

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1. RSA-802-2012 (O&M)
Reserved on: 29.01.2025
Date of decision: 21.04.2025

SAHIB SINGH (DECEASED) THROUGH LRS. & ANR.

..Appellants

Versus

RAM KUMAR AND OTHERS

..Respondents

2. RSA-236-2023 (O&M)

SAHIB SINGH (DECEASED) THROUGH LRS. & ANR.

..Appellants

Versus

RAM KUMAR AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Gaurav Mohunta, Advocate
Mr. Satyendra Kumar, Advocate
Mr. Pratyush Sood, Advocate
for the appellants (in RSA-802-2012)

Mr. Balkar Singh, Advocate
for appellants (in RSA-236-2023).

Mr. R.K. Sharma, Advocate
for respondents (in both cases).

ANIL KSHETARPAL, J.

I. Brief facts:-

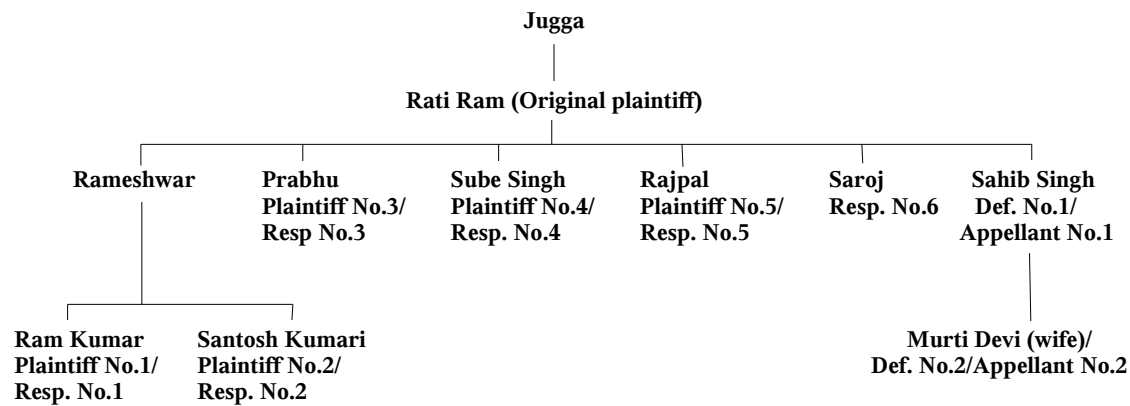
1. With the consent of learned counsel for the parties, two connected regular second appeals shall stand disposed of by this common order.

2. After having heard learned counsel for the parties, this Court is



of the opinion that the matter is required to be remitted back to the trial Court for fresh decision, hence, bare minimum facts are being noticed.

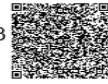
3. To comprehend the controversy involved, pedigree of the family is extracted as under:-



4. The dispute is with regard to the property of Sh. Rati Ram. On 31.03.1997, Sh Rati Ram executed a general power of attorney in favour of his son (Sh. Sahib Singh-appellant No.1). Sh. Sahib Singh on the basis of that attorney, executed three registered sale deeds in favour of his wife Smt. Murti Devi with respect to the following properties on 01.06.2006:-

- “(i) Sale deed dated 04.06.1998 for Rs.1,92,000/- for House measuring 300 sq. yds. at Sonipat.*
- (ii) Sale deed dated 23.05.2000 for Rs.1,23,000/- for Land measurinig 7 Kanal 11 Marla.*
- (iii) Sale deed 01.06.2000 for Rs.1,05,000/- for Gher.”*

5. On 04.01.2000, Sh Rati Ram is alleged to have executed a registered Will in favour of the plaintiffs and defendants. Thereafter, on 20.09.2000, Sh. Rati Ram filed a suit for declaration and possession against Sh. Sahib Singh and Smt. Murti Devi claiming that the general power of attorney dated 31.03.1997 was fraudulently procured by Sh. Sahib Singh, who in turn transferred the property in favour of his wife, hence, the same is illegal. During the pendency of the suit, Sh. Rati Ram executed another registered Will on 20.12.2001 with respect to land measuring 39 kanals and



8 marlas out of his total land holding of 46 kanals and 19 marlas.

6. Sh. Sahib Singh had transferred land measuring 7 kanals and 11 marlas comprised in Rectangle No.21, Khasra No.13/2 (7-11) in favour of his wife on 23.05.2000. This area was not made part of the property bequeathed through a Will by Sh. Rati Ram. He also bequeathed another 10 kanals land comprised in Rectangle No.21, Khasra No.19 (8-0), 7/2 (2-0) in favour of Sh. Sahib Singh while remaining property was bequeathed in favour of his remaining sons.

7. The other sons of Sh. Rati Ram filed application under Order I Rule 10 of the Code of Civil Procedure, 1908 (in short 'CPC') alleging that the suit filed by Sh. Rati Ram and Sh. Sahib Singh and Smt. Murti Devi are colluding with each other, which was allowed. Sh. Rati Ram died on 05.10.2004.

8. On the basis of registered Will dated 20.12.2001, the property was mutated in favour of his children.

9. During the lifetime of Sh. Rati Ram, the respondents filed a suit on 20.03.2002 for declaration alleging collusion regarding transfer of property through general power of attorney in favour of Smt. Murti Devi, which was dismissed as withdrawn on 11.01.2007.

