



RSA-1150-1993 (O&M)

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

S.No.144

RSA-1150-1993 (O&M)**Date of decision : 6.5.2025**

Gurdwara Sahib

... Appellant

VERSUS

Bakhshish Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. G.S.Dhaliwal, Advocate, for the appellant.
Mr. Saksham Mahajan, Advocate, Amicus.

PANKAJ JAIN, J. (Oral)

Defendant No.2 is in appeal. Plaintiffs filed suit, seeking decree of declaration to the effect that plaintiffs along with defendant No. 1 are legal heirs of deceased Bachchan Singh. Each of them is owner in possession of suit land measuring 172 Kanals as detailed out in the head note of the plaint in equal share. Defendant No.2 has no concern with the suit land. Defendants No. 2 and 3 be restrained from interfering in their peaceful possession and that defendant No.1 be restrained from alienating land beyond her share.

2. As per the case of the plaintiffs, Bachan Singh, their predecessor-in-interest died on 03.12.1984. On his death, plaintiffs along with defendant No.1 succeeded to his estate. Defendants No. 3 claims 2 killas of suit land have been gifted by Bachchan Singh in favour of defendant No.2. The claim of defendant No.2 and defendant No.3 is wrong.



Deceased Bachchan Singh, never gifted any land during his lifetime and remained sick for 4/5 years prior to his death.

3. Suit was contested by defendant No.1. She denied possession of plaintiffs over the suit land. She contended that she is in joint possession of suit land and is entitled to alienate the same. It was contended that no injunction can be granted against a co-owner.

4. Defendant No.2 contested the suit propounding Will dated 07.05.1984 claimed to have been executed by deceased Bachchan Singh whereby he bequeathed 16 Kanals of land comprised in Khasra number 1810(8-0) and 1811(8-0) in favour of Gurudwara Sahab.

5. Suit filed by the plaintiffs was put to trial by the Court of First Instance, framing following issues:

1. *Whether plaintiffs and defendant No.1 are entitled to inherit the property left by Bachan Singh? OPP.*
2. *Whether BachanSingh deceased executed the valid will dated 7.5.84 in favour of the defendants? OPD*
3. *Whether suit is not maintainable in the present form? OPD*
4. *Whether suit is bad for non-joinder of necessary parties? OPD*
5. *Relief.*

6. While deciding issues No.1 and 2, Trial Court held that defendant No.2 successfully proved execution of Will by deceased Bachan Singh. Rajinder Pal-scribe appeared as DW1 and attesting witness Ujaggar Singh appeared as DW2. Both of them proved that at the time of execution of Will, Bachan Singh was in sound and disposing mind. Issues No.1 and 2 were partly decided in favour of plaintiffs. They were held entitled to declaration qua suit land, except for land comprised in Khasra No. 1810 and



Khasra No.1811. Decree of injunction against defendant No.2 was declined qua specific Khasra No. 1810 and 1811.

7. Dissatisfied, the plaintiffs approached Appellate Court.

8. The Lower Appellate Court re-analysed the evidence to find that Will propounded by defendant No. 2 was not trustworthy and was surrounded by suspicious circumstance. Lower Appellate Court held that the original Will as recorded in the proceedings register of the Gram Panchayat reveals that Khasra No. 1810 and 1811 and their areas were written in different handwriting and different ink as compared to the rest of the Will which was in different hand and with a different pen. The same is clear to the naked eye. Lower Appellate Court while referring to the testimony of scribe Rajinder Pal Singh, recorded that as per him, whole of the Will, including Khasra numbers and areas were written by him with the same pen and in one go, which was found to be false from perusal of the document. While referring to the testimony of Ujaggar Singh, DW-2, the attesting witness, Lower Appellate Court found that he was also not reliable as he did not admit that Khasra numbers were written separately with different ball pen having different ink.

9. The Lower Appellate Court reversed the findings recorded by Court of the First Instance on issues No.1 and 2 and found that the Will propounded by defendant No.2 cannot be sustained being surrounded by suspicious circumstances. Reversing the findings recorded by Court, Lower Appellate Court allowed the appeal and decreed the suit filed by the plaintiffs, holding them entitled to decree of declaration as well as decree of permanent injunction against the defendants.



10. Learned counsel for the appellants-defendants has assailed the findings recorded by the Lower Court. He submits that well reasoned findings recorded by Court of the First Instance have been reversed by Lower Appellate Court without any cogent reason. He refers to statement of DW2-Panchayat Secretary, the attesting witness to the Will and submits that the suspicious circumstance pointed out by the Lower Court was fully explained by DW2-Ujagar Singh. He explicitly testified that he delivered a slip of Khasra numbers to the Secretary the Scribe, who inserted Khasra numbers in the Will. It has been thus, claimed that the findings recorded by the Lower Appellate Court being conjectural need to be reversed and the findings recorded by the Trial Court need to be maintained.

11. Learned Amicus submits that as per settled proposition of law, mere proof of execution of Will in accordance with statutory requirements is not final and conclusive. The suspicious circumstance surrounding the Will need to be dispelled by the propounder of the Will. Mr. Mahajan further submits that as per settled law, pure finding of fact recorded by the court below, even if erroneous, need not be interfered with unless there is an error of law.

12. I have heard counsel for the parties and have carefully gone through records of the case with their able assistance.

13. The issue in the present appeal relates to validity of Will propounded by defendant No.2, claimed to have being executed by deceased Bachan Singh on 07.05.1984.

14. The Will being a solemn document that becomes operative after the death of the testator, needs to be proved with evidence of unimpeachable



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corrector that satisfies the judicial conscience. Attesting witnesses and scribe need to provide consistent and convincing testimony.

15. Both the courts below have concurrently found that Khasra No.1810 and 1811 and their areas have been written in different handwriting and with different pen than rest of the Will.

16. Scribe of the will appeared as DW1 and claimed that the Will was written by him in continuation with the same pen. He denied suggestion that Khasra number and the area thereof were filled later. Counsel for the appellant relies upon testimony of DW2 to explain that Khasra number was filled later on after DW 2 gave him slip, mentioning Khasra numbers. In the considered opinion of this Court, once scribe-DW1, denied the suggestion that Khasra numbers were filled later on, the explanation tendered by DW 2 is of no help and cannot be relied upon to hold that the suspicious circumstance surrounding the Will stands dispelled. It does not improve the case of the propounder of the Will. Material discrepancy between the statements of scribe and testing witness is evident. Both have been rendered untrustworthy.

17. As a sequel of the discussion held here in above, this Court finds that Lower Court rightly discarded the Will propounded by defendant No.2 and decreed the suit filed by the plaintiffs. Finding no merits in the present appeal, the same is ordered to be dismissed.

(PANKAJ JAIN)
JUDGE

May 6, 2025

Paritosh Kumar

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