

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA-2718-1994(O&M)

Date of decision:-25.9.2019

Hardev Singh

...Appellant

Versus

Faqir Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

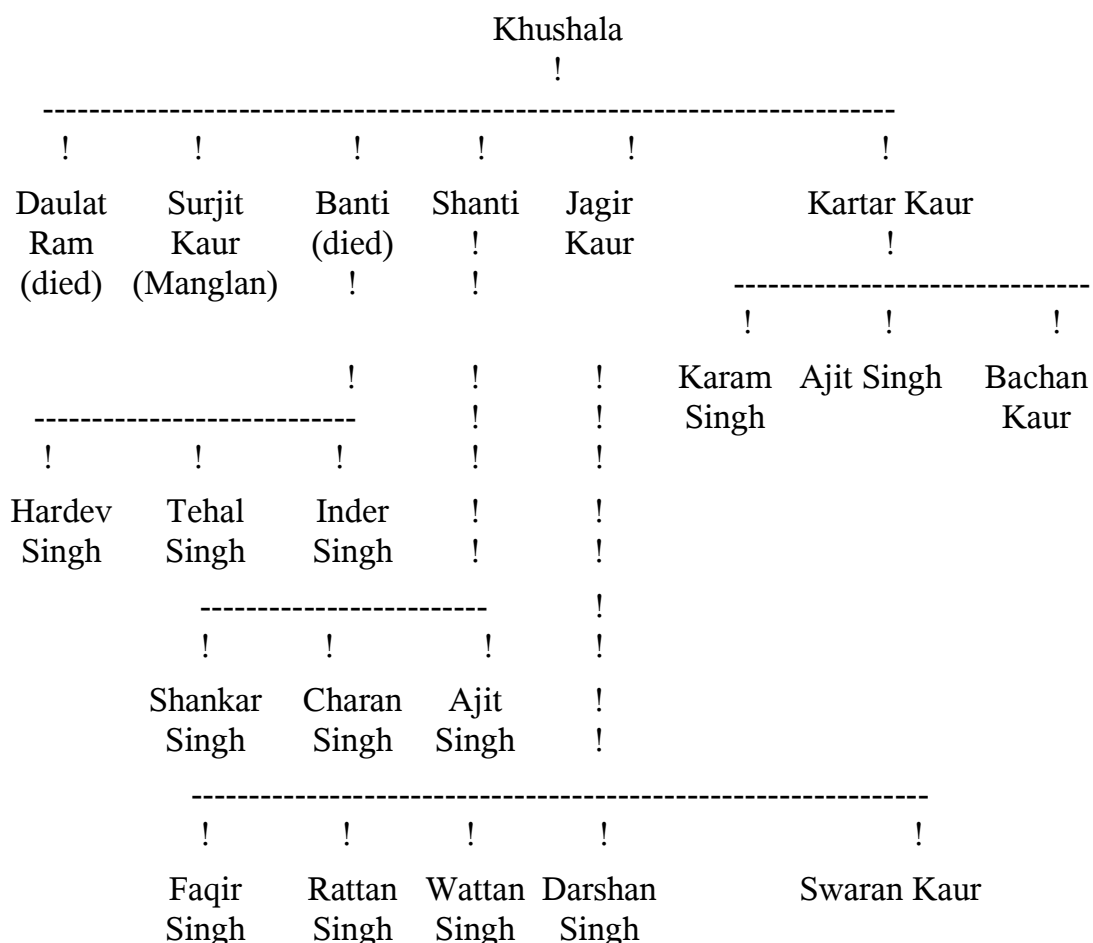
Present: Mr.S.D. Sharma, Sr.Advocate with
Mr.K.R. Sharma, Advocate
for the appellant.

Mr.K.S. Cheema, Advocate
with Mr.K.S. Pawar, Advocate
for respondents.

H.S. MADAAN, J.

Briefly stated, the facts of the case are that Faqir Singh along with 11 other plaintiffs had brought a suit against Hardev Singh, Tehal Singh, Inder Singh sons of Nand Singh and Smt.Manglan alias Surjit Kaur widow of Nand Singh, all residents of village Khurdpur, Tehsil and District, Jalandhar seeking joint

possession of 4/5th share of 4663/12408 share of Daulat Ram, deceased, in land measuring 77 kanals 11 marlas situated at village Dagana Kalan as per jamabandi for the year 1984-85, fully described in head-note of the plaint. The relationship of the parties inter se and with the deceased has been illustrated for better understanding by way of pedigree table, which is as under:



As the case of the plaintiffs goes, Daulat Ram had five sisters; he had not contracted a second marriage and was residing in his own house at village Dagana; three sisters of Daulat Ram, namely, Kartar Kaur, Jai Kaur and Shanti had pre-deceased him,

whereas Smt.Banti another sister of Daulat Ram died in March, 1986 and she was succeeded by her only son, namely, Sharo – plaintiff No.9; plaintiffs No.1 to 5 i.e. Faqir Singh, Rattan Singh, Wattan Singh, Darshan Singh - sons and Smt.Swaran Kaur – daughter are legal heirs of Jai Kaur, whereas plaintiffs No.6 to 8 i.e. Karam Singh, Ajit Singh sons of Sant Singh and Smt.Bachan Kaur wife of Chanan Singh daughter of Sant Singh are legal heirs of Smt.Kartar Kaur, whereas plaintiffs No.10 to 12 i.e. Shankar Singh, Chandan Singh and Ajit Singh sons of Nand Singh are legal heirs of Smt.Shanti; that Daulat Ram had cordial relations with his sisters and he used to visit all of them treating them equally; Daulat Ram died on 18.8.1984 at village Khurdpur where he had gone to see his sister Surjit Kaur alias Manglan – defendant No.4; that Daulat Ram had executed a Will dated 13.6.1984 bequeathing his estate in five equal shares giving $\frac{2}{5}$ shares to his living sisters Surjit Kaur and Banti, whereas $\frac{1}{5}^{\text{th}}$ share each to the branch of his deceased sisters in sound disposing mind; Sumittar Singh is the wife's brother of Hardev Singh; a power of attorney is alleged to have been executed by Daulat Ram deceased in favour of Sumittar Singh for the purpose of management of his estate and under the garb of that power of attorney, the will has been got fabricated allegedly executed by Daulat Ram in favour of defendant No.1 – Hardev Singh; as a matter of fact, it is a forged and fabricated document; Daulat Ram was totally illiterate and he used to put his

thumb impressions. On the other hand Hardev Singh was in Army, as such he did not serve Daulat Ram deceased and there was no occasion for the latter to execute any will in favour of the former excluding all his other legal heirs; that Assistant Collector Ist Grade, Hoshiarpur has wrongly sanctioned the mutation on the basis of will set up by defendant No.1 on 22.4.1985. According to the plaintiffs, the order of Assistant Collector Ist Grade, Hoshiarpur is null and void. The defendants were called upon to admit the claim of the plaintiffs but to no effect, as such they brought the suit in the Court.

On being put to notice, only defendant No.1 appeared and filed written statement contesting the suit whereas the remaining defendants did not appear despite service and as such were proceeded against ex parte.

In the written statement filed by defendant No.1, he raked up various legal objections like that the plaintiffs had no locus standi to bring the suit; that the suit was not maintainable; that the plaintiffs were estopped by their own act and conduct from filing the suit; that the suit was bad for misjoinder and non-joinder of necessary parties. On merits, the answering defendant contested the assertions in the plaint pleading that the pedigree table mentioned in the plaint was wrong and incomplete; that Banti had another son namely Faqir Singh, who died leaving behind a son; Banti was living in Haripur, District Jalandhar and had no connection with her brother, the

deceased; that Banti and Daulat Ram were not on visiting terms with each other; however, Daulat Ram had cordial relations with the defendants; that the sisters of Daulat Ram had pre deceased him and he never visited their families; that 5-6 years prior to his death, Daulat Ram used to live at village Khurdpur along with Surjit Kaur mother of defendant No.1 and the answering defendant and his mother used to serve Daulat Ram; Daulat Ram lived with them till his death and out of love and affection, he had bequeathed his estate to the answering defendant vide Will dated 9.8.1982 and the will set up by the plaintiffs is false and fabricated; the mutation has rightly been sanctioned in favour of answering defendant. In the end, such defendant prayed for dismissal of the suit.

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

1. Whether Daulat Ram executed a valid will in favour of respondent No.1 Hardev Singh? OPD.
2. Whether Daulat Ram executed a valid will dated 13.6.1984 in favour of plaintiffs and defendant No.4? OPD.
3. Whether the plaintiffs are entitled to 4/5th share as co-sharers alleged? OPP.
4. Whether the suit is not maintainable as alleged? OPD.
5. Whether the plaintiffs are estopped from filing the suit by his act and conduct? OPD.

6. Whether the suit is bad for non-joinder of necessary parties and misjoinder of parties? OPD.

7. Relief.

Both the parties led evidence in respect of their claims.

After hearing the learned counsel for the parties, the trial Court decided issues No.2 and 3 in favour of the plaintiffs, issue No.1 against the defendants, issues No.4 , 5 and 6 were decided against the defendants. Resultantly, the suit of the plaintiffs was decreed holding that plaintiffs are entitled to joint possession of 4/5th share of the property in dispute held by Daulat Ram deceased. This was so done vide judgment and decree dated 2.4.1990.

The defendant No.1 Hardev Singh felt aggrieved by the said judgment and decree and he had filed an appeal before the Court of District Judge, Hoshiarpur, who vide judgment and decree dated 18.4.1994 partly accepted the appeal and the judgment and decree of the trial Court were set aside and it was substituted by a decree for joint possession in favour of the heirs of Smt.Banti, including Sharo plaintiff No.9, there respondent No.7 in equal shares with Smt.Manglan alias Surjit Kaur defendant – respondent No.12.

Still feeling dissatisfied, the defendant No.1 – Hardev Singh has filed the present regular second appeal before this Court, notice of which was issued to the respondents/plaintiffs, who have appeared through counsel.

I have heard learned counsel for the parties besides going through the record

Here the parties are unanimous with regard to the fact that Daulat Ram was earlier owner of the property and when he died he did not leave behind any wife or issue. The relationship of both the parties with Daulat Ram is not much disputed. Both the parties had set up wills in their favour. According to the plaintiffs, Daulat Ram had executed a valid will dated 13.6.1984 in favour of the plaintiffs and defendant No.4. Whereas according to version of defendant No.1, Daulat Ram had executed a valid will dated 9.8.1982 in his favour. Both the parties had led evidence to prove their respective wills. The trial Court had observed that the plaintiffs had successfully proved execution of will Ex.P1 by Daulat Ram in favour of the plaintiffs and defendant No.4 and for that reason the plaintiffs were found entitled to inherit estate of Daulat Ram. Whereas the Will set up by the defendant Ex.D1 was found to be result of fraud and misrepresentation, therefore, the same was rejected.

However, when the matter went before learned District Judge, Hoshiarpur, he had rejected both the wills reversing the finding recorded by the trial Court in favour of the plaintiffs accepting their will. In that way, the appeal had been allowed partly and judgment and decree of the trial Court were set aside and those were substituted by a decree of joint possession in favour of heirs of

Smt.Banti, including Sharo plaintiff No.9, there respondent No.7 in equal shares with Smt.Manglan alias Surjit Kaur defendant – respondent No.12.

Learned District Judge, Hoshiarpur observed that the circumstances surrounding the execution of will were still more suspicious as compared to execution of will Ex.D1. The reasons for arrival of such conclusion were as under:

- (i) Firstly the deed writer chosen belonged to village Nasrala, 5-6 kms. away from village of the testator and there was no explanation as to why the testator did not come to the Courts or Tehsil premises for getting his will scribed by a licensed Deed Writer as had been done by him on the earlier occasion and even that Deed Writer of Nasrala was not produced by plaintiffs for being cross-examined by defendant and his examination-in-chief was incomplete when it was deferred for want of his register, which was not found with the summoned file.
- (ii) Secondly there is no mention or reference by the testator to earlier registered will much less mentioning any reason for change in his mind.
- (iii) Thirdly no mention has been made by the testator with regard to the names or number of children of any of his deceased sisters and he had merely mentioned that they had children.

(iv)Fourthly, the recital in the will Ex.P1 does not give any clue as to why he thought of giving his share in his property to the children of his sisters, who had died long way back without there being any evidence of their being on visiting terms with him to the disadvantage of his living sisters Surjit Kaur alias Manglan and Smt.Banti because they were the only natural and legal heirs entitled to inherit his estate.

(v)Though registration of will is not compulsory yet the village of the testator being close to Tehsil complex, Hoshiarpur and he had earlier got his power of attorney registered, it was natural to expect from him to get the will registered to put the matter beyond controversy. Therefore, reliance could not be placed on testimony of PW2 Bagga Singh and PW3 Ajaib Singh with regard to the execution of will Ex.P1 and its attestation by them.

(vi)Statement of Nazar Singh during the mutation proceedings certified copy of which being Ex.D4 showed that Daulat Ram was not mentally sound and could not therefore be in a free disposing mind.

Accordingly, learned District Judge, Hoshiarpur concluded that the plaintiffs had failed to prove that Will Ex.P1 propounded by them was voluntarily executed by Daulat Ram deceased in a free disposing mind.

With the Will set up by plaintiffs having been rejected by learned District Judge, Hoshiarpur, if they felt aggrieved, they should have challenged that judgment by way of filing a separate appeal, which they have not done, meaning thereby, that such finding has become final and binding upon them. The plaintiffs had another opportunity of challenging such finding by way of filing cross-objections before this Court in the Regular Second Appeal filed by defendant No.1 Hardev Singh but it has not been done by them even. Therefore, the chapter with regard to the Will Ex.P1, propounded by plaintiffs stands closed.

Now coming to the Will set up defendant No.1. It was rejected by both the Courts below for almost similar reasons. However, the reasoning given by learned District Judge, Hoshiarpur for rejecting the Will set up by defendant No.1 is contained in paras No.17 to 26, which for ready reference are reproduced as under:

17. It is well settled that it is for the party propounding a will to prove by cogent and convincing evidence that it was executed voluntarily by the testator in a free disposing mind.

Thus, even when the signatures or thumb impression on a will propounded by a party are proved to be genuine, still it may be discarded if there are suspicious circumstances surrounding its execution, to

show that the disposition made thereby, is so unnatural or improbable that it could not have been made by the testator.

The mere registration of such a will would not by itself be sufficient to prove the due execution of the will by the testator, without the suspicious circumstances surrounding its execution, having been properly and reasonably explained by the propounder.

18. The will Ex.D1 propounded by the defendant is dated 9.8.1982 and the testator died on 18.8.84, admittedly at the house of his sister Smt.Manglan alias Surjit Kaur at village Khurdpur and the last rites were also performed there, though the case of the plaintiffs is that he had gone temporarily a few days earlier to his death and died there, whereas according to the defendant, he had shifted about 5/6 years earlier.

Both the attesting witnesses of the will Ex.D1, namely, Kartar Singh (DW1) and Nazar Singh, Lambardar, who died before he could be examined, during the trial, are from village Dagana to which the testator belonged and where the property in dispute is situated.

The will was scribed by a licenced deed writer

Bhagat Ram (DW5).

19. *Both the attesting witnesses, therefore, knew the testator and there could be no dispute about his identity but what makes it suspicious is that there is no mention therein by the testator, to his other sister Smt.Banti who was still alive or to the children of his three sisters, who had pre-deceased him much less, giving any clue of his having indifferent relations with the said living sister and the children of the three deceased sisters.*

It merely recites of his having great love and affection for Hardev Singh from the very beginning and his serving him.

Even this recital is not factually correct and is misleading because Hardev Singh is serving in the Army and was not in a position to serve him and only the sister and other children could do so.

20. *Another circumstances, deserving notice is that Manglan alias Surjit Kaur has two other sons, Tehal Singh and Inder Singh, as mentioned in the pedigree table, given in para No.2 of the plaint and who are defendants Nos.2 and 3 and no reason has been given to exclude them.*

21. *Secondly, the recitals in the will Ex.D1 do not*

advance the case of the defendant-appellant about Daulat Ram having shifted to the house of Surjit Kaur 5/6 years earlier to his death.

In the will, Daulat Ram has given his place of residence as his village Dagana.

(DW1) Kartar Singh of that village examined by the defendant-appellant also deposed that Daulat Ram also used to reside in village Dagana as well as Khurdpur and therefore, does not support of his permanently shifting to the house of his sister Surjit Kaur.

Kartar Singh also deposed about the other witness Nazar Singh of his village having died.

22. The defendant-appellant himself tendered into evidence certified copy of statement of Nazar Singh as D4, which that witness had made before the Assistant Collector Ist Grade, in the proceedings for the sanction of mutation of inheritance.

A reference to his statement Ex.D4 would show that though he supported the case of the defendant in those proceedings about the execution of the said will by Daulat Ram and his attesting the same but significantly in the course of his cross-examination, he admitted that

Daulat Ram was taken ill a few days before the execution of the will and that he was mentally not sound and that even after the execution of the will also, he used to recover at times and at others, was not so.

23. Another circumstance deserving notice in this connection is that on the same day, a power of attorney was executed by Daulat Ram in favour of Sumittar Singh, brother of the wife of Hardev Singh defendant – appellant. Entry regarding the execution of that power of attorney is at serial No.202 in the register of Bhagat Ram, licensed deed writer and that of the will is at serial No.201. According to the entry in his register, Nazar Singh and Kartar Singh were the attesting witnesses of that power of attorney as well.

24. Daulat Ram was admittedly an illiterate person and had thumb marked the documents and even though there is no evidence to show that the will was procured from him by mis-representing it to be the power of attorney, but in the background of the suspicious circumstances, it will not be unreasonable to conclude that he did not make voluntarily and consciously the will Ex.D1 in favour of Hardev Singh, to the exclusion of other natural heirs.

25. *The defendant-appellant was unable to dispel the suspicious surrounding the execution of the will Ex.D1, propounded by him and therefore, the final conclusion of the learned Sub Judge, for discarding the said will ex.D1 is affirmed, though its finding about its having been procured by fraud practised on the testator is not sustainable, in the absence of any cogent evidence.*

26. *The findings of the learned Sub Judge, under issue No.2, as already pointed out, is the result of his faulty approach to the matter.*

However, I find that the whole approach of the Courts below with regard to determination of the question whether the testator had executed a legal and valid will Ex.D1 in favour of defendant No.1 was erroneous and faulty.

The Will Ex.D1 is dated 9.8.1982. It is a registered document. The deceased testator Daulat Ram had died on 18.8.1984 at the house of his sister at village Khurdpur. Smt.Manglan alias Surjit Kaur is none else but mother of Hardev Singh beneficiary under the Will Ex.D1. There is common address of all the defendants pointing out towards their having a common residence, that means the testator was residing with family of defendant No.1 prior to his death. Learned District Judge, Hoshiarpur in para No.18 has

specifically observed that his last rites were performed there at village Khurdpur of course by the defendants. Though according to the plaintiffs, the deceased had gone to village Khurdpur temporarily a few days earlier to his death and he had died there, whereas according to the contesting defendant, he had shifted about 5-6 years earlier. But then the stand by the contesting defendant seems to be much more plausible. There is nothing on record to show that the deceased used to reside with plaintiffs for a considerable time. It is but natural that the testator had an inclination towards his real sister Manglan @ Surjit Kaur and her sons and pleased with their services, he had executed will in favour of Hardev Singh. A question may arise as to why did he execute the will in favour of Hardev Singh only stated to be serving in Army and not in favour of his other two brothers or mother. Of course it was choice of the testator. It is for the testator to determine as to who should inherit his estate after his death. The testator may be having liking for a particular person, who may or may not be related to him and he would like to bequeath his properties to the said person. None out of the defendants No.2 to 4 had appeared in the Court to offer a contest, which points out their common interest with defendant No.1. Of course testamentary succession is deviation from natural succession. Hardev Singh beneficiary under the will Ex.D1 is none-else but a real nephew of deceased testator and as it can be gathered from the facts and

circumstances of the case particularly the fact that deceased had breathed his last at village Khurdpur i.e. village of the defendants and his last rites had been performed by the defendants, indicating that he had been residing with them and relations between them were cordial and there was nothing unnatural in testator bequeathing his property to one of sons of his real sister Surjit Kaur @ Manglan namely Hardev Singh. There are no suspicious circumstances surrounding the will in favour of Hardev Singh. Both the Courts below by misappraisal of evidence and wrong interpretation of law started finding faults in the will and wrongly discarded it.

Learned District Judge, Hoshiarpur has observed that it is for the party propounding a will to prove by cogent and convincing evidence that it was executed voluntarily by the testator in a free disposing mind. There cannot be any dispute with such proposition of law. Similarly his observations that suspicious circumstances surrounding the will are to be explained by the propounder cannot be differed with. However, whatever little suspicious circumstances were there, the same stand duly explained by the propounder. The disposition by testator in favour of his real nephew with whom he is shown to have cordial relations and at whose house he died and who and whose family had performed his last rites can certainly be not taken to be unnatural or improbable so as to treat the will with a suspicion. The observations of learned District Judge, Hoshiarpur

that the mere registration of the will would not by itself be sufficient to prove the due execution of will by testator without suspicious circumstances surrounding its execution having been properly and reasonably explained by the propounder can also be not differed with.

However, registration of will gives rise to presumption of due execution. Sub-Registrar, a responsible Government Officer acting in discharge of his official duties would register an important document like a will only if satisfied that it was being executed by the testator of his free will without any pressure or undue influence being exerted upon him. For that reason he makes inquiries from the testator, the attesting witnesses so as to reach a satisfaction that the will is executed by the testator out of free mind without any pressure, undue influence or use of force. The endorsement by the Sub-Registrar is to that effect. Therefore, though as per law a registered and unregistered will are at par but registration of will does give rise to presumption of due execution, though the same could be rebutted by the persons challenging the will by bringing cogent and convincing evidence. It needs to be noticed here that both the attesting witnesses of the Will Ex.D1 namely Kartar Singh – DW1 and Nazar Singh, Lambardar, who had died before he could be examined before the trial Court belonged to village Dagana to which the testator belonged and where the suit property is situated, that

means the will was attested by two responsible persons of the area acquainted with the testator, in addition to that will was scribed by licensed Deed Writer DW5 Bhagat Ram. The execution of the Will stood duly proved fulfilling the requirements of Section 68 of Indian Evidence Act and Section 63 of the Indian Succession Act.

Learned District Judge, Hoshiarpur has though observed that both the attesting witnesses therefore knew the testator and there could not be any dispute about his identity, but without any justifiable reason observed that what makes it suspicious is that there is no mention by the testator to his other sister Banti, who was still alive or to the children of his three sisters, who had pre-deceased him much less giving any clue of his having indifferent relations with such living sister and children of three deceased sisters.

This inference drawn by learned District Judge, Hoshiarpur was uncalled for more particularly when there is not enough cogent and convincing evidence available on the record that the deceased had cordial relations with all his sisters and their children and he was on visiting terms with them. Therefore, the non-mentioning of their names or not making reference to them can certainly be not taken to be a suspicious circumstance.

The testator had specifically observed that he was having great love and affection with Hardev Singh from the very beginning, who was serving him.

Learned District Judge, Hoshiarpur again adopted a wrong approach in observing that Hardev Singh is serving in the Army and was not in a position to serve him and only the sister and other children could do so. As observed above Hardev Singh was not supposed to remain with the testator all the times. The testator had been visiting his sister and her family, which include Hardev Singh and was being served by them. Therefore, there was no ambiguity in the recital of the Will and District Judge, Hoshiarpur misdirected himself in treating it as a suspicious circumstances.

Learned District Judge, Hoshiarpur read between the lines and rather tried to find faults with the Will without there being enough reasons to do so. DW1 Kartar Singh had categorically stated that testator used to reside at village Dagana and village Khurdpur, therefore, the finding given that recital in the will Ex.D1 does not advance case of the appellant about Daulat Ram having shifted to house of Surjit Kaur @ Manglan 5-6 years earlier to his death was uncalled for. There could not be any possible restrictions on the movements of Daulat Ram. He could reside at village Dagana or with her sister Surjit Kaur @ Manglan at village Khurdpur and that could not be taken to be contrary to the recital in the will.

Learned District Judge, Hoshiarpur again adopted wrong approach in picking up lines from cross examination of Nazar Singh when his statement had been recorded in mutation proceedings to the

effect that Daulat Ram was taken ill a few days before execution of will and he was mentally not sound. Those lines have been interpreted out of context ignoring the other evidence available on file. As already noticed, if the Tehsildar registering the will had any iota of doubt that testator was mentally not sound, he would have refused to register the will and the registration of the will goes a long way to show that the testator was having sound disposing mind at the time of execution of the will.

Learned District Judge, Hoshiarpur has observed in para No.24 of the judgment that there is no evidence to show that will was procured from the testator by misrepresentation as to power of attorney. But then again, he drew a wrong conclusion that will Ex.D1 was not executed voluntarily and consciously, which conclusion is absolutely without any basis.

Learned counsel for the appellant has referred to various judgments first being **Prem Singh & Ors. Versus Birbal & Ors., 2006(3) RCR(Civil) 381**, by the Apex Court wherein it was observed that there is a presumption that a registered document is validly executed and a registered document, therefore prima facie would be valid in law, the onus of proof, thus, would be on a person who leads evidence to rebut the presumption.

He has further referred to judgment **Harbhajan Singh Versus Chanan Singh and others, 1964 PLR 1170** by a Single

Judge of this Court wherein it was observed that registration of a will goes a long way to prove its execution and disposing mind of the person making the will.

The third judgment referred to by him was **Rabindra Nath Mukherjee Versus Panchanan Banerjee (dead) by LRs, 1995(3) R.R.R. 520** by the Apex Court wherein it was observed that where the will has been registered and Registrar has given his certificate on it that the same was read over to the executant and admitted him, the witnesses being interested loses significance.

On the other hand, learned counsel for the respondents has referred to judgment **Lalitaben Jayantilal Popat Versus Pragnaben Jamnadas Kataria & Ors., 2009(1) RCR(Civil)715**, by the Apex Court wherein it was observed that whether a Will is surrounded by suspicious circumstances or not is essentially a question of fact.

There cannot be any dispute with such proposition of law. However, the Courts below had not properly appreciated the factual and legal position while conducting enquiry whether the will Ex.D1 is surrounded by suspicious circumstances or not, which had led to a wrong inference that it was surrounded by suspicious circumstances resulting in miscarriage of justice and this Court can certainly look into the facts of the case including the evidence available on the file to find out as to whether such conclusion drawn

by the Courts below was correct or not.

Resultantly the judgment and decree passed by District Judge, Hoshiarpur as well as the trial Court are set aside observing that the testator had executed a legal and valid will Ex.D1 in favour of Hardev Singh – appellant and the mutation was rightly sanctioned in his favour on the basis of will. Under the circumstances, the estate of Daulat Ram is to go by testamentary succession in favour of Hardev Singh – appellant and not by natural succession.

The appeal stands allowed accordingly with costs.

25.9.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No