

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****109****RSA-14947-2018 (O&M)****Date of decision: 18.02.2025****Jasbir Singh and others****...Appellant(s)****Vs.****Balbir Singh and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Ms. Anamika Shoeran, Advocate for
Mr. Vikas Singh, Advocate for the appellants.

NIDHI GUPTA, J.

The plaintiffs are in second appeal against the concurrent judgments and decrees of the learned Courts below, whereby the suit of the appellants/plaintiffs for declaration to the effect that plaintiffs and performa defendants/respondents No. 4 to 12 herein, are owners in possession and successors to the estate of Sohail Singh @ Rawel Singh on the basis of his Will dated 18.12.1982, 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 the respondents are the 'defendants'.

3. The plaintiffs have filed the present suit for declaration that plaintiffs along with proforma defendant no.4 Pritam Kaur are owners in possession and have succeeded the estate of Sohail Singh at Village



Manakpur and Urna as per Will dated 18.12.1982; **and** suit for declaration that whole estate of Rawail Singh @ Sohail Singh is succeeded by plaintiffs & proforma defendant Pritam Kaur and defendants no.1 to 3 have no concern with the same; **and** suit for declaration that revenue record showing defendants no.1 to 3 as successor to the extent of 1/3 share in land situated at village Manakpur and Urna is illegal and liable to be set aside; **and** the mutation No.9905 is illegal, null and void and liable to be set aside; **along with** suit for permanent injunction restraining defendants no.1 to 3 from interfering in the peaceful possession of plaintiff over the suit land and from alienating, mortgaging or transferring the suit land.

4. The brief facts as put forth by the plaintiffs in the plaint are that Sohail Singh was owner and in possession of suit land as described in the plaint. The plaintiffs and defendants are sons, daughters and widow of Rawal Singh @ Sohail Singh. During his life time Sohail Singh conducted marriages of his daughters/defendants No.2&3 and spent huge amount on their marriages. Defendant No.1 used to quarrel with Rawel Singh and never looked after him. That is why Sohail Singh did not want to give any share to him. Plaintiffs along with performa defendant no.4-Pritam Kaur served Rawel Singh during his life time. Said Rawel Singh also executed his Will dated 18.12.1982 in the presence of witnesses Jagtar Singh son of Sampuran Singh, and Numberdar Jasmer Singh of village Manakpur which is his last and valid Will. Said Will was found in the last month when plaintiffs and performa defendant were cleaning the kothri. Said Rawel Singh died on 4.4.2004. Defendants No.1&2 never served their father and



this fact is in the knowledge of whole of the village rather defendant No.1 insulted and quarrel with Rawel Singh. Performa defendant Pritam Kaur was not available and plaintiffs have no cause of action against performa defendants No.5 to 12 but due to legal technicality they are pleaded as performa defendants in the present suit. It is further stated in the plaint that Defendant no.1 in collusion with Halka Patwari and other revenue officials got mutated the suit property of the share of Sohail Singh in equal share in the name of plaintiffs, performa defendant Pritam Kaur, and defendants No.1 to 3 which are liable to be set aside. Plaintiffs requested defendants No.1 to 3 to get corrected the revenue record but they did not pay any heed to the genuine request of plaintiffs. Hence, this suit.

5. Upon notice, defendant No.1/respondent No.1 herein, appeared and filed written statement contesting the suit by stating that the suit was time barred as the plaintiffs relied upon Khangri Will dated 18.12.1982. Moreover, the said Will is not a registered document and is forged and fabricated and created by the plaintiffs to grab the share of defendant No.1; that mutation No. 9905 has been entered in the name of defendant No.1 on the basis of natural succession etc.

6. Defendants No. 2 to 4 filed separate written statement admitting the claim of the plaintiffs. Performa defendants No. 5, and 9 to 12 filed separate written statement submitting that suit is not legally maintainable as the same is without cause of action and the said defendants have been unnecessarily made party as they had no concern with the estate of Rawel Singh, father of the plaintiffs.



7. The plaintiffs filed replication to the written statement of defendant No.1 denying the averments of the written statement and reiterating the ones made in the plaint.

8. From the pleadings of the parties, following issues were framed vide order dated 17.07.2015:-

1. Whether plaintiffs are entitled for declaration as prayed for? OPP
2. Whether plaintiffs are entitled for permanent injunction prayed for? OPP
3. Whether the suit of plaintiffs is time barred? OPD
4. Whether plaintiffs have no locus standi and cause of action to file the present suit? OPD
5. Whether plaintiffs are estopped to file the present suit? OPD
6. Whether suit of plaintiffs is not legally maintainable? OPD
7. Relief.

9. On the basis of the evidence adduced by the parties, the learned trial Court decided issues No.1 to 3 and 5 against the plaintiffs and in favour of defendants; issues No. 4 and 6 were decided against the defendants and in favour of the plaintiffs; and the suit of the plaintiffs was dismissed by the learned trial court vide judgment and decree dated 01.08.2017. The appeal filed by the plaintiffs was also dismissed by the learned Additional District Judge, Patiala vide judgment and decree dated 25.07.2018 affirming the findings of the learned trial Court. Hence, the present second appeal.



