

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

2025.PHHC:126234



Reserved on: 08.08.2025

Date of pronouncement: 11.09.2025

RSA-923-1988 (O&M)

**VEENA PATHAK AND OTHERS ... APPELLANTS
VERSUS**

KAMLESH KUMAR AND OTHERS ... RESPONDENTS

CORAM : HON'BLE MR. JUSTICE PARMOD GOYAL

Present:- Mr. Rakesh Gupta, Advocate and
Ms. Jasneet Kaur, Advocate and
Ms. Nishta Naray, Advocate for the appellants.

Mr. S.M.Sharma, Advocate for LR's of respondent No.7.

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PARMOD GOYAL, J.

Present appeal has been preferred by plaintiffs-appellants who are aggrieved by impugned judgment and decree dated 24.11.1987 vide which appeal preferred by defendants against judgement and decree dated 29.05.1986 passed by Sub Judge First Class, Samrala in suit for declaration preferred by the plaintiffs was allowed and decree passed by Court of First Instance was set aside.

2. Plaintiffs vide their suit for declaration claimed suit property duly mentioned in the plaint and noted down in the judgment passed by learned Sub Judge First Class, owned by Gurdas Ram based on Will dated 26.07.1972. It is the case of plaintiffs that Gurdas Ram was owner of suit property and had died on 20.12.1972 living behind his son Bal Krishan, widow Bhagwanti, two daughters namely Darshan Devi and Usha Kiran and

family of his pre-deceased son namely Dharam Parkash. Bhagwanti was arrayed as defendant No.1. Darshan Devi and Usha Kiran daughters were arrayed as defendant Nos. 2 and 3 whereas Shakuntla Devi wife, Kamlesh Kumar, Vijay Kumar and Chaman Lal sons, Veena daughter of Dharam Parkash were arrayed as defendant Nos. 4 to 8. It was asserted that Gurdas Ram vide Will dated 26.07.1972 had bequeathed his entire property in favour of Bal Krishan as he was pleased with the services rendered by Bal Krishan. It was asserted that Bal Krishan had taken possession of suit land and continued in possession through tenants throughout his lifetime. However, he could not get the mutation sanctioned as he was in service away from village, had fallen ill in 1976 due to brain cancer and had died on 18.12.1979 after prolonged illness. After death of deceased Bal Krishan the property had fallen to the share of plaintiffs and defendant no.1 to the extent of 1/4th each. That since plaintiffs were residing at Chandigarh and plaintiff Nos. 2 and 3 were minors therefore, inheritance of Gurdas Ram and Bal Krishan could not be got sanctioned and it was only in 1982 that defendants managed to get mutation in favour of natural heirs ignoring the Will executed by Gurdas Ram. Plaintiffs had accordingly challenged the mutation in favour of natural heirs as well as claimed 3/4th of the property based on Will of Gurdas Ram and being LRs of Bal Krishan.

3. Defendants on notice contested the suit, denied execution of Will by Gurdas Ram. It was asserted that mutation was correctly sanctioned in favour of natural heirs. They had further asserted that suit property was ancestral, co-parsenary and joint Hindu family property in the hands of Gurdas Ram and he was not competent to execute a Will in respect thereof. Will was stated to be false, fictitious, fabricated, and manufactured document. Fact that Bal Krishan had rendered service to Gurdas Ram was

specifically denied. It was asserted that owing to illness Gurdas Ram was not in position to understand the nature of things. It was asserted that Bal Krishan had not pressed Will during his lifetime and therefore, he had impliedly abandoned his rights under the Will. Defendants have also pleaded the suit property in their possession through tenants. Dismissal of suit was prayed.

4. Following issues were framed from the pleadings of the parties :-

- “(1) Whether deceased Gurdas Ram executed a valid will dated 26-7-1972 in favour of his son Bal Krishan? OPP
- (2) If issue No.1 is proved in the affirmative, whether Bal Krishan had relinquished his right under the will? OPP
- (3) Whether the property in dispute was ancestral and co-parcenary property and Gurdas Ram was not competent to execute the will? OPD
- (4) Whether the suit is time barred? OPD
- (5) Whether the plaintiffs have no locus standi to file the suit? OPD
- (6) Whether the suit is bad for mis-joinder of the necessary parties? OPD
- (7) Whether the suit is not properly valued for purposes of court fees and jurisdiction? OPD
- (8) Whether the plaintiffs are owners in possession through tenants to the extent of 3/4th share and are entitled to the declaration prayed for accordingly? OPP
- (9) Whether the plaintiffs are entitled to the alternative relief of joint possession? OPP
- (10) Relief.”

