



110

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

**RSA-1328-2020 (O&M)
Reserved on : 01.08.2025
Date of Decision : 19.08.2025**

Sukhpal Singh ... Appellant(s)

VERSUS

Joginder Kaur & Ors ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Rishabh Gupta, Advocate for the appellant.

ALKA SARIN, J.

CM-3914-C-2020

1. For the reasons mentioned therein, the application seeking condonation of 166 days delay in refiling the appeal is allowed. The delay in refiling the appeal is condoned.

CM-3913-C-2020

2. For the reasons mentioned therein, the application seeking condonation of 13 days delay in filing the appeal is allowed. The delay in filing the appeal is condoned

RSA-1328-2020

3. The present regular second appeal has been preferred by the plaintiff No.1 (plaintiff-appellant) against the judgements and decrees dated 19.09.2015 and 14.03.2019 passed by the Trial Court and the First Appellate Court dismissing the suit for declaration and permanent injunction.

4. One Dilbagh Singh died leaving behind his widow (defendant No.1) and sons (defendant Nos.2 to 8). The plaintiffs are the sons of Santokh

Singh son of Dilbagh Singh (defendant No.2) i.e. they are the grandsons of Dilbagh Singh. Dilbagh Singh was drawing some pension in the UK and his sons, except Santokh Singh, were also based in the UK. Santokh Singh was living in Dubai. The suit for declaration and permanent injunction was filed by the plaintiffs - Sukhpal Singh (plaintiff No.1-appellant herein) and his brother Pawandeep Singh (plaintiff No.2-respondent No.24) - averring that they were the owners of the immovable and movable properties left by their deceased grandfather, Dilbagh Singh, under a registered Will dated 19.12.1997 in their favour. It was averred that the defendant Nos.1 to 8 had got the mutation of inheritance executed and sanctioned in their favour and that the said mutation does not confer any right or title in favour of defendant Nos.1 to 8 and does not affect the right and title of the plaintiffs over the suit properties. Hence, the suit. The defendant Nos.3 and 6 to 8 filed written statements raising preliminary objections of locus standi, estoppel, maintainability, court fee, etc. It was the stand taken that Dilbagh Singh never executed the alleged Will dated 19.12.1997 which was a bogus, fictitious and forged document and that the mutation of inheritance of Dilbagh Singh was sanctioned in favour of the heirs of Dilbagh Singh on the basis of natural succession and that the alleged Will had never been propounded. It was averred that all the heirs of Dilbagh Singh were in possession of the suit land and that the plaintiffs have no concern with the same and that the father of the plaintiffs had separated from his father about 20 years before his death and he and his family were not even on speaking terms with Dilbagh Singh. It was also the stand taken that Dilbagh Singh used to be served by his sons living in the UK, especially by Jaswinder Singh and Lal Singh. As per the defendants Dilbagh Singh was visiting the

defendant Nos.3 to 8 in the UK and used to stay with them and they were maintaining him and used to take care of him in the UK as well as in India and that the plaintiffs never served Dilbagh Singh. It was also the stand taken that the defendants used to send money to Dilbagh Singh from the UK to purchase land and other household and agricultural equipments and for his personal expenditure. It was further contended that Dilbagh Singh was not in his senses and was of unsound mind for two months prior to his death and was unable to execute any document. The plaintiffs had not raised any objection at the time of sanctioning of the mutation in favour of the natural heirs of Dilbagh Singh. Replication was filed by the plaintiffs denying the contents of the written statements and reiterating the contents of the plaint.

5. From the pleadings of the parties following issues were framed by the Trial Court :

1. Whether the plaintiffs are owners in possession of the properties fully detailed in part ABCDE in the head note of the plaint ? OPP
2. Whether Dilbagh Singh deceased executed a Will dated 19.12.1997 in favour of the plaintiffs ? OPP
3. Whether Dilbagh Singh deceased executed a Will dated 27.01.1998 in favour of the defendant No.5 ? OPD-5
4. Whether the plaintiffs are entitled to injunction as prayed for ? OPP
5. Whether the plaintiffs have no locus standi to file the present suit ? OPD
6. Whether the plaintiffs are estopped from filing the present suit by their own acts and conduct ? OPD
7. Whether the Will dated 19.12.1997 is a bogus, factitious and forged document ? OPD

8. Whether the suit is not maintainable in the present form ? OPD

9. Whether the suit is collusive and is at the instance of defendant No.2 ? OPD

10. Whether the suit is not properly valued for the purpose of court fee ? OPD

11. Whether the land in dispute has not been described in the plaint ? OPD

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

13. Relief.

6. Vide judgement and decree dated 19.09.2015 the Trial Court dismissed the suit of the plaintiffs. Only the plaintiff-appellant herein i.e. plaintiff No.1 filed an appeal against the judgement and decree of the Trial Court. However, the said appeal of the plaintiff-appellant was also dismissed by the First Appellate Court vide judgement and decree dated 14.03.2019. Hence, the present regular second appeal by the plaintiff-appellant.

7. Learned counsel for the plaintiff-appellant has contended that both the Courts have erred in dismissing the suit of the plaintiffs. It is urged that the plaintiffs had propounded a registered Will in their favour which stood duly proved and therefore their suit for declaration and permanent injunction deserved to be decreed.

8. Heard counsel for the plaintiff-appellant and perused the record.

9. In the present case the suit of the plaintiffs has been dismissed by both the Courts. It has been held by the Trial Court that even if the Will (Ex.P1) is held to have been validly executed, it is surrounded by a number of suspicious circumstances. The Will (Ex.P1) propounded by the plaintiffs is dated 19.12.1997. The Testator, Dilbagh Singh, died just about a month

later on 28.01.1998. The wife of Dilbagh Singh i.e. Joginder Kaur (defendant No.1) executed her registered Will on 27.04.1998 bequeathing nothing to the plaintiffs.

10. It was found from the deposition of the plaintiff Sukhpal Singh that Dilbagh Singh was having love and affection with his wife and sons specifically defendants No.1 to 6 and he alongwith his wife Joginder Kaur (defendant No.1) used to visit to their sons in the UK and stay with them. The sons i.e. Jaswinder Singh and Lal Singh were nominees in the accounts held by the deceased and his wife Joginder Kaur (defendant No.1) in the Post Office. Further, the Will in question by which Dilbagh Singh bequeathed his entire property in favour of the plaintiffs was never produced before the Revenue Authority when the mutation of inheritance of Dilbagh Singh was sanctioned in favour of his natural heirs though the said Will was allegedly in possession of the plaintiff-appellant from the date of its execution. There is also no reason forthcoming in the Will as to why the Testator was excluding all his sons for whom he had love and affection and resided with them during his visits to the UK. Though it is mentioned in the Will that the Testator had already given some property to his wife Joginder Kaur, there is nothing on the record to show that Dilbagh Singh had given or transferred any property in favour of his wife Joginder Kaur. Further, the plaintiffs have not brought forth anything convincing to show that they were serving the deceased Dilbagh Singh. Infact, the plaintiff No.1 was about 22 years of age and his brother the plaintiff No.2 was 8/9 years old when Dilbagh Singh died. Learned counsel for the plaintiff-appellant has not been able to convince the Court that a child of 8/9 years of age could provide any services to an aged man of 70/75 years of age.

11. Even the due execution of the Will (Ex.P1) is not proven on the record with one attesting witness Mohinder Singh (PW-3) turning hostile and the other attesting witness being given up by the plaintiffs. Further the said witness PW-3 was cross-examined at length by the counsel for the plaintiffs however, nothing fruitful could be elicited. Since the Will is not proved by the attesting witnesses, it does not meet the requirements of law. Counsel for the plaintiff-appellant contended that the Will (Ex.P1) should be taken to having been proved as the scribe and the Registrar had deposed in support of its due execution. This argument is being noticed to be rejected. To be an attesting witness it is essential that the witness should have put his signature *animo attestandi* i.e. for the purpose of attesting that he has seen the executant sign or has received from him a personal acknowledgement of his signature. If a person puts his signature on the document for some other purpose e.g. to certify that he is a scribe or an identifier or a registering officer, he is not an attesting witness.

12. The suspicious circumstances surrounding the Will (Ex.P1) have not been satisfactorily explained by the plaintiff-appellant. In **K. Laxmanan vs. Thekkayil Padmini [(2009) 1 SCC 354]** the Supreme Court inter-alia held as under :

“19. When there are suspicious circumstances regarding the execution of the will, the onus is also on the propounder to explain them to the satisfaction of the court and only when such responsibility is discharged, the court would accept the will as genuine. Even where there are no such pleas, but circumstances give rise to doubt, it is on the propounder to satisfy the conscience of the court. Suspicious circumstances arise due to several reasons such as with regard to genuineness of

the signature of the testator, the conditions of the testator's mind, the dispositions made in the will being unnatural, improbable or unfair in the light of relevant circumstances or there might be other indications in the will to show that the testator's mind was not free. In such a case, the court would naturally expect that all legitimate suspicion should be completely removed before the document is accepted as the last will of the testator. The aforesaid view is taken by us in consonance with the decision of this Court in Shashi Kumar Banerjee v. Subodh Kumar Banerjee [AIR 1964 SC 529] and Pushpavathi v. Chandraraja Kadamba [(1973) 3 SCC 291].”

13. In **Jaswant Kaur vs. Amrit Kaur [(1977) 1 SCC 369]** it was held that:-

9. *“In cases where the execution of a will is shrouded in suspicion, its proof ceases to be a simple lis between the plaintiff and the defendant. What, generally, is an adversary proceeding becomes in such cases a matter of the court's conscience and then the true question which arises for consideration is whether the evidence led by the propounder of the will is such as to satisfy the conscience of the court that the will was duly executed by the testator. It is impossible to reach such satisfaction unless the party which sets up the will offers a cogent and convincing explanation of the suspicious circumstances surrounding the making of the will”.*

14. In a recent decision by the Supreme Court in **Gurdial Singh (Dead) through LR vs. Jagir Kaur (Dead) & Anr. [2025 SCC OnLine SC 1466]** while discussing the parameters to ascertain ‘suspicious circumstances’ vitiating a Will, it was held :

“14. This brings us to the next issue i.e. what are the suspicious circumstances which may vitiate the

disposition. In Indu Bala Bose v. Manindra Chandra Bose [(1982) 1 SCC 20] the Court held any and every circumstance is not a “suspicious” circumstance.

“8. Needless 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 [AIR 1946 PC 156] of suspicious circumstances as follows :

“17.....where 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 v. PPK Balakrishnan Nambiar [1995 Supp(2) SCC 664] that suspected features should not be mere fantasies of a doubting mind.

“5.It 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.”

It was further held in the said case that :

“16. We are conscious that deprivation of a natural heir, by itself, may not amount to a suspicious circumstance because the whole idea behind the execution of the Will is to interfere with the normal line of succession. However, in Ram Piari (supra), this Court held prudence requires reason for denying the

benefit of inheritance to natural heirs and an absence of it, though not invalidating the Will in all cases, shrouds the disposition with suspicion as it does not give inkling to the mind of the testator to enable the court to judge that the disposition was a voluntary act.

17. It was rightly indicated in Leela Rajagopal v. Kamala Menon Cocharan [(2014) 15 SCC 570] when unusual features appear in a Will or unnatural circumstances surround its execution, the Court must undertake a close scrutiny and make an overall assessment of the unusual circumstances before accepting the Will. The Court held as follows :

“13. A will may have certain features and may have been executed in certain circumstances which may appear to be somewhat unnatural. Such unusual features appearing in a will or the unnatural circumstances surrounding its execution will definitely justify a close scrutiny before the same can be accepted. It is the overall assessment of the court on the basis of such scrutiny; the cumulative effect of the unusual features and circumstances which would weigh with the court in the determination required to be made by it. The judicial verdict, in the last resort, will be on the basis of a consideration of all the unusual features and suspicious circumstances put together and not on the impact of any single feature that may be found in a will or a singular circumstance that may appear from the process leading to its execution or registration. This, is the essence of the repeated pronouncements made by this Court on the subject including the decisions referred to and relied upon before us.”

18. What boils down from this discussion is that suspicious circumstance i.e. non-mention of the status of wife or the reason for her disinheritance in the Will ought not to be examined in isolation but in the light of all attending circumstances of the case. It would be argued that proof of signatures on the Will and its registration dispels such suspicious circumstance. On a first blush, this submission appears to be attractive till one delves further into the peculiar and unique circumstances of the case.”

The Supreme Court did not accept the registered Will propounded in the above cited case and dismissed the appeal.

15. In view of the discussion above and keeping in view the settled law, no fault can be found with the judgments and decrees passed by both the Courts. In the face of the findings recorded by both the fact-finding Courts, there is no scope for any interference by this Court. No cogent and reliable evidence has been highlighted by the counsel for the plaintiff-appellant for this Court to take a contrary view from the one taken by both the Courts. No other point was argued.

16. No question of law, much less any substantial question of law, arises in the present case. The appeal being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

19.08.2025
Yogesh Sharma

(**ALKA SARIN**)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO