



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

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RSA-2667-2014 (O&M)  
Reserved on: 22.04.2025  
Pronounced on: 28.04.2025

**RAMESH KUMAR ALIAS RAMESH CHANDER  
AND ANOTHER**

. . . . APPELLANTS

Vs.

**RAVI KANT ALIAS RAVI KUMAR AND OTHERS**

. . . . RESPONDENTS

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**CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA**

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Argued by: - Mr. Amit Jain, Sr. Advocate with  
Mr. Anupam Mathur, Advocate, for the appellants.

Mr. Harsh Aggarwal, Advocate, for respondent No.1.

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**DEEPAK GUPTA, J.**

Suit for declaration with consequential relief of permanent injunction regarding property in dispute filed by plaintiffs Ramesh Kumar and another (*appellants herein*) was decreed by the trial Court of Id. Civil Judge (Jr. Div.) Abohar vide judgment & decree dated 11.03.2013. However, the appeal filed by contesting defendants No.1 Ravi Kant (*respondent No.1 herein*) was allowed by the First Appellate Court of Id. Additional District Judge, Fazilka vide his judgment dated 03.01.2014, thus dismissing the suit of the plaintiffs.

2. Trial Court record was called. Same has been perused. In order to avoid confusion, parties shall be referred as per their status before the Trial Court.

3. It is undisputed that Sh. Parmanand was the owner of the property in dispute detailed in the head note of the plaint. He died on 12.03.2005. He had four sons and three daughters. These seven children are party to this litigation, as two of the brothers namely, Ramesh Kumar &

Naresh Kumar (*plaintiffs – appellants*) filed the suit against their two other brothers namely Ravi Kant & Vijay Kumar, and three sisters namely Krishana, Santosh & Asha, who were impleaded as defendants N: 1 to 5.

4.1 According to the plaintiffs, during his lifetime, Sh. Parmanand executed a Will dated 09.06.2004, which was registered on 22.06.2004, through which he bequeathed his property to the two plaintiffs and Defendant No. 2 Vijay. Based on this Will, the plaintiffs, along with Defendant No. 2, claim to have become the rightful owners in possession of the suit property. However, Defendant No. 1 Ravi Kant, is alleged to have fraudulently prepared another Will dated 07.08.2004, purportedly executed by Sh. Parmanand, in collusion with the alleged witnesses. On the basis of this fabricated Will, defendant No. 1 succeeded in getting Mutation No. 1403 sanctioned in his name. The plaintiffs contend that this Will is forged, was never executed by Sh. Parmanand during his lifetime, and was in fact created after his death. Therefore, it holds no legal validity. The plaintiffs prayed for decree of declaration affirming their ownership and possession of the suit land, along with a decree of permanent injunction to restrain defendant No. 1 from interfering with their possession, dispossessing them, or alienating any portion of the property.

4.2 Only Defendant No. 1 Ravi Kant, contested the suit by filing a written statement, as the other defendants chose not to contest. In his defence, defendant No. 1 claimed that Sh. Parmanand had executed a subsequent and final Will dated 07.08.2004, through which the property was bequeathed solely in his favour. Based on this Will, the mutation of the disputed land was sanctioned in his name by the Assistant Collector First Grade, Abohar, after recording statements from both parties. He further asserted that the Will dated 07.08.2004 revoked all previous Wills. Denying the other allegations made by the plaintiffs, defendant No. 1 prayed for the dismissal of the suit.

5. Necessary issues were framed. Evidence produced by the parties was taken on record.

6.1 Trial Court came to the conclusion that Sh. Parmanand had executed valid Will dated 09.06.2000 (Ex.P4) and had got it registered on 22.06.2000. It was further found that the Will dated 07.08.2004 relied by defendant No.1 was not proved. As such, he decreed the suit by way of the judgment dated 11.03.2013.

6.2 However, reversing the aforesaid finding, Id. First Appellate Court in the appeal filed by defendant No.1, held that earlier Will dated 09.06.2000 had been revoked by Sh. Parmanand by virtue of the last Will dated 07.08.2000. The First Appellate Court further found that the said Will was also subject matter of dispute between the Revenue Authorities, who had found the same to be duly proved. Id. First Appellate Court also held that merely because Sh. Parmanand and defendant No.1-Ravi Kant were under litigation at the relevant time, could not be a reason to discard the Will nor the same could be taken as a suspicious circumstance. With these findings, the Id. First Appellate Court set aside the judgment and decree passed by the trial Court and dismissed the suit by accepting the appeal of defendant No.1 vide his judgment dated 03.01.2014.

7.1 Assailing the reversal of the trial court's well-reasoned judgment, learned Senior Advocate for the appellants-Plaintiffs contends that the First Appellate Court erred in setting aside a decision that was based on sound reasoning. He emphasizes that the validity of the Will dated 09.06.2000, registered on 22.06.2000, was duly established through the testimony of one of the attesting witnesses - Harish Kataria (PW3). Additionally, the Will was scribed by the late Sh. Firangi Lal Midha, whose son Sh. Deepak Midha (PW2), appeared as a witness and produced the original register containing the entries related to the execution and registration of the Will. These entries were proved as Ex.P2 and Ex.P3. It is further submitted that the second attesting witness - Sh. Parvesh Sachdeva, had passed away, a fact confirmed in the testimony of PW3. There was no plausible ground to disregard the Will, especially considering that defendant No.1, in his written statement, did not dispute its execution. Instead, he

claimed that it stood revoked by the subsequent unregistered Will dated 07.08.2004.

7.2 The learned Senior Advocate then questioned the credibility of the later Will (Ex.D1), relied upon by defendant No.1, which was allegedly attested by Uttam Chand (DW2) and Prem Chand Gupta (DW4). Both these witnesses admitted under cross-examination that they did not know the testator personally, although they were familiar with the beneficiary, Ravi Kant, for a long time. Moreover, neither they nor Ravi Kant (DW3) could even name the scribe of the Will, raising serious doubts about its authenticity.

7.3 Finally, he argued that the later Will makes no mention of the earlier registered Will dated 22.06.2000. A vague statement suggesting that any previous Will stands revoked cannot, by itself, be deemed a valid revocation of the earlier registered document.

7.4 Learned Senior Advocate further highlights the history of prolonged litigation between Ravi Kant and his father Sh. Parmanand. He draws attention to the judgments & decrees Ex.P6 and Ex.P7, which show that as early as 1993, Sh. Parmanand and others had challenged a decree secured by Ravi Kant on the ground of fraud. This suit was decreed in 2006, with the court holding that Ravi Kant had indeed obtained the earlier decree through fraudulent means. The appeal filed by Ravi Kant against this decision was also dismissed, as evidenced by Ex.P8. Additionally, in 1995, Ravi Kant had instituted another suit seeking declaration against his father and others, which too was dismissed vide Ex.P10. In light of this acrimonious litigation history, the learned Senior Advocate argues that it is highly implausible for Sh. Parmanand to have executed the Will (Ex.D1) in Ravi Kant's favour. This significant and suspicious circumstance, he asserts, was erroneously overlooked by the First Appellate Court.

7.5 The learned Senior Advocate also clarifies the legal position, submitting that mutation proceedings or orders passed by Revenue Authorities have no bearing on the question of the Will's validity. He

contends that such administrative actions cannot be relied upon by a Civil Court for determining the genuineness of a testamentary document.

7.6 In support of his contentions, Ld. counsel has relied upon *H.V. Nirmala Vs. R. Sharmila, 2018 (2) RCR (Civil) 40; Bhagwan Kaur Vs. Malwinder Singh, 2009 (4) RCR (Civil) 732; Balbir Wati Vs. Jagbir Singh Arora, 1993 (1) RRR 11; Abhey Chand Vs. Smt. Bimla Devi, 2006(4) RCR (Civil) 802; B. Venkatamuni Vs. C.J. Ayodhya Ram Singh, 2007(1) RCR (Civil) 277; Mahila Bajrangji Vs. Badribai, 2003 (2) SCC 464; and Jagjit Singh Vs. Divisional Commissioner, Patiala, 2012 (13) RCR (Civil) 96.*

7.7 With all the above submissions, Ld. senior advocate prayed for setting aside the judgment as passed by the First Appellate Court and to restore the judgment of the trial Court, by accepting this Appeal.

