

2026:PHHC:079999



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

RSA-360-1989

Reserved on : 12.03.2026

Pronounced on 19.05.2026

SURJIT KAUR AND OTHERS

....Appellant

Versus

**GANDHA SINGH (SINCE DECEASED) THROUGH
LRS AND OTHERS**

...Respondent

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. Ravinder Singh Randhawa, Senior Advocate with
Ms. Tarranum Madan, Advocate
Mr. Varun Tuteja, Advocate
for the appellant.

Mr. J.S. Brar, Advocate
for the respondents No.1 and 2.

PARMOD GOYAL, J. (ORAL)

Present regular second appeal has been preferred by unsuccessful appellants/plaintiffs being aggrieved by judgment and decree dated 10.12.1986, passed by learned Additional Senior Sub Judge, Bathinda whereby their suit for declaration and joint possession was dismissed as well as by judgment and decree dated 23.08.1988, passed by learned Additional District Judge, Bathinda, whereby first appeal preferred by appellants/plaintiffs was also dismissed.

2. In their suit for declaration and joint possession, appellants/plaintiffs had claimed that they are owners to the extent of 1/8th share of land measuring 252 kanals duly described in the plaint and

accordingly had sought possession of the same. It was asserted that Dharam Singh husband of appellant/plaintiff No.1-Surjit Kaur and father of appellants/plaintiffs No.2 and 3, Jasbir Kaur and Bant Kaur respectively constituted joint Hindu family with his father Billu Singh and respondents/defendants No.1 and 2. The suit land in the hands of Billu Singh was joint Hindu family and co-parcenary property in which Dharam Singh had 1/4th share by birth. That Dharam Singh died 9 years ago leaving appellants/plaintiffs as his only legal heirs, however, respondents/defendants No.1 and 2 had illegally taken possession of suit property on the basis of registered Will dated 03.07.1974 allegedly executed in their favour by Billu Singh. The Will was, however, stated to be forged and fabricated and respondents/defendants No.3 to 20 were impleaded being co-sharers mortgagees in the joint khata. Accordingly, suit for declaration and possession was preferred.

3. Respondents/defendants No.1 and 2 contested the suit and took number of preliminary objections regarding maintainability etc. They had specifically denied that suit land was ancestral or joint Hindu family property in the hands of Billu Singh and that Dharam Singh had 1/4th share in it by birth. They also asserted that Dharam Singh and Billu Singh never constituted joint Hindu family and Billu Singh being exclusive owner in possession of land had executed valid registered Will on 26.06.1974 in their favour and respondents/defendants No.1 and 2 came in possession of the suit land being owners on the basis of Will. Dismissal of suit was prayed for.

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

1) Whether the plaintiffs are owners of 1/8 share of the suit land?

OPP

- 2) Whether the plaintiffs have no cause of action to file the present suit? OPD
- 3) Whether the present suit is within limitation? OPD
- 4) Whether the suit is bad for mis-joinder of parties? OPD
- 5) Whether the suit is not maintainable in the present form? OPD
- 6) Whether the suit not properly valued for purposes of jurisdiction and court fee? OPD
- 7) Whether Billu Singh deceased executed a valid will on 26.06.1974 in favour of defendants 1 and 2? OPD
- 8) Relief.

5. Initially suit was dismissed on the preliminary issue of limitation vide judgment and decree dated 18.02.1983, however, learned First Appellate Court vide judgment and decree dated 16.03.1984 had remanded the case back for fresh decision on merits.

6. Following additional issues were framed as under :-

- 1) Whether plaintiffs, Dharam Singh and defendants No.1 and 2 formed a Joint Hindu Family? OPP
- 2) Whether the property in dispute is Joint Hindu Family property that is coparcenary property? OPP
- 3) Whether the plaintiffs and defendants No.1 and 2 are governed by customary law, if so its effect? OPD

7. Additional issue No.1 was decided against appellants/plaintiffs and additional issues No.2 and 3 were decided in favour of respondents/defendants. Issue No.1 was decided against appellants/plaintiffs, issues No.2, 3, 4, 5 and 6 were decided against respondents/

defendants and issue No.7 was decided in favour of respondents/defendants. Accordingly, suit was dismissed by learned Court of first instance. Findings of learned Court of first instance were affirmed by learned First Appellate Court.

