

(2020) 01 SHI CK 0003

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 464 Of 2012

Rukmani Devi (Since Deceased) Through Her Legal
Representative Sh. Gulab Singh Son Of Late Sh. Tule Ram

APPELLANT

Vs

Prem Lata & Anr

RESPONDENT

Date of Decision : 01-01-2020

Acts Referred:

Code Of Civil Procedure, 1908 — Section 100
Indian Succession Act, 1925 — Section 63, 63(c)
Hindu Marriage Act, 1955 — Section 5
Evidence Act, 1872 — Section 68

Citation : (2020) 01 SHI CK 0003

Hon'ble Judges : Chander Bhusan Barowalia, J

Bench : Single Bench

Advocate : Bimal Gupta, Kusum Chaudhary, O.P. Sharma, Gurmeet Bhardwaj

Judgement

Chander Bhusan Barowalia, J

1. The present regular second appeal is maintained by the appellant under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 15.5.2012, passed by the learned Additional District Judge (Fast Track Court), Kullu, in Civil Appeal No.28 of 2011, affirming the judgment and decree dated 14.10.2011, passed by the learned Civil Judge (Sr. Division), Manali, District Kullu, H.P., in Civil Suit No.43 of 2008.

2. Briefly stating the facts giving rise to the present appeal are that the plaintiff/appellant (hereinafter to be called as 'the plaintiff') filed a suit for declaration to the effect that the land comprised in Khata Khatoni No.55/105, Khasra Nos. 1202, 1218, land measuring 1-18-41 hectare and Khata Khatoni No.56/106 to 56/114, Khasra No.1126, 1174, 1176, 1178, 1179, 1220, 1250, 1251, 1291, 1300, 1413, 1501, 1182, 1183, 1184, 1188, 1189, 1217, 1269, 1451, 1452, 1348, 1180, 1219, 1252, 1253, 1263, 1268, 1297, 1232, 1334, 1496, 1292, 1293, 1415, 1152, 1127, 1175, 1177,

1260,1261,1301,1325, 1333, 1497 & 1226 total land measuring 4-57-81 hectares as per jamabandi for the year 2000-01, to the extent of 1/4th share situated at Phati Soyal, Kothi Barshai and two houses wherein the plaintiff is residing, as per site plan (hereinafter to be called as 'suit property'). The plaintiff has alleged that she had solemnized marriage in the year, 1957 with Atma Ram(deceased) and at that time Atma Ram had given two bighas of Ropa and five bighas and 10 biswas of Bathal land to her as 'Istridhan', which is adjoining to the the house and is in exclusive possession of the plaintiff since then.

3. As per the applicant, thereafter, he had developed love and affection with respondent/defendant No.1 (hereinafter called the 'defendant No.1'), who is daughter of Tulsi, the God-sister of the plaintiff. Tulsi, lateron settled in the house of Atma Ram, however, she could not bear any child from the loins of her husband, Atma Ram. As per the plaintiff defendant No.1 was the daughter of Tulsi from her previous husband. In the month of March,2008, Atma Ram fell ill and had grown very weak and was mentally infirm and treatment was given to him in Manali hospital. Defendant No.1 used to take Atma Ram under the pretext of treatment to Manali and used to take his signatures on many papers. Plaintiff averred that he never executed any Will. After his death, the last rites of Atma Ram were performed by the plaintiff. The defendants never rendered any services to Atma Ram during his life time. After about 15 days of the death of Atma Ram to utter shock and surprise of plaintiff, the defendant No.1 and her husband started saying that they have got the Will of Atma Ram. The defendant No.1 procured Will in her favour fraudulently under the pretext of treatment of her husband. On 3.7.2008, plaintiff again was shocked to know that the defendant had got herself entered as nominee of Atma Ram in the bank accounts in connivance with the bank officials. Hence, the suit for declaration to declare the Will Ext.DW5/B, null and void and decreeing the suit for permanent prohibitory injunction restraining the defendants from interfering into the ownership and possession of plaintiff over the suit property in any manner and defendant No.1 be directed through a decree of mandatory injunction to hand over the entire amount withdrawn by her from the banks.

4. The defendants filed written statement and resisted the suit on merits as well they maintained the preliminary objections. On merits, it is averred that Atma Ram married for the second time with Smt. Tulsi Devi mother of defendant No.1 and kept her as second wife. During his life time, Atma Ram gifted his land in favour of defendant No.1 on 19.12.2001,as per deed Ex.DW2/A and mutation number 57,58 Ext.DW1/E and Ext. DW1/F were attested. It has been denied that any land was given to the plaintiff as Women's Estate (ISTRIDHAN). The defendant averred that she was born from the wedlock of Atma Ram and Tulsi Devi, as is evident from her school certificates Ext.DW1/B & C and Atma Ram has been recorded as her father. Atma Ram was suffering from heart ailment and was treated at Chandigarh and defendant No.1 and she incurred rupees five lakh on his treatment. Atma Ram was satisfied with the services of defendant No.1 and he had gifted suit property vide gift deed Ex.DW2/B and thereafter, Atma

Ram had duly executed Will Ex.DW5/B. As per Will Ex.DW5/B, the plaintiff has also been given share in the land as well as in the house. It has been averred that deceased Atma Ram had desired that his last rites be performed by defendant No.2 and for the said purpose, he had also given part of the suit property to him in the Will Ex.DW5/B. It has also been averred that as per the wish of deceased Atma Ram, defendant offered two lacs to the plaintiff, but she refused to accept the same.

