



RSA No.1066 of 1990

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

RSA No.1066 of 1990

Reserved on:14.03.2024

Pronounced on:16.04.2024

Balbir Kaur through her LR Pargat

.....Appellant

Versus

Gurdip Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

**Present: Mr. Gourave Bhaiyya Gilhotra and
Mr. Hitesh Verma, Advocates,
for the appellant.**

**Mr. Baltej Singh Sidhu, Senior Advocate with
Mr. Inderpal Singh and
Mr. Himmat Singh Sidhu, Advocates,
for respondent Nos.15 and 16.**

VINOD S. BHARDWAJ , J.

Appellant-plaintiff is in challenge to the judgment and decree dated 20.04.1990 passed by the Additional District Judge, Faridkot in Civil Appeal No.76 of 21.04.1986 whereby he has set aside the judgment and decree dated 19.03.1986 passed by the Sub Judge Ist Class, Muktsar in Civil Suit No.74 dated 25.02.1983.

The appellant-plaintiff had filed a suit for possession as owner of the land measuring 63 kanals 16 marlas detailed in the head-note of the plaint and situated in the revenue estate of village Barkandi, Tehsil Muktsar, as per



jamabandi pertaining to the year 1977-78. It was averred that one Bakhshish Kaur was the true owner of the land in dispute and she was married to Daya Singh son of Kundan Singh, resident of village Barkandi. She also had a brother by the name of Kundan Singh son of Hazara Singh, resident of village Sadduwala. The appellant-plaintiff claims to be daughter of the abovesaid Kundan Singh and hence a niece to Bakhshish Kaur (who died issueless). A registered Will was executed by Bakhshish Kaur in favour of the appellant-plaintiff, in a sound disposing mind, on 15.12.1979 out of natural love and affection and in lieu of the services rendered by the appellant-plaintiff to deceased Bakhshish Kaur, who died on 25.01.1980. The said Will was registered in the office of Sub-Registrar, Zira on the day of its execution. The respondents(defendant Nos.1 to 5 in the suit) were the sons and daughters of Ajit Singh-brother of Kundan Singh(father-in-law of Bakhshish Kaur) and are thus the nephews on her matrimonial side. The respondents-defendants No.6 to 9 in the suit are the widow, sons and daughter of Tara Singh son of Ajaib Singh, another brother of Kundan Singh(father-in-law of Bakhshish Kaur). Respondents-defendants No.14 to 16 are the brothers and sisters of Kundan Singh(father-in-law of Bakhshish Kaur). The respondents-defendants claimed to be owners of the land in dispute by way of natural succession. Nishan Singh and Jarnail Singh, i.e. respondents-defendants No.17 and 18 in the suit are claimed to be in possession of a part of the land in dispute on the strength of a mortgage created in their favour by defendant Nos.1, 2 and 10 to 13. It was further averred that the defendants had no right to create a mortgage with respect to the land in dispute in favour of respondents-defendants No.17 and 18 and the said mortgage is illegal and is not binding on the rights of the appellant-



plaintiff Balbir Kaur. The suit for possession was thus filed as the defendants refused to admit the rights of the appellant-plaintiff in the land in dispute on the basis of the Will.

Only defendant Nos.1, 4, 14, 15 and 16 namely, Gurdip Singh, Mangal Singh, Sardool Singh, Shabeg Singh and Smt. Mangal Kaur appeared to contest the suit. While respondent-defendant No.16-Mangal Kaur filed her independent written statement, other respondents-defendants filed a joint reply denying the execution of the Will by Bakhshish Kaur in favour of the appellant-plaintiff. A counter-claim is also raised with regard to the land in dispute and it was contended that mutation with regard to the disputed property had already been entered on 14.07.1983 and they have become owners of the land. It was further averred that the appellant-plaintiff never looked after or served Bakhshish Kaur and that there was no natural love and affection. The Will was a fabricated document and that the appellant-plaintiff was alleged to have forged the said Will by way of an impersonation. The respondents-defendants claim to be the owners and sought a decree of possession in their favour.

Replication was filed by the appellant-plaintiff reiterating her averments in the plaint and denying the objections/responses filed by the respondents-defendants.

On completion of the pleadings, the following issues were framed:-

- “1. Whether Bakhshish Kaur made a valid registered Will in favour of the plaintiff? If so, to what effect? OPP*
- 2. If issue No.1 is proved, whether the plaintiff is entitled to the possession of the suit land? OPP*
- 3. Whether the mortgage created by defendants No.1, 2 and 10 to 13 is illegal and not binding upon the rights of the plaintiff? OPP*



4. *Whether defendants 1 to 16 are the heirs of Bakhshish Kaur? OPP*
5. *Whether defendants 1 to 16 are tenants of the suit land? OPD*
6. *Whether the counter claim has not been properly made and valued? OPP*
7. *Whether the counter claim cannot be set up in the present plaint as alleged in preliminary para No.4 of the replication? OPP*
8. *Relief.”*

Issue Nos.6 and 7 were given up as not pressed by counsel for the appellant-plaintiff. The remaining issues were accordingly decided by the Sub Judge Ist Class, Muktsar.

