the writ or direction sought for in the nature of *habeas corpus* cannot be issued for his release. He can seek his remedy according to law in the case in connection with which he is stated to have been arrested. Nothing said herein should be taken as expression of opinion on the merits of that case. The petition is, accordingly dismissed, and the detenu is directed to be taken to the custody from which he has been produced.

N. K. S.

APPELLATE CIVIL

Before R. S. Narula, J.

AJIT SINGH,—*Appellant.*

versus

MADHA SINGH AND ANOTHER,—*Respondents.*

Regular Second Appeal No. 951 of 1960

November 11, 1969

Indian Succession Act (XXXIX of 1925)—Section 63—Disputed wills—Appreciation of evidence in proof thereof—Important principles as to—Stated.

Held, that in appreciating the evidence in support of disputed wills, the following principles are important. (i) The burden of proving a disputed will lies on the person who propounds it; (ii) if there are no suspicious circumstances surrounding the execution of the will, it is sufficient to discharge the initial onus by proving the signature or thumb-impression of the testator as required by law and by proof of testamentary capacity of the testator; (iii) in a case where the execution of the will is surrounded by suspicious circumstances or if the will is not a natural will in the circumstances of the case, the propounder must explain and remove the suspicion in order to entitle the Court to accept the will as genuine; (iv) even if no plea is taken by the caveator or the person contesting the genuineness of the will, a duty is cast on the propounder to satisfy the conscience of the Court about the genuineness of the will where the circumstances of the case give rise to doubts or suspicions; (v) what would give rise to suspicion in the mind of the Court would depend on the facts and circumstances of each particular case. One of the circumstances which has almost always taken as capable of giving rise to suspicion to the effect that the will does not express the mind of the testator is the taking of a prominant part in the execution of the will by the propounder himself on

whom substantial benefits are conferred under the will; (vi) in a case where suspicious circumstances are created the will has not to be rejected outright and the only result is that the Court must still proceed with an open mind which may nevertheless be vigilant and cautious; (vii) if the circumstances surrounding the execution of the will are suspicious, it cannot be argued that the mere fact that the will was got registered is by itself sufficient to dispel the suspicions without scrutiny of the evidence of registration; and (viii) registration of a will during the lifetime of the testator would dispel the doubt as to the genuineness of the will only if the registration was made in such a manner that it was brought home to the testator that the document of which he was admitting execution was a will providing for disposal of his property. The suspicion would not be dispelled by registration if it is shown that the document was registered in a perfunctory manner and the testator had no opportunity to really know as to what were the contents of the document, of which he was admitting execution. Subject to the general principles referred to above, the evidence led in support of or against the execution of or genuineness of the will has to be appraised in each case in the same manner as evidence in support of any other issue is weighed by a Court. (Para 6)

Regular Second Appeal from the decree of the Court of Shri Radha Krishan Baweja, Additional District Judge, Gurdaspur, dated the 14th April, 1960, affirming with costs that of Shri G. K. Bhatnagar, Senior Sub Judge, Gurdaspur, dated the 19th January, 1960, dismissing the plaintiffs' suit with costs.

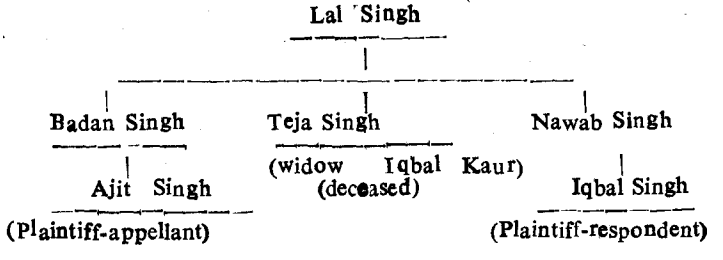
D. S. NEHRA, NARINDER SINGH, K. S. NEHRA, ADVOCATES, for the Appellants.

J. N. SETH AND RAMESHWAR SHARMA, FOR SHRI R. N. MITTAL, ADVOCATES, for the Respondents.

JUDGMENT

NARULA, J.—The facts leading to the filing of this regular second appeal against the judgment and decree of the Court of Shri R. K. Baweja, Additional District Judge, Gurdaspur, affirming that of the trial Court, dated January 19, 1960, are these.

(2) The property in dispute belonged to Smt. Iqbal Kaur whose relationship with the parties to this litigation would become apparent from the following pedigree-table.



