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

RSA No.100 of 2006
Reserved on : 29.09.2025
Date of Decision: 05.12. 2025

Dalbir Kaur and another

...Appellants

Versus

Kashmir Kaur and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE RAMESH KUMARI

Present:- Mr. Sudeep Mahajan, Advocate for the appellants.

None for the respondents.

RAMESH KUMARI, J.

1. The instant regular second appeal has been filed against the judgment and decree dated 24.08.2005 passed by the Addl. District Judge, Amritsar, whereby, the first appeal filed by the appellants-defendants (hereinafter referred to as defendants) against the judgment and decree dated 10.03.2004 passed by the Addl. Civil Judge (Sr. Divn.) Amritsar, decreeing the suit of the respondents-plaintiffs (hereinafter referred to as plaintiffs), has been dismissed.

2. In brief, the facts are that the plaintiffs filed a civil suit for declaration and permanent injunction (as detailed in the head note of the plaint) alleging therein that Dalip Singh son of Jagat Singh, predecessor-in-interest of plaintiffs and defendants, resident of Village Sanghana, Tehsil and District Amritsar, during his life time executed a Will dated 09.11.1992,



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Ex.PW3/1 in respect of land measuring 27 kanals 2 marlas along with other land. The land measuring 27 kanals 2 marlas was on lease with him on the basis of lease deed dated 21.08.1964, Ex.PW2/1 executed by Shri Tara Singh @ Kartar Singh son of Udham Singh for a period of 98 years. After the death of Dalip Singh and Jagir Singh, the plaintiffs are in actual possession of 27 kanals 2 marlas of land. It was alleged that in the Will Ex.PW3/1 in question, Dalip Singh has specifically mentioned that Jagir Singh shall remain in possession of 27 kanals 2 marlas of the land, which he had on lease, besides 79 kanals 4 marlas of land situated at Village Sanghana, Tehsil and District Amritsar. It is also mentioned in the Will, Ex.PW3/1 that Manbir Singh grand son of Dalip Singh shall be owner of 86 kanals 3 marlas of land situated at Village Sanghana.

3. It was further alleged that Smt. Gurdip Kaur wife of late S. Dalip Singh of Village Sanghana was the owner of the land measuring 20 kanals 7 marlas land situated at Village Sanghana. During life time of Dalip Singh and at the instance of Dalip Singh, Smt. Gurdip Kaur executed a Will dated 09.11.1992, in favour of defendant No.2. This land was bequeathed by her at the instance of Dalip Singh simply to compensate defendant No.2 in lieu of land measuring 27 kanals 2 marlas covered by the lease deed, which is in possession of plaintiffs being successor-in-interest of late Shri Jagir Singh. It was further stated that real owner Tara Singh @ Kartar Singh son of Udham Singh from whom Dalip Singh had taken the land on lease, also executed a registered sale deed dated 11.09.1964, Ex.PW2/4 in respect of 27 kanals 2 marlas in favour of Bakshish Singh son



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of Dalip Singh and Jagir Singh in equal shares and while executing the sale deed Ex.PW2/4, recital was made in it that the rights of the lease deed had been kept reserved and safe in favour of Dalip Singh. The term of lease deed Ex.PW2/4 has to expire on 20.08.2063. The defendants, who are successors of Bakshish Singh are threatening to take forcible possession of said 27 kanals 2 marlas on the basis of partition proceedings initiated by them in the court of ACI Amritsar. The defendants have no right to pursue the said proceedings as by virtue of Will Ex.PW3/1, the defendants have no right in the said 27 kanals 2 marlas of land of Village Khaper Kheri which is in the exclusive ownership and possession of plaintiffs. The defendants are threatening to take forcible possession of the land taking benefit of the mutation with respect to the sale deed dated 11.09.1964, Ex.PW2/4 in which they do not have any right, title or interest. Therefore, it was prayed that the suit be decreed as prayed for.

