2026:PHHC:066637

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

101 RSA-2436-1995(O&M)
Date of Decision: **30.03.2026**

Bhura Singh

.....Appellant

VERSUS

Mukhtiar Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present : Mr. Karanveer Singh with Mr. S.S. Aviraj, Advocates for the appellant.

Ms. Anmol Puri, Advocate for the respondents.

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HARPREET SINGH BRAR, J. (Oral)

CM-900-C-1996

The present application has been filed under Section 151 of CPC for placing on record the reply to the captioned appeal.

In view of the grounds mentioned in the application, the same is allowed, reply is ordered to be taken on record.

Registry is directed to place the same at an appropriate place.

MAIN

1. The instant Regular Second Appeal has been filed by the appellant-plaintiff against the judgment and decree dated 16.08.1995 passed

by the learned Additional District Judge, Mansa (hereinafter referred to as 'the First Appellate Court'), thereby setting aside the well-reasoned judgment and decree dated 05.12.1992 passed by the learned Sub Judge II Class, Mansa (hereinafter referred to as 'the Trial Court'), which had decreed the plaintiff's suit for declaration to the effect that he is the owner in possession of 1/6th share of the suit land.

FACTUAL BACKGROUND

2. The brief facts of the case are that the appellant-plaintiff filed a suit for declaration against his mother and two sisters. He claimed that his father had executed a valid registered Will dated 19.06.1985 in his favour, the father of the appellant-plaintiff passed away on 01.01.1986. The appellant-plaintiff asserted that based on this Will, he had become the owner in possession of the 1/6th share of the suit land, as reflected in the Jamabandi for the year 1989-90. He challenged the mutation No. 2729 dated 05.02.1991, which had been sanctioned in favour of the defendant-respondents (his mother and sisters) on the basis of natural succession, as illegal and not binding on his rights.

3. The suit was contested by the defendants/respondents. In their joint written statement, they raised preliminary objections regarding maintainability, locus standi, and cause of action. On merits, they alleged that the Will, if any, was a result of fraud and a fabricated document. It was specifically denied that the father of the appellant-plaintiff ever executed any valid Will in his lifetime. They further claimed that the father of the appellant-plaintiff was not in a fit mental or physical condition to execute a

Will. The Trial Court, after framing issues and considering the evidence of the parties, decreed the suit in favour of the appellant-plaintiff on 05.12.1992. The relevant findings of the Trial Court are as follows:

- The plaintiff proved the due execution of the registered Will (Ex.P1) by examining PW2 Gurcharan Singh (the Deed Writer/Scribe) and PW3 Karnail Singh (an attesting witness). Both witnesses deposed that Mal Singh was in a sound and disposing state of mind at the time of execution.

- The plaintiff (PW4) proved his possession over the suit property.

- The defendants failed to prove that Jasbir Kaur was a minor or that the suit was bad for non-joinder of necessary parties.

4. Aggrieved by the judgment and decree of the Trial Court, the defendants/respondents filed an appeal before the First Appellate Court. The First Appellate Court, vide its judgment and decree dated 16.08.1995, allowed the appeal and dismissed the appellant-plaintiff's suit. The First Appellate Court's judgment was primarily based on the following grounds:

- It was "unusual" for a person of 45 years to execute a Will.

- There was no mention in the Will of either the wife (the mother of the plaintiff) or the daughters (sisters of the plaintiff).

- There was no evidence that the relations between Mal Singh (father of the plaintiff) and Mukhtiar Kaur (mother of the plaintiff) were strained.

- The plaintiff had no occasion to serve his father as he was a bachelor.

CONTENTIONS

5. Learned counsel for the appellant-plaintiff *inter alia* contends that the findings of the First Appellate Court are perverse, based on conjectures and surmises, and contrary to the settled law on the subject.

5.1 It was contended that the First Appellate Court erred in holding that a person of 45 years cannot execute a Will. There is no age bar for executing a Will under the Indian Succession Act, 1925. The testator, Mal Singh, was alive and had a sound disposing mind, as proved by two unimpeachable witnesses (the scribe and an attesting witness) and the fact that the Will was registered. A Will executed by a person of 45 years is not suspicious merely on account of age and that the exclusion of a natural heir cannot by itself be a ground to hold that there are suspicious circumstances.

5.2 Learned counsel further submits that the First Appellate Court's reasoning that the non-mention of the widow and daughters in the Will makes it suspicious is legally unsustainable. Relying on the judgement rendered by the Hon'ble Supreme Court in ***Swarnalatha & Ors. v. Kalavathy & Ors., 2022 INSC 372***, he submitted that a testator is not bound to distribute his property in a fair and equitable manner. The Court does not apply Article 14 to dispositions under a Will. He further submitted that the omission of the daughters' names from the Will stands duly explained, inasmuch as one was already married and the other was on the verge of marriage, and the appellant - plaintiff had borne the entire expenses for the

marriages of his sisters. It was additionally contended that the mother of the appellant- plaintiff, in any event, possesses an independent statutory right to claim maintenance from her son.

