



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

**RSA-555-2003 (O&M) and
COC-1110-2003**

Reserved on : 26.08.2025

Pronounced on : 09.09.2025

Soma Devi and another

.....Appellants

Vs.

Kamaljit @ Karamjit and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE RAMESH KUMARI

Present: Ms. Neha Jain, Advocate
for the appellants.

Mr. Pardeep Kumar, Advocate
for respondents No.1 and 2.

Mr. Vivek Gupta, Advocate
for the respondents No.3 (through VC).

RAMESH KUMARI J.

The present appeal is preferred against the judgment and decree dated 13.09.2002 passed by Learned Additional District Judge, Hoshiarpur, vide which learned Additional District Judge, Hoshiarpur affirmed the judgment and decree dated 26.08.1999 passed by learned Civil Judge (Junior Division), Hoshiarpur, vide which the civil suit filed by the appellants, was dismissed.

UNDISPUTED FACTS

2. The admitted facts of this case, are that one Mehnga Ram son of Dalip Singh, was owner of land measuring 11 Kanals 14 Marlas as reflected in *Jamabandi* Ex.P1 for the year 1993-94. He died on 20.04.1993. Appellant



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No.2 (plaintiff No.2) is wife of Mehnga Ram and appellant No.1 (plaintiff No.1) is daughter of appellant No.2 and Mehnga Ram. Respondents Nos.1 and 2 (defendants No.1 and 2) are sons of appellant No.2 and Mehnga Ram. Undisputedly, after the death of Mehnga Ram on 20.04.1993, mutation of inheritance of his estate was sanctioned in favour of respondents No.1 and 2 (sons) on the basis of Will Ex. D1 dated 11.07.1990. It is also undisputed fact that during the pendency of the civil suit before the learned trial Court, respondents No.1 and 2 sold 6 kanals of land, out of total 11 Kanals 14 Marlas vide sale deed Mark-A/PW6/E dated 07.04.1998 in favour of the respondent No.3 (defendant No.3).

THE PLEADINGS OF APPELLANTS/PLAINTIFFS

3. The appellants pleaded that they are entitled to inherit 1/4th share each in the estate of Mehnga Ram being his daughter and wife. The alienation of property in favour of respondent No.3 during the pendency of civil suit filed by the appellants is hit by the principles of *lis pendens* and liable to be ignored qua the rights of the plaintiffs over the suit property. The plaintiffs are entitled for joint possession of 1/2 share in the suit property.

PLEADINGS OF RESPONDENTS NO.1 AND 2/DEFENDANTS NO.1 AND 2

4. The pleaded case of respondent No.1 and 2 (sons of Mehnga Ram) is that Mehnga Ram, their father, during his life time executed a registered Will Ex.D1 dated 11.07.1990 in favour of them. Appellant No.1 alongwith appellant No.2 left the house of Mehnga Ram about 13 years before filing of the suit. Mehnga Ram was residing with respondents No.1 and 2. Marriage of respondent No.1 was performed about 10 years before filing of the suit, as it was difficult for respondents No.1 and 2 and Mehnga Ram for performing

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domestic chores. Wife of respondent No.1 is looking after the house chores and providing meals to respondents No.1 and 2 and Mehnga Ram during his life time. Respondent No.1 performed the marriage of his younger brother i.e. respondent No.2. The respondents No.1 and 2 levelled allegations against appellant No.2, their own mother that she was not a lady of good character. She abandoned the house alongwith appellant No.1 and eloped with some one. Mehnga Ram was upset that appellant No.2 had dis-reputed Mehnga Ram in the eyes of public. Mehnga Ram executed a Will dated 11.07.1990 Ex. D1 in favour of his sons with his free will and in sound disposing mind. Mehnga Ram was residing with his sons/respondents No.1 and 2 and was looked after by them. Ration card of Mehnga Ram was with both respondents No.1 and 2. After the death of Mehnga Ram, mutation of inheritance of his property was rightly sanctioned in favour of respondents No.1 and 2 on the basis of Will dated 11.07.1990 Ex. D1. The appellants did not object to the said mutation. They prayed for dismissal of suit.

PLEADINGS OF RESPONDENTS NO.3/DEFENDANTS NO.3

5. Respondent No.3 i.e. purchaser of 6 Kanals of land was impleaded as party to the suit during the pendency of the suit before the learned trial Court, since he purchased 6 Kanals out of total suit land, vide Sale Deed dated 07.04.1998 Ex.PW6/1 from respondents No.1 and 2. He in his written statement took the plea about ignorance of litigation between appellants and respondents No.1 and 2 and that he is *bonafide* purchaser for a consideration of Rs.4,50,000/- without any knowledge of any alleged rights of the appellants in the suit property

6. The learned trial Court framed following issues for determination:-



- “1. Whether the plaintiff is entitled to the joint possession of 1/2 share in the suit land? OPP.*
- 2. Whether the plaintiffs are estopped from filing the present suit by their act and conduct? OPD.*
- 3. Whether the suit is barred by limitation? OPD.*
- 4. Whether the plaintiffs have not come to the court with clean hands ? OPD.*
- 5. Whether Mehnga Ram executed a valid will dt. 11.7.90 in favour of defendant No.1 and 22 OPD.*
- 6. Whether the suit 15 not maintainable against defendant No.3 ? OPD.*
- 7. Whether the defendant purchased the suit land during pendency of the suit? OPP. No.3*
- 8. Relief*

7. In affirmative evidence, appellants tendered *Jamabandi* Ex. P1 for the year 1993-94 and Sale Deed Mark A in favour of respondent No. 3.

8. Respondent No.1 got himself examined as DW-1 and he also examined Naresh Kumar-Inspector Food and Supplies, Hoshiarpur (DW-2), Barjinder Mohan Singh-Deed Writer (DW-3) and Om Parkash (DW-4), Raghbir Lal (DW-5). The documents brought on record by the respondents No.1 and 2 are, (a) Will dated 11.07.1990 Ex.D1, (b) copy of Form D1 and Register D4 of Food Supply department-D1 and D2,

9. Respondent No.3, who himself examined as DW-6 and also examined the Patwari Arvinder Singh as DW-7. One document i.e. sale deed ExPW6/1 dated 07.04.1998 is brought on record by respondent No.3.

10. Thereafter, appellant No.1 (daughter of Mehnga Ram) stepped into the evidence box in rebuttal as PW-1 and closed evidence in rebuttal.



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DECISIONS OF THE LEARNED TRIAL COURT AND LEARNED FIRST APPELLATE COURT

11. After perusal of oral and documentary evidence and hearing arguments, learned trial Court upheld the legality of Will dated 11.07.1990 Ex.D1, held respondent No.3 as *bonafide* purchaser for a lawful consideration and decided Issue No.1, 2 and 5 against the appellants, Issue No.3 and 4 against the respondents and Issue No.6 against the appellants and dismissed the suit No.404 dated 02.05.1997 vide judgment dated 29.08.1999.

12. The appellants preferred first appeal RBT 51/20.09.1999 before learned District Judge, which was dismissed vide judgment and decree dated 13.09.2002. Aggrieved with the findings of learned trial Court and learned First Appellate Court, the present regular second appeal is preferred by the appellants.

SUBMISSION OF LEARNED COUNSEL FOR THE APPELLANTS

13.(i) Learned counsel for the appellants submitted that appellant No.2 being legally wedded wife of Mehnga Ram (since deceased) and appellant No.1 biological daughter of Mehnga Ram are entitled to inheritance $\frac{1}{2}$ share from the estate of Mahnga Ram. False allegations against appellant No.2 are levelled by respondents No.1 and 2 in the written statement which are not proved. Appellant No.2 never left the company of Mehnga Ram. She resided with Mehnga Ram during his life time. The alleged story of elopement of appellant No.2 is concocted, as it is not alleged with whom appellant No.2 eloped. There is no proof that she eloped with anybody. The allegations of elopement of appellant No.2 were levelled by respondents No.1 and 2, her own sons only to grab the property of Mehnga Ram. Mehnga Ram was not in sound disposing mind when he allegedly executed Will Ex. D1 dated 11.07.1990. In



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Will Ex. D1, no reason is mentioned to disinherit wife and daughter from the property of Mehnga Ram. This is a suspicious circumstance in Will Ex.D1. After coming to know about filing of suit by the appellants, respondents No.1 and 2 hurriedly, sold almost 6 Kanals of land i.e. half of the property in favour of respondent No.,3. This itself proved that the Will Ex.D1 is not executed by Mehnga Ram. Attesting witness of sale deed PW6/1 and Will Ex. D1 is one and the same person. Hakam Singh-Lamberdar is attesting witness of Will Ex.D1 and Sale deed Ex. PW6/1. He is not examined for the reasons best known to the respondents. Had he been examined, he would not have supported the execution of the Will. The learned trial Court has ignored these facts.

13. (ii) Learned counsel for the appellants further contended that taking advantage of dismissal of appeal, respondents No.1 and 2 had sold the property vide sale deed dated 08.01.2003 Annexure A-3/1 to Amit Gupta s/o Satish Kumar and Sh.Karam Aggarwal and for this reason, Karam Aggarwal and Amit Gupta are necessary parties to the appeal. She also prayed that CM No.4026-C-2014 in present regular second appeal be allowed and they be also made party to the appeal. In support of her contention, learned counsel for the appellants relied upon the judgment passed by this Court in **(1) Kishan Chand Vs. Basanti Devi (died) through her LRs., 1996(3) RCR (Civil) 487; (2) Ram Piari Vs. Bhagwant and others, 1990(3) SCC 364; (3) Chand Rani and others Vs. Joginder Pal and others 2020(2) RCR (Civil) 415; and (4) Jaswinder Singh Vs. Charanjit Kaur, 2014 (13) RCR (Civil) 1643**

SUBMISSION OF LEARNED COUNSEL FOR RESPONDENTS NO.1 AND 2

14.(i) The main contention raised by learned counsel for respondents No.1 and 2 is that although appellant No.2 was their mother and there is age

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gap between appellant No.2 and Mehnga Ram. Mehnga Ram was much elder to his wife. Respondent No.1 was very young when appellant no.2 left the company of Mehnga Ram and eloped with some one else and took her daughter appellant No.1 alongwith her. Respondent No.1 was 19 years of age when he was got married by Mehnga Ram to run the household chores because there was no one else in the house. Thereafter, respondent No.1 married of his younger brother i.e. respondent No.2. Appellant No.2 was not present at the time of marriage of either of her sons (respondents No.1 and 2). She never made contact with respondents No.1 and 2. Since both the appellants were not residing with the Mehnga Ram since long time back and Mehnga Ram did not mention their name in the Will executed as Ex.D1 because he felt that by eloping with someone else, appellant No.2 had brought bad name to Mehnga Ram. Moreover, the purpose of execution of Will to divert the natural course of succession is not a suspicious circumstance. Will Ex.D1 duly executed by Mehnga Ram during his life time in sound disposing mind with his own free will. The Will Ex.D1 is got registered by Mehnga Ram. Execution of Will Ex.D1 is duly proved by its attesting witnesses i.e. DW-5 Raghbir Lal and scribe DW3-Barjinder Mohan Singh. The respondents were not required to examine all the witnesses of Will Ex. D1. Hakam Singh is an attested witness to the Will Ex.D1 and Sale Deed Ex.DW6/1 because he is *Lambardar* of the area and for his position being *Lambardar*, he was available and known to the parties and for this reason he attested both the documents. Will Ex.D1 was duly produced before the Sub-Registrar. There also Mehnga Ram put his thumb impression on the endorsement of Will Ex.D1. Moreover, execution of Will Ex. D1 is not disputed by the appellants. They have only disputed the mental state

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of Mehnga Ram to execute the Will but they have not brought on record any documents that Mehnga Ram was not in his sound disposing mind at the time of execution of Will Ex.D1 dated 11.07.1990. Mehnga Ram remained alive for three years after execution of Will Ex. D1 dated 11.07.1990 because he died on 20.04.1993. Had he not executed Will in his sound mind, he was at liberty to cancel the Will Ex. D1 at any time during his life time, but he has no reason to cancel the Will because he had executed the Will bequeathing his property in favour of his sons, who were taking care of him and both were brought up by him in the absence of their mother-appellant No.2.

14.(ii) Learned counsel for respondent No. 1 and 2 further contended that learned trial Court rightly held that the Will executed Ex. D1 is executed by Mehnga Ram in his sound disposing mind and appellants are estopped by their act and conduct from filing the suit. The respondents No.1 and 2 sold the property in favour of respondent No.3 because they were in need of money, the other purchasers (who purchased the property during the pendency of RSA) are not necessary party to the appeal because the parties to the *lis* are bound by any decision rendered in this appeal. He prayed for dismissal of the appeal being devoid of merits and to uphold the judgment of learned trial Court.

SUBMISSION OF LEARNED COUNSEL FOR RESPONDENT NO.3

15. Learned counsel for respondent No.3, who appears through VC contended that he had no knowledge of pendency of any litigation between the appellants and respondents No.1 and 2, when he purchased 6 Kanals of suit land vide Sale Deed Ex.DW6/1 dated 07.04.1998. He paid sale consideration of Rs.4,50,000/- to respondent No.1 and 2. Hakam Singh is attesting witness of sale deed Ex. PW6/1 because he was present there being *Lamberdar*. As per



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statement of Patwari-Arvinder Singh (DW-7), there was no mention of litigation between the appellants and respondents No.1 and 2 in the revenue record and for this reason, he was not aware of any alleged rights of the appellants in the suit property. Even if the appeal on merits succeeds, the ownership rights of respondent No.3 are protected because the sale by respondents No.1 and 2 in favour of respondent No.3 is not more than $\frac{1}{2}$ from the estate of Mehnga Ram, which they would otherwise succeed on the basis of natural succession in the absence of any Will. He prayed for protection of his rights as owner in the suit property being *bona fide* purchaser for lawful consideration and for dismissal of the appeal.

16. The findings of the learned trial Court on Issue No.3, 4 and 6 are not assailed by learned counsel for the appellants during the course of her arguments, therefore, the findings of the trial Court and First Appellate Court on this issues are upheld. The only contentious issues are Issue Nos. 1 and 5.

FINDINGS ON ISSUE NO.1 AND 5

17. In the present *lis*, as observed earlier, the dispute is regarding the inheritance of Mehnga Ram. The respondents examined seven witnesses, who are as under:-

17. (i) Karamjit Singh-defendant/respondent No.1 stepped into the witness box as DW-1 and stated on oath that his mother and sister were not staying with them. His mother run away about 12/13 years back alongwith appellant No.1. They were unable to find their trace. His father searched for them 2-3 years but they were not found and his father died in April 1993. Three years before death, their father executed a registered Will in favour of both brothers (respondents No.1 and 2). His father was owner of 11 Kanal and 14



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Marlas of land. His father bequeathed this land in their favour i.e. both brothers. His father himself purchased the land. From this land, half of land belonged to their paternal uncle. After his death, the said land inherited by their father by Will. Their uncle was un-married and no child was born to him. His father was agriculturist. After the elopement of his mother alongwith his sister, his father used to cook food. In the absence of any female in the family, there was difficulty in the family. Two years after elopement of his mother, his father performed his marriage. At that time, he was 19 years of age. His father had paralysis and his right side was effected. He could not speak. He suffered paralysis one year before his death. Before that, his father was absolutely fine and used to walk and perform the work of agriculture. At the time of his death, his father was 63 years of age. His mother and sister did not attend cremation of his father. The mutation of land was sanctioned on the basis of Will in their favour. At that time, his mother and sister did not come. Ration card of two brothers is also with their father and appellants do not have any ration card in the village. His father was very upset with the appellants. After his marriage, his wife used to look after the household chores. Two years after death of his father, he performed the marriage of his younger brother and both the brothers are residing together. The appellants never met them nor visited the village after elopement. They and their father had to suffer humiliation because of elopement of appellants. They have no concern with the suit property.

17.(ii) DW-2 Naresh Kumar-Inspector Food and Civil Supply, proved the Form D1, entry of register-D4 and further stated that as per Form D1, ration card has been issued in the name of Karamjit Singh son of Mehnga Ram and five persons viz. Karamjit, Surinderjit, Kamla Rani, Geeta Rani and Mehnga



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Ram, have been enrolled in the same ration card. Ration card is addressed at the address of Bharwai Road, Bhivani Nagar, Hoshiarpur at the residential address of the applicant. Entry is made at Sr. No.96 in the Register, Copy of which is D4 and entry of the above said is register from block 21. The photocopy of Form D1 and register D4 is proved by him vide D1 and D2.

17. (iii) DW-3-Barjinder Mohan Singh (Deed writer) deposed about the factum of scribing of Will Ex.D1 by Mehnga Ram and making of Entry of the same in his register at Sr. No.554 dated 11.07.1990.

17. (iv) DW-4-Om Parkash deposed that he knows Mehnga Ram. His house is 100 foot away from the house of respondents No.1 and 2. Mehnga Ram was agriculturist. His agriculture land is adjoining the Mehnga Ram. Daughter of Mehnga Ram left the house 12-13 years back. After elopement of appellants, Mehnga Ram looked for them for 2-3 years but they could not be traced. Mehnga Ram felt insulted and used to not talk about it. There was age gap of Mehnga Ram and his wife was of 10-15 years. He also deposed about the fact that Mehnga Ram died due to paralysis which he suffered about 1 year before his death. The appellants did not attend the cremation of Mehnga Ram. He also stated that when the appellants left Mehnga Ram, Karamjit Singh was 15-16 years of age. Second son was younger and the daughter was youngest. After the appellants left the house, Mehnga Ram used to cook food. He also deposed about marriage of respondent No.1 by Mehnga Ram, when he was quite young and marriage of respondent No.2 by respondent No.1 and of their joint residence. He also deposed that Mehnga Ram was look after by respondents No.1 and 2. The appellants never returned home, once they left the home and they have no concern with the property of Mehnga Ram.



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17. (v) DW-5-Raghubir Lal, is attesting witness of Will and he in his testimony proved the factum of execution of Will Ex.D1 in his presence and in the presence of *lamberdar* Hakam Singh.

17. (vi) DW-6 Sanjay Kumar-respondent No.3 stepped into the witness box and deposed about the factum of execution of Sale Deed Ex.DW6/A by respondents No.1 and 2 in his favour which was got scribed from Devi Dass Deed Writer, attested by Hakam Singh and Vinod Kumar. He also deposed that he duly verified the revenue record before purchase.

17. (vii) DW-7 Arvinder Singh *Patwari*, stated that as per *jamabandi* for the year 1993-94, the land in dispute stands in the name of Karamjit Singh and Shadi Lal (respondents No.1 and 2) in equal share.

17. (viii) PW-1-Soma Devi-Appellant No.1 stepped into the witness box and deposed that her marriage was performed during the life time of her father and her mother remained with her father till his death. Her father suffered from paralysis of right side before his death. Her brothers were not properly looking after her father during his illness. He was not in fit state to execute any Will.

18. The pleadings and evidence reveal that respondents No.1 and 2 i.e. the sons of Mehnga Ram have propounded Will Ex. D1 in their favour. In Will Ex.D1, there is no reference of wife and daughter of Mehnga Ram. In this peculiar case, the sons have levelled allegations against their mother that she left them and their father alongwith minor daughter because she was much younger to their father. As per the testimony of DW-4 Om Parkash, there was age gap of 10-15 years between Mehnga Ram and his wife. DW-1 Karamjit Singh, DW-4 Om Parkash, DW-5 Raghubir Lal in their testimonies categorically stated that appellant No.2 left the house of Mehnga Ram about 12-13 years



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back. Marriage of respondent No.1 was performed by Mehga Ram. Appellant No.2 alongwith appellant No.1 never resided with Mehgna Ram and his sons, this fact is proved from the Form No.D1 and entry of register No.4 (Ex.D1 and E.D2). In such a situation, the evidence of appellant No.2 would have gone a long way to uplift the mist regarding her relationship with her own sons and husband and of her residence with Mehgna Ram and his sons but she failed to step into the witness box to support the averments of plaint.

19. Defendants No.1 and 2 had set up Will Ex.D1 dated 11.07.1990. Section 63(c) of Indian Succession Act and Sections 68 and 71 of Indian Evidence Act are relevant, when to adjudicate the legality of Will. The relevant paragraphs of the same are reproduced hereinunder:-

“Clause (c) of Section 63 of the Indian Succession Act reads as follows:

“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 (2013) 7 SCC 490 or engaged, or a mariner at sea, shall execute his will according to the following rules—

*(a)-(b) * * **

(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 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.”



20. As per the requirement of clause (c), a Will is to be attested by two or more witnesses each of whom should have seen the testator sign or put his mark on the Will or should have seen some other person sign the Will in his presence and by the direction of the testator or should have received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person. The Will must be signed by the witness in the presence of the testator. It is not necessary that more than one witness should be present at that time.

21. The stringent requirements of clause (c) to Section 63 of the Indian Succession Act has been explained in several decisions. In ***H. Venkatachala Iyengar v. B.N. Thimmajamma and Others (1959) supp.SCR 426***, Hon'ble Apex Court had highlighted the dissimilarities between the Will which is a testamentary instrument vis-à-vis other documents of conveyancing, by emphasising that the Will is produced before the court after the testator who has departed from the world, cannot say that the Will is his own or it is not the same. This factum introduces an element of solemnity to the decision on the question where the Will propounded is proved as the last Will or testament of the departed testator. Therefore, the propounder to succeed and prove the Will is required to prove by satisfactory evidence that (i) the Will was signed by the testator; (ii) the testator at the time was in a sound and disposing state of mind; (iii) the testator understood the nature and effect of the dispositions; and (iv) that the testator had put his signature on the document of his own free will. Ordinarily, when the evidence adduced in support of the Will is disinterested, satisfactory and sufficient to prove the sound and disposing state of mind of the testator and his signature as required by law, courts would be justified in



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making a finding in favour of the propounder. Such evidence would discharge the onus on the propounder to prove the essential facts. At the same time, this Court observed that it is necessary to remove suspicious circumstances surrounding the execution of the Will and therefore no hard and fast or inflexible rules can be laid down for the appreciation of the evidence to this effect.

22. *In Jaswant Kaur v. Amrit Kaur and Others, 1997 PLJ 54*, it was held that suspicion generated by disinheritance is not removed by mere assertion of the propounder that the Will bears the signature of the testator or that the testator was in sound and disposing state of mind when the Will disinherits those like the wife and children of the testator who would have normally received their due share in the estate. At the same time, the testator may have his own reasons for excluding them. Therefore, it is obligatory for the propounder to remove all the legitimate suspicions before a Will is accepted as a valid last Will of the testator.

23. *In Surendra Pal and Others. v. Dr. (Mrs.) Saraswati Arora and Another (1974) 2SCC 600* Hon'ble the Apex Court had observed that the propounder should demonstrate that the Will was signed by the testator and at the relevant time, the testator was in a sound and disposing state of mind and had understood the nature and effect of the dispositions, that he had put his signature on the testimony of his own free will and at least two witnesses have attested the Will in his presence. However, suspicion may arise where the signature is doubtful or when the testator is of feeble mind or is overawed by powerful minds interested in getting his property or where the disposition appears to be unnatural, improbable and unfair or where there are other reasons



to doubt the testator's free will and mind. The nature and quality of proof must commensurate with such essentiality so as to remove any suspicion which a reasonable or prudent man may, in the prevailing circumstances, entertain. Where coercion and fraud are alleged by an objector, the onus is on him to prove the same and on his failure, probate of the Will must necessarily be granted when it is established that the testator had full testamentary capacity and had in fact executed the Will with free will and mind.

