

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 743 of 1990 (O&M)

Date of Decision: 10.08.2022

Jabarjang Singh
... Appellant(s)
Versus
Inder Singh and Others
... Respondent(s)

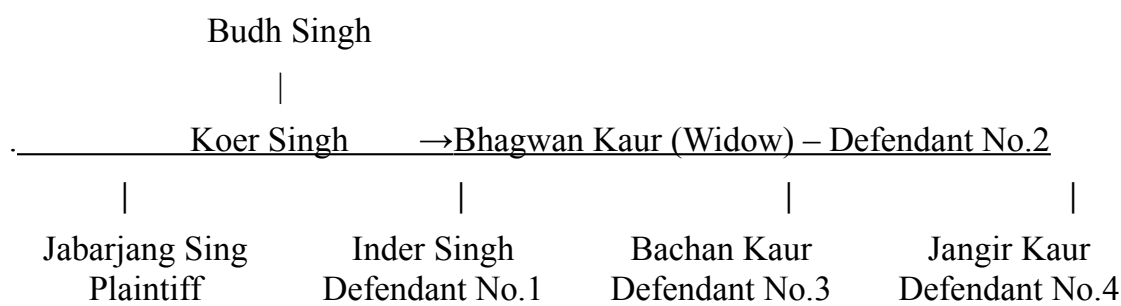
CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Gunjeet Brar, Advocate
for the appellant(s).

Mr. Baltej Singh Sidhu, Senior Advocate
with Mr. Mohabat Sandhu and Mr. Tarun Shatta, Advocates
for the respondent No.6 and 7.

Anil Kshetarpal, J.

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in ***Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157.***
2. While assailing the concurrent findings of facts arrived at by both the Courts below, the plaintiff has filed the present appeal.
3. A small pedigree table will help in understanding the *inter se* relationship between the parties, which is extracted as under:-



4. The plaintiff, while filing the suit, claimed that he is owner in possession of the land measuring 70 kanals and 17 marlas on the basis of a family settlement. In the alternative, he claimed that he is in joint possession of the land measuring 63 kanals and 15 marlas being 3/10th share of the land measuring 212 kanals and 9 marlas. It has come in the evidence that the plaintiff-Sh.Jabarjung Singh son of Sh.Koer Singh has failed to prove any deed of family settlement. It has also come on the record that Sh.Koer Singh gifted the land measuring 10 acres to his wife Smt. Bhagwan Kaur alias Gurnam Kaur before consolidation of the holdings took place in the village. After the consolidation of holdings, Smt. Bhagwan Kaur had sold the land measuring 52 kanals and 16 marlas. The plaintiff claims that the aforesaid gift was only a benami transaction in favour of Smt. Bhagwan Kaur. It has also come in evidence that Sh.Koer Singh suffered a judgment and decree dated 19.10.1969 in favour of his other son, namely Sh.Inder Singh with respect to the land measuring 55 kanals and 11 marlas. The plaintiff claims that the said judgment and decree is a result of impersonation. The plaintiff also claims that the suit property was a Joint Hindu Co-parcenary property, but he has failed to prove the same.

6. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-book.

7. The learned counsel representing the appellant while assailing the concurrent findings of facts contends that the property is proved to be co-parcenary property, therefore, Sh.Koer Singh had no right to transfer the property in favour of his son, namely Sh.Inder Singh. It would be noted here that both the Courts below have examined the aforesaid contention in an

elaborate manner while returning the finding that the plaintiff has miserably failed to prove the aforesaid facts. It has come in evidence that the plaintiff himself separated from the family long before the filing of the suit. The plaintiff has been held entitled to a decree in joint possession to the extent of 1/4th share in the land measuring 86 kanals and 5 marlas i.e. the land held by Sh.Koer Singh at the time of his death.

8. Keeping in view the aforesaid facts, no ground is made out to interfere. Hence, the present appeal is dismissed. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

August 10, 2022

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No