8. In the present case, the main dispute between the parties is whether the suit property in the hands of Billu Singh was joint Hindu family property/co-parcenary property or was his independent/exclusive/self acquired property and whether respondents/defendants have succeeded in proving Will dated 26.06.1974 in their favour.

9. As far as Will dated 26.06.1974 is concerned, both the Courts after appreciating evidence led by both the parties have concluded that same is genuine and was validly executed by Billu Singh in favour of respondents/defendants No.1 and 2.

10. On one hand, appellants/plaintiffs have claimed that neither due execution of Will has been proved nor suspicious circumstances surrounding execution of Will have been cleared by respondents/defendants and, therefore, Will dated 26.06.1974 is a void and illegal document.

11. The burden to prove due execution of Will and to dispel suspicious circumstances is always upon propounder. As far as validity of Will is concerned, the onus to prove the same was upon respondents/defendants No.1 and 2. It is incumbent upon respondents/defendants No.1 and 2 to prove that the Will was executed by its testator being in sound mind. It is duty of respondents/defendants No.1 and 2 to dispel all the suspicious circumstances as being alleged by appellants/plaintiffs. It is only after proving due execution of Will as well as explanation of suspicious circumstances, the Courts can conclude due

execution of Will.

12. In the present case, respondents/defendants No.1 and 2 in order to prove Will Ex.D1 had duly examined the Scribe-Ram Sarup as DW1 and attesting witness Lal Singh as DW2. From the evidence of both Scribe-Ram Sarup and attesting witness-Lal Singh, it is clearly made out that both have stated the manner of execution of Will in a consistent and reliable manner. Scribe DW1 had clearly stated that Will was scribed by him at the instance of Billu Singh. That Billu Singh had duly thumb marked the Will in presence of attesting witnesses Lachhman Dass and Lal Singh. That Scribe had duly identified the signatures of Lachhman Dass, attesting witness. Learned counsel for appellants/plaintiffs argued that Scribe-Ram Sarup has not produced the register wherein factum of Will was recorded, however, perusal of evidence of DW1 goes to show that Scribe had duly explained that register is not traceable as the matter is an old one. The Will was executed on 26.06.1974, whereas DW1 was examined only in December 1984. The explanation preferred by Scribe-Ram Sarup after passing of 10 years, therefore, is a cogent explanation as with passage of time loss of record cannot be ruled out and is quite probable in ordinary course of life. The Courts below have rightly noted that Scribe-Ram Sarup was an independent person who had no relationship with respondents/defendants or appellants/plaintiffs.

13. Learned counsel for appellants/plaintiffs has also pointed out that second attesting witness Lachhman Dass was none other than the father of DW1 who was stated to be an advocate at that time. This cannot be held to be suspicious circumstances as it is a common practice that for the purposes of identification of parties, advocates are also roped in while

executing the Will and if such thing has been done, then no adverse inference against execution of Will can be raised, merely on the ground that second attesting witness was an advocate and related to Scribe. It was natural for father and son to provide professional services jointly.

14. Similarly, DW2-Lal Singh attesting witness in the same terms as stated by DW1 had asserted that Will Ex.D1 scribed by DW1-Ram Sarup was duly executed by Billu Singh. Will was read over to him and was duly thumb marked by Billu Singh and he along with other attesting witness had attested the same. No major discrepancy could be highlighted either from cross-examination or otherwise. The evidence of DW1 and DW2 were duly relied upon for concluding that Will was validly executed by Billu Singh in sound mind and in voluntary manner. The Courts have also duly taken note of fact that Will was a registered document which was duly registered on 03.07.1974 after its execution on 26.06.1974. The reason for non-registration of Will on date of its execution i.e. on 26.06.1974 stands explained by DW2-Lal Singh contesting witness who in his evidence has clearly stated that on 26.06.1974 after execution of Will testator and attesting witnesses had gone to the office of Sub Registrar, but he was not found in his office and, therefore, Will could not be registered on 26.06.1974. His evidence to this effect has gone unchallenged and unrebutted and no material was placed on record by appellants/plaintiffs to show that Sub Registrar was working on the said date.

15. Moreover, registration of Will only re-affirms its validity and is not essential. Therefore, even if a Will is not registered on the same day of its execution and is subsequently registered before Sub Registrar, it cannot be held to be a suspicious circumstance as execution of Will and registration

of Will are two different acts and there is no requirement of law that Will has to be registered on the same day of execution. Execution of Will as well as its registration is dependent upon convenience of parties. In many cases, parties are not aware that Will can be registered and when they come to know about availability of option of registration they may opt for the same. Registration of Will acts as a corroborative evidence and affirms its execution and is not a mandatory act to be performed by testator to make his Will valid. Both un-registered and registered Wills are valid Wills if their execution is duly proved in accordance with law. In the present case endorsement by Sub Registrar while registering the Will goes to show that Will was duly read over to the testator before the Sub Registrar and after admitting its correctness, testator had duly put thumb impression in the presence of witnesses.

16. Similarly, the argument raised on behalf of appellants/plaintiffs that Will was registered at Tehsil, Bathinda instead of Sub-Tehsil, Nathana is again is of no help to the case of appellants/plaintiffs. A Tehsil is always better connected than Sub-Tehsil and if the party has chosen to prefer to go to Tehsil instead of Sub-Tehsil, this cannot be held to be suspicious circumstance as Will could have been registered at both Sub-Tehsil and Teshi. It is worth noticing that all these facts which are raised by appellants/plaintiffs do not go into the root of the case showing that Will was not executed voluntarily in sound mind and in presence of witnesses.

17. It must be noted by Courts while appreciating evidence of parties that there is no perfect way to execute a Will. Many a times out of ignorance as well as on account of practical defects and options available before the parties, they opt one of the options available to them. In such

cases, mere opting one option instead of the other would not give rise to a suspicious circumstance. It is only those circumstances, which goes to the root of execution of Will which can only be held to be suspicious circumstance so as to doubt the Will i.e. evidence regarding unsoundness of mind of testator, pressure on testator, fact that Will was not read over to testator or he had no knowledge about the Will or that the attesting witnesses and testator have not signed the Will or that they had not signed the Will in presence of each other or any other material shown which may raise doubt over the execution or capacity of testator or attesting witnesses. The circumstances which are not mandatory in nature and optional cannot be held to be suspicious circumstances. In the present case, registration of Will at Tehsil instead of Sub-Tehsil cannot be held to be suspicious circumstances going to the root of execution of Will and, therefore, cannot be a circumstance which can raise doubt over due execution of Will.

18. In the present case, appellants/plaintiffs have failed to show any defect in evidence of Scribe-Ram Sarup, DW1-Lachhman Dass and attesting witness DW2-Lal Singh so as to raise doubt over due execution of Will. Will in the present case, stands proved by evidence of DW1 and DW2 having been executed by testator in sound mind after understanding the same in presence of attesting witnesses. The finding of both the Courts with regard to Will are accordingly, affirmed.

19. It must be noted that appellant/plaintiff No.1 after death of her husband Dharam Singh son of Billu Singh had performed Karewa and had taken away appellants/plaintiffs No.2 and 3 along with her. Therefore, Will by Billu Singh in favour of respondents/defendants No.1 and 2 (his real sons) in fact justify the act of Billu Singh. Billu Singh bequeathed his

property to his sons instead of daughter-in-law and grand-children who had left their home.

