

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH.

Regular Second Appeal No.1216 of 1987 (O&M)  
Date of Decision: November 06, 2015.

Inder Kaur  
.....APPELLANT(s).

VERSUS

Babu Singh and others  
.....RESPONDENT(s).

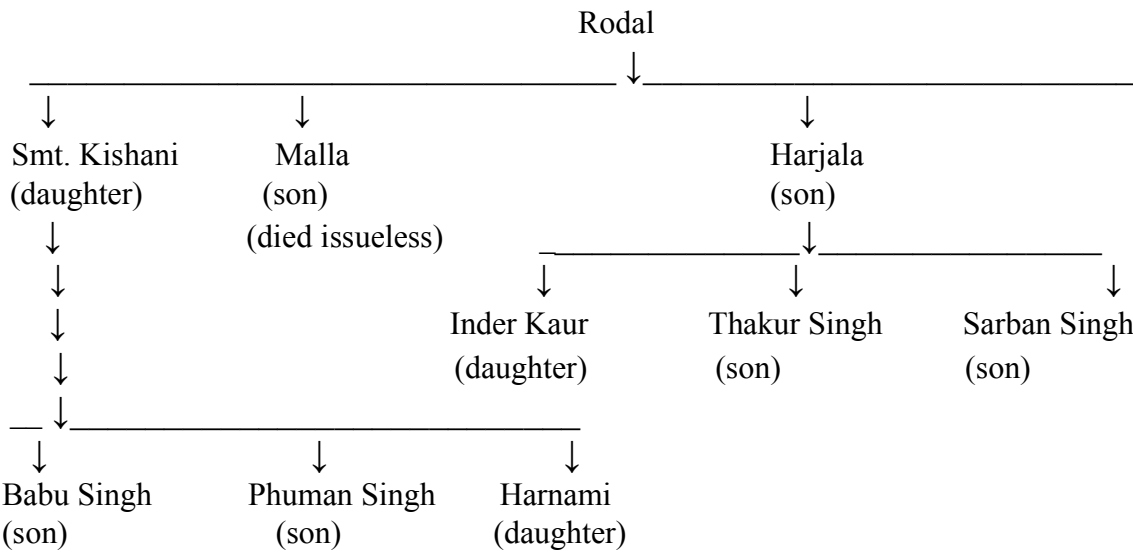
CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Avnish Mittal, Advocate  
for the appellant (s).  
  
Ms. Madhu Dayal, Advocate  
for the respondents.

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SURINDER GUPTA, J.

The dispute in this case pertains to the estate of Malla son of Rodal. The pedigree table given below will help in understanding the relationship of the parties to the suit:-



2. Malla died on 04.07.1966 unmarried and issueless. After his death, Thakur Singh and Sarban Singh sons of Harjala got mutation of the

estate of Malla entered and sanctioned in their favour on 27.11.1966. The mutation was entered a day before it was sanctioned.

3. On coming to know of the mutation Babu Singh, Phuman Singh and Harnami, sons and daughter of Kishani (sister of Malla) raised objection and claimed their 1/2 share in the estate left by Malla. At this stage, Inder Kaur daughter of Harjala came forward and set up a Will dated 05.01.1966 (Ex.DW4/1) executed by Malla in her favour. Thakur Singh and Sarban Singh brothers of Inder Kaur withdrew their claim in favour of Inder Kaur and revenue authorities cancelled mutation in favour of Thakur Singh and Sarban Singh and allowed the same in favour of Inder Kaur. Babu Singh and others challenged the order of sanctioning of mutation in favour of Inder Kaur before the Collector who allowed the appeal and reversed the order of Assistant Collector vide order dated 14.07.1967. Inder Kaur filed appeal before the Commissioner, who reversed the order of Collector. Ultimately, Babu Singh and others filed civil suit on 18.06.1968 for possession as owners of 1/2 share of the land measuring 48 kanals 4 marlas.

4. Thakur Singh and Sarban Singh in their written statement contested the claim of the plaintiffs inter-alia pleading as follows:-

(i) Kishani was not the sister of Malla or was related to him and the plaintiffs are not sister's sons and daughter of Malla.

(ii) The Will executed by Malla in favour of Inder Kaur was not in their knowledge.

5. Inder Kaur filed separate written statement claiming herself to be only surviving legal heir of Malla on the basis of his Will dated

05.01.1966. She also alleged that Kishani was not sister of Malla and

plaintiffs have got no relation with Malla deceased. She also denied that plaintiffs are the sons and daughter of Kishani, sister of Malla. It was alleged that Malla had executed a valid Will in her favour, out of love and affection.

