

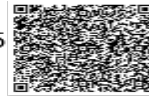
**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****121****RSA-1442-2021 (O&M)****Date of decision: 21.04.2025****Angrej Kaur****...Appellant(s)****Vs.****Jagsir Singh and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Ravish Bansal, Advocate with
Mr. Ashok Hooda, Advocate for the appellant.

NIDHI GUPTA, J.

The plaintiff is in second appeal against the concurrent judgments and decrees of the learned Courts below, whereby the suit filed by the plaintiff for declaration that she is owner in joint possession of suit land as described in the plaint, and for consequential relief restraining defendants No.1 and 2 from alienating the same, has been dismissed by both the Courts below.

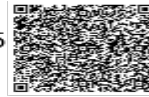
2. Brief facts of the case are that the plaintiff and defendants No.1 to 4 are daughters and sons of Jagir Kaur. Jagir Kaur was owner of 202 Kanal 7 Marlas of land. Jagir Kaur passed away on 08.09.1996 leaving behind the plaintiff and defendants No.1 to 4 as her natural heirs. Pursuant to her death, Mutation No. 776 (Ex.P4) was sanctioned in the names of defendants No.1 and 2/sons of Jagir Kaur in respect of the suit land. Accordingly, plaintiff had filed the present suit seeking 1/5th share in the estate of Jagir Kaur being her natural legal heir and stating that she is



owner in joint possession of the suit land. It was further asserted that defendants No.1 and 2 had got the mutation No. 776 sanctioned in their names without informing the plaintiff. Vide the impugned judgments and decrees, the suit of the plaintiff has been dismissed by both the Courts below, primarily on the basis of registered Will date 12.12.1985 executed by Jagir Kaur in favour of her sons/defendants no. 1 and 2. Hence, the present second appeal.

3. It is submitted by learned counsel for the plaintiff that the Will dated 12.12.1985 in favour of her two brothers/defendants No. 1 and 2 to the exclusion of the plaintiff and her sisters/defendants No. 3 and 4 could not have been relied upon by the learned Courts below in non-suiting the plaintiff as the said Will has not been proven in accordance with law. It is submitted that perusal of the Scribe Register Ex.DW2/1 shows that on the same date i.e. 12.12.1985, Jagir Kaur was in the Tehsil Complex to execute the Mortgage Deed with regard to land measuring 80K 16M of the same village. It is contended that as Jagir Kaur was an uneducated, simple and rustic village woman, her thumb impressions on the Will in question were procured by defendants No.1 and 2 giving her the false impression that she was affixing thumb impressions on the Mortgage Deed. It is submitted that therefore, the Will was put in suspicious circumstances.

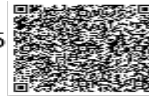
4. Learned counsel further submits that even DW4 Bhagwan Dass, marginal witness to the Will, has admitted in his cross-examination that the Will was scribed at the instance of and on the directions of



defendants No.1 and 2. Learned counsel submits that from the cross-examination of DW4, it is proved that beneficiaries of the Will not only called the witnesses, but also dictated the Will to the Scribe; and therefore, it cannot be said that the Will was executed by testatrix as per her own true will, volition and desire. As such, the Will is liable to be discarded. Moreover, defendants failed to prove that at the time of execution of Will, Jagir Kaur was hale and hearty and of sound disposing mind. In fact, prior to registration of the Will, Jagir Kaur had remained unwell. For this reason, also, the Will is shrouded in suspicious circumstances.

5. It is further contended that no doubt, weightage has been given by the learned Courts below to the alleged Affidavit dated 30.09.1996 Ex.DW5/A purportedly executed by the plaintiff along with her sisters/defendants No.3 and 4. Learned counsel contends that however, it is settled law that Will cannot be proven on admission of adverse party. Moreover, the plaintiff has specifically denied the execution of Affidavit during her cross-examination as PW1; and despite this, she was not confronted with the same. Therefore, the alleged Affidavit cannot be relied upon against the plaintiff in light of Section 145 of the Indian Evidence Act, 1872. It is accordingly prayed that the impugned judgments and decrees of the learned Courts below be set aside; and the suit of the plaintiff be decreed with costs.

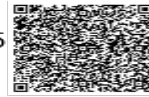
6. No other argument is raised on behalf of the plaintiff.



7. I have heard learned counsel for the appellant/plaintiff and perused the case file in great detail.

8. I find no merit in the submissions advanced on behalf of learned counsel for the appellant/plaintiff for the reasons recorded hereafter. Before coming to the arguments advanced on behalf of the appellant, it may first and foremost be pointed out that the plaintiff has not identified the suit land in respect of which she is seeking declaration. Plaintiff has sought declaration that she is owner of land measuring 40K 09 Marlas being 1/8th share of the total land measuring 323K 15 Marlas bearing khewat No. 78 in khatoni No 179 to 183 situated at village Khuranj Tehsil Jalalabad, District Fazilka being legal heir of her mother Jagir Kaur. However, plaintiff has not specified the rectangle, killa No. of the land against which declaration is sought. Only khewat No. and khatoni No. have been mentioned; which are prone to change with new jamabandi. Therefore, there is ambiguity in the plaint itself.

