

(2016) 08 SHI CK 0056
In the High Court Of Himachal Pradesh
Case No : RSA No. 500 of 2005.

**Puran Singh s/o Sh. Paras Ram - Appellant/Plaintiff @HASH Yoginder Pal
s/o Sh. Paras Ram and Others /Defendants**

Date of Decision : 09-08-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Specific Relief Act, 1963 — Section 34, Section 37, Section 38, Section 6
Succession Act, 1925 — Section 63

Citation : (2016) 4 HimLR 2439 : (2016) LatestHLJ(HP) 1051 : (2016) 3 SimLC 1693

Hon'ble Judges : P.S. Rana, J.

Bench : Single Bench

Advocate : Mr. N.K. Thakur, Senior Advocate with Ms. Sneh Lata, Advocate, for the Appellant; Mr. K.D. Sood, Senior Advocate with Mr. Mukul Sood, Advocate, for the Respondent Nos. 1 to 6; None, for the Respondent Nos. 7 to 11

Final Decision : Disposed Off

Judgement

P.S. Rana, J. - Present RSA is filed against the judgment and decree passed by Presiding Officer/Additional District Judge Fast Track Court Hamirpur H.P. in Civil Appeal No.71/1998 RBT No. 11 of 2004 title Sh. Puran Singh and others v. Sh. Yoginder Pal and others wherein learned Additional District Judge affirmed the judgment and decree passed by learned Trial Court except findings upon issue No.1.

Brief facts of the case:

2. Sh. Puran Singh and others plaintiffs filed civil suit for declaration to the effect that plaintiffs are owners in possession of suit land on the basis of Will dated 27.12.1982 executed by Smt. Janki Devi widow of Sh. Paras Ram resident of Tika Kakkriar Distt. Hamirpur H.P. who expired on 23.05.1990. It is pleaded that defendants No.1 to 3 have no right to interfere over the suit land in any manner forcibly. Consequential relief of permanent injunction restraining co-defendants No.1 to 3 from interfering over suit land in any manner sought. Further relief of possession also sought in case co-defendants No.1 to 3 succeed in dispossessing

the plaintiffs from suit land during pendency of the civil suit.

3. Per contra written statement filed on behalf of co-defendants No.1 to 3 pleaded therein that plaintiffs have got no locus-standi in filing the present suit. It is further pleaded that plaintiffs are estopped by their own act and conduct. It is further pleaded that Smt. Janki Devi deceased executed latest Will dated 25.02.1990 in favour of plaintiff No.1 and defendants in sound disposing state of mind. It is further pleaded that latest Will dated 25.02.1990 is binding upon plaintiffs. It is further pleaded that Smt. Janki Devi did not execute any Will on dated 27.12.1982 as alleged. It is further pleaded that plaintiffs have no cause of action to file the present suit. It is further pleaded that present suit is bad for non-joinder of necessary parties. Prayer for dismissal of suit sought.

4. Per contra written statement filed on behalf of co-defendants No.4 to 6. Co-defendants No.4 to 6 admitted the case of plaintiffs and pleaded that suit filed by plaintiffs be decreed as prayed. As per pleadings of parties learned Trial Court framed following issues on 24.06.1992:

1. Whether late Smt. Janki Devi had executed valid Will dated 27.12.1982 in favour of plaintiffs if so its effect? ????.OPD

2. Whether late Smt. Janki Devi had executed a valid Will dated 25.02.1990 in favour of plaintiffs and defendants as alleged, if so its effect? ??..OPD

3. Whether plaintiffs have no locus-standi to file the suit? ??OPD

4. Whether plaintiffs are estopped from filing the suit by their own act and conduct? ??OPD

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

6. Relief.

5. Learned Trial Court decided issues No.1 and 2 in affirmative and issues No. 3, 4 and 5 in negative. Learned Trial Court dismissed the suit filed by plaintiffs. Learned Trial Court held that both Wills dated 27.12.1982 and 25.02.1990 proved to be legal and valid Wills. Learned Trial Court further held that latest Will dated 25.02.1990 would prevail. Thereafter Sh. Puran Singh and others filed civil appeal before Presiding Officer/Additional District Judge Fast Track Court Hamirpur H.P. and civil appeal was dismissed. However learned First Appellate Court set-aside findings upon issue No.1 and learned First Appellate Court held that Will dated 27.12.1982 is not proved on record. Feeling aggrieved against the judgment and decree passed by learned First Appellate Court present RSA is filed. Following substantial question of law framed on 17.07.2006 by H.P. High Court.

1. Whether appellant/plaintiff has been materially prejudiced on account of non-consideration of his application for the comparison by a Finger Print Expert of the allegedly admitted thumb impression of deceased Janki Devi appearing on Power

of Attorney with the disputed thumb impression on the Will Ext. DA?

6. Court heard learned Advocate appearing on behalf of appellant and learned Advocate appearing on behalf of respondents and Court also perused the entire records carefully. Findings upon substantial question of law No.1 with reasons:

7. PW-1 Sh. Puran Singh has stated that deceased Smt. Janki Devi was his mother who died on 23.05.1990. He has stated that he has four sisters and four brothers. He has further stated that all brothers and sisters are residing separately. He has further stated that deceased Smt. Janki Devi was residing with him. He has further stated that his wife, children and his sister Smt. Meena Devi @ Veena Devi used to reside with him. He has further stated that property of Smt. Janki Devi was situated in three villages. He has further stated that Smt. Janki Devi inherited property from her husband on the basis of Will. He has further stated that deceased Smt. Janki Devi had executed Will in his favour on 27.12.1982. He has further stated that ration card and voter list of Smt. Janki Devi were jointly with his family members. He has further stated that he used to pay house tax. He has further stated that Smt. Janki Devi was admitted in hospital prior to her death. He has further stated that Smt. Janki Devi died in Hamirpur hospital. He has further stated that he received dead body of deceased from hospital vide document mark X. He has further stated that OPD slips are mark Y and mark Z. He has further stated that Smt. Janki Devi had executed Will in his favour for the services rendered by him. He has further stated that deceased did not execute any Will on dated 25.02.1990. He has further stated that thumb impression of deceased was obtained in fraudulent manner upon Will on dated 25.02.1990. He has further stated that Will dated 25.02.1990 was prepared after the death of deceased Smt. Janki Devi. He has further stated that defendants are interfering in suit property. In cross-examination he has stated that two brothers separated in the year 1980. He has further stated that elder brother was separated in the year 1971. He has further stated that his father died in the year 1975. He has further stated that house tax and ration card was in the name of Smt. Janki Devi. He has further stated that suit property was inherited from ancestors.

He has denied suggestion that suit land was divided. He has denied suggestion that defendants had cordial relations with deceased Smt. Janki Devi. He has admitted that deceased died at the age of 75 years. He has denied suggestion that all are cultivating land owned by Smt. Janki Devi. He has denied suggestion that he did not serve Smt. Janki Devi during her life time.

8. PW-2 Sh. Dalip Singh has stated that he remained Pradhan of Gram Panchayat and Kakkaryar village falls in Panchayat area. He has stated that he issued ration cards Ext. PA. Ext. PB Ext. PC and Ext. PE. He has further stated that house tax receipts Ext. PF and Ext. PG are also issued by him. He has further stated that mother of Sh. Puran Singh used to reside jointly. He has further stated that defendants had cordial relations with his deceased mother and there was no litigation inter se deceased and defendants. He has further stated that

defendants had also contested Pradhan election against him. He has further stated that he does not know that all sons used to serve deceased Smt. Janki Devi.

9. PW-3 Sh. Lal Singh has stated that he is election Kanoongo. He has further stated that he has brought the voter list. He has further stated that voter list Ext. PW-3/A was issued from the office. He has further stated that document Ext. PW-3/A has not been prepared by him.

10. PW-4 Dr. N.K. Sharma Medical Officer District Hospital Hamirpur H.P. has stated that he is posted as Medical Officer in the hospital since 1984. He has further stated that receipt mark X was issued by him.

11. PW-5 Sh. Desh Raj Registration Clerk has stated that he has brought the Will dated 27.12.1982. He has further stated that Will was registered by Sub-Registrar Sh. Sunder Singh. He has further stated that endorsement of registration is Ext. PW-5/A. He has further stated that he did not work under Sh. Sunder Singh. He has further stated that he does not know on which date Sh. Sunder Singh Sub-Registrar retired.

12. PW-6 Sh. Piar Chand has stated that he is Numberdar of the area and he had signed the Will. He has further stated that Will was executed by Smt. Janki Devi in favour of Sh. Narender Dev, Sh. Puran Chand and Smt. Veena Kumari. He has further stated that Will was written by petition writer Sh. Sohan Singh at the instance of Smt. Janki Devi. He has further stated that contents of Will were not read over to Smt. Janki Devi in his presence. He has further stated that Smt. Janki Devi appeared before Sub-Registrar. He has further stated that Smt. Janki Devi had admitted the contents of Will as correct and marked her thumb impression. He has further stated that Sh. Khayali marginal witness of the Will and Sh. Sohan Singh petition writer both have died. He has further stated that Smt. Janki Devi had marked her thumb impression in endorsement in his presence. He has further stated that Smt. Janki Devi was personally known to him. He has further stated that his village is situated at a distance of 10 kms. from the village of deceased Smt. Janki Devi. He has denied suggestion that Smt. Janki Devi did not execute any Will. He has denied suggestion that Smt. Janki Devi was not in conscious state of mind.

13. PW-7 Sh. Madan Lal has stated that he was ward member of panchayat and Smt. Janki Devi was known to him. He has further stated that Smt. Janki Devi resided with Sh. Puran Singh who used to bear all expenses of Smt. Janki Devi. He has further stated that Smt. Janki Devi had four daughters and five sons. He has further stated that Smt. Janki Devi had died at the age of 80- 90 years. He has further stated that Smt. Janki Devi had cordial relations with all sons and daughters. He has further stated that all are in possession of property of Smt. Janki Devi.

14. PW-8 Sh. Kartar Singh has stated that he was Pradhan of Gram Panchayat. He has further stated that he was adopted by Sh. Bhoomi Dev and he is familiar

with his signatures. He has further stated that document Ext. PD is signed by Sh. Bhoomi Dev. He has further stated that ration card Ext. PE is also signed by Sh. Bhoomi Dev. He has further stated that Smt. Janki Devi was personally known to him who died in the year 1990.

15. DW-1 Sh. Yoginder Pal has stated that his mother has five sons and four daughters. He has further stated that relations of deceased Smt. Janki Devi with her sons and daughters were cordial. He has further stated that all brothers are residing separately since 14-15 years. He has further stated that death ceremony of deceased was solemnized jointly. He has further stated that property of deceased is situated in three villages. He has further stated that mutation has been sanctioned in favour of all brothers. He has further stated that deceased had executed Will in favour of her sons. He has further stated that all sons of deceased are in separate possession of property. He has further stated that deceased Smt. Janki Devi had not executed any other Will. He has admitted that Smt. Janki Devi had inherited property from his father by way of Will. He has denied suggestion that Will produced by defendants is not valid Will. He has denied suggestion that thumb impression of deceased was placed in fraudulent manner upon Will. He has denied suggestion that testator used to reside in residential house of plaintiffs only. He has denied suggestion that defendants had no cordial relations with deceased Smt Janki Devi during her life time. He has denied suggestion that he did not spend any money upon medical treatment of deceased. He has denied suggestion that death ceremony of deceased was performed by plaintiff Sh. Puran Singh.

16. DW-2 Sh. Karam Chand has stated that parties are known to him. He has further stated that he is sales man of society. He has further stated that deceased Smt. Janki Devi was known to him. He has further stated that deceased Smt. Janki Devi had cordial relations with her sons. He has further stated that Smt. Janki Devi used to reside along with Sh. Puran Singh. He has further stated that after death of Smt. Janki Devi death ceremony was performed by all brothers and expenditure bill was paid by all brothers.

17. DW-3 Sh. Onkar Thakur Advocate has stated that he is practicing as an Advocate since 1964. He has further stated that he is also Numberdar of the area since 1946. He has further stated that Smt. Janki Devi was personally known to him. He has further stated that his sister was also married in the same village in which Smt. Janki Devi used to reside. He has further stated that he had written the original Will Ext. DA dated 25.02.1990. He has further stated that original Will Ext. DA was written by him as per direction of testator Smt. Janki Devi. He has further stated that contents of Will Ext. DA dated 25.02.1990 were also read over to testator. He has further stated that after admitting the contents of Will as correct testator had marked her thumb impression. He has further stated that attesting witnesses have also signed the Will in the presence of testator. He has further stated that he had signed the Will Ext. DA as scribe. He has further stated that at the time of execution of Will Ext. DA Smt. Janki Devi was in sound

state of mind. He has denied suggestion that Will Ext. DA dated 25.02.1990 was written after death of testator. He has further stated that Will was written in the courtyard of testator. He has denied suggestion that Smt. Janki Devi was not in proper state of mind. He has further stated that he does not know that testator used to reside with Sh. Puran Singh prior to her death.

18. DW-4 Sh. Ranjit Singh has stated that parties are known to him and testator Smt. Janki Devi was also known to him. He has further stated that Smt. Janki Devi had executed Will Ext. DA dated 25.02.1990 in favour of her sons and he signed Will as attesting witness. He has further stated that Will dated 25.02.1990 was scribed by Sh. Onkar Thakur, Advocate. He has further stated that contents of Will were read over to testator and thereafter testator had marked thumb impression upon Will. He has further stated that attesting witnesses had signed the Will in presence of testator. He has further stated that testator was in sound state of mind at the time of execution of Will. He has further stated that death ceremony of deceased was performed by all sons. He has further stated that deceased had cordial relations with all her sons. He has further stated that Will was written in courtyard of testator. He has denied suggestion that Smt. Janki Devi used to reside in residential house of Sh. Puran Singh. He has denied suggestion that deceased did not execute any Will Ext. DA on 25.02.1990. He has denied suggestion that Will dated 25.02.1990 did not bear thumb impression of Smt. Janki Dev. He has further stated that Smt. Janki Devi had marked her thumb impression in his presence upon Will. He has denied suggestion that defendants, scribe and other attesting witnesses have prepared a fraudulent Will.

19. DW-5 Sh. Kishan Dayal has stated that he is farmer by profession. He has stated that he was ward member of panchayat of Narsi Panchayat and parties are known to him. He has further stated that he remained member of Panchayat for eleven years. He has further stated that testator had executed Will Ext. DA dated 25.02.1990 in favour of five sons. He has further stated that scribe of the Will was Sh. Onkar Thakur Advocate. He has further stated that when Will was written at that time deceased Smt. Janki Devi was in sound state of mind. He has further stated that contents of Will dated 25.02.1990 were read over to testator and after admitting the contents of Will as correct testator had marked her thumb impression. He has further stated that he and Sh. Ranjit Singh have signed the Will dated 25.02.1990 as attesting witnesses. He has further stated that death ceremony of Smt. Janki Devi was performed by her sons. He has denied suggestion that Smt. Janki Devi used to reside in residential house of Sh. Puran Singh. He has further stated that Sh. Puran Singh used to reside in residential house of Smt. Janki Devi. He has further stated that testator had cancelled her previous Will when new Will was executed by testator. He has denied suggestion that deceased Smt. Janki Devi had executed her last Will dated 27.12.1982. He has denied suggestion that Will Ext. DA dated 25.02.1990 had been executed in fraudulent manner. He has denied suggestion that deceased Smt. Janki Devi had not marked her thumb impression upon Will Ext. DA dated 25.02.1990. He has denied suggestion that Will Ext. DA dated

25.02.1990 was executed in fraudulent manner in collusion with Sh. Onkar Thakur Advocate.

20. Following documentaries evidence filed by parties. (1) Ext. DG is copy of pedigree table. (2) Ext. DH is copy of jamabandi for the year 1986-87. (3) Ext. DI is copy of jamabandi for the year 1986-87. (4) Ext. P1 is copy of jamabandi for the year 1987-88 (5) Ext. P2 is copy of jamabandi for the year 1986-87 (6) Ext. P3 is copy of missal hakiyat settlement for the year 1989-90 (7) Ext. P4 is copy of death certificate of Smt. Janki Devi issued by Registrar Births and Deaths. Smt. Janki Devi died on 23.05.1990. (8) Mark A to Mark F are house rent receipts. (9) Ext. PC, Ext. PD and Ext. PE are ration cards issued in favour of Smt. Janki Devi. (10) Ext.PW- 3/A is voter list. (11) Mark X is certificate that testator remained admitted in the hospital w.e.f. 17.05.1990 to 23.05.1990. (12) Mark Y is discharge summary issued from hospital which shows that Smt. Janki Devi was admitted on 31.12.1987 and was discharged on 05.01.1988. (13) Mark Z is discharge certificate of Smt. Janki Devi which shows that Smt. Janki Devi was admitted on 11.04.1990 and was discharged on 21.04.1990. (14) Mark G is special power of attorney given by Smt. Janki Devi. (15) Ext.DA is original Will dated 25.2.1990 executed by deceased Janki Devi in favour of five sons namely Hans Raj, Narinder Dev, Yoginder Pal, Hem Raj and Puran Chand in equal shares. (16) Ext.DB is order of Sub Registrar Barsar Distt.Hamirpur (H.P.) wherein Will dated 25.02.1990 was registered after the death of testator under Section 40/41 of Indian Registration Act. (17) Ext.DC is order of Registrar Hamirpur whereby case was transferred to Sub Registrar Barsar from Sub Registrar Hamirpur. (18) Ext. PW-5/A is original Will dated 27.12.1982. (19) Ext. DD is copy of mutation No.257. (20) Ext. DE is copy of mutation. (21) Ext. DF is copy of mutation whereby property of Smt. Janki Devi was divided upon Sh. Hans Raj, Narinder Dev, Yoginder Pal, Hem Raj and Puran Chand on the basis of Will dated 25.02.1990.

21. Submission of learned Advocate appearing on behalf of appellant that proof of execution of Will dated 25.02.1990 is not proved on record is rejected being devoid of any force for reasons hereinafter mentioned. It is well settled law that execution of unprivileged Will is proved under Section 63 of Indian Succession Act 1925. It is well settled law that Will is one of very solemn document known to law. In the present case DW-3 Sh Onkar Thakur Advocate has stated in positive manner when he appeared in witness box that Will Ext. DA dated 25.02.1990 was written at the instance of testator Smt. Janki Devi. DW-3 has further stated in positive manner that contents of Will Ext. DA dated 25.02.1990 were read over to testator. DW-3 has further stated in positive manner that attesting witnesses had signed Will Ext. DA in the presence of testator. DW-3 has further stated in positive manner that he also signed Will Ext. DA as scribe. DW-3 has further stated in positive manner that Smt. Janki Devi was in sound state of mind at the time of execution of Will dated 25.02.1990 placed on record. Testimony of DW-3 Sh. Onkar Thakur is trustworthy, reliable and inspires confidence of the Court. There is no reason to disbelieve the testimony of DW-3

Sh. Onkar Thakur Advocate. There is no evidence on record in order to prove that DW-3 Sh. Onkar Thakur has hostile animus against the plaintiffs at any point of time.

