

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.171 of 1989 (O&M)

Date of Decision:12.03.2019

Bibi and others

...Appellants

versus

Balwant Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Ranjit Saini, Advocate
for the appellants.

Mr. J. L. Malhotra, Advocate,
for the respondents.

Amol Rattan Singh, J.

By this second appeal, some of the defendants in the civil suit filed by the three respondents herein (plaintiffs), challenge the judgments and decrees issued by the learned Sub-Judge II Class, Kaithal, dated 22.04.1987 and of the learned District Judge, Kurukshetra (first appellate court) dated 23.08.1988.

2. The suit of the respondent-plaintiffs was one seeking possession of the suit land measuring 27 kanals and 5 marlas, situated in the revenue estate of village Jadaula, Tehsil Kaithal (as was fully described in paragraph 1 of the plaint), with the suit having been decreed in favour of the plaintiffs by the learned Sub Judge, they having been held entitled to joint possession of the suit land, with that judgment and decree having been upheld *in toto* by the first appellate court.

3. The case of the respondent-plaintiffs was that Baru Ram son of Shehzada @ Mara son of Ganga Ram, resident of the aforesaid village, was

the owner in possession of the suit land.

Baru Ram died on 11/12.1.1980, with him having bequeathed the whole of his property, including the suit land, to the plaintiffs by way of a will dated 06.02.1979.

As per the plaintiffs, that was the last will and testament of Baru Ram, the bequeathment having been made in lieu of services rendered to him by them, with them contending that the executor was in a sound disposing mind when he had executed the will.

Thus, they claimed that after his death they had become owners of the suit land, but the defendants (the present appellants, as also their co-defendants) were in possession thereof, who refused to admit the claim of the plaintiffs and had finally refused to hand over the vacant possession of the suit land.

4. Notice in the suit having been issued, as per the judgment of the learned trial court respondents no.1 to 3 and 6 to 12 were proceeded against *ex parte* on 12.11.1980 and 23.02.1981, with defendants no.4 and 5 also not resisting the suit. However, defendant no.13 (seen to be Bichha from the memo of parties before the trial court), filed a written statement controverting the contentions of the plaintiffs.

(The trial court also observed that in fact Bichha died during the pendency of the suit itself on 23.12.1986 and was therefore substituted by his legal heirs, i.e. the present appellants before this court, of whom the first appellant, i.e. the widow of Bichha is also stated to have since died).

5. It was submitted in the written statement that the 'alleged will' was never executed by Baru Ram voluntarily and consequently, it was a "fraudulent document", which, if at all executed by Baru Ram, was under

duress and as a result of a mis-representation made.

It was also contended that in any case Baru Ram was not in a sound disposing mind being an old and illiterate person, with Bichha being his only heir, and him therefore entitled to inherit the property.

It was also the stand of the appellants, and before them of their father, that the plaintiffs had in fact murdered Baru Ram after manipulating a forged and frivolous will and that they had also been charged with the crime pursuant to FIR no.61 dated 17.11.1980 having been registered against them at Police Station Pehowa. Thus, they contended that the plaintiffs had no right to inherit Barus' estate.

6. A replication having been filed by the respondent-plaintiffs denying the contents of the written statement, the following issues were framed by the learned Sub-Judge:-

- “1) Whether Baru deceased executed a will dated 6.2.1979 in favour of the plaintiffs in lieu of the services rendered by the plaintiffs and the said will is the last will of deceased if so to what effect? OPP
- 2) Whether the defendants no.13 is the legal heir of Baru deceased? OPD
- 3) Whether the plaintiffs have no locus-standi to file the suit? OPD
- 4) Relief.”

Subsequently, two additional issues were ordered to be framed on 10.05.1988 at the stage of first appeal (as is obvious from paragraph 20 of the judgment of the 1st appellate court), with a report on those issues called for by that court from the trial court, which report, i.e. the findings on the issues, given by the trial court in its order dated 28.05.1988 (as seen from paragraph 21 of the judgment of the lower appellate court). The said two issues framed

read as follows:-

Addl: Issue No.1-A:-

“Whether the plaintiffs were prosecuted under Sections 302/201/34 IPC? If so, to what effect?”

Addl: Issue No.3-A:-

“Whether the land of the share of Baru deceased is in possession of defendants no.4, 5 and 6 as tenants of the said deceased Baru?”

7. Upon the evidence led by the parties, one of the plaintiffs, Balwant Singh, examined himself as PW3, further examining Shri Bhagwan Dass, Advocate, Kaithal, as PW1, with one Ram Chander having testified as PW2, as the attesting witness of the registered will dated 06.02.1979, (exhibited as Ex.P1 before that court).

[It is to be noticed here that in paragraph 4 of the judgment of the trial court, it has wholly erroneously referred to the plaintiff as Baru Ram, stating that he examined himself as PW3, whereas actually the 1st plaintiff Balwant Singh was so examined (as PW3), Baru Ram being the deceased executor of the will].

The plaintiffs also relied upon a *jamabandi* for the year 1976-77 as Ex.P2.

The defendants examined the Sarpanch of the village, Nanha Ram, one Chhelu (defendant no.4, though not a contesting defendant), Ishwar, Kesho, Ram Kumar, Tara Chand and Amar Nath, as DWs1 to 7 respectively, and also relied upon a pedigree table as Ex.D2.

(Ex.D1 is referred to as a power of attorney in the judgment of the trial court but with no further elaboration, with no specific argument having been raised by either counsel before this court also, on any controversy

on that document).

They also relied upon a *khasra girdawari*, as also a copy of a case titled as State versus Mohinder Singh etc., i.e. the judgment in the trial pursuant to the earlier mentioned FIR having been registered against the plaintiffs, the said judgment having been passed on 14.06.1982. The FIR registered was also tendered as Ex.DW6/A by the appellant-defendants.

8. Having appraised the evidence, the learned trial court found that PW1, Advocate Bhagwan Dass, had testified to being the scribe of the will in question, who stated that he had read over the contents and explained them to Baru Ram, who admitted the same to be correct and had thereafter appended his thumb impressions on the document.

It was also found that PW2, Ram Chander, had testified to being a witness to the will.

Nothing was seen to have been elicited from their cross-examination, to disbelieve their testimonies (as observed by the trial court).

