

Joginder Singh and ors. Vs. Surinder Singh (Deceased) and ors.

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Court : Punjab and Haryana

Decided On : Sep-09-1996

Reported in : (1997)115PLR83

Judge : R.L. Anand, J.

Appeal No. : Regular Second Appeal No. 1517 of 1980

Appellant : Joginder Singh and ors.

Respondent : Surinder Singh (Deceased) and ors.

Advocate for Def. : Sarjit Singh, Sr. Adv.,; H.S. Bhullar,; Vikas Singh,

Advocate for Pet/Ap. : M.L. Sarin, Sr. Adv. and; Rahul Rathore, Adv.

Disposition : Appeal dismissed

Judgement :

R.L. Anand, J.

1. This is a defendants' appeal and has been directed against the judgment and decree dated 4.2.1980 passed by the Court of Additional District Judge, Faridkot, who set aside the judgment and decree dated 26.8.1978 passed by the Court of Sub Judge 1st Class, Faridkot, who decreed the suit of the plaintiff Surinder Singh (dead) represented by the legal representatives.

2. Brief facts of the case are that Smt. Sham Kaur widow of Attar Singh died on 11.8.1970 and her daughter Smt. Devinder Kaur filed an application for succession certificate on the basis of the will in her favour allegedly executed by her mother Smt. Sham Kaur. Notice was issued to Surinder Singh Plaintiff-respondent and he also claimed the property of Smt. Sham Kaur on the basis of the will in his favour and asserted that the will relied upon by Smt. Devinder Kaur was a forged document. The Presiding Officer, who was seized of the matter came to the conclusion that since a complicated question of law and fact is involved, no succession certificate could be granted in favour of Smt. Devinder Kaur and the Presiding Officer directed the parties to get their rights adjudicated from the civil Court. Resultantly, Surinder Singh filed the. present suit, asserting that Smt. Sham Kaur, widow of Attar Singh died on 11.8.1970. She was the mother of the plaintiff, defendants Nos. 2, 3 and 5 and the maternal grand mother of defendants Nos. 1, 4-A to 4-E. She had left some amount in the bank account mentioned in the plaint and she had also executed a valid will dated 18.1.1963 (Exhibit P1) in favour of the plaintiff and none of the defendants had any right in any property left by Smt. Sham Kaur deceased. Devinder Kaur, mother of defendant No. 1, had alleged a will dated 7.8.1970 (Exhibit D1) in her favour. It was never executed by Smt. Sham Kaur in her favour and any such will is a fictitious document. The defendants were called upon to admit the rights of the plaintiff but they refused to do so. Reference was also made by the plaintiff to the application for the grant of succession certificate and the order dated 19.1.1971 passed by the Civil Court, who directed the parties to approach the Civil Court for the adjudication of their rights. Plaintiff Surinder Singh claimed a declaration that he is the sole heir of the properties left by Smt. Sham Kaur.

3. Smt. Devinder Kaur filed a written statement admitting the relationship of the parties and the date of death of Sham Kaur. She, however, denied the execution of any will in favour of the plaintiff on 18.1.1963 (Exhibit P1). It was asserted that Smt. Sham Kaur was not mentally fit to execute any will at that time and any such will was the result of collusion between the plaintiff and the marginal witnesses. Plaintiff Surinder Singh was not rendering any service to Smt. Sham Kaur, rather he had strained relations with his mother. Smt. Devinder Kaur also asserted that her mother Smt. Sham Kaur had executed a will in her favour on 7.8.1970 (D1),

which is the last will of the deceased and is binding upon the parties. Defendants Nos. 2 and 3, namely, Joginder Singh and Raminder Singh, who were also the sons of Smt. Sham Kaur filed separate written statements. They supported the stand taken up by Smt. Devinder Kaur and asserted that the plaintiff was not having good relations with his mother Smt. Sham Kaur and that their father Attar Singh had disinherited the plaintiff from his succession by means of a registered will dated 22.12.1961. Defendant No. 4 Smt. Inderjit Kaur, who later on was represented by defendants Nos. 4-A to 4-E, also filed a separate written statement. She admitted the relationship between the parties, but denied the existence of both the wills (P1) and (D1) and asserted that both the wills were the result of fraud, coercion and collusion and it was not voluntary act on the part of Smt. Sham Kaur. The plaintiff filed replication to the written statements filed by the defendants and he reiterated the allegations made by him in the plaint.

