

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****110****RSA-1217-2021 (O&M)****Date of decision: 21.01.2026****Hazura Singh****...Appellant(s)****Vs.****Hakam Singh and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. D.V.Sharma, Senior Advocate with
Mr. Tushar Sharma, Advocate
for the appellant.

NIDHI GUPTA, J.

Plaintiff is in Second Appeal against the concurrent judgments and decrees of the learned Courts below; whereby suit filed by the appellant for declaration, possession, and permanent injunction, has been dismissed by both the Courts below.

2. Brief facts of the case are that the plaintiff/appellant had filed the present suit seeking decree for **declaration** to the effect that the agricultural land purchased in the names of the defendants along with their father Late Shri Ram Kishan on different dates vide registered sale deed no. 2691/1 dated 24.07.1978 pertaining to agricultural land measuring 4 Acres comprised in Khasra no. 6/20(8-0), 21(8-0), 22(8-0), 23(8-0), 24 (8-0), 25 (8-0), 16 (8-0), 12/5 (8-0), sale deed no. 827/1 dated 13.05.1980 pertaining to agricultural land comprised in khasra no. 4/3 (6-8), sale deed no. 1971 dated 16.06.1981 pertaining to agricultural land measuring 20 Kanals 11.5 marlas comprised in khasra no. 6/11 (3-18), 12



(4-7), 13 (5-18) 14 (2-11), 19 (8-0) situated in village Sarangpur Tehsil and District Ambala and sale deed no. 5774 dated 18.11.1986 pertaining agricultural land measuring 1Kanal 15 Marlas comprised in khasra no. 10/20/2 (7-11) situated in village Rupamazra Tehsil and District Ambala is joint Hindu Family property as the same were purchased out of the joint Hindu family funds (hereinafter to be referred as suit property). The plaintiff also sought relief of decree for **declaration** to the effect that he is owner of equal share along with the defendants of the aforesaid agricultural lands; **and** challenging Will no.489 dated 25.02.2010 and alleged that same is result of fraud and misrepresentation and is not binding upon the rights of the plaintiff. Consequently mutation no. 644 dated 07.07.2011 sanctioned on the basis of of alleged Will was also challenged. The plaintiff also sought relief of **possession** of his share of the suit property; **and** relief of permanent injunction restraining the defendants from alienating the suit property.

3. Upon appraisal of the pleadings and the evidence led by the parties, the learned Additional Civil Judge (Senior Division), Ambala had dismissed the suit of the plaintiff vide judgment and decree dated 06.11.2017. The Civil Appeal filed by the appellant was dismissed by the learned District Judge, Ambala vide judgment and decree dated 06.03.2020. Hence, the present second appeal by the plaintiff.

4. It is *inter alia* submitted by learned Senior Counsel for the appellant that the appellant is the eldest son of Testator Sh. Ram Kishan. The appellant had served his father and the family throughout his life.



Appellant had spent huge amount of money on the treatment of his mother when she suffered major mental shock on the death of her son Daljeet Singh. In 1978, on the request of his father, he kept his brother/defendant No.3 and bore all his expenses from 1981-1986. In 1980, again at the request of his father, appellant had kept his other brother/defendant No.4 and bore all his expenses from 1983 to 1989. Appellant also helped his father in solemnizing marriage of his sister. It is submitted that the record is replete with evidence that plaintiff has served his father and acquiesced to all his demands; and that he had good relations with the testator.

5. Ld. Senior counsel further submits that the plaintiff had purchased 2 acres of land on 18.03.1975; 6K 8M on 13.05.1980; 4K 2.1/2 M on 16.06.1981; and 1K 10M on 18.11.1986 from his own savings and savings of his wife. These lands had remained under the cultivation of father of the appellant Ram Kishan till 1989 and entire income was utilized by Ram Kishan to purchase land as mentioned in para 11 of the plaint. Thereafter, out of the agricultural earning, Ram Kishan had also purchased 4 acres of land on 06.09.1978, out of which 3 acres was got registered in the name of Ram Kishan and 1 acre in the name of defendant No.1. Out of total sale consideration in the said land, Rs.1,000/- was given by the plaintiff and same was purchased out of joint family funds of which the plaintiff was the main member being the eldest son. Plaintiff had also purchased 24K 14M in the name of all the defendants by spending his money. On 18.11.1986, 3K 5M of land was purchased by Ram Kishan in



the name of all defendants and remaining 1K 10M was purchased by the plaintiff himself. It is submitted that therefore, plaintiff being the main member of the Joint Hindu family, he is owner to the extent of 1/6th share in the estate of Ram Kishan. However, the defendants being greedy persons in collusion with each other, had got mutation of suit property sanctioned in their names excluding the plaintiff. Defendants had got the said mutation sanctioned in their names on the basis of a Will No. 489 dated 25.02.2010 alleged to have been executed by Ram Kishan to the exclusion of the appellant.

6. Learned Senior Counsel contends that appellant had proven on record that Ram Kishan was bedridden for 10 years and was, therefore, not mentally fit to execute the Will. It is submitted that a bare reading of the Will itself also shows that Ram Kishan had duly recorded therein that he had six sons all of whom are serving him well. It is submitted that therefore, the Will is surrounded by suspicious circumstances as no reason has been given in the Will for disinheriting the appellant; which, as per judgment of the Hon'ble Supreme Court is a suspicious circumstance in itself. It is further submitted that merely because the brothers were living separately would not imply disruption of joint Hindu family.

7. It is further submitted that Ld. Courts below failed to notice that the execution of the Will has not been proved, as it was admitted by DW-4, the son of the deed writer that he was not working with his father and was in fact running a readymade garment shop. Rather he admitted that the signatures on the entry in the register, was not made in his



presence. He further admitted that signatures on the Will Ex.D1 and on the entry in the register, Ex.DW4/A do not tally. This itself was a suspicious circumstance to hold that the Will is a forged and fabricated document.

8. It is contended that accordingly, the findings of the learned Courts below are based on misreading of the evidence on record. This is so as it is admitted case that the appellant had purchased the property from his own funds. However, as the appellant was stationed at Bombay therefore, in his absence the land was cultivated by his father and income was also used by his father for purchase of more land. It is contended that land purchased by Ram Kishan was Joint Hindu Family property which could not have been disposed of by Ram Kishan by execution of the impugned Will. However, learned Courts below have failed to take all these factors into account. It is submitted that the said findings of the Courts below are based on presumption and against the positive evidence on record showing that the plaintiff was sending money for purchase of land in the name of the defendants. It is accordingly prayed that the present Appeal be allowed; and the impugned judgments and decrees of the Courts below be set aside.

9. No other argument is raised on behalf of the appellant/plaintiff. I have heard learned Senior counsel for the appellant and perused the case file in great detail. I find no merit in the submissions advanced on behalf of learned Senior Counsel for the appellant.

10. It is the contention of the learned Senior counsel for the appellant that the agricultural land was ostensibly and largely purchased



by the plaintiff from his own funds albeit in the name of the defendants. It has also been submitted that the suit land was joint Hindu Family property and could therefore have not been disposed of by Ram Kishan/late father of the appellant by way of impugned Will No. 489 dated 25.02.2010.

11. The two fold contention has been raised by learned Senior counsel for the appellant that part of the suit property has been purchased by the plaintiff of his own funds and part of the property has been purchased out of joint Hindu Family funds and, therefore, appellant has a share in the suit property. To prove that the plaintiff had purchased property from his own funds, plaintiff had examined PW1 Ranjodh Singh. However, PW1 Ranjodh Singh has stated in his deposition that he has no knowledge whether the plaintiff used to send money to Ram Kishan for purchase of land; or to maintain his family. PW1 has further stated that all the brothers i.e. plaintiff and defendants No. 2 to 5 are residing separately. Thus, oral evidence of PW1 is of no use to the plaintiff.

