



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

RSA-686-1997 (O&M)
Reserved on :-26.02.2026
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Karnail Kaur (Deceased) Through her LR

... Appellants

Versus

Jit Singh and Others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :-

Mr. Sanjeev Sharma, Senior Advocate with
Mr. Dhanajay Mittal, Advocate,
Mr. Jugansh Goyal, Advocate
for the appellants.

Mr. S.S. Rangi, Senior Advocate with
Mr. Didar Singh, Advocate,
Mr. Fateh Sahota, Advocate
Mr. Avneet Mangat, Advocate and
Mr. Kawal Dhillon, Advocate
for the respondents.

VIRINDER AGGARWAL, J.

1. The present Regular Second Appeal (here-in-after to be referred as, "RSA" for short) is directed against the judgment and decree dated 03.01.1997 passed by the learned Additional District Judge, Fatehgarh Sahib, whereby the appeal preferred by the defendants—appellants was allowed and the judgment and decree passed by the learned Trial Court were set aside, resulting in dismissal of the suit instituted by



the plaintiff–respondent. Aggrieved by the aforesaid judgment and decree, the appellant–plaintiff has preferred the present appeal.

2. Succinctly stated, the appellant–plaintiff instituted a suit for possession of the suit land, fully detailed and described in the headnote of the plaint, situated in the revenue estates of village Gopalon and Ram Bagh. It was pleaded that Bachan Singh had two sons, namely Waryam Singh and Sham Singh. Waryam Singh had a son Joginder Singh, whereas Sham Singh had a son Inder Singh. After the death of Bachan Singh, Waryam Singh and Inder Singh became co-owners in joint possession of the suit property. Joginder Singh son of Waryam Singh was married to Harbans Kaur, and from their wedlock the appellant–plaintiff Kako @ Karnail Kaur was born on 09.06.2006 (Vikrami).

2.1. It was further pleaded that Waryam Singh died in the year 1949, whereupon his estate devolved upon his son Joginder Singh. However, Joginder Singh died about a year thereafter, leaving behind his widow Harbans Kaur and the appellant–plaintiff as his daughter. Mutation of the estate of Waryam Singh in village Gopalon was sanctioned in favour of Joginder Singh, and upon the death of Joginder Singh, mutation of his inheritance was sanctioned in favour of his widow Harbans Kaur.

2.3. Subsequently, Harbans Kaur contracted a Karewa marriage with Inder Singh, father of the defendants. It was alleged that by virtue of such remarriage, Harbans Kaur forfeited her interest in the estate of Joginder Singh which had devolved upon her. Taking undue advantage of his superior position and fiduciary relationship with Harbans Kaur, and also considering the tender age of the plaintiff, Inder Singh allegedly managed to have his name fraudulently entered in the revenue record as



owner of the estate of Joginder Singh. The plaintiff asserted that upon the remarriage of Harbans Kaur with Inder Singh, she became the absolute owner of the interest of Joginder Singh in the suit property.

2.4. It was further alleged that with respect to the estate situated at Ramgarh, Inder Singh also fraudulently procured the sanctioning of mutation of inheritance of Waryam Singh directly in his own name by concealing the existence of Joginder Singh as the son of Waryam Singh and by suppressing the fact that Harbans Kaur and the plaintiff were respectively the widow and daughter of Joginder Singh. The plaintiff further pleaded that she was brought up under the care of Inder Singh and Harbans Kaur and was treated well. However, after the death of Inder Singh, when she visited the village to attend the marriage of defendant No.2, the defendants allegedly ill-treated her, whereupon she made inquiries and came to know that defendants No.1 and 2 had unlawfully usurped her share in the suit property. Consequently, the present suit was instituted.

3. Defendant No.2 contested the suit by filing a written statement denying the marriage of Harbans Kaur with Joginder Singh as well as the claim that the plaintiff was born from their wedlock. It was pleaded that Joginder Singh died about a year after the death of Waryam Singh. While admitting that mutation of inheritance of Waryam Singh had been sanctioned in favour of Joginder Singh, it was contended that upon the death of Joginder Singh, Inder Singh inherited the suit property and the same was rightly recorded in his name in the revenue record. It was further pleaded that after the death of Inder Singh, defendants No.1 and 2 became owners in possession of the suit land on the strength of a Will dated



04.12.1977 executed by Inder Singh in their favour. In the alternative, it was also pleaded that defendants No.1 and 2 had perfected their title over the suit property by way of adverse possession.

