



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

RSA-1513-1992 (O&M)

Reserved on :- 15.12.2025

Date of Pronouncement:-16.12.2025

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Raj Pal and another

... Appellants

Versus

Rameshwar (Deceased) through his LRs and others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :-

Mr. Vijay Kumar Jindal, Senior Advocate with
Mr. Yashvardhan Goyal, Advocate
for the appellants.

Mr. Ashish Aggarwal, Senior Advocate with
Mr. Vishal Pundir, Advocate
Mr. Saket Bhandari, Advocate
for respondents No.1 to 3.

VIRINDER AGGARWAL, J.

1. The appellants/plaintiffs, being aggrieved by the judgment and decree dated 09.04.1992 passed by the learned District Judge, Ambala whereby the well-reasoned judgment and decree dated 27.10.1988 of the learned Sub-Judge II Class, Kurukshetra was unjustifiably overturned, most respectfully invoke the appellate jurisdiction of this Court through the present Regular Second Appeal (for short "RSA"). The appellants seek restoration of the decree rightly granted by the Trial Court and appropriate redress for the substantial miscarriage of justice that has resulted.



1.1. It is most respectfully submitted that the impugned judgment and decree are vitiated by manifest perversity, substantial errors of law, and a fundamentally flawed appreciation of the evidentiary record, culminating in a grave miscarriage of justice. The appellants therefore earnestly pray that this Court be pleased to set aside the impugned judgment and decree and to reinstate the lawful and well-reasoned decree rendered by the learned Trial Court.

2. The circumstances precipitating the present appeal may be succinctly stated thus:-

“The plaintiffs instituted a suit for possession of 110 kanals 19 marlas of agricultural land in village Kartarpur, asserting succession to Shambhu Dayal, who died issue-less, his wife and son having predeceased him. As his nearest surviving collaterals who had cared for him and shared residence with him, they claimed entitlement under his Will dated 5.12.1982, whereby he bequeathed the Kartarpur property to them and the Adiana property (District Saharanpur, U.P.) to his brother’s grandsons Adesh Kumar, Sudesh Kumar, and Ashok Kumar. Although Shambhu Dayal had earlier executed a registered Will dated 2.7.1976 in favour of the said grandsons for both properties, he subsequently changed his disposition. The defendants challenged the mutation based on the 1982 Will, setting up rival Wills dated 4.7.1977 and 6.2.1980, on the basis of which the Kartarpur land was mutated in their favour. This led to the present suit for possession.”



3. Upon service of summons, the defendants entered appearance. Defendants No. 4 to 6 admitted the plaintiffs' claim before the learned Trial Court and did not contest the claim preferred by their brothers, Raj Pal and Amar Pal, before the Court.

3.1. The contesting defendants asserted that Shambhu Dayal had no relationship with the plaintiffs and had never resided with them. They claimed he lived jointly with them and, out of affection, executed a registered Will dated 7.4.1977 bequeathing 90 kanals of his Kartarpur land to them. They denied the Will dated 5.12.1982 relied on by the plaintiffs but admitted the earlier Will dated 2.7.1976, under which Shambhu Dayal devised his Adiana and Kartarpur properties to Adesh Kumar, Sudesh Kumar, and Ashok Kumar. They further pleaded that Shambhu Dayal treated defendants No. 1 and 2 as his sister's sons and defendant No. 3 as his brother's son, as reflected in the 7.4.1977 Will, and sought dismissal of the suit as false and frivolous with costs.

