



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

112

RSA-3059-2017 (O&M)

Date of decision: 02.04.2025

Amarjit Kaur

...Appellant(s)

Vs.

Harinder Singh and others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Amit Jain, Sr. Advocate with
Ms. S.P.Arora, Advocate and
Mr. Himanshu Arora, Advocate
for the appellant.

Mr. Divanshu Jain, Advocate and
Mr. Minkal Rawal, Advocate for
respondent No.1.

Mr. Akshit Pathania, Advocate for
Mr. Vivek K. Thakur, Advocate
for respondents No.2 to 4.

NIDHI GUPTA, J.

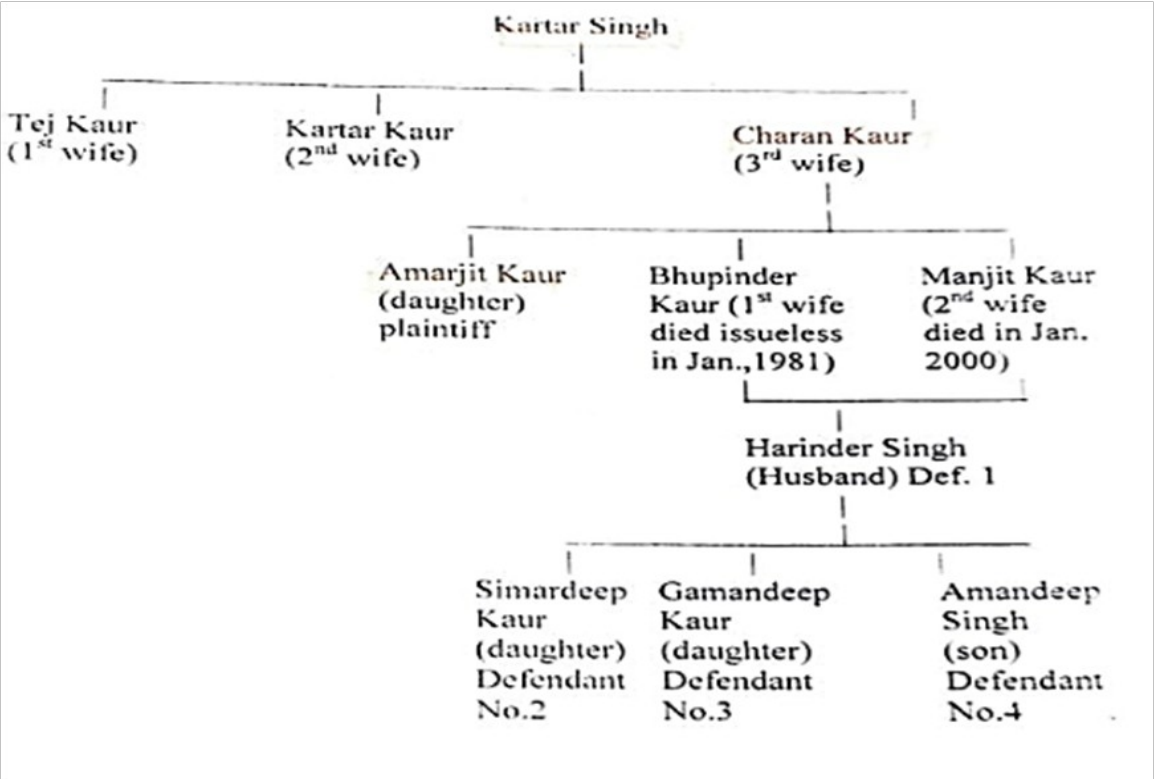
The plaintiff is in second appeal against the judgment and decree dated 03.04.2017 passed by the learned Additional District Judge, Amritsar, whereby the appeal of the respondents/defendants against the judgment and decree dated 04.10.2013 of the learned trial Court thereby decreeing the suit of the plaintiff, has been allowed.

2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellant is the 'plaintiff'; and respondents are the 'defendants'.



3. Brief facts of the case are that the appellant/plaintiff had filed a suit for possession of 1/2 share by way of partition of Kothi Bearing No. 179, Khasra Nos. 2311/2285/1831 situated in Ajit Nagar O/s Sultanwind Gate, Amritsar as per Jamabandi for the year 2005-06; with consequential relief of permanent Injunction restraining the defendants from selling, mortgaging, gifting, alienating in any manner the suit property more than their share in it; and for recovery of mesne profit at the rate of Rs.1,000/- per day for use and occupation of the share of the plaintiff by defendants from date of suit.

4. The following pedigree table will be helpful, in order to understand relationship between the parties and to appreciate the facts properly:-



5. The facts as stated in the plaint are that the suit property i.e. Kothi No. 179 was in the ownership of late Kartar Singh, father of the



plaintiff. On his death on 4.9.1997, the said property devolved to his three wives namely, Tej Kaur, Kartar Kaur and Charan Kaur. Charan Kaur had three daughters i.e. Amarjit Kaur/plaintiff; Bhupinder Kaur, who was married to defendant No.1 and had died issueless in January 1981; and Manjit Kaur, who was second wife of defendant No.1, who had died in January 2000. Defendants No. 2, 3 and 4 are the children of Harinder Singh/defendant No. 1 and Manjit Kaur. It was pleaded in the plaint that three daughters, namely, Amarjit Kaur/plaintiff, Bhupinder Kaur and Manjit Kaur were born out of the wedlock of Charan Kaur and Kartar Singh. It was further pleaded that as per the order dated 29.09.2006 passed by the SDM Amritsar, the plaintiff has inherited half share; and defendants had inherited half share in the suit property. The plaintiff was entitled to get possession of her half share of the suit property. Accordingly, present suit for partition was filed on 30.03.2009.

6. Upon notice, defendants resisted the suit by filing written statement. Besides formal objections, the defendants had admitted that property in question belonged to Kartar Singh Bamrah but denied that after the death of Kartar Singh, the suit property devolved upon his three wives and three daughters. Defendants submitted that the plaintiff is not daughter of Kartar Singh; and that she is, in fact, daughter of one Hazara Singh, first husband of Charan Kaur. Plaintiff is stated to have no right, title or interest over the property left by Kartar Singh. Kartar Singh was only survived by his two daughters Bhupinder Kaur and Manjit Kaur. Bhupinder Kaur also died and her estate was inherited by her sister Manjit Kaur. Manjit



Kaur also died and the defendants no. 2 to 4 are the legal heirs of Manjit Kaur and Harinder Singh (husband) are entitled to inherit the estate left by the deceased. There is no final order of SDM as the appeal against the said order is also pending. Defendants denied that the plaintiff has inherited 1/2 share of the estate left by Kartar Singh or that she is co-sharer in possession. Defendants being the only legal heirs of Kartar Singh deceased are in possession of the entire suit property. Defendants denied that they are liable to pay any mesne profit to the plaintiff. They are owners and in possession of the suit property and are not liable to pay any thing to the plaintiff. Denying all other allegations and contending the suit of the plaintiff to be false and frivolous one, the defendants made a prayer for dismissal of the suit.

7. On the basis of pleadings of the parties, following issues were framed:-

- “1. Whether the plaintiff is entitled to get possession by partition of 1/2 share of the suit property i.e Kothi bearing no. 179, khasra nos. 2311/2285/1831 situated in Ajit Nagar, O/s Sultanwind Gate, Amritsar? OPP
2. Whether the plaintiff is entitled to relief of permanent injunction as prayed for? OPP
3. Whether the plaintiff is entitled to recovery of mesne profit for use and occupation of the share of the plaintiff, by the defendant, if so at what rate?OPP
4. Whether the suit is not legally maintainable ? OPD
5. Whether plaintiff has no locus standi to file the present suit ? OPD



6. Whether the plaintiff has not come to the Court with clean hands and concealed the material facts from the Court? OPD
7. Whether suit is not maintainable being partial partition ? OPD
8. Whether no cause of action has been arose to file the present suit ? OPD
9. Whether present suit is abuse of process of law ? OPD
10. Whether the suit has been filed with malafide intention to harass the defendant ?OPD
11. Whether suit has not been properly valued for the purpose of court fee and jurisdiction ?OPD
12. Whether the plaintiff is estopped by his own act and conduct to file the present suit? OPD
13. Whether the suit is within time? OPP
14. Relief.”

8. Upon appraisal of the pleadings and the evidence led by the parties, the Id. trial Court decided issues No. 1, 2, 6 and 7 against the defendants and in favour of the plaintiff; issue No. 3 against the plaintiff and in favour of the defendants; issue no. 4 against the defendants; issue no. 5 against the defendants and in favour of the plaintiff; issue no. 8 against the defendants and in favour of the plaintiff; issues no. 9 to 12 against the defendants and in favour of the plaintiff; issue no. 13 in favour of the plaintiff and against the defendants; and accordingly, vide judgment and decree dated 04.10.2013, the learned trial Court partly decreed the suit of the plaintiff by holding that the suit of the plaintiff for possession of $\frac{1}{2}$ share by way of partition and permanent injunction succeeds and suit for recovery of mesne profits fails. Thus, the suit of the plaintiff was partly



decreed with costs to the effect that plaintiff was held entitled to possession of 1/2 share by way of partition of Kothi Bearing No. 179, Khasra Nos. 2311/2285/1831 situated In Ajit Nagar O/s Sultanwind Gate, Amritsar and defendants were restrained from selling, mortgaging, gifting, alienating in any manner the suit property more than their share in it.

9. The appeal filed by the defendants against the above said judgment and decree was allowed by the learned lower Appellate Court; and the judgment and decree of the learned trial Court was set aside and suit of the plaintiff was ordered to be dismissed. Hence, the present second appeal.

10. Learned Senior counsel appearing on behalf of the appellant/plaintiff *inter alia* submits that the only ground on which the defendants had resisted the suit of the plaintiff was that the plaintiff was not the daughter of Kartar Singh; rather she was the daughter of Charan Kaur from her previous marriage to one Hazara Singh. It is firstly submitted that in respect of this bald statement, no evidence whatsoever has been produced by the defendants. On the other hand, the plaintiff had produced voluminous documentary evidence in the form of Ex.P-1 to Ex. P-7 to establish that the plaintiff was the daughter of Kartar Singh. The defendants did not refute these documents; rather they have been admitted by defendant no.1 in his evidence as DW1. Thus, the plaintiff had convincingly established through documentary evidence that she was the daughter of Charan Kaur and Kartar Singh.



11. It is submitted that however, the lower appellate Court has rejected all of the above said substantial documentary evidence by holding that the said documents have not been proved in accordance with law. Learned Senior counsel submits that the said reasoning of the learned Lower Appellate Court is unsustainable as the plaintiff had produced original public documents. Therefore, the documents being original public documents, requirements of the Evidence Act stand duly satisfied. It is argued that the documentary evidence, in respect of public documents and certificates, is *per se* admissible. Besides public documents related to the British Government and all the said documents are admissible in England; and, therefore, under Section 82 of the Evidence Act, there is presumption of truth in their favour and the same are admissible.

12. It is further submitted that in Agreement dated 10.10.2006 Ex.D1 entered into between the parties and relied upon by the defendants, also establishes the parentage of the plaintiff; wherein also she is shown to be daughter of Kartar Singh. It is argued that if the plaintiff was not the daughter of Kartar Singh, there was no occasion for the defendants to enter into an Agreement with her husband for relinquishing her rights in the suit property. Moreover, defendant No.1 Harinder Singh has appeared in the witness box as DW1 and has admitted that Bhupinder Kaur and Manjit Kaur never challenged the parentage of Amarjit Kaur/plaintiff during their lifetime. It was also admitted by DW1 that at the time of executing Compromise/Agreement Ex.D1, defendants have admitted plaintiff to be the daughter of Kartar Singh.



13. Ld. Senior counsel for the plaintiff further submits that even as per order dated 2.9.2009 Ex.P3 passed by the additional Collector, Grade-1, Amritsar, claim of the plaintiff has been decided in her favour by the revenue authorities. It is accordingly prayed that the impugned judgment and decree dated 03.04.2017 passed by Id. lower Appellate Court be set aside.

14. *Per contra*, learned counsel for defendant No.1/Harinder Singh assisted by learned counsel for defendants No. 2 to 4 vehemently submits that it is a categorical finding of the learned lower Appellate Court that the documentary evidence (Ex.P1 to Ex.P7) relied upon by the plaintiff, have not been proven in accordance with law. In this regard, it is submitted by learned counsel for respondents No. 2 to 4 that two questions to be adjudicated upon by this Court are the relevancy, and the presumption in respect of the said documents. It is submitted that relevancy of the documents would fall under Section 35 of the Indian Evidence Act which reads as follows: -

“35. Relevancy of entry in public [record or an electronic record] made in performance of duty-An entry in any public or other official book, register or [record or an electronic record], stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register, or [record or an electronic record] is kept, is itself a relevant fact.”



