



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

**RSA No.2029 of 2025 (O&M)
Date of Decision: 12.08.2025.**

Baru Ram

...Appellant

Versus

Ant Ram and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Vikram Singh, Advocate
Mr. Abhinav Sood, Advocate
for the appellant.

VIKRAM AGGARWAL, J.(oral)

This is defendant's appeal against judgment and decree dated 29.03.2025 passed by the Court of Additional District Judge, Sonipat vide which the appeal preferred by the plaintiff against judgment and decree dated 14.05.2024, passed by the Court of Civil Judge (Junior Division), Ghanaur (Sonipat), was allowed and the suit filed by the plaintiff seeking declaration was decreed.

2. For the sake of convenience and clarity, parties shall be referred to as per their original status.

3. The dispute, once again, is between real brothers and sisters. The plaintiff-Ant Ram is the son of one Sh. Sobha Chand, whereas the defendants No.1 and 3 (Baru Ram and Chawri) are the son and daughter of said Sobha Chand and defendant No.2 (Laxmi) is the daughter-in-law of Sobha Chand, her husband Ram Kanwar son of Sobha Chand have expired.

3.1. Ramesh Chand, another son of Sobha Chand was owner in possession of three chunks of land (fully described in the plaint) situated in

the revenue estate of village Ram Nagar, Tehsil Ghanaur, District Sonipat (hereinafter referred to as the 'suit land'). He expired on 04.05.2017. His wife Raj Bala had pre-deceased him and the couple was issueless. By way of the suit, it was claimed that the plaintiff and defendants had become owners in possession of the suit land. When an application was moved for sanction of mutation of inheritance of Ramesh Chand, it came to the knowledge of the plaintiff that Mutation No. 3662 had already been sanctioned in favour of defendant No.1 on the basis of registered Will dated 18.12.2012 alleged to have been executed by Ramesh Chand in favour of defendant No.1. The Will was claimed to be illegal, null and void and not binding upon the rights of the plaintiff.

3.2. The Will was sought to be set aside on the ground that the suit land was ancestral property and that, under the circumstances, it could not be alienated by way of a Will. It was further alleged that taking undue advantage of the old age of Ramesh Chand, defendant No.1 obtained his thumb impressions on some blank papers and fabricated a Will. It was also alleged that no notice had been given to the plaintiff and other parties before sanctioning the mutation on the basis of the Will. It was claimed that the Will was a forged and fabricated document as Ramesh Chand was seriously ill and was unable to hear, see or understand anything.

3.3. The defendant No.1 was called upon to admit the claim of the plaintiff and other defendants. However, since he did not agree, the suit was filed.

4. Defendant No.1 opposed the suit by way of a written statement, raising preliminary objections as regards maintainability, cause of action, non-joinder and mis-joinder of necessary parties, suppression of material

facts etc. On merits, it was claimed that Ramesh Chand had been living with defendant No.1 and it was defendant No.1 who had been serving him in all respects, as a result of which a registered Will dated 18.12.2012 was executed by Ramesh Chand in his favour. It was averred that the plaintiff and remaining defendants were having knowledge of the said Will and that that they also had the knowledge of the sanction of the mutation.

5. Defendants No.2 and 3 did not contest the suit and their defence was accordingly struck-off.

6. From the pleadings, the following issues were framed:-

- 1. Whether the plaintiffs are entitled to Decree for Declaration, as prayed for? OPP**
- 2. Whether the plaintiffs are entitled to a Decree for Permanent Injunction, as prayed for? OPP**
- 3. Whether the suit of the plaintiff is not Maintainable in its present form? OPD**
- 4. Whether the plaintiff has no Cause of action and no Locus standi to file the present suit? OPD**
- 5. Whether the plaintiff has suppressed the material facts from the Court and has not come with clean hands? OPD**
- 6. Whether the plaintiff has dragged answering defendant into unnecessary and unwarranted litigation? OPD**
- 7. Relief.**

7. Parties led their respective evidence. The trial Court dismissed the suit filed by the plaintiff vide judgment and decree dated 14.05.2024 which led the plaintiff to file an appeal which was allowed by the Court of Additional District Judge, Sonipat vide judgment and decree dated 29.03.2025, leading to the filing of the present second Appeal.

8. I have heard learned counsel for the appellants.

9. Learned counsel for the appellant submits that the First Appellate Court erred in decreeing the suit. He submits that the trial Court had given a well-reasoned judgment and that the same was set aside by the First Appellate Court without giving any cogent reasons. He submits that the plaintiffs had failed to prove that the Will was the result of a fraud. He submits that though none of the attesting witnesses was examined, the scribe was duly examined and, therefore, in terms of the provisions of Section 71 of the Indian Evidence Act, 1872 (hereinafter referred to as the 'Evidence Act'), the execution of the Will stood proved.

10. I have considered the submissions made by learned counsel for the appellant but find the same to be devoid of merit.

11. The trial Court proceeded on a wrong premise by holding that the plaintiff had not been able to prove that the Will was a forged and fabricated document. The trial Court appears to have been ignorant about the settled position of law that the onus to prove the execution of a Will is always on the propounder and once that onus is discharged, the onus would shift on the person who alleges the Will to be a forged and fabricated document to prove the same. The First Appellate Court, however, set right the error committed by the trial Court and while holding that it was for the propounder of the Will to prove its due execution, went on to decide the appeal by holding that its execution had not been proved.

12. It is well settled that the execution of a Will is to be proved in terms of the provisions of Section 63 of the Indian Succession Act, 1925 and Section 68 of the Evidence Act. Reference in this regard can be made to the celebrated judgment of the Supreme Court of India in the case of *H*

Venkatachala Iyengar Vs. B.N. Thimanajamma, AIR SC 443 which has been relied upon in almost all subsequent judgments of the Supreme Court of India and various High Courts. Still further, it is well settled that the burden to prove the due execution of a Will is on the propounder. Reference in this regard can once again be made to judgment of the Supreme Court of India in the case of ***Smt. Jaswant Kaur Vs. Smt. Amrit Kaur and others, 1977 PLR 54 SC.***

13. Concededly, none of the attesting witnesses of the Will were examined. Only Ram Prasad, Deed Writer stepped into the witness box as DW-2 and stated about his having scribed the Will. This, in the considered opinion of this Court would not be sufficient to discharge the onus as no explanation was forth-coming as to why none of the attesting witnesses was examined. In view of the categoric view taken in the case of ***Sattar Vs. Cheriya, 2019 (4) RCR (Civil) 420*** and ***Smt. Angoori Vs. Smt. Khajani (since deceased) RSA No. 168 and 169 of 1993, decided on 20.12.2022***, the provisions of Section of 71 of the Evidence Act could not have been invoked without exhausting Section 68 thereof.

14. Not only this, defendant No.1 himself admitted in his cross-examination that Ramesh Chand used to love the parties to the *lis* equally. Further, the Will (Ex.P2/D1) also did not contain any reason for excluding the other brothers and sisters of Ramesh Chand which was taken to be a suspicious circumstance by the First Appellate Court.

15. That being so, nothing has been pointed out which would have impelled this Court to disturb the findings recorded by the First Appellate Court, though by way of a judgment of a reversal.

In view of the above, I do not find any merit in the present appeal and the same is accordingly dismissed.

Pending application(s), if any, shall also stand disposed of.

(VIKRAM AGGARWAL)
JUDGE

August 12, 2025
Rekha

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