IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-1391-1990 (O&M)

Amarjit Singh …Appellant

Versus

Hardeep Singh (Deceased) through LRs and others …Respondents

1.	The date when the judgment is reserved	February 10, 2026
2.	The date when the judgment is pronounced	April 28, 2026
3.	The date when the judgment is uploaded on the website	April 28, 2026
4.	Whether only operative part of the judgment is pronounced or whether the full judgment is pronounced	Full
5.	The delay, if any, of the pronouncement of full judgment, and reasons thereof	Not applicable

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Punit Jindal, Senior Advocate with
Mr. Rohit Sharma, Advocate
for the appellant.

Mr. G. S. Punia, Senior Advocate with
Ms. Harveen Kaur, Advocate and
Ms. Manleen Kaur, Advocate
for respondents.1 and 2.

TRIBHUVAN DAHIYA, J.

This is defendant's Regular Second Appeal against the judgment passed by learned Sub Judge first Class, Malerkotla, dated 20.04.1982, and judgment and decree passed in first appeal by learned Additional District Judge, Sangrur, dated 22.03.1990. The trial Court decreed the respondents'/plaintiffs' suit for declaration and possession, holding them to be the owners of the agricultural land measuring 52 bighas 8 biswas and the house detailed in the headnote of the plaint; they were also held entitled to possession of the land measuring 19 bighas 11 biswas comprised in khasra no.148. Plaintiff Mukhinder Singh was further held to be the owner of tractor no. PUV 5570. And appellant/defendant no.1 Amarjit Singh was restrained by a decree of permanent injunction not to sell, mortgage, alienate or dispose of any portion

of the suit property in any manner. The appeal against the decree was dismissed by the lower Appellate Court.

2. As per the facts on record, in brief, the respondents/ plaintiffs and appellant/defendant no.1 are sons of Hira Singh; defendants no.2 and 3 are the daughters of Hira Singh, who expired on 03.02.1980. At the time of his death, he was owner in possession of the suit property. He had executed a Will on 06.10.1975 bequeathing one tractor no. PUV 5570 to respondent/plaintiff no.2. As Hira Singh was not on good terms with his son, appellant/defendant no.1, the former executed the Will in question, dated 14.11.1979, at Moga, bequeathing all his properties, movable as well as immovable, in favour of respondents/plaintiffs in equal shares to the exclusion of the appellant/defendant no.1. It is also a fact on record that earlier Hira Singh had gifted away one-third share of his land measuring 188 bighas 3 biswas to his son, appellant/defendant no.1, and that during the former's lifetime the latter filed a civil suit no.254 dated 28.07.1979, Ex P-3, for injunction against Hira Singh and the respondents/plaintiffs herein restraining them from alienating the suit land measuring 52 bighas and 8 biswas. The prayer for interim injunction in that suit was declined by the trial Court on 05.11.1979, Ex.P-54, and appeal against the same was also dismissed vide order dated 22.01.1980, Ex.P-51. Further, it is the respondents'/plaintiffs' case that after the death of Hira Singh, the appellant/defendant no.1, in collusion with the village Patwari, got khasra Girdawari of 19 bighas 11 biswas entered in his name. In these circumstances, the suit in question was filed.

2.1. Upon notice, defendants no.2 and 3, daughters of Hira Singh filed a separate written statement and admitted the correctness of both the Wills

aforementioned. They also stated that the plaintiffs had rendered services to their father till his death, and they gave up their share in the suit property.

2.2 Appellant/defendant no.1 admitted the relationship between the parties by stating that the land in question was a coparcenary property in which he as well as his brothers and father were equal share holders. His father Hira Singh had migrated from Pakistan and owned land in four villages there, which had been inherited by him from his father, Arjan Singh. This land was sold by Hira Singh after migrating to India and he purchased the suit land with those proceeds. The Wills in question were disputed by him, and it was also stated that the land in dispute being Joint Hindu Family property, Hira Singh was not entitled to execute any Will concerning the same.

2.3 On the pleadings of the parties, following issues were framed:

1. Whether Hira Singh deceased executed a will on 6.10.75 in favour of plaintiff No.2? OPP
2. Whether Hira Singh deceased executed a valid will dated 14.11.79 in favour of plaintiffs? OPP
3. Whether the property in dispute is ancestral? OPD
4. Whether the present suit is not maintainable? OPD
5. Relief.

2.4 While decreeing the suit, the trial Court decided issues no.1 and 2 in plaintiffs' favour and issues no. 3 and 4 against defendant no.1. The appellant/defendant preferred first appeal against the judgment and decree of the trial Court, which was dismissed by the lower Appellate Court as aforementioned.

3. Learned senior counsel for the appellant/defendant no.1 has questioned the findings of the Courts below only on issues no.2 and 3. *Firstly,* he has contended that the property in dispute in the hands of Hira Singh was ancestral, and the appellant was therefore entitled to one-fourth share along with

his brothers/respondents/plaintiffs and father. In this regard, he has relied upon *jamabandis* of the suit land on record which show that the land in Pakistan was owned by Hira Singh with his five brothers in equal shares; this would make the property ancestral in nature. The suit property was allotted to Hira Singh in lieu of his properties in Pakistan. And since the same were ancestral in nature, the allotted land would also carry the same character which makes the appellant's exclusion therefrom illegal. In support of his contention, he has relied upon the Supreme Court judgment in *Angadi Chandranna* v. *Shankar and others,* 2025 SCC Online SC 877. *Secondly,* it is contended that the registered Will, dated 14.11.1979, is shrouded in suspicious circumstances and cannot be a basis to grant the declaration sought. At the time of execution of the Will, Hira Singh was eighty-two years of age and died merely two months thereafter. It shows he was not in sound state of mind at that time. The execution and registration of the Will was actually managed by his relative, who was working as Sub-registrar in the Tehsil at Moga when the Will was registered. Otherwise, there was no reason for Hira Singh to travel to Moga for execution and registration of the Will from his ordinary place of residence in Village Mahorana, Tehsil Malerkotla, where the Will could easily have been got registered. Besides, attesting witnesses of the Will, Partap Singh (PW-1), was father-in-law of respondent/plaintiff no.2, who was a former Sub-registrar at Moga. And the second witness was Bhupinder Singh (PW-3), brother-in-law of first attesting witness, Partap Singh. No co-villager from Mahorana accompanied the testator/Hira Singh to Moga. The witnesses being connected to the beneficiaries is another suspicious circumstance. Besides, there is no mention about the appellant/defendant no.1 in the Will in question; it does not state for what reason he is being excluded altogether. Therefore, such a

document could not have been relied upon by the Courts below while decreeing the suit. In support of the contention, he has relied upon a Supreme Court judgment in *Gurdial Singh (Dead) through Lr* v. *Jagir Kaur (Dead) and another*, 2025 SCC OnLine SC 1466.

4. *Per contra,* learned senior counsel for the respondents/plaintiffs contended that the necessary ingredients to establish that the suit property is ancestral in nature, have not been proved on record. Merely because the testator, Hira Singh, owned properties in Pakistan in equal share with his brothers, is not sufficient to establish the nature of the suit property as ancestral which undisputedly was allotted to him after the partition. Further, he contended that there are no suspicious circumstances surrounding the execution of the Will in question. A reference has been made to paragraph 11 of the plaint where the fact of bequeathing the property in execution of the Will, dated 14.11.1979, has been mentioned. There is specific averment that Hira Singh was in full senses and had sound disposing mind at that time. He read all pros and cons before executing the Will, signed it and got it attested with marginal witnesses in his presence, and got it registered also before the Sub-registrar, Moga. This was his last Will. There is no specific denial to these averments in the written statement filed by the appellant/defendant no.1, and his only reply to paragraph 11 is, “not admitted”.

4.1 He also contended that appellant/defendant no.1 was not on good terms with Hira Singh, and the fact stands explained in paragraph 4 of the civil suit, Ex-P-3, filed by him against Hira Singh for restraining the latter from alienating the suit land. Still further, he contended that another reason for not following the natural line of succession in bequeathing the suit property finds mention in the Will, Ex.P-1, itself that sufficient land had already been given to

his sons. And as per the facts admitted on record by the appellant, his father gave 188 bighas 3 biswas of land to his three sons, including him, in equal shares, and that he was issueless. Regarding the medical condition of Hira Singh, it has been contended that he died of heart attack and there is no evidence on record to establish that he was suffering from any disease which was the cause of death. PW-6 Captain Gurbaksh Singh, son-in-law of Hira Singh, testified that before death the latter was with him. The fact has been corroborated by the appellant/DW-1 as well who admitted that Hira Singh was with his daughter/Mahinder Kaur prior to execution of the Will. Thus, there are no suspicious circumstances and there is no basis to disbelieve the Will. In support of the contention, he has relied upon the judgments rendered by this Court in *Sobha Singh* v. *Mst. Gurbarhshi and others*, 1960 PLR 440, *Rabindra Nath Mukherjee* v. *Panchanan Banerjee (dead) by LRs and others*, (1995) 4 SCC 459 and *Smt. Sushila Devi* v. *Pandit Krishna Kumar Missir and others*, (1971) 3 SCC 146.

5. Submission made by learned counsel for the parties have been considered.

6. The first issue arises for consideration is whether the property in dispute bequeathed by Hira Singh by way of a registered Will dated 14.11.1979 in favour of respondents/plaintiffs is ancestral in nature. It remains well settled that a property cannot be termed ancestral merely on the ground that it had been held in equal shares at one point of time. It has to be established as a matter of fact that the land devolved upon the testator by way of inheritance from generation to generation, at least for three generations. The *jamabandis* on record demonstrate that the suit land was held by Hira Singh with his brothers in Pakistan prior to the country's partition, but there is no document indicating

that it had devolved upon him by inheritance. Therefore, sufficient evidence to prove the ancestral nature of land is not there. On this aspect it is relevant to refer to the following observations by the Division Bench in *Sobha Singh* case (*supra*) where a similar argument was discounted by this Court:

> 2. …It has been contended by the counsel for the appellant that the equality of shares of the branches as shown in the jamabandi of the year 1913-14 coupled with the joint khata held by the branches in the year 1890 lead to an irresistible inference that the property is ancestral. It is not possible for us to accede to this argument. For one thing, the khata which was in joint possession consists of a very small proportion of the land which is now in dispute. Moreover, there is no indication of any kind that at the time of the first settlement the ancestors of the parties held land in equal shares and this alone could have given rise to the presumption that it was held by the common ancestor Dewan Singh. The learned counsel has placed reliance on a Division Bench judgment of the Lahore High Court in *Mt. Maryan Bibi v. Ghulam Muhomad*, AIR 1924 Lahore 175, where it was held that when the property of the plaintiffs was just equal to that of the deceased and the name of the common ancestor was expressly recorded in genealogical trees prepared at different settlements and one of the khata was still joint, the presumption was that it was ancestral. The ruling of this decision was based on *Jiwan Singh v. Har Kaur*, 41 P.R. 1914: 51 P.L.R. 1914, an authority which was subsequently dissented from by a Division Bench (Campbell and Tek Chand, JJ.) in *Chanda Singh v. Mst. Banto*, ILR 8 Lahore 584: 28 P.L.R. 643. The ratio decidendi of Jiwan Singh's case (supra) that "the express mention of the common ancestor in the genealogical tree furnished a presumptive proof that the land originally belonged to him" is a proposition which can no longer he subscribed after the

> Privy Council decision in *Mt. Subhani v. Nawab*, AIR 1941 Privy Council 21: 43 P.L.R. 343, Rt. Hon'ble Mr. M.R. Jayakar, who delivered the judgment of the Board, approved the decision of the Division Bench of Campbell and Tek Chand. JJ. in Chanda Singh v. Mst. Banto (supra). At page 23, it was stated that "to establish the ancestral character of land it is not sufficient to show that the name of the common ancestor from whom the parties are descended was mentioned in the revenue pedigree. It should also be proved that the descendants of that common ancestor hold the land in ancestral shares and that the land occupied, at the time of the dispute, by the proprietors thereof had devolved upon them by inheritance. It is now settled law in the Punjab that the mere mention of the name of a person in the pedigree table as the common ancestor is no proof of the fact that every piece of land held by his descendants (howsoever low) was originally held by and descended from him in succession from generation to generation.

6.1 Additionally, it remains undisputed that the suit land was allotted to Hira Singh when he came to India after the partition. The assertion on behalf of the appellant is that he paid for this allotment by selling the land in Pakistan which would make the suit land ancestral, is too far fetched to be accepted as lawful. Firstly, as discussed herein before, the land in Pakistan in Hira Singh's name has not been established to be ancestral. Secondly, it is also not a case that the consideration for suit property was paid out of a joint family nucleus by Hira Singh. There is no evidence, in fact, that there was any such nucleus wherein sale proceeds of the said property in Pakistan were deposited. In the absence of such evidence, no benefit can be drawn from the judgment in *Angadi Chandranna* case (*supra*) which only holds, there is no presumption that a property belongs to the joint family merely because a joint Hindu family exists.

It is only when the person so asserting proves that there was a nucleus out of which a Joint Hindu Family property could have been acquired, there would be presumption of the property being joint. The onus will then shift to the person who claims it as self-acquired property to prove that he purchased it out of his own funds and not from the joint family nucleus that was available. The existence of nucleus is also required to be established as a matter of fact, and there cannot be any presumption about it.

7. The arguments by learned senior counsel to challenge the veracity of the Will are misconceived. Merely because Hira Singh was above eighty years of age or travelled from his village in Malerkotla to Moga, which was at a distance of about 88 kilometers, to get the Will executed and registered, that would not create any doubt about the Will. The reason for not getting the Will registered at Malerkotla stands explained by way of evidence on record that at the time of its execution Hira Singh was staying with one of his daughters and not at Malerkotla; testimony of PW-6 and DW-1 can be referred to in that regard. Besides, there is no evidence about his inability to execute the Will due to any disease etc. or otherwise; and his death due to heart attack some time later can also not be an indication of his inability at the relevant time. Further, even exclusion of one of the heirs/appellant/defendant no.1 from the property bequeathed, in itself cannot be a ground to question truthfulness of the Will which is a testament to bestow personal property at variance with the natural line of succession. Besides, in this case, there is evidence on record indicating the reasons why Hira Singh thought it appropriate to exclude the appellant from inheriting the property; *firstly,* he was in litigation with Hira Singh and had sought an injunction against the latter by filing a civil suit dated 28.07.1979, which was prior to execution of the Will; *secondly*, it has also been admitted by

the appellant that Hira Singh had already gifted 188 bighas 3 biswas land to his sons, including him, in equal shares. And it also finds mention in the Will that he had no issue. In this regard, a reference can be made to the judgment in *Smt. Sushila Devi* case (*supra*) holding that once execution of the Will is satisfactorily proved, its validity cannot be questioned on the ground that the testator has not bequeathed any property to one of his children. The reasons to consider a bequest unnatural have to be scrutinised keeping in view the test - satisfaction of a prudent mind. The Court's observations are as under:

> 5. Prima facie, the circumstance that no bequest was made to the appellant by the testator would make the will appear unnatural but if the execution of the will is satisfactorily proved, the fact that the testator had not bequeathed any property to one of his children cannot make the will invalid. If the bequest made in a will appears to be unnatural then the court has to scrutinise the evidence in support of the execution of the will with a greater degree of care than usual, because every person must be presumed to act in accordance with the normal human behaviour but there is no gainsaying the fact that some individuals do behave in an abnormal manner. Judges cannot impose their own standard of behaviour on those who execute wills. As observed by this Court in *M. Venkatachala Iyengar* v. *B. N. Thimmajamma*, (1951) 1 Supp 426 that 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 by Section 63 of the Indian Succession Act. Proof in either case cannot be mathematically precise and certain and so the test should be one of satisfaction of a prudent mind in such matters. The onus must be on the profounder and in absence of suspicious circumstances surrounding the execution of the will, proof of testamentary capacity and signature of the testator as

> required by law may be sufficient to discharge the onus. Where, however, there are suspicious circumstances the onus would be on the profounder to explain them to the satisfaction of the court before the will can be accepted as genuine.

7.1 Still further, the fact that the attesting witnesses are relatives of one of the plaintiffs/beneficiaries, is also not a suspicious circumstance *per se*, especially when the Will is duly registered and the testator's ability to bequeath is not in question. There is no mandate in law that the attesting witnesses have to be independent. And it cannot be ignored there is a tendency among the people in general to get their near ones, friends or relatives as witnesses in matters like execution of a Will bequeathing personal property. One of the reasons is the trust that can be reposed in them, as also their accessibility. It has also been laid down that in case of a registered Will, as in the instant case, which is read over to the testator by the Sub-registrar as per his certification, the witnesses being interested becomes inconsequential. Reference in this regard can be made to the following observations in *Rabindra Nath Mukherjee* case (*supra*):

> 6. Insofar as the third circumstance is concerned, we may first observe that witnesses in such documents verify whether the same had been executed voluntarily by the person concerned knowing its contents. In case where a will is registered and the Sub-registrar certifies that the same had been read over to the executor who, on doing so, admitted the contents, the fact that the witnesses to the document are interested loses significance. . . .

7.2 In addition, it cannot be lost sight of that the Will was duly registered, and specific averments with regard to it's registration, execution, testator being in sound state of mind, etc. were not even specifically denied by

the appellant in the written statement. Therefore, there is no reasonable basis to contend that there was any suspicious circumstance surrounding the Will.

8. Reliance placed by learned senior counsel for the appellant on *Gurdial Singh* case (*supra*) is misplaced since in that case the Will was termed suspicious on account of a host of circumstance, which included cryptic nature of the Will whereby the testator bequeathed his properties to his nephew, i.e., the appellant, and it being completely silent with regard to existence of his own wife and natural heir, i.e., the respondent. It had also come in evidence that the respondent therein was residing with the testator till the latter's death and there was nothing on record to establish that the relations between the couple were bitter. In collective assessment of all these circumstances, it was held that omission to mention the existence of his wife in the Will by the testator gave rise to serious doubt that execution by the testator was not with free will. No such circumstance exists in the instant case; rather, there is plenty of evidence to the contrary explaining the exclusion of the appellant/defendant no.1 from the registered Will.

9. In view of the discussion, there is no merit in the appeal and it stands dismissed.

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

(TRIBHUVAN DAHIYA)
JUDGE

28.04.2026
Mehak

Whether speaking/reasoned? *Yes/No*
Whether reportable? *Yes/No*