

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-1125 of 1997 (O&M)

Piar Kaur (Deceased) through LRs

. . . . Appellants

Vs.

Kartar Kaur (Deceased) through LRs

. . . . Respondents

Reserved on : 19.03.2026

Pronounced on : 17.04.2026.

Pronounced Fully/Operative Part: Fully

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Argued by: - Mr. Baldev Raj Mahajan, Sr. Advocate with
Ms. Nikita Goel, Advocate
for the appellants.

Mr. Rakesh Gupta, Advocate
For the respondents.

DEEPAK GUPTA, J.

The present appeal has been preferred by the defendant against the concurrent findings recorded by both the Courts below, whereby the suit for declaration filed by the plaintiff–Smt. Kartar Kaur was decreed by the learned trial Court vide judgment & decree dated 03.10.1991, and the appeal preferred by the defendant was dismissed by the learned First Appellate Court on 07.01.1997.

2. For the sake of clarity, the parties are referred to as per their status before the trial Court. Trial Court record, available on DMS, has been perused.

3. The dispute relates to land measuring 138 kanal 7 marla situated in the revenue estate of village Ratta Khera Lukman, Tehsil Guhla, District Kurukshetra, which was owned by Smt. Labh Kaur, who died on 25.09.1982



leaving behind her two daughters, namely the plaintiff and the defendant, who are thus real sisters.

4.1 The case set up by the plaintiff is that after her marriage, she along with her husband started residing with her mother, who had no male issue, and both of them used to serve her and cultivate the suit land. It is pleaded that on account of love and affection and in recognition of the services rendered, Smt. Labh Kaur executed an unregistered will dated 30.03.1982 in favour of the plaintiff with respect to her entire estate. On the strength of the said will, the plaintiff claimed herself to be the exclusive owner in possession of the suit land.

4.2 However, after the death of Smt. Labh Kaur, mutation No. 530 dated 05.12.1983 came to be sanctioned in favour of both the sisters. The plaintiff challenged the said mutation before the revenue authorities, but the matter was relegated to the Civil Court on the ground that complicated questions regarding the validity of the Will were involved. In the meantime, the mutation in favour of both the parties continued to hold the field. It is in these circumstances that the plaintiff instituted the present suit seeking a declaration to the effect that she is the exclusive owner in possession of the suit land on the basis of the Will and that the mutation sanctioned in favour of both the parties is illegal and not binding upon her rights.

5. The defendant contested the suit by denying the execution and validity of the alleged Will and asserting that the same was forged and fabricated. It was pleaded that upon the death of Smt. Labh Kaur, both the daughters succeeded to the estate in equal shares by way of natural succession and that the mutation sanctioned in their favour was legal and valid.

6. On the basis of the pleadings, the trial Court framed necessary issues and the parties led evidence in support of their respective stands. Upon appreciation of the evidence on record, the learned trial Court came to the conclusion that the Will dated 30.03.1982 stood duly proved. The attesting



witnesses as well as the deed writer supported the execution of the Will, and their testimonies remained intact in cross-examination. The trial Court further found that the plaintiff and her husband had been residing with the deceased and were serving her, and that the husband of the plaintiff was in cultivating possession of the suit land during the lifetime of Smt. Labh Kaur. The discrepancies pointed out by the defendant were held to be minor and not sufficient to discard the otherwise reliable evidence. Accordingly, the suit was decreed.

7. The First Appellate Court, on a re-appraisal of the entire evidence, concurred with the findings recorded by the trial Court and dismissed the appeal filed by the defendant.

8.1 Assailing the aforesaid concurrent findings recorded by both the Courts below, learned senior counsel appearing on behalf of the appellant-defendant has vehemently contended that the alleged Will dated 30.03.1982 is surrounded by grave and unexplained suspicious circumstances, which have been completely overlooked by the Courts below.

8.2 It is argued that the testatrix, Smt. Labh Kaur, was an aged illiterate lady of about 80–85 years and a resident of village Ratta Khera Lukman, Tehsil Guhla. However, the Will is alleged to have been executed at Samana (Punjab), despite the availability of deed writers as well as registration facilities at Guhla itself. No explanation has been furnished as to why the testatrix would travel to another town for execution of an unregistered Will. It is further contended that although she remained alive for about six months after the alleged execution, the Will was never got registered, which adds to the suspicious nature of the document.

8.3 Learned senior counsel has further submitted that it is highly improbable that an elderly rustic lady would travel alone to Samana and stay there overnight for the purpose of execution of a Will, particularly when she was residing with the plaintiff. This circumstance becomes more doubtful in



view of the testimony of the attesting witness Dalip Singh, who stated that the testatrix had come to Samana one day prior to execution of the Will and was alone.

8.4 It is next contended that the circumstances regarding discovery of the Will are wholly unnatural and inconsistent. The plaintiff has taken the stand before revenue authorities that she came to know about the Will nearly one year after the death of the testatrix and that the same was found amongst discarded papers. Such a version, according to the learned counsel, is inherently improbable, as a document of such importance would not ordinarily be kept in such a casual manner.

8.5 Learned counsel has also pointed out material contradictions between the statements of the plaintiff and her husband. While the plaintiff claimed that she came to know about the Will after about one year, her husband stated that the Will was discovered within 10–15 days of the death of the testatrix and was taken to the Patwari shortly thereafter. This inconsistency, it is argued, goes to the root of the matter.

8.6 It is further submitted that despite the alleged existence of the Will, no steps were taken by the plaintiff to get mutation sanctioned in her favour. On the contrary, it was the defendant, who approached the revenue authorities and got mutation entered in favour of both sisters after a lapse of more than one year. This conduct is wholly inconsistent with the normal course of human behaviour and casts serious doubt on the genuineness of the Will.

8.7 Learned senior counsel has also drawn attention to discrepancies in the testimony of the attesting witnesses, particularly regarding the age of the testatrix. One of the witnesses stated her age to be around 60 years, whereas the record indicates that she was about 80–85 years old. Such a material discrepancy, according to the learned counsel, renders the testimony unreliable.



8.8 The principal submission, however, relates to the thumb impressions on the Will. It is argued that the scribe as well as the attesting witnesses categorically deposed that the testatrix had affixed her right thumb impression on the Will as well as on the register of the scribe. However, the expert evidence clearly establishes that the thumb impressions on the Will are of the left hand. This contradiction, it is contended, strikes at the root of the plaintiff's case and creates serious doubt about the authenticity of the document.

8.9 It is further argued that no effort was made by the plaintiff to compare the thumb impressions on the Will with any admitted thumb impressions of the testatrix. The comparison was confined only to the register of the scribe, which cannot conclusively establish that the thumb impressions are those of Smt. Labh Kaur. It is thus contended that the possibility of impersonation or fabrication cannot be ruled out.

8.10 In support of the aforesaid submissions, reliance has been placed upon ***Prithi Singh vs. Saran Singh and others, 2006(4) RCR (Civil) 66***, wherein it has been held that in rural practice, males ordinarily affix left thumb impressions, whereas females affix right thumb impressions, and deviation from such practice, if unexplained, constitutes a suspicious circumstance. Similar reliance has been placed on ***Bishan Singh (dead) through LRs vs. Saran Singh and others, 2006(4) RCR (Civil) 226***; ***Balbir Kaur @ Balvir Kaur vs. Kewal Singh and others, 2011(5) RCR (Civil) 850***; ***Smt. Harbans Kaur vs. Anoop Singh and another, 1991 (1) Shimla Law Journal 217***; and ***M/s Ambition Poultry Farm vs. Jagir Kaur and others, 2018(4) PLR 729***, to contend that failure to explain such deviation renders the Will doubtful and unworthy of reliance.

8.11 On the strength of these submissions, it is prayed that the judgments and decrees passed by the Courts below be set aside and it be held that both daughters are entitled to inherit the estate of Smt. Labh Kaur in equal shares by way of natural succession.



9.1 *Per contra*, learned counsel appearing on behalf of the respondent–plaintiff has supported the concurrent findings recorded by the Courts below and contended that the Will stands duly proved in accordance with law. It is submitted that both the attesting witnesses as well as the scribe have supported the execution of the Will and their testimonies inspire confidence.

9.2 It is further argued that the mere fact that the thumb impressions are of the left hand would not render the Will invalid, particularly in rural settings where such distinctions are not strictly adhered to. It is contended that minor discrepancies or irregularities cannot outweigh the otherwise cogent evidence led by the plaintiff.

9.3 Learned counsel thus submits that the concurrent findings of fact recorded by the Courts below are based on proper appreciation of evidence and do not call for interference in second appeal.

10. Having heard learned counsel for the parties and upon perusal of the record, the following substantial question arises for consideration in the present appeal:

- Whether the Will dated 30.03.1982 propounded by the plaintiff stands duly proved in accordance with law, and whether the concurrent findings recorded by the Courts below suffer from perversity on account of ignoring material suspicious circumstances surrounding the execution of the Will?

11. The present appeal arises out of concurrent findings of fact recorded by both the Courts below. It is trite that the jurisdiction of this Court under Section 100 of the Code of Civil Procedure is confined to substantial questions of law. However, it is equally well settled that where the findings recorded by the Courts below are vitiated on account of misreading of evidence, non-consideration of material evidence, or are otherwise perverse, this Court would be justified in interfering with such findings.



12. In the present case, the controversy revolves around the validity and due execution of the Will dated 30.03.1982 allegedly executed by Smt. Labh Kaur in favour of the plaintiff. The law relating to proof of Wills is no longer res integra. A Will is required to be proved in terms of Section 63 of the Indian Succession Act, 1925 read with Section 68 of the Indian Evidence Act, 1872. However, mere proof of execution in a mechanical manner is not sufficient. Where suspicious circumstances surround the execution of the Will, the onus lies heavily upon the propounder to remove such suspicion and to satisfy the conscience of the Court that the document truly represents the last testament of the testator.

