

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

**RSA-2248-2017 (O&M)**

Reserved on : August 16, 2022

Date of Pronouncement : August 23, 2022

Divya Kajal minor through her mother/natural guardian

....Appellant

Vs.

Harnandi Devi (since deceased) through her LR's

....Respondents

**CORAM : HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN**

Present : Mr. Vikram Singh, Advocate  
for the appellants.

Mr. Kulwant Singh, Advocate  
for LR of the respondent.

**ARVIND SINGH SANGWAN, J.**

The present appeal is filed by the daughter of Mahinder Singh against defendant-grandmother-Harnandi Devi praying for a decree of permanent injunction restraining the defendants from alienating 1/3<sup>rd</sup> share of the suit property in favour of Jagbir Singh and Satbir Singh, who are the brothers of Mahinder Singh.

It is the case of the plaintiff that her father Mahinder Singh was murdered on the intervening night of 8/9.9.2006 by his brothers Jagbir Singh and Satbir Singh and prior to that the brothers of her father,

namely, Jagbir Singh and Satbir Singh got executed a fraudulent relinquishment deed dated 22.8.2006 qua the share of Mahinder Singh in their favour on the basis of which mutation No.721 dated 9.9.2006 was sanctioned in their favour. It is also stated that the relinquishment deed was challenged by the mother of the plaintiff in civil suit No.476/2009 dated 11.10.2006 which was decreed in her favour vide judgment and decree dated 19.11.2011 by setting aside the relinquishment deed and the mutation. Accordingly, the mutation No.808 was sanctioned in favour of the plaintiff, her mother Punam Devi and defendant Harnandi Devi-grandmother and expecting that her grandmother/defendant may alienate the property in favour of her other sons, namely, Jagbir Singh and Satbir Singh, the present suit was filed. The suit was contested by the defendant and following issues were framed:-

- “1. Whether the plaintiff is entitled to a decree for permanent injunction as prayed for ? OPP.
2. Whether the suit is not maintainable in its present form ? OPD.
3. Whether the plaintiff has got no locus standi to file and maintain the present suit ? OPD.
4. Whether the plaintiff has got no jurisdiction to file and maintain the present suit before the civil Court? OPD.

5. Relief.”

The trial Court while deciding Issue No.1 recorded a finding that the suit of the plaintiff deserved to be dismissal as Harnandi-defendant is absolute owner of 1/3<sup>rd</sup> share in the property left by her deceased son Mahinder Singh and Section 25 of the Hindu Succession Act, 1956 is not applicable and there is no evidence that Mahinder Singh was murdered by his brothers. Accordingly, holding that no injunction can be granted against Harnandi-defendant the suit was dismissed, vide judgment and decree dated 7.9.2015. The plaintiff preferred an appeal before the learned the lower Appellate Court which was also dismissed by passing the following judgment :-

“9. It was vehemently argued on behalf of appellant/plaintiff that learned trial Court did not take into account the basic law that after expiry of Mahinder Singh, his share might have devolved upon his natural heirs as per Section 8, Schedule 1 and as per Section 15 of the Indian Succession Act, 1956, this property becomes absolute property of plaintiff Ms. Divya Kajal daughter of Mahinder Singh and Poonam Devi wife of Mahinder Singh. Smt. Harnandi Devi defendant has no right for alienating this property because same property was ancestral property in the hands of Mahinder Singh. Accordingly, it was prayed that present appeal be accepted and findings, recorded by learned trial Court, be set aside.

10. On the other side, it was argued by counsel for respondent/defendant that during lifetime Mahinder Singh got transferred his share in disputed property to the extent of 24 Bighas 07 Biswas in favour of his two brothers namely Jagbir Singh and Satbir Singh by relinquishment deed dated 22.8.2006 and mutation No.721 dated 9.9.2006, in this regard, was got entered in favour of Jagbir Singh and Satbir Singh. After expiry of Mahinder Singh when this fact came to the notice of Poonam Devi wife of Mahinder Singh, she and plaintiff Ms. Divya Kajal challenged that relinquishment deed by filing Civil Suit No.476 of 2009 on 11.10.2006. That case was decided on 19.11.2011 in favour of plaintiffs whereby relinquishment deed was set aside being result of fraud. Thereafter, mutation was sanctioned in favour of plaintiff Divya Kajal and her mother Poonam Devi along with defendant Harnandi Devi. Thus, thereafter, Divya Kajal, her mother Poonam Devi and defendant Harnandi Devi became co-sharers in total property to the extent of 1/3<sup>rd</sup> each. Since finding, given by learned trial Court on 19.11.2011, has been set aside by first appellate Court vide judgment dated 2.8.2014 and property in question reverted back to the brothers of Mahinder Singh, therefore, plaintiff and defendant have now no concern with the disputed property and thus, question of granting decree of permanent injunction does not arise. Hence, he requested for dismissal of present appeal.

11. It is no more in dispute that with regard to findings, recorded by first appellate Court, Regular Second Appeal is still stated to be pending before Hon'ble High Court of Punjab and Haryana as fairly conceded by both counsels

for the parties at the time of arguments. The bone of contention between both parties is with regard to ownership of 24 Bighas 07 Biswas land. However, this property now stands in the name of brothers of Mahinder Singh namely Jagbir Singh and Satbir Singh. At this stage, property does not lie neither in the hands of plaintiff nor in the hands of defendant. Secondly, for the time being, if it is considered that property still falls in the hands of natural heirs of Mahinder Singh in that contingency also as per Section 8 Schedule 1 of Hindu Succession Act, 1956, property would equally falls in the hands of Ms. Divya Kajal, being first class heir, wife of deceased Mahinder Singh namely Poonam Devi and mother of deceased Harnandi Devi. In both these situations, plaintiff cannot claim her right to deprive Harnandi Devi defendant from exercising her right of ownership qua the joint property though same has been snatched out as per finding of first appellate Court from their hands. Thus, for above two reasons, in my view, finding recorded by learned trial Court for denial of permanent injunction in favour of plaintiff, is perfectly valid and suffering from no infirmity or illegality and accordingly same is hereby confirmed.

12. No other point was argued.”

Counsel for the appellant has argued that the property at the hands of Mahinder Singh was ancestral property and, therefore, once the mutation was sanctioned to the extent of 1/3<sup>rd</sup> share in favour of his daughter-plaintiff, widow-Poonam Devi and mother Harnandi Devi-defendant, she has no right to transfer the same in favour of her other

sons Jagbir Singh and Satbir Singh. It is also stated that Harnandi is not absolute owner of the property and, therefore, she has no right to alienate the same.

Counsel for the respondent has argued that, in fact, the judgment and decree dated 19.11.2011 passed by the Civil Judge was set aside by the lower Appellate Court dismissing the suit filed by the plaintiff and her mother and, therefore, the very cause of action to file this subsequent suit of permanent injunction does not survive as the mutation No.808 automatically stand cancelled. Counsel has further argued that even if it is presumed that Harnandi Devi-defendant has inherited the property from her deceased son, she became the absolute owner and the plaintiff cannot claim any right to restrain her grandmother–Harnandi Devi-defendant from alienating the suit property.

This appeal was ordered to be listed with RSA No.4694 of 2014.

Vide separate judgment of the even date the aforesaid RSA, filed by the plaintiff and her mother, also stands dismissed.

After hearing the counsel for the parties, I find no merit in this appeal as it has been rightly held by both the Courts below that as per Section 8, Schedule I of Hindu Succession Act, 1956 after the death of Mahinder Singh the property will fall in the hands of her daughter-plaintiff, wife and mother-defendant, being class-I heirs and in that

eventuality, the plaintiff cannot claim that a decree of permanent injunction against her grandmother Harnandi Devi be granted restraining her from exercising right of ownership or alienation qua the suit property.

The present appeal is dismissed, accordingly.

**August 23, 2022**  
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**(ARVIND SINGH SANGWAN)**  
**JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No