

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-2292 of 1989 (O&M)
Date of decision: 03.08.2022

Mohinder Singh (since deceased) through his LRs and others
..Appellants

Versus

Charan Singh (deceased) through LRs and others ..Respondents

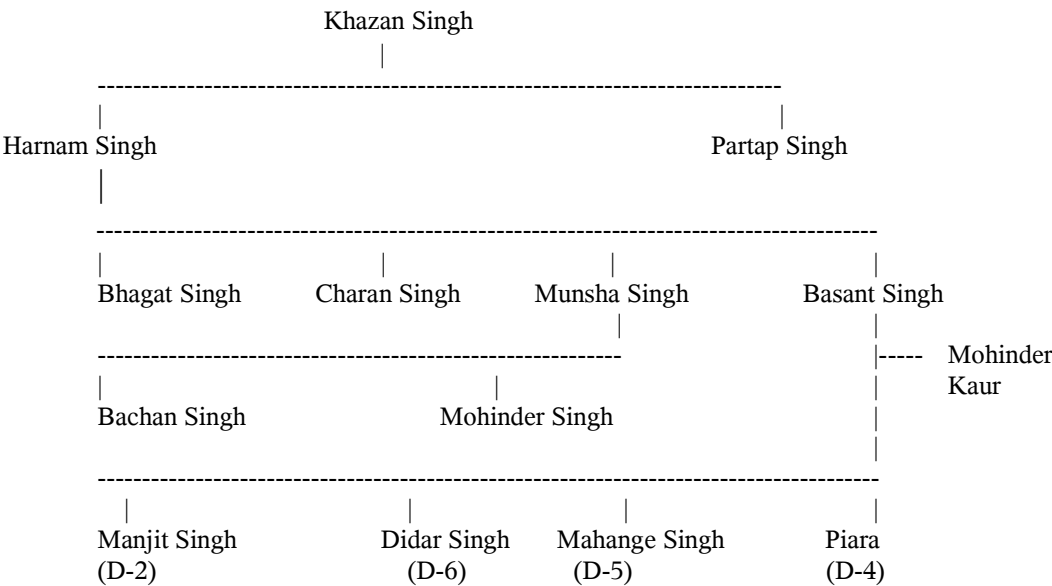
CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kanwaljit Singh, Sr. Advocate, with
Ms. Shazia K. Singh, Advocate
for the appellants.

Mr. Rajinder Pal Singh Rana, Advocate
for the respondents.

ANIL KSHETARPAL, J(Oral)

1. While assailing the findings of the First Appellate Court, the defendants have come up in appeal.
2. The dispute is with regard to the succession of the property left behind by late Sh. Bhagat Singh, who died unmarried and issueless. A small pedigree table has been prepared in order to understand the inter-se relationship between the parties:-



3. Sh. Charan Singh, the plaintiff, filed a suit claiming decree of declaration to the effect that he is an exclusive owner of the property left behind by late Sh. Bhagat Singh on the basis of a Will dated 12.12.1961.

4. The defendants contested the suit while asserting that there does not exist any Will dated 12.12.1961, however, late Sh. Bhagat Singh did execute a registered Will on 22.05.1981, in favour of Sh. Mohinder Singh, Sh. Mehanga Singh, and Sh. Piara Singh.

5. The trial court found that the plaintiff failed to prove the Will dated 12.12.1961 but the Will dated 22.05.1981 has been proved. Thus, the suit filed by the plaintiff was dismissed. It may be noted here that no attesting witness of the Will dated 12.12.1961, was examined by the plaintiff.

6. The judgment and decree passed by the trial Court has been reversed by the First Appellate Court while recording the following reasons:-

- (1) The testator did not recite any reason for excluding the natural preferential heirs.
- (2) No reason has been assigned for excluding Sh. Didar Singh son of Sh. Basant Singh.
- (3) There is no reference to the previous Will dated 12.12.1961 and why the testator changed his mind.
- (4) There is no evidence that the attesting witnesses were in confidence of the testator.
- (5) In a criminal case against Sh. Mohinder Singh, Sh. Dev Raj appeared as a defence witness in order to help the accused.

- (6) There is evidence that the relationship between late Sh. Bhagat Singh and Sh. Dev Raj was strained.
- (7) The second attesting witness, namely, Sh. Joginder Singh is from another village and there is no evidence that he was in confidence of the testator, hence, late Sh. Bhagat Singh (the testator) is not expected to request Sh. Joginder Singh for execution of the Will.
- (8) In the Will dated 12.12.1961, late Sh. Bhagat Singh gave his age as 60 years, whereas in the Will dated 22.05.1981, he has disclosed his age to be 70, whereas, in fact, he should be 81 years of age, at the time of execution of the later Will.

9. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book and the record which was requisitioned.

10. In the considered view of the Court, the most important document is the registered Will Ex.D1, dated 22.05.1981. It is a hand written Will in Gurmukhi Script (Punjabi). At the end of the page, late Sh. Bhagat Singh has thumb marked the Will. Both the attesting witnesses Sh. Dev Raj (DW1) and Sh. Joginder Singh (DW3) have signed the Will in Punjabi. The testator appeared before the Registrar at the time of registration. He has thumb marked on the endorsement of the sub-Registrar at two different places. One thumb impression is marked at the time of presentation of the Will for registration and the second is marked at the time of its registration. There is no evidence to prove that late Sh. Bhagat Singh never put the afore-mentioned thumb impressions.

