



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

RSA-1584-1995 (O&M)

Reserved on :- 19.02.2026

Date of Pronouncement:-06.03.2026

Uploaded on:-10.03.2026

Iqbal Singh (Deceased) through his LRs and Others

... Appellants

Versus

Amar Singh (Deceased) through his LRs

... Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :-

Mr. Amit Jain, Senior Advocate with
Ms. Nikita Sharma, Advocate
for the appellants.

Mr. Puneet Jindal, Senior Advocate with
Mr. P.C. Munjal, Advocate,
Ms. Natasha Munjal, Advocate and
Mr. Rahul Bansal, Advocate
for the respondents/cross-objectors.

VIRINDER AGGARWAL, J.

1. The appellants/plaintiffs, aggrieved by the judgment and decree dated 17.04.1995 of the learned Additional District Judge, Ferozepur, which partly reversed the well-reasoned judgment and decree dated 31.03.1993 of the learned Sub-Judge Ist Class, Zira, respectfully invoke the appellate jurisdiction of this Court through the present Regular Second Appeal (for short "RSA"). The appellants seek restoration of the



decree rightly granted by the learned Trial Court and appropriate redress for the substantial miscarriage of justice occasioned thereby. It is respectfully submitted that the impugned judgment and decree are vitiated by manifest perversity, serious errors of law, and a fundamentally flawed appreciation of the evidentiary record, resulting in grave injustice. The appellants therefore pray that this Court set aside the impugned judgment and decree and reinstate the lawful and well-reasoned decree of the learned Trial Court.

2. The sequence of events antecedent to, and culminating in, the present appeal may be succinctly set out as under:-

“In the plaint, the plaintiffs predicate their claim upon their asserted consanguinity with the deceased Shangara Singh, whose estate forms the subject matter of the present lis. It is averred that they are the sons of Pidar Singh, the uterine brother of Shangara Singh, both born to Smt. Lachhmi from her two successive marriages. A pedigree table has been set forth to elucidate the lineage.

It is pleaded that Smt. Lachhmi was first married to Makhan Singh, from whom Pidar Singh was born, and upon his demise, she entered into a Kareva marriage with Baga Singh, from which wedlock Shangara Singh was born. Shangara Singh, owner of land measuring 122 Kanals 1 Marla situated in village Aminwala, Tehsil Zira, is stated to have died issueless in January 1989.

The plaintiffs allege that he had executed a registered Will dated 03.05.1962 bequeathing his entire estate in their favour, the original whereof was subsequently lost in floods. The defendant, Amar Singh, is alleged to have procured mutation on the basis of a forged unregistered Will dated 24.01.1989, falsely claiming heirship. On these averments,



the plaintiffs seek a declaration of their rights under the earlier Will with consequential symbolic possession.”

3. Upon service of summons, the defendants appeared and filed their written statement as follows:-

“In his written statement, Amar Singh, defendant, has repudiated the plaintiffs’ pedigree and set up an independent line of succession. It is averred that plaintiff No.5 acts solely as attorney for plaintiffs No.1 to 4. The defendant asserts that he is the son of Baga Singh son of Jeon Singh, and that upon Baga Singh’s demise, his estate devolved upon his son Shangara Singh and daughter Santo. The alleged Kareva marriage of Smt. Lachhmi with Baga Singh is specifically denied.

While admitting Shangara Singh’s ownership of 122 Kanals 1 Marla, the defendant pleads that the deceased resided with him, being his maternal uncle, and expired on 25.01.1989 at his residence after medical treatment at Civil Hospital, Moga. The allegation of murder is emphatically denied. It is further averred that, out of love and affection and in recognition of services rendered, Shangara Singh executed an unregistered Will dated 24.01.1989 in his favour, on the basis whereof Mutation No.970 was sanctioned. The defendant claims heirship as the son of Santo and asserts possession after redemption of mortgage.”

4. Upon a meticulous consideration of the pleadings, documentary material, and rival submissions advanced by the parties, the learned Trial Court framed the following issues for adjudication so as to facilitate a precise and comprehensive determination of the matters in controversy:-

1. *Whether Shangara Singh deceased executed a valid will dated 3.5.1992 in favour of the plaintiffs in respect of the land in dispute?*

OPP



2. *Whether Shingara Singh deceased executed a Will dated 24.1.1989 in favour of the defendant? OPD*
3. *Whether the plaintiffs are entitled to the declaration and consequential relief prayed.*
4. *Relief.*

5. Both parties were granted adequate opportunity to lead evidence in support of their respective cases. Upon conclusion of the trial and after hearing learned counsel for the parties, the learned Trial Court proceeded to decree the suit with the following observations:-

“In consequence of the findings recorded hereinabove, the suit of the plaintiffs stands decreed with costs. It is hereby declared that the plaintiffs are the lawful owners of land measuring 22 Kanals 1 Marla, comprised in Khewat Nos. 2, 3 and 69; Khatoni Nos. 3 to 5, 20, 6 and 121; and the Khasra numbers detailed in the Jamabandi for the year 1982–83, situated in the revenue estate of village Aminwala, Tehsil Zira, by virtue of the registered Will dated 03.05.1962.

