



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

267

RSA-4551-2017 (O&M)

Date of decision : 12.01.2026

Rajinder Singh**..... Appellant****versus****Avtar Singh****..... Respondent****CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Ms. Ekta Thakur, Advocate with
Ms. Shikha, Advocate
for the appellant.

Mr. Hardip Singh, Advocate
for the respondent.

PANKAJ JAIN, J. (Oral)

1. Defendant is in second appeal.
2. Plaintiff filed suit seeking decree of declaration to the effect that he along with defendant are co-owners in joint possession to the extent of 1/2 share each in the suit property as detailed out in the plaint. Plaintiff propounded Will dated 16.07.1999 executed by Deep Singh s/o Mehar Singh, whereby he bequeathed his entire movable and immovable properties including the suit property in equal share in favour of plaintiff and defendant. As per plaintiff, defendant illegally got the entire suit property mutated in his name on the strength of Will dated 05.04.2010 in his favour ignoring WILL dated 16.07.1999.
3. Suit was contested by the defendant, who claimed that the Will dated 16.07.1999 propounded by the plaintiff was a result of fraud played upon Deep Singh. Defendant claimed that the plaintiff used to misbehave and insult Deep Singh. He was not happy with the conduct



of plaintiff. Deep Singh was residing with defendant and thus executed a valid Will in his favour on 05.04.2010.

4. Trial court after analysing the evidence on record concluded that Deep Singh executed valid Will dated 16.07.1999 Ex.P1 in favour of both the parties. The Court of First Instance, however, disbelieved Will dated 05.04.2010 Ex.D1 propounded by the defendant holding the same to be shrouded by the following suspicious circumstances:-

- “(i) No witness of the Will belongs to village Tangori i.e. the village of the testator.
- (ii) Attesting witness Jasvir Singh is a Lambardar of village Kailon and is married to the real sister of the beneficiary i.e. Rajinder Singh defendant.
- (iii) There is no evidence of attesting witness Sh. J.S.Sohal Advocate personally knowing testator Deep Singh.
- (iv) No reason is given in the Will EXD1 for cancelling the earlier Will dated 16.7.99.
- (v) There is no averment in evidence to establish the that the written statement plaintiff Avtar Singh used to insult and abuse the testator Deep Singh.
- (vi) No reason has been given by the testator to exclude the plaintiff Avtar Singh from inheriting his property.”

5. Lower Appellate Court upheld the judgment passed by the Trial Court dismissing the appeal filed by the defendant.

6. Learned counsel appearing for the appellant has assailed the findings recorded by the Courts below. She contends that the circumstances spelled out by the Courts below do not constitute suspicious circumstance. It has come on record that Deep Singh was residing with the appellant. The same stands proved by way of ration card Ex. D3 and voter card Ex. D6. It is the defendant who was looking after and serving the deceased Deep Singh. During the course of



arguments, counsel for the appellant submits that the execution of earlier Will and the validity thereof is not in dispute.

7. *Per contra*, counsel for the respondent submits that the Courts below have rightly decreed the suit filed by the plaintiff. Earlier Will dated 16.07.1999 executed by Deep Singh is not in dispute. Rather the execution thereof stands admitted in the document propounded by defendant-appellant, i.e. Will dated 05.04.2010 Ex. D1. No reason has been assigned to cancel the Will. Pure finding of facts has been recorded by the Courts below which need not be disturbed in the regular second appeal.

8. I have heard counsel for the parties and have carefully gone through the records of the case.

9. The entire series of case law was considered by Supreme Court in ***Kavita Kanwar vs. Mrs. Pamela Mehta and others, 2020 AIR Supreme Court 2614***. Reiterating the parameters laid down by Supreme Court in ***Shivakumar and others vs. Sharanabasppa and others, (2021) 11 SCC 277***, the Supreme Court held as under:-

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xxxx

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24.8. We need not multiply the references to all and other decisions cited at the Bar, which essentially proceed on the aforesaid principles while applying the same in the given set of facts and circumstances. Suffice would be to point out that in a recent decision in Civil Appeal No.6076 of 2009: Shivakumar & Ors. Vs. Sharanabasppa & others, decided on 24.04.2020, this Court, after traversing through the relevant decisions, has summarized the principles governing the adjudicatory process concerning proof of a Will 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 dependents; 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 circumstances 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.*

XXXX XXX XXXX”



Supreme Court in *Shivakumar's case (supra)* and reiterated in *Kavita Kanwar's case (supra)*, it can be held that circumstance is 'suspicious' when it is not normal or is not normally expected in a normal situation or is not expected from a normal person. The law presumes testator to be a man of ordinary prudence.

11. The estate left by Deep Singh, uncle of both the parties is in dispute. Will dated 16.07.1999 executed by Deep Singh whereby he bequeathed his estate in favour of both the parties equally is not in dispute. Dispute is only with respect to Will dated 05.04.2010 propounded by defendant Ex. D1. From the bare perusal of the Will, it is evident that there is no reason forthcoming that led to revocation of the earlier Will dated 16.07.1999. Defendant claims that Avtar Singh used to abuse and misbehave Deep Singh, but the Will is bereft of any such reason. There is no evidence on record to show discord between plaintiff-Avtar Singh and deceased-Deep Singh. The attesting witness of the Will Ex. D1 examined by the defendant is DW2 Jasvir Singh. He happens to be the husband of real sister of beneficiary Rajinder Singh, i.e. Defendant-appellant.

12. In these circumstances, the Courts below dislodged the Will propounded by the defendant Ex. D1 holding the same to be shrouded by suspicious circumstance. The Courts below have rightly analyzed the entire evidence on record. The counsel for the appellant could not point out any misreading of evidence that can persuade this Court to infer any perversity in the pure finding of facts recorded by the Courts below.



13. Finding no merits in the present appeal, the same is ordered to be dismissed.

14. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

12.01.2026
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No