the case of married daughter as well. Therefore, we have no hesitation in rejecting the aforesaid argument. Moreover by an amendment dated 5.6.2005, Section 6 of the Hindu Succession Act, 1956, has been amended and now the daughter of a coparcener have the same rights and liabilities in the coparcenary property as she would have had she been a son.

(10) In view of the above, the instant petition is allowed. The offending part of clause (f) of the policy shown in italics is declared ultra vires of Article 14 of the Constitution and the clause (f) shall read as under:

> "(f) Married dependent son or married daughter of Ex- Servicemen who does not have independent source of livelihood will also be eligible for dependent certificate"

The respondents are directed to issue dependent certificate to the petitioner for his daughter, subject to fulfilling other conditions by her.

(11) The writ petition stands disposed of in the above terms.

P.S. Bajwa

Before Ram Chand Gupta, J.

CHARAN SINGH AND ANOTHERS,—*Appellants*

versus

AMAR SINGH AND OTHERS ,—*Respondents*

RSA No.1013 of 1994

31st October, 2011

Code of Civil Procedure, 1908 - S.100, O.41 Rl.47 - Punjab Courts Act, 1918 - S.41 - Registration Act, 1908- S. 17(2)(vi) - Indian Evidence Act, 1872 - S.14 - Application filed in year 2006 to lead additional evidence highly belated appeal pending since 1994 - Application without any merit - Dismissed.

Held, that this Court is of the view that appellants are having no right to adduce evidence at this belated stage. The litigation is pending since the year 1986. No such application for adducing additional evidence was

filed before learned trial Court. No such application was also filed before learned first appellate Court. The present appeal before this Court was filed in the year 1994. The application was not filed alongwith the appeal. The application was filed after about 12 years of filing of the appeal before this Court, i.e., in the year 2006.

(Para 21)

Further held, That hence, in view of these facts, it cannot be said that the application filed by appellants-defendants under Order 41 Rule 27 read with Section 151 for adducing additional evidence is of any merit and, hence, the same is, hereby, dismissed.

(Para 22)

(ii) Indian Succession Act, 1925 - S.63 - Will - Execution of will - Ones on propounder to prove will is genuine - requirements for proving due execution of Will summarized.

Held, That hence, the legal requirements for proving execution of Will can be summarised as under :-

1. A Will like any other document is to be proved in terms of provisions of Indian Succession Act and the Indian Evidence Act;

2. Onus of proving the Will is on the propounder;

3. Testamentary capability of the propounder must also be established;

4. The execution of the Will by the testator has to be proved;

5. At least one attesting witness is required to be examined for the purpose of proving the execution of the Will;

6. It is required to be shown that the Will has been signed by the testator with his free will and that at the relevant time, he was in sound disposing state of mind and understood the nature and effect of disposition;

7. It is also required to be established that he has signed the Will in the presence of two witnesses, who attested his signatures in his presence or in the presence of each other;

8. When there exist suspicious circumstances, the onus would be on the propounder to explain the same to the satisfaction of the court before it can be expected as genuine.

9. The Court must satisfy its conscience before its genuineness is accepted by taking a rationale approach.

(Para 34)

M.L.Sarin, Sr.Advocate with Nitin Sarin, Advocate, *for the appellants.*

J.K.Sibal, Sr.Advocate with Puneet Jindal, Advocate, for respondent nos.1 and 2.

RAM CHAND GUPTA, J.

(1) Facts giving rise to the present regular second appeal are as under:-

Dispute is regarding inheritance of estate of Hazara Singh, husband of respondent -plaintiff Smt. Sodhan Kaur (since deceased and represented by her legal representatives, i.e., present respondents no.1 and 2). The property in dispute is described in the heading of the plaint and the same is situated in Village Bhalowal, Tehsil Phillaur, as per jamabandi for the year 1982-83, in village Fatehpur, Tehsil Phillaur, as per jamabandi for the year 1983-84, and in village Fatepur, Tehsil Phillaur, as per jamabandi for the year 1983-84 and described in the heading of the plaint as (a), (b) and (c) respectively.

(2) Admitted facts are that Hazara Singh died issueless on 27.3.1986 leaving behind his wife, Smt.Sodhan Kaur as the only legal heir to inherit his estate. Plaintiff has filed this suit for declaration that she is entitled to inherit the property left by deceased Hazara Singh with consequential relief of possession. She has challenged judgments and decrees dated 10.10.1984 and 29.5.1984 passed by the Court of then Sub Judge Ist Class, Phillaur against her husband Hazara Singh and in favour of Charan Singh and Bachan Singh, the present appellants-defendants on the ground that the same are illegal, null, void, without consideration and are a result of fraud,

misrepresentation and coercion. Plea has been taken that Hazara Singh was having no knowledge about the said decrees passed against him and that a fraud was committed upon him. Hazara Singh during his lifetime had given statement in another case titled as Charan Singh and another v. Surjan Singh and others, in which he denied having suffered any such decrees in favour of appellants-defendants.

(3) Present appellants-defendants contested the suit on the ground that decrees dated 10.10.1984 and 29.5.1984 were voluntarily and legally suffered by Hazara Singh in their favour and that the decrees are legal and binding upon the plaintiff. However the fact that respondent-plaintiff is wife of Hazara Singh and that Hazara Singh died issueless on 27.3.1986 is not denied. Specific plea has been taken that Hazara Singh appeared in those proceedings alongwith his counsel and made statement in both the aforementioned suits admitting the case of present appellants-defendants and hence, it is denied that any fraud was committed upon Hazara Singh by the appellants -defendants in getting the said decrees passed in their favour.

(4) Plea has also been taken that Hazara Singh during his lifetime also executed a Will dated 3.8.1983 regarding his entire property in favour of appellants-defendants and the said Will was also got registered.

(5) In replication, respondent-plaintiff denied execution and validity of any such alleged Will by Hazara Singh in favour of appellantsdefendants.

(6) From the pleadings of the parties, the following issues were settled by learned trial Court:-

"1. Whether the decrees dated 10.10.1984 and 29.5.1984 passed in favour of defendants no.1 and 2 in respect of the disputed land are illegal and void? If so, its effect? OPP

2. Whether the plaintiff is entitled to the possession of the suit land as owner? OPP

3. Whether the deceased Hazara Singh executed a valid Will dated 3.8.1983 in favour of the defendants no.1 and 2. If so, its effect? OPD

4. Whether the suit as framed is not maintainable? OPD

5. Whether the plaintiff is estopped by his act and conduct to file the present suit? OPD

6. Whether the suit is barred by time? OPD

7. Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPD

8. Whether the suit is properly valued for the purpose of court fee and jurisdiction? OPP

9. Whether the plaintiff has no locus standi to file the present suit? OPD

10. Relief."

(7) Parties adduced evidence in support of their respective contentions before learned trial Court. Learned trial Court decided issue no.1 in favour of respondent-plaintiff by holding that decrees dated 29.5.1984 and 10.10.1984, Ex.D3 and Ex.D5 were not legal and hence, the same do not effect the rights of the plaintiff in the property in dispute and the mutation sanctioned on the basis of those decrees also do not confer any right upon the present appellants-defendants.

(8) Issues no.2 and 3 were discussed together and it was held that Will Ex.D1 is not a valid document and hence the same is having no effect on the rights of respondent-plaintiff to inherit the property of her husband Hazara Singh.

(9) Issues no.4 and 9 were also decided in favour of plaintiff. Issues no.5,6,7 and 8 were also decided in favour of plaintiff. In view of the findings on various issues, suit filed by respondent-plaintiff was decreed with cost by learned trial Court.

(10) Aggrieved against the said judgment and decree passed in favour of respondent-plaintiff by learned trial Court, present appellantsdefendants filed appeal before learned Additional District Judge, Jalandhar, which was also dismissed vide impugned judgment and decree dated 9.3.1994.

(11) Aggrieved against the said judgment and decree passed by learned Additional District Judge, Jalandhar, the present regular second appeal has been filed by appellants-defendants which was admitted by this Court vide order dated 28.10.1994 without framing substantial questions of law, as required under Section 100 of the Code of Civil Procedure (for short the 'Code').

(12) A Full Bench of this Court in the case of **Ghanpat *versus* Ram Devi (1)** had taken a view that in view of Section 41 of the Punjab Courts Act, the amended provisions of Section 100 of the Code, as amended in 1976, were not applicable to the second appeals filed in this Court and accordingly, no substantial question of law was framed, nor the aforesaid regular second appeals were admitted on any such substantial question of law. However, the Hon'ble Apex Court in the case of **Kulwant Kaur *versus* Gurdial Singh Mann (dead) by LRs. (2)** has held that after amendment of Code of Civil Procedure in the year 1976, thereby amending Section 100, Section 41 of the Punjab Courts Act had become redundant and repugnant to the Central Act, i.e., Code of Civil Procedure and therefore was to be ignored and therefore, the second appeal shall only lie to this court under Section 100 of the amended Code of Civil Procedure on a substantial question of law.

(13) It may be mentioned here that though question of law was not framed at the time of admission of present appeal, and however, it has been observed by Full Bench of this Court in **Dayal Sarup *versus* Om Parkash (since deceased) through L.Rs and others (3),** that this Court can formulate question of law as contemplated under Section 100 of the Code at any point of time before hearing of the appeal, even without amending the grounds of appeal. It has also been held that it is the duty of the Court to formulate substantial question of law while hearing the appeal under Sections 100(4) and 100(5) of the Code and question of law can be permitted to be raised at any stage of proceedings.

(14) Hence, in view of this legal background, though the appeal was admitted without framing any substantial question of law, however, counsel for the appellants was permitted to file substantial questions of law, stated to be arising in this appeal.

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(1) AIR 1978 P.b. and Hy. 137 (F.B.)
(2) (2001) 4 JT SC 158 : AIR 2001 SC 1273
(3) (2010-4)160 PLR 1

(15) Learned counsel for the appellants filed the following substantial questions of law, stated to be arising in this regular second appeal in terms of Section 100 of the Code, which were taken on record and the same are as under:-

"1. Whether the Courts below have illegally rejected the Will, Ex.D1 on conjectural and erroneous grounds?

2. Whether the judgments and decrees of the Courts below are vitiated as both the Courts have overlooked the most material fact that the Will Ex.D1 is a registered documents?

3. Whether the Will Ex.D1 is surrounded by suspicious crestaces?

4. Whether the Will Ex.D1 has been misread?

5. Whether the judgments and decrees, Ex.D2 and D4 have been rightly set aside when there is no evidence of fraud or misrepresentations?

6. Whether the courts below have misread the oral and documentary evidence on the record?

7. Whether the judgments and decrees of courts below are perverse?"

(16) I have heard learned senior counsel for the parties and have gone through the whole record carefully.

(17) At the very outset it may be mentioned here that an application under Order 41 Rule 27 read with Section 151 of the Code for producing additional evidence was filed on behalf of appellants-defendants on 13.12.2006, though the appeal pertains to the year 1994. Vide the said application, prayer was made to allow appellants-defendants to produce the following documents by way of additional evidence:-

"(i) certified copies of the sale deeds annexed as A1-A6;

(ii) the photocopy of the bank account book annexed as A- 7;

(iii) the photocopy of the passport of Sh.Hazara Singh annexed as A-8;

(iv) The photocopy of the passport of Smt.Saudhan Kaur annexed as A-9

(v) The certified copy of the statement made before the trial court by Sh.Hazara Singh annexed as A-10."

(18) It has been contended by learned senior counsel for the appellants-defendants that the documents are necessary for decision of present case and the same could not be produced by appellants-defendants before the Courts below despite exercise of due diligence. It has been further contended that vide various sale deeds property owned by Smt.Sodhan Kaur was sold by her during lifetime of Hazara Singh. It is further contended that there was joint account of Hazara Singh and Sodhan Kaur and a substantial amount was withdrawn from the said account by Hazara Singh, which was given to Smt.Sodhan Kaur. Copy of passport sought to be produced to show that Hazara Singh was in the country at the time of execution of Will.

(19) On the other hand it has been contended by learned senior counsel for the respondent-plaintiff that application for additional evidence filed by appellants-defendants was not a bona fide one and that rather the same has been filed just to further delay the decision of the case as the litigation is pending since the year 1986 and that the present appellantsdefendants want to remain in illegal possession of the property in dispute. It is further contended that the application does not fulfill the requisite conditions prescribed under Order 41 Rule 27 of the Code for adducing additional evidence. It has also been contended that the documents and the evidence now sought to be produced was within the knowledge of appellants-defendants and that it cannot be said that the same could not be produced despite due diligence before learned Courts below. It is also contended that the documents and the evidence are not such which are required by this Court to pronounce the judgment or for any other substantial cause. Rather the plea has been taken that the documents sought to be produced are irrelevant and the same are not at all necessary to set aside the concurrent finding of fact recorded by both the Courts below in favour of respondent-plaintiff.

(20) Law on the point of allowing additional evidence to be adduced by any party before appellate Court under Order 41 Rule 27 has been well settled by Hon'ble Apex Court in **Mahavir Singh *versus* Naresh Chandra (4)** relevant paragraph of which reads as under:-

> "5. Before we proceed further we would like to refer to the scope of an application under Order XLI, Rule 27 CPC. Section 107 CPC enables an appellate court to take additional evidence or to require such other evidence to be taken subject to such conditions and limitations as are prescribed under Order XLI, Rule 27 CPC. Principle to be observed ordinarily is that the appellate court should not travel outside the record of the lower court and cannot take evidence on appeal. However, Section 107(d) CPC is an exception to the general rule, and additional evidence can be taken only when the conditions and limitations laid down in the said rule are found to exist. The court is not bound under the circumstances mentioned under the rule to permit additional evidence and the parties are not entitled, as of right, to the admission of such evidence and the matter is entirely in the discretion of the court, which is, of course, to be exercised judiciously and sparingly. The scope of Order XLI, Rule 27 CPC was examined by the Privy Council in **Kesowji Issur *versus* G.I.P.Railway (5),** in which it was laid down clearly that this rule alone can be looked to for taking additional evidence and that the court has no jurisdiction to admit such evidence in cases where this rule does not apply. Order XLI, Rule 27 CPC envisages certain circumstances when additional evidence can be adduced :
>
> (i) the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or
>
> (ii) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or

(4) 2001 (1) RCR (Civil) 454: 2001(2) Civ.C.C.708: 2001 AIR (SC) 134
(5) AIR 1931 PC 143

could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed,or

(iii) the appellate court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause.

In the present case, it is not the case of either party that the first situation is attracted. So far as the second circumstance noticed above is concerned, question of exercise of due diligence would not arise because the concerned scientific equipment from which examination is sought to be made itself was not in existence at the time of trial and so that clause is also not attracted. In the third circumstance the appellate court may require any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause. The expression to enable it to pronounce judgment has been subject of several decisions including **Syed Abdul Khader *versus* Rami Reddy & Ors.** AIR 1979 SC 553, wherein it was held that when the appellate court finds itself unable to pronounce judgment owing to a lacuna or defect in the evidence as it stands, it may admit additional evidence. The ability to pronounce a judgment is to be understood as the ability to pronounce a judgment satisfactory to the mind of court delivering it. It is only a lacuna in the evidence that will empower the court to admit additional evidence [See : The Municipal Corporation of **Greater Bombay *versus*** Lala **Pancham & Ors.** AIR 1965 SC 1008**.** But a mere difficulty in coming to a decision is not sufficient for admission of evidence under this rule. The words or for any other substantial cause must be read with the word requires, which is set out at the commencement of the provision, so that it is only where, for any other substantial cause, the appellate court requires additional evidence, that this rule would apply as noticed by the Privy Council

> in **Kesowji Issur v. G.I.P.Railway** [supra]. It is under these circumstances such a power could be exercised. Therefore, when the first appellate court did not find the necessity to allow the application, we fail to understand as to how the High Court could, in exercise of its power under Section 115 CPC, have interfered with such an order, particularly when the whole appeal is not before the court. It is only in the circumstances when the appellate court requires such evidence to pronounce the judgment the necessity to adduce additional evidence would arise and not in any other circumstances. When the first appellate court passed the order on the application filed under Order XLI, Rule 27 CPC, the whole appeal was before it and if the first appellate court is satisfied that additional evidence was not required, we fail to understand as to how the High Court could interfere with such an order under Section 115 CPC. In this regard, we may notice the decision of this Court in **Gurdev Singh & Ors. *versus* Mehnga Ram & Others** 1997 (6) SCC 507 : 1997 (3) RCR (Civil) 712 (SC)**,** in which the scope of exercise of power under Section 115 CPC on an order passed in an application filed under Order XLI, Rule 27 CPC was considered. When this decision was cited before the High Court, the same was brushed aside by stating that the principle stated therein is not applicable to the facts of this case. We do not think so. The High Court ought not to have interfered with such an order."

(21) If ratio of the said decision is applied to the facts of present case this Court is of the view that appellants are having no right to adduce evidence at this belated stage. The litigation is pending since the year 1986. No such application for adducing additional evidence was filed before learned trial Court. No such application was also filed before learned first appellate Court. The present appeal before this Court was filed in the year 1994. The application was not filed alongwith the appeal. The application was filed after about 12 years of filing of the appeal before this Court, i.e.,

in the year 2006. The case is not covered under Clause (i) of Order 41 Rule 27 of the Code, as aforementioned. The present case also cannot be said to be covered under Clause (ii) as it cannot be said that evidence now sought to be produced was not within knowledge of the appellants-defendants and the same could not be adduced by them notwithstanding the exercise of due diligence. So far as Clause (iii) is concerned it cannot be said that documents now sought to be produced are such which are required by this court to pronounce the judgment or for any other substantial cause. It has come in evidence that deceased Hazara Singh alongwith his wife Smt.Sodhan used to reside together. They were having joint bank account. Some of the property was purchased by Hazara Singh in the name of Smt.Sodhan. Smt.Sodhan was having no independent income. Hazara Singh used to earn while living in England and used to purchase the property during his lifetime. He had been asserting ownership of the entire property including the property which was in the name of Smt.Sodhan. Hence, even if it is taken that some property in the name of Smt.Sodhan was sold by her during lifetime of Hazara Singh, it cannot be said that said sale deeds are such documents without which judgment cannot be pronounced by this Court. Further even if it is taken that the some amount was withdrawn from the joint account by Hazara Singh before execution of Will, the same cannot be said to be a sufficient ground to disinherit Smt.Sodhan from the property owned by Hazara Singh. Even copies of passports of Smt.Sodhan and Hazara Singh are not such documents without which judgment cannot be pronounced by this Court as there is no dispute that Hazara Singh and Smt.Sodhan used to reside in England and they also used to visit India off and on.

(22) Hence, in view of these facts, it cannot be said that the application filed by appellants-defendants under Order 41 Rule 27 read with Section 151 for adducing additional evidence is of any merit and, hence, the same is, hereby, dismissed.

(23) It has been further contended by learned senior counsel for the appellants that judgments and decrees suffered by Hazara Singh in favour of present appellants are valid one and that Hazara Singh appeared through counsel in the Court and filed admitted written statement in both the cases and that he also suffered statement in the Courts which passed

the decrees admitting the claim of appellants-defendants. Hence, it is contended that both the Courts below committed illegality in arriving at the conclusion that the decrees are result of fraud and coercion. It is further contended that the decrees being validly suffered by Hazara Singh are also not required to be registered as per law. It is further contended that moreover the said point has also been decided by learned first appellate Court in favour of appellants-defendants. He has also argued that plea of fraud like any other charge, whether made in civil or criminal proceedings, must be stated beyond reasonable doubts and, however, suspicious may be the circumstances and, however strange the co-incidence and however, grave the doubts, suspicions alone can never take the place of proof. On the point he has placed reliance upon **Union of India *versus* M/s.Chaturbhai M.Patel and Co. (9).**

(24) On the point that consent decrees suffered by Hazara Singh in favour of present appellants-defendants do not require registration, he has placed reliance upon a judgment rendered by a coordinate Bench of this Court in **Ved Pal alias Vedu *versus* Smt.Raj Rani (10),** judgments rendered by Hon'ble Apex Court in **Bachan Singh *versus* Kartar Singh and others (11)** and in **Som Dev and others *versus* Rati Ram and another (12)** and other judgments of this court rendered in **Gurdev Kaur and others *versus* Mehar Singh and others (13)** and **Hari Singh *versus* Gurcharan Singh and others (14).**

(25) On the other hand it has been vehemently contended by learned counsel for the respondent-plaintiff that the decrees are challenged on the ground that the same are illegal and void. It is further contended that property is not proved to be ancestral in the hands of Hazara Singh and that it is also not the case of present appellants-defendants that the property in the hands of Hazara Singh was ancestral. It is further contended that the property was purchased by Hazara Singh during his lifetime and hence, it was his self acquired property. It is further contended that there was no

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(9) 1976 Current Law Journal (Civil) 166
(10) 2003(1) PLR 455
(11) 2002(2) PLR 512
(12) (2006) 10 SCC 788
(13) 1989 PLJ 182
(14) 2003(3) PLR 199

question of any family settlement as there was no joint Hindu family of Hazara Singh alongwith present appellants-defendants. Hence, it is contended that rights in the property in dispute were created for the first time vide judgments and decrees dated 29.5.1984 and 10.10.1984 by Hazara Singh deceased in favour of appellants-defendants without any consideration and that this fact is also clear from perusal of decrees Ex.D3 and Ex.D5 and hence, it is contended that no right in the property can be legally passed vide these decrees Ex.D3 and Ex.D5 in favour of appellantsdefendants as the decrees require compulsory registration and that admittedly they were not got registered as required under Section 17(2)(vi) of the Registration Act (16 of 1908). On the point he has placed reliance upon a judgment rendered by Hon'ble Apex Court in **Bhoop Singh *versus* Ram Singh Major (15).**

(26) Ex. D2 is the judgment passed by learned Civil Judge Ist Class, Phillaur on 29.5.1984, which shows that the suit filed by present appellantsdefendants against Hazara Singh deceased regarding property in dispute situated in Village Bhallowal was decreed in view of admitted written statement filed by Hazara Singh and in view of statement given by Hazara Singh admitting claim of present appellants-defendants. Decree Ex.D3 was passed pursuance to the said judgment, copy of which is Ex.D2. A very perusal of both these documents shows that the rights in the property which was subject matter of the said judgments and decrees were created in favour of appellants-defendants for the first time. The judgments do not show that there was any pre-existing right in the property in favour of present appellants-defendants and that the said right was recognised vide the said judgment and decree. Similarly perusal of Ex. D4 shows that judgment was passed in favour of present appellants-defendant and against Hazara Singh regarding share of property of Hazara Singh situated in village Bhallowal on the basis of admitted written statement filed by Hazara Singh and statement given by him before the Court admitting claim of present appellants-defendants. Decree Ex.D5 has been passed pursuance to judgment Ex.D4. Perusal of both these documents also shows that the rights in the property were created for the first time vide the said decree in favour of appellants-defendants.

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(15) AIR 1996 SC 196

(27) Law on the point has been settled by Hon'ble Apex Court in **Bhoop Singh's** case (supra), relevant paragraphs of which read as under:-

" 13. In other words, the court must enquire whether a document has recorded unqualified and unconditional words of present demise of right, title and interest in the property and included the essential terms of the same; if the document, including a compromise memo, extinguishes the rights of one and seeks to confer right, title or interest in praesenti in favour of the other, relating to immovable property of the value of Rs.100/- and upwards, the document or record or compromise memo shall be compulsorily registered.

14 and 15. XX XX XX

16. We have to view the reach of clause (vi), which is an exception to sub-section (1), bearing all the aforesaid in mind. We would think that the exception engrafted is meant to cover that decree or order of a court, including a decree or order expressed to be made on a compromise, which declares the pre-existing right and does not by itself create new right, title or interest in praesenti in immovable property of the value of Rs.100/- or upwards. Any other view would find the mischief of avoidance of registration, which requires payment of stamp duty, embedded in the decree or order.

17. It would, therefore, be the duty of the court to examine in each case whether the parties have pre-existing right to the immovable property, or whether under the order or decree of the court one party having right, title or interest therein agreed or suffered to extinguish the same and created right, title or interest in preasenti in immovable property of the value of Rs.100/- or upwards in favour of other party for the first time, either by compromise or presented consent. If latter be the position, the document is compulsorily registrable.

18. The legal position qua clause (vi) can, on the basis of the aforesaid discussion, be summarised as below :

(1) Compromise decree if bona fide, in the sense that the compromise is not a device to obviate payment of stamp duty and frustrate the law relating to registration, would not require registration. In a converse situation, it would require registration.

(2) If the compromise decree were to create for the first time right, title or interest in immovable property of the value of Rs.100/- or upwards in favour of any party to the suit, the decree or order would require registration.

(3) If the decree were not to attract any of the clauses of sub-section (1) of section 17, as was the position in the aforesaid Privy Council and this Court's cases, it is apparent that the decree would not require registration.

(4) If the decree were not to embody the terms of compromise, as was the position in Lahore case, benefit from the terms of compromise cannot be derived, even if a suit were to be disposed of because of the compromise in question.

(5) If the property dealt with by the decree be not the "subject matter of the suit or proceeding", clause (vi) of subsection (2) would not operate, because of the amendment of this clause by Act 21 of 1929, which has its origin in the aforesaid decision of the Privy Council, according to which the original clause would have been attracted, even if it were to encompass property not litigated."

(28) Hence, Court has to see as to whether rights in the property has been created or extinguished for the first time vide the impugned judgments and decrees and if it is so, the same requires compulsory registration, failing which no right in immovable property of the value of Rs.100/- and upwards would be extinguished and right would be created in favour of the other party. Even in **Som Dev and others**'s case (supra), on which reliance has been placed by learned counsel for the appellants-

defendants, which was a case in which there was admission regarding recognising pre-existing right in the property under a family arrangement, it was observed that the same did not by itself create any right or interest in immovable property and hence, it was observed that it could not be said that the same was not admissible as evidencing recognition of rights of plaintiff and his brother for want of registration. It was specifically held that it was a decree on admission and the admission was of pre-existing right set up by the plaintiff and that decree by itself did not create any right in the immovable property. It merely recognised the right put forward by the plaintiff in that suit based on an earlier family arrangement or relinquishment by the defendant in that suit and on the basis of that defendant in that suit had admitted such an arrangement or relinquishment and hence, it was held that the said decree could not be held to be inadmissible and could not be treated as evidencing recognition of the rights of plaintiff and his brother as co-owners for want of registration.

(29) As already discussed above, in the present case as well rights in the immovable property valuing more than Rs.100/- have been created for the first time in favour of present appellants-defendants vide impugned decrees Ex.D3 and Ex.D5 and hence, the same requires compulsory registration, however, as the same has not been got registered, hence, it cannot be said that any rights in the property in dispute has been validly created in favour of present appellants-defendants.

(30) It has been further contended that Hazara Singh deceased also executed a valid Will Ex.D1 in favour of present appellants-defendants and that by virtue of the said Will, they alone are entitled to inherit the property left by Hazara Singh and that in view of the said Will, respondent-plaintiff, Smt.Sodhan is having no right to succeed to the property left by Hazara Singh. It has been contended that appellants-defendants have been able to prove valid execution of Will Ex.D1 by Hazra Singh in their favour. It has been contended that Will has been proved by both the attesting witnesses, namely, DW2 Udham Singh and DW3 Surain Singh as well as Deed Writer., Malik Hargobind, who appeared as DW4. It is also contended that Will is also a registered one and that the Will was executed by Hazara Singh in their favour in view of services rendered by them to Hazara Singh. Hence,

it is argued that both the Courts below have committed illegality in no accepting the Will Ex.D1 as having been validly executed by Hazara Singh in favour of appellants-defendants. It has further been contended that merely on the ground that attesting witnesses of the Will belong to other village, the validity of the Will cannot be doubted. It is further contended that so far as inheritance of Smt.Shodha is concerned, there was valid reasons for Hazara Singh to disinherit her. It has been contended that property was purchased by Hazara Singh in the name of Smt.Sodhan during his lifetime and the said property was sold by her and that some amount was also withdrawn by Hazara singh from joint account of of Hazara Singh and Smt.Sodhan and that the same was given to her. It is further contended that Smt.Sodhan was not serving Hazara Singh during his last days as Hazara Singh was ill and only appellants-defendants used to serve him. He has also placed reliance upon **Atma Ram *versus* Smt.Parsini and others (16), Shashi Kumar Banerjee and others *versus* Subodh Kumar Banerjee since deceased and after him his legal representatives and others (17), Joginder Singh and others *versus* Surinder Singh (deceased) and others (18),** and **Chander *versus* Mst.Nihali (19).**

(31) On the other hand, it has been contended by learned senior counsel for the respondent-plaintiff that onus to prove due execution of Will is heavy upon his propounder and that propounder is not merely to prove execution of the Will in the sense that it was signed by testator but also to adduce evidence which removes all suspicious circumstances to the satisfaction of the Court, which are found to be surrounding in its due execution. It is further contended that valid reasons have been given by both the Court below for discarding the Will allegedly executed by Hazara Singh in favour of appellants-plaintiffs and hence, it is contended that it cannot be said that any illegality has been committed by learned Courts below in not placing any reliance upon the will propounded by present appellants-defendants.

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(16) AIR 1979 Pb. and Hy. 234
(17) AIR 1964 SC 529
(18) 1997(1) PLR 83
(19) 1992(2) HLR 23

(32) The principles, which govern the proving of a Will were considered by Hon'ble Apex Court in **H.Venkatachala Iyengar *versus* B.N.Thimmajamma (20)** and in a later judgment passed by a Bench of four Hon'ble Judges of Hon'ble Apex Court in **Rani Purnima Debi and another *versus* Kumar Khagendra Narayan Deb and another (21).** It was observed as under:-

> "5. Before we consider the facts of this case it is well to set out the principles which govern the proving of a will. This case was considered by this Court in H.Venkatachala Iyengar v. B.N.Thimmajamma**,** 1959 Supp (1) SCR 426. It was observed in that case that the mode of proving a will did not ordinarily differ from that of proving any other document except as to the special requirement of attestation prescribed in the case of a will by Section 63 of the Indian Succession Act. The onus of proving the will was on the propounder and in the absence of suspicious circumstances surrounding the execution of the will proof of testamentary capacity and signature of the testator as required by law was sufficient to discharge the onus. Where, however, there were suspicious circumstances, the onus would be on the propounder to explain them to the satisfaction of the Court before the will could be accepted as genuine. If the caveator alleged undue influence, fraud or coercion, the onus would be on him to prove the same. Even where there were no such pleas but the circumstances gave rise to doubts, it was for the propounder to satisfy the conscience of the Court. Further, what are suspicious circumstances was also considered in this case. The alleged signature of the testator might be very shaky and doubtful and evidence in support of the propounder's case that the signature in question was the signature of the testator might not remove the doubt created by the appearance of the signature. The condition of the testator's mind might appear to be very feeble and debilitated and evidence adduced might not succeed in removing the legitimate doubt as to the mental

(20) 1959 Supp (1) SCR 426
(21) (1962) AIR (SC) 567: 1962(3) SCR 195

capacity of the testator; the dispositions made in the will might appear to be unnatural, improbable or unfair in the light of relevant circumstances; or the will might otherwise indicate that the said dispositions might not be the result of the testator's free will and mind. In such cases, the Court would naturally expect that all legitimate suspicions should be completely removed before the document was accepted as the last will of the testator. Farther, a propounder himself might take a prominent part in the execution of the will which, conferred on him substantial benefits. If this was so it was generally treated as a suspicious circumstance attending the execution of the will and the propounder was required to remove the doubts by clear and satisfactory evidence. But even where there were suspicious circumstances and the propounder succeeded in removing them, the Court would grant probate, though the will might be unnatural and might cut off wholly or in part near relations."

(33) In **Savithri and others *versus* Karthyayani Amma and others (22),** it was observed by Hon'ble Apex Court that a Will like any other document is to be proved in terms of provisions of Indian Succession Act and the Indian Evidence Act, relevant paragraph of which reads as under:-

"14. The legal requirements in terms of the said provisions are now well-settled. A Will like any other document is to be proved in terms of the provisions of the Indian Succession Act and the Indian Evidence Act. The onus of proving the Will is on the propounder. The testamentary capacity of the propounder must also be established. Execution of the Will by the testator has to be proved. At least one attesting witness is required to be examined for the purpose of proving the execution of the Will. It is required to be shown that the Will has been signed by the testator with his free will and that at the relevant time he was in sound disposing state of mind and understood the nature and effect of the disposition. It is also required to be established that he has signed the Will in the presence of two witnesses

(22) 2007 (4) RCR (Civil) 749: 2008 AIR (SC) 300

who attested his signature in his presence or in the presence of each other. Only when there exist suspicious circumstances, the onus would be on the propounder to explain them to the satisfaction of the court before it can be accepted as genuine."

(34) Hence, the legal requirements for proving execution of Will can be summarised as under:-

1. A Will like any other document is to be proved in terms of provisions of Indian Succession Act and the Indian Evidence Act;

2. Onus of proving the Will is on the propounder;

3. Testamentary capability of the propounder must also be established;

4. The execution of the Will by the testator has to be proved;

5. At least one attesting witness is required to be examined for the purpose of proving the execution of the Will;

6. It is required to be shown that the Will has been signed by the testator with his free will and that at the relevant time, he was in sound disposing state of mind and understood the nature and effect of disposition;

7. It is also required to be established that he has signed the Will in the presence of two witnesses, who attested his signatures in his presence or in the presence of each other;

8. When there exist suspicious circumstances, the onus would be on the propounder to explain the same to the satisfaction of the court before it can be expected as genuine.

9. The Court must satisfy its conscience before its genuineness is accepted by taking a rationale approach.

(35) Hence, in the light of aforementioned legal proposition this Court is to see as to whether appellants-defendants have been able to prove due execution of Will Ex.D1 by deceased Hazara Singh in their favour and as to whether they have been able to dispel the suspicious circumstances surrounding execution of the Will by deceased Hazara Singh.

(36) Admittedly Smt.Sodhan Kaur, respondent-plaintiff since deceased was the wife of Hazara Singh and was dependent upon him. Nothing has come on the record that Smt.Sodhan was having any independent income. It has been admitted by Charan Singh, appellantdefendant no.1, who is one of the beneficiary of the Will in his statement when he appeared in the witness box as DW1 that Hazara Singh and Smt.Sodhan Kaur used to reside in England as husband and wife and only 3- 4 years before death of Hazara Singh, they returned to India. He has also admitted that Smt.Sodhan Kaur was not doing any work and she was dependent upon Hazara Singh and that their relations remained cordial. He also admitted that Hazara Singh was having joint account with smt.Sodhan Kaur, which remained joint till the death of Hazara singh. He also admitted that Hazara Singh suffered paralytic attack while in England and at that time, Smt.Sodhan was with him and they came back to India sometime in the year 1983. He also admitted that Smt.Sodhan used to reside with Hazara Singh though he deposed that sometimes, she also used to go to the house of her brothers. Hence, it has been rightly observed by learned Courts below that Smt.Sodhan Kaur resided with Hazara Singh through out her life and that she was dependent upon income of Hazara Singh and was having no income of her own. Even bank account of Hazara Singh with Smt.Sodhan Kaur remained joint till death of Hazara Singh. So far as the land which was in the name of Smt.Sodhan Kaur is concerned, Hazara Singh was treating himself to be exclusive owner of the said land also which was purchased in the name of Smt.Sodhan. Hazara Singh had suffered statement Ex.PW2/B in earlier suit filed by Surjan Singh against him and he asserted in his written statement that he is exclusive owner of the property which existed in the name of Smt.Sodhan Kaur.

(37) Cogent reasons have been given by both the Courts below in not accepting Will Ex.D1 as having been validly executed by Hazara Singh in favour of present appellants-defendants. Learned Additional District Judge, Jalandhar, discarded Will Ex.D1 by observing as under:-

> "14. There are number of suspicious circumstances surrounding the due execution of the will which are enumerated hereunder:-
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> (i) Smt. Sodhan Kaur plaintiff was the wife of Hazara Singh, deceased. She was admittedly dependent upon her husband. Both husband and wife had been residing in

England and they came back to India about 3 or 4 years back. This fact is admitted by DW Charan Singh defendant in his statement. He further admits that Sodhan Kaur was not doing any work but was dependent upon Hazara Singh. He further states that relations between them were cordial. He found no alternative except admitting that he was having a joint account with Smt. Sodhan Kaur till his death. He further admits that Hazara Singh got paralysis attack in England and at that time Sodhan Kaur was with him. They came back to India in 1983. He further admitted that while in India Sodhan Kaur was residing with Hazara Singh. In view of the above admission made by defendant No.1 it is clear that Smt. Sodhan Kaur remained faithful to Hazara Singh who rendered services to him during his illness in England and also served him in India and further that she was dependent upon Hazara Singh and she was having joint account with him, therefore, no reasons have been given as to why the wife had been totally ignored. She was neither given any land nor any amount nor any provision had been made by the executant for her maintenance. Learned counsel for the appellants has contended that some land was existing in the name of Smt. Sodhan Kaur and she was having joint account with Hazara Singh. Therefore, she was getting sufficient income for herself and that was the reason that she was ignored. The above contention is misconceived. The land which was in the name of Sodhan Kaur was purchased by Hazara Singh in her name and the same was managed and controlled by Hazara Singh. The deceased was treating himself to be the exclusive owner of the same. This is apparent after going through Ext.PW/B, the written statement filed by Hazara Singh. The deceased clearly asserted in para No.1 of the written statement that he is exclusive owner of the said property which existed in the name of Sodhan Kaur. Regarding the bank account, it has been specifically mentioned in the will that it will go to defendants No.1 and 2 who are beneficiaries of the will.

No amount has been given to Smt. Sodhan Kaur and this argument raised by the learned counsel for the appellants appears to be the result of a fertile brain, carved out after much thought, consultation and deliberation. So reliance cannot be placed.

(ii) It has rightly been argued by the learned counsel for the respondents that no witness of the village has been associated to attest the will and the will is not a natural one. The above contention is correct one. Udham Sngh one of the attesting witness is a close relation of the beneficiary, namely, Charan Singh. The second witness, namely, Surain Singh was introduced to Hazara Singh by Udham Singh. No convincing reasons have been given by the appellants for not joining the witness from the village. Hazara Singh made a statement (Ex.PW2/A) wherein he did refer to the will but categorically stated that he himself is the owner of the disputed land. Question of ownership was involved in that suit. If defendants No.1 and 2 had any such will duly executed by Hazara Singh under genuine circumstances they would very well ask Hazara Singh about the execution of the will in their favour but no such safe step was taken and this would go to show that defendants No.1 and 2 were not inclined to ask any question on this score otherwise the cat would have been out of the bag. If in the judicial Court Hazara Singh did not state with regard to the execution of any will by him then burden lies upon the beneficiary to prove that the testator executed the genuine will. This aspect of the matter has not been gone through by the beneficiary, therefore, it can safely be said that it was the propounder to remove all doubts surrounding the due execution of the will.

(iii) The story propounded by the beneficiaries that one servant was with the testator to serve him during the time of his illness appears to be a fabricated version and it has rightly been observed by the learned lower Court that this was

only done to disinherit the wife who served the deceased during his hard time/illness in England and also in India. That was the reason that neither the name of that domestic servant has come on the record nor the beneficiary did dare to produce him before the learned lower Court. The introducing of the domestic servant has also created a suspicion which could not be removed by the propounder.

(iv) If a fact/plea has been taken by the beneficiary for the annoyance of Hazara Singh with his wife then it was their bounden duty to have proved this fact beyond the possibility of reasonable doubt. To me it appears that the beneficiary would neither do justice to themselves nor to the wife of Hazara Singh. The beneficiaries took the plea that a sum of Rs.1,90,000/- was withdrawn by Smt. Sodhan Kaur without the permission of Hazara Singh and that was the reason for excluding her. Neither this fact has been proved on the record nor the same finds mention in the will.

(v) Now the beneficiaries took the plea that Sodhan Kaur used to live with her brothers and that was the reason for ignoring her by Hazara Singh. The above is also not the true picture because this fact does not find mention in the will. Secondly defendant No.1 Charan Singh, himself, admitted that relations between the deceased Hazara Singh and Sodhan Kaur remained cordial upto end. Had Sodhan Kaur been living with her brothers then Hazara Singh would not have kept the bank account joint uptil his death. From this it appears that cordial relations existed between husband and wife and the wife used to serve the husband during his life time. She was not doing any independent work and rather was dependent upon the deceased."

(38) Hence, sufficient reasons have been given by learned Courts below that there are various suspicious circumstances surrounding due execution of Will. Present appellants-defendants as a propounder of Will

have failed to remove the same to the satisfaction of the Court. Hence, there is no force in the argument of learned senior counsel for the appellantsdefendants that Courts below have committed illegality in discarding Will Ex.D1 allegedly executed by Hazara Singh in favour of present appellantsdefendants.

(39) Hence, all the aforementioned substantial questions of law, on which present appeal has been argued by learned counsel for the appellants are decided against the appellants and in favour of respondent-plaintiff.

(40) As a sequel to my above discussion, there is no merit in the present regular second appeal. The same is, hereby, dismissed.

(41) However, in view of the peculiar facts and circumstances of the case, the parties are left to bear their own cost.

J. Thakur

Before Alok Singh, J.

PUNJAB ROADWAYS CHANDIGARH,—*Petitioner*

versus

ARJINDERA BUS SERVICE REGD.
AND OTHERS ,—*Respondents*

CWP No. 13940 of 2009

2nd August, 2011

Constitution of India - Art. 226/227 - State Transport Tribunal allowed private operator to lift permit which had not been lifted by Punjab Roadways within six months of allotment - Whether permit can be granted in favour of private operator from quota fixed for State Transport Undertakings (STUs)-Held,-Transport Tribunal has no such jurisdiction to pass order neither RTA nor STA nor Appellate Tribunal are authorized to grant any permit in violation of the scheme.