

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-2838-2016 (O&M)
Date of decision: 20.04.2022

AMRITPAL KAUR

..Appellant

Versus

MOHINDER KAUR AND ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vikram Bajaj, Advocate for the appellant.

Mr. Harkesh Manuja, Advocate for respondent No.1.

Mr. L.S.Sidhu, Advocate for respondent No.3.

Mr. Rohit Sud, Advocate for respondent No.4 and 5.

ANIL KSHETARPAL, J.

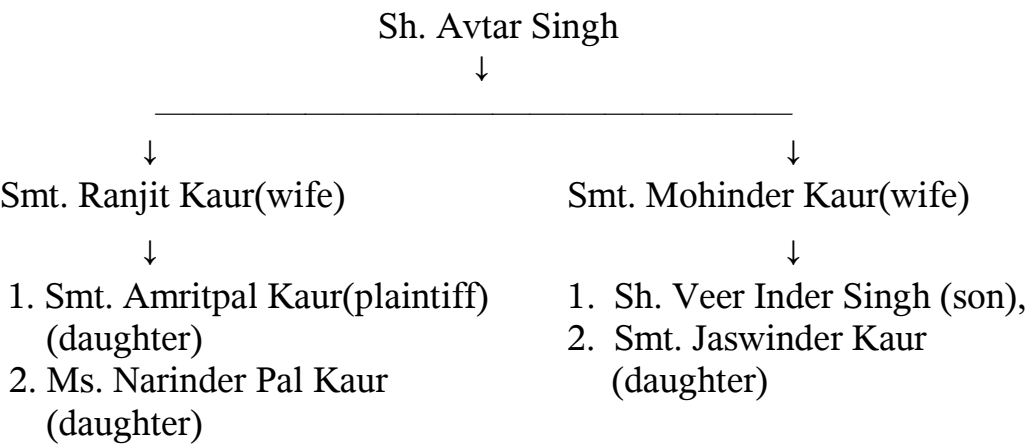
1. Questioning the correctness of judgment and decree passed by the learned First Appellate Court, the plaintiff has filed the present appeal. In the considered view of the Court the following issues arise for consideration:-

Issue No.1:- Whether a certified copy issued by the Registrar in accordance with Section 57 of the Registration Act, 1908 (hereinafter referred to as “the 1908 Act”) with respect to a registered Will is admissible in evidence, particularly when the record from the Sub-Registrar has been produced in order to verify the correctness of the certified copy?

Issue No.2:- Whether the suit claiming succession can be filed at any point of time particularly when the revenue authorities have already changed the entries (mutation) in favour of the other heirs of the deceased?

Issue No.3:- Whether two widows left behind by a male would inherit the property to the extent of one share jointly or will they inherit one share each?

2. A pedigree table would facilitate the Court to understand inter se relationship between the parties:-



3. It is evident from the perusal of the pedigree table that Avtar Singh left behind two widows namely late Smt. Ranjit Kaur and Smt. Mohinder Kaur. From the lions of Sh. Avtar Singh, Smt. Ranjit Kaur gave birth to two children namely Smt. Amritpal Kaur (plaintiff) and late Ms. Narinder Pal Kaur. Ms. Narinder Pal Kaur is stated to have died after the death of Sh. Avtar Singh and after the death of Ms. Narinder Pal Kaur, Smt. Ranjit Kaur also died. Similarly, from the lions of Sh. Avtar Singh, Smt. Mohinder Kaur gave birth to two children Sh. Veer Inder Singh and Smt. Jaswinder Kaur. Late Sh. Avtar Singh died on 28.06.1980. During his lifetime, he was an owner of various properties including agricultural land located in four different villages namely Sayianwala, Wan, Buttar and Jhoke Sarkari. On the death of Sh. Avtar Singh, the property located in villages Buttar and Jhoke Sarkari was mutated in favour of Smt. Mohinder Kaur (widow) and Sh. Veer Inder Singh on the basis of registered Will dated 08.10.1979, left behind by Sh. Avtar Singh. Whereas, the immovable property located in Village Sayianwala and Wan were mutated on the basis of natural succession in accordance with Schedule I of the Hindu Succession Act, 1956. Sh. Veer Inder Singh and Smt. Mohinder Kaur

2000. Smt. Amritpal Kaur, the married daughter of late Sh. Avtar Singh filed the suit on 12.04.2001, claiming that after the death of Sh. Avtar Singh all the six family members sat together and entered into a family settlement according to which the various properties located in village Sayianwala and Wan were decided to be given to Smt. Ranjit Kaur, Smt. Amritpal Kaur and Ms. Narinder Pal Kaur, whereas, the various properties located in village Jhoke Sarkari and Buttar fell to the share of Smt. Mohinder Kaur, Sh. Veer Inder Singh and Smt. Jaswinder Kaur. The plaintiff also asserted that Smt. Mohinder Kaur and Sh. Veer Inder Singh agreed that they shall not inherit the property on the basis of a registered Will dated 08.10.1979. In the alternative, it was pleaded that the alleged Will dated 08.10.1979, is wrong, illegal, null, void, false and fabricated as the same has been prepared by defendant No.1 to 3 in collusion with the scribe and the marginal witnesses. The plaintiff claims that the sale deeds executed by defendant No.1 and 2 namely Smt. Mohinder Kaur and Sh. Veer Inder Singh, are against the family settlement and, therefore, not binding on her rights.

4. The defendant No.1 and 2 filed a joint written statement and while asserting that the suit is time barred. It was asserted that the plaintiff has no right, title or interest in the various properties including agricultural land left by Sh. Avtar Singh located in village Buttar and Jhoke Sarkari in view of the registered Will left behind by Sh. Avtar Singh on 08.10.1979. A separate written statement was filed by defendant No.3 reiterating the stand taken by defendant No.1 and 2. Defendant No.4 and 5 filed separate written statements and asserted that they are the bonafide purchasers and Sh. Avtar Singh left behind a registered Will.

5. The plaintiff in order to prove her case, examined Sh. Harbhajan Singh, her husband as her General Power of Attorney. PW-2 Sh.

Harbans Singh was examined but he did not come for cross-examination. PW-3 Sh. Chhinderpal Singh was examined to prove General Power Attorney executed by the plaintiff in favour of Sh. Harbhajan Singh. PW-4 Sh. Jagdish Singh proved translation of the revenue record from Urdu to Gurmukhi script (Punjabi). The defendants examined Sh. Jasbir Singh, HRC, an official from the office of the Sub-Registrar, who brought the book maintained by the Registrar in accordance with the 1908 Act, proving the certified copy of the Will. DW-2 Smt. Jaswinder Kaur(defendant No.3) appeared and proved her case. DW-3 Sh. Gurnam Singh, attesting witness of the registered Will dated 08.10.1979, proved the Will. DW-4 Sh. Ratinder Singh guardian of Sh. Ashishpal Singh, the purchaser appeared, whereas, Sh. Baljinder Pal Singh (defendant No.4) again a purchaser appeared and deposed that they are bonafide purchasers of the property, after due diligence.

6. The learned trial Court on appreciation of evidence found that Sh. Avtar Singh left behind a registered Will dated 08.10.1979, which has been proved while examining Sh. Jasbir Singh, official from the Office of the Registrar and attesting witness DW-3 Sh. Gurnam Singh. The Court held that Smt. Amritpal Kaur (plaintiff), is an owner to the extent of 1/4th share in the property left behind by Sh. Avtar Singh in villages Sayianwala and Wan. The plaintiff filed the first appeal which has been partially accepted. The First Appellate Court while affirming the findings of fact arrived at by the trial Court with regard to the validity of the Will dated 08.10.1979, executed by late Sh. Avtar Singh, has held that Smt. Amritpal Kaur is owner to the extent of half share in the property left behind by Sh. Avtar Singh located in villages Sayianwala and Wan.

parties at length and with their able assistance perused the judgments passed by the Courts below and the records of the Courts below, which was requisitioned.

8. The learned counsel representing the appellant has also filed a short synopsis. He contends that in the original notebook maintained by the Sub-Registrar, the copy of the alleged Will although is available but it is not signed by the testator or the attesting witnesses, therefore, the Will has not been proved. He further contends that without an application for permission to lead secondary evidence, the registered Will cannot be said to have been proved. While criticizing the evidence of Sh. Gurnam Singh, the learned counsel contends that he has stated that he companied Sh. Avtar Singh only on one day at one point of time, whereas, the Will executed on 08.10.1979, was registered on 09.10.1979. Further, Smt. Mohinder Kaur and Sh. Veer Inder Singh have not stepped into the witness box therefore, adverse inference should be drawn against the plaintiff. While referring to Section 74 of the Indian Evidence Act, 1872 (hereinafter referred to as the “1872 Act”), contends that on non-compliance thereof, the Will is said to have been not proved. He relies upon a three Judge Bench Judgment in **Gutari Vs. Shiv Charan and other, 1980 Hindu Law Reporter 273**. In the end he contends that the trial Court returned a finding that the suit is within limitation, in favour of the plaintiff and in absence of the cross-appeal, the First Appellate Court erred in returning a finding that the suit filed by the plaintiff with respect to the property located in villages Jhoke Sarkari and Buttar, is barred by time. He relied upon a Division Bench Judgment in **Mohinder Singh (deceased) through legal representatives Vs. Kashmira Singh and others, AIR 1985 Punjab and Haryana 215**.

have contended that the judgment passed by the First Appellate Court does not require interference. They contend that there is no requirement to file an application for permission to lead secondary evidence in view of judgment passed in **Dhanpat Vs. Sheo Ram (deceased) through his legal representatives and others, 2020(16) SCC 209**. They further contends that the Will has been proved in accordance with Section 68, of the 1872 Act. They rely upon **Madan Lal Vs. Shankar and others, 2021(2) PLR 130**.

10. After having heard the learned counsel representing the parties, this Court now proceeds to examine the issues which have been culled out in para No.1 of the judgment.

Issue No.1: Whether a certified copy issued by the Registrar in accordance with Section 57 of the Registration Act, 1908 with respect to a registered Will is admissible in evidence particularly when the record from the Sub-Registrar has been produced in order to verify the correctness of the certified copy?

11. A testamentary disposition is required to be executed in accordance with Indian Succession Act, 1925 (hereinafter referred to as “the 1925 Act”), which provides that there are two types of Wills. The first type of Will is a privileged Will, whereas, the second type is an unprivileged Will. The privileged Wills can be executed by any soldier employed in an expedition or engaged in a actual warfare or an airman so employed or engaged or any mariner being at the sea. Such kind of privileged Will can be executed in accordance with the provisions of Section 66 of the 1925 Act. Section 63 of the 1925 Act lays down the procedure for the execution of the unprivileged Wills. It provides that every testator shall sign or affix his mark to the Will and it also specifies that two or more witnesses should attest to the Will. The signature or the mark of the testator or the signature of the person signing for him (i.e. the authorized signatory) must be placed in such a way so that it discloses clear intention of the creator to give effect

of what is written in the Will. The Will is required to be attested by two or more witnesses each one of whom has seen the testator, sign or affix his mark to the Will or has seen some other person sign the Will in the presence and by the direction of the testator or has received from the testator a personal acknowledgment of his signature or mark or of signature of such other person (i.e. his authorized signatory). Each witness shall sign the Will in the presence of the testator but it shall not be necessary that more than one witness must be present at the same time and no particular form of attestation shall be necessary.

12. It is also evident that the testamentary disposition (Will) is not required to be compulsorily registered. However, if it is registered, it carries a certain high degree of credibility. Section 57 of the 1908 Act, provides that the registration officer shall be empowered to give certified copies of the Will. Part XI of the 1908 Act provides that the Registrar should properly maintain the register book and indexes. With regard to the testamentary disposition, it is provided that the Registrar will maintain specifically a Book No.3, containing register of the Wills and the authorities to adopt. Section 51 of the 1908 Act, is extracted as under:-

*“51. Register-books to be kept in the several offices.-(1)
The following books shall be kept in the several offices
hereinafter named, namely:-*

A-In all registration offices-

*Book 1, “Register of non-testamentary documents
relating to immovable property”.*

*Book 2, “Record of reasons for refusal to
register”.*

*Book 3, “Register of wills and authorities to
adopt”, and*

Book 4, “Miscellaneous Register”.

B-In the offices of Registrars

Book 5, “Register of deposits of wills”.

(2) In Book 1 shall be entered or filed all documents or

memoranda registered under sections 17, 18 and 89 which relate to immovable property, and are not wills.

(3) In Book 4 shall be entered all documents registered under clauses (d) and (f) of section 18 which do not relate to immovable property.

(4) Nothing in this section shall be deemed to require more than one set of books where the office of the Registrar has been amalgamated with the office of a Sub-Registrar.”

13. Section 79 of the 1872 Act provides that the Court shall presume every document to be genuine, purporting to be a certified copy which is by law declared to be admissible in evidence, as an evidence of a particular fact. Sub-Section (f) of Section 65 of the 1872 Act provides that a certified copy of a document can be produced in evidence as secondary evidence, if permitted by the 1872 Act or by any other law enforced.

14. On a cumulative reading of the aforesaid provisions, it is evident that the Registrar is required to maintain the register books with indexes containing the register of Wills and the authorities to adopt. It is provided that the Registrar will be entitled to issue certified copies of the entries in Book No.3 and indexes under the Sub-Section 2 and Sub-Section 5 of Section 57 of the 1908 Act.

15. The Will is required to be proved in accordance with Section 68 of the 1872 Act, which requires that if a document is required by law to be attested it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence. Proviso to Section 68 of the 1925 Act lays down that it shall not be necessary to call an attesting witness to prove the execution of document not being a Will which has been registered in accordance with the provisions of the 1908 Act, unless its execution by the person by whom it

Section 68 does treat the document which have been registered on a higher pedestal. Section 69 provides that in a case where no attesting witness can be found then the propounder of the document is required to prove that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person. For compliance of Section 69, two conditions are required to be proved. The first one that the document is attested by one of the attesting witness at least in his handwriting. Such attestation one attesting witness in his absence can be proved by examining a witness who is acquainted with the handwriting or signatures of the alleged witnesses. The second requirement is that the signature of the person executing the document is in the handwriting of that person. In other words, the signatures of the executant of the document is required to be proved by examining a witness who is well acquainted with the handwriting or signatures of the executant. Section 71 of the 1872 Act provides that if the attesting witness denies or does not recollect the execution of the document, its execution may be proved by adducing other evidence.

16. As per Section 63 of the 1925 Act, the Will is required to be attested by two attesting witnesses. Thus, the Court is required to see whether the Will has been proved either by fulfilling the requirement of Section 68, 69 or 71 of the 1872 Act. In the present case, one attesting witness Sh. Gurnam Singh has been examined by the defendants as DW-3. In these circumstances, both the Courts have correctly held that the Will was proved.

17. The learned counsel representing the appellant is incorrect in contending that since the copy of the Will produced by Sh. Jasbir Singh, an

not signed by the testator, therefore, the Will is not proved. Section 68 of the 1872 Act does not provide that the signature or the thumb impression of the testator are required to be proved. Furthermore, the Will was registered on 09.10.1979. Late Sh. Avtar Singh died on 28.06.1980. The plaintiff filed the suit after a period of 21 years from the death of late Sh. Avtar Singh. At the time when Sh. Avtar Singh was alive, there was no dispute between the family members. Even after his death, there was no dispute between the family members for a period of nearly 21 years. In such circumstances, the registration authority registered the Will and reproduced it in their register book in accordance with Section 51 of the 1908 Act, in Book No.3. Such book is maintained by the Registrar in discharge of his official functions. Such document carries a presumption of correctness. Section 79 of the 1872 Act further carries a presumption as to the genuineness of the certified copies.

18. Hence, the Will has been proved.

19. Moreover, Smt. Amritpal Kaur has in the alternative pleaded that the Will dated 08.10.1979, is forged and fabricated. In the first part of the plaint, Smt. Amritpal Kaur admits the existence of the Will dated 08.10.1979, and asserts that the parties through their mutual settlement decided not to stake claim on the basis of Will but on the basis of the alleged family settlement. Smt. Amritpal Kaur failed to prove the said family settlement.

20. The issue of requirement to seek prior permission for leading additional evidence has already been examined in **Madan Lal Vs. Shankar and others 2021(2) PLR 130**, after taking note of the judgment passed by the Full Bench in **Gutari's case (supra)**. The Court after noticing that a

which is not supported by the statutory provision. Para 13, 17 and 18 of the aforesaid judgment is extracted as under:-

“13. As regards the requirement of prior permission to produce secondary evidence, it may be noted that Chapter V of the Indian Evidence Act, 1872 provides that the party is required to produce primary evidence. However, Section 63 provides for and defines the secondary evidence in absence of primary evidence. Section 65 of the Indian Evidence Act, deals with the circumstances under which the secondary evidence can be led. The distinction between the primary evidence and secondary evidence is nature of evidence. In absence of primary evidence, secondary evidence can be examined by the Court subject to fulfillment of the requirements of Section 65 of the Indian Evidence Act. There is no requirement that before leading secondary evidence, prior permission of the Court is required to be obtained. No doubt, a practice has developed to seek prior permission to lead secondary evidence and granted/refused by the Courts, however, this practice is not supported by the statutory provision. Therefore, merely because a prior permission has not been sought, the evidence which has come on file in the form of secondary evidence cannot be ignored, if it fulfills the requirement of Section 65 of the Indian Evidence Act.

*17. This Court has come across various judgments passed by the Courts wherein different High Courts have taken a view that prior permission to lead secondary evidence is not required and the evidence so led by the party can be in the nature of primary evidence or secondary evidence. Even if it is assumed that formal permission is required, that can be granted by the Court while examining and evaluating the evidence. The practice of seeking prior permission by moving an application to that effect results in unnecessary delay of the trial. If the application is accepted or rejected, the order so passed by the trial Court is further challenged before the Higher Court which again results in delay of the trial. Such delay can be very well avoided by the Courts by examining the evidence and granting permission if required after satisfying that requirements of Section 63 and Section 65 of the Evidence Act stand complied with. Reference in this regard can be made to two judgments of the Delhi High Court, first, **2009 (32) RCR (Civil) 54, Sanyogta Prakash Vs. Dhira Bala Malhotra and others**, second, **2009(12) RCR (Criminal) 701, Prem Chandra Jain (deceased) represented by LRs Shri Bharat Bhushan Jain, Advocate and others Vs. Sri Ram (deceased) represented by LRs Shri Sunil Kumar Arora and others**, the judgment passed by the Allahabad High Court in the case of **Hameed and others Vs.***

*Kanhaiya, 2004 AIR (Allahabad) 405. Reference in this regard can also be made to the judgments of this Court in the case **Harjinder Singh Vs. Ranjit Kaur and others, 2016(3) RCR (Civil) 229, Rajesh Yadav and others Vs. Balbir Singh and others 2014(5) RCR (Civil) 941, Harbans Kaur and others Vs. Beant Kaur and others 2014(9) RCR (Civil) 3009, Anupam Jain wife of Rakesh Jain Vs. Kulwant Gupta wife of Surinder Kumar and others 2016(3) RCR (Civil) 220.***

18. The attention of the Court has been drawn to the judgment passed by the Larger Bench of this Court reported as 1980 HLR 273, Gutari Vs. Shiv Charan and others. In the aforesaid judgment, the Court decided the question whether a certified copy issued by the Registering Authority is per se admissible being public document or not. The Larger Bench held that the certified copy of a true copy of the original cannot be a public document and, therefore, cannot be received in secondary evidence either under Clause 'e' or Clause 'f' of Section 65 of the Indian Evidence Act. In the aforesaid judgment, the Court was dealing with a case of certified copy of registered Will produced in evidence. The parameters for proof of a Will and registered sale deed are entirely different. The sale deed is required to be compulsorily registered if it is conveying immoveable property worth more than ₹ 100/-. Whereas the Will is not necessarily required to be registered in law. Still further, the sale deed is not required to be attested by the two attesting witnesses whereas the Will as per Section 63 of the Indian Succession Act, 1925 is required to be attested by two attesting witnesses. Hence, the aforesaid judgment would have no application.”

21. Recently, the Supreme Court in **Dhanpat's case (supra)**, has also observed that if it is proved that primary evidence has been lost and a certified copy thereof is produced, then there is no requirement of seeking prior permission to lead secondary evidence particularly when foundation for leading secondary evidence already exists either in the plaint or in the evidence.

22. In view of the aforesaid discussion, question No.1 is answered against the appellant (plaintiff).

23. Now, this Bench proceeds to examine the findings of the First Appellate Court on the issue of suit being barred by limitation is correct or

not. Both the Courts have found that the plaintiff and her mother and sister were aware of the Will executed by late Sh. Avtar Singh on 08.10.1979. It has also come on record that they were also aware of the mutation of the land in village Buttar and Jhoke Sarkari sanctioned by the revenue authorities after the death of late Sh. Avtar Singh. The suit was filed in the year 2001. As per Article 58 of the Schedule attached to the Limitation Act, 1963, to obtain any other declaration, the period of limitation is three years which will begin to run when the right to sue first accrues. Determining when the right to sue first accrued is important. When the plaintiff has knowledge of the Will then the judgment relied upon the learned counsel representing the appellant in **Mohinder Singh (deceased) through legal representatives case(supra)** shall not be applicable. In fact, in a case involving the identical facts while upholding the judgment passed by the Himachal Pradesh High Court in **Shyam Lal @ Kuldeep Vs. Sanjeev Kumar and others 2009(12) SCC 452**, the Supreme Court has held that on the basis of the Will, when the mutation entry has been sanctioned then the limitation begins to run from the date of knowledge of the Will or the mutation entry. In that case, the suit was held to be barred by time.

24. Previously also, this Court had occasion to examine the aforesaid issue and the Court found that the Division Bench judgment in **Mohinder Singh (deceased) through legal representatives case(supra)** would not have application because in that case, there was no Will. No doubt, that the mutation of the land does not in all such circumstances give rise to cause of action for filing the suit, however, in the facts of the case the plaintiff is established to be sleeping over her rights for a period of more than 21 years, then the suit cannot be said to be within time. Furthermore,

the plaintiff has not appeared in evidence. Hence, she has failed to prove

that she was not in the knowledge of the Will that was executed in the year 1979 or 1980. No cogent reason for her non-appearance in evidence has been proved, therefore, adverse inference is required to be drawn against the plaintiff.

25. Hence, the suit is held to be barred by limitation.

26. Now, this Bench proceeds to examine the last issue. As per the facts established, late Sh. Avtar Singh died on 28.06.1980. He had left behind two widows (Smt. Mohinder Kaur and Smt. Ranjit Kaur) and four children namely Smt. Amritpal Kaur, Ms. Narinder Pal Kaur, Smt. Jaswinder Kaur and Sh. Veer Inder Singh. Thus, as per Section 8 of the 1956 Act, Sh. Avtar Singh left behind six class-I heirs. However, as per Rule 1 of Section 10, if the person leaves behind more widows than one, then all the widows together shall take one share. Thus, Smt. Mohinder Kaur and Smt. Ranjit Kaur would take one share, whereas, remaining children would take one share each. Thus, each child will get $\frac{1}{5}$ th of the property, whereas, Smt. Mohinder Kaur and Smt. Ranjit Kaur will get $\frac{1}{10}$ th share each. Thereafter, Ms. Narinder Pal Kaur is stated to have died. As per Section 15 of the 1956 Act, in absence of her own children including a children of a pre-deceased son or daughter and the husband and the heirs of the husband, her property would devolve upon the mother. Section 15(1)(c) of the 1956 Act, would be applicable. Thus, share of Smt. Ranjit Kaur enlarges to $\frac{3}{10}$ th. It is stated that Smt. Ranjit Kaur also died intestate. As per Section 15(1)(a) of the 1956 Act, the entire property left behind by Smt. Ranjit Kaur would devolve upon Smt. Amritpal Kaur to the exclusion of Sh. Veer Inder Singh and Smt. Jaswinder Kaur as they are not children of Smt. Ranjit Kaur. Sh. Veer Inder Singh and Smt. Jaswinder Kaur are children of

Smt. Mohinder Kaur and Sh. Avtar Singh.

27. Keeping in view the aforesaid facts, the First Appellate Court has correctly held that after including 3/10th share in her existing share of 1/5th, Smt. Amritpal Kaur will be entitled to one half of the property located in villages Sayianwala and Wan.

28. In this case, there is one more fact which is required to be noticed. Smt. Amritpal Kaur (plaintiff) filed the suit only after Smt. Mohinder Kaur and Sh. Veer Inder Singh sold the property through four different sale deeds executed in June, 2000, in favour of defendant No.4 and 5. Therefore, the defendant No.4 and 5 have been correctly held to be bona fide purchasers by the plaintiff because they after verifying the entry of their vendors in the revenue record and applying due diligence purchased the property.

29. It may be noted here that both the Courts have correctly recorded findings that the plaintiff failed to prove the alleged family settlement as neither the date, the month or the year has been disclosed nor the plaintiff has appeared in evidence. Her husband has stated in the cross-examination that the family settlement took place 32-35 years ago. His statement was recorded in the year 2011, which takes the matter to the year 1976 i.e. before the death of Sh. Avtar Singh. The plaintiff has also failed to prove that the property was a Joint Hindu Family property. Both the Courts have recorded the findings of fact to that effect and the learned counsel representing the appellant did not assail its correctness at the time of the arguments or in the written argument.

30. Keeping in view the aforesaid discussion, no ground to interfere with the findings of fact arrived at by the First Appellate Court is made out.

Dismissed.

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

20th April, 2022

(ANIL KSHETARPAL)
JUDGE

Ay

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*