

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on 29th of January, 2026
Pronounced on 27th of April, 2026
Uploaded on 28th of April, 2026

Whether only operative part of the judgment is pronounced? No
Whether full judgment is pronounced? Yes

RSA No.1825 of 1987 (O&M)

Ajmer Kaur and anotherAppellant

Versus

Jasbir KaurRespondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Amit Jain, Sr. Advocate with
Mr. Aryaman Thakur, Advocate and
Ms. Kavita Arora, Advocate
for the appellants.

Mr. Naresh Jain, Advocate
for the respondent.

PANKAJ JAIN, J.

- Plaintiffs are in second appeal.
2. For convenience and to avoid confusion, the parties hereinafter are referred to as by their original position before the Court of the First Instance, i.e., the appellants as plaintiffs and the respondent as defendant.
3. Plaintiff filed suit seeking possession of the agricultural land left behind by their husband Jaswant Singh.

4. Defendant is the daughter of Avtar Singh (brother of Jaswant Singh). Thus, two widows of Jaswant Singh are fighting his niece for his estate. Jaswant Singh died issueless. Defendant claims right over inheritance of Jaswant Singh on the basis of a registered WILL dated 29.09.1981 (Exhibit D-1). Issue No.3 was framed *qua* validity of WILL, Exhibit D-1. In order to prove the WILL, defendant examined scribe Gurcharan Singh (DW-1), Registration Clerk Ved Parkash (DW-2) and one of the attesting witnesses namely Balam Singh as DW-5.

5. The Court of First Instance disbelieved the WILL propounded by the defendant holding that there is no evidence to prove that the attesting witness Balam Singh, DW-5, knew Jaswant Singh personally. There is no description of the property left by Jaswant Singh in the WILL. Jaswant Singh left two widows who are plaintiffs in the suit. None of them finds mention in the WILL and there is no reason assigned to exclude them from inheritance. The Court of First Instance accordingly held that the WILL being surrounded by suspicious circumstances, cannot be believed and decreed the suit filed by the plaintiffs granting them decree of possession *qua* share of Jaswant Singh.

6. In an appeal preferred by the defendant, the First Appellate Court reversed the findings recorded by the Trial Court on Issue No.3 upholding the WILL propounded by the defendant.

7. Ld. Senior Counsel representing the appellants has assailed the findings recorded by the Lower Appellate Court. He submits that the Lower Appellate Court erred in reversing well reasoned findings recorded by the

Court of the First Instance. There is no mention of plaintiffs in the WILL. No reason has been assigned to exclude them. Thus, the WILL cannot be believed. He submits that so much so, Jaswant Singh did not even mention his real brother Avtar Singh in the WILL. He was resident of village Channu. WILL was executed at Mansa which is about 90 Kilometres away from Channu, even though tehsil complex is situated at Lambi, which is at a distance of 6 Kilometres from village Channu.

7.1. He further contends that none of the witnesses was known to the executant Jaswant Singh, yet the Lower Appellate Court has held that it can be read between the lines that the executant was known to Balam Singh, DW-5. The observation made is conjectural and cannot be sustained. In support of his contentions, Ld. Senior Counsel relies upon ratio of law laid down in the case of **Jaswinder Kaur vs. Rupinder Kaur, 2023(1) RCR(Civil) 389, B. Venkatamuni vs. C.J. Ayodhya Ram Singh and others, 2007(1) RCR (Civil) 277, Dhani Ram (died) through LRs.& others vs. Shiv Singh, 2023(4) RCR (Civil) 603 and Bharpur Singh vs. Shamsher Singh, 2009(1) RCR(Civil) 826.**

7.2. Mr. Amit Jain, Ld. Senior Counsel has further drawn attention of this Court to statement suffered by Jaswant Singh under Section 313 Cr.P.C. while being tried as an accused in FIR No.176, dated 13.04.1982 registered at Police Sation Lambi for the offences punishable under Section 302 IPC and Section 27 of the Arms Act (Exhibit PY). To the question of the Court, he answered that he was living with his wife, who is suffering from Asthma. He submits that once testator in judicial proceedings admitted

that he is living with his wife(s), the Lower Appellate Court erred in making out a case in favour of defendant beyond document in dispute.

8. Per contra, Mr. Naresh Jain, Advocate counsel representing the respondent submits that the WILL is a registered document. The same cannot be held to be surrounded by suspicious circumstances merely for the reason that the same does not find mention of the plaintiffs, the two wives of the executant.

8.2. Mr. Jain has drawn attention of this Court to the statement of defendant-Jasbir Kaur who appeared as DW8, to contend that the testator was residing with her and she was taking care of him. While testator Jaswant Singh was being tried for murder, it was she who took all the cudgels to ensure that he was adequately represented. Defendant engaged defence counsel for him. He has further referred to the statement of plaintiff PW-1 to submit that both the wives were estranged and were getting maintenance through Court from Jaswant Singh. He relies upon the ratio of law laid down in the case of **Gurdial Singh (Dead) through LRs vs. Jagir Kaur (Dead) and another, 2025 SCC Online SC 1466, Dhanpat vs. Sheo Ram (Deceased) through LRs and others, (2020) 16 SCC 209, Uma Devi Nambiar and others vs. T.C. Sidhan (Dead) – Civil Appeal No.9726 of 2003 (arising out of SLP (C) No.9026 of 2002), decided on 11.12.2003**, to submit that mere exclusion of testator's wife and non-mentioning of reasons for her disinheritance in the WILL cannot be a ground to dislodge the WILL.

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

10. The only issue that arises for the consideration of this Court is regarding validity of WILL dated 29.09.1981, Exhibit D-1, propounded by defendant.

11. Before advertng to the facts of the present case, it would be apt to peruse the following proposition of law laid down by Supreme Court in the case of **Kavita Kanwar vs. Mrs. Pamela Mehta and others, 2020 AIR Supreme Court 2614**. After considering the entire series of precedents, reiterating the parameters laid down in **Shivakumar and others vs. Sharanabasppa and others, (2021) 11 SCC 277**, the Supreme Court held as under:

“XXXX

XXXX

XXXX

24.8. We need not multiply the references to all and other decisions cited at the Bar, which essentially proceed on the aforesaid principles while applying the same in the given set of facts and circumstances. Suffice would be to point out that in a recent decision in Civil Appeal No.6076 of 2009: Shivakumar & Ors. Vs. Sharanabasppa & others, decided on 24.04.2020, this Court, after traversing through the relevant decisions, has summarized the principles governing the adjudicatory process concerning proof of a Will 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 dependents; 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 circumstances 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.

XXXX

XXXX

XXXX”

(emphasis supplied)

12. In the present case, Jaswant Singh and Avtar Singh are two brothers. Jaswant Singh died issueless. Thus, the property in the hands of Jaswant Singh, even though inherited from his father lost its character of

being an ancestral property. His competence to execute WILL cannot be disputed. It is an admitted fact that Jaswant Singh died leaving behind two widows. He was tried for having murdered Gamdoor Singh, brother of defendant No.1 and was sentenced by Trial Court on 08.09.1982. The Lower Appellate Court wrongly observed that the judgment of criminal court is not relevant in a civil case. The findings recorded in the criminal trial may not be binding on the civil court and vice-versa, but the relevance of the judgment cannot be disputed. It is a fact proved on record that Jaswant Singh was tried for the murder of the brother of defendant No.1. Defendant No.1 in her testimony also admits the said fact. FIR is dated 13.04.1982. WILL in dispute is dated 29.09.1981. Testator Jaswant Singh was tried as a resident of village Channu Tehsil Muktsar, District Faridkot. Jasbir Kaur is resident of Makhewala, Tehsil Mansa, District Bathinda. This fact belies the statement of Jasbir Kaur that testator was residing with her and she was taking care of Jaswant Singh. Defendant wants to rely upon statement of PW1 to aver that none of the plaintiffs were residing with Jaswant Singh. They were getting their maintenance through courts. Thus, they were excluded from inheritance. However, the contents of the WILL do not support the same. WILL does not even mention any of the wives, leave aside assigning any reason to exclude them. It is but trite that the Court cannot add to or subtract from the contents of the document much less adding reasons to exclude a natural heir from WILL.

12.1. Even though, the WILL is a departure from natural succession and the testator has a right to be foolish and can exclude any or all of the

12.2. Needless to mention here that it is now settled proposition of law that in Punjab and Haryana, the second appeals preferred are to be treated as an appeal under Section 41 of the Punjab Courts Act, 1918 and not Section 100 of the Code of Civil Procedure. Reference can be made to a judgment of Supreme Court in the case of **‘Pankajakshi (dead) Through LRs and others vs. Chandrika and others’**, (2016) 6 SCC 157, wherein it has been held as under:

XXX

24. The judgment in Kulwant Kaur case [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262] raised a question which arose on an application of Section 41 of the Punjab Courts Act, 1918. This

section was couched in language similar to Section 100 of the Code of Civil Procedure as it existed before the Code of Civil Procedure (Amendment) Act, 1976, which amended Section 100 to make it more restrictive so that a second appeal could only be filed if there was a substantial question of law involved in the matter. The question this Court posed before itself was whether Section 41 stood repealed by virtue of Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976, which reads as under :

“97. Repeal and savings.—(1) Any amendment made, or any provision inserted in the principal Act by a State Legislature or a High Court before the commencement of this Act shall, except insofar as such amendment or provision is consistent with the provisions of the principal Act as amended by this Act, stand repealed.”

This Court concluded that Section 41 of the Punjab Courts Act was repealed because it would amount to an amendment made or provision inserted in the principal Act by a State Legislature. This Court further held that, in any event, Section 41 of the Punjab Courts Act being a law made by the Legislature of a State is repugnant to a later law made by Parliament, namely, Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976, and that therefore, by virtue of the operation of Article 254 of the Constitution of India, the said provision is in any case overridden. In arriving at the aforesaid two conclusions, this Court held [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262.

“27. Now we proceed to examine Section 97(1) of the Amendment Act and the amendment of Section 100 CPC by the said 1976 Act. Through this amendment, right to second appeal stands further restricted only to lie where, ‘the case involves a substantial question of law’. This introduction definitely is in conflict with Section 41 of the Punjab Act which was in pari materia with unamended Section 100 CPC. Thus, so long there was no specific provision to the contrary in this Code, Section 4 CPC saved special or local law. But after it comes in conflict, Section 4

CPC would not save, on the contrary its language implied would make such special or local law inapplicable. We may examine now the submission for the respondent based on the language of Section 100(1) CPC even after the said amendment. The reliance is on the following words:

‘100. Second appeal.—(1) Save as otherwise expressly provided ... by any other law for the time being in force....’

These words existed even prior to the amendment and are unaffected by the amendment. Thus, so far it could legitimately be submitted that, reading this part of the section in isolation it saves the local law. But this has to be read with Section 97(1) of the Amendment Act, which reads:

‘97. Repeal and savings.—(1) Any amendment made, or any provision inserted in the principal Act by a State Legislature or a High Court before the commencement of this Act shall, except insofar as such amendment or provision is consistent with the provisions of the principal Act as amended by this Act, stand repealed.’ (Noticed again for convenience.)

28. Thus, language of Section 97(1) of the Amendment Act clearly spells out that any local law which can be termed to be inconsistent perishes, but if it is not so, the local law would continue to occupy its field.

29. Since Section 41 of the Punjab Act is expressly in conflict with the amending law viz. Section 100 as amended, it would be deemed to have been repealed. Thus, we have no hesitation to hold that the law declared by the Full Bench of the High Court in Ganpat [Ganpat v. Ram Devi, AIR 1978 P&H 137] cannot be sustained and is thus overruled.”

25. We are afraid that this judgment in Kulwant Kaur case [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262] does not state the law correctly on both propositions. First and foremost, when Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 speaks of any amendment made or any provision inserted in the principal Act by virtue of a State Legislature or a High Court, the said section refers only to amendments made and/or provisions inserted in the Code of Civil Procedure itself and not elsewhere. This is clear from the expression “principal Act” occurring in Section 97(1). What Section 97(1) really does is to state that where a State Legislature makes an amendment in the Code of Civil

Procedure, which amendment will apply only within the four corners of the State, being made under Schedule VII List III Entry 13 to the Constitution of India, such amendment shall stand repealed if it is inconsistent with the provisions of the principal Act as amended by the Parliamentary enactment contained in the 1976 Amendment to the Code of Civil Procedure. This is further made clear by the reference in Section 97(1) to a High Court. The expression “any provision inserted in the principal Act” by a High Court has reference to Section 122 of the Code of Civil Procedure by which High Courts may make rules regulating their own procedure, and the procedure of civil courts subject to their superintendence, and may by such rules annul, alter, or add to any of the rules contained in the First Schedule to the Code of Civil Procedure.

26. Thus, Kulwant Kaur [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262] decision on the application of Section 97(1) of the Code of Civil Procedure (Amendment) Act, is not correct in law.

27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision in Kulwant Kaur case [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262] . Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80-A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued

by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force. Shri Viswanathan's reliance upon this authority, therefore, does not lead his argument any further.

XXXX

XXXX

XXXX”

- 12.3. In the present case, this Court finds that the defendant having failed to dislodge the suspicious circumstances surrounding the WILL in dispute, the question of law needs to be answered in favour of the appellants.
- 12.4. Resultantly, the findings recorded by the Lower Appellate Court on Issue No.3 are hereby reversed and those recorded by the Trial Court are restored. Suit filed by the plaintiffs is accordingly, decreed. Judgment and decree passed by the Trial Court is restored.
13. Hence, the present appeal is allowed.
14. Pending application, if any, shall also stand disposed off.

April 27, 2026

Dpr

Whether speaking/reasoned : Yes

Whether reportable : Yes

(Pankaj Jain)
Judge