

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****110****RSA-2418-1993 (O&M)****Date of decision: 01.04.2025****Satbir and another****...Appellant(s)****Vs.****Ram Narain and another****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. R.A.Sheoran, Advocate for the appellants.

Mr. Sumit Sangwan, Advocate with

Mr. Vikrant Rana, Advocate for respondent No.1(i)

NIDHI GUPTA, J.

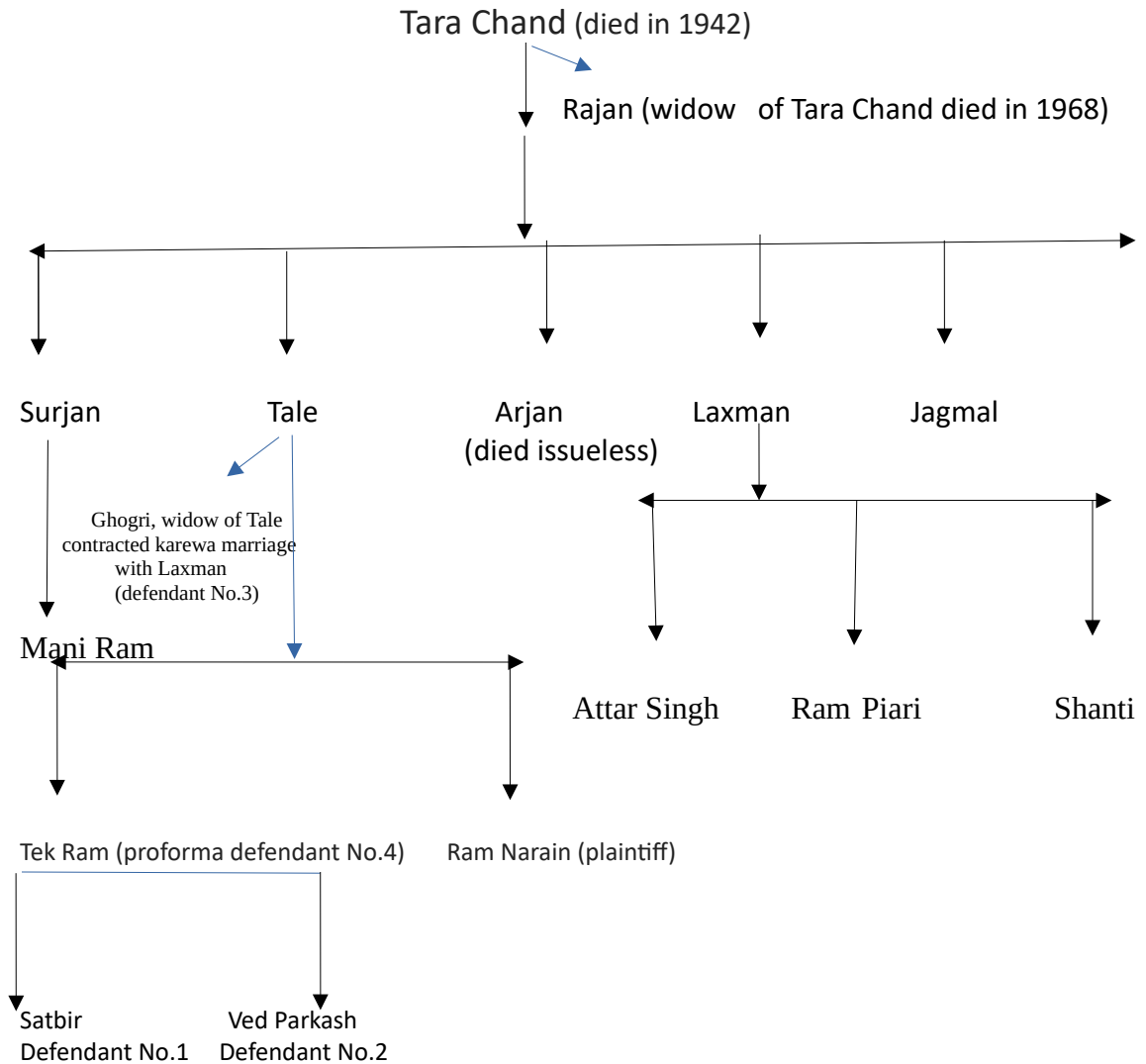
The defendants No.1 and 2 are in second appeal against the concurrent judgments and decrees of the learned Courts below, whereby the suit filed by respondent No.1/plaintiff for declaration, has been decreed by both the Courts below.

