



(105) IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

RSA-4850-2019 (O&M)  
Date of Decision: 08.05.2026

RAM DEI AND OTHERS

...Appellants

Vs.

RAM KUMAR AND ANOTHER

...Respondents

CORAM:- HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present: Mr. Sahil Nehra, Advocate  
for the appellants.

**VIRINDER AGGARWAL, J. (Oral)**

1. The present Regular Second Appeal has been filed assailing the judgment and decree dated 14.05.2019 passed by the learned Additional District Judge, Jhajjar, whereby the appeal preferred by the respondents/defendants was allowed and the well-reasoned judgment and decree dated 21.09.2017 passed by the learned Trial Court, decreeing the civil suit filed by the appellants/plaintiffs, has been set aside.

2. Briefly stated, the appellants/plaintiffs instituted a suit for declaration challenging the validity of the sale deed dated 05.07.2011 executed by defendant No.1 in favour of defendant No.2, seeking a declaration that the same is illegal, null and void, having been executed without any legal necessity. It was pleaded that the suit land, in the hands of defendant No.1-Ram Kumar, was ancestral and coparcenary property of a Joint Hindu Family, and as such, he had no authority in law to alienate the same without legal necessity or benefit of estate. It was further pleaded that earlier also defendant No.1-Ram Kumar had transferred the suit property in favour of one Jai Bhagwan, husband of defendant No.2, through a civil Court decree, which



was subsequently set aside vide judgment and decree dated 30.07.1999, thereby restoring the rights of the parties. Defendant No.2 contested the suit by filing written statement, inter alia, asserting that the suit property was not ancestral in the hands of defendant No.1, rather it was his self-acquired property, which had fallen to his share in a family settlement allegedly arrived at in the year 1988. It was further pleaded that defendant No.1 was the exclusive owner in possession of the property and was fully competent to alienate the same, and that the sale deed in question was executed for a valid and lawful consideration. On the basis of the pleadings of the parties and evidence led, the learned Civil Court decreed the suit vide judgment and decree dated 21.09.2017 in favour of the plaintiffs. However, the appeal preferred by respondent/defendant No.2 was allowed by the learned Additional District Judge, Jhajjar vide judgment and decree dated 14.05.2019, whereby the judgment and decree passed by the Trial Court were set aside. Aggrieved by the same, the appellants/plaintiffs have preferred the present Regular Second Appeal before this Court.

3. Learned counsel for the appellants contended that the learned First Appellate Court has decided the appeal on a ground which was neither pleaded nor raised by the contesting respondent/defendant. It is submitted that the plea of family settlement set up by defendant No.1 was not substantiated by any cogent evidence on record, and the First Appellate Court erred in law in proceeding on an entirely new premise that the suit property was self-acquired in nature. It is further contended that the learned First Appellate Court has, in effect, introduced a new legal theory by observing that the suit property came into the hands of defendant No.1 as an occupancy tenant, and



that ownership rights subsequently matured in his favour. According to learned counsel, such a finding amounts to travelling beyond the pleadings of the parties, as no foundation had been laid in the written statement for such a conclusion. It is well-settled that no Court can set up a new case for the parties which is not pleaded. It is also submitted that the First Appellate Court erred in framing, at the appellate stage, an issue relating to the nature of the suit property, without affording the appellants a fair and proper opportunity to meet such a case. It is further argued that since defendant No.1 was proceeded against ex parte, an adverse inference ought to have been drawn against him, which has not been done.

4. On the other hand, upon careful consideration of the entire record and the rival submissions, this Court finds no illegality or perversity in the findings recorded by the learned Additional District Judge. The very foundation of the appellants' suit was that the suit property was ancestral and coparcenary in the hands of defendant No.1, and therefore, it was incumbent upon the appellants/plaintiffs to prove the foundational fact regarding the nature of the property, irrespective of whether the defence was effectively contested or not. It is a settled principle that a plaintiff cannot succeed merely on the weakness of the defence and must stand or fall on the strength of his own case. Even in the absence of effective rebuttal by the defendants, the burden remained upon the appellants to establish that the suit property was ancestral/coparcenary property. From the evidence on record, particularly document Ex. P-22 relied upon by the appellants themselves, it stands established that the property originally belonged to Hari Singh, who was recorded as an occupancy tenant and not as an owner. It further emerges from



the record that upon the death of Hari Singh, defendant No.1-Ram Kumar inherited the tenancy rights, and ownership rights subsequently matured in his favour by operation of law. In this regard, reliance has rightly been placed upon the judgments in *Faqiria and others v. Mst. Rajo and another*, 1956 PLR Vol. LVIII 194, and *Satpal Singh and others v. Smt. Harminster Kaur and others*, 1992 PLJ 164 (P&H), wherein it has been held that where property is held as occupancy tenancy and ownership rights accrue for the first time in favour of a successor, such property cannot be treated as ancestral or coparcenary in nature in the hands of that successor.

5. In view of the aforesaid settled legal position and the evidence on record, the learned First Appellate Court has rightly concluded that the suit property was the self-acquired property of defendant No.1, and consequently, the appellants/plaintiffs had no *locus standi* to challenge the sale deed executed by defendant No.1 in favour of defendant No.2 during his lifetime. Accordingly, finding no merit in the present appeal, the same is hereby dismissed.

6. Pending applications, if any, shall stand disposed of.

(VIRINDER AGGARWAL)  
JUDGE

08.05.2026

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