

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

RSA No.4512 of 2015 (O&M)
Decided on:-March 27, 2018.

Gurdial Singh and another

.....Appellants.

Versus

Jangir Kaur (deceased) through her LRs and others

.....Respondents.

CORAM: *HON'BLE MR. JUSTICE HARI PAL VERMA.*

Present:- Mr. Harvinder Singh Maan, Advocate
for the appellants.

HARI PAL VERMA, J.

The appellant-defendants No.1 and 2 have filed the present regular second appeal against the judgment and decree dated 20.04.2015 passed by learned Additional District Judge, Sangrur, whereby their appeal against the judgment and decree dated 19.01.2013 passed by learned Additional Civil Judge (Senior Division), Moonak, was dismissed.

Vide judgment and decree dated 19.01.2013, learned civil Court had decreed the suit filed by plaintiff-respondent Jangir Kaur (since deceased and represented through her legal heirs) and she was held entitled to the extent of 1/4th share out of the estate of her husband late Lal Singh.

Briefly stated, the plaintiff had filed a suit for declaration that she is owner and in joint possession to the extent of 1/64 share of the land measuring 105 Kanal 5 Marlas; owner to the extent of 1/4th share out of the

land measuring 3 Marlas and owner in joint possession to the extent of 1/4th share out of land measuring 84 Kanal 1 Marlas, fully detailed in the head note of the plaint situated at village Bhai Ki Pishore, Tehsil Lehra, District Sangrur as per the Jamabandi for the year 2004-05 and the defendants have no concern with the suit land and the mutation No.6865 dated 20.09.2002 regarding inheritance of deceased Lal Singh son of Sher Singh sanctioned in favour of defendants No.1 to 3 (including the appellant-defendants No.1 and 2) is illegal, void and against law and the mutation of inheritance of Lal Singh deserves to be sanctioned in favour of the plaintiff and defendants No.1 to 3 in equal shares on the basis of registered Will dated 26.02.2001.

As per the plaint, Lal Singh son of Sher Singh i.e. husband of the plaintiff was owner in possession to the extent of 1/16th share out of land measuring 105 Kanal 5 Marlas bearing Khata No.168/340 to 345. He was also owner in possession of land measuring 3 Marlas bearing Khata No.181/366. Similarly, in Khata No.180/365, he was owner in possession of the land measuring 84 Kanal 1 Marlas. The plaintiff is a widow, whereas defendants No.1 to 3 are sons of Lal Singh. The plaintiff and defendants No.1 to 3 used to serve Lal Singh and on account of the services so rendered by the plaintiff and defendants No.1 to 3, said Lal Singh had executed a registered Will dated 26.02.2001 vide deed No.141 dated 26.02.2001. The Will was registered in the office of Sub-Registrar, Lehra. Lal Singh had died on 21.04.2001. After his death, the plaintiff and defendants No.1 to 3 inherited the property of Lal Singh and stepped into his shoes on the basis of Will dated 26.02.2001 in equal shares. The plaintiff became owner in possession of the suit land as per her share, but the defendants No.1 to 3 being clever persons got the

mutation No.6865 dated 20.09.2002 regarding inheritance of Lal Singh sanctioned in their favour in connivance with the revenue officials at the back of plaintiff ignoring the plaintiff from inheritance of Lal Singh. The mutation of inheritance of Lal Singh was liable to be sanctioned in favour of the plaintiff and defendants No.1 to 3 in equal shares. The defendants No.1 to 3 further sold 3 Marlas land bearing Khata No.181/366 Khasra No.229 (0-3) to defendant No.7 on the basis of wrong entry in their names vide sale deed No.1382 dated 21.08.2008.

The plaintiff had claimed that the said sale deed dated 21.08.2008 in favour of defendant No.7 is null and void having no effect on the rights of the plaintiff. On the basis of sale deed dated 21.08.2008, the defendant No.7 got the mutation No.7345 dated 28.05.2009 sanctioned in his favour at the back and in the absence of the plaintiff. Similarly, the defendants No.1 and 2 mortgaged some land out of the suit land to defendant No.8 vide mortgage deed No.10498 dated 24.10.2005 which is illegal. Defendant No.3 also mortgaged some land out of the suit land to defendant No.9 vide mortgage deeds No.1988 dated 17.03.2008 and 1989 dated 24.12.2009. The defendants No.4 to 6 are the daughters of Lal Singh. Though they have been impleaded as defendants, but they have no concern with the suit land. After execution of the sale deed dated 21.08.2008, the defendant No.7 had taken possession of land measuring 3 Marlas comprising of Khata No.181/366 Khasra No.229 (0-3) illegally and forcibly for which he had no right. Defendant No.7 had taken possession of 1/4th share of the plaintiff out of the said land which is illegal and as such, he is a trespasser. The plaintiff has

claimed that she is entitled for joint possession of the land to the extent of 1/4th share on the basis of title.

