

2026:PHHC:068946



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

**RSA No.1554 of 1995
Reserved on : 25.02.2026
Pronounced on : 05.05.2026**

STATE OF HARYANA AND OTHERS

...APPELLANTS

Versus

SHAMSHER SINGH

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. Abhinav Mahant, Asst. A.G., Haryana.

Mr. Amitabh Tiwari, Advocate
for respondent.

PARMOD GOYAL, J.

1. Present regular second appeal has been preferred by appellants-defendants being aggrieved by judgment and decree dated 05.12.1994 passed by learned Additional District Judge, Jind, whereby first appeal preferred respondent-plaintiff against judgment and decree dated 31.08.1992 passed by learned Sub-Judge Ist Class, Narwana was allowed and suit for declaration preferred by respondent-plaintiff was decreed. The Court of First Instance had dismissed the suit preferred by respondent-plaintiff.

2. Respondent-plaintiff, in his suit for declaration, had challenged order dated 11.09.1986, whereby the competent authority under Haryana Ceiling of Land Holdings Act, 1972 (hereinafter referred to as '1972 Act') had declared land in the hands of father of respondent-plaintiff as surplus.

Respondent-plaintiff had challenged the said order and claimed that he is owner in possession to the extent of 1/12 share in the suit land, measuring 744 kanals 16 marlas comprised in Khewat and Khata No.11/15 as per the jamabandi for the year 1984-1985. The said land was transferred by Smt. Lichhmi d/o Udmi, his father's sister in his favour vide registered gift deed dated 04.01.1966 and appellant-defendant No.2 had erred in considering father of respondent-plaintiff as owner of whole land and had wrongly declared land measuring 95 kanal 03 marlas as surplus vide order dated 11.09.1986, which was asserted to be illegal, null and void and without jurisdiction as no notice was given to the respondent-plaintiff before passing of impugned order. It was asserted that in pursuance of order dated 11.09.1986, appellants-defendants were trying to take possession of the suit property and were threatening to allot the same to other person. Despite requests, the impugned orders were not cancelled and accordingly respondent-plaintiff had preferred the suit.

3. Appellants-defendants by filing detailed written statement had contested the suit. It was asserted that father of respondent-plaintiff namely Rangi son of Udmi, was declared big land owner under Haryana Ceiling on Land Holdings Act, 1972 (hereinafter referred to as '1972 Act'). Father of respondent-plaintiff duly appeared before prescribed authority and had chosen his permissible area, his land measuring 95 kanals 3 marlas was declared surplus vide order dated 16.05.1978. Against order dated 16.05.1978, father of respondent-plaintiff had filed an appeal before Court of Collector, which was dismissed on 01.03.1983 and thereafter, second appeal was preferred before Commissioner, Hissar, wherein case was remanded back on

03.04.1984 on the plea of co-sharer that he was not given any notices with directions that order be passed after hearing the said co-sharers, who was not heard. In pursuance of remand order, full opportunity to said co-sharer was given and after giving full opportunity, order dated 11.09.1986 affirming land in the hands of father of plaintiff to the extent of 95 kanals 3 marlas land to be surplus, was passed. Thereafter, father of respondent-plaintiff again filed an appeal in the Court of Collector, Commissioner and Finance Commissioner, Haryana which were dismissed. The father of respondent-plaintiff had also challenged order dated 16.05.1978 by way of civil suit in the Court of learned Senior Judge, Jind and same was also dismissed. Appeals against dismissal of civil suit were preferred before learned Additional District Judge, Jind and thereafter before Hon'ble High Court, however, both the appeals were also dismissed. It was also asserted that father of respondent-plaintiff had already availed all the remedies both before Revenue Courts as well as Civil Courts, therefore, respondent-plaintiff has no right to challenge the same by way of present suit. It was further asserted that as far as order dated 16.05.1978 against father of plaintiff is concerned, same was never set aside and it had remained intact throughout as the remand was only qua Ganga Singh son of Hari Singh, one of the co-sharers in the suit land along with father of respondent-plaintiff as he was not given any notice before passing of order against him. As far as father of plaintiff is concerned, he had already availed all the opportunities and his suit as well as further appeals stood dismissed and matter stood decided against him. Hence, dismissal of suit was prayed.

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

- i. Whether the order dated 11.09.1986 is illegal, null and void and without jurisdiction ? OPP
- ii. Whether the suit is bad for want of notice under Section 80 CPC ? OPD
- iii. Whether the suit is not properly valued for the purposes of court fee ? OPD
- iv. Whether the suit is barred by the principle of res judicata and civil courts has no jurisdiction ? OPD.
- v. Whether the suit is time-barred ? OPD
- vi. Relief.

5. The simple claim of respondent-plaintiff in civil suit was that he was owner of 1/12th share in the suit property measuring 744 kanals 16 marla as the same was transferred by his father's sister vide registered gift deed dated 04.01.1966 and while passing impugned order, he was not given any opportunity of being heard as no notice was given to him. Reliance was placed upon Jamabandi for the year 1984-1985 (Ex. P1) and mutation (Ex.P2) showing that Lichhmi had transferred her one-third share out of one-half share in favor of Ganga Singh, Zile Singh son of Hari Singh and one-half share in favor of Ganga Dayal, Shamsheer Singh, vide registered gift deed dated 04.01.1966 and in the surplus proceedings before the competent authority, no notice was given to the respondent-plaintiff.

6. On the other hand, case of appellants-defendants was that plaintiff was minor when surplus proceedings were initiated, he was represented through his father and on the date of passing of order, declaring land surplus in the hands of father of respondent-plaintiff, he being minor was being represented through his father and therefore he had notice of the proceedings. It was further asserted that father of respondent-plaintiff had

duly exhausted all his remedies before revenue authorities up to Financial Commissioner and order declaring surplus was upheld by Revenue Authorities and thereafter, father of respondent-plaintiff had also approached the Civil Courts by filing civil suit which was dismissed. Order declaring land surplus was upheld and the said dismissal of suit was further upheld by learned First Appellate Court as well as by Hon'ble High Court as appeals preferred by father of respondent-plaintiff were dismissed. It was further asserted that once land of respondent-plaintiff has been considered to be land in the hands of his father, he being minor and represented through his father, therefore the order dated 16.05.1978 declaring land surplus cannot be challenged by respondent-plaintiff. It was further asserted that order dated 16.05.1978 was never set aside qua father of respondent-plaintiff and respondent-plaintiff. Case was remanded back only qua share of one of the co-sharers, namely Ganga Singh, who was not given notice of the proceedings.

7. As far as father of respondent-plaintiff and respondent-plaintiff are concerned, the original order dated 16.05.1978 declaring land to the extent of 95 kanal 03 marlas as surplus was never disturbed and thus continued. Learned Court of First Instance had accepted the contentions raised by appellants-defendants, whereas learned First Appellate Court concluded that notice to appellants-defendants, at the time of passing of order dated 11.09.1986 was not given and therefore order dated 16.05.1978 and 11.09.1986 declaring land surplus was bad. The appeal was accepted and suit was decreed.

8. Both the learned Courts have duly noticed that at the time of passing of order dated 16.05.1978, respondent-plaintiff was minor and was

being represented by his father before the competent authorities. The option exercised by father of respondent-plaintiff was not only on his behalf but also on behalf of respondent-plaintiff as respondent-plaintiff was represented by him. Respondent-plaintiff has fairly admitted that he was eight years old in the year 1971. At the time of passing of order dated 16.05.1978, respondent-plaintiff was about 16 years and had not attained majority. It is, therefore, clearly made out that at the time of passing of order dated 16.05.1978, respondent-plaintiff being minor duly represented through his father before the competent authority.

9. On consideration, I find that in the present case it needs to be seen whether plaintiff had any independent right of getting land separately in surplus proceedings. If he has got any such right then notice/representation on his behalf would be required, if he had no independent right then neither notice nor representation before surplus authorities would be material.

10. Learned First Appellate Court has failed to take into consideration the provisions of Section 3(f) of the Haryana Ceiling on Land Holdings Act, 1972 (hereinafter referred to as '1972 Act'). Section 3(f) of the 1972 Act defines the term "family" and reads as under:

Section 3(f) – "Family"

"Family" means husband, wife and their minor children or any two or more of them.

11. From the above-noted definition of "family" under Section 3(f) of the Haryana Ceiling on Land Holdings Act, 1972, it is evident that the land held by the father of the respondent-plaintiff as on 16.05.1978 constituted family holdings. The land in hands of father of appellant was, therefore,

required to be determined on the basis of family unit. At that time, the respondent–plaintiff was a minor. Consequently, the land gifted to him by his aunt was liable to be clubbed with the land owned by his father, in view of the definition of “family” under Section 3(f) of the 1972 Act.

12. As on the date of initiation of surplus proceedings, as well as on the date of the order dated 16.05.1978, the respondent–plaintiff had no independent right to claim a separate share, which he now asserts to be 1/12th, distinct from the land considered for declaration of surplus in the hands of his father. The father, admittedly, had already exhausted all available remedies up to the level of the Financial Commissioner before the revenue authorities, as well as before the High Court in civil proceedings challenging the orders dated 16.05.1978. Therefore, on the date of the order declaring the land surplus, i.e., 16.05.1978, the respondent–plaintiff, being a minor and falling within the ambit of “family,” had no independent right to claim exclusion of his alleged share for the purpose of determination of surplus area. Consequently, no separate notice was required to be issued to him. The finding of the learned First Appellate Court that the respondent–plaintiff was entitled to an independent notice is thus erroneous and unsustainable.

13. The next question which requires to be determined in present case would be whether by virtue of remand of appeal preferred by Ganga Singh, the order dated 16.05.1978 qua father of respondent-plaintiff also stood quashed and respondent-plaintiff got fresh rights on passing of order dated 11.09.1986 after remand of the case. It is pertinent to note that Commissioner, Hissar vide order dated 03.04.1984 had remanded the case back to prescribed authority as one of the co-sharers, namely Ganga Singh who had preferred

appeal before Commissioner was not given any notice and was not heard before land was declared surplus in the hands of Ganga Singh. It is clear that order dated 16.05.1978 was not set aside in the appeal filed by father of respondent-plaintiff but was set aside qua rights of Ganga Singh on appeal filed by Ganga Singh, wherein father of respondent-plaintiff was one of the respondents-defendants. As far as claim of father of respondent-plaintiff was concerned, the same stood decided vide order dated 16.05.1978 and remained in force. It is also admitted that father of respondent-plaintiff had filed Civil Suit No.587 against order dated 16.05.1978. This said civil suit was dismissed on 14.06.1980 and appeal filed by father of respondent-plaintiff against judgment was also dismissed by learned District Judge, Jind, vide judgment and decree dated 13.11.1982 Ex. D-3. Therefore, as far as father of respondent-plaintiff is concerned, he had duly availed all his remedies before Revenue Court as well as Civil Courts and order declaring land in his hands to be surplus dated 16.05.1978 had attained finality and by remand no fresh rights in favour of plaintiff-respondent accrued. Since, father of respondent-plaintiff was also representing respondent-plaintiff, who was minor at that time, therefore respondent-plaintiff cannot challenge the order dated 16.05.1978 and 11.09.1986 having been passed without giving due opportunities by the authorities. Respondent-plaintiff was represented by his father being minor [actually was not entitled to independent notice being minor in view of Section 3(f) of 1972 Act] and therefore order dated 16.05.1978 passed by competent authorities is also binding on the rights of respondent-plaintiff and cannot be challenged by respondent-plaintiff by way of present suit. Moreover, rights of parties freezed on appointed day under

1972 Act and subsequent attainment of majority would not give fresh rights to respondent-plaintiff. In view of above discussions, the learned Appellate Court has erred in allowing first appeal preferred by respondent-plaintiff.

14. Appeal preferred by appellants-defendants is allowed. Consequently, the judgment and decree passed by the learned First Appellate Court are hereby set aside.

15. Pending miscellaneous application(s), if any, also stand(s) disposed of accordingly.

(PARMOD GOYAL)
JUDGE

05.05.2026
Sunil Chander/manoj

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No