

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(i) RSA-1241-1993 (O&M)

Hamir Kaur
...Appellant

VERSUS

Joginder Singh and others
...Respondents

(ii) RSA-1242-1993 (O&M)

Hamir Kaur
...Appellant

VERSUS

Joginder Singh and others
...Respondents

Reserved on: March 30, 2026
Date of Pronouncement: May 11, 2026
Uploaded on: May 11, 2026

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Akshay Bhan, Senior Advocate with
Mr.Santosh Sharma, Mr.Rohit Nagpal and
Mr.Varun Sandhu, Advocates
for the appellant.

Mr.Sanjay Kaushal, Senior Advocate with
Ms.Ojaswi Gagneja and Mr.Ankit Rana, Advocates
for respondent No.1

Mr.Reshabh Bajaj, Advocate
for respondents No.2 to 5.

ARCHANA PURI, J.

Hamir Kaur-appellant has filed two Regular Second Appeals to

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assail the judgments dated 24.11.1992 passed by learned First Appellate Court, whereby, two appeals filed by Joginder Singh-respondent No.1 were allowed and the consolidated judgment passed in the suit filed by Joginder Singh (15T of 2.2.1984), which was dismissed and the suit filed by Hamir Kaur (169T/16.4.86/18.6.85), which was decreed by the trial Court, was reversed.

For the convenience of discussion, the parties are referred to as making appearance in the **suit No.15T of 2.2.1984**, filed by Joginder Singh.

The facts germane to be noticed, as culled out from the record, are herein given:-

That, Harnam Singh of village Dhakraba was owner of the suit property. He had two daughters, namely Hamir Kaur and Jagir Kaur (who had since died). Jasminder Singh, Inder Singh, Gurtej Singh and Ms.Bitto are the minor sons and daughter of Jagir Kaur. In the suit filed by Joginder Singh, they were impleaded as defendants No.1 to 4. Joginder Singh claimed himself to be son of deceased Harnam Singh and thus, filed the suit for declaration thereby, claiming himself to be owner in possession of the agricultural land measuring 21 Kanal 6 Marla, as detailed in the plaint of **suit No.15T of 2.2.1984** and also asserted about mutation to be sanctioned in his favour. Consequential relief of permanent injunction was also sought.

The case set up by plaintiff Joginder Singh is that Harnam Singh had executed registered Will dated 02.12.1980, giving suit property exclusively to him. He is in cultivating possession as owner, since death of Harnam Singh and even prior to his death. However, the defendants contested the mutation, on the basis of the Will. The Asstt. Collector Grade-I, Patiala, vide order dated 23.12.1983 had ordered the sanction of mutation, on the

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basis of the natural succession. The order dated 23.12.1983 was asserted to be illegal, null and void and not binding upon the plaintiff.

However, the version of Hamir Kaur-defendant No.5, admittedly daughter of Harnam Singh is that no Will was executed by Harnam Singh in favour of Joginder Singh nor he had any reason to do so. Joginder Singh had no concern with the land in dispute. She filed a suit for possession, being owner of the land in dispute. The defendant contested the mutation. The Will in favour of the defendant is correct and the Will set up by the plaintiff, has been rightly ignored. She denied plaintiff-Joginder Singh to be son of Harnam Singh, her deceased father and alleged that in fact, Joginder Singh is son of Chand Singh of village Laloda and birth entry regarding the plaintiff, has been correctly entered in the register.

Even, defendants No.1 to 4, who are children of deceased Jagir Kaur, had taken the stand and denied about execution of Will, as claimed by the plaintiff and the same was rightly ignored, being result of fraud and undue influence. Defendants No.1 to 4 allege that plaintiff and his mother, to have been wrongly shown as heirs of Harnam Singh, in the pedigree table and the appeal preferred by them and defendant No.5, has been accepted and mutation attested in their favour.

