



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

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**RSA-2330-1993 (O&M)
Reserved on:-21.08.2025
Date of Decision : 01.09.2025**

Prem Chand and Others

...Appellants

VERSUS

Ram Lal and Others

...Respondents

CORAM : HON'BLE MS. JUSTICE MANDEEP PANNU

Present: Mr. Vijay Kumar Jindal, Sr. Advocate with
Mr. Akshay Jindal, Mr. Vijayveer Singh and
Mr. Pankaj Gautam, Advocates for the appellants.

Mr. Pritam Singh Saini, Advocate,
Mr. Deepak Saini and Ms. Vamika Johar, Advocates
for the respondents.

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MANDEEP PANNU, J.

1. The plaintiffs/respondents No.1 and 2 (herein), Sham Lal and Ram Lal, sons of Nand Lal, instituted the suit for declaration and joint possession of agricultural land measuring 36 kanals 1 marla situated in village Kirmach, Tehsil Thanesar, District Kurukshetra.

Brief Facts

2. The plaintiffs pleaded that they, along with defendant No.1 Prem Chand (their brother) and other heirs, constituted a joint Hindu family, and the land in dispute was ancestral property in the hands of their father, Nand Lal. On 13.06.1984, Nand Lal had suffered a consent decree in Civil Suit No. 729 of 1984 in favour of defendant no.1 (Prem Chand) and his minor sons (defendants nos. 2–



4). Nand Lal, being a coparcener, was not competent to alienate the ancestral land without legal necessity. The decree was therefore illegal, null and void, and not binding upon the plaintiffs. Defendant no.1 was interfering with their right to cultivate their shares in the land. The plaintiffs sought a declaration that the decree dated 13.06.1984 be set aside and that they be declared co-owners entitled to joint possession of the land.

3. The contesting defendants No.1 to 4/appellants No.1 to 4 admitted the relationship but denied the ancestral nature of the property, asserting that Nand Lal was the absolute owner and competent to alienate the property. They further contended that the decree of 1984 was the result of a family settlement. It was also pleaded that as agriculturists, the parties were governed by agricultural custom rather than Hindu law.

4, From the pleadings of the parties, following issues were framed

1. Whether the judgment and decree dated 13.06.1984 in Civil Suit No. 729 of 1984 are illegal, void, ineffective against the interest of the plaintiff and are liable to be set aside? OPP
2. Whether the defendants No.1,5 and 6 along with the plaintiffs are owners in equal shares in the suit land? OPP
3. Whether the plaintiffs are entitled to the possession of the suit land as alleged? OPP
4. Whether the suit is not maintainable in the present form? OPD
5. Whether the plaintiffs have no locus standi to file the present suit? OPD
6. Whether the plaintiffs have concealed the material facts, if so to what effect? OPD



7. Whether the plaintiffs have no cause of action? OPD
8. Relief.
5. In order to prove their case, following documentary evidence was adduced by the parties.
6. To establish the ancestral nature of the property, the plaintiffs relied on revenue records:
 - i) Pedigree Table Ex. P1, Jamabandies Ex. P6 (1956–57), Ex. P7 (1963–64), Ex. P8 (1967–68), Ex. P9 (1972–73), Ex. P10 (1977–78), Ex. P11 (1982–83).
 - 2) Ex. PW2/A (Intkhab), Ex. PX (Khatauni Pamais), and Ex. PY (Khatoni Istemal) prepared by the revenue authorities.
7. Plaintiffs by leading the above said evidence has tried to prove that these documents demonstrated the chain of title. Land was recorded in the name of Murli, son of Ram Narain. After Murli's death, the property was mutated in favour of his sons including Nand Lal. By successive inheritance and consolidation proceedings, Nand Lal came to own a ½ share of 36 kanals 1 marla (18 kanals) and that the consistent entries in the revenue records reflected that the land had passed through generations by inheritance and therefore retained its ancestral character in the hands of Nand Lal.
8. The defendants did not produce any documentary evidence to prove their case.

Findings of the Trial Court

9. On the question of ancestral character, based on the Jamabandi and mutation records, the court held that the land had devolved by inheritance through



the family line and was thus ancestral property in the hands of Nand Lal. The contention that it was self-acquired was rejected.

10. On the issue of consent decree of 1984 trial Court observed that since the property was ancestral, Nand Lal was not competent to alienate without legal necessity. As no such necessity was proved, the consent decree was declared illegal, null and void, and not binding on the plaintiffs.

11. Learned trial Court, finally declared the plaintiffs, along with defendant no.1 (Prem Chand) and defendants nos. 5 & 6 (daughters of Nand Lal), as co-owners in equal shares and entitled to joint possession. Issues regarding maintainability, locus standi, concealment, and cause of action were decided in favour of the plaintiffs. The suit was accordingly decreed.

