



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 496 of 1992(O&M)

Harbans Singh (since deceased) through LRs & Anr.

...Appellants

Versus

Umrao Singh & Ors.

...Respondents

Reserved on: 22.04.2026

Pronounced on: 05.05.2026

Pronounced fully/ operative part: fully

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued by:- Mr. Sanjay Majithia, Sr. Advocate with
Ms. Divya Mohan, Advocate
For the appellants.

Respondent No.4 ex-parte.

Service of remaining respondents dispensed with.

DEEPAK GUPTA, J.

The present Regular Second Appeal has been filed by two out of six defendants challenging the concurrent findings recorded by both the Courts below, whereby the suit for declaration filed by the plaintiff Umrao was decreed by the learned trial Court vide judgment dated 20.09.1986 and the appeal preferred by the contesting defendants was dismissed by the learned First Appellate Court on 16.11.1991.

2. The trial Court record was requisitioned and perused. For the sake of convenience, the parties are referred to as per their status before the trial Court.

3.1 As emerges from the record, the suit property was recorded in the name of Smt. Manpyare wife of Bhup Singh, by virtue of a registered sale deed

dated 15.06.1964. She died on 19.04.1976 leaving behind six sons and one daughter.

3.2 The plaintiff, who is one of her sons, instituted the present suit claiming that although the property stood in the name of his mother, in reality the same had been purchased by him from the previous owners pursuant to an agreement to sell dated 11.09.1963 followed by a sale deed dated 15.06.1964. It was pleaded that he had paid the entire sale consideration, including ₹18,000/- as earnest money, and had remained in possession and management of the property since its purchase. According to him, the property was got registered in the name of his mother merely as a matter of convenience.

3.3 It was further pleaded that the other brothers had separated from the mother as early as in the year 1957 and that Smt. Manpyare was residing with the plaintiff alone. During her lifetime, she executed a Will dated 15.01.1976 in favour of the plaintiff, acknowledging that the property had been purchased by him. However, after her death, mutation No.410 was sanctioned in favour of all legal heirs, on the basis of which the defendants started asserting ownership. The plaintiff, therefore, sought a declaration that he was the exclusive owner in possession of the suit property and that the said mutation was illegal and liable to be set aside.

4. Out of the legal heirs, three brothers and one sister supported the claim of the plaintiff. The contesting defendants (*appellants herein*), however, denied the plaintiff's claim and asserted that Smt. Manpyare was the absolute owner of the property. They further disputed the Will, alleging the same to be forged and fabricated, and prayed for dismissal of the suit.

5. On the basis of the pleadings, the trial Court framed the necessary issues and the parties led both oral and documentary evidence. The plaintiff examined, inter alia, the scribe of the Will Inderjit Singh (PW1) and two attesting witnesses, namely Jaswant Singh (PW2) & Pratap Singh (PW4), who supported its execution. He also relied upon the agreement to sell and surrounding circumstances to establish that he had paid the entire sale consideration and had remained in possession.

6. On the other hand, the defendants examined a fingerprint expert to challenge the thumb impressions on the Will and led other evidence to assert that the property belonged to Smt. Manpyare.

7. Upon appreciation of the evidence, the trial Court recorded a finding that the plaintiff was the real purchaser of the property and that the Will dated 15.01.1976 had been duly proved. Consequently, the mutation in favour of all heirs was held to be illegal and the suit was decreed.

8. The First Appellate Court, on reappraisal of the entire evidence, affirmed the material findings of fact recorded by the trial Court. It held that although the plaintiff appeared to be the real purchaser, the claim based on benami ownership could not be enforced in view of the provisions of the Benami Transactions (Prohibition) Act, 1988. However, the Appellate Court upheld the decree on the independent ground that the Will executed by Smt. Manpyari in favour of the plaintiff had been duly proved in accordance with law. The appeal was accordingly dismissed.

9. Assailing the concurrent findings, learned senior counsel for the appellants has argued that the Will is a forged document and that the Courts below have failed to appreciate the evidence in its proper perspective. It is contended that the scribe was incapable of drafting such a document and that the expert evidence produced by the defendants has been wrongly discarded. An application under Order XLI Rule 27 CPC has also been pressed into service to seek permission to lead additional evidence.

10. Having heard learned counsel for the appellants and having perused the record, this Court finds no merit in the submissions advanced on behalf of the appellants.

11. Insofar as the application under Order XLI Rule 27 CPC is concerned, no sufficient ground has been made out to allow additional evidence at this stage. The evidence sought to be produced was neither shown to be unavailable earlier nor is it essential for just decision of the case. The application is thus liable to be rejected.

12. On merits, the execution of the Will stands duly proved by the testimony of the scribe as well as two attesting witnesses. Their evidence is consistent and inspires confidence. The mere fact that the Will is unregistered does not detract from its validity. The expert evidence led by the defendants is inconclusive and has been rightly discarded by the Courts below. It is well settled that where the evidence of attesting witnesses is reliable, inconclusive expert opinion cannot override such direct evidence.

13. It is significant to note, as rightly observed by the First Appellate Court, that the Will was scribed by Inderjit Singh, who is the son of defendant Moti Singh. The Will is attested apart from others by Jaswant Singh, who is the real brother of the contesting defendant Harbans Singh as well as of the plaintiff Umrao. Another witness, Pratap, is also associated with the execution. The scribe as well as two attesting witnesses have consistently deposed regarding the due execution of the Will, thereby satisfactorily proving the same in accordance with law. Once the execution and attestation of the Will stand duly established through reliable oral evidence, the inconclusive opinion of the handwriting/fingerprint expert examined by the defendants, who merely stated that the thumb impressions were smudged and hence not comparable, loses significance. The First Appellate Court has, therefore, rightly discarded such expert evidence.

14. The surrounding circumstances also support the genuineness of the Will. The plaintiff had been residing with the testator and managing the property, whereas the other brothers had separated long ago.

15. It is further noteworthy that three of the brothers and one sister have supported the case of the plaintiff. Had the Will been fabricated or the plaintiff not been the real owner, these co-heirs, whose rights were identical to those of the contesting defendants, would not have endorsed the plaintiff's claim. Their conduct lends strong corroboration to the genuineness of the Will.

16. Equally important are the recitals contained in the Will itself, wherein the testatrix, Smt. Manpyare, has expressly acknowledged that the suit property had been purchased by the plaintiff out of his own funds. She has also

recorded that her other sons had already been separated in the year 1957 after

being provided with their respective shares, and that her daughter had been suitably married with sufficient expenditure. These recitals, forming part of a duly proved testamentary document, lend further assurance to the plaintiff's case and clearly reflect the intention of the testatrix in bequeathing the property exclusively in his favour.

17. The law governing proof of Wills is well settled. Once the execution and attestation of the Will are proved in accordance with law, the burden shifts to the challenger to establish suspicious circumstances. Mere suspicion cannot take the place of proof.

18. In the present case, no suspicious circumstance has been established so as to discredit the Will. The findings recorded by both the Courts below are based on proper appreciation of evidence and do not suffer from any perversity or illegality.

19. It is trite that in a second appeal under Section 100 CPC, interference is warranted only when a substantial question of law arises. The concurrent findings of fact recorded by the Courts below, being neither perverse nor contrary to law, do not call for interference.

20. Consequently, the present appeal, being devoid of merit, is hereby dismissed.

05.05.2026
Jiten

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

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