



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-5267-2017 (O&M)
Date of Decision : 28.01.2026

BANWARI LAL (SINCE DECEASED) THR LR Appellant
VERSUS

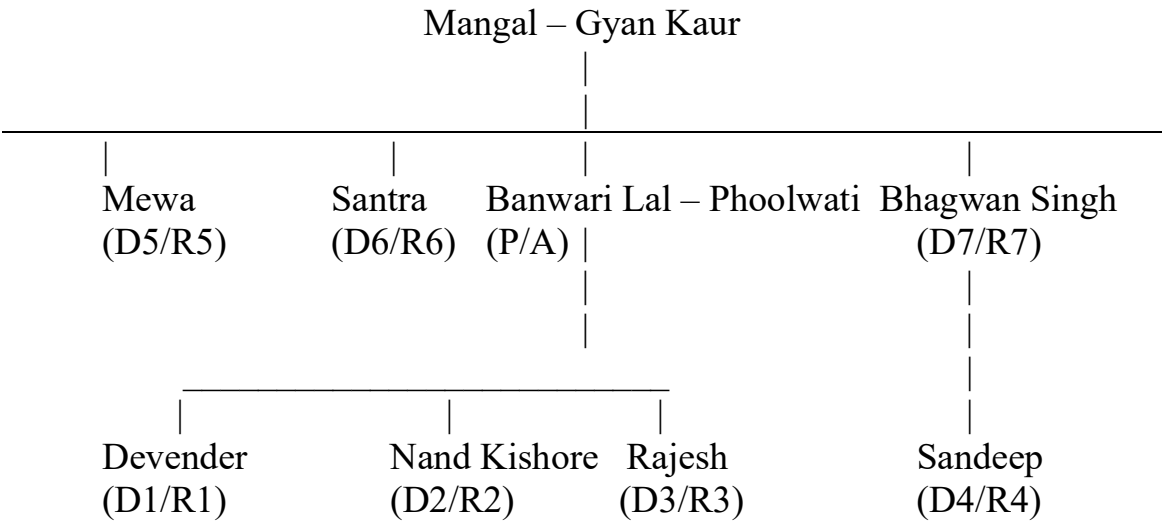
DEVENDER AND ORS Respondents

CORAM : HON’BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Chanderhas Yadav, Advocate for the appellant.

ALKA SARIN, J. (ORAL)

1. The present regular second appeal has been preferred by the plaintiff-appellant challenging the judgment and decree dated 25.11.2013 passed by the learned Trial Court and the judgment and decree dated 09.01.2017 passed by the learned First Appellate Court.
2. A pedigree table is drawn up hereinbelow :



[*P denotes Plaintiff *D denotes Defendant *A denotes Appellant *R denotes Respondent]

A suit was filed by the plaintiff-appellant, namely, Banwari Lal son of Mangal claiming that his father was the owner in possession of the suit land fully described in the plaint and he died on 25.07.1955, before coming into force of the Hindu Succession Act, 1956. It was pleaded that before the coming into force of the Hindu Succession Act, 1956 the daughters had no right of inheritance in the property of the father and that the plaintiff-appellant and his brother, namely, Bhagwan Singh are the heirs of Mangal and the daughters, namely, Mewa and Santra Devi (defendant-respondents No.5 and 6) had no right or title in the suit land. Challenge was also laid to the mutation No.371 of inheritance of Mangal in favour defendant-respondents No.5 and 6 as being illegal and wrong. It was further the case that taking advantage of the wrong entries in their favour, defendant-respondents No.5 and 6 wrongly executed a release deed dated 12.09.2006 in favour of defendant-respondents No.1 to 4. The said release deed was challenged as being illegal, without jurisdiction and a mere paper transaction.

