

(1996) 05 P&H CK 0027

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 2509 of 1991

Vesakha Singh

APPELLANT

Vs

Jit Singh and Another

RESPONDENT

Date of Decision: May 10, 1996

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 27, 100
- Evidence Act, 1872 - Section 50

Citation: (1996) 2 CivCC 339 : (1996) 114 PLR 45

Hon'ble Judges: R.L. Anand, J

Bench: Single Bench

Advocate: K.K. Mehta, for the Appellant; S.K. Singla, for the Respondent

Judgement

R.L. Anand, J.

Basakha Singh, defendant No. 1 in the trial Court, has filed the present R.S.A. and it has been directed against the judgment and decree dated 10.10.1990 passed by the Court of Additional District Judge, Barnala, District Sangrur, who affirmed the judgment and decree dated 31.1.1987 passed by the Sub Judge 1st Class, Barnala, who decreed the suit of the plaintiff-respondent Jit Singh for declaration as prayed for.

2. Jit Singh plaintiff-respondent filed a suit for declaration that he is the owner in possession in respect of the share of the deceased Daman Singh son of Sunder Singh in the land measuring 91 Kanals 13 Marlas on the basis of the will dated 13.3.1984 executed by Daman Singh deceased in his favour and that the sale deed is ineffective against the rights of the plaintiff and for the relief of perpetual injunction for restraining the defendants from interfering with the possession of the plaintiff in respect of the land measuring 18 Kanals 12 Marlas, fully described in the head-note of the plaint, situated in village Sehna, which was alienated by Jangir Kaur defendant No.2 in favour of Basakha Singh defendant No.1, and that Basakha Singh defendant

No.I should not alienate the same in any manner.

3. The case set up by the plaintiff was that Daman Singh deceased during his life time executed a will dated 13th March, 1984 (Ex.P1). Daman Singh was not a married person. The plaintiff occupied the suit land during the life time of Daman Singh as Co-sharer. The plaintiff used to cultivate the land both the his share and of Daman Singh and has been cultivating the same now. On the basis of the will he has become the owner of the land. The plaintiff alleged that defendant No.I Basakha Singh (now appellant), impersonating defendant No.2 Smt. Jangir Kaur as the widow of the deceased (Daman Singh) got the sale deed No. 685 dated 29.11.1984 executed in his favour fictitiously, whereas Smt. Jangir Kaur was not the widow of Daman Singh. There had been no marriage between Daman Singh and Smt. Jangir Kaur. The mutation in respect of the inheritance of Daman Singh had not been decided at the time of the institution of the suit. Therefore, Smt. Jangir Kaur was not competent to alienate the property of Daman Singh. The defendants wanted to occupy forcibly the land measuring 91 kanals 13 marlas and they made an attempt for forcible occupation on 13.12.1984. Defendant No.2 wanted to alienate the property by transferring the same on the basis of the sale deed executed by her in favour of defendant No. 1 Basakha Singh. Hence the suit.

4. Notice of the suit was given to the defendants and objections were taken, such as, the suit was not maintainable in the present form; that the suit is barred by time; that the suit is liable to be dismissed under Order 7 Rule 11, C.P.C.; that the plaintiff has got no locus standi/cause of action to file the suit; that the suit is bad for non-joinder and mis-joinder of necessary parties and that the defendants are entitled to the special costs of Rs. 2,000/-. On merits it was pleaded by the defendants that the plaintiff never came into possession of the suit land, which has been occupied by Smt. Jangir Kaur defendant No. 2 after the death of Daman Singh as his widow. Smt. Jangir Kaur out of the land owned and possessed by her sold 15 Kanals 10 Marlas of land to Basakha Singh defendant No.I on 29.11.1984 for a consideration of Rs. 25,000/- and delivered the possession thereof to him. Defendant Basakha Singh is a bona fide purchaser for a valuable consideration and without notice. The possession with respect to the remaining land is with Smt. Jangir Kaur and Daman Singh did not execute any will in favour of plaintiff Jit Singh. The will propounded by the plaintiff is a forged and fictitious document and the same has been prepared in conspiracy with the attesting witnesses of the same. The defendants also denied the plaintiff being the grandson of the sister of deceased Daman Singh. It has been alleged that Daman Singh had no sister. Daman Singh was married with Smt. Jangir Kaur defendant, who is his widow. Smt. Jangir Kaur used to serve the deceased. On 7.11.1984 the plaintiff filed an application before the Naib Tehsildar Bhadaur admitting Smt. Jangir Kaur to be the widow of Daman Singh and, therefore, he is estopped from filing the suit by his act and conduct. The application moved by Jit Singh to the Assistant Collector Grade II, Bhadaur for the correction of the Gir-dawari has been dismissed. After controverting the other

