



RSA-1462-1989 (O&M) -1-

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

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RSA-1462-1989 (O&M)
Reserved on:10.09.2025
Pronounced on:18.09.2025

Sis Pal

...Appellant

Versus

Smt. Lado (since deceased) through LRs

...Respondent

CORAM : HON'BLE MR. JUSTICE AMARINDER SINGH GREWAL

Present: Mr. Amit Jain, Senior Advocate with
Mr. Aryaman Thakur, Advocate
for the appellant.

Mr. Sumit Gupta, Advocate
for the respondents.

AMARINDER SINGH GREWAL, J.

1. The defendant is the appellant before this Court challenging the impugned judgment and decree dated 30.03.1989 whereby the appeal preferred by the plaintiff-Lado against the judgment and decree passed by the learned trial Court dated 29.10.1988 dismissing her suit, was allowed and the suit was decreed by the learned 1st Appellate Court while declaring the adoption deed dated 08.03.1985 Ex.D1 and Will dated 08.03.1985 Ex.D2 as illegal, void and not binding upon her.

2. For the sake of convenience, the parties shall be referred to in terms of their status before the learned trial Court.

3. In brief, the facts are that husband of the plaintiff namely Ram Pat son of Ram Nath was owner in possession of the properties as detailed in para No.1 of the plaint. He died issueless on 01.04.1985. Before his death, he remained ill for about four months and was not having sound disposing



mind during the aforesaid period. The defendant on the basis of false and fictitious adoption deed Ex.D1 and Will Ex.D2 alleged to have been executed by husband of the plaintiff succeeded in getting the mutation bearing Nos.4094, 495 and 1073 with respect to some of the land in his name and thus, suit was filed to declare the adoption deed and the Will as null and void and so the mutations entered in the name of the defendant in pursuance to aforesaid adoption deed and the Will.

4. Upon notice of the suit, defendant filed the written statement stating therein that Ram Pat, husband of the plaintiff, was healthy and was in a sound disposing mind at the time of execution of the adoption deed as well as the Will. He claimed himself to be adopted son of Ram Pat and thus, the adoption deed and the Will being valid documents, mutations entered in the name of defendant on the basis of aforesaid documents, are legal and binding.

5. On the basis of rival pleadings, the learned trial Court framed as many as nine issues including the issue of relief and on the said issues, both parties led their respective evidence.

6. Upon appreciation of the pleadings, oral and documentary evidence, the learned Trial Court vide judgment and decree dated 29.10.1988 though declared the adoption deed Ex.D1 as illegal and not binding upon the plaintiff but upheld the Will, thus, her suit qua declaration of the Will Ex.D2 as illegal and void was dismissed. The appeal preferred by the plaintiff against the aforesaid judgment and decree passed by the learned trial Court was allowed by the learned 1st Appellate Court vide judgment and decree dated 30.03.1989 declaring the Will Ex.D2 as null and void as well as the mutations entered in favour of the defendant on the basis of aforesaid



document. Aggrieved by the aforesaid judgment and decree of the learned 1st Appellate Court, the defendant is before this Court by way of instant regular second appeal.

7. Mr. Amit Jain, Senior Advocate assisted by Mr. Aryaman Thakur, Advocate submitted that execution of adoption deed as well as the Will on the same day cannot infer that the Will was fictitious. The adoption deed was held invalid as there were procedural defects but that does not mean that Ram Pat had not any intention to execute the adoption deed and the Will in favour of the defendant. Ram Pat equally took care of his wife while granting half share of the property to her and it is not that he excluded her totally. Had there been an ulterior motive behind the execution of the Will Ex.D2, the defendant ought to have grabbed the whole property and not just the half share. The defendant served the testator during his life time and therefore, out of love and affection, he executed the Will in his favour. It was further submitted that the learned 1st Appellate Court has gravely erred in discarding the Will dated 08.03.1985 Ex.D2 as not genuine, which is a registered document and has been duly proved in terms of Section 63 of the Indian Succession Act, 1925 (hereinafter referred to as the Act of 1925) and Section 68 of the Indian Evidence Act, 1872. He relied upon the statement of attesting witnesses of the Will, who stepped into the witness box as DW-1 Bihari and DW-2 Ram Rattan and in unison deposed that the testator Ram Pat had put thumb mark on the Will in their presence and they thumb marked the same in presence of the testator. They also appeared before the Tehsildar and put their thumb marks on the Will. Furthermore, no evidence was brought on record to show that the testator Ram Pat was not hale and healthy and in



sound state of mind when he made the Will. The compliance of aforesaid is sufficient to satisfy the conscience of the Court that the Will was duly executed. In support of his contention, he relied upon the judgments passed by the Hon'ble Supreme Court in *Madhukar D. Shende Vs. Tarabai Aba Shedage 2002(1) RCR (Civil) 724*; *Pentakota Satyanarayana and others Vs. Pentakota Seetharatnam and others* and the judgments passed by Coordinate Benches of this Court in *Raj Singh and Ors. Vs. Nikko @ Jasvir Kaur (deceased) through LRs 2021(4) RCR (Civil) 410* and *Daljinder Singh Vs. Harbans Kaur 2001(2) RCR (Civil) 294*.

8. Per contra, Mr. Sumit Gupta, Advocate for the respondents submitted that Will Ex.D2 is surrounded by suspicious circumstances. The learned 1st Appellate Court has rightly observed that if the adoption deed Ex.D1 was a valid document and purported the intention of the executor to give half share of property to the defendant then there was no need to execute a Will on the same day and conversely, had he intended to bequeath half share of the property upon the defendant by way of Will Ex.D2, there was no need to execute an adoption deed. One document was sufficient but with a *mala fide* intention, two documents for the same purpose were executed so that in case of challenge, the purpose of executing documents can either way be achieved.

9. It was further submitted that there are material contradictions in the statements of attesting witnesses of the Will i.e. DW-1 and DW-2. DW-1 in his cross-examination stated that when the adoption deed and the Will were written, plaintiff-Lado was present in the Tehsil and she also put her thumb impression on both the documents. However, DW-2 stated in his cross-



examination that at the time of writing of Will and the adoption deed, plaintiff-Lado was not present nor she put her thumb impression on the same. But in actual, thumb impression of plaintiff-Lado was not present on the Will. Furthermore, both witnesses of adoption deed and the Will are common and their testimonies with respect to veracity of adoption deed have already been discarded by both the learned Courts below. It was also argued that a Will found validly executed does not hold a presumption that it is genuine also. Will is validly executed and a Will is genuine cannot be said to be the same. In case the objector raises suspicious circumstances, it is the bounden duty of the Court to call upon the propounder to remove such suspicious circumstances to satisfy its conscience. In support of his contentions, reliance was placed by him upon the judgment passed by the Hon'ble Supreme Court in *Lilian Coelho and others Vs. Myra Philomena Coelho (2025) 2 SCC 633*.

10. I have heard learned counsel for the parties and have perused the paper book with their able assistance as well as record of the case and case laws cited.

11. Admittedly, the adoption deed Ex.D1 and the Will Ex.D2 are of the same date i.e. 08.03.1985 and while taking into consideration the material contradictions with respect to authenticity and genuineness of the adoption deed Ex.D1 and the procedural irregularities, both the learned Courts below have rightly discarded the same as fictitious, which finding is not even disputed before this Court.

12. Now the question remains is whether the Will Ex.D2 is a genuine document or not? The onus to prove the validity of the Will is always on the propounder of the Will and to remove all the suspicious circumstances



surrounding the execution of the Will. There is no dispute that the Will Ex.D2 is a registered document and both the attesting witnesses have deposed in unison that the testator put thumb mark on the Will in their presence and they also thumb marked the Will in his presence. But after going through their statements, this Court found material and stark contradictions, which pricked the conscience of the Court. DW-1 Bihari in his cross-examination stated that when the adoption deed and the Will were written, plaintiff-Lado was present in the Tehsil and she also put her thumb impression on both the documents. However, DW-2 Ram Ratan stated in his cross-examination that at the time of writing of Will and the adoption deed, plaintiff-Lado was not present nor she put her thumb impression on the same. Furthermore, DW-1 deposed that it is correct that son of Lado's brother is living with her from last 10 years; whereas DW-2 in his cross-examination stated that it is incorrect that Lado is keeping his nephew with her from last 10 years, rather he visited her occasionally. But in the second lines, he said that her nephew Sher Singh was studying in the High School of Kot, which is only two kms. away and after school time, he used to come to Lado's house in the evening. In this regard, DW-4 Shish Pal stated in his cross-examination that it is incorrect that Ram Pat had kept his brother-in-law's son at his house.

13. One of the important features which distinguishes 'Will' from other documents is that the 'Will' speaks from the date of death of the testator, and so, when it is propounded or produced before a Court, testator who has already departed the world cannot say whether it is his 'Will' or not; and this aspect naturally introduces an element of solemnity in the decision of the question, whether the document propounded is proved to be the last 'Will' and



testament of the departed testator. Therefore, the propounder of 'Will' must prove, (i) that the 'Will' was signed by the testator in a sound and disposing state of mind duly understanding the nature and effect of disposition and he put his signature on the document of his own free will; (ii) when the evidence adduced in support of the 'Will' is disinterested, satisfactory and sufficient to prove the sound and disposing state of testator's mind and his signature as required by law, Courts would be justified in making a finding in favour of propounder; and, (iii) if a 'Will' is challenged as surrounded by suspicious circumstances, all such legitimate doubts have to be removed by cogent, satisfactory and sufficient evidence to dispel suspicion.

14. The adoption deed Ex.D1 has already been discarded by both the Courts below while noticing the material contradictions in the testimonies of both attesting witnesses i.e. DW-1 and DW-2 and with respect to Will Ex.D2 as well, there are stark and material contradictions, which cloud its veracity. Had it been the intention of the testator to bequeath half share in favour of the appellant, the testament through Will was sufficient and there was no need to execute an adoption deed and that too, on the same day. Thus, in the considered opinion of this Court, the propounder of the Will i.e. defendant has not been able to dispel the suspicions raised by the plaintiff by leading cogent and satisfactory evidence.

15. In view of the judgments passed by the Hon'ble Supreme Court in *Pankajakshi (Dead) through Legal Representatives and others Vs. Chandrika and others (2016) 6 SCC 157*, *Randhir Kaur Vs. Prithvi Pal Singh and others (2019) 17 SCC 71* and *Gurbachan Singh (dead) through LRs Vs. Gurcharan Singh (dead) through LRs and others*, questions of law



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are not required to be framed in second appeal before the Punjab and Haryana High Court whose jurisdiction is circumscribed by provisions of Section 41 of the Punjab Courts Act, 1918.

16. As an upshot of above discussion, this Court finds no illegality and perversity in the judgment and decree passed by the learned 1st Appellate Court and the same is upheld. Resultantly, the regular second appeal is dismissed.

17. Misc. application(s) pending, if any, shall also stand disposed of.

(AMARINDER SINGH GREWAL)
JUDGE

September 18, 2025

Pankaj*

Whether speaking/reasoned : Yes
Whether reportable : Yes