



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**RSA-2509-1991 (O&M)
Reserved on: 18.12.2024
Date of decision: 14.01.2025**

VASAKHA SINGH (DECEASED) THROUGH LRS.

..Appellants

Versus

JIT SINGH AND ANOTHER

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Preetwinder Singh Dhaliwal, Advocate
for the appellant.

Mr. Vikrant Bhardwaj, Advocate
for Mr. Ashok Singla, Advocate
for respondent No.1.

ANIL KSHETARPAL, J.

CM-11901-C-2024

1. For the reasons stated in the application which is supported by an affidavit, the application for bringing on record the legal representatives of deceased late Sh. Vasakha Singh [appellant], is allowed, subject to all the just exceptions.

2. CM stands disposed of.

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3. In this regular second appeal, the defendant assails the correctness of concurrent findings of fact arrived at by the Courts below while decreeing plaintiff's suit for grant of decree of declaration of the fact that the plaintiff is owner in possession of share of Sh. Daman Singh in the land measuring 91 kanal and 13 marlas situated in village Sehna, Tehsil



Barnala on the basis of Will dated 13.03.1984 and the sale deed dated 29.11.1984 is not binding on plaintiff's right with a consequential relief of permanent and perpetual injunction restraining the defendants from interfering with the possession of the plaintiff with respect to land measuring 18 kanal and 12 marlas.

4. In this case, the dispute is with regard to inheritance of the property left behind by Sh. Daman Singh, who died on 27.09.1984. On the one hand, Smt. Jangir Kaur claims to be widow who has executed a sale deed in favour of Sh. Vasakha Singh on 29.11.1984, whereas, on the other hand Sh. Jit Singh claims the property on the basis of Will dated 13.03.1984. Sh. Jit Singh is grandson of Sh. Daman Singh's sister. Sh. Jit Singh claimed that Sh. Daman Singh was not married.

5. The execution of the Will has been proved by examining PW-2 Sh. Hari Ram scribe, attesting witnesses, PW-3 Gurnam Singh, Nambardar of the village Sehna and PW-4 Sh. Gurdev Singh member of the Panchayat. Thumb impression of Sh. Daman Singh appended on the Will has been proved by examining Sh. Tiwan K.S. Puri, hand writing and fingerprint expert, who compared the thumb impression of Sh. Daman Singh on the Will and mortgage deed. Both the Courts have held that Sh. Daman Singh was unmarried and Smt. Jangir Kaur is not proved to be the widow. The testamentary disposition of the property by Sh. Daman Singh has been proved.

6. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

7. It may be noted here that in the first round, this appeal was allowed on 10.05.1996, however, it was set aside by the Hon'ble Supreme Court vide order dated 24.07.2003, hence, the appeal has come up for



re-hearing. This Court has also studied the judgment passed on 10.05.1996. The learned counsel representing the appellant has contended that the judgment dated 10.05.1996, is required to be reiterated as it has been set aside only on the ground that the substantial question of law was not culled out. He submitted that cogent reasons have been given in the judgment dated 10.05.1996, which has been set aside only on technical ground.

8. Per contra, learned counsel representing the respondent has contended that there is no scope for interference in the second appeal and the judgment which has already been set aside cannot be relied upon.

9. This Court has considered the submission put forth by learned counsel representing the parties.

10. As far as execution of the Will dated 13.03.1984, is concerned, two attesting witnesses namely Sh. Gurnam Singh and Sh. Gurdev Singh have supported the Will. There were as many as four attesting witnesses of the Will including Sh. Mukthiar Singh, who appeared as DW-4 and supported defendant's case, however, in cross-examination, he admitted that the Will was scribed by Sh. Hari Ram. Thus, it is proved that Sh. Hari Ram scribed the Will. Despite lengthy cross-examination of Sh. Gurnam Singh and Sh. Gurdev Singh credibility of the depositions could not be impeached.

11. Though, Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh, are not filed under Section 100 of the Code of Civil Procedure, 1908, however, these are filed under Section 41 of the Punjab Courts Act, 1918. A five Judge Bench of the Supreme Court in **Pankajakshi (Dead) through LRs Vs. Chandrika and others, (2016) 6 SCC 157**, has held that Section 41 of the Punjab Courts Act, 1918, would apply, however, the scope of interference under Section 41 of the Punjab Courts Act, 1918, is also limited as held by the Supreme Court in **Randhir Kaur Vs.**



Prithi Pal Singh, 2019 (17) SCC 71, Dhanpat Vs. Sheo Ram (Deceased) through LRs and others, 2020 (16) SCC 209 and Avtar Kaur Vs. Bimla Devi, 2021 (13) SCC 816.

12. Learned counsel representing the appellant has failed to draw the attention of Court to any substantive error in reading or non-reading of material evidence. While hearing the regular second appeal, the Court is not expected to re-appreciate the evidence for the first time while ignoring the findings of fact.

13. The findings of the Courts below that Smt. Jangir Kaur is not proved to be the widow suffers from material irregularity. Both the Courts have ignored document Ex.P-3, submitted by the plaintiff Sh. Jit Singh before the Collector. On the death of Sh. Daman Singh, Sh. Jit Singh filed an application before the Collector in which he categorically admitted that Smt. Jangir Kaur is widow of Sh. Daman Singh. He took a stand that Smt. Jangir Kaur never served or took care of Sh. Daman Singh during his lifetime as she used to reside separately from Sh. Daman Singh. Moreover, Smt. Jangir Kaur has appeared in evidence as DW-2. In the voter list Ex.DC, which was allowed in additional evidence, Smt. Jangir Kaur is recorded as wife of Sh. Daman Singh. The discrepancy in her statement with respect to her age is immaterial because she was a rustic villager who had no exposure to the outside world. Moreover, Sh. Shamsheer Singh DW-3 has also deposed that Smt. Jangir Kaur was married to Sh. Jit Singh. Even Sh. Vasakha Singh stated that Smt. Jangir Kaur was widow of Sh. Daman Singh. When Assistant Collector visited the village for sanctioning mutation, it was stated by the residents including Nambardar and members of Panchayat that Smt. Jangir Kaur was widow of Sh. Daman Singh. Hence, both the Courts have erred on that account.



14. The argument of learned counsel representing the appellant that this Court should rely upon the judgment dated 10.05.1996 is misplaced because the same has already been set aside by the Hon'ble Supreme Court vide order dated 24.07.2003, hence, the judgment which has been already been set aside cannot be relied upon by this Court.

15. Hence, the findings of the Courts below with respect to issue No.3 is set aside, however, the same does not affect the result of the suit. Consequently, the regular second appeal is dismissed.

16. All the pending miscellaneous applications, if any, are also disposed of.

14th January, 2025

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*