Defendants No.1 to 3 and 8 had appeared through their respective counsel and filed their separate written statements. The other defendants did not opt to appear and hence, were proceeded against *ex parte*.

In their joint written statement, defendants No.1 and 2 while taking preliminary objections regarding locus standi, cause of action, estoppel, maintainability, limitation have pleaded that the plaintiff has not come to the court with clean hands. On merits, it has been alleged that at the time of Will and mutation, the plaintiff was interested that the whole property of Lal Singh be inherited by defendants No.1 to 3 and at the time of mutation of inheritance of Lal Singh, the plaintiff was present and she relinquished her right in the suit property. She had stated that she was not interested in inheriting any share out of the suit land and, rather, facilitated the revenue authorities to sanction the mutation of inheritance in favour of defendants No.1 to 3. It is in this manner, the defendants are owners in possession of the suit property as per their respective shares recorded in the revenue record and the sale deeds, mortgage deed and the entries have rightly been executed.

The defendant No.3, who is another son of the plaintiff in his written statement has admitted the claim of the plaintiff and has, rather, prayed that a decree be passed in favour of the plaintiff.

The defendant No.8 bank in its written statement has also raised preliminary objections regarding locus standi, cause of action, estoppel, maintainability and that the plaintiff has not come to the court with clean hands. On merits, it was submitted that defendants No.1 and 2 had obtained

loan from the bank for Rs.4 lakhs and in this regard, they produced a mortgage deed No.1049 dated 24.10.2005 and after verifying the facts from the revenue authorities, the bank advanced loan to defendants No.1 and 2.

The plaintiff filed replication to the written statement filed by the defendants No.1 and 2 wherein the averments of written statement were denied and that of the plaint were re-affirmed to be correct.

On the basis of pleadings of the parties, the civil Court formulated the following issues:

1. Whether the plaintiff is entitled to relief of declaration as she is in joint possession to the extent of her share as prayed for? OPP
2. Whether the mutation No.6865 dated 20.09.2002 is illegal, null and void as prayed for? OPP
3. Whether the sale deed No.1382 dated 21.08.2008 in favour of defendant No.7 is illegal, null and void and no effect on the right of plaintiff as prayed for? OPP
4. Whether the mutation No.7345 dated 28.05.2009 sanctioned in favour of defendant No.7 is illegal, null and void as prayed for? OPP
5. Whether the mortgage deed No.1049 dated 24.10.2005 executed by defendants No.1 and 2 in favour of defendant No.8 is illegal, null and void and no effect on the right of plaintiff as prayed for? OPP
6. Whether the deeds No.1988 dated 17.03.2008 and 1989 dated 24.12.2009 executed by defendant No.3 in favour of defendant No.9 are illegal, null and void and no effect on the right of plaintiff as prayed for? OPP
7. Whether the plaintiff is entitled to relief of possession as prayed for? OPP
8. Whether plaintiff is entitled to relief of permanent injunction as prayed for in plaint? OPP
9. Whether the suit is not maintainable in the present form? OPD 1, 2, 8

10. Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD 1, 2, 8
11. Whether plaintiff is estopped by her own act and conduct from filing the present suit? OPD 1, 2, 8
12. Whether the suit is not properly valued for the purpose of court fee? OPD 1, 2
13. Relief.

In order to prove her case, plaintiff Jangir Kaur stepped into the witness box as PW1 and proved the Will dated 26.02.2001 as Ex.P1. She has also examined Gurdarshan Singh, Registry Clerk working in the office of Sub-Registrar, Lehra, who produced the record related to the Will dated 26.02.2001 Ex.P1 executed by Lal Singh, upon which he identified endorsement of Sub-Registrar as Ex.P2. Similarly, he has proved the sale deed dated 21.08.2008 as Ex.P3, mortgage deed dated 24.10.2005 as Ex.P4, mortgage deed dated 24.02.2009 as Ex.P5 and mortgage deed dated 18.03.2008 as Ex.P6. Gobinder Singh Namberdar, who is an attesting witness of the Will Ex.P1 has been examined by the plaintiff as PW3. He proved the Will dated 26.02.2001 Ex.P1 as required under Section 68 of the Indian Evidence Act, 1872 read with Section 63(c) of the Indian Succession Act, 1925.

In order to controvert the claim of the plaintiff, the defendant No.1 Gurdial Singh stepped into the witness box as DW1. The defendants further examined Bhagwan Singh @ Bhana as DW2, who stated that Lal Singh (deceased) was being looked after by his sons during his life time and plaintiff Jangir Kaur was also residing along with them, who was also assisting in looking after Lal Singh. However, after the death of Lal Singh,

the plaintiff was not willing to take any share out of the estate of Lal Singh and she wished that the entire property of Lal Singh be equally divided amongst defendants No.1 to 3 and it is on this account, the mutation of inheritance of Lal Singh was sanctioned in favour of defendants No.1 to 3 as the plaintiff had relinquished her rights on her own voluntarily.

The civil Court recorded a finding that the defendants have failed to establish that the plaintiff ever relinquished her share in favour of defendants No.1 to 3. The defendants examined only DW2 Bhagwan Singh @ Bhana, but except oral assertion, no such evidence has come on record that the plaintiff ever relinquished her share in favour of defendants No.1 to 3. the relevant paragraph No.17 of the impugned judgment dated 19.01.2013 passed by learned civil Court is reproduced as under:

“17. The plaintiff has set up her claim on the basis of will dt. 26.02.2001, Ex.P1 purported to be executed by Lal Singh in favour of plaintiff and defendants No.1 to 3. At the very outset, it would be pertinent to note here that the original will not was traceable which necessitated plaintiff filing of application dt.14.12.2010, before this court seeking permission to lead secondary evidence to prove the will dt.26.2.2001, executed by deceased Lal Singh in favour of plaintiff and defendants No.1 to 3. Pursuantly, this court vide order dt.6.4.2011, permitted plaintiff to prove the will by way of secondary means subject to proof of its execution and its non possession with her. The plaintiff had positively asserted that original will not was in her possession since the same was left in possession of defendants No.1 to 3. Even the plaintiff had moved application dt.21.9.2010 for directing defendants No.1 to 3 to produce original will dt.26.2.2001 in the court. In reply to which this defendant stated that original will was not in their possession. In the backdrop of

these circumstances, plaintiff was forced to move application U/s 65 of the Indian Evidence Act, for leading secondary evidence. The said will Ex.P1, is registered document, which was registered with Joint Sub-Registrar, Lehra, the plaintiff had placed on record certified copy of the said will. Even the said will has been produced by PW2 Gurdarshan Singh, Registry Clerk from the office of Joint Sub-Registrar, Lehra, who has proved will Ex.P1, as well as endorsement of the Joint Sub-Registrar, Lehra, as Ex.P2. Thus, it fully stands established that will dt.26.2.2001 was actually in existence which was executed by deceased Lal Singh and subsequently got registered from the Joint Sub-Registrar, Lehra. As such, the plaintiff has satiated about existence of the will in question as well as its non possession with her. In order to prove said will, as per section 68 of the Indian Evidence Act, she examined PW2 Gohbinder Singh Numberdar one of the attesting witness, who has fulfilled the ingredients of due attestation and execution of will by deceased Lal Singh by deposing as required U/s 63(c) of the Indian Succession Act. He has categorically testified that on 26.2.2001, Lal Singh had executed will in favour of his sons Gurdayal Singh, Gurjant Singh and Jarnail Singh as well as his wife Jangir Kaur and the said will was scribed at the instance of Lal Singh in his presence as well as in presence of Preet Mohinder Singh other attesting witness. After typing, the same was read over to Lal Singh who after admitting and understanding its contents to be correct, thumb marked the same in their presence. Thereafter, he and other witnesses signed in presence of each other and even the document writer also obtained their signatures/thumb impressions in his register. He has specifically stated that said will was executed by Lal Singh out of his sweet will and free volition. Thus the will Ex.P1 duly stands proved. It is germane here to note that defendants No.1 and 2, have not denied the execution of will by their father, rather they have admitted that

Lal Singh executed will as stated by plaintiff. Similarly, the defendant No.3 has admitted the claim of plaintiff regarding execution of will. The only bone of contention was that as per defendants No.1 and 2 at the time of mutation, plaintiff was not interested to inherit any share out of the suit property and was interested that whole property of Lal Singh be inherited by defendants No.1 to 3. Thus, as per the defendants she has relinquished her share out of the suit property as per her desire due to which mutation of inheritance was sanctioned in favour of defendants No.1 to 3. However, this assertion of the defendants is merit less and unsupported by any evidence. No doubt, defendants have examined DW2 Bhagwan Singh @ Bhana to fortify their claim regarding relinquishment of interest by the plaintiff but oral assertions would not serve the purpose for the defendants since such relinquishment ought to be reduced into writing. In fact mutation of inheritance Ex.P9, reveals that said mutation bearing No.6865 has been sanctioned on the basis of registered will bearing No.141 dt.20.2.2001, but actually the will was not implemented in letter and spirit, since one of the beneficiary i.e. plaintiff who was wife of Lal Singh was left out and the property was mutated in the name of three sons in equal shares, whereas the said suit property was required to be divided in four shares and plaintiff along with her three sons had become the owner of the suit property to the extent of 1/4th share on the basis of will Ex.P1. The Tehsildar has given undue favour to defendants No.1 to 3 for the reasons best known to him without adverting to the procedure of Land Record Revenue Manual and by ignoring the plaintiff without any rhyme or reason. He should have recorded some statement and only upon some written relinquishment deed, he could have sanctioned mutation in favour of defendants No.1 to 3. The record surprisingly reveals that the said mutation has been sanctioned at the back of plaintiff, and Tehsildar even did not issue any notice to plaintiff

regarding application of plaintiffs for sanctioning mutation of inheritance of Lal Singh in their favour. Thus, the entire procedure adopted by Tehsildar suffers from various infirmities as he has illegally and without adopting due course of law bypassed plaintiff. The present litigation is outcome of the negligence/illegality committed by concerned official for rendering undue favour to defendants No.1 to 3 without any substantial reason. As such, such kind of serious lapse should be brought to the notice of Ld. Collector for taking appropriate action and accordingly he be apprised of this conduct of concerned revenue official who had created turmoil and led to the filing of present suit. Even the plea of the defendants regarding relinquishment of her share is not supported by this mutation. No reason has been assigned in the mutation as to why one of the beneficiary i.e. plaintiff has been ignored and on what account, thus the said mutation is set aside and it is held that plaintiff alongwith defendants No.1 to 3 entitled to the suit property to the extent of 1/4th share each. Pursuantly mutation of inheritance bearing No.6865 dt. 20.9.2002 Ex.P9 is set aside as the same has ignored 1/4th entitlement of the plaintiff on the basis of registered will dt.20.2.2001 Ex.P1. Sequelly, the plaintiff is entitled for joint possession to the extent of 1/4th share out of land measuring 3M bearing khata No.181/366 khasra No.229 (0-3), fully detailed in the head note of the judgment. Resultantly, defendants No.1 to 7 are restrained from alienating share of the plaintiff, out of the suit property.”

Accordingly, vide judgment and decree dated 19.01.2013, learned civil Court decreed the suit of the plaintiff.

Aggrieved against the aforesaid judgment and decree dated 19.01.2013 passed by the civil Court, the appellant-defendants No.1 and 2 preferred an appeal before the lower appellate Court. But the appeal was also

dismissed by learned Additional District Judge, Sangrur vide judgment and decree dated 20.04.2015.

Still aggrieved, the appellant-defendants No.1 and 2 have filed the present regular second appeal.

Following substantial questions of law have been raised by the appellant-defendants No.1 and 2:

- i. Whether the judgment and decree passed by the Courts below are sustainable in the eyes of law?
- ii. Whether the courts below have misread the evidence brought on the file?
- iii. Whether the judgment and decree passed by the courts below on the shaky evidence are tenable in the eyes of law?

Learned counsel for the appellant-defendants No.1 and 2 has argued that after the death of Lal Singh, respondent-plaintiff was not willing to take any share out of the estate of Lal Singh and, therefore, she relinquished her share in favour of her sons including defendants No.1 and 2 to be divided equally and accordingly, the mutation dated 20.09.2002 was sanctioned in favour of defendants No.1 to 3. At the time of sanction of mutation, the plaintiff was very much present and the revenue authorities sanctioned mutation in favour of defendants No.1 to 3 as per her wishes and desire.

He has further argued that the appellant-defendants have examined Bhagwan Singh @ Bhana as DW2 regarding relinquishment of interest by the plaintiff, but his testimony has wrongly been ignored by the Courts below. In fact, the plaintiff had filed the suit in connivance with

defendant No.3 against the appellant-defendants No.1 and 2 to grab their share. The sale deed, mortgage deed and the entries have rightly been executed in the revenue record and the plaintiff never challenged the mutation till the filing of the suit. The Courts below have committed a legal error in deciding the crucial issues No.1 to 8 in favour of the plaintiff and against the appellant-defendants No.1 and 2 because after the death of Lal Singh, the plaintiff was not willing to take any share out of the estate of Lal Singh and she, rather, wished that the entire property of Lal Singh be equally divided amongst her three sons and it is on this basis, mutation No.6865 dated 20.09.2002 of inheritance of Lal Singh was sanctioned in favour of three sons including the present appellant-defendants No.1 and 2, as the plaintiff had relinquished her rights voluntarily.

I have heard learned counsel for the appellants (defendants No.1 and 2) and perused the record.

There is no dispute that Lal Singh was the husband of plaintiff and father of defendants No.1 to 3 including the present appellants. Lal Singh had executed a Will dated 26.02.2001 in favour of his widow (plaintiff) and three sons (defendants No.1 to 3). He had expired on 21.04.2002. The very execution of the Will dated 26.02.2001 (Ex.P1) has duly been proved by the plaintiff by examining the attesting witness i.e. Gobinder Singh Namberdar as PW3. Even the execution of said Will has not been disputed by the appellant-defendants No.1 and 2. Since the mutation No.6865 dated 20.09.2002 of inheritance of Lal Singh, which is based on Will Ex.P1, was sanctioned at the back of the plaintiff, she had challenged the same.

The crucial argument raised by learned counsel for the appellant-

defendants No.1 and 2 which requires consideration is as to whether plaintiff Jangir Kaur had relinquished her rights in the suit property in favour of her three sons, but the plaintiff had successfully proved her case that she had not relinquished her rights in the suit property in favour of her sons. In fact, the mutation No.6865 dated 20.09.2002 was sanctioned on the basis of Will dated 26.02.2001 Ex.P1 and, therefore, in the absence of any writing executed by the plaintiff, there is no reason to ignore the share of plaintiff Jangir Kaur on the basis of Will Ex.P1 executed by Lal Singh. There is no relinquishment deed on record and simply because the revenue officials have sanctioned mutation in favour of defendants No.1 to 3 without there being any proof of relinquishment, the Courts below have rightly held that there was no relinquishment on the part of the plaintiff in favour of defendants No.1 to 3.

Appellant-defendant No.1 Gurdial Singh while appearing in the witness box as DW1 has admitted in his cross-examination that deceased Lal Singh had executed a Will in favour of the plaintiff and defendants No.1 to 3 and at the time of sanction of mutation, which was based on the Will, plaintiff Jangir Kaur had not executed any document regarding relinquishment of her share in favour of her sons and there is no such statement on behalf of plaintiff Jangir Kaur on the file.

Thus, when the mutation No.6865 dated 20.09.2002 was sanctioned, neither the plaintiff was present nor she signed the mutation proceedings. The mutation was sanctioned at her back which has no effect on her rights. Once it is proved that there is no relinquishment deed on the file, the mutation No.6865 dated 20.09.2002 has rightly been declared as illegal, null and void by the Courts below. However, on the basis of Will Ex.P1, the

Courts below have held that the plaintiff is entitled to inherit 1/4th share out of the property which belonged to deceased Lal Singh.

The plea of appellant-defendants No.1 and 2 that the suit was liable to be dismissed on account of limitation has already been dealt with by learned Courts below that there is no limitation in a suit for possession, which is based on inheritance.

Since the respondent-plaintiff had proved her case by leading oral as well as documentary evidence, the crucial issues No.1 to 4, 7 and 8 were rightly answered by the civil Court in favour of the plaintiff and against the defendants. The appeal filed by the appellant-defendants No.1 and 2 has rightly been dismissed by learned lower appellate Court. Therefore, there is no illegality in the concurrent finding of facts recorded by the Courts below.

No other point was argued.

This Court finds that the controversy involved in the case has duly been considered by the Courts below and, therefore, no substantial question of law arises in the present regular second appeal.

Thus, affirming the judgment and decree dated 19.01.2013 passed by the civil Court as well as the judgment and decree dated 20.04.2015 passed by the lower appellate Court, the instant regular second appeal, being devoid of any merit, is dismissed.

March 27, 2018

Yag Dutt

**(HARI PAL VERMA)
JUDGE**

Whether speaking/reasoned: Yes

Whether Reportable: No