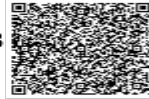
**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****201****RSA-457-2022 (O&M)****Date of decision: 09.02.2026****Nachhatar Singh and another****...Appellant(s)****Vs.****Surjit Singh and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Onkar Rai, Advocate for the appellants.

NIDHI GUPTA, J.

Defendants No. 1 and 2 are in Second Appeal against the concurrent judgments and decrees of the Id. District Courts; whereby suit filed by the plaintiff/respondent No.1 for declaration and permanent injunction, has been partly decreed with costs by both the District Courts.

2. The pleaded case of the plaintiff is that he is owner of 1/8 share of the land comprised in Khewat No.308, Khatoni No.436, Rect.No.166, Killa No.10/2 (0K-16M), and he is also owner in possession of 1/8 share of the land comprised in Khewat No.388. Khatoni No.554, Rect. No 146, Killa No.23/2 (7K-0M). Rect.No.166. Killa No.3/2 (3K-0M), Kitta 2, area measuring 10 Kanal 0 Marla situated within the revenue estate of Village Jalalana, Tehsil & District Sirsa, being a legal heir of Nand Kaur alias Bibi, daughter of Bhag Singh. It was pleaded in the plaint that initially, Nand Kaur alias Bibi, predecessor in interest of the parties, was owner in possession of the suit property. Nand Kaur died on 28.05.2013. She had four sons and four daughters. One of the daughters namely Chotto Kaur

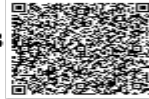


also died. It was pleaded that therefore, the suit property was succeeded to by the plaintiff, defendants, and the performa defendants being the surviving legal heirs of Nand Kaur. Accordingly, declaration was sought that the plaintiff is owner in possession of 1/8th share of suit property.

3. It was further averred in the plaint that in June 2013, plaintiff came to know that defendants have obtained a forged Will of Nand Kaur alias Bibi. Accordingly, on 19.06.2013, plaintiff moved an application to the Tehsildar for not entering the mutation on the basis of forged Will dated 03.04.2013. However, vide order dated 16.09.2016, the District Revenue Officer, Sirsa had ordered that mutation be sanctioned in favour of the defendants on the basis of the said Will. It was prayed that the said order be set aside; and the alleged Will being illegal, be also set aside.

4. It was further pleaded that plaintiff had also registered an FIR No. 346 dated 08.12.2014 against the defendants and witnesses of the said Will; in which challan had been submitted in Court. Defendants had refused to accept the claim of the plaintiff. Accordingly, present suit was filed on 24.10.2016; seeking further declaration that the Will dated 03.04.2013 is illegal, forged, wrong, result of fraud and the same is liable to be set aside; **and** that the consequent mutation No. 4024 sanctioned on the basis of said Will is liable to be set aside; **and** a consequential relief of permanent injunction restraining the defendants from interfering in the possession of the plaintiff over the suit property.

5. Upon appraisal of the pleadings and the evidence led by the parties, the learned Civil Judge (Junior Division), Dabwali, had partly



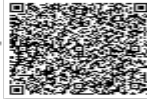
decreed the suit of the plaintiff with costs vide judgment and decree dated 02.05.2018 in the following manner:-

“In view of the facts and circumstances of the case, the decision of issues No. 1 & 2 and the evidences placed on record, the present suit is hereby partly decreed with cost to the effect that it is hereby declared that the plaintiff is owner in possession of 1/8th share of the suit property being legal heir of Nand Kaur alias Bibi. It is hereby further declared that the impugned Will is liable to be set-aside. Moreover, the consequent mutation bearing No. 4024 is also liable to be set-aside. Further, the plaintiff has the right to get a mutation entered and sanctioned in his favour of 1/8 share of the suit/property.”

6. Civil Appeal filed by defendants No. 1 and 2 was dismissed with costs by the Additional District Judge, Sirsa vide judgment and decree dated 18.11.2021. Hence, present second appeal by defendants No. 1 and 2.

7. It is *inter alia* submitted by learned counsel for the appellants that the appellants had duly proved the Will dated 03.04.2013 by producing one attesting witness i.e. DW1 Makhan Singh, who had supported and proved the Will. It is submitted that the other attesting witnesses had resiled from earlier stand only because an FIR was registered against them. It is contended that otherwise the said witnesses have duly made statement in favour of the Will before the Revenue Authority at the time of sanction of mutation in favour of the appellants.

