

**In the court of Surinder Pal Kaur
Additional District Judge, Bathinda
(UID:PB-0089).**

CNR No. PBBT010083572019

Case No. CA/204/2019



Presented on : 01-07-2019

Registered on : 02-07-2019

Decided on : 16-10-2025

Karam Singh, aged about 84 years son of Sh.Sher Singh son of Sh.Ishar Singh, resident of Kothe Nathiana, Village Mehma Sarja, Tehsil and District Bathinda, through his special attorney Jagat Singh son of Sh.Karam Singh son of Sh.Sher Singh, resident of Kothe Nathiana, Village Mehma Sarja, Tehsil and District Bathinda.

.....Plaintiff

Versus

1. Rama Singh son of Sh.Zaila Singh son of Sh.Sher Singh;
2. Zaila Singh son of Sh.Sher Singh son of Sh.Ishar Singh;
3. Nachhatar Singh son of Sh.Sher Singh son of Sh.Ishar Singh;
4. Murti Kaur daughter of Sh.Sher Singh son of Sh.Ishar Singh ;
5. Parwati Kaur widow of Sh.Basant Singh son of Sh.Sher Singh;
6. Roshan Singh;
7. Jaskaran Singh- sons of Sh.Basant Singh son of Sh.Sher Singh.

All residents of Kothe Nathiana Village Sarja Mehma Tehsil and
District Bathinda

8. Gurjant Singh;
9. Roshan Singh;
10. Leela Singh;
11. Bhajan Singh- sons of Kati daughter of Sh.Sher Singh;

....Proforma respondents

Appeal against the judgment and decree dated 04.05.2019 passed by the Court of Shri Gurmeet Tiwana, Addl. Civil Judge (Sr. Divn.), Bathinda in civil suit bearing CIS No.CS 704-2015 vide which learned trial court has dismissed the suit filed by the plaintiff/ appellant.

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Present: Sh.Jaskaran Sharma, Advocate for appellant.
Shri Kanwaljit Singh Sidhu, Advocate for the respondent No.1.
Respondents No.2,3,5 to 7 and LR Nasib Kaur exparte.
Service of respondent No.8 to 11 dispensed with.

JUDGMENT

1) Appellants/ plaintiffs have directed this civil appeal against impugned judgment and decree dated 04.05.2019 passed by the Court of Shri Gurmeet Tiwana, Addl. Civil Judge (Sr. Divn.), Bathinda in civil suit bearing CIS No.CS 704-2015 vide which learned trial court has dismissed the suit filed by the plaintiff/ appellant.

2) Brief facts, as putforth by the plaintiff in the plaint are that plaintiff, Mithu Singh alias Kaka Singh (deceased), Zaila Singh, Nachhatar Singh (defendant no. 2 & 3), Murti Kaur (defendant no. 4), Basant Singh now deceased (husband of defendant no. 5) and father of defendants No. 6 & 7 and Kati Kaur (mother of defendants no. 8 to 11) were owners in equal share to the extent of half share in the suit property as per jamabandi for the year 2010-11. Mithu Singh alias Kaka Singh was unmarried and died issue-less on 25.03.2015. The property in dispute is ancestral coparcenary property and it has come to the hand of Mithu Singh by way of natural succession. Mithu Singh alias Kaka Singh

illegally and without any right transferred the ownership title in favour of defendant no. 1 vide transfer deed no. 1506 dated 18.02.2015 without any consideration to defeat the rights of the plaintiff and defendants no. 2 to 11 being members of joint family. The said transfer deed is liable to be set aside on the ground that plaintiff and defendants no. 2 to 11 were having birth right in the property and Mithu Singh could not transfer the coparcenary property. Said sale deed is result of fraud as it is registered by taking the exemption of registration fee on the basis of notification no. S.O.28/C.A.2/1899/S.9/2014 dated 07.05.2014. Said sale deed is without transfer of possession. Defendant no. 1 in connivance with antisocial elements tried to take possession of the suit property. Mutation no. 12371 sanctioned on 26.02.2015 on the basis of transfer deed no. 1506 dated 18.2.2105 is result of fraud as in the mutation defendant no. 1 has been shown as grandson of executant but in fact, he was nephew of executant. Plaintiff came to know about the said transfer deed dated 18.02.2015 when defendant no. 1 tried to take possession of the suit land. Hence the present suit was filed.

3) Upon notice, defendant no.1 appeared and filed written statement taking legal objections interalia that suit is not maintainable; plaintiff has no locus standi; plaintiff is estopped due to his own acts; plaintiff has no cause of action and plaintiff has concealed material facts. Mithu Singh alias Kaka Singh was real uncle of defendant. He was unmarried and issue-less. Answering defendant used to look after and take care of him. He was satisfied with the service rendered by the answering

defendant and in his sound disposing state of mind, Mithu Singh executed transfer deed no. 1506 dated 18.02.2015 and also transferred the actual and physical possession of suit property to answering defendant and mutation no. 12371 was also sanctioned and since then, answering defendant is owner in possession of the suit property. Mithu Singh died on 25.03.2015 and his last rites were performed by answering defendant. That suit is under valued for the purpose of court fee.

4) On merits, it has been submitted that Mithu Singh alias Kala Singh was owner in possession of his share in the land and was at liberty to deal with it. Mithu Singh was satisfied with the services rendered by defendant and he executed transfer deed no. 1506 dated 18.02.2015 and also delivered physical possession of suit property. Mutation no. 12371 was also sanctioned. Mithu Singh died on 25.03.2015 and his last rites were performed by answering defendant. Remaining contents of the plaint are denied and dismissal of the suit was sought.

5) Defendants No.4 filed written statement. Legal objections are taken that suit is not maintainable; plaintiff has no locus-standi; plaintiff is estopped; plaint is liable to be rejected under Order 7 Rule 11 CPC, suit is false and plaintiff has concealed the material facts from this court. It is stated that defendant No.1 used to look after Mithu Singh alias Kaka Singh who was unmarried and issue-less. Being satisfied with the services rendered by defendant no. 1, he executed transfer deed dated 18.02.2015 and transferred the actual possession of the suit property to defendant no.1

and mutation no. 12371 was sanctioned. Mithu Singh died on 25.03.2015 and his last rites were performed by defendant No.1.

6) On merits, averments made during preliminary objections are have been reiterated and remaining contents of the plaint have been either denied or controverted and in the end, prayer for dismissal of the suit has been made.

7) Defendants no. 5, 6, 7 were proceeded against exparte vide order dated 17.08.2015 exparte, defendant No.2 was proceeded against exparte dated 28.09.2016 and defendants No.3, 8 to 11 were proceeded against exparte vide order dated 04.05.2017.

8) Replication was not filed. From the pleadings of the parties, the following issues were framed vide order dated 16.07.2018:-

1. Whether Mithu Singh @ Kaka Singh had no authority to alienate his share in the joint property? OPP
2. If Issue No.1 is proved, whether the plaintiff is entitled to the relief of declaration and permanent injunction as prayed for? OPP
3. Whether the suit of the plaintiff is not maintainable in the present form?OPD
4. Relief.

9) In order to prove his case, Jagat Singh, attorney of plaintiff stepped into witness box as PW1 who tendered his affidavit Ex.PW1/A alongwith documents: Ex.P1 Copy of power of attorney executed by Karam Singh plaintiff in favour of Jagat Singh Ex.P2 Jamabandi for the year 2010-11 Ex.P3 Mutation no. 12371 Ex.P4 Copy of transfer deed no.1506 dated 18.02.2015 by Mithu Singh deceased Ex.P5 Copy of

notification of Punjab Government bearing Memo No. 24/160/11-S.T.2/6030-6300 dated 15.05.2014

10) On the other hand, defendant No.1 Rama Singh examined himself as DW1 who tendered into evidence his duly sworn affidavit Ex.DW1/A and document i.e. transfer deed bearing no. 1506 dated 18.02.2015 as Ex.DW1/B and identified his thumb impression over the same at point A. Thereafter, defendants have examined Tarsem Singh, Namberdar as DW2 who tendered into evidence his duly sworn affidavit Ex.DW2/A and identified his signatures over the Ex.DW1/B. Thereafter, defendants have examined Gurtej Singh, Ex.Panch as DW3 who tendered into evidence his duly sworn affidavit Ex.DW3/A and identified his signatures over the Ex.DW1/B.

11) After hearing the arguments of both the sides, suit of the plaintiffs was dismissed.

12) Aggrieved by the impugned judgment and decree, this appeal has been preferred by the appellant/ plaintiff.

13) Notice of the appeal was issued to the respondents/ defendants. Respondent/ defendant No.1 appeared and contested the appeal through counsel and the service of the remaining respondents was dispensed with.

14) Learned counsel for the appellants has contended that learned lower court has wrongly dismissed the suit of the plaintiff without appreciating the pleadings, evidence and arguments made by the counsel for the appellant/ plaintiff. The judgment has been passed only on the

basis of surmises and conjectures and is not sustainable in the eyes of law and deserves to be set-aside. It has been contended that learned trial court has not properly appreciated the property in dispute in the hands of Mithu Singh being co-parcenary and inherited by him alongwith his borhters nad sisters from their father on the basis of natural succession, who inherited the same from Ishar Singh, who inherited the same from Wazir Singh. Hence, Mithu Singh was not competent to alienate the suit property without legal necessity. It has been contended that lower court has wrongly observed that since Mithu Singh @ Kaka Singh was issue-less and he was not Karta. It has been contended that Ld. trial court has failed to appreciate that said transfer deed is illegal, null and void and is the result of fraud committed by respondent No.1/ defendant and his father Zaila Singh in order to grab the entire share of the deceased Mithu Singh @ Kaka Singh in the ancestral property and to deprive the appellant/ plaintiff and other surviving brothers and sisters of the deceased Mithu Singh to inherit the same as he was unmarried and issue-less. The Ld. trial court has not appreciated the fact that the fraud can only be proved from the circumstantial evidence which has been fully proved in the present case as first the deceased Mithu Singh @ Kaka Singh was lying seriously ill at the time of execution and registration of the alleged transfer deed and was having no senses and was also having no testamentary capacity to understand the nature of any document allegedly executed by him rather the alleged transfer deed has been procured from him by playing fraud and misrepresentation of facts. It has been further argued that the

alleged transfer deed is without any consideration and no amount has been paid by the respondent No.1/ defendant to Mithu Singh @ Kaka Singh and no possession has been transferred to the respondent No.1/ defendant, as such the alleged transfer deed is merely a sham/ paper transaction.

15) Ld. trial court has also not properly appreciated the fact that the alleged transfer deed has been got executed in pursuance of the notification dated 7.5.2014, but as per the said notification Ex.P5, the transfer deed could have been executed only in favour of sons/ daughters/ grand sons/ grand daughters/ maternal grand sons and maternal grand-daughters, brothers & sisters only and the nephew does not come within the definition of said notification. Ld. trial court has wrongly observed that the question of deficiency of stamp duty is between State, Executant or beneficiary and the appellant/ plaintiff has no right to challenge the transfer deed on this ground. The pedigree table of the executant of the transfer deed is also being prepared on the transfer deed executed under the aforesaid notification but the defendant No.1 does not fall within the ambit of the aforesaid notification as no pedigree table was prepared. With these submissions, prayer for acceptance of the appeal has been made.

16) On the other hand, learned counsel for the respondent vehemently contested the arguments raised by learned counsel for the appellants and contended that there is no illegality and infirmity in the judgment passed by learned trial court. Learned trial court after giving details reasons has dismissed the suit of the plaintiff based upon the

evidence and law of land, therefore, there is no merit in the appeal and same deserves to be dismissed.

17) I have considered the contention of both the parties and have gone through the record of this case.

18) The present suit has been filed by the plaintiff for declaration challenging the transfer deed No.1506 dated 18.2.2015 allegedly executed by Mithu Singh @ Kaka Singh son of Sher Singh, resident of Kothe Nathiana village Mehma Sarja, Tehsil and District Bathinda in favour of defendant No.1. The plaintiff has also challenged the mutation No.12371 sanctioned on 26.2.2015 on the basis of said sale deed. It is averred that Mithu Singh was unmarried and issueless and the property was ancestral in the hands of Mithu Singh, so he was not competent to execute the sale deed in favour of defendant no.1 depriving the other co-sharers from receiving the property. The plaintiff has also claimed the relief of permanent injunction restraining the defendant No.1 from taking illegal and forcible possession of any portion of the suit land and from alienating the same in any manner.

19) In order to prove his case, Jagat Singh, attorney of plaintiff stepped into witness box as PW1 who tendered his affidavit Ex.PW1/A alongwith documents: Ex.P1 Copy of power of attorney executed by Karam Singh plaintiff in favour of Jagat Singh Ex.P2 Jamabandi for the year 2010-11 Ex.P3 Mutation no. 12371 Ex.P4 Copy of transfer deed no.1506 dated 18.02.2015 by Mithu Singh deceased Ex.P5 Copy of

notification of Punjab Government bearing Memo No. 24/160/11-S.T.2/6030-6300 dated 15.05.2014.

20) Whereas, on the other hand, counsel for the respondent/defendant has contended that plaintiff has no locus-standi to file the suit. Mithu Singh was unmarried and issue-less and he has every right to property and during his lifetime, he has rightly executed the sale deed Ex.DW1/B in favour of defendant No.1 and merely on the basis that stamp duty was not affixed on the transfer deed, the same cannot be declared as null and void. If the court reaches to the conclusion that stamp duty has not been affixed on the transfer deed, the court can order for the same but on this score, transfer deed cannot be declared as null and void. In order to prove his case, defendant No.1 Rama Singh himself stepped into the witness box as DW1 who tendered into evidence his duly sworn affidavit Ex.DW1/A and document i.e. transfer deed bearing no. 1506 dated 18.02.2015 as Ex.DW1/B and identified his thumb impression over the same at point A. Thereafter, defendants have examined Tarsem Singh, Namberdar as DW2 who tendered into evidence his duly sworn affidavit Ex.DW2/A and identified his signatures over the Ex.DW1/B. Defendant also got examined Gurtej Singh, Ex.Panch as DW3 who tendered into evidence his duly sworn affidavit Ex.DW3/A and identified his signatures over the Ex.DW1/B.

21) The first and foremost argument raised by Ld. counsel for the appellant is that property in question is ancestral and coparcenery in nature and Mithu Singh is having no right to transfer the same by way of

transfer deed as the same has been received by him by way of natural succession.

22) It is the case of the plaintiff that the property in question is ancestral and coparcenary in the hands of Mithu Singh as suit property was inherited by Mithu Singh from Sher Singh, who further inherited the same from Ishar Singh, who further inherited the same from Wazir Singh. With regard to the same, it needs to mention here that the appellant/plaintiff has not led an iota of evidence on record to prove that the property in question is ancestral and coparcenary in the hands of Mithu Singh. No pedigree table has been attached with the plaint. No jamabandi or excerpt has been proved on record in this regard. Even no witness has been examined in this regard by the appellant/plaintiff. Hence, in the absence of any evidence on record, it cannot be concluded that the property in question is ancestral and coparcenary property in the hands of Mithu Singh.

23) The second objection is with regard to the fact that transfer deed has been executed without stamp duty. However, during the course of arguments, learned counsel for the plaintiff has placed on record one another notification of 2006 dated 3rd November, 2006 bearing No.S.O.43/C.A.2/1899/S.9/2006. Though this notification has not been produced by the plaintiff before the trial court but this being a public gazette notification, judicial notice of the same is being taken and the same is being referred in the judgment. Vide this notification issued by the Department of Revenue and Rehabilitation, Punjab, the stamp duty

has been exempted when the transfer deed has been executed by some unmarried person in favour of his brother, sister, brother's son, brother's daughter, sister's son and sister's daughter also. So, in the instant case, Mithu Singh has executed the transfer deed in favour of his brother's son. Whereas the notification relied upon by the appellant is No.S.O.28/C.A.2/ 1899/S.9/2014 dated 7th May, 2014 issued by the Department of Revenue Rehabilitation and Disaster Management (Stamp and Registration Branch), Govt. of Punjab, is in continuation of the notification No.S.O.43/C.A.2/1899/S.9/2006 dated the 3rd November, 2006 and S.O.20/C.A.2/1`899/S.9/2007 dated the 27th April, vide which the Governor of Punjab remitted the stamp duty in whole chargeable on the instruments pertaining to transfer of immovable property by an owner during his life time to any of his blood relation (i.e. children, grandchildren, brothers and sisters, whereas the said notification is not applicable in the present case and the notification No.S.O./C.A.2/1899/S.9/2004 dated 8th January, 2004 is applicable in the present case. In the light of above said notifications, the transfer deed cannot be held to be null and void or illegal on the ground of non-affixation of stamp duty as the same is exempted vide notification dated 3rd November, 2006.

24) In the light of discussion above, I find that the Id. Trial court has rightly appreciated the facts, evidence on record and law and there is no illegality or perversity in the judgment and decree under challenge. Accordingly, I find no ground to interfere in the well reasoned judgment of Id.trial court and the same is hereby affirmed. Consequently, the

present appeal stands dismissed. Decree sheet be prepared. Trial court record alongwith copy of this judgment be returned. Appeal file be consigned to the record room.

Pronounced:
Dt.16.10.2025.

(Surinder Pal Kaur),
Additional District Judge,
Bathinda (UID:PB-0089).

Kulwinder Singh,
Stenographer(Grade-II).