15. It is argued that the said provision is couched into 2 parts (a) entry; and (b) who deposed regarding documents. It is contended that as per Sections 102 and 103 of the Evidence Act, a person who asserts the fact, has to prove the fact. In the present case, the documents relied upon by the plaintiff have not been proved by producing witnesses/public authorities to prove the said documents as required under Section 35 of the Indian Evidence Act. It is submitted that as per the said provision, it was incumbent upon the plaintiff to summon the public record/register. Moreover, as per Section 79 of the Evidence Act, even certified copies have to be proved. It is thus contended that the finding of the learned lower Appellate Court to the effect that the documents have not been proven in accordance with law, suffers from no error.

16. It is further submitted by learned counsel for the defendants that irrefutable evidence of parentage of the plaintiff would be her birth certificate. However, the same has not been produced by the plaintiff. Moreover, as noticed by the lower Appellate Court in the impugned judgment, in the order dated 29.06.2006 passed by the revenue authorities, the plaintiff was mentioned as 'pichlag' daughter of Charan Kaur. It is submitted that therefore it is established that plaintiff was not born out of the wedlock and cohabitation of Kartar Singh and Charan Kaur. In support of their contentions, learned counsel for the defendants relies upon the following judgments passed by Hon'ble Supreme Court and this Court: -

1. *Sait Tarajee Khimchand and others vs. Yelamarti Satyam and others, Law Finder Doc Id # 108541 (SC);*



2. ***Avtar Singh and others vs. Inder Pal Singh and others, Law Finder Doc Id # 743298 (P&H);***
3. ***Kailash Devi vs. Jai Kishan (Lance Naik) and another, Law Finder Doc Id # 76591 (P&H);***
4. ***Narbada Devi Gupta vs. Birendra Kumar Jaiswal and another, Law Finder Doc Id # 65178(SC);***
5. ***Sada Ram vs. Paras Ram & others, Law Finder Doc Id # 603768 (P&H);***
6. ***Mohinder Singh vs. Joginder Singh, law Finder Doc Id # 183065 (P&H);*** and
7. ***Gopal Krishnaji Ketkar vs. Mohamed Haji Latif and others, Law Finder Doc Id # 109584 (SC).***

17. Learned counsel for the defendants submits that it has been broadly held in the above said judgments that mere marking of a document as exhibit does not dispense with its proof. It is accordingly prayed that the present appeal be dismissed.

18. In rebuttal, learned Senior counsel for the plaintiff submits that the documentary evidence relied upon by the plaintiff were original public documents; and, therefore, the same stood proven as per provisions of Sections 74 to 77 of the Evidence Act. Moreover, nothing has been produced by the defendants to refute the said documents. On the contrary, defendant No.1 has accepted these documents.

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

20. I have heard learned counsel for the parties and have perused the voluminous case file, as also lengthy lower Court record in minute detail with the able assistance of learned counsel for the parties. I have also given



my thoughtful consideration to the rival submissions advanced on behalf of both the parties.

21. On careful consideration of the entire matter, I find no merit in the submissions advanced on behalf of the respondents/defendants. As noticed above, the facts are that the suit property belonged to (L) Kartar Singh Bamrah. On his death the property devolved upon his three wives (namely Tej Kaur, Kartar Kaur and Charan Kaur) and his three daughters born from Charan Kaur (namely Amarjit Kaur (plaintiff), Bhupinder Kaur and Manjit Kaur). All the three wives of Kartar Singh have since died. Bhupinder Kaur was married to the Defendant no.1 Harinder Singh. No child was born of their wedlock. After her death Harinder Singh married her sister, namely, Manjit Kaur, who has also since died. The plaintiff is the sister-in-law of the Defendant No. 1 and the other defendants are her nephews. For clarity in respect of the relationship between the parties, the Pedigree table reproduced above may be referred to.

22. The plaintiff brought the suit for possession by way of partition on the grounds that being the daughter of Kartar Singh, she had share in his estate. Further, as per the order of the SDM, Amritsar dated 29.09.2006, the plaintiff and the defendants had each inherited $\frac{1}{2}$ share of the suit property. However, the Defendants were in occupation and were using the entire suit property. The plaintiff sought to partition the suit property as she did not want to keep it joint with the defendants.

23. The Defendants, on merits, admitted that the suit property belonged to Kartar Singh Bamrah but denied that after his death, the suit



property devolved upon his three wives and three daughters. The defendants have submitted that the plaintiff was not the daughter of Kartar Singh, and was in fact the daughter of Hazara Singh, and as such, she had no right, title, or interest in the property left by Kartar Singh. The said assertion of the defendants, although rejected by the learned trial court, was accepted by the Ld. Addl. District Judge, Amritsar vide the impugned judgment dated 03.04.2017 on the primary ground that the documentary evidence produced by the plaintiff was not proved in accordance with law.

24. However, in holding as above the Id. Lower Appellate Court has not considered the nature of the said documents to prove her pedigree as the daughter of Kartar Singh and Charan Kaur. These documents included:

- (i) the application for registration as a citizen of the UK (Ex P-1). The application Ex. P-1 dated 10.02.1953 wherein the parentage of the Appellant, who was a minor at the time, was clearly mentioned as Kartar Singh Bamrah (father) and Charan Kaur (mother). The application was made by the Appellant's father himself (Kartar Singh Bamrah) for the Appellant. Additionally, a clear declaration was also signed by Kartar Singh Bamrah at Clause 8 of the same application, submitted under the British Nationality Act, 1948, declaring the particulars as true. Similarly, Kartar Singh and his wife Charan Kaur also applied for the citizenship on the same day i.e. 10th February 1953.



- (ii) the marriage registration certificate of Charan Kaur and Kartar Singh (Ex. P-2). This certificate was issued by the Registrar of Marriages, Amritsar. The particulars of the bride (Charan Kaur) were given as daughter of Meet Singh; her age 17 years and status as unmarried. Similarly, the particulars of bridegroom (Kartar Singh Bamrah) were given as son of Hem Singh Bamrah; 40 years old and status as married. The certificate has reflected the date of marriage as 5.09.1948. What is to be noted is that Charan Kaur was unmarried before her marriage with Kartar Singh and after this marriage (on 05.09.1948), Amarjit Kaur was born on 15.06.1949. Her date of birth is also reflected in the copy of passport exhibited as Ex. P-5.

25. This Court has gone through the lower Court record in minute detail. The plaintiff had produced her *“Application for the registration as a citizen of the United Kingdom and Colonies of a person under 21 years of age” /Ex.P1 (available at page 227 of the LCR)*. Perusal of the said application dated 10.02.1953/Ex.P1 for registration of plaintiff as citizen of United Kingdom reveals that the said application was made by Kartar Singh himself for his minor daughter Amarjit Kaur/plaintiff. Kartar Singh has mentioned parentage of the then minor plaintiff therein as Kartar Singh Bamrah (father) and Charan Kaur (mother). In this regard, even a clear declaration was signed by Kartar Singh at clause 8 of the said application,



submitted under the British Nationality Act, 1948 declaring the said particulars to be true. Perusal thereof further reveals that date of birth of the plaintiff is shown to be 15.06.1949 in column No. 5 thereof.

26. Plaintiff had also produced Marriage Registration Certificate of Charan Kaur and Kartar Singh/ Ex.P2 (at page 229 of the LCR) in which age of Charan Kaur daughter of Mit Singh is recorded as 17 years; and very important to note that her marital status is shown to be 'unmarried'. The particulars of Kartar Singh Bamrah as reflected in the said certificate are that he is shown to be son of Hem Singh Bamrah; age 40 years; and status 'married'. The date of marriage is recorded as 5.9.1948. From this document it is clear that Charan Kaur was unmarried before her marriage with Kartar Singh on 5.9.1948.

27. It has further come on record that Amarjit Kaur/plaintiff was born thereafter on 15.06.1949 as reflected in the copy of her passport Ex.P5 (at pages 245 to 249 of the LCR). In Ex.P6 (at pages 281 to 285 of the LCR), which is passport of Charan Kaur, she is shown to be the wife of Kartar Singh. Even in the Marriage Registration Certificate of the plaintiff/ Ex.P7 (at page 315 of the LCR), name of father of plaintiff is Kartar Singh Bamrah; and her date of birth is recorded as 15.6.1949; and her status prior to said marriage with Surinder Singh is recorded as 'unmarried'. From all of the above documentary evidence, which has been produced in original by the plaintiff before the learned trial Court, it is established that the plaintiff was daughter of Kartar Singh and Charan Kaur.



28. However, the entire above said documentary evidence of the plaintiff has been rejected by the lower appellate Court as follows:

“13. *This court is further of the considered opinion that it is an admitted fact that after the death of Tej Kaur first wife of Kartar Singh and Kartar Kaur second wife of Kartar Singh, said Kartar Singh was married with Charan Kaur mother of plaintiff Amarjit Kaur. On the other hand appellants/defendants are alleging that Amarjit Kaur is pichlag daughter of Charan Kaur and was not born out of the wedlock and cohabitation of Kartar Singh and Charan Kaur, rather she was daughter of one Hazara Singh resident of Taragarh earlier husband of Charan Kaur. From the facts and circumstances and as argued by Id. counsel for the defendants/respondents, it is opined that a person like Kartar Singh who had already two issueless wives, there would be remote chances for him to get his third wife unmarried like Charan Kaur in the year 1948. However, anyhow he was married with Charan Kaur who is shown to be unmarried in marriage certificate dated 02.12.1965 of Kartar Singh and Charan Kaur Ex.P2, but on the file there is no concurrent proof of age of Charan Kaur like date of birth etc nor any such record is proved as per Evidence Act. Further, in the document Ex.P2 it reveals that Charan Kaur was 17 years old and she conceived a child which was born in the year 1948. But when Kartar Singh married with Charan Kaur, his first wife Tej Kaur was admittedly alive, then how he can solemnize the marriage with a 17 years old girl without taking consent or divorce from his previous wife. It is nowhere mentioned that when Kartar Singh solemnized marriage with his first wife, the date of marriage of Kartar Singh with his first wife is missing. Then date of marriage of his second wife is also missing and further it is not proved on record how much time*



*and year Kartar Singh waited for a child from the womb of his first and second wives and Amarjit Kaur plaintiff herself admitted that at the time of marriage of Charan Kaur, Smt. Tej Kaur first wife of S.Kartar singh was alive. Moreover, on the file there is no birth certificate of Amarjit Kaur plaintiff is proved and placed on record, except said documents tendered in evidence by the plaintiff Ex.P1 to Ex.P7, which are not duly proved on record. Record further shows that Kartar Singh was literate and affluent person, serving in Railway Deptt abroad, as he was also citizen of Colony and Protectorate of Kenya, however, this court has failed to understand that what prevented them at that time to procure birth certificate of Amarjit Kaur plaintiff, who was stated to be born in Sarja, Tehsil Baba Bakala, District Amritsar, Punjab, but the same is not explained or pleaded on the file, when other documents are placed which are not duly proved as per Indian Evidence Act. So these facts do not inspire the confidence of the court towards the case put forth by the plaintiff/respondent in this regard. On this point I am also fortified by the ratio of law laid down by our own Hon'ble High Court in a case titled as **Mohinder Singh Vs. Krishan Lal & Ors.2009(1) Civil Court Cases 015(P&H)** in which it is held "**Declaration made by a private party before a public authority is not a public document-Mere fact that the documents are forthcoming from a Government Department and bear its seal, will not dispense with its necessity of formally proving those documents**".*

29. It is my considered view that a bare reading of the above extract shows that the Id. lower appellate Court has gone off on a tangent losing sight of the issue at hand. The impugned judgment is clearly based



on conjectures and surmises and is unsustainable. The learned lower Appellate Court failed to appreciate that the documentary evidence of the plaintiff, relates to public documents and its original certified copies are per se admissible. Ex.P-1 has been submitted by Kartar Singh under the British Nationality Act, 1948 declaring the said particulars viz that the plaintiff is daughter of Kartar Singh, to be true. Besides, the public documents relate to the British Government and all documents admissible in England and under Section 82 of the Evidence Act, there is a presumption in their favour, and are therefore, admissible. Even otherwise, the documents being original public documents carry presumption of truth.

30. Further, even assuming the said documents Ex.P1 to Ex.P7 were not proved as per mandatory provisions of the Evidence Act, no doubt, the said documents were rebuttable, and it was open for the defendants to rebut the same. However, this has not been done. No evidence to rebut or deny the said documents has been produced by the defendants. In fact, the defendants neither at the time of exhibiting documents raised any objection before the learned trial Court; nor any ground was raised in the Grounds of Appeal to challenge the admissibility, authenticity and evidentiary value of the documentary evidence adduced by the plaintiff.