It is submitted that as per the provision of the Indian Evidence Act, one



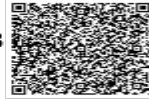
witness was sufficient for the appellant to prove the Will; and in the present case, DW-2 Makhan Singh proved the due execution of Will and removed all doubt raised by plaintiff. Thus, findings recorded by both the District Courts are contrary to law and record; and learned Districts Courts were in error in discarding the Will on spurious grounds.

8. Learned counsel for the appellants further submits that Ld. District Courts have heavily relied upon statement of Jamna Dass-PW-4 Scribe of Will dated 03.04.2013. However, PW-4 is only Writer of the Will, but he was presented before District Courts and accepted by District Courts as attesting witness; on basis of which erroneous opinion was formed that Will is surrounded by suspicious circumstances. Ld. District Courts ought to have appreciated that there are number of discrepancies in his statement, but District Courts ignored it and held that Will is not genuine and is surrounded by suspicious circumstances.

9. Learned counsel for the appellants further submits that Ld. Trial Court failed to frame any issue with regard to Will; and when this issue was raised in Grounds of Appeal and during arguments, then Ld. First Appellate Court framed following additional issue:

“Whether the will executed by the decease has been proved by its beneficiaries as a will released by the executant with her free mind and in fit state of mind and this will has no suspicious circumstances?”

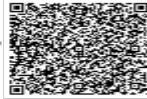
10. However, instead of remanding the case to learned Trial Court to decide the aforesaid issue afresh after affording opportunity to lead evidence, Ld. First Appellate Court had taken the case on board for



adjudication and decided the issue without granting any opportunity to both parties to lead evidence. Therefore, impugned judgment and decree of Ld. First Appellate Court is contrary to law.

11. It is further submitted by learned counsel for the appellants that false FIR No. 346 dated 08.12.2014, PS Kalanwali, U/Ss 420/467/468/471/506/120-B IPC, Distt. Sirsa was registered against beneficiaries of Will, Scribe, and attesting witnesses of Will. Therefore, in order to get free from clutches of false criminal case, attesting witness of Will Saravjit Kaur appeared as PW-2 and she denied the execution of Will by Nand Kaur @ Bibi. Further, attesting witness of Will i.e. Nikka Singh also appeared as PW-3 and he also denied the execution of will by Nand Kaur.

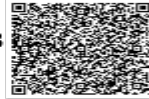
12. Learned counsel for the appellants further submits that observations of both the District Courts that Will is handwritten and not computerized typing and there is line space margin and thumb impression of testator is extreme left corner side of Will, therefore, Will is forged document, is conjectural. It is contended that Ld. District Courts ought to have appreciated the fact that space margin either increased or decreased during writing the Will and thumb impression of testator at left side of Will are not suspicious circumstances as held by this Court and Hon'ble Apex Court. Further, plaintiff throughout the proceedings of the suit has not controverted or raised any suspicion qua thumb impression of Nand Kaur. He did not take any steps to get tallied the thumb impression from an expert taking specimen & standard thumb impression from admitted thumb marks of testator-Nand Kaur. But all these facts have been ignored;



therefore, impugned judgement and decree of both the courts below are fallacious.

13. Learned counsel for the appellants further submits that both the District Courts wrongly observed that from reading the impugned Will, it has been transpired that propounder of Will had four sons and four daughters and Will was executed in favour of only two sons and excluded other sons and daughters. It is submitted that testator executed Will in a sound disposing mind without any fear and coercion, therefore, what is good or bad for her, it is her conscience. There is no evidence on record which prove that Nand Kaur @ Bibi was weak, of unsound mind and she was suffering from any illness. The attesting witness of Will duly proved the Will. Further, Hon'ble Supreme Court has held time and again that excluding natural heir and Deprivation of a due share by the natural heirs itself is not a factor which would lead to the conclusion that there exist suspicious circumstances.

14. It is further submitted by learned counsel for the appellants that all attesting witnesses and scribe of Will appeared before Revenue Authority/DRO and filed their respective affidavits/statements (Ex. D/2 and D-3-Makhan Singh, Ex. D-4 and D-5 Nikka Singh, Ex. D-6 and D-7 Saravjit Kaur, Ex. D-8 and D-9 Jamna Dass) in favour of appellant with regard to due execution and registration of Will. But both the courts below did not give due weightage to aforesaid documents i.e. affidavits/statements and decreed the suit in casual manner.



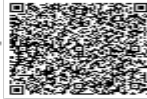
15. Learned counsel for the appellants further submits that in view of affidavits/statements as mentioned above, mutation was sanctioned in favour of the appellants and Will was upheld by Ld. District Revenue Officer, Sirsa vide order dated 16.09.2016 (Ex D-17) and same was attained finality as it was not challenged before higher revenue authorities in view of provision of Punjab Land Revenue Act. However, in the impugned judgments there is no discussion with regard to finding recorded by Ld. DRO especially when same was passed after going through objections and cross examination of attesting witnesses by counsel for plaintiff. The order of Ld. DRO is in detail and based on evidence, therefore, plaintiff/respondent No.1 has no right to challenge the mutation proceedings in civil courts.

