

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

**RSA No. 5789 of 2016 (O&M)**

Date of decision : October 10, 2018

Bhagwant Singh

....Appellant

Versus

Parkash Kaur (since deceased through LRs) and others ....Respondents

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. Premjit Kalia, Advocate  
for the appellant.

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**LISA GILL, J.**

Appellant - plaintiff is aggrieved of concurrent findings rendered against him by the learned Additional Civil Judge (Senior Division), Khadur Sahib vide judgment and decree dated 25.11.2014 as well as by the learned District Judge, Tarn Taran vide judgment and decree dated 18.05.2016.

The appellant who is one of the defendants, i.e. defendant No. 1 before the learned trial Court, is aggrieved of judgment and decree dated 25.11.2014 passed by the learned Additional Civil Judge (Senior Division), Khadur Sahib whereby the suit filed by respondents No. 1 to 4 was decreed. Plaintiffs – respondents No. 1 to 4 filed a suit for declaration to the effect that they are joint owners in possession of 2/3<sup>rd</sup> share of the land as detailed in the plaint and in the alternate a suit for joint possession as owners of 2/3<sup>rd</sup> share of the land in question besides permanent injunction to the effect that defendant No. 1 (present appellant) and defendant No. 2 Balwinder Singh be restrained from alienating the above mentioned land beyond their 1/3<sup>rd</sup> share therein.

It was pleaded by the plaintiffs that Bachan Singh was the Karta of the joint Hindu Family consisting of himself, his two sons i.e. defendants No. 1 and 2 (Bhagwant Singh and Balwinder Singh) alongwith four daughters i.e. the plaintiffs. The suit land was claimed to be joint Hindu Family coparcenary ancestral property. The plaintiffs alongwith defendants No.1 and 2 were stated to be coparceners having a right of ownership therein by birth. Bachan Singh died on 27.08.2007 and all the siblings are stated to have inherited the suit land in equal share. Bachan Singh never executed a Will in favour of defendants No. 1 and 2 and in case any such document is produced the same is a false, suspicious and fraudulent document. Moreover, Bachan Singh was not competent to execute any will in respect to the suit land, which is the Joint Hindu Family coparcenary ancestral property. Mutation of inheritance was earlier sanctioned in the names of the plaintiffs alongwith defendants No. 1 and 2 their brothers. Defendants No. 3 to 12 were pleaded to be co-owners of the joint khata of the suit land and there was no dispute in respect to their shares. Hence, the suit was filed.

Defendant No. 1 (present appellant) contested the suit. Written statement was filed taking various preliminary objections. Averments on merits were denied and controverted. It was pleaded that Bachan Singh executed a Will dated 12.06.2007 in favour of his two sons. Earlier, the plaintiffs in connivance with defendant No. 2, the other brother got a mutation sanctioned in the name of all the legal heirs of Bachan Singh behind the back of defendant No. 1. Dismissal of the suit was prayed for.

Defendant No. 2 filed a written statement stating that no will was ever executed by their father Bachan Singh in his favour alongwith

defendant No. 1. Mutation was wrongly sanctioned by defendant No. 1 in collusion with revenue officials on the basis of a false and fabricated will. Replication was filed.

Following issues were framed by the learned trial Court on the basis of the pleading:-

1. Whether the plaintiffs are entitled for the relief of declaration as prayed for?OPD.
2. Whether the plaintiffs are entitled for the relief of permanent injunction as prayed for?OPP
3. Whether the plaintiffs are entitled for the relief of joint possession as alternative relief as prayed in the head note of the plaint? OPP.
4. Whether the suit is not maintainable in the present form? OPD.
5. Whether the plaintiff has not come to the court with clean hands?OPD
6. Whether Bachan Singh executed will dated 12.06.2007 in favour of defendants No. 1 and 2 ?OPD
7. Relief.

Evidence was led by both the parties to substantiate their respective case.

Learned trial Court held that the property in dispute was not the joint Hindu Family coparcenary ancestral property. Bachan Singh being the owner thereof had a right to deal with the property in any manner. However, it was held that the will dated 12.06.2007 was not proved in accordance with law. Hence, the property of Bachan Singh would devolve as per natural succession. The suit of the plaintiff was, thus, decreed to the effect that plaintiffs are joint owners in possession of the land in question. Defendants No. 1 and 2 were restrained from alienating the suit land (except their share) except in due course of law.

Appeal was filed by the present appellant Bhagwant Singh. The same was dismissed by the learned Additional District Judge, Tarn Taran vide judgment dated 18.05.2016. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant vehemently argues that will dated 12.06.2007 (Ex. D1) has been duly proved on record. There are no suspicious circumstances which cast a doubt upon the genuineness and veracity of the said will. The said Will has been proved by both the attesting witnesses as well as son of the deed writer Tarjit Singh DW3. The fact that the document is an unregistered Will cannot be held against the appellant. Moreover, both the learned courts below have wrongly relied upon the report of the Finger Print Expert once the attesting witness and the scribe had proved the same. It is, thus, prayed that this appeal be allowed, impugned judgment and decree dated 25.11.2014 passed by the learned Additional Civil Judge (Senior Division), Khadur Sahib as well as judgment and decree dated 18.05.2016 passed by the learned District Judge, Tarn Taran be set aside. Consequently, suit filed by the plaintiffs-respondents be dismissed throughout.

I have heard learned counsel for the appellant and have perused the file as well with his able assistance

The finding of the learned courts below in respect to the nature of the suit property has attained finality and is not in question. The entire controversy rests upon the validity of the will dated 12.06.2007 (Ex.D1). Both the learned courts below while relying upon the evidence of the Hand Writing and Finger Print Expert PW4 Sukhpreet Kaur have held that the thumb impression on the alleged Will is not of Bachan Singh. The standard

thumb impression of Bachan Singh was taken from a mortgage deed admittedly executed by Bachan Singh. PW3 Ajit Singh, Numberdar of village Chak Mehar deposed that he had seen the original mortgage deed dated 07.07.2004 in the summoned bahi brought by the Clerk of office of the Sub Registrar. The said mortgage deed was executed by Bachan Singh son of Sadhu Singh in his presence. Mortgage deed was attested by Ajit Singh as witness alongwith Satnam Singh and Narinder Singh. The said mortgage deed was executed before the Sub Registrar. In any case, no dispute has been raised about the said thumb impression on the mortgage deed not being of Bachan Singh. PW4 Sukhpreet Kaur Finger Print and Hand Writing expert has specifically deposed that thumb impressions on the will dated 12.06.2007 do not match with the standard thumb impression of Bachan Singh. It is clearly opined that both the thumb impressions have been affixed by two different persons. Moreover, no reason whatsoever has come on record for excluding the plaintiffs from inheritance of Bachan Singh.

It is pertinent to note, at this stage, that respondent No. 2 - Balwinder Singh, the other son of Bachan Singh has taken a specific stand that no such Will Ex. D1 was executed in his favour or the appellant – Bhagwant Singh. There was no reason whatsoever for Balwinder Singh to have disputed the said will as he himself was the beneficiary of the same and would stand to benefit under the said will. Mutation was at the outset sanctioned in favour of the legal representatives of Bachan Singh in equal shares.

Both the learned courts below have rightly held that the property of Bachan Singh would devolve upon all the legal heirs of Bachan

Singh as per natural succession in equal shares.

Both the learned courts below have rendered concurrent findings of fact against the appellant on a wholesome and proper appreciation of evidence on record which warrants no interference. In my considered opinion, no question of law much less a substantial question of law is involved in this appeal.

No other argument was addressed.

Learned counsel for the appellant is unable to point out any illegality and infirmity in impugned judgment and decree dated 25.11.2014 passed by the learned Additional Civil Judge (Senior Division), Khadur Sahib as well as judgment and decree dated 18.05.2016 passed by the learned District Judge, Tarn Taran which calls for any interference by this Court.

Accordingly, this appeal is dismissed with no order as to costs.

October 10, 2018

*rts*

**(Lisa Gill)**  
**Judge**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No