

2026:PHHC:058159



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

RSA-1393-2002 (O&M)

Judgment reserved on :06.02.2026

Judgment pronounced on 17.04.2026

RAM MEHAR

... APPELLANT

VERSUS

DARIYA SINGH

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: None for the appellant.

PARMOD GOYAL, J.

1. RSA No. 1393 of 2002 was taken up along with RSA No. 1550 of 2002 as a connected matter. However, perusal of both the appeals, particularly RSA No. 1393 of 2002, shows that they involve different parties and arise out of distinct cause of action, though the part of land in dispute, i.e., Killa No. 23, in both the appeals is one and the same.

2. Present regular second appeal No. 1393 of 2002 has been preferred by the defendant–appellant, being aggrieved by the judgment and decree dated 31.01.2002 passed by the Additional District Judge, Panipat, whereby the first appeal preferred by the plaintiff was allowed. The plaintiff was held to be the owner in possession of suit land measuring 2 kanals 19 marlas, i.e., 1 kanal 3 marlas on the western side of Killa No. 2, rectangle No. 88, wrongly shown in the name of the defendant, and 1 kanal 16 marlas in Killa No. 23 of rectangle No. 70 already shown in the plaintiff’s name vide mutation No. 3233 on the basis of family partition. It was further held that incorrect entries in the revenue

record would not be binding on the rights of the plaintiff. Vide the impugned judgment and decree dated 31.01.2002, the judgment and decree dated 09.02.2000 passed by the Civil Judge (Junior Division), Panipat, whereby the suit for declaration with consequential relief of permanent injunction preferred by the plaintiff–respondent had been dismissed, was set aside.

3. It was the case of respondent–plaintiff that the plaintiff and the defendant are real brothers and after the death of their father, plaintiff and defendant inherited the suit land in equal shares. It is asserted that out of the total land measuring 107 kanals 6 marlas both the plaintiff and defendant were entitled to 53 kanals 13 marlas each and accordingly mutation No. 3233 reflecting equal shares of plaintiff and defendant on the basis of a family settlement was entered and sanctioned. However, it was alleged that the defendant, being an educated ex-serviceman, defrauded the plaintiff and got larger area entered in his name to the extent of 1 kanal 3 marlas instead of 53 kanals 13 marlas. It was also asserted that the plaintiff was shown as owner in possession over 52 kanals 10 marlas only, whereas the defendant was shown as owner in possession over 54 kanals 16 marlas. It was further asserted that both parties were, in fact, in actual physical possession of their respective half shares. The plaintiff claimed that he came to know about the incorrect revenue entries only in the year 1993, when a false criminal case under Sections 323 and 325 IPC was lodged by the defendant against him and his sons. Thereafter when the plaintiff was released on bail, a Panchayat was convened and the matter was settled through a compromise dated 16.05.1993, which was duly signed/thumb-marked by both the parties. As per the compromise, both the parties were to retain equal shares and any excess land was to revert to the plaintiff. It was

further alleged that the defendant, by playing fraud, obtained an *ex parte* judgment and decree from the Civil Court *qua* agricultural land measuring 1 kanal 16 marlas out of plaintiff's Killa No. 23 without any service upon the plaintiff. Accordingly, the plaintiff filed the present suit seeking declaration that the judgment and decree obtained by the defendant in respect of 1 kanal 16 marlas comprised in Killa No. 23, as well as the excess share of 1 kanal 3 marlas, is illegal, and that the plaintiff is the owner in possession of the suit land. It was also prayed that the wrong entries in the revenue record be declared not binding on the rights of the plaintiff.

4. The suit was contested by the defendant. The relationship between the parties and the fact that they had inherited the suit land from their father were not disputed. However, it was contended that the land had already been duly partitioned by the Assistant Collector, II Grade, Panipat on 12.08.1977 and both the parties were in possession of their respective shares as per the partition carried out on the basis of valuation of the land. It was asserted that the plaintiff's land was of 'Awwal' quality, whereas the defendant's land was 'Saum' and 'Doyam', and therefore, there was a variation of 1 kanal 3 marlas to set off better quality of land to plaintiff. It was further pleaded that the defendant had earlier filed Civil Suit No. 1527 of 1995 against the plaintiff and had succeeded in obtaining declaration that he was the owner in possession of land measuring 1 kanal 16 marlas, which had been wrongly mutated in the name of the plaintiff. Consequently, vide *ex-parte* judgment and decree dated 11.06.1996, the said land was declared in favour of the defendant and mutation No. 3969 dated 08.09.1996 was also got sanctioned in favour of defendant. Since then, the defendant is owner in possession of the said land. Accordingly, dismissal of the

suit was prayed for.

