

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

**RSA No.3712 of 1998 (O&M)  
Date of Decision:23.05.2019**

Mehnga Singh and another

.....Appellants

Versus

Jito @ Ranjit Kaur

..... Respondent

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

Present: Mr.Prabhjyot Singh Chahal, Advocate  
for Mr. G.S.Nagra, Advocate  
for the appellants.

Mr. Tribhawan Singla, Advocate  
for Mr. Harsh Goyal, Advocate  
for the respondent.

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**LISA GILL, J.**

The present appeal has been filed by the appellants, who were arrayed as defendants before the learned trial Court, challenging judgement and decree dated 17.08.1998 passed by the learned Additional District Judge, Jalandhar, whereby judgement and decree dated 11.06.1996 passed by the learned Civil Judge (Jr. Division), Jalandhar, has been set aside. Consequently, suit filed by the plaintiff-respondent has been decreed.

At the outset, it is relevant to note that the defendants are the real brothers of the respondent (plaintiff), all of them being children of Basant Singh son of Ran Singh. Plaintiff, Jito @ Ranjit Kaur, filed a suit for declaration to the effect that she is the owner of 1/ 4<sup>th</sup> share of the house as detailed in the site plan attached with the plaint. It is pleaded that Basant Singh, father of the plaintiff and defendants was the owner of the house in

question and as mentioned in the plaint, plaintiff and defendants succeeded to his estate to the extent of 1/ 4<sup>th</sup> share each. However, possession of the same was not being handed over to the plaintiff. Hence the suit was filed.

Defendants no.1 and 2 (present appellants) in their written statement raised various preliminary objections. Relationship between the parties was however admitted. It is denied that Basant Singh was the owner of the house in question. It is stated that the house in dispute belonged to Kartar Singh, real brother of Basant Singh. Kartar Singh executed a will in favour of defendants Mehnga Singh and Jiwan Singh. After the death of Kartar Singh on 20.06.1976, the defendants claimed to have inherited the house in dispute and thus were its owners in possession and the plaintiff having no right thereto. Dismissal of the suit was prayed for.

Defendant no.3 did not appear despite service and he was proceeded against *ex parte*. Defendant no.3 during the pendency of the suit before the learned trial Court passed away.

From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether plaintiff is owner of 1/ 4<sup>th</sup> share of the suit property?OPP
2. Whether the suit is not properly valued for the purpose of court fee and jurisdiction?OPD
3. Whether the plaintiff is estopped by his act and conduct from filing the suit?OPD
4. Whether plaintiff has no locus standi to file the present suit?OPD
5. Whether suit is barred by limitation?OPD
6. Whether suit is bad for non-joinder and misjoinder of necessary parties?OPD
7. Whether suit is not maintainable in the present form? OPD
8. Whether plaintiff is entitled to declaration as prayed for? OPD
9. Whether plaintiff is entitled to possession of 1/ 4<sup>th</sup> share

of the suit property?OPD  
10. Relief.

Both the parties led evidence in support of their respective claims/stands.

Learned trial Court on considering the evidence on record concluded that the plaintiff failed to prove that the house in question belonged to Basant Singh. The plaintiff thus failed to prove her case. Suit filed by the plaintiff was accordingly dismissed.

Appeal preferred by the plaintiff, was however allowed by the learned Additional District Judge, Jalandhar, vide impugned judgement and decree dated 17.08.1998. It is observed that the defendants admitted their father Basant Singh and uncle Kartar Singh, to have inherited three houses from their father Ran Singh. The defendants never pleaded any partition between them, thus the plea that two houses fell to the share of Basant Singh was held to be beyond pleadings. Moreover, no sale deed by Basant Singh in favour of Kartar Singh regarding the purported sale of the two houses was produced. Will purportedly executed by Kartar Singh in favour of the present appellants, it is observed, in any case, is not proved to be related to the house in question. The point regarding the right of the plaintiff qua any share in the property of her predeceased brother-Jeetu/ Jitoo, on the basis of a will purportedly executed by him in favour of the present appellants, was left open by the learned Additional District Judge, Jalandhar.

Aggrieved therefrom, present appeal has been filed by the appellants.

Learned counsel for the appellants contends that the plaintiff-respondent was not able to prove her case on the basis of the evidence

adduced by her. She was unable to prove that the property belonged to Basant Singh. The property in question, in-fact belonged to Kartar Singh. Learned Additional District Judge, Jalandhar, has wrongly ignored the will Ex.D-5, executed by Kartar Singh in their favour. The said will, it is stated is a registered document. Both the attesting witnesses had died. Therefore, it is wrongly held that the will dated 09.07.1962 was not proved in accordance with law. The following substantial questions of law were framed and placed on record by learned counsel for the appellants in October 2006:-

1. Whether the impugned judgement and decree passed by the appellate Court is contrary to law and evidence and facts on the file?
2. Whether the appellate court has erred in holding that plaintiff is owner of  $\frac{1}{4}$  share in the property in dispute?
3. Whether the appellate court has wrongly ignored the 'Will' Ex.D-1 produce by the defendant/appellant?
4. Whether the First appellate Court was duty bound to decide the First appeal issue wise being court of facts and law?

