

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****RSA-959-2000 (O&M)****Reserved on: 10.02.2025****Pronounced on: 27.02.2025**

INDERJIT SINGH

. . . . APPELLANT

Vs.

BALBIR SINGH

. . . . RESPONDENT

**CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA**

Present:- Mr. Amit Jain, Sr. Advocate, with  
Mr. Parit Aggarwal, Advocate, for the appellant.

Mr. Raj Kumar Gupta, Advocate,  
for the respondent.

**DEEPAK GUPTA, J.**

Suit for possession and permanent injunction regarding property in dispute filed by plaintiff-Inderjit Singh *minor (appellant herein)* against defendants-Balbir Singh and others, was dismissed by the trial Court of Id. Additional Civil Judge (Sr. Division) Rajpura on 22.07.1996. Appeal filed by the plaintiff against the said judgment was dismissed by the First Appellate Court of Id. Additional District Judge, Patiala vide judgment dated 15.12.1999. Against these concurrent findings, the plaintiff has approached this Court by way of the present Regular Second appeal.

2. Lower Court record was called. Same has been perused. In order to avoid confusion, parties shall be referred as per their status before the Trial Court.

3. Undisputed facts are that Sharam Singh was owner of 44 bighas 17 biswas of land situated in Village Gado Majra, Tehsil Rajpura. He has two sons namely Wadhawa Singh and Piara Singh. Wadhawa Singh has one son namely Inderjit Singh (*plaintiff-appellant herein*). Piara Singh

has two sons namely, Balbir Singh and Ranjit Singh (*Defendants No.1 & 2 herein*). By way of a Will dated 06.03.1975 registered on 07.03.1975, Sharam Singh bequeathed 22 bighas 9 biswas of land in favour of plaintiff-Inderjit Singh; whereas the remaining 22 bighas 8 biswas of land was bequeathed in favour of defendants No.1 & 2 i.e. Balbir Singh and Ranjit Singh.

4.1 The plaintiff has challenged the validity of a Will dated 28.05.1984, allegedly executed by Sharam Singh, bequeathing his entire property exclusively to defendants No.1 and 2. At the time, defendants No.1 and 2 were serving in the military, while the plaintiff and his mother cared for Sharam Singh. In May 1984, Piara Singh took Sharam Singh to the tube well, during which Wadhawa Singh was residing abroad. Exploiting Wadhawa Singh's absence, Piara Singh allegedly orchestrated the execution of a fraudulent Will in favour of his sons, defendants No.1 and 2, thereby cancelling the previous Will. The plaintiff contends that Sharam Singh never executed the Will dated 28.05.1984, which was instead procured by Piara Singh through fraud and coercion. Based on this contested Will, the entire suit property was mutated in favour of defendants No.1 and 2. According to the plaintiff, upon Sharam Singh's death on 26.08.1984, the property should have devolved equally among the plaintiff and defendants No.1 and 2, as per the earlier Will dated 06/07.03.1975.

4.2 Furthermore, the plaintiff alleges that defendants No.1 and 2 transferred possession of 6 bighas 5 biswas of land, comprised in Khasra No.436, to defendants No.3 and 4 under a false and fictitious agreement to sell. Previously, while still a minor, the plaintiff had filed a similar suit through his mother Smt. Gurmail Kaur, but it was withdrawn with permission to file afresh on the same cause of action.

4.3 With these submissions, plaintiff prayed for decree of possession and permanent injunction of the suit land in respect of the land measuring 22 bighas 9 biswas. He further sought decree of

permanent injunction to restrain defendants from alienating or encumbering in any manner the suit property.

5. Defendants In their written statement contended that Will dated 28.05.1984 was the last Will of Sharam Singh, whereby the earlier Will dated 06.03.1975 had been cancelled. They denied all the allegations as made by the plaintiff and prayed for dismissal of the suit.

6. Necessary issues were framed. Evidence produced by the parties was taken on record. Trial Court held that suit property was self-acquired property of Sharam Singh. It was further held that Will dated 06.03.1975 registered on 07.03.1975 was not proved; whereas, the Will dated 28.05.1984 (Ex.D1) set up by the defendants was duly proved by the testimony of attesting witnesses and the scribe. Suit was accordingly dismissed on 22.07.1996 and the appeal filed by the plaintiff was dismissed on 15.12.1999.

7.1 Assailing the aforesaid findings, Id. Sr. Advocate appearing for the appellant-plaintiff contends that both the Courts have held the Will dated 28.05.1984 to have been proved by relying upon the testimony of attesting witnesses namely DW1-Kirpal Singh and DW3-Chand Raj, but ignoring the fact that none of these witnesses deposed that the contents of the Will were read over to the testator Sharam Singh and only after admitting the contents thereof to be correct, Sharam Singh had put his signatures thereon. Id. senior counsel further contends that in the absence of this mandatory requirement of law, the Will cannot be held to be proved.

7.2 It is specifically pointed out that on realizing that material questions had not been answered by the witnesses, the defendants had moved an application for recalling DW1-Kirpal Singh, DW3-Chand Raj, besides DW2-Scribe Sukhdev Bedi, but that application was dismissed by the trial Court on 06.06.1995 and CR-2758-1995 filed by the defendants against the said order dated 06.06.1995 was dismissed by this High Court.

7.3 Still further, it is argued that numerous suspicious circumstances surrounding the Will, pointed out to the Courts below, have been ignored. Specific attention has been drawn to the fact that Sharam Singh was 112 years old. He had only two sons Wadhawa Singh and Piara Singh. Wadhawa was residing abroad at the time of alleged execution of the Will dated 28.05.1984. Both his sons i.e. defendants No.1 & 2-Balbir Singh and Ranjit Singh were serving in Military Service. Plaintiff-Inderjit Singh was minor, aged hardly 12 years, at the relevant time and residing with his mother. Thus, Piara Singh was the only person available in the family near Sharam Singh. Attention is drawn towards the fact that as per the admitted evidence, Piara Singh was residing in Village, whereas Sharam Singh was residing at the tube well. It is contended that taking benefit of the absence of Wadhawa Singh and the minority of Inderjit Singh, it is Piara Singh, who managed to get the Will dated 28.05.1984 executed from Sharam Singh.

7.4 Apart from this, numerous material contradictions have been pointed out in the statements of attesting of witnesses DW1 & DW3, so as to contend that none of these witnesses are reliable.

7.5 It is argued by Id. Sr. counsel that defendants-respondents had not been able to repel the suspicious circumstances surrounding the Will and that the Courts below have wrongly held the Will to have been proved.

7.6 With these submissions, prayer is made to set aside the impugned judgments and decrees passed by the Courts below and to decree the suit of the plaintiff-appellant by allowing this appeal.

8. On the other hand, Id. counsel for the respondent-defendant, defended the judgments passed by the Courts below and submitted that there is no scope for interference in the concurrent findings of facts recorded by the Courts below.

9. I have considered submissions of both the sides and appraised the record carefully.

10. The mode of proving a WILL does not ordinarily differ from that of proving any other document except as to the special requirement of attestation prescribed in the case of a WILL by Section 63 of the Indian Succession Act, which reads as under:-

**"63. Execution of unprivileged wills.** - Every testator, not being a soldier employed in an expedition or engaged in actual warfare) or an airman so employed or engaged or a mariner at sea, shall execute his will according to the following rules:

(a) The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.

(c) The will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the will in the presence of the testator but it shall not be necessary that more than one witness be present at the same time and no particular form of attestation shall be necessary."

11. Apart from above, Section 68 of the Evidence Act is quite relevant regarding proving the execution of a WILL. This reads as under:

**"68. Proof of execution of document required by law to be attested.** --

If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been

registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.”

12. The conjoint reading of above provisions makes it quite clear that at least one out of the two attesting witnesses must be called to prove due execution of the WILL. Further, it is required for the attesting witness to prove that he had seen the testator sign or affix his mark to the WILL in his presence; or that he received from the testator a personal acknowledgment of his signature or mark of the signature of such other person and each of the witnesses shall sign the WILL in the presence of testator. Reliance can be placed on ***Pentakota Satyanarayana Vs. Pentakota Seetharatnam 2006(1) C.C.C.563***, wherein it has been held by Hon'ble Supreme Court that to prove due execution of Will, attesting witness must state that each of the two witnesses has seen the executor sign or affix his mark to the instrument or has seen some other person sign the instrument in his presence and by the direction of the execution. Witness should further state that each of the attesting witness signed the instrument in the presence of the executant. Hon'ble Supreme Court held that these are the ingredients of attestation and they have to be proved by the witnesses.

