

**IN THE HIGH Court OF PUNJAB AND HARYANA AT CHANDIGARH****105****RSA-2316-2019 (O&M)
Date of decision: 11.03.2025****Paramjit Kaur and another****...Appellant(s)****Vs.****Bua Singh and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Vinod Kumar Kaushal, Advocate for the appellant.

*********NIDHI GUPTA, J.**

The plaintiffs are in second appeal against the concurrent judgments and decrees of the learned Courts below, whereby the suit of the plaintiffs for declaration that the plaintiffs are co-owners/co-sharers of the suit property to the extent of 2/5th share which includes 2 shops on front side, and a vacant open plot at the back of the shops; declaration that the Will dated 17.08.2000 purportedly executed by Joginder Kaur (who is mother of the plaintiffs and defendants No.1 to 3) in favour of defendants No. 1 and 2, is illegal, null and void; and further consequential relief of permanent injunction, has been dismissed by both the Courts below.

2. At the very outset, it may be pointed out that the present appeal is of the year 2019. However, notice has not yet been issued in the same as the matter has been adjourned multiple times either due to non-appearance of, or at request of learned counsel for the appellants.



3. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellants are the 'plaintiffs'; and the respondents are the 'defendants'.

4. The case as put forth by the appellants/plaintiffs in the plaint was that Joginder Kaur/mother of the plaintiffs and defendants No.1 to 3, was married to their father, Piara Singh. 5 children were born out of their wedlock i.e. Bua Singh/defendant No.1; Kuldeep Singh/defendant No.2; Paramjit Kaur/plaintiff No.1; Amarjit Kaur/plaintiff No.2; and Ram Lubhai/defendant No.3. After the death of Piara Singh, the suit property was owned by Joginder Kaur. It is averred in the plaint that upon her death, the suit property was inherited equally by all the 5 legal heirs to the extent of 1/5th share each; and that the possession of the defendants No.1 and 2 over the suit property, is only as co-sharers. Accordingly, the plaintiffs demanded that their rightful share be given to them. However, the defendants No.1 and 2 refused to do so, claiming ownership over the suit property based on Will dated 17.08.2000 allegedly executed by Joginder Kaur. It was also pleaded in the plaint that the alleged Will dated 17.08.2000 is forged and fabricated. Hence, the plaintiffs filed the present suit.

5. Upon notice, the defendants No.1 to 3 filed written statement contesting the suit by stating that the Will dated 17.08.2000 is a registered Will and that the plaintiff No.1 and defendant No.3 are the attesting witnesses of the said registered Will. It was further averred by defendants No.1 to 3 that Joginder Kaur had expired on 24.12.2014 and the said Will



was never challenged by the plaintiffs during her lifetime and present suit was filed thereafter, only on 22.04.2015. Accordingly, dismissal of the suit was prayed for.

6. Defendant No.4 is the subsequent purchaser of the suit property, who filed separate written statement stating that he has no concern with the suit property. It is submitted that dispute was between the family members. Subsequently, defendant No.4 was proceed ex parte.

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

1. Whether plaintiff is entitled to relief of Declaration as prayed for? OPP.

2. Whether plaintiff is entitled to relief of Permanent Injunction as prayed for? OPP.

3. Whether Joginder Kaur, executed Will dated 17.8.2000 ? OPD.

4. Whether the suit of the plaintiff is not maintainable? OPD.

5. Relief.”

8. Upon appraisal of the pleadings and the evidence led by the parties, the Id. trial Court decided issues No. 1 to 3 in favour of the defendants and against the plaintiffs; issue No.4 in favour of the plaintiffs and against the defendants; and accordingly vide judgment and decree dated 17.08.2017, the learned trial Court dismissed the suit of the plaintiffs with costs. The appeal filed by the plaintiffs was also dismissed with costs by the learned Additional District Judge, Amritsar vide judgment and decree dated 03.07.2018; thereby affirming the judgment and decree dated



17.08.2017 passed by the learned trial Court. Hence, the present second appeal.

9. At the very outset, learned counsel for the plaintiffs very fairly admits that the suit property in the hands of Joginder Kaur was self acquired property. It is however contended that the Will on the basis of which the defendants No. 1 and 2 are claiming title to suit property is surrounded by suspicious circumstances. It is submitted that plaintiff No.1 although marked as attesting witness to the said Will, had never affixed her signatures on the Will. It is further submitted that photographs of plaintiff No.1 and defendant No.3 were not on the said Will. Both the courts below failed to notice that the Will has been proved to be not a genuine document and same is surrounded in suspicious circumstances as Joginder Kaur died on 24.12.2014 and the alleged Will dated 17.08.2000 came to the light after a period of 15 years. This fact itself prove that the alleged Will dated 17.08.2000 is only a forged and fabricated document. No reason is given for not producing the Will initially when the same was registered.

10. It is further submitted that learned Courts below have misconstrued the evidence of Sulakhan Singh DW-1, who is the attesting witness of the alleged Will, and has categorically stated that he cannot read and write Punjabi language and is conversant with Urdu language. Scribe of the alleged Will has also not been examined.

11. It is further submitted by learned counsel for the appellants that the address of the deceased Joginder Kaur as well as of DW-2 Ram Lubhai and the plaintiff Amarjeet Kaur has been mentioned as same. But



the differences in addresses of Paramjjit Kaur and Ram Lubhai as mentioned in alleged Will and those stated by them in their cross-examination is a suspicious circumstance.

12. It is further submitted that the deceased Joginder Kaur remained bedridden for continuous period of two years about 15 years back and the person who remains bedridden for two years cannot be physically as well as mentally fit. Further, it is nowhere mentioned on the alleged thumb impression of Joginder Kaur that whether it is her left thumb impression or right thumb impression. It is accordingly prayed that the present appeal be allowed; and the impugned judgments and decrees of the learned Courts below be set aside.

13. No other argument is raised on behalf of the appellants/plaintiffs.

14. I have heard learned counsel for the appellants/plaintiffs and perused the case file in great detail.

15. I find no merit in the submissions advanced on behalf of the plaintiffs. It is the first contention of the plaintiffs that the Will dated 17.08.2000 (Ex.D1) is surrounded in suspicious circumstances as: a) the same was produced by the defendants 15 years after its execution; b) the same does not bear the signatures and photographs of the plaintiff No.1 and defendant No.3; c) the signatures borne on the Will (Ex.D1) of plaintiff No.1 is forged and fabricated; and d) Sulakhan Singh DW-1, has stated that he is not conversant with Punjabi language.



16. The above contentions of the plaintiffs are liable to be outrightly rejected as there is ample evidence on record to prove the Will in question. The said Will stands proven by the evidence of attesting witnesses DW1-Sulakhan Singh and DW2-Ram Lubhai/defendant No.3. DW4/Manjeet Kaur, Clerk from the office of Sub Registrar had also appeared and deposed regarding execution of the Will. Manjeet Kaur/DW4 has further deposed that Will (Ex.D1) was presented to her for registration by the testator Joginder Kaur who was identified by attesting witnesses. DW4 read over the contents of the Will and explained the Will to Joginder Kaur in the presence of the witnesses, who had admitted the same to be correct and thereafter, affixed her thumb impressions/handwriting expressions upon the same. Thus the Will stood proven in accordance with law as per requirement of Section 63 of the Indian Succession Act.

17. Further, on a direct Court query, learned counsel for the plaintiffs has admitted that no handwriting expert was examined by the plaintiffs to prove that the Will dated 17.08.2000 did not bear the signatures of the plaintiff No.1 or defendant No.3. Moreover, the Will in question is admittedly a registered document. Therefore, presumption of truth is attached to it.

18. Even contention of the plaintiffs that the Will was produced 14/15 years after its execution is liable to be rejected. Admittedly, Joginder Kaur had expired on 24.12.2014; whereas the Will in question was executed on 17.08.2000. Clearly therefore, in case Joginder Kaur wanted to change



the Will during this long intervening period of 14 years, she could have done so. However, she chose not to do so.

19. It has next been contended by learned counsel for the plaintiffs that Joginder Kaur was not competent to execute the Will as she was bedridden for 15 years prior to her death. However no evidence let alone any medical evidence has been led by the plaintiffs in this regard. This fact has been admitted by plaintiff No.1 during her cross-examination that she had not produced any record regarding any alleged illness of Joginder Kaur.

20. It is also relevant to note that perusal of the Will (Ex.D1) shows that Joginder Kaur bequeathed her entire property in favour of defendants No.1 and 2 as, as specifically stated in the Will, she/Joginder Kaur, had got married her 3 daughters (plaintiffs No.1 and 2 and defendant No.3) in which marriages, she had given them sufficient cash, clothes, jewellery etc. Thus, reasons were duly given by the testator for excluding the plaintiffs No.1 and 2 and defendant No.3, as beneficiaries. Moreover, Defendant No.3/DW2 who is one of the attesting witnesses of the Will has duly proved the execution of the Will. The said Will also bear the signatures of plaintiff No.1. As such, plaintiffs cannot claim declaration of being owners of the suit property to the extent of 2/5th share on the basis of natural succession; also in view of the admitted fact that the suit property was self acquired in the hands of Joginder Kaur.

21. As regards evidence of DW1 Sulakhan Singh that he cannot read and write Punjabi language and is conversant with the Urdu language, it is admitted by learned counsel for the appellants that the Will was scribed



in Urdu language. It has also come on record that the plaintiffs were not having cordial relations with their parents during their lifetime and other litigations were pending between them as well.

22. From the above facts, it is clear that the plaintiffs were unable to prove any suspicious circumstances surrounding the Will. Mere allegation without evidence cannot undermine the authenticity of the Will.

23. Learned counsel for the appellants/plaintiffs is unable to dispute or controvert the above said facts and findings.

24. Accordingly, the present regular second appeal is **dismissed**.

25. Pending applications, if any, stand disposed of.

11.03.2025

Divyanshi

(NIDHI GUPTA)
JUDGE

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