

**111 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****RSA No.762 of 2022 (O&M)****Date of Decision: May 14, 2025****Surinder Kaur****. . . . Appellant****Vs.****Balwant Singh alias Surinder Singh and others****. . . . RESPONDENTS****CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA****Present:-** Ms. Rupinder Kaur Thind, Advocate for the appellant.**DEEPAK GUPTA, J.**

Suit for declaration filed by plaintiff - Surinder Kaur (appellant herein) was dismissed by the trial Court on 26.05.2017 and the appeal filed her was dismissed by the First Appellate Court on 23.09.2021. Against these concurrent findings of the Courts below, plaintiff has approached this Court by way of present regular second appeal.

2. Plaintiff sought a decree of declaration to the effect that he is owner in possession of the suit property based upon a Will dated 17.12.2001 executed by her mother-in-law Smt. Surjit Kaur W/o late Shri Amar Singh, who was admittedly the owner of the suit property. The said Will was unregistered at the time of its alleged execution on 17.12.2001. Smt. Surjit Kaur had died on 04.06.2002 and the Will was stated to have been got registered on 06.05.2003.

3. Both the Courts below have discarded the Will and dismissed the suit and consequent appeal.

4. Assailing the aforesaid findings, it is contended by learned counsel for the appellant that the Courts below failed to appreciate the evidence on record properly.

5. This Court does not find merit in the contention. It has been observed by the Courts below that the original Will did not see the light of the day as it was never produced before the Court. Plaintiff had moved an application seeking permission to lead secondary evidence in respect of the Will in question by pleading that it was untraceable in her house.

6. It was observed that as per plaintiff, she had seen the original Will for the last time at the time of registration, but later on it was untraced. It has been rightly observed by the First Appellate Court that it was incumbent upon the plaintiff to have properly preserved the Will and so non-production of the same goes against her. In fact, the bald statement of the plaintiff that the original was not traceable, in itself is not sufficient to prove the loss thereof.

7. Not only above as noticed by the Courts below, the Will in question is alleged to be scribed by one Sukhdev Singh, who also allegedly attested it as one of the attesting witnesses along with one Jaspal Kaur. As per the legal requirements, a Will is required to be attested by at least two attesting witnesses, though for the purpose of proving the same, examination of one of them only is necessary. The trial Court rightly relied upon "**S.R. Srinivasa & Ors v. Padamathamma**", 2010(2) Apex Court Judgments 674 (S.C.), wherein it has been held that where a scribe is stated to have attested the Will, he must have put his signatures for the purpose of attesting that he has seen the executant sign or has received from him a personal acknowledgment of his signatures. If a person puts his signature on the document for some other purpose, i.e. to certify that he is a scribe or an identifier or a registering officer, he is not an attesting witness.

8. In the present case, plaintiff utterly failed to prove that Sukhdev Singh had signed the Will as an attesting witness, besides in the capacity of scribe. Thus legal requirements for execution of the Will itself are not proved.

9. For the sake of arguments even if it be assumed that Sukhdev Singh was one of the attesting witnesses to the Will, the said Will has also been rightly held by the Courts below to be surrounded by various suspicious

circumstances, the most material of which is that deceased - Surjit Kaur had left behind defendant Nos.1, 2 and 6 as her sons and defendant No.7 as a daughter. No reason whatsoever was given in the Will to ignore children by the testator and to prefer a daughter-in-law.

10. In the aforesaid facts and circumstances when the original Will is not produced; loss thereof is not duly explained; Will is not attested as per the legal requirements; and the Will is surrounded by suspicious circumstances, the Courts below did not commit any error in discarding the Will.

11. This Court does not find any ground to disturb the concurrent findings of facts as recorded by the Courts below and as such holding the present appeal to be devoid of any merit, the same is hereby dismissed.

May 14, 2025
Sarita

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No