



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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**CM-10107-C-2025 in/and
RSA-3613-2017 (O&M)
Date of decision: 27.08.2025**

Pradeep Singh and another

...Appellant(s)

Vs.

Gurjant Singh (deceased) through LRs and others ...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Suvir Sidhu, Advocate with
Mr. Arun Kumar, Advocate
for the applicant/appellants.

NIDHI GUPTA, J.

CM-10107-C-2025

Present application has been filed seeking recalling of order dated "23.05.2019 (Annexure P-2)"; whereas in actual fact recall is sought of the order dated **25.07.2025 (Annexure A-1)**; whereby the main Second Appeal was disposed of as follows: -

"1. Even in the second round, arguing counsel for the appellants is not available today. On the last date of hearing, none had appeared on behalf of the appellants.

2. On 23.05.2019, the following order was passed:

"Mr. Sidhu, learned Senior Counsel submits that dispute is amongst the grand children and the uncles regarding the estate of Kartar Singh, common ancestor. The appellants have propounded the registered Will dated 15.07.2004, which has been rejected/discarded by the Courts below. There is likelihood of compromise in case the matter is referred to Mediation and Conciliation Centre.



Notice of motion on this point only.

Mr. Mohinder Pal, Advocate, accepts notice for the respondents. He also expressed no aversion to the aforementioned proposal.

Let the matter be referred to Mediation and Conciliation Centre.

Parties along with their counsel are directed to appear before the Mediation and Conciliation Centre on 02.07.2019.

To await report on 02.09.2019."

3. *In pursuance to the Mediation referred by this Court vide order dated 23.05.2019, report dated 30.08.2019 has been received as per which it is reported that "Despite best efforts, parties are not able to arrived at any settlement. The aforesaid case is fixed for 02.09.2019. Hence, the case is being sent back to the Hon'ble Court".*

4. *Keeping in view the aforesaid report, as notice of motion was issued by Co-ordinate Bench only for purpose of exploring possibilities of amicable settlement, the present appeal stands dismissed.*

5. *Pending application(s), if any, also stand disposed of."*

2. Even in the prayer cause of the present application for recall, it is prayed that *"present application may kindly be allowed and order dated 23.05.2019 may kindly be recalled and main case may kindly be restored keeping in view the interest of the client, inadvertent non-appearance of the arguing counsel, opportunity to present case on merits and in the interest of justice."*

3. In view of the fact that patently incorrect prayer has been made in the application, therefore, the same deserves to be dismissed on this short ground itself. However, in the interest of justice and in order to



avoid multiplicity of litigation, the main case is being considered and order on merits is being passed. The main case is taken on Board today itself.

RSA-3613-2017 (O&M)

The appellants/defendants No.1 and 2 are before this Court against the concurrent judgments and decrees of the learned Courts below; whereby the suit filed by the respondents/plaintiffs for declaration that the plaintiffs and performa defendants are owners in possession in equal shares of the suit land as described in the plaint as per Jamabandi for the year 2007-08; **and** the Will No. 121 dated 15.07.2004 executed by Kartar Singh in favour of defendants No.1 and 2, is illegal, null and void; and its subsequent Mutation No. 14871 having been entered is also wrong and against law; **and** for consequential relief of permanent injunction restraining the defendants from alienating the suit land in any manner, has been decreed by both the Courts below.

2. It is submitted by learned counsel for the appellants that it has been incorrectly held by the learned Courts below that the appellant had failed to prove the Will dated 15.07.2004 Ex.DW-1/A. It is submitted that, in fact, to prove said Will; appellants have examined DW-1 Kishore Chand Deed Writer and DW-2 Harcharan Singh attesting witness of the Will. Other attesting witness Gugan Ram, Nambardar has died. Appellants also examined DW-4 Dharampal, Clerk of office of Sub Divisional Officer, Mandi Dabwali who has identified signatures of Bhup Singh, Sub Registrar on the Will, as Bhup Singh has also died. In this way requirement of Section 63(c) of Indian Succession Act and of Section 68 of the Evidence



Act has been duly complied with by the appellants. But the Ld. Courts below on the basis of flimsy grounds have disbelieved the Will. Inferences drawn to decree the suit are not based on evidence on record.

3. It is further contended that the Ld. Courts below did not consider that DW-2 Harcharan Singh attesting witness of the Will has submitted his affidavit Ex.DW-2/A on 10.3.2012 as part of his examination in chief in court. DW-2 has duly supported the execution of the Will Ex. DW-1/A by Kartar Singh in his presence and in the presence of Gugan Ram, Nambardar and its registration as per rules by Sub Registrar, Dabwali. This witness has admitted during cross examination that Kartar Singh has told him that he is also signing the Will and you also sign it because he has to execute the Will in the name of grandsons. Firstly, Kartar Singh signed then DW-2 Harcharan Singh signed. DW-2 also admitted that Kartar Singh has got the Will typed. This witness has also admitted that he also asked Kartar Singh as to whether my signatures are not being got wrongly, Kartar Singh said that these are not being done wrongly. Ld. Courts below has not considered the evidence of this witness as a whole and rather on the basis of isolated sentences has discarded the Will. It is argued that Evidence must be taken as a whole and not by tearing the same into pieces. Ld. Courts below did not consider that justice cannot be given in the hands of witnesses and rather is to be imparted by the Courts.

4. It is further submitted that mere registration of a case against Gugan Ram, Nambardar does not prove that he was a person of doubtful



integrity. All documents which require registration are to be witnessed by the Nambardars, therefore if numerous documents were being witnessed by Gugan Ram, it cannot be a suspicious circumstance to discard the Will.

5. Ld. Counsel also submits that the Ld. Courts below did not consider the pleadings of the parties. Basis of the suit pleaded by respondents no.1 to 3 is that suit property is ancestral HUF property in the hands of Kartar Singh. But no evidence has been led to prove this fact. It is proved on record that Kartar Singh has already given some share of his land to his sons and a decree dated 23.4.1994 Ex.D7 is proved on the record. Suit land was kept by Kartar Singh for his own livelihood which he has bequeathed by his sound disposing mind in favour of appellants by means of above said Will dated 15.7.2004 Ex.DWI/A. It is lastly submitted that the Will in question also finds mention in the compromise entered into between the parties. As such, the same has been admitted by the respondent/plaintiffs; and, therefore, it could not have been held that the appellants had failed to prove the Will in question.

6. It is accordingly prayed that the present Second Appeal be allowed; and the impugned judgments and decrees of the learned Courts below be set aside.

7. No other argument is raised on behalf of the appellants. I have heard ld. counsel and perused the case file in detail. I find no merit whatsoever in the submissions made on behalf of the appellants.

8. First and foremost, learned counsel for the appellants has been unable to satisfy this Court in respect of the jurisdiction of this Court



to examine the concurrent judgments and decrees of the learned Courts below. The Hon'ble Supreme Court in ***M/s. Shivali Enterprises v. Godawari (Deceased) (SC): Law Finder Doc Id # 2034559*** has held that no matter howsoever incorrect or grossly erroneous the concurrent findings of the learned Courts below may be, this Court, in the Second Appeal can interfere in the concurrent findings only where there is an error in law or procedure. In the present case, no such error in law and procedure has been made out by learned counsel for the appellants.

9. Be that as it may, even on merits no ground is made out to interfere. There are positive findings of the learned Courts below that the appellants/propounders of the Will dated 15.07.2004, have been unable to prove the said Will. Much Reliance has been placed by the appellants upon the evidence of DW 2 Harcharan Singh, one of the attesting witnesses of the Will. However, it is to be noted in this regard that DW2 Harcharan Singh, has himself admitted in his cross-examination that the Will was not scribed in his presence; that it was not read over to the testator in his presence; and that the other witness Gugan Ram has also not signed the Will in his presence; that he himself has signed the Will in a hurry without knowing the contents of the document; and that defendant no.3 Sukhdev Singh son of Kartar Singh, and father of defendant No.2 had called him to sign the Will. It therefore follows that Sukhdev Singh had exercised undue influence over the testator Kartar Singh. DW2 has further admitted in his cross-examination that the Will was not got typed in his presence and it was already got typed by Kartar Singh. It was in this



background that the learned trial Court held that the appellants had been unable to prove the Will in question. Learned trial Court therefore, correctly held that *“It was also held that Animus attestandi is a necessary ingredient for proving the attestation. The essential conditions of valid attestation are (i) two or more witnesses have seen the executant sign the instrument (ii) each of them has signed the instrument in presence of the executant.”* However, this was not so in the present case. As such, no ground is made out to interfere in the impugned judgments and decrees.