To prove its case, the appellant-plaintiff produced Narinder Kumar Narang, petition writer(scribe) as PW1; Resham Singh son of Hukam Singh(attesting witness) as PW2, while Balkar Singh son of Teja Singh(attesting witness) as PW3 and she herself stepped into the witness box as PW4. The attesting witness PW3-Balkar Singh is husband of the appellant-plaintiff Balbir Kaur. The respondents-defendants, on the other hand, examined Shabeg Singh son of Guddar Singh as DW1, Nishan Singh son of Milkha Singh as DW2 and Mangal Kaur wife of Resham Singh as DW3. All the said witnesses were defendants in the suit itself.

Upon consideration of the rival contentions raised by the respective parties, the Sub Judge Ist Class, Muktsar recorded a finding to the effect that the Will and its execution was well-established and that the suspicious circumstances alleged by the respondents-defendants do not in any manner create a doubt about the genuineness of the Will. The relationship of the



appellant-plaintiff with deceased Bakhshish Kaur was duly established and that even though the respondents-defendants alleged that it was a possible case of impersonation, however, no such suggestion was even put to the witnesses of the appellant-plaintiff when they appeared in the witness box. It was also not a case set up by the respondents-defendants that execution of the Will was under any undue influence, fraud or coercion on the testatrix. Besides, the scribe as well as the attesting witnesses had also stepped into the witness box and that merely because one of the attesting witnesses was husband of the appellant-plaintiff, the same was held as would not vitiate the Will since the other witness i.e. the scribe verified the due and proper execution of the Will. The suit was accordingly decreed in favour of the appellant-plaintiff. In so far as the mortgage-deeds created by virtue of documents dated 27.05.1982(Ex.P4) and 08.11.1981(Ex.P5), respectively, the same were disbelieved because the mortgage-deeds had been created much prior to the entry of mutation of the land in favour of the defendants only on 14.09.1982. The appellant-plaintiff having become owner of the suit land immediately after the death of Bakhshish Kaur in January, 1980, the respondents-defendants could not have created any mortgage rights against the land in question and that the appellant-plaintiff cannot be stated to be bound by the said mortgage.

Aggrieved of the said judgment and decree passed by the Sub Judge Ist Class, Muktsar, only respondents-defendants Shabeg Singh and Mangal Singh preferred an appeal before the Additional District Judge, Faridkot and the other defendants i.e. Gurdip Singh, Sardool Singh and Mangal Kaur did not file any separate appeal.



The Additional District Judge, Faridkot heard the appeal and observed that the Will set up by the appellant-plaintiff could not be accepted to be free of suspicious circumstances for the following reasons:-

i) The appellant-plaintiff was not the natural heir of the deceased.

ii) That the appellant-plaintiff and her husband, even though claimed to be residing along with deceased Bakhshish Kaur at village Barkandi for a period of one year prior to her death, however, there was no occasion for them to shift from the said village to village Kaadarwala for execution of the Will and that both the attesting witnesses also belong to the same village.

iii) Bakhshish Kaur had died at village Sadduwala, was cremated there only and even her Bhog ceremony was performed in village Sadduwala and not at village Barkandi, hence, deceased Bakhshish Kaur was suspected of having never resided with the appellant-plaintiff. Deceased also did not have a vote in village Kaadarwala.

iv) It was also noticed that even though appellant-plaintiff Balbir Kaur had stated that she was not informed by Bakhshish Kaur about the execution of the Will, however, the same appeared to be improbable, since her husband was an attesting witness to the Will.

v) That there was no evidence to suggest that appellant-plaintiff Balbir Kaur was rendering any services to Bakhshish Kaur which may lay satisfactory basis for execution of a Will in her favour.

Relying on the abovesaid suspicious circumstances, the Additional District Judge, Faridkot concluded that the Will in question was not duly



executed and was shrouded with suspicious circumstances rendering it liable to be disbelieved.

The judgment and decree dated 19.03.1986 passed by Sub Judge Ist Class, Muktsar was accordingly set aside and the respondents-defendants were held to be the legal heirs of deceased Bakhshish Kaur and were held entitled to possession of the land on the basis of the title in their favour on succession. He thus upheld the mortgage created by the defendants-respondents in favour of respondent-defendants No.17 and 18. An injunction order restraining the appellant-plaintiff Balbir Kaur from interfering with the possession of the respondents-defendants and from alienating the land in dispute was also ordered by the Additional District Judge, Faridkot.

Aggrieved thereof, the present appeal has been filed.

