

RSA-520-1994 (O&M)
RSA-521-1994 (O&M)

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2025.PHHC.066290



101 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on: 07.05.2025
Pronounced on: 16.05.2025

1. RSA-520-1994 (O&M)

Baldev Singh (Deceased) through LRs ...Appellant

Vs.

Surjit Singh and another ...Respondents

2. RSA-521-1994 (O&M)

Baldev Singh (Deceased) through LRs
and another ...Appellants

Vs.

Jagdish (Deceased) through LRs
and another ...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashish Aggarwal, Sr. Advocate
Ms. Aashna Aggarwal, Advocate
with Mr. Vishal Pundhir, Advocate
for the appellant.

Mr. Sandeep Khunger, Advocate
Mr. Saksham Khunger, Advocate
for respondent No.1, 2(i)(c), 2(i)(e) (in RSA-520-1994)
for respondent No.1(ii), (iv), (v) and (vi) (in RSA-521-1994).

ANIL KSHETARPAL, J.

I Brief Facts:-

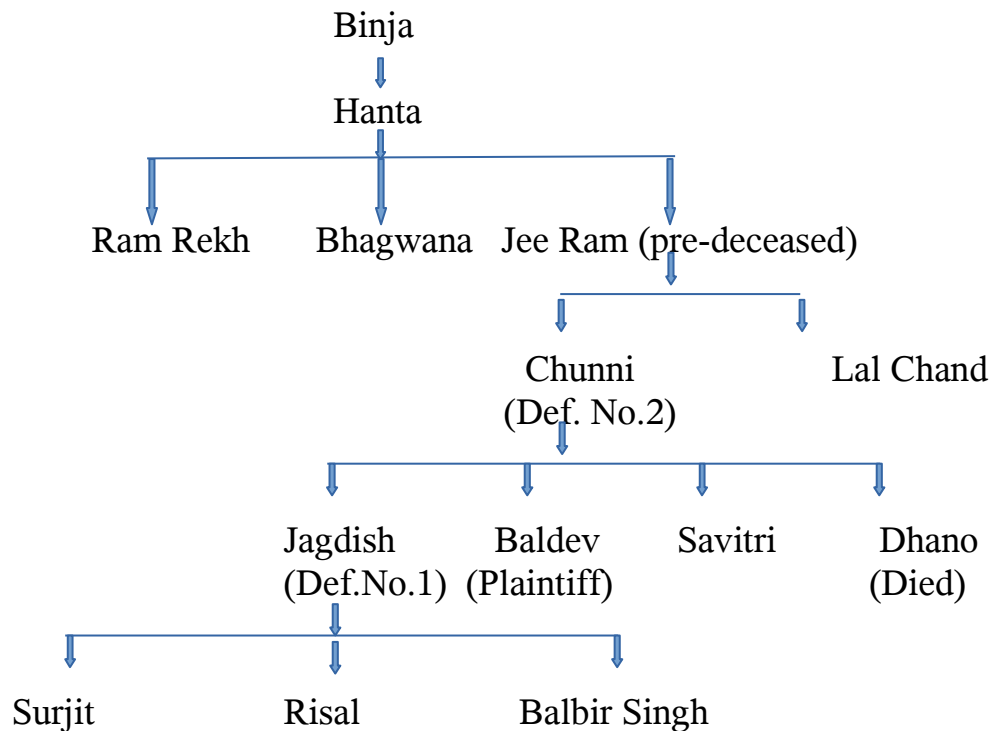
1. With the consent of learned counsel representing the parties, two connected regular second appeals between the same parties, shall stand



disposed of by this common order.

2. These two regular second appeals have been filed by the plaintiff against two separate judgments passed by the First Appellate Court which in turn have reversed two separate judgments and decrees passed by the trial Court.