11. In order to prove the Will, the defendants have examined DW1-Sh. Des Raj, the attesting witness of the Will. He is the Sarpanch of the same village, where late Sh. Bhagat Singh used to reside.

12. The second attesting witness is Sh. Joginder Singh, who has been examined as DW3. He is the resident of another village. The defendants have also examined Sh. Sukhdev Raj, professional scribe of the Will.

13. Both the attesting witnesses as well as the scribe have proved the Will in accordance with Section 63 of the Indian Succession Act, 1925 read with Section 68 of the Indian Evidence Act, 1872.

14. From a bare perusal of the pedigree table, it is evident that late Sh. Bhagat Singh bequeathed the property in favour of the children of his two brothers (Sh. Munsha Singh and Sh. Basant Singh). No doubt, Sh. Didar Singh son of Sh. Basant Singh has not been bequeathed any share in the estate, however, Sh. Didar Singh has not filed any suit challenging the same.

15. In this context, the Bench proceeds to analyze the reasons recorded by the First Appellate Court.

16. The testator was unmarried and issueless. While executing a testamentary disposition, the testator is not required to record reasons why he is excluding a particular natural heir.. He has not left behind any Class-I heir. His brother Sh. Charan Singh (the plaintiff) is also a Class-II heir. The Will has been read over in the open Court. Late Sh. Bhagat Singh has recited that the beneficiaries are his nephews who are serving him while no one else takes care of him. In the considered opinion of the Court, this in itself is a sufficient reason to execute the concerned Will.

17. The second reason assigned by the First Appellate Court is regarding the exclusion of Sh. Didar Singh. It is completely related to the wisdom of the testator which is subjective in nature and the court cannot question unless it is inherently absurd or unpalusible. The testamentary disposition is a solemn document and the courts have no right to interfere with the same unless the Court comes to a conclusion that such document is surrounded by suspicious circumstances which have not been explained. At the cost of repitition, Sh. Didar Singh has never challenged the correctness of the Will executed by late Sh. Bhagat Singh in favour of his two brothers and two other cousins.

18. The next reason assigned by the First Appellate Court is with regard to the non disclosure of the previous Will dated 12.12.1961. In fact, the First Appellate Court has contradicted itself. The Will dated 12.12.1961 has not been proved. In the absence thereof, the Court erred in recording a finding that late Sh. Bhagat Singh did execute the Will dated 12.12.1961.

19. The next reason assigned by the First Appellate Court is to the effect that the attesting witnesses to the second Will were not men of confidence of the testator. It may be noted here that Sh. Dev Raj is the Sarpanch of the village in which late Sh. Bhagat Singh (the testator) used to reside. It is assumed that he must be a respected resident of the village and generally, considered as a good choice to be a witness to a crucial document.

20. The learned counsel representing the appellants submits that there was some litigation between Sh. Dev Raj and late Sh. Bhagat Singh, however, no document in this regard has been brought to the notice of this Court. The learned counsel, though tried to read in-between the lines to contend that there was some litigation between Sh. Dev Raj and late Sh.

Bhagat Singh, however, in the absence of any concrete evidence, the deposition of an attesting witness cannot be disbelieved.

21. The second attesting witness is stated to be distantly related to one of the beneficiaries, namely, Sh. Mohinder Singh. This by itself should not be a ground to disbelieve a witness, particularly when the Will is not exclusively in favour of Sh. Mohinder Singh. Sh. Mohinder Singh, at the most, gets 1/4th share of the estate left behind by late Sh. Bhagat Singh. Had Sh. Mohinder Singh been so influential, he would have got a Will forged in his favour to the exclusion of everyone else. The Will has been executed in favour of two sons of Sh. Munsha Singh and two sons of Sh. Basant Singh.

22. The next reason assigned by the First Appellate Court is that the relationship of late Sh. Bhagat Singh and Sh. Dev Raj was strained. The learned counsel representing the plaintiff has read over the cross-examination of Sh. Dev Raj. There is no inter-se litigation between late Sh. Bhagat Singh on the one side and Sh. Dev Raj on the other side. Merely because Sh. Dev Raj appeared as a defence witness in a criminal case against Sh. Mohinder Singh is not considered sufficient to discard his evidence, which otherwise appears to be believable.

23. The next reason assigned by the Court is with regard to Sh. Joginder Singh being resident of another village. This aspect has already been discussed. Once Sh. Joginder Singh was distantly related to Sh. Mohinder Singh, the testator must have considered it appropriate to invite him to witness the Will. Hence, the reason assigned by the First Appellate Court is without substance.

24. The last reason assigned by the First Appellate Court is regarding the discrepancy in the age of the testator. The court has found that

in the Will dated 12.12.1961, the testator has given his age as 60 years, whereas in the Will dated 22.05.1981, the testator gave his age as 70 years. First of all, the Will dated 12.12.1961, is not proved to have been executed by late Sh. Bhagat Singh. Secondly, the Will is not an evidence of correct age of the testator. The defendants have not produced any evidence to prove that in the Will dated 22.05.1981, incorrect age of late Sh. Bhagat Singh has been mentioned.

25. Keeping in view the aforesaid facts, the judgment and decree passed by the First Appellate Court is not sustainable. Hence, the same is set aside. Consequently, the judgment and decree passed by the trial Court is restored.

26. The Regular Second Appeal is allowed.

27. All the pending miscellaneous applications, if any, are also disposed of.

August 03, 2022

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*