



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

108

RSA-5223-2019 (O&M)

Reserved on : 11.02.2026

Pronounced on : 07.04.2026

BALKAR SINGH

...APPELLANT

VERSUS

AVTAR SINGH (SINCE DECEASED) THROUGH L.RS. AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. Adish Jain, Advocate for
Mr. Naresh Jain, Advocate
for appellant.

PARMOD GOYAL, J.

Present regular second appeal has been preferred by appellant-plaintiff for setting aside the judgment and decree dated 09.04.2015 passed by learned Additional Civil Judge (Senior Division), Nakodar and judgment and decree dated 15.09.2018 passed by learned Additional District Judge, Jalandhar.

2. Appellant-plaintiff in his suit for declaration had claimed that he is owner in possession of land measuring 29 kanals 04 marlas being 1/7th share of total agricultural land measuring 206 kanals and 03 marlas, fully described in plaint, situated in area of village Akbarpur, Tehsil Shahkot, District Jalandhar. Appellant-plaintiff had also sought declaration that judgment and decree dated 22.02.1983 passed by Court of learned Sub-Judge First Class, Nakodar in Suit No.253 of 1983 titled as Gurjinder Singh

Vs. Avtar Singh and judgment and decree dated 25.03.1995 passed by learned Sub-Judge (Second Class), Nakodar in Civil Suit No.543 of 1994 Gurjinder Singh and Others Vs. Joginder Kaur as well as Mutations bearing No.1014 and 1104 are illegal, void, *ab initio* and not binding upon the rights of the appellant-plaintiff. Appellant-plaintiff had also sought declaration to the effect that sale deeds dated 17.03.2009 and 20.03.2009, allegedly executed by defendant No.1 in favour of defendants No.7, 8, and 9 are without consideration and legal necessity and therefore, are illegal, unlawful, null, void and *ab initio* and mutations No.1181 and 1182, sanctioned on the basis of above sale deeds are liable to cancelled and set aside. Appellant-plaintiff further sought relief of permanent injunction restraining defendants No.2 and 7 to 9 from alienating suit property and claimed joint possession. It was the case of appellant-plaintiff that suit land was possessed by Bhola Singh and after his death, Harbans Singh got 1/3rd share and defendant No.1 got remaining 2/3rd share on the basis of oral Will and on the basis of that Will mutation No.964 was sanctioned. It was further asserted that defendant No.1-father of appellant-plaintiff, transferred his share in favour of defendant No.2 vide judgment and decree dated 22.02.1983 passed in Civil Suit No.253 of 1983, whereby 61 kanals 06 marlas was transferred and mutation No.1014 was wrongly entered in favour of defendant No.2. It was further claimed that suit land was joint, co-parcenary, joint Hindu family property and appellant-plaintiff, being co-parcener, has legal right over the property by virtue of his birth. It was also asserted that even the sale deed made in favor of defendants No.7 to 9 and mutation No.1181 and 1182 pertaining to said sale were illegal as same were made without there being

any legal necessity. Defendant No.1 has no right to sell land in his hand being *Karta* of co-parcenary property. Appellant-plaintiff accordingly sought declaration that judgments and decrees dated 22.02.1983 & 25.03.1995, sale deeds dated 17.03.2009 & 20.3.2009 and consequent mutations bearing No.1014, 1104, 1181 and 1182 are not binding on his rights.

3. Defendants No.1 to 3, 4 and 6 to 9 had contested the suit by filing written statements, wherein they raised preliminary objections regarding maintainability of suit, cause of action and locus standi. It was asserted that property was not ancestral, co-parcenary and joint Hindu Family Property and was exclusive property of defendant No.1, who was within his right to suffer decrees as well as execute sale deeds. It was further asserted that appellant-plaintiff has got no right over the suit property and he is neither owner nor in possession of the property. Defendant No.9 claimed himself to be *bona fide* purchaser of the land measuring 04 kanals, bearing khasra No.50//20/1 for a valid consideration without notice by virtue of sale deed dated 23.02.2009 executed by defendant No.1. It was asserted that suit land was not ancestral property in the hands of Bhola Singh and same has not been devolved upon defendant No.1 by natural succession, rather, defendant No.1 got suit land by way of Will. It was also asserted that at the time of passing of decree dated 22.02.1983, appellant-plaintiff was not even born. Defendants accordingly had defended both the judgments and decrees dated 22.02.1983 and 25.03.1995 passed in their favour as well as sale deeds dated 17.03.2009 and 20.03.2009 and consequent mutations.

4. The simple case of appellant-plaintiff is that suit property in the hands of defendant No.1 was co-parcenary property and being *Karta*, defendant No.1 had no right to transfer or sell the same either by way of suffering judgments and decrees dated 22.02.1983 and 25.03.1995 and sale deeds dated 17.03.2009 and 20.03.2009. In order to prove that suit property is ancestral property in the hands of defendant No.1, appellant-plaintiff has relied upon his own oral testimony while appearing as PW1 and that of his mother and relative, who appeared as PW2 and PW3. All the three PWs have stated suit property to be ancestral co-parcenary property. PW2 and PW3, in addition to asserting that suit property was ancestral, also claimed that PW2-mother of appellnat-plaintiff was married to defendant No.1. Appellant-plaintiff was born out of their wedlock. Relations of PW2 and defendant No.1 became sour and on 16.04.1994, a compromise was effected regarding maintenance of appellant-plaintiff and defendant No.1 had agreed to transfer land measuring 16 kanal and get mutation in favour of appellant-plaintiff. Possession of 02 acres of land was duly transferred to appellant-plaintiff.

5. The main issue in present appeal is whether appellant-plaintiff has succeeded in proving that suit property was joint Hindu family property/co-parcenary property and defendant No.1 had no right to transfer the same by way of judgment and decree or by way of registered sale deed or not. Facts of present case are not in dispute much. The original owner of the suit property was Bhola Singh, grandfather of appellant-plaintiff, who had three sons, namely Harbans Singh, Avtar Singh and Sardool Singh, who got suit property by way of un-registered Will executed by Bhola Singh.

There is no rebuttal to this fact as noted above. In order to show a property

to be co-parcenary property, it is incumbent upon person claiming property to be co-parcenary property to show that it had vested through four generation of male lineage and the succession is by way of natural succession without there being any break in the same.

6. On consideration, I find that there is no evidence as to satisfy both the conditions which are required to declare a property to be co-parcenary property. In present case, the suit property in the hands of defendant No.1 was not by virtue of natural succession, but he received the same by virtue of un-registered Will executed by his father, who was the owner of property. There is no evidence to conclude that suit property in the hands of Bhola Singh was ancestral or co-parcenary in nature. From the materials on record, the only conclusion which can be drawn is that suit property in the hands of Bhola Singh was his self-acquired property which devolved by way of Will in favour of his three sons. Once, defendant No.1 had got suit property by way of Will, the same cannot be said or considered to be co-parcenary property in his hand. Neither of the two tests, noted above, could be established by appellant-plaintiff. Both the learned Courts below have rightly held that appellant-plaintiff has failed to prove nature of suit property to be co-parcenary property in the hands of his father, defendant No.1 qua appellant-plaintiff. The judgments and decrees dated 09.04.2015 and 15.09.2018 passed by both the Courts below, therefore, are in accordance with law. As it is appellant-plaintiff who had failed to prove that suit property was co-parcenary property in the hands of defendant No.1, therefore, defendant No.1 was free to alienate the same and no challenge can be made to such transfer by appellant-plaintiff.

7. In view of above, present appeal is dismissed being without any merit.
8. Pending application(s), if any, stand disposed of.

(PARMOD GOYAL)

JUDGE

07.04.2026

Sunil Chander

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No