

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

RSA-2724-1993 (O&M)

Reserved on : 09.04.2024

Date of decision: 25.04.2024

Smt. Tej Kaur (since deceased) through her LRs and another

....Appellants

Versus

Joginder Kaur and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Ranjit Saini, Advocate for the appellants

Mr.Viren Sibal, Advocate for the respondents

ANIL KSHETARPAL, J

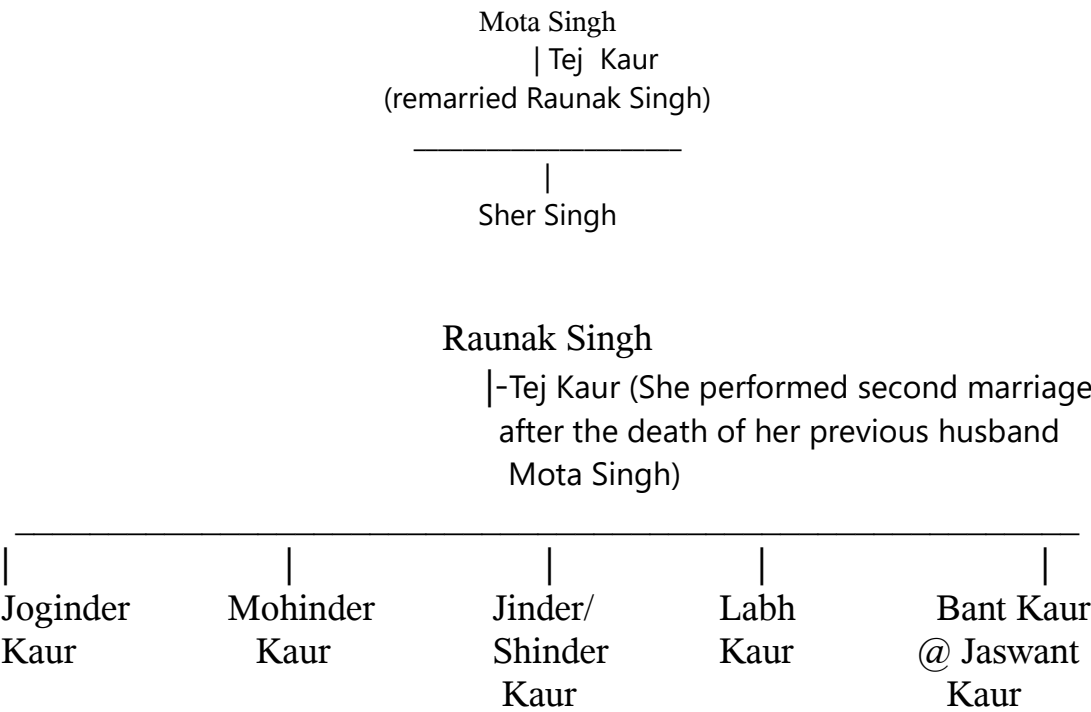
1. Brief facts of the case:-

1.1 The defendant has filed this Regular Second Appeal challenging the correctness of the judgment passed by the First Appellate Court, which in turn has reversed the judgment passed by the trial court. Resultantly, the plaintiff's suit has been decreed.

1.2 To demonstrate inter se relationship between the parties, two small pedigree tables alongwith the brief facts are required to be noticed in order to comprehend the issues involved in the present case.

1.3 Smt. Tej Kaur was previously married to late Sh.Mota Singh. From the loins of Mota Singh, Sh.Sher Singh was born. However, after the death of S.Mota Singh, Smt. Tej Kaur married Sh.Raunak Singh. From the loins of Sh.Raunak Singh, Smt. Tej Kaur gave birth to five daughters namely Joginder Kaur, Mohinder Kaur,

Jinder/Shinder Kaur, Labh Kaur, Bant Kaur @ Jaswant Kaur:-



1.4 On 02.02.1983, Sh.Raunak Singh executed a registered Will in favour of his wife Smt. Tej Kaur, which was attested by Sh.Prem Singh, Nambardar and Sh.Santokh Singh, Panch. He died on 07.03.1983. On the death of Sh.Raunak Singh, the entire property was mutated in favour of Smt. Tej Kaur by virtue of the Will. Sh.Raunak Singh was owner of two different parcels of land located in village Kainaur and Burmajra. Smt. Tej Kaur vide registered sale deed dated 27.5.1988, sold land measuring 5 kanals 14 marlas to Bant Singh (defendant no.3). In the written statement, Smt. Tej Kaur has alleged that she executed a registered Will in favour of all the five daughters on 04.10.1985. However, it was cancelled on 08.06.1988 as the plaintiffs misbehaved with her. Joginder Kaur, Mohinder Kaur, Surinder Kaur and Labh Kaur were married in different villages, whereas, Jaswant Kaur alias Bant Kaur was married in village Kainaur where Smt. Tej Kaur was residing. After her marriage, she resided in the same village where her mother Smt. Tej Kaur used to reside. On 06.06.1988, Jaswant Kaur filed

