

248 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2025:PHHC:127727



RSA-382-2023 (O&M)
DATE OF DECISION : 15.09.2025

OM PARKASH (SINCE DECEASED) THROUGH LEGAL HEIRS
... APPELLANTS

V/S

SHISH RAM AND OTHERS ... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. Sandeep Singh Ghangas, Advocate for the appellants.

* * *

PARMOD GOYAL, J. (ORAL)

CM-1373-C-2023

This is an application under Section 151 CPC for condonation of delay of 159 days in re-filing the appeal.

For the reasons stated in the application, the same is allowed.

Delay of 159 days in re-filing the appeal is condoned.

Main case

Unsuccessful appellants-plaintiffs are aggrieved by the judgments and decrees dated 27.09.2016 and 22.02.2022 passed by learned Civil Judge (Junior Division) Panipat and learned Addl. District Judge, Panipat respectively.

2. Deceased Om Parkash s/o Lal Chand had preferred the present suit on 15.05.2009 claiming the suit property owned by Lal Chand to be property jointly held by plaintiff and other LRs of Lal Chand i.e. defendants no. 5 to 9. The case of plaintiff was that Thakur Dwara Radha Ballabh Vaisery was a big landlord and his land was declared surplus. Lal Chand was eligible for allotment and was accordingly, allotted surplus land measuring 13 Kanal 7 Marlas comprised in Rect. No. 23, Killa No. 25(7-0) and 24/1(6-7). That in pursuance of allotment, mutation no. 413 was duly sanctioned. However, mutation no. 413 had wrongly recorded khasra number allotted to Lal Chand. However, the land allotted was owned and possessed by Lal Chand. Lal Chand had died on 25.02.1990 and was survived by plaintiff and defendants no. 5 to 9 and since defendants no. 5 to 9 never claimed any right in the property of Lal Chand only plaintiff is entitled to the suit land. It is the case of plaintiff that during the lifetime Lal Chand, defendant No.1 was tenant over khasra No. 25/2 and Khasra No.24/1 was cultivated by Lal Chand. The defendant no.1 used to pay *batai* as rent qua khasra no. 25/2. Subsequently, after death of Lal Chand plaintiff asked defendant no.1 to vacate land comprised in khasra no. 25/2 and hand over possession to plaintiff. Defendant refused to do so and claimed that he has become owner in possession of suit land by virtue of decree dated 14.02.1985. Plaintiff had challenged the judgment and decree dated 14.02.1985 passed by Court of the then learned Sub Judge Ist Class, Panipat in suit titled as Shish Ram Vs. Lal Chand to be illegal, null and void as Lal Chand had never consented to the decree and the facts stated in decree that a

family settlement has taken place is totally incorrect as defendant no.1 was not family member of Lal Chand being brother-in-law (wife's brother).

3. It is asserted that Lal Chand was never served and counsel, who appeared for Lal Chand and defendant no.1 happened to be husband and wife and were having same chamber. It is asserted that all these facts goes to show that no decree was suffered by Lal Chand. Since defendant has failed to accept the claim of plaintiff, plaintiff had preferred suit for declaration and permanent injunction against him.

4. On notice, defendant No.1 & defendant Nos. 5 to 7 had filed written statement opposing the suit filed by plaintiff. It was asserted that Lal Chand, father of plaintiff was living with defendant no.1 who is brother of wife of Lal Chand after death of sister of defendant no.1. It was defendant no.1, who had looked after five minor daughters and one minor son. It was defendant no.1 and his family who looked after minor children of his sister and had borne all expenses for their upbringing and marriage. The factum of allotment to father of plaintiff was not disputed. However, it was asserted that entire installments of land was deposited by defendant no.1, though it was allotted in the name of Lal Chand. Subsequently, a dispute arose in respect of suit land which was settled between Lal Chand and Shish Ram by way of family settlement in 1984 and on the basis of family settlement, Shish Ram had filed a suit where Lal Chand appeared and admitted claim of Shish Ram. The suit filed by Shish Ram was decreed on 14.02.1985 by the Court of Sh. P.L. Khanduja, the then learned Sub Judge, Panipat and accordingly, mutation no.446 on the basis of judgement and decree was also sanctioned in the name of defendant no.1. It is the case of defendant No.1

that it is he, who is the owner in possession of suit land and has made it cultivable after spending huge amount. That passing of decree dated 14.02.1985 was in the knowledge of plaintiff and he has never challenged it. It was asserted that suit land was always in possession of defendant no.1 and therefore, possession of plaintiff over the same after the death of Lal Chand does not arise. He, accordingly, sought dismissal of suit.

5. Defendant no.2 in its written statement admitted allotment of 13 Kanal 07 Marlas land comprised in Rect. No. 23, Killa No. 25/2(7-0) and 24/2(6-7) in favour of Lal Chand. Defendant no.2, however, asserted that mutation was wrongly sanctioned in respect of wrong killa numbers. Even defendant nos. 3 and 4 took similar stand as was taken by defendant no.2 claiming that due to clerical mistake Killa no.24/1 got 24/2 changed with each other in mutation. They all have prayed for dismissal of suit.

