



**RSA-4136-2001(O&M)
and other connected case**

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

RSA-4136-2001(O&M)

Ajit Singh (since deceased) through his LRs

..Appellant

Versus

Rattan Singh (since deceased) through his LRs and others

..Respondents

RSA-3567-2002(O&M)

Rattan Singh (since deceased) through his LRs and another

..Appellants

Versus

Smt. Bachan Kaur and others

..Respondents

**Reserved on : 26.03.2025
Date of decision:24.04.2025**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Aditya Dassaur, Advocate for the appellant
in RSA-4136-2001

Mr. R.S.Ghuman, Advocate
for the respondents in RSA-4136-2001
and for the appellants in RSA-3567-2002

ANIL KSHETARPAL, J.

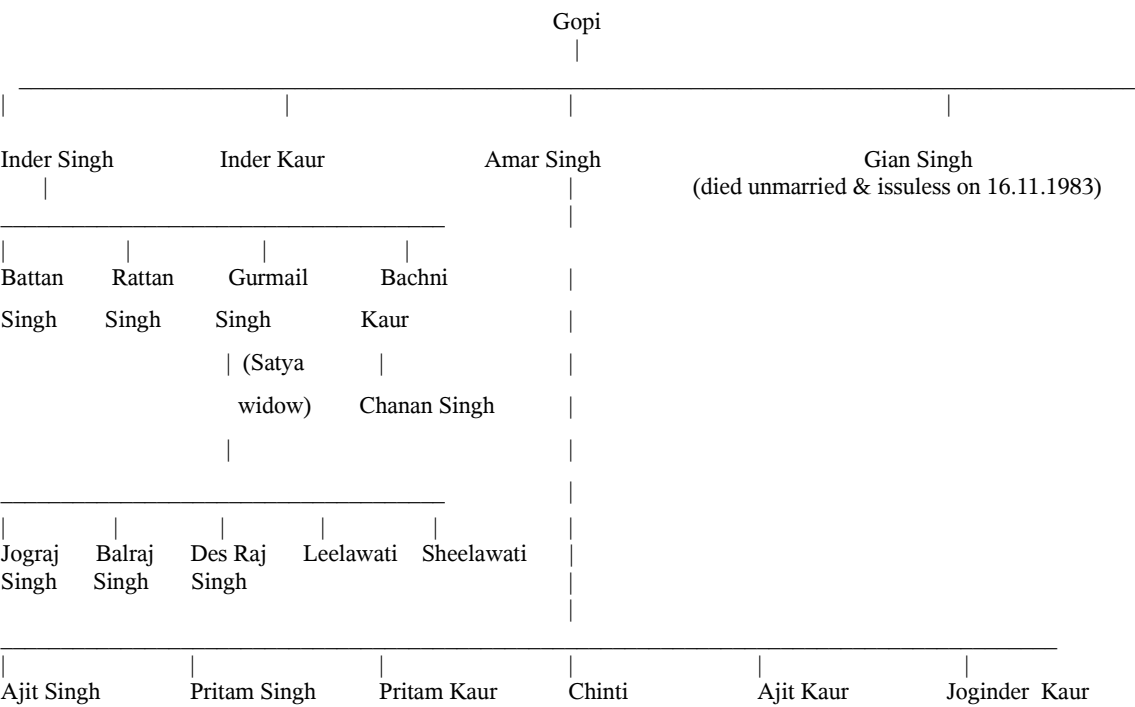
1. With the consent of the learned counsel representing parties two connected cross Regular Second Appeals shall stand disposed of by this common order.

