



In the High Court of Punjab and Haryana, at Chandigarh

1. Regular Second Appeal No. 3163 of 1994 (O&M)

Joginder Kaur
... Appellant(s)

Versus

Kartar Kaur (Since Deceased) through her Legal Representatives
... Respondent(s)

AND

2. COCP No. 999 of 2013(O&M)

Dilbar Singh
... Petitioner(s)

Versus

Joginder Kaur and Others
... Respondent(s)

RESERVED ON: 24.03.2025
PRONOUNCED ON: 25.04.2025

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Munish Gupta and Mr. Paras Kukkar, Advocates
for the appellant – Joginder Kaur (In RSA-3163-1994).

Mr. Sunil Chadha, Senior Advocate
with Ms. Sonia, Advocate
for the applicant-Sunita Chawla (In CM-1546-C-2023
In RSA-3163-1994).

Mr. Naresh Kaushal and Mr. Nitish Kaushal, Advocates
for the respondent (In RSA-3163-1994).

Anil Kshetarpal, J.

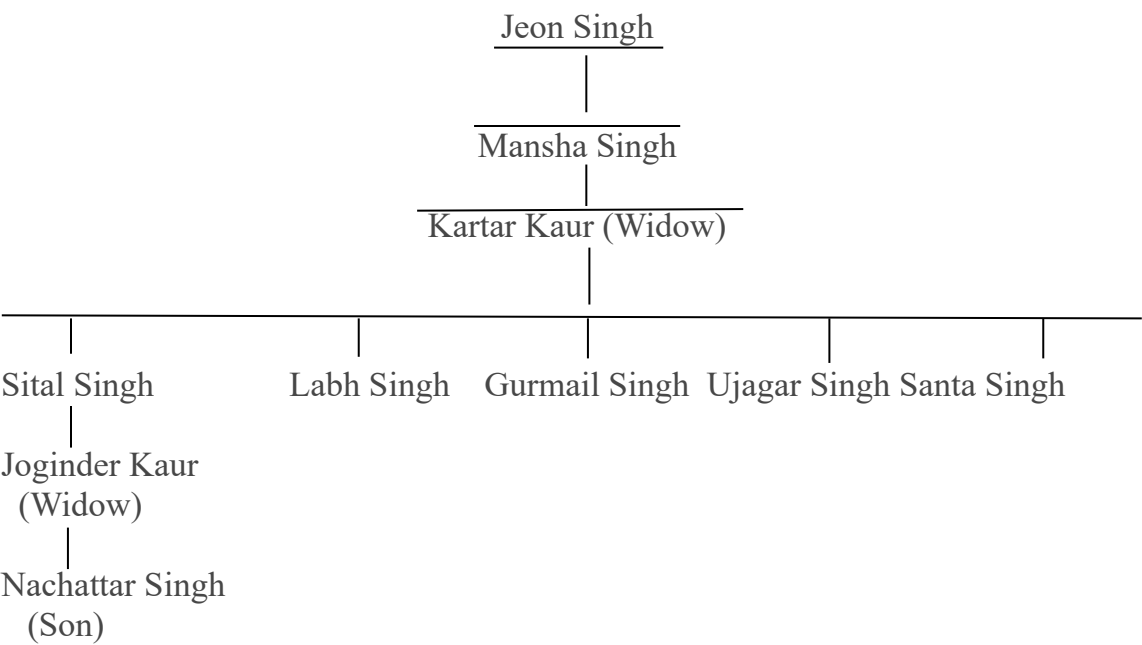
I. Brief Facts of the Case

1. With the consent of the learned counsel representing the parties,

two connected cases i.e. Regular Second Appeal No. 3163 of 1994 and COCP No. 999 of 2013 shall stand disposed of by this common order.

2. The defendant assails the correctness of the concurrent findings of facts arrived at by both the Courts below while decreeing the plaintiff’s suit for declaration that she is owner in possession of the land measuring 10 kanals 15 marlas left behind by her son late Sh. Labh Singh who died on 19.10.1984. On the other hand, the appellant/defendant-Joginder Kaur claims to be a widow of late Sh. Labh Singh. It is her case that previously she was married to the elder brother of late Sh. Labh Singh, namely late Sh. Sital Singh who died in the year 1962. At the time of his death, he left behind widow Joginder Kaur and son Nachattar Singh. Subsequently, Joginder Kaur married Labh Singh by customary marriage, namely Kareva/Chaddar Andazi. Labh Singh executed a Will in her favour on 11.04.1984. Thus, the substance of the dispute is with regard to the property left behind by Labh Singh.

3. The following genealogy would explain the relationship between the parties:-



4. Both the Courts below have held that Joginder Kaur has failed to prove that she was married with Labh Singh and there is inconsistency in the statement of the attesting witnesses and hence, the Will dated 11.04.1984 is surrounded by the suspicious circumstances.

5. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-book along with the photocopy of the requisitioned record.

II. Analysis and Discussion

6. Firstly, both the Courts have erred in observing that Joginder Kaur has failed to give details of the date, month and year of her marriage with Labh Singh in her written statement. Joginder Kaur filed the written statement asserting that she, after the death of her previous husband, namely Sital Singh, re-married with his younger brother, namely Labh Singh and they resided as husband and wife. It was also asserted that she left her son, namely Nachattar Singh with her parents at village Badali and therefore, she and her husband Labh Singh visited the said village quite often. She further asserted that her husband Labh Singh had executed a Will in her favour on 11.04.1984.

7. While appearing as DW.3, Joginder Kaur reiterated the aforesaid fact. Labh Singh died on 19.10.1984 whereas Sital Singh died in the year 1962. In such circumstances both the Courts below have erred in observing that Joginder Kaur failed to make averments with regard to the date, month and year of her marriage with Labh Singh in her written statement.

8. The first significant issue is as to “whether Joginder Kaur

married Labh Singh or not?” The first reason assigned by both the Courts below to the effect that she, while filing the written statement, has failed to give specific, time, date, month and year of her marriage, is incorrect. It has also been observed that the manner in which her marriage took place has not been incorporated in the pleadings. Another question that arises for consideration is, “whether it was a kareva marriage performed with the ceremony of “Chaddar Andazi” ceremony?”

9. In the considered opinion of this Court, the evidence is not required to be incorporated in the pleadings as per Order VI Rule 2 of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”). Joginder Kaur has disclosed in her written statement that she contracted kareva (customary) marriage with Labh Singh after the death of her previous husband, namely Sital Singh. Joginder Kaur has appeared as DW.3. She has categorically stated that she was married to Labh Singh after the death of her previous husband Sital Singh. It has been stated by her that Nachattar Singh (son) grew at village Badali after Sital Singh’s death where she owns land and her parents were residing. Despite lengthy cross-examination, the credibility of her deposition could not be impeached. Undoubtedly, she has stated that she is a registered voter and her ration card shows the address of village Badali. However, that itself would not be sufficient to conclude that she never married Labh Singh. In fact, when Joginder Kaur appeared for her cross-examination, the learned counsel appearing for the plaintiff did not cross-examine her on the aspect of time, date, month and year or manner in which her marriage took place. In the absence of thereof, both the Courts below have erred in returning findings against Joginder Kaur with regard to

her marriage with Labh Singh. Moreover, PW.2 Gian Singh admits that Joginder Kaur married Labh Singh, though, subsequently, he resiled from the statement and volunteered that Joginder Kaur never married Labh Singh. However, it is evident that Gian Singh is not a reliable witness.

