



**RSA-3131-2024(O&M)
and other connected cases**

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

1. RSA-3131-2024(O&M)

**Kuldeep Kaur (since deceased) through her LRs
..Appellant**

Versus

Kiranvir Singh and others ..Respondents

2. RSA-3129-2024(O&M)

**Kuldeep Kaur (since deceased) through her LRs
..Appellant**

Versus

Kiranvir Singh and others ..Respondents

3.RSA-3130-2024(O&M)

**Kuldeep Kaur (since deceased) through her LRs
..Appellant**

Versus

Kiranvir Singh and others ..Respondents

Reserved on : 15.01.2025

Date of decision: 20.01.2025

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Nitin Sachdeva, Advocate for the appellant

ANIL KSHETARPAL, J.

1. Factual Background:-

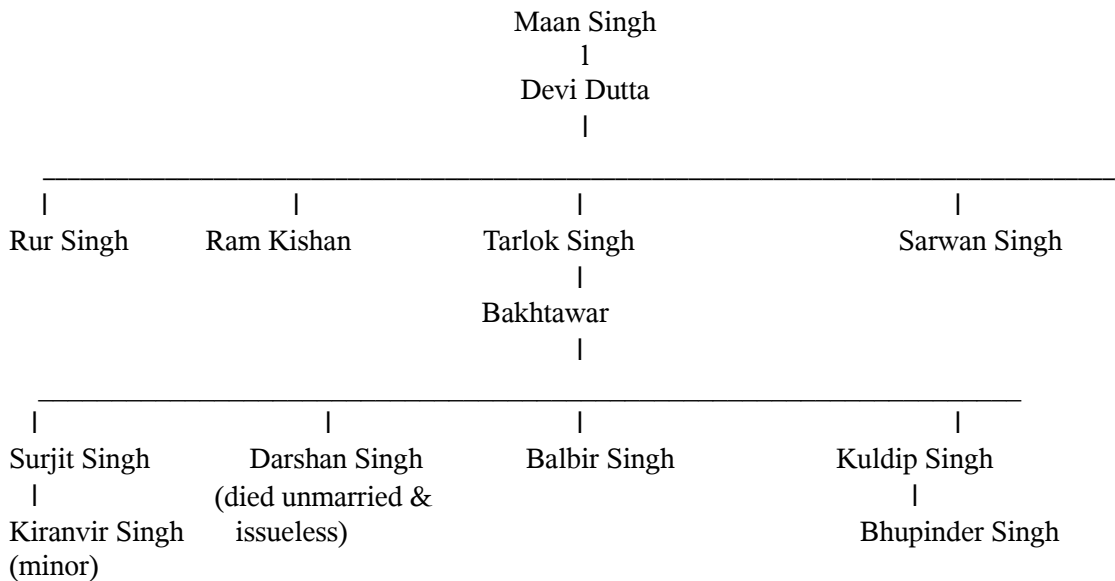
1.1 With the consent of the learned counsel representing the appellant, three connected Regular Second Appeals i.e RSA-3131, 3129 and 3130 of 2024 shall stand disposed of by this common order.



**RSA-3131-2024(O&M)
and other connected cases**

1.2 In order to comprehend the issues involved in the present appeal, the relevant facts, in brief, are required to be noticed.

1.3 For better comprehension, the family tree of the parties is drawn as under:-



1.4 Kiranvir Singh minor son of Surjit Singh filed a suit for the grant of decree of declaration with a consequential relief of permanent injunction claiming that he alongwith defendant no.8 are joint owners in possession of 58 kanals 8 marlas land on the basis of registered Will executed by late Sh.Rur Singh, their grandfather on 07.04.2004. The second suit was filed for the grant of declaration that the Will dated 18.06.2007 executed by Balbir Singh in favour of Kuldeep Kaur and Bhupinder Singh is illegal, null and void. Both the suits were consolidated and disposed of by a common judgment.

1.5 The court held that though the property in the hands of Sh.Rur Singh is not proved to be coparcenary property, however, 30 kanals 7 marlas was ancestral property and therefore, the plaintiff is not entitled to grant of decree of declaration with respect to 30 kanals 7 marlas land. Hence, the Will is valid only qua 29 kanals 1 marla land and the house. In fact, the



**RSA-3131-2024(O&M)
and other connected cases**

court erred in dismissing both the suits after recording finding that the Will dated 07.04.2004 is proved.

1.6 As many as three appeals were filed, two by the plaintiff and one by the defendant. The First Appellate Court has held that the property is not proved to be ancestral. Therefore, the plaintiff's civil suit no.64 of 20.03.2007 is decreed whereas the second suit has been dismissed as infructuous because of the decree passed in the first suit.

2. Arguments of the learned counsel representing the appellant:-

2.1 Heard the learned counsel representing the appellant at length and with his able assistance perused the paperbook.

2.2 The appellant's counsel has submitted that the Will executed by Sh.Rur Singh is suspicious because he has not given details of his remaining children and there is no evidence to prove that his two grandsons were taking care of him because at that time both the grandsons were minors. He further submitted that the witnesses examined by the plaintiff admit that the property is ancestral and therefore, the judgment passed by the First Appellate Court is incorrect.

3. Analysis and Discussion:-

3.1 This Court has considered the submissions made by the learned counsel representing the appellant.

3.2 First of all, it is necessary to examine the First Appellate Court's judgment. Defendant in order to prove that the property is ancestral has produced excerpt of the revenue record as PW4/C alongwith the index PW4/A and summary Ex. PW4/B. Jamabandis of the years 1940-41, 1952-53 and then between 1952-53 till 1976-77 are missing. DW4, the revenue



**RSA-3131-2024(O&M)
and other connected cases**

official who prepared excerpt has categorically admitted this fact during his cross-examination. The defendant has not linked the suit land with the property owned by Devi Dutta who was father of Rur Singh. As per jamabandi for the year 1904-05 Ex.DW4/D, Devi Dutta son of Maan Singh is recorded as owner in possession of the property measuring 24 bighas 3 biswas of land. Thereafter, consolidation of holdings took place in the village. Devi Dutta son of Maan Singh was recorded as owner of different khasra numbers of land in the jamabandi for the year 1915-16. In the jamabandi for the year 1952-53, Ram Kishan, Sarwan and Sh.Rur Singh sons of Devi Dutta alongwith Bakhtawar Singh son of Tarlok Singh are shown to be owners in possession of the land comprised in Village Khanpur in khasra nos. 80, 81, 82, 84, 85, 86, 87, 88, 137, 141, 142, 143, 144, 145, 146, 148, 149, 150, 151 and 152.

3.3 In Ex.DW6/1, the jamabandi for the year 1976-77 Ram Kishan Singh, Sarwan Singh, Rur Singh alongwith Bakhtawar Singh are shown to be owners in possession of land comprised in Village Khanpur in khasra nos. 80, 81, 82, 84, 85, 86, 87, 88, 137, 141, 142, 143, 144, 145, 146, 148, 149, 150, 151 and 152. It has come on record that Darshan Singh died issueless and he was a bachelor. The defendants have not produced the documents prepared during consolidation of holdings including Khatauni Ishtemal, Khatauni Paimaish and Naksha Haqdaran to connect the old khasra numbers with new khasra numbers in order to prove the identity of the land.

3.4 Thus, the court has held that the defendant failed to prove that the property was ancestral and could not be bequeathed by Rur Singh by way of a registered Will.



**RSA-3131-2024(O&M)
and other connected cases**

3.5 With regard to the first argument of the appellant's counsel, it may be noticed that Will dated 7.04.2004 has been brought on record as Ex.P-1. The Will has been proved by the deposition of PW1, PW2 and PW4 which fulfils the requirement of Section 68 of the Indian Evidence Act, 1872. Both the attesting witnesses have been examined. Left hand thumb impression of Sh. Rur Singh appended on the Will has been proved by examining the hand-writing and finger print expert. While executing the Will, Sh.Rur Singh has stated that both the beneficiaries are his grandchildren and he wants to bequeath the entire property in their favour. The Will is a natural Will executed by a grandfather in favour of his grandchildren. It has also been asserted by the plaintiff that Balbir Singh and Darshan Singh received the land from maternal side in village Bikhi. The children of Surjit Singh and Kuljit Singh, remaining two sons of Sh.Rur Singh are beneficiaries of the Will. Hence, failure to make reference to other children would not be sufficient to discard the registered Will which has been proved.

3.6 With regard to the second submission of the learned counsel, it may be noticed that the defendant was required to prove that the land qua Sh.Rur Singh was ancestral property, which is a concept of customary law. However, the defendant failed to prove that fact. Defendants failed to produce evidence to connect Devi Dutta's land with the land of Rur Singh. Moreover, defendant has miserably failed to prove that 30 kanal 7 marlas land lineally descended upon Sh.Rur Singh from his father particularly when Devi Dutta had four sons namely Sh.Rur Singh Ram Kishan, Tarlok



**RSA-3131-2024(O&M)
and other connected cases**

Singh and Sarwan Singh. During the lifetime of Devi Dutta, Bakhtawar his grandchild was also recorded as owner in the revenue record.

3.7 The oral admission/deposition qua the property being ancestral would not estop the plaintiff to claim that the property is not ancestral. The onus of proving the fact that property is ancestral lay upon the defendant. It is also proved that Sh.Rur Singh had four sons and four daughters. When he died he had three sons and two daughters whereas Darshan Singh did not marry.

4. Decision:-

4.1 For the foregoing reasons, this Court does not find it appropriate to interfere with the findings of fact arrived at by the First Appellate Court. All the three appeals are dismissed.

4.2 All the pending miscellaneous applications, if any, are also disposed of.

**(ANIL KSHETARPAL)
JUDGE**

20.01.2025

rekha

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No