



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

RSA-27-1996 (O&M)

Judgment reserved on :18.03.2026

Judgment pronounced on: 27.05.2026

MANJIT SINGH & OTHERS

... APPELLANTS

VERSUS

DARSHAN SINGH & OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. Manjit Singh Khaira, Senior Advocate (through V.C.) with
Mr. Jaswinder Singh, Advocate
for the appellants.

Mr. Avnish Mittal, Advocate and
Ms. Aparna Singhal, Advocate and
Mr. Danish Brar, Advocate
for the respondents.

PARMOD GOYAL, J.

1. Present regular second appeal has been preferred by appellants-defendants No.4, 5 & 6 being aggrieved by the judgment and decree dated 19.12.1991 passed by Sub Judge, First Class, Hoshiarpur, whereby the suit for declaration filed by respondent No. 1-plaintiff was decreed and the two sale deeds both dated 15.04.1986 executed by Ram Singh, the father of respondent No.1-plaintiff-Darshan Singh in favour of defendant Nos.3 to 7 was held to be null and void, and respondent No.1-plaintiff was held entitled to joint possession to the extent of 2/3rd share in the suit land except the land comprised in Khasra Nos. 3692/1 to 2711, 3738/1 to 2711 and 3756/1 to 2711, which was already owned by respondent No. 1-plaintiff and respondent-defendant No. 2-Shingara Singh to the extent of its 1/3rd share. Appellants-

defendants No.4, 5 & 6 are also aggrieved by judgment and decree dated 16.10.1995 passed by Additional District Judge, Hoshiarpur, whereby the first appeal preferred by the defendants No.3 to 7 was dismissed.

2. It was the case of the respondent No.1-plaintiff that the suit property was owned by Ishar Singh, who had three sons, namely Ram Singh (defendant No.1), Karam Singh who died issueless in 1984, and Lachhman Singh, who was stated to be alive. That Ram Singh (defendant No.1) had three sons, namely Punna Singh (who was adopted by his uncle Gurbax Singh), Shangara Singh (defendant No.2), and Darshan Singh (respondent No.1-plaintiff). That Punna Singh had five sons, namely Baldev Singh, Manjit Singh, Balbir Singh, Dilbagh Singh, and Avtar Singh, who were arrayed as defendants No. 3 to 7 respectively. That the suit property, in the hands of Ram Singh (defendant No.1), was ancestral coparcenary property and, therefore, respondent No.1-plaintiff and respondent-defendant No.2 had equal shares therein along with their father Ram Singh. However, Ram Singh (deceased) had wrongly executed the sale deed dated 15.04.1986 in favour of defendant Nos. 3 to 7 without any legal necessity or valid consideration, despite having no authority to alienate the said coparcenary ancestral property. It was pleaded that the sale deeds dated 15.04.1986 executed in favour of defendant Nos. 3 to 7 were illegal, void, and not binding upon the rights of respondent No. 1-plaintiff. Accordingly, respondent No. 1-plaintiff had claimed joint possession of 2/3rd share in the suit property along with respondent-defendant No.2.

3. Defendants No.3 to 7 had contested the suit by raising several preliminary objections regarding maintainability, etc. It was pleaded that the adoption of Punna Singh by Gurbax Singh was merely a customary adoption prevailing amongst Jats for the limited purpose of succession to the property of

the adoptive father, without severing his rights from the property of his natural father. It was further asserted that Karam Singh, son of Ishar Singh, had already bequeathed his property in favour of defendant Nos. 3 to 7, whereas Lachhman Singh, another son of Ishar Singh, had sold his property to Shangara Singh (defendant No.2). The defendants No.3 to 7 had denied the ancestral nature of the suit property and had also pleaded that the sale deed executed by Ram Singh was for legal necessity, as he required funds to bear the marriage expenses of his grand-daughter i.e. his daughter's daughter. Further, it was asserted that Ram Singh needed money for his day-to-day survival and he used to borrow money from defendants No.3 to 7 for his medical treatment, as the land in his possession was not yielding sufficient income. On these grounds, the defendants No.3 to 7 claimed that both the sale deeds dated 15.04.1986 were valid and legally binding documents. The defendants No.3 to 7 had also challenged the Will dated 05.09.1979 (Ex. P-2) propounded by respondent No. 1-plaintiff, allegedly executed by his father Ram Singh in his favour. It was asserted that Ram Singh had died leaving behind three sons and five daughters and, therefore, all of them were necessary parties to the suit. It was contended that, in the absence of the said legal heirs, the claim of respondent No.1-plaintiff with regard to the suit property could not be properly adjudicated. Dismissal of suit was accordingly, sought.

