

Jaswant Singh Vs Sucha Singh and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Sept. 13, 2012

Acts Referred: Evidence Act, 1872 – Section 68

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 expounded by the Supreme Court in the decision in *Bharpur Singh*

and *Others Vs. Shamsher Singh*, . With these directions, the civil revision is disposed of.