5.3 Further, the counsel submits that the will was a registered one, and further placing his reliance on ***Bhagwan Kaur v. Malwinder Singh and others, 2009(4) RCR(Civil) 732***, he submits that the registration of a Will goes a long way in establishing its genuineness. Unlike the unregistered Will in that case which was held to be suspicious, the Will in the present case dated 19.06.1985 (Ex.P1) is a registered Will, which strongly supports its authenticity. Moreover, the First Appellate Court completely ignored the positive and credible testimony of the attesting witnesses (PW2 & PW3) who proved the due execution of the Will in accordance with Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872. The First Appellate Court gave no cogent reason for disbelieving these witnesses, which is a perverse finding of fact.

6. Per contra, learned counsel for the respondents-defendants supported the judgment of the First Appellate Court, arguing that the Will was shrouded in suspicious circumstances as it excluded the natural heirs (the widow and daughters) without any justifiable reason. To buttress his submissions, learned counsel placed reliance on several judicial precedents. Relying on the judgment rendered by the Hon'ble Supreme Court in ***Kalyan Singh v. Smt. Chhoti, AIR 1990 Supreme Court 396***, learned counsel submitted that the exclusion of the testator's wife without any plausible reason is unnatural and casts a serious doubt on the genuineness of the Will.

Furthermore, relying on the judgment of this Court in ***Hira Nand v. Maya Devi and others, 2014(2) RCR(Civil) 680***, learned counsel submitted that if a testator excludes his legal heirs without assigning any reason, the Will is doubtful and cannot be relied upon. Placing reliance on the judgment of the Delhi High Court in ***Yashoda Gupta v. Suniti Goyal, Suit No. 325 of 1983***, learned counsel submitted that the disinheritance of a daughter and the complete exclusion of the widow without even mentioning her in the Will are strong suspicious circumstances. Lastly, relying on the judgment of this Court in ***Amrit Pal Kaur and another v. Nishabar Singh, RSA-705 of 2013***, learned counsel submitted that a Will which does not mention any strained relations with the wife is liable to be rejected.

6.2 Learned counsel for the respondents further argued that the findings of the First Appellate Court are pure findings of fact and cannot be interfered within a Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908.

OBSERVATIONS AND ANALYSIS

7. I have heard learned counsel for the parties and have perused the records with their able assistance.

8. It transpires that the testator executed a registered Will dated 19.06.1985, the due execution and validity of which stand proved through PW2 (Deed Writer/Scribe) and PW3 (attesting witness). Both witnesses have categorically deposed that the testator was in a sound and disposing state of mind at the time of execution, a finding duly recorded by the learned Trial Court. Notably, the learned Appellate Court has not disputed either the

attestation of the Will or the testimonies of PW2 and PW3. Further, it is undisputed that the will is indeed a registered one.

9. Moreover, the first appellate Court vide its impugned judgment and decree dated 16.08.1995 set aside the reasoned order of the learned Trial Court primarily on the following grounds: firstly, that the execution of a Will by a person of 45 years of age was "unusual" and that such young persons do not ordinarily execute Wills; secondly, that the Will did not contain any reference to the widow or the daughters of the testator; thirdly, that there was no evidence on record to suggest that the relations between the testator and his wife were strained; and fourthly, that the plaintiff being a bachelor had no occasion to serve his father during his lifetime. On the basis of these findings, the First Appellate Court concluded that the Trial Court had wrongly upheld the execution of the Will and consequently dismissed the suit of the appellant-plaintiff.

10. The question that emerges out for adjudication is that whether the First Appellate Court was justified in setting aside a well-reasoned judgment of the Trial Court decreeing the suit on the basis of a registered Will, by primarily relying on factors such as the age of the testator and the exclusion of natural heirs?

11. The primary ground relied on by the First Appellate Court, that the execution of a Will by a person of 45 years of age was "unusual" and that such young persons do not ordinarily execute Wills, is untenable in the eyes of law. Section 59 of the Indian Succession Act, 1925 provides that every person of sound mind, not being a minor, may dispose of his property

by Will. Reliance in this regard may also be placed on the judgement rendered by the three Judge Bench of the Hon'ble Supreme Court in ***Shivakumar v. Sharanabasappa 2022 INSC 349***. As such, as long as the testator was a major and of sound mind his age cannot be an impediment towards questioning the validity of his Will. Moreover, if age has to be taken as an important factor, an individual of 45-year will benefit from natural presumption of competence, as scrutiny rises with advanced age. A Will made in the "prime of life" is less likely to be the result of a sudden impulse or the "faltering mind" of old age, and more likely a deliberate, well-thought-out plan.

