

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

RSA-3126-1998(O&M)

Date of decision:-6.11.2019

Rattan Singh and others

...Appellants

Versus

Gurmit Singhand others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Rajinder Goyal, Advocate
for the appellant.

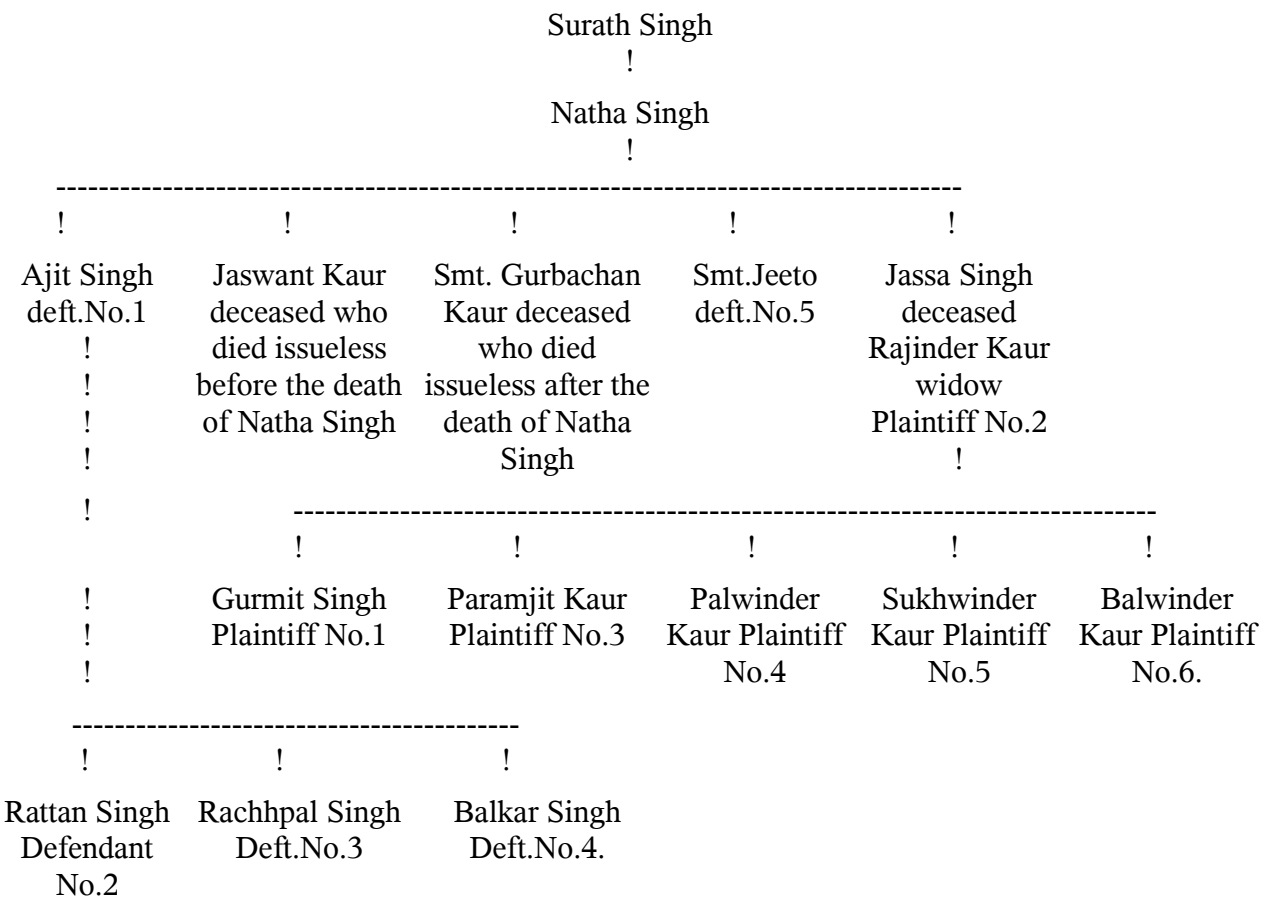
Mr.Rajesh Garg, Senior Advocate with
Mr.Sundeep Kumar, Advocate
for the respondent.

H.S. MADAAN, J.

In nutshell, the facts of the case are that Gurmeet Singh – minor son, Smt.Rajinder Kaur – widow, Paramjit Kaur and Palwinder Kaur – major daughters, Sukhwinder Kaur and Balwinder Kaur – minor daughters of Jassa Singh son of Natha Singh, residents of village Udhowali Khurd, Tehsil Batala had brought a suit against defendants Ajit Singh and his major sons namely Rattan Singh and Rachhpal Singh, minor son – Balkar Singh and Smt.Jeeto daughter of Natha Singh, seeking a joint possession of 1/6 share of land measuring 54 kanals 10 marlas as mentioned in the jamabandi for the year 1979-80 situated at village Udhowali Khurd, H.B. No.374

Tehsil Batala.

For better understanding of the relationship between the parties inter se, the following pedigree table has been drawn in the judgment of the trial Court, which is being reproduced as under:



As per version of the plaintiffs, Natha Singh deceased was owner of ½ share in the suit land measuring 54 kanals 10 marlas; Natha Singh had died on or about 25.1.1984 leaving behind Ajit Singh as his son, Smt.Jeeto as his daughter and the plaintiffs as legal heirs of his pre deceased son Jassa Singh, in that way, plaintiffs are entitled to 1/3rd share in the estate of the deceased; that defendants No.2 to 4 alleged that Natha Singh had executed some will in their favour, which fact is totally wrong because Natha Singh had not executed any valid will during his life time in favour of defendants

No.2 to 4 and even if any such will is set up by defendants No.2 to 4, the same is void and illegal in the eyes of law since the suit land was joint Hindu family ancestral coparcenary property qua the plaintiffs and deceased Natha Singh; that the defendants are in illegal possession of the share of the deceased after his death; when the defendants failed to admit the claim of the plaintiffs, they brought the suit in question in the Civil Court at Batala.

On getting notice, all the defendants appeared and filed a joint written statement contesting the suit. According to them in fact defendants No.2 to 4 are legal heirs of Natha Singh deceased, entitled to inherit his estate being his grandsons on the basis of registered will dated 31.5.1977, which was executed by Natha Singh in their favour in sound disposing mind out of free will and without any pressure since he was pleased with the services rendered by them and their families; defendant No.1 is father of defendants No.2 to 4 and the defendants had performed all the funeral and last rites of deceased Natha Singh; that Jassa Singh, father of plaintiff No.1 and 3 to 6 and husband of plaintiff No.2 had a separate kitchen and residence from the defendants and Natha Singh deceased; Natha Singh had given the share to Jassa Singh during his life time, thus predecessor of the plaintiffs was compensated by Natha Singh; that families of the plaintiffs had also purchased separate land from that of Natha Singh during his life time; that the plaintiffs had left the village after death

of Jassa Singh; the plaintiffs had also filed a civil suit against deceased Natha Singh and others during his life time in the Court of Sub Judge, Jalandhar, however, the suit was dismissed on 17.4.1976; the defendants denied that the suit land had nature of joint Hindu family ancestral coparcenary property. According to them in fact the suit property is self acquired property of Natha Singh. Refuting the remaining allegations in the plaint, the defendants prayed for dismissal of the suit.

The plaintiffs had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

On the pleadings of the parties, following issues were framed:

1. Whether Natha Singh deceased executed a will dated 31.5.77 in favour of defendants No.2 to 4? OPD.
2. Whether the plaintiff is entitled to joint possession of the suit property? OPP.
3. Relief.

Both the parties led evidence in respect of their claims.

After hearing the learned counsel for the parties, the trial Court decided issue No.1 in favour of the plaintiffs and against the defendants, issue No. 2 in favour of the plaintiffs and against the defendants. Resultantly, the suit of the plaintiffs was decreed for joint

possession of 1/6 share of land measuring 54 kanals 10 marlas. This was so done vide judgment and decree dated 30.11.1993

Feeling aggrieved by the said judgment and decree, the defendants No.1 to 4 had filed an appeal in the Court of District Judge, Gurdaspur, which was assigned to Additional District Judge, Gurdaspur, who vide judgment and decree dated 22.8.1988 dismissed the said appeal upholding the judgment and decree passed by the trial Court.

Being dissatisfied with the judgments and decrees passed the Courts below, the defendants No.1 to 4 have filed the present regular second appeal before this Court, notice of which was issued and respondent No.1 has appeared through counsel.

I have heard learned counsel for the parties besides going through the records.

In this case Natha Singh deceased being earlier owner of the property in question is admitted, so is the fact that he has since expired. The crucial question to be seen is as to whether his property is to devolve by natural succession as per the submissions put forward by the plaintiffs or by testamentary succession as per the version set up by the defendants. Since testamentary succession is deflection from the normal succession, it was for defendants No.2 to 4, the beneficiaries under the Will to establish that Natha Singh had executed a legal and valid will in their favour, while being possessed

of a sound disposing mind without any force or pressure having been exerted upon him. The Courts below have rejected the will set up by the defendants finding it to be a document of doubtful authenticity. The reasons as given by the trial Court in para No.9 for ready reference are reproduced as under:

9. *In the will Ex.D1 alleged to be executed by Natha Singh, it has been stated that Natha Singh executed will in favour of his grandsons Rattan Singh, Rachhpal Singh and Balkar Singh sons of Ajit Singh for the services rendered by them to Natha Singh. In the will it has not been mentioned as to why children of Jassa Singh predeceased son of Natha Singh have been disinherited and why no provision for maintenance of widow of Jassa Singh has been made in the will. Our own High Court in a case titled as Mohinder Singh and other Versus Nagina and others, 1991-PLJ-763 has held that when nothing mentioned in the will as to why lawful heirs were ignored statements of scribe and Sub Registrar did not know executant cannot be considered to be attesting witness authenticity and genuineness of will was held to be doubtful. In another case reported as Avtar Singh and others Vs. Mst.Bhagi, 1993(suppl.)Civil Court Cases – 301, it was held by our own High Court that will not*

making any provision for widow, no reasons provided for not providing any maintenance and propounder taking active part in execution of the will, the will is surrounded by suspicious circumstances.

In another case reported as Sardara Singh and others Vs. Atma Singh and another, 1990 Civil Court Cases, 534, our own High Court has held that if the will is surrounded by suspicious circumstances it has to be set aside. Registration or non registration does not make any difference in the eyes of law.

In the case in hand also the plaintiffs are legal heirs of Natha Singh of the same degree as the defendants and no reason is given for disinheriting them, so the authenticity of the will is doubtful. In view of the above discussion, I decide issue No.1 in favour of the plaintiffs and against the defendants.

Whereas while deciding issue No.2, the Trial Court has come to the conclusion that suit land is joint Hindu family property qua the plaintiffs and defendants.

When the matter came up before learned Additional District Judge, Gurdaspur, he too examined it and agreed with the trial Court that the Will was surrounded by suspicious circumstances.

The relevant paras No.16 to 19 of the judgment passed by learned Additional District Judge, Gurdaspur for ready reference are being reproduced as under:

16. Admittedly, the beneficiary of the Will Ex.D1 dated 31.5.77 are the grandsons of Natha Singh, whereas the respondents-plaintiffs are the sons and daughters of pre-deceased son Jassa Singh son of Natha Singh executant and widow of said Jassa Singh. The relationship of the beneficiary of the will and that of the respondents – plaintiffs is the same. The deceased has not executed the will in favour of his living son Ajit Singh, but the will has been allegedly executed in favour of the appellants who are the sons and daughters of Ajit Singh. The reasons for executing the Will in their favour have been given as in lieu of the services rendered by them, but DW4 Rattan Singh has admitted that he was of 10 years of age at the time of death of Natha Singh executant of the will and he died on 25.1.84, whereas the will was executed on 31.5.1977 i.e. 7 years ago. He has also admitted that other brothers and sisters were also younger to him. So, from the children of such a tender age, it cannot be accepted that they would have been serving the executant.

17. *It is evident that after the death of Jassa Singh, the children of Jassa Singh were living with Natha Singh and about 2/3 years prior to his death the sons of Jassa Singh and his widow have shifted to Jalandhar. It has come in evidence that widow of Jassa Singh on the advise of deceased Natha Singh settled at Jalandhar. In spite of that minor daughter of Jassa Singh was still studying at the village of Natha Singh i.e. Udhowal, as is evident from the school leaving certificate of Palwinder Kaur Ex.P3. She has studied from 1972 to 1977 in the said village.*

18. *No reason has been given in the Will Ex.D1 as to why the sons and daughters and the widow of Jassa Singh, who is pre-deceased son of Natha Singh are being excluded from inheritance. So, it cannot be said that it is not a suspicious circumstance. It is suspicious circumstance and will is not free from suspicious circumstances. Thus the suspicious circumstances are to be dispelled by the beneficiary of the Will i.e. appellants, but no evidence has been led by the appellants to remove these suspicious circumstances.*

19. *The evidence led by the appellants also does not prove that the executant was in full disposing mind at the*

time of execution of the Will. Didar Singh Lambardar has been examined by the appellants who is the attesting witness of the Will Ex.D1. He has nowhere stated that at the time of execution of the Will, Natha Singh was in sound disposing mind. DW1 Des Raj, Scribe has stated that the executant was in full disposing mind, but in the cross-examination he has specifically stated that he did not know the attesting witnesses and Natha Singh personally.

