

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

**RSA-1168-2020 (O&M)**  
**Reserved on: 07.05.2025**  
**Pronounced on: 12.05.2025**

**ISHWAR**

. . . .APPELLANT

Vs.

**SONU AND OTHERS**

. . . . RESPONDENTS

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

Argued By: Mr. Ram Pal Verma, Advocate,  
for the appellant.

**DEEPAK GUPTA, J.****CM-3639-C-2020**

Present appeal is accompanied by an application bearing **CM-3639-C-2020** to condone the delay of 494 days in refiling the appeal.

2. It is contended by learned counsel that though the appeal was filed within limitation, but some objections were raised by the Registry. The clerk of the counsel took the paper-book from the Registry and inadvertently put the same in brief of contested cases and it is only when the appellant verified about the filing of the appeal with the counsel that he came to know that appeal had not been refilled. On searching, the paper book was found in some other brief and all this has caused a delay of 494 days.

3. After hearing learned counsel, this Court does not find any merit in the application. Though application is supported by Advocate of the appellant, but neither the name of the Clerk to the counsel has been disclosed, who had put the file of this case in another brief, nor affidavit of any such clerk of the counsel has been placed on record.

4. As such, finding no justification to condone the long delay of 494 days in re-filing the appeal, the application is hereby rejected.

**RSA-1168-2020 (O&M)**

Although, the present appeal deserves to be dismissed being barred by limitation on account of the dismissal of *CM-3639-C-2020*, but even if the appeal is considered on merits, it is found to have no substance.

2. The suit was filed by three plaintiffs seeking declaration with consequential relief of permanent injunction qua the property in dispute. However, after dismissal of the suit and then the appeal, the present Regular Second Appeal has been filed only by one of the plaintiffs namely Ishwar, assailing the concurrent findings of the Courts below.

3. In order to avoid confusion, parties shall be referred as per their status before the trial Court.

4. Subject matter of the dispute is house measuring 111 sq. yards situated at K.D. Nagar, Gali No.2, Ganaur, detailed in para No.1 of the plaint. Said house was owned by Chandgi Ram, having purchased it by virtue of sale deed dated 18.10.1955. Said Chandgi Ram expired on 26.05.2012. Chandgi Ram had three sons namely, Ishwar (*plaintiff No.1*), Om Parkash (*proforma defendant No.3*) and Nand Kishore; besides a daughter Lachmi (*plaintiff No.2*). Chandgi Ram also left behind his widow namely Sarbati (*plaintiff No.3*). One of the sons of Chandgi Ram namely, Nand Kishore had expired, leaving behind his two sons Sonu and Munish (*defendants No.1 & 2*) as his legal heirs.

5.1 One of the sons of Chandgi Ram namely Ishwar along with daughter lachmi & widow Sarbati brought the suit against defendants No.1 & 2 i.e., sons of Nand Kishore claiming that during his lifetime in the year 1987, Chandgi Ram had partitioned the suit property amongst his legal heirs and that portion shown with green colour in the enclosed site plan had come to the share of plaintiffs. The portions, which had allegedly come to the shares of defendant No.3 and Nand Kishore were also shown in the site plan and it was claimed that ever-since then, plaintiffs and other parties were enjoying their respective portions. Plaintiffs alleged further that as defendants No.1 & 2 started negotiating to sell the suit property, so enquiries were made, which

revealed that defendants No.1 & 2 had allegedly got executed a Will dated 05.07.2010 in their favour from Chandgi Ram.

5.2 Said Will was assailed by the plaintiffs to be null, illegal and void being the result of fraud and misrepresentation. According to the plaintiffs, scuffle had taken place between plaintiffs and defendants No.1 & 2 on 04.07.2010 wherein injuries were inflicted on the person of plaintiff No.1 and that with the intervention of Chandgi Ram, the elder of the family, the matter was patched up and that on the pretext of getting some affidavit typed, the mother of defendants No.1 & 2 visited Tehsil compound along with Chandgi Ram and instead of getting prepared the affidavit and other papers, obtained the signature of Chandgi Ram on the Will. Plaintiffs alleged that Chandgi Ram was an illiterate and simpleton person and had no reason to deprive the plaintiffs from their right to succeed his estate and otherwise also, the Will was surrounded by suspicious circumstances and so, not binding on the rights of the plaintiffs.

5.3 With these averments, decree for declaration along with consequential relief of perpetual injunction was claimed.

6. Defendants No.1 & 2 contested the suit. Apart from raising some preliminary objections, they denied alleged family settlement in 1987. According to them, a valid Will dated 05.07.2010 was executed by Chandgi Ram in their favour, which was got registered and that they were exclusive owner in possession of the suit property. They denied the allegation of the plaintiffs to the effect that Will was outcome of any fraud played upon Chandgi Ram or that Will was surrounded by any suspicious circumstances. At the same time, these defendants also claimed that plaintiff No.1 was a licensee in possession on the disputed portion and that said license had been terminated. These defendants also preferred a counter-claim seeking decree for mandatory injunction for directing plaintiff No.1 to vacate the disputed portion and handover its possession to them.

7. Plaintiffs filed reply to the counter-claim and opposed the same.

8. Necessary issues were framed. Evidence produced by the parties was taken on record.

9. Trial Court found that Will dated 05.07.2010 was proved to have been validly and legally executed by Chandgi Ram in favour of defendants No.1 & 2 and that registration thereof added to its credibility and further that plaintiffs had failed to substantiate their allegation of any fraud. It was further found that though defendants No.1 & 2 had claimed mandatory injunction for directing plaintiff No.1 to vacate the suit property, but it had been admitted during evidence that plaintiff No.1 was no longer residing in the suit property and as such, no decree for mandatory injunction was required to be passed. The suit was accordingly dismissed and the counter-claim of the defendants No.1 & 2 was decreed by way of the judgment dated 05.02.2016.

10. No appeal was filed against decreeing of the counter-claim of defendants No.1 & 2 by any of the plaintiffs. However, one of the plaintiffs namely, Ishwar assailed the judgment of the trial Court against dismissal of the suit. First Appellate Court did not find merit in the appeal. However, it observed that since plaintiff No.1 was no longer in possession of the suit property, so there was no need to decree the counter-claim of defendants for issuance of the mandatory injunction. Appeal was accordingly dismissed by way of the judgment dated 13.04.2018.

11. Assailing the aforesaid concurrent findings against the plaintiffs, it is argued by learned counsel for the plaintiff-appellant that Courts below have failed to appreciate that Will propounded by defendants No.1 & 2-respondents was surrounded by suspicious circumstances, inasmuch as there was no reason for testator Chandgi Ram to ignore his other legal heirs; that Sher Singh, who had brought the Will as claimed by the witnesses, was not examined; that as per the statement of the attesting witness, Chandgi Ram was not in proper mental condition at the time of executing the Will and therefore, the Will was required to be ignored. With these submissions, prayer is made by learned counsel to set aside the judgments and decrees passed by the Courts below and to decree the suit of the plaintiffs.

12. Having considered submissions of learned counsel for the appellant and having gone through the paper-book, this Court does not find any merit in the appeal.

13. 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, apart from Section 68 of the Evidence Act.

14. The conjoint reading of the above provisions makes it 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.

15. In the present case, as has been found by the Courts below, in order to prove the execution of the Will dated 05.07.2010 (Ex.D1), propounders i.e., defendants No.1 & 2 not only examined Ram Parsad Kaushik, Deed Writer as DW3, who had scribed the Will, but further examined one of the attesting witnesses namely. Ram Kumar Nambardar as DW1. Said DW1 testified in detail, the manner in which the testator had signed the Will in his presence after understanding the contents thereof and that he (DW1) had signed the Will as the witness in the presence of testator. It has further come in his testimony

that at the time of execution of the Will, Chandgi Ram was hale and hearty. Similarly, DW3 Ram Parsad Kaushik, Scribe of the Will, proved that he had read-over the contents of the Will to Chandgi Ram and after accepting the same to be correct and true, Chandgi Ram had affixed his mark on the same.

16. Learned counsel for the appellant has tried to discredit the testimony of DW1 by pointing out that in his cross-examination, he had stated that mental state of Chandgi Ram was not up to the mark. The said contention was also considered by the Courts below and has been rightly rejected. As per the own case of the plaintiffs, on 04.07.2010, i.e., only one day prior to the execution of the Will dated 05.07.2010, some dispute had taken place within the family and that Chandgi Ram being elder of the family had resolved the same, which clearly indicates that plaintiffs themselves admitted that Chandgi Ram was a capable person of normal prudence. Had it not been so, it could not have been possible for him to intervene and settle the dispute amongst his family members. Further in the pleadings, plaintiff simply stated that the Will was outcome of a fraud, as mother of defendants No.1 & 2 had obtained the signature of Chandgi Ram on the pretext of getting an affidavit attested. There is no evidence that Chandgi Ram was not having sound mind to execute the Will. Apart from this, no medical evidence, whatsoever, was produced by the plaintiffs to prove the allegation regarding the mental status of Chandgi Ram.

17. Further, plaintiffs utterly failed to produce any cogent evidence that Will in question was a result of fraud, inasmuch as none of the witnesses examined by the plaintiffs were present at the time of execution of the Will so as to prove that in what circumstances, the Will was executed. Rather, the Courts below have rightly observed that mere fact that Will in question is a registered document, enhanced its credibility.

18. As far as the contention of Id. Counsel that other legal heirs have been ignored by the testator is concerned, it is not disputed that property in dispute was self-acquired of Chandgi Ram. Will is executed to displace the natural succession. The beneficiaries to the Will in this case are sons of deceased son of Chandgi Ram. It is not unnatural for a person to bequeath his

property in favour of his grandsons, who are the sons of his deceased son, in preference to the other living children. As such, for this preference of the testator for his grandsons, the Will cannot be discarded.

19. No other point has been raised.

20. Consequent to the aforesaid discussion, it is held that there is no reason for this Court, calling for any interference in the well reasoned concurrent findings of facts as recorded by the Courts below by holding that the registered Will dated 05.07.2010 executed by Chandgi Ram in favour of respondents No.1 & 2 was duly proved on record by virtue of which they are the exclusive owner of the suit property. As it has been found by the Courts below that plaintiff No.1-appellant is no longer residing in the property in dispute, so he was rightly declined the decree of permanent injunction.

21. Learned First Appellate Court has also rightly observed that there was no requirement for the trial Court to issue a decree of mandatory injunction in the counter-claim of defendants No.1 & 2, having regard to the fact that plaintiff No.1 was no longer residing in the property in dispute.

22. Consequently, the present appeal is found to be devoid of any merit and as such, the same is hereby dismissed.

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

**12.05.2025**

*Vivek*

**(DEEPAK GUPTA)**  
**JUDGE**

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