



RSA-1709-2022 (O&M)

115 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1709-2022 (O&M)
Date of decision : 09.09.2025

Major Singh ...Appellant

Versus

Amar Singh and others ...Respondents

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Rajan Bansal, Advocate,
for the appellant.

HARPREET KAUR JEEWAN, J. (Oral)

1. Present Regular Second Appeal has been filed by the appellant-plaintiff, impugning the judgment and decree dated 13.08.2021, passed by the District Judge, Barnala, whereby the suit filed by the plaintiff has been dismissed by upholding the judgment and decree dated 10.07.2017, passed by the Civil Judge, Senior Division, Barnala.

2. There are concurrent findings against the appellant recorded by the trial Court as well as the First Appellate Court.

3. As per the brief facts on record, the appellant/plaintiff-Major Singh along with non-appellant/plaintiff-Mukand Singh filed a Civil Suit, seeking relief of joint possession on the basis of inheritance *qua* estate of Mukhtiar Singh son of Kakkar Singh, who expired on 20.03.2009. The plaintiffs set-up a Will dated 01.02.1985 alleged to have been executed by Mukhtiar Singh in favour of his 04 brothers, namely, Mukand Singh, Amar Singh, Mehar and Major Singh sons of Kakkar Singh, bequeathing his entire estate, in equal shares. The



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plaintiffs further alleged that a Transfer Deed dated 16.10.2008 , which is alleged to have been executed by Mukhtiar Singh in favour of Amar Singh-defendant No.1-respondent is a fabricated document and without consideration. It was contended that Mukhtiar Singh was incapable of executing the said Transfer Deed; he was an old person and expired a few months thereafter.

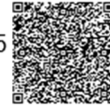
3.1 Upon notice, the suit was contested on behalf of defendant Nos.1, 9, 10, 19 and 24.

3.2 In the written statement, it was admitted that Mukhtiar Singh had executed a Will on 01.02.1985 in favour of his brothers, however, it was alleged that after the death of his wife, Mukhtiar Singh started living along with his brother-Amar Singh-defendant No.1 as wife of Mukhtiar Singh and wife of Amar Singh were real sisters. It was alleged by the contesting defendants that Mukhtiar Singh transferred his share of land in question in favour of Amar Singh-defendant No.1 vide registered Transfer Deed dated 16.10.2008. On the basis of said deed, mutation No.1310 was sanction on 17.10.2008.

3.3 The trial Court framed issues and parties led their respective evidence.

3.4 After hearing the counsel for the parties and considering the evidence on record, the trial Court dismissed the suit filed by the plaintiffs seeking relief of joint possession and permanent injunction.

3.5 The First Appellate Court vide the impugned judgment and decree dated 13.08.2021, also dismissed the appeal, while observing that the alleged Transfer Deed, Ex.D1, is having recital that Mukhtiar Singh is residing with his brother-Amar Singh, who is



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providing food and clothing to him. There is a further recital that the executant is living happily, and he is happy with the services rendered by the beneficiary of the deed, as such, he wants to compensate his brother-Amar Singh during his lifetime for his services rendered by transferring his share in the property. The First Appellate Court while considering the provisions of Section 54 of the Transfer of Property Act 1882 (*for short, the 'TP Act'*), which defines 'sale', observed that price in terms of currency is not *sine qua non* to complete the sale. Further, while considering the provisions of Section 25 of the Indian Contract Act, 1872 (*for short, 'the Contract Act'*), the First Appellate Court observed that in case a contract has been executed on account of natural love and affection between the parties, who are in close relation, such a contract would not be void for want of consideration in view of Clauses (1) & (2) of Section 25 (*ibid*). The First Appellate Court further observed that though the plaintiffs have challenged the mental capacity of Mukhtiar Singh to execute the said Transfer Deed, but the said contentions are not true since the executant appeared before the Registering Authority and certificate of the Authority on the said Deed clarifies that the deed was executed by the executant in his full senses. Even thereafter, the mutation has been sanctioned on the basis of said deed. The First Appellate Court observed that the plaintiffs had failed to produce any cogent evidence that the executant-Mukhtiar Singh was not in sound disposing mind at the time of execution of the Transfer Deed, Ex.D1.

4. Aggrieved against the dismissal of the First Appeal, the appellant has filed the present Second Appeal.



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5. Learned counsel for the appellant submits that the alleged transfer deed was without any consideration and is hit by the provisions of Section 25 of the Indian Contract Act as well as the provisions of Section 54 of the TP Act. It is further contended that the alleged transfer deed in favour of defendant-Amar Singh is dated 16.10.2008 and the executant died 5 months thereafter, which itself is a suspicious circumstance surrounding the transfer deed. Another contention has been raised that prior to the execution of the alleged transfer deed, the executant-Mukhtiar Singh had already executed a registered Will dated 01.02.1985 and expressed his desire that his property shall be inherited by all his brother. The executant was issueless, as such, he had love and affection for his brother. In such circumstances, it becomes highly doubtful that he had executed the alleged transfer deed out of his sweet-will. All these facts have not been properly considered by the trial Court as well as the First Appellate Court while dismissing the suit.

6. I have considered the aforesaid submissions and perused the paper-book.

7. It is not disputed that the executant and the beneficiary of the alleged Transfer Deed, Ex.D1, are real brothers. The appellant could not lead any cogent evidence to prove that recitals in the deed are factually incorrect. The executant had given reasons to make the said transfer during his lifetime, i.e. he was being looked after by his brother-Amar Singh. It is pleaded in the written statement that the wife of the executant died, thereafter, he started living with the beneficiary, since his wife was real sister of the wife of the beneficiary. The executant was admittedly above 85 years of age. Keeping in view the



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close-knit relationship *inter se* the executant and the beneficiary as also *inter se* their wives, the transfer of the property cannot be doubted. This fact is also not disputed that the executant of the alleged Transfer Deed was not having any child. In such circumstances, leaning towards one of his siblings with whom a person lives in the last years of his life and towards a close relative who looks after a person in old age, is natural human tendency.

8. Learned counsel for the appellant has laid much stress on the point that the executant had earlier executed a Will in favour of all his brothers; as such, he had no occasion to transfer his property in favour of his one brother. Such an argument is devoid of any force as the plaintiffs have taken a plea of forgery, and such plea is not proved on record. Secondly, the plaintiffs have taken a plea that the executant was not in sound disposing mind, but in the absence of any cogent evidence, the First Appellate Court has rightly declined to accept such contention. Thirdly, the subsequent Transfer Deed is a registered document.

9. The Will was to take effect after the death of the executant, as such, having executed a Will during the lifetime cannot be treated as a suspicious circumstance surrounding a subsequent Transfer Deed, particularly in view the special circumstances on record, i.e. the executant was alone; his wife had expired; he was childless and was living along with his brother who is the beneficiary of the said deed.

10. In view of aforesaid reasons, no interference is called for in the impugned judgment and decree.



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11. The present appeal is devoid of any merit and the same is hereby dismissed.

12. Pending miscellaneous application(s) shall stand disposed of.

09.09.2025

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**[HARPREET KAUR JEEWAN]
JUDGE**

Whether speaking / reasoned :

Yes

No

Whether Reportable :

Yes

No