



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA-2993-2013 (O&M)

Date of decision: 03.04.2025

Resham Kaur

...Appellant(s)

Vs.

Gurdev Singh and others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. M.S.Dhami, Advocate for the appellant.

Mr. Sandeep Bansal, Advocate for the respondents.

NIDHI GUPTA, J.

The plaintiff is in second appeal against the concurrent judgments and decrees of the Id. Courts below, whereby the suit filed by the appellant seeking declaration that plaintiff is joint owner in possession of estate of deceased Jagat Singh, along with consequential relief of permanent injunction, has been dismissed by both the Courts below.

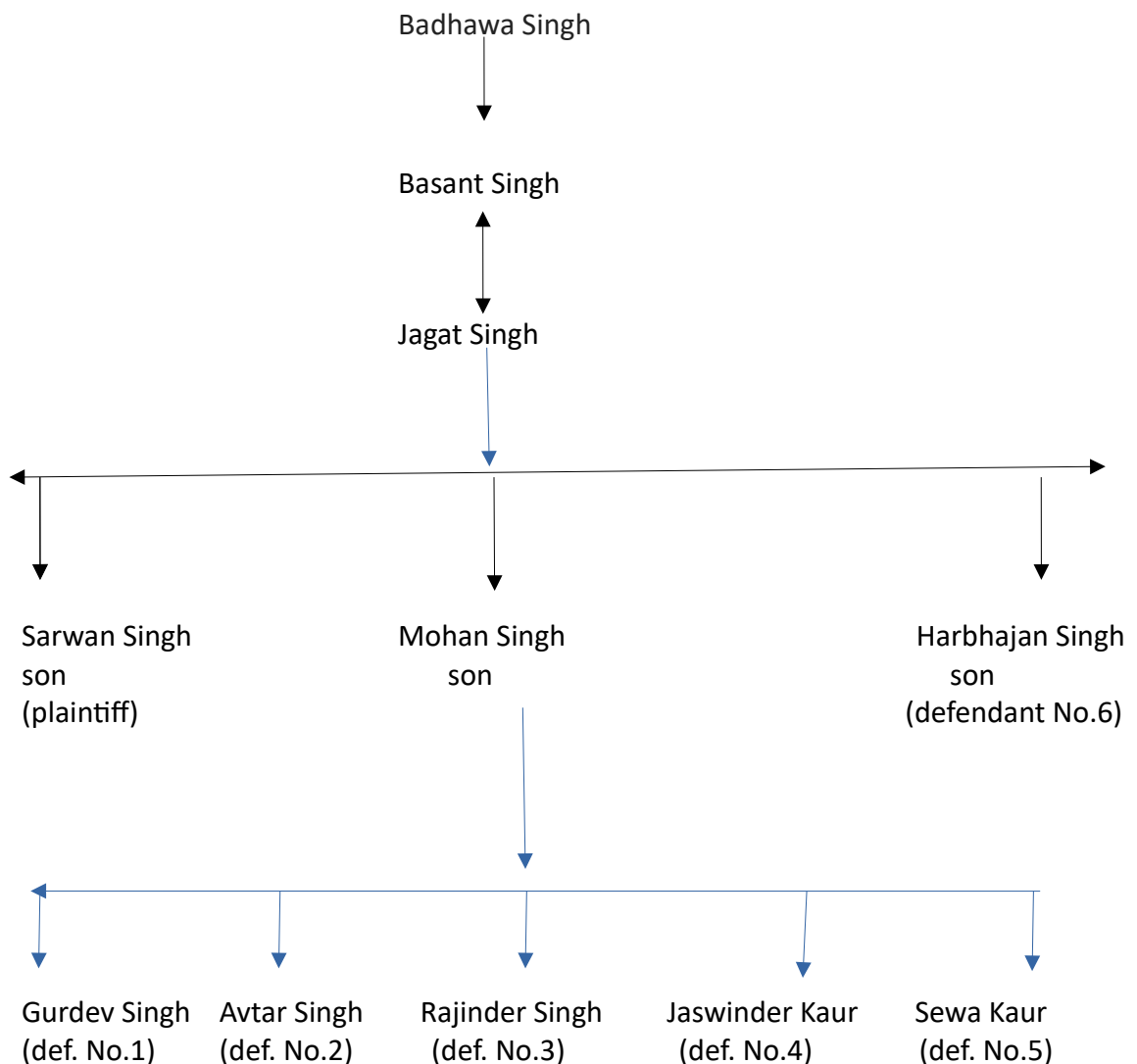
2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellant is the 'plaintiff'; and respondents are the 'defendants'.

3. Brief facts of the case are that the plaintiff had filed a suit for declaration that the plaintiff is joint owner in possession of the estate of deceased Jagat Singh to the extent of 1/3rd share in the suit land as described in the plaint as per Jamabandi for the year 2000-01; and mutation no. 4329 sanctioned on 31.10.2003 on the basis of Will dated 28.12.2001 is illegal; and permanent injunction restraining the defendants



from alienating and from interfering in the peaceful possession of the plaintiff over the suit land.

4. The following pedigree table will be helpful, in understanding the relationship between the parties: -



5. It was pleaded in the plaint that the suit land was owned by Jagat Singh (father of the plaintiff and defendant no. 6, and grandfather of defendants no. 1 to 4, and father-in-law of defendant no.5). it was asserted in the plaint that Jagat Singh had inherited the suit land from his ancestors; and therefore, the suit land was ancestral coparcenary in nature; and that the plaintiff and defendants have acquired right being coparcenars and ancestral property by birth. It was further pleaded that Jagat Singh had died



intestate leaving behind plaintiff, defendants No. 1 to 6; and Mohan Singh. Mohan Singh/father of defendants No. 1 to 4, and husband of defendant no.5 had also died. After the death of Mohan Singh, defendants No. 1 to 5 have succeeded as class-I heirs. Mohan Singh had alleged that Jagat Singh had executed impugned Will dated 28.12.2001 in his favour; on the basis of which he got mutation entered and sanctioned in his favour vide order dated 31.10.2003. It was pleaded that deceased Jagat Singh was not competent to execute the said Will of land which was coparcenary in nature. The plaintiff is joint owner in possession to the extent of 1/3rd share in the estate of deceased Jagat Singh. With these assertions the civil suit was filed on 10.02.2004.

6. It is submitted by learned counsel that Will dated 28.12.2001 is surrounded in suspicious circumstances in-as-much as DW3 grand son of Jagat Singh has admitted that beneficiary has taken active part in execution of the Will. It is submitted that moreover in the Will it is not mentioned that it is the last Will of the deceased Jagat Singh. Further no reasons have been given for excluding the plaintiff as beneficiary. Moreover, Jagat Singh was not of sound disposing mind at the time of his death.

6. On the other hand, learned counsel for the defendants opposes the contentions made on behalf of the plaintiff and argues that it is nowhere proved on record that the suit land was ancestral in nature. Furthermore, the Will was a registered document and has been proved in accordance with law by producing attesting witnesses as well as the Scribe. The allegations of the plaintiff that testator Jagat Singh was not of sound



disposing mind at the time of execution of Will are factually incorrect and have been proven to be so on record. Further the Will clearly assigns reasons for excluding the plaintiff as beneficiary as it has come on record that the testator and Harbhajan Singh were living with the defendants. It is accordingly prayed that the present appeal be dismissed.

7. No other argument is raised on behalf of the parties.

8. I have heard learned counsel for the parties and examined the case file in great detail.

9. I find no merit in the submissions advanced on behalf of the appellant. It has firstly been contended by learned counsel for the plaintiff that the suit land was ancestral in nature. However, the record reveals that the plaintiff has miserably failed to prove that the suit land was inherited by his father Jagat Singh from his father Basant Singh. In order to prove the ancestral nature of the suit land, it was incumbent upon the plaintiff to prove that property was inherited by Jagat Singh from his father Basant Singh, who had inherited from his father Badhawa Singh. There is no evidence on file to show that suit land was inherited by Basant Singh from Badhawa Singh. As such, plaintiff failed to prove that the suit land was inherited by father of the plaintiff upto three generations.

10. Even otherwise, the record reveals that the suit land was inherited by Jagat Singh by way of Will dated 05.11.1972 Ex.P13 executed by Basant Singh in favour of Jagat Singh; in respect of which mutation No. 2781 was also sanctioned in the name of Jagat Singh. From these facts it is



clear that the suit property was not inherited by Jagat Singh by survivorship but had been inherited by him through Will of Basant Singh.

11. It is the next contention of the plaintiff that the Will was surrounded in suspicious circumstances. However, the said contention of the plaintiff is factually incorrect as the defendants had produced attesting witness of the Will, namely Balbir Singh/DW1; as also the Scribe/Deed Writer Sukhwinder Singh as DW2, who have proven the Will dated 28.12.2001 Ex.D1. DW1 Balbir Singh had tendered his affidavit Ex.DW1/A wherein he had stated that he personally knew the testator Jagat Singh who had executed Will dated 28.12.2001 and after admitting the same to be correct, he had thumb marked the said Will in his presence as well as in the presence of other attesting witness i.e. Amanpreet Singh and Sukhwinder Singh (Deed Writer) DW2. DW1 further deposed that the Will was executed in favour of Mohan Singh with free will of Jagat Singh.

