



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

226

**RSA-2991-2013 (O&M)
Reserved on: 29.07.2025
Pronounced on:20.08.2025**

Harbans Singh

...Appellant(s)

Vs.

Charanjit Singh and others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Maninder Singh Saini, Advocate for the appellant.

Mr. Sarju Puri, Advocate for the respondents.

NIDHI GUPTA, J.

CM-7021-C-2019

Prayer in the present application under Order 41 Rule 27 read with Section 151 CPC for placing on record the additional evidence to produce and prove the Death Certificate of Jawala Kaur, w/o Dalip Singh, Grandmother of the appellant/plaintiff.

2. Heard.

3. For the reasons mentioned in the application, the same is **allowed** and the Death Certificate of Jawala Kaur is taken on record as Annexure A-1.

RSA-2991-2013 (O&M)

The plaintiff is in second appeal against the concurrent judgments and decrees of the Id. Courts below, whereby the suit filed by



the plaintiff seeking decree of declaration to the effect that plaintiff is owner in possession of land measuring 120 K-15 M (hereinafter “the suit land”); **and** permanent injunction restraining defendants from interfering in peaceful possession of plaintiff over the suit land; **and** in the alternative suit for possession; has been dismissed by both the Courts below.

2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellant is the ‘plaintiff’; and the contesting respondent no.1 is the ‘defendant’.

3. Brief facts of the case as pleaded in the plaint are that Dalip Singh son of Kanhayya Singh was grandfather of the plaintiff and father of the defendants. Contesting defendant No.1 is the son of Dalip Singh; and defendants no.2 and 3 namely Kirpal Kaur and Parkash Kaur respectively, are the daughters of Dalip Singh. Dalip Singh was owner in possession of suit land. It was pleaded case of the plaintiff that Dalip Singh grandfather, out of natural love and affection and in lieu of services rendered by the plaintiff to Dalip Singh, had executed a Will dated 14.10.1958 registered on 16.10.1958 thereby bequeathing the suit land to the plaintiff. Dalip Singh had died on 17.11.1958. Since then, plaintiff is owner in possession of the suit land. It was further averred that on the basis of the said Will, a Probate had already been granted in favour of the plaintiff by the Court of learned District Judge, Jalandhar vide order dated 27.11.1963. Thus, the Will had been upheld in the Probate proceedings; and defendants had no right, title or interest in the suit property. However, defendant No.1 in connivance with revenue staff had got the mutation sanctioned in his



favour regarding estate of Dalip Singh. Taking undue advantage of the wrong revenue entries, defendant No. 1 was declaring himself to be the owner of the suit land and had threatened to dispossess plaintiff from the suit land and to alienate the same forcibly. Hence, present suit was filed on 24.07.2000.

4. Upon notice, Defendant No.2 did not appear despite service and was proceeded against exparte. Defendant No.3 was reported to have died.

5. The defendant No. 1 had appeared and contested the claim of the plaintiff by filing written statement stating the suit to be barred under Order II Rule 2 CPC as plaintiff had previously filed a suit for permanent injunction, bearing Civil Suit No. 141 of 1997 titled as **Harbans Singh vs. Charanjit Singh** (Ex.DA) in the Court of Additional Civil Judge (Sr. Divn.), Nawanshahr, which was decided on 2.5.2000 and in the said suit, the alleged Will was also a matter in dispute. It was further contended that in suit bearing No. 141/97, plaintiff had even admitted the ownership of the defendant No. 1 to the extent of 1/2 share in the suit land.

6. It was further averred in the written statement that plaintiff is barred by his act and conduct to file the present suit and has not come to the Court with clean hands as the issue regarding the very same suit property was decided in case No. 347/59 titled as **Charanjit Singh Vs. Harbans Singh** by Sub Judge, Nawanshahr vide judgment and decree dated 25.12.1959; on the basis of which mutation No. 4249 had been sanctioned on 21.4.1960. Thereafter, defendant is in possession of his



share to the extent of 1/2 share in the suit land. Further even if there is any Probate of Will, the rights of defendant No. 1 are not affected in lieu of the decision in case 347/59. The execution of the Will was also denied. It was averred that even if there is any Will, the same is result of fraud and misrepresentation and is a fictitious document, and did not affect the rights of the defendant. The remaining averments were denied, and it was averred that the plaintiff and the replying defendant are owners in possession to the extent of 1/2 share of the suit property. A prayer for dismissal of the suit was made.

7. Plaintiff filed replication controverting the assertions made by defendant No. 1 in his written statement and reiterated those in the plaint. It was stated that defendant No. 1 had not inherited any share in the estate of Dalip Singh as he was settled in foreign country as permanent citizen and had married European lady against the wishes of Dalip Singh.

8. On the basis of pleadings of the parties, the following issues were framed by learned trial Court:-

“1. Whether the plaintiff is owner in possession of the suit land? OPP

2. Whether the plaintiff is entitled to the declaration as prayed for? OPP

3. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP

4. Whether the plaintiff is entitled to the possession of the suit land by way of alternative relief? OPP



5. *Whether Dalip Singh executed registered Will dated 14.10.1958 registered on 16.10.1958? OPP*
6. *Whether the Probate date 27.11.1963 has been granted on the Will?OPP*
7. *Whether the suit is not maintainable in the present form? OPD*
8. *Whether the suit is barred under Order 2 Rule 2 CPC? OPD*
9. *Whether the plaintiff is barred by his act and conduct from filing the suit? OPD*
10. *Whether the plaintiff has not come to the court with clean hands? If so, its effect? OPD*
11. *Relief.”*

9. Upon appraisal of the pleadings and the evidence led by the parties, the Id. trial Court dismissed the suit of the plaintiff with costs vide judgment and decree dated 01.02.2010. The appeal filed by the plaintiff was also dismissed by the Additional District Judge, SBS Nagar vide judgment and decree dated 16.05.2013. Hence, the present second appeal by the plaintiff.

10. It is *inter alia* submitted by learned counsel for the plaintiff the learned courts below have non-suited the plaintiff on the basis of the following 3 presumptions, that: -

- a. Plaintiff had failed to place on record the decree dated 25.12.1959;
- b. The defendant and plaintiff had jointly sold some land; and
- c. There was recital in the Will that the plaintiff shall inherit the entire suit land upon demise of Raj Kaur and Jwala Kaur; and plaintiff had placed no proof on record of their death.



11. Ld. counsel for the plaintiff submits that all of the above said three assumptions made by the learned Courts below against the plaintiff were erroneous. In respect of the alleged judgment and decree dated 25.12.1959, it is submitted that the said judgment and decree had been relied upon by the defendant No.1. As such, onus was upon defendant No.1 to produce the same. However, neither any such judgment has been exhibited nor produced on the record; nor any judicial record qua the same has been produced by the defendant. Therefore, the reliance placed by the Ld. Courts below on the said judgment in non-suiting the plaintiff was totally against the law. It is submitted that therefore, also, it cannot be held that the plaintiff has concealed regarding the said alleged judgment dated 25.12.1959, as the same had not been produced by the defendant himself. The Ld. Courts below while deciding Issues No. 5 & 6 have wrongly relied upon the judgment and decree dated 25.12.1959 which is not even exhibited, and which is not even part of the record. And while deciding Issues No. 1 to 4 pertaining to possession, the Ld. trial Court has held that since there is a concealment of the judgment and decree dated 25.12.1959, therefore, the appellant/plaintiff is not entitled to any relief. Ld. counsel vehemently contends that the Ld. Courts below were in patent error in holding as above and could not have relied upon the alleged judgment dated 25.12.1959, as the same has not even been brought on record by the defendant No.1.

12. As regards the alleged joint selling of suit land by the plaintiff and defendant, Ld. counsel forcefully submits that vide the said sale deeds,



no property which was subject matter of the Will was sold. Thus, there was no question of acknowledging any right of the defendant. Thus, conclusion of the courts below to this effect is based on conjectures and surmises.

13. The other point which was taken against the appellant was that the Will dated 14.10.1958 was executed in favour of the appellant; and daughter-in-law Raj Kaur and wife Jawala Kaur of Dalip Singh had been granted life time interest. It is submitted that the plaintiff had specifically stated that Raj Kaur has died; and Jawala Kaur had never challenged the Probate/Letter of Administration granted in favour of the appellant. Therefore, there was no necessity to bring on record Raj Kaur or Jawala Kaur as parties or their death certificates as the same has been duly proved. In any event, as evident from Annexure A-1, Jawala Kaur has expired on 19.9.1972. Thus, adverse inference could not have been drawn against the plaintiff.

14. It is submitted that, therefore, from the above facts it is evident that the three grounds on the basis of which the learned courts below had dismissed the suit of the plaintiff, were erroneous.

15. Ld. Counsel further submits that the learned Courts below were in further error in not appreciating that rights of the parties already stood adjudicated upon by the learned Probate Court vide judgment and decree dated 27.11.1963 Ex.P4 in which registered Will dated 14/16.10.1958 was held to be valid. The Letter of Administration dated 27.11.1963 Ex.P3 was duly given to the plaintiff. However, merely on a technicality Probate was denied to the plaintiff on the ground that there



was no executor. It is argued that irrespective of that admittedly, Letter of Administration Ex.P3 was issued in favour of the plaintiff. Thus, once the Will has been upheld and the Letter of Administration has also been granted, the impugned judgments are absolutely without any sound reasoning and are also against law. Moreover, the judgment and decree dated 27.11.1963 given by the District Judge, Jalandhar was challenged in FAO No. 31 of 1964 by defendant no.3/Parkash Kaur, and the same was dismissed for non-prosecution on 16.2.1970.

16. It is accordingly prayed that the present Second Appeal be allowed; and the judgments and decrees of the Courts below be set aside.

17. *Per contra*, learned counsel for the defendant-respondent No.1 vehemently opposes submissions made on behalf of the plaintiff and submits that the present suit was barred by res judicata *in-as-much* as the plaintiff had filed the previous Civil Suit No. 141 of 1997 seeking permanent injunction against the defendants in respect of the suit property. It is contended that all that has been pleaded by the plaintiff in the present suit was available to the plaintiff to plead even in the previous suit. The plaintiff failed to include the whole relief of declaration based on the Will in question in the previous civil suit No.141 of 1997, although it pertained to the same land. Therefore, the suit is hit by Order II Rule 2 CPC as the cause of action now sought to be invoked by the plaintiff was available to him at the time of filing the previous civil action also. Not only this, factum of filing of the previous suit has been concealed by the



plaintiff in the present suit. Therefore, Order II Rule 2 CPC barred suit of the plaintiff.

