

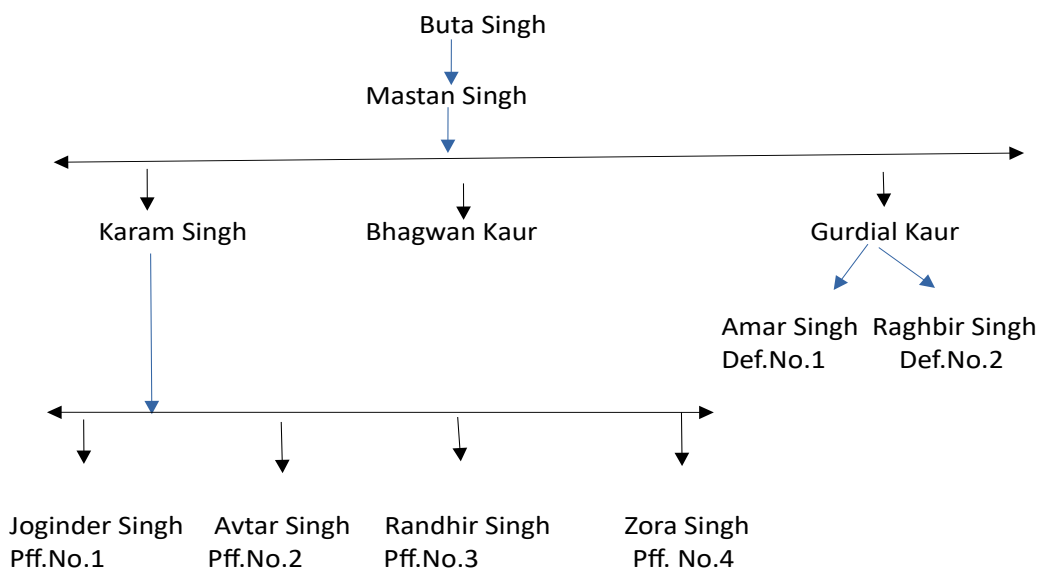
**IN THE HIGH Court OF PUNJAB AND HARYANA AT CHANDIGARH****211****RSA-2476-2013 (O&M)****Date of decision: 20.04.2026****Joginder Singh and others****...Appellant(s)****Vs.****Amar Singh and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Amit Jain, Senior Advocate with
Mr. Parit Aggarwal, Advocate for the appellants.

NIDHI GUPTA, J.

The plaintiffs are in Second Appeal against the concurrent judgments and decrees of the learned District Courts, whereby the suit filed by the appellants for declaration to the effect that plaintiffs are owners of 5/6th share in the suit land measuring 101K-15M; **AND** for permanent injunction, has been dismissed by both the District Courts.

2. In order to correctly appreciate the dispute at hand, following pedigree table shall be useful: -





3. It was the pleaded case of the appellants that the suit land is Ancestral Joint Hindu Family Coparcenary property. The suit property was inherited by Mastan Singh from his father Buta Singh. On the death of Mastan Singh, mutation of inheritance was sanctioned in favour of father of the plaintiffs namely Karam Singh, and his sisters Bhagwan Kaur and Gurdial Kaur. Bhagwan Kaur and Gurdial Kaur never came into possession of the suit land at any point of time. In 1978, plaintiffs had purchased the land in the name of Bhagwan Kaur vide Sale Deed dated 24.04.1978. Gurdial Kaur had died and defendants are her only legal heirs. The defendants are wrongly recorded as owners to the extent of 1/3rd share in the revenue record though their shares are not more than 1/6th. Defendants are further claiming to alienate the suit land more than their share. Hence, the present suit was filed on 25.07.2005.

4. Upon notice, the defendants had appeared and resisted the suit by filing written statement.

5. On the basis of pleadings of the parties, following issues were framed:-

"1. Whether the plaintiffs are entitled to declaration as prayed for?OPP.

2. Whether the plaintiffs are owner of 5/6 share in the suit land? OPP.

3. Whether the plaintiffs are entitled to permanent injunction as prayed for?OPP.

4 Whether the suit of the plaintiff is not maintainable? OPD

5. Whether the suit is false and frivolous if so its effect? OPD.



6. Whether the plaintiffs have no cause of action to file the present suit? OPD

7. Whether the plaintiffs have concealed the material facts from the court? OPD

8. Relief.”

6. Upon appraisal of the pleadings and the evidence led by the parties, learned Trial Court had held that the plaintiffs had succeeded in proving that the suit property was ancestral in nature. However, the learned trial court had declined to decree the suit of the plaintiffs on the ground that plaintiffs had come to know about the defective mutation entries in 1978 and still kept quiet till the year 2005. Learned Trial Court had further observed that Karam Singh had also not challenged the mutation and revenue record; and even after death of Karam Singh, plaintiffs had waited till 2005 to file the suit. Learned Trial Court further held that no objection was raised by plaintiffs qua share of Bhagwan Kaur at the time of execution of Sale Deed. It is further held that defendants are in symbolic possession of the suit property. Accordingly, vide judgment and decree dated 07.09.2011, learned Additional Civil Judge (Senior Division), Samana had dismissed the suit of the plaintiffs with costs in the following manner:-

“27. In view of my findings in Issues No.1 and 3, plaintiffs are not entitled for any declaration and injunction and plaintiff can not be declared as owner to the extent of 5/6 share. Accordingly suit of the plaintiff fails and same is hereby dismissed with costs. Decree sheet be prepared. File is ordered to be consigned to the record room.”



7. Against the same, plaintiffs had filed Civil Appeal No.68-A dated 01.10.2011. Defendants had also filed Cross objections. Vide judgment and decree dated 16.03.2013, learned Additional District Judge, Patiala has dismissed the Civil Appeal filed by the plaintiffs/appellants; whereas cross objections filed by defendants were partly allowed as follows: -

“29. Consequent to my findings above, appeal filed by the appellants/ plaintiffs fails and is hereby dismissed with costs. However, cross objections filed by respondents/ defendants succeeds and are hereby partly allowed. Findings returned by learned trial court on Issues No.2 and 4 are reversed and both these issues are decided in favour of defendants and against the plaintiffs. It is declared under Issue No.2 that plaintiffs are owners to the extent of 2/3rd share in the suit property and defendants are owners of remaining 1/3rd share in suit as depicted in revenue record. Decree sheets be prepared accordingly. Copy of this judgment be placed in the cross-objection file. Trial court record be sent back alongwith copy of this judgment and appeal file be consigned to the record room.”

8. Hence, the present second appeal by the plaintiffs.

9. It is *inter alia* submitted by learned Senior Counsel for the appellants that learned District Courts have erred in non-suiting the appellants purely on the ground of limitation. It is contended that limitation does not begin from the date of sanctioning of mutation as mutation does not confer any title. It is argued that therefore, cause of action in favour of the appellants would start on the date when possession of appellants or



title of the appellants is put to challenge. Learned Senior Counsel submits that once it is established on record that the entries in the revenue record were incorrect and liable to be corrected, suit filed by the appellants could not have been held to be barred by limitation.

10. Learned Senior Counsel for the appellants further submits that the learned trial court had erred in law in dismissing the suit filed by the plaintiffs despite recording the aforesaid findings in favour of the plaintiff /appellants. The learned lower appellate court also erred in law in dismissing appeal filed by the plaintiff /appellants and also reversed the findings recorded by the learned trial court on Issues No. 2 and 4 while partly allowing the cross objections filed by the respondents.

11. It is further submitted by learned Senior Counsel for the appellants that it was the specific case of the plaintiff /appellants that the property in dispute is ancestral joint Hindu family coparcenary property and the parties were governed by Hindu law. The learned trial court had recorded a specific finding to the effect that the property was proved to be ancestral joint Hindu family coparcenary property. The reasoning adopted by the learned lower appellate court in reversing the said finding of the trial court is without any basis and cannot be sustained in law. It is contended that it is a settled principle of law that in the Hindu family there is a presumption of joint-ness unless contrary was proved by the respondents. The defendant /respondents had failed to lead any evidence to rebut the said presumption to establish that the property in dispute was self acquired property of Mastan Singh. A Hindu Male born in the joint family has a right



in the property right from the birth in the family and entitled to a separate share as a coparcener. Once it was proved that the property was joint Hindu family property there was no denying the fact that Karam Singh would have got 2/3rd share in the property on the death of his father Mastan Singh.

12. Learned Senior Counsel for the appellants further submits that it is a settled principle of law that there is no limitation in case of a suit for declaration on the basis of inheritance and the same can only be defeated by a plea of adverse possession. However, no such plea was raised by the defendants in the written statement and the suit filed by the plaintiff/appellants has been wrongly held to be barred by limitation by the courts below and the said finding is erroneous and liable to be set aside.

13. It is further submitted by learned Senior Counsel for the appellants that the learned courts below have further erred in law in drawing an adverse inference on account of the fact that the appellants had purchased the share of Bhagwan Kaur. The reasoning adopted by the courts below in treating the said transaction was an implied admission of ownership of the respondents to the extent of one third share was erroneous and cannot be sustained in law. In fact, the sale deed dated 24.4.1978 was executed in a notice of the legal implications and cannot be treated as an admission so as to annul any benefit to the respondents. Once it was established on record that the properties were joint Hindu family ancestral property, the suit filed by the plaintiffs ought to have been decreed.



