

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

1) RSA No.2253 of 2004
Date of Decision: 27.03.2017

Smt. Usha Devi

....Appellant

Vs.

Joginder Singh and others

....Respondents

2) RSA No.2254 of 2004

Smt. Usha Devi

....Appellant

Vs.

Joga Singh and another

....Respondents

3) RSA No.615 of 2007

Baba Kali Dass Dera

....Appellant

Vs.

Dildar Singh and another

....Respondents

4) RSA No.3695 of 2007

Surma Chand and others

....Appellants

Vs.

Joginder Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Vikas Behl, Senior Advocate, with
Ms. Japneet Kaur, Advocate,
for the appellants in all the appeals.

Mr. Rajinder Sharma, Advocate,
for respondents No.1 & 2 in RSA No.2253 & 2254 of 2004.

Mr. Som Nath Saini, Advocate,
for respondent No.1 in RSA No.3695 of 2007.

Mr. Vijay Lath, Advocate,
for respondents No.1 and 2 in RSA No.615 of 2007.

Amol Rattan Singh, J.

These four appeals arise out of four suits filed by five persons who are parties to the *lis*. Two of the suits pertain to land falling in village Bakhlaur, then Tehsil Nawanshahar, formerly District Hoshiarpur (now District Nawanshahar), whereas two suits pertain to land falling in village Sooni, Tehsil Garshankar, District Hoshiarpur. The owner of the suit land, in all the suits, was stated to be one Shakuntla Devi, essentially whose wills stand to question in 3 of the 4 suits. In one suit, pertaining to land in village Bakhlaur, only a decree of permanent injunction was sought, though even in that case, the defendant did rely upon a will of Shakuntla Devi.

Civil suit No.25 was filed by Joginder Singh, husband of Shakuntla Devi, arraying as defendants therein one Usha Devi, her brother Baljit Singh, as also his minor sons Joga Singh and Deepak Kumar. Usha Devi and Baljit Singh are stated to be first cousins (paternal uncles' children) of Shakuntla Devi. The plaintiff sought a decree of declaration that he is the co-owner in joint possession of 24 kanals and 8 marlas of land, out of a holding of 97 kanals and 14 marlas, fully described in the plaint. He further sought a declaration that mutation no.1462 sanctioned in the name of the defendants, on the basis of an 'alleged will' dated 19.06.1995, stated to have been executed by his wife, Shakuntla Devi, in favour of the first defendant, i.e. Usha Devi, as also mutation no.1462 entered in the revenue record on the basis of an 'alleged will' dated 15.07.1992, again allegedly executed by Shakuntla Devi, in favour of the 3rd and 4th defendants, i.e. the minor sons of Baljit Singh (plaintiffs in

Civil Suit No.208), be corrected in the revenue record, by entering a mutation in his (plaintiff Joginder Singhs') favour. He further sought a decree of permanent injunction, restraining the defendants from interfering in his possession over the suit land, and from alienating it in any manner. Alternatively, he simply prayed for a decree of joint possession.

Civil Suit No.208 was filed by the aforesaid Joga Singh and Deepak Kumar, minor sons of Baljit Singh, arraying therein as defendants their aunt Usha Devi, as also the aforesaid Joginder Singh, plaintiff in Civil Suit No.25, husband of the late Shakuntla Devi. The plaintiffs in this suit also sought a decree of declaration, to the effect that they are owners/co-sharers in joint possession of the same land, measuring 24 kanals and 8 marlas, on the basis of a will registered on 15.07.1992, executed by the late Shakuntla Devi in their favour.

The suit by the minors was filed through their mother, also named Shakuntla Devi, (wife of the aforesaid Baljit Singh-defendant no.2 in Civil Suit No.25).

Civil Suit No.25 dated 27.01.1996 and Civil Suit No.208 dated 06.08.1999, both pertaining to land falling in village Sooni, were consolidated by the learned Additional Civil Judge (Senior Division), Garshankar, with evidence stated to be led in Civil Suit No.25. Both these suits were decided by a common judgment on 11.12.2001.

2. Both suits were dismissed by the learned Additional Civil Judge vide her judgment and decree dated 11.12.2001, against which four appeals were preferred before the first appellate Court (of the learned Additional District Judge, Hoshiarpur). Two appeals were filed by Usha Devi, who, being a defendant in both the civil suits, would seem to have no reason to file any

appeal with the civil suits dismissed, but her appeals were so filed, on account of the finding by the trial Court that no declaration could be issued in favour of the defendants, i.e. Usha Devi and her brother Baljit Singh, to the effect that they are the legal representatives of the father of the late Shakuntla Devi (and consequently entitled to inherit the suit land). Similarly, Joga Singh and Deepak Kumar also filed two appeals against the dismissal of the two suits, on the same ground.

Joginder Singh, the plaintiff in Civil Suit No.25, i.e. the husband of Shakuntla Devi, executrix of the will, did not file any appeal against the dismissal of his suit.

The four appeals were decided together by the learned first appellate Court, which, upon appraisal of the evidence and consideration of the judgment of the learned Additional Civil Judge, dismissed them on 10.02.2004, against which judgment and decree, the aforesaid Usha Devi has filed two appeals before this Court, i.e. RSA Nos.2253 and 2254 of 2004. No 2nd appeal before this Court has been filed by Joga Singh and Deepak Kumar, plaintiffs in Civil Suit no.208 of 1999, against the dismissal of their first appeals.

3. As regards the other two appeals clubbed before this Court alongwith the aforesaid two appeals, RSA No.615 of 2007 has its basis in Civil Suit No.529 of 1997 (instituted on 07.02.1996 in the Court of the Civil Judge (Senior Division), Nawanshahar), in which plaintiffs Dildar Singh and Niranjan Singh sought a decree of permanent injunction against the sole defendant, Baba Kali Dass, injunctioning him from interfering in their possession of land measuring 38 kanals 10 marlas, situate in village Bakhaur, which they claimed to have been in continuous possession of for 12 years.

The defendant in that suit, i.e. Baba Kali Dass, claimed ownership of the suit land on the basis of the same will, dated 19.06.1995, stated to have been executed by Shakuntla Devi in his favour, qua the suit land in village Bakhaur. The suit of the plaintiffs having been decreed by the learned Civil Judge (Senior Division), Nawanshahar, vide her judgment and decree dated 21.05.2005, defendant Baba Kali Dass preferred an appeal before the learned first appellate Court of the Additional District Judge, Nawanshahar, who dismissed the appeal vide the impugned judgment dated August 30, 2006.

Hence, defendant Baba Kali Dass is in second appeal before this Court in RSA No.615 of 2007.

4. The genesis of RSA No.3695 of 2007 lies in Civil Suit No.131 of 2003, instituted on 14.11.1999 by Joginder Singh before the Additional Civil Judge (Senior Division), Nawanshahar, husband of the late Shakuntla Devi, arraying as defendants in this suit, the aforesaid Usha Devi and Dera Baba Kali Dass. The subject matter of this suit of Joginder Singh was not land falling in village Sooni but in village Bakhaur. The land in this suit is shown to be about 75 kanals and 15 marlas, if calculated from the shares shown in three different pockets, the first being a $\frac{3}{5}$ th share of 21 kanals and 2 marlas, the next being a $\frac{1}{3}$ th share of 375 shares in 52 kanals and 15 marlas of land and the last being a $\frac{1}{5}$ th share of 791 shares of land measuring 39 kanals and 11 marlas, all situated in the revenue estate of village Bakhaur, Tehsil and District Nawanshahar. However, as per the will dated 19.06.1995, 19 kanals and 14 marlas of land in village Bakhaur were shown to be bequeathed to Baba Kali Dass, defendant no.2.

In this suit, plaintiff Joginder Singh sought a decree of

declaration to the effect that he is the owner in joint possession of the estate of Shakuntla Devi, comprising of agricultural land in the aforesaid three pockets, situate in village Bakhaur.

This suit of Joginder Singh was decreed by the learned Additional Civil Judge (Senior Division), Nawanshahar, on 11.05.2004, declaring him to be the owner of the suit land, against which judgment and decree the defendants instituted a first appeal before the learned Additional District Judge, which was however dismissed on 01.11.2007. Hence, in RSA No.3695 of 2007, the legal heirs of Usha Devi, i.e. her husband and three sons are in second appeal, alongwith Dera Baba Jakudass, stated to be the successor-in-interest of Dera Baba Kali Dass. The sole respondent in this appeal is the plaintiff in Civil Suit No.131 of 2003, Joginder Singh, husband of the late Shakuntla Devi.

5. In this Court, RSA No.2253 of 2004 (pertaining to land in village Sooni) was admitted to regular hearing on 01.02.2007, on 3 of the 6 questions of law framed on behalf of the appellant, the late Usha Devi. The said questions of law that were found to be requiring adjudication upon by this Court, vide its aforesaid order, are as follows:-

- “a) Whether the property, which has admittedly come from the father would as per Section 15(2) of the Hindu Succession Act, 1956 would devolve upon the Legal Representatives of the father after the death of the daughter?
- b) Whether in case there are no Class I heirs, then the brother's daughter would be entitled to the suit property in preference to the brother's grand children as per the Schedule attached to the Hindu Succession Act, 1956?

XXXXX

XXXXX

XXXXX

- g) Whether dis-inheritance of a close relative is a suspicious

circumstance in the execution of a Will?”

RSA No.2254 of 2004, also pertaining to land in village Sooni, was simply admitted on the same date, to be heard alongwith RSA No.2253.

RSA No.615 of 2007 (pertaining to land in village Bakhaur) was admitted to regular hearing on 18.11.2008, also simply to be heard with RSA No.2253 of 2004.

RSA No.3695 of 2007 was admitted to regular hearing on 26.08.2008, with the following two questions of law framed by this Court:-

“(a) Whether due execution of the registered Will stands proved from the evidence of the Attesting Witness, Registration Clerk and also from the fact that the defendants looked after the deceased, whereas the plaintiff had long litigation with the deceased Shakuntla Devi ?

(b) Whether the sole purpose of the Will is to disinherit a natural heir and whether the said fact alone would be a suspicious circumstance calling for rejection of the Will ?”

Thus, the question of law framed as clause (b) in RSA No.3695 of 2007, is virtually the same as that framed as clause (g) in RSA No.2253 of 2004, with the former more elaborate than the latter.

6. Before going on to the questions of law to be decided, the contents of the wills in question need to be referred to, as the whole dispute actually centres around the validity of those wills and presently in fact, only around the will dated 19.06.1995, with Joga Singh and Deepak Kumar not having filed any 2nd appeal against the dismissal of their suit no.208, as also the dismissal of the two first appeals filed against such dismissal. As already noticed, by the said civil suit claim was laid by these two plaintiffs, to the suit

land in village Sooni, on the basis of the will dated 15.07.1992 alleged to have been executed in their favour by their late aunt (fathers' cousin), Shakuntla Devi. Thus, that will having been disbelieved by both the Courts below and such decision not having been challenged by way of any second appeal, the will dated 15.07.1992 need not be gone into by this Court.

Coming then to the contents of the will dated 19.06.1995, Ex.D1 before the learned trial Court at Garhshankar, in Civil Suits no.25 of 1996 and 208 of 1999. It has been pointed to by learned counsel for the appellant, from the record of the Courts below, that vide the said will, the late Shakuntla Devi had specifically stated that since her husband used to quarrel with her and she does not live with him, whereas on the other hand her cousin, son of her uncle, Amra, i.e. present appellant Usha Devi, had looked after her and that Shakuntla Devi lived with her (Usha Devi), she felt it to be her 'prime duty to return her favours'. The recital in the will next reads that the testatrix (Shakuntla Devi) was also a disciple of the Dera Baba Kali Dass situate at village Aima Jattan, Tehsil Garhshankar and therefore, in her full senses and realizing her own welfare and any harm to it ("*Naffa-Nuksan*"), she was executing the said document as her first and last will to the effect that after her death, 19 kanals and 14 marlas of her land situate at village Bakhlaur, Tehsil Nawanshahar, in which there was earlier an orchard, would go to the ownership of the aforesaid Dera Baba Kali Dass, and that all other property owned by her any where in India in any shape, i.e. land, building, water bodies, as also any money in banks and post offices, cattle, machinery etc. would devolve upon her 'sister', Usha Devi wife of Suram Singh, resident of village Khushipaddi, Tehsil Garhshankar and that she would become the owner of all such property with no other person would have a right to the

testatrix's property.

Thus, other than 19 kanals and 14 marlas of land situate at village Bakhlaur, all other property, including, seemingly obviously, any more land situate in that village, as also in any other village, were bequeathed to Usha Devi, as per the said will.

7. What arises from the aforesaid factual position, first boils down to one question, i.e. whether the Courts below have correctly decided the issue on the wills of the late Shakuntla Devi being valid wills or otherwise.

8. Shakuntla Devis' husband, Joginder Singhs', stand in his suit (no.25 of 27.01.1996), was that Mutation No.1462 sanctioned in favour of the first defendant, on the basis of the will relied upon by her, dated 19.06.1995, as also the will set up by defendants no.2 to 4, dated 15.07.1992, were liable to be declared to be null and void, both the wills never having been executed by the late Shakuntla Devi and consequently he, being her husband and sole legal heir, be declared to be the owner in possession of the suit land and in the alternative, if the defendants were also found entitled to any right in the said land, he be declared to be a joint owner and joint possession be given to him.

9. Therefore, the two questions of law framed in RSA No.3695 of 2007, alongwith the last question framed in RSA No.2253 of 2004, need to be decided before the first two questions framed in RSA No.2253, as the question of natural devolution of the suit property would only arise if the will dated 19.06.1995 is disbelieved by this Court also, as it has been by the learned Courts below.

10. In the aforesaid background, the seven questions of law that arise in these three appeals, clubbed together, are as follows:-

i) Whether due execution of the registered Will stands proved

from the evidence of the Attesting Witness, Registration Clerk and also from the fact that the defendants looked after the deceased, whereas the plaintiff had long litigation with the deceased Shakuntla Devi ?

- ii) Whether the sole purpose of the will is to disinherit a natural heir and whether the said fact alone would be a suspicious circumstance calling for rejection of the Will?"
- iii) Even if the will is found to be otherwise proved in terms of Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872, it would still be acceptable as a true will of the late Shakuntla Devi, if there are any suspicious circumstances surrounding it and if so, the effect thereof?
- iv) Whether the property, which has admittedly come from the father would as per Section 15(2) of the Hindu Succession Act, 1956 would devolve upon the Legal Representatives of the father after the death of the daughter?
- v) If there are no Class I heirs, then the brother's daughter would be entitled to the suit property in preference to the brother's grand children as per the Schedule attached to the Hindu Succession Act, 1956?
- vi) Whether a suit property which has come to a female Hindu from a relative of her husband, but not from her father-in-law or her husband, would devolve upon her heirs as per Section 15 (2) (b) of the Act of 1956, or as per Section 15 (1) read with Section 16 of that Act.
- vii) Whether Civil Suit no.529 of 1997 has been correctly decreed in favour of the respondents in RSA No.615 of 2007, i.e. the plaintiffs in the aforesaid suit, granting them a decree of permanent injunction, restraining the appellant herein (defendant in the suit), from interfering in their possession of the suit land except in due course of law, despite the respondents-plaintiffs never having sought a decree of declaration that they be declared owners of the

suit land?

11. Before going on to the issues framed by the three Civil Judges seized of the four suits filed (two of the suits having been clubbed together as already noticed), since these appeals essentially arise out of the findings with regard to the validity of the wills stated to have been executed by Usha Devi, dated 19.06.1995 and 15.07.1992, it needs to be noticed at the outset that both the wills were disbelieved by the learned Civil Judge seized of the two suits clubbed together, such suits pertaining to land in village Sooni, Tehsil Garshankar. As regards the suit property in village Bakhaur, the beneficiaries of the will dated 15.07.1992 (Joga Singh and Deepak Kumar), not being party to the two suits pertaining to land falling in that village, the question of that will was never raised, that will, in any case not shown to have been in respect of any property in village Bakhaur, Tehsil Nawanshahar. Therefore, only the will dated 19.06.1995 was in question in the two suits pertaining to village Bakhaur (out of which RSA Nos.615 and 3695 of 2007 arise before this Court).

The learned Civil Court, in Civil Suit no.529 of 1997 (out of which RSA No.615 of 2007 eventually arises), duly noticed the contention with regard to the will dated 19.06.1995 having been executed in favour of the defendant, Baba Kali Dass (qua a part of the suit land), but went on to hold that the suit being only one seeking permanent injunction against interference and possession over the suit land, the only issue to be really determined was as to whose possession the suit land actually was in.

In Civil Suit No.131 of 2003, filed by Joginder Singh, pertaining to land in village Bakhaur, on the issue of whether the aforesaid will was a

valid will or not, it was held that the will already having been disbelieved in a previous *lis* between plaintiff Joginder Singh and Usha Devi, with that judgment of the Civil Judge affirmed in first appeal, the finding in the previous *lis* would operate as constructive resjudicata upon the parties in the subsequent *lis* and therefore, that question could not be reopened.

In short, the learned Courts seized of the suits pertaining to land situate in village Bakhaur, did not independently go into the validity of the two wills in question, for the aforesaid reasons.

12. Hence, as regards the wills set up by the different parties in their favour, the Courts below in these three sets of proceedings before them, held the wills to have not been validly executed.

Consequently, it was held by each Court, as regards the devolution of the suit properties, that they would devolve as per natural succession, in terms of the Hindu Succession Act, 1956.

Thus, as already said, whether the will in question was correctly disbelieved by those learned courts and whether the provisions of the Succession Act have been correctly applied or not thereafter, in respect of the two suit properties, in villages Sooni and Bakhaur respectively, are the two essential questions that are to be decided by this Court, as regards ownership of the properties, in 3 of the 4 appeals clubbed together. As regards RSA No.615 of 2007, it is to be seen whether the suit, seeking only permanent injunction, has been correctly decided or not, it actually being only a question of possession of a part of the suit property situate at village Bakhaur.

13. Coming then to the issues framed in the civil suits, and the reasoning for the decisions thereon, the 2nd appeals pertaining to those suits, are now being dealt with separately as follows.

RSA nos. 2253 and 2254 of 2004

14. Other than what has been stated hereinabove, relating to the parties to the two suits that were consolidated, pertaining to the land in village Sooni, the pleadings in brief were that plaintiff Joginder Singh, in Civil Suit No.25, stated that his wife was the co-owner in joint possession of the suit land and had died issueless on 29.08.1995, leaving him (her husband) as her only legal heir and consequently, he became co-owner of the suit land and entered into joint possession over it. However defendant no.1, Usha Devi, got mutation no.1462 sanctioned in her name on the basis of the will dated 19.06.1995, which, as per the plaintiff, was a false and fabricated document prepared by Usha Devi, in connivance with the scribe and marginal witnesses, because the late Shakuntla Devi was not in a position to execute the will, she not having been in a sound disposing mind for two years before her death.

The plaintiff further contended in his suit that on 20.01.1996, Usha Devi on the basis of the aforesaid mutation, threatened to forcibly dispossess him and to alienate the suit land. It was further alleged that thereafter, on 15.07.1996, defendant no.2, Baljit Singh, also threatened to dispossess the plaintiff, stating that Shakuntla Devi had executed a will dated 15.07.1992 in favour of his minor sons, i.e. defendants no.3 and 4.

In his suit, Joginder Singh further prayed, as already noticed, that in case he was found to be in joint possession of the suit land (actually seeming to mean if he was held to be a co-owner alongwith the defendants), a decree of joint possession be granted in the alternative.

15. Upon notice issued in the suit, defendant no.1, Usha Devi, filed a written statement taking the usual preliminary objections of locus standi, maintainability, non-joinder and mis-joinder of parties and *res judicata* etc.

She further alleged that the suit had been filed by Joginder Singh actually at the instance of defendants no.2 to 4.

On merits, defendant no.1 admitted that the late Shakuntla Devi was the plaintiffs' wife, though she was living separately from him, with litigation also pending between them. It was further pleaded that she (defendant no.1) was now the legal heir of Shakuntla Devi, in exclusive possession of the suit land, with the plaintiff having no concern with it.

As regards the will dated 19.06.1995, defendant no.1 stated that it had been executed in favour of her and Baba Kali Dass, on the basis of which mutations had been duly sanctioned.

The reason why Shakuntla Devi had executed such a will, was stated to be that Usha Devi had served her cousin (Shakuntla Devi), 'in lieu of which' she had rewarded her. An earlier suit seeking permanent injunction against dispossession, filed by her, was also referred to, stating that such injunction had been granted to her.

16. Further, as per the written statement of Usha Devi, Shakuntla Devi had herself received the property by way of a will executed in her favour by Hukam Singh on 09.04.1985, which was a genuine will.

As regards the will dated 15.07.1992 set up by defendants no.2 to 4, defendant no.1 stated that no such will had been executed.

As such, she sought dismissal of the suit.

17. In their joint written statement, defendants no.2 to 4 also took the usual preliminary objections, and on merits pleaded that the plaintiff was not the legal heir of Shakuntla Devi, nor the co-owner of the suit land, nor in fact, was he in possession thereof. As per defendants no.2 to 4, Shakuntla Devi was the niece of the grand-father of defendants no.3 and 4 and used to reside with

defendants no.2 to 4, where she was served by the sons of defendant no.2, i.e. by defendants no.3 and 4. Hence, as per these defendants, the will dated 15.07.1992 was executed in favour of defendants no.3 and 4, in lieu of services rendered by them and for the love and affection that Shakuntla Devi carried for them. She was stated to be in a fully disposing mind at the time of execution of the will.

On possession of the land, it was stated that defendants no.3 and 4 were in possession through their father, i.e. defendant no.2 Baljit Singh, who used to actually manage the land for Shakuntla Devi, even in her life time.

As regards the subsequent will dated 19.06.1995, defendants no.2 to 4 took the same stand as the plaintiff, i.e. that Shakuntla Devi was not in a position to execute any document for two years prior to her death on account of her illness and hence, the said will was a forged document and the mutation sanctioned on the basis of that will was also incorrect.

Thus, defendants no.2 to 4 sought dismissal of the suit on the aforesaid grounds.

18. No replication having been filed by the plaintiff, the following issues were framed by the learned Additional Civil Judge in Civil Suit no.25, filed by Joginder Singh:-

- “1. Whether plaintiff being legal heir of Shakuntla Devi is co-sharer in the suit property as alleged? OPP
2. Whether Shakuntla Devi duly executed registered will in favour of defendant as alleged. If so, its effect? OPD
3. Whether will dated 19.06.1995 is forged and fabricated document as alleged? OPP
4. Whether suit of the plaintiff barred by his act and conduct as well as on account of principles of resjudicata? OPD”
- 4A. Whether Smt. Shakuntla Devi duly executed will dated

15.07.1992 in favour of defendants no.3 and 4, if so its effect. OPD 2 to 4

4B. Whether will dated 15.07.1992 is a forged and fabricated document as alleged. If so its effect. OPP”

5. “Relief.”

[Note:- Issues no.4A & 4B were added after Baljit Singh and his minor sons, Joga Singh and Deepak Kumar, were added as defendants no.2 to 4 in Civil Suit no.25, with Usha Devi having been the sole defendant prior thereto].

19. During the pendency of the aforesaid civil suit, defendants no.3 and 4, the minor sons of defendant no.2 therein, filed Civil Suit No.208/1999 seeking a decree of declaration that they are owners/co-sharers in joint possession of the suit land, on the basis of the will registered on 15.07.1992, essentially reiterating what they had stated in their written statement filed in reply to Civil Suit No.25.

In their suit, they further sought setting aside of the mutation entry made pursuant to the will dated 19.06.1995, and all other revenue entries from 1996-97 onwards qua the suit land, and for correction therein so as to show them, i.e. Joga Singh and Deepak Kumar, to be co-owners in joint possession of the suit land, to the extent of a 1/4th share therein.

They also prayed for the consequential relief of permanent injunction restraining defendant no.1, Usha Devi, i.e. their aunt (fathers' sister), from interfering in their possession of the land and from alienating it in any manner.

20. Upon notice issued in that suit, the two defendants, i.e. Usha Devi and Joginder Singh (plaintiff in Civil Suit No.25/1996), appeared and filed

separate written statements; though it needs to be noticed here that the Civil Judge in her judgment (paragraph 10 thereof) has wholly erroneously shown that a joint written statement was filed by defendants no.1 and 2, i.e. Usha Devi and Joginder Singh. Other than the fact that such a joint written statement was wholly unlikely, as that would have destroyed the suit filed by Joginder Singh (defendant no.2 in the second suit), it has been seen from the record of that Court, that factually defendant no.1 Usha Devi filed a separate written statement and Joginder Singh defendant no.2, filed a separate written statement.

The contents of the 'joint written statement' referred to by the Additional Civil Judge, are actually seen to be taken from the written statement of defendant no.1, i.e. Usha Devi.

21. Again, the stand of Usha Devi in her written statement filed in Civil Suit No.208 was largely the same stand as taken by her in the written statement filed in reply to Civil Suit No.25; however, further stating that this civil suit was barred under Order 2 Rule 2 and Section 10 of the CPC and that, in fact, the suit was a collusive one, filed by the plaintiffs and defendant no.2, Joginder Singh.

Repeating that the will dated 10.06.1995 was a genuine will, it was also stated that Joginder Singh and his wife, the late Shakuntla Devi, were in litigation for about ten years, with civil suits pending in Courts at Nawanshahar.

One such civil suit, titled Joginder Singh v. Shakuntla Devi, had been dismissed on 12.10.1999, but another one, also titled Joginder Singh v. Usha Devi, was still pending at Nawanshahar.

Yet further, it was contended that in fact Usha Devi had

performed all the ceremonies after the death of Shakuntla Devi, including immersing her 'urns' (ashes) at Haridwar and that neither the plaintiffs in Civil Suit no.208, Joga Singh and Deepak Kumar, nor their parents, had performed any rites of Usha Devi, who had actually died at village Khusipaddi in Usha Devis' house, where they were both living.

The pendency of litigation with regard to land situate at village Bakhaur was also referred to.

22. Though the judgment of the learned Civil Judge does not refer to the written statement filed by Joginder Singh, the two page written statement is very much available on the record summoned by this Court from the Court of the learned Additional Civil Judge (Senior Division), Garshankar.

To avoid repetition, the contents of that written statement are not being gone into, they essentially being the same as the stand taken by defendant no.2, Joginder Singh, as the plaintiff in his suit, i.e. suit no.25 of 1996.

The plaintiffs are also seen to have filed two separate replications to the aforesaid two written statements, essentially reiterating what they had stated in their plaint, denying the contents of the written statements.

23. In Civil Suit No.208/1999, the following issues were framed by the learned Additional Civil Judge, as can be seen from the common judgment delivered in both suits:-

- “1. Whether the plaintiffs are owners in possession of the suit property on the basis of registered will dated 15.07.1992 executed by Shakuntla Devi in favour of the plaintiff. OPP
2. Whether Shakuntla Devi executed a valid will dated 19.06.1995 in favour of defendant no.1, if so, its effect. OPD-1

3. Whether the plaintiffs are entitled to the declaration prayed for. OPP
4. Whether the plaintiffs are entitled to permanent injunction prayed for. OPP
5. Whether the plaintiffs are entitled to the decree for joint possession in the alternative. OPP
6. Whether the suit is barred by provisions of order 2 Rule 2 and Section 10 of the CPC. OPD
7. Whether the suit is barred by limitation. OPP
8. Whether the suit is not properly valued for the purpose of court fee and jurisdiction. OPD
9. Relief.”

24. As already noticed earlier, common evidence was stated to have been recorded 'in consonance' with the array of parties in Civil Suit No.25, wherein plaintiff Joginder Singh examined himself and PW2 Niranjana Singh, though he is seen to have actually led evidence in rebuttal to the evidence led by defendant no.1 Usha Devi, who examined a deed-writer, Purshottam Lal, one Jarnail Singh, herself and a resident of her village, Balbir Singh, i.e. DWs1 to 4 respectively.

Documentary evidence was led by her in the form of copies of an order dated 01.12.1995, a judgment dated 14.08.1993 passed in Civil Suit No.335/1993 and the statement of Joginder Singh dated 01.12.1995 made in appeal no.390/1995, filed against the judgment in Civil Suit no.335/1993.

[It has been pointed out from the record that the said civil suit (Ex.D4), was filed by Shakuntla Devi against Joginder Singh and two others at Nawanshahar, seeking permanent injunction in respect of 11 kanals and 8 marlas of land situate at village Bakhlaur. The said suit was decreed in favour of Shakuntla Devi but with liberty to the defendants to get their own share in

the suit land determined. The decree is seen to have been passed on the basis of the fact that Shakuntla Devi was also a co-sharer in the land that was subject matter of that suit. It is also seen to be at least to a large extent the same land as is subject matter of dispute in RSA No.3695 of 2007, though the suit out of which that appeal arises before this Court, was filed by Joginder Singh seeking a decree of declaration as already noticed.]

A copy of a plaint dated 20.02.1999 was not an exhibited document but was taken on record as a document marked as 'A'.

25. Defendants No.2 to 4 in Civil Suit No.25/1996 (with defendants no.3 and 4 being the plaintiffs in Civil Suit No.208/1999), examined Shri S.K.Sareen, Advocate of Nawanshahar, deed-writer Amarjit of Mahilpur and one Jagdish Singh, as DWs 5, 6 and 7 respectively. They also examined the mother of Joga Singh and Deepak Kumar (defendants no.3 and 4 in Civil Suit No.25/1996), also named Shakuntla Devi, as DW8.

26. The learned Additional Civil Judge took up the main issues of both the suits together for deciding thereupon, i.e. issue no.1 to 4-B of Civil Suit No.25 and issue no.1 to 5 of Civil Suit No.208. Of these, other than issue no.4 in the first suit, which is seen to be pertaining to whether the suit was barred on the principle of *res judicata*, and issues no.4 and 5 of the second suit, which pertain to the consequential relief of permanent injunction and joint possession, the remaining issues taken up first by that Court, pertain to whether the two wills in question were actually executed by the late Shakuntla Devi or not.

27. As regards the will dated 19.06.1995, it was held that it was a suspicious document, not duly proved, in view of certain contradictory statements made by Usha Devi and the only attesting witness examined, i.e.

DW2 Jarnail Singh, with regard to where Shakuntla Devi died and how Jarnail Singh met her, as also how he knew Usha Devi. Contradictions were also found in whether Shakuntla Devi was actually residing permanently with Usha Devi prior to her death, or was only visiting her sporadically.

These two witnesses, i.e. Usha Devi and Jarnail Singh, both having been found to be followers of Dera Baba Kali Dass, that too was found to be a suspicious circumstance and it was opined by the learned trial Court that Jarnail Singh had testified in favour of the will benefitting Usha Devi, they both being 'disciples' of the same Dera/sect.

28. As regards the will dated 15.07.1992 propounded by the plaintiffs in Civil Suit no.208 (defendants no.3 and 4 in Civil Suit No.25), that too was disbelieved, for the reason that it was also held to be a document not free of suspicion, with the mother of the two minors, i.e. plaintiffs in Civil Suit No.208, testifying to the effect that Usha Devi actually lived with her in-laws' in village Bakhilaur, with no separate residence in her parental village, Sooni, where she used to visit as a visitor.

Secondly, a recital in the will stated that it had been executed in favour of Deepak Kumar and Joga Singh because they looked after Shakuntla Devi, which was also found to be not believable, because both children were found to be 2 years and less old at the time of the execution of the will, who obviously could not have rendered any service to the deceased. With no mention in the will regarding any services rendered by their father, Baljit Singh, to Shakuntla Devi, or the fact that she wished that her parental property should go back to her brother and his sons, those too were found to be 'suspicious omissions', which made the will not believable.

On the aforesaid findings, both the wills set up as having been

executed by Shakuntla Devi, were disbelieved by the learned Additional Civil Judge.

29. It was further found by the trial Court that the suit property falling in village Sooni had devolved upon Shakuntla Devi by natural inheritance from her father, Babu, she having no other siblings. The contention of her husband, plaintiff Joginder Singh, in Civil Suit No.25, to the effect that actually his father-in-law had executed a '*Behnama*' bequeathing his property in favour of his daughter, was found to be an averment made without any backing, no such document having been actually produced by the plaintiff.

30. Hence, the wills having been disbelieved and it having been found that the suit property in village Sooni had devolved upon Shakuntla Devi from her father, Section 15(2)(1)(a) of the Hindu Succession Act, 1956, was cited, to hold that any property inherited by a female Hindu from her father or mother, would, in the absence of any children born to her, devolve upon the heirs of the female Hindus' father and not upon the heirs specified in Section 15(1).