3. The following genealogy will illustrate their relationship:-



4. The dispute in the present two appeals is with respect to 60 kanals 08 marlas land located in village Hizrawan Kalan.

5. The agricultural land of the family is located in three villages:-

- I. Hizrawan Kalan 36 acres
- II. Bhoria Khera 20 acres 5 kanals
- III. Basti Bheema 22 acres (approx.)



6. The plaintiff (Late Sh. Baldev Singh) claims that the land located in village Hizrawan Kalan and Bhoria Khera is ancestral, whereas, property located in village Basti Bheema was purchased by Sh. Chunni Lal in the names of his two sons, namely, Sh. Jagdish and Baldev Singh (half share each). The land under caption A and B was *barani* (dependent for irrigation on rain), whereas, property under caption 'C' was canal irrigated, located near G.T. Road and Meenakshi Mill, Fatehabad.

7. The plaintiff claims that in a family settlement arrived at on 11.07.1971, the entire property under caption 'A' and 'B' came to his share, however, 7.5 acres land was kept by Sh. Chunni Lal for his own maintenance without any right to alienate the same, whereas, entire agricultural land located in village Basti Bheema (caption C) was allocated to Sh. Jagdish and his three sons. After the death of Sh. Chunni Lal, 7.5 acres of land located in Hizrawan Kalan (60 kanals 08 marlas) was to revert to him. Actual possession of this parcel of land remained with him. The settlement deed dated 11.07.1971 was kept by Sh. Chunni Lal. On the basis of family settlement, Sh. Baldev Singh-plaintiff filed a suit for declaration to the effect that he is the owner of the property located in village Bhoria Khera, which was admitted by Sh. Chunni Lal resulting in judgment and decree dated 01.02.1972.

8. In order to reiterate the family settlement arrived at on 11.07.1971, another document was executed on 15.05.1972. In this deed of settlement, the settlement dated 11.07.1971 was reiterated and it was recorded that 60 kanals 08 marlas land located in village Hizrawan Kalan belongs to Sh. Baldev Singh,



however, kept by Sh. Chunni Lal for his maintenance. It was also recited that land of inferior quality has been given to Sh. Baldev Singh.

9. It has come on record that there were two more Civil Court decrees suffered by Sh. Baldev Singh while acknowledging that his share of the property is now onward owned and possessed by the family of Sh. Jagdish, namely, Sh. Surjit, Sh. Risal Singh and Sh. Balbir Singh. The Civil Court passed these decrees on 05.01.1972 and 27.12.1977, which are reflected from Ex.P-24 and P-25 (mutations).

10. It appears that thereafter, there was a familial discord. Originally, Sh. Jagdish filed Civil Suit No. 781 dated 07.08.1981 against Sh. Chunni Lal claiming that he is the owner in possession of 44 kanals 09 marlas land located in village Hizrawan Kalan on the basis of some alleged family settlement. In this suit, Sh. Baldev Singh on coming to know of its pendency, filed an application under Order I Rule 10 of the Code of Civil Procedure, 1908. However, Sh. Jagdish did not further prosecute the same resulting in dismissal in default on 16.11.1981. Subsequently, two suits were filed, one by Sh. Jagdish on 27.04.1983 with respect to 32 kanals land located in village Hizrawan Kalan another by Sh. Surjit Singh son of Sh. Jagdish Civil Suit on 16.07.1983 claiming that he is the owner of 28 kanals 08 marlas on the basis of some family settlement. In these two suits, Sh. Baldev Singh-plaintiff was not impleaded as a party. Both these suits were decreed as Sh. Chunni Lal conceded to the claim of Sh. Jagdish and his son Sh. Surjit, resulting in decrees



passed on 30.04.1983 (in favour of Sh. Jagdish) and 09.05.1983 (in favour of Sh. Surjit).

