

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1248-1989 (O&M)
Date of decision: March 13, 2024

Malkiat Singh

....Appellant

Versus

Sukhwinder Singh (deceased) through his L.Rs and others

....Respondent

RSA-1249-1989 (O&M)

Malkiat Singh

....Appellant

Versus

Sukhwinder Singh (deceased) through his L.Rs and others

....Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

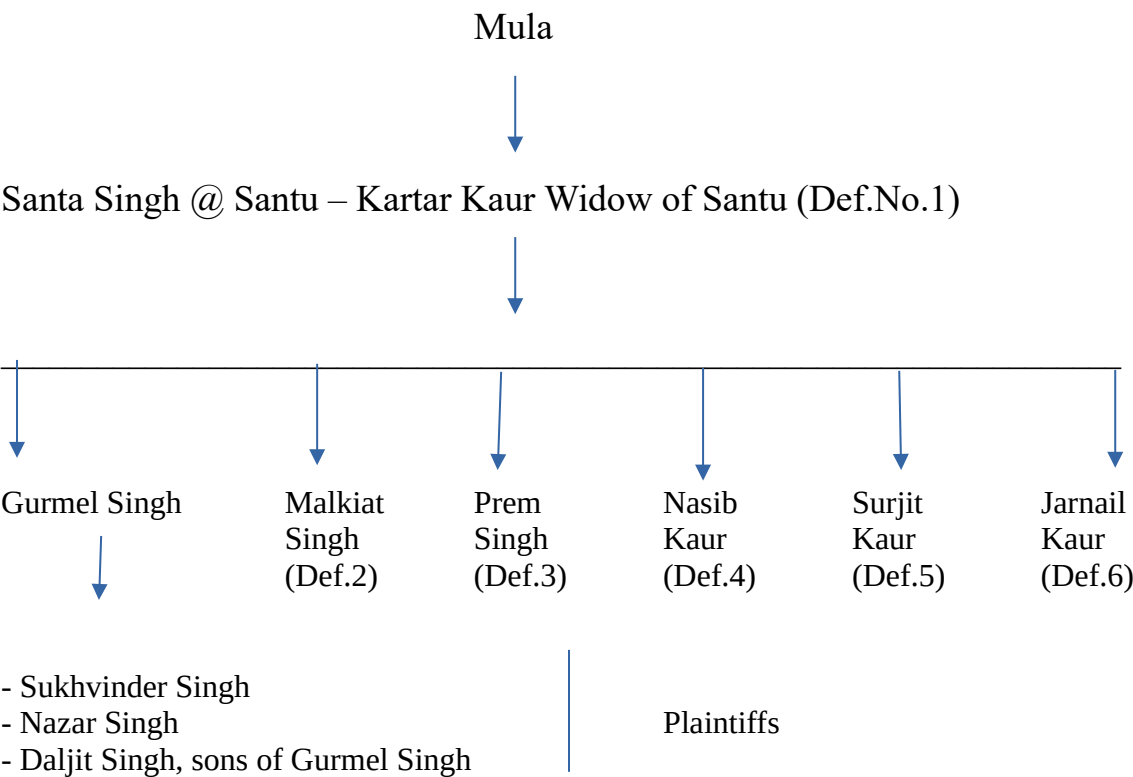
Present:- Mr. S. S. Behl , Advocate
for the appellant.

Mr. Akshay Bhan, Senior Advocate with
Mr. Santosh Sharma, Advocate and
Mr. Sahil Mehndiratta, Advocate
for the respondents.

ANIL KSHETARPAL, J (Oral)

1. With the consent of learned counsel for the parties, these two Regular Second Appeals shall stand disposed of by a common order. Both the appeals are arising from two connected suits.
2. The dispute is with regard to correctness, validity and genuineness of Will executed by Sh. Santa Singh @ Santu in favour of his three grand sons.

3. In order to understand the controversy involved in the present cases, relevant facts in brief are required to be noticed. The following family tree of the parties to the suit would help us to understand inter se relationship.