8.1 On the other hand, learned Senior Advocate appearing for contesting respondent No.1 (defendant No.1) argues that the plaintiffs, in their pleadings, failed to allege any specific suspicious circumstances surrounding the Will dated 07.08.2004. He submits that unless such suspicions are expressly pleaded, the burden does not shift to the propounder to clarify or dispel them.

8.2 He further contends that the Will dated 07.08.2004 (Ex.D1) was the last testament of Sh. Parmanand and stands duly proved through the depositions of both attesting witnesses - DW2 and DW4. Even the plaintiff, he urges, acknowledged this document as the final Will of the testator. The presence of the beneficiary at the time of execution or the inability of the witnesses to name the scribe, he argues, are not valid grounds to reject the Will.

8.3 Lastly, the learned counsel asserts that the existence of prior litigation between the testator and defendant No.1 does not, by itself, invalidate the Will. He points out that the disputes were not limited to Parmanand and defendant No.1 alone but involved other parties as well, and thus, cannot be treated as conclusive evidence against the execution of the Will.

8.4 To support of his contentions, Ld. counsel has relied upon *Mritunyoy Sett Vs. Jadunath Basak, 2011(2) RCR (Civil) 894; Baj Singh vs. Nikko 2021 (4) RCR (Civil) 410; Randhir Singh Vs. Jasdev Singh, 2019(2) PLR 597; Sohan Singh Vs. Preet Kamal Singh, 2014(87) RCR (Civil) 354; and Madhukar D. Shende Vs. Tarabai Aba Shedage, 2002(1) RCR (Civil) 724.*

8.5 With these submissions, Id. advocate prays for dismissal of the appeal.

9. This Court has considered submissions of both the sides and appraised the record carefully.

10. Both the parties have propounded their respective Wills of Shri Parmanand. Whereas the plaintiffs have propounded Will dated 09.06.2000 duly registered before Sub Registrar, Shri Ganga Nagar on 22.06.2000; on the other hand, the defendant Ravi Kant has relied upon an unregistered Will dated 07.08.2004. In case the legality and validity of the Will dated 07.08.2004 relied by the defendant is proved, obviously, the earlier Will dated 09.06.2000, even if registered, will have no value, as it is the later Will, which is to prevail. On the other hand, if the Will dated 07.08.2004 is not proved and the Will dated 09.06.2000 is proved, then the plaintiffs will get the property as per the said Will. In case, none of the Wills are proved, the parties to the suit will get the property as per natural succession of Sh. Parmanand. In these circumstances, it is required to be seen as to which of the Will stands proved.

11. The mode of proving a WILL does not ordinarily differ from that of proving any other document except as to the special requirement of attestation prescribed in the case of a WILL by Section 63 of the Indian Succession Act, which reads as under:-

*"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 acknowledgment of his signature or mark, or of 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."*

12. Apart from above, Section 68 of the Evidence Act is quite relevant regarding proving the execution of a Will. This reads as under:

***"68. Proof of execution of document required by law to be attested. -- If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:***

*Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied."*

13. The conjoint reading of above provisions makes it quite clear that at least one out of the two attesting witnesses must be called to prove due execution of the WILL. Further, it is required for the attesting witness to prove that he had seen the testator sign or affix his mark to the WILL in his presence; or that he received from the testator a personal acknowledgment of his signature or mark of the signature of such other person and each of the witnesses shall sign the WILL in the presence of testator. Reliance can be

placed on ***Pentakota Satyanarayana Vs. Pentakota Seetharatnam 2006(1) C.C.C.563***, wherein it has been held by Hon'ble Supreme Court that to prove due execution of Will, attesting witness must state that each of the two witnesses has seen the executor sign or affix his mark to the instrument or has seen some other person sign the instrument in his presence and by the direction of the execution. Witness should further state that each of the attesting witness signed the instrument in the presence of the executant. Hon'ble Supreme Court held that these are the ingredients of attestation and they have to be proved by the witnesses.

14. Further, it is the settled proposition of law that it is the propounder of the Will, who has to prove its due execution. Besides, mere proving the signatures of the testator on the Will is not sufficient. Reference in this regard can be made to ***Ganpat Vs. Siri Chand 1992(1) LJR 252 and Janki Narayan Bhoir Vs. Narayan Namdeo Kadam 2003(2) LJR 646***, wherein it has been held that due and valid execution of the Will cannot be proved by simply proving that the signatures on the Will was that of the testator. It must be proved that attestations were also made properly as required by clause (c) of Section 63 of the Succession Act, 1925.

15. In the light of abovesaid legal position, it is required to be seen as to whether the due execution of the Will by any of the attesting witnesses of the Will, has been proved in this case.

16. The plaintiffs have placed reliance upon the Will dated 09.06.2000, which was duly registered with the office of the Sub Registrar on 22.06.2000. The said Will is purported to have been scribed by Sh. Firangi Lal Midha, Deed Writer, and attested by two attesting witnesses, namely Sh. Harish Kataria and Sh. Parvesh Sachdeva. In order to prove the due execution of the said Will, the plaintiffs examined one of the attesting witnesses, Sh. Harish Kataria, as PW3, who deposed that he was well-acquainted with the deceased testator, Sh. Parmanand, and that the Will in question was scribed by Sh. Firangi Lal Midha in his presence and in the presence of the other attesting witness. He further stated that the scribe

had read over and explained the contents of the Will to Sh. Parmanand, who thereafter signed the same in the presence of both attesting witnesses. PW3 categorically stated that the Will was signed/thumb-marked by the testator and attesting witnesses in each other's presence and that all of them appeared before the Sub Registrar on 22.06.2000 for registration. He also confirmed that the other attesting witness, Sh. Parvesh Sachdeva, has since passed away.

17. The testimony of PW3 is duly corroborated by the deposition of PW2 Sh. Deepak Midha son of the deceased scribe Sh. Firangi Lal Midha. PW2 produced the original register maintained by his late father, which contains the relevant entries dated 09.06.2000 and 22.06.2000, evidencing the execution and registration of the said Will. Copies of these entries were exhibited as Ex.P2 and Ex.P3, respectively. He also placed on record the death certificate of his father as Ex.P5. PW2 identified the signature and stamp of his late father on the original Will, which was produced by Sh. Gurjant Singh Kanungo from the mutation file, and on the register entries Ex.P2 and Ex.P3. The certified copy of the Will was marked as Ex.P4.

18. Both PW2 and PW3 were subjected to lengthy and detailed cross-examination, but nothing material could be elicited to discredit their testimonies or to cast doubt on the due execution of the Will.

19. Further, it is pertinent to note that in the written statement filed by defendant no.1, the primary plea is that the Will dated 09.06.2000 stands revoked by a subsequent Will dated 07.08.2004. This clearly implies an implied admission by the defendant of the execution and registration of the Will dated 09.06.2000 (Ex.P4) by the testator, Sh. Parmanand.

20. Learned counsel for the respondent/defendant has failed to point out any suspicious circumstances surrounding the execution of the Will dated 09.06.2000. Moreover, the defendant has not challenged the legality or validity of the said Will in specific terms and has merely taken a plea of revocation.

21. In view of the evidence on record and the absence of any suspicious circumstances, this Court is of the considered opinion that the plaintiffs have successfully proved the due execution, legality, and validity of the Will dated 09.06.2000, which was registered with the Sub Registrar on 22.06.2000, the certified copy of which is Ex.P4.

22. Coming to the Will relied by the defendant, he has propounded an unregistered Will dated 07.08.2004, which is typed in Hindi script. The said document does not disclose the name of the typist or scribe, nor does it bear any signature or seal of the scribe. The Will purports to have been attested by two witnesses: Sh. Uttam Chand and Dr. Prem Parkash Gupta.