22. Testimony of DW-3 Sh. Onkar Thakur is corroborated by DW-4 Sh. Ranjit Singh who is attesting witness of Will dated 25.02.1990. DW-4 Sh. Ranjit Singh has stated in positive manner that Will Ext. DA was written at the instance of testator Smt. Janki Devi and contents of Will Ext. DA dated 25.02.1990 were read over to testator and testator had marked her thumb impression upon the Will. DW-4 has further stated in positive manner that attesting witnesses had signed Will Ext. DA in the presence of testator. DW-4 has further stated in positive manner that Smt. Janki Devi was in sound state of mind at the time of execution of Will dated 25.02.1990 placed on record. Testimony of DW-4 Sh. Ranjit Singh is also trustworthy, reliable and inspires confidence of the Court. There is no reason to disbelieve the testimony of DW-4 Sh. Ranjit Singh. There is no evidence on record in order to prove that DW-4 Sh. Ranjit Singh has hostile animus against the plaintiffs at any point of time.

23. Testimony of DW-3 Sh. Onkar Thakur Advocate is also corroborated by DW-5 Sh. Kishan Dayal ward member of Panchayat who is another attesting witness of Will dated 25.02.1990. DW-5 Sh. Kishan Dayal has specifically stated in positive manner that Will Ext. DA dated 25.02.1990 was executed by Smt. Janki Devi in favour of five sons in equal share. DW-5 has further stated in positive manner that Will Ext. DA was written by Sh. Onkar Thakur Advocate. DW-5 has further stated in positive manner that testator was in sound state of mind at the time of execution of Will. DW-5 has further stated in positive manner that Will Ext. DA dated 25.02.1990 was read over to testator and after admitting the contents of Will as correct testator had marked her thumb impression. Testimony of DW-5 Sh. Kishan Dayal is also trustworthy, reliable and inspires confidence of the Court. There is no reason to disbelieve the testimony of DW-5 Sh. Kishan Dayal. There is no evidence on record in order to prove that DW-5 Sh. Kishan Dayal has hostile animus against the plaintiffs at any point of time. In the present case execution and attestation of Will Ext. DA dated 25.02.1990 is proved as per Section 63 of Indian Succession Act 1925. It is held that maxim omnia praesumuntur solemniter esse acta would apply in the present case.

24. Submission of learned Advocate appearing on behalf of appellant that deceased Smt. Janki Devi had executed Will on dated 27.12.1982 and on this ground appeal be allowed is rejected being devoid of any force for reasons hereinafter mentioned. It is well settled law that when there are two Wills then latest Will always prevail. In the present case it is proved on record that deceased Smt. Janki Devi had executed two Wills i.e.

Will dated 27.12.1982 and Will dated 25.02.1990. Execution and attestation of Will dated 25.02.1990 is proved as per Section 63 of Indian Succession Act 1925. It is well settled law that when there is conflict between former Will and subsequent Will then subsequent Will always prevail.

25. Submission of learned Advocate appearing on behalf of appellant that learned Additional District Judge has illegally set aside the findings relating to issue No.1 is accepted for reasons hereinafter mentioned. Learned Additional District Judge has set aside the findings relating to issue No.1 on the ground that Will dated 27.12.1982 is not proved as per Section 63 of Indian Succession Act 1925. There is recital in Will dated 25.02.1990 that testator had revoked the earlier Will executed in favour of two sons and one daughter. In view of recital in Will dated 25.02.1990 relating to revocation of earlier Will Court is of the opinion that factum of earlier Will is proved due to admission by testator herself that she had executed earlier Will in favour of two sons and one daughter. It is well settled law that facts admitted need not to be proved under Section 58 of Indian Evidence Act 1872. In view of the above states facts finding of learned Trial Court on issue No.1 is affirmed and finding of learned Additional District Judge upon issue No.1 is set aside.

