

2026:PHHC:077138



**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

**RSA No.1917 of 1992 (O&M)
Reserved on: 26.02.2026
Pronounced on: 18.05.2026
Uploaded on: 18.05.2026**

Sardar Gurbachan Singh (deceased) through his LR's and another

.....Appellants.

Versus

Kamaldish Kaur and another

.....Respondents.

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present:- Mr. Sapan Dhir, Advocate
for the appellants.

None for respondent No.1.

Service of respondent No.2 dispensed with
vide order dated 12.11.1992.

VIKRAM AGGARWAL, J.

This is defendants' appeal against the judgment and decree dated 04.09.1992 passed by the Court of Additional District Judge, Amritsar, allowing the appeal filed against the judgment and decree dated 11.08.1989 passed by the Court of Sub Judge 1st Class, Amritsar, vide which the suit for permanent injunction filed by the plaintiff (Kamaldish Kaur) had been dismissed, thereby decreeing the same.

2. For the sake of convenience, parties shall be referred to as per their original status.

3. The plaintiff (Kamaldish Kaur) instituted a suit for permanent injunction restraining defendant No.1 (Karam Kaur) from alienating land measuring 47 Kanal 11 Marlas (fully described in the plaint) situated in Village Verka, Tehsil and District Amritsar (hereinafter referred to as the 'suit property') and from transferring its possession to defendant No.2 (Col. Balwant Singh) or to any other person. The relief of possession was also sought.

4. One S. Bhag Singh had 03 sons namely Balwant Singh (defendant No.2), Gurbachan Singh (defendant No.3) and Harbans Singh. His wife was Karam Kaur (defendant No.1). Plaintiff (Kamaldish Kaur) is the widow of Harbans Singh. Bhag Singh was the owner of the suit property. It was claimed in the plaint that he had executed a Will dated 27.02.1969 bequeathing his properties to his heirs and the suit property which was in possession of defendant No.1 as a limited owner having a life interest was to devolve upon Harbans Singh, deceased husband of the plaintiff after the death of defendant No.1. It was further claimed that Harbans Singh had also executed a Will in favour of the plaintiff and her two daughters in respect of his entire properties. It was claimed that accordingly, after the death of defendant No.1, the suit property was to devolve upon the plaintiff and her two daughters.

4.1. It was claimed that in order to defeat the rights of the plaintiff, the defendants had connived and were attempting to alienate the suit property. Defendant No.2 had moved an application for correction of Khasra Girdawris in his favour in connivance with defendant No.1.

4.2. It was averred that a gift deed had been executed by S. Bhag Singh on 07.04.1956 in favour of defendant No.1 vide which only a life interest had been granted to defendant No.1 and she was not entitled to alienate any portion of the suit property. It was stated in the gift deed that after the death of defendant No.1, the same was to revert to S. Bhag Singh and in case, S. Bhag Singh pre-deceased defendant No.1, the suit property was to devolve upon his three sons, namely, Balwant Singh, Gurbachan Singh and Harbans Singh.

4.3. It was claimed that S. Bhag Singh had, however, executed a Will on 27.02.1969 abrogating the rights of defendants No.2 and 3 qua reversion of the suit property and had stated that the suit property would devolve only upon Harbans Singh (husband of the plaintiff) on the death of Karam Kaur. Under the circumstances, after the death of Karam Kaur, the property was to devolve on Harbans Singh and thereafter, in favour of the plaintiff and her two daughters in accordance with the Will dated 29.07.1985 executed by Harbans Singh. It was averred that the said Will had also been got probated vide order dated 02.03.1973 by defendant No.1 and even defendant No.2 was a party in the probate proceedings.

4.4. Upon the death of defendant No.1 on 19.03.1984, the suit was amended and the prayer for possession was also included.