13. Further, it is the settled proposition of law that it is the propounder of the Will, who has to prove its due execution. Besides, mere proving the signatures of the testator on the Will is not sufficient. Reference in this regard can be made to ***Ganpat Vs. Siri Chand 1992(1) LJR 252 and Janki Narayan Bhoir Vs. Narayan Namdeo Kadam 2003(2) LJR 646***, wherein it has been held that due and valid execution of the Will cannot be proved by simply proving that the signatures on the Will was that of the testator. It must be proved that attestations were also made properly as required by clause (c) of Section 63 of the Succession Act, 1925.

14. In the light of abovesaid legal position, it is required to be seen as to whether the due execution of the Will by any of the attesting witnesses of the Will, has been proved in this case.

15. In present case, Ex.D1 is the Will dated 28.05.1984 purportedly of Sharam Singh. By way of this Will, the testator has mentioned that he had earlier executed a Will in favour of Ranjit Singh and Balbir Singh to the extent of 1/2 share; and Inderjit Singh to the extent of 1/2 share, but now Inderjit Singh did not listen to him and did not take care of him in his old age and therefore, he cancels the earlier Will executed by him. Testator mentioned further that he was now 112 years old and that after his death, Inderjit Singh will not have any right/interest in his property. After mentioning that he was pleased with the services of Ranjit Singh and Balbir Singh, who were taking care of him, he (testator) bequeathed his property in their favour.

16. The aforesaid Will is purported to be scribed by Sukhdev Bedi (DW2), document writer; and witnessed by Kirpal Singh (DW1) and Chand Raj (DW3). Although the defendants, who propounded the Will dated 28.05.1984 (Ex.D1) and examined both the attesting witnesses namely Kirpal Singh as DW1 and Chand Raj as DW3, but none of them witnesses have proved the necessary ingredients required to prove the due attestation of Will. Both these witnesses stated that the Will (Ex.D1) was executed by Sharam Singh and that they had signed the same and that the Will was scribed by Sukhdev Bedi, document writer and they identify their signature; and that executant signed the Will in their presence, but none of these witnesses stated that either the document writer or any of them had read over the contents of the Will to the testator i.e. Sharam Singh and only then, after understanding the contents thereof, Sharam Singh had signed the same in their presence. In the absence of these basic requirements so as to prove the due attestation of the Will, the statement of DW1 and DW3 is not sufficient to prove the execution of the Will.

17. Similarly, DW2-Sukhdev Bedi, document writer, who had scribed the Will (Ex.D1) stated that he had scribed the Will and the contents thereof were read over by him to Sharam Singh and that Sharam Singh had put his signature on the Will in the presence of the witnesses, but he did not at all state that after understanding the contents of the Will, Sharam Singh had put his signature on the Will. Not only this, DW2 admits in cross-examination that he did not know the testator personally. Thus, even the scribe of the document i.e. DW2 has not been able to prove the mandatory requirement so as to prove the due execution of the Will.

18. It will not be out of place to mention, as has been rightly pointed out by Id. senior advocate of the appellant-plaintiff that defendants were well aware of the said lacuna left by DW1 and DW3 in their testimony to the effect that they did not prove the attestation of the Will as required under Law. It is for this reason that defendants moved an application for recalling DW1- Kirpal Singh, DW3-Chand Raj besides DW2 Sukhdev Bedi for their further examination, but said application was dismissed by the trial Court on 06.06.1995. Defendants even approached this Court by filing CR-2758-1995 assailing the order dated 06.06.1995, but the same was dismissed by this Court on 01.03.1996.

19. In view of the abovesaid evidence, the Courts below have committed grave error in holding that execution of the Will Ex.D1 was duly proved.

20. Without holding so and assuming for the sake of arguments, that the execution of the Will by Sharam Singh is proved, the Courts below have failed to notice numerous suspicious circumstances surrounding the Will, as have been rightly pointed by Id. Senior counsel of the plaintiff - appellant.

