

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

(1)

**Regular Second Appeal No.4698 of 2011 (O&M)
Date of Decision: January 15, 2015.**

Dalel Singh

.....APPELLANT(s).

VERSUS

Pawan Kumar and others

.....RESPONDENT(s).

(2)

Regular Second Appeal No.4699 of 2011 (O&M)

Dalel and others

.....APPELLANT(s).

VERSUS

Ramesh Kumar and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Rakesh Gupta, Advocate
for the appellant(s) in both the appeals.

Mr. Rajinder Goel, Advocate
for respondents No.3 and 4 in RSA-4698-2011 and
for respondents No.1 and 2 in RSA-4699-2011.

Mr. Sachin Gupta, Advocate
for respondent No.5 in RSA-4698-2011.

None for remaining respondents.

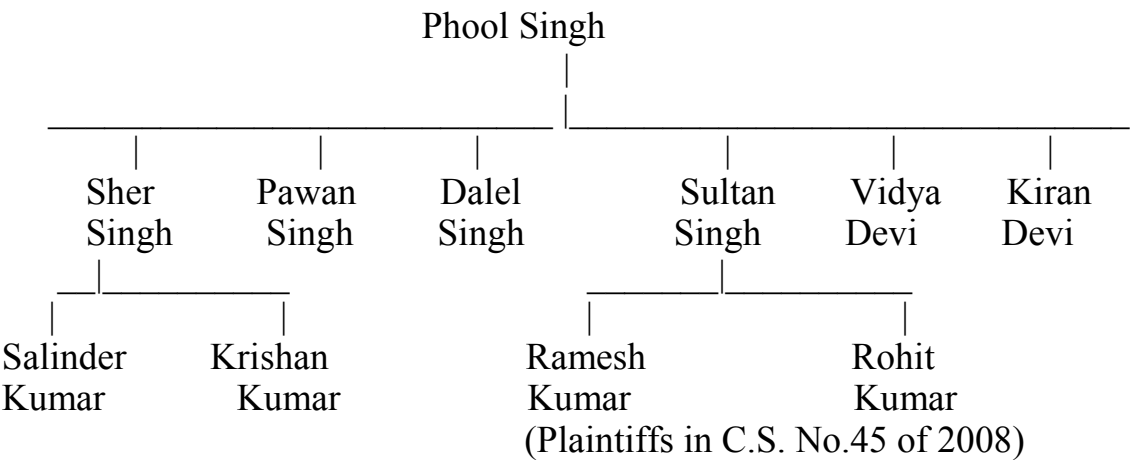
SURINDER GUPTA, J.

Both the aforementioned regular second appeals are being
disposed of by this common judgment as the same arise out of a common
judgment in separate civil suits i.e. Civil Suit No.RBT-23 of 2007 titled as

Phool Singh (since deceased represented by his legal heirs) Vs. Dalel Singh and another and Civil Suit No.45 of 2008 titled as Ramesh Kumar and another Vs. Sher Singh and others.

RSA No.4698 of 2011 has been filed by Dalel Singh son of Phool Singh while RSA No.4699 of 2011 has been filed by Dalel Singh and others.

The pedigree table given below will help in understanding the relationship of the parties:-



Civil Suit No.RBT-23 of 2007 instituted on 12.08.2002

In civil suit filed by Phool Singh (since deceased), he sought relief of permanent injunction against his son Dalel Singh with regard to the property bearing house No.145/13 forming part of land bearing khewat No.1558, khatauni No.1756, rectangle No.63 killa No.10 and rectangle No.64 killa No.6 situated in the revenue estate of village Pundri, Tehsil and District Kaithal. As per plaintiff Phool Singh, the suit property was owned and possessed by him. His son Dalel Singh was very disobedient, disrespectful and not on speaking terms with him. The disputed house was entered in the municipal record in his name prior to 1996 but taking the undue benefit of his illiteracy and innocence, his son Dalel Singh in collusion with officials of Municipal Committee, Pundri, (defendant No.2) got his name entered in the

house tax assessment register in the column of ownership and occupation. On the basis of that entry, Dalel Singh was claiming ownership of the said house. On coming to know of the wrong entry, plaintiff Phool Singh approached Municipal Committee, Pundri for correction of the same but the matter was put off on one pretext or the other, resulting in filing the instant suit. Relief claimed by Phool Singh in this suit is as follows:-

“That the plaintiff prays that a decree for permanent injunction restraining the defendant No.1 for ever in any manner from raising any sort of construction over the suit property fully detailed above in para No.1 of the plaint and further be restrained from interfering into the lawful and peaceful possession of the plaintiff over the suit property either by dispossessing the plaintiff from the same or otherwise and further a decree for mandatory injunction directing defendant No.2 to correct the house tax assessment record in respect of suit property in favour of the plaintiff since the year it was wrongly entered in the name of defendant No.1 to upto date and be further directed to supply the certified copy of house tax assessment register in respect of suit property to the plaintiff since 1985 to upto date may kindly be passed with costs in favour of the plaintiff and against the defendants. Any other relief to which the plaintiff is found entitled to may also be granted.”

