IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA-5252-2018 (O&M)
Reserved on:-15.09.2025
Date of Decision : 16.09.2025

Jeewan Kumar and Another ....Appellants

VERSUS

Rama Rani and Another ....Respondents

CORAM : HON'BLE MS. JUSTICE MANDEEP PANNU

Present: Mr. Vipin Mahajan, Advocate and
Ms. Chandanpreet Kaur Ahluwalia, Advocate
for the appellants.

Mr. Aayush Goyal, Advocate for respondent No.1.

Respondent No.2 was proceeded ex parte
Vide order dated 28.02.2023.

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MANDEEP PANNU,J.

1. This Regular Second Appeal is preferred by the appellant, Shri Jeewan Kumar, impugning the judgment and decree dated 07.03.2018 passed by the learned First Appellate Court. By that judgment, the First Appellate Court allowed the appeal preferred by respondent–plaintiff, Ms. Rama Rani, reversed the judgment and decree dated 16.11.2016 of the Trial Court and decreed the plaintiff's suit by declaring the plaintiff to be owner in possession of 1/10th share in the suit land and by setting aside Mutation No. 3198 which had been sanctioned in favour of the appellant. The appellant challenges the correctness of that learned appellate Court's decree and maintains that the Will dated 17.12.1995 (Ex.D-2) on which the mutation was sanctioned is a genuine testamentary instrument duly proved in accordance with law.

Factual Background

2. The relevant facts, in brief are that the suit land comprises 88 kanals 19 marlas fully detailed in plaint, situated in Village Dodwan, Tehsil and District Gurdaspur, as per jamabandi for the year 2002-2003. The protracted family history of which is material. The common ancestor, Nikka Ram, died in 1959 leaving widow Banti, two sons Ram Lubhaya and Som Prakash, and two daughters Kamla and Punni alias Shakuntla Devi. The estate devolved upon these five legal heirs in equal shares, i.e., each got 1/5th share. Smt. Punni alias Shakuntala Devi/testatrix died on 24.01.1996 leaving behind two children, namely, Rama Rani (daughter), and Naval Kishore (son) (respondents-herein). On succession the 1/5 share of Punni devolved upon her two children in equal shares and thus the respondents claimed 1/10 share. The plaintiff/respondent further pleaded that she had empowered her maternal uncle, Ram Lubhaya (defendant No.2), by a general Power of Attorney dated 12.06.2002 to get the inheritance mutation sanctioned. Later, on obtaining certified copies from revenue record on 30.11.2010, the plaintiff found her name and that of her brother not recorded in the ownership column, instead Mutation No.3198 dated 24.07.2006 recorded the suit share in the name of defendant No.1 (appellant), son of Ram Lubhaya, on the basis of a Will dated 17.12.1995 (Ex.D-2) allegedly executed by Punni in favour of the appellant. The plaintiff alleged that the Will was a forgery effected by the defendants in connivance with witnesses and scribe and that Mutation No.3198 was illegal. She cancelled the Power of Attorney on 03.01.2011 and filed the suit seeking declaration and injunction.

3. The defendants denied the allegation of forgery. Their pleaded case was that the testatrix validly executed the Will dated 17.12.1995 (Ex.D-2) in

favour of the appellant for reasons stated in the Will, that the Will was attested by two witnesses, that mutation No.3198 was duly sanctioned and valid, and that there was no fraud. The defendants led oral evidence in support of Ex.D-2 and relied upon attesting witnesses.

4. On the pleadings, the Trial Court framed the principal issues which may be summarized as follows:

1. Whether the plaintiff is entitled to the declaration as prayed for? (OPP)
2. Whether the suit is not maintainable in the present form? (OPD)
3. Whether the suit of the plaintiff is barred by limitation? (OPD)
4. Whether the suit is bad for non-joinder of necessary parties? (OPD)
5. Relief.