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

- i. Whether the suit is not maintainable in the present form? OPD
- ii. Whether the suit has not been properly valued for the purposes of Court fee and jurisdiction? OPD
- iii. Whether the suit property is ancestral qua the plaintiff, defendant

No.2 and their father Ram Singh (now dead)?OPD

- iv. If issue No.3 is proved, whether the impugned sale deeds dated 15.04.1986 executed by Ram Singh (now dead) in favour of defendants No.3 to 7 are for legal and valid necessity? OPD
- v. Whether the impugned sale deeds of dated 15.04.1986 are without consideration and are sham documents? OPP
- vi. Whether the suit is bad for non-joinder of the necessary parties? OPD
- vii. Whether the deceased Ram Singh executed a valid will of dated 05.09.1979 in favour of the plaintiff? OPP
- viii. Whether the parties to the suit are governed by custom in the matters of alienation, if so its effect? OPD
- ix. Whether the plaintiffs are entitled to the declaration and consequential relief of possession and injunction prayed for? OPP
- x. Relief

5. The Courts below have held that suit property in the hands of Ram Singh was ancestral/coparcenary property and therefore, Ram Singh had no authority to execute sale deeds dated 15.04.1986 without legal necessity. The Courts below had further held that the defendants No.3 to 7 have failed to prove legal necessity justifying sale of land by Ram Singh. The Will dated 05.09.1979 was also upheld in favour of respondent No.1-plaintiff and accordingly, suit was decreed and appeal filed by defendants No.3 to 7 was dismissed.

6. Learned counsel for the appellants-defendants No.4 to 6 has argued that father of defendant Nos.3 to 7 namely Punna Singh son of Ram Singh was also entitled to 1/3rd share as his adoption by Gurbax Singh was

merely customary and had not served his ties with his biological family. It is also argued that the suit property was neither ancestral nor coparcenary, same was sold by Ram Singh for meeting the expenses of marriage of his granddaughter and for his medical treatment which constitute legal necessity justifying sale of property by Ram Singh. It is argued that learned Courts below have erred in appreciating evidence of the parties and have wrongly concluded suit property to be an ancestral/coparcenary property.

7. As far as adoption of Punna Singh by Gurbax Singh is concerned, same was duly pleaded by respondent No.1-plaintiff and was admitted by defendants No.3 to 7. It is admitted by the parties that Punna Singh after his adoption had inherited the property of his adoptive father Gurbax Singh. The adoption and right over the property held by Ram Singh was challenged on the sole ground that the adoption was customary adoption wherein adopted son continues to have right of inheritance property in his biological family. However, no cogent evidence has been placed on record in order to prove the said custom as pleaded by appellants-defendants No.4 to 6. The onus to prove custom is always upon person who claims existence of such custom. However, no material evidence has been placed on record to prove that the adoption was customary adoption and Punna Singh had right to succeed property in his biological family. An adoption which is duly admitted/proved places adopted person as member of adopted family and all ties with biological family stand severed by virtue of adoption. The appellants-defendants have failed to show any custom whereby an adopted son continues to have right in biological family after his adoption. On adoption, Punna Singh has severed his ties with his biological family and therefore, he cannot be held entitled to coparcenary property of his biological family as he ceases to be a coparcenar after his

adoption.

8. The moot question in the present case is whether suit property is coparcenary/ancestral property. Admittedly, in the present case, Ram Singh had executed two sale deeds, both dated 15.04.1986, Ex. D1 and Ex.D2, selling two separate parcels of land situated in two different villages namely Hargarh and Chakkowal Sheikhan to the defendants No.3 to 7. The land in Village Hargarh measuring 17 kanal 2 marlas i.e. 1/3rd share of land 51 kanal 8 marlas comprised in khewat Nos.92, 93 & 94, khatoni Nos.167, 168 & 169 bearing khasra No.3185/1 2711(22-13), 3276/1-2711(13-1), 3278/1-2711(0-16), 3577/1-2711(1-8), 3692/1-2711(5-13), 3738/1-2711(2-10), 3756/-2711(5-7) was sold vide sale deed dated 15.04.1986 (Ex.D1).

9. The other piece of land situated in village Chakkowal Sheikhan measuring 6 kanals 6 marlas comprised in khewat No.23, khatoni No.36, khasra No.22-R/22/4(0-2), 22/15(2-14), 23/1(0-2), 23/2(3-8) were sold vide sale deed dated 15.04.1986 (Ex.D2).