3. The defendant-respondent No.1 filed a written statement raising various preliminary objections qua maintainability, *locus standi*, cause of action and jurisdiction. On merits it was the case set up that after the death of Mangal, mutation No.371 was entered and sanctioned on 09.09.1960 in the presence of the plaintiff-appellant and Bhagwan Singh. Banwari Lal (plaintiff-appellant) accepted Mewa and Santra (defendant-respondents No.5 and 6) as co-sharers in the suit land and as such the plaintiff-appellant was estopped by his own act and conduct from filing the suit. It was further the case that Mewa and Santra (defendant-respondents No.5 and 6) executed a release deed in

favour of defendant-respondents No.1 to 4 at the instance of Banwari Lal (plaintiff-appellant) on 12.09.2006 by their own free will and consent. It was further the case set up that the possession had also been transferred in favour of defendant-respondents No.1 to 4 on the basis of the release deed. Defendant-respondents No.2, 3 and 6 filed separate joint written statement admitting the claim of the plaintiff-appellant. Defendant-respondents No.4 and 5 denied the claim of the plaintiff-appellant. Defendant-respondent No.7 also filed separate written statement and requested that the matter be decided as the Court deems fit.

4. Replication was filed. On the basis of the pleadings of the parties the following issues were framed :

- 1) Whether release deed vasika No.4951 dated 12.09.2006 and corresponding mutation are illegal, null and void and liable to be set aside as claimed ? OPP
- 2) Whether plaintiff and performa defendant Bhagwan Singh are exclusive owners in possession of suit property and defendants no.1 to 6 have no right, title or interest in the suit property as claimed ? OPP
- 3) Whether the plaintiff is entitled for a decree of injunction against defendants as claimed ? OPP
- 4) Whether the suit is not maintainable in the present form ? OPD
- 5) Whether the suit is time barred ? OPD

- 6) Whether the plaintiff is estopped by his own act and conduct to file present suit ? OPD
- 7) Whether the plaintiff has no locus standi to file the present suit ? OPD
- 8) Whether the plaintiff has no cause of action to file the present suit ? OPD
- 9) Whether the Civil Court has no jurisdiction to try and entertain the present suit ? OPD
- 10) Whether the plaintiff is not in possession of the suit property ? OPD
- 11) Relief.

5. The learned Trial Court vide judgment and decree dated 25.11.2013 dismissed the suit. Aggrieved by the same an appeal was preferred by the plaintiff-appellant which appeal was also dismissed by the learned First Appellate Court vide judgment and decree dated 09.01.2017. Hence the present regular second appeal by the plaintiff-appellant.

6. Learned counsel for the plaintiff-appellant would contend that since Mangal died on 25.07.1955 prior to the coming into force of the Hindu Succession Act, 1956, the daughters were excluded from inheriting the share of the father and as such the mutation in favour of the daughters, namely, Mewa and Santro i.e. defendant-respondents No.5 and 6 was *void ab initio*. It is further the contention of the learned counsel that the mutation does not confer any title. Learned counsel would further contend that the bar of limitation would also not apply in the present case as the present is a suit based

on title. It is still further the contention that there is contradiction regarding possession as the stand taken by defendant-respondent No.1 was that the possession had been delivered however in the statements of the witnesses it had been stated that the possession was delivered after 7-8 days, indicating that it was a mere paper transaction.

7. Heard.

8. In the present case challenge was laid to the mutation in favour of the sisters, namely, Mewa and Santra (defendant-respondents No.5 and 6 herein) as well as the release deed executed by them on 12.09.2006 in favour of defendant-respondents No.1 to 4 who are none other than the children of Banwari Lal (plaintiff-appellant) and his brother, namely, Bhagwan who was arrayed as proforma defendant-respondent No.7. The argument of the learned counsel for the plaintiff-appellant that prior to the coming into force of the Hindu Succession Act, 1956 the woman could not inherit the property and since Mangal died on 25.07.1955, therefore, the property could not have been mutated in the names of the sisters (defendant-respondents No.5 and 6 herein) cannot be accepted. Findings have been returned by both the Courts that the mutation was entered in favour of the widow and all the children of Mangal on 09.09.1960 (Ex.P4/T). Certain records were sought to be produced and the testimony of Sanjiv Kumar (PW1) was sought to be relied upon who brought the summoned death register of Police Station Khol, Rewari for the year 1955 which was in Urdu language. During cross-examination of the said witness he admitted that he could not read Urdu. He further stated in his deposition that if the name of the informant was not mentioned, the death was not registered.

