IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(101) **RSA-352-1994(O&M)**
Reserved on: 06.03.2026
Pronounced on: 20.03.2026
Uploaded on: 20.03.2026

Rahimuddin (Since Deceased) Through LRs and Another … Appellants

Versus

Nasru (Since Deceased) Through LRs … Respondent

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present: Mr. Alok Jain, Advocate
for the appellants.

Mr. Sanjiv Gupta, Senior Advocate with
Mr. Umesh Sharma, Advocate
for the respondent

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VIRINDER AGGARWAL,J

1. The present Regular Second Appeal has been preferred by the appellants/defendants against the judgment and decree dated 27.01.1994 passed by learned Additional District Judge, Faridabad, whereby the first appeal filed by the plaintiff/respondent was allowed and the judgment and decree dated 20.07.1992 passed by learned Additional Senior Sub Judge, Faridabad, dismissing Civil Suit No. 88 of 1990, was set aside. By the impugned judgment, the first appellate Court declared that the decree dated 31.07.1979 passed in Civil Suit No. 103 of 1979 was vitiated by fraud and misrepresentation and further declared the plaintiff/respondent owner in possession to the extent of 1/2 share in the agricultural land left by Arjun son of Kaley, who died intestate on 16.07.1975.

BACKGROUND FACTS

2. The plaintiff/respondent instituted a Civil Suit No. 88 of 1990 on 12.01.1989 seeking declaration to the effect that he is the owner in possession of the agricultural land measuring approximately 25 bighas situated in village Jakkopur, Tehsil Ballabgarh, District Faridabad, as per his share in the inheritance of Arjun deceased, and that the decree dated 31.07.1979 (Ex.P-3) passed in Civil Suit No.103 of 1979 in favour of plaintiff No.3 (appellant no.1 in this appeal) and plaintiff No.4 therein (appellant no.2 in this appeal) was obtained by fraud and misrepresentation, entitling them to have the same set aside. It was pleaded that the suit land originally belonged to Arjun, who died leaving behind daughters, collaterals including the respondent (plaintiff No.1 in the earlier suit), his brother Basrudin (plaintiff No.2), and both appellants/defendants in this case; that in the earlier suit instituted on 04.04.1979, a compromise was recorded whereby the defendant daughters of Arjun in that suit admitted the plaintiffs' claim, but the decree was fraudulently passed only in favour of plaintiffs No.3 and 4, excluding the respondent/Nasru and Basrudin, without their knowledge or consent; that the respondent/plaintiff came to know of the fraud only upon the death of his brother Basrudin in 1988, and the mutation sanctioned in favour of the appellants on 28.03.1980 based on the said decree was void. The defendants/appellants contested the suit on the grounds of res judicata, limitation (Article 59 of the Limitation Act), absence of fraud, non-joinder of necessary parties (the five daughters), and long possession.

3. Upon a meticulous examination of the pleadings and the competing claims of the parties, the learned Trial Court proceeded to frame the following issues for determination:-

1. Whether the plaintiffs are joint owners in joint possession over the agricultural land mentioned in the plaint? OPP

2. Whether the judgment and decree dated 31.7.1979 in suit No.103 is based on fraud, misrepresentation and not binding upon the rights of the plaintiff ? OPP

3. Whether the plaintiff is entitled for relief as claimed by him in the plaint? OPP

4. Whether the suit is not within time OPD

5. Whether the plaintiff has no locus standi to file the present suit ? OPD

6. Whether the suit is not properly valued for the purpose of court fee and jurisdiction ? OPD

7. Whether the suit is barred by principle of resjudicata ? OPD

8. Whether the defendants inherited the property on 16.7.1976 on the death of Arjun, if so to what effect? OPD

9. Relief.

4. Both parties were afforded full and adequate opportunity to adduce evidence in substantiation of their respective claims and defences. The respondent/plaintiff led evidence including the copy of the earlier plaint (Ex.P1), compromise statement (Ex.P2), and decree (Ex.P3), besides oral testimony to prove fraud and lack of knowledge. The appellants/defendants produced the jamabandi (Ex.D1), mutation entries (Ex.D2), and revenue records showing long possession, and examined witnesses to establish that the decree was consensual and binding. Upon the culmination of the evidentiary proceedings, and after hearing learned counsel for the parties at length, the

learned Trial Court decided issues Nos.(ii), (iii) and (iv) in favour of the defendants/appellants, holding that the earlier decree operated as res judicata and estoppel by judgment, no fraud was established as the court had consciously limited the decree to plaintiffs No.3 and 4 under law, the suit was barred by limitation since the respondent was a party to the earlier suit with constructive knowledge, and necessary parties were not impleaded rendering the suit incompetent. Consequently, issues Nos.(i), (v) and (vi) were decided against the plaintiff/respondent, and the suit was dismissed vide judgment and decree dated 20.07.1992.

5. Aggrieved by the judgment and decree so rendered by the learned Trial Court, the respondent/plaintiff preferred an appeal before the learned Additional District Judge, Faridabad. The said first appeal was allowed by the learned Additional District Judge, Faridabad, who reversed the trial court's findings, holding that fraud was apparent on the face of the record as the decree contradicted the compromise statement, the doctrine of res judicata did not apply to vitiated decrees, and the effect of setting aside the decree would restore the respondent's share without needing all parties. Aggrieved, the appellants/ defendants have approached this Court in second appeal.

CONTENTION

6. Learned counsel for the appellants/defendants contended that the First Appellate Court has gravely erred in reversing the well-reasoned judgment of the trial Court. He submitted that the plaintiff-respondent was a party to Civil Suit No.103 of 1979 and is bound by the decree dated 31.07.1979, which was passed in accordance with Meo custom by granting relief only to the nearest collaterals (plaintiffs No.3 & 4) by excluding the remote collaterals (plaintiffs No.1 & 2). No fraud was proved, as the earlier Court consciously applied the

rule of proximity. The suit is barred by res judicata and estoppel by judgment in view of ***Iftikhar Ahmed v. Syed Meharban Ali, AIR 1974 SC 749 and Byram Pestonji Gariwala v. Union Bank of India, AIR 1991 SC 2234***. It is also barred by limitation under Article 59 of the Limitation Act since the plaintiff had full knowledge of the decree and mutation from 1979-80. The First Appellate Court has proceeded on conjectures rather than evidence and its judgment deserves to be set aside.

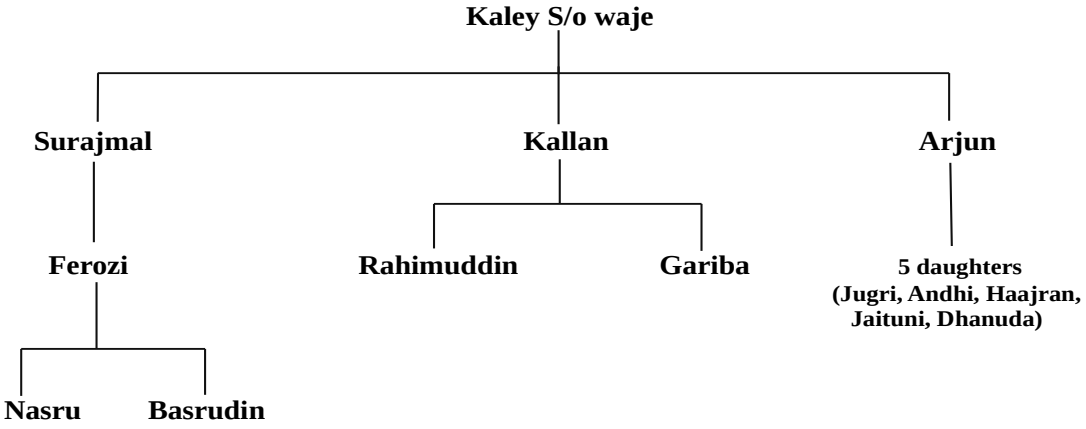
7. Per contra, learned counsel for the respondent/plaintiff supported the impugned judgment and submitted that the decree dated 31.07.1979 was obtained by fraud and misrepresentation because it ignored the compromise admitting the claim of all four plaintiffs. Such a fraudulent decree cannot operate as res judicata. Limitation began only from the date of actual discovery of fraud in 1988 after Basruddin's death. The First Appellate Court has rightly appreciated the facts and law, including the absence of any binding inter se adjudication, and its findings do not call for interference in second appeal.

OBSERVATIONS AND FINDINGS

8. I have heard learned counsel for the appellants at considerable length and have bestowed anxious and thoughtful consideration upon his submissions, keeping in view the pleadings of the parties, the evidentiary material brought on record, and the findings returned by the Courts below.

9. The core issue involved in this appeal is the law of succession governing the estate of a sonless Meo proprietor in respect of agricultural land situate in village Jakkopur, Tehsil Ballabgarh, District Faridabad (erstwhile Gurgaon), and whether the decree dated 31.07.1979 passed in Civil Suit No.103 of 1979 by the Sub Judge, Ballabgarh, correctly applied the said law or was vitiated by fraud/mistake as alleged by the plaintiff-respondent. Therefore, at the outset, it

is apposite to reproduce the pedigree table of Arjun for the sake of convenience and ready reference.



10. It is not disputed that the parties belong to the Meo Muslim community (agricultural tribe) of the Mewat region and that the suit property is purely agricultural land. Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937, expressly excludes questions relating to agricultural land from the overriding effect of Muslim Personal Law (Shariat). Therefore, succession to the estate of Arjun deceased is governed by the customary law (Riwaj) prevailing among the Meos of Haryana, and not by the Quranic rules of inheritance.

11. The custom applicable to Meos, as repeatedly recognised by this Court and as pleaded in the plaint (Ex.P5) and also proved in the 1979 suit itself, is clear and unambiguous: In the case of a sonless proprietor, the agricultural land devolves upon the nearest male agnates/collaterals in accordance with the rule of proximity of degree. Daughters have no right of succession whatsoever in the property of a Meo proprietor. This custom has been authoritatively affirmed in ***Ismail And Another v. Hajra, 2010 (1) RCR(Civil) 441***, wherein this Court has held as under:

> *"Para 3. Late Samsuddin was the co-sharer to the extent of ¼th share in the suit land situated in the revenue estate of village Neemka, Tehsil Punhana, District Gurgaon. On his death, mutation was sanctioned in favour of the defendant vide mutation No. 1772 dated 17.2.1999. The defendant had no male issue, therefore, Sher Khan and his two brothers namely Ayyub and Abbas being the nearest collaterals had to succeed the estate left by Samsuddin on the death of the defendant.* ***According to the custom prevailing in the community, the ancestral property in the hands of meos is inherited by his son and in the absence of his son by the nearest collateral. Daughters have no right of succession in the property either ancestral or non-ancestral in the hands of meo proprietor."***
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> *.....(emphasis added)*

12. The same custom finds mention in the village Riwaj-i-Am of the area and in Rattigan's Digest of Customary Law applicable to agricultural tribes of erstwhile Punjab (including Mewat). The custom is patrilineal and agnatic; female heirs are excluded so that the land remains within the male line of the tribe. Further, among collaterals, the nearer agnate excludes the more remote; a principle of proximity consistently applied in customary succession. This rule of proximity (also called the rule of "nearer in degree excludes the remoter") is the cardinal and fundamental principle of agnatic customary succession in Punjab and Haryana. It flows directly from the very object of customary law among agricultural tribes to prevent fragmentation of holdings and to ensure that the property remains with the closest male blood relation who would have

been in joint enjoyment and cultivation with the deceased proprietor during his lifetime. The nearer collateral is presumed to have a stronger moral and legal claim because he stands in a closer line of succession and is more likely to have contributed to the maintenance and preservation of the family land. This principle is deeply rooted in the tribal and agrarian structure of Meo and other agricultural communities of Mewat, where land is not merely property but the very basis of family and clan survival.

13. In the present case, Arjun left behind only five daughters (Jugri and others) and no son or widow. Four male collaterals filed Civil Suit No.103 of 1979 claiming inheritance under the aforesaid custom:

- Plaintiffs No.3 & 4 (Rahimuddin and Gariba - present appellants/defendants) - **3rd degree reversioners** (sons of Kallan - brother of Arjun).
- Plaintiffs No.1 & 2 (Nasru and Basruddin-Plaintiffs in present suit also) - **4th degree reversioners** (remote collaterals - Grandsons of Suraj Mal- brother of Arjun).

14. The learned Sub Judge, Ballabgarh, in Civil Suit No.103 of 1979, upon due appreciation of the pleadings and evidence on record, correctly applied the settled customary law governing succession among Meos and passed the decree in favour of the nearest collaterals, namely plaintiffs No.3 and 4 (Rahimuddin and Gariba), declaring them owners in possession of the estate of deceased Arjun. It is evident from the record that the suit property was admitted to be agricultural land and that the parties had themselves founded their claim on the prevailing custom, which was neither disputed nor rebutted. In fact, in paragraph No.4 of the plaint of the said suit, it was specifically pleaded that plaintiffs No.3 and 4, being the nearest collaterals, were the only heirs in

possession of the property, thereby clearly asserting their preferential right based on proximity of relationship. The daughters of the deceased had also appeared and admitted the existence and applicability of such custom and admitted claim of plaintiffs of that suit.

15. Although the trial Court did not elaborate in express terms the reasoning for excluding plaintiffs No.1 and 2, the conclusion reached is clearly in consonance with the well-settled rule of customary succession, namely that the nearer agnate excludes the more remote. The operative part of the judgment (Ex.P-3) unequivocally decrees the suit “in favour of plaintiffs No.3 and 4 against the defendants”, thereby implicitly but unmistakably applying the principle of proximity of degree. The mere fact that the prayer clause in the plaint was couched in general terms could not have bound the Court to grant relief contrary to the established custom; rather, it was incumbent upon the Court to mould the relief in accordance with the proved custom and the admitted degrees of relationship. The Court have passed the decree based upon legal position prevalent in the community of parties on the basis of admission of defendants of that suit. There is no fraud so played upon plaintiffs of the present suit.

16. Resultantly, the question of succession stood conclusively determined in the said proceedings, wherein the nearer collaterals (plaintiffs No.3 and 4) were rightly preferred over the more remote collaterals (plaintiffs No.1 and 2). The decree dated 31.07.1979 thus represents a correct and lawful application of the customary rule prevailing in the community and does not suffer from any fraud, misrepresentation, or mistake. Consequently, the said finding, having attained finality, does not call for re-adjudication in the present proceedings.

Limitation (Issue No.4)

17. The next contention pertains to the question of limitation and the effect of findings recorded on Issue No.4 by the learned trial Court. The said issue, relating to limitation, was specifically framed and decided against the plaintiff-respondent. The trial Court held that the present suit, instituted on 12.01.1989, was clearly barred under Article 59 of the Limitation Act, 1963, which prescribes a period of three years from the date when the facts entitling the plaintiff to seek cancellation first become known. The plaintiff, admittedly being a party to the earlier Civil Suit No.103 of 1979 and represented through the same counsel, had full knowledge of the decree from the very inception. Furthermore, mutation of the suit property was sanctioned in favour of the present appellants on 28.03.1980, which was duly reflected in the revenue record, including Jamabandis and Khasra Girdawaris. In such circumstances, the plea of alleged “discovery” only after the death of Basruddin in the year 1988 was rightly rejected by the trial Court as wholly untenable and an afterthought.

18. However, the First Appellate Court, while reversing the trial Court’s decree, failed to consider and record any finding to set aside the clear findings returned on Issue No.4. It is well settled that the first appellate Court, being the final Court of fact, is under a statutory obligation in terms of Order XLI Rule 31 CPC to frame points for determination and record its decision thereon with reasons. It has failed to discharge the obligation placed on a first appellate court. The appeal has been decided in a very unsatisfactory manner in this regard. First appeal is a valuable right and the parties have a right to be heard both on questions of law and on facts. The judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in

support of the findings. In ***Santosh Hazari v. Purushottam Tiwari***, ***2001 (1) SCC 179***, Hon'ble Apex court has been authoritatively held that the appellate Court must independently assess and deal with all material issues decided by the trial Court, and failure to do so renders the judgment unsustainable. Similarly, reliance is also placed on ***Madhukar & Ors. v. Sangram & Ors., (2001) (4) SCC 756 and B.V. Nagesh v. H.V. Sreenivasa Murthy, 2010 (13) SCC 530.***

19. No doubt, it is equally settled that where the reasoning of the appellate Court is wholly inconsistent with the findings of the trial Court, an implied reversal may, in certain circumstances, be inferred. However, such a principle cannot be applied mechanically, particularly in respect of a finding on limitation which goes to the very root of the maintainability of the suit. Further, it is also a settled principle that a finding which has not been specifically assailed in the grounds of appeal ordinarily attains finality and cannot be permitted to be reopened. In the present case, a perusal of the grounds of appeal shows that the findings recorded by the trial Court on Issue No.4 were not specifically assailed by the plaintiff in grounds of appeal before first appellate court, and therefore, the same had attained finality.

20. In view of the above, the failure of the First Appellate Court to specifically consider and reverse the finding on limitation, despite it being a foundational issue affecting the very maintainability of the suit, vitiates the impugned judgment. The decree passed by the First Appellate Court, therefore, cannot be sustained on this ground alone. Suit has been rightly held to be barred by limitation by the learned Trial court, and there is no reason to interfere in that finding. Thus, the Learned first appellate court has committed illegality in allowing the appeal without any reversal of finding over Issue No.4.

Res-Judicata(Issue no.7)

21. The learned trial Court had decided Issue No.7 against the plaintiff-respondent. It held that the decree dated 31.07.1979 in Suit No.103 is final and binding and cannot be collaterally challenged in the present suit. However, the first appellate Court reversed this finding on the ground that there was no conflict of interest between the co-plaintiffs in the 1979 suit. Relying upon ***Iftikhar Ahmed and others v. Syed Meharban Ali and others, AIR 1974 SC 749***, the learned Additional District Judge held as under:

> *"16. The above principles when applied to the facts of the case at hand, it clearly emerges that in suit No.103, firstly there was no conflict of interest between the co-plaintiffs, secondly it was not necessary to decide the conflict in order to give relief being claimed in favour of all the plaintiffs and thirdly that the court actually had not decided the question. So the judgment and decree of suit No.103 cannot apply as resjudicata for the suit and the appeal at hand."*

22. This reasoning of the first appellate Court is wholly erroneous and contrary to the settled law as well as to the record of the 1979 suit. The law on res judicata between co-plaintiffs is authoritatively laid down in the very same judgment relied upon by the first appellate Court. The Hon'ble Supreme Court in ***Iftikhar Ahmed (supra)*** has held that res judicata operates between co-plaintiffs if:

> *(i) there is a conflict of interest between them;*
>
> *(ii) such conflict was necessary to be decided for granting the relief claimed; and*

(iii) the issue was finally adjudicated by the Court.

23. In Suit No.103 of 1979, all four plaintiffs (including Nasru and Basruddin) had claimed ownership as heirs under Meo custom. The Sub Judge, after considering the pleadings (particularly para 4 of the plaint which expressly stated that plaintiffs No.3 and 4 were the "only legal heirs), the statements of the daughters and Rahimuddin, and the degrees of relationship, consciously restricted the decree only to plaintiffs No.3 & 4 (Rahimuddin and Gariba) as the nearest collaterals, denying any relief to plaintiffs No.1 & 2. Although the operative part of the decree dated 31.07.1979 does not use the exact words "nearest collateral excludes the remoter", the very act of granting relief exclusively to plaintiffs No.3 & 4 while denying it to the others clearly demonstrates that the Court applied the rule of proximity and adjudicated the inter se conflict between the co-plaintiffs on the vital question - "who among the four collaterals are the nearest male agnates entitled to succeed?" This conflict was necessary for granting the relief claimed and was in fact decided by the Court. Thus, all three conditions laid down in ***Iftikhar Ahmed and others v. Syed Meharban Ali and others, AIR 1974 SC 749***, were fully satisfied. The trial Court's conclusion that the 1979 decree operates as res judicata between the co-plaintiffs is therefore correct and unassailable. Even though the trial Court reached the conclusion through the route of "finality of decree and no collateral attack" (rather than the exact three-ingredient test), the ultimate finding is legally sound. The same principle has been reiterated by the Hon'ble Supreme court in the judgment of ***Mahboob Sahab v. Syed Ismail, 1995 (3) SCC 693.***

24. Hence, the present suit is clearly barred by the principle of res judicata. The plaintiff-respondent, being a co-plaintiff in the 1979 suit, cannot now be

permitted to re-agitate the very same question of succession. The first appellate Court's finding of "no conflict of interest" is factually incorrect and contrary to the ratio of ***Iftikhar Ahmed (supra)*** as well as the pleadings and operative decree of the 1979 suit. The learned lower appellate Court thus fell into grave error by proceeding on the premise of "what ought to have been" rather than "what has been" proved. It wrongly presumed absence of res judicata merely because the decree was not passed in favour of all four plaintiffs, ignoring the clear adjudication of inter se rights under Meo custom. The judgment of the trial Court, on the other hand, is well-reasoned, based on correct appreciation of custom, evidence and law, and deserves to be restored.

25. In view of the above discussion, the appeal is **allowed.** The judgment and decree dated 27.01.1994 passed by the learned Additional District Judge, Faridabad, is set aside and the judgment and decree dated 20.07.1992 passed by the learned Additional Senior Sub Judge, Faridabad, dismissing the suit of the plaintiff-respondent is **restored**. Decree sheet be prepared accordingly.

26. Since the main appeals stands decided, pending application(s), if any, also stand disposed of.

(VIRINDER AGGARWAL)
JUDGE

20.03.2026
Saurav Pathania

(i) Whether speaking/reasoned : Yes/No
(ii) Whether reportable : Yes/No