5. The suit was opposed by the defendants. The stand taken was that in view of the gift deed dated 07.04.1956, the property had vested in defendant No.1 and after her death, it was to revert to the defendants and husband of the plaintiff in equal shares. It was averred that the Will

allegedly executed by S. Bhag Singh on 27.02.1969 would not affect the rights which had accrued to the defendants as a gift once accepted becomes irrevocable. It was denied that the suit property was devolved upon Harbans Singh in view of the Will executed by said Harbans Singh. It was averred that the suit for injunction had become infructuous on the death of defendant No.1 as she had never alienated any portion of the suit property during her life time.

5.1. It was averred that in terms of the gift deed, the suit property had, after the death of defendant No.1, been mutated in favour of defendants No.2 and 3 and the heirs of Harbans Singh in equal shares.

5.2. Certain objections as regards non-joinder of necessary parties i.e. the daughters, maintainability, cause of action were raised.

6. In the replication, averments made in the written statement were denied and those made in the plaint were reiterated.

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

- (1) Whether Harbans Singh duly executed his Will dated 29/30.07.1981 while of sound disposing mind to what effect? OPP**
- (2) Whether SBS Bhag Singh vide his Will dated 27.02.1969 validly bequeathed the land to S. Harbans Singh? OPP**
- (3) Whether S. Harbans Singh, S. Gurbachan Singh, S. Balwant Singh, legal representatives of Bhag Singh had become the owners of the property in dispute vide the term of gift deed dated 07.04.1956 as such S. Bhag Singh was incompetent to bequeath property to Harbans Singh? OPD**

- (4) Whether defendant No.2 is the tenant under Smt. Karam Kaur and its effect? OPD**
- (5) Whether the plaintiff is entitled to possession of property from the defendant? OPD**
- (6) Whether the defendants are liable to mesne profits? OPD**
- (7) Whether the civil Court have no jurisdiction to try the suit? OPD**
- (8) Whether the plaintiff is entitled to injunction. If so, on what terms? OPD**
- (9) Are Mrs. Surinder Kaur d/o Sardarni Karam Kaur (since deceased) and Mrs. Raminder Kaur and Kiran Khurana daughters of the plaintiff necessary parties and the suit can proceed in their absence? OPD**
- (10) What is the share of the plaintiff in the land in dispute and can file a suit in excess of here share in the property? OPD**
- (11) What is the effect of sanctioning the mutation of inheritance of Karam Kaur in favour of plaintiff and defendant? OPD**
- (12) Relief.**

8. Parties led their respective evidence.

9. The trial Court dismissed the suit filed by the plaintiff.

However, in appeal, the said decision was reversed and the suit was decreed leading to the filing of the instant appeal.

10. Learned counsel for the appellants was heard.

11. It would be relevant to mention here that the appeal was admitted on 24.09.1992 and dispossession of the appellants was stayed. A perusal of the record shows that nobody had put in appearance on behalf of

the respondents. However, on one occasion, notice of an application was ordered to be issued to Mr. Naresh Katyal, learned counsel representing the respondents, meaning thereby he had caused appearance for the respondents. Vide order dated 10.01.2023, fresh notice was ordered to be issued to learned counsel for the respondent. On 21.02.2023, despite intimation having been given, no one appeared and accordingly, notice was ordered to be issued to the respondent. The same was received back unserved with the report that she was not living at the given address. Notice was again ordered to be issued to the respondent on 03.03.2025 and the Registry was directed to make an effort to effect service upon respondent No.1 through the SHO of the concerned area.

12. On 18.11.2025, the following order was passed:-

“Notice to respondent No.1 has not been received back despite being sent to S.H.O.. The report of the S.H.O. has not been received.

It is informed that address of respondent No.1 falls in the area of P.S. Civil Lines, Amritsar.

Let fresh notice be sent to S.H.O. of Police Station, Civil Lines, Amritsar for effecting service of respondent No.1. The S.H.O. concerned shall appear in person before this Court on the date fixed along with his explanation, in case the order is not complied with by the next date of hearing.

Adjourned to 12.01.2026.”

13. Thereafter, on 12.01.2026, the following order was passed:-

“As per the report of the Registry, notice issued to respondent No.1 received back unserved with the report that she (sic he) is not residing at the given address.

Notice issued through SHO concerned received by MHC Rashpinder Singh but report is still awaited.

Considering the fact that SHO concerned has not complied the previous order passed by this Court, he is again directed to appear before this Court by the next date of hearing, otherwise necessary coercive steps shall be taken against him.

Fresh notice in compliance of the previous order qua respondent be also sent through SHO concerned.

Adjourned to 04.02.2026.”

14. On 04.02.2026, the following order was passed:-

“Learned State counsel, on instructions from Inspector Gurpreet Singh, SHO Police Station Civil Lines, who is present in Court submits that the contesting respondent No.1 (Kamaldish Kaur) had expired far back as on 02.05.1996. An attested copy of the death certificate has also been produced which along with the report is taken on record. Learned State counsel further submits that efforts were made to trace out respondent No.1 at the given address. However, upon verification, it emerged that the old residential house had been sold further and three new houses had been constructed at the said place. It has also been reported that no family members of respondent No.1 were living at the given address.

Though, at one point of time, learned counsel had put in appearance on behalf of respondent No.1, no legal representatives have been brought on record.

Learned counsel for the appellant also submits that the appellant is not aware about the legal representatives of respondent No.1.

That being so, list on 18.02.2026 for arguments.”

15. After that, arguments of learned counsel for the appellants were heard.

16. It was strenuously urged by learned counsel for the appellants that the first Appellate Court had erred in reversing the well reasoned decision of the trial Court. It was argued that the gift deed was irrevocable and even otherwise, once the suit property had been gifted to defendant No.1, no power was left with S. Bhag Singh to execute a Will as regards the same property as he was not the owner of the same. It was submitted that the property would have reverted to S. Bhag Singh only in case defendant No.1 pre-deceased him which was not the case and it was S. Bhag Singh who had pre-deceased defendant No.1.

16.1. It was argued that the observation of the first Appellate Court that S. Bhag Singh never abdicated his responsibility to maintain his wife during his life time and that under the circumstances, she had no legal right over the disputed property was without any basis as it had nowhere been pleaded by the plaintiff nor was any evidence led to show that defendant No.1 had been given something else by her husband in lieu of maintenance.

16.2. It was averred that the gift deed was wrongly treated as a Will and that once a gift deed had been executed, there was no question of execution of any Will.

16.3. It was submitted that defendant No.1 had become the absolute owner of the suit property in terms of the provisions of Section 14(1) of the Hindu Succession Act, 1956 (hereinafter referred to as the '1956 Act') and the provisions of Section 14(2) of the 1956 Act shall not be applicable as

the suit property had been gifted out of love and affection and in lieu of maintenance. It was submitted that under the circumstances, the decision of the first Appellate Court deserves to be set-aside.

16.4. In support of his contentions, learned counsel has placed reliance upon the judgments of the Hon'ble Apex Court in the cases of *Jupudy Pardha Sarathy Versus Pentapati Rama Krishna and others, 2016(2) SCC 56; Jagdish Chand Sharma Versus Narain Singh Saini (Dead) through his LRs and others, 2015 AIR SC 2149; Renikuntla Rajamma (D) by LRs Versus K. Sarwanamma 2014 AIR Supreme Court 2906; Mathai Samuel and others Versus Eapen Eapen (Dead) by LRs and others, 2013 AIR Supreme Court 532; Ittianam and others Versus Cherichi alias Padmini, 2010 AIR Supreme Court 2994; P.K. Mohan Ram Versus B.N. Ananthachary and others, 2010(4) SCC 161; K. Laxmanan Versus Thjekkayil Padmini and others, 2009 AIR SC 951; Brij Raj Singh (Dead) by LRs Vs. Sewak Ram 1999 AIR SC 2203; Smt. Beni Bai Vs. Raghubir Prasad, 1999(3) SCC 234; Balwant Singh Vs. Daulat Singh (dead) by LRs, 1997(7) SCC 137; Veddeboyina Tulasamma and others Vs. Vaddeboyina Sesha Reddi (dead) by LRs, 1977 AIR Supreme Court 1944; Thota Sesharathamma and another Versus Thota Manikyamma (dead) by LRs and others, 1991(4) SCC 312; Badri Pershad Versus Smt. Kanso Devi, 1969(2) SCC 586; Subhan Rao and another Versus Parvathi Bai and others, 2010(10) SCC 235; Santosh and others Versus Saraswathibai and another, 2008 AIR SC 500; V. Muthasami (dead) by LRs Vs. Angammal, 2002 AIR SC 1279; Chandrika*

Singh (Dead) by LRs and another Versus Sarjug Singh and another, 2007(1) RCR(Civil) 891; Smt. Palchuri Henumayamma Versus Tadikamalla Kotlingam (D) by LRs and others, 2001(8) SCC 552; Sri Ramakrishna Mutt rep. by Manager Versus M. Maheswaran and others, 2011(1) SCC 68 and Raghubar Singh Versus Gulab Singh, 1998(3) RCR(Civil) 330 as well as the judgments of this Court in Mohinder Singh and others Versus Mukhtiar Singh (died) through his LRs and others, 2011(3) RCR(Civil) 361; Harbans Kaur Versus Tej Kaur through LRs and others, 2015(23) RCR(Civil) 381 and Gurmel Singh Versus Gurnam Singh and others, 2012(5) RCR(Civil) 44.

17. I have considered the submissions made by learned counsel for the appellants.

18. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are to be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 CPC. Reference in this regard can be made to the judgment of the Supreme Court in the case of ***Pankajakshi (Dead) through LRs and others Versus Chandrika and others, (2016)6 SCC 157***, followed by the judgments in the cases of ***Kirodi (since deceased) through his LR Versus Ram Parkash and others, (2019) 11 SCC 317*** and ***Satender and others Versus Saroj and others, 2022(12) Scale 92***. Relying upon the law laid down in the aforesaid judgments, no question of law is required to be framed.

19. The relationship between the parties is admitted. Bhag Singh

had 03 sons namely Balwant Singh, Gurbachan Singh and Harbans Singh. The wife of Bhag Singh was Karam Kaur. Harbans Singh had expired and his wife was Kamaldish Kaur. The execution of the registered gift deed (Ex.PW6/1) dated 07.04.1956 in favour of Karam Kaur is admitted. There is no dispute as regards execution of a Will (Ex.PW4/C) dated 27.02.1969 by S. Bhag Singh. Further, there is also no dispute as regards Will dated 29.07.1981 having been executed by Harbans Singh in favour of his wife (plaintiff) and his two daughters.

20. The sole question which arises is as to whether after having executed the gift deed Ex.PW6/1, the suit property could have been willed away by way of Will Ex.PW4/C. The answer to the said question is in the negative.

21. It is well settled that a Will comes into operation after the death of the testator whereas a gift comes into operation immediately upon its execution. Once the gift deed was executed on 07.04.1956 as regards the suit property, S. Bhag Singh was left with no interest in the same. It was provided in the gift deed that in case Karam Kaur pre-deceased S. Bhag Singh, the suit property would revert to him. It was also provided that otherwise, the suit property would be inherited by his three sons after Karam Kaur. Concededly, S. Bhag Singh expired in the year 1970 whereas Karam Kaur expired in March 1984. Bhag Singh, therefore, pre-deceased Karam Kaur. The Will Ex.PW4/C was executed on 27.02.1969. As stated, on the date of execution of the Will, Bhag Singh had no right, title or interest in the suit property and, therefore, it could not have been made a

subject matter of the Will. The question as to whether Karam Kaur had inherited the property under Section 14(1) of the 1956 Act or under Section 14(2) of the 1956 Act would not be relevant for the purpose of the present dispute because of the simple reason that after execution of the gift deed, S. Bhag Singh was left with no right, title or interest in the suit property.

22. In terms of the gift deed, after the death of Karam Kaur, the suit property would be inherited by her three sons namely Balwant Singh, Gurbachan Singh and Harbans Singh. Since Harbans Singh had also expired, the share of Harbans Singh would be inherited by his wife Kamaldish Kaur and his two daughters by way of natural succession.

23. In the considered opinion of this Court, the first Appellate Court committed a grave error by reversing the findings returned by the trial Court. The trial Court recorded the following findings under issue No.3:-

“9. The case of the defendant is that defendants Gurbachan Singh and Balwant Singh become owner of the suit property along with their brother Harbans Singh in equal share after the death of Karam Kaur in whose favour the property in suit was gifted by S. Bhag Singh. They contended that in view of the terms of the Gift deed Ex. PW6/1, the suit property was given to said Karam Kaur for her life and after her death the property was to devolve upon defendants Gurbachan Singh, Balwant Singh alongwith their brother Harbans Singh in equal shares. However, on behalf of the plaintiff it is contended that through his Will dated 27.2.69 copy of which is produced as Ex. PW4/C after the death of Karam Kaur, the property was to devolve on Harbans Singh alone and after the death of said Harbans

Singh, the plaintiff became the owner of the suit property in pursuance of the Will executed by Harbans Singh deceased. This controversy between the parties have been discussed to some extent while disposing of issue No.2. As discussed there, the gift deed was registered document and when this gift was accepted by done it become irrevocable. Accordingly said Bhag Singh was left with nothing with respect to the suit property, which he could give to Harbans Singh alone, through a Will dated 27. 2.69 copy of which is Ex. PW4/C. The arguments of learned counsel for the plaintiff is that the Gift Deed which provided for future succession amounted to a Will and this could be revoked by said Bhag Singh by another will as was done by him through a Will Ex.PW4/C. The arguments of learned counsel for the plaintiff is not tenable. The Gift once made and accepted becomes irrevocable. The right of possession was gifted away by said Bhag Singh to Karam Kaur for life and the remainder of rights in the suit property were given by him to his three sons, in his absence at the time of death of Karam Kaur. So when will Ex. PW4/C was executed by Bhag Singh he was not owner of any rights in the suit property which he could give to Harbans Singh alone. Moreover, in Will Ex. PW4/C. in its para No.12 it is stated that if this will should be invalid in respect of any provision, it shall continue to be fully operative with respect to the remaining provisions of the will. In view of this recital in the Will, the alleged revocation of a part of the Gift made by Bhag Singh on 7.4.56 being invalid is not operative. Consequently the Will Ex. PW4/C does not create any right with respect to the suit property in Harbans Singh alone and in turn in favour of the plaintiff.

11. Accordingly in view of the provisions of Gift Deed Ex. PW6/1, defendants Gurbachan Singh and Balwant Singh become, the owners of the suit property after the death of Karam Kaur alongwith their brother Harbans Singh in

equal shares. This issue is therefore decided against the plaintiff and in favour of the defendants.”

24. The Appellate Court, in the considered opinion of this Court, went on a completely different tangent and came to the conclusion that since Karam Kaur had not become the absolute owner of the suit property, there was no illegality in the same having been made a part of the Will Ex.PW4/C.

25. I have perused the judgments, reliance upon which was placed by learned counsel for the appellant. Almost all the judgments deal with the issue of a life estate which, in the considered opinion of this Court, would not be a point for consideration in the present case. This Court, therefore, does not feel the necessity to discuss the said judgments.

26. The decision of the first Appellate Court is, therefore, found to be unsustainable. Accordingly, the instant appeal is allowed. The judgment and decree dated 04.09.1992 passed by the Court of Additional District Judge, Amritsar, is set aside and the judgment and decree dated 11.08.1989 passed by the Court of Sub Judge 1st Class, Amritsar, is upheld. Consequently, the suit filed by the plaintiff stands dismissed.

27. Pending application(s), if any, shall also stand disposed of.

May 18, 2026
Yag Dutt

(VIKRAM AGGARWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No