



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

**RSA No.4986 of 2011 (O&M)**

**Date of Decision: 25.02.2026**

Samey Singh (now deceased) through LRs  
and others

..... Appellants-plaintiffs

**Versus**

Smt. Kanta and others

..... Respondents-defendants

**CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA**

Present:- Mr. Vikram Singh, Advocate  
for the appellant(s)-plaintiff(s).

Mr. Saket Bhandari, Advocate  
for respondent Nos. 2 to 9.

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**HARKESH MANUJA, J. (ORAL)**

The plaintiffs are in appeal. First Appeal filed by the respondents-defendants was accepted by the learned First Appellate Court. For the sake of convenience, the parties are referred to as per their status in the Civil Suit.

[2] By way of present appeal, challenge has been laid to judgment and decree dated 05.05.2011 passed by the Court of learned Additional District Judge, Karnal (**hereinafter to be referred as “First Appellate Court”**), whereby judgment and decree dated 27.10.2009 passed by the Court of learned Additional Civil Judge (Senior Division), Karnal (**hereinafter to be referred as “trial Court”**), was set aside and consequently, suit for declaration and joint possession along with consequential relief of permanent injunction filed by the appellants-

plaintiffs claiming  $1/7^{\text{th}}$  share from the estate of deceased-Sardha was dismissed; thereby **reversing** the judgment and decree passed by the learned trial Court.

[3] Briefly stating, the plaintiff filed a suit for declaration as well as joint possession and permanent injunction while claiming himself to be the owner of  $1/7^{\text{th}}$  share of the suit property. It was pleaded that the plaintiff-Nathi Ram was son of Sardha Ram (since deceased) and the suit property in the hands of the deceased was ancestral in nature. It was further asserted that the Will dated 11.02.1975, allegedly executed by the deceased-Sardha in favour of his other two sons namely, Sadhu Ram and Krishan to the extent of  $2/3^{\text{rd}}$  share and  $1/3^{\text{rd}}$  share respectively was illegal, null and void as the suit property in the hands of Sardha was ancestral in nature, thus he had no right to alienate the same.

[4] Upon appearance, the respondents-defendants contested the suit while disputing the nature of property in the hands of Sardha not to be of ancestral nature. Further, the suit was contested being barred by limitation as well as on the ground of non-joinder of necessary parties as one of the beneficiaries to the Will dated 11.02.1975, namely, Krishan s/o Sardha was never impleaded as party to the suit. It was thus pleaded that the suit be dismissed.

[5] On the basis of pleadings of the parties, the trial Court framed the following issues:-

- “1. Whether the plaintiff is owner in joint possession to the extent of  $1/7^{\text{th}}$  share out of the suit land being legal heir of deceased Sardha son of Mussadi?OPP.*
- 2. Whether the will dated 11.2.1975 is illegal, null and void in effective and not binding on the rights of the*

*parties?OPP.*

3. *If issues no. 1 and 2 are proved in favour of the plaintiff whether the plaintiff is entitled to a decree of permanent injunction? OPP*
4. *Whether the plaintiff is estopped from filing the suit by his own act and conduct? OPD.*
5. *Whether the plaintiff has got no locus-standi to file and maintain the present suit? OPD.*
6. *Whether the plaintiff has waived his right to file the present suit as such the suit is not maintainable? OPD.*
7. *Whether the suit is barred by the limitation? OPD.*
8. *Whether the suit has not been properly valued for the purposes of court fee and jurisdiction? OPD*
9. *Relief.”*

[6] The learned trial Court vide judgment and decree dated 27.10.2009 decreed the suit in favour of plaintiff(s), while holding the suit property to be ancestral in the hands of Sardha. It was thus recorded that the deceased-Sardha had no right to execute the Will dated 11.02.1975 in favour of his two sons and as such, the same was illegal, null and void. Consequently, the following relief was granted in favour of appellants-plaintiffs:-

*“ In view of the foregoing discussion, the suit of the plaintiff is decreed with costs and he is held to be co-owner in joint possession of land measuring 139 Kanals-6 Marlas of the land measuring 32 Kanals 2 Marlas being ½ share of total land measuring 64 Kanals 4 Marlas comprised in khewat no. 69/59, Khatoni no. 90, Rect. No. 52, Killa nos. 10(8-0), 11(6-4), Khatoni no. 91, Rect. No. 53, Killa nos. 3(8-0), 4(8-0), 5(8-0), Khatoni no. 92 Rect. No. 53 Killa no. 7(8-0), Land measuring 92 Kanals 4 Marlas being ½ share of land measuring 182 Kanals 8 Marlas comprised in khewat no.94/82, Khatoni no. 121, Rect. No. 47, Killa nos. 20(8-0), 21(8-0), Rect. No. 52, Killa no. 1(8-0), Rect. No. 53,*