(3) Madha Singh, the contesting respondent, is the son of the brother of Iqbal Kaur. After the death of Teja Singh, his widow Iqbal Kaur was not being looked after by the plaintiffs, but had started living with her brother where she was being looked after by Madha Singh. On November 25, 1958, she made the disputed will whereunder she bequeathed the property in dispute, which comprised her entire estate, in favour of Madha Singh respondent. At that time, she was admittedly suffering from an attack of paralysis of one side of the body. She died on December 1, 1958. After her death, the will exhibit D. 1 was presented for registration on December 26, 1958, and was duly registered.

(4) On February 20, 1959, Ajit Singh, appellant and Iqbal Singh, respondent 2 filed a suit against Madha Singh, respondent for possession of the property in dispute. They claimed the property as nephews of Teja Singh and natural heirs of Iqbal Kaur. The suit was resisted by Madha Singh. He claimed to have become owner of the property under the will exhibit D. 1. The plaintiffs filed a replication in reply to the written statement of Madha Singh. The relevant averments are contained in paragraph 2 of the replication. It was admitted therein that Madha Singh, defendant had been cultivating the land in dispute for some time and was living with the deceased at the time of her death. It was denied that Iqbal Kaur had executed any valid will. It was also denied that the alleged will was signed or thumb-marked by Iqbal Kaur. The plaintiffs went to the extent of denying that Iqbal Kaur was alive at the time of the making of the will and lastly added that they did not admit that she was in her proper senses and sound disposing mind so as to be able to understand her interests and benefits at the time of the execution of the will. In the replication, the plaintiffs specifically denied that Madha Singh had been rendering service to the deceased. From the pleadings of the parties, the trial Court framed the following issues on May 29, 1959,—

"(1) Whether the plaintiffs are the collaterals of the husband of Iqbal Kaur, deceased and are they as such her legal heirs ?

(2) Whether Iqbal Kaur made a valid will in favour of the defendant in respect of the property in dispute ?

(3) Relief."

By its judgment, dated January 19, 1960, the trial Court held in favour of the plaintiffs on issue No. 1, but dismissed the suit on account of its finding on issue No. 2 to the effect that Iqbal Kaur had made a valid will in favour of Madha Singh, respondent in respect of the property in dispute. Both the plaintiffs preferred an appeal against the decree of the trial Court. This appeal was dismissed by the well-considered judgment of the learned Additional District Judge, Gurdaspur, on April 14, 1960. Not satisfied with the same, Ajit Singh one of the plaintiffs, has come up in second appeal to this Court and has joined his co-plaintiff, Iqbal Singh, as a *pro forma* respondent.

(5) The solitary ground pressed by Mr. D. S. Nehra, learned counsel for the appellant, at the hearing of the case is that the decision of both the Courts below on issue No. 2 is incorrect. He submits that the lower appellate Court should have held on a proper appreciation of evidence on the record of this case that the execution of the will exhibit D. 1 by Iqbal Kaur while in proper disposing mind had not been proved. Though Mr. Nehra, repeatedly urged that the finding of fact recorded by the lower appellate Court on the crucial issue is liable to be set aside as it has been recorded contrary to the principles subsequently settled by their Lordships of the Supreme Court in various cases (to which reference will hereafter be made) relating to appreciation of evidence in support of disputed wills, he in fact argued this case as if it were a regular first appeal and took me through the entire documentary and oral evidence on the record of the suit. The legal proposition for pressing which into service reliance was placed by Mr. Nehra on the following Judgments of the Supreme Court is by now well settled—

(1) *V. Venkatachala Iyengar* v. *B. N. Thimmajamma and others* (1);

(2) *Rani Purnima Devi and another* v. *Kumar Khagendra Narayan Dev and another* (2);

(3) *Ramchandra Rambux* v. *Champabai and others* (3); and

(4) *Gorantla Thataiah* v. *Thotakura Venkata Subbaiah and others* (4).

(1) 1959 (1) S.C.R. 426.
(2) 1962 (3) S.C.R. 195.
(3) A.I.R. 1965 S.C. 354.
(4) 1968 (3) S.C.R. 473.

The judgment of the Punjab High Court in *Amar Nath and others* v. *Ganga Ram, etc.* (5) merely follows the dictum of the Supreme Court in the earlier cases.

(6) The principles which emerge from the abovementioned decisions are not at all disputed and may be summarised thus :

(i) The burden of proving a disputed will lies on the person who propounds it;

(ii) if there are no suspicious circumstances surrounding the execution of the will, it is sufficient to discharge the initial onus by proving the signature or thumb-impression of the testator as required by law and by proof of testamentary capacity of the testator;

(iii) in a case where the execution of the will is surrounded by suspicious circumstances or if the will is not a natural will in the circumstances of the case, the propounder must explain and remove the suspicion in order to entitle the court to accept the will as genuine ;

(iv) even if no plea is taken by the caveator or the person contesting the genuineness of the will, a duty is cast on the propounder to satisfy the conscience of the Court about the genuineness of the will where the circumstances of the case give rise to doubts or suspicions;

(v) what would give rise to suspicion in the mind of the Court would depend on the facts and circumstances of each particular case. One of the circumstances which has almost always taken as capable of giving rise to suspicions to the effect that the will does not express the mind of the testator is the taking of a prominent part in the execution of the will by the propounder himself on whom substantial benefits are conferred under the will;

(vi) in a case where suspicious circumstances are created the will has not to be rejected outright and the only result is that the Court must still proceed with an open mind which may nevertheless be vigilant and cautious ;

(5) 1962 Curr. L.J. (Pb.) 557.

(vii) if the circumstances surrounding the execution of the will are suspicious, it cannot be argued that the mere fact that the will was got registered is by itself sufficient to dispel the suspicions without scrutiny of the evidence of registration; and

(viii) registration of a will during the lifetime of the testator would dispel the doubt as to the genuineness of the will only if the registration was made in such a manner that it was brought home to the testator that the document of which he was admitting execution was a will providing for disposal of his property. The suspicion would not be dispelled by registration if it is shown that the document was registered in a perfunctory manner and the testator had no opportunity to really know as to what were the contents of the document, of which he was admitting execution. Subject to the general principles referred to above, the evidence led in support of or against the execution of or genuineness of the will has to be appraised in each case in the same manner as evidence in support of any other issue is weighed by a Court.

(7) Mr. J. N. Seth, learned counsel for the contesting respondent, referred to the following additional authorities—

(1) The Division Bench judgment of the Lahore High Court in *F.J. Woolmer* v. *Mrs. D. I. Daly and others*, (6), wherein, it was held, *inter-alia*, that a testator suffering with paralysis even if it has affected his mental capacity to some extent may still be able to execute a will of simple character;

(2) The judgment of their Lordships of the Privy Council in *Judah* v. *Isolyne Shrojbashini Bose and another*, (7). In that case it was held that the fact that the testator was unwell when he executed the will is a long way from saying that he had no testamentary capacity; and

(6) I.L.R. (1920) 1 Lah. 173.
(7) A.I.R. 1945 P.C. 174.

(3) judgment of Shamsher Bahadur, J. in *Chhanga Singh* v. *Dharam Singh and others*, (8). The learned Judge in that case followed the dictum of the Privy Council in *Judah's case* (7) and held that in order to have the will declared as valid the testator is not required to be proved to be in perfect state of health and that it is sufficient to prove that the testator was able to give the outlines of the manner in which his estate was to be disposed of.

(8) Mr. Nehra's submission is that due regard has not been paid by the first appellate Court to the settled principles referred to above. According to the counsel, the following facts constitute evidence of suspicious circumstances which should have led the Courts below to have exercised greater caution and have been more vigilant in appreciating the evidence led by the propounder of the will—

(a) Though the will is stated to have been scribed by a deed-writer in the Tehsil Premises and the execution of the will is stated to have been completed by about 1.00 p.m. on November 25, 1958, there is no reason why the will should not have been presented for registration to the Sub-Registrar on the same day, though the Sub-Registrar admittedly held his office in the Tehsil compound :

(b) Even if it is believed that soon after the execution of the will the Sub-Registrar left his office on November 25, 1958, and the will could not, therefore, be entertained for registration on that day, it would in normal circumstances have been presented for registration to the Sub-Registrar on the next day, particularly when it is in evidence that the deceased remained in the Tehsil headquarters on the morning of November 26, 1958, and was taken to her village in the forenoon of that day :

(c) the testator was between seventy to eighty years old according to the evidence on the record of the case and was definitely suffering from paralysis of one side of her body and according to the opinion of the doctor it was said even on the evening of November 25, 1958, that there was no chance of her recovery ;

(8) 1964 P.L.R. 1208.

(d) The testator was an illiterate woman and did not understand the language (Urdu) in which the will was written and she had merely put her thumb-impression on the will;

(e) The will does not give any reason for excluding the normal heirs of the testator from her estate and the solitary reason given for making the bequest in favour of the testator's brother's son is relegated to the position of a note at the fag end of the will; and

(f) Madha Singh, respondent, the sole beneficiary under the will, has taken a prominent part in accompanying (amongst others) the testator to the Tehsil headquarters to have the will executed, to have brought back the testator from the Tehsil headquarters and to have summoned all the evidence in this case to prove the will.

(9) After carefully considering all the facts and circumstances of this case, I am unable to hold that any serious suspicion could have been created by the facts referred to above regarding the disputed will not representing the real intention of the testator. It is the admitted case of both sides that it was Madha Singh who had been looking after the testator since after the death of her husband, that the testator and the respondent were living together for a long time before her death, that none of the relatives of the husband of the testator had looked after her since she became a widow and that Madha Singh, respondent had started cultivating the testator's land even during her lifetime with her consent. All these facts lead to the irresistible conclusion that the will is, in the circumstances of the case, most natural and not, in any way, unreasonable. Madha Singh respondent was not alone when he took the testator to the Tehsil headquarters. He was accompanied by Surain Singh, D.W. 2, Lambardar Santa Singh, D.W. 1 and Santokh Singh, D.W. 4. All these abovenamed three witnesses attested the will exhibit D. 1. Out of them Lambardar Santa Singh and Surain Singh, appeared subsequently before the Sub-Registrar to identify Madha Singh, respondent. Even the contesting respondent has admitted that Santa Singh was with the testator when she was taken to the hospital on the evening of November 25, 1958. All the three witnesses have supported the will and have not been shaken in cross-examination. They have no direct interest either in the estate of the testator or in the respondent.

(10) No suspicion at all can be created because of the non-registration of the will on the 25th or 26th of November, 1958. The Sub-Registrar himself has appeared in the witness-box and has stated that he left his office on November 25, 1958, at about 1.30 p.m. This is consistant with the case of the defendant that soon after the will was completed at about 1.00 p.m. the Sub-Registrar left his office. There is no doubt that the testator remained at the Tehsil headquarters on the 26th morning, but it is significant that 26th of November, 1958, was a public holiday on account of Guru Nanak Birth Day. Counsel could not even argue that in these circumstances the testator should have been kept at the Tehsil headquarters for still another day contrary to the medical advice that she should be taken to her place and given the medicines prescribed for her, as there was no use admitting her in the hospital.

(11) The mere fact that the testator was about seventy-five or eighty years old does not create any suspicion. The deed-writer Sukh Dial D.W. 3, stated that the will had been scribed by him in accordance with the instructions given by the testator and had been read over to her and admitted by her to be correct and thumb-marked by her. It is not necessary that if a part of a human body is paralysed, the patient is necessarily rendered incapable of having a disposing mind. Dr. H. S. Bhandari, P.W. 1 came in the witness-box: He did not state that the deceased was not capable of understanding Nor did he say that she was not in a disposing state of mind at the time he examined her on the evening of November 25, 1958. P.W. 2 Vir Bhan, who was the compounder in the hospital, has unequivocally stated that the testator could, in the evening of November 25, understand the questions put to her and could even sit up when asked to do so. The Courts below have believed the statements of the attesting witnesses and the scribe and have not relied on the oral testimony of some witnesses produced by the plaintiff who have deposed that the testator was not possessed of normal mental faculties at the relevant time. Neither I have any reason to differ from that view; nor is it open to me to do so.

(12) I am unable to find any force in the contention of Mr. Nehra to the effect that suspicion should be aroused in the mind of the Court merely because the will was written in a script and a language which was not known to the testator. If this were correct, the will of every illiterate person could be said to be suspicious. Nor

is it necessary to give the reason for excluding the natural heirs of the testator when the bequest is clear and unambiguous and is in favour of a near relative to whom the testator was admittedly obliged. The testator took care to get it mentioned at the end of the will that Madha Singh was the son of her real brother who had been living with her for the previous twelve or thirteen years. This is enough explanation of her desire to make the bequest in favour of Madha Singh.

(13) It is a simple and straightforward will, which is very natural in the circumstances of the case and has been proved to have been executed by Iqbal Kaur of her free will while in sound disposing mind.

(14) After carefully considering all the submissions made by the learned counsel and the entire facts and circumstances of the case, I am, therefore, unable to hold contrary to what has been found by both the Courts below on issue No. 2. No other point having been argued in this case, the appeal fails and is dismissed. I do not, however, make any order as to costs of this appeal.

R.N.M.

APPELLATE CIVIL

Before Prem Chand Pandit and H. R. Sodhi, JJ.

HARDYAL,—*Appellant.*

versus

STATE OF PUNJAB,—*Respondent.*

First Appeal from Order No. 120 of 1962

November 18, 1969

Arbitration Act (X of 1940)—Sections 3, 28, 30 and First Schedule, para 3—Evidence Act (I of 1872)— Section 115—Award given by the arbitrator after prescribed time—Such award—Whether a nullity—Parties to the arbitration proceedings raising no objection regarding time of the award before the arbitrator and participating in the proceedings after the prescribed time—Such parties—Whether estopped to challenge the validity of the award—Objection raised before the Court regarding the invalidity of the award for its having been made beyond the prescribed time—Court dismissing the objection—Whether deemed to have enlarged the time for making the award.