

2026:PHHC:052286



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

103

RSA-1979-1995

Date of decision :06.04.2026

RAM PARKASH

... APPELLANT

VERSUS

MAYA CHAND (SINCE DECEASED) THROUGH LRS AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. Narender Singh, Advocate
for the appellant.

Mr. Ajay Ghangas, Advocate
for the respondents.

PARMOD GOYAL, J. (ORAL)

1. The appellant-defendant is aggrieved by the impugned judgment and decree dated 08.08.1995 passed by the Additional District Judge, Rohtak, whereby the first appeal preferred by the plaintiff-respondents against the dismissal of their suit for declaration vide judgment and decree dated 04.10.1994 passed by the Sub Judge, Ist Class, Bahadurgarh, was allowed and the suit for declaration filed by the respondents-plaintiffs was decreed by the First Appellate Court.

2. The respondents-plaintiffs, in their suit for declaration claimed share in the estate of Ganga Sahai, who had died intestate without leaving any Class-I heirs. It was the case of the respondents-plaintiffs that they are the real brothers of the deceased Ganga Sahai and, being Class-II heirs, are entitled to

succeed to his estate; therefore, they claimed themselves to be joint owners in possession of the suit land. It was further asserted that the suit property was ancestral in nature and that Ganga Sahai had no right to execute a Will in respect of the same; consequently, they sought a declaration of ownership over the suit land owned by Ganga Sahai.

3. The appellant-defendant contested the suit and, in the written statement, raised various preliminary objections regarding the maintainability of the suit. He further pleaded that Ganga Sahai had been residing with him and was being looked after by him, and out of love and affection, Ganga Sahai executed an unregistered Will dated 14.01.1989 in his favour. It was also pleaded that at the time of execution of the Will on 14.01.1989, Ganga Sahai was physically and mentally fit, in a sound disposing state of mind, and hale and hearty. However, subsequently, in April 1989, he fell ill and ultimately died in the hospital on 18.04.1989 due to cardio-respiratory arrest. On this basis, the appellant-defendant claimed the entire estate of Ganga Sahai by virtue of the Will dated 14.01.1989. Dismissal of suit was prayed for.

4. From the pleadings of the parties, the following issues were framed:

1. *Whether the plaintiffs are owners of the disputed property, as alleged in the plaint? OPP*
2. *Whether the plaintiff is entitled for the relief as claimed for? OPP*
3. *Whether the plaintiffs have no locus standi? OPD.*
4. *Whether the suit is not maintainable? OPD.*
- 4-A. *Whether deceased Ganga Sahai executed a valid will in favour of the defendant dated 14.1.89 as alleged ? OPD.*
5. *Relief.*

5. The learned trial Court had duly accepted the Will and dismissed

the suit preferred by the plaintiffs–respondents. However, the learned First Appellate Court concluded that the Will was surrounded by suspicious circumstances and, therefore, could not be relied upon. Accordingly, it set aside the judgment and decree passed by the trial Court and decreed the suit preferred by the respondents–plaintiffs.

6. In the present case, the dispute is as regards to validity of the Will dated 14.01.1989, i.e., whether the same is valid or liable to be rejected, as held by the First Appellate Court.

7. The following facts between the parties stand duly established from the pleadings as well as the evidence:

1. Ganga Sahai was about more than 80 years of age at the time of his death.
2. The Will (Ex. D-1) was executed by him on 14.01.1989.
3. He was admitted to the hospital on 01.04.1989 and died on 18.04.1989.
4. As per the death certificate (Ex. P-3), the cause of death was cardio-respiratory arrest.
5. The thumb impressions of Ganga Sahai on the Will were duly compared with his admitted signatures/thumb impressions on a registered mortgage deed executed by him. As per the handwriting and fingerprints expert (DW-7), the thumb impressions on both documents were found to be identical. No evidence in rebuttal was led by the respondents-plaintiffs to show that the thumb impressions on the Will were not those of Ganga Sahai.