10. Admittedly, to prove ancestral nature of suit property in Village Hargarh which is subject matter of sale deed dated 15.04.1986 (Ex.D1), respondent No.1-plaintiff had duly relied upon revenue excerpts along with jamabandi (Ex.P34) which goes to show that the suit property was initially owned by Nand Singh, grand-father of Ram Singh. In the Jamabandi Bandobast 1884 Nand Singh was shown to be owner of said land. After death of Nand Singh, the same had devolved upon his son Ishar Singh as is made out from jamabandi for the year 1909-10. In Missal Haqiat for the year 1911-12 the suit land was shown to be owned by Ishar Singh with difference regarding small changes in khasra numbers, though the previous numbers and new numbers remained the same. The entries so recorded in Missal Haqiat for the

year 1911-12 continued in subsequent jamabandies for the year 1919-20 and 1923-24 and after death of Ishar Singh, the mutation of his inheritance was sanctioned vide mutation (Ex.P26) in the names of his sons namely Ram Singh, Karam Singh and Lachhman Singh. Thus, from the year 1927-28, suit property was incorporated in the name of Ram Singh, Karam Singh and Lachhman Singh, all sons of Ishar Singh and they were shown to be owners in possession of suit property. This fact was further recorded in the jamabandi for the year 1931-1932 as well as 1935-36.

11. It is also not in doubt that, from revenue record that Ishtemal of the societies took place in year 1937-38 and khasra numbers were shown under the ownership of Ram Singh, Karam Singh and Lachhman Singh and they were accordingly allotted land in the Ishtemal, detailed as under:-

Sr. No.	Khasra No.	Area in kanals and Mls
i.	Khasra Nos.1 to 2711/4	(22-13)
ii.	1 to 2711/90	(13-1)
iii.	1 to 2711/92	0-16
iv.	1 to 2711/382	1-8
v.	1 to 2711/494	5-13
vi.	1 to 2711/540	2-10
vii.	1 to 2711/558	5-7
viii.	1 to 2711/381	0-11

That after the aforesaid allotment of the land in Ishtemal, the record of Ishtemal was handed over to revenue authorities and new khasra numbers were accordingly, allotted to right holders. The said new khasra numbers which are subject matter of present suit are clearly made out from record and duly finds reflection in jamabandi for the year 1939-40 and jamabandi for the year 1981-82 and on the basis of this, present suit was preferred.

12. From the above-noted evidence, it is therefore clearly made out

that suit property in the hands of respondent No.1-plaintiff would be ancestral/coparcenary property being fourth generation having succeeded from three lineal ascendants. Therefore, the conclusion drawn by learned Courts below that suit property situated in Village Hargarh is ancestral property cannot be faulted with. It is accordingly held that the suit property, subject matter of Ex.D1 was rightly held to be ancestral/coparcenary property in the hands of respondent No.-1-plaintiff and defendant No.1. Therefore, Ram Singh had no authority to sell it without legal necessity.

13. In case of land which is subject matter of Ex.D2 situated in Village Chakkowal Sheikhan, the learned Courts below have noted that vide mutation Ex.P25, inheritance of Ishar Singh was recorded in favour of his three sons, Ram Singh, Karam Singh and Lachhman Singh. This mutation was as regards to khasra Nos.591 and 589. Admittedly, this also went in Ishtemal and in Ishtemal separate kurrahas were carved out for the three brothers as is made out from Ex.P21, P22 and P23 which are copies of the Khatauni Pamaish. Ram Singh was allotted the land, and it was sold by Ram Singh to defendants No.3 to 7 vide Ex.D2. There is no evidence on record to show that the said land was ever owned by Nand Singh, grand-father of Ram Singh and Ishar Singh had succeeded the same from Nand Singh. In order to declare a land to be a coparcenary land, it is mandatory that same has fallen by way of succession through three lineal ascendants. In the present case, in absence of proof of ownership of Nand Singh over suit property subject matter of Ex.D2, the suit land cannot be held to be ancestral property, therefore, the conclusion drawn by learned Courts below that suit property subject of Ex.D2 is also ancestral cannot be upheld. Same has to be held to be self-acquired property of Ram Singh having not been inherited through three male ascendants qua

respondent No.1-plaintiff. Therefore, the learned Courts below have erred in declaring land subject matter of Ex.D2 to be ancestral property, the same is self-acquired property in the hands of Ram Singh and Ram Singh was free to sell the same as he liked.

14. It is worth noticing that Ram Singh had not challenged the sale deed ever during his lifetime though he was a party to the present suit. Accordingly, sale made vide sale deed Ex.D2 is held to be valid and binding, respondent No.1-plaintiff had no right to challenge the same qua khasra Nos.22-R/22/4 (0-2), 22/15(2-14), 23/1(0-2).

15. Both the Courts have taken notice of fact that land comprised in khasra No.23/2(3-8) sold by Ram Singh in favour of defendants No.3 to 7 vide sale deed dated 15.04.1986 was actually owned by Mann Kaur and she had exchanged this area with Ram Singh and in lieu of said area, she got area measuring 4 kanals 10 marla situated in Village Hargarh. Respondent No.1-plaintiff had duly proved the exchange made with Maan Kaur vide exchange deed Ex.PX. The execution of exchange deed stands duly proved and is not in doubt. On the basis of exchange deed Ex.PX, it was held that land comprised in khasra No.23/2(3-8), which was sold by Ram Singh vide Ex.D2 would be ancestral land as it was bought from Mann Kaur by virtue of exchange deed by exchanging ancestral land.

16. Admittedly, there is no evidence that khasra No.23/2 owned by Ram Singh was coparcenary/ancestral property. The only claim over said khasra number is on the basis of exchange deed Ex.PX as same was exchanged with ancestral property situated in Village Hargarh. It is also not in doubt that land measuring 4 kanals 10 marlas which was exchanged with Maan Kaur was purchased by respondent No.1-plaintiff vide registered sale deed dated

15.03.1940 (Ex.P-1). Both the Courts have taken notice of this fact and accordingly, excluded the land having been purchased by respondent No.1-plaintiff separately from Maan Kaur out of suit land.

17. Learned counsel for the appellants-defendants No.4 to 6 has argued that in case, it is held that the suit land comprised in khasra No.23/2 is ancestral as it was taken in lieu of ancestral land in that case, the land equivalent to 4 kanals 10 marlas given to Maan Kaur in Village Hargarh would be considered as a self-acquired property of Ram Singh as both the lands, one which is exchanged and other in lieu of which land was exchanged cannot be treated to be ancestral. The nature of property of one of them would remain self-acquired. I find no merit in the above-noted contentions raised by learned counsel for the appellants-defendants No.4 to 6. The ancestral nature of land is to be seen in the hands of Ram Singh and not Maan Kaur.

18. It is held that subject matter of Ex.D2 i.e. khasra No.22-R/22/4 (0-2), 22/15 (2-14), 23/1(0-2) are self-acquired property and khasra No.23/2(3-8) is ancestral property. The Courts below have failed to take note of above aspect and accordingly, their findings as regards to property detailed in Ex.D2 is modified/set aside partly.

19. Faced with above, learned counsel for the appellants-defendants has further challenged findings of learned Courts below on the ground that learned Courts below have erred in not accepting plea of defendants No.3 to 7 that the sale made vide Ex.D1 & Ex.D2 was for legal necessity. The onus to prove that sale was made by Ram Singh was for legal and valid necessity was upon defendants No.3 to 7. It is also not in doubt that mere recital in the sale deeds showing legal necessity is not sufficient, the legal necessity has to be proved by cogent and reliable evidence. Both the Courts below have duly

noticed that defendants No.3 to 7 have failed to prove legal necessity raised by them that the money was utilized by Ram Singh for marriage of her grand-daughter as well as his medical treatment. The learned Courts below have duly noticed the evidence led by both the parties and has concluded that no reliable evidence has been placed on record to show that Ram Singh was suffering from any medical illness which requires medical treatment. The Courts below have rightly taken note of evidence of PW-2-Sewa Singh who had clearly admitted in his statement that Ram Singh was not suffering from any disease and rather was hale and hearty. Even respondent No.1-plaintiff-Darshan Singh, while appearing as a witness had duly asserted this fact that Ram Singh was not suffering from any medical problem. The Court had further taken notice of fact that no medical prescription was placed on record by defendants No.3 to 7 showing any medical issues, even though they had claimed that Ram Singh was living with their father Punna Singh for last five/six years before his death.

20. All these facts and evidences collectively show that Ram Singh was not suffering from any medical problem as to justify sale of suit land for medical treatment. Similarly, in the case of marriage of grand-daughter, defendant-Manjit Singh had admitted that marriage of grand-daughter had taken place towards the end of year 1986 whereas sale was made on 15.04.1986, it is unlikely that Ram Singh would have sold his land in anticipation of his grand-daughter's marriage. The sale is not in close proximity with the marriage and therefore, cannot be held to be a legal necessity for the sale of property. Therefore, the conclusion drawn by learned Courts below that sale was not for legal necessity cannot be faulted with.

21. In view of above discussion, the judgments and decrees passed by both the Courts below are partly affirmed and partly modified. Sale of land

vide Ex.D1 is held to be beyond the capacity of vendor-Ram Singh as land subject matter of Ex.D1 was ancestral/coparcenary property and was not sold for legal necessity. However, land subject matter of Ex.D2 comprised in khasra No.22-R/22/4(0-2), 22/15(2-14), 23/1(0-2) was self-acquired property in the hands of Ram Singh and therefore, it was rightly sold in favour of defendants No.3 to 7 as Ram Singh had never challenged the same during his lifetime. Respondent-plaintiff No.1 had no capacity or right to challenge the sale of self-acquired property on any of the grounds except for that land was coparcenary, the fact which they have failed to prove. Self-acquired property alone is valid by way of sale in favour of defendants No.3 to 7.

22. In view of above discussion, present appeal is partly allowed in above terms.

23. Pending application(s), if any, stand disposed of.

27.05.2026
Ravinder

(PARMOD GOYAL)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes/No