10. On 07.09.2010, the suit filed by Sh. Rati Ram was decreed declaring that there was no requirement of Sh. Rati Ram having executed general power of attorney in favour of his son Sh. Sahib Singh. It was also found by the Court that there is no evidence that the sale consideration had exchanged hands. Consequently, the general power of attorney and all the three sale deeds were declared null and void. The appellant (Sh. Sahib Singh) and Smt. Murti Devi filed first appeal. In the meantime, Sh. Ram Kumar, Smt. Santosh Kumari, Sh. Prabhu, Sh. Sube Singh, Sh. Rajpal filed



suit for joint possession and permanent injunction on 03.02.2011, claiming that they are joint owner in possession of shop No.B-157, measuring 27 sq. yard on the basis of judgment passed by the trial Court in the first suit on 07.09.2010. Sh. Sahib Singh and his wife Smt. Murti Devi filed application for permission to lead additional evidence in order to produce two registered Will executed by Sh. Rati Ram on 04.01.2000 and 20.12.2001, copy of statement given by Sh. Rameshwar while withdrawing the civil suit filed on 20.03.2002 and order passed by the Court on 11.01.2007. The First Appellate Court dismissed the application for additional evidence as well as the first appeal.

12. RSA-802-2012 was filed by Sh. Sahib Singh and Smt. Murti Devi against the judgment passed by the First Appellate Court. The Civil Suit No.418 of 2003 filed by Sh. Ram Kumar for joint possession was dismissed by the trial Court on 12.04.2016, which in appeal was reversed by the First Appellate Court on 18.11.2022, consequently, RSA-236-2023 has been filed by legal representatives of Sh. Sahib Singh.

13. Hence, both the appeals have come up for hearing.

14. In RSA-802-2012, the appellants have also filed an application under Order XLI Rule 27 of the 'CPC' for permission to lead additional evidence in order to produce two registered Wills dated 04.01.2000 and 20.12.2001.

II. Analysis & Discussion:-

15. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook along with the requisitioned trial Court record.

16. It is evident that while deciding Civil Suit No.564 of 2000, the Courts have not only posed wrong questions but also returned finding on the



basis of conjectures and surmises. The First Appellate Court posed the following wrong questions:-

- i. Why a father would execute a general power of attorney in favour of only one son in respect of suit property, whereas, he has four more sons?
- ii. While executing the power of attorney, why Sh. Rati Ram discriminated against his four sons?
- iii. Why Sh. Rati Ram himself challenged the execution of the general power of attorney as fraud?

17. Thereafter, the Court proceeded to record finding that the power of attorney appears to be suspicious. Sh. Rati Ram has himself challenged the general power of attorney. Sh. Rati Ram never received any sale consideration. The general power of attorney and three sale deeds executed by Sh. Sahib Singh were attested by Sh. Ram Niwas son of Sh. Dharam Singh, who does not belong to the village of the parties and is an outsider.

18. Similarly, the First Appellate Court also erred in observing that the two registered Wills and other documents are not material documents for decision of the appeal and the cause of action was different. Sh. Sahib Singh is attempting to fill up lacunae in his case, which is not permissible.

19. It is evident that the whole approach of both the Courts in deciding Civil Suit No.564 of 2000 and the appeal was incorrect. There was subsequent developments, which could guide the Court to come to a correct conclusion. If Sh. Rati Ram had executed a registered Will on 20.12.2001 with respect to land measuring 39 kanals and 8 marlas, while excluding the properties, which were subject matter of sale deed executed by Sh. Sahib Singh on the basis of attorney, the documents could not be said to be irrelevant. Significantly, Sh. Rati Ram allegedly bequeathed 10 kanals



additional land out of 39 kanals and 8 marlas to Sh. Sahib Singh through Will dated 20.12.2000, hence, these documents were very much relevant. On the basis of Will dated 20.12.2001, revenue authorities mutated the property in favour of children of Sh. Rati Ram. Hence, opportunity should have been given to the appellants to prove those documents. These developments should not have been ignored by the Courts. In fact, if the Will dated 20.12.2001, is proved, it will change the course of entire litigation. The First Appellate Court has taken a very conservative view while dismissing application for additional evidence. The Courts are expected to take a holistic view of the matter with a pragmatic approach. The rules or procedures are handmaids of justice. The Appellate Court should have risen above the technical objections while allowing application for additional evidence.

III. Conclusion & Remedy:-

20. Hence, the order passed by the First Appellate Court dismissing the application for additional evidence on 10.01.2012, is set aside.

21. Now, the parties will have to be given opportunity to lead evidence to prove both the Will i.e. 04.01.2000 and 20.12.2001. Hence, it is considered appropriate to remit both the cases back to the trial Court for fresh decision. The parties will be given opportunity to file additional pleadings and the Courts will proceed to decide the matter after framing additional issues and permitting the parties to lead evidence.

22. With these observations, both the appeals are allowed.

23. The judgment passed by all the four Courts are set aside. Both the suits are restored to its original number..

24. The parties through their learned counsel are directed to appear before the trial Court on 21.05.2025.

25. The District Judge would also consolidate both the suit.
26. All the pending miscellaneous applications, if any, are also disposed of.

21st April, 2025
Ayub

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No