



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA-2784-1993 (O&M)

Date of decision: 22.07.2025

Ragbir Singh

...Appellant(s)

Vs.

Surta Ram and others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Ms. Neeru Bansal, Advocate
for the appellant.

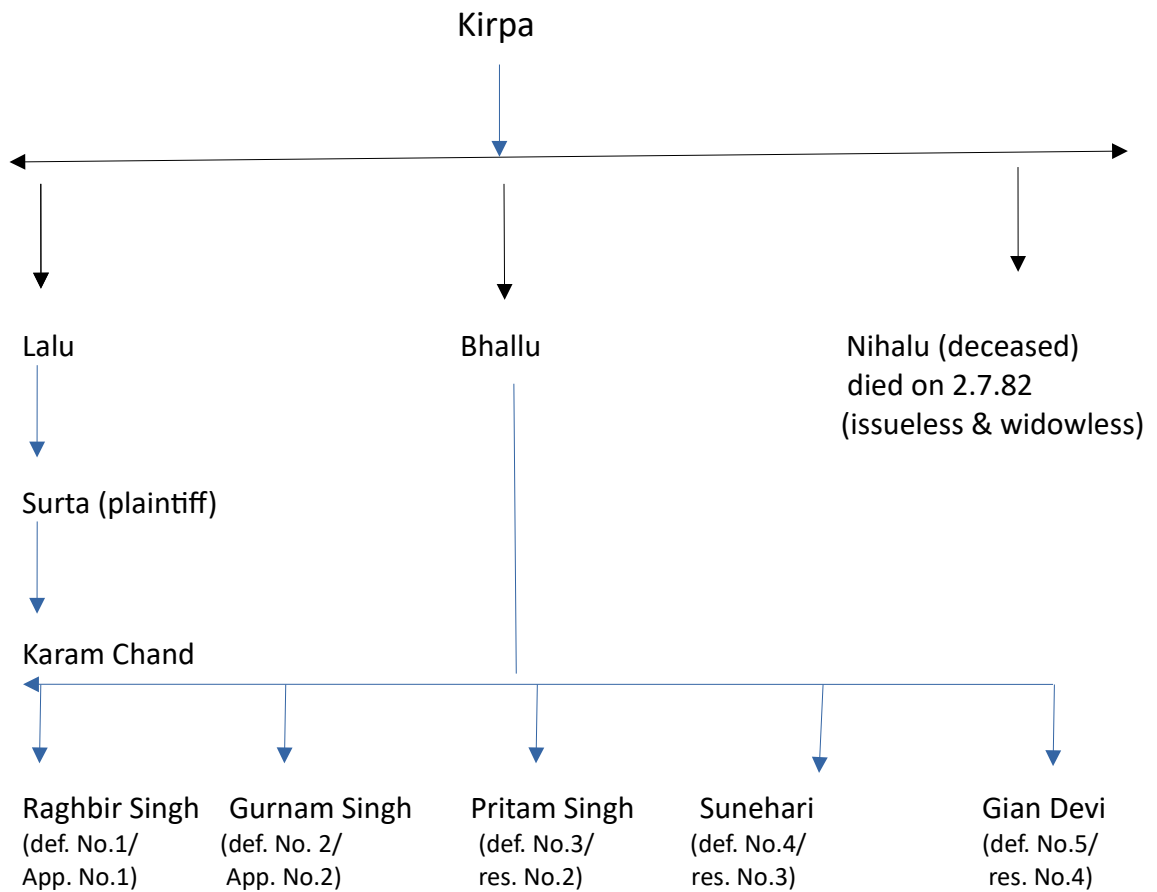
Mr. M.L.Sarin, Sr. Advocate with
Mr. Ritesh Aggarwal, Advocate for
respondent No.1.

Mr. Manjeet Saini, Advocate for
Mr. Hari Om Sharma, Advocate for
respondents No. 2 to 4.

NIDHI GUPTA, J.

Defendants No. 1 and 2 are in Second Appeal against the concurrent judgments and decrees of the learned Courts below whereby the suit filed by the plaintiff/respondent No.1 herein, for declaration that the plaintiff is owner of 1/3rd share of the suit property, has been decreed by both the Courts below.

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



3. Brief facts of the case are that Lalu, father of the plaintiff had died when Surta Ram/plaintiff was very young. Surta Ram-plaintiff was brought up by his uncle Nihalu, who had died on 02.07.1982. Nihalu had died issueless and widowless. It is the case of the plaintiff that Nihalu had executed a Will dated 15.03.1982 (Ex.P1) in favour of the plaintiff; and therefore, on the death of Nihalu, the plaintiff had inherited the suit property left by him. It was pleaded that the defendants had taken forcible possession of the suit property from the plaintiff and the defendants were now in illegal possession. It was further contended that defendants No.1 and 2 had executed a forged Will dated 12.01.1982 allegedly executed by Nihalu in favour of defendants No. 1 and 2. With these pleadings, present suit was filed by the plaintiff on 15.06.1985.



3. Upon notice, defendants No.2 to 4 had filed their joint written statement denying allegations made in the plaint. It was averred that the Will dated 15.03.1982 (Ex.P1) produced by the plaintiff was a forged document; and the Will dated 12.01.1982 was the last registered Will of Nihalu in favour of defendants No.1 and 2. On the basis of this Will dated 12.1.1982,, a mutation of inheritance was also sanctioned by the revenue authorities in favour of the said defendants. It was further claimed that Nihalu in his lifetime had been living with defendants No.1 and 2 and had been looked after by them and in response for the service rendered to him by defendants No.1 and 2, Nihalu had executed the registered Will dated 12.01.1982 in their favour.

4. Defendant No. 5 had filed written statement admitting the claim of the plaintiff. Plaintiff filed replication controverting the averments mentioned in the written statement filed by defendants No. 2 to 4.

5. On the basis of pleadings of the parties, following issues were framed by the learned trial Court vide order dated 20.09.1985: -

“1. Whether the deceased Nihalu son of Kirpa executed a valid will dated 15-3-1982 in favour of the plaintiff as alleged, if so to what effect? OPP.

2. Whether the present suit is not maintainable as alleged OPD.

3. Whether the suit is collusive as alleged? OPD.

4. Whether the defendants are entitled to special costs, if so to what amount OPD.

5. Relief.



6. Vide order dated 31.3.1989 following additional issues were settled from the amended pleadings of the parties: -

6. Whether deceased Nihalu executed a valid Will dated 12.1.1982 in favour of defendants No.1 & 2 OPD: 1&2.

7. If issues No.1 & 6 are not proved then to what extent plaintiff is entitled for the estate left by deceased Nihalu OPP. Parties.”

7. On the basis of the pleadings, learned trial Court vide judgment and decree dated 14.02.1991 had decreed the suit of the plaintiff with costs. The appeal filed by the defendants No. 1 and 2 was dismissed by the learned Additional District Judge, Jagadhri vide judgment and decree dated 19.11.1993. Hence, present 2nd Appeal by defendants No.1 and 2.

8. It is *inter alia* submitted by learned counsel for the appellants/defendants No.1 and 2 that the learned Courts were in patent error in decreeing the suit of the plaintiff as they failed to appreciate that the Will in favour of the appellants was a registered document, in pursuance to which even a mutation was sanctioned in their favour. On the other hand, a close examination of the Will dated 15.03.1982 (Ex.P1) shows that the same is not proved to have been executed in accordance with law. Moreover, the same is not a registered document. As such, presumption of truth cannot be attached to it. It is contended that it was proven on record that the defendant No.1/appellant was residing with Nihalu deceased. Adverse inference could not have been drawn against



the appellants merely on the ground that other parties except the appellants were excluded. It is also to be appreciated that plaintiff has not appeared in the witness box. Plaintiff has been represented only through his GPA and, therefore, the case of the plaintiff was not proven according to law.

9. In support, learned counsel for the appellants relies upon judgment passed by the Hon'ble Supreme Court in "***Mohinder Kaur vs. Sant Paul Singh***", ***Law Finder Doc Id # 1595854***. He accordingly prays that the present Regular Second Appeal be allowed; and the impugned judgments and decrees be set aside.

10. *Per contra*, learned Senior Counsel appearing on behalf of respondent No.1/plaintiff submits that it is established position in law that this Court in Regular Second Appeal has limited jurisdiction to interfere in the concurrent findings of facts returned by the learned Courts below. In support of his contention, Id. Senior Counsel relies upon the following judgments: -

1. ***Manindra Chandra Lala vs. Mahaluxmi Bank Limited AIR (32) 1945 Privy Council 105;***
2. ***Lashkar Singh vs. Bakhshish Kaur and another 1994 (1) HLR;***
3. ***State of Haryana vs. Harnam Singh (Dead) through Legal Representatives and others (2022) 2 SCC 238; and***
4. ***Jagjit Singh vs. Pritam Singh and others (P&H) 1994(1)***



11. Learned Senior Counsel further contends that the Will dated 12.01.1982 has been discarded by both the Courts below. As such, it is not open to this Court to reappraise the said findings of fact.

12. On merits, it is submitted that both the Courts below vide comprehensive and detailed examination of all the evidence on record, have categorically returned the findings that the Will dated 15.03.1982 (Ex. P1) produced by the plaintiff had been executed by Nihalu in favour of the plaintiff; and that the Will dated 12.01.1982 (Ex.D1/A) was discarded. Learned Senior Counsel refers to the said findings returned by both the Courts below in this regard. He accordingly prays for dismissal of the present Regular Second Appeal.

13. No other argument is raised on behalf of the parties.

14. I have heard Id. counsel and perused the case file in great detail. I have given my thoughtful consideration to the rival submissions advanced on behalf of both the parties. I find no merit in the submissions made on behalf of the appellants.

15. First and foremost, learned counsel for the appellants is unable to controvert the legal contention raised by learned Senior Counsel for the plaintiff to the effect that in Second Appeal, scope of detailed factual enquiry into the concurrent findings of fact returned by both the Courts below, is limited. Admittedly, in the present case, as stated by learned Senior Counsel for plaintiff, the Will dated 12.01.1982 (Ex.D1/A), propounded by the appellants, has been rejected by both the Courts below taking into account the fact that no respectable of the village in



which Nihalu was residing, was brought as a witness to the Will. One Lamberdar who was resident of another village, was a witness to the Will; and his presence at the time of execution of Will, cannot be presumed as a natural circumstance. It has also been found that there is probability of undue influence exercised upon Nihalu. On the other hand, Will dated 15.03.1982 (Ex.P1) propounded by the plaintiff was scribed by a well reputed lawyer by the name of Dhan Prakas Garg, who had been practising since 1965. Therefore, his credentials were beyond doubt, and it was unlikely for him to participate in any forgery. Dhan Parkas Garg, Advocate had appeared as PW4 and had duly proved the execution of the Will. Even the attesting witnesses to the Will dated 15.03.1982 (Ex.P1) namely, Bhadu Ram PW1 and Roshan Ali PW2 proved the Will in question. Admittedly, Will is not a compulsorily registrable document and, therefore, no adverse inference can be drawn against the plaintiff in this regard. Merely because a Will is registered, it cannot be assumed to be authentic. Further, it is also to be seen that it was the own case of the defendants in their written statement that Nihalu had been ill for 5-6 months prior to his death on 02.07.1982; whereas the Will (Ex.D1/A) has been executed on 12.01.1982. This belies the case put forth by the appellants themselves. It is also noteworthy that the appellants in the mutation proceedings have not set up any case of illness suffered by Nihalu prior to his death. Learned Courts below had further found that there were material and glaring contradictions in the statements of the attesting witnesses to the Will produced by the defendants which further



belied the veracity of the said Will. It was not proved that the thumb impressions borne on the Will (Ex.D1/A) was of Nihalu. On the other hand, plaintiff had proved by Expert opinion dated 06.02.1992 that the thumb impressions existing on the Will (Ex.P1) was that of Nihalu. There is also nothing on record to explain as to why the other defendants besides the appellants, have been excluded by Nihalu in the Will (Ex.D1/A). In this regard, findings of the Id. lower Appellate Court in para 17 of the judgment and decree dated 19.11.1993 are relevant and reproduced herein below: -

“Now adverting to the evidence adduced by the plaintiff to prove will Ex.P.1, it may be mentioned at the put-set that all the attesting witnesses to the will Ex.P1 are resident of village Kulchandu, to which village Nihalu testator belonged. The scribe of will sh. Dhan Parkash Garg Adv. has appeared in the witness box as P.W.4 It is categorically stated by him that he scribed the will Ex.P1 at the instance of Nihalu s/o Kirpa and the will was read over and explained to him and Nihalu, had put his thumb-impression after admitting the contents as correct. From the cross-examination of Sh. Dhan Parkash Garg Advocate, it has transpired that Nihalu was known to him, because in cross-examination it is stated by him that perhaps Nihalu remained his client. He was also knowing all the attesting witnesses, Yado Ram P.W.1 is the Sarpanch of the village. He is one of the attesting witness of the will and of the same village. Roshan Ali, P.W.2, is also one of the attesting witnesses of the will and of the same village. Dharam Pal P.W.3, is also the attesting witness of the will and is of the same village. These witnesses have categorically



*stated that Nihal, had taken them to the seat of Sh. Dhan Parkash Garg Advocate, in the court compound Jagadhri, and they have categorically stated about the execution of will by Nihal in favour of Surta plaintiff. Sh. Dhan Parkash Garg Advocate, has also stated that he had scribed the will because at that time he might be sitting idle. It has also transpired from the statement Sh.Dhan Parkash Garg Advocate, who is having long standing at bar, that he has scribed 5/7 documents. There are no reasons to disbelieve the statement of these witnesses. No enemy or malice on the part of these witnesses against the present defendant-appellants is alleged or proved. Neither any interestedness on the part of these witnesses, in Surta plaintiff is proved. There is only half hearted suggestion to Roshan Ali P.W.2, to the effect that Raghbir had gone some opposition in the election of Yado Ram, but there is no suggestion to Yado Ram, Sarpanch P.W.1 rather, it has transpired from the very evidence adduced by the defendant that Yado Ram, had even attested the ration card form Ex.D1, of Raghbir Singh. These witnesses have also stated that Surta used to render services to Nihal. Id. counsel for the defendant-appellants has submitted that there is no such pleadings of the plaintiff, in the plaint, and so the statement of these witnesses regarding this fact should be dismissed and in support of his contention Id. counsel for the defendant-appellant has cited before me authority **Vinod Kumar vs. Joginder Dass 1970 P.L.J. 362**, but this contention of Id. counsel for the defendant-appellants is without any merit because each and every fact is not to be pleaded. The contents of the will are not to be pleaded in the plaint. The factum of will dt. 15.3.1982, is categorically mentioned and a perusal of the contents of the will Ex.P.1,*



shows that the parents of Surta had died in the very childhood and Surta was brought up by Nihalu. He was also married by Nihalu as recited in the will Ex.P1. This is the natural human conduct because Nihalu was after all issueless and unmarried and normally on the death of parents of Surta, in the childhood, he would bring up Surta like his son.”

16. Thus, witnesses who have attested the Will dated 15.03.1982 (Ex.P1) are independent witnesses and respectables of the same village. On the other hand, witnesses to the Will dated 12.01.1982 (Ex.D1/A) are not from the same village; and statements of the said witnesses are discrepant. Thumb impressions do not tally; and there is no explanation as to why the remaining defendants were disinherited by the said Will.

17. It also cannot be ignored that Gian Devi/defendant No.5/respondent No.4, real sister of the appellants has admitted the correctness of the Will dated 15.03.1982 executed by Nihalu in favour of the plaintiff. In this regard, reference may be made to observations recorded by the learned lower Appellate Court in para 20 of its judgment dated 19.11.1993 which are reproduced hereunder: -

“The gravamen of the circumstances against the defendant-appellants, is also that Smt. Gian Devi, defendant no.5, who is the real sister of the present defendant-appellants, has also filed a separate written statement admitting the claim of Surta plaintiff. No reasons whatsoever is put forward by the present defendant-appellant against Gian Devi. There are no reasons to disbelieve the version of Smt. Gian Devi contained in the written statement filed by her. Neither there are any



reasons to disbelieve, the statement of the witnesses examined by the plaintiffs.”

18. Over and above, the aforesaid findings of fact which remain uncontroverted by learned counsel for the appellants, legal position as contained in the judgment of Hon’ble Supreme Court in **Harnam Singh’s case (supra)** may be noticed which reads as follows: -

“Thus, the High Court erred in formulating the question of law on the basis that the Will was proved in terms of Section 63 of the Succession Act, 1925. In fact, both the fact-finding courts-the trial court and the first appellate court, had found that the Will was not proved. The evidence of the witnesses was disbelieved as they failed to inspire the confidence of fact-finding courts. The High Court, however, went into a detailed factual enquiry to come to its finding. We are of the opinion that an enquiry of such nature was impermissible while hearing an appeal under Section 100 of the Civil Procedure Code, 1908.”

19. In view of the above facts, no ground to interfere in the concurrent findings of the learned Courts below is made out.

20. The present Regular Second Appeal is hereby **dismissed**.

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

22.07.2025

Divyanshi

**(NIDHI GUPTA)
JUDGE**

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