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

RSA-2617 of 2016 (O&M)
Date of decision :05.08.2025

Inderjit Kaur ...... Appellant

Versus

Ranjit Kaur & ors. ..... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

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Present :- Ms. Sarika Gupta, Advocate for the appellant.

Mr. M.S.Batth, Advocate for respondent No.1.

Mr. Parvinder Singh, Advocate
for respondents No.2 & 3.

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PANKAJ JAIN, J. (ORAL)

1 Defendant No.3 is in appeal. For convenience, parties hereinafter are referred to by their original position in the suit i.e. appellant as defendant No.3, respondent No.1 as plaintiff and respondents No.2 to 7 as defendants.

2 Plaintiff filed suit seeking decree of declaration to the effect that she along with defendants No.1 to 7 are owners in possession to the extent of 1/8 share each in the estate left behind by Pritam Singh son of Labhu Ram.

3 The dispute in the appeal relates to estate left by Pritam Singh which has been fully detailed in the head note of the plaint. As per the admitted facts Pritam Singh married twice and died on 25.06.2008 leaving

behind 7 children and one widow i.e. the appellant. Present appellant who was arraigned as defendant No.3 propounded a WILL dated 04.06.2008 claiming to have been executed by Pritam Singh whereby he bequeathed his entire property in her favour. To prove WILL one of the attesting witnesses Balkar Singh was examined as DW-2. The Courts below after analyzing the entire evidence came to the conclusion that Balkar Singh was not a truthful witness. The WILL propounded by the defendant was surrounded by suspicious circumstances. Pritam Singh died 21 days after execution of WILL. Description with respect to sons and daughters left by him is in correct. Balkar Singh while appearing in the witness box could not satisfy the requirement of Section 63 (c) of the Indian Succession Act, 1925 (for short 'the 1925 Act'). He even failed to identify signatures of Pritam Singh on Ex.P3, the same being in Urdu script. While he claimed to have recognized signatures of Pritam Singh on WILL despite the same also being in URDU.

4 Learned counsel for the appellant has assailed the findings recorded by the Courts below. She refers to the finding recorded by the Trial Court to the effect that no reason has been assigned to exclude the sons and daughters and refers to the WILL wherein it has been mentioned that the sons and daughters are being excluded by the testator as they have been given sufficient property by the testator during his life time. She thus submits that the findings recorded by the Courts below dislodging the WILL cannot be sustained. She further refers to testimony of plaintiff-Ranjit Kaur PW-1. Attention of the Court has been drawn to the admission made by

Ranjit Kaur that the suit has been filed at the instance of her brother Jasvir Singh and that sons of Pritam Singh namely Jasvir Singh and Harjit Singh were embroiled in proceedings under Section 107/151 Cr.P.C. It has been contended that it was but obvious for Pritam Singh to exclude his sons owing to such disputes. She accordingly submits that once attesting witness came and testified supporting the execution of the WILL, the Courts below ought not have dislodged a registered WILL. It has been further contended that even though there is time gap of only 21 days between the execution of the WILL and death of Pritam Singh but in the absence of any evidence to suggest that Pritam Singh was not in control of his physical and/or mental faculties at the time of execution of the WILL the short time gap cannot be held to be fatal to the case of the appellant.

5 Per contra learned counsel for the respondents have referred to the WILL to submit that even the number of children left by Pritam Singh was not correctly described. This puts whole of the document under cloud of suspicion. It has been contended that no reason has been assigned to exclude sons and daughters. Reference is being made to the admissions made by propounder of the WILL Inderjit Kaur, who appeared in the witness box as DW-2. It has been submitted that Inderjit Kaur admitted that Pritam Singh had good relations with his sons and daughters yet all of them have been excluded without assigning any reason. Counsels further submit that even though the WILL contains a covenant that the sons and daughters are being excluded by the testator as he gave them sufficient property during his life time but there is nothing on record to suggest that any property was ever

given by Pritam Singh to any of his sons and daughters. While plaintiff appeared in witness box not even a suggestion was put to her with respect to handing over of any property to her by Pritam Singh during his life time.

6 I have heard learned counsel for the parties and have gone through the records of the case.

7 The issue of legality of Will and the suspicious circumstances surrounding the same is no more *res integra*. Supreme Court in ***H. Venkatachala Iyengar vs. B.N. Thimmajamma and others, 1959 AIR (Supreme Court) 443*** laid down the following prepositions: -

> *"xxxx xxxx xxxx*
>
> *18. What is the true legal position in the matter of proof of wills? It is well-known that the proof of wills presents a recurring topic for decision in courts and there are a large number of judicial pronouncements on the subject. The party propounding a will or otherwise making a claim under a will is no doubt seeking to prove a document and, in deciding how it is to be proved, we must inevitably refer to the statutory provisions which govern the proof of documents. Sections 67 and 68 of the Evidence Act are relevant for this purpose. Under Section 67, if a document is alleged to be signed by any person, the signature of the said person must be proved to be in his handwriting, and for proving such a handwriting under Sections 45 and 47 of the Act the opinions of experts and of persons acquainted with the handwriting of the person concerned are made relevant. Section 68 deals with the proof of the execution of the document required by law to be attested; and it provides that such a document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. These provisions prescribe*

the requirements and the nature of proof which must be satisfied by the party who relies on a document in a court of law. Similarly, Sections 59 and 63 of the Indian Succession Act are also relevant. Section 59 provides that every person of sound mind, not being a minor, may dispose of his property by will and the three illustrations to this section indicate what is meant by the expression "a person of sound mind" in the context. Section 63 requires that 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 that the signature or mark shall be so made that it shall appear that it was intended thereby to give effect to the writing as a will. This section also requires that the will shall be attested by two or more witnesses as prescribed. Thus the question as to whether the will set up by the propounder is proved to be the last will of the testator has to be decided in the light of these provisions. Has the testator signed the will? Did he understand the nature and effect of the dispositions in the will? Did he put his signature to the will knowing what it contained? Stated broadly it is the decision of these questions which determines the nature of the finding on the question of the proof of wills. It would prima facie be true to say that the will has to be proved like any other document except as to the special requirements of attestation prescribed by Section 63 of the Indian Succession Act. As in the case of proof of other documents so in the case of proof of wills it would be idle to expect proof with mathematical certainty. The test to be applied would be the usual test of the satisfaction of the prudent mind in such matters.

19. However, there is one important feature which distinguishes wills from other documents. Unlike other documents the will speaks from the death of the testator, and so, when it is propounded or produced before a court, the testator who has

already departed the world cannot say whether it is his will or not; and this aspect naturally introduces an element of solemnity in the decision of the question as to whether the document propounded is proved to be the last will and testament of the departed testator. Even so, in dealing with the proof of wills the court will start on the same enquiry as in the case of the proof of documents. The propounder would be called upon to show by satisfactory evidence that the will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the dispositions and put his signature to the document of his own free will. Ordinarily when the evidence adduced in support of the will is disinterested, satisfactory and sufficient to prove the sound and disposing state of the testator's mind and his signature as required by law, courts would be justified in making a finding in favour of the propounder. In other words, the onus on the propounder can be taken to be discharged on proof of the essential facts just indicated.

20. There may, however, be cases in which the execution of the will may be surrounded by suspicious circumstances. The alleged signature of the testator may be very shaky and doubtful and evidence in support of the propounder's case that the signature, in question is the signature of the testator may not remove the doubt created by the appearance of the signature; the condition of the testator's mind may appear to be very feeble and debilitated; and evidence adduced may not succeed in removing the legitimate doubt as to the mental capacity of the testator; the dispositions made in the will may appear to be unnatural, improbable or unfair in the light of relevant circumstances; or, the will may otherwise indicate that the said dispositions may not be the result of the testator's free will and mind. In such cases the court would naturally expect that all

legitimate suspicions should be completely removed before the document is accepted as the last will of the testator. <u>The presence of such suspicious circumstances naturally tends to make the initial onus very heavy; and, unless it is satisfactorily discharged, courts would be reluctant to treat the document as the last will of the testator. It is true that, if a caveat is filed alleging the exercise of undue influence, fraud or coercion in respect of the execution of the will propounded, such pleas may have to be proved by the caveators; but, even without such pleas circumstances may raise a doubt as to whether the testator was acting of his own free will in executing the will, and in such circumstances, it would be a part of the initial onus to remove any such legitimate doubts in the matter.</u>

21. Apart from the suspicious circumstances to which we have just referred, in some cases the wills propounded disclose another infirmity. Propounders themselves take a prominent part in the execution of the wills which confer on them substantial benefits. If it is shown that the propounder has taken a prominent part in the execution of the will and has received substantial benefit under it, that itself is generally treated as a suspicious circumstance attending the execution of the will and the propounder is required to remove the said suspicion by clear and satisfactory evidence. It is in connection with wills that present such suspicious circumstances that decisions of English courts often mention the test of the satisfaction of judicial conscience. It may be that the reference to judicial conscience in this connection is a heritage from similar observations made by ecclesiastical courts in England when they exercised jurisdiction with reference to wills; but any objection to the use of the word "conscience" in this context would, in our opinion, be purely technical and academic, if not pedantic. The test merely emphasizes that, in determining the

question as to whether an instrument produced before the court is the last will of the testator, the court is deciding a solemn question and it must be fully satisfied that it had been validly executed by the testator who is no longer alive.

22. It is obvious that for deciding material questions of fact which arise in applications for probate or in actions on wills, no hard and fast or inflexible rules can be laid down for the appreciation of the evidence. It may, however, be stated generally that a propounder of the will has to prove the due and valid execution of the will and that if there are any suspicious circumstances surrounding the execution of the will the propounder must remove the said suspicions from the mind of the court by cogent and satisfactory evidence. It is hardly necessary to add that the result of the application of these two general and broad principles would always depend upon the facts and circumstances of each case and on the nature and quality of the evidence adduced by the parties. It is quite true that, as observed by Lord Du Parcq in Harmes v. Hinkson [(1946) 50 CWN 895] "where a will is charged with suspicion, the rules enjoin a reasonable skepticism, 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 would sound platitudinous to say so, but it is nevertheless true that in discovering truth even in such cases the judicial mind must always be open though vigilant, cautious and circumspect.

xxxx xxxx xxxx"

8 While discussing the aforesaid proposition laid down in ***H. Venkatachala Iyengar's case (supra)***, the Supreme Court in ***Jaswant Kaur vs. Amrit Kaur, 1977 AIR (Supreme Court) 74*** observed as under:-

> *"xxxx xxxx xxxx*
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> *"10. There is a long line of decisions bearing on the nature and standard of evidence required to prove a will. Those decisions have been reviewed in an elaborate judgment of this Court in H.* ***Venkatachala Iyengar vs. B.N. Thirnmajamma and others, (1959) Supp. 1 SCR 426***. The Court, speaking through Gajendragadkar J., laid down in that case the following propositions:-
>
> *1. Stated generally, 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 in such matters. As in the case of proof of other documents, so in the case of proof of wills, one cannot insist on proof with mathematical certainty.*
>
> *2. Since Section 63 of the Succession Act requires a will to be attested, it cannot be used as evidence until, as required by Section 68 of the Evidence Act, 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.*
>
> *3. Unlike other documents, the will speaks from the death of the testator and therefore the maker of the will is never available for deposing as to the circumstances in which the will came to be executed. This aspect introduces an element of solemnity in the decision of the question whether the document propounded is proved to be the last will and testament of the testator.*

Normally, the onus which lies on the propounder can be taken to be discharged on proof of the essential facts which go into the making of the will.

4. Cases in which the execution of the will is surrounded by suspicious circumstances stand on a different footing. 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 and such other circumstances raise suspicion about the execution of the will. That suspicion cannot be removed by the mere assertion of the propounder that the will bears the signature of the testator or that the testator was in a sound and disposing state of mind and memory at the time when the will was made, or that those like the wife and children of the testator who would normally receive their due share in his estate were disinherited because the testator might have had his own reasons for excluding them. The presence of suspicious circumstances makes the initial onus heavier and therefore, in cases where the circumstances attendant upon the execution of the will excite the suspicion of the court, the propounder must remove all legitimate suspicions before the document can be accepted as the last will of the testator.

5. It is in connection with wills, the execution of which is surrounded by suspicious circumstances that the test of satisfaction of the judicial conscience has been evolved. That test emphasises that in determining the question as to whether an instrument produced before the court is the last will of the testator, the court is called upon to decide a solemn question and by reason of suspicious circumstances the court has to be satisfied fully that the will has been validly executed by the testator.

6. If a caveator alleges fraud, undue influence, coercion etc. 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 raise a doubt as to whether the testator was acting of his own free will. And then it is a part of the initial onus of the propounder to remove all reasonable doubts in the matter."

xxxx xxxx xxxx

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:-

"xxxx xxxx xxxx

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

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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 xxxx xxxx"*

10 It is thus well settled that propounder of WILL is not only required to prove execution of the WILL in terms of Section 63 of the Indian Succession Act, 1925 but is also required to dispel suspicious circumstances if any. A 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.

11 In the present case propounder of the WILL is defendant No.2. She is not only required to prove the execution of the WILL in terms of Section 63(c) of the 1925 Act, but also has a bounden duty to dispel suspicious circumstances surrounding the WILL, if any. In order to satisfy the terms of Section 63(c) of the 1925 Act, the WILL is required to be proved in accordance with Section 68 of the Indian Evidence Act, 1872. Balkar Singh one of the attesting witnesses was examined as DW2. The attesting witness, Balkar Singh, has dented the case of the defendant irreparably. From the entire testimony of Balkar Singh it is evident that even though he claimed that Pritam Singh signed the WILL in his presence but he nowhere says that the same was read over to Pritam Singh after it was drafted. Rather he admits that after the WILL was typed/scribed it was never read over. In these circumstances, this Court finds that the propounder

of the WILL failed to discharge the burden to satisfy the necessary ingredients of Section 63(c) of the 1925 Act.

12 Coming on to the suspicious circumstances, the initial lines of the WILL regarding number of sons and daughters is evidently wrong. Defendant in her testimony admitted that Pritam Singh left behind four daughters and three sons whereas, WILL mentions of three sons and three daughters. In the WILL the testator claims to have given sufficient property to his sons and daughters during his life time. There is nothing on record by way of pleadings or evidence mentioning any property given by the testator to any of the sons or daughters during his life time.

13 Pure findings of fact have been recorded by the Courts after analyzing the entire evidence on record. There is no piece of evidence that can be said to have been misread or ignored by the Courts below. Even though the second appeal has to be entertained by this Court in terms of Section 41 of the Punjab Courts Act, 1918, but question of law still remains *sine-qua-non* to entertain the appeal.

14 Finding no question of law involved in the present appeal, the same is ordered to be dismissed.

(PANKAJ JAIN)
JUDGE

05.08.2025
Pooja Sharma-I

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No