A decree for symbolic possession of the suit property is also passed in favour of the plaintiffs and against the defendants. The defendants shall bear the costs of the suit. Unexhibited documents and any undisbursed diet money, if any, be returned to the parties concerned in accordance with law.”

6. Aggrieved by the impugned judgment and decree, the respondents–defendants preferred an appeal before the learned First Appellate Court, which came to be partly allowed, *inter alia*, with the following observations:-

“Upon due consideration of the foregoing discussion, this Court finds no cogent or legally sustainable ground to interfere with the findings of the learned trial Court under Issue No. 2; the same are accordingly affirmed.



However, in view of the determination rendered under Issue No. 1, the respondents–plaintiffs are disentitled to the relief of declaration and symbolic possession. Consequently, the findings of the trial Court under Issue No. 3 are set aside, and the said issue is decided in favour of the appellant–defendant.

Resultantly, the appeal is allowed. The judgment and decree dated 31.03.1993 are hereby reversed, and the suit of the respondents–plaintiffs stands dismissed with costs.”

6.1. Assailing the findings of the learned First Appellate Court, the appellants–plaintiffs have preferred the present appeal. Upon admission, notice was issued and the respondents/cross-objectors entered appearance through their counsel and contested the matter. The records of the learned Courts below are accessible on DMS for thorough examination and adjudication.

7. I have heard learned counsel for the parties and carefully considered their submissions in the light of the pleadings, evidence on record, and the findings returned by the Courts below.

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 appearing on behalf of the appellants has vehemently contended that the learned First Appellate Court has failed to appreciate the pleadings and evidence available on record in their true perspective and has recorded findings which are founded upon mere surmises and conjectures rather than on a judicious evaluation of the material placed before it.

9.1. It is submitted that the learned Trial Court, vide order dated 22.03.1990, had already permitted the appellants to prove the Will by way of secondary evidence, and the said order having attained finality, it was not open for the learned First Appellate Court to re-examine or sit in appeal over the correctness of the said order while adjudicating the appeal.

9.2. Learned counsel further submits that the finding recorded by the learned First Appellate Court to the effect that the Will was never executed by Shingara Singh is wholly unsustainable and based purely on conjectural reasoning. The Will in question is a registered document, and its existence stood duly established through the testimony of PW-2 Raj Kumar, Head Clerk from the office of the Sub-Registrar, who produced the certified copy of the Will from the official record maintained in the office of the Sub-Registrar, which was duly exhibited as Ex.P3. It is contended that, under Section 114 of the Indian Evidence Act, 1872, a statutory presumption attaches to the performance of official acts, and the said presumption has remained wholly un rebutted in the present case.



9.3. It is further contended that the learned First Appellate Court has unjustifiably discarded the testimony of PW-7 Rajinder Singh (plaintiff) with regard to the loss of the original Will in the floods, on speculative considerations. The Court below observed that if a substantial extent of land had indeed been bequeathed in favour of the plaintiff through the Will, the beneficiaries would not have allowed the document to be washed away in floodwaters and would have made every possible effort to retrieve it, even at the risk of their own safety. According to the learned counsel, such observations are purely conjectural and not founded upon any legal or evidentiary basis.

9.4. It is further argued that the learned First Appellate Court erroneously observed that the floods had affected only the house of the plaintiffs. In this regard, it is pointed out that even the respondent-defendants themselves examined a witness from the Department of Civil Supplies to prove a ration card, and the said witness categorically deposed that the original record maintained in the department had also been destroyed in the floods of the year 1988. Apart from this, other official witnesses had likewise deposed regarding the destruction/damage of records in the said floods. Thus, the learned First Appellate Court has ignored material evidence on record while arriving at the conclusion that the Will had not been proved to have been lost in the floods.

9.5. Learned counsel has further contended that the Will stood duly proved through the testimony of PW-3 Maluk Singh, one of the attesting witnesses to the Will. However, the learned First Appellate Court discarded his testimony on untenable grounds by terming him a chance



witness merely because he did not belong to the village of the testator. The Court also observed that Shingara Singh was accustomed to affixing thumb impressions on documents rather than signing them, whereas the Will Ex.P3 bears his signatures. It was additionally observed that Shingara Singh had affection for Amar Singh (defendant), as evidenced by the execution of a gift deed dated 04.07.1969, whereby a substantial portion of land had been gifted in his favour, a copy of which was exhibited as Ex.DW6/A.