Similarly, respondent no.1 herein, i.e. plaintiff Balwant Singh, was also found to have testified in terms of the averments made in the plaint.

9. The trial court further recorded a finding that it was admitted that Baru Ram did not have a wife and used to “wander here and there”, with DW4 Kesho also having admitted to that effect.

DW5 Ram Kumar was also found to have admitted that Baru Ram had no association with the defendants and used to take his meals either at his own home or at any other place.

This witness was also found to have admitted in his cross-examination that Baru Ram was in a sound disposing mind and in fact was a 'sharp person' who could distinguish between right and wrong.

10. Thus, a finding was recorded by that court to the effect that nothing had been brought on record to doubt the fact that Baru Ram was in a sound disposing mind, with even witnesses for the defendants having admitted that he enjoyed good health and had no ailment and further, that even at the time of his death, he was talking coherently, discussing all important matters relating to the family.

11. That court further recorded a finding that the will was duly registered as per the testimony of PWs1 and 2, Bhagwan Dass and Ram Chander, though the contesting defendant was found to be a 'natural collateral' of Baru Ram, which even PW2 Ram Chander admitted.

12. As regards the allegation that Baru Ram was in fact killed by the plaintiffs, it was found that Dws3, 4, 5 and 7 had testified to that effect, as also with regard to a criminal case registered against the plaintiffs, but it was further found that in fact they were all acquitted of the charge framed against them vide the judgment of the trial court pursuant to FIR no.61 dated 17.01.1980 having been registered, the said judgment being Ex.D3.

The learned Subordinate Judge further recorded that he had gone through the said judgment very carefully, wherein it was found that the FIR was delayed, with no sufficient evidence to convict the accused, DW4 Kesho having deposed (in the criminal trial) that he was passing by the *baithak* of Lijja Ram 'in the mid-night', when he had heard cries and had noticed through the chinks of the window that Lijja Ram and Balwant were administering something to Baru Ram who was resisting and saying that when he had willed his entire property in favour of Lijja Rams' son, they should not kill him.

As regards the allegations in the criminal proceedings, it was also found by the trial court in the present *lis*, that Lijja Ram was alleged to have

said that only medicine was administered to Baru Ram, after which Baru Ram had died. (The allegation however was that his dead body was also cremated without getting a post mortem examination conducted, the police allegedly being in collusion with the alleged perpetrators of the crime).

13. Having recorded as above, the learned trial court went on to hold, (after distinguishing on facts, two judgments cited before it of this court and the Andhra Pradesh High Court), that once the plaintiffs had been acquitted in the murder case, with no medical evidence also led by the respondents in the present *lis*, to the effect that Baru Ram was addicted to drugs or used to even take any other medicine due to old age, simply because the plaintiffs were charge sheeted for the alleged murder of Baru Ram, they could not be ousted from inheriting the property on the basis of the will that they had set up, with that will having been otherwise proved by the testimonies of the attesting witness thereto, as also its scribe.

14. Another finding was recorded by that court, that there was overwhelming evidence to establish that the plaintiffs used to render services to Baru Ram and therefore there was every reason for him to execute the will in their favour, though Baru Ram otherwise used to reside separately. A finding was also recorded that the defendants had no association with him, with the will also stating that the executor was very pleased with the services of the plaintiffs and therefore was executing the will in their favour voluntarily and without any undue influence.

15. Essentially on the aforesaid evidence, it was held that the will was a valid will, duly proved, with no suspicious circumstances attached to it, and therefore, with the beneficiaries of the will also having been acquitted in the criminal proceedings instituted against them, there would be no reason to

deny them the benefit thereof.

16. The issue of lack of *locus standi* not having been pressed, the suit of the respondent-plaintiffs was decreed in their favour and against the appellant-defendants.

17. The present appellants are seen to have filed a first appeal alongwith three other defendants, i.e. Chhelu, Amar Nath and Jagdish, who, as defendants no.4 to 6, were otherwise proceeded against *ex parte* before the trial court.

(Before this court, Chhelu, Amar Nath and Jagdish are seen to be impleaded as respondents no.12 to 14, with the other defendants in the suit impleaded as respondents no.4 to 11, none of whom actually contested the suit as already noticed, at the outset.)

18. The learned lower appellate court at the outset has drawn a pedigree table in its judgment, showing that the defendants in the suit are collateral descendents from one Ganga Ram, who had two sons, Maru and Badama, with Baru (whose will is in question) being the grand son of Maru and son of Shehzada.

The present appellants are the three daughters of Bichha/Bichhna who was the son of the other son of Ganga Ram, i.e. the son of Badama, and as such, Bichha was the first cousin of Baru Ram. Defendants no.1 and 2 (present respondents no.4 and 5), Ram Saroop and Piari, are seen to be the children of Bichhas' brother, Chhittar.

The respondent-plaintiffs on the other hand, Balwant Singh, Gurdial and Bharat Singh, are shown to be the sons of Lijja Ram son of Lachhman Singh, with the said reproduced pedigree table at least not showing them to be in any immediate relation to the appellant-defendants.

19. Other than noticing some of the evidence led before the trial court, the learned 1st appellate court also recorded that DW1 Saha Ram had admitted in his cross-examination that Baru Ram used to let out his land on *Batai*, himself. It was also noticed that DW2 Chhelu in his cross-examination had stated that Baru Ram used to “take account of the *Batai*”.

The testimony of DW5 Ram Kumar was also referred to by the first appellate court to the effect that this witness admitted towards the end of his cross-examination that Baru Ram could walk very well before his death and that he had a sound disposing mind. He was also stated to be a wise man who could not be defrauded and who used to give the land on *Batai* himself and therefore he looked after his interests very well.

DW7 Amar Nath was also found to have stated in his cross-examination that Baru Ram used to consult him every year as regards who he should let out his land to, on *Batai*.

20. On the basis of the aforesaid testimonies, the lower appellate court also came to the same conclusion; viz. that the executor of the will, Baru Ram, possessed a sound disposing mind and had executed the will voluntarily without any outside threat or influence.

Noticing the different arguments raised on behalf of the appellant-defendants, the testimony of PW3, i.e. plaintiff Balwant Singh, was found to be to the effect that he had served Baru Ram during his life time, with PW2 Ram Chander having asserted towards the end of his cross-examination that Baru Ram used to live with the plaintiffs before his death. It was also found to have been admitted by one of the defendants' witnesses, i.e. DW7 Amar Nath, that Baru Ram used to take his meals at the house of the plaintiffs, from which that court drew a conclusion that the executor of the

will had good relations with the beneficiaries thereof, i.e. the plaintiffs.

21. As regards the pedigree table led by way of evidence, the first appellate court found that but for the will, Bichha (the contesting defendant and father of the present appellants) should have inherited the estate in terms of Section 8 (c) of the Hindu Succession Act, 1956, he being an agnate of Baru Ram, with the deceased having no 1st and 2nd class heirs.

22. Having recorded the aforesaid finding, the first appellate court agreed with the trial court, holding that Baru Ram had executed a will in favour of the plaintiffs in lieu of services rendered by them to him, thereby excluding the contesting defendant no.13 from inheriting the suit property.

Consequently, the findings on issues no.1 and 2 were upheld by that court also.

23. On the 3rd issue, of lack of *locus standi*, the first appellant court also recorded a finding that no arguments were advanced before that court too on that issue and in any case the plaintiffs having a valid will in their favour, they had *locus standi* to institute the suit.

24. On the additional issues, i.e. issues no.1-A and 3-A (reproduced in paragraph 6 hereinabove), the first appellate court found that vide an order dated 28.05.1988 (i.e. after the judgment and decree passed by the trial court on 22.04.1987), that court had recorded a finding on the said additional issues that, on issue no.1-A, since the plaintiffs had not been proved to have murdered Baru Ram, they could not be disqualified from “reaping the fruits in question” and that as regards the issue no.3-A, defendant no.4 (Chhelu) had been shown to be in possession of the suit land as a co-sharer, whereas defendants 5 and 6, Amar Nath and Jagdish sons of Matu, were not in possession and consequently none of these defendants, in respect of whose

possession/non-possession the said issue was framed, were in possession of the suit land as tenants of Baru Ram.

25. As regards arguments before the 1st appellate court on those issues; it observed that qua issue no.1-A no arguments at all were raised before it by the appellant-defendants, with it admitted on both sides that plaintiffs no.1 and 2, Balwant Singh and Gurdial Singh, were prosecuted for the alleged commission of offences punishable under Sections 302/201 read with Section 34 of the IPC, alongwith three other persons (i.e. Mohinder, Ram Krishan and Lijja Ram), and that plaintiff no.3 Bharat Singh had not been prosecuted in respect of the commission of such offences.

Thus, holding that with the prosecuted plaintiffs also having been acquitted of the murder of Baru Ram, they could not be deprived of the benefit of the will which had otherwise been proved, with Section 25 of the Hindu Succession Act, 1956 consequently not being applicable, by which a murderer of a deceased person is not entitled to succeed to her/his estate.

26. As regards issue no.3-A, an argument was raised before the lower appellate court that in the *Khasra Girdawaris* from *Kharif* 1982 to *Rabi* 1984 (Ex.D3), in the column of ownership, the entry read as: “Bichha etc. *Madarza Khewat* no.110”.

In the column of cultivation, Chhelu was shown to be a *Hissedar*.

From the aforesaid entries that court drew a conclusion, as already noticed (as had the trial court in its subsequent order dated 28.05.1988), that Chhelu alone was in possession in his capacity as a co-sharer, with defendants no.5 and 6 not being in possession either as co-sharers or as tenants.

As regards the *jamabandi* for the year 1976-77 (Ex.P2 relied

upon by the plaintiffs), it was found that 2 alienations by way of sale were reflected vide mutations no.1298 and 1398, with there being entries in the pedigree table also, showing that Baru Ram had sold off 17 marlas of agricultural land for a sum of Rs.7000/-, with a mutation to that effect entered at Sr.no.1325 or 1375. However, the name of the vendees was not given therein.

Again, vide a mutation bearing no.1305 Baru Ram was found to have sold another 17 marlas of agricultural land in favour of Abhey Ram and Rati Ram.

A 3rd mutation, bearing no.1374, also found to be entered, with regard to succession of the plaintiffs to the estate.

27. It was next found by the first appellate court that Chhelu, as DW2, had testified that he was a tenant under Baru Ram and after his death he had 'attorned to Bichha' and was paying *Batai* to him.

However, in fact, no case was found to have been set up by him that he was a co-sharer, with that court further recording a finding that in any case he had not explained as to how he had entered the suit land as a co-sharer.

28. Observing and holding as above, the finding on the additional issue no.3-A, as recorded by the trial court in its subsequent order dated 28.05.1988, was also affirmed by the first appellate court, to the effect that defendants no.4 to 6 were not in possession of the suit land as tenants of deceased Baru Ram.

29. On the aforesaid findings, the judgment and decree of the trial court was upheld in the first appeal of the present appellants.

30. Before this court in this second appeal, the following were

submitted by learned counsel for the appellants, on 24.08.2013, as substantial questions of law arising therein, the appeal otherwise having been admitted to regular hearing on March 16, 1989:-

- “1. Whether once a person commits murder or abets the commission of murder of a person, he is debarred from inheriting the property of the person murdered, even if he is acquitted by the court from the charge of murder?
2. Whether the will projected by the respondent is a result of fraud?
3. Whether the respondents have failed to prove the will allegedly executed by Baru Ram?
4. Whether the will is surrounded by suspicious circumstances and has not been proved as per the law of evidence and the provisions of Indian Succession Act?
5. Whether the alleged will executed by Baru Ram is a result of fraud and cannot be said to be executed by Baru Ram deceased?
6. Whether once Baru Ram died in a suspicious circumstances, even if the respondents have been acquitted in the murder case, still it can very well be said that the will is surrounded by suspicious circumstances?
7. Whether the will Ex.P1 from the naked eyes seems to be an act of forgery by the respondents and has not been executed by Baru Ram?”

30(a) As regards the first question of law hereinabove, in my opinion it has been incorrectly framed, inasmuch as a person cannot be held to have committed murder or even of having abetted murder, unless it is proved to be so in a court of law, failing which it cannot legally be held to be a murder.

Hence, the question of law that actually should have been framed, is:-

- “1) Whether, once a person charged with committing a murder,

is acquitted of that crime, would he still be debarred from inheriting the property of the deceased testator, on the allegation that the testator had been murdered by the beneficiary of the testators' will?"

30(b) As regards questions no.2 to 6, they are essentially a single question to the following effect:-

- (2) "Whether the will executed by Baru Ram was duly proved as per law by the respondent-plaintiffs and even if so, is it still to be held to be a valid will without any suspicious circumstances attached to it, with no element of it being a fraudulently executed document?"

30(c) On 22.11.2018, when this appeal had been finally heard by this court, upon arguments addressed by learned counsel, the following additional question of law had been also raised and accepted by this court to be necessary to be considered, in terms of the arguments raised by both learned counsel:-

3. "Whether in the absence of any person examined from the office of the Sub Registrar, would the testimony of an attesting witness to the will, as is essential in terms of Section 63(c) of the Indian Succession Act, 1925, still be believable, read with the testimony of the scribe to the will?"

31. Coming to the arguments addressed by learned counsel before this court, on the aforesaid questions.

32(a) As recorded earlier in the order dated 30.10.2018, Mr. Ranjit Saini, learned counsel for the appellants, had first submitted that the will relied upon by the respondent-plaintiffs (Ex.P-1), is not seen to be attested on both pages thereof by the two persons who claimed to be the attesting witnesses, i.e. Amar Singh, Lambardar, and Ram Chander, with the thumb

impression of Amar Singh present on the first page of the will and signatures of Ram Chander son of Telu Ram present on the second page.

(b) He next submitted that the will was obviously prepared subsequently because even the last 4 lines of the will are put closer to each other than the remaining lines, thereby raising suspicion that it was not actually a will genuinely executed by the deceased Baru Ram.

(c) He further submitted that Ram Chander, who testified as PW2, as also the scribe Bhagwan Dass (who Mr.Saini submits that was actually not a deed writer but a lawyer as per his own testimony as PW1), both deposed that the will was written as was dictated by the deceased Baru Ram. He submits that Baru Ram obviously being illiterate, he having affixed his thumb impression to the will, some of the words used in the will, could not be his, they being in the language of a person educated in Persian/Urdu.

(d) He next submitted that respondent-plaintiffs no.1 and 2, i.e. Balwant Singh and Gurdial Singh, as also their father Lajja Ram, were in fact prosecuted for the murder of Baru Ram, though eventually they were acquitted.

(e) Last, he submitted that undoubtedly the suit land was in the possession of the appellant-defendants, which is why the respondent-plaintiffs filed a suit seeking possession thereof. Hence, the contention is that the appellants being the collaterals (cousins) of Baru Ram, they would be the persons in natural possession of his property in the absence of any first class legal heirs and therefore, all circumstances put together point to the fact that the will was a wholly forged and fabricated document.

33(a) *Per contra*, Mr.J.L.Malhotra, learned counsel for the respondent-

plaintiffs, had submitted that one of the attesting witnesses to the will having testified in its 'favour' and the learned Courts below having noticed that nothing could be found from either his testimony, or that of the scribe, that the will was not actually executed by Baru Ram, who was also stated to be in a sound 'disposing mind' by the aforesaid witnesses and further, even as regards the allegation of Baru Ram having been murdered by two of the appellants in collusion with their father Lajja Ram and another accomplice, not only were they acquitted, but the trial Court as also the lower appellate Court (in the present *lis*) had duly dealt with that issue and finally found that there was nothing suspicious about the will so as to oust the plaintiffs' claim to the suit property, therefore, this court would not interfere in a concurrent finding of fact.

(b) He further submitted that a witness had also testified that he had appeared before the Sub-Registrar, with an endorsement to that effect recorded by the Sub Registrar and therefore, the presumption in favour of a registered document would come in favour of the plaintiffs, other than the fact that one of the attesting witnesses had in any case testified to the authenticity of the will.

(c) To lay stress upon his aforesaid arguments, Mr. Malhotra had referred to paragraphs 12 and 15 of the judgment of the learned trial court and paragraphs 13 and 15 of the judgment of the first appellate court, as regards the genuineness and validity of the will, including the fact that it was duly executed by the testator, Baru Ram, without any undue influence or pressure and therefore there were no suspicious circumstances surrounding it.

He also specifically referred to paragraph 21 of the judgment of

the latter court as regards the issue of the respondent-plaintiff being disentitled to the suit land (as contended by the appellant-defendants), on account of the allegation of them having murdered Baru Ram.

34. In rebuttal, Mr. Saini, learned counsel for the appellants, had submitted that the presumption drawn by the learned lower appellate Court, especially on the factum of the will being a registered will and duly having been read over to the testator, i.e. Baru Ram, is wholly erroneous, with nobody examined from the office of the Sub Registrar and therefore even the endorsement on the will, with regard to the presence of Baru Ram there, cannot be solely relied upon, especially in the circumstances of the fact that the respondent-plaintiffs faced a trial for the murder of Baru Ram.

He referred to the judgment of the trial Court in the criminal proceedings instituted against two of the plaintiffs and their co-accused (Ex.D3 in the civil proceedings, at page 75 of the record).

In support of the aforesaid arguments, he further submitted that an FIR was registered on 17.1.1980 (as is seen from the judgment in the criminal proceedings) and therefore, if the will had been existent at the time when the FIR was registered, a presumption may have been raised that the complainant in the FIR (stated to be the Sarpanch of Baru Rams' village), had falsely got it registered only to try and negate the validity of the will. However, the will never having been referred to at all by either side (as contended), in criminal proceedings, it suddenly could not have been produced in the suit in the present *lis*.

35. Having considered the arguments of learned counsel on both sides, as regards the first question of law arising in this matter, as already

stated in paragraph 30(a) hereinabove, the question actually arising is, whether, when an allegation of murder has not been proved in criminal proceedings, can a person be held to be disentitled to inherit the property of the deceased, even if the deceased has willed it to him.

In this context, first Section 25 of the Hindu Succession Act, 1956, needs to be referred to, which reads as follows:-

“25. Murderer disqualified.- A person who commits murder or abets the commission of murder shall be disqualified from inheriting the property of the person murdered, or any other property in furtherance of the succession to which he or she committed or abetted the commission of the murder.”

Thus, if the respondent-plaintiffs or any of them had been convicted of the murder of deceased Baru Ram, naturally, in terms of the aforesaid statutory provision itself, such person(s) would have been disentitled from inheriting the property of Baru Ram.

The question posed however, actually is, as to whether, despite their acquittal, would the respondents still be disentitled to so inherit, as is contended on behalf of the appellants?

36. To come to a finding on that issue, what first needs to be stated, as per well settled law which need not be really referred to in detail, is that a will (other than a privileged will as described in Section 65 of the Act of 1925), has to be proved in terms of Section 63 of the said Act, which reads as follows:-

“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 acknowledgement 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.”

Other than the above conditions, what necessarily has to be seen by a court in case of a challenge to a will, is whether the will would otherwise be seen to be clouded in suspicious circumstances, so as to even discard the testimony of a person who is shown to be an attesting witness thereof, and even if otherwise the testamentary document seemingly at least meets with the conditions prescribed in sub-clauses (a) and (b) of Section 63.

37. In the present case, undoubtedly, suspicion was straightway created the moment it was shown that the beneficiaries of the will were actually charged with the murder of the testator and were even tried for that offence.

However, once they were acquitted of the criminal charges, and both the courts below in the civil proceedings have come to a finding of fact upon examining the judgment of acquittal in criminal proceedings, and further

(equally importantly), have found on the basis of testimonies of even some of the witnesses for the appellant-defendants, that no medical evidence was led even in the present *lis* to prove any administration of poison/overdose of medicine leading to Baru Rams' death, with it further found on the basis of the testimonies of the appellants' witnesses, that the late Baru Ram in fact used to have meals at the house of the respondents often enough, with he himself having no immediate family, i.e. no wife and children and no class-I legal heirs, can the respondents be denied the legacy bestowed upon them by his will?

In the aforesaid circumstances, I would see no reason to 'discard' the authenticity of the will; however, as there was a criminal case registered against the respondent-plaintiffs on the allegation of the murder of Baru Ram, which of course would *prima facie* at least put their inheritance from him in doubt, the issue should be looked at further.

38. In that context, a perusal of paragraph 10 of the judgment of the trial court (in the present *lis*) shows that in the criminal proceedings, the case of the complainants and the prosecution was that Kesho (DW4 in the present civil *lis*), had deposed that while he was passing the *baithak* of Lijja Ram, i.e. the father of the respondent-plaintiffs at about midnight, he heard cries and then noticed through the chinks in the window, that Lijja Ram and respondent no.1 Balwant Singh were administering something to Baru Ram, who was resisting it and saying that when he had already made a will qua his entire property in favour of Lijja Rams' sons, they should not kill him.

The further contention of this witness was that Lijja Ram on the other hand was saying that it was simply medicine that he was administering, which Baru Ram should take.

The said witness had further stated that on the next day Baru Ram died due to poisoning and that his body was cremated with the help of the police, without getting any post mortem examination conducted (as already noticed earlier). PW3 Ishwar is also stated to have testified in criminal proceedings that Baru Ram was cremated with the “help of the police”.

The trial court, after noticing the above, thereafter came to a conclusion that the argument made before it, that the judgment of acquittal in criminal proceedings was a mere opinion, could not be accepted, because firstly it was not proved by any medical evidence led in the civil *lis* also, that Baru Ram used to take 'any tablets' due to old age' (which he was being administered by respondent no.1), or that he was addicted to drugs, and therefore, there would be no reason to dis-entitle the beneficiaries of the will from the fruits thereof, in the aforesaid circumstances.

39. The learned lower appellate court, on that aspect (issue no.1-A subsequently framed), as already noticed, stated that actually no arguments whatsoever were addressed on the finding of the trial court on additional issue no.1-A.

Consequently, that court also, holding that since the prosecuted plaintiffs (Balwant Singh and Gurdial Singh, alongwith their father Lijja Ram who was not a plaintiff), had been acquitted of the charge of murder of Baru Ram, there would be no ground to hold the plaintiffs disqualified to succeed to the property of Baru Ram on the basis of his will.

40. Hence, with both the courts below having come to a finding of fact, not shown to be perverse in any manner, that there was no concrete evidence at all led even in the civil *lis*, as regards the allegation of murder against some of the respondent-plaintiffs and their co-accused, simply that

allegation leading to a criminal trial, could not, in my opinion too, be made the basis to deny them the benefit of the bequeathment made by Baru Ram in their favour.

Even so, the judgment in the criminal proceedings (Ex.D3 in the present civil *lis*), shall be looked at while considering the 2nd question of law framed in this appeal, further ahead.

41. Therefore, as regards the first question of law framed, it is answered to the effect that if there are enough suspicious circumstances surrounding a will, then mere acquittal on a charge of the murder of the testator of the will, on a benefit of doubt granted, may not entitle the beneficiary to inherit the property of a deceased person, if enough suspicious circumstances are shown in the civil *lis* so as to discredit the will. However, such exclusion from the deceaseds' property would not be on account of operation of Section 25 of the Hindu Succession Act, because that provision postulates a murderers' exclusion, with murder to be proved. Such exclusion therefore would be on the basic principle that a will should not be surrounded by suspicious circumstances, for it to take effect.

If on the other hand, there are not shown to be any suspicious circumstances, other than only an allegation of murder of the testator at the hands of the beneficiaries/their accomplices, such mere allegation cannot debar the beneficiaries from the benefits of the will.

42. Coming to the next question raised by learned counsel for the appellants, i.e. as to whether the will propounded by the respondent-plaintiffs was duly proved in terms of statutory provisions and can be also said to be a document beyond suspicion, with no element of fraud attached to it.

What is to be first seen in that context is whether the Will in

question was executed in the manner prescribed in Section 63 of the Act of 1925, or not.

Clause (a) of the said provision (reproduced earlier in this judgment in paragraph 36), stipulates that a testator must either sign on the will or affix his mark on it, or, alternatively, it may also be signed by another person in the presence of the testator, under his direction.

Obviously, the said provision is made to facilitate a testator, who for any reason is unable to sign or to affix his mark due to any medical condition etc., to direct a person to sign the will on his behalf, (provided, of course that he is otherwise of sound disposing mind).

Clause (b) of Section 63 stipulates that the signature or mark of the testator (or the signature of the other person referred to in clause (a)), should be placed at such a position on the document (Will), for it to show that the testator was aware of what was written in the Will, as per his intention.

In the other words, the signature or mark of the testator, or the signature of such authorised person, should not be so 'far away' from the recorded contents of the document, so as to give an impression that the contents have been filled in later, on a document that was otherwise signed or marked by the testator.

Clause (c) of Section 63 stipulates that a will must necessarily be attested by two or more witnesses, each of whom has seen the testator signing or affixing his mark thereto, or has seen the person directed by the testator to sign the document in his presence, actually signing it, and that too in the presence of the testator.

Alternatively, clause (c) provides that an attesting witness, even if he has not seen the testator or any such other person directed by him to sign

the will, actually signing it, yet the testator, in the presence of the attesting witness, acknowledges the signature/mark on the will to be his own, or to be the signature of such other person as the testator had directed to sign the document in his presence.

Thus, each attesting witness must sign the will in the presence of the testator, upon him admitting to his signature/mark on the document, or admitting to the signature of another person authorised by him to sign the will in the testators' presence earlier.

Yet further, each of the two (or more) attesting witnesses need not all be present at the same time when they sign on the will, but each of them must have signed it in the presence of the testator, with the testator admitting to his/his authorised persons' signatures on it.

43. A will having been executed in the manner provided for in Section 63 of the Succession Act, above, it is thereafter to be proved in the manner provided by Section 68 of the Indian Evidence Act, 1872, which reads as follows:-

“68. Proof of execution of document required by law to be attested.- If a document is required by law to be attested, it shall not be used as evidence until 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:

[Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.]”

Hence, in the case of a Will, regardless of it being a registered

document, at least one attesting witness must testify before a court of law, if any of the witnesses is alive at the time when such testimony is required, that he had actually attested the Will in the manner prescribed in Section 63 (c) of the Act of 1925.

Only if no attesting witness can be found, then, as per Section 69 of the Evidence Act, the signature of at least one attesting witness, and the signature of the testator, must be proved to be of those two persons.

(Obviously, that situation does not arise in the present case as an attesting witness to the Will (Ex.P1), namely Ram Chander, was found by both the courts below to have testified as PW2, to the effect that he had indeed attested the said Will of Baru Ram, as a witness thereto).

Nothing has been pointed out to this court by learned counsel for the appellants, either by referring to the testimony of PW2 or otherwise, that the finding of the courts below, as regards the testimony of PW2 being wholly believable, is perverse in any manner.

44. Coming then to the 'authenticity' of the will in question on the touchstone of Sections 63 & 68 of the Acts of 1925 and 1872 respectively.

As regards the requirement of sub-clause (a) of Section 63 of the Succession Act, even though this is not a fact finding court (in a second appeal), and the courts below have not recorded any finding to the contrary, it was felt necessary to look at the document, Ex.P1, from the record of evidence led before the learned trial court, to determine as to whether the condition stipulated in the said clause stands fulfilled or not.

A perusal of the said document shows that it consists of two pages, the first of which is seen to be thumb marked in the left margin, close enough to the written contents of the will, with Baru Rams' name written in

Hindi (seemingly by the scribe) immediately above and to the left of the thumb mark.

On the same page, the thumb mark of a person, shown to be Amar Singh, *Lumberdar* of Banimajra, Tehsil Kaithal, is seen to be affixed towards the end of the page, again in the left hand margin.

On the next page, again the thumb mark of Baru Ram is seen in the left margin, with his name written above and to the left thereof. The signature of Ram Chander (in English) is seen at the bottom end of the page, with his name written in Hindi/*Devnagri*, alongwith his parentage and address, i.e. son of Telu Ram resident of Pundri, Tehsil Kaithal. At the absolute end of the page, the date 06-12-79 is also written in ink in continuation of the contents of the will (the entire will having been written in ink).

In my opinion also, therefore, there is nothing to be discerned from the Will so as to suggest that it does not conform to the conditions stipulated in clauses (a), (b) and (c) of Section 63 of the Succession Act.

45. Mr. Ranjit Saini, learned counsel for the appellant had however also argued that the last four lines of the will, Ex.P1, are written too close to each other, thereby raising a suspicion that the will was actually written after obtaining the signatures of Baru Ram.

In that context, it is seen that no doubt the last three lines, containing the last part of the recital of the will, and the line where the date is written (06.12.1979), are slightly closer to each other than the earlier lines on the page are to each other, but the hand in which the entire will is written, is seen to be the same to the naked eye, with no difference in ink seen either, as regards all the lines contained in the Will. Therefore, simply because the

scribe may have slightly compressed the last 4 lines to avoid carrying a single line onto a 3rd page, with otherwise ample space available for writing three lines together towards the end, there would be no reason to raise any suspicion on the will simply on that count.

Additionally, the reverse side of the 1st page is seen to be stamped with the stamp of the Sub-Registrar, Kaithal, with the date 6.12.79 written at the proper place. Another stamp, containing, within it, the hand written words, “*Vasiyat*” of Baru Ram (in Hindi) is also seen, with three more stamps of the office of the Sub-Registrar further seen thereunder, with two thumb impressions of Baru Ram and one each of Ram Chander and Amar Singh, *Lumberdar*, also present on the reverse side of the 1st page.

46. Thus the thumb mark of the testator (Baru Ram) is seen to be close enough to the written recital/wordings on both pages of the will dated 06.12.1979, with one attesting witness thereto having affixed his thumb mark on the first page (Amar Singh, Lumberdar), and the second attesting witness having put his signature on the second page (Ram Chander-PW2) and all three of them having affixed their thumb marks on the reverse side of the first page of the will, i.e. the page that is shown to be carrying the original stamps of the office of the Sub-Registrar, Kaithal.

(However, as regards the additional factor of the will having been shown to be registered also, that would be dealt with in this judgment, while answering the 3rd question of law framed in paragraph 30 hereinabove).

47. Further, one of the two attesting witnesses, Ram Chander, duly testified on oath before the trial court to the effect that he had seen the will the contents of which were read over to Baru Ram in his presence by the scribe thereto, with Baru Ram thereafter having affixed his thumb impression on it,

as had he (PW2) and the other attesting witness, Amar Singh, in the testators' presence. Hence, all the conditions set out in clauses (a), (b) and (c) of Section 63 of the Indian Succession Act, 1925 are seen to be met as regards proving the will, read with Section 68 of the Indian Evidence Act, which requires one of the attesting witnesses to a will to depose with regard to such attestation in the testators' presence as mandatory.

Additionally, the scribe to the will, Shri Bhagwan Dass, Advocate, also having testified as PW1 (though it is not mandatory to do so), I would find no reason to interfere with the findings of the courts below, holding that the will was duly proved in terms of Section 63 of the Act of 1925 (read with Section 68 of the Evidence Act).

47(a) Next coming to the second aspect of the second question of law framed in this appeal, i.e. as to whether there are any suspicious circumstances attached to the Will, so as to discard it, despite it having been so proved, or whether there is any element of fraud seen to be played upon the testator, Baru Ram.

A part of this question already stands answered while answering the first question of law framed in this appeal (reference paragraphs 37 to 41 supra).

It has been seen earlier hereinabove (also while narrating the contents of the judgments of the learned courts below), that some of the defendants' own witnesses, i.e. witnesses of the present appellants themselves, had admitted that Baru Ram was of a sound disposing mind and of good health, who also used to visit the house of the respondent-plaintiffs, with him also taking his meals with them sometimes.

This is to be seen with the fact that findings of fact were also

recorded by the courts below, on the basis of testimonies on both sides, that Baru Ram was a person fully aware of his circumstances, even giving out his property on *Batai* (a kind of share-cropping) from year to year.

Further, once the Will was duly proved by one of the attesting witnesses thereto having testified in favour thereof, with the scribe to the Will also having testified to having read it out to Baru Ram, who after understanding it had affixed his signatures thereto, the onus was upon the appellant-defendants to show that the Will was the result of a fraud played, which onus was not found to be discharged before the courts below, and nor even before this court, by pointing to any concrete evidence to that effect, other than by contending that since an allegation of the murder of Baru Ram had been made against the respondent-plaintiffs, the will necessarily needs to be treated as one clouded in suspicious circumstances.

To repeat, simply on the aforesaid allegation, it cannot be held that the will was a result of a fraud committed upon Baru Ram, who was otherwise shown by the testimonies of witnesses, to be a man fully aware of his actions, and in sound disposing mind.

48. Still, the argument of Mr. Saini with regard to the criminal proceedings, needs to be noticed.

He had contended that the FIR in respect of the alleged Will of Baru Ram was registered on 17.01.1980 (his date of death being 11/12.01.1980 as per the judgment of the trial court) and therefore, if the will dated 06.12.1979 had been existent, it would have been at least referred to by either side in the criminal proceedings and would not have been suddenly produced at the time when the suit in the present *lis* was filed.

In that context, firstly it is to be seen that the date of institution

of the suit is seen to be 06.05.1980 on the first page of the judgment of the trial court, though the plaint itself is seen to be dated February 2/20, 1980 (as seen from the record of evidence).

Of course, the said argument not having been shown to be raised before the courts below, there would be no reason for this court to go into the issue in second appeal; yet, the question being of the validity of a Will, the judgment of the learned trial court in criminal proceedings (Sessions Case no.6 of 1982, decided on June 04, 1982), i.e. Ex.D3 in the record of evidence in the present *lis*, has been perused, in which it is seen that the will was duly referred to at least before the trial court in the criminal proceedings, and therefore if there was no mention of it in the FIR by the complainant, it being a will in favour of the respondent-plaintiffs, I do not see what mileage can be taken from that fact by the appellants.

The short judgment in the criminal proceedings having been actually seen by this court, it may be appropriate to notice that the acquittal of the two plaintiffs and their co-accused was on the ground that there was absolutely no evidence of poison having been administered to Lijja Ram, with “none of the witnesses having come forward to the police at the relevant time”, with their statement made 20/22 days after the occurrence, it also having been noticed by that court that there was no evidence on record that the will was got executed forcibly from Baru Ram, and that it being a registered will, the chances of pressurising him to make the will, were therefore 'minimised'. Other than that, the FIR was found to be delayed, with even the complainant therein not having supported it.

This is to be again seen with the fact that even (as noticed by the trial court, and already referred to earlier in this judgment), the case of the

prosecution on the basis of the testimony of Kesho (stated to be a witness in the present *lis* as also in the criminal proceedings), was that even when Baru Ram was allegedly being administered poison or medicine at midnight by the father of respondent no.1 (as alleged), even as per the complainants' case Baru Ram had said that 'as he had already executed a will in favour of the sons of Lijja Ram, there was no reason to kill him'. Therefore the story of the will itself not having been executed by Baru Ram or executed under any pressure 11 months prior to his death, does not sustain because even as per that testimony the will had already been executed (as per the depiction of Baru Rams' words, as alleged).

The allegation of his murder, subsequent to the will having been executed, by the beneficiaries of the will, is an argument that has already been dealt with hereinabove, holding that such an allegation alone, without any kind of evidence other than an oral testimony having been led, did not stand substantiated to record a finding of Baru Ram having been possibly murdered at the hands of the beneficiaries.

49. It also needs to be observed here that, naturally, the possibility of the appellant-defendants having concocted the entire story because they were collaterals of Baru Ram and took possession of the suit land, cannot be entirely ruled out, though nothing further is to be said by this court on that issue, the respondent-plaintiffs in any case having been acquitted in criminal proceedings, with to again repeat, no evidence having been led to substantiate the allegation of the alleged murder of Baru Ram.

50. As regards the argument of Mr. Saini that there are too many Persian words used in the will for an illiterate man to understand (Baru Ram having thumb marked it instead of signing it), that contention may have been

worth considering seriously if the will was found to be in a language which was not possible to be understood by even a man aware of his business and other interests, which obviously is not so, as seen.

Further, though the will at some places does contain some words and phrases normally used in legal language taken from Urdu/*Persian* as per practice, yet even a reading of the entire will (of two pages) reveals that the intention is in very plain language with the words such as “*Paigham-e-Azal*” coming immediately after the words “*Zindgi Ka Koi Bharosa Nahi Hai*”. Thus, it would not be difficult even for an illiterate man to understand them, with in any case the scribe of the Will having read them over to the attesting witness and the testator himself. The other Urdu words used in parts of the Will, are also naturally to be seen in the context of the sentences in which they are used, and the entire intention conveyed in the will, which, as already said, is found to be in perfectly understandable language (in Hindi).

51. Hence, having considered the above and with this court also having had to look at the judgment in criminal proceedings also on account of the argument raised that the will itself was not free of suspicious circumstances as there was an allegation of the testator having been murdered by some of the plaintiffs, and that argument not seen to be based on any firm foundation as discussed hereinabove, and this court further having found from the judgments of the learned courts below (in the present civil *lis*), that findings of fact were recorded with regard to one attesting witness and the scribe of the will having testified to its authenticity; with further, the appellants' own witnesses also having admitted that the deceased testator was of a sound disposing mind and fully aware of how to look after his property, with it also admitted that he even used to have meals with the plaintiffs, I

would find no reason to hold the will to be clouded in suspicious circumstances and to interfere with the judgments of both the learned courts below.

No doubt, the learned courts should have recorded a specific finding as regards the will duly meeting with the conditions stipulated in clauses (a) and (b) of Section 63 of the Succession Act, but simply because they have not recorded a specific finding by referring to the specific provisions, but have held the will to be otherwise genuine in the light of the testimony of the attesting witness and the testimony of even the defence witnesses to the effect that Baru Ram was in a sound disposing mind prior to his death (and therefore obviously so when the will was executed about 11 months earlier), the will, in my opinion, cannot be said to have not been proved.

52. Thus, the 2nd question of law framed in paragraph 30(b) of this judgment, is answered to the effect that the will of Baru Ram was duly proved in terms of Section 63 of the Indian Succession Act, 1925, read with Section 68 of the Indian Evidence Act, 1872 and further, it is seen to be free of suspicious circumstances, despite the allegation of Baru Ram having been murdered by the some of the plaintiffs and their alleged accomplices.

53. Coming then to the last question of law framed, i.e. whether in the absence of any person examined from the office of the Sub-Registrar, would the testimony of an attesting witness to the will, still be believable, seen with the testimony of the scribe to the will.

54. On that question, it is first to be noticed that a will is not a compulsorily registrable document even in terms of Section 17 of the Indian Registration Act, 1908.

The proviso to Section 68 of the Evidence Act provides that as regards a registered document, not being a will, it would not be necessary to call even an attesting witness to prove it, if the document has been registered in accordance with the provisions of the Registration Act. However, as regards a will, to prove it, an attesting witness, if alive and to be found, necessarily must testify to its authenticity, whether it is a registered document or not.

An ancillary question would however be, that if registered, can it be seen to be a public document in terms of Sections 74, 76 and 79 of the Indian Evidence Act, 1872, which reads as follows:-

“74. Public documents.—The following documents are public documents :-

- (1) Documents forming the acts, or records of the acts-
 - (i) of the sovereign authority,
 - (ii) of official bodies and tribunals, and
 - (iii) of public officers, legislative, judicial and executive, 1[of any part of India or of the Commonwealth], or of a foreign country; 1[of any part of India or of the Commonwealth], or of a foreign country;"
- (2) Public records kept [in any State] of private documents.”

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76. Certified copies of public documents.—Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies.—Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on

payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies."

Explanation.—Any officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

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79. Presumption as to genuineness of certified copies.—The Court shall presume 1[to be genuine] every document purporting to be a certificate, certified copy, or other document, which is by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer 2[of the Central Government or of a State Government, or by any officer 3[in the State of Jammu and Kashmir] who is duly authorized thereto by the Central Government]: Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf. The Court shall also presume that any officer by whom any such document purports to be signed or certified held, when he signed it, the official character which he claims in such paper.

55. A co-ordinate Bench of this court, in **Parsa Singh v. Smt. Parkash Kaur and others** 1976 PLR 21, citing a judgment of the Privy Council in **Gopal Das and another v. Sri Thakurji and others** AIR 1943 Privy Council 83, held that even a registered will continues to be a private document, despite its registration, and therefore would not come within the definition of a public document as contained in sub-section 2 of Section 74 of the Evidence Act.

Obviously therefore, when a certified copy of a will is presented in terms of Section 79 of the Evidence Act it cannot be accepted as such because Section 76 of the said Act stipulates that a public officer having custody (only) of a public document, which any person has a right to inspect, shall give that person, on demand, a copy of the document on payment of the legal fees applicable, certifying at the foot of such copy that it is a true copy thereof.

Therefore, even if a will is registered, it cannot be considered to be a public document, a certified copy of which would suffice as proof thereof, without further substantiating the validity of that copy by examining a person from the office that registered it, alongwith the register entering such registration.

56. In the present case however, the will, Ex.D1, is an original document seen to be carrying the stamp of the Registrar. That being so, without examination of any witness from the office of the Registrar/Sub-Registrar, can it be presumed to have been duly registered?

In the present case actually that questions also become superfluous because the will, Ex.P1, is seen to be the original document and therefore, it having been proved in terms of the conditions set out in Section 63 of the Act of 1925, read with Section 68 of the Evidence Act, non-examination of a person from the Registrars' office would not affect the acceptance of the will in question to be a genuine document. Further, with no evidence led by the appellants to disprove the authenticity of the stamps of registration, such stamps further lend strength to the authenticity of the document.

Though the onus to prove the authenticity of a document is upon

the person relying on that document, however the onus to prove a will in terms of the Succession Act and the Evidence Act, having been discharged by the respondent-plaintiffs who relied upon document, with this court already having held that it could not be held to be a document surrounded in suspicious circumstances, in my opinion, the onus to disprove its registration in such a situation would fall on the appellants, which they did not discharge by examining any one from the Registrars' office, to show that the stamps of the Registrar as are affixed on the will, Ex.P1, are fabricated ones, and therefore the document is a forged one.

Hence, though a will is not a public document even in terms of sub-section (2) of Section 74 of the Evidence Act, once the validity of the will has been proved as per the conditions prescribed in Section 63 of the Succession Act (read with Section 68 of the Evidence Act), even the registration thereof becomes only an added 'factor', with the onus of disproving the authenticity of the registration shifting onto the person doubting such registration.

The 3rd question of law framed, is consequently answered to the aforesaid effect.

57. Thus eventually, in the light of the detailed discussion hereinabove, I see no reason to interfere with the findings of the learned courts below, or the judgments and decrees issued by them.

This appeal is therefore dismissed, with costs through out.

March 12, 2019
dinesh

(AMOL RATTAN SINGH)
JUDGE

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|-------------------------------|-----|
| 1. Whether speaking/reasoned? | Yes |
| 2. Whether reportable? | Yes |