4. Upon notice, the defendants appeared and filed their written by taking preliminary objections as regards locus standi, estoppel, valuation for the purpose of course fee, jurisdiction and not approaching the court by the plaintiffs with clean hands. On merits, it was admitted that Dalip Singh had executed a Will dated 09.11.1992, Ex.PW3/1, but the defendants denied that in the Will, Dalip Singh had given 27 kanals 2 marlas land to the plaintiffs as alleged by them. It was further alleged that Dalip Singh was not the owner of the suit property as such, he was not legally competent to execute any Will regarding the suit land. This fact was also denied that Dalip Singh was a lessee of the suit land. The existence and validity of the lease deed is



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denied. It was alleged that if in alternative any lease deed is proved that does not effect the rights of the defendants. The said lease deed Ex.PW2/1 was never acted upon by the parties. The suit land was purchased by Jagir Singh and Bakshish Singh. Dalip Singh never cultivated the suit land, as a lessee. The alleged lease deed may be the paper transaction. The possession of the plaintiffs over the suit land was also denied. It was further alleged that Jagir Singh was a co-sharer along with Bakshish Singh, his real brother. However, Manbir Singh was given land measuring 86 kanals 3 marlas in the said Will Ex.PW3/1. As far as the suit land is concerned, it was in the joint ownership of Jagir Singh and Bakshish Singh. However, it was admitted that Smt. Gurdip Kaur executed a legal and valid Will dated 09.11.1992, regarding the land measuring 20 kanals 7 marlas. This fact was denied that the lessee rights were reserved. It was alleged that the defendants are adopting legal ways to partition the said joint khata by filing partition application before Assistant Collector Ist Grade, Amritsar and the plaintiffs have been appearing and contesting the same and raised the similar question before the Assistant Collector Ist Grade, which has already been rejected. The defendants are within their rights to get the joint khata partitioned, which had come into their possession. The mutation had already been sanctioned on the basis of said registered sale deed. Therefore, it was prayed that the suit be dismissed.

5. Replication was filed denying the averments contained in the written statement. From the pleadings of the parties, the following issues were framed:-



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1. Whether the plaintiff is entitled to declaration as prayed for? OPP.
2. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP
3. Whether the plaintiffs have got no locus standi to file the present suit? OPD.
4. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD
5. Whether the plaintiffs are estopped by their own act and conduct from filing the present suit? OPD
6. Whether the plaintiffs have not come to the court with clean hands? OPD
7. Relief.

6. In support of its case, one of the plaintiffs Smt. Kashmir Kaur herself stepped into the witness box as PW1, Sh. Devi Dass, HRC of the office of Sub Registrar, Amritsar was examined as PW2, Sh. Ramesh Kumar, Clerk, Sub Registrar's Officer, Amritsar, was examined as PW3 and Jarnail Singh, Lambardar was examined as PW4. On the other hand, the defendants examined Sh. Darshan Singh son of S. Achhar Singh as DW1 and Smt. Dalbir Kaur was examined as DW2.

7. After hearing the contentions of both the sides, the trial court decreed the suit of the plaintiffs to the effect that they are declared owner in possession of $\frac{1}{2}$ share out of the suit property 27 kanals 2 marlas and the



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remaining $\frac{1}{2}$ portion they were lessee under Shri Bakshish Singh and the defendants were restrained from ousting the plaintiffs from the suit property except according to due course of law. The defendants filed the first appeal before the first Appellate Court, which was dismissed. Hence, the instant regular second appeal has been filed challenging the judgments and decrees passed by both the courts below.

8. Learned counsel appearing on behalf of the defendants argues that the defendants have categorically stated that Dalip Singh was never the owner of the land in dispute, therefore, was not competent to execute any Will regarding the suit land. The defendants have further denied that Dalip Singh was lessee of the suit land. It is submitted that the defendants have further denied the existence and validity of the alleged lease deed ExPW2/1. It is contended that the suit land was purchased by Jagir Singh and Bakshish Singh, sons of Dalip Singh, deceased vide sale deed dated 11.09.1964, Ex.PW2/4 and therefore, no question of any legal consequences flowing from the said lease deed, if at all executed, regarding the suit land. Learned counsel for the defendants further submits that the defendants denied that Dalip Singh ever cultivated the suit land as a lessee or that the plaintiffs are in actual possession of the suit land. It is argued that Jagir Singh was a co-sharer along with Bakshish Singh, his real brother qua the land in dispute. It is further argued that Will, Ex.PW3/1 executed by Dalip Singh does not mention anything about the lease or about the description of the property allegedly taken on rent. It is submitted that both the courts below have erroneously concluded that the sale deed dated 11.09.1964 Ex.PW2/4



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mentioned or protected the lease deed or the rights created under the said lease deed in favour of Dalip Singh.