6. The Will (Ex. D-1) is an unregistered Will. The scribe of the Will was examined by the appellant-defendant as DW-1, and one of the attesting witnesses was examined as DW-2. The second attesting witness could not be examined as he had already died by the time evidence was being recorded.
 7. Ganga Sahai was the Lambardar of the village and was educated up to 5th standard. The scribe (DW-1) was educated up to 7th standard.
 8. Plaintiff–respondent No. 1, Maya Chand (PW-1), in his cross-examination, admitted that Ganga Sahai’s voter card was with appellant-defendant. He further admitted that the ration card of Ganga Sahai was also included with the family ration card of the appellant-defendant.
8. These facts have been duly noticed by both the Courts upon appreciation of the pleadings and evidence. On consideration of the same, the learned Court of first instance concluded that the Will stood duly proved and accordingly dismissed the suit. However, the learned First Appellate Court noted certain alleged suspicious circumstances and, inter alia, observed that the scribe of the Will (DW-1) was not a regular scribe and was not sufficiently literate to draft such a document. On that basis, it inferred that the Will might have been scribed by some other person and, therefore, held that the Will was surrounded by suspicious circumstances. In order to appreciate the said findings, it would be relevant to reproduce the findings recorded by the learned First Appellate Court in paragraphs 7 and 8 of the judgment dated 08.08.1995:

“ 7. *In the light of the above in my considered opinion it is*

rightly been submitted on behalf of the appellant-plaintiff that the words used in Ex. D1, in the circumstances of the standard of education, schooling, as well as the capacity of the scribe (DW1) who even cannot spell very ordinary words like "Meri" which he writes "Mari" as in fifth line of para No.1 of Ex. D1, cannot be from the covubularu of the scribe much less it can be from the vocabulary of deceased Ganga Sahai who was illiterate or having studied only upto 5th standard and that too in his age group would mean a schooling upto 5th standard in Urdu or Parsian medium of instructions. Hence the author of Ex. D1 must be a third person.

8. *Testator Ganga Sahai was of 80 years of age on the date of execution of Ex.D1. As per DW2 Hazari son of Shankar he was ill for about 20 days prior to his death as per the information given to this witness by Dariao etc. As per DW6 Ram Parkash son of Dariao Singh Ganga Sahai was 111 for 60 or 70 days prior to his death. He was admitted in hospital by PW6 on 1.4.1989 where Ganga Sahai has died. Ex.P3 is the medical certificate of cause of death of Ganga Sahal. The immediate cause of death given in the certificate is cardio respiratory arrest. This in these circumstances is being interpreted on behalf of the appellant-plaintiffs that deceased Ganga Sahai must be incapacitated for the normal working, walking, thinking, etc. at least for some months prior to his death and this coupled with the fact that Ex. D1 is firstly unregistered one. secondly it is got scribed from a person other than a regular scribe makes the whole activity as full of suspicions."*

9. On one hand, learned counsel for the appellant-defendant has argued that the appreciation of evidence and the alleged suspicious circumstances noted by the learned First Appellate Court are without any basis, as the Appellate Court failed to consider the background of the witnesses as well as the executor, Ganga Sahai. It is contended that Ganga Sahai was the

Will to the scribe. In fact, he was the author of the Will, while the scribe merely acted as its writer. Therefore, keeping in view his long experience as Lambardar, the use of customary words and expressions, which form part of common day-to-day language, cannot be treated as a suspicious circumstance. It is further argued that mere illiteracy or limited education is not sufficient to conclude that Ganga Sahai had not validly executed the Will. The presence of incorrect spellings or imperfect drafting only indicates that both Ganga Sahai and the scribe (DW-1) had limited formal education, though they possessed sufficient practical experience of life, and the same, by itself, does not render the Will doubtful or suspicious.

10. On the other hand, learned counsel for the respondents–plaintiffs has supported and justified the impugned judgment and decree dated 08.08.1995 passed by the learned First Appellate Court. It is contended that the grounds relied upon by the Appellate Court clearly establish that the Will was not validly executed by Ganga Sahai and that the same is surrounded by suspicious circumstances. In addition to the grounds recorded by the learned First Appellate Court, learned counsel for the respondents–plaintiffs has drawn attention to paragraph No. 1 of the Will to contend that the line spacing therein differs from the spacing in the remaining paragraphs of the Will, thereby raising further suspicion regarding its authenticity. He has also placed reliance upon the following judgments:

(1) **Gitika Puri & Ors. Vs. Suman Chopra & Ors.**, Civil Appeal No. 9113 of 2018, decided on 11.01.2024.

(2) **Gurdial Singh (Dead) Through Lr VS. Jagir Kaur (Dead) and Anr.**, 2025 (172) ALR 705; and

(3) **Leela & Ors. Vs. Muruganantham & Ors.**, 2025(1) R.C.R.
(Civil) 419.

11. Settled principles of law stated in cited judgments are not in dispute. Mere registration of a Will does not, by itself, confer validity upon it. Whether a Will is registered or unregistered, it must be proved in accordance with the provisions of the Indian Evidence Act, 1872 replaced by Bharatiya Sakshya Adhiniyam, 2023; particularly by examining at least one of the attesting witnesses.

12. It is further well settled that the propounder of the Will is required to dispel any suspicious circumstances surrounding its execution. The burden of proving that the testator was in a sound disposing state of mind lies upon the propounder, especially when such suspicious circumstances are brought on record.

13. All the aforesaid principles, as laid down in the judgments relied upon by learned counsel for the respondents–plaintiffs, are well established. The question which, therefore, arises for consideration is whether the appellant–defendant has been able to prove the due execution of the Will and satisfactorily dispel the suspicious circumstances surrounding its execution as has been relied by plaintiff.

14. On appreciation of the evidence led by the parties, I find that the learned trial Court has rightly appreciated the same and correctly concluded that the execution of Will stood proved. The approach adopted by the learned First Appellate Court, in assuming suspicious circumstances and thereby raising doubt over the execution of the Will, appears, in the facts and circumstances of the present case, to be based on conjectures rather than on a proper appreciation

of evidence.

15. As noticed above, all the material witnesses, whether the attesting witness, the scribe, or the appellant-defendant have consistently deposed that Ganga Sahai, at the time of execution of the Will dated 14.01.1989, was physically and mentally alert and in a sound disposing state of mind. The facts brought on record also corroborate the assertions made by DW-1, DW-2, and DW-6.

16. It is an admitted position that the deceased was more than 80 years of age at the time of execution of the Will as well as at the time of his death. It is also not in dispute that he died on 18.04.1989, after executing the Will on 14.01.1989, and that he remained admitted in the hospital from 01.04.1989 till his death. However, as per the cause of death mentioned in Ex. P-3, he died due to cardio-respiratory arrest and not on account of any ailment that could have impaired his mental faculties or clouded his judgment.

17. On the one hand, the defendant has clearly pleaded and proved that Ganga Sahai was in a sound disposing state of mind and was not suffering from any serious ailment, except for his hospitalization shortly before his death. On the other hand, no cogent rebuttal evidence has been led by the respondents-plaintiffs to show that Ganga Sahai was not in a fit condition to execute the Will. Even the respondents-plaintiffs have admitted that, due to old age, Ganga Sahai was suffering only from minor ailments and have not pointed out any major disease that could have affected his mental capacity at the time of execution of the Will. The evidence of the attesting witness and the scribe, coupled with the expert opinion confirming that the thumb impressions on the Will are those of Ganga Sahai, stands duly proved on record. Despite opportunity, the

respondents-plaintiffs failed to lead any rebuttal evidence to discredit the said evidence or to establish that the thumb impressions on the Will were not those of Ganga Sahai.

18. Furthermore, PW-1, respondent No. 1-plaintiff Maya Chand, in his cross-examination, admitted that the voter card as well as the ration card of Ganga Sahai were with appellant-defendant. This clearly corroborates the stand of the appellant-defendant that Ganga Sahai was residing with him and was being looked after by him. This circumstance also lends support to the recital in the Will (Ex. D-1), wherein Ganga Sahai stated that he was being served by the appellant-defendant and, out of love and affection for the services rendered, executed the Will in his favour.

19. These material facts have gone unrebutted and, thus, strengthen the case of the appellant-defendant regarding the due execution and genuineness of the Will.

20. The learned First Appellate Court has unduly placed reliance on few spelling errors and the use of certain comparatively difficult words in the Will to conclude that it was not written by the scribe, who was educated only up to the 7th standard. Such an approach, however, does not reflect a proper appreciation of evidence. Appreciation of evidence cannot be confined to rigid or compartmentalized standards as there is no straightjacket formula for the same. The testimony of witnesses is required to be assessed with the prudence of an ordinary person and in the backdrop of the overall circumstances of the case.

21. It is significant to note that the testator, Ganga Sahai, was about 80 years of age and was the Lambardar of the village. His position and advanced

age indicate that he possessed considerable practical experience and understanding arising out of the nature of his duties. It would, therefore, be natural for him to dictate the contents of his Will, with the scribe merely putting the same into writing.

22. Perusal of the Will, as available on record, shows that except for a few spelling mistakes in Hindi and the use of certain words commonly employed in drafting legal documents, the language of the Will is simple and reflects the expression of an ordinary person. In fact, the presence of incorrect spellings supports the version of the scribe (DW-1), who is claimed to be only 7th pass, and indicates his limited formal education rather than casting doubt on the genuineness of the document.

23. Similarly, the use of expressions such as “Swasthindriya, Sithir Buddhi, aur Sithir Chit ki Awastha,” and words like “Puran” and “Rupanen” cannot be treated as suspicious. These are commonly used expressions in the drafting of documents, particularly Wills, and are often part of the conventional legal vernacular. The scribe (DW-1) has also stated that this was not the first Will written by him and that he had earlier scribed and attested other Wills as well.

24. It is a matter of common experience that individuals often use certain words or expressions in their daily conversation, having learned them through usage and experience, even without formal education in the language. Words once absorbed into common parlance do not necessarily require formal schooling to be understood or used correctly. The same principle applies in the present case.

25. Thus, the grounds taken by the learned First Appellate Court to

doubt the Will do not constitute suspicious circumstances so as to discard a Will that otherwise stands duly proved through the testimony of the attesting witness, the scribe, and the handwriting expert.

26. Further, the fact that Ganga Sahai was residing with the appellant-defendant and sharing a common mess with him lends credence to the reason for execution of the Will in favour of the appellant-defendant and for excluding his brothers from succession. A testator is well within his rights to exclude natural heirs, and such exclusion can be justified either expressly or by necessary implication from the recitals in the Will. Where the Will itself discloses reasons expressly or impliedly for such exclusion, the same must be given due weight, and the Will cannot be discarded merely on that ground.

27. Before concluding, it is also necessary to note that although the respondents-plaintiffs, in their pleadings, claimed the suit property to be ancestral in nature and asserted that Ganga Sahai had no capacity to execute the Will, no evidence was led to substantiate the said plea. Moreover, neither the learned trial Court nor the learned First Appellate Court recorded any finding holding the suit property to be ancestral. Both the Courts did not non-suit the appellant-defendant on the ground of lack of capacity of the deceased to execute the Will; rather, the learned First Appellate Court non-suited the appellant-defendant solely on the ground of alleged suspicious circumstances.

28. However, in view of the discussions made hereinabove, I find that the findings of fact recorded by the learned First Appellate Court are not sustainable, being perverse and based on an improper appreciation of evidence, without applying the prudence of an ordinary person.

29. Consequently, the impugned judgment and decree dated

08.08.1995 passed by the learned First Appellate Court is set aside. The judgment and decree passed by the learned trial Court is held to be legal and valid.

30. Accordingly, the present appeal is allowed, and the suit preferred by the respondents-plaintiffs stands dismissed.

31. Pending miscellaneous application(s), if any, also stand(s) disposed of accordingly.

06.04.2026
manoj

(PARMOD GOYAL)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes/No