14. It is further submitted that learned District Courts were also in error in not granting the relief of injunction to the appellants as appellants had duly succeeded in proving the possession over the suit property. In fact, defendants never came in possession of the suit property at any point of time. It is argued that a co-sharer in exclusive possession is entitled to injunction against the other co-sharers, who are not in possession of the suit property. It is accordingly prayed that the present Appeal be allowed; and the impugned judgments and decrees of the learned District Courts be set aside.

15. I have heard learned Senior Counsel for the appellants and perused the case file alongwith Lower Court Record in minute detail. I find no merit in the submissions advanced on behalf of learned Senior Counsel for the appellants.

16. It was clearly pleaded case of the appellants that the suit property was ancestral in nature. The learned Trial Court had held that the suit property in the hands of Mastan Singh and Karam Singh was ancestral and coparcenary; as the defendants in their written statement had not specifically denied the nature of the suit property as ancestral. The learned trial court had further held that it was for the defendants to prove that suit property was not Joint Hindu Family Coparcenary property. As such, the plaintiffs were held entitled to 5/6th share.

17. First and foremost, it is to be seen that it was the contention and case of the plaintiffs that the suit property is ancestral. As such, onus to prove the nature of the suit property as ancestral was upon the plaintiffs.



Reverse onus could not be placed upon the defendants to prove that suit property is *not* ancestral. The record further reveals that plaintiffs have failed to lead any evidence whatsoever to prove their assertion that the suit land was ancestral. Accordingly, Id. First Appellate Court had correctly reversed the findings on issue No.2 holding that as per the settled law, presumption is in favour of land being non-ancestral unless it is proved to the contrary.

18. Further, learned First Appellate Court had also correctly observed that learned Trial Court had wrongly recorded that defendants had not specifically denied that the suit land was Joint Hindu Family Coparcenary property. The LCR reveals that in para 1 of the Reply on merits of the amended written statement dated 08.02.2008 filed by defendants No.1 and 2 (at page 75 of the LCR), the defendants have specifically denied that suit land is ancestral. The relevant extract of which reads as under: -

"1. That the contents of this para are wrong and hence denied. It is wrong that the suit land is ancestral joint Hindu family coparcenary property of the plaintiffs. It is matter of record if it was inherited by Mastan Singh from this father Buta Singh and the plaintiffs be put to strict proof of the allegations that suit property was inherited by Mastan Singh from his father Buta Singh....."

19. Thus, it is clear that there is absolutely no evidence on record to show that suit property was Joint Hindu Family Coparcenary property.

20. In this regard, findings of First Appellate Court are in para 24 of the judgment dated 16.03.2013, relevant extract of which reads as under:-



“24.....Even if it is taken that respondents/ defendants had admitted that suit property was inherited by Mastan Singh from his father Buta Singh it does not make the suit property Joint Hindu coparcenary property, appellants/ defendants were required to show as to how property had fallen to Mastan Singh from his father Buta Singh and whether Buta Singh had more successors apart from Mastan Singh or only he was his successor. Even it has not come on record as to when property had fallen to the share of Mastan Singh from his father Buta Singh. Thus in my considered opinion there is no admission regarding the fact that suit property was Joint Hindu Family coparcenary property of plaintiffs and as such plaintiffs were required to prove on record that it was Joint Hindu Family Coparcenary property. But plaintiffs had not led any evidence in this regard. There is not even an iota of evidence to show that suit property was Joint Hindu Family property and whether it was inherited by Mastan Singh from his father Buta Singh or it was his self acquired property. Even if it is taken that it was inherited by Mastan Singh from his father Buta Singh, it has not been clarified that whether it was inherited by way of Will or by natural succession. Thus, there is absolutely no evidence on record to show that the suit property was Joint Hindu Family coparcenary property of plaintiffs. It was wrongly observed by learned trial court while deciding Issue No.2 that defendants had failed to prove that the property was not Joint Hindu Family coparcenary property.”

21. Consequentially, the case set up by the appellants fails as the entire foundation of the case of the appellants is that suit land is ancestral.
22. Furthermore, both the District Courts had given concurrent findings of fact that the suit was barred by limitation. It is unequivocally



proven on record that plaintiffs were aware of the impugned mutations at least since the year 1978 when they had bought share of Bhagwan Kaur. Whereas, present suit was filed only in the year 2005. The explanation sought to be given by the learned Senior counsel for the appellant to the effect that plaintiffs were required to challenge the said mutations only when there was danger to their title or possession, is misconceived. If the said argument of the learned Senior counsel were to be accepted, then there is nothing either pleaded or shown by the plaintiffs as to in what manner, on which date, and where, and when, did the defendants threaten the possession and title of the appellants. The relevant findings of First Appellate Court in this regard are in para 15 of the judgment dated 16.03.2013, which reads as follows: -

“15. As per suit filed by appellants/ plaintiffs suit property was Joint Hindu Family Coparcenary property and it was inherited by Mastan Singh predecessor in interest of their father Karam Singh from his father Buta Singh but mutation was wrongly sanctioned in favour of Karam Singh son of Mastan Singh and Bhagwan Kaur and Gurdial Kaur daughters of Mastan Singh. As it was a Joint Hindu Family coparcenary property. Karam Singh had 1/2 share in the same from his birth and remaining 1/2 share was to be divided between Karam Singh and his sisters after death of Mastan Singh. But mutation was wrongly sanctioned to the extent of 1/3rd each in favour of Karam Singh, Bhagwan Kaur and Gurdial Kaur in a cursory manner and same was required to be corrected. As such in the garb of filing the present suit, appellants/ plaintiffs had challenged sanction of mutation to the extent of 1/3rd each in favour of Bhagwan Kaur and Gurdial Kaur but no date had been



mentioned by them as to when said mutation was sanctioned in their favour. However, respondents/ defendants had placed on record jamabandi for the year 1961-62 Ex. D2 on record. As per remarks made in the said jamabandi mutation regarding inheritance of Mastan Singh was sanctioned in 1960s if not earlier. Even plaintiffs acted upon said mutation by getting executed sale deed Ex. D1 from Bhagwan Kaur regarding her 1/3rd share. As such the plaintiffs were well aware of the fact that mutation had been sanctioned in that fashion since 1978 when they got executed sale deed in their favour. Karam Singh never challenged wrong sanctioning of mutation in favour of his sisters during his life time. It has come on record that Karam Singh expired in the year 2000. Even thereafter appellants/ plaintiffs did not file any suit upto 25.7.2005. Now it had been alleged by appellants/ plaintiffs that they got executed sale deed Ex. D1 in their favour from Bhagwan Kaur without knowing its legal implications. It has nowhere been pleaded by the appellants/ plaintiffs as to when they came to know about wrong sanctioning of mutation in favour of sisters of their father. Suit for declaration can be filed within three years from the date of knowledge. Even if it is taken that plaintiffs came to know about sanctioning of mutation only in the year 1978 when they got executed sale deed from Bhagwan Kaur, the suit is hopelessly barred by time as same was filed on 25.7.2005. In this regard it has also been argued by learned counsel for appellants/ plaintiffs that appellants/ plaintiffs had always been in possession of suit property and present suit had been filed only for correction of revenue record and there was no limitation for the same under Section 45 of Punjab Land Revenue Act."



23. Both the District Courts have further held that in view of the above undisputed facts on record, the plaintiffs were estopped by their own conduct in filing the present suit. I am in agreement with the said observations of the District Courts, as well. Relevant findings of learned First Appellate Court are contained in para 17 of the judgment dated 16.03.2013 which reads as follows: -

“17. Further more, it has also been rightly observed by learned trial court that appellants/ plaintiffs were estopped by their act and conduct from filing the present suit. As per mutation under challenge, Karam Singh, Bhagwan Kaur and Gurdial Kaur got 1/3rd share each in the property of Mastan Singh. Present plaintiffs themselves got registered sale deed dated 24.4.78 Ex. D1 from Bhagwan Kaur regarding her 1/3rd share in the suit property. Thus they themselves acted upon the mutation and now they are estopped from claiming that mutation was wrongly sanctioned in favour of Bhagwan Kaur and Gurdial Kaur. This view of mine finds support in law laid down by Hon'ble Punjab and Haryana High Court in case titled as Ujaggar Singh vs. Sham Singh and others (supra) wherein it has been held that when claim of defendant was admitted by plaintiff and mutation of that share was allowed to be recorded, after lapse of many years, the plaintiff can not be allowed to change the position.”

24. Learned Senior Counsel for the appellants is unable to controvert or dispute the above said facts and findings.

25. In view of the discussion above, no ground is made out to interfere in the impugned judgments and decrees of the learned Courts below. The present Regular Second Appeal is hereby **dismissed**.



26. Pending applications, if any, stand disposed of.

20.04.2026
Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No