

2026:PHHC:078751



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
RSA-1893-1989 (O&M)

CHAKKAN LAL (SINCE DECEASED) THROUGH LRS
...APPELLANT(S)

VERSUS

RAM PYARI @ TILLO (SINCE DECEASED) THROUGH LRS
AND ORS.

...RESPONDENTS

RSA-1894-1989 (O&M)

CHAKKAN LAL (SINCE DECEASED) THROUGH LRS
...APPELLANT(S)

VERSUS

RAM PYARI @ TILLO (SINCE DECEASED) THROUGH LRS
AND ORS.

...RESPONDENTS

RSA-1895-1989 (O&M)

CHAKKAN LAL (SINCE DECEASED) THROUGH LRS
...APPELLANT(S)

VERSUS

RAM PYARI @ TILLO (SINCE DECEASED) THROUGH LRS
AND ORS.

...RESPONDENTS

RSA-1902-1989 (O&M)

CHAKKAN LAL (SINCE DECEASED) THROUGH LRS
...APPELLANT(S)

VERSUS

RAM PYARI @ TILLO (SINCE DECEASED) THROUGH LRS
AND ORS.

...RESPONDENTS

1.	The date when the judgment is reserved	19.02.2026
2.	The date when the judgment is pronounced	19.05.2026
3.	The date when the judgment is uploaded	19.05.2026
4.	Whether only operative part of the judgment is pronounced or whether the full judgment is pronounced	Full
5.	The delay, if any of the pronouncement of full judgment and reason thereof.	Not applicable

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Chanderhas Yadav, Advocate
for the appellant.

Mr. Anand K. Bishnoi, Advocate
for respondents No.16 to 18, 21, 22, 25 to 29

SANDEEP MOUDGIL, J

1. Vide this common order, this Court hereby disposes off all the above-said appeals by this common judgment since common question of law is involved therein. However, for the sake of brevity, the facts are being taken only from the lead case i.e. RSA-1893-1989.

2. The present regular second appeals have arisen out of a judgment dated 03.12.1987 for possession or in the alternative for joint possession, whereby suit by the plaintiff/ appellant was dismissed qua 86 kanals 2 Marlas of land at Village Jhamavas, District NUH, erstwhile District Gurugram, and the judgment and decree dated 09.03.1989 passed by the Additional District Judge, Gurgaon in the appeal preferred by the him, which was also dismissed having no merits, meaning thereby this Court will examine the concurrent findings as to whether the suit property was coparcenary, i.e. issue No. 1 was returned against the plaintiff/appellant, and the impugned gift is invalid and void or not, which will have the effect on the subsequent transfer of property

in dispute by defendant/respondents Nos. 2 to 4 to defendants/respondents No.6 to 13.

3. In addition to above, issue No. 4 and 6 to the effect that whether defendants No. 6 to 13 are bona fide purchasers for value without notice and would have the protection under Section 41 of the Transfer of Property Act, 1882 or not along with issue No. 8 and 9 which was adjudicated against the plaintiff by both the courts below.

Factual Backdrop

4. The factual aspects would emerge out of the backdrop which was set into motion with the averment that Hemraj was defendant No. 1 in the original suit and after his death, the LRs brought on record is the father of Chakkan Lal plaintiff whereas Vasdev, Devaraj, Kishanlal and Keval Ram, defendants No. 2 to 5.

5. Hemraj owned various properties in West Pakistan district Dera Ghazi Khan, who migrated to India and in lieu thereof was allotted a land measuring 92 kanals 7 marlas as detailed in Annexure 'A' to the plaint at village Jhamavas, District Nuh erstwhile District Gurugram. The plaintiff/appellant Chhakkan Lal would plead that the said property was joint Hindu family property being ancestral, in the hands of Hemraj as a coparcenar of the joint Hindu family consisting of Hemraj, his five sons as well as the plaintiff Chhakkan Lal. Hemraj gifted away the entire land vide deed dated 03.08.1967 measuring 92 kanals 7 marlas along with another plot number 95/2 measuring 319 square yards that too situated at village Jhamavas in favour of defendant Nos. 2 to 4 who happened to be his sons but excluded the plaintiff depriving him the legal right over the said property and benefit arising therefrom being a joint Hindu family.

6. The remaining defendants happen to be subsequent vendees of the suit land from the donees of their vendees, though defendant No.5 being the brother of plaintiff-appellant and of defendant/respondent Nos. 2 to 4 was impleaded as being the member of the coparcenary having interest in the suit land. The gift deed has been challenged on the grounds of it being illegal, void and nullity and not binding against the interests of the plaintiff and defendant No.5.

7. The plaintiff/appellant has put forth the submissions stating that the subsequent vendees, i.e. defendant-respondent Nos. 6 to 16, are unauthorized occupants over the suit land and transfer in their favour relying upon the said alleged gift deed is therefore invalid transfer and cannot affect the rights of the plaintiff and defendant-respondent No.5.

8. The written statement filed by defendant/respondents, controverted the case of the plaintiff-appellant on the ground that the suit property was not in the hands of Hemraj and as such cannot be called a joint Hindu family consisting of the plaintiff-appellant, defendants/respondents No. 1 to 6. The defendants would further argue that the plaintiff-appellant had separated 35 years ago from his father and by that virtue as well, even if it was a joint Hindu family at all, at any such stage, had been disrupted. It is pleaded by the defendants that defendant/respondents No. 1 to 5 were not governed under the Hindu law who in fact, followed a custom prevalent in the agriculture Aroda tribe in District Dera Ghazi Khan, West Pakistan, according to which the concept of joint Hindu family and that of coparcenary property was not known under which sons do not acquire any interest in the property of their father by virtue of their birth.

9. The defendants/respondents Nos. 2 to 4 claim to have rendered services to Hemraj, deceased, and repaid the debt to the tune of rupees 20,000,

due to which Hemraj gifted away his property to defendant/respondents Nos. 2 to 4 in the year 1967. It is on the strength of such averments, the defendants would seek that plaintiff/appellant was in full knowledge of the gift deed, who kept silent for over 10 years before filing the suit, and is now estopped by his own act, conduct, and acquiescence, and also challenge the *locus standi* for filing of the suit with their rights duly protected under Section 41 of the Transfer of Property Act being bonafide purchaser for a valuable consideration from defendant/respondent Nos. 2 to 4, after verification of their rights to pass a title apart from the suit being barred by limitation as well.

10. In view of above said facts, the trial court framed the following issues for adjudication.

Whether the suit property is coparcenary property of the plaintiff qua defendant No.1 and defendants No.2 to 4? OPP.

Whether the plaintiff and defendants No.1 to 5 constituted a Joint Hindu Family and whether defendant No.1 was the Karta thereof? OPP.

Whether the impugned gift is invalid and void and whether the subsequent transfer of property in dispute by defendants No.2 to 4 and defendants No.6 to 13 is invalid and substantiable? OPP.

Whether defendants No.6 to 13 are bonafide purchasers for value without notice and are protected under Section 41 of T.P. Act? OPD.

Whether suit is within time? OPD.

Whether the plaintiff is estopped from filing the suit by his act and consent?OPD.

Whether the parties are governed by custom, if so what is the said custom? OPD.

Whether defendants No.2 to 4 had paid Rs.20,000/- on account of debts which defendant No.1 owed to various persons? OPD.

Whether defendants No.2 to 4 had installed a tube well in the land in suit at a cost of Rs.15,000/- and had got the land levelled? If so to what effect? OPD.

Relief.

Then subsequently issues No.2, 5 and 7 were recasted as under on 27.7.1981:

Whether the plaintiff and defendants No.1 to 5 do not constitute the Joint Hindu Family and defendant No.1 is not the Karta of the said Joint Hindu Family? OPD.

Whether suit is barred by time? OPD.

Whether the parties are governed by custom? OPD.

Submissions before this Court:

11. Learned counsel appearing on behalf of the appellant has contended that both the Trial Court and the First Appellate Court have erred in law in holding that the suit property was not coparcenary in nature, despite the admitted position that Hemraj had migrated from West Pakistan and the property allotted to him in lieu of ancestral land retained its ancestral character, thereby conferring a birthright upon the plaintiff as a coparcener.

12. It is submitted that the alleged gift deed dated 03.08.1967, executed by Hemraj in favour of defendant Nos. 2 to 4, is void and non est in law insofar as it purports to transfer the entire coparcenary property without legal necessity or consent of other coparceners, and therefore could not confer any valid title upon the donees or subsequent transferees.

13. It is further argued that the plea of custom set up by the defendants, to the effect that the parties are governed by Aroda tribal custom excluding the concept of coparcenary, has neither been specifically pleaded nor duly proved by cogent evidence, and cannot override the settled principles of Hindu law governing ancestral property. It is also contended that the finding of limitation and estoppel recorded by the courts below is erroneous, as a void transaction can be challenged at any time and mere delay or silence does not validate an

illegal transfer of coparcenary property.

