



RSA-282-2001 (O&M)

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

**RSA-282-2001 (O&M)
Reserved on :19.08.2025
Pronounced on : 23.09.2025**

Jatinder Kumar and others

...Appellants

Versus

Sant Ram (deceased) through LRs

...Respondents

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Avnish Mittal, Advocate,
for Ms. Ishika Jain, Advocate for the appellants.

Mr. Pritam Saini, Advocate,
and Ms. Parul Saini, Advocate for the respondent.

HARPREET KAUR JEEWAN, J.

1. The plaintiff-appellants have filed this Regular Second Appeal, raising challenge to the judgment and decree dated 11.09.2000, passed by the First Appellate Court-Additional District Judge, Patiala whereby the findings recorded by the trial Court-Sub Judge II Class, Rajpura, were reversed; the Civil Suit of the plaintiff-appellants was dismissed; and the plaintiffs were held entitled to claim 1/5th share in the suit property on the basis of inheritance from their father.

Factual Matrix:

2. As per the brief facts, the plaintiff-appellants filed a suit for declaration that they are exclusive owners-in-possession of the land measuring 35 *Bigha* 10 *Biswas* having inherited on the basis of a registered Will dated 30.05.1978 (Ex.P4) (*hereinafter referred to as "the Will"*). The plaintiffs are claiming inheritance of brother of their

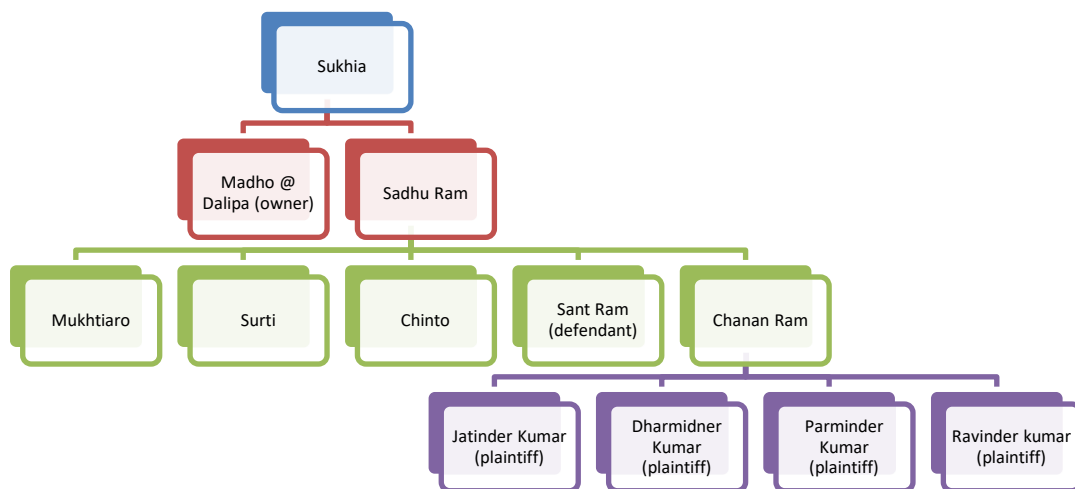


RSA-282-2001 (O&M)

grandfather (Madho @ Dalipa son of Sukhia) on the basis of the Will.

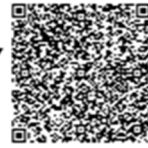
Madho @ Dalipa died unmarried and issueless on 09.08.1978.

2.1 The following pedigree table would elicit relationship *inter se* the parties:-



2.2 The plaintiffs have also sought setting aside the judgment and decree dated 01.09.1984 (Ex.P11) [*hereinafter referred to as the “judgment and decree (Ex.P11)”*], passed in favour of defendant-Sant Ram by the trial Court – Sub Judge, I Class, Rajpura, in the previous Civil Suit No.362 dated 18.03.1982, as well as the judgment dated 06.06.1985 (Ex.D1) [*hereinafter referred to as the “judgment and decree (Ex.D1)”*] passed by the First Appellate Court – Additional District Judge, Patiala, confirming the said decree passed in the previous suit, alleging the same to be illegal and nullity *qua* the rights of the plaintiffs on the following grounds:-

- (a) The plaintiffs were minor at the time of filing of the previous suit and they were impleaded as defendants. However, the



RSA-282-2001 (O&M)

previous judgment and decree (Ex.P11) is a result of collusion *inter se* Chanan Ram-father of the plaintiffs and his brother-Sant Ram-defendant. Even the judgment and decree (Ex.D1) passed by the Appellate Court is against the interest of the minors.

(b) No guardian was appointed by the Court to represent the minor-plaintiffs.

(c) Chanan Ram, father of the plaintiffs did not watch the interest of the minors and even concealed the decree from the minor plaintiffs.

(d) The judgment and decree (Ex.P11) and the judgment and decree (Ex.D1) passed by the Appellate Court in the previous civil suit is against the interest of the minor-plaintiffs, since the plaintiffs were to inherit the property on the basis of a registered Will having been executed by the owner.

2.3 The defendant contested the civil suit. It was pleaded that Madho @ Dalipa son of Sukhia was issueless and unmarried. The execution of the Will in favour of the plaintiffs was denied. It was alleged that the land has been inherited by defendant-Sant Ram, Chanan Ram (father of the plaintiffs), Mukhtiaro, Surti and Chinto, in equal shares to the extent of 1/5th share each. The judgment and decree (Ex.P11) passed by the trial Court in the previous suit, as well as the judgment and decree (Ex.D1) passed by the First Appellate Court, cannot be declared as null & void since the plaintiffs and their father had hotly contested the case and they even filed an appeal against the judgment and decree (Ex.P11). However, this fact is admitted that the



RSA-282-2001 (O&M)

plaintiffs were minor at the time of institution of the previous Civil Suit on 18.03.1982. It is alleged that the suit was contested by the father of the plaintiffs as their natural guardian, and there is no collusion.

2.4 After framing of the issues, both parties led their evidence.

2.5 The trial Court decreed the suit filed by the plaintiffs, holding that the judgment and decree (Ex.P11) passed by the trial Court in the previous civil suit, confirmed in appeal vide judgment and decree (Ex.D1), is nullity *qua* the rights of the plaintiffs, as such, not binding on them. The plaintiffs were declared as exclusive owners-in-possession of the suit property.

2.6 The First Appellate Court allowed the appeal while setting aside the judgment passed by the trial Court, holding that the plaintiffs shall be entitled to claim only 1/5th share of the property. For adjudication of the matter, the First Appellate Court framed the following question for determination: -

“Whether in the previous litigation the minor plaintiffs were properly represented by their guardian or not?”

2.7 While deciding the said question, the First Appellate Court observed that this question was also raised in the appeal before the First Appellate Court, wherein judgment and decree (Ex.P11) of the trial Court in the previous suit was challenged. No fresh decision or observation was recorded by the First Appellate Court on the aforesaid question, and the question above was shut merely on the ground that such point stands already adjudicated by the First Appellate Court vide judgment and decree (Ex.D1). As such, the plaintiffs were held barred

**RSA-282-2001 (O&M)**

to raise the point again. It was further observed that father of the plaintiffs had defended the suit on their behalf, as such, the plaintiffs were held to be properly represented.

2.8 On the issue of inheritance of the plaintiffs on the basis of the Will, the First Appellate Court observed that the findings of the Appellate Court in the previous litigation would operate as *res judicata*, as such, the plaintiffs were held not entitled to the declaration.

2.9 The findings of the First Appellate Court have been challenged by filing the present Regular Second Appeal.

2.8 The following substantial question of law was framed in the present RSA on 22.02.2005:-

“i) Whether when appellants who were minor, were not properly represented in earlier proceedings, they have a right to challenge those proceedings/ judgment and decree after attaining the majority or not?”

Contentions on behalf of the parties:

3. Learned counsel for the appellants contends that while passing the judgment and decree dated 01.09.1984 (Ex.P11), the Court did not appoint any guardian of the minor-defendants. During the proceedings of the previous suit, even the evidence of the minor defendants was closed by order, and ultimately, the minors were proceeded against *ex parte*. The interest of the minors was not properly watched, as such, said judgment and decree (Ex.P11) and the judgment and decree (Ex.D1) passed by the First Appellate Court confirming the findings of the trial Court are liable to be set aside. Learned counsel



RSA-282-2001 (O&M)

further contended that the interest of the minors has not been watched, as such, adverse order passed against the minors has been challenged upon two of them attaining the age of majority. The findings of the First Appellate Court are erroneous and contrary to law.

4. On the other hand, by referring to the reasons recorded by the First Appellate Court, learned counsel for the respondents submitted that the order is well-reasoned and no interference is called for. It is contended that the appellants were represented by their father, who had filed a written statement and contested the suit, which was ultimately decreed in favour of the respondent vide judgment and decree dated 01.09.1984 (Ex.P-11). Since the appellants were duly represented by their father, as such, the appellants cannot challenge the said judgment and decree on such grounds, which have been raised while filing a separate civil suit. It is contended that the First Appellate Court has rightly dismissed the suit filed by the appellants while reversing the findings of the trial Court.

5. I have heard learned counsel for the parties and perused the records.

Findings and observations:

6. After considering the contentions raised on behalf of the parties and perusal of the record, this Court is of the considered opinion that the findings of the First Appellate Court vide the impugned judgment and decree dated 11.09.2000 are erroneous for the following reasons: -

- (a) It is not disputed that the appellants were minor at the time when Sant Ram-respondent sued them by filing a civil suit on



RSA-282-2001 (O&M)

18.03.1982. A declaration of ownership was sought against the minor-defendants. The Will in favour of the minors was also sought to be set aside. It is also not disputed that the trial Court while passing the judgment and decree (Ex.P-11) in previous suit neither passed any order for appointment of a guardian under Order XXXII Rule 3 of the Code of Civil Procedure, 1908 (*for short, 'the CPC'*), nor any application was filed by the plaintiff giving particulars of all possible guardians and the requisite affidavit under Order XXXII Sub Rules 3 & 4 CPC. No certificate was filed to the effect that the person who was to be appointed as guardian, had no interest in the subject matter(s) adverse to the interest of the minors. No formal order for appointment of the guardian was passed.

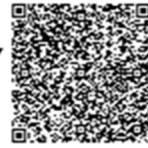
(a1) Order XXXII Rule 3 CPC also casts a duty upon the Court to appoint a proper person to be the guardian to defend the suit on behalf of the minor-defendants. The said provision reads as under:-

“3. Guardian for the suit to be appointed by Court for minor defendants.—(1) Where the defendant is a minor the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor.

(2) An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff.

(3) Such application shall be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in controversy in the suit adverse to that of the minor and that he is a fit person to be so appointed.

(4) Order shall be made on any application under this rule except upon notice to any guardian of the minor appointed or declared by

**RSA-282-2001 (O&M)**

an authority competent in that behalf, or, where there is no such guardian upon notice to the father or where there is no father, to the mother, or where there is no father or mother, to other natural guardian] of the minor, or, where there is no father, mother or other natural guardian, to the person in whose care the minor is, and after hearing any objection which may be urged on behalf of any person served with notice under this sub-rule.

(4A) The Court may, in any case, if it thinks fit, issue notice under sub-rule (4) to the minor also.

(5) A person appointed under sub-rule (1) to be guardian for the suit for a minor shall, unless his appointment is terminated by retirement, removal or death, continue as such throughout all proceedings arising out of the suit including proceedings in any Appellate or Revisional Court and any proceedings in the execution of a decree.”

- (b) No doubt, as per the provisions of Order XXXII Rule 3A CPC, a decree against a minor cannot be set-aside, unless prejudice has been caused to his interest. As per the said provisions, no decree passed against a minor shall be set aside merely on the ground that the next friend or guardian for the suit of the minor had an interest in the subject matter of the suit adverse to that of the minor and on account of such adverse interest, prejudice has been caused to the interest of the minor. However, the proceedings conducted in the previous litigation indicate that prejudice has been caused to the minor-appellants.

(b1) It has been noticed that Chanan Ram – father of the appellants was also defendant No.5 in the earlier civil suit instituted by Sant Ram – respondent, whereas minor appellants were defendant Nos.1 to 4. The judgment and decree (Ex.P-11) indicate that a joint written statement was



RSA-282-2001 (O&M)

filed on behalf of the minors as well as on behalf of their father, however, the minors were proceeded against *ex parte* as their counsel pleaded 'no instructions'. However, father of the minor defendants, i.e. defendant No.5 in the said suit initially continued to contest the suit.

(b2) It is also noticed that though defendant No.5 (father of the minors) contested the said civil suit, however, he did not contest it with due diligence as the evidence on behalf of all the defendants was closed by order of the Court.

(b3) In the previous suit, the respondent – Sant Ram has claimed declaration of ownership alleging himself as one of the legal heirs of the deceased (brother of the deceased). Though, Chanan Ram – father of the minors had filed a joint written statement on his behalf as well as on behalf of his minor sons, but his interest was clashing with that of the minors. The father of the minors was aware that in case the earlier suit is decreed, he would inherit along with his brother – Sant Ram, who had instituted the suit, as such prayer was also made to set aside the Will, which was in favour of the minors. The father of the minors was also aware that in case the suit filed by Sant Ram would fail, the minors would be declared owner of the entire property, and he would not get any share in the property. This fact clearly indicates that there was a clash of interest *inter se* the minors and their father – Chanan Ram, due to which he could not have



RSA-282-2001 (O&M)

properly taken care of the interest of his sons who were minor at that time.

- (c) Respondent – Sant Ram had filed the previous suit seeking declaration of ownership on the basis of natural inheritance of his brother. It has been admitted by Sant Ram during his cross-examination in that suit that Mukhtiaro, Surti and Chinto are the real sisters of Sant Ram and Chanan Ram, and this fact has also been referred to by the trial Court in para No.8 of the judgment and decree (Ex.P-11). The sisters were also Class-II heirs of the owner and as such, proper party in the said civil suit, but were not impleaded by respondent – Sant Ram, while seeking a declaration of ownership in his favour.

8. The aforesaid facts and circumstances clearly indicate that neither the trial Court in the previous suit had appointed any guardian as required under Order XXXII Rule 3 CPC, nor taken into consideration that there is clash of interest *inter se* the person who had half-heartedly acted on behalf of the minor defendants, and the minors. Apart from this, the First Appellate Court had also failed to observe that the suit was not properly contested; the evidence of the father of the minors was also closed by order of the Court; and an *ex parte* judgment was passed against the minors.

9. It is the case of the appellants that two of them attained majority and immediately filed the present civil suit, challenging the aforesaid judgments (Ex.P11 and Ex.D1), which were against their



RSA-282-2001 (O&M)

interest. The Hon'ble Apex Court in *K.P. Natarajan's case (supra)* has upheld the order passed by the High Court in a Civil Revision, filed under Section 115 of CPC, whereby challenge was to an order of the trial Court, refusing to condone the delay in seeking setting aside of an *ex parte* decree, and observed that the *ex parte* decree was a nullity as it was passed against the minor without the minor being represented by a guardian duly appointed in terms of the procedure contemplated in Order XXXII Rule 3 CPC. The Hon'ble Apex Court affirmed the findings of the High Court, even though those were recorded while exercising power of superintendence under Article 227 of the Constitution.

10. In view of the facts and circumstances referred above, it is concluded that the appellants, who were minors, were not properly represented in the earlier proceedings. They have a right to challenge those proceedings and such right has been exercised by two of the appellants upon attaining majority. As such, the impugned judgment and decree passed by the First Appellate Court dated 11.09.2000 is liable to be set aside.

Conclusion:

11. Consequently, present Regular Second Appeal is allowed; the judgment and decree dated 11.09.2000 passed by the First Appellate Court reversing the findings of the trial Court is set aside. The judgment and decree dated 01.09.1984 (Ex.P-11) passed in the previous Civil Suit as well as the judgment and decree dated 06.06.1985 (Ex.D-1) are also held to be illegal, null & void.



RSA-282-2001 (O&M)

11.1 However, there are no observations on merits regarding validity of the Will dated 30.05.1978 (Ex.P-4) by this Court inasmuch as, while challenging the Will, neither all the proper parties, i.e. all the legal heirs of the executant of the Will were impleaded in the previous suit, nor the appellants, who were defendants and minor at that time, were properly represented. As such, respondent-Sant Ram shall have the liberty to seek appropriate remedy as per law, however, which shall be only subject to the law of limitation.

11.2. Decree be drawn accordingly.

12. Pending miscellaneous application(s) shall stand disposed of.

23.09.2025

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[HARPREET KAUR JEEWAN]

JUDGE

Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No