10. Moreover, Gian Singh is the Headman of village Dhakoran Kalan. When mutation of inheritance of Labh Singh was sanctioned in favour of Joginder Kaur, it is he who attested the same. Subsequently, he denied his signatures. However, defendant-Joginder Kaur examined DW.5 Arvind Sood, Handwriting and Fingerprint Expert, to prove the Gian Singh's signatures on the mutation. Furthermore, PW.3 Daljit Singh, Patwari, admits that the mutation was sanctioned exclusively in favour of Joginder Kaur as Gian Singh and Ajit Singh, Headman and Lambardar, respectively, of villages Dhakoran Kalan and Naglian, appeared before the Revenue Authorities for sanction of mutation in favour of Joginder Kaur. Furthermore, the plaintiff has not led any expert evidence to prove that Labh Singh did not execute the Will which also corroborates Joginder Kaur's stand to the effect that she was the widow of Labh Singh. In the Will also, it is disclosed that Joginder Kaur is married to Labh Singh.

11. The second reason assigned by the Court to discard the Will is again erroneous because Gian Singh's oral deposition has been preferred over the documentary evidence. Gian Singh is a not a reliable witness because he has, at one stage, admitted that Joginder Kaur married Labh Singh. The relevant extract of his statement is reproduced as under:-

“....It is correct that Joginder Kaur married Labh Singh after the death of Sital Singh but she did not remained (sic) with

Labh Singh. Again said she was not married with Labh Singh.”

12. Similarly, both the Courts have also held that both the attesting witnesses of the Will, namely, Dalbir Singh and Mohinder Singh have failed to disclose the date of alleged marriage and details of the family of Labh Singh. Both these witnesses were the attesting witnesses of the Will. They are the residents of village Badali and not of village Dhakoran Kalan. Hence, they were not expected to know about the family of Labh Singh.

13. The next reason assigned by the Court is equally erroneous because the defendant's plea could not be disbelieved on the ground that she failed to examine any witness from village Dhakoran Kalan, particularly when it is specifically recited in the Will by Labh Singh that his mother and brothers are notorious and they are out to grab the property and all the residents of the village are afraid of his family. Similarly, the Court has also erred in drawing an adverse inference on the ground that Joginder Kaur is enrolled as a voter in village Badali. It is noted here that village Badali and village Dhakoran Kalan are located in the same tehsil. Both these villages are located close to each other. Even if it is proved that Joginder Kaur was predominantly residing with her parents, that itself would not be sufficient to discard her plea to the effect that she was married to Labh Singh particularly when she is admittedly an owner of the land in village Dhakoran Kalan after the death of her first husband, namely Sital Singh and Labh Singh executed a Will in her favour.

14. It would be noted here that Kartar Kaur has admitted that the present suit has been got filed by her son Gurmail Singh and the dispute with regard to the Gurmail Singh's property is pending between Joginder Kaur on

one hand and Kartar Kaur on the other hand. Bhag Singh has admitted that Joginder Kaur has also challenged the consent decree suffered by Mansha Singh in favour of his two sons. From overwhelming evidence, it is proved that Joginder Kaur married Labh Singh after the death of her previous husband Sital Singh, who was the elder brother of Labh Singh.

15. Now, let us examine the reasons recorded by the First Appellate Court to discard the Will. The first reason assigned by the First Appellate Court is incorrect because the Will was exhibited as Ex.D1 in the statement of DW.3 Joginder Kaur. She was never called upon to produce the original document (Will). It was exhibited without any objection from the plaintiff's counsel. During her cross-examination, she was never asked to explain the reasons for not producing the original. She stated that she had produced the Will at the time of sanction of the mutation. Similarly, when both the attesting witnesses, namely Mohinder Singh and Dalbir Singh appeared in evidence, they were never asked to explain the reasons for not producing the original Will. The scribe, namely Randhir Singh appeared as DW.4. His explanation was also never sought with regard to non-production of the original Will. Hence, the First Appellate Court has erred in discarding the Will on this score.

16. The second reason assigned by the First Appellate Court is also discreet. The Court has discarded the deposition of the attesting witnesses on the ground that these attesting witnesses and the scribe are the residents of village Badali and not of village Dhakoran Kalan where the land was situated. It is the positive case of Joginder Kaur and the attesting witnesses that the Will was scribed at village Badali when Labh Singh was residing in

the said village. The son of Joginder Kaur was residing in village Badali. Hence, the Will was executed at village Badali. Moreover, it has been recited in the Will by Labh Singh that his mother and other family members are of quarrelsome nature and the villagers are afraid of them. He also had dispute with his brothers. Hence, the statements of the attesting witnesses and the scribe on the ground that they were residing in village Dhakoran Kalan were erroneous.

