

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****116****RSA-6067-2018 (O&M)****Date of decision: 26.03.2025****Kamaljeet Kaur and others****...Appellant(s)****Vs.****Bhajni and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

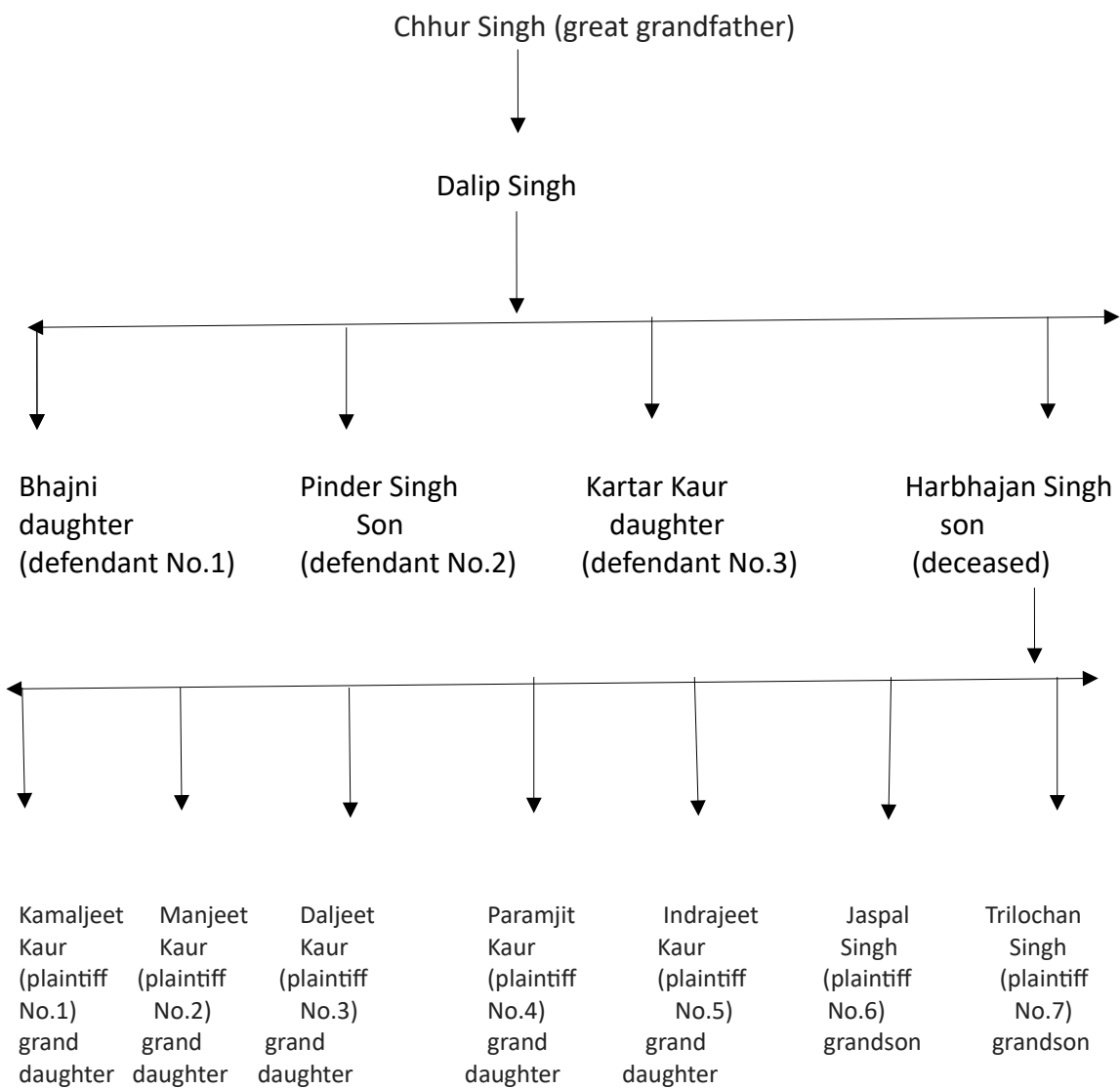
Present:- Mr. I.P.S. Doabia, Advocate for the appellants.