I find that the reasoning given by the Courts below is not proper, appropriate and is least convincing. The Will is a registered document, which carries presumption of due execution. The Sub Registrar, a public servant acting in discharge of official duties would be the last person to register a document unless satisfied that the executant was executing the document out of free will and in a proper state of mind, without any pressure, threat or coercion. Learned Additional District Judge, Gurdaspur has observed that there was nothing to show that the testator had executed the will in sound disposing mind. This observation is totally wrong. As already observed, the Will is a registered document. The Will is duly registered in the office of Sub-Registrar, Batala. The will was presented by the testator himself for registration. The endorsement of

Sub Registrar translated into English is that the Will was read over to Natha Singh, testator and he was made to understand the contents thereof; he heard and admitted the contents to be correct. The testator was identified by Didar Singh, Lambardar and Bachan Singh, attesting witnesses and Didar Singh, Lambardar was known to the Sub Registrar, who had identified other attesting witness Bachan Singh. That clearly goes to show that the testator was having a sound disposing mind at that time. It is a case of civil nature. The plaintiffs have not led any evidence to show that the testator was suffering from any physical or mental handicap and was not in a position to understand as to what was good or bad for him at the relevant time. Rajinder Kaur – plaintiff appearing as PW1 had though stated that Natha Singh had not executed any will in favour of any person and there was no ground for him to disinherit her and her children but she had nowhere stated that prior to his death Natha Singh was not possessed of sound mental faculties and was not having a sound disposing mind. She stated that Didar Singh is Lambardar of her village and Bachan Singh is also resident of her village and she has no enmity with them. DW1 Desraj, Scribe of the Will had categorically stated that the testator was having sound disposing mind at the time of execution of the Will. Simply because he had stated that he did not know the testator personally does not go to prove otherwise, when identity of the testator was duly established

from the deposition of DW2 Didar Singh, Lambardar, an attesting witness of the will. Didar Singh had duly proved the execution of will by Natha Singh in favour of defendants No.2 and 3. He had categorically stated that Natha Singh was having sound mental faculties and there was no pressure upon him at the time of execution of the will Ex.D1. No reason was there for him to depose falsely in favour of the defendants and against the plaintiffs.

Therefore, this ground mentioned in the judgments by the Courts below, especially that of Additional District Judge, Gurdaspur for the purpose of rejection of the will is totally wrong and is not borne out from the record.

The next ground taken for rejection of the will was that the disinheritance of plaintiffs by the testator is without any justifiable reason. Again that ground was fallacious. It has come on record that Jassa Singh along with his family has shifted their residence to Jalandhar and the testator had been residing with his other son Ajit Singh and his family at village Udhowali Khurd. He had breathed his last there and his last rites were also performed by the defendants. After death of Jassa Singh, his widow was involved in litigation with the testator and Ajit Singh inasmuch as she had filed a suit against them seeking permanent injunction restraining defendants Natha Singh, Nihal Singh – son-in-law of Natha Singh and Ajit Singh son of Natha Singh from taking away minor children

of plaintiff Rajinder Kaur from her lawful custody. That suit was contested by the defendants and it was dismissed by Sub Judge Ist Class, Jalandhar vide judgment and decree dated 17.4.1976, copy of the judgment being available on record as Ex.D2. The plaintiff Rajinder Kaur appearing as PW2 in her cross-examination has admitted filing of that suit against Natha Singh and others. It means that relations between Rajinder Kaur and testator were not cordial. Going further, this witness had stated in her cross-examination that she had purchased some land in village Udhowali Khurd, which was got for them by Natha Singh, that fortifies the contention of defendants in the written statement that Natha Singh had given share in his property to Jassa Singh. Even otherwise, it is for owner to decide to whom his estate should go after his death and no rider can be put on the option of a owner in doing so. Merely because in the recital of the will, the reason for disinheriting the plaintiffs has not been mentioned, though it is otherwise proved on record cannot be taken to a suspicious circumstance to discard the will. The will having been scribed by regular Deed Writer with an entry being there in his register maintained in ordinary course of business containing signatures of testator and attesting witnesses; the will being a registered document duly proved by statement of DW1 Desraj, Scribe and DW2 Didar Singh, Lambardar, an attesting witness of the will, the will comes out to be a natural document and deserves to be

given effect to rather than rejecting it on frivolous grounds. The testator obviously had love and affection for his son and his family with whom he was residing and who were helping and supporting him in his old age rather than family of his son, which was residing separately from him and not supporting him in any manner. The requirements of Section 63 of the Evidence Act and Section 61 of the Indian Succession Act are duly fulfilled in this case. The execution of the will stands duly proved. It comes out to be a natural disposition, which deserves to be given effect to and was wrongly discarded by the Courts below.

