

2025:PHHC:145406



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

115

RSA-2708-2022 (O&M)
Reserved on: 24.07.2025
Pronounced on: 17.10.2025

Sukhwinder Kaur

...Appellant

Versus

Jhirmal Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Ms. Ramandeep Kaur, Advocate and
Ms. Himani Kapila, Advocate for the appellant.

Mr. Dheeraj Mahajan, Advocate and
Ms. Rashika Mahajan, Advocate for respondent No.1.

VIKAS SURI, J.

1. This regular second appeal has been filed by Sukhwinder Kaur-plaintiff assailing the concurrent findings in the judgment and decree dated 27.01.2020 passed by the learned Civil Judge (Junior Division), Gurdaspur, and in the judgment and decree dated 18.05.2022 passed by the learned District Judge, Gurdaspur, whereby her suit for declaration and permanent injunction was dismissed.

2. Succinctly, the plaintiff/appellant instituted a suit seeking declaration to the effect that the judgment and decree dated 02.04.2013



passed by the Court of Smt. Harpreet Kaur, the then learned Civil Judge (Junior Division), Gurdaspur, in favour of respondent/defendant No.1 is illegal, null and void, result of fraud and concealment of material facts, and further, the plaintiff also sought for a decree of permanent injunction restraining the official respondent/defendant Nos.7 and 8 from sanctioning the mutation on the basis of the said decree and for restraining the private defendants from alienating the suit land. The dispute in the present suit pertains to agricultural land measuring 52K-17M situated in village Bikhariwal, Tehsil and District Gurdaspur. The plaintiff/appellant claimed herself to be the daughter of late Kulwant Singh (defendant No.5) and late Gurmit Kaur (defendant No.6), asserting that she is a co-heir to the suit property and, therefore, a necessary party in respect of the impugned decree dated 02.04.2013, in an earlier suit titled as '*Jhirmal Singh vs. Kulwant Singh and others*'. The plaintiff further alleged that the said decree was fraudulently obtained without impleading her and the subsequent mutation sanctioned on 14.09.2016, based on that decree, was illegal and void.

2.1 Upon notice of the suit, defendant Nos.1 to 4, 7 and 8 put in appearance before the trial Court. Defendant Nos.5 and 6 were represented by other defendants being their legal heirs. Respondent-defendant No.2 had died prior to his service in the suit and, therefore, his legal heirs were brought on record. The suit was contested by filing written statement. Defendant No.1 pleaded that the plaintiff is not the daughter of defendant Nos.5 and 6 and, therefore, she has got no locus



standi to file the suit. He further averred that he had been serving in the Indian Army and used to come and live with defendant Nos.2 to 6 as and when he got leave. After retirement from service, he settled at Batala to provide better education to his children, however, he has been continuously visiting his native village. It was further contended that since the plaintiff is not the daughter of Kulwant Singh, therefore, she has got no right, title or interest in the suit property and hence, she had not been impleaded as a party to the suit, which was decreed on 02.04.2013.

2.2 Defendant Nos.2 to 4 filed separate written statements, supporting the case of the plaintiff. The official defendants, i.e. defendant Nos.7 and 8, namely Tehsildar Gurdaspur and State of Punjab, filed separate written statement to the effect that the mutation had been sanctioned on the basis of the judgment and decree dated 02.04.2013, and therefore, the suit qua them had been rendered infructuous.

2.3 From the pleadings of the parties, the following issues were framed:

- “1. Whether the plaintiff is entitled for declaration and permanent injunction as prayed for? OPP
2. Whether the suit of the plaintiff is not maintainable? OPD
3. Whether plaintiff has no cause of action or locus standi to file the present suit? OPD
4. Whether plaintiff has not come to the Court with clean hands? OPD
5. Relief.”



2.4 The trial court dismissed the suit having arrived at the conclusion that the plaintiff failed to produce cogent evidence establishing that she was the biological or adopted daughter of Kulwant Singh. It was further held that the impugned decree dated 02.04.2013 was a valid adjudication and the appeal arising therefrom was dismissed on 21.08.2017. The plaintiff-appellant herein was a party appellant in the said appeal as legal heir of her mother Gurmit Kaur and thus, she is estopped from alleging fraud or concealment. Further, the impugned decree dated 02.04.2013 had attained finality and could not be re-opened through a new suit, particularly by a litigant who was a party in the said proceedings. It was further held that the plaintiff was a party to the appeal against the judgment and decree dated 02.04.2013, though she was impleaded at the appellate stage as legal heir of a party originally impleaded in the said suit, and after the said appeal was dismissed, she had not filed any further appeal.

2.5 The plaintiff/appellant assailed the judgment and decree dated 27.01.2020 passed by the trial Court before the learned District Judge, Gurdaspur. Re-appraising and discussing the entire evidence led by the parties, the appeal was dismissed, vide judgment and decree dated 18.05.2022. It was categorically held that the plaintiff/appellant could not establish her relationship with Kulwant Singh and thus, she had no locus standi to file the suit. Accordingly, the finding returned under issue No. 3 was affirmed with the aforesaid clarification. The first Appellate Court further held that as the plaintiff has not pleaded in the plaint that she was



having any interest in the land forming the subject matter of the judgment and decree dated 02.04.2013, she cannot successfully challenge the said decree on the ground that she was not impleaded as a party therein.

3. Still aggrieved, the plaintiff/appellant has challenged the judgments and decree passed by the Courts below, returning concurrent findings, by way of the present regular second appeal.

4. I have heard learned counsel for the parties and with their able assistance perused the record.

5. Learned counsel for the appellant has argued that defendant Nos.3 and 4 have supported the case of the plaintiff and have deposed in their examination-in-chief that she is their sister. The said aspect has been specifically considered by the first Appellate Court. It is not disputed that the plaintiff is elder to Amrik Singh (defendant No.4) by 10 years and to Harjit Singh (defendant No. 3) by 5-6 years and, thus, they are not expected to have personal knowledge with regard to paternity of plaintiff (Sukhwinder Kaur) and as such, their statements are of no help to the plaintiff. Similarly, the deposition of PW-2 Daljit Singh, who is stated to be an independent witness who is not related to the family, deposed that the plaintiff is daughter of Kulwant Singh. However, the said witness admitted in his cross-examination that plaintiff (Sukhwinder Kaur) is daughter of second wife of Kulwant Singh from her first marriage. Even in the cross-examination of DW4 Gurmej Singh, it has come on record that Gurmit Kaur (mother of the plaintiff) and plaintiff/appellant had been brought by the said witness from Madhya Pradesh and thereafter,



marriage of Gurmit Kaur was solemnized with Kulwant Singh. The plaintiff witnesses have thus not satisfied the requirement contained under Section 50 of the Indian Evidence Act, 1872 (for short 'Evidence Act') pertaining to the proof of the relationship of the plaintiff with her alleged father Kulwant Singh.

6. It would be notable that during the cross-examination of the plaintiff herself, she could not deny that she was daughter of Gurmit Kaur from her first marriage with someone else. Further, she has deposed only that she used to treat Kulwant Singh as her father. The reliance placed on the Will dated 10.12.2013 (Mark A) alleged to have been executed by Kulwant Singh, is also of no help to the plaintiff/appellant. The said Will has not been proved in accordance with Section 68 of the Evidence Act. Concededly, neither of the attesting witnesses of the alleged Will have been examined in the present case and, therefore, any recital therein cannot be relied upon in the present suit.

7. Learned counsel for the plaintiff/appellant has failed to refer to any material on record to establish that she was the biological or adopted daughter of Kulwant Singh.

8. It would also be gainful to refer to the definition of uterine sister contained under Section 3(1)(e) of the Hindu Succession Act, 1956 (for short 'Succession Act'), which is extracted hereunder:

“3. Definitions and interpretation. —(1) In this Act, unless the context otherwise requires,—

(e) full blood “half blood” and “uterine blood”—



- (i) two persons are said to be related to each other by full blood when they are descended from a common ancestor by the same wife, and by half blood when they are descended from a common ancestor but by different wives;
- (ii) two persons are said to be related to each other by uterine blood when they are descended from a common ancestress but by different husbands;

Explanation.—In this clause “ancestor” includes the father and “ancestress” the mother;”

9. As per the above extracted definition, two persons are said to be related to each other by uterine blood when they are descendants from a common ancestor who was a woman, but by her different husbands. In other words, if a woman has children from different husbands, those children are said to be related to each other by uterine blood. Thus, a uterine sister is a sibling, who shares the same mother but has a different father. A perusal of the evidence in the present case leads to the inescapable conclusion that the plaintiff/appellant is a uterine sister. In the Schedule to the Succession Act, which lists Class I and Class II heirs, the explanatory note thereto explicitly states; “In this schedule, references to a brother or sister do not include references to a brother or sister by uterine blood”. A complete reading of the aforesaid statutory provisions show that uterine brothers and sisters are excluded from inheritance under the Schedule and they are not considered Class I or Class II heirs.

10. It is trite law that a uterine sister cannot inherit the property under the ordinary operation of the Schedule to the Succession Act. Only



siblings related by full or half blood (sharing the same father like defendant Nos.1 and 2 on one hand and defendant Nos.3 and 4 on the other hand) are recognized for the purposes of succession in the case of intestate succession under the Schedule. It is, thus, summarized that a uterine sister (same mother, different father) is legally recognized as related by uterine blood but is excluded from the Schedule's definition of heirs (Class I/Class II) under the Succession Act.

11. The concurrent findings by the Courts below are based on appreciation of oral testimony and learned counsel for the appellant has failed to show any misapplication of law that is alleged to have resulted in illegality or perversity in the impugned judgments and decree. It is well settled principle of law that in second appeal under section 100 CPC, interference is permissible only on a substantial question of law and re-appraisal of evidence is outside the domain of the Court hearing such second appeal.

12. No question of law much less substantial question of law arises for determination in the instant second appeal.

13. In view of the above discussion, this Court is of the considered opinion that that the present second appeal is meritless. Moreover, the first Appellate Court upon independent re-appraisal of the entire record has reached correct and concurrent conclusion and the findings are based on evidence supported by the applicable law. The attempt to re-open issues that already stand settled through a lawful decree, upheld in appeal, has rightly been rejected.



- 14. Accordingly, the regular second appeal is dismissed.
- 15. No orders as to costs.
- 16. Pending applications, if any, also stand closed.

October 17, 2025
sumit.k

(VIKAS SURI)
JUDGE

Whether speaking/reasoned :	Yes / No
Whether Reportable :	Yes / No