

**In the Court of Parinder Singh,
Additional District Judge, Amritsar.**

CNR No.
PBAS010073452017

Case No. CA/433/2017



Presented on : 01-07-2017

Registered on : 03-07-2017

Decided on : 08.07.2026.

Maninderjit Singh, aged 65 years, son of Partap Singh, R/o H.No. 843, Ram Singh Avenue, Tehsil and Distt. Amritsar.

....Appellant/plaintiff.

Versus.

1. Partap Singh son of Bukan Singh, since deceased through legal heir Sarabpreet Singh son of Harwinder Singh through attorney holder Harwinder Singh as impleaded vide order dated 13.10.2015;
2. Baldev Singh son of Partap Singh;
3. Harinder Singh son of Partap Singh, all residents of VPO Sultanwind, Patti Behniwal, Amritsar.
4. Sukhwinder Kaur wife of Tejinder Singh, resident of House No. 1563, Jandiala Guru, Tehsil and District Amritsar.
5. Ranbir Kaur wife of Anokh Singh, resident of VPO Kotla Doom, Near Ram Tirath Road, Tehsil Ajnala, District Amritsar.
6. Vijaya Bank, Branch Madan Mohan Malviya Road through its Senior Branch Manager.

..... Respondents/Defendants.

Appeal against the judgment and decree dated 06.04.2017 passed by the court of Ms. Rajbir Kaur, the then learned Civil Judge (Junior Division), Amritsar whereby the learned trial court has dismissed the suit of the plaintiff/appellant.

Present:- Sh. A.K. Vermani, Adv. counsel for appellant.
Sh. Maneesh Bajaj, Adv. Counsel for LR's. of respondent no. 1.
None for respondents no.2 to 5.
Sh. Vijayant Khanna, Advocate, Counsel for the respondent no.6.

JUDGMENT:

1. Instant appeal has been preferred by plaintiff/appellant against judgment and decree dated 16.04.2017 passed by the court of Ms. Rajbir Kaur, the then learned Civil Judge (Junior Division), Amritsar vide which suit of the plaintiff/appellant for declaration, mandatory injunction etc. was dismissed.

Pleadings of Plaintiff

2. Perusal of the record of learned trial court reveals that appellant/plaintiff had filed a suit for declaration etc. with the pleadings that Balbir Singh was exclusive owner of various lands situated in the area covered under New Amritsar Scheme. On acquisition of her land, compensation to the tune of Rs.1,15,00,000/- approximately was released to her and same was deposited in her account maintained with Punjab and Sind Bank. On account of some misunderstanding, said bank had got a false FIR No.88/1988 registered against the plaintiff and others with the allegations that the amount was got released by one Sukhraj Kaur by impersonating herself to be Balbir Kaur in connivance with plaintiff. During the investigation/trial of said case, learned court of Sh. Rajiv Kalra, the then Civil Judge (Jr. Divn.), Amritsar directed deposit of the entire amount in Vijaya Bank and same to be retained as such till disposal of the trial. As per directions of the court, said amount was converted into FDRs. During said trial, Balbir Kaur appeared as prosecution witness and gave statement that she had herself got the account opened and released the amount in question and no offence was committed. She also moved an application before the

court for transfer of said amount in the bank account of the plaintiff, clarifying that said amount was exclusively owned by plaintiff and her other relatives were having no right or interest in the same. Thus, she had made her son/plaintiff exclusive owner of said amount during her life time as she had already given sufficient properties to her other relatives/defendants. Said application must be termed as her last will with regard to said amount. Balbir Kaur unfortunately expired on 28.10.2008. After her death, plaintiff approached the defendants a number of times with a request to get the amount released in his favour but they did not pay any heed and thus, plaintiff knocked the door of court.

3. By getting his plaint amended, the plaintiff had also got incorporated that during the pendency of the suit, defendant no.6 Vijaya bank (newly added defendant) in collusion with defendant no.1 has released the amounts of FDRs to defendant no.1. Said act of the defendant no.6 is against its own pleadings given in earlier litigations and defendant no.1 is required to deposit the amount in question over which the plaintiff is having his exclusive right.

