



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

**110**

**RSA-3908-2019 (O&M)**

**Date of decision: 25.02.2025**

**Sukhminder Kaur and others**

**...Appellant(s)**

**Vs.**

**Sapinder Singh and another**

**...Respondent(s)**

**CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Inderjit Sharma, Advocate for the appellants.

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**NIDHI GUPTA, J.**

**CM-10517-C-2019**

Prayer in this application filed under Section 151 CPC is for condonation of delay of 399 days in refiling the accompanying appeal.

Heard.

For the reasons mentioned in the application, the same is allowed and delay of 399 days in refiling the accompanying appeal is condoned.

**RSA-3908-2019**

The present appeal has been filed by the plaintiffs against the concurrent judgments and decrees of the learned Courts below, whereby the suit of the plaintiffs for declaration, has been dismissed by both the Courts below.



2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellants are the 'plaintiffs'; and the respondents are the 'defendants'.
3. The present suit was filed by appellants/plaintiffs seeking declaration that Will dated 29.03.2006 executed by late S. Hardial Singh son of late S. Niranjan Singh Mavi is null and void, inoperative, result of coercion, fraud, undue influence on the part of the defendant No.1 and, therefore, is a sham document and has no effect upon the rights of the plaintiffs in respect of the property left by late S. Hardial Singh son of late S. Niranjan Singh Mavi i.e. House No.2130, Sector 21-C, Chandigarh; and further the plaintiffs are 1/3rd shareholders of the property bearing House No.2130, Sector 21-C, Chandigarh along with defendant Nos.1 and 2, who are also the owners of 1/3rd share each in House No.2130, Sector 21-C, Chandigarh (hereinafter referred to as suit property) on the basis of oral and documentary evidence.
4. Brief facts of the case as set out in the plaint are that late S. Hardial Singh had married Smt. Jaswant Kaur and from the wedlock there were three children, namely Dr. Inderjit Singh, Sapinder Singh sons, and daughter Ravinder Kaur. Late Dr. Inderjit Singh had pre-deceased S. Hardial Singh. At the time of death of Dr. Inderjit Singh, he had left behind his widow Sukhminder Kaur and two daughters namely Ms. Gurpreet Kaur and Ms. Harkiran Kaur (the plaintiffs). After death of Dr. Inderjit Singh, defendant No.1 started creating hurdle and problems in the life of plaintiffs. Plaintiffs were thrown out from the matrimonial home and plaintiff No.1



started residing in her parental home along with plaintiffs No.2 and 3. Some litigation also commenced between the plaintiffs and S. Hardial Singh. However, litigation came to an end much before the death of S. Hardial Singh. Late S. Hardial Singh had stated to the plaintiffs that he would give 1/3rd share in House No.2130, Sector 21-C, Chandigarh to the plaintiffs. S. Hardial Singh had also stated that he would supersede his earlier Will dated 14.07.1994, and would execute a fresh Will by giving due share of plaintiffs to them in the Will to be executed by him. S. Hardial Singh was living with defendant No.1 and became dependent upon him. As such, by exercising undue influence, defendant No.1 got a Will dated 29.3.2006, executed in his favour, whereby S. Hardial Singh excluded the plaintiffs from any share in his property. Will dated 29.03.2006 was not executed by late S. Hardial Singh with his free mind and is a result of coercion and undue influence of defendant No.1. S. Hardial Singh was not keeping good health and was mentally not sound/capable, and was unable to exercise his sound discretion while executing the Will. Thus, Will dated 29.03.2006 is null, void, inoperative, ab initio; and plaintiffs are 1/3rd shareholders of the suit property along with defendants No.1 and 2, who are the owners of 1/3rd share each on the basis of natural succession. Hence, the present suit.

5. Upon notice defendants/respondents herein, appeared and contested the suit by filing written statement *inter alia* submitting that the suit of the plaintiffs was not maintainable being time barred; that plaintiff No.1 never served or looked after her parents-in-law including late Hardial Singh; that Will dated 29.03.2006 was executed by Hardial Singh of his own



free will and the same is a registered document. Accordingly, dismissal of the suit was prayed for.

6. Defendant No.3 filed separate written statement contesting the suit on various grounds by interalia stating that House No. 2130 Sector 21-C, Chandigarh stands in the name of Sh. Hardial Singh as per transfer letter issued in his favour. Vide application dated 25.04.2008, the plaintiffs had applied for transfer of ownership on the basis of intestate death of late Sh. Hardial Singh and Sh. Inderjit Singh legal heir of deceased owner to the extent of 1/3rd share. It was further submitted that vide application dated 08.07.2008, defendant No.1 applied for transfer of ownership to the extent of 100% share in respect of property in question on the basis of registered Will 29.03.2006 left by deceased owner along with Court Decree dated 25.09.1998 and 24.08.2001 in support of their claim. Defendant No.3 has processed the case for the transfer of ownership to the extent of 100% share on the basis of registered Will dated 29.03.2006 and asked the defendant No.1 to publish the public notice in regional newspapers one in Hindi and another in English; and also informed the plaintiffs, vide letter dated 16.07.2008 that their request for transfer of ownership to the extent of 1/3rd share on the basis of intestate death cannot be acceded, as the defendant No.1 had applied for transfer of ownership on the basis of registered Will. Defendant No.1 has furnished the press clips in original of public notice in the office of defendant, but till date the property in question has not been transferred in the name of defendant No.1. Denying all other averments prayer for dismissal of suit has been made.



7. From the pleadings of the parties, following issues were framed vide order dated 24.05.2010: -

1. *Whether the plaintiff is entitled to the decree for declaration as prayed for? OPP*
2. *Whether the suit of the plaintiff is maintainable in the present form? OPP*
3. *Whether the suit of the plaintiff is bad for want of service of notice U/S 80 CPC if so its effects on the suit? OPD*
4. *Whether the plaintiff has got no locus standi to file the present suit? OPD*
5. *Relief.*

8. Upon appraisal of the pleadings and the evidence led by the parties, the Id. trial Court decided issues No. 1 and 2 against the plaintiffs and in favour of defendants; issue No. 3 was neither pressed at the time of arguments nor in evidence and hence, was left being not pressed; issue No. 4 was decided in favour of the defendants and against the plaintiffs. Accordingly, vide judgment and decree dated 31.10.2014, the suit of the plaintiffs was dismissed with costs and the plaintiffs was held not entitled for decree of declaration. The appeal filed by the plaintiffs against the said judgment and decree dated 31.10.2014 was dismissed by the learned Additional District Judge, Chandigarh vide judgment and decree dated 31.10.2017, thereby affirming the findings of the learned trial Court. Hence, the present second appeal.

9. At the very outset, it is admitted by learned counsel for the appellants/plaintiffs that the suit property in the hands of Hardial Singh/father-in-law of the plaintiff No.1, was his self acquired property. It is



however contended that the Will dated 29.03.2006, whereby the suit property was bequeathed by Hardial Singh to the defendants No. 1 and 2 was executed in suspicious circumstances and under the undue influence of defendants No. 1 and 2. Therefore, the said Will was null, void, inoperative, void ab initio; and that the plaintiffs are the owners of 1/3rd share of the suit property on the basis of natural succession. It is contended that the exclusion of the legal heirs/the plaintiffs, from the rights of inheritance without any justification and reason was enough in the present case to create suspicious circumstances regarding the Will dated 29.03.2006. However, in passing the impugned judgments and decrees, the learned Courts below have failed to take into consideration the aspect of undue influence exercised by defendant No.1 upon the deceased Sardar Hardial Singh. No doubt, Sardar Hardial Singh was residing with defendant No.1, however, it was the continuous endeavour of defendant No.1 to grab the property of Hardial Singh.

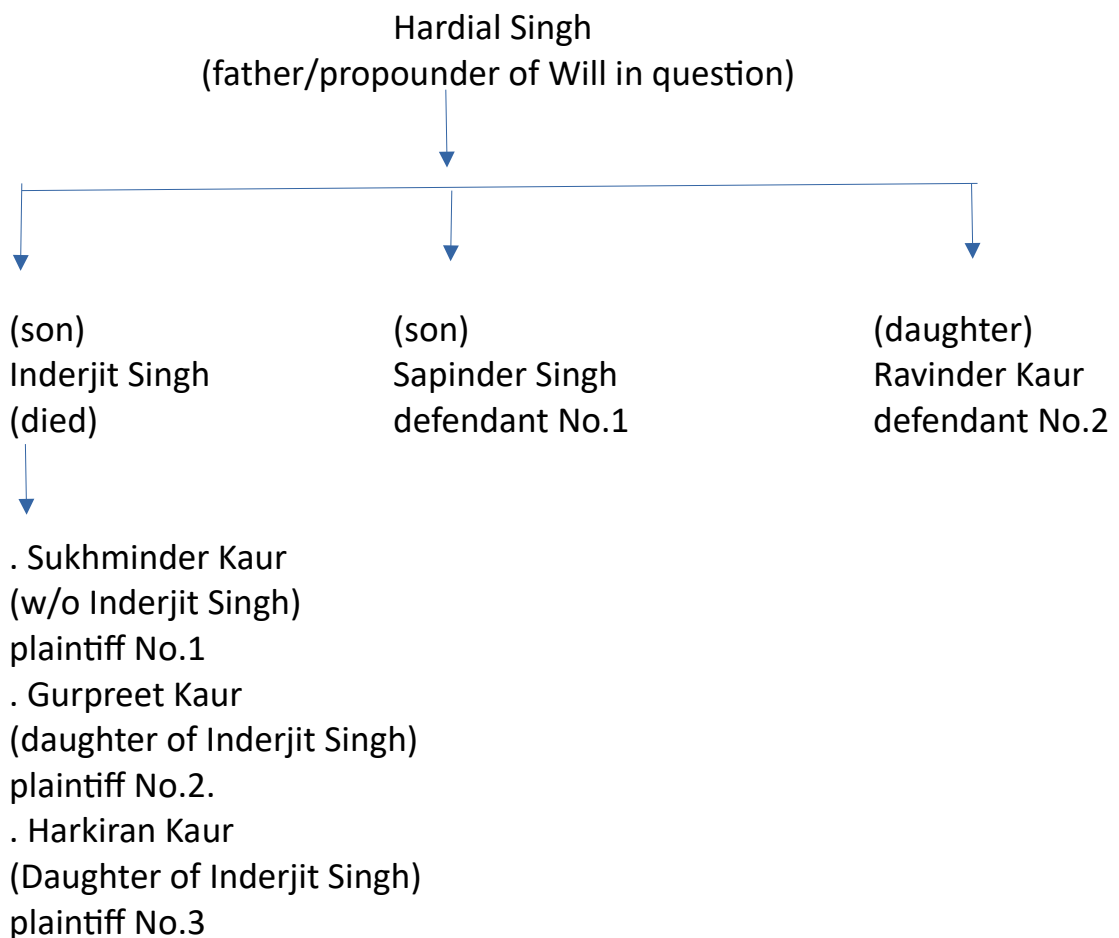
10. It is further submitted that the Will in question is shrouded in suspicious circumstances is also evident from the fact that the said Will was not proven in accordance with law. It is submitted that the testimony of DW3 Davinder Singh, the alleged marginal witness to the Will, is liable to be rejected as he was an interested witness, as he was counsel for the defendants No.1 and 2. Therefore, his evidence in respect of the Will could not be taken into account. It is accordingly prayed that the present appeal be allowed; and impugned judgments and decrees be set aside.



11. No other argument is raised on behalf of the appellants/plaintiffs.

12. I have heard learned counsel for the appellants/plaintiffs and perused the case file in great detail.

13. For the facility of proper appreciation of the present dispute, it will be helpful to consider the pedigree table, which is as under:-



14. Before dealing with the arguments raised by learned counsel for the appellants, it may be noted that the plaintiff No.1 had previously filed a Civil Suit against Hardial Singh for declaration to the effect that plaintiffs are the owners to the extent of 1/3rd share in the present suit property bearing House No. 2130, Sector-21 C, Chandigarh. Vide judgment and decree dated 25.09.1998 (Ex.D1), the said suit of the plaintiffs was dismissed. The appeal filed by the plaintiffs against the said decree dated



25.09.1998 was also dismissed by the learned Additional District Judge, Chandigarh vide judgment and decree dated 24.08.2001 (Ex.D3). It is in this background, that the present Will dated 29.03.2006 (Ex.D9) came to be executed.

15. Further, admittedly, the said Will is a registered document. Therefore, there is a presumption of truth attached to it. Vide the said Will, Hardial Singh had bequeathed his property including the suit property in favour of his son/defendant No.1. Clear and cogent reasons have been given in the said Will for excluding the plaintiffs as beneficiaries thereof, including the fact that Hardial Singh lived and resided with defendant no.1 who had looked after him. In this regard, it is pertinent to note that defendant No.1 was made beneficiary of the Will to the exclusion of the plaintiffs as, as admitted by the plaintiffs themselves that the deceased Hardial Singh was residing with defendant No.1.

16. In this regard, the evidence of DW2 Arvinder Singh Bakshi is also relevant, who has deposed that his parents had social relation with defendant No.1 being neighbours; and that he had never seen plaintiff No.1 residing in the suit house; that Hardial Singh had told DW2 at various times that plaintiff No.1 had dragged him in various false and frivolous litigation since 1993 and then there was no personal contact between them; that on the contrary defendant No.1, son of Hardial Singh used to look after him dutifully, obediently and respectfully; whereas the plaintiff No.1 bore an insulting attitude towards Hardial Singh due to which he lived under stress till his death.



17. Furthermore, the said Will dated 29.03.2006 was duly proved by the evidence of DW3 Davinder Singh, marginal witness of the Will. DW3 Davinder Singh, had deposed through his affidavit Ex.DW3/A stating that Will was a registered document signed by Hardial Singh and witnesses in each other's presence. The Will was signed by Hardial Singh after reading and understanding its contents; that at the time of execution of Will, Hardial Singh was of sound and disposing mind. The argument of learned counsel for the plaintiffs that testimony of DW3 was unreliable being interested witness, is liable to be rejected as it has been found by learned trial Court that *"at the time of deposing as a witness as one of the marginal witnesses of the Will, he had surrendered his authority and accordingly, defendants had arranged another attorney to contest the case."*

18. From the above, it is clear that Will dated 29.03.2006 stood duly proved in accordance with law.

19. Although it has not been argued, however it has come on record that Hardial Singh had previously executed a Will dated 14.07.1994 in favour of his wife Mrs. Jaswant Kaur and defendant No.1 in which he Hardial Singh has clearly stated therein that as his pre-deceased son late Inderjit Singh/husband of plaintiff No.1 was economically well-off and employed as a Doctor in Punjab Health Department and had sufficient movable, immovable, fixed and liquid assets to his family members; and as plaintiff No.1 wife of Inderjit Singh was also professionally qualified and is working as Lecturer in private college and is likely to be appointed to the post of Lecturer in the Government College/Higher Secondary School by



preferential treatment being widow of the government office, as such, the plaintiffs are being deprived from inheriting any of the property. It is also to be noted that vide the said Will, Hardial Singh also did not bequeath any part of the suit property to his daughter/defendant No.2 as she was well-off and happily married in her matrimonial home. It has come on record that the present Will dated 29.03.2006 was executed by Hardial Singh in substitution of earlier Will dated 14.07.1994 due to some changed circumstances; which have duly been recorded by Hardial Singh in the present Will dated 29.03.2006 to the effect that *“whereas I have already executed a will dated 14/07/1994, which is duly registered in the office of Sub-Registrar, UT, Chandigarh at serial No. 1729, Volume No.207. Some circumstances have changed and my wife Smt. Jaswant Kaur has expired on 02.10.2005, therefore I am substituting my earlier will with the present one. I am executing the present will. The present will supersede will dated 14.07.1994”*

20. It is also trite to suggest that had Hardial Singh been under the threat of defendant No.1, nothing forbade him from approaching the police. Further, only bald statements have been made by the plaintiffs' witnesses which bear no authenticity to revoke the Will in question.

21. The learned lower appellate Court further noticed that the reasons assigned in the Will dated 29.03.2006 are exhaustive and convincing. The said Will is not silent with regard to reasons for ousting the plaintiffs from inheriting the property.



22. Keeping in view the above undisputed facts, the present regular second appeal is hereby **dismissed**.

23. Pending applications, if any, stand disposed of.

**25.02.2025**

Divyanshi

**(NIDHI GUPTA)  
JUDGE**

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No