3.1. Defendants No.3, 5 and 6 filed separate written statements admitting the claim of the plaintiff and prayed that the suit be decreed in her favour.

4. The plaintiff thereafter filed a replication reiterating the averments made in the plaint and controverting those raised in the written statements. Upon a comprehensive consideration of the pleadings, documents, and submissions advanced by the parties, the learned Trial Court framed the following issues for adjudication so as to facilitate a proper and effective determination of the controversy between the parties:-

1. Whether plaintiff is entitled to the possession of the land in question? OPP.
2. Whether suit is not properly valued for the purpose of court fee and jurisdiction? OPD.
3. Whether defendants are entitled to special costs? OPD.
4. Relief.

5. The parties were afforded adequate opportunity to adduce evidence in support of their respective claims. Upon conclusion of the trial and after hearing learned counsel for the parties, the learned Additional Civil Judge (Senior Division), Fatehgarh Sahib decreed the suit, holding that the plaintiff, being the daughter of Joginder Singh and Harbans Kaur, was entitled to inherit the estate of Joginder Singh and consequently entitled to possession of her lawful share in the suit property.



5.1. Aggrieved by the said judgment and decree, defendants Jeet Singh and Jagtar Singh preferred an appeal assailing the decision of the learned Trial Court. The learned Additional District Judge, Fatehgarh Sahib allowed the appeal and set aside the judgment and decree passed by the learned Trial Court, holding that the plaintiff had failed to establish that she was the daughter of Joginder Singh and Harbans Kaur and further observing that the suit was barred by limitation.

5.2. Dissatisfied with the aforesaid judgment and decree, the present appeal has been preferred. The appeal was admitted for hearing vide order dated 21.01.1998. The same has been contested by respondent Nos.1 and 2, and the record of the case was accordingly requisitioned.

6. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are to be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 CPC. Reference in this regard can be made to the judgment of the Supreme Court in the case of ***Pankajakshi (Dead) through LRs and others V/s Chandrika and others, (2016)6 SCC 157***, followed by the judgments in the case of ***Kirodi (since deceased) through his LR V/s Ram Parkash and others, (2019) 11 SCC 317 and Satender and others V/s Saroj and others, 2022(12) Scale 92***. Relying upon the law laid down in the aforesaid judgments, no question of law is required to be framed.

6.1. I have heard learned counsel for the parties at considerable length and have given my anxious and thoughtful consideration to their respective submissions, while also examining the pleadings of the parties,



the evidence adduced on record, and the findings returned by the Courts below.

7. Learned counsel for the appellant contends that the learned First Appellate Court has completely misread the evidence on record and has consequently arrived at an erroneous conclusion in holding that the appellant–plaintiff failed to establish that she is the daughter of Joginder Singh. It is argued that the status of the appellant–plaintiff as the daughter of Joginder Singh stands substantially admitted by the respondent–defendants during the course of the cross-examination of the appellant–plaintiff. It is further contended that the learned First Appellate Court erred in discarding the birth certificate Ex.P1 on the ground that it had not been proved that the appellant–plaintiff Karnail Kaur was also known by the name “Kako.”

8. It is further submitted that once it stands proved that the appellant–plaintiff is the daughter of Joginder Singh, the legal consequence would follow that upon the remarriage of her mother Harbans Kaur with Inder Singh, which admittedly took place prior to the coming into force of the Hindu Succession Act, 1956, Harbans Kaur forfeited the limited estate which had accrued to her as a widow by virtue of her right of maintenance from the estate of her deceased husband. Consequently, after such remarriage, the entire estate devolved upon the appellant–plaintiff.

8.1. It has further been argued that the learned First Appellate Court has also erred in holding that the suit is barred by limitation. According to learned counsel, it is a settled proposition of law that no limitation operates against a claim based upon inheritance unless the



defendants establish that they have perfected their title by way of adverse possession. In order to successfully set up a plea of adverse possession, the defendants must first admit the ownership of the plaintiff; however, in the present case, the defendants have completely denied the plaintiff's ownership. Therefore, in view of Limitation Act, 1963, particularly Article 65 of the Schedule appended thereto, a suit for possession based on ownership is not barred by limitation. On these premises, it is prayed that the appeal be allowed and the judgment and decree passed by the learned First Appellate Court be set aside.

