

RSA-2317-1989 (O/M)

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2025:PHHC:035578

RSA-2318-1989 (O/M)

2025:PHHC:035579

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on : 18.12.2024

Date of decision : 17.03.2025

RSA-2317-1989 (O/M)

2025:PHHC:035578

Amarjit Singh through his legal heirs and another

..... Appellants

Versus

Parkash Kaur through her LR and others

..... Respondents

RSA-2318-1989 (O/M)

2025:PHHC:035579

Jaswant Singh through his LRs

..... Appellant

Versus

Amarjit Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. B.S. Jaswal, Ms. Vaishali Thakur,
Mr. Ankit Bhardwaj, Advocates
for appellants in RSA-2317-1989.

Mr. M.L. Saggar, Senior Advocate with
Ms. Armaan Saggar, Advocate
for appellant in RSA-2318-1989.

Mr. Anshuman Narula, Advocate
for respondent No. 1 in RSA-2317-1989 and
for respondent No. 3 in RSA-2318-1989.

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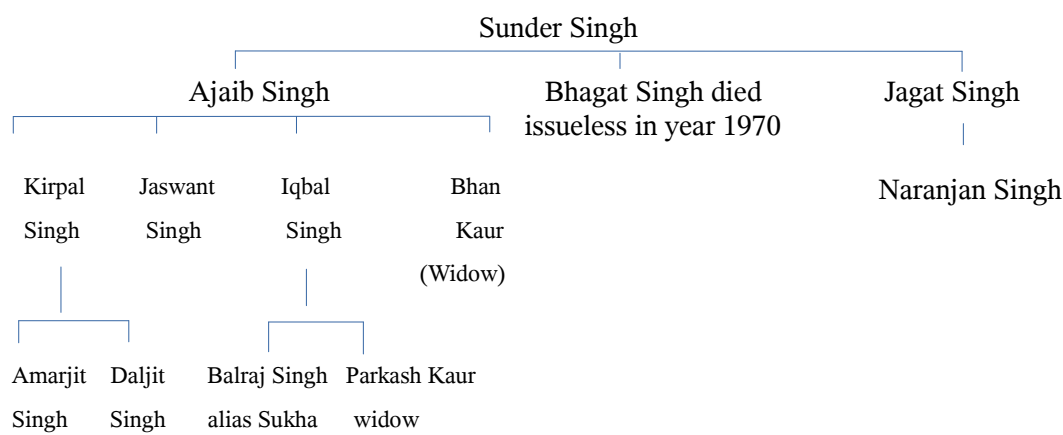
HARSH BUNGER, J.

1. This order shall dispose of abovementioned two regular second appeals, as identical issues of law and facts are involved therein. For brevity, facts have been taken from RSA-2317-1989. For convenience, the parties herein are being addressed as per their status in the original suit.

2. This is plaintiffs' regular second appeal against judgment and decree dated 23.08.1989, passed by learned Additional District Judge, Amritsar, whereby he has set aside the judgment and decree dated 30.08.1986, passed by learned Additional Senior Sub Judge, Tarn Taran, whereby the suit of the plaintiffs was decreed. Consequently, the suit filed by plaintiff was ordered to be dismissed.

3. Briefly, plaintiffs (Amarjit Singh and Daljit Singh, both sons of Kirpal Singh) filed a suit for declaration to the effect that plaintiffs and defendant No. 3, namely, Jaswant Singh, son of Ajaib Singh, are heirs in equal share in the estate of Bhagat Singh son of Sunder Singh on the basis of registered Will dated 09.12.1966, executed by Bhagat Singh (deceased) in their favour. A further prayer for permanent injunction was also made for restraining defendants No. 1 and 2 from seeking partition of the suit land as heirs of Bhagat Singh (deceased) and dis-possessing the plaintiffs and defendant No. 3 from the suit land.

3.1 In order to understand the relationship between the parties, it is necessary to have a look at the family tree of Bhagat Singh (deceased), as reproduced in the plaint, which is as under :-



3.2 It is the pleaded case of the plaintiffs that Bhagat Singh (deceased) executed a registered Will dated 09.12.1966 in favour of plaintiffs, defendant No. 3 (Jaswant Singh) and Iqbal Singh [husband of Parkash Kaur-defendant No. 1 and father of Balraj (minor)-defendant No. 2]. It was stated that as per registered Will dated 09.12.1966, Iqbal Singh was a joint beneficiary under said Will, however, he died during lifetime of Bhagat Singh (testator). It was further stated that defendants No. 1 and 2, claiming themselves to be heirs of Iqbal Singh, got mutation No. 2898 pertaining to the estate of Bhagat Singh (deceased) sanctioned in their favour with connivance of local revenue officials and on that basis, they filed an application for partition of joint khata, which was pending before the revenue authorities. It is the case of the plaintiffs that since Iqbal Singh had pre-deceased testator Bhagat Singh, therefore, registered Will dated 09.12.1966 will be deemed to have lapsed as far as defendants No. 1 and 2 are concerned. Consequently, they had no right to seek partition of joint khata on the basis of mutation No. 2898. Accordingly, the suit was filed with the prayer, as noticed hereinabove.