4. On the above pleadings of the parties, the trial Court framed the following issues:-

1. Whether the plaintiff is the sole heir of Smt. Sham Kaur? OPP.
2. Whether Sham Kaur executed a valid will in favour of the plaintiff? OPP.
3. Whether Smt. Sham Kaur executed a valid will in favour of defendant No. 1? OPD.
4. Whether S. Attar Singh executed a will as alleged by defendant No. 2? OPD.
5. Relief.

The parties led voluminous oral and documentary evidence in support of their case. As many as 13 witnesses were examined on the side of the plaintiff and 21 witnesses were examined on the side of the defendants. Suffice it to mention that on the conclusion of the trial, the trial Court held that both the wills relied upon by the plaintiff and defendant No. 1 should not be acted upon, as a result of which the suit of the plaintiff Surinder Singh was dismissed.

5. Aggrieved by the judgment and decree of the trial Court, plaintiff Surinder Singh filed first appeal in the Court of Additional District Judge, Faridkot. Vide the impugned judgment and decree dated 4.2.1980 the learned first appellate Court set aside the judgment and decree of the trial Court and allowed the appeal and decreed the suit of plaintiff Surinder Singh. It may also be mentioned that Major Amritpal Singh son of Smt. Devinder Kaur also filed first appeal in the Court of Additional District Judge and his appeal was dismissed. In short Surinder Singh plaintiffs suit was decreed and he was held to be the sole heir of Smt. Sham Kaur deceased on the basis of the will (Exhibit P1). I will also give the detailed reasons which prevailed upon the mind of the first appellate Court in accepting the will (P1) and in rejection of the will (D1) in the subsequent portion of this judgment, but at this stage I may mention that two sets of appeals were filed against the judgment and decree dated 4.2.1980 in the High Court. The appeal filed by Major Amritpal Singh son of Smt. Devinder Kaur (defendant No. 1) was denoted R.S.A. No. 1119 of 1980 and it was dismissed in limine by Justice J.M. Tandon on 21.5.1980. The appeal filed by Joginder Singh and others was denoted R.S.A. No. 1517 of 1980, i.e., the present appeal. This appeal earlier came up for hearing before Justice D.V. Sehgal on 22.5.1986 and the Hon'ble Judge was pleased to dismiss this appeal in view of the decision dated 21.5.1980 given by justice J.M. Tandon. It was observed by Justice D.V. Sehgal :-

'.....The necessary consequence of dismissal of that appeal is that the judgment and decree dated 4.2.1980 of the learned Additional District Judge, Faridkot, were upheld and his findings that the will Ex. P.1 was validly executed by Sham Kaur in favour of her son Surinder Singh plaintiff was affirmed. The present regular second appeal has been preferred against the same judgment and decree of the learned Additional District Judge by Joginder Singh and Sunanda daughter of Inderjit Kaur.

In view of the fact that R.S.A. No. 1119 of 1980 was dismissed in limine by this Court on 21.5.1980 and the judgment and decree of the learned Additional District Judge were affirmed, the present appeal is clearly barred by the principle of res judicata as enunciated by the Supreme Court in Sheodan Singh v. Daryao Kunwar, A.I.R. 1966 S.C. 1332. In fact, after admission of this appeal, when the dismissal of R.S.A. No. 1110 of 1980 was brought to the notice of A.S. Bains, J.,

he recorded in his order dated September 4, 1980, that the fact that R.S.A. No. 1110 of 1980 against that very judgment against which the present appeal arises had already been dismissed in limine was not brought to his notice at the time of motion hearing. The result is that this appeal is barred by the principle of res judicata and is consequently dismissed. The parties are, however, left to bear their own costs.'

