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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-2205-1991 (O&M)
Date of decision: 12.02.2026

Lal Chand (deceased) through his LRs

...Appellant

Versus

Data Ram and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Dr. Pankaj Nanhera, Sr. Advocate with
Mr. Nitin Verma, Advocate and
Mr. Sachin Jangra, Advocate and
Mr. Sanjay Verma, Advocate for the appellant.

Mr. Naveen Bhardwaj, Advocate with
Mr. Lokendra Singh, Advocate and
Mr. Arvind K. Bangar, Advocate for respondent Nos.9 and 10.

VIKAS BAHL, J. (ORAL)

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1. Challenge in the present regular second appeal is to the judgment of the Ist Appellate Court dated 21.08.1991 vide which the appeal filed by defendants no.2, 3, 4, 5, 9 and 10 has been allowed and the suit filed by the plaintiff Lal Chand was dismissed. The present appeal has been filed by the plaintiff Lal Chand under Section 41 of the Punjab Courts Act, 1918 and is being pursued by his LRs.



ARGUMENTS ON BEHALF OF THE APPELLANT/PLAINTIFF

2. Learned senior counsel for the appellant/plaintiff has submitted that in the present case the plaintiff had filed a suit for declaration to the effect that the plaintiff is owner in possession of the suit land measuring 35 kanals 15 marlas situated in village Dulheri, Tehsil and District Bhiwani and that the mutation of inheritance no.921 dated 15.06.1980 in favour of defendants no.1 to 5 was illegal and against law. It is submitted that it was the case of the plaintiff that he was the son of Chunia and Mohra and was also the brother of Girdhari. It is further submitted that the said Girdhari had died issueless and intestate and thus, the plaintiff being the only surviving son of Chunia was entitled to the suit land which prior to the death of Girdhari was in the name of Girdhari. It is argued that after the death of Chunia, the plaintiff was entitled to half share of the estate of Chunia and Girdhari was entitled to the other half of the said estate. It is submitted that since the plaintiff was in the womb of his mother Mohra, when, Chunia died on 15.04.1928, thus, the suit land was shown only in the name of Girdhari and that after the death of Girdhari, it is the plaintiff who is entitled to the land which was shown in the name of Girdhari being his brother and being the only surviving son of Chunia.

3. Learned senior counsel for the plaintiff has submitted that in the present case the fact that the plaintiff as well as Girdhari were sons of Mohra is not disputed and has been found as a matter of fact by the trial Court as well as by the Ist Appellate Court. It is further submitted that it is also not in dispute that Girdhari was admittedly the son of Chunia and Mohra, and thus, it is apparent that it is not in dispute that the mother of Girdhari and the



plaintiff was the same person i.e., Mohra. It is argued that even the fact that Mohra was married to Chunia is not disputed and thus, since there is a presumption of legitimacy in favour of the plaintiff, it was for the defendant to show that the plaintiff was not the son of Chunia. It is argued that it was the specific case of the defendants in the written statement that the said Mohra had performed *kareva* marriage with Kirpa and that the present plaintiff was born from the marriage of Kirpa and Mohra. It is submitted that no such *Kareva* marriage between Kirpa and Mohra had been proved and neither the trial Court nor the Ist Appellate Court has given any finding in favour of the defendants with respect to the said alleged *Kareva* marriage.

4. It is further submitted that it is proved on record that PW-3 Naraini was the widow of Kirpa and thus it is impossible to believe that the said Kirpa could have had two wives living at the same time. Learned senior counsel for the appellant has further submitted that the said Kirpa had died and after his death, mutation no.665 dated 20.08.1965 was entered into which has been duly exhibited as Ex.P11 and a perusal of the same would show that the property of Kirpa had been inherited by his widow Naraini, daughter Devki Chandro and three sons Hardeva, Om Parkash and Jai Singh. It is submitted that in spite of the fact that Mohra was alive at the time of death of Kirpa, yet, neither any property has been given to said Mohra nor any property has been given to the plaintiff which also clearly establishes that neither Mohra was the wife of Kirpa nor the plaintiff was the son of Kirpa. It is submitted that the said mutation was entered into in the year 1965 which is prior to the filing of the present suit, which was filed in the



year 1983.

5. It is further argued that it is the own case of the defendants that Kirpa was not the real brother of Chunia and thus, the question of Kirpa performing *kareva* marriage with Mohra would not arise. It is submitted that no custom has been pleaded, much less, proved on behalf of the defendants to even remotely show that *kareva* marriage can be performed with the wife of a person who is not even the real brother of the deceased. It is submitted that the witnesses of the plaintiff, more so, PW-2, PW-4 and PW-6 were all more than 70 years of age and thus they were alive when Chunia was living and were the best persons to give evidence with respect to the parentage of the plaintiff. It is submitted that in fact, PW-2 has specifically stated in his evidence that Chunia was his uncle (*Tau*) and had specifically stated that the plaintiff was the son of Chunia. It is further highlighted that PW-3 Narayani was the widow of Kirpala and was 75 years of age on the date of giving of her evidence on 07.08.1986 and she had also specifically stated that Lal Chand was the son of Chunia and Mohra and that Mohra had not performed any *kareva* with Kirpala. It is submitted that even PW-4 Dhan Singh was 70 years of age when his evidence was recorded and he has also given positive evidence with respect to the plaintiff being the son of Chunia.

6. It is submitted that the other oral evidences also fully prove the case of the plaintiff and even the ration card which has been duly proved on record as Exhibit PW5/A also shows that the plaintiff is the son of Chunia. It is submitted that the said document has been rightly taken into consideration by the trial Court but the 1st Appellate Court has, on the basis of surmises and conjectures, not placed reliance on the said document by observing that



the said ration card has been prepared during the pendency of the suit, which finding, is absolutely perverse and against law. It is argued that the said ration card (Exhibit PW5/A) has been duly proved on record by PW-5 Jai Singh, Sub Inspector, Food and Supply Office, and there is no suggestion put to the said witness by the counsel for the defendants to the effect that the said document has been prepared during the pendency of the suit. Moreover, there is also no date forthcoming which could even remotely show that the same has been prepared during the pendency of the suit and further no other ration card showing that the plaintiff was not the son of Chunia has been produced by the defendants.