a suit for declaration claiming that in a family settlement, the property in dispute fell to her share. On 14.06.1988, Smt. Tej Kaur filed a written statement admitting the Jaswant Kaur's case. She also appeared in evidence and made a statement in the court resulting in judgment dated 14.05.1988, decreeing Jaswant Kaur's suit.

1.5 Remaining four daughters of Sh.Ranauk Singh namely Joginder Kaur, Mohinder Kaur, Surinder Kaur and Labh Kaur filed a suit for declaration to the effect that they are owners in possession of land in both the villages and the decree dated 14.06.1988, is illegal, null and void and it does not affect their rights and the sale deed executed by Smt. Tej Kaur in favour of defendant no.3-Bant Singh also does not affect their rights. Smt. Tej Kaur filed the separate written statements while contending that the plaintiffs never served their father Sh.Ranauk Singh and hence, they have no locus standi to challenge either the sale deed or the decree. On 04.10.1985, she executed a registered Will bequeathing all her property in favour of her five daughters but due to the ill-treatment by the plaintiffs, got the Will cancelled on 08.06.1988. Thereafter, she executed a registered Will on 09.08.1988, in favour of Jaswant Kaur, who lives with her. The decree passed on 14.06.1988, is legal and binding on the rights of the plaintiffs. A separate written statement was filed by defendants no.2 and 3. It was claimed that Sh.Ranauk Singh executed a registered Will in favour of Smt. Tej Kaur and she sold 5 kanals 14 marlas to Bant Singh. A family settlement took place in the year 1985 which due to an inadvertent typing mistake was wrongly typed as 1975 in the previous plaint. In the aforesaid

family settlement, the suit property fell to the share of Jaswant kaur @ Bant Kaur, which was acknowledged in the civil court decree. Two separate replications were filed by the plaintiffs.

2. Evidence produced by the Respective Parties:-

2.1 In order to prove their case, the plaintiffs examined Surinder Kaur @ Jinder Kaur, one of the plaintiffs.

2.2 On the other hand, defendants examined Sh.Sher singh s/o of Mota Singh, DW2 Om Parkash Official from the office of Sub Registrar, DW3 Krishan Chand scribe, DW4 Sh.Prem Singh the attesting witness of the Will who was also Nambardar of the Village. DW5 Jaswant Kaur and DW6 Bant Singh, Sh.K.S.Mander, Advocate DW7, who represented Smt. Tej Kaur in the consent decree dated 14.06.1988, DW8 Gurpal, General power of attorney of Smt. Tej Kaur.

2.3 The trial court dismissed the plaintiff's suit, however, the First Appellate Court has set aside the same resulting in filing of this appeal by defendants no.1 and 2.

3. Reasons recorded by the First Appellate Court:-

3.1 The following reasons emerge on analysis of the First Appellate Court:-

- i) The original Will dated 1983 has not been produced by Smt. Tej Kaur.
- ii) Sh.Ranauk Singh did not have a sound disposing mind at the time of execution of the Will because he died within a period of five days after executing the Will. If he wanted to give property to his wife, he could have executed the Will

much earlier. Thus, the Will is manipulated. Jaswant Kaur appears to have manipulated the Will because she got collusive decree from Smt. Tej Kaur.