20. Faced with above, learned counsel for appellants/plaintiffs has relied upon writing Ex.P1 was duly executed by Billu Singh before the Panchayat wherein he had agreed to give share of Dharam Singh to appellants/plaintiffs. However, writing was rightly not accepted by both the Courts below. To prove writing before Panchayat, appellants/plaintiffs had examined Gurdial Singh, who admitted that writing was scribed by Sarpanch of their village. That Sarpanch had written whatever he wanted and the writing was not read over to Billu Singh before obtaining his thumb impression. Except for Gurdial Singh, no other witness was examined by appellants/plaintiffs to prove the writing Ex.P1. Moreover, in the Will Ex.D1 which is subsequent to writing Ex.P1, the testator Billu Singh has clearly asserted that any writing made before Panchayat shall stand withdrawn and cancelled. Therefore, Courts below have rightly held that no rights have flown in favour of appellants/plaintiffs by virtue of writing Ex.P1 before Panchayat as it was not duly proved and it was superseded by Will Ex.D1. Both the Courts have rightly concluded that choice of Billu Singh to bestow his property in favour of his sons instead of his daughter-in-law and grand-children who had left the company of Billu Singh cannot be faulted with.

21. Therefore, the conclusion drawn by Courts below with regard to validity of Will cannot be held to be erroneous or perverse. The conclusion drawn by learned Courts below is affirmed being rightly arrived at after proper appreciation of evidence led by the parties in the present case.

22. Reliance has been placed upon following judgment :-

A. **H. Venkatachala Iyengar Vs. B.N. Thimmajamma & Ors.,**

1959 AIR (Supreme Court) 443;

The principle stated in the judgment relied upon by learned counsel for appellants/plaintiffs are not in dispute. But in view of evidence on record which establishes due execution of Will, no help to the case of appellants can be derived from cited judgment.

23. Faced with above conclusion drawn by learned Courts below as well as by this Court, learned counsel for appellants/plaintiffs has argued that even if Will is held to be validly executed, even then the right of appellants/plaintiffs over the suit property would be clearly made out as Billu Singh had no capacity to execute Will as the suit property was co-parcenary/joint Hindu family property. Learned counsel for appellants/plaintiffs by placing reliance upon judgment titled **Dalip Singh Vs. Dara Singh & Anr.** (supra) argued that occupancy rights inherited by sons who have been treated as proprietor, subsequently would be ancestral property if the sons got proprietary rights in lieu of said occupancy rights. It is therefore, necessary to find out whether the suit property in the hands of Billu Singh was co-parcenary/joint Hindu family property or was his individual/exclusive/self-acquired property. In case suit property is held to be co-parcenary property, Billu Singh shall have no right to execute Will with regards to same. However, if it is held that suit property was exclusive and self-acquired property of Billu Singh, in that case, property would devolve upon respondents/defendants No.1 and 2 in view of Will dated 26.06.1974.

24. In order to prove nature of property in the hands of Billu Singh, appellants/plaintiffs have duly examined Kundal Lal, Patwari (PW) who had placed on record Ex.P2. From excerpt of revenue records it is clearly made

out that Naraina, father of Billu Singh was occupancy tenant of suit land under the original owners namely Smt. Jiwi, Harbant Singh, Gurdial Singh etc. The father of Billu Singh was paying *batai* to its original owners to the extent of 1/3rd as was stated by PW-Kundal Lal, Patwari Halqa. The father of Billu Singh held suit property as occupancy tenant throughout his life and had never become its owner. After his death in 1943 Billu Singh along with his mother and brother became occupancy tenants over the suit land and mutation regarding their status as occupancy tenants was duly recorded and they continued to pay *batai* to their original owner. It is also not in dispute that after 11 years of becoming occupancy tenants, after death of his father, The Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 (hereinafter referred to as '1952 Act') was enacted. It is by virtue of 1952 Act, Billu Singh along with his brother-Arjan Singh and mother Jai Kaur became owner of suit property on payment of compensation to original owners and thereafter, for the first time they were recorded as owners in jamabandi for the year 1955-56 as is made out from Ex.P2.

