

2026:PHHC:070807



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

RSA-1854-1998 (O&M)
Reserved on: 11.02.2026
Pronounced on: 07.05.2026

GURDEV SINGH (SINCE DECEASED) THROUGH LRS ...Appellant

Versus

SUKHDEV SINGH AND OTHERS ...Respondents

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. Vijay Kumar Jindal, Senior Advocate with
Mr. Manav Bajaj, Advocate,
Mr. Abhishek Shukla, Advocate,
for the appellant.

Mr. Ranjit Singh Sidhu, Advocate for
Mr. G. S. Nahel, Advocate
for respondent Nos.1 & 2.

PARMOD GOYAL, J.

Present regular second appeal has been preferred by the appellant-defendant No.1 being aggrieved by judgment and decree dated 14.05.1998 passed by learned Additional District Judge, Sangrur vide which first appeal preferred by plaintiffs-respondents was allowed and judgment and decree dated 05.02.1994 passed by Sub Judge 1st Class, Dhuri was set aside and suit of plaintiffs-respondents was decreed with costs.

2. Respondents-plaintiffs filed a suit for declaration, joint possession and permanent injunction seeking to restrain appellant-defendant No.1 from alienating the suit property on the plea that they are in joint possession to the extent of 1/4th share of total land measuring 181 bighas 11 biswas situated in village Pun nawal. That respondents-plaintiffs, appellant/defendant and Sadhu Singh were real brothers and son of Bakshish

Singh. Respondents-plaintiffs and appellant-defendant No.1 were married and had issues whereas, Sadhu Singh remained unmarried and died leaving behind none. It was asserted that defendant Nos.2 to 4 are real sisters of respondents-plaintiffs. That Sadhu Singh had mortgaged certain property in favour of defendant Nos.5 to 7 and defendants No.5 to 7 were impleaded being mortgages. It was asserted that three months prior to his death Sadhu Singh was not keeping good health, he remained confined to bed and was critical. He was hard of hearing, short of sight and had gone considerably weak and remained admitted in private Nursing Home at Dhuri. It was asserted that Sadhu Singh was addicted to bad habits, had been taking drugs and intoxicants and he was unable to identify even close relatives and had died on 07.06.1989. Sadhu Singh was having love and affection for his brothers and due services were rendered to Sadhu Singh by respondents-plaintiffs. That appellant-defendant No.1 is claiming his rights through alleged Will executed by Sadhu Singh and is not acknowledging rights of respondents-plaintiffs, therefore, the suit was preferred.

3. Suit was contested only by defendant No.1, other defendants were proceeded *ex parte*. Defendant No.1 in his written statement asserted that it was he who had rendered services to Sadhu Singh and not the respondents-plaintiffs and Sadhu Singh had executed a valid Will in his favour on 30.05.1989. Appellant-defendant No.1 also claimed that Sadhu Singh was in good health and remained in his senses till his death, however, he had died suddenly. Addiction to drugs and intoxicants by Sadhu Singh was also denied. It was asserted that Sadhu Singh was residing with his mother Kartar Kaur and appellant-defendant No.1. Appellant-defendant No.1 claimed entire property on the basis of Will and prayed for dismissal of

suit. Rajinder Kumar-defendant No.7 only asserted that factum about mortgage executed by Sadhu Singh in his favour.

4. Following issues were framed from the pleadings of parties:-

- (i) Whether Sadhu Singh deceased executed a registered Will dated 30.05.1989 in favour of defendant No.1 if so its effect? OPD-1
- (ii) Whether the plaintiff and defendant Nos.1 to 4 are entitled to declaration and joint possession as prayed for? OPP
- (iii) Whether the plaintiffs are entitled to injunction prayed for? OPP
- (iv) Relief.

5. In the present case, the main dispute is as regards to validity of Will dated 30.05.1989 executed by Sadhu Singh. Learned Court of First Instance had accepted the due execution of Will in favour of defendant No.1 and had accordingly, dismissed the suit of respondents-plaintiffs.