- iii) If Will was executed by Sh.Ranauk Singh willingly then there was no occasion for Jaswant Kaur or Tej Kaur to transfer the property in favour of Jaswant Kaur by a collusive decree.
- iv) Presence of attesting witness Sh.Prem Singh at the time of execution of the Will became doubtful because he has stated that the Will is written by hand whereas it is typed.
- v) Moreover, Sh.Prem Singh has stated that he brought Sh.Ranauk Singh for execution of the Will. Generally, if the Will was to be executed by Sh.Ranauk Singh, he would have himself come to execute the Will.
- vi) Sh.Prem Singh has admitted that there is no recital in the Will with regard to the other daughters.
- vii) The original Will must be in possession of Smt. Tej Kaur but it has not been produced by her.
- viii) Gurpal Singh, attorney of Smt. Tej Kaur stated that the Will was taken by Joginder Kaur which shows that Sh.Ranauk Singh did not execute the Will in a sound disposing mind.
- ix) Smt. Tej Kaur did not appear in evidence.
- x) Gurpal Singh is son of Jaswant Kaur. On 28.09.1992, Smt. Tej Kaur filed an application for recording her statement that 'Ex.C1' compromise has been effected between the

parties which was recorded on the same day. She has stated that no Will was executed by her in favour of Jaswant Kaur and she did not transfer the property in favour of Jaswant Kaur. Hence, it is proved that Sh.Ranauk Singh never executed the Will. Mere registration of the Will does not prove that the testator was in sound disposing mind while executing the Will. In the plaint filed on 06.06.1988, it has been alleged that there was a family settlement between Jaswant Kaur and Smt. Tej Kaur in the year 1975 whereas Sh.Ranauk Singh died on 09.02.1983 hence, Smt. Tej Kaur was not the owner of the property and there was no question of any family settlement. Sh.A.S.Mander, Advocate appeared on behalf of Smt. Tej Kaur in the previous suit. He admitted that the same Clerk scribed the power of attorney executed by Smt. Jaswant Kaur and Smt. Tej Kaur. Resultantly, there is collusion. Hence, it is proved that the decree was obtained by Jaswant Kaur by misrepresentation and fraud. Smt. Tej Kaur did not voluntarily suffer the decree because the decree is collusive.

- xi) The sale deed executed in favour of Bant Singh was upheld and Smt. Tej Kaur was held entitled to 1/6th share. It was declared that sale in favour of Bant Singh shall be valid to 1/6th share of Smt. Tej Kaur i.e her share in the property.

4. Arguments put forth by the learned counsel representing the parties:-

4.1 Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook, alongwith the requisitioned record.

4.2 At the request of the Court, the learned counsel representing the parties have filed their respective written notes of submissions, which are as under:-

“Appellant’s submissions:-

	<i>The plaintiffs filed appeal before the District Judge, Ropar. The appeal was fixed for 22.09.1992 when the following order was passed:-</i> <i>22.09.1992 Present:- As before</i> <i>Respondent not served. Respondents 3 to 11 be summoned on PF and RC for 19.11.1992.</i> <i>Sd/-</i> <i>ADJ</i> <i>Intead of taking the case on 19.11.1992 the matter was taken on 18.11.1992 and was adjourned to 15.02.1993.</i>
	<i>The order dated 18.11.1992 is reproduced below:-</i> <i>"18.11.1992 Present:- None</i> <i>Case taken up today as I shall be proceeding for training from 19.11.1992 to 31.12.1992. Respondents no.3 to 11 be summoned on P.F. for 15.02.1993"</i> <i>Sd/-</i> <i>ADJ</i>
28.09.1992	<i>That one application was filed allegedly on behalf of Tej Kaur before the Additional District Judge on 28.09.1992 stating that case was fixed on that date but adjourned to 19.11.1992 and file be taken up and statement be recorded despite the facts that as per zimini orders case was never listed for hearing on 28.09.1992. Although on the application there is no clear signature of the counsel but power of attorney attached with the application shows that it was filed by one Sh. R.N. Modgil, Advocate who was not counsel in the main appeal. One compromise allegedly signed by all the four plaintiffs and Tej Kaur was also placed on record and the Learned Additional District Judge on the same day called the file and recorded the statement.</i>

