



RSA-2102-2022 (O&M)

**Sr.No.123**

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

**RSA No.2102 of 2022 (O&M)  
Decided on : 20.08.2025**

Balbir Singh Chahal

....Appellant

Versus

Sukhdev Singh and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN**

**Present:-** Mr. D.V. Sharma, Sr. Advocate  
with Mr. Arshdeep, Advocate  
for the appellant.

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**PANKAJ JAIN, J. (ORAL)**

Plaintiff is in second appeal aggrieved of judgment and decree passed by Courts below, whereby suit filed for separate possession by way of partition of properties, as detailed in the headnote of the plaint, stands dismissed. For convenience, the parties are being referred to by their original position in the suit i.e. the appellant as plaintiff and respondents as defendants.

2. Plaintiff filed suit claiming estate of S. Babu Singh son of S. Kishan Singh son of S. Mohinder Singh, who left behind the properties,



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as detailed out in the headnote of the plaint (*hereinafter referred to as 'suit property'*). S. Babu Singh died on 05.07.2008 leaving behind the plaintiff and defendants No.1 to 3 as sons and defendants No.4 & 5 as his married daughters. As per plaintiff, Babu Singh deceased executed registered Will bearing Registration No.1948 dated 09.03.1999, registered in the office of Sub-Registrar, Ludhiana in favour of plaintiff and defendants No.1, 2 and 3. Plaintiff claims separate possession in the joint properties. It has been further claimed that in one of the properties i.e. Plot No.418 measuring 500 sq. yards, situated at Model Town Extension, Part II, Block D, Ludhiana, defendant No.1 is claiming exclusive ownership through his wife Karamjit Kaur, defendant No.6. The said property was purchased by S. Babu Singh. Karamjit Kaur had no independent source of income and thus had no means to purchase the said property in her own name. Plaintiff claims that he along with defendants No.1 to 3 are joint owners of the said plot which also needs to be partitioned.

2.1. Plaintiff further submitted that defendant No.1 has propounded Will dated 19.11.2004 which is a sham document. The same was never executed by S. Babu Singh, who was not known to marginal witnesses, namely Prem Kumar and Ramesh Kumar.

2.2. Plaintiff further submitted that S. Babu Singh was neither mentally fit nor physically capable and he was on a wheelchair in those days. He could not sign properly on the alleged Will in the year 2004 having suffered paralytic stroke. S. Babu Singh executed a registered Will



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dated 09.03.1999 *qua* his entire estate which was witnessed by Jasbir Singh Nambardar of Village Khanur and S. Bhagwant Singh, brother-in-law of S. Babu Singh. Whereas the alleged Will dated 19.11.2004 is an unregistered Will.

2.3. Suit was contested by defendants by filing separate written statements. As per defendants, S. Babu Singh, father of plaintiff and defendants No.1 to 5, died in UK on 05.07.2008, leaving behind plaintiff and defendants No.1 to 5 as his legal heirs. The suit has been filed by plaintiff out of greed to grab the property left by Babu Singh. Defendants No.1 to 3 admitted execution of Will dated 09.03.1999 in favour of plaintiff and defendants No.1 to 3, but it was claimed that the same was cancelled by executing fresh Will dated 19.11.2004.

2.4. Defendant No.3 in his written statement claimed that present suit was filed by plaintiff in collusion with defendant No.1. Relationship between parties is admitted.

2.5. Defendant No.4 filed separate written statement denying that that Late S. Babu Singh ever executed any Will in favour of any person, including his son, during his lifetime. It was claimed that Babu Singh treated all his sons and daughters equally. He was looked after and served by all his children and had an affectionate relationship with them. Defendant No.4 claimed that both the Wills furnished by plaintiff dated 09.03.1999 and that by defendant No.1 dated 19.11.2004 are false, fictitious and forged documents. S. Babu Singh died intestate. Present suit has been



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filed by plaintiff in collusion with defendants No.1 to 3 just to deprive the daughters of their share in the property left by S. Babu Singh. It was further claimed that even before the revenue authorities, the Wills propounded by plaintiff could not be proved. Mutation regarding estate of S. Babu Singh was sanctioned as per natural succession in six equal shares.