23. In order to prove the said Will, the defendant examined both the attesting witnesses, namely, Sh. Uttam Chand as DW2 and Dr. Prem Parkash Gupta as DW4. While both these witnesses, in their examination-in-chief, supported the defendant's case by stating that Sh. Parmanand had executed the Will dated 07.08.2004 voluntarily and had thereby revoked the earlier Will, their respective cross-examinations significantly undermine the credibility of their testimonies and cast serious doubt on the due execution of the Will Ex.D1.

24. DW2 Uttam Chand admitted during cross-examination that he is a property dealer and had assisted the defendant, Sh. Ravi Kant, in purchasing certain plots, for which he had received commission. Though the Will is in Hindi, DW2 categorically stated that he is unable to read Hindi. He further deposed that at the time of execution of the Will, only the beneficiary, Ravi Kant, was present, and none of the other family members of Sh. Parmanand were present. He admitted that he had only signed the Will and was unaware of who had actually scribed it. He was also ignorant of whether the Will was presented before the Tehsildar and was completely unaware of its contents. In such circumstances, the assertion of DW2 that the contents of the Will were read over and explained to the testator and the witnesses loses all credibility.

25. Likewise, DW4 Dr. Prem Parkash Gupta, in his cross-examination, admitted that he did not know the name or address of the scribe, who had typed the Will and had never met him before. He confirmed that the typist had not appended any name, seal, or signature on the Will. Though he is a resident of Abohar, he claimed to have gone to Ganga Nagar on 07.08.2004 to sign the Will. He admitted being a friend of the defendant Ravi Kant and acknowledged that he only knew Sh. Parmanand as the father of his friend.

26. Further, DW3 Ravi Kant, the beneficiary of the Will, also admitted in his deposition that he does not know the name of the scribe and that he was present at the time of scribing of the Will.

27. A cumulative assessment of the testimonies of DW2, DW3, and DW4 reveals that none of them is able to disclose the identity of the scribe of the alleged Will Ex.D1. The Will bears no name, signature, or seal of the scribe. It further emerges that the sole beneficiary, Ravi Kant, was present during the execution of the Will, and both the attesting witnesses are closely acquainted with him. These facts, taken together, give rise to serious doubts about the authenticity and voluntariness of the alleged Will.

28. Additionally, a perusal of Ex.D1 indicates that while it contains a vague statement to the effect that any previous Will stands revoked, there is no specific reference to the earlier Will dated 09.06.2000, registered on 22.06.2000 (Ex.P4). The absence of any explicit revocation of the registered Will further weakens the defendant's claim regarding the execution of a subsequent valid Will.

29. This Court is guided by the settled principles laid down in judicial precedents concerning competing Wills, particularly when one is registered and the other is not. In ***Bhagwan Kaur v. Malwinder Singh (supra)***, this Court held that though registration of a Will is not compulsory under law, it significantly bolsters the presumption of its genuineness. In that case, the subsequent unregistered Will was found to be clouded by

suspicious circumstances and was rightly ignored in favour of the earlier registered Will. Similarly, in *H.V. Nirmala v. R. Sharmila (supra)*, the Hon'ble Supreme Court reiterated that when a registered Will is duly proved through reliable evidence, it must be preferred, especially when the alleged later Will does not even refer to the existence or revocation of the earlier Will. The Court emphasized that a subsequent Will should clearly express an intention to revoke a previous one, failing which, its validity is doubtful. In *Balbir Wati v. Jagbir Singh Arora (supra)*, this court observed that when a person has already executed a registered Will, it is normally expected that a subsequent Will, intended to override it, should also be registered. Non-registration of such subsequent Will raises a presumption of suspicion, and the burden lies squarely on the propounder to dispel the same through convincing and satisfactory evidence.

30. Thus, the settled legal position is that while registration of a Will is not mandatory, it strongly supports its authenticity. A subsequent unregistered Will, especially one not mentioning the earlier registered Will, is inherently suspicious and the onus lies heavily on the propounder of such a subsequent Will to remove all doubts and prove its validity.