5. From the pleadings of the parties, the following issues were framed:

- “1. Whether the plaintiff is owner in possession of the suit property as alleged? OPP*
- 2. Whether the suit property has already been partitioned amongst its co-sharers, as alleged? OPP.*
- 3. Whether the suit is not maintainable in the present firm? OPD*
- 4. Whether the plaintiff has no locus standi to file the present suit? OPD*
- 5. Whether the plaintiff has no cause of action to file the present suit? OPD.*
- 6. Whether the suit has not been properly valued for the purposes of court fee and jurisdiction? OPD.*
- 7. Relief.”*

6. The learned Court of first instance concluded that the mutation regarding partition of the suit land, entered vide mutation No. 3233, had been sanctioned in the presence of both the parties as well as respectables of village Mahawati vide order dated 12.08.1977 and was challenged only on 12.08.1998, i.e., after a delay of about 21 years, the suit was held to be hopelessly time-barred and was accordingly dismissed.

7. On appeal by the plaintiff, the learned First Appellate Court, however, held that the trial Court had not properly dealt with the issue relating to 1 kanal 16 marlas, which formed part of Killa No. 23 and was mutated in the name of the plaintiff. The learned First Appellate Court further observed that, after the death of the father of the parties, mutation No. 3154 had been sanctioned in favour of both parties on the basis of a will, and thereafter, vide mutation No. 3233 dated 12.08.1977, the plaintiff was recorded as owner in

possession of 52 kanals 10 marlas, whereas the defendant was shown as owner in possession of 54 kanals 16 marlas. It has also been concurrently found by both the Courts below that the mutation No. 3233 dated 12.08.1977 was duly entered in the presence of both the parties.

8. On consideration, I find that the learned First Appellate Court has erred in accepting the claim of the plaintiff over the suit land measuring 1 kanal 3 marlas, alleged to be in excess of his half share and shown in the name of defendant vide mutation dated 12.07.1977. Admittedly, the said mutation was entered in the presence of both the parties. Therefore, the plea of the plaintiff that he came to know about the alleged incorrect mutation only in the year 1998 cannot be accepted.

9. It is well settled principle of law that when a party alleges fraud, the onus to prove the same lies upon the party making such an allegation. In the present case, the allegations of fraud have not been substantiated by any cogent evidence and are based merely on oral assertions. The plaintiff has also failed to explain the inordinate delay of about 21 years in challenging the mutation, despite having been present at the time of the mutation proceedings. In such circumstances, the plaintiff is estopped from raising the plea of fraud and lack of knowledge. Accordingly, the claim of the plaintiff with regard to land measuring 1 kanal 3 marlas is found to be without merit, and the learned First Appellate Court had erred in accepting the same. However, as regards to the land measuring 1 kanal 16 marlas comprised in Killa No. 23, which, as per the partition proceedings, had fallen to the share of the plaintiff, it is evident that the learned trial Court did not consider this aspect at all, and even the First Appellate Court failed to deal with the issue in detail. In the present case, the defendant

has admitted that the suit land was partitioned on the basis of a family settlement, and that the plaintiff had been allotted 52 kanals 10 marlas on account of his land being of superior quality. However, the defendant has nowhere justified his claim over the land measuring 1 kanal 16 marlas comprised in Killa No. 23 over the suit property.

10. In the written statement, the defendant has merely relied upon an *ex parte* judgment and decree in his favour, without placing the same on record in accordance with law. He has also relied upon mutation entries made after *ex parte* judgment in his favour, which have not been duly proved as per the provisions of the Evidence Act, 1872 and have only been placed on record as marked documents.

11. Once it is admitted that the land was partitioned as per a family settlement and that 1 kanal 16 marlas comprised in Killa No. 23 had fallen to the share of the plaintiff, it was incumbent upon the defendant to justify his claim over the said land. In the absence of any proof that the said land subsequently vested in the defendant, his claim cannot be sustained merely on the basis of unproved mutation entries.

12. Accordingly, I find merit in the case of the plaintiff to the extent that the defendants have no right over the suit land measuring 1 kanal 16 marlas comprised in Killa No. 23, which had fallen to his share as per the family partition duly reflected in the mutation No. 3233 dated 12.07.1977.

13. Consequently, the present appeal is partly allowed. Mutation No. 3233 dated 12.07.1977, recorded on the basis of family settlement in the presence of both the parties, is held to be binding upon them and both the parties shall remain owners in possession of the land as reflected therein. The claim of

the plaintiff over land measuring 1 kanal 3 marlas, as well as the claim of the defendant over land measuring 1 kanal 16 marlas comprised in Khasra No. 23, is rejected.

14. The appeal stands partly allowed in the above terms.
15. Pending miscellaneous application(s), if any, also stand(s) disposed of accordingly.

17.04.2026
manoj

(PARMOD GOYAL)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes/No