

**IN THE COURT OF NEHA DAHIYA, SENIOR CIVIL JUDGE,
NAHAN, DISTT. SIRMAUR, H.P.**

CNR No.	:	HPSI03-000202-2018
CIS No.	:	8/2018
Case Type	:	Suit for declaration
Civil Suit No.	:	8/1 of 2018
Date of Institution:	:	27.03.2018
Date of Decision :	:	18.11.2024

1. Kesho Ram S/o Sh. Chet Ram,
2. Mahant Ram S/o Sh. Chet Ram,
3. Yaad Ram S/o Shree Ram,
4. Kunta Devi W/o Sh. Hirda Ram,
5. Khem Chand S/o Sh. Hirda Ram,
6. Balinder Dutt S/o Sh. Hirda Ram

All residents of village Nalka, P.O. Matter, Tehsil Nahan, Distt.
Sirmaur, H.P.

...Plaintiffs.

Versus

1. Babli Devi W/o Late Sh. Vipin Kumar R/o Village and P.O.
Jangla Bhodd, Tehsil Nahan, Distt. Sirmaur, H.P.
2. Kurmla Devi W/o Sh. Lajinder R/o Village Chouriyen, P.O.
Surla, Tehsil Nahan, Distt. Sirmaur, H.P.
3. Tej Ram S/o Sh. Madan Lal R/o Village Nalka, P.O. Matter,
Tehsil Nahan, Distt. Sirmaur, H.P.
4. Sh. Ghana Nand S/o Sh. Tula Ram,
5. Sumer Chand S/o Sh. Tula Ram,
6. Munna Ram S/o Sh. Tula Ram,

All residents of village Nalka, P.O. Matter, Tehsil Nahan, Distt.
Sirmaur, H.P.

...Defendants

SUIT FOR DECLARATION

For the Plaintiffs : Sh. Vikas Thakur, Ld. Advocate.
For the Defendants : Sh. Mohd. Iqbal, Ld. Advocate

JUDGMENT:

The plaintiffs' case, as pleaded, is that Sh. Daya Ram (common ancestor of parties to the lis) was owner in possession of land bearing Khewat No. 28/27, Khatauni No. 38/37, Khasra No. 40m, 44m, measuring 6.11 bighas, Khatauni no. 39/38, Khasra No. 40min, 44min, measuring 4-1 bighas, Khatauni no. 40/39, Khasra No. 40min, 41m, 44m, measuring 3-12 bighas, Khatauni no. 41/40, Khasra No. 44min, 41min, measuring 3-1 bighas total Kittas 10 measuring 17.5 bighas, situated at village Nalka, Tehsil Nahan, Distt. Sirmaur, H.P. (**hereinafter referred to as suit property**). Sh. Daya Ram expired in the year 1950-51 and mutation No. 39 dated 29.04.1951 of inheritance, qua, the suit property was attested in favour of predecessors of plaintiffs (to the extent of 2/3 share) and predecessor of defendants (to the extent of 1/3 share). However, in the revenue record for the year 1950-51, the predecessor of plaintiffs were shown owners to the extent of 1/3 share whereas defendants were shown owners to the extent of 2/3 shares wrongly. The mutation No. 99-100 was attested in the year 1985 on the basis of some family settlement whereby the shares of the parties were increased. The plaintiffs claim that the entries in the jamabandi for the year 1950-51 and the subsequent revenue entries are wrong, null and void as they do not depict the shares of the parties to the lis properly, which have to be in consonance with mutation No. 39 dated 29.04.1951. The cause of action accrued in favour of the plaintiffs in the month of July, 2017, when the defendants threatened to dispossess the plaintiffs from their share. The plaintiffs obtained the copy of mutation No. 39 dated 29.04.1951 in the month of January, 2018 and filed the present suit for declaration to the effect that plaintiffs are co-owners in

possession to the extent of 2/3 share in the suit property left by late Sh. Daya Ram.

2. The defendants No. 1 to 4 filed joint written statement wherein preliminary objections qua, concealment of material facts, limitation, estoppel, non-joinder of necessary parties, no cause of action etc. were taken. On merits, it was pleaded that the entries made in the revenue record since 1950-51 were in the knowledge of the predecessor in interest of the parties but they were never challenged earlier. As per the family settlement, the entries were rightly incorporated in the revenue record. The mutation No. 39 dated 29.04.1951 is incorrect and contrary to the terms and conditions of the family arrangement. It was further mentioned that the present suit had been filed by the plaintiff only to harass the defendants. Lastly, a prayer was made to dismiss the suit.

3. The defendant No. 5 filed separate written statement, wherein similar averments were made, as made in the written statement filed by the defendants No. 1 to 4 and lastly, prayer to dismiss the suit was made.

4. Replication was filed by the plaintiff, wherein averments made in the written statement were specifically denied and that of plaintiff were reiterated.

5. On the pleadings of the parties, the following issues were framed by the Court on 10.04.2019:-

1. Whether plaintiffs are co-owners in possession over the suit land with defendants to the extent of 2/3rd share, as alleged?....OPP
2. Whether the suit of the plaintiffs is not maintainable?....OPD
3. Whether the plaintiffs have concealed the true and material facts from this court and effect thereof?OPD
4. Whether the suit of the plaintiffs is hopelessly time barred, as alleged?....OPD
5. Whether plaintiffs are estopped by their acts, conducts and acquiescence from filing the present

suit?....OPD

6. Whether suit is bad for non-joinder of necessary parties?...OPD

7. Whether suit of the plaintiffs deserves dismissal with special costs?....OPD

8. Relief.

6. I have heard the learned counsels for the parties and gone through the record of the case carefully.

7. For the reasons to be recorded here-in-after, while discussing the issues for determination, my findings on these issues are as under:-

Issue No. 1..... Yes

Issue No. 2..... No

Issue No. 3..... No

Issue No. 4..... No

Issue No. 5..... No

Issue No. 6..... No

Issue No. 7..... No

Relief. Suit is decreed as per operative part of the judgment.

(REASONS FOR FINDINGS)

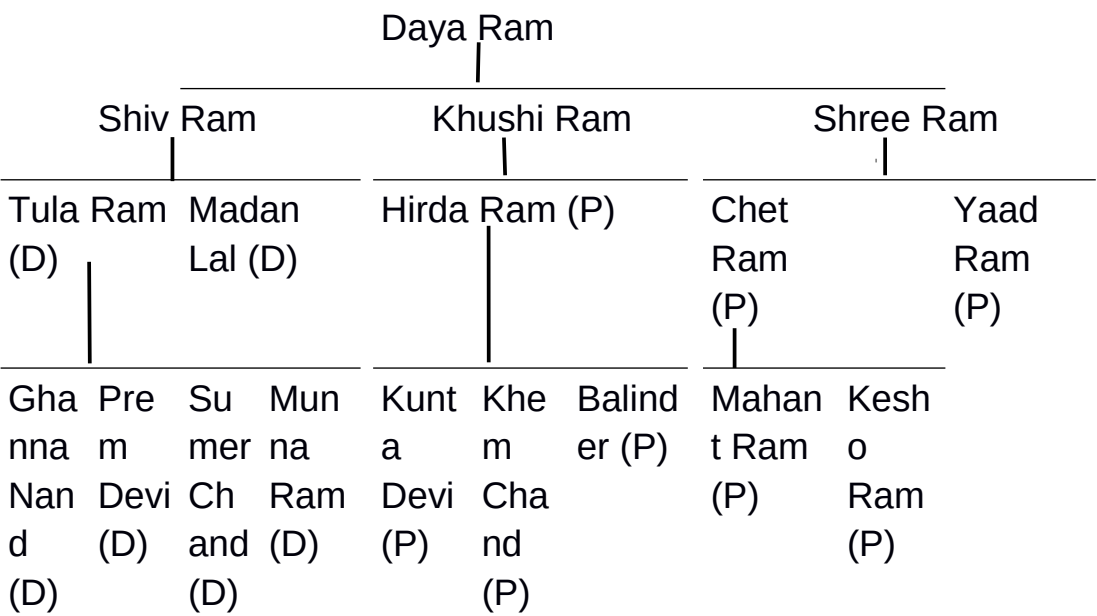
ISSUE NO. 1 :

8. In the present case the plaintiffs have claimed that they are entitled to 2/3 share in the suit property left by their ancestor late Sh. Daya Ram whereas defendants are entitled to 1/3 share in the suit property. After the death of Sh. Daya Ram, mutation No. 39 dated 29.04.1951 was rightly attested in favour of his successors but entries qua the shares were wrongly incorporated in the revenue record. On the other hand, defendants have taken the plea that revenue record was prepared on the basis of family settlement and plaintiffs were well aware of the revenue entries but they never challenged the same earlier. Moreover, they are not in possession of the suit property and a simplicitor suit for declaration is not maintainable.