10. Learned counsel for the appellants/plaintiffs assails the impugned judgments and decrees of the learned Courts below by submitting that learned Courts below were in error in rejecting the Will (Ex.P1) produced by the plaintiffs as the execution of the said Will was duly proved by production of attesting witnesses. The deceased Sohail Singh had executed the Will in the presence of 2 witnesses, the testator had signed the Will in the presence of the said witnesses and the witnesses have also signed in his presence. Scribe is also witness in this case who had duly proved that the Will was scribed by him and that the witnesses had signed in his presence and that the deceased had also signed in the presence of the witnesses. Thus, as per Section 68 of the Evidence Act, the Will dated 18.12.1982 was duly proved. Thus, the learned courts below have erred in opining that the Will was surrounded by suspicious circumstances. As such, plaintiffs cannot be denied their inheritance on the basis of the said Will. It is also submitted that there is no period of limitation for claiming inheritance.

11. It is further contended that there is no law which requires the Will to be registered. Even if the Will is not registered and there is evidence to prove the same, it should be taken as proved.

12. It is further submitted that even the proper issues have not been framed in the case. It is contended that learned trial Court ought to have framed issues as to whether the deceased Sohail Singh @ Rawel Singh had executed the Will dated 18.12.1982 (Ex.P1). It is contended that finding regarding the Will could not have been given without framing of the issues.



The non-framing of proper issues had caused serious prejudice to the plaintiffs. Accordingly it is prayed that the impugned judgments and decrees of the learned courts below be set aside.

13. No other argument is raised on behalf of the appellants.

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

15. I find no merit in the submissions made on behalf of the plaintiffs. The plaintiffs are seeking declaration as owners in possession to the estate of Sohail Singh @ Rawel Singh on the basis of the Will dated 18.12.1982 allegedly executed by Sohail Singh in favour of his five sons/the plaintiffs, while excluding the sixth son/defendant no.1. However, the record reveals that the said Will is shrouded in suspicious circumstances.

16. Admittedly, Rawel Singh had died on 04.04.2004/04.04.2006 (in the plaint it is stated that Sohail Singh died on 04.04.2004, however it has been deposed by plaintiff no.1/PW1, that Sohail Singh died on 04.04.2006). Whereas, the present suit has been filed by the plaintiffs on 17.04.2012 i.e. 8 years after the death of Sohail Singh. No explanation has been given by the plaintiffs for this delay.

17. In an attempt to explain the delay in filing the suit, the plaintiffs have stated in the plaint that the said Will was found only one month prior to filing of the suit when the performa defendants were cleaning the kothri. However, the plaintiff No.1/Jasbir Singh in his cross-examination as PW1 has stated that he came in possession of the Will on the date of filing the suit. Contradictorily, he has also deposed that the papers were traced on the day



of death of Sohail Singh from the house and then Will was found. It has also come in the plaintiffs' evidence that Kabal Singh PW3 had disclosed to the plaintiff No.1 about the Will when his father expired. However, this does not explain as to why the plaintiffs did not file the suit despite admitting that they had knowledge of the Will. As such, several different versions have been given by the plaintiffs themselves in respect of the Will, thus casting shadow of doubt upon the same.

18. In further contradiction, PW2 Jagtar Singh, the marginal witness to the Will had deposed that all the 5 plaintiffs/sons of Sohail Singh were present at the time of execution of Will. On the other hand, PW-3 Kabal Singh has deposed that the Will was found while cleaning the house after 5-6 months after the death of Sohail Singh and it was found lying in the almirah in the room. No witness was also able to explain as to why the Will was not produced at the time of sanction of mutation No. 9905 on the basis of natural succession in favour of the plaintiffs and defendant No.1.

19. Even no explanation is forthcoming as to why Sohail Singh excluded defendant no.1 as beneficiary in the said Will dated 18.12.1982. It has been admitted by PW2 Jagtar Singh, marginal witness that although 5 brothers/plaintiffs were present at the time of scribing the Will, the defendant No.1 Balbir Singh was not present. PW2 has further deposed that he was not aware that Balbir Singh has been disinherited or disowned by Sohail Singh. Despite being marginal witness, PW2 Jagtar Singh has also failed to disclose when the Will was executed. PW3 also admitted in his



cross-examination that he had never heard that Sohail Singh had disowned Balbir Singh from his property.

20. The plaintiffs had further admitted that the suit has been filed 6 years after the death of his father on the basis of his Will; and that the defendant No.1 was not aware of the Will. It is also relevant that PW1 has admitted that the attesting witness to the Will, namely, Jagtar Singh PW2 was not related to him; that he was was a resident of Naraina; and that the plaintiff had never met him since 1982. From the above, it is clear that the plaintiffs did not have close relation with the attesting witness to the Will. Thus, the learned courts below correctly held that the Will relied upon by the plaintiffs was shrouded in suspicious circumstances; and therefore, the plaintiffs were not entitled to the declarations as prayed for.

21. As regards the contention of the learned counsel for the appellants that no issue was framed by the learned trial Court regarding the authenticity of the Will, the same is liable to be rejected as the perusal of the Civil Appeal No. 658 dated 23.08.2017 filed by the appellants before the learned Additional District Judge, Patiala shows that no such ground has been taken by the appellants before the learned lower appellate Court. In any event, the said issue would be covered by the Issues no. 1 to 4.

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

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



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

18.02.2025
Divyanshi

(NIDHI GUPTA)
JUDGE

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