2025:PHHC:047704

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA-559-1993 (O&M)
Reserved on: 02.04.2025
Pronounced on: 07.04.2025

Kashmir Singh and others

. . . . Appellants

Vs.

Smt. Bheero @ Prakash Kaur and others . . . . Respondents

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Argued by: - Mr. Baldev Raj Mahajan, Advocate, with
Ms. Nitika Geol and Ms. Harita Dhanda, Advocates,
for the appellants.

Mr. Maninder Singh Saini, for the respondents.

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DEEPAK GUPTA, J.

Suit for joint possession of the suit property filed by the plaintiffs-Smt. Bheero and her sister Smt. Kashmiro *(contesting respondents No.1 & 2 herein)*, was decreed by trial Court of ld. Sub Judge Ist Class, Taran Taran vide judgment & decree dated 19.04.1990. The appeal filed by contesting defendants No.1 to 7 *(appellants herein)* was dismissed by the First Appellate Court of Ld. Additional District Judge, Amritsar vide his judgment dated 28.10.1992.

2. It is against the aforesaid concurrent findings that the defendants No.1 to 7 have approached this Court by way of the present Regular Second Appeal.

3. Trial Court record was called. Same has been perused. In order to avoid confusion, parties shall be referred as per their status before the Trial Court.

4. Undisputedly, three brothers namely Tara Singh, Chanan Singh and Sadhu Singh were owners in possession of the suit property measuring 177 kanal 07 marla situated in village Rasulpur, Tehsil Tarn Taran, as per details given in the plaint, in equal share. Chanan Singh died unmarried and issueless on 20.05.1977. Plaintiffs are the daughters of Sadhu Singh; whereas, defendants No.1 to 7 *(appellants herein)* are the widow and children of Tara Singh.

5.1 The dispute pertains to the estate left behind by Chanan Singh. The case of the plaintiffs i.e. daughters of Sadhu Singh is that after the death of Chanan Singh, his estate was inherited by his two brothers namely Tara Singh and Sadhu Singh. Both the brothers have since died and therefore, plaintiffs being the successors-in-interest/daughters of Sadhu Singh are entitled to 1/6th share each in the suit property. It is further the averment of the plaintiffs that defendants No.1 & 2 - Kashmir Singh & Sukhdev Singh Ss/o Tara Singh have got the mutation sanctioned in their favour on the basis of alleged WILL of Chanan Singh in their favour.

5.2 Plaintiffs deny the factum and validity of the Will set up by defendants No.1 & 2 and claimed that the said Will was forged and fictitious document, by which plaintiffs are not bound. It is also alleged that Chanan Singh (deceased) lacked testamentary capacity and was not competent to execute the Will and therefore, after his death, his brother Sadhu Singh had got 1/3 share, which after death of Sadhu Singh has been inherited by the plaintiffs.

5.3 Defendants No.1 to 7 are the legal heirs of Tara Singh (another brother of Chanan Singh); whereas, defendants No.8 to 16 *(performa respondent N: 3 to 11 herein)* have been impleaded as party to the suit as proforma defendants being co-sharers in the joint Khata.

5.4 On the basis of all the aforesaid averments, plaintiffs filed the suit seeking joint possession of 1/6th share in the disputed property.

6. Only defendants No.1 to 3 & 7 contested the suit. They pleaded that during his life time, Chanan Singh had executed a registered Will dated 17.11.1976 bequeathing 2/3rd share in the suit property in favour of defendant No.1-Kashmir Singh and 1/3rd share in favour of defendant No.2-Sukhdev Singh. Mutation on the basis of the said Will was also sanctioned. They controverted all other averments of the plaint and prayed for dismissal of the suit.

7. In rejoinder, plaintiffs reiterated their claim.

8. Necessary issues were framed. Evidence produced by the parties was taken on record.

9.1 Trial Court found that the Will dated 17.11.1976 (Ex.D1) relied by the defendants was surrounded by the suspicious circumstances and so, discarded the same. Suit was accordingly decreed on 19.04.1990 and plaintiffs were held entitled for joint possession as owner of the suit land to the extent of 1/6th share i.e. 1/2 share each out of 1/3rd share of Chanan Singh in the total suit land.

9.2 The Appellate Court endorsed the above findings, while dismissing the appeal filed by the defendants No.1 to 7 on 28.10.1992.

