

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

220

RSA-104-2012 (O&M)
Decided on: 29.10.2025

Jashandeep Singh

...Appellant(s)

Vs.

Malkiat Singh and another

...Respondent(s)

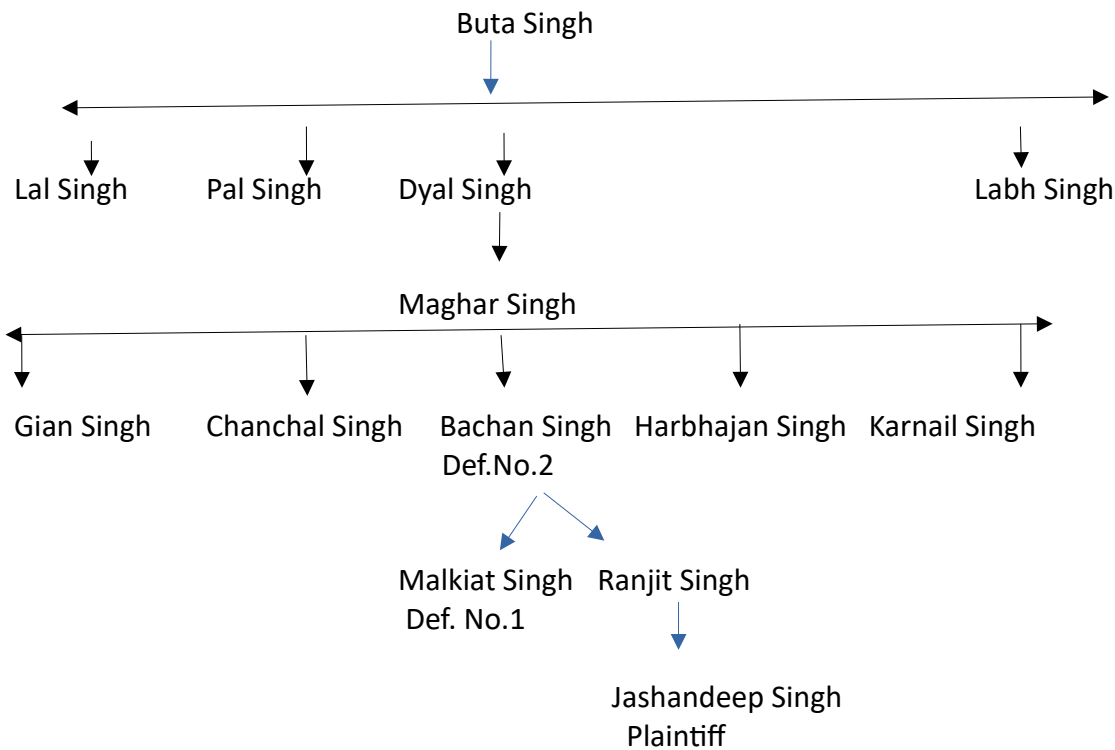
CORAM: HON’BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Amit Mehta, Advocate for the appellant.
Mr. Vishal Sodhi, Advocate for the respondents.

NIDHI GUPTA, J.

Present Second Appeal has been filed by the plaintiff against the judgment of reversal dated 01.08.2011 passed by the Additional District Judge, Amritsar; whereby first Appeal filed by the defendants/respondents has been accepted, and suit of the plaintiff has been dismissed.

2. In order to correctly appreciate the dispute at hand, following pedigree table shall be useful: -

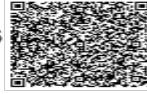




3. Brief facts of the case are that the plaintiff is grandson of defendant No.2. As plaintiff was minor at the time of filling of the suit, the same was instituted through his natural guardian i.e. through his mother Paramjit Kaur. Plaintiff had filed suit for declaration to the effect that the Sale Deed dated 20.05.2004 executed by defendant No.2 in favour of defendant No.1 in respect of the suit land as described in the plaint total measuring 40K 5M is without legal necessity, null and void and in excess to the share of defendant No.2, and therefore, the sale is liable to be cancelled; with consequential relief of joint possession of said land; and permanent injunction restraining defendant No.1 from further alienating, transferring or disposing of any part of the suit property.

4. Vide judgment and decree dated 28.05.2009, learned Additional Civil Judge (Senior Division) Baba Bakala had decreed the suit of the plaintiff with costs holding that *“the sale deed dated 20.5.2004 executed by defendant no.2 in favour of defendant no.1 qua the land in dispute is cancelled and the plaintiff is entitled for joint possession of the said land and defendant no.1 is restrained from further alienating the suit land in any manner”* The suit was decreed primarily on the ground that the suit land was ancestral in nature.

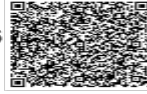
5. However, the appeal filed by the defendants was accepted by the learned Additional District Judge, Amritsar vide judgment and decree dated 01.08.2011 and suit of the plaintiff was dismissed with costs. Hence, the present Second Appeal by the plaintiff.



6. It is *inter alia* submitted by learned counsel for the plaintiff that a bare perusal of pedigree table shows that the suit land was ancestral in nature. Therefore, it was not open to Bachan Singh, grandfather of the plaintiff to dispose of the suit land by way of the impugned Sale Deed dated 20.05.2004 executed by him in favour of defendant No.1. It is submitted that the findings of learned first Appellate Court to the contrary are against the evidence on record.

7. It is further submitted by learned counsel for the appellant that finding of the Ld. Lower Appellate Court in para No.20 of its judgment that Maghar Singh great grand father of the appellant has executed the Will in favour of his five sons i.e. Bachan Singh, Gian Singh, Chanchal Singh, Harbhajan Singh, and Karnail Singh, therefore, when Bachan Singh defendant No.2 acquired the property from his father Maghar Singh on the basis of said Will, the property which came into the hands Bachan Singh became un-ancestral property. It is contended that the aforesaid finding is completely illegal and arbitrary.

8. Learned counsel for the plaintiff further submits that great grand father of the appellant had also executed Gift Deed dated 11.6.1964 (Ex.D3), certified copy of which was Ex.D4 in favour of his five sons with regard to the property which comes him from his forefathers, so that no dispute could arise amongst the sons of Maghar Singh. It is submitted that mere execution of the Gift Deed would not lose the character of ancestral property.



9. It is accordingly prayed that the present appeal be allowed; and the impugned judgment and decree dated 01.08.2011 passed by learned first Appellate Court be set aside.

10. *Per contra*, learned counsel for the respondents/defendants vehemently opposes submissions made on behalf of the appellant/plaintiff and submits that it is proven on record that the suit property had been partitioned between the parties; whereafter it became self acquired in the hands of Maghar Singh. Maghar Singh had further executed registered Will in favour of his sons including Bachan Singh, Chanchal Singh and Harbhajan Singh. Maghar Singh had also executed a Gift Deed dated 11.06.1964 (Ex.D4) in respect of 35K 4M of land in favour of Bachan Singh, Chanchal Singh, Harbhajan Singh and Karnail Singh. Thus, suit property in the hands of Bachan Singh was not ancestral. It is argued that once the land stood transferred through a validly executed and proved Gift Deed and Will it ceased to retain the character of ancestral coparcenary property and became self acquired property of Bachan Singh. Consequently, Bachan Singh was fully competent to transfer or alienate the same in favour of any person including his son/defendant No.1. Accordingly prays that the impugned judgment and decree dated 01.08.2011 suffers from no error and the present appeal deserves to be dismissed.

11. No other argument is raised on behalf of the parties.

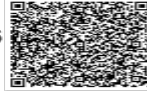
12. I have heard learned counsel and perused the case file and the lower Court records in minute detail. Upon giving thoughtful



consideration to the rival submissions made on behalf of both the parties, I find merit in the submissions advanced on behalf of the respondents/defendants.

13. Learned Trial Court has decreed the suit of the plaintiff by holding the suit property to be ancestral in hands of Bachan Singh. Ld. trial court derived this conclusion from the evidence of DW3 Bachan Singh himself wherein he had admitted that he had purchased part of the suit land from Ajaib Singh from the income of land which he got from his grandfather and some amount was paid by him by taking loan from Chanchal Singh. Learned Trial Court observed that Bachan Singh had failed to place on record any document to prove that he had availed loan of Rs.4,000/- from Chanchal Singh. Learned Trial Court has also taken into account the fact that Sale Deed executed in favour of defendant No.1 by defendant No.2 is without sale consideration; that Bachan Singh in his cross-examination had admitted that plaintiff was born prior to execution of Sale Deed; and that defendant No.2 had not given any land to the plaintiff. The trial court noted that DW1 Harbhajan Singh had admitted the above said facts in his cross-examination.

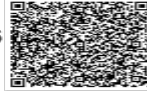
14. However, in holding as above, the learned Trial Court has ignored and failed to consider very relevant and material documentary evidence in the form of revenue record. Further, as will be demonstrated here in below, the view of the learned Trial court is contrary to the established legal position in this regard.



15. Perusal of the record of the case shows that it is admitted fact between the parties that Dayal Singh had executed a Will in favour of his son Maghar Singh on the basis of which mutation No. 1241 (Ex.P11) and its Punjabi translation (Ex.P12), and Mutation No.1321 (Ex.P14) were sanctioned which were proved in evidence. Therefore, property in the hands of Maghar Singh cannot be said to be ancestral. It is also established on record that Maghar Singh had then further executed a registered Will in favour of his sons including Bachan Singh. Thus, as defendant No.2 had received property from his father Maghar Singh by way of Will, the property in his hands is not ancestral in nature.

16. Further, from the Mutation No. 1379 (Ex.P16) it is clear that Maghar Singh had also executed a Gift Deed 11.06.1964 (Ex.D3) in respect of 35K 4M of land in favour of his sons including Bachan Singh. The said Gift Deed was duly proved by Harbajan Singh (DW-1) and attesting witness Dara Singh (DW-2). Both these witnesses categorically deposed that Maghar Singh, son of Dial Singh, executed the Gift Deed dated 11.06.1964 in favour of his sons, including Bachan Singh, for land measuring 35K 4M. The said deed was written by one Charan Das and read over to Maghar Singh, who signed it in their presence, as duly noted by the learned Trial Court in para 10 of its judgment dated 28.05.2009. Thus, as Bachan Singh had received some part of suit property by way of Gift Deed (Ex.D4) also, therefore, property in the hands of Bachan Singh cannot be said to be ancestral.

17. It has also come on record that Bachan Singh had purchased another parcel of land measuring 3K-13M by Sale Deed dated 12.06.1980



(Ex.D-1) from one Kundan Singh from his own personal income. Bachan Singh had purchased another parcel of land measuring 4K-4M by Sale Deed dated 12.06.1980 (Ex.D-2) from one Ajaib Singh from his own personal income. Thus, Bachan Singh was very much competent to execute the impugned Sale Deed dated 20.5.2004 (Ex.P-20) in favour of defendant No.1. These transactions further reinforce that Bachan Singh held separate and self-acquired property, distinct from any alleged joint Hindu family property.

18. Once the land stood transferred through a validly executed and proved Gift Deed and Will, it ceased to retain the character of ancestral coparcenary property and became the self acquired property of Bachan Singh. In the present case, the property in the hands of Bachan Singh was received through a Will and Gift Deed and further supplemented by independent purchases. Consequently, Bachan Singh was fully competent to transfer or alienate the same in favour of any person, including the defendant No.1. The finding of the Learned Appellate Court that the suit land was not ancestral and the plaintiff had no right to claim coparcenary share therein is fully justified and in accordance with settled law.

19. It is a settled principle of Hindu Law that a property can be treated as ancestral only if it descends undivided through four male lineal generations by succession and has not been the subject of partition or transfer. Once the property is partitioned, gifted, devised by Will, or otherwise alienated, it loses its character.