6. On the pleadings of the parties, following issues were framed:-

“1. Whether the plaintiff is entitled for a decree of declaration to the effect that judgement and decree dated 14.02.1985 passed in civil suit no. 93/85 titled Shish Ram Vs. Lal Chand passed by Sh. P.L. Khanduja, the then learned SJIC, Panipat is illegal, null and void, on the grounds taken in the plaint? OPP

2. If issue no. 1 is proved whether plaintiff is entitled for possession, permanent and mandatory injunction on the grounds taken in the plaint? OPP

3. Whether suit of the plaintiff is not maintainable? OPD

4. Whether the plaintiff has no cause of action to file the present suit? OPD

5. Whether plaintiff is estopped by his own act and conduct to file the present suit? OPD

6. Whether suit is not within limitation? OPD

7. Whether suit is barred by misjoinder of defendants no. 3 and 4? OPD

8. Relief.”

7. I have heard learned counsel for the appellant.

8. Facts in the present case are not much in dispute. Admittedly, land of original land owner was declared surplus. Lal Chand, father of plaintiff was entitled to seek allotment. He accordingly sought allotment and was allotted 13 Kanal 7 Marlas of suit land comprised in khasra no. 25/2 and 24/2. It is also not in dispute that parties are closely related to each other. Defendant no.1 is real maternal uncle of plaintiff. On one hand, plaintiff is seeking his right over the suit land being one of the LRs of Lal Chand. On the other hand, defendant is seeking his right over the suit land on the basis of judgement and decree dated 14.02.1985 passed by learned Sub Judge First Class, Panipat in Civil Suit No. 93 of 1985.

9. Learned counsel for the appellant has challenged the judgement and decree dated 14.02.1985 on twin grounds; 1) that Lal Chand had not suffered any judgement and decree as being claimed by defendant no.1 as he was never served. It is argued that this fact is made out from the fact that counsel representing Lal Chand and counsel representing plaintiff were closely related being husband and wife sharing same chamber.

10. On the other hand, impugned judgements and decrees passed by both the Courts below go to show that both the Courts have taken in consideration Ex.DW3/B. Copy of statement of Lal Chand which Lal Chand had suffered before the Court admitting claim of defendant no.1 in Civil Suit bearing no. 93 of 1985 titled as Shish Ram Vs. Lal Chand. The fact that Lal Chand himself had appeared before the Court and had suffered statement admitting claim of defendant no.1 demolishes the entire case of plaintiff-appellant. No evidence has been led by plaintiff-appellant to show that statement Ex.DW3/B recorded before the Court of Sub Judge First Class, Panipat culminating in judgement and decree dated 14.02.1985 was forged or fabricated. In view of fact that Lal Chand himself has appeared in Court and has suffered statement admitting claim of defendant No.1, it is clearly made out that ground that Lal Chand was never served or had never engaged any counsel is without any basis. The learned Courts below have rightly rejected the argument raised on behalf of appellant in this regard.

11. Faced with this, learned counsel for the appellant has argued that relationship of Lal Chand and defendant no.1 is admitted and since they were brother-in-laws, therefore, they were not members of same family and belonged to different families and no family settlement can take place between them.

12. The argument on face of it, appears to be attractive. However, on close scrutiny I find that no exception with the conclusion drawn by Courts below can be taken as admittedly, Lal Chand and defendant no.1 shared close relationship as being stated by daughters of Lal Chand, who have supported the case of their maternal uncle i.e. defendant no.1 against

their real brother (plaintiff). Defendant Nos. 5 to 7 sisters of plaintiff who were also entitled to inherit Lal Chand being Class I heir have supported defendant no.1 and had asserted that defendant no.1 had looked after Lal Chand and his 6 minor children after death of sister of defendant no.1 and it was defendant no.1 who looked after them, borne expenses and married 5 sisters of plaintiff.

13. Therefore, keeping in view the close relationship and claim of defendant no. 1 that it was he who had paid actual consideration amount on allotment as well as support from sisters of appellant, both the Courts below have rightly concluded that Lal Chand and defendant no.1 shared a very close relationship and were living as a family and therefore, in such circumstances, the plea of family settlement raised by defendant no.1 and accepted by Lal Chand cannot be doubted. Moreover, in the present case, suit property is a self-acquired property of Lal Chand and he was free to deal with it as he liked. Admittedly, it is Lal Chand who had suffered decree, admitted right of defendant no.1 on the basis of family settlement and during his lifetime i.e. up to year 1990 when he died, he had never challenged the judgement and decree dated 14.02.1985. Same was challenged by appellant only in the year 2009 i.e. after 24 years of passing of decree. This is clearly, an attempt on the part of plaintiff-appellant to grab the property which his father had duly accepted to have fallen to defendant no.1. From the evidence led by both the parties, due passing of judgment and decree dated 14.02.1985 is clearly made out. The finding of facts recorded by both the Courts is affirmed. No fault with the finding of facts can be made out. No question of law arises in the facts and circumstances of the present case.

14. Appeal, is accordingly, dismissed. Pending miscellaneous application(s), if any, shall also stand disposed of.

15.09.2025

Janki

(PARMOD GOYAL)

JUDGE

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