

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-2122 of 2014 (O&M)
Date of decision: 06.09.2022

Paramjit Singh and others

..Appellants

Versus

Gurdev Kaur and others

..Respondents

RSA-4481 of 2014 (O&M)

Buta Singh and others

..Appellants

Versus

Gurdev Kaur and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjeev Manrai, Sr. Advocate, with
Mr. Inderjit Singh, Advocate and
Mr. Sumit Jain, Advocate
for the appellants.

Mr. Abhay Gupta, Advocate, for
Mr. Amar Vivek, Advocate
for the appellants No.2, 5 and 6 (in RSA-4481 of 2014)

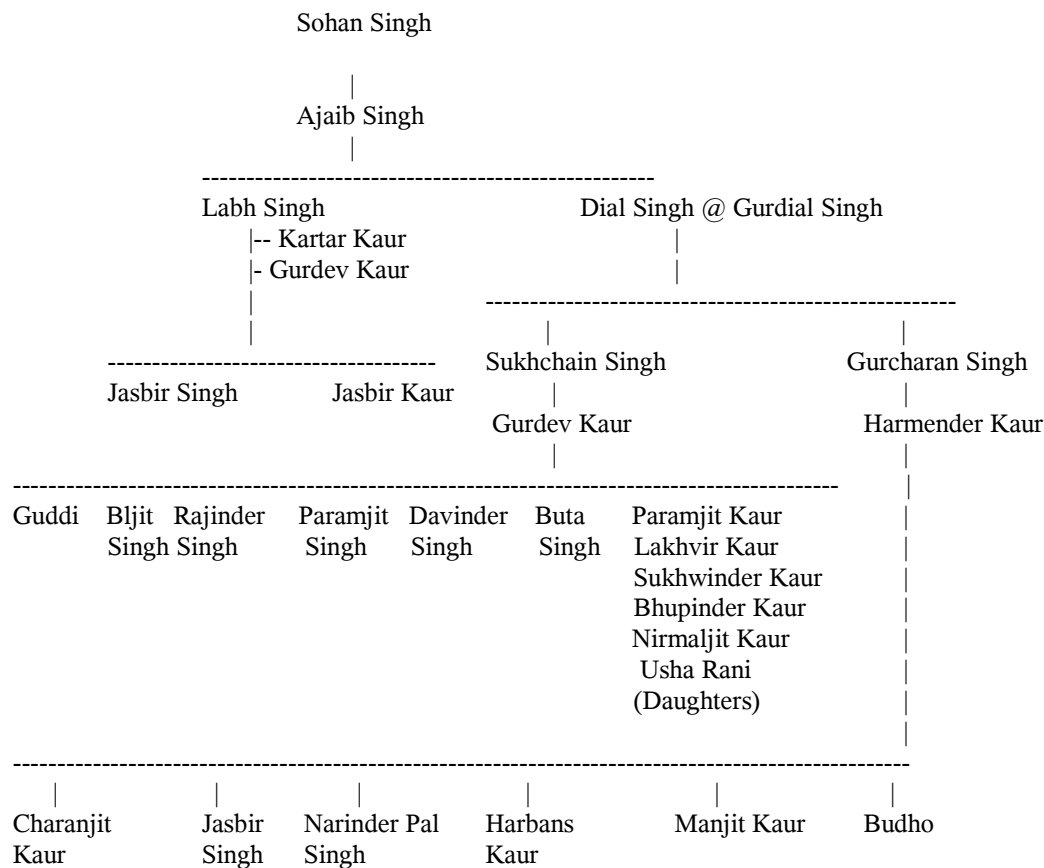
Mr. Dilraj S. Brar, Advocate
for the respondents.

ANIL KSHETARPAL, J(Oral)

Two different appeals have been filed by the defendants
challenging the correctness of the concurrent findings of fact arrived at by
the Courts below in a common judgment.

The plaintiffs filed a suit with a prayer to decree of declaration
that they are the owners in possession of land measuring 217 kanals 2
marlas.

In order to understand the inter-se relationship between the parties, it would be appropriate to draw a pedigree table:-



Sh. Ajaib Singh was the owner of 313 kanals 10 marlas of land.

He is alleged to have gifted 212 Kanals 1 marla land to Sukhchain Singh and Gurcharan Singh (grand children). The aforesaid gift deed was challenged by Sh. Labh Singh by filing a civil suit which was allowed on 09.01.1964 and Sh. Labh Singh was granted a decree of declaration that he is an owner to the extent of 111 kanals and 3 marlas of land. Sh. Ajaib Singh gifted 63 kanals 2 marlas to Smt. Kartar Kaur the first wife of Sh. Labh Singh. On the death of Smt. Kartar Kaur, the aforesaid property was inherited by Sh. Labh Singh as she did not have any children. At the time of death of Sh. Ajaib Singh i.e. in the year 1974, he was owner of 86 kanals 14 marlas of land, which came by natural succession in favour of Sh. Labh Singh and Sh. Dayal Singh @ Gurdial Singh. The plaintiffs, thus, claim that they are owners of 217 kanals 12 Marlas.

Defendants no.1 to 7, 9, 16 to 21 contested the suit by filing the written statement. However, they admitted assertions made in para 1,3,4, 10, 11, 15 and 16 while simply denying the assertions made in the remaining paras.

The defendants alleged that Smt. Kartar Kaur gifted the property in their favour. However, neither the gift deed was produced nor any attesting witness was examined. Sh. Buta Singh, appeared in the witness box but he never came back to face the cross examination. Sh. Sukhchain Singh claim that the property was bequeathed by Smt. Kartar Kaur in favour of Sh. Buta Singh, however, no Will was produced to prove the said claim.

Thus, both the courts have decreed the suit.

This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the paper book

The learned senior counsel representing the appellants contends that the judgment and decree dated 09.01.1964 has not been produced and merely a mutation entry in the revenue record is not sufficient to prove the same. He further submits that the distribution of the property is inequitable.

On the other hand, the learned counsel representing the respondents contends that in para 3 of the plaint, the plaintiffs asserted that the suit filed by Sh. Labh Singh was decreed on 09.01.1964, while declaring the gift deed to be illegal. It was further asserted that Sh. Labh Singh was declared owner of 111 kanals 3 marlas in the judgment and decree dated 09.01.1964. He submits that the defendants while filing the written statement admitted that fact.

Once the defendants did not dispute the factum of the judgment

and decree passed on 09.01.1964, they cannot in the regular second appeal, for the very first time, deny its existence. Moreover, the plaintiffs have proved that due to fire in the official record room, the original record was not available.

Keeping in view the aforesaid facts, no ground to interfere is made out.

Dismissed.

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

September 06, 2022

(ANIL KSHETARPAL)
JUDGE

nt

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>