2.6. Suit filed by plaintiff was put to trial framing following issues:-

1. *Whether the plaintiff is entitled to decree for separate possession by way of partition as prayed for? OPP*
2. *Whether the plaintiff is entitled to decree for declaration as prayed for ? OPP*
3. *Whether the suit is not maintainable in the present form? OPD*
4. *Whether the plaintiff has no cause of action to file the present suit? OPD*
5. *Whether the plaintiff is estopped by his act and conduct to file the present suit? OPP*
6. *Relief.*

3. While deciding issues No.1 & 2, the Court of First Instance found that the plaintiff miserably failed to prove Will dated 09.03.1999 propounded by him as the original document was never produced. Ex.P3 is a photocopy of Will dated 09.03.1999. The Court found that there is a material discrepancy between the testimony of Harinder Chahal, wife and attorney of plaintiff, who appeared as PW1 and that of plaintiff, who also appeared in the witness box as PW5, regarding mental health and physical condition of Late S. Babu Singh. The Court of First Instance found that there was serious dispute regarding possession of the original Will. Plaintiff



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claimed that the same was in possession of defendant No.1 while testifying in the present suit. While moving application before the authorities dealing with the dispute of NRIs, plaintiff himself admitted by way of affidavit on oath that the original Will was in his possession. Referring to the statement of one of the attesting witnesses and close relative of the family Bhagwant Singh, who appeared as PW4, the Court held that Sukhdev Singh, one of the beneficiaries under Will dated 09.03.1999, performed active role in the execution of Will. Attesting witness admitted that the Will was scribed by Joginder Pal on the asking of Sukhdev Singh i.e. defendant No.1. The Court of First Instance further found that both PW1 and PW5 admitted that S. Babu Singh suffered paralytic stroke in February, 1998. He remained admitted in hospital for six months. He did not recover after stroke. PW1 admitted that S. Baba Singh remained on wheelchair till his death on 05.07.2008 in UK. But PW5 claimed that S. Babu Singh was used to walking with the stick and was not on the wheelchair. Contradictions between the testimony of two witnesses being evident, the Court found that their statement cannot be believed and the Will being surrounded by suspicious circumstances, cannot be held to be proved.

4. The aforesaid findings stand affirmed by the Lower Appellate Court.

5. Ld. Senior Counsel for the appellant has assailed the findings recorded by the Courts below. He submits that the fact that defendant No.1 propounded Will dated 19.11.2004, wherein he claimed that Will dated



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09.03.1999 executed by S. Babu Singh was cancelled, is enough to prove the execution of Will dated 09.03.1999. He thus submits that the execution of Will of S. Babu Singh dated 09.03.1999 having proved on record, that too by admission of defendant No.1, the Courts below erred in dismissing the suit filed by plaintiff.

6. I have heard learned senior counsel for the appellant and have carefully gone through records of the case.

7. Law regarding proof of Will by propounder and the need for the propounder to dispel suspicious circumstances surrounding the same has been elaborately discussed and explained by Supreme Court in the case of ***H. Venkatachala Iyengar vs. B.N. Thimmajamma and others, 1959 AIR (Supreme Court) 443.***

8. The entire series of case law was considered by Supreme Court in ***Kavita Kanwar vs. Mrs. Pamela Mehta and others, 2020 AIR Supreme Court 2614.*** Reiterating the parameters laid down by Supreme Court in ***Shivakumar and others vs. Sharanabasppa and others, (2021) 11 SCC 277,*** the Supreme Court held as under:-

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*24.8. We need not multiply the references to all and other decisions cited at the Bar, which essentially proceed on the aforesaid principles while applying the same in the given set of facts and circumstances. Suffice would be to point out that in a recent decision in Civil Appeal No.6076 of 2009: Shivakumar & Ors. Vs. Sharanabasppa & others, decided on 24.04.2020, this Court, after traversing through the relevant decisions, has*



*summarized the principles governing the adjudicatory process concerning proof of a Will as follows:-*

- 1. Ordinarily, a will has to be proved like any other document; the test to be applied being the usual test of the satisfaction of the prudent mind. Alike the principles governing the proof of other documents, in the case of will too, the proof with mathematical accuracy is not to be insisted upon.*
- 2. Since as per Section 63 of the Succession Act, a will is required to be attested, it cannot be used as evidence until at least one attesting witness has been called for the purpose of proving its execution, if there be an attesting witness alive and capable of giving evidence.*
- 3. The unique feature of a will is that it speaks from the death of the testator and, therefore, the maker thereof is not available for deposing about the circumstances in which the same was executed. This introduces an element of solemnity in the decision of the question as to whether the document propounded is the last will of the testator. The initial onus, naturally, lies on the propounder but the same can be taken to have been primarily discharged on proof of the essential facts which go into the making of a will.*
- 4. The case in which the execution of the will is surrounded by suspicious circumstances stands on a different footing. The presence of suspicious circumstances makes the onus heavier on the propounder and, therefore, in cases where the circumstances attendant upon the execution of the document give rise to suspicion, the propounder must remove all legitimate suspicions before the document can be accepted as the last will of the testator.*
- 5. If a person challenging the will alleges fabrication or alleges fraud, undue influence, coercion et cetera in regard to the execution of the will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the will may give rise to the doubt or as to whether the will had indeed been executed by the testator and/or as to whether the testator was acting of his own free will. In such*



*eventuality, it is again a part of the initial onus of the propounder to remove all reasonable doubts in the matter.*

*6. A circumstance is “suspicious” when it is not normal or is “not normally expected in a normal situation or is not expected of a normal person”. As put by this Court, the suspicious features must be “real, germane and valid” and not merely the “fantasy of the doubting mind”.*

*7. As to whether any particular feature or a set of features qualify as “suspicious” would depend on the facts and circumstances of each case. A shaky or doubtful signature; a feeble or uncertain mind of the testator; an unfair disposition of property; an unjust exclusion of the legal heirs and particularly the dependents; an active or leading part in making of the will by the beneficiary thereunder et cetera are some of the circumstances which may give rise to suspicion. The circumstances above-noted are only illustrative and by no means exhaustive because there could be any circumstance or set of circumstances which may give rise to legitimate suspicion about the execution of the will. On the other hand, any of the circumstances qualifying as being suspicious could be legitimately explained by the propounder. However, such suspicion or suspicions cannot be removed by mere proof of sound and disposing state of mind of the testator and his signature coupled with the proof of attestation.*

*8. The test of satisfaction of the judicial conscience comes into operation when a document propounded as the will of the testator is surrounded by suspicious circumstance(s). While applying such test, the court would address itself to the solemn questions as to whether the testator had signed the will while being aware of its contents and after understanding the nature and effect of the dispositions in the will?*

*9. In the ultimate analysis, where the execution of a will is shrouded in suspicion, it is a matter essentially of the judicial conscience of the court and the party which sets up the will has to offer cogent and convincing explanation of the suspicious circumstances surrounding the will.*

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9. Applying the aforesaid parameters, this Court finds that even if the plea raised by Mr. Sharma is taken on its face value, the same does not help the cause of plaintiff. Plaintiff propounded Will dated 09.03.1999. Thus, as per settled principles of law, he is not only required to prove execution thereof in terms of Section 63 of the Indian Succession Act, 1925, but was also required to prove that the testator was in control of his mental and physical faculties and was able to understand the contents of Will. Plaintiff is also required to dispel the suspicious circumstance surrounding the Will.

10. In the present case, even if execution of Will dated 09.03.1999 is taken to have been proved, the original thereof having not been proved, the document remained unproved on record. One of the attesting witnesses, Bhagwant Singh appeared as PW4. He himself stated on oath that the Will was scribed by Joginder Pal on the asking of Sukhdev Singh, one of the beneficiaries under the Will. Testimony of PW1 and PW5 have been found to be untrustworthy. PW1, attorney of PW5, admitted that in the year 1998, S. Babu Singh suffered a paralytic stroke. He never recovered from the same and remained on wheelchair till his death in the year 2008. Plaintiff while appearing as PW5 though admitted the fact that S. Babu Singh suffered stroke but claimed that he used to walk with a stick. Both husband and wife i.e. son and daughter-in-law of Late S. Babu Singh are at variance



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regarding physical condition of S. Babu Singh which puts testimony of both under cloud.

11. In view of above, this Court finds that the Courts below have rightly discarded Will dated 09.03.1999 being surrounded by suspicious circumstance.

12. Finding no merits in the present appeal, same is ordered to be ***dismissed.***

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

**( PANKAJ JAIN )  
JUDGE**

**August 20, 2025**  
*ashish*

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No