

2025:PHHC:017375



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

RSA-3787-2019 (O&M)
Reserved on : 21.01.2025
Pronounced on : 06.02.2025

MANJEET SINGH AND ORS

....Appellants

VERSUS

SURINDER KAUR

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. R.S. Chauhan, Advocate for the appellants.

ALKA SARIN, J.

1. The present appeal has been preferred by the defendant-appellants challenging the judgment and decree dated 22.01.2015 passed by the Trial Court and judgment and decree dated 05.03.2019 passed by the First Appellate Court.

2. Brief facts relevant to the present *lis* are that the plaintiff-respondent filed a suit for declaration and permanent injunction averring therein that she is joint owner in possession to the extent of one-seventh share of land measuring 106 Kanals 8 Marlas, fully described in the plaint, as per the jamabandi for the year 1985-86 and that the mutation No.3014 dated 30.04.1996 sanctioned in favour of the defendant-appellants and subsequent revenue entries were illegal, null and void and not binding on the rights of the plaintiff-respondent. It was the case set up in the plaint that the plaintiff-respondent was married to Guljeet Singh @ Gurmeet Singh and there was no issue born out of the wedlock. Guljeet Singh died on

07.05.1988. During the lifetime of Guljeet Singh, he and his brothers, namely, Sucha Singh, Gurcharan Singh, his cousins, namely, Harbhajan Singh, Surjeet Singh, Baljeet Singh and Randhir Singh had purchased the suit land in equal shares to the extent of one share each and mutation was also sanctioned in their favour. After the death of Guljeet Singh the plaintiff-respondent remained in joint possession of the suit land to the extent of Guljeet Singh's share being his only legal heir. In 1989 the plaintiff-respondent, at the instance of the family members, was remarried with Sucha Singh brother of Guljeet Singh and out of the said wedlock, one daughter, namely, Manpreet Kaur, was born on 28.11.1990. Sucha Singh also died on and after the death of Sucha Singh, the cousin brothers started harassing the plaintiff-respondent and she left her matrimonial home and started living in her parental home where her parents got her married to one Jaswant Singh. It was further averred that in October 2007 the plaintiff-respondent asked the other co-sharers to get the suit land partitioned by metes and bounds and then the defendant-appellants started to allege their right as owners in the share of the plaintiff-respondent and stated that they have become owners of the share of Guljeet Singh on the basis of an oral Will of 18.01.1988 and they have also got entered their names in the revenue records as owners. Hence, the present civil suit.

3. The defendant-appellants filed their joint written statement and admitted that the plaintiff-respondent was married to Guljeet Singh and that no child was born out of the wedlock. It was the case set up that the plaintiff-

respondent had illicit relations with one Jaswant Singh and therefore the marriage between Guljeet Singh and the plaintiff-respondent was dissolved in November 1987 with the intervention of the Panchayat. Thereafter, the plaintiff-respondent left the society of Guljeet Singh and started living with Jaswant Singh. It was further the case that Guljeet Singh was being served by the defendant-appellants and executed an oral Will in their favour and he died on 07.05.1988. The marriage between Sucha Singh and the plaintiff-respondent was denied and it was denied that she ever gave birth to a daughter, namely Manpreet Kaur.

4. Replication was filed. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the plaintiff is entitled to the relief of declaration, as prayed for ? OPP
2. Whether the plaintiff is entitled to the relief of permanent injunction, as prayed for ? OPP
3. Whether the suit of the plaintiff is not maintainable ? OPD
4. Whether the plaintiff has no *locus standi* and cause of action to file the present suit ? OPD
5. Whether the plaintiff is stopped from filing the present suit by her own act and conduct ? OPD
6. Whether the plaintiff has not come to the Court with clean hands and concealed true and material facts from the Court ? OPD

7. Relief.

5. The Trial Court vide judgment and decree dated 22.01.2015 decreed the suit. Aggrieved by the same an appeal was preferred by the defendant-appellants which appeal was dismissed by the First Appellate Court vide judgment and decree dated 05.03.2019. Hence, the present regular second appeal by the defendant-appellants.

6. The learned counsel for the defendant-appellants has contended that both the Courts have erred in decreeing the suit of the plaintiff-respondent. The two-fold arguments raised by the learned counsel for the defendant-appellants is firstly qua the oral Will alleged to have been executed by Guljeet Singh on 18.01.1988 in favour of the defendant-appellants and the second argument is regarding the fact that Guljeet Singh had divorced the plaintiff-respondent in the year 1987 with the intervention of the Panchayat. The learned counsel has further contended that on the basis of the oral Will of Guljeet Singh, mutation No.3014 was sanctioned on 30.04.1996 and hence the plaintiff-respondent had no right in the property.

7. Heard.

8. In the present case the dispute is qua the property left behind by Guljeet Singh who was admittedly the husband of the plaintiff-respondent. Guljeet Singh is stated to have died issueless on 07.05.1988. Thereafter the case set up by the plaintiff-respondent was that she was remarried to Sucha Singh – the brother of Guljeet Singh – and one daughter, namely, Manpreet Kaur was also born on 28.11.1990. After the death of Sucha Singh on 02.08.1990, the plaintiff-respondent left her matrimonial home and her

parents got her married to one Jaswant Singh. The defendant-appellants have denied the marriage of the plaintiff-respondent with Sucha Singh and have set up the case that the plaintiff-respondent was divorced from Guljeet Singh with the intervention of the Panchayat. The learned counsel for the defendant-appellants on a query put by the Court as to whether there was/is any document on the record to even remotely suggest that Guljeet Singh had divorced the plaintiff-respondent, the answer is in the negative. He, however, states that a Panchayati divorce had taken place. It is pertinent to note at this stage that the plaintiff-respondent had filed a suit (Ex.P-16) wherein the defendant-appellants had filed a written statement and admitted that Guljeet Singh was the husband of Surinder Kaur (plaintiff-respondent herein) and that after the death of Guljeet Singh the plaintiff-respondent was remarried to Sucha Singh. They have also admitted the birth of Manpreet Kaur out of the said wedlock with Sucha Singh. There is not an averment in the said written statement regarding any Panchayati divorce between Guljeet Singh and Surinder Kaur. A copy of the judgment dated 18.01.2001 was produced on the record as Exhibit P-17. A perusal of the same reveals that Manjeet Singh and others, the present appellants herein, had filed a suit against Punjab Kaur (their mother) and Surinder Kaur (the plaintiff-respondent herein) and had averred that Surinder Kaur was the widow of Guljeet Singh. The admission of the defendant-appellants in the written statement (Ex.P-16) belies the stand now taken by the defendant-appellants that there was a Panchayati divorce between Guljeet Singh and his wife i.e.

the plaintiff-respondent herein. In view thereof, no fault can be found with the findings returned by both the Courts concerned on the said issue.

9. The second argument of the learned counsel for the defendant-appellants that there was an alleged oral Will dated 18.01.1988 in favour of the defendant-appellants and on the basis of which mutation was sanctioned on 30.04.1996 is also devoid of any merit. Section 63 of the Indian Succession Act, 1925 reads as under :

“63. Execution of unprivileged Wills - Every testator, not being a soldier employed in an expedition or engaged in actual warfare, or an airman so employed or engaged, or a mariner at sea, shall execute his Will according to the following rules :

(a)The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.

(b)The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.

(c)The Will shall be attested by two or more witnesses, each of whom has seen the

testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of his signature or mark, or the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.”

The above reproduced Section clearly states that the testator shall sign or shall fix his mark to the Will, or it shall be signed by some other person in his presence and by his direction. The mark by the testator has to be so placed that it appears that it was intended to give effect to the writing as a Will. Further, the Will is also required to be attested by two or more witnesses. The argument of the learned counsel for the defendant-appellants that the oral Will was proved is devoid of any merit. An unprivileged Will can be executed only in terms of Section 63 of the Succession Act, 1925 and has to be proved as per Section 68 of the Indian Evidence Act, 1872.

10. In the present case the defendant-appellants not only failed to prove their stand that Guljeet Singh had divorced Surinder Kaur during his

lifetime but also failed to prove any alleged Will in their favour dated 18.01.1988.

11. In view of the above, no fault can be found with the judgments and decrees pass by both the Courts concerned. No question of law, much less any substantial question of law, arises in the present case which requires determination by this Court. The appeal, being devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

06.02.2025
Aman Jain

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No