

IN THE COURT OF AJAY PAL SINGH MALHI, CIVIL JUDGE
(JUNIOR DIVISION), LOHARU (UID NO. HR-0758)

HRBHBO0003892021



CS-339-2021

Date of Institution: 28.09.2021

Date of Decision: 06.08.2026

Smt. Shila Devi, aged 46 years, daughter of Dalip son of Mansa son of Shri Sukha, resident of Village Dhigawa Jatan, Tehsil Loharu, District Bhiwani.

... Plaintiff.

Versus

1. Smt. Prema Devi wife of Suresh Kumar son of Richpal,
2. Smt. Azad Kaur wife of Sajjan Kumar son of Richpal,
3. Smt. Poonam wife of Naresh Kumar son of Richpal,
4. Smt. Sunita Devi wife of Vijay Kumar son of Dalip Singh,
5. Suman Bala wife of Sanjay Kumar son of Dalip Singh, residents of Village Dhigawa Jatan, Tehsil Loharu, District Bhiwani.

... Defendants.

SUIT FOR DECLARATION AND FOR PERMANENT INJUNCTION.

Present:- Sh. R.K. Pawaria, Advocate for the plaintiff.
Sh. Sanjay Nehra, Advocate for defendants no. 2 to 5.
Defendant No.1 proceeded Exparte vide order dated 25.04.2023.

JUDGMENT:-

The plaintiff, Shila Devi, has instituted the present civil suit against the defendants seeking a decree of declaration to the effect that the Sale Deed bearing Registered No. 630 dated 06.10.2020, executed and registered by her late father, Shri Dalip son of Mansa, in favour of

Defendants No. 1 to 5 in respect of agricultural land measuring 02 Kanals 01 Marla, being 41/160th share out of total land measuring 08 Kanals 00 Marla comprised in Khewat No. 106/102, Khatoni No. 209 to 212, total 4 Kitas, situated in the revenue estate of Village Dhigawa Jatan, Tehsil Loharu, District Bhiwani, as per Jamabandi for the years 2017-2018 (hereinafter referred to as suit property), along with the consequent Mutation No. 3818 dated 20.10.2020 sanctioned on the basis thereof, are illegal, null, void, without consideration, executed without authority or consent of coparceners, devoid of legal necessity or benefit of the Joint Hindu Family estate, not an act of good management by the 'Karta', and outcome of fraud and mistake of fact, and consequently not binding upon the coparcenary rights, title, and interest of the plaintiff. In the alternative, the plaintiff asserts her preferential right under Section 22 of the Hindu Succession Act, 1956, to acquire the suit land as a Class-I legal heir of the deceased intestate, Shri Dalip. Additionally, the plaintiff prays for a decree of permanent injunction restraining the defendants from alienating the suit land, dispossessing the plaintiff from the house and well constructed in Khasra No. 307 (3-0), and altering the physical nature of the suit property in any manner.

PLEADINGS OF THE PLAINTIFF

2. The case of the plaintiff, as made out in her plaint, is that she is the daughter of late Shri Dalip son of Mansa, resident of Village Dhigawa Jatan, Tehsil Loharu, District Bhiwani, and is married to one

Shri Indraj, resident of Dabar Colony, Bhiwani. It is asserted that the plaintiff and her late father constituted a Joint Hindu Family governed by the Mitakshara School of Hindu Law, wherein Shri Dalip acted as the 'Karta' of the joint family. The plaintiff contends that the agricultural land measuring 02 Kanals 06 Marlas, 23/80th share out of total land measuring 08 Kanals 00 Marla, comprised in Khewat No. 106/102, Khatoni No. 209 to 212, total 4 Kitas, situated in Village Dhigawa Jatan, as recorded in the Jamabandi for the years 2017-2018 standing in the name of Shri Dalip, constitutes ancestral, coparcenary, and Joint Hindu Family property. The said property was inherited by Shri Dalip from his forefathers, and the plaintiff, by virtue of her birth, acquired an absolute coparcenary right and interest in the said ancestral nucleus under the Hindu Law. It is further stated that a residential house and an irrigation well exist over Khasra No. 307 (3-0), which form an integral part of the ancestral family property.

3. The plaintiff alleges that her late father, Shri Dalip Singh, possessed no independent authority or absolute right as Karta to alienate coparcenary land without the express consent of the coparceners or without any established legal necessity or benefit of the family estate. It is pleaded that the impugned Sale Deed No. 630 dated 06.10.2020, registered in the office of Joint Sub-Registrar, Loharu, conveying suit land in favour of Defendants No. 1 to 5 for a recited consideration of Rs. 30,00,000/- (Rupees Thirty Lacs), was obtained by taking undue advantage of his old age and frail mental condition. The plaintiff further

asserts that the transaction is entirely fraudulent, bogus, and paper-based, devoid of any genuine monetary consideration. In this regard, it is specifically pleaded that although the sale deed recites payment of consideration through three separate cheques—namely Cheque No. 034525 dated 06.10.2020 for Rs. 10,00,000/-, Cheque No. 034526 dated 06.10.2020 for Rs. 10,00,000/- drawn on State Bank of India, and Cheque No. 011798 dated 06.10.2020 for Rs. 10,00,000/- drawn on Oriental Bank of Commerce—no such cheques were ever actually handed over to Shri Dalip, nor was any monetary amount credited to his bank account or passed to him.

4. It is further the case of the plaintiff that actual physical possession of the suit land was never delivered to the defendants by Shri Dalip at any point in time. The plaintiff contends that a sale deed executed without delivery of possession and without realization of sale consideration is a mere waste paper in the eyes of law, conferring no valid title, right, or interest upon the defendants. The plaintiff maintains that she had no knowledge of the execution of the impugned sale deed or the sanctioning of the consequent Mutation No. 3818 dated 20.10.2020 during the lifetime of her father. She acquired knowledge thereof only after the demise of Shri Dalip on 14.05.2021, when inheritance Mutation No. 3930 in respect of his other land holdings (comprised in Khewat Nos. 104, 105, 136, 202, and 212) was sanctioned in favour of his legal heirs.

5. The plaintiff pleads that upon discovering the impugned fraudulent transaction, she repeatedly requested the defendants to admit her rightful claim and consent to the cancellation of the sale deed and mutation. However, the defendants refused her requests a week prior to the institution of the suit and instead issued open threats to alienate the suit property, dispossess the plaintiff from the residential house and well situated in Khasra No. 307 (3-0), and alter the physical nature of the land by raising unauthorized construction. In the alternative, the plaintiff submits that even if the sale deed were not liable to be set aside in its entirety, she, being a Class-I legal heir of deceased Shri Dalip who died intestate, possesses a statutory preferential right under Section 22 of the Hindu Succession Act, 1956, to acquire the transferred interest in the agricultural land. Therefore, it is finally prayed that the present suit be decreed in favour of the plaintiff.

PLEADINGS OF THE DEFENDANTS

6. Upon service of summons, Defendants No. 2 to 5 appeared and contested the suit by filing a joint Written Statement raising manifold preliminary objections as well as denying the claim on merits. By way of preliminary objections, the defendants submitted that the suit is wholly false, frivolous, vexatious, and unmaintainable under the law. It is contended that the plaintiff has no locus standi or cause of action to file the present suit, as her late father, Shri Dalip, was the sole and absolute owner in possession of the suit property and possessed full testamentary

and legal capacity to alienate the same. The defendants asserted that Shri Dalip executed Sale Deed No. 630 dated 06.10.2020 in their favour in equal shares for a total valuable sale consideration of Rs. 30,00,000/- and transferred actual physical possession of the suit land measuring 02 Kanals 01 Marla (1240 sq. yards) to them at the spot.

7. The defendants forcefully pleaded that the suit for mere declaration without seeking the consequential relief of recovery of possession is expressly barred under Section 34 of the Specific Relief Act, 1963, since the defendants are in established, actual physical possession of the suit land pursuant to the sale deed. The defendants also raised the plea of non-joinder of necessary parties, pointing out that late Shri Dalip left behind two other daughters, namely Santosh and Raj, who were necessary parties to the litigation but were deliberately omitted by the plaintiff.

8. Unfolding the true factual backdrop of the transaction, the defendants pleaded that late Shri Dalip was owner in possession of 02 Kanals 06 Marlas, 23/80th share of 08 Kanals 00 Marla in Khewat No. 106, and sold 02 Kanals 01 Marla to Defendants No. 1 to 5 for valid legal necessity and domestic urgent family needs. The defendants explained that although three cheques of Rs. 10,00,000/- each were initially drawn and handed over to Shri Dalip at the time of execution of the sale deed, Shri Dalip subsequently expressed urgent domestic requirement of immediate funds and stated that the clearing of cheques through bank

channels would entail delay. Consequently, Shri Dalip returned the three cheques to the defendants and received the entire sale consideration of Rs. 30,00,000/- in liquid cash in the presence of marginal attesting witnesses, namely Ram Bhagat, Lambardar, and Dipesh Kumar son of Surender Kumar, both residents of Village Dhigawa Jatan.

9. The defendants asserted that on the basis of the valid execution of the sale deed and transfer of physical possession, revenue Mutation No. 3818 dated 20.10.2020 was lawfully sanctioned in their favour. They claimed to be bona fide purchasers for valuable consideration without notice of any defect in title. Refuting the allegations on merits, the defendants denied that the property was coparcenary or that the plaintiff constituted a Joint Hindu Family with Shri Dalip, highlighting that the plaintiff was married to Indraj decades ago and has been permanently residing at her matrimonial home in Bhiwani. The defendants further refuted any claim under Section 22 of the Hindu Succession Act, 1956, asserting that the section has no application to completed inter vivos transfers made during the lifetime of the owner. Denying all allegations of fraud, coercion, or threat, the defendants prayed for the outright dismissal of the suit with compensatory costs under Section 35A of the Code of Civil Procedure.

10. Defendant no. 1, upon notice, failed to appear before this court and was therefore, proceeded against ex-parte vide order dated 25.04.23.

ISSUES:-

On the basis of the pleadings of the parties, the following issues were framed vide order dated 25.04.2024 by the learned Predecessor Court:

1. Whether the plaintiff is entitled to the decree of declaration as prayed for? (OPP)
2. Whether the plaintiff is entitled to the decree of permanent injunction as prayed for? (OPP)
3. Whether the suit is not maintainable in the present form? (OPD)
4. Whether the plaintiff has no locus standi and cause of action to file the present suit? (OPD)
5. Whether the present suit has not been valued for the purpose of court fees? (OPD)
6. Whether the suit of the plaintiff is bad for non-joinder and mis-joinder of necessary parties? (OPD)
7. Whether the plaintiff has not come to the Court with clean hands and has concealed true and material facts from the Court? (OPD)
8. Relief.

EVIDENCE ON BEHALF OF PLAINTIFF

11. In order to establish his case the plaintiff produced following witnesses:

Plaintiff himself appeared as PW1 and tendered her affidavit as PW1/A whereby, she reiterated the contents mentioned in the plaint. In order to establish his case plaintiff proved following documents:

Sr. No.	Documents	Description
1.	Sale deed dated 06.10.2020	Ex.P-1
2.	Mutation dated 20.10.2020	Ex.P-2
3.	Jamanbandi for the year 1977-78	Ex.P-3
4.	Mutation dated 06.03.1968	Ex.P-4
5.	Revenue record	Ex.P-5
6.	Revenue record	Ex.P-6
7.	Revenue Patti	Ex.P-7
8.	Revenue record	Ex.P-8
9.	Jamanbandi for the year 1982-83	Ex.P-9
10.	Jamanbandi for the year 2012-13	Ex.P-10
11.	Jamanbandi for the year 2017-18	Ex.P-11
12.	Jamanbandi for the year 2022-23	Ex.P-12
13.	Jamanbandi for the year 2012-13	Ex.P-13
14.	Mutation dated 11.11.2021	Ex.P-14
15.	Death certificate of Dilip	Ex.P-15

12. Thereafter, plaintiff closed his evidence vide separate statement dated 25.11.2024.

EVIDENCE ON BEHALF OF DEFENDANTS

13. In order to establish his defence and to prove his counter-claim defendant produced following witnesses:

S.no	Name	Witness no.
1.	Ravinder, Registry clerk	DW1
2.	Adv. Sumit Kumar	DW2
3.	Prema Devi	DW3
4.	Rambhagat Lambardar	DW4
5.,	Dipesh Kumar	DW5

14. Defendant no. 1 Prema Devi appeared as DW3 and tendered her affidavit as DW3/A whereby, she reiterated the contents mentioned in the written statement filed by defendant no. 2 to 5. Defendants also produced Ravinder, registry clerk, tehsildar office, Loharu, as DW1. DW1 proved the accuracy of sale deed dated 06.10.2020 Ex.D1 by producing the record from tehsildar office, Loharu. Adv. Sumit Kumar was examined as DW2 who testified that he signed as a deed writer on the sale deed dated 06.10.2020 Ex.D1. He further testified that he had properly read over and explained the contents of the deed Ex.D1 to each party and parties had signed it in his presence upon understanding it. Rambhagat Lambardar was examined as DW4 who tendered his affidavit Ex.DW4/A in his examination in chief. He deposed that he witnessed the execution of the sale deed dated 06.10.2020 Ex.D1 and defendants had issued and handed over three cheques of Rs. 10,00,000/- each to Late Sh. Dalip at the time of sale deed Ex.D1 which were required by him for some domestic purpose. But later on, Late Sh. Dalip had requested that he had some

urgent requirement of money, therefore, he returned the cheques and took liquid cash from the defendants in his presence. Dipesh Kumar was examined as DW5 who tendered his affidavit Ex.DW5/A in his examination in chief. He deposed that he witnessed the execution of the sale deed dated 06.10.2020 Ex.D1 and defendants had issued and handed over three cheques of Rs. 10,00,000/- each to Late Sh. Dalip at the time of sale deed Ex.D1 which were required by him for some domestic purpose. But later on, Late Sh. Dalip had requested that he had some urgent requirement of money, therefore, he returned the cheques and took liquid cash from the defendants in his presence. In order to establish his case defendants proved following documents:

S. no	Document	Description
1.	Sale deed dated 06.10.2020	Ex.D-1
2.	Mutation dated 20.10.2020	Ex.D-2
3.	Jamanbandi for the year 2022-2023	Ex.D-3
4.	Jamanbandi for the year 2017-2018	Ex.D-4

15. Thereafter, Ld counsel for defendant closed their defence evidence vide separately recorded statement dated 01.05.2025.

ARGUMENTS ON BEHALF OF PLAINTIFF

16. Learned counsel for the plaintiff vehemently submitted that the suit property constitutes ancestral coparcenary property in the hands of

Late Shri Dalip Singh, wherein the plaintiff acquired an absolute coparcenary right by birth under Mitakshara Hindu Law. It was argued that the suit property originally belonged to Sukha, the great-grandfather of the plaintiff. Shri Mansaram, who was the father of Dalip Singh, had predeceased his father Sukha. Upon the demise of Sukha, his properties, including the suit property, were inherited equally by his three grandsons, namely Dungar, Kashiram, and Dalip Singh, as duly reflected in Mutation No. Ex. P4 dated 06.03.1968. It is argued that suit property having been inherited directly from plaintiff's paternal grandfather in the year 1968, the property retained its character as ancestral coparcenary property in the hands of Dalip Singh vis-à-vis his legal descendants up to four degrees, including the plaintiff.

17. It was further argued that the continuous lineage and uninterrupted joint family nucleus stand conclusively established through a chain of revenue records spanning several decades. The series of Jamabandis brought on record as Ex. P3, Ex. P9, Ex. P10 and Ex. P13, Ex. P11, and Ex. P12 demonstrate that the suit property remained in the continuous ownership of Dalip Singh until its impugned alienation through Sale Deed Ex. P1 and the consequent Mutation Ex. P2.

18. Learned counsel vehemently asserted that Shri Dalip, acting merely as a 'Karta' of the Joint Hindu Family, possessed no independent or absolute authority to alienate coparcenary land without the express consent of the coparceners or without an established legal necessity or

benefit to the family estate. It is argued that the defendants have miserably failed to discharge this burden, as they led no cogent or documentary evidence to show any pressing family distress, financial emergency, or managerial necessity that compelled the sale of the ancestral land.

19. Furthermore, the impugned Sale Deed Ex. P1 was assailed as a fraudulent, bogus, and paper-based transaction executed by taking advantage of the old age and frail condition of Dalip Singh. Counsel highlighted that while the deed recites the payment of Rs. 30,00,000/- through three specific cheques, namely Cheque No. 034525 and 034526 drawn on State Bank of India and Cheque No. 011798 drawn on Oriental Bank of Commerce, no such consideration was ever credited to the bank account of Shri Dalip, nor was actual physical possession ever handed over to the defendants.

20. In the alternative, it was submitted that even if the sale deed were not set aside entirely, the plaintiff, as a Class-I legal heir of deceased Shri Dalip who died intestate on 14.05.2021 Ex. P15, is entitled to enforce her statutory preferential right under Section 22 of the Hindu Succession Act, 1956, to acquire the suit land. Therefore, it is finally pleaded that the plaintiff is entitled to a decree of declaration, cancellation of the sale deed and mutation, alongside a decree of permanent injunction restraining the defendants from alienating the suit property or dispossessing the plaintiff from the residential house and well situated in Khasra No. 307 (3-0)

ARGUMENTS ON BEHALF OF DEFENDANTS

21. Per contra, learned counsel for Defendants No. 2 to 5 forcefully refuted the claims of the plaintiff, contending that the suit property was the separate and self-acquired property of Shri Dalip Singh, and not coparcenary land. Shri Dalip possessed full legal capacity and absolute testamentary power as sole owner to alienate the suit land, and the plaintiff never constituted a Joint Hindu Family with him.

22. Learned counsel placed heavy reliance upon the damaging admissions made by the plaintiff PW1 Shila Devi during her cross-examination, which totally undermine the foundation of her case. PW1 admitted that she has been married for over 34 years and resides permanently at her matrimonial home in Bhiwani, completely separate from her father. She admitted that she was not on good terms with her father during his lifetime, whereas her father resided with her sister Santosh and lived together with her harmoniously. PW1 further admitted that her father did not like her, preferred her sisters over her, and was an educated man who personally managed all his financial and property affairs from the very beginning. Further, PW1 admitted in her cross-examination that she possesses no knowledge whatsoever regarding which properties belonged to her father or where they were situated. Most notably, PW1 admitted that regarding all other agricultural properties that devolved upon her by way of inheritance following her father's demise, she has already sold every single one of them. Counsel submitted that this

admission proves the plaintiff is merely pursuing a speculative and vexatious litigation out of greed.

23. It was further submitted that the execution, registration, and payment of full sale consideration of Rs. 30,00,000/- stand impeccably proved through defense witnesses. DW1 Ravinder, Registry Clerk verified the official registration of Sale Deed Ex. D1. DW2 Advocate Sumit Kumar, Deed Writer testified that he drafted the sale deed and explained its contents to Dalip Singh, who signed it voluntarily. Furthermore, attesting witnesses DW4 Ram Bhagat, Lambardar and DW5 Dipesh Kumar corroborated that although three cheques were initially issued, Dalip Singh subsequently requested immediate cash due to urgent domestic financial requirements and returned the cheques, receiving the entire consideration of Rs. 30,00,000/- in liquid cash in their presence.

24. Finally, counsel argued that Section 22 of the Hindu Succession Act, 1956, applies strictly to intestate succession upon death and has no applicability to completed inter vivos transfers made during an owner's lifetime. Since actual physical possession was transferred to the defendants at the spot and revenue Mutation No. 3818 Ex. D2 was duly sanctioned, the present suit for mere declaration without seeking consequential recovery of possession is expressly barred under Section 34 of the Specific Relief Act, 1963. Thus, it is argued that the suit deserves an outright dismissal with heavy costs.

ISSUE-WISE FINDINGS

25. Having heard the learned counsel for the plaintiff as well as the learned counsel for the defendants, and upon a comprehensive evaluation of the pleadings, documentary evidence, and oral testimony adduced on record, this Court proceeds to record its issue-wise findings.

ISSUE NO. 1

**Whether the plaintiff is entitled to the decree of declaration as prayed for?
(OPP)**

26. The Plaintiff has sought two distinct declarations. The principal relief sought by the plaintiff is a declaration that Sale Deed No. 630 dated 06.10.2020 Ex. P-1, executed by late Shri Dalip in favour of Defendants No. 1 to 5, is null and void. In the alternative, the plaintiff has sought a declaration of her preferential right under Section 22 of the Hindu Succession Act, 1956 over the suit property. For the sake of convenience and clarity, the claim of the plaintiff is bifurcated and examined under the following heads:

A. Declaration that Sale Deed No. 630 dated 06.10.2020 Ex. P-1 is null and void

B. Alternative claim of preferential right under Section 22 of the Hindu Succession Act, 1956

A. Declaration that Sale Deed No. 630 dated 06.10.2020 Ex. P-1 is null and void

27. The principal declaration sought by the plaintiff is that Sale Deed No. 630 dated 06.10.2020 Ex. P-1, executed by late Shri Dalip in favour of Defendants No. 1 to 5, is null and void. The challenge to the sale deed proceeds on two distinct and independent grounds. For the sake of convenience, the same are considered separately as under:

(i) Challenge to the authority of late Shri Dalip to alienate the suit property on the ground that the property was coparcenary property and the sale was not supported by legal necessity; and

(ii) Challenge to the validity of the sale transaction on the ground that the sale deed was illegal, fraudulent and without consideration.

A(i). Whether late Shri Dalip was competent to alienate the suit property, or whether the property was coparcenary property requiring legal necessity for its alienation?

28. The central bone of contention in the first ground revolves around the true legal character of the suit property measuring 02 Kanals 01 Marla in the hands of late Shri Dalip, and consequently, his legal competence to execute the impugned sale deed.

29. The chain of title of suit land, established through Mutation Ex. P-4, demonstrates that the suit land formed part of land holding originally belonging to Sukha, the great-grandfather of the plaintiff. Sukha's only son, Mansaram, predeceased him. Upon Sukha's death, succession opened and his estate devolved upon his three grandsons

namely Dungar, Kashiram, and Dalip in equal shares via Mutation Ex. P-4 sanctioned on 06.03.1968. Now this Dalip executed the sale of part of the land that he inherited from his grandfather Sukha vide sale deed No. 630 dated 06.10.2020 Ex. P-1. Plaintiff, daughter of Dalip, seeks declaration for cancellation of sale deed No. 630 dated 06.10.2020 Ex. P-1 on the ground of her coparcenary right in the suit property.

30. Nothing has been brought on record by the plaintiff to show the nature of property in the hands of Sukha. Hon'ble Punjab and Haryana High Court in the case of Harmesh Kaur v. Taro, (Punjab And Haryana):Law Finder Doc Id # 1577684 held that:

“....it is appropriate to recapitulate that the litigant who claims a particular property to be Joint Hindu Family or Coparcenary has to establish his plea by leading evidence. The nature of suit property to be Joint Hindu Family Coparcenary Property cannot be decided on the basis of admission made by a contesting party or any other party to the litigation. Equally settled is that unless a property is proved to be Joint Hindu Family or Coparcenary Property, it is to be treated as self-acquired property of its holder.”

31. Since, plaintiff has failed to show that property of Sukha was Joint Hindu Family corpus, this court is inclined to treat the suit property as self acquired property of Sukha. Therefore, the devolution of personal

property of Sukha upon his 3 grandsons is strictly governed by the statutory framework of Section 8 of the Hindu Succession Act, 1956 as succession opened in the year 1968.

32. The legal position regarding property inherited post 1956 under Section 8 is settled by authoritative judicial pronouncements. In Commissioner of Wealth Tax, Kanpur v. Chander Sen, (1986) 3 SCC 567, the Hon'ble Supreme Court authoritatively held as follows:

"11. The heirs mentioned in Class I of the Schedule are son, daughter etc. including the son of a predeceased son but does not include specifically the grandson, being a son of a son living. Therefore, the short question, is, when the son as heir of Class I of the Schedule inherits the property, does he do so in his individual capacity or does he do so as karta of his own undivided family ?

XXX XXX XXX

20. In view of the Preamble to the Act i.e. that to modify where necessary or to codify the law, in our opinion it is not possible when Schedule indicates, heirs in Class I and only include son and does not include son's son but does include son of a predeceased son, to say that when son inherits the property in the situation contemplated by Section 8 he takes it as karta of his own undivided family. The Gujarat High

Court's view noted above, if accepted would mean that though the son of a predeceased son and not the son of a son who is intended to be excluded under Section 8 to inherit, the latter would by applying the old Hindu law get a right by birth of the said property contrary to the scheme outlined in Section 8. Furthermore as noted by the Andhra Pradesh High Court the Act makes it clear by Section 4 that one should look to the Act in case of doubt and not to be pre-existing Hindu law. It would be difficult to hold, today the property which devolved on a Hindu under Section 8 of the Hindu Succession Act would be HUF property in his hand vis-a-vis his own son; that would amount to creating two classes among the heirs mentioned in Class I, the male heirs in whose hands it will be joint Hindu family property and vis-a-vis son and female heirs with respect to whom no such concept could be applied or contemplated. It may be mentioned that heirs in Class I of Schedule under Section 8 of the Act included widow, mother, daughter of predeceased son etc."

33. In **Yudhishter v. Ashok Kumar, AIR 1987 Supreme Court 558**, Hon'ble Supreme Court held that the property which devolved on a Hindu under Section 8 would not be an HUF property in his hand *vis-a-vis* his own son. It was observed in para 10 as under:

"10. This question has been considered by this Court in *Commr. of Wealth Tax, Kanpur v. Chander Sen*, (1986)3 SCC 567 AIR 1986 Supreme Court 1753, where one of us (Sabyasache Mukharji, J.) observed that under the Hindu Law, the moment a son is born, he gets a share in father's property and becomes part of the coparcenary. His right accrues to him not on the death of the father or inheritance from the father but with the very fact of his birth. Normally, therefore, whenever the father gets a property from whatever source from the grandfather or from any other source, be it separate property or not, his son should have a share in that and it will become part of the joint Hindu family of his son and grandson and other members who form joint Hindu family with him. This Court observed that this position has been affected by Section 8 of the Hindu Succession Act, 1956 and, therefore, after the Act, when the son inherited the property in the situation contemplated by Section 8, he does not take it as Karta of his own undivided family but takes it in his individual capacity. At pages 577 to 578 (of SCC) (at p. 1760 of AIR) of the report this Court dealt with the effect of Section 8 of the Hindu Succession Act, 1956 and the commentary made by Mulla, 15th Edn. pages 924-926 as well as Mayne's on

Hindu Law 12th Edn. at pages 918-919. This Court observed in the aforesaid decision that the views expressed by the Allahabad High Court, the Madras High Court, the Madhya Pradesh High Court and the Andhra Pradesh High Court appeared to be correct and was unable to accept the views of the Gujarat High Court. To the similar effect is the observation of learned author of Mayne's Hindu Law 12th Edn. page 919. In that view of the matter it would be difficult to hold that property which devolved on a Hindu under Section 8 of the Hindu Succession Act, 1956 would be HUF in his hand vis-a-vis own sons. If that be the position then the property which devolved upon the father of the respondent in the instant case on the demise of his grandfather could not be said to be HUF property. If that is so, then the appellate authority was right in holding that the respondent was a licensee of his father in respect of the ancestral house."

34. In **Arshnoor Singh v. Harpal Kaur" (2019) 14 SCC 436**, the Hon'ble Supreme Court clearly articulated the temporal distinction, affirming that:

"if ancestral property has been inherited prior to 1956, the status of such property in the hands of the successor would be coparcenary property... However, if the

succession opens after 1956, the devolution is governed strictly by Section 8 of the Act, and the property in the hands of the heir is his separate property".

35. Hon'ble Karnatka High Court through its Division Bench Smt. Shakuntala Basavaraj, 2017(2) Air Kar R 209 held that:

“As stated above, after coming into force of the Hindu Succession Act, 1956, self acquired or separate property of a male Hindu, on his dying intestate, devolves on his heirs in their individual capacity and not as coparcenary property, and in such a case, their children will not acquire any right by birth in such property”.

This standard has been consistently followed by the Hon'ble Punjab and Haryana High court in Maan Jain v. Suraj Parkash Jain 2018(3) RCR (Civil) 759 and Lal Chand v. State of Haryana 2019(4) RCR (Civil) 532

36. Therefore, the legal position after the enactment of the Hindu Succession Act, 1956, upon a conjoint reading of Sections 4, 8 and 19 of the Act, is that where heirs inherit the separate property of a person dying intestate in accordance with Section 8 of the Act, the property so inherited will not be coparcenary property for the future generations, as heirs hold the property as tenants-in-common and not as joint tenants. Consequently, the property is their separate property, and their children do not acquire any birthright therein as coparceners.

37. Applying these established principles to the present facts, on the death of Sukha, a common ancestor, the property was mutated in favour of three class-I heirs i.e his grandsons Dalip Singh, Dungar and Kashiram. Hence, on the death of Sukha, the property devolved under Section 8 of the Act by way of inheritance. When Dalip succeeded to the property in 1968 under Section 8 of the Act, he inherited it as his individual, self-acquired property. His daughter, plaintiff Shila Devi, did not acquire any right by birth in the suit property. Therefore, the claim of coparcenary right in the suit land is without legal basis.

38. Accordingly, the relief of declaration that Sale Deed No. 630 dated 06.10.2020 Ex. P-1, executed by late Shri Dalip in favour of Defendants No. 1 to 5, is null and void on the ground of coparcenary right is declined.

A(ii). Whether the Sale Deed is liable to be declared null and void on the ground of fraud, illegality and want of consideration?

39. The second ground to seek a declaration that Sale Deed No. 630 dated 06.10.2020 Ex. P-1 is null and void is that the Sale Deed No. 630 dated 06.10.2020 Ex. P-1, executed by late Shri Dalip in favour of Defendants No. 1 to 5, is illegal, fraudulent and without consideration.

40. As the vendor Dalip was the sole, absolute owner of the land as discussed above, he possessed unfettered statutory authority under Section 30 of the Hindu Succession Act, 1956 to sell or alienate the

property during his lifetime without seeking anyone's consent or proving legal necessity.

41. The record reveals that the disputed documents are duly registered documents. This court is, therefore, guided by the settled legal principle that a document is presumed to be genuine if the same is registered, as held by Hon'ble Supreme Court in *Prem Singh and Ors. v. Birbal and Ors.*, AIR 2006 SC 3608. The relevant portion of the said decision reads as below:

“27. There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent 1 has not been able to rebut the said presumption.”

42. In addition to the above-said presumption the defendants successfully proved the valid execution and registration of the sale deed by producing consistent, credible witness testimonies. DW1, Ravinder (Registry Clerk), produced the official record and confirmed the official registration of Sale Deed No. 630 on 06.10.2020. DW2, Advocate Sumit Kumar (Deed Writer), corroborated drafting the document upon the specific, voluntary instructions of parties, who signed it after understanding its contents. DW4, Ram Bhagat (Lambardar), and DW5,

Dipesh Kumar (Attesting Witness), provided direct eye-witness accounts and proved execution of the impugned sale deed Ex.P1.

