



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
253

RSA-4075-2018(O&M)
Date of decision: 28.01.2026

Dharamjit Kaur

...Appellant(s)

Vs.

Smt. Gurdev Kaur & Another

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. A.S. Narang, Advocate
for the appellant.

Mr. Ashok Giri, Advocate
Mr. Mohit Giri, Advocate
for the respondents.

NIDHI GUPTA, J.

Present second appeal has been filed by the plaintiff against the judgment of reversal dated 13.12.2017 passed by Additional District Judge, SAS Nagar (Mohali) whereby Civil Suit filed by the appellant seeking declaration as owner in possession of suit land and permanent injunction, although decreed by the Id. Trial Court vide judgment and decree dated 29.08.2013, has been dismissed by the learned first Appellate Court vide the impugned judgment and decree dated 13.12.2017.

2. It was the pleaded case of the appellant in the plaint that originally the suit land, as described in the head note of the plaint, was



owned and possessed by her husband Gulzar Singh. Gulzar Singh had died; whereafter the suit property was inherited by the plaintiff along with her two sons and two daughters. Defendant No.1 is the daughter-in-law of the plaintiff being the wife of her late son Baljinder Singh. Defendant No.2 is the granddaughter of the plaintiff, born out of wedlock of defendant no.1 and Baljinder Singh. It was pleaded that relations between Baljinder Singh and defendant No.1 were strained. It was alleged that defendant No.1 had harassed Baljinder Singh to such extent that he had become a heart patient. As such, Baljinder Singh had filed a divorce petition under Section 13 of the Hindu Marriage Act. Eventually, both parties had arrived at a compromise and decided to dissolve their marriage by filing petition under Section 13-B of the Hindu Marriage Act; and it was mutually agreed that Baljinder Singh shall pay an amount of Rs.4 lakh to the defendants by way of full and final Settlement. Out of the said amount, Baljinder Singh had even paid Rs.50,000/- to the defendant No.1. A joint statement to this effect was made by them before the concerned Family Court on 16.02.2009. The next date for recording of second statement and for payment of remaining amount of Rs.3,50,000/- was fixed for 25.03.2009. However, unfortunately, Baljinder Singh died before that on 16.03.2009, as a result of which, the petition under Section 13-B was rendered infructuous. It was further pleaded that during the lifetime of Baljinder Singh, the plaintiff was looking after him. As a result, Baljinder Singh was stating openly that in case of any mishap, his property



was to be inherited by his mother. It was further pleaded that Baljinder Singh had executed a Will dated 29.12.2008 in favour of the plaintiff in the presence of witnesses. It was averred that due to the shock of the death of her son, the plaintiff did not bother to get the Mutation sanctioned in her favour on the basis of the Will dated 29.12.2008. However, when she approached the Halqa Patwari for entering of Mutation, he told the plaintiff to come after a week. It was averred that when the plaintiff met the Patwari again, he said Mutation had already been sanctioned on the basis of natural succession in favour of the plaintiff and the defendants in equal share. Accordingly, on 23.01.2010, the plaintiff had filed the present suit for declaration as owner in possession of land 1/60 of Late Sh. Baljinder Singh (in addition to her own share) out of the land bearing Khasra Nos.21//1, 22//5, 206 and 21//3/3/2, 4/1, 5/1, 9/2, 9/3 and 1/270 share of late Sh. Baljinder Singh (in addition to her share) out of the land bearing Khasra No.7//27 Min, 7//27 min, 7//2 min, and 7//27 min as per jamabandi for the year 2002-03 situated within the revenue limits of village Saini Majra, Tehsil Kharar, Distt. SAS Nagar Mohali and 2/60 share of Baljinder Singh (in addition to her own share) out of land bearing Khasra Nos.3//21, 4//25/2, 9//5, 6/1, 10//1/1/1, 1/1/2, 10/460 share of Baljinder Singh (in addition to her own share) out of land bearing Khasra Nos.4//24/2 as per Jamabandi for the year 2002-03, situated within the revenue limits of village Bansepur, Tehsil Kharar, District Mohali on the basis of valid Will dated 29.12.2008 executed by Late Baljinder



Singh in favour of the plaintiff; along with consequential relief of permanent injunction restraining the defendants from interfering in above land and not to dispossess the plaintiff illegally and forcibly from the said land.

3. Upon notice, the defendants had put in appearance and resisted the suit by filing written statement and stating that defendant No.2 is the legitimate child of Baljinder Singh; and therefore, share of Baljinder Singh had been inherited by the plaintiff along with the defendants in equal share. It was further alleged that the Will dated 29.12.2008 is a forged and fabricated document and the same has been created to cheat the defendants and it is for this very reason that Will did not see the light of day for more than a period of one year and was produced only when the mutation was sanctioned in favour of defendants. Moreover, Baljinder Singh could not execute a valid Will regarding the entire suit property as the same is ancestral co-parcenary property. As such defendants along with plaintiff have inherited equal share in the suit property. Accordingly, dismissal of suit was prayed for.

4. On the basis of pleadings of the parties, following issues were framed by the learned trial Court: -

“1. Whether the plaintiff is entitled to the relief of declaration as prayed for? OPP

2. Whether the plaintiff is entitled to the relief of permanent injunction, as prayed for? OPP

3. Whether the suit is bad for non-joinder of necessary party? OPD



4. Whether the suit is not maintainable in the present form? OPD

5. Whether the plaintiff has concealed the material facts from the court? OPD

6. Relief.”

5. Upon appraisal of pleadings and oral & documentary evidence adduced by the parties, the learned trial Court decided issues No.1 and 2 in favour of the plaintiff and against the defendant; issues No.3, 4 and 5 in favour of the plaintiff in the absence of evidence against the defendants. Accordingly, vide judgment and decree dated 29.08.2013, learned Civil Judge (Junior Division), Kharar had decreed the suit of the plaintiff by holding that:-

“21. the Will dated 28.12.2008 as Genuine and declared plaintiff, owner in possession of the suit land as detailed in the head note of the plaint and further defendants are restrained from dispossessing the plaintiff from the suit land...”

6. However, Civil Appeal filed by the defendants was accepted by the Id. Additional District Judge, SAS Nagar, Mohali vide impugned judgment and decree dated 13.12.2017. Hence, present Second Appeal by the plaintiff.

7. It is inter alia submitted by learned counsel for the appellant/plaintiff that the learned First Appellate Court has reversed the well-reasoned judgment of the learned trial Court on totally whimsical grounds; and on an absolutely erroneous interpretation of Section 63 of the Indian Succession Act (hereinafter referred to as ‘the Act’). Id. Counsel submits that the Id. First Appellate Court has misread the bare provision of



Section 63 of the Act while reversing the judgement of the Id Trial Court. The Trial Court after examining the entire evidence on record came to the conclusion that the Will dated 29.12.2008 executed by the deceased Baljinder Singh in favour of his mother, stood duly proved in accordance with law. The depositions of the two witnesses to the WILL, Harjinder Singh and Rajinder Kumar i.e. PW 2 and 3 fulfilled the requirements of law and nothing startling or contradictory could be extracted during cross examination. However, the First Appellate Court has reversed this finding on an absolutely erroneous interpretation of Section 63 of the Act by observing that the two witnesses have nowhere stated that the WILL was scribed in their presence. Therefore, Id. First Appellate Court concluded that compliance of S. 63 was not made. Id. Counsel argues that the only requirement of S. 63 is that the testator must have signed in the presence of the witnesses and the witnesses must have affixed their signatures 'animo attestendi', in the presence of the testator. A perusal of the WILL, Ex. P1, as well as examination in chief of the two witnesses succinctly establishes that the requirements of S. 63 were duly fulfilled. Even no suggestion was put to the witnesses to this effect during cross-examination.

8. Ld. Counsel further submits that the First Appellate Court has again misread the law relating to testamentary documents while disbelieving the WILL propounded by the Appellant. The Id. First Appellate Court has erroneously discarded the WILL on the ground that the Notary Public who



had attested the WILL was not produced as a witness. The said finding is again contrary to law as the requirement of law is that a WILL must be attested by two witnesses, out of which at least one must be produced and examined to prove the WILL. In the instant case, both witnesses to the WILL were produced and both have proved the WILL. Hence, failure to produce the Notary cannot be deemed to be fatal to the case of the appellant.

9. Ld. Counsel contends that the judgement and decree rendered by the First Appellate Court is based on complete misreading of the evidence brought on record. The Ld. First Appellate Court has discarded the WILL on an erroneous assumption that the WILL has not been witnessed by 'men of confidence' of the deceased. However, a perusal of the evidence on record would indicate that both witnesses were well known to the deceased and in fact, PW-2 was 'class fellow' of the deceased. It is argued that clearly, therefore, the above finding is capricious and based on an erroneous assumption and deserves to be set aside. Once the WILL stood proved in accordance with law and there were no suspicious circumstances surrounding the execution of the WILL, the Ld. First Appellate Court could not have discarded the Will propounded by the Appellant.

10. Ld. Counsel for the appellant lastly submits that the finding of the Ld. First Appellate Court to the effect that the WILL is surrounded by suspicious circumstances is completely erroneous and is the result of absolute misreading of the evidence on record. The Ld. First Appellate Court



has concluded that exclusion of the deceased's minor daughter, production of the WILL after one year and the fact that the deceased was not an old person are enough circumstances to create suspicion on the execution of the WILL. It is submitted that the aforesaid conclusion is contrary to the evidence on record. It can be safely deduced from evidence on record that the relations between the deceased and respondent no. 1 i.e. his estranged wife had turned sour within six or seven months of their marriage and thereafter, she started living separately. Litigation ensued between the parties as the deceased had filed a petition for divorce whereas respondent no. 1 had filed a criminal complaint before the police. The pleadings of the parties in the divorce petition also establish the fact that the minor child was born after the deceased and respondent no. 1 had separated and that the deceased had not met his child since her birth. In the cross-examination of defendant no.1 it has come on record that neither she nor the minor daughter came for any of the last rites of the deceased. Thus, in these circumstances it is quite natural for the deceased to have excluded his estranged wife and daughter as they had maintained no contact or relations with the deceased. In fact, the soured relations itself were a good enough reason for the deceased to have executed his WILL. Even, otherwise the evidence on record suggests that the deceased was suffering from diabetes and heart disease, which would prompt any person of ordinary prudence to prepare a WILL. The other apprehension raised by the Id. First Appellate Court that the WILL was



produced after considerable delay is also not tenable as there is sufficient explanation for the delay. It is quite obvious that the tragic and untimely loss of her son would have been an overwhelming incident and mutation of properties of the deceased would not be of priority for the appellant. Thus, the Trial Court's finding that there were no suspicious circumstances in the execution of the WILL is based on cogent evidence whereas, the First Appellate Court reversed these findings based on surmises and conjectures.

11. It is accordingly prayed that the present appeal be allowed, and the impugned judgment of the learned First Appellate Court be set aside; and judgment of the learned trial Court be restored.

12. Per contra, learned counsel for the respondents/defendants vehemently opposes the submissions on behalf of the appellant and submits that the First Appellate Court was in no error in holding that the Will propounded by the appellant was surrounded in suspicious circumstances. It is submitted that the Will is dated 29.12.2008; Baljinder Singh had died on 16.03.2009; whereas Civil Suit, based on the said alleged Will has been filed more than one year later, only on 23.01.2010. It is contended that no reasons have been given as to why the said alleged Will was not previously disclosed by the plaintiff. Furthermore, the alleged attesting witnesses PW2 and PW3 have both admitted in their respective depositions that after the death of Baljinder Singh they had met the plaintiff on several occasions but did not inform her regarding the Will. It is submitted that this clearly points that the



Will was fabricated subsequently by the appellant only after Mutation was sanctioned to defeat the rights of the defendants.

13. It is further submitted that the Will in question cannot be relied upon also on the ground as the same is an unregistered Will. It is pointed out that the said Will was notarised by a lady; whereas PW2 attesting witness has stated in his cross-examination that the Notary was a man. Even further said Notary has not been examined by the appellant; and neither has the Scribe. In fact, it is not forthcoming from the record as to who had scribed the Will. It is contended that these factors also cast a shadow of doubt on the veracity and authenticity of the Will.

14. It is further submitted by learned counsel for the defendants that in any event, the suit property could not have been bequeathed by Baljinder Singh vide the Will dated 29.12.2008 as the suit property was coparcenary/ancestral in nature; and therefore, the defendants being Class-I Legal Heirs of Baljinder Singh, have rights in it. It is submitted that the status of respondent No.1 as that of a widow and status of respondent No.2 as daughter of Baljinder Singh is not disputed and is in force till today as respondent No.1 has not remarried. Moreover, plaintiff as PW1 has admitted that suit property is ancestral in nature. In this regard, learned counsel for the respondents refers to the District Court Record and the evidence on record. It is pointed out that the learned First Appellate Court in its impugned judgment dated 13.12.2017 has given as many as 5 cogent and valid reasons



for discarding the Will dated 29.12.2008. It is accordingly prayed that the present appeal be dismissed. In support of his contentions, learned counsel relies upon judgment of this Court in **Surjit Singh v. Gurdeep Singh, (Punjab And Haryana) : Law Finder Doc ID # 2804547.**

15. No other argument is made on behalf of the parties. I have heard learned counsel for the parties and perused the District Court Record in minute detail. Upon giving my thoughtful consideration to the vehement and rival submissions advanced on behalf of both the parties, I find myself in agreement with the submissions advanced on behalf of the appellant.

16. The brief chronological sequence of events as evident from the record is as follows: -

01.12.1996: On 1.12.1996, Deceased Baljinder Singh/son of the appellant solemnised marriage with defendant/respondent No.1.

05.06.1997: However, barely seven months thereafter, due to matrimonial discord, Baljinder Singh and defendant No.1 separated on 05.06.1997. After the separation, respondents never came back and never visited the deceased or the appellant.

23.10.1997: Respondent No.2 was born on 23.10.1997.

15.06.2002: As the respondents had failed to return to the matrimonial home after 5.6.1997 despite best efforts, deceased Baljinder Singh filed a petition under Section 13 of the Hindu Marriage Act on 15.06.2002 (Ex.P-9).



29.12.2008: Due to the continuous matrimonial discord, Baljinder Singh developed a heart condition and also suffered from diabetes and other ailments. Due to his ill health, Baljinder Singh executed a Will dated 29.12.2008 (Ex.P1), in favour of his mother, the appellant/plaintiff.

16.02.2009: In the meantime, a compromise was arrived at between Baljinder Singh and the respondents, as per which it was decided that Baljinder Singh would pay a total amount of Rs.4 lakh to the defendants by way of full and final settlement. Accordingly, the Divorce Petition filed under Section 13 was converted into a petition under Section 13-B (Ex.P2) for divorce by mutual consent, in respect of which first joint statement was made before the Family Court on 16.02.2009 at which time, an amount of Rs.50,000/- was paid by Baljinder Singh to the defendants; and remaining amount was to be paid by Baljinder Singh to the defendants on 25.03.2009.

16.3.2009: However, Baljinder Singh died on 16.3.2009. Resultantly, the divorce petition under Section 13 B HMA was rendered infructuous.

23.01.2010: The present Civil Suit came to be filed on 23.01.2010.

17. It is the case of the appellant/plaintiff that the suit property was bequeathed to the appellant vide Will dated 29.12.2008. To the contrary, it is the case of the defendant that the said Will is a forged and fabricated document and was manufactured by the appellant only after the mutation was sanctioned in favour of the parties on the basis of inheritance. However, the said contentions of the respondents are ill-founded as the plaintiff has



succeeded in proving the authenticity of the Will in accordance with Law. The plaintiff has examined the two attesting witnesses of the Will namely PW2 Harjinder Singh and PW3 Rajender Kumar, who had tendered in their duly sworn affidavits (Ex.PW2/A and Ex.PW3/A respectively). Both witnesses had specifically deposed that Baljinder Singh had executed the Will of his own free will; that Will was got attested from Notary Public who had read over the Will to Baljinder Singh, who had admitted the contents of the same as correct; whereafter signatures were affixed upon the Will. Both witnesses stated that they had seen the original Will and identified the signatures of Baljinder Singh and the other attesting witnesses. PW2 further stated that he was class-fellow of Baljinder Singh, thereby establishing that he was well-known to the deceased. In this manner, both witnesses had duly proved the execution of the Will through their detailed evidence. In view of this fact, non-registration of the Will, will not discount its authenticity.

