

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

Reserved on: 19.09.2025
Pronounced on: 28.10.2025

RSA-4103-2016(O&M)

Surjit Singh & Others

...Appellant(s)

Vs.

Gurdeep Singh & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Argued by:- Mr. S.S. Ranghi, Advocate
Mr. Didar Singh, Advocate
Ms. Aneet Kaur, Advocate
for the appellants.

Mr. Parvinder Singh, Advocate
for respondent No.1.

NIDHI GUPTA, J.

Present second appeal has been filed by the defendants No.1, 2 and 4 laying challenge to the judgment and decree dated 11.03.2016 passed by Additional District Judge, SAS Nagar, Mohali, whereby Civil Appeal filed by the plaintiff has been allowed; and suit of the plaintiff/respondent No.1 for declaration, has been decreed "*for joint possession of ½ share in the entire land (i.e. 1/4th share of his father Sardara Singh besides his own 1/4th share in the in the entire land) which once stood in the name of Sardara Singh as per judgment and decree dated*



21.8.1998 Ex.D1 & Ex.D2 and the defendants are permanently restrained from alienating the suit land without getting it partitioned except in due course of law...”; thereby setting aside the judgment and decree dated 24.04.2014 passed by the learned trial court whereby suit of the plaintiff was partly decreed holding the plaintiff entitled to recovery of ₹16,800/- from each of the defendants no.1 to 4, and ₹16,800/- collectively from defendants no.5 to 7.

2. Brief facts of the case are that the plaintiff had filed a suit for declaration that he is *“owner in possession of land comprised in Kh./Kh. No.58/76, Khasra No.434/1(7-16), 468(8-8), 469(6-10), 380/5(0-12) situated in village Revenue Limit Mamupur, H.B. No.381, Teh. Kharar, Distt. SAS Nagar Mohali vide Jamabandi to the year 2003-04 and mutation No.2261 sanctioned in favour of the defendants along with plaintiff on 29.08.2008 is illegal, null and void and for permanent injunction restraining the defendants from alienating any portion out of the suit land in alternative suit for recover of Rs.16,800/- from defendants No.1 to 4 and for recovery of Rs.16,800/- from defendants No.5 to 7 collectively.”*

3. It was the pleaded case of the plaintiff that the suit land was owned by Sardara Singh (father of the plaintiff, and defendants No.1 to 4, and Avtar Singh.) The defendants No.5 to 7 are the legal heirs of Avtar Singh/ who is brother of the plaintiff and defendants No.1 to 4. It was pleaded in the plaint that Sardara Singh had been living with the plaintiff



who had been serving him. As such, Sardara Singh had executed a registered Will dated 07.06.2005 in favour of the plaintiff, as per which he had bequeathed all his properties in favour of the plaintiff. Sardara Singh died on 12.07.2005 in the house of the plaintiff and he was cremated by the plaintiff. The plaintiff had performed all the ceremonies and last rites. However, the defendants in connivance with Revenue Officials had got the impugned mutation No.2261 entered and sanctioned in favour of all the defendants and plaintiff, without notice to the plaintiff. Thus, the said mutation was illegal, null and void as it was sanctioned at the back of the plaintiff. It was pleaded that in the presence of the registered Will, mutation in favour of all legal heirs could not have been sanctioned. Moreover, part of the suit land was under mortgage without possession with the Kharar Primary Co-operative Agriculture Development Bank Ltd., Kharar for a loan amount of Rs.70,000/-. The plaintiff considering himself to be owner of the suit land had even repaid loan amount of Rs.1,17,600/- including interest. However, one month back, the plaintiff had come to know about the above-said illegal mutation. It was averred that *"in case suit of the plaintiff is not decreed as it is due to any reason, even then the plaintiff can be held owner upto the extent of 2/7 share out of the suit land along with recovery of amount upto the extent of 5/7 share out of total amount loan and interest amounting to Rs.1,17,600/- as detailed in the head note of the plaint."* the



plaintiff had also repeatedly requested the defendants to admit his claim, but they had refused to do the same. Thus, suit was filed on 16.07.2009.

4. Upon notice, the defendants No.1, 2 and 4 had resisted the suit and filed written statement claiming that suit was barred by res judicata as the matter had been decided on 21.08.1998 in Civil Suit No.491 dated 21.12.1994 titled as "Kuldip Kaur Vs. Sardara Singh & Others". It was admitted that suit land was owned by Sardara Singh along with other land. However, the controversy qua all the land had been decided in the above noted Civil Suit no. 491 of 1994. Moreover, there was settlement dated 15.10.2008 in which the tubewell was given to plaintiff and land was partitioned qua Khasra No.468, 469 and the residential house. All the averments made in the plaint were denied being false and baseless. It was stated that the defendants had served their father; that suit property is ancestral and coparcenary thus answering defendants have every right in suit land; that Will is forged and Sardara Singh had no right to will away the suit property more than his share; that in the previous suit plaintiff had not deposed regarding Will; that Sardara Singh died in his own house in joint family house and all the members performed his funeral rites; and that plaintiff was present at the time of sanctioning of mutation. It was denied that Khasra numbers were mortgaged by Sardara Singh receiving loan for tubewell, but as the tubewell was given to plaintiff, thus he was bound to repay the loan amount. It was stated that suit of the plaintiff could not be



decreed neither for land nor for recovery in the light of above facts. All the other material averments are denied.

5. Defendants No.5 to 7 had also appeared and filed separate written statement resisting the claim of the plaintiff by inter alia submitting that in addition to the suit property, Sardara Singh was having some other land also at village Mamupur. Since the suit land was Joint Hindu Family Coparcenary property in the hands of Sardara Singh, Avtar Singh being son had birth right in the same; and defendants No.5 to 7 being successors-in-interest representing the share of Avtar Singh after his death, also had a right to the same. However, the said right of the defendants No.5 to 7 was denied by Sardara Singh, plaintiff and Surjit Singh/defendant no.1. Thus, defendants No.5 to 7 had been forced to file Civil Suit No.491 dated 21.12.1994 claiming declaration to the effect that defendants No.5 to 7 are owners in possession to the extent of 1/4th share of the entire land held by Sardara Singh, being next legal heirs of Avtar Singh. The said suit was decreed by the Civil Court vide judgment and decree dated 21.08.1998 and the defendants No.5 to 7 were declared joint owners to the extent of 1/4th share in the land held by Sardara Singh including suit property. It was denied that the plaintiff had ever served Sardara Singh nor Sardara Singh was ever pleased with the services of the plaintiff. It was denied that Sardara Singh had ever executed any Will in favour of the plaintiff and stated that the alleged Will is forged and fictitious document. It was pleaded that Sardara



Singh had equal love and affection with all his natural heirs. It was stated that even if the alleged Will is presumed to be genuine, the same would have no effect on the share of defendants No.5 to 7 which was already decreed vide judgment and decree dated 21.08.1998, which had attained finality. It was denied that there was any loan on the suit property. It was further averred that sanctioning of mutation is a matter of record. As such, dismissal of the suit was prayed for.

6. Replication was filed. From the pleadings of the parties, following issues were framed: -

“1. Whether the plaintiff is owner in possession of the suit land?

OPP.

