



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
215 **RSA-3424-2019 (O&M)**

Date of decision: 10.01.2025

Baldev Singh

...Appellant(s)

Vs.

Jagdeep Singh & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Charan Jit Sharma, Advocate
for the appellant.

NIDHI GUPTA, J.

The appellant-plaintiff had filed a suit for declaration to the effect that the plaintiff is owner with possession of 1/3rd share; and also legally entitled to inherit 1/3rd share of his brother Sukhdev Singh deceased as natural heir successor and for joint possession of total land measuring 237 kanal 17 marlas as described in the headnote of the plaint; and that the 3 respondents/defendants No.1 to 3/children of the deceased Sukhdev Singh are all NRIs and not citizens of India and therefore cannot inherit as natural heirs successors of his property under class-I of Schedule of Hindu Succession Act, 1956; and mutations of inheritance be set aside being null and void etc. Vide judgment and decree dated 28.03.2018 suit of the appellant was dismissed with costs. Appeal filed thereto by the appellant being Civil Appeal No.22 of 17.04.2022 was also dismissed vide judgment and decree dated



04.10.2018 by the learned Additional District Judge, Faridkot. Hence present second appeal.

2. Learned counsel for the appellant vehemently seeks to impress upon this Court that the defendants No.1 to 3 and their father had migrated to England and had also acquired citizenship of England. As such, as per Article 9 of the Constitution of India, whereby if a person voluntarily acquires citizenship of another State/country he ceases to be the citizen of India. As such the defendants and their father Sukhdev Singh ceased to be citizens of India. Therefore, as per Section 4(b) of the Notification No. FEMA.21/2000-RBI dated 03.05.2000 issued under the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations 2000/ Ex. P-6, it was stipulated that "*A person of Indian origin resident outside India may acquire immovable property, other than agricultural land by way of gift from a person residing in India or from person outside India, who is citizen of India or from person of Indian origin resident outside India.*"It is contended that as such, the land/suit land could not have been inherited by the deceased-Sukhdev Singh or his children/ defendants No.1 to 3. However, this aspect of matter has not been considered by the learned Courts below while passing the impugned judgment.

3. No other argument is raised on behalf of the appellant.

4. I have heard learned counsel for the appellant and perused the case file in great detail.



5. Brief facts of the case are that Sukhdev Singh, Gurdeep Singh, Baldev Singh/appellant/plaintiff, are real brothers and sons of Santokh Singh. They had no sister. Previously, Sukhdev Singh son of Santokh Singh was the owner to the extent of 1/3rd share and plaintiff is also owner with possession to the extent of 1/3rd share in joint total suit land i.e. 237 kanals 17 marlas as elucidated in the head note. Sukhdev Singh and Gurdeep Singh migrated to England with their families in the year 1965 and since then, they lived there and voluntarily acquired the Citizenship thereof. Sukhdev Singh was permanent resident as well as Citizen of England, as such, he ceased to be the Citizen of India. The defendants No.1 to 3/children of the said Sukhdev Singh were also stated to be not having good relations with their father Sukhdev Singh who died in a Hospital in England on 05.05.2008. It is the case of the appellant that after the death of Sukhdev Singh, the concerned Revenue Officer sanctioned the inheritance of the share of Sukhdev Singh in favour of his children/ defendants no. 1 to 3/respondents no.1 to 3, on the basis of forged Will vide mutation nos. 4806, 2128, and 3322.The said defendants no. 1 to 3 sold the share of Sukhdev Singh in the suit land to defendants no. 4 and 5/respondents no.4 and 5 vide Sale Deed no. 572 dated 11.6.2010. The defendants no. 4 and 5 further sold the said suit land to defendants no.6 and 7/respondents no.6 and 7 by way of three registered sale deeds being Sale Deed No.326 dated 07.05.2014 and Sale Deed



Nos.1658 & 1659 dated 11.08.2014 respectively in respect of which also mutations were sanctioned.

6. It is further the case of the appellant that the appellant had legal claim to the share of deceased-Sukhdev Singh as Sukhdev Singh was not entitled to inherit the property as he had acquired the citizenship and permanent residency of England. In contending as above the appellant has relied upon Article 9 as also the aforesaid notification/ Ex. P-6. It is the contention of the appellant that the legal submission has not been noticed and/or considered by the learned Courts below in passing the impugned judgments. However, a perusal of the impugned judgments shows the said contention of the appellant is shown to be patently incorrect. Moreover, in submitting as above, the appellant is reading the relevant notification piecemeal and is ignoring section 4(c) as per which *“A person of Indian origin resident outside India may acquire any immovable property in India by way of inheritance from a person resident outside of India, who had acquired such property in accordance with the provisions of the Foreign Exchange Law in force at the time of acquisition by him or the provisions of these Regulations or from a person resident in India.”* The observations as recorded in paras 10, 11 and 12 of the judgment dated 28.03.2018 passed by learned Civil Judge (Jr. Division) Faridkot are relevant and read as under:-

“10. It is admitted fact that, defendants no.1 to 3 are legal heirs of deceased Sukhdev Singh being sons and daughter of deceased Sukhdev Singh respectively. It is further admitted by



the plaintiff that Sukhdev Singh also executed a will dated 23.06.1999 in favour of defendants no.1 to 3 regarding the property situated in India. Although, despite notice defendants failed to appear before the Court to prove the execution of the will in question, however, it is admitted fact that defendants no.1 to 3 were children of deceased Sukhdev Singh and therefore, they being class-I heirs of deceased Sukhdev Singh were otherwise also entitled to the properties of deceased Sukhdev Singh. Therefore, when it is established that deceased Sukhdev Singh was also having three class one heirs i.e. defendants no.1 to 3 living at the time of his death, therefore, plaintiff being real brother of deceased Sukhdev Singh was not entitled to inherit the property of deceased Sukhdev Singh as he is not class one heir. Therefore, plaintiff cannot claim ownership over the property of deceased Sukhdev Singh.

*11. It is further argued by the Ld. Counsel for the plaintiff that as per the notification no. S.O.542 (E), dated 11.04.2005 published in the Gazette of India regarding Citizenship Act, 1955, the Central Government has held that, "NRI's shall have parity with Indians with respect to all facilities available to them except in matters relating to acquisition of agricultural or plantation properties". Plaintiff has also relied upon notification no. **FEMA 21/2000-RBI dated 03.05.2000 made in Foreign Exchange Management (Acquisition and Transfer of immovable property in India), Regulations, 2000**. Ld. Counsel for the plaintiff has exhibited the above said notification as Ex. P6 and he referred to section 4(b) of the above said notification, which says that, "A person of Indian origin resident outside India may acquire immovable property other than agricultural land by way of gift from a person residing in*



India or from person outside India, who is citizen of India or from person of Indian origin resident outside India.

12. However, this Court would like to go through clause (c) of above said section 4 of the notification which says that a person of Indian origin resident outside of India may acquire any immovable property in India by way of inheritance from a person resident outside of India, who had acquired such property in accordance with the provisions of Foreign Exchange Law inference at the time of acquisition by him or the provisions of its regulations or there a person resident in India. Therefore, the provisions on which plaintiff is relying makes it clear that, a person of Indian Origin resident outside India may acquire any immovable property in India by way of inheritance including agricultural land from a person resident outside India. Therefore, defendants no.1 to 3 being persons of Indian origin were having all the rights to acquire immovable property including agricultural land by way of inheritance from their father i.e. deceased Sukhdev Singh, who was person resident outside India: Therefore, this Court does not agree with the contention of Ld. Counsel for the plaintiff as defendants no.1 to 3 did not acquire any property by way of purchase, rather they inherited the property from their deceased father Sukhdev Singh, in which they were having a pre-existing right being class one heirs of deceased Sukhdev Singh.”

7. It is also to be noted that the appellant was seeking ownership and possession of 1/3rd share of deceased-Sukhdev Singh however, as per Jamabandi (Ex.P1) it was shown on record that besides the defendants there were other co-sharers to the suit land who were not made party to the suit and who were therefore necessary parties.



However, they were not impleaded as party to the suit. Relevant findings returned by learned Lower Appellate Court in judgment dated 04.10.2018 are as under:-

“14. Admittedly, there is no dispute regarding parties being governed by Hindu law. They are Sikh by religion. In the present case, property is situated in India and as such, Indian law is applicable. Admittedly, defendants no.1 to 3 are legal heirs of deceased Sukhdev Singh being sons and daughter of deceased Sukhdev Singh respectively and as such, they being class-I heirs of deceased Sukhdev Singh were otherwise also entitled to the properties of deceased Sukhdev Singh. Section 2 of The Hindu Succession Act, 1956, does not bar any Non-Resident of India (NI) to acquire any property situated in India by way of inheritance from a person resident outside of India. Hence, the learned Lower court has rightly observed that the plaintiff being real brother of deceased Sukhdev Singh is not entitled to inherit the property of deceased Sukhdev Singh as he is not class one heir.

15. Although, plaintiff has taken the plea that Will dated 23.06.1999 executed by Sukhdev Singh in-favour of Jagdeep Singh, Daljit Kaur and Raminder Kaur, is false and forged, but failed to prove the same by leading cogent and clinching evidence. Here in the present case matter defendants no.1 to 3 did not acquire any property by way of purchase, rather they inherited the property from their deceased father Sukhdev Singh, in which they were having a pre-existing right being class one heirs of deceased Sukhdev Singh. As per notification No.FEMA 21/2000-RB dated 3r May 2000 (Ex.P6), it is mentioned at Clause 4 Acquisition and Transfer of property in India by a person of Indian origin A person of India



original resident outside India may: (a)..... (b)... (c) acquire any immovable property in India by way of inheritance from a person resident outside of India, who had acquired such property in accordance with the provisions of the Foreign Exchange Law in force at the time of acquisition by him or the provisions of these Regulations or from a person resident in India.

16. As regard the plea taken by the plaintiff for the relief of declaration regarding ownership and possession of 1/3 share, careful perusal of the record on file in the shape of jamabandi for the year 2014- 2015 Ex.P1, show that except the defendants, there are so many other co-sharers in the suit land, who were necessary party in the present suit for seeking declaration regarding ownership by the plaintiff, but the plaintiff has failed to implead them as party in the present suit for the reasons best known to him and as such, the plaintiff cannot claim declaration, as prayed for.”

8. In view of the above discussion, the present appeal is **dismissed.**

9. Pending application(s) if any also stand(s) disposed of.

10.01.2025
Sunena

(Nidhi Gupta)
Judge

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