



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-981-1992 (O&M)

Reserved on : 21.05.2025

Pronounced on : 01.07.2025

JAI PAL SINGH AND ORS

.... Appellants

VERSUS

SHEORAJ SINGH AND ORS

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

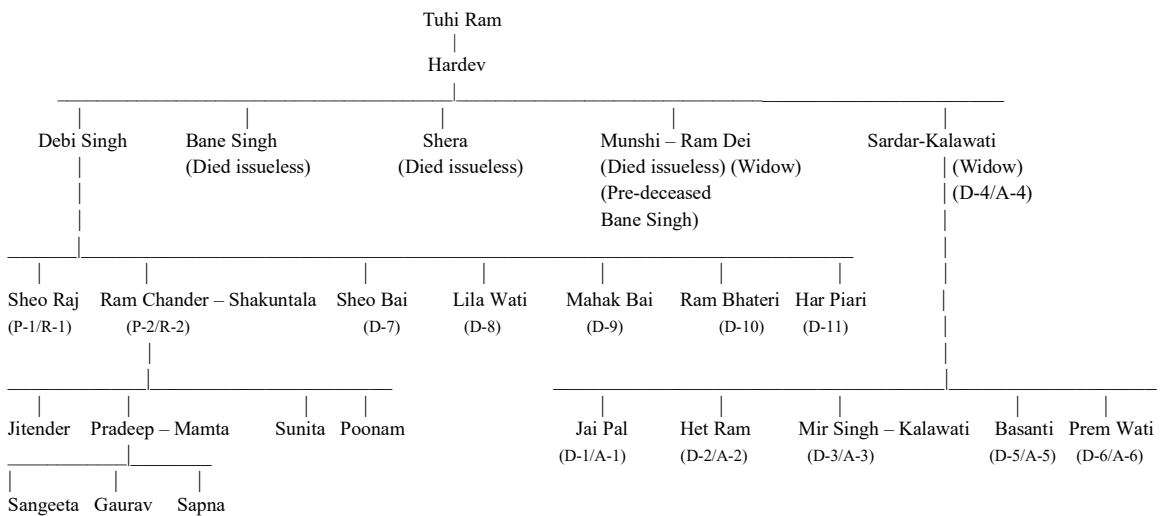
Present : Mr. Krishan Singh, Advocate for the appellants.

Mr. Amit Jain, Advocate for the respondents.

ALKA SARIN, J.

1. The present regular second appeal has been preferred by defendant-appellants aggrieved by the judgment and decree dated 13.03.1992 passed by the learned First Appellate Court reversing the judgment and decree dated 21.10.1989 passed by the learned Trial Court.

2. Before advertng to the facts of the case, a pedigree table is reproduced hereinunder for a clearer understanding of the relationship between the parties :



*A denotes Appellant

*D denotes Defendant

*P denotes Plaintiff

3. The brief facts relevant to the present case are that the plaintiffs, who are the children of Debi Singh, filed the present suit for declaration with consequential relief of permanent injunction claiming themselves to be owners in possession along with defendants No.7 to 11 of half share of the estate left by Bane Singh i.e. half of 1/4th share besides their own 1/4th share in the land in dispute and further that the revenue entries were illegal, wrong and not binding on the rights of the plaintiffs with consequential relief of permanent injunction restraining the defendant-appellants from mortgaging or alienating the suit land.

4. It was the case set up by the plaintiff-respondents that the parties are descendants of Hardev Singh son of Tuhi Ram. Hardev Singh had five sons, namely, Debi Singh, Bane Singh, Shera, Munshi and Sardar. Bane Singh, Shera, and Munshi died issueless. The defendant-appellants are the sons of Sardar and the plaintiff-respondents and defendant-respondents are the sons and the daughters of Debi Singh. It was averred in the plaint that the plaintiff-respondents' father and the father of the defendant-appellants were joint owners along with three other brothers of agricultural land measuring 11 Bighas 5 Biswas situated in Village Khandsa, Tehsil and District Gurgaon, as fully described in the plaint. Bane Singh pre-deceased Debi Singh and Sardar and on the death of Bane Singh, the father of the plaintiff-respondents and the father of the defendant-appellants succeeded to his share equally being his collaterals. It was averred that though the share of Bane Singh was inherited equally by Debi Singh and Sardar in equal shares however, the defendant-appellants in collusion with the revenue authorities

got mutated 2/3rd share out of the share of Bane Singh in their name and the remaining 1/3rd share was mutated in the name of the plaintiff-respondents and the defendant-respondents. It was further the case that the defendant-appellants on the basis of the wrong entries were threatening to alienate the suit land to which they had no right, title or interest.

5. The defendant-appellants herein filed a joint written statement raising various preliminary objections qua maintainability and that the plaintiff-respondents were estopped by their own act and conduct, omission, acquiescence and admission. The pedigree table of the parties was not denied however it was alleged that Bane Singh's estate was inherited by Debi Singh, Sardar, and Smt. Ram Dei in equal shares and a mutation was got sanctioned by Debi Singh, predecessor-in-interest of the plaintiff-respondents and the defendant-respondents, who was present and had full knowledge about the sanctioning of the mutation. It was further the stand taken that the mutation was got sanctioned in three equal shares in accordance with the wishes of deceased Bane Singh. It was denied that Debi Singh and Sardar Singh had succeeded to the estate of Bane Singh in equal shares. It was further averred that 1/3rd share inherited by Ram Dei on the death of Bane Singh was inherited by Jai Pal i.e. defendant-appellant No.1 being her adopted son.

6. Replication was filed denying the averments made in the written statement and reiterating those made in the plaint. On the basis of the pleading of the parties, the following issues were framed :

1. Whether the mutation of inheritance in respect of the estate left by Bane Singh deceased in favour of DebiSingh etc. is wrong, illegal, ultra vires, *non est* as alleged, if so to what effect ? OPP
 2. Whether the suit is not maintainable in its present form ? OPD
 3. Whether the plaintiffs are estopped from filing the present suit by their act, conduct, acquiescence, laches and admission ? OPD
 4. Whether the plaintiffs have no *locus standi* to file the present suit ? OPD
 5. Whether the suit is barred by time ? OPD
 6. Whether the defendants No.1 to 6 have become owners of the suit land by adverse possession, as alleged ? OPD
 7. Relief.
7. The Trial Court vide judgement and decree dated 21.10.1989 dismissed the suit of the plaintiff-respondents. Aggrieved by the same an appeal was preferred by the plaintiff-respondents which appeal was allowed by the First Appellate Court vide judgement and decree dated 13.03.1992. Hence, the present Regular Second Appeal by the defendant-appellants.
8. The learned counsel for the defendant-appellants contended that Ram Dei had inherited on the basis of relinquishment by the father of the plaintiff-respondents and the defendant-respondents and therefore the

plaintiff-respondents were estopped by their own act and conduct from challenging the relinquishment in favour of Ram Dei. It was further the contention of the learned counsel that the suit was barred by limitation and that the First Appellate Court had erred in allowing the appeal and decreeing the suit of the plaintiff-respondents.

9. *Per contra*, the learned counsel for the plaintiff-respondents contended that there was not an iota of evidence on the record to show that Debi Singh had ever relinquished his right in favour of Ram Dei. Learned counsel further referred to the Schedule to the Hindu Succession Act, 1956 to contend that Ram Dei would not have inherited the property by way of natural succession as she falls into the category of Class II(iv) and the brothers and deceased Bane Singh fall under the category of Class II(ii). It was further the contention that there was no limitation for a suit based on inheritance and mere mutation entries do not confer any right.

10. Heard.

11. In the present case the argument of the learned counsel for the defendant-appellants that Ram Dei had inherited the property on the death of Bane Singh, on the basis of a relinquishment in her favour by Debi Singh, is not supported by any evidence. In the absence of any writing relinquishing the rights by Debi Singh in favour of Ram Dei, the property would devolve as per the provisions of the Hindu Succession Act, 1956. Admittedly, in the wake of the fact that the brothers were alive, the widow of another brother would not have a superior right to inherit the property. The learned for the defendant-appellants is not in a position to dispute the fact that as per the

Hindu Succession Act, 1956 Ram Dei would not have a share in the property. The learned counsel for the defendant-appellants has not been able to point out to any evidence on the record to even remotely suggest that the right had been relinquished by Debi Singh in favour of Ram Dei. In the absence of any such relinquishment, it cannot be held that Ram Dei had any right to succeed to the property.

12. The argument of the learned counsel for the defendant-appellants that merely because a mutation had been sanctioned, therefore, the property stood transferred in the name of the defendant-appellants deserves to be rejected. A mere mutation entry would not confer any right upon the person in whose favour the mutation entry has been made. The limitation would not commence on mere mutation entries but rather when there is a real threat to the possession of the party and it is based on such action that the cause of action would be stated to have arisen. In the case of **Mohinder Singh (deceased by LRs) & Anr. Vs. Kashmira Singh [1985 RRR 339]** the Hon'ble Division Bench of this Court held as under :

“5. On the other hand, the learned counsel for the respondent submitted that no period was prescribed under the Limitation Act, for filing a suit for possession on the basis of inheritance and that a suit for possession on the basis of title is governed by Article 65 of the Limitation Act, 1963, the relevant portion of which reads as under :-

<i>Description of suit</i>	<i>Period of</i>	<i>Time from which</i>
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	<i>limitation</i>	<i>period begins to run</i>
<i>65. For possession of immovable property or any interest therein based on title</i>	<i>Twelve years</i>	<i>When the possession of the defendant becomes adverse to the plaintiff.</i>

6. After hearing the learned counsel for the parties, I find force in the contention of the learned counsel for the respondent. It is well established principle of law that inheritance does not remain in abeyance and the heirs after the death of the last male holder succeed to the property of the deceased in accordance with law, Kashmira Singh, being the son of Niranjana Singh deceased, was entitled to 1/3rd share in the land in dispute. After the death of Niranjana Singh, he was not required to file any suit for possession on the basis of inheritance. He had become full owner of his share in the property on the death of the last male holder. For establishing his right as an heir, he was not required to file a suit. However, a situation may arise when the heir is not in possession of the property inherited. In that event a suit for possession may have to be filed and on contest the same may fail on the defendant proving that

he has perfected his title by adverse possession. It is such type of suit which is governed by the provisions of Article 65 of the Limitation Act. In this view of the matter, with respect, I find that the view taken by R. N. Mittal, J. in Naginder Singh's case (1983 Cur LJ (Civ & Cri) 432) (supra) that it is well settled that a suit for possession on the ground of inheritance should be filed within a period of twelve years from the date when the inheritance opens, does not lay down any such rule. On the other hand, in all those decisions it was the plea of adverse possession of the defendants which was upheld. Thus, I hold that no period of limitation is prescribed for filing a suit for possession on the basis of inheritance.”

In the case of **Ganpat & Anr. Vs. Lachhman & Ors. [2008**

(4) RCR (Civil) 9] it was held as under :

“9. The Division Bench of this Court in Kashmira Singh's case (supra) where similar issues was involved, has, in para 6 of its judgment, laid down as under :

After hearing the learned Counsel for the parties, I find force in the contention of the learned Counsel for the respondent. It is well established principle of law that inheritance does not remain in abeyance and heirs after the death of the last male holder succeed to the property of the deceased in

accordance with law. Kashmira Singh, being the son of Niranjan Singh, deceased, was entitled to 1/3rd share in the land in dispute. After the death of Niranjan Singh, he was not required to file any suit for possession on the basis of inheritance. He had become full owner of his share in the property on the death of the last male-holder. For establishing his right as an heir, he was not required to file a suit. However, a situation may arise when the heir is not in possession of the property inherited. In that event a suit for possession may have to be filed and on contest the same may fail on the defendant proving that he has perfected his title by adverse possession. It is such type of suit which is governed by the provisions of Article 65 of the Limitation Act. In this view of the matter, with respect, I find that the view taken by R.N. Mittal, J. in Naginder Singh's case (supra) that it is well settled that a suit for possession on the ground of inheritance should be filed within a period of twelve years from the date when the inheritance opens, does not lay down correct law. The decisions to which reference has been made in para 9 of the judgment by the learned judge, do

not lay down any such rule. On the other hand, in all those decisions it was the plea of adverse possession of the defendants which was upheld. Thus, I hold that no period of limitation is prescribed for filing a suit for possession on the basis of inheritance.”

Further, in the case of **Mohinder Singh & Ors. Vs. Shangara Singh & Anr. [(2007) 5 RCR (Civil) 388]** it was held as under :

“9. It is well settled that entries in the revenue record does not by title give rise to a cause of action. Reference may be made to Ibrahim v. Smt. Sharifan and Balwant Singh v. Khushal Singh and Anr. The Division Bench in Ibrahim's case (supra) has held that entry in the revenue record by itself does not provide any cause of action. The cause of action arises only when there is any threat to the title of the suitor.”

In the absence of any right, a mere mutation entry would not confer any right in the property. No other argument had been raised by the learned counsel for the defendant-appellants.

13. In view of the above and in view of the fact that there is not an iota of evidence on the record to show that Debi Singh had relinquished his right in favour of Ram Dei, no fault can be found with the judgement and decree passed by the First Appellate Court. No question of law, much less substantial question of law arises in the present case, which requires