*Killa no. 17(8-0), Rect. No. 63, Killa no. 18/3 (0-9), Khatoni no. 122, Rect. No. 34, Killa No. 24 (8-0), Rect. No. 47, Killa nos. 4 (8-0), 5 (8-0), 7 (8-0), 14 (8-0), Khatoni no. 123, Rect. No. 47, Killa nos. 3 (8-0), 13 (8-0), Khatoni no. 124, Rect. No. 46, Killa Nos. 23 (8-0), 24 (8-0), Khatoni no. 125, Rect. No. 46, Killa Nos. 5/2 (5-19), rect. No. 47 killa nos. 1(8-0), 2(8-0), 9(8-0), 10(8-0), 12(8-0), khatoni no.126, Rect. No. 53, Killa Nos. 6 (8-0), 8(8-0), 14(8-0), Khatoni no. 127, Rect. No. 46, Killa No. 25(8-0), Kittas 24, Land measuring 16 kanals 0 Marla being ½ share of land measuring 32 Kanals-0 Marla comprised in khewat no. 366/332, Khatoni No. 522, Rect. No. 46, Killa Nos. 15(8-0), 16(8-0), khatoni no. 523, Rect. No. 47, Killa No. 8(8-0), Khatoni no. 524, Rect. No.47, Killa Nos. 11(8-0), kittas 4, situated in village Gheer, Tehsil and District Karnal. The defendants are restrained from alienating the share of the plaintiff without getting the same formally partitioned. Decree sheet be drawn accordingly and file be consigned to records.”*

[7] Aggrieved thereof, the respondents-defendants filed first appeal, which was allowed vide judgment and decree dated 05.05.2011 passed by the learned First Appellate Court, while holding that the suit preferred at the instance of appellant(s)-plaintiff(s) was clearly barred by limitation. Further, it was also held that the suit was not maintainable for want of impleadment of necessary parties as one of the beneficiaries to the Will dated 11.02.1975 namely Krishan s/o the testator-deceased/Sardha was not impleaded as a party-defendant. Besides, it was also recorded that the suit property in the hands of Sardha was not established to be of ancestral nature and accordingly, the Will dated 11.02.1975 was held to be valid.

**CONTENTION(S)**

**ON BEHALF OF THE APPELLANT(S)-PLAINTIFF(S)**

[8] Impugning the aforementioned judgment and decree dated 05.05.2011 passed by the learned First Appellate Court, learned counsel for

the appellants submits that the suit property in the hands of Sardha was proved to be of ancestral nature on the basis of two mutations proved on record as Exhibits P-4 & P-6 vide which the suit property devolved upon Musaddi and Lakhia from their father-Thakur; thereafter, the share of Lakhia s/o Thakur who died issueless got devolved upon Musaddi s/o Thakur and then from Musaddi, it devolved upon Sardha and Ganga Ram. Learned counsel thus submits that the testator-Sardha had no right to alienate the entire suit property by virtue of execution of Will dated 11.02.1975 in favour of Sadhu Ram and Krishan in 2/3<sup>rd</sup> and 1/3<sup>rd</sup> share respectively.

**[8.1]** Learned counsel also points out that since the suit filed at the instance of plaintiff was based on title, hence, the same could not have been dismissed being barred by limitation and therefore, the findings recorded by the learned First Appellate Court were liable to be set aside.

No other argument has been addressed.

**ON BEHALF OF RESPONDENT(S)-DEFENDANT(S)**

**[9]** On the other hand, learned counsel for the respondents-defendants submits that the plaintiff was not able to prove the nature of the suit property in the hands of Sardha to be ancestral as the same been inherited from three degrees of ancestors was never proved on record. He also submits that suit filed at the hands of plaintiff was clearly barred by limitation as based on the Will dated 11.02.1975, mutation No. 2560 was duly entered in the revenue records in terms of order dated 20.11.1978 passed by the Assistant Collector, Ist Grade, Karnal whereas the suit in hand was filed much later in the year 2000.

