

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: February 16, 2017*

+ **RSA 19/2012**

OM PARKASH Appellant

Through: Mr.Umesh Yadav, Advocate.

versus

SRI KISHAN & ORS. Respondents

Through: Mr.B.D.Sharma, Advocate.

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

JUDGMENT (Oral)

1. This Regular Second Appeal under Section 100 of Code of Civil Procedure has been filed by the appellant/plaintiff assailing the judgment dated 31st October, 2011 whereby the First Appellate Court allowed the appeal bearing RCA No.2/2010 preferred by the respondents/defendants against the judgment and decree 29th May, 2010 passed by learned Trial Court in Civil Suit No.17/09.

2. As a result of the impugned judgment by the First Appellate Court, the suit of the appellant/plaintiff which was decreed by the learned Trial Court, stands dismissed.

3. By filing the Civil Suit No.17/2009, the appellant/plaintiff sought a decree of declaration and injunction challenging the two Wills executed by his father in favour of his two brothers namely Sh.Mahender Singh and Sh.Sri Kishan bequeathing the land allotted to him (father) to his two

brothers to the exclusion of the appellant/plaintiff.

4. The facts, in brief, are that Civil Suit No.17/2009 was filed by Sh.Om Prakash seeking decree of declaration and permanent injunction impleading the beneficiaries of the two Wills executed by Sh.Chander i.e. Sh.Sri Kishan and his wife as defendants as No.1 & 2. Since Sh.Mahender Singh had expired, his three sons namely Satish Kumar, Dinesh Kumar & Avan Kumar were impleaded as defendants No.3 to 5. The above Civil suit was filed pleading as under:

(i) Sh.Chander Singh was allotted a agriculture land measuring 4 Bigha, comprising Khata No.108/108, Khasra No.33/17 Min situated in the revenue estate of Village Khera Dabar, New Delhi, under Twenty Point Programme of the Government and he was declared Bhumidhar.

(ii) **Sh.Chander Singh expired on 2nd January, 1997 and Sh.Mahender Singh, brother of the appellant/plaintiff expired in the year 2003.**

(iii) **The appellant/plaintiff happened to visit the office of Halqa Patwari on 21st September, 2007 where he came to know that instead of equal distribution amongst all the legal heirs the land allotted to his father has been mutated in the name of the defendants/respondents.**

(iv) The prayer made in the civil suit is to the following effect:

“(I) Pass a Decree of Declaration the Wills dated 17th December, 1996 allegedly executed by Late Sh. Chander S/o Late Sh.Hosyare as Null and Void.

(II) That Pass a Decree of Permanent Injunction in favour of the Plaintiff and against the Defendants thereby restraining the Defendants, their agents, successors, representatives, anybody working on their behalf for using the alleged Wills dated 17th December, 1996 in any works/proceedings etc.

(III) Award cost of the suit in favour of the Plaintiff and against the Defendants.”

5. The suit was contested by filing the joint written statement by the respondent/defendants taking the preliminary objections that the suit is barred by limitation as the execution of WILL by father was within the knowledge of the appellant/plaintiff since beginning.

6. On merits it has been contended that apart from Sh.Chander (father of the plaintiff), the plaintiff was also allotted One Acre land by the Gaon Sabha under the Twenty Point Programme. The other two brothers namely late Shri Mahender Singh i.e. father of the defendants No.3 to 5 and Sri Krishan i.e. defendant No.1 were not given any land under the Twenty Point Programme. As the appellant/plaintiff was already having one acre of land and his two other brothers were not having any land, by virtue of Wills registered on 17th December, 1996 Sh.Chander divided one acre of land allotted to him between his other two sons namely Sh.Mahender Singh and Sh.Sri Kishan.

7. On the pleadings of the parties, the following issues were settled by the learned Trial Court on 15th April, 2009:-

‘(1) Whether the suit of the plaintiff is barred by limitation? OPD.

(2) Whether Wills dated 17.12.1996 of late Sh.Chander were validly executed? OPP.

(3) Whether the plaintiff is entitled for the relief of declaration? OPP.

(4) Whether the plaintiff is entitled for the relief of permanent injunction? OPP.

(5) Relief.’

8. However, issue No.2 was amended on 20th May, 2009 and reframed as under:-

'Issue No.2:

Whether Wills dated 17.12.1996 of Late Sh.Chander were not validly executed? OPP'

9. Before the learned Trial Court the appellant/plaintiff examined himself as PW-1 and produced clerk from the office of the Sub-Registrar as PW-2 and Sh.Praveen Kumar Patwari as PW-3. On behalf of the respondent/defendants Sh.Satish examined himself as DW-1.

10. After trial, the learned Trial Court held the suit filed by the appellant/plaintiff to be within limitation. It was also held that the Wills dated 17th December, 1996 were not validly executed. The suit filed by the appellant/plaintiff was decreed in respect of both the reliefs i.e. for declaration and permanent injunction.

11. The respondents/defendants filed RCA No.2/2010 impugning the judgment passed by the learned Trial Court. The First Appellate Court in its finding on issues No.2 & 3 held that the Wills have been duly executed by Sh.Chander in favour of its beneficiaries. The finding of the learned Trial Court on issue No.1 was also reversed and it was held that the suit for declaration and permanent injunction was not filed within limitation thereby decree passed by learned Trial Court was set aside and the suit was dismissed.

12. The following substantial question of law was formulated on 7th March, 2013:-

'Whether the finding returned by the First Appellate Court is perverse or not?'

13. Learned counsel for the appellant has vehemently contended that the First Appellate Court mis-appreciated the evidence while setting aside the order of the learned Trial Court not only on the issue of limitation but also on the issue of validity of the Wills exhibit PW-1/1 & PW-1/2. Counsel for the appellant has relied upon the decision of this Court in Raman Mahindra & Ors. Vs. Adarsh Bala Sud @ Adarsh Kumari & Ors., 217(2015) DLT 490 and submitted that the period of limitation has to be computed from the date of knowledge of existence of Will or date of receipt of such Will. In the plaint the appellant/plaintiff has specifically pleaded that on 21st September, 2007 when he met the Halka Patwari for some work then he got the knowledge that his father's land has been mutated on the basis of Will in the name of the defendants only instead of the same being distributed amongst all the three sons. The copy of the Will was not supplied to him. The suit was filed on 16th February, 2009 i.e. within three years from the date of knowledge hence the same was within limitation.

14. Learned counsel for the appellant has drawn the attention of this Court to the affidavit filed by Sh.Satish Kumar son of late Sh.Mahender Singh wherein he has mentioned that the deceased has not executed any Will during his life time and if it was so, the mutation could not have been done on the strength of the Will. Thus findings of the First Appellate Court holding the Wills exhibit PW-1/1 & PW-1/2 to be validly executed, being perverse, needs to be set aside.

15. On behalf of the respondent it has been submitted that late Sh.Chander Singh executed separate Wills in favour of his sons Sri Chand and Mahender Singh only for the reason that the appellant/plaintiff Om Prakash was having one acre of land allotted to him under Twenty Point Programme of

Government. Since no land was allotted to Sri Chand and Mahender Singh, to provide some land to his other two sons, he executed two separate Wills in favour of Sri Chand and Mahender Singh on 17th December, 1996 which were duly registered. The appellant/plaintiff was having the knowledge of the wills since inception, but he did not question the transfer of the plot allotted to Sh.Chander Singh to his other two sons who were landless. The mutation was done in the year 2004 and at that time, the appellant/plaintiff did not question the transfer of the land by Sh.Chander Singh in favour of his other two sons. The appellant/plaintiff was already having one acre of land whereas by virtue of Will the other two sons just got half share in the one acre land allotted to late Sh.Chander Singh.

16. It has been further contended that the suit is barred by limitation as the Will was well within the knowledge of Sh.Om Parkash and since death of their father on 2nd January, 1997 till filing of the suit he never raised any issue claiming his share in the land allotted to his father. Learned counsel for the respondent has further contended that so far as affidavit for purpose of mutation is concerned, though it is mentioned by Satish Kumar that no Will was executed but as a matter of fact the mutation is only on the basis of Will which fact is recorded in the Revenue Record and not disputed even by the appellant/plaintiff.

17. Learned counsel for the respondent has relied upon the decision of the Hon'ble Supreme Court in Smt.Dilboo (dead) by LRs. Vs. Smt.Dhanraji (dead) 2000(4) RCR(Civil) wherein it was held as under:-

“Where a document is registered the date of registration becomes the date of deemed knowledge. In other cases where a fact could be discovered by due diligence then deemed knowledge would be attributed and the party cannot be allowed to extend period of limitation by merely claiming that he had no knowledge.”

18. This being second appeal, the impugned order by the First Appellate Court can be challenged by the appellant/plaintiff only when it involves substantial question of law or on the ground of perversity.

19. A bare perusal of the trial Court judgment shows that it has been written in very cryptic manner. Learned Trial Court in para No.1 to 4 of the judgment has dealt with the plaint, written statement and replication. In para no.5 the issues settled in the case have been reproduced and in para no.6 issue no.2 as amended has been reproduced. In para nos.7 to 11 the gist of the deposition of the witnesses is recorded. Para no.12 of the judgment records that parties have been heard.

20. In para no.13 to 15 issue no.1 has been dealt with on limitation aspect. The learned Trial Court while recording that defendant has not led any evidence whereas the appellant/plaintiff has proved that he got the knowledge on the contents of the WILL on 27th January, 2009 only after receiving the certified copy of the WILL and the suit has been filed on 6th February, 2009 within three years, was well within the limitation.

21. On the issues No.2 & 3 about the validity of the Will executed by late Shri. Chander Singh, the learned Trial Court referred to the testimony of DW-2 the attesting witness to the Will who had stated that Wills in question were read over before obtaining the signature of the testator whereas the Wills were not having the signatures but thumb impression of the testator. The learned Trial Court did not delve further. The testator was an illiterate person and has put his thumb impression on both sides of the WILL i.e. on the front and on the reverse side of the WILL which also bears the stamp of the office of Sub-Registrar. The registration of the two WILLs has also been proved by the witness summoned by the appellant/plaintiff from the office of

the Sub-Registrar and to that extent the appellant/plaintiff could not have challenged the WILL being forged and fabricated.

22. The contradictions in the testimony of the defence witnesses as to who got the WILL signed and who accompanied the testator has been given undue weightage by the learned Trial Court. The issue has been decided by the learned Trial Court in favour of the plaintiff for the reasons given in paras 24 to 28 which are extracted hereunder:

“24. Further, both defence witnesses have given contradictory statements regarding the person who got the alleged wills typed and the person who accompanied the testator for the execution of the alleged wills.

25. Here it has been argued on behalf of the defendants that since the wills were registered before the Sub-Registrar office, this fact itself proves the valid execution of the wills. In this regard, it will suffice to mention that as per the settled law of the land, the mere registration of any document does not prove its genuineness. Hence, I do not find any force in the aforesaid argument.

It has also been argued on behalf of the defendants that since the plaintiff is not in possession of the disputed land, the present suit for declaration is not maintainable. In this regard, it be seen that as per the case of the plaintiff, he is one of the co-owner in the disputed land. Now, since the possession of a land by a co-owner is also possession on behalf of other co-owner, this Court is of the opinion that the aforesaid argument is baseless. The citations of law as relied upon by the defendants are not applicable to the facts and circumstances of the present case.

26. In view of the aforesaid discussions, observations and findings, this Court is of the considered opinion that the plaintiff has successfully discharged the onus placed upon him. Accordingly, it is held that the wills dated 17.12.1996 of late Sh.Chander were not validly executed and the plaintiff is entitled for the relief of declaration as prayed for.

27. **Issue No.4**

Whether the plaintiff is entitled for the relief of permanent injunction? OPP

In view of my findings on issue no.2 & 3, this issue becomes irrelevant.

28. **Relief:** *The suit of the plaintiff is decreed with costs. Decree sheet be drawn and file be consigned to records after due compliance.*

23. A bare reading of judgment by the learned Trial Court shows that without referring to any material on the basis of which the appellant/plaintiff could be treated as co-owner, just on the strength of arguments raised on behalf of the plaintiff, abruptly concluded in paras 26 to 28 and the decree has been passed without even specifying the nature of the declaration and if issue No.4 had become irrelevant how under the heading 'Relief' the suit could have been decreed as a whole when no relief of permanent injunction was granted.

24. The judgment of learned Trial Court is not sustainable at all in the eyes of law either on the legal principles or on the facts on appreciation of the evidence led by the parties in support of their rival claims.

25. While dealing with the first appeal, the First Appellate Court first dealt with the issue No.2 regarding validity of the execution of the WILLS PW-1/1 & PW-1/2 re-appreciating the testimony of the appellant/plaintiff, PW-2 Sh.Kishan Kumar witness from the office of Sub-Registrar, the attesting witness DW-2 Sh.Vinod Kumar Sharma. The requirements under Section 63 of the Indian Succession Act, 1925 to prove the WILL and legal position dealt with in various judicial pronouncements on the subject was considered

to hold that all the requirements of Section 63 of the Indian Succession Act, 1925 stand satisfied in respect of the two Wills dated 17th December, 1996.

26. The necessary discussion appear in paras No.11 and 12 of the impugned judgment which reads as under:

'11. So far as the first ingredient of the execution of the Wills i.e. Whether the Wills propounded by deceased Chander Singh was attested by two witnesses in his presence is concerned, the appellants/defendants examined Shri Vinod Kumar Sharma as DW-2 who has specifically stated in his statement that at the instructions of the testator, he has drafted the Wills Ex.PW1/1 and Ex.PW1/2. Thereafter, the contents of the same were read over to the testator, Chander Singh who put his thumb impression and subsequently the witnesses also signed on the Wills Ex.PW1/1 and Ex.PW1/2. The mental health of the testator was found to be satisfactory.

The statement of DW-2, Shri Vinod Kumar Sharma can not be brushed aside as he does not belong to the same locality, certainly, in his statement he has stated that he has his office at District Centre, Janak Puri where the execution and registration of the Wills Ex.PW1/1 and Ex.PW1/2 were carried out. The plea taken by the respondent/plaintiff, in his plaint, is that the Wills in question are fake, fabricated, false and bogus but no allegation of fabrication has been put to this Witness DW-2, Shri Vinod Kumar Sharma. Further, there is no cross examination on behalf of the respondent/plaintiff that the Wills in question were not drafted by him or the same was not registered in his presence before the Sub Registrar concerned.

Coming to the second requirement, namely, the placing of the signatures of the testator on the Will, I find that the Wills Ex.PW1/1 and Ex.PW1/2 duly bear the thumb impression of testator Chander Singh, at the right hand bottom part of the Wills as well as at the back of the Wills when the same were under the procedure of registration before Sub Registrar

concerned. The thumb impression affixed on the Wills Ex.PW1/1 and Ex.PW1/2 only indicates that testator intended to execute the Wills in favour of the beneficiaries and nothing else.

The third requirement brings that the Wills must be attested by two or more witnesses, each of whom have seen the testator signing and affixing his mark to the Wills or has not signed some other person signing in the presence and by the direction of the testator.

In the present case, DW-2, Shri Vinod Kumar Sharma, has specifically stated that the Wills in question Ex.PW1/1 and Ex.PW1/2 were drafted under the instructions of the testator and the same were read over to him and thereafter, the testator put his thumb impression on the Wills and subsequently the witness Shri Bishan Swaroop Sharma and he has signed the said Wills as witness and the Wills in question are executed by the testator Chander Singh in their presence.

The respondent/plaintiff did not examine Shri Bishan Swaroop Sharma to rebut the evidence led by the appellants/defendants and there is no specific averment either in the plaint or in the cross examination that in fact the execution of the Wills was as a result of manipulation and fabrication by DW-2 Shri Vinod Kumar Sharma. Therefore, the testator Chander Singh has validly executed the Wills dated 17.12.1996 in favour of the appellants/defendants, in the presence of two witnesses Shri Bishan Swaroop and Shri Vinod Kumar Sharma and thereafter, remaining formalities of registration were carried out in the office of Sub Registrar II, Janak Puri. The execution of the Wills before the Sub Registrar is also strengthened, as, the Wills in question bears the signatures of Shri Vinod Kumar on the back of the Wills before the Sub Registrar, at the time of registration of the Wills.

