



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

(252)

RSA-3950-1998 (O&M)
Reserved on:17.09.2025
Pronounced on:- 23.09.2025

RAJINDER SINGH AND ANOTHER
Versus

... Appellants

BACHAN SINGH AND OTHERS

... Respondents

-.-

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present:- Mr. Sherry K. Singla, Advocate,
for the appellants.

Mr. Abhishek Thakur, Advocate and
Mr. Navrajdeep Singh, Advocate,
for the respondents.

VIRINDER AGGARWAL, J.

1. The present regular second appeal has been filed by the appellants/plaintiffs against the judgment and decree passed by learned Additional District Judge, Gurdaspur (*in short 'learned First Appellate Court'*) dated 19.05.1998, vide which, the judgment and decree passed by learned Civil Judge (Junior Division), Gurdarspur (*in short 'learned Trial Court'*) has been set aside.

2. Briefly, appellants/plaintiffs claimed themselves to be the owners of the suit land on the basis of Will executed by Teja Singh, S/o Partap Singh on 13.11.1992, whereby plaintiffs succeeded Teja Singh to the extent of half share along with defendants to the extent of other half share. The suit was contested by defendants by claiming that Will dated 13.11.1992 is forged and fabricated document and that Teja Singh has not executed any such Will. Teja Singh has executed a registered Will dated 05.10.1978 in



favour of answering defendants and the Will dated 13.11.1992 was held to be forged and fabricated by Assistant Collector, First Grade, Gurdaspur and mutation has been sanctioned in favour of answering defendants and they are owners in possession of the suit land.

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

1. Whether Teja Singh deceased executed the Will dated 13.11.1992 in favour of the plaintiffs and defendants No.1 to 4. If so, its effect? OPP
2. If issue No.1 is proved whether plaintiffs become co-sharers in joint possession to the extent of $\frac{1}{2}$ share in the suit land ? OPP
3. Whether the plaintiffs are entitled to the declaration prayed for? OPP
4. Whether the suit is not maintainable in the present form? OPD
5. Whether the plaintiffs have no locus standi to file the present suit? OPD
6. Whether Teja Singh deceased executed Will dated 05.10.1978 in favour of defendants No.1 to 4? OPD
7. Relief.

4. Both the parties were afforded opportunities to lead evidence and after hearing arguments, the learned Civil Judge decreed the suit of the plaintiffs on the basis of findings recorded on issue Nos.1, 2 and 3.

5. Aggrieved by the judgment and decree so passed, the respondents/defendants filed appeal, which was allowed vide impugned judgment and decree by learned First Appellate Court.

6. Aggrieved by the judgment so passed, the present appeal has been filed.



7. The appeal was admitted for hearing vide order dated 10.05.1999.

8. Respondents appeared through counsel.

9. Lower Courts record were requisitioned .

10. Arguments heard.

11. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are to be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 CPC. Reference in this regard can be made to the judgment of the Supreme Court in the case of ***Pankajakshi (Dead) through LRS and others V/s Chandrika and others, (2016)6 SCC 157***, followed by the judgments in the case of ***Kirodi (since deceased) through his LR V/s Ram Parkash and others, (2019) 11 SCC 317*** and ***Satender and others V/s Saroj and others, 2022(12) Scale 92***. Relying upon the law laid down in the aforesaid judgments, no question of law is required to be framed.

12. Learned counsel for the appellants submitted that the learned First Appellate Court has disbelieved the Will 'Ex. P1' by ignoring the convincing evidence on record and has recorded findings on surmises and conjunctures. Will is duly proved and is free from all suspicious circumstances. He further assailed the judgment and decree on the grounds that the learned First Appellate Court has allowed the application for leading additional evidence and thereafter, without affording any opportunity to the appellants/plaintiffs relied upon that additional evidence in order to base the findings. The learned First Appellate Court was required to afford an



opportunity to the appellants/plaintiffs to rebut the evidence led by respondents/defendants in first appeal or the matter should have been remanded to the Court below for retrial and he relied upon the law laid down by Hon'ble Apex Court in ***The Corporation of Madras and another versus M. Parthasarathy and others, AIR 2018 SC 3777.***

13. Counsel for the respondents/defendants submitted that there is no illegality and infirmity in the findings recorded by the learned First Appellate Court. The additional evidence was rightly allowed and since by way of additional evidence only a copy of mutation sanctioned in favour of defendants was tendered into evidence and the learned First Appellate Court has not discarded the Will on the basis of mutation having been sanctioned in favour of respondents/defendants as such, the re-trial is not warranted nor the matter is required to be remanded back and prayed for dismissal of the appeal.

14. I have gone through the file and perused the record carefully.

15. The learned First Appellate Court has allowed the application filed by the respondents/defendants for placing on record the copy of mutation of the inheritance of Teja Singh and the same was taken into consideration as Ex. DX and after deciding the application and allowing the respondents/defendants to place on record the copy of mutation, no opportunity to rebut that evidence was afforded to the appellants/plaintiffs and counsel for the appellants/plaintiffs assailed the judgment and decree on that ground being violative of the provisions of Order 41 of Code of Civil Procedure (CPC) and violation of principles of natural justice as no



opportunity to rebut the evidence was granted to the appellants/plaintiffs. He placed reliance upon the judgment of Supreme Court of India in the ***Corporation of Madras and others*** (supra), wherein it has been held as under:-

“17) Having allowed the CMP No.1559/1993 and, in our opinion rightly, the first Appellate Court had two options, first it could have either set aside the entire judgment/decreed of the Trial Court by taking recourse to the provisions of Order 41 Rule 23-A of the Code and remanded the case to the Trial Court for re-trial in the suits so as to enable the parties to adduce oral evidence to prove the additional evidence in accordance with law or second, it had an option to invoke powers under Order 41 Rule 25 of the Code by retaining the appeals to itself and remitting the case to the Trial Court for limited trial on particular issues arising in the case in the light of additional evidence which was taken on record and invite findings of the Trial Court on such limited issues to enable the first Appellate Court to decide the appeals on merits.”

16. Perusal of the file shows that the learned First Appellate Court has not afforded any opportunity to the appellants/plaintiffs to rebut the additional evidence so the course open before this Court is either to allow the appellants/plaintiffs an opportunity to rebut the evidence or to discard the additional evidence ‘Ex. DX’.

17. Now, considering that Ex. D4 is merely a copy of mutation sanctioned with regard to inheritance of Teja Singh and it is settled law that mere sanctioning of mutation regarding inheritance does not confer any right, title or interest in the property rather in the present case, both the parties are contesting the inheritance of Teja Singh on the basis of Will in their favour. So, copy of mutation (Ex. DX) is discarded and now after discarding Ex. DX from consideration, the findings recorded by the learned First Appellate Court are required to be evaluated. Learned First Appellate



Court has discarded the Will executed in favour of the appellants/plaintiffs on the grounds that the same is shrouded in suspicious circumstances. The learned First Appellate Court has pointed following suspicious circumstances.

1. There is no proof of services rendered by the appellants/plaintiffs to Teja Singh.
2. The subsequent Will in favour of the appellants/plaintiffs is un-registered Will.
3. Will has not been scribed by a regular deed writer.
4. The Will has been entered on the last page of register maintained by the scribe who is an Advocate with narrow spacing.
5. The margins left on the paper to scribe the Will are narrow.
6. One of the contesting witness of the Will is labourer and the other is a resident of some other village.
7. Will has been made regarding property having been purchased out of the pension amount, which Teja Singh was getting.

18. It is settled law that it is for the propounder of Will to dispel suspicious circumstances shrouding the Will. It is the admitted case that Teja Singh executed a registered Will in favour of respondents/defendants, which is Exhibit D1 having been executed in the year 1978 and the Will (Exhibit P1) has been executed few months prior to the death of Teja Singh and the same is un-registered Will. The learned First Appellate Court has rightly observed that a Will is not required to be registered but the circumstances are to be taken into consideration with regard to execution of the Will. In the present case, Teja Singh in 1978 has executed a registered Will and



thereafter, in the year 1992, he goes to an Advocate and gets a Will scribed. Both Teja Singh and Advocate, who is scribe of the Will are well aware about the importance to be attached to the registration of the Will but in spite of that the subsequent Will in favour of the appellants/plaintiffs was not got registered. Coupled with the fact that one attesting witness is a labourer and another is a resident of another village and furthermore, it is admitted evidence on record that the plaintiffs are residing separate from Teja Singh since long as one of the plaintiff is serving in the Army since 1968 and he started residing at Gurdaspur in the year 1978 and as per him, he used to visit Teja Singh after every 15-20 days, whereas, the other plaintiff is also in service and was not residing in the village with Teja Singh whereas defendants were residing with Teja Singh till last day of his life so, Teja Singh executed a Will by way of un-registered document after cancelling registered Will executed in favour of defendants his children, who were residing with him till his last was rightly taken to be a suspicious circumstances, when it is on record that appellants/plaintiffs were not residing with Teja Singh since long and were not able to serve Teja Singh. Furthermore, the Will has been entered on the last page of the register maintained by the scribe, who is an Advocate and that has been entered with a narrow spacing. It is not proved on record that property in dispute was purchased out of pension of father of appellants, which Teja Singh was getting.

19. Cumulatively, all these circumstances are suspicious and creates a doubt about genuineness of the Will (Ext. P1) and it was for the appellants/plaintiffs to dispel these suspicious circumstances and as per



evidence on record, appellants/plaintiffs has failed to dispel these suspicious circumstances.

20. As such, there is no reason to interfere in the well reasoned judgment of the learned First Appellate Court, as such, finding no merit in the present appeal, and the same is dismissed.

21. Pending miscellaneous applications, if any, are also disposed of accordingly.

23.09.2025	(VIRINDER AGGARWAL)
S. Pathania	JUDGE
Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No