Having recorded findings as above, it was held that the suit property in village Sooni would have to devolve upon the legal heirs of the father of the late Shakuntla Devi, i.e. upon defendants no.1 and 2, (Usha Devi and her brother Baljit Singh), they being the daughter and son of the brother of Shakuntala Devis' father.

31. As regards the issue of *res judicata*, i.e. issue no.4 framed in Joginder Singh's suit (Civil Suit No.25/1996), it was found that no previous judgment passed in any civil suit pertaining to the suit property in village Sooni had been brought on record, and hence, the suit could not be held to be barred on the principle of *resjudicata*.

However, as regards the plea of the defendants in Civil Suit No.208/1999, i.e. the plea of Joginder Singh and Usha Devi, to the effect that the suit was barred under Order 2 Rule 2 of the CPC, the Additional Civil Judge held that Civil Suit No.25/1996 already having been filed qua the suit property by Joginder Singh, in which Usha Devi and subsequently Baljit Singh and his two sons were also impleaded as defendants, the civil suit subsequently filed by them on 06.08.1999 (no.208 of 1999), was barred under Order 2 Rule 2.

32. The issues pertaining to limitation and deficiency in Court fee not having been pressed, they were decided in favour of the plaintiffs in each suit.

However, eventually, on account of the findings on the main issues, both the suits were dismissed by that Court, further recording that since there was no counter-claim filed in Civil Suit No.25/1996, by defendants Usha Devi or Baljit Singh, no decree could be issued in their favour, even if they were the natural heirs to the suit property, being the daughter and son of the brother of Shakuntala Devis' father.

33. As already noticed, against the aforesaid judgment and decrees, the defendants filed four appeals, two of which were by Usha Devi (one each in Civil Suit No.25 and 208). Joga Singh and Deepak Kumar also filed two appeals, again against the decree passed in each of the two suits.

The learned first appellate Court, also therefore, passed a common judgment in all four appeals.

Having given the details of the pleadings made in both the suits before the trial Court, and the issues framed in each suit by that Court, on appraising the evidence, the appellate Court first held that the lower Court had mixed up the discussions on the two wills propounded by the parties, whereas

distinct adjudication should have been made in respect of each will.

However, thereafter, going on to appraise the testimonies of the witnesses examined on both sides, eventually even the first appellate Court came to the same conclusion, that the wills were highly doubtful and as such, could not be held to be proved.

34. As regards the will dated 19.06.1995, it was found that the only attesting witness examined was DW2, with the other witness, Dharampal, stated to be addicted to liquor, but with no evidence led with regard thereto.

Thereafter, the testimony of DW2 was disbelieved by the first appellate Court also, essentially on the same reasoning as that given by the learned Additional Civil Judge, though with a very detailed discussion on that issue.

It was also held that the last place of residence of Shakuntla Devi was not proved to be the house of the beneficiary of the said will, i.e. the house of Usha Devi, and the fact that it had been admitted by Usha Devi that there was no litigation pending, pertaining to the marriage of Joginder Singh and Shakuntla Devi, it was found to be a suspicious circumstance for Shakuntla Devi to have excluded her husband from the will.

The suit titled Joginder Singh v. Shakuntla Devi, pending at the civil Court at Nawanshahar, Ex.D7, was seen to be pertaining to alienation of 16 kanals of land by Shakuntla Devi (in her matrimonial village, Bakhaur), but with the written statement filed by Shakuntla Devi in that case not having been brought on record to reflect any strained relations between her and her husband, it was held to be a circumstance not favourable to the propounder of will dated 19.06.1995, i.e. Usha Devi.

Civil suit no.335 of 1993 filed by Shakuntla Devi against her

husband, Joginder Singh, (seeking permanent injunction), was also referred to, which was decreed in favour of Shakuntla Devi, (as already noticed), with Joginder Singh having thereafter appealed against that judgment but subsequently having withdrawn the appeal, upon the death of Shakuntla Devi.

35. The learned first appellate Court held that despite the aforesaid litigation, there was no recital in the will dated 19.06.1995 referring to such litigation, thereby again pointing towards the will being a suspicious document.

Giving further reasons also, which are seen to be essentially the same as those given by the learned Additional Civil Judge, the said will was disbelieved by the lower appellate Court also.

36. As regards the will dated 15.07.1992, in favour of the minor plaintiffs Joga Singh and Deepak Kumar, sons of Baljit Singh, largely the same 'faults' were found by the first appellate Court in the circumstances accompanying the said will, as had been found by the learned Additional Civil Judge. Additionally, the testimony of the deed-writer, Amarjit Singh, was also discussed, to hold that in his register, the entry with regard to the documents stated to have been scribed by him, was actually initially in respect of a sale deed, which was later corrected to add the word "wasiat" (will), thereby creating a doubt on the authenticity of the document.

Thus, the will dated 15.07.1992 was also disbelieved by that Court, as it had been by the lower Court.

37. An argument having been raised before the first appellate Court that holding the will of the year 1995 to be an 'invalid will', would affect the rights of Baba Kali Dass Dera, that argument was rejected on the ground that

Baba Kali Dass Dera was not a party to the suit and if the Dera/the Mahant of

the Dera were aggrieved of any controversy settled in this *lis*, they would have their own remedies against it.

38. As regards the issue of *res judicata* in Civil Suit No.25/1996, it was found by the first appellate Court that the finding in that regard, of the learned Additional Civil Judge, holding that the suit was not barred, with no previous litigation qua the suit land having been led by way of evidence, was a finding that was not challenged, and in any case, that finding of the lower Court was also not erroneous.

However, as regards the finding of the lower Court on issue no.6 in Civil Suit No.208/1999, i.e. of the said suit being barred under Order 2 Rule 2 CPC, that finding was set aside by the first appellate Court, holding that since both the suits were consolidated, after the second suit was filed, vide a specific order to that effect dated 12.10.2000, and evidence was recorded in one of the suits, to be read as evidence in the second suit also, the second suit could not be held to be barred under the said provision. Consequently, that finding of the lower Court was reversed.

39. Even having recorded as above on that issue, eventually the final decision of the learned Additional Civil Judge, dismissing both the suits but denying any decree to the legal heirs of the father of the late Shakuntla Devi, i.e. to Usha Devi and to Baljit Singh, defendants in both the suits, was upheld by the first appellate Court on the same reasoning, that they not having raised any counter claim seeking a decree that they be declared owners of the suit property, the lower Court was left with no alternative except to simply dismiss the suits with no further relief granted (despite otherwise holding in favour of the legal heirs of the father of Shakuntla Devi).

40. On the aforesaid findings, all four appeals before it were

dismissed by the first appellate Court.

41. Before this Court, since the will dated 19.06.1995 is in issue in RSA No.3695 of 2007 also, with in fact, specifically only the land in village Bakhaur having been referred to in that will, the judgment of the learned Additional Civil Judge, as also of the first appellate Court, giving rise to that second appeal before this Court, would also be need to be looked at before going on to the arguments addressed on the matter of the will by learned counsel on both sides.

42. As already noticed, Civil Suit no.131 of 2003 was instituted by the late Shakuntla Devis' husband, Joginder Singh, qua land in village Bakhaur, seeking a declaration that he is owner in joint possession of the estate of Shakuntla Devi, further seeking a decree of permanent injunction against Usha Devi and Dera Baba Kali Dass, both beneficiaries of the will dated 19.06.1995, restraining them from interfering in his possession.

In this suit also, Joginder Singh, in the alternative, prayed for joint possession of the suit property described in the will, which otherwise works out to be approximately 75 kanals and 15 marlas of land, as earlier noticed.

43. However, in the main body of the plaint, Joginder Singh alleged that land measuring 21 kanals and 2 marlas was jointly owned and possessed by Shakuntla Devi, i.e. his wife, in village Bakhaur as per the *jamabandi* for the year 1991-92. He repeated in this suit also that she had expired on 29.08.1995 and during her life time she was in possession of the suit land jointly owned by her. Again stating in this suit also that they had no children, therefore, he alone was the legal heir to his wifes' estate, with the defendants having no right to it, the will dated 19.06.1995 was described as a forged and

fabricated document, further reiterating that Shakuntla Devi was not in a sound disposing mind for the last two years before her death.

It was further contended in the plaint that as the defendants were threatening to assert their rights on the basis of the mutation entered (based on the will), the suit had been instituted.

44. Upon notice issued, the two defendants, i.e. Usha Devi and Dera Baba Kali Dass, filed a joint written statement, taking preliminary objections with regard to locus, non-joinder and mis-joinder of necessary parties, maintainability and improper Court fee and jurisdiction.

On merits, the contents of the plaint were denied, further stating that Shakuntla Devi had actually died in village Khusipaddi, i.e. the village of residence of defendant Usha Devi, where Shakuntla Devi also resided before her death.

It was further contended that the last rites of Shakuntla Devi were performed by the defendants.

The will being a valid will, the first defendant being a close relative of the deceased and the mutation having been correctly entered on the basis of the will, were averments made in the written statement filed in this suit too.

Strained relations between Shakuntla Devi and plaintiff Joginder Singh were also reiterated, further contending that they were not even on speaking terms with each other due to the litigation pending between them.

45. Upon a replication having been filed by the plaintiff, the following issues were framed by the learned Additional Civil Judge:-

“1) Whether the plaintiff is joint owner in possession of the suit land? OPP

- 2) Whether the plaintiff is entitled to the declaration & injunction as prayed for? OPP
- 3) Whether in the alternative, plaintiff is entitled to joint possession of the suit land? OPP
- 4) Whether the deceased Smt. Shakuntla Devi executed a legal and valid will dated 19.06.1995 in favour of the defendant? OPD
- 5) Whether the suit is bad for non-joinder and mis-joinder of parties? OPD
- 6) Whether the suit as framed, is not maintainable? OPD
- 7) Whether the suit has not been properly valued for the purpose of Court fee and jurisdiction? OPD
- 8) Whether the plaintiff is barred by his act, conduct principle, waiver, estoppel and acquiescence, to file the present suit? OPD
- 9) Relief.”

46. In this case too, plaintiff Joginder Singh examined himself, further examining one Amar Chand as PW2, one Jarnail Singh-Inspector, Department of Food and Supplies as PW3 and one Gurdas (also wrongly assigned the number PW3).

By way of documentary evidence, copies of the judgment and decree of the first appellate Court passed in the other suit pertaining to village Sooni, dated 10.02.2004, were tendered as Exs.P1/A and P1/B and copies of mutation entries were tendered as Exs. P1/C to PW/E.

47. Usha Devi examined herself as DW1, one Bhaga Ram as DW2, Khushi Ram as DW3 and the attesting witness to the will, Jarnail Singh, as DW4 (this witness also having appeared as a witness for her in the suit pertaining to village Sooni).

48. Upon considering the evidence led and arguments addressed, the

learned Additional Civil Judge first recorded a finding that the suit property of village Bakhaur had come to Shakuntla Devi from her husbands' family, i.e. from the family of the plaintiff, specifically from his uncle.

It was further noticed by that Court that the plaintiff had proved copies of ration cards as Exs. P1 and P2, as also a certified copy of a voter list as Exs. P3 and P4. The ration card was held to be proved by PW3 Jarnail Singh, i.e. an Inspector of the Food and Supplies Department and the relationship between the petitioner and his wife was held to be proved by the testimony of the aforementioned Gurdas.

49. Though it was found that DW2 Bhaga Ram had proved the death certificate, Ex.DA, of deceased Shakuntla Devi, showing that she had died at village Khushipaddi and that the attesting witness to the will, Jarnail Singh had also tried to support the will in his testimony, yet the validity of the will was not examined by the trial Court at Nawanshahar, in Civil Suit no.131 of 2003, that issue already having been decided in Civil Suit Nos. 25 of 1996 and 208 of 1999 by the learned Civil Judge, Garhshankar. Thus, it was held that the said judgment operated as constructive *res judicata* between the parties and therefore, with the will already having been held to be not proved, that issue could not be gone into again in a different suit.

Even so, it was noticed that DW3 Khushi Ram had also tried to prove the will but even his testimony did not help the defendants, because in his cross-examination, he admitted his relationship to the defendants and further, he deposed that no will was executed at Garhshankar, whereas Usha Devi herself had deposed to the contrary.

50. Having held as above, the learned Civil Judge then examined the issue of how the estate of Shakuntla Devi, at Bakhaur, was to devolve by

natural succession.

Citing Section 15 (1) of the Hindu Succession Act, 1956, it was held that as per clause (a) thereof, the property of a female Hindu dying intestate would first of all devolve upon her sons and daughters and her husband, and therefore, there having been no children born to Shakuntla Devi, it would be the plaintiff, i.e. Joginder Singh, who would inherit her estate.

The other issues of maintainability and jurisdiction and Court fee also not having been proved against the plaintiff, the suit of plaintiff Joginder Singh was decreed in his favour.

51. The defendants having appealed against the aforesaid judgment and decree (through their respective LRs/successors-in-interest), the first appellate Court, after having noticed the pleadings and issues framed and the evidence led, eventually came to the same finding as the learned trial Court.

It was found by that Court also that it had been proved that Shakuntla Devi had died at village Khushipaddi and as per the evidence of DW2, the Chowkidar of village, she also resided there at that time, and the registration of the will was proved by Khushi Ram, a Registration Clerk in the office of Sub-Registrar. However, the validity of the will not discussed by that Court, again on the principle of *res judicata*.

Still, the evidence of Inspector Jarnail Singh of the Food and Supplies Department (as regards Usha Devis' name appearing in the ration card alongwith plaintiff Joginder Singh), was noticed by that Court also.

Thus, the first appellate Court having agreed with the lower Court that the issue of the validity of the will not being an issue that could be gone into again, the subsequent finding, on the manner of devolution of the suit property, in terms of Section 15 of the Hindu Succession Act, was upheld by

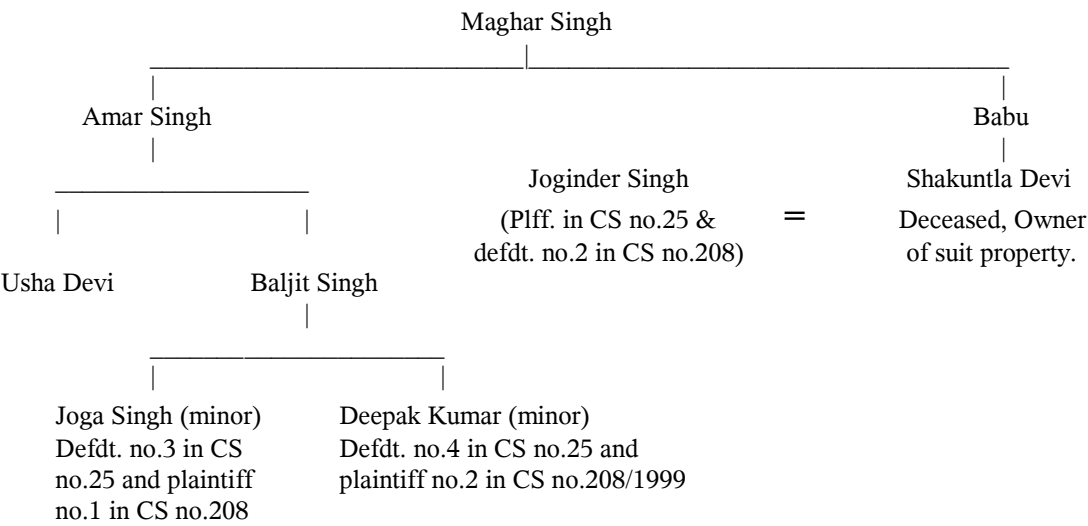
that Court.

Consequently, the appeal filed by the defendants was dismissed .

52. It therefore now falls upon to this Court to first determine whether the finding of the learned Additional Civil Judge (Senior Division), Garhshankar, in Civil Suits no.25 of 1996 and 208 of 1999, as also of the first appellate Court at Hoshiarpur, on the issue of the validity of the will dated 19.06.1995, has been correctly decided or not.

53. Before this Court, arguments were addressed as discussed immediately hereinafter, by learned counsel appearing on both sides.

54. Addressing arguments for appellant Usha Devi, Ms. Japneet Kaur, Advocate, first drew up a pedigree chart to explain the relationship between the parties to the *lis* in RSAs No.2253 and 2254 of 2004. The chart is reproduced hereinunder:-



After giving the facts and referring to the pleadings in respect of such facts, learned counsel first pointed to the fact that the suit property had devolved upon Shakuntla Devi from her father as per natural succession and her husband, plaintiff Joginder Singhs' plea, that in fact she had succeeded to it on the basis of a gift deed (*Hibanama*), was never proved and therefore, Joginder Singh in any case cannot claim to be the natural successor to a

property held by his wife on the basis of a gift deed. Learned counsel further submitted that in fact the said argument need not even be raised, as Joginder Singh in any case had not challenged any finding after the dismissal of his civil suit, or even as regards the dismissal of Civil Suit no.208/1999 instituted by the sons of Baljit Singh, i.e. respondents no.3 and 4 herein, Joga Singh and Deepak Kumar.

She next referred to the finding of the learned trial Court, wherein certain lines in Punjabi, from the will dated 19.06.1995 (Ex.D1), were reproduced in the judgment of that Court, the English translation of which would read as follows:-

“I do not get alongwith my husband Joginder Singh who quarrels and fights with me and I live separately from him”

Ms. Japneet Kaur submitted that in the face of the aforesaid recital in the will executed in favour of the appellant, the findings of the Courts below are wholly erroneous and in fact perverse, holding that there was no recital in the will to the effect that Shakuntla Devi was not proved to have been living separately from her husband.

Learned counsel next pointed to the observation of the trial Court in paragraphs 13 and 14 of its judgment, to the effect that firstly the deed-writer who had scribed the will, DW1 Purshottam Lal, had duly testified and produced his register showing the entry of the will in it, and one attesting witness, Jarnail Singh, also appeared as DW2 and testified to the effect that the will had been read over to Shakuntla Devi in his presence at Nawanshahar, by the deed-writer, upon admitting which she had signed on both pages of the document. This witness had also deposed that the other witness, Dharampal,

was present there, who had also signed the will in the presence of Shakuntla Devi. In fact, learned counsel pointed out that DW2 also specifically testified with regard to the strained relations between Shakuntla Devi and her husband Joginder Singh, on account of litigation between them.

She next pointed to the finding of the trial Court itself, that PW2 Niranjana Singh, had also admitted that Joginder Singh had a dispute with his wife due to selling of some land and that therefore, vide the will dated 19.06.1995, Shakuntla Devi had bequeathed her property in favour of her cousin Usha Devi, though subsequently this witness added that this was before she executed her will in favour of the sons of her other cousin, Baljit Singh. She further submitted that even DW8, i.e. the mother of the minor plaintiffs in Civil Suit no.208, eventually in cross-examination, admitted that when Shakuntla Devi used to visit, she used to stay at Usha Devi's house during the day and returned at night and Usha Devi used to serve her tea, water and meals like brothers and sisters look after each other.

[Note:- It is to be noticed here that learned counsel has pointed to that part of the testimony of DW8 only from the translated version given in the grounds of appeal, though the said translation has not been objected to by learned counsel for the respondents.]

Hence, Ms. Japneet Kaur reiterated that the finding of the learned trial Court to the effect that Shakuntla Devi never resided permanently with Usha Devi, and therefore the will was not believable, was actually an erroneous interpretation by that Court, inasmuch as, once Usha Devi was shown to have been close to Shakuntla Devi, the will executed in her favour was but natural.

55. Learned counsel then summed up her arguments as follows:-

- i) That the property in village Sooni cannot in any case go to either of the plaintiffs of the two suits filed pertaining to the land in village Sooni, i.e. to Joginder Singh and the minor children of Baljit Singh, even if the wills are disbelieved, as then the suit land would devolve in terms of Section 15(2) of the Hindu Succession Act, 1956, whereby the property of a female Hindu, as is inherited by her from her father, would revert to her fathers' legal heirs, in the absence of such female Hindu having any children of her own. Therefore, it would neither devolve upon her husband, nor upon the children of her cousin.
- ii) The will set up by the plaintiffs in Civil Suit no.208, i.e. the one dated 15.07.1992, has been held to be not proved and therefore rejected by the Courts below, which finding has not been appealed against before this Court, by the plaintiffs in Civil Suit no.208/1999, i.e. by Joga Singh and Deepak Kumar, and as such, that finding has attained finality.
- iii) The will executed by Shakuntla Devi in favour of appellant Usha Devi, firstly is a registered will, and secondly, it has been proved in terms of Section 68 of the Indian Evidence Act, 1872, as both, the attesting witness and the scribe were examined, with the register of the scribe also produced before the Court.
- iv) PW2 and DW8 (the latter being the mother of Joga Singh and Deepak Kumar), both testified that Usha Devi was looking after Shakuntla Devi, with it also having been found as a fact that Shakuntla Devi was unwell in her last years, having cancer.
- v) Further, DW4 Balbir Singh also admitted that Shakuntla Devi was looked after by Usha Devi and that they even lived together.
- vi) The will itself, Ex.D1, recited that Shakuntla Devi was excluding her husband from the suit property, as she had

strained relations with him and she was living separately.

- vii) The fact that the appellant was in the possession of the suit property, and therefore obviously she had been put in such possession by Shakuntla Devi herself.

Further, with the appellant having specifically pleaded in her written statement that she was in possession of the suit property, Shakuntla Devi having lived with her and no replication having been filed to the aforesaid contention, the contention was bound to be accepted.

On this, learned counsel cited a judgment of a Division Bench of this Court in **Sohan Lal v. State of Haryana 2001(4) RCR (Civil) 483.**

- viii) That the learned trial Court had also rightly decreed that since in reply to the first suit filed by Joginder Singh (Civil Suit no.25/1996), the 3rd and 4th respondents herein, i.e. minors Joga Singh and Deepak Kumar, did not file a counter claim, the subsequent suit filed by them, i.e. Civil Suit no.208/1999, was barred under Order 2 Rule 2 and therefore, the judgment of the learned lower appellate Court, reversing that finding, is erroneous. On this issue, learned counsel cited a judgment of a co-ordinate Bench of this Court in **Rakesh Kumar v. Ajit Singh 2001(3) RCR (Civil) 285.**

[It is to be noticed at this stage itself that the said judgment refers to the basic principle contained in under Order 2 Rule 2, to the effect that a cause of action cannot be split up by the plaintiff by filing two suits. No reference to that principle applying in a case where no counter-claim has been filed, has been made in the judgment.]

56. In response to the aforesaid arguments, Mr. Rajinder Sharma, learned counsel appearing for respondents no.1 and 2, i.e. Joginder Singh and Baljit Singh (the latter now represented by his LRs, including his then minor

sons Joga Singh and Deepak Kumar), first submitted that the testimony of the scribe, DW1 Purshottam Lal, cannot be accepted towards proving a document in terms of Section 68 of the Evidence Act, as the said provision only refers to a document being proved by the testimony of an attesting witness thereto.

As regards the attesting witness, learned counsel submitted that DW2, Jarnail Singh, who was stated to be the attesting witness to the will dated 19.06.1995, was found to be an interested witness by the Courts below, being a follower of Dera Kali Dass, as was Usha Devi, the beneficiary of the will. In fact, as regards the other beneficiary of the said will, qua the property located at village Bakhaur, it was the Dera itself that was a beneficiary.

On the above submission, learned counsel cited a judgment of the Supreme Court in **S.R. Srinivasa v. S. Padmavathamma** (2010) 5 SCC 274.

57. Mr. Sharma next submitted that the will was obviously surrounded by suspicious circumstances because there is a gap between the lines of the will.

Lastly, he submitted that the will not having been signed or thumb marked by the executors thereof on the first page, it would not be a valid will.

58. In reply to the aforesaid two contentions, Ms. Japneet Kaur, learned counsel for the petitioner, first submitted that there was no question put to DW2 in cross-examination that he was an interested witness. Hence, even an argument to that effect would not be entertainable.

Next, she submitted that though Baba Kali Dass was a beneficiary to the will, neither her nor the Dera were impleaded as defendants in either of the two suits.

On the issue of the first page of the will not being signed, Ms.

Japneet Kaur submitted that as long it was admitted to be signed on the last page, it would not make the will invalid, as no form of attestation of a will is specifically prescribed anywhere.

In this context, she relied upon a judgment of a co-ordinate Bench of this Court in Burmitu @ Balo and another v. Ujagar Singh and others 1963 (1) ILR (Punjab) 7.

Further, she submitted that it being a registered will, with one of the attesting witnesses having duly testified in its favour, the conditions prescribed in Section 68 of the Evidence Act were wholly fulfilled.

On the parameters of how a will is proved, she cited a judgment of a co-ordinate Bench of the Madras High Court in Sarojini v. Mohandoss 2008(2) RCR (Civil) 656.

59. Having considered the aforesaid arguments of learned counsel appearing on both sides in these two appeals, i.e. RSAs no.2253 and 2254 of 2004, the first thing that needs to be seen, in terms of the questions of law framed by this Court is as to whether at least strictly in terms of Section 63 of the Indian Succession Act, read with Section 68 of the Indian Evidence Act, the will dated 19.06.1995 would stand proved, and if so, whether it can be accepted to be a will truly executed by the late Shakuntla Devi, free of all suspicion.

For that purpose, the aforesaid provisions are reproduced hereinunder:-

Indian Succession Act, 1925

“63 Execution of unprivileged Wills. —Every testator, not being a soldier employed in an expedition or engaged in actual warfare, [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.”

Indian Evidence Act, 1872

“68. Proof of execution of document required by law to be attested.- If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

[Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.]

60.

As regards the conditions stipulated in Section 63 of the Act of

1925, clause (a) thereof simply lays down that the testator or any other person under his direction, shall sign or shall affix his mark to the will. In the present case, Shakuntla Devi is seen to have signed in Hindi (Devanagari script) on both, the first and the second page of the will, Ex.D1, which is otherwise written in Punjabi (Gurmukhi script). It needs notice that though respondent Joginder Singh, in both his suits, i.e. at Garhshankar as also at Nawanshahar, stated that his wife, the late Shakuntla Devi, testatrix of the will, was not in a sound disposing mind for about two years prior to her death as she was suffering from cancer, however, specifically her signatures were not refuted by way of any expert opinion.

To that extent, therefore, Section 63(a) would seem to be complied with.

61. Coming to clause (b) of the said provision, it stipulates that the signature of the testator shall be so placed so as to reveal the intention of the testator that he/she was giving effect to the recital in the will. Seen from that angle, one signature of Shakuntla Devi, on the first page of the will, is placed immediately beneath the writing below the last line of the actual recital in the will, with the line in between stating that the signature (below) was that of the testatrix. Her second signature on the first page is seen on the right hand margin of the page, between the signatures of the two witnesses.

However, on the next page, i.e. the last page of the will, the signature does appear to be too far down below the last line of the recital contained in the will, which could be on account of a stamp of the deed writer affixed immediately below the recital. Yet, it does raise some doubt as to why there is such a large gap between the last line of what is contained in the will and the actual signature of Shakuntla Devi, which again appears below a line

in Gurmukhi, indicating that that is the place for the signatures of the testatrix.

It needs also to be noticed that the signatures of Shakuntla Devi, in Hindi, are not seen to be that of a very literate person, the letters in Hindi being very carefully formed, suggesting that they are not written by a person accustomed to writing regularly.

62. As regards clause (c) of Section 63 of the Act of 1925, that stipulates that the will needs to be attested by two or more witnesses, each of whom acknowledges that he has either seen the testator or a person under his direction signing the will, or that the testator acknowledged such signatures/mark, of himself/such other person.

As regards the first part of clause (c), it states that the will would be signed by two witnesses and in the case of the will dated 19.06.1995, the first page thereof is seen to be signed in English by one Dharampal and in Gurmukhi by Jarnail Singh in the right hand margin of the page, in between which again is the signature of Shakuntla Devi, as already noticed. However, on the second page of the will, i.e. the last page, only the signature of Shakuntla Devi appears, with neither of the two witnesses having signed it on that page.

In the opinion of this Court, though the recital otherwise is seen to be continuous from one page to the other, however, seen with the fact that the Courts below have disbelieved the only attesting witness who testified in Court, on the ground that he was an interested witness, both, in favour of Usha Devi as also Dera Baba Kali Dass, in the opinion of this Court, the lack of signatures of witnesses on the second page, i.e. the last page of the will, would definitely lend suspicion to the document. This would be more so because even though on the reverse side of the first page, beneath the stamp of the

Sub-Registrar, the signatures of both the witnesses are again seen, but that is not so on the reverse of the second page.

63. Coming then to whether the will was duly proved in terms of Section 68 of the Evidence Act, to that extent of course, one person who is shown to be an attesting witness, i.e. DW2 Jarnail Singh, duly testified in Court that the will dated 19.06.1995 was read over to Shakuntla Devi in his presence by the deed writer and she, thereafter, admitting to it being correct, signed on both pages of the will, with the other witness, Dharampal also present there, who both signed the document, i.e. Ex.D1, in Shakuntla Devis' presence.

Therefore, as regards Section 68, the will would seem to be duly proved before both, the Court at Garhshankar as also the Court at Nawanshahar, with one attesting witness, Jarnail Singh, having testified before the Court at Nawanshahar too, to the same effect, that he was an attesting witness before whom Shakuntla Devi had admitted to the correctness of the contents of the will and had signed on it.

Hence, with the will otherwise also stated to be a registered will, and at least at Nawanshahar, even the registration clerk having testified that it was so registered, there would seem to be no ground to disbelieve the execution of the will except for the following reasons.

64. Firstly, this Court has held that the absence of signatures of the attesting witnesses on the second page, with the signature of the testatrix herself also coming too far below the last line of the recital in the will, it would be a suspicious circumstance.

Secondly, the Courts below have actually disbelieved the will holding that firstly, the witnesses contradicted themselves as to the place of

death of Shakuntla Devi and because the only attesting witness who testified in favour of the will, (with the second witness not having testified), was also a devotee of the same Dera that the beneficiary of the will, i.e. Usha Devi, was a devotee of.

65. In this context, it first needs to be noticed that the witnesses for the plaintiff and the defendant contradicted each other with regard to where Shakuntla Devi lived out her last days and where she actually died. In the suit at Garhshankar, the attesting witness, Jarnail Singh, is shown to have stated that he had met Shakuntla Devi 15 to 20 times at the Dera that they visited, i.e. Dera Baba Kali Dass, but in cross-examination, he was unable to state actually whether she resided with Usha Devi or was only visiting there. Usha Devi of course stated that Shakuntla Devi had lived with her for about two years and had died at her house, though she was cremated at her parental village, i.e. village Sooni. However, DW4, i.e. a witness for Usha Devi, though otherwise supported her testimony and her stand in the written statement, in cross-examination could not state whether she was staying permanently with Usha Devi or was visiting her sporadically. The mother of the two plaintiffs in Civil Suit no.208 of 1999, also namd Shakuntla, in cross-examination admitted that the late Shakuntla Devi used to visit Usha Devi and was also looked after by Usha Devi but the expenses for the treatment of Shakuntla Devi (for cancer) were borne by plaintiff Joginder Singh.

Joginder Singh testified in terms of his plaint, to the effect that his wife used to visit Usha Devi at village Khushipaddi, but actually resided with him; though in cross-examination, he stated that she used to reside with Baljit Singh (father of the plaintiffs in Civil Suit no.208), at Sooni.

However, he stated that he had performed her last rites at village

Sooni.

PW2 Niranjan Singh, supported the suit of Joginder Singh but in cross-examination admitted that the late Shakuntla Devi had love for her sister Usha Devi and had executed a will in her favour, before which she had executed a will in favour of the sons of Baljit Singh, i.e. the plaintiffs in Civil Suit no.208.

On further cross-examination, it was found by the learned Civil Judge that the witness then turned over to say that Usha Devi was actually residing with Baljit Singh and his sons for about 4 to 6 months and had lot of love for those sons and that she had also executed a will in their favour.

This witness was also found to have stated earlier in his cross-examination that Shakuntla Devi was in sound disposing mind till her death, but later, upon further cross-examination by the counsel for the plaintiffs in Civil Suit no.208, i.e. the sons of Baljit Singh, he stated that she had not executed the will dated 19.06.1995 (in favour of Usha Devi and Dera Baba Kali Dass).

Thus, obviously the testimony of this witness was wholly unbelievable, he having gone with each counsel who cross-examined him, after having gone wholly with the plaintiff in his examination-in-chief.

As regards the witnesses who appeared in the suit at Nawanshahar, plaintiff Joginder Singh and defendant no.1 Usha Devi are found to have materially testified as per their respective testimonies in the suits instituted at Garhshankar. As already noticed, plaintiff Joginder Singhs' witnesses, i.e. the Inspector from the Food and Supplies Department and the Registration Clerk from the Election Department, testified to the effect that the late Shakuntla Devi was shown to be entered as a resident of village Bakhlaur

in the ration card, as also as a voter of that village.

The important witness on behalf of the defendants was Bhaga Ram, DW2, Chowkidar in village Khushipaddi, who proved the death certificate Ex.DA, showing that Shakuntla Devi had actually died at village Khushipaddi, i.e. the village of Usha Devi, on 29.08.1995. Hence, as regards that controversy, it obviously stand settled that Shakuntla Devi died at Usha Devis' village. Yet, even as per Usha Devis' own testimony, in cross-examination, Shakuntla Devis' last rites were performed by her husband, plaintiff Joginder Singh at village Sooni, i.e. her parental village, where her (Shakuntla Devis') brother, Baljit Singh and his family resided. Baljit Singh's wife, also Shakuntla, further in her cross-examination admitted, as already seen, that though Usha Devi was looking after the late Shakuntla Devi, expenses for her treatment were borne by her husband plaintiff Joginder Singh, who also performed her last rites.

66. In the aforesaid situation, it is to be determined by this Court as to whether the will executed by the late Shakuntla Devi, in favour of Usha Devi and Dera Baba Kali Dass, to the exclusion of her natural heir, i.e. her husband, is to be accepted as her true will, executed in a sound disposing mind, or not.

As regards her intention to possibly bequeath her property to her cousin (sister) and her spiritual Guru, it would not otherwise be unnatural for her to do so, especially when litigation was on-going between her and her husband. However, what this Court cannot lose sight of is the fact that admittedly the will was executed only two months and ten days before the death of Shakuntla Devi, who was suffering from cancer. The question then is, whether at an advanced stage of the disease (with even Usha Devi admitting

that she had been suffering from cancer for about 4 to 5 years), can she be stated to be in a sound disposing mind, with a specific stand taken by her husband, as also the witnesses who deposed in his favour, that she was not in a sound disposing mind for the last two to three years.

In the opinion of this Court, in such a situation, the will executed by Usha Devi on 19.06.1995 cannot be held to be that of a person in a sound disposing mind, especially when admittedly her husband was paying for her treatment despite litigation pending between them, and also admittedly, the property in village Bakhaur having come to her from her husbands' family. Thus, even if she intended that her property at village Sooni, which came to her from her father, should go entirely to Usha Devi who had looked after her, it does not stand to reason that a person in a sound disposing mind would also deprive her own husband of all property wholly and completely, including that which came to her from the husbands' family.

Thus, even for this sole reason alone, I would find myself unable to interfere with the decrees passed by the Court below, disbelieving the will dated 19.06.1995, though not only for the reasons recorded by the Court seized of Civil Suit no.25 of 1996 and 208 of 1999 and the appeals filed against the judgment and decrees passed in those suits.

Further, as the Courts below have also recorded, it was not wholly proved that Shakuntla Devi actually resided for two years continuously with Usha Devi. Most definitely, as this Court has also come to hold on the basis of the death certificate proved by the village Chowkidar, she died in Usha Devis' village, Khushipaddi; but was cremated at village Sooni, i.e. her parental village, by her husband, plaintiff Joginder Singh, even as per Usha Devis' own admission in her testimony.

Thus, with Shakuntla Devi being shown to be a voter in Bakhlaur, i.e. her husbands' village, with the ration card of her husband also showing her to be a resident of that place, and the witnesses having all testified (other than Usha Devi herself), that she used to visit Usha Devi frequently, it can be safely held that the Courts below have not erred in holding that Shakuntla Devi was not residing with Usha Devi continuously for two years prior to her death.

Obviously, in her very last days, she seems to have been residing with Usha Devi at village Khushipaddi, where she died, but in fact, in the opinion of this Court, that would fortify the fact that in the last stage of her disease, she was not fully of a sound disposing mind, as has already opined above, thereby leading to her excluding her husband of 40 years wholly and completely even from property which came to her from her husbands' uncle.

To that effect again, in the opinion of this Court, the Courts below have not erred in holding that even the testimony of the sole attesting witness who testified before the Courts, i.e. Jarnail Singh, cannot be wholly relied upon, as the beneficiary of the will is Usha Devi, a co-devotee (alongwith Jarnail Singh) of Dera Baba Kali Dass, with the other beneficiary of the will specifically being Baba Kali Dass.

Hence, I see no reason to reverse the opinion and finding of those Courts.

67. It also needs to be repeated here that even though the will of 1992 in favour of the plaintiffs in Civil Suit no.208 of 1999, is not subject matter of appeal before this Court by those plaintiffs, that will in any case was allegedly disbelieved by the Courts below in view of the fact that the recital contained therein was to the effect that the sons of Baljit Singh, i.e. (then) minor

plaintiffs Joga Singh and Deepak Kumar, had served Usha Devi whereas they were actually found to be less than 2 years old at the time when the will was executed, on 15.07.1992.

Hence, if such a will could be executed by Shakuntla Devi, with her signature shown to be present on the document also, this Court would find it difficult to accept that the will dated 19.06.1995, shown to be executed about two months before the death of the testatrix, who was in an advanced stage of cancer by that time, was a will executed by her wholly in a sound disposing mind, whereby she would deprive her husband of almost 40 years completely of any property, even that which came to her from his uncle, simply because there was some litigation between them. This is, to again repeat, to be seen with the fact that her husband was admitted to have been bearing the expenses for her cancer treatment, as was also testified to by the mother of the plaintiffs in Civil Suit no.208/1999.

68. On the circumstances that would be gone into, to determine the validity of a will, a judgment of the Supreme Court in **Jaswant Kaur v. Amrit Kaur** (1977) 1 SCC 369 can be cited, wherein the following principles were laid down, which have been reiterated subsequently in **S. R. Srinivasa v. S. Padmavathama** (2010) 5 SCC 274:-

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

2. Since Section 63 of the Succession Act requires a will to be attested, it cannot be used as evidence until, as required by Section 68 of the Evidence Act, one attesting witness at least has been called for the purpose of proving its execution, if there be an

attesting witness alive, and subject to the process of the court and capable of giving evidence.

3. Unlike other documents, the will speaks from the death of the testator and therefore the maker of the will is never available for deposing as to the circumstances in which the will came to be executed. This aspect introduced an element of solemnity in the decision of the question whether the document propounded is proved to be the last will and testament of the testator. Normally, the onus which lies on the propounder can be taken to be discharged on proof of the essential facts which go into the making of the will.

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

5. It is in connection with wills, the execution of which is surrounded by suspicious circumstances that the test of satisfaction of the judicial conscience has been evolved. That test emphasises that in determining the question as to whether an

instrument produced before the Court is the last will of the testator, the Court is called upon to decide a solemn question and by reason of suspicions circumstances the Court has to be satisfied fully that the will has been fully validly executed by the testator.

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

(Emphasis applied by this Court)

69. Coming then to the next issues of whether, once the will stands disbelieved even by this Court, as it was by the Courts below, has the natural succession to the suit property in the three suits, been correctly adjudicated upon in terms of the Hindu Succession Act, 1956.

Naturally, with both the wills of 1992 and 1995 having been disbelieved, i.e. findings on the first will having become final with no challenge thereto to in this Court, and the challenge to the will dated 19.06.1995 also having been repelled by this Court, the suit property would devolve upon the legal heirs of the late Shakuntla Devi, in terms of the Hindu Marriage Act, 1956.

Section 14 of the said Act stipulates that any property held by a female Hindu shall be held by her as full owner thereof and not as a limited owner, though sub-section (2) thereof further stipulates that the provision contained in sub-section (1) would not apply to any property acquired by way of a gift or under a will or any other instrument, including a decree or order of

a Civil Court or by an Award, in any of which a restricted estate in such female Hindu is a condition of the ownership of the property being conferred upon her by way of such instrument.

In the present case, as regards the property at village Sooni, it has not been in dispute at any stage by any party to the *lis*, that it devolved upon Shakuntla Devi from her father, Babu. Though respondent-plaintiff Joginder Singh did contend in Civil Suit no. 25/1996 that it came to her by way of a gift deed ('*behnama*') executed by her father, such gift deed was never led by way of evidence as already noticed. Hence, Shakuntla Devi having come into complete ownership of her property from her father, there was no limitation to her ownership thereof.

As regards the property held by her in village Bakhaur, i.e. the village of her husband, again it was never in issue that the property came to her by way of an instrument executed in her favour by the uncle of her husband. Even as per the plaintiff Joginder Singhs' case (in Civil Suit No. 131/2003), Usha Devi had become the complete owner of the suit property, though formal partition thereof had not taken place. In other words to the extent of her share in the joint holding she was the exclusive owner thereof.

70. The position that thus emerges is that the property at village Sooni was inherited by Shakuntla Devi from her father whereas that at village Bakhaur came to her from her in-law (husbands' uncle).

Section 15 of the Hindu Succession Act lays down the rules of succession in the case of female Hindus.

The said provision is reproduced hereinbelow:-

“15. General rules of succession in the case of female Hindus.

(1)The property of a female Hindu dying intestate shall devolve according to

the rules set out in section 16,—

(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;

(b) secondly, upon the heirs of the husband;

(c) thirdly, upon the mother and father;

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section (1),—

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.”

Thus, Usha Devi having been held up-to this Court to have died intestate, her estate would devolve, as regards the suit property at village Sooni, inherited from her father, in terms of sub-section (2) of Section 15, i.e. in the absence of any children of her own, not upon her husband or upon his heirs, but upon her mother and father, or upon them no longer being alive, first upon the heirs of her father and in their absence only, upon the heirs of her mother.

The learned courts below having held exactly to that effect in Civil Suit no. 25/1996 and Civil Suit no.208/1999, I see no error in that reasoning. Of course in the judgment and decree passed by the learned Civil

Judge in those suits, it has been specifically stated that the present appellant-Usha Devi, and her brother Baljit Singh, i.e. Defendant no. 2 in Civil Suit no. 25/1996, would be the persons upon whom the property would devolve, but with no counter-claim filed by either Usha Devi or Baljit Singh, no decree could be issued in their favour.

That finding was upheld by the learned first appellate court and is otherwise maintained, except to observe that there being no evidence led with regard to whether they were any other legal heirs of Babu, i.e. the father of Shakuntla Devi, any proceedings instituted by such other legal heirs would not be hampered by the findings of the courts below as regards the legal heirs entitled to such property.

Thus, eventually in any suit, if properly instituted by any other legal heirs of Babu, the order of succession to the property of Shakuntla Devi (situate at village Sooni), shall be governed by Section 15 (2) (a) read with Rule 3 of Section 16 of the Act of 1956, which reads as under:-

“16. Order of succession and manner of distribution among heirs of a female Hindu--- The order of succession among the heirs referred to in section 15 shall be, and the distribution of the intestate’s property among those heirs shall take place, according to the following rules, namely:-

Rule 1- Among the heirs specified in sub-section (1) of section 15, those in one entry shall be preferred to those in any succeeding entry and those including in the same entry shall take simultaneously.

Rule 2- If any son or daughter of the intestate had pre-deceased the intestate leaving his or her own children alive at the time of the intestate’s death, the children of such son or daughter shall take between them the share which such son or daughter would have taken if living at the intestate’s death.