12. Besides the above, plaintiff has not examined any other material witnesses. Plaintiff has also not produced any documentary evidence to prove that properties Ex.P3 to Ex.P5 were purchased only through the money sent by the plaintiff. Rather Sale Deeds Ex.P3 to Ex.P5 show that said suit properties were purchased by the plaintiff and defendants No. 1 to 5; and that shares were owned by each party as per the money contributed by them. Contention of the plaintiff to the contrary that the said properties were purchased entirely through the funds supplied by the plaintiff remained unsubstantiated as the plaintiff



has not placed on record any bank account statement to prove that he had ever sent any amount to his father for managing affairs of the family or for purchase of the suit property. It may be pointed out that PW1 Ranjodh Singh had also stated in his testimony that Ram Kishan, father of the plaintiff was owner of 18K of land. From this it is to be inferred that Ram Kishan was not a poor person. It is, therefore, improbable that he would require financial assistance from the plaintiff for purchase of land or to manage family affairs. Plaintiff had also failed to establish nucleus of joint Hindu Family from where the suit property is purchased. Thus, plaintiff miserably failed to prove his pleaded case.

13. It has also come on record that as per Jamabandi Ex.P6 Ram Kishan was taking land on lease and also cultivating his own land, from which it is clear that Ram Kishan had sufficient funds of his own to purchase land by way of Sale Deed Ex.P2. Plaintiff has failed to lead any evidence whatsoever to show that he was sending any money to his father from his salary. The plaintiff produced no money order, draft or any such instrument to prove that he was sending any money to Ram Kishan as alleged. On the contrary, perusal of Sale Deeds Ex.P3 to Ex.P5 shows that plaintiff was present at the time of execution of said Sale Deeds, as per which a separate parcel of land was purchased by him from his own funds. Thus, claim of the plaintiff that land in dispute was Joint Hindu Family property was rightly not accepted. Therefore, since property was not ancestral in the hands of Ram Kishan, and the same was self acquired property, he was competent to execute the impugned Will.



14. On the other hand, defendants had duly proved the Will No Will No. 489 dated 25.02.2010 Ex.D1 from the testimonies of attesting witness DW2; Registration Clerk DW3; and DW4 son of Deed Writer Kuldeep Singh. It has been contended by learned Senior Counsel for the appellant that DW4/son of the Deed Writer had stated in his testimony that the sign of the Deed Writer borne on the Will, does not tally with the standard signature of the Deed Writer. However, merely the said stray statement of DW4 is not sufficient to discard the Will. The appellant had failed to lead any evidence in this regard to conclusively prove that the Will was a fraudulent document. Admittedly, no handwriting expert was examined by the plaintiff to substantiate the said allegation. Furthermore, it has come in evidence that DW4 Kuldeep Singh son of Deed Writer, has stated in his cross-examination that he is running a readymade garment shop; that he never sat with his father in his office nor seen his father typing. He also stated that the entry at Sr. No.200 at page 66 in the Register Ex.DW4/A in respect of the impugned Will is the last one and the said entry was not made in his presence. As such, it would appear that above said statement of DW4 was not reliable.

15. It has lastly been contended on behalf of the appellant that Ram Kishan was not in a fit frame of mind to execute the impugned Will. However, even the said contention of the appellant remained unsubstantiated as the appellant had not led any medial evidence to prove that Ram Kishan was indisposed or was not in a fit state of mind. On the contrary, perusal of the Will No. 489 dated 25.02.2010 Ex.D1 reflects



that Ram Kishan was well in his senses as he has clearly stated in the Will that he was in fit state of mind and he has been served by all his sons. There is nothing on record to establish that testator was suffering from any hearing problem or was otherwise unfit to execute the Will.

16. Learned Senior counsel for the appellant is unable to controvert or dispute the above said facts and findings.

17. Even otherwise, present Second appeal is liable to be dismissed on the short ground that this Court in Regular Second Appeal has limited jurisdiction to interfere in the concurrent findings of facts returned by the learned Courts below. The Hon’ble Supreme Court in *M/s. Shivali Enterprises v. Godawari (Deceased) (SC): Law Finder Doc Id # 2034559* has held that no matter howsoever incorrect or grossly erroneous the concurrent findings of the learned courts below may be, this Court in the Second Appeal can interfere in the concurrent findings only where there is an error in law or procedure. In the present case, no such error in law and procedure has been made out by learned Senior counsel for the appellant.

18. In view of the above, no ground is made out to interfere in the concurrent judgments and decrees of the learned Courts below. The present Regular Second Appeal is hereby **dismissed**.

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

21.01.2026

Divyanshi

(NIDHI GUPTA)
JUDGE

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