



**RSA-1469-1998 (O&M) and  
RSA-2101-1998 (O&M)**

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

**Reserved on: 19.08.2025  
Pronounced on:27.08.2025**

**1. RSA-1469-1998 (O&M)**

Smt. Bidamo (since deceased) through her LRs .....Appellant

**VERSUS**

Manbhari and Another .....Respondents

**2. RSA-2101-1998 (O&M)**

Smt. Bidamo (since deceased) through her LRs .....Appellant

**VERSUS**

Manbhari and Another .....Respondents

**CORAM: HON'BLE MS. JUSTICE MANDEEP PANNU**

Present: Mr. Amit Jain, Sr. Advocate with  
Ms. Aeshna Jain, Advocate for the appellant.

Mr. Kanwar Abhay Singh, Advocate for the respondents.

**MANDEEP PANNU, J**

1. Before proceeding to discuss the factual matrix, it is relevant to mention here that there were two suits; one filed by Badami, titled as “*Smt. Badami Vs. Smt. Manbhari and Another*” and second filed by Manbhari titled as “*Smt. Manbhari and Another Vs. Smt. Badamo and Others.*” The suit titled as “*Smt. Manbhari and Another Vs. Smt. Badamo and Others*” was consolidated vide order dated 19.01.1993 with the suit titled as “*Smt. Badami Vs. Smt. Manbhari and Another*”. The trial Court disposed of both the suits vide common judgment and decree dated 10.02.1995. Thereafter, defendants-Manbhari and Ude Ram alias



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Udey Bhan preferred two appeals, i.e CA No.38 of 1995 and CA No.37 of 1995 against the judgment and decree dated 10.02.1995. Both the said appeals were decided by the lower Appellate Court vide one common judgment and decree dated 30.04.1998 as common questions of facts and law were involved in the said appeals. Thereafter, plaintiff-Bidamo preferred the above-said two Regular Second Appeals.

2. This order shall dispose of above-mentioned two Regular Second Appeals filed by Smt. Bidamo, impugning the judgment and decree dated 30.04.1998 passed by the learned Lower Appellate Court by common judgment, whereby the appeal filed by the respondents/defendants herein was allowed, the judgment and decree dated 10.02.1995 passed by the learned Trial Court were reversed, and the suit of the present appellant was dismissed.

**Brief Facts and Pleadings**

3. The facts are not much in dispute. One Hari Ram S/o Jisukh was the recorded owner of agricultural land situated at village Kaliraman, Tehsil and District Hisar. His whereabouts have not been known for more than three decades, and he was not seen or heard of by any person. Consequently, he was deemed to be civilly dead, and mutation No. 4426 dated 10.02.1991 was sanctioned in favour of Manbhari (defendant No.1), Ude Singh alias Ude Bhan (defendant No.2), and Badami (plaintiff) in equal shares.

4. This mutation gave rise to two civil suits. One civil suit was filed by Badami claiming herself to be the sole heir of Hari Ram being his daughter and, therefore, entitled to the entire estate to the exclusion of others. On the other hand, Manbhari and Ude Ram filed a separate suit seeking declaration that the mutation



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in their favour along with Badami was valid, on the ground that Manbhari was the widow and Ude Ram, the son of Hari Ram. Both suits were consolidated.

5. The stand of plaintiff/appellant-Badami was that Hari Ram never married Manbhari, nor was Ude Ram his son. On the other hand, the respondents asserted that after the death of Hari Ram's first wife, Mankori, he contracted a second marriage with Manbhari, and Ude Ram was born out of that wedlock.

6. The learned Trial Court framed the following issues:-

- 1) Whether the plaintiff is sole legal heir of her father? OPP
- 1A) If issue No.1 is not proved by plaintiff then whether defendants are legal heirs of deceased Hari Ram, if so its effect? OPD
- 2) Whether the mutation No.4426 dated 10.02.1991 pertaining to khewat No.438 khatoni No.855 measuring 72 kanals situated at village Kaliraman is wrong or illegal? OPP
- 3) Whether the suit is not maintainable in the present form? OPD
- 4) Whether the suit is not signed and verified according to law? OPD
- 5) Whether the suit is frivolous and is being filed with ulterior motive and liable to be dismissed? OPD
- 6) Whether the plaintiff has not come to the court with clean hands?
- 7) Whether the plaintiff be stopped to file the present suit by her own act and conduct? OPD
- 8) Relief.

7. Out of the above-mentioned seven issues, Issues No.1 and 1A were pivotal.



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8. Both the parties led their evidence in support of their contentions.

**Trial Court Findings**

9. On appreciation of evidence, the Trial Court held that the defendants-respondents had failed to prove their status as legal heirs of Hari Ram, being his widow and son. Consequently, mutation No. 4426 was held to be illegal, and the plaintiff/appellant-Badami was declared sole owner of the estate.

