2025 INSC 866

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 3509-3510/2010

GURDIAL SINGH (DEAD) THROUGH LR — APPELLANT(S)

VERSUS

JAGIR KAUR (DEAD) AND ANR. ETC. — RESPONDENT(S)

J U D G M E N T

Joymalya Bagchi, J.

1. The appeals are directed against the common judgment and decree dated 13.11.2009 passed by the Punjab & Haryana High Court in R.S.A. No.837 of 1996 and R.S.A. No.958 of 1996 setting aside the concurrent findings of the Trial Court and the First Appellate Court, and declaring the 1st respondent as the owner and in possession of the suit land.

Facts

2. One Maya Singh was owner of land measuring 67 kanals 4 marlas in village Sathiala[1]. Appellant is the nephew of Maya Singh. 1st respondent is Maya Singh's wife. Gurpal Singh (hereinafter referred to as 2nd respondent) claimed to be the adopted son of Maya Singh and

1 Hereinafter referred to as "the suit land".

1st respondent. Maya Singh died on 10.11.1991. On 27.10.1992, the suit land was mutated in favour of 1st respondent. Apprehending that 1st respondent was taking steps to alienate the property, appellant filed a Suit RBT No. 329/1992 by propounding a Will executed by Maya Singh on 16.05.1991, bequeathing the land to him. In this suit, appellant contended his uncle, Maya Singh was married to one Joginder Kaur who had pre-deceased him and 1st respondent was not his lawfully wedded wife or 2nd respondent, their adopted son.

3. Whereas respondents filed another suit seeking declaration that 1st respondent is the lawfully wedded wife of Maya Singh and 2nd respondent is their adopted son.

4. Trial Court dismissed the respondents' suit holding that 2nd respondent was not the adopted son of Maya Singh and decreed the appellant's suit declaring that the Will dated 16.05.1991 propounded by the latter was genuine and by virtue of the Will, he was the lawful owner of the suit land. However, the Court held 1st respondent is the lawfully wedded wife of Maya Singh.

5. 1st respondent preferred two appeals challenging the dismissal of her suit as well as against the judgment and decree passed in the appellant's suit. The appeals were disposed of by the Additional District Judge, Amritsar (hereinafter referred to as the "First Appellate Court") upholding the judgment and decree passed in the appellant's suit.

6. Being aggrieved, 1st respondent filed Second Appeals being RSA No.958 of 1996 and RSA No.837 of 1996. The High Court framed the following substantial question of law:-

> *"Whether the execution of Will dated 16.05.1991, set up by Gurdial Singh, was duly proved?"*

Holding that the suspicious circumstance namely, non-mention of 1st respondent who is the wife of the testator Maya Singh and the reasons for her disinheritance in the Will exposed absence of 'free disposing mind' of the testator, High Court reversed the concurrent findings of the Trial Court and First Appellate Court and held 1st respondent was the owner and was entitled to possession of the suit land.

7. Being aggrieved by the impugned judgment, the appellant is before us. During the pendency of the appeal, both the appellant and 1st respondent died and have been substituted by their respective legal representatives.

8. The principal issue which falls for consideration is as follows:-

> *Whether, in the facts and circumstances of the case, non-mention of the status of 1st respondent as wife of the testator and failure to give reasons for her disinheritance in the Will dated 16.05.1991 is a suspicious circumstance which exposes lack of a free disposing mind of the testator, rendering the Will invalid?*

Arguments

9. Mr. Manoj Swarup, learned Senior Counsel argued that the Will is a registered one and its execution has been lawfully proved. Appellant had examined PW-2 Surinder Kumar, Scribe of the Will and PW-3

Chanan Singh, one of the attesting witnesses. PW-2 deposed he scribed the Will at the instance of Maya Singh. It was read over to Maya Singh and the latter had signed in presence of the attesting witnesses Chanan Singh (PW-3) and Pesra Singh. PW-3 stated he was the attesting witness and the Will was presented before Sub-Registrar where it was again read over to the testator. Their evidence could not be discredited during cross-examination. Mere non-mention of 1st respondent's name cannot be a ground to hold that the Will is not a genuine one. It was further contended that the monies left by Maya Singh had been given to 1st respondent and she was also entitled to his pension.

10. Per contra, Mr. Arun Bhardwaj, learned Senior Counsel submitted 1st respondent was the lawfully wedded wife of Maya Singh. Relationship between the couple was good as would be evidenced from 1st respondent's deposition that she was living with Maya Singh till his death. The Trial Court glossed over this evidence and came to a perverse finding that she had not served Maya Singh. While relations between the couple were good, appellant disputed 1st respondent's status as the wife of Maya Singh. Non-mention of 1st respondent's name and the reasons for her disinheritance in the Will must be viewed from this sinister design of the appellant. His effort not only to disinherit the 1st respondent but also to deny her the very status as his wife is eloquent in the omission of her status as wife in the Will. Viewed from this perspective, the tenor of the Will demonstrates the

masked voice and intention of the appellant and not the free disposing mind of the testator. Courts below erred in applying the correct legal principles and erroneously held that this suspicious circumstance did not vitiate the Will.