9. I have heard learned counsel for the defendants and have gone through the record of the case minutely, but find no substance in the same.

10. Firstly, in the Will, Ex.PW3/1 in question, it was alleged that Dalip Singh was having 79 kanals 4 marlas of land bearing different khasra numbers situated in Village Sanghana and admittedly, the plaintiffs are legal heirs of Jagir Singh son of Dalip Singh and the defendants are legal heirs of Bakshish Singh son of Dilip Singh. He bequeath the same to his son and grand son i.e. Jagir Singh and Manbir Singh son of Bakshish Singh, including the land measuring 27 kanals 2 marlas and afterwards the detailed description is given in which khasra number and village the said land is situated. Therefore, this contention of the defendants is not tenable. When the defendants are themselves placing reliance upon the Will Ex.PW3/1, then the document is to be read as a whole and not in a part. Another contention of the defendants is that Dalip Singh was not within his rights to Will, Ex.PW3/1 away this particular piece of land because he was not owner of the same because Dalip Singh being lessee of this particular piece of land was not within his rights to Will, Ex.PW3/1 away his lessee rights in the said piece of land in favour of the person to whom he likes. So, once the defendants themselves admitted the execution of the Will, Ex.PW3/1 by Dalip Singh in favour of Jagir Singh and Bakshish Singh, it proves the fact that by virtue of this Will, Ex.PW3/1, Dalip Singh has willed away his lessee rights in this particular piece of land that is the suit property in favour of



Jagir Singh.

11. Another contention raised by the defendants is that in the year 1964 the suit property was purchased by Jagir Singh and Bakshish Singh in equal shares from Tara Singh, as such, no question of willing away the suit property by Dalip Singh in favour of the plaintiffs is made out. However, contention of the defendants is not tenable, as a perusal of the sale deed Ex.PW2/4 reveals that while executing the sale deed in favour of Jagir Singh and Bakshish Singh, the seller (Tara Singh) has kept intact the lessee rights in favour of Dalip Singh, father of vendees and this fact is very well mentioned in the sale deed Ex.PW2/4 in a very clear terms. It has also come on record that period of said lease deed Ex.PW2/1 has to expire in the year 2063. Once the sale deed Ex.PW2/4 is admitted by the defendants, it cannot be read in part and it is required to be read as a whole.

12. Learned counsel for the defendants further argues that Dalip Singh was not in possession of the suit property, as such, he cannot validly execute any Will in respect of the same. It is the stand of the defendants that Jagir Singh and Bakshish Singh are in possession in equal shares by virtue of Sale deed Ex.PW2/4. As already noted, a perusal of the sale deed, Ex.PW2/4 clearly reveals that the seller has kept intact the lessee rights in favour of Dalip Singh and this fact is clearly mentioned in the sale deed Ex. PW2/4 in clear terms. Once there is a clear stipulation that the piece of land, which he is selling to them, is already on lease and he has kept reserving the lease deed rights intact, then the defendants cannot wriggle out the same. Moreover, the entries of the suit property lies in the name of Dalip Singh and



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not in the name of Jagir Singh and Bakshish Singh. Therefore, in these circumstances, Jagir Singh or his legal heirs have become lessee qua $\frac{1}{2}$ share and regarding other $\frac{1}{2}$ share under them, they have purchased, they have become full owner of the same. Therefore, till the expiry of lease deed in the year 2063, Jagir Singh (now his legal heirs) would be considered to be lessee qua $\frac{1}{2}$ portion of the suit land and their lessor qua this portion is Bakshish Singh or his legal heirs and regarding the remaining $\frac{1}{2}$ share, he has become the full owner of the same.

13. Learned counsel for the defendants has miserably failed to point out any material irregularity or perversity in the findings so recorded by the courts below. No question of law, what to talk of substantial question of law, arises in the present case. Accordingly, the instant regular second appeal is hereby dismissed.

05.12.2025

pooja saini

(RAMESH KUMARI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No