6. Learned Court of first instance had concluded that though ration card of Sadhu Singh was with Harnek Singh, however, it showed that no ration was taken after 1981 on the said card. It also concluded that even if deceased Sadhu Singh was residing with Harnek Singh, this itself was not sufficient to give property to Harnek Singh. Learned Court of first instance has also taken into consideration evidence of deed writer as well as attesting witnesses and had concluded that discrepancy pointed out by respondents/plaintiffs were minor and bound to come with lapse of time as witnesses were examined after two years of execution of will. Learned Court of first instance has also taken note of the fact that initially Sadhu Singh had married Chatin Kaur but had not brought her Muklawa and it was Gurdev Singh-defendant No.1 who married Chatin Kaur and resided with her as husband and wife and raised children from the said wedlock and, therefore, it was probable that Sadhu Singh shared a close bond with Gurdev Singh-

defendant No.1. It also concluded that Sadhu Singh was residing with her mother Kartar Kaur and no evidence has been brought by respondents/plaintiffs to show that he was actually sick on the day of execution of will or was not of sound mind. Learned Court had also found that at the time of filing of suit, mother of respondents/plaintiffs and appellants/defendants Kartar Kaur who was class-I heir was alive and the suit land would have gone to Kartar Kaur and not to respondents/plaintiffs or appellant/defendant by way of natural succession. Learned Court of first instance accordingly held that suit itself was not maintainable in view of the fact that Kartar Kaur was alive and she was not made party. It was also held that since Kartar Kaur who ought to have succeeded the estate of Sadhu Singh had not challenged the Will, the challenge by respondents/plaintiffs is not justified and accordingly, respondents/plaintiffs had no cause of action on the date of filing of suit and were not entitled to any declaration. All the issues were decided against respondents/plaintiffs by learned Court of first instance.

7. However, learned First Appellate Court vide impugned judgment and decree dated 14.05.1998 accepted the claim and appeal preferred by respondents-plaintiffs. Will was held to be surrounded by suspicious circumstances. Learned First Appellate Court had concluded that Gurdev Singh-defendant No.1 had failed to prove that at the time of execution of alleged Will Sadhu Singh was in sound disposing mind. The Will does not mention about other brothers and sisters of Sadhu Singh. That scribe had admitted that neither testator nor witnesses were known to him and Gurdev Singh-defendant No.1, the beneficiary of Will took active part in preparation and execution of Will.

8. Learned First Appellate Court had further noticed that there is discrepancy in the evidence of DW-1-Scribe and DW-3 attesting witness. On one hand, DW-1-scribe stated that all the persons had come to him at 2:30/3:00 PM, however, DW-3 had asserted that they had started from the village at 11:00 AM and reached village Dhuri at about 2:00/3:00 PM. The second attesting witness was not examined. It was also concluded that since DW-3 had admitted that Sadhu Singh had lived with Harnek Singh and ration card of Sadhu Singh was with Harnek Singh, therefore, Will is surrounded by suspicious circumstances. Learned First Appellate Court had also taken note of statement of appellant-defendant No.1 as DW-2 wherein, he claimed that Sadhu Singh had married Chatin Kaur and three issues were born and has failed to prove that Sadhu Singh was not in speaking terms with respondents-plaintiffs and had litigation with respondents-plaintiffs. It also noticed that signatures of Sadhu Singh on Will were in English, however, appellant-defendant No.1 has not proved the signatures after getting it compared with standard signatures. Accordingly, Will was rejected and suit was decreed.

9. In the present case, Will is relied upon by appellant-defendant No.1 has been rejected by learned First Appellate Court on following grounds:-

- (i) That appellant has failed to prove that Sadhu Singh (deceased) was in sound disposing mind.
- (ii) That there is no mention regarding other brothers and sisters in Will.
- (iii) That Gurdev Singh the appellant who is beneficiary of Will took active part in preparation and execution of alleged Will.

- (iv) That evidence of DW-1 and DW-3 as regards to timing of execution of Will are in variance and therefore, creates doubt.
- (v) That the second attesting witness was not examined.
- (vi) That from ration card Ex.P-3, it is shown that deceased was living with respondents-plaintiffs, however, no proof was produced by appellant-defendant to show that Sadhu Singh was living with him.
- (vii) That appellant-defendant had put up a new case while appearing as DW-2 by claiming marriage of Chatin Kaur with Sadhu Singh.
- (viii) That appellant-defendant No.1 had failed to prove that the relations of respondents-plaintiffs and Sadhu Singh were strained as was claimed by him.

10. On the basis of above reasons, Will was found to be surrounded by suspicious circumstances and was rejected by learned First Appellate Court vide impugned judgment and decree dated 14.05.1998. It is therefore, to be seen whether appellant/defendant had proved due execution of Will and has explained suspicious circumstances pointed out by respondents/plaintiffs. On consideration of evidence, for the following reasons I find findings of learned First Appellate Court to be erroneous.

11. In the present case, Will dated 30.05.1989 was a registered Will. Scribe as well as one of the attesting witnesses were duly examined as DW-1 and DW-3. Evidence of DW-1 and DW-3 goes to show that both have stated about due execution of Will in a consistent and reliable manner. Both have stated that Will was scribed by DW-1 at the desire of deceased-Sadhu Singh. It was deceased-Sadhu Singh who had told the scribe what he wanted

and accordingly, scribe had scribed the Will. Both the witnesses have stated that deceased-Sadhu Singh had signed the Will after understanding the same and he was of sound mind. Both the witnesses i.e. DW1 and DW3 have duly stated that Sadhu Singh had signed the will after understanding the same in the presence of scribe as well as attesting witnesses. Scribe and witnesses had also signed the will in the presence of Sadhu Singh. DW1 in clear terms had asserted that at the time of scribing the Will Sadhu Singh was hale and hearty. He was aware about his interest (profit and loss) and had got prepared the Will on his instructions. DW1 also stated that he had duly made entry regarding will at serial No.641 dated 30.05.1989 and had placed the same as Ex.D2.

12. From gist of evidence of DW1, it is clearly made out that he was an independent witness as he had clearly admitted in cross-examination that neither Sadhu Singh nor Gurdev Singh-defendant No.1 were known to him. He had also clearly stated that he had not accompanied Sadhu Singh for registration of will. He also stated that except for Sadhu Singh and witnesses, none had come to him and he is not aware whether Gurdev Singh-defendant No.1 had accompanied them or not as Gurdev Singh-defendant No.1 was not known to him. He also stated that as per his information, none had accompanied Sadhu Singh or witnesses when they came to him. He had specifically denied the suggestion that Will Ex.D1 was scribed on the asking of Gurdev Singh-defendant No.1, rather reiterated that Will was written as was narrated by Sadhu Singh. He also denied that Will was written prior to arrival of witnesses, rather asserted that it was written in presence of witnesses. He denied that signatures of Sadhu Singh were taken without informing him or that Sadhu Singh was under influence of intoxicants. No

suggestion was given to DW1 regarding signatures of testator, DW1 and witnesses on the Will.

13. Similarly, DW3-Jang Singh attesting witness to the Will had duly stated that Sadhu Singh had executed Will in favour of Gurdev Singh-defendant No.1 in his presence. That will was written by document writer as per dictation of Sadhu Singh. He clearly stated that after writing of Will, it was read over to Sadhu Singh. Sadhu Singh had admitted the same to be correct and had signed the same in his presence and presence of other attesting witness and deed writer. He also had affixed his LTI in the presence of Sadhu Singh along with other attesting witness Kartar Singh. He also stated thereafter, Will was registered and at the time of execution of Will Sadhu Singh was in alert state of mind and body, though he was having simple fever. He was duly conscious, aware about his rights (profit and loss) and had executed Will. In his cross-examination DW3 admitted that respondents/plaintiffs also had good relationship and on speaking terms with deceased Sadhu Singh. He also stated that Sadhu Singh for short time had lived with Harnek Singh and had died in the village itself. He asserted that at the time of his death, Sadhu Singh was 60 years and he was not aware about any disease. He asserted in his cross-examination that Sadhu Singh had gone from Village along with DW3 and Kartar Singh. Gurdev Singh-defendant No.1 had also accompanied them. They were duly informed by Sadhu Singh that he wanted to take them (attesting witnesses) for execution of Will. They started from Village at around 11:00 AM by bus and had taken one hour to reach Dhuri and thereafter, had gone on foot to Tehsil Office. The Will paper was purchased by Sadhu Singh himself. That they had asked Sadhu Singh as to why he was leaving his brothers upon which he informed that he

want to execute Will in the name of Gurdev Singh-defendant No.1 only. In his cross-examination DW3 had reiterated that Sadhu Singh himself had dictated the contents to the document writer. He also stated that at the time of scribing the Will 10/15 persons were also present there. Thereafter, they had gone to the Office of Sub Registrar. He also stated that after writing the Will he had duly thumb marked the same and thereafter, he had left for drinking water and when he came back, document writer had taken signatures and thumb impression of others and they started back to their Village at about 2:00/3:00 PM. He denied that Sadhu Singh was under the influence of intoxication or mentally/physically not conscious. He also denied that signatures of Sadhu Singh were taken while he was sitting in the car.

14. From the above noted jist of evidence of DW2 and DW3 it is clearly made out that both of them in clear terms have stated that executant of Will i.e. Sadhu Singh was alert, of sound mind and not under the influence of intoxicant and was fully competent to understand his interest (profit and loss). Both DW1 and DW3 have stated that the Will was written as desired by Sadhu Singh who had duly disclosed as to how Will is to be recorded and on his instructions DW1 had scribed the Will. Both the witnesses have duly asserted that Sadhu Singh had signed the Will in presence of witnesses and witnesses had signed the Will in presence of Sadhu Singh immediately after scribing the Will. DW3 had stated that they had gone to Office of Registrar and had duly got the same registered.

15. Evidence of DW1 and DW3 with regard to mental condition of executant at the time of execution of Will has gone un rebutted. Respondents/plaintiffs had asserted that Sadhu Singh was ill prior to

execution of Will and was not in a position to understand things. It was also alleged by respondents/plaintiffs that Sadhu Singh was addicted to liquor and intoxicants and at the time of execution of Will he was under the influence of intoxicants and was not in a position to understand the contents of Will. However, except for making these allegations in the plaint and by asserting orally by way of self-serving statements, no other evidence showing mental condition of deceased on the date of execution of Will has been produced by respondents/plaintiffs. In the present case, respondents/plaintiffs have not led any evidence either to prove that deceased Sadhu Singh was addicted to liquor or intoxicants or that he was ill prior to execution of Will or on the date of Will he was not able to understand the contents of Will.

17. Merely because Sadhu Singh had died within one week after execution of Will due to natural causes would not raise doubt over due execution of Will which is duly registered before the Sub Registrar. Execution of Will has been stated in a consistent and reliable manner by independent witness DW1 Scribe, who had no connection with Sadhu Singh or Gurdev Singh-defendant No.1 i.e. beneficiary of Will and that of attesting witness DW3. Deceased was 60 years old and had died on account of natural causes, therefore, unless it is shown that he had no capacity to understand the contents of Will, the Will cannot be doubted, as is duly proved by attesting witness, Scribe and was duly registered with Sub Registrar.

18. The only discrepancy in the evidence of DW1 and DW3 which has been noted by learned Appellate Court is that they had stated the time when Will was executed in a different manner. It is to be noted that DW3 had stated that they had started from Village at about 11:00 AM and had

gone by bus which had taken one hour to reach Dhuri and, thereafter, they had gone on foot from bus stand to the office of Scribe. That they were back to village by 2:30/3:00 PM. This goes to show that around 1 ½ to 2 hours must have been taken from Village to reach office of Scribe i.e. at about 12:30/1:00 PM.

19. On the other hand, DW1 stated that testator of Will and witnesses had come to him at around 2:00/3:00 PM and half an hour was taken to scribe the same. In fact, it is not to be forgotten that both the witnesses were examined after passing of two years from the date of execution of Will, therefore, minor discrepancies of 1 or 2 hours is natural and bound to come. The same is not material as has been made by learned Appellate Court.

20. Learned Appellate Court has also non-suited the Will on the ground that Will is surrounded by suspicious circumstances as beneficiary of the Will was present at the time of its execution. Mere presence of beneficiary at the time of execution of Will itself is not a suspicious circumstance. There is no legal bar against presence of beneficiary at the time of execution of Will. The presence of beneficiary at the time of execution of Will is not considered suspicious circumstance if it is explained and ruled out that beneficiary had no role in influencing the decision of testator at the time of execution of Will. In the present case, DW1 had totally denied the presence of beneficiary Gurdev Singh-defendant No.1 at the time of execution and asserted that Gurdev Singh-defendant No.1 was not know to him. Whereas DW3 had fairly admitted presence of Gurdev Singh-defendant No.1 at the time of execution of Will in the office of Scribe.

However, both DW1 and DW3 in clear terms have stated that Will was

recorded as asked by Sadhu Singh. This aspect of the case stated by DW1 and DW3 has gone unchallenged in cross-examination and has gone unrebutted by way of independent evidence. The fact that both DW1 and DW3 have clearly stated that it was only Sadhu Singh on whose desire alone Will was recorded. None had stated about any role played by Gurdev Singh-defendant No.1 to influence the mind of Sadhu Singh. Therefore, the presence of Gurdev Singh-defendant No.1 along with his brother who was 60 years old and was having light fever was natural and failure of respondents/plaintiffs to show that by presence of beneficiary, the executant got influenced would lead to only conclusion that presence of beneficiary is not fatal to the execution of Will, rather his presence stands explained and it is clearly made out from evidence of DW1 and DW3 that Will was out of free will of Sadhu Singh.

