

RSA-596-1995 (O&M)

[1]

2026:PHHC:074459

**101****IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**RSA-596-1995 (O&M)
Date of decision: 12.05.2026

Jagir Singh and another

...Appellants

Versus

Dalip Singh (deceased) through his LRs

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHLPresent: Mr. Rajinder Sharma, Advocate and
Mr. Mridul Sharma, Advocate for the appellants.

Mr. Sarbjit Singh, Advocate for respondent Nos.1(ii) and 1(iv).

VIKAS BAHL, J. (ORAL)**INDEX**

		Paragraph(s)	Page(s)
1.	Challenge in the present appeal	1	1-2
2.	Arguments on behalf of the appellants	2	2
3.	Arguments on behalf of respondents No.1(ii) and 1(iv)	3	2-3
4.	Analysis and findings	4-21	3-13
5.	Application u/o 41 Rule 27 CPC	22	13-14

CHALLENGE IN THE PRESENT APPEAL

1. Plaintiffs have filed the present appeal against the concurrent findings of fact. Challenge in the present appeal is to the judgment and decree dated 31.01.1994 of the trial Court vide which the suit filed by the



plaintiffs/appellants for declaration to the effect that they were owners in possession of the suit land had been dismissed. Challenge is also to the judgment and decree of the First Appellate Court dated 26.10.1994 vide which the appeal filed by the present appellants/plaintiffs had also been dismissed.

ARGUMENTS ON BEHALF OF THE APPELLANTS

2. Learned counsel for the appellants has submitted that deceased-Sadhu Singh had died issueless and he was unmarried. It is submitted that the present appellants/plaintiffs are the sons of the brother of said Sadhu Singh and out of love and affection and also on account of the fact that the appellants/plaintiffs took care of the said Sadhu Singh, the said Sadhu Singh had executed a Will dated 17.02.1992 in favour of the present appellants/plaintiffs. It is submitted that the appellants/plaintiffs had examined both the attesting witnesses of the Will as PW-2 and PW-3 and the said two witnesses had proved due execution of the Will but the trial Court as well as the First Appellate Court misconstrued the evidence of the said two witnesses. It is submitted that even the notary public had been examined as PW-1. It is submitted that the suit of the plaintiffs is meritorious and the same should have been decreed and the Will in favour of the plaintiffs should have been upheld and the judgments of the trial Court as well as the First Appellate Court are based on misreading of evidence and deserve to be set aside.

ARGUMENTS ON BEHALF OF RESPONDENTS NO.1(II) AND 1(IV):-

3. Learned counsel for the respondents No.1(ii) and 1(iv), on the



other hand, has submitted that both the alleged attesting witnesses i.e. PW-2 and PW-3 had in their cross-examination specifically admitted that Sadhu Singh had not put his thumb impression on the Will in their presence and thus, there was non-compliance of Section 63 of the Indian Succession Act, 1925 and it cannot be said that the attesting witnesses had proved due execution of the Will. It is submitted that the trial Court as well as the First Appellate Court had taken into consideration the entire evidence and had concurrently found that the Will was not duly executed and was also surrounded by suspicious circumstances and the said finding is neither perverse nor against law and deserves to be upheld.

ANALYSIS AND FINDINGS

4. This Court has heard learned counsel for the appellants and learned counsel for respondents No.1(ii) and 1(iv) and has perused the paper book as well as the record of the trial Court and is of the opinion that the present appeal is meritless and deserves to be dismissed and the judgments of the trial Court and the First Appellate Court are in accordance with law and deserve to be upheld for the reasons which are detailed hereinafter.

5. The present appellants/plaintiffs had filed a suit for declaration to the effect that they were owners in possession of the land measuring 13 kanals comprised in khasra Nos.19/14/1 (6-4), 14/3/2(1-8), 15/2 (7-2) and 19/14/2 (0-8) situated in Village Talwandi Dasondha Singh, Tehsil and District Amritsar, as entered in the *jamabandi* for the year 1991-92.

6. It was the case of the plaintiffs, who were the sons of Ajit Singh, that the brother of Ajit Singh, Sadhu Singh was the owner of the suit property and the said Sadhu Singh had executed a Will dated 17.02.1992 in



their favour. It was the case of the plaintiffs that the said Will dated 17.02.1992 was duly executed by the deceased in his sound disposing mind out of natural love and affection. It was further pleaded in the amended plaint that the plaintiffs vide sale deed dated 23.07.1991 had purchased land measuring two kanals from Sadhu Singh for a sale consideration of ₹12,500/-.

7. The defendant, who was the brother of the deceased-Sadhu Singh and was entitled to the property of Sadhu Singh on the basis of natural succession, had in his written statement stated that the date of death of Sadhu Singh which had been mentioned in the plaint as 26.02.1992 was wrong, as the said Sadhu Singh had died on 20.02.1992. It was further stated that the deceased Sadhu Singh had never executed any Will and the said Sadhu Singh was a literate person who used to sign documents and thus, the question of putting thumb impression on the alleged Will does not arise. It was stated that the plaintiffs were neither owners nor in possession of the suit property.

8. The trial Court had framed the following issues:-

“1. Whether the plaintiff has become the owner of the suit land by virtue of will dated 17.2.1992 executed by Sadhu Singh deceased?OPP.

2. Whether the plaintiff has no cause of action?OPD.

3. Whether the plaintiff has no locus standi to file the present suit?OPD.

4. Whether the suit is not maintainable in the present form? OPD.

5. Whether the deceased Sadhu Singh died on 26.2.1992? Onus of the proof of the parties.



6. *Relief.”*

9. Issue No.1 was decided against the plaintiffs-appellants and the trial Court while deciding the said issue took into consideration the evidence of all the witnesses including that of PW3-Baldev Singh who had deposed that Sadhu Singh had love and affection for respondent-Dalip Singh and that there was no specific reason to exclude the respondent/defendant Dalip Singh from the Will. The trial Court also took into consideration the fact that the plaintiffs had purchased property from Sadhu Singh for a consideration of Rs.12,500/- on 23.07.1991 which showed that Sadhu Singh did not have any special love and affection for the plaintiffs as he had sold his property for a valuable consideration, even as per the case set up by the plaintiffs. It was noted that the Will was not proved in accordance with the provision of Section 63 of the Indian Succession Act. Under Issue No.4, it was found that the suit was not maintainable as the plaintiffs-appellants were required to file a suit for possession and not a simplicitor suit for declaration. Even the date of death under issue No.5 was found to be 20.02.1992 as stated in the written statement and not 26.02.1992 as stated by the plaintiffs/appellants in the plaint. On the basis of the said findings, the suit filed by the appellants was dismissed.

10. Appeal filed by the plaintiffs-appellants was dismissed vide judgment dated 26.10.1994 and while dismissing the said appeal, the First Appellate Court had re-examined the entire evidence and found that both the attesting witnesses i.e., Baldev Singh-PW3 and PW2-Gursharan Singh, Advocate had admitted in their cross-examination that Sadhu Singh had not



put his thumb impression in their presence. It was further noticed that PW2-Gursharan Singh had stated that he did not know Sadhu Singh personally. The evidence of PW1-Notary Public to the effect that the Will bears thumb impressions of the two attesting witnesses, whereas a perusal of the Will showed that the said two witnesses had not thumb marked the Will was also taken into consideration. The fact that there was space between the signatures of Baldev Singh and where the heading “attesting witness” had been typed was also found to be suspicious. The fact that the entire Will was typed, whereas names of the witnesses were handwritten and other factors were considered in opining that the attesting witnesses were not present at the time when the alleged Will was typed. It was observed that it had come on record, more so, in evidence of PW3 that Sadhu Singh was a mature litigant but he had not got the Will registered and had merely thumbmarked the Will whereas the other documents i.e., sale deed etc. were signed by him. It was found that neither the Will was shown to be a duly executed Will nor suspicious circumstances around the Will were dispelled and thus, it was observed that it could not be said that the Will propounded by the plaintiffs was the last genuine Will of Sadhu Singh.

11. This Court has also examined the entire record.

12. A perusal of the alleged Will dated 17.02.1992 would show that the same is an unregistered Will and the entire Will has been typed and even the name of the person i.e., Sadhu Singh, who is stated to be the executant, is typed but the name of witnesses have not been typed and there is a gap between the heading “attesting witnesses” and where the signatures of the attesting witnesses are present. Further perusal of the said Will shows that



in the body of the Will, it has been mentioned that the executant-Sadhu Singh has signed and thumb marked the said Will whereas it is an admitted fact that the Will has not been signed and it only bears one thumbmark which is alleged to be that of one Sadhu Singh. The contents of the Will are thus, false. No reason has been given in the said Will to exclude Dalip Singh who is the brother of the deceased Sadhu Singh and who as per the evidence, which has been discussed hereinafter, was looking after the said deceased. In the Will, it had been stated that there were two attesting witnesses i.e., Baldev Singh-PW3 and Gursharan Singh, Advocate-PW2.

13. PW3 had in his cross-examination specifically stated that the Will was not typed in his presence and that Sadhu Singh had not thumb marked the said Will in his presence and that in fact, the said Sadhu Singh had not thumb marked any documents in his presence. It was further admitted by the said witness that the deceased had love and affection with Dalip Singh i.e., defendant, yet as per the said alleged Will, nothing has been given to Dalip Singh who was to succeed to the property in its natural course being closest surviving heir. In further cross-examination, the said Baldev Singh had stated that he did not remember the name of the second attesting witness and he could not even say as to when Sadhu Singh had died. The true translation of the relevant portion of evidence of PW3-Baldev Singh is reproduced hereinbelow (the said translation has been done by the Translation Branch of this Court):-

“PW3 Baldev Singh recalled for cross-examination xxx xxx

..... It is correct that Sadhu Singh had been pursuing several cases and used to visit the courts. We had come to the



*court at 10-11 o'clock in the morning. **I had not gone along at the time of typing the will, he himself had brought it after getting the same typed.** When the will was being typed, I was sitting at the seat of Advocate Shanti Saroop. It took Sadhu Singh about three-quarters of an hour in getting the will typed. I am not literate; I only know to append signatures. **Sadhu Singh had not affixed the thumb impression in my presence. He had brought it after affixing the same beforehand. Sadhu Singh had not affixed the thumb impression on any other paper in my presence.** There are three brothers including Sadhu Singh. The name of the second brother was Dalip Singh and the name of the third was Ajit Singh. Sadhu Singh was unmarried. **He had affection with his brother Dalip Singh also. I cannot say as to after how many days of the scribing of the will Sadhu Singh died. I also cannot tell as to after how many days, months or weeks or years after the writing of the Will Sadhu Singh died.** It is correct that Sadhu Singh had sold two Kanals of land to Jagir Singh and Dalbir Singh. I don't remember as to for how much it was sold. Apart from me one other advocate had put testimony as witness on this Will **and I don't remember his name.**”*

Thus, from the said evidence, it cannot be said that Will had been duly executed, rather, there were several suspicious circumstances which have not been answered.

14. Similarly, a perusal of the evidence of PW2-Gursharan Singh, who is also stated to be the attesting witness, would show that in his cross-examination he had stated that he did not know Sadhu Singh personally and thus, he could not have possibly given evidence to the effect that Sadhu Singh had executed the Will. The said PW2 had also stated that the Will was brought after it had been typed and Sadhu Singh had not thumb marked



any document in his presence. The true translation of the relevant portion of evidence of PW2-Gursharan Singh is reproduced hereinbelow (the said translation has been done by the Translation Branch of this Court):-

“PW2 Statement of Gursharan Singh recalled for cross-examination.

XXX by defendant counsel.

I am not personally acquainted with Sadhu Singh. I am acquainted with Baldev Singh as complainant. I have not appeared as counsel in any civil suit with regard to Baldev Singh. I do not even know the name of father of Baldev Singh. I have not put the testimony with Baldev Singh on any other document apart from this Will. The Will was brought after it was typed. I do not know as to from where the Will was got typed. When the Will was received after typing it neither my nor name of witness Baldev Singh existed. The thumb impression of Sadhu Singh was already lying affixed. The thumb impression of Baldev Singh was affixed in my presence. Sadhu Singh had not affixed his thumb impression on any document in my presence. There are many Deed Writers in the Court. My signatures were got appended before lunch at around 11 o'clock. I cannot say whether Sadhu Singh is literate or not. Sadhu Singh and Baldev Singh did not come to me after putting testimony. ”

15. Scribe in the present case has not been examined. PW1, who is the Notary Public, had in his cross-examination stated that he did not know when Sadhu Singh had died and that he was not in visiting terms with the said Sadhu Singh.

16. Section 63 of the Indian Succession Act, 1925 reads as under:-

“63. Execution of unprivileged Wills.- Every testator, not being a soldier employed in an expedition or engaged in actual



warfare, [or an airman so employed or engaged], or a mariner at sea, shall execute his Will according to the following rules:

—
(a) The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.

(c) The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.”

17. It is a matter of settled law that ingredients of the said Section have to be met in order to prove the execution of Will. The ingredients as required under Section 63(c) of the Indian Succession Act, 1925 are not even remotely fulfilled as both the attesting witnesses had not seen the testator affix his thumb impressions as had been admitted by them in their respective cross-examinations. Moreover, there is no evidence to show that they had received personal acknowledgment from the testator qua the marking of the thumb impression of the testator on the Will. Thus, due execution of the Will has not even been remotely proved.



18. On the other hand, witnesses of the defendant had fully proved that the deceased had love and affection with the said Dalip Singh-defendant and it was Dalip Singh who was looking after the deceased. DW1-Dalip Singh son of Lal Singh who was ex-Member of the Panchayat had specifically stated in his evidence that the deceased had died on 20.02.1992 and it was Dalip Singh-defendant who was looking after the deceased. It was further stated by him that Sadhu Singh was literate person and could read newspapers and thus, the question of said Sadhu Singh only thumbmarking the Will and not signing the Will also raises doubt. It has further come in the evidence of Dalip Singh that Sadhu Singh was not well for a period of several days prior to his death and thus, the question of executing an unregistered Will on 17.02.1992 i.e., three days prior to his death which took place on 20.02.1992 is also highly suspicious. Nothing has been pointed out on behalf of the appellants before this Court from his cross-examination to dislodge the evidence of the said witness.

19. Similarly, DW3-Dalip Singh son of Jarnail Singh who was a Member Panchayat, had also reiterated the fact that Sadhu Singh had all love and affection for his brother-Dalip Singh. It was stated that Dalip Singh used to take care of the deceased. It was further reiterated that the said Dalip Singh was not well for several days prior to his death and the said witness was a neighbour of the deceased Sadhu Singh. The true translation of the relevant portion of evidence of DW3-Dalip Singh is reproduced hereinbelow (the said translation has been done by the Translation Branch of this Court):-

“DW3 Dalip Singh s/o Jarnail Singh r/o Village Talwandi



Dasandha Singh, Occupation Agriculture, Age 45 years, Asr, on oath.

I am a member of the Panchayat now. I knew Sadhu Singh. He has died. He was unmarried. He has one brother, Dalip Singh, who is alive, the another brother was Ajit Singh, who has died. Sadhu Singh had affection for his brother Dalip Singh and Dalip Singh used to look after him. Before dying, he remained ill for 8-10 days. He could not walk at that time and remained lying on his bed. The votes were cast on the twentieth, and he also died on the twentieth. I am neighbour of Dalip. Dalip Singh also used to serve the ailing Sadhu Singh. Sadhu Singh used to read newspapers etc.....”

Nothing has been pointed out on behalf of the appellants before this Court from the cross-examination of the abovesaid witness to dislodge the evidence of the said witness.

20. DW2 as well as DW4 also fully supported the case of the defendant. Thus, from the abovesaid evidence, it is apparent that the deceased was literate and had signed various documents including the sale deed which has been produced by the plaintiffs-appellants as well as the receipt which has been relied upon by the plaintiffs-appellants with respect to payment of money. Although, in the body of the Will, it has been mentioned that the same is signed and thumb marked by executant Sadhu Singh but a perusal of the Will shows that same has not been signed by the executant. In spite of there being unrebutted evidence that the deceased had love and affection for the defendant-Dalip Singh yet no reason has been given in the Will to exclude him, although the said Dalip Singh was his closest heir who was entitled to the property in case of there being no Will.



21. Keeping in view the abovesaid facts and circumstances, it is apparent that the findings of the trial Court as well as Appellate Court are based on the evidence and documents on record and same are neither perverse nor illegal and the present appellants have not been able to bring their case within the parameters of Section 41 of the Punjab Courts Act, 1918 for this Court to interfere in the present Regular Second Appeal. Accordingly, the judgments of the trial Court as well as First Appellate Court are upheld and the appeal filed by the present appellants is dismissed.

22. It would be relevant to note that the plaintiffs-appellants had filed an application for additional evidence bearing No.CM-1022-C-1995 under Order 41 Rule 27 CPC read with Section 151 CPC for granting permission to compare the thumb impression of the deceased on the Will with that of the deceased on the sale deed. The said application has been opposed by the respondent. As has been discussed hereinabove, the trial Court as well as the First Appellate Court have given several reasons for discarding the Will, including non-proof of due execution of the Will, which reasons have been found to be valid and have been upheld by this Court. In the said circumstances, this Court is of the opinion that the present application is meritless. Moreover, it cannot be said that the plaintiffs had moved the present application with due diligence, inasmuch as, during the course of trial, it was open to the plaintiffs-appellants to have compared the said thumb impression and then to submit a report and also to examine an expert, which expert would have then be cross-examined by the counsel for the defendant. In case any such evidence was led, then, even the defendant could have led evidence of a thumb impression expert. Allowing the present

RSA-596-1995 (O&M)

[14]

2026:PHHC:074459



application would result in reopening the matter in spite of the fact that the application has been filed without due diligence. It would also be relevant to note that in view of the findings given by this Court, this Court is of the opinion that the said application would not in any way help in finally and properly adjudicating the matter, thus, the said application for additional evidence is dismissed.

23. At this stage, learned counsel for the appellants has submitted that the original sale deed dated 23.07.1991 had been exhibited by the plaintiffs-appellants as Ex.AW4. It is submitted that the plaintiffs-appellants be permitted to take back the original of the said sale deed.

24. In case any such request is made by the appellants before the Registry of this Court, then, the said request would be dealt by the Registry in accordance with the procedure and rules which are applicable.

25. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

12.05.2026*Punit/Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:-****Yes/No****Whether reportable:-****Yes/No**