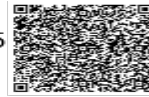
9. Further, the suit was filed by the plaintiff on 19.12.2012 on the basis of Jamabandi for the year 1994-95/Ex.P2 (available at page 164 of LCR); whereas Jamabandis are changed after every 5 years. Moreover, Jagir Kaur expired on 08.09.1996. Therefore, declaration could not have been sought on the basis of Ex.P2/jamabandi for the year 1994-1995 while Jagir Kaur was still alive. Further, plaintiff has wrongly claimed her share out of 323K 15M; whereas as per the said jamabandi Ex.P2, Jagir Kaur owned only 5/8th share of the said land i.e. 202K 7M; and the plaintiff could have claimed 1/5th share of only 202K 7M and not 1/5th share out



of 323K 15M as wrongly prayed by her. In her plaint, plaintiff has also referred to Gift Deed Ex.P1, however, she has not pleaded or claimed any relief on the basis of the said Gift Deed in the plaint.

10. Most importantly, in her plaint, the plaintiff has not laid any challenge to the Registered Will dated 12.12.1985/Ex.DW4/A (available at page 181 of LCR); or the inheritance Mutation dated 11.10.1996 sanctioned on the basis of the said Registered Will. As such, argument of the plaintiff that the said Will has not been proven in accordance with law is liable to be rejected on this short ground itself. Even otherwise, they said argument of the plaintiff is unfounded as, the defendants had proved the Will dated 12.12.1985 through ample evidence: of the Scribe DW2; attesting witness DW4; and the supporting documents Ex.DW2/1 (available at page 189 of LCR) which is the true photocopy of the Scribe Register bearing entry No. 1038 in respect of the said Will which has been duly thumb marked by Jagir Kaur. Even the registration of the Will stood proved by evidence of DW3 Clerk HRC Branch Ferozepur, who produced the record in respect of registration of the Will. Therefore, argument of the plaintiff that the Will has not been proved in accordance with law, is unfounded; even argument of the plaintiff that thumb impression of Jagir Kaur was taken by the defendant under fraudulent circumstances is liable to be rejected as no such plea has been raised by the plaintiff in the plaint. Moreover, the said allegation is not backed by any evidence whatsoever.

11. Further, Defendant No.3 Tej Kaur/sister of the plaintiff had appeared as DW9 and had confirmed that the Will was executed with the



consent of all three sisters including the plaintiff; and no objection was raised by them at the time of Mutation. In fact, a no objection was given by the three sisters by way of Affidavit notary dated 30.09.1996, original of which Affidavit is Ex.DW5/A. The said Affidavit was duly proved by the evidence of DW5 Mithu Singh, Lamberdar who was one of the attesting witnesses of this Affidavit, who had testified that the plaintiff along with her sisters/defendants No. 3 and 4, had executed the said Affidavit for sanctioning Mutation in favour of their brothers/defendants No. 1 and 2. Affidavit Ex.DW5/A was further proved from the evidence of DW7 Notary Public who proved its execution and attestation; and also proved from the entry in respect of the said affidavit in the Register Ex.DW7/B at Sr. No. 420 on dated 30.09.1996. DW8 Balkaran Singh, another witness of the Affidavit has also proved the same on file. In these circumstances, it is futile for the plaintiff to allege that she had no knowledge of the affidavit.

12. From the above un-refuted and undenied evidence, it is clear that the Will Ex.DW4/A in favour of defendants No.1 and 2 stood duly proved on record. At the risk of repetition, it is again pointed out that the Entry of the Will in the Scribe Register at Sr. No. 1038 was proved from the evidence of Scribe DW2, which is on record as Ex.DW2/1. It is also proven on record that after the death of Jagir Kaur, the plaintiff and her two sisters gave Affidavit Ex.DW5/A for sanction of mutation in favour of their brothers. Moreover, Affidavit Ex.DW5/A is duly proven by the evidence of DW5, DW7 and DW8. It has been argued by learned counsel for the appellant that the Will cannot be proven on admission. However, the said

document is misconceived as, from the extensive evidence referred to above, it is amply demonstrated that the Registered Will dated 12.12.1985 Ex.DW4/A has been duly proven in accordance with law. It has also been contended by learned counsel for the plaintiff that the said Will was not scribed on the saying of Jagir Kaur rather it had been scribed on the directions of defendants No.1 and 2. In this regard, learned counsel for the plaintiff has relied upon cross-examination of DW4 Bhagwan Dass, who was marginal witness of the Will. However, the said cross-examination of DW4 cannot be read in isolation to the exclusion of other prolific evidence on record as per which the Will in question stood proved beyond doubt. In any event, plaintiff has failed to explain as to why she executed Affidavit Ex.DW5/A if Jagir Kaur had not executed the Will.

13. Learned counsel for the plaintiff is unable to dispute or controvert the above said concurrent facts and findings of the courts below.

14. In view of the discussion above, no ground is made out to interfere in the impugned judgments and decrees of the learned Courts below. The present regular second appeal is hereby **dismissed**.

15. Pending applications, if any, stand disposed of.

21.04.2025
Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:Yes/No

Whether reportable:Yes/No