21. Learned First Appellate Court had also taken non-mentioning of brothers and sisters in Will as another suspicious circumstance. It has also taken note of the fact that second attesting witness was not examined, however, none of these circumstances can be considered to be suspicious circumstances as to dislodge Will which stands proved by cogent and reliable evidence of DW1 and DW3 as well as finds corroboration in the shape of its registration. It is common for an executant only to name beneficiary when beneficiary and others are not direct descendant and beneficiary is person who is providing services to him.

22. Present is not a case where, upon death of deceased, his brothers and sisters would have got the property. The property after the death of Sadhu Singh would have gone to his mother who was alive on the date of execution of Will as well as on the date of filing of present suit. In

fact, it was she who alone could have raised objection against execution of Will by Sadhu Singh in favour of Gurdev Singh-defendant No.1 as it was her right which got affected by execution of Will. However, she during her lifetime had not raised any challenge to the will. She had duly accepted the Will executed by Sadhu Singh which was against her interest, therefore, mere non-mentioning of names of other brothers and sisters in the facts and circumstances of the present case has no effect on the validity of Will.

23. Similarly, there is no requirement under law to examine second attesting witness. In the present case, both DW1 and DW3 have duly stated that Kartar Singh-second attesting witness had duly signed the Will in their presence as well as in the presence of Sadhu Singh. They have duly proved that Will was thumb marked by Kartar Singh. Therefore, once it is proved that Kartar Singh had thumb marked the Will in the presence of Scribe and other attesting witnesses at the time of execution of Will, the requirement of law is satisfied and non-examination of second attesting witness cannot be a suspicious circumstance which can be taken into consideration for non-suiting the Will.

24. Reliance on ration card by learned Appellate Court only shows that Sadhu Singh had once lived with Harnek Singh and, therefore, this fact is of no help to the case of respondents/plaintiffs. It has been duly noticed by learned Court of first instance that ration card was an old one and was not in use since 1981, whereas Will was executed in 1989. Except for ration card there is no evidence placed by respondents/plaintiffs showing that deceased Sadhu Singh was living with them at the time of execution of Will or at the time of his death. Rather it is clearly proved that Sadhu Singh was living with his mother Kartar Kaur and was being looked after by Gurdev Singh-

defendant No.1. There is no evidence on record that respondents/plaintiffs have ever served Sadhu Singh, even though they were real brothers. On the other hand, a close relation is made out from the fact that Sadhu Singh was married to Chatin Kaur but said marriage was not put into force and it was Gurdev Singh-defendant No.1 who had taken Chatin Kaur as his wife and had raised children from their wedlock. This fact clearly shows that there was a close relationship between Gurdev Singh-defendant No.1 and Sadhu Singh. The conclusion drawn by learned Appellate Court that appellant/defendant has tried to make out a new case by saying that Sadhu Singh was married is totally misreading of evidence. Gurdev Singh-defendant No.1 while appearing as DW2 had only stated that initially Chatin Kaur was married to Sadhu Singh, but he had not brought her as his wife and thereafter, it was Gurdev Singh-defendant No.1 who had married Chatin Kaur and lived with her as husband and raised children. This fact goes to show that no new case was set up by DW2, rather he had explained the reality of life and it is worth noticing that this fact was not challenged by respondents/plaintiffs in the cross-examination of DW2. It is a fact which goes in favour of appellant/defendant and not against them which has been wrongly taken against appellant/defendant by learned Appellate Court.

25. In view of above discussion, the conclusion drawn by learned Appellate Court is clearly erroneous and perverse and is a result of misreading of evidence led by parties. It is accordingly held that Sadhu Singh-executant of Will was of sound mind at the time of execution of Will dated 30.05.1989, had got the same scribed under his instructions and had signed in the presence of Scribe and two other attesting witnesses who had also signed in his presence. It is also duly proved that Will was thereafter got

registered on the same day with the office of Sub Registrar where again Sub Registrar had verified due execution of Will which further lends corroboration to the evidence of DW1 and DW3 proving due execution of Will. It is accordingly, held that Will dated 30.05.1989 was a valid Will executed by Sadhu Singh and is not surrounded by any suspicious circumstances.

26. Learned Appellate Court has erred in allowing the appeal. The impugned judgment and decree passed by learned First Appellate Court is accordingly set aside and appeal is allowed. Suit preferred by respondents/plaintiffs is accordingly dismissed.

27. Pending application(s), if any, is/are disposed of accordingly.

07.05.2026
Ravinder/Chiranjeev

(PARMOD GOYAL)
JUDGE

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No