7. Learned senior counsel for the appellant has submitted that the present appeal deserves to be allowed on a very short point. It is argued that even assuming, for the sake of arguments, that the present plaintiff is not the son of Chunia, then also the suit of the plaintiff deserves to be decreed, as has been rightly done by the trial Court, as it is proved on record that the plaintiff was the uterine brother of Girdhari. The trial Court as well as the First Appellate Court have given positive finding regarding the same. It is submitted that in the said circumstances, the plaintiff would come within the definition of “cognate” as defined in Section 3(1)(c) of the Hindu Succession Act, 1956 and the plaintiff would, therefore, be entitled to inherit the property of Girdhari, unless the defendants are able to show higher relationship. It is submitted that in the present case, the defendants have raised a specific plea that defendants No.1 to 5 are entitled to inherit the property as agnates, however, the same has not been remotely proved on record. It is argued that the First Appellate Court which has allowed the



appeal of the defendants, has not given any finding to the effect that the defendants No.1 to 5 are agnates in relation to Girdhari and that the trial Court had specifically observed that the said fact has not been proved. It is submitted that there is also no cross-appeal filed by the defendants and thus on the said short ground alone, the appeal of the plaintiff deserves to be allowed.

8. It is further submitted that even a perusal of the pedigree table, reproduced in the written statement filed on behalf of the defendants, would show that the defendants have tried to build a case that defendants No.1 to 5 were the grandchildren of Haria and Chunia was the son of Moyla. It is submitted that it was further the case of the defendants that Haria and Moyla were sons of Cheta. It is submitted that there is no document, much less revenue record, to remotely support the said pedigree table. It is submitted that there is no oral evidence to even remotely show that Cheta had two sons i.e. Hariya and Moyla and since the said aspect has not been proved, it cannot even remotely be stated that defendants No.1 to 5 were agnates in relation to Girdhari and in the said circumstances, the suit of the plaintiff was required to be decreed even on the said argument raised by the plaintiff. It is submitted that the observations of the First Appellate Court to the effect that the said aspect was beyond the pleaded case of the plaintiff is apart from being a perverse observation is also illegal and unsustainable. It is submitted that it was the specific case of the plaintiff in the plaint that he is the son of Mohra and Chunia and the aspect that the plaintiff was the son of Mohra has not been disputed in the written statement and rather from the averments in the written statement, it stands established that the plaintiff was the son of



Mohra and thus was a uterine brother of Girdhari. It is argued that once a fact is admitted and is also proved on record, then it is incumbent upon the Court to grant relief which the party is entitled to on the basis of the admitted/proved fact. It is submitted that the First Appellate Court itself has observed that the evidence of the defendants is inconsistent and there is no independent witness, who has either proved the fact of *kareva* of Mohra or also the fact that the plaintiff was born nine months after the death of Chunia. It is submitted that in the said circumstances, the judgment of the First Appellate Court deserves to be set aside and the judgment of the trial Court deserves to be upheld. In support of his arguments, learned senior counsel for the appellant has relied upon the judgment of the Hon'ble Supreme Court in the case of *Ivan Rathinam Versus Milan Joseph* passed in *Criminal Appeal No.413 of 2025* arising out of *Special Leave Petition (CRL.) No.4917 of 2018*.

ARGUMENTS ON BEHALF OF THE CONTESTING RESPONDENTS NO.9 AND 10/DEFENDANTS NO.9 AND 10:

9. Learned counsel for the contesting respondents No.9 and 10/defendants No.9 and 10 has submitted that the onus to prove that the plaintiff is the son of Chunia is on the plaintiff. It is further submitted that for a period of more than 50 years, there was no document produced by the plaintiff to show that he is the son of Chunia and rather there are three documents that being the voter lists for the years 1975, 1976 and 1980 where the plaintiff is shown as the son of Kirpa. It is submitted that the said three documents clearly show that the plaintiff had himself admitted that he is the son of Kirpa as he never got the father's name in the said voter list corrected



till the time he filed the civil suit. It is further argued that the evidence given by the witnesses of the plaintiff would not be relevant under Section 50 of the Evidence Act, 1872. It is submitted that PW-3 Narayani who was the widow of Kirpa did not prove qua her conduct the relationship that needs to be proved but merely gave a categoric statement that no *kareva* was performed.

10. It is further submitted that PW-3 Naraini was an interested witness, inasmuch as, the plaintiff as per the case of the defendants was the stepson of Naraini, thus, she did not want that the said plaintiff should inherit the property of Kripa and it was in her vested interest to give evidence to the effect that the plaintiff was the son of Chunia. It is stated that as per Section 8 of the Hindu Succession Act, 1956 (hereinafter to be referred as “Act of 1956”), the property is to devolve upon a cognate only if there is no agnate. It is further stated that it was the case of the defendants that they were agnates in relation to Girdhari and the said relationship was duly depicted in the pedigree table which has been reproduced in the written statement. It is submitted that since in the present case the plaintiff has not been able to prove that he is the son of Chunia, thus, the suit of the plaintiff should have been dismissed on the said ground alone. It is argued that the 1st Appellate Court had rightly rejected the alternative argument on behalf of the plaintiff to the effect that he was setting up a case of the plaintiff being uterine brother of Girdhari as there was no such pleaded case and the said finding deserves to be upheld. It is further argued that defendants No.2 to 5 had further sold the property to defendants No.9 and 10 and thus, on the said aspect also, the suit of the plaintiff deserves to be dismissed.

**ANALYSIS AND FINDINGS**

11. This Court has heard learned senior counsel/counsel for the parties and has perused the paper-book and the record of the trial Court and is of the opinion that the present appeal is meritorious and deserves to be allowed and the judgment of the 1st Appellate Court is unsustainable and deserves to be set aside and the judgment of the trial Court deserves to be upheld and the suit filed by the plaintiff deserves to be decreed for the reasons which have been detailed hereinafter.

