**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****122****RSA-1403-2022 (O&M)****Date of decision: 19.11.2025****Lakhwinder Singh****...Appellant(s)****Vs.****Balkar Singh and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

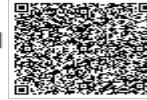
Present:- Mr. Tarun Singla, Advocate for the appellant.

NIDHI GUPTA, J.

Present Second Appeal has been filed by the plaintiff against the concurrent judgments and decrees of the Id. Courts below, whereby suit filed by the appellant for declaration and consequential relief of permanent injunction, has been dismissed by both the Courts below.

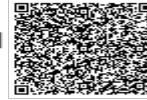
2. Brief facts of the case are that defendants No.1 to 3 are the real brothers of the plaintiff; and performa defendants No. 4 and 5 are the real sisters of the plaintiff; and performa defendant No.6 is the mother of the plaintiff. All the above parties are legal heirs of deceased Himmat Singh.

3. Learned counsel for the appellant *inter alia* submits that Himmat Singh had got transferred land measuring 44K 9M and 4 Sarsai out of suit land in favour of defendants No. 1 to 3 on the basis of an alleged oral Family Settlement; pursuant to which Civil Decree dated 01.03.2013 was passed in favour of defendants No.1 to 3, to the exclusion



of the plaintiff. It is contended that firstly nothing has been brought on record by the defendants to show that any Family Settlement ever took place between the parties. Moreover, it is held by the Hon'ble Supreme Court in **Badami (Deceased) By her L.R. v. Bhali (SC) : Law Finder Doc Id # 371044**, that Family Settlement should be equitable. In the present case, any alleged Settlement is not equitable as plaintiff has been excluded for no apparent reason. Therefore, Civil Decree dated 01.03.2013 was also liable to be set aside as the plaintiff and performa defendants were not party in the suit. Therefore, Mutation No. 21865 entered and sanctioned on the basis of said Civil Decree is also liable to be set aside.

4. It is further submitted that Himmat Singh had also executed a registered Will No. 228 dated 05.12.2013 in favour of defendants No.1 to 3 regarding land measuring 17K 19M 02 Sarsai out of suit land; which is also liable to be set aside as the same was executed by playing fraud upon the deceased Himmat Singh. It is pointed out that Himmat Singh during his lifetime had previously executed Will No. 138 dated 06.09.2010 in which it was stated that land measuring 08K 0M out of total land situated in village Dhani Lehranwali and also constructed house at village Rania, District Sirsa was to be given to the plaintiff; and the remaining land was to be divided between the defendants in equal shares. It is submitted that from the above facts, it is clear that Himmat Singh was having love and affection towards all his sons, including the plaintiff; and there was no reason to exclude the plaintiff from his legal and valuable rights through the impugned Will in question. It is contended that this also indicates that

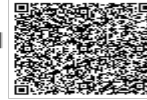


the defendants No.1 to 3 had got executed and registered Will in their favour by playing fraud upon Himmat Singh.

5. It is also submitted that the suit land was ancestral and coparcenary property. Therefore, Himmat Singh was not having any right or authority to execute any such Will only in favour of defendants No. 1 to 3. After the death of Himmat Singh, Mutation of Inheritance No. 23309 dated 19.08.2015 was entered in the revenue record in the name of the plaintiff, defendants and perma defendants which was legal and lawful and binding upon the parties. However, the defendants on the basis of above said judgment and decree dated 01.03.2013 had got entered and sanctioned the impugned Mutation No. 21865 in their favour which is liable to be set aside. It is reiterated that the above said decree dated 01.03.2013 is collusive Consent Decree. It is further submitted that the plaintiff/appellant is in the Indian Army. It is contended that there were cordial relations of Himmat Singh with all his 4 sons which is the plaintiff and defendants No. 1 to 3. Yet, the registered Will was executed in favour of defendants No.1 to 3 only. No reasons have been assigned in the Will dated 05.12.2013 for excluding the appellant from inheritance.

6. It is accordingly prayed that the present Appeal be allowed; and the impugned judgments and decrees of the Courts below be set aside.

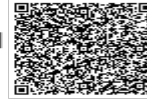
7. No other argument is raised on behalf of the appellant. I have heard learned counsel and perused the case file in great detail. I find no merit in the submissions made on behalf of the appellant.



8. It has firstly been contended on behalf of learned counsel for the appellant that Himmat Singh could not have disposed of the suit land by way of Will dated 05.12.2013 Ex.D1 as the suit land is ancestral in nature. However, the said contention of the appellant is borne out to be factually incorrect from the voluminous revenue record produced by the defendants. Defendants had placed on record various mutations Ex.D3, Ex.D6, Ex.D8 and Ex.D10 which establish that part of suit land was purchased by Himmat Singh through various Sale Deeds. Thus, it was proved that part of suit property of deceased Himmat Singh was his self acquired property.

9. Further, Mutation Ex.P10 clearly reflects that part of suit land was inherited by Himmat Singh from his father Ujagar Singh by way of Will dated 05.03.1983 pursuant to which the aforesaid Mutation No. 10262 Ex.P10 was entered in favour of Himmat Singh alongwith other heirs. Therefore, once the suit property is devolved upon Himmat Singh through Will, the same will be considered to be self acquired property of legal heirs of Ujagar Singh. From this fact, it is established that suit land was not ancestral in nature as alleged. Thus, Himmat Singh was competent to dispose of the suit land in any manner, he deemed fit.

10. The next contention of the appellant is that Consent Decree dated 01.03.2013 was collusive and fraudulently obtained, as appellant was not impleaded as party in the said Civil Decree. Even the said plea of the appellant is liable to be rejected as, as noted above, the suit property is self acquired property of Himmat Singh. As such, he is competent to



transfer his share of the suit property through civil suit without impleading all his family members.

11. As regards the Will dated 05.12.2013 Ex.D1, the same is a registered document therefore, presumption of truth is attached to it. Attesting witness to the Will namely, Vinod Kumar DW4 has deposed that he had seen Will Ex.D1. DW4 has identified his signature upon the Will as witness. Vinod Kumar has also deposed that after examination, Himmat Singh had thumb-marked the Will. DW4 further deposed that photographs were taken. DW4 identified his photograph at point B and also identified photo of Himmat Singh at point A. The second attesting witness to the Will namely, Balwinder Singh was examined as DW5 who deposed that Will dated 05.12.2013 was drafted by him on instructions of Himmat Singh. He deposed that he had seen Will Ex.D1; and Himmat Singh had thumb marked on the Will in his presence as well as in the presence of other witnesses. DW5 had also signed the said Will as Deed Writer. Charan Singh/defendant No.3/DW6 through his Affidavit filed during examination-in-chief, had reiterated the entire averments made in the written statement. Nothing favourable to the plaintiff could be deduced from the cross-examination of the said witnesses DW4, DW5 and DW6. Thus, the Will Ex.D1 was duly proved in accordance with law.

12. As regards contention of the appellant about previous Will dated 06.09.2010 executed by Himmat Singh, the same is of no consequence, as in the registered Will dated 05.12.2013, it is clearly mentioned that the said earlier Will was cancelled through this new Will.



Furthermore, the present Will Ex.D1 also bears a clear recital that Himmat Singh has already previously given enough of his estate to the plaintiff and for this reason, the plaintiff is being excluded in the present Will dated 05.12.2013.

13. The aforesaid judgment in **Badami’s case (supra)** relied upon by learned counsel for the appellant is distinguishable on facts and law and the appellant cannot derive any benefit from the said judgment.

14. Learned counsel for the appellant is unable to controvert or dispute the above said facts and findings.

15. In view of the discussion above, no ground is made out to interfere in the concurrent judgments and decrees of the learned Courts below. The present Regular Second Appeal is hereby **dismissed**.

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

19.11.2025

Divyanshi

(NIDHI GUPTA)
JUDGE

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