11.1 As such the issue of executing the Will at the age of 45, is found in favour of the appellant-plaintiff.

12. Further, the issue of exclusion of natural heirs from the Will, as long as the validity of the Will is undisputed, is no longer *res integra*.

12.1 A two Judge Bench of the Hon'ble Supreme Court in ***Uma Devi Nambiar v. T.C. Sidhan 2003 INSC 705***, while speaking through Justice Arijit Pasayat observed as under:

> *"17.* ***A Will is executed to alter the ordinary mode of succession and by the very nature of things it is bound to result in either reducing or depriving the share of natural heir. If a person intends his property to pass to his natural heirs, there is no necessity at all of executing a will.*** *It is true that a propounder of the Will has to remove all suspicious circumstances. Suspicion means doubt, conjecture or mistrust.* ***But the fact that natural heirs have either been excluded or a lesser share has been given to them, by itself without anything more, cannot be held to be a suspicious circumstance especially in a case where the bequest has been made in favour of an offspring.*** *As*

held in ***Rabindra Nath Mukherjee and Anr. v. Panchanan Banerjee (dead) by LRs. and Ors. (1995(4) SCC 459) : 1995(3) RRR 520 (SC),*** *it was observed that the* ***circumstance of deprivation of natural heirs should not raise any suspicion because the whole idea behind execution of the Will is to interfere with the normal line of succession and so, natural heirs would be debarred in every case of Will.*** *Of course, it may be that in some cases they are fully debarred and in some cases partly."*

12.3 Reliance in this regard may also be placed on the judgement rendered by the Hon'ble Apex court in ***Swarnalatha (supra)***.

12.4 As such the issue of exclusion of some of the natural heirs, is found in favour of the appellant-plaintiff.

13. Moreover, a two Judge Bench of the Hon'ble Supreme Court in ***Meena Pradhan Vs. Kamla Pradha 2023 INSC 847***, while speaking through Justice Sanjay Karol deduced the principles required for proving the validity and execution of the Will

> "11. In short, apart from statutory compliance, broadly it has to be proved that (a) the testator signed the Will out of his own free Will, (b) at the time of execution he had a sound state of mind, (c) he was aware of the nature and effect thereof and (d) the Will was not executed under any suspicious circumstances."

14. It transpires that the appellant-plaintiff successfully proved the due Execution of the Will. An examination of PW2 and PW3 unequivocally deposed that the testator was in a sound and disposing state of mind and that he executed the Will in their presence. Their testimonies stand unrebutted.

The defendants did not produce any independent witness to show that the testator was not of sound mind. Their own witness, DW2, admitted in cross-examination that the testator used to walk and was not suffering from any disease that affected his mental faculties. The Trial Court rightly appreciated this evidence. The First Appellate Court, however, set aside this finding without any proper discussion or reasoning for disbelieving the attesting witnesses, which is a grave perversity. The First Appellate Court cannot reverse a well-reasoned judgment of the Trial Court on pure conjecture. Its findings must be based on evidence on record, which is not the case here.

15. Further, in view of the judgment passed by the Hon'ble Supreme Court in ***Pankajakshi (Dead) through Legal Representatives and others Vs. Chandrika and others (2016) 6 SCC 157,*** questions of law are not required to be framed in Regular Second Appeal before the Punjab and Haryana High Court whose jurisdiction is circumscribed by provisions of Section 41 of the Punjab Courts Act**.**

16. In view of the above, it is evident that the findings of the First Appellate Court are perverse, based on no evidence, and contrary to the legal principles laid down by the Hon'ble Supreme Court. The perversity is evident from the fact that the First Appellate Court dismissed a valid registered Will on the ground that a 45-year-old man cannot execute a Will, a finding that is absolutely illegal and against all known legal precedents.

CONCLUSION

17. In the light of the above discussion, the instant Regular Second Appeal is allowed. The impugned judgment and decree dated 16.08.1995 passed by the learned Additional District Judge, Mansa is hereby set aside.

The judgment and decree dated 05.12.1992 passed by the learned Sub Judge II Class, Mansa is hereby restored and affirmed. Consequently, the suit of the appellant-plaintiff, Bhura Singh, stands decreed.

18. No order as to costs. Registry is directed to prepare the decree sheet accordingly.

19. All pending miscellaneous applications, if any, are also disposed of.

(HARPREET SINGH BRAR)
JUDGE

30.03.2026
Puneet Chawla

Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/Nos