5. On the pleadings of the parties, the learned Trial Court framed the following issues for determination and adjudication:-

- "1. Whether the plaintiff was only wife of deceased Atma Ram, as alleged? OPP.
2. Whether the plaintiff has inherited the entire estate left by deceased Atma Ram, as alleged? OPP.
3. Whether the plaintiff is owner in possession of the suit land, as alleged ? OPP.
4. Whether the plaintiff is entitled for relief of permanent prohibitory injunction, as alleged? OPP
5. Whether the plaintiff is entitled for a relief of mandatory injunction as alleged? OPP
6. Whether the plaintiff is estopped by her acts and conduct from filing the present suit? OPD.
7. Whether the suit of the plaintiff is not maintainable? OPD.
8. Whether the suit is bad for non-joinder of necessary parties? OPD.
9. Whether the defendant No.1 is co-owner in the suit land as per gift dated 19.12.2001? OPD.
10. Whether the suit is bad for mis-joinder of necessary parties? OPD.
11. Whether deceased Atma Ram executed valid and last Will dated 16.5.2008 in favour of plaintiff and defendants, as alleged? OPD.
12. Relief."

6. The learned Trial Court after deciding Issue No.1 in favour of the plaintiff, Issue No. 2 against the plaintiff, Issue No.3 partly in favour of the plaintiff, Issue No.4 against the plaintiff, Issue No.5 against the plaintiff, Issue No.6 and 7 in favour of the defendant, Issue No.8 against the defendant, Issue No.9 in favour of the defendant, Issue No.10 against the defendant and Issue No.11 in favour of the defendant dismissed the suit.

7. The plaintiff, thereafter, maintained an appeal before the learned lower Appellate Court, which was dismissed vide the impugned judgment and hence, the present regular second appeal, which was admitted for hearing on the following Substantial Questions of Law:-

"1. Whether Will dated 16.5.2008 (Ex.DW-5/B) is executed in accordance with Section 63 of the Indian Succession Act.

2. Whether findings of the Courts below are based upon misreading, misinterpreting and misconstruing of oral and documentary evidence on record and the view taken by both the Courts below is totally perverse and contrary to evidence led by the propounder of the Will."

8. I have heard the learned counsel for the parties and have carefully gone through the record.

9. Mr. Bimal Gupta, learned Senior Counsel for the appellant, while referring to Section 63 of the Indian Succession Act, has argued that the two conditions necessary for the execution of the Will are:

(i) That the testator should sign the Will in the presence of atleast two attesting witnesses; and

(ii) the witnesses should sign the Will in the presence of the Testator.

He has argued that neither the scribe nor the witnesses in their examination-in-chief has deposed that the witnesses have signed the Will in the presence of the Testator. He has further argued that as per the scribe and the witness DW 5 and DW6, the Testator has not signed the Will on that particular day, as the hands of the Testator were trembling and thus put his thumb impression on the Will, which is a concocted story.

10. While inviting attention of this Court of the document (Ext.DW5/B) of the Court below, he has argued that on the same day the Testator has signed the withdrawal slip in the Bank while withdrawing the amount. So, as per the learned Senior Counsel for the appellant, the Will is suspicious and the Will is required to be declared null and void, which the Courts below have wrongly upheld. He has argued that the Court below while dealing with the issue in paragraph 13 of the judgment passed by the learned First Appellate Court and in Para 22 and 23 of the leaned Trial Court, both the Courts below have not touched this issue while upholding the Will that when a person can sign on the same day why he will put the right hand thumb impression on the Will. In these circumstances also, the Will becomes suspicious.

11. The learned Counsel has placed reliance upon the decision of Hon'ble Supreme Court rendered in case titled Charan Dass(deceased through his Lrs) versus Dole Ram in RSA No.48/2001, decided on 06.11.2012 and Sohan Lal and Another versus Thakur Dass and others 2019 SCC HP 1975.

12. Conversely, Mr. O.P. Sharma, learned Senior counsel for the respondents argued that no question of law is involved in the appeal and so the appeal needs dismissal. He has argued that even otherwise also, the present appeal cannot be maintained as it is the respondent only who is legally entitled to inherit the property as per the law laid down by the Hon'ble Supreme Court. To support his

arguments he has relied upon the judgments passed by the Hon'ble Apex Court rendered in State of Rajasthan & Ors. versus Shiv Dayal & Anr. (CA No.7363 of 2000 and Vijay Devi versus Navendra Singh Katoch, 2009 (2) Shim.LC 316, and in Bishan Singh (deceased) by his L.Rs versus Saran Singh and ors.

13. Mr. O.P. Sharma, Senior counsel appearing for the defendant has further argued that the Will contains right hand Thumb impression of the executant on it, but when he appeared before the learned Registrar for the registration of the Will, he has put left hand thumb impression. He has further argued that the law does not require which thumb impression is to be marked by the testator. He has also argued that there is no allegation that Atma Ram was not of sound state of mind at the time of execution of the Will. Mr. Sharma has further argued that the Bank Officer, while appearing in the witness box, has specifically stated that the hands of the testator were trembling and he could sign with difficulty and there is no contradiction in the statement of the marginal witnesses and that of Bank Manager, as it is on record that the testator was signing with his left hand and that is the reason that he could put his left thumb impression. He has further relied upon a judgment of this Hon'ble High Court rendered in Ishwar Dass versus Smt. Neelam Dassi deceased through her Lrs Shesh Ram and others, Latest HLJ 2016 (HP) 1252. He has further argued that the law is settled that the property inherited by the widow and in case of no legal heir from her husband, it will go to the heirs of the husband and not to any other person. So, in these circumstances, he has argued that the property cannot be inherited by the present appellant. In these circumstances also, the appellant/plaintiff has no case in his favour. As per this, the daughter of late Atma Ram also can inherit the property. He has also placed reliance on the matriculation certificate of Mrs. Prem Lata. He has also relied upon a judgment rendered in Smt. Malkani versus Jamadar and others, AIR 1987 Supreme Court, 767 and argued that the beneficiaries taking active partition in the execution of the Will does not make the Will suspicious. He has further argued that as per the law settled in Bhagat Ram (D) by L.Rs. versus Teja Singh (D) L.Rs. AIR 2002 Supreme Court 1, after the death of Rukmani, no one on her side could inherit the estate of Atma Ram, as the property goes to the source from where it has come. He has emphasized that the appeal be dismissed as both the judgments are after appreciating the facts in accordance with law.

14. In rebuttal Mr. Gupta, senior counsel has argued that Atma Ram was capable of signing the documents whereas he had put his right thumb impression, hence, the Will in question becomes suspicious.

15. To appreciate the arguments of the learned counsel for the parties, I have gone through the record in detail.

16. Perusal of the record depicts that marriage between the plaintiff Rukmani and Atma Ram was solemnized on 17.10.1957 and no issue was born out of their wedlock.

Thereafter, Atma Ram started cohabiting with Smt. Tulsi Devi sometime in the year 1970. Any Hindu Marriage to be held valid has to fulfill conditions of Section 5 of the Hindu Marriage Act, which reads as under:

5. Conditions for a Hindu marriage:

A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled namely:-

(I) Neither party has a spouse living at the time of the marriage,

1[(ii) at the time of marriage, neither party-

(a) Is incapable of giving a valid consent to it in consequence of unsoundness of mind; or

(b) Though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or

(c) Has been subject to recurrent attacks of insanity 2[***]

(iii) The bridegroom has completed the age of 3[twenty-one years] and the bride, the age of 4[eighteen years] at the time of marriage;

(iv) The parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;

(v) The parties are not Sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two;

17. PW1, Smt. Rukmani has stated that she was the wife of deceased Atma Ram, as the marriage was solemnized in the year 1957 and at the time of marriage Atma Ram had given her 2 Bighas of Ropa and 5 Bighas and 10 Biswas of Bathal land, as Istridhan. There were no children. Thereafter, Atma Ram developed love and affection with defendant No.1 (Prem Lata), who is the daughter of Tulsi, who was her God-sister and used to visit her quite often. Tulsi later on settled in the house of Atma Ram, but there were no children between the union of Atma Ram and Tulsi and defendant No.1 Prem Lata is the daughter of Tulsi Devi from her previous husband. She used to look after her husband Atma Ram. In March, 2008, Atma Ram fell seriously ill and had grown very weak and was mentally infirm. Atma Ram was under treatment at Manali hospital and defendant No.1 used to take Atma Ram under the pretext of treatment of Manali and used to take his signatures on many papers. Atma Ram never executed any Will during his life time. Atma Ram expired on 23.5.2008 and after 15 days of his death to her surprise defendant No.1 proclaimed that Atma Ram had executed a Will during his life time. Thereafter, she enquired about the matter from the local Patwari and came to know that a mutation had been got entered by the defendants on the basis of Will dated 16.5.2008 Ext. DW5/B. In cross-examination, she has stated that her husband had three brothers. She has

further admitted that last rites of Atma Ram were performed by defendant No.2 Rajesh Kumar. Defendant No.1 was brought up, educated and married off by Atma Ram. She has denied that Atma Ram had gifted part of suit land to defendant No.1 Prem Lata during his life time. She has also denied that Prem Lata used to look after Atma Ram and also helped in his medical treatment. She has denied that defendant No.1 Prem Lata had offered her a sum of Rs.2,00,000/- which she had refused. Atma Ram used to sign and did not affix thumb impression. Atma Ram had performed Kanya Dan of Prem Lata. She has denied that she is out of possession of the suit land.

18. PW-2 Cheering Ram was an Officer from Himachal Gramin Bank Bazar branch, who presented withdrawal receipts Ext.PW2/A to Ext.PW2/D of Atma Ram. He has stated that Atma Ram used to sign the documents. Last withdrawal by Shri Atma Ram had been done on 16.5.2008. In his cross-examination, he has admitted that Atma Ram was ill and his hands used to tremble.

19. PW-3 Sher Singh was the dealing Clerk of the Bank, who brought withdrawal voucher Ext.PW3/A and stated that Atma Ram used to sign. In cross-examination, he has admitted that he did not know Atma Ram personally. RPW-1 Sangat Ram was the witness, who was examined by the plaintiff in rebuttal. He has reiterated the version of plaintiff in examination-in-chief. In cross-examination, he expressed his ignorance as to how much land was in whose possession. Now, coming to the Ext.DW5/B, i.e. Will, perusal of it shows that DW5 Lekh Raj, Advocate is scribe of the Will in question. He has stated that the Will was drafted as per the directions of Atma Ram in presence of marginal witnesses namely, K.G. Thakur and Om Prakash Advocates. Thereafter, Will was read over and explained to Atma Ram, who admitted the contents to be correct and affixed his right thumb impression over the same. He has further stated that Atma Ram did not sign the Will, as due to his old age, his hands were trembling and his eye sight was weak. Thereafter, the Will was got registered before the Registrar. In cross-examination, he has stated that he does not remember as to how many documents he has scribed. The Will was got typed on Computer. Om Prakash had come to him along with K.G. Thakur, Advocate, Rukmani (plaintiff) and Tulsi Devi. He does not remember as to who had brought the papers. He had made a rough draft of Will. Atma Ram had affixed his thumb impression on the Will as his hands were trembling and his eye sight was weak. He does not remember as to who had called Om Prakash Sharma, Advocate. He has denied that Atma Ram was not in sound disposing mind at the time of execution of Will Ext.DW5/B. He has denied that Will is a forged document.

20. The judgments as cited by the learned counsel for the appellant are considered. In Charan Dass (deceased through his LRs) versus Dole Ram, in RSA No.48 of 2001, decided on 06.11.2012. wherein it has been held as under:

"10. In the light of the above provisions and the above decision, the evidence has to be appreciated as to whether it complies with the above provisions of law or not. In the present case, the will in question has been proved in evidence as

Ex.PW2/A. It was executed by Smt. Bresti, who thumb marked the Will dated 15.3.1989. The names of the scribe mentioned is as Sh. Anup Ram, Document Writer and the name of the attesting witness mentioned is as Mohar Singh, s/o Kanshi Ram and there are signatures of one Khyal Chand, Pradhan, Gram Panchayat also over the Will. Out of these persons, the plaintiffs examined the scribe as PW-4, Anup Ram. A perusal of the statement shows that he simply stated that at the instance of Smt. Bresti, he wrote the Will Ex.PW2/A. He stated that in red circle "B", there are his signatures. He further stated that the Will was read over to Bresti, who affixed her thumb mark on being satisfied and thereafter, the witness Khyal Chand and Mohar Singh signed the same.

11. It is clear from the perusal of the statement that this witness never stated that the Will was read over to Smt. Bresti in presence of the witnesses and she signed it in presence of the witnesses or both the witnesses signed in her presence. His statement only proves that it was thumb marked by Bresti and then it was signed by both the witnesses and nothing else was stated as is required by law as mention above. He admitted that he is not an attesting witness of the Will. Out of the two attesting witnesses, Khayala Ram was stated to be dead and the plaintiffs examined PW-2 Mohar Singh. A perusal of the statement of Mohar Singh shows that the Will was executed in favour of the plaintiffs mark A/ Ex.PW2/A. He further stated that within a circle, there are his signatures and the Will was read over and the second witness Khayala Ram is dead. He further stated that it was written by the Deed Writer.

12. From a perusal of the statement, it is also clear that he did not state that the will was thumb marked by Smt. Bresti, in presence of both the witnesses or that both the witnesses signed in her presence. Therefore, the statement of both these witnesses, the attesting witness and scribe do not prove that the requirements of Section 63 of Indian Succession Act and Section 68 of Evidence Act were complied with."

21. In the instant case, the attesting witnesses have deposed that the Will was signed by the Testator in their presence. Thereafter, it was attested in the office of the Sub Registrar where the witnesses were present and it was attested in the presence of the witnesses. So, this judgment is not applicable to the facts of the present case.

22. In Sohan Lal and Another versus Thakur Dass and others 2019 SCC HP 975, it has been held:

"14. The controversy in the case in hand mainly relates to Section 63(c) of the Indian Succession Act, 1925 (hereinafter referred to as "the Act"). At the very outset the same is extracted hereunder:

"Section 63 in The Indian Succession Act, 63. Execution of unprivileged Wills. --

Every testator, not being a soldier employed in an expedition or engaged in actual warfare, 12 [or an airman so employed or engaged,] or a mariner at sea,

shall execute his Will according to the following rules:--

(a) The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.

(c) The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of his signature or mark, or the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary."

15. Thus, as highlighted above, as per the mandate of Section 63(c) of the Act, a Will is to be attested by two or more witnesses, each of them must have seen the testator of the Will putting his/her signatures or affix mark on the Will and the witnesses must put their signatures on the Will in the presence of the testator. Thus, Section 63 of the Act lays down conditions qua proof of execution of valid Will. A Will has to be proved in the manner provided in Section 63 of the Act. Section 63(c) clearly provides that a Will has to be attested by two or more witnesses, but it is not mandatory that both these witnesses should be present simultaneously and they put their signatures in each others' presence. The mandatory requirement is that these witnesses must have seen the testator signing the Will or affixing his mark thereon or they have received personal acknowledgement from the testator of his signature or mark on the Will. Besides this, other mandatory prerequisite is that the attesting witnesses of the Will must sign the Will in presence of the testator.

16. Thus, in view of mandatory requirements laid down by Section 63 of the Act the propounder of the Will must prove that the attesting witnesses saw him signing the Will or affixing his mark thereon and they also signed in his presence.

23. This judgment, if applied, to the facts of the present case, as the witnesses have deposed that it was thumb mark by the Testator, the inference is that had they seen the Testator while affixing his thumb impression.

24. In Punni versus Sumer Chand and others, AIR 1995 HP, 74, it has been held:

"11. As regards attestation, Clause (c) aforementioned requires that the Will shall be attested by two or more witnesses. It is not necessary that both of them be present simultaneously at the time of putting their signatures but the requirement is that each of the attesting witness must have seen the testator sign or affix his mark to the Will or has received from the testator a personal acknowledgment of his signature or mark on the Will. There is also an additional

requirement that each of the attesting witness shall also sign the Will in the presence of the testator..... "

25. The learned Counsel has placed reliance upon a decision of this Hon'ble High Court rendered in Bal Krishan & Anr. versus Shangri Devi & Ors. 2008 (1) Cur.L.J. (HP) 584, it has been held:

"13. The learned counsel appearing on behalf of the plaintiff before the trial Court had submitted that there were as many as 5 suspicious circumstances to doubt the genuineness of the will: (i) the active participation by the legatee, (ii) the denial of benefit to the plaintiff who was otherwise entitled to succeed to him, (iii) the witness Amar Singh being related (brother in law of the legatee), (iv) inherently improbable dis-position made in the will, and (v) non-production of the Will at the earliest time.

17. The other suspicious circumstance is the manner in which the Will in question was written and executed. It has come in the evidence that the Will was written by one Shri Sanjeev. Shri Sanjeev has not been examined as a witness on the ground that he had died. The appellant, Bal Krishan has not produced on record even the death certificate of Sanjeev to prove his death. The presence of Shri Krishan Dutt Sharma at the time of the execution of the Will is also doubtful in view of the contradictions in the statements made by Bal Krishan (DW-1) and Shri Amar Singh (DW-2). Moreover, Amar Singh (DW-2) is closely related to Bal Krishan and his statement with regard to the execution of the Will cannot be believed being interested witness. There are material contradictions in the manner in which the parties have left for Rajgarh for the execution of the Will from their respective villages. There is no explanation why Matha would go to the house of Amar Singh to witness the execution of the Will. According to Bal Krishan (DW-1), Matha had gone to visit Amar Singh for taking him on 11.2.1985 and on that day they all had reached and stayed at village Shargaon in the evening of 11.2.1985. Next day they left for Rajgarh at about 8.00 a.m. from Shargaon. However, Amar Singh (DW-2) had stated that Matha had come to him 2 or 3 days before for informing his intention to execute a Will. Amar Singh had not stated that he had come with Matha and Bal Krishan to village Shargaon in the evening of 11.2.1985 and all of them had gone on 12.2.1985 to Rajgarh. He had stated that he had met Matha Ram and Bal Krishan in the Tehsil office at Rajgarh on 12.2.1985. It also casts doubt about the very presence of Shri Amar Singh at the time of execution of the will. Shri Krishan Dutt Sharma has not been examined as a witness. He was the material witness to explain the manner in which the will was executed. It also appears from the bare perusal of Ex.DW-2/A that the document has not been registered by completing all the codal formalities. The manner in which the signatures of the witnesses and testator have been obtained have been dealt with extensively by the trial Court and those findings are affirmed.

20. Their Lordships of the Hon'ble Supreme Court have held in Ram Purnima Deb and another v. Kumar Khagendra Narayan Deb and another, AIR 1962, SC 567

that there is no doubt if a Will has been registered, that is a circumstance which may, having regard to the circumstances, prove its genuineness. But the mere fact that a Will is registered will not by itself be sufficient to dispel all suspicions. Their Lordships have held as under:- "There is no doubt that if a Will has been registered, that is a circumstance which may, having regard to the circumstances, prove its genuineness. But the mere fact that a will is registered will not by itself be sufficient to dispel all suspicion regarding it where suspicion exists, without submitting the evidence of registration to a close examination. If the evidence as to registration on a close examination reveals that the registration was made in such a manner that it was brought home to the testator that the document of which he was admitting execution was a will disposing of his property and thereafter he admitted its execution and signed it in token thereof, the registration will dispel the doubt as to the genuineness of the Will. But if the evidence as to registration shows that it was done in a perfunctory manner, that the officer registering the Will did not read it over to the testator or did not bring to him that he was admitting the execution of a will or did not satisfy himself in some other way (as, for example, by seeing the testator reading the will) that the testator knew that it was a will the execution of which he was admitting, the fact that the will was registered would not be of much value. It is not unknown that registration may take place without the executant really knowing what he was registering. Law reports are full of cases in which registered wills have not been acted upon : (see, for example, *Vellaswamy Servai v. Siraraman Servai*, ILR 8 Rang 179 : (AIR 1930 PC 24), *Surendra Nath v. Jnanendra Nath*, AIR 1932 Cal 574 and *Girja Datt Singh v. Gangotri Datt Singh*, (S) AIR 1055 SC 346. Therefore, the mere fact of registration may not by itself be enough to dispel all suspicion that may attach to the execution and attestation of a will; though the fact that there has been registration would be an important circumstance in favour of the will being genuine if the evidence as to registration establishes that the testator admitted the execution of the will after knowing that it was a will the execution of which he was admitting. The question therefore is whether in the circumstances of the present case the evidence as to registration discloses that the testator knew that he was admitting the execution of a will when he is said to have put down his signature at the bottom of the will in the presence of Arabali. We have scrutinized that evidence carefully and we must say that the evidence falls short of satisfying us in the circumstances of this case that the testator knew that the document the execution of which he was admitting before Arabali and at the bottom of which he signed was his will. Therefore we are left with the bald fact of registration which in our opinion is insufficient in the circumstances of this case to dispel the suspicious circumstances which we have enumerated above. We are therefore not satisfied about the due execution and attestation of this Will by the testator and hold that the propounder has been unable to dispel the suspicious circumstances which surround the execution and attestation of this Will. In the circumstances, no letters of administration in favour of the respondent can be granted on the basis of it."

26. The facts of the present case are different as the Attesting witnesses have stated that the Thumb impression was put in their presence and they were present before the Registering Authority when it was registered, which is clear from the photographs, on the Will, so the above judgment is not applicable to the facts of the present case.

27. Hon'ble Punjab & Haryana High Court in Bishan Singh (deceased) by his Lrs versus Saran Singh & Ors., 2007(1) Civil Court Cases 209(P&H), held:-

"8. The common practice in the rural areas amongst the illiterates is that except on account of some physical disability, it is generally the left thumb mark which is put on important documents like a will or other documents creating a right or title in some property by the males and right thumb impression is put by the ladies. In fact even in respect of Panchayat proceedings and other day to day working amongst (the rural persons as a matter of practice and habit, the left thumb impression is put on documents by male members and right thumb impression by ladies where because of the illiteracy they are unable to sign. This being the practice it is easy in case of any doubt or ambiguity to compare the thumb impression with the standard thumb impressions of the person concerned. Deviating from his practice would result in great hardship and any one wanting to set up a document like a Will of someone could easily be able to do so by putting a right thumb impression in the case of a male and left thumb impression in the case of already so as to, in case of doubt or suspicion, avoid the comparison of their thumb impressions with their standard and admitted thumb impression which are otherwise generally available. In Smt. Harbans Kaur and Anoop Singh 1991 Shimla Law Journal 217, this Court considered the question as to which thumb impression is normally to be affixed by a male executant on a sale deed. It was held that petition writers always get the left thumb impression of a male on a sale deed and in case it is not possible to do so, only then the right thumb impression of a male executant is got affixed. The same would apply to documents like Wills executed by males. Therefore, this practice of accepting the right thumb impressions of male executants on documents like a Will is liable to be discouraged and it is only when it can otherwise be shown as to why the standard form of putting the left thumb impression in the case of a male and a right thumb impression in the case of a female is being deviated from, the court would consider the question in the facts and circumstances of each case. Physical disability to put the left thumb impression in the case of a male and right thumb impression in the case of a lady can be a valid ground for deviating from the practice.

9. In the case in hand, no reason has been given for deviating from his practice. Therefore, it is somewhat unusual for Fakir Singh to have put his right thumb impression on a document which is an important document being his Will when in the normal circumstances on the sale deed dated 1.5.1981 Ex. D.1 he had put his left thumb impression which is as per the prevalent practice. The intention of putting the right thumb impression on the Will can only be to avoid the

comparison of the same with the standard thumb impression of the executant so as to take the stand that the executant inadvertently and unknowingly put the right thumb impression which is now not comparable. The propounder of the will has failed to dispel this suspicious circumstance which he was under an obligation to remove by leading cogent and convincing evidence. The reason recorded by the learned trial Court is that the handwriting expert has opined that the disputed document bears the right thumb impression of deceased Fakir Singh. It is further recorded by the learned trial Court that : "But I could not understand as to how this expert has come to this conclusion. It is not specifically mentioned that RTI (Right Thumb Impression) of deceased Fakir Singh were taken in the Court and then it was compared with specimen thumb impression of L.T.I. (Left thumb Impression) of deceased." Accordingly the contention of the learned Counsel for the defendant was held to be not maintainable. In fact the thumb impressions of a deceased person could not possibly have been taken in court. Therefore, the reasoning recorded by the learned Trial Court in rejecting the argument of the learned Counsel for the defendant is not tenable. Therefore, in my view the reasons and findings recorded by the Courts below as regards the validity of the Will dated. 3.6.1985 (Ex. P.1) are without any merit. The right thumb impressions were put so as to avoid the possibility of the same being got compared with the standard left thumb impression of Fakir Singh the testator of the Will (Ex. P.1). As such it is evident that in the case in hand the right thumb impression of the testator has been put so that the thumb impressions cannot be got compared. This circumstance in the facts and circumstance of the case makes the Will (EX. P.1) set up by the plaintiffs to be doubtful inasmuch as the thumb impression could not be got compared."

28. This judgment is also not applicable to the facts of the present case, as it was Thumb marked when it was being registered and the Thumb mark of the testator was noted put that time also. So, this does not create any doubt in the mind of the Court that the Will was not executed out of the free mind by the testator as the testator was having only one daughter who is the respondent.

29. The judgments as relied upon by the learned counsel for the respondent are considered and this Court finds that these are applicable to the facts of the present case as the left hand thumb impression was put on the Will when the testator appeared before the registering Authority for attestation of the Will.

30. In these circumstances, the Will cannot be said to be suspicious. In in Bhagat Ram (D) by L.Rs. versus Teja Singh (D) L.Rs. AIR 2002 Supreme Court 1, in para 8 whereof it has been held as under:-

8. We do not find any merit in the contention raised by the Counsel for the respondents. Admittedly, Smt. Santi inherited the property in question from her mother. If the property held by a female was inherited from her father or mother, in the absence of any son or daughter of the deceased, including the children of any pre-deceased son or daughter, it would only devolve upon the heirs of the

father and, in this case, her sister Smt. Indro was the only legal heir of her father. Deceased Smt. Santi admittedly inherited the property in question from her mother. It is not necessary that such inheritance should have been after the commencement of the Act. The intent of the Legislature is clear that the property, if originally belonged to the parents of the deceased female, should go to the legal heirs of the father. So also under clause (b) of sub-Section (2) of Section 15, the property inherited by a female Hindu from her husband or her father-in-law, shall also under similar circumstances, devolve upon the heirs of the husband. It is the source from which the property was inherited by the female, which is more important for the purpose of devolution of her property. We do not think that the fact that a female Hindu originally had a limited right and later, acquired the full right, in any way, would alter the rules of succession given in sub-section 2 of Section 15."

