

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

**RSA-4923-2019 (O&M)
Reserved on: 10.10.2022**

Date of Pronouncement: November 4, 2022

Jaswinder Kaur Appellant/Defendant
Versus
Rupinder Kaur Respondent/Plaintiff

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr.Amit Jhanji, Sr. Advocate with
Ms. Priyanka Kansal, Advocate for the appellant.

Mr.G.S. Punia, Sr. Advocate with
Ms. Harveen Kaur, Advocate for the respondent.

HARKESH MANUJA, J.

Present second appeal has been filed challenging the impugned judgments and decrees dated 17.04.2015 and 01.08.2019 passed by the Courts below; whereby a suit for declaration claiming ownership to the extent of half share qua the property in dispute has been decreed in favour of respondent/ plaintiff (hereinafter referred to as 'the respondent').

The facts leading to the present appeal are that in the present case the property left by deceased Shamsher Singh has become an apple of discord between his mother i.e. appellant/ defendant (hereinafter referred to as 'the appellant') and his widow i.e. respondent. As per the case set up in the plaint, leaving behind the suit property Shamsher Singh unfortunately died intestate on 28.05.2009 and respondent as well as the appellant as his Class I legal heirs. The

respondent further submits that mutation No.383 dated 26.11.2019 was entered into in the name of both the Class I legal heirs though later impugned in appeal at the instance of present appellant having set up a registered Will dated 18.05.2009 in her favour. As per the plaint, the Will dated 18.05.2009 happens to be a forged and fabricated document being surrounded by suspicious circumstances. Based on the aforesaid facts, the respondent sought declaration claiming half share in the property left by her husband Shamsheer Singh on the basis of natural succession with a further prayer for grant of joint possession as well as for grant of permanent injunction restraining the appellant from alienating the suit property, in any manner, besides having challenged the validity of Will dated 18.05.2009 registered on 19.05.2009 being illegal, forged and fabricated document.

In response, the appellant contested the suit by filing a detailed written statement. Having admitted the factum of marriage between the respondent and Shamsheer Singh, the primary thrust was on the validity of Will dated 18.05.2009. The learned Civil Judge, (Junior Division), Ludhiana, vide its impugned judgment and decree dated 17.05.2015 though accepted the execution of the Will in question, however, discarded the same being based on suspicious circumstances, thereby decreeing the suit in favour of respondent to the extent of half share in the suit property. Aggrieved against the judgment and decree passed by learned trial Court, the appellant filed first appeal which again met the same fate and was dismissed by learned

Additional District Judge, Ludhiana, vide judgment and decree dated 01.08.2019.

Challenging the judgments and decrees passed by the Courts below, learned Senior Counsel-Mr. Amit Jhanji appearing on behalf of the appellant contends that the valid execution of Will has been duly proved on record in accordance with the requirements of Section 68 of the Indian Evidence Act, 1872, for short '1872 Act' read with Section 63 of the Indian Succession Act, 1925, for short '1925 Act'. Learned senior counsel further submits that the Will in question dated 18.05.2009 is a registered document, having been registered on 19.05.2009 and has been validly proved on record through the statements of the appellant, the attesting witnesses, the scribe as well as the witness from the office of Sub Registrar, Ludhiana. He further submits that the respondents has not been able to impeach the consistency of the testimony of all the aforesaid witnesses who have appeared as DW1, and DW5 in order to prove the execution of Will in question. Learned counsel for the appellant further submits that in the absence of any evidence on record that the testator was not of sound disposing mind at the time of execution of the Will, the Courts below have gone wrong while discarding the Will based on suspicious circumstances which were not made out in the facts and circumstances of the present case.

On the other hand, learned Senior counsel appearing on behalf of the respondent submits that both the Courts below have concurrently found that the Will in question is surrounded by suspicious

circumstances as enumerated in the judgments and decrees passed by the Courts below. He further submits that the finding on the point of Will being surrounded by suspicious circumstance is a finding of fact based on due appreciation of evidence by the Courts below and as such the scope of interference therein, by way of second appeal is extremely thin and limited, particularly there being absence of any misreading of evidence.

I have heard learned Senior counsels for both the sides and gone through the paper-book which includes all the relevant records including the pleadings, statements of witnesses, besides the Will in question as well. I do not find much substance in the submissions made on behalf of the appellant.

No doubt, both the Courts below have recorded that the execution of Will in question dated 18.05.2008 has been proved on record as per the requirements of Section 68 of the 1872 Act read with Section 63 of the 1925 Act, however, mere proving of a Will does not establish the same to be valid in law, in case the same is surrounded by suspicious circumstances. The beneficiary is not only required to discharge his burden to prove the Will; but is also to satisfy the conscious of the Court that there are no suspicious circumstances or if there are any, to explain them is also on the propounder of the Will. It is only when such responsibility is discharged by the beneficiary, the Court can accept the Will to be genuine. My aforesaid view is derived from the judgment of Supreme Court of India in **Gurdial Kaur and others Vs. Kartar Kaur and others**, 1998 (2) RCR (Civil) 390 and

Babu Singh and others Vs. Ram Sahai @ Ram Singh, 2008 (3) RCR (Civil) 154, and relevant paras 3 & 11, respectively, of the same are reproduced hereunder:-

“Para 3 of Gurdial Kaur’s case

3. The law is well-settled that if there is suspicious circumstance about the execution of the will, it is the duty of the person seeking declaration about the validity of the will to dispel such suspicious circumstances. In this connection, , reference may be made to the decision of this court in Rani Purnima Debi and another Vs.Kumar Khagendra Narayan Deb and another (AIR 1962 SC 567). It has been held in the said decision that if a will being registered and having regard to the other circumstances, is accepted to be a genuine, the mere fact that the will is a registered will it will not by itself be sufficient to dispel all suspicions regarding the validity of the will where suspicions exist. it has been held that the broad statement by witness that he had witnessed the testator admitting execution of the will was not sufficient to dispel suspicions regarding due execution and attestation of the will. it has been specifically held that registration of the will by itself was not sufficient to remove the suspicion, Relying on an earlier decision of this Court reported in AIR 1959 SC 443, it has been held in the said decision that where the propounder was unable to dispel the suspicious circumstances which surrounded the question of valid execution and attestation of the will, no letters of administration in favour of the propounder could be granted.”

Para 11 of Babu Singh’s case

“11. In terms of Section 68 of the Act, although it is not necessary to call more than one attesting witness to prove due execution of a Will but that would not mean that an attested document shall be proved by the evidence of one

attesting witness only and two or more attesting witnesses need not be examined at all. Section 68 of the Act lays down the mode of proof. It envisages the necessity of more evidence than mere attestation as the words 'at least' have been used therein. When genuineness of a Will is in question, apart from execution and attestation of Will, it is also the duty of a person seeking declaration about the validity of the Will to dispel the surrounding suspicious circumstances existing if any. Thus, in addition to proving the execution of the Will by examining the attesting witnesses, the propounder is also required to lead evidence to explain the surrounding suspicious circumstances, if any. Proof of execution of the Will would, inter alia, depend thereupon."

In the present case, the Will in question has been discarded and disbelieved by the Courts below having found to be surrounded by the suspicious circumstances which the appellant has not been able to dispel. It may be relevant to refer to para 19 of the judgment passed by learned first Appellate Court; wherein the details of suspicious circumstances have been delineated and for reference, relevant part of the same is reproduced hereunder:-

"19. Perusal of record further reveals that defendant Shamsher Singh was admittedly of the age of 27 years at the time of his death and as such, this Court is of the considered view that there was no reason for execution of the alleged Will by him at such shorted age. Even DW-1 Jaswinder Kaur when cross-examined, has categorically admitted that relations between plaintiff Rupinder Kaur and her deceased husband Shamsher Singh are cordial and no litigation of any type was pending between them. However, in the alleged Will executed by deceased

