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

1.

RSA-1537-1989 (O&M)
Reserved on : 17.02.2025
Date of Decision : 17.03.2025

Tej Kaur (deceased) through LRs & Ors

... Appellant(s)

VERSUS

Harbhajan Singh (deceased) through LRs & Ors

... Respondent(s)

2.

RSA-1883-1989 (O&M)

Tej Kaur (deceased) through LRs & Ors

... Appellant(s)

VERSUS

Banto (deceased) through LRs & Ors

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

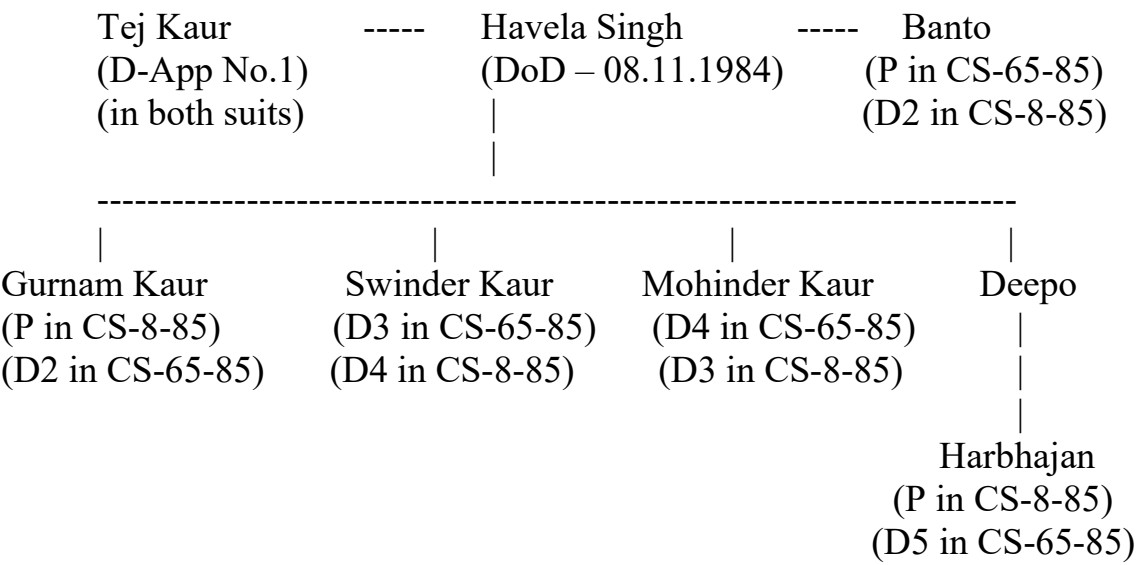
Present : Ms. Deepali Puri, Advocate
for the appellants (in both the appeals).

Mr. Rajinder Sharma, Advocate
for respondent Nos.1(i) to 1(v) in RSA-1537-1989 and
for respondent No.3 in RSA-1883-1989.

ALKA SARIN, J.

1. The present judgment shall dispose off both the above-noted appeals filed by the appellants-Tej Kaur, Swinder Kaur and Mohinder Kaur.

2. Before advertng to the facts relevant to the present *lis*, a pedigree table is being drawn up for a clear understanding of the dispute in hand :



D denotes defendant. P denotes plaintiff and App denotes appellant.

3. The dispute in the present case pertains to the estate of Havela Singh who died on 08.11.1984. Two suits came to be filed, one being Civil Suit No.65 of 1985 by Banto wife of Havela Singh against Tej Kaur, the second wife of Havela Singh, Gurnam Kaur, Swinder Kaur, Mohinder Kaur, daughters of Havela Singh and Harbhajan Singh being grandson of Havela Singh. Banto widow of Havela Singh filed the Civil Suit No.65 of 1985 for declaration to the effect that she was owner in joint possession to the extent of 1/6th share in land measuring 93 kanals 14 marlas fully described in the heading of the plaint situated in Tehsil Ajnala, District Amritsar. It was the case set up by her that Havela Singh was the owner in possession of the suit land and Gurnam Kaur was the daughter of Banto and Havela Singh whereas Swinder Kaur, Mohinder Kaur and Deepo were the daughters of Havela Singh and Tej Kaur. Harbhajan Singh was the son of the Deepo. In the suit, two Wills - one dated 10.12.1973 in favour of Tej Kaur, Swinder Kaur, Gurnam Kaur, Mohinder Kaur and Harbhajan Singh and one dated 12.03.1975 in favour of Tej Kaur, Mohinder Kaur and Swinder Kaur - were also challenged as being forged and fabricated. It was the case set up that no

Will was executed by Havela Singh. It was further the case set up that earlier also the defendant-appellants had filed a civil suit which was dismissed on 22.11.1977 holding that there was no family settlement.

4. In Civil Suit No.65 of 1985, Gurnam Kaur and Harbhajan Singh (defendant Nos.2 and 5) filed a joint written statement admitting the ownership of Havela Singh and stated that a Will dated 10.12.1973 had been executed in favour of Harbhajan Singh, Gurnam Kaur, Mohinder Kaur and Swinder Kaur and that they were owners to the extent of half share on the basis of the said Will. The Will dated 12.03.1975 was denied.

5. In Civil Suit No.65 of 1985, Tej Kaur, Swinder Kaur and Mohinder Kaur (defendant Nos.1, 3 and 4) filed a separate written statement denying that Banto was the widow of Havela Singh and further denying that Gurnam Kaur and Deepo were the daughters of Havela Singh and set up a Will dated 12.03.1975.

6. Civil Suit No.8 of 1985 was filed by Harbhajan Singh and Gurnam Kaur for declaration to the effect that they were owners to the extent of half share by virtue of the Will dated 10.12.1973.

7. The civil suit (CS No.8 of 1985) was contested by Tej Kaur, Mohinder Kaur and Swinder Kaur by filing a joint written statement denying the relationship of Gurnam Kaur with Havela Singh. Even the relationship of Banto was denied and referred to the Will dated 12.03.1975 alleged to have been executed by Havela Singh in their favour.

8. In Civil Suit No.8 of 1985, Banto in her written statement challenged the validity of the Will.

9. On the basis of the pleadings of the parties, the following issues were framed :

In CS-8-1985

1. Whether Smt. Banto is the widow of Havela Singh ? OPD
2. Whether the said Havela Singh executed a valid Will dated 10.12.75 in favour of plaintiffs and defendant Nos.3 and 4 ? OPP
3. Whether the said Havela Singh executed a Will dated 12.3.75 in favour of defendants No.1, 3 and 4 ? OPD
4. Whether the plaintiffs are entitled to the joint possession to the extent of 1/6th share ? OPP
5. Whether Gurnam Kaur plaintiff is the daughter of Havela Singh deceased ? OPP
6. Relief.

In CS-65-1985

1. Whether the plaintiff is the widow of Havela Singh ? OPP
2. Whether the said Havela Singh executed a valid Will dated 10.12.1973 in favour of defendants No.2, 3, 4, 5 ? If so its effect ? OPD
3. Whether the said Havela Singh executed a valid Will dated 12.3.75 in favour of defendants No.1, 2, 3, 4 ? If so its effect ? OPD
4. Whether the plaintiff is entitled to the joint possession to the extent of 1/6th share ? OPP
5. Whether Gurnam Kaur is the daughter of deceased

Havela Singh ? OPD

6. Relief.

10. The Trial Court vide the judgment and decree dated 31.08.1987 held that Banto was the widow of Havela Singh and that Havela Singh had executed a valid Will dated 10.12.1973 in favour of Gurnam Kaur, Swinder Kaur and Mohinder Kaur (his three daughters) and Harbhajan Singh (son of the predeceased daughter Deepo). However, the suit of Banto was dismissed holding her not entitled to joint possession of 1/6th share. Civil Suit No.8 of 1985 filed by Gurnam Kaur and Harbhajan Singh was decreed in their favour to the extent that they were held to be owners in possession to the extent of half share in the suit land and the remaining half share was to be inherited by Swinder Kaur and Mohinder Kaur. Aggrieved by the same, appeals were preferred by Tej Kaur, Mohinder Kaur and Swinder Kaur and cross-objections were preferred by Banto. The appeals as well as the cross-objections were dismissed vide judgment and decree dated 12.04.1989. Two appeals have been preferred by Tej Kaur being RSA No.1537 of 1989 and RSA No.1883 of 1989. Banto has not chosen to challenge the judgments and decrees.

11. Since Banto has not challenged the judgments and decrees passed by the Trial Court and the First Appellate Court before this Court, the only issue which remains to be addressed in the present regular second appeals is regarding the validity of the Will dated 12.03.1975 set up by Tej Kaur and others (appellants herein). Both the Courts had concurrently found that the earlier Will dated 10.12.1973 was the subject matter of dispute in a Civil Suit (Ex.DW10/1) filed by Mohinder Kaur and Swinder Kaur against Havela Singh wherein they had stated that they had come in possession of

the suit property owned by Havela Singh on the basis of a family settlement. In the said suit, Harbhajan Singh had been impleaded as a party and it has also come in the findings that Havela Singh had four daughters, namely, Chindo, Mindo, Gurnamo and Deepo and Harbhajan Singh was stated to be the son of Deepo. The validity of the Will of 1973 was also upheld.

12. Learned counsel representing the appellants in both the regular second appeals would contend that the Will dated 12.03.1975 was proved. However, the same has been rejected on the ground that the scribe was not produced and that the second witness was not examined. It is further the contention that DW2-Joginder Singh who was the attesting witness of both the Wills had clearly mentioned that the second Will dated 12.03.1975 refers to revocation of the earlier Will dated 10.12.1973. It is further the contention of the learned counsel that the validity of the Will dated 10.12.1973 was never proved in accordance with law and hence the same could not have been upheld.

13. *Per contra*, the learned counsel for the respondents would contend that the judgment (Ex.DW10/1) attained finality inasmuch as the same was never challenged by any of the parties. It was clearly held in that decision that Havela Singh had four daughters. It is further the contention that once the Will dated 12.03.1975 talks of revocation of the Will dated 10.12.1973, a very suspicious circumstance which remains unexplained is that in the Will dated 12.03.1975 it has been stated that the only legal heirs are Tej Kaur wife of Havela Singh and two daughters, Mohinder Kaur and Swinder Kaur, whereas the Will dated 10.12.1973 executed by Havela Singh speaks of four daughters, namely, Gurnam Kaur, Swinder Kaur, Mohinder Kaur and Deepo whose son is Harbhajan Singh and as per the Will dated

10.12.1973 the property was to devolve on Gurnam Kaur, Swinder Kaur, Mohinder Kaur and son of Deepo. Neither before the Trial Court nor before the First Appellate Court the said suspicious circumstance has been dispelled with.

14. I have heard the learned counsel for the parties and perused the record.

15. In the present case, as noticed above, the only aggrieved parties are Tej Kaur, Mohinder Kaur and Swinder Kaur who preferred the above-noted appeals on the ground that the Will dated 12.03.1975 set up by them was discarded. The Will dated 10.12.1973 was the subject matter of the Civil Suit decided on 22.11.1977 (Ex.DW10/1). In the said suit a family settlement had been claimed to have been entered into by Mohinder Kaur and Swinder Kaur on the basis of which they claimed to be in possession of the suit property. The said family settlement was held to be not proved. No challenge was laid by any of the parties to the said judgment and decree dated 22.11.1977 which attained finality. The Will dated 10.12.1973 was executed by Havela Singh in favour of Gurnam Kaur, Swinder Kaur, Mohinder Kaur and Harbhajan Singh, whereas the alleged Will dated 12.03.1975 talks of revocation of the earlier Will of 1973, however, it very strangely speaks of the Testator having his wife Tej Kaur and his daughters, namely, Mohinder Kaur, Swinder Kaur as being the only heirs. This suspicious circumstance was not dispelled with either before the Trial Court or the First Appellate Court or even before this Court. The learned counsel for the appellants has been unable to explain as to why a person who had admitted in the earlier Will that he has four daughters would, in the second Will which talks of the revocation of the earlier Will, state that he

has only his wife Tej Kaur and two daughters, namely, Mohinder Kaur and Swinder Kaur. Even the other suspicious circumstance shrouding the Will had not been dispelled with. There is no explanation as to why the Will was scribed and registered at Amritsar and not at Ajnala which is closer to the place of residence of the Testator. No cogent and reliable evidence has been pointed out by counsel for the appellants to interfere with the concurrent findings recorded by both the Courts. No credible and reliable evidence has been highlighted by the counsel for the appellants for this Court to take a contrary view from the one taken by both the Courts. In view thereof, no fault can be found with the findings returned by both the Courts concerned. No other point was argued.

16. In view of the discussion above, this Court does not find any reason to interfere in the concurrent findings of fact returned by both the Courts. No question of law, much less any substantial question of law, arises in the present case. The appeals being devoid of any merit are accordingly dismissed. Pending applications, if any, also stand disposed off.

17.03.2025
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO