JASWANT KAUR

v.

AMRIT KAUR & ORS.

October 25, 1976

[Y. V. CHANDRACHUD, P. K. GOSWAMI AND A. C. GUPTA, JJ.]

Indian Succession Act, 1925—Sec. 63 legal will—Genuineness of—Suspicious circumstances—Burden of proof—Degree of proof.

S. Gobinder Singh Sibia was possessed of a large estate valued at about Rs. 15 lacs at the time of his death in the year 1954. He had awo wives Gulab Kaur and Dalip Kaur. Dalip Kaur pre-deceased him leaving a son and a grandson named Surjit. After the death of S. Gobinder Singh, Gulab Kaur filed a suit for maintenance, claiming alternatively a one-half share in the estate left by her husband. Surjit contested the said suit. After the institution of the suit, the Hindu Succession Act, 1956, came into force on June 17, 1956 upon the plaintiff giving up her claim for maintenance and restricting her suit to a half share in her husband's estate, the defendant made an application for amending his written statement and pleaded that S. Gobinder Singh had executed a will in the year 1945 bequeathing practically the entire estate in his favour and leaving a small life interest in favour of the plaintiff. The amendment application was filed in March, 1958, after the plaintiff's evidence was over. The Trial Court decreed the plaintiff's suit and held that the plaintiff was entitled to a half share in the estate left by Gobinder Singh and that the defendant had failed to prove the will. In an appeal filed by the defendant the High Court set aside the Judgment of the Trial Court and dismissed the plaintiff's suit. The High Court held that will was duly established.

1. Allowing the appeal,

HELD : (a) In cases where the execution of a will is shrouded in suspicion, its proof ceases to be a simple *lis* between the plaintiff and the defendant. What generally is an adversary proceeding becomes in such cases a matter of the court's conscience. The presence of suspicious circumstances makes the initial onus heavier and, therefore, in cases where the circumstances attendant upon the execution of the will excite the suspicion of the court the propounder must remove all legitimate suspicions before the document can be accepted as the last will of the testator. [929 C-F, 930 C-D]

(b) A will has to be proved like any other document by applying the usual test of the satisfaction of the prudent mind. [929 F]

(c) Since section 63 of the Succession Act requires a will to be attested it cannot be used as an evidence until at least one of the attesting witnesses is examined, if available. [929 G]

(d) Unlike other documents the will speaks from the death of the testator and, therefore, the maker of the will is never available for deposing as to the circumstances in which the will was executed. That circumstance introduces a certain amount of solemnity in proof of testamentary instruments. [929 H, 930 A]

R. Venkatachala Iyengar v. *B. N. Thimmajamma & Others* [1959] Supp. 1 S.C.R. 426, followed.

2. The testator was a man of property and occupied a high position in society. A genuine will of such a person is not likely to suffer from the loopholes and infirmities which may beset an humbler testamentary instrument. [931 D, H, 932 A]

3. The following circumstances throw a cloud of suspicion on the making of the will by Gobinder Singh :

(i) The will is alleged to have been made in 1945 but it did not see the light of the day till 1957. It is unacceptable that a document by which property worth lacs of rupees was disposed of could have remained a closely guarded secret from intimate friends and relatives and from the sole legatee himself for over 2½ years after the testator's death. [932 A-B]

(ii) The testator had left behind him a large property and along with it large amount of litigation which makes it impossible to believe that upon his death no one bothered to go through his papers. The explanation of the defendant that he stumbled upon the will by chance while going through some papers of his grandfather is patently lame and unacceptable. [932 B-D]

(iii) The defendant came out with the theory of will after the Hindu Succession Act of 1956 came into force as a result of which the plaintiff would become an absolute owner of the property that would fall to her share as the heir of her husband. [932 G-H, 933 A-B]

(iv) The will was typed out on both sides of a single foolscap paper and was obviously drafted by a lawyer. No evidence was led as to who drafted the will and who typed it out. [933 B-C]

(v) The will was attested by two persons, both of whom were strangers to the testator's family and neither of whom could give a proper account of the execution of the will. In fact they contradicted each other. [933 C-H]

