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

RSA-304-1993 (O&M)

Reserved on :-22.12.2025

Date of Pronouncement:-28.01.2026

Uploaded on:- 28.1.2026

Prem Kaur (Deceased) through her LRs

... Appellants

Versus

Jasmer Singh and another

... Respondents

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CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :-

Mr. Harbhajan Singh, Advocate
for the appellants.

Mr. L. M. Gulati, Advocate
for respondents.

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VIRINDER AGGARWAL, J.

1. At the threshold, this appeal commands the attention of this Court, the appellant–plaintiff having instituted the present Regular Second Appeal (for short ‘RSA’) impugning the judgment and decree dated 30.09.1992 of the learned Additional District Judge, Patiala, which confirmed the findings of the learned trial Court. The trial Court, vide its judgment and decree dated 11.08.1990, passed by the learned Sub-Judge Ist Class, Nabha, had dismissed the suit filed by the appellant–plaintiff seeking



declaratory relief. The appellant challenges the concurrent findings of the Courts below as being legally unsustainable and factually erroneous.

2. As set forth in the pleadings, the appellant contends that she approached the learned Trial Court seeking a declaratory decree, founded upon the following contentions:-

“The plaintiff instituted the present suit seeking a declaration that she is the rightful owner of a one-half share in the land comprised in Khewat No. 93/84, Khatoni No. 132, B//7/2(6-12), 8/2(4-17), 13-8, 14(7-0), 23, 24, 23//3/2(1-9), 4(7-7), 172(0-18), 211(1-0), 212(1-9), Gair Mumkin Abadi, measuring 88 Kanals and 13 Marlas, situated in village Roshanpur, Tehsil and District Patiala, and for a decree for joint possession thereof. The plaintiff further contends that the decree dated 27.05.1988 obtained by the defendants against Sunder Singh is illegal, void, and the outcome of collusion, and as such is not binding upon her. She also contends that mutation No. 1517, sanctioned on the basis of the said decree, is likewise illegal and ineffective, and does not divest her of her title, interest, or right to possession in the property.

Plaintiff-Prem Kaur further alleges that her father, Sunder Singh, died on 13.09.1988 leaving two daughters, Prem Kaur and Har Kaur (mother of the defendants), and no male issue. Sunder Singh had executed a registered will bequeathing all his properties to his daughters, entitling the plaintiff to a one-half share. The defendants had earlier obtained a collusive decree dated 27.05.1988 in Civil Suit No. 181 through



misrepresentation, which is alleged to be illegal, void, and without jurisdiction, and mutation effected thereon is also invalid. The plaintiff claims her one-half share and joint possession of the property, seeking the decree's nullification. Hence the suit."

3. Following due service of summons, the respondents appeared through their counsel and filed a written statement opposing the claim, wherein they articulated the following contentions comprehensively:-

"The defendants contended in the written statement that the decree relied upon by the plaintiff was valid and legally binding. They further pleaded that Sunder Singh had executed a registered will dated 23.09.1987 in their favour, thereby vesting them with rightful ownership. The defendants also asserted that they were in lawful possession of the property in dispute and that the plaintiff had no cause of action to claim any share or relief in respect of the suit property."

4. After a careful and comprehensive examination of the pleadings and the submissions advanced by the parties, Court deemed it appropriate to crystallize the matters in controversy and, for the purpose of a structured and coherent adjudication, framed the following issues for determination:-

1. *Whether the decree dated 27.5.1988 is the result of collusion? OPP.*
2. *Whether the decree dated 27.5.1988 is the result of misrepresentation ? OPP.*
3. *Whether the decree dated 27.5.1988 is without jurisdiction? OPP.*
4. *Whether the mutation No. 1517 dated. 23.9.1988 is illegal? OPP.*



5. *Whether the deceased Sunder Singh had executed a valid will in favour of the plaintiff and Smt. Har Kaur mother of defendants? OPP.*
6. *Whether the deceased Sunder Singh had executed a valid will dated 23.9.1987 in favour of the defendants? OPP*
7. *Whether the plaintiff is entitled to joint possession of the land in dispute? OPP.*
8. *Relief.*

5. In the wake of the framing of issues and after allowing both parties ample opportunity to adduce evidence, the learned Trial Court dismissed the suit of the appellant–plaintiff. The appeal filed by the appellant–plaintiff was also dismissed by the learned First Appellate Court. Challenging the concurrent findings, the appellant has instituted the present RSA before this Court.

6. This appeal calls for the considered attention of this Court, the appellant having filed the present appeal impugning the concurrent findings and decrees of the learned Courts below. The appeal, upon due scrutiny, was admitted for regular hearing with notice served on the respondents. Learned counsel appeared for the respondents, and the matter was thereafter heard in its entirety, in light of the detailed submissions advanced by the parties.