43. In regard to allegation of non payment of consideration, DW4 and DW5 testified that vendor Dalip returned the three initial cheques mentioned in the Sale Deed No. 630 dated 06.10.2020 Ex. P-1 due to an urgent need for liquid funds for domestic requirements, and that the entire sale consideration of Rs. 30,00,000/- was paid to and accepted by Shri Dalip, in cash, in their presence. The cross-examination of these witnesses failed to elicit any material contradictions or discredit their veracity.

44. Conversely, the plaintiff completely failed to discharge the burden of proof. The plaintiff led no evidence to prove fraud, misrepresentation, coercion, or non-payment of consideration. Her allegations remained mere unsubstantiated oral assertions. Given the un-rebutted legal presumption of registration and the cogent witness testimonies adduced by the defendants, the plaintiff's challenge to the registered Sale Deed Ex. P-1 fails entirely.

45. Accordingly, the declaration that Sale Deed No. 630 dated 06.10.2020 Ex. P-1 is null and void on the ground that the same was illegal, fraudulent or without consideration cannot be granted.

B. Alternative claim of preferential right under Section 22 of the Hindu Succession Act, 1956

46. The plaintiff has further raised an alternative plea claiming a preferential right under Section 22 of the Hindu Succession Act, 1956 to acquire the suit land. It is essential to first reproduce Section 22(1) of the Act:

*“22. Preferential right to acquire property in certain cases.—
(1) Where, after the commencement of this Act, an interest in any immovable property of an intestate, or in any business carried on by him or her, whether solely or in conjunction with others, devolves upon two or more heirs specified in class I of the Schedule, and any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.”*

47. Section 22 of the Act applies exclusively to cases where an interest in immovable property devolves upon two or more Class-I legal heirs on the intestate death of an owner, and one co-heir subsequently proposes to transfer their inherited share. Section 22 of the Act has no application to inter vivos transfers executed by an absolute owner during his own lifetime. Vendor Dalip transferred the property during his lifetime on 06.10.2020, whereas he passed away later on 14.05.2021 as per death certificate Ex. P-15 produced on record. Therefore, Section 22 of the Act is completely inapplicable, and the claim of a preferential right is rejected.

Conclusion on Issue No. 1

48. In light of the afore-said discussion, the plaintiff has failed to establish either of the two bases on which the principal declaration has been sought. The plaintiff has failed to establish any coparcenary right in the suit property and, consequently, the challenge to the authority of late Shri Dalip to alienate the property on the ground of absence of legal necessity is not sustainable. The plaintiff has further failed to prove that the impugned Sale Deed was illegal, fraudulent or without consideration. The alternative claim of preferential right under Section 22 of the Hindu Succession Act, 1956 is also wholly inapplicable to the transaction in question, which was completed during the lifetime of Shri Dalip.

49. Accordingly, the plaintiff has failed to prove any ground for declaration that Sale Deed No. 630 dated 06.10.2020 Ex. P-1, executed by late Shri Dalip in favour of Defendants No. 1 to 5, is null and void. Further, no ground for declaration of right under Section 22 of the Hindu Succession Act, 1956 to acquire the suit land has been made out. Accordingly, Issue No. 1 is decided in favour of the defendants and against the plaintiff.

ISSUE NO. 2

Whether the plaintiff is entitled to the decree of permanent injunction as prayed for? (OPP)

50. Since the plaintiff has failed to establish any pre-existing coparcenary right, title, or interest, and has failed to invalidate the registered sale deed, she is not entitled to any consequential decree of

permanent injunction against the defendants. Accordingly, Issue No. 2 is decided in favour of the defendants and against the plaintiff.

ISSUE NO. 3 4, 5, 6 and 7

51. The burden to prove these issues was on the defendant. However, no evidence was led by the defendant on these issues nor the same were pressed during the course of arguments. Therefore, these issues are disposed of accordingly.

RELIEF

52. In view of the detailed findings recorded, the plaintiff has failed to prove any grounds for declaration that Sale Deed No. 630 dated 06.10.2020 Ex. P-1, executed by late Shri Dalip in favour of Defendants No. 1 to 5, is null and void. Further, no ground for alternate relief under Section 22 Hindu Succession Act, 1956 has been made out. **The suit of the plaintiff stands dismissed with costs. Decree-sheet be prepared according.**

File be consigned to the record room after due compliance.

Announced in open Court:
Dated:06.08.2026

(Ajay Pal Singh Malhi)
Civil Judge (Jr. Divn.),
Loharu/UID No. HR0758

Note: This judgment contains 29 pages and each page has been checked and signed by me.

(Ajay Pal Singh Malhi)
Civil Judge (Jr. Divn.),
Loharu/UID No. HR0758

Manoj Kumar,
Stenographer Gr-III