2. Whether Sardara Singh execute valid Will dated 7.6.2005 in favour of plaintiff? OPP

3. Whether plaintiff is entitle to declaration as prayed for? OPP.

4. Whether plaintiff is entitle to permanent injunction as prayed for? OPP.

5. Whether plaintiff is entitle to recovery of Rs.16,800/- from defendants no.5 to 7 as alleged? OPP.

6. Whether the suit is not maintainable in the present form?

OPD

7. Relief.”

7. Upon appraisal of oral and documentary evidence adduced by the parties, the learned Civil Judge (Junior Division), Kharar vide judgment and decree dated 24.04.2014 had partly decreed the suit of the plaintiff inasmuch as, the suit was Dismissed qua the declaration (Will declared null



and void on suspicious circumstances); and Decreed qua the entitlement to recover the amount sought for alternative relief, in the following manner:-

“11. In view of my findings on issues above, particularly on issues no.1,2,3,4 plaintiff fails to prove his case for declaration as prayed for and on issue no. 5, plaintiff has succeeded to prove his suit and same is hereby partly decreed in his favour by hold him entitled to recover the amount of Rs.16,800/- from defendants no. 1 to 4 each and same amount from defendants no. 5 to 7 collectively...”.

8. The plaintiff had filed appeal against the above-said judgment and decree of the learned trial Court, which was allowed vide judgment and decree dated 11.03.2016 passed by Additional District Judge, SAS Nagar, Mohali granting decree to the plaintiff holding him entitled: –

“19...for joint possession of ½ share in the entire land (i.e. 1/4th share of his father Sardara Singh besides his own 1/4th share in the in the entire land) which once stood in the name of Sardara Singh as per judgment and decree dated 21.8.1998 Ex.D1 & Ex.D2 and the defendants are permanently restrained from alienating the suit land without getting it partitioned except in due course of law...”.

Hence, present second appeal by defendants No.1, 2 and 4.

9. It is inter alia submitted by learned counsel for the appellants/defendants No.1, 2 and 4 that in decreeing the suit of the plaintiff, the learned First Appellate Court failed to appreciate that the Will dated 07.06.2005 was surrounded by suspicious circumstances. To prove the Will, the plaintiff had produced PW1 attesting witness Tirath Singh.



However, Tirath Singh was totally alien to the life of Sardara Singh. He did not even belong to the village of Sardara Singh and had no connection with him and had no knowledge of his life. This fact has nowhere been denied that PW1 was not known to Sardara Singh. It is argued that it is a matter of common knowledge that the executant of the Will, will always desire that the execution of the Will is witnessed by a person who is his close confidant so that tomorrow if his Will is dragged in a court in any dispute, the attesting witness could come forward to vouch for its genuineness. In the instant case, when PW-1 was tested on the anvil of cross examination, he failed to answer the queries relating to the personal life of the executant, thus suggesting that PW-1 was not a close confidant of the executant; and hence it was not expected from Sardara Singh to ask from PW-1 to witness the execution of alleged Will. To cap it all, the whole of the Will is typed and even the name of Harpal Singh, one of the attesting witnesses is also typed; whereas the name of PW-1 Tirath Singh was never typed on the alleged Will which throws doubt on its genuineness. The name of Tirath Singh, second attesting witness has been handwritten on the Will. No reason is given as to why name of PW1 was not typed on the Will. It is submitted that this was so because PW1 is a stock witness. As such evidence of PW1 is not reliable.

10. Furthermore, Harpal Singh, attesting witness who was known to Sardara Singh, was not examined for reasons best known to the plaintiff.



11. It is submitted that the Will is unreliable also because the same was scribed on 07.06.2005; whereas Sardara Singh expired a few days thereafter on 12.07.2005. It is pointed out that from the photograph which was clicked at the time of registration of the Will, it is evident that Sardara Singh was not even in position to stand on his own legs and the man standing next to him is holding him.

12. Moreover, there are various discrepancies in the version put forth by the witnesses of the plaintiff. As per Tirath Singh attesting witness PW-1 the Will was handed over to the executant after it was scribed at 4/5 P.M for the purpose of attestation. However, PW-5 the scribe of the Will recanted this version by saying that the Will was scribed by him at about 11/11.30 A.M. and he himself sent the Will for the purpose of attestation. This is a major contradiction in the statements of PW-1 and PW-5 and impinges upon the validity of the Will. Moreover, as per PW-5, the Scribe of the Will, Sardara Singh has also made reference of his daughters in the Will in dispute. However, the Will does not carry even whisper or fleeting reference about any reason which weighed with Sardara Singh to divest his daughters from inheriting their share in his estate.

13. It is further argued that there is no reason given by the plaintiff as to why the said Will was withheld by him for 4 years and why was it not disclosed by the plaintiff at the time of mutation entry. It is further submitted that even no reasons have been given as to why the other



defendants were excluded from the Will of Sardara Singh. It is contended that the assertion of the plaintiff that the deceased Sardara Singh was living with the plaintiff and he was looking after him, is incorrect as Sardara Singh used to live with the defendants as also with the plaintiff. It is submitted that the defendant No.1 was serving in the Indian Army and therefore, he was unable to always reside with Sardara Singh.

14. Learned counsel for the appellants lastly submits that it is undisputed fact on record that the entire land in the hands of Sardara Singh was coparcenary in nature. Accordingly, all coparceners, being the plaintiff, defendant No.1 and Avtar Singh and Sardara Singh were entitled to 1/4th share in the same. The dispute in the present case is with respect to the 1/4th share of Sardara Singh, which is the suit land in the present case. It is contended that the same being ancestral in nature, the suit land being coparcenary in nature, could not in any event have been bequeathed by Sardara Singh by way of the disputed Will.

15. It is accordingly prayed that the present appeal be allowed; and the judgment and decree dated 11.03.2016 of the learned First Appellate Court be set aside; and that of the learned trial Court dated 24.04.2014 may be upheld, in the interest of justice.

16. Per contra, learned counsel for the plaintiff/respondent No.1 vehemently opposes the submissions made on behalf of the appellants and submits that after the decree of declaration, the 1/4th share in the hands of



Sardara Singh had become his self-acquired property; and therefore, he could have willed it exclusively to the plaintiff. It is contended that the registered Will dated 07.06.2005 was proved by the plaintiff before the Courts below from the evidence of attesting witness PW1 Tirath Singh and PW5 Manveer Singh, Advocate, Scribe of the Will. Sardara Singh had appended his thumb impression on the Will, however, the defendants led no expert evidence to dispute the said thumb impression/signature of Sardara Singh. Accordingly, the Will stood proven in accordance with law.

17. It is further submitted that Harpal Singh, attesting witness No.2, was not examined on account of the fact that he was mental. It is contended that merely because an attesting witness, in the present case Tirath Singh PW1, was not known to the testator, would not constitute any ground to discard the Will. It is argued that minor discrepancies in the evidence of plaintiff witnesses were bound to occur with the passage of time. However, the same cannot be fatal to the case of the plaintiff. In any event, there was no pleading or any suggestion put to the plaintiff that the said witnesses were inimical to the defendants. It is contended that in fact, it is not even pleaded that Sardara Singh was not in sound disposing mind. As such, it is not open to the defendants to raise these objections.

18. It is further submitted that cogent reasons have been given in the Will for excluding the defendants. It is submitted that the plaintiff was the sole beneficiary of the Will dated 07.06.2005 as Sardara Singh was



residing with the plaintiff and it was the plaintiff who had looked after him throughout his entire cancer treatment. Even in their written statements, the defendants had not denied that Sardara Singh was residing with the plaintiff and services were given to Sardara Singh by the plaintiff. It is submitted that the defendants No.2, 3 and 4 being married daughters of Sardara Singh were not included in the Will as they were happily residing in their respective matrimonial homes. In respect of defendant No.1, Sardara Singh has categorically stated in the Will that Surjit Singh misbehaves with him and even beats him; and on account of his misbehaviour, Sardara Singh had disowned him. It is contended that accordingly, cogent reasons have been given for excluding the defendants from the Will.

19. Learned counsel further refers to the cross-examination of defendant No.1 as DW1 (at page 75 of the LCR), to submit that defendant No.1 has admitted the claim of the plaintiff. It is submitted that Defendant No.1 in his deposition has also admitted that the suit land was separate in the hands of Sardara Singh; and that *“House constructed by Gurdeep Singh is in the land in suit.”* Moreover, neither the alleged compromise nor any other document was produced by the defendant No.1 to controvert the Will propounded by the plaintiff.

20. Ld. Counsel reiterates that after the decree of declaration, the 1/4th share in the hands of Sardara Singh had become his self-acquired property; and therefore, he could have willed it exclusively to the plaintiff.



In support of his contention, Id. counsel for the plaintiff relies upon Division Bench judgment of this Court in **Smt. Bhagya Wati Jain v. General Public, (P&H)(DB) : Law Finder Doc ID # 38516**, wherein it is held in Para 5 that:-

“5. Under the Act Will has been defined to mean a legal declaration of the intention of the testator with respect to his property which he desires to be carried into effect after his death. Under the General Clauses Act Will includes a codicil making a voluntary posthumous disposition of property intending to take effect after the death of the testator. According to Halsbury's Laws of England, a Will or testament is a declaration in a prescribed manner of the intention of the person making it with respect to the matters which he wishes to take effect upon or after his death. A Will made for disposal of property of the testator after his death and of appointing an executor, for appointing a testamentary guardian, for exercising a power of appointment and for revoking or altering a previous Will. The essential characteristics of a Will are :

- a) There must be a legal declaration,*
- b) Such declaration must be with respect to the property of the testator; and*
- c) the declaration must be intended to operate after the death of the testator.*

In order to hold a document to be a Will it has to be proved that the same is in conformity with the provisions as regards the execution and attestation as provided under Section 63 of the Act and executed by a person competent to make it. The Will must relate to the property of the maker which he intends to dispose of and if no reference is made to the disposal of the property, the document cannot be termed to be a Will. The



declaration intended to take effect after the death of the testator impliedly means that declaration should not be meant to take effect immediately and if it does so then it is not a Will. The testamentary document can be revoked by the testator during his life-time. A Will can be executed in any form but to be effective it is required to be signed and attested by the witnesses as required under the Act. No specific form or language is required to be applied while executing the Will. As the Will diverts the rule of natural succession, its execution is required to be satisfactorily proved in accordance with the provisions of the law and keeping in view the judgments delivered by the Apex Court and the various High Courts in the country. The origin of the Will can be referred to ancient times as it is shown to be in existence as in Babylon and Assyria. It was considered that the idea of disposition by Will was the gift of Rome's expiring civilisation to Rome's rude conquerors, awakened at last, by closer contact with that civilisation to a better life. The laws prevalent in various civilised countries concede to the owner of the property the right of determining by Will to whom the effects which he leaves behind him shall pass. Such a right is, however, subject to statutory restrictions imposed, if any. It is common knowledge that instincts and affections determine and will lead the man to decide for those who are nearest to him in kindred and who in life has been the object of his affection. It is reasonably presumed that a man leaving the world and going back to his creator would naturally distribute his property amongst his children or nearest relatives on the judged opinion based upon his experience in life and not being influenced by extraneous considerations. The concept of making the Will was unknown under the ancient



Hindu Law as no name equivalent or pseudonymous to Will has been traced either in Sanskrit or in the vernacular languages. The absence of testamentary disposition of the property under the old Hindu Law can be attributed to the joint family system and the custom of adoption prevalent amongst the Hindus. The old joint Hindu family system was consisted to be inconsistent with the independent dominion over property and perhaps it was the main reason to ignore the testomentary disposition. However, with the growth, development and change of law regarding succession, the power of Hindu to create interests in property during his life time leads to the power to create interests in the property of his death. From a pretty long time the testamentary power of a Hindu has been recognised and he is authorised to make Will regarding his self acquired property. Such a right has got statutory sanction after the passing of the Act. Before the passing of the Act, no part of the co-parcenary property could be disposed of by making a Will which was restricted only to self acquired property. However, Section 30 of the Hindu Marriage Act now enables the Hindus to dispose of by Will his share in the co-parcenary property at the time of his death. The Act has consolidated the law applicable to intestate and testamentary succession of India and is applicable to all the testaments made in the country subject to the exceptions made in Sub Section 1 of Section 58 of the Act. Section 63 of the Act regulates the execution of the Will providing 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 directions. 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. Such a Will is required to be attested by two or more witnesses, each of whom is required to see the testator signing or affixing his mark to the Will or see some other person signing the same, in the presence and by directions of the testator or should have received a personal acknowledgement of his signature from the testator, or of the signature of such other person; and each of the witnesses should sign the Will in the presence of the testator. It is, however, not necessary that more than one witness be present at the same time, and no particular form of attestation is necessary.”

(Emphasis added)

21. It is submitted that therefore, Sardara Singh was competent to execute the Will in favour of the plaintiff in respect of his 1/4th share of the coparcenary property in the hands of Sardara Singh.
22. As regards the sound disposing mind of Sardara Singh, learned counsel again refers to the **Bhagya Wati (supra)** wherein it is held that: -

“21. A perusal of the statement of the RWs shows that the testator was suffering from Cancer and was in a state of agony but that cannot be stretched to hold that he had no disposing mind at the time of the execution of the Will. the attending circumstances and the conduct of the parties establishes that being a patient of Cancer and aware of his death he had opted to settle his property by making a valid Will. He was conscious and aware of his all relations and the properties owned by him and his family members and had tried to justify the settlement by granting shares to the deserving according to the limits as estimated by him. The settlement of the property was and has



in-act affected the interest of some of his legal heirs but no Court could help them as he admittedly being fully owner of the self acquired property had a right to dispose of in any manner he liked irrespective of the interests of his adversely affected heirs. The circumstances of suspicion or doubt tried to be created or proved are not sufficient to hold that the Will had not been properly executed or could not be made a basis for the grant of relief prayed for under the provisions of the Act.

22. The learned Single Judge after being of the opinion that the Will had not been properly executed had tried to justify his conclusion by a reference to the various statements of the witnesses and assigning 14 reasons in the judgment impugned in this appeal. None of the circumstances referred to by the learned Single Judge in itself can be held to be sufficient circumstances to arrive at the conclusion regarding non-execution of the Will in accordance with the provisions of the law. The mere fact that the testator was suffering from Cancer of throat and food-pipe which became known in February, 1983 could not be made the basis for rejecting the proper execution of the Will rather such circumstances give credence to the execution of the Will in August, 1983 at Ambala instead of during the intervening period from February, 1983 when the testator was admittedly at Bombay with the so-called beneficiaries of the Will. Minor discrepancies in the statement of Shri B.N. Sehgal, Mr. Baljit Singh and Ms. Avtar Kaur are in-fact a guarantee of their true depositions and cannot be made a basis for holding that they had not seen or attested the Will. The testimony of Shri B.N. Sehgal, Baljit Singh and Avtar Kaur, PWS., has not been relied upon by the learned Single Judge merely on the basis of hypothesis and imaginative falsehood



attributed to such witnesses which in fact do not exist. The defect noted in the endorsement of the Notary Public cannot in any way be held to be a proof of the non-execution of the Will or to be a suspicion requiring the rejection of the Will in toto. The statement of the relations of the respondents made after the death of the testator could not be made basis for coming to the conclusion as has been done by the learned Single Judge.”

(Emphasis added)

23. Learned counsel for the plaintiff further relies upon judgments of the Hon'ble Supreme Court in **Savithri v. Karthyayani Amma, (SC) : law Finder Doc ID # 132729**; and **E. Madhavi Pallikkaramma v. K.V. Prabhakaran Nair, (SC) : Law Finder Doc ID # 78155**, wherein similar view has been enunciated.

24. It is lastly submitted that the learned trial Court had awarded an amount of Rs.1,17,600/- to the plaintiff for the improvement carried out by the plaintiff on the suit land. No cross appeal was filed by the appellants. Therefore, finding of the learned trial Court in respect of the improvement by the plaintiff, remains proved and unrebutted. It is accordingly prayed that the present second appeal be dismissed.

25. Learned counsel for the appellants rebuts the submissions of the plaintiff by submitting that Harpal Singh, attesting witness, was present at the time of sanctioning of mutation. This fact has been mentioned by defendant No.1 in his cross examination. However, the Will was not

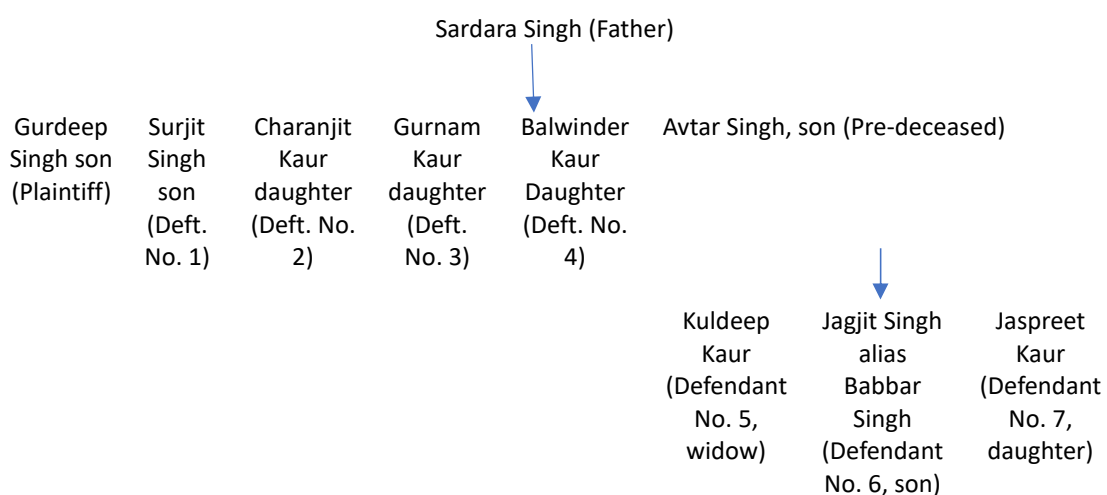


produced by the plaintiff even during mutation. Learned counsel refers to the cross-examination of defendant No.1 Surjit Singh/DW1 wherein defendant No.1 has duly mentioned this fact (at page 75 of the LCR). It is further submitted that the plaintiff has contradicted his own plaint case by stating in his evidence as PW4 that Sardara Singh was having love and affection for all the defendants and the plaintiff. It is accordingly prayed that the present appeal be allowed.

26. No other argument is made on behalf of the parties.

27. I have heard learned counsel for the parties and perused the case file in great detail. I find merit in the submissions advanced on behalf of the appellants. In order to properly understand the dispute between the parties, the following Pedigree Table shall be helpful: –

Pedigree Table



28. Admittedly, the estate of Sardara Singh was coparcenary/joint Hindu family property. As such, all coparceners - being the plaintiff,



defendant No.1, Avtar Singh, and Sardara Singh - were entitled to 1/4th share in the same. A Civil Suit No. 491 of 1994 was filed by Kuldeep Kaur/defendant No.5, and defendants No.6&7; which was decreed by the Civil Judge, Jr. Division, Kharar vide judgment and decree dated 21.8.1998, (Ex. D-1 and D-2 respectively), holding that the suit property (Jamabandi Ex. P-2/1 in the said suit) is joint Hindu family coparcenary property and that Avtar Singh had 1/4th share therein. In consequence, the shares of Sardara Singh and his sons Gurdeep Singh, Surjit Singh, and pre-deceased son Avtar Singh were defined as 1/4th share each in the property involved in the said suit.

29. The dispute in the present case is with respect to the 1/4th share of Sardara Singh/the suit land. It has been contended by the appellants that the suit land being ancestral/coparcenary in nature, it could not have been bequeathed by Sardara Singh by way of the disputed Will. On the other hand, in claiming exclusive ownership over the suit land, the plaintiff has relied upon the impugned Will dated 7.6.2005/Ex.P-1 (at page 60-62 of the LCR), executed by his father Sardara Singh exclusively in favour of the plaintiff. The said Will, reads as follows: –

“I, Sardara Singh, aged about 81 years, son of Sh. Chhaja Singh, son of Naudh Singh, resident of village Mamupur, Teh Kharar, District Ropar.

I am currently in old age. I am suffering from cancer. I am always sick and in a delicate condition. I had three sons Gurdeep Singh, Surjit Singh and Avtar Singh. Out of whom my son Avtar Singh has died. My son Avtar Singh was married and



has a daughter Jaspreet Kaur and a son Jagjit Singh. These two children live with their mother Kuldeep Kaur, who is the widow of Avtar Singh. After the death of Avtar Singh, Kuldeep Kaur has remarried to Ranjit Singh, a resident of Mamupur. From this marriage, Kuldeep Kaur has a son and a daughter. I had filed a civil suit to take my granddaughter Jaspreet Kaur and Jagjit Singh as guardian, in which Kuldeep Kaur and her current husband Ranjit Singh and current mother-in-law gave a statement in the Court that we will take care of and raise these two children themselves, because Ranjit Singh is the owner of a lot of property and he also has vehicles (trucks). Based on the arguments given in the court by Kuldeep Kaur and Ranjit Singh, I lost the case. The children Jaspreet Kaur daughter and Jagjit Singh son of Avtar Singh now live with their mother Kuldeep Kaur, presently wife of Ranjit Singh, resident of Mamupur. Therefore, they have no connection or relation with any of my movable and immovable property now and will not have any. That one of my sons Surjit Singh misbehaves with me. He beats me. In this condition of my illness and in the condition of my old age, he does not serve and take care of me. On account of his misbehavior I have disowned him. He will also have no right in any of my property. That in my old age and illness, my son Gurdeep Singh serves and takes care of me. He provides me with all kinds of facilities. At this time, he is my support in old age. Therefore, I in my full senses and with my own free will, without any force, execute this Will that after my death, the land purchased by me within the abadi and Lal Lakir of the village Mamupur, Tehsil Kharar, the boundaries of which are East (19 ½ Ft) Hazara Singh son of Mangal Singh, West (28 feet) Street, North (76 Ft) House of Sardara Singh -Mehtar Singh-



*Hazara Singh Sons of Dasoda Singh, South (42 Ft +34 Ft)
Hazara Singh son of Mangal Singh, at village Mamupur, Tehsil
Kharar, One motor connection Khasra number 458, 469 and
Khasra No. 382, at Village Mamupur, in the land which I
purchased 0-4 ½ Biswas and my all kinds of Deposits in Bank or
Post Office and my ownership of Land in village Mamupur, as
per my share, owner and possessor will only be my son
Gurdeep Singh, son of Sardara Singh, resident of Mamupur,
Tehsil; Kharar, District Ropar. That I have three daughters, who
are married. If any of my heirs or persons claim any rights etc.
regarding my aforesaid registered property, it will be wrong
and false according to the Will. Therefore this Will is being
executed in my full senses so that the same remains proof
thereof. The contents of the Deed have been read over and
understood and found to be true and correct. Dated:
07.06.2005.”*

30. A heavy onus is placed on the propounder of the Will (in this case the plaintiff) to dispel all the suspicious circumstances surrounding the Will. It is the propounder of the Will who is under duty to prove the Will as per law. The Trial court has discarded the Will on the ground that it is not genuine as it is shrouded by suspicious circumstances; but the First Appellate Court has upheld the Will only because it is registered. It is my view that the plaintiff has failed to discharge the onus placed upon him. Even if, for the sake of argument, it is assumed that Sardara Singh was competent to execute the Will in respect of the suit land, which was admittedly coparcenary, yet, it is irrevocably established from the record



that the said Will is shrouded in suspicious circumstances. The reasons for reaching the above conclusion are as follows: –

31. First and foremost, the **fitness and capacity of the executant/Sardara Singh to execute the Will** is in doubt. Admittedly, the Will was executed by Sardara Singh on 7.6.2005; and he had died barely one month later on 12.7.2005. The close proximity in the date of execution of Will and date of death of the testator, raise suspicion regarding the validity of the Will. Moreover, the factum of the death of the executant within one month, even raises suspicion in respect of his capacity and capability to execute the Will. In fact, the incapability of the testator to execute the Will is mentioned in the Will dated 7.6.2005 itself. A bare reading of the above reproduced Will, shows that Sardara Singh himself has begun by admitting that he is a cancer patient and that he is *“always sick and in a delicate condition.”* This admission raises question on the state of physical and mental health of the testator; which has been admitted by the plaintiff/PW4 in his cross-examination that Sardara Singh was suffering from cancer. The frail condition of Sardara Singh is also borne out from the photograph attached on the backside of the Will (at page 60 of the LCR), in which Sardara Singh can be seen being held up by the attesting witness to help him to stand. This clearly shows that Sardara Singh was not in sound health at the time of execution of the Will as he could not even stand on his own. All these circumstances when viewed collectively gravitate towards an

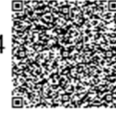


inference that Sardara Singh was not in sound disposing mind at the time of execution of the alleged Will; and therefore, cast a shadow of doubt not only on the mental and physical capability of Sardara Singh to execute the impugned Will, but also on the validity of the said Will.

32. In such a situation, reference may be made to a recent judgment of the Hon'ble Supreme Court in **Gurdial Singh (Dead) v. Jagir Kaur (Dead), (SC) : Law Finder Doc ID # 2751616, decided on 17.7.2025,** wherein it is held as under: -

"Proof of Will : Legal Principles

*11. A Will has to be proved like any other document subject to the requirements of Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872, that is examination of at least of one of the attesting witnesses. However, unlike other documents, when a Will is propounded, its maker is no longer in the land of living. This casts a solemn duty on the Court to ascertain whether the Will propounded had been duly proved. Onus lies on the propounder not only to prove due execution but dispel from the mind of the court, all suspicious circumstances which cast doubt on the free disposing mind of the testator. Only when the propounder dispels the suspicious circumstances and satisfies the conscience of the court that the testator had duly executed the Will out of his free volition without coercion or undue influence, would the Will be accepted as genuine. In **Smt. Jaswant Kaur v. Smt. Amrit Kaur and others (1977) 1 SCC 369**, this Court referring to **H. Venkatachala Iyengar v. B.N. Thimmajamma &***



Ors. 1959 Supp (1) SCR 426 enumerated the principles relating to proof of Will:

"10.*****

"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."

The Court further held:

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

33. From a detailed consideration of all the attendant factors of the present case, it does not appeal to the conscience of this Court that the Will in question is free from suspicion. It is reiterated that it cannot be ignored that a perusal of the Will (Ex.P1) (at page 60 of the LCR) and the photograph of Sardara Singh on the endorsement (Ex.P1/A) (at page 60 of the LCR) shows Sardara Singh to be a very weak frail man who is being held up by two other persons. This unequivocally indicates the feeble physical and mental state of the testator; which would raise question on his capacity to independently execute the Will. The feebleness of the executant also



stands established from the fact that he died almost within a month of executing the Will. Needless to say, in these circumstances, the plaintiff can derive no benefit from the relied upon judgments in **Savithri (supra)**, **Bhagya Wati (supra)** and **E. Madhavi (supra)**, as facts and circumstances of each case have to be considered independently. Mere cancer may perhaps by itself not entail any weakness of mind of the testator. However, in the present case, given the co-attendant facts enumerated above that in the photograph, Sardara Singh is shown to be held up by two other people and also the fact that Sardara Singh had died on 12.07.2005, soon after executing the alleged Will dated 07.06.2005, would surround the Will under suspicious circumstances.

34. The authenticity of the Will is further eroded as, in the present case, even the **credibility of the witnesses** is doubtful. Tirath Singh/PW1 is the second attesting witness to the Will. However, his name is not typed on the Will. It is handwritten (page 62 LCR). Whereas the name of the other/first attesting witness namely Harpal Singh is typed; but he is not examined. No explanation is given as to why name of Tirath Singh is not typed. This would lend credence to the argument of the appellants that Tirath Singh was not an independent witness and is a stock witness.

35. Further, said Tirath Singh was also absolutely alien to the personal life of Sardara Singh. Tirath Singh has admitted this fact in his cross examination (at page 43 of the LCR), wherein he has stated that he did not



know how many sons and daughters Sardara Singh was having; that he did not know how much land Sardara Singh held; that he did not even know the year in which Sardara Singh had died; and that he only knew Sardara Singh because he used to come along with Harpal Singh Numberdar. Therefore, PW1 had no direct acquaintance with Sardar Singh. PW1 has also admitted that he became witness at the asking of Harpal Singh. Very importantly, PW1 has admitted that the entire Will was not typed in his presence. Tirath Singh was Numberdar from the adjoining village and had no direct connection with the village of the executant Sardara Singh. Clearly, therefore, PW1 was not a credible witness who could be relied upon to prove the impugned Will in accordance with law. The cross-examination of Tirath Singh (at page 43 of the LCR), reads as follows:

“I know that Avtar Singh one of the son of Sardara Singh who had died. I do not know if the next legal heirs of Avtar Singh who are defendant no. 5 to 7 filed a suit against Sardara Singh claiming their right in the ancestral property held by Sardara Singh. I do not know if that claim of defendants no. 5 to 7 was decreed against Sardara Singh. I do not know whether Sardara Singh has executed the will entire land or held by him or after excluding the area which he had lost in the decree. I knew Sardara Singh since he used to come alongwith Harpal Singh Nambardar. I did not notice whether all the fingere including the thumb of Sardara Singh left hand were chocked off or intact. He used to walk normally. I did not notice whether he had any big cut mark on his nose or not. I do not know how many sons or daughters Sardara Singh was married and how much land he held. I became the witness at the asking of Harpal Singh. I do not know when Sardara Singh died I had a talk with Sardara Singh only when the will was executed. I do not whether Sardara Singh stammered or used to speak



normally. Manvir Singh drafted the will and Sardar Singh had been talking with him. However no talk took place between Sardara Singh and Manveer Singh in my presence. Sardara Singh had come with Harpal Singh Nambardar and none else. No stamp paper was used for preparing the Will as the same is not required. Photo was pasted. Photos were taken in side the room of the Tehsildar also. Perhaps Tehsildar Sikh Gentleman. The thumb impression and signature were taken by registration clerk in his separate room. The thumb impressions are required to be affixed on the Will at four places, after taking photographs. This is the requirement in every Will, without caring whether village on four paper or on one papers. My name was not typed at the place/column of witness. Since the Tehsildar had left the seat earlier when another witness of the village was available but later on the witness had gone on account of which the last page of the which the particulars of the witness were typed was again changed and second page was prepared and this page was prepared outside the office of Sub Registrar. Entire Will was typed not in my presence but in the presence of other witness. I do not know who was another witness. It is wrong to suggest that I had deposing falsely. In my presence Sub Registrar had enquired from Sardara Singh and he had told to Sub Registrar. I do not know if at that time he told in a stammered manner or clearly. In fact there was a crowd of the people who were trying to get their sale deed registered and I was standing behind the crowd.”

(Emphasis added)

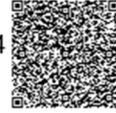
36. From the above deposition, it is clear that not only is Tirath Singh alien to the life of Sardara Singh, but it would appear that he is also alien to the Will itself. Thus, it cannot be held that the Will was proven in accordance with law.

37. As regards, the second attesting witness, Harpal Singh, he was not examined. His presence was valuable as the only witness examined



(Tirath Singh) had stated that he had become witness on the asking of the Harpal Singh and signed the Will at the instance of other attesting witness i.e. Harpal Singh. However, Harpal Singh who was the attesting witness for both, the Will and Mutation, was not examined. No plausible explanation has been given for this. It has been contented on behalf of the plaintiff that Harpal Singh could not be examined as he was 'mental'. However, there is not one whit of medical evidence on record to substantiate the said contention of the plaintiff. Plaintiff has also failed to supply details as to on what date, where, when and how did Harpal Singh become mental. There is also no rebuttal to the deposition of defendant No.1 that Harpal Singh was present at the time of entering of mutation. It is but logical and trite that in case the Will dated 07.06.2005 had been executed by Sardara Singh in favour of the plaintiff, then Harpal Singh would mention that fact to defendant No.1. Thus, failure to examine important witness, Harpal Singh is also fatal to the case of the plaintiff.

38. The plaintiff has sought to prove the Will from the evidence of the Scribe, Manveer Singh/PW5 also. However, PW5 has stated in his cross-examination (at page 55 of the LCR) that PW-1 usually come to tehsil complex that's why he knows him. PW5 has also admitted that name of second witness/PW1 was not typed. However, PW5 was unable to give any explanation why the name of second witness was not typed. PW5 only stated that he had got typed the Will.



39. Furthermore, there are numerous **contradictions in the witness statements** which cannot be ignored, and which raise suspicion. By way of example, attesting witness PW1 has stated that the Will was scribed at 4-5 p.m. (at page 41 LCR); whereas the Scribe PW5 has stated that the Will was scribed at about 11– 11:30 AM and sent for attestation (at page 56, LCR). Whereas, from the endorsement on the Will (pg. 60 back side LCR), it was attested at 4:07 PM. It has become suspicious as after scribing the Will it was got typed and signed and entered by the scribe in his register, which takes time. How can the Will be scribed at 4 – 5 pm and then typed and signed all under 10 minutes. Another discrepancy is that the Scribe/PW5 has stated Sardara Singh has mentioned the names of his daughters in Will, however there is no name of any daughter of Sardara Singh in Will. Thus, these aspects also raise question regarding the validity and authenticity of the Will.

40. Furthermore, the plaintiff himself in his evidence as PW4 (at page 51 of the LCR) has made a statement that: -

“My brother Avtar Singh died around 25 years back. He left behind his widow, a son and daughter. My father owned about 7/8 acres of land. Out of that 22/23 bighas were inherited by father from his father whereas the remaining land was purchased by my father. Wife and children of Avtar Singh had filed the case to have their shares from the property of Sardar Singh which was decreed in our favour accordingly we have left the share. Agan said she did not get under any decree rather



she is cultivating as per her share as we have three brothers and three sisters. She has been given 3 ½ bighas out of the ancestral land held by father and not from the other land and remaining entire land which was purchased by my father is in my cultivating possession. I do not know after the death of Sardara Singh whatever property was held by him whether the defendants 5 to 7 have got their right to inherited equally along with the other legal heirs i.e. sons and daughters of Sardara Singh. My father died in the year 2005 at the age of 81/82 years. He was patient of Cancer and died due to old age and cancer. He left cultivation around 2-3 months prior to his death. Actually my father never cultivated the land always I have cultivated the land. I cannot say how much produce I used to get out of one acre. I used to drop the crop at the shop of the commission agent and I do not know how much money the commission agent used to pay it was the duty of my father. My father had been providing us all the expenses of the family. I do not know why my father had taken the loan and I also do not know it has been spent on us. I did not accompany my father for execution of the Will. Volunteer he handed over to me the Will about 15 days before his death. My father has equal love and affection to all his sons including the widow and children of his pre-deceased son Avtar Singh. Avtar Singh age was 30/35 years at the time of his death. She was also of his age. At that time the daughter of Avtar Sigh was 6 years old and son was 5 years old. After the death of Avtar Sigh his children and widow was looked after by Sardara Singh. It is wrong to suggest that in order to grab the share of children of Avtar Singh, I have got the forged Will to grab the entire property of Sardara Singh. The Will was written by a scriber



whose name I forget. Harpal Singh has gone mental, he may be aged about 85/90 years. Tirath Singh the second witness used to accompany Harpal Singh. Tirath Singh used to attest the documents not on the asking of Harpal Singh but after satisfying the documents. Tirath Singh had no land in our village and was not having any relation of his own in our village. Volunteer he used to visit Harpal Singh because both are Lambardars. I cannot say who else who may be lambda had been going to meet Harpal Singh. Actually house of Harpal Singh is on the other side. Rabbi Singh was the lambardar of our Patti and Sarpanch was also Rabbi Singh. His house is in our Mohalla. We do not bring him because we have not good terms with him. I can not produce any record showing we were not with him in good terms. It is wrong to suggest that I am deposing falsely in the present case."

(Emphasis added)

41. Thus, there is categoric admission by the plaintiff that his father had died in 2005 at the age of 81-82 due to old age and cancer. Plaintiff has also expressed ignorance about any loan taken by his father; whereas simultaneously plaintiff has stated that he had himself paid off this loan. Most importantly, Plaintiff has also admitted that Sardara Singh had handed over the Will to the plaintiff only about 15 days before his death. Yet, no explanation is given as to why was the said Will then not produced by the plaintiff at the time of mutation. No reasons have been given by the plaintiff for not disclosing the Will from the time of death of Sardara Singh



on 12.07.2005; till the time of filing of suit in 2009; or even at the time of sanctioning of mutation in 2008.

42. As regards the ostensible reasons cited by the plaintiff for the exclusion of the defendants from the Will of Sardara Singh, the same also do not stand up to scrutiny. The same is discounted from the own testimony of the plaintiff where he has stated that “...*Volunteer he handed over to me the Will about 15 days before his death. My father has equal love and affection to all his sons including the widow and children of his pre-deceased son Avtar Singh...*” Thus, plaintiff himself has admitted that Sardara Singh had equal love and affection towards all his sons, including the widow and children of predeceased Avtar Singh. If this was so, there is no explanation as to why the defendants were excluded from the Will of Sardara Singh. The plaintiff has therefore, failed to satisfactorily justify as to why the defendants and other family members were divested from the Will of Sardara Singh. Even the other contradictions mentioned above, have not been sufficiently explained by the plaintiff.

43. The plaintiff has also made reference to evidence/cross examination of defendant no.1/DW1 (at page 75 of the LCR). However, this cross-examination cannot be read piecemeal and has to be read in its entirety in context. The deposition of DW1 reads as follows: –

“It is correct that after the death of my father Sardara Singh, I got entered mutation No. 2762 regarding his inheritance after producing the death certificate before the Patwari. It is correct



that this mutation was sanctioned in my presence at Kharar Tehsil Complex. Numberdar Harpal Singh was present at that time. Harpal Singh asked by the revenue officer regarding age of Sardara Singh. Whatever named were told by Harpal Singh as thereof Sardara Singh were accepted by me as correct and mutation was sanctioned in favour of all the heirs. Sisters were also summoned by Tehsildar and their statements were recorded by Tehsildar. The application moved by Gurdeep Singh when the mutation should be sanctioned in all heirs' favour. It is incorrect to suggest that Gurdeep Singh was not informed about entering and sanctioned of mutation. The application was signed by all the heirs. I am not in possession of copy of the application. It was attached with the mutation. The Compromise regarding above said entering and sanctioning the mutation was arrived at Tehsil Complex Kharar after sanctioning the mutation, it was in writing. Gurdeep Singh had not written in the compromise that he will not claim property on the basis of Will. I do not know if we have kept the copy of compromise with us, but its photocopy produced before the revenue official which was attached with the mutation file. Tubewell was not given to Gurdeep Singh by my father. I have seen signatures on the written statement and identified the same. This written statement contains what I have asked incorporate in it. I have not repaid any share out of the loan amount taken for installing the tubewell. It was paid by my father. The loan was cleared in the life time of my father. I also paid money to my father for repayment of the loan. Again said I have not paid any amount to my father for repaying the loan. My father used to reside with Gurdeep Singh, however, he also resided with us. Kuldeep Kaur after death of Avtar Singh



had contracted marriage with Jeet Singh son of Sajjan Singh. Avtar Singh had died near about in the year of 1990. It is correct that widow of Avtar Singh and his children filed a suit against Sardara Singh for getting the share of the land of Avtar Singh. I also admitted the claim of above said plaintiff. Land in suit is also the subject matter of the earlier suit referred above. Parents of mother of my father were at village Makarapur, Tehsil Khamano. My father also got land after death of his mother and my father sold that land and purchased with those sale proceeds at village Mamupur. The land at Makarapur was 40 Bigha. My father purchased land with the above said sale deed proceeds measuring 23 and half bigha at Village Mamupur. I am seen the photographs of my father on Ex.P2 and I identify the same. I do not know Tirth Singh Numberdar of village Khanpur, but I know Harpal Singh, Numberdar of my village. I had come to know after the mutation when my father Sardara Singh had executed Will Ex.P2 in favour of Gurdeep Singh. Harpal Singh had also told me about this fact. In spite of the Will Ex.P2 Gurdeep Singh had given in writing the mutation be sanctioned in favour of all the legal heirs. It is incorrect to suggest that I got the mutation sanctioned intentionally without informing Gurdeep Singh. House constructed by Gurdeep Singh is in the land in suit. The tubewell is accrossed the passage near to the house. Gurdeep Singh does not allow me to water from this Tubewell saying alleging himself to be the absolute owner. Gurdeep Singh did not allow any co-sharer to take water from the Tubewell in suit.”

44. Thus, defendant no.1 has stated that Sardara Singh used to reside with the plaintiff, however, also used to reside with the defendant



no.1. It is notable that defendant no.1 has stated that application for mutation was submitted by the plaintiff himself. At this juncture, it is necessary to reiterate that there is no rebuttal by the plaintiff to the deposition of defendant No.1. Thus, there is no denial to the fact that application for mutation was submitted by the plaintiff; and that Harpal Singh was present at the time of entering of mutation.

45. To briefly recapitulate, it is but logical and trite that in case the Will dated 07.06.2005 had been executed by Sardara Singh in favour of the plaintiff, then Harpal Singh would mention that fact to defendant No.1. It is relevant to note that Will dated 7.6.2005 was handed over to the plaintiff by Sardara Singh about 15 days before his death on 12.7.2005. The mutation dated 29.8.2008 was in the knowledge of plaintiff because above said evidence of defendant no.1 that mutation application was moved by the plaintiff, is not disputed. Yet, no reason has been given by the plaintiff for not disclosing the Will from the time of death of Sardara Singh on 12.07.2005 till the time of filing of suit on 16.7. 2009 or even at the time of sanctioning of mutation on 29.8.2008. Clearly, the Will was withheld by the plaintiff from the authorities. The only irresistible conclusion that can be drawn in these circumstances is that there was no Will in the first place. Argument of the plaintiff that the defendants failed to disprove the thumb impression of Sardara Singh on the Impugned Will, is also liable to be rejected as case of the plaintiff is to stand on its own legs.



46. Hence, I concur with the view taken by the Ld. Trial Court and hold that the learned Civil Judge has rightly discarded the Will dated 07.06.2005 as being surrounded by suspicious circumstances which the plaintiff (propounder of Will) has failed to dispel. Furthermore, the first Appellate Court has granted permanent injunction while it is settled law that injunction cannot be granted qua the co-sharers.

47. In holding as above, I find support from the following case law:

48. The judgment of the Hon'ble Supreme Court in **Jaswant Kaur v. Amrit Kaur, (SC) : Law Finder Doc ID # 74518**, wherein it is held as under:-

"14. Circumstances are too numerous to mention which throw a cloud of suspicion on the making of the will by Gobinder Singh. The will is alleged to have been made on November 26, 1945 but it did not see the light of day till August 20, 1957. Being an ambulatory document, it may be granted that there may be no occasion for anyone to know of its existence until the death of the testator on December 15, 1954. But it is understandable that a document by which property worth lakhs of rupees was disposed of should have remained a closely guarded secret from the whole world of intimate friends and relatives, nay, from the sole legatee himself, for over 2½ years after the testator's death. The testator had left behind him a large property and along with it a large amount of litigation which makes it impossible to believe that upon his death in December 1954, no one bothered to go through his papers which would reflect the state and extent of his property. The explanation of the defendant that he hit upon the will by



chance while going through some papers of his grand-father is therefore patently lame and unacceptable.

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21. The will is unnatural and unfair in more than one respect. At the time that the will is alleged to have been made, the testator had a daughter Guraprakash Kaur who was born of Dalip Kaur and a daughter-in-law Joginder Kaur, being the widow of the testator's predeceased son Gurbachan Singh who was also born of Dalip Kaur. Gurbachan Singh and Joginder Kaur gave birth to the defendant Surjit Inder Singh and to a daughter Palvinder Kaur. The will contains not even a fleeting reference either to the testator's daughter or the widowed daughter-in-law or to the grand-daughter Palvinder Kaur. It is urged that all of these persons were happily placed in life and it was therefore needless for the testator to provide for them. If that be so, it was usually unnecessary to refer to the appellant Jaswant Kaur who also, it is common ground, has been married happily.

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23. Quite a few other circumstances can be mentioned which raise a grave suspicion as regards the making of the will but the circumstances enumerated above are, in our opinion, sufficient to discard the will. The defendant in his evidence has offered no explanation of any of these circumstances. He has totally failed to discharge the heavy onus which lay on him of explaining the suspicious circumstance surrounding the execution of the will and of establishing that the document which he propounded was the last will and testament of his grand-father Gobiner Singh."



49. Reliance may be placed upon judgment of this Court in **Sukhpal Singh v. Joginder Kaur, (Punjab and Haryana) : Law Finder Doc ID # 2765781**, wherein it is held as under:-

"9. In the present case the suit of the plaintiffs has been dismissed by both the Courts. It has been held by the Trial Court that even if the Will (Ex.P1) is held to have been validly executed, it is surrounded by a number of suspicious circumstances. The Will (Ex.P1) propounded by the plaintiffs is dated 19.12.1997. The Testator, Dilbagh Singh, died just about a month later on 28.01,1998. The wife of Dilbagh Singh i.e. Joginder Kaur (defendant No.1) executed her registered Will on 27.04.1998 bequeathing nothing to the plaintiffs.

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

"19. When there are suspicious circumstances regarding the execution of the will, the onus is also on the propounder to explain them to the satisfaction of the court and only when such responsibility is discharged, the court would accept the will as genuine. Even where there are no such pleas, but circumstances give rise to doubt, it is on the propounder to satisfy the conscience of the court. Suspicious circumstances arise due to several reasons such as with regard to genuineness of the signature of the testator, the conditions of the testator's mind, the dispositions made in the will being unnatural, improbable or unfair in the light of relevant



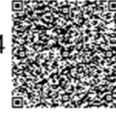
*circumstances or there might be other indications in the will to show that the testator's mind was not free. In such a case, the court would naturally expect that all legitimate suspicion should be completely removed before the document is accepted as the last will of the testator. The aforesaid view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

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

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

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

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



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

"8. Needless to say that any and every circumstance is not a "suspicious" circumstance. A circumstance would be "suspicious" when it is not normal or is not normally expected in a normal situation or is not expected of a normal person."

The Court quoted the Privy Council's elucidation in **Hames v. Hinkson [AIR 1946 PC 156]** of suspicious circumstances as follows :

"17here a Will is charged with suspicion, the rules enjoin a reasonable scepticism, not an obdurate persistence in disbelief. They do not demand from the Judge, even in circumstances of grave suspicion, a resolute and impenetrable incredulity. He is never required to close his mind to the truth."

It was again reiterated in **PPK Gopalan Nambier v. PPK Balakrishnan Nambiar [1995 Supp(2) SCC 664]** that suspected features should not be mere fantasies of a doubting mind.

"5.....It is trite that it is the duty of the propounder of the will to prove the will and to remove all the suspected features. But there must be real, germane and valid suspicious features and not fantasy of the doubting mind."

It was further held in the said case that :

"16. We are conscious that deprivation of a natural heir, by itself, may not amount to a suspicious circumstance because the whole idea behind the execution of the Will



is to interfere with the normal line of succession. However, in Ram Piari (supra), this Court held prudence requires reason for denying the benefit of inheritance to natural heirs and an absence of it, though not invalidating the Will in all cases, shrouds the disposition with suspicion as it does not give inkling to the mind of the testator to enable the court to judge that the disposition was a voluntary act.

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

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



to its execution or registration. This, is the essence of the repeated pronouncements made by this Court on the subject including the decisions referred to and relied upon before us."

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

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

50. Reference may also be made to judgment of this Court in **Des Raj alias Des Singh v. Mst. Gurdial Kaur, (P&H) : Law Finder Doc ID # 128288**, wherein it is held as under:-

"6. It is true that if a Will is registered, that is a circumstance which may, having regard to the other circumstances, prove its genuineness but the mere fact that the Will is a registered Will, is not by itself sufficient to dispel all suspicions regarding it, where suspicion exists, without submitting the evidence of registration to close scrutiny. In this case, both the Courts below, on reading of the statement of Hazura Singh, attesting witness, has recorded a firm finding of fact that the registration of Will, Ex.D-1 was done in a perfunctory manner for the reason that signatures and thumb impressions on the Will had been secured by the Registration Clerk sitting in a different room from the one the Sub-Registrar used to sit and



register the documents. Hazura Singh, DW-2 claimed himself to be known to Gajjan Singh but in cross-examination, he was unable to tell the number of sons and daughters of Gajjan Singh nor could he tell the names of the persons residing in the neighbourhood of Gajjan Singh. He was not the resident of the village in which the testator used to live. Likewise, other witness, Sham Lal, DW-4 too was not resident of village Gundu Khurd in which the testator used to reside but was resident of village Saidewala which was at a distance of 7-8 Kms. from village Gundu Khurd. Reading of his statement shows that he was not known to the testator. Rather on the date the Will is alleged to have been executed and registered, he had gone to the office of the Sub-Registrar to get one sale deed registered of some land which he had purchased. He, in fact, was on intimate terms with Sukhdev Singh father of the beneficiaries under the Will. Petition-writer, DW-3 in his cross-examination was unable to state the date, month and the year in which the will was scribed. He had not even brought the Register in which he may have made entries in regard to the execution of the Will. No explanation is forthcoming as to why a provision was not made in the Will for Gurdial Kaur, her minor sons and daughters. In fact, no reason whatsoever has been given as to why they were being deprived. In my view, the Courts below have rightly discarded Will dated 25.9.1973. No case is thus made out for interference. Dismissed. No costs."

51. Reliance may also be placed upon judgment of this Court in

Smt. Sukhma (since deceased) v. Smt. Lichhmi (since deceased), (Punjab

And Haryana) : Law Finder Doc ID # 2735304, wherein it is held as under:-

"The genuineness of a Will must be tested on the touchstone of judicial conscience, and the presence of suspicious circumstances places a heavier burden on the propounder to dispel such doubts."

52. From the discussion above, it is clear that the plaintiff has

failed to dispel such doubts to the satisfaction of this Court. Accordingly,



the judgment and decree of the learned First Appellate Court is set aside,
and present appeal stands **allowed**.

53. Pending application(s) if any also stand(s) disposed of.

28.10.2025

Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes