

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

RSA No.3762 of 2006 (O&M)

Date of Decision: November 22, 2018

Kuldip Kaur

...Appellant

Versus

Kuldip Kaur and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Kanwaljit Singh, Sr. Advocate with
Mr.Abhishek Bajaj, Advocate for the appellant.

Mr.Rakesh Chopra, Advocate for the respondents.

HARINDER SINGH SIDHU, J.

The appellant is defendant No.1 in the plaint filed by respondent No.1. She has filed the present appeal impugning the judgments of the courts below whereby the suit of the plaintiff has been decreed.

For facility of reference the parties will be referred to as per their status in the plaint.

The plaintiff had filed a suit for declaration to the effect that she is the owner of 1/5th share in the suit land and for restraining defendants No.1 and 2 from alienating the suit land in any manner to any person. Mesne profits were also claimed from the date of filing the suit till delivery of possession of the suit land to the plaintiff.

Plaintiff is the daughter of Sultan Singh. Defendant No.1 is the daughter- in- law of Sultan Singh being the widow of his son, Hardial Singh.

Defendant No.2 is the widow of Sultan Singh. Defendants No.3, 4 and 5 are

the daughters of Sultan Singh. The pedigree table is as under:-

Jhanda Singh				
↓				
Sultan Singh				
↓				
Ms.Mohinder Kaur wd/o Sultan Singh (Defendant No.2)				
↓				
Amarjit Kaur d/o Sultan Singh (defendant No. 3)	Kuldip Kaur d/o Sultan Singh (Plaintiff)	Kuljit Kaur d/o Sultan Singh (defendant No. 4)	Jasbir Kaur d/o Sultan Singh (defendant No. 5)	Hardial Singh s/o Sultan Singh (died on 20.2.94) and has left behind his widow Mrs. Kuldip Kaur, defendant No.1 .

It was pleaded that Sultan Singh was the owner of considerable land in village Kalhiana including the suit land. During his life time, he effected an oral partition/family settlement with his son Hardial Singh and transferred more than one half share of his land to Hardial Singh. Sultan Singh died intestate on 20.1.1980 and was succeeded by the plaintiff and defendants no.2 to 5 who inherited his estate in equal shares. After the death of Sultan Singh, Hardial Singh, brother of the plaintiff offered to cultivate the suit land for the plaintiff in return for giving the plaintiff 1/5th share of the value of the crop from the suit land. The offer was accepted by the plaintiff. During his life time, Hardial Singh continued paying one-fifth share of the value of the crops to the plaintiff. He died on 20.02.1994. After his death defendants No.1 and 2 stopped paying the plaintiff's share. They claimed to be the owners of the suit land in equal shares. On inquiry, the plaintiff learnt that Hardial Singh had illegally and unlawfully got the mutation of the suit land sanctioned in his favour on the basis of forged and fabricated Will dated

Hardial Singh. The plaintiff disputed the Will. It was pleaded that for a period of 8-9 years preceding his death, Sultan Singh, was not in a sound disposing mind. It was stated that the mutation in favour of Hardial Singh was sanctioned without notice to the plaintiff and was not binding on her.

Defendant No.1 pleaded that originally Sultan Singh was the owner of the suit land. He had executed a valid Will of the suit land in favour of his only son Hardial on 23.2.1974 as Hardial Singh used to serve and look after him. His daughters were not given any share as Sultan Singh had already spent considerable amount on their marriage. Originally, Jhanda Singh father of Sultan Singh owned substantial land in Pakistan. On his death Sultan Singh succeeded to the same. After partition, the suit land was allotted to Sultan Singh in lieu of the land owned by him in Pakistan. The suit land was thus ancestral in the hands of Sultan Singh. It was further pleaded that the plaintiff and defendant No.2 were personally present at the time of sanction of mutation in favour of Hardial Singh in 1983 on the basis of the Will executed by Sultan Singh. Defendants No.3 and 5 had filed affidavits admitting the genuineness of the Will and given their consent for sanctioning of mutation in favour of Hardial Singh. Hence, they were estopped from challenging the Will.

Defendants No.2 to 5 filed separate written statement in which they admitted the claim of the plaintiff.