20. I find support in the above view from a judgment of this Court in **Jagdev Singh and another v. Major Singh and others (P&H): Law Finder Doc Id # 695631**; wherein it is held as under:-

“Civil Procedure Code, 1908 Section 100 Second appeal - Sustainability of - Hindu Undivided Coparcenary Property - Gift made in favour of grand son - By way of natural succession - The grand-son would not have got the property as other legal heirs were alive - So, it is not getting the property in the same manner as that of inheritance but one line of descendants have been totally ignored by gift executed by grand father in favour of son - If the property received by ancestor through gift and Will that loses the character of ancestral property - Therefore, First Appellate Court rightly held that plaintiff was failed to prove that property is a joint Hindu Family Property - No interference warranted - Appeal dismissed.”

21. The relevant para of the above said judgment is as under:-

*“16. The Hon'ble Apex Court in authority **C.N. Arunachala Mudaliar v. C.A. Muruganatha Mudaliar and another 1953 AIR (SC) 495** held that if the property is received by ancestor through Gift and Will that loses the character of ancestral property. Similar view was taken by this Court in **Kapur Chand Major and others v. Des Raj 1974 PLR 522.**”*

22. Reference is made to another judgment passed by Himachal Pradesh High Court in **Bhaga Ram v. Parveen Kumar and others, (H.P.): Law Finder Doc Id # 133190**; wherein it is held as under:-

“Ancestral property - self acquired property - Gift - No evidence to show that land in dispute was ancestral - To



be presumed that the land was self acquired property - Mutation shows that son had acquired land in dispute from his father by way of gift during time of his father - The land in dispute never devolved upon him by way of succession - A property gifted or bequeathed by a father to his son cannot become ancestral property in the hands of the donee or legatee - Simply because that the donee of legatee got from his father or ancestor - Findings of District Judge holding land in dispute as ancestral - Are based neither on proper reading and appreciation of evidence nor on proper application of law, set aside - Appeal allowed - Finding of trial Court restored. AIR 1953 Supreme Court 495 Relied.”

23. Reference is made to the judgment passed by this Court in **Taro Devi v. Raunak Singh and others (P&H) : Law Finder Doc Id # 398778**; wherein it is held as under:-

“8. After hearing learned Counsel for the appellant and going through the record, I am of the considered opinion that the present appeal deserves to be dismissed outrightly simply for the reason that the appellants have not been able to bring on record any cogent evidence to prove the fact that property in dispute was ancestral property. To prove the factum of the nature of the suit property being ancestral, it was incumbent upon the plaintiffs to show that the property was coming to Kartara through four male lineal descendants and the same had never been partitioned among them. However, in the present case, the appellants have not lead any evidence to prove this fact, rather it is clear from the impugned judgments and decrees that the property in dispute had devolved upon Kartara through a Will executed by his father and, therefore, property in hand was not ancestral in its



nature and character. Hence, the argument raised by the learned Counsel for the appellant qua the nature of the property does not hold forte.”

24. The above said view has also been reiterated in the following judgments: -

- (1). **C. N. Arunachala Mudaliar v. C. A. Muruganatha Mudaliar and another, (SC): Law Finder Doc Id # 113028;**
- (2). **Mohinder Kaur v. Pargat Singh and others (P&H): Law Finder Doc Id # 211239; and**
- (3). **Smt. Sukhdev Kaur and others v. Darshan Singh and others, (Punjab And Haryana): Law Finder Doc Id # 906800.**

25. Thus, the Id. First Appellate Court has rightly set aside the judgment and decree dated 28.05.2009 passed by the Trial Court, as the latter had failed to properly appreciate the nature and character of the suit property. The evidence on record clearly establishes that the property which came into the hands of Bachan Singh (defendant No. 2) from his father Maghar Singh was not ancestral in nature but was received by way of Will and Gift Deed; and part of it was bought by Maghar Singh. The above noted legal position further establishes that the suit property was not ancestral.

26. Keeping in view the above said facts, findings, and law, the present Second Appeal is **dismissed**.



27. Pending applications, if any, stand(s) disposed of.

29.10.2025

Divyanshi

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

(NIDHI GUPTA)
JUDGE