18. Learned counsel for the defendant further submits that in the previous Civil Suit No. 141 of 1997 vide order dated 02.05.2000 Ex.DA (at page 275 of the LCR), GPA of the plaintiff has categorically admitted the share of defendant No. 1. It is submitted that GPA of the plaintiff namely, Satnam Singh has again admitted the share of the parties in Ex.DB. Even in Ex.DC (at page 283 of the LCR), similar statement has been made by Satnam Singh. Ld. counsel contends that in view of these admissions on behalf of the plaintiff that the defendant was owner of the suit property to the extent of half share, the suit of the plaintiff was rightly dismissed.

19. Learned counsel submits that furthermore defendant no.1 had previously filed a case No. 347 of 1959 titled as **Charanjit Singh Vs. Harbans Singh** before the Special Judge, Nawashahr which was decided vide judgment and decree dated 25.12.1959. On the basis of the said decree dated 25.12.1959, Mutation No.4249 of estate of Dalip Singh was sanctioned on 21.04.1960. The certified copy of Mutation No. 4249 was duly placed on record by the defendant and the same is available at page 315 of the LCR. It is pointed out that there are 2 kinds of properties being parat patwar and parat sarkar; and the present being parat sarkar, presumption under Section 35 of the Indian Evidence Act would come into play. Moreover, defendant No. 1 is in possession of his share i.e. half share in the suit land in pursuance to and on the basis of the said mutation. It is argued that it is for this very reason that the plaintiff/his GPA had



admitted half share of defendant No.1 in the suit land in the previous suit No. 141 of 1997. It is submitted that therefore, non-production of the decree dated 25.12.1959 cannot adversely affect the case of the defendant. It further follows that Will of 1958 had been superseded and had died its death in the face of decree of 1959 as rights of parties stood crystallized by decree of 1959. Moreover, the decree dated 25.12.1959, passed in Suit No.347 by Sub-Judge, Nawanshahr and the decision dated 02.05.2000, passed in Civil Suit No.141/1997 had attained finality in the absence of any challenge by the plaintiff. The same are, therefore, binding upon the plaintiff. Neither the said decree nor the mutation has been challenged by the plaintiff, either in the previous suit or in the present one.

20. Moreover, the plaintiff and the defendant had jointly been selling the suit land vide Sale Deed dated 08.02.1995 Ex.DW3/1; Sale Deed dated 17.02.1995 Ex.DW3/3; Sale Deed dated 18.03.1997 Ex.DW3/5; and Sale Deed dated 27.11.1995 Ex.DW5/1 and 17.02.1995 Ex.DW5/2. It is contended that argument of the plaintiff that the said Sale Deeds did not pertain to the suit land is bogus as admittedly the only property in *lis* is the estate of Dalip Singh. Therefore, the Sale Deeds are with regard to the suit property only. It is further contended that the plaintiff is barred by estoppel and his own act and conduct as he has been jointly selling land along with defendant Charanjit Singh in the years 1995 and 1997, prior to the filing of the present suit in the year 2000. The plaintiff has also not



challenged the said sale deeds and their consequential mutations by impleading the vendees of the sale deeds in the present suit.

21. It is also submitted that it was a condition of the Will that the share of Jawala Kaur and Raj Kaur would devolve upon the plaintiff only after their death. However, no death certificate or any other evidence has been brought on record by the plaintiff which could indicate that either Jawala Kaur and/or Raj Kaur had expired. The plaintiff did not produce any evidence to establish the exact dates of death of Jawala Kaur and Raj Kaur.

22. In respect of the Probate proceedings, learned counsel for the defendant submits that even as per the judgment passed in Probate proceedings, the previous decree of 25.12.1959 and the consequential Mutation No.4249 were never set aside or even discussed by the Probate Court. Moreover, no Probate was granted to the plaintiff in respect of the Will set up by him and only a letter of administration was granted. Rather, the grant of Probate was specifically declined. Further still, there is no evidence on record that the plaintiff had fulfilled the conditions laid down by the Probate Court while deciding the matter. Once the Probate Court had declined to grant the Probate, the plaintiff was obligated to prove the Will in accordance with Section 63 of the Indian Succession Act and Section 68 of the Evidence Act. Even otherwise, the presumption under Section 90 of the Evidence Act is available only to the original document, which is not the case here. It is reiterated that the rights of the plaintiff to succeed on the basis of Will dated 14.10.1958 stand eclipsed by the decree dated 25.12.1959, on the basis whereof, the Mutation No.4249



was sanctioned in favour of both the parties to the extent of ½ share each. The plaintiff has failed to challenge the said decision and its Mutation as they cast a cloud over his rights on the basis of the Will in question. Accordingly, dismissal of the present appeal is prayed for.