14. With respect to the subsequent vendees, it is submitted that they cannot claim protection under Section 41 of the Transfer of Property Act as the foundational title itself being void, the doctrine of ostensible ownership is inapplicable, and the conditions precedent for invoking such protection, including due diligence and consent of the real owner, are not satisfied.

15. Per contra, learned counsel for the respondents has supported the concurrent findings recorded by the courts below and contends that no substantial question of law arises for consideration in the present appeal. It is submitted that the property in question was self-acquired property of Hemraj and there is no reliable evidence to establish its ancestral or coparcenary character, nor is there any material to show existence of a joint Hindu family with coparcenary rights. It is further contended that the parties are governed by a well-established custom prevalent among the Aroda agricultural tribe of Dera Ghazi Khan, under which sons do not acquire any right by birth in the property of the father, and therefore the concept of coparcenary is inapplicable.

16. It is urged that Hemraj, being rightful owner of the property, validly gifted the same to defendant Nos. 2 to 4, particularly in recognition of services rendered and repayment of debts, and the said transfer has been duly acted upon and followed by long-standing possession. It is further submitted that the plaintiff remained silent for over a decade despite knowledge of the transaction and is thus barred by limitation and estopped by his conduct and acquiescence.

17. It is also contended that the subsequent purchasers are bona fide purchasers for value without notice and are entitled to protection under Section 41 of the Transfer of Property Act, having purchased the property

after due verification of title from ostensible owners, and therefore their rights cannot be unsettled at this belated stage.

Substantial Question Of Law

Whether the Courts below committed a patent error of law in disregarding the ancestral/coparcenary character of the suit property and consequently upholding the impugned gift deed and subsequent alienations made by the Karta beyond his legal authority?

Analysis

18. Having heard learned counsel for the parties and upon perusal of the pleadings, oral evidence, documentary evidence as well as the judgments passed by both the Courts below, this Court is of the considered opinion that the impugned judgments and decrees suffer from patent illegality, misreading of evidence and erroneous application of settled principles governing ancestral/coparcenary property.

19. The principal controversy in the present Regular Second Appeals pertains to Issue No.1 framed by the learned trial Court, namely:

“Whether the suit property is coparcenary property of the plaintiff qua defendant No.1 and defendants No.2 to 4?”

20. It shall not be incorrect to observe that the entire lis between the parties substantially revolves around the determination of the aforesaid issue, as the validity of the gift deed dated 03.08.1967 and the subsequent alienations directly depends upon the nature of the property in the hands of Hem Raj.

21. The record demonstrates that the plaintiff-appellant Chhakkan Lal specifically pleaded that Hem Raj, father of the parties, had migrated from District Dera Ghazi Khan, West Pakistan, and the land measuring 92 Kanals 7 Marlas situated in Village Jhamwas, Tehsil Nuh, District Gurgaon, had been

allotted to him in lieu of ancestral property left behind in Pakistan. The consistent stand of the plaintiff throughout was that the allotment retained the character of the original ancestral estate and consequently constituted coparcenary property in the hands of Hem Raj qua his sons, including the plaintiff.

22. The learned trial Court, while deciding Issue No.1 against the plaintiff, proceeded primarily on the reasoning that the earlier rights of Hem Raj in Pakistan were occupancy tenancy rights and that conferment of ownership subsequently rendered the property self-acquired in his hands. Reliance was placed upon *Faqiria v. Mst. Rajo AIR 1957 Punjab 79*. The lower Appellate Court also affirmed the said reasoning.

23. However, this Court finds that both the Courts below failed to correctly appreciate the true legal character of allotment of evacuee/compensation property received in lieu of ancestral holdings left behind in Pakistan. The record reveals that the land situated at Village Jhamwas was not an independent acquisition of Hem Raj, but was allotted in lieu of ancestral property abandoned in Pakistan by Lala Ram and Hem Raj during partition. The appellant/plaintiff had specifically relied upon rehabilitation decision dated 18.10.1957 (Ex. P-9), sanad allotment Ex. PZ, mutation No.207, Ex. P-6/A, Ex. P-17 and Ex. P-18 to demonstrate the direct nexus between the ancestral properties left in Pakistan and the allotment subsequently made in India. The Ex. P-9/A further showed that land left in villages Vakandhal, Nausara, Ishlampur, Basti Dhandla, Talsumali and Dhadla formed the basis of rehabilitation allotment, whereafter corresponding land came to be allotted at Village Jhamwas after statutory deductions.