3.3 Defendants No. 1 and 2 contested the suit by filing their written statement wherein certain preliminary objections were taken that the suit was time barred and that the plaintiffs have no locus standi to file the suit. The averments made in the plaint were also denied. It was stated that the share of Iqbal Singh did not lapse in the presence of defendant No. 2-Balraj.

3.4 The plaintiffs filed their replication to the written statement filed on behalf of defendants No. 1 and 2.

3.5 From the pleading of the parties, the trial Court framed the following issues :-

“1) Whether Bhagat Singh deceased executed any valid will dated 9.12.66 in favour of the plaintiffs and others ? If so, its effects ? OPP

1A) Whether the plaintiffs have locus standi to file the suit ? OP Parties

1B) Whether the amended written statement is in order ? OPD

2) Whether the suit is time barred ? OPD

3) Whether the plaintiffs are estopped by their own act and conduct from filing the present suit ? OPD

4) Whether the suit is not maintainable in the present form ? OPD

5) Whether the defendant No. 1 has no concern with the disputed land ? If so, its effects ? OP

6) Whether Daljit Singh plaintiff has attained the majority, if so, its effects ? OPD

7) Relief.”

3.6 The parties led their respective evidence in support of their claim. The trial Court, vide judgment and decree dated 30.08.1986, decreed the suit of plaintiffs and held that the plaintiffs to the extent of 1/2 share and Jaswant Singh (defendant No. 3) to the extent of 2/3 share, are owners in possession of the estate left by Bhagat Singh on the basis of registered Will dated 09.12.1966. A further decree was granted to the effect that defendants No. 1 and 2 are restrained from seeking partition of the share of the land of deceased Bhagat Singh.

3.7 Feeling aggrieved against the aforesaid judgment and decree dated 30.08.1986, defendants No. 1 and 2 preferred an appeal before learned Additional District Judge, Amritsar, who vide judgment and

decree dated 23.08.1989, allowed the appeal and set aside the judgment and decree of the trial Court and thereby dismissed the suit of the plaintiffs.

4. In the aforementioned circumstances, plaintiffs have filed the regular second appeal (RSA-2317-1989) before this Court. On the other hand, defendant No. 3 (Jaswant Singh) has filed his independent regular second appeal (RSA-2318-1989) before this Court. This is how both regular second appeals have come up for final hearing before this Court.

5. Learned counsel appearing for plaintiffs (appellants in RSA-2317-1989) would submit that concededly Bhagat Singh executed a registered Will dated 09.12.1966, whereby $\frac{1}{3}$ share of his estate was bequeathed in favour of the plaintiffs and $\frac{2}{3}$ share was jointly bequeathed in favour of Iqbal Singh (predecessor-in-interest of defendants No. 1 and 2) and Jaswant Singh (defendant No. 3). It is submitted that admittedly Iqbal Singh had pre-deceased Bhagat Singh (testator) and on demise of Bhagat Singh, mutation No. 2898 of village Panjwar, Tehsil Tarn Taran, District Amritsar, was sanctioned on the basis of registered Will dated 09.12.1966 and the estate of Bhagat Singh was transferred in favour of Jaswant Singh and Iqbal Singh, sons of Ajaib Singh to the extent of $\frac{2}{3}$ share and $\frac{1}{3}$ share was transferred in favour of plaintiffs Amarjit Singh and Daljit Singh, sons of Kirpal Singh. The said mutation came to be sanctioned on 06.03.1970. It is contended that since Iqbal Singh pre-deceased Bhagat Singh (testator), therefore, in terms of Section 106 of Indian Succession Act, 1925 (in short '1925 Act'), the entire $\frac{2}{3}$ share, which was jointly bequeathed in favour of Iqbal Singh

and Jaswant Singh, would fall to the share of Jaswant Singh alone. Accordingly, defendants No. 1 and 2 in the suit had no right, title or interest under the registered Will dated 09.12.1966. It is submitted that the trial Court had rightly decreed the suit, however, the same has been wrongly, illegally and arbitrarily set aside by the lower appellate Court, vide judgment and decree dated 23.08.1989. Accordingly, it is prayed that the judgment and decree dated 23.08.1989 be set aside and that of the trial Court be maintained.