23. In rebuttal, learned counsel for the appellant/plaintiff submits that the Mutation of 1960 relied upon by the defendant stood superseded by the Letter of Administration of 1963. It is further submitted that the admission of the GPA of the plaintiff was not in respect of 'share' of the defendant; and statement was made only to the extent that there will be no interference by the plaintiff. In regard to plea of applicability of Order II Rule 2 CPC raised by the defendant, learned counsel for the plaintiff submits that Order II Rule 2 CPC would be applicable only if the defendant demonstrates and establishes by placing on record the relevant pleadings of the previous suit to satisfactorily establish by evidence the identical cause of action in the 2 suits. It is contended that plea of bar under Order 2 Rule 2(3) CPC has to be established satisfactorily and cannot be presumed merely on the basis of inferential reasoning. In support of his contentions, learned counsel relies upon judgment passed by Large Bench of Hon'ble Supreme Court in ***Gurbux Singh vs. Bhooralal (SC)***, ***Law Finder Doc Id # 111073***. Learned counsel also relies upon judgment of Hon'ble Supreme Court in ***Anathula Sudhakar vs. P. Buchi Reddy (Dead) by LRs and others (2008) 4 Supreme Court Cases 594***; and judgment of this Court in ***Bhup Singh vs. Raj Singh @ Rajinder Singh (P&H)***; ***Law Finder Doc Id # 1229117***; wherein it is held that filing of



subsequent suit for declaration after suit for permanent injunction is not barred. Ld. counsel also relies upon judgment of Hon'ble Supreme Court in ***Sawarni (Smt.) vs. Inder Kaur (1996) 6 Supreme Court Cases 223;*** wherein it is held that mutation of name in revenue records would not create or extinguish the title nor has any presumptive value on title; and it only entitled the person concerned to pay land revenue. Learned counsel for the plaintiff has also relied upon judgment passed by a Coordinate Bench of this Court in ***Inder Singh vs. Sumitra and others 2019 SCC Online P&H 6872;*** wherein it has been held that un-exhibited and un-proved documents cannot be read in evidence. Lastly learned counsel relies upon judgment of Hon'ble Supreme Court passed in ***Crystal Developers vs. Smt. Asha Lata Ghosh (Dead) Thr. Lrs. (SC): Law Finder Doc Id # 78384*** to submit that there is no difference in Grant of Probate or Letter of Administration except Probate comes to effect upon death of testator; whereas Letter of Administration comes to effect from the date of its issuance.

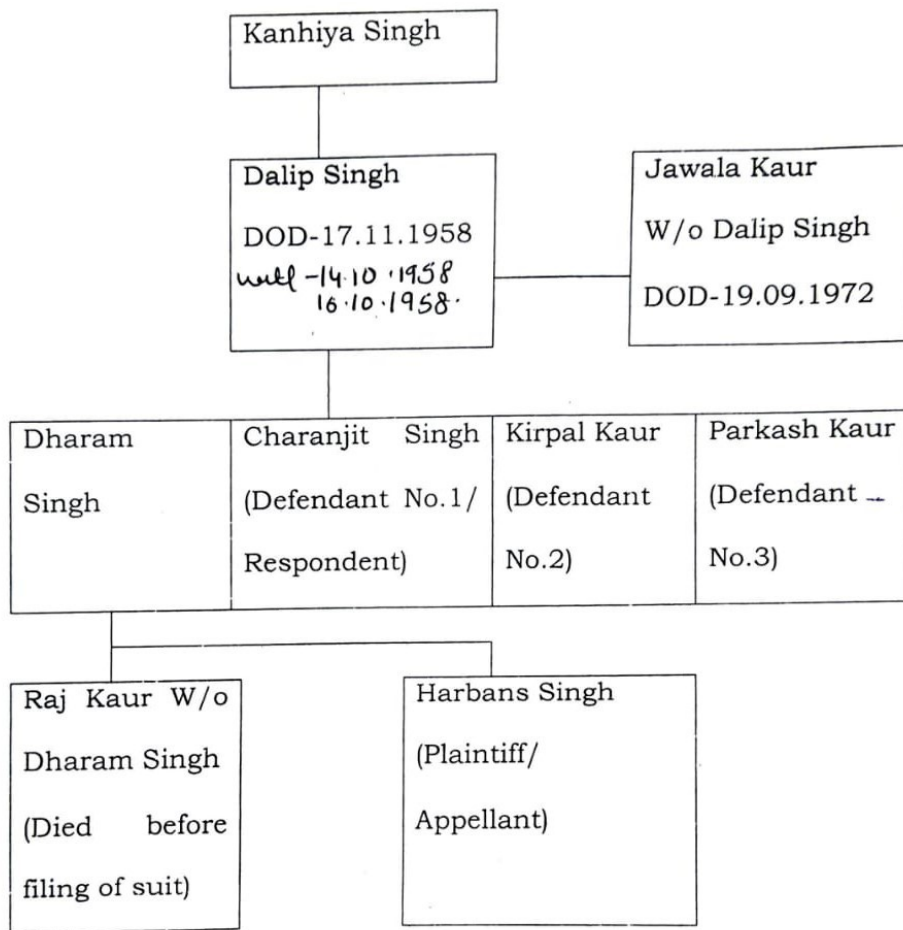
24. Learned counsel for defendant No.1 counters the above submissions of the plaintiff and refers to Letter of Administration dated 27.11.1963 Ex.P3 to submit that Probate has been specifically denied to the plaintiff. Learned counsel refers to the findings recorded in issue no.2 that plaintiff has not been found entitled to grant of Probate. It is pointed out that even no appeal was filed by the plaintiff against Letter of Administration. It is further submitted that even if it is assumed that there was a judgment of 1963, the same was never acted upon; and therefore,



the plaintiff's rights continued to be eclipsed by the decree of 1959. He accordingly prays for dismissal of the present appeal.

25. No other argument is raised on behalf of learned counsel for the parties. I have heard learned counsel and perused the case file alongwith the LCR in great detail. I have given my very thoughtful consideration to the rival submissions made on behalf of both the parties.

26. For the proper appreciation of the dispute at hand, following pedigree table will be helpful:-



27. Given the long history of dispute, it will also be helpful to view the sequence of events in the following chronological order: –



14.10.1958: Dalip Singh, grandfather of the plaintiff and father of the defendants, executed a registered Will (Ex.P-2) [registered on 16.10.1958] with respect to land measuring 120 Kanal 15 Marla. The Will provided that in case his other son Charanjit Singh, defendant-respondent No. 1 lives permanently in village Urapar, then he will be entitled to 1/2 share; otherwise plaintiff Harbans Singh, Raj Kaur (daughter-in-law) and Jawala Kaur (wife) of Dalip Singh, shall inherit; but Raj Kaur and Jawala Kaur shall only have life interest with no right to alienate.

27.11.1963: Harbans Singh and Raj Kaur filed an application for grant of Probate of the said Will (Ex.P2) impleading Charanjit Singh/defendant no.1, Jawala Kaur, Kirpal Kaur/defendant no.2 and Parkash Kaur/defendant no.3, as respondents (Ex.P4). The aforesaid application was partially allowed in as much as the Will was held to be proved under Issue No. 1. However, the Probate was not granted on the ground that the executor in the Will has not been named; whereas, Letter of Administration was granted. This Letter Administration was further amended vide order dated 05.03.1964 (Ex.P3).

16.2.1970: Appeal filed by Prakash Kaur/defendant no.3 against the abovesaid judgment of Id. District Judge, Jalandhar was dismissed in default, vide order dated 16.02.1970 (Ex.P5). However, the mutation of the land was sanctioned on the basis of alleged compromise (not exhibited) in the Civil Suit in the year 1959 in equal share i.e. half in favour of Harbans Singh, Raj Kaur; and half in favour of Charanjit Singh.

19.07.2000: Plaintiff had appointed his General Power of Attorney on dated 19.07.2000.



24.07.2000: Plaintiff-appellant filed the present suit for declaration that he is owner in possession of land measuring 120 Kanal 15 Marla, with consequential relief of permanent injunction restraining the defendants from interfering in the possession of the plaintiff or alienating the same in any manner. In the alternative, relief of possession was also sought.

16.11.2000: Written statement was filed denying the existence of the Will. It was further pleaded that the present suit is barred by Order 2 Rule 2 CPC as earlier, a suit No. 141/97 was filed, titled as "Harbans Singh vs. Charanjit Singh". Defendant further asserted that the plaintiff has failed to disclose the decision between the parties regarding the same property in case No. 347 decided by Sub-Judge, Nawanshahr, on 25.12.1959. It was further pleaded that the mutation was sanctioned on the basis of compromise and decision.

- On behalf of appellant, Harmit Paul appeared as PW1 as attorney of plaintiff Harbans Singh. Avtar Singh appeared as PW2 who claimed that he is tenant of plaintiff Harbans Singh. Parkhar Singh, a resident of the village was also examined as PW3.
- On behalf of defendant, DW1 Mohan Singh appeared as attorney of defendant Charanjit Singh. Charanjit Singh himself appeared as DW2. Sant Ram Kapoor, record-keeper in the office of Sub-Registrar, Nawanshahr appeared as DW3 and produced 3 sale deeds dated 08.02.1995, 17.02.1995 and 18.03.1997 as Ex. DW3/1 (endorsement DW3/2); Ex. DW3/3 (endorsement DW3/4); Ex. DW3/5 (Endorsement as Ex. DW3/6) respectively.



- Talvinder Singh appeared as DW4 who asserted that he has purchased the property along with his brother vide sale deed dated 18.03.1997.
- Nirmal Singh appeared as DW5 who asserted that he has purchased the land vide sale deed dated 27.11.1995 and 17.02.1995 (Ex. DW5/1 & Ex. DW5/2).

1.2.2010: The Id. trial Court dismissed the suit of the plaintiff with costs vide judgment and decree dated 01.02.2010.

16.5.2013: The appeal filed by the plaintiff was also dismissed by the learned Additional District Judge, SBS Nagar vide judgment and decree dated 16.05.2013. Hence, the present second appeal by the plaintiff.

28. After giving my very thoughtful consideration to the rival submissions of the parties, I find merit in the submissions made on behalf of the appellant/plaintiff. The learned Courts below have non-suited the appellant primarily on the basis of decree dated 25.12.1959 cited by and relied upon by the defendant. However, admittedly the said decree has not been produced. It has been duly noted by the learned trial Court in para 29 of the judgment dated 01.02.2010 that *“the judgment dated 25.12.1959 on the basis of which the Mutation was sanctioned, has not been placed on the file.”* Despite that plaintiff has been non-suited; even though the very foundation of the case put forth by the defendant No.1, the very document on which the case of the defendant is based, is not available on record. On repeated Court queries, it has been submitted by learned counsel for the respondents that the said judgment/decree was not available. However, nothing has been brought to the notice of this Court that any application



was moved at any stage by the respondent before the District Court concerned for procuring even a copy of the said decree. Written statement shows that even no averment has been made in this behalf. All that has been mentioned in the written statement in para 4 is that *“That the plaintiff has not come to the court with clean hands as the plaintiff failed to disclose the decision between the parties regarding the same property vide case No. 347 decided by Sub Judge Nawanshahr on 25-12-1959 titled as Charanjit Singh vs. Harbans Singh”*. It is my unambiguous view that merely on the basis of above averment made by respondent No.1, the Id. Courts below could not have dismissed the suit. Since the said decree was being relied upon by the defendant, it was incumbent upon the defendant to produce the same. No adverse inference could have been drawn against the plaintiff for non-production of the decree dated 25.12.1959. At this stage, reference is made to judgment of this Court in case of ***Inder Singh supra*** where it is held that un-exhibited and marked documents cannot be read in evidence, as follows: –