21. Testator Sharam Singh was 112 years of age at the time of execution of the Will, as has been mentioned in the Will (Ex.D1) itself,

which fact is not even disputed by any of the parties. Said Sharam Singh used to reside alone at the tube well and not residing with Piara Singh, the father of defendants No.1 & 2 i.e. beneficiaries of the Will. Both the beneficiaries to the Will i.e. Balbir Singh and Ranjit Singh were serving in the Military service at the time of execution of the Will, as has come in the statement of DW4 Ranjit. Further, it has come on record that at the relevant time, plaintiff-Inderjit Singh son of Wadhawa Singh, was a minor, whereas Wadhawa Singh was residing abroad at that time. Thus, Piara Singh was the only person in the family, who was available in the village and who could manipulate the execution of Will from Sharam Singh so as to discard the rights of his brother’s son Inderjit Singh, and so as to get the Will executed in favour of his own sons Balbir Singh and Ranjit Singh.

22. In the Will (Ex.D1), the only reason given by testator so as to ignore Inderjit Singh and Wadhawa Singh is that they were not listening to him and that Inderjit Singh was no longer serving him. It is despite the fact that said Inderjit was only 12 years old at that time. Even both the defendants were serving in Military at that time and were not serving the testator.

23. Apart from above suspicious circumstances surrounding the WILL, numerous contradictions have emerged in the testimony of the two attesting witnesses, which itself creates doubt about the authenticity of the Will. The relevant questions as put to DW1-Kirpal Singh and DW3-Chand Raj is shown in the tabular form as follows:

DW1 – Kirpal Singh	DW3 – Chand Raj
<ul style="list-style-type: none"> <li>· Sharam Singh had reduced the entire Will into writing and then dictated the same and then it was scribed by Mr. Bedi, Deed Writer on the dictation of testator.</li> </ul>	<ul style="list-style-type: none"> <li>· Sharam Singh did not reduce the Will in writing with him. Sharam Singh went on dictating the Will and Deed Writer went on scribing the Will.</li> </ul>
<ul style="list-style-type: none"> <li>· I was called by Ranjit Singh and Balbir Singh, sons of Piara Singh.</li> </ul>	<ul style="list-style-type: none"> <li>· When I came to the court, on asking of Sharam Singh, only</li> </ul>

<ul style="list-style-type: none"> <li>· Only myself, Ranjit Singh and Balbir Singh, Chand Raj and testator Sharam Singh were present at the time of execution of Will.</li> <li>· Piara Singh, the father of defendants No.1 and 2, was not present at the time of execution of Will.</li> </ul>	<p>Sharam Singh and Kirpal Singh were sitting at the seat of Mr. Bedi – Deed Writer.</p> <ul style="list-style-type: none"> <li>· Ranjit Singh and Balbir Singh – defendants did not meet me on the day of execution of the Will in the Court area.</li> </ul>
<ul style="list-style-type: none"> <li>· Sharam Singh did not mention about any earlier Will in Ex.D1.</li> </ul>	<ul style="list-style-type: none"> <li>· I do not know whether Sharam Singh had executed any other Will prior to Ex.D1. The fact of any earlier Will was not mentioned in Ex.D1.</li> </ul>
	<ul style="list-style-type: none"> <li>· I have purchased the land from Ranjit Singh and Balbir Singh to the extent of 06 bighas.</li> <li>· It is wrong to suggest that I attested the Will only after entering into bargain of purchasing the land out of the suit land.</li> </ul>
<ul style="list-style-type: none"> <li>· Sharam Singh was separate from Piara Singh.</li> </ul>	<ul style="list-style-type: none"> <li>· Sharam Singh was separate from Piara Singh and used to live alone at tubewell.</li> <li>· Sons of Piara Singh had separated from Piara Singh after their marriage.</li> </ul>
<ul style="list-style-type: none"> <li>· It is correct that Wadhwa Singh was in foreign country at the time of execution of the Will.</li> <li>· I cannot say ever since when, he was in foreign country.</li> </ul>	
<ul style="list-style-type: none"> <li>· I know plaintiff- Inderjit. He was 14-15 years old at the time of</li> </ul>	

execution of the Will.	
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24. The comparison of the statements of the two attesting witnesses would reveal that though DW1 says that Sharam Singh had reduced the entire Will into writing and then on his dictation, it was scribed by Mr. Sukhdev Bedi; DW3-Chand Raj denied the said fact and says that Sharam Singh went on dictating the Will and Deed Writer went on scribing the same. As per DW1-Kirpal Singh, Ranjit Singh & Balbir Singh i.e. the beneficiaries to the Will were present at the time of execution of the Will and who had called him for the purpose of execution of the Will; but DW3-Chand Raj denied the said fact. Even DW2 Sukhdev Singh Bedi, the scribe to the Will, says that only the attesting witnesses to the Will were present at the spot and none else.

25. Further both DW1 and DW3 ignored about the mention of any fact regarding the earlier Will in the Will (Ex.D1). DW1 says that Sharam Singh did not mention anything of the earlier Will (Ex.D1), whereas DW3 ignored anything about the same and stated that fact of any earlier Will was not mentioned in Ex.D1. This is contrary to the contents of Will (Ex.D1), wherein the testator is alleged to have specifically mentioned about the earlier Will, which he was cancelling.

26. Apart from above, DW3-Chand Raj is an interested witness, inasmuch as after attesting the Will, he purchased a part of the suit land to the extent of 6 bigha from Ranjit Singh and Balbir Singh as has been admitted by him. The said circumstance clearly indicates that he attested the Will only after entering the bargain of purchasing the land out of the suit land from the beneficiaries.

27. Unfortunately, the Courts below have failed to notice the abovesaid suspicious circumstances surrounding the Will, which entirely make the authenticity of the Will highly doubtful.

28.1 Still further, the circumstance of testator being extremely old at time of execution of WILL, was considered by the Bombay High Court

in *Suryabhan Namdeo Vakte Vs. Bhagirathibai alias Vatsalabai Tulshidas Chavan, 2016(2) AIR BomR 155*. In that case testator was 91 years old person. It was held that it was necessary to ascertain whether testator knew what he was disposing i.e. contents of the Will; and that he was in position to understand consequences of such disposition.

28.2 Bombay High Court referred to Section 59 of the Succession Act, which reads as under:

**59. Person capable of making wills.**—Every person of sound mind not being a minor may dispose of his property by will.

Explanation 1.—A married woman may dispose by will of any property which she could alienate by her own act during her life.

Explanation 2.—Persons who are deaf or dumb or blind are not thereby incapacitated for making a will if they are able to know what they do by it.

Explanation 3.—A person who is ordinarily insane may make a will during interval in which he is of sound mind.

Explanation 4.—No person can make a will while he is in such a state of mind, whether arising from intoxication or from illness **or from any other cause**, that he does not know what he is doing.

*Illustrations*

(i) A can perceive what is going on in his immediate neighbourhood, and can answer familiar questions, but has not a competent understanding as to the nature of his property, or the persons who are of kindred to him, or in whose favour it would be proper that he should make his will. A cannot make a valid will.

(ii) A executes an instrument purporting to be his will, but he does not understand the nature of the instrument, nor the effect of its provisions. This instrument is not a valid will.

(iii) A, being very feeble and debilitated, but capable of exercising a judgment as to the proper mode of disposing of his property, makes a will. This is a valid will.

28.3 It was then held as under:

16. Explanation 4 of this section shows that when there were circumstances like illness or other cause (underlined) like old age (in the present case age of the testator was 91 years), it becomes necessary to ascertain whether the testator knew what he was disposing i.e. the contents of the will and that he was in a position to understand the consequences of such disposition. Competent understanding is relevant and not condition of body but when there are other circumstances like such old age, it becomes necessary to show that the deceased was active in life and he was in a position to understand the effect of what he was doing. Thus in a case like present one, old age itself can be treated as "other cause" mentioned in explanation 4 to section 59 of the Succession Act.

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27. It is true that appending medical certificate to the will regarding fitness of the testator is not the requirement of law but when age of testator was 91 years and he died within 15 days of the date of execution of the will and when there are aforesaid circumstances, the absence of fitness certificate itself has become a suspicious circumstance in the present matter. It creates doubt about due execution, competency of the testator and voluntariness of the testator."

29. In this case also, the testator was 112 years old at the time of execution of the Will. He died within 3 months from the date of execution of the Will. He was residing alone at the tube well. He had only two sons Wadhawa Singh and Piara Singh. Wadhawa was residing abroad at the time of alleged execution of the Will dated 28.05.1984. Both his sons i.e. defendants No.1 & 2-Balbir Singh and Ranjit Singh were serving in Military Service. Plaintiff-Inderjit Singh was minor, aged hardly 12 years, at the relevant time and residing with his mother. Thus, Piara Singh was the only person available in the family near Sharam Singh and was residing in Village.

30. In the above circumstances, the absence of fitness certificate itself become a suspicious circumstance in the present case and creates doubt about the competence and voluntariness of the testator to execute the WILL. In such like circumstances when testator is 112 years old, died within 3 months of the execution of Will and was residing alone, onus was heavy upon the propounder of the Will i.e. defendants to show that testator at the time of execution of the Will was in sound disposing and free mind and that the Will was executed without any extraneous influence.

