

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

134

**Reserved on : 03.02.2025
Pronounced on : 09.04.2025**

1. RSA-839-2024 (O&M)

Purshotam Kumar Sharma Appellant

versus

Hanuman (since deceased) through his LRs and ors. ... Respondents

2. RSA-876-2024 (O&M)

Prem Lata @ Sunita @ Prema Devi Appellant

versus

Hanuman (since deceased) through his LRs and ors. ... Respondents

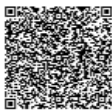
CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. V.K. Jindal, Sr. Advocate with
Mr. Abhishek Shukla, Mr. Naveen Bhardwaj,
Mr. Surya Pratap Singh, Mr. Vijayveer Singh and
Mr. Akshay Jindal, Advocate
for the appellant.

Mr. Ashish Gupta, Advocate
for the respondents.

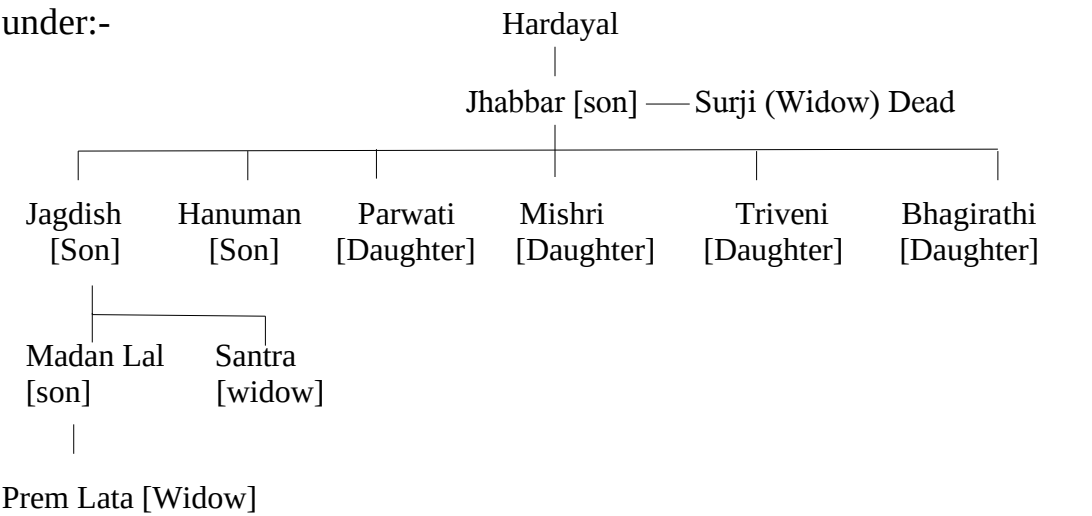
PANKAJ JAIN, J. (Oral)

- Both the plaintiffs have filed separate appeals.
- During arguments, senior counsel submitted that he does not wish to press RSA No.876 of 2024 at the behest of plaintiff No.2. The same is ordered to be dismissed as not pressed.
- RSA No.839 of 2024 is at the behest of plaintiff No.1 Purshotam Kumar Sharma @ Purshotam Kumar.



4. Plaintiffs filed suit seeking decree of declaration to the effect that they are owners to the extent of 1/7th share in the suit land as described in the plaint with the further prayer for decree of perpetual injunction seeking restrain against defendants from interfering in the use and possession of suit land by the plaintiffs and further restraining defendants from alienating or creating charge in any manner over the suit property qua share of deceased Santra @ Santra Devi and Madan Lal. In alternate, the plaintiffs prayed for decree of joint possession in case they are not found to be in possession over the suit land. The dispute relates to the estate inherited by Santra after the death of her husband Jagdish and son Madan Lal. Plaintiff No.2-Prem Lata joined suit claiming herself to be widow of Madan Lal-deceased son of Santra. However, the Lower Appellate Court found that Prem Lata failed to prove herself to be the widow of Madan Lal. Prem Lata has withdrawn the regular second appeal. Thus, the aforesaid finding having attained finality, suit filed on behalf of plaintiff No.2 Prem Lata stands dismissed.

5. In order to appreciate the pleadings raised in the plaint, it will be apt to peruse the pedigree table as given in plaint which reads as under:-





6. Jhabbar died on 01.01.1962. Jagdish pre-deceased him leaving behind his son Madan Lal and widow Santra. After death of Jhabbar, his inheritance was entered in favour of his widow Surji, son Hanuman, 04 daughters and 1/7th share of Jagdish was succeeded by Santra and Madan Lal jointly.

7. Plaintiff No.1 Purshotam Kumar is brother of Santra. After death of Jagdish, his widow Santra and her son Madan Lal went to the parental village of Santra and started residing with plaintiff No.1 Purshotam Kumar. As per plaintiff, Madan Lal married Prem Lata on 29.11.1972. Madan Lal also died issue less. On death of Madan Lal, his share in the suit property was inherited by Santra Devi. She died on 17.03.2009. Plaintiff-Purshotam Kumar has filed present suit seeking declaration in his favour on the strength of unregistered Will dated 09.03.2009, claiming that by way of said Will, Santra bequeathed all her property in his favour. On death of Santra, mutation was sanctioned in favour of defendants. The same was contested by the plaintiff. Apart from contesting the mutation, plaintiff-Purshotam Kumar also complaint against the defendants which led to registration of FIR No.243 dated 05.07.2009 registered for offences punishable under Sections 420, 467, 468, 471 and 506 of IPC.

8. Suit was contested by the defendants. Apart from disputing relationship of plaintiff No.2 with late Madan Lal, there is no serious dispute qua relationship of Purshotam Kumar-plaintiff with Santra Devi. Execution of Will is disputed. It was further claimed that though Santra was residing in her maternal village, but she was residing



separately from plaintiffs and had no jointness with them. Santra had thus, no reason to execute Will in favour of plaintiff No.1. Defendant No.1 also filed counter claim seeking declaration to the effect that he, along with his sisters is entitled to succeed to 1/7th share in the suit land being successors of deceased-Madan Lal and Santra.

9. On the basis of the pleadings, Court of the first instance framed following issues:-

- “1. Whether plaintiffs are owner to the extent of their share mentioned in their plaint and are entitled to get their names recorded accordingly in the revenue records as alleged? OPP*
- 2. Whether plaintiffs are entitled for a decree for permanent injunction as prayed for? OPP*
- 3. Whether plaintiffs were taking care of Smt. Santra, since deceased during her life time as alleged? OPP*
- 4. Whether plaintiff No. 2 is legally wedded wife of Madan Lal s/o Jagdish as alleged? OPP*
- 5. Whether Santra wife of Jagdish Parsad had executed a legal Will in favour of plaintiff No. 1 by her free will and consent as alleged? OPP*
- 6. Whether plaintiffs have got no locus standi and cause of action to file the present suit as alleged? OPD*
- 7. Whether plaintiffs are estopped from filing the present suit by their own act and conduct as alleged? OPD*
- 8. Whether the suit is liable to be dismissed for non joinder of necessary parties as alleged? OPD*
- 9. Whether the defendant No. 1 entitled for the relief claimed by way of counter claim as alleged? OPD*
- 10. Relief.”*

10. Deciding issue No.4, Trial Court came to the conclusion that plaintiffs failed to prove that plaintiff No.2 is legally wedded wife of Madan Lal. Answering issue No.5 with respect to Will, Trial Court relied upon testimony of PW-4 Raj Kumar and PW-6 Ved Prakash the

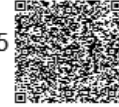


attesting witnesses and PW-5 Anil Kumar Srivastav, the alleged scribe to the Will and answered the issue in favour of the plaintiffs holding that the plaintiffs proves valid execution of Will dated 09.03.2009 Ex. PW-4/A by Santra Devi in favour of plaintiff No.1. Answering issue No.5 in favour of the plaintiffs, Court of the first instance answered issue No.1 in favour of the plaintiffs holding them entitled to decree of declaration. Issue No.2 was decided against the plaintiffs, but held plaintiff No.1 to be co-sharer in joint possession of the suit land and decreed the suit filed by the plaintiff.

11. Two separate appeals were filed before the Lower Appellate Court. Plaintiff No.2-Prem Lata filed Civil Appeal No.12 of 2017. Defendants preferred Civil Appeal No.175 of 2016. Lower Appellate Court after re-appreciating the evidence, affirmed the findings on issue No.4 against plaintiff No.2 and dismissed the appeal preferred by her.

12. In Civil Appeal No.175 of 2016, Lower Appellate Court reversed the findings on issue No.5 and held that there are material discrepancies between the testimonies of attesting witnesses, scribe and the plaintiffs. The plaintiffs could not prove valid execution of the Will and Lower Appellate Court, thus, dismissed the suit filed by the plaintiff allowing appeal preferred by the defendants.

13. Learned senior counsel appearing for the appellant has assailed the findings recorded by the Lower Appellate Court, submitting that well reasoned findings recorded by the Trial Court have been reversed by the Lower Appellate Court substituting its own reasoning.



Execution of Will Ex.PW-4/B dated 09.03.2009 was duly proved by the plaintiffs. Both the attesting witnesses Ved Prakash and Raj Kumar appeared as PW-4 and PW-6 respectively. Their testimony proves that both were present when Santra Devi thumb marked the Will, thereafter the same was read over to her by the scribe Anil Kumar, Advocate. Entire evidence was analyzed threadbare by the Trial Court in its true perspective. Testimony of plaintiff nowhere shows that the plaintiff actively participated in execution of the Will. Thus, the Lower Appellate Court erred in dismissing the suit filed by the plaintiff. Senior counsel further submits that it has been proved on record that Santra Devi after having lost her husband, was residing at her parental village. It is plaintiff-appellant who was taking care of her. In the given circumstances, it was natural for Santra Devi to bequeath her property in favour of her younger brother, whom she treated as her own son. Mr. Jindal further submits that Lower Appellate Court has relied upon the previous statement made by the plaintiff before revenue authorities in mutation proceedings.

14. *Per contra*, counsel for the respondents has referred to the statements made by attesting witnesses PW-4 and PW-6 and the testimony of PW-5, the scribe to submit that the plaintiff-appellant failed to prove execution of Will by Santra. There are material contradictions between their statements. He has further drawn attention of this Court to the statement made by PW-1 Purshotam Kumar to submit that the Lower Appellate Court has rightly re-appreciated the evidence on record to come to rightful conclusion. The plaintiff having



miserably failed to prove the Will, suit has been rightly dismissed. He further submits that there being no misreading of evidence on record, there is no question of law involved in the present regular second appeal and thus, the appellant cannot asked this Court to re-appreciate the evidence which is beyond the scope of regular second appeal.

15. I have heard counsel for the parties and have carefully gone through the records of the case.

16. It is now well settled that the regular second appeals filed before this Court are to be treated in the light of Section 41 of the Punjab Courts Act. There is no requirement of framing substantial question of law, but question of law still remains *sine qua non* to maintain regular second appeal. Reference can be made to the judgment passed by Supreme Court in ***Pankajakshi vs. Chandrika (2016) 6 SCC 157***.

17. In the present case, the pivotal issue relates to proof of execution of Will dated 09.03.2009 propounded by the plaintiff.

18. Supreme Court in the case of ***Shiva Kumar and others vs. Sharanabassapa and others (2021) 11 SCC 277***, observed as under:-

“11. For what has been noticed hereinabove, the relevant principles governing the adjudicatory process concerning proof of a Will could be broadly summarised as follows:-

“1. Ordinarily, 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. Alike the principles governing the proof of other documents, in the case of Will too, the proof with mathematical accuracy is not to be insisted upon.

2. Since as per Section 63 of the Succession Act, a Will is required to be attested, it cannot be used as



evidence until at least one attesting witness has been called for the purpose of proving its execution, if there be an attesting witness alive and capable of giving evidence.

3. The unique feature of a Will is that it speaks from the death of the testator and, therefore, the maker thereof is not available for deposing about the circumstances in which the same was executed. This introduces an element of solemnity in the decision of the question as to whether the document propounded is the last Will of the testator. The initial onus, naturally, lies on the propounder but the same can be taken to have been primarily discharged on proof of the essential facts which go into the making of a Will.

4. The case in which the execution of the Will is surrounded by suspicious circumstances stands on a different footing. The presence of suspicious circumstances makes the onus heavier on the propounder and, therefore, in cases where the circumstances attendant upon the execution of the document give rise to suspicion, the propounder must remove all legitimate suspicions before the document can be accepted as the last Will of the testator.

5. If a person challenging the Will alleges fabrication or alleges fraud, undue influence, coercion et cetera 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 give rise to the doubt or as to whether the Will had indeed been executed by the testator and/or as to whether the testator was acting of his own free will. In such eventuality, it is again a part of the initial onus of the propounder to remove all reasonable doubts in the matter.

6. A circumstance is “suspicious” when it is not normal or is ‘not normally expected in a normal situation or is not expected of a normal person’. As put by this Court, the suspicious features must be ‘real, germane and valid’ and not merely the ‘fantasy of the



doubting mind.’

7. As to whether any particular feature or a set of features qualify as “suspicious” would depend on the facts and circumstances of each case. A shaky or doubtful signature; a feeble or uncertain mind of the testator; an unfair disposition of property; an unjust exclusion of the legal heirs and particularly the dependants; an active or leading part in making of the Will by the beneficiary thereunder et cetera are some of the circumstances which may give rise to suspicion. The circumstances above-noted are only illustrative and by no means exhaustive because there could be any circumstance or set of circumstances which may give rise to legitimate suspicion about the execution of the Will. On the other hand, any of the circumstance qualifying as being suspicious could be legitimately explained by the propounder. However, such suspicion or suspicions cannot be removed by mere proof of sound and disposing state of mind of the testator and his signature coupled with the proof of attestation.

8. The test of satisfaction of the judicial conscience comes into operation when a document propounded as the Will of the testator is surrounded by suspicious circumstance/s. While applying such test, the Court would address itself to the solemn questions as to whether the testator had signed the Will while being aware of its contents and after understanding the nature and effect of the dispositions in the Will?

9. In the ultimate analysis, where the execution of a Will is shrouded in suspicion, it is a matter essentially of the judicial conscience of the Court and the party which sets up the Will has to offer cogent and convincing explanation of the suspicious circumstances surrounding the Will.”

The aforesaid view was reiterated in ***Kavita Kanwar vs. Mrs. Pamela Mehta and others*** 2020 AIR Supreme Court 2614.



19. In view of the aforestated position of law, the onus lies upon the propounder to prove the Will. The propounder in order to discharge the same, must satisfy the judicial conscience. The Court is required to address the question whether the testator had signed the Will while being aware of its contents. Will speaks after the death of the testator. To prove execution thereof, the propounder needs to bring on record evidence of unimpeachable character. Attesting witnesses need to be truthful to satisfy judicial conscience.

20. Executant Santra Devi died on 17.03.2009. In order to prove Will, plaintiff examined the two attesting witnesses namely Ved Prakash and Raj Kumar as PW-4 and PW-6 respectively. Advocate Anil Kumar Srivastava-the scribe of the Will appeared as PW-5.

21. Purshotam-plaintiff appeared as PW-2. Relevant extract of his testimony reads as under:-

“xx xx xxx

I was not present at the time when Will of Santra Devi was scribed. I was also not present at the time when Santra Devi signed the Will. I was in the Factory at that time. Will was given two days prior the death of Santra Devi. Before that, I never knew whether Santra Devi had executed any Will or not. Prior thereto, neither I knew who scribed the Will, nor did I know who signed the same. Santra Devi herself told that it was Anil Srivastava, who scribed the Will. xx x x x xxx. I do not know who typed the Will nor I know who brought the stamp paper. I was not present at the time of signature on Will and proceedings of thumb mark. I don't know that there is a tube well and pipeline installed in the disputed property. I appeared in mutation proceedings No.2277 dated 01.07.2009 and was present before SDM, where, as a witness I tendered my affidavit there and Advocate cross examined me. It is wrong that I made a statement in that case that Will was scribed before me and stamp paper brought by me. I also



appeared before Tehsildar in mutation proceedings No.2277 dated 01.07.2009. Neither I endorsed any copy of Will at the time of proceedings before Tehsildar nor I can say that I informed revenue authority of Mahendergarh about the Will. Volunteered that it was done in 2009.”

22. One of the attesting witnesses Ved Parkash, who appeared as PW-4 claimed to have witnessed the execution of Will. Relevant part of his testimony reads as under:-

“xxx xxxx

When Will was typed, I was present which was scribed at home. The same was scribed by Anil Kumar Srivastava. How many times I signed the Will, I don’t know, but today myself said that I signed two times.” xx xx xx

In later part of his testimony he testified that:

“I don’t know who typed the Will and even the same was not typed in front of me.”

23. Relevant extract of testimony of the other attesting witnesses Raj Kumar PW-6 reads as under:-

“xxxx xxx

Will was not scribed in front of me. When the Will was signed, then I, Santra, Ved Prakash and Advocate sahib were present. At that time, I stayed there for 15 to 20 minutes. xxx xx xx I was called by Santra bua. I can’t tell who called me and brought me there. I know Durga Prasad and Ashok, who are Santra’s brother and nephew who lived in the same house. Will was scribed in the noon time, but exact time, I forgot. At that point of time, Santra Devi was indisposed, but was fine with walking around.”

24. The scribe Anil Kumar Srivastava appeared as PW-5. Relevant extract of his testimony reads as under:-

“xxxx

Who brought the stamp, I don’t know. The same was given to me by Santra Devi on 6th or 7th date. I did not print the Will myself. It was printed by computer. Santra has



given us only blank stamp paper. It was typed on a computer and the same was not printed in front of Santra Devi. Whatever Santra Devi told, it was typed accordingly. At the time, Santra Devi told only I and Santra Devi were present there and none else was there. We met Santra Devi at Bahraich two days prior and she told that we have some work, you come here. Stamp paper was not purchased on that day. It was purchased on 09.03.2009, which was printed on stamp paper. I can definitely say that the stamp paper which Santra Devi given to me, the date i.e. 09.03.2009 was clearly written over there by stamp vender. I cannot tell that who is the stamp vender from whom the stamp paper was purchased. Attention of witness was drawn to the endorsement of Ex.PW-4/A, in which date of stamp is empty. However, witness says that date was written as 09.03.2009. It was wrong that it was written December after tampering the date. I had prepared rough Will, then the same was typed verbatim. I brought the rough Will and the same was destroyed by me. The rough Will was scribed on 6th at the room of Santra Devi. At that time, none else was there. The witness of the Will were called by Santra. How she called, I don't know. I don't know the witnesses personally. I do not keep the document register. In Bahraich Court, there are two-three Advocates from Risiya town. I don't know them personally. My home town is Bahraich. I have no relationship with Santra Devi, I personally know her as she was honored by Marwari society for her services to the society. I don't know Durga Prasad and Chajuram, but I know Purshotam.”

His testimony has dented the case of the appellant irreparably.

25. The aforesaid testimonies when juxtaposed upon each other leave many questions unanswered. Statement made by Purshotam Kumar before the revenue authorities is on record as DW-3/B. Comparative reading of his testimony before the revenue authorities and his testimony before the Civil Court in the instant suit shows that he



has improved upon his version. He was confronted with his deposition before revenue authorities. Contents thereof were put to him. This amounts to compliance of Section 145 of the Evidence Act, 1872. He testified before the revenue authorities that it is he, who purchased the stamp paper and called scribe Anil Kumar Srivastava. PW-4 in the earlier part of his cross-examination claimed that while the Will was typed, he was present, whereas in the later part, he testified that he does not know who typed the Will and the Will was not typed before him. PW-5 the scribe testified that at the time of typing of Will, only he i.e. the scribe and Santra Devi was present and none-else was present. PW-6 Raj Kumar the other attesting witness states that at the time the Will was scribed, he was not present. PW-5 further claims that the stamp paper was handed over to him by Santra Devi on 06.03.2009/07.03.2009, whereas the stamp papers bears dated 08.03.2009.

26. In view of above, this Court finds that Lower Appellate Court rightly held that the plaintiff failed to prove the Will and thus, dismissed the suit filed by him.

27. I may add here that even though plaintiff No.2-Prem Lata has withdrawn her appeal, however, the attempt made by the plaintiffs to project her as widow of deceased-Madan Lal deceased son of Santra Devi. Attempt was made to gild the lily. Thus, from the testimony of the attesting witnesses, scribe and the conduct of the plaintiffs, this Court does not find any reason to interfere in the well reasoned findings



recorded by the Lower Appellate Court which are based upon proper appreciation of the evidence.

28. As a sequel of the discussion held hereinabove, the present appeal is ordered to be dismissed.

29. A photocopy of this order be placed on the file of other connected case.

(PANKAJ JAIN)
JUDGE

09.04.2025
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No