9.6. According to the learned counsel for the appellants, the learned First Appellate Court has erroneously relied upon circumstances which arose subsequent to the execution of the Will, particularly events that took place nearly seven years after its execution, which could not legitimately be used to cast doubt upon the validity of the Will.

9.7. It is further contended that once the learned First Appellate Court rejected both the Wills set up by the respective parties, it was incumbent upon the said Court to record a finding regarding the relationship of the parties with the deceased Shingara Singh, which could appropriately have been done by framing an additional issue and remanding the matter to the learned Trial Court for proper adjudication.

9.8. Lastly, learned counsel submits that the cross-objections filed by the respondent-defendants are hopelessly barred by limitation and, therefore, were not liable to be entertained or taken into consideration. On the strength of the aforesaid submissions, it is prayed that the judgment and decree passed by the learned First Appellate Court be set aside, and the judgment and decree of the learned Trial Court be restored.



10. Learned counsel appearing on behalf of the respondent-defendants has, with equal vehemence, contended that the respondent-defendants are fully entitled to assail the adverse findings recorded against them in the appeal preferred by the appellants, even independent of the cross-objections, by virtue of the wide amplitude of the powers conferred upon the Appellate Court under Order XLI Rule 33 of the CPC. It is submitted that even assuming, arguendo, that the cross-objections filed by the respondent-defendants may be construed as barred by limitation, the substantive contentions advanced by them challenging the finding returned on Issue No.2 nevertheless require due adjudication by the Appellate Court in exercise of its plenary appellate jurisdiction. Learned counsel has further contended that the learned First Appellate Court has rightly concluded that the Will Ex.P3 was never executed by Shingara Singh and that the said document cannot be regarded as a valid testamentary instrument conferring any right, title, or interest in the suit property upon the appellants-plaintiffs.

10.1. It is further submitted that the copy of the Will Ex.P3, which was produced from the record of the office of the Sub-Registrar, does not bear the signatures or thumb impressions either of the testator or of the scribe. According to the learned counsel, the said document merely appears to be in the handwriting of an official of the Sub-Registrar's office and, therefore, cannot be treated as a duly proved testamentary document in accordance with the requirements of law. Learned counsel has also pointed out certain material discrepancies in the recitals contained in the alleged Will. It is contended that the testator has been described therein as



a resident of village Hamad, Tehsil Zira, whereas, in fact, village Hamad does not fall within the territorial jurisdiction of Tehsil Zira, thereby casting serious doubt upon the authenticity of the document. It is further contended that the Will is alleged to have been registered at Ferozepur, notwithstanding the fact that the land in dispute is situated in village Aminwala, which falls within the jurisdiction of Tehsil Zira, where too the competent office of the Sub-Registrar is located.

10.2. It is further argued that the learned First Appellate Court has rightly discarded the Will on the ground that the alleged loss of the original Will has not been satisfactorily proved. According to the learned counsel, the conduct of the appellants-plaintiffs in withholding the alleged original Will from the scrutiny of the Court itself raises a legitimate inference that the document did not bear the signatures or thumb impressions of the testator Shingara Singh, and was therefore intentionally not produced. Learned counsel has also contended that the appellants-plaintiffs have failed to establish their relationship with Shingara Singh. It is submitted that there is no cogent or reliable evidence on record to demonstrate that Lachmi, the alleged grandmother of the plaintiffs, had ever contracted a *Karewa* marriage with Bagga Singh, the father of Shingara Singh. Consequently, the claim of the appellants-plaintiffs to derive any right through such relationship remains wholly unsubstantiated.

10.4. It is further submitted that the learned First Appellate Court has rightly recorded a finding that the alleged floods in District Ferozepur, which were pleaded as the cause for the loss of the original Will, were not established by leading sufficient and convincing evidence. In view of this



deficiency, the Court below was justified in rejecting the plea of loss of the Will and discarding the reliance placed thereon. Learned counsel has additionally contended that the Will propounded by the respondent-defendants dated 24.01.1989 stands duly proved on record. In this regard, both attesting witnesses, namely DW-3 Niranjana Singh and DW-4 Jagir Singh, were examined and have fully supported the execution of the said Will. It is submitted that the learned First Appellate Court has erred in disbelieving the testimonies of the attesting witnesses as well as the scribe without any legally sustainable justification. On the strength of the aforesaid submissions, learned counsel has prayed that the appeal preferred by the appellants be dismissed, and the cross-objections filed by the respondent-defendants be allowed.