allegations of the plaint, the defendants prayed for the dismissal of the suit.

5. The plaintiff filed a rejoinder to the written statement in which he reiterated his allegations made in the plaint by denying those of the written statement.

6. On the above pleadings of the parties, the trial Court framed the following issues :-

1. Whether Daman Singh executed a valid will dated 13.3.84 in favour of the plaintiff ? OPP.

2. Whether plaintiff is the owner in possession of the suit property ? OPP.

3. Whether Jangir Kaur is widow of Daman Singh ? OPP.

4. Whether defendants are purchasers for valid consideration without any notice of the rights of the plaintiff, if any with respect to land measuring 15 Kanals 10 Marlas ? OPD. 5. Whether suit is bad for non-joinder of parties ? OPD.

6. Whether plaintiff has no locus standi or cause of action to file this suit ? OPD.

7. Whether suit is barred by time ? OPD.

8. Whether suit is barred under Order 7 Rule 11, CPC ? OPD.

9. Whether the suit is not maintainable in the present form ? OPD.

10. Whether the defendants are entitled to special costs, if so to what extent ? OPD.

11. Whether the plaintiff is entitled to injunction as prayed for ? OPD.

12. Relief.

On conclusion of the evidence led by the parties, issues Nos. 1 and 2 were decided in favour of the plaintiff and against the defendants. It was held that Smt. Jangir Kaur defendant No.2 was not the widow of Daman Singh and the relationship of husband and wife has not been proved. Issue No. 4 was also decided against the defendants. Issue No. 5 decided in favour of the plaintiff like issue No. 6. Issues Nos. 7, 8 and 9 were decided against the defendants like issue No. 10. Issue No. 11 was not, however, decided in favour of the plaintiff, and finally the suit was decreed.

7. Aggrieved by the judgment and decree passed by the trial Court, Basakha Singh defendant No. 1 filed an appeal in the Court of Additional District Judge, Barnala, who vide the impugned judgment dated 10th October, 1990 dismissed the appeal by affirming the findings of the trial Court. Aggrieved by the judgments of the Courts below, the present appeal has been filed by Basakha Singh.

8. During the pendency of the appeal Basakha Singh defendant filed an application under Order 41 Rule 27, C.P.C., praying that he may be allowed to place on record the certified copies of the voters lists in order to establish that Smt. Jangir Kaur was the widow of Daman Singh. In the application which was supported by an affidavit it

was averred by the applicant-appellant that he is the bona fide transferee for consideration vide sale deed dated 29.11.1984 for a sum of Rs. 25,000/-. It was averred that before purchasing the property he had obtained the Farad as well as the mutation of inheritance from which it appeared that Smt. Jangir Kaur was the widow of Daman Singh and she was in possession of the property. During the course of trials the Voters list for the year 1980 (Ex.DC) was produced to show that Smt. Jangir Kaur was the wife of Daman Singh. But the said entry has been rejected by the Courts below wholly on unsustainable reasons and on account of the fact that it was a solitary entry in the Voters List for the year 1980, which had been produced in defence evidence. The appellant avers that he made an application to the chief Electoral officer, Punjab, and obtained a certified copy of the Voters' List for the year 1976 where Smt. Jangir Kaur has been recorded as wife of Daman Singh and from this background it would be established that Smt. Jangir Kaur is the widow of Daman Singh. The Voters' List is a document prepared by the Government officials in the discharge of their official duties. Moreover these entries relate to a period when there was no dispute between the parties nor it was being anticipated. The document, i.e., the Voters List, is admissible without any proof and the same may be led into evidence.

