

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****239****RSA-5251-2015 (O&M)****Date of decision: 05.05.2026****Amrik Singh****...Appellant(s)****Vs.****Dalip Singh and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

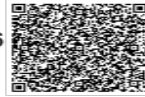
Present:- Ms. Madhu Bala, Advocate for
Mr. Angraze Singh Dhindsa, Advocate
for the appellant.

Mr. Mandeep Singh Dhaliwal, Advocate
for respondents No.1 and 2.

NIDHI GUPTA, J.

The plaintiff is in Second Appeal against the concurrent judgments and decrees of the learned District Courts, whereby suit filed by the appellant for declaration, declaring himself to be owner in joint possession of suit land, has been dismissed by both the District Courts.

2. Brief facts of the case are that the plaintiff has sought declaration declaring himself to be owner and in joint possession of suit land detailed in the heading of the plaint on the basis of writing/agreement dated 10.07.1990 executed by Gurdev Singh in presence of witnesses and declaring mutation no.3424 sanctioned by AC 1st Grade in favour of defendant no.2 on the basis of forged and fabricated Will dated 23.10.1997 to be illegal null and void and restraining the

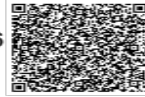


defendants from alienating the suit property detailed in the heading of the plaint.

3. It was the pleaded case of the appellant that originally Attar Singh great grandfather of the plaintiff was owner in possession to the extent of 1/2 share. Gurdev Singh father of the plaintiff had inherited said 1/2 share from his grandfather Attar Singh. As such, suit land was ancestral, Joint Hindu Family property.

4. It was simultaneously averred in the plaint that an oral Family Settlement had taken place between the plaintiff and Gurdev Singh as per which 7 bigha of land was given to the plaintiff; and it was further settled that the plaintiff would inherit the remaining share in the property after the death of Gurdev Singh. Plaintiff was also given one house in oral Family Settlement in which plaintiff is residing as owner. It was further alleged that the plaintiff's share/land was taken by Gurdev Singh on Chakota and Gurdev Singh was cultivating the same. In this regard, a Writing dated 10.07.1990 was executed. Gurdev Singh had died on 11.12.2008. It was contended that Gurdev Singh used to pay chakota to the plaintiff till his death; and after his death, defendant No.1 has also paid chakota. It was alleged that the Will dated 23.10.1992 propounded by defendants No.1 and 2 is forged and fabricated and is a result of fraud; and that the plaintiff has a right to inherit the property on the basis of Family Settlement. Hence, present suit was filed on 19.04.2010.

5. Upon appraisal of the pleadings and the evidence led by the parties, the learned Civil Judge (Junior Division), Dhuri had dismissed the



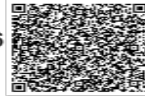
suit of the plaintiff with costs vide judgment and decree dated 02.11.2012.

The Civil Appeal filed by the plaintiff was dismissed by the learned Additional District Judge, Sangrur vide judgment and decree dated 12.02.2015. Hence, the present second appeal by the plaintiff.

6. It is *inter alia* submitted by learned counsel for the appellant that learned District Courts were in error in non-suiting the appellant as they failed to appreciate that during the trial, respondents No. 1 and 2 produced the Will dated 23.10.1992, but not proved on the file that remains as marked C and is not exhibited. The original Will has not been produced in the case. Both the courts below stated that there is a presumption of a registered will being voluntary and the onus is on the person who alleges the Will to be not voluntary. Hence, in the present case when the plaintiff who had challenged the validity of the Will, has not produced any evidence in this regard, therefore, the Will being a registered document, stood proved. This finding of the trial court, is totally contrary to the fact that the onus of proving the Will was OPD as the issue number 6 framed by the trial court is as under:

"6. Whether Gurdev Singh executed a registered will dated 23/10/1992 in favour of defendants no. 1 and 2, if so its effect? OPD (1 and 2)"

7. Learned counsel for the appellant further submits that since the Will has not been proved on file, when the onus to prove the Will was on respondents No. 1 and 2/defendants, so the question of disproving the



Will does not shift on the plaintiff. Since the Will dated 23.10.1992 has not been proved, so case could not be decided on the basis of said Will.

8. It is further submitted by learned counsel for the appellant that the learned lower appellate court wrongly held that Will is Ex. D4, while Ex. D4 is seal and signature of the scribe and in whose statement, the Will dated 23/10/1992 has not been proved. The statement of scribe Jagdish Chand Garg to the effect of Ex. D4, relevant is as under:

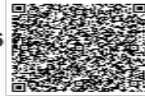
"This will dated 23/10/1992 scribed, sealed and signed by me. I identified my writing. I identified my sealed signature. Will dated 23/10/1992 is certified copy of the original that is marked C. I identified my sealed & signature on the will, those is Ex. D4."

9. So from the perusal of above both the courts below have decided the case as the will has been proved on the file. Mere registration of will does not mean, is genuine one until it is perused on the file as per law.

10. Learned counsel for the appellant reiterates that the original will has not been produced during the trial in evidence by the defendants, so cannot be read in evidence until it is proved under the Indian Evidence Act.

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. *Per contra*, learned counsel for defendants No.1 and 2 vehemently opposes submissions advanced on behalf of the appellant and

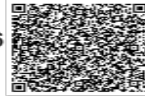


submits that concurrent findings of fact have been given that the appellant has failed to prove the ancestral nature of the suit property. Moreover, appellant has contradicted himself by simultaneously laying claim to the suit property on the basis of alleged Writing dated 10.07.1990.

13. It is further contended that defendants had duly succeeded in proving the registered Will dated 23.10.1992 by examining the Scribe; as also the LRs of the deceased marginal witnesses. Moreover, the validity of the Will cannot be doubted as Will was executed by Gurdev Singh in favour of defendants No.1 and 2 on dated 23.10.1992; whereafter Gurdev Singh had died several years thereafter on 11.12.2008. Pursuant to the Will, mutation proceedings were also proved by the defendants No.1 and 2. He accordingly prays for dismissal of the present Appeal being meritless.

14. No other argument is raised on behalf of learned counsel for the parties. I have heard Id. counsel and perused the case file in detail. I find no merit in the submissions advanced on behalf the appellant.

15. In claiming ownership and possession of the suit property, plaintiff has relied upon Writing dated 10.07.1990, which was placed on record as Ex.D1. However, plaintiff can derive no benefit from the said Writing dated 10.07.1990 as the same was neither registered nor properly stamped. It is the own case of the plaintiff that as per the said Writing dated 10.07.1990/Family Settlement, alleged partition had taken place. As such, the same was compulsorily registrable. However, as noted above, the said Writing was not registered nor stamped. Thus, the same was not admissible in evidence. Moreover, the said Family Settlement had neither been acted



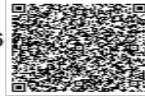
upon nor reflected in revenue record. For this reason, as well, plaintiff could not have rightly placed reliance upon the said Settlement. For the above reasons, no benefit can come to the plaintiff from the evidence of PW2 Piara Singh alleged marginal witness of the Writing dated 10.07.1990. PW2 had tendered his Affidavit Ex.PW2/A. However, the testimony of the said witness was no help to the plaintiff as Writing Ex.D1 has already been rejected being inadmissible as the same being Family Settlement, had not been registered nor properly stamped, nor acted upon, nor reflected in the revenue record. The said alleged private partition dated 10.07.1990 Ex.D1 could not be accepted also for the reason that it did not reflect past transaction.

16. Further, plaintiff had been unable to prove that the deceased Gurdev Singh was holding any ancestral property in the hands of Gurdev Singh at the time of his death. Nature of the suit property was not proved to be ancestral as alleged by the plaintiff. To prove the ancestral nature of the suit property, plaintiff had examined PW3 Avtar Singh Patwari Moharrir. However, admittedly, the said witness had not brought the complete revenue record. PW3 had only brought 3 jamabandis and had not brought the remaining record. The excerpts which were produced by the said witness alongwith his Affidavit Ex.PW3/A had not been exhibited in the Court; and therefore, could not have been relied upon. Further, PW3 has admitted that the said excerpts had not been prepared by him. Moreover, the excerpts itself are not an evidence. Thus, plaintiff could not prove his interest in the suit property.



17. In any event, from the above facts, it is clear that plaintiff has taken contradictory and self-destructive pleas *in as much* as, on the one hand, plaintiff is claiming the suit property as ancestral in nature. Simultaneously, plaintiff is claiming inherited right in the suit property on the basis of Family Partition dated 10.07.1990. Needless to say, if the suit property was ancestral, the same could not be divided by way of Family Partition and would devolve as per law. What is more, plaintiff has led evidence in respect of both the pleas; thereby contradicting and confusing his case himself.

18. By way of the present suit, plaintiff has also challenged the Will dated 23.10.1992 Ex.D4 stating the same to be a forged and fabricated document. First and foremost, the Will dated 23.10.1992 Ex.D4 being a registered document, presumption of truth is attached to the same. Nonetheless, in fulfilment of onus placed upon the defendants vide issue No.6 to prove "*6. Whether Gurdev Singh executed a registered will dated 23/10/1992 in favour of defendants no. 1 and 2, if so its effect? OPD (1 and 2)*"; Defendants had examined DW2 Jagdish Chand Garg, Scribe of the Will, who had deposed on oath that he had scribed the said Will at the asking of Gurdev Singh. DW2 had further deposed that after scribing the Will, it was read over and explained to Gurdev Singh, who had thumb marked the same in the presence of marginal witnesses Jarnail Singh, Numberdar, and Karam Singh, who had then also signed the Will in the presence of Gurdev Singh and in his/presence of DW2. DW2 had accordingly made an entry in his Register Ex.D2 at Sr. No. 1056. Defendants No.1 and 2 had also examined



DW4 Hardeep Kaur Numberdar widow of Jarnail Singh, Numberdar, who had identified signatures of his deceased husband. As the marginal witness Karam Singh had expired, defendants No.1 and 2 had examined his son DW3 Avtar Singh, who had deposed that Karam Singh, attesting witness of the Will was his father and has since expired. DW3 had identified signatures of his father Karam Singh on the Will. It is my clear view that in view of the above unrebutted evidence, the Will propounded by the defendant stood proved in accordance with law. Plaintiff led no evidence whatsoever to prove that the said Will was forged and fabricated as alleged.

19. Defendants No.1 and 2 had also examined DW6 Dr. Inderjit Singh, Handwriting and Fingerprint Expert. DW6 had compared the disputed thumb impression of Gurdev Singh on the registered Will dated 23.10.1992 with the standard thumb impression of Gurdev Singh borne on the registered Sale Deed dated 19.05.2008 Ex.D3. DW6 had tendered his Handwriting Report Ex.D11 in which he had concluded that thumb impressions of Gurdev Singh borne on the Will dated 23.10.1992, are of Gurdev Singh. The plaintiff examined no expert witness to rebut the Report Ex.D11. Despite lengthy cross-examination, plaintiff could extract nothing from the abovesaid witnesses to shatter their credibility. Thus, defendants No.1 and 2 specifically fulfilled the onus placed upon them to prove issue No.6.

20. It is also undisputed fact on record that the mutation of inheritance registered in favour of defendants No.1 and 2 on the basis of the aforesaid Will dated 23.10.1992, was contested mutation between the



same parties before the learned Assistant Collector, 1st Grade, Dhuri; wherein the Will was upheld by the revenue officials in favour of the said defendants. Consequentially, mutation was entered in favour of defendants No.1 and 2 on the basis of the said Will.

21. What clinches the entire issue is that it has come on record that Gurdev Singh had disinherited the plaintiff by submitting an Affidavit dated 01.06.2004 and Public Notice was also published in the newspaper to this effect as he was not having good relations with his son, the plaintiff. It was also proved on record that deceased Gurdev Singh had been residing with defendants No.1 and 2; and due to his love and affection for the said defendants, Will was executed in their favour while excluding the plaintiff.

22. Relevant findings of learned Additional District Judge Sangrur are in para 18 of the judgment dated 12.02.2015, which reads as under:-

*“18. It is further contended by the learned counsel for the plaintiff/appellant that as the property in the hands of deceased Gurdev Singh was ancestral coparcenary and joint Hindu family property, thus, will executed by him is void ab-initio and is liable to be set aside. This contention is devoid of any merits. Plaintiff has failed to prove on record that the property in dispute is ancestral coparcenary and joint Hindu family property. Unless and until it is proved by cogent evidence that property is having ancestral character, it is presumed that property is self acquired. My this view is fully fortified by the law laid down in **2013 (1) Civil Court Cases 459 (P&H) Harpal Singh Versus Jiwan Kumar and others**. The plea taken by the learned counsel for the plaintiff that property inherited by male Hindu from his father, father's father or father's father's father is ancestral property. There is no doubt*

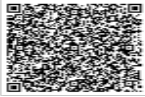


*in it that such a property is ancestral Admittedly plaintiff was residing separately from his father Gurdev Singh during his life time, only due which, he was given separate residence by Gurdev Singh as alleged by the plaintiff himself. Plaintiff has alleged that Gurdev Singh had partitioned his properties in an oral family settlement and given him one house known as Chubare Wala House where he is residing since then. Meaning thereby plaintiff and Gurdev Singh were never joint in mess or residence. By mere this fact property cannot be held to be joint family property that it is inherited from his father, unless and until it is proved on the file that plaintiff was ever joint in mess or living with his father, it cannot be held that property is joint Hindu family property. Even it is not proved on the file that how Gurdev Singh inherited the property from his grandfather. As per revenue record i.e. jamabandi for the year 1951-1952 which is Ex. P2 on the file, Attar Singh son of Fateh Singh is recorded as owner of the suit property. Whereas in the jamabandi Ex.P3, Gurdev Singh and Harnek Singh sons of Surjan Singh are recorded as joint owners in possession of the suit property. When the excerpts are produced in the lower Court, then why it could not be proved through the evidence of the Kanungo that the property in the hands of Gurdev Singh was inherited by him by way of succession only. Once a partition in the sense of division of right, title or status is proved or admitted, all joint property would be presumed to have been partitioned or divided. Consequently, the burden of proof that certain property was excluded from the partition would be on the party that alleges the same to be joint property. My this view is fully fortified by the law laid down in **2014 (2) Civil Court Cases 475 (SC) in case titled as Kesharbai alias Pushpabai Eknathrao Nalawade (D) by LRs. & Anr. Versus Tarabai Prabhakarrao Nalawade & Ors.** as relied upon*



*by the learned counsel for the respondents. In the instant case also, when the plaintiff himself is alleging that Gurdev Singh had partitioned the joint property and given him Chubare Wala House, then it is to be presumed that all joint property stands partitioned between the parties. When the properties in the hands of Gurdev Singh were already partitioned during his life time, then plaintiff after his death cannot challenge the will on the ground that property in dispute is ancestral coparcenary and joint Hindu family property. The citation relied upon by the learned counsel for the appellant **1996 HRR 187 Babru Versus Basakha Singh and others and 1997 (4) RCR (Civil) 210 Smt. Asha Rani Versus The Controller of Estate Duty** are not applicable to the facts of the case in hand. When the plaintiff has failed to prove that the property in dispute is ancestral coparcenary and joint Hindu family property, then it cannot be said that will is not genuine. Rather will Ex.D4 is a registered document which was executed by Gurdev Singh on 23.10.1992 and whereas he has admittedly expired on 11.12.2008. Had it been so that this will was not genuine, then he could have very easily got it cancelled or rectified during his life time. Non-taking of any steps by deceased Gurdev Singh for a period of more than 16 years, is clearly indicative of the fact that will in question is a genuine document. There is no ground at all to interfere with the line of reasoning recorded by the learned trial Court regarding the execution of the will by Gurdev Singh in favour of defendants no.1 and 2.”*

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



24. In view of the discussion above, no ground is made out to interfere in the impugned judgments and decrees of the learned District Courts below. The present Regular Second Appeal is hereby **dismissed**.
25. Pending applications, if any, stand disposed of.

05.05.2026
Divyanshi

(NIDHI GUPTA)
JUDGE

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