

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****RSA-714-2020 (O&M)****Date of Decision : 11.09.2025**

Krishan Kumar

... Appellant

Versus

Brij Mohan and Another

... Respondents

**CORAM : HON'BLE MRS. JUSTICE ALKA SARIN**

Present : Mr. J.S. Salana, Advocate for  
Mr. G.S. Salana, Advocate for the appellant.

**ALKA SARIN, J. (Oral)**

1. Present appeal has been preferred by the plaintiff-appellant challenging the concurrent findings returned by the Trial Court vide judgment and decree dated 21.09.2018 and the First Appellate Court vide judgment and decree dated 30.07.2019.

2. The brief facts relevant to the present *lis* are that the plaintiff-appellant herein, who is grandson of Sohan Lal, filed a suit for declaration that he is owner of the suit property on the basis of a registered Will dated 28.05.2008 alleged to have been executed by Sohan Lal in his favour. It was averred in the plaint that Sohan Lal had executed the Will in favour of plaintiff-appellant and that the defendant-respondents, who are the sons of Sohan Lal were not on good terms with Sohan Lal. On notice, the defendant-respondents appeared and contested the suit on the grounds of maintainability, *locus standi* and concealment of material facts. It was further the stand taken that Sohan Lal during his lifetime had executed a transfer deed dated

02.06.2010 in favour of the defendant-respondent No.1 and defendant-respondent No.2 appended his signatures as a marginal witness. The bank account was also transferred in the name of defendant-respondent No.1. However, the plaintiff-appellant fraudulently, being a nominee, encashed the amount lying in the said account of Sohan Lal.

3. On the basis of pleadings of the parties, the following issues were framed :

1. Whether plaintiff is entitled for declaration, as prayed for ? OPP
2. Whether plaintiff is entitled for permanent injunction ? OPP
3. Whether suit of plaintiff is not maintainable ? OPD
4. Whether plaintiff has no locus standi to file the present suit ? OPD
5. Whether plaintiff has no cause of action to file this suit ? OPD
6. Relief

4. The Trial Court vide judgment and decree dated 21.09.2018 dismissed the suit. Aggrieved by the same an appeal was filed which appeal was also dismissed by the First Appellate Court vide judgment and decree dated 30.07.2019. Hence, the present regular second appeal.

5. Learned counsel for the plaintiff-appellant would contend that both the Courts have erred in dismissing the suit. It is urged that the plaintiff-appellant was looking after his grandfather, namely, Sohan Lal and out of love and affection he executed a registered Will dated 28.05.2008 (Ex.P1) in his favour. It is further the contention that the defendant-respondents were not on

good terms with Sohan Lal and therefore the property was all bequeathed to the plaintiff-appellant.

6. Heard.

7. In the present case both the Courts rejected the Will on the ground that not a single witness was examined to prove the veracity of the Will. Though two attesting witnesses had signed the Will, namely, Sukhmander Singh and Raj Kumar, however, both the attesting witnesses were not examined. Section 63 of the Indian Succession Act, 1925 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 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.”*

8. A Will as per Section 63 of the Indian Succession Act, 1925 has to 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 and each of the witnesses shall sign the Will in the presence of the testator.

9. Section 68 of the Indian Evidence Act, 1872 (Section 67 of the Bharatiya Sakshya Adhinyam, 2023) 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.”*

10. Section 68 of the Indian Evidence Act, 1872 (Section 67 of the

Bharatiya Sakshya Adhinyam, 2023) states that if a document is required by law to be attested it shall not be used as evidence until one of its attesting witness has been called for the purpose of proving its execution. In the present case, as held by both the Courts, not a single witness was produced. There is no evidence on the record whether the said witnesses were dead or alive, hence in the absence of having examined any of the attesting witnesses the Will has rightly been rejected.

11. In view of the above, I do not find any merits in the present appeal. No question of law, much less any substantial question of law which requires consideration, arises in the present case. The appeal, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

12. Learned counsel for the appellant has pointed out that costs as imposed vide order dated 23.01.2025 since stands paid.

11.09.2025  
jk

**( ALKA SARIN )  
JUDGE**

NOTE: Whether speaking/non-speaking: Speaking  
Whether reportable: YES/NO