Pleadings of Defendants

4. In pursuance of notice, **defendants no.1 to 3** appeared and filed their common written statement taking legal objections that suit of the plaintiff is not legally maintainable; suit of the plaintiff is hopelessly time barred; the plaintiff has not approached the court with clean hands and he is having no cause of action to file present suit.

5. On merits, it has been explained that earlier also, the plaintiff had filed a suit for declaration with regard to the same amount against his

mother Balbir Kaur during her life time which was dismissed by the learned civil court. Thereafter, he filed a petition u/s 372 of Indian Succession Act claiming the same amount which was also dismissed by the learned civil court and now the plaintiff has filed the present suit with regard to the same amount. Balbir Kaur in sound disposing mind had executed a will dated 3.1.2006 in favour of defendant no.3 and on the basis of said will, after her death, her entire estate was inherited by said defendant. Defendant no.6 Vijaya Bank has rightly released the payment after verifying the relevant facts. Rest of the averments of the plaint have been formally denied and finally a prayer for dismissal of the suit has been made.

6. Defendants no.4 and 5 opted to file common written statement taking legal objections that plaintiff has not approached the court with clean hands; plaintiff is estopped by his own act and conduct from filing the present suit; plaintiff is having no cause of action and locus-standi to file present suit and his suit is hopelessly time barred.

7. On merits, it has been explained that plaintiff and defendants no.1 to 3 are colluding with each other. The amount which was received by Balbir Kaur was pertaining to ancestral property. Said property was inherited by her from her parents. During her life time, she was not on speaking terms with the plaintiff and defendant no.1 but was residing separately. She was also not having a sound disposing mind and had already disinherited the plaintiff from her estate by getting published news items dated 13.9.2008 in Spokesman Newspaper. The said property has been inherited by her children as per law except plaintiff who was disinherited by her during her life time. Accordingly, in the amount in question, defendants no.4 and 5 are having

1/5th share. On the basis of statement of Balbir Kaur, FIR No. 88/1988 was registered at P.S. Chheharta against the plaintiff and his associates as they tried to withdraw the amount in question by forging her signatures. In view of statement of Balbir Kaur given in the court, the plaintiff was acquitted by learned court of Magistrate. Rest of the averments of the plaint have been formally denied and finally a prayer for dismissal of the suit has been made.

8. Defendant no.6 opted to file separate written statement taking legal objections that suit of the plaintiff is not legally maintainable; the plaintiff has not approached the court with clean hands; the plaintiff is having no cause of action to file present suit and his suit has already become infructuous.

9. On merits, it has been explained that the amount with regard to which present suit has been filed, was withdrawn by defendant no.1 Partap Singh being nominee on the basis nomination made by Balbir Kaur during her lifetime in favor of defendant no.1 Partap Singh with regard to said amount. After her death, the amount was withdrawn by said defendant on different dates and no such amount is lying with the defendant no.6 bank. Rest of the averments of the plaint have been formally denied and finally a prayer for dismissal of the suit has been made.

Issues

10. The plaintiff opted to file replications to the written statement of **defendants no.1 to 3** and **that of respondents no. 4 and 5** reiterating the averments of the plaint and disputing the averments of written statements. From the pleadings of the parties following issues were framed:-

1. Whether the plaintiff is entitled to Declaration as prayed for? OPP.
2. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP.
3. Whether the plaintiff is entitled to mandatory injunction as prayed for? OPP.
4. Whether present suit is not legally maintainable in the present form and an abuse of process of law? OPD.
5. Whether the plaintiff has not come to the Court with clean hands and concealed the material facts? OPD.
6. Whether no cause of action arises to the present suit? OPD.
7. Relief.

Evidence of Plaintiff/appellant.