22.10.1993	<i>The certified copy of the Will was duly proved and with regard to decree also no material has been brought by the plaintiffs on the basis of which it could be said that decree was passed in favour of Jaswant Kaur by playing fraud. With regard to the Will also the Learned Trial Court has held that Will has duly been proved. The Appellate Court while reversing the findings as recorded by the trial court on the basis of the assumption and presumption and much reliance has been placed on the statement made by Tej Kaur before the Additional District Judge, which otherwise could not have taken into consideration as appearance before the Additional District Judge on the false Sh.Premises and when case was not listed for hearing and by engaging new lawyer create every doubt about her appearance. Furthermore, the statement made by the person without any oath and without subject to cross-examination cannot be taken into consideration as has wrongly been done in the present case.</i> <i>The lower appellate courts accepted the appeal relying upon the statement made by Tej Kaur on 28.09.1992 stating that she entered into compromise with Joginder Kaur etc. and said that no Will was executed by Raunak Singh in favour of Tej Kaur as Tej Kaur herself stated in the court. The Learned Additional District Judge further illegally held that when Will executed by Raunak Singh has not been proved, Tej Kaur was not the owner of the property and could not have suffered the consent decree. The findings recorded by the Learned Additional District Judge would shows that whole findings recorded are on just imagination and unsustainable in the eyes of law. The Will executed by Raunak Singh was not only proved by the attesting witnesses of the Will but the certified copy of the Will was proved by the Registration Clerk DW-2 and DW-1 Sher Singh who is son of Tej Kaur from the earlier husband further proved that the original Will was in possession of the plaintiffs.</i> <i>It is also relevant to mention here that Will was executed on 02.02.1983 and Raunak Singh died on 09.02.1983. Although the plaintiffs have not brought any evidence on record to show that Raunak Singh was not having sound disposing mind but the learned Additional District Judge, of its own has taken it a ground to hold that Raunak Singh was not having sound disposing mind as he died immediately after execution of the Will, despite the fact that Ranuak Singh was not suffering from any disease. It is further submitted that Will was executed on 02.02.1983 whereas the decree passed in favour of Jaswant Kaur was on 14.06.1988. However, the by Learned Additional District</i>
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	<i>Judge has recorded the finding otherwise, ignoring the fact that the plaintiffs have tried to play fraud even before the by Learned Additional District Judge by getting the statement of Tej Kaur, recorded secretly and further fabricating a compromise between the plaintiffs and Tej Kaur in contrary to the statutory provision for recording such compromise.</i> <i>Raunak Singh executed the registered will in favour of Tej Kaur on 2.2.1983 and Tej Kaur suffered a decree in favour of Jaswant Kaur on 12.8.1988 and therefore the finding recorded by the Id Additional District Judge that if Raunak Singh had executed a registered will in favour of Tej Kaur why there was hurry to get the consent decree by Jaswant Kaur is also without any basis and thus the judge and decree passed by the lower appellate court which is an example of non application of mind having passed without adjudicating the real controversy is sustainable in the eyes of law.</i> <i>Although some more wills and cancellation of will was allegedly executed by Tej Kaur but none of the parties have led any evidence and therefore are not necessary to be discussed which have wrongly been discussed by the learned Lower appellate court.</i>
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4.3 Learned counsel representing the respondent has submitted as under:-

*“Application submitted by Tej Kaur
Tej Kaur (Appellant herein) submitted an application for recording her statement that compromise has been affected between the parties. (Kindly refer to Pg. 37 of the paperbook)
No Will was executed by Ronak Singh
Along with the statement recording compromise, she also categorically stated that no will was ever executed by Ronak Singh which forms the basis of the collusive decree (Kindly refer to Pg. 38 of the paperbook) Jaswant Kaur (appellant no.2) wanted to grab the property Ronak Singh and Tej Kaur (Appellant No. 1) wanted to give the property to the Respondents and Jaswant Kaur (Appellant No. 2) orchestrated the fake will as well as the collusive decree in order to grab the property.
(Kindly refer to Pg. 38 of the Paper Book)*

WILL DATED 02.02.1983 SET ASIDE

Will was executed merely 7 days before the death of Ronak Singh which makes it suspicious and therefore the execution of the collusive decree is not possible. [Kindly refer to Pg. 38 of the Paper Book]

FLAWED REASONING OF SUB-JUDGE, 1ST CLASS, ROPAR.

The reasoning of the Ld. Sub Judge for justifying the will is that "no agriculturist in this part of the country in the heart of his hearts can venture that his land should devolve upon his son-in-law, and for that reason on any such outsiders. It is inherent desire of such a person that property should at least remain in his line of descent. Since he had no male issue the disposition of property in favour of wife was quite natural. Further, there is no material on record that testator was in any manner under the influence of the defendant Tej Kaur" [Kindly refer to Pg. 56,57 of the Paper Book!]

4. That the above mentioned reasoning is flawed on three accounts:

Firstly, saying no "agriculturist in this part of the country in the heart o his hearts can venture that his land should devolve upon his son-in-law has no legal basis and cannot be relied upon in proving the registration of a will.

Secondly, there was reason to believe that Tej Kaur was coerced at the behest of Jaswant Kaur (Appellant No.2) which becomes evident when the collusive decree is passed.

Thirdly, Tej Kaur herself states that no will was executed by Ronak Singh."

5. Analysis of the reasons recorded by the First Appellate Court:-

5.1 Now, the Bench proceeds to discuss the reasons recorded by the First Appellate Court.

5.2 The First Appellate Court's reason no.(i) lacks substance. It is the specific case of Smt. Tej Kaur and Jaswant Kaur that the original Will dated 02.02.1983, is in possession of the plaintiff no.1 Joginder

Kaur. This fact has been stated by Sh. Sher Singh son of Smt. Tej Kaur, from her previous marriage. It has been stated by Sh.Sher Singh that Sh.Ranauk Singh handed over the Will to him before his death, however, Joginder Kaur took it away. Moreover, the attested copy of the Will (Ex.D2) has been produced, which has been proved by Sh. Om Parkash, the Registration Clerk from the Sub Registrar's office, Ropar. He has also brought alongwith him the summoned record i.e Bahi no.3 Zilad no.57 to prove the Will. He has stated that the extract/summary of the Will has been entered into his register, which has been thumb marked by Sh.Ranauk Singh. No attempt has been made by the plaintiffs to prove that Sh.Ranauk Singh did not thumb mark the Will. In these circumstances, failure to produce the original Will will not make any difference.

5.3 The First Appellate Court's second reason is also a result of non-application of the judicial mind. Smt. Shinder Kaur @ Surinder Kaur, one of the plaintiffs has appeared in evidence. She has not stated that her father was not in a sound disposing mind. She has only stated that her father was confined to bed and had lost his eyesight and was hard of hearing. However, she has not produced any evidence to prove that Sh.Ranauk Singh was not in sound disposing mind on 02.02.1983. The First Appellate Court has erred in assuming that Sh.Ranauk Singh was not of sound mind because he died after five days of the execution of the Will. In the opinion of this Court, the approach of the First Appellate Court was incorrect, particularly when Sh.Ranauk Singh visited the office of the Sub-Registrar in order to get the Will registered.

Moreover, one of the attesting witnesses Sh.Prem Singh, Namabardar of the Village while appearing as DW4 has stated that Sh.Ranauk Singh was of sound disposing mind at the time of execution of the Will.

5.4 The reason no.(iii) recorded by the First Appellate Court is again erroneous. The Court has assumed that the decree in favour of Jaswant Kaur has been passed in a hurry, which is not the correct position. Sh.Ranauk Singh died on 07.03.1983 whereas the decree dated 14.06.1988 in favour of Jaswant Kaur was passed after a period of more than 5 years i.e from the date of death of her father.

5.5 The First Appellate Court's reason no.(iv) is also insubstantial. Testimony of Sh.Prem Singh was recorded in 1990 whereas the Will was executed and registered on 02.02.1983 i.e more than 7 years before the testimony was recorded. In these circumstances, even if Sh.Prem Singh has stated that the Will was hand written though it was typed, still it will not affect the validity of a registered Will, particularly when no evidence was led to prove that Sh.Ranauk Singh did not execute the Will in favour of his wife.

5.6 The fifth reason is cited by the First Appellate Court is again the result of an incorrect approach. In fact, the First Appellate Court has erred in reading the evidence. Reason no.(v) has been cited due to the misreading of evidence. In fact, Sh.Prem Singh, Namabardar has not stated that he brought Sh.Ranauk Singh. It has been stated by Sh.Sher Singh 'DW1' that he brought Sh.Ranauk Singh alongwith the attesting witnesses in his car to Ropar for scribing the Will. Sh.Sher Singh is not the beneficiary of the Will.

5.7 The sixth reason recorded by the First Appellate Court is also erroneous because Sh.Ranauk Singh had five daughters, who were married. He bequeathed the property in favour of his wife. In fact, Sh.Ranauk Singh has not only made reference to his daughters, he has even named them in the Will. He has also stated that all these five daughters are married and living happily in their married life and he has already spent sufficient amount on them at the time of their marriage. Hence, he wants to bequeath all his property in favour of his wife Smt. Tej Kaur. This Court is unable to comprehend the sixth reason assigned by the First Appellate Court because Gurpal Singh has appeared as attorney of Smt. Tej Kaur. He has stated that the original Will was taken away by Joginder Kaur from Sh.Sher Singh. Same thing is reiterated by Sh.Sher Singh while appearing as DW1. Undoubtedly, Smt. Tej Kaur did not appear in the witness box, however, the defendants led sufficient evidence to prove their case. Hence, adverse inference could not be drawn against the defendants solely on the ground that Tej Kaur failed to testify in the Court. An attested copy of the registered Will dated 02.02.1983 is Ex.D2 is on the trial court's record.

5.8 The First Appellate Court's reason no.(vii) is again beyond this Court's comprehension. In fact, during the pendency of the first appeal, an application was allegedly filed by Smt. Tej Kaur for recording her statement to the effect that a compromise has been effected between the parties. The statement of Smt. Tej Kaur to that effect was recorded. While making statement, she stated that no Will was executed in her favour. However, that statement or the deed of settlement would not in

anyway impact the decision of the case, particularly when she while filing the written statement has admitted that Sh.Ranauk Singh executed the Will in dispute in her favour. In fact, Smt. Tej Kaur has also filed the second appeal alongwith with her daughter Jaswant Kaur. She has stated that her statement was obtained by the plaintiffs by playing fraud on her. In fact, her statement would not make any difference to the result of the case, particularly when not only the Will but also the court decree has been proved by the defendants.

5.9 Reason no.(viii) recorded by the First Appellate Court again discusses about the sound disposing mind. This reason has already been discussed while analysing reason no.(ii) cited by the First Appellate Court.

5.10 First Appellate Court's reason no.(ix) is also insubstantial as it has resulted in a wrong judgment. Undoubtedly, in the previous suit filed by Jaswant Kaur she has stated that a family settlement took place in the year 1975 which has been clarified in the written statement filed by Jaswant Kaur in this suit to the effect that the family settlement took place in the year 1985, however, that would not impact the result of the case. Even if the family settlement was arrived at in the year 1975, however, once it was admitted by Smt. Tej Kaur while filing the written statement and in the statement suffered before the court on 14.06.1988, the decree passed on that basis is valid. In view of Section 43 of the Transfer of Property Act, 1882 the validity of the family settlement can be upheld by taking clue from Section 43 of the 1882 Act which lays down the doctrine of feeding the title.

5.11 Similarly, the deposition of DW7 K.S.Mander, Advocate admitting that the power of attorney of both the counsels was scribed by the same Clerk would also not make any difference, particularly when Smt. Tej Kaur appeared in evidence before the Court and admitted Jaswant Kaur's case. Hence, reason no.(x) recorded by the First Appellate Court is again sans substance because Smt. Tej Kaur has suffered the statement in the court on 14.06.1988.

5.12 The last reason assigned by the First Appellate Court is insubstantial because the First Appellate Court has again observed plea on the part of Jaswant Kaur that the family settlement took place in the year 1975 proves that the decree was obtained by misrepresentation and fraud. The court has totally overlooked the clarification submitted by the defendant Jaswant Kaur that there was a typographical error in the previous plaint.

5.13 From a perusal of the written submissions submitted by the learned counsel representing the respondent, it is evident that the same is reiteration of the various reasons recorded by the First Appellate Court, which have already been examined.

6. Discussion by this Court:-

6.1 It has come in evidence that Jaswant Kaur is locally married and is residing in the village Kainaur where Smt. Tej Kaur and her father used to reside whereas the plaintiffs are married and residing at far away places. Additionally, the defendants have produced the copies of the cancellation of Will dated 08.06.1988, while cancelling the Will dated 04.10.1985. The defendants have also produced a copy of the registered

Will executed by Smt. Tej Kaur in favour of Jaswant Kaur on 09.08.1988. These documents have been marked because their attesting witnesses were not examined. However, the cancellation deed dated 08.6.1988, as well as the Will dated 09.08.1988, are registered documents. These documents prove that Smt. Tej Kaur intended to give her entire property in favour of her daughter Jaswant Kaur @ Bant Kaur. The Will dated 09.08.1988, proves that even after a period of 2 months from the date the decree was suffered, she admitted that she intends to give the entire property to Jaswant Kaur and not to any other daughter.

7. Decision:-

- 7.1 Keeping in view the aforesaid facts and discussion, the judgment and decree passed by the First Appellate Court is set aside whereas that of the trial court is restored.
- 7.2 The appeal stands allowed.
- 7.3 All the pending miscellaneous applications, if any, are also disposed of.

25.04.2024
rekha
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE