



IN THE HIGH OF PUNJAB AND HARYANA AT CHANDIGARH

Reserved on: August 20, 2025

Pronounced on: August 22, 2025

(i) **RSA No.2575 of 2002 (O&M)**
Surinder Kumar (deceased)
through LRs and others **Appellants**

Vs.

Smt. Tara Wanti (deceased)
through LRs and others **RESPONDENTS**

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(ii) **COCP No.864 of 2004 (O&M)**
Surinder Kumar and others **Appellant**

Vs.

Smt. Tara Wanti and others **RESPONDENTS**

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CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued By:- Mr. T.K. Gupta and Mr. Vivek Arora,
 Advocates for the appellants
 (Through Video Conferencing).

Mr. B.D. Sharma, Advocate for the respondents.

DEEPAK GUPTA, J.

Introductory Facts: Defendant Nos.3 to 6 have filed the present Regular Second Appeal, challenging the judgment and decree dated 04.04.2002 passed by the learned Additional District Judge, Fatehgarh Sahib, whereby the appeal of plaintiff Kewal Krishan (now represented by his legal representatives – respondent Nos.1 to 3) was allowed and his suit decreed. The trial Court had earlier dismissed the suit on 07.12.1992. For clarity, the parties are being referred to as per their status before the Trial Court. The Trial Court record available on DMS has been perused.

2. **Subject Matter:** The dispute pertains to agricultural land situated in village Bhat Majra, Tehsil Fatehgarh Sahib, as described in the plaint. The land was recorded in the ownership of defendant No.1 – Piara Lal son of Lachhman Dass. Plaintiff – Kewal Krishan, defendant No.2 – Dharampal, and defendant No.3 – Surinder Kumar are sons, while defendant No.7 – Maya Banti is the daughter of Piara Lal. Defendant Nos.4 to 6 are sons of Dharampal, i.e. nephews of the plaintiff.

3. **Background Transactions :** Defendant No.1 – Piara Lal had suffered judgment & decree dated 18.02.1982 in Civil Suit No.45 of 1982 (Exs.P-15B & P-16), thereby transferring $\frac{1}{2}$ share of the suit property in favour of defendant No.3 – Surinder Kumar, and the remaining $\frac{1}{2}$ share in favour of defendant Nos.4 to 6.

4. **Plaintiff's Case :** The plaintiff assailed the aforesaid decree on the ground that the parties constituted a Joint Hindu Family governed by Mitakshara Law, with Piara Lal as *karta*. It was pleaded that the suit property had descended from Ram Partap to his son Lachhman Dass, and thereafter to Piara Lal, thereby retaining its character as joint Hindu Family coparcenary property. On this premise, the plaintiff asserted his entitlement to $\frac{1}{4}$ share in the suit property. He alleged that Piara Lal had no authority to suffer the decree dated 18.02.1982 in favour of defendant Nos.3 to 6, as the same was without legal necessity or benefit to the estate. Accordingly, the plaintiff sought declaration of his $\frac{1}{4}$ share, joint possession, and a further decree of permanent injunction to restrain the defendants from interfering with his rights.

5. **Defendants' Stand :** The contesting defendants denied the joint family character of the property and pleaded that it was the self-acquired property of Piara Lal, who was competent to transfer it. A further stand was taken that though the plaintiff was born to Piara Lal, but he had been adopted by one Chajju Ram of village Bhoglan (Khanpur), Tehsil Rajpura, during his childhood, and since then had ceased to be a member of the family of Piara

Lal. It was thus claimed that the plaintiff had no right or interest in the suit property. Dismissal of the suit was accordingly prayed for.

6. **Rejoinder** : In rejoinder, the plaintiff denied the allegations of adoption and reiterated his plea regarding the coparcenary nature of the property.

7. **Trial Court Findings** : Both sides led oral and documentary evidence. The Trial Court held that the plaintiff had failed to establish the ancestral character of the suit property. It further held that the plaintiff had been adopted by one Chajju Ram, thereby ceasing to be a member of the family of defendant No.1 – Piara Lal. Consequently, it was concluded that the judgment & decree dated 18.02.1982 in Civil Suit No.45 of 1982 was legal, valid, and binding on the plaintiff. On these findings, the suit was dismissed.

8. **Proceedings before the First Appellate Court** : On appeal by the plaintiff, an additional issue was framed:

“Whether plaintiff was adopted by Chhaju Ram, resident of Bhoglan, and if so, its effect? OPD”

9. The report submitted by the Trial Court on this additional issue recorded a finding that the plaintiff had not been adopted by Chhajju Ram.

10. Objections were filed by the defendants against this report.

11. Upon re-appraisal of the entire evidence, the First Appellate Court held that the alleged adoption of the plaintiff by Chhajju Ram was not proved. It further concluded:

- the suit property was ancestral in nature;
- the plaintiff and defendants constituted a joint Hindu family governed by Mitakshara law, with Piara Lal as *karta*;
- the plaintiff, being a coparcener, had acquired a right by birth;

- Piara Lal had no authority to transfer the coparcenary property by suffering the decree dated 18.02.1982 in favour of defendant Nos.3 to 6.

