



IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

144

CM-7394-C-2025 in/and  
RSA No.2169 of 2025 (O&M)  
Date of Decision :01.07.2025

**Rajbir and others**

.....Appellants

**Versus**

**Mayawati and others**

..... Respondents

**CORAM: HON'BLE MR.JUSTICE VIKRAM AGGARWAL**

Present: Dr. Pankaj Nanhera, Advocate for the appellants.

VIKRAM AGGARWAL, J. (Oral):

**CM-7394-C-2025**

Prayer in the present application is for condonation of delay of 85 days in re-filing the appeal.

For the reasons mentioned in the application, the same is allowed and the delay of 85 days in re-filing the appeal is condoned.

**RSA No.2169 of 2025**

Plaintiffs are in second appeal against the judgment and decree dated 20.11.2024, passed by the Court of Additional District Judge Bhiwani, dismissing the appeal filed against the judgment and decree dated 21.12.2016, passed by the Court of Additional Civil Judge (Sr. Divn.), Siwani, vide which the suit for declaration and permanent injunction was dismissed.

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

3. Plaintiffs (Rajbir, Surender and Krishan) claimed to be the grandsons of one Har Chand. Defendant No.1 (Mayawati) is their mother.



They filed a suit for declaration and permanent injunction seeking the following relief:-

“It is, therefore, prayed that the suit of the plaintiffs for declaration to the effect that transfer of land measuring 119 kanals 11 marlas i.e. 3/7 share of land measuring 278 kanals 19 marlas comprised in khewat No. 15/13min khatoni No 34 total kitas-45 situated in the revenue estate of Naloi. Tehsil Siwani District Bhiwani, as per latest jamabandi for the years 2002-03 and now comprised in Khewat No. 15715 khatoni No.34 as per latest jamabandi for the years 2007-08, by the defendant No.1 to the defendant No.2 vide registered sale deed No.332 dated 06-06-2007 registered with the office of Joint Sub Registrar, Siwani and mutation No. 1542 dated 10-7-2007 and further entries in the revenue record till the latest jamabandi showing the defendant No.1 as owner to the extent of 398/5579 share and the defendant No.2 to the extent of 3/7 share of land measuring 278 kanals 19 marlas as per latest jamabandi for the years 2007-08, are an act of malafide to defeat the right of inheritance of the plaintiffs and defendant No.6 and Performa defendants No.7 and 8, who have acquired the right by birth being the ancestor and coparcenery property, without the consent of the plaintiffs, defendant No.6 and Performa defendants, who are coparceners, without consideration, shame transactions, without any legal necessity, not an act of good management, based on misrepresentation and are liable to be so declared and the defendant No.2 has not acquired any right, title or interest in the land measuring 119 kanals 11 marlas on the basis of the impugned sale deed No.332 dated 06-06-2007 and mutation No. 1542 dated 10-7-2007 and further transfer of land measuring 19 kanals 18 marlas i.e. 398/5579 share by the defendant No.1 to the defendant No. 6 Raj Kumar vide judgment and decree dated 30-10-2009 passed in Civil Suit No 53/2011 titled as Raj Kumar Vs Mayawati passed by the court of Shri Peeyush Gakhar Civil Judge (Junior Division) Bhiwani and mutation No.1684 dated 2-1-2012 is without authority and against the interest of the plaintiffs and Performa defendants and are liable to be set aside and further subsequent sale of land measuring 119 kanals 11 marlas by the defendant No.2 to the defendant No.3 Chandro Devi vide sale deed No.388 dated 08-06-2011 and further subsequent sale of land measuring 119 kanals 11 marlas by the defendant No.3 to defendant No.4 Lado Devi vide sale deed No.830 dated 29-07-2011 and mutation No 1672 dated 01-09-2011 and also mortgage of land



measuring 119 kanals 11 marlas by the defendant No.4 in favour of the defendant No.5 vide registered mortgage deed No.2889 dated 19-03-2012 registered with the office of Sub Registrar Siwani, are wrong, illegal, null and void and not binding on the rights of the plaintiffs and Performa defendants and the land measuring 139 kanals 09 marlas i.e. 1/2 share of land measuring 278 kanals 19 marlas is liable to be reverted by way of restoring the possession of the land to the defendant No.1 and further suit for permanent injunction (Prohibitory and mandatory) restraining the defendant No.6 from alienating land measuring 19 kanals 18 marlas i.e. 398/5579 share of land measuring 278 kanals 19 marlas and also restraining the defendant No.4 Smt. Lado from further alienating/transferring or creating any further encumbrance over the land measuring 119 kanals 11 marlas i.e. 3/7 share of land measuring 278 kanals 19 marlas and the defendant No.4 be directed to clear the loan outstanding arisen from the loan by creating mortgage with the defendant No.5 Bank, as the defendant No.4 has no right, title or interest to mortgage the land with the defendant No.5 on the basis of the impugned sale deed dated 830 dated 29-07-2011, may kindly be decreed with costs in favour of the plaintiffs and Performa defendants and against the defendants. Any other relief to which the plaintiffs are found entitled during the trial of the suit may also be granted to the plaintiffs.”

4. The basic case set up was that since the property was ancestral, the same could not have been alienated without legal necessity.

5. The suit was opposed by the defendants. The factum of the suit land being ancestral was denied. It was also denied that the plaintiffs, defendant No.1, defendant No.6 and performa defendants were members of a co-parcenary.

6. From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the plaintiffs are entitled to the decree for declaration as prayed for? OPP
2. Whether the plaintiffs are entitled to the decree for permanent injunction



as prayed for? OPP

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

4. Whether the plaintiffs have no locus standi and cause of action to file the present suit? OPD

5. Whether the plaintiffs have concealed material facts from the Court?  
OPD

6. Relief.

7. Parties led their respective evidence. The trial Court dismissed the suit filed by the plaintiffs. The appeal filed against the said decision was also dismissed, leading to the filing of the instant second appeal.

8. I have heard learned counsel for the appellant.

9. The sole argument raised by learned counsel for the appellants is that a specific issue as regards the property being ancestral should have been framed by the trial Court. He has referred to the averments made in paragraph 2 of the plaint as also the reply submitted thereto wherein it was claimed by the plaintiffs that the property was ancestral in nature and the said fact was denied by the defendants. Learned counsel submits that under the circumstances, in terms of the provisions of Order 14 Rule 1 of the Code of Civil Procedure, 1908 (for short 'CPC'), a specific issue should have been framed. He submits that since no such specific issue was framed, it was not incumbent upon the plaintiffs to lead evidence to prove that the property was ancestral in nature. He submits that the plaintiffs were non-suited on the ground that they had been unable to lead any such evidence, and, therefore, the suit as also the appeal were dismissed. In support of his contentions, learned counsel has placed reliance upon a judgment of a co-ordinate Bench in the case of **Wahida and another Vs. Naseem Akhtar and another, 2009(50) RCR(Civil) 839.**

10. I have considered the submissions made by learned counsel for the



appellants. However, I am unable to concur with the submissions made by learned counsel.

11. It is not in dispute that the plaintiffs claimed that the suit property was ancestral. It is also not in dispute that the said fact was denied by the defendants. Issue No.1 was as to whether the plaintiffs were entitled to the decree for declaration as prayed for and the onus to prove the said issue was on the plaintiffs. A perusal of the heading of the plaint as also the prayer clause makes it abundantly clear that sale deeds and other deeds were sought to be set aside on the ground that the suit property was ancestral in nature. It was, therefore, incumbent upon the plaintiffs to prove that the property was ancestral. It would not be open for the plaintiffs to contend that since a specific issue was not framed, they did not lead any evidence to the said fact. This argument is not liable to be accepted. *Ex facie*, the onus to prove that the suit property was ancestral was upon the plaintiffs. The non-framing of a specific issue in this regard was therefore, inconsequential. Both Courts nonsuited the plaintiffs on the ground that they had not been able to prove that the suit property was ancestral. The First Appellate Court, in fact, went to the extent of holding that the suit property was self-acquired property. Nothing has been shown to even *prima facie* prove that the findings recorded by the Courts are not sustainable.

12. I have perused the judgment in the case of **Wahida and others Vs. Naseem Akhtar and another**. In that case, the matter had been remitted after framing of an issue and the Court concerned was directed to record the findings on the same. In that case, the issue was as to whether Babu Khan was the owner of the suit property. Whereas the plaintiffs had claimed right to the property on the basis of they being the legal heirs of Babu Khan, the



respondents had taken a stand that Babu Khan was not the owner of the property and the property, in fact, belonged to Bachittar Singh who had further given the same to Naseem Akhtar. The trial Court, however, only framed an issue as to whether the plaintiff was entitled to separate possession of half share of the suit property. It was found that a specific issue should have been framed. In the considered opinion of this Court and in the facts of the said case, the issue was required to be framed. However, as discussed, in the present case, the issue of the property being ancestral or not would be covered by issue No.1 which was framed by the trial Court. Under the circumstances, the judgment in the case of **Wahida and another (supra)** would not be of any assistance to the appellants.

13. No question of law, therefore, arises for consideration by this Court warranting interference in second appeal.

14. In view of the above, the appeal is found to be devoid of merit and is accordingly dismissed.

Pending application(s), if any, shall also stand disposed of.

**(VIKRAM AGGARWAL)**  
**JUDGE**

**01.07.2025**

*Manoj Bhutani*

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