

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

1. RSA-4121 of 2017 (O&M)

Rajpal Singh and othersAppellants

Versus

Smt.Suraj Bai and othersRespondents

2. RSA-4129 of 2017 (O&M)

Ratni BaiAppellant

Versus

Smt.Suraj Bai and othersRespondents

Date of Decision:01.09.2017

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK.

**Present: Mr.M.K.Mittal, Advocate,
for the appellant(s)in both the appeals.**

RAMESHWAR SINGH MALIK, J.(Oral)

These two identical regular second appeals, at the hands of plaintiffs, are directed against the concurrent findings of facts recorded by both the learned courts below, whereby suit for declaration and permanent injunction filed by the plaintiffs was dismissed by the learned trial court vide its impugned judgment and decree dated 10.10.2008 and two identical appeals filed by plaintiffs were dismissed by the learned Additional District Judge, vide his similar but two separate impugned judgments and decrees dated 10.02.2010, upholding the judgment and decree of the learned trial court.

With the consent of learned counsel for the appellants, both these appeals are being decided together, vide this common order as both

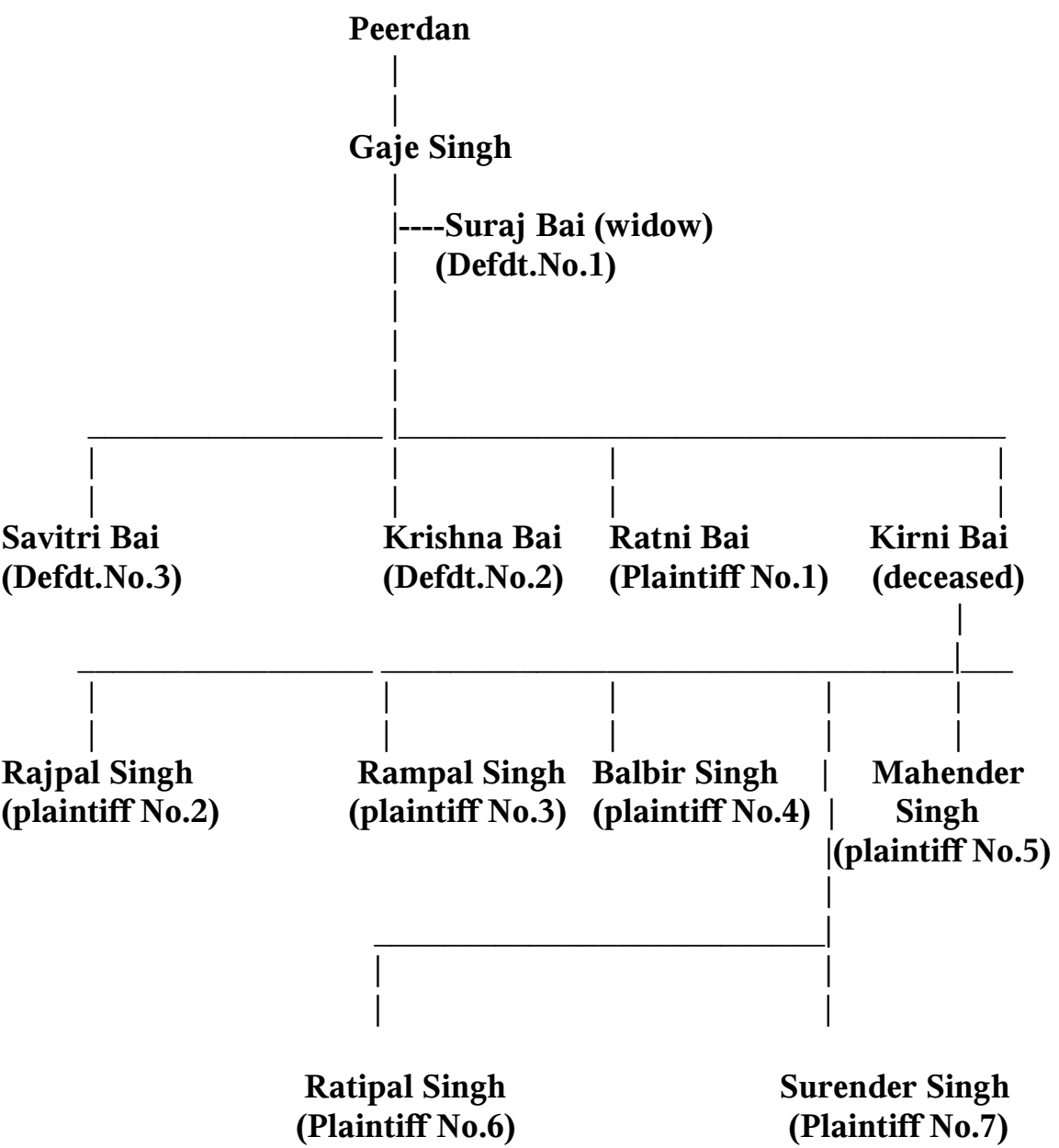
these appeals are arising out of similar set of facts and between the same parties. However, for the facility of reference, facts are being culled out from **RSA-4121 of 2017 (Rajpal Singh and others Versus Smt.Suraj Bai and others)**.