Findings of the Lower Appellate Court

12. Learned Additional District Judge reconsidered the revenue records (Jamabandi Ex. P1–P11, Khatauni Istemal Ex. PX, Intkhab Ex. PW2/A, etc.) and reaffirmed that the property came down by inheritance, and thus was ancestral property. The plea that the decree of 1984 represented a family settlement was disbelieved. No cogent evidence was led in support.

13. While affirming the trial Court's main findings, the lower Appellate Court modified the decree to the extent that only coparceners by birth (plaintiffs, defendant no.1, and defendants nos. 2 to 4) were entitled as joint owners. The daughters (defendants nos. 5 & 6) were excluded from coparcenary rights under the law then prevailing.

14. The decree dated 13.06.1984 was declared illegal, null and void. The appeal was dismissed with costs.



15. Feeling aggrieved by the above said judgements and decrees passed by the lower courts with concurrent findings, the present Regular Second Appeal was filed before this Court by the defendants No.1 to 4/appellants Nos.1 to 4, on nature of the property

Findings of the High Court in RSA vide judgement dated 24.07.2014

16. This Court noted that both the learned trial Court and the learned First Appellate Court had relied upon the Intkhab/Excerpt Ex. PW2/A, which had been proved by PW2 Hira Lal, Muharrir Patwari. Both the learned lower Courts had accepted this as sufficient to prove the ancestral character of the property and decreed the plaintiffs' suit.

17. This Court then reproduced Rules (v) and (vi) of Chapter 9, Volume I, which require that:

- a) An excerpt should be a true copy and proved as such.
- b) The Special Kanungo or Patwari Muharrir must bring the original record to court for comparison, be put on oath, and confirm the correctness of the excerpt.
- c) The court should, as a rule, compare the excerpt with the original record by checking certain entries.

18. The Court held that these requirements had not been complied with in the present case. PW2 had not produced the original revenue record, nor had the court compared the excerpt with it. In the absence of such proof, Ex. PW2/A could not be treated as admissible evidence.

19. The Court emphasized that in cases of alleged ancestral property, the presumption is in favour of land being non-ancestral unless proved otherwise.



Since the plaintiffs had failed to establish the ancestral nature of the property in accordance with the Rules, they could not succeed.

20. Accordingly, this Court concluded that the plaintiffs had failed to prove that the property in dispute was ancestral in the hands of Nand Lal when he suffered the decree dated 30.06.1984 in favour of defendants nos. 1 to 4. The RSA was allowed, and the judgments and decrees of both the courts below were set aside.

21. It is relevant to mention here that The Hon'ble Supreme Court in *Rajinder Kaur and Others Vs. Rajesh and Others, Civil Appeal No. 5890 of 2015*, arising out of SLP (C) No. 28053 of 2014, remitted the case to High Court for formulating a substantial question of law.

Subsequent proceedings

22. As per the directions of the Hon'ble Supreme Court to frame substantial question of law, the following substantial questions of law framed:-

Substantial Questions of Law

1. Whether, without producing the original revenue record from which the excerpt (Intkhab) is prepared and without following the procedure prescribed under Rules (v) and (vi) of Chapter 9, Volume I of the High Court Rules and Orders, such excerpt can be admitted in evidence?
2. Whether property inherited from a female retains the character of ancestral/coparcenary property, so as to restrict the power of alienation of the holder under Hindu law?



3. Whether, after making a statement to withdraw the suit, one of the plaintiffs can still pursue the suit without formally withdrawing such statement with the permission of the Court?

23. It is pertinent to mention here that respondent moved an application for additional evidence under order 41 Rule 27 CPC. Arguments were heard in the Regular Second Appeal along with the application under order 41 Rule 27 CPC.

24. The learned counsel for the appellants submitted that in the year 1965, land measuring 18 kanals 1½ marlas had been purchased by the sons of Nand Lal, and the same continued to remain unpartitioned amongst them. It was therefore urged that the courts below had erred in presuming that the entire suit land was ancestral in character.

25. It was next argued that all the documents which were relied upon by the plaintiffs had been tendered only through their counsel, without being duly proved in accordance with law. On this ground alone, the findings of the trial court were liable to be set aside.

26. The counsel further submitted that PW2 Heera Lal, the Patwari, had merely produced Mutation Ex. PW2/A. Such a document, it was contended, by itself could not establish the ancestral character of the land, and the courts below had attached undue weight to it.

27. Attention was also invited to the fact that plaintiff Sham Lal, son of Nand Lal, had made a statement before the learned Civil Judge admitting the ownership and partition between the parties and further stating that he did not wish to press the suit. Despite such a categorical admission, it was argued, the trial court proceeded to decree the suit, which was wholly unjustified.