11. In order to prove his case, the plaintiff Maninderjit Singh, himself stepped into witness box as PW-1 and proved the material averments of his plaint by tendering his sworn in affidavit Ex.PW1/A. He has also placed on record following documents:-

1. General power of attorney dated 23.12.2005 Ex. P1,
2. Cheque bearing no. 898805 dated 28.07.2008 Ex. P2,
3. Cheque bearing no. 898806 dated 8.8.2008 Ex. P3,
4. Receipt dated 29.10.2008 Ex. P5,
5. Receipt dated 28.10.2008 Ex. P5,
6. Bank Passbook of Balbir Kaur Ex. P6,
7. Jamabandi for the year 1995-96 Ex. P7,
8. Newspaper cutting Ex. P8, Ex. P9 and Ex. P10,
9. Certified copy of order dated 17.12.2008 Ex. P11.

12. The plaintiff also opted to examine Jasbir Singh and Chanan Singh respectively as PW2 and PW3 who vide their respective sworn in affidavits Ex.PW2/A and Ex. PW3/A, deposed that Balbir Kaur mother of the plaintiff had got compensation of Rs.1,15,00,000/- approximately on acquisition of land which was exclusively owned by her. Said amount was deposited in Punjab and Sind Bank and due to some misunderstanding, said bank got registered a false FIR against the plaintiff and others. As per the orders of the court, said amount was deposited with defendant no.6 in the shape of FDRs. They further deposed that in the trial of said criminal case, Balbir Kaur got recorded her statement that no such offence has been committed and also moved an application for release of the amount in favour of plaintiff to which he was exclusively entitled. After the death of Balbir Kaur, the plaintiff approached the defendants for withdrawal of the amount but they did not pay any heed and defendant no.1 in connivance with defendant no.6 bank got said amount released.

13. Before closing the evidence, learned counsel for plaintiff placed on record certified copy of application dated 20.9.2004 Ex.P12, copy of order dated 20.9.2004 Ex.P13, copy of statement of Balbir Kaur Ex. P14, her death certificate Ex.P15 and copies of FDRs Ex.P16 and Ex.P17.

14. In rebuttal, plaintiff tendered documents Ex. PA to Ex. PY.

Evidence of defendants.

15. On the other hand, in order to rebut the evidence of plaintiff, defendant No.1 Partap Singh himself stepped into witness box as DW-1 and proved the material averments of the written statement by tendering his sworn in affidavit Ex. DW4/A. He has also placed on record copy of plaint

of suit titled as Pritam Singh Vs. Balbir Kaur Ex.D1, certified copy of judgment and decree dated 20.2.2007 Ex.D2 and Ex.D3, certified copy of grounds of appeal Ex.D4, certified copy of order dated 17.12.2008 Ex. D5, certified copy of order dated 5.2.2016 of dismissal of succession petition Ex. D6, death certificate of Balbir Kaur Ex.D7, certified copy of judgment dated 13.09.2012 Ex.D8 and relinquishment deed dated 8.6.2010 Ex.D9.

16. Defendants no.4 and 5 namely Sukhwinder Kaur and Ranbir Kaur stepped into the witness-box respectively as DW2 and DW3 and proved the material averments of their written statement by tendering their respective sworn in affidavits Ex. DW2/A and Ex. DW3/A.

17. Learned counsel for defendant no.6 before closing the evidence placed on record certified copies of nomination forms etc. Ex. DW1/6 to Ex. DW4/6.

Decision of Learned Trial Court

18. Appreciating the evidence on record and considering the rival submissions of learned counsel for the parties learned trial court vide impugned judgment dismissed the suit of the plaintiff for declaration, mandatory injunction etc.

19. Being aggrieved of said decree, the plaintiff has preferred present appeal and defendants No.1, 4 to 6 have opted to contest the same by appearing through counsel.

20. Rival submissions of learned Counsel for the parties have been heard.

Arguments of Appellant/plaintiff

21. Learned counsel for the appellant/plaintiff opened his arguments with the submission that Balbir Kaur owned some immovable property which was acquired by Amritsar Improvement Trust for development purposes. On acquisition of said land, she was given compensation to the tune of Rs.1,15,00,000/- approximately which was transferred in her account maintained with Punjab and Sind Bank. On account of some misunderstanding, said bank got registered a false FIR against appellant and others. However, the appellant who is the real son of Balbir Kaur was acquitted by the learned trial court and judgment of his acquittal was also affirmed by learned Sessions Court. In said case, one Sukhraj Kaur had impersonated herself as Balbir Kaur and for said criminal act, she was prosecuted and punished. As per the directions of learned court of Judicial Magistrate Ist Class with whom trial of said case was pending, the amount was transferred in respondent no.6 bank and same was ordered to be converted into FDRs. Balbir Kaur herself moved an application Ex. P12 for transferring said amount in the account of appellant but said application was not decided during her lifetime. As said document contained the wish of Balbir Kaur who expired intestate, said document must have been considered as her last testament but learned trial court discarded the same as it did not fulfill the requirements of Section 63 of the Indian Succession Act. Even in case the appellant was found not entitled to the entire amount, he was having share in said amount being one of the legal heirs of Balbir Kaur who died intestate. Though, the respondents No.1 to 3 propounded some will but said will not proved on record and thus, the appellant must have

been held entitled to 1/6th share of said amount but learned trial court failed to grant the relief to which appellant was entitled.

22. It has been further argued that respondent no.1 had earlier filed a suit for mandatory injunction for restraining the respondent no.6 from releasing the amount. In said suit, the respondent no.6 bank examined Mangat Ram officer as DW3 and as it is apparent from his statement recorded in said case Ex. PAG, it was nowhere disclosed that Balbir Kaur had made any such nomination during her life time. Even in the written statement filed in said case Ex.PB, respondent no.6 kept mum. Though the appellant had earlier filed an application for issuance of Succession certificate but his petition Ex.P5 was dismissed as complex question regarding validity of the will and title of the parties was involved. Due to said reason, the appellant had to knock the door of the court seeking the relief of declaration with regard to his title and for directing the respondent no.6 bank to release amount. However, after filing of the suit, respondent no.6 bank in connivance with respondent no.1 released those amounts to respondent no.1 despite the fact that litigation was pending and the bank had already given undertaking that said amount would be disposed/ transferred only in accordance with the orders of the court. In this regard, he also referred to the written statement filed by respondent no.6 in suit for mandatory injunction filed by respondent no.1 Ex.PA. On discovery of said fact, the appellant got his pleadings amended and sought the relief of mandatory injunction for directing the respondent no.1 to deposit the amount which he has got illegally withdrawn. Learned trial court wrongly placed reliance on the document tendered by respondent no.6 in the evidence of its

counsel. Those documents were not admissible in evidence as same were not proved in accordance with the provisions of Indian Evidence Act by examining the concerned official. Those documents are forged and fabricated which have been prepared by respondent no.1 in connivance with respondent no.6 bank. In order to further establish the connivance between respondents no.1 and 6, the appellant also collected certified copies of application moved by respondent no.6 bank for getting the original FDRs for the purpose of renewal and order passed by learned trial court on said application. By moving said application, respondent no.6 played fraud upon the court and after having got the original FDRs, it wrongly prepared the nomination in the name of respondent no.1 and did not return the original FDRs despite there being directions in the order dated 04.02.2009 for return of the FDRs. With these submissions, learned counsel for the appellant concluded his arguments and finally prayed for acceptance of the appeal.

Arguments of Respondents/defendants

23. In reply, learned counsel for the respondents no.1 to 3 argued that a false suit was filed by the appellant with the motive of harassing and humiliating the respondents and grabbing the estate of Balbir Kaur. Admittedly, Balbir Kaur had got compensation on account of acquisition of her land but appellant in connivance with his wife got said amount withdrawn by playing fraud upon the bank by impersonating his wife as Balbir Kaur. In that regard, FIR was registered against appellant and his wife but unfortunately the appellant was acquitted. The judgment of conviction of his wife Sukhraj Kaur was affirmed by learned trial court and she had to undergo the sentence awarded by learned trial court of Judicial Magistrate

Ist Class. In order to get said amount, the appellant earlier filed suit for declaration Ex. D1 against Balbir Kaur during her lifetime. Despite the fact that Balbir Kaur did not contest said suit, same was ex parte dismissed vide judgment dated 20.02.2007 Ex.D2. The appellant preferred appeal against said decree of dismissal of suit but on finding that even his appeal was about to be dismissed, he withdrew the same by giving false excuse of death of his mother/defendant. Even on account of death of defendant/respondent, said appeal did not become infructuous and said appeal could have been proceeded further by getting impleaded her LRs. Thereafter, the appellant moved an application u/s 372 of the Indian Succession Act for issuance of succession certificate exclusively in his name but said petition was dismissed vide order dated 5.2.2016 Ex. D6. In those proceedings also, the appellant had claimed that the application moved by Balbir Kaur Ex. P12 must be treated her last testament but said prayer was turned down by the learned court of Civil Judge (Sr. Divn.). Despite having lost the legal battle twice, the appellant filed present suit again claiming himself to be exclusive owner of the amount lying in the FDRs in the name of his mother Balbir Kaur. As discussed by learned trial court, he miserably failed to lead any such evidence to prove his claim. At this stage, he has started claiming that he is entitled to 1/6th share being one of the legal heirs but said claim of the appellant being beyond pleadings cannot be considered. It has been further argued that the suit of the appellant had already become infructuous as the amount lying in the FDRs was released by the bank in accordance with the nomination made by Balbir Kaur during her life time. Thus, the suit of the

appellant was not even legally maintainable and learned trial court appreciating the evidence on record rightly dismissed the same.

24. Learned counsel for respondent no.6 bank argued that the respondent no.6 bank was falsely joined as one of the parties in the present litigation as it has nothing to do with the inter-se dispute between the parties. Admittedly, some account was lying with the respondent no.6 bank in the form of FRDs in the name of Balbir Kaur in which no such nomination was made but as it is apparent from Ex.DW1/6 to Ex.DW4/6, during her life time, she had made nominations and in accordance with those nominations, the amounts of those FDRs was released on maturity. In none of the earlier litigations, the respondent no.6 bank claimed that during her lifetime, Balbir Kaur did not make any such nomination and no such contradictory pleadings ever come on record. In case, the appellant is having any such right or interest in said amount, he must resort to the remedy available to him against the respondent no.1. With these submissions, learned counsel for the respondent no.6 concluded his arguments and finally prayed for dismissal of the suit.

25. Rival submissions of learned Counsel for the parties have been heard and record has been perused.

Findings

26. The basic point for determination involved in the present appeal is that whether the appellant is entitled to the amount which was lying with the respondent No.6 Bank in the form of Fixed Deposit Receipts in the name of Balbir Kaur. The claim of appellant that on the basis of application dated 20-09-2004 Ex.P12 moved by Balbir Kaur, he inherited said amount, was

rightly discussed by learned court of Sh.Parminster Singh Rai, the then learned Civil Judge Senior Division, Amritsar in Order dated 5-02-2016 Ex.D6 vide which he dismissed the petition for issuance of succession certificate with regard to said amount in his favor and also by learned trial court in its impugned judgment. Even during the course of arguments, learned counsel for the appellant conceded to the fact that said application could not have been treated as last testament as it does not fulfill the requirements of an unprivileged testament, as defined under section 63 of the Indian Succession Act. The appellant has not explained any such other circumstance, document or legal provision under which he could have been declared the only person entitled to receive said money lying in the account of his mother. Thus, at no stretch of imagination, his prayer for declaring him as the only person entitled to receive the amount lying in Fixed Deposit Receipts of his mother, could have been accepted.

27. Now the question that arises is that whether the appellant is entitled to 1/6th share in said amount being one of the legal heirs of Balbir Kaur. Taking the very first objection raised by respondents No.1 to 3 in this regard that appellant has not sought any such specific relief, this court is of the opinion that a civil court is having the powers of granting the relief to which a plaintiff is found entitled especially when said relief is smaller in context to the relief sought by him, so as to do effective justice and avoid multiplicity of litigation. Even otherwise, in the head-note as well as relief clause of the plaint, the appellant has in clear words prayed for granting any other relief to which he may be found entitled. Thus, no ground is made out

for outrightly rejecting said limited claim of the appellant with regard to the subject matter of the lis.

28. The fact that the entire/substantial amount was released by the respondent No.6 bank to respondent No.1 during pendency of the suit without permission of the court, does not need much consideration as in view of those changed circumstances the appellant only claimed the relief of mandatory injunction directing the respondent No.1 to deposit back the amount. He did not challenge the release of amount by seeking relief of declaration to the effect that act of the respondent No.6 bank was illegal or some forged documents have been prepared or that respondent No.6 is liable to pay the amount which it released wrongly to respondent No.1. Thus, no findings are required to be given in that regard and the only question that remains to be decided is that whether appellant deserves a share in said amount which is now in the hands of his father/respondent No.1.

29. Learned trial court rightly discussed the fact that some of the persons who had got a part of the amount in question are not party to the present suit and in their absence, the court is not competent to decide the claim of the appellant over those amounts but it did not consider that as per nomination Ex.DW1/6, it is the respondent No.1 who had got amount of four Fixed Deposit Receipts 1000067, 1000066, 10000309 and 10000311 and there was no legal bar in deciding the right of appellant qua the amount of those four Fixed Deposit Receipts which respondent No.1 had got being nominee. From the following observation of Hon'ble Apex Court given in the case of Shri Vishin N. Khanchandani & Anr vs Vidya Lachmandas

Khanchandani & Anr¹, it is crystal clear that nomination is only for limited purpose and said amount is inherited by the legal heirs of deceased as per the law of succession :-

“ The nomination only indicated the hand which was authorised to receive the amount on the payment of which the insurer got a valid discharge of its liability under the policy. The policy holder continued to have interest in the policy during his lifetime and the nominee acquired no sort of interest in the policy during the lifetime of the policy holder. On the death of the policy holder, the amount payable under the policy became part of his estate which was governed by the law of succession applicable to him. Such succession may be testamentary or intestate. Section 39 did not operate as a third kind of succession which could be styled as a statutory testament. A nominee could not be treated as being equivalent to an heir or legatee. The amount of interest under the policy could, therefore, be claimed by the heirs of the assured in accordance with law of succession governing them. It is contended on behalf of the appellants that the non obstante clause in Section 6 excludes all other persons, including the legal heirs of the deceased holder, to claim any right over the sum paid on account of the national savings certificates, to the nominee. There is no doubt that by non-obstante clause the Legislature devices means which are usually applied to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other statute. In other words such a clause is used to avoid the operation and effect of all contrary provisions. The phrase is equivalent to showing that the Act shall be no impediment to measure intended. To attract the applicability of the phrase, the whole of the section, the scheme of the Act and the objects and reasons for which such an enactment is made has to be kept in mind. The submission made on behalf of the appellants has no substance in view of sub-section (2) of Section 8 and the Statement of Objects and Reasons necessitating the passing of the Act. Sub-section (1) of Section 8 provides that if any payment is made in accordance with the provisions of the Act to a nominee, the same shall be a full discharge from all further liabilities in respect of the sum so paid. Section 7 of the Act provides that after the death of the holder of the savings certificates

¹ AIR 2000 SUPREME COURT 2747

payment of the sum shall be made to the nominee, if any, and sub-section (1) of Section 8 declares that such payment shall be a full discharge from all further liabilities in respect of the sum so paid. However, sub-section (2) of Section 8 specifies that the payment made to the nominee under sub-section (1) shall not preclude any executor or administrator or the legal representative of the deceased holder of a savings certificate from recovering from the person receiving the same under Section 7; the amount remaining in nominee's hand after deducting the amount of all debts or other demands lawfully paid or discharged by him in due course of administration. In other words though the nominee of the national savings certificates has a right to be paid the sum due on such savings certificates after the death of the holder, yet he retains the said amount for the benefit of the persons who are entitled to it under the law of succession applicable in the case, however, subject to the exception of deductions mentioned in the sub-section."

30. In the recent case of Ajay Kumar Goyal vs Ravinder Kumar Goyal And Another², while dealing with the same question, our own Hon'ble High Court observed, "it is well settled that the nominee of a bank account or locker is merely a trustee for the legal heirs and is under a fiduciary duty to distribute the estate of the deceased in accordance with law." Thus, the respondent No.1 on account of having received the amount of those four Fixed deposit receipts of Balbir Kaur, in the capacity of nominee, did not become entitled to appropriate the same and in said amount all her legal heirs have equal right. As explained by appellant, Balbir Kaur died intestate leaving behind him and respondents No.1 to 5. Though, the respondents have not disputed the fact that there was no other legal heir of Balbir Kaur but respondent No.3 had propounded a will dated 3-01-2006 of Balbir Kaur in his favor. Thus, in case the genuineness of said will vide which Balbir Kaur had bequeathed her entire estate in favor of respondent No.3, is upheld,

² CR-6597-2025(date of order 29 October, 2025)

the appellant would have no right in the amount but in case said will is discarded, he is legally entitled to 1/6th share.

31. While going through the record, this court discovered that without framing of formal issues, learned trial court asked the parties to lead evidence and the formal issues were framed only on the day on which the suit was finally decided. Even at that stage, no formal issue with regard to the will propounded by respondent No.3 was framed by casting burden of proof on the respondent. Since it was not the first litigation with regard to the subject matter and the parties had already a number of rounds of litigation in which appellant remained loser and one of those earlier litigations was almost with the same pleadings i.e. Succession Petition No.78/2009, it cannot be safely held that non framing of formal issue with regard to the will, has not caused any prejudice to the respondent No.3. As it is apparent from the record, despite having propounded said will, the respondents did not lead any evidence in support of said document. It is also pertinent to note that the basic claim of the appellant was his exclusive right over the subject matter of the litigation, with regard to which specific issues were framed and in that regard, the will was not having much relevance. Considering the strained relations between the appellant with his mother Balbir Kaur and father and earlier rounds of criminal as well as civil litigation between the parties, this court is of the considered opinion that it would be totally unjustified to discard said will without giving a fair opportunity to the respondents of proving said material document. The giving of effective opportunity to the respondents to prove said document would ensure effective justice and would rule out the possibility of causing

injustice to the respondent No.3. This would also not adversely affect the interest of appellant as he would not only get opportunity of cross examining the witnesses of respondents but would also get a chance to rebut said evidence in rebuttal. Considering the fact that case is already quite old, this court can give certain directions/suggestions to learned trial court so that the proceedings are concluded at earliest.

32. In view of above discussion, this court find it proper to frame following additional issue with regard to the will:-

3A. Whether Balbir Kaur had executed an unprivileged will dated 03-01-2006 in favor of respondent No.3 in sound disposing mind by complying with the requirements of Section 63 of the Indian Succession Act? OPD3.

33. For the purpose of decision of said issue, the case stands remanded back. Learned trial court would give three-three effective opportunities to both the parties for leading evidence on this issue and would decide the fate of the case in view of findings on the same. In case the will is upheld and in accordance with said will, the appellant has no right in the estate of appellant, his suit would be liable to be dismissed but in case the will is not proved, his suit would stand partly decreed for recovery of 1/6th of the amount of those four fixed deposit receipts received by respondent No.1 against respondent No.1 only. Since the appellant appears to have tried to avoid payment of ad-valorem court fee by seeking relief of mandatory injunction instead of recovery, before proceeding with the matter, learned trial court would get the deficiency of the court fee made good. Accordingly, appeal stands partly accepted and impugned decree stands reversed. The case stands remanded back to learned trial court for trial of issue No.3A.

Parties through their counsel are directed to appear before the ld. trial Court/Successor Court on 27.07.2026. Ahlmad of this Court is directed to send file of ld. trial Court/Successor court along with the copy of Judgment of this Court well before the date fixed whereas appeal file complete in all respects be consigned to record room.

Pronounced in open court

on dated 08.07.2026.

**(Parinder Singh)
Addl. District Judge,
Amritsar.UID No.(PB0247)**

Karamjeet Kaur, Stenographer Gr. I.