4. The plaintiff filed a replication, denying the defendants' assertions and reaffirming the averments made in the plaint. Upon a thorough examination of the pleadings, documents, and submissions of both parties, the Court framed the following issues for adjudication, with a view to securing a precise and comprehensive determination of their respective claims and defences, as set out below:-

1. *Whether Shambhu Dayal (deceased) was the owner of the suit land?*
OPP.
2. *Whether the plaintiffs are the nearest surviving collaterals of Shambhu Dayal deceased and were serving the deceased? OPP.*



3. *Whether Shambhu Dayal deceased executed any will dated 5.12.1982 in favour of plaintiffs and defendants No.4 to 6? If so, what is the effect? OPP.*
 4. *Whether Shambhu Dayal deceased executed any registered will dated 4.7.1977 and 6.2.1980 in favour of the defendant No.1 to 3? If so, to what effect? OPD.*
 5. *Whether defendant No.1 to 3 are related to Shambhu Dayal deceased? OPD.*
 6. *Whether the plaintiffs have got no locus standi to file the present suit? OPD.*
 7. *Whether the plaintiffs have properly verified the plaintiff? OPD.*
 8. *Whether the suit is not maintainable in the present form. OPD.*
 9. *Whether the plaintiffs are estopped by their act and conduct to file the present suit? OPD.*
 10. *Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD,*
 11. *Whether the suit is within time? OPD.*
 12. *Whether the defendants have become owners of suit 1 property on account of adverse possession? OPD.*
 13. *Whether the suit is bad for mis-joinder and non- joinder of necessary parties and causes of action? OPD.*
 14. *Relief.*
5. Both parties were afforded adequate and meaningful opportunity to lead evidence in support of their respective claims. Upon culmination of the trial and after hearing learned counsel for both sides, the learned Senior Sub-Judge II Class, Kurukshetra proceeded to decree the suit with following observation:-

“In light of the foregoing findings, the plaintiffs’ suit stands decreed.

Defendants No. 1 to 3 shall deliver vacant possession of the suit land, as



detailed in paragraph 1 of the plaint, on or before 15.12.1988. Mutation No. 539, recorded in favour of the defendants, is hereby declared illegal, void, and inoperative against the plaintiffs' rights. Given the particular circumstances of the case, the parties shall bear their own costs."

6. Aggrieved by the judgment and decree, the respondents/appellants preferred an appeal before the learned District Judge, Ambala, who allowed the appeal and consequently **dismissed** the plaintiffs' suit.

6.1. Dissenting from the findings of the learned First Appellate Court, the appellants/plaintiffs instituted the present appeal. Upon admission, notices were issued, whereafter contesting respondents No. 1 to 3 entered appearance and opposed the appeal. The records of the Courts below were then requisitioned for comprehensive scrutiny and adjudication.

7. I have heard learned counsel for the parties and perused their submissions in conjunction with the pleadings, evidence, and the findings recorded by the learned Courts below. The record has been meticulously examined to determine '*whether the impugned judgment and decree are vitiated by any legal infirmity or error warranting interference by this Court*'?

8. The instant appeal raises the following '*quaestio juris substantialis*' for adjudication and determination before this Court:-

- "i. Whether the First Appellate Court erred in holding that the Wills dated 04.07.1977 and 06.02.1980 were duly proved and admissible on record, notwithstanding the contentions of the appellants challenging their execution and authenticity?"***
- ii. Whether the Will dated 04.07.1977 can be considered properly proved on record in the absence of any attesting witness to***



corroborate its execution and attestation, and if the First Appellate Court committed error in holding otherwise?

iii. Whether the Will dated 05.12.1982 (Ex. P-1) has been duly proved and established on record in accordance with the requirements of law, and whether the findings of the lower courts in this regard are sustainable”?

9. Learned counsel for the appellants/plaintiffs contended that the learned First Appellate Court erred in its appreciation of both the pleadings and the evidence on record in relation to the Wills dated 07.04.1977 (Ex. PW5/1) and 06.02.1980 (Ex. DW4/1). It was submitted that these Wills were not duly proved, as no attesting witness had corroborated the execution or attestation of the Will Ex. DW5/1, and the original Will dated 06.02.1980, the copy of which is Ex. DW4/1, was not placed or proved during the course of the trial. It is an admitted position on record that the beneficiaries Rameshwar, Puran Chand, and Parmesher, father of the third beneficiary were present at the time of execution of Will Ex. DW4/A, and that one of the attesting witnesses was closely related to the beneficiaries, thereby raising questions regarding impartiality.