(vi) The two persons who are alleged to have been appointed executors were not examined, though available. Normally, the executors are not appointed without their consent or consultation. [934 A-C]

(vii) The will is unnatural and unfair. [934 C]

(viii) The will does not make mention of many of the near relations and descendants of the testator. [934 D-F]

(ix) The plaintiff was excluded as an heir of the testator for the supposed reasons that she had brought disgrace to the Sibia family and that her behaviour was such as would not even bear a mention in the will. No evidence was led on the misconduct of the plaintiff. [934 F-G]

(x) The defendant in his evidence did not offer any explanation for any of the suspicious circumstances. [934 G]

4. The High Court merely recited a few facts mechanically and without going into the suspicious circumstance accepted the will as genuine. The High Court did not apply the rule as to the burden of proof which governs the testamentary proceedings, as set out in the decision of this Court in *Iyengar's* case to which reference was made in the Trial Court's Judgment. [838 F-H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1360 of 1975.

(From the Judgment and Order dated 12-3-1975 of the Punjab & Haryana High Court in Regular First Appeal No. 315/64).

V. M. Tarkunde, E. C. Agrawala and Miss N. Tarkunde for the appellant.

Bishan Narain, and *Mrs. Urmila Sirur* for respondent No. 1.

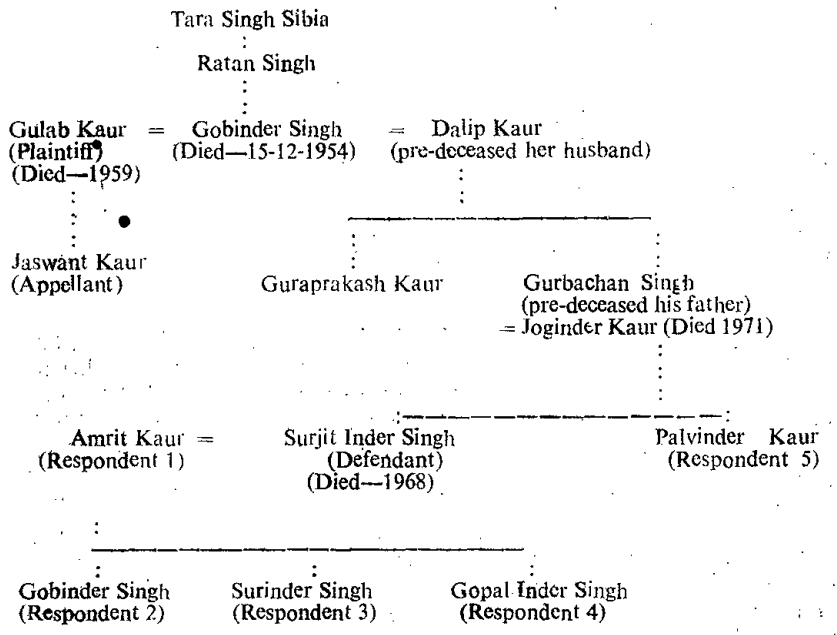
Hardev Singh and R. S. Sodhi, for Respondent No. 2.

The Judgment of the Court was delivered by

CHANDRACHUD, J.—Sardar Gobinder Singh Sibia who was possessed of a large estate died on December 15, 1954 at the age of about 70.

He had taken two wives, Gulab Kaur and Dalip Kaur. The story of his life follows the familiar pattern—the pretext of a disagreement with the unwanted wife, special favours for the favourite and jealous rivalries between the children born of the two.

The following pedigree will facilitate a better understanding of the issues involved in the case :—



After the birth of the appellant Jaswant Kaur, Gulab Kaur started living or as the story goes, was compelled to live with her parents. Dalip Kaur had given birth to a daughter Guraprakash Kaur and a son Gurbachan Singh. Gurbachan died during the life-time of his father Gobinder Singh, leaving behind his widow Joginder Kaur who died in 1971. Gurbachan Singh and Joginder Kaur gave birth to two children, a son Surjit Inder Singh and a daughter Palvinder Kaur. Surjit Inder Singh died in 1968 leaving behind a widow Amrit Kaur and three sons.

On May 22, 1956 which was about a year and a half after the death of Sardar Gobinder Singh, his widow Gulab Kaur filed a suit in *forma pauperis* claiming maintenance @ Rs. 1000/- per month or in the alternative a one-half share in the properties left by her husband. Her co-wife's grandson Surjit Inder Singh was the defendant to the suit. He filed his written statement on January 5, 1957 contending that the plaintiff had deserted her husband and that she was neither entitled to maintenance nor to any share in his estate. On these pleadings the trial court struck issues in the suit on February 1, 1957. At the end of her evidence on August 17, 1957 the plaintiff gave up her claim for maintenance and stated that she wanted a one-half share in her husband's estate. The hearing of the suit was adjourned by the learned trial Judge to August 24, for recording defendant's evidence.

A In the meanwhile, on August 20, the defendant filed an application asking for permission to produce a will stated to have been made by Sardar Gobinder Singh, on November 26, 1945. The learned District Judge, Sangrur, who was then seized of the suit rejected that application and refused to allow the defendant to amend his written statement. That order was, however, set aside in revision by the Punjab High Court which directed the trial court to allow the defendant to amend B his written statement and to produce his father's alleged will. On March 8, 1958 the defendant amended his written statement contending that by the will, his father had left almost the entire property to him and that the plaintiff Gulab Kaur was not entitled to any share in the property under the will. In June, 1958 the plaintiff filed a formal application seeking leave to amend her plaint giving up her claim for maintenance and asking for a one-half share in the properties of her C deceased husband. Fresh issues were thereafter framed on the basis of the amended pleadings. On March 10, 1959 the plaintiff died and her daughter, Jaswant Kaur, who is the appellant before us, was brought on the record as her legal representative.

The suit was tried eventually by the learned Senior Sub-Judge, Sangrur, who by his judgment dated June 29, 1964 decreed it. The learned D Judge held that the defendant who set up the will had failed to prove that it was the last will and testament of his grand-father Gobinder Singh and alternatively, that even on the assumption that the will was proved, it must be deemed to have been revoked on account of certain dispositions made by the testator after the making of the will. This alternative conclusion that the will stood revoked by implication is clearly unsupportable and the appellant, who disputes the will, did not urge E that consideration before us. The revocation of an unprivileged will is an act only a little less solemn than the making of the will itself and has to comply with statutory requirements contained in section 70 of the Succession Act.

Holding that the defendant had failed to discharge his onus of proving the will, the trial court granted to the plaintiff a decree for a one-half F share in the properties of her husband. In doing this, the Court relied on "overwhelming documentary evidence" showing that according to the custom by which the parties were governed, a sonless widow was entitled to a one-half share in the estate of her husband, as an equal sharer with the male progeny born of a co-wife. That the parties were governed in this matter by customary law was "openly conceded" in the trial court, the point of dispute being restricted on this point to the G question as to what in fact was the custom. It was common ground before us that if the will goes, the plaintiff will be entitled to a half share in the estate of her husband Gobinder Singh.

Aggrieved by the judgment of the trial court, the defendant Surjit Inder Singh filed First Appeal No. 315 of 1964 in the High Court of Punjab and Haryana. During the pendency of the appeal, the defendant H died on October 22, 1968 and his widow Amrit Kaur, her three sons, and his sister Palvinder Kaur were brought on the record as his legal representatives. They are respondents 1 to 5 to this appeal. By its judgment dated March 12, 1975 the High Court set aside the judgment

of the trial court, allowed the appeal and dismissed the plaintiff's suit. The High Court has held, or appears to have held, that the will was duly established. Since the will excludes the plaintiff as a sharer in the testator's estate, the suit had to fail, custom or no custom. This appeal by special leave is directed against the judgment of the High Court.

The defendant who is the principal legatee and for all practical purposes the sole legatee under the will, is also the propounder of the will. It is he who set up the will in answer to the plaintiff's claim in the suit for a one-half share in her husband's estate. Leaving aside the rules as to the burden of proof which are peculiar to the proof of testamentary instruments, the normal rule which governs any legal proceeding is that the burden of proving a fact in issue lies on him who asserts it, not on him who denies it. In other words, the burden lies on the party which would fail in the suit if no evidence were led on the fact alleged by him. Accordingly, the defendant ought to have led satisfactory evidence to prove the due execution of the will by his grand-father Sardar Gobinder Singh.

In cases where the execution of a will is shouded in suspicion, its proof ceases to be a simple *lis* between the plaintiff and the defendant. What, generally, is an adversary proceeding becomes in such cases a matter of the court's conscience and then the true question which arises for consideration is whether the evidence led by the propounder of the will is such as to satisfy the conscience of the court that the will was duly executed by the testator. It is impossible to reach such satisfaction unless the party which sets up the will offers a cogent and convincing explanation of the suspicious circumstances surrounding the making of the will.

There is a long line of decisions bearing on the nature and standard of evidence required to prove a will. Those decisions have been reviewed in an elaborate judgment of this Court in *R. Venkatachala Iyengar* v. *B. N. Thimmajamma & Others.*(1) The Court, speaking through Gajendragadkar J., laid down in that case the following propositions :—

1. Stated generally, a will has to be proved like any other document, the test to be applied being the usual test of the satisfaction of the prudent mind in such matters. As in the case of proof of other documents, so in the case of proof of wills, one cannot insist on proof with mathematical certainty.

2. Since section 63 of the Succession Act requires a will to be attested, it cannot be used as evidence until, as required by section 63 of the Evidence Act, one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive and subject to the process of the court and capable of giving evidence.

3. Unlike other documents, the will speaks from the death of the testator and therefore the maker of the will is never available for deposing as to the circumstances in which the will came to be executed.

(1) [1959] Supp. 1 S.C.R. 426.

A This aspect introduces an element of solemnity in the decision of the question whether the document propounded is proved to be the last will and testament of the testator. Normally, the onus which lies on the propounder can be taken to be discharged on proof of the essential facts which go into the making of the will.

4. Cases in which the execution of the will is surrounded by suspicious circumstances stand on a different footing. A shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the will under which he receives a substantial benefit and such other circumstances raise suspicion about the execution of the will. That suspicion cannot be removed by the mere assertion of the propounder that the will bears the signature of the testator or that the testator was in a sound and disposing state of mind and memory at the time when the will was made, or that those like the wife and children of the testator who would normally receive their due share in his estate were disinherited because the testator might have had his own reasons for excluding them. The presence of suspicious circumstances makes the initial onus heavier and therefore, in cases where the circumstances attendant upon the execution of the will excite the suspicion of the court, the propounder must remove all legitimate suspicions before the document can be accepted as the last will of the testator.

5. It is in connection with wills, the execution of which is surrounded by suspicious circumstance that the test of satisfaction of the judicial conscience has been evolved. That test emphasies that in determining the question as to whether an instrument produced before the court is the last will of the testator, the court is called upon to decide a solemn question and by reason of suspicious circumstances the court has to be satisfied fully that the will has been validly executed by the testator.

6. If a caveator alleges fraud, undue influence, coercion etc. in regard to the execution of the will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the will may raise a doubt as to whether the testator was acting of his own free will. And then it is a part of the initial onus of the propounder to remove all reasonable doubts in the matter.

We will now set out briefly the provisions of the will which is dated November 26, 1945. The will consists of 9 paragraphs, by the first of which the testator appointed Sardar Kesho Ram, a Judge of the High Court of Patiala, and Sardar Bahadur Ranjit Singh a contractor of Delhi, as executors. By paragraph 2 the testator bequeathed the whole of his property, movable and immovable, to his grandson Surjit Inder Singh who is the defendant in the present suit. By paragraph 3 the testator gave to his wife Dalip Kaur a life-interest in a house at Simla, called Kenilworth. The testator provided by paragraph 4 that if the house was later acquired by the Government or was sold by himself Dalip Kaur would be entitled to receive from his estate a sum equal to the compensation fixed in the acquisition proceedings or equal

to the sale price. The amount was to be deposited in approved securities, Dalip Kaur being entitled only to the interest thereon. On her demise, the house or the amount in deposit was to vest absolutely in the defendant. Paragraph 5 gave to Dalip Kaur the right of residence in a part of the house at Sangrur, paragraph 6 gave to her the right to use during her life-time the jewellery and ornaments and paragraph 7 states expressly that she will have no right to alienate any of the properties in which she was given a life-interest. Paragraph 8 provides that Dalip Kaur had the right to live jointly with the defendant but in case there were differences between them, she would be entitled to receive from him an annual sum of Rs. 5,000 for her maintenance. This amount was to constitute a charge on a land at Karmsar, District Lyallpur. Paragraph 9 of the will recites that the plaintiff Gulab Kaur had given birth to a daughter Jaswant Kaur in 1898, that Jaswant Kaur was married happily in 1913 to Sardar Gurbax Singh Mansahia, that after Jaswant Kaur's marriage Gulab Kaur started misbehaving and left for her parents' house, taking jewellery worth about Rs. 50,000 with her. It is further stated in paragraph 9 that Gulab Kaur was "leading her life in a way which would not bear mention here" and that therefore she did not deserve to get any allowance at all from the testator's property. The defendant was however directed to pay to her a monthly sum of Rs. 50 for her maintenance provided that she lived in a part of the house at Sangrur and her conduct remained worthy of the Sibia family. Paragraph 9 expressly mentions that Gulab Kaur would have no right to any share in the testator's property.

The testator, Sardar Gobinder Singh, was a man of property and occupied a high position in society. By a modest estimate, the property which he disposed of by his will was of the value of rupees ten to fifteen lakhs. A registered power of attorney (Ex. D/2) which he had executed seven months before the will on April 6, 1945 shows that he owned extensive movable and immovable properties, had a bank account in several banks and that various legal proceedings to which he was a party were pending in "all the States of British India". Gobinder Singh describes himself in the power of attorney as a "big biswedar" and says that he had "a large business to attend to". The evidence of Kartar Singh, Gurcharan Singh and Teja Singh (P.Ws. 4, 5 and 6) shows that Sardar Gobinder Singh owned over 15000 bighas of land, several houses and several cars including a Rolls Royce. Sardar Ratan Singh, the father of Gobinder Singh, was the President of the Council of Regency in the erstwhile State of Jind, while Gobinder Singh himself held "distinguished and responsible posts" in Jind such as the Nazim, the Private Secretary to the Maharaja and a Minister in his government.

It is the will of a man of such affluence and social status which has to be judged in this case. It is not as if the burden of proof varies with the riches and social prestige of the testator but habits of life are prone to vary with the means of the man and the privileged few who happen to occupy a high place in the social hierarchy have easy access to competent legal advice. Normally therefore, a genuine will of a propertied man, well-positioned in society too, does not suffer from

A the loopholes and infirmities which may understandably beset an humbler testamentary insrument.

Circumstances are too numerous to mention which throw a cloud of suspicion on the making of the will by Gobinder Singh. The will is alleged to have been made on November 26, 1945 but it did not see the light of day till August 20, 1957. Being an ambulatory document, it may be granted that there may be no occasion for anyone to know of its existence until the death of the testator on December 15, 1954. But it is ununderstandable that a document by which property worth lakhs of rupees was disposed of should have remained a closely guarded secret from the whole world of intimate friends and relatives, nay, from the sole legatee himself, for over 2½ years after the testator's death. The testator had left behind him a large property and along with it a large amount of litigation which makes it impossible to believe that upon his death in December 1954, no one bothered to go through his papers which would reflect the state and extent of his property. The explanation of the defendant that he hit upon the will by chance while going through some papers of his grand-father is therefore patently lame and unacceptable.

There is an ominous significance in the date on which the defendant applied for production of the will in the present suit. By her suit which was filed on May 22, 1956 the plaintiff Gulab Kaur had originally asked for maintenance and in the alternative for a one-half share in the estate of her husband. Under the Punjab customary law by which the parties were governed, the plaintiff, being a sonless widow, was entitled to an equal share in the property of her husband along with the male progeny born from a co-wife. But the customary law gave to the sonless widow only a limited and not an absolute interest in the estate of her husband. The Hindu Succession Act, 30 of 1956, came into force on June 17, 1956 which explains why the plaintiff at the end of her evidence on August 17, 1957 expressly gave up her claim for maintenance and restricted her demand in the suit to a one-half share in her husband's estate. So long as the plaintiff was entitled only to maintenance or to a limited interest in her husband's property, the defendant was content to meet that claim by raising pleas like desertion and misconduct. The passing of the Hindu Succession Act changed the entire complexion of the suit, raising at least a reasonable apprehension that on account of the provisions of that Act the plaintiff would become an absolute owner of a part of her husband's estate. By section 8 of the Act, the widow becomes an heir to the husband's estate on intestate succession, along with other heirs mentioned in Class I of the Schedule. And by section 14(1), any property possessed by a female Hindu whether acquired before or after the Act becomes her absolute property subject to the provisions of sub-section (2) which would have no application in the instant case. By reason of section 4, the provisions of the Act have generally an overriding effect on custom and usage. On August 17, 1957 the plaintiff's evidence was over and the suit was adjourned to August 24 for defendant's evidence. In the meanwhile, on August 20, the defendant filed an application stating

that he had accidentally discovered a will made by the plaintiff's husband Gobinder Singh and asking for permission to produce that will. The defendant has not stated why he suddenly thought of examining his grand-father's papers in between the conclusion of the plaintiff's evidence on the 17th and the 20th of August. His case is one of a purely providential discovery and neither in the application for production of the will nor in his evidence did he give the haziest details of the discovery. We are surprised that the High Court should have so readily accepted the story that the defendant stumbled across the will.

The will has been typed out on both sides of a single foolscap paper and is obviously drafted by a lawyer. No evidence at all has been led as to who drafted the will and who typed it out. The will uses some trite legal jargon but it does not show where it was executed and contains no description whatsoever of any of the extensive properties bequeathed to the defendant.

The will has been attested by two persons called Dinshaw H. M. Framjee and Pali Ram. It is intriguing that a person in the position of Sardar Gobinder Singh should choose these two strangers as attesting witnesses to a very solemn and important document. Dinshaw Framjee was a trader in Simla and Pali Ram was his servant. Framjee has stated in his evidence that he did not remember where Gobinder Singh used to stay in Simla, that he did not know for how long he was staying in Simla before the attestation of the will, that he was unable to state whether he had met Gobinder Singh after the attestation of the will and that he was unable to give the approximate time of the day when the will was attested—forenoon, afternoon or evening. Framjee was sure about one thing only, that he had not attested the will at night. He attempted to say that he was on friendly terms with the testator's family but he was unable to give even the approximate ages of the testator's son and daughter. Under the stress of cross-examination, he had to admit eventually that he knew nothing about the testator's family or family affairs.

Pali Ram, the other attesting witness, did not remember the date or the year of the execution of the will but said that it was probably executed in 1945. He did not know the testator and was a total stranger to him. Whereas Framjee stated that the will was attested in his business premises which were on the ground floor, Pali Ram says that Framjee sent for him from the business premises to his residence, which was on the upper floor.

The utter improbability of the testator accosting these two strangers for getting his will attested and the fundamental contradictions in their evidence render it impossible to hold that they attested the will at the instance of the testator as alleged. A man of importance that the testator was, he could not ever have left the validity of his will to depend on the unpredictable attitude of unknown elements like Framjee and Pali Ram. Pali Ram claims to have read the will before attesting it. It is not known why, if he knew that the property

A was bequeathed to the defendent, he did not, at least after the testator's death, inform the defendant of the existence of the will.

By the will the testator appointed Sardar Kesho Ram, a Judge of the High Court of Patiala and one Sardar Bahadur Ranjit Singh as executors. Both of these persons were fortunately available for B giving evidence but neither of them was examined in the case. Normally, executors are not appointed without their consent or at least without a prior consultation with them. Respondent 1, the defendant's widow, is the daughter of the executor Ranjit Singh. The marriage was performed during the testator's life-time and we find it hard to believe that he would not disclose even to Ranjit Singh that he had made a will appointing him as one of the executors and that C Ranjit Singh's son-in-law, that is to say the testator's grandson, was the sole legatee under that will.