24. Most significantly, the earlier judgment, as placed on record inter partes pertaining to connected rehabilitation property situated at Village

Gudha. Vide judgment dated 06.06.1972 passed by the learned Sub Judge Ist Class, Charkhi Dadri (Ex. P-10), while adjudicating challenge to gift deed dated 04.03.1965 executed by Hem Raj in favour of Chhakkan Lal, the Court expressly held that the parties constituted a Joint Hindu Family and were coparceners in the rehabilitation property. The said judgment was upheld upto this Court vide Ex. P-13 dated 22.01.1976. Thus, a binding judicial finding had already attained finality between the same parties that property allotted in lieu of ancestral property left in Pakistan retained coparcenary character.

25. Curiously, it is also noted that the same defendants who had earlier asserted the ancestral nature of rehabilitation property while challenging the gift deed in favour of Chhakkan Lal adopted a completely contradictory stand in the present proceedings by contending that the Jhamwas property was self-acquired property of Hem Raj. Such inconsistent pleas, in relation to the same source of title and same rehabilitation pool, could not legally have been permitted. The findings recorded by the Courts below, therefore, suffer from manifest inconsistency and overlook settled principles prohibiting approbation and reprobation.

26. The oral and documentary evidence relied upon by the appellant also remained substantially un rebutted. Statements of Hem Raj (Ex. P-12), Dev Raj (Ex. P-2), Jetha Nand (Ex. P-18) along with Exhibits P-3/D and P-19 consistently supported the appellant's case that the allotment at Village Jhamwas was substitutionary rehabilitation allotment arising from ancestral property abandoned in Pakistan. No evidence whatsoever was produced by the defendants to establish that Hem Raj had acquired the suit property from any independent source or separate nucleus.

27. The Courts below further failed to appreciate that rehabilitation allotment made by the Custodian Department was compensatory in nature and

merely represented substitution of the property left in Pakistan. Once the original property possessed ancestral/coparcenary character, the substituted property retained the same legal incidents in the hands of the allottee. The mere conferment of ownership rights through sanad allotment did not convert ancestral property into self-acquired property.

28. The existing legal position is that a property flowing from ancestral nucleus and substitution thereof retains its ancestral character unless specifically proved otherwise. This Court in several decisions concerning rehabilitation allotments has recognized continuity of character where property allotted in India is traceable to ancestral holdings abandoned in Pakistan. Reliance may be placed on “**Maya Ram and ors vs Satnam Singh and ors.1967 AIR Punjab and Haryana 353**”, wherein it was held that:

“In this respect we find that proprietary rights were granted to Ajmer Singh in the land in dispute because his father had owned land in areas now forming part of West Pakistan and it was in lieu of the land abandoned by Bishen Singh consequent upon the partition of the country that Ajmer Singh got the proprietary rights in the land in dispute. In the circumstances the land in dispute should partake the character of the land in lieu of which it was given to Ajmer Singh. As the land left in West Pakistan, in lieu of which the proprietary rights in the land in dispute were conferred upon Ajmer Singh, was admittedly ancestral of Ajmer Singh, having been held by his father Bishen Singh, the land in dispute should be held to be ancestral of Ajmer Singh qua his son. The question, as to whether in the case of an exchange the land received in exchange is ancestral if the land given in exchange was ancestral, arose in Ghanus v. Imam Din and others, 57 P.R. 1910, and was answered by Shah Din, J. in the affirmative. Same view was taken by a Division Bench (Scott-Smith and Martineau, JJ.) in Thakur, etc. v. Ram Singh, 120 P.R. 1918 and Abdul Raoof and Harrison, JJ.in Mokha and others v. Dhan Singh, 63 I.C. 719. In Sardar and

another v. Pir Muhammad and another, 3 P.L.R. 1901, it was held by Harris and Rattigan, JJ. that where the amount of compensation awarded by the Government for ancestral land is used to purchase other land the property so purchased becomes ancestral property as the transaction is in the nature of an exchange. In our opinion, the principle enunciated in the above cases, even though they were of exchange, would hold good in the present case also as the proprietary rights in the land in dispute were conferred upon Ajmer Singh in lieu of the land left by his father in areas now forming part of West Pakistan.”

29. However, this court is of the opinion that the Courts below completely failed to appreciate that no evidence whatsoever was led by the defendants to establish that the allotment constituted independent self-acquisition of Hem Raj severed from the ancestral lineage. Mere conferment of ownership rights by operation of law does not obliterate the ancestral character of property inherited or substituted from ancestral sources.

30. Furthermore, the plea regarding agricultural Aroda custom excluding coparcenary rights was neither specifically proved through cogent customary evidence nor supported by any binding custom record. The burden to prove exclusion of ordinary Hindu law squarely rested upon the defendants, which remained undischarged.

31. The trial Court itself noticed that the entire case hinged upon the determination as to whether the property was coparcenary property or not. Once the foundation regarding ancestral nature of the property is established, the inevitable legal consequence follows that Hem Raj, as Karta, could not have gifted away the entire coparcenary estate in favour of selected sons to the complete exclusion of the plaintiff.

32. The gift deed dated 03.08.1967 purported to transfer the entirety of the suit land measuring 92 Kanals 7 Marlas along with plot No.95/2

measuring 319 square yards exclusively in favour of defendant Nos.2 to 4 and excluding the petitioner. Such wholesale alienation of coparcenary property, without consent of coparceners and without proof of legal necessity or benefit of estate, is clearly unsustainable in law.

33. Reference in this regard may be made to *Thamma Venkata Subbamma v. Thamma Rattamma 1987 INSC 151*, wherein the Supreme Court held that a Karta cannot gift away coparcenary property except for limited recognized purposes. Relevant extract is as under:

12. There is a long catena of decisions holding that a gift by a coparcener of his undivided interest in the coparcenary property is void. It is not necessary to refer to all these decisions. Instead, we may refer to the following statement of law in Mayne's Hindu Law, Eleventh Edition, Article 382 : -

"It is now equally well settled in all the Provinces that a gift or devise by a coparcener in a Mitakshara family of his undivided interest is wholly invalid A coparcener cannot make a gift of his undivided interest in the family property, movable or immovable, either to a stranger or to a relative except for purposes warranted by special texts."

13. We may also refer to a Passage from Mulla's Hindu Law, Fifteenth Edition, Article 258, which is as follows : -

"Gift of undivided interest. - (1) According to the Mitakshara law as applied in all the States, no coparcener can dispose of his undivided interest in coparcenary property by gift. Such transaction being void altogether there is no estoppel or other kind of personal bar which preclude the donor from asserting his right to recover the transferred property. He may, however, make a gift of his interest with the consent of the other coparceners."

34. The justification advanced by the defendants that defendant Nos.2 to 4 had rendered services to Hem Raj and repaid debts to the extent of Rs.20,000/- also does not validate transfer of the entire coparcenary estate. At best, such considerations may have entitled the donees to equitable adjustment or reimbursement, but could not extinguish the birthright of the plaintiff in ancestral property.

35. The findings recorded by the Courts below under Issue No.3

regarding validity of the gift deed and subsequent alienations are thus vitiated being consequential to the erroneous adjudication under Issue No.1.

36. Equally unsustainable are the findings regarding protection under Section 41 of the Transfer of Property Act. Once the suit property is held to be coparcenary property, defendants No.2 to 4 could not transfer interests beyond their own undivided shares in absence of legal necessity or benefit of estate. The subsequent purchasers merely stepped into the shoes of their vendors and acquired no better title. The hurried alienations effected after the earlier adjudication reflected clear notice regarding the disputed nature and ancestral character of the property.

37. It is a settled legal position that a transferee cannot acquire a better title than that possessed by the transferor. Therefore, the plea of protection under Section 41 of the Transfer of Property Act, 1882 raised by defendant Nos.6 to 13 is also liable to be rejected. Consequently, the findings of the Courts below granting protection to the subsequent purchasers are unsustainable in law.

38. Accordingly, the substantial question of law framed by this Court is answered in favour of the appellant-plaintiff and against the respondents. It is held that the Courts below committed a patent error of law in wrongly adjudicating Issue No.1 and in holding the suit property to be non-ancestral/self-acquired property despite overwhelming material demonstrating its ancestral/coparcenary character.

39. Consequently, the present Regular Second Appeals are allowed. The judgments and decrees dated 03.12.1987 passed by the learned Sub Judge Ist Class, Gurgaon and dated 09.03.1989 passed by the learned Additional District Judge, Gurgaon are hereby set aside. The gift deed dated 03.08.1967

executed by Hem Raj in favour of defendant Nos.2 to 4, along with the consequential sale deeds executed in favour of defendant Nos.6 to 13, is declared illegal, void and not binding upon the coparcenary rights of the plaintiff-appellant.

40. Resultantly, the suit filed by the plaintiff-appellant Chhakkan Lal stands decreed. The plaintiff shall be entitled to possession, or in the alternative joint possession, of the suit property, as prayed for in the plaint.

41. Decree sheet be prepared accordingly.

42. The Regular Second Appeals are allowed in the aforesaid terms.

43. Pending applications, if any, shall also stand disposed of.

(SANDEEP MOUDGIL)
JUDGE

19.05.2026

Meenu

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*