

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

**Regular Second Appeal No.831 of 2012 (O&M)  
Date of Decision: February 25, 2016.**

Manohar Singh

.....APPELLANT(s).

**VERSUS**

Gurdatar Singh and others

.....RESPONDENT(s).

**CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA**

Present: Mr. Vikas Singh, Advocate  
for the appellant (s).

Mr. Ajay Singla, Advocate for  
Mr. D.S. Chinna, Advocate  
for caveators-respondents

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**SURINDER GUPTA, J.**

**CM-2205-C-2012**

Heard. There is delay of 15 days in re-filing the appeal.

2. Learned counsel for the appellant submits that while removing the objections raised by the registry, the delay of 15 days in re-filing the appeal was caused, which was not intentional.

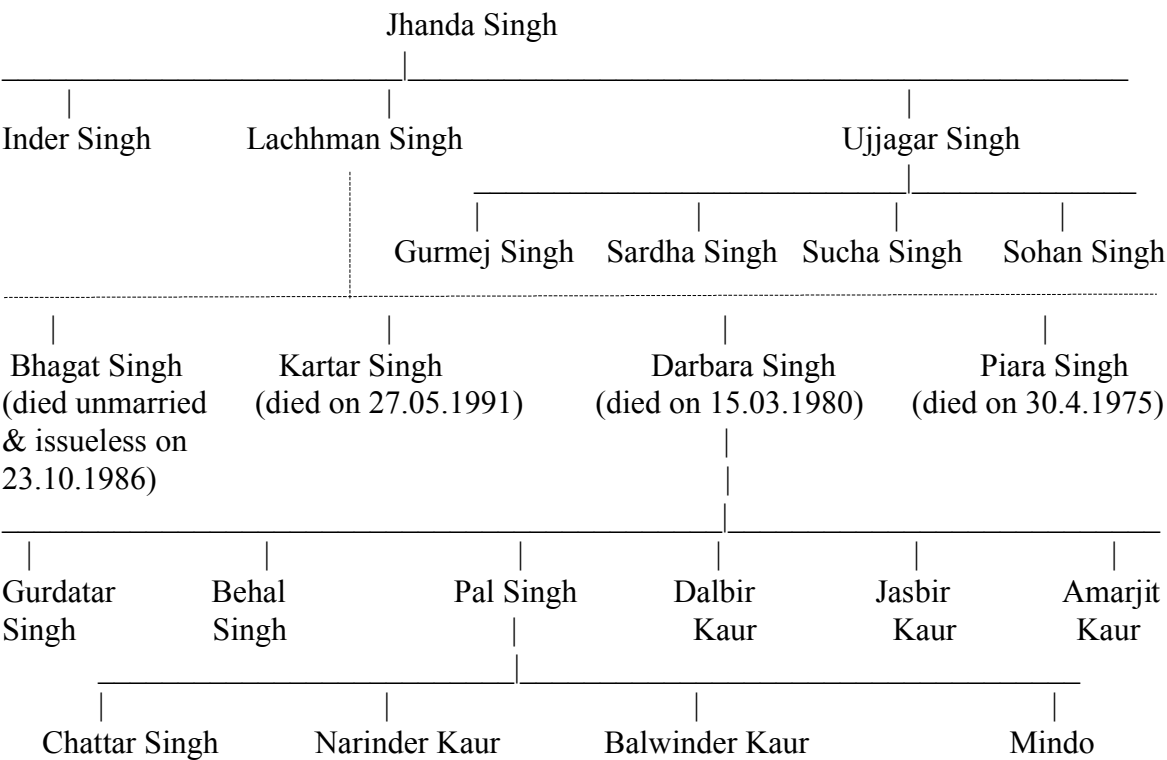
3. In view of submission made by learned counsel for the appellant, supported by affidavit, the application is allowed and delay of 15 days in re-filing the appeal is, hereby, condoned.

**RSA-831-2012**

4. This is second appeal against the judgment and decree passed by

Civil Judge (Senior Division), Jalandhar decreeing the suit of plaintiffs Gurdattar Singh and others and declaring ex parte judgment and decree dated 30.03.1999 passed in civil suit No.251 of 15.06.1998 titled as *Manohar Singh Vs. Mukhtiar Singh and General Public* as illegal, null and void, not binding on the rights of the plaintiffs and consequently, plaintiffs were declared joint owners in possession of the suit land to the extent of 1/2 share. Defendants No.1(appellant), 2, 11 and 12 were also restrained from alienating the suit land on the basis of ex parte decree dated 30.03.1999.

