

2024:PHHC:107836



(149) **IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Decided on:-20.08.2024

1. **RSA-99-2017 (O&M)**

Surinder Kaur BrarAppellant.

VS.

Gursharan Kaur and othersRespondent.

2. RSA-532-2017 (O&M)

Gursharan KaurAppellant.

VS.

Surinder Kaur Brar and others ...Respondents.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Rajbir Singh Guraon, Advocate,
for the appellant (in RSA-99-2017) and
for the respondent(s) (in RSA-532-2017).

Mr. Aashish Chopra, Senior Advocate with
Mr. Varun Aryann Sharma, Advocate,
for the appellant (in RSA-532-2017) and
for the respondent(s) (in RSA-99-2017).

HARKESH MANUJA J. (Oral)

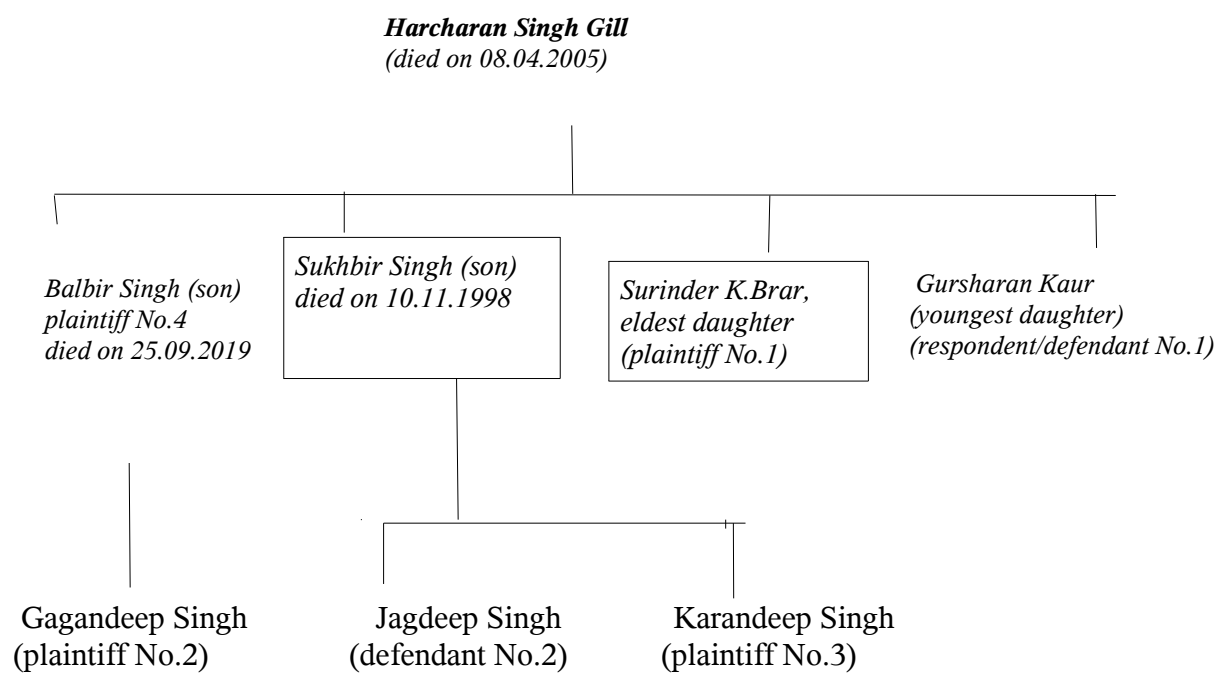
1. This common judgment of mine shall dispose of above mentioned two appeals as both appeals have arisen out of the same judgments and decrees.

For convenience, the facts are being taken from RSA-99-2017 (O&M).

2. By way of present appeal, challenge has been laid to the

judgments and decrees dated 17.09.2014 and 16.04.2016 passed by both the Courts below, whereby, a suit for declaration filed at the instance of appellant-plaintiff No.1, claiming herself along with plaintiffs No.2 to 4 as well as defendant No.1 to be entitled for Rs.15 lakhs each out of the cash amount left by her deceased father, namely, Harcharan Singh Gill, in his account with State Bank of India, Branch Sector 7, Chandigarh in accordance with Will dated 11.03.2005, was dismissed.

2. Briefly stating, the dispute in the present case revolves around certain amount allegedly lying in the State Bank of India, Branch Sector 7, Chandigarh in the name of Harcharan Singh Gill, who unfortunately died on 08.04.2005. The parties to the *lis* being closely related to each other claims themselves the successors of deceased- Harcharan Singh Gill. So as to understand their relationship, a pedigree table is reproduced hereunder:-



3. Relying upon a Will dated 11.03.2005, followed by an alleged family settlement arrived at between the heirs of Harcharan Singh Gill,

appellant-plaintiff No.1 filed a suit for declaration claiming herself to be entitled for Rs.15 lakhs cash out of the amount left by her deceased-father in his account maintained in State Bank of India, Branch Sector 7, Chandigarh along with claiming plaintiffs No.2 to 4 as well as defendant No.1 to be also entitled for equal share i.e. Rs.15 lakhs each. In the alternative, it was pleaded that if the Will was not proved to be a valid document, mandatory injunction be issued to defendant No.1/respondent No.1 for distribution of the aforesaid amount as per natural succession i.e. $\frac{1}{4}$ share each in the following manner:-

- (i) $\frac{1}{4}$ share to Surinder Kaur Brar (appellant-plaintiff No.1)
- (ii) $\frac{1}{4}$ joint to Karandeep Singh (plaintiff No.3/respondent No.3) and Jagdeep Singh (defendant No.2/respondent No.2)
- (iii) $\frac{1}{4}$ share to Balbir Singh (plaintiff No.4/respondent No.4).
- (iv) $\frac{1}{4}$ share to Gurcharan Kaur (defendant No.1/respondent No.1).

