

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****114****RSA-2523-2022 (O&M)****Date of decision: 24.03.2025****Sukhdarshan Singh and others****...Appellant(s)****Vs.****Ranjit Singh****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Sunny K. Singla, Advocate for the appellants.

*********NIDHI GUPTA, J.****CM-8665-C-2022**

Prayer in this application filed under Section 5 of the Limitation Act read with Section 151 CPC is for condonation of delay of 83 days in filing the accompanying appeal.

Heard.

For the reasons mentioned in the application, which is duly accompanied by an affidavit of the applicant/appellant No.1, the same is allowed and delay of 83 days in filing the accompanying appeal is condoned.

RSA-2523-2022 (O&M)

The present appeal has been filed by the plaintiffs against the concurrent judgments and decrees of the learned Courts below, whereby the suit filed by the plaintiffs seeking declaration to the effect that the



plaintiffs are exclusive owners of the suit property/share of Nahar Singh as described in the head note of the plaint; seeking setting aside of the mutation No. 2882; and further seeking permanent injunction in respect of the suit property, has been dismissed with costs by both the Courts below.

2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellants are the 'plaintiffs'; and the respondent is the 'defendant'.

3. It is submitted by learned counsel for the appellants/plaintiffs that the plaintiffs have sought declaration that the plaintiffs are exclusive owners of the property share of Nahar Singh as follows:-

(a) 1/14 share in land measuring 37K-5M having khewat No.295, khatauni No.307, khasra No.92, 93, 58//25, 30, 59//21, 62//1/1, 1/2/1, 63//4/1, 4/2,

(b) 137/958 shares in land measuring 23KL-19M having khewat No.296, khatauni No. 308, khasra No.63//5, 6,7

(c) 1/7 share in land measuring 34K-11M having khewat No.298, khatauni No.310, khasra No.22//12/2, 17, 19, 20, 21

(d) 65/456 share in land measuring 22k-16M having khewat No.300, khatauni No.312, khasra No.22//18, 22, 23

as per jamabandi for the year 2008-09, situated at village Saharan Majra, HB No. 385, Tehsil Maloud, District Ludhiana.

4. Nahar Singh was owner in possession of the disputed property and had passed away on 22.12.2011. The plaintiffs are the only natural heirs of Nahar Singh. It is submitted that Nahar Singh had executed a Will dated 7.11.2011 stating therein that only the plaintiffs would inherit his property to the exclusion of his son Ranjit Singh/defendant. Nahar Singh had excluded Ranjit Singh due to hostile relations between them and because of



several civil and criminal litigations pending between them. Ranjit Singh had also caused injuries to Nahar Singh. That is why, Nahar Singh had not made Ranjit Singh beneficiary in Will dated 7.11.2011 which was executed only in favour of the plaintiffs. It is submitted that the plaintiffs had duly presented the said Will before the Assistant Collector First Grade. However, during mutation proceedings, the said Authority had ignored the Will and had sanctioned mutation No. 2882 based on natural succession favouring Ranjit Singh.

5. It is submitted that the Courts below were in patent error in dismissing the suit of the plaintiffs with costs as the plaintiffs have proved on record that Nahar Singh had executed the said Will in favour of the plaintiffs. The plaintiffs had duly proved on record that the defendant was not having good relations with his father and, therefore, he was excluded from the property of Nahar Singh. Moreover, the plaintiffs have been in continuous possession of the suit property even before Nahar Singh's death. It is accordingly prayed that the impugned judgments and decrees of the learned Courts below be set aside, and the suit of the plaintiffs be decreed.

6. No other argument is raised on behalf of the plaintiffs.

7. I have heard learned counsel for the appellants/plaintiffs and perused the case file in great detail.

8. The plaintiffs are basing their claim to the exclusion of Ranjit Singh on the basis of alleged Will dated 7.11.2011. However, a bare perusal of the record of the case shows that the said Will was never produced by



the plaintiffs before the learned Courts below. Even no attesting witness to the said Will was examined by the plaintiffs to prove the same. This fact has not been denied by the learned counsel for the appellants during the course of hearing. Even possession of the plaintiffs to the exclusion of defendant was not proved as no jamabandi to this effect was produced by the plaintiffs.

9. The relevant findings in this regard of the learned trial Court are contained in para 7 of the judgment dated 19.7.2017, which read as under: -

“The onus to prove issues No. 1 and 2 is upon the plaintiff. Both these issues are taken up together for discussion being interconnected to avoid repetition. Plaintiff has sought relief of declaration regarding the suit property on the basis of Will dated 7.11.2011 and has also sought relief of permanent injunction. No evidence has been led by the plaintiff except the solitary statement of plaintiff himself. It is a cardinal principle of law that plaintiff has to prove its case and he cannot take help from the deficiencies of the defendant. Plaintiff has not even exhibited Will or jamabandi. Plaintiff has not proved its case as per the standard of proof required in the civil cases. Moreover, plaintiff has sought the relief of declaration without seeking the relief of possession which is not legally permissible. As such issues No.1 and 2 are decided against the plaintiffs and in favour of defendant. Therefore, as per discussion held above issues No.1 and 2 are decided against the plaintiffs and in favour of the defendant.”

10. The relevant findings of the learned lower appellate Court are contained in para 14 of the judgment dated 11.4.2022, which read as under:-

“The Will in question was set to have been attested by one Joginder Singh son of Kartar Singh and Jagmeet Singh Ramal. But plaintiffs have not examined any



witnesses to prove the Will dated 07.11.2011 nor produced the original will before the trial Court. Ld. Counsel for the Respondent/defendant has relied upon law titled as **Makhan Ram alias Makhan Singh vs Ujagar Ram (died) through LRs (2006-1) 142 PLR 497** and submitted that as the Plaintiffs have failed to examine one of the two attesting witnesses of the Will, they did not discharge the onus of proof in proving the due execution of the same. It was held in the said judgment that under section 68 of the Evidence Act, although both the attesting witnesses were not required to be produced but at least one attesting witness should have been examined to prove the due execution of the Will in terms of Clause (c) of Section 63 of the Indian Succession Act. He further relied upon similar law laid down by Hon'ble Punjab and Haryana High Court in case **Karnail Singh and Anr vs Bishan Singh and others 2008(2) Civil Court Cases 499**. The will has not been proved by any cogent evidence as stated above. Thus, the will had not been according to law even the attesting witnesses has not been examined by plaintiffs to prove the Will. And as such plaintiffs have failed to lead any cogent evidence to prove will dated 7.11. 2011. Consequently, the findings delivered on all issues are found to be well reasoned, legal and speaking and as such, the same are hereby affirmed."

11. In this view of the above noted undisputed facts and findings to the effect that the plaintiffs had failed to produce the Will, and had failed to examine any of the attesting witnesses to the said Will, no ground is made out to interfere in the impugned mutation No. 2882, which was sanctioned on the basis of natural succession.

12. Hence, the present regular second appeal is hereby **dismissed**.

13. Pending applications, if any, stand disposed of.

24.03.2025

Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No