9.1 have heard Shri K.K. Mehta, Advocate, on behalf of the appellant, and Shri S.R. Singal, Advocate, on behalf of the respondent, and with their assistance have gone through the record of this case. Vide this judgment I intend to dispose of the application as well as the main appeal itself and first of all I would dispose of the application under Order 41 Rule 27 C.P.C.

10. No doubt embargo has been put under Order 41 Rule 27 C.P.C., upon the party to a litigation that it can produce the additional evidence whether oral or documentary as of a right but the powers are conferred upon the appellate Court if it requires such proposed additional evidence sought to be produced by the litigant to enable it to pronounce the judgment or for any other substantial cause. Before doing that an obligation has also been put on the court admitting the document that the opposite party should not be taken by surprise and at least that party against whom the document is sought to be produced must be well aware about the nature of the controversy. Further the appellate Court which intends to allow the documentary evidence must see the genuineness and authenticity of that document before taking it on record. The controversy between the plaintiff and the defendants throughout in the trial court was whether Smt. Jangir Kaur was the wife of Daman Singh or not because the plaintiff claims himself to be the grandson of the sister of Daman Singh and has propounded a will in his favour. The case of Smt. Jangir Kaur and the contesting defendant Basakha Singh was that Smt. Jangir Kaur is the widow of Daman Singh, who never executed any will in favour of the plaintiff and that the will is surrounded by suspicious circumstances and could not be executed in favour of the plaintiff in the presence of Smt. Jangir Kaur, who had no inimical relations with her husband Daman Singh, and who had been serving him during his life time

and there was no occasion for Daman Singh to deprive Smt. Jangir Kaur of the property by appointing a remote legatee, who had no occasion to serve Daman Singh. Basakha Singh and Smt. Jangir Kaur had placed on record copy of the Voters List of the year 1980, showing that Smt. Jangir Kaur is the wife of Daman Singh, but this document has been discarded by the courts below on the plea that the ages of Daman Singh and Smt. Jangir Kaur did not tally, with the oral evidence produced by the defendants and that this document alone will not establish the relationship of husband and wife between Daman Singh and Smt. Jangir Kaur, and thirdly, the appellant did not place enough documentary evidence in the shape of Voters Lists to corroborate the Voters List (Ex.DC) of the year 1980. The proposed additional evidence, i.e., the Voters List of the year 1976, would help me to determine the issue as to whether Smt. Jangir Kaur was the wife of Daman Singh or not and, therefore, this document is taken on record and would be discussed in the latter portion of the judgment. The Civil Misc. by which the document was sought to be produced by way of additional evidence is thus allowed.

11. Reverting to the merits of the case, the learned counsel appearing on behalf of the appellant submitted that there was enough evidence on the record to establish that Daman Singh never executed any will dated 13th March, 1984, in favour of the plaintiff and it is also proved on the record that Smt. Jangir Kaur is the widow of Daman Singh and the appellant Basakha Singh was a purchaser for consideration. A valid title passes to Basakha Singh as Smt. Jangir Kaur had absolute right to alienate the property. Even otherwise appellant Basakha Singh is a bona fide purchaser for consideration because after the death of Daman Singh the property was entered in the name of Smt. Jangir Kaur as owner.