9.1. Learned counsel further submitted that the learned First Appellate Court wrongly discarded the Will dated 05.12.1982 (Ex. P1) on the ground that it was allegedly shrouded in suspicious circumstances, whereas the Will had been duly proved as the last testamentary disposition of the deceased Shambhu Dayal. It was emphasized that PW-1, Vikram Pal Gupta, the scribe, and PW-2, Rikhi Ram, the attesting witness, had clearly and credibly proved the execution of the Will by the testator Shambhu Dayal, as well as its attestation. Furthermore, the evidence of PW-5 and PW-10, expert finger-print witnesses, along with the FSL Madhuban report, conclusively



demonstrated that the Will Ex. P1 bore the thumb impressions of Shambhu Dayal.

9.2. Learned counsel submitted that the trial Court had rightly concluded that the Will was valid and duly proved. Evidence on record further established that at the time of making the Will, Shambhu Dayal was of sound and disposing mind, and had, *inter alia*, nominated Amar Pal, one of the plaintiffs and a beneficiary under the Will, in his account with Radur Cane Growers Co-operative Society. Despite this, the learned Additional District Judge erroneously set aside the Will on the ground that it was shrouded in suspicious circumstances, without adequately considering settled principles of law.

9.3. It was submitted that mere non-registration of a Will does not constitute suspicious circumstances, nor does the non-mention of previous Wills or disinheritance of certain legal heirs create any such presumption. Wills are often executed precisely to alter the natural line of succession, and such deviations cannot, by themselves, be regarded as suspicious. Learned counsel placed reliance on the law laid down by the Hon'ble Apex Court in **Dhani Ram (deceased) through LRs & others vS. Shiv Singh, AIR 2023 SC 4787**, where it was held that "mere registration does not sanctify a document by attaching to it an irrebuttable presumption of validity," and further relied upon **V. Prabhakara vS. Basavaraj K (Dead) by LRs & another, 2021(4) RCR (Civil) 534**, wherein principles regarding the proof and admissibility of Wills were elucidated, relevant portion of the same is as under:-

"24. A testamentary court is not a court of suspicion but that of conscience. It has to consider the relevant materials instead of adopting



an ethical reasoning. A mere exclusion of either brother or sister per se would not create a suspicion unless it is surrounded by other circumstances creating an inference. In a case where a testatrix is accompanied by the sister of the beneficiary of the Will and the said document is attested by the brother, there is no room for any suspicion when both of them have not raised any issue.”

9.4. It was, therefore, contended that the impugned findings of the Additional District Judge were contrary to law and the settled principles of testamentary jurisprudence, and that the Will Ex. P1 ought to have been upheld as the valid last testament of the deceased Shambhu Dayal.

9.5. In **Atma Singh v. Smt. Guro and others, 1983 CurLJ 75**, this Court observed that in cases where a Will is not a document that is compulsorily required to be registered under law, the mere fact of non-registration cannot, in itself, give rise to any presumption of invalidity or prejudice. The Court held that an unregistered Will remains fully admissible and enforceable, provided it is otherwise duly executed and proved in accordance with law.

10. Per contra, learned counsel for the respondents contended that the learned First Appellate Court rightly concluded that the Wills Ex. PW5/1 and Ex. DW4/1 were duly proved on record. It was submitted that in circumstances where one of the attesting witnesses has turned hostile and the other has deceased, the law does not permit a hostile witness to dictate or obstruct the rights of the parties. The learned counsel emphasized that, in such cases, the Will can be proved by other admissible evidence, in accordance with the provisions of Section 71 of the Indian Evidence Act, 1872.



