

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

**(1) RSA No.4901 of 2013 (O&M)
Date of Order: 25.10.2018**

Tarsem Singh and others ..Appellants

Versus

Jagpreet Singh and others ..Respondents

(2) RSA No.94 of 2015(O&M)

Tarsem Singh and others ..Appellants

Versus

Balbir Singh and others ..Respondents

(3) RSA No.4312 of 2013 (O&M)

Balwinder Singh and others ..Appellants

Versus

Surinder Kaur and others ..Respondents

(4) RSA No.3254 of 2012 (O&M)

Jagpreet Singh and another ..Appellants

Versus

Tarsem Singh and others ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. Sanjiv Gupta, Advocate,
for the appellants.**

**Mr. Akshay Jindal, Advocate,
for the respondents.**

ANIL KSHETARPAL, J(Oral)

By this judgment, 4 Regular Second Appeal Nos.4901 of 2013, 94 of 2015, 4312 of 2013 and 3254 of 2012, which are inter-linked and interconnected shall stand disposed of.

This court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed in various suits by the courts below subject matter of different appeal and the records.

Some facts are required to be noticed.

Harnam Singh was owner of the property, who died in the year 1947. He had left behind 5 sons Ajit Singh @ Jit Singh, Ajaib Singh, Ran Singh, Balbir Singh @ Kuldeep Singh, Sarup Singh, and 2 daughters Angrej Kaur and Tej Kaur.

After the death of Harnam Singh, property was transferred in favour of 5 sons named above and there is no dispute between the parties on this aspect. It is alleged that Balbir Singh @ Kuldeep Singh had been given in adoption to Tara Singh son of Sh. Chotu Ram, on 27.03.1973. Ajit Singh @ Jit Singh, Ajaib Singh and Ran Singh have died issueless. Ajit Singh @ Jit Singh executed a Will (testament) bequeathing his 1/5th share in favour of Sarup Singh and the aforesaid Will has been upheld upto this court in a previous litigation. Ajaib Singh died interstate and his share was succeeded by the heirs by natural succession.

In the present case, main dispute between the parties is with regard to a registered Will executed by Ran Singh dated 05.12.1988 in favour of Balbir Singh @ Kuldeep Singh, the son who has gone in adoption. The registered Will has been proved on file by examining attesting witness Didar Singh, thus, Ran Singh's share stands bequeathed in favour of Balbir Singh @ Kuldeep Singh. Various litigations which have resulted into these

suits have been filed as entire agricultural land has been acquired and compensation on account thereof is payable. There are certain residential houses and 'Baras" (plot of plain non agricultural land), which are left out.

Counsel appearing for the legal heirs of Balbir Singh @ Kuldeep Singh has submitted that the entire agricultural land which fell to the share of Balbir Singh @ Kuldeep Singh on the death of Harnam Singh as also the property which came to him on the death of Ran Singh has been sold and the compensation qua the aforesaid land has already been received by subsequent purchasers.

Since, the Will executed by Ajit Singh @ Jit Singh in favour of Sarup Singh has already been upheld, therefore, Sarup Singh, who has died, his legal heirs are entitled to $\frac{2}{5}$ th share in the compensation, as $\frac{1}{5}$ th share he received on the death of Harnam Singh and $\frac{1}{5}$ th share he received on the death of Ajit Singh @ Jit Singh. They will also be entitled to additional share received in natural succession of Ajaib Singh.

Now let's deal with the residential houses and "Baras(plot of non agricultural land). The prayer was made for partitioning the residential house and "baras' in Civil Suit No.428 dated 01.04.2003, subject matter of RSA No.94 of 2015. Legal heirs of Sarup Singh are entitled to $\frac{2}{5}$ th share in the aforesaid property also. This aspect is not contested by learned counsel for the respondent. Similarly, Balbir Singh @ Kuldeep Singh would also be entitled to $\frac{2}{5}$ th share in the aforesaid houses apart from additional share which he gets in natural succession from the share of Ajaib Singh. Since, Ajaib Singh died issueless before Ajit Singh @ Jit Singh and Ran Singh died, therefore his share would devolve upon his brothers and sisters i.e. $\frac{1}{6}$ th share each. Although, learned counsel for the appellant in RSA No.94

of 2015 has submitted that Ajaib Singh's property would not devolve upon Balbir Singh @ Kuldeep Singh as he had gone in adoption to a different family, however, learned counsel on being pointedly asked, admitted that the aforesaid issue has never been raised before the courts below. Hence, this court cannot permit the counsel to raise this issue for the first time.

Hence, with regard to residential houses and 'Baras', (non-agricultural plots), a preliminary decree for partition is passed in favour of legal heirs of Sarup Singh to the extent of 2/5th share plus 1/15th share and similarly Balbir Singh @ Kuldeep Singh would also be entitled to equal share i.e. 2/5th share plus 1/15th share. The parties would be entitled to file an application for final partition. Thus, the entire dispute between the parties shall stand settled and suit for injunction filed by Balbir Singh @ Kuldeep Singh through legal heirs shall also stand disposed of.

Needless to say that the legal heirs of Sarop Singh shall now be entitled to withdraw their compensation as per their share determined.

In view thereof, all the 4 regular second appeals are disposed of accordingly.

C.M.No.11673-C-2013 in RSA No.4312 of 2013

Prayer in this application is for condonation of delay of 33 days in filing the appeal.

For reasons mentioned in the application, which is supported by an affidavit, the delay of 33 days in filing the appeal is condoned.

Application is allowed.

C.M.No.265-C-2015 in RSA NO.94 of 2015

Prayer in this application filed under Order 1 Rule 10 of the Code of Civil Procedure is for impleading necessary parties as respondents.

For the reasons mentioned in the application, which is supported by an affidavit, the application is allowed, subject to all just exceptions. The applicants mentioned in paragraph 2 of the application are impleaded as respondents.

C.M.No.8622 -C-2012 in RSA NO.3254 of 2012

Prayer in this application is for bringing on record the legal representatives of Balbir Singh @ Kuldeep Singh-appellant.

For the reasons mentioned in the application, which is supported by an affidavit, the application is allowed as counsel for the respondent does not have any objection to the impleading of the legal representatives. The legal representatives mentioned in paragraph 2 of the application are brought on record for the purpose of prosecuting this appeal only.

Office is directed to carry out necessary corrections in the memorandum of parties.

October 25, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No