



RSA-1604-1991 (O&M)

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

**RSA-1604-1991 (O&M)
Reserved on: 22.08.2025
Pronounced on: 28.08.2025**

Champa

.....Appellant

VERSUS

Nitya Nand and Others

....Respondents.

CORAM: HON'BLE MS. JUSTICE MANDEEP PANNU

Present: Mr. Ajay Jain, Advocate for the appellant.

Mr. Manuj Chadha, Advocate for the respondents.

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MANDEEP PANNU, J

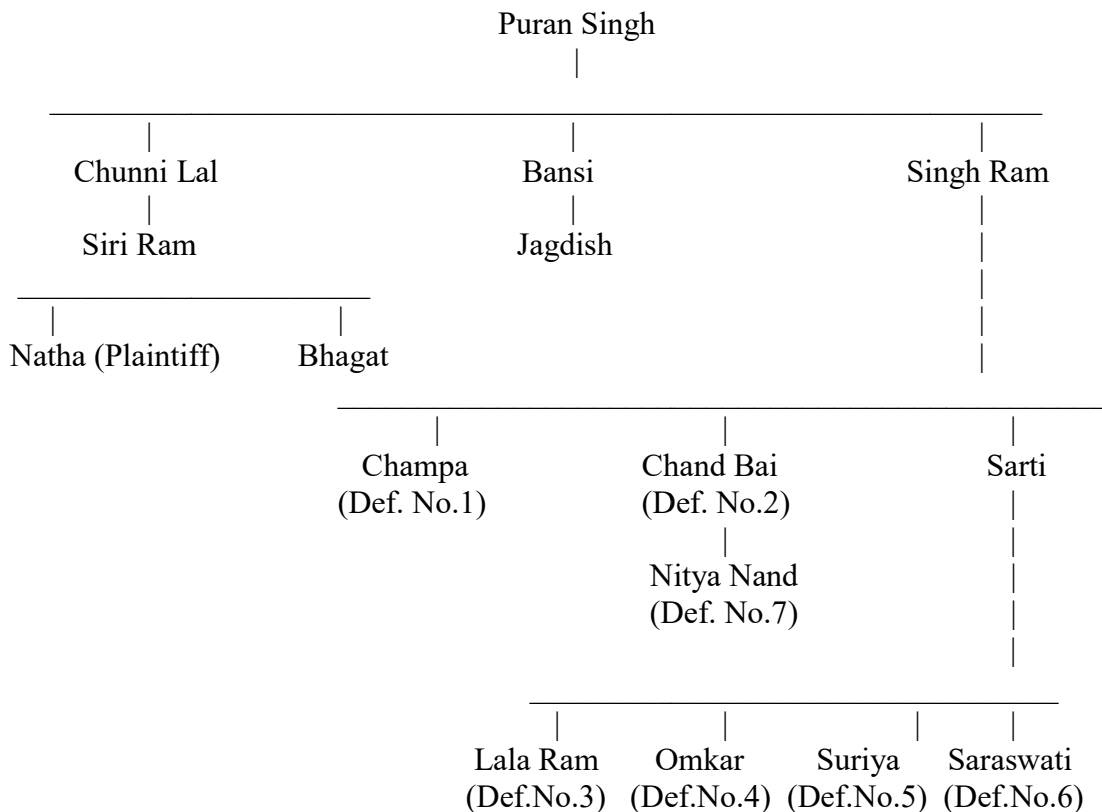
1 The present Regular Second Appeal has been filed by the appellant/defendant No.1-Champa, challenging the judgment and decree dated 25.04.1991 passed by the learned Lower Appellate Court. By the impugned judgment and decree, the lower appellate Court found no infirmity in the trial Court's rejection of the Will dated 05.12.1980 propounded by the plaintiff Natha, and set aside the trial Court's findings insofar as they affected the claim of defendant No. 7, Nitya Nand, and proceeded to accept the registered Will dated 17.11.1980 propounded by defendant No. 7, thereby holding him entitled to a 1/4th share in the estate of late Singh Ram.