10.2. It was further argued that the original of Ex. DW4/1 was in the possession of the appellant-plaintiff, having been handed over for the purpose of sanctioning mutation. In these circumstances, proof of the Will by way of secondary evidence, through the production of a certified copy of the registered document, does not necessitate prior permission of the Court. Reliance was placed on the decision of this Court in **Hardev Singh (since deceased) and another vs. State of Punjab and others, 2024 NCPHHC 68911**, where it was held that there is no requirement under law to file a separate application for permission to lead secondary evidence. Similar principles have been affirmed by the Hon'ble Supreme Court in **Dhanpat vs. Sheoram (Deceased) through LRs and others, 2020 SCC Online SC 606**, and by this Court in **Madan Lal vs. Shankar and others, 2021(2) PLR 130**, wherein it was reiterated that prior permission to lead secondary evidence is not legally mandated.

10.3. Learned counsel further submitted that the mere presence of beneficiaries at the time of execution of a Will does not, in itself, constitute suspicious circumstances. He emphasized that Will Ex. DW4/1 contained supplementary provisions for the disposition of property by Shambhu Dayal in favor of the father of the appellants/plaintiffs, namely Soran, who was not present at the time of execution of the Will, and that this fact does not invalidate the testamentary document.

10.4. In contrast, Will Ex. P1 was correctly held to be shrouded in suspicious circumstances, which the appellants/plaintiffs failed to dispel. Consequently, the rejection of Will Ex. P1 by the First Appellate Court was entirely justified. It was submitted that the findings and decree rendered by the First Appellate Court are based on a proper appreciation of evidence and



settled law and do not warrant any interference in the exercise of appellate or revisional jurisdiction.

11. With regard to Will Ex. DW5/A dated 04.07.1977, the defendant examined DW-5, Satish Chand, who is the son of the deceased scribe of the Will. DW-5 deposed that the Will was scribed by his father and confirmed that the document is in his father's handwriting. He further testified that the execution of the Will had been duly recorded in the register maintained by his father.

11.1. Bishamber Dass, DW-6, who is the son of one of the attesting witnesses of the Will (now deceased), also testified, identifying the signatures of his father on the Will and confirming that he was familiar with his father's handwriting, being educated up to the middle level.

11.2. Jasmer Singh, the only attesting witness still alive, was examined as DW-14. While he admitted his signatures on the Will, he did not support the respondents/defendants' case and failed to corroborate the execution and attestation of the Will.

11.3. Learned counsel for the respondents/defendants contended that, under these circumstances, where the sole surviving attesting witness does not support the case of the party seeking to prove the Will, the document may nonetheless be proved by adducing other evidence in accordance with Section 71 of the Indian Evidence Act, 1872. Section 71 of the Indian Evidence Act, 1872, provides as follows:-

“71. Proof when attesting witness denies the execution.—If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.”



12. The Hon'ble Apex Court, in **V. Kalyanswamy (Deceased) by LRs and another v. L. Bakthavatsalam (Deceased) by LRs and others, 2020 (3) R.C.R. (Civil) 404**, held that the rights and entitlement of a legatee under a Will cannot be made to depend entirely upon the testimony or cooperation of the attesting witnesses. In paragraph 70 of the judgment, the Court observed that the fate of a legatee cannot be left to the whim or convenience of an attesting witness, and that the law permits the proof of a testamentary document by alternative or corroborative evidence in appropriate circumstances, ensuring that the testamentary intentions of the deceased are given effect to in accordance with law and in para No.70 Hon'ble Apex Court has held as under:-

“70. We are of the view that Section 69 of the Evidence Act manifests a departure from the requirement embodied in Section 68 of the Evidence Act. In the case of a Will, which is required to be executed in the mode provided in section 63 of the Indian Succession Act, when there is an attesting witness available. the Will is to be proved by examining him. He must not only prove that the attestation was done by him but he must also prove the attestation by the other attesting witness. This is, no doubt, subject to the situation which is contemplated in Section 71 of the Evidence Act which allows other evidence to be adduced in proof of the Will among other documents where the attesting witness denies or does not recollect the execution of the Will or the other document. In other words, the fate of the transferee of a legatee under a document, which is required by law to be attested, is not placed at the mercy of the attesting witness and the law enables proof to be effected of the document despite denial of the execution of the document by the attesting witness.”



