintiff had legal right; and in absence of any obstruction in execution of their legal right, no specific direction by Civil Court is required as no cause of action had arisen. Accordingly, in this regard,



prayer of plaintiffs for a direction to the Revenue Authorities for correction of the Revenue Record, has been rejected as follows: -

“28. With regard to the other claim of the plaintiffs to inherit self acquired property of deceased Gurpreet Singh and for directing the revenue authorities for correction thereof, it is observed that as per Hindu Succession Act, 1956, a person being legal heirs of deceased dying intestate is entitled to inherit his property to the extent of his share as per law. In present case, neither it is pleaded case nor proved otherwise by plaintiffs that they had ever approached revenue authorities for mutation of inheritance of self acquired property of deceased Gurpreet Singh or there is any obstruction caused by the revenue authorities. In absence of any obstruction shown or proved by plaintiffs in execution of that legal right, no specific direction of Civil Court is required as with regard to same no cause of action had accrued with the plaintiffs.”

15. Learned counsel for the appellants is unable to dispute or controvert the aforesaid facts and findings.
16. In view of the above, present appeal is **dismissed**.
17. Pending application(s) if any also stand(s) disposed of.

19.11.2025
Sunena

(Nidhi Gupta)
Judge

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