12. The plaintiff Lal Chand had filed a suit for declaration to the effect that the plaintiff is the owner in possession of total land measuring 35 Kanals 15 Marlas bearing Khewat No.43/50, Khatoni No.109, Murabba No.47, Killa No. 6(7-8), 7(8-0), 8/1(4-12), 13/1(7-11), 14/1(4-4), 15/1(3-18), and 354(0-2), according to the Jamabandi for the year 1977-78, situated in Village Dulheri, Tehsil and District Bhiwani. In the said suit, challenge was made to the mutation of inheritance No.921 decided on 15.06.1980 in favour of defendants No.1 to 5 with respect to the estate of the Girdhari, son of Chunia. The suit was filed on 28.02.1983 and when the defendants No.2 to 5 mortgaged a part of the suit property during the pendency of the suit on 19.10.1983 and also sold the said property vide registered sale deed dated 08.06.1985 in favour of defendants No.9 and 10, the plaintiff moved applications for amendment of the plaint and accordingly, the plaint was amended and a challenge was made to the said mortgage deed as well as the sale deed both of which had been executed during the pendency of the suit and would be hit by the principle of lis pendens. It was the case of the plaintiff that he was the son of Chunia and Smt. Mohra and at the time when Chunia died,

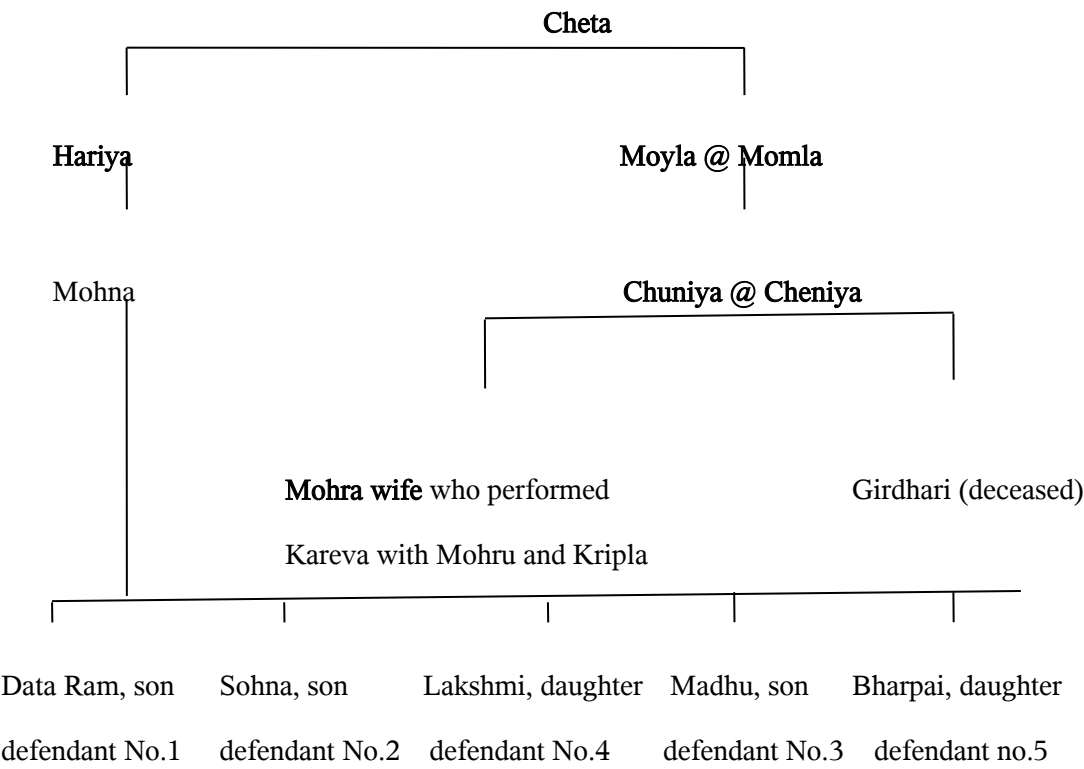


the plaintiff was in the womb of his mother Smt. Mohra and was born after 5-6 months of the death of Chunia. It is further the case of the plaintiff that on account of the said fact the mutation of inheritance of Chunia was sanctioned only in favour of Girdhari, brother of the plaintiff, who was admittedly the son of Chunia and Smt. Mohra. It was also pleaded that Girdhari, brother of the plaintiff, had died in the year 1980 issueless and intestate and since the plaintiff, being his brother, was the only successor of Girdhari and was entitled to the entire property which was in the name of Girdhari. It was also the case of the plaintiff that up to the death of Girdhari, the plaintiff as well as his brother Girdhari used to cultivate the land in question and used to work and live together and that the defendants, who had no relation or concern either with Girdhari or with the suit land, had illegally got mutation of inheritance No.921, decided on 15.06.1980, entered in their favour. On the basis of the said pleadings the suit was filed.

13. In the written statement, the plea of the respondents was to the effect that after 5-6 months of the death of Chunia, Mohra wife of Chunia had solemnized kareva with Mohru and then with Kripala and it was after two years of the said kareva marriage between Kripala and Mohra that the plaintiff was born to Kripala and Mohra and that Chunia had only one deceased son i.e. Girdhari. The fact that Smt. Mohra was the wife of Chunia and that Girdhari was the son of Chunia and Smt. Mohra and that the present plaintiff was the son of Smt. Mohra was not disputed. It was the case of the defendants that Girdhari was the only legal heir and was entitled to the entire property of Chunia and after the death of Girdhari, since the defendants No.1 to 5 were related to Girdhari, thus, they were entitled to the property of the



said Girdhari. The alleged pedigree table, which was reproduced in the written statement, is reproduced herein below: -



It would be relevant to note, at this stage, although the detailed discussion regarding the same has been done in the subsequent paragraphs, that it has been fairly admitted before this Court on behalf of the respondents that there was no document, much less, revenue record or evidence to even remotely prove that Hariya and Moyla were the sons of Cheta and thus, the main link is completely missing. It is, therefore, apparent that the defendants had not been able to show that they are agnates in relation to Girdhari.

