

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 4882 of 2015 (O&M)
Date of Decision : 02.05.2016

Boota Singh and anotherAppellants

Versus

Pritam Singh and othersRespondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Amit Jhanji, Advocate
for the appellants.

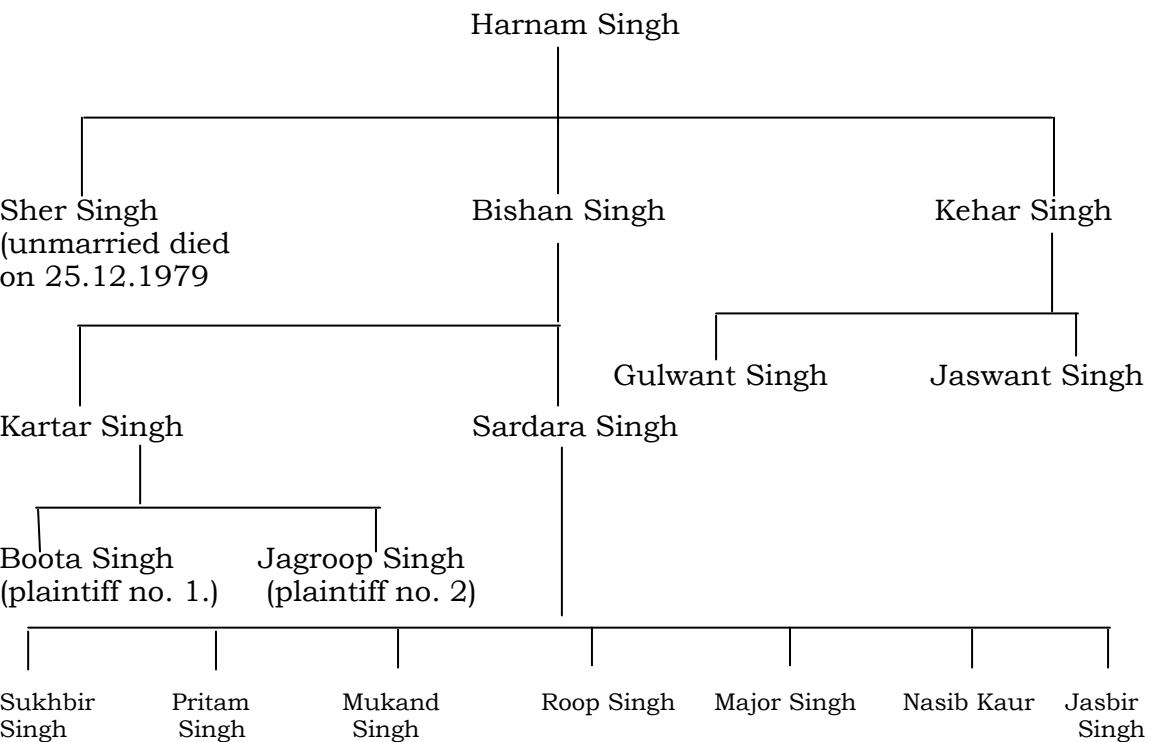
Mr. P.L. Singla, Advocate
for the respondents-caveators.

Surinder Gupta, J.

This is appeal against concurrent judgments and decrees passed by the Courts below whereby suit filed by plaintiffs seeking declaration that they are owners in possession of ½ shares in the estate of Sher Singh, brother of their grandfather was dismissed.

BRIEF FACTS:-

2. Following pedigree table will help in understanding the relationship of parties:-



3. The dispute pertains to estate of Sher Singh, who died on 25.12.1979. He was unmarried and issueless and as per case of defendants he left a Will dated 02.12.1979 in favour of Sardara Singh. Mutation No. 7680 (Ex. D-8) regarding inheritance of estate of Sher Singh was sanctioned in favour of Sardara Singh. As per order of mutation passed by Assistant Collector, 2nd Grade, Nihal Singh Wala, Kartar Singh father of plaintiffs and Jaswant Singh son of Kehar Singh were present at the time of mutation and they submitted affidavits to the effect that they had no objection to sanctioning of mutation of the estate of Sher Singh in favour of Sardara Singh. The Will was also duly proved before the revenue authorities by the scribe and marginal witnesses.

4. After sanctioning of mutation, Sardara Singh was recorded as owner of the share of Sher Singh and after his death his sons and daughters were recorded as owner in possession of the land in the name of Sardara Singh including the share inherited from Sher Singh. It is after a period of 33 years of death of Sher Singh and sanctioning of mutation of his inheritance that plaintiffs laid their claim over the land of Sher Singh.

5. It is evident that Kartar Singh or Kehar Singh, who in the event of intestate succession of Sher Singh, would have inherited the share in the land of Sher Singh, had never challenged either the Will executed by Sher Singh or the mutation sanctioned in favour of Sardara Singh on the basis of that Will. The defendants proved affidavit (Ex. D-1) executed by Kartar Singh, father of appellants, admitting the Will of Sher Singh. They also proved the Will executed by Sher Singh by examining scribe and son of one of the marginal witnesses.

6. It appears that plaintiff in order to challenge Will dated 02.12.1979, prevailed upon one of the marginal witnesses and also one of the witnesses who were examined to prove affidavit of Kartar Singh. The Will in question was produced before the revenue authorities at the time of sanctioning of mutation where it was lost. Kartar Singh did not require the Will after the mutation had been sanctioned in his favour with the consent of other collateral who could inherit share in the land of Sher Singh, as such, he had no requirement to take the Will back. Learned Additional Civil Judge (Senior Division) has elaborately discussed the evidence produced by the parties before reaching the conclusion that inheritance of estate of Sher Singh by Kartar Singh on the basis of Will dated 02.12.1979 is duly proved. It is also apparent from the observations recorded by Ist Appellate Court that plaintiff Boota Singh had filed Civil Suit No. RT/789 dated 16.10.2002, wherein the contesting defendants had taken the plea that land of the share of Sher Singh had come to them on the basis of Will. That suit was dismissed and the appeal was also declined by then Additional District Judge, Moga on 23.12.2009. The appellants, as such, were aware of the Will in the year 2002 and their plea that they had come to know about the Will at this stage only was rightly discarded by the Court below.

7. Both the Courts have rightly held that plaintiffs were aware of the mutation in favour of Sardara Singh on the basis of Will of Sher Singh and it cannot be believed that after expiry of a period of 29 years after the death of their father they were in dark and did not know as to who had inherited the share of Sher Singh in suit land.

8. Learned counsel for the appellants could not point out any legal or factual infirmity in the concurrent judgments of both the Courts below. No substantial question of law, requiring determination, arises in this appeal, which has no merit.

Dismissed.

May 02, 2016

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**(SURINDER GUPTA)
JUDGE**