24. In ***Rabindra Nath Mukherjee and Another v. Panchanan Banerjee (Dead) by LRs. and Others***, (1995) 4 SCC 459 Hon'ble Apex Court had observed that the doubt would be less significant if the Will is registered and the Sub-Registrar certifies that the same was read over to the executor who, on doing so, had admitted the contents. In each case, the court must be satisfied as to the mandate and requirements of clause (c) to Section 63 of the Indian Succession Act.

25. In ***Jagdish Chand Sharma v. Narain Singh Saini (Dead) Through LRs. and Others***, (2015) 8 SCC 615, Hon'ble Apex Court referring to Section 63 of the Indian Succession Act had illustrated that the provisions contemplate that in order to validly execute the Will, the testator would have to sign or affix his mark to it or the same has to be signed by some other person in his presence and on his direction. Further, the signature or mark of the testator or signature of the person signing for him has to be so placed that it was intended to give effect to the writing as a Will. It is further observed that Section 63 mandates that the Will should be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to it or has seen some other person sign it in the presence and on the direction of the testator, or has



received from the testator a personal acknowledgment of his signature or mark, or the signature of such other person and each of the witnesses has signed the Will in the presence of the testator, though it is not necessary that more than one witness be present at the same time and that no particular form of attestation is necessary. The execution and attestation of the Will are mandatory in nature and any failure and deficiency of which in adhering to the essential requirements would result in invalidation of the instrument of disposition of the property.

26. Sections 68 and 71 of the Evidence Act, which relate to proof of documents required by law to be attested, read as under:

“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 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.

* * *

71. Proof when attesting witness denies the execution.—If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.”

27. In **Jagdish Chand Sharma (supra)** referring to Sections 68 and 71 of the Evidence Act, it was observed:



“22.2. These statutory provisions, thus, make it incumbent for a document required by law to be attested to have its execution proved by at least one of the attesting witnesses, if alive, and is subject to the process of the court conducting the proceedings involved and is capable of giving evidence. This rigour is, however, eased in case of a document also required to be attested but not a will, if the same has been registered in accordance with the provisions of the Registration Act, 1908 unless the execution of this document by the person said to have executed it denies the same. In any view of the matter, however, the relaxation extended by the proviso is of no avail qua a will. The proof of a will to be admissible in evidence with probative potential, being a document required by law to be attested by two witnesses, would necessarily need proof of its execution through at least one of the attesting witnesses, if alive, and subject to the process of the court concerned and is capable of giving evidence.

22.3. Section 71 provides, however, that if the attesting witness denies or does not recollect the execution of the document, its execution may be proved by the other evidence. The interplay of the above statutory provisions and the underlying legislative objective would be of formidable relevance in evaluating the materials on record and recording the penultimate conclusions. With this backdrop, expedient it would be, to scrutinize the evidence adduced by the parties.

xxx xxx xxx 57.1. Viewed in premise, Section 71 of the 1872 Act has to be necessarily accorded a strict interpretation.

28. After referring to **H. Venkatachala Iyengar** (supra), Hon’ble Apex Court in **Jaswant Kaur**(supra) had laid down the following propositions of law:



“(1) Stated generally, 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 in such matters. As in the case of proof of other documents, so in the case of proof of wills, one cannot insist on proof with mathematical certainty.

(2) Since Section 63 of the Succession Act requires a will to be attested, it cannot be used as evidence until, as required by Section 68 of the Evidence Act, 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.

(3) Unlike other documents, the will speaks from the death of the testator and therefore the maker of the will is never available for deposing as to the circumstances in which the will came to be executed. This aspect introduces an element of solemnity in the decision of the question whether the document propounded is proved to be the last will and testament of the testator.

Normally, the onus which lies on the propounder can be taken to be discharged on proof of the essential facts which go into the making of the will.

(4) Cases in which the execution of the will is surrounded by suspicious circumstances stand on a different footing. A shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the will under which he receives a substantial benefit and such other circumstances raise suspicion about the execution of the will. That suspicion cannot be removed by the mere assertion of the propounder that the will bears the signature of the testator or that the testator was in a sound and disposing state of mind and memory at the time when the will was made, or that those like the wife and children of the testator who would normally



receive their due share in his estate were disinherited because the testator might have had his own reasons for excluding them. The presence of suspicious circumstances makes the initial onus heavier and therefore, in cases where the circumstances attendant upon the execution of the will excite the suspicion of the court, the propounder must remove all legitimate suspicions before the document can be accepted as the last will of the testator. (5) It is in connection with wills, the execution of which is surrounded by suspicious circumstances that the test of satisfaction of the judicial conscience has been evolved. That test emphasises that in determining the question as to whether an instrument produced before the court is the last will of the testator, the court is called upon to decide a solemn question and by reason of suspicious circumstances the court has to be satisfied fully that the will has been validly executed by the testator.

(6) If a caveator alleges fraud, undue influence, coercion, etc. 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 raise a doubt as to whether the testator was acting of his own free will. And then it is a part of the initial onus of the propounder to remove all reasonable doubts in the matter.”

29. In the present case, respondents No.1 and 2 have examined one attesting witness i.e. DW-5 Raghbir Lal, who attested the Will Ex.D1 executed by Mehnga Ram. Second attesting witness of Will Ex.D1 is Hakam Singh. Respondents No.1 and 2 are not required to examine both the witnesses of Will. DW-5 Raghbir Lal in his testimony before the learned trial Court specifically stated that he knows Mehnga Ram. He was resident of Sukhiyabaad, Bhiwani Nagar. He died on 21.07.1993. Before his death, he executed a Will dated 11.07.1990 in favour of his two sons. He is the attesting witness of the said



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Will. He was also confronted with Will dated 11.07.1990 vide Mark 'X' and he stated that this Will was executed by Mehnga Ram in Tehsil Complex. The Will was executed happily and with his own free will by Mehnga Ram. The Will was read over to Mehnga Ram, after scribing the same. Admitting it as correct, Mehnga Ram thumb marked on the endorsement of Will in his presence and in the presence of *Lamberdar* Hakam Singh. He and *Lamberdar* Hakam Singh also signed in the presence of each other. One copy of Will also scribed in the Register of Deed Writer. The register of Deed Writer was also thumb marked by Mehnga Ram and thereafter, they also proved the Will vide D1 and thereafter they took the Will to the office of the Registrar. There also the Will was read over to Mehnga Ram and Mehnga Ram admitting the same as correct, thumb marked on the endorsement of Will in their presence. He and Hakam Singh also signed in the presence of each other. After taking Will, Mehnga Ram went separately and he went separately. Mehnga Ram was alone, when he came to execute the Will. He is subjected to cross examination but nothing worthwhile is extracted from him to create any dent in his testimony. The statement of DW-5 Raghbir Lal attesting witness of Will Ex.D1 dated 11.07.1990 proved that Will Ex.D1 was executed by Mehnga Ram in his sound mind and free will, it is attested by him and Hakam Singh *Lambardar* and also signed by both of them in the presence of each other.

30. DW-3-Barjinder Mohan Singh scribe of Will, also corroborated the testimony of DW-5 regarding scribing of Will by him, at the instance of Mehnga Ram and thumb marking of Will by Mehnga Ram on the text of Will and in his Register. He also prove the Entry on his Register at Sr. No.554 dated



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11.07.1990, original register was produced by him at the time of his statement and he had also signed the original Will.

31. The Will Ex. D1 is duly registered document and there is presumption “that Registered document is validly executed”. Registered document, therefore, *prima facie* would be valid in law. The onus of proof, thus would be on a person who lead the evidence to rebut the presumption.”

Reference can be made upon a judgment rendered by Hon’ble the Apex Court in ***Prem Singh and others Vs. Birbal and others***, 2006(3) RCR (Civil) 381.

Will Ex. D1 is registered documents and thus, it is for the appellants to prove that Mehnga Ram was not having sound disposing mind at the time of execution of Will. This Court in ***1997(1) RR (Civil) 479, 1997(1) SC 299*** held that the onus to prove the testator of a Will was not in sound disposing state of mind at the time of execution of Will was upon the appellants. Similar opinion is expressed by Karnatka High Court in ***1999(1) CCC 250***. No document worth the name or the oral testimony of appellant No.2-Resham Kaur is on record, to prove that Mehnga Ram was suffering from physical or mental ailment to the extent that he was physically or mentally incapacitated at the time of execution of Will Ex. D1 dated 11.07.1990. Mehnga Ram survived for 3 years after execution of Will Ex.D1. He could have change the Will during his life time, had he not executed Will Ex. D1 with his free and sound disposing mind, but he did not do so for the simple reason that his intention was to disinherit his wife and daughter from his property. For the simple reason that wife and daughter are disinherited from the property by Mehnga Ram, itself is not a suspicious circumstance given the background of relationship of Mehnga Ram with his wife and daughter. The ***Kishan Chand*** (supra) cannot be applied to the



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facts of this case because in the said case, Will was in favour of nephews to the exclusion of wife and wife was living with testator during his life time. Similarly in **Ram Piari** (supra) daughter was inherited from the property of father and father executed Will one day before his death bequeathing his property in favour of sons of her only sisters. In the present case, the Will is in favour of natural/biological sons of Mehnga Ram. In **Chand Rani's** case (supra), the dispute was inheritance of the property of Shanti Devi daughter of Beli Ram which she inherited from her father Beli Ram and the Will was propounded by the sons of Beli Ram to the exclusion of children of Shanti Devi. The facts of the present case are entirely different from **Chand Rani's** case. The reason for exclusion of his wife and daughter from his inheritance, is not explained in Will Ex. D1 by Mehnga Ram because DW-4 Om Parkash, DW-5 Raghbir Lal and DW-1 also stated that Mehnga Ram felt humiliated that his wife has left them. The learned first Appellate Court rightly observed that *“if it is said that the appellant No.2 eloped with some person some years ago that was very important event in the life of Mehnga Ram and was expected to mention it in the Will itself. I however, of the view that if the respondents have been able to establish the allegation that wife of Mehnga Ram deserted him many years before, he would rather hate to describe such female members related to him, while executing his bequest. So, the only question that remains to be considered is whether this story propounded by the respondent is acceptable.”*

32. The cross-examination of PW1 also reflects that she never resided with her father and brothers. She when subjected to cross-examination, stated that appellant No.2 is living in the house of appellant No.1. Appellant No.1



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does not know anything about the wife and children of Respondent No.1 and 2. Respondent No.1 also stated that he performed the marriage of his younger brother-respondent No.2 after death of their father. The respondents were of the young age and learned trial Court rightly held that the respondents at the young age of 18 and 19 would not have turned their mother and young sister from the house without any reason.

33. Learned first Appellate Court also took into notice the cross-examination of appellant No.1 who was stepped into the witness box on 17.08.1999 stated that she is 28 years of age and married in 1987. She was about 16 years of age at the time of marriage but according to respondent No.1(DW-1), his sister is 4 or 5 years younger to him and the youngest of all the children of Mehnga Ram. The respondent (DW-1) mentioned his age as 30 years at the time of his deposition and it is quite clear that PW-1 was much younger and not 28 years of age when her statement in the Court was recorded. Thus, appellant No.1 was quite young when appellant No.2 eloped with some one. DW-4 Om Parkash also stated that respondent No.1 was 15//16 years of age and appellant No.1 was younger to all. If respondent No.1 was 15 years of age and respondent No.2 must be 13 years of age and appellant No.1 was 10/11 years of age when her mother eloped with someone. In such a situation, it was natural for Mehnga Ram to disinherit his wife and daughter from his property and not to mention about it. Therefore, absence of any reference of his wife and daughter in the Will Ex.D1 was because of the absence of his wife and daughter from the life of Mehnga Ram and his sons, because of elopement of appellant No.2 with some one alongwith her daughter.



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34. Appellant No.1 stated that Mehnga Ram died in Civil Hospital, Hoshiarpur because he consumed some poison, however, no record of hospital is brought on record and simple testimony of PW-1 cannot be taken into consideration especially which it is refuted by DW-1 Karamjit Singh, DW-4-Om Parkash and DW-5 Raghbir Lal. These witnesses denied death of Mehnga Ram due to consumption of poison. DW-1/resondent No.1 stated that his father got paralysis attack about one year before his death and denied the suggestion that attack of paralysis was five or six years before his death.

35. As per the statement of attesting witness DW-5 Raghbir Lal, Mehnga Ram himself came to the Court complex and had Mehnga Ram been under paralysis attack 5/6 years before his death, he would not have been in a position to go to the Court complex. Thus, the learned trial Court rightly upheld the legality of the Will Ex.D1. Since after the death of Mehnga Ram, his property devolved upon his two sons i.e. respondents No.1 and 2, they were well within their rights to execute sale deed for 6 Kanals of land in favour of respondent No.3 vide Sale Deed DW6/A and thereafter, sale of remaining land in favour of Amit Gupta s/o Satish Kumar and Sh.Karam Aggarwal. Therefore, Amit Gupta s/o Satish Kumar and Sh.Karam Aggarwal, are not required to be impleaded as party to the appeal. Learned trial Court and learned First appellate Court had rightly held that the appellants are not entitled to any share from the property of Mehnga Ram, on the basis of natural succession in view of execution of Will Ex.D1 by Mehnga Ram bequeathing his property in favour of his sons to the exclusion of his wife and daughter and not entitled to declaration and joint possession of suit property to the extent of 1/4th share.



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36. In view of the above, this Court is of the considered opinion that learned trial Court rightly dismissed the suit and learned first Appellate Court rightly dismissed the appeal. No illegality or irregularity in the findings of learned trial court on this point is made out. No other question of law is involved. Hence, the present Regular Second Appeal is ***dismissed***.

37. All the pending application(s), if any, also stand(s) disposed of.

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In view of dismissal of the Regular Second Appeal, COCP also stands dismissed.

(RAMESH KUMARI)
JUDGE

09.09.2025
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Whether speaking/reasoned:	Speaking
Whether reportable	Yes / No