

**RSA-434-1989 (O&M)**

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

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**Date of decision : 05.07.2019**

Jagdev Singh

... Appellant

Versus

Gurdeep Singh and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Arun Jain, Senior Advocate with  
Mr. Amit Jain, Advocate and  
Mr. Manish Kumar Singla, Advocate  
for the appellant.

Mr. Kanwaljit Singh, Senior Advocate with  
Mr. ADS Jattana, Advocate and  
Mr. C.B. Goel, Advocate  
for the respondents.

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**AMIT RAWAL, J.**

The present regular second appeal, at the instance of the plaintiff, is directed against the judgment and decree of the lower Appellate Court, whereby the suit for declaration and permanent injunction challenging judgment and decree dated 09.10.1981 rendered in Civil Suit No.485 of 1981, vide which, respondents-defendant Nos.1 to 4, were declared owner in possession of land measuring 107 kanals 2 marlas, etc., has been dismissed, in essence, judgment and decree of the trial Court decreeing the suit, has been set aside.

Succinctly, the facts, which emanate from the pleadings of parties, are that on 08.12.1983, plaintiff instituted aforementioned suit, challenging decree on account of misrepresentation, mis-statement of facts

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and fraud, being null and void qua his rights. It was explained that Kesar Singh was common ancestor and had two sons, namely, Buta Singh and Harnam Singh. Buta Singh had another son Maingal Singh, who died on 19.11.1983, whereas Harnam Singh had two sons and one daughter, namely, Gudial Singh, Gurbax Singh and Dhan Kaur, respectively. Maingal Singh was married to Bhagwan Kaur @ Bhano. Maingal Singh had one daughter, Natho/defendant No.5. Jagdev Singh-plaintiff was son of Natho/defendant No.5.

About 15 years back, was stated to be minor and residing with his father, Mithu Singh, husband of Natho. Plaintiff alleged himself to be minor son of Mithu Singh being natural father and guardian. Maingal Singh was owner of land measuring 127 kanals 2 marals. He being grandson of Maingal Singh, used to reside with him and his wife Bhagwan Kaur, in Village Lehra Bega as he was getting his education and out of love and affection, Maingal Singh, during his life-time, executed a Will dated 14.12.1981, regarding his moveable and immovable properties, in his favour and Bhagwan Kaur, grandmother, in equal shares. The Will was executed from Makhan Singh, Panchayat Secretary of the Village, before the Village Panchayat and read over and explained. Testator appended his thumb-impressions, in presence of Makhan Singh, scribe, Gurdev Singh, Sarpanch, Babu Singh, Chhota Singh, Dal Singh and Chetu Singh, Members Panchayat. All the above-said witnesses also signed and thumb-marked. On 15.09.1983, Bhagwan Kaur, unfortunately, passed away. As per Will, half share was given to Bhagwan Kaur and he remained owner of remanning half share, thus, half share was to be inherited by natural heirs. On 19.11.1983, Maingal Singh, died at Village Burj Sema and plaintiff, thus, became owner

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of half share of the land including 127 kanals 2 marlas of land. Natho/defendant No.5, mother of the plaintiff, became owner of half share including the suit land. In a family settlement, the aforementioned land was given by Maingal Singh to plaintiff, in Civil Suit No.594 of 1983. Judgment and decree dated 17.10.1983, was also passed in favour of plaintiff and against, Maingal Singh,. It is only month before filing of the suit, plaintiff acquired the knowledge of the decree, impugned. It was alleged that Bhagwan Kaur wife of Maingal Singh, was alive, at the time of impugned decree. In fact, Maingal Singh never went to the Court or suffered any statement or signed/thumb-marked any paper, much less, neither any possession was given to defendant Nos.1 to 4. When steps for forcible possession were taken, suit, aforementioned was filed.

Defendant Nos.1 to 4 rebutted all the averments in written statement, besides taken numerous preliminary objections qua maintainability, *locus standi* and denied that any such Will was executed. Minor cannot be said to be serving Maingal Singh and his wife. Decree of 1983 was a nullity as Maingal Singh did not have any right and title, owing to decree of 1981, under challenge. There was no mis-representation or any fraud, even, Maingal Singh had executed an attorney in favour of his counsel, who filed written statement and suffered a statement before the Court, after understanding its contents.