28. The learned counsel further pointed out that Murli Dhar, son of Ram Narain, was recorded as owner of 10 bighas 17 biswas of land in 1904–05, and in 1922–23, he also obtained 11 bighas 5 biswas from Prashani Devi, widow of Chetu. Thus, the total land reflected in Murli's name came to 22 bighas 2 biswas. On this basis, it was argued that the finding of the courts below, that the property was ancestral in the hands of Nand Lal, was wholly erroneous.

29. It was next contended that the said land of 22 bighas 2 biswas thereafter devolved upon Ram Rikh, Salag Ram and Nand Lal in equal shares, and after consolidation in 1946–47, was converted into 36 kanals 1 marla. The trial court, however, fell into error in holding that the entire land was ancestral qua Nand Lal.

30. He further urged that even if the property was to be treated as ancestral, on the death of Salag Ram unmarried and intestate, his share devolved upon the two surviving brothers, namely Ram Rikh and Nand Lal. Thus, the effective share of Nand Lal could not have been the entire 36 kanals 1 marla, but at best only about 9 kanals.

31. The learned counsel also pressed the argument that under settled law, for property to be regarded as ancestral in the hands of a coparcener, it must be shown to have descended from at least three generations. In the present case, the revenue record merely traced it to Murli Dhar, and hence the courts below erred in declaring it ancestral.

32. Lastly, it was urged that the trial court wrongly proceeded on the assumption of fraud, whereas no fraud had in fact been proved on record. The real and only issue, it was submitted, was whether the property in the hands of Nand Lal could in law be treated as ancestral, which, according to the appellants, could



not be sustained. It was further contended that Ex. PW2/A was inadmissible in evidence, as the original record was never produced nor compared by the Court in accordance with the mandatory Rules. Reliance was placed on *Hawa Singh v. Daya Nand (2010 (2) PLR 567)*, to contend that it is well settled that presumption is in favour of the land being non-ancestral unless and until it is proved to the contrary that it is ancestral.

33. Conversely, learned counsel for the respondents submitted that PW2 had categorically deposed that he prepared the excerpt after consulting the original record, and that the appellants, though afforded opportunity, chose not to cross-examine on this point. Both courts below, after appreciation of oral and documentary evidence including Jamabandis and pedigree table, concurrently held that the property was ancestral. He further contended that they have also filed CM No. 6525-C of 2024 under Order 41 Rule 27 CPC seeking permission to produce the original revenue record from which Ex. PW2/A was prepared

34. As regards the appellants' objection to proof of Ex. PW-2/A (Intkhab), it was submitted that although this Hon'ble Court in its earlier judgment dated 24.07.2014 (RSA 2330 of 1993) had held that the excerpt was not proved in terms of Rules (v) and (vi) of Chapter 9, Vol. I of the High Court Rules, the Hon'ble Supreme Court in *Rajinder Kaur and Others Vs. Rajesh and Others, Civil Appeal No. 5890 of 2015* had set aside that judgment and remitted the matter for fresh adjudication on substantial questions of law.

35. It was pointed out that the respondents have already moved CM No. 6525-C of 2024 for permission to lead additional evidence so that the Special Kanungo or Patwari Muharrir may produce the original record from which Ex. PW-2/A was prepared, thereby curing any technical defect.



36. Finally, it was prayed that since the matter has now been remanded by the Hon'ble Supreme Court for fresh decision, the judgments and decrees passed by the courts below, being based on correct appreciation of the revenue records and family tree, were liable to be upheld, and the present appeal deserved dismissal with costs.

Findings of this court

37. Both the lower Courts attached great importance to the jamabandi entries, mutations, and consolidation records prepared by revenue authorities.

38. The trial court decreed the suit, declaring the decree of 1984 void and plaintiffs co-owners entitled to joint possession along with other heirs.

39. Learned lower Appellate Court affirmed the finding that the property was ancestral and that the decree was void, but modified the judgment by excluding daughters (defendants 5 & 6) from the coparcenary, restricting rights to coparceners by birth.

40. As regards the appellants' objection to proof of Ex. PW-2/A (Intkhab), it was submitted that although this Hon'ble Court in its earlier judgment dated 24.07.2014 (RSA 2330 of 1993) had held that the excerpt was not proved in terms of Rules (v) and (vi) of Chapter 9, Vol. I of the High Court Rules, but Hon'ble Supreme Court in Civil Appeal No. 5890 of 2015 (Rajinder Kumar & Ors. v. Rajesh & Ors.) had set aside that judgment and remitted the matter for fresh adjudication on substantial questions of law.