Hamir Kaur had filed a suit for possession, thereby, impleading Joginder Singh as defendant No.1 and proforma defendants No.2 to 5, who are sons and daughters of Jagir Kaur, pre-deceased daughter of Harnam Singh. In this suit, plaintiff Hamir Kaur had sought possession to the extent of 1/2 share along with defendants No.2 to 5 i.e. 1/2 share alleged by her that she is daughter of Harnam Singh. In fact, it was asserted therein, that Joginder Singh was never born from the loins of her deceased father Harnam

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Singh and Smt.Premi, as Premi had no link nor performed '*kareva*' marriage with Harnam Singh. Joginder Singh is son of Chand Singh. Premi was earlier married to Sham Bahadur, prior to her marriage with Chand Singh. Joginder Singh failed to prove that he is son of Harnam Singh, as he had filed a suit for declaration on 11.12.1982 and that suit was dismissed as withdrawn, after filing of the written statement. Defendants No.2 to 5 are also entitled to equal distribution of property of Harnam Singh deceased, who executed a registered Will in favour of the plaintiff and defendants No.2 to 5 on 27.02.1978, which was written on 30.01.1978 and was duly attested by the witnesses.

Proforma defendants No.2 to 5, conceded the claim, while asserting that they along with plaintiff-Hamir Kaur, are the only legal heirs and defendant No.1-Joginder Singh has no right or interest in the property.

However, the suit filed by Hamir Kaur was contested by Joginder Singh, thereby, claiming revocation of the Will in favour of the natural heirs, to have been effected and Will executed in his favour to be valid.

Replication was filed. Issues were framed separately, in both the suits. Thereafter, both the suits were consolidated and thereupon, parties adduced the evidence.

On appraisal of the evidence, learned trial Court concluded about Joginder Singh to have failed to remove the doubt created by the suspicious circumstances, spelt therein and that the Will dated 02.12.1980 was held to be the result of some fraud and undue influence and that the validity of the same, is not proved by the plaintiff. The version of Hamir Kaur was believed. Ultimately, the suit of Joginder Singh was dismissed

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and the suit of Hamir Kaur was decreed, thereby, holding that Hamir Kaur is entitled to possession to the extent of 1/2 share and defendants No.2 to 5 are equally entitled to joint possession of remaining 1/2 share of the suit land, previously held by their father and maternal grand-father Harnam Singh, respectively.

Being aggrieved, Joginder Singh filed two appeals. The First Appellate Court concluded about the Will set up by Joginder Singh to have been duly proved and there to be revocation of the earlier Will by Harnam Singh and had allowed the appeals and reversed the trial Court judgment of both the suits and thereby, deciding the appeals in favour of Joginder Singh, while decreeing the suit filed by Joginder Singh and dismissing the suit of Hamir Kaur.

Not satisfied with the reversal of the judgment, Hamir Kaur filed two RSAs.

Counsel for the parties heard.

At the very outset, it is submitted by learned counsel for the appellant-Hamir Kaur that the First Appellate Court has not appraised the evidence, in correct perspective, more particularly, when the relationship of Joginder Singh with Harnam Singh, as such, does not stand established. Precisely, on this account, the evidence, vis-a-vis, execution of the Will, also has been overlooked and suspicious circumstances coming forth, have not been dispelled. Thus, there is misreading/misinterpretation of the evidence.

On the other hand, learned counsel for respondent-Joginder Singh submits that the Will in question, has been duly proved by way of examination of PW-2 Chand Singh, attesting witness to the Will and revocation of the earlier will and also the draftsman PW-5 Krishan Lal.

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Once the execution of the Will is established, the question of relationship (even if assumed to be not established) pales into insignificance, as the Will can also be executed, in favour of the stranger, as the very purpose of executing a Will, is to deviate the natural course of succession.

Thus, counsel submitted that it cannot be concluded that there was any misrepresentation or misreading of the evidence, brought on record.

The suit land, admittedly was property of Harnam Singh, since deceased. Also, it is not disputed that Harnam Singh had two daughters, namely, Hamir Kaur and Jagir Kaur. Jagir Kaur had since died and Jasminder Singh, Gurtej Singh, Inder Singh and Bitto, who were impleaded as defendants No.1 to 4, through their father Balwant, are the children of Jagir Kaur and thus, grand-children of Harnam Singh.

The Will set up by Joginder Singh is Ex.P1 and revocation of earlier Will is Ex.P2. These are two documents, banked upon by Joginder Singh to assert his right. Suffice to consider the same, which evidently show about the earlier Will Mark- 'A', to have been executed by Harnam Singh on 27.02.1978, in favour of natural heirs. No need to go in further, vis-a-vis, earlier Will executed by Harnam Singh.

