

**Khushbir Singh Vs. State**

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**Court :** Delhi

**Decided On :** May-25-1989

**Reported in :** AIR1990Delhi59; 39(1989)DLT37

**Judge :** Y.K. Sabharwal, J.

**Acts :** [Succession Act, 1925](#) - Sections 63; [Evidence Act, 1872](#) - Sections 68

**Appeal No. :** Probate Case No. 40 of 1983

**Appellant :** Khushbir Singh

**Respondent :** State

**Advocate for Pet/Ap. :** S.K. Khanna,; G.S. Vohra and; M.S. Vohra, Advs

**Judgement :**

**Y.K. Sabharwal, J.**

(1) Shri Jeevan Singh died on 24/11/1981 at R-569. New Rajinder Nagar, New Delhi. The petitioner is his son who seeks probate of the Will purported to have been executed by Sh. JeevanSingh on 23rd November 1961. Under tr the Will the petitioner has been appointed as sole executor and all moveable and immoveable properties have been bequeathed in his favor.

(2) Some undisputed facts : Petitioner Kushbir Singh is son of Sh.Jeevan Singh from his first wife who had died before Jeevan Singh had married Dr. Deep Kaur. The marriage between Jee

(3) Dr. Deep Kaur and Ms. Harleen Kaur have opposed the grant of probate. Both mother and daughter in reply to probate petition have denied the factum and validity of the Will. The opposition of mother and daughter is contained in Paras 4 and 7 of their reply to the petition which reads as under: Para 4 'Para No. 4 of the petition is denied. It is incorrect that S. Jeevan Singh made the Will in question, as alleged. The answering respondents deny the factum and validity of the Will in dispute. Para 7 Para No. 7 of the petition is not admitted correct. It is denied that Shri Paras Ram Kaira who purports to have made verification, declaration, has done so or that he purposely and validly attested the Will or that the Will has been attested, according to law. The respondents deny that the Will was properly executed. It is denied that S. Jeevan Singh signed the Will, as alleged, when he was in possession of full senses or that he understood what it was about'.

(4) On the pleadings of the parties the following issues were framed :- '(1) Whether the deceased Jeevan Singh validly executed the Will in question dated 23.11.1961 as his last Will and testament ? (2) Whether the deceased was possessed of a sound disposing mind at the time of the execution of this Will. (3) Relief.'

(5) The petitioner has examined three witnesses. PW-1 Dr. RajKumar Seth and PW-2 Mr. Paras Ram Kaira are the two attesting witnesses of the Will Ex. P-I. PW-3 Sh. S.L. Batra is a Chartered Accountant who is stated to have handed over the Will to the petitioner after death of Jeevan Singh. The respondents/objectors have themselves entered the witness box, Dr. Deep Kaur RW-1 and Ms. Harleen Kaur RW-2. Respondents have also examined one Sh. Jagdish Chander Segbal (RW-3) and Sh. P.C. Mehra (RW-4). It would be convenient to take up all the issues together.

(6) The evidence led on behalf of the petitioner as to execution and attestation of the Will and how the petitioner came in possession of the Will is briefly this.

(7) PW-1 Dr. Seth has deposed that Jeevan Singh had signed the Will Ex. P-I in his presence and he was in perfect health and sound disposing mind when the Will was executed. The Will contains a certificate from Dr. Seth to the effect that 'I have examined S. Jeevan Singh today. He is imperfect health and is of sound disposing mind.' Dr. Seth has further deposed that in the year 1961 he was working as Assistant Surgeon Gr. I. Willingdon Hospital, New Delhi, and he retired on 30/11/1986 as Medical Officer of Health, N.D.M.C. He claims to have known Jeevan Singh since childhood. It has also been deposed by Dr. Seth that the other attesting witness Sh. P.R. Kalra, PW-2 was present at the time of execution of the Will and he had also signed in presence of Dr, Seth as well as in the presence of S. Jeevan Singh.

(8) PW-2 Paras Ram Kaira has deposed that Jeevan Singh was known to him for more than 50 years before his death and both belonged to the same village/town. He has further deposed that Jeevan Singh and he had been working as Assessors in the Sessions Courts in Pakistan. Mr. Kalra has also deposed that on request of Jeevan Singh he had attested the Will Ex. P-I and that Jeevan Singh was of sound disposing mind at the time when he executed the Will, and had signed the Will in his presence as also in the presence of Dr. Seth.

(9) PW-3 Sh. S.L. Batra has deposed that he had been practicing as a Chartered Accountant in Delhi since 1948 and was advisor to Jeevan Singh in regard to income-tax matters. Mr. Batra has further deposed that Jeevan Singh was a director of M/s. Jubilee Highway Transport Co. Ltd. at Pathankot and he was the auditor of the said company, since its inception. It has also come in the statement of Mr. Batra that S. Jeevan Singh used to visit his office and residence quite often. Mr. Batra has further deposed that Jeevan Singh had told him during one of his visits that he wanted to execute Will and had given Mr. Batra instructions to prepare a draft. Mr. Batra says that he had given a rough draft to Mr. Jeevan Singh and thereafter he brought Will Ex. P-I duly executed and deposited it with Mr. Batra. The witness claims that Jeevan Singh had instructed him to hand over the Will to his son Kushbir Singh after his (Jeevan Singh's) death and that as per Jeevan Singh's desire the Will was handed over to the petitioner after Kirya ceremony of Jeevan Singh. The witness further says that Will Ex. P-I remained

with him in the same condition in which it was deposited with him by Jeevan Singh. it is common case of the parties that Mr. Batra had been the income-tax advisor of S. Jeevan Singh as also of Dr. Deep Kaur. Dr. Deep Kaur has deposed that she started paying income-tax in the year 1964 or 1965 and Mr. Batra was her income-tax advisor.

(10) Mr. Khanna, learned counsel for the petitioner, contends that due execution and attestation of Will Ex. P-1 stood proved by the statement of two attesting witnesses and the petitioner is entitled to grant of probate of the Will in question.

(11) Before considering the suspicious circumstances on which reliance has been placed by Mr. Vobra, learned counsel for the objectors, well settled principles bearing on the nature and standard of evidence required to prove a Will, may be stated. The Supreme Court in an elaborate judgment in *H. Venkatachala Iyenger v. D.N. Thimmajamma*, : AIR 1959 SC443 , speaking through Gajendragadker J. laid down the following propositions : '(1) Stated generally, a Will has to be proved like any other document, the test to be applied being the usual test of the satisfaction of the prudent mind in such matters. As in the case of proof of other documents, so in the case of proof of Wills, one cannot insist on proof with mathematical certainty. (2) Since Section 63 of the Succession Act requires a Will to be attested, it cannot be used as evidence until, as required by Section 68 of the Evidence Act, one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the court and capable of giving evidence. (3) Unlike other documents, the Will speaks from the death of the testator and therefore the maker of the Will is never available for deposing as to the circumstances in which the Will came to be executed. This aspect introduces an element of solemnity in the decision of the question whether the document propounded 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 suspicion before the document can be accepted as the last Will of the testator.(5) It is in connection with Will, 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 the burden is a part of the initial onus of the propounder to remove all reasonable doubts in the matter.(See *Jaswant Kaur v. Amrit Kaur and others*, : [1977]1SCR925 .

(12) It is not necessary to refer other judgments relied upon by learned counsel for the parties as most of the said judgments either follow or reiterate the aforesaid propositions of law.

(13) When the Will Ex, P-1 was executed Jiwan Singh was about 48 years old. Ex. P-1 is a one page hand written document. It has only one paragraph which reads as under : 'I, Jiwan Singh S/o S. Sher Singh Baweja resident of House No. P-569 New Rajinder Nagar, New Delhi-5 with sound and disposing mind by this my last Will (WILL) bequeath and devise all my moveable and immoveable property, whatsoever and wheresoever, to my only son Kbushbir Singh absolutely and

appoint him sole executor of this my Will. In witness whereof I have signed this hereunder on the 23rd day of November 1961. sd/- Jiwan Singh Baweja 23.11.61

(14) After the above passage there is an endorsement about the testator and attesting witnesses having signed it in presence of each other. Thereafter there is a note said to have been made by PW-1 Dr. R.K. Seth that 'I have examined S. Jiwan Singh today. He is in perfect health and is of sound disposing mind.' Then it contains signatures purporting to be of the attesting witnesses.

(15) I may also notice few material facts which have come mostly in the statement of Dr. Deep Kaur. After marriage of Jiwan Singh and Dr. Deep Kaur in the year 1954 at Pathankot, she stayed with him at his house at Pathankot, up to 1956. Petitioner was away to Tehran before their marriage and was expected to come to India in February 1957. From the end of 1956 Dr. Deep Kaur, on being asked by her husband started living at his Rajinder Nagar House. Petitioner came to India in early 1957 and went back to Tehran after his engagement. Petitioner came back to India in the year 1958 and after his marriage he again went back to Tehran with his wife. Dr. Deep Kaur, during this period, continued staying along in house No. R-569, New Rajinder Nagar, New Delhi. Petitioner finally returned to India in the year 1960 and started living in the same house. Dr. Deep Kaur says that she stayed in that house till early part of 1963 when she along with her daughter shifted to another house No. H-479, New Rajinder Nagar which she claims that her husband got her on rent, though according to PW-3, mother and daughter were living separately at the time when Jiwan Singh had executed the Will. Dr. Deep Kaur admits that even when she had gone away and started living separately, Jiwan Singh continued living with his son Khushhir Singh, the petitioner. It also stands established and rather admitted that further and son were jointly doing business which was of finance, transport and batteries etc. Dr. Deep Kaur and her daughter did not make any positive statement about the educational qualifications of Jiwan Singh though it was vaguely stated by Dr. Deep Kaur that 'I do not think S. Jeevan Singh was even metriculate.' She, however, admitted that he used to write English also though she stated that he used to correspond in Urdu and used to write to her in Gurmuki only. Four recurring accounts in the bank had been opened during the lifetime of Jiwan Singh so that deposits there from could be utilised for marriage of

daughter Harleen Kaur and two deposits had matured during the lifetime from which he had started buying articles for marriage. The total amount received from the said accounts was about Rs. 80,000.00. The husband and wife had never any joint account in any bank. Jiwan Singh used to sign in English and his signatures were obtained by counsel of Dr. Deep Kaur from the bank. None have, however, been filed on record. She also admits that she had some correspondence exchanged between her and the Bank about the locker which she said Jiwan Singh had in Punjab & Sind Bank, but no such correspondence was filed on record. The case of petitioner appears to be that Jiwan Singh had no such bank locker. Dr. Kaur admitted that in 1982 petitioner showed her the Will and thereafter she never visited his house. PW-3 Mr. Jagdish Chander Segbal, one of the witnesses examined by the objectors, states that Dr. Kaur told him after 1 or 10 months of death of Jiwan Singh that one Will executed by Jiwan Singh had been found and in that Will nothing had been left to them. Dr. Kaur did not state that the Will Ex. P-1 was not in the handwriting of Jiwan Singh or that it was not signed by him though her daughter did make such a statement. The daughter said that her father knew English but not correct English. She, however, admitted that if some draft written in English was given to him, he could copy it out.

(16) Bearing in mind the aforesaid facts and proposition of law. I will now consider the various circumstances which, according to Mr. Vohra, learned counsel for the objectors, are suspicious and remain unexplained disentitling the petitioner to grant of probate. Learned counsel submits that it is the duty of the propounder of the Will to dispel all doubts and explain all suspicious circumstances. There is no doubt about this general proposition. It is also well settled that even if there is no plea of suspicious circumstances raised by the objector still the propounder of the Will has to completely dispel all doubt and explain all suspicious circumstances and satisfy the conscience of the court. There is also no doubt about the well settled principle of law that the initial onus of proving the Will is very heavy on the propounder of the Will. I may, however, add that evidence in the petition was recorded more than 25 years after the execution of the Will Ex. P-1 and this fact cannot be ignored while considering the objections to the grant of probate and considering the circumstances said to be suspicious. As held by the Supreme Court no hard and fast or inflexible rules can be laid down for the appreciation of

the evidence and which of the circumstances would be regarded as suspicious cannot be precisely said or exhaustively enumerated. It is no doubt true as contended by the objectors that they were totally disinherited and petitioner is the sole beneficiary under the Will but this fact by itself cannot be treated as suspicious circumstance as there is nothing on the record to establish that petitioner had taken any part in the execution of the Will let alone prominent part. The disinheritance by itself cannot be treated as a suspicious circumstance. The two currents of natural affection and settlement of properties can flow indistinct channels, and that the change in the course of the one need not necessarily have any effect on the direction of the other (See : Naresh CharanDas Gupta v.Paresh Charan Das Gupta and another, : [1955]1ITR1035(SC) ).Assuming that disinheritance of mother and daughter is a suspiciouscircumstance the disinheritance stands completely explained in the facts and circumstances of the case. Admittedly, the petitioner was the only son of the testator. Admittedly, the objectors were shifted to another house, may be,at a short distance of a mile or so and testator continued to live with his son till his death in the year 1981. Ordinarily, if a person finds that his wife and children are not pulling on well he would ask the children and their family members to shift to some other house and himself would continue to stay in the same house with his wife. In the present case, however, that did nothappen. According to Dr. Deep Kaur, she with her daughter shifted to another house in early part of 1963. According to Batra they were living separately when the Will was executed. Dr. Deep Kaur has also stated that since end of 1956 she is living at Delhi whereas Jiwan Singh was living atPathankot. This explains the state of mind of Jiwan Singh even if it be assumed that she started living separately from early 1963 and was not43living separately when Will was executed. I also cannot shut my eyes to the fact that when Will was executed S. Jeevan Singh was about 48 years old,He knew that his wife was well off. She was a practicing doctor. He could have well thought that he will solemnise the marriage of his daughter himself during his lifetime and that may have led him to disinherit her. It is not unknown of Indian parents to deprive daughters of any share in theirstate. It has also come .on record in the statement of Dr. Deep Kaur that the petitioner finally returned to India in January 1960 and was looking after the business jointly with his father. It also stands proved that four recurring deposits in

the banks had been opened so that amounts of the said deposits could be utilised on the marriage of Ms. Harleen Kaur. The amount received on maturity of those account was about Rs. 8U.000/. Two of the deposits had matured during lifetime of Jiwan Singh and the amount so received had been used by him for purchase of articles for marriage of the daughter. In view of the aforesaid facts and circumstances, the argument that Jiwan Singh loved her daughter and would not have disinherited her or atleast would have made some provision for her marriage is of noconsequence. The facts taken as a whole show that disinheritance of wife and daughter is not a suspicious circumstance and in any case it has been duly explained.

(17) Learned counsel for the objectors then contended that the effect of keeping the Will with Mr Batra raises serious doubts about the authenticity of the Will. The best person with whom the Will should have been kept, according to the counsel, was the petitioner himself, being the sole beneficiary and executor of the Will. It is well known that the Wills are generally kept with persons of trust. It is also well known that Wills are generally not kept with the beneficiaries. It has been proved that Mr.Batra was the Chartered Accountant of Jiwan Singh and he used to meet him quite often. It is not unknown to keep the Wills with the professions like Chartered Accountants. It also stands proved that Mr.Batra was also handling the income-tax matters of Dr. Deep Kaur as well. The objectors have not been able to shake the testimony of Mr, Batra in any manner.

(18) The petitioner had produced in evidence both the attesting witnesses besides Mr. Batra. It is not necessary that in every case a handwriting expert should be produced. There is nothing suspicious particularly when the objection on this score is vague. It may also be noticed that even Dr.Deep Kaur did not depose that the writing and signatures on the Will were not of her late husband though her daughter did make such a statement.Under the facts and circumstances of the case there was nothing unnatural in not examining the handwriting expert. Even the objectors did not care to produce a handwriting expert though Dr. Deep Kaur admitted that she had taken the specimen signatures in English of Jiwan Singh from the bank.

(19) It was next contended that testator did not know English language and the Will was in English. However, it stands proved even from the evidence of the objectors that Jeevan Singh sometimes used to write English though objectors claim that it was grammatically wrong and spellings would also be wrong. Ms. Harleen Kaur admitted that her father knew English but added the rider that he did not know much correct English. She admitted that if some draft written in English was given to her father he was in a position to copy it out. Both mother and daughter did not make any positive statement on educational qualification of Jiwan Singh but made only vague & vague statement. The objectors had not even pleaded in their reply that Jiwan Singh did know English and were satisfied with the vague plea of denial of proper execution of the Will. In their reply the objectors said that it is denied that S. Jeevan Singh signed the Will as alleged when he was in possession of full sense or that he understood all it was about. Admittedly testator used to sign in English. As observed above, the objectors had obtained English signature of testator from Bank but did not file it on record of the case. The evidence is also to be appreciated in the context of the fact that a rough draft of the Will had been prepared by Mr. Batra and handed over to Jiwan Singh. Another discrepancy pointed out by the objectors that Dr. Seth in his evidence had stated that the subject matter of the Will was not copied by Jiwan Singh from any other paper but he had scribed this Will in his own handwriting is of not much relevance considering that the evidence was being recorded more than 25 years after the execution of the Will. Further more considering that it is short Will of few lines only, the testator could have remembered that contents of the draft.

(20) It was nobody's case that when the Will Ex. P-I was executed testator was not in possession of full senses. No argument was put forth on behalf of respondents that Jiwan Singh was not of sound disposing mind at the time of execution of Will or any time even thereafter. It stands proved that Jiwan Singh was of sound disposing mind when he executed the Will Ex. P-I. He lived for about 20 years after executing the Will.

(21) With regard to the circumstance that legal terminology has been used in the Will, in my opinion, there is no such particular legal terminology used in the Will. Further, from the evidence of PW-2, it appears that testator must have had some

knowledge of this terminology as it was stated that he had been working as Assessor in Sessions Court in Pakistan. I do not find any merit in this circumstances.

(22) PW-1 Dr.Seth in his evidence stated that he had performed the clinical examination of Jiwan Singh before giving a certificate on the Will about his being of perfect health and sound disposing mind. The argument of Mr. Vohra was that the witness was going too much out of way to help the propounder of the Will and there was no question of clinical examination of S. Jiwan Singh as such examination was unnecessary before giving certificate of perfect health and sound disposing mind. The note of the doctor on the Will does not show the clinical examination but only says that the doctor had examined Jeevan Singh and after 25 years doctor states that he had performed clinical examination. The argument in my view is not of much consequence while determining the due execution and attestation of the Will.

(23) Both the attesting witnesses have deposed that they knew Jiwan Singh since long and their statement that they did not know the relations of S. Jeevan Singh with his family members is not of any relevance. Such facts can co-exist. The witnesses examined on behalf of the petitioner are trustworthy and their testimony has not been shaken in any manner. The aforesaid circumstances, on which giant reliance has been placed by the objectors are not suspicious circumstances and, in any case, these circumstances stand duly explained. I may also notice that the objectors have not pleaded exercise of any undue influence, fraud or coercion in respect of execution of the Will. The petitioner has been successful in discharging the onus placed on him. The fact that Jeevan Singh during his life-time was looking after his wife and daughter and had taken for them the house on rent or that he was prosecuting the eviction petition in respect of the said rented house do not in any manner affect the due execution and attestation of the Will particularly keeping in view the factum of mother and daughter having been provided separate accommodation since 1963. It has also come in evidence that the objectors had cordial relations with the petitioner even after death of S. Jiwan Singh and relations of petitioner with Dr. DeepKaur became sore only after about 8 or 10 months of death of S. Jiwan Singh when petitioner showed the Will executed

by Jiwan Singh and in that Will nothing had been left for the objectors. In spite of the said knowledge the objectors did not think it necessary to either take positive pleas in their reply/objections or to produce any other evidence to cause any doubt much less serious doubt about the validity of the Will.

(24) For the reasons stated above, I am of the opinion that the petitioner has successfully proved the valid execution and attestation of the Will Ex. P-I. Thus, both the issues are answered in favor of the petitioner. I accordingly, direct that probate be granted to the petitioner with a copy of Will dated 23/11/1961 (Ex P-I) attached subject to the petitioner complying with all legal requirements including filing of the administration bond. Parties are left to bear their own costs. Probate granted.

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