2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellants are the 'defendants No.1 and 2'; and respondent No. 1 is the 'plaintiff'.

3. Brief facts of the case as stated in the plaint are that the plaintiff Ram Narain son of Tale, resident of village Loharwara, had filed the present suit for declaration against the defendants with the averments that previously Tara Chand was the owner in possession of agriculture land measuring 10 Bigha 15 Biswa and 1/3rd share measuring 20 Bigha 9 Biswa, as detailed in para No.2 of the plaint.



4. The following pedigree table will be helpful, in order to understand the relationship between the parties: -



5. Tale, father of the plaintiff had expired on 18.4.1940 during the lifetime of his father Tara Chand, who had died in the year 1942. The mutation No.157 of inheritance of Tarachand was sanctioned on 16.9.1942. While sanctioning the mutation No.157, the name of defendant No.3 Ghogri was also entered alongwith the names of plaintiff and Tek Ram, father of defendants No.1 & 2 as an heir of 1/6th share; whereas she was not entitled to it because she had contracted karewa marriage with Laxman after the death of her previous husband Tale. The defendant No. 3 Ghogri has been living with Laxman as his wife and she had also given birth to Ram



Piari, Shanti and Attar Singh. During the consolidation proceedings, the entire land of Tale's family was consolidated and now it was measuring 170 kanals 18 marlas comprised in Khewat No.114 as per jamabandi for the year 1982-83. After the death of Smt. Rajan, 1/6th share was mutated vide mutation No.532 in favour of her heirs and in that mutation also the name of defendant No.3 Ghogri was added with that of the plaintiff and Tek Ram. Due to these wrong entries in mutation Nos.157 and 532, wherein she/Ghogri has been shown to be owner of 1/15 share, the defendants No.1 and 2 taking advantage of this wrong entry filed a collusive suit against Ghogri which was decided in their favour on 21.11.1986 by which the defendant No.3 Ghogri transferred her 1/15th share in favour of defendants No.1 and 2. Although she has ceased to have any land after she had contracted karewa marriage with Laxman. The defendants No. 1 & 2 have started to assert their title on the basis of impugned judgment and decree of which the defendants were asked number of times by the plaintiff to get corrected the wrong entries and to get cancelled the impugned judgement and decree but the defendant did not agree, hence, the necessity arose to file the present suit, for declaration against the defendants.

6. Upon notice, the defendants No. 1 and 2 who appeared through counsel and resisted the suit by filing written statement. Besides formal objections, it was denied that karewa marriage was solemnized between defendant No.3 and Laxman after the death of previous husband of defendant No.3. It was admitted that Tale had expired during lifetime of Tara Chand. It was also pleaded that the suit of the plaintiff was time



barred, and the plaintiff was estopped to file the suit by his own act and conduct.

7. Plaintiff filed replication re-asserting the averments made in the plaint and denying those made in the written statement.

8. On the basis of pleadings of the parties, following issues were framed:-

“1. Whether Shri Tale Ram died in the year 1942 and Smt. Ghogri contracted karewa marriage with Laxman after the death of Tale Ram?OPP

2. If issue No.1 proved, whether the mutation No.157 dated 16.9.42 in favour of Smt. Ghogri is illegal, null and void against law and facts and liable to be set aside?OPP

3. If issue No.1 proved, whether mutation No.532 dated 8.8.1968 is also illegal, null and void, against facts, not binding on the right of the plaintiff?OPP

4. If issues No.1 to 3 proved, whether the decree in civil suit No.1160 dated 21.11.1986 is also illegal, null and void, against law and facts, not binding on the rights of the plaintiff?OPP

5. If all the above issues are proved, whether the plaintiff is owner and in joint possession of 1/10 share out of the total land measuring 170 kanals 8 marlas as detailed and described in the head note of the plaintiff?OPP

6. Whether the plaintiff has no locus-standi to file the present suit?OPD

7. Whether the suit is not maintainable in the present form? OPD

8. Whether the plaintiff is estopped to file the present suit by his own act and conduct?OPD

9. Whether any private agreement took place between the parties on 15.1.1989, if so, its effect?OPD



10. Relief.”

9. Upon appraisal of the pleadings and the evidence led by the parties, the Id. trial Court decided issues No. 1 to 5 in favour of the plaintiff and against the defendants; issues No. 6 to 8 against the defendants; issue No. 9 in favour of the plaintiff and against the defendants; and accordingly, vide judgment and decree dated 20.08.1992, the learned trial Court decreed the suit of the plaintiff against the defendants with costs. The appeal filed by the defendants No. 1 and 2 was also dismissed with costs by learned Additional District Judge, Bhiwani vide judgment and decree dated 14.09.1993, thereby affirming the findings of the learned trial Court. Hence, the present second appeal.

10. It is submitted by learned counsel for defendants No. 1 and 2 that the learned Courts below are in patent error in decreeing the suit of the respondent/plaintiff. The learned Courts below have failed to appreciate that there were two women by the name of Ghogri. It is submitted that widow of Tale was named Ghogri; as also the wife of Laxman was also named Ghogri. It is contended that the respondent/plaintiff in order to take 'disadvantage' of the same name, filed the present false suit. Accordingly, the findings of the learned Courts below are erroneous.

11. It is further submitted that it was proved on record that Smt. Ghogri had never contracted karewa marriage with Laxman. Mutation dated 16.09.1942 was entered on the basis of her share. If she had contracted karewa marriage with Laxman, then second mutation No. 532 dated 08.08.1968 could not have been sanctioned in her favour. So, from



the mutation itself it is clear that she never contracted karewa marriage with Laxman. The Courts below have misread the evidence on record. Even the plaintiff has failed to prove the karewa marriage of Ghogri with Laxman.

12. It is further submitted that the suit of the plaintiff was time barred as the plaintiff had remained silent for about 45 years and had not challenged the mutation of inheritance in favour of Smt. Ghogri widow of Tale. In respect of the mutations entered in the year 1942 and 1968, the plaintiff has filed suit in the year 1987. As such, the learned Courts below ought to have drawn adverse inference against the plaintiff. However, even no issue was framed regarding limitation despite the specific pleading of the defendants in this regard. It is accordingly prayed that the present appeal be allowed; and the impugned judgments and decrees of the learned Courts below be set aside.

13. *Per contra*, learned counsel for respondent No.1/plaintiff opposes the prayer made on behalf of the appellants/defendants and firstly submits that as per the judgment of Hon'ble Supreme Court in "***State of Rajasthan vs. Shiv Dayal***", (2019) 8 SCC 637, it is not open for this Court to interfere in the concurrent findings of fact returned by the Courts below "*unless it is pointed out that it was de hors the pleadings or it was based on no evidence or based on misreading of material on record and documents.*"

14. It is further submitted that in the present case, there was no plea taken by the appellants in the written statement that there were two ladies by the name of Ghogri, one of who was the widow of Tale; and another woman also named Ghogri was married to Laxman. It is argued



that, as per the ratio of above said judgment in the absence of any such pleading even the evidence sought to be referred to by the defendants, could not be taken into consideration. It is pointed out that the Hon'ble Supreme Court in the judgment of "***Mst. Sugani vs. Rameshwar Das and another***" ***Law Finder Doc Id# 123580***, has gone on to further hold that "*the concurrent findings of facts howsoever erroneous cannot be disturbed by the High Court in exercise of the powers in second appeal*".

15. As regards Karewa marriage of Ghogri with Laxman, learned counsel submits that Ghogri had appeared before the learned trial court as PW3 and had duly admitted her karewa marriage with Laxman. It is contended that admission is the best evidence and in view of the admission of Ghogri, no further evidence was required. In support, learned counsel for plaintiff relies upon the following judgments of this Court: -

1. ***Smt. Ji Kaur vs. Smt. Bhullan etc. Law Finder Doc Id # 114579;***
2. ***Jai Lal and another vs. Mst. Hans Kaur, Law Finder Doc Id # 128845;***
3. ***Mst. Ranbir Kaur and others vs. Angrez Kaur alias Charanjit Kaur and another, Law Finder Doc Id # 76842; and***
4. ***Darbara Singh son of Inder Singh of Village Cheema, Tehsil and District Sangrur vs. Jaswant Kaur widow of Chand Singh of Village Cheema, Tehsil and District Sangrur and others, Law Finder Doc Id # 523620.***

16. Learned counsel for the plaintiff submits that it has been held in the above said judgments that it is well settled law that karewa marriage by the widow would forthwith divest her of limited estate in her deceased husband's property.



17. Learned counsel for the plaintiff further submits that in case of inheritance, ground of limitation is misconceived. It is submitted that as the plaintiff was claiming right to the suit property by way of inheritance, limitation would not apply. In support of his contention, learned counsel relies upon the judgment passed by the Division Bench of this Court in ***Mohinder Singh (died) and Rep. By his LRs and another vs. Kashmira Singh, Law finder Doc Id# 53265***. It is accordingly prayed that the present second appeal be dismissed.

18. No other argument is raised on behalf of the parties.

19. I have heard learned counsel for the parties and perused the case file, as also the lower court records in minute detail and given my thoughtful consideration of the rival contentions on behalf of the parties.

20. I find no merit in the submissions made on the behalf of the appellants/defendants.

21. The admitted facts are that Tale son of Tara Chand had predeceased his father on 18.04.1940. Tara Chand had died thereafter in the year 1942. Upon the death of Tara Chand in 1942, mutation No. 157 dated 16.09.1942 was sanctioned in favour of Rajan, widow of Tara Chand; plaintiff Ram Narain; Tek Ram (father of defendants No.1 and 2); and Ghogri widow of Tale. Admittedly, this mutation was sanctioned at the instance of Laxman son of Tara Chand. After the death of Tale in 1940, Ghogri had entered into karewa marriage with Laxman. Rajan widow of Tara Chand had expired in 1968; whereafter mutation No. 532 dated 08.08.1968 was sanctioned as per entitlement of sons of Tara Chand and



LRs of Tale. The present Civil Suit was filed by the plaintiff on 10.04.1987 laying challenge to the above said mutations.

22. It is the contention of the defendants that Ghogri had never entered into karewa marriage with Laxman. A categorical assertion to this effect was made by the defendants in their written statement. In this regard, the appellants have also relied upon evidence of PW4 to prove that there was no karewa marriage between Ghogri and Laxman. However, these contentions of the appellant are liable to be discarded in view of the unequivocal and undisputed evidence of Ghogri herself appearing as PW3. The statement dated 13.06.1990 made by Ghogri/PW3, is as under: -

“My marriage was solemnized with Surjan. After death of Surjan I solemnized Karewa with Tale. From me and Tale two sons Tek Ram and Ram Narain born out. After death of Tale, I solemnized karewa with Laxman. From me and Laxman two daughters and one son born out namely Ram Pyari, Shanti and Attar Singh. I am living with Attar Singh. When Tale died, at that time my father-in-law Tara Chand was alive. After death of Tara Chand the share of Tale came to Tek Ram, Ram Narain and me by way of mutation. Name of wife of Tara Chand was Raje. After death of Raje the share of Tale, inherited by her mutated in the name of Ram Narain, Tek Ram and me. However, I already committed karewa with Laxman. Tek Ram has two sons namely Satbir and Ved Parkash. They took me in Court compound under the garb of making pension and obtained my thumb impression on some papers and I put my thumb impression as per them under impression as pension. I am Illiterate. Ram Pyari was eldest



child of mine and Laxman and she born out after 2-3 years of karewa. After Ram Pyari, Shanti and then Attar Singh born out.

xxxxxxxxxxxxxx examination.

From lion of Surjan I gave birth to one son namely Mani Ram and no daughter born. I did not inherit the land of Surjan. It is wrong that I mutated the land in the name of Satbir and Ved Parkash from my own wish. I was asked to come for making pension and in that pretext my thumb impression obtained. I did not know the Advocate. It is wrong that earlier land mutated by me as per my own wish and now in connivance with another party I am deposing falsely.”

23. As such, in view of the categoric evidence of Ghogri herself, any objection by the defendants is unsustainable. It is to be noted that PW3-Ghogri has also admitted that after 2-3 years of karewa Ram Pyari was born as first baby of her and Laxman, and she was not cross-examined on this point by the defendants. As such, Karewa marriage between PW3 and Laxman is established.

24. Dispute in the present case is with regard to inheritance of Tale. His widow/Ghogri/Defendant no.3 could not get his share as she committed karewa with Laxman (brother of her first husband) before death of Tara Chand, so she cannot inherit property of Tara Chand as widow of Tale. These facts have been admitted by defendant No.3 when she appeared in the witness box. At this stage, reference is made to the judgment passed by Hon’ble Supreme Court in **“Kizhakke Vattakandiyil Madhavan (Dead) through LRs vs. Thiyyurkunnath Meethal Janaki and others”**, **Law Finder Doc Id # 2543828**, wherein it is held that “widow lost



her right over property on contracting second marriage. Hindu Widow's Remarriage Act, 1856, Section 2-Rights of widow in deceased husbands property to cease on her marriage - Suit for partition in share of suit property by plaintiff through remarried widow - Decreed by trial Court and set aside by First Appellate Court - Second appeal by plaintiff in High Court allowed - Appeal by defendants - Whether remarried widow had any title over subject-property which plaintiff claimed through series of transactions? Held widow lost her right over property on contracting second marriage - Her status over property, post-1910 if at all was that of lessee - No indication in any of deeds that lease can travel beyond stipulated term of twelve years - Ownership of suit property cannot be said to have devolved in any manner whatsoever to original plaintiff, who was born within wedlock of remarried widow and deceased first husband - Hence, order of High Court set aside and decision of First Appellate Court upheld."

