

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA-1727-2022 (O&M)

Date of decision: 22.04.2026

Joginder Singh and others

...Appellant(s)

Vs.

Balbir Singh

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

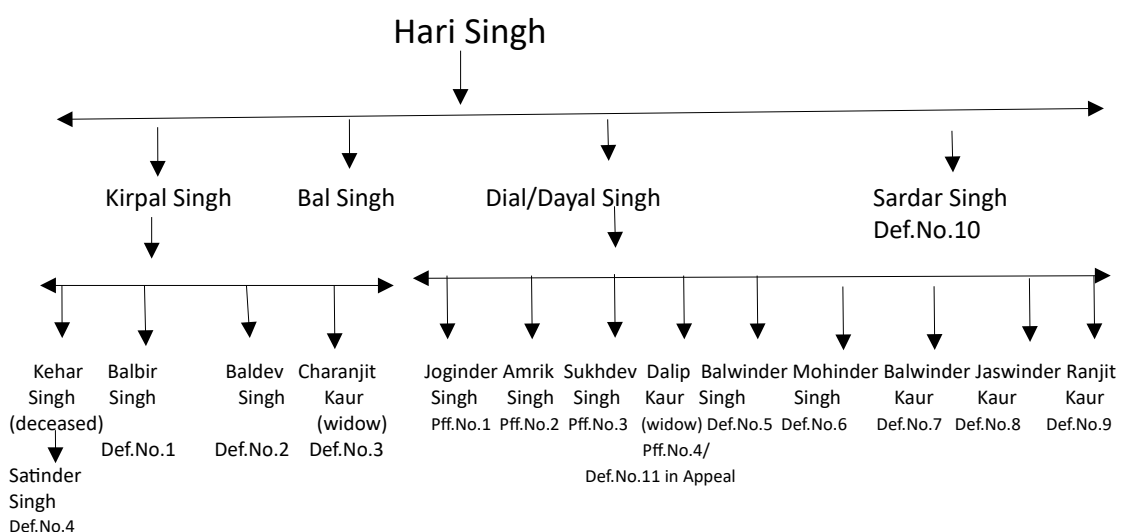
Present:- Mr. D.S.Malwai, Advocate for the appellants.

NIDHI GUPTA, J.

Present second appeal has been filed by plaintiffs No. 1 to 3

against the concurrent judgments and decrees of the Id. District Courts, whereby suit filed by the appellants for declaration and permanent injunction, has been dismissed by both the District Courts.

2. In order to correctly appreciate the dispute at hand, following pedigree table shall be useful: -



3. Brief facts of the case are that the plaintiffs had filed the instant suit seeking declaration that the plaintiffs and the proforma



defendants No. 5 to 10 have inherited the estate of Bal Singh son of Hari Singh by way of natural succession to the extent of 39/420 share in the suit land as described in the plaint. As such, they have become owner in possession out of the suit property. It was contended that Bal Singh had never executed alleged Will dated 25.12.1976; and the Will produced/claimed by the defendants was illegal, false, forged and fabricated; and the revenue entries including mutation No. 323 sanctioned in favour of the defendants showing them to have been inherited share of Bal Singh on the basis of the said alleged Will, are illegal, wrong and false and liable to be corrected; and suit for permanent injunction restraining the defendants from interfering in the suit property.

4. It was the pleaded case of the plaintiffs that plaintiffs and proforma defendant No. 5 to 8 are the first-class legal heirs of late Dial Singh. Hari Singh was having 4 sons, namely, Kirpal Singh, Bal Singh, Dial Singh and Sardar Singh. Bal Singh had expired on 01.04.1977 unmarried and issueless; and had left behind his 3 brothers as his LR's. However, defendants No.1 and 2 in connivance with their brother Kehar Singh (since deceased) had created a false Will dated 25.12.1976 to grab the estate left behind by Bal Singh. Defendants No. 1 and 2 also got illegal Mutation sanctioned in their favour in respect of share of Bal Singh on the basis of the said false Will. Plaintiffs had discovered about the said facts in August 2007. Plaintiffs had requested the defendants to get their revenue entries corrected in the name of the plaintiffs and proforma defendants.



However, defendants had refused to do so. Hence, present suit was filed on 12.10.2007.

5. Upon appraisal of the pleadings and the evidence led by the parties, the Id. Additional Civil Judge (Senior Division), Fatehgarh Sahib had dismissed the suit of the plaintiffs with costs vide judgment and decree dated 18.09.2014. The Civil Appeal filed by the plaintiffs was dismissed with costs by the learned Additional District Judge, Fatehgarh Sahib vide judgment and decree dated 17.03.2022. Hence, the present second appeal by the plaintiffs No.1 to 3.

6. It is *inter alia* submitted by learned counsel for the appellants that learned District Courts have failed to appreciate that evidence brought on record by the contesting defendants was wrought with discrepancies and contradictions. However, the same has been brushed aside by the learned District Courts by stating that the witnesses had appeared after more than 30 years and in that situation, some discrepancies are bound to arise. However, in doing so, learned District Courts lost sight of the fact that an unregistered Will was being relied upon after more than 18 years upon the death of the alleged testator without any plausible explanation. Even otherwise, even to the naked eye, the said Will is written on a plain paper and seems to be surrounded in suspicious circumstances. Yet, both the learned District Courts have based their judgments by finding faults in the appellants' evidence, which is against the well-settled principle of law that Will was required to be



proved by the propounder of the Will by removing all the suspicious circumstances.

7. Learned counsel for the appellants further submits that the contesting respondent claimed sanctioning of mutation on the basis of Will in the year 1994 claiming that they got entered the mutation when the Will came in their hand without explaining, how they came to know of the Will and how it came in their hands after such a long time, when Ball Singh died after four months of the Will and they have not given any explanation in the evidence about knowledge of the will by any of the persons, scribe or attesting witness and how they searched the same after such a long time. But, the Ld. Trial court in a mechanical way went to uphold the Will on the plea that the witnesses have supported the same and there does not appear to be any point to suspect that the same might have been prepared on a paper which might be having thumb impression of deceased Bal Singh.

8. It is submitted that therefore, the contesting party, who is the propounder of the Will has failed to remove the suspicious circumstances and how the Will came in their hands after about 18 years; as the Will is stated to have executed on 25.12.1976; and the testator had died in 1977; and Will was produced before the revenue authorities only in 1994.

9. Learned counsel for the appellants further submits that in the present case the propounder of the Will had examined Kamal Manjit Singh to claim execution of the Will by Bal Singh on 25.12.1976. The said witness stated his age 61 years in the year 2013, when his evidence was recorded.



It is argued that this means that he made statement after 38 years of the Will and he was of the age of about 22 years at the time of alleged Will and a mature person could not be expected to get the Will attested from such boys which shows concocted statement has been made as this witness claimed that Ball Singh came alone and the paper for Will was with the scribe, who is proved to be not a regular scribe and his hand writing only has been identified by his brother after his death.

10. It is further submitted by learned counsel for the appellants that the beneficiary of the Will did not produce on record any documentary evidence to show that deceased was residing with them or was having ration card with them or having vote alongwith them in the same house, rather not even a single document came on record to show jointness of Bal Singh with the beneficiary which could have been the ground to execute the will in their favour. It is contended that therefore, the impugned Will is shrouded in suspicious circumstances.

11. It is accordingly prayed that the present Appeal be allowed; and the impugned judgments and decrees of the Id. District Courts be set aside.

12. No argument is made on behalf of the appellants. I have heard learned counsel and perused the case file in a great detail. I find no merit in the submissions advanced on behalf of learned counsel for the appellants.

13. It is first to be seen that in their plaint, plaintiffs have failed to produce any pedigree table to prove the relationship between the parties.

Plaintiffs have only mentioned the relationship in para 2 of the amended



plaint. Needless to say, for proving their rights of natural inheritance, it was incumbent upon the plaintiffs to have put forth the correct relationship between the parties. Moreover, relationship as mentioned by the plaintiffs in the amended plaint shows the same to be incorrect and erroneous.

14. Further, main argument on behalf of the appellants is that Will dated 25.12.1976 Ex.D3 executed by Bal Singh in favour of defendants No.1 and 2 and Kehar Singh (since deceased) is surrounded in suspicious circumstances as no reason has been given by testator to exclude his brother Dial Singh. However, the said contention is erroneous as plaintiff No.3 Sukhdev Singh s/o Dial Singh while appearing as PW2 has admitted in his cross-examination that his father i.e. Dial Singh had shifted to Uttar Pradesh about 60 years ago. PW2 has also admitted that 4th brother, namely, Sardar Singh/defendant No. 10, has also shifted to Uttar Pradesh. Plaintiff No.3 has also deposed that Bal Singh et cetera used to live in village Jeonpura with his other brother Kirpal Singh. The above facts have also been admitted by Gurdev Singh PW1. It may be pointed out that Gurdev Singh is the husband of defendant No.9/Ranjit Kaur, daughter of Dial Singh. Ranjit Kaur/wife of said Gurdev Singh has also admitted the above said facts that Bal Singh was residing in village Jeonpura; whereas plaintiffs are residing in U.P.

15. From the above facts, service rendered by defendants No.1 and 2 towards Bal Singh stands duly proved. From the above facts, it is proven on record that the beneficiaries of the Will i.e. defendants No.1 and 2 and Kehar Singh (deceased), father of defendant No. 4 were looking after



testator Bal Singh till the time of his death. Plaintiffs and the proforma defendants alongwith their father Dial Singh undisputedly residing in Uttar Pradesh. Therefore, merely because the attesting witnesses did not belong to the same village, would constitute no ground for discarding the Will. Moreover, there is nothing on record to remotely indicate that Bal Singh was not of sound disposing mind at the time of execution of Will.

16. It is most important to note that Dial Singh, predecessor-in-interest of the plaintiffs, had never challenged the said Will during his lifetime. Rather, a perusal of the copy of the order dated 11.07.1994 Ex.D1 passed by the Assistant Collector 1st Grade, Fatehgarh Sahib shows that Dial Singh and Sardar Singh had duly furnished their Affidavits before the Revenue Court thereby expressing their no objection in sanctioning of mutation Ex.D2 in favour of defendants No.1 and 2 on the basis of the impugned Will Ex.D1.

17. Furthermore, defendants No.1 and 2 had duly proved the execution of the Will dated 25.12.1976 Ex.D3. It is to be seen that thumb impressions of Bal Singh on Will Ex. D3 is not disputed by the plaintiffs. Learned District Courts have duly taken note of the fact that the said thumb impressions/marks of Bal Singh have been affixed in due proximity to the contents of the Will. Therefore, there is no unexplained space or line space et cetera, to cast any shadow of doubt on the intention of the testator.

18. Furthermore, Will stands proved from the evidence of DW1 Kanwalmanjit Singh, attesting witness of the Will, who had affirmed the contents and execution of the Will and deposed that Harmohinder Singh



had scribed and attested the said Will in his presence. DW3 Gurminder Singh is the brother of the attesting witness/Scribe Harmohinder Singh (deceased) who had identified the signatures on the Will. Thus, Will has been proved in accordance with law.

19. Contention of the appellants that the said Will is not registered, is also liable to be rejected as mere non-registration of the Will is not sufficient ground to discard the same; especially in view of the above facts and evidence.

20. Furthermore, from the above facts, it is clear that plaintiffs were well aware of the Mutation sanctioned in the year 1994. Yet, despite that suit has been filed by the plaintiffs only in 2007. No specific or plausible explanation has been furnished by the plaintiffs as to why suit was filed after such delay. No explanation is given by learned counsel for the appellants as to why Will dated 25.12.1976 was challenged by way of suit filed 30 years later, on 12.10.2007. It belies belief that the plaintiffs were not aware of the Will Ex.D3 when their father Dial Singh and their uncle Sardar Singh had filed their Affidavits during proceedings before the learned Assistant Collector 1st Grade, Fatehgarh Sahib at the time of sanctioning of mutation.

21. 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 counsel for the appellants.

22. Learned counsel for the appellants is unable to controvert or dispute 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 District Courts. The present regular Second Appeal is hereby **dismissed**.

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

22.04.2026
Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:Yes/No

Whether reportable:Yes/No