11. Having bestowed my anxious and thoughtful consideration upon the rival submissions advanced by the learned counsel appearing for the respective parties, and having meticulously examined the pleadings, evidence, and material available on the record, the point-wise findings of this Court on the issues arising for determination are delineated here-in-below:-

Maintainability of the cross-objections:-

11.1. Insofar as the maintainability of the cross-objections is concerned, the record reveals that the judgment and decree passed by the learned First Appellate Court is dated 17.04.1995. The present appeal was instituted on 07.06.1995 and was admitted for hearing on 07.08.1996 in the presence of learned counsel appearing for the respondents/cross-



objectors. Thereafter, the matter eventually came up for final hearing on 23.11.2023.

11.2. In terms of the settled position of law governing Order XLI Rule 22 of the CPC, cross-objections are required to be preferred within a period of 30 (thirty days) from the date of service of notice of the day fixed for hearing of the appeal upon the respondent. Since the respondents are shown to have been present before the Court on 23.11.2023, the period of limitation for preferring cross-objections would necessarily commence from the said date.

11.3. However, the cross-objections in the present case were instituted only on 09.09.2024, which is manifestly beyond the statutory period of one month to be reckoned from the date of service of notice of the hearing of the appeal. Consequently, the cross-objections, on the face of the record, are clearly barred by limitation. In this regard, reliance may appropriately be placed upon the judgment rendered by this Court in ***Union of India vs. Tikka Rajinder Prakash Bedi and Others, 2019(3) RCR (Civil) 303***, wherein the governing principles concerning limitation for filing cross-objections have been authoritatively expounded.

11.4. Even otherwise, assuming arguendo that the cross-objections are held to be barred by limitation, it remains well settled that the respondent-defendants are not entirely foreclosed from assailing the findings recorded against them. By virtue of the wide and enabling powers conferred upon the Appellate Court under Order XLI Rule 33 of the CPC, the respondents are entitled to challenge adverse findings and seek appropriate relief in the appeal preferred by the appellants.



11.5. For ready reference, the provisions of Order XLI Rule 33 CPC are reproduced hereunder:-

33. “Power of Court of Appeal.—The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection ¹ [and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees]:

¹ [Provided that the Appellate Court shall not make any order under section 35A in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order.]”

11.6. It is by now a well-entrenched principle of appellate jurisprudence that a respondent is not precluded from assailing adverse findings recorded against him merely on account of the absence of formal cross-objections. This Court, while adjudicating ***RSA-2847-2001*** titled as ***Dharam Pal vs. Baldev Gir @ Daya Ram and Others***, decided on ***26.02.2026***, ***Neutral Citation No. 2026:PHHC:031510***, has authoritatively reiterated that a respondent-defendant retains the right to challenge findings recorded against him in the course of arguments in the appeal itself, even without preferring cross-objections. Thus, the absence



of formally instituted cross-objections does not denude the respondent-defendants of their entitlement to question such adverse findings, particularly in view of the expansive powers vested in the Appellate Court under Order XLI Rule 33 of the CPC.

12. The learned First Appellate Court has reversed the finding recorded on Issue No.1, principally on the premise that the appellants failed to satisfactorily establish both the due execution of the Will as well as the loss of the original testamentary document. It has been observed that the permission granted to the appellants to adduce secondary evidence in support of the Will vide order dated 22.03.1990 was conditional and expressly subject to the appellants proving the existence of the original Will and its subsequent loss. According to the learned First Appellate Court, the appellants-plaintiffs failed to discharge this foundational burden. The Will was further disbelieved by the learned First Appellate Court upon taking note of the circumstance that Shingara Singh, during his lifetime, had executed a gift deed dated 04.07.1969 (Ex.DW6/A) in favour of Amar Singh, whereby land measuring 115 kanals and 8 marlas was transferred. From this transaction, the learned First Appellate Court inferred that Shingara Singh had considerable love and affection for Amar Singh and that Amar Singh had been rendering services to him. It was consequently reasoned that had such affection not existed, Shingara Singh would not have executed the aforesaid gift deed in favour of Amar Singh. Conversely, the absence of any similar transfer in favour of the plaintiffs was treated as a circumstance casting doubt upon their alleged proximity with the testator. The learned First Appellate Court also expressed



reservations regarding the claimed relationship of the plaintiffs with Shingara Singh, holding that the same was not convincingly established on the record.

12.1. Another factor weighed against the appellants was the testimony of Malook Singh, the attesting witness of the Will, who admittedly belonged to a different village, which, according to the learned First Appellate Court, diminished the evidentiary reliability of his testimony. It was further noticed that Kahan Chand, who allegedly belonged to the village of the plaintiffs and could have been a material witness, was not examined.

12.2. The testimony of PW-2 Raj Kumar, Head Clerk from the office of the Sub-Registrar, was also considered insufficient to prove the execution of the Will, as he was not the official who had actually copied the document into the relevant register maintained in the office of the Sub-Registrar. Additionally, the learned First Appellate Court noted a discrepancy in the manner of execution of documents by the testator. While the impugned Will purportedly bore the signatures of Shingara Singh, the document Ex.DW6/A demonstrated that Shingara Singh ordinarily affixed his thumb impression. The learned First Appellate Court observed that the appellants, being the propounders of the Will, failed to furnish any satisfactory explanation as to why a document allegedly executed seven years later bore '*thumb impression*' instead of the '*signatures*' which the testator was otherwise accustomed to affixing.

13. **Admissibility of the Secondary Evidence of the Will:-**



13.1. The learned Trial Court, vide order dated 22.03.1990, permitted the appellants-plaintiffs to prove the Will by way of secondary evidence, subject to the condition that the existence of the original document and its subsequent loss were duly established. The said order was never assailed by the respondent-defendants and, consequently, attained finality.

13.2. In order to establish the existence of the original Will, the appellants-plaintiffs examined PW-2 Raj Kumar, an official from the office of the Sub-Registrar, who produced the relevant record maintained in that office and proved the corresponding entry as Ex.P3. The learned First Appellate Court, however, discarded this evidence on the ground that the official who had originally copied the contents of the Will in the register maintained in the office of the Sub-Registrar was not examined. Such reasoning, however, overlooks the prevailing practice during the relevant period, when the contents of registered documents, including Wills, were ordinarily transcribed in the official registers maintained in the office of the Sub-Registrar by the concerned staff. The present practice of retaining an exact signed copy of the Will bearing the signatures or thumb impressions of the testator and attesting witnesses in the record of the Sub-Registrar was not prevalent at that time. Consequently, the original register maintained in the office of the Sub-Registrar constituted the primary official record reflecting the registration of the document.

13.3. In the present case, the said record was produced by a competent official from the proper and lawful custody of the office of the Sub-Registrar. In such circumstances, a statutory presumption arises under



Section 114 of the Indian Evidence Act, 1872, that official and judicial acts have been regularly performed. There is no material on record to rebut the authenticity or genuineness of the record so produced by PW-2. In the absence of any rebuttal to this statutory presumption, the learned First Appellate Court erred in discarding the record of the Sub-Registrar merely on the premise that the official who originally copied the contents of the Will in the register had not been examined. Once the record was produced from proper custody and its authenticity remained unchallenged, the presumption attached to official acts ought to have been given due effect. The finding recorded by the learned First Appellate Court in this regard, therefore, cannot be sustained in law.

14. **Loss of Original:-**

14.1. To establish the loss of the original Will, the appellants-plaintiffs examined PW-7 Rajinder Singh, who categorically deposed that the original Will was lost during the floods of the year 1988. The learned First Appellate Court, however, disbelieved this testimony on certain observations, *inter alia*, that the alleged loss of the Will was not reported to higher authorities when the police declined to register an FIR; that the floods appeared to have affected only the Will without causing damage to any other property or documents of the plaintiffs; that no evidence had been produced to show that documents or property of neighbouring houses were similarly lost; and that no official from the Revenue, Municipal, or Drainage Department had been examined to establish the occurrence of floods during the said year. The learned First Appellate Court further made certain conjectural observations to the effect that, had the Will been of



such importance, the plaintiffs would have made extraordinary efforts to preserve it rather than allowing it to be washed away by the flood waters.

14.2. Upon a careful consideration of the record, this Court is of the view that the aforesaid findings of the learned First Appellate Court are founded more on surmises and conjectures than on the evidentiary material available on record. There is nothing in the evidence to suggest that the floods affected only the Will in question. On the contrary, the respondent-defendants themselves led evidence indicating damage to official records caused by the same floods, as DW-1 proved that original records of the Department of Civil Supplies had also been damaged during the floods. The learned First Appellate Court, however, failed to advert to or consider this material testimony. Further, PW Surinder Bajaj, the son of the scribe Mulkh Raj, also deposed that the register maintained by his father had similarly been damaged in the floods. Even this testimony was discarded by the learned First Appellate Court on reasoning which appears wholly untenable and conjectural. The relevant portion of the said reasoning reads as under:—

xxxxxx

“This Court is of the considered view that it is very strange that flood water adopted only that route, where the relevant record touching the proof with regard to the alleged Will was concerned.”

14.3. This Court is constrained to observe that the learned First Appellate Court has recorded its findings while overlooking material evidence on record pertaining to the floods which affected the State of Punjab in the year 1988–89. As already noticed hereinabove, even the



respondent-defendants themselves led evidence acknowledging the damage caused by the floods, and a defence witness categorically proved that official records of the concerned department had also been destroyed or damaged during the said floods. In the face of such evidence, the conclusion drawn by the learned First Appellate Court that the loss of the original Will was not proved cannot be sustained. The testimony adduced by the appellants-plaintiffs, read in conjunction with the evidence produced by the respondents themselves, sufficiently establishes that the original document was lost in the floods. Consequently, the finding recorded by the learned First Appellate Court casting doubt both on the existence of the original Will and on its loss is not borne out from the evidentiary record and, therefore, cannot withstand judicial scrutiny.

15. **Suspicious Circumstances:-**

15.1. It is well settled that the execution, attestation, and due registration of a Will must be duly proved by its propounder in accordance with law. In the present case, the appellants-plaintiffs, in discharge of the said burden, have examined PW-3 Maluk Singh, one of the attesting witnesses to the Will, in order to establish its due execution and attestation. The said witness, who at the relevant time was serving as the Sarpanch of village Basti Pathana, has categorically deposed regarding the execution of the Will by the testator Shingara Singh, as well as its attestation by himself and the other attesting witness, namely Kahan Chand.

15.2. It is a settled principle of testamentary jurisprudence that the propounder of a Will must establish that the testator possessed the requisite testamentary capacity and volition at the time of execution of the



instrument. Further, where any suspicious circumstances are alleged or appear surrounding the execution of the Will, the burden squarely lies upon the propounder to satisfactorily dispel such suspicion by cogent and reliable evidence. This principle has been consistently reiterated by the Hon'ble Supreme Court in ***Madhukar D. Shende vs. Tarabai Aba Shedage, AIR 2002 (SC) 637***, wherein the governing legal position has been authoritatively elucidated. The relevant extract of the said judgment reads as under:-

8. The requirement of proof of a will is the same as any other document excepting that the evidence tendered in proof of a will should additionally satisfy the requirement of Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872. If after considering the matters before it, that is, the facts and circumstances as emanating from the material available on record of a given case, the court either believes that the will was duly executed by the testator or considers the existence of such fact so probable that any prudent person ought, under the circumstances of that particular case, to act upon the supposition that the will was duly executed by the testator, then the factum of execution of will shall be said to have been proved. The delicate structure of proof framed by a judicially trained mind cannot stand on weak foundation nor survive any inherent defects therein but at the same time ought not to be permitted to be demolished by wayward pelting of stones of suspicion and supposition by wayfarers and waylayers. What was told by Baron Alderson to the Jury in *R v. Hodge* 1838, 2 Lewis CC 227 may be apposite to some extent "The mind was apt to take a pleasure in adapting circumstances to one another and even in straining them a little, if need be, to force them to form parts of one



connected hole; and the more ingenuous the mind of the individual, the more likely was it, considering such matters, to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete." The conscience of the court has to be satisfied by the propounder of will adducing evidence so as to dispel any suspicions or unnatural circumstances attaching to a will provided that there is something unnatural or suspicious about the will. The law of evidence does not permit conjecture or suspicion having the place of legal proof nor permit them to demolish a fact otherwise proved by legal and convincing evidence. Well founded suspicion may be a ground for closer scrutiny of evidence but suspicion alone cannot form the foundation of a judicial verdict positive or negative.

9. It is well-settled that one who propounds a will must establish the competence of the testator to make the will at the time when it was executed. The onus is discharged by the propounder adducing prima facie evidence proving the competence of the testator and execution of the will in the manner contemplated by law. The contestant opposing the will may bring material on record meeting such prima facie case in which event the onus would shift back on the propounder to satisfy the court affirmatively that the testator did know well the contents of the will and in sound disposing capacity executed the same. The factors, such as the will being a natural one or being registered or executed in such circumstances and ambience, as would leave no room for suspicion, assume significance. If there is nothing unnatural about the transaction and the evidence adduced satisfies the requirement of proving a will, the court would not return a finding of 'not proved' merely on account of certain assumed suspicion or supposition. Who are the persons propounding and



supporting a will as against the person disputing the will and the pleadings of the parties would be relevant and of significance.

16. In the present case, it is an admitted position that the suit land is situated in village Aminwala, falling within the territorial jurisdiction of Tehsil Zira, whereas the Will in question is alleged to have been executed at Ferozepur. The testator, Shingara Singh, is stated to have been a resident of village Hamad. The attesting witness examined by the appellants-plaintiffs, namely Malook Singh, is admittedly a resident of village Bassi Pathana, which is located at a distance from village Hamad.

16.1. A number of circumstances surrounding the Will raise legitimate suspicion regarding its genuineness. Firstly, the Will is alleged to bear the signatures of Shingara Singh, whereas the admitted and registered gift deed Ex.DW6/A, executed by him, bears only his thumb impression. Secondly, the testimony of Malauk Singh indicates that he was merely a chance witness, as he himself stated that he had come to the Tehsil complex in connection with his own work and happened to meet the testator and the other witness there. His examination-in-chief is confined only to the execution and attestation of the Will, and he has not deposed anything regarding its registration.

16.3. Although the Will Ex.P3 is alleged to have been registered in the office of the Sub-Registrar, Ferozepur, the said witness has nowhere stated that he or the testator ever appeared before the Sub-Registrar for registration of the document, or that the Will was read over and explained to them by the registering authority, or that the signatures of the witnesses and the testator were appended in the presence of the Sub-Registrar.



16.4. Furthermore, the Will is stated to have been executed on 03.05.1962, whereas, according to the testimony of PW-2 Raj Kumar, an official from the office of the Sub-Registrar, it was registered at Serial No.37 on 05.05.1962. This clearly indicates that the Will was not registered on the date of its execution but only after a gap of two days. However, there is no testimony of the attesting witness Maluk Singh to the effect that he was called again to the office of the Sub-Registrar for registration of the Will on the subsequent date. This unexplained gap further contributes to the suspicious circumstances surrounding the document.

17. Another circumstance relied upon by the learned First Appellate Court pertains to the conduct of the testator subsequent to the alleged execution of the Will. It has been noticed that approximately six years after the alleged execution of the Will, Shingara Singh executed a registered gift deed of a substantial portion of his estate in favour of defendant Amar Singh. This circumstance indicates that the testator had considerable affection for Amar Singh. In such circumstances, the complete exclusion of Amar Singh from the alleged Will raises a legitimate doubt regarding the authenticity and naturalness of the testamentary disposition.

18. Insofar as the objection regarding the signatures of Shingara Singh on the Will is concerned, the appellants-plaintiffs have examined PW-1, an official from the Cooperative Agricultural Service Society, who produced the membership register of the Society. The entry dated 17.01.1962, recorded at Serial No.42 in the name of Shingara Singh,



bears his signatures in Punjabi, which has been proved on record as Ex.P1. The register was produced from proper custody and duly proved in accordance with law. This evidence demonstrates that Shingara Singh was capable of signing in Punjabi, and therefore the mere fact that he affixed his thumb impression on the gift deed Ex.DW6/A several years later does not, by itself, render the case of the appellants-plaintiffs doubtful. Nonetheless, the surrounding circumstances relating to the execution and attestation of the Will still warrant careful scrutiny.

18.1. It is noteworthy that the testator was allegedly a resident of village Hamad, whereas the only attesting witness examined to prove the Will, namely Maluk Singh, belonged to village Bassi Pathana. The other attesting witness, Kahan Chand, who is stated to have been a resident of village Hamad, was not examined by the appellants-plaintiffs without any satisfactory explanation though it is not necessary to examine all attesting witnesses and legally only one attesting witness is sufficient to prove due attestation of document. Maluk Singh has stated that he happened to visit the Tehsil office per chance and was not previously informed about any intention of the testator to execute a Will. Ordinarily, when a person decides to execute a Will, he approaches the scribe and the registering authority accompanied by two attesting witnesses, since attestation by two witnesses is a statutory requirement under Section 63 of the Indian Succession Act, 1925. However, in the present case, the evidence indicates that the testator had not come to the office of the Sub-Registrar with the attesting witnesses.



18.2. Reliance in this regard may be placed on the decision in ***Varendra Prasad and Another v. Deputy Director of Consolidation and Others, 2014 (3) CCC 79 (Allahabad)***, wherein it has been observed that, in the ordinary course of human conduct, a testator would normally have his Will attested by persons in whom he reposes confidence rather than by chance witnesses. In the present case, the testimony of Maluk Singh only establishes that he met the testator and another witness at the Tehsil office and that the Will was executed and attested there; he has not deposed anything regarding the subsequent presentation or registration of the Will. The record further reveals inconsistencies regarding the chronology of events. The Will is stated to have been executed on 03.05.1962, presented before the Sub-Registrar, Ferozepur on 04.05.1962 at 2:00 p.m., and eventually registered on 05.05.1962. The endorsement of the Sub-Registrar indicates that the document was read over and explained to the testator in the presence of the attesting witnesses Maluk Singh and Kahan Chand, who allegedly appended their signatures in Urdu. However, Maluk Singh has not stated in his examination-in-chief that he appeared before the Sub-Registrar on the subsequent date when the Will was presented or registered. If Maluk Singh was indeed a chance witness from a different village, some evidence ought to have been produced to establish that he was requested to return on the following day for the purpose of registration. No such evidence has been led. Although attestation by a witness from another village is not inherently suspicious, the fact that the only witness examined was a chance witness who has not deposed that he was present at the time of registration casts doubt on the genuineness of the transaction.



18.3. Moreover, there is no explanation as to why the Will, though allegedly executed on 03.05.1962, was not presented for registration on the same day. The absence of any explanation regarding this delay, coupled with the lack of testimony regarding the registration process, further strengthens the suspicious circumstances surrounding the document.