The controversy, as such, revolves upon the question of validity of the Will dated 02.12.1980, allegedly executed by Harnam Singh, in favour of Joginder Singh. As observed aforesaid, so far as Harnam Singh, having two daughters is concerned, the said relationship is not disputed. However, the dispute is qua the relationship, as claimed by Joginder Singh with Harnam Singh. He claimed to have been born to Smt.Premi, from the loins of Harnam Singh. Asserting this relationship, Joginder Singh came up with the Will Ex.P1, to have been executed by Harnam Singh, in his favour.

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Thus, it is Joginder Singh, who has set up the questioned Will. Hamir Kaur took the stand about the said Will to be fabricated with a view to defraud.

The onus to prove, due execution and attestation of the Will, always vests upon the propounder of the Will and it is his bounden duty, to dispel various suspicious circumstances surrounding the Will. The initial onus, always lies on the propounder, but the same can be taken to have been primarily discharged, on the proof of the essential facts, which go into the making of a Will. However, the case in which the execution of the Will is surrounded by suspicious circumstances, the same stands on a different footing. The presence of suspicious circumstances, makes the onus heavier on the propounder and, therefore, in the cases where, the circumstances, attendant upon the execution of the document, gives rise to suspicion, the propounder must remove all legitimate suspicions, before the document can be accepted, as the last Will of the testator. Unlike other documents, the Will speaks from the death of testator and at the time of adjudicating the controversy, the testator has already departed the world. An element of solemnity is attached to the controversy, with regard to proof of the Will. The propounder has to remove the suspicious circumstances, surrounding the Will and satisfy the conscience of the Court that the Will set up by him is genuine and valid document, depicting the last wish of the deceased.

Even though, the rival party may allege the Will to be fabricated or outcome of the fraud, undue influence, coercion etc. etc., vis-a-vis, the execution of the Will, but the same pleas have to be proved by the rival party. However, even if, in the absence of such plea, the circumstances surrounding the execution of the Will, may at times, give rise to the doubt or

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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 part of initial onus of the propounder to remove all reasonable doubts in the matter.

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’. However, the suspicious features, ought to be ‘real, germane and valid’ and not merely the ‘fantasy of the doubting mind.’

Anyhow, any particular feature or a set of features, qualifying as ‘suspicious’, would depend upon the facts and circumstances of each case. Thus, the very factum of the execution of the Will and the contents of the same, to be considered, has to be appraised in each case, in its own factual background. However, the test of judicial conscience comes into operation, when the 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 and more particularly, under what circumstances, it was being executed.

Where, on appraisal of the evidence, the execution of the 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. If the suspicious circumstances are dispelled, only then, the Court shall consider the due execution of the Will and proceed further to conclude about the validity of the Will, while adjudicating the rights of the rival

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parties.

In the case in hand, it be noted that Joginder Singh had himself stepped into witness box as PW-4 and stated about the Will having been executed by Harnam Singh, in his favour. Further, he also examined Chand Singh, one of the attesting witness as PW-2 and also Krishan Lal, document writer as PW-5. The testimonies of aforesaid three material witnesses, have been meticulously appraised by the trial Court and held that the suspicious circumstances, spelt out, were not legitimately explained for its reception by the normal human expectation.

Even if, for the sake of arguments, the Will, in the light of the attesting witness being examined, is taken to be executed, then also, there is suspicion raised qua the manner of execution of the Will. Of course, as submitted by counsel for the respondent, the purpose of execution of the Will is to deviate the course of natural succession and that, it can be executed, even in favour of stranger, but however, Joginder Singh, is banking upon the Will, while asserting himself to be son of Harnam Singh. Such specific stand of relationship taken by him, for the purposes of Will, having executed in his favour, then proof of existence of relationship, in the minimum of 'gathering of probability', in the normal human mind, has to be there. It is in this context, the suspicious circumstances, gain momentum.

There are several circumstances, which belie the version of Joginder Singh. So far as, the version of Joginder Singh about having born to Premi from the loins of Harnam Singh is concerned, the most weighing piece of evidence, which could have tilted the scales in favour of Joginder Singh, was Smt.Premi, mother of Joginder Singh having stepped into the witness box. However, she has not been examined.

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It has come in the testimony of Joginder Singh himself, when he stepped into witness box as PW-4 as well as in the testimony of PW-3 Dalip Singh and PW-6 Chand Singh that Premi is alive, but however, no reason, as such, is assigned for not having examined her. PW-6 Chand Singh, in the opening line of cross-examination had stated that his wife Sassi is alive and she is not well. However, voluntarily he stated that she is not admitted in any hospital and his wife is aged about 50 years. Why then, she has not been examined, no satisfactory reason is coming forth. Rightly so, the trial Court had considered this fact, which has been given amiss by the First Appellate Court.

Apart from Joginder Singh, Chand Singh is the second most important witness, with whom, Premi got married and had gone to village Laloda, Chand Singh had categorically stated that it was about 24-25 years back, he brought Sassi from village Dhakraba from the house of Harnam Singh and that Sassi is also known by other name Premi. He stated that when he took Sassi, she was pregnant of 4-5 months from Harnam Singh and he allowed the pregnancy to mature and then Joginder Singh was born from the loins of Harnam Singh from Smt.Premi, at his residence at village Laloda. He also stated that he brought him up, as his own son.

While facing cross-examination, he stated that Joginder Singh might be 20-25 years old. Further, he also stated that his wife is residing with him for the last 35-40 years. However, Joginder Singh, while in the witness box had stated about his age to be 35 years and also stated that his mother was 6-7 months in pregnancy, at the relevant time.

Thus, as observed by the trial Court, there are contradiction coming forth, with regard to the version set up of the manner of Joginder Singh

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having born to Smt.Premi. It has been rightly considered that the age, as specified by Chand Singh and Joginder Singh himself, the version is improbable and inconsistent to the case of the plaintiff, more particularly, when Premi, as such, who was the best person to explain away and state the correct factual position, has not stepped into witness box.

Very close to the aforesaid, also it is essential to note that it has come in the testimony of Joginder Singh himself that he was born at village Laloda to Smt.Premi, in the house of Chand Singh and that his name is entered in the ration card as son of Chand Singh. Further, he stated that he had been studying in Government Primary School, Laloda, as son of Chand Singh. Also, there is discrepancy coming forth, in the testimony of the material witnesses, with regard to time, since when Joginder Singh had returned to Harnam Singh. Joginder Singh himself stated that he is residing at village Dhakraba from the last about 9 years and his statement was recorded on 03.03.1987. PW-3 Dalip Singh stated that for the last 8-9 years, Joginder Singh is residing in village Dhakraba as son of Harnam Singh and his statement was also recorded on 03.03.1987.

Another material witness Chand Singh, in his examination-in-chief only had stated that about 10 years back, plaintiff had been taken by Harnam Singh, to his village. His statement was recorded on 02.04.1987. Though, there is contradiction coming forth, but even then, if the period of 9-10 years, as stated by the witnesses is taken aback, then it was somewhere in 1977, Joginder Singh had returned to Harnam Singh. The earlier Will was executed on 27.02.1978. Meaning thereby, Joginder Singh allegedly was with Harnam Singh at that time.

However, in the Will earlier executed in favour of Hamir Kaur and

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children of Jagir Kaur, other daughter of deceased Harnam Singh, which allegedly was revoked vide Ex.P2, there is no mention made about Joginder Singh to be son of the testator. In fact, there is mention made of Harnam Singh having only two daughters, in the said Will. This is also a circumstance, which raises doubt about the Will in question.

Furthermore, it be noted that in the questioned Will, Harnam Singh allegedly had stated that he had already spent much more than his means, on the marriages of Jagir Kaur and Hamir Kaur and that Jagir Kaur had already died. Therein, he never states about execution of the previous Will or revoking of the same. The reasons assigned therein, do not speak about the previous Will having executed, which also is a doubtful circumstance.

The attesting witness as well as any other person examined, vis-a-vis, the execution of the Will, needs to be trustworthy and truthful. PW-2 Chota Singh, has though been examined, but however, he had nowhere stated about knowing the contents of the Will. PW-5 Krishan Lal, document writer, also in his cross-examination stated that original Will was not brought by Joginder Singh and Chota Singh and they had brought the number of its registration and in the later portion of cross-examination, he stated that no Will was executed in his presence.

Apart form them, much emphasis has also been laid upon the testimony of DW-3 Balwant Singh, who is husband of Jagir Kaur, daughter of Harnam Singh, who was examined, to substantiate the version of plaintiff-Joginder Singh. However, it is necessary to note that the written statement was filed by the children of deceased Jagir Kaur, through their father, wherein, specific stand was taken that Will has been rightly ignored by the

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revenue authorities, being result of fraud, undue influence and pressure upon the deceased and the mutation has been sanctioned in their favour. Therein, it was also asserted that the answering defendants are the heirs of Harnam Singh.

However, the said witness, while facing cross-examination had supported the version of Joginder Singh, wherein, he had stated about Joginder Singh to have been born from the loins of Harnam Singh to Premi and Harnam Singh arranged the marriage of Joginder Singh. He also further stated that he was present, at the time, when the earlier Will was revoked and on the same day, fresh Will was executed in favour of Joginder Singh. However, while facing cross-examination, at the behest of Hamir Kaur, he had stated that the written statement was correctly got prepared and therein, he had stated about the Will, in favour of Joginder Singh, to be result of fraud. Not only this, he further stated that he had contested the mutation proceedings and that there were four contesting Wills and in these proceedings, he had asserted the Will in their favour to be correct and other Wills to be false. He also stated that he had been appearing in the appeal of the mutation.

Considering the written statement, as admitted by this witness to have been correctly prepared and his deposing against the pleaded case in the written statement, learned trial Court had correctly concluded about his testimony to be not worth safe reliance.

However, learned First Appellate Court had simply on the score of attesting witness and draftsman having been examined, concluded about the Will to have been duly executed and further overlooked the suspicious circumstances, more particularly, relating to the relationship of Joginder

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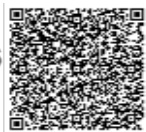
Singh with Harnam Singh.

During the pendency of the appeal, there was allegedly compromise effected qua Jagir Kaur to the extent of half share, in the property of Harnam Singh and the statements were recorded. However, it has been observed and is also evident from the trial Court record, about no formal order having made on this compromise. The compromise and the statements were recorded on 09.06.1988.

May it be so. However, as observed aforesaid, DW-3 Balwant Singh, through whom, being guardian, the children of Jagir Kaur, were impleaded as defendants No.1 to 4, did not watch the interest of the minors. However, the compromise, though was recorded, but this *ipso facto*, do not establish the claim of Joginder Singh. It stands amply established about Balwant Singh to have taken somersault, at the time of appearing as a witness and this reflects about the vested interest, on the part of Balwant Singh, which further stood concretized, by virtue of compromise allegedly effected. If the Will in favour of Joginder Singh was executed in the presence of Balwant Singh, as deposed by him and at that time, as stated in cross-examination, no objection, as such, was raised to the execution of the said Will, in favour of Joginder Singh, then question arises, as to why there was need for effecting compromise, during the pendency of the appeals.

This in itself reflects about some malafide intention, on the part of Balwant Singh to usurp the share of his children, who were minors at the relevant time and precisely on this account, the compromise, as such, has to be discarded. This aspect, as such, has also not been considered by the First Appellate Court.

In the light of the aforesaid discussion, the findings recorded by



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learned First Appellate Court, are erroneous, based on misreading/misinterpretation of the evidence, brought on record. Such being the position, when the evidence is misread and misinterpreted and conclusions are drawn on the assumptions not supported by evidence, the High Court needs to intervene in the Regular Second Appeal.

Considering the evidence aforesaid and the manner of appraisal of the same, as such, both the appeals are hereby accepted and the impugned judgment passed by the First Appellate Court is hereby reversed, thereby, restoring the judgment passed by the trial Court, with regard to dismissal of the suit (15T of 2.2.1984) filed by Joginder Singh and decretal of the suit (169T/16.4.86/18.6.85) filed by Hamir Kaur.

May 11, 2026	(ARCHANA PURI)
Vgulati	JUDGE
Whether speaking/reasoned	Yes
Whether reportable	Yes/No