4. Sh. Santa Singh @ Santu was owner of 150 Kanals 9 Marlas of land on the basis of family settlement vide judgment and decree dated 29.03.1972. Sh. Santa Singh @ Santu acknowledged that his three sons namely Gurmel Singh, Prem Singh and Malkiat Singh have become owner in possession of 1/4th share each in land measuring 150 Kanals 9 Marlas. Thus, 3/4th share of his land holding was given to his three sons whereas Sh. Santa Singh @ Santu retained remaining 1/4th share equivalent to 38 Kanals 7 Marlas.

5. On 13.07.1966 he executed a registered Will in favour of his three sons namely Gurmel Singh, Prem Singh and Malkiat Singh. However, on 29.03.1972 he acknowledged that his three sons become owner of 3/4th share. The dispute is with regard to remaining 1/4th share.

6. Two suits were filed. First suit was filed by Sukhwinder Singh and Nazar Singh grand sons of Sh. Santa Singh @ Santu claiming decree of

declaration on the basis of Will dated 15.04.1975. The second suit was filed by Malkiat Singh claiming property on the basis of registered Will on 13.07.1966. In order to prove the Will dated 15.04.1975 both the attesting witnesses namely PW-2 Rajinder Singh and PW-4 Prem Singh were examined. The scribe of the Will Sh. Vijay Kumar died, however PW-3 Hans Raj, his father appeared in evidence. The trial court disbelieved the Will on the ground that it is not registered and surrounded by suspicious circumstances. However, the first appellate court on re-appreciation of evidence reverted the judgment and decree passed by the trial court. It was held that the Will dated 15.04.1975 executed by Sh. Santa Singh @ Santu in favour of his three grand sons is proved under Section 68 of the Evidence Act. The correctness of the aforesaid finding of fact has been challenged in these two appeals.

7. Heard learned counsel for the parties at length. With their able assistance perused the paper book along with requisitioned record of the courts below.

8. Learned counsel representing the appellant submits that the Will dated 15.04.1975 is liable to be ignored on the following grounds-

- i) There is no reference in the Will to Smt. Kartar Kaur widow of Sh. Santa Singh @ Santu.
- ii) The Will dated 15.04.1975 is unregistered.
- iii) No reason has been disclosed for disinheriting the remaining Class-I heirs.
- iv) There is no difference in space between the lines at the bottom of the page, Prem Singh and Rajinder Singh are entrusted witnesses as Prem Singh

is uncle of beneficiary whereas Rajinder Singh is involved in a criminal case along with Prem Singh.

9. Learned counsel representing the appellant has read over the Will in open Court. Sh. Santa Singh @ Santu has recited that these three grand sons are serving him in his old age and he has great love and affection for the three grand sons who are beneficiaries of the Will. It has been recited that he does not wish to give anything else to his remaining two sons and married daughters. The testator has thumb marked the Will on the left side margin as well as bottom of the page. It is a hand written Will. It has been attested by two witnesses namely Prem Singh and Rajinder Singh who have signed the Will. Testimony of both the attesting witnesses has been recorded by the Court.

10. With reference to argument number 1, advanced by learned counsel representing the appellant, it may be noted that Smt. Kartar Kaur never questioned the validity of Will during her life time. It is the plaintiff namely Malkiat Singh who has filed the suit. In absence of any other ground it would not be appropriate to discard the Will only because the testator forgot to refer to his wife.

11. With regard to argument number 2, it may be noted that the Will is not required to be mandatorily registered. It is at the option of the testator, hence the Will cannot be ignored only on the ground that it is not registered.

12. With regard to argument number 3, it may be noted that Sh. Santa Singh @ Santu had in a family settlement given 1/4th share of his total land holding to each of his three sons while retaining remaining 1/4th share.

13. In these circumstances Malkiat Singh has already got 38 Kanals 7 Marlas pursuant to family settlement which was acknowledged in civil court judgment and decree dated 29.03.1992.

14. As regards with reference to argument No.4, it may be noted that Prem Singh is son of the testator. He is not the beneficiary of the Will, he rather stands deprived of the property, if the Will is upheld. In the opinion of the Court he is the most natural witness.

15. With reference to the testimony of Rajinder Singh, it may be noted that no evidence has been brought to prove that Rajinder Singh was a person with criminal antecedents. No judgment convicting him in criminal case has been produced.

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

17. Both the appeals are dismissed.

(ANIL KSHETARPAL)
JUDGE

March 13, 2024
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Whether speaking/reasoned : Yes
Whether reportable : No