

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****RSA No.808 of 2024 (O&M)**
Date of Decision: April 03, 2025**Hari Singh and another** **Appellants**

Vs.

Joginder Singh and another **RESPONDENTS****CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA****Present:-** Mr. Rajiv Sharma and Mr. Om Parkash Sharma, Advocates
for the appellants.**DEEPAK GUPTA, J.**

Suit for declaration filed by plaintiff – Joginder Singh (*contesting respondent herein*) regarding property in dispute, was decreed by the trial Court on 21.11.2017. The appeal filed by one of the defendants, namely, Gurcharan Singh (*respondent No.2 herein*), was dismissed by the Appellate Court of learned District Judge, Hoshiarpur, on 21.11.2023. Against this concurrent finding, defendant Nos.2 and 3 of the suit have filed the present regular second appeal, although they had not approached the First Appellate Court.

2. One Uttam Singh was the owner of the suit property. He executed a transfer deed dated 17.07.2006 in favour of plaintiff and based thereon, mutation No.2880 was sanctioned. Later, on the death of Uttam Singh on 13.02.2008, mutation No.2979 was sanctioned in favour of the plaintiff Joginder Singh & defendant No.1 Gurcharan Singh on the basis of Will dated 11.07.1996. Defendant No.1 Gurcharan Singh then executed sale deed dated 08.04.2009 in favour of defendant Nos.2 and 3, i.e. Hari Singh and Malkiat Singh (*appellants herein*). As on the basis of sale deed dated 08.04.2009, defendant Nos.2 and 3 started asserting their rights in the suit property, plaintiff brought the suit seeking declaration that transfer deed

dated 17.07.2006 and consequent mutation No.2880 are legal and valid for all intents & purposes and that the Will dated 11.07.1996, the consequent mutation No.2979 and the sale deed dated 08.04.2009 executed by defendant No.1 in favour of defendant Nos.2 and 3 are null and void. Plaintiff further prayed for consequential relief of permanent injunction to restrain the defendants from denying his title or interfere in his possession.

3. Defendant No.1 contested the suit by asserting that he had become owner by virtue of Will dated 11.07.1996 executed by Uttam Singh, in his favour and in favour of the plaintiff; whereas defendant Nos.2 and 3 asserted their rights in the suit property on the basis of sale deed dated 08.04.2009.

4. After framing necessary issues and taking evidence, suit was decreed by the trial Court and those findings have been affirmed by the First Appellate Court, dismissing the appeal of defendant No.1 – Gurcharan Singh, as has been noted earlier.

5. Assailing the aforesaid findings, the only plea raised by learned counsel for the appellants is that Will dated 11.07.1996 was prior in time comparing to an agreement to sell dated 3.4.2006 between plaintiff & defendant No.1, and the transfer deed dated 17.07.2006 in favour of the plaintiff and that property had already been partitioned so, the Courts below went in error in decreeing the suit.

6. There is no merit in the aforesaid contention. The Will takes its effect after the death of testator. No doubt, the Will pleaded by the defendants had been executed by Uttam Singh on 11.07.1996, but it came into effect only on the death of Uttam Singh on 13.02.2008. Prior to death of Uttam Singh, he had already executed transfer deed dated 17.07.2006 in favour of the plaintiff and as such, Uttam Singh was left with no right in the suit property after execution of that transfer deed.

7. As such, the Courts below did not commit any error in reaching to the conclusion that no right, title or interest can be conferred in favour of

defendant No1 on the basis of Will dated 11.07.1996 and similarly, defendant Nos.2 and 3, who are purchasers from defendant No.1, will not get any right in the suit property, which had already been transferred in favour of the plaintiff by virtue of the transfer deed dated 17.07.2006.

8. Consequent to above, this Court does not find any ground to interfere in the well-reasoned concurrent findings of facts as recorded by the Courts below in the absence of any perversity or illegality in the same. As such, finding the present appeal to be devoid of any merit, the same is hereby dismissed.

April 03, 2025

Sarita

(DEEPAK GUPTA)

JUDGE

Whether speaking/reasoned?

Yes/No

Whether reportable?

Yes/No