5. The plaintiff examined herself as PW-1 and exhibited Jamabandi for the year 2002-03 Ex.P-1, copy of mutation (challenged) Ex.P-2, General Power of Attorney Ex.P-3 and Deed of Cancellation dated 03.01.2011 Ex.P-4. Thereafter the plaintiffs closed their evidence.

6. The defendants examined Jeewan Kumar as DW-1, Dalip Singh, attesting witness of the Will dated 07.12.1995 as DW-2, Naval Kishore (son of the testatrix) as DW-3 and Ram Lubhaya, who also testified as a witness to the Will and was involved in obtaining mutation as DW-4. The Will dated 17.12.1995 was produced on record as Ex.D-2. Thereafter the defendants closed their evidence.

Findings of the Trial Court

7. After evaluating oral and documentary evidence the Trial Court held that the Will Ex.D-2 had been proved in accordance with Section 63 of the Indian

Evidence Act, 1872. The Trial Court recorded that two attesting witnesses viz DW-2 and DW-4 had been examined and that their testimony established due execution of the Will by the testatrix while she was possessed of a sound disposing mind and that she had affixed her thumb impression and signed in the presence of witnesses. The Trial Court further found that the plaintiff had failed to produce cogent evidence to prove forgery or fraud and that, mere assertions of forgery by the plaintiff without corroborative material evidence were insufficient. Consequently, the Trial Court upheld Mutation No.3198 sanctioned in favour of the appellant and dismissed the plaintiff's suit vide judgment dated 16.11.2016.

Findings of the First Appellate Court

8. Feeling aggrieved, the plaintiff preferred an appeal. The First Appellate Court re-examined the record and reversed the Trial Court. The Appellate Court took the view that the Will Ex.D-2 was surrounded by a cluster of suspicious circumstances and that the evidence did not satisfactorily prove due execution. The Appellate Court's reasoning can be summarised as follows:

(a) The Will did not specify the age of the testatrix nor did it specify which thumb impression was affixed; the Will was an unregistered document.

(b) Evidence disclosed that the Will had been typed/described by son of testatrix Sh. Naval Kishore DW-3, which cast doubt on the independence of its preparation.

(c) Material recitals in the Will about services allegedly rendered by Jeewan Kumar were belied by oral evidence showing that it was Naval Kishore who had actually attended and cared for the testatrix,

the beneficiary (appellant) was shown to be employed elsewhere and not in attendance.

(d) There was an inordinate delay of eleven years between the date of the Will (17.12.1995) and the date when the mutation was sanctioned (24.07.2006); during this interval the Will "did not see the light of day," which raised suspicion.

(e) Taken cumulatively, these circumstances caused the Appellate Court to disbelieve the documentary exhibit and to hold that the Will was not a genuine instrument. By natural succession the 1/5 share of Punni devolved upon her two children and the plaintiff was declared to be owner in possession of 1/10 share; the mutation in favour of defendant No.1 (appellant) was set aside. The impugned decree by Appellate Court was rendered on 07.03.2018.

Submissions of learned counsel for the parties

9. Learned counsel for the appellants vehemently urged that the First Appellate Court erred in reversing the concurrent finding of the Trial Court without proper reason. It was pointed out that the defendants had examined two attesting witnesses DW-2 and DW-4 who had positively deposed to the due execution of the Will dated 17.12.1995 and that DW-3 Naval Kishore, the son of the testatrix, had also given evidence which, properly considered, supported execution rather than disproved it. Learned counsel emphasised that Section 63 of the Evidence Act requires that a Will be proved by the evidence of attesting witnesses and that if two attesting witnesses are examined the requirement is satisfied. Once the primary evidence has been so led, the burden to show forgery or fabrication lies on the party asserting it and that such party must lead cogent

evidence of fraud. Reliance was placed on the Trial Court's thorough appreciation of evidence and on the settled principle that an appellate court should not lightly overturn a trial court's findings unless perversity, misappreciation or failure to consider material evidence is demonstrated.

10. Learned counsel for the respondents supported the approach of the Appellate Court and urged that the Will was indeed surrounded by suspicious circumstances which, taken together, rendered the Will unreliable. Learned counsel pressed the points that the Will had been typed by son of testatrix, that the recitals were inconsistent with material facts about attendance and services, that the Will remained concealed for a long period before mutation and that subsequent cancellation of the Power of Attorney and the conduct of defendants suggested an after-thought or fabricated documentation. Counsel submitted that suspicion, where strong and cogent, can outweigh mere attestation.

11. I have heard learned counsel for the parties and gone through the record.

12. It is well established that a Will is a testamentary instrument which must be proved in accordance with the Evidence Act. When two attesting witnesses are examined and their testimony is satisfactory, a court may accept the instrument as proved. At the same time the law recognises that if a Will is surrounded by suspicious circumstances the tendency is to treat the proof required of the propounder of the Will as heavier. In other words, where reasonable doubts are raised, a Court must scrutinise the evidence carefully. The Court must weigh the primary evidence i.e. attesting witnesses and the document itself and also examine the surrounding facts. Where findings of fact have been recorded by the Trial Court after appreciating evidence of witnesses and seeing their demeanour

and where there is no perversity, the Appellate Court must be cautious in substituting its view.

13. This Court now proceeds to discuss in detail each circumstance relied upon by the First Appellate Court and the respondent, and explain why, on critical analysis of the record, these circumstances either do not carry the weight attributed to them by the Appellate Court or they are insufficient either singly or cumulatively to displace the direct evidence of attesting witnesses and the Trial Court's credibility findings.

Absence of testatrix's age and the question of thumb impression particulars

14. The Appellate Court emphasised that the Will did not contain an express statement of the age of the testatrix and that the Will did not clearly record whether a right or left thumb impression had been affixed. This Court is of the view, while such descriptive details may sometimes assist a Court, the absence of a testatrix's exact age or the precise description of which thumb impression was affixed is not per se a ground to declare a Will invalid or forged. There is no statutory requirement that a Will must contain the testator's age or that the instrument must specify which thumb was impressed. The decisive considerations are whether the document bears the formalities of testamentary execution i.e. presence of attesting witnesses and their corroborating testimony, that the testatrix had requisite testamentary capacity, and that the instrument expresses the testatrix's intent. In the record before this Court there is positive testimony from two attesting witnesses (DW-2 and DW-4) who stated that the testatrix admitted the contents to be correct and then put her thumb impression in their presence and thereafter the witnesses signed. That testimony directly addresses the essential formalities of execution. The absence of an age recital therefore constitutes at most

a peripheral irregularity and not evidence of fabrication in the absence of other concrete indicia of non-genuineness.

The unregistered nature of the Will

15. The fact that the Will was unregistered was given some significance by the Appellate Court. It must be emphasised that registration of a Will is optional in law. Many private Wills are never registered and yet are perfectly valid if duly executed and attested. The principal consequence of non-registration relates to evidential considerations ie. registered documents ordinarily carry an evidentiary weight of authenticity but absence of registration does not make a Will invalid. Therefore the unregistered status of Ex.D-2 cannot itself constitute suspicious circumstance of sufficient force to overthrow positive testimony of attesting witnesses.

Typing/description of the Will by the son of the testatrix (DW-3/Naval Kishore)

16. The First Appellate Court observed that the Will had been typed or described by Naval Kishore (DW-3), son of the testatrix, and treated this as a suspicious circumstance. In the view of this Court, this reasoning is flawed. Ordinarily, one might treat involvement of an heir in preparing a Will as creating a possibility of self-interest, however, in the present case the factual position is the reverse. Naval Kishore was a natural heir of Punni and, under normal succession, he would have inherited one-half of her 1/5 share in the estate. Yet, the Will Ex.D-2 expressly disinherited him and bequeathed the property to the appellant, a nephew of the testatrix. Despite this, Naval Kishore not only did not challenge the Will but also appeared as DW-3 and admitted that the Will had been executed by his mother.

