

(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

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 exposted by the

Supreme Court in the decision in [Bharpur Singh and Others Vs. Shamsheer Singh,](#).
With these directions, the civil revision is disposed of.