Pleadings of the parties led to the framing of issues as follows:-

- (1) Whether the plaintiffs are entitled to succeed to the estate of Malla deceased; if so, to what extent? OPP
- (2) Whether Malla made a valid will in favour of deft. No.1, if so to what effect? OPD
- (3) Relief.

6. Both the Courts below decreed the suit by discarding the Will propounded by Inder Kaur.

7. Learned counsel for the appellant-defendant No.1 has argued that the Will of Malla dated 05.01.1966 was duly proved by examining scribe and marginal witnesses. Both the Courts below have discarded the Will with the observation that this Will was fabricated at the behest of Thakur Singh and Sarban Singh brothers of Inder Kaur who first got the mutation of the property of Malla sanctioned in their favour by not disclosing the relationship of Kishani with the deceased and also withholding their relations with Inder Kaur. Inder Kaur on coming to know of the mutation proceedings immediately swung into action and claimed inheritance of deceased Malla on the basis of Will dated 05.01.1966. If her brothers Sarban Singh and Thakur Singh have played smart and got the mutation sanctioned in their favour, this has no impact on the rights of Inder Kaur and both the courts below have wrongly non-suited her and have

circumstances. This fact is not disputed that Malla was issueless. He has not disinherited any of his natural heir. There was no plea of his impersonation or collusion of defendants No.2 and 3 with Inder Kaur. She had claimed inheritance on the basis of Will in December, 1966, as such, it cannot be said that the Will had not seen the light of the day for a considerable long time. The greed of brothers of Inder Kaur cannot effect the claim of appellant. The finding recorded by both the Courts below are perverse and beyond pleadings.

8. Learned counsel for the respondents-plaintiffs has argued that the Will propounded by Inder Kaur when examined in the facts and circumstances of this case, on the face of it, is a suspicious document. Admittedly, Mala was a saintly person having no attachment with the materialistic world. There is no recital on the Will that Inder Kaur was serving him and he was pleased with her services. The marginal witnesses and the witnesses of the Will were not knowing Malla. There was no reason mentioned in the Will as to why he has ignored his brother's sons Thakur Singh and Sarban Singh. The reason that the duo i.e. Thakur Singh and Sarban Singh could not fabricate the Will in their favour was that they were over confident and got the mutation of the estate of Malla sanctioned in their favour by concealing the existence of their sister Inder Kaur and Smt. Kishani sister of Malla. The moment plaintiffs claimed their share on the basis of natural succession in the estate of Malla, feeling handicapped, Thakur Singh and Sarban Singh found it convenient to put their sister on the front. This fact is admitted and proved on record that the possession of the

their legal heirs). This further indicates that Inder Kaur is only a trump card being used by her brothers to usurp the property of Malla, a person, who had virtually renounced the world. The plaintiffs could not lay their hands on any document bearing thumb impression of Malla to get the same compared with thumb impression on Will dated 05.01.1966. The witnesses of Will were not knowing Malla and execution of the Will is not duly proved. Both the Courts have rightly discarded the same being shrouded by suspicious circumstances.

9. The main dispute between the parties is regarding the Will of Malla Singh dated 05.01.1966 purported to have been executed in favour of Inder Kaur. Malla died on 04.07.1966. After his death, Sarban Singh and Thakur Singh got entered and sanctioned mutation of the suit land in their favour claiming themselves to be the sole legal heirs of deceased Malla. They even did not disclose Inder Kaur, their sister as one of the legal heir of Malla. On coming to know of the sanctioning of mutation in favour of Sarban Singh and Thakur Singh on 27.11.1966 i.e. next day, on which it was entered, plaintiffs raised objection and matter was ordered to be reviewed by the Collector. During the proceedings on the objection, it was found by the revenue authorities that Malla had a sister named Kishani who had share in the land left by Malla. Plaintiffs are sons and daughter of Kishni and entitled to inherit her share in the land left by Malla. It was at this stage that Inder Kaur descended on the scene with a Will alleged to have been executed by Malla in her favour.

10. On the basis of evidence on record, the Courts below have observed that in Will Ex.DW4/1 no reason has been given to make out as to

what had weighed in the mind of Malla while bequeathing his entire estate in favour of Inder Kaur. There is no mention in the Will that the services rendered by Inder Kaur have weighed in the mind of Malla while executing the Will in her favour. There is no mention of brothers of Inder Kaur and the reason for excluding them from inheritance. The defendant's witnesses have stated in no uncertain terms that Malla was a saintly person. He was known as Bhagat (Saint) Malla and was leading a detached life.

11. The appellant has projected that Malla had been visiting her house and staying there for few days but there is no cogent and convincing evidence that he in any manner was attached with her. Admittedly, he did not breath his last in the house of Inder Kaur. She came to know of his death after 8 days. The witnesses of the Will namely Sadhu Singh DW5 and Sucha Singh DW6 were found not acquainted with Malla. Both witnesses of the Will are of village Chotamli, where Inder Kaur was residing. The scribe Hirda Ram was of Kurali, Tehsil Kharar. The land is situated at village Bhareili, Tehsil Kalka District Ambala (now District Panchkula). No person from the village of deceased was a witness to the Will. Though the first Appellate Court has referred the Will (Ex.DW4/1) as registered document but admittedly, this Will was never got registered. The scribe and marginal witnesses have not stated at any point of time that the Will was produced before the Sub Registrar.

12. In these circumstances, the Courts below have taken note of the fact that marginal witnesses of the Will were not known to the deceased.

Sadhu Singh DW5 stated that he knew Malla as he had been visiting the house of Inder Kaur. DW5 Sadhu Singh has further stated that during the

day, the Will was got scribed, the deceased was residing at village Bhareili and not at Chotamli, he had been coming to their village and staying there for 4-5 days. Sucha Singh DW6, other marginal witness has stated that he knew Malla, who has also known as *Bhagat* (Saint).

13. The fact that this unregistered Will had seen the light of the day only when controversy arose between the plaintiffs and brothers of Inder Kaur create suspicion about the testimony of marginal witnesses. Inder Kaur while appearing as DW9 has stated that Malla had given the Will to her. On coming to know after 8/9 days about the death of Malla, she came to village Bhareili and stayed there for 15/16 days to perform the last rites. She has stated that during this period, she informed Sarban Singh, her brother about the Will of Malla. She has, however, not disclosed any reason as to why the matter was not reported to the revenue authorities. It is unbelievable rather absurd that brothers of Inder Kaur initially got the inheritance of the estate of Malla sanctioned in their favour at the back of plaintiffs and Inder Kaur and later on when the same was challenged claiming that Malla had left behind a sister namely Kishani, Inder Kaur immediately came forward and set up a Will in her favour.

14. The factors which heavily weighed against appellant are that Sarban Singh and Thakur Singh in order to usurp the land of Malla, got it mutated in their name at the back of Inder Kaur and plaintiffs but when the plaintiffs challenged that mutation and Inder Kaur propounded the Will of Malla in her favour, they immediately withdrew and did not challenge the Will set up by Inder Kaur but in the back-drop, they were contesting and pursuing this case.

15. Even in appeal filed by Inder Kaur before Commissioner, they were active and appearing there for Inder Kaur. The counsel representing them was also representing Inder Kaur. If it be believed that Sarban Singh and Thakur Singh have withdrawn from inheritance of estate of Malla, there was no reason for them to contest the litigation or even to appear as witness in this case, thereby contesting the claim put forward by the plaintiffs. In natural course, the dispute remained between the plaintiffs and Inder Kaur.

16. The plaintiffs had filed the appeal against the sanctioning of mutation in favour of Inder Kaur, which was allowed by Collector, Ambala. Against that order, an appeal was filed before the Commissioner by Inder Kaur. However, while appearing as DW9 Inder Kaur has stated that she has never filed any appeal before the Commissioner. This reflects that she was only a figure-head put forth by Sarban Singh and Thakur Singh.

17. From the evidence on file, it is quite apparent that the things have not taken shape in a natural way. Had there been any Will of Malla in favour of Inder Kaur, she must have asserted the same before the revenue authorities immediately after the death of Malla. She had admitted that the possession of the suit land is with Sarban Singh and Thakur Singh, but then realising that this fact may imperil her claim, she has further stated that her son is cultivating the land and had not given it for cultivation on *Chakota*.

18. While appearing as DW8 Sarban Singh had admitted that the land was in their possession and they have been paying the share of produce to the sons of Inder Kaur. This contradict the statement of Inder Kaur that her sons had not given the land to anyone for cultivating on *Chakota*.

Sarban Singh had also admitted that he and Inder Kaur had also engaged a

common lawyer to contest the case in the revenue Court.

19. It is not a case where the appellant can project that she was deceived by her brothers while getting sanctioned mutation of inheritance of Malla in their favour. It is apparent that she is colluding with them. She had never claimed possession of the suit land from her brothers despite having a Will of Malla in her favour executed in the year 1966 despite the fact that a long period of about 49 years has elapsed thereafter. Keeping all these facts and circumstances in view, learned Sub Judge, Ambala City has observed in para 22 as follows:-

“It is no gain saying that in the normal course of succession, the estate of Malla would have devolved equally on the plaintiffs being his sister's sons and daughter and the defendants. In view of the above, there was no ground for Sarwan Singh and Thakur Singh asserting exclusive right in the property. Whether they were actuated to do so out of sheer greed or for any other reason is a matter which the evidence brought on record does not answer. This is because it has not been denied by DW8 Sarwan Singh abovenamed that they had not disclosed it to the Patwari that they have a sister Inder Kaur who too has interest in the estate of Malla. On the contrary, they had represented that both of them namely Sarwan Singh and Thakur Singh are his heirs and further that they did not know the factum of existence of the will in favour of Inder Kaur. This clearly shows that it was probably the avarice in them which had prompted them to conceal a material fact which at long last came to surface leading to the present situation. At any rate, after defendant no.1 had come forward with the will, her brothers Sarwan Singh and Thakur Singh, defendants no.2

and 3 made a somersault and did not contest the will and acquiesced the entire estate including their own share going into the hands of their sister. Apparently, this was designed to deprive the plaintiffs of their half share in the property which but for the intervention of the will would have legally gone to them. Considered in this context, the next question is whether this was done as a part of well thought-over scheme or they just could not put up the will in time without any motive.”

20. Learned Sub Judge has also taken note of the plea raised before the revenue authority and observed in para 23 of the judgment as follows:-

“After all Inder Kaur, defendant no.1 could not withhold the factum of will from her brothers because this had to be revealed as and when she approached the Patwari for the purpose. However, she did not herself contact the Patwari and came to claim exclusive interest in the property only after the plaintiffs had come forward to claim their half share. This raises serious doubt about the bonafide of the whole case. In this behalf, it is significant to refer to para 3 of the order dated 14.7.1967 to Collector, Ambala, Ex.P.2 in which learned counsel for the defendants had taken the position that Smt. Inder Kaur did not produce the will earlier because she did not know of the death of Malla. However, in her cross-examination as DW9 recorded in this court, she has not minced words in admitting that she had learnt of the death of Malla after 8/9 days of the event. In view of this, it cannot be said that Inder Kaur, defendant no.1 could not produce the will before the Patwari as she did not know of the death of Malla. On the contrary, the circumstances and the stage at which the will was produced cast a serious doubt about the whole affair. After all, it had to be explained as to what had prevented Inder Kaur from going to the Patwari from

the date of death of Malla which took place on 4.7.1966 to the date of reopening of the attestation of mutation which came about in December, 1966. Learned counsel for the defendants could not explain the above with any degree of plausibility. The only inescapable conclusion which can be drawn from the above circumstances is that there was in fact no will in existence at the time of attestation of mutation in favour of defendants no.2 and 3. However, when they realised that the plaintiffs were claiming half share in the property they contrived the scheme of disinheriting the plaintiffs through the instrumentality of their sister Inder Kaur who came up and claimed exclusive ownership of the property in her favour on the strength of a will of which Ex.DW4/1 is a copy. In this behalf it is significant to note that her brothers Sarwan Singh and Thakur Singh who had passed her over and had even concealed the factum of her existence from the Patwari at the time of mutation proceedings all at once became so magnanimous that they withdrew their claim in the property in favour of their sister without even trying to ascertain that the will carried by her was at all a genuine document. This is a strong circumstance which raises serious doubt about the veracity of the whole affair and unless the suspicion is dispelled by acceptable evidence/explanation, I am constrained to hold the will to be the product of forgery.”

21. On appraisal of the facts and circumstances of the case, the first Appellate Court also found the Will shrouded by suspicious circumstances which find mention in para 15 as follows:-

“(i) That there is no recital in the will Ex.DW.4/1 that Smt. Inder Kaur brother's daughter of Malla rendered

any service to Malla;

- (ii) That there is a mis-leading recital in the will that Smt. Inder Kaur is the only heir of Malla deceased, although Inder Kaur had two brothers and the alleged testator had also a sister by the name of Kishani, whose sons/daughter the plaintiff-respondents were;
- (iii) That the scribe and the alleged two attesting witnesses did not know Malla testator personally;
- (iv) That there is no explanation in the will why Malla excluded his other heirs namely sister's children and other children of his brother Harjala;
- (v) That Malla was a man with saintly inclination. He was popularly called as *Bhagat Malla* and that he had no attachments for any particular heir and this circumstance is inconsistent with Malla choosing a single of the many heirs to will away his property;
- (vi) That the death of Malla occurred on 7.4.66. The death occurred in village Manakpur and not at the place of Inder Kaur. According to her, Smt. Inder Kaur came to know of the death of Malla within 7 to 8 days of the occurrence. However, the will did not see the light of the day till Dec.1966, say for a period of eight months; and
- (vii) That the will was introduced in a circuitous manner it is this that soon after the death of Malla, the mutation was sanctioned in favour of Thakur Singh and Sarban Singh, brothers of Smt. Inder Kaur overnight. However, when the plaintiff-respondents pressed their claim for a share, the character of Inder Kaur was introduced and the will Ex.DW.4/1 was set up in her favour and the mutation of the entire inheritance was obtained in favour of Smt. Inder Kaur.”

22. Learned counsel for the appellant while referring to the observations in case of *Major Singh Vs. Rattan Singh (dead) by L.Rs 1997 (3) SCC 546* has argued that where the reasons given by the Courts below were flimsy and not substantiated by the evidence on record while rejecting the Will, it is a substantial question of law before the High Court. He has also referred to the observations in case of *Tara Singh Vs. Smt. Shani and others 1988 PLJ 77*, wherein it was observed that depriving of real daughter or the fact that the witnesses are not belonging to the village of the deceased are not sufficient to discard the Will. He has relied on the observations in case of *Madhukar D. Shende Vs. Tarabai Aba Shedage 2002(2) SCC 85* and *Smt. Sushila Devi Vs. Pandit Krishna Kumar Missir and others AIR 1971 Supreme Court 2236*.

23. I have perused the above referred citations which have no applicability to the facts and circumstances of this case. In this case, the Courts below have not discarded the Will on flimsy grounds not substantiated by the evidence on record. The facts and circumstances, as discussed above, are sufficient to draw the inference that this Will is the product of clever mind of Sarban Singh and Thakur Singh. In the case of *Madhukar D. Shende Vs. Tarabai Aba Shedage (supra)*, the opponent was a stranger while the Will was in favour of only natural heir. The legal proposition that if the children of testator are not given any share in the property and are ignored, may not be a fact in itself to discard the Will, but the fact and circumstance discussed above, were sufficient for the Courts below to reach a conclusion that the Will was not duly proved and is

shrouded by suspicious circumstances.

24. The burden is on the propounder of the Will to explain the suspicious circumstances. Even where the plea of suspicious circumstances is not raised but circumstances give rise to doubt, the propounder must satisfy the conscious of the Court by removing such doubts, as observed by Hon'ble Apex Court in *K. Laxmanan Vs. Thekkayil Padmini and others (2009)1 SCC 354*.

25. The mere fact that the propounder of the Will has examined the marginal witnesses, is not enough to hold the Will a valid document. The evidence adduced must satisfy the Court conscious. In the case of *R. Venkatachala Iyengar Vs. B.N. Thiminajamma AIR 1959 Supreme Court 443*, Hon'ble Apex Court has laid down following proposition of law when the Will shrouded by suspicious circumstances:-

“1. Stated generally, a will has to be proved like any other document, the test to be applied being the usual test of the satisfaction of the prudent mind in such matters. As in the ease of proof of other documents, so in the case of proof of wills, one cannot insist on proof with mathematical certainty.

2. Since section 63 of the Succession Act requires a will to be attested, it cannot be used as evidence until, as required by section 63 of the Evidence Act, one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive and subject to the process of the court and capable of giving evidence.

3. Unlike other documents, the will speaks from the death of the testator and therefore the maker of the will is never available for deposing as to the circumstances in which the will came to be executed. This aspect introduces an element of solemnity in the decision of the question whether the document propounded is proved to be the last will and testament of the testator. Normally, the onus which lies on the propounder can be taken to be discharged on proof of the essential facts which go into the making of the will.

4. Cases in which the execution of the will is surrounded by suspicious circumstances stand on a different footing. A shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the will under which he receives a substantial benefit and such other circumstances raise suspicion about the execution of the will. That suspicion cannot be removed by the mere assertion of the propounder that the will bears the signature of the testator or that the testator was in a sound and disposing state of mind and memory at the time when the will was made, or that those like the wife and children of the testator who would normally receive their due share in his estate were disinherited because the testator might have had his own reasons for excluding them. The presence of suspicious circumstances makes the initial onus heavier and therefore, in cases where the circumstances attendant upon the execution of the will excite the suspicion of the court, the propounder must remove all legitimate suspicions before the document can be accepted as the last will of the testator.

5. It is in connection with wills, the execution of which is surrounded by suspicious circumstance that the test of satisfaction of the judicial conscience has been evolved. That test emphasises that in determining the question as to whether an instrument produced before the court is the last will of the testator, the court is called upon to decide a solemn question and by reason of suspicious circumstances the court has to be satisfied fully that the will has been validly executed by the testator.

6. If a caveator alleges fraud, undue influence, coercion etc. in regard to the execution of the will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the will may raise a doubt as to whether the testator was acting of his own free will. And then it is a part of the initial onus of the propounder to remove all reasonable doubts in the matter.

26. In this case, it is evident that Courts below have taken a pragmatic view in the facts and circumstances of the case and have committed no error of law or fact while discarding Will dated 5.1.1966. Sarban Singh and Thakur Singh were quite intelligent and shrewd persons and the moment they came to know that they could not succeed in their

design to lay claim over the land left by Malla and in order to deprive respondents-plaintiffs, who are sons and daughter of Kishani, sister of Malla, they put forth their sister and projected her claim over the suit land. It is apparent from the evidence on record that they kept on pursuing the entire litigation behind the curtain and also retained possession of the suit land and other property of Malla. They also went to the extent of denying the relationship of Kishani as sister of Malla. The Courts below have relied on the testimony of PW1 Hardit Singh, PW2 Chetan Singh, PW3 Pritam Singh and PW4 Phuman Singh while reaching the conclusion that Kishani is the sister of Malla. The witnesses belong to village Bhareili and had special means of knowledge of relationship of Kishani with Malla. Even the witnesses of the defendants namely Boota Singh DW1 and Sadhu Singh DW5 have not denied that Kishani is the sister of Malla. Sarban Singh while appearing as DW8 had also stated that he came to know the plaintiffs being sons and daughter of Kishani. The plaintiffs have produced on file copy of birth certificate entry Ex.P5 to show that a daughter was born to Rodal, father of Malla. Though the name of daughter is not mentioned in birth certificate, yet it is nowhere case of the appellant-defendant no.1 that there is any other daughter of Rodal except Kishani. The witnesses examined by the plaintiffs had stated that Kishani was married to Jagat Singh and plaintiffs Babu Singh and Phuman Singh are sons of Jagat Singh. The plaintiffs have produced the best evidence available with them and both the Courts below have committed no error of law while relying on the same. In nut-shell, the circumstances in which the Will has come forth; the place where it was

deceased Malla; the Will being an unregistered document; the conduct of appellant in not reporting the matter to the revenue authorities and claiming inheritance of Malla immediately after his death; the fact that Sarban Singh and Thakur Singh despite knowledge of the Will did not disclose the same to the revenue authorities; they did not disclose even the existence of Inder Kaur; that Inder Kaur appeared before the revenue authorities even without any notice sent to her and propounded the Will; the suit land and other property of Malla even after about half century of his death are in possession of Thakur Singh and Sarban Singh and in view of the facts and circumstances discussed by the Courts below, I find no legal or factual infirmity in the findings and judgments of the Courts below terming the Will propounded by the appellants as shrouded by suspicious circumstances, calling for any interference.

27. No substantial question of law requiring determination arises in this appeal, which has no merits.

28. Dismissed.

29. As the dispossession of the appellant was stayed vide order dated 07.08.1987, subject to the appellant furnishing security for mesne profits to the satisfaction of executing Court, the respondents-plaintiffs will be entitled to mesne profits of suit land to the extent of their share from the date of that order till the date of disposal of the appeal. The executing Court will assess the mesne profits and allow the same to the plaintiffs during the execution proceedings.

**November 06, 2015.**

*Sachin M.*

**( SURINDER GUPTA )  
JUDGE**

***Whether to be referred to Reporters:***

√  
***Yes/No***