11. Sh. Baldev Singh filed two Civil Suits (CS No. 459 and 460) challenging the decrees passed on 30.04.1983 and 09.05.1983, which were contested by Sh. Jagdish, his son Sh. Surjit and Sh. Chunni Lal. The trial Court by two separate judgments passed on 18.03.1988 decreed both the suits filed by Sh. Baldev Singh, however, the First Appellate Court has reversed the judgments and decrees resulting in filing of these two appeals.

II Analysis & Discussion:-

12. Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book alongwith the original requisitioned record.

13. On 09.07.2004, this Court heard learned counsel representing the parties at length but the original record of the lower Court was not available, hence, the same was requisitioned.

14. Now, once again arguments have been heard.

15. As far as, the agricultural land of the family located in villages Bhoria Khera and Basti Bheema are concerned, they are not in dispute. Vide Civil Court judgment and decree dated 01.02.1972, late Sh. Chunni Lal, the common ancestor of the parties acknowledged that Sh. Baldev Singh was owner of the total land measuring 20 acres 05 kanals 08 marlas located in Bhoria Khera (Exhibited as D-1 and D-2). It is further proved that Sh. Baldev Singh on 14.03.1977 filed a suit with respect to 72 kanals 17 marlas land



located in village Hizrawan Kalan against Sh. Chunni Lal, which was also decreed on 06.04.1977. From mutation No. 3113 dated 21.03.1973, Ex. P-25, it becomes evident that the plaintiff-late Sh. Baldev Singh acknowledged that three sons of Sh. Jagdish, namely, Sh. Surjit, Sh. Risal Singh and Sh. Balbir Singh were owner of 77 kanals 13 marlas land located in village Basti Bheema vide Civil Court judgment and decree dated 05.01.1972. This suit was filed by Sh. Surjit, Sh. Risal Singh and Sh. Balbir Singh against Sh. Baldev Singh. Mutation No. 3531 dated 17.04.1978 proves that another Civil Court judgment and decree was passed on 07.12.1977 wherein the plaintiff-late Sh. Baldev Singh again acknowledged that Sh. Surjit, Sh. Risal Singh and Sh. Balbir Singh are owners of land measuring 05 kanals 17 marlas located in Basti Bheema. Both these judgments and decrees i.e. 05.01.1972 and 27.12.1977 have not been produced by Sh. Jagdish and Sh. Surjit. Hence, adverse inference was required to be drawn against them. From these four judgments and decrees dated 05.01.1972, 01.02.1972, 06.04.1977 and 27.12.1977, it is proved that Sh. Baldev Singh relinquished his rights pursuant to the family settlement arrived at in the year 1971 in favour of the family of Sh. Jagdish (property Caption 'C') and Sh. Chunni Lal acknowledged that the plaintiff was owner of the entire land located in village Bhoria Khera and 72 kanals 17 marlas located in Hizrawan Kalan.

16. On careful reading of family settlement dated 15.05.1972, it becomes evident that the same is not a separate family settlement but a continuation of the previous family settlement dated 11.07.1971. It is recorded



therein that in 1971, there was a family settlement with respect to the entire land, which was also reduced into writing. In the aforesaid family settlement, it was agreed that 60 kanals 08 marlas land in village Hizrawan Kalan was kept with Sh. Chunni Lal for his maintenance but he will not sell the property and after his death Sh. Baldev Singh would be absolute owner of the same. It is also recorded in the settlement that in 1971, Sh. Baldev Singh was allotted inferior quality land, whereas, the property handed over to Sh. Jagdish was of superior quality. It was also recited that the entire land in village Hizrawan Kalan including 60 kanals 08 marlas is in possession of Sh. Baldev Singh and Sh. Chunni Lal will not be entitled to give this land to anyone else and Sh. Baldev Singh is the owner of the same from that day. This deed of settlement is scribed by Sh. Mohinder Singh who has been examined. It is attested by Sh. Sheo Chand, who has also been examined. Undoubtedly, with the passage of time, there is a faint impression of signatures of Sh. Jagdish. However, the thumb-impression (with light print) of Sh. Chunni Lal and signatures of Sh. Baldev Singh are clear. In fact, when this document was produced in evidence in the statement of Sh. Baldev Singh, the Court recorded these observations to the effect that the signatures of Sh. Jagdish are very faint and the Judge has encircled it. The First Appellate Court has overlooked the fact that thumb-impression of Sh. Chunni Lal is clear and visible, though, with a light ink. The plaintiff filed an application for permission to prove the same while examining handwriting expert, which was opposed by the defendant and resulting in dismissing of the application. Thus, no fault can be found with the plaintiff. It



is further evident that the First Appellate Court has wrongly erred in observing that thumb-impression of Sh. Chunni Lal is also not visible. In fact, the First Appellate Court has wrongly observed that only ridges of the thumb-impression are visible.

17. The First Appellate Court has also erred in observing that the plaintiff-Sh.Baldev Singh has not made assertions in his plaint with regard to two settlements. As already noticed, the settlement dated 15.05.1972 is in continuation to the settlement dated 11.07.1971. There was no difference in the settlement arrived at on 11.07.1971 and 15.05.1972.

18. The First Appellate Court has also erred in observing that the settlement dated 11.07.1971 has neither been produced nor proved. It would be noted here that the plaintiff has claimed that the aforesaid document is in possession of Sh. Chunni Lal, who denied the same. In order to prove the settlement dated 11.07.1971, the plaintiff produced the register of the Scribe to prove the entry in the Scribe's register with respect to the entry of family settlement dated 11.07.1971, which was exhibited on the statement of the counsel for the plaintiff as Ex. PZ. At that point of time, the defendant's counsel did not object to its admissibility in evidence. Subsequently, the defendant closed his evidence. Thus, the First Appellate Court erred in giving precedence to procedure than substantive justice. Once, the document Ex.PZ was exhibited in absence of objection by the counsel representing the defendant, the Court should have considered the same. The First Appellate Court also erred in observing that document Ex. PW4/A required registration.



The document was only a memorandum of family settlement because the original settlement was arrived at on 11.07.1971. Moreover, it was acted upon, which is proved from Ex. D-1, D-2, D-3, D-4, D-24 and D-25.

19. The First Appellate Court also erred in observing that the trial Court should not have compared the signatures and thumb-impression of Sh. Jagdish and Sh. Chunni Lal. Section 73 of the Indian Evidence Act, 1872, enables the Court to compare the thumb-impressions and signatures. Moreover, once the document was produced, the onus shifted on the defendant to prove that he or Sh. Chunni Lal never signed or thumb-marked the document. The document was proved by the deposition of Scribe as well as attesting witness, who appeared as PW5-Mohinder Singh, Scibe, PW6-Sh.Sheo Chand, attesting witness. Sh. Sheo Chand was an independent person who was not interested in the property. Moreover, it is proved that from the crop Kharif, 1972, Sh. Baldev Singh was recorded as the owner in possession of the property.

20. The First Appellate Court has also overlooked that possession of Sh. Baldev Singh is admitted by Sh. Chunni Lal. The First Appellate Court has also erred in overlooking the fact that when the trial of two suits between the same parties or their families was being held simultaneously, the document produced in one suit could be relied upon in other, particularly, when both were being decided on the same date.

21. The First Appellate Court has overlooked the fact that the trial Court recorded the following observation with respect to deposition of Sh. Jagdish:-



"25 On the other hand, the testimony of defendant as D.W.1 in considered opinion, does not inspire any confidence and is not, at all, safe to rely upon. His belt, uncorroborated testimony, in his own Interest, is not safe to rely upon, in view of the wholly reliable evidence of the plaintiff. The testimony of the defendant in the witness box is even contrary to his own pleadings. In written statement, he has pleaded that the tubewell in the land of village 'Basti Bhiwan' was got installed by both the brothers by sharing the expenses but as DW1 has stated that the tubewell was installed by him alone after obtaining the loan from the B.D.O. But this testimony is not substantiated which could have been done, by procuring the available documentary evidence. He has also pleaded in the written statement that the land was self acquired property of his father Chuni but as D.W.1 admitted the same as ancestral. In pleadings, his case is that the parties are Hindus and governed by Hindu Law and as D.W.1 he has stated that they are governed by Customary Law. He was even hesitant to tell that his grand father Jee Ram had predeceased his father Chuni, by expressing his ignorance on this vital point. He has even completely denied the factum of family partition or execution of any document in the year 1971-72 against the established facts. He has even denied that the land of village Hizrawan Kalan came to the plaintiff in the year 1971, contrary to the established fact by revenue record that the change in his favour had effected in the crop of Kharif 1971. He even expressed his forgotfulness to



tell if Chuni gave his land to the plaintiff in the year 1971 and the plaintiff also gave his land of 'Basti Bhiwan' to him and to his sons, which is even otherwise admitted and established by judgement EX.D.1 and EX.D.2 dated 1.2.1972 and mutations EX.P. 24 and EX.P.25 sanctioned on the basis of decrees by which the plaintiff transferred his share in the land of 'Basti Bhiwan' in favour of the defendant and his sons. Therefore, it is very clear that the testimony of defendant Jagdish is not, at all, reliable or trustworthy and so, has miserably failed to prove or to substantiate his stand."

22. Learned counsel representing the respondents has submitted that ridges of the thumb-impression of Sh. Chunni Lal are feeble and indecipherable. However, this Court has closely examined the document. The thumb-impression of Sh. Chunni Lal is with light ink, however, it is visible and its ridges are clear.

23. The First Appellate Court has also erred in observing that the document Ex. PW4/A, the settlement dated 15.05.1972 was not filed in the plaint but was filed after the death of Sh. Chunni Lal. The plaintiff while filing the suit did make assertions with regard to settlement, which of course was produced subsequently. However, this will not be sufficient to discard the document only because it was produced late during the course of trial. The plaintiff while appearing in evidence produced the same and defendants were given opportunity to not only cross-examine the witness but also subsequently lead evidence.



25. Similarly, the document Ex. PW4/A cannot be ignored on the ground that the spacing between the first four lines of the document is different from spacing between remaining lines of the documents. It is hand-written document and the spacing between the lines in first four lines is compressed as compared to remaining part. However, it is in continuation and it does not appear that it was added subsequently. The signatures and thumb-impression of the parties are on the reverse side of the page, hence, there was sufficient space. It is not the case of the defendants that the plaintiff was in possession of a blank signed paper, which was subsequently used to scribe the memorandum of family settlement.

III Conclusion & Decision:-

26. Taking into consideration, overall evidence produced by the parties, it is proved that on 11.07.1971, a family settlement was arrived at, which was reduced into writing but not produced by the defendants. Subsequently, the same settlement was reiterated in writing dated 15.05.1972, which has been proved by examining PW5-Sh. Mohinder Singh and PW6-Sh. Sheo Chand (attesting witness).

27. The First Appellate Court has also overlooked that Sh. Jagdish filed Civil Suit No. 781, dated 07.08.1981, claiming ownership of 44 kanals 09 marlas land in village Hizrawan Kalan against Sh. Chunni Lal. When Sh. Baldev Singh filed an application under Order I Rule 10 of CPC for impleadment as defendant, Sh. Jagdish did not prosecute the suit resulting in



dismissal in default on 16.11.1981. Thus, it is evident that Sh. Jagdish was trying to grab the property of his younger brother Sh. Baldev Singh.

28. Keeping in view the aforesaid discussion, both the judgments passed by the First Appellate Court are set aside and that of the trial Court are restored.

29. Hence, both the appeals are allowed.

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

(ANIL KSHETARPAL)
JUDGE

16.05.2025
neeraj

Whether speaking/reasoned : Yes No

Whether Reportable : Yes No