5. The case of the plaintiffs, in brief, is that the plaintiffs and defendants No.3 to 10 being descendants of Jhanda Singh are collateral. The pedigree table of Jhanda Singh is as follows:-



6. Bhagat Singh, Darbara Singh, Kartar Singh and Piara Singh sons of Lachhman Singh were owners of suit land measuring 176 kanals 17 marlas to the extent of 1/2 share and another 1/2 share was owned by defendants No.3 to 10 i.e. Gurmej Singh and others. The suit land was never

partitioned amongst cosharers. Besides the suit land, descendants of Jhanda Singh particularly Bhagat Singh, Darbara Singh, Kartar Singh and Piara Singh also owned agricultural land of village Waryah, Tehsil Tam Taran and lived in that village.

7. Piara Singh son of Lachhman Singh died on 30.04.1975; Darbara Singh died on 15.03.1980, Bhagat Singh died on 23.10.1986 and Kartar Singh died on 27.05.1991 at village Waryah. They all except Darbara Singh died issueless leaving behind no wife. After the death of Piara Singh, his estate devolved upon Bhagat Singh, Darbara Singh and Kartar Singh and they became owners of 1/3<sup>rd</sup> share each in the suit land. After the death of Darbara Singh, his share devolved upon the plaintiffs. On death of Bhagat Singh on 23.10.1986, his share in suit property devolved on Kartar Singh. After the death of Kartar Singh, plaintiffs being his legal heirs inherited his share and became owner of 1/2 share in the suit land.

8. Defendants No.1 and 2 namely Manohar Singh(appellant) and Mukhtiar Singh under a conspiracy, fabricated a Will dated 10.03.1998 alleged to have been executed by Bhagat Singh son of Lachhman Singh and under that conspiracy, filed civil suit No.251 of 15.06.1998 titled as *Manohar Singh Vs. Mukhtiar Singh and General Public*, without impleading the plaintiffs and obtained an ex parte decree dated 30.03.1999 from Civil Judge (Junior Division), Jalandhar. On coming to know of the decree, the plaintiffs filed an application under Order 1 Rule 10 CPC in the Court of Civil Judge (Junior Division), Jalandhar and sought the relief of setting aside ex parte decree and to implead them as defendants. That application was dismissed vide order dated 05.10.2000. On 10.01.2001, defendant No.1

declared that he had sold the suit property to Karnail Singh and Balbir Singh, impleaded as defendants No.11 and 12, who also moved application seeking partition of the suit land.

9. Defendants No.11 and 12 filed written statement taking preliminary objection that plaintiffs have no locus standi to file the present suit. All the averments of the plaintiffs were contested, controverted and denied. They pleaded themselves to be bona fide purchasers of the suit land.

10. Defendant No.1 Manohar Singh (appellant) also filed written statement, inter-alia, pleading that plaintiffs have no relations with deceased Bhagat Singh. He alleged that on the basis of judgment and decree dated 30.03.1999, he has become owner of 1/2 share of the suit land. Bhagat Singh had died in village Sarhali Kalan on 21.03.1998 (not on 23.10.1986 as alleged by plaintiffs). The plaintiffs have forged the death entry of Bhagat Singh, which was detected during the proceedings on the application filed by plaintiffs seeking setting aside ex parte judgment and decree and Civil Judge (Junior Division) Jalandhar rightly dismissed that application. The Will dated 10.03.1998 was executed by Bhagat Singh during his life time in favour of defendant No.1 and by virtue of that Will, defendant No.1 has inherited the share of Bhagat Singh in the suit land.

11. The dispute in this case pertains to the inheritance of the land owned by Bhagat Singh. The plaintiffs are claiming succession to the share of Bhagat Singh in the suit land, alleging his date of death as 23.10.1986 at village Waryah while defendant No.1 Manohar Singh (appellant) claimed the death of Bhagat Singh on 21.03.1998 and based his claim to the share of

propounded by defendant No.1 has not been proved on file.

12. Learned counsel for the appellant has argued that learned Civil Judge (Senior Division), Jalandhar had not framed any specific issue with regard to the Will, as such, appellant-defendant No.1 did not produce the Will or any evidence to prove the same.

13. This fact is proved on file that Manohar Singh, appellant-defendant No.1 was not related to Bhagat Singh or belonged to his brotherhood. He has admitted this fact in his cross-examination. Nothing was brought on record to show as to why Bhagat Singh would execute the Will in favour of appellant-defendant No.1. So far as the submission of learned counsel for the appellant that there was no issue framed by learned lower Court with regard to the Will in question is concerned, it has no force as the parties were fully aware of the controversy and have led evidence to prove their respective pleadings. In case of *Swamy Atmananda Vs. Sri Ramakrishna Tapovanam (2005) 10 SCC 51*, it was observed by Hon'ble Apex Court in para 45 of the judgments as follows:-

“45. If the parties went to the trial knowing fully well the real issue involved and adduced evidence in such a case without establishing prejudice, it would not be open to a party to raise the question of non-framing of particular issue.”

14. In this case, the parties have gone to trial being conscious of the fact that one of the dispute for adjudication was the inheritance to the property of Bhagat Singh. The appellant-defendant No.1 had set up his own plea claiming inheritance on the basis of the Will while the respondents-plaintiffs have sought inheritance on the basis of natural succession,

therefore, on the facts of the case, no prejudice is said to have been caused merely on account of non-framing of specific issue relating to the inheritance of suit property by the appellant on the basis of Will executed by Bhagat Singh.

15. It, rather, appears that the appellant deliberately avoided to produce or prove the Will in his favour and this conduct of the appellant was not without reason. The appellant had earlier filed suit against one Mukhtiar Singh defendant No.2, who was also not related to Bhagat Singh on the basis of Will executed by Bhagat Singh, without impleading the plaintiffs or any other natural heir of Bhagat Singh. Surprisingly, he made general public a party in that case. On coming to know of ex parte judgment and decree, plaintiffs applied to set aside the same and to implead them as party but could not succeed and were left with no other right or opportunity except to challenge the same by filing a separate suit. In view of the observations of Civil Judge (Junior Division), Jalandhar in the order dated 05.10.2000 that the plaintiffs being not party to the civil suit filed by appellant Manohar Singh titled as *Manohar Singh Vs. Mukhtiar Singh and General Public*, the judgment and decree passed in that case is not binding on them and they have remedy to file a fresh suit.

16. The plaintiffs have filed suit seeking declaration that they are owners in possession to the extent of 1/2 share in the land in suit and to restrain appellant-defendant No.1 from alienating the suit land. Appellant-defendant No.1 had contested the claim of plaintiffs on the ground that Bhagat Singh, whose share is in dispute, had died in village Sarhali Kalan on

suit based on this Will against one Mukhtiar Singh, who had admitted the claim of plaintiff in the written statement filed by him (Ex.PW15/2). The appellant was well aware that plaintiffs are staking claim over the suit property claiming natural succession being legal heirs of Bhagat Singh. Appellant-defendant No.1 had propounded the Will of Bhagat Singh and pleaded to stake their claim by claiming inheritance to estate of Bhagat Singh on the basis of his Will. The fact that the appellant did not produce the Will or any evidence to prove its due execution shows that he was reluctant in bringing the Will on record for the reasons best known to him. Before learned Civil Judge (Senior Division), Jalandhar or first Appellate Court, the appellant did not file any application seeking adjudication on Will or to prove the Will by way of additional evidence. Even in this appeal, he has not come up with any such application. The above facts clearly show that the appellant had no intention to bring Will dated 10.03.1998 alleged to have been executed by Bhagat Singh in his favour, on record of this case and to prove the same by leading cogent and convincing evidence for the reasons best known to him.

17. One of the reason for the appellant avoiding to produce and rely upon the Will dated 10.03.1998 appears to be the date of death of Bhagat Singh alleged by plaintiffs as 23.10.1986. Besides statement of PW1 Wasan Singh that Bhagat Singh died in the year 1986 at village Waryah, plaintiff also examined Kehar Singh, Lamberdar of village Sarhali, who has stated that Bhagat Singh and his brother never resided at village Sarhali. PW4 Gurmej Singh also stated that Bhagat Singh and his brothers were residing at