10.1 Assailing the aforesaid concurrent findings, it is argued by ld. Senior Advocate appearing for the appellants-defendants that Will (Ex.D1) relied by the defendants is a registered document. Sadhu Singh, Numberdar of the village, and Bakshish Singh s/o Deva Singh are the attesting witnesses to the said Will. One of the attesting witnesses namely Sadhu Singh examined as DW2 has proved due execution of the said Will by Chanan Singh. His testimony could not be impeached regarding the execution of the Will. On the death of Chanan Singh on 20.05.1977, mutation in favour of defendants No.1 and 2 was sanctioned on the basis of said Will.

10.2 It is pointed out that at that time, Tara Singh & Sadhu Singh i.e. two brothers of Chanan Singh were very much alive but they never

challenged either the validity of the Will or the mutation sanctioned on the basis of that Will in favour of defendants No.1 & 2, despite the fact that Tara Singh remained alive till 1982; whereas, Sadhu Singh, the father of the plaintiffs, died on 13.01.1984. Learned counsel contends that since during his lifetime Sadhu Singh never assailed the validity of the Will, therefore, it does not lie in the mouth of children of Sadhu Singh i.e., the plaintiffs to plead that no Will had been executed by Chanan Singh.

10.3 Learned Senior Advocate submits further that both the Courts below have made out the case for discarding the Will on the basis of suspicious circumstances despite the fact that plaintiffs had not pleaded any suspicious circumstances surrounding the Will. Ld. Sr. Advocate has relied upon ***Derek A.C. Lobo Vs. Ulric M.A. Lobo (Dead) by LRs and others, 2024 (2) RCR (Civil) 873,*** wherein it has been held by Hon'ble Supreme Court that a party challenging the execution of a Will as suspicious must plead the suspicious circumstances and then only the propounder would legally be bound to remove those suspicious circumstances. Learned counsel has then drawn attention to the pleadings of the parties so as to contend that neither in the plaint nor in the replication, plaintiffs pleaded any suspicious circumstances surrounding the Will and as such, the Courts below at their own could not hold the Will to be surrounded by suspicious circumstances.

10.4 Learned Senior Advocate further contends that the mere exclusion of certain relatives, such as Chanan Singh's brothers, nephews & nieces, in favour of only two nephews does not, by itself, render the Will suspicious. The very purpose of a Will is to alter the natural line of succession, and Chanan Singh's decision to favor two specific nephews does not constitute a suspicious circumstance.

10.5 With these submissions, ld. Senior Advocate prayed for setting aside the impugned judgments and decrees as passed by the Courts below and to dismiss the suit filed by the plaintiffs-respondents, by accepting this appeal.

11. Refuting the aforesaid contentions, it is argued by ld. counsel for the respondents-plaintiffs that High Court has limited scope to interfere in the concurrent findings of the Courts below. Learned Counsel contends that findings of facts as recorded by the Courts below being concurrent, there is no scope to interfere therein by this High Court. It is also contended that by appreciating the evidence on record, simply because other view is possible comparing to the view taken by the Courts below, that cannot be a reason so as to upset the concurrent findings of the Courts below. With these submissions, learned counsel prayed for dismissal of the appeal.

12. This Court has considered submissions of both the sides and has appraised the record carefully.

13. As per the admitted position, Chanan Singh died unmarried and issueless. At that time, he had two brothers Tara Singh and Sadhu Singh, who were alive and so, in natural course of succession, the estate of Chanan Singh would have been inherited by said brothers Tara Singh and Sadhu Singh being his class II (entry 2) legal heirs as per Hindu Succession Act. Had brothers of Chanan Singh pre-deceased him, then in natural succession, suit property would have gone to plaintiffs & defendants N: 1 to 6, being brother's sons and brother's daughter's daughters i.e., Class II (entry 4) legal heirs. However, in this case, on the death of Chanan Singh, the mutation regarding his estate was sanctioned in favour of defendants No.1 and 2 on the basis of Will dated 17.11.1976. Later on, both Tara Singh as well as Sadhu Singh expired and have been succeeded by their respective legal heirs. Plaintiffs are the daughters of Sadhu Singh, who have claimed succession of the suit property on the basis of natural succession, whereas defendants No.1 & 2 have set up a Will dated 17.11.1976. Courts below have discarded the Will and decreed the suit on the basis of natural succession.

14. There are mainly two aspects to be considered by the court, as and when a WILL is set up. First is proof of due execution of the Will in accordance with law and the onus to prove the said execution is upon the

propounder. Once the valid execution of Will as per law is proved, then comes the next aspect, as to whether the Will is surrounded by any suspicious circumstances. In case, the first aspect i.e., due execution of the WILL is not proved, there is no need to look into or consider the other aspect i.e., suspicious circumstances.