The appellants of R.S.A. No. 1517 of 1980, i.e., the appellants of the present appeal, approached the Hon'ble Supreme Court in Civil Appeal No. 4830 of 1992 and vide judgment dated 9.11.1992 the Hon'ble Supreme Court was pleased to set aside the judgment and decree dated 22.5.1986 passed by this Court (Justice D.V. Sehgal) and the matter was remanded to this Court with the directions to restore R.S.A. No. 1517 of 1980 and to dispose of the same on merits in accordance with law. In this manner I am disposing of the present appeal under the directions of the Hon'ble Supreme Court and with the assistance of Shri M.L. Sarin, Senior Advocate, and Shri G.S. Dhillon, Advocate, appearing on behalf of the appellants, and Shri Bhullar, Advocate, appearing on behalf of the contesting responding Surinder Singh.

6. On the one hand the thrust of the argument of Shri Sarin was that both the wills, i.e. Exhibit P1 propounded by Surinder Singh, and Exhibit D1 propounded by Smt. Devinder Kaur, should be disbelieved and the succession of Smt. Sham Kaur should go by way of natural succession and not in the manner as adopted by the first appellate Court Supplementing and elaborating his argument, the learned counsel Shri Sarin submitted that the will (Exhibit P1) dated 18.1.1963, allegedly executed by Smt.' Sham Kaur in favour of Surinder Singh, has not been legally proved and secondly, this will is surrounded by suspicious circumstances. There was no earthy reasons on the part of Smt. Sham Kaur to exclude her natural heirs, like Inderjit Kaur, Joginder Singh, Raminder Singh and Joginder Kaur, who admittedly are her sons and daughters. He further submitted that the attesting witnesses examined by plaintiff Surinder Singh in support of the will (Exhibit P1) are not worthy of credence. Said Surinder Singh has taken sufficient interest in the execution of the will (Exhibit P1). He had prevailed upon the mind of Smt. Sham Kaur, who could not form a rational opinion and judgment in the execution of the

will. Mr. Sarin also submitted that one of the attesting witnesses is Karnail Singh. He has not supported the execution of the will (P1). Rather he has been examined as D.W. 16 by the defendants and this witness has categorically deposed that Surinder Singh, plaintiff took active interest in the execution of the will. Secondly, the other attesting witness Kastur Chand is a deed writer by profession and his attestation to the will itself suggests that his signatures on the will (Exhibit P1) have been obtained in mysterious circumstances, especially when Kastur Chand sits by the side of the petition writer Harbhagwan Dass (P.W.1) who scribed this will. It was also submitted by Shri M.L. Sarin that there is no recital by the attesting witnesses while attesting the alleged will (P1) that the testator had thumb marked in their presence and that they were also attesting the will in the presence of the testator or that the testator and the attesting witnesses had put their signatures in the presence of each other. Mr. Sarin also submitted that disinheriting the natural heirs by Smt. Sham Kaur without any valid reason itself is a mysterious circumstance, which has not been removed successfully by the propounder Surinder Singh and mere recital in the will on the part of Smt. Sham Kaur that she was executing the will in favour of Surinder Singh plaintiff due to love and affection, was not enough. It was also submitted by Shri Sarin that Smt. Sham Kaur died at Ferozepur and her dead body was brought by Smt. Devinder Kaur defendant and this circumstance itself suggest that Surinder Singh plaintiff was not looking after the deceased. Mr. Sarin was also critical of the evidence led by the plaintiff and submitted that Kastur Chand marginal/attesting witness of the will (Exhibit P1) himself was a regular scribe and had Smt. Sham Kaur wanted to execute the will in a voluntary manner, there was no bar on her part to approach Kastur Chand to scribe the will instead of approaching Harbhagwan Dass, whose seat of work adjoins the seat of Kastur Chand in the same tehsil premises. Mr. Sarin wanted to say that, in fact, Kastur Chand, Harbhagwan Dass and Surinder Singh plaintiff connived with each other and got the will executed from Smt. Sham Kaur. Mr. Sarin also wanted to highlight that mere registration of the will (Exhibit P1) does not ipso facto proves its due registration, rather the will had been registered in a perfunctory manner and the plaintiff cannot take the advantage of the registration of the will. Shri G.S. Dhillon, Advocate, also supported the arguments and the reasons which were advanced by Mr. Sarin.

7. On the contrary, Mr. Bhullar, learned counsel who appeared on behalf of the plaintiff-contesting respondent Surinder Singh, submitted and highlighted the various circumstances to convince me that the will (Exhibit P1) has been properly executed. It was allegedly a wilful act on the part of Smt. Sham Kaur and no undue influence has been exercised. In fact, Smt. Sham Kaur was obeying the wishes of her husband Attar Singh in the execution of the will (P1). She allegedly could not execute the will in favour of the defendants who had gone to the extent of forgoing the documents on behalf of Smt. Sham Kaur and who had even gone to the extent of kidnapping her husband Attar Singh. Shri Bhullar practically supported the reasons advanced by the first appellate Court and had also is rejected the will Exhibit D1, allegedly executed by Smt. Sham Kaur in favour of her daughter Smt. Devinder Kaur.

8. I have considered the submissions made by the counsel for the parties and have also the occasion to go through the detailed judgments of the Courts below and I am of the considered view that the will (P1) should be believed and I do not see any affirmity in the judgment of the first appellate Court when it has given due credence in upholding the will (P1) in favour of plaintiff Surinder Singh. The disputed will Exhibit P1, as I stated above, was executed on 18.1.1963 by Smt. Sham Kaur. There is a clear recital in Exhibit P1 executed by the deceased that Surinder Singh, her son, looks after her and rest of her sons and daughters did not bother about her, and, therefore, she wanted to bequeath her property in favour of her son Surinder Singh. The will is attested by two witnesses, Kastur Chand and Karnail Singh. Smt. Sham Kaur had thumb marked this document which runs into two pages and both the pages arc thumb marked by Smt. Sham Kaur. It was presented before the Sub Registrar on the same day. The executant Smt. Sham Kaur had again thumb marked twice before the Sub Registrar and was identified by Karnail Singh and Kastur Chand. The endorsement of the Sub Registrar clearly suggest that the contents of the will were read over and explained to the testator who thumb marked the same in the presence of the Sub Registrar after knowing the contents. Smt. Sham Kaur was identified by Karnail Singh and Kastur Chand, as I have just submitted above. Thus the above would show that Smt. Sham Kaur executed the will purposely in favour of Surinder Singh and she had given the reason as to why she wanted to disinherit her other sons and daughters. It is a

settled law that the wills are executed in order to disinherit sons of the natural heirs.

9. Now I have to see the evidence in this regard, which was produced by the plaintiff-Surinder Singh, propounder of the will (P1). He had examined four witnesses in this case, namely, Harbhagwan Dass, deed writer, who stated that the will (Exhibit P1) was read over and explained to Smt. Sham Kaur and she admitted it to be correct and then she put her thumb impression in the presence of Kastur Chand and Karnail Singh. The will is also entered in the register of the scribe. Exhibit P2 is the copy of the entry. It may also be mentioned that this will was executed in Faridkot. Harbhagwan Dass also stated that Smt. Sham Kaur put her thumb impression in his register of scribe, which is date-wise and scribe-wise. In the cross-examination it has come in the statement of the witness; that he knew Smt. Sham Kaur previously for the last about 22 years since the date he settled in Faridkot. He further stated that Smt. Sham Kaur used to visit his mother-in-law. In the cross-examination, of course, this witness, admits that he and Kastur Chand, marginal witness, sit under the same shed and they are sitting as co-scribes for the last 15/16 years. This witness categorically stated in the cross-examination that he had no work in partnership with Kastur Chand. It has also come in the statement of this witness that Karnail Singh and Kastur Chand - the other attesting witnesses - were present when Smt. Sham Kaur thumb marked the will (Exhibit P1). Further it has been clarified by this witness that he knew Smt. Sham Kaur since the date he attained the age of discretion. This witness did not state that on the date of execution of the will Surinder Singh plaintiff was present at the time of the execution or registration but completely ruled out that the will (Exhibit P1) was under the influence of the plaintiff. Dewan K.S. Puri is the document expert, who has compared the disputed thumb impression Q1, Q2, and Q3, with the standard thumb impressions of Smt. Sham Kaur and came to the conclusion that the disputed and the standard thumb impressions are of Smt. Sham Kaur. His report is Exhibit P.W.3/A, which is on the record. This report, I have perused independently.

10. Then it will be proper for me to dispose of the evidence of Kastur Chand, who appeared as P.W. 2 as well as P.W. 6. A perusal of the statement of this witness would show that this witness earlier knew Smt. Sham Kaur and her husband Attar

Singh. In the year 1959 a sale deed was executed by Attar Singh and it was scribed by this witness. Further, this witness has categorically stated that the will (Exhibit P1) executed by Smt. Sham Kaur, was read over and explained to her and she thumb marked it after admitting its contents. The statement of this witness further shows that he earlier scribes a sale deed at the asking of Smt. Sham Kaur. With this background the statement of Kastur Chand recorded on 26.2.1972 has to be read when he deposed that the will Exhibit P1 was voluntarily executed by Smt. Sham Kaur. He knew Smt. Sham Kaur since he attained the age of discretion. He used to see her in public. The deceased allegedly came alone to get the will executed and no relative of hers accompanied her. The other witness was called by Smt. Sham Kaur. The witness admits that he sits by the side of Harbhagwan Dass, Deed writer (P.W. 1), and he became the attesting witness of the will Exhibit P1 on the request made by Smt. Sham Kaur. There is no bar for a petition writer to become an attesting witness, specially when such a witness knew the deceased earlier. It was not incumbent on the part of Smt. Sham Kaur to ask Kastur Chand to be the scribe of the will (Exhibit P1). If the will has been scribed by Harbhagwan Dass and has been attested by Kastur Chand, who is known to the deceased, the will cannot be set aside on this ground. It is not proved on the record at all that Kastur Chand or Harbhagwan Dass accompanied Surinder Singh plaintiff or that they prevailed upon Smt. Sham Kaur for the execution of the will (Exhibit P1).

11. Now I discuss the testimony of D.W.16 Karnail Singh - the other attesting witness, examined by the defendants. No doubt this witness had tried to say that he was called by Surinder Singh at the time of the execution and registration of the will (Exhibit P1.) and that Surinder Singh plaintiff was present at the time of registration and execution and he took active part leading to the execution of the will, yet a close scrutiny of his statement would clearly show that he is telling the lies so as to help the defendants, but truth has emerged out from his statement, which proves that Smt. Sham Kaur voluntarily executed the will. Karnail Singh admits in the cross-examination that he had little acquaintance with Surinder Singh plaintiff. Had it been so, Surinder Singh would be the last man to approach Karnail Singh at attest the will. The witness further admitted that he had no dealings with Surinder Singh. He is not in a position to tell as to what amount was paid to the petition writer as. his fee by Surinder Singh plaintiff. The witness had never

attested any document executed by Surinder Singh or any other document on the asking of the plaintiff prior to or after the execution of the will (P1). The witness further stated that he attested the will (P1) since he had known Surinder Singh little-bit and this was the only reason for his attesting it. The reason given by the witness is not worthy of any credence. Rather he admits that he appeared before the Sub Registrar. He further admits that Smt. Sham Kaur also thumb marked the document in the office of the Tehsildar (Sub Registrar). From the statement of Karnail Singh (D.W. 16) it appears that he is deposing falsely to the disadvantage of the plaintiff under some threat because one Mohinder Singh was standing inside the Court at the back of the witness and said Mohinder Singh is the brother of Surinder Singh plaintiff. It has also come in the statement of this witness that the person standing at his back has connections with the Police. Karnail Singh also deposed that he usually attested the registered documents, but without knowing the contents and without inquiring the persons executing the document. A person of this calibre cannot be believed so as to disprove the due execution of the will (Exhibit P1) when the plaintiff has led voluminous evidence in the shape of petition writer, attesting witness, handwriting expert etc. The registration of the will itself is a big circumstance proving its genuineness. Where a testator was endorsed by Registrar to be in sound disposing state of mind, discrepancy in evidence of attestator does not vitiate the validity of will, as held by the Hon'ble Supreme Court in PPK Gopalan Nambiar v. PPK Balakrishnan Nambiar and Ors., JT 1995(5) S.C. 163. I am not convinced with the argument of Mr. Sarin when he submitted that the attesting witnesses did not specify in the will itself that the contents of the will were read over and explained to the testator in their presence. The oral evidence can be led in that regard even in the absence of such endorsement and from the statements of Kastur Chand and Karnail Singh this Court is in a position to endorse the reasons advanced by the first appellate Court when it has held the due execution and registration of the will (P1).

12. Now I will proceed to adjudge whether the will (Exhibit P1) is surrounded by suspicious circumstances, as argued by Mr. Sarin and Mr. G.S. Dhillon, learned counsel appearing on behalf of the appellants, and in this regard it will be useful for me to refer to the statement of Surinder Singh plaintiff, who deposed that his mother Smt. Sham Kaur used to reside with him and he used to render services to

her. He has two brothers, namely, Raminder Singh and Joginder Singh, and Smt. Devinder Kaur was his real sister. Smt. Joginder Kaur and Smt. Inderjit Kaur are his other sisters. The witness and his mother Smt. Sham Kaur were separate from his other brothers and sisters. This witness categorically stated that his brothers and sisters did not render any service to his mother Smt. Sham Kaur. Rather there was litigation between them. With regard to Smt. Devinder Kaur, this witness, further stated that she was married at Moga with Pritam Singh and after two-three years of marriage, the relations between her and her husband Pritam Singh became strained and thereafter she started living in Faridkot with her parents but she was being supported by Rani Sahiba (Rajmata of Faridkot) and not by him. A specific suggestion was put to this witness, which was categorically denied, that the will (Exhibit P1) was the result of undue influence and misrepresentation. The major criticism which was levelled against this witness was that the dead body of Smt. Sham Kaur was not even brought from Ferozepur to Faridkot for the purpose of cremation by the plaintiff which completely rules out that he was serving the deceased and as such the recital in the will (P1) made by the deceased to the effect that she was being looked after by her son Surinder Singh plaintiff is wrong. This argument is not acceptable to the Court because I cannot lose sight of the fact that plaintiff Surinder Singh is a teacher by profession and nobody could contemplate that Smt. Sham Kaur was to die on 11.8.1970. The witness accepted in the cross-examination a fact that his sister Smt. Devinder Kaur and his son brought the dead body of Smt. Sham Kaur from Ferozepur. A cogent explanation has been given by this witness that since he was to proceed in connection with some official work, therefore, he deputed his son along with his sister Smt. Devinder Kaur to proceed to Ferozepur in order to bring the dead body. It is true that the residence of plaintiff Surinder Singh was not in the same house as that of the deceased but this fact cannot be lost sight of the fact that Smt. Devinder Kaur, who propounded the will (D1) also did not reside with her mother in spite of the fact that she was neglected by her own husband Pritam Singh. It is also established from the statements of the defendants that none of the defendants had ever served the deceased. Rather they were on litigation with her and the relations became strained to the extent that one of her sons connived with his brother-in-law and got kidnapped Attar Singh, husband of the deceased (Smt. Sham Kaur) and

later on Attar Singh was got recovered with the intervention of the High Court, when it appointed a Warrant Officer. I think this is the biggest insult to a Hindu Lady whose husband was kidnapped by her own sons and in these circumstances Smt. Sham Kaur could never think that her estate should go to such disloyal and unfaithful sons.

13. The trial Court gave reasons, which are contained in paras Nos. 21 to 34 of its judgment while discarding the will (Exhibit P1) and those reasons have been summoned up by the first appellate Court in para No. 12 of the judgment, i.e. (a) that the registration of the will (Exhibit P1) was not in accordance with law and was not proper and it was not satisfactory and convincing; (b) that it is surrounded by suspicious circumstances because the selection of Karnail Singh D.W.16 by Smt. Sham Kaur did not inspire confidence. Karnail Singh had no association with her and as such the deceased could not choose him to be her witness to a scribed document like Exhibit P1 and that Karnail Singh appeared to be the choice of Surinder Singh plaintiff; (c) that there is a false recital incorporated in the will that Surinder Singh plaintiff used to serve the deceased; (d) that the subsequent conduct of Surinder Singh Plaintiff after the execution of the will towards his mother Smt. Sham Kaur did not change and was not satisfactory. He did not bother about her even after the execution of the will (Exhibit P1) in his favour and his conduct towards the deceased is a pointer that the said will was a forged document; (e) that Smt. Sham Kaur could not revoke the will because she never knew about it. If the will could have been her conscious act, he would have made a mention of it to so many persons. For the reason that the entire property had been given to Surinder Singh plaintiff alone, the will was unnatural. I am not in a position to endorse the reasons given by the learned trial Court and I am in full agreement with the reasons advanced by the first appellate Court in believing the registered will (Exhibit P1). The first appellate Court was justified in remarking that the reasons advanced by the trial Court were based on surmises and conjectures. In my opinion, the trial Court failed in its judgment by making an assessment that though the plaintiff might not have rendered too much positive assistance to his mother Smt. Sham Kaur, but nevertheless the defendants did not render an iota of assistance to the deceased. After all the deceased was a Hindu lady who had always an inclination to accept the command of her husband. There is a clear

recital in the will Exhibit Px executed by Attar Singh on 22.12.1961 wherein he made a clear recital that though he wanted to bequeath his property in favour of his wife, still it was his desire that the entire property should go to Surinder Singh irrespective of some strained relations with him (Attar Singh deceased). In pursuance of that wish in all probability Smt. Sham Kaur executed the will (P1). Smt. Devinder Kaur, in spite of the fact that she was neglected by her husband, did not think it proper to live with her mother in order to serve her. The residence of Surinder Singh plaintiff, though not is in the same house, but it is a fact that he was residing adjoining to the residence of Smt. Sham Kaur. The learned first appellate Court has given its cogent reasons in paras Nos. 13 to 35 of its judgment while accepting the will (P1) and I am in full agreement with those reasons and I have also supplemented my own reasons in acceptance of the will (Exhibit P1).

14. Reverting to the will (Exhibit D1), which has been relied upon by the defendants, it will be useful for me if I make a pointed mention to paras Nos. 45 to 50 of the judgment of the trial Court because it will throw a light not only in the rejection of the will (Exhibit D1), but also in support of the will Exhibit P1. The defendants tried to show that the deceased Smt. Sham Kaur was sympathetically disposed towards them as much as she and her husband Attar Singh executed gift (Exhibit DC) in their favour, but this document was declared by the Court as a result of fraud. Further the plaintiff brought on record the statement of Shri Hazura Singh, Advocate of Punjab & Haryana High Court, who filed a petition of habeas corpus on behalf of Smt. Sham Kaur for the production of her husband Attar Singh and it was alleged by her that her husband Attar Singh was kidnapped and detained illegally by Gurdev Singh and search warrants were issued Attar Singh was produced in the Court by Gurdev Singh and this Gurdev Singh is the brother-in-law of Joginder Singh defendant, as admitted by Raminder Singh (D.W.21). The plaintiff also placed on record the copy of the judgment dated 31.8.1965 where Sham Kaur deceased had alleged that the gift deeds claimed by Joginder Singh and Raminder Singh and Smt. Devinder Kaur were not executed by her husband and were the result of fraud and after hot contest the contention of Smt. Sham Kaur was upheld. The suit was contested by one of the defendants, who now claimed on the basis of the will Exhibit D1. Not only this, there was a long drawn litigation between Smt. Sham Kaur and the defendants who are the propounders

of the will (Exhibit D1), which clearly suggests that Smt. Sham Kaur never wanted to bequeath her property in favour of the defendants, but she had all intention to bequeath the property in favour of the plaintiff, who was a lesser evil as compared to the defendants. The biggest criticism against the conduct of Surinder Singh plaintiff is that he participated in the execution of the will (Exhibit P1) and that he was present on the date of its execution and registration and this fact stands totally falsified from the statement of Smt. Sukhwant Kaur (P.W.9), Headmistress, who stated that Surinder Singh plaintiff was present in the School at Golewal on 18.1.1963, on which date the will (Exhibit P1) was got executed and registered. The will Exhibit D1 has been rightly ignored by the trial Court, which advanced the reasons in paras Nos. 45 to 50, and also by the first appellate Court for the reasons given in para Nos. 36 to 37 of the judgment.

15. While dealing with matters of wills, the proposition in respect of the nature and standard of evidence required to prove a will has been summarised in *R. Venkatachala Iyengar v. B.N. Thimmajamma*, AIR 1959 S.C. 443, wherein it has been held as under:-

'It is not as if the burden of proof varies with the riches and social prestige of the testator but habits of life are prone to vary with the means of the man and the privileged few who happen to occupy a high place in the social hierarchy have easy access to competent legal advice. Normally, therefore, a genuine will of a propertied man, well-positioned in society too, does not suffer from the loopholes and infirmities which may understandably beset testamentary instrument.'

This observation of the Hon'ble Supreme Court was followed in *Smt. Jaswant Kaur v. Smt. Amrit Kaur and Ors.*, AIR 1977 S.C. 74. It will remain a question of fact whether in a particular case the alleged suspicious circumstances surrounding the will have been removed successfully by the propounder or not. In the present case I have tried to supplement my reasons to the reason advanced by the first appellate Court, which held that the will (P1) was not surrounded by any suspicious circumstances and the deceased Smt. Sham Kaur wanted to execute the will in favour of none else than Surinder Singh plaintiff, who has successfully discharged the onus with regard to the due execution of the will as well as to the

removal of the suspicious circumstances. In Smt. Jaswant Kaur's case (supra) Hon'ble the Supreme Court was pleased to hold that in cases where the execution of a will is shrouded in suspicion, its proof ceased 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. In the present case this Court is fully convinced that the registered will (Exhibit P1) was the natural disposition on the part of Smt. Sham Kaur and it was not a manipulated affair of Surinder Singh plaintiff in connivance with Kastur Chand and Karnail Singh. This Court is of the view that strong circumstances are required to be proved by the defendants to rebut the case of the plaintiff, who has been able to discharge his initial burden. I am further of the view that the registered will ordinarily cannot be thrown in the dust-bin on the mere ipsi dixit of contesting litigant as he wants because adversary has been able to prove the essential ingredients for the due execution of the will and he has also been able to establish why the will in question was executed by the deceased in his favour.

16. Learned counsel Shri Sarin drew my attention to the citation reported as Shri Kishan Chand and Anr. v. Smt. Basanti Devi (died) through her L.Rs., (1996-2)113 P.L.R. 135, and submitted that the deceased did not give any explanation in the will as to why she was excluding her other natural heirs and, therefore, this omission itself amounts to sufficient suspicious circumstance to ignore the will (P1). This authority is not helpful to Mr. Sarin because the recital made in Exhibit P1 is clear to the effect that the contesting defendants did not bother for the deceased, whereas the plaintiff-Surinder Singh was looking after her and for that reason she was executing the will in favour of the plaintiff. The primary question in this case was whether the deceased was in sound disposing mind when she executed the will and whether she could think what was proper and in her interest. She was not an ordinary lady, but a lady of courage and conviction, who fought the litigation against her sons and daughter. She had been visiting the law courts and

had been going to the Tehsil premises. She even fought the litigation upto the High Court. The plaintiff did not give any pinch to the deceased and for that reason the will was executed in his favour. It has been held in *Shrimati Asharfi Devi v. Tirlok Chand and Ors.*, (1964)66 P.L.R. 1130, that it cannot be laid down as a matter of law that because the witnesses did not state in examination-in-chief that they signed the will in the presence of the testator, there was no due attestation. It will depend on the circumstances elicited in evidence whether the attesting witnesses signed in the presence of the testator or not. This authority thus meets the first and foremost argument of Mr. Sarin, who argued that it was necessary on the part of the attesting witnesses to say in the will itself that the testator had signed in the presence of the testator and all of them had signed in the presence of each other. When the law has gone to this extent the will cannot be rejected on the ground that there is no mention about the signatures of the attesting witnesses that they had signed the will (P1) in the presence of the testator.

17. After considering all the pros and cons of the evidence and after making full assessment of the voluminous evidence and the arguments advanced by the counsel for the parties, I once again reiterate that the reasons advanced by the first appellate court in accepting the will (exhibit P1) are sound, convincing and weighty and must be given preference to the reasons advanced by the trial Court. I also reiterate the reasons of the trial Court as well as of the first appellate Court when they rightly rejected the will Exhibit DI.

18. Seeing no merit in this appeal, it is hereby dismissed with no order as to Costs.