26. Submission of learned Advocate appearing on behalf of appellant that appellant filed application before learned Trial Court for sending two Wills i.e. Will dated 27.12.1982 and Will dated 25.02.1990 along with admitted documents for opinion of hand writing expert but learned Trial Court did not send the documents to the hand writing expert and on this ground appeal be allowed is rejected being devoid of any force for reasons hereinafter mentioned. It is well settled law that opinion of hand writing expert is only advisory in nature. It is well settled law that execution and attestation of unprivileged Will should be proved as per Section 63 of Indian Succession Act 1925. It is admitted case that Will dated 27.12.1982 and Will dated 25.02.1990 are unprivileged Wills as mentioned in Section 63 of Indian Succession Act 1925. Will dated 25.02.1990 is proved by way of testimonies of DW-3 Sh. Onkar Thakur, DW-4 Sh. Ranjit Singh and DW-5 Kishan Dayal. Factum of execution and attestation of unprivileged Will dated 25.02.1990 is proved as per Section 63 of Indian Succession Act 1925 on the concept of *omnia praesumuntur solemniter esse acta*.. It is held that it is not expedient in the ends of justice to send documents for opinion of hand writing expert in view of positive evidence of eye-witnesses namely DW-3 Sh. Onkar Thakur, DW-4 Sh. Ranjit Singh and DW-5 Kishan Dayal.

27. It is well settled law that whole idea behind execution of Will is to interfere with the normal line of succession. It is well settled law that question of execution of Will is purely question of facts. It is also well settled law that onus of proving Will is upon propounder. In view of the above state facts propounder has proved execution and attestation of Will dated 25.02.1990 in positive cogent and reliable manner as per testimonies of DW-3 Sh. Onkar Thakur, DW-4 Sh. Ranjit Singh and DW-5 Sh. Kishan Dayal. See AIR 1995 SC 1852 title PPK Gopalan Nambiar v. PPK Balakrishnan Nambiar and others. See AIR 1977 SC 74 title Smt. Jaswant Kaur v. Smt. Amrit Kaur and others. See AIR 1962 SC 567 title Rani Purnima Debi and another v. Kumar Khagendra Narayan Deb and another. See AIR 1995 SC 1684 title Rabindra Nath Mukherjee and another v. Panchanan Banerjee and others. See AIR 1997 SC 3819 title Misri Lal and another v. Daulati

Devi and another. See AIR 1985 SC 500 title Satya Pal Gopal Das v. Panchubala Dasi and others. See AIR 1997 HP 43 title Shakuntala Devi v. Savitri Devi and others. Hence payer of appellant to send documents for opinion of hand writing expert is declined and application filed for opinion of hand writing expert is rejected. It is held that appellant is not materially prejudiced on account of non-consideration of his application for comparison of thumb impression of deceased Smt. Janki Devi upon Will dated 25.02.1990 Ext. DA with admitted thumb impression by finger print expert in view of testimonies of eye-witnesses DW-3 Sh. Onkar Thakur Advocate, DW-4 Sh. Ranjit Singh and DW-5 Kishan Dayal ward member of Panchayat. Substantial question of law No.1 is decided against appellant.

Final Order:

28. In view of findings upon substantial question of law No.1 present appeal is partly allowed. Judgment and decree passed by learned Trial Court is affirmed and judgment and decree passed by learned First Appellate Court relating to issue No.1 is set-aside. Parties are left to bear their own costs. Learned Registrar Judicial will prepare decree sheet forthwith as required under Section 100 Code of Civil Procedure 1908. Files of learned Trial Court and learned First Appellate Court along with certified copy of judgment and decree sheet be sent back forthwith. RSA No. 500/2005 is disposed of. Pending applications if any also disposed of.