



2.2. Initially, the suit was contested by the petitioner-defendant No.1. The issues were framed by the trial Court vide order dated 21.12.2021 (Annexure P-4 colly.). Thereafter, defendant Nos.3 to 5 filed an application for setting aside the *ex parte* order, which was allowed and issues were reframed vide order dated 22.02.2022 (Annexure P-4 colly.). An application under Order XIV Rule 15(1) read with Section 151 of the Code of Civil Procedure, 1908 was filed by the defendants, as such issue No.2 was recast vide order dated 10.02.2025 (Annexure P-4 colly.) and ultimately, the issues were reframed vide order dated 17.07.2025 (Annexure P-5).

2.3 The issue No.2 regarding the Will in question was framed which reads as under:-

“2. Whether the plaintiff is entitled for the relief of setting aside the alleged forged, false and fabricated will dated 13.05.1991 alleged to be executed by Karam Singh in favour of defendant no.1 Kesar Singh? OPP”

2.4 On the basis of an application moved by one of the defendants, the trial Court passed the impugned order dated 19.08.2025 and directed the petitioner-defendant No.1 to lead evidence at the first instance, i.e. before the respondent Nos.1 to 4-plaintiffs.

3. Learned counsel for the petitioner contends that the impugned order has been passed without appreciating the facts on record. Respondent Nos.1 to 4-plaintiffs have claimed declaration and claimed setting aside the Will in question, as such, the burden of proof is upon them. It is further contended that plaintiffs had already tendered into evidence affidavits of 03 witnesses, though their cross-examination is yet to be conducted. In such circumstances, the trial



Court could not have directed the petitioner-defendant No.1 to lead evidence at the first instance.

4. Keeping in view the peculiar facts and circumstances, issuance of notice to the respondents is dispensed with.

5. I have considered the aforesaid submissions and perused the paper-book.

6. It is not disputed that the respondent Nos.1 to 4-plaintiffs have sought declaration of ownership on the basis of inheritance. Though the plaintiffs have alleged that the Will in question in favour of the petitioners is null and void, but petitioner-defendant No.1 is the propounder of the Will and contesting the claim of the respondent-plaintiffs on the basis of Will in question. It is well settled that Section 63 of the Indian Succession Act, 1925 deals with the law governing the proof of Will, 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.



7. It is also well settled that it is for the propounder/beneficiary to prove the Will to the satisfaction of the Court. Reliance in this regard can be placed on the decision of the Hon'ble Apex Court in **Ramkali Soni & Ors. Vs. Mukta Soni**, Civil Appeal No.928 of 2016, decided on 08.05.2025.

8. The requisites for proving a Will are also well established and as per the principles summarized by the Hon'ble Apex Court in **Meena Pradhan and others Vs. Kamla Prathan and another, (2023) 9 SCC 734**, for the purpose of proving the executing of the Will, at least one of the attesting witnesses who is alive, subject to the process of court, and capable of giving evidence, shall be examined.

9. In view of the above well-settled proposition that the beneficiary/propounder of the Will is to prove the Will, the onus to prove issue No.2 framed by the trial Court should have been upon the propounder, i.e. petitioner/defendant No.1. In such circumstances, it can be noticed that onus of proof of issue No.2 has been wrongly fixed by the trial Court in the issues finally settled by it vide order dated 17.07.2025. As such, proper issues are required to be framed by the trial Court and onus is required to be fixed in terms of the aforesaid decisions. In this case, the issues have not been rightly framed by the trial Court.

10. Consequently, impugned order dated 19.08.2025 is set aside and present petition is disposed of with directions to the trial Court to frame proper issues in terms of the pleadings of the parties and in view of the aforesaid decisions, by fixing onus upon proper parties.



11. It is made clear that there are no observations on merits of the controversy and the trial Court shall be at liberty to fix onus of proof upon proper parties.

12. Pending miscellaneous application(s), if any, shall also stand disposed of.

01.09.2025

Kusum/atulsethi

[HARPREET KAUR JEEWAN]

JUDGE

Whether speaking / reasoned :

Yes

No

Whether Reportable :

Yes

No