



**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

**RSA No.2630 of 2025 (O&M)
Date of Decision:- 12.05.2026**

Jagwinder Singh @ Joginder Singh

.....Appellant.

Versus

Ramandeep Khimareet Kaur and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present:- Mr. Anmol Karan S. Sidhu, Advocate for
Mr. Santokhwinder S. Grewal, Advocate
for the appellant.

VIKRAM AGGARWAL, J. (ORAL)

1. This is defendant No.2's appeal against the judgment and decree dated 28.10.2024 passed by the Court of Additional District Judge, Bathinda, dismissing the appeal filed against the judgment and decree dated 22.11.2018 passed by the Court of Additional Civil Judge (Senior Division), Phul, vide which the suit for declaration, possession and permanent injunction filed by the plaintiff had been decreed.

2. For the sake of convenience, parties shall be referred to as per their original status.

3. The plaintiff (Ramandeep Khimareet Kaur) instituted a suit for declaration that she along with defendant No.4 (Kiranpal Kaur Nagra) were

owners of the land measuring 64 Kanal 12 Marlas (fully described in the plaint) situated at Village Dialpura Bhaika, Tehsil Rampura Phul, District Bathinda (hereinafter referred to as the 'suit property'), being the legal heirs of Gursewak Singh. A declaration was also sought that mutation No.2833 dated 04.04.1994 entered in favour of defendant No.2 (Jagwinder Singh @ Joginder Singh) at the behest of defendant No.1 (Beant Singh) was illegal, null and void and was liable to be cancelled. A further declaration was sought that the Will dated 23.02.1984 registered on 11.03.1993 in the office of Sub-Registrar, Moga alleged to have been executed by Gursewak Singh in favour of defendant No.2 qua the suit property was a forged and fabricated document. Possession of the suit property was also claimed. Consequential relief of permanent injunction was also prayed for.

4. From the facts, it emerges that one Hardyal Singh had two sons Gursewak Singh and Beant Singh. Gursewak Singh solemnized marriage with one Avtar Kaur Gill. From the said wedlock, a daughter Ramandeep Khimareet Kaur (plaintiff) was born. After the death of Avtar Kaur Gill, Gursewak Singh is said to have solemnized marriage with one Harvinder Kaur. From the said wedlock, one Kiranpal Kaur Nagra (defendant No.4) was born. The brother of Gursewak Singh namely Beant Singh (defendant No.1) had two sons Jagwinder Singh @ Joginder Singh (defendant No.2) and Jasvir Singh (defendant No.3).

5. The pedigree table has also been given in the plaint. It, therefore, emerges that defendant No.1 is the paternal uncle (Chacha) of

the plaintiff whereas defendants No.2 and 3 are first cousins (sons of defendant No.1). It was averred that Gursewak Singh expired on 01.06.1992. He was the lawful owner of the suit property. He left behind only two Class-I legal heirs i.e. the plaintiff and his widow Harvinder Kaur. Said Harvinder Kaur re-married after the death of Gursewak Singh after which, only the plaintiff and defendant No.4 were left behind as the legal heirs of Gursewak Singh. It was averred that during his lifetime, Gursewak Singh had informed the plaintiff that he had accumulated enough wealth for his heirs to live comfortably.

5.1. The plaintiff claimed that she was 15 years old at the time of the death of her father. She had been living with defendants No.1 to 3 and reposed complete faith in them while considering defendant No.1 as a father.

5.2. When the plaintiff, lately, sought information from defendants No.1 to 3 about the suit property, they started dilly-dallying. Upon inquiry, she came to know that a Will dated 23.02.1984 was allegedly executed by Gursewak Singh in favour of defendant No.2. It was claimed that the contents of the Will were contradictory and that the Will was an unregistered document which was subsequently got registered on 11.03.1993 much after the death of Gursewak Singh with the connivance of the revenue officials.

5.3. It was stated that the alleged Will categorically mentioned that defendant No.2 looked after the father of the plaintiff whereas defendant No.2 was only 04 years old when the alleged Will is stated to have been

executed by Gursewak Singh. It was claimed that the Will did not bear the signatures of Gursewak Singh and in fact, he was not present in India when the Will is stated to have been executed. It was claimed that the Will was the result of forgery and fabrication.

5.4. It was claimed that mutation No.2833 dated 04.04.1994 had been sanctioned illegally. Accordingly, the suit was instituted.

6. The suit was contested only by defendant No.2 (Jagwinder Singh @ Joginder Singh). The remaining defendants did not appear despite service as a result of which, they were proceeded against ex-parte. Defendant No.2 raised certain preliminary objections as regards maintainability, estoppel, the suit being bad for non-joinder of necessary parties, the suit having been filed beyond the period of limitation etc.

6.1. On merits, the pedigree table was denied. It was claimed that Harvinder Kaur had no relation with Gursewak Singh. It was admitted that Gursewak Singh was residing in England, but he did not contract second marriage after the death of Avtar Kaur Gill. It was stated that the plaintiff and Harvinder Kaur had no right in the suit property. Gursewak Singh was claimed to have executed a Will dated 23.02.1984 in favour of defendant No.2. It was claimed that the said Will was a legal and valid document which had been executed by Gursewak Singh in a sound disposing state of mind out of love and affection with defendant No.2. It was claimed that the Will had been executed in the presence of witnesses namely Panch Harnek Singh and Jora Singh and that the same had been scribed by one Mohinder Singh. It was claimed that admitting the contents of the Will to be correct,

Gursewak Singh had appended his signatures on the same and so had the witnesses. It was claimed that the Will was registered on 11.03.1993 in the office of Sub-Registrar, Moga. It was claimed that the mutation had rightly been sanctioned on the basis of the Will.

7. From the pleadings of the parties, following issues were framed:-

- (1) Whether the plaintiff is entitled to decree of declaration as prayed for? OPP**
- (2) Whether the plaintiff is entitled to decree of possession as prayed for? OPP**
- (3) Whether the plaintiff is entitled to decree of permanent injunction as prayed for? OPP**
- (4) Whether suit of the plaintiff is not maintainable in the present form? OPD**
- (5) Whether Monisha Mahajan has no authority to file the present suit on behalf of plaintiff? OPD**
- (6) Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD**
- (7) Whether plaintiff is estopped from filing the present suit by her own act and conduct? OPD**
- (8) Whether plaintiff has filed the present suit by concealing material facts from the Court? OPD**
- (9) Whether suit is bad for non-joinder of necessary parties? OPD**
- (10) Whether the suit is beyond the period of limitation? OPD**
- (11) Whether suit is not properly valued for the purpose of Court fee and jurisdiction? OPD**
- (12) Whether the present suit is liable to be dismissed with special costs U/s.35-A CPC? OPD**

(13) Relief.

8. On 13.10.2015, an additional issue 1(A) was framed:-

1(A) Whether Gursewak Singh executed Will dated 23.02.1984 registered at Serial No.23237/3 dated 11.03.1993 in the office of Sub Registrar, Moga in favour of defendant No.2 Jagwinder Singh, if so, its effect? OPD No.2

9. Parties led their respective evidence.

10. The trial Court decreed the suit filed by the plaintiff. It was held that the Will had not been proved to have been executed. The appeal filed by defendant No.2 was dismissed by the first Appellate Court leading to the filing of the instant regular second appeal.

11. I have heard learned counsel for the appellant.

12. Learned counsel for the appellant has strenuously urged that both Courts have gravely erred in decreeing the suit. It has been submitted that the mutation had been sanctioned on 04.04.1993 whereas the suit was filed on 06.02.2014. It has been submitted that the suit was, therefore, barred by limitation.

12.1. It has further been submitted that execution of the Will dated 23.02.1984 had duly been proved. It has been submitted that the attesting witness of the Will namely Jora Singh had duly been examined as DW5 and the son of the scribe namely Gurcharan Singh was examined as DW6. It has been submitted that evidence of the said witnesses duly proved the execution of the Will. It has been argued that even its registration was duly proved, but despite the same, the Courts erroneously discarded the Will.

12.2. It has been submitted that the Will was not shrouded by any

suspicious circumstances as the reasons for bequeathing the suit property in favour of defendant No.2 had duly been given in the Will.

12.3. Learned counsel has referred to the impugned judgments and decrees in detail and has submitted that the same are not sustainable. Learned counsel has also referred to the oral and documentary evidence led on the record in the case and has argued that the instant appeal deserves to be allowed.

13. I have considered the submissions made by learned counsel for the appellant but find the same to be devoid of merit.

14. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are to be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 CPC. Reference in this regard can be made to the judgment of the Supreme Court in the case of *Pankajakshi (Dead) through LRs and others V/s Chandrika and others, (2016)6 SCC 157*, followed by the judgments in the cases of *Kirodi (since deceased) through his LR V/s Ram Parkash and others, (2019) 11 SCC 317* and *Satender and others V/s Saroj and others, 2022(12) Scale 92*. Relying upon the law laid down in the aforesaid judgments, no question of law is required to be framed.

15. It is well settled that the onus to prove a Will is on the propounder. The execution has to be proved in terms of the provisions of Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872. Reference can be made to the celebrated judgment of

the Hon'ble Apex Court in the case of *H. Venkatachala Iyengar Versus B.N. Thimmajamma and others, AIR 1959 Supreme Court 443.*

Reference can also be made to the judgment of the Hon'ble Apex Court in the case of *Shivakumar and others Vs. Sharanabasappa and others, 2021(11) SCC 277* wherein the Hon'ble Apex Court enunciated the following principles:-

“11. For what has been noticed here in above, the relevant principles governing the adjudicatory process concerning proof of a Will could be broadly summarised as follows:—

1. Ordinarily, a Will has to be proved like any other document; the test to be applied being the usual test of the satisfaction of the prudent mind. Alike the principles governing the proof of other documents, in the case of Will too, the proof with mathematical accuracy is not to be insisted upon.

2. Since as per Section 63 of the Succession Act, a Will is required to be attested, it cannot be used as evidence until at least one attesting witness has been called for the purpose of proving its execution, if there be an attesting witness alive and capable of giving evidence.

3. The unique feature of a Will is that it speaks from the death of the testator and, therefore, the maker thereof is not available for deposing about the circumstances in which the same was executed. This introduces an element of solemnity in the decision of the question as to whether the document propounded is the last Will of the testator. The initial onus, naturally, lies on the propounder but the same can be taken to have been primarily discharged on proof of the essential facts which go into the making of a Will.

4. The case in which the execution of the Will is surrounded by suspicious circumstances stands on a different footing. The presence of suspicious circumstances makes the onus heavier on the propounder and, therefore, in cases where the circumstances attendant upon the execution of the document give rise to suspicion, the propounder must remove all legitimate suspicions before the document can be accepted as the last Will of the testator.

5. If a person challenging the Will alleges fabrication or alleges fraud, undue influence, coercion et cetera in regard to the execution of the Will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the Will may give rise to the doubt or as to whether the Will had indeed been executed by the testator and/or as to whether the testator was acting of his own free will. In such eventuality, it is again a part of the initial onus of the propounder to remove all reasonable doubts in the matter.

6. A circumstance is “suspicious” when it is not normal or is ‘not normally expected in a normal situation or is not expected of a normal person’. As put by this Court, the suspicious features must be ‘real, germane and valid’ and not merely the ‘fantasy of the doubting mind.’

7. As to whether any particular feature or a set of features qualify as “suspicious” would depend on the facts and circumstances of each case. A shaky or doubtful signature; a feeble or uncertain mind of the testator; an unfair disposition of property; an unjust exclusion of the legal heirs and particularly the dependants; an active or leading part in making of the Will by the beneficiary thereunder et cetera are some of the circumstances which may give rise to

suspicion. The circumstances above-noted are only illustrative and by no means exhaustive because there could be any circumstance or set of circumstances which may give rise to legitimate suspicion about the execution of the Will. On the other hand, any of the circumstance qualifying as being suspicious could be legitimately explained by the propounder. However, such suspicion or suspicions cannot be removed by mere proof of sound and disposing state of mind of the testator and his signature coupled with the proof of attestation.

8. The test of satisfaction of the judicial conscience comes into operation when a document propounded as the Will of the testator is surrounded by suspicious circumstance/s. While applying such test, the Court would address itself to the solemn questions as to whether the testator had signed the Will while being aware of its contents and after understanding the nature and effect of the dispositions in the Will?

9. In the ultimate analysis, where the execution of a Will is shrouded in suspicion, it is a matter essentially of the judicial conscience of the Court and the party which sets up the Will has to offer cogent and convincing explanation of the suspicious circumstances surrounding the Will.”

16. Reverting to the facts of the case, one of the attesting witnesses of the Will namely Jora Singh stepped into the witness box as DW5. He was 95 years old when he was examined. Though he stated that Gursewak Singh had executed the Will in favour of Jagwinder Singh and he identified the signatures of Gursewak Singh on the same, he spilled the beans in the cross-examination. He stated that he had no relation with

Jagwinder Singh and Gursewak Singh. He stated that Gursewak Singh had expired about 30 years ago and he did not know as to what was his age at the time of his death. He also stated that he was not on visiting terms with Gursewak Singh. He also deposed that at the time of execution of the Will, Gursewak Singh was 30/32 years old and defendant No.2 Jagwinder Singh was about 4/5 years old. He also stated that he had seen the original Will in the Court when he tendered his affidavit in examination-in-chief. The Courts, therefore, rightly found that the statement was not trustworthy.

17. The son of the scribe of the Will namely Mohinder Singh was also examined as DW6. He was also the power of attorney holder of defendant No.1. He had got the Will registered on behalf of Beant Singh. He identified the signatures and handwriting of his father on the Will. He stated that the Will which had been produced in the Court was only a photocopy. However, no death certificate etc. of the scribe was produced.

18. The trial Court rightly found that the original Will dated 23.02.1984 had not seen the light of the day and though permission was granted to prove it by way of secondary evidence, the conditions imposed vide order dated 17.10.2016 were not fulfilled. DW1 Parmod Chander, Naib Sadar Kanungo, deposed that the Will dated 23.02.1984 had been registered on 11.03.1993, but the said Will was not in their record. He stated in his cross-examination that he was not aware as to where the original Will had gone. He categorically stated that the said Will could not be traced out. No report was submitted to the police as regards the loss of the Will. If one juxtaposes this fact with the statement of DW5 Jora Singh

who stated that he had seen the original Will in the Court, it emerges that the version about the loss of the Will was a concocted story.

19. It is also quite strange that the Will dated 23.02.1984 was got registered on 11.03.1993 after the death of Gursewak Singh. DW4 Sukhdev Singh stated that Gursewak Singh had himself got the Will registered. Once Gursewak Singh had already expired on 01.06.1992, he could not have got the Will registered on 11.03.1993.

20. Not only this, DW5 Jora Singh stated that the Will had been executed in the house of Balwinder Kaur, sister of Gursewak Singh. If such was the case, it is not understood as to why the sister of Gursewak Singh did not attest the Will and why Jora Singh, who was not on visiting terms with Gursewak Singh, was made an attesting witness.

21. Most importantly, the age of Gursewak Singh at the time of execution of the Will was about 32 years. This in itself is a suspicious circumstance because normally, a 32 years old person would not make a will. Even if this fact is ignored, it was stated in the Will that defendant No.2 had been serving him. Defendant No.2 was about 04 years old at the time of execution of the alleged Will, having born on 19.08.1979. It is not understood as to what kind of service a four year old child must have been providing to Gursewak Singh, who, out of love and affection, executed the Will in favour of defendant No.2 Jagwinder Singh.

22. Still further, it was stated in the Will that Gursewak Singh did not have a son. However, no mention was made about his daughters. This also is a suspicious circumstance. No doubt, a Will is made when one has

to deviate from the nature line of succession. However, the deviation is to be accompanied by some reasons. The absence of reasons amounts to a suspicious circumstance.

23. All the aforesaid suspicious circumstances were to be dispelled by the propounder of the Will, but he failed to do so.

24. Under the circumstances, both Courts did not commit any illegality in decreeing the suit.

25. As regards the issue of limitation, it was rightly held that the cause of action would arise from the date of knowledge and further, for a suit for possession, the limitation would be 12 years. Under the circumstances, it was rightly held that the suit was not barred by limitation.

26. Both Courts recorded concurrent findings of facts and law. It has not been shown that there was any misreading of evidence or misapplication of law warranting interference in second appeal.

27. In view of the aforesaid discussion, the instant appeal is found to be devoid of merit and is, accordingly, dismissed.

Pending application(s), if any, shall also stand disposed of.

May 12, 2026
Yag Dutt

(VIKRAM AGGARWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No