[9.1] Learned counsel also points out that at the time of entering of the said mutation, presence of Nathi Ram was duly recorded who even expressed his no objection to the same and thus, the suit, having been filed after the expiry of more than twenty-two years was clearly barred by limitation. Learned counsel further points out that since Krishan son of Sardha was also one of the beneficiary to the Will dated 11.02.1975 to the extent of 1/3<sup>rd</sup> share of the subject property, there was no illegality or perversity in the reasoning recorded by the learned First Appellate Court while dismissing the suit preferred at the instance of appellants-plaintiffs being not maintainable for want of impleadment of necessary parties. He thus submits that the present appeal was liable to be dismissed.

#### DISCUSSION AND REASONING

[10] After hearing learned counsel for the parties and having gone through the paper-book, I am unable to find substance in the submission(s) made on behalf of the appellant(s)-plaintiff(s).

[11] The core question involved in the present appeal is as to whether the property in the hands of Sardha son of Mussadi was of ancestral nature. The Hon'ble Apex Court in *Shyam Narayan Prasad v. Krishna Prasad* reported as **2018(7) SCC 646** has reiterated that it is well-settled principle of law that the property inherited by a male Hindu from his father, father's father or father's father's father is an ancestral property. Further, this Court in *Hari Krishan v. Rati Ram* reported as **2018(4) PLR 783** has held that the ancestral nature of the property has to be proved in terms of excerpt, pedigree table and as per requirement of Volume 1, Chapter 9, Rules 5 and 6 of High Court Rules and Orders. The burden of

proof lies on the person asserting the land to be ancestral in nature. It needs to be duly proved that the property has devolved upon him from the immediate three preceding generations. The relevant extract thereof is reproduced hereunder:-

*“As regards substantial question of law No.4, it is true that the property being ancestral in nature has to be proved in terms of its devolution/descendance from generations, in essence, last generation should be fourth generation. The burden lies upon the plaintiffs to prove the ancestral nature of land in question. Mere assertion in the plaint and admission thereof in the written statement would not clothe the Court to presume ancestral nature of the property. The ancestral nature of the property has to be proved in terms of excerpt, pedigree table and as per requirement of Volume 1, Chapter 9, Rules 5 and 6 of High Court Rules and Orders. As per para No.232 of Mullah's Law, the plaintiffs who have asserted that the property was ancestral in nature, have to prove that the same has devolved upon them from three generations, in essence, they are the fourth generation. The admission of the defendants would not change the legal position. There is no dispute with regard to aforesaid proposition.”*

[11.1] In order to prove that the suit property was ancestral in nature, the appellant(s)-plaintiff(s) produced on record mutations in the form of Exhibits P-4 to P-6. Vide mutation No. 100 (Exhibit P-4), it was sought to be proved that the subject property devolved upon Lakhia and Mussadi from their father-predecessor, namely, Thakur; from mutation No. 1597 (Exhibit P-6), it was sought to be proved that the share of Lakhia son of Thakur later devolved upon Mussadi son of Thakur; whereas vide mutation No. 2039 (Exhibit P-5), the subject property devolved upon Sardha and Ganga Ram from Mussadi. However, it is clear that vide the said

mutations, the property devolved only upto two degrees of ancestors i.e. from Thakur to Mussadi & Lakhia and then from Mussadi to Sardha and Ganga Ram, was at best proved on record. In such circumstances, it was nowhere established that the subject property devolved upon Sardha from his ancestors upto three degrees and as such, nature of the property in Sardha's hand was not proved to be ancestral.

[11.2] Moreover, a perusal of record shows that the aforesaid mutations-Exhibits P-4 to P-6 were copies in *urdu* only and no translated copy thereof was ever produced and proved on record so as to prove the contents of the same. Thus, the same carried no evidentiary value.

[12] Further, in the present case, the validity of the Will dated 11.02.1975 (Exhibit D-1) was duly proved on record from the deposition of one of the attesting witnesses, namely, Ganga Ram (AW-4), having proved the essentials of Section 68 of the Indian Evidence Act, 1872 read with Section 63 of the Indian Succession Act, 1925. Furthermore, based on the aforesaid Will dated 11.02.1975 (Exhibit D-1), mutation No. 2560 (Exhibit AW1/B) was sanctioned in favour of the beneficiaries on 16.04.1979, in terms of an order dated 20.11.1978 (Exhibit AW-1/C) passed by the Assistant Collector, First Grade, Karnal.