16. It is accordingly prayed that the present Second Appeal be allowed; and the impugned judgments and decrees of the learned District Courts be set aside.

17. No other argument is raised on behalf of the appellants. I have heard learned counsel and perused the case file in detail.

18. Before proceeding with the matter, it may be pointed out that notice in the present Appeal was issued by the Predecessor Bench vide order dated 04.03.2022 while also directing that "*status quo regarding the property shall be maintained till the next date of hearing.*" Office report dated 14.10.2022 shows that respondent Nos. 1 to 3, 4(i), 4(iii), 4(iv), 5 and 6 had been served; and respondent No.4(ii) had died.

Subsequently vide order dated 28.02.2024, respondent Nos. 1 to 3, 4(i),

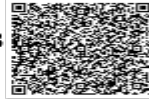


4(iii), 4(iv), 5 and 6 were proceeded against exparte; whereas respondent No.4 (ii) has died and no steps have been taken by appellants to implead LR's of the said respondent.

19. I have given my thoughtful consideration to the submissions advanced on behalf of the appellants; and I find no merit in the same for the reasons recorded hereinafter.

20. Perusal of the record shows that there is no dispute with regard to the fact that Nand Kaur alias Bibi predecessor-in-interest of the parties was owner in possession of the suit property. The said fact has been admitted by the defendants in their written statement; and is also established from the Jamabandi Ex.P1.

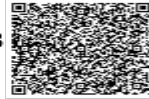
21. However, the Will dated 03.04.2013 Ex.P2 propounded by the defendants has been rejected by the learned District Courts for cogent findings as recorded by both the learned Courts below. Learned First Appellate Court had duly framed an additional issue to the effect that *"Whether the Will executed by the deceased has been proved by its beneficiaries as a Will released by the executant with her free mind and in fit state of mind and this Will has no suspicious circumstances?"* After examining of all the oral and documentary evidence in detail, and while relying upon judgment of Hon'ble Supreme Court in **H. Venkatachala Iyengar vs. B.N.Thimmajamma and others AIR 1959 SC 443**, the learned First Appellate Court has given categorical finding that the defendants had failed to dispel the suspicious circumstances surrounding the Will in question. Learned First Appellate Court has recorded that DW2 Gurnam



Singh has admitted in his cross-examination that Nand Kaur remained ill for 5-6 months prior to her death on 28.05.2013. Learned First Appellate Court also took note of the fact that the Will is alleged to have been executed on 03.04.2013, while soon thereafter Nand Kaur died on 28.5.2013. Admittedly, she was unwell for 5-6 months prior to her death. Moreover, the Will was unregistered, and the same was registered only on 14.08.2013 by the defendants after the death of Nand Kaur. Thus, as the Will was executed just prior to the death of testator, and was not registered during her lifetime, the same is surrounded in suspicious circumstances. Learned First Appellate Court has further noted in para 23 of the judgment dated 18.11.2021, as under: -

*“23. The perusal of the Will itself shows that there are 19 lines. The first six lines are in narrow form whereas from 7th to 13th lines have some more gap than first 6 lines and 13th to last have extra more gap. So the space between the lines of Will found narrower in the beginning and wider towards its end gives complete suspicion and all these adjustment facts have been cleared by PW4 himself. So this is an another suspected circumstance on the execution of the Will as per law laid down in **Kartar Singh and another (supra)**, **Surender Singh (supra)**, **Baltej Singh (supra)** and **Basakha Singh (supra)**. The burden was on the propounder of the Will to dispel all suspicious circumstances pointed out.”*

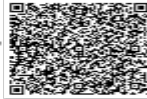
22. The relevant observations of the learned Civil Judge, Junior Division, Dabwali in respect of the Will in the judgment dated 02.05.2018, are as under: -



*“The impugned Will has been placed on record by the plaintiff as Ex. P-2. The perusal of the same shows that the space between the lines of the said Will are narrower in the beginning and wider towards its end. Moreover, the thumb impression of the testator should normally appear at the end of the Will, but in the present case, the thumb impression of the testator Nand Kaur alias Bibi appears on the extreme left comer. Moreover, the space between the lines have been increased in the latter half of the said Will to reach the thumb impression of the testator, and when the said attempt failed, another attempt has been made to reach the thumb impression of the testator by filling the gap with the details of the testator and signatures of the attesting witnesses. Hence, the perusal of the impugned Will clearly suggests that an attempt has been made to write a Will on a blank piece of paper that already had the thumb impression of the testator. It causes a grave suspicion on the impugned Will and the same has gone unexplained by the defendants. In this regard, reference can be made to the judgment passed by the Hon'ble High Court of Punjab and Haryana in the case titled as **Kartar Singh v. Dilber Singh, 2009 (3) RCR (Civil) 253.**”*

23. At this stage, reference may be made to the judgment passed by this Court in **Kartar Singh v. Dilber Singh, (P&H) : Law Finder Doc Id # 192630**; wherein it is held as under: -

“E. Will - Suspicious circumstances - Forged Will - The space between the lines of Will found narrower in the beginning and wider towards its end - Thumb impressions and signatures of the attesting witnesses which should normally appear at the end of the Will were preceded by the stamp of the Deed Writer - Deed writer affixed his stamp between the



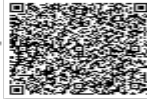
tumb impressions and recitals so as to fill the space left between the recitals - It shows that the Will was written on a blank piece of paper that already bore the thumb impression of the testator.

F. Will - Suspicious circumstances - Burden is on the propounder of a Will to dispel all suspicious circumstances pointed out - If his own evidence is full of contradictions, unexplained inaccuracies and suspicion, the same are sufficient to hold that he failed to prove the execution of the Will.

G. Civil Procedure Code, Section 100 - Concurrent findings of fact - Will - Concurrent findings of Courts below rejecting the Will being surrounded by suspicious circumstances - Do not require interference in second appeal unless the findings suffer from any errors of fact, misreading of evidence or perversity.”

The relevant paras of the said judgment are as under: -

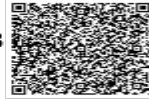
“15. Apart from the circumstances referred to above, the first appellate court proceeded to make a visual appraisal of the Will Ex.D2 and thereafter held that the space between the lines was narrower in the beginning of the Will and wider towards its end. The thumb impressions and signatures of the attesting witnesses which should normally appear at the end of the Will were preceded by the stamp of the Deed Writer. It was, therefore, concluded that the deed writer affixed his stamp between the thumb impressions and the recitals so as to fill the space left between the recitals that had been written on a blank piece of paper, that already bore the thumb impression of the testator.



16. A perusal of the impugned judgments and the evidence adduced to prove the execution of the will and the circumstances referred to above, clearly establish that the evidence adduced by the appellants is riddled with contradictions, unexplained inaccuracies and suspicious circumstances that are cumulatively sufficient to hold that not only have the appellants failed to prove the execution of the Will but have also failed to dispel the suspicious circumstances that shroud its execution. The above facts, duly considered and relied upon by the learned courts below to discard the will in my considered opinion leave no manner of doubt that the Will Ex.D2 is a forged and fabricated document, created by the appellants to deprive the respondents of their rightful inheritance to the estate of Milkhi @ Prem Singh. The concurrent findings returned by the courts below rejecting the Will Ex D-2, therefore, do not require interference. The impugned judgments do not suffer from any errors of fact, misreading of evidence, perversity in the process of reasoning or in the conclusions so recorded. As a result, the findings of fact recorded by the courts below discarding the Will Ex.D2 as a forged and fictitious document, are affirmed."

24. Besides the above, Will in question was also rejected on account of the fact that testator has given no reason for excluding her 2 sons including the plaintiff especially in view of the fact that there was nothing on record to show that there was any enmity between the testator and the plaintiff.

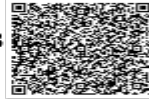
25. Learned District Courts have also taken note of the fact that PW2 Saravjit Kaur attesting witness of the Will, has stated in her cross-



examination that defendants had come to her and taken her signatures and thumb impression on 2-3 blank papers on false impression that the same is a family settlement; and, therefore, she had put her thumb impressions on 2-3 blank papers. PW2 Saravjit Kaur has stated that no Will was written in her presence. PW3 Nikka Singh has also stated that his thumb impression was taken on 3-4 places by misguiding him. PW3 has further stated that Nand Kaur did not write the Will in his presence nor he ever saw her.

26. Most importantly, PW4 Jamna Dass, Deed Writer of the Will has admitted in his cross-examination that the gap between last 5-6 lines in the Will is due to attempt made to reach the thumb impression of the testator which was already there on the paper. PW4 has further admitted that he is not a regular Scribe as he had never written a Will before the impugned Will. PW4 has further admitted that he had not written original Will which was in Punjabi; and he had only translated the original Punjabi Will from Punjabi to Hindi. Relevant extract of the cross-examination of PW4 is as under: -

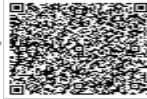
“I am not the summoned witness and I have been called for making the statement by plaintiff. I am 10th pass. I have never written any will. I have never been given testimony in any case and himself stated that in the same case I had given the testimony of DRO Sirsa in this case. I have never given any statement in case of Killianwali. I have not given any affidavit in Killianwali case. Himself stated that my signatures were taken on one paper and nothing was written on the said paper. I was told that I have to make statement on will and therefore sign it and I did it. My signatures had been taken on the blank paper in Killianwali. I had not gone to the Tehsildar. I am surety for the plaintiff and his other three brothers. Their mother's name was Bibi. I don't remember about the death of their



mother's I have big village. I don't remember with whom she used to live. When she died, her age will be around 90 years, was old aged, it is not the sure statement. She did not used to walk and used to remain in the house. I don't remember whether she used to see or hear and himself stated that I did not use to visit her. I don't know about the land she had. I used to visit the house of Sukdev Singh and himself stated that I am a shopkeeper and I did not write any will It is correct that Ex-P-2 is written by me which I have translated from Punjabi to Hindi and it bears my signatures. At the time of translation of will, I was alone and there were 2-3 persons from outside whom I don't know. One Makhan Lambardar was there. It is incorrect that at that time Saravjit and Nikka were also present there. I was told by Nambardar that the thumb impression, which is on below right side of Ex-P-1 is of Nand Kaur. He stated that this disputed will was prepared in the house of Nambardar. I don't remember the time when it was written. I was told about writing of will but I was not told to read the will and neither did I read it. Himself stated that I had made a translation to Hindi. I don't know about the land and I had written it by looking at the Punjabi version.”

27. Thus, from the above, it is clear that PW4 is not a regular Scribe but runs a kiriyana shop. Moreover, he had not written the original Will. Rather he has admitted in his cross-examination that the original Will was in Punjabi, and he had only translated the same into Hindi. PW4 has further admitted in his Affidavit PW4/A that Nand Kaur did not put her thumb impression in his presence, nor he wrote down on the asking of Nand Kaur nor he saw Nand Kaur while writing down in Punjabi. It was for these reasons that learned District Courts have correctly held that the Will was surrounded in suspicious circumstances.

28. The contention of the appellants that attesting witness and other witness have testified against the appellants on account of the fact



that FIR No. 346 dated 08.12.2014 under sections 420, 467, 468, 471, 506 & 120-B of Indian Penal Code, 1860 was registered at Police Station, Kalan Wali, District Sirsa against them, also does not stand scrutiny. It is to be noted that in the said FIR, Makhan Singh and another were convicted by the learned Judicial Magistrate, 1st Class, Dabwali vide judgment of conviction dated 07.08.2018 and order of sentence dated 09.08.2018. Against the same, CRA-317-2018 was filed. However, during the pendency of the said CRA-317-2018 before the learned Additional Sessions Judge, Sirsa, Makhan Singh and another had filed **CRM-M-20611-2025** titled as **‘Makhan Singh and another vs. State of Haryana and another’** before this Court seeking quashing of the above said FIR and all proceedings emanating there from; including the judgment of conviction dated 7.8.2018; on the basis of compromise dated 04.04.2025. The said CRM-M-20611-2025 was allowed and the FIR was quashed vide order dated 14.05.2025 and judgment of conviction dated 07.08.2018 was also quashed qua the petitioners therein. Consequentially, CRA-317-2018 is disposed of by the Additional Sessions Judge, vide order dated 04.06.2025 as having been rendered infructuous. Thus, contention of the appellants that attesting witnesses had given false testimony in favour of the plaintiff under fear of the FIR, stands falsified.

29. The appellants have relied heavily on the findings given by the Revenue Court. However, it is trite law that findings given by the Revenue Court are not binding upon the Civil Court. Even otherwise, it has come on record that the documents Ex.D4 to Ex.D8, which were executed

before the revenue authorities, relied upon by the defendants were not put to the plaintiff witnesses i.e. PW2, PW3 and PW4 during their cross-examination. Thus, the documents Ex.D4 to Ex.D8 have no evidentiary value.

30. Learned counsel for the appellants is unable to controvert or dispute the above said facts and findings, or the legal position.

31. In view of the above, no ground is made out to interfere in the concurrent judgments and decrees of the learned District Courts. The present Regular Second Appeal is hereby **dismissed**.

32. Pending applications, if any, stand disposed of.

09.02.2026

Divyanshi

Whether speaking/reasoned:

Whether reportable:

Yes/No

Yes/No

(NIDHI GUPTA)

JUDGE