

**Daljit Singh and ors. Vs. Sukhwinder Singh and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/628278](http://sooperkanoon.com/628278)

**Court :** Punjab and Haryana

**Decided On :** Jul-28-2005

**Reported in :** AIR2006P& H39; (2006)142PLR146

**Judge :** M.M. Kumar, J.

**Acts :** [Evidence Act, 1872](#) - Sections 68; [Succession Act, 1925](#) - Sections 63;  
[Code of Civil Procedure \(CPC\) , 1908](#) - Sections 100

**Appeal No. :** Regular Second Appeal No. 1955 of 2005

**Appellant :** Daljit Singh and ors.

**Respondent :** Sukhwinder Singh and ors.

**Advocate for Pet/Ap. :** Arun Jain, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**M.M. Kumar, J.**

1. This is plaintiff's appeal filed under Section 100 of the Code of Civil Procedure, 1908 challenging concurrent findings of facts recorded by both the Courts below holding that the Will dated 22.10.1986 Ex.D-1 on which reliance has been placed by the defendant-respondents is a genuine document and would constitute the

basis to determine the right of the parties. It has further been held that the adoption deed Ex.D-2 dated 5.2.1974 could not be proved by defendant-respondent No. 1 showing that he was legally adopted by Harnam Kafir his grandmother.

2. There was one Harnam Kaur who had two daughters namely, Surjit Kaur and Bal-winder Kaur. The estate of Harnam Kaur is subject-matter of dispute between three sisters and Ors.. Surjit Kaur and Balwinder Kaur, two daughters of Harnam Kaur, filed a suit for recovery of Rs. 2,70,000/- and for possession of the house as per the details given. The amount of Rs. 2,70,000/- was claimed from FDR maintained by Harnam Kaur jointly with defendant-respondent. Similar claim was made in respect of the house which was allegedly taken in possession by the defendant-respondents after the death of Harnam Kaur on 24.5.1989. It is pertinent to mention that Ishar Singh had pre-deceased Harnam Kaur. Defendant-respondent Jagir Kaur is now represented by defendant respondents 3 to 7. The possession of the house in dispute was also claimed. Succession certificate was obtained by Jagir Kaur (now represented by defendant-respondents 3 to 7) on the basis of the Will dated 22.10.1986. It was claimed that Harnam Kaur had in fact died intestate without executing any Will. The succession certificate issued vide order dated 27.10.1989 was also challenged because the plaintiff-appellants were never impleaded as parties in those proceedings. In the written statement filed by the defendant-respondents the case set up was that Harnam Kaur had no son and she adopted defendant-respondent No. 1 Balwinder Singh vide registered adoption deed dated 5.2.1974. Reliance was also placed on the Will dated 22.10.1986 asserting that Harnam Kaur had great love and affection for defendant-respondent No. 1.

3. Both the Courts below have concurrently found that the Will dated 22.10.1986 Ex.D-1 is a genuine document and is not surrounded by any suspicious circumstance. Various arguments expressing suspicion regarding Will have been rejected. It has been pointed out that Harnam Kaur had purchased property in the name of defendant-respondent No. 1 vide sale-deed Ex.DW4/A. The sale deed further shows that deceased Harnam Kaur was residing with defendant-respondent No. 1 and she had love and affection for him. A joint FDR account was

opened by deceased Harnam Kaur alongwith defendant-respondent No. 1 for a sum of Rs. One lac. The execution of the Will and the thumb impression of Harnam Kaur has also been duly established by examining DW-1 Mehma Singh, the attesting witness and DW-2 Bharat Bhushan, Deed Writer. DW-1 Mehma Singh has deposed in unequivocal terms that the Will Ex.D-1 was read over to the testator Harnam Kaur and after admitting its contents to be correct and true, she had thumb marked the same in his presence as well as in the presence of other marginal witness, namely Balbir Singh. The Will was thereafter presented before the Sub-Registrar for its registration who also read over its contents to Harnam Kaur and who had thumb marked the same after admitting the contents of the Will to be true. The witnesses have also attested the Will. It has further stated that the testator was in a sound disposing mind at that time. Despite the detailed cross-examination of all the witnesses nothing suspicious could be extracted. It is further appropriate to mention that defendant-respondents had also examined Shri Anil Kumar Gupta DW-8, a document expert. The thumb impressions of Harnam Kaur on the Will Ex.D-1 has been compared with the admitted thumb impression and it has been opined that the thumb impression on the Will are of one and the same person who had thumb marked the sale deed Ex.D-3 and DW-4/A. The observations of the lower appellate Court on the afore-mentioned issue reads as under:

Furthermore, the defendant No. I has also examined DW-8 Shri Anil Kumar Gupta, Document Expert, who after comparing the thumb impressions of Harnam Kaur appearing on the above said sale deeds with her thumb impression on the Will D-1 opined that the disputed thumb impressions on the Will Ex.D-1 and the standard thumb impression appearing on the sale deeds Ex.D-3 and Ex.DW-4/A are identical with each other and have been affixed by one and the same person. Having examined the report of the Expert DW-8 Anil Kumar Gupta. I do not find any reason to disbelieve the same. He also elaborated each and every point in his report Ex. DW-8/A for forming his opinion. Thus, the opinion of this document expert is a relevant piece of evidence and also proves the execution of the Will. Therefore, the arguments of the learned Counsel for the appellants stand repelled.

4. Shri Arun Jain, learned Counsel for the plaintiff-appellant has made two submissions to persuade me to admit the appeal. He has argued that Exs.P-11 to P-13 are the copies of the judgments where Anil Kumar Gupta, DW-8, who has given the report as an expert on behalf of defendant-respondent, has been doubted in other cases. According to the learned Counsel reliance on his opinion is not meritorious and therefore his report is bound to be ignored. Learned counsel has further argued that the Will cannot be accepted merely because the execution has been proved. Learned counsel has maintained that there are suspicious circumstances surrounding the Will. According to learned Counsel the exclusion of the plaintiff-appellants who are the real daughters of the testator Harnam Kaur in itself is a suspicious circumstance.

5. Having heard the learned Counsel at a considerable length I am of the view that the view taken by the Courts below deserved to be upheld. The Will Ex.D-1 has been duly proved on record and there is no suspicious circumstances warranting a conclusion that the Will should be ignored. Once the Will is accepted the suit of the plaintiff-appellant has to be dismissed. I find that Will Ex.D-1 dated 22.10.1986 has been rightly found to be a legal document executed by the testator. The defendant-respondents have successfully proved the same and it satisfied all the necessary requirements of Section 68 of the Indian [Evidence Act, 1872](#) (for brevity, '1872 Act') and Section 63(c) of the [Succession Act, 1925](#) (for brevity, '1925 Act'). The Supreme Court in the case of Janki Narayan Bhoir v. Narayan Namdeo Kadam,<sup>1</sup> : [2002]SUPP5SCR175 , has considered Section 68 of 1872 Act and Section 63(c) of 1925 Act. The combined reading of both the sections and their interpretation is available in para 10 of the judgment which reads as under: On a combined reading of Section 63 of the Succession Act with Section 68 of the Evidence Act, it appears that a person propounding the Will has got to prove that the will was duly and validly executed. That cannot be done by simply proving that the signatures on the will was that of the testator but must also prove that attestations were also made properly as required by Clause (c) of Section 63 of the Succession Act. It is true that Section 68 of the Evidence Act does not say that both or all the attesting witnesses must be examined. But at least one attesting witness has to be called for proving due execution of the Will as envisaged in Section 63. Although Section 63 of the succession Act requires that a Will has to

be attested at least by two witnesses, Section 68 of the Evidence Act provides that a document, which is required by law to be attested, shall not be used as evidence until one attesting witness at least has been examined for the purpose of proving its due execution if such witness is alive and capable of giving evidence and subject to the process of the Court. In a way, Section 68 gives a concession to those who want to prove and establish a Will in a Court of law by examining at least one attesting witness even though the Will has to be attested at least by two witnesses mandatorily under Section 63 of the Succession Act. But what is significant and to be noted is that one attesting witness examined should be in a position to prove the execution of a Will. To put in other words, if one attesting witness can prove execution of the Will in terms of Clause (c) of Section 63 viz. attestation by two attesting witnesses in the manner contemplated therein, the examination of the other attesting witness can be dispensed with. The one witness examined, in his evidence has to satisfy the attestation of a Will by him and the other attesting witness in order to prove there was due execution of the will. If the attesting witness examined besides his attestation does not, in his evidence, satisfy the requirements of attestation of the Will by the other witness also it falls short of attestation of Will at least by two witnesses for the simple reason that the execution of the Will does not merely mean the signing of it by the testator but it means fulfilling and proof of all the formalities required under Section 63 of the Succession Act....

6. When the facts of the present case are examined in the light of interpretation given by the Supreme Court to Section 68 of 1872 Act and Section 63(c) of 1925 Act, then it becomes evident that defendant-respondent 1 has succeeded in proving the Will. Apart from examining Bharat Bhushan, Deed Writer, he examined the attesting witness Mehma Singh DW-1 who has deposed that Will and read over to testator Harnam Kaur who admitted its contents to be correct. The attesting witness has further stated that she had thumb marked the Will in his presence as well as in the presence of other marginal witnesses, namely, Balbir Singh and himself. Balbir Singh is also stated to have signed in his presence. The Will was thereafter presented before the Sub-Registrar for its registration who also read over contents of the Will to Harnam Kaur. She admitted the contents of the Will to be true and had thumb marked the same before the Sub-Registrar. It is

further appropriate to mention that the document expert Anil Kumar Gupta DW-8 has also opined that the thumb impression on the Will are of one and the same person who had thumb marked the admitted document Ex.D-3 like sale-deeds Ex.D-3 and DW4/A.

7. Similarly, the amount deposited in the FDR is in the joint account of defendant-respondent No. 1 and Harnam Kaur. There are instances when land has been purchased by Harnam Kaur in the name of defendant-respondent No. 1. The recitals prove the love and affection of Harnam Kaur for defendant-respondent No. 1. There is nothing on record of this Court to entertain any doubt with regard to the finding recorded by both the Courts below concerning the genuineness of the Will and the joint account of Harnam Kaur with defendant-respondent. There is no question of law raised in the appeal which may warrant its admission.

8. The argument with regard to document expert Anil Kumar Gupta cannot be accepted merely because in some other cases his credibility has been doubted. There is nothing brought on record by the plaintiff-appellants nor any expert has been produced by them to create a doubt that the thumb impression of Harnam Kaur on Will Ex.D-1 was fabricated or forged. Even otherwise there is ample evidence on record in the form of statements made by DW-1 Mehma Singh, attesting witness, DW-2 Bharat Bhushan, Deed Writer to testify that the deed was scribed by Ladda Ram, Deed Writer at the instance of testator Harnam Kaur she had thumb marked the Will after it was read over and explained to her. The attesting witness Mehma Singh has stated that the Will was thumb marked in his presence by Harnam Kaur and Balbir Singh. Therefore, there is no substance in the argument that the evidence of the expert was Hable to be discarded.

9. The other argument that there is a suspicious circumstance inasmuch as the two real daughters, namely, plaintiff-appellants have been excluded by the testator would also not require any detailed consideration because there is nothing on the record to show that the registered Will executed by Harnam Kaur was not the result of her free volition showing that the testator's mental capability was not impaired and she had personally gone to the office of the Registrar for registration of the Will. She died almost two and half years later. The mere fact that the entire

property was given to defendant-respondent No. 1 alone is no ground to entertain any suspicion. In this regard, reliance may be placed on a judgment of the Supreme Court in the case of Rama Bai Padmakar Patil v. Rukmani Vishnu Venkhande, : AIR 2003 SC3109 . Therefore, there is no substance in the argument raised by the learned Counsel for the plaintiff-appellant.

In view of the above, this appeal fails and the same is dismissed.

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