2. In this litigation, inheritance of property left behind by late Sh.Gian Singh is subject matter of dispute. He died unmarried and issueless



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on 16.11.1983. The following genealogy illustrates the relationship of the parties:-



3. The plaintiffs are Rattan Singh son of Inder Singh and Pritam Singh son of Amar Singh whereas the suit has been contested only by defendant no.16 i.e Ajit Singh son of Amar Singh.
4. The plaintiffs have propounded the Will dated 13.11.1983 whereas defendant no.16 propounded the registered Will dated 24.06.1975.
5. The plaintiffs have examined PW1 Darshan Kumar (scribe) and PW2 Dev Raj Sharma (attesting witness of the Will dated 13.11.1983) Ex.P1. On the other hand, defendant has examined DW1 Amrik Singh (attesting witness of the Will dated 24.06.1975) and DW2 Jagtar Singh (official from the Registration Office).
6. On a careful reading of the Will Ex.P1 dated 13.11.1983, it becomes evident that Gian Singh has superseded the previous Will by specifically referring to same. Will dated 24.06.1975 has been proved by examining its attesting witness DW1 Amrik Singh who has proved its



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execution in accordance with Section 68 of the Indian Evidence Act, 1872. Though its original has not been produced, however, the defendant Ajit Singh has claimed that it was lost. The second copy of the Will has been proved by examining Jagtar Singh official from the office of the Sub Registrar. Both the courts have erred in reading one sentence of the deposition of Amrik Singh that he has seen the original today outside the court. In the next sentence, he has stated that it is the same copy which has been produced as Ex. D1. Hence, defendant has not withheld the original. Although Ajit Singh failed to lodge police report with respect to loss however that would not be sufficient to discard a registered Will. Examination of the second attesting witness was not required. Moreover, Gian singh while executing second Will on 13.11.1983 supersedes the previous Will. Hence, both the courts have erred in recording a finding that the Will Ex.D1 is not proved. Hence, the same is set aside.

7. The Will dated 13.11.1983 is Ex.P1. It has been scribed on two running pages. Gian Singh the testator has stated that he is resident of Village Baljitpur, Tehsil Nawanshahr, District Jalandhar and he is unmarried and hence does not have any issue. He refers to the previous Will executed in favour of Ajit Singh who had promised to serve him but did not bother. It is recited that in the year 1977, the testator has started residing with his nephew Pritam Singh at H.No.330-D, Mahesh Nagar, Ambala Cantt. Pritam Singh and his children are taking care of him. His another nephew Rattan Singh son of Inder Singh who is residing in Prithvi Nagar, Jagadhari Workshop has not only been visiting him but also helping him by rendering financial help. Hence, he has executed a Will in favour of his two nephews.



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Both the pages are thumb marked by Gian Singh. First page of the Will is signed by Dev Raj, attesting witness. The second page is signed by another attesting witness namely Pakshi Varyam Singh. It is scribed by a professional scribe namely Darshan Singh who has been examined as PW1.

8. The courts below have discarded the Will dated 13.11.1983 on following grounds:-

- i) The Will does not refer to other heir.
- ii) The testator dies after three days of its execution.
- iii) The Will Ex.P1 was not registered whereas previous one was registered.
- iv) Dev Raj Sharma and the plaintiff admit that Gian Singh fell ill
- v) Scribe was not licensed. His register was not page marked and not checked by the Registrar.
- vi) Signature of the attesting witness are missing in the register whereas it is not specified whether Gian Singh appended his left or right thumb impression.
- vii) There are certain blank papers in the register
- viii) The conduct of the scribe is suspicious.
- ix) It was executed at Ambala where one of the beneficiary and the attesting witnesses resides but none of them belong to Village Bajitpur
- x) Recital superseding the previous Will makes the Will doubtful.



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xi) Pritam Singh one of the beneficiary took active part till its execution.

xii) Des Raj says that testator dies 4-5 years after its execution.

9. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook. alongwith the requisitioned record.

10. On opportunity given, learned counsel representing the parties have also filed their written submissions.

11. While examining testamentary disposition the court is not expected to sit with a mindset of a detective who looks at everything with suspicion. There has to be some foundation to form an opinion of presence of suspicious circumstances which are required to be put to the propounder or the attesting witnesses in order to give them opportunity to furnish an explanation. In the absence thereof, it is not expected to discard a Will which has been proved on the ground of suspicion. The courts are expected to take a holistic view while having pragmatic approach.

12. In this case, the testator Gian Singh was unmarried and thus, issueless. Hence, he was not having any class I heir. When he died his one brother had predeceased him whereas his other brother died 10 months after his death. Hence, he was only having Class II heirs. The Will dated 13.11.1983 has been produced. It has been proved by examining the scribe and Sh. Dev Raj Sharma, one of the two attesting witnesses. Dev Raj Sharma has been cross-examined at length but his credibility could not be impeached despite cross-examination. One sentence in his statement to the



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effect that Dev Raj Sharma died after 4-5 years after the execution of the Will will not be sufficient to discard the deposition of the attesting witness. It is recited in the Will that after his death, his two nephews namely Pritam Singh and Rattan Singh shall equally inherit his property whereas the other heirs would have no right, title or interest in the same. Hence, it is incorrect that the Will does not refer to other heirs. Moreover, it is not requirement of law that other heirs should be specifically referred to and they should be particularly disinherited from the property.

13. Similarly, there is no evidence to the effect that Gian Singh's decision making capacity was compromised, even if he died after three days. Gian Singh has appended his two thumb impressions. No effort has been made by the defendant to prove that these thumb impressions were not appended by Gian Singh. In such circumstances, the death of Gian Singh, testator after three days of the execution of the Will would not be sufficient to conclude that it was surrounded by suspicious circumstances, particularly when there is no evidence that Gian Singh is admitted in any hospital at the time of execution of the Will. As per Section 17 of the Registration Act, 1908, the Will is not required to be registered. It's registration is optional. Hence, it cannot be treated as a document surrounded by suspicious circumstances, even if the previous Will was registered.

14. Similarly, even if the register of the scribe of the Will is not page marked or checked by the Registrar, still the validity of the Will would not be adversely affected because there is no allegation that the execution of the Will is pre-dated. The scribe of the Will may not be a person of credibility, however, it would not be sufficient to discard the Will,



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particularly when no evidence has been led by the defendant to prove that the Will was never thumb marked by Gian Singh. Moreover, there is no provision for appending the signatures of the attesting witnesses in the register of the scribe. Similarly, Section 63 of the Indian Succession Act, 1925 does not makes it mandatory that there should be specification as to whether thumb impression is of the right hand or the left hand.

15. The courts have also erred in discarding the Will on the ground that it was executed in Ambala, particularly when it is proved that Gian Singh was residing at Ambala with the family of his nephew Pritam Singh as is evident from the voters list for the year 1982 (Ex.P5). Gian Singh was residing with Pritam Singh and his wife in H.No.330-D, Ward No.8, Ambala Cantt. Moreover, there is no evidence that Pritam Singh influenced the decision making process of executing the Will. Once the Will is being executed at Ambala, the attesting witnesses were expected to the resident of the same place. Moreover, it is evident that defendant has made no attempt to prove that Gian Singh did not thumb mark the Will, particularly when thumb impression of Gian Singh was available in the registered Will which could be compared with Will Ex.P1.

16. The courts are expected to honour the wishes of the testator. Defendant no.16 Ajit Singh has appeared as PW3 in evidence. He admits that Gian Singh died at Ambala Cantt and he was cremated and his last rites were performed at Ambala Cantt. In these circumstances, there was hardly any doubt about the fact that Gian Singh used to reside at Ambala during his last days of life.



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17. It is evident that Gian Singh bequeathed his property equally in favour of Rattan Singh and Pritam Singh. Rattan Singh is son of Inder Singh whereas Pritam Singh is son of Amar Singh. Gian Singh was residing with Pritam Singh. Had Pritam Singh influenced the testator he would have got the Will executed in his favour and not in favour of his cousin Rattan Singh. Moreover, Pritam Singh is brother of Ajit Singh who was the beneficiary of the previous Will. Authenticity of the Will is further established on the fact that Gian Singh superceded the previous Will while specifically referring to the same.

18. Keeping in view the aforesaid discussion, the judgments passed by the courts below are set aside and the suit filed by the plaintiffs shall stand decreed. Consequently, RSA-4136-2001 filed by Ajit Singh is dismissed whereas RSA-3567-2002 filed by Rattan Singh is allowed.

19. All the pending miscellaneous applications, if any, are also disposed of.

**(ANIL KSHETARPAL)
JUDGE**

24.04.2025

rekha

Whether speaking/reasoned Yes/No

Whether reportable Yes/No