6.1. In the interest of rendering a well-reasoned and comprehensive adjudication of the questions arising in this appeal, the entire record of the Courts below was requisitioned and duly made available to this Court for detailed examination and analysis.

7. Having afforded the parties ample opportunity to address the Court and after deliberate, meticulous scrutiny of the pleadings, evidence, and findings of the lower Courts, I have subjected the record to exhaustive



examination to determine ‘*whether the impugned judgments and decrees are tainted by jurisdictional infirmity, manifest perversity, or misappreciation of evidence*’?

8. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are to be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 CPC. Reference in this regard can be made to the judgment of the Supreme Court in the case of ***Pankajakshi (Dead) through LRs and others V/s Chandrika and others, (2016)6 SCC 157***, followed by the judgments in the case of ***Kirodi (since deceased) through his LR V/s Ram Parkash and others, (2019) 11 SCC 317 and Satender and others V/s Saroj and others, 2022(12) Scale 92***. Relying upon the law laid down in the aforesaid judgments, no question of law is required to be framed.

9. Learned counsel for the appellants has advanced the submission that the learned First Appellate Court failed to adequately consider that the decree rendered in favour of the respondents–defendant is inherently unsustainable, being allegedly procured through misrepresentation, and that Sunder Singh did not execute the same with free volition. It is further contended that the Will in question (Ex.D1) is shrouded in suspicious circumstances, and that mere fact of the appellant’s being happily married and having received dowry at the time of marriage cannot constitute a legitimate basis for disinheritance. Learned counsel submits that the surrounding suspicious circumstances have not been dispelled, and, therefore, the learned Court erred in placing reliance upon Ex.D1. It is urged that the succession of Sunder Singh ought to have been sanctioned in



accordance with the principles of natural inheritance, disregarding both the decree and the Will Ex.D1.

10. Learned counsel for the respondents has submitted, with utmost respect, that the findings recorded by the learned Courts below are free from any illegality, infirmity, or misappreciation of law and fact. It is contended that the learned First Appellate Court has correctly held that the appellants—plaintiff cannot assail the judgment and decree purportedly suffered by Sunder Singh, particularly when Sunder Singh himself had not, during his lifetime, challenged the decree, and it was conclusively found that the decree was not the result of any misrepresentation.

10.1. Further, it is submitted that the Will in question (Ex.D1) stands duly proved on record, and no suspicious circumstances encumber its validity. The appellants—plaintiff have been explicitly disinherited in the Will, with the reasons for such disposition clearly reflecting the testamentary intent of the testator. It is well-established that the sufficiency or adequacy of the testator's reasons is not subject to judicial scrutiny, as a Will embodies the testamentary mind and the rationale for disposition of property. Being a registered document, Ex.D1 attracts the presumption of due execution. It is also an admitted position that Sunder Singh resided with the respondents along with their mother, Har Kaur, daughter of Sunder Singh, and the property was naturally disposed of in accordance with his intent.

10.2. In these circumstances, the Will propounded by the appellants—plaintiff remains unproved, and the learned First Appellate Court has rightly upheld Ex.D1. Consequently, the appeal deserves to be dismissed, and the judgment and decree of the learned First Appellate Court merit full affirmation.



11. It is incontrovertible that the Will propounded by the appellants—plaintiff has not been proved in accordance with the requirements of law, and consequently, the appellants’ claim predicated upon an alleged Will executed by Sunder Singh in favour of both his daughters has been rightly rejected.

11.1. With regard to the decree purportedly suffered by Sunder Singh on 27.05.1988, the learned First Appellate Court has correctly and categorically recorded that, in consonance with the authoritative pronouncement of this Court in ***Harpal and Others v. Ram Piara and Others***, 1981 PLJ 492, “*the Court in a subsequent suit cannot go behind a decree in an earlier suit to examine whether it was passed on right or wrong facts; the decree in the subsequent suit can be assailed only on the limited grounds of fraud, misrepresentation, coercion, or similar vitiating factors.*” The finding of the learned First Appellate Court, therefore, stands legally sound, and no interference is warranted.

11.2. It is manifest that the learned First Appellate Court has, with complete propriety, held that the decree in question can only be impugned on the grounds of fraud, misrepresentation, or coercion. Sunder Singh survived for several months following the rendition of the decree and did not, at any point during his lifetime, challenge the same on any such grounds. Moreover, there is no credible or admissible evidence on record to establish that the decree suffered by Sunder Singh was procured by fraud or misrepresentation. In consequence, the decree stands as a valid and binding judicial determination and has been rightly upheld by the learned First Appellate Court.

11.3. With respect to the Will (Ex.D1), it has been assailed on the contention that it is tainted with suspicious circumstances, arising primarily



from the fact that one of the testator's daughters was excluded from inheritance. While DW-Piara Singh, an attesting witness, is admittedly an interested party, the other attesting witness and the scribe were not examined. The learned First Appellate Court has meticulously considered the genuineness and validity of the Will, and its findings in this regard are articulated in paragraphs 11 and 12 of the impugned judgment, which are reproduced hereunder for ready reference:-

11. *“Will Ex.D1 dated 23.9.87 is registered will executed by Sunder Singh in favour of the defendants/respondents who are daughter's sons. It is mentioned therein that there is another daughter Prem Kaur. According to Sunder Singh executant, he had already given much more than the share of Prem Kaur to her and therefore, she had been excluded from inheritance. It had been admitted that Sunder Singh was residing with Har Kaur and sons of Har Kaur, the Present defendants, although Prem Kaur was on visiting terms. It is further admitted fact that Sunder Singh had no son. It is quite natural that under these circumstances, Sunder Singh will be inclined to execute will in favour of Har Kaur or her sons. Piara Singh attesting witness of this will had appeared as DW3 and had supported the execution of will by Sunder Singh in favour of defendants/respondents.*
12. *Counsel for the appellant had argued that this will is surrounded by suspicious circumstances since the other attesting witness was an advocate of Patiala and he was not produced,. It was also argued that as per Piara Singh DW3 they had first gone to village Dudhan Sadhan but since. Tehsildar was not there, therefore, they went to Patiala. He pointed out that if Sunder Singh and Piara Singh had gone to Dudhan Sadhan, then they would have taken second attesting witness there and advocate who did not know the parties*



would not be a second witness of the will which was allegedly executed at Patiala. Counsel for the appellant relied upon an authority reported in 1990 (1) **The Punjab Law Reporter 639, Ram Piari Vs. Bhagwant (S. C. Judgement)** AND ARGUED THAT THE PRESENT CASE WAS QUITE SIMILAR TO THE CASE BEFORE THE Supreme Court and the will in this case is full of suspicious circumstances, I find that the facts of the case before the Hon'ble Supreme Court are quite different where the excutant died just after one day. Here the will was executed one year before and is a registered document. It is in favour of daughters' sons with whom the testator was admittedly leaing. The testator had no son. This will Ex. D1 is natural and does not suffer from any suspicious circumstances or infirmity, especially when Prem Kaur also alleged a will but did not produce any will or witness in evidence except her own statement.”

12. It is well-settled under law that the attestation and proof of a Will are governed by the combined operation of Section 63 of the Indian Succession Act, 1925, and Section 68 of the Indian Evidence Act, 1872. Section 63 mandates that a Will must be attested by two witnesses, while Section 68 prescribes that, where a document requires attestation, it is incumbent upon the party propounding it to examine at least one attesting witness to prove its execution. A conjoint reading of these provisions makes it abundantly clear that the law does not demand the examination of all attesting witnesses or the scribe to establish due execution of a Will.

12.1. In the present case, the respondent–defendant has examined Piara Singh, one of the attesting witnesses, to prove the Will. The absence of evidence from the other attesting witness and the scribe is therefore legally immaterial and does not vitiate the proof of execution. Further, there exists



no cogent or convincing evidence to suggest that Piara Singh is an interested witness, and, in the absence of such material, the execution of the Will stands duly established on record.

13. Learned counsel for the appellant has sought to rely upon the decision of the Co-ordinate Bench of this Court in ***Kartar Kaur (deceased) through LRs and another v. Gurbax Singh (deceased) through LRs and another, Natural Citation No. 2024PHHC094660***, wherein the Will propounded was found to be surrounded by suspicious circumstances. In that case, the testator's status was erroneously recorded as unmarried despite being married; one attesting witness appeared to have been introduced subsequently, having signed vertically while others signed horizontally; and the Will failed to disclose the reason for disinheriting the appellant despite ongoing litigation with the testator.

13.1. By contrast, in the present matter, no such suspicious circumstances attend the Will. Ex.D1 is a duly registered document executed in favour of the respondents, who are the maternal grandsons of Sunder Singh. Sunder Singh had no son and only two daughters, and it is an admitted fact that he resided with the respondents and their mother, who was his daughter. In such natural circumstances, the testator's preference towards the respondents is entirely understandable. Moreover, the Will explicitly records sufficient reasons for disinheriting the appellant. Accordingly, the Will stands duly proved on record, free from any taint or cloud of suspicion, and the findings recorded by the learned First Appellate Court are unimpeachable. The appeal is, therefore, dismissed, and the judgment and decree of the learned First Appellate Court are affirmed in all respects.



14. Consequent upon the final adjudication of the principal matter, all pending miscellaneous applications, if any, arising out of or connected with the present proceedings, shall stand disposed of by necessary implication. In light of the conclusions reached herein, no separate or independent orders are required in respect of such applications, as their determination has become wholly infructuous and academic.

28.01.2026
Gaurav Sorot

(VIRINDER AGGARWAL)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No