



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
114+232

RSA-818-2001(O&M)
Date of decision: 28.08.2025

Sohan Singh

...Appellant(s)

Vs.

Bachittar Singh & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. A.S. Ahluwalia, Advocate
Mr. G.K. Ahluwalia, Advocate
Ms. Sunidi Jain, Advocate
for the appellant.

Mr. Hitesh Verma, Advocate
for respondent No.3.

NIDHI GUPTA, J.

Present appeal has been filed by the plaintiff against the concurrent judgments and decrees of the learned Courts below whereby the suit filed by the plaintiff for declaration and permanent injunction has been dismissed by both the Courts below.

2. Brief facts of the case are that the plaintiff and defendants No.1 and 2 are siblings being children of Joginder Singh, who was owner of the suit land. Defendant No.1 is the brother; and defendant No.2 namely Mohinder Kaur is the sister of the plaintiff; and defendant No.3 is the subsequent purchaser of the suit property. It was the pleaded case of the plaintiff that



Joginder Singh being pleased with the services of the plaintiff had executed the disputed registered Will.

3. At the very outset, it is submitted by learned counsel for the appellant that the sole plaintiff namely Sohan Singh has expired on 04.02.2020. Accordingly, an application bearing CM-4219-C-2025 has been filed by applicant/defendant No.2 namely Mohinder Kaur w/o Gurdev Singh d/o Joginder Singh for bringing her on record as the sole surviving legal representative of the plaintiff/appellant.

4. This is opposed by learned counsel for the respondents/defendants who objects to the application and submits that the defendant cannot be transposed as plaintiff. It is submitted that the present appeal has abated as the sole appellant/plaintiff has expired.

5. Heard.

6. It is mentioned in the application bearing CM-4219-C-2025 that defendant No.1 namely Bachhitar Singh/brother of the applicant has died and he was bachelor and issueless. It is averred that therefore, applicant is the only legal representative of the deceased appellant Sohan Singh.

7. Needless to say, the applicant/defendant No.2 cannot be appellant and defendant in her own case/cause. The applicant Mohinder Kaur cannot be granted a decree against her own self as defendant Mohinder Kaur. Accordingly, the present application stands dismissed.



8. Further, even on merits, no ground is made out to interfere in the concurrent judgments and decrees of the learned Courts below.

9. Brief facts of the case are that the plaintiff and defendants No.1 and 2 are siblings. Originally, Joginder Singh (father of plaintiff and defendants No.1 and 2) was owner of the suit land. During lifetime of Joginder Singh, plaintiff had been serving him and providing all necessities. Joginder Singh being pleased with the services rendered by plaintiff executed a registered Will dated 14.02.1977 in favour of the plaintiff. The plaintiff became the owner in possession of the suit land on the basis of Will dated 14.02.1977 but AC-1st Grade vide order dated 15.12.1987 has wrongfully ignored the Will and sanctioned mutation on the basis of natural succession in favour of plaintiff, and defendants No.1 and 2 equally. The plaintiff preferred appeal against order dated 15.12.1987 and vide order dated 05.09.1988, appeal was dismissed. Defendants No.1 and 2 wanted to dispossess the plaintiff from the suit land and had filed a suit for declaration and permanent injunction against him which was dismissed as withdrawn on 26.03.1992 because Defendants No.1 and 2 despite of injunction had sold the suit land to defendant No.3 vide Sale Deed No.6723 dated 12.03.1992. Now, defendant No.3 on the basis of aforesaid Sale Deed wants to dispossess the plaintiff from the suit land illegally and forcibly. The plaintiff requested defendant many times not to take forcible possession of the suit land. Hence, present suit was filed on 27.03.1992.



10. Learned trial Court vide judgment and decree dated 22.10.1997 dismissed the suit of the plaintiff. Relevant findings returned by the learned trial Court are that the plaintiff miserably failed to prove the Will (Ex.P2) in accordance with provisions of Evidence Act. The plaintiff failed to explain to the satisfaction of the Court the suspicious circumstances pointed out by defendants' counsel. The plaintiff also tried to establish his claim on the basis of Will (Ex.P2) by way of secondary evidence. However, even by way of secondary evidence, the Will (Ex.P2) could be proved as per provisions of Section 63 of the Evidence Act unless it is compared with the original as per requirement of Section 76 of Evidence Act. Where the document is a copy of copy and the person who made that copy is not produced, the document is inadmissible in evidence. Applying this cardinal principle of law, alleged Will (Ex.P2) being copy of a copy which has not been got proved from a person who prepared the same after comparing the same with original, the same is inadmissible in evidence and same cannot be taken into account as evidence. Thus, plaintiff miserably failed to remove the suspicion in respect of alleged Will (Ex.P2). The plaintiff himself has not explained the circumstances under which defendants No.1 and 2 have been excluded to succeed the estate of Joginder. Therefore, Will (Ex.P2) did not stand proved.

11. Learned lower Appellate Court vide judgment and decree dated 30.09.2000 dismissed the appeal by giving findings that it goes undisputed that Ex.P2 is not even the certified copy of Will dated 14.02.1977 but a copy



of its copy or gist as noted down by concerned Registration Clerk. This fact was quite clear from the statement made by PW1 Head Registration Clerk, who has produced the said document on record. It is admitted by PWs namely Puran Singh, Bohar Singh and even plaintiff, that plaintiff, defendants No.1 and 2 are son and daughter of deceased Joginder Singh. But not to speak of giving any reason in the said Will by the testator to exclude defendants No.1 and 2 from his valuable inheritance, even there is no mention about them in the same. Further, there was nothing on record to indicate if Joginder Singh had any enmity towards defendant No.1. PW3 Puran Singh, only attesting witness of the Will, also stated nothing about this. PW2 document writer also specifically deposed that he does not know testator or witnesses. Therefore, Will was further rendered unreliable and shrouded by suspicious circumstance.

12. Keeping in view the above facts, the present appeal stands **dismissed.**

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

28.08.2025
Sunena

(Nidhi Gupta)
Judge

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