



233 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-4976-2015(O&M)
Date of decision:28.04.2025

Ram Kaur (since deceased) through her LRs and others
..Appellants
Versus
Gurkirpal Kaur
..Respondent

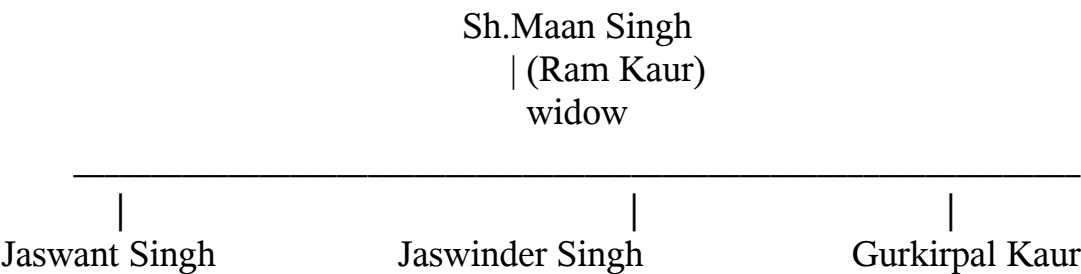
CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. H.S.Lalli, Advocate for the appellants
(through video conferencing)

Dr. Anmol Rattan Sidhu, Senior Advocate with
Mr. Gursher Singh Dhillon, Advocate for the respondent

ANIL KSHETARPAL, J. (Oral)

1. The defendants assail the correctness of the concurrent findings of fact arrived at by the courts below while decreeing the plaintiff’s suit for the grant of decree of declaration that she is owner to the extent of 1/3rd share in the suit land.
2. The following genealogy illustrates the inter se relationship between the parties:-



3. It is evident that Sh.Maam Singh was the owner of the property. He died on 22.04.1975. He left behind his widow, two sons and one daughter. The daughter filed the suit. The defendants contested the suit on the ground that Sh.Maam Singh executed a Will on 03.12.1974 bequeathing



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his property in favour of his widow and two sons. Subsequently, Smt. Ram Kaur widow also transferred her 1/3rd share in favour of her two sons vide registered transfer deed dated 27.05.2002.

4. Both the courts have held that the Will dated 03.12.1974 allegedly executed by Sh. Maan Singh has not been proved, although, it was registered after his death. Both the attesting witnesses of the Will have not been examined. The defendants have also not produced evidence to prove the Will in accordance with Section 69 of the Indian Evidence Act, 1872. The propounders were required to prove that the attestation of one of the attesting witnesses at least was in his handwriting and signatures of the testator is also in his handwriting. Thus, there is no error in the concurrent findings of fact with regard to failure of the defendants to prove the Will.

5. However, the courts below have taken an unconventional view. Smt. Ram Kaur widow of Sh. Maan Singh transferred her 1/3rd share in favour of her two sons namely Jaswant Singh and Jaswinder Singh on 27.05.2002. The courts have held that since the Will is not proved, hence, the transfer is also illegal. The courts have not found that the transfer was not executed and registered in accordance with law. Even if Smt. Ram Kaur inherited 1/4th share out of the property left behind by Sh. Maan Singh, the transfer deed which was with respect to 1/3rd share shall be valid qua 1/4th share. There was no reason for the courts below to discard the transfer deed on the ground that it was executed with respect to 1/3rd share. 1/4th share is smaller than 1/3rd share. The transfer deed to the extent of share of Smt. Ram Kaur i.e 1/4th share is valid. Hence, the appeal is partly allowed. The plaintiff's suit qua 1/4th share shall stand decreed whereas the remaining



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3/4th share will be owned by the two sons of Sh.Maam Singh namely Jaswant Singh and Jaswinder Singh in equal shares.

6. All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

28.04.2025

rekha	
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No