18. However, the first Appellate Court has ignored all of the above facts and evidence, and has discarded the Will for the following reasons: -

“16. Now the evidence of the propounder of the Will and testimonies of attesting witnesses are to be appreciated on the touchstone of the law enunciated by the superior Courts. Testimonies of PW-2 Harjinder Singh and PW-3 Rajinder Singh provides that none of the witnesses have deposed as per requirement of Section 63 of Indian Succession Act as during their cross-examination these witnesses have not categorically stated that Will in question was scribed in their presence at the



instance of Baljinder Singh. In his chief examination PW-2 Harjinder Singh has stated that Will in question was scribed in his presence at the instance of Baljinder Singh, whereas in his cross-examination this witness has stated that he had attended the Bhog ceremony of Baljinder Singh, but he had not disclosed about the Will at that time. He further stated in his cross-examination that he had not asked Baljinder Singh from where the Will was scribed by him. Thereafter the respondent has relied upon the testimony of Rajinder Kumar PW-3 who is also attesting witness of the said document. PW-3 Rajinder Kumar who has stated in his examination that on 29.12.2008 Baljinder Singh executed a Will in favour of his mother Dharamjit Kaur and same was scribed at the instance of Baljinder Singh and after admitting the contents of the case the said Baljinder Singh has signed the Will in his presence and in presence of Harjinder Singh. This witness has also stated in his cross-examination that Baljinder Singh had already got written his Will when he approached him at his shop in Sector 45, Chandigarh. This witness has deposed that he has never told about the execution of the Will to the mother of the deceased at the time of bhog of deceased. Even he has not told about this fact to the mother of the deceased when she met him prior to death of the deceased. He has also stated that he does not know who had scribed the same or from where the same was scribed. From the above defective deposition of both the concerned witnesses, examined by respondent to prove execution of Will, this Court has found that the Will has been got executed in a very perfunctory and casual manner. Even PW-3 Rajinder Kumar in his cross-examination has stated that he do not know where the property



/land of deceased is situated qua which he executed a Will. This Court finds force in contention of arguments of learned counsel for contesting respondents that a person executing a Will always keeps men of his confidence as witnesses of the Will, so that they may execute his last wish as per his desire, if need be, which is not so in the instant case. Accordingly, in the end, it can be said that both the attesting witnesses cannot be relied upon as they failed to clear the suspicion attached with the Will. The other witness who has attested the Will is a Notary Public at Mohali, but she has not been brought by the respondent in the witness box to prove the factum of execution of the will on 29.12.2008, which also raises doubt about the Will.”

19. Besides the above, a further reading of the impugned judgment shows that the Learned First Appellate Court has nonsuited the appellant also on the ground that no cogent reasons have been given as to why Baljinder Singh had disinherited his minor daughter. The Will has been held to be shrouded in suspicious circumstances also on the ground that at the time of death, deceased Baljinder Singh was only 42 years old and there was nothing on record to show that he was suffering from any fatal disease due to which there was necessity to execute the Will, especially in view of the fact that the plaintiff herself despite being 63 years old had not executed any Will. The Will was held to be doubtful also on the ground that it was not known as to who had scribed the Will. The Will was doubted also for the reason that the Notary was not examined. Moreover, great weight



was given to the fact that PW2 had stated in his cross-examination that Notary Public was about 40-45 years of age, and that “he” was having normal health i.e. PW2 and PW3 had addressed Notary Public as a ‘male’; whereas the Notary Public was Jagdeep Kaur, a woman. It was accordingly held that the Will was shrouded in suspicious circumstances. However, upon a perusal of the record, it is clear that the above said reasoning of first Appellate Court is based on conjectures and surprises, and a complete misreading of evidence. I shall deal with each of the above grounds in detail.

20. The first ground on which learned First Appellate Court has rejected the Will is that: -

“16...Testimonies of PW-2 Harjinder Singh and PW-3 Rajinder Singh provides that none of the witnesses have deposed as per requirement of Section 63 of Indian Succession Act as during their cross-examination these witnesses have not categorically stated that Will in question was scribed in their presence at the instance of Baljinder Singh...”

21. However, the above-said reasoning of the First Appellate Court is based on an abject misreading of the provision of Section 63 of the Indian Succession Act, which reads as follows: -

“63. Execution of unprivileged Wills.—

Every testator, not being a soldier employed in an expedition or engaged in actual warfare, or an airman so employed or engaged, or a mariner at sea, shall execute his Will according to the following rules:—



(a)The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.

(b)The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.

(c)The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of his signature or mark, or the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.”

22. A bare reading of the above provision shows that the aforesaid Section only contemplates that the witness should ‘attest’ the signature on the Will; and not that the Will be ‘scribed’ in the presence of the witness. It nowhere stipulates that the document has to be ‘scribed’ in the presence of the attesting witnesses. Therefore, there is merit in the submission of learned counsel for the appellant that the only requirement of Section 63 is that the testator must have signed in the presence of the witnesses and the witnesses must have affixed their signatures 'animo attestendi' i.e. in the presence of the testator. In the present case, both the attesting



witnesses have categorically deposed that Baljinder Singh had signed the Will in their presence. Thus, requirement of Section 63 stood satisfied. Clearly, therefore, the first Appellate Court is in error.

23. Notwithstanding the above, the first Appellate Court has simultaneously and contradictorily also noted that both PW2 and PW3 have admitted that the Will was scribed in their presence, as follows: -

“16. In his chief examination PW-2 Harjinder Singh has stated that Will in question was scribed in his presence at the instance of Baljinder Singh, whereas in his cross-examination this witness has stated that he had attended the Bhog ceremony of Baljinder Singh, but he had not disclosed about the Will at that time. PW-3 Rajinder Kumar who has stated in his examination that on 29.12.2008 Baljinder Singh executed a Will in favour of his mother Dharamjit Kaur and same was scribed at the instance of Baljinder Singh and after admitting the contents of the case the said Baljinder Singh has signed the Will in his presence and in presence of Harjinder Singh.”

24. Thus, reasoning of the first Appellate Court is not just contrary to the law but is also riddled with inexplicable contradictions.

25. The Will was also doubted for the reason that the same was not produced immediately after the death of Baljinder Singh but was brought to the notice of the Revenue Authorities almost after one year when Mutation of one property was sanctioned on the basis of natural succession and proceedings of Mutation in respect of the second property at village Bansepur was in process. The first Appellate Court has rejected the Will as



both the attesting witnesses admitted that they had not disclosed about the Will to the appellant when they had met her at the Bhog Ceremony of Baljinder Singh. However, to my mind the said reasoning is erroneous as, it is understandable that Bhog Ceremony of Baljinder Singh would be an occasion of such devastation to the plaintiff, that the attesting witnesses correctly thought that it would not be the appropriate time to disclose about the Will to the plaintiff. Even if the attesting witnesses had met the plaintiff before or after the ceremony, it is perfectly understandable that at such a sad time, soon after the death of a young son, property matters are far from the minds of near and dear ones, especially a mother. Even if attesting witnesses had met the plaintiff before the death of Baljinder Singh, then it was not in their place to disclose about the Will to the plaintiff as it was for Baljinder Singh himself to mention about it to his mother. In such a circumstance, the first Appellate Court was in error in drawing an adverse inference against the plaintiff in this regard.

26. Learned First Appellate Court has also discarded the Will on the ground that attesting witnesses are generally “men of confidence” of the testator which was not so in the present case. The said observation of the learned First Appellate Court is patently incorrect as PW2 has categorically deposed that he was ‘class-fellow’ of deceased Baljinder Singh, and was therefore, a close confidant of the deceased.



27. Adverse inference has also been drawn on the ground that Notary of the Will and the Scribe have not been examined. However, in holding as above, the first Appellate Court has misguided itself as, as per Section 68 of the Evidence Act, Notary and Scribe are not required to be examined to prove the authenticity of the Will. In fact, it is trite law that to prove a Will, only one attesting witness must be examined; whereas in the present case, both attesting witnesses have been examined.

28. Doubt has been cast upon the Will also on the ground as to why defendant No.2 was disinherited by Baljinder Singh. However, the facts enumerated above amply demonstrate that relations between the defendants and Baljinder Singh were totally acrimonious. It has not been denied by learned counsel for the respondents that the defendants had not even attended the funeral of Baljinder Singh or any of his funeral ceremonies. It has also not been denied by learned counsel for the respondents that after the separation on 05.06.1997, defendants had never visited the plaintiff or the deceased Baljinder Singh. Moreover, the petitions under Section 13 and 13-B have not been denied by the respondents and even the terms of Settlement under Section 13-B have not been denied by the respondents. It is not denied that as per the said Settlement, the respondents were to receive a total amount of Rs.4 lakh, of which Rs.50,000/- was paid to them. It is also not denied by the respondents that the appellant had offered to increase the amount, but the respondents had refused the said offer. On a



Court query, learned counsel for the respondents has categorically stated that of the suit land measuring 22 kanal, and respondents are entitled to 14 kanal as per inheritance, and plaintiff should get 7 kanal. It has also been contended by learned counsel for the appellant that respondent No.1 never allowed respondent No.2 to meet the deceased Baljinder Singh. Thus, above facts reflect the complete severance of relationship between the parties. This Court finds it extremely odd that for all other purposes, the defendants had no connection whatsoever with Baljinder Singh, to the extreme extent that defendant had not even attended the funeral of their husband/father. However, for the purposes of suit property, respondent No.1 suddenly rediscovers herself to be the widow of Baljinder Singh and respondent No.2 as the daughter of Baljinder Singh.

29. The defendants are also unable to prove that the suit property was coparcenary in nature. To support his contention, learned counsel for the respondents has referred to an alleged admission to this effect made by the plaintiff as PW1 in her Affidavit of Evidence (Ex.PW1/A) that: *“Originally the land as fully described in the head note of the plaint was owned and possessed by Sh. Gulzar Singh who has since died and his property is inherited by deponent along with her two sons and two daughters...”*. It has been contended by learned counsel for the respondents that the said admission by the plaintiff that suit property was previously owned by Gulzar Singh amounts to admission that the suit property is ancestral in nature. It has been



submitted that the plaintiff has nowhere stated that the suit property was self-acquired property of Gulzar Singh and therefore, the same is ancestral in nature. I find the said contentions to be absurd as despite repeated Court queries, learned counsel for the respondents has not been able to show the 4 male lineal descendants to prove co-parcenary nature of the suit property.

30. Learned counsel for the defendant has also relied upon the cross-examination of PW1, wherein she has stated that *“The land of Bansapur was purchased by my husband whereas land at village Saini Majar is ancestral...”*. I find no force in the said contention as well. It is established position in law that even if any stray admission has been made by the plaintiff, not much weightage can be given to the same as there is no other documentary or any other proof produced by the defendants to prove the co-parcenary nature of the suit property. Even from the record, nothing else whatsoever has been pointed out to this Court by the defendants to remotely indicate that the suit property was ancestral in nature. What to say, a perusal of the written statement filed by the defendants before the learned trial Court also shows that no such objection has been taken by the defendants that they have a right in the suit property as the same is co-parcenary in nature. Even no issue has been framed by the learned trial Court in respect of the nature of the suit property being ancestral. In this situation, reliance may be placed upon judgment of Hon’ble Supreme Court in **Saygo Bai v. Chueeru Bajrangi (SC) : Law Finder Doc Id # 227237**, wherein it is held that:-



“D. Evidence Act, Sections 18 and 19 - Civil Procedure Code, Order.....Rule - Admission - Appreciation of evidence - The Court must read whole evidence - One stray admission cannot be read in isolation with the other evidence”

31. The contention of the defendants that the Will was a forged and fabricated document also remains unsubstantiated as except for the oral bald statement of respondent No.1, no evidence whatsoever has been produced by them to show that the Will was a forged and fabricated document. It is to be appreciated that the Handwriting Expert examined by the respondents had given the opinion that the Will is an “imitated forgery” on the basis of the photocopy of the Will. Subsequently, the Handwriting Expert had examined the Original Will, albeit only in Court. This has been admitted by Handwriting Expert/DW2 in his cross-examination as follows:-

“...I have examined the photocopy of the Will dated 28.12.2008 earlier also. Vol. but I have examined the original Will in the Hon’ble Court.”

Thus, opinion of the expert witness was not reliable. Moreover, no criminal case was filed by the defendants in respect of the alleged forgery of the Will. Thus, defendants failed to discharge their onus.

32. The observation of the learned First Appellate Court that as Baljinder Singh was only about 42 years of age there was no reason for him to execute the Will; and therefore, the Will has been fraudulently produced by the plaintiff to defeat the rights of the defendants, it is also unsustainable.



I find the said observation also to be erroneous as, given the total severance of relation between Baljinder Singh and the defendants, it would not be surprising that he would want to protect and secure his assets as per his will and desire. Further, respondent No.1 has also admitted that she had filed matrimonial criminal case against the appellant in which the appellant and Baljinder Singh had been summoned. Thus, in these circumstances, in the face of such criminal acrimony, exclusion of the wife and daughter cannot be held to be fatal to the Will. Moreover, the defendant No.1 has made another contradictory statement on the one hand in claiming herself to be in possession of the suit property and on the other hand stating that possession was never delivered to her. Observations of the learned First Appellate Court are based on conjectures and surmises.

33. This Court, in almost identical circumstance in **Rajeshwari Rani Pathak v. Nirja Guleri, (P&H) : Law Finder Doc ID # 77058**, has held that:-

“16. It has been contended that there is no circumstances on the record to justify the execution of the Will by the testator at the young age of 34/36 years especially when he was not in anticipation of death. It was also convassed that the preparation of the Will is shrouded in mystery and it has not been explained as to where the draft of the Will has gone. None of these contentions has any substance. As explained above, since April, 1970, the testator had been faced with a number of incidents like the taking away of jewellery ornaments and cash forcible removal of household goods, the suspected



administration of poison by Shrimati Nirja to him, constant pin-pricks and also the persistence of Shrimati Nirja to refuse to come to Simla and live with the testator. Lastly, her conduct in not going to Ajmer and not attending on her mother-in-law during her illness and not even caring to participate in the rites associated with the death of an ancestor of the family and then going on the occasion of the Kiryarites only for a few hours were quite too strong provocations for the testator to take a decision to execute the Will. It is clear from the Will itself that the document had been drafted and typed by the testator himself. It is not a case of an illiterate testator for whom the draft may have been prepared by some other person or the attesting witnesses or any beneficiary. In such circumstances, the preservation of the draft of the Will or its loss may be taken to be a relevant circumstance which may have some bearing to assess the genuineness of the Will. In the present case the testator was no other than an highly placed I.A.S. Officer in full possession of his mental capacity and there was nothing strange if he drafted the Will himself nor was it necessary to keep the draft with him.

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*34. It was further contended that though Mahesh put his signature and seal on the Will as Oath Commissioner, but he has not been examined and, therefore, an adverse presumption should be drawn under Section 114, Evidence Act, to the effect that the said Mahesh had put in his signature before the signature of the testator was affixed. According to the learned counsel it constitutes inherent infirmity and suspicion in the Will. Reliance was placed on **Surendra Krishna***



Mondal v. Rani Dass, (1920) Indian Law Reports XLVII Calcutta 1043, for the proposition that all the attesting witnesses must be examined in the case of a Will. In the said case, only one attesting witness had been examined and other attesting witnesses had been left out. There was also the allegation of fraud in the matter of execution of the Will. It was in these circumstances held that it is desirable that all the witnesses may be examined. The facts of the present case are quite different and distinguishable. Both the attesting witnesses of the Will have been examined. The said Mahesh did not sign the Will as an attesting witness. His signature is only as Oath Commissioner. In these circumstances, the objector is not entitled to the raising of any adverse presumption against the authenticity of the Will from the fact that the Oath Commissioner has not been examined. According to the attesting witnesses, the Oath Commissioner was not present at the time the Will was executed and attested. May be that after the completion of the Will the testator got it attested from the Oath Commissioner, but thereby the Oath Commissioner did not become a witness to the execution of the Will and it was not necessary to examine him. If the objector wanted to derive any benefit from the statement of said Mahesh, he could be produced by her in evidence in rebuttal.

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37. It was lastly contended by the learned counsel for the objector, that Dr. S.K. Sharma, the brother of the testator at whose house the Will, Exhibit PA, was executed and his other brother in favour of whose sons the property in District Solan, Himachal Pradesh, had been abandoned by the testator,



previous to the Will Exhibit PA, and to which there is a reference in the Will, were necessary witnesses and they have not been produced. The learned counsel, therefore, wanted this Court to raise an adverse presumption against the petitioner as all suspicions with which the Will was clothed had not been removed by the petitioner. This contention also has no substance. **In the final analysis, it is the conscience of the Court that has to be satisfied and as such, the nature and quality of proof must be commensurate with the requirement to satisfy that conscience.** The important question in each case is : What is the suspicion which a reasonable man Will entertain in the circumstances of a case. In **Surendra Pal and others v. Dr. (Mrs.) Saraswati Arora and another, AIR 1974 Supreme Court 1999**, relied upon by the learned counsel for the petitioner, the testator had disinherited his sons and the children from the first wife and had executed a Will exclusively in favour of the second wife. It was proved on the record that the relations of the testator with his children from the wife were not cordial. The Will was held to be valid. Dealing with the nature and scope of enquiry as to whether the Will was the last Will of the testator and the same had been executed with a free and disposing mind and as to how far it was the responsibility of the propounder to remove the suspicious circumstances, the entire case law on the subject was considered. Therein, the following principle of law as laid down in **Motibai Hormusjee v. Jamsetjee Hormusjee, AIR 1924 Privy Council 28**, was approved.”

(Emphasis is mine)



34. In the present case, in view of the facts and circumstances noted above, the conscience of this Court is indubitably satisfied that the Will in question suffers from no suspicious circumstances and was executed by the testator only in favour of his mother-the plaintiff for valid reasons. Relevant findings returned by learned trial Court are as under:-

“9. To rebut the evidence of the plaintiff, defendant no.1 herself appeared as DW-1 and tendered his duly sworn affidavit Ex.DW1/A, in the lines of his written statement along with document Mark 'A' which is already on record. In her cross examination, she stated that relation with her husband remain cordial for seven months after the marriage. She further stated that after her marriage her mother in law, two sisters in law and her husband started demanding dowry and harassed her after a week. DW-1 stated that she had not made any complaint to the police for the demand of dowry during her stay at her in laws house. She further stated that when her husband filed a divorce petition against her, then, she filed a complaint to the police after the birth of her daughter and the police sent the case In Women Cell Chandigarh for compromise, but no compromise arrived at in the proceedings before Women Cell Chandigarh. DW-1 stated that police has not registered any case against her in law, voluntarily stated that police has told to her that since their case is pending in the court at Chandigarh, So, the court will decide the matter. DW-1 stated that their divorce petition remain pending 7/8 years, thereafter, the matter was compromised in the Lok-Adalat. She admitted it correct that amount of Rs. 4 lac was agreed as



compromise money, voluntarily states that claim of minor daughter was not decided in the said compromise and her daughter was at liberty to pursue her claim against her father. DW-1 stated that she had seen the petition filed by her husband and wherein she also identifies her signatures. She admitted it correct that she had signed the said petition after admitting its content to be correct. DW-1 denied that she had settled all claims regarding the dowry articles and maintenance. DW-1 admitted that amount of Rs. 50,000/- was received by her in the said petition at the time of recording of first statement under section 13-B of H.M. Act. DW-1 further admitted it correct that before remaining amount of Rs. 3.5 lac could be tendered and second statement for divorce could be recorded, her husband died. DW-1 stated that she does not know who had used to take care of her husband and she also does not know, whether her husband used to ill. DW-1 stated that her husband died due to heart attack at Delhi, while he was attending a meeting. She had come to know about the fact of death of her husband through a newspaper after three days from his death. DW-1 stated that her family member and she herself did not attend the cremation ceremony of her husband. She also does not know, when cremation ceremony of her husband took place. It is further stated that any of her family member and defendant herself had not attended the Bhog ceremony of her husband. DW-1 stated that her husband working as a sports teacher in sector 23, Chandigarh and further stated that she approached to the school authorities of her husband for release dues of her husband to her. DW-1 denied that due to the atmosphere created by her, her husband



was under so stress that why he was suffering from diabetes and heart problems, due to these problems he was suffered from Heart attack. DW-1 stated that at the time of death, her husband around 42 years old. DW-1 stated that she had seen suit property and some of land was partitioned with her husband, his brothers and uncle and some of the land is joint. DW-1 further states that land at village Bansepur has been partitioned and land at village Saini Majra has been joint. It is stated that her husband was not doing the work of agriculture and the land was given on Theka/Batai to his uncle, but she does not know, what was the rate of Theka/Batai of the land. DW-1 stated that she does not know, in how many Tucks was the land of her husband and she never received any Theka/Batai of the land. She further states that possession at the spot was not delivered to her. DW-1 denied that her husband never executed any Will dated 29.12.2008 any Will in favour of plaintiff and also that plaintiff is owner in possession of the suit property on said Will. DW-1 stated that during her stay at her in laws house, she served for her husband, but after the separation, she did not served her husband because she had filed the divorce petition against her husband.

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16. I have heard the contentions of both the counsel for the parties and also persuade the record on file carefully. From the evidence and arguments of the parties it has come out that they are not disputing the property involved it means documents Ex.P2 Jamabandi pertaining to Village Saini Majra and Ex.P3 Jamabandi pertaining to Village Bansepur admitted and death is also not disputed which is Ex. P4. It is also not



disputed that there is matrimonial dispute among the executor of the Will and defendant no.1 and the documents produced in this case regarding it admitted. The only and main question in this suit is to decide whether Will dated 29.12.2008 executed by Baljinder Singh or it false, fraudulent and fabricated document created by the plaintiff to grab the share of the defendants. First of all, take the suspicious circumstances as defendants are alleging that Will has not seen the light of the day after a considerable time, means approximately one year of the death of the executor of the Will appeared, more over when Halqa Patwari ask for document from plaintiff, has not produces it, what when plaintiff found that property is going to defendants she all of sudden produced it. But this suspicion has been repelled by the plaintiff as she does not know about the Will at the time when Halqa Patwari asked about the document of Baljinder Singh, It is also convincing that Baljinder Singh had not told about the Will to the family as death of the Baljinder Singh occurred in short span after executing the Will. More over the attesting witnesses have not disclosed about the Will to the plaintiff as they has met only at the time of cremation and Bhog Ceremony of the executor of Will and these were not appropriated time to talk about it. More over they did not know the family members have no knowledge about the Will. Second suspicion on the Will is that matrimonial dispute has been resolved among the executor of the Will and defendant no.1, when they filed the petition under section 13-B after resolving it finally and settling the amount to be paid to the defendant no.1 in compromise. This suspicion of the defendant is self contradictory as on the one hand it is



claimed that relationship is still survive among the parties that why defendant no.1 claiming share in the property of her husband, on the other hand defendant is claiming it suspicious by mentioning about the matrimonial dispute in the Will. It is clear that marriage is still surviving among the parties, so the dispute had not been finally resolved rather it had in process to be resolved. It cannot be taken as suspicious circumstances rather it is the valid reason to execute the Will by excluding the defendant no.1. Non-examination of the scribe of the Will by the plaintiff does not affect the validity as plaintiff has discharge her onus by examining the two attesting witnesses of the Will who clearly deposed that Will was executed in their presence by Baljinder Singh after admitting it correct. Notary Public who had registered the Will is not necessary to examine as registration is not necessary in the case of Will even unregistered Will is as good as a registered one if it is free from suspicions. It has come out that Will is free from suspicion as alleged by the defendants it is quite natural that when a young son of the family expired then immediately family do not run for property and start searching the document to got the property, otherwise defendant no.1 who had not even bothered about the death of her husband, even did not attended his last rites and bhog ceremony and thereafter defendant no.1 started for claiming right on the property her husband and approached to school authority for reliving dues of the husband.

17. Secondly defendants are alleging that Will is a false, fabricated and fraudulent document prepared by the plaintiff to grab the share of the defendants. For this



defendants have examined the handwriting and fingerprint expert as Dw2 to prove the forgery, who after due examination and comparing the standard signature and questioned signature on Will. He submitted his report that this is an imitated forgery. Expert in his report does not explain what is this imitated forgery, otherwise he is admitting that he cannot tell about whether person whose signature he has examined is left hand writer or right handed and he has not given the report regarding the writing posture of the writer. Dw2 further admitting that he has not mentioned regarding the quality of the writing instrument in his report. Expert admitting that he has examined the photo copy of the Will dated 29.12.2008 earlier, but denying the report by saying that he does not remember, he further denied that in evasive manners that he do not remember which party has provided the Will to him for examination. In these manners it is clear that expert has formed hid opinion on the prior examination of photo copy of the Will without examining the original and comparing with the standard signature. Hence the report of the expert can be a procured one by the defendants to prove Will forged. It is clear from the examination of the documents available on record that it is quite natural that there are some variations in signature due the paper quality and mental state of person at the time of signing. Hence the variations are natural and bound to occur. So the Will dated 29.12.2008 is a genuine one executed by the Bäljinder Singh in his full sense by giving the property to his mother, who is looking after him, as there is matrimonial dispute among the husband and wife and the same is on the verge of dissolution of their marriage, first



statement under section 13-B of H.M. Act had been recorded. Defendant no.1 claiming herself in possession of the disputed property, but she stated that possession was never delivered to her. It is admitted by her that land is given on Theka/Batai and she never received the Theka/Batai. Sanctioning of mutation is just up-gradation of revenue record. So, on the basis of above discussion on the issues no 1&2 are decided in favor of the plaintiff and against the defendants.”

(Emphasis added)

35. Ld. Counsel for the respondents is unable to dispute or controvert the above noted factual and legal position.

36. In view of the above, present appeal is **allowed**; and judgment and decree dated 13.12.2017 passed by the learned first Appellate Court is set aside; and that of the learned trial Court is restored; and suit of the plaintiff is decreed as prayed for.

37. Pending application(s) if any also stand(s) disposed of.

28.01.2026
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No