



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

**RSA No.1180 of 1998 (O&M)
Date of Order:02.06.2025**

Santokh Singh

.Appellant

Versus

Kewal Singh (Deceased) through LRs and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

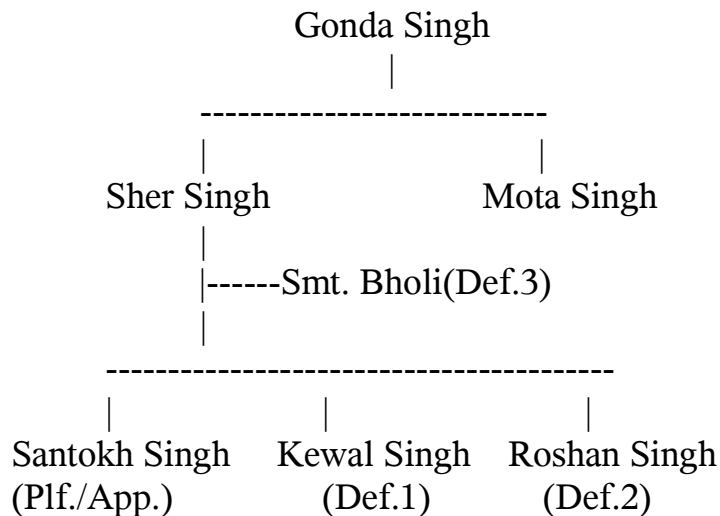
**Present: Mr. K.G.Chaudhary, Advocate
Mr. Sushant Puri, Advocate
for the appellant.**

**Mr. Gurmeet Singh, Advocate
for respondent no.1(i) to 1(iv)**

ANIL KSHETARPAL, JUDGE (Oral)

1. Through this Regular Second Appeal, the plaintiff assails the correctness of the first appellate court's judgment which in turn has modified the judgment of the trial court.

2. The following genealogy will illustrate the relationship of the parties to the suit:-





3. The plaintiff-Santokh Singh filed the suit on 27.04.1992, claiming that he is co-owner to the extent of 5/16th share in the land measuring 61 kanals 6 marlas with consequential relief of permanent injunction. The plaintiff's case was based upon the fact that the suit property was joint Hindu Family Coparcenary property of Sher Singh, who is not heard for the last more than 7 years by those who would have naturally heard about him. Thus, the plaintiff's share comes to 5/16th, whereas defendant no.3, namely, their mother's share is only 1/16th.

4. Defendants including Smt. Bholi contested the suit. It was also claimed that defendant no.1 is a bonafide purchaser for valuable consideration regarding 15 kanals 7 marlas of land which she purchased vide sale deed dated 01.04.1991, from defendant no.3.

5. The trial court decreed the plaintiff's suit and he was held entitled to 5/16th share. The First Appellate Court upheld the finding of fact arrived at by the trial court that the suit property was a joint Hindu Family property, however, while relying upon the judgment of the Supreme Court in **Smt. Raj Rani vs. Chief Settlement Commissioner, Delhi, (1984) 3 SCC 619**, held that the share of Smt. Bholi was 1/4th and not 1/16th.

6. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

7. The learned counsel representing the appellant while relying upon the judgment passed by the Supreme Court in **Man Singh (dead) by LRs vs. Ram Kala (dead) by LRs and others, (2010) 14 SCC 350**, contends that the first appellate court has erred while declaring that Smt. Bholi



became entitled to 1/4th share after the presumed civil death of her husband Sh. Sher Singh.

8. This court has considered the submission of the learned counsel representing the appellant.

9. In *Man Singh's case (supra)*, the Court did not determine the share of the parties on the ground that the three daughters were not party to the suit. Hence, this judgment does not help the appellant. In fact, this issue has been conclusively decided by the Division Bench of the Supreme Court in *Gurupad Khandappa Magdum vs. Hirabai Khandappa Magdum and others (1978) 3 SCC 383*. In paragraphs 10 and 11 of the aforesaid judgment, the court concluded as under:-

“10. Two things are thus clear : One, that in a partition of the coparcenary property Khandappa would have obtained a 1/4th share and two, that the share of the plaintiff in the 1/4th share is 1/6th, that is to say, 1/24th. So far there is no difficulty. The question which poses a somewhat difficult problem is whether the plaintiff's share in the coparcenary property is only 1/24th, or whether it is 1/4th plus 1/24th, that is to say, 7/24th. The learned trial Judge, relying upon the decision in Shiramabai which was later overruled by the Bombay High Court, accepted the former contention while the High Court accepted the latter. The question is which of these two views is to be preferred.

11. We see no justification for limiting the plaintiff's



share to 1/24th by ignoring the 1/4th share which she would have obtained had there been a partition during her husband's life time between him and his two sons. We think that in overlooking that 1/4th share, one unwittingly permits one's imagination to boggle under the oppression of the reality that there was in fact no partition between the plaintiff's husband and his sons. Whether a partition had actually taken place between the plaintiff's husband and his sons is beside the point for the purposes of Explanation 1. That Explanation compels the assumption of a fiction that in fact "a partition of the 'property had taken place", the point of time of the partition being the one immediately before the death of the person in whose property the heirs claim a share."

10. Similar view was reiterated in **Raj Rani's case (supra)**. It has been held that in view of Section 6 of the Hindu Succession Act, 1956 (hereinafter referred to as 'the 1956 Act'), partition of the property is deemed to have taken place immediately before the death of coparcener who is survived by a female relative specified in Class-1 of the schedule or a male relative who claims through such female relative. Thus, immediately before the civil death of Sh. Sher Singh, a notional partition is presumed to have taken place, as a result, the widow Smt. Bholi gets 1/5th share, Sh. Sher Singh would also receive 1/5th share, whereas the remaining three sons would get 1/5th each. After the death of Sh. Sher Singh, the deceased's share would devolved as per Section 8 of the 1956 Act. Thus, the widow will get



an additional 1/4th share of his 1/5th share, which would be 1/20th and it will have to be added to her original share of 1/5th. Hence, the total share comes to be 1/4th share of the total property. The first appellate court has rightly held that the sale of 1/4th share by Smt. Bholi by virtue of sale deed dated 01.04.1991, in favour of defendant no.1, is in accordance with law.

11. Hence, finding no merit, the appeal is dismissed.

12. All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

02nd June, 2025

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