



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

RSA-2278-1996 (O&M)

Reserved on :-16.03.2026

Date of Pronouncement:-25.03.2026

Uploaded on:-30.03.2026

Nanak Chand (Since Deceased) through LRs

... Appellants

Versus

Mukat (Since Deceased) through LRs

... Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :-

Mr. Manjit Singh Khaira, Senior Advocate (Through VC) ,
Mr. Jaswinder Singh, Advocate and
Ms. Gunita Sangha, Advocate
for the appellants.

None for respondents.

VIRINDER AGGARWAL, J.

1. This Regular Second Appeal (here-in-after to be referred as “RSA”) is preferred against the judgment and decree dated 31.07.1996 rendered by the learned District Judge, Faridabad, whereby the appeal filed by the appellant was dismissed and the judgment and decree dated 23.01.1995 passed by the Additional Senior Sub-Judge, Palwal, was affirmed.

2. At the threshold, it is submitted that the appellant-plaintiff instituted a suit seeking a declaration that he is the owner in possession of



one-half of the suit land and the house situated within the revenue estate of Village Manpur, being the son of Ghamandi. It is averred that the said land had been purchased by Ghamandi using funds remitted by the plaintiff during his service in the military. The plaintiff further contended that the Will relied upon by the defendant is fabricated, obtained through undue influence over Ghamandi, and that the respondent-defendant wrongfully succeeded in procuring mutation in his favor on the basis of such Will.

3. The respondent-defendant was duly served and contested the suit, denying the paternal relationship between the plaintiff and Ghamandi. The defendant asserted that Ghamandi died issueless and had executed a valid Will in his favor on 31.05.1989, and that mutation had been sanctioned accordingly.

4. The plaintiff thereafter filed a replication, wherein all objections and averments contained in the written statement were categorically denied, and the claims and contentions set forth in the plaint were reiterated and affirmed. Upon a meticulous examination of the pleadings and the rival contentions of the parties, the learned trial Court deemed it necessary to crystallize the disputes in question and, for the purposes of structured and legally coherent adjudication, framed the following issues for determination: -

1. Whether plaintiff Nanak Chand is son of Ghamandi deceased; if so, to what effect? OPP.
2. Whether deceased Ghamandi executed a valid will in favour of the defendant which was registered on 31.5.79? OPD.
3. Whether the suit is not maintainable in the present form? OPD.



4. Whether the plaintiff has no locus-standi to file the present suit?
OPD.
 5. Whether there is no cause of action, as alleged? OPD
 6. Whether the plaintiff is estopped from filing the present suit by his own act, conduct and acquiescence? OPD
 7. Whether the suit is not properly valued for the purpose of Court fees and jurisdiction? OPD
 8. Relief.
5. Both parties were afforded ample opportunity to lead evidence. Upon hearing arguments, the learned Additional Senior Sub-Judge, Palwal, recorded that the appellant-plaintiff had failed to establish the alleged paternal relationship with Ghamandi, whereas the respondent-defendant had successfully proved the execution and validity of the Will on record. Aggrieved by the said findings, the appellant preferred a first appeal before the learned District Judge, Faridabad. The First Appellate Court, upon consideration of the materials on record, reversed the Trial Court's finding on Issue No.1, holding that the appellant-plaintiff had sufficiently established his relationship with Ghamandi. The Court relied upon documentary evidence and the ocular testimony of Jageram (PW-2), the brother of the plaintiff's father, as well as the deposition of his mother, Bhagwani, who, it is noted, had died on 23.01.1992. Additional documentary evidence, marked Ex.C1 to Ex.C5 including the Ex-servicemen Certificate, certified copy of registered sale deed dated 12.01.1971, School Leaving Certificate, Voter List, and Ration Card further corroborated that the appellant-plaintiff was the son of Ghamandi, resident of Manpur, Tehsil Hathin.



5.1. Notwithstanding the above, the learned First Appellate Court ultimately dismissed the appeal, observing that the Will dated 31.05.1989 (Ex.D1) had been duly proved and that no suspicious circumstances or irregularities surrounding its execution had been established. Aggrieved by this concurrent judgment and decree, the appellant has filed the present Regular Second Appeal, which was admitted for hearing vide order dated 20.05.1997. Notice was duly served upon the respondent. The respondent was initially represented by Mr. R.M. Singh, Advocate; however, following the death of the respondent, his legal representatives were impleaded. Despite due service, none appeared on behalf of the legal representatives, and the matter proceeded to hearing.

6. I have heard learned counsel for the appellant at considerable length and have given anxious and thoughtful consideration to his submissions, bearing in mind the pleadings of the parties, the evidentiary record, and the concurrent findings of the Courts below.

7. 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.

8. Learned counsel for the appellant contended that the Courts below have failed to appreciate the evidence on record in its proper perspective and have arrived at conclusions regarding the due execution of the Will, and the absence of any suspicious circumstances, on the basis of conjectures and surmises. It was submitted that both Courts overlooked certain manifest inconsistencies and erroneous recitals in the Will, most notably that the only son serving in the Army had been disinherited without any explanation or rationale provided by the testator. Learned counsel further relied upon settled legal principles concerning the proof and execution of Wills, as enunciated by the Hon'ble Supreme Court in ***H. Venkatachala Iyengar v. B.N. Thimmajamma & Ors., 1959 Supp (1) SCR 426***, wherein it was held as follows:-

10.1. *“Stated generally, a will has to be proved like any other document, the test to be applied being the usual test of the satisfaction of the prudent mind in such matters. As in the case of proof of other documents, so in the case of proof of wills, one cannot insist on proof with mathematical certainty.*

2. *Since Section 63 of the Succession Act requires a will to be attested, it cannot be used as evidence until, as required by Section 68 of the Evidence Act, one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the court and capable of giving evidence.*



3. *Unlike other documents, the will speaks from the death of the testator and therefore the maker of the will is never available for deposing as to the circumstances in which the will came to be executed. This aspect introduces an element of solemnity in the decision of the question whether the document propounded is proved to be the last will and testament of the testator. Normally, the onus which lies on the propounder can be taken to be discharged on proof of the essential facts which go into the making of the will.*
4. *Cases in which the execution of the will is surrounded by suspicious circumstances stand on a different footing. A shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the will under which he receives a substantial benefit and such other circumstances raise suspicion about the execution of the will. That suspicion cannot be removed by the mere assertion of the propounder that the will bears the signature of the testator or that the testator was in a sound and disposing state of mind and memory at the time when the will was made, or that those like the wife and children of the testator who would normally receive their due share in his estate were disinherited because the testator might have had his own reasons for excluding them. The presence of suspicious circumstances makes the initial onus heavier and therefore, in cases where the circumstances attendant upon the execution of the will excite the suspicion of the court, the propounder must remove all legitimate suspicions before the document can be accepted as the last will of the testator.*



5. *It is in connection with wills, the execution of which is surrounded by suspicious circumstances that the test of satisfaction of the judicial conscience has been evolved. That test emphasises that in determining the question as to whether an instrument produced before the court is the last will of the testator, the court is called upon to decide a solemn question and by reason of suspicious circumstances the court has to be satisfied fully that the will has been validly executed by the testator.*
6. *If a caveator alleges fraud, undue influence, coercion etc. in regard to the execution of the will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the will may raise a doubt as to whether the testator was acting of his own free will. And then it is a part of the initial onus of the propounder to remove all reasonable doubts in the matter."*

8.1. The Court further observed and held as follows:-

- "9. *In cases where the execution of a will is shrouded in suspicion, its proof ceases to be a simple lis between the plaintiff and the defendant. What, generally, is an adversary proceeding becomes in such cases a matter of the court's conscience and then the true question which arises for consideration is whether the evidence led by the propounder of the will is such as to satisfy the conscience of the court that the will was duly executed by the testator. It is impossible to reach such satisfaction unless the party which sets up the will offers a cogent and convincing explanation of the suspicious circumstances surrounding the making of the will.'*



9. In the present case, the recital of the Will (Ex.D1) unequivocally states that the testator, Ghamandi, had no children. This assertion is demonstrably incorrect, as it has been conclusively established on record that the appellant-plaintiff is the son of Ghamandi. Such a misstatement constitutes a material inaccuracy with direct bearing on the inheritance rights under natural succession. Being the legitimate son of Ghamandi, the appellant-plaintiff was lawfully entitled to succeed to his father's estate, yet the Will erroneously denies his very existence.

9.1. It is pertinent to note that in this region, military service is held in high esteem, and families traditionally take pride in the fact that their children serve in the armed forces. The appellant-plaintiff was actively serving in the Army at the relevant time. Against this backdrop, Ghamandi's omission of his only son in the Will's recitals (Ex.D1) constitutes a manifestly suspicious circumstance. There is no evidence on record or any pleading to suggest that the relationship between Ghamandi and the appellant-plaintiff was strained or acrimonious to justify such omission.

9.2. A misstatement regarding the existence of a natural heir, particularly the only son, raises serious suspicion as to the Will's authenticity. Furthermore, the Will fails to make any reference to the wife of Ghamandi or provide for her in any manner. While the mere disinheritance of natural heirs may not, by itself, be a ground for suspicion, the deliberate denial of the existence of the sole son and the complete omission of the spouse renders the Will inherently dubious.



9.3. In support of this principle, the Hon'ble Apex Court, in ***Gurdial Singh (Dead) through LRs. v. Jagir Kaur (Dead) and Another, 2025 INSC 866***, has held that where a Will fails to disclose the existence of the testator's spouse or makes no provision for the spouse, such omissions constitute suspicious circumstances warranting scrutiny of the Will's validity, relevant extract of the same is as under:-

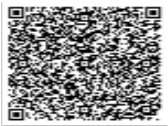
19. *Appellant's case was not only to propound the Will in his favour but even to deny the very status of 1st respondent as Maya Singh's wife. When one reads the contents of the Will, appellant's stand is stark and palpable in its tenor and purport. The Will is a cryptic one where Maya Singh bequests his properties to his nephew i.e. the appellant, as the latter was taking care of him. However, the Will is completely silent with regard to the existence of his own wife and natural heir, i.e. the 1st respondent, or the reason for her disinheritance. Evidence on record shows 1st respondent was residing with Maya Singh till the latter's death. Nothing has come on record to show the relation between the couple was bitter. As per the appellant, she was nominated by Maya Singh and was entitled to receive his pension which demonstrates the testator's conduct in accepting 1st respondent as his lawfully wedded wife. Further, the Trial Court erroneously observed that non-performance of last rites of Maya Singh by 1st respondent hinted at sour relations between the couple. Ordinarily, in a Hindu/Sikh family, last rites are performed by Male Sapinda relations. Given this practice, 1st respondent not performing last rites could not be treated as a contra indicator of indifferent relationship with her husband during the latter's lifetime. In this backdrop, it cannot*



be said Maya Singh had during his lifetime, denied his marriage with 1st respondent or admitted that their relation was strained, so as to prompt him to erase her very existence in the Will. Such erasure of marital status is the telltale insignia of the propounder and not the testator himself. A cumulative assessment of the attending circumstances including this unusual omission to mention the very existence of his wife in the Will, gives rise to serious doubt that the Will was executed as per the dictates of the appellant and is not the 'free will' of the testator.

10. The judgment cited is directly apposite to the facts of the present case. In the matter at hand, the Will (Ex.D1) contains demonstrably erroneous recitals, specifically denying the existence of the appellant-plaintiff, who is conclusively proved to be the son of the deceased, Ghamandi. Further, the Will makes no reference to the wife of Ghamandi and disinherits both the son and the spouse without any rational or cogent justification. Such misstatements and omissions raise serious doubts regarding the authenticity and genuineness of the Will.

10.1. In light of these circumstances, it cannot be held that Ex.D1 represents the genuine Will of the testator, Ghamandi. On the contrary, the evidence suggests that the Will may have been procured under undue influence exerted by the respondent-defendant, as alleged by the appellant-plaintiff. The findings recorded by both the learned Trial Court and First Appellate Court fail to adequately consider these material facts, and the suspicious circumstances surrounding the execution of the Will remain unresolved by the respondent-defendant.



10.2. Accordingly, the **judgment and decree passed by the learned First Appellate Court cannot be sustained and are hereby set aside**. The suit filed by the appellant-plaintiff is decreed, and the appellant-plaintiff is declared to be the co-owner, in joint possession, of one-half share of the suit property. Appeal is allowed.

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

25.03.2026
Gaurav Sorot

(**VIRINDER AGGARWAL**)
JUDGE

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