

2026:PHHC:066002



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

RSA-1571-2026 (O&M)

Date of Decision: 28.04.2026

Har Chand (since deceased) through LR's and others

...Appellants

VersusShanti Karewa and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Edward Augustine George, Advocate,
Ms. Kashish Sahni, Advocate, and
Mr. Shubham Malik, Advocate, for the appellants.

VIKRAM AGGARWAL, J (Oral)

This is plaintiffs' appeal against the judgment and decree dated 10.02.2026 passed by the Court of Additional District Judge, Bhiwani, partly modifying the judgment and decree dated 02.06.1990 passed by the Court of Senior Sub Judge, Bhiwani, vide which the suit filed by the plaintiffs, had been dismissed.

2. For the sake of convenience and clarity, parties shall be referred to as per their original status.

3. The plaintiffs (Harchand and others), who are the sons and daughters of one Dod Ram, instituted a suit for declaration and perpetual injunction against defendant No.1 (Smt. Shanti), who was the widow of Mohar Lal, brother of the plaintiffs.

3.1 The case set up was that Mohar Lal had expired in 1965 while serving in the Indian Army and upon his demise, defendant No.1 had contracted Karewa marriage with one Rameshwar. It was claimed that since the parties were Jats, as per the custom prevalent in their caste, a widow on remarriage forfeited her rights in the estate of her previous husband. Despite the same, defendant No.1, in collusion with the revenue officials, got mutation No.1700 sanctioned on the basis of inheritance of Mohar Lal in her name to the extent of $\frac{1}{2}$ share, the other $\frac{1}{2}$ share having been mutated in the name of the mother of Mohar Lal namely Smt. Kasturi. It was claimed that on the demise of Kasturi, mutation of her inheritance i.e. Mutation No.65 dated 26.07.1982 to the extent of $\frac{1}{8}$ th share in favour of defendant No.1 was also wrongly sanctioned, as after remarriage, defendant No.1 ceased to have any right to inherit the estate of her deceased mother-in-law.

3.2 It was claimed that plaintiffs No.1 and 2 and their brother Mohar Lal used to be owners in possession of the suit land and defendant No.1 had never been in possession. Accordingly, they claimed to have become owners by way of adverse possession as well.

4. Defendant No.1 contested the suit. She admitted the fact of her having solemnized Karewa marriage after the death of Mohar Lal, but denied that she had, on account of the same, forfeited her rights in the estate of her deceased husband. All other averments were denied.

4.1 Defendant No.2, who was one of the daughters of Dod Ram and had been arrayed as a proforma defendant, admitted the claim of the plaintiffs.

4.2 In the replication filed to the written statement of defendant No.1, averments made therein were denied and those made in the plaint, were reiterated.

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

1. **Whether defendant No.1 has entered into a Karewa marriage after the death of her former husband Mohar Lal within 13 days of his death?OPP**
2. **Whether there is a custom between the parties, whereby defendant No.1 forfeited her rights in the property of her husband by the alleged Karewa marriage?OPP**
3. **Whether defendant No.1 was not entitled to inherit the property or her mother-in-law as alleged?OPP**
4. **Whether the plaintiffs are in exclusive possession of the suit land as owners and have become owners by adverse possession?OPP**
5. **Whether the suit is barred by limitation?OPD**
6. **Whether the suit is bad for non-joinder and mis-joinder of necessary parties?OPD**
7. **Whether the plaintiffs are estopped from filing the suit by their own act and conduct?OPD**
8. **Whether the suit has not been properly valued for the purposes of Court-fee and jurisdiction as alleged?OPD**
9. **Whether the suit is false and frivolous and the defendants are entitled to special costs? If so, how much?OPD**
10. **Relief.**

6. Parties led their respective evidence.

7. The trial Court returned the finding that there was no substantive evidence that defendant No.1 had contracted Karewa marriage within 13 days of the demise of Mohar Lal and that the plaintiffs had not been able to prove that there was a custom that a widow would not be entitled to succeed to the estate of her husband after his death and after her remarriage. Despite holding so, the trial Court decided issue No.1 in favour of the plaintiffs. The trial Court also found that the plaintiffs had stated that they were Kumhars by caste.

8. Under issue No.1, it was, therefore, held by the trial Court that no such custom between the parties, vide which defendant No.1 would have forfeited her rights in the estate of her deceased husband upon her remarriage with Rameshwar, had been proved. Accordingly, mutation No.1700 was found to be legal and valid.

9. Under issue No.3, it was held that since defendant No.1 had remarried, she had no right to inherit the property of her deceased mother-in-law. Accordingly, mutation No.65 dated 26.07.1982, was declared as illegal, null and void. The plea of adverse possession was rejected. It was also held that the suit was barred by limitation. Accordingly, the suit was dismissed.

10. An appeal was filed against the said decision, which was partly accepted by the Court of Additional District Judge, Bhiwani, vide judgment and decree dated 07.09.1993 and mutation No.65 was set aside.

11. Thereafter, RSA-2456-1993 was filed, which was allowed on 01.07.2025 and the matter was remitted to the first

Appellate Court for a fresh decision since no finding had been returned on adverse possession. Thereafter, the matter has been decided by the first Appellate Court vide judgment and decree dated 10.02.2026, in which all other findings of the trial Court have been upheld except for that the suit has been partly decreed by setting aside mutation No.65 dated 26.07.1982, leading to the filing of the instant appeal.

12. I have heard learned counsel for the appellant.

13. The sole contention raised by learned counsel for the appellants is that Mohar Lal had expired prior to Dod Ram and, therefore, as per Section 24 of the Hindu Succession Act, 1956, which was repealed w.e.f. 09.09.2005 only before which succession of Dod Ram had opened, defendant No.1 would not be entitled to succeed to the estate of Dod Ram.

14. I have considered the submission made by learned counsel for the appellant, but find the same to be devoid of merit.

15. 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 cases 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.

16. Both Courts concurrently found that no custom existed disentitling the widow to inherit the property of her deceased husband, upon her remarriage. It was also found that no evidence had been adduced to prove that defendant No.1 had solemnized remarriage within 13 days from the death of her husband-Mohar Lal. The first Appellate Court rightly observed that the observations of the trial Court on issue No.1 were in contradiction to the decision on issue No.1 in so far as issue No.1 had been decided in favour of the plaintiffs even after observing that there was no evidence to prove that defendant No.1 had solemnized remarriage within 13 days from the death of her husband. The first Appellate Court, therefore, rightly reversed the said finding and decided issue No.1 against the plaintiffs. It was rightly held by both Courts that the plaintiffs had not been able to prove that they belonged to the Jat community and had in fact admitted that they did not belong to the Jat community and, therefore, there could not be any question of them being governed by any custom as regards disentitlement of a widow to inherit the estate of her husband upon her remarriage, which in any case was pleaded to be a custom in Jats.

17. Both Courts also rightly found that upon remarriage, defendant No.1 would not have any right in the property of her mother-in-law. The plea of adverse possession was also rightly rejected since co-sharers cannot be said to be in adverse possession. The argument that defendant No.1 could not inherit

the estate of her father-in-law is defective, since it was the own case of the plaintiffs that mutation No.1700 was as regards inheritance of Mohar Lal and not that of Dod Ram. It was also the case of the plaintiffs that vide mutation No.1700, ½ share had been mutated in favour of defendant No.1 and the other half share had been mutated in favour of Smt. Kasturi. Once it was the mutation of inheritance of deceased Mohar Lal, it is not understood as to how an argument has been raised that defendant No.1 was not entitled to succeed to the estate of Dod Ram. In fact, it was the own case of the plaintiffs that plaintiffs No.1 and 2 and the husband of defendant No.1 were owners in possession of the suit land. Under the circumstances, such a contradictory stand cannot be permitted to be taken in second appeal.

18. Having examined the matter from all angles, this Court does not find any illegality in the judgment and decree passed by the first Appellate Court, warranting interference in the instant Regular Second Appeal.

19. For the reasons aforementioned, I do not find any merit in the present appeal and the same is, accordingly, dismissed.

20. Pending application(s), if any, also stands disposed of.

(VIKRAM AGGARWAL)
JUDGE

28.04.2026

ds

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