



CNR No: PHHC010974662026

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

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RSA-2338-2026 (O&M)

Date of decision: 15.07.2026

Amarjit Kaur and others

...Appellants

Versus

Harbhajan Kaur @ Bhajan Kaur through her LR

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. M.S. Dalal, Advocate and
Mr. Himanshu Kashyap, Advocate for the appellants.

VIKAS SURI, J.

1. This regular second appeal has been filed by the defendant-appellants, assailing concurrent findings returned vide judgment and decree dated 21.10.2023, passed by the learned Civil Judge (Junior Division), Ludhiana, as affirmed vide judgment and decree dated 29.04.2026, passed by the learned Additional District Judge, Ludhiana, whereby the suit for possession and permanent injunction has been decreed against the defendant-appellants and the appeal preferred thereagainst has been dismissed, respectively.

2. Succinctly, the present appeal emanates from a suit filed by the sole plaintiff–Harbhajan Kaur @ Bhajan Kaur (since deceased), for possession of a house built on an area of 79 square yards, consisting of six rooms, kitchen (double storey), bearing house no. 169-C (old), 225 (new), situated in Janta Colony, Basti Jodhewal, Ludhiana, (comprised



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in Khasra Nos.293, 295, 298, 299, 300, 301, 302 and 303, situated in Taraf Jodewal, Tehsil and District Ludhiana); and for mandatory injunction, directing the defendant-appellants to hand over the household goods along with the title documents of the property, including the original agreement qua the suit property in favour of the plaintiff-respondent; and also for permanent injunction, restraining the defendants from alienating the suit property on the basis of any forged and fictitious document, from parting with its possession, from making any construction over the house or changing its nature by making any addition or alteration, and from creating any charge over or a third party interest in the same in any manner, whatsoever.

2.1 It is averred that the plaintiff-respondent was an issueless widow, aged about 65 years, and defendant No.1 is her sister and defendant No. 2 is the husband of defendant No.1, whereas defendant Nos. 3 and 4 are the children of defendant Nos.1 and 2. It is also pleaded that initially, defendant No.1 had managed to procure a Will in her favour from the plaintiff by misguiding, misrepresenting and misleading the plaintiff, however, after the execution of the said Will, the intentions of defendant No.1 are said to have turned dishonest. On becoming aware of the said aspect, the plaintiff revoked her Will in favour of defendant No.1 by way of Revocation Deed, registered with the Sub Registrar, Ludhiana vide Vasika No. 799 dated 15.02.2008.



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2.2 Thereafter, defendant No.1 allegedly made an attempt to occupy the house of the plaintiff, i.e. the suit property, by forging an agreement to sell and falsely claiming under the said agreement, she filed civil suit No.798 of 01.12.2007, which was later on dismissed under Order 9 Rule 8 CPC, on 17.08.2009. Thereafter, the plaintiff moved an application before the Senior Superintendent of Police, Ludhiana for registration of a criminal case against the defendants, for the said act of forgery and fabrication.

2.3 The plaintiff, being an aged woman of infirm health, was being taken care of by her brother, namely Tarsem Singh, and the civil suit referred to hereinbefore was also being defended by the said brother. Unfortunately, on her brother's death in the last week of December, 2009, the plaintiff remained completely alone and, in that state of helplessness, all the defendants, in the absence of the plaintiff when she was away to *Mayya Da Dera*, Phillaur, forcibly took possession of the suit property in a concerted manner, in January, 2010, and also retained all her household goods, personal effects as well as the original sale agreement qua the suit property. Furthermore, when the plaintiff tried to enter her house, the defendants resisted her entry. On the plaintiff's request to vacate her house and hand over all the household goods, the defendants refused to do so and, as such, the defendants have been in illegal possession of the house ever since.



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3. Upon notice of the suit, defendant Nos.1 and 2 put in appearance before the Court and contested the suit by filing their joint written statement, whereas the suit against defendant Nos.3 and 4 was dismissed by the Trial Court. The contesting defendants raised preliminary objections, challenging the maintainability of the suit, to the effect that the plaintiff had not filed 'Form 4' *Sawaal* (opening sheet), which is mandatory for filing a civil suit; that no document showing title or possession of the plaintiff had been placed on record; that the suit was under-valued, suppresses material facts and is only an abuse of process of law. It was averred that, even though the plaintiff alleged that she was dispossessed of her house in the first week of January, 2010, she initiated litigation after an interval of 5-6 months, which is unreasonable and *ex facie* shows the malafide intention of the plaintiff. It was further pleaded that the plaintiff had neither mentioned any date of illegal/forcible taking over of possession nor was she present at the time of the alleged incident. On merits, it was submitted that plaintiff has some ulterior motive behind levelling false allegations against defendant No.1 qua the manner of obtaining the Will. The rest of the case as set up by the plaintiff in her plaint was denied by defendant Nos.1 and 2 and a prayer was made for dismissal of the suit.

4. From the pleadings of the parties, the following issues were framed by the Trial Court:



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1. *Whether the plaintiff is entitled to relief of possession as prayed for? OPP*
2. *Whether the plaintiff is entitled to relief of mandatory injunction as prayed for? OPP*
3. *Whether the plaintiff is entitled to relief of permanent injunction as prayed for? OPP*
4. *Whether the suit of the plaintiff is not maintainable in the present form? OPD*
5. *Whether the plaintiff has not come to the Court with clean hands and has suppressed the material facts from this Court? OPD*
6. *Relief.*

5. During the pendency of the suit, plaintiff-respondent (Harbhajan Kaur) unfortunately passed away and Gurwinder Kaur, who is the natural-born child of defendant Nos.1 and 2 but claimed to have been adopted by the plaintiff, was impleaded as her legal representative vide order dated 09.05.2017, being the legatee under the Will dated 15.03.2013, executed by the deceased plaintiff. The said Will was duly proved before the Trial Court and its authenticity could not be successfully assailed, since it had been registered and an attesting witness thereto, had been examined. Furthermore, the Trial Court also noted that the defendants had admitted the title of the plaintiff but failed to bring on record and prove the agreement to sell dated 21.11.2006, vide which the plaintiff was alleged to have transferred the suit property to the defendants. The defendants also failed to show any documentary



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evidence regarding payment of Rs. 3,75,500/- for the purchase of the property in question, from plaintiff-Harbajan Kaur.

6. After considering the evidence adduced and arguments advanced, by both the sides, learned Trial Court partly decreed the suit vide judgment and decree dated 21.10.2023, allowing the relief of possession and permanent injunction but refused to grant mandatory injunction, since the ownership of the household articles could not be proved by the plaintiff.

7. Dissatisfied with the above outcome, defendant-appellants assailed the said judgment and decree dated 21.10.2023, before learned District Judge, Ludhiana. After re-appraising and discussing the entire evidence led by the parties, the appeal was dismissed by the first Appellate Court, vide judgment and decree dated 29.04.2026.

8. Still aggrieved, the defendant-appellants have challenged the judgments and decrees passed by both the Courts below, returning concurrent findings of fact, by way of the present regular second appeal.

9. I have heard learned counsel for the appellants and perused the record, with his able assistance.

10. Notably, the first Appellate Court observed that the factum of Amarjit Kaur (defendant-appellant No.1) coming into possession of the suit property through plaintiff-Harbhajan Kaur on the basis of an earlier Will executed by Harbhajan Kaur in her favour, is not disputed.



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The said Will executed by Harbhajan Kaur in favour of Amarjit Kaur has already been revoked and subsequent to its cancellation, plaintiff-Harbhajan Kaur executed a Will in favour of Gurwinder Kaur, which has been duly proved by the plaintiff, in consonance with Section 68 of the Indian Evidence Act, 1872 (now Section 67 of the Bharatiya Sakshya Adhiniyam, 2023) read with Section 63 of the Indian Succession Act, 1925. Thus, the main contesting parties after the demise of plaintiff-Harbhajan Kaur, are biological mother and daughter, namely Amarjeet Kaur and Gurwinder Kaur, respectively. The first Appellate Court further noted that the factum of Harbhajan Kaur being the owner of the property, after having purchased the same from one Bhagat Ram, has been admitted by Amarjit Kaur, herself and secondly, the aforesaid fact gets substantiated from the records of Municipal Council and the evidence of the summoned witness from PSPCL. The main contention of defendant-appellant No.1, as pleaded in her written statement, was that she became the owner in possession of the suit property on the basis of an agreement to sell dated 21.11.2006, allegedly executed in her favour by plaintiff-Harbhajan Kaur. However, the said plea of the appellant was held to be not tenable as the said agreement had not been proved, and even the original agreement was not brought on record. The learned Appellate Court further concluded that an agreement to sell does not confer any title, by itself. Thus, it affirmed the findings of fact recorded by the Trial Court, by upholding the judgement and decree



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dated 21.10.2023. The aforesaid findings have not been not been challenged, before this Court, in the instant appeal.

11. Learned counsel for the appellants has emphatically argued that as the property in question was owned by a female Hindu, the general rules of succession provided under Section 15 of the Hindu Succession Act, 1956 (for short, 'Act of 1956'), were applicable and hence, both the Courts below have erroneously passed the impugned judgments and decree. It is further submitted that in view of the aforesaid statutory provision, the suit property had to be distributed amongst the heirs of the plaintiff-respondent, in the order of succession provided under Section 16 *ibid*.

12. The aforesaid argument made on behalf of the appellants, though attractive but does not hold much water and is liable to be rejected, as such, for the reasons given hereinafter.

13. It would be apposite to refer to the provisions of Sections 15 and 16 of the Hindu Succession Act, 1956, which are extracted hereunder:

15. General rules of succession in the case of female Hindus.—(1) *The property of a female Hindu dying intestate shall devolve according to the rules set out in Section 16,—*

- (a) *firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;*
- (b) *secondly, upon the heirs of the husband;*
- (c) *thirdly, upon the mother and father;*



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- (d) *fourthly, upon the heirs of the father; and*
- (e) *lastly, upon the heirs of the mother.*

(2) *Notwithstanding anything contained in sub-section (1),—*

- (a) *any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter), not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and*
- (b) *any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any predeceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.*

16. Order of succession and manner of distribution among heirs of a female Hindu.—*The order of succession among the heirs referred to in Section 15 shall be, and the distribution of the intestate's property among those heirs shall take place, according to the following rules, namely:*

Rule 1.—Among the heirs specified in sub-section (1) of Section 15, those in one entry shall be preferred to those in any succeeding entry, and those included in the same entry shall take simultaneously.

Rule 2.—If any son or daughter of the intestate had pre-deceased the intestate leaving his or her own children alive at the time of the intestate's death, the children of such son or daughter shall take between them the share which such son or daughter would have taken if living at the intestate's death.

Rule 3.—The devolution of the property of the intestate on the heirs referred to in clauses (b), (d) and



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(e) of sub-section (1) and in sub-section (2) of Section 15 shall be in the same order and according to the same rules as would have applied if the property had been the father's or the mother's or the husband's as the case may be, and such person had died intestate in respect thereof immediately after the intestate's death.” (emphasis supplied)

14. A perusal of sub-section (1) of Section 15 of the Act of 1956, would show that the same is applicable only when the two conditions mentioned therein are satisfied, i.e. (i) the property belongs to a female Hindu, and (ii) she has died intestate. In the present case, admittedly, the plaintiff-respondent had executed a registered Will dated 15.03.2013, which stands proved on record. In the light of the aforesaid fact, the provision of Section 15 or, for that matter, of Section 16 of the Act of 1956, are not attracted in the present case. Instead, the devolution of the deceased plaintiff's estate herein is governed by Section 30 of the Act of 1956, which is reproduced hereunder:

“30. Testamentary succession.—Any Hindu may dispose of by will or other testamentary disposition any property, which is capable of being so disposed of by him or by her, in accordance with the provisions of the Indian Succession Act, 1925 (39 of 1925), or any other law for the time being in force and applicable to Hindus.

Explanation.—The interest of a male Hindu in a Mitakshara coparcenary property or the interest of a member of a tarwad, tavazhi, illom, kutumba or kavaru in the property of the tarwad, tavazhi, illom, kutumba or kavaru shall, notwithstanding anything contained in this Act or in any other law for the time being in force, be deemed to be



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property capable of being disposed of by him or by her within the meaning of this section.”

15. Faced with the aforesaid, learned counsel for the appellants argued that one person cannot be both, a scribe as well as an attesting witness of the Will. The poser raised is no longer *res integra*. The Hon’ble Supreme Court in its decision dated 03.01.2006, rendered in Civil Appeal No.2034 of 2003, titled as ***Mathew Oommen vs. Suseela Mathew***, reported in **(2006) 1 SCC 519**, has held that there is no legal requirement that a scribe cannot be an attesting witness. The relevant portion of the judgment reads thus:

“8. The learned counsel for the respondent also argued that the Will had not been attested by the two attesting witnesses as required under the law. In support of this argument it was submitted that one of the alleged attesting witnesses is only scribe of the Will and is not an attesting witness. **Regarding this objection we may note that there is no requirement in law that a scribe cannot be an attesting witness.** The person concerned has appeared in the witness box as PW 1 and has clearly stated that he is a scribe of the Will as well as he is an attesting witness of the Will. For attestation what is required is an intention to attest which is clear from the statement of PW 1. He categorically stated that he has signed as an attestor and scribe. In our view, the requirement of attestation of the Will by two witnesses is fully met in the present case.” (emphasis supplied)



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However, it is trite law that a scribe cannot be “treated” as an attesting witness to a Will. In the case at hand, the factual matrix is not that a scribe has been treated as an attesting witness. Rather, one of the attesting witnesses has also signed as a scribe. Thus, the matter is squarely covered by *Mathew Oommen’s case* (supra).

16. For better comprehension of the ratio of the above verdict, it would be useful to first understand the concept of testamentary disposition and the requirements of law. A 'will' is defined under Section 2(h) of the Indian Succession Act, 1925 (for short ‘Succession Act’), whereas 'codicil' is defined under Section 2(b), which provisions read as under:

“2. Definitions.—In this Act, unless there is anything repugnant in the subject or context—

(a) x x x x x;

(b) “codicil” means an instrument made in relation to a will, and explaining, altering or adding to its dispositions, and shall be deemed to form part of the will;

(bb) to (g) x x x x x;

(h) “will” means the legal declaration of the intention of the testator with respect to his property which he desires to be carried into effect after his death.”

17. Wills are classified under two broad categories, namely privileged wills and unprivileged wills. As per the provisions contained



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in Section 65 of the Succession Act, a 'privileged will' is a testamentary declaration made in the manner prescribed under Section 66, which is by any soldier being employed in an expedition or engaged in actual warfare or an airman so employed or engaged, or any mariner being at sea, who has completed 18 years of age, to dispose of his property. Execution of the other category of wills, known as unprivileged wills, i.e. by persons other than those covered under Section 65 *ibid*, is governed by the provisions contained under Chapter III. Section 63 of the Succession Act provides for execution of unprivileged wills, which reads thus:

“63. Execution of unprivileged wills.—Every testator, not being a soldier employed in an expedition or engaged in actual warfare, or an airman so employed or engaged, or a mariner at sea, shall execute his will according to the following rules:—

- (a) The testator shall sign or shall affix his marks to the will, or it shall be signed by some other person in his presence and by his direction.*
- (b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.*
- (c) The will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the will in the presence of the*



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testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.”

18. A perusal of the aforesaid provision shows that the requirement of due execution of a Will under Section 63(c) of the Succession Act, is its attestation by two or more witnesses, which is mandatory. There is no provision under the Succession Act, which provides the qualification of a person to be an attesting witness to the Will. The requirement of attestation of a Will is statutory in nature, and cannot as such be done away with. Nonetheless, it would be necessary that the intent of the attestor, to be an attesting witness to the Will, should be evident. Thus, the intention of the attestor (or the *animus attestandi*) and its paramount importance, is integral to the statutory requirement given under Section 63 of the Succession Act. The manner in which a Will is to be proved before a Court of law, is provided under Section 68 of the Indian Evidence Act, 1872 (for short ‘Evidence Act’), corresponding to Section 67 of the Bhartiya Sakshya Adhiniyam, 2023. Section 68 of the Evidence Act, reads thus:

“68. Proof of execution of document required by law to be attested.—*If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:*

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a



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will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.”

19. A conjoint reading of Section 63 of the Succession Act and Section 68 of the Evidence Act would show that the purpose for which a Will is attested by a witness, is distinctly defined. An attesting witness would attest the Will on the request made by the testator for the purpose of due execution of the Will and in accordance with the mandate of Section 63 of the Succession Act. Thus, it has to come in evidence that the attesting witness had the intention to attest, i.e. the *animus attestandi*. It is in such circumstances that a scribe, who has though appended his signatures to the testamentary disposition, cannot be treated to be an attesting witness unless he had the aforesaid intention of being an attesting witness. However, there is no bar for the said person to be a scribe as well as an attesting witness. It has been held by the Hon'ble Supreme Court in its decision dated 03.08.2001 passed in Civil Appeals No.3164-66 of 1997, titled as ***N. Kamalam (dead) and another vs. Ayyasamy and another***, reported in (2001) 7 SCC 503, that there are two significant requirements of the term “attest”, viz. that the attestor should witness the execution of the Will, thereby implying his presence on the occasion and secondly, he should certify for execution by subscribing his name as a witness which implies consciousness and intention to attest.



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20. In the present case, no material has been shown to this Court or has been referred, to show that the aforesaid requirement was not satisfied and hence, the Courts below were not correct in returning a finding in favour of the Will dated 15.03.2013 as having been validly executed. One of the attesting witnesses of the Will, namely S.L. Mahey, Advocate, has been examined in the instant case. The said witness has categorically deposed in favour of the Will in question, made in favour of Gurvinder Kaur. The testamentary disposition is a registered document and keeping in view the totality of the facts and circumstances, the Will has been held to be validly proved. It is conceded that the said attesting witness, namely S.L. Mahey, Advocate, has signed as both the attesting witness as well as the scribe. The reference in his examination, to the effect that the will in question had already been prepared when the testator came to him, would not *ipso facto* prove that he was not an attesting witness to the will in question or that he had not appended his signatures on the Will both as an attesting witness and as a scribe. Despite the said witness having been cross examined at length, nothing material has been pointed out therefrom, by learned counsel for the appellants that would bring the credibility of the said attesting witness in doubt.

21. The Courts below have recorded concurrent findings of fact, on proper appreciation of the evidence led in the present case, which is not shown to be perverse on the facts or in law. Further, learned counsel



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for the appellants has not been able to show that the instant appeal involves any substantial question of law for the consideration of this Court, which is *sine qua non* for maintainability of the second appeal under Section 100 CPC. Reference may be made to the judgments rendered in ***Ramachandra Reddy (dead) through Legal Representatives and others vs. Ramulu Ammal (dead) through Legal Representatives***, reported in (2025) 8 SCC 788, and ***Gurvachan Kaur and others vs. Salikram (dead) through LRs***, reported in (2010) 15 SCC 530.

22. No other issue has been argued.

23. On a conspectus of the aforesaid discussion, the present second appeal being bereft of merit, is dismissed.

July 15, 2026
sumit.k

(VIKAS SURI)
JUDGE

Whether speaking/reasoned : Yes / No

Whether Reportable : Yes / No