17. This is a very material circumstance because it demonstrates that even the son of the testatrix, who would have lost a direct share under the Will did not dispute its genuineness. On the contrary, he supported it in his testimony. Far from casting suspicion on the Will, the involvement of Naval Kishore in typing the instrument lends support to the case of the propounder. If the Will had been fabricated to the detriment of Naval Kishore, he would have been the first person to object, but he did not. Instead, he confirmed its execution, which strengthens the case of the appellant and goes to support its genuineness.

The recital of services rendered to the testatrix by appellant and the evidence of actual caregiving

18. One of the primary grounds relied upon by the Appellate Court was an apparent contradiction between a recital in the Will that the appellant had rendered certain services to the testatrix and the oral evidence which suggested that actually the testatrix had been served by her son, Naval Kishore. The Appellate Court treated this contradiction as undermining credibility of the Will.

19. This raises two distinct legal and factual points which must be carefully separated. First, a testator has complete freedom to bequeath property to whom she chooses, and gratitude for services rendered many years earlier or for reasons of companionship or preference can lawfully be a motive for testamentary disposition. The fact that the testatrix may have received more care from one person at some period does not legally preclude her from choosing to benefit another relative. The law does not require the testatrix to distribute property in proportion to services rendered nor to explain every motivation in detail in the instrument itself.

20. For these reasons the alleged inconsistency between the recital and the contemporaneous caregiving evidence cannot be treated as a decisive indicator of forgery.

Delay between date of Will (17.12.1995) and mutation (24.07.2006)

21. The Appellate Court attached particular importance to the lapse of time i.e. approximately eleven years, between the date of the Will and the date on which mutation was sanctioned on its basis. Undoubtedly, an unexplained long delay in producing a Will may be suspicious, particularly if the propounder offers no plausible explanation for the delay and contemporaneous events make production at a later date improbable. But caution is required.

22. There are many legitimate reasons why a Will may remain out of revenue record for many years. In the present case, the record shows that a General Power of Attorney (Ex.P-3) was executed in 2002 and that mutation occurred in 2006. The Power of Attorney route itself provides a plausible explanation for why mutation may have been delayed, administrative steps followed by revenue action often consume years. The mere numerical gap between 1995 and 2006, without additional proof that the Will was fabricated during the intervening period, does not suffice to persuade the Court that the Will is false.

Cancellation of the Power of Attorney (03.01.2011) and conduct after mutation

23. The plaintiff relies upon the fact that the Power of Attorney (Ex.P-3) which facilitated mutation was subsequently cancelled by a deed dated 03.01.2011 (Ex.P-4), and argues that such cancellation supports a conclusion that initial documents were procured by fraud. Cancellation of an instrument does not by itself prove that a testamentary document executed earlier was forged. The cancellation

proves that a dispute arose between parties later, the existence of a dispute is unsurprising in intra-family property matters.

Credibility and evidentiary weight of attestations (DW-2 and DW-4)

24. The decisive evidentiary element in favour of the Will rests on the testimony of two attesting witnesses DW-2 (Dalip Singh) and DW-4 (Ram Lubhaya). The Trial Court accepted their evidence. The First Appellate Court was entitled to re-appreciate the evidence, but to overturn concurrent factual findings of the trial court, its conclusion must demonstrate that the trial court's assessment was manifestly contrary to the materials on record or vitiated by legal error.

25. On re-reading the materials of the attesting witnesses, one finds that both DW-2 and DW-4 gave consistent accounts. They stated that Punni acknowledged the contents to be correct and put her thumb impression before them and they signed as witnesses. There is no direct evidence in the record showing that these witnesses lied, indeed the plaintiff produced no independent witness or forensic evidence to disprove their testimony. Where the party alleging forgery fails to produce contradictory credible evidence, the attesting witnesses' testimony must be afforded weight. The Trial Court's acceptance of their evidence cannot be impugned as perverse when the record otherwise shows no cogent negative evidence.