31. Thus this judgment is of some help to the respondent but is not material for adjudicating the present lis.

32. PW-6 K.G. Thakur, Advocate is the marginal witness to Will in question, he has stated that Atma Ram was related to him. He is practicing as an Advocate since the year 1978 and Atma Ram used to come to him for legal advice. Tulsi Devi is second wife of Atma Ram and defendant No.1 Prem Lata is his daughter. Atma Ram married Tulsi Devi, as he had no children with Rukmani (plaintiff). Atma Ram brought up defendant No.1 Prem Lata and paid for her studies etc. and thereafter, married her off to Chhavinder Singh. He has stated that on 16.5.2008, Atma Ram had executed a valid Will Ext.DW5/A, in which, he is a marginal witness. The Will was scribed by Lekh Raj, Advocate, on the direction of Atma Ram and Atma Ram had affixed his thumb impression in presence of himself (K.G. Thakur) and other marginal witness Om Prakash, Advocate. Further stated that Atma Ram had affixed his thumb impression, as because of old age, his hands used to tremble and his eye sight was also weak. Atma Ram was in sound disposing mind and was in a position to understand his good and bad. Thereafter, Atma Ram and himself and other marginal witness had appeared before Registrar in the Registrar's office and the Will was again read over and explained to Atma Ram, who admitted it to be correct and affixed his thumb impression over the same. As per the last wish of Atma Ram, his last rights were performed by defendant No.2 Ramesh Kumar, who has also been awarded a share in the suit land in Will Ext. DW5/B. Earlier also, Atma Ram had gifted a part of suit land to defendant No.1, Prem Lata. In cross-examination, he has stated that he does not remember as to what day of the week, it was on 16.5.2008. He had come to Manali on that date alongwith Atma Ram, Tulsi Devi and Rukmani in his own car. Atma Ram had told him that he wanted to write a Will and requested him to come to Manali. He was not aware as to whether Atma Ram had gone to the Bank on that date the will was scribed by Lekh Raj Advocate. Lekh Raj, Advocate had initially prepared rough draft of the Will and thereafter, the same was got typed on a Computer. Thereafter, Lekh Raj, Advocate had read over and explained the contents of the Will to Atma Ram in

presence of marginal witnesses and Atma Ram accepted the same to be correct and affixed his thumb impression, because his eye sight was weak. He has expressed his ignorance as to whether Atma Ram had withdrawn money from the bank on 16.5.2008 and had signed the withdrawal voucher. The Will in question was scribed between 12.00 noon and 1.00 p.m He has denied that Atma Ram did not make Will and it is a forged document.

33. DW-2 Chhaivinder Thakur, Advocate is the scribe of gift deed Ext.DW2/B, who stated that he had scribed gift deed as per the directions of Atma Ram and had read over and explained it to Atma Ram and Prem Lata and thereafter, the document was got registered. In cross-examination, he has denied that gift deed is false document. DW-3 Atma Ram and DW4 Devi Singh are the marginal witnesses to gift deed Ext.DW2/B.

34. The fact that earlier Atma Ram had gifted a part of suit land to defendant No.1 Prem Lata by way of gift deed Ext.DW2/A and mutation number 57 Ext.DW1/E and 58 Ext. DW1/F had been attested in this regard is not in dispute. It is also not in dispute that the plaintiff has not challenged mutation number 57 and 58 respectively.

35. After analyzing the above evidence, it is clear that as per the marginal witness PW6, Atma Ram was related to him. The Will was scribed by Lekh Raj, Advocate, on the direction of Atma Ram and Atma Ram had affixed his thumb impression in presence of himself (K.G. Thakur) and other marginal witness Om Prakash, Advocate. Further stated that Atma Ram had affixed his thumb impression, as because of old age, his hands used to tremble and his eye sight was also weak. Atma Ram was in sound disposing mind and was in a position to understand his good and bad. Thereafter, Atma Ram and himself and other marginal witness had appeared before Registrar in the Registrar's office and the Will was again read over and explained to Atma Ram, who admitted it to be correct and affixed his thumb impression over the same. As per the last wish of Atma Ram, his last rights were performed by defendant No.2 Ramesh Kumar, who has also been awarded a share in the suit land in Will Ext. DW5/B. Earlier also, Atma Ram had gifted a part of suit land to defendant No.1, Prem Lata. In cross-examination, he has stated that he does not remember as to what day of the week, it was on 16.5.2008. He had come to Manali on that date alongwith Atma Ram, Tulsi Devi and Rukmani in his own car. Atma Ram had told him that he wanted to recite a Will and requested him to come to Manali. He was not aware as to whether Atma Ram had gone to the Bank on that date the will was scribed by Lekh Raj Advocate. Lekh Raj, Advocate had initially prepared rough draft of the Will and thereafter, the same was got typed on a Computer. Thereafter, Lekh Raj, Advocate had read over and explained the contents of the Will to Atma Ram in presence of marginal witnesses and Atma Ram accepted the same to be correct and affixed his thumb impression, because his eye sight was weak. He has expressed his ignorance as to whether Atma Ram had withdrawn money from the bank on 16.5.2008 and had signed the withdrawal voucher. The

Will in question was scribed between 12.00 noon and 1.00 p.m He has denied that Atma Ram did not make Will and it is a forged document.

36. From the above, it is clear that the judgment passed by the learned Courts below are after appreciating the facts and law which has come on record correctly and the Will dated 16.5.2008, is executed in accordance with the Section 63 of the Indian Evidence Act and the Substantial Question of law is answered accordingly.

37. The Substantial Question of Law No.2 is answered holding that the Court below has appreciated the pleadings and interpreted the law orally and the documentary evidence correctly and so this question is answered accordingly.

38. The net result of the above discussion is that the appeal, which sans merits, deserves dismissal and is accordingly dismissed. However, taking into consideration the facts and circumstances of the case, the parties are left to bear their own costs.

39. In view of the disposal of the appeal, pending application(s) if any, shall also stands disposed of.