9. Amongst the plaintiffs, plaintiff No. 1 Kesho Ram

appeared in the witness box as PW-1 and tendered his affidavit Ex.PW1/A in evidence, wherein the averments made in the plaint were reiterated. He also tendered the documents Ex.PW1/B to Ex.PW1/J in evidence. In order to rebut the claim of the plaintiffs, defendant No. 2 Dharma Nand appeared as DW-1 and tendered his affidavit Ex.DW1/A in evidence, wherein the averments made in the written statement were reiterated. No other independent witness was examined by either of the parties in this case.

10. A pedigree table of family of late Sh. Daya Ram is drawn below for better understanding of dispute between the parties :-



11. The plaintiffs have also placed on record Shazra Nasab (Ex.PW1/C) to show that Sh. Daya Ram had three sons namely Shiv Ram, Khushi Ram and Shri Ram. Shiv Ram had expired and he was survived by his two sons namely Tula Ram and Madan Lal. The document (Ex.PW1/D) is copy of mutation No. 39 dated 29.04.1951 attested after the death of late Sh. Daya Ram. A pedigree table of family of Sh. Daya Ram has been drawn on this document which tallies with the copy of Shazra Nasab referred above. Thus, mutation was rightly sanctioned in favour of two sons of late Sh. Daya Ram namely Khushi Ram and Shri Ram

to the extent of 2/3 share and grand-sons namely Tula Ram and Madan Lal, sons of late Sh. Shiv Ram to the extent of 1/3 share. The defendants have taken the plea that mutation No. 39 dated 29.04.1951 is incorrect but this plea is not tenable as mutation has been rightly sanctioned in this case. The plaintiffs have placed on record jamabandi for the year 1950-51 but this document has not been exhibited. Another jamabandi placed on record pertains to year 1958-59 (Ex.PW1/E) wherein entries have been made in the column of ownership, which are not contrary to mutation No. 39 dated 29.04.1951. As per this revenue record, Tula Ram and Madan Lal are recorded as owners to the extent of 1/3 share and Khushi Ram and Shri Ram are recorded as owners to the extent of 2/3 share.

12. The document (Ex.PW1/G) is copy of mutation No. 99-100 sanctioned in the year 1985. The defendants have claimed that subsequent entries were incorporated on the basis of some family settlement which took place between the predecessors of parties to the lis. Perusal of the document (Ex.PW1/G) shows that two Khasra numbers were part of one Khata and one Khasra No. 44 was part of another Khata, in which even the shares of co-owners were separate, due to which this property could not be partitioned. Hence, the concerned co-sharers had agreed to consider the entire property as part of one Khata so that the same could be partitioned and on the basis of this settlement, the shares were determined. No further details of family settlement or arrangement were given in this mutation. On the basis of this family settlement/arrangement, entries were incorporated in the Jamabandi for the year 1987-88 (Ex.PW1/F), Jamabandi for the year 1992-93 (Ex.PW1/H), Jamabandi for the year 2002-03 (Ex.PW1/I) and latest Jamabandi for the year 2012-13 (Ex.PW1/B). In the latest revenue record, even the State of H.P and Social

Justice Empowerment Department were shown as co-owners in the column of ownership.

13. The concept of family settlement or arrangement has been discussed in various judgments of the Hon'ble Apex Court and Hon'ble High Courts. It was held in **Sahu Madho Dass Vs Mukand Ram AIR 1955 SC 481** that:-

" [54] But before doing that, we will pause to distinguish - 'Rani Mewa Kuwar v. Rani Hulas Kuwar', 1 Ind App 157 at p. 166 (PC) (D); -'khunni Lal v. Gobind Krishna Narain', 35 Ind App 87 at p. 102 (E), and 'Ramsumran Prasad v. Mt. Shyam Kumari' AIR 1922 PC 356 at p. 359 (F). It is well settled that a compromise or, family arrangement is based on the assumption that there is an antecedent title of some sort in the parties and the agreement acknowledges and defines what that title is each party relinquishing all claims to property other than that falling to his share and recognising the right of the others, as they had previously asserted it, to the portions allotted to them respectively. That explains why no conveyance is required in these cases to pass the title from the one in whom it resides to the person receiving it under the family arrangement. It is assumed that the title claimed by the person receiving the property under the arrangement had always resided in him or her so far as the property falling to his or her share is concerned and therefore no conveyance is necessary.

But, in our opinion, the principle can be carried further and so strongly do the Courts lean in favour of family arrangements that bring about harmony in a family and do justice to its various members and avoid, in anticipation, future disputes which might ruin them all, that we have no hesitation in taking the next step (fraud apart) and upholding an arrangement under which one set of members abandons all claim to all title and interest in all the properties in dispute and acknowledges that the sole and absolute title to all the properties resides in only

one of their number (provided he or she had claimed the whole and made such an assertion of title) and are content to take such properties as are assigned to their shares as gifts pure and simple from him or her, or as a conveyance for consideration when consideration is present.

[55] The legal position in such a case would be this. The arrangement or compromise would set out and define that the title claimed by A to all the properties in dispute was his absolute title as claimed and asserted by him and that it had always resided in him. Next, it would effect a transfer by A to B, C and D (the other members to the arrangement) of properties X, Y and Z; and thereafter B, C and D would hold their respective titles under the title derived from A. But in that event, the formalities of law about the passing of title by transfer would have to be observed, and now either registration or twelve years adverse possession would be necessary. But in the present case, we are dealing with an arrangement made in 1875 at a time when the Transfer of Property Act was not in force and no writing was required: and, as there is no writing the Registration Act does not apply either. Therefore, the oral arrangement of 1873 would be sufficient to pass title in this way and that, in our opinion, is what happened.

14. In **Kale VS Deputy Director of Consolidation AIR 1976 SC 807** it was held that:-

“ [10] In other words to put the binding effect and the essentials of a family settlement in a concretised form, the matter may be reduced into the form of the following propositions:

(1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family.

(2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;

(3) The family arrangements may be even oral in which case no registration is necessary;

(4) It is well settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immoveable properties and therefore does not fall within the mischief of Section 17 (2) (sic) (Sec. 17 (1) (b) ?) of the Registration Act and is, therefore, not compulsorily registrable;

(5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has not title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owners, then the antecedent title must be assumed and the family arrangement will be upheld and the Courts will find no difficulty in giving assent to the same;

(6) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement

which is fair and equitable the family arrangement is final and binding on the parties to the settlement.

[11] *The principles indicated above have been clearly enunciated and adroitly adumbrated in a long course of decisions of this Court as also those of the Privy Council and other High Courts' which we shall discuss presently.*

[12] *In Khunni Lal v. Gobind Krishna Narain, (1911) 38 Ind App 87, 102 (PC) the statement of law regarding the essentials of a valid settlement was fully approved of by their Lordships of the Privy Council. In this connection, the High Court made the following observations which were adopted by the Privy Council;*

"The learned judges say as follows:

"The true character of the transaction appears to us to have been a settlement between the several members of the family of their disputes, each one relinquishing all claim in respect of all property in dispute other than that falling to his share, and recognizing the right of the others as they had previously asserted it to the portion allotted to them respectively. It was in this light, rather than as conferring a new distinct title on each other, that the parties themselves seem to have regarded the arrangement, and we think that it is the duty of the Courts to uphold and give full effect to such an arrangement."

Their Lordships have no hesitation in adopting that view."

This decision was fully endorsed by a later decision of the Privy Council in Mt. Hiran Bibi v. Mt. Sohan Bibi, AIR 1914 PC 44.

[13] *In Sahu Madho Das v. Mukand Ram, (1955) 2 SCR 22, 42-43 = (AIR 1955 SC 481, 490, 491) this Court appears to have amplified the doctrine of validity of the family arrangement to the farthest possible extent, where Bose, J., speaking for the Court,*

observed as follows:

It is well settled that a compromise or family arrangement is based on the assumption that there is an antecedent title of some sort in the parties and the agreement acknowledges and defines what that title is, each party relinquishing all claims to property other than that falling to his share and recognising the right of the others, as they had previously asserted it, to the portions allotted to them respectively. That explains why no conveyance is required in these cases to pass the title from the one in whom it resides to the persons receiving it under the family arrangement. It is assumed that the title claimed by the person receiving the property under the arrangement had always resided in him or her so far as the property falling to his or her share is concerned and therefore no conveyance is necessary. But, in our opinion, the principle can be carried further and so strongly do the Courts lean in favour of family arrangements that bring about harmony in a family and do justice to its various members and avoid in anticipation, future disputes which might ruin them all, and we have no hesitation in taking the next step (fraud apart) and upholding an arrangement under which one set of members abandons all claim to all title and interest in all the properties in dispute and acknowledges that the sole and absolute title to all the properties resides in only one of their number (provided he or she had claimed the whole and made such an assertion of title) and are content to take such properties as are assigned to their shares as gifts pure and simple from him or her, or as a conveyance for consideration when consideration is present."

[14] In Ram Charan Das v. Girjanandini Devi, (1965) 3

SCR 841 at pp. 850-851 = (AIR 1966 SC 323 at p. 329) this Court observed as follows:

"Courts give effect to a family settlement upon the broad and general ground that its object is to settle existing or future disputes regarding property amongst members of a family. The word 'family' in the context is not to be understood in a narrow sense of being a group of persons who are recognised in law as having a right of succession or having a claim to a share in the property in dispute The consideration for such a settlement, if one may put it that way, is the expectation that such a settlement will result in establishing or ensuring amity and goodwill amongst persons bearing relationship with one another. That consideration having been passed by each of the disputants the settlement consisting of recognition of the right asserted by each other cannot be permitted to be impeached thereafter."

[15] In *Tek Bahadur Bhujil v. Debi Singh Bhujil*, AIR 1966 SC 292, 295 it was pointed out by this Court that a family arrangement could be arrived at even orally and registration would be required only if it was reduced into writing. It was also held that a document which was no more than a memorandum of what had been agreed to did not require registration. This Court had observed thus:

"Family arrangement as such can be arrived at orally. Its terms may be recorded in writing as a memorandum of what had been agreed upon between the parties. The memorandum need not be prepared for the purpose of being used as a document on which future title of the parties be founded. It is usually prepared as a record of what had been agreed upon so that there be no hazy notions about it in future. It is only when the parties reduce the family arrangement in writing with

the purpose of using that writing as proof of what they had arranged and, where the arrangement is brought about by the document as such, that the document would require registration as it is then that it would be a document of title declaring for future what rights in what properties the parties possess."

15. The law is also settled that mutation does not confer any title and in the present case, no document of any family arrangement/settlement has been tendered at the time of attestation of mutation No. 99-100. The name of one of the predecessors of plaintiffs i.e. Hirda Ram is mentioned at the time of attestation of mutation, but this does not imply that other successors of late Sh. Daya Ram had knowledge about this mutation. The defendant No. 2 (DW-1) admitted in his cross examination that the suit property was ancestral but he could not place on record any document which could substantiate his claim that the suit property had been partitioned. The mutation No. 99-100 was sanctioned in the year 1985 when plaintiffs were of tender age. PW-1 has clarified that he was hardly 8-9 years old at that time and even DW-1 has mentioned that he was hardly 6-7 years old. The mutation cannot become basis to create any new right or title in favour of party and in absence of any reliable document in the form of family arrangement or settlement, the mutation No. 99-100 cannot be solely relied upon. Moreover, even DW-1 has clearly admitted the suggestion put to him in the cross examination that property of late Sh. Daya Ram should have been divided in three shares. He also admitted the suggestion that he has no objection in case the property of late Sh. Daya Ram is divided in equal proportion in favour of his sons namely Shiv Ram, Khushi Ram and Shri Ram and in case of their death, in favour of their successors.

Hence, the mutation No. 99-100 has no bearing on the rights of the plaintiffs in this case and any revenue entries made contrary to mutation No. 39 dated 29.04.1951 are incorrect and liable to be rectified.

16. As far as the question of possession is concerned, the plaintiffs have claimed that they are in possession of the suit property and cause of action accrued in their favour when defendants threatened to dispossess them from their share on the basis of wrong revenue entries. The defendants have claimed that plaintiffs are out of possession of the suit property but DW-1 has clearly admitted in his cross examination that plaintiffs are in possession of the suit property and then he has clarified that both the parties are in possession. He also did not deny specifically the suggestion to the effect that plaintiffs got to know about the wrong revenue entries in the month of July, 2017, when they collected the revenue record. In such circumstances, the plaintiffs who are successors of Khushi Ram and Shri Ram (sons of late Sh. Daya Ram) are definitely entitled to 2/3 share in the property left by their common ancestor late Sh. Daya Ram. Hence, this issue No. 1 is answered in affirmative and decided in favour of plaintiffs.

ISSUE NO.2:

17. The defendants have claimed that plaintiffs are out of possession and simplicitor suit for declaration is not maintainable. However, it has come in the evidence that plaintiffs are in possession of the suit property and this fact has been duly admitted by DW-1 in his cross examination. Hence, the suit of the plaintiffs is maintainable in the present form. Thus, this issue is answered in negative and decided against the defendants.

ISSUE NO.3:

18. It is not proved that plaintiffs have concealed the true and material facts from the court. Thus, this issue is answered in negative and decided against the defendants.

ISSUE NO.4:

19. The defendants have claimed that plaintiffs were aware of the revenue entries but they never challenged the same earlier. On the other hand, plaintiffs have taken the plea that cause of action accrued in their favour in the month of July, 2017, when defendants threatened to dispossess them from their share in the suit property. The plaintiffs were not out of the possession of suit property and threat given to them by the defendants to dispossess them, compelled them to procure the revenue record and then they filed the present suit. Hence the suit is not time barred. Thus, this issue is answered in negative and decided against the defendants.

ISSUE NO.5:

20. In view of discussion made above, the plaintiffs are not estopped by their act, conduct and acquiescence from filing the present suit. Thus, this issue is answered in negative and decided against the defendants.

ISSUE NO.6:

21. The defendants have claimed that State of H.P and Social Justice Empowerment Department are recorded as owners of the suit property in the latest revenue record. There is entry of mutation No. 157 in favour of the Forest Department in the remarks column of last page of revenue record for the year 2002-03. It has also come in the evidence that Hirda Ram and Shri Ram were also having daughters but they were not made party in this case, hence, the relief sought by the defendants cannot be granted in absence of aforesaid parties. However, in my opinion, the suit is not bad for non-joinder of necessary parties as the plaintiffs have not claimed any relief against the State of H.P or Social Justice Empowerment Department. The Hindu Succession Act came into force in the year 1955 and Sh. Daya Ram expired prior to 1955. The mutation No. 39 was attested in the year 1951 and at that time inheritance qua the property of Sh. Daya Ram was rightly attested in favour of his

three sons or their successors. The plaintiffs have claimed their right/share on the basis of aforesaid mutation, hence, there was no need to implead the daughters in this case. Hence, this issue is answered in negative and decided against the defendants.

ISSUE NO.7:

22. In view of discussion made above, the suit of the plaintiffs does not deserve dismissal with special costs. Thus, this issue is answered in negative and decided against the defendants.

RELIEF:-

23. In view of above findings, the suit of plaintiff is decreed with costs. The plaintiffs are held entitled to the declaration to the effect that they are co-owners in possession, to the extent of 2/3 share, in the suit property owned by their common ancestor late Sh. Daya Ram comprised in Khewat No. 28/27, Khatauni No. 38/37, Khasra No. 40min, 44min measuring 6.11 bighas, Khatauni No. 39/38, Khasra No. 40min, 44min, Kite 2 measuring 4.1 bigha, Khatauni No. 40/39, Khasra No. 40min, 41min, 44min, Kittas 3 measuring 3-12 bighas, Khatauni No. 41/40, Khasra No. 40 min, 41min, 44min, Kite 3 measuring 3-1 bighas total Kittas 10 measuring 17-5 bighas, situated at village Mauza Nalka, Tehsil Nahan, Distt. Sirmaur, H.P., prior to his death. Decree sheet be prepared accordingly. File, after its due completion, be consigned to record room.

Announced and signed in the Open Court today this 18th day of November, 2024.

(Neha Dahiya)
Senior Civil Judge,
Nahan, Distt. Sirmaur, H.P.

List of witnesses

<u>Sr. No.</u>	<u>Name of witnesses</u>	<u>Whether witness of plaintiff or defendants.</u>
PW-1	Kesho Ram	Plaintiff witness
DW-1	Ghanna Nand	Defendant's witness

List of Exhibits

<u>Ext. No.</u>	<u>Date of Ext.</u>	<u>Description of Ext.</u>
Ex.PW1/A	28.06.2022	Affidavit of evidence of plaintiff
Ex.PW1/B	-do-	Copy of Jamabandi
Ex.PW1/C	-do-	Copy of Shazra Nasab
Ex.PW1/D	-do-	Copy of mutation dt. 29.04.1951
Ex.PW1/E	-do-	Copy of Jamabandi for year 1958-59
Ex.PW1/F	-do-	Copy of Jamabandi for year 1987-88
Ex.PW1/G	-do-	Copy of Mutation register
Ex.PW1/H	-do-	Copy of Jamabandi for year 1992-93
Ex.PW1/J	-do-	Copy of Jamabandi for year 2002-03
Ex.DW1/A	10.01.2024	Affidavit of evidence of defendant

(Neha Dahiya)
Senior Civil Judge,
Nahan, Distt. Sirmaur, H.P.