14. The trial Court in para 7 of the judgment framed the following issues: -

- “1. Whether the plaintiff is the son of Chunia @ Chenia as alleged in the plaint if so to what effect ? OP Parties.
- 2. Whether the mutation no. 227 dated 24.5.1928 in favour of deceased Girdhari and mutation No.921 dated 15.6.1980 in favour of the



defendants are wrong against law and facts as alleged in the plaint, if so to what effect ? OPP.

3. *Whether the plaintiff is co-owner in possession as to disputed land ? OPP*

4. *If issue No.3 is not proved whether plaintiff will be entitled for relief for possession ? OPP*

5. *Whether the suit of the plaintiff is estopped by his act and conduct? OPD*

6. *Whether the defendants are entitled for special costs ? OPD*

7. *Whether the suit is not properly valued for the purpose of court fee and jurisdiction and if so to what effect ? OPD*

8. *Relief.”*

15. Issue No.1 was decided in favour of the plaintiff and against the defendants. Under the said issue, it was observed that undoubtedly, the plaintiff was born from Mohra, who was also the mother of deceased Girdhari, whose inheritance was in question and the issue which needs to be resolved was whether the plaintiff was born from the matrimonial wedlock of deceased Chunia and Mohra or from Kirpa and Mohra, as it was alleged by the defendants that Mohra had contracted kareva marriage with the said Kripa after the demise of Chunia. The trial Court had taken into consideration the evidence of the plaintiff witnesses which included the relatives of Chunia, wife of Kirpa and had found that their evidence was relevant for the purpose of proving and determining the said issue. Reference was also made to the ration card which had been duly exhibited as Ex.PW5/A which also depicted that the plaintiff was the son of Chunia and not of Kirpa. It was observed that the evidence of the defendants witnesses, more so, DW1, who was the defendant himself, was based on hearsay and did not prove that there was any kareva marriage or even the fact that the defendants No.1 to 5



were the agnates of the deceased Girdhari. In para 18 of the judgment, the trial Court even considered the alternative argument raised on behalf of the plaintiff to the effect that since the plaintiff was the brother of Girdhari having a common mother i.e. Smt. Mohra and they were related to each other by uterine blood, thus, the plaintiff would at any rate be a cognate of Girdhari and that since defendants No.1 to 5 had not been able to prove that they were the agnates, thus, on the said aspect also, it was observed that the plaintiff would be entitled to inherit the estate which was shown in the name of Girdhari.

16. Issue No.2 as well as issue no.3 were also decided in favour of the plaintiff. Under issue no.3, it was observed that defendants No.9 and 10 were *lis pendens* purchasers vide sale deed dated 08.06.1985 and thus, the said sale deed which had been executed during the pendency of the suit would not in any way come in the way of the title of the plaintiff. It was observed that issues No.5, 6 and 7 had not been pressed by the defendants and thus, were also decided against the defendants. The suit of the plaintiff was decreed and the plaintiff was declared to be the absolute owner in possession of the suit land measuring 35 kanals 15 marlas as detailed in the head note of the plaint and the impugned sale deed Ex.P6 as well as the mortgage deed dated 19.10.1983 Ex.P5 and the mutations Ex.P7 and P9 were set aside.

17. Defendants No.2, 3, 4, 5, 9 and 10 had filed an appeal and in the said appeal, the 1st Appellate Court in para 9 had specifically observed that Lal Chand was given birth to by Mohra and his maternity was an admitted fact and was not in dispute. However, the finding of the trial Court, on the aspect that the suit of the plaintiff was required to be decreed even in case



the alternative argument with respect to the plaintiff being related to deceased Girdhari by uterine blood was to be accepted, was set aside solely on the ground that the same was not the pleaded case of the plaintiff. This observation of the 1st Appellate Court is absolutely against law and the reasons for holding the same would be detailed hereinafter. The evidence of the witnesses was misread and misconstrued by the 1st Appellate Court and in para 20, the evidence of PW2 Chandgi Ram who was a relative of Chunia was cryptically rejected by saying that it was not difficult to bring up a man of his status and standard and to put him in the witness box. Further, in para 22, the 1st Appellate Court had observed that there were discrepancies in the statement of DW1, DW2, DW3 and DW4 as has also been observed by the trial Court and yet the said evidence was relied upon. The material evidence of PW3 Naraini, who was the widow of Kripa was also illegally excluded.

18. From the pleadings, evidence and documents on record, certain undisputed facts and aspects have emerged and the same are as follows.

(i) Girdhari is admittedly the son of Chunia and Mohra and the said Girdhari had died issueless and intestate.

(ii) The plaintiff was admittedly the son of Smt. Mohra and the fact that the plaintiff was related to Girdhari by uterine blood is not disputed.

(iii) It is the case of the plaintiff that he is the son of Chunia and Mohra and thus, even the father of the plaintiff and Girdhari is the same.

(iv) It is the case of the defendants that although the plaintiff is the son of Mohra, but he is not the son of Chunia and is rather the



son of Mohra and Kirpa as Mohra had performed kereva marriage with Kirpa after the death of Chunia and that the defendants No.1 to 5 were the agnates of Girdhari.

19. In the above-said facts and circumstances, two important points/questions arise for consideration before this Court, which are as follows: -

- (i) Whether the plaintiff is the son of deceased Chunia and Mohra, as is Girdhari?
- (ii) Whether irrespective of the plaintiff having proved himself to be the son of Chunia, he, being admittedly the son of Mohra, who was also the mother of Girdhari, would be entitled to inherit the property which is in the name of Girdhari being his uterine brother/cognate in the absence of agnates, Class I and Class II heirs?

20. This Court would first consider the second point/question as the same does not require any detailed discussion and is proved on the record. The trial Court vide its judgment dated 14.06.1988 had, after taking into consideration the evidence and documents on record, observed that even on the said point i.e. Point No.(ii), the suit of the plaintiff deserves to be decreed. In para 18 of the said judgment, it was observed that since the mother of the plaintiff and the deceased Girdhari was common, thus, they were related to each other by uterine blood and the plaintiff would be a cognate of Girdhari and since it had not been proved on record that defendants No.1 to 5 were agnates of deceased Girdhari, thus, it was held that the suit of the plaintiff deserves to be decreed on the said ground also. The 1st Appellate Court in para 9 had observed as under: -



“9. Lal Chand was given birth to by Mohran. His maternity is an admitted fact and is no longer in dispute. The dispute is only with regard to the paternity. This is the main, rather, the only question of dispute. He claims to be the son of Chunia. According to the defendants he is the son of Kirpala with whom Mohran, widow of Chunia, had allegedly, entered into a Kareva marriage.”

21. In para 27 of the judgment, the 1st Appellate Court had set aside the finding of the trial Court on the said aspect only by observing that the same was not the pleaded case of the plaintiff. Para 27 of the judgment of the 1st Appellate Court is reproduced herein below: -

“27. The learned trial court in his Judgment has taken up an alternative case also in favour of the plaintiff. It has been so discussed by the learned trial court in para 18, 19, and 20 of the impugned Judgment. The learned trial Court has held that even if Lal Chand is held to be the son of Kripala born from the womb of Mohran mother of Girdhari, even in that case he being a half brother he is entitled to the land left by Girdhari. No such case was pleaded by the plaintiff and, therefore, no such finding can be recorded on facts or on the legal position. The learned trial court has made an erroneous approach in this regard also. This finding is also set aside.”

22. The said observations of the 1st Appellate Court are absolutely illegal and against law and deserve to be set aside. It would be relevant to note that the 1st Appellate Court had not reversed the finding of the trial Court to the effect that the defendants No.1 to 5 are not proved to be agnates. Moreover, it has been fairly submitted before this Court on behalf of the respondents that there is no documentary evidence, much less, revenue record or even relevant and admissible oral evidence to substantiate or to remotely show that Hariya and Moyla were the sons of Cheta (reference may be made to the pedigree table, reproduced in the written statement and also herein-



above) and once the same was not proved, then, it cannot be said that defendants No.1 to 5 were the agnates of Girdhari as the main link is missing. The fact that the plaintiff was the son of Mohra was specifically stated by the plaintiff in the plaint, which fact was not denied in the written statement. It is a matter of settled law that in the pleadings, the facts are required to be stated and not arguments and once the said facts are proved/admitted, then, it is incumbent upon the Court to grant relief, which the party is entitled to on the basis of the said admitted/proved facts. Section 8 of the Hindu Succession Act, 1956, which deals with the succession of property of a male Hindu and is relevant, is reproduced herein below: -

“8. General rules of succession in the case of males. The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter:-

- (a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;***
- (b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;***
- (c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and***
- (d) lastly, if there is no agnate, then upon the cognates of the deceased”***

23. Section 3(1)(c) of the 1956 Act, which define ‘cognate’ is reproduced herein below: -

“3. Definitions and interpretation.- (1) In this Act, unless the context otherwise requires,--

- (c) "cognate" one person is said to be a "cognate" of another if the two are related by blood or adoption but not wholly through males.”***

A perusal of the above would show that the property of a male



Hindu dying intestate would devolve upon cognates, in case there are no Class I heirs, Class II heirs and agnates. In the present case, it is not in dispute that there was no Class I heirs and Class II heirs of Girdhari. The defendants No.1 to 5 had not been able to prove that they were agnates of Girdhari and there was no such finding in favour of the said defendants by the 1st Appellate Court or by the trial Court. In the said circumstances, it was incumbent upon the 1st Appellate Court to have considered the alternative argument of the plaintiff to the effect that they were at least cognates on admitted facts and were thus entitled to the suit land. It would be relevant to note that cognates are persons who are related by blood or adoption but not wholly through males and it could not be disputed on behalf of the respondents that the plaintiff and the said Girdhari, being born from the same mother would be cognates. No argument to contradict the same has been raised on behalf of the respondents. Moreover, the 1st Appellate Court has not held that the plaintiff is not a cognate of Girdhari whereas the trial Court had held that at any rate the plaintiff was a cognate. In the said circumstances, the 1st Appellate Court fell into a grave error by reversing the finding of the trial Court on the said issue and thus, the cryptic finding of the 1st Appellate Court in para 27 deserves to be set aside on the said ground alone and the finding of the trial Court on the said aspect deserves to be upheld. The suit of the plaintiff deserves to be decreed on the basis of the said alternate argument alone.

24. This Court would now consider and adjudicate upon the first point/issue which has been framed by this Court hereinabove, i.e. whether the plaintiff is the son of deceased-Chunia and Mohra, as is Girdhari. The



trial Court, after considering the entire evidence and documents, had rightly decided the said point/issue in favour of the plaintiff, whereas the First Appellate Court without considering the material evidence and settled principles of law and by misreading the evidence, has reversed the said findings. In this regard, the following aspects are relevant, which have not been duly considered by the First Appellate Court:

- (i) It is the admitted position on record, which has also not been disputed before this Court, that Mohra is the mother of the plaintiff and Girdhari and Mohra was married to Chunia.
- (ii) It was the case of the defendant that Mohra had performed *kareva* with Kirpa and the plaintiff was the son of Kirpa and Mohra. The onus to prove the said *kareva* was on the contesting defendants, who had set up the said plea. Admittedly, neither the trial Court nor the 1st Appellate Court, which had allowed the appeal of defendants No.2, 3, 4, 5, 9 and 10, had given a finding to the effect that Kirpa had performed *kareva* with Mohra. No substantial evidence to prove the said fact has been highlighted on behalf of the defendants/respondents before this Court also.
- (iii) Chunia and Kirpa were admittedly not the real brothers and no custom has been pleaded, much less proved by the respondents, to show that the *kareva* marriage was prevalent even between the widow of the deceased, and a person who is not the real brother of the deceased.
- (iv) The counsel for the contesting defendants/respondents has not been able to highlight any document to show that the plaintiff was the son of Kirpa. Rather the register of mutation of Village Dulheri, Tehsil



Tosham, District Bhiwani which has been duly exhibited as Exhibit P-11 would show that the estate of Kirpa was inherited by his widow Smt. Narayani, his daughter Smt. Devki Chandro and his three sons i.e. Hardeva, Om Parkash and Jai Singh. The said mutation was sanctioned on 20.08.1965 i.e. much prior to the institution of the present suit which was instituted in the year 1983. The plaintiff as well as Mohra, who, as per the case of the defendants, were the son and widow of Kirpa, have as per Exhibit P-11 not been given any share in the estate of Kirpa. There is nothing on record to show that the plaintiff had instituted any proceedings to claim any share in the estate of Kirpa. The said fact also disproves the defence of the defendants that there was a *kareva* marriage and the plaintiff was the son of Kirpa and Mohra. The First Appellate Court had, after observing that plaintiff-Lal Chand's name does not appear in the list of heirs of Kirpala in Mutation No.665, has not placed reliance on the said document on surmises and conjectures, by observing that the same could be an innocent mistake or a willful fraudulent intention. No reference to any piece of evidence on record has been made in order to come to the said conclusion.

(v) It is proved on record that Narayani was the widow of Kirpala. Apart from the fact that she had inherited the estate of Kirpala as is apparent from Mutation No.665 (Exhibit P-11), the said Narayani had also appeared in the witness box as PW-3. The true translation of the relevant portion of the evidence of the said PW-3 (translated by the Translation Branch of this Court) is reproduced hereinbelow:

“PW3 Narayani widow of Kripla (--illegible text--) son



of Ballu aged 75 years, r/o Dulheri

-on SA

I know Lalchand. His father's name was Chunia. They were two brothers one is Girdhari and other is Lalchand, Girdhari had died. Both brothers were unmarried. Both used to live together. Both used to do farming together and were neighbour to our field. His mother's name was Mohra. His mother namely Mohra has not ever performed Kareva (leverate marriage) with Kripla. Lal Chand was born 6 months after the death of his father i.e. when his father died then Lalchand was in his mother's womb. Lalchand was born from Chuniya and Mohra. Now, on the spot Lalchand has cultivated Bajra and Moong. He sows these two three crops.”

A perusal of the above would show that the said Narayani was stated to be 75 years of age at the time of her evidence which was recorded on 07.08.1986. Narayani had stated that Lal Chand was the son of Chunia and his mother was Mohra and Mohra had never performed *kareva* with Kirpala and that Lal Chand was born six months after the death of his father Chunia and when Chunia had died, Lal Chand was in his mother's womb. The trial Court had rightly taken into consideration the evidence of PW-3 Narayani, who was the wife of Kirpa and it was observed that the said PW-3 was an important witness as she was herself the wife of Kirpa. The First Appellate Court, however, has rejected the said piece of evidence by stating that she had a vested interest to oust Lal Chand from her husband Kirpa's family so that the estate of Kirpa could devolve upon her children. It would be relevant to note that the property of Kirpa had already devolved in the year 1965 upon the said Narayani and her sons and her daughter and nothing was given to the plaintiff-Lal



Chand or Mohra and thus, in the said circumstances, it cannot be said that the said PW-3 Narayani would appear after a period of 21 years from the said mutation to falsely support the case of the plaintiff. The counsel for the contesting respondents has not highlighted anything from the cross-examination of the said PW-3 to discard her testimony. Moreover, the fact of Mutation No.665 being only in the name of Narayani and her children clearly proves that PW-3 Narayani was the widow of Kirpa and it is highly improbable that at the same time Kirpa could have had two wives i.e. PW-3 Narayani and Mohra.

(vi) Exhibit PW-5/A is the ration card in which Lal Chand has been shown to be the son of Chunia. The said document has been duly exhibited and proved on record by PW-5 Jai Singh, Sub Inspector, Food and Supply Office, Tosham, who had produced the summoned record and had even brought Form D1 which had been attested by the Sarpanch and had produced the ration card. The true translation of the relevant portion of the evidence of the said PW-5 (translated by the Translation Branch of this Court) is reproduced hereinbelow:

“PW5 Jai Singh Sub Inspector, Food and Supply Officer Tosham, on SA.

It is submitted that I have brought the summoned record. I have brought Form D-1 Lal Chand s/o Chunni resident of Dulheri. It has been attested by the Sarpanch. We get the Ration card made using this form. EX-PW5/A is the photocopy of Ration card (objected to) which is correct as per original Ration card.

The trial Court had rightly considered the said document and



evidence as a factum in favour of the plaintiff. The First Appellate Court, however, had perversely observed that since the said document has been prepared during the pendency of the suit, thus the same cannot be considered. It would be relevant to note that there is nothing on record to show that the said document had been prepared during the pendency of the suit. A perusal of the cross-examination of PW-5 Jai Singh, Sub Inspector, would show that no suggestion was put to the said witness by the counsel for the defendants to the effect that the said document had been prepared during the pendency of the suit. Thus the said observation of the First Appellate Court is absolutely perverse.

(vii) The plaintiff witnesses have specifically stated that the plaintiff and Girdhari used to do farming and agriculture together and also used to live together till the time of death of Girdhari. DW-2 Sita Ram son of Bhole Ram who was the Election Kanungo and was produced by the defendants has stated in his cross-examination that even the votes of Lal Chand and Girdhari are in the same house i.e. H.No.85. From the evidence on record, it is proved that plaintiff-Lal Chand and Girdhari were living in the same house and had the voter list in the same house and same is also a factor which furthers the case of the plaintiff.

(viii) The witnesses of the plaintiff have fully proved the case of the plaintiff, however, their evidence has been misconstrued by the First Appellate Court. PW-2 Chandgi Ram son of Mukh Ram who was aged 74-75 years at the time of his evidence which was recorded on 22.03.1984 and was thus very much living at the time when Chunia was living. The said Chandgi Ram has specifically stated in his evidence that



Chunia was his uncle (*Tau*) and has further stated that Lal Chand was the son of Chunia and was born 6-7 months after the death of Chunia and also that Lal Chand and Girdhari used to live and work together. The true translation of the relevant portion of the evidence of the said PW-2 (translated by the Translation Branch of this Court) is reproduced hereinbelow:

“PW2

*Chandgi Ram S/o Mukh Ram aged 74-75 years, Landlord
r/o Dulheri on S.A.*

I knew Chunya very well. He was my uncle (Tau) who lived in the village. Chunya had two sons, one was born before his death whose name was Girdhari, and another was born after his death who was named Lalchand. Lalchand was born 6-7 months after the death of Chunya. Both the brothers used to live together and had shared livelihood. Both the brothers used to do the cultivation together. Girdhari died unmarried. It has been 10-11 years since he died. Now Lalchand lives in the village in the same house in which he lived earlier. Now on this land the plaintiff Lalchand has been doing the farming. The defendant got the mutation sanctioned in respect of the land in dispute. The information/munadi was not made/conveyed in village. The defendants have nothing to do with the land in dispute. Now the case is pending. Therefore, I do not know.”

The abovesaid witness was a very relevant witness as he was related to Chunia and he would have had special knowledge with respect to the relationship of the plaintiff with deceased-Chunia. The First Appellate Court, however, in paragraph 20 of the judgment had not taken into consideration the evidence of said PW-2 on surmises and conjectures by simply observing that a person like him could be put in the witness box to give facts in favour of a party. Paragraph 20 of the judgment of the



First Appellate Court is reproduced hereinbelow:

“20. P.W. 2 Chandgi Ram claims to be a relation of Chunia stating that Chunia was his Tau in his brotherhood. It is not difficult to bring up a man of his status and standard and to put him in witness box to get deposed some facts in favour of a particular party, may be the facts are false.”

The First Appellate Court has not highlighted anything from the cross-examination of the said PW-2 so as to not rely upon the said witness but has strangely on surmises and conjectures excluded the evidence of the said witness.

(ix) There were other witnesses examined by the plaintiff who also support the case of the plaintiff. PW-6 Ramprashad was also 70 years of age at the time of his evidence on 09.01.1987 and the said PW-6 has also stated that Lal Chand was related to him as brother and that Lal Chand was the son of his *bua* (paternal aunt) and had further given the evidence that Lal Chand was born to Mohra and Chunia and Girdhari was also the son of Chunia and Mohra. It was stated that said Lal Chand was born 5-6 months after the death of Chunia. The true translation of the relevant portion of the evidence of the said PW-6 (translated by the Translation Branch of this Court) is reproduced hereinbelow:

“PW6

Lalchand v/s Data Ram

*Ramprashad s/o Munah age 70 years occupation farming
17... 61 [sic] Rampur*



It is stated that Lalchand is son of Chunia. He is related to me as brother. He is son of my buaa (paternal aunt). My aunt's name was Mohra who was married to Chunia. Mohra and Chunia had a son Girdhari and a daughter who died few days after she was born. Then Lalchand was born. He was born 5-6 months after the death of Chunia. Girdhari and Lalchand used to live and do farming together. Girdhari had died now. Now Lalchand does the farming. Both brothers were unmarried. My aunt has died now. She has not done Karewa (levirate marriage) with anyone.”

(x) PW-4 is Dhan Singh who was also 70 years of age on the date of his evidence i.e. 07.08.1986 and even he has given evidence to the effect that he knows Lal Chand and that Lal Chand is the son of Chunia and was born out of the womb of Mohra from Chunia. Similarly PW-1, plaintiff-Lal Chand has also supported his case by stepping into the witness box. The evidence given by the plaintiff witnesses, some of whom were relatives and some of whom were aged more than 70 years and had special means of knowledge was relevant. Moreover, there is nothing highlighted before this Court by the respondents from their cross-examination to discard the evidence of the abovesaid witnesses of the plaintiff.

(xi) On the other hand, the defendants had only examined four witnesses whose evidence does not prove the defence set up by the defendants nor does it dislodge the case of the plaintiff, rather, certain admissions made by the said defendants, further the case of the plaintiff. DW-1, who is defendant No.3 Madu Ram, has stated that before Chunia



died, he had not seen him and that his father had told him about Chunia. From the same, it is apparent that the evidence of the said DW-1 who was the star witness of the defendants was based on hearsay. In his further cross-examination, he has admitted that he had sold off the suit property during the pendency of the suit which also clearly shows his conduct. The said DW-1 has further admitted that he had filed a suit with respect to Girdhari's house which was consigned to the record room to be filed later on and even a suggestion was put to him that he had got it consigned deliberately as Lal Chand was the owner of the said house. DW-2 Sita Ram who was the Election Kanungo has not led any evidence to prove *kareva* marriage or the fact that Lal Chand was the son of Kirpa which was the case of the defendants and rather in his cross-examination he has admitted the fact that Lal Chand and Girdhari had votes in the same house which was H.No.85.

(xii) DW-3-Ram Singh has in his cross-examination admitted that the name of Kirpa's brother was Surja who was elder to him. The said piece of evidence would be relevant inasmuch as PW-3 Narayani was the widow of Surja and after the death of Surja, she had performed *kareva* with Kirpa, the real brother of Surja. In his further cross-examination, he had stated that he is not aware as to whether any ration card was issued in the name of Lal Chand in the village. DW-4 Zile Singh defendant No.10 is the subsequent purchaser who admitted the fact that he had purchased the suit property during the pendency of the suit. Thus his purchase is hit by the principle of *lis pendens*. Moreover, there is nothing in his evidence which has been highlighted on behalf of the defendants/respondents that



he had any personal knowledge about the relationship or the parenthood of Lal Chand. In fact, the First Appellate Court in paragraph 22 of its judgment has observed that the evidence of DW-1, DW-2, DW-3 and DW-4 as remarked by the trial Court is full of discrepancies, but still has chosen to rely upon the same. The entire discussion with respect to the evidence of the said four witnesses of the defendants is in paragraph 22 of the judgment of the First Appellate Court which is reproduced hereinbelow:

“22. On the other hand there are statements of D.W.1 Lal Chand, D.W.2 Sita Ram, D.W.3 Ram Singh and D.W.4 Zile Singh. Of course, as remarked by the learned trial court, there are discrepancies in their statements. But still, as is clear from documents, the statements of these D.Ws. Find corroboration from documentary evidence and, therefore, they furnish reliable testimony.”

(xiii) A perusal of the abovesaid para 22 of the judgment of the First Appellate Court would show that there is no mention as to the statement of which witness corroborates which documents. The documents produced by the plaintiff i.e., Ex.PW5/A as well as Ex.P11 which have been discussed hereinabove have been rejected illegally. The First Appellate Court has apparently set aside the judgment of the trial Court primarily by relying upon voter lists Ex.D5 and Ex.D6 in which the plaintiff is not shown as the son of Chunia. It would be relevant to note that in the voter list Ex.P8, the plaintiff has been shown to be the son of Chunia. Moreover, in view of the abovesaid facts and circumstances, as well as the evidence on record, this Court is of the opinion that merely on account of voter list entries, the well reasoned judgment of the trial Court does not deserve to be set aside and suit of the plaintiff does not deserve to be dismissed, more so, when even on the



alternative argument raised on behalf of the plaintiff, as has been discussed in the earlier part of the judgment, suit of the plaintiff deserves to be decreed. Even with respect to the voter lists, it would be relevant to note that DW1 in his cross-examination had stated that the persons who made the voter list did not visit every house and in fact, the Patwari sat on the chowk (roundabout) and made entries. Relevant portion of the said cross-examination of DW1 (true translation has been got done from the Translation Branch of this Court) is reproduced hereinbelow:-

“...When ration card were being made, I was present in the village. Who were making votes did not visit every house. Patwari sat in the Chowk (roundabout) and wrote...”

(xiv). Further DW2-Sitaram had admitted in his cross-examination that both Lal Chand and Girdhari have the vote in the same house i.e., house No.85.

25. It is a matter of settled law that voter list cannot be made the sole basis of determining the relationship and, at best, can only be used as corroborative evidence. Once affirmative evidence led by the plaintiff supports the case that Lal Chand is son of Chunia and Mohra and the abovesaid detailed circumstances also support the said fact and the factum of kareva is not remotely proved then in the said circumstances, the said voter list cannot be the basis for dismissal of the suit of the plaintiff. It is a matter of settled law that there is presumption in favour of legitimacy and there is also a presumption that the husband of the wife to whom the child is born is the father unless the same is rebutted by the person alleging illegitimacy or the fact of husband not being the father due to non-access, which must be



established by evidence. In the present case, since the mother of the plaintiff-Lal Chand is admittedly Mohra Devi and Mohra Devi was admittedly married to Chunia and it is not even remotely proved on record that Mohra Devi had performed kareva marriage with Kripa and there is no evidence to show that plaintiff was son of Kripa and Mohra Devi then in the said circumstances, apart from the above evidence and points which have been highlighted in the earlier part of the judgment, there would be a presumption in favour of the plaintiff being the legitimate child of Chunia and Mohra Devi, more so, when the same is the specific case of the plaintiff which is also fully supported by the plaintiff witnesses. There is nothing on record to show that the plaintiff was born after a period of nine months from the death of Chunia, and thus, keeping in view all the abovesaid facts and circumstances, this Court finds that the finding of the trial Court on the said aspect/point No.(i) also deserves to be upheld and that of the First Appellate Court deserves to be set aside. Accordingly both the points are decided in favour of the plaintiff/appellant and against the defendants/respondents.

26. It would be relevant to note that on 21.01.2026, this Court had passed the following order:-

*“Present:- Dr. Pankaj Nanhera, Senior Advocate, with
Mr. Nitin Verma, Advocate, and Mr. Anurag Mor,
Advocate for the appellant.
Mr. Lokindra Singh, Advocate
for respondents No.9 and 10.*

Learned senior counsel for the appellant has pointed out that in the present case, the suit of the plaintiff/appellant was decreed against the respondents/defendants and only defendant Nos.2, 3, 4, 5, 9 and 10 had filed appeal against the same and the other defendants had not filed any appeal. It is submitted that a perusal of the record would show that for



respondents No.1 to 5, counsel had appeared and thus, they were duly served. It is submitted that for defendant Nos.9 and 10, the counsel is contesting the present appeal and thus, service is complete. It is further pointed out that defendants No.9 and 10 are the subsequent purchasers and in fact, they are the main contesting parties.

Learned counsel for respondents No.9 and 10 has made a request that a photocopy of the LCR be provided to him.

Adjourned to 04.02.2026 for arguments.

Registry is directed to give a photocopy of the LCR to learned counsel for respondents No.9 and 10 on payment of charges as per rules.

To be taken up 1:45 P.M.

January 21, 2026”

27. Respondents No.1 to 5 were earlier represented by counsel and were thus served. None has appeared on their behalf. The present appeal has been opposed on behalf of the respondent Nos.9 and 10 who are the contesting parties and are duly represented.

28. It would be relevant to note that the present Regular Second Appeal has been filed under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 of CPC and that in paragraph 27 of the judgment of the Constitutional Bench (Five Judges Bench) of the Hon’ble Supreme Court in the case of ***Pankajakshi (dead) through legal representatives and others Vs. Chandrika and others and other connected matters*** reported as ***(2016) 6 Supreme Court Cases 157***, it was observed that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976, has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force. Section 41 of the Punjab Courts Act, 1918 provides that an appeal would lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court on any of the grounds mentioned therein and one such ground, i.e., ground No.(a) is when the decision is contrary to law



or to some custom or usage having the force of law. The finding of the Ist Appellate Court, as has been detailed hereinabove, is contrary to settled law and perverse and thus, deserves to be set aside.

29. Keeping in view the abovesaid facts and circumstances, the present appeal is allowed and the judgment of the First Appellate Court dated 21.08.1991 is set aside and the judgment of the trial Court dated 14.06.1988 is upheld and the suit filed by the plaintiff is decreed.

30. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

12.02.2026

D.K./Puneet/naresh/pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:- Yes

Whether reportable:- Yes