Another reason given for discarding the will was that since nature of the property in hands of Natha Singh was ancestral, therefore, he could not execute the will. That finding was recorded by the Courts below without there being any sufficient ground to jump to that conclusion. The facts, which seems to have weighed heavily on the mind of the Courts below was that Natha Singh had not purchased any property during his life time. That by itself was not sufficient to draw conclusion that property in hands of Natha Singh was ancestral. To constitute the nature of the property to be ancestral, it ought to have been established on the record that Natha Singh had inherited the same by natural succession from his father or grandfather etc. As per Mulla's Hindu Law, ancestral property is defined as the property inherited by a Hindu from his father, father's

father or father's father's father and the property inherited by him from other relations is his separate property. The excerpts in that regard ought to have been got prepared by plaintiffs but they failed to do so. As regards the evidence adduced by the parties, the oral evidence comprised of testimony of PW2 Rajinder Kaur – plaintiff. She simply stated that Natha Singh had not purchased any land from any where and the entire land in suit belonging to Natha Singh was inherited by him from his father Surath Singh. Does it mean that whatever she stated is to be taken as gospel truth, the answer is in negative. Unless that contention is proved by the documentary evidence especially the revenue record, the nature of land in hands of Natha Singh cannot be taken to be ancestral. The cross-examination of PW2 makes very interesting reading. She was unable to tell as to when Surat Singh had died and area of land left by him. She was unable to tell as to when Surat had any brother or not. If we see the revenue record placed on file by the plaintiffs, the suit has been filed with regard to khasra Nos.164/2, 27/8, 12/2, 17/1, 27/18/1, 19/2, 27/17/3, 17/2, 27/12/3/2, 18/27, 27/26, 27/9/2, 9/3, 12/3/1, 13, 14, 26/16/3, Min Dakhan(south) 26/16/3 Min Pahar(north), 164/1, Khewat No.195, Khatauni Nos.490 to 499 as mentioned in jamabandi for the year 1979-80 situated at village Udhowali Khurd, H.B.No.374, Tehsil Batala. As per the jamabandi for the year 1984 Ex.P1 that relates to khasra Nos.27//19/4, 27//12/1. However, those

khasra numbers are not subject matter of the suit in question. With regard to khasra No.164/2(0-11), 27//8(8-0), 12/2(2-4), 17/1(1-18), 27//18/1(6-16) 19/2(0-3) in the ownership column names of Jaimal Singh, Gurdit Singh son of Smt.Gurbax Kaur, Sawinder Kaur daughter of Bua Singh to the extent of one half share, Rattan Singh, Rachhpal Singh, Balkar Singh sons of Ajit Singh son of Natha Singh in equal shares to the extent of $\frac{1}{2}$ share are entered. That means names of Natha Singh or his father Surat Singh are no where shown in this jamabandi. Khasra girdawaris placed on record can certainly not prove the ancestral nature of the land. Therefore, Natha Singh comes out to be absolute owner of the land and property in his hands can certainly be not taken to be ancestral. It being so he could deal with it any manner he felt like. Therefore, on death of Natha Singh on the basis of will Ex.D1, his estate devolved upon defendants No.2 to 4 and they have stepped into his shoes. The plaintiffs have got no right or concern with the said land on the basis of natural succession. The suit filed by them was wrongly decreed by the Courts below. That wrong is undone by way of acceptance of the appeal.

The judgments and decrees passed by the Courts below are not sustainable since those are based upon misappraisal of evidence and wrong interpretation of law, resulting in miscarriage of justice. Though the concurrent findings have been recorded by the Courts below but those are wrong. Simply because the concurrent

findings are there, stamp of approval is not to be accorded when it is apparent that the judgments are perverse in violation of the settled legal position.

Therefore, the judgments and decrees passed by the Courts below are hereby set aside by way of acceptance of appeal. Resultantly, the suit of the plaintiffs stands dismissed.

6.11.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No