

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

RSA-721-2002 (O&M)

Date of decision: 25.04.2023

Kartar Singh through his Legal heirsAppellants

VS

Labh Singh and others ...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Bhupinder Ghai, Advocate,
For the appellants.

None for respondents No.1 and 2.

ARUN MONGA, J. (ORAL)

For convenience, parties herein are described as per recitals
before learned trial Court.

2. Having suffered concurrent adverse findings by the two
Courts below, plaintiff Kartar Singh (since deceased and now represented
through legal representatives) is in second appeal before this Court
assailing learned trial Court judgment and decree dated 26.05.1999, as
upheld by learned First Appellate Court vide its judgment and decree
dated 25.10.2001, dismissing the suit of plaintiff for joint possession and
declaration to the effect that original plaintiff was owner of land
measuring 74 Kanals 13 Marlas and further owner to the extent of 1/54th
share of Khasra No.1309 (0-10) and to the extent of 1/81st share of Khara
No.1289 (5-0), situated at village Longowal, Patti Gahu, Tehsil and
District Sangruru and the revenue entries regarding the suit land in the

names of defendants and their father Mukand Singh and Saun Singh were wrong and liable to be corrected in favour of plaintiff/appellant herein.

3. Briefly stated, facts as noticed by Courts below are as under:

“...The dispute in this case between the parties relates to the inheritance to the estate of Sh. Bhagwan Singh who was the owner of the disputed land.

XXX XXX XXX

The dispute between the parties was basically whether Bhagwan was the son of Kahan Singh, as alleged by the appellant-plaintiff, or he was the son of Pakhar Singh as per the version of the respondent-defendants Bhagwan Singh aforesaid had shifted to village Vasdevpura, Tehsil Kalka, Haryana and while shifting to that village he handed over the cultivating possession of land to Mukand Singh Saun Singh and their father Maingal Singh. Bhagwan Singh used to receive some amount in lieu of the crop from aforesaid Mukand Singh etc. The amount was being paid to Bhagwan Singh during his life time, and after his death Mukand Singh etc. started making the payment to Deva Singh, brother of Bhagwan Singh, because the appellant-plaintiff, the son of Bhagwan Singh aforesaid, was minor at that time. Bhagwan Singh pre-deceased Deva Singh his brother, and said Deva Singh died issueless and unmarried in the year 1956. The appellant-plaintiff, thus succeeded to the estate of Bhagwan Singh and Deva Singh, and the mutation with regard to the land at village Vasdevpura, has already been sanctioned in favour of the appellant-plaintiff Mukand Singh and Saun Singh thus started making the payment of the share of crop, to the appellant-plaintiff thereafter. It was further averred that the appellant-plaintiff requested Mukand Singh and Saun Singh to get the mutation of the estate of Bhagwan Singh, entered in his name. They promised to do so, and obtained thumb impressions of the appellant-plaintiff on certain papers to complete the formalities. Since the appellant-plaintiff was being paid the amount by Mukand Singh and Saun Singh and after their death by the respondent- defendants, in lieu of the share of the produce, there was no occasion for the appellant-plaintiff to enquire into the revenue record, but two years before the filing of the suit when the respondent-defendants stopped making the payment, the appellant-plaintiff came to know about the illegal and wrong entry of mutation of the estate of Sh. Bhagwan Singh.”

4. Upon notice, defendant appeared and filed written statement taking preliminary objections that suit is time barred and it is bad for non-joining of necessary parties.

4.1 On merits, it was submitted that Sh. Mukand Singh died in the year 1989 whereas Bhagwan Singh unmarried and issueless died in the year 1949. Since the name of Bhagwan Singh was existing in the revenue record, the mutation of his estate was sanctioned in favour of Mukand Singh and Saun Singh in the year 1969 on the basis of statement made by Sarwan Singh Lambardar of the village, that Bhagwan Singh son of Pakhar Singh had not been heard of for more than seven years prior thereto. It was denied that Bhagwan Singh had any brother. All the allegations about the payment of the amount in lieu of the share of produce to appellant-plaintiff or earlier to Bhagwan Singh, were denied.

5. Replication was filed. Based on rival pleadings, following issues were framed:

- “1. Whether Bhagwan Singh son of Kahan Singh was the owner of the suit land? OPP*
- 2. Whether the plaintiff is son of said Bhagwan Singh? OPP*
- 3. Whether the plaintiff is entitled to the declaration and possession as prayed for? OPP*
- 4. Whether the suit is time barred? OPP*
- 5. Whether the Civil Court has no jurisdiction to try the suit? OPD*
- 6. Whether the defendants are the owners of suit land by way of adverse possession? OPD*
- 7. Whether the suit is bad for non-joinder of necessary parties? PPD*
- 8. Relief.”*

6. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

7. On appraisal of evidence vis-à-vis pleadings, issue No.1 was disposed of with the observations that it cannot be said if owner of Khasra Nos.1309 and 1289 was Bhagwan Singh son of Kahan Singh and issue No.2, 3, 4 and 6 were decided against plaintiff. Issues No. 5 and 7 were deemed to have given up as no evidence was led. Consequently, suit of plaintiff was dismissed by learned trial Court vide impugned judgment and decree dated 26.05.1999.

8. Feeling aggrieved, plaintiff went in appeal, which was also dismissed with costs by learned First Appellate Court, resulting in instant Regular Second Appeal by plaintiff before this Court.

9. Learned counsel for appellant would submit that the basic dispute in this appeal is whether Bhagwan Singh, father of plaintiff Kartar Singh was son of Kahan Singh son of Uttam Singh or he was son of Pokhar Singh son of Uttam Singh. He further argues that learned Courts below have totally ignored two documents to viz., Ex.P-2 Jamabandi for the year 1963-64 and Ex.PX mutation dated 17.09.1069, on the basis of which defendants got the land in inheritance. In these documents, Bhagwan Singh had been shown as son of Kahan Singh. Thus, learned Courts below have wrongly non-suited appellant herein.

10. In its judgment, learned First Appellate Court, *inter alia*, observed as below:

“XXX XXX XXX

9. *The plaintiff-appellant has relied upon the certain records of village Vasdevpura but that does not advance the case of the appellant-plaintiff. ExP5 is the jamabandi for the year 1981-82 BK of Vasdevpura corresponding to the year 1924-25 in which in column no. 5*

relating to the possession of the land the name of Bhagwan Singh Deva Singh sons of Kahan Singh is entered as Garmarusi is, but there is no evidence at all that Bhagwan Singh son of Pakhar Singh son of Uttam Singh had any brother Deva Singh, as per the revenue record of Longowal. The appellant-plaintiff has also tendered Ex. P6 the pedigree table of village Vasdevpura in which the names of Bhagwan Singh and Deva Singh sons of Kahan Singh are mentioned but no explanation as to why the complete pedigree table beyond the name of Kahan Singh has not been tendered. The other revenue record of village Vasdevpura is ExP7 the mutation of the estate of Deva Singh, who died issueless and unmarried, in favour of Kartar Singh son of Bhagwan Singh and ExP8 is the jamabandi for the year 1984-85 in the name of Kartar Singh son of Bhagwan Singh son of Kahan Singh the plaintiff. So taking the advantage of name of father of plaintiff as Bhagwan Singh, the appellant-plaintiff has tried to lay a wrong claim over the land in question after so many years of the sanction of mutation in favour of the respondents-defendants in the year 1969.

10 There is very important evidence in the examination of Kartar Singh himself. In the chief examination he stated that his father Bhagwan Singh died about sixty years ago while the appellant-plaintiff himself was ten years old. He stated that the name of his mother is Basanti and Basanti died about 15 years ago, while she was residing with them. That would be a clinching factor on the dispute. If Basanti wife of Bhagwan Singh was alive, the mutation of the estate of Bhagwan Singh would have been sanctioned in favour of Basanti also apart from the mutation in favour of Kartar Singh. The case of the respondent-defendants is that Bhagwan Singh son of Pakhar Singh was unmarried. Infact ExP9 the mutation of the estate of Bhagwan Singh, was sanctioned only in the name of Kartar Singh of village Vasdevpura on 28.7.57.

11. On the other hand the respondent-defendants have produced two witnesses of village Longowal DW1 Bhoga Singh was 70/75 years old and DW 109 Mukand Singh was also 70 years old when he examined. They both have stated that Bhagwan Singh son of Pakhar Singh was unmarried and he did not have any brother or sister. In the cross examination Mukand Singh stated that he knew Bhpa and Uttam Singh, who were the real brothers. He also stated in the cross-examination that Bhupa has two sons Jaimal Singh and Maingal Singh and Uttam Singh had one son. He denied the suggestion that Kahan Singh as the son of Uttam Singh, rather he stated that Pakhar Singh was the son of Uttam Singh aforesaid. According to him, there was only one person of the name of Bhagwan Singh during the partition of country who was son of Pakhar Singh. When Bhagwan left

the village during the partition of the country, and shifted to village Vasdevpura, he was about 55 years old, as stated by this witness and by DW1 Bhoga Singh.

12. *The appellant-plaintiff, therefore, failed to prove by bringing any convincing evidence of the fact, that he is entitled to inherit the estate of Bhagwan Singh who was the owner of the disputed land, because he had only to establish his allegation that Bhagwan Singh was the son of Kahan Singh. The findings on issues no1 and 2 therefore, have rightly been returned against the appellant- plaintiff, by the lower court.*

13. *The lower court has also held the respondent-defendants to have establish the plea of adverse possession but this findings of the lower court could not be supported by the learned counsel for the respondent- defendants. For establishing the plea of adverse possession it has to be admitted that somebody else was the owner of the property and that the respondent-defendants were holding the property hostile to the real owners. The respondent-defendants in fact are claiming the ownership by inheritance on the basis of the mutation Ex. PX sanctioned in the year 1969 and the question of claiming hostile title does not arise. The findings of the learned lower court on issue no.6, therefore, is not affirmed. Since the appellant plaintiff was not a party to the mutation Ex. PX. The suit cannot be held barred by time on account of sanction of mutation, even though he has failed to prove his case on merits. This findings of the lower court is also reversed.”*

12. Having perused the impugned judgments, my considered opinion is that the submissions made before learned Courts below to the effect that plaintiff is the son of Bhagwan Singh, whose inheritance he claims, were duly considered and repelled by recording sound and sufficient reasons consistent with record and the applicable law. I am inclined to agree with the same. There seems no substance in the submissions that the impugned judgments are contrary to record or based on conjectures and surmises.

13. To my mind, judgments under challenge have been rendered after due and correct appreciation of record including the evidence adduced by the parties.

14. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings. In this second appeal, no fresh ground worthy of interference is made out.

15. No question of law, much less substantial one, a *sine qua non* for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 100 of Civil Procedure Code.

16. As an upshot of my preceding discussion, the appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

17. Pending application/s, if any, shall also stand disposed of.

18. No order as to costs.

(ARUN MONGA)
JUDGE

25.04.2023
Vandana

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No