**Lower Appellate Court's findings**

10. The Lower Appellate Court reversed the findings of the Trial Court on Issues 1, 1A and 2, holding that it stood duly proved on record that Manbhari was the widow of Hari Ram and Ude Ram is his son. Resultantly, Bidamo was not the sole heir of Hari Ram, but the respondents also shared his estate. Accordingly, the lower Appellate Court accepted the appeal and dismissed the suit of plaintiff-Bidamo.

**Submissions of learned counsel for the appellant**

11. Learned Senior counsel for the appellant/plaintiff submits that the respondents-defendants failed to discharge the burden casted upon them to establish their relationship with deceased Hari Ram. Learned senior counsel further submits that though the pleaded case of the respondent was that Smt. Manbhari and Sh. Hari Ram lived together as husband and wife for around 20 years in Kaliraman, however, neither any voter list nor any ration card etc. was ever produced on record in order to establish the aforesaid fact. He further submits that even from Ex. D5 i.e. the Birth Certificate dated 28.12.1954 the relationship between Hari Ram and Ude Bhan was never established as the said certificate reflected the birth of son to Hari Ram at Village Kalait whereas there was no evidence to establish on record that Smt. Manbhari and Hari Ram ever lived



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together at Kalait. Learned senior counsel for the appellant further submits that the deposition of DW5 Lal Chand cannot be relied upon to record on finding in favour of respondent-defendants with respect to the marriage of Smt. Manbhari with Hari Ram as even as per the deposition made by DW5 Lal Chand, he was never part of Baraat (a marriage party) and thus never saw the marriage having taken place between the two.

12. Learned Senior counsel for the appellant further submits that there has been contradiction in the stand taken by the respondents-defendants in their pleadings in the suit as in the written statement filed on their behalf in Civil Suit No. 95-C of 1991 titled as 'Badamo versus Manbhari'. The stand taken by respondents-defendants was that since the mother of the appellant-plaintiff namely Smt. Mamkauri could not bear the child as such Hari Ram got married to Manbhari whereas CS/160-C-RBT-1990 filed at the instance of respondents the stand taken in their plaint was that the marriage between Hari Ram and Manbhari was solemnized with the consent of Mamkauri. He thus submits that in the vague of contradictory stand taken by the respondents-defendants, the adverse influence was needed to be drawn against them.

**Submissions of learned counsel for the respondents**

13. Learned counsel for the respondents/defendants, on the other hand, submits that the factum of marriage between Hari Ram and Manbhari was proved on record, from the deposition of DW1, DW2-Jana and DW3 Hukma who happen to be of 70 years of age at the time of deposition and are permanent residents of village Mayor.

14. Learned counsel for the respondents/defendants further submits that on perusal of Ex.D5 it is very clearly established that Hari Ram was having one



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son and in the facts and circumstances of the given case no one else except defendant No. 2 has claimed himself to be the son of Hari Ram and thus in the vague of deposition made by Manbhari having appeared as DW1 read with Ex.D5, it was established on record that Manbhari happen to be the wife of Hari Ram and Ude Bhan to be his son.

15. It is further contended by learned counsel for the respondents/defendants that in the very first line of cross-examination-in-chief DW5 very categorically mentioned about his relationship with Hari Ram as that of nephew and uncle and DW5 was never cross examined on the said aspect neither even a suggestion was put to him in this regard. Thus learned counsel for the respondents-defendants submits that once the relationship between DW5 Lal Chand and Hari Ram was that of nephew and uncle; the deposition of Lal Chand on the aspect of relationship between Hari Ram and Manbhari & Ude Bhan was required to be believed.

16. Learned counsel for the respondent referring to para No. 19 of the judgments of the Appellate Court submits that plea regarding contradiction of the pleadings of the respondents was dealt with in detail by the learned First Appellate Court while holding that in fact there was consistency in the pleadings made by the respondents-defendants and there was no contradiction in the pleadings as upon a conjoint reading of both the pleadings it was clear that Smt. Manbhari during her lifetime gave consent to Hari Ram so as to contract second marriage with Manbhari as they were not having any male child.

**Findings**

17. Having heard learned counsel for the parties and examined the record, I find no infirmity in the judgment of the learned Lower Appellate Court.



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18. The Trial Court, while discarding vital documentary and oral evidence, erred in law by selectively extracting portions of testimony and ignoring the overall weight of evidence. The finding that the defendants failed to prove their relationship is thus based on misreading of evidence. In contrast, the Lower Appellate Court has minutely examined the depositions of witnesses, contemporaneous documents like the birth register and voter lists, and the conduct of family members and villagers. Its conclusion that the relationship stood established is supported by cogent reasoning.

19. The learned Lower Appellate Court scrutinised the evidence on record. It was noted that the relationship of Bidamo with Hari Ram as his daughter was admitted by the defendants. Thus, the question that fell for adjudication was whether Manbhari was the legally wedded wife of Hari Ram and Ude Ram his legitimate son.

