



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

**RSA No.322 of 2025 (O&M)
Date of Decision: 10.07.2025**

Smt. Omwati and others

...Petitioners

Versus

Smt. Prem Lata (deceased) through LRs and another

...Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Amit Jain, Senior Advocate with
Mr. Anupam Mathur, Advocate
for the appellants.

VIKRAM AGGARWAL, J (ORAL)

Plaintiffs are in appeal against concurrent findings vide which the suit filed by the plaintiffs for declaration was dismissed by the Court of Additional Civil Judge (Senior Division), Sonipat vide judgment and decree dated 22.02.2019 and appeal preferred against the said judgment and decree was also dismissed by the Court of Additional District Judge, Sonipat vide judgment and decree dated 13.02.2024.

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

3. One Bishan Sarup had two sons namely Shyam Sarup and Ashok and two daughters namely Prem Lata and Shakuntla. The plaintiffs are Ashok and legal representatives of Shyam Sarup (sons of Bishan Sarup) whereas the defendants are Smt. Prem lata and legal representatives of Shakuntla (daughters of Bishan Sarup). The plaintiffs instituted a suit for declaration that they were the owners in possession of the property of Bishan

Sarup (fully described in the plaint) situated in the Revenue Estate of Village Garhi Brahmanan, Tehsil and District Sonipat in equal shares.

3.1 Bishan Sarup is stated to have expired on 05.07.1974 pursuant to which mutation of inheritance No.2178 was entered and sanctioned in favour of the sons and daughters of Bishan Sarup in equal shares.

3.2 Subsequently, it was found that Bishan Sarup had executed a Will on 04.07.1974 as per which he had bequeathed his property in favour of his two sons and daughters. It was averred that the Will had come to the knowledge of the plaintiffs in 2011 in the old papers of Shyam Sarup after his death. Their mother Smt. Dayawati had also expired and had executed a Will in favour of the plaintiffs. It was accordingly prayed that the plaintiffs be declared to be the owners of the suit land in equal shares (plaintiffs No.1 to 5-1/2 share and plaintiff No.6-1/2 share).

4. The defendants opposed the suit. Both filed separate written statements. Defendant No.1 raise preliminary objections as regards maintainability, cause of action, *locus standi*, limitation etc. The execution of the Will dated 04.07.1974 was denied and it was asserted that the Will was a fake, forged and fabricated document. It was also averred that the suit property was ancestral as a result of which Bishan Sarup was not competent to execute the Will.

5. A similar stand was taken by defendant No.2 in her written statement.

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

1. Whether the mutation no.2178 is liable to be set aside in view of the Will dated 04.07.1974.

2. Whether the plaintiffs are entitled to a decree for declaration, as prayed for ?OPP
3. Whether the suit of the plaintiffs is not maintainable in its present for? OPD
4. Whether the plaintiff has no *locus standi* or cause of action to file the present suit? OPD
5. Whether the suit of the plaintiff is barred by limitation ? OPD
6. Whether the suit is bad for non-joinder and mis-joinder of the necessary parties? OPD
7. Relief.

7. Parties led their respective evidence. The trial Court dismissed the suit which led them to file an appeal which was also dismissed by the Court of learned Additional District Judge, Sonipat, leading to the filing of the present second Appeal.

8. I have heard learned Senior counsel for the appellants and have perused the record which was produced during the course of hearing.

8.1. Learned Senior counsel has strenuously urged that the trial court erred in making out a new case by holding that the Will executed by Bishan Sarup was shrouded by suspicious circumstances. Learned Senior counsel submits that no such stand had been taken in the written statement and in the absence of a specific stand in this regard, the Court could not have made out a new case by holding that the Will was shrouded by suspicious circumstances.

8.2. Learned Senior counsel further submits that the execution of the Will had duly been proved, for, the scribe and one of the attesting witnesses had duly been examined, and, therefore, the provisions of Section 63 of the Indian Succession Act, 1925 (for short 'the Succession Act') and Sections

68 and 69 of the Indian Evidence Act, 1872 (for short 'the Evidence Act') were duly complied with.