31. In the absence of any such evidence on record, there is high probability that taking benefit of the absence of Wadhawa Singh and the minority of Inderjit Singh, it is Piara Singh, who managed to get the Will dated 28.05.1984 executed from Sharam Singh.

32. Proceeding ahead, the execution of the Will dated 06.03.1975, which was got registered on 07.03.1975 by the testator is not in dispute, whereby the testator had earlier bequeathed 1/2 share of the suit property in favour of the plaintiff and other 1/2 share in favour of the defendants, which means that he had made equal distribution. By way of the alleged will dated 28.05.1984, the testator is alleged to have made unnatural, improbable and unfair disposition, which in itself is to be considered as a suspicious circumstance, particularly when plaintiff was minor at that time, his father was residing abroad, defendants were serving in Military and it is only Piara Singh, the father of the defendants, who was in the village with Sharam Singh and who clearly appears to have manipulated the things.

33. It is argued by Id. counsel for the respondents that there is no scope of interference with the concurrent findings of facts by the Courts below.

34. There is no merit in the contention. No doubt that High Court has limited scope to interfere in the concurrent findings of facts,

but there are certain exceptional circumstances, when the High Court can intervene. One of such circumstances is when there is complete misappreciation of evidence or ignorance of the material evidence on record on the parts of the Courts below. In ***Gurbachan Singh Versus Gurcharan Singh 2023 SCC OnLine SC 875***, it has been held by Hon'ble Supreme Court:

“14. As already noted above, another ground of objection taken by the Appellant is the fact of the impugned judgment entering into a reappraisal of evidence. While it is true that ordinarily, in second appeal, the court must not disturb facts established by the lower court or the first appellate court. However, it is also equally well recognised that this rule is not an absolute one or in other words, it is not a rule set in stone. In ***Nazir Mohamed (2020) 19 SCC 57***, this Court has recognised three conditions in which a court in such jurisdiction, may disturb findings of fact. They are:—

“(i) the courts below have ignored material evidence or acted on no evidence; or (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. A decision based on no evidence, does not refer only to cases where there is a total dearth of evidence, but also refers to case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.”

15. A Bench of three learned Judges, recently in ***Balasubramanian v. M. Arockiasamy (Dead) Through LRs, (2021) 12 SCC 529.***, had referred to, with approval judgment rendered in ***Ramathal v. Maruthathal , (2018) 18 SCC 503*** (two-Judge Bench) wherein it was observed that the restraint in interfering with questions of fact under the jurisdiction of second appeal, is not an absolute rule. Where the court is of the view that the conclusions drawn by the court below do not have a basis in the evidence led or it is of the view that the appreciation of evidence “suffers from material irregularity” the court will be justified in interfering with such findings.”

35. In ***Easwari Vs. Parvathi and others, 2014 AIR (SCW) 4406***, it has been held by Hon'ble Supreme Court that there is no absolute ban on the High Court in the Second Appeal to interfere with the facts. High Court cannot be precluded from reversing the order and judgment of the Lower Court if there is perversity in the decision due to misappreciation of the evidence. Similar view has also been taken in ***State of Rajasthan and others Vs. Shiv Dayal and another, 2019 (3) PLR 635***.

36. On account of entire discussion as above, it is held that the judgments as passed by the Courts below cannot be sustained in the eyes of law. Both these judgments are hereby set aside. It is held that Will dated 28.05.1984 (Ex.D1) relied by the defendants-respondents, is not proved on record to be the genuine Will of the testator-Sharam Singh. It is further held that by virtue of the earlier Will dated 06.03.1975, registered on 07.03.1975, plaintiff had become owner of 1/2 share in the suit property, whereas defendants No.1 & 2 had become the owner of the remaining 1/2 share.

37. As such, present appeal is accepted. A decree for possession of the suit property to the extent of 1/2 share in favour of the plaintiff is hereby passed in his favour and against the defendants. Defendants are restrained from alienating or creating any encumbrance on the suit property to the extent of share of the plaintiff. Decree sheet be prepared accordingly.

**27.02.2025**

*Vivek*

**(DEEPAK GUPTA)  
JUDGE**

<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether reportable?</i>	<i>No</i>