12. On the contrary, learned counsel appearing on behalf of the plaintiff-respondent has supported the reasons of the trial Court as well as the first appellate Court and submitted that the suit of Jit Singh has been rightly decreed. The concurrent findings of the Courts below cannot be interfered by the High Court in the R.S.A. and the learned counsel appearing on behalf of the plaintiff-respondent has drawn my attention to the citations reported as [Sadhu Vs. Kishni](#), ; [Madan Lal Vs. Mst. Gopi and Another](#), ; and Smt Surasti Devi and Anr. v. Smt. Shanti Devi and Ors. (1988) 93 P.L.R. 26. I am in respectful agreement with the case law which has been incorporated by the Hon"ble Judges of this Court as well as the Hon"ble Judges of the Apex Court. Even a trio would agree that the concurrent findings of fact should not be disturbed and it would not be proper on the part of this court sitting in the second appeal to reappraise the evidence and set aside the finding of fact. However, there is a salutary principle of law also when the second appellate Court can reassess the evidence led by the parties in the trial Court if it finds that both the Courts below have ignored to make proper appreciation of the material, oral/documentary evidence produced by the parties, in the judgments, causing serious prejudice to a party in suit The High Court in the regular second appeal would also invoke its powers if it finds that the Courts below have committed a grave irregularity or

patent illegality in interpreting the document or by ignoring the facts which can change the fate of the case altogether. For the reasons stated above, I would like to reassess the evidence which has been led by the parties without disturbing the ratio which has been laid down by the Hon"ble Supreme Court of India and by the Hon"ble Judges of this Court. At this stage I am not in agreement with the submissions made by the learned counsel for the respondent that this Court in no circumstances can set aside the finding of fact recorded by the Courts below.

13. Now I proceed to dispose of issue No. 1 which was decided in favour of the plaintiff as to whether Daman Singh deceased executed a will dated 13th March, 1984 in favour of the plaintiff or not. I have gone through the detailed reasons given by the trial Court and affirmed by the first appellate Court under issue No.1 and I have my own reasons to differ with the findings of the courts below. I had already stated above that the will in dispute is Exhibit P1 on the record written on a single sheet in Urdu. The scribe of this witness is Mr. Hari Ram and is allegedly attested by Mukhtiar Singh, Lachman Singh, Gurdev Singh and Gurnam Singh; and also thumb marked by Daman Singh. A bare glance on this document leaves no manner of doubt in my mind that this document has been fabricated over the thumb impression of Daman Singh, and the services of at least one attesting witness Gurdev Singh have been procured subsequently to attest this will as an attesting witness. This glaring aspect of this case has been conveniently overlooked by the Courts below. The forger tries to commit forgery in perfection but nature always helps the rightful person. The space between the first 10 lines of the will is uniform but the space between the 10th and 11th lines is definitely more as compared to the previous 10 lines, casting serious doubt at least in the mind of this Court that a ready made material was given to Hari Ram scribe to get it written on the page above the thumb impression of Daman Singh. Upto the first ten lines the writer was writing the will in the normal circumstances but he fumbled by writing the 11th and 12th lines as he wanted to conclude the matter between the two lines, which he could not do so if he was to write 11th and 12th lines by leaving the normal space which was left out for writing the first ten lines. Second glaring aspect which has come to my notice by giving a bare glance to this will is that the name of one attesting witness Gurdev Singh has been written with a separate pen. The following words :

"Gurdev Singh Panch, Gram Panchayat Sehna, Vald Inder Singh Jat Sehna"