31. On the contrary, defendant No.1 has accepted and admitted the said documents. Testimony of DW1/defendant No.1 Harinder Singh to this effect is as follows (at page 199 of LCR): -



"S. Kartar singh had three wives namely Tej kaur, Kartar kaur and Charan kaur. There was no child of Tej kaur and Kartar kaur. Charan kaur had two daughters and one is peechla. I do not remember the date, year and month of the marriage of Tej kaur and same my reply regarding Kartar kaur and Charan kaur. Charan kaur was previously married at village Talawan. I had not seen the previous marriage of Charan kaur. I met all the relatives of the previous husband of Charan kaur. I had met elder brother of Hazara singh in the year 2006 when we were in dispute. Our dispute is still continuing. Charan kaur was born in Baba Bakala but I can not tell date month and year of her birth. I have no documentary proof which shows that Charan kaur is wife of Hazara singh. It is wrong to suggest that Amarjit kaur never considering as a daughter of Kartar kaur however, Bhupinder kaur and Manjit kaur considering her as a daughter of Kartar kaur. Ex P5 is correct that in this passport is clearly that Amarjit kaur is the daughter of Kartar singh. volunteered previously Indian passport was prepared and in that passport that father shown Hazara singh. That passport was not in our custody. It is wrong to suggest that Amarjit kaur was a daughter of Hazara singh. It is correct that Ex P6 is correct and correctly mentioned that Charan kaur wife of Kartar singh. Amarjit kaur got married with Surinder singh. It is correct that certificate was duly registered by HMA u/R 18 and i.e. P7 is correct accordingly. It is correct that marriage certificate was duly Issued by the registrar of marriage u/R 10 between Charan kaur and Kartar singh Bamra and Ex P 2 is correct accordingly. It is correct that Kartar singh Bamra was a foreman in Railway Nairobi. It is correct that it is correctly mentioned in Ex P-1 that Amarjit kaur is daughter of Kartar singh Bamrah. I do not remember the date of death of Kartar kaur then afterwards Charan kaur died, Tej kaur was died lastly



but I do not remember date, month and year of death of wives of Kartar singh Bamrah. The mutation was sanctioned in the year 1975 in the name of three wives and three daughters of Charan kaur after the death of Kartar singh Bamrah namely Tej kaur, Charan kaur and Kartar kaur and daughters namely Amarjit kaur, Bhupinder kaur and Manjit kaur." (Emphasis mine)

32. Perusal of the deferred testimony of DW1 further establishes that he has categorically admitted (at page 197-199 of the LCR), that Bhupinder Kaur and Manjit Kaur never challenged the paternity of Amarjit Kaur during their lifetime. He further admitted that at the time of executing Compromise Agreement dated 10.10.2006/Ex. D-1 Amarjit Kaur was considered as daughter of Kartar Singh. DW1 has further admitted in his testimony that Ex.D1 was entered into between the parties '*.....to settle the matter as property was in the name of Amarjit Kaur.*' Thus, the documentary evidence led by the plaintiff is buttressed by the oral evidence in the shape of admission of defendants, which supports the stand of the plaintiff.

33. Furthermore, learned counsel for the defendants has been unable to explain as to why in their own document Ex.D1/Agreement/compromise dated 10.10.2006, the plaintiff has been shown to be the daughter of Kartar Singh. It has been sought to be argued by learned counsel for respondents No.2 to 4 that this was done by the defendants only in an attempt to reach an Agreement with the plaintiff. However, the record reveals that though the Agreement was arrived at



between the parties, it was not acted upon. In this regard, Ld. Lower Appellate Court has erred in not considering the statement of DW-2 Sukhvinder Singh, who has admitted in his cross-examination that the Agreement (Ex. D-1) was executed but the same was never implemented in the revenue records (it is so admitted at page 205 of the LCR). Clearly, therefore, the Agreement dated 10.10.2006 (Ex. D-1) admitting plaintiff to be daughter of Kartar Singh and relied upon by the Defendants irrevocably establishes the parentage of the plaintiff. It is also to be pondered that had it been true that plaintiff was not daughter of Kartar Singh, there was no occasion for the Defendants to enter into an agreement with the husband of the Appellant for relinquishing her rights in the suit property. Thus, the entire case of the plaintiff is well established not only on the basis of documentary evidence but also on the basis of admission of the defendants.

34. It is established tenet of law that '*admission is the best evidence*'. In this regard, reference can be made to a judgment of the Hon'ble Supreme Court in "**Divisional Manager, United India Insurance Co. Ltd. & anr. vs. Samir Chandra Chaudhary**" Law Finder Doc Id # 83537; wherein it is held that an "*admission of fact is good evidence*" against the person admitting the same unless it is legally explained away to be made under a bona fide mistake. That is not so in the present case. As such, the documentary evidence produced by the plaintiff could not have been merely brushed away by the Lower Appellate Court. The Ld. Lower Appellate



Court is in patent error in ignoring the testimony of DW1 and DW2, as also Exhibit D1 in this regard.

35. Further, it is the own submission of learned counsel for respondents No.2 to 4 that *“person who asserts the fact has to prove the fact”*. It is but trite to suggest that what is cheese for the gander is cheese for the geese. The said principal cannot be said to apply only to the plaintiff. It has been repeatedly and vehemently submitted by the defendants at every stage that the plaintiff is the daughter born from the marriage of Charan Kaur and Hazara Singh. However, not one whit or smidgen of evidence has been produced by the defendants in support of the said contention. Even the date of alleged marriage between Charan Kaur and Hazara Singh is not mentioned at any stage on the record of the case. It has also not been denied by the defendants that in the marriage certificate of Charan Kaur and Kartar Singh (Ex.P2 - at page 229 of the LCR), Charan Kaur is shown to be 17 years of age and unmarried. Needless to say, if she was previously married at time of her marriage to Kartar Singh, the said fact would find mention in marriage certificate. Even otherwise, the fact that Charan Kaur was only 17 years old at time of her marriage to Kartar Singh, would make a previous marriage improbable rather well nigh impossible. From these facts, it would appear that the said plea that plaintiff is not daughter of Kartar Singh, has been manufactured by the defendants only to wrongfully deprive the plaintiff of her right in the property/estate of her father Kartar Singh.



36. Much reliance has been placed by the defendants upon the order dated 29.09.2006 of the SDM Amritsar, wherein plaintiff is allegedly shown as 'pichlag' daughter of Charan Kaur. However, admittedly the said order has not been placed on record by the defendants. As such, counsel for the defendants has been unable to enlighten this Court as to on what basis, this assertion has been made by the defendants when even the said order is not on record. Further, admittedly, the said order dated 29.06.2006 has been upheld by the Additional Collector, Grade-1, Amritsar, vide order dated 02.09.2009 (Ex.P3 - at page 231 of the LCR). Vide order dated 2.9.2009, the appeal filed by the defendants against the order of the SDM dated 29.9.2006, was dismissed and claim of the plaintiff was upheld. In the order dated 2.9.2009, it has been positively found by the Additional Collector Grade-1 that the three sisters Amarjeet Kaur, Bhupinder Kaur, and Manjit Kaur are real sisters. Further, the lower appellate Court has exceeded its jurisdiction in commenting adversely about the revenue proceedings particularly when there was no such pleading or issue in this behalf.

37. Furthermore, as per Jamabandi for the year 1975-76/ Ex. P9; and Jamabandi for the year 2000-01/ Ex.P14, the plaintiff, along with Bhupinder Kaur and Manjit Kaur, have been shown to be daughters of Kartar Singh. It has been held by a Coordinate Bench of this Court in **"Major Singh and another vs. Mukhtiar Singh"**, Law Finder Doc Id # 201085, that under Section 44 of the Punjab Land Revenue Act, 1887, revenue entries carry a presumption of truth that they are correct unless such entries are challenged by filing civil suit. Nothing has been brought to the notice of this



Court that the said order dated 2.9.2009/revenue entries in favour of the plaintiff, have been challenged by the defendants.

38. It is also relevant to note that the Hon’ble Supreme Court has held that there is the basic distinction between right of suit and right of appeal as reported in **Smt. Ganga Bai v. Vijay Kumar (1974) (2) SCC 393**. It has been held that appeal is not maintainable against a mere finding. The defendants can derive no benefit from the judgments relied upon as the same or distinguishable on facts and law.

39. In view of the above discussion, the present appeal is **allowed**; and the impugned judgment and decree dated 03.04.2017 passed by the learned Additional District Judge, Amritsar is hereby set aside; and the judgment and decree dated 4.10.2013 of the Id. Trial Court is restored.

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

02.04.2025
Divyanshi

(NIDHI GUPTA)
JUDGE

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