13. In the case at hand, several circumstances emerge from the record which, in the considered opinion of this Court, create serious doubt regarding the genuineness of the Will.

14. The first circumstance pertains to the place of execution of the Will. The testatrix was an aged lady of about 80–85 years, residing in village Ratta Khera Lukman (Haryana). The Will is alleged to have been executed at Samana (Punjab). No explanation whatsoever has been furnished as to why she would travel to another town for execution of the Will, particularly when facilities of deed writers and registration were admittedly available at Guhla itself. This unexplained circumstance assumes significance in view of the age and condition of the testatrix.

15. The second circumstance relates to the conduct of the plaintiff in relation to the Will. The plaintiff has taken the stand before revenue authorities that she came to know about the Will nearly one year after the death of the testatrix and that it was found amongst discarded papers. Before court, she says that she found Will from the trunk of her mother. Such a version does not inspire confidence. A document of such importance would ordinarily be preserved with due care.



16. Moreover, there are material contradictions between the statements of the plaintiff and her husband regarding the discovery of the Will, which further weaken the case set up by the plaintiff. While the plaintiff (PW-2) stated that she came to know about the Will nearly one year after the death of Smt. Labh Kaur, her husband, Subheg Singh, deposed that the Will was discovered within 10–15 days of the death and was taken to the Patwari shortly thereafter. This inconsistency casts serious doubt on the genuineness of the Will.

17. Equally significant is the conduct of the plaintiff in not taking any steps to get mutation sanctioned in her favour on the basis of the Will. On the contrary, it was the defendant who got the mutation entered in favour of both the sisters, more than one year & 3 months of death of Labh Kaur. If the Will had indeed been in existence and within the knowledge of the plaintiff, she would have taken immediate steps to assert her rights. The inaction on her part is a circumstance, which cannot be lightly ignored.

18. The evidence of the attesting witnesses also does not inspire full confidence. The version of attesting witness - PW8 Dalip Singh that the testatrix, at such an advanced age, travelled alone to Samana and stayed overnight for execution of the Will, appears unnatural and improbable. Further, discrepancies regarding the age of the testatrix, as deposed by the witnesses, cast doubt on their credibility.

19. The most significant circumstance, however, relates to the thumb impressions on the Will. The attesting witnesses and the scribe have consistently stated that the testatrix affixed her right thumb impression. However, the expert evidence on record indicates that the thumb impressions on the Will are of the left hand. This contradiction is not a trivial discrepancy but strikes at the very root of the plaintiff's case.

20. Normally in rural areas, males ordinarily affix left thumb impressions, whereas females affix right thumb impressions. This convention



aids in verification and comparison with admitted thumb impressions. Any unexplained deviation from this practice raises suspicion, as it may be used to avoid identification and facilitate fabrication. Such deviation can be accepted only if justified by valid reasons, such as physical disability.

21. It is also noteworthy that the plaintiff did not take any steps to get the thumb impressions on the Will compared with any admitted thumb impressions of the testatrix. The comparison relied upon is only with the register of the scribe, which cannot conclusively establish that the thumb impressions on the Will are those of Smt. Labh Kaur. In the absence of such corroborative evidence, the possibility of fabrication or impersonation cannot be ruled out.

22. The Courts below have brushed aside these circumstances by terming them as minor discrepancies. However, in the considered opinion of this Court, the aforesaid circumstances are not minor in nature but go to the root of the matter and create a legitimate suspicion regarding the execution of the Will.

23. The law is well settled that where suspicious circumstances exist, the burden on the propounder of the Will becomes heavier. The propounder is required to remove all such suspicious circumstances by leading cogent and convincing evidence. In the present case, the plaintiff has failed to discharge this burden.

24. The issue relating to thumb impressions assumes particular significance. Judicial precedents have consistently held that deviation from the normal practice regarding thumb impressions, if unexplained, constitutes a suspicious circumstance. In the present case, no explanation has been furnished as to why the alleged testatrix affixed left thumb impressions when, as per the consistent testimony of the witnesses, she had affixed right thumb impressions. This contradiction further deepens the suspicion surrounding the Will.



25. In view of the cumulative effect of the aforesaid circumstances, this Court is of the considered opinion that the Will propounded by the plaintiff cannot be said to have been proved in accordance with law. The findings recorded by the Courts below, in ignoring these material aspects, suffer from perversity and are liable to be set aside.

26. Consequently, the substantial question of law is answered in favour of the appellant–defendant.

27. The present appeal is allowed. The judgments and decrees passed by the learned trial Court dated 03.10.1991 and the learned First Appellate Court dated 07.01.1997 are hereby set aside. The suit filed by the plaintiff stands dismissed. It is held that upon the death of Smt. Labh Kaur, both the plaintiff and the defendant, being her daughters, succeeded to her estate in equal shares by way of natural succession. Pending applications, if any, shall also stand disposed of.

(DEEPAK GUPTA)
JUDGE

17.04.2026

Jiten/Neetika

Whether Speaking/reasoned

Yes

Whether reportable

No

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