So far as the fourth requirement under Section 63 of Indian Succession Act, 1925, is concerned, DW-2 Shri Vinod Kumar Sharma, in his statement, has specifically stated that execution of the Wills Ex.PW1/1 and Ex.PW1/2 was got done in his presence. The contents of the Wills were drafted by DW-2 Shri Vinod Kumar Sharma, at the instructions of the testator Shri Chander Singh, and, thereafter, he read over the contents of the same to the testator and the testator after hearing the contents, the contents believed to be true, put his thumb impression on the Wills Ex.PW1/1 and Ex.PW1/2 and thereafter, Shri Bishan Swaroop and he himself as witness signed the Wills.

Since, all the aforesaid four ingredients, as per Section 63 of Indian Succession Act, 1925 are fulfilled, in the present case, the execution of the Wills by testator stands proved in favour of its beneficiaries i.e appellants/defendants. It has been so held by Hon'ble Supreme Court of India in case reported in 2011 I AD (S.C.) 17 titled Gopal Swaroop Vs. Krishna Murari Mangal & Ors.

(i) Original Wills are coming from the possession of the appellants/defendants. Whereas the said Wills are registered with the Sub Registrar II, Janak Puri. Therefore, the allegation of the respondent/plaintiff that Wills are false, fake, bogus and fabricated loses its significance being Wills registered with the Sub Registrar concerned.

(ii) The respondent/plaintiff's reliance on application for mutation Ex.DW1/P1 is not going to fetch any iota of substance in his favour as the application Ex.DW1/P1 is dated 2.7.2004. The Wills in question are already registered with the Sub Registrar Office on 17.12.1996. Therefore DW-1's application dated 2.7.2004 disclosing that there was no Will executed by his grandfather, during his life time, is meaningless. Moreover, DW-1 Shri Satish Kumar is not only the beneficiary in the aforesaid Wills but the remaining family members namely Shri

Sri Kishan, Smt. Sudesh Devi, Shri Dinesh Kumar and Shri Avan Kumar are also the beneficiary of the aforesaid Wills.

(iii) So far, the plea of Ld. counsel for the respondent/plaintiff that the Witness Shri Vinod Kumar Sharma, DW-2, does not belong to the same village and the testator who was the old man could not have contacted him for execution of the Wills in question is concerned, the same does not seems to be correct, particularly, DW-2, in his examination in chief has specifically stated that he is having his office at District Centre, Janak Puri where the office of Sub Registrar is situated and it was the testator who approached the witness DW-2 to draft the Wills and not DW-2 Shri Vinod Kumar Sharma who initiated the execution of the Wills without the instructions of the testator. The statement of DW-2 Shri Vinod Kumar Sharma can not be brushed aside only on the ground that he does not belong to the same village and his statement suffers from minor discrepancy. It has been so held by Hon'ble Supreme court of India in 1995(2) UJ(SC) 61 : 1995 (5) JT 163: 1995(2) Scale 560: 1995 (Supp.2) SCC 664 : 1995 AIR(SC) 1852: 1995 Legal Eagle 320 titled P.P.K.Gopalan Nambiar Vs. P.P.K.Balakrishnan Nambiar dated 7.3.1995.

The plea of the respondent/plaintiff that the second attesting witness Shri Bishan Swaroop is not been examined by the appellants/defendants, therefore, statement of DW-2 Shri Vinod Kumar Sharma loses its significance, is not correct, in the presence of the plea of the respondent/plaintiff that the Wills in question are false, fabricated, fake and bogus. There is no averment in the plaint against Shri Vinod Kumar Sharma, DW-2 that the Wills in question have been fabricated by him or any other witness. Therefore, statement of DW-2 proves the execution of the Wills under the law and there is no necessity to examine the second witness. Same has been held by Hon'ble Supreme Court of India in case reported in 2004 (1) RCR(Civil)

825 titled *P.S.Sairam and anr. Vs. P.S.Rama Rao Pisey and others.*

12. As discussed above, the respondent/plaintiff fails to prove that the Wills in question were not validly executed by deceased Chander Singh. On the contrary, the appellants/defendants have proved that Wills in question are validly executed by deceased Chander Singh in favour of its beneficiaries. Therefore, issue no.2 is decided against the respondent/plaintiff and in favour of the appellants/defendants.”

27. The issue No.1 pertaining to the suit being barred by limitation was also decided against the appellant/plaintiff observing that mutation was effected on 31st July, 2004 on the basis of WILL dated 17th December, 1996. PW-1, the appellant/plaintiff admitted in his cross-examination that he had filed an application for cancellation of the mutation before the Dy.Commissioner about two and a half years before instituting the suit. The Halqa Patwari from whom on 21st September, 2007 he claimed to have acquired knowledge about mutation has not been cited or examined. The suit being filed after about four years of mutation was held to be barred by limitation and the suit was dismissed.

28. Since this appeal arises against reversal of judgment of learned Trial Court, approach of the First Appellate Court on the issue of suit being barred by limitation, is to be examined first.

29. Certain facts being very relevant to decide as to when the appellant/plaintiff acquired the knowledge in respect of Wills and mutation, are noted hereunder:-

(i) Under Twenty Point Programme of the Government, the Gaon Sabha of Village Khera Dabar allotted one acre land each to the plaintiff Sh.Om Prakash and to his father Sh.Chander.

- (ii) Sh.Chander had three sons namely Sh.Om Prakash, Sh.Mahender Singh and Sh.Sri Kishan. Mahender Singh and Sri Kishan were not allotted any land.
- (iii) Sh.Om Prakash – the plaintiff was residing separately from his father and brothers and his father was residing with his brothers.
- (iv) The land allotted by Gaon Sabha to Sh.Om Prakash – the plaintiff and to his father Sh.Chander was not having ancestral characteristics so as to make the plaintiff as co-owner/co-bhumidar.
- (v) Sh.Chander expired on 2nd January, 1997 and Sh.Mahender Singh – brother of the plaintiff expired in the year 2003. But despite the fact that he was having the adjoining land (as can be made out from the description of the plot given in the Wills Ex.PW1/1 and PW1/2) and had been visiting the Revenue Officer to collect the *Khasra Girdawari* of his land after every six months for a period of about 22 years (as stated before Trial Court on 18th July, 2009), entries in *Khasra Girdawari* in respect of the plot allotted to his father, on the death of allottee was accessible to him being one of his legal heir/son.
- (vi) He has not produced any document or stated the purpose of his visit to the Revenue Office on 21st September, 2007 from which date he claimed to have acquired the knowledge about the mutation in favour of the respondents/defendants. The Halqa Patwari whom he was visiting every six months for a period of 22 years or the name of Patwari who disclosed him about the mutation in the year 2004 in respect of the land allotted to his father late Sh.Chander was neither mentioned nor he was examined. Even the context in which he visited the Revenue Office or this knowledge was acquired by him through the Halqa Patwari, was not stated in the plaint, in his examination-in-chief or during cross examination.

30. After the death of Sh. Chander, the plaintiff, being son, if he presumed himself to be the co-sharer, never applied to the Revenue Authorities for mutation in the name of all the three sons on the death of their father Sh.Chander and never questioned the possession of his brothers for a decade in the plot allotted to their father and on his death, occupied by his other two brothers from 1997 onwards.

31. As per cross examination of PW-1, before filing the suit, he had even filed applications before SDM and the Deputy Commissioner for cancellation of mutation in respect of plot allotted to Sh.Chander but no such record was summoned by him which could have established his date of acquiring the knowledge about mutation in favour of other legal heirs excluding him. Learned First Appellate Court had rightly arrived at the conclusion that the suit was barred by limitation as not filed within three years from the date of arising of cause of action.

32. The decisions relied upon by learned counsel for the appellant/plaintiff that limitation has to be computed from the date of knowledge, is of no assistance to the appellant/plaintiff. He has miserably failed to prove that for the first time, he came to know about the mutation only on 21st September, 2007. Thus, the finding of first Appellate Court in this regard is affirmed.

33. Even if it is assumed for the sake of arguments that the suit filed by the appellant/plaintiff was within limitation, he could not have sought the relief of declaration and injunction which is a discretionary relief and the suit was filed withholding the material facts by him.