5. Issue nos.1, 2, 4, 5, 6, 7, 9 were decided in favour of plaintiffs and against defendants. Issue No.3 was decided in favour of defendant against plaintiff. Issue no.8 was decided partly in favour of plaintiff and

partly against plaintiff and accordingly, suit was decreed holding Will in favour of plaintiff to be valid Will and plaintiffs were held entitled to 3/4th share in the suit property by Court of First Instance.

6. Aggrieved by judgment and decree, defendants had preferred appeal. Findings of learned trial Court were reversed by learned First Appellate Court i.e. Court of learned Addl. District Judge, Ludhiana. Appeal was accepted and suit of plaintiff was dismissed.

7. I have heard learned counsel for the parties.

8. In the present case, following facts are not in dispute:-

- 1) Suit property was owned by Gurdas Ram. Plaintiffs are widow and children of Bal Krishan s/o Gurdas Ram whereas defendant no.1 was widow of Gurdas Ram. Defendant nos. 2 and 3 were daughters of Gurdas Ram and defendant no.4 to 8 were LRs of Dharam Chand pre-deceased son of Gurdas Ram.

9. On one hand plaintiffs are claiming that suit property was bequeathed upon Bal Krishan by Gurdas Ram by way of Will dated 26.08.1973 and after death of Bal Krishan the suit property had fallen to the share of plaintiffs and defendant no.1 who was mother of Bal Krishan. On the other hand, case of defendant is that alleged Will relied upon by plaintiffs is forged and fabricated, Gurdas Ram was not of sound disposing mind and had never executed any Will and therefore, plaintiffs as well as defendants are owners of property of Gurdas Ram, being Class I heirs and not as per Will relied upon by plaintiffs. It is also the case of defendant that rights under Will had not seen light till 1982 and was never relied upon by Bal Krishan during his lifetime and therefore, Will is liable to be considered to have been abandoned impliedly.

10. Learned Court of First Instance on one side had considered and

found that Will was validly executed by Gurdas Ram as attesting witnesses of Will were duly examined who had proved the execution of Will in favour of Bal Krishan. It was further found that Will was duly produced before the revenue authorities and was duly recorded by Patwari by way of mutation No. 859 and could not be pressed as Bal Krishan was residing at Chandigarh, he fell ill in 1976 due to brain cancer and died in 1979. Since plaintiff nos. 2 and 3 were minor and plaintiff no.1 was widow lady, she could not pursue the mutation based on Will and in 1982 defendants succeeded in getting mutation based on natural succession and on coming this fact in notice, present suit was filed whereas learned First Appellate Court has discarded the Will.

11. The main issue in the present case is whether the conclusion of learned Appellate Court that Will dated 26.10.1972 was not validly executed by Gurdas Ram is correct or it is the view of Court of First Instance who had found Will to be validly executed and should be accepted.

12. Learned Appellate Court has noted following grounds while rejecting the Will:

- 1) That Will was unregistered document;
- 2) Gurdas Ram was himself deed writer but got it written from somebody else and this conduct raises suspicion;
- 3) That Bal Krishan was in service at Chandigarh and had no occasion to render services to Gurdas Ram;
- 4) That no provision was left by Gurdas Ram for his widow Bhagwanti and unmarried daughter Usha Kiran;
- 5) That no provision was left for widow and children of Dharam Dass, pre-deceased son of Gurdas Ram;
- 6) That Will was abandoned as it has seen light only in the year 1983 when present suit was filed.

13. Hon'ble Supreme Court in **Derek A.C. Lobo & Ors. v. Ulric M.A. Lobo (dead) by LRs & Ors., 2024 (2) RCR (Civil) 873** serves as a

pivotal reference in the realm of probate law, particularly concerning the burden of proof in validating wills under suspicious circumstances and has held as under :

- Mere registration of a will does not inherently validate it; it must still satisfy the legal requirements under Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act. **Moturu Nalini Kanth v. Gainedi Kaliprasad (Dead) Through Lrs.**, *Law Finder Doc Id # 2391980.*;
- Any suspicion regarding a will's validity must be explicitly presented by the contestant opposing the will, shifting the onus back to the propounder to dispel such doubts. **Gurdial Kaur & Ors. v. Kartar Kaur & Ors.**, *Law Finder Doc Id # 30637* ;
- Propounder must demonstrate the testator's sound mind and free will in the execution of the will, especially when beneficiaries have a prominent role in its execution. **Meenakshiammal (Dead) through LRs. v. Chandrasekaran**, (2005) 1 SCC 280;
- Suspicion alone cannot undermine a will unless accompanied by substantial evidence indicating issues like undue influence or coercion. **P.P.K. Gopalan Nambiar v. P.P.K. Balakrishnan Nambiar**, AIR 1995 SUPREME COURT 1852;
- The initial burden to prove the execution and validity of a will lies with the propounders, in this case, the appellants.
- If the opposing party raises specific and well-founded suspicious circumstances, the burden shifts back to the propounders to dispel these doubts.

14. Therefore, it is the duty of plaintiffs-appellants to prove due execution of will & dispel all suspicious circumstances around will if it is challenged. In the present case, plaintiff had duly examined Nasib Chand, PW4 and Ramesh Chand, PW5, both the attesting witnesses of the Will. Plaintiffs-respondents had also examined son of Achhru Ram, Scribe of the Will as PW2, who in turn had duly stated that his father had died and Will dated 26.07.1972 was written by his father Achhru Ram and had duly identified the handwriting of his father. He (PW-2) also duly proved receipt

Ex.P3 vide which register (in which entry regarding Will was made), was deposited with Court at Lakhimpur Kheri. Both PW4 and PW5 had duly asserted that Gurdas Ram was known to them and Will Ex.P5 was executed by him after having been read over to Gurdas Ram in the presence of attesting witnesses as well as Scribe. They have also asserted that Gurdas Ram was in sound deposing mind at that time. PW4 has clearly stated Bal Krishan was well known to him as he was Lambardar and PW-5 stated that Gurdas Ram was known to him as he was ex-President, Municipal Committee, Khanna. It is also not disputed by either of the parties that Gurdas Ram himself was a Scribe but had left the regular work of scribe due to his age. From the evidence of PW2, PW4 and PW5 execution of Will stands duly established. The initial onus upon plaintiff appellants was duly discharged by examining both the attesting witnesses and son of Scribe who had died by the time of examination of witnesses. Therefore, it was for the defendants to show that the Will was never signed by Gurdas Ram or he was not of sound deposing mind or that Will is doubtful on account of suspicious circumstances surrounding it or that he had no capacity to execute will.

15. No evidence has been led by defendant to raise doubt over attesting witnesses of Will who had duly stated due execution in their presence as well as in presence of Scribe by Gurdas Ram. Even from the cross-examination of PW4, PW5 or PW2 nothing could be shown as to doubt facts stated by them regarding due execution of Will dated 26.07.1972. No handwriting expert has been examined to show that Will was not signed by Gurdas Ram or his signatures were forged. Gurdas Ram himself was a Scribe and aware of execution of Will and accordingly, had chosen Lambardar of Village and President of Municipal Committee to be attesting witnesses to his Will. Both are respectables persons of the Society.

Nothing could be shown from cross-examination as to doubt presence of PW4 and PW5 and execution of Will as stated by them. Similarly, there is no evidence to conclude that Gurdas Ram was not having sound deposing mind on the date of execution of Will dated 26.07.1972. It is also not in dispute that Gurdas Ram had died on 20.12.1972. Merely saying that Gurdas Ram was ill for last 4-5 months itself is not sufficient to conclude that Gurdas Ram was not of sound deposing mind. There is no evidence in the shape of medical records showing that Gurdas Ram was incapable to execute Will dated 26.07.1972. Therefore, no conclusion that Gurdas Ram was incapable to execute Will dated 26.07.1972 on account of fact that he was not of sound deposing mind rather evidence of PW4 and PW5 goes to show that he had not only understood the contents of Will but has also executed the same in the presence of PW4 and PW5. Therefore, learned Court of First Instance has rightly held that Gurdas Ram was of sound deposing mind on the date of execution of Will.

16. One of the arguments raised on behalf of learned counsel for the appellant is that Gurdas Ram was not capable to execute the Will as suit property was co-parsenary property. However, again no evidence is forthcoming on behalf of appellants-defendants to show that suit property was co-parsenary or ancestral property and Gurdas Ram was not capable of executing Will as regards to suit property. From the above discussion, it is, therefore, clearly made out that Gurdas Ram had executed the Will dated 26.07.1972 in presence of attesting witnesses and Scribe who have duly appeared and proved the same while Gurdas Ram was of sound deposing mind. There was no legal bar to execute the Will as regards to suit property as suit property cannot be held to be co-parsenary or ancestral property as claimed by defendant in absence of evidence in this regard.

17. Learned counsel for the appellant has also relied upon various suspicious circumstances which in turn raise doubt over execution of Will dated 26.07.1972. The main ground/suspicious circumstance being raised by defendant is that Gurdas Ram has not made any provision for his widow and unmarried daughter as well as LRs of his pre-deceased son Dharam Chand. From the evidence led by parties, it is not in doubt that at the time of death of Gurdas Ram as well as at the time of execution of Will, he was residing with defendant no.1 and defendant no.2 i.e. his wife and unmarried daughter. It is also not in doubt and stands established from evidence on record duly noticed by both the Courts that after death of Dharam Chand, defendant no.4 along with her children was residing separately from Gurdas Ram at her parental home.

18. While deciding validity of Will, Courts cannot ignore fact that Will is generally executed by testator either to distribute his properties fairly or to disturb natural succession and make provisions of succession of his estate according to his wishes. Merely, because natural heirs have been ignored from succession by itself is no ground to conclude the Will to be doubtful.

19. On consideration, contents of Will Ex.P5 goes to show that while executing Will and giving of his properties to his son Bal Kishan he has duly taken notice of interest of other family members i.e. defendants. Perusal of Will goes to show that Gurdas Ram while executing the Will has duly kept interest of his wife i.e. his widow and unmarried daughter. He has specifically mentioned that for the purpose of marriage of her unmarried daughter Bal Krishan can raise loan to meet expenses of her marriage by using property of Gurdas Ram. He had also clearly mentioned that his wife would be at liberty to sell the property owned by him for liquidating loan if

any, taken for the marriage of her unmarried daughter. Perusal of Ex. P5 Will dated 26.07.1972 goes to show that Gurdas Ram had placed his complete faith in his son Bal Krishan. He had noted that Bal Krishan was his obedient, taking care of him and serves him well. He has also noted about all his natural heirs. He has noted that his pre-deceased son Dharam Chand had separated from him after his marriage and after his death, his widow and his children have started living with in-laws of Dharam Chand and are not having any contact with him. He has similarly noticed that his daughter Sudharshna Kumari was married of well by him and due expenses on her marriage as well as for giving gifts after her marriage were made by him. He has also noted that for the marriage of Bal Krishan as well as his daughter Sudarshana Kumari he had taken loan of Rs.25,000/- which is due and the same has to be discharged by sale of property owned by him. He has further noted that Rs.15,000/- would be spent on the marriage of her unmarried daughter Usha Kiran and said amount shall be raised either by mortgaging or by selling his property. He has further reposed complete faith in Bal Krishan by referring to his wife and has reposed faith that Bal Krishan will look after his wife well. Therefore, present is not a case where executor of Will has not taken care of his family members. In fact, the testator of Will had duly taken care about wellbeing of his other family members and has shown his concerns accordingly. Since he had more faith in his son Bal Krishan, he had chosen to give his property to his son Bal Krishan rather than opting to give property to his other legal heirs. There is no evidence that as to who had paid of loan of Rs.25,000/- and who had made expenses on the marriage of Usha Kiran. However, there is no dispute between the parties that Usha Kiran was married after the death of deceased.

20. I do not find any merit in the finding of learned appellate Court

that plaintiff has failed to show that Bal Krishan had taken any loan. There was no requirement on the part of plaintiff to show that loan was taken for the marriage of Usha Kiran by Bal Krishan and it was returned. The Will had only enabled Bal Krishan to take loan by way of mortgage or sale of property of Gurdas Ram for performing marriage. It is nowhere mentioned that marriage has to be performed by taking loan and merely, because no loan was taken, it will not lead to conclusion that Will of Gurdas Ram is doubtful. Merely, because testator of Will has chosen to repose faith in one of his natural heirs on account of love and affection or for any other reasons in present case, on account of services rendered by his son Bal Krishan and after considering other natural heirs has executed Will in favour of one of them would not make the Will doubtful. This by itself is not a suspicious circumstance and learned Appellate Court has erred in concluding so.

21. The second suspicious circumstance taken by learned Court is as regards to fact that Will was sought to be enforced only in the year 1983 whereas it was executed in the year 1972. Learned counsel for the respondent has referred to Ex.P11 and Ex.P12 i.e. statements made by Bhagwanti Devi and that of Vijay Kumar before Assistant Collector in mutation proceedings. However, said statements cannot be relied wherein they had made claim as per the assertions made in the written statement of present case. It is worth noticing that oral assertions made in Ex.P11 and Ex.P12 are not finding any corroboration to accept them to be true assertions. Even if the statement of Bhagwanti, defendant No.1 is considered, even then it cannot be concluded that Gurdas Ram was not in sound deposing mind. She had merely stated that before his death Gurdas Ram was suffering from problem of ulcer/Phlegmon. The problem stated by her before Assistant Collector First Grade clearly shows that it has no effect

on the sound deposing mind of the person suffering from above noted problem. The problem being asserted at the most can restrict some mobility or result in discomfort but it cannot be held that it could affect logical thinking and decision making. Therefore, there is no material to conclude that Gurdas Ram was not having sound deposing mind at the time of execution of Will.

22. The learned Appellate Court has also noted the fact that Gurdas Ram himself was deed writer but got the same written from Achru Ram and that Will was unregistered document. Registered or unregistered Will, if are validly executed, will have same effect. Even a registered Will can be surrounded by suspicious circumstances and can be rejected. Similarly, the unregistered Will if proved by cogent evidence cannot be rejected merely on the ground that it was unregistered document. Therefore, mere non-registration of Will would not make it doubtful. No doubt registration of document leads to further corroboration and assurance regarding its due execution but non-registration of document does not give rise to assumption that will was not validly executed. Similarly, merely because Gurdas Ram was deed writer by profession or mere non-registration would not give rise to assumption that Will was not validly executed. Learned Appellate Court has wrongly placed onus to get signatures compared upon the plaintiffs whereas plaintiffs have duly proved the signatures by examining both the attesting witnesses; one of them was Lambardar and another was Ex-President of Municipal Committee showing that Will was executed by Gurdas Ram in presence of independent respectable persons and both have stood by Will and has stated due execution by Gurdas Ram after understanding same in the presence of witnesses. Therefore, non-registration of Will merely because Gurdas Ram himself was scribe cannot lead to

conclusion against due execution. Similarly, death within 5 months cannot be held to be suspicious circumstance itself unless signatures of Gurdas Ram are held to be forged or it is shown that Gurdas Ram was not of sound disposing mind or that Will was not executed in accordance with law.

23. The duty to prove signatures is upon a person who denies it on the ground of fraud. It was defendants who had challenged and asserted that Will is forged and fabricated. It was duty of defendant to prove that Will was forged and fabricated once onus to prove Will stood discharged by examination of both the attesting witnesses. It is worth noticing that no Will can be executed in perfect circumstances in day-to-day working. There will always be some reasons to challenge Will specially when someone is ignored from natural succession.

24. Learned Appellate Court had also doubted the Will on the ground that it was sought to be implemented belatedly only in 1983 after a lapse of 11 years from death of Gurdas Ram. Learned Appellate Court has duly referred to Ex.P6, Mutation No.859 wherein reference to Will dated 26.07.1972 was made in Column No.13. It is also admitted fact that though the mutation entry was made regarding Will, however, same was not verified by Kanungo and its parad sarkar was never prepared and therefore, it could not be held to be valid mutation. The fact that Bal Krishan / plaintiffs had tried to get mutation based on Will is therefore, clearly proved from Ex.P6. Therefore, it is not a case where plaintiffs had not pressed Will but it is a case where plaintiffs had not succeeded to get mutation in their favour based on Will as revenue authorities have not acted upon the same. After making a note vide Mutation no. 859 the further formalities specially preparation of parad sarkar was not followed and proceeded with by revenue authorities. However, this failure upon revenue authorities cannot be held failure of

plaintiffs. It is not a case where plaintiffs have never claimed their rights on the basis of it. It is a case where plaintiffs have failed to get their rights through Will before revenue authorities. In fact, revenue authorities had no right to comment upon validity of Will. Validity of Will can only be upheld by Civil Courts. Therefore, it is not a case where plaintiffs have delayed claiming their rights but it is a case where they could not succeed to claim their rights before the revenue authorities on the basis of Will.

25. I find the findings of learned Appellate Court to be based upon surmises and conjectures mostly on account of presumption in favour of legal heirs without appreciating that Will is executed to exclude legal heirs. Legal heirs are bound to challenge it but they can succeed only when they can show that Will was not executed in accordance with law, or it does not bear signatures of executant or executant was not in sound disposing mind or they are able to show suspicious circumstances raising doubt over due execution of Will. None of the circumstances is made out in the present case and in fact stands explained by evidence of plaintiffs.

26. Accordingly, the findings of learned First Appellate Court are liable to be set aside. Appeal filed by appellants-plaintiffs is, accordingly, allowed. Judgment passed by Court of First Instance decreeing suit of plaintiff is restored and affirmed. Judgment passed by First Appellate Court is set aside. Pending miscellaneous application(s), if any, shall also stand disposed of.

11.09.2025		(PARMOD GOYAL)
Janki		JUDGE
Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No