



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

111

RSA-1052-2012

Date of decision : 05.05.2025

Umrao Singh**..... Appellant****versus****Bhag Chand and others****..... Respondents****CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. R.A. Sheoran, Advocate
for the appellant.

Mr. Sumit Sangwan, Advocate
for the respondent.

PANKAJ JAIN, J. (Oral)

1. Instant appeal is at the behest of the plaintiff.
2. Parties are brothers fighting for the estate left by their father namely Amar Singh. At the heart of dispute lies, Will dated 07.09.2001 propounded by defendants No.1 and 2 claiming to have been executed by their father Amar Singh. Amar Singh died on 14.09.2001.
3. Leaving merits of the case apart, this Court finds that the judgment passed by Lower Appellate Court 'smacks of plagiarism'. It is an act of non-application of mind. The same is evident from the comparative reading of the judgment passed by the Trial Court and of the First Appellate Court. Part of para 18 of the judgment of the Trial Court reads as under:-

“18. So far as 3rd suspicious circumstances is concerned that testator had executed Will on 7.9.2001 i.e. only before 7 days



of his death. However, when testator was physically and mentally fit then he was competent to execute will even at the day of his death. xx xx xx”

4. Para 14 recorded by the Lower Appellate Court dealing with the same suspicious circumstance pointed out by the plaintiff to dislodge the Will reads as under:-

“14. So far as third suspicious circumstances is concerned that testator had executed Will on 7.9.2001 i.e. only before seven days of his death. When testator was physically and mentally fit then he was competent to execute will even at the day of his death and this circumstances in itself is not such that the Will can be thrown away.”

5. Evidently, Lower Appellate Court did not apply its mind and opted to reproduce the findings recorded by the Trial Court verbatim.

6. Needless to say, Order XLI Rule 31 of Code of Civil Procedure details out the contents of judgment to be passed by the Appellate Court. It casts statutory obligations upon the Appellate Court to re-appreciate the evidence on record. To state points of determination, record decisions, and reasons behind such decision. Lower Appellate Court ought to have shouldered the responsibility of being the final Court of fact.

7. In view thereof, this Court finds that the judgment passed by the Lower Appellate Court dated 05.01.2012 cannot be sustained and is hereby set aside. The Lower Appellate Court is directed to decide entire matter afresh in accordance with law and record its findings issue wise after re-appreciating evidence on record.

8. Keeping in view that the suit is of the year 2001 and the present appeal is pending consideration before this Court since 2012,



this Court is sanguine that the Lower Appellate Court shall make an endeavour to decide the appeal afresh within the calendar year of 2025.

8. In view of above, present appeal is disposed off. Parties to appear before the District Judge, Charkhi Dadri on **19.05.2025**.

(PANKAJ JAIN)
JUDGE

05.05.2025
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No