17. Similarly, the First Appellate Court has also erred in observing that Joginder Kaur has failed to prove that she was residing with Labh Singh at village Dhakoran Kalan. At the time of the execution of the Will, Labh Singh was residing at village Badali with his family where Joginder Kaur and her son are the registered voters and have a ration card of the said address. Similarly, the First Appellate Court has also erred in observing that Joginder Kaur had no connection with the family of Labh Singh (the Testator), after the death of Sital Singh. The aforesaid observation is without any basis. Similarly, the First Appellate Court has also erred in observing that the Will was not produced at the time when the mutation was sanctioned in favour of Joginder Kaur. It would be noted here that it is evident from the statement of Dalbir Singh, Patwari, that the mutation of the property left behind by Labh Singh was sanctioned in favour of Joginder Kaur on the statements of two headmen, namely Gian Singh and Ajit Singh of village Dhakoran Kalan. In the absence of the Will, the mutation would have been sanctioned in favour of two Class-I heirs of Labh Singh, namely Kartar Kaur and Joginder Kaur. Hence, the First Appellate Court has erred in observing that the Will was kept secret. Similarly, the First Appellate Court has also

erred in observing that the scribe of the Will was not a professional scribe and the Will is not registered. It is well settled that the registration of the Will is optional and is not mandatory. The Courts have also failed to record reason for making observation that the evidence of the attesting witness is full of discrepancies. The learned counsel representing the respondent has also failed to draw the attention of this Court to the discrepancies in the statements of both the attesting witnesses. As per Section 68 of the Indian Evidence Act, 1872, the Will is required to be proved by examining one of the witnesses who have attested the Will. However, in the present case, both the attesting witnesses have not only proved the Will but also their credibility could not be impeached despite lengthy cross-examination.

18. From the overall discussion, it is evident that both the Courts below have erred in correctly appreciating the evidence and have failed to examine the evidence in proper perspective. Though the scope of interference in the regular second appeal filed under Section 100 of CPC is limited, however, in the States of Punjab and Haryana and Union Territory, Chandigarh, the regular second appeals are filed under Section 41 of the Punjab Courts Act, 1918, which permits the Court to examine the evidence if there is substantive error in the judgments of both the Courts below which goes to the roots of the case. It has been proved that Joginder Kaur inherited the property from her first husband i.e. Sital Singh and she continued to not only own the same but also cultivate the same. There was a reason for disputing her marriage because she challenged the consent decree suffered by Mansha Singh in favour of his two sons while excluding his two sons, namely Sital Singh and Labh Singh. She was also litigating qua her rights in

the property of Gurmail Singh, brother of Labh Singh. It is not abnormal that after the death of elder brother, his widow marries younger brother which is quite common in the area.

19. Keeping in view the aforesaid reasons, the judgments passed by both the Courts below are set aside and the suit filed by Kartar Singh shall stand dismissed.

20. In COCP No. 999 of 2013, Dilbar Singh son of Bhag Singh prays for initiating the contempt proceedings on the alleged willful disobedience of interlocutory order passed on 28.03.1995 while directing the parties to maintain *status quo* regarding possession as it existed on 21.12.1994. He alleges that Joginder Kaur has sold the property on 08.12.2013 in favour of Baljinder Kaur. It is evident that the parties were directed to maintain *status quo* and there was no restraint on alienation of the property by Joginder Kaur. In any case, now the appeal filed by Joginder Kaur has been allowed. Hence, there is no reason to proceed further in the petition for initiation of the contempt proceedings.

III. Decision

21. Consequently, the regular second appeal is allowed, whereas the contempt petition is dismissed.

22. The miscellaneous application(s) pending, if any, shall stand disposed of.

**(Anil Kshetarpal)
Judge**

April 25, 2025

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No