15. In this case, perusal of the Will (Ex.D1) would reveal that it is a registered document, whereby Chanan Singh bequeathed his estate in favour of his two nephews namely Kashmir Singh and Sukhdev Singh i.e. defendants No.1 & 2 to the extent of 2/3 and 1/3 share respectively, making it clear that none else will be entitled for the same. The said Will dated 17.11.1976 was duly registered in the office of Sub Registrar, Taran Taran on the same day i.e. 17.11.1976. The will is attested by two attesting witnesses namely Sadhu Singh, Nambardar, Rasulpur, and Bakshish s/o Deva Singh, also resident of Rasulpur i.e. the same place, where Chanan Singh used to reside.

16. Let us consider the first aspect, *as to 'whether the execution of the Will dated 17.11.1976 (Ex.D1) is proved or not?'.* It may be noted that as per legal position, the mode of proving a WILL does not ordinarily differ from that of proving any other document except as to the special requirement of attestation prescribed in the case of a WILL by Section 63 of the Indian Succession Act, which reads as under:-

> **"63. Execution of unprivileged wills.** - Every testator, not being a soldier employed in an expedition or engaged in actual warfare) or an airman so employed or engaged or a mariner at sea, shall execute his will according to the following rules:
>
> (a) The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.
>
> (b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.

(c) The will shall be attested by two or more witnesses, each of whom has 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 his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the will in the presence of the testator but it shall not be necessary that more than one witness be present at the same time and no particular form of attestation shall be necessary."

17. Apart from above, Section 68 of the Evidence Act is quite relevant regarding proving the execution of a WILL. This reads as under:

"68. Proof of execution of document required by law to be attested. -- If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied."

18. The conjoint reading of above provisions make it quite clear that at least one out of the two attesting witnesses must be called to prove due execution of the WILL. Further, it is required for the attesting witness to prove that he had seen the testator sign or affix his mark to the WILL in his presence; or that he received from the testator a personal acknowledgment of his signature or mark of the signature of such other person and each of the witnesses shall sign the WILL in the presence of testator. Reliance can be placed on ***Pentakota Satyanarayana Vs. Pentakota Seetharatnam 2006(1) C.C.C.563,*** wherein it has been held by Hon'ble Supreme Court that to prove due execution of Will, attesting witness must state that each of the two witnesses has seen the executor sign or affix his mark to the instrument or has seen some other person sign the instrument in his presence and by the

direction of the execution. Witness should further state that each of the attesting witness signed the instrument in the presence of the executant. Hon'ble Supreme Court held that these are the ingredients of attestation and they have to be proved by the witnesses.

19. Further, it is the settled proposition of law that it is the propounder of the Will, who has to prove its due execution. Besides, mere proving the signatures of the testator on the Will is not sufficient. Reference in this regard can be made to ***Ganpat Vs. Siri Chand 1992(1) LJR 252 and Janki Narayan Bhoir Vs. Narayan Namdeo Kadam 2003(2) LJR 646***, wherein it has been held that due and valid execution of the Will cannot be proved by simply proving that the signatures on the Will was that of the testator. It must be proved that attestations were also made properly as required by clause (c) of Section 63 of the Succession Act, 1925.

20. In the light of abovesaid legal position, it is required to be seen as to whether the due execution of the Will dated 17.11.1976 set up by defendants, has been proved in this case or not.

21. In the present case, in order to prove the due execution of Will Ex.D1, defendants examined one of the attesting witnesses namely Sadhu Singh, Numberdar as DW1. In his statement, Sadhu Singh testified that Chanan Singh had executed the Will in favour of Kashmir Singh and Sukhdev Singh in the sound disposing state of mind and on his own accord; that the Will was read-over by the scribe to the parties and after admitting the same to be correct, Chanan Singh signed the same in his (Sadhu Singh's) presence and also in the presence of Bakshish Singh and the scribe. He further testified that Sahib Singh had scribed the Will, who has since expired; whereas, other witness Bakshish Singh had also expired. DW1 Sadhu Singh testified further that Will was also got registered by Chanan Singh, where all of them appeared before the Sub-Registrar and where again, Chanan Singh signed the Will and the attesting witnesses also affixed their signatures/thumb impressions. He also proved endorsement Ex.DW1/A in this regard and stated that Sub-Registrar had also explained the Will. This

witness was cross-examined by counsel for the plaintiffs at length, but nothing material could be elicited so as to discredit him.

22. Though the witness – DW1 Sadhu Singh pleaded ignorance as to whether Chanan Singh had sustained injury in his hip bone about six months prior to his death, but clearly stated that at the time of the Will and also at the time of his death, Chanan Singh was in his sound disposing state of mind and was an abled bodied person.