41. The counsel emphasized that Salag Ram died issueless, Ram Rikh's share devolved upon his son Ram Sarup, and Ram Sarup later sold his entire share in favour of Nand Lal and his three sons, namely Sham Lal, Ram Lal and Prem Chand, as reflected in Ex. P/10 and Ex. P/11. In this way, the plaintiffs and



defendants stood recorded as owners of the consolidated land measuring 36 kanals 1 marla.

42. It was further urged that the records consistently reflected the land as ancestral in the hands of Nand Lal. The plaintiffs filed the suit claiming their share on the basis of inheritance, and both the trial court and the first appellate court had concurrently found that the property was ancestral. The decree dated 13.06.1984, having been suffered by Nand Lal without competence, was therefore, set aside.

43. The learned counsel pointed out that to prove the ancestral nature of the suit land, the plaintiffs had produced the Pedigree Table (Ex. P/1), Jamabandis for the years 1956–57 (Ex. P/6), 1963–64 (Ex. P/7), 1967–68 (Ex. P/8), 1972–73 (Ex. P/9), 1977–78 (Ex. P/10), 1982–83 (Ex. P/11), Mutation Ex. PW-2/A (Intkhab), Khatauni Pamais Ex. PX, and Khatauni Istemal Ex. PY and submitted that a perusal of these records confirmed that Murlidhar was in possession since 1904–05, and the land was thus coparcenary property descending to the plaintiffs and defendants

44. Having heard counsel for the parties and perused the entire record, I am of the view that the first substantial question of law goes to the root of the matter. Rules (v) and (vi) of Chapter 9, Volume I of the High Court Rules & Orders mandate that when excerpts are tendered in evidence, the original record must be produced for comparison by the Court and the official preparing the excerpt must be examined on oath. These requirements were not adhered to.

45. However, the Hon'ble Supreme Court in *Sambhaji & Ors. v. Gangabai & Ors. Civil Appeal No.6731 of 2008, decided on 20.11.2008* held as under:-



“11. The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in Judges to act ex debito justitiae where the tragic sequel otherwise would be wholly inequitable. Justice is the goal of jurisprudence, processual, as much as substantive. No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner for the time being by or for the Court in which the case is pending, and if, by an Act of Parliament the mode of procedure is altered, he has no other right than to proceed according to the altered mode. A procedural law should not ordinarily be construed as mandatory, the procedural law is always subservient to and is in aid to justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed.

12. Procedural law is not to be a tyrant but a servant, not an obstruction but an aid to justice. A procedural prescription is handmaid and not the mistress, a lubricant, not a resistant in the administration of justice.”

46. Order 41 Rule 27 CPC provides that additional evidence may be allowed if:

- (a) the trial court has refused to admit evidence which ought to have been admitted; or
- (b) the party seeking to produce evidence was prevented by sufficient cause from producing it; or



(c) the appellate court requires such evidence to pronounce judgment.

47. In the present case, the evidence sought is the production of the original record from which Ex. PW2/A was prepared and was not produced earlier, but is essential to decide the real controversy. Without this, the substantial question of law on admissibility cannot be answered conclusively.

48. On the first substantial question of law, the controversy relates to the admissibility of Ex. PW2/A (Intkhab). The rules require production of the original record for comparison before excerpts can be admitted. Since this procedure was not followed, additional evidence is necessary. The plaintiffs have already moved CM No. 6525-C of 2024 under Order 41 Rule 27 CPC, seeking permission to produce the original revenue record. In the interest of justice, this application deserves to be allowed.

49. As regards the second and third substantial questions of law, namely, whether property inherited from a female is ancestral/coparcenary, and whether one plaintiff's statement to withdraw the suit binds the other plaintiff without court permission, the findings shall be given only after the report of the trial court received on the character of suit.

Conclusion

50. In view of the discussion made herein-above, the following order is passed:-

1. CM No. 6525-C of 2024 under Order 41 Rule 27 CPC is allowed.
2. The case is remitted to the learned trial Court to permit production of the original revenue record from which Ex. PW2/A was prepared and then allow cross-examination of the revenue official and rebuttal evidence by the appellants. Thereafter, to record findings afresh on the character of the suit property in light of this additional evidence.



3. Submit a report with evidence to this Court within five months, preferably from the date of receipt of copy of this order.
4. It is clarified that the judgments and decrees of the Courts below are not set aside at this stage. They shall remain intact until final adjudication by this Court.
5. The answers to the substantial questions of law will be recorded only after receipt of the trial court's report.
6. It is clarified that the matter is remitted only for the limited purpose of recording additional evidence and report.
7. List for final hearing thereafter.

September 01, 2025
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(MANDEEP PANNU)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No.