(Translation; Gurdev Singh, Member, Gram Panchayat, Sehna, son of Inder Singh Jat Sehna) have been written with a different pen, the tip of which was thin as compared to the other writing of the will (Ex.P1). The case of the plaintiff is that Gurdev Singh, also put his thumb impression in the presence of the executor of the will Daman Singh, but this aspect is not proved. No doubt the above reasons, to my mind, have not been put to the witness Gurdev Singh when he appeared in the witness-box, but nevertheless this Court can make a cursory glance to the will itself

in order to find out its genuineness. In [H. Venkatachala Iyengar Vs. B.N. Thimmajamma and Others,](#) , it has been laid down that in order to prove the genuineness of the will the onus to prove lies on the propounder. An obligation has been put upon the propounder to show by satisfactory evidence that the will was signed by the testator and that the testator was in sound and disposing mind and that he understood the nature and effect of the dispositions and put his signatures on the document of his own free will. The will can be relied upon when the evidence adduced in respect of the will is disinterested, satisfactory and sufficient to prove the sound and disposing state of the testator's mind and his signatures as required by the law. If there are suspicious circumstances surrounding the will, it is the obligation of the propounder to remove those suspicious circumstances.

14. The evidence in this case now has to be looked into in the light of the principles as enshrined in the above authorities. After the death of Daman Singh, mutation proceedings were started and the matter was placed before the Assistant Collector 1st Grade. Exhibit PB is the mutation proceedings dated 8th February, 1985, when Shri Lal Singh, Assistant Collector 2nd Grade Bhadaur went to village Sehna. It shows that mutation of Daman Singh, who died on 27.9.1984, came for hearing before Shri Lal Singh. In the pedigree table recorded at the back of Ex. PB on the day of mutation, it is clearly shown that Smt. Jangir Kaur is the widow of Daman Singh. Both Smt. Jangir Kaur and Jit Singh were present before Shri Lal Singh, A.C. Grade II. Smt. Jangir Kaur was identified by Gurdev Singh Lamberdar of the village, as widow of Daman Singh, and claimed the estate of Daman Singh, being his widow, which was disputed by Jit Singh not on the ground that Smt. Jangir Kaur was not the widow of Daman Singh, but he stated before Shri Lal Singh that Daman Singh had executed a will in his favour. Strange enough copy of the will was not produced before Shri Lal Singh at that time, nor it is mentioned on which date Daman Singh had executed the will in favour of Jit Singh, who, admittedly, is remotely related to Daman Singh. Jit Singh is the grand son of Smt. Nand Kaur, who was the sister of Daman Singh. It is also to be seen if Daman Singh would execute a will in favour of a remote relation like Jit Singh in preference to his wife Smt. Jangir Kaur. There is not an iota of evidence on the record that at any point of time there was any sort of litigation between Smt. Jangir Kaur and Daman Singh so as to show that the latter wanted to exclude Smt. Jangir Kaur from his estate or that Daman Singh wanted to go to the extent that he did not want to make any provision even for the maintenance of Smt. Jangir Kaur. What appears from the record is that Jit Singh earlier had obtained a thumb impression on a blank paper of Daman Singh and later on he got a forged will in connivance with other attesting witnesses named above and it may be mentioned here at this stage that one of the attesting witnesses was Mukhtiar Singh, who did not appear for the plaintiff in support of the will. Rather he appeared for the defendant and denied the execution of the will by Daman Singh in favour of Jit Singh plaintiff. Truth must come on the surface. Jit Singh admitted in his cross-examination that on 7.5.1981 vide Exhibit P6 Daman Singh got land, i.e. 1/16th

share of the land measuring 91 kanals 13 Marlas and the said sale deed was signed on behalf of the vendee Daman Singh by plaintiff Jit Singh himself. Jit Singh stated in the trial Court that he used to reside in village Sehna with Daman Singh for the last 14/15 years and used to serve him. The witness deposed in the cross-examination that as and when an application had to be moved or a deed had to be registered, Daman Singh used to send him. The plaintiff further admitted that he used to move the application after getting the thumb impression of Daman Singh for the sake of getting copy of the document etc. This could be the occasion when Jit Singh obtained the thumb impression of Daman Singh on a blank paper over which the will (Ex.PI) was fabricated in connivance with the attesting witnesses and the scribe. The Courts below have interpreted this evidence in a different manner by saying that Daman Singh for this reason had executed the will in favour of Jit Singh by ignoring his wife Smt. Jangir Kaur and also by ignoring other relations. At the time of making the statement the age of Jit Singh was 27 years. It is difficult for me to appreciate if a young boy would be serving Daman Singh in the presence of his wife Jangir Kaur. I would also try to show in the subsequent portion of this judgment that Jit Singh never resided with Daman Singh in village Sehna in House No. 199 as shown in the voters list. Close relations were present who could be preferred by Daman Singh instead of Jit Singh whose relationship I had already highlighted above.

15. Now I would like to take up the reasons discussed by the Courts below in favour of the will, which is unregistered written on a plain paper scribed by a person who was not a regular scribe and who was not even residing in village Sehna. In para No. 8 of the judgment the trial court held that earlier the land of one Mal Singh, the other brother of deceased Daman Singh, has also been mutated in favour of Arjun Singh father of plaintiff Jit Singh on the basis of a will dated 15th March, 1978 as is evident from the copy of Exhibit PII sanctioned on 28.3.84 and the said mutation had not been challenged by Mai Singh and Ors., therefore, it was a natural act on the part of Daman Singh. The reasons cannot be endorsed by this Court because the reasons themselves give the answer. The plaintiff admits that one son and three daughters of Lai Singh, brother of Daman Singh deceased, were alive and strangely enough, they have been disinherited by Daman Singh by giving preference to Jit Singh. In case Daman Singh wanted to exclude his wife, he could advance cogent reasons and he could will away the property in favour of Arjun Singh by making some provisions of maintenance etc.

16. It has also come to evidence that Hari Singh scribe happened to be present in village Sehna. The statement of this witness is very unnatural when he deposed that Madan Lal of his village used to be a petition writer and he resided at a distance of 20/25 Karams from his shop. If Daman Singh really wanted to execute the will, he could take the services of Madan Lal a regular scribe of his village - or he could go to the office of the Sub Registrar for the registration of the will. No doubt this Court also admits that the registration of the will is optional u/s 17 of the Registration Act,

but if all the suspicious circumstances are clubbed together the only inference would be that it has not been executed by the executor in sound disposing mind. The third circumstances which surrounds with suspicion the will is that none of the attesting witnesses hails from the Patii of the deceased. No doubt Gurnam Singh is Lambardar of village Sehna, but the evidentiary value of this witness would be eroded and erased once it has been proved that signatures of Gurdev Singh, who is also a Member Panchayat, had been obtained subsequently so as to give authenticity to the document, specially in the light of the statement of D.W.4 Mukhtiar Singh, who has not deposed in favour of the due execution of the will.

17. The recital to the will would show that it has been allegedly averred by Daman Singh that Jit Singh used to serve him and for love and affection he wanted to execute the will in his favour. No document in the shape of ration card or voters list has been produced to show that the legatee of the will used to reside with the deceased. The trial Court believed Exhibit DC primarily on the ground that detailed voters list showing the names at serial Nos. 1025, 1028, and 1029 had not been brought on the record and in the absence of that the Court can draw the inference that the name of plaintiff Jit Singh might have been entered at any of the serial numbers and a very strong circumstances goes in favour of the plaintiff to show that he was living with Daman Singh, who had full faith in him. This is the reason I have allowed the additional evidence to be taken on record. The Courts below have ignored the fact that the onus was upon the plaintiff to establish that he used to serve the deceased. In H.No. 199 of village Sehna the names of the voters have been entered. Ex. DC was produced by the defendant to show that Jangir Kaur was the wife of Daman Singh and her vote was registered in H.No. 199 in the voters list prepared in the year 1980. The plaintiff could show his vote in village Sehna either in H.No. 199 or in any other house prior to the date of the execution of the will. He Could also show that he used to reside in this village for the last several years and that he had the occasion to serve Daman Singh. Not an iota of evidence had been led by the plaintiff that he used to serve Daman Singh Or that the deceased was happy with him or that there was any love and affection giving any chance for the deceased to execute a will in favour of the plaintiff. Jit Singh does not figure anywhere in Exhibit DC prepared in the year 1980 and in the additional evidence, i.e., voters list. prepared in the year 1976 in H.No. 199. Once the recital of the will (P1) is found to be false it will cast a dark cloud on the authenticity of the will (Ex.P1),

18. Exhibit DC has been attacked by the learned counsel for the respondent on the ground that this document cannot be relied upon as there is a discrepancy in the oral evidence about the exact age mentioned in Exhibit DC. I do not agree with the argument of the learned counsel for the respondent. In the will Exhibit PI the age of Daman Singh has been given as 67 years in the year 1984 i.e. on 13th March, 1984 and in the year 1980 the age of Daman Singh has been stated as 66 years. It is a matter of common knowledge that rustic and illiterate witnesses have no exact idea about the ages and they just mention the ages by way of approximation so much so

the officials of the Election Department note down the ages by looking towards the faces of the voters or sometimes they note down the ages on derived information. Nevertheless the age of Daman Singh has been mentioned in Ex.Dc as 66 years while that of Smt. Jangir Kaur as 63 years. The counsel also attached the electoral list of the year 1976-by urging that in this document the age of Smt. Jangir Kaur has been mentioned as 25 years and in the oral statement of Smt. Jangir Kaur., who appeared in the witness-box, has also given a discrepant age and from all those factors it is not established that Smt. Jangir Kaur was the wife of Daman Singh. I had also stated above that the ages sometimes are giving erroneously. It appears to me that there is a printing mistake in the additional evidence, i.e., the voters list of 1976 where the age of Smt. Jangir Kaur has been mentioned as 25 years in the year 1980, which possibly could not be so if this document is looked into in the light of Exhibit DC. Nevertheless it is not proved that Jit Singh plaintiff was ever serving the deceased by residing in village Sehna or in the house of Daman Singh, The counsel for the respondent strongly supported the reasons given by the trial Court by stating and in support of his contention he has relied upon Exhibit P-7 a receipt which was issued by the Granthi of village Sehna, who performed the Bhog ceremony. This document is not a conclusive evidence because the evidence has come on the record that Smt. Jangir Kaur showed fire to the pyre of Daman Singh and it is a matter of common knowledge that charges are invariably paid to the Granthies by the male members. This Court is not disputing that Jit Singh is not related to the deceased, but is expressing doubt if there could be any possible occasion for Daman Singh to execute a will in favour of a remote and distant relation like Jit Singh, and that the will is surrounded by suspicious circumstances just highlighted above.

19. For the reasons set forth above and by disagreeing with the reasons given by the Courts below, I reverse the findings of the trial court and the first appellate Court on issue No. 1, holding that Daman Singh had never executed any valid will in favour of Jit Singh irrespective of the fact that the plaintiff made effort to prove the due execution of the will by producing attesting witnesses, namely, Gurnam Singh (P.W.3), Gurdev Singh (P.W.4), Hari Ram scribe (P.W.2) and Diwan K.S. Puri Handwriting expert (P.W.1).

20. With the reversal of the findings of the courts below on issue No.1, the locus standi of the plaintiff to file suit goes because he was claiming this property under the will which has been proved to be a forged document in the opinion of this Court.

21. Now it is to be seen whether Smt. Jangir Kaur is the widow of Daman Singh or not. Again in my opinion the Courts below have not interpreted the evidence in the correct manner. Section 50 of the Indian Evidence Act reads as under :-

"50. Opinion on relationship, when relevant :-

When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact;

Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Under Divorce Act, 1869 (4 of 1869) or in prosecutions u/s 494, 495, 497 of 498 of the Indian Penal Code (45 of 1860)."

This Court too is of the opinion that when the relationship of an individual is in question, the evidence of conduct is relevant, but it is to be seen whether from the evidence led by the defendant it stands proved or not that Smt. Jangir Kaur was the wife of Daman Singh. There is a material document on the record from which a legitimate inference can be taken about the relationship of Daman Singh and Smt. Jangir Kaur. After the death of Daman Singh, in order to make his mutation disputed, Jit Singh made an application before the Collector (Ex.P3), in which he categorically admitted that Jangir Kaur was the widow of Daman Singh. His case was that Smt. Jangir Kaur never served Daman Singh during his life time and that she used to reside separately from Daman Singh. I had already highlighted above that mutation of Daman Singh was entered by the revenue Patwari and was produced before Shri Lal Singh, Assistant Collector 2nd Grade and Smt. Jangir Kaur was identified as the widow of Daman Singh by the Lambardar of the village. Smt. Jangir Kaur was examined as D.W. 2 in the trial court and she stated that Daman Singh deceased was her husband and that she was her widow and also that she was his legal heir. No doubt Smt. Jangir Kaur has not examined her close relations, such as her sister to prove her relationship with Daman Singh, but non-examination of that witness to my mind would not advance the case of Jit Singh, who earlier made an admission in Exhibit P3 that Smt. Jangir Kaur was the widow of Daman Singh. This fact is also corroborated by the Voters List (Ex.DC) and the additional evidence which has been accepted. I cannot lose sight of the fact that I am supposed to discuss the evidence of a rustic widow and her statement made in the year 1976 cannot be rejected on the ground that the witnesses deposed that Daman Singh was 80/90 years at the time of his death. The case of the plaintiff himself is that Daman Singh must be about 68 years. Also I cannot reject the statement of Smt. Jangir Kaur when she gave her age as 45 years. In my opinion such types of witnesses have no idea about their ages, but nevertheless no lady would try to forget as to whether she is the wife of a particular person or not. In the sale deed, which has been questioned in the suit, Smt. Jangir Kaur has also mentioned that she is the widow of Daman Singh. Shamsheer Singh (D.W.3) stated in his cross-examination that Daman Singh was aged about 70 years at the time of his death and that Smt. Jangir Kaur was younger to him by about 4 to 5 years. Presumption is in favour of marriage. Why Smt. Jangir Kaur should tear her abdomen by saying so that she is the widow of Daman Singh. A very strong evidence was required on the part of the plaintiff to rebut the statement of Smt. Jangir Kaur. Learned trial Court has discarded the

application (Ex.P3) on the ground that it was not made in the proceedings pending between the parties. I am not in a position to subscribe to the same because the application of Jit Singh was moved against Smt. Jangir Kaur. The citation relied upon by the counsel for the respondent reported as L/NK Nasib Chand v. Surinder Kaur @ Chhindo 1980 HLR 157 would not come to the rescue of the plaintiff Jit Singh when I decided issue No. 3 in favour of the defendant and against the plaintiff by setting aside the findings of the Courts below on this issue. I may add here that Basakha Singh when appeared as his own witness supported the case of Smt. Jangir Kaur that she is the widow of Daman Singh and that he consulted the revenue Patwari before purchasing the land vide sale deed No. 685 dated 29.11.1984.

22. By setting aside the findings of the Courts below on issues Nos. 1 to 3, it is held that the plaintiff did not become the owner of the estate of Daman Singh under the will (PI) dated 13.3.1984. The effect of the findings of this Court would be that Smt. Jangir Kaur would become the owner of the property of her husband Daman Singh and she could alienate the same in favour of defendant No.1 Basakha Singh appellant vide sale deed dated 29.11.1984.

23. In the light of the above discussion, I accept this appeal set aside the impugned judgments and decrees dated 10.10.1990 of the first appellate court and of the trial Court dated 31.1.1987, and dismiss the suit of the plaintiff-respondent Jit Singh. The parties are left to bear their own costs.