It was further pleaded that total amount lying in the bank account of Harcharan Singh Gill was Rs.1,19,00,000/- and after adjustment of Rs.75 lakhs as per the Will dated 11.03.2005, the remaining Rs.41 lakhs (but as per calculation, Rs.44 lakhs) was to be donated with the assistance of two sisters together.

4. Upon notice, the suit was contested by respondent No.1/defendant No.1 having filed detailed written statement, wherein, the execution of Will dated 11.03.2005 was disputed being a forged and fabricated document while alleging that at the relevant point in time, the testator was not in a sound and disposing mind on account of he being

suffering from various ailments and that the Will in question was even surrounded by suspicious circumstances. In addition, respondent No.1/defendant No.1 also set-up another registered Will dated 22.11.2000 allegedly executed by deceased-Harcharan Singh Gill with regard to his movable and immovable assets. Based on the pleadings, the following issues were framed:-

1. *Whether plaintiff is entitled to declaration prayed for?*

OPP

2. *If issue No.1 is proved, whether the plaintiff is entitled to mandatory injunction as prayed for? OPP*

3. *Whether present suit is not maintainable? OPD*

4. *Whether present suit is not maintainable in view of proviso of Section 34 of Specific Relief Act? OPD*

5. *Whether present suit is not maintainable and is prohibited due to bar created under Section 213 of Indian Succession Act? OPD*

5A. *Whether Will dated 11.3.2005 was executed by Harcharan Singh with his free consent and in sound disposing mind? OPP*

5B. *Whether Will dated 22.11.2000 was executed by Harcharan Singh with his free consent in sound disposing mind? OPD*

5C. *Whether deceased Harcharan Singh was holding a joint account with defendant No.1, if so, then whether defendant No.1 became entitled to entire amount lying therein on account of death of Harcharan Singh? OPD*

6. *Relief.”*

5. The Trial Court vide judgment and decree dated 17.09.2014, dismissed the suit filed at the instance of the plaintiffs having discarded the

Will dated 11.03.2005, set-up by her being surrounded by suspicious circumstances, whereas, the Will dated 22.11.2000 set-up by respondent No.1/defendant No.1 was also discarded being not proved as per the statutory requirements. Further, it was also recorded that since account with SBI, Sector 7, Chandigarh was in the joint name of deceased-Harcharan Singh Gill and respondent No.1/defendant No.1, as such, every joint holder of the said account was entitled for the amount existing therein and thus, even the relief of mandatory injunction was also declined.

6. Aggrieved of the judgment and decree dated 17.09.2014 passed by the trial Court, plaintiffs, Surinder Kaur Brar and Gagandeep Singh filed Civil Appeal No.C-504-2014, titled as “Surinder Kaur Brar and another vs. Gurcharan Kaur and others”. In the said Civil Appeal, respondent No.1/defendant No.1 filed cross-objections, which were numbered as Civil Appeal No.C-581-2014 instituted on 05.12.2014.

7. The Appellate Court vide judgment and decree dated 16.04.2016, dismissed the appeal as well as the cross-objections while upholding the findings recorded by the trial Court.

8. Having argued for some time and been confronted with the prime fact that except for evasive observations no specific finding was recorded by either of the Courts below in their judgments with regard to the proof or disproof about execution of Will dated 11.03.2005 (Ex.PW1/1) in terms of Section 63 of the Indian Succession Act, 1925 read with Section 68/69 of the Indian Evidence Act, 1872, both the learned counsel for the parties consented that the matter be referred back to the trial Court for its fresh adjudication on this issue so that a detailed and specific finding could

be recorded by the Courts on the point of execution of the Will dated

11.03.2005 (Ex.PW1/1) and to decide the suit afresh.

9. No doubt, the Courts below discarded the Will dated 11.03.2005 being surrounded by suspicious circumstances, yet, the issue regarding its valid execution in terms of Section 63 of the Indian Succession Act, 1925 read with Section 68/69 of the Indian Evidence Act, 1872 having material bearing about the determination of rights of the appellant-plaintiff was essential to be decided. A close perusal of the findings recorded in the impugned decisions show that neither this issue was dealt with in detail nor the same was considered conclusively, thereby caused serious prejudice to the rights of the appellant. In such circumstances, it was difficult to deal with the entire matter and thus, the remand was necessary in the interest of justice being required for reaching just conclusion and for correct evaluation of the substantial rights of the parties.

10. In view of the aforesaid stand taken by the counsels for the respective parties, the judgments and decrees passed by both the Courts below are hereby set aside and the matter is remanded back to the Trial Court for its fresh adjudication on merits.

Parties through their counsels are directed to appear before the Trial Court on 12.09.2024.

11 Pending application(s), if any, also stand(s) disposed of.

20.08.2024

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(HARKESH MANUJA)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/ No