8.3. Learned Senior counsel has referred to the pleadings of the parties as also to the statements of the witnesses and has submitted that both Courts erred in holding that the execution of the Will had not been proved and that the same was shrouded by suspicious circumstances. In support of his contentions, learned counsel has placed reliance upon a judgment of a Coordinate Bench passed in ***RSA No.559 of 1993 titled as Kashmir Singh and others Vs. Smt. Bheero @ Parkash Kaur and others (decided on 07.04.2025).***

9. I have considered the submissions made by learned Senior counsel for the appellants.

10. Concededly, Bishan Sarup had two sons Shyam Sarup and Ashok and two daughters namely Prem Lata and Shakuntla.

11. Bishan Sarup expired on 05.07.1974. After his death, the suit land was mutated in favour of his sons and daughters in equal shares and Mutation No.2178 was duly sanctioned.

12. The instant suit was then instituted on 15.12.2012 by the legal representatives of Shyam Sarup (plaintiff No.1 to 5) and Ashok Kumar (plaintiff No.6) against Smt. Prem Lata (defendant No.1) and Smt. Pinki daughter of Shakuntla (defendant No.2). Will dated 04.07.1974 was set up stating that as per the Will, Bishan Sarup had desired that upon his death, his property shall devolve upon his two sons and wife. It was stated that the Will had come to notice after the death of Shyam Sarup when his son found the same in some papers.

13. Since the plaintiffs had propounded the Will, it was upon them to prove its execution thereof.

14. Before proceeding further, let us examine the legal position as regards proof of Wills. A three-Judges Bench of the Supreme Court of India was considering this very question in the case of *H. Venkatachala Lyengar Vs. B.N. Thimmajamma and others, 1959 AIR Supreme Court 443 (Law finder Doc Id # 113675)*. The Supreme Court of India observed that the proof of Wills presents a recurring topic for decisions in Courts and there are a large number of judicial pronouncements on the subject. It was held that in deciding how a Will is to be proved, we must inevitably refer to the statutory provisions which govern the proof of documents. Reference was then made to the provisions of Section 67 and 68 of the Evidence Act and Section 59 and 63 of the Succession Act.

15. Section 63 of the Succession Act lays down as under:-

“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 mark 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 acknowledgement of his signature or mark, or 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.”

16. Further Section 68 of the Evidence Act lays down as under:-

“68. Witness not disqualified by interest or by being executor.—

No person, by reason of interest in, or of his being an executor of, a Will shall be disqualified as a witness to prove the execution of the Will or to prove the validity or invalidity thereof.”

17. In the present case, since the attesting witnesses are stated to have expired, Section 69 of the Evidence Act would also be relevant.

Section 69 of the Evidence lays down as under:-

“69. Proof where no attesting witness found-

If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.”

18. The Supreme Court of India in *H.Venkatachala Iyengar Vs. B.N. Thimmajamma and others (supra)*, while discussing the aforesaid provision held as under:-

“18. What is the true legal position in the matter of proof of wills ? It is well-known that the proof of wills presents a recurring topic for decision in courts and there are a large

number of judicial pronouncements on the subject. The party propounding a will or otherwise making a claim under a will is no doubt seeking to prove a document and, in deciding how it is to be proved, we must inevitably refer to the statutory provisions which govern the proof of documents. Sections 67 and 68 of the Evidence Act are relevant for this purpose. Under Section 67, if a document is alleged to be signed by any person, the signature of the said person must be proved to be in his handwriting, and for proving such a handwriting under Sections 45 and 47 of the Act the opinions of experts and of persons acquainted with the handwriting of the person concerned are made relevant. Section 68 deals with the proof of the execution of the document required by law to be attested; and it provides that such a document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. These provisions prescribe the requirements and the nature of proof which must be satisfied by the party who relies on a document in a court of law. Similarly, Sections 59 and 63 of the Indian Succession Act are also relevant. Section 59 provides that every person of sound mind, not being a minor, may dispose of his property by will and the three illustrations to this section indicate what is meant by the expression " a person of sound mind " in the context. Section 63 requires that the testator shall sign or affix his mark to the will or it shall be signed by some other person in his presence and by his direction and that the signature or mark shall be so made that it shall appear that it was intended thereby to give effect to the writing as a will. This section also requires that the will shall be attested by two or more witnesses as prescribed. Thus the question as to whether the will set up by the propounder is proved to be the last will of the testator has to be decided in the light of these provisions. Has the testator signed the will ? Did he understand the nature and effect of the dispositions in

the will ? Did he put his signature to the will knowing what it contained ? Stated broadly it is the decision of these questions which determines the nature of the finding on the question of the proof of wills. It would prima facie be true to say that the will has to be proved like any other document except as to the special requirements of attestation prescribed by Section 63 of the Indian Succession Act. As in the case of proof of other documents so in the case of proof of wills it would be idle to expect proof with mathematical certainty. The test to be applied would be the usual test of the satisfaction of the, prudent mind in such matters.”

19. The aforesaid judgment has consistently been followed by the Supreme Court of India as also by virtually all High Courts. In the case of *Savithri and others Vs. Karthyayani Amma and others, 2008 AIR SC 300 (Law Finder Doc ID 132729)*, the Supreme Court of India dealt with the issue of proof of Wills and held as under:-

“14. The legal requirements in terms of the said provisions are now well- settled. A Will like any other document is to be proved in terms of the provisions of the Indian Succession Act and the Indian Evidence Act. The onus of proving the Will is on the propounder. The testamentary capacity of the propounder must also be established. Execution of the Will by the testator has to be proved. At least one attesting witness is required to be examined for the purpose of proving the execution of the Will. It is required to be shown that the Will has been signed by the testator with his free will and that at the relevant time he was in sound disposing state of mind and understood the nature and effect of the disposition. It is also required to be established that he has signed the Will in the presence of two witnesses who attested his signature in his presence or in the presence of each other. Only when there exist suspicious circumstances, the onus would be on the

propounder to explain them to the satisfaction of the court before it can be accepted as genuine.

15. We may, however, notice that according to the appellants themselves, the signature of the testator on the Will was obtained under undue influence or coercion. The onus to prove the same was on them. They have failed to do so. If the propounder proves that the Will was signed by the testator and he at the relevant time was in sound disposing state of mind and understood the nature and effect of disposition, the onus stands discharged. For the aforementioned purpose the background fact of the attending circumstances may also be taken into consideration. [See *B. Venkatamuni v. C.J. Ayodhya Ram Singh and Others* (2006) 11 SCALE 148].

16. In *Niranjan Umeshchandra Joshi v. Mrudula Jyoti Rao & Ors.* [2006 (14) SCALE 186], this Court held :

“Section 63 of the Indian Evidence Act lays down the mode and manner in which the execution of an unprivileged Will is to be proved. Section 68 postulates the mode and manner in which proof of execution of document is required by law to be attested. It in unequivocal terms states that execution of Will must be proved at least by one attesting witness, if an attesting witness is alive subject to the process of the court and capable of giving evidence. A Will is to prove what is loosely called as primary evidence, except where proof is permitted by leading secondary evidence. Unlike other documents, proof of execution of any other document under the Act would not be sufficient as in terms of Section 68 of the Indian Evidence Act, execution must be proved at least by one of the attesting witnesses. While making attestation, there must be an animus attestandi, on the part of the attesting witness, meaning thereby, he must intend to attest and extrinsic evidence on this point is receivable.

The burden of proof that the Will has been validly executed and is a genuine document is on the propounder. The propounder is also required to prove that the testator has signed the Will and that he had put his signature out of his own free will having a sound disposition of mind and understood the nature and effect thereof. If sufficient evidence in this behalf is brought on record, the onus of the propounder may be held to have been discharged. But, the onus would be on the applicant to remove the suspicion by leading sufficient and cogent evidence if there exists any. In the case of proof of Will, a signature of a testator alone would not prove the execution thereof, if his mind may appear to be very feeble and debilitated. However, if a defence of fraud, coercion or undue influence is raised, the burden would be on the caveator. [See Madhukar D. Shende v. Tarabai Shedage (2002) 2 SCC 85 and Sridevi & Ors. v. Jayaraja Shetty & Ors. (2005) 8 SCC 784]. Subject to above, proof of a Will does not ordinarily differ from that of proving any other document.

17. Therein, this court also took into consideration the decision of this Court in H. Venkatachala Iyengar (supra), wherein the following circumstances were held to be relevant for determination of the existence of the suspicious circumstances :

*“(i) When a doubt is created in regard to the condition of mind of the testator despite his signature on the Will;
(ii) When the disposition appears to be unnatural or wholly unfair in the light of the relevant circumstances;
(iii) Where propounder himself takes prominent part in the execution of Will which confers on him substantial benefit.”*

20. The statutory provisions and the law on the subject make it manifestly clear that at-least one of the two attesting witnesses must depose to prove the due execution of the Will. The said attesting witness would have to prove that he had seen the testator sign or affix his mark to the Will in his presence; or that he had received from the testator a personal acknowledgment of his signature or mark of the signature of such other person and each of the witnesses shall sign the Will in the presence of the testator.

21. We shall now examine the matter on the touchstone of the statutory provisions and the principles of law enunciated by the Supreme Court of India.

22. The Will dated 04.07.1974 was an un-registered Will. No doubt, mere registration does not *ipso facto* prove the genuineness of a Will. However, it does lend more authenticity to a document. Be that as it may, Bishan Sarup expired on 05.07.1974 i.e., one day after the alleged execution of the Will. Since, suspicious circumstances were not pleaded in the written statement, this Court will not go into the issue of there being no mention of the daughters in the Will or the Will having been executed one day before the death of Bishan Sarup or the fact that it was un-registered Will. In the case of ***Derek A.C. Lobo and others Vs. Ulric M.A. Lobo (dead) by LRs and others, Law Finder Doc Id # 2547508***, the Supreme Court of India held that if a Will is contested on the ground of it being shrouded by suspicious circumstances, the same must be pleaded which would then give an opportunity to the propounder to explain or remove the same.

23. However, in the considered opinion of this Court, the plaintiffs were not able to prove the due execution of the Will (Ex.P-1) as well. Mahabir Prasad, the deed writer stepped into the witness box as PW-1 and stated that he had scribed the Will and that Digvijay, Dharam Singh and Sarup Singh had attested the same. In his cross-examination, he conceded that in his register, thumb impressions were present but the names of the persons whose thumb impressions were present were not mentioned. He did not know Bishan Sarup personally. He stated that since he did not Bishan Sarup personally, he could not say as to whether on the Will, Ex.P-1, whether the actual Bishan Sarup had put his thumb impressions or some other Bishan Sarup had put his thumb impressions. Under the circumstances, no reliance could have been placed upon his statement and the same was rightly discarded.

24. Similarly, Mahinder Singh, PW-3 who was the son of Col. Digvijay Singh, who was one of the attesting witnesses of the Will identified the signatures of his father but neither did he give the date of death of his father nor could he say as to when his father had signed the Will. He admitted that he was related to Bishan Sarup and that Bishan Sarup was his great grandfather. No doubt, there would be no bar on a relative signing a Will but once the issue of proving a Will is concerned, the relative being one of the attesting witnesses becomes little suspicious and the evidence has to be tested with greater caution.

25. None of the other attesting witnesses were examined nor was it brought on record as to whether they had died and if yes, when.

26. Not only this, PW-2 Ashok Kumar who is the son of Bishan Sarup stated that Bishan Sarup was a well educated person and he knew how

to write in Urdu and he used to append his signatures in Urdu language. It was not explained that when he used to sign, why he put his thumb impressions on the Will.

27. Still further, the elder son of Shyam Sarup who allegedly found the Will in the papers of Shyam Sarup was not examined. This witness could have thrown some light on the Will because it was he who is stated to have found the Will.

28. It is, therefore, clear that the plaintiffs were unable to prove the due execution of the Will as a result of which they were rightly non-suited by both the Courts.

29. I do not find any reason to interfere in the concurrent findings recorded by both the Courts. The findings, in the considered opinion of this Court, do not suffer from any infirmity or illegality and cannot, in any manner be said to be perverse.

That being so, I do not find any merit in the present appeal and the same is accordingly dismissed.

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

(VIKRAM AGGARWAL)
JUDGE

July 10, 2025
Rekha

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