[12.1] A perusal of the mutation entry dated 16.04.1979 shows that the predecessor-in-interest of the appellant-plaintiff (Nathi Ram-since deceased) was present at the time of sanctioning of the said mutation and even submitted his no objection to the same. In such circumstances, once the factum of Will dated 11.02.1975 followed by entry of mutation based on it, was in the knowledge of the predecessor-in-interest of Nathi Ram

(since deceased), besides the same revenue entries been carried out further in the *jamabandis*, the suit for declaration filed at the instance of appellant(s)-plaintiff(s) laying challenge to the said Will dated 11.02.1975 (Exhibit D-1) after a gap of more than twenty years in October 2000 was clearly barred by limitation.

[13] Be that as it may, it be noticed here that in terms of Will dated 11.02.1975, which was proved on record as Exhibit D-1, the subject property was bequeath in favour of Sadhu Ram and Krishan, both sons of Sardha to the extent of  $\frac{2}{3}^{\text{rd}}$  and  $\frac{1}{3}^{\text{rd}}$  share each respectively; however, Krishan son of Sardha, though one of the beneficiary, was never arrayed as defendant in the suit despite being a necessary party. The Hon'ble Apex Court in *Moreshar Yadaorao Mahajan v. Vyankatesh Sitaram Bhedi* reported as **2022 SCC Online SC 1307** has held that a necessary party is a person who ought to have been joined and, in whose absence, no effective decree could be passed by the Court. The Court further laid down the twin requirements for determining whether a party is a necessary party – first, that there must be a right to some relief against such party in respect of the controversies involved in the proceedings; and second, that no effective decree can be passed in the absence of such a party. Thus, if a necessary party is not impleaded, the suit itself is liable to be dismissed. The relevant portion thereof is extracted hereunder:-

*“17. This Court, in the case of Mumbai International Airport Private Limited (supra), has observed thus:*

*"15. A "necessary party" is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a "necessary party" is not impleaded, the suit itself is liable to be dismissed. A "proper party" is a party who, though not a necessary party, is a person whose*

*presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance."*

*18. It could thus be seen that a "necessary party" is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. It has been held that if a "necessary party" is not impleaded, the suit itself is liable to be dismissed.....*

*.....*

*Insofar as the reliance placed by Shri Chitnis on the judgment of this Court in the case of Kasturi (supra) is concerned, the question therein was as to whether a person who claims independent title and possession adversely to the title of a vendor could be a necessary party or not. In this context, this Court held thus:*

*"7. ....From the above, it is now clear that two tests are to be satisfied for determining the question who is a necessary party. Tests are - (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings; (2) no effective decree can be passed in the absence of such party."*

*20. It can thus be seen that what has been held by this Court is that for being a necessary party, the twin test has to be satisfied. The first one is that there must be a right to some relief against such party in respect of the controversies involved in the proceedings. The second one is that no effective decree can be passed in the absence of such a party."*

**[13.1]** Since the relief prayed for by the appellant(s)-plaintiff(s) pertains to a declaration that the Will dated 11.02.1975, allegedly executed by the deceased-Sardha in favour of his other two sons namely, Sadhu Ram and Krishan to the extent of 2/3<sup>rd</sup> share and 1/3<sup>rd</sup> share respectively, is illegal, null and void, it is evident that the outcome of the said suit would

have direct bearing over the rights of Krishan son of Sardha and thus, no effective decree could have been passed without arraying him as a party in the suit and as such, the same was not maintainable on account of non-joinder of necessary parties. Moreover, once the claim of declaration as prayed for by the appellant(s)-plaintiff(s) qua 1/7<sup>th</sup> share of the estate left by Sardha was based on the subject property being ancestral in the hands of deceased-Sardha, all his sons were required to be impleaded as necessary parties to the suit.

[14] Accordingly, in view of the discussion made hereinabove, finding no illegality or perversity with the findings of fact recorded by the learned First Appellate Court and there being no misreading or misinterpretation of either the pleadings or the evidence available on record; the present appeal, being devoid of merits, is hereby **dismissed**.

[15] Since, the main appeal has been decided / dismissed, no orders are required to be passed in the pending application(s) and the same shall stand disposed off.

February 25, 2026  
*'Tejwinder/dk kamra'*

( HARKESH MANUJA )  
JUDGE

|                                  |               |
|----------------------------------|---------------|
| <i>Whether Speaking/reasoned</i> | <i>Yes/No</i> |
| <i>Whether Reportable</i>        | <i>Yes/No</i> |