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Date: 23/10/2025

## **Gurbaksh Singh Vs Jagat Singh and Others**

## Regular Second Appeal No. 1731 of 1978

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Feb. 16, 1990

**Acts Referred:** 

Civil Procedure Code, 1908 (CPC) â€" Order 41 Rule 25

Hon'ble Judges: G.C. Mittal, J

Bench: Single Bench

## **Judgement**

G.C. Mittal, J.

In order to appreciate the controversy, the following pedigree table would be useful to keep in mind.

Chanan Singh Smt. Bholi

Gurbaksh Jagat Singh Smt. Prito

Singh

Chanan Singh owned 29 Kanals 4 Marias of agricultural land and after his death Smt. Bholi, Gurbaksh Singh and Smt. Prito filed a civil suit for

declaration aginst Jagat Singh and his two sons to the effect that the Plaintiffs are owners in possession of 3/4th of the estate left by Chanan Singh

by way of inheritance and for permanent injunction not to interfere in their peaceful possession. In the alternative, it was prayed that in case the

Plaintiffs are not found to be in possession, they be granted a decree for joint possession of their share.

2. In the written statement, the sons of Jagat Singh set up a will dated 20-2-1972 in their favour arid pleaded that they had inherited the entire

estate left by their grand-father under the will. In replication, the Plaintiffs denied the execution, genuineness and validity of the will.

3. On the contest of the Parties, the following crucial issue was framed regarding the will:

Whether Chanan Singh, deceased, executed a valid will, according to law in favour of Defendants No. 2 and 3 on 20-2-1972? O.P.D.

4. There were other issues also framed in the case and of all those issues, the burden of proof was placed on the Plaintiffs. The Plaintiffs in

affirmative closed their evidence on 11-6-1975 and 5-11-1976 was the date given for the Defendants" evidence and for rebuttal. The next date

was 11-6-1976 on which date the Defendants made the statements and closed the evidence. The trial Court proceeded to hear the arguments on

the same day and decided the crucial issue on Will against the Plaintiffs and dismissed the suit. The Plaintiffs remained unsuccessful before the

district Court and this is their second appeal.

5. The learned Counsel for the Plaintiffs-Appellants has urged that serious prejudice has been caused to his clients inasmuch as no reasonable

opportunity was granted to his clients for leading evidence in rebuttal. Unless they had known as to what evidence is led by the Defendants, who

had set up the Will, no evidence in rebuttal could be produced and as. opportunity was granted to the Defendants, after the Plaintiffs had closed

their evidence in affirmative, similarly on the issue of Will it was the duty of the Defendants to lead evidence in affirmative and roasonable

opportunity had to be granted to the Plaintiffs to lead evidence in rebuttal which was denied as is evident from the facts enumerated above.

6. On a consideration of this matter, I am of the view that the Plaintiffs did not have reasonable opportunity to produce evidence in rebuttal to the

evidence led by the Defendants about the Will set up by them.

7. The facts of the case are such in which the main-issue was regarding the Will and it were the Defendants who were to lead evidence first and

thereafter reasonable opportunity had to be granted to the Plaintiffs to lead evidence in rebuttal. On 5-11-1976, the Defendants did not lead any

evidence and short adjournment was granted for 11-11-1976 on which date the statements of the Defendants were recorded and after closing

their evidence, the Plaintiffs were not given any date for leading their evidence and the Court proceeded to hear the argument's and decided the

case. This has clearly prejudiced the case of the Plaintiffs.

8. It cannot be disputed that in the estate of Chanan Singh, Smt. Bholi would have claim for maintenance as his wife and after his death as his

widow and such a claim cannot be denied even by willing away the property. In the Will no provision was made for her maintenance. Therefore, it

was a fit case in. which opportunity deserved to be granted to the Plaintiffs to lead evidence in rebuttal.

9. Since the appeal has already remained pending in this Court for a long time, complete remand of the case will further delay the matter.

Accordingly, the case is remmitted under Order 41, Rule 25 of the Code of Civil Procedure, to the trial Court to give opportunity to the Plaintiffs

to lead evidence in rebuttal on issue of Will. After the Plaintiffs have led their evidence, the trial Court will hear arguments of the parties on the

evidence already led and to be led now and give its report on the issue of Will. The report would be submitted by the trial Court to the District

Judge, Jalandhar, who will hear the parties on the issue of Will and give his report.

10. The trial Judge will complete his part of the job within six months from the date of appearance of the parties before him and the learned District

Judge shall complete his job within two months from the receipt of the file by him. The learned District Judge shall submit the entire record

alongwith both the reports of the Court for disposal of the appeal.

11. The parties, through their counsel, are directed to appear before the trial Court on 9-4-1990. The Registry is directed to remit the records to

the trial Court so as to reach there positively before 9-4-1990.