

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****RSA-991-1993(O&M)****Reserved on: 04.03.2025****Pronounced on: 10.03.2025****PREM SINGH****. . . .APPELLANT****Vs.****AMRIK SINGH AND OTHERS****. . . . RESPONDENTS****CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA**

Argued by:- Mr. Saurabh Bajaj, Advocate, for the appellant.

Mr. Bhag Singh, Advocate, for the respondent.

DEEPAK GUPTA, J.

Plaintiff (*appellant herein through his LRs*) of the suit is aggrieved by the judgment/decreed dated 03.11.1992 passed by the First Appellate Court of Id. Additional District Judge, affirming the judgment & decree dated 11.12.1990 of the trial Court, whereby suit filed by him seeking declaration of his title to the suit property to the extent of 1/6th share was dismissed.

2. Trial Court record was called. Same has been perused. In order to avoid confusion, parties shall be referred as per their status before the trial Court.

3. Smt. Punjabi was married to Kartara @ Kartar Singh. From their wedlock, Puran Singh @ Purna was born. Said Puran Singh died unmarried and issueless. On the death of Kartara @ Kartar Singh, Smt. Punjabi performed marriage with Kahla Singh @ Kallu and from this wedlock, six issues, namely, Prem Singh, Ajmer Singh, Jagir Singh, Ram Singh, Joginder and Ajmer Kaur were born. Prem Singh is plaintiff. Defendants N: 1 to 4 are heirs of Ajmer Singh. Jagir Singh & Ram Singh are defendants N: 5 & 6. Joginder and Ajmer Kaur are impleaded as party to the suit.

4. The dispute pertains to 27 kanal 12 marla of land, which belonged to Puran Singh. Plaintiff claims 1/6 share in the said land submitting

that after the death of Puran Singh, six legal heirs of the mother of Puran Singh @ Purna had inherited the same in equal share. He further alleged that Will as purported to be executed by Puran Singh, was null and void.

5. Defendants contested the claim, pleading title to the suit property on the basis of Will dated 15.2.1980 of Puran Singh in favour of Ajmer Singh i.e., predecessor of defendants N: 1 to 4 and defendants N: 5 & 6. It was further claimed that plaintiff was estopped from filing the suit, as at the time of sanctioning of the mutation on 01.04.1980 based upon the Will, he had not raised any objection.

6. In replication, plaintiff denied his presence at the time of sanctioning of mutation. He further submitted that mutation was got sanctioned in very suspicious way on the same date, when Puran had died.

7. Necessary issues were framed. Evidence produced by the parties was taken on record. Trial Court dismissed the suit by holding the defendants to be owner of the suit property based on the Will of Puran Singh. The judgment dated 11.12.1990 to this effect passed by the trial Court has been affirmed by the Appellate Court on 03.11.1992, in the appeal filed by the plaintiff.

8. Against the aforesaid concurrent findings, the plaintiff has approached this Court.

9. During pendency of the appeal, the sole appellant Prem Singh expired and his legal representatives were brought on record.

10.1 It is contended by Id. counsel for the appellant that original Will was never produced before the Court for comparing the purported thumb signature of Puran Singh on the Will with his sample signatures. Although it was observed by the First Appellate Court that original Will had been produced at the time of sanctioning of the mutation before the Revenue Authorities, but defendants did not take any steps so as to summon any official from revenue department to produce the original Will and as such, copy of the Will could not have been taken into consideration.

10.2 It is further contended that out of the two attesting witnesses to the Will namely, Chetu Ram and Gurdev, Chetu Ram had expired; whereas, Gurdev was alive but still he was not examined on the ground that he had sided with the plaintiff.

10.3 Ld. counsel contends that the Will is held to have been proved by both the Courts below only on the basis of statement of scribe Prem Singh, who could not be considered to be an attesting witness. Ld. counsel further submits that as per Section 63 of the Indian Succession Act to be read with Section 68 of the Indian Evidence Act, at least one of the attesting witnesses is required to be examined to prove the Will. It is contended that Section 69 of the Evidence Act, will come into play only in case none of the attesting Witness can be found. Ld. counsel has further drawn attention towards Section 71 of the Evidence Act so as to contend that execution of the Will can be proved by other evidence only in case the attesting witness denies or does not recollect the execution of the document. It is contended that in this case, as only one of the attesting witnesses i.e. Gurdev was available, he should have been examined so as to prove the Will. Only in case the said witness Gurdev denied the execution of the Will or failed to recollect the execution of document, either due to siding with the plaintiff or any other reason whatsoever, that the Will could have been proved by way of other evidence as per Section 71 of the Evidence Act. No such step having been taken by the defendant i.e. the propounder of the Will to examine attesting witness Gurdev, the Courts have committed grave error in holding the Will to be duly proved. Ld. counsel has relied upon ***Gurcharan Singh and others Vs. Angrez Kaur and another, Law Finder Doc Id #145102***; and ***Janki Narayan Bhoir Vs. Narayan Namdeo Kadam, Law Finder Doc Id #1612***.

11.1 Refuting the aforesaid contentions, it is argued by ld. counsel for the respondents-defendants that at the time of sanctioning of the mutation on 01.04.1980 based upon the Will of Puran, plaintiff-Prem Singh did not make any protest. As such, he is estopped from challenging the Will or filing the suit.

11.2 It is further contended that Prem Singh scribe has been examined so as to prove the Will and he proved the due attestation thereof also and that the appellate Court has observed that he was also one of the attesting witnesses to the Will. Ld. counsel has also drawn attention towards the testimony of the defendant, as per which the other attesting witness Gurdev had sided with the plaintiff and so, was not supporting the case of defendants.

11.3 Ld. counsel further submits that defendants cannot be faulted for non-production of the original Will, inasmuch as the same had been produced for sanctioning of mutation before the revenue authorities as has been observed by the Id. Appellate Court and as such, suit has been rightly dismissed.

11.4 With the above submissions, Id. counsel contends that there is no scope for interference in the concurrent findings of facts as recorded by the Courts below. Prayer is made for dismissal of the appeal.

12. This Court has considered submission of both the sides and has appraised the record carefully.

13. Admittedly, the original Will dated 15.02.1980 was not produced in evidence. However, trial court record reveals that permission to prove said Will by way of secondary evidence was granted by trial court vide order dated 23.04.1987. Contention of learned counsel for the appellant is that said permission was wrongly granted in the absence of proof of loss of the Will.

14. Section 65 of the Indian Evidence Act, 1872 (for short, 'the Evidence Act') deals with the cases, in which secondary evidence relating to the documents may be given. It reads as under:-

“65. Cases in which secondary evidence relating to document may be given.

Secondary evidence may be given of the existence, condition or contents of a document in the following cases :

- (a) when the original is shown or appears to be in the possession or power of the person against whom the document is sought to be

proved, or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in section sixty-six, such person does not produce it;

(b) xxxxxxxxxxxxxxxx

(c) When the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(d) to (g) xxxxxxxxxxxxxxxx

In cases (a), (c) and (d), any secondary evidence of the contents of the documents is admissible.

xxxxxxxxxxxxxx.”

15. As far as existence of WILL is concerned, it may be noted that mutation No.204 dated 01.04.1980 (*Ex.D1/Ex.P3*) was sanctioned in favour of Ajmer, Jagir & Ram Singh on the basis of Will dated 15.02.1980. The mere fact that mutation has been sanctioned on the basis of Will in itself proves the existence of the Will. In ***Joga Singh and another Vs. Gurwinder Singh and others, 2017(2) Law Herald 1279***, mutation of inheritance was sanctioned on the basis of registered Will. It was held by this court that existence of the Will was proved and, therefore requirement of Section 65 of the Evidence Act for granting permission to lead secondary evidence was duly complied with.

16. Further, loss of Will is also proved by evidence available on record. Trial Court record shows that Harender, Office Kanango was summoned to produce the Will, as it had been earlier produced by Ajmer Singh at the time of sanctioning of the mutation. However, as per the statement of Harinder, Office Kanango, the original Will was taken away by Ajmer Singh. Jagir Singh, one of the defendants, appeared in the witness box as AW2 and stated that he made all possible search for the original Will at his house and also at the house of Ajmer Singh, who has since expired, but could not trace the same. As per his testimony, at the time of mutation, it is Ajmer, who has produced the Will and had taken the same with him but later on did

not return it back. In these circumstances and in the absence of any evidence in rebuttal to the contrary, it is held that loss of Will is duly proved.

17. It is also important to notice that it is the plaintiff, who was going to gain by the non-production of the Will because in case Will is not proved, the property will go by natural succession and plaintiff will get 1/6th share in the suit property. On the other hand, if Will is produced and proved on record, it is only Ajmer, Jagir & Ram Singh (*predecessor of defendant No.1 to 4; and defendants N: 5 & 6*), who being the beneficiary of the Will, are to get the entire property. Therefore, there was absolutely no reason for defendants to have concealed the original Will.

18. In ***Dhanpat Vs. Sheo Ram (Deceased) Through LRs & Ors., 2020(2) RCR (Civil) 437***, there was oral evidence of the defendants that original Will was lost. Certified copy of the Will was produced. It was held that defendants had made out sufficient ground for leading of the secondary evidence.

19. Considering the legal as well as factual position in this case, it is held that no illegality was committed by trial court in granting permission to prove the Will by way of secondary evidence.

20. Before moving further as to whether the Will dated 15.02.1980 of Puran is proved or not as per the requirement of law, it is noticed that there is also dispute amongst the parties regarding the date of death of Puran. According to plaintiff, Puran had expired on 01.04.1980, as is evident from death certificate issued by the Registrar, Birth and Death (Ex.P1). This certificate is also proved by PW1-Suresh, an official of CMO Office. On the other hand, contention of the defendants is that Puran had expired on 19.03.1980, as recorded by Patwari in the mutation sanctioned on the basis of Will.

21. In this regard, it has been noticed by the Appellate Court that entry of 01.04.1980 regarding the death of Puran was made by Chowkidar, whereas the entry regarding date of death of Puran to be on 19.03.1980 was

made by Patwari in the mutation. The Patwari Sheo Ram DW1 appeared in the witness box and proved that he had recorded the date of death of Puran after ascertaining the said date from the Village. As against it, Chowkidar, on whose entry, birth and death certificate Ex.P1, was issued, has since expired. It is noticed that there is consistent evidence produced by the defendants on record showing that Chowkidar belonged to another village and was uneducated and that he used to visit their village only once in a month and used to write the dates, whatever were told to him by the people and it was not always correct.

22. In the abovesaid facts and circumstances, it is no doubt true that exact date of death of Puran has not come on record, but at the same time, it is not believable that Puran had expired on 01.04.1980. There is another reason for holding so. Perusal of the mutation No.204 Ex.D1/Ex.P3 would reveal that this mutation, based upon the Will of Puran, was entered by the Patwari on 23.03.1980, stating therein that Puran had expired on 19.03.1980 and that on 23.03.1980 the Will was produced by Ajmer for sanctioning. The said mutation was verified by Kanango on 24.03.1980 and then, ultimately it was sanctioned on 01.04.1980. In case Puran had expired on 01.04.1980, there could be no question for the Patwari to enter on 23.03.1980 the date of his death as 19.03.1980. In these circumstances, on the basis of preponderance of probabilities, it is held that date of death of Puran is 19.03.1980 and not 01.04.1980. As such, the finding of the Courts below in this regard is upheld.

23. Proceeding to the most material issue involved in the case, *as to whether the Will dated 15.02.1980 (Ex.DW2/A) is proved or not?*, it may be noted that as per legal position, the mode of proving a WILL does not ordinarily differ from that of proving any other document except as to the special requirement of attestation prescribed in the case of a WILL by Section 63 of the Indian Succession Act, which reads 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 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."

24. Apart from above, Section 68 of the Evidence Act is quite relevant regarding proving the execution of a WILL. This reads 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."

25. The conjoint reading of above provisions makes it quite clear that at least one out of the two attesting witnesses must be called to prove due execution of the WILL. Further, it is required for the attesting witness to prove that he had seen the testator sign or affix his mark to the WILL in his

presence; or that he 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 testator. Reliance can be placed on ***Pentakota Satyanarayana Vs. Pentakota Seetharatnam 2006(1) C.C.C.563***, wherein it has been held by Hon'ble Supreme Court that to prove due execution of Will, attesting witness must state that each of the two witnesses has seen the executor sign or affix his mark to the instrument or has seen some other person sign the instrument in his presence and by the direction of the execution. Witness should further state that each of the attesting witness signed the instrument in the presence of the executant. Hon'ble Supreme Court held that these are the ingredients of attestation and they have to be proved by the witnesses.

26. Further, it is the settled proposition of law that it is the propounder of the Will, who has to prove its due execution. Besides, mere proving the signatures of the testator on the Will is not sufficient. Reference in this regard can be made to ***Ganpat Vs. Siri Chand 1992(1) LJR 252 and Janki Narayan Bhoir Vs. Narayan Namdeo Kadam 2003(2) LJR 646***, wherein it has been held that due and valid execution of the Will cannot be proved by simply proving that the signatures on the Will was that of the testator. It must be proved that attestations were also made properly as required by clause (c) of Section 63 of the Succession Act, 1925.

27. In the light of abovesaid legal position, it is required to be seen as to whether the due execution of the Will dated 15.02.1980 set up by defendants, has been proved in this case or not.

28. As per the legal position discussed above, though attestation of the Will by at least two witnesses is required but in order to prove the Will, at least one of the attesting witnesses is required to be examined, who should prove due execution of the WILL as per requirement of Section 63 of the Indian Succession Act. However, the question is that in case attesting witnesses are dead or not available for any reason, or in case the attesting witnesses become hostile to the beneficiary by colluding with the opposite

party, whether the beneficiary of the Will can be deprived of the fruits of the Will or whether in such a situation, Will can be proved in any other mode.

29. Section 69 of the Evidence Act deals with the situation, when no witness is found; whereas Section 71 of the Evidence Act deals with the situation, when attesting witness denies the execution. These provisions read 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.

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.”

30. In the present case, perusal of the Will dated 15.02.1980, copy of which has been produced on record as Ex.DW2/A would reveal that it is purported to be scribed by Prem Singh and attested by two witnesses namely Chetu Ram and Gurdev. Chetu Ram has admittedly expired. Gurdev has not been examined on the ground that he had sided with the plaintiff after taking money from him. In order to prove the said Will, defendants have only relied upon the testimony of scribe Prem, who examined as DW2 proved that he had scribed the Will on the dictation of Puran and had read over the contents thereof to Puran and after understanding thereof, Puran had signed the same and other two attesting witnesses had attested the same.

31. Though this witness i.e. DW2-Prem Singh proved the legal requirements so as to prove the Will, but the question is as to whether his testimony can be considered to be that of an attesting witness, when it is noticed that attesting witness Gurdev has not been examined despite being available. It has been conceded during arguments before this Court that no effort was made so as to summon witness Gurdev by the defendants. As per

the testimony of Jagir DW4, one of the defendants, this witness i.e. Gurdev had sided with the plaintiff after taking money, due to which he has not examined.

32. Here itself, it may be noticed that though Id. appellate Court has referred DW2 Prem Singh to be scribe as well as attesting witness but said observation is absolutely wrong. Perusal of the Will (Ex.DW2/A) will clearly reveal that Prem Singh has been referred as '*likhne wala*'. Meaning thereby, he had only scribed the Will. Even in his testimony as DW2, Prem Singh clearly stated that he had scribed the Will. He nowhere stated that he had attested it as an attesting witness. As such, statement of DW2 Prem Singh cannot be considered to be that of attesting witness to the Will.

33. Now the question is when one of the attesting witnesses is dead and other attesting witness has not been examined by the propounder of the Will, whether the Will can be held to be proved, even if the contention of the propounder of the Will i.e., defendants is that the other attesting witness had sided with the plaintiff, due to which he has not been examined.

34. Perusal of the Section 69 of Evidence Act would reveal that it only comes to operation, when no attesting witness can be found. However, in the present case from the evidence on file, it is quite clear that one of the attesting witnesses namely Gurdev was alive but neither he has been examined nor any effort was made by the defendants, the propounder of the Will, to summon him on the pretext that he had sided with the plaintiffs. As such, Section 69 is not applicable.

35. Section 71 of the Evidence Act will be applicable only in case the attesting witness denies or does not recollect the execution of the document and it is only in that situation that the execution of the Will may be proved by the other evidence. It has been observed by Hon'ble Supreme Court in ***Janki Narayan Bhoir*** (Supra) as under:

“Section 71 of the Evidence Act is in the nature of a safeguard to the mandatory provisions of Section 68, Evidence Act, to meet a situation where

it is not possible to prove the execution of the will by calling attesting witnesses, though alive. This Section provides that if an attesting witness denies or does not recollect the execution of the will, its execution may be proved by other evidence. **Aid of Section 71 can be taken only when the attesting witnesses, who have been called, deny or fail to recollect the execution of the document to prove it by other evidence.** Section 71 has no application to a case where one attesting witness, who alone had been summoned, has failed to prove the execution of the will and other attesting witnesses though are available to prove the execution of the same, for the reasons best known, have not been summoned before the court. It is clear from the language of Section 71 that if an attesting witness denies or does not recollect execution of the document, its execution may be proved by other evidence. However, in a case where an attesting witness examined fails to prove the due execution of will as required under clause (c) of Section 63 of the Succession Act, it cannot be said that the Will is proved as per Section 68 of the Evidence Act. It cannot be said that if one attesting witness denies or does not recollect the execution of the document, the execution of will can be proved by other evidence dispensing with the evidence of other attesting witnesses though available to be examined to prove the execution of the will. Yet, another reason as to why other available attesting witnesses should be called when the one attesting witness examined fails to prove due execution of the Will is to avert the claim of drawing adverse inference under Section 114 illustration (g) of Evidence Act. Placing the best possible evidence, in the given circumstances, before the Court for consideration, is one of the cardinal principles of Indian Evidence Act. Section 71 is permissive and an enabling Section permitting a party to lead other evidence in certain circumstances. But Section 68 is not merely an enabling Section. It lays down the necessary requirements, which the Court has to observe before holding that a document is proved. **Section 71 is meant to lend assistance and come to the rescue of a party who had done his best, but driven to a state of helplessness and impossibility cannot be let down without any other means of proving due execution by "other evidence" as well. At the same time Section 71 cannot be read so as to absolve a party of his obligation under Section 68 read with Section 63 of the Act and liberally allow him, at his will or choice to make available or**

not a necessary witness otherwise available and amenable to the jurisdiction of the court concerned and confer a premium upon his omission or lapse, to enable him to give a go bye to the mandate of law relating to proof of execution of a will.”

[Bold portion emphasised by this court]

36. Similarly, in *Ram Ratan Misra And Anr. vs Smt. Bittan Kaur AIR 1980 Allahabad 395*, it has been observed as under by Allahabad High Court:

“7. Section 71 of the Act makes it clear that if the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence. This rule provides an exception to the rule enunciated in Section 68. **But to make this provision applicable it is evident that the attesting witness will have to appear in Court as a witness. Until he appears as a witness there is no question of his denying the execution of the document, or not recollecting the execution of the document.** If the witness sits at home and is not examined because there is an apprehension that he may not support the execution of the mortgage deed, in that event there is a failure to produce the evidence which is required under Section 68 of the Act. Consequently, Section 71 cannot come into play. There is no question of leading any other evidence about the due execution of the document in such a case. Other evidence can be led only when the attesting witness who has been called, fails to prove the execution of the document by reason of the denial of his own signature or that of the executor or having no recollection about the execution of the document. Consequently, until that stage is reached no other evidence can be led or relied upon to prove the due execution of the mortgage deed. In the present case the courts below have fallen into this error. They have proceeded to examine other evidence and rely on it without the attesting witness, who is alive and available, having entered the witness box and denied the execution of the document. The evidence of the scribe in the circumstances of the case could not be relied upon for the proof of the due execution of the mortgage deed.

8. A witness can become hostile only when he makes a statement contrary to the case taken by the party who has summoned him. It is then open to the party examining him to pray to the court to declare him hostile and seek

the permission of the Court under Section 154 of the Evidence Act for cross-examining him. The party may then through the cross-examination elicit from him the proof of his case. Section 71 makes it clear that if the attesting witness repudiates his signature or that of the executor or does not recollect the execution of the document, then other evidence may be led to prove the due execution of the document. Consequently, the courts below were not right in allowing the party to lead or in relying on the other evidence in proof of the due execution of the document. **The contention that the plaintiff was certain that the attesting witness had been won over and would not give evidence in her favour is not a sufficient ground for the consideration of other evidence.** In view of what has been stated above the due execution of the mortgage deed cannot be held to have been proved.....”

[Bold portion emphasised by this court]

37. The aforesaid authority was also followed by Karnataka High Court in ***Robert D’ Mello Vs. Henry D’ Mello, AIR 2004 Karnataka 78***. In this case, the execution of the Will was denied by one of the attesting witness; whereas other attesting witness was not called at all to depose though available. In these circumstances, execution of the Will was held to be not proved on evidence of the Sub-Registrar and Scribe.

38. It is, thus, clear that in order to make Section 71 of the Evidence Act, applicable, it is required that attesting witness has to appear in the Court as a witness. Until he appears as a witness, there is no question of his denying the execution of the document or not to recollect execution of the document. If the witness has not been produced on the apprehension that he may not support the execution of the Will, in that event there is a failure to produce the evidence as required under Section 68 of the Evidence Act and consequently, Section 71 of the Evidence Act cannot be applied.

39. In the present case, as Gurdev, one of the attesting witnesses, despite being alive, having not been examined by the propounder of the Will i.e., defendants, therefore, it is held that Courts below committed grave error in holding the Will to have been proved. Section 71 of the Evidence Act is not

at all applicable in the facts of the present case. As such, finding of the courts below in this regard is hereby reversed.

40. It is contended by Ld. counsel for the respondents that at the time of sanctioning of the mutation, plaintiff had not raised any protest and so, Will is assumed to be admitted by him. Contention has no merit. It is noticed that only Ajmer had produced the will for sanctioning of the mutation on 23.03.1980. Mutation was sanctioned on 01.04.1980 in the presence of Ajmer, who had produced it and in the presence of both the attesting witnesses and the Lambardar. The proceedings of the sanctioning of the mutation as recorded by the Assistant collector 2nd Grade, as mentioned on the mutation would reveal that presence of plaintiff Puran is nowhere shown. As such, it cannot be held that Puran had admitted the execution of the Will or had consented for sanctioning of the mutation on the basis of the Will.

41. It is lastly argued by Id. counsel for the respondents that both the courts below have upheld the validity of the Will and that this court cannot interfere in the concurrent findings of facts recorded by the Courts below.

42. There is no merit in the contention. No doubt that High Court has limited scope to interfere in the concurrent findings of facts, but there are certain exceptional circumstances, when the High Court can intervene. One of such circumstances is where there is complete misappreciation of evidence or ignorance of the material evidence on record on the part of the Courts below. In ***Gurbachan Singh Versus Gurcharan Singh 2023 SCC OnLine SC 875***, it has been held by Hon'ble Supreme Court:

“14. As already noted above, another ground of objection taken by the Appellant is the fact of the impugned judgment entering into a reappreciation of evidence. While it is true that ordinarily, in second appeal, the court must not disturb facts established by the lower court or the first appellate court. However, it is also equally well recognised that this rule is not an absolute one or in other words, it is not a rule set in stone. In ***Nazir***

Mohamed (2020) 19 SCC 57, this Court has recognised three conditions in which a court in such jurisdiction, may disturb findings of fact. They are:—

“(i) the courts below have ignored material evidence or acted on no evidence; or (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. A decision based on no evidence, does not refer only to cases where there is a total dearth of evidence, but also refers to case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.”

15. A Bench of three learned Judges, recently in **Balasubramanian v. M. Arockiasamy (Dead) Through LRs, (2021) 12 SCC 529.**, had referred to, with approval judgment rendered in **Ramathal v. Maruthathal , (2018) 18 SCC 503** (two-Judge Bench) wherein it was observed that the restraint in interfering with questions of fact under the jurisdiction of second appeal, is not an absolute rule. Where the court is of the view that the conclusions drawn by the court below do not have a basis in the evidence led or it is of the view that the appreciation of evidence “suffers from material irregularity” the court will be justified in interfering with such findings.”

43. In **Easwari Vs. Parvathi and others, 2014 AIR (SCW) 4406**, it has been held by Hon’ble Supreme Court that there is no absolute ban on the High Court in the Second Appeal to interfere with the facts. High Court cannot be precluded from reversing the order and judgment of the Lower Court if there is perversity in the decision due to misappreciation of the evidence. Similar view has also been taken in **State of Rajasthan and others Vs. Shiv Dayal and another, 2019 (3) PLR 635.**

44. In the present case, courts below not only mis-appreciated the evidence on record, they also failed to correctly apply the legal position regarding proving of the Will in dispute. As such, High Court can certainly intervene in such circumstances.

45. On account of entire discussion as above, it is held that the judgments as passed by the Courts below cannot be sustained in the eyes of

law. Both these judgments are hereby set aside. The present appeal is hereby allowed. It is held that Will dated 15.02.1980 (Ex.DW2/A) is not proved in accordance with law. As such, the suit filed by the plaintiff-appellant is hereby decreed by holding that plaintiff (*appellant herein through his LRs*) is entitled to 1/6th share in the suit property on the basis of natural succession and by discarding the Will of Puran, which is held to be not proved as per law. Plaintiff is further held entitled to the decree for possession of the land to the extent of his share as indicated above. Parties are left to bear their own cost. Decree sheet be prepared accordingly.

10.03.2025

Vivek

(DEEPAK GUPTA)
JUDGE

<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether reportable?</i>	<i>Yes</i>