5.1 Same arguments have been raised on behalf of defendant No. 3-Jaswant Singh (appellant in RSA-2318-1989).

5.2 On the other hand, learned counsel representing defendants No. 1 and 2 has opposed the submissions made on behalf of appellants in both the appeals by submitting that under the registered Will dated 09.12.1966, plaintiffs (appellants in RSA-2317-1989) were entitled to only 1/3 share in the estate of Bhagat Singh and vide mutation No. 2898, they had acquired 1/3 share only, therefore, they had no cause of action to file the suit. It is submitted that since Bhagat Singh had bequeathed his 2/3 share in favour of Iqbal Singh (predecessor-in-interest of defendants No. 1 and 2) alongwith Jaswant Singh, therefore, the cause of action (if any) arose in favour of Jaswant Singh, however, he never agitated his claim by filing any suit at least upto the date of filing of suit by plaintiffs in November, 1983 i.e. for more than 12 years. Accordingly, prayer for dismissal of the appeals has been made.

6. I have heard learned counsel for respective parties and also perused the records of the case.

7. Concededly, Bhagat Singh (testator) executed a registered Will dated 09.12.1966 whereunder he bequeathed 1/3 share in favour of plaintiffs (appellants in RSA-2317-1989) and 2/3 share was jointly bequeathed in favour of Iqbal Singh (predecessor-in-interest of defendants No. 1 and 2) and Jaswant Singh (defendant No. 3). It is not disputed that Iqbal Singh pre-deceased Bhagat Singh (testator) and in the said circumstances, Section 106 of 1925 Act gets attracted, which reads as under :-

“106. Legacy does not lapse if one of two joint legatees die before testator. If a legacy is given to two persons jointly, and one of them dies before the testator, the other legatee takes the whole.”

7.1 By virtue of above extracted Section 106 of 1925 Act, Jaswant Singh alone was entitled to 2/3 share of the estate of Bhagat Singh.

8. It appears that upon death of Bhagat Singh, mutation No. 2898 came to be sanctioned by the revenue authorities on the basis of registered Will dated 09.12.1966 and on that basis, defendants No. 1 and 2 being heirs of Iqbal Singh, acquired the share bequeathed in favour of Iqbal Singh. It is interesting to note that vide Mutation No. 2898, the plaintiffs had acquired 1/3 share of the estate of Bhagat Singh on the basis of registered Will dated 09.12.1966, however, Jaswant Singh, who was to take the entire 2/3 share of the estate of Bhagat Singh by virtue of Section 106 of 1925 Act did not institute any suit for claiming entire 2/3 share of estate of Bhagat Singh. Therefore, cause of action (if any) arose only in favour of Jaswant Singh, however, since no claim was filed

by Jaswant Singh, accordingly, it has to be taken that Jaswant Singh had waived off his claim. Here it would be gainful to refer to an observation made by Hon'ble Supreme Court in ***Kanchan Udyog Limited Vs. United Spirits Limited 2017 (8) SCC 375***, which is reproduced as under:-

“23. Waiver could also be deduced from acquiescence, was considered in Waman Shrinivas Kini v. Ratilal Bhagwandas and Co., 1959 Supp (2) SCR 217, observing as follows :

"13.....Waiver is the abandonment of a right which normally everybody is at liberty to waive. A waiver is nothing unless it amounts to a release. It signifies nothing more than an intention not to insist upon the right. It may be deduced from acquiescence or may be implied...."

9. At this stage, learned counsel appearing for defendant No. 3 Jaswant Singh (appeallant in RSA-2318-1989) submits that before the lower appellate Court, Jaswant Singh had filed an application seeking transposition as a plaintiff, however, the same was wrongly declined and it cannot be said that Jaswant Singh has not agitated his claim.

9.1 I have considered the aforesaid submission raised on behalf of Jaswant Singh, however, I do not find any merit in the same because in the suit, the plaintiffs had claimed that they are entitled to 1/2 share of the estate left by Shri Bhagat Singh in accordance with registered Will dated 09.12.1966. Concededly, Jaswant Singh did not file any written statement before the trial Court and rather was proceeded against ex-parte. As against the claim of the plaitntiffs, Jaswant Singh by filing an application for transposition as plaintiff, sought 2/3 share in the estate of Bhagat Singh. It is thus apparent that the relief sought by the plaintiffs and the claim of Jaswant Singh in application for transposition were

conflicting and contradictory to each other, therefore, the lower appellate Court had rightly declined the application filed by Jaswant Singh for being transposed as a plaintiff.

10. In my considered view, the findings of the lower appellate Court, are based upon appreciation of facts/pleadings as well as the evidence on record and I see no illegality or perversity in the findings returned by the lower appellate Court. Furthermore, no question of law, much less a substantial question of law, is involved herein, so as to exercise appellate jurisdiction under Section 100 of Civil Procedure Code, 1908.

11. Resultantly, the present appeals are dismissed, being bereft of any merit.

12. Pending application (s), if any, shall also stand closed.

13. Photocopy of this order be placed on connected case file.

(HARSH BUNGER)
JUDGE

17.03.2025
sjks

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