20. The Lower Appellate Court has rightly observed that the onus of Issue No.1A was rightly placed on the defendants. Manbhari herself entered the witness box and deposed that she had married Hari Ram soon after Independence and that Ude Ram was born two-and-a-half years later. In corroboration, reliance was placed on the birth register, Ex.D5, recording that a son was born to Hari Ram on 28.12.1954. Independent witnesses, namely, Jana DW2 and Huma DW3, deposed that they had attended the marriage of Manbhari with Hari Ram some 40 years ago, and that they had always been regarded as husband and wife.

21. Learned senior counsel for the appellant while relying upon the judgment of this Court in the case of *Ajaib Singh and others Vs. Mann Singh and others [1968 PLR 83]* has submitted that this Court in the said judgment has observed that Section 50 of the Indian Evidence Act, 1872 (for short, 'the Act')



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makes the opinion of a witness relevant only if the same was expressed by conduct whereas in the case in hand it is not so, no such evidence has come on the record that fulfils the requirements of Section 50 of the Act. This contention of learned counsel for the appellant is not acceptable.

22. Relevant part of the Section 50 of the Indian Evidence Act, 1872 reads as under:-

*“50. When the Court has to form an opinion as to the relationship of one person to another the opinion, expressed by conduct as to the existence of such relationship of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is relevant fact”*

23. In the present case, significantly, Lal Chand (DW5), son of Hari Ram’s real brother, categorically deposed that he had attended the marriage and that thereafter Hari Ram and Manbhari lived together as husband and wife at village Kaliraman, wherefrom Ude Ram was born. His testimony is of great value, he being a close relation with special means of knowledge on the relationship of Hari Ram and Manbhari.

24. The Lower Appellate Court further placed reliance upon voter lists Ex.D1 to Ex.D4 of village Muklan, in which Manbhari was recorded as the wife of Hari Ram, and Ude Ram as his son. It was observed that although the Trial Court discarded these documents on the ground of absence of pleadings regarding residence at Muklan, this reasoning was unsustainable. In Civil Suit filed by Manbhari herself, her residence at village Kaliraman was specifically pleaded. Thus, the voter lists were rightly admissible and corroborated the respondents’ case.



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25. The contradiction relied upon by the Trial Court between pleadings of Manbhari in her suit (stating that she married with consent of Mamkauri) and in her written statement (stating that she married after the death of Mamkauri) was also clarified. The Lower Appellate Court held that there was no categorical admission of contracting marriage during the lifetime of Mamkauri. Rather, a combined reading of the pleadings showed that Mamkauri, being issueless, had consented during her lifetime, and after her death, Hari Ram solemnised marriage with Manbhari. The so-called contradiction was therefore illusory.

26. The statement of Bidamo herself was found unconvincing. In cross-examination she admitted that she had not seen her father since childhood and was brought up by her maternal uncle, and had learnt about her father only from villagers. Her testimony, therefore, was at best hearsay. Similarly, PW2 Gulab Singh admitted ignorance about the relationship between Hari Ram and Manbhari.

27. The Lower Appellate Court also referred to Section 50 of the Indian Evidence Act, 1872, which makes relevant the opinion, expressed by conduct, of persons with special means of knowledge regarding the relationship of one person to another. In the present case, relatives and villagers consistently regarded Hari Ram and Manbhari as husband and wife, and Ude Ram as their son. This conduct was relevant and corroborative.

28. The evidence of Lal Chand, a close relative with direct knowledge, is of sterling worth and corroborates the case of the defendants. The voter lists, duly proved, are official records carrying a presumption of correctness. The birth register, Ex.D5, specifically recording the birth of a son to Hari Ram in 1954, clinches the matter. There is nothing on record to suggest that these entries pertain to any person other than the present parties.



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29. The testimony of Bidamo, on the other hand, is insufficient, being based on hearsay and devoid of personal knowledge. Once the defendants discharged their burden through oral, documentary, and circumstantial evidence, the plea of the appellant could not be sustained.

**Conclusion**

30. In light of the above discussion, I am of the considered opinion that the learned Lower Appellate Court has rightly reversed the findings of the Trial Court. It has carefully appreciated the entire evidence and arrived at a legally justified conclusion that Manbhari was the widow of Hari Ram and Ude Ram his son. Consequently, Bidamo is not the sole heir of Hari Ram; the respondents are also his legal heirs and entitled to succeed to his estate.

31. The findings of the Lower Appellate Court being based on proper appreciation of evidence and in accordance with law, call for no interference.

32. Accordingly, the above said two Regular Second Appeals are dismissed.

33. Pending application(s), if any, also stand disposed of.

August 27, 2025  
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**(MANDEEP PANNU)**  
**JUDGE**

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