



**RSA-647-1994 (O&M)**

**Sr.No.110**

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

**RSA No.647 of 1994 (O&M)**

**Reserved on : 04.04.2025**

**Pronounced on : 27.05.2025**

Smt. Sukhma (since deceased) Through LRs.

....Appellants

Versus

Smt. Lichhmi (since deceased) Through LRs.

....Respondents

**CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN**

**Present:-** Mr. M.L. Sarin, Sr. Advocate with  
Ms. Himani Sarin, Advocate  
for the Appellants.

Mr. Ashok Verma, Advocate and  
Mr. Satnam Singh Sishodia, Advocate  
for the Respondents.

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**PANKAJ JAIN, J.**

Defendant is in appeal. The original parties to the suit were two step sisters from the same father namely Shobha son of Nandu. For convenience, the parties are being referred to by their original position in the suit before the Court of First Instance i.e. the appellant (since deceased) as defendant and the respondent (since deceased) as plaintiff.

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2. Shobha earlier married Phulia and from their union, plaintiff-Lichhmi was born. Thereafter, Shobha married Mehma and defendant-Sukhma was born out of their wedlock. Shobha is stated to have died prior to the year 1956. Mehma had inherited his estate being his widow. Mehma died in the year 1983. Plaintiff claimed that Mehma during her lifetime executed Will dated 02.02.1983, whereby she bequeathed 1/2 share of the estate in favour of plaintiff and 1/2 share in favour of defendant. It was claimed by defendant that Mehma never executed any Will during her lifetime. The Will propounded by plaintiff was forged and fabricated document with the active connivance of Khazan Singh, Sarpanch, Lakhmi Chand, Panch and Svaiya, Lambardar and Ishwar Singh, son of plaintiff.

2.1. Trial Court found the Will to be surrounded by suspicious circumstances. The same had been spelled out in para 9 of the judgment which reads as under:-

*"9. The mode of proving a will does not ordinarily differ from that of proving any other document except as to special requirements of attestation prescribed in the case of a will by Section 63 of the Succession Act. In a case in which a will is prepared under circumstances which raise the suspicion of the Court that it does not express the mind of the testator, the onus is upon the propounder to explain them to the satisfaction of the Court before the Court accepts the will as genuine. In such a case, the Court naturally expects that all legitimate suspicion should be completely removed before the document is accepted as the last will of the testator. The will Ex.P2 is full of suspicion*

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*and this was not a valid will and it is a false document. The names of the village Rakhi Khas and Mirchpur are not mentioned in the will and even the details of the properties were not given. Age and health of Mehma had not been mentioned in the will. The alleged thumb impression of Mehma was not in routine and it was not written whether she gave her right thumb impression or left thumb impression. It was also not mentioned in the will that she was executing a will with her free of will nor she mentioned the name of her daughter. The signature or thumb impression of Lichhmi and Sukhma were also not obtained even the ink was different. So, all these points indicate that the document is full of suspicion. The star witness Bhim Singh, PW2 was the scribe of the will and he is only Matriculate. The language is trite legal language and in the legal form. The words used in the will Ex. P2 are of Urdu and it was not possible by the scribe being the Matriculate. Even, the scribe of the will did not give signature on the will and the will is un-registered. This is a clear lacuna in the evidence in regard to this aspect of the will Ex. P2. The testimony of Khajan Singh, PW4 and Svaiya, Lamberdar, PW3 also cast doubt on the case of the plaintiff. The PWs who appeared in the support of the will. Ex. P2 does not say anywhere whether Smt. Mehma gave her thumb impression or signature. According to the will Ex. P2, Lichhmi and Smt. Sukhma were present at the time of execution of it but Smt. Lichhmi was not produced and she had been withheld from the Court with no explanation to prove that she alongwith Smt. Sukhma was present at the time of execution of will Ex. P2. Ishwar Singh, PW1 son of Smt. Lichhmi appeared as attorney. He never says that he is conversant with the facts of the case. PW1, Ishwar Singh has*



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*further stated that the will was presented before the Tehsildar whereas it was presented before the Naib Tehsildar. Ex. P2 was never presented either to the Tehsildar or to the Naib Tehsildar or it was not mentioned at the time of entering the mutations in the name of plaintiff. PW1 further deposed that he did not know by whom the will Ex. P2 was presented. PW3 stated that he did not see the will after execution whereas PW4 deposed that the will was not shown to him. So, the presentation of the will is very doubtful. PW1 further deposed that after executing the will, it was handed over to Sarpanch Khajan Singh whereas PW2 deposed that after executing the will, it was given to Smt. Mehma. So, the evidence of the plaintiff casts doubt on the execution of the will Ex. P2. If the alleged will Ex. P2 was in existence on 2.2.83 then it would have certainly been told by Svaiya, Lambardar at the time of entering the mutations Ex.D1 and Ex.D2 on 2.11.83 in the name of Smt. Sukhma. As per the case of the plaintiff, the will was with Khazan Singh but he never told nor produced the will before 7.1.84. If the will was in existence, Svaiya Lambardar certainly took an objection that the will was already executed in favour of Smt. Lichhmi and it was cropped up in the minds of Ishwar Singh and Khazan Singh to execute a false will in favour of Smt. Lichhmi and to prove the ulterior motive, this will was executed and the cuttings on the mutations Ex.D1 and Ex.D2 were made and an illegal order dated 7.1.84 was passed by the Tehsildar, Sh.Chater Singh Bhardwaj and it shows that the intention of the Tehsildar was also bad. Both the documents Ex. D1 and Ex.D2 were not produced by the plaintiff to prove that the mutations in favour of the plaintiff were sanctioned whereas both these documents were produced by the defendant. The cuttings on the mutations*

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*Ex.D1 and Ex.D2 make the position clear and a high suspicion would cast on the execution of the will Ex. P2. So, to my mind, the will Ex. P2 is a false document and the orders dated 29-4-86 and 21-10-86 passed by A.C. Ist Grade, Hansi and Collector, Hissar are legal and not liable to be set aside at all. The mutations No.2246 and 4265 were wrongly sanctioned in the name of Smt. Lichhmi on the basis of will dated 2.2.83 and they are liable to be set aside. Even otherwise also, according to Hindu Succession Act, Section 15(a), the plaintiff is not entitled to inherit the suit property of Smt. Mehma as Smt. Mehma was the sole owner of the suit property and she inherited it from her husband Shobha and in natural course, Smt. Sukhma was the legal heir of Smt. Mehma. Moreover, A.C Ist Grade or Collector has no power to decide the mutation when they came into conclusion that there is a suspicion on the execution of the will Ex. P2 and then they must decide the mutations according to law of succession. In other words, the plaintiff is not owner in possession of one half share of the land in dispute as will Ex. P2 is a false and fabricated document as alleged above and the impugned orders dated 29-4-86 and 21-10-86 passed by the then A.C.Ist Grade, Hansi and Collector, Hissar are legal and not liable to be set aside. The mutations No. 2246 and 4265 of village Rakhi Khas and Mirchpur respectively are not legal and not correctly sanctioned and these are liable to be set aside and both these mutations have no binding effect on the rights of the defendant. Hence, these issues are decided in favour of the defendant and against the plaintiff."*

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2.2. The Court of the First Instance, thus dismissed the suit filed by plaintiff. In Appeal, the findings have been reversed by the Lower Appellate Court observing as under:-

*"13. Now coming to the genuineness of the will, it was scribed by Bhim Singh, who appeared as PW2, and it was witnessed by Saviya Lambardar, Khajan Singh, Sarpanch and Lakhmi Panch, who appeared as PW3, Ex. P4 and PW5 respectively. This will was also signed by Ishwar Singh, the son of Lichhmi plaintiff, who appeared as PW1. All the witnesses have given consistent and convincing account of the execution of this will by Smt. Mehma. They deposed that this will was scribed at the instance of Mehma by Bhim Singh, PW2 and after writing it was read over and explained to Mehma, who put her thumb impression on the same in the presence of the witnesses. All the witnesses belong to village Rakhi Khas where Smt. Mehma was admittedly residing before and at the time of her death. No doubt, the scribe Bhim Singh deposed that after writing he handed over the will to Mehma but he further deposed that he remained at the place of writing the will only for 15 minutes after the will was scribed. All the other witnesses consistently deposed that Mehma handed over the will on the day of the execution itself to Khajan Singh, Sarpanch, who handed it over to the revenue officer for the purpose of mutation. All the witnesses were cross-examined at length but they remained totally unshattered. The defendant's counsel could not bring out any material which could lead to suspicion on their presence at the time and place of the execution of will or the due execution of this will by Mehma. No motive or enmity has been alleged against any of these witnesses by the defendant. There is not*

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*even a suggestion to any of the witnesses that they (witnesses) or any of them was in any way interested in the suit property. So, there was no reason for them to depose in favour of the will Ex. P2 if it had not been actually executed in their presence by Mehma.*

*14. So far as the thumb impression of Mehma on the will Ex. P2 is concerned, it is amply proved from the corroborative and unshattered evidence of PWs Bhim Singh, Ishwar Singh, Khajan Singh, Lakhmi and Svaiya. No doubt, it is not in the pad ink but in the ink of the pen but the ridges of this thumb impression are visible. There is no evidence worth the name on the file to hold and it has not even been deposed by the witnesses of the defendant that the thumb impression of Mehma is blurred and is not identifiable. When all the attesting witnesses and the scribe had deposed that Mehma had thumb marked the will in their presence, it is hardly material that it is not as clear as could be with the pad ink.*

*15. The trial Court as well as the respondent's counsel have placed great reliance upon the mutation Ex.D2 which allegedly contains the signatures of Svaiya, Lambardar, who is one of the attesting witnesses of the will Ex. P2. According to counsel, the mutation of inheritance of Mehma was entered on 2.11.1983 in the presence of Svaiya, Lambardar and if the will had been in existence by that time and was actually executed in the presence of Svaiya, Lambardar, the later must have told about the existence of that will of Mehma to the Patwari. But there is at all no merit in the observations of the trial Court or in the argument of the respondent's counsel. Svaiya, Lambardar did appear as a witness before the trial Court. His alleged*

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*signatures on the mutation Ex.D2 were not put to him. He was not given an opportunity to explain as to how he put his signatures, if any, on the mutation. So, when the alleged signatures of Svaiya, Lambardar on the mutation Ex.D2 were not put to him when he appeared as a witness nor these alleged signatures of Svaiya Lambardar have been proved on file by any other witness, the respondent is estopped from arguing that the signatures of Svaiya, Lambardar are present on the mutation Ex.D2 and the will in question was not in existence when the alleged signatures were put by Svaiya, Lambardar."*

3. Learned Senior Counsel for the appellant has assailed the findings recorded by Lower Appellate Court submitting that the impugned Will was signed by Ishwar Singh son of plaintiff. The same shows active connivance of the propounder of Will in execution thereof. Thus, the Trial Court rightly discarded the Will. It has been further contended that on 02.11.1983, the mutation of inheritance of Mehma was sanctioned in favour of Lichhmi as well as defendant. The Will was not produced. In appeal, the revenue authorities discarded the Will as the mutation was found to be defective. The Lower Appellate Court reversed the findings of the Trial Court on issue Nos.1, 2, 3, 4 & 7 and decreed the suit without dealing with the suspicious circumstances spelled out by the Court of First Instance.

3.1. Mr. Sarin submits that onus to dispel the suspicious circumstances is on propounder of the Will. No evidence was led by the plaintiff to dispel the same. Will was found to be highly suspicious as even the name of villages as well as the details or properties were not mentioned.

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Even the age and health condition of Mehma had not been mentioned in the Will, yet the Lower Appellate Court has upheld the Will. He thus submits that the findings recorded by the Lower Appellate Court, being without any reasons, be set aside and reversed. To support his contentions, Mr. Sarin has relied upon catena of judgments including *Ramachandra Rambux vs. Champabai and others, AIR 1965 SC 354; Nikka Singh and others vs. Nachhattar Singh and others, 1980 Rev. LR 230; N. Kamalam (Dead) Through LRs and another vs. Ayyasamy and Another, JT 2001(6) SC 219; Gurnam Singh vs. Smt. Ass Kaur and others, AIR 1977 P&H 103; Smt. Jaswant Kaur vs. Smt. Amrit Kaur and others, 1977 PLJ 54 (SC); Girja Datt Singh vs. Gangotri Datt Singh, AIR 1955 SC 346 and M.B. Ramesh (Dead) by LRs vs. K.M. Veeraje (Dead) by LRs and others, 2013(7) SCC 490.*

4. Mr. Ashok Verma, Advocate has supported the findings recorded by Lower Appellate Court. It has been contended that Will Ex.P2, propounded by plaintiff, has been duly proved. Ishwar Singh son of plaintiff/respondent appeared as PW1, Bhim Singh, Scribe of the Will, appeared as PW2, Sawaiya Ram, Lambardar of the village, appeared as PW3, Khajan Singh, Sarpanch, appeared as PW4 and Lakhmi, Ex. Panch, appeared as PW5. From the testimony of aforesaid witnesses, it stands proved that Will was result of disposition made by executant by free mind. He submits that Mange Ram , real brother of appellant/defendant, admitted

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that Shobha used to treat both daughters equal and had love and affection for the plaintiff as well.

4.1. He further submits that from the bare reading of Will it is evident that respectable persons of the village were present at the time of execution of Will. Majority of them have deposed in favour of execution of the Will and thus the Lower Appellate Court has rightly upheld the same. To support his contentions, the reliance is being placed upon catena of judgments including *Smt. Malkani vs. Jamadar and others, 1987(1) SCC 610; Sundhri (Dead) Through LRs. vs. Lala Ram (Dead) Through LRs., 2005(2) RCR (Civil) 140; Palanivelayutham Pillai vs. Ramachandran, 2000(6) SCC 151 and Meenakshiammal (Dead) Through LRs. vs. Chandrasekaran, 2005(1) SCC 280.*

5. I have heard learned Senior Counsel as well as counsel for the parties and have carefully gone through records of the case.

6. The issue of legality of Will and the suspicious circumstances surrounding the same is no more *res integra*. 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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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*

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*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*



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*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.*

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7. As held by Supreme Court, the Court needs to test the case of the propounder on the touchstone of judicial conscience. The Court has to satisfy itself whether the Will, which is speaking after the death of testator, is the wish of testator. In order to ascertain the same, it has to be found as to whether the testator indeed executed the Will. Unreasonableness exhibited in a Will cannot be a sole ground to dislodge the Will in the absence of any

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other evidence to prove that the contents of the Will is not wish of the testator. Human emotions cannot be anticipated with mathematical precision and the accuracy of chemical reactions. Testator has right to act foolish and to be unreasonable at times.

8. Applying the aforesaid parameters to the present case, it is evident that so far as executant of the Will Mehma is concerned, there is no allegation regarding her incapacity to execute the Will, either physical or mental. Court of the First Instance spelled out *n* number of reasons as suspicious, whereas in fact none of them can be held to be so. Name of the village Rakhi Khas and Mirchpur, having not been mentioned in the Will or the details of the property not given, can hardly said to be a suspicious circumstance. Likewise, once there is no dispute regarding mental and physical health of the executant, non-mentioning thereof in the Will cannot be held to be a circumstance that can dislodge the Will, which otherwise stands proved to have been executed by Mehma. It has come on record that Will was not scribed by a professional scribe, but by a person who was only matriculate. Thus, to say that LTI or RTI was not mentioned, is hardly of any consequence, that too when no evidence was led by the defendant to prove that the thumb impressions on the Will were not that of executant. Respectable persons of village i.e. Sarpanch, Panch and Lambardar of the village were present at the time of execution of Will. All of them had deposed in favour of execution of the Will. Thus, merely for the reason that



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son of the plaintiff also signed the Will, the cloud can't be raised *qua* veracity thereof.

9. Supreme Court in the case of ***Chandrasekaran's case (supra)*** observed as under:-

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*16. We do not find any merit in this civil appeal. The onus of proving the will is on the propounder and in the absence of suspicious circumstances surrounding the execution of the will, proof of testamentary capacity and proof of the signature of the testator, as required by law, is sufficient to discharge the onus. Where, however, there are suspicious circumstances, the onus is on the propounder to explain them to the satisfaction of the court before it accepts the will as genuine. Even where the circumstances give rise to doubts, it is for the propounder to satisfy the conscience of the court. The suspicious circumstances may be regarding the genuineness of the signature of the testator, the condition of the testator's mind, the disposition 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 normally expect that all legitimate suspicions should be completely removed before the document is accepted as the last will of the testator.*

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*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*

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*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] the 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*



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*such allegation and mere presence of motive and opportunity are not enough.*

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10. As a sequel of discussion held herein above, this Court finds that Lower Appellate Court has rightly reversed the findings recorded by Trial Court holding that Will stands proved.

11. Finding no merits in the present appeal, the same is order to be ***dismissed.***

12. Pending application(s), if any, shall also stand disposed off.

**( PANKAJ JAIN )  
JUDGE**

**May 27, 2025**

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Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No