18.4. It is also true that Shingara Singh executed the gift deed Ex.DW6/A in favour of Amar Singh with respect to a substantial portion of his property. While the execution of such a gift deed in itself is not suspicious, the fact that Amar Singh, who was evidently close to the testator was not bequeathed any portion of the estate under the alleged Will Ex.P3 constitutes an additional suspicious circumstance which has not been satisfactorily explained by the appellants-plaintiffs. In view of the cumulative effect of these circumstances, it becomes evident that the appellants-plaintiffs have failed to dispel the suspicious circumstances surrounding the Will. Consequently, the learned First Appellate Court was justified in discarding the Will Ex.P3 as its genuineness remains doubtful.

18.5. As regards the findings on Issue No.2, this Court also finds no illegality or infirmity in the conclusions reached by the learned First Appellate Court. The Will Ex.DW3/A, set up by the respondent-defendants, is alleged to have been executed on 24.01.1989, and there is uncertainty regarding the exact date of death of Shingara Singh, whether he died on 24.01.1989 or 25.01.1989. The attesting witnesses have also given inconsistent statements regarding the age of the testator at the time of execution: DW-3 Niranjan Singh stated that the testator was about 100



years of age, whereas DW-4 Jagir Singh assessed his age at about 60 years. Although witnesses generally state age approximately, the disparity between these two estimates is too substantial to be ignored.

19. Further doubt arises from the fact that DW-4 Jagir Singh, one of the attesting witnesses, was unable to identify Shingara Singh from the photographs marked A, B and C, whereas DW-3 Niranjan Singh and DW-5 Amar Singh identified photograph 'Mark-A' as that of the testator. Such inconsistency further undermines the reliability of the evidence. Additionally, contradictions exist in the testimonies of the attesting witnesses regarding the delivery of copies of the Will to the propounder Amar Singh.

19.1. Considering that the Will relied upon by the respondents is an unregistered document, allegedly executed immediately before or on the eve of the testator's death, and keeping in view the inconsistencies and suspicious circumstances noticed above, the learned First Appellate Court was justified in discarding the said Will as well.

19.2. The contention of the learned counsel for the appellants that, upon rejection of both Wills, the matter ought to have been remanded to the Trial Court for determination of the relationship of the parties with Shingara Singh does not merit acceptance. Although no specific issue was framed in that regard, both parties have clearly pleaded their respective relationships in the plaint and written statement and have led evidence on the said aspect.

19.3. From the evidence on record, it emerges that the appellants-plaintiffs are second-degree nephews of Shingara Singh, being the sons of



Didar Singh, who was born from the marriage of Lachhmi with Makhan Singh. After the death of Makhan Singh, Lachhmi contracted *Karewa* marriage with Bagga Singh, from whose union Shingara Singh was born. On the other hand, the respondent-defendant Amar Singh has pleaded and proved that he is the son of Santo, the sister of Shingara Singh, and therefore his nephew in the first degree.

19.4. Significantly, Shingara Singh himself, in the gift deed Ex.DW6/A, described Amar Singh as his nephew, thereby acknowledging the relationship. In these circumstances, Amar Singh, being a nephew of the first degree, clearly enjoys a preferential claim over the appellants-plaintiffs, who stand related to the testator only in the second degree.

20. It is a well-settled principle of law that where the pleadings of the parties clearly delineate the controversy and both sides have adduced evidence in support of their respective stands, the mere omission to frame a specific issue does not assume material significance. In such circumstances, the Court is fully competent to adjudicate upon the dispute on the basis of the pleadings and evidence available on record.

20.1. In the present matter, it cannot be overlooked that the *lis* between the parties has remained pending adjudication for an inordinately long period of more than 35 years. Remanding the matter at this stage would not serve the ends of justice; rather, it would only result in unnecessary prolongation of litigation, leading to avoidable expenditure of time, resources, and judicial effort both for the parties as well as for the Courts. Where the entire evidentiary material necessary for a just determination of the controversy is already available on record, it would



be neither prudent nor expedient to remit the matter for a fresh determination.

20.2. In view of the foregoing circumstances, and upon an independent appraisal of the material available on record, this Court finds no compelling reason to interfere with the findings returned by the learned First Appellate Court. Consequently, the appeal stands **dismissed**, and the findings recorded by the learned First Appellate Court on **Issues No. 1, 2, and 3 are hereby affirmed**. Suit of plaintiffs is rightly dismissed.

21. Since the principal controversy involved in the present proceedings has now been conclusively adjudicated on merits and the appeal itself stands finally disposed of, all ancillary, interlocutory, or pending application(s), if any, shown to be subsisting on the record shall, by necessary implication, also stand disposed of, no separate or independent orders being required thereon.

06.03.2026
Gaurav Sorot

(VIRINDER AGGARWAL)
JUDGE

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No