Cumulative assessment of suspicious circumstances

26. The law instructs courts to examine suspicious circumstances cumulatively. Where numerous independent indicia of fabrication converge, a court may rightly decline to accept a Will despite attesting evidence. In this case, however, the so-called suspicious circumstances i.e absence of age, unregistered status, typing by son of testatrix, the recital about services, delay in mutation, and

subsequent cancellation of Power of Attorney when analysed in detail, do not constitute a sufficiently tight or compelling cluster to upset the Trial Court's acceptance of attesting witnesses. The central evidence remains unrefuted by cogent counter-evidence. On the whole, the suspicions are not of such strength or clarity as to outweigh the positive testimony of DW-2 and DW-4 and the Trial Court's findings.

Burden and standard of proof

27. It must be reiterated that the primary burden to prove the Will rests on the propounder. If the propounder proves the Will by attesting witness testimony, the receiving party asserting forgery must discharge a burden of proof to show fabrication or fraud. Mere assertions and inferences drawn from peripheral facts are insufficient. The plaintiff here failed to lead independent evidence, for example contemporaneous documents, handwriting or forensic evidence, or independent witness testimony contradicting the attesting witnesses which would have been material in proving forgery. The Trial Court, therefore, correctly treated the evidence of the propounders as legally sufficient.

CONCLUSION

28. On the basis of the evidence on record, the careful re-examination of attesting evidence, and the detailed analysis of each circumstance, the following findings are recorded:

(i) The Will dated 17.12.1995 (Ex.D-2) was produced and attested by two witnesses whose testimony was heard and accepted by the Trial Court. That evidence satisfied the requirement of proof by attesting witnesses as contemplated by Section 63 of the Evidence Act. The Trial Court's acceptance of DW-2 and DW-4's testimony

was not shown to be perverse or vitiated by a misappreciation of evidence.

(ii) The arguments based on peripheral omissions in the instrument (such as absence of the testatrix's age or the particular thumb specified) are not legally decisive. There is no legal requirement that age must be recorded or that registration is mandatory. Such defects, if any, are minor and do not, without additional direct evidence of fabrication, invalidate a duly attested Will.

(iii) The involvement of the heir in preparing the will shall factually create a possibility of self-interest. But in this case, the son lost a direct share in the Will despite being the one preparing it. Thus, far from casting the suspicion of Will, the involvement of Naval Kishore in typing the instruction lends support to the case of the propounder. Had the Will been fabricated, the heir should have been the first one to object. Therefore, typing/description of the Will by the son creates no suspicion regarding the genuineness of the instrument.

(iv) The recital in the Will describing services allegedly rendered by the appellant, when contrasted with evidence that the testatrix may have been served by her son, Naval Kishore, does not in law render the Will invalid. A testatrix may lawfully make testamentary dispositions in favour of any person for reasons of gratitude, choice or personal preference, past services, or other considerations. The record does not establish that the recital was a deliberate falsehood.

(v) The delay between the date of the Will and the sanctioning of mutation, and the subsequent cancellation of a power of attorney, are

facts that require explanation but are not, on this record, evidence of fabrication.

(vi) For all these reasons, the cluster of suspicious circumstances identified by the Appellate Court does not, in the particular factual matrix before this Court, attain the necessary cogency to overturn the Trial Court's acceptance of the Will.

29. In view of the above, the present Regular Second Appeal is allowed. Judgment and decree dated 07.03.2018 passed by the First Appellate Court are hereby set aside. The judgment and decree dated 16.11.2016 passed by the Trial Court dismissing the plaintiff's suit are restored. In consequence, Mutation No.3198 sanctioned in favour of the appellant stands held valid on the basis of the proved Will (Ex.D-2). The plaintiff's claim for declaration and injunction is dismissed.

30. Pending application(s), if any, also stands disposed of.

September 16, 2025 **(MANDEEP PANNU)**
tripti **JUDGE**

Whether speaking/non-speaking : Speaking
Whether reportable : Yes.