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*[2], this Court referring to *H. Venkatachala Iyengar vs. B.N. Thimmajamma & Ors.*[3] enumerated the principles relating to proof of Will:-

"10. ***** **** **** ****

2 (1977) 1 SCC 369.
3 1959 Supp (1) SCR 426.

"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."*

12. Similarly in *Ram Piari vs. Bhagwant & Ors.*[4] this Court held when suspicious circumstance exists, Courts should not be swayed by due execution of the Will alone:

*"**3.** .....Unfortunately none of the courts paid any attention to these probably because they were swayed with due execution even when this Court in Venkatachaliah case [AIR 1959 SC 443 : 1959 Supp 1 SCR 426] had held that, proof of signature raises a presumption about knowledge but the existence of suspicious circumstances rebuts it....."*

13. There is no cavil when suspicious circumstances exist and have not been repelled to the satisfaction of the Court, the Court would not be justified in holding that the Will is genuine since the signatures have been duly proved and the Will is registered one[5].

Parameters to ascertain 'suspicious circumstances' vitiating a Will:-

4 (1993) 3 SCC 364.
5 AIR 1962 SC 567, Para 23.

14. This brings us to the next issue i.e. what are the suspicious circumstances which may vitiate the disposition. In *Indu Bala Bose & Ors. vs. Manindra Chandra Bose & Anr.*[6] 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*[7] of suspicious circumstances as follows:

> "**17**.....*where 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 vs. PPK Balakrishnan Nambiar & Ors.*[8] 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."*

15. It is from this prism, we need to examine whether the High Court was justified in reversing the concurrent findings of the Trial Court and the appellate court and holding the Will was vitiated due to existence of suspicious circumstances.

Findings of the Trial Court

6 (1982) 1 SCC 20.
7 AIR 1946 PC 156.
8 1995 Supp (2) SCC 664.

Trial Court dealt with this issue in the following manner:

"As discussed above, defendant No. 1 is the widow of Maya Singh deceased. In Smt. Bhagya Wati Jain's case (supra) it was held that deprivation of legal heir from succession may be one of the suspicious circumstances along with other but that by itself is not sufficient ground to raise presumption against the Will. Admittedly, defendant No. 1, who is widow of Maya Singh, has been dis-inherited. Statement of Jagir Kaur defendant No. 1 who appeared as DW3 reads as follow:-

"I was married with Maya Singh, I lived with Maya Singh as his wife till his death. We took Guirpal Singh as our adopted son. He is the son of my sister. At the time of adoption Gurwas distributed. Maya Singh was in service and I draw pension. We are in possession of the land in suit. Maya Singh never told me having executed a Will in favour of the plaintiff. He was not on speaking terms with the plaintiff. I reside in the house of Maya Singh".

Jagir kaur has no where stated that the served Maya Singh during his life time. That she actually resided with Maya Singh on the day the Will was executed i.e. on 16.5.91. She is again silent whether she performed the last rites of Maya Singh. In the circumstances if Maya Singh did not mention about her in the Will the same is not required to be explained by the plaintiff. No doubt Arjan Singh and Naranjan Singh have stated that last rites were performed by the defendant No. 1. But their statements are to corroborate the statement of the defendant No. 1 and when the defendant No. 1 herself is silent about the service rendered to Maya Singh, statement of Arjan Singh and Naranjan Singh did not prove that Maya Singh was actually served and lived with defendant No. 1. As stated above there is nothing against Surinder Kumar and Chanan Singh PWs who proved the due execution of the Will by Maya Singh and if the widow had been deprived, of the Will cannot be discarded on this sole ground."

Findings of the First Appellate Court

First Appellate Court upheld the findings of the Trial Court holding:

"From this catena of judicial pronouncements there can be no manner of doubt that mere deprivation of a legal; heir or mere non mention of such legal heir's name in the testamentary disposition, in itself, does not invalidate the will. A careful perusal of the will would reveal that the same purport to beat the signatures of testator Maya Singh (since deceased) in English. It is an admitted case of the parties that Maya Singh had been serving as a Havaldar in the Army and had retired from Military service which implies that he was an educated person. The will in dispute is a registered document on which the signatures of the testator or of the attesting witnesses have not been challenged by Jagir Kaur. There is nothing on the record, if Maya Singh was suffering from any mental incapacity to execute the will. The written

statement of Jagir Kaur is quite silent with regards to the fact that Maya Singh was not in sound state of disposing mind. She has alleged that Maya Singh deceased was suffering from paralysis for the last more than 10 months before his death. Assuming it to be so, he might had been treated upon. Evidence regarding his treatment could have been produced by Jagir Kaur. There is no such evidence to the effect that he was paralytic without there being evidence, this plea remains unsubstantiated. Jagir Kaur, appearing as DW3 stated in her cross examination that Maya Singh had executed a will in her favour. She has not set up the same in her written statement nor produced the sesame on record for the reasons best known to her. Therefore, an adverse inference can be drawn to the effect that no valid will has been executed by Maya Singh deceased in her favour. Further, there is no allegation from the side of Jagir Kaur defendant that the marginal witnesses of the will Ex. P. 1 or the Sub Registrar by whom the same was registered were in collusion with the legatee Gurdial Singh. There is no gain saying the fact that Jagir Kaur is drawing pension of Maya Singh being his widow. Ex. P. 7, is the certified copy of the order dated 29.9.1994 which purport to have been handed down by Commissioner (Appeals) Jalandhar Division. In its concluding paragraph, it has been mentioned that the petitioner (referring to Gurdial Singh) has explained that respondent No. 1 (referring to Jagir Kaur) was given the entire money left by the deceased (Maya Singh) and she was also entitled to get pension. My be that due to adjustment of pension and other deposits, Maya Singh had deprived Jagir Kaur of her state in the will and for that he did not think it proper to make reference to her in the disputed will."

Findings of the High Court

High Court reversed these findings and held as under:-

"The complete silence on the part of the executant qua his wife, while executing the Will, renders the will a suspicious document and leads to the inference that the same had not been executed by the executant of his free disposing mind. Rather it leads to the inference that the propounder of the Will might have influenced the executant to execute the Will in his favour. In these circumstances, the Courts below erred in holding that the Will dated 16.5.1991 was a genuine document."

Analysis

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.[9] 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.[10]

17. It was rightly indicated in *Leela Rajagopal* vs. *Kamala Menon Cocharan*[11] 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."*

9 (1995) 4 SCC 459, (2004) 2 SCC 321 and (1995) Supp 2 SCC 665.
10 (1990) 3 SCC 364, Para 2.
11 (2014) 15 SCC 570.

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 insolation 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.

19. Appellant's case was not only to propound the Will in his favour but even to deny the very status of 1st respondent as Maya Singh's wife. When one reads the contents of the Will, appellant's stand is stark and palpable in its tenor and purport. The Will is a cryptic one where Maya Singh bequests his properties to his nephew i.e. the appellant, as the latter was taking care of him. However, the Will is completely silent with regard to the existence of his own wife and natural heir, i.e. the 1st respondent, or the reason for her disinheritance. Evidence on record shows 1st respondent was residing with Maya Singh till the latter's death. Nothing has come on record to show the relation between the couple was bitter. As per the appellant, she was nominated by Maya Singh and was entitled to receive his pension which demonstrates the testator's conduct in accepting 1st respondent as his lawfully wedded wife. Further, the Trial Court erroneously observed that non-performance of last rites of Maya Singh by 1st respondent hinted at sour relations between the couple. Ordinarily, in a Hindu/Sikh family, last

rites are performed by Male Sapinda relations. Given this practice, 1st respondent not performing last rites could not be treated as a contra indicator of indifferent relationship with her husband during the latter's lifetime. In this backdrop, it cannot be said Maya Singh had during his lifetime, denied his marriage with 1st respondent or admitted that their relation was strained, so as to prompt him to erase her very existence in the Will. Such erasure of marital status is the tell-tale insignia of the propounder and not the testator himself. A cumulative assessment of the attending circumstances including this unusual omission to mention the very existence of his wife in the Will, gives rise to serious doubt that the Will was executed as per the dictates of the appellant and is not the 'free will' of the testator.

20. In this background, we have no hesitation to hold that non-mention of 1st respondent or the reasons for her disinheritance in the Will, is an eloquent reminder that the free disposition of the testator was vitiated by the undue influence of the appellant.

21. We are not impressed with reference to *Dhanpat vs. Sheo Ram (deceased) through LRs. & Ors.*[12] that mere non-mention of some natural heirs would not vitiate the Will. In *Dhanpat* (Supra), the wife who had been disinherited, herself admitted that she had been ousted by her husband. On the other hand, DW3 unequivocally stated that she was living with her husband till his death and the specious rationale given that she may have been disinherited as Maya Singh's monies had

12 (2020) 16 SCC 209.

been settled in her favour and she was entitled to pension is hardly convincing. No evidence was led to show whether the quantum of money said to be settled in favour of 1st respondent was reasonable and would satisfy the conscience of a man of ordinary prudence with regard to her complete expungement in the Will.

22. For the aforesaid reasons, we affirm the impugned judgment and dismiss the appeals. Pending application (s), if any, stands disposed of.

……, J
(**SANJAY KAROL**)

……, J
(**JOYMALYA BAGCHI**)

NEW DELHI,

JULY 17, 2025