village Waryah and they never lived or held any land at village Sarhali

Kalan. Sudeep Singh, official of the Civil Surgeon Office, produced on record the death entry of Bhagat Singh. To shatter the plea of defendant-appellant that Bhagat Singh died at village Sarhali Kalan, plaintiff examined Gurpal Singh Chowkidar as PW2, who had brought the summoned death record in which only entry with regard to death of Bhagat Singh son of Isher Singh @ Lachhman Singh of village Sarhali Kalan aged 80 years on 24.03.1998 was mentioned. This Bhagat Singh was son of Isher Singh, which was allegedly changed to Isher Singh @ Lachhman Singh by introducing word 'Lachhman Singh' with different ink. Said Isher Singh of village Sarhali had died without leaving behind his wife or children. He had a brother named Jaggar Singh. Jaggar Singh had four sons and Mukhtiar Singh, who was impleaded as defendant No.1 in the suit filed by the appellant, was son of Jaggar Singh. PW2 Gurpal Singh has stated that Darbara Singh, Bhagat Singh, Kartar Singh and Piara Singh sons of Lachhman Singh never resided in their village Sarhali Kalan or owned any land in that village. On the basis of record, learned Civil Judge (Senior Division), Jalandhar concluded that **it was Bhagat Singh son of Isher Singh, who had died on 24.03.1998 at village Sarhali Kalan and not Bhagat Singh son of Lachhman Singh.** To further corroborate this fact, plaintiffs examined Harvinder Kumar, Patwari, Circle Sarhali Kalan, who has stated that as per jamabandi for the year 1992-93, there is khata of Bhagat Singh son of Isher Singh and on the death of said Bhagat Singh, his inheritance was recorded in the name of Mukhtiar Singh, Kartar Singh, Shingar Singh sons of Isher Singh. The mutation of inheritance was attested

on 27.04.1998. Bhagat Singh, Darbara Singh, Kartar Singh and Piara Singh sons of Lachhman Singh were not right-holders in village Sarhali Kalan. In view of the record produced by this witness and on the basis of his testimony, learned Civil Judge (Senior Division) concluded that one Bhagat Singh died on 24.03.1998 at village Sarhali but as per mutation record that Bhagat Singh was son of Isher Singh and not Bhagat Singh son of Lachhman Singh. Kehar Singh PW5 is Lamberdar of village Sarhali had also stated that Bhagat Singh, Darbara Singh, Kartar Singh, Piara Singh sons of Lachhman Singh were not residents of *Patti Dhire ke or Sarjah Patti* of village Sarhali and did not own any land in that village. To further corroborate the existence of a person with the name of Bhagat Singh son of Isher Singh, plaintiffs examined PW7 Balwinder Singh, who proved the sale deed dated 31.05.1996 executed by Bhagat Singh son of Isher Singh son of Jawala Singh. Even in this sale deed, Bhagat Singh is not mentioned as son of Isher Singh @ Lachhman Singh. PW8 Gagandeep Singh proved the voter list of village Sarhali of the year 1980, wherein Bhagat Singh, Darbara Singh, Kartar Singh and Piara Singh sons of Lachhman Singh were not recorded as voters in village Sarhali Kalan.

18. From the evidence on record, it was proved that Bhagat Singh was not resident of village Sarhali Kalan and the death entry dated 24.03.1998 does not pertain to Bhagat Singh son of Lachhman Singh. The plaintiffs have also placed on record death certificate of Bhagat Singh, wherein date of death of Bhagat Singh son of Lachhman Singh was recorded as 26.10.1986. Even otherwise, onus was on the appellant to prove that

Bhagat Singh son of Lachhman Singh died on 24.03.1998 but he miserably

failed in his attempt to prove this fact.

19. The ex parte judgment and decree obtained by the appellant against Mukhtiar Singh and General Public is not binding on the plaintiffs as they were not party to that suit. The question involved in that suit was regarding inheritance of the estate of Bhagat Singh. The appellant has not come up with any explanation as to why he did not implead the plaintiffs and preferred to file a suit against his nephew who admitted his claim. The fraud, collusion and misrepresentation before the Court while obtaining that decree dated 30.03.1999 is writ large and the Courts below have rightly set aside the decree while observing that the same is not binding on the plaintiffs. It appears that appellant in collusion with Mukhtiar Singh had tried to usurp and grab the estate of Bhagat Singh but could not succeed when plaintiffs came to know of his design.

20. On perusal of the record and judgments of the Courts below, I find no legal or factual infirmity therein calling for any interference.

21. No substantial question of law requiring determination arises in this appeal, which has no merits.

22. Dismissed.

**February 25, 2016.**  
*Sachin M.*

**( SURINDER GUPTA )**  
**JUDGE**