Shamsher Singh, there is no mention as to why he has deprived his duly wedded wife from his estate in a young age. Even the Will is silent regarding the marriage ad his living wife. The said Will was also not produced at the time of sanctioning of mutation in favour of the plaintiff as well as defendant in equal shares. Furthermore, the perusal of evidence reveals that during his cross-examination, attesting witness DW-2 Mohan Singh has admitted that more than five cases have been registered against him for forging the documents out of which, in one case, he has already been acquitted and the other cases are pending, which are registered under Sections 467, 468, 471, 419, 420 of the IPC whereas DW-3 Lakhwinder Singh is the cousin of late Shamsher Singh and nephew of defendant. DW4 Ravi Kumar has also admitted during his cross-examination that he was not present in the office of Sub Registrar at the time of registration of the Will. The perusal of Will in question reveals that there is a cutting on the date of execution of Will, which also creates a doubt on the Will.....”

It is settled proposition of law that mere exclusion or dis-heritance of a natural heir while executing a Will is not to be taken as a suspicious circumstance as the very purpose of execution of a Will is to divert from the line of natural succession. However, it has also been settled and expounded upon by the Hon’ble Supreme Court in catena of judgments that any unnatural, improbable or unfair disposition made in the Will has to be considered as a suspicious circumstance. In the facts and circumstances of the present case, wherein it has been established on record that the respondent happened to be the legally wedded wife

of deceased Shamsheer Singh, neither the testator has recorded the factum of his marriage with the respondent in the Will; nor even her name has been mentioned therein. More than that, no provision has even been made for her maintenance particularly under the circumstances wherein it has been established/ proved on record from the statements of DW1 i.e. appellant herself as well as DW3- Lakhwinder Singh, who happens to be the cousin of deceased Shamsheer Singh that the relationship between the husband and wife remained amicable throughout. Similarly, the omission to mention two of her sons by the testator now taken to be a suspicious circumstance by the Hon'ble Supreme Court in case of **Joseph Antony Lazarus (Dead) by LRs Vs. A.J. Francis**, 2006 (2) RCR (Civil) 570 and relevant part of para 20 thereof, reads as under:-

“20. It will be injudicious to suggest, as has been held by the learned Single Judge of the Madras High Court, that there are no suspicious circumstances surrounding the execution and registration of the Will. It is difficult to understand as to why the testatrix omitted to mention two of her sons in the Will although she has taken great pains to mention the fact that the appellant herein and her other son, Cecil Lazarus, had looked after her and had paid all the installments towards the house property, even though Cecil Lazarus had gone to Sharjah as far as back as in 1963 and only the appellant was living with her in the house being the subject matter of the bequest in the Will..... (emphasis supplied)”

In the written statement, though the following explanation rendered by the appellant on the point of testator having disinherited the

respondent, the same, however, does not appear to be sound and reasonable:-

“Though he was married with the plaintiff yet events reveal that he had executed a valid and registered Will in favour of his loving mother with a belief that any untoward incident happened to him the plaintiff young in age can manage for her future life though the defendant old in age unable to have new ventures in life and for this reason he executed Will giving his entire estate to his sole surviving mother. Thus, the plaintiff is stranger to the suit property having no right to file the present suit.”

From cumulative effect of the aforesaid facts and circumstances, one can easily see through that the testator's mind was not free at the time of making disposition of Will dated 18.05.2009.

Besides it, in the facts of the present case, the young age of the testator, he being 27 years of age; an application having been moved at the instance of appellant for impleading legal representatives of deceased Shamsheer Singh in another litigation for impleading the respondent as well, based on natural succession and five cases of forging documents being pending against DW2 Mohan Singh i.e. one of the attesting witness of the Will in question, having been admitted in his cross-examination making it sufficient to believe him as an unreliable attesting witness, appear to be more than sufficient to hold that the Will in question was surrounded by suspicious circumstances which the appellant could not dispel.

Thus, in view of the discussion made hereinabove, I do not find any merit in the present appeal impugning the concurrent findings of

fact recorded by both the Courts below, as such no question of law much less substantial question of law is involved in the present appeal.

There is no illegality or irregularity warranting interference by this Court in exercise of powers under Section 100 of CPC read with Section 41 of the Punjab Courts Act, 1918. Thus, the present appeal is dismissed.

Pending application(s), if any, shall also stand disposed of.

November 4, 2022
sanjay

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>