Brief facts of the case, as noticed by the learned first appellate court in para 2 of its impugned judgment, are that the suit for declaration and permanent injunction was filed by the plaintiffs, inter alia, pleading therein that Gaje Singh, father of plaintiff No.1 and defendants No.2 and 3 and husband of defendant No.1 and maternal grandfather of plaintiffs No.2 to 7 were coming as owner in possession of the agricultural land mentioned in para No.2A of the plaint and also of two other properties mentioned in para No.2B and 2C of the plaint. He died intestate in the month of December 2000 and as such the parties became the joint owners in possession of the suit property. It was alleged by the plaintiffs that after the death of Gaje Singh, defendants had started claiming themselves to be the exclusive owners in possession of the suit property on the basis of a registered Will dated 21.06.1989 allegedly executed in their favour by Gaje Singh. The aforesaid Will was stated to be forged, illegal and liable to be set aside on the various grounds, as set out in para Nos.5A to 5D of the plaint. When the plaintiffs approached Halqa Patwari in the month of January, 2001 for sanctioning mutation of inheritance with regard to the properties of deceased Gaje Singh, they came to know that the defendants had illegally got sanctioned a mutation No.1095 of 12.1.2001 in their favour on the basis of the aforesaid forged Will. The said mutation was also stated to be illegal, null and void and not binding on the rights of the plaintiffs.

Plaintiffs asked the defendants several times to get the said Will and

mutation set aside and get them entered as joint owners in possession of the suit property in the revenue record and also not to alienate or interfere into their joint possession over the suit property on the basis of the aforesaid Will and mutation, but the defendants continued to postpone the matter on one pretext or the other and finally refused to the requests of the plaintiffs on 7.2.2001.

Pedigree table which is relevant for appreciating the controversy involved, reads as under:-



Defendants were served in the suit. They appeared and filed their joint written statement, raising more than one preliminary objections.

Plaintiffs filed their replication. On completion of pleadings of the parties,

the learned trial Court framed the following issues:-

- “1. Whether the plaintiffs and defendants are joint owner in possession of the suit property?OPP*
- 2. Whether the Will dated 21.06.1989 and the mutation No.1095 sanctioned on the basis of aforesaid Will is not binding on the rights of the plaintiffs?OPP*
- 3. Whether Gaje Singh deceased executed a valid Will in favour of the defendants, if so to what effect?OPD*
- 4. Whether the suit is not maintainable in the present form?OPD*
- 5. Whether the plaintiffs have no locus standi to file the present suit?OPD*
- 6. Whether the plaintiffs are estopped by their act and conduct to file the present suit?OPD*
- 7. Relief.”*

With a view to substantiate their respective stands taken in their pleadings, both the parties produced on record their documentary as well as oral evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that the plaintiffs miserably failed to prove their pleaded case by leading cogent and convincing evidence. Accordingly, suit for declaration and permanent injunction filed by the plaintiffs was dismissed by the learned trial court, vide its impugned judgment and decree dated 10.10.2008. Feeling aggrieved, plaintiffs filed two identical but separate appeals and both the appeals came to be dismissed by the learned first appellate court, vide its impugned judgment and decree dated 10.02.2010. Hence, these two identical regular second appeals, at the hands of the unsuccessful plaintiffs.

Heard learned counsel for the appellants in both the appeals.

The entire controversy between the parties revolves around the

Will dated 21.06.1989 executed by Late Sh.Gaje Singh, predecessor-in-interest of both the parties. A bare perusal of the Will will make it crystal clear that it was a most natural and genuine document. Specific and strong reasons were assigned by the testator Late Sh.Gaje Singh as to why he was excluding the son of his daughter Kirni Bai from his inheritance. He was very categoric in disinheriting the appellants-plaintiffs. He executed the Will in question Ex.DW1/1 in favour of his two daughters and wife.

It was a registered Will. Both the learned courts below recorded their cogent and convincing findings arriving at their respective judicious conclusions on the validity of this Will. Further, since the Will in question was not found surrounded by any suspicious circumstances, it was rightly upheld by both the learned courts below. Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

It was not even the pleaded or argued case on behalf of the plaintiffs-appellants that suit property in the hands of Late Sh.Gaje Singh was ancestral in nature. Unless any property is not specifically pleaded and proved to be ancestral in nature, the same will be treated to be non-ancestral. Further, the plaintiffs-appellants raised a plea of fraud against the defendants but they miserably failed to prove the said plea of fraud for want of cogent and sufficient evidence.

It goes without saying that it is very easy to raise a plea of fraud but it is equally difficult to prove the same. It is so said because a plea of fraud is to be proved like a criminal charge. However, since in the case in hand, plaintiffs-appellants took the plea of fraud in a casual manner and did

not make even a sincere effort to prove the said plea of fraud by leading relevant and cogent evidence in this regard, they were bound to fail. That is what has been held by both the learned courts below. Under these circumstances of the case, it can be safely concluded that the learned courts below committed no error of law, while passing their impugned judgments and decrees and the same deserve to be upheld, for this reason also.

The above-said view taken by this Court also finds support from the judgments of the Hon'ble Supreme Court and judgments of this Court in **Gautam Sarup Vs. Leela Jetly and others, 2008 (7) SCC 85, Santa Singh Vs. Tarsem Singh, 2010 (67) RCR (Civil) 520, Devi Lal Vs. Shekaran and another, 2011 (5) RCR (Civil) 615, Usha and others Vs. Subhash Chander and others, 2014 (5) RCR (Civil) 813, M/s Machhi Ram Kishan Singh Sidana, Rice Mills Vs. Sham Singh and others, 2015 (9) RCR (Civil) 506, RSA No.4070 of 2016 (Chamkur Singh and another Vs. Raghbir Singh and another) decided on 13.1.2017, RSA No.1239 of 2016 (Satbir Singh Vs. Mukesh Rani and others), decided on 17.1.2017, State Bank of India Vs. Ghamandi Ram (dead) by his legal representatives Gurbux Rai, 1969 AIR (SC) 1330, Surjit Lal Chhabda V. Commissioner of Income-tax, Bombay, 1976 AIR (SC) 109, Surjit Singh and others Vs. Gurmit Singh and others, 2010 (3) PLR 122 (P&H), Hawa Singh Vs. Daya Nand and others, 2010 (21) RCR (civil) 918, Gurmail Singh Vs. Rajbir Singh and another, 2014 (4) RCR (civil) 397 and Jagdev Singh and another Vs. Major Singh and others, 2014 (82) RCR (civil) 214.**

Before arriving at his judicious conclusion, the learned Additional District Judge has rightly examined, considered and appreciated

true facts of the case as well as evidence available on record, in the correct perspective. Relevant and cogent findings recorded by the learned Additional District Judge in para 10 and 11 of his impugned judgment, which deserve to be noticed here, read as under:-

“In the instant case, it will be seen that DW1 Virender Kumar Sharma, Deed Writer, had scribed the Will Ex.DW1/1. The said witness has categorically stated that Gaje Singh had thumb-marked both the pages of the Will after the contents thereof were read over and explained to him in his presence as well as in the presence of both the witnesses namely Bir Singh and Mohar Singh. According to him, both the above named witnesses had also attested the execution of the Will in his presence.

Besides this, this Court is also of the considered view that the Will in the present case is a registered document which would give rise to presumption of its genuineness. The Sub Registrar Khalil Mohamad, who has registered the Will, has also been examined by the defendants in their evidence as DW12. According to the testimony of the Sub Registrar, he had read over the contents of the Will to Gaje Singh, who admitted them to be correct and then put his thumb-impression on the same in his presence and also in the presence of the attesting witnesses, who had identified him also also thumb-marked the Will. The endorsement made on the aforesaid Will at Ex.DW12/1 to Ex.DW12/4 also bears the attestation of the Sub-Registrar. This testimony seen with that of the scribe Virender Kumar Sharma and Bir Singh leaves no manner of doubt that Will Ex.DW1/1 was indeed duly executed by Gaje Singh and was thus a valid and legal Will.”

During the course of hearing, learned counsel for the appellants could not point out any patent illegality or perversity in the impugned judgments and decrees passed by the learned courts below. He was also

unable to refer to any question of law much less substantial question of law, which is *sine qua non* for entertaining any regular second appeal, at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the judgments of the Hon'ble Supreme Court in **Naryanan Rajendran and another Versus Lekshmy Sarojini and others, 2009 (2) RCR (Civil) 286** and **Santosh Hazari Versus Purshottam Tiwari, 2001 (3) SCC 179**.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that both the appeals are wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, both the regular second appeals stand dismissed, however, with no order as to costs.

September 01, 2017

seema

(RAMESHWAR SINGH MALIK)

JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No

**CM-10685 and 10687-C-2017 in
RSA-4121-2017**

**Rajpal Singh and others
Versus
Smt.Suraj Bai and others**

Present: Mr.M.K.Mittal, Advocate,
for the applicants-appellants.

CM-10685-C-2017

Applicants seek condonation of delay of 1 day in filing the appeal.

After hearing the learned counsel for the applicants-appellants, instant application is allowed, for the reasons stated therein. Delay of 1 days in filing the appeal is condoned.

C.M. stands disposed of.

CM-10687-C-2017

Applicants seek condonation of delay of 2682 days in re-filing the appeal.

After hearing the learned counsel for the applicants-appellants, instant application is allowed, for the reasons stated therein. Delay of 2682 days in re-filing the appeal is condoned.

C.M. stands disposed of.

September 01, 2017
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(RAMESHWAR SINGH MALIK)
JUDGE