25. Both the Courts have rightly held that suit property in the hands of Billu Singh cannot be held to be ancestral and co-parcenary property. In fact suit property was not inherited by Billu Singh from his father Naraina as owner of the property and he only got right to cultivate the land as occupancy tenant from his father is duly proved. It was subsequent to enactment of 1952 Act, by virtue of provisions of said Act, right of ownership was bestowed upon Billu Singh for the first time in 1955-56 only on payment of compensation to land owners. Payment of compensation by Billu Singh makes it self-acquired property. Therefore, suit property in the hands of Billu Singh would be self-acquired property and cannot be held to

be co-parcenary property.

26. Learned counsel for appellants/plaintiffs has asserted that since right of occupancy was inheritable and said right subsequently matured into ownership right on account of operation of law, the ownership would relate back to succession as ownership was result of succession of occupancy right alone. Reliance has been placed upon **Dalip Singh Vs. Dara Singh & Anr.** (supra) Section 59 of The Punjab Tenancy Act, 1887 and, Section 3 and 13 of The Punjab Occupancy Tenants Act (Vesting of Proprietary Rights) Act, 1953 (hereinafter referred to as 1953 Act) which are reproduced as under:

“59. Succession to right of occupancy -

- (1) When a tenant having a right of occupancy in any land dies, the right shall devolve-
 - (a) on his male lineal descendants, if any, in the male line of descent; and
 - (b) failing such descendants, on his widow if any until she dies or remarries or abandons the land or is under the provisions of this Act ejected therefrom; and
 - (c) failing such descendants and widow, or widowed mother, if any, until she dies or remarries or abandons the land or is under the provisions of this Act ejected therefrom].
 - (d) failing such descendants and widow, or widowed mother or, if the deceased tenant left a widow or widowed mother then when her interest terminates under clause (b) or (c) of this sub-section, on his male collateral relatives in the male line of descent from the common ancestor of the deceased tenant and those relatives.

Provided with respect to clause 3(d) of this sub-section, that the common ancestor occupied the land.

- (2) As among descendants and collateral relatives claiming under sub-section (1) the right shall, subject to the provisions of that sub-section devolve as if it were land left by the deceased in the village in which the land subject to the right is situate.
- (3) When the widow of a deceased tenant succeeds to a right of occupancy she shall not transfer the right by sale, gift or mortgage or by sub-lease for a

term exceeding one year.

- (4) If the deceased tenant has left no such persons as are mentioned in subsection (1) on whom his right of occupancy may devolve under that subsection, the right shall be extinguished.

3. Vesting of proprietary rights in occupancy tenants and extinguishment of corresponding rights of landlords.- Notwithstanding anything to the contrary contained in any law, custom or usage for the time being in force, on and from the appointed day-

- (a) all rights, title and interest (including the contingent interest, if any, recognized by any law, custom or usage for the time being in force and including the share in the Shamilat with respect to the land concerned) of the landlord in the land held under him by an occupancy tenant, shall be extinguished, and such rights, title and interest shall be deemed to vest in the occupancy tenant free from all encumbrances if any, created by the landlord:

Provided that the occupancy tenant shall have the option not to acquire the share in the Shamilat by giving a notice in writing to the Collector within six months of the publication of this Act or from the date of his obtaining occupancy rights whichever is later;

- (b) the landlord shall cease to have any right to collect or receive any rent or any share of the land revenue in respect of such land and his liability to pay land revenue in respect of the land shall also cease;
- (c) the occupancy tenant shall pay direct to the Government the land revenue accruing due in respect of the land;
- (d) the occupancy tenant shall be liable to pay and the landlord concerned shall be entitled to receive and be paid, such compensation as may be determined under this Act.

13. Repeal and saving.- The Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1951 (President's Act VIII of 1951), is hereby repealed - but, notwithstanding such repeal, anything done or any action taken in exercise of any power conferred by or under the said Act shall be deemed to have been done or taken in exercise of the powers conferred by or under this Act, as if this Act was in force on the day on which such thing was done or action was taken.”

It was argued that, therefore, the character of suit property would remain co-

parcenary as reason for ownership rights was succession of occupancy rights.

27. In **Narajan Singh Etc. Vs. Parsa Singh alias Parsu**, 1971 Cur.L.J. 195, this Court had duly considered judgment cited by appellants/plaintiffs titled **Dalip Singh Vs. Dara Singh & Anr.** (supra) and had concluded that in a case of occupancy tenancy, a subsequent acquisition of ownership rights, in such cases the land would be self-acquired property and not ancestral property. This Court while deciding **Narajan Singh Etc. Vs. Parsa Singh alias Parsu** (supra) had duly considered the scope and ambit of judgment of Division Bench in **Dalip Singh Vs. Dara Singh & Anr.** (supra) and had held as under :-

“2. The trial Court, on the additional issue (a) above, held that the parties were governed by custom and the custom applicable to them prohibited alienation of ancestral property by will. The lower appellate Court, before whom the finding on the additional issue (a) was not challenged, confirmed substantially the finding of the trial Court on the additional issue (b) regarding nature of the property with the exception of one Khasra No. 1078 situated in village Jhande Majra which the lower appellate Court, unlike the trial Court, found to be non-ancestral. Both the parties filed objections under Order 41, Rule 26, Civil Procedure Code, against the report of the trial Court and that of the lower appellate Court. The plaintiffs have challenged the finding of the Courts below regarding the suit land comprised in Khasra No.3036 situated in village Majri, of which Kirpa was the occupancy tenant and which right in the said land had been inherited by him from his ancestors on the ground that, in fact, as a result of the acquisition of the ownership rights in the said land by virtue of the operation of law, the same cannot be considered to be the self acquired property of Kirpa. In support of this submission, the learned counsel for the plaintiffs has placed reliance on a Division Bench decision of this Court report in **Dalip Singh v. Dara and another, 1967 Cur. L.J. 540**, wherein the facts involved were that one Bishan Singh possessed land as an occupancy tenant in Pakistan and after the partition, some land in lieu of the land so left in Pakistan was allotted to his three sons on quasi-

permanent basis. Later on, they surrendered 40 per cent of the said land and acquired full ownership rights in the remaining 60 per cent. It was held by this Court that 60 per cent land, in which the sons of Bishan Singh acquired full ownership rights, could not be considered to be their self-acquired property because those rights were secured by them after surrendering 40 per cent of the land under their occupancy tenancy which rights were ancestral in nature and the full ownership rights acquired in the 60 per cent land in lieu of the ancestral rights in 40 per cent of the land surrendered by the sons of Bishan Singh have to be considered as self-acquired, because the rights in 60 per cent land are by way of exchange of ancestral rights in 40 per cent land surrendered for acquiring such full ownership rights. The ratio of the above ruling is not applicable to the facts of the present case and that decision is clearly distinguishable as Will be clear from the fact that Kirpa deceased in the present case did not surrender any portion of his occupancy land with a view to secure ownership rights in the other portion of the land under his possession as occupancy tenancy. He secured his rights by operation of law, which also provided payment of certain amount as compensation to the landlord which was made recoverable by the statute as arrears of land revenue. The learned counsel faintly urged that as the compensation to be recovered from the occupancy tenant is dependent on the initiative of the landlord and in this case so far the landlord has not recovered any compensation so it cannot be said that the occupancy tenant secured the ownership rights after payment of some money from his own pocket possession became self-acquired as a result thereof. For one thing, no such plea was taken and the parties had no occasion to lead evidence, but even if the landlord had not so far recovered compensation from Kirpa before he died, the law provides for the recovery of such compensation as arrears of land revenue and what is more, the right of ownership conferred on the occupancy tenant is by operation of law, and the tenancy right merged in the ownership right which right is distinct from tenancy right. This point is made still more clear in a Single Bench decision of this Court reported in ***Budh Singh alias Nachhatar Singh and others v. Shrimati Gurdev Kaur and others, 1968 Cur., L.J. 27***, wherein this Court was confronted with a similar problem arising in a case coming from erstwhile Faridkot State. The facts involved in that case were that the Maharaja of erstwhile Faridkot State was the Ala Malik and the status of the tiller of the soil in his State was that of an Adna Malik and the question arose that after the abolition of the Ala Malkiat rights, the property in possession of the Adna Malik whether became his self-acquired property ? In answering that

question, Mahajan, J. observed that, in that case, the land could not be considered to be the self-acquired property of the Adna Malik had all the rights of an owner except that he had to pay something to Ala Malik and the further fact that in certain contingency land of Adna Malik reverted to the Ala Malik was considered of no consequence since Ala Malik also happened to be the ruler of the State, and so the reversion of the land in certain contingency to the ruler amounted to escheat. And it was held that the rights enjoyed by an occupancy tenant who had no right of alienation which an Adna Malik had. In the reckoning of Mahajan J. whether the land under the cultivation of an Adna Malik and the occupancy tenant, after the abolition of Ala Malkiat right in the former case and after vesting of the proprietary right in the later case, is to be considered the self-acquired property of that person or not, is dependent on the quality and the extent of rights enjoyed by the tiller falling in the above two categories, and not on the fact as to whether in a given case ownership rights have been acquired with or without payment of compensation. I find myself, with respect, in complete agreement with the view taken by Mahajan J. That being the position, I hold that the land in the possession of the occupancy tenant over which he acquired full ownership rights by the operation of law became self-acquired property in his land and so I find no merit in the submission that the land in question was not the self-acquired property of Kirpa deceased.

3. Learned counsel for the appellants has next urged that Khasra No. 1078 situated in village Jhande Majra cannot be considered as self-acquired property of Kirpa deceased and the reasoning employed by the lower appellate Court to hold it so is fallacious. It may be stated here that Khasra No. 1078 is equivalent to two Khasra Nos. 641 and 644, as given in the excerpt, Exhibit P.8 in the year 1952. Khasra No.641 was owned by one Udia, the common ancestor, while Khasra No. 644 was a Shamilat Deh and was possessed by the Shamilat Deh area, as represented by Khasra No. 644 could not be considered in the ownership of Udia, so when the ancestral and the non-ancestral property is mixed up the whole of the property has to be termed as non-ancestral. The learned counsel urged that since Udia by virtue of his being owner in the village did have some share in the Shamilat Deh land, so the land that later on fell to his share as represented by Khasra No. 1078 should be considered to include only the land which represents the land included in Khasra No. 641 and the other land from Shamilat Deh Khasra, which fell to his share, has also to be considered as ancestral land, I find merit in this contention of the learned

counsel and so I hold that, in fact, Khasra No. 1078 is also ancestral and to that extent the finding of the lower appellate Court is erroneous and vitiated, as the same is based on the misreading of the evidence on the record.”

28. The case cited by learned counsel for appellants/plaintiffs i.e. **Dalip Singh Vs. Dara Singh & Anr.** (supra) is distinguishable in view of facts and circumstances of the present case. In the said case, ancestral rights were surrendered to get ownership rights. However, in the present case, there was no surrender of rights, rather the ownership came by virtue of enactment of law whereby co-parcenary rights were converted into full ownership rights on payment of compensation to original owner. Payment of compensation was not part of co-parcenary rights, the suit property, therefore, had vested in Billu Singh only upon payment of compensation and, therefore, once he had made payment from his own funds, then the rights acquired under 1953 Act would be self-acquired rights and suit land would not continue to be ancestral land as being argued by learned counsel for appellants/plaintiffs.

29. In view of above discussion, I do not find any error in the judgment and decree passed by Courts below. The present appeal is without any merit and liable to be dismissed. The findings of learned Courts below on all the issues is affirmed. Appeal is accordingly dismissed.

30. Pending application(s), if any, is/are disposed of accordingly.

19.05.2026
chiranjeev

(PARMOD GOYAL)
JUDGE

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No