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## (2012) 09 P&H CK 0322

## High Court Of Punjab And Haryana At Chandigarh

Case No: CR No. 2881 of 2012 (O and M)

Jaswant Singh APPELLANT

Vs

Sucha Singh and

Others RESPONDENT

Date of Decision: Sept. 13, 2012

**Acts Referred:** 

• Evidence Act, 1872 - Section 68

Citation: (2012) 09 P&H CK 0322

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Advocate: Ashok Verma and Ms. Kamalpreet Kaur, for the Appellant; S.C. Chhabra, Advocate,

for respondents 1 and 2 and None for respondents 3 and 4, for the Respondent

## **Judgement**

## K. Kannan, J.

The application had been filed for recasting the issue by the plaintiff when the defendant was denying the Will set up by the plaintiff as a forgery. The burden of proof shall always be on a person who propounds the same. The issues framed were: Whether Smt. Kartar Kaur executed a valid Will on 16.04.2008 in favour of Jaswant Singh defendant? and If above issue No. 1 is proved, whether the Will dated 16.04.2008 is forged and fabricated Will of Smt. Kartar Kaur? If there was an issue relating to the genuineness, there is no need for framing a separate issue whether the Will was forged or fabricated as contended by the defendant. The learned counsel for the petitioner contends that since the defendant contends that the Will is a forgery, the burden of proving that the Will is a forgery or fabricated is on the defendant. The contention is untenable. A contention that a Will is forged or fabricated has the effect of denying the genuineness and being fundamental to rule of evidence, the burden of establishing the genuineness is only on the plaintiff u/s 68 of Evidence Act. This will be so, even if there is no denial by the defendant. The denial of a Will as initiated by fraud, undue influence or coercion is wholly different, in which situation, the burden of proving such fraud shall be on the person who

sets up a litigating circumstance. This difference in approach is exposited by the Supreme Court in the decision in <u>Bharpur Singh and Others Vs. Shamsher Singh</u>, With these directions, the civil revision is disposed of.