From the pleadings, the following issues were framed:-

- “1. Whether the plaintiff is entitled to possession of 1/5 share out of the property of her deceased father Sultan Singh? OPP*
- 2. Whether the said Sultan Singh executed a valid Will dated 23.2.1974 in favour of his only son Hardial Singh? If is its effect? OPD.*
- 3. Whether the suit is time barred? OPD*
- 4. Whether the plaintiff is estopped from filing the present suit by*

- his own act and conduct? OPD*
- 4A. *Whether the property in dispute is ancestral property in the hands of Sultan Singh? OPD.*
- 4B. *Whether Hardial Singh had ½ share in the property? OPD*
5. *Whether the suit is not maintainable in the present form? OPD.*
6. *Relief.”*

To prove her case the plaintiff appeared as PW-1. N.K.Tewari Advocate appeared as PW-2, Surinder Pal as PW-3 and Arjun Singh as PW-4.

For defendant No.1, Kuljit Kaur appeared as DW-1, Defendant No.1 Kuldip Kaur appeared as DW-2, Harnek Singh Patwari as DW-3, Parkash Deed writer DW-4, Hardial Singh as DW-5, HS Jhajj Advocate as DW-6 and Dr. Atul Kumar Singla as DW-7.

In rebuttal, the plaintiff examined N.K.Jain, document expert as PW-5.

Vide order dated 27.8.1996 defendant No.1 was allowed to prove the Will of Sultan Singh in favour of his son Hardial Singh by way of secondary evidence. Vide order dated 4.5.1998, application of the defendant for leading additional evidence to prove the entry of the Will in the register of the Deed Writer and photocopy of the affidavits of Amarjit Kaur daughter of Sultan Singh was allowed.

Vide judgment dated 24.1.2000 the Trial Court decreed the suit of the plaintiff for possession to the extent of 1/6th share in the suit property. A preliminary decree for mesne profits from the date of filing the suit till delivery of possession was also passed.

Defendant No.1 filed an appeal. During the pendency of appeal she moved two applications under Order 41 Rule 27 CPC for leading additional evidence. In the application 14.1.2003, it was prayed that the original

register containing entry at Sr.No.302 dated 23.2.74 of the Will dated 23.2.74, photostat copy of which had already been placed as Mark 'X' be got produced by summoning Parkash Kumar, Deed Writer, Nabha and that the applicant be allowed to examine Parkash Kumar whose statement had been recorded partly in examination in chief but was not completed. In the application dated 3.4.2003, permission was sought to lead additional evidence to prove the date of death of Ravail Singh Sidhu, attesting witness of the Will by proving the documents pertaining to his death and also to examine Sat Pal Singh Sandhu. Both the applications were allowed vide order dated 16.2.2004 and the case was remanded to the Lower Court for recording additional evidence.

After remand, defendant No.1 examined DW7 Ashok Kumar Tiwari, Advocate, Nabha who identified the signatures of D.P. Tiwari., Advocate of his village at Mark-X. He also proved the death certificate of his father Ex.DW7/1. Amarjit Singh DW8 brought the record from Gurdwara Keshgarh Sahib and proved Ex.DW8/1 copy of register maintained there. She also examined DW9 Gurdev Singh of Nabha, DW4 Parkash Kumar, DW10 Sat Pal Singh Sidhu and DW11 Dalip Singh son of Labh Singh.

No evidence in rebuttal was led. As the trial court had only been directed to record the evidence, the file was sent back to the Appellate Court without giving any findings.

The Ld. Lower Appellate Court affirmed the findings of the Trial Court. It was held that the Will had not been proved. It was also held that the presence of defendant No.2 and 5 at the time of sanction of mutation in favour of Hardial Singh does not exclude the plaintiff from claiming

Mr. Kanwaljit Singh, Sr. Advocate for the appellant- defendant No.1 has submitted that the findings of the Courts below are wholly unsustainable on the basis of the evidence on record. He argued that the evidence has been misread by the Courts below. Mr. Rakesh Chopra on the other hand has supported the judgments of the Courts below.

The core questions that require to be determined are:

- (i) Whether defendant No.1 has been able to prove the Will dated 23.2.1974?
- (ii) What weight, if any, can be accorded to the fact that mutation on the basis of the Will had been sanctioned in favour of Hardial Singh on 7.6.1983.

Section 68 of the Indian Evidence Act, 1872 (for short 'the Act') requires that Will is to be proved by calling an attesting witness, if alive and subject to the process of the Court and capable of giving evidence. Section 69 of the Act gives an alternate method to prove a document required to be attested by law when no attesting witness can be found.