9. Per contra, learned counsel for the contesting respondents submits that the findings recorded by the learned First Appellate Court suffer from no illegality or infirmity. It is argued that the learned First Appellate Court has rightly concluded that the birth certificate Ex.P1 does not pertain to the plaintiff, as the certificate has been issued in the name of one "Kako." Learned counsel further submits that after the death of the appellant-plaintiff during the pendency of the present appeal, an application was filed for bringing her legal representatives on record, along with which a death certificate was annexed. In the said certificate, it is reflected that the name Jarnail Kaur had been changed to Karnail Kaur, and the name of the mother of the deceased had been altered from Surjit Kaur to Harbans Kaur, while the name of the husband of the deceased is recorded as Amar Singh, whereas the appellant-plaintiff had earlier claimed that she was married to Hardial Singh. On this basis, it is contended that the plaintiff cannot be regarded as the daughter of Harbans Kaur and Joginder Singh.



9.1. It is further contended that there is no reliable evidence on record to establish that the appellant–plaintiff was the daughter of Joginder Singh. According to learned counsel, the testimonies of the witnesses examined by the plaintiff do not satisfy the requirements of Indian Evidence Act, 1872, particularly Section 50 thereof, as they are not witnesses to conduct indicating such relationship. Consequently, it is submitted that their testimonies were rightly discarded by the learned First Appellate Court. On these premises, it is prayed that the present appeal be dismissed.

10. The most crucial issue arising for determination in the present case pertains to the relationship of the appellant–plaintiff with Joginder Singh. The appellant–plaintiff has asserted that she is the daughter of Joginder Singh. In support of this assertion, she has produced on record a birth certificate Ex.P1, which indicates that Joginder Singh had a daughter named “Kako.” However, the learned First Appellate Court recorded a finding that it had not been proved that the plaintiff Karnail Kaur was also known by the name Kako, and consequently held that the said certificate did not relate to the plaintiff and she could not establish her relationship with Joginder Singh. The testimonies of PW-2, PW-3, and PW-4 were also not relied upon for establishing that the plaintiff was the daughter of Joginder Singh.

10.1. In the facts of the present case, the testimony of PW-5, Karnail Kaur (the plaintiff herself) assumes considerable significance. In her examination-in-chief, she categorically deposed that during her childhood she was known by the name “Kako.” Significantly, there is no cross-examination on this specific assertion. Consequently, this material fact has



remained unchallenged. Moreover, Jeet Singh, when he entered the witness-box on behalf of the defendants, did not depose anywhere that the plaintiff was not known by the name Kako during her childhood.

11. It is a settled principle of law that when a material statement made by a witness in examination-in-chief is not challenged in cross-examination, that portion of the testimony is deemed to have been admitted. Therefore, the testimony of Karnail Kaur establishes that she was known by the name Kako in her childhood, and the said assertion having remained unchallenged in cross-examination, there exists no rebuttal to that part of her testimony. Consequently, the finding recorded by the learned First Appellate Court that the plaintiff failed to prove that she was known by the name Kako is clearly the result of a misreading of the testimony of PW-5.

11.1. Furthermore, during the course of cross-examination, several suggestions were put to the plaintiff which also have a bearing on the question of relationship. It was suggested that defendants No.1 and 2 had performed her marriage; that at the time of her marriage her mother and brothers were living jointly with her; that the marriage expenses were borne by Inder Singh; and that the plaintiff's mother Harbans Kaur had died prior to the death of Inder Singh. The relevant extract of the cross-examination reads as under:-

“It is wrong to suggest that defendants No.1 and 2 performed my marriage. Volunteered my mother had performed my marriage. It is correct that at the time of my marriage my mother and my brothers were joint along with me. It is wrong to suggest that expenses were incurred by Inder Singh at the time of my marriage. Volunteered my mother met



with the expenses with the money left behind by my grandfather and my father's sister. It is correct that my mother Harbans Kaur died prior to the death of Inder Singh. ”

11.2. The aforesaid portion of the cross-examination leaves little room for doubt that the appellant–plaintiff is indeed the daughter of Joginder Singh and Harbans Kaur. The learned First Appellate Court, however, appears not to have adverted to this material part of the evidence, and the findings recorded by it are clearly the result of a serious misreading of the evidentiary record, an error which warrants interference in the exercise of jurisdiction in a second appeal. The evidence on record sufficiently establishes that the appellant–plaintiff was known by the name “Kako” during her childhood. The birth certificate Ex.P1 corroborates that Joginder Singh had a daughter by that name, while the testimony of the appellant–plaintiff further substantiates that she is the daughter of Joginder Singh and Harbans Kaur. Consequently, upon the death of Joginder Singh and the subsequent remarriage of Harbans Kaur with Inder Singh, it is the appellant–plaintiff who became entitled to succeed to the entire estate of Joginder Singh.

12. As regards the death certificate placed on record along with the application for impleadment of the legal representatives of Karnail Kaur, it is true that the said certificate (Annexure A-1) reflects certain alterations, namely the change of the name of the deceased from Jarnail Kaur to Karnail Kaur and the change in the name of the mother from Surjit Kaur to Harbans Kaur. However, such discrepancies do not materially affect the claim of the appellant–plaintiff. At best, it may be inferred that the said certificate does not pertain to the appellant–plaintiff and may have



been manipulated by the legal representatives, but such circumstance by itself cannot dislodge the established fact that the appellant–plaintiff is the daughter of Joginder Singh. Accordingly, the finding recorded by the learned First Appellate Court to the contrary is unsustainable in law and is hereby reversed.

13. Insofar as the issue of limitation is concerned, the learned First Appellate Court appears to have proceeded on the premise that the suit was one for correction of entries in the record of rights under Punjab Land Revenue Act, 1887, and in para Nos. 33 to 35 of the judgment it was observed that the relevant entries first appeared in the year 1993, whereas the plaintiff had attained majority in the year 1968 and the suit had been instituted nearly 39 years after the entries were recorded in the revenue record. Further, in paragraph 43, the learned First Appellate Court recorded that the suit for declaration had been filed in the year 1992, while the plaintiff had attained majority in the year 1968, and that no steps had been taken by the plaintiff until March, 1992 to assert any right or title over the property. Proceeding on this basis, the learned First Appellate Court concluded that the limitation period for filing such a suit was 12 years and that the suit having been filed after a lapse of 24 years from the date the plaintiff attained majority was barred by limitation.

14. The claim of the appellant–plaintiff, however, is essentially for possession of the suit land, and the learned Trial Court rightly held the suit to be within limitation. The suit is not one seeking correction of entries in the revenue record; rather, it has been instituted for possession on the ground that the appellant–plaintiff inherited the estate of her father Joginder Singh sometime around the year 1950, thereby becoming a co-

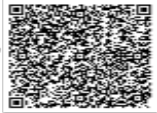


owner in the suit land and entitled to claim possession of her share. In this regard, the learned Trial Court rightly relied upon the judgment of this Court reported as **(1985 SLJ 1994)**, wherein it was held that in a suit for possession based on inheritance, no specific period of limitation is prescribed and such a suit is governed by Article 65 of the Limitation Act, 1963.

15. It is a settled principle of law that inheritance never remains in abeyance. Upon the death of Joginder Singh, the appellant–plaintiff became a co-owner in the suit property and her status was that of a co-owner in joint possession. It is equally well settled that every co-owner of property is deemed to be in joint possession unless he or she is specifically ousted by a clear and unequivocal act. In the present case, there is neither any pleading nor any evidence to establish that the appellant–plaintiff was ever ousted from the suit land. Consequently, she continued to remain a co-owner in joint possession of the suit property.

16. The appellant–plaintiff has filed the present suit seeking possession of her specific share in the suit land; however, she has not sought partition of the suit property. In the absence of partition, the relief of exclusive possession of a specific portion of the joint land cannot be granted. Furthermore, the suit land being agricultural land, proceedings for partition thereof fall within the exclusive jurisdiction of the revenue authorities, and a civil suit in that regard is barred under Section 158 of the Punjab Land Revenue Act, 1887.

17. Accordingly, while the finding of the learned First Appellate Court holding the suit to be barred by limitation is unsustainable and is hereby set aside, the relief of possession cannot be granted to the



appellant–plaintiff. She would be entitled to seek possession only through appropriate partition proceedings before the competent revenue authority. The appellant–plaintiff is, therefore, held to be a co-owner in joint possession to the extent of one-half share in the suit land. To this extent, the appeal filed by the appellant–plaintiff is **partly allowed**, and the judgment and decree passed by the learned First Appellate Court stand **modified accordingly**.

18. As a necessary consequence of the final adjudication of the principal matter, all pending miscellaneous applications, if any, arising out of or connected with the present proceedings, shall stand disposed of accordingly. In view of the conclusions reached here-in-above, no separate or independent orders are required to be passed in respect of such applications.

18:03:2026
Gaurav Sorot

(**VIRINDER AGGARWAL**)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No