13. On a careful consideration of the evidence, it is apparent that the only attesting witness who was alive was examined by the defendants, yet he failed to prove the execution and attestation of the Will. In such circumstances, the provisions of Section 71 of the Indian Evidence Act, 1872, mandate that other admissible evidence must be taken into account to establish the validity of the document.

13.1. In the present case, the original Will dated 04.07.1977 (Ex. DW5/1) was produced before the Court and proved to have been scribed by the father of DW-5, Satish Chand, who testified to the authenticity of his father's handwriting and confirmed the relevant entry in the register maintained by his father. Additionally, DW-6, the son of another deceased attesting witness, identified the signature of his father on the Will and testified regarding its attestation. In light of the foregoing, Will Ex. DW5/1, being a duly registered document, was correctly held by the learned First Appellate Court to be proved on record in accordance with Section 71 of the Indian Evidence Act.

13.2. As regards Will Ex. DW4/1 dated 06.02.1980, the original was not produced in Court. The appellants contend that the absence of the original renders the Will unproved. However, the respondents/defendants examined Puran Chand (DW-11), who deposed that the original Will was handed over to Soran, the father of the appellants, for the purpose of sanctioning mutation. Such a transfer of the original Will is neither unnatural nor suspicious, as the Will conferred upon Soran a share in the property in addition to the dispositions made by the testator, Shambhu Dayal in earlier Will Ex.DW5/1. Notably, Soran did not appear in the witness-box to controvert this assertion.



13.3. Given that the original Will was in the possession of the opposite party and the opposing party denied its execution, the respondents were justified in proving the Will by way of secondary evidence. Consistent with the judgments cited by the respondents' counsel, there was no requirement to seek prior permission of the Court to lead secondary evidence. Accordingly, the certified copy of the Will (Ex. DW4/1) was duly proved through the testimonies of the attesting witnesses, Munni Lal and Hari Singh, as well as the scribe, Raghbir Chand Gupta.

13.4. The appellants further contended that the presence of beneficiaries, Rameshwar, Puran Chand, and Parmeshwar (father of one of the beneficiaries) at the time of execution of Will Ex. DW4/1 raised a presumption of suspicious circumstances. This contention, however, is legally untenable. As held by the Hon'ble Apex Court in **V. Prabhakara** (supra), mere presence of beneficiaries at the execution of a Will does not constitute suspicious circumstances.

13.5. Reliance is also placed upon the decision of this Court in **Harnek Singh v. Sukhdev Singh, 2001(4) RCR (Civil) 411**, wherein it was held in paragraph 12 that the presence of beneficiaries during the execution of a Will is not, per se, a ground to doubt its validity and in para No.12, this Court has held as under:-

“XXXXX

The registered will should be given more weightage once it is established that the property was non-ancestral in the hands of the testator who was in a sound and disposing mind. The presence of a beneficiary by the side of the testator per se is no ground to hold that the testator was not in a position to form a rational view.

XXXXXX”



14. It is well settled that the mere presence of beneficiaries at the time of execution of a Will does not, by itself, constitute suspicious circumstances. In the present case, an additional and significant factor further negates any such inference. Ex. DW4/A represents a supplementary Will to Ex. DW5/1. While Ex. DW5/1, executed on 04.07.1977, already made dispositions in favor of Rameshwar and Puran Chand etc., Will Ex. DW4/1, executed on 06.02.1980, provided for a supplementary disposition in favor of Soran, the father of the appellants, who was a relative of the testator, Shambhu Dayal. Notably, Soran, the sole beneficiary under Ex. DW4/1, was not present at the time of its execution, and the individuals present Rameshwar, Puran Chand and son of Parmeshwar were not beneficiaries under this particular Will, as their interests had already been addressed in Ex. DW5/1.

14.1. With regard to Will Ex. P1, it was duly proved on record through the examination of PW-1, Vikram Pal Gupta, the scribe, and PW-2, Rikhi Ram, one of the attesting witnesses, who testified to the proper execution and attestation of the Will. Further corroboration was provided by the appellants/plaintiffs themselves through the reports of handwriting experts, PW-5 and PW-10, which confirmed that the Will contained the thumb impressions of Shambhu Dayal. The report of the FSL, Madhuban, was also placed on record, further establishing that the Will bore the thumb impressions of the testator.

14.2. Despite this, the learned First Appellate Court discarded Will Ex. P1 on the ground that it was shrouded in suspicious circumstances. However, the appellants/plaintiffs have failed to rebut the suspicious circumstance, and no credible evidence has been produced to dispel the



circumstance. The learned First Appellate Court has recorded its findings with regard to suspicious circumstances in para No.7 of the impugned judgment, which is reproduced as under:-

“7. Coming to the last Will Ex.P.1 dated 5.12.1980 set up by the plaintiffs which forms the basis of their suit is on unregistered document. It was scribed by Vikram Pal Gupta an Ex-Clerk of Advocate who subsequently took to deed writing. He appeared as PM-1 and admitted that he did not know Shambhu Dayal personally. The document is attested by two witnesses Rikhi Ram and Shiv Charan. Out of them only Rikhi Ram was examined without any mention for non examining Shiv Charan. Rikhi Ram a Retired Head Constable appearing as PW-2 had deposed about the execution of the Will Ex.P.1 by Shambhu Dayal. The suspicious circumstances attached to the will are as follows:-

- I) There is no mention in the will about the execution of the earlier wills;
- II) While three earlier wills are registered the Will Ex.P.1 was not got registered in spite of the fact that it was executed at the Sub Tehsil Headquarter Nukkar District Saharanpur, where Tehsildar-cum- Sub-Registrar holds his office;
- III) No mention was made in the will for change in mind of testator in depriving Rameshwar, Puran and Lajpat to whom Shambhu Dayal had decided to give by way of will major chunk of his agricultural holding at village Kartarpur;
- IV) No reason has been given as to why change was being brought about as regards the beneficiaries in variance to the earlier Wills;

AND



- v) *The will was never presented for registration though Shambhu Dayal lived for more than six months after execution of the alleged Will.”*

15. The Hon’ble Apex Court has laid down authoritative guidelines regarding the evidentiary requirements for proving a valid Will in **Meena Pardhan and others v. Kamla Pradhan and another, 2023 (9) SCC 734**. The Court has observed and elucidated the principles to be followed for establishing the execution, attestation, and admissibility of a testamentary document, emphasizing the necessity of credible corroborative evidence in circumstances where attesting witnesses are unavailable, hostile, or otherwise unable to testify. The relevant portion of the judgment reads as follows:-

“10. Relying on H. Venkatachala Iyengar v. B.N. Thimmajamma, 1959 Supp (1) SCR 426 (3Judge Bench), Bhagwan Kaur v. Kartar Kaur, (1994) 5 SCC 135 (3Judge Bench), Janki Narayan Bhoir v. Narayan Namdeo Kadam, (2003) 2 SCC 91(2Judge Bench) Yumnam Ongbi Tampha Ibema Devi v. Yumnam Joykumar Singh, (2009) 4 SCC 780 (3Judge Bench) and Shivakumar v. Sharanabasappa, (2021) 11 SCC 277 (3Judge Bench), we can deduce/infer the following principles required for proving the validity and execution of the Will:

- i. The court has to consider two aspects: firstly, that the Will is executed by the testator, and secondly, that it was the last Will executed by him;
- ii. It is not required to be proved with mathematical accuracy, but the test of satisfaction of the prudent mind has to be applied.
- iii. A Will is required to fulfil all the formalities required under [Section 63](#) of the Succession Act, that is to say:
 - (a) The testator shall sign or affix his mark to the Will or it shall be signed by some other person in his presence and by his direction



and the said signature or affixation shall show that it was intended to give effect to the writing as a Will;

- (b) It is mandatory to get it attested by two or more witnesses, though no particular form of attestation is necessary;
 - (c) Each of the attesting witnesses must have 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 acknowledgment of such signatures;
 - (d) Each of the attesting witnesses shall sign the Will in the presence of the testator, however, the presence of all witnesses at the same time is not required;
- iv. For the purpose of proving the execution of the Will, at least one of the attesting witnesses, who is alive, subject to the process of court, and capable of giving evidence, shall be examined;
 - v. The attesting witness should speak not only about the testator's signatures but also that each of the witnesses had signed the will in the presence of the testator;
 - vi. If one attesting witness can prove the execution of the Will, the examination of other attesting witnesses can be dispensed with;
 - vii. Where one attesting witness examined to prove the Will fails to prove its due execution, then the other available attesting witness has to be called to supplement his evidence;
 - viii. Whenever there exists any suspicion as to the execution of the Will, it is the responsibility of the propounder to remove all legitimate suspicions before it can be accepted as the testator's last Will. In such cases, the initial onus on the propounder becomes heavier.
 - ix. The test of judicial conscience has been evolved for dealing with those cases where the execution of the Will is surrounded by suspicious circumstances. It requires to consider factors such as awareness of the



testator as to the content as well as the consequences, nature and effect of the dispositions in the Will; sound, certain and disposing state of mind and memory of the testator at the time of execution; testator executed the Will while acting on his own free Will;

- x. One who alleges fraud, fabrication, undue influence et cetera has to prove the same. However, even in the absence of such allegations, if there are circumstances giving rise to doubt, then it becomes the duty of the propounder to dispel such suspicious circumstances by giving a cogent and convincing explanation.
- xi. Suspicious circumstances must be 'real, germane and valid' and not merely 'the fantasy of the doubting mind' 1. Whether a particular feature would qualify as 'suspicious' would depend on the facts and circumstances of each case. Any circumstance raising suspicion legitimate in nature would qualify as a suspicious circumstance for example, a shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the Will under which he receives a substantial benefit, etc."

16. With regard to the concept of "*suspicious circumstances*" in the context of testamentary documents, the Hon'ble Apex Court has comprehensively examined and defined the same in **Gurdial Singh (Deceased) through LRs v. Jagir Kaur (Deceased) and Another, 2025 INSC 866**. The Court elucidated the factors that may render a Will surrounded by suspicious circumstances, while also clarifying the evidentiary thresholds required to substantiate such a claim. The relevant observations of the Court are extracted as follows:-

"14. This brings us to the next issue i.e. what are the suspicious circumstances which may vitiate the disposition. In *Indu Bala Bose & Ors. vs. Manindra Chandra Bose & Anr.*⁶ the Court held any and every circumstance is not a "suspicious" circumstance. "8. Needless

GAURAV SOROT
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I attest to the accuracy and
integrity of this document



to say that any and every circumstance is not a “suspicious” circumstance. A circumstance would be “suspicious” when it is not normal or is not normally expected in a normal situation or is not expected of a normal person.” The Court quoted the Privy Council’s elucidation in *Hames v. Hinkson* 7 of suspicious circumstances as follows:

“17where a Will is charged with suspicion, the rules enjoin a reasonable scepticism, not an obdurate persistence in disbelief. They do not demand from the Judge, even in circumstances of grave suspicion, a resolute and impenetrable incredulity. He is never required to close his mind to the truth.” It was again reiterated in [PPK Gopalan Nambier vs. PPK Balakrishnan Nambiar & Ors.](#)⁸ that suspected features should not be mere fantasies of a doubting mind.

“5It is trite that it is the duty of the propounder of the will to prove the will and to remove all the suspected features. But there must be real, germane and valid suspicious features and not fantasy of the doubting mind.”

17. In the light of settled legal principles, the question that arises for consideration is whether the learned First Appellate Court was justified in concluding that Will Ex. P1 is surrounded by suspicious circumstances, and whether the appellants/plaintiffs failed to dispel such circumstances. It is a well-established principle of law that an unregistered Will is valid and its non-registration, in itself, does not give rise to any suspicion. The law recognizes numerous instances where courts have preferred a subsequent unregistered Will over an earlier registered Will, and mere non-registration cannot, in isolation, render a Will suspicious. Similarly, the exclusion of certain relatives from inheritance or the absence of recorded reasons for such



exclusion does not constitute suspicious circumstances when considered in isolation.

17.1. However, these factors when examined cumulatively and in the context of the facts and circumstances of the particular case, as only then can they assume the character of suspicious circumstances. In the present case, it is undisputed that the testator, Shambhu Dayal, executed a registered Will on 02.04.1976, the dispositions under which, in respect of property situated at Village Adiana, are not disputed in the present suit and is not subject matter of the instant proceedings. Subsequently, Shambhu Dayal executed two further registered Wills Ex. DW5/1 on 04.07.1977 and Ex. DW4/1 on 06.02.1980, which were duly proved on record.

17.2. The Will propounded by the appellants/plaintiffs, Ex. P1, executed on 05.12.1982, is unregistered and was executed at a Tehsil complex, where the office of the Sub-Registrar is located. Given that Shambhu Dayal was fully aware of the significance of registering Wills, as evidenced by his earlier registration of three prior Wills, the execution of Ex. P1 without registration in such circumstances raises a legitimate presumption of suspicious circumstances particularly when Will was alleged to be executed in the complex having office of Sub-Registrar.

17.3. The learned Trial Court's observation that Shambhu Dayal was of a fluctuating mind is also misplaced, as Ex. DW4/1 is not inconsistent with Ex. DW5/1 but rather a continuance thereof, a supplementary Will. Furthermore, Ex. DW4/1 itself refers to the execution of the earlier Will, establishing a consistent testamentary intent. In these circumstances, if Shambhu Dayal intended to alter the inheritance pattern and disinherit defendants No. 1 to 3 through Ex. P1, he ought to have provided reasons for



such disinheritance and recorded about the cancellation of the earlier registered Wills (Ex. DW4/1 and Ex. DW5/1). The failure to do so lends further weight to the conclusion that Ex. P1 is shrouded in suspicious circumstances.

17.4. In view of the above, both Wills Ex. DW5/1 and Ex. DW4/1 stand duly proved on record through primary and secondary evidence, and the contentions raised by the appellants regarding suspicious circumstances or non-production of originals are without merit.

17.5. The onus was upon the appellants/plaintiffs to dispel all such suspicious circumstances surrounding Will Ex. P1. In light of the failure to discharge this burden, the learned First Appellate Court rightly rejected Ex. P1.

17.6. In view of the foregoing discussion and the settled principles of testamentary law, no merit is found in the instant appeal, which is, accordingly, dismissed.

18. In consequence of the final adjudication of the principal matter, all pending miscellaneous applications, if any, which arise out of, or are ancillary to, the present proceedings, shall stand disposed of by necessary implication. In view of the conclusions reached herein, no separate or independent orders are required in respect of such applications, as their adjudication has become wholly infructuous.

16.12.2025
Gaurav Sorot

(**VIRINDER AGGARWAL**)
JUDGE

Whether reasoned / speaking?
Whether reportable?

Yes / No
Yes / No

GAURAV SOROT
2025.12.16 17:34
I attest to the accuracy and
integrity of this document