25. In "**Smt. Ji Kaur etc. Versus Smt. Bhullan etc.**", **Law Finder Doc Id # 114579** it is held that in case of Karewa marriage by the widow, she is not entitled to inherit the property of her deceased husband. In "**Dhanno and others Vs. Hari Ram and another**", **1997(1) RCR (Civil) 356** it is held that if Widow of a Hindu performed Karewa marriage after death of her husband in 1943, she automatically stood divested of her right in the property of her deceased husband on account of Section 59 of Punjab Tenancy Act and the legal heirs of the deceased become owners of the property to the extent of share. In "**Darbara Singh Versus Jaswant Kaur**



and others”, Law Finder Doc Id # 523620, Karewa marriage is recognised as a valid form of marriage, and it confers all rights of a valid marriage. In **“Smt. Ass Kaur (deceased) by LRs Vs. Kartar Singh (Dead) by LRs and others, 2007(3) RCR (Civil) 369”**, the Hon'ble Apex Court of India held that the court can also take judicial notice of such customs in terms of Section 57 of the Evidence Act, 1872. As and when custom has repeatedly been recognised by the courts, the same need not be proved.

26. The defendants have also made the outrightly absurd contention that there were two women by the name of Ghogri. Admittedly, no such plea was taken by them in the written statement. Even no evidence has been led by the defendant to show that there was another woman by the name of Ghogri, who was married to Laxman. Or that Ghogri wife of Tale was different from Ghogri wife of Laxman. The assertions of the defendants are not supported by any documentary evidence. Only oral statement has been made by PW4, which is also liable to be discarded. DW3-Dhanpati said that there were two Ghogries but it is not the case set up by the defendants at any point of time.

27. In any event, any evidence produced by the defendants in this regard, is liable to be rejected in view of judgment of the Hon'ble Supreme Court in **“Divisional Manager, United India Insurance Co. Ltd. & anr. vs. Samir Chandra Chaudhary” Law Finder Doc Id # 83537**; wherein it is held that an **“admission of fact is good evidence”** against the person admitting the same unless it is legally explained away to be made under a



bona fide mistake. Thus, in view of the admission made by defendant no.3 herself, the present plea of the defendants is liable to be rejected.

28. Moreover, learned counsel for the defendants is also unable to dispute that in a second appeal, it is not open for this Court to interfere in the concurrent findings of the learned Courts below unless material error is pointed out in the judgments and decrees of the learned Courts below. In ***Mst. Sugani's case (supra)***, the Hon'ble Supreme Court has held that concurrent findings of fact, howsoever erroneous, cannot be disturbed by the High Court. The substantial question of law has to be distinguished from a substantial question of fact. Again, in ***Avtar Singh Vs. Bimla Devi and others, 2021(4) RCR (Civil) 402***. Hon'ble Apex Court has held that finding of fact cannot be interfered with in exercise of second Appellate jurisdiction. As such, in the admitted position that there was no pleading/objection taken by the defendants in the written statement that there were two women by the name of Ghogri, the said plea cannot be considered at this stage; and challenge to the findings of facts returned by the Courts below cannot be entertained.

29. As regards limitation, learned counsel for the defendants cited no judgment to counter the judgment of ***Mohinder Singh (died) and Rep. By his LRs and another's case (supra)***. In ***Ram Chander vs. Prito and others Law Finder Doc Id # 2060723*** cited by learned counsel for the plaintiff it is clearly held that "*no period of limitation is prescribed for filing a suit for possession on the basis of inheritance-Limitation would not commence on mere mutation entries but rather when there is a real*



threat to the possession of the plaintiff-appellant based on such actions that the cause of action would be stated to have arisen.” As such, it cannot be said that the present suit is barred by limitation.

30. Given the undisputed factual and legal position as noted above, I find no ground is made out to interfere in the impugned judgments and decrees of the learned Courts below. The present regular second appeal is hereby **dismissed**.

31. Pending applications, if any, stand disposed of.

01.04.2025

Divyanshi

**(NIDHI GUPTA)
JUDGE**

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