

**IN THE HIGH Court OF PUNJAB AND HARYANA AT CHANDIGARH****113****RSA-3659-2019 (O&M)****Date of decision: 29.07.2025****Santosh Sharma****...Appellant(s)****Vs.****Shyam Sunder and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Balkar Singh, Advocate for the appellant.

NIDHI GUPTA, J.**CM-9988-C-2019**

Prayer in this application filed under Section 5 of Limitation Act is for condonation of delay of 12 days in filing the accompanying appeal.

2. Heard.

3. For the reasons mentioned in the application which is duly supported by affidavit of the applicant-appellant, the same is allowed and delay of 12 days in filing the appeal is condoned.

RSA-3659-2019 (O&M)

The appellant/plaintiff is in Second Appeal against the concurrent judgments and decrees of the learned Courts below; whereby the suit for declaration and permanent injunction filed by the appellant, has been dismissed by both the Courts below.

2. Brief facts of the case are that the defendants No.1 and 2 and their brother Rishi Pal and Rohtash were co-owners in possession of



agricultural land. It was the case of the plaintiff that the suit property was ancestral. Defendant No.2/father of the plaintiff was owner in possession in the half share in 1198/1797 share in the said holding. Being ancestral property of the plaintiff, defendant No.2 and performa respondents/defendant No. 4 and 5 are co-parceners thereof. It was alleged that defendant No.1 had got procured a collusive decree from defendant No.2 with regard to his share and deprived the plaintiff and performa respondents/defendants No. 4 and 5 from their rights. It was further alleged that the defendants had played a fraud upon the Court by making false suit in which impugned judgment and decree 24.02.2007 was passed. Defendant No.1 in collusion with defendants got mutated and sanctioned the same in his favour in revenue records by mutation No. 1384 and transferred the possession of suit land in favour of defendant No.3 by way of registered Lease Deed dated 08.02.2008 and sanctioned Mutation dated 20.10.2008 with malafide intention. Accordingly, a declaration was sought that the said judgment and decree, Lease Deed, and Mutation be declared as null and void, ab initio; and to admit rightful claim of the plaintiff. With these pleadings, present suit was filed on 18.01.2016.

3. Defendants No. 1 and 3 resisted the suit by filing joint written statement pleading that defendant No.1 is owner in possession in suit property as defendant No.2 had already transferred his share in the land in question to defendant no.1 vide judgment and decree dated 24.02.2007. It was averred that defendant No.2 had received sufficient



amount from defendant no.1 at the time of said decree after which defendant No.2 was left with no right, title or interest in the land in question. Thus, the Mutation No. 1384 dated 04.06.2007 had been rightly sanctioned; and had also been rightly acted upon. Defendant No.1 had leased out some portion of the suit land to defendant No. 3 vide registered Lease Deed dated 08.02.2008 in furtherance to which Mutation dated 23.10.2008 was sanctioned in favour of defendant No.3, which is a registered society. Accordingly, dismissal of the suit was prayed for.

4. Defendants No. 2, 4 and 5 were proceeded exparte vide order dated 04.05.2010.

5. No replication was filed.

6. On the basis of the pleadings of the parties, the learned trial Court framed the following issues on 17.07.2015 -

"1. Whether the plaintiff is entitled to relief of declaration that decree dated 24.2.2007 passed in civil suit no.54 of 6.2.2007 is illegal, null and void? OPP

2. Whether the plaintiff is entitled to a relief of declaration that mutation no. 1384 dated 4.6.2007, mutation no. 1433 dated 20.10.2008 and lease deed no.11664 dared 8.2.2008 are null and void?OPP

3. Whether the plaintiff is entitled to a relief of permanent injunction for restraining defendants from further alienating the suit property and from further creating third party interest in the suit property?OPP

4. Whether the plaintiff has not come to the court with clean hands and have concealed the actual and true facts from the court? OPD

5. Whether the suit of plaintiff is not maintainable?OPD



6. Whether the plaintiff has no locus standi and no cause of action to file the present suit?OPD

7. Whether the plaintiff is estopped by his own act and conduct from filing the present suit?OPD

8. Whether the suit of the plaintiff is not properly valued for the purpose of court fees?OPD

9. Relief.”

7. Upon appraisal of the pleadings and the evidence led by the parties, the Id. Trial Court vide judgment and decree dated 30.07.2016, had dismissed the suit of the plaintiff. The appeal filed by the plaintiff was also dismissed with costs by the learned Additional District Judge Faridabad vide judgment and decree dated 06.09.2018. Hence, the present Second Appeal by the appellant/plaintiff.

8. It is *inter alia* submitted by Id. counsel for the plaintiff that Id. Courts below were in patent error in non-suiting the appellant on the ground that no family settlement had ever taken place between the parties. It is contended that nothing in this regard has been proved by the defendants. Therefore, the collusive judgment and decree dated 24.02.2007 was null and void and against public policy and had been executed by defendant No.2 without legal necessity with the sole motive to deprive the plaintiff from his indefeasible right in the suit property as coparcener.

9. Id. Counsel contends that the learned Courts below did not take into consideration the fact that respondent no. 2 had no legal right to suffer a decree of the suit land which was ancestral, without legal necessity and consideration. Even consideration is not proved on record.



10. It is submitted that the learned Courts below did not take into consideration the fact that property in hands of defendant no. 2/ father of the appellant was ancestral. Whereas it is nowhere disputed by any of the parties rather it is an admitted fact that the property was not self acquired or purchased by defendant no. 2 as it devolved upon the defendants no. 1 and 2 and their brothers on the death of their father late Om Parkash.

11. It is submitted that being a member of Hindu undivided family, the collusive judgment and decree dated 24.02.2007 is illegal, null and void because the suit land was the HUF property, ancestral property of the parties, who are coparcener qua the same and so no consent decree could have been suffered by the respondent no. 2 in favour of respondent no.1.

12. It is accordingly prayed that the present Appeal be allowed; and the impugned judgments and decrees be set aside.

13. No other argument is raised on behalf of the appellant.

14. I have heard learned counsel for the appellant/plaintiff and perused the case file in great detail. I find no merit whatsoever in the submissions made on behalf of the plaintiff. The entire case of the appellant is founded on the assertion that the suit property was ancestral in the hands of defendants No. 1 and 2. Needless to say, the burden to prove the nature of the property was upon the plaintiff. However, no evidence whatsoever was brought on file by the plaintiff to prove that suit property was ancestral. On the contrary, a perusal of copy of Mutation Ex.P5 shows



that after the death of Om Parkash, property was inherited by Birbal, Rohtash, Shyam Sunder, Rishi Pal (sons of Om Parkash), and Sumitra and Geeta (daughters of Om Parkash). Thus, Sumitra and Geeta/defendants in the previous decree, had also inherited one share each in the property of Om Parkash. The Mutation dated 24.09.1997/Ex.P5 also shows that suit property was inherited by daughters of Om Parkash. Clearly therefore, the property was not ancestral in nature and was self acquired property of Om Parkash on 24.09.1997, (when Mutation was sanctioned on death of Om Parkash) as daughters have no right to inherit the ancestral property. Even a perusal of the Mutation No. 1173 shows that defendant No. 2 had inherited self acquired property of his father. As such, plaintiff was unable to prove 3 lineal stages of inheritance.

15. Thus, the strong reliance placed by the plaintiff upon the oral testimony, and Ex.P5, the Mutation sanctioned on the demise of Om Parkash, was misconceived. Perusal of Ex.P5 shows that property of Om Parkash had devolved upon his children by inheritance. To establish the ancestral nature of property, it was necessary for the plaintiff to show that property had devolved upon 3 generations, and the plaintiff being 4th generation in the case in hand. Mutation Ex.P5 reveals that property was transferred from Om Parkash to Birbal which is only 2 degrees of inheritance. Therefore, rule of coparcenary is not satisfied as the same is still short of 2 degrees. The plaintiff was required to prove with the help of independent evidence as to the nature and character of the property. However, he failed to do so.

16. In view of the above, I find no ground is made out to interfere in the concurrent findings of learned Courts below.
17. The present Regular Second Appeal is hereby **dismissed**.
18. Pending applications, if any, stand disposed of.

29.07.2025

Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:Yes/No

Whether reportable:Yes/No