In the written statement, defendant No.1 Dalel Singh contested the claim of his father Phool Singh inter-alia pleading that house bearing MCP No.145/13 was constructed by him and his brother Pawan on the land bearing rectangle No.63 killa No.10, rectangle No.64 killa No.6 in an area of 28' X 86.6' approximately. He and Pawan Kumar were owners in possession of this house which has fallen to their share in family partition in the year 1992. Sultan Singh and Sher Singh also got their separate shares from the

land mentioned above and constructed their separate houses which were allotted No.144/13 and 143/13. The electric and water connections in house No.145/13 were in the name of defendant Dalel Singh. The old ancestral *haveli* bearing No.129/7 situated in Sethan Wala Mohalla came to the share of plaintiff Phool Singh, where he was residing. There was a dispute about the tubewell and construction of *Chaubara* in the front side of house of Dalel Singh, which was resolved by the *Panchayat* and it was decided that if Phool Singh wanted to live in that *Chaubara*, then other brothers Sher Singh, Sultan and Pawan Kumar shall construct a *Chaubara* thereon which was, however, not constructed as Phool Singh declined to live in the *Chaubara*. The entries in the Municipal record were rightly corrected in the year 1996 as the earlier entries were wrongly continuing in the name of plaintiff.

In the separate written statement filed by Municipal Committee, Pundri-defendant No.2 it was pleaded that as per the record of the Municipal Committee for the year 1994-95 plaintiff Phool Singh was recorded as owner in possession of the house in dispute but the ownership was changed when the private contractor surveyed the house and Dalel Singh, defendant No.1 was found in possession of the same. His name was incorporated in the Municipal record of house tax assessment for the year 2001-02 due to his possession over the house.

Plaintiff Phool Singh reiterated his claim in the replication and pleadings of the parties led to the framing of following issues:-

- (1) Whether the plaintiff is entitled to a decree for permanent injunction restraining the defendant no.1 from raising construction over suit property and from interfering into the lawful and peaceful possession over the suit property of plaintiff?OPP

- (2) Whether the plaintiff is entitled to a decree for mandatory injunction directing the defendant no.2 to correct the house-tax assessment record in respect of the suit property in favour of the plaintiff as prayed for and to supply the certified copy of house-tax assessment register in respect of the suit property to the plaintiff since 1985, till date ?OPP
- (3) Whether the suit of the plaintiff is not maintainable ?OPD
- (4) Whether the plaintiff has no cause of action to file the present suit ?OPD
- (5) Whether the plaintiff has concealed the true and material facts from the court ?OPD
- (6) Whether the suit is bad for non-joinder and mis-joinder of the necessary parties ?OPD
- (7) Relief.

Civil Suit No.45 of 2008 instituted on 10.06.2004

After the death of Phool Singh @ Phoola Ram on 15.02.2004, plaintiffs Ramesh Kumar and Rohit, both minors filed the present suit through their father and natural guardian Sultan Singh claiming the properties left by Phool Singh on the basis of Will dated 14.05.2002, which was got registered on 17.05.2002 by Phool Singh in favour of plaintiffs and defendants No.6 and 7 namely Salinder and Krishan sons of Sher Singh. The suit properties in this case are as follows:-

- i) Land measuring 20K-18M representing 1/5 share of land measuring 104K-10M entered at Khewat no.31 khatoni no.39, Rect No.77, killa no.25, Rect. No.78 killa no.17, 18, 19, 20/1, 21, 22, 23, 24/1, Rect. No.111 killa no.1,2,3,10/2, Rect. No.112, killa no.5, 6 comprised in 15 kittas according to jamabandi for the year 1995-96 relating to village Pundri, Sub Tehsil Fatehpur Pundri, Tehsil and District Kaithal.
- ii) One residential house bearing MCP No.145/13, consisting of one Nohra, one room, varanda and open space forming part

of land measuring 4K-8M entered at khewat no.1558, khatoni no.1756, Rect. No.63 killa No.10, Rect. No.64, killa no.6 according to jamabandi for the year 1995-96 relating to village Pundri situated within the revenue estate of village Pundri, Tehsil and District Kaithal and municipal limits of Pundri Municipality.

Plaintiffs case, in brief, is that defendants No.1 to 5, who are the sons and daughters of late Shri Phool Singh got entered mutation No.1872 relating to inheritance of the suit property mentioned as (i) above in their favour and in favour of Sultan Singh, father of plaintiffs without notice and knowledge of the plaintiffs. Dalel Singh, appellant No.1/defendant No.3 in collusion with municipal officials got entered his name in the house tax assessment register for the year 2001-02 in the column of ownership and possession with regard to the property mentioned as (ii) above. On the basis of mutation and entries in the municipal record, defendants were threatening to dispossess the plaintiffs from the suit property and to alienate the same.

Relief claimed by plaintiffs Ramesh and Rohit in the suit is as follows:-

“The plaintiffs pray that a decree for declaration to the effect that plaintiffs no.1 and 2 and defendants no.6 & 7 are owner in possession of the suit property fully detailed and described in para no.1 a & b of the plaint above and the mutation no.8472 in the favour of defendant no.1 to 5 and Sh. Sultan Singh and municipal entries in the favour of defendant no.3 are null and void and do not confer any right title or interest in the defendant no.1 to 5 and further a decree for permanent injunction restraining the defendants no.1 to 5 from interfering into the lawful and peaceful possession of the plaintiffs over the suit property either by dispossessing them from the same or by alienating the same

to any one or otherwise may kindly be passed with cost in the favour of plaintiffs and against the defendants.”

In the joint written statement filed by the appellants-defendants, the claim of the respondents-plaintiffs along with proforma defendants claiming inheritance of the property left by Phool Singh on the basis of his Will, was contested and controverted inter-alia pleading that Phool Singh was 70 years of age when he expired and was not in a sound disposing mind. He never executed or thumb marked the Will. He used to remain ill and under the influence of liquor. He was also under the influence of Sultan Singh who once tried to commit suicide by consuming poisonous substance. Sultan Singh used to blackmail Phool Singh by giving him threat of suicide in case he did not act according to his wishes and threatened to kill his family. It was further pleaded that Phool Singh was not legally competent to execute any Will in favour of respondents-plaintiffs Ramesh and Rohit, defendants-respondents Salinder and Krishan.

Pleadings of the parties led to the framing of issues as follows:-

- (1) Whether the plaintiffs are entitled to a decree of declaration and permanent injunction as prayed for ?OPP
- (2) Whether the suit is not maintainable ?OPD
- (3) Whether the plaintiffs have suppressed the true and material facts from the court ?OPD
- (4) Whether the suit is bad for non-joinder of necessary party ?OPD
- (5) Relief.

The above civil suit No.45 of 2008 was consolidated with civil suit No.23 of 2007 filed by Phool Singh and the evidence was recorded in that case titled as Phool Singh Vs. Dalel Singh and another.

Learned Civil Judge (Junior Division), Kaithal vide judgment

and decree dated 30.03.2009 decreed both the civil suits as follows:-

“In view of my issue-wise findings given above for both the suits, civil suit No.23/2007/2002 and civil suit No.45/2008/2004 are, hereby, decreed with costs and the plaintiffs are held entitled to a decree for declaration to the effect that plaintiffs No.1 and 2 and defendants No.6 and 7 are the owners in possession of the suit property fully detailed and described in para no.1(a) and 1 (b) of the plaint of civil suit no.45/2008/2004 and mutation no.8472 in favour of defendants No.1 to 5 and Shri Sultan Singh and the Municipal entries in favour of defendant no.3 are null and void. The plaintiffs are also held entitled to a decree for permanent injunction restraining defendants No.1 to 5 from interfering into the lawful and peaceful possession of the plaintiffs over the suit property either by dispossessing them from the same or by alienating the same to any one or by raising construction over the suit property. Defendant No.2 in civil suit No.23/2007/2002 is also directed to correct the house-tax assessment record in respect of the suit properties in favour of the plaintiffs.”

