

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

RSA-2496-1989 (O&M)**WAZIRA SINGH (SINCE DECEASED)
THROUGH HIS LRS AND OTHERS**

. . . . APPELLANTS

Vs.**ANGAD (SINCE DECEASED)
THROUGH HIS LRS AND OTHERS**

. . . . RESPONDENTS

Reserved on: 20.04.2026
Pronounced on: 04.05.2026
Pronounced Fully/Operative Part: Fully

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Manu K. Bhandari, Advocate, and
Mr. Arjun Sawhni, Advocate, for the appellants.

Mr. Namit Gautam, Advocate, for respondents No.1 to 4.

Mr. Gurdeep Grewal, Advocate and
Mr. Manish Soni, Advocate, for respondent No.6.

DEEPAK GUPTA, J.

The present Regular Second Appeal has been preferred by the plaintiffs against the judgment & decree dated 24.01.1989 passed by the learned Additional District Judge, Sirsa, whereby the appeal filed by defendants No.1 to 4 was allowed and the judgment & decree of the learned trial Court dated 19.01.1987 decreeing the suit of the plaintiffs, was set aside.

2. To avoid any ambiguity, the parties are being referred to according to their status before the learned trial Court. The record of the trial Court was requisitioned and has been carefully examined.

3. ***Pedigree of the parties*** : The parties are closely related and descend from a common ancestor, Nanu, who had three sons, namely Phalli, Sobha and Kalu. Kalu was succeeded by Rampat, who died in the year 1972 unmarried and issueless. The plaintiffs, namely Wazira, Modan & Shri Chand are sons of Dhannu son of Phalli; whereas defendants No. 5 to 7, namely Puran, Inder & Smt. Biro are the children of Lakhu son of Sobha. Defendants No. 1 to 4, namely Angad, Shishpal, Jagdish & Ram Gopal are sons of Puran son of Lakhu.

4. Apart from the admitted relationship between the parties as above, certain material facts, which are not in dispute and have attained finality through earlier rounds of litigation, may be briefly noticed.

5.1 ***Earlier litigation*** : Rampat was the owner of land measuring 170 kanal 2 marla situated in village Bani, as detailed in Para No. 1 of the plaint. Rampat, during his lifetime, executed a Will dated 19.02.1968, registered on 21.02.1968, in favour of defendants No.1 to 4 (sons of Puran). The said Will was challenged by the present plaintiffs in Civil Suit No.207 of 1976. The trial Court, vide judgment dated 29.08.1979 (Annexure A1), held that although the Will was duly proved, it was not binding on the plaintiffs' reversionary rights as the property was ancestral. Consequently, the plaintiffs were declared entitled to half share.

5.2 An appeal was filed by the beneficiaries of the Will. During its pendency, a compromise was effected between some of the parties as per joint statements made before the court (Annexure A2), whereby the plaintiffs received 62 kanal of land. The First Appellate Court partly accepted the appeal on 01.05.1980 (Annexure A3), in terms of the compromise. However, Inder Singh and Biro, who were not parties to the compromise, filed a second appeal (RSA 2330 of 1981) before this Court. Vide judgment dated 25.09.1984 (Annexure A4), this Court modified the decree and remanded the matter for adjudication qua their share.

5.3 Upon remand, the learned Additional District Judge, Sirsa, vide judgment dated 06.08.1985 (Annexure A5), upheld the plaintiffs' entitlement to

62 kanal under the compromise, while distributing the remaining land partly in favour of the legatees (defendants No.1 to 4) and partly in favour of defendants No.5 to 7.

5.4 In a subsequent round of litigation, two of the legatees, namely Ram Gopal and Jagdish, challenged the compromise decree as well as the judgment dated 06.08.1985. Though their suit was initially dismissed on 12.02.1990 (Annexure A6), the First Appellate Court allowed their appeal on 16.12.1994 (Annexure A7). However, this Court, in second appeals (RSA Nos. 407 of 1995, & 1550 of 1995) preferred by both sides, vide common judgment dated 05.01.2023 (Annexure A8), set aside the appellate judgment and restored the trial Court's decision dated 12.02.1990.

5.5 Thus, the earlier two rounds of litigation concerning land measuring 170 kanal 2 marla, as detailed in paragraph No.1 of the plaint, stand concluded and have attained finality. That litigation is not directly in issue in the present case.

6. ***Present dispute and plaintiff's Case*** : The present dispute pertains to two parcels of land. The first parcel measuring 26 kanal 6 marla (detailed in Para No. 2 of the plaint) had been acquired by the Government in the year 1964 during the lifetime of Rampat and compensation in respect thereof had already been received by him. After his death, the land was released by the Government and defendants No.1 to 4 deposited the compensation and obtained possession. The second parcel measuring 14 kanal 3 marla (detailed in Para No. 3 of the plaint) was earlier under tenancy and came into possession of defendants No.1 to 4 after the death of Rampat.

7. The plaintiffs instituted the present suit in June 1981 seeking declaration and possession to the extent of half share in both the aforesaid parcels of land. It was pleaded that the properties were ancestral and, therefore, not amenable to testamentary disposition by Rampat. In the alternative, it was contended that even otherwise the suit properties were not covered by the Will and would devolve by natural succession. On this premise, it was asserted that

defendants No.1 to 4 had no exclusive right to retain possession. The plaintiffs claimed entitlement to 1/2 share, with the remaining 1/2 share vesting in defendants No.5 to 7. Insofar as the land measuring 26 kanal 6 marla is concerned, possession was sought on payment of ₹2632/-, being the amount deposited by defendants No.1 to 4, while possession of the other parcel measuring 14 kanal 3 marla was claimed without such condition. Accordingly, a decree for declaration and consequential possession was prayed for.

8. ***Stand of defendants*** : The suit was contested by defendants No.1 to 5, who pleaded that suit property was not ancestral and that the entire property was covered by the Will executed by Rampat and, therefore, defendants No.1 to 4 were exclusively entitled to its possession. It was further contended that the suit was barred under Order II Rule 2 CPC and that the plaintiffs were estopped from maintaining the same.

9. Defendants No.6 and 7, however, supported the case of the plaintiffs.

10. ***Findings of Courts below*** : The trial Court, on appreciation of evidence, held that the suit property was not ancestral, but further held that the Will did not cover the suit properties, as they were not owned by Rampat at the time of its execution, and accordingly decreed the suit. The First Appellate Court, however, reversed the said finding by holding that once the properties reverted, they formed part of the estate of Rampat and stood governed by the Will, and consequently dismissed the suit.

11. ***Contentions of Appellants*** : Aggrieved by the reversal of the trial Court's decree, the plaintiffs have preferred the present appeal. Learned counsel for the appellants contends that the First Appellate Court erred in holding that the Will Ex.D-1 covered the suit properties. It is argued that the Will contains no reference to after-acquired or future property and could only operate in respect of property owned by Rampat at the time of its execution. Emphasis is laid on the fact that one parcel had already been acquired by the Government prior to the execution of the Will and the other was neither owned nor in contemplation

of the testator at that time; therefore, such properties cannot be deemed to fall within the ambit of the Will. A prayer is thus made for restoration of the trial Court's decree.

12. ***Contentions of Respondent*** : *Per contra*, learned counsel for the respondents supports the judgment of the First Appellate Court, contending that the properties having reverted to Rampat after his death formed part of his estate and, therefore, rightly devolved upon defendants No.1 to 4 under the Will. Accordingly, dismissal of the appeal is sought.

13. ***Substantial question*** : The central question that arises for determination is whether the Will dated 21.02.1968 can be construed to include properties, which were neither owned nor possessed by the testator at the time of its execution and which came into existence or reverted after his death.

14. ***Analysis by this Court*** : This Court has considered submissions of both the sides and has appraised the record carefully.

15. ***Nature of Suit Property*** : It stands well established on record that both parcels of land forming the subject matter of the present suit have not been proved to be ancestral in the hands of Rampat. The trial Court, on a proper appreciation of the pedigree table and revenue record, found that the plaintiffs failed to establish that the property had descended from the common ancestor through inheritance so as to retain the character of ancestral property. This finding has not been disturbed by the First Appellate Court and, being based on cogent documentary evidence, calls for no interference.

16. The principal question, therefore, arises for consideration is whether the two parcels of land in dispute are covered by the Will Ex.D-1. If the answer is in the affirmative, defendants No.1 to 4, being the beneficiaries under a duly proved Will, would be entitled to retain possession thereof. However, if the Will is found not to encompass the suit property, succession would necessarily be governed by the provisions of the Hindu Succession Act.

17. Learned counsel for the appellants has drawn the attention of this Court to the relevant recitals of the Will Ex.D-1, wherein the testator has bequeathed his cultivated and uncultivated land, residential house and other movable and immovable property in favour of defendants No.1 to 4, to be enjoyed by them after his death, to the exclusion of all others.

18. A perusal of the aforesaid recital shows that the bequest is couched in general terms, referring to the property of the testator without any express indication that it was intended to include property, which might be acquired or revert in future.

19. **Law relating to Construction of Will :** The law relating to interpretation of Wills is no longer res integra. In **H. Venkatachala Iyengar v. B.N. Thimmajamma, AIR 1959 SC 443**, the Hon'ble Supreme Court laid down that the intention of the testator is the governing factor and such intention must be gathered from the language of the Will itself, read as a whole, without adding or subtracting anything. It was further held that the Court cannot speculate as to what the testator might have intended but did not express.

20. In **Navneet Lal v. Gokul, 1976 SCR (2) 924**, Hon'ble Supreme Court dealt with issue relating to construction of the Will and culling out following principles, held as under:

"We are concerned in this appeal only with the construction of the will executed in the year 1916.

From the earlier decisions of this Court the following principles, inter alia, are well established:-

(1) In construing a document whether in English or in vernacular the fundamental rule is to ascertain the intention from the words used; the surrounding circumstances are to be considered; but that is only for the purpose of finding out the intended meaning of the words which have actually been employed. [**Ram Gopal v. Nand Lal and others**(1)].

(2) In construing the language of the will the court is entitled to put itself into the testator's armchair [Venkata Narasimha v. Parthasarathy(2)] and is bound

to bear in mind also other matters than merely the words used. It must consider the surrounding circumstances, the position of the testator, his family relationship, the probability that he would use words in a particular sense....but all this is solely as an aid to arriving at a right construction of the will, and to ascertain the meaning of its language when used by that particular testator in that document. [*Venkata Narasimha's case supra and Gnanambal Ammal v. T. Raju Ayyar and Others*(1)].

(3) The true intention of the testator has to be gathered not by attaching importance to isolated expressions but by reading the will as a whole with all its provisions and ignoring none of them as redundant or contradictory [*Raj Bajrang Bahadur Singh v. Thakurain Bakhtraj Kuer*(2)].

(4) The court must accept, if possible, such construction as would give to every expression some effect rather than that which would render any of the expression inoperative. The court will look at the circumstances under which the testator makes his will, such as the state of his property, of his family and the like. Where apparently conflicting dispositions can be reconciled by giving full effect to every word used in a document, such a construction should be accepted instead of a construction which would have the effect of cutting down the clear meaning of the words used by the testator. Further, where one of the two reasonable constructions would lead to intestacy, that should be discarded in favour of a construction which does not create any such hiatus. [*Paerey Lal v. Rameshwar Das*(3)].

(5) It is one of the cardinal principles of construction of wills that to the extent that it is legally possible effect should be given to every disposition contained in the will unless the law prevents effect being given to it, Of course, if there are two repugnant provisions conferring successive interests, if the first interest created is valid the subsequent interest cannot take effect but a Court of construction will proceed to the farthest extent to avoid repugnancy, so that effect could be given as far as possible to every testamentary intention contained in the will. [*Ramachandra Shenoy and Another v. Mrs. Hilda Brite and Other*(4)]”

21. Thus, the Supreme Court reiterated that the duty of the Court is to put itself in the armchair of the testator and ascertain his intention from the

words used, and that such intention must prevail, provided it is consistent with law. Importantly, it was emphasized that every clause of the Will must be given meaning, but no words can be introduced which are not there.

22. Further, in ***S. R. Srinivasa v. S. Padmavathamma, 2010 (5) SCC 274*** the Supreme Court categorically held that the Court cannot supply omissions in a Will or read into it something, which is not expressly or impliedly contained therein, even if such an interpretation appears to be equitable.

23. Again, in ***Mahesh Kumar v. Vinod Kumar, 2012 (4) SCC 387***, it was observed that a Will must be construed strictly in accordance with its terms and the Court cannot enlarge its scope on considerations of fairness or presumed intention.

24. ***Application of above legal position to facts of this case*** : Applying the aforesaid settled principles to the facts of the present case, it is evident that at the time of execution of the Will in 1968, the land measuring 26 kanal 6 marla had already been acquired by the Government in 1964 and Rampat had received compensation. Thus, he had no subsisting title or interest in the said property at the time of execution of the Will. Similarly, the second parcel of land measuring 14 kanal 3 marla was not owned or possessed by him at the relevant time. The Will does not contain any expression indicating that the testator intended to include after-acquired property or property which might revert in future.

25. In absence of any such indication, it would not be permissible for the Court to extend the operation of the Will to properties, which were neither owned nor contemplated by the testator. To do so would amount to rewriting the Will, which is clearly impermissible in view of the law laid down by the Hon'ble Supreme Court in the judgments referred to hereinabove.

26. The reasoning adopted by the First Appellate Court that the property, upon reversion, must be deemed to have formed part of the estate of Rampat and hence pass under the Will, overlooks the fundamental principle that testamentary succession operates in accordance with the intention expressed in the Will and not on the basis of subsequent events. Property, which was not part

of the testator’s estate at the time of execution and was not within his contemplation, cannot be brought within the sweep of the Will, merely because it came into existence or reverted at a later stage.

27. On the other hand, the view taken by the trial Court is in consonance with settled legal principles. The trial Court rightly held that the Will would operate only in respect of property owned by Rampat at the time of its execution and intended to be bequeathed by him. The suit properties having not been so owned or contemplated, cannot be held to be covered by the Will and would, therefore, devolve by natural succession in accordance with law.

28. Accordingly, this Court is of the considered opinion that the judgment and decree passed by the First Appellate Court suffers from a clear error of law in interpreting the Will and cannot be sustained. The judgment and decree passed by the trial Court are based on correct appreciation of both facts and law and deserve to be restored.

29. **Conclusion :** Consequently, the appeal is allowed. The judgment and decree passed by the learned First Appellate Court are set aside and those of the learned trial Court are restored. The plaintiffs are held entitled to possession to the extent of half share in land measuring 26 kanal 6 marla subject to payment of the amount deposited by defendants No.1 to 4, and also to half share in land measuring 14 kanal 3 marla without any payment. The remaining share shall vest in defendants No.5 to 7. Decree be drawn accordingly.

(DEEPAK GUPTA)
JUDGE

04.05.2026
Vivek

<i>Whether Speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>

Uploaded on: 04.05.2026