12. DW2/Scribe had also tendered his affidavit in examination-in-chief Ex.DW2/A; where he had stated that Jagat Singh had executed Will in favour of Mohan Singh. The said Will was scribed by DW2 Sukhwinder Singh on 28.12.2001. DW2 Deed Writer had duly entered the Will in his Register at Sr. No. 663 where Jagat Singh had put his thumb mark in the Register. Thus, DW2 duly proved the Will Ex.D1; as also copy of relevant page of his Register Ex.D2. As such, the Will Ex.D1 stood proven in accordance with law.

13. DW3 Arjinder Singh also tendered his affidavit Ex.DW3/A in which he had stated that the suit property is not ancestral coparcenary



and Jagat Singh was sole owner in possession of the suit property. DW3 further deposed that Jagat Singh had executed the registered Will in favour of Mohan Singh.

14. Thus, the registered Will Ex.D1 was proved by the evidence of attesting witnesses and Scribe. The Will was also bearing the photo of Jagat Singh and is thumb marked. No handwriting, fingerprint or document expert was examined by the plaintiff to prove that thumb impression of Jagat Singh on the Will is of different person. The record reveals that it has also been contended on behalf of the plaintiff that the Will Ex. D1 did not bear any photograph of Jagat Singh. Even the said contention was found to be incorrect as admittedly the photograph of Jagat Singh was borne on the back side of the Will along with all other witnesses in the record of office of Sub Registrar. As such, presence of Jagat Singh was duly proven. Even signatures of the attesting witness Balbir Singh was proved by evidence of Balbir Singh DW1 and Scribe Sukhwinder Singh DW2.

15. It has been contended by the plaintiff that the beneficiary has taken active part in the execution of the Will and no reason has been assigned by Jagat Singh for excluding the plaintiff. However, even the said assertion is incorrect as a perusal of the registered Will/Vasika No. 197 dated 28.12.2001 Ex.D1 (available at pages 381 to 385 of the LCR) shows that it was clearly stated therein that *"I am being looked after constantly by my son Mohan Singh. I am very happy from his services and he does everything what I say, looks after me and provides medical facilities.*



Therefore, I am getting this will written myself, feeling happy from his looking after myself. That till the time I am alive, I will remain owner in possession of my Estate. After my death only my son Mohan Singh son of Sh. Jagat son of Basant Singh Village Jhingar Kalan, Tehsil Dasuya, District Hoshiarpur will be the absolute owner of my property. I have two other sons Sarwan Singh and Harbhajan Singh wherein Sarwan has been got married and he has already been given land according to his share and he is looking after that. Therefore, he will have no concern with my property. My son Harbhajan Singh is un-married and has passed the age of performing marriage and he will live his life with my son Mohan Singh and is living since birth. Therefore, he will have no concern with my property. That this Will has been written in full senses, without any pressure and with my own free will so as record remains.”

16. From the above extract of the Will, it is clear that the testator Jagat Singh has assigned clear and categoric reasons for bequeathing his estate upon Mohan Singh. It has also not been denied by learned counsel for the plaintiff that the testator Jagat Singh and Harbhajan Singh had been living with the defendants and were being looked after by them. The defendants had also placed on record copies of ration card Ex.D3 and voter list Ex.D4 to prove that deceased Jagat Singh was residing with Mohan Singh. Residence of Harbhajan Singh with the defendants was proven from the evidence of plaintiff witnesses PW1 Joginder Singh and PW2 Resham Kaur themselves who had admitted this fact during their cross-examination. Further, in the Will, it is clearly mentioned that Swaran



Singh/plaintiff has been given land in another village. As such, plaintiff also failed to prove that the Will was result of undue influence. Resultantly, mutation No. 4329 dated 31.10.2003 Ex.D5 sanctioned on the basis of the said Will is also legal and valid.

17. It has also been contended by learned counsel for the plaintiff that Jagat Singh was not of sound disposing mind at the time of execution of Will. However, admittedly no medical documents in this regard have been produced by the plaintiff before any Court to substantiate the said allegation.

18. It is also to be noted that although the plaintiff Sarwan Singh had appeared as witness, but he did not appear for cross-examination. On the contrary, his Attorney-holder, his wife Resham Kaur, had appeared as PW2. As such, plaintiff was unable to prove his own case himself. PW2 Resham Kaur has admitted in her cross-examination that the disputed land was not in their possession and the same was in the possession of the defendants even at the time of filing of the suit. It is to be noted that simplicitor suit for declaration without possession is not maintainable. As such, suit of the plaintiff was also held to be not maintainable.

19. In view of the discussion above, no ground is made out to interfere in the impugned judgments and decrees of the learned Courts below. The present regular second appeal is hereby **dismissed**.

20. Pending applications, if any, stand disposed of.

03.04.2025

Divyanshi

(NIDHI GUPTA)
JUDGE

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