The will is unnatural and unfair in more than one respect. At the time that the will is alleged to have been made, the testator had a daughter Guraprakash Kaur who was born of Dalip Kaur and a D daughter-in-law Joginder Kaur, being the widow of the testator's predeceased son Gurbachan Singh who was also born of Dalip Kaur. Gurbachan Singh and Joginder Kaur gave birth to the defendant Surjit Inder Singh and to a daughter Palvinder Kaur. The will contains not even a fleeting reference either to the testator's daughter or the widowed daughter-in-law or to the grand-daughter Palvinder Kaur. It is urged that all of these persons were happily placed in life E and it was therefore needless for the testator to provide for them. If that be so, it was usually unnecessary to refer to the appellant Jaswant Kaur who also, it is common ground, has been married happily.

The plaintiff Gulab Kaur has been wholly excluded as an heir of the testator for the supposed reason that she had brought disgrace F to the Sibia family and that her behaviour was such as would not even bear mention in the will. Not only that no evidence was led to show any misconduct on the part of Gulab Kaur but the evidence of Jaswant Kaur (P.W.2) shows that for about 7 or 8 years prior to 1956 Gulab Kaur had lost her eyesight. One of the issues in the suit namely, issue No. 2, arising from the original pleadings was whether the plaintiff was disentitled to maintenance for the reason G that she had deserted her husband. The judgment of the trial court shows that the defendant led no evidence in support of that issue and that during the course of arguments, the defendant's counsel did not press the particular issue. The plaintiff on the other hand led evidence in rebuttal and accepting that evidence the trial court rejected the contention that she had deserted her husband. It seems to us difficult to believe that a person in the position of S. H Gobinder Singh who was possessed of a large estate, would disinherit so many of his near relatives including his wife Gulab Kaur and shower his bounty on the grandson, to the exclusion of everyone else.

Quite a few other circumstances can be mentioned which raise a grave suspicion as regards the making of the will but the circumstances enumerated above are, in our opinion, sufficient to discard the will. The defendant in his evidence has offered no explanation of any of these circumstances. He has totally failed to discharge the heavy onus which lay on him of explaining the suspicious circumstance surrounding the execution of the will and of establishing that the document which he propounded was the last will and testament of his grand-father Gobiner Singh.

Learned counsel for the respondents contends that the defendant did not offer any explanation of these suspicious circumstances because the will was not challenged in the trial court on the ground that its execution was shrouded in suspicion. It is impossible to accept this contention because even the learned District Judge who had rejected the defendant's application for production of the will and the consequent amendment of the written statement had observed in his order dated September 13, 1957 that it was inconceivable that the defendant did not know about the will and that the possibility of its being forged cannot be excluded. This itself was sufficient notice to the defendant as to the nature of the burden which he had to discharge. Counsel for the defendant also contended that the testator must have kept the will a closely guarded secret because if the will was published, Gulab Kaur and her daughter would have created some trouble. This argument, in the context of the various facts adverted to above, has to be rejected. The testator might have wished to keep the will a secret from Gulab Kaur and her daughter but it is impossible to appreciate that he would frustrate the very object of making the will by suppressing it from the defendant and from the executors, one of whom was highly placed and the other of whom is the defendant's father-in-law.

Frankly, though with respect, it surprises us that the High Court should have accepted the will as genuine. It observes: "It is evident from the above evidence that there are no suspicious circumstances about the execution or the contents of the will." We could have understood if the High Court were to say that the defendant had given a valid explanation of the suspicious circumstances surrounding the execution of the will. But to say that there is nothing in the case to excite the court's suspicion and to accept the will as genuine on that premise is wholly ununderstandable. The High Court does not refer to a single circumstance out of the many that we have discussed and the operative part of the judgment just recites a few facts mechanically as if there could possibly be no answer to the validity of the will. The High Court has not referred in its judgment even in passing to the rule as to the burden of proof which applies to testamentary proceedings. If only it had taken the trouble of looking at the decision of this Court in *Iyengar's* case, which is copiously extracted in the judgment of the Trial Court, it would have realized what its true duty was in the case.

A For these reasons we allow the appeal, set aside the judgment of the High Court and restore that of the trial court. The appellant will be entitled to recover from the respondents the costs of this Court and of the High Court.

P.H.P.

Appeal allowed.