

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

**1. RSA-1794-1991 (O&M)
Date of decision: 11.03.2022**

**MAGHAR SINGH SINCE DECEASED THROUGH LRS.
Versus
..Appellant**

**GURDEV SINGH AND ORS.
..Respondents**

2. RSA-2411-1990 (O&M)

**MAGHAR SINGH SINCE DECEASED THROUGH LRS.
Versus
..Appellant**

**GURDEV KAUR AND ORS.
..Respondents**

3. COCP-140-2012 (O&M)

**ALBEL SINGH AND ANR.
Versus
..Petitioners**

**GURDEV KAUR AND ORS.
..Respondents**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Raj Kiran Talwar, Advocate
for the appellant.

Mr. Samarth Sagar, Advocate
for respondent No.1 and 2.

Mr. Shubham Bhalla, Advocate
and Mr. Siddarth Sandhu, Advocate
for respondent No.3 and 4.

ANIL KSHETARPAL, J.

This judgment shall dispose of Regular Second Appeal No.2411-1990, Regular Second Appeal No.1794-1991 and Civil Original Contempt Petition No.140 of 2012. Both the appeals arise from a common suit filed by the appellant-Maghar Singh, whereas, the Civil Original

Contempt Petition has been filed by Albel Singh and Bachittar Singh (sons

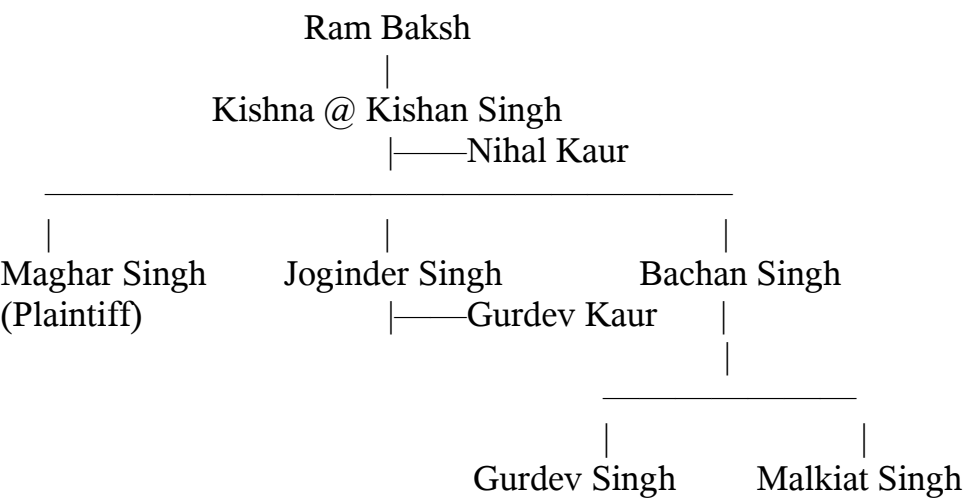
of Maghar Singh), complaining the violation of interim order passed by the High Court. The learned counsel representing the parties are *ad idem* that these appeals can conveniently be disposed of by a common judgment.

The following question arises for consideration:-

If in the testamentary disposition neither there is a specific recital regarding conferring a limited estate/life interest in favour of the testator's wife nor any restriction has been imposed on her from alienating the property, then, is it appropriate to hold that the testator bequeathed only a limited estate because the Will provides for a specific manner of regulating the succession of property after her death?

In the considered view of the Court, the point in issue is whether, in the facts and circumstances of the present case, Sh. Kishna @ Kishan had bequeathed only a limited estate or life interest in favour of Smt. Nihal Kaur (wife of Sh. Kishna @ Kishan) vide registered Will dated 24.02.1965 or the right of full ownership? It may be noted here that the learned counsel representing the appellant has confined his submissions only on the aforesaid issue.

Before noticing the facts, it will be appropriate to draw a pedigree table of the family in order to understand the inter se relationship between the parties.



Sh. Maghar Singh-appellant filed a suit for grant of decree of declaration to the effect that he is the owner in possession of 4 Bighas, 8 Biswas and 17 Biswas, being half share of the land measuring 17 Bighas and 15 Biswas as Smt. Nihal Kaur had only a limited estate as per the Will dated 25.02.1964. Therefore, the Will executed by Smt. Nihal Kaur dated 01.06.1975, in favour of Smt. Gurdev Kaur (her daughter-in-law) and sale deed dated 18.05.1991, in favour of defendants No.3 and 4, is illegal. It is not disputed between the respective parties that late Sh. Kishna @ Kishan had executed a registered Will dated 24.02.1965. The defendant No.1 to 4 while filing a joint written statement contended that there is no dispute with regard to the Will executed by late Sh. Kishna @ Kishan bequeathing his property in a particular manner. However, it was claimed that Smt. Nihal Kaur became the absolute owner of the property which was bequeathed in her favour after the death of late Sh. Kishna @ Kishan.

It may be noted here that the translated version of the Will has been reproduced by the First Appellate Court in its judgment, the correctness whereof is not in dispute. Since the issue of interpretation of the Will is involved, therefore, it is considered appropriate to extract a English translated version of the alleged Will, as reproduced by the First Appellate Court:-

“I (Kishan Singh) have become old. No body can trust life and no body is sure as to when the measure of life may over-flow its brim. I have got three sons and a wife who are in existence. All four of them have been serving me in every possible manner. I am pleased with the services rendered by them and want to compensate them for the services rendered to me and simultaneously I have to appoint my heirs. Therefore, of my free will and volition and with sound disposing mind I execute this will. After my death my wife Nihal Kaur shall get 30 bighas kham of land prorate keeping in view the kind of the soil out of my entire land of the remaining land my three sons Ajaib Singh, Maghar Singh and Joginder

Singh in equal shares would be owners and heirs. My daughters or any other heir or relative have no right or interest in my land. After the death of Nihal Kaur her land would be given to her three sons or their male progeny in equal shares. If any son pre-deceases me, his share would devolve on his male line. If Nihal Kaur pre-deceases me, then my three sons would be owner of all my movable and immovable property in equal shares. My other movable and immovable property would be owned by my three sons. Nihal Kaur would have a right of residence in my house. For this reason I have executed this will so that it may serve as (sanad) dated 24.2.65. Thumb marked by Kishan Singh testator and attested by the witnesses.”

The learned counsel representing the appellant while repeatedly reading the testamentary disposition, has contended that once the testator late Sh. Kishna @ Kishan had made a provision that the property shall be initially inherited by Smt. Nihal Kaur and after her death, it will be bequeathed in favour of his three sons, therefore, Smt. Nihal Kaur inherited only a limited estate/life interest. He submits that once it is provided in the Will that after the death of Smt. Nihal Kaur, her share of land would be given to his three sons or their male progeny in equal share, then, Smt. Nihal Kaur had received only a limited estate/life interest in the said property. In support of the aforesaid submissions, the learned counsel representing the appellant relies upon the judgment passed by the Supreme Court in **Sadhu Singh Vs. Gurdwara Sahib Narike and others, 2006(8) SCC 75**. While drawing the attention of the Court to para 18, the learned counsel representing the appellant contends that the interpretation of the First Appellate Court is against the settled law.

Per contra, Sh. Shubham Bhalla and Sh. Samarth Sagar, Advocates, have submitted that the testamentary disposition dated 24.02.1965, bequeathed the complete ownership in favour of late Smt. Nihal Kaur.

Succession Act, 1956, which reads as under:-

“14, (1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation.—In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other Instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.”

That the aforesaid provision has already been interpreted in extenso by the Supreme Court in **V. Tulasamma and others Vs. Sesha Reddi (Dead) by Legal Representative, 1977(3) SCC 99** and **Sadhu Singh's case (supra)** and by a recent judgment in **Jogi Ram Vs. Suresh Kumar and other 2022 SCC Online (SC) 127.**

In the present case, on a careful reading of the will, it is evident that Smt. Nihal Kaur was never prohibited from alienating the property during her lifetime. In other words, the testator late Sh. Kishna @ Kishan did not restrict his wife Smt. Nihal Kaur to deal with the property in any manner during her lifetime. The testator tried to regulate the bequest after the death of Smt. Nihal Kaur provided she dies intestate. Therefore, it was only a contingent provision which became redundant on the execution of Will with regard to the said property by Smt. Nihal Kaur. In the considered opinion of the Court, it would not be appropriate to read something in the Will unless it has been specifically provided. The normal rule of

construction is to read the complete Will in order to understand the intent of the testator. On the complete reading of the Will, it is evident that neither the testator specifically provided that Smt. Nihal Kaur will only have a life or limited estate nor it was provided that she will not have the right to alienate/transfer the property bequeathed in her favour. In such circumstances, it is not reasonable to hold that the wife was conferred only a limited estate or life interest merely because it is provided in the testamentary disposition that after the death of the legatee, the property will stand bequeathed in a particular manner. To interpret it in such a manner as suggested by the learned counsel representing the plaintiff, shall result in reading a clause which is not provided in the Will. This aspect can be considered from another angle as well. It is well settled that various clauses of the Will have to be harmoniously construed and the Will has to be carefully perused while analyzing the intent of the testator before arriving at a conclusion. It is evident from the testamentary disposition that late Sh. Kishna @ Kishan has bequeathed 30 Bighas Kham land in favour of his wife, whereas, the remaining entire land was bequeathed in favour of Sh. Ajaib Singh, Sh. Maghar Singh and Sh. Joginder Singh in equal shares while excluding the daughter or any other heir or relative from the bequest. Furthermore, while referring to the residential house, the testator specifically provided that Smt. Nihal Kaur would have only a right of residence in the aforesaid house.

The learned counsel representing the appellant has relied upon the judgment of the Supreme Court passed in **Sadhu Singh's case (supra)**. This Court has carefully read the aforesaid judgment. In the aforesaid case, the wife was restrained from disposing of the property during her lifetime

and it was also provided that after her death, the property will devolve upon

the two nephews. In the present case, it is neither provided that Smt. Nihal Kaur only has a life estate nor it is given that she is prohibited from alienating the property bequeathed in her favour.

Hence, the aforesaid judgment with greatest respect, is not applicable.

No other submission has been made.

Consequently, finding no merit, both the Regular Second Appeals are dismissed.

In Civil Original Contempt Petition No.140 of 2012, the legal representatives, of the original appellant Maghar Singh, complain of violation/disobedience of order dated 18.09.1992 and 30.10.1992. On 18.09.1992, it was provided that the respondent can sell the property only with the prior permission of the Court which was subsequently affirmed on 30.10.1992. Since the appeals filed by Maghar Singh is being dismissed, hence, this Bench does not find it appropriate to proceed with the Contempt Petition.

With these observations, both the Regular Second Appeals as well as the Contempt Petition, are ordered to be dismissed.

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

11th March, 2022

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No