

**(2013) 07 P&H CK 0723**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Regular Second Appeal No. 1874 of 1986 (O and M)

Gurbachan Singh (deceased, through his LRs) and Others APPELLANT

Vs

Chanan Kaur alias Channo (deceased, through her LRs) and Others RESPONDENT

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**Date of Decision :** 22-07-2013

**Acts Referred:**

**Citation :** (2013) 07 P&H CK 0723

**Hon'ble Judges :** K. Kannan, J

**Bench :** Single Bench

**Advocate :** Harinder Kumar Aurora, for the Appellant; G.S. Virk, Advocate, for Mr. G.S. Nagra, for the Respondent

**Final Decision :** Dismissed

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## Judgement

K. Kannan, J.—The following substantial question of law arises for consideration in this second appeal:-- i) Whether the court below was in error in finding of Will to have been not established when all the relevant facts regarding the alleged suspicious circumstance had been properly explained and considered by the trial Court?

The suit had been filed for claiming possession of the property in the hands of the defendants by the plaintiffs claiming the property as heirs to their father Bhola Singh. Bhola Singh had died on 09.02.1971 and the principal contest was entered by the defendants, who were Bhola Singh's brother's grand son. The defendant propounded a Will alleged to have been executed by Bhola Singh on 01.04.1970 and that the property had fallen to the hands of his widow after Bhola Singh's death and after her death on 16.07.1978, the property had been handed over to him. The Will was posthumously registered in 1980 and the mutation had also been effected in his name. The plaintiffs had contested the mutation, but failed and the suit had been filed seeking for possession of the property.

2. The trial Court found that the plaintiff had examined two witnesses-Puran Singh and Naranjan Singh as DW1 and DW2, who spoke to the fact that Bhola Singh had affixed the thumb-impression and they had seen Bhola Singh affixing the thumb-impression and that Bhola Singh had also seen the respective witnesses sign the document in his presence as attestors. The Court, while finding that there has been due attestation, proceeded to examine whether the Will was attendant with any suspicious circumstance and reasoned each one of the circumstances held out against the defendants had been properly explained. On the first consideration regarding the fact that the plaintiff had been disinherited, the Court reasoned that the daughters had been married and were living in a foreign country, while the defendant had actually looked after Bhola Singh and his wife and hence, he had a natural affection for him and intended to benefit him. The Court also found that the plaintiff himself came to know about the Will only a few days before the death of his widow who spoke to him about the Will and handed over the Will to him and only subsequent to her death, he had the Will duly registered with the Sub-Registrar. The very same officer had also subsequently carried out the mutation in his favour. This also, according to the trial Court, is a valid justification that dispelled any room for suspicion about the genuineness of the document. The trial Court also observed that PW2 himself had admitted that the defendant had been taking care of Bhola Singh and his widow and, therefore, the bequest in favour of the defendants was most natural.

3. Each one of the circumstances spelt out was reversed by the appellate Court. The appellate Court held that even though the plaintiffs had been married and living away, there had been no reason given as to why the father was going as far as to totally disinherit daughters. Even the finding of the trial Court that PW2 had admitted that the defendant was taking care of Bhola Singh was not established and the judgment extracted the actual evidence tendered where PW2 was denying the suggestion that the defendant was looking after Bhola Singh and his wife. On the other hand, according to the appellate Court, the defendant was living in Jalandhar and not at the village where Bhola Singh was living. If at all, it was only the defendant's mother and other relatives, who were residing in the same village and could have been taking care of him and the bequest could have been if at all only to one of them and not to the defendant. It was another way of saying that there was no special circumstance or affection that Bhola Singh could have borne to the defendant to make a bequest wholly in his favour. The appellate Court also made a serious remark about the fact that there was a delayed publicity to the Will. Bhola Singh had died on 09.02.1971 and till the mutations were effected in late 1980, the Will had been not been published. With every one of the circumstances which were taken by the trial Court as not properly considered, the appellate Court reversed the finding.

4. The learned counsel for the appellants, who were the legal representatives of the original defendant, apart from reading the judgment of the trial Court in full, is not even in a position to supply to the Court the translation of the recitals of the Will written in urdu and explain whether there had been even a reference

about the plaintiffs in his Will and whether he was making any specific reason for disinheriting his daughter. I have also not the benefit of knowing first hand from the recitals where the testator was directing possession of the property soon after his death with merely a provision for income to be given to his widow or he was deferring the delivery of possession of the property till after the life time of the widow. The manner in which the possession was to be handed over would really explain whether there had been a delayed publicity to the Will or not. If it was a case of the property being given to the defendant going after his death with direction to take care of his widow by giving income, then he ought to have known the Will immediately. Any evidence that only before the death of widow 7 or 8 years after the death of her husband that she was making reference to the Will would be a grossly unnatural circumstance. I cannot believe that a person who had disinherited his daughters and was handing over the entire bequest to the defendant had not even chosen to inform him of the benefit that he was giving to him. If the Will was to be kept as secret and he had any reason to believe that giving publicity to it would have created some problem with his daughters causing some trouble, that itself ought to be again a circumstance and reason to be explained in Court. A person that propounds a Will needs to be spelt out every circumstance that could enable him to secure the bequest and weed out the dark cloud of suspicion. The propounder of the Will had failed to dispel the doubts.

5. I find that the appellate Court had properly considered all the relevant facts that would go into the reckoning for considering the genuineness or otherwise of the Will and had cogent reasons to offset the finding of fact regarding the Will in its judgment. I do not find that there has been any error in the appreciation of fact or law in the decision of the appellate Court for an interference in the second appeal. The second appeal is dismissed with costs throughout.