It is thus prayed that this appeal be allowed and the judgement passed by the learned Additional District Judge, Jalandhar, be set aside and that of the learned trial Court be upheld.

Per contra, learned counsel for the respondent, submits that the defendants have duly admitted Basant Singh to be the owner of the property in their written statement. Will dated 09.07.1962, Ex.D-1, was not proved in accordance with law. Even, if the attesting witnesses had passed away, it was incumbent upon the defendants to have led evidence to prove that the said will was drawn up in accordance with law. Signatures of the attesting witnesses were not proved. Furthermore, a contradictory stand has been

taken by the appellants to the effect that Basant Singh sold the property in question to Kartar Singh and Milkha Singh. No such sale deed was brought on record. It is thus prayed that this appeal be dismissed and the judgement and decree dated 17.08.1998, passed by the learned Additional District Judge, Jalandhar, be upheld.

I have heard learned counsel for the parties and have gone through the record with their assistance.

As noted in the foregoing paras, relationship between the parties is not in dispute. Basant Singh admittedly had four children i.e., the plaintiff and three sons (defendants) namely Mehnga Singh, Jiwan Singh and Jitu. Plaintiff claimed that the house in question belonged to Basant Singh, father of the plaintiff and the defendants. Therefore, she had one fourth ( $\frac{1}{4}$ ) share in the property. Defendants in their written statement claimed that Basant Singh had two houses in the village and the defendants with the consent of the plaintiff had sold both the houses, 28 years ago, to Milkha Singh and Kartar Singh and since then Milkha Singh and Kartar Singh are in continuous, peaceful, uninterrupted possession of this house. Suit was claimed to be barred by limitation as well. House in question was claimed to belong to Kartar Singh i.e., the real brother of Basant Singh and the paternal uncle of the plaintiff and the answering defendants. Kartar Singh, it is further stated died issue-less and his wife had predeceased him. Kartar Singh was claimed to have executed a registered will in favour of Mehnga Singh and Jiwan Singh. However, DW-2-Jiwan Singh in his cross-examination admitted that Basant Singh and Kartar Singh owned three houses in village Ucha and they had partitioned the said houses. He further deposed that the

area of the houses was 5 Marla, 10 Marla and 15 Marlas respectively. DW-2, has specifically admitted that the sale of the two houses to Milkha Singh and Kartar Singh was not through any registered sale deed. Furthermore, once it is contended by the defendants that consent of the plaintiff was sought at the time of transfer of the said property, they have clearly admitted her claim.

DW-4-Piara Singh, has admitted that Kartar Singh was issue-less and he used to reside with Basant Singh and his sons. In such a situation, the story put-forth by the appellants regarding sale of the house in question to Kartar Singh, is bereft of any credence. Two houses measuring 5 marlas and 10 marlas purportedly fell to the share of Basant Singh, while the house measuring 15 Marlas fell to the share of Kartar Singh. Defendants admitted that Basant Singh and Kartar Singh inherited the three houses from their father Ran Singh. It is rightly held by the learned Additional District Judge, Jalandhar, that the defendants have thus admitted that Basant Singh was the owner of the house in dispute having inherited it from Ran Singh.

It is further not in dispute that the defendants could not produce any sale deeds in respect to the said two houses allegedly sold by Basant Singh to Kartar Singh and Milkha Singh. Kartar Singh admittedly died issue-less. Will, Ex.D-1 though registered, cannot be said to have been proved in accordance with law. Moreover, perusal of the said will, Ex.D-1, translation of which was directed by a Coordinate Bench, reveals that there is no description of the property purportedly owned by Kartar Singh. There is no evidence on record to prove that the house in question was owned by Kartar Singh. Plaintiff is the real sister of the present appellants. She is thus entitled to her share as claimed.

No other argument has been addressed.

Keeping in view the facts and circumstances of the case, there is no ground whatsoever to interfere in the findings returned by the learned Additional District Judge, Jalandhar, vide impugned judgement and decree dated 17.08.1998 and the same is upheld.

Present appeal is, consequently, dismissed with no order as to cost.

**23.05.2019**  
s.khan

**[LISA GILL]**  
**Judge**

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|---------------------------|---|---------|
| Whether speaking/reasoned | : | Yes/No. |
| Whether reportable        | : | Yes/No. |