“2.xxxxxxxxxxxxx

(1)xxxxxxxxxxxxx

(2) *Whether it is permissible to reply upon the documents which neither exhibited nor proved?*

xxxxxxxxxxxxx

“12. As regards Question No. (2), it may be mentioned that as per Rules and Orders of Punjab and Haryana High Court, Volume-I, Chapter -I, Part-



9. *Rule 14 provides that the documents produced in evidence are required to be exhibited by the Presiding Judge. Wherever the document produced in evidence are not admitted in evidence, the same shall only be marked as Rule 15. Exhibition of a document only result in admitting such document in evidence. A word of caution were admission of a document in evidence does not amount to proof of the document. The party is required to lead evidence to prove the document in accordance with the Evidence Act. However, unexhibited and marked documents are not to be read in evidence. Accordingly Question No. (2) is also answered.”*

29. It has also been stated by learned counsel for the respondent No.1 that it was not necessary to produce the said decree dated 25.12.1959 as, Mutation No. 4249 was sanctioned on 21.04.1960 on the basis of the said decree, and as per which, parties were shown to be owners to the extent of 50%. However, even the said Mutation has not been exhibited by the defendant. Only a certified copy thereof has been produced without proving the same in accordance with law. Therefore, reliance of the defendant even upon the Mutation of 1960 is misplaced.

30. Moreover, it is undisputed and established position of law that Mutation confers no right or title. I draw support from a Full Bench judgment of this Court rendered in case of ***The State of Punjab vs. Pohnu and another 1985 SCC OnLine P&H 580***; wherein the following question was formulated for consideration by the Hon’ble Full Bench: -

“7. (ii) Whether the production of certified copy of mutation is admissible to prove apart from the factum of sale, its terms and conditions?”



The answer to the above question is given in paras 16 and 17 of the abovesaid judgment, which read as under: -

*“16. On the second question The copy of the mutation being neither primary nor secondary evidence of the sale transaction effected through registered deed would not be admissible in evidence to prove the sale consideration which is essentially one of the terms of the contract of sale. There can be no dispute with the proposition that the entries made in the mutation register by the Patwari in the discharge of his public duties or the orders passed thereon by the Revenue Officer would be a relevant piece of evidence under Section 35 if they contain any fact in issue or a relevant fact. However, so far as proof of the terms of a contract is concerned, Section 91 has specifically barred the leading of any other evidence except the document itself or the secondary evidence whenever permissible under the other provisions of Evidence Act. As a matter of fact, there is no provision in whole of the Punjab Revenue Act which, even, remotely deals with the question of relevancy or admissibility of any piece of evidence. By no stretch of reasoning, therefore, can it be said that the provisions of Section 34 contain a special provision regarding the relevancy or admissibility of entries in the mutation register or the mutation order of the Revenue Officer and as such the question of its overriding the provisions of Sections 65 and 91 of the Evidence Act does not arise at all. There is very little case law on this matter, may be because the provision itself is very clear. Directly this question-came up, for consideration before Godfray, J. in **Maung Tun v. Maung Khan and another, AIR 1925 Rangoon 61**, where the mortgage in the absence of a registered document was, sought to be proved by survey map and a*



*counterfoil of entry in the revenue register. Both the document were held to be Inadmissible, in evidence in proof of the mortgage to spite of the fact that they were relevant under Section 35 of the Evidence Act (wrongly mentioned as Section 23 in the report). Though the matter before the Privy Council in **K.S. Bonerji. Official Receiver v. Sitamath. Daste;** did not relate to the admissibility of a revenue entry, yet the following observations made at page, 212 clearly show that to case of a written contract no other evidence than the document itself or secondary evidence when permissible, could be been established for the admission of secondary evidence of the contents of a written document, and objection has been taken to the fact that the document has not been produced, it is not permissible to go to other evidence for the purpose of indicating what the contents of the written document may prove to be if once it were examined."*

17. Recently the question of the evidentiary value of mutation order of sale came up for consideration before a Division Bench of the Himachal Pradesh High Court in **Sannu v. The Collector Land Acquisition, B.S.L. Mandi**, and it was observed:

"The mutation can only prove the factum of sale but it is no evidence of the price paid. Nor It would prove that the sale was effected by a willing seller and a willing purchaser."

31. Reference may also be made to judgments of the Hon'ble Supreme Court in **Sawarni (Smt.) vs. Inder Kaur (1996) 6 Supreme Court Cases 223; H. Lakshmaiah Reddy and others vs. L. Venkatesh Reddy (2015) 14 Supreme Court Cases 784; Bhimabai Mahadeo Kambekar (Dead)**



through Legal Representative vs. Arthur Import and Export company and others (2019) 3 Supreme Court Cases 191; and Prahlad Pradhan and others vs. Sonu Kumhar and others (2019) 10 Supreme Court Cases 259, wherein also it is held that mutation does not confer, create or extinguish any title and no presumption is attached to mutation entries. Even otherwise, in the present case, the Mutation proceedings are illegal, and in violation of the order of the Probate Court and also against the contents of the Registered Will and without any notice to the plaintiff.

32. It has next been submitted by learned counsel for the respondents that suit was barred by res judicata. However, the said argument of the respondents is liable to be rejected in view of the judgments cited by learned counsel for the appellant in ***Anathula Sudhakar (supra)***, and ***Bhup Singh (supra)***, wherein it has been clearly held that filing of subsequent suit for declaration after suit for permanent injunction, is not barred. No judgment to the contrary has been cited by learned counsel for the respondents. Therefore, the legal position as noted above, has not been disputed by the respondents. Moreover, in the previous Civil Suit No. 141 of 1997, plaintiff had only sought permanent injunction against the defendants; whereas the present suit was for declaration. As the relief sought in both the Civil Suit was at variance, the same cannot be said to be barred by Order II Rule 2 CPC. Even further, in the previous suit for permanent injunction, controversy between the parties was different as Will dated 14.10.1958 was not a subject matter or in dispute, neither was the Probate. As such, it cannot be said that the present suit is barred by



Order 2 Rule 2 CPC. It has been stated by the defendant that the said decree was passed in pursuance to a settlement between the parties. However, plaintiff in replication to the written statement of defendant No.1, has categorically denied the same in para 4 (available at page 61 of LCR) as under:-

“4. That it is wrong. There was no decision between the parties concerning the present controversy. Plaintiff was minor in the year 1959 and in case, there is any such decision, the same is nullity and void and not affecting the rights of plaintiff in any way.”

33. Furthermore, it has been held by the Constitution Bench of the Hon’ble Supreme Court in ***Gurbux Singh’s case (supra)*** that in order for a suit to be barred by Order 2 Rule 2 CPC, it was necessary for the defendant to demonstrate and place on record the pleadings of the previous Civil Suit No. 141 of 1997. The same has not been done. As such, present suit could not have been held to be barred by res judicata.

34. Much reliance has been placed by the respondents upon the alleged statement dated 02.05.2000 made by the GPA of plaintiff. However, it is to be seen that all that was stated on behalf of the plaintiff was that *“they will not interfere in the specific share of any of the parties.”* As such all that can be gleaned from the above so-called admission is that it was agreed during the pendency of the said proceedings that neither of the parties will interfere in the specific share of any of the parties. This cannot in any manner tantamount to an admission of any right of the respondents over share of the suit property. The admission of GPA of the plaintiff is not



that each party is owner. All that has been stated by GPA is that there will be no interference.

35. It has next been contended by learned counsel for the respondents that the plaintiff and the respondents had together sold some part of the suit land vide Sale Deed dated 08.02.1995 Ex.DW3/1; Sale Deed dated 17.02.1995 Ex.DW3/3; Sale Deed dated 18.03.1997 Ex.DW3/5; and Sale Deed dated 27.11.1995 Ex.DW5/1 and 17.02.1995 Ex.DW5/2. In respect of the Sale Deeds, it is also to be noted that the same are prior to filing of the Civil Suit. The khasra Nos. mentioned in the Sale Deeds do not find mention in the suit property as described in the Civil Suit. It has also been contended by the respondents that this fact has not been denied by the plaintiff. However, first and foremost, it may be clarified that the perusal of the amended replication filed by the plaintiff shows that allegations of the respondent/defendant that some parts of suit land were sold, has been specifically denied by the plaintiff. Furthermore, the respondent has been unable to buttress his said contention by leading any evidence in this regard. It has been consistently stated by the plaintiff that the subject land of the said Sale Deeds is not part of the suit land as asserted by the defendants. Therefore, the same was to be proved by the defendant but he has failed to do so. Except for a bald assertion, the defendant has not led any evidence to show that the subject land of the said Sale Deeds was part of the suit land.

36. It has also been submitted by learned counsel for the defendant that the Will dated 14.10.1958 was a conditional Will, which



stipulated that ownership of the plaintiff over the entire suit land would devolve upon the plaintiff only upon the demise of Jawala Kaur and Raj Kaur. It has been contended that nothing has been brought on record by the plaintiff to establish that Jawala Kaur and Raj Kaur were demised on the date of filing of suit. However, deeper examination of the facts on record shows that even the said submission of the defendant is flawed. A perusal of the plaint itself shows (at page 49 of the LCR), that plaintiff has clearly averred that "Raj Kaur (now deceased)". Further, Annexure A-1, death certificate of Jawala Kaur has been placed on record from which it is established that Jawala Kaur had expired on 19.09.1972 at village Urapar; whereas the present Civil Suit was filed on 24.07.2000. From the above facts, it is therefore, irrevocably established that both Jawala Kaur and Raj Kaur were demised at the time of filing of the suit; and therefore, writing in the Will to the above effect was fulfilled and plaintiff was owner of entire suit land. In any event, it is not even the case of the defendant no.1 that Jwala Kaur and Raj Kaur were alive. Even otherwise, Jawala Kaur and Raj Kaur were granted interest in the suit property only till their survival and their right to alienate had been curtailed. As such, reasoning of the learned Trial Court in para 28 of the judgment dated 01.02.2010 to the effect that *"it was incumbent upon the plaintiff to prove the death of Jawala Kaur and Raj Kaur to seek the interest in the suit property"*, is misguided.

37. Let us also examine the basis on which the defendant is laying claim to the suit land. The defendant claims to be owner to the extent of 50% share in the suit land on the basis of a decree dated



25.12.1959 which has not seen the light of the day. It is a matter of wonderment to this Court that the learned Courts below have non-suited the plaintiff on the basis of a decree which was not produced or placed on record by the respondents. Merely, an assumption was drawn regarding the existence of the said decree; without even examining as to what the said decree decreed. The clear terms of the decree were never brought to the notice of the Courts below. Merely the word of the defendant in this regard to the effect that as per the said decree, both parties were given 50% each share of the suit land, has been blindly accepted. In this circumstance, it is not clear as to how the Courts below took the word of the respondent to be gospel truth. Such assumptions could not have been made by the learned Courts below.

38. On the other hand, plaintiff has based his claim on the basis of a registered Will dated 14/16.10.1958. It is trite law that presumption of truth is attached to a registered document. Besides that, it is also writ large on file that Letter of Administration was issued in favour of the plaintiff; and Probate of the said Will was denied only on the ground that Executor was not appointed by the testator. Again, in *Crystal Developers's case (supra)*; it is held that the only the difference between grant of Probate and Letter of Administration is that Probate comes into effect on the death of testator; whereas Letter of Administration comes into effect on the date of its grant. Thus, Letter of Administration Ex. P3 (available at backside of page 187 of the LCR), is as good as issuance of Probate, which is merely a formality and puts into effect what is granted by Letter of Administration. Order of



Probate Court is judgment in rem regarding the validity and execution of the Will in question. Clearly therefore, rights of the parties stood crystallized on 27.11.1963.

39. Furthermore, it is important to note that admittedly, the said Letter of Administration was issued in the presence of all concerned parties including the defendants as well as defendant no.1. Nothing has been brought to the notice of this Court that any objection was raised by the defendant(s) at that stage. Even no objection or mention was made with regard to existence of or in respect of any decree dated 25.12.1959. There is nothing on record to remotely indicate that any objection was raised by the defendants in the said Probate proceedings in respect of decree dated 25.12.1959.

40. It may be noted that Jawala Kaur never contested the Probate and never came forward. It is most important to note that even no appeal was filed by the defendant no.1 against the Letter of Administration dated 27.11.1963 Ex.P3. It has been noted by the learned Trial Court in para 21 of its judgment dated 01.02.2010 that *“defendant No.1 Charanjit Singh was a party to the said Probate proceedings, but he did not prefer to go in appeal against the said order”*. Although the same was challenged by Parkash Kaur, aunt/bua of the plaintiff and sister of defendant No.1 by way of FAO No. 31 of 1964 titled as *“Parkash Kaur vs. Harbans Singh and Smt. Raj Kaur”*, the said appeal was dismissed in default by this Court vide order dated 16.02.1970 (available at page 195 of the LCR), which reads as under: -



“First Appeal from the order of the Court of Shri Banwari Lal Nagpal District Judge, Jullundur dated 27.11.1963 granting Letters of Administration to the estate of Dalip Singh deceased, with a copy of the will annexed, on their furnishing a bond, in the sum of Rs.5000/- with one surety in the like amount, engaging for the due collection, getting in, and administering the estate of Dalip Singh deceased, and on their furnishing the estate duty clearance certificate the required bond should be put in by or before 3.12.1963.”

41. Therefore, the Probate proceedings had attained finality. Thus, the day when the Letter of Administration is issued, the property would be at the disposal of the plaintiff. Probate is only for the purpose of enforcing the Will Ex.P1. The Will in question stood duly proved and, therefore, it has come into effect too.

42. At the risk of repetition, it is reiterated that as it was the defendant who was placing reliance upon the decree dated 25.12.1959, it was incumbent upon the defendant to produce the same. Even Mutation has not been placed on record by the defendant no.1. It has been contended by the defendant that Probate and Will had died their death in the face of the decree of 1959. *Au contraire* it is the invisible decree which would be superseded by Probate and the Will. The rights of the parties stood crystallized by the Letter of Administration of 1963. Mutation is of the year 1960 which is superseded by the Letter of Administration of 1963. Vide judgment and decree of 1963, the Will had been upheld; and Letter of Administration was also judgment in rem as has been held by this Court in



numerous precedents. However, these facts have been ignored by learned Courts below. Given the fact that Probate proceedings had attained finality by issuing Letter of Administration in favour of the plaintiff, suit should have been decreed in favour of the plaintiff.

43. It is also to be noted that defendant No.1 cannot lay any claim to the suit property also on the ground that there is a recital in the Will Ex.P1 that defendant shall be granted share in the suit property if he resides in the village Urapar. It is not anyone's case, on the contrary, it is admitted fact on record that defendant No.1 was not residing in the village. Therefore, the said stipulation of the Will was also not fulfilled by the defendant no.1. For this reason, as well, defendant No.1 cannot lay any claim to any part of the suit land. Despite the categorical findings of the learned Courts below to the effect that the defendant is not residing in the village, suit has been dismissed.

44. In view of the above discussion, and the facts, findings, and the legal position noted above, the present Regular Second Appeal is **allowed**; and the impugned judgments and decrees of both the Courts below are set aside.

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

20.08.2025

Divyanshi

**(NIDHI GUPTA)
JUDGE**

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