Section 69 of the Act, reads as follows:

"69. Proof where no attesting witness found.- If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person. "

Accordingly, in a case where the attesting witnesses are not available, the Will in question has to be proved by showing that the attestation of one attesting witness at least, is in his handwriting and that the signature of the person executing the document is in the handwriting of that person.

Section 47 of the Act reads as follows :

"47. Opinion as to handwriting, when relevant.- *When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.*

Explanation.- *A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him."*

Thus the opinion of any person acquainted with the hand writing of the person by whom any document was written or signed is a relevant fact.

A person is said to be acquainted with the handwriting of another person, when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

The original Will dated 23.2.1974 executed by Sultan Singh was not produced. The case of the defendant No.1 was that it was with defendant No.2, Mohinder Kaur, her mother-in-law, who was in collusion with the plaintiff and had for that reason withheld it. Photostat copy of the Will is on the record as Mark-X. The Trial Court vide its order dated 27.8.1996 permitted defendant No.1 to prove this Will by leading secondary evidence.

The Will is purported to be attested by Dharampal Tewari, Advocate, Nabha and Ravail Singh son of Shri Kartar Singh of Nabha as attesting

Witnesses. It bears the signatures of the both of them. The executant has

signed it in Urdu. The scribe of the Will is Baldev Sahai Dutt.

The case of defendant No.1 was that both the attesting witnesses were dead. She was required to prove this fact and then prove the Will by leading evidence as required under Section 69 of the Act. The question is whether she has been able to do so?

The signatures of Dharampal Tewari, Advocate on the Will were proved by his son Ashok Kumar Tewari, who appeared as RDW-7. He stated that his father, had been practising as Advocate from 1967 to 1991 and that he had also been working with him. He identified his father's signatures at Mark X-2. He also produced the death certificate of his father, EX.RDW-7/1.

The signatures of other marginal witness Ravail Singh son of Shri Kartar Singh were proved by Sat Pal Singh Sidhu son of Bhagwan Singh, RDW-10. He stated that Ravail Singh was his real brother-in-law (wife's brother). He also stated that in the year 1980, he constructed his house at the back of house of Ravail Singh at Nabha. He stated that Ravail Singh died on 11.8.1984. His last rites were performed at about 4.00/5.00 PM at Nabha after bringing his body from Rajindera Hospital, Patiala. He stated that ashes of Ravail Singh were immersed by him along with Surjit Singh and Gurdev Singh at Kiratpur Sahib. He deposed that he was acquainted with signatures of Ravail Singh as he had seen him signing and writing. He identified the signatures of Ravail Singh on the Will at Mark X-4.

RDW-9 Amarjit Singh Record Keeper of Gurdwara Keshgarh Sahib stated that a record of all persons whose ashes are immersed at Gurdwara Sahib Patalpuri is maintained. After the register is filled, it is sent to

14.8.1984 was of Ravail Singh son of Kartar Singh. A true copy of the entry is Ex.RDW 8/1.

RDW-9 Gurdev Singh son of Kartar Singh brother of Ravail Singh deposed that Ravail Singh died on 11.8.1984 at Rajindera Hospital, Patiala and that he was cremated at Nabha. His ashes were immersed at Kiratpur Sahib on 14.8.1984. He also identified his signatures on Ex.RDW8/1, the copy of the entry in the register of immersion of Ashes. He identified the signatures of R.S.Sidhu i.e. Ravail Sngh at point X-3, X-4 on the Will.

RDW-11 Dalip Singh son of Labh Singh identified the signatures of Sultan Singh on the Will Mark-X at point Mark X-5 and Mark X-6. He also identified the signatures of Sultan Singh at Mark Y-3 in the Original Register of the Deed Writer. He stated that his daughter was married to Hardial Singh, the son of Sultan Singh in 1975. He stated that he used to go with Sultan Singh to Jalandhar in connection with some allotment. He had seen Sultan Singh writing and signing and as such was acquainted with his signatures and knew its particular features.

From the above, it is clear that defendant No.1 had been able to meet the requirements of Section 69 of the Act by proving that the attestation of both attesting witnesses were in their handwriting and that the signatures of executant Sultan Singh were in his handwriting.

Mr. Chopra, Ld. Counsel for the plaintiff- respondents has contended that the evidence of RDW-11 Dalip Singh cannot be taken into consideration as vide order dated 16.02.2004 additional evidence was allowed only to prove the death of Ravail Singh attesting witness and for further examination of DW4 Parkash Kumar. He further contended that he

There is no merit in his objections. If the plaintiff had any objection to the examination of RDW-11 Dalip Singh, the objection ought to have been raised at that stage. It also does not appear to have been raised before the Ld. Lower Appellate Court. It cannot be permitted to be raised at this stage. The other objection of Mr .Chopra that he is interested witness can also be no ground to discard his evidence. RDW-11 has been able to explain that he was acquainted with the signatures of the testator as he had accompanied him to Jalandhar on a few occasions. He also knew Urdu and was familiar with the particular features of the signatures of Sultan Singh. From his cross examination nothing could be elicited to cast a doubt on his assertions. His evidence cannot be discarded merely on account of his relationship with defendant No.1.

There is also no merit in the contention of Mr.Chopra that the Will is surrounded by suspicious circumstances. The mere fact that no provision was made in the Will for the widow and unmarried daughters of the testator and the property was bequeathed solely to his son, cannot be held to be a circumstance vitiating the Will. There is no evidence that Hardial Singh was staying separate from his father. One daughter of Sultan Singh was already married and two remained to be married. If Sultan Singh trusted his son to discharge the family obligations after the former's death, it was his wisdom. There is also no evidence led by the plaintiff to indicate that at the time when the Will was executed Sultan Singh did not possess a sound disposing mind.

Thus, it is held that defendant No.1 has been able to prove the Will in accordance with law. There are no suspicious circumstances surrounding the execution of the Will. It is accordingly held to be legal and valid.

Defendant No.1 had also examined DW-4 Parkash Kumar, Deed Writer, Nabha, He brought the original register of Baldev Sahai Dutt, Document Writer pertaining to the year 1974. He stated that entry at Sr.No.302 dated 23.2.1974 pertained to the Will executed by Sultan Singh son of Jhanda Singh. The same was marked as Mark Y. He stated that Baldev Sahai Dutt died on 19.1.1990 i.e. prior to the filing of the present suit dated 16.5.1994. He identified the writing of Baldev Sahai Dutt.

To prove the entry, defendant No.1 examined DW-7, Dr. Atul K.Singla Handwriting and Fingerprint Expert, Patiala. He stated that he was M.Sc. Forensic Science from Punjabi University Patiala. In 1992, he received a doctorate degree in Forensic Science from the same University. He has been practising as an expert from the last 14 years and had published papers at international conferences. He compared the original signatures of Sultan Singh on this entry No.302 dated 23.2.1974 with his standard signatures on the statement dated 4.12.1970, written statement dated 4.12.1970 in the summoned file titled as “Hardial Singh versus Sultan Singh” copies whereof had been produced by the plaintiff herself. He opined that the signatures marked as Q1 in the register of the Deed Writer, has been signed by the same person, who has appended the standard signatures i.e. they are of Sultan Singh. He stated that he had working knowledge of Urdu and denied the suggestion that he could not read or write in Urdu script.

The plaintiff to the contrary, had examined PW4 N.K. Jain Document expert who compared the signatures of Sultan Singh in the register of the petition writer at Sr. No.302 dated 23.4.1972 with his standard signatures in

19.10.1970 decided on 4.12.1970 and opined that they did not tally.

The opinion of the Handwriting and Fingerprint experts being divergent, defendant No.1 can draw no support from this. However, this does not effect the ultimate result as defendant No.1 has been able to prove the Will in accordance with law as held above.

The next question is the relevance of the mutation sanctioned in favour of Hardial Singh. The case of defendant No.1 is that the mutation was sanctioned in the presence of and with the consent of the plaintiff and defendants No.2 to 5. Hence, they not only had knowledge of the Will but had accepted its authenticity. The Ld. Counsel for the respondents on the other hand disputed the presence/ consent of the plaintiff and other defendants at the time of sanction of mutation. He also argued that no reliance can be placed on the proceedings for sanction of mutation as they are summary proceedings.

In this regard, first it is necessary to refer to the relevant evidence regarding sanction of mutation.

Paramjit Singh Kanungo brought the original register containing the order of mutation no.709 of village Kalihana. In the said order, it has been specifically mentioned that photocopy of unregistered Will dated 23.2.1974 and the Power of Attorney of Amarjit Kaur are attached with the order. He, however, stated that actually these documents are not attached with this order. He was not able to say anything about the whereabouts of the said documents.

DW-3 Harnek Singh son of Zora Singh, Retired Patwari worked as Patwari in Halqa Dhuri in which village Kaliaana was included during the

Sultan Singh in favour of Hardial Singh (Ex. DA-1) was entered into by him. He proved his signatures at Point-A. The report No.270 in the Roznamacha, (certified copy of which is Ex.DA-2.) was also recorded by him, He stated that the order sanctioning mutation dated 19.5.1983 is in the hand of Balbir Singh, Naib Tehsildar. He stated that the mutation was entered on the basis of unregistered Will dated 23.2.1974 and as per this Will, Hardial Singh succeeded Sultan Singh. He further stated that at the time of mutation, he himself, mother of Hardial Singh, his sisters and Lambardar were present. He stated that an affidavit of Jasbir Kaur was also produced giving her consent. He further stated that Power of Attorney of Amarjit Kaur regarding her consent, was also produced. He identified the signatures of Arjun Singh Lambardar at point-F, G and H of Ex.DA/1. In cross examination he stated that when mutation is sanctioned on the basis of consent the signatures/thumb impressions of the persons giving consent are not obtained. Similarly in the Roznamacha also the thumb impressions/signatures of the consenting parties, are not obtained.

To the contrary, Sh. Chopra, Ld. Counsel for the respondent has referred to the evidence of PW3 Arjun Singh Lambardar who admitted his signatures on the order of mutation. He admitted his signatures on the reverse side of the mutation where the pedigree table is mentioned. He, however, stated that he had signed the mutation in his capacity as Lambardar and denied that he was present when the mutation was sanctioned. He also denied that Kuldip Kaur plaintiff was present at the time of sanction of mutation. He also denied that the Power of Attorney of Amarjit Kaur (defendants No.3) was presented in his presence. Mr. Chopra also referred

Primary Education Office, Amritsar who brought the record of attendance of plaintiff Kuldip Kaur who was working as teacher. As per that record the plaintiff had not availed of even a single day's leave between 1.4.1983 to 31.3.1984. From this, Ld. Counsel contended that the presence of the plaintiff at the mutation proceedings is falsified.

The statements of PW3 Arjun Singh Lambardar and of PW4 Surinder Pal based on the attendance register are not sufficient to hold that the plaintiff and the other defendants who though recorded as being present at the time of sanctioning of mutation were in fact not present and that the affidavit and power of Attorney of defendant Jasbir Kaur and Amarjit Kaur regarding the consent were not presented before the sanction of mutation. PW3 Arjun Singh Lambardar denied that he was present at the time of attestation of mutation No.709. He, however, admitted his signatures as identifying the parties and on the pedigree table which he explained that he had done on the asking of the Patwari. A Lambardar is a responsible person. It is not expected that he would append his signatures to the mutation proceedings in a casual manner merely on the asking of some official. Moreover, his denial about his presence is contradicted by DW 3 Harnek Singh Patwari who stated that Arjun Singh Lambardar was present. Thus, his denial about his presence carries no conviction. Similarly, merely from the fact that the record of office of Block Primary Education Office, Amritsar indicated that the plaintiff had not availed of even a single day's leave between 1.4.1983 to 31.3.1984 would not prove that the plaintiff was not present at the time of sanctioning of mutation where she is recorded as being present.

Patwari in the discharge of his public duties or the orders passed thereon by the Revenue Officer would be a relevant piece of evidence under Section 35 of the Evidence Act if they contain any fact in issue or a relevant fact. The issue of relevance of mutation entries in the context of a disputed Will was considered by a Division Bench of this Court in ***Babu Singh v. Ram Sahai***, (2006) 2 RCR (Civil) 140 and it was affirmed that while mutation itself does not create any title in favour of a party, but still the entries made in the mutation or the facts mentioned in the order sanctioning the mutation are relevant. It was observed as under:

“9. Moreover, the Will was produced before the Mutation Officer and the mutation in respect of the suit land was sanctioned in favour of the plaintiff-respondent Ram Sahai @ Ram Singh. It is true that the mutation itself does not create any title in favour of a party but still the entries made in the mutation or the facts mentioned in the order sanctioning the mutation are equally relevant. A perusal of order (Ex. P5) sanctioning the mutation by placing reliance on the disputed will dated 25.9.1981 clearly shows that Amar Kaur widow of Ram Bux Singh, Surinder Kaur wife of defendant-appellant No. 1 Babu Singh, Karam Kaur and Dalwinder Kaur daughters of Ram Bux Singh were all present before the Mutation Officer. They all have filed their affidavits before the Mutation Officer in which they had admitted the contents of the Will and allowed the sanctioning of the Will in favour of the plaintiff-respondent Ram Sahai. Therefore, the Will has to be accepted to be sufficiently proved on record”

In the instant case vide order dated 07.06.1983, mutation Ex DA/1 was sanctioned in favour of Hardial Singh on the basis of the unregistered

The presence of Hardial Singh, Mohinder Kaur (defendant No.2), Kuljit Kaur (defendant No.4), Kuldeep Kaur (plaintiff) is recorded therein. It has been recorded that the original Will of Sultan Singh was presented and the same has been returned, a photocopy of the same has been annexed. A photocopy of the Power of Attorney of Amarjit Kaur (defendant No.3) giving consent has also been annexed. Affidavit dated 24.5.1983 of Jasbir Kaur (defendant No.5) has also been recorded as being annexed.

Defendant No.1 examined Harcharan Singh Dhillon son of Sampuran Singh Dhillon, Stamp Vendor Nabha as DW4 who stated that stamp paper of Rs.3/- mentioned at Sr. No.5405 dated 24.5.1983 in the name of Jasbir Kaur daughter of Sultan Singh was sold by him. He stated that the endorsement on this stamp was in his hand and he proved the entry Ex. DA/13. DW-6 H.S. Jhajj, Advocate-cum-Oath Commissioner deposed that the affidavit (Ex. DA/ 15) was attested by the Municipal Commissioner the same day in his presence and was signed by Jasbir Kaur in his presence. It is apparent that the plaintiff, Defendant No.2 (Mohinder Kaur), Defendant No.4 (Kuljit Kaur) were present at the time of sanctioning of mutation in favour of Hardial Singh and defendants No.3 (Amarjit Kaur) and defendant No.5 (Jasbir Kaur) had given their consent. Thus, they were aware of the Will and had accepted its authenticity.

The mutation in favour of Hardial Singh was given effect to in the record- of- rights (Jamabandis) and Hardial Singh was recorded as exclusive owner of the land. This is clear from the Jamabandi for the year 1991-92 (Ex.P-1) produced by the plaintiff herself. The plaintiff or the defendant No.2 to 5 never objected to the same during the life time of Hardial Singh.

litigation has ensued between defendant No.1 (the widow of Hardial Singh) and defendant No.2 (her mother-in-law). The present suit was filed on 9.5.1994 by the sister-in-law of defendant No.1 claiming 1/5th share in the land of Sultan Singh. On 3.6.1994 defendant No.1 filed a suit against defendant No.2 (her mother-in-law) for restraining her from alienating more than her share of the house or any specific portion thereof. The suit was decreed vide judgment and decree dated 14.10.1995 (Ex DA/3 and Ex DA/4). Defendant No.1 filed another suit for restraining defendant No.2 from dispossessing her from the land measuring 58 Kanals- 15 marlas which was decreed vide judgment and decree dated 15.03.1996 (Ex DA/5 and Ex DA/6). A suit for permanent injunction filed by defendant No.2 against defendant No. 1 for restraining her from interfering with the ownership and possession of the land was dismissed vide judgment and decree dated 15.3.1996 (Ex DA/7 and DA/8).

Ld. Counsel for defendant No.1 stated that there is no child from the marriage between Hardial Singh and defendant No.1. As Hardial Singh had died intestate, defendant No.1 (being his widow) and defendant No.2 -Mohinder Kaur (his mother) would be entitled to his property in equal shares. It is this right of defendant No.1 which is sought to be denied by instituting the present suit. In fact, it is apparent that after the death of Hardial Singh, the plaintiff and other defendants have all joined hands to deny defendant No.1 her legitimate share in her deceased husband's property by disputing the Will dated 23.2.1974 of Sultan Singh (who died on 20.1.1980) which had been acted upon by sanction of mutation in favour of Hardial Singh on 7.6.1983 in their presence and/or with their consent.

Even otherwise defendant No. 1 has been able to prove the Will as per law.

To conclude this appeal is allowed. The judgments and decrees of both the Courts below are set aside. The suit of the plaintiff is dismissed.

November 22, 2018

(**HARINDER SINGH SIDHU**)
JUDGE

gian

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No