

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

101

RSA-1223 of 1998 (O&M)

Date of Order: 05.07.2023

Gurdev Singh

.Appellant

Versus

Chuhar Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. N.S.Dandiwal, Advocate, for the appellant.

Mr. Sukhdeep Singh Bhinder, Advocate
Mr. D.S.Bhinder, Advocate,
Mr. K.M.Garg, Advocate and
Mr. Birinder Pal, Advocate
for respondent no.1 to 3.

Mr. Anubhav Bansal, Advocate and
Mr. Arun Bansal, Advocate,
for respondent no.3.

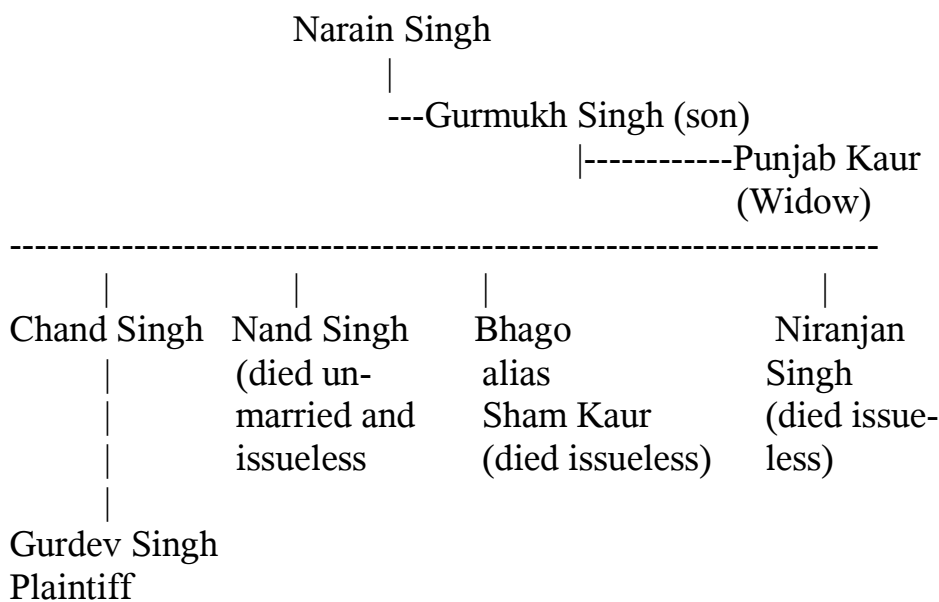
Mr. Abhiraj Singh Baweja, Advocate
for respondent no.6

ANIL KSHETARPAL, J

1. This regular second appeal has been filed by the plaintiff challenging the correctness of the concurrent findings of fact arrived at by the courts below. The Court dismissed his suit for grant of decree of possession to the extent of 1/12th share in the land measuring 1077 kanals and 10 marlas while setting aside the orders passed by the authorities while deciding the proceedings of mutation.

2. The dispute in the present case is with respect to the estate left behind by late Sh. Niranjan Singh. At this stage, it would be appropriate to draw a pedigree table with the consent of the learned counsels representing

the parties in order to understand the inter-se relationship between the parties:-



3. Sh. Nand Singh, who was unmarried and issueless, died during the life time of Smt. Punjab Kaur. Consequently, Smt. Punjab Kaur, the mother being Class-I heir inherited the share of Nand Singh.
4. Smt. Punjab Kaur died in the year 1968, whereas Sh. Niranjn Singh, who was also unmarried and issueless, died on 09.11.1980. The appellant (Sh. Gurdev Singh) claims share in the property left behind by Sh. Niranjn Singh on the basis of natural succession. Whereas, defendants no.1 to 3 claim that Sh. Niranjn Singh bequeathed his entire property while executing a Will on 06.01.1980 in their favour. In order to prove the execution of the Will, DW1- Sh. Sehaj Ram, scribe and the attesting witness DW2-Sh. Gurdial Singh were examined.
5. On appreciation of the evidence, both the courts found that the Will executed by Sh. Niranjn Singh on 06.01.1980 is proved to have been executed in accordance with Section 63 of the Indian Succession Act, 1925.

The Courts have also held that the execution of the Will has been proved in accordance with Section 68 of the Indian Evidence Act, 1872.

6. This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the judgments passed by both the courts below along with the requisitioned record of the trial Court.

7. The learned counsel representing the appellant contends that no reason to disinherit the appellant has been disclosed in the Will which is a strong suspicious circumstance to discard the Will. He further submits that the courts below have erred in ignoring the opinion of the experts.

8. On the other hand, the learned counsels representing the contesting respondents contend that in the absence of any material irregularity or perversity in the impugned judgments, the High Court should not interfere in the second appeal.

9. This court has heard the learned counsels representing the parties while evaluating their arguments.

10. While entertaining the Regular Second Appeal, the interference in the judgments passed by the courts below is permissible only when there is a material misreading or non-reading of evidence by the courts below. Though, a substantial question of law is not required to be framed because the Regular Second Appeals in the States of Punjab, Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918, however, interference in second appeal is permissible in accordance with the parameters laid down in Section 41 of the Punjab Courts Act, 1918 which includes misreading and non-reading of material evidence which go

to the root of the matter.

11. In the present case, both the courts on appreciation of evidence have come to a conclusion that the appellant is not Class-I heir of Sh. Niranjan Singh. Defendant no.1 to 3 were also closely related to Sh. Niranjan Singh as all of them belong to the same family.

12. As regard the report of Hand Writing and Finger Print Experts, it may be noticed that such report contains opinion which is not binding on the court. Both the courts have recorded cogent reasons to discard the report of private expert.

13. Hence, finding no merit, the appeal is dismissed.

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

July 05, 2023
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	:YES/NO
Whether reportable	:YES/NO