



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-3333-1997 (O&M)

SARDARI LAL & ANR.

Versus

MEWA SINGH (SINCE DECEASED) & ORS.

..... Appellants

..... Respondents

1.	Judgment reserved on	29.01.2026
2.	Judgment pronounced on	28.04.2026
3.	Judgment uploaded on	29.04.2026
4.	Whether only operative part of the judgment is pronounced or whether the full judgment is pronounced.	FULL
5.	The delay, if any of the pronouncement is full judgment and reason thereof.	NA

CORAM: HON'BLE MR. JUSTICE YASHVIR SINGH RATHOR

Argued by : Mr. Satish Jain, Advocate for the appellants.

Mr. Ishwar Lal, Advocate for the respondents.

YASHVIR SINGH RATHOR, J.

1.

The present Regular Second Appeal has been instituted by the plaintiffs-appellants against the judgment and decree dated 13.08.1997 passed by the Court of learned Additional District Judge, Patiala, vide which the judgment and decree passed by the learned Trial Court dated 30.03.1996 has been set aside and the suit preferred by the plaintiffs for possession of the suit property has been ordered to be dismissed.
2.

Case of the plaintiffs is that they are the owners of one vacant site in the form of Khola shown by letters ABCD in the site plan attached with the plaint, situated within the abadi deh of Dera Bassi, Tehsil Rajpura and detailed in the headnote of the plaint (**hereinafter referred to as the suit property**). It is further submitted that the suit



property was earlier owned and possessed by Smt. Ram Piari, daughter of Puran Chand (wife of Rameshwer Dass), resident of Dera Bassi, Tehsil Rajpura, who was the aunt/Bua of the plaintiffs. She died issueless on 20.08.1987, leaving behind the plaintiffs as her only legal heirs. Smt. Ram Piari was a goldsmith by caste and defendant, who is a Jat by caste, has no concern whatsoever with the suit property. However, after the death of Smt. Ram Piari, defendant has illegally and unlawfully occupied the suit property in the absence of the plaintiffs, who had gone to village Manimajra after performing the last rites of Smt. Ram Piari. Plaintiffs requested the defendant several times to hand over the possession of the suit property to them, but he refused, which necessitated the present suit. By way of the present suit, a decree for possession of the suit property has been sought and a prayer has been made that the defendant be directed to hand over the possession of the suit property to them.

3. Defendant in his written statement has refuted the contents of the plaint, submitting that the plaintiffs have no right, title or interest in the suit property. It has been denied that they are related to Smt. Ram Piari in any manner or that they are her brother's sons. It is further submitted that Smt. Ram Piari was earlier married to Rameshwar Dass and she was the owner in possession of the suit property before her death. The husband of Smt. Ram Piari, namely Rameshwar Dass, had died about 40 years ago and after his death, she had started residing with the defendant as his wife. A Karewa marriage was performed between the defendant and Smt. Ram Piari about 35 years ago and since then, they had been living together as husband and wife. It is further submitted that Smt. Ram Piari had executed one Will dated 19.08.1987 bequeathing the



suit property in favour of the defendant and after her death, defendant has become owner in possession of the suit property. It has been admitted that Smt. Ram Piari was issueless, but it is submitted that the defendant is the only legal heir and successor in interest of Smt. Ram Piari, being her husband as well as on the basis of the Will dated 19.08.1987. An alternative plea has been taken that the possession of the defendant is peaceful, continuous, open, hostile and to the knowledge of the public over the suit property for the last about 15 years and he has perfected his title by way of adverse possession. Additional pleas have been taken that the plaintiffs have no cause of action or locus standi to file the present suit and the suit in the present form is not maintainable and dismissal of the suit has been prayed for.

4. Replication to the written statement was filed, controverting the contents of the written statement. It is submitted that Smt. Ram Piari was not in a sound and disposing mind as on 19.08.1987. She was seriously ill for the last 8–9 months prior to her death and she died on 20.08.1987, i.e. one day after the execution of the alleged Will. It has been denied that Smt. Ram Piari used to live with defendant or that any Karewa marriage was performed between them. The allegations with regard to adverse possession have been refuted and rather, it is submitted that the defendant has taken possession of the suit property after the death of Smt. Ram Piari.

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

“i. Whether the plaintiffs are owners of the property in suit?

OPP



ii. Whether Ram Piari had executed a valid Will in favour of the defendant? OPD

iii. Whether the plaintiffs are entitled to the possession of the suit property? OPP

iv. Relief.”

6. In support of their case, the plaintiffs examined Subhash Chander as PW1, Amrit Lal, Draftsman, as PW2 and Gurcharan Dass, Power of Attorney, as PW3. They relied upon the site plan Ex.P1. On the other hand, the defendant examined himself as DW1, Jai Singh as DW2, Devi Dayal as DW3, Roshan Lal as DW4, Kishori Lal, Deed Writer, as DW5 and Labh Singh as DW6. The defendant relied upon the unregistered Will Ex.D1.

7. After hearing the parties and on going through the material on file, the learned Trial Court came to the conclusion that the Will Ex. D1 relied upon by the defendant is surrounded with suspicious circumstances and it was held that the same has not been executed by Smt. Ram Piari. It was further held that the plaintiffs are nephews of Smt. Ram Piari, who died issueless and that they are the only legal heirs. The alleged Karewa marriage was also turned down and ultimately, the suit was decreed. However, in the appeal being filed, the learned Appellate Court affirmed the finding of the Trial Court that the defendant has failed to prove execution of the Will as well as his marriage with Smt. Ram Piari. However, it was held that the plaintiffs have failed to prove their relationship with Smt. Ram Piari and the judgment & decree passed by the Trial Court was set aside and the suit was ordered to be dismissed.

8. Feeling aggrieved present Regular Second Appeal has been instituted. Both the parties have been heard and material on file has been



perused.

9. Learned counsel for the appellants contended that the judgment and decree passed by the learned Appellate Court is patently illegal and erroneous and the same is based on conjectures and surmises and the well-reasoned judgment of the Trial Court has been wrongly reversed. Learned counsel argued that the plaintiffs are the nephews (brother's sons of deceased Smt. Ram Piari), who died issueless on 20.08.1987 and being her sole legal heirs, they have succeeded to the estate of the deceased and are owners of the suit property. Learned counsel further contended that the learned Appellate Court gravely erred in coming to the conclusion that the plaintiffs have failed to prove their relationship with Smt. Ram Piari. No issue was also framed regarding the relationship of the plaintiffs with Smt. Ram Piari and an adverse finding without framing of an issue to this effect has seriously prejudiced the plaintiffs' case. Learned counsel next contended that the pleas regarding execution of the Will and Karewa marriage were negated by both the Courts and in these circumstances, the plaintiffs' claim as the legal heirs of Smt. Ram Piari should have been accepted without drawing any adverse inference against them merely on the ground that they had not stepped into the witness box and had examined an attorney on their behalf. Learned counsel prayed that the impugned judgment and decree passed by the Appellate Court be set aside and the suit be decreed with costs.

10. On the other hand, learned counsel for the respondents-defendants argued that the judgment and decree passed by the first Appellate Court is perfectly legal and valid. The facts of the case and the



evidence on file have been appreciated in the correct perspective and no interference in the impugned judgment and decree is called for. Learned counsel next contended that the findings of fact arrived at by the first Appellate Court are binding unless the same are shown to be contrary to the mandatory provisions of law or based on inadmissible evidence or lack of evidence. The second appeal under Section 100 of CPC must involve a substantial question of law and cannot serve as a third trial on facts and he prayed that the appeal in hand be dismissed.

11. After hearing the learned counsel for the parties and on going through the material on file, I am of the considered opinion that the present appeal deserves to be dismissed for the reasons discussed hereinafter.

12. As per the version of the plaintiffs, they are brother's sons of Smt. Ram Piari, who admittedly was the owner of the suit property, as also admitted by the defendant. The case of plaintiffs is that Smt. Ram Piari died issueless and there are no other legal heirs of Smt. Ram Piari except them and after her death, they have become owners of the suit property, but the defendant has illegally occupied the same after her death and they are entitled to possession of the suit property. On the other hand, the stand of defendant is that the first husband of Smt. Ram Piari, namely Rameshwar Dass, had died and she had started residing with him about 40 years ago and they had performed 'Karewa' marriage and since then, they had been living as husband and wife. It is also his case that Smt. Ram Piari executed Will dated 19.08.1987 Ex.D1 in his favour one day prior to her death, bequeathing the suit property in his favour and that the plaintiffs are not in any manner related to Smt. Ram Piari.



13. The Trial Court as well as the first Appellate Court have held that the Will Ex.D1 is surrounded with suspicious circumstances and the same has been discarded. The plea of the defendant that Smt. Ram Piari had entered into a Karewa marriage with the him too has been negated by both the Courts below and the findings in this regard have not been assailed by the defendant by filing any appeal or cross-objections and since both the Courts have concurrently held that the deceased had not executed any Will and had not performed any Karewa marriage with the defendant, no interference in the findings in this regard is called for.

14. To prove their relationship, plaintiffs have examined PW-1 Subhash Chander as well as one Gurcharan Singh as PW-3, who is stated to be their General Power of Attorney. PW-3 deposed that the plaintiffs have authorized him to pursue the present suit vide General Power of Attorney dated 30.04.1990, whose copy is Ex.PW-3/A and that he has brought the original. He deposed that he knew Smt. Ram Piari, wife of Rameshwar Dass, who died on 20.08.1987. Smt. Ram Piari was the daughter of Puran Chand. Her husband, Rameshwar Dass, died about 35–40 years ago and after his death, Smt. Ram Piari did not perform any Karewa marriage with the defendant and she used to reside at Dera Bassi alone. Plaintiffs are nephews of Smt. Ram Piari. Shamsher Singh, father of the plaintiffs, has died and after the death of Smt. Ram Piari, the plaintiffs have become owners of the suit property and there is no other legal heir of Smt. Ram Piari except the plaintiffs. He deposed that the plaintiffs had performed the last rites of Smt. Ram Piari and no Will was executed by her in favour of the defendant. During cross-examination, he stated that he is not related to the plaintiffs and he is merely their Power



of Attorney. The plaintiffs reside at Manimajra for the last 30–35 years.

15. PW-1 also deposed that he is a resident of Dera Bassi and he knew Smt. Ram Piari since deceased, who was the wife of late Rameshwar Dass who died 30–40 years ago and Smt. Ram Piari had no issue of her own. She used to reside alone in her house and was the owner of the suit property till her death. Plaintiffs are sons of her brother, namely Shamsher Singh and they used to visit her during her lifetime. Smt. Ram Piari also used to visit her brother Shamsher Singh very often. He further deposed that the plaintiffs had performed the last rites of Smt. Ram Piari, including the ceremony of kirya and bara, etc. During cross-examination, he stated that Shamsher Singh, who was the father of the plaintiffs, was the only son of his father Puran Chand. He admitted that the plaintiffs are from his brotherhood and they used to visit his shop. He further stated that Smt. Ram Piari had two sisters, one of whom is Vidhya, but he does not remember the name of the second sister.

16. To rebut the evidence led by the plaintiffs, defendant Saritam stepped into the witness box as DW-1 and he stated that Smt. Ram Piari used to live with him after performing Karewa marriage and he had performed her last rites after her death. Plaintiffs have no concern with the suit property. He pleaded ignorance as to whether the plaintiffs are related to Smt. Ram Piari. During cross-examination, he admitted that Smt. Ram Piari had purchased the suit property. He stated that Babu Singh and Shamsher Singh were the brothers of Smt. Ram Piari who were residing at Manimajra and one brother resided at Gaddepur also. He further deposed that he knows plaintiff Sardari Lal, who is present in the Court, but he pleaded ignorance as to whether he is the son of Shamsher



Singh, brother of Smt. Ram Piari. He stated that one brother of Smt. Ram Piari, namely Babu Singh, is alive and Shamsheer Singh has died. His version has also been corroborated by DW-2 Jai Singh, Lumberdar.

17. This is all what has been led by the plaintiffs to prove their relationship with Smt. Ram Piari. It is pertinent to mention that the suit was initially dismissed vide judgment and decree dated 03.05.1991 passed by the Court of the learned Additional Senior Sub Judge, Rajpura and thereafter, the plaintiffs had preferred an appeal and the matter was remanded for a decision afresh after giving an opportunity to the plaintiffs to lead evidence vide order dated 17.05.1995 as none of the plaintiffs had stepped into the witness box in support of their case. However, even after remand, none of the plaintiffs have stepped into the witness box to state their case on oath and to offer themselves for cross-examination. Infact, they have examined PW-3 Gurcharan as their Attorney. However, heavy onus was upon the plaintiffs to establish their relationship with Smt. Ram Piari. It is well settled that the plaintiffs have to prove their own case by leading cogent and convincing evidence and they cannot depend on the weakness of the defendant's case or evidence led by the defendant. Since the plaintiffs have not stepped into the witness box and offered themselves for cross-examination, an adverse inference has to be drawn against them to the effect that the case set up by them is not true and mere oral testimony of their Attorney, namely PW-3 Gurcharan, is not sufficient to come to the conclusion that the plaintiffs are the nephews of deceased Smt. Ram Piari. It is well settled that the parties must produce the best evidence in their possession and if they have personal knowledge of the facts, they must themselves appear



as witnesses. In case of their failure to do so without cogent reasons, the Court can legitimately draw an adverse inference against the party who commits the fault and that party cannot rely upon the abstract doctrine of burden of proof. It is pertinent to mention that when defendant Saritam was being cross-examined, one of the plaintiffs, namely Sardari Lal, was present in the Court and a question was put to him whether he is the nephew of Smt. Ram Piari or not and he had pleaded ignorance in this regard. Thereafter, the suit was dismissed, which was remanded by the first Appellate Court. After remand of the case, the plaintiffs had examined PW-3 as their Attorney but they did not dare to step into the witness box themselves for the reasons best known to them. Both PW-1 Subhash Chander and PW-3 Gurchanan, Attorney of the plaintiffs, did not state even a single word about their conduct with regard to the relationship of the plaintiffs with the deceased. They also did not state anything about their special means of knowledge about the said relationship. Both are residents of Dera Bassi, where the deceased used to reside, and none of them is related to the plaintiffs or Smt. Ram Piari in any manner. In these circumstances, they did not have any special means of knowledge about the relationship of the plaintiffs with Smt. Ram Piari and to say that the plaintiffs are brother's sons of Smt. Ram Piari particularly because neither the plaintiffs nor the brother of Smt. Ram Piari were residing at Dera Bassi and were rather residing at Manimajra. Learned Appellate Court has, thus, appreciated the facts of the case and the evidence on file in the correct perspective while coming to the conclusion that the plaintiffs have miserably failed to prove their relationship with the deceased, Smt. Ram Piari.



18. The plea raised by the appellants that a proper issue was not framed with regard to the relationship of Smt. Ram Piari with the plaintiffs and, as such, they were prevented from leading evidence on this issue, is without any force. It is the case of the plaintiffs from the very beginning that they are the only legal heirs left behind by the deceased Smt. Ram Piari, who was their Aunt/Bua, and this fact was controverted by the defendant. PW-1 Subhash Chander was also examined by the plaintiffs to prove their relationship with Smt. Ram Piari. Initially, the suit was dismissed vide judgment and decree dated 03.05.1991 passed by the Court of the learned Additional Senior Sub Judge, Rajpura. The plaintiffs preferred an appeal, which was allowed, and the matter was remanded for a decision afresh vide order dated 17.05.1995. However, even thereafter, the plaintiffs did not dare to step into the witness box and rather preferred to examine their Attorney to prove their relationship. As such, the parties were alive to the controversy from the very beginning and had led sufficient evidence on the said disputed fact, and mere non-framing of the issue will, thus, not prejudice them in any manner.

19. As a result of aforesaid discussion, the present Regular Second Appeal is hereby dismissed.

20. Decree sheet be prepared, accordingly.

21. Pending misc. application (s), if any, shall also stand disposed of.

(YASHVIR SINGH RATHOR)
JUDGE

28.04.2026

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Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No