In the translated version of document (Ex.PW2/1) there is no name of the informant. DW2 Santra (defendant-respondent No.6) appeared and stated that Mangal died in the year 1960 and at that time she was about 10-11 years old. The date of birth of Santra (defendant-respondent No.6) is mentioned as 25.09.1950. There is nothing on the record to fortify the stand of the plaintiff-appellant that Mangal had died prior to the coming into force of the Hindu Succession Act, 1956. Rather what is coming in evidence is that Mangal had died in the year 1960.

9. Both the Courts concurrently found that the mutation of inheritance of Mangal was got entered by Banwari Lal (plaintiff-appellant) himself. DW1 Mahender in his Examination-in-Chief (Ex.DW1/A) deposed that the release deed dated 12.09.2006 was got registered and executed by defendant-respondents No.5 and 6 herein in favour of the children of Banwari Lal (plaintiff-appellant) and Bhagwan (proforma defendant-respondent No.7) at the instance of Banwari Lal (plaintiff-appellant) and Bhagwan. A copy of the mutation (Ex.DW4/A) of Chand Kaur, widow of Mangal, was also sanctioned in favour of Banwari Lal (plaintiff-appellant), Bhagwan (proforma defendant-respondent No.7), Mewa and Santra (defendant-respondents No.5 and 6) and thus it cannot be said that the plaintiff-appellant was unaware of sanctioning of mutation No.371 in favour of the legal heirs of Mangal. Further still, a perusal of the jamabandi (Ex.DW4/D) reveals that Banwari Lal (plaintiff-appellant) and Santra (defendant-respondent No.6) had together obtained a loan from the Central Bank of India. Thus, showing that it was well within the knowledge plaintiff-appellant that his sisters were co-sharers in the

suit land. Thus, the argument of the learned counsel that Mangal had died in 1955 and that the woman could not inherit the property cannot be accepted in the absence of any evidence qua the date of death of Mangal. Even otherwise neither there is any evidence on the record whether the property was self-acquired property of Mangal or ancestral nor any such plea was raised. The plaintiff-appellant failed to plead or prove any custom. In the absence of any such cogent evidence, as discussed above, no fault can be found with the findings returned by both the Courts that the property was rightly mutated in the names of defendant-respondents No.5 and 6 i.e. Mewa and Santra.

10. The arguments of the learned counsel that the mutation does not confer any title and qua limitation stand rejected. There is no quarrel with the proposition that mutation does not confer any right however in the present case mutation was correctly entered as discussed above. Further still, the mutation was entered in the presence of Banwari Lal (plaintiff-appellant). Not only was the mutation entered, the plaintiff-appellant had even taken a loan jointly with his sister, namely, Santra (defendant-respondent No.6). Widow of Mangal, namely, Chand Kaur died in 1981. Even her property was mutated in favour of Banwari Lal (plaintiff-appellant), Bhagwan (proforma defendant-respondent No.7), Mewa and Santra (defendant-respondents No.5 and 6) on 29.05.1981. Thus, it does not now lie in the mouth of the plaintiff-appellant to state that he was not aware of the entries.

11. Learned counsel for the plaintiff-appellant cannot draw any benefit from the minor discrepancies in the statements of the witnesses qua possession. As discussed above, the plaintiff-appellant miserably failed to

lead any cogent evidence to show whether the property was ancestral or self-acquired property of Mangal. The plaintiff-appellant has further failed to lead any cogent evidence qua the death of Mangal prior to 1956. Further still, the mutation itself was entered in the presence of Banwari Lal (plaintiff-appellant) and even the release deed, as has been found by both the Courts concurrently, was entered at the behest of the plaintiff appellant and his brother, namely, Bhagwan.

12. In view of the above, I do not find any merit in the present appeal. No question of law, much less any substantial question of law, arises for determination in the present case. The appeal being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

28.01.2026
Aman Jain

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No