12. Consequently, the decree dated 18.02.1982 was declared null and void, and not binding on the plaintiff's rights. While recognizing that the plaintiff could not claim a fixed $\frac{1}{4}$ share until partition (as coparcenary shares fluctuate), the Court nonetheless declared him a joint owner entitled to joint possession. The suit for permanent injunction was also decreed, restraining defendant Nos.2 to 6 from alienating the suit property on the basis of the impugned decree.

13. **Submissions on Behalf of Appellants** : Assailing the above reversal by the appellate court, Learned counsel for the appellants – defendants contends that:

- the First Appellate Court wrongly relied on the excerpt report (Ex.P1) and testimony of PW3 – Kapil Dev, Patwari, to hold the property ancestral, as the plaintiff failed to establish the line of inheritance up to the fourth degree;
- khasra numbers had changed during consolidation, and the plaintiff failed to correlate them;
- the excerpt report was at best advisory, and not conclusive proof of ancestral nature;
- DW1 – Piara Lal deposed regarding the adoption of the plaintiff by Chhajju Ram, and that his evidence should not have been disbelieved.

On these grounds, it is argued that the findings of the First Appellate Court are unsustainable and that the judgment of the Trial Court deserves restoration.

14. **Submissions on Behalf of Respondents** : Per contra, learned counsel for the respondents – successors of plaintiff supports the judgment of the First Appellate Court, submitting that both oral and documentary evid-

ence were thoroughly appreciated to rightly conclude that the property was ancestral and that the plaintiff was never adopted by Chhajju Ram. It is contended that the appeal is meritless and deserves dismissal.

15. **Consideration by this Court** : This Court has carefully examined the rival submissions and scrutinized the record.

16. **Substantial Questions of Law** : The following substantial questions of law arise:

- Whether the First Appellate Court was justified in holding the suit property to be ancestral?
- Whether the finding regarding absence of adoption of the plaintiff by Chhajju Ram suffers from perversity?
- Whether the decree dated 18.02.1982, suffered by Piara Lal, could bind the rights of the plaintiff, if the property was coparcenary in nature?

17. **Discussion and Findings - (Ancestral nature)** : The law is settled that to establish property as ancestral, the claimant must prove its descent from a common ancestor without break in succession. While Ex.P1 and the Patwari's testimony may not by themselves constitute conclusive proof, they corroborate other revenue record – Jamabandies & Mutations (EX.P2 to Ex.P6) produced on file indicating devolution from Polu son of Gurmukh to Ram Pratap son of Polu, and then Ram Partap to Piara Lal son of Lachhman Dass. The Appellate Court has further referred to *Khatauni Istemal* (Ex.P7) to rightly conclude the connection of new Khasra numbers of the suit property with the old ones, thus negating appellant's contention that suit property was not corelated with old Khasra Numbers. As such, it is held that the Appellate Court's inference, by holding the suit property as ancestral, cannot be termed perverse. Said finding is upheld.

18. **(Adoption)** : Adoption severs ties with the natural family and must be proved strictly as per law. Self-serving statements of Piara Lal and other witnesses examined by defendants, without any registered deed, or ceremony, fall short of the statutory requirement under Section 11 of the Hindu

Adoptions and Maintenance Act, 1956. Courts below not only referred to testimonies of close relatives including sister of Piara Lal but also to the WILL dated 7.9.1971 Ex.P20 of Chhajju Ram to conclude that adoption was not proved. No doubt that plaintiff Kewal Krishan was staying for long time with his maternal uncle Chhajju Ram, who bequeathed his property in favour of son of plaintiff, but this in itself did not prove that plaintiff was adopted by Chhajju Ram, particularly when in the WILL of Chhajju, plaintiff is described as son of Piara Lal. Not only this, in the mortgage deed dated 5.5.1971 (Ex.P19) executed by Piara Lal himself in favour of a bank, he described the plaintiff Kewal Krishan as his son.

19. In the face of above material, it is held that both the Trial Court (on reference) and the First Appellate Court rightly rejected the plea of adoption, and as such, concurrent findings of fact on this aspect warrant no interference in second appeal.

20. **(Validity of decree of 1982)** : It is trite that a *karta* cannot alienate coparcenary property except for legal necessity, benefit of estate, or for indispensable duties. A collusive or consent decree, not backed by legal necessity, does not bind non-alienating coparceners. As such, the First Appellate Court rightly held the decree of 18.02.1982 to be null and void vis-à-vis the plaintiff's rights.

21. **Conclusion** : To conclude, it is found that no perversity or substantial error of law is demonstrated in the judgment of the First Appellate Court. The findings are supported by settled principles of Hindu law and evidence on record. The appeal is accordingly dismissed. The judgment and decree dated 04.04.2002 passed by the learned Additional District Judge, Fatehgarh Sahib, are affirmed. No order as to costs.

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22. Vide order dated 27.05.2004 passed in RSA-2575 of 2022, this Court had directed the parties to maintain status quo regarding the property in dispute till further orders. The present petition was thereafter filed by the

appellants in violation of this order, thereby committing civil contempt within the meaning of Section 2(b) of the Contempt of Courts Act. The respondents, however, denied the allegation. During the course of arguments, learned counsel for the appellants-defendants did not press the aforesaid COCP. Accordingly, the same stands disposed of as not pressed.

Photocopy of this order be placed on the connected case file.

August 22, 2025
Sarita

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned?
Whether reportable?

Yes/No
Yes/No