34. The declaration sought by him that the two Wills dated 17th December, 1996 be declared as null and void, could not have been granted to him when on the strength of the said Will not only mutation was done but also the defendants more than a decade continued enjoying their possessory

rights/title as bhumidars within the knowledge of the appellant/plaintiff who is their real brother and allottee of adjoining plot under the same scheme.

35. The First Appellate Court had held that the Wills dated 17th December, 1996 have been duly proved by examining the attesting witness by the respondents/defendants (beneficiary) and the official from Sub-Registrar Officer examined by the appellant/plaintiff. There was absolutely no material before the learned Trial Court to hold that the Wills were forged and fabricated or not validly executed. Long silence by the appellant/plaintiff from 1997 till 2007 established that he knew about the existence of the Wills executed by his father whereby he divided one acre of land, which was allotted to him by Gaon Sabha under Twenty Point Programme of the Government, between his two other sons namely Sh.Mahender Singh and Sh.Sri Kishan who were not allotted any land as it was given to their father. Even the share of the two brothers was described in the Wills Ex.PW1/1 and PW1/2 separately executed in favour of both the beneficiaries as under:-

To Sh.Mahender Singh

'East : Road.
*West : **Land of Om Prakash (Plaintiff)***
North : Portion of the plot
*South : **Land of Ram Kumar.'***

To Sh.Sri Kishan

'East : Road.
*West : **Om Prakash's land (Plaintiff)***
North : Portion of the land
*South : **Land of Hari Singh.'***

The fact that the testator late Sh.Chander executed two separate Wills in respect of one acre of land describing the boundaries, shows that one acre of land was distributed by him by virtue of two Wills in favour of his two

sons who were otherwise landless. Hence, there was no question of plaintiff being co-sharer in the land allotted to his father by Gaon Sabha in addition to one acre of land allotted to him (plaintiff) by Gaon Sabha. There was no question of giving any share to the plaintiff Sh.Om Prakash as he was already having one acre of land allotted to him by Gaon Sabha under Twenty Point Programme of the Government. The property not being ancestral could have been bequeathed by Sh.Chander in the manner he deemed fit.

36. So the first prayer made in the civil suit by the appellant/plaintiff i.e. to pass a decree of declaration in respect of the Wills dated 17th December, 1996 allegedly executed by Late Sh. Chander S/o Late Sh.Hosyare as null and void, could not have been granted by the learned Trial Court when the execution of the Will and registration was duly proved.

37. The second prayer made by the appellant/plaintiff in the civil suit was to pass a decree of permanent injunction in his favour and against the Defendants thereby restraining the Defendants, their agents, successors, representatives, anybody working on their behalf from using the alleged Wills dated 17th December, 1996 in any works/proceedings etc. The relief sought in the above second prayer also could not have been granted by the learned Trial Court and has been rightly declined by the First Appellate Court. There were validly executed two Wills by late Sh.Chander in favour of his two sons namely Sh.Mahender Singh and Sh.Sri Kishan. By virtue of two Wills Ex.PW1/1 and Ex.PW1/2 the mutation has already been done in the name of the beneficiaries long back in the year 2004 and was not challenged by the appellant/plaintiff within the period of limitation. It appears that his request for cancellation of the mutation has not been acceded to by the Revenue Authorities and that must have been the reason that he did not summon any record from the Revenue Authorities which would have

also proved the date and mode of acquisition of knowledge about mutation and the reason for rejection of his application for cancellation of mutation on the strength of Wills Ex.PW1/1 and Ex.PW1/2.

38. Once the purpose of Wills i.e. mutation of the land allotted to Sh.Chander in favour of his other two sons namely Sh.Mahender Singh through legal heirs and Sh.Sri Kishan, has been served by effecting entries in the Revenue Record, nothing survived which was required to be enjoined by passing a decree of permanent injunction.

39. In view of the aforesaid discussion, the substantial question of law is answered against the appellant. Consequently, the judgment of the First Appellate Court is upheld.

40. RSA No.19/2012 is dismissed.

41. No costs.

42. LCR be sent back alongwith copy of this order.

PRATIBHA RANI
(JUDGE)

February 16, 2017
'hkaur/pg'