31. In the present case, the earlier Will dated 09.06.2000 is registered and has been proved in accordance with law. The later Will dated 07.08.2004 is unregistered, does not mention the prior Will, and is fraught with multiple suspicious circumstances. In light of the principles enunciated in the aforementioned authorities, this Court finds no reason to discard the earlier registered Will in favour of the subsequent unregistered and suspicious one.

32. Still further, apart from the fact that the legal and valid execution of the Will dated 07.08.2004 (Ex.D1) has not been duly proved by the testimonies of DW2 and DW4—who have been found unreliable—this Court finds merit in the submission of the learned Senior Counsel for the appellants, who has rightly pointed out several strong suspicious circumstances surrounding the said Will.

33. The most glaring suspicious circumstance arises from the documented history of strained relations between the testator Sh. Parmanand, and the beneficiary, defendant No.1—Ravi Kant. As evidenced on record, the parties were involved in protracted and hostile litigation over a span of nearly two decades. Notably, Sh. Parmanand had instituted a suit in 1993 against defendant No.1, seeking a declaration that a decree dated 01.10.1993 was null and void on grounds of fraud. That suit was decreed in 2006 in favour of Parmanand, as seen in judgment Ex.P6. The appeal preferred by defendant No.1 was dismissed by the Appellate Court on 08.10.2008 (Ex.P8). Furthermore, another suit was filed by defendant No.1 against his father and the present appellants in 1995, which too was dismissed vide judgment dated 14.02.2011 (Ex.P10 and Ex.P11). This sustained adversarial litigation continued from 1993 until even after the death of the testator in 2005, which makes it highly improbable and unnatural that Sh. Parmanand would, in 2004, execute a Will in favour of defendant No.1.

34. Additionally, it is of significant relevance that the earlier Will dated 09.06.2000 was not only validly executed but was also registered on 22.06.2000. However, the alleged subsequent Will dated 07.08.2004 contains no reference to the earlier registered Will. The absence of any express revocation or mention of the prior Will is another material suspicious circumstance, which casts serious doubt on the genuineness of Ex.D1.

35. The First Appellate Court appears to have placed undue reliance upon observations made by the Revenue Authorities in the course of mutation proceedings to arrive at a finding that the Will dated 07.08.2004 stood proved. This approach is legally unsustainable. It is a settled position of law that mutation proceedings are summary in nature and do not adjudicate upon title or the legality of testamentary documents. Moreover, it stands brought on record by the learned Senior Counsel for the appellants that the mutation order was under challenge before the Financial

Commissioner, and the operation of the order passed by the Commissioner affirming the Assistant Collector's decision had been stayed vide order dated 19.02.2013 (Ex.P12). Thus, reliance by the First Appellate Court on such proceedings is misplaced.

36. Ld. Advocate for the respondent has sought to place reliance on **Randhir Singh v. Jasdev Singh**, wherein this Court held that the propounder of a Will is required to prove its execution and dispel all surrounding suspicious circumstances, and that minor inconsistencies pointed out by objectors do not suffice to discredit a valid Will.

37. However, the facts of the present case are clearly distinguishable. Here, the suspicious circumstances are neither minor nor trivial—they strike at the very root of the validity of the Will. Moreover, while the Will dated 07.08.2004 is said to be the last Will of Parmanand, who passed away on 12.03.2005, no explanation has been offered as to why this Will, unlike the earlier one, was not registered. In the backdrop of his prior registered Will (Ex.P4), the failure to register the subsequent Will, especially when the testator lived for several months thereafter, further enhances the cloud of suspicion surrounding its execution—though it is once again clarified that registration is not mandatory, its absence, in the present factual matrix, assumes evidentiary significance.

38. Learned counsel for the respondent has contended that PW1—plaintiff Ramesh Kumar—admitted in his testimony that the Will dated 07.08.2004 was the last Will of Sh. Parmanand, and that this constitutes a valid admission proving the Will's validity. Ld. Counsel relied upon **Mritunyoy Sett v. Jadunath Basak (supra)**, wherein the Hon'ble Supreme Court observed that an admission made by a party in a court of law constitutes a valid and relevant piece of evidence and may be relied upon in other proceedings. Since such an admission emanates from the person against whom it is sought to be used, it is regarded as the best form of evidence.

39. This court finds the above contention to be devoid of merit. To determine whether a statement amounts to an admission that can be used against the person making it, the testimony must be read in its entirety. Upon analysis of the testimony of PW1 Ramesh Kumar, it becomes apparent that he only acknowledged the existence of the Will dated 07.08.2004 presented by defendant Ravi Kant before the Revenue Authorities during the mutation proceedings. He clarified that both parties had produced their respective Wills and that the Assistant Collector First Grade had sanctioned the mutation based on the Will presented by Ravi Kant. However, nowhere in his deposition did he admit that the said Will was legally and validly executed by Sh. Parmanand. Merely referring to the Will dated 07.08.2004 as the 'last Will' does not constitute an admission of its legality or validity. Accordingly, the argument raised by the respondents' counsel regarding the alleged admission lacks merit and cannot be accepted.

40. The question as to whether suspicious circumstances surrounding a Will must be pleaded has also been addressed in judicial precedents. In ***Baj Singh and others v. Nikko @ Jasvir Kaur (supra)***, this Court emphasized the requirement of foundational pleadings to challenge a Will on the ground of suspicious circumstances. It was held that:

“It would not be appropriate for the Court to address the argument with regard to suspicious circumstances of the registered Will particularly when the pleadings and the evidence are totally lacking to prove the same. The party who wishes to assail the correctness of the registered Will on the ground of suspicious circumstances is required to lay a foundation in the pleadings itself and thereafter, lead material evidence to prove the same. The other party who has propounded the Will cannot be taken by surprise at a later stage.”

The Court further observed that while pleadings should be concise in accordance with the Code of Civil Procedure, 1908, any party asserting a positive fact must include it in their pleadings and substantiate it through evidence. If this procedure is not followed, the propounder of the Will may

be seriously prejudiced. The Court would confront the propounder with any suspicious circumstances not so pleaded only if such circumstances are visibly apparent and shockingly suspicious on the face of the record.

41. However, in ***B. Venkatamuni v. C.J. Ayodhya Ram Singh (supra)***, the Hon'ble Supreme Court held that mere compliance with legal formalities in the execution of a Will does not by itself prove its validity. When there are suspicious circumstances surrounding a Will, the onus lies on the propounder to dispel such doubts with cogent and convincing evidence. The Court emphasized that the conscience of the Court must be satisfied based on the totality of circumstances. The Supreme Court held that once the propounder of a registered Will has discharged the initial burden of proving its execution, the burden shifts to the contestant to bring on record credible material creating doubt. Upon the contestant doing so, the burden shifts back to the propounder to affirmatively satisfy the Court that the testator knew the contents of the Will and executed it in a sound and disposing state of mind.

42. Thus, while suspicious circumstances are generally expected to be pleaded and substantiated with evidence, even when such circumstances are not specifically pleaded, the Court retains its duty to evaluate the totality of facts and satisfy its conscience before upholding the validity of a Will, particularly where the circumstances surrounding its execution raise reasonable doubts.

43. In view of the entire foregoing discussion, the judgment and decree passed by the First Appellate Court are hereby set aside. It is concluded that the defendant Ravi Kant—respondent herein—has failed to establish the due execution and genuineness of the Will dated 07.08.2004, which is enveloped in grave suspicious circumstances that remain unexplained. Conversely, the Will dated 09.06.2000, duly registered on 22.06.2000 with the Sub-Registrar, stands proved on record and there exists no cogent reason to disregard its authenticity.

44. Consequently, the judgment of the Trial Court is restored, and the suit is decreed in favour of the appellants - plaintiffs. Present appeal is accepted accordingly. Each party shall bear their own costs.

**28.04.2025**

*Vivek*

**(DEEPAK GUPTA)**

**JUDGE**

*Whether speaking/reasoned?*

**Yes**

*Whether reportable?*

**Yes**