

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

Date of decision:28.2.2020

1. **RSA No.2520 of 1993(O&M)**

Bhajan Singh through LRAppellant

VERSUS

Jangir Singh and othersRespondents

Present: Mr. Karamjit Singh Chahal, Advocate for the appellant.

Mr. Deepak Sharma, Advocate for
Mr. Rajinder Singla, Advocate for respondent No.1 to 5.

Mr. Jitender Singh Gill, Advocate for respondents No.6 to 9.

2. **RSA No.2110 of 1994(O&M)**

Labh Singh and othersAppellants

VERSUS

Bhajan Singh and othersRespondents

Present: Mr. Deepak Sharma, Advocate for
Mr. Rajinder Singla, Advocate for the appellants.

Mr. Jitender Singh Gill, Advocate for respondents No.3 to 6.

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

REKHA MITTAL, J.

This order will dispose of RSA Nos.2520 of 1993 and 2110 of 1994 as these have emerged out of the same judgments and decrees passed by the Courts. For facility of reference, facts are taken from RSA No.2110 of 1994.

The present lis pertains to land measuring 104 kanal 15 marlas situated at village Ghandhu khurd, left behind by Smt. Bant Kaur widow of Bir Singh, who died 1¼ years earlier to institution of suit on 05.02.1986. Jangir Singh and others – appellants/plaintiffs staked their claim to the suit land on the basis of Will dated 15.10.1984 purported to be executed in their favour in lieu of services rendered by them to Bant Kaur, their sister. They challenged mutation No.1776 dated 31.01.1986 sanctioned in favour of defendants No.1 and 2 (appellants in RSA No.2520 of 1993). It has further been averred that Bant Kaur had given General Power of Attorney in favour of the plaintiffs to manage the suit land including its sale. They have prayed in the alternative that in case the Will dated 15.10.1984 is not accepted, suit land would be inherited by defendants No.3 to 6, sons of paternal uncle of Bir Singh husband of Bant Kaur.

The Courts have consistently held to reject Will dated 15.10.1984. The original Will has not seen light of the day and attested copy, probably obtained from the records of mutation proceedings, is marked as Ex.P2.

Counsel for the appellants has failed to advance any arguments much less meaningful to successfully assail concurrent findings by the Courts rejecting Will dated 15.10.1984 or entitlement of the appellants to inherit to Ms. Bant Kaur on the basis of aforesaid Will. I have seen photocopy of the Will whereas the attested copy is not the copy of the Will but has been prepared in the handwriting of an official of the concerned revenue authority. Perusal of photocopy of the Will leaves no manner of doubt that the trial Court has rightly commented adversely against Will dated 15.10.1984. The Court also refused to rely upon

testimonies of the witnesses examined to prove Will in view of various contradictions/discrepancies noticed therein. I have also gone through statements of the witnesses examined to prove the Will but find myself unable to justify interference in those findings rejecting the Will and claim of the appellants on the basis thereof.

The Courts have held that it has not been proved on record as to how Ms. Bant Kaur became owner of suit land or to say that whether she became owner on the basis of inheritance or a title deed in her favour. These findings are the result of failure to take into consideration facts elicited in cross examination of witnesses of the appellants wherein they had stated that land was inherited by Bant Kaur on the death of her husband Bir Singh. This apart, as the appellants themselves have raised a contention that in case the Will is not accepted, defendants no.3 to 6 would become owner of the suit land on the basis of natural inheritance being sons of paternal uncle of husband of Bant Kaur and contesting defendants No.1 and 2 have also staked their claim to the suit land on the basis of inheritance to Sh. Bir Singh by claiming themselves to be children of Bua (paternal aunt) of Sh. Bir Singh, there is no dispute that suit land was inherited by Bant Kaur from her husband Bir Singh. During the course of hearing, counsel for the parties have not disputed that suit land came to be inherited by Bant Kaur on the death of Bir Singh as there was no other class-I heir of Bir Singh except Bant Kaur, his widow.

The appellants do not claim the suit property on the basis of natural succession. The Will in their favour has been rejected and findings of the Courts in this regard have been affirmed. As such, the appellants have no right in the suit property, therefore, they cannot maintain a suit to

challenge mutation No.1776 dated 31.01.1986 sanctioned in favour of defendants No.1 and 2. That being so, findings of the Courts setting aside mutation No.1776 dated 31.01.1986 sanctioned by A.C. Ist Grade (E.M.) Mansa cannot be allowed to sustain.

Counsel for the appellants in RSA No.2520 of 1993 has made sole submission that since Jangir Singh and others are not entitle to inherit to Bant Kaur on the basis of testamentary succession and they have not claimed right on the basis of natural succession, the Courts have wrongly set aside the aforesaid mutation sanctioned in their favour at the behest of plaintiffs. This contention raised by counsel for the appellants has already been taken care, in view of discussion made hereinbefore. However, it is pertinent to mention that counsel for the appellants has not made any submissions to challenge correctness of factual findings by the Courts negating plea of the appellants that they are the children of paternal aunt (Bua) of Bir Singh.

Bhajan Singh and Kishno – appellants/defendants No.1 and 2 did not appear in the witness box to establish their defence plea in respect of their relationship with Bir Singh and Bant Kaur. An adverse inference is liable to be drawn against them for their failure to appear in the witness box. No documentary evidence was produced to prove that Kesar Kaur was the sister of father of Bir Singh and as such said Kesar Kaur is Bua of Bir Singh, husband of Bant Kaur. Gurdev Singh son of Kishno – defendant No.2 was examined but he expressed ignorance about various vital facts relating to family of Bir Singh and Bant Kaur. Meaning thereby that testimony of Gurdev Singh is not at all sufficient to establish that Kesar Kaur was the sister of father of Bir Singh, thus, defendants No.1 and

2 are the sons of Bua of said Bir Singh. Similarly, statement of Lehna Singh DW-2 does not inspire confidence to prove relationship of Kesar Kaur with Bir Singh. As such, findings of the Courts negating plea of defendants No.1 and 2 being related to Sh. Bir Singh are liable to be affirmed and ordered accordingly. It is clarified that findings of the Courts to set aside mutation No.1776 dated 31.01.1986 in favour of defendants No.1 and 2 have been set aside on the solitary ground that the plaintiffs/appellants do not have any right in the suit property, they cannot maintain a suit to challenge the aforesaid mutation.

In view of what has been discussed hereinbefore, RSA No.2110 of 1994 is dismissed leaving the parties to bear their own costs. RSA No.2520 of 1993 stands disposed of, in view of aforesaid observations.

Before parting with this order, it is appropriate to note that no clear picture emerged before the Courts, if Sh. Bir Singh had any heir who could inherit to Ms. Bant Kaur being successor in interest of Bir Singh in view of the provisions of Hindu Succession Act, 1956. In the given circumstances, interest of justice commands that a copy of this judgment be sent to the Chief Secretary, Government of Punjab and Collector/Deputy Commissioner, Mansa for examining, if land left behind by Bant Kaur is required to be escheated to the State Government, in accordance with law. The Registry is directed to send copies of the judgment to the aforesaid authorities for necessary action and report within three months of receipt of copy.

February 28, 2020
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no