10. Learned trial Court further found that a compromise Ex.C1 had been entered into between the parties however, the same was not implemented. It was accordingly correctly observed *“that compromise does not amount to admission of the plaintiffs regarding the execution of the Will as the onus of proving the Will was upon the defendants.....”*

11. A perusal of the record further reveals that at the time of execution of the alleged Will, the beneficiary thereof, being the defendants No. 1 and 2/appellants were minor at the time of execution of the Will. Therefore, learned trial Court has correctly held that *“It cannot be said that these minors were taking care of the testator Kartar Singh and were giving him all the needs of his requirement as has been averred in the Will. So, the beneficiaries themselves being minor, there is no question of their taking good care of late Kartar Singh. However, it has come in the evidence of the defendant themselves that Kartar Singh was residing with the plaintiffs and it is also not proved that he was residing with the defendants as has been averred by them. So, no cogent and valid*



reason have been given as to how the testator Kartar Singh has tried to dispose of his share to the beneficiaries and the plaintiffs have been denied their share in the property of their father Kartar Singh, disregarding the natural succession to the natural heirs.”

12. In these circumstances, mere registration of the Will would not authenticate and validate its execution.

13. Much reliance has been placed by the appellants upon the evidence of Kishore Chand Deed Writer DW1 in order to prove the Will. DW1 had deposed that he had seen the Will which was prepared by him on the asking of Kartar Singh in respect of which he has made entry in his Register at Sr. No. 656 dated 15.07.2004. However, even the evidence of said witness cannot be relied upon as DW1 in his cross-examination has admitted that he did not know Kartar Singh personally on the day when the Will was executed; that the Will was got typed by him from typist Dinesh Kumar; who has not been examined to establish that the Will was typed at the instance of testator Kartar Singh. Even otherwise, Scribe cannot be held at par with the attesting witnesses.

14. It is also to be noted that it is the case of the plaintiffs that Kartar Singh was seriously ill being an old man. He was hard of hearing and was not capable of understanding anything. He was unable to go anywhere because of his serious illness. He was not of sound disposing mind and was not fit physically or mentally in order to execute the Will. It was further their case that the suit land was ancestral in nature and therefore, testator was not competent to execute the Will regarding



ancestral land. The suit land being ancestral, plaintiffs and performa defendants had pre-existing rights in the suit land. In any event, the suit land being in the ownership of Kartar Singh/father of the plaintiffs and defendants, would devolve upon the parties by way of natural succession.

15. Moreover, witnesses of the impugned Will were not persons of integrity and were strangers to the family and, therefore, this pointed to Will being forged and fabricated. It is also pointed out that Gugan Ram, Nambardar, one of the alleged attesting witnesses of the Will, was a professional witness and had been proceeded against by the Police for attesting fake identity of person and, therefore, he could not be considered to be a reliable person. DW4 Dharampal in his evidence has stated that Gugan Ram has given evidence in many cases and also FIR had been registered against him for attesting fake identity of persons.

16. Further, the assertion of the appellants that the Will in question was allegedly found amongst the documents belonging to the testator after his death on 06.12.2009 further shrouds the Will in suspicious circumstances as it is odd that the testator did not disclose about the same to any of his family members during his lifetime. Clearly therefore, the evidence brought on record by the appellants does not fulfil the statutory requirements to prove the legal and valid execution of the Will.

17. In view of the same, no ground is made out to interfere in the impugned judgments and decrees of the learned Courts below. The present Regular Second Appeal is hereby **dismissed**.



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

27.08.2025

Divyanshi

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

(NIDHI GUPTA)
JUDGE