



104 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-200-1994 (O&M)
Reserved on: 07.03.2025
Pronounced on: 21.03.2025

Jit Singh (Deceased) through
legal representatives

...Appellant

Vs.

Chanan Singh (Deceased) through
legal representatives

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rahul Sharma, Advocate
for the appellant.

Mr. Puneet Kumar Kansal, Advocate for
Mr. G.L. Bajaj, Advocate
for respondent No. 1(e).

Ms. Natasha Munjal, Advocate
for respondent-Gurcharan Singh.

ANIL KSHETARPAL, J.

1. **Brief facts:-**

1.1 The plaintiff assails the correctness of concurrent findings of fact arrived at by the Courts below while dismissing the plaintiff's suit for declaration that he is the sole owner of the suit land.

1.2 In order to comprehend the issues involved in the present case, relevant facts, in brief, are required to be noticed.

1.3 Sh. Duni Singh sacrificed his life for the nation in Indo-China war in 1962. In recognition of the martyrdom of Sh. Duni Singh, Smt. Pritam Kaur, his widow, was allotted the suit property in 1971. Ultimately, the conveyance deed was executed in favour of Smt. Pritam Kaur in 1976. The plaintiff- Sh.Jit



Singh is the brother of Smt. Pritam Kaur. She executed a Will on 08.02.1989 in favour of his brother-Sh. Jit Singh on 08.02.1989, whereas, she died on 03.04.1989. The plaintiff filed a suit for declaration that he is the sole owner of the property on the basis of Will dated 08.02.1989. Sh. Chanan Singh-defendant is father of Sh. Duni Singh. The Will is scribed by Sh. Parkash Singh and attested by Sh. Nishawar Singh, Sh. Sukhdev Singh and Sh. Piara Singh. The defendant denied that the plaintiff is Smt. Pritam Kaur's brother or had rendered any service to her. The execution of the Will was also denied. He also alleged that he never expelled Smt. Pritam Kaur from his house after the death of his son Sh. Duni Singh.

1.4 In order to prove the Will, the plaintiff examined Sh. Parkash Singh, Scribe and two attestting witnesses, namely, Sh. Nishawar Singh and Sh. Sukhdev Singh. Both the Courts held that execution of the Will is proved. However, the Courts have held that the Will is surrounded by the following suspicious circumstances:-

1. The spacing between the lines is unequal and the Will is not properly formatted.
2. The Will is not registered.
3. Absence of signatures/initials of Scibe or his name on the Will creates doubt about its genuineness.
4. The Will was executed at village Mallanwala, which is five kilometers away from village Fattewala, where Smt. Pritam Kaur was residing. If she could travel five kilometers she would have travelled 25 kilometers to



come to Ferozpur or 15 kilometers to come to Zira to get the Will registered.

5. The Will is wholly silent about actual legal heirs, namely, Smt. Pritam Kaur's father-in-law and does not give any reason for disinheriting him or her two other brothers.

2. Discussion & Analysis:-

2.1 Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book.

2.2 This Court has perused the scanned copy of the Will. The Will is scribed on the plain paper. It is scribed in *Gurmukhi* (Punjabi). From its perusal, it appears that the spacing between the lines is not unequal. It has been typed on a manual Punjabi typewriter. It is attested by three attesting witnesses, namely, Sh. Nishawar Singh, Sh. Sukhdev Singh and Sh. Piara Singh. After the recitals in the Will comes to an end, the date on which the Will was executed is typed with a single line space. However, that would not be sufficient to doubt the correctness of the Will, particularly, when it is proved that the executant was allotted the land in village Fattewala, where her brother-Sh. Jit Singh, the plaintiff, was already residing. It has come in evidence that she was residing with her brother, which is proved from the ration card. Her two other brothers have not challenged the correctness of the Will.

2.3 The second reason is also incorrect because the Courts below themselves have held that registration of the Will is not mandatory but optional.

2.4 The third reason assigned by the Courts below is also erroneous because absence of signatures/initials of Scribe or his name on the Will is not



sufficient to suspect the genuineness of the Will, particularly, when Sh. Parkash Singh has appeared in evidence and stated that he scribed the Will on the request of Smt. Pritam Kaur. Both the Courts below have not held that the Will is not typed by him. Sh. Parkash Singh while appearing in evidence has stated that he scribed the Will. Despite lengthy cross-examination, the credibility of his deposition could not be impeached.

2.5 The fourth reason is also not sustainable because the place at which the Will is to be executed depends upon the wishes of the executants. She chose to go to village Mallanwala, which is 05 kilometers away. All the attesting witnesses of the Will are residents of village Fattewala, where the land is situated and she was residing. It is not necessary that she must travel to Ferozepur or Zira, where the registration office exists if she has travelled to next village.

2.6 The last reason assigned by the Courts below is also erroneous because it has come in evidence that after the death of Sh. Duni Singh, she was turned out of the house by Sh. Darshan Singh, her father-in-law. There is no rebuttal to the aforesaid evidence. It is proved on record that after the death of Sh. Duni Singh, Smt. Pritam Kaur never resided with her father-in-law. Her two other brothers have not disputed the correctness of the Will. It is recited in the Will that the plaintiff-Sh. Jit Singh has been looking after her. He has been taking care of her medical expenses. The law does not require that the Will should explain the reason for not bequeathing the property to the natural heirs. In fact, the Will is executed only to divert the property from natural succession. In fact, this Court in **'Bogh Singh (Deceased) through LRs vs. Karnail Singh and others'**, RSA-2228-1992 decided on 08.02.2024 has held as under:-



“31. In cases of the Will, the Court is not required to impose its own perception. Unless and until, there is a genuine and substantial ground, which proves that the Will is surrounded by strong suspicious circumstances, the Court is not expected to interfere. Such suspicious circumstances should be confronted to the attesting witnesses or the scribe as the case may be to solicit his response. The alleged suspicious circumstances should not be based on figment of imagination. Unless a foundation is laid, which is corroborated by some evidence to prove that the Will is surrounded by suspicious circumstances, the Court should not interfere. The Will is a solemn document, which comes into effect after the death of the testator. The Court should try to honour the wishes of the testator unless the propounder fails to prove it or the testator did not execute it or there are some grounds on which are sufficient for the common man to believe that the testamentary disposition is not in accordance with the wishes of the testator/executor. While trying to analyze their credit worthiness in the context of being attesting witness in the solemn document. Their testimonies are required to be read in entirety. After passage of long time, human memory is not expected to recollect every small event in the exactly same manner. Some leverage in that account is required to be given to the attesting witnesses. Moreover, each individual has his own perceptions about the things/development/events which took place. In such circumstances, the oral evidence is required to be appreciated and critically analyzed. It has been noticed that the testamentary disposition are to be surrounded by suspicious circumstances in a very casual manner. This is not a correct approach. The Courts are not required to substitute its own opinion. They are expected to decide the cases on the basis of evidence before declaring



that the Will is surrounded by suspicious circumstances, the Court is required to sit on the chair of the executant and examine the circumstances.”

2.7 It is evident that the plaintiff is in possession of the property as held by the trial Court.

3. **Decision:-**

3.1 Keeping in view the aforesaid discussions, the judgments of the Courts below discarding the Will on the ground of suspicious circumstance, are not sustainable, hence, set aside. The suit filed by the plaintiff shall stand decreed.

3.2 Hence, the appeal is allowed.

3.3 All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

21.03.2025

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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No