Since parties were at variance, trial Court frame the following issues:-

- 1. Whether Mangal Singh deceased executed a valid will on 14.12.1981 regarding his property in favour of Jagdev Singh and Bhagwan Kaur in equal shares? OPP*

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*2. Whether the judgment and decree dated 09.10.1981 passed by the Court of learned Senior Sub Judge, Bathinda in Civil Suit No.485 dated 4.9.81 obtained by defendants No.1 to 4 is against facts and law and result of misrepresentation and misstatement of facts and by playing fraud on the Court and as such is illegal, null & void and ineffective against the rights of the plaintiff? OPP*

*3. Whether the plaintiff is entitled to the injunction prayed for? OPP*

*4. Whether the suit is not maintainable in the present form? OPD*

*5. Whether the plaintiff has no locus standi to bring this suit? OPD*

*6. Relief.*

Both the parties led extensive evidence in support of their respective cases.

On the basis of preponderance of evidence, trial Court decreed the suit and held decree, impugned, to be null and void and restrained the respondents for dispossession as well as alienation of the suit property.

It is a matter of record that defendant No.5, in the suit, was proceeded *ex parte*.

As noticed above, lower Appellate Court set aside judgment and decree of the trial Court, resulting into, dismissal of the suit.

Mr. Arun Jain, learned Senior Counsel assisted by Mr. Amit Jain, learned counsel appearing on behalf of the appellant-plaintiff, in support of memorandum of appeal, raised the following submissions:-

- (i) In Civil Suit No.485 of 1981 titled as **Gurdeep Singh and others V/s Maingal Singh**, judgment and decree dated 09.10.1981 (Ex.D2 and D5) and its proceedings, reveal that defendants rebutted the categoric averments and the evidence qua fraud and misrepresentation as no evidence qua service of summons or examination of lawyer, has been led.
- (ii) Plaint in the aforesaid civil suit was bereft of the status of living wife and daughter i.e. Bhagwan Kaur and Natho.
- (iii) Defendants, remotely related to Maingal Singh and had no occasion to enter into any family partition.
- (iv) Defendants failed to produce any decree before the revenue authorities for the period of two years and mutation, Ex.D9, dated 31.10.1983. was only entered after decree of 17.10.1983 suffered by Maingal Singh, in favour of plaintiff.
- (v) Expert of defendants was not qualified nor had any receipt of formal training.
- (vi) Lower Appellate Court has assigned no reasons to discard the report of Diwan K.S. Puri and Satwant Puri, examined on behalf of plaintiff.
- (vii) Defendants failed to prove on record any evidence qua alleged rendering of services.
- (viii) Voter list was intentionally altered by erasing House No.43, to mislead the Court.
- (ix) DW1 admitted residence of plaintiff with Maingal Singh and Bhagwan Kaur as well as the fact that defendants did not have any ration card with Maingal Singh.

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(x) Both Maingal Singh and Bhagwan Kaur, died in the Village of their daughter Natho/defendant No.5.

(xi) Though the Will (Ex.P1) is unregistered, but its execution and intention of the testator, has been proved through the testimony of PW1-Gurdev Singh, Sarpanch, PW7-Babu Singh, Member Panchayat and DW-5, Dal Singh, thus, there is compliance of Section 63(c) of the Indian Succession Act.

In support of his submissions, relied upon the *ratio decidendi* culled out by this Court in **"Gurcharan Singh and others V/s Angrez Kaur and another" 2008 (4) RCR (Civil) 178.**

Per contra, Kanwaljit Singh, learned Senior Counsel, assisted by Mr. ADS Jattana, learned counsel appearing on behalf of respondents/defendants, supported the judgment and decree of lower Appellate Court, as defendant Nos.1 to 4, are none-else, but sons of daughter of Harnam Singh and were residing in the house adjoining to the house of deceased Maingal Singh. Death Certificate (Ex.P8) revealed that Maingal Singh after execution of the decree was alive for two years and had there been any fraud, he would have definitely challenged the same. Concededly, plaintiff was minor and no such evidence has been placed and proved on record to establish the alleged the fact of rendering of services. According to the plaintiff, Maingal Singh was enrolled as Member of the Society at Sr. No.134, but in fact, record reveals Sr. No.131. There was a cutting as it was marked as 131, later on. Ex.DW6/A is such entry, which bears his thumb-impressions at two places one in column No.5 and another 8. Second one has been exhibited as DW6/B. There was no such material before the trial Court to form an opinion that thumb-impressions of

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Maingal Singh was fake and not decipherable even on naked eye, but the fact of the matter is that there is no reference to the aforementioned entry Ex.DW6/B. PW-9, Naib Singh, Secretary, witness, could not say that photo on pass-book was that of Maingal Singh or his thumb-impressions as they were not attested by any Inspector. Karam Singh, PW2, proved agreement (Ex.PW2/A), that it bore thumb-impressions of Maingal Singh. It was an agreement for obtaining the amount subject matter of some mortgage. Ex.D6, copy of voter list, though revealed rubbing of figure 43, but no evidence has been placed on record to establish handiwork of the contesting defendants. The Will has not been proved by the witnesses as it was unregistered. It was suffering from suspicious circumstances. DW7, V.B. Bhatnagar, stated that he was graduate from Panjab University and had taken Training Certificate of Science of Identification of Handwriting and Finger Expert. In support of the aforementioned submissions, also relied upon unreported judgment of this Court rendered in **RSA No.5041 of 2011** titled as **"Sadhu Singh (deceased through LRs) V/s Gurdeep Singh and others"** decided on 01.03.2018, regarding non-compliance of the provisions of Section 63(c) of the Indian Succession Act, for, the Will should have been attested by two or more witnesses and by the directions of the testator. The aforementioned compliance has not been followed. On similar line judgment in **RSA No.5252 of 2012** titled as **"Kanwaljeet Kaur V/s Joginder Singh Badwal (deceased through LRs) and others"** decided on 13.12.2016 and **"Janki Narayan Bhoir V/s Narayan Namdeo Kadam"** **2003 (1) RCR (Civil) 409.**

I have heard learned counsel for parties, appraised paper book as well as records of Courts below and of view that following 'Substantial

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Question of Law' arises for determination:-

*"Whether judgment and decree of the lower Appellate Court is based upon mis-interpretation or misdirection of oral and documentary evidence, resulting into, illegality and perversity.*

There is no dispute to the pedigree table that plaintiff is the son of Natho/defendant No.5, who was alive at the time, when decree of 1981 was passed. DW8-Gurcharan Singh admitted that Dhan Kaur was his mother and they are sons of Dhan Kaur, whereas Maingal Singh used to reside in Village Lehra Bega, but in cross-examination, he spilled the beans and unable to rebut suspicion with regard to genuinity of the thumb-impressions appearing in the written statement and statement made before the Court, resulting into, impugned decree, as previous plaint did not disclose factum of Bhagwan Kaur being his mother, who was alive, at that time. Ex.D6, voter list, apparently, from naked eye, shows rubbing of Sr. No.43, in order to project that defendant No.4 was having common mess with Maingal Singh. Cross-examination of DW7-V.B. Bhatnagar, reveals that he had not taken any training certificate from any recognized school or institution. Though he had taken photograph, but could not develop due to defected film, which could give better result. He admitted not to be ink specialist or could tell age of the writing and thumb-impressions. Dehor of the fact that plaintiff has not been able to prove the Will, but being son of Natho/defendant No.5, has a credence other than defendants, who were collateral, to succeed in the estate of Maingal Singh, who died intestate. There is no evidence of service summons upon Maingal Singh or Advocate, who appeared on behalf of Maingal Singh or examined. Both wife and daughter, for the sake of repetition, were alive, but not mentioned in the

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plaint. No explanation has come forth in not producing decree before revenue authorities, which was only after decree of 17.10.1983 in favour of plaintiff. Defendants failed to place on record any evidence qua rendering of services giving a cause for Maingal Singh to suffer impugned decree. DW1 admitted that plaintiff used to reside with Maingal Singh and Bhagwan Kaur, much less, death of Maingal Singh and Bhagwan Kaur, in the village of their daughter Natho. He also admitted that they did not have any ration card with Maingal Singh. All these facts, have not been examined, in extenso, by lower Appellate Court, differing with reasoning assigned by the trial Court, whereby the suit, aforementioned, was decreed. Lower Appellate Court also remained oblivious in not examining report of Diwan K.S. Puri and Satwant Puri as both have been acknowledged, in a judicial verdict, to be a very fair expert. DW8, in cross-examination, admitted that they did not given anything in lieu of land of Maingal Singh, received in the family settlement, but had received in lieu of rendering of services, which remained figment of imagination and also had not gone to Haridwar or other religious place for flowing ashes of Maingal Singh deceased nor did produce any medical record of Maingal Singh, alleged to have been taken to a medical practitioner, where he was being treated.

It is a matter of record that the defendants though may be members of some family, but the arrangement must have some antecedent title. Credence has to be given to the immediate legal heir/successor-in-interest than that of collateral, therefore, findings of the lower Appellate Court are wholly preposterous, much less, fallacious.

Keeping in view the aforementioned facts and circumstances,

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the judgment and decree of lower Appellate Court is not sustainable in the eyes of law and the same are hereby set aside and that of the trial Court is restored. The suit of the plaintiff is decreed. The Substantial Question of Law, as framed above, is answered in favour of the appellant-plaintiff and against the respondents-defendants. Resultantly, the present second appeal is allowed.

**05.07.2019**  
Yogesh Sharma

**( AMIT RAWAL )**  
**JUDGE**

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**