Counsel for the appellant has argued that the Additional District Judge, Faridkot fell in error in doubting the due and proper execution of the Will on account of circumstances that are neither material nor having any bearing on the status *inter se* between the appellant-plaintiff and deceased Bakhshish Kaur. He contends that the respondents-defendants never pressed their counter-claim and there was no documentary evidence to show that deceased Bakhshish Kaur suffered from any mental incapacity. Further, it was also not the case of the respondents-defendants that the Will in question was got executed on account of an impersonation by the appellant-plaintiff. The due and valid execution and registration of the Will was established by leading evidence of the scribe as well as both the attesting witnesses who deposed that Bakhshish Kaur was in a sound disposing mind and had got the Will registered in the office of the Sub-Registrar, Zira. He further contends that no



respondents-defendants other than the four defendants came forth to contest the claim of the appellant-plaintiff and that only two of the defendants had preferred an appeal before the Additional District Judge, Faridkot. Hence, the due and proper execution of the Will was accepted by all other respondents-defendants.

He has placed reliance on the judgment of Hon'ble the Supreme Court in the matter of Seth Beni Chand (since deceased) now by LRs Versus Smt. Kamla Kunwar and others, (1976) 4 SCC 554 to contend that mathematical proof cannot be insisted upon by the Court and that a propounder of the Will is required to satisfy the conscience of the Court that the testator had a sound and disposing state of mind and memory at the time of execution of the Will. Only a reasonable scepticism, not an obdurate persistence in disbelief nor a resolute and impenetrable incredulity is demanded of the testamentary Judge. The relevant extract of the abovesaid judgment reads thus:-

“9. The question which now arises for consideration, on which the Letters Patent Court differed from the learned Single Judge of the High Court, is whether the execution of the will by Jaggo Bai is proved satisfactorily. It is well- settled that the onus probandi lies in every case upon the party propounding a will, and he must satisfy the conscience of the Court that the instrument so propounded is the last will of a free and capable testator. (See Jarman on Wills (8th Ed., P- 50) and H. Venkatachala lyengar v. B.N. Thimmajamma & Ors. [1959] Supp. (1) S.CR. 426.) By "free and capable testator" is generally meant. that the testator at the time when he made the will had a sound and disposing state of mind and memory. Ordinarily, the burden of proving the due execution of the will is discharged if the propounder leads evidence to show that the will bears the signature or mark of the



testator and that the will is duly attested. For proving attestation, the best evidence would naturally be of an attesting witness and indeed the will cannot be used as evidence unless at least one attesting witness, depending on availability, has been called for proving its execution as required by section 68 of the Evidence Act. But where, as in the instant case, the circumstances surrounding the execution of the will are shrouded in suspicion, it is the duty and the function of the propounder to remove that suspicion by leading satisfactory evidence. The testatrix was advanced in age being past eighty years of age, the will contains provisions which are prima facie unnatural since the only son is disinherited under it and the testatrix died five days after making the will. There can be no dispute that these are gravely suspicious circumstances. But the propounder has, in our opinion, offered an explanation of these circumstances which ought to satisfy a prudent mind. Ultimately, that is the test to adopt for one cannot insist on mathematical proof even where the circumstances attendant on the execution of the will raise a suspicion as regards its due execution. The burden in testamentary cases is of a different order than in other cases in the sense that an attesting witness must be called, wherever possible, to prove execution, the propounder must remove the suspicion, if any, attaching to the execution of the will and if there be any doubt regarding the due execution, he must satisfy the conscience of the court that the testator had a sound and disposing state of mind and memory when he made the will. "Reasonable scepticism, not an obdurate persistence in disbelief nor a resolute and impenetrable incredulity" is demanded of the testamentary judge: "He is never required to close his mind to the truth". (See Harmes v. Hinkson (1946) 50 C.W.N. 895 per Lord Du Parcq.) Gajendragadkar J. who spoke for the Court in Iyengars case([1959] Supp. (1) S.CR. 426. 446.) noticed these observations of Lord Du Parcq with approval and said: "It would sound platitudinous to say so, but it is nevertheless true that in discovering truth even in such cases the



judicial mind must always be open though vigilant, cautious and circumspect."

Reliance was also placed on the judgment of Madras High Court in the matter of **Malliga Versus P. Kumaran**, reported as **2022 SCC Online Mad 1289**. The relevant extract of the judgment reads thus:-

"11. There is no dispute with regard to the fact that Chinnadurai Mudaliar was the original owner of the suit property. He had executed a Will and given life interest to his nephews Murugesu Mudaliar and Purusothaman and the vested remainder was given in favour of the male heirs of the nephews. It is also an admitted case that one of the nephew viz., Murugesu Mudaliar died and his wife is the defendant in the suit. The other nephew Purusothanam is alive and he is the father of the plaintiff. On going through the entire evidence, it is seen that the said Purusothaman and his son, the plaintiff herein were residing elsewhere at Chennai for more than 30 years and they were never in possession and enjoyment of the property. Murugesu Mudaliar, till his life time was enjoying the suit property and thereafter, his wife is enjoying the suit property and is cultivating crops.

12. The document through which the plaintiff was claiming for half share in the suit property is the Will dated 09.05.1977 marked as Ex.A6, which was executed by Chinnadurai Mudaliar. Both the Courts below admitted the Will in evidence and acted upon the same, only on the ground that the defendant did not dispute the availability of the Will. In view of the same, the main focus of the arguments revolved around the admissibility of the Will without the same being proved in accordance with Section 68 of the Indian Evidence Act. That is the reason why this Court in the course of arguments framed an additional substantial question of law in this regard and heard both the counsel.

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18. *This view taken by the Division Bench of the Kerala High Court, seems to have been reiterated by this Court also in the following judgments:—*

(a) [S. Kaliyammal v. K. Palaniammal] reported in AIR 1999 Mad 40.

(b) [Minor Mani, rep. By next Friend/mother Ramayi v. Ammakannu] reported in (2009) 1 LW 309

(c) [R. Vellingiri v. R. Kannaian] reported in (2008) 1 CTC 130.

(d) [Karpagam v. E. Purushothaman] in (2010) 3 LW 282

(e) [Ranganathan v. Natarajan] in (2012) 1 MWN (Civil) 180

19. *A close look at all the above judgments makes it very clear that examination of attesting witness is mandatory only where the genuineness or validity of the Will is questioned. In cases where the Will has not been specifically denied or it has been admitted, it has been held that examination of attesting witnesses to a Will is unnecessary.*

20. *The law was once and for all settled by the Hon'ble Supreme Court in [Ramesh Verma (Dead) Through Legal representatives v. Lajesh Saxena (dead) by legal representatives] reported in (2017) 1 SCC 257. The relevant portion in the judgment is extracted hereunder:—*

“13. A Will like any other document is to be proved in terms of the provisions of Section 68 of the Indian Succession Act and the Evidence Act. The propounder of the Will is called upon to show by satisfactory evidence that the Will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the disposition and put his signature to the document on his own free will and the document shall not be used as evidence until one attesting



witness at least has been called for the purpose of proving its execution. This is the mandate of Section 68 of the Evidence Act and the position remains the same even in a case where the opposite party does not specifically deny the execution of the document in the written statement.”

By referring to the above, it was argued that once the due execution of the Will has been proved in terms of the mandate of Section 68 of the Evidence Act, the veracity of the documents could not be doubted or disputed and Will of the testator needs to be given effect to.

Counsel for respondent Nos.15 and 16 i.e. respondents-defendants Shabeg Singh and Mangal Kaur @ Mangli have, on the other hand, reiterated the suspicious circumstances noticed by the Additional District Judge, Faridkot and contended that the Will in favour of the appellant-plaintiff deserves to be discarded and that the property in question ought to devolve upon the respondents-defendants by way of succession. The factual aspects argued are however not being reiterated. Reliance was placed on the judgment of the Additional District Judge, Faridkot and reasons cited therein to pray for dismissal of the appeal.

I have heard learned counsel appearing on behalf of the respective parties and have gone through the judgments as also the evidence relied upon by the respective parties.

Even though it may not be necessary to draw a substantial question of law under the Punjab Courts Act, 1941 but none-the-less, the question which has arisen for consideration of this Court is whether a registered Will should be disbelieved merely because an attesting witness is husband of the beneficiary



and that the Will was executed at a place other than where the testatrix is claimed to be residing?

The Will dated 15.12.1979(Ex.P1) was executed by Bakhshish Kaur, Bua of the appellant-plaintiff Balbir Kaur, who was issueless. The dispute now is between the niece, who claims on the strength of the Will and collaterals from her husband who claims ownership on the basis of succession. It was specifically stated in the said Will that she(Bakhshish Kaur) does not have any child and that her husband Daya Singh had predeceased her and that she was residing with the appellant-plaintiff Balbir Kaur at village Kaadarwala. The said Will was witnessed by Balkar Singh(husband of the appellant-plaintiff) who also happened to be the Nambardar of village Kaadarwala and one Resham Singh son of Hakam Singh of the same village and was scribed by Narinder Kumar Narang. The said Will was duly registered in the office of Sub-Registrar, Zira. The scribe appeared as PW1 and acknowledged that he had typed the Will at the instance of Bakhshish Kaur who marked it after admitting the same to be correct on being read over in the presence of the witnesses. He also stated that the testatrix was in a sound disposing mind and the Will was also attested in his presence. PW2-Resham Singh son of Hakam Singh (attesting witness) also made a specific deposition that Bakhshish Kaur, resident of village Barkandi was known to him personally and that she used to reside in village Kaadarwala with the appellant-plaintiff Balbir Kaur who was the niece of Bakhshish Kaur. He also deposed that the Will was executed by Bakhshish Kaur and was thumb marked in their presence after admitting the same to be correct and on being read over. It was further testified that Bakhshish Kaur had appended her thumb impression after understanding the Will. In cross-examination, it was admitted



by the said witness that the other attesting witness Balkar Singh is his neighbour and that they originally hail from village Palhara, Tehsil Chuni in Pakistan and also that Bakhshish Kaur had died at village Sadhuwala in her parents' home after one month of the execution of the Will. PW3 Balkar Singh-Nambardar deposed in similar terms and admitted in his cross-examination that Bakhshish Kaur did not have any voter card in village Kaadarwala and also that Bakhshish Kaur had died in village Sadduwala. He further submitted that her ashes were immersed by him and his father-in-law Kundan Singh(brother of Bakhshish Kaur) at Haridwar.

The respondents-defendants on the other hand claimed that Bakhshish Kaur had inherited the property of Daya Singh who had in turn inherited the same from their forefathers. It was claimed that the appellant-plaintiff never served Bakhshish Kaur and that she used to live in village Barkandi. It was stated that village Barkandi and Kaadarwala are at a distance of about 20 miles and the attesting witnesses are *inter se* related to each other and thus had an interest in the estate of the deceased. It was averred by the said witness that Bakhshish Kaur had died at village Barkandi although he acknowledged that he was not present and he did not attend the funeral since no message was sent to him. He also acknowledged and admitted that Bhog of Bakhshish Kaur was performed by her brother Kundan Singh and that he had not participated in any of the last rites or ceremonies. He was not even aware as to whether Bakhshish Kaur had any ration card or vote at village Barkandi and claimed that Bakhshish Kaur used to reside at village Barkandi after the death of her husband Daya Singh. He pleaded ignorance about any knowledge of Bakhshish Kaur having ever fallen ill. The said witness Shabeg Singh claimed



to be brother of the father-in-law of Bakhshish Kaur and stated that on the basis of the same he was thus entitled to succeed to the said estate that had fallen to the share of Bakhshish Kaur by way of inheritance from Daya Singh. The deposition of DW2-Nishan Singh son of Milkha Singh was to the effect that the abovesaid land was mortgaged to him for a sum of Rs.4,000/- by Karnail Singh, Jarnail Singh, Sant Kaur and Piaro and that possession of the said land had been delivered to him. He claims to be in continuous occupation of the possession of the said land. The said witness admitted that Bakhshish Kaur died in village Sadduwala, while staying with her brother Kundan Singh, and he never attended any of the ceremonies or funeral of Bakhshish Kaur. Mangal Kaur had appeared as DW3 and claimed that her brother Kundan Singh died in Pakistan and that Bakhshish Kaur was the wife of her nephew Daya Singh. She denied execution of the Will by Bakhshish Kaur and claimed that she used to reside in village Barkandi. She also acknowledged that Bakhshish Kaur used to reside at village Sadduwala and that she had not gone to attend the funeral of Bakhshish Kaur.

It undisputedly emerges that the respondents-defendants are residents of village Barkandi where the land in question is situated and that Bakhshish Kaur belonged to village Sadduwala on her maternal side and that the appellant-plaintiff Balbir Kaur was married to Balkar Singh who was a resident of village Kaadarwala near Kot Isse Khan. The Additional District Judge, Faridkot has disbelieved the execution of the Will by holding the same to be surrounded by suspicious circumstances on the grounds extracted above, however, I fail to find myself in agreement with the reasons given by the



Additional District Judge for disbelieving the Will and to hold that the Will in question was surrounded by suspicious circumstances.

Even though the Will in question was disbelieved on the ground that there was no evidence to suggest that deceased Bakhshish Kaur was residing along with the appellant-plaintiff Balbir Kaur at village Kaadarwala before her death since no ration card or voter identity card had been exhibited in evidence and also for the reasons that the attesting witnesses to the Will happened to be the husband of the beneficiary herself and the second witness is a neighbour of village Kaadarwala itself. It was also observed that as Bakhshish Kaur died in village Sadduwala and not in village Kaadarwala, hence, the contention of the appellant-plaintiff that she used to take care of Bakhshish Kaur does not appear to be valid and tenable.

Certain facts however also emerge from the testimony of the witnesses and their conduct. It has remained undisputed that Bakhshish Kaur, the testatrix died in village Sadduwala i.e. her maternal home and that her funeral, last rites and ceremonies were performed by her brother Kundan Singh alongwith Balkar Singh, husband of the appellant-plaintiff. The defence witnesses have admitted during cross-examination that they had not attended the funeral and the last rites ceremonies of Bakhshish Kaur. They were also unaware of having met Bakhshish Kaur at any time prior to her death even though a specific claim is made by them to be the legal heirs of Daya Singh, husband of Bakhshish Kaur. Further, there is no evidence on record also to suggest that deceased Bakhshish Kaur resided at village Barkandi after demise of her husband Daya Singh as no such documentary evidence in the form of ration card, chulha tax, voter identity card showing her place of residence at



village Barkandi had been placed on record. Besides, the defendants also do not claim to have been taking care of Bakhshish Kaur at any point in time. The necessary inference which flows from the same was that deceased Bakhshish Kaur started residing with her relations on her maternal side i.e. with Kundan Singh and/or appellant-plaintiff Balbir Kaur. It is further not established before this Court that some person other than Bakhshish Kaur appeared before the Sub-Registrar, Zira to get the Will executed and/or that she was not in a sound disposing mind at the time of execution of the Will. No suggestion of a fraud having been performed as claimed has been put to the plaintiff's witnesses or established. Further, while the appellant-plaintiff happened to be the real niece(daughter of brother), the respondents-defendants happened to be related as collaterals to her father-in-law Kundan Singh. The scribe as well as the attesting witnesses had unambiguously deposed about the Will having been executed on the asking of Bakhshish Kaur and that the same was read over to her and that she attested the same after understanding and accepting the same and was presented before the Sub-Registrar, Zira for its registration. Merely because Bakhshish Kaur moved to village Sadduwala soon before her death cannot be a ground to presume that she never resided with the appellant-plaintiff Balbir Kaur at village Barkandi. There is no evidence on record to suggest that Bakhshish Kaur in fact ever resided in village Barkandi and only a presumption of her having resided at village Barkandi is being drawn due to performance of her marriage with Daya Singh, who was resident of the said village. Since the respondents-defendants had never met Bakhshish Kaur at any time prior to her death, hence, they cannot be in a position to depose as regards who was actually taking care of the deceased Bakhshish Kaur before her death



or as to who all were providing necessary moral, emotional, physical and psychological support to Bakhshish Kaur. The detachment of the respondents-defendants with Bakhshish Kaur is self-explained from their conduct as admitted in cross-examination.

On the other hand, an affirmative evidence has been led by the appellant-plaintiff Balbir Kaur to show that she was taking care of deceased Bakhshish Kaur. PW2-Resham Singh who was a resident of village Kaadarwala specifically deposed that Bakhshish Kaur used to reside in village Kaadarwala along with the appellant-plaintiff Balbir Kaur and that he knew her personally. Merely because Bakhshish Kaur did not get her voter card prepared at village Kaadarwala cannot be held to be sufficient to draw a conclusion that she was not residing at village Kaadarwala. It is not unthought of that people, at that point in time, would not be rigorously seeking transfer of their votes on a mere change of residence. Besides, it is also equally a large probability that people may retain their vote at a place other than a place where they may ordinarily choose to reside. The same thus cannot be said to be a suspicious circumstance so as to discredit a registered Will. The second circumstance which has been highlighted as a suspicious circumstance is that husband of the beneficiary was an attesting witness to the Will. Even though, presence of a beneficiary may be perceived as a suspicious circumstance, however, the same has to be examined in the totality of circumstances. The probabilities of the present case rest heavily in favour of the deceased residing with the appellant-plaintiff and not at village Barkandi. Had the case been otherwise, there would have been no occasion for the respondents-defendants to not have definite information about the date of death of Bakhshish Kaur and they would have certainly participated



in the funeral and last rites being immediate collaterals. Their absence at any of the ceremonies lends credence to a probability that Bakhshish Kaur was actually not residing at village Barkandi. The factum that the last ceremonies and funeral were performed at village Sadduwala further shows that she was dependent only on her maternal side for extending all care and support. Her affinity and proximity to her maternal side thus remains undisputed. There is also nothing on record to suggest that the deceased was in any manner ailing or not in a sound disposing mind and that merely because she went to village Sadduwala soon before her death cannot be sufficient to dispel that she has no love and affection for the appellant-plaintiff. People are known to make an attempt to go back to their native place or place of their comfort before their end is near. The fact that the witnesses PW2, PW3 and PW4 had specifically deposed that the deceased Bakhshish Kaur was residing at village Kaadarwala is corroborated by the fact that the attesting witnesses to the Will happened to be from the same village where she was residing. Apparently, once Bakhshish Kaur is not established or inferred to be residing in village Barkandi, her probability of residing either at village Sadduwala or at village Kaadarwala are larger and under the totality of circumstances, probability of her residing with appellant-plaintiff Balbir Kaur gets strong. The respondents-defendants have sought to dispel the said probability by a mere oral testimony which such testimony however fails to inspire any confidence, given that even the basic details about the well-being and health of Bakhshish Kaur were not within the knowledge of the defence witnesses, who were related to her. Thus, there would be nothing suspicious about the attesting witnesses to be from village Kaadarwala where she was ordinarily residing and would be so presumed.



A mere relationship with one of the attesting witnesses cannot be sufficient to discredit the Will as the other attesting witness and the scribe have also appeared before the Court and testified about the execution and attestation of the Will. It is not uncommon or unheard of that any person would like to call upon people that he or she may know or may be related to, at the time of execution of a Will and it is equally unlikely that a person who is completely unknown would even opt for being a witness to a Will as the same would lead to another suspicious circumstance about the determination of the identity of the executant of the Will before the attesting witnesses. The said aspect cannot thus be held to be an outright suspicious circumstance. A mere self-serving statement by the respondent-defendant, in my opinion cannot lay foundation for discrediting the genuineness of the Will of which both the basic features i.e. *onus probandi and animo attestandi* stand established. The attesting witnesses have subscribed with the intent that the subscription of the signature may stand by way of a complete attestation of a Will. An attesting witness is required to establish the due execution and attestation of the Will and that the said aspect stands fully established. Even though, the only need or legal requirement is for examination of one attesting witness, however, both the witnesses as well as the scribe have stepped into the witness box in the present case.

The Hon'ble Supreme Court laid down the relevant principles governing the adjudicatory process concerning proof of a Will and broadly summarised the same in the matter of *Shivakumar and others Versus Sharanabasappa and others*, reported as **2020 SCC Online SC 385**. The said relevant principles can be summarised as follows:-



“1. Ordinarily, a Will has to be proved like any other document; the test to be applied being the usual test of the satisfaction of the prudent mind. Alike the principles governing the proof of other documents, in the case of Will too, the proof with mathematical accuracy is not to be insisted upon.

2. Since as per Section 63 of the Succession Act, a Will is required to be attested, it cannot be used as evidence until at least one attesting witness has been called for the purpose of proving its execution, if there be an attesting witness alive and capable of giving evidence.

3. The unique feature of a Will is that it speaks from the death of the testator and, therefore, the maker thereof is not available for deposing about the circumstances in which the same was executed. This introduces an element of solemnity in the decision of the question as to whether the document propounded is the last Will of the testator. The initial onus, naturally, lies on the propounder but the same can be taken to have been primarily discharged on proof of the essential facts which go into the making of a Will.

4. The case in which the execution of the Will is surrounded by suspicious circumstances stands on a different footing. The presence of suspicious circumstances makes the onus heavier on the propounder and, therefore, in cases where the circumstances attendant upon the execution of the document give rise to suspicion, the propounder must remove all legitimate suspicions before the document can be accepted as the last Will of the testator.

5. If a person challenging the Will alleges fabrication or alleges fraud, undue influence, coercion et cetera in regard to the execution of the Will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the Will may give rise to the doubt or as to whether the Will had indeed been executed by the testator



and/or as to whether the testator was acting of his own free will. In such eventuality, it is again a part of the initial onus of the propounder to remove all reasonable doubts in the matter.

6. A circumstance is “suspicious” when it is not normal or is “not normally expected in a normal situation or is not expected of a normal person”. As put by this Court, the suspicious features must be “real, germane and valid” and not merely the “fantasy of the doubting mind.”

7. As to whether any particular feature or a set of features qualify as “suspicious” would depend on the facts and circumstances of each case. A shaky or doubtful signature; a feeble or uncertain mind of the testator; an unfair disposition of property; an unjust exclusion of the legal heirs and particularly the dependants; an active or leading part in making of the Will by the beneficiary thereunder et cetera are some of the circumstances which may give rise to suspicion. The circumstances above-noted are only illustrative and by no means exhaustive because there could be any circumstance or set of circumstances which may give rise to legitimate suspicion about the execution of the Will. On the other hand, any of the circumstance qualifying as being suspicious could be legitimately explained by the propounder. However, such suspicion or suspicions cannot be removed by mere proof of sound and disposing state of mind of the testator and his signature coupled with the proof of attestation.

8. The test of satisfaction of the judicial conscience comes into operation when a document propounded as the Will of the testator is surrounded by suspicious circumstance/s. While applying such test, the Court would address itself to the solemn questions as to whether the testator had signed the Will while being aware of its contents and after understanding the nature and effect of the dispositions in the Will.



9. In the ultimate analysis, where the execution of a Will is shrouded in suspicion, it is a matter essentially of the judicial conscience of the Court and the party which sets up the Will has to offer cogent and convincing explanation of the suspicious circumstances surrounding the Will.”

In an event of a Will being sought to be challenged on the ground of suspicious circumstance, the Court is required to be satisfied that the suspicious features must be real, genuine and valid and the propounder of a Will is required to remove only the legitimate suspicions before a document can be accepted as the Will of a testator. A suspicious circumstance cannot be precisely defined or exhaustively enumerated and the same is inevitably a question of fact required to be determined in each case. A circumstance would be suspicious only when it is not normal or is not normally expected in a normal situation or is not expected of a normal person.

The evidence brought on record has to be examined collectively and in doing so, oral, documentary and surrounding circumstances are required to be taken into consideration. Before an evidence is rejected on grounds of discrepancies, the Court is expected to satisfy itself that those discrepancies cannot be explained on account of defective memory or a failing power observation. The conduct of the parties, apart from the other proof, has also been deemed to be very material having a considerable bearing on the evidence as to the genuineness of Will.

It was held by the Allahabad High Court in the matter of **Chandania Versus Gyan Chand**, reported as ***AIR 1989 ALL 75*** that while active participation or taking undue interest in the execution of a Will by a person who is a beneficiary under the Will may raise legitimate suspicions, but



mere presence of such a person without any other role cannot be a ground for suspecting the genuineness of the Will. It was further held by Hon'ble the Supreme Court in the matter of **Rani Purnima Debi Versus Khagendra Narayan Deb**, reported as **AIR 1962 SC 567** that where there are suspicious circumstances, the onus would be on the propounder to explain them to the satisfaction of the Court before a Will can be accepted as genuine. It was held by Hon'ble the Supreme Court in the matter of **Malkani Versus Jamadar**, reported as **AIR 1987 SC 767** that merely taking active part in the execution is not sufficient to create any doubt about the testamentary capacity or genuineness of the Will and that its genuineness has to be determined on the facts and circumstances of the case. Such Will was so accepted as genuine in the said case. The said judgment was followed in the matter of **Harihar Prasad Sao Versus Bhagwan Das**, reported as **AIR 1972 Pat 146** as well as by this Court in the matter of **Sita Ram Versus RD Gupta**, reported as **AIR 1981 P&H 83**.

It thus emerges that Bakhshish Kaur used to reside in village Kaadarwala and not village Barkandi. She being taken care of by her niece, for whom she would have a naturally more love and affection, than her collaterals from the matrimonial side. She went soon before her death to Sadduwala and all her last rites, ceremonies and rituals were performed by the plaintiffs. No evidence of Bakhshish Kaur having lived in village Barkandi has been brought by the respondents-defendants who were never aware of her well being. There is nothing on record that Bakhshish Kaur was not in a sound disposing mind or was under duress or pressure.

The above set of circumstances do not reflect that the natural heirs had been excluded from the property and further that the probable



circumstances about the testatrix being taken care of by the beneficiaries is lawfully borne out from a totality of the evidence brought on record, I am of the opinion that the Additional District Judge, Faridkot fell in an error in discrediting the genuineness of the Will by drawing adverse conclusions whereas the conduct of testatrix and witnesses was normal and did not evoke any suspicion. Mere some lapses in conclusively establishing the place of residence cannot be construed as the case having been proved against the propounder of the Will especially when the testimony against the appellant-plaintiff was nothing more than an oral deposition by the respondents-defendants by way of a mere denial with no corroborating piece of evidence to establish or to suggest the case propounded or set up by them. It is also not unnatural on the part of a woman to have an attachment with her maternal side in relation to disposition of the properties that fall to them and when there is no natural child surviving. The issueless widow is normally not known to transfer her property in favour of distant collaterals from her husband's side in preference to her close maternal relations. The relationship of appellant-plaintiff Balbir Kaur with Bakhshish Kaur as her niece (being daughter of the brother) is in any way a closer relation as compared to the relatives/heirs from her father-in-law and not even in her immediate family.

Additionally, it seems highly improbable that despite as many as 15 defendants, who were related as collaterals to deceased Bakhshish Kaur, respondents-defendants No.2, 3, 5 to 13, 17 and 18 preferred to be proceeded against *ex parte* while respondent-defendant No.16-Mangal Kaur never chose to prefer an appeal against the judgment and decree dated 19.03.1986 passed by the Sub Judge Ist Class, Muktsar. None of the other collaterals had any interest



in the estate of deceased Bakhshish Kaur but for Shabeg Singh and Mangal Singh sons of Ajit Singh. While Shabeg Singh happens to be brother of father-in-law of Bakhshish Kaur and Mangal Singh happens to be son of another brother of father-in-law of Bakhshish Kaur. It would be highly improbable that if any of the members of the family on her matrimonial side had been taking care of deceased Bakhshish Kaur or had any concern, why they would not come forth to stake a claim. Their lack of interest rather suggests that none of them had any actual concern with Bakhshish Kaur which further corroborates the case of the appellant-plaintiff that Bakhshish Kaur was actually being taken care of by her instead of the respondents-defendants. It is thus held that a mere fact of husband of beneficiary would not always discredit the Will and that the same is only a suspicious circumstances which gives rise to a rebuttable presumption. The conclusion is however to be drawn from the totality of circumstances, facts and contemporary evidence and as to whether the conduct appears normal of the persons whose Will is now being examined. Law does not intend to apply its wisdom for that of faith, belief or understanding of the testator. A Will being a sacrosanct document depicting last wishes of a testator, needs to be given due respect and Court of law would ordinarily attempt to give effect to the same.

The conclusions of the Additional District Judge, Faridkot are thus liable to be set aside being based on a restricted consideration and limited appreciation of the circumstances leading to erroneous conclusions.

In view of the above, the present appeal is **allowed**. The judgment and decree dated 20.04.1990 passed by the Additional District Judge, Faridkot,



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is hereby **set aside** and the judgment and decree dated 19.03.1986 passed by the
Sub Judge Ist Class, Muktsar, **is ordered to be restored.**

April 16, 2024
seema

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No