Mr. Inderjit Sharma, Advocate for the respondents.

NIDHI GUPTA, J.

The plaintiffs are in second appeal 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 co-owners in possession to the extent of 1/4th share; and the defendants are co-sharers /co-owners in possession to the extent of 3/4th share i.e. 1/4th share each, in the suit land as described in the plaint, which they have inherited after the death of their father Dalip Singh (father of defendants and grandfather of the plaintiffs); and suit for permanent injunction restraining the defendant no.1 from interfering in the joint possession of the plaintiffs of the suit land; or in the alternative alienating the suit land in any manner, has been dismissed 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 respondents are the ‘defendants’.
3. The following pedigree table will be helpful, in order to understand relationship between the parties: -



4. Brief facts of the case as set out in the plaint are that the suit property was owned and possessed by Dalip Singh, son of Chhur Singh, who had expired leaving behind the plaintiffs as his grandchildren; defendants No. 1 and 3 as his daughters and defendant no.2 as his son. It was the case of the plaintiffs before the learned courts below that the plaintiffs are co-sharers/co-owners in possession to the extent of 1/4th share in the suit



property as the suit property was ancestral in the hands of Dalip Singh. It was further pleaded that the plaintiffs were looking after Dalip Singh; and that Dalip Singh never executed any Will in favour of the defendants and any such document is a result of forgery with connivance of Scribe. Defendant no.1 is threatening to interfere in the joint possession of the plaintiffs over the suit property. Hence, the present suit was filed on 07.05.2008.

5. Upon notice, defendant No.1 appeared and resisted the suit by filing written statement by submitting that Dilip Singh during his lifetime had executed a Will dated 24.05.2001 registered on 25.05.2001 in favour of defendant no.1. Hence, she was owner in possession of the suit property. Defendant no.1 had looked after Dilip Singh during his life and had also performed his funeral ceremony. The remaining contents of the plaint were denied and dismissal of the suit was prayed for.

6. Defendants No. 2 and 3 filed separate written statement and prayed that the suit be decreed.

7. Replication was filed by the plaintiffs to the written statement of defendant no.1 reiterating the averments made in the plaint and denying those in the written statement.

8. On the basis of pleadings of the parties, following issues were framed vide order dated 21.07.2010: -

“1) Whether the plaintiffs are entitled to the relief of declaration as prayed for? OPP.

2) Whether the plaintiffs are entitled to the relief of Permanent injunction as prayed for? OPP



3) Whether in the alternative, the plaintiffs are entitled to the relief of joint possession of the suit land? OPP

4) Whether the Will dated 24.5.2010 executed by Dalip Singh in favour of defendant no.1 is legal and valid? OPD

5) Whether the plaintiffs have got no cause of action to file the present suit? OPD

6) Relief.”

9. Upon appraisal of the pleadings and the evidence led by the parties, the Id. trial Court decided issues No. 1 to 3 against the plaintiffs; issue no.4 in favour of defendant no.1; issue No. 5 against the defendant No. 1 as the said issue was not pressed by learned counsel for the defendant No.1 during the course of arguments; and accordingly, vide judgment and decree dated 15.05.2013, the learned trial Court dismissed the suit of the plaintiffs with costs. The appeal filed by the plaintiffs was also dismissed by learned District Judge, Gurdaspur vide judgment and decree dated 29.01.2018. Hence, the present second appeal.

10. Learned counsel appearing on behalf of the appellants/plaintiffs submits that the appellants had duly established on record that the suit property in the hands of Dalip Singh was ancestral in nature. The plaintiffs had produced jamabandi for the year 2009-10 Ex.P1 from which it was evident that the suit property had devolved upon grandfather of the plaintiffs Dalip Singh through Chhur Singh. It is submitted that therefore, it is clear that suit property was ancestral in nature.

11. It is further argued that the Will dated 24.5.2001 on the basis of which defendant no.1 is claiming title to the suit property is surrounded by suspicious circumstances. First and foremost, the date of Will is



24.05.2001, yet it has been registered one day thereafter on 25.05.2001. There is no explanation in delay of registration of the Will. Moreover, the scribe of the Will Amrik Singh DW1 has admitted in his cross-examination that the Register of the scribe does not bear the signature of testator of the witnesses to the Will. Moreover, admittedly at the time of registration of the Will on 25.5.2011, the Scribe did not appear before the Sub Registrar. He has further admitted in his cross-examination that he did not know any details of the suit land, such as measurement and nature etc. It is further submitted that similarly DW2 Kashmir Singh and DW3 Gurdial Singh, who are attesting witnesses of the Will did not give details of the land bequeathed by Dalip Singh to defendant no.1 by way of the said Will. Ld. counsel further refers to the testimony of DW5 Pinder Singh who has admitted the case of the plaintiffs in his affidavit Ex.DW5/A. It is accordingly submitted that the Will relied upon by defendant No.1 is surrounded in suspicious circumstances; and therefore, the suit of the plaintiffs has been wrongly dismissed.

12. *Per contra*, learned counsel for the respondents/defendants submits that the impugned judgments and decrees suffer from no error. It is submitted that the plaintiffs have miserably failed to prove the ancestral nature of the land. Even the submission made by the plaintiffs in respect of the evidence on record are based on misreading of the evidence. It is submitted that the Scribe Amrik Singh DW1 had duly proved the original Register in which entry of the Will dated 25.05.2001 is at Serial No.323. Furthermore, the Will Ex.D1 categorically mentioned that Dalip Singh



bequeathed his suit property to his daughter Bhajni/ defendant no.1 to the exclusion of other children/defendants No. 2 and 3; and also to the exclusion of his grandchildren/plaintiffs, on the ground that Bhajni had been serving Dalip Singh; whereas defendants No. 2 and 3 had not been looking after Dalip Singh. It is accordingly prayed that the present appeal be dismissed.

13. In support of his contention, learned counsel for respondent No.1/defendant no.1 relies upon the following judgments:

1. Makhan Singh (D) by LRs vs. Kulwant Singh Docid # IndLawLib/260721 (Hon'ble Supreme Court)

2. Matu Ram (deceased) through LRs. Vs Kartar Singh and others Docid # IndLawLib/349695 (Punjab and Haryana High Court)

3. Saroja vs. Santhil Kumar Law Finder Doc Id # 250916 (Hon'ble Supreme Court)

4. Inder Singh (Dead) through LRs. vs. Chhano and others, Law Finder Doc Id # 73847 (Punjab and Haryana High Court)

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

15. I have heard learned counsel for the parties and perused the case file, as also the lower Court records in minute detail.

16. It has firstly been contended by learned counsel for the appellants/plaintiffs that the suit property was ancestral in nature in the hands of Dalip Singh and therefore, he could not dispose off the same by way of Will dated 25.05.2001 Ex.D1. I do not find any merit in the said contention of learned counsel for the appellants. Perusal of the record



shows that in order to prove the ancestor nature of the land, the plaintiffs have produced only one document i.e. jamabandi for the year 2009-10 Ex.P1. However, a perusal of the said Jamabandi Ex. P-1 (available at page No. 205 of the LCR) the defendant No.1 is recorded as owner of the suit land. No doubt, the suit land had devolved upon Dalip Singh through Chhur Singh. However, in order to prove the ancestral nature, it was incumbent upon the plaintiffs to prove that the land had come to Dalip Singh through 3 lineal stages of inheritance. However, the plaintiffs have not been able to prove the inheritance of the suit land beyond Chhur Singh. Further, in ***Inder Singh (dead) through LRs case (supra)***, it is held by the Coordinate Bench of this Court that if ancestral and non-ancestral part of land has been mixed up in such a manner that is difficult to find out as to which part of land is ancestral or non-ancestral, it is to be held that entire land is non-ancestral. In holding as above, AIR 1933 Lahore 180 has been followed.

17. It has secondly been contended on behalf of the plaintiffs that the Will is surrounded in suspicious circumstances. The said argument of the appellants is also liable to be rejected as DW1 Amrik Singh/Scribe of the Will has duly produced his original Register dated 24.05.2001; where the entry in respect of the Will is recorded at Sr. No. 323. In this regard, reference may also be made to the affidavit Ex. DW1/A (available at pages No. 159 and 160 of the LCR) submitted by Amrik Singh/scribe wherein he has stated as follows:-



“1. That, I have seen the Original Will dated 24.5.2001 which is Ex-D1. The said Will was scribed by me on the instructions of Dalip Singh son of Chuhan Singh son of Hira Singh resident of village Cheema Bhattewad, Tehsil Batala in favour of Smt. Bhajni her daughter. The contents of the said Will were read over and explained to said Dalip Singh and the said Dalip Singh after admitting the contents of the same as correct signed the said Will in my presence and in the presence of Kashmir Singh Ex-Chairman, Village Cheema Bhattewad and Gurdial Singh son of Hazara Singh resident of village Cheema Bhattewad. Thereafter the said Kashmir Singh and Gurdial Singh put their signatures on the said Will as witnesses thereof. I have brought the original register dated 24.5.2001 today in Court and the entry is in existence in my Register at Serial No. 323.”

18. As regards DW2, the argument that the attesting witnesses had not been able to provide the dimensions and other details of the suit land, the same is irrelevant as the attesting witnesses are not concerned with the area of the land etc. and such like details.

19. Furthermore, defendant No.2/DW5 has admitted in his cross-examination (available at page 195 to 199 of the LCR) that:

“..... My father was five brothers and I had two aunts (Bua). Out of them, one was living at Batala. Two out of them were living in Asansol and one was living at Golmore. The land was owned by my grandfather which was ancestral. He had purchased the land. Langar was arranged there itself Satnam Singh is a son of Bhajni. Satnam Singh got him admitted in the hospital and we were not told. Dead body was also received by Satnam Singh from hospital.



..... It is correct that Ex.D1 bears photo of my father Dalip Singh.”

20. Further perusal of the record reveals that the Will Ex.D1 (available at page No. 233 of the LCR) clearly mentioned that only Bhajni defendant no.1 has been serving Dalip Singh and it was for this reason that the other two children of Dalip Singh/defendants No. 2 and 3 had been excluded from the Will. As noted above, this fact has been admitted by defendant no.2/DW5 in his cross-examination. The said Will Ex.D1 is reproduced as under:-

“I Dalip Singh S/o Chhur Singh S/o Heera Singh is a resident of village Cheema, District Gurdaspur. I am owner of movable and immovable properties. My age is around 85 years and usually I am not well. So I am under fear of impression that death can arrive at anytime to me. I am married and my wife is no more. I have 2 sons and 2 daughters. My sons do not take good care of me due to which they have no connection with my property. My daughter Sheelo is married and I have given her share in the property to her in the form of dowry at the time of her marriage. My daughter Bhajni is married and she takes good care of me. So in conscious state of mind I am bequeathing my movable and immovable property in favour of Bhajni D/o Dalip Singh. During my lifetime I will be the owner of property. This is my first Will and I have written this Will.

Executor-Dalip Singh

Witness No.1-Kashmir Singh

Witness No.2-Gurdial Singh”



21. The relevant findings of the learned lower appellate Court as contained in para 11 of the judgment and decree dated 29.01.2018 are reproduced herein-below: -

“11. This Court has considered the rival submissions of learned counsel appearing on behalf of the respective parties. There is no dispute to the fact that parties to the lis are in relations. Appellant Kamaljeet Kaur was daughter-in-law of one Dalip Singh and the remaining appellants are grandchildren of Dalip Singh. In the suit, they alleged that the suit property in the hand of Dalip Singh was ancestral and being ancestral in nature of the suit land, Dalip Singh was not competent to execute any will and, as such, the Will dated 24.05.2001 registered on 25.05.2001 was, in fact, forged and fabricated. Thus, the claim of the appellant is based on inheritance of Dalip Singh on the basis of natural succession. However, in order to prove the ancestral nature of the land, the appellant have only produced jamabandi, Ex.P1, for the year 2009-2010 in their evidence. However, this proof alone could not establish the ancestral nature of the suit land. The best evidence available with the appellants, which was required to be produced on the file was Intkhab (Excerpt), Khatoni Istemal, Khatoni Paimash and Naksha Haq-Dar-war. However, the appellant failed to produce on record said documentary evidence which could prove ancestral nature of the suit land and in the absence of that, the nature of the suit land is presumed to be non-ancestral. The law on the point is settled that all properties presumed to be non-ancestral and onus is upon the party to prove the same is ancestral, which exerting the same to be so. Thus, it is not sufficient to prove that mere holder had inherited the property from his grandfather and as such, it was ancestral property, as argued



by the learned counsel appearing on behalf of the appellant. The nature of the suit property that suit property is ancestral has to be established by the party who alleges this fact. In the instant case, there is no such evidence, from where an inference can be drawn about nature of the suit property that suit property in hand of Dalip Singh was ancestral. Even otherwise also, it is borne out from the record that Dalip Singh had two sisters, meaning thereby that Chuhar Singh was having three children, one is Dalip Singh and two daughters and, admittedly, sisters were not given any share from inheritance of Chuhar Singh, is a fact admitted by Pinder Singh while appearing as DW-5. Thus, in the light of the evidence available on record, coupled with the fact that the appellant failed to produce the relevant documentary evidence, which could prove ancestral nature of the suit land, it can be held that the property in hand of Dalip Singh was his self-acquired property and being his self-acquired property, he was competent to execute the Will and in the instant case, according to the respondent No.1, Dalip Singh had executed a Will on 24.05.2001, which was registered on 25.05.2001. The Will, Ex.D1, is on the record and in order to prove valid execution of the will, the respondents examined Kashmir Singh and Gurdial Singh. Both are the attesting witnesses of the Will and in their testimony, they have deposed that the Will was scribed by Amrik Singh under the instructions of Dalip Singh. Amrik Singh also appeared to prove the validity of the Will, as DW-1. From the testimony of the attesting witnesses, it is clear that contents were read over to Dalip Singh at the time of execution of the Will and it is in their evidence that said Dalip Singh put his signatures after understanding the contents to be correct and thereafter both the attesting witnesses appended their signatures. The Will



was registered, though later on, but this fact alone cannot be sufficient to doubt the validity of the Will. Rather, registration of the Will, in the light of the attending facts and circumstances of the case, was proof of its authenticity. There is nothing in the testimony of attesting witnesses, from where it can be held that the Will was not a genuine Will executed by Dalip Singh. Since the respondents have proved the execution, attestation and genuineness of Ex.D1, by removing all reasonable doubts and, therefore, it cannot be held that while dismissing the suit of the appellants, the learned Trial Court went in wrong. The suit of the appellants was rightly dismissed by the learned Trial Court.”

22. Learned counsel for the appellants/plaintiffs is unable to dispute or controvert the above said facts and findings.

23. In view of the discussion above, no ground is made out to interfere in the impugned judgments and decrees of the learned Courts below. The present regular second appeal is hereby **dismissed**.

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

26.03.2025

Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No