



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

**RSA-1802-1997 (O&M)
Reserved on :- 02.09.2025
Date of Pronouncement:-04.09.2025**

Gurmail Singh and another

... Appellants

Versus

Sukhminder Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :-

Mr. A.D. S. Jattana, Advocate
for the appellants.

Mr. Madan Lal Saini, Advocate
for respondents No.1 to 3.

VIRINDER AGGARWAL, J.

1. The appellants have instituted the present appeal challenging the judgment and decree dated 24.02.1997, delivered by the learned Additional District Judge, Patiala, which reversed and set aside the earlier judgment and decree passed by the Sub-Judge First Class, Patiala on 26.02.1992.
2. The appellants/plaintiffs No. 1 and 3 filed a suit claiming to be the legal heirs of Amar Singh based on a Will dated July 21, 1985, executed by Amar Singh in their favour. The plaintiffs asserted ownership and possession of a 1/18th share each in the disputed land, relying on the Will dated 21.07.1985, and challenged the earlier Will dated 10.02.1985, as illegal, null-&-void, and as revoked by the later Will. The defendants



contested the suit, arguing that Amar Singh never executed the Will dated 21.07.1985, and that the mutation was correctly sanctioned based on the Will dated 10.02.1985.

3. From the pleadings of the parties following issues were framed:-
1. Whether Amar Singh deceased executed a valid will dt. 21.7.1985 in favour of the plaintiff?OPP
 2. Whether Amar Singh deceased executed a valid will dt. 10.2.1985 in favour of defendants?OPD
 3. Whether suit land is coparcenary and joint Hindu family properly? if so to what effect?OPP
 4. Relief.

4. The Learned Sub-Judge First Class, Patiala, initially decreed the suit in favour of the appellants/plaintiffs, recognizing them as co-owners of the suit land with a 1/18th share each, premised on the Will dated 21.07.1985. However, upon appeal by the defendants, the Learned Additional District Judge, Patiala, set-aside the Sub-Judge's judgment and decree, holding that the Will propounded by the plaintiffs was enveloped in suspicious circumstances, which the plaintiffs failed to adequately dispel. Aggrieved by this reversal, the appellants have preferred the present appeal. Notice of motion was duly issued to the respondents, who appeared through their counsel, Mr. Madan Lal Saini, Advocate. The Lower Court Record (LCR) has been requisitioned for further proceedings.

5. I have reviewed the arguments presented by the learned counsel for the respondents but find them to be without merit.

6. Regarding the jurisdiction and ambit of a second appeal, it is now a well-established legal principle that in Punjab and Haryana, second appeals are to be construed as appeals under Section 41 of the Punjab Courts



Act, 1918, rather than under Section 100 of the Code of Civil Procedure. This position has been authoritatively affirmed by the Supreme Court in ***Pankajakshi (Dead) through LRs and others v. Chandrika and others, (2016) 6 SCC 157***, and subsequently reiterated in ***Kirodi (since deceased) through his LR v. Ram Parkash and others, (2019) 11 SCC 317***, and ***Satender and others v. Saroj and others, 2022 (12) SCALE 92***. In light of the precedent established by these rulings, it is unnecessary to frame any question of law in the present matter.

7. Learned counsel for the appellants/plaintiffs vehemently submitted that the impugned findings recorded by the learned Additional District Judge are untenable in law and fact. It was argued that the learned Additional District Judge failed to duly appreciate that the Will had been properly and validly proved through the examination of witnesses in strict compliance with Section 63 of the Indian Succession Act, 1925. Furthermore, the so-called suspicious circumstances relied upon by the Additional District Judge are wholly insufficient to impugn or set aside the Will, which was executed in favor of all the natural heirs, thereby effectuating a lawful and natural disposition of the property. Counsel emphasized that no natural heir has been disinherited or excluded under the Will. Accordingly, it was urged that the findings recorded by the Additional District Judge on Issue No. 1, as re-framed in appeal, ought to be reversed, and the findings of the learned Sub-Judge First Class, Patiala, ought to be affirmed. Reliance was placed on the authoritative pronouncement of the Hon'ble Supreme Court in ***Shina Kumar and Others v. Sharan Ban and Others, 2021 (11) SCC 277***, to bolster the contention that the impugned findings suffer from legal infirmity and ought to be set aside.



8. Learned counsel for the respondents/defendants contended that the learned Additional District Judge has diligently and thoroughly evaluated the evidence on record and arrived at a well-reasoned conclusion that the Will is tainted by suspicious circumstances. It was argued that the appellants/plaintiffs have failed to satisfactorily dispel these doubts. Accordingly, counsel urged that the appeal be dismissed and the judgment and decree of the learned First Appellate Court be upheld.

9. With regard to the proof of the Will, both the Courts below have concurred that the Will was legally established. However, the First Appellate Court delineated several suspicious circumstances, which are as follows:-

- (i) **The registered Will is purportedly revoked by a subsequent unregistered Will;**
- (ii) **Both attesting witnesses are not inhabitants of the testator's village;**
- (iii) **The propounder of the Will assumed a prominent and active role in its execution;**
- (iv) **The propounder was responsible for procuring the witnesses, the paper on which the Will was drafted, as well as the requisite writing instruments and ink-pad;**
- (v) **The Will is alleged to have been executed at a village bus stand, an unusual and questionable venue;**
- (vi) **The rationale provided for the revocation of the prior Will fails to inspire confidence and raises serious doubts in the mind of the Court.**

10. After careful and thorough consideration of the evidence on record and the findings of the learned First Appellate Court, I am of the considered view that, in this case, Amar Singh, having earlier executed a registered Will, was fully aware of the significance attributed to a registered



Will. While registration of a Will is not mandatory and a Will may validly be executed without registration and even a registered Will can be revoked by a subsequent unregistered Will, certain facts here raise legitimate suspicion. Notably, the first Will was drafted by a professional deed-writer at the Tehsil complex and duly registered by Amar Singh, whereas the subsequent Will was purportedly executed at a village bus stand, which is inherently questionable.

10.1 Furthermore, both attesting witnesses to the subsequent Will are not residents of the testator's village. The record further reveals that these witnesses were arranged by the plaintiff-Gurmail Singh, who received a share under the subsequent unregistered Will that was not granted to him in the earlier registered Will. It was Gurmail Singh who played a prominent role in the execution of this subsequent Will, having arranged not only the witnesses but also the writing materials, including the paper and ink-pad used for its drafting.

10.2 In light of these circumstances, the learned Additional District Judge rightly rejected the subsequent unregistered Will, holding that the suspicious circumstances identified were not satisfactorily dispelled by the propounder. It is well-settled law that when a Will is enveloped in suspicious circumstances, the burden on the propounder to dispel such doubts is heavy. Given that a Will takes effect only after the testator's death when the testator is no longer available to testify regarding the conditions under which the Will was executed, the propounder must eliminate any doubts to enable the Court to safely conclude that the Will propounded is indeed the last valid testament of the deceased, thereby reflecting the true intentions of the testator concerning the disposition of his estate.



11. Undoubtedly, suspicious circumstances must be both pertinent and cogent, rather than the mere figment of conjecture or the vagaries of a sceptical mind. What constitutes suspicious circumstances, however, is inherently contextual and must be assessed in light of the specific facts of each case. In the instant matter, Amar Singh had previously executed a duly registered Will, and the subsequent revocation of the same through an unregistered instrument executed at a village bus stand, attested by two witnesses who are neither residents of the testator's village nor intimately familiar with his affairs, and who were arranged by the beneficiary-Gurmail Singh was rightly pointed as raising serious suspicion. The appellants have failed to dispel these suspicions with satisfactory evidence or explanation. In these circumstances, there is no compelling reason to interfere with the considered and well-reasoned judgment rendered by the learned Additional District Judge, Patiala. Consequently, the appeal is hereby dismissed, and the judgment and decree of the learned Additional District Judge, Patiala, is affirmed.

12. Since the main case has been decided, pending miscellaneous application(s), if any, stands also disposed of.

04.09.2025
Gaurav Sorot

(VIRINDER AGGARWAL)
JUDGE

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No