2. Aggrieved thereby as acceptance of defendant No. 7's Will reduces the natural-heir share that defendant No. 1-Champa would otherwise receive on intestacy, the present Regular Second Appeal has been preferred by appellant/defendant No.1 – Champa.



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3. The following pedigree is not in dispute and is necessary to appreciate the controversy:



4. Defendants 3 to 6 (heirs of Sati) are not central to the present *lis* as Sati is not disputing the inheritance otherwise and the live dispute is between Natha (plaintiff), Champa (D-1), and Nitya Nand (D-7).

Brief Facts

5. Facts in brief are that plaintiff-Natha instituted a suit for joint possession claiming 1/3rd share (144 kanals 4 marlas) out of land measuring 432 kanals 12 marlas, owned by late Singh Ram, situate in the revenue estate of Village Ram Bass, Tehsil and District Mahendragarh, and also two residential houses of late Singh Ram at Village Ram Bass, Tehsil and District Mahendragarh.

6. The plaintiff founded his title on a Will dated 05.12.1980 allegedly executed by Singh Ram in his favour (Ex. P-1). He also sought a declaration that the registered Will dated 17.11.1980 executed by Singh Ram in favour of

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defendant No.7, Nitya Nand (Ex. DW2/1) was the product of fraud and misrepresentation and is liable to be set aside.

7. In her written statement defendant No. 1-Champa asserted her status as a natural heir, claiming 1/3rd share left by her father Singh Ram, on intestacy.

8. In joint written statement of defendants No. 2 & 7 (Chand Bai and her son, Nitya Nand), they pleaded that defendant No. 7-Nitya Nand was brought up by Singh Ram, received education from that village, resided with him and, along with his wife, served him till death. They denied the plaintiff's Will dated 05.12.1980 and asserted that Singh Ram executed the registered Will No. 64 dated 17.11.1980 in favour of defendant No. 7 bequeathing his property to the extent of 1/4th share; thus, defendant No. 7 had 1/4th share and defendant No. 1 also 1/4th share in the suit land owned by Singh Ram, as per their stand.

9. Replication was filed by the plaintiff traversing the defence and reiterating the plaint.

10. On the pleadings, trial Court framed the following issues:-

- 1) Whether deceased Singh Ram executed a valid Will on 05.12.1980 in favour of plaintiff? OPP
- 2) Whether Singh Ram deceased executed a valid Will on 17.11.80 in favour of defendant No.7 OPD.
- 3) Whether Will dated 17.11.80 in favour of defendant no.1 illegal, fictitious, forged, based on fraud and void as alleged by the plaintiff? OPP
- 4) Whether Will dated 05.12.80 in favour of the plaintiff is fictitious, forged, illegal and prepared after the death of Singh Ram? OPD (defendant No.2 & 7).



- 5) If both the Wills are proved to be illegal and void who were the legal heirs of Singh Ram at the time of his death? OPParties
 - 6) In case Issue no.1 is not proved whether plaintiff has no locus-standi? OPD
 - 7) Whether suit is not maintainable in the present form? OPD
 - 8) Whether suit is false and frivolous and defendants No.2 and 7 are entitled for compensatory costs? OPD
 - 9) Relief.
11. In order to prove his case, plaintiff led the following evidence:
- i) PW-1 Sardar Singh; PW-2 Surjeet Singh; PW-3 Satpal; PW-4 Umrao; PW-5 Natha Ram; PW-6 Kanhi Ram and Chandgi Ram, (attesting witnesses of the Will); PW-7 Banssi (attesting witness of the Will) and Vijay Kumar Rastogi (Hand Writing and Finger Expert).
 - ii) Exhibits: Ex. P-1 – Will dated 05.12.1980; Ex. P-2 – Site plan; Ex. P-3 – Jamabandi for the year 1979–80; Mark A to Mark D – Sale deed(s) of 1985; Mark E – Birth certificate; Mark F – Voter list.
12. Defendants have also led following evidence to prove their case:-
- i) DW-1- Nitya Nand (defendant examined himself); DW-2 Badri Prasad; DW-3 Bishna Ram (attesting witness of the Will dated 17.11.1980); DW-4 Matadin (attesting witness); DW-5 Jagmal Singh; DW-8 Shri Ram; DW-9 Naresh Kataria, handwriting & fingerprint expert.
 - ii) Exhibits: Ex. DW2/1 – Registered Will propounded by defendant No. 7 dated 17.11.1980; Ex. D-2 – School certificate of

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Nitya Nand; Ex. D-3 – Ration-card; Ex. DA – Voter List; Ex. DW9/1
– Expert report.

Findings of the Trial Court

13. By judgment and decree dated 30.01.1989, the learned Trial Court dismissed the suit of the plaintiff, having discarded both the Wills i.e. the plaintiff's Will Ex. P-1 (05.12.1980) and defendant No. 7's Will Ex. DW2/1 (17.11.1980) and held that the property of Singh Ram would devolve upon his natural heirs, meaning thereby all three daughters of Singh Ram would get 1/3rd share each in the suit property.

14. Plaintiff-Natha did not file any appeal against the judgment and decree dated 30.01.1989 and consequently, the finding discarding plaintiff's Will dated 05.12.1980 (Ex.P-1) attained finality.

Findings of the Lower Appellate Court

15. An appeal was preferred by defendant No. 7, Nitya Nand, against the judgment and decree dated 30.01.1989. The appeal was contested by defendant No. 1-Champa, who stood to lose from 1/3rd on intestacy to 1/4th if the Will dated 17.11.1980 is upheld.

16. The learned Lower Appellate Court reversed the trial Court's findings on Issues 2, 3, 5, 6, 7, and 9 and held that defendant No. 7, Nitya Nand, is entitled to 1/4th share in the property of Singh Ram as per the registered Will dated 17.11.1980 (Ex. DW2/1) and at the same time it agreed with the trial Court that the plaintiff's Will dated 05.12.1980 (Ex. P-1) stood rightly discarded, a finding that had already attained finality due to lack of appeal by the plaintiff.

17. Hence the present Regular Second Appeal by the appellant-defendant No.1 – Champa.

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18. Upon notice, contesting respondent No.1 appeared and contested the appeal.

Submissions of learned counsel for the appellant

19. Learned counsel for the appellant/defendant No. 1 – Champa argued that the lower Appellate Court wrongly decided Issue No. 2, holding that Singh Ram executed a valid registered Will dated 17.11.1980 (Ex.DW2/1) in favour of Nitya Nand and that Nitya Nand thus became entitled to 1/4th share. He further submitted that Will propounded by Nitya Nand is surrounded by suspicious circumstances. The appellant specifically urged the following suspicious circumstances:

- i) That Nitya Nand alienated property allegedly bequeathed to him after getting it partitioned, and that he was not a resident of Village Ram Bass. Reliance was placed on Sale Deed “Mark D”, where Nitya Nand described himself as resident of Village Jonawas, and Birth Certificate “Mark E”, showing a male child of Nitya Nand was born at Village Jonawas. From these, it was contended that the plea that Nitya Nand used to serve late Singh Ram in Village Ram Bass is false; he never served Singh Ram by staying in that village.
- ii) Second suspicious circumstance as pointed out by the learned counsel for the appellant/defendant No.1 is that both attesting witnesses to Ex. DW2/1, namely Bishna and Mathura, are from different villages, which, according to the appellant, creates suspicion; and
- iii) Third suspicious circumstance as pointed out by the learned counsel for the appellant is that the beneficiary, Nitya Nand took

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active part in the execution of the Will, which shows Will is the result of coercion.

iv) Fourthly, in Sale Deed “Mark A” executed by Nitya Nand, he described himself as the adopted son of Singh Ram, whereas no such plea was taken by Nitya Nand either in the pleadings or in evidence; this inconsistency was urged as a suspicious circumstance.

(v) It was also urged that there existed conflicting opinions concerning the thumb impressions of Singh Ram, that some impressions on the society record taken as standard signatures were super-imposed, and that the standard impressions used by the experts had thus become doubtful, requiring that the opinions of both experts be discarded.

20. It is further argued that the lower Appellate Court’s observation that the trial Court had found Singh Ram to be of sound disposing mind, affixed his thumb impression in the presence of the attesting witnesses, and that the thumb impression stood proved by the expert, is an incorrect reading. The trial Court had never given such a finding, and the lower Appellate Court misdirected itself. It is further contended that maintainability of the first appeal by Nitya Nand was also questioned, the appellant contending that, as defendant No. 7, his proper remedy was a separate suit rather than an appeal against a decree dismissing the plaintiff’s suit and discarding his Will ExDW2/1. He further submitted that in any case considering both Wills invalid, property must devolve on the natural heirs and defendant No.1-Champa, being a daughter of Singh Ram, must receive 1/3rd share as held by trial Court.



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Submissions of learned counsel for the respondent/defendant

21. Learned counsel for respondent No.1/defendant No.7, on the other hand, contended that defendant No.1-Champa has no locus to challenge the impugned judgment and decree and it was only the plaintiff who could have challenged, and Champa had admitted the plaintiff's claim before the trial Court. He further submitted that the lower appellate Court has rightly believed the registered Will dated 17.11.1980 (Ex. DW2/1) propounded by defendant No. 7 and found it free of suspicious circumstances after discussing each of the appellant's objections. It is admitted that the plaintiff's Will Ex. P-1 (05.12.1980) stands discarded and has attained finality. On merits, Ex. DW2/1 records a bequest of 1/4th share in favour of Nitya Nand in recognition of his services to Singh Ram, who had no son and Nitya Nand used to stay with and look after him.

Points for Determination

22. Having heard counsel and perused the record, the following questions arise for determination:

- A) Maintainability/locus of appellant/defendant No.1-Champa's RSA—whether the appeal by the appellant/defendant No. 1 is maintainable when her share stands reduced from 1/3rd (on intestacy) to 1/4th (on Will).
- B) Whether the lower appellate Court rightly accepted the Will Ex. DW2/1 (17.11.1980) in favour of Nitya Nand and whether the suspicious circumstances pleaded by the appellant stand dispelled.

**Point A****Maintainability/Locus of appellant/defendant No.1**

23. The trial Court had dismissed the suit and declared devolution of property of Singh Ram on natural heirs, thereby giving appellant/defendant No.1-Champa 1/3rd share. The lower appellate Court, by accepting Ex. DW2/1, reduced her effective share to 1/4th. The impugned decree thus adversely affects the civil rights of appellant/defendant No.1-Champa. She is therefore an aggrieved person competent to maintain the Regular Second Appeal. Thus, objection to locus stands rejected and appeal filed by appellant/defendant No.1 is held to be well maintainable.

Point B**(i) Validity of Will dated 17.11.1980 (Ex.DW2/1) & the Alleged Suspicious Circumstances**

24. So far as law on proof of Wills & Suspicious Circumstances are concerned, it is settled law that the propounder must prove due execution and attestation as per Section 63 of the Indian Succession Act, 1925, and Section 68 of the Evidence Act, 1872. Reliance in this regard has been placed upon the judgment of Hon'ble Supreme Court passed in the case of *Jaswant Kaur v. Amrit Kaur, (1977) 1 SCC 369*, wherein it has been held that where suspicious circumstances are alleged, the propounder of the Will carries the burden of dispelling these doubts. The propounder is required to provide a satisfactory explanation for any suspicious elements.

25. Learned counsel for the appellant/defendant No.1 relies on Sale Deed "Mark D", where Nitya Nand gives his residence as Village Jonawas and Birth Certificate "Mark E" (birth of his male child at Jonawas) to argue that Nitya Nand

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did not reside in Village Ram Bass and hence could not have served Singh Ram there, he also adverts to alleged alienations after partition and cited it as a suspicious circumstance.

26. However, the lower appellate Court has correctly appreciated that these postural indicators of residence are not determinative of the fact of service or co-residence at relevant times. On the contrary, Ex.D-2, school certificate, shows Nitya Nand studied at the school in Village Ram Bass, which aligns with the case that he stayed with and was brought up by Singh Ram. Even the trial Court noted that in childhood Nitya Nand remained with Singh Ram, obtaining primary education at Village Ram Bass, and later went to a nearby village for higher education due to lack of facilities at Ram Bass. Thus, merely because a sale deed or a birth certificate records Jonawas as residence/birthplace does not negate the association and service with Singh Ram at material times.

27. In Will jurisprudence, residence recitals or later alienations are ancillary, unless they contradict proof of execution/attestation, they do not amount to suspicious circumstances. Thus, this cannot be said to be a suspicious circumstance.

(ii) **Attesting Witnesses from Other Villages (Bishna & Matu Ram)**

28. The appellant stresses that both attesting witnesses to Ex. DW2/1 viz Bishna and Matu Ram belong to other villages, urging that this creates suspicion.

29. Again, the contention is misconceived in law. A Co-ordinate Bench of this Court in the case of *Tara Singh v. Shanti & Ors.*, [PLJ 1988 p. 77], was of the view that merely the witness being of different village does not itself constitutes a suspicious circumstance, in particular when they were not shown to be interested in the plaintiff, biased against the defendants. The Court further held



that the witnesses being independent persons though from a nearby village and the Will having been executed in view of the above facts, the Will stands proved to be genuine and last will of the deceased. Thus, in view of the law laid down above, the mere fact that an attesting witness is not from the same village is no ground, by itself, to discard his testimony or to dub the Will suspicious. What the law demands is credible evidence that the witness is unworthy of reliance or that his presence was procured by fraud/undue influence. However, none is shown here. There is nothing on record that the attesting witnesses were brought by beneficiary from other village and Will is the result of coercion or under influence used by beneficiary upon testator. It is pertinent to mention here that both attesting witnesses were examined, their statements support due execution and attestation. There is no cross-examination demonstrating impeachment on material particulars. Appellant was represented through separate counsel before the trial Court who has not cross-examined any attesting witness. Thus, this objection of learned counsel for the appellant does not hold good.

iii) **Beneficiary's Active Participation in Execution**

30. It was argued that beneficiary Nitya Nand took active part in the execution of the Will and possibility of Will being result of undue influence cannot be ruled out. The Supreme Court in *Pentakota Satyanarayan v. Pentakota Seetha Ratnam, (2005) 8 SCC 67*, authoritatively holds that mere presence or participation of a beneficiary at the time of execution or registration of Will or the presence of multiple persons during the same, does not automatically imply undue influence, coercion, or fraud so as to render a Will suspicious. It is necessary for objectors to provide substantial evidence to prove that beneficiaries exercised undue influence.



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31. The evidence here lacks any proof that Nitya Nand's participation, if any, overbore the volition of Singh Ram. There is no plea of undue influence/coercion in the written statement of the appellant. Also as stated above there is no cross-examination by the learned counsel for the appellant who was represented by separate counsel and there is no suggestion to the attesting witnesses in cross-examination, and no circumstance showing that the testator was dominated or that the Will was fabricated. Thus, this circumstance being suspicious also falls on the ground.

iv) **Sale Deed "Mark A" Recital—Claim of "Adopted Son" vs. No Plea in Suit**

32. The appellant urges that, in Sale Deed "Mark A", Nitya Nand described himself as the adopted son of Singh Ram, but no such plea was taken in the suit, hence, this inconsistency is a suspicious circumstance. The argument is untenable. The validity of a Will does not hinge upon whether the beneficiary is the adopted son. The Will in question (Ex. DW2/1) predates the sale deed recital. Even assuming the adoption recital was inaccurate, it does not impeach the due execution/attestation of the earlier Will. There is absence of proof that the recital evidences fraud in the making of the Will, this point remains collateral and insufficient to taint the testament.

v) **Thumb Impressions/Expert Evidence - "Super - imposed" / "Conflicting Opinions"**

33. The appellant contends that there were conflicting opinions regarding the thumb impressions of Singh Ram, that some standard impressions used by the expert were smudged or super-imposed said to be from society records, and hence the opinions of the experts must be discarded.



34. As the lower Appellate Court has noticed, DW-9 Naresh Kataria, handwriting & fingerprint expert, compared the disputed thumb impressions on Ex. DW2/1 with available standard impressions. It is true that some of the standard impressions were unfit due to ink smudging, but others were fit for comparison and were used. The expert opinion though not a substitute for mandatory attesting-witness proof, corroborates the attesting witnesses' depositions.

35. Crucially, attesting witnesses Bishna and Mathura were examined to prove execution and attestation. The appellant did not cross-examine them as discussed above. In Will cases, imperfections in some comparison material do not defeat a Will where there is credible ocular proof of execution/attestation. This objection of the learned counsel for the appellant also fails.

36. Now coming to the allegations of alleged misreading by the Lower Appellate Court of Trial Court's Observations, the appellant submits that the lower appellate Court wrongly assumed that the trial Court had held Singh Ram to be of sound disposing mind and that his thumb impression stood proved, whereas the trial Court had in fact discarded both Wills.

37. The submission does not advance the appellant's case. The lower appellate Court undertook a full re-appraisal of evidence as the first appellate Court and recorded its own findings on soundness, execution, and attestation of Ex. DW2/1. Even if any stray observation ascribed to the trial Court was infelicitously phrased, the impugned decree rests on the lower appellate Court's independent appreciation of attesting witnesses, documentary exhibits, and expert opinion. No perversity or illegality in that appreciation is demonstrated. This objection also cannot stand and is hereby rejected.



38. It is undisputed that the trial Court discarded the plaintiff's Will Ex. P-1, and the plaintiff did not appeal. The lower appellate Court concurred. The finding has attained finality and is not open in the present RSA. This Court proceeds only on the contest regarding Ex. DW2/1. Having observed above that the RSA by the applicant/defendant No.1 Champa is maintainable, as her share stands adversely affected by the impugned decree and the propounder-defendant No.7 Nitya Nand, has proved the due execution and attestation of the Will (Ex.DW2/1) through the attesting witnesses Bishna and Mathura and has furnished expert corroboration Naresh Kataria's report and the alleged suspicious circumstances having been dispelled by propounder and execution and attestation proved by propounder, the Will (Ex.DW2/1), stands proved on record.

39. In addition, the classic tests in *Jaswant Kaur (1977) 1 SCC 369* fortify the approach that once execution/attestation are proved and alleged suspicion is plausibly dispelled, the Will must be upheld.

Conclusion

40. On a comprehensive re-appraisal of the record, this Court finds no perversity, illegality, or material irregularity in the lower appellate Court's acceptance of the registered Will dated 17.11.1980 (Ex. DW2/1) executed by late Singh Ram in favour of defendant No. 7, Nitya Nand, to the extent of 1/4th share in his property. The specific suspicious circumstances pleaded by the appellant have been dealt with point-wise and found to be without substance. The Will stands duly proved in accordance with law.

41. The finding of the trial Court discarding the plaintiff's Will Ex. P-1 (05.12.1980) has already attained finality and remains undisturbed.



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42. The impugned judgment and decree dated 25.04.1991 passed by the Lower Appellate Court therefore calls for no interference in second appeal. The Regular Second Appeal is dismissed.

43. Pending application(s), if any, also stand disposed off.

August 28, 2025
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(MANDEEP PANNU)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No