Rule 3-The devolution of the property of the intestate on the heirs referred to in clauses (b), (d) and (e) of sub-section (1) and in sub-section (2) of section 15 shall be in the same order and according to the same rules as would have applied if the property had been the father's or the mother's or the husband's as the case may be, and such person had died intestate in respect thereof immediately after the intestate's death.

71. Coming then to the estate of Shakuntla Devi at village Bakhlaur, i.e the one which came to her from her husbands' uncle.

Section 15 (2) (b) only refers to property inherited by a female Hindu from her husband or from her father-in-law, for it to devolve upon her husband or his heirs; however, Section 15 (1) (a) stipulates that the property of a female Hindu would devolve firstly upon her sons and daughters and then upon her husband. Thus, the property at village Bakhlaur not having come to Shakuntla Devi in any case from her parents, it has to be held to be her own self acquired property, which would devolve upon her husband and no one else, she not having any children.

Hence, the finding of the courts below in Civil Suit No. 131 of 2003 is upheld to that effect also.

72. Finally then, going on to **RSA No. 615 of 2007.**

As already noticed twice earlier, the suit out of which this appeal eventually arises, i.e. Civil Suit No. 529 of 1997, was decreed in favour of the plaintiffs (respondents herein in this appeal) by the learned Civil Judge (Sr. Divn.), Nawanshahar. It was a suit only seeking permanent injunction against the defendant therein (appellant in this appeal), i.e. Baba Kali Dass Dera.

Plaintiffs Dildar Singh and Niranjana Singh had contended that

they were in cultivating possession of the suit land measuring 38 kanals and 10 marlas situated at village Bakhaur, fully described in the plaint filed by them. Such possession was stated to have been with them for the past 12 years, continuous and legal. It was also recorded as such in the 'cultivation column' in the jamabandi (Records of Rights). Further, the Assistant Collector Ist Grade and the Collector, Nawanshahar had also passed orders in favour of the possession of the plaintiffs, but with the defendant, i.e. Baba Kali Dass Dera (appellant herein), having threatened their possession, the suit came to be instituted on 07.02.1996.

Upon notice issued to the defendant, Baba Kali Dass Dera, it appeared and filed a written statement taking preliminary objections with regard to *locus*, maintainability, non-joinder and mis-joinder etc.

On merits, the plaintiffs being in cultivating possession of the suit land was denied, further contending that the order passed by the revenue authorities was a result of misrepresentation and concealment of facts.

It was further stated that the late Shakuntla Devi had been given the land in dispute by Hukam Singh by way of a legal and valid will and she in turn had executed a will dated 19.06.1995 in favour of Baba Kali Dass Dera and Usha Devi, on account of the services rendered by them to her. Thus, the plaintiffs were never owners in possession of the suit land and that in fact, a mutation had also been sanctioned on the basis of the will, in favour of Baba Kali Dass Dera and Usha Devi.

It was contended in the written statement that in another suit the sons of the plaintiffs had claimed to be in possession of the suit land, whereas in the current suit, the plaintiffs had claimed such possession. Yet further, it

was contended that the revenue record had been manipulated in connivance with revenue officials after the jamabandi for the year 1986-87 had been issued and that the suit had been actually filed by the plaintiffs on account of their sons having lost the earlier suit.

It was next contended that the plaintiffs had filed a suit for specific performance also against the late Shakuntla Devi, alleging therein that she had executed an agreement of sell dated 18.02.1988 in their favour and on an application filed in that case, under Order 39 Rules 1 and 2, further alienation of the suit property had been stayed.

Shakuntla Devi had also filed a suit seeking a decree of permanent injunction against Rameshwar Singh and Pitamber Singh sons of the plaintiffs, wherein the order of stay of dispossession had been confirmed.

73. Upon a replication having been filed by plaintiffs, denying the contents of written statement and reiterating the averments of the plaint, the following issues were framed by the learned Civil Judge:-

- “1) Whether the plaintiffs are in possession of the suit land? OPP.
- 2) Whether the plaintiffs are entitled to the injunction prayed for? OPP
- 3) Whether the suit as framed, is not maintainable? OPD
- 4) Whether the suit is bad for non-joinder and mis-joinder of parties? OPD
- 5) Relief.”

74. The plaintiffs examined plaintiff no. 1 and one Bhagat Singh as PW-2 and tendered various documents in evidence including a copy of an

order passed by the Commissioner Jalandhar Division on 10.12.1996, two judgments and decrees, whereas the defendant-examined 07 witnesses and tendered various documents in evidence, including a jamabandi for the year 1991-92, a copy of an order of Commissioner Jalandhar Division dated 12.07.1994 and a jamabandi for the year 1996-97. They also tendered a copy of a judgment and decree dated 14.11.2000.

75. Upon appraising the evidence and considering the pleadings and arguments led before her, the learned Civil Judge found that the factum of Shakuntla Devi having inherited the suit property on the basis of a will, executed by Hukam Singh was admitted by the plaintiffs, as was the filing of a suit for permanent injunction by Shakuntla Devi, which was found to have been dismissed (by which she sought permanent injunction against the plaintiffs sons).

As per the 'jamabandi' it was found that Shakuntla Devi and her co-sharers were the owners of the suit property and that mutation No. 3936 had been entered showing that she had sold a 100th of 791 shares in favour of the plaintiffs and as per the jamabandi and the *khasra girdawari* Ex. P-2, the plaintiffs were shown to be in cultivating possession as co-owners of the suit property.

76. Though the appellant herein (defendant) also referred to the will of Shakuntla Devi, that was not taken into consideration by the learned Civil Judge, holding that the issue with regard to the will had not been finally decided and in any case, the possession of the suit property having been proved to be with the plaintiffs, they could not be dispossessed forcibly by the defendant.

Thus, the first two essential issues framed were decided in favour

of the plaintiffs and as regards the issue of maintainability and mis-joinder of the parties, they too were decided in favour of the plaintiffs.

Therefore, the suit of the plaintiffs seeking permanent injunction was decreed in their favour.

77. In the first appeal filed by the present appellant, the learned Additional District Judge, after noticing the pleadings and the evidence led before the lower court, noticed the arguments of the appellant by which the evidence of DW-5, Punnu Ram, was pointed out, the said Punnu Ram being the attorney of the defendant. That testimony was with regard to the ownership of the suit property coming to Shakuntla Devi and thereafter the will executed by her in favour of the appellant-Usha Devi. Similarly the testimony of other witnesses for the appellant-defendant was also noticed as regards the will of Shakuntla Devi having been executed in favour of the appellant-Usha Devi. However, holding that the suit only being one seeking permanent injunction, the issue of ownership was not necessary to be gone into, with only actual possession thereof to be determined. On that issue, finding that the record did indeed show the respondents-plaintiffs to be in possession of the suit property, the findings of the learned trial Court were upheld by the first appellate court also.

78. Before this Court, Ms. Japneet Kaur, learned counsel for the appellant-defendant, reiterated that the will executed by Shakuntla Devi in favour of Dera Baba Kali Dass and Usha Devi being proof of ownership of the appellant herein also, even as regards the land at village Bakhaur, to the extent willed to the appellant, and a mutation also having been sanctioned on the basis of the will, possession could not be held to be that of the respondents-plaintiffs.

79. In response, Mr. Vijay Lath, learned counsel for the respondents, reiterated from the judgments of the courts below, to the effect that the suit was only one seeking permanent injunction and not a declaration and therefore, possession having been found to be that of the respondents-plaintiffs by the revenue Court also, they could not be dispossessed from there except due course of law.

He submitted that the appeal filed by Shakuntla Devi against such mutation, to the Commissioner, was also found to have been dismissed.

80. Having considered the aforesaid arguments, I actually see no controversy in this case in any manner, with the physical cultivating possession of the suit property having been found by both the courts below to be that of the respondent-plaintiffs. Nothing whatsoever has been pointed out from the record, by which it can be held that the finding in that regard is perverse in any manner.

Therefore, in RSA no.615 of 2007 also, I find no reason whatsoever to interfere with the judgments and decrees of those Courts, by which a decree of permanent injunction has been issued in favour of the respondent-plaintiffs, to the effect that they would not be dispossessed from the suit property except in due course of law.

81. Consequently, to sum up in terms of what has been held hereinabove, the questions of law, framed in paragraph 10 of this judgment, are answered as follows:-

- (a) In reply two questions (i) and (iii), it is held that despite the evidence of the attesting witness, the Registration Clerk and the defendant who looked after the deceased, the will dated 19.06.1995 does not stand proved to have been executed by Shakuntla Devi in a sound disposing mind.

This is despite the fact that strictly in terms of Section 63 of the Indian Succession Act of 1925 and Section 68 of the Indian Evidence Act, 1872, the will would otherwise stand proved. Yet, due to the highly suspicious circumstance of the state of mind of the testatrix, who was in the final stages of cancer and the fact that the only attesting witness who testified in Court, has been held to be an interested witness, it cannot be held to be a valid will.

- (b) As regards question (ii), it is answered to the effect that a will cannot be held to be passed in suspicious circumstances, simply because its sole purpose is to disinherit a natural heir, though nevertheless, the onus to prove the will to be a true and valid document, lies upon the beneficiary of such will.
- (c) As regards the question of law at sr. no.(iv), it is held that the property of a female Hindu, as has come to her from her father, such property would devolve upon the heirs of her father in terms of Section 15(2) (a) of the Act of 1956 read with the relevant part of Rule 3 of Section 16 (as has been underlined in the paragraph 70 hereinabove.)
- (d) As regards question no.(v), it is held that the property of a female Hindu, dying intestate, as has been inherited from her father, it would again devolve upon her fathers' heirs as held in answer to question no.(iv), and the fathers' brothers' grand-children would not take precedence over other heirs.
- (e) As regards question no.(vi) when a property has come to a female Hindu from a relative of her husband, but not from her father-in-law or her husband, it would be treated as her self-acquired property and would devolve upon her heirs in terms of Section 15(1) of the Hindu Succession Act, read with Section 16 thereof, and not as per Section 15 (2) (b).
- (f) As regards the question of law pertaining to RSA no.615 of 2007, i.e. question no.(vii) framed in para 10, it is answered against the appellant, to the effect that the suit of

the respondents-plaintiffs was correctly decreed in their favour, they having been found to be in cultivating possession of the suit property.

82. Hence, in view of the detailed discussion hereinabove, I find no merit in any of these 4 appeals, which are all therefore dismissed, but in the circumstance that the will dated 19.06.1995 has been disbelieved by this Court primarily on account of the fact that the late Shakuntla Devi cannot be held to have been in a sound disposing mind, there would be no order as to costs in RSA Nos.2253 and 2254 of 2004, or in RSA No.3695 of 2007.

As regards RSA No.615 of 2007, costs of Rs.10,000/- are imposed on the appellant.

March 27, 2017
dinesh

(AMOL RATTAN SINGH)
JUDGE

1. Whether speaking/reasoned?	Yes/No
2. Whether reportable?	Yes/No