Not satisfied, Dalel Singh filed appeal against the judgment and decree passed in case titled as Phool Singh Vs. Dalel Singh and another. He along with his brothers Pawan Kumar, Sher Singh and sister Karna Devi filed appeal against the judgment passed in civil suit titled as Ramesh Kumar and another Vs. Sher Singh and others. Both the appeals were dismissed by learned Additional District Judge, Kaithal vide judgment dated 30.09.2011.

Under challenge in both these regular second appeals are the concurrent findings of the Courts below recorded against the appellant(s).

Learned counsel for the appellant(s) while not disputing that Phool Singh was owner of the suit property which was subject matter of both

the civil suits, has argued that vide family settlement which took place in the year 1992, placed and proved on file as Ex.D25, the plot measuring 28' X 86.6' fell to the share of Dalel Singh and Pawan Kumar over which they constructed their houses and are residing there. Sultan Singh and Sher Singh got another plot measuring 28.7' X 110'. A *haveli* in ward No.8 fell to the share of Sher Singh and Sultan Singh. As per this family settlement, Dalel Singh and Pawan Kumar became owner of the plot over which house No.145/13 has been constructed. He has further argued that the land measuring 20 kanals 18 marlas and the house bearing MCP No.145/13 were though owned by Phool Singh but these were joint Hindu family coparcenary property which he was not competent to alienate through Will. The documents on record prove the ancestral nature of the suit property. He further argued that Sher Singh and Sultan Singh have also constructed house bearing MCP Nos.143/13 and 144/13 on the plots which were given to them. In house No.145/13, electric connection and water connection are in the name of Dalel Singh. While referring to the Will Ex.P1, he has argued that figure 2 in the date on page 2 of the Will was incorporated later and this figure was not there in the photocopy of the Will supplied to the appellants with the copy of plaint and this amounts to interpolation. He further argues that one of the beneficiary under the Will namely Salinder Singh appeared as DW6 and has not claimed any benefit as a beneficiary under Will dated 14.05.2002/17.05.2002. The statement of Salinder Singh corroborate the plea of appellants that Will dated 14.05.2002/17.05.2002 propounded by plaintiffs Ramesh and Rohit is false and fabricated.

Learned counsel for contesting respondents has argued that family settlement Ex.D25 relied by the appellants is not admissible in the

eyes of law as the property belonged to Phool Singh. The settlement allegedly took place during the life time of Phool Singh and as per the case of the appellants, the *haveli* in the village had fallen to the share of Phool Singh under the settlement but Phool Singh was not a party to this settlement or at any point of time ratified the same. He rather filed the suit during his life time laying his claim over the house No.MCP-145/13. In that suit, he had categorically described Dalel Singh as a person who was disobedient, disrespectful and not on speaking terms with him. The execution of the Will is duly proved. Phool Singh was conscious enough to get the Will registered as he was aware of the conduct of his other sons. Moreover, he did not confer his entire property to Ramesh Kumar and Rohit sons of Sultan, rather he gave equal shares to Krishan Kumar and Salinder sons of Sher Singh, his other son. The fact that Salinder Singh is now describing the Will as false and is not claiming the property under Will is of no consequence, so far as the legality and validity of the Will is concerned. This argument of learned counsel for the appellants that the property in dispute was joint Hindu family coparcenary property, is not tenable in view of the facts and evidence on record. Even if, it be believed that the land measuring 104 kanals 10 marlas was joint Hindu family coparcenary property, vide settlement dated 04.06.2001 Phool Singh had given share to his all the four sons namely Sultan Singh, Sher Singh, Dalel Singh and Pawan Kumar. He had equally divided his 104 kanals 10 marlas of land and retained 20 kanals 18 marlas bearing murabba No.78 killa No.22 (3-11), 21 min south (1-7), murabba No.111 killa No.2(8-0) and 3 (8-0). Even under Section 30 Hindu Succession Act, Phool Singh was competent to execute the Will qua his share in the ancestral land.

The arguments of learned counsel for the appellants revolve around three facts:-

- (i) that Dalel Singh and Pawan Kumar got the plot over which house No.145/13 exist by way of family arrangement;
- (ii) that the land measuring 20 kanals 18 marlas in the hands of Phool Singh was joint Hindu family coparcenary property and could not be willed away by Phool Singh;
- (iii) that there are interpolation in the Will Ex.P1, as such, it is a suspicious document.

- (i) that Dalel Singh and Pawan Kumar got the plot over which house No.145/13 exist by way of family arrangement;

There is no evidence on file that plot over which property bearing No.MCP-145/13 is situated, was joint Hindu family coparcenary property, rather perusal of the revenue record i.e. jamabandi for the year 1970-71 and 1975-76 show that land bearing khasra No.63//10 and 64//6 measuring 4 kanals 8 marlas was owned by Jangli, Phoola, Vir Singh Mangal Singh and Jamna each to the extent of 1/12 share. Learned counsel for the appellants could not make out as to how this property is proved to be a joint Hindu family coparcenary property of Phool Singh @ Phoola Ram. Phool Singh was not a party to the alleged family settlement Ex.D25. He was neither a signatory to this family settlement nor at any point of time had ratified the same. This property was recorded in the name of Phool Singh in the Municipal record and some changes were made only in the house tax assessment register of the Municipal Committee, which in no manner, confer any title on Dalel Singh and Pawan Singh. This plea of the appellants, as such, fails. A perusal of family settlement Ex.D25 falsified the plea of appellants that under settlement Ex.D25 *haveli* bearing No.129/7 in the village had fallen to the share of Phool Singh. There is no mention in

Ex.D25 about any *haveli* bearing No.129/7, rather it is recited that a *haveli* in ward No.8 had fallen to the share of Sher Singh and Sultan Singh. This family settlement is also without any date. This plea of learned counsel for appellants is without basis and is repelled.

- (ii) that the land measuring 20 kanals 18 marlas in the hands of Phool Singh was joint Hindu family coparcenary property and could not be willed away by Phool Singh;

This plea of appellant has no substance. It is not disputed that vide settlement Ex.P6, Phool Singh divided land owned by him measuring 104 kanals 10 marlas and given equal share to all his sons and retained 1/5th share measuring 20 kanals 18 marlas with him. Even otherwise, Phool Singh was competent to execute the Will of his share of land in the joint Hindu family coparcenary property under Section 30 of Hindu Succession Act, which reads as under:-

“30. Testamentary succession

.- (1) Any Hindu may dispose of by will or other testamentary disposition any property, which is capable of being so disposed of by him, in accordance with the provisions of the Indian Succession Act, 1925 (49 of 1925), or any other law for the time being in force and applicable to Hindus.

Explanation.—The Interest of a male Hindu in a Mitakshara coparcenary property or the interest of a member of a *tarwas*, *tavazhi*, *illom*, *kutumba* or *kavaru* in the property of the *tarwas*, *tavazhi*, *illom*, *kutumba* or *kavaru* shall, notwithstanding anything contained in this Act or in any other law for the time being in force, be deemed to be property capable of being disposed of by him or by her within the meaning of this subsection.

The Will executed by Phool Singh with regard to his share in the total land measuring 104 kanals 10 marlas is legal and could not be assailed

by other coparceners. As the appellants have no claim, even if, their argument that the total land measuring 104 kanals 10 marlas was joint Hindu family coparcenary property be accepted, as such, it is not required to delve on the point as to whether land measuring 104 kanals 10 marlas was in fact joint Hindu family coparcenary property?

(iii) that there are interpolation in the Will Ex.P1, as such, it is a suspicious document.

This argument of learned counsel for the appellant that there is interpolation of the date of Will is also without any merit. Though in order to satisfy himself, learned Civil Judge called the register of the scribe to verify this fact and was satisfied that there is no interpolation yet this plea could not be raised by the appellants because when the scribe of the Will appeared, his explanation was not sought regarding the alleged interpolation.

Even otherwise, the Will was got registered on 17.05.2002 and the Will was scribed by a regular deed writer, as such, this plea has no substance that the date 14.05.2002 mentioned in the Will is interpolated. No party is going to gain on this score.

Salinder Singh, one of the beneficiary under the Will, was generous enough to state that he did not wish to claim under the Will but his statement, in no manner, create any doubt about the Will or can be termed as a fact effecting the legality and validity of the Will which both the Courts below have held as duly proved. It appears that due to his sympathy and affection for appellant Dalel Singh and expressing his desire that Dalel Singh should retain house bearing No.MCP-145/13 as owner, Shalenger Singh has gone to the extent of foregoing his share which he will get as beneficiary under the Will. The arguments of learned counsel for the appellant about

interpolation in date of Will dated 14.05.2002/17.05.2002, have no merits

and are discarded.

As a sequel of my above discussion, the judgment and decree passed by the Courts below suffer from no factual or legal infirmity calling for interference. No question of law what to talk of substantial question of law arises in these appeals. Both these appeals i.e. RSA No.4698 of 2011 and RSA No.4699 of 2011 are dismissed with costs.

January 15, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE