



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

**RSA-3675-1998 (O&M)
Reserved on: 30.04.2025
Pronounced on: 02.06.2025**

**Sadhu Singh (Deceased) through
legal representatives**

...Appellant

Vs.

Baljit Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Abhilaksh Grover, Advocate
for the appellant.

Mr. N.K. Manchanda, Advocate
for the respondent.

ANIL KSHETARPAL, J.

I Brief facts of the case:-

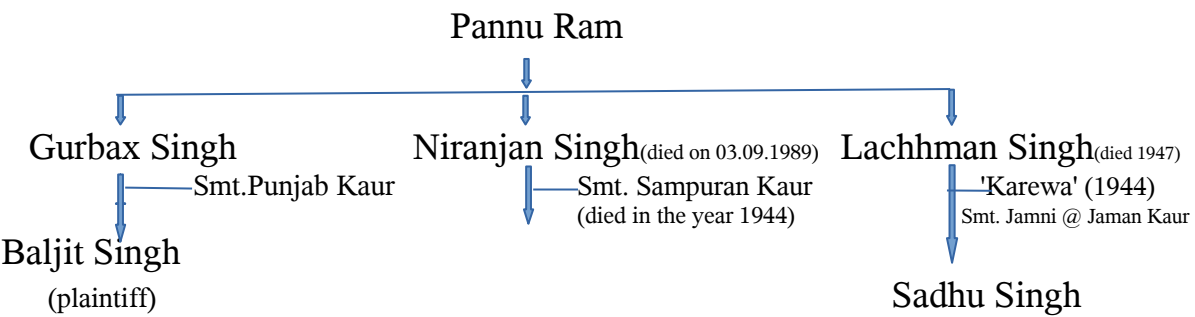
1. The defendant (through his legal representatives) assails the correctness of concurrent findings of fact arrived at by the Courts below while decreeing the plaintiff's suit for grant of decree of declaration that he is entitled to exclusively inherit the property of Sh. Niranjana Singh alongwith a consequential relief of permanent injunction. In the alternative, a decree for possession was also sought.

2. In this case, the following two issues require adjudication:-

I. Whether the plaintiff-Sh. Baljit Singh is son of Sh. Niranjana Singh?



- II. Whether the registered Will [Ex.D3] allegedly executed by Sh. Niranjan Singh on 15.03.1982, bequeathing his property in favour of Sh.Sadhu Singh is surrounded by suspicious circumstances?
3. Dispute in the present case pertains to the property left behind by Sh. Niranjan Singh. The following genealogy illustrates the relationship of the parties involved in the litigation:-



4. Smt. Sampuran Kaur w/o Sh. Niranjan Singh died in the year 1944. Smt. Punjab Kaur is the wife of Sh. Gurbax Singh. Sh. Sadhu Singh claims that after the death of Sh. Lachhman Singh, Sh. Niranjan Singh contracted a 'Karewa' marriage (customary marriage), with widow of Sh. Lachhman Singh, namely, Smt. Jamni @ Jaman Kaur in the year 1947. On the other hand, Sh. Baljit Singh contended that Smt. Punjab Kaur started living with Sh. Niranjan Singh after Sh. Gurbax Singh shifted to Uttar Pradesh and that he was born out of the cohabitation of Sh. Niranjan Singh and Smt. Punjab Kaur. Sh. Niranjan Singh died on 03.09.1989.
5. The trial Court as well as the First Appellate Court held that Sh. Baljit Singh is the son of Sh. Niranjan Singh and that the registered Will



executed by Sh. Niranjana Singh in favour of Sh. Sadhu Singh is surrounded by suspicious circumstances.

II Analysis and Discussion:-

6. Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book alongwith the scanned copy of the requisitioned Lower Court Record.

7. Pursuant to the liberty granted, learned counsel representing the parties have also filed their respective synopses.

8. Before proceeding further, it is appropriate to first examine issue No.2, which pertains to the registered Will allegedly executed by Sh. Niranjana Singh in favour of Sh. Sadhu Singh Exhibited as Ex. D-3. It is scribed on a non-judicial stamp paper of Rs. 3/- by Sh. Pran Nath, the Scribe. It is written on two pages. It was both executed and registered on the same day. It is attested by two witnesses, namely, Sh. Gurnam Singh and Sh. Asra Singh, Nambardar. DW5-Sh. Asra Singh, the attesting witness of the Will has been examined. The defendant also examined Sh. Raman Kumar, who proved the entry of the Will at serial No. 138 dated 15.03.1982, in the register of the Scribe, namely, late Sh. Pran Nath, who was his uncle. The plaintiff has not led any evidence to prove that Sh. Niranjana Singh, who was previously serving in the Indian Army did not execute the Will. However, the First Appellate Court has held that the Will is surrounded by the following suspicious circumstances:-



1. The failure to examine the second attesting witness of the Will, namely, Sh. Gurnam Singh, creates a doubt in the peculiar facts of the present case.
 2. Sh. Raman Kumar, who appeared as DW4, was not present at the time of execution of the Will.
 3. Sh. Asra Singh while appearing in evidence during the proceeding for sanction of mutation of inheritance of Sh. Niranjan Singh before the Court of Assistant Collector Ist Grade stated that the Will was scribed by Sh. Amar Nath, whereas, it has come on record that it was scribed by Sh. Pran Nath.
 4. Sh. Asra Singh could not confirm if the Will was prepared on the Stamp Paper or not. Sh. Asra Singh failed to answer with respect to the beneficiary of the Will and he stated that the Will has already been scribed by the time he arrived for its registration.
9. As per Section 68 of Indian Evidence Act, 1872, (hereinafter referred to as '1872 Act') deposition of one attesting witness is necessary to prove the Will. Hence, non-examination of the second attesting witness, namely, Sh. Gurnam Singh would not go against the defendant and does not result in the defendants failure to prove the Will. The defendant has also examined DW/4-Sh. Raman Kumar in order to prove entry No. 38 dated 15.03.1982, in the register of Scribe, namely, Sh. Pran Nath, who happens to be



his uncle. Moreover, an official from the Registrar's office has also been examined in the evidence by the defendant to prove registration of the Will. The correct name of the Scribe is Sh. Pran Nath as is evident from the Will 'Ex. D-3'. When Sh. Asra Singh appeared in evidence in this suit, he stated that Sh. Pran Nath scribed the Will. When he was confronted with his earlier deposition before the Assistant Collector, he adhered to stand that the Will was scribed by Sh. Pran Nath. Moreover, a witness is not expected to memorize the name of the Scribe after a long period of 09 years. Sh. Asra Singh was examined on 23.08.1991, whereas, the Will in question was scribed on 15.03.1982. Human memory is not expected to be perfect, it is inherently fallible, especially after a significant period of time.

10. Moreover, the clarification in this regard could have been sought from Sh. Raman Kumar, however, he was not cross-examined on this aspect of the matter.

11. It is also unreasonable to expect that the attesting witness would remember whether the Will was scribed on a non-judicial stamp paper or not that too after a period of 09 years. The registered Will has been found doubtful by the Courts below because Sh. Asra Singh failed to recollect that he while appearing before the Assistant Collector in the mutation proceeding stated that the Will was scribed on the stamp paper or not. It is evident that the Will is scribed on the non-judicial stamp paper of Rs. 3/-. When he was cross-examined, he stated that Sh. Sadhu Singh, the legatee under the Will was nephew of Sh. Niranjan Singh. This does not cast a doubt when there is a clear



recital in the Will stating that Sh. Niranjn Singh has bequeathed the property in favour of Sh. Sadhu Singh.

12. Similarly, the Courts below have also erroneously doubted the correctness of the Will on the ground that Sh. Niranjn Singh did not leave behind any property in favour of Smt. Jamni @ Jaman Kaur. The Will is executed in order to bequeath the property in accordance with the testator's wishes and not by natural succession. Smt. Jamni @ Jaman Kaur has never challenged the correctness of the Will. Hence, the Courts have erred in doubting the correctness of the Will, particularly, when Sh. Asra Singh, Sh. Raman Kumar and an official of the Registrar proved the registered Will.

13. The First Appellate Court has held that Sh. Baljit Singh is proved to be son of Sh. Niranjn Singh for the following reasons:-

1. At the time of birth of Sh. Baljit Singh, entry in the year 1962 was made while reflecting Sh. Niranjn Singh as father of Sh. Baljit Singh, which continued in the school.
2. Sh. Gurbax Singh himself stated that he remained out for a period of 8-9 years and during that time his wife cohabited with Sh. Niranjn Singh.
3. From Ex. D-4 to D-7, relied upon by Sh. Sadhu Singh, it is not proved that two children were born from the wedlock of Sh. Niranjn Singh and Smt. Jamni @ Jaman Kaur.
4. Smt. Jamni @ Jaman Kaur has not been examined.



5. There is no evidence that Sh. Sadhu Singh took care of Sh. Niranjn Singh during his last days.

14. Admittedly, Smt. Punjab Kaur was married with Sh. Gurbax Singh brother of Sh. Niranjn Singh. Out of this wedlock five children were born. Sh. Gurbax Singh has stated that he shifted to Uttar Pradesh and remained away from his family for a period of 8-9 years, however, there is no documentary evidence to this effect. The Courts below have also overlooked Section 112 of the 1872 Act. Under Section 4 of the 1872 Act the expressions "may presume," "shall presume," and "conclusive proof" are defined. Section 112 of the 1872 Act, uses the expression conclusive proof of legitimacy, unless it can be shown that the parties to the marriage had no access to each other at the time when child could have been begotten. Sh. Baljit Singh or Sh. Gurbax Singh have not produced any unimpeachable evidence including their own DNA analysis to prove that Sh. Baljit Singh was not born out of wedlock of Sh. Gurbax Singh with Smt. Punjab Kaur. Similarly, Sh. Gurbax Singh has also not produced record of births of his remaining children. Therefore, oral deposition of Sh. Gurbax Singh is not sufficient. Smt. Punjab Kaur has also not stepped into the witness box.

15. Likewise, the Courts below have also erred while observing that documents Ex. D-4 to D-7 do not prove that two children, namely, Mewa and Ajmero were born from the loins of Sh. Niranjn Singh. Ex.D-6 proves Ajmero, a daughter was born from the loins of Sh. Niranjn Singh on 18.08.1950, who died on 24.06.1951 (D-7). Ex. D-4 proves that Sh. Niranjn



Singh fathered another child who was born on 12.09.1952 but subsequently, died on 14.04.1953

16. Moreover, it is highly improbable that Sh. Gurbax Singh would permit his wife to live with his brother, particularly, when Sh. Niranjan Singh had already remarried Smt. Jamni @ Jaman Kaur in the year 1947 and had two children, namely, Mewa and Ajmero out of the said wedlock. State of Uttar Pradesh is not far away and there is no evidence to the effect that Sh. Gurbax Singh never visited Punjab after starting working in the State of Uttar Pradesh and that he severed ties with his native place.

17. Similarly, failure of the defendant (Sh. Sadhu Singh) to examine Smt. Jamni @ Jaman Kaur in his evidence would not be sufficient to draw adverse inference against him, particularly, when there is a duly registered Will executed in his favour by Sh. Niranjan Singh.

18. Similarly, Sh. Sadhu Singh was not required to establish that he took care of Sh. Niranjan Singh because it is proved on the file that Sh. Niranjan Singh and Smt. Jamni @ Jaman Kaur were married and had started living together. He executed a registered Will acknowledging the fact that Sh. Sadhu Singh takes care of him.

19. Both the Courts have also overlooked that Smt. Jamni @ Jaman Kaur received pensionary benefits of late Sh. Niranjan Singh. The pension papers of Smt. Jamni @ Jaman Kaur were produced and proved as Ex. D-1/A.

III Decision:-

20. Keeping in view the aforesaid discussion, both the issues are answered in favour of the appellant. Consequently, the judgments passed by the Courts below are set aside and the suit filed by the plaintiff shall stand dismissed.
21. The appeal is allowed.
22. All the pending miscellaneous applications, if any, are also disposed of.

02.06.2025
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No