23. Perusal of the impugned judgments passed by the Courts below would reveal that no clear cut finding has been given regarding the due execution of the Will on the basis of aforesaid statement of DW1 Sadhu Singh and rather, the Will has been discarded by noticing certain suspicious circumstances and discrepancies in the statement of witnesses, inasmuch as DW2-Kashmir, one of the defendants and beneficiary of the Will had stated in his cross-examination that Chanan Singh had sustained hip bone injury about six months prior to his death but clarifying that there was no fracture and that there was injury only on the muscles. He had also stated that Chanan Singh could walk with the help of stick at that time. On the other hand, DW1 had stated that Chanan Singh could walk without the help of the stick. It is also the observation of the trial Court that signature on the first and second page of the Will of Chanan Singh differed. It is by noticing these discrepancies and that the other natural heirs had been ignored and were not mentioned in the Will, the Courts below ignored the Will.

24. I am afraid that approach of the Courts below was absolutely erroneous. There is a gap of approximately six months during the execution & registration of the Will dated 17.11.1976 and the date of death of Chanan Singh, which is 20.05.1977. Even if it be assumed that Chanan Singh had sustained some injury in the hip bone about six months prior to his death, it does not mean that he was not in sound disposing state of mind so as to execute the Will. Testimony to that effect as made by DW1 Sadhu Singh could not be impeached in any manner, nor any evidence to the contrary was produced by the plaintiffs

25. The observation of the trial Court that signature on the first and second page of the Will of Chanan Singh differed, is also based upon conjectures in the absence of any cogent evidence to that effect and in the absence of the examination of any handwriting and finger print expert by the plaintiffs, who were opposing the Will.

26. Hon'ble Supreme Court has observed in ***O. Bharathan Vs. K. Sudhakaran and another, 1996 AIR (Supreme Court) 1140*** that when Court takes upon itself the hazardous task of adjudicating upon the genuineness, authenticity of the signature in question, even without assistance of a skilled and trained person, whose services could have been easily availed of, though there is no legal bar for the Judge to use his own eyes to compare the disputed writing, but the Judge is not right in ignoring the question administered by the Apex Court to the Courts to be adopted in ***State Vs. Pali Ram, AIR 1979 Supreme Court 14.*** In ***K.R. Aravindakshan Nair Vs. M/s Essen Bhankers, Pathanamthitta and another, 2007(4) RCR (Civil) 214***, it has been held by Kerala High Court that though there is no bar for the Court to compare the admitted signature/writings with the disputed signatures/writings and come to its own conclusion, it would be more prudent to require the opinion of an expert and that Court should not have ventured to form an opinion merely because Section 73 of the Evidence Act enables the Courts to compare the signatures.

27. In the aforesaid circumstances, there was no reason whatsoever to ignore the testimony of DW1-Sadhu Singh, one of the attesting witnesses of the Will, who proved due and valid execution of the Will by Chanan Singh as per the requirements of the law. The other attesting witness and scribe had already expired, as per his testimony. As per law, though a Will is required to be attested by two witnesses, but in order to prove the same, examination of only one of them is required, which has been done in this case by the propounder of the Will i.e. defendants. As such, the finding of the Courts below to the effect that validity of Will is not proved, is hereby reversed.

28. Coming to the second aspect, as to whether Will Ex.D1 is surrounded by any suspicious circumstances, it is important to take note of the legal position to the effect that a party alleging that a Will is suspicious, must specifically plead those circumstances. Only then does the onus shift to the propounder to dispel them.

29. Reference can be made to ***Derek A.C. Lobo (supra),*** wherein it has been held by Hon'ble Supreme Court that the party challenging execution of a Will as suspicious must plead the suspicious circumstances and then only the propounder would be legally bound to remove these suspicious circumstances. It will be relevant to reproduce the observations made by Hon'ble Supreme Court in this regard, which read as under: -

> "15. Now, we will refer to the cited suspicious circumstances. In the light of the decision in **Gurdial Kaur & Ors. v. Kartar Kaur & Ors., (1998) 4 SCC 384** there can be no doubt with respect to the position that when suspicious circumstances exist about the valid execution of a Will, it is the duty of the person seeking declaration about the validity of the Will to dispel such suspicious circumstances. In this context, we think it not inappropriate to refer to a decision of the High Court of Madhya Pradesh, in ***Nathia Bai and Ors. v. Gangaram and Ors. (2010) 1 MPLJ 140,*** with which we agree, rendered relying on the decisions of this Court in ***Meenakshiammal (Dead) through Lrs. And others v. Chandrasekharan and Another, (2005) 1 SCC 280*** and in ***P.P.K. Gopalan Nambiar v. P.P.K. Balakrishnan Nambiar, AIR 1995 SC 1852***, that a party challenging the execution of a Will as suspicious must plead the suspicious circumstances and then only the propounder would legally be bound to remove these suspicious circumstances.
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> In ***Nathia Bai's case*** it was held thus:-
>
> > "11. The Will is required to be proved just like any other document by adducing the additional evidence to prove the ingredients as envisaged under Section 63(c) of the Succession Act by examining the attesting witness according to Section 68 of the Evidence Act. It is also well settled that the propounder of the Will is required to prove the Will by removing all suspicious circumstances. Thus, if suspicious circumstances would have

been pleaded by the defendants, then only the plaintiffs, who are the propounder of the Will, were legally bound to remove those suspicious circumstances. The contestant opposing the Will, according to me, was required to bring the material on record so that the Will can be said to be a suspicious document and in that event the onus would shift back on the propounder of the Will to satisfy the Court by adducing positive evidence that the Will is not suspicious.....

(Underline Supplied)

In the decision in ***Meenakshiammal's case (supra)***, it was held in paragraphs 19 and 20 thus:-

"19. In the case of ***Chinmoyee Saha v. Debendra Lal Saha, AIR 1985 Cal 349*** it has been held that if the propounder takes a prominent part in the execution of the will, which confers a substantial benefit on him, the propounder is required to remove the doubts by clear and satisfactory evidence. Once the propounder proves that the will was signed by the testator, that he was at the relevant time in a sound disposing state of mind, that he understood the nature and effect of the disposition and put his signature out of his own free will, and that he signed it in presence of the witnesses who attested it in his presence, the onus, which rests on the propounder, is discharged and when allegation of undue influence, fraud or coercion is made by the caveator, the onus is on the caveator to prove the same.

20. In the case of ***Ryali Kameswara Rao v. Bendapudi Suryaprakasarao, AIR 1962 AP 178,*** this Court while discussing the provisions of Section 63 of the Succession Act, 1925, has held that the suspicion alleged must be one inherent in the transaction itself and not the doubt that may arise from conflict of testimony which becomes apparent on an investigation of the transaction. That suspicious circumstances cannot be defined precisely. They cannot be enumerated exhaustively. They must depend upon the facts of each case. When a question arises as to whether a will is genuine or forged, normally the fact that nothing can be said against the reasonable nature of its provisions will be a strong and material element in favour of the probabilities of the will. Whether a will has been executed by the testator in a sound and disposing state of mind is purely a question of fact, which will have to be decided in each case on the circumstances

disclosed and the nature and quality of the evidence adduced. When the will is alleged to have been executed under undue influence, the onus of proving undue influence is upon the person making such allegation and mere presence of motive and opportunity are not enough.

(Underline supplied)

The decision in ***Madhukar D. Shende v. Tarabai Aba Shedage, (2002) 2 SCC 85***, in so far as it is relevant, reads thus:

"8. The requirement of proof of a will is the same as any other document excepting that the evidence tendered in proof of a will should additionally satisfy the requirement of Section 63 of the Evidence Act, 1872. If after considering the matters before it, that is, the facts and circumstances as emanating from the material available on record of a given case, the court either believes that the will was duly executed by the testator or considers the existence of such fact so probable that any prudent person ought, under the circumstances of that particular case, to act upon the supposition that the will was duly executed by the testator, then the factum of execution of will shall be said to have been proved. The delicate structure of proof framed by a judicially trained mind cannot stand on week foundation nor survive any inherent defects therein but at the same time ought not to be permitted to be demolished by wayward pelting of stones of suspicion and supposition by wayfarers and waylayers. What was told by Baron Alderson to the jury in **R. v. Hodge** may be apposite to some extent:

'The mind is apt to take a pleasure in adapting circumstances to one another and even in straining them a little, if need be, to force them to form parts of one connected whole, and the more ingenious the mind of the individual, the more likely was it, considering such matters, to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete.'

The conscience of the court has to be satisfied by the propounder of will adducing evidence so as to dispel any suspicions or unnatural circumstances attaching to a will provided that there is something unnatural or suspicious about the will. The law of evidence does not permit conjecture or suspicion having the place of legal proof nor permit

them to demolish a fact otherwise proved by legal and convincing evidence. Well-founded suspicion may be a ground for closer scrutiny of evidence but suspicion alone cannot form the foundation of a judicial verdict – positive or negative.

9. It is well-settled that one who propounds a will must establish the competence of the testator to make the will at the time when it was executed. The onus is discharged by the propounder adducing prima facie evidence proving the competence of the testator and execution of the will in the manner contemplated by law. The contestant opposing the will may bring material on record meeting such prima facie case in which event the onus would shift back on the propounder to satisfy the court affirmatively that the testator did know well the contents of the will and in sound disposing capacity executed the same. The factors, such as the will being a natural one or being registered or executed in such circumstances and ambience, as would leave no room for suspicion, assume significance. If there is nothing unnatural about the transaction and the evidence adduced satisfies the requirement of proving a will, the court would not return a finding of 'not proved' merely on account of certain assumed suspicion or supposition. Who are the persons propounding and supporting a will as against the person disputing the will and the pleadings of the parties would be relevant and of significance.

(Underline supplied)

In the decision in ***P.P.K. Gopalan Nambiar's case (supra),*** this Court held in paragraph 4 thus:-

"4. On appeal, the sub-ordinate Judge has given various reasons to accept the validity of the will. One of the reasons is that it is a registered will and the endorsement by the Registrar would show that the testator was in a sound disposing state of mind and that it was executed out of her free will and that, therefore, the discrepancy in the evidence of DW 2, an attestor does not vitiate the validity of the will. On appeal, the learned Single Judge without going into the evidence, has stated in one sentence that he agrees with the reasoning of the trial court and does not agree with the reasoning of the appellate court. We are at a loss to appreciate the view taken by the learned Judge. The High Court also stated that the whole of the estate given to the son under the will would itself generate suspicious

circumstance. It is difficult to accept the reasoning of the learned Judge. Admittedly, the will was executed and registered on 1-11- 55 and she died 8 years thereafter in the year 1963. When the appellant had propounded the will in his written statement, nothing prevented either the respondent or any of the contesting defendants to file a rejoinder i.e. additional written statement with leave of the court under Order 8, Rule 9 pleading the invalidity of the will propounded by the appellant. Nothing has been stated in the pleadings. Even in the evidence when the appellant was examined as DW 1 and his attestation was as DW 2, nothing was stated with regard to the alleged pressure said to have been brought about by the appellant to execute the will. In the cross-examination by the first respondent, no attempt was even made to doubt the correctness of the Will.

5. Under these circumstances, the suspicion which excited the mind of the District Munsif is without any basis and he picked them from his hat without fact-foundation. The Subordinate Judge had rightly considered all the circumstances and upheld the will. The High Court, without examining the evidence, by merely extracting legal position set out by various decisions of this Court has upset the finding of the fact recorded by the Subordinate Judge in one sentence. 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."

(Underline supplied)

16. In the light of the aforesaid decisions, it can be safely said that once the burden to prove is discharged by the propounder in terms of Section 63 of the Succession Act and Section 68 of the Evidence Act, and by adducing prima facie evidence proving the competence of the testator, the onus is on the contestant opposing to show prima facie the existence of suspicious circumstances so as to shift the onus on the propounder to dispel them. Without knowing the circumstances, which according to the contestant opposing are suspicious, how will the propounder be able to dispel them and to convince the court about its genuineness and validity. We are saying that the contestant opposing the Will has to raise surrounding suspicious circumstances specifically and not vaguely or in a general manner. A case of

> well-founded suspicion has to exist to cause shifting of onus back to the propounder once he discharged his burden to prove the execution of the Will. We may hasten to add that we shall not be understood to have held that failure of the party/parties to plead suspicious circumstances would automatically make the court to take a Will as validly proved even where the circumstance(s) raising doubt is inherent in the document. Certainly, in such circumstances the propounder has to convince the court and dispel such suspicious circumstances."

30. It is, thus, evident from the legal position as elucidated above that while the propounder is legally bound to address and dispel suspicious circumstances, this obligation arises only when such concerns are specifically pleaded by the contesting party. The objector must clearly articulate the suspicious circumstances, rather than relying on vague or general assertions. A well-founded suspicion must exist to shift the onus back to the propounder after they have initially proved the execution of the Will. However, the absence of specific pleadings does not automatically validate the Will, if the document itself contains inherent suspicious features. In such cases, the propounder must still satisfy the court and dispel the doubts arising from the document's content. Importantly, the suspicion must stem from the Will itself, not merely from conflicting testimony that emerges during its examination.

31.1 In the present case, pleadings of the parties would reveal that no suspicious circumstances were pleaded by the plaintiffs-respondents.

31.2 In this regard, para No.5 of the plaint is as under: -

> 'That defendant No.1 and 2 allege that Shri Chanan Singh executed a Will in their favour which facts is denied. In case any Will is produced or proved on the record, the same is illegal false and fictitious documents. The plaintiffs are not bound by the said Will. Shri Chanan Singh died intestate. He lacked testamentary capacity. He was not competent to execute any Will.'

31.3 In response to the aforesaid pleading of the plaintiffs, defendants pleaded in their written statement as under: -

'4. That para No4. of the plaint in admitted correct to the extent that Chanan Singh died on 20-5-77. Rest of the para is denied. Chanan Singh in his life time, in a sound disposing mind of his own free will executed a valid registered will in favour of defendants Kashmir Singh, Sukhdev Singh, who are the nephews of Chanan Singh. They used to serve him and because of the services rendered by them, out of love and affection Chanan Singh bequeathed his estate in favour of Kashmir Singh and Sukhdev Singh and mutation respect of the estate of Chanan Singh has also been sanctioned in favour of answering defendants. All other allegations in this para are wrong and incorrect.

5. That para No.5. of the plaint is wrong and incorrect. Reply to this para No.4. of the plaint may also be read as a part of reply to this para. Chanan Singh in his life time in a sound disposing mind of his own free will, executed a valid registered will in favour of the answering defendants. Itis wrong to suggest that Chanan Singh did not execute a valid registered will. The same has also been implemented in the revenue record after his death. The plaintiff did not challenge the will. They are also estopped by their act and conducts from challenging the same. It is wrong to suggest that Chanan Singh lacked testamentary. Rest of the para is denied.'

31.4 The corresponding response to the plaintiffs in the rejoinder, is as under: -

'4. That para No. 4 of the written statement is denied being wrong and incorrect and that of the plaint is correct and affirmed. It is denied that Shri Chanan Singh executed any registered will dated 16.11.1976 in favour of Kashmir Singh and Sukhdev Singh. It is further denied that Shri Chanan Singh had sound disposing mind and a free will before his death. Shri Chanan Singh was incompetent to execute any will. The land in dispute was an ancestral property in the hands of Shri Chanan Singh, he had no right to bequeath his property in favour of defendants No. 1 and 2. It is further denied that he had any love and affection towards defendants No. 1 and 2. In case any will is produced or proved on the record the same is false and factitious documents. Rest of the para is denied being wrong and incorrect.

5. That para No.5 of the written statement is denied being wrong and incorrect and that of the plaint is correct and affirmed, it is further submitted that para No. 4 of the replication be read as part of this para.'

32. It is, thus, clear from the aforesaid pleadings that except the denial of execution of the WILL by Chanan Singh and his competency to execute the WILL, or that he was not in disposing state of mind, no suspicious circumstance had been pleaded by the plaintiffs.

33. As far as the disposing state of mind of the Chanan Singh at the time of execution of the Will is concerned, it has already been observed that the same is duly proved on record by the testimony of one of the attesting witnesses to the WILL Ex.D1 i.e., DW1-Sadhu Singh and the plaintiffs could not rebut this evidence by way of cogent evidence. Simply because Chanan Singh had sustained some injuries on his hip six months prior to his death, could not be a reason to infer that he was not having the sound disposing state of mind, especially when Sadhu Singh DW1 candidly stated that till the time of his death, Chanan Singh was having sound disposing state of mind.

34. Although, there was no pleading about any suspicious circumstance, but the First Appellate Court observed as suspicious circumstance that other natural legal heirs have been ignored by the testator Chanan Singh.

35. As has been noticed earlier that at the time, when Chanan Singh died, he had two living brothers Tara Singh and Sadhu Singh, who would have succeeded him being Class-II legal heirs in the natural course of succession, in the absence of any Class-I legal heir, as Chanan Singh had died unmarried and issueless. Tara Singh had six children – defendants N: 1 to 6; whereas, Sadhu Singh had two children - plaintiffs. Instead of preferring his two brothers, who were alive at that time; or all the nephews/nieces, in case Chanan Singh preferred two nephews Karishma Singh and Sukhdev Singh i.e. defendant No.1& 2, it cannot be stated to be suspicious

circumstances. The whole purpose of executing a Will is to disturb the natural line of succession.

36. In ***Ramabai Padmakar Patil (D) through Lrs & Ors. Vs. Rukminibai Vishnu Vekhande & Ors, 2003(3) Civil Court Cases 0592***, it has been held by Hon'ble Supreme Court that suspicion means doubt, conjecture or mistrust. Simply because lesser share has been given or a natural heir has been deprived, this by itself, without anything more is not a suspicious circumstance especially in a case where the bequest is made in favour of an offspring.

37. In ***Bhajan Kaur Vs. Harjit Singh, 2010 (48) RCR Civil) 73***, it has been held by this Court that it is not uncommon in the northern part of this country that agriculturists had the tendency to pass on their property in favour of their male lineal descendants and in the absence of male lineal descendants, even in favour of male collaterals in preference to the daughters so as to keep the property within family.

38. In the present case, Chanan Singh did not have offspring of his own. He preferred two of his nephews instead of brothers or other nephews/nieces and as such, this in itself cannot be considered as suspicious circumstance.

39. In view of above discussion, it is held that there was no cogent evidence to come to the conclusion that Will was surrounded by any suspicious circumstance. Though plaintiffs - the opponents of the Will had not pleaded about the suspicious circumstances, still the defendants/ propounder of the Will were able to satisfy the conscious of the Court to dispel the alleged suspicious circumstances.

40. As such, the findings of the Courts below is hereby reversed and it is held that by virtue of Will dated 17.11.1976 (Ex.D1) of Chanan Singh, defendants No.1 & 2 had become owner of the estate of Chanan Singh in the suit property to the extent of 2/3 & 1/3 share, respectively as per the contents of the WILL.

41. It is also important to notice that impugned WILL was executed on 17.11.1976 and after the death of Chanan Singh on 20.05.1977, mutation based on the WILL, was sanctioned in favour of defendants N: 1 & 2, without any objection by two living brothers - Tara Singh & Sadhu Singh of Chanan Singh, who would have succeeded to the estate of Chanan Singh in natural course. Tara Singh remained alive till 1982; whereas, Sadhu Singh, the father of the plaintiffs, died on 13.01.1984. During their lifetime, they never assailed the validity of the Will. On the death of Sadhu Singh, mutation N: 1966 of his estate was sanctioned in favour of his daughters – plaintiffs, as reflected in Jamabandi for the year 1983-84 Ex.P5 in the remarks column. In the absence of any pleading to the contrary, it is apparent that plaintiffs were well aware of the WILL since date of its execution or at least since the time of sanction of mutation in favour of defendants N: 1 & 2 on the death of Chanan Singh on 20.05.1977. However, present suit was brought by the plaintiffs on 10.06.1988, alleging the WILL to be not binding on them. Apparently, suit is also barred by limitation.

42. Coming to the contention raised by Ld. counsel for the respondents that High Court should not interfere in the concurrent findings of facts, it has no merit. No doubt that High Court has limited scope to interfere in the concurrent findings of facts recorded by the Courts below, but the High Court is well within its power to see that there is no illegality or perversity in the findings.

43. In ***RSA-4958-2012 titled as Lakhpat Rai & Others vs. J.D Gupta & Others, decided on 14.10.2024,*** after referring to various precedents of Hon'ble Supreme Court including ***Avtar Singh & ors. v. Bimla Devi & ors. (2021) 13 SCC 816; Shivali Enterprises v. Godawari 2022 SCC Online SC 1211; Municipal Committee, Hoshiarpur v. Punjab State Electricity Board 2010 (13) SCC 2016; and Kashmir Singh vs. Harnam Singh 2008 AIR Supreme Court 1749,*** it has been held by this court as under:

> "60. To conclude, legal principles, which can be culled out are that though High Court is not to interfere with the concurrent findings of the

Courts below but it is not an absolute rule. There are some exceptions for interference by the High Court, when it is found that:

- When finding of fact by the Courts below is vitiated by non consideration of material evidence or erroneous approach.
- The Courts have drawn wrong inferences from the proved facts by applying the law erroneously.
- The Courts have wrongly cast the burden of proof.
- When decision is based upon no evidence, which would mean that not only there is total dearth of evidence but also, where if the evidence taken as a whole, is not reasonably capable of supporting the finding.
- When the judgment of the final Court of fact is based on misinterpretation of documentary evidence or on consideration of inadmissible evidence or ignoring material evidence."

44. In view of the above exceptions, a review of the evidence of this case reveals that the courts below drew incorrect inferences by misapplying the law. Their judgments are based on misinterpretation of documentary evidence, reliance on inadmissible material, and omission of crucial evidence. Overall, the findings are not reasonably supported by the evidence on record. As such, the contention of the learned counsel for the contesting respondents against interference with the concurrent findings is without merit and is accordingly rejected.

45. On account of the entire discussion as above, present appeal is hereby accepted. Judgments and decrees as passed by the Courts below are hereby set aside. The suit, as filed by the plaintiffs-*respondents herein*, is hereby dismissed, leaving the parties to bear their own costs.

(DEEPAK GUPTA)
JUDGE

07.04.2025
Vivek

Whether speaking/reasoned? **Yes**

Whether reportable? Yes