

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:25.3.2019

RSA No. 1344 of 2002(O&M)

Sona Singh @ Santa Singh and others

---Appellants

vs.

Kakka Singh and others

---Respondents

RSA No. 2056 of 2002(O&M)

Kakka Singh and others

---Appellants

vs.

Sona Singh @ Santa Singh and others

---Respondents

RSA No. 1422 of 2011(O&M)

Santa Singh @ Sona and others

---Appellants

vs.

Kakka Singh

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Ashish Aggarwal, Senior Advocate
with Ms. Shamona Sabherwal, Advocate
for the appellants in RSA-1344 of 2002 and 1422 of 2011

Mr. Naresh Kumar, Advocate
for respondents No. 1 to 4 in RSA-2056 of 2002

Mr. Sanjeev Kumar Arora, Advocate
for the appellants in RSA- 2056 of 2002
for respondents No. 1 to 7 in RSA- 1344 of 2002

Rekha Mittal, J.

This order will dispose of RSA No. 1344, 2056 of 2002 and
1422 of 2011 as identical questions of law and fact are involved for

adjudication. For facility of reference, facts are taken from RSA No. 1344 of 2002.

The present litigation pertains to land measuring 107 kanal 3 marlas previously owned by Sh. Labh Singh who died in December 1978. Indisputably, Sh. Labh Singh was married to Matto Bai and there were six daughters namely Karmo, Dhanno, Karro, Ghammo, Jhando and Indo out of wed lock of Labh Singh and Matto Bai. There is dispute between the parties with regard to Kesar Singh plaintiff No. 4 to be adopted by Labh Singh and Matto Bai. Will dated 14.10.1978 purported to be executed by Labh Singh in favour of Shmt. Matto Bai and Will dated 25.1.1990 registered on 30.1.1990 purported to be executed by Matto Bai in favour of Sona Singh @ Santa Singh (major), Banta Singh and Kanta Singh minor sons of Kesar Singh plaintiffs No. 1 to 3.

Sona Singh and others including Kesar Singh filed Civil Suit No. 47-1 dated 8.4.1995 claiming that plaintiffs No. 1 to 3 are owners in possession of land measuring 107 kanal 3 marlas on the basis of Will dated 25.1.1990 executed by their grand mother by relying upon Will dated 14.10.1978 executed by Labh Singh in favour of Matto Bai and Kesar Singh their father being taken in adoption by Matto Bai and Labh Singh. It is averred that Labh Singh and Matto Bai had a son who expired at an early age. Kesar Singh was the son of Bishan Singh, real bother of Labh Singh. After death of their son, Matto Bai and Labh Singh adopted Kesar Singh when he was infant. Since that date, Kesar Singh was residing with his adoptive parents. They cared and brought him up and showered their affection upon Kesar Singh. Kesar Singh also took care of his parents and

performed all types of duties as a son. After death of Labh Singh, Matto Bai stayed with his son Kesar Singh. He took full care of her. Labh Singh executed and registered various documents wherein he treated Kesar Singh as his son. Bishan Singh executed registered Will dated 7.10.1988 in favour of his grand sons and excluded Kesar Singh from inheritance.

The suit was contested by defendant Nos. 2 and 5 (since deceased) represented by their LRs. They filed separate written statements raising preliminary objections relating to suit being barred by limitation, locus standi of the plaintiffs to file the suit and Wills set up by the plaintiffs to be forged and fabricated documents. It is averred that Labh Singh had no son but had six daughters. Labh Singh had love and affection for his daughters and there was no reason for him to exclude his daughters from inheritance. It is further averred that if there was any Will dated 14.10.1978 executed by Labh Singh, there was no reason for not producing said Will upto the year 1991 when mutation was got entered and the objection was raised by the answering defendants. Matto Bai never appeared before the Assistant Collector 2nd Grade to support Will in her favour. It was plaintiff Kesar Singh and his brother Khiwa Singh who are running the whole show. They have denied the allegations that Kesar Singh was adopted by Matto Bai and Labh Singh. It is submitted that in the mutation proceedings Kesar Singh appeared as a witness and produced a birth certificate in which his date of birth is 2.3.1956 and tried to show from the birth certificate as real son of Labh Singh. All other material averments of the plaint have been denied with a prayer for dismissal of the suit.

The plaintiffs filed replication to the written statement filed by both sets of defendants and they asserted their stand taken in the plaint and controverted the preliminary objections raised by the contesting defendants.

The controversy between the parties led to framing of following issues by the trial court:-

1. Whether Labh Singh executed a will dated 14.10.1978 in favour of Matto Bai? OPP
2. Whether Smt. Matto Bai executed a registered will dated 25.1.1990 and registered on 30.1.1990 in favour of plaintiffs No. 1 to 3? OPP
3. Whether Kesar Singh was adopted son of Labh Singh and Matto Bai? OPP
4. Whether the plaintiffs are entitled to declaration and injunction as prayed for? OPP
5. Whether the suit of the plaintiff is within limitation? OPP
6. Whether the plaintiff has locus standi to file the present suit?
OPP
7. Relief

To prove their case, appellants-plaintiffs examined Ramesh Chander, Ahlmad, Commissioner Office, Ferozepur PW2, Dial Singh PW3, one of the attesting witnesses of Will dated 25.1.1990, Jit Singh PW4 another attesting witness of said Will, Ramesh Chander PW5, Khiwa Singh PW6 attesting witness of Will dated 14.10.1978 and one of the plaintiffs Sona Singh appeared as his own witness.

To rebut evidence of the plaintiffs, one of the legal

representatives of defendant No. 5 appeared in the witness box and they examined Gurukaran Sher Singh Sodhi DW2, Joginder Singh DW3, Narinder Kumar Deed Writer DW4, scribe of Will dated 25.1.1990 Balbir Chand DW5 Senior Clerk from office of Financial Commissioner, Punjab S.P.Kamboj DW6 and Anil Kumar Gupta, Forensic Expert DW7.

The learned trial court answered issues No. 1 to 3 in favour of the plaintiffs and consequently declared plaintiffs No. 1 to 3 to be owners in possession of suit land and mutation No. 1798 is held to be wrong, illegal, null and void. The defendants were restrained from interfering in possession of the plaintiffs over the suit land and alienating the suit land in any manner.

The judgment and decree dated 1.3.2001 passed by the trial court became subject matter of challenge before the first Appellate Court. The Additional District Judge, Ferozepur set aside findings of the trial court on issues No. 1 and 3 but findings on issue No. 2 were affirmed and as a consequence, the appeal was partly accepted to the following effect:-

“The judgment and decree dated 1.3.2001 are set aside qua the relief on the basis of Will dated 14.10.1978 Ex. P2 and modified qua the Will dated 25.1.1990/30.1.1990 executed by Shmt. Matto Bai. Accordingly, the suit of the plaintiffs-respondents No. 1 to 3 is dismissed with regard to their ownership and possession on the basis of Will allegedly executed by Labh Singh dated 14.10.1978 Ex. P2. However, it stands decreed with regard to the declaration on the basis of Will executed by Matto Bai dated 25/30.1.1990 Ex. P1/D2 to

the effect that the plaintiffs No. 1 to 3 are owners in joint possession to the extent of 1/7th share of Matto Bai inherited by her, after the death of her husband Labh Singh in equal shares. The relief of permanent injunction restraining the defendants from causing any interference in possession is declined. However, the relief of injunction restraining the respondents from alienating the suit property is modified to the effect that they shall not alienate the land in any manner to the extent of 1/7th share of which the plaintiffs No. 1 to 3 have been held to be the owners on the basis of Will dated 25/30.1.1990.”

RSA No. 1344 of 2002 has been filed by Sona Singh @ Santa Singh and others plaintiffs in Civil Suit No. 47-1 dated 8.4.1995. RSA No. 2056 is the off shoot of judgment and decree dated 4.3.2002 passed by the Additional District Judge, Ferozepur and has been preferred by Kakka Singh and others (defendants therein) and RSA No. 1422 of 2011 has been filed by Santa Singh @ Sona and others against the judgment and decree dated 21.1.2011 passed by the Additional District Judge, Ferozepur whereby appeal preferred by Kakka Singh against the judgment and decree dated 17.5.2010 in Civil Suit No. 477 dated 11.12.2002 titled “Kakka Singh vs. Kesar Singh” for possession of suit land in respect of land measuring 96 kanal 16 marlas subject matter of the said suit was accepted and suit filed by Kakka Singh for possession of said land and mesne profits @ Rs. 2 lakhs per annum from Rabi 1995 till delivery of possession was decreed.

Counsel for the parties are ad idem that entire dispute in the present litigation revolves around three issues namely (i) whether Kesar

Singh was the adopted son of Labh Singh and Matto Bai (ii) whether Labh Singh executed Will dated 14.10.1978 in favour of Matto Bai and (iii) whether Matto Bai executed Will dated 25.1.1990 registered on 30.1.1990 in favour of plaintiffs No. 1 to 3 namely Santa Singh @ Sona Singh and others.

To assail findings of the Appellate Court on issue No. 3 pertaining to adoption of Kesar Singh by Labh Singh and Matto Bai, the sole submission made by counsel for the appellants is that subsequent conduct of adoptive parents and adopted child is relevant for determination of the question of adoption. In support of his contention, he has relied upon Division Bench judgment of this Court **Jagjit Singh vs. Pritam Singh 1994(1) PLR 95** wherein by referring to judgment of Hon'ble the Supreme Court **Raghavamma vs. A. Chenchamma AIR 1961 Supreme Court 136**, it was held that subsequent conduct of the parties in recognition of adoption is now-a-days is very material. Much evidence was not required to be produced in the present case more so when there was direct evidence of Mehar Singh himself accepting adoption and treating Jagjit Singh as his son. It is argued that in the revenue records i.e. jamabandis and khasra girdawaries some of which are marked as exhibits and others available on record, Kesar Singh is recorded as son of Malik i.e. Labh Singh. In addition, it is argued that even the Will dated 14.10.1978 Ex. P2 makes reference that Labh Singh has six daughters and one son.

Counsel representing the respondents supported findings of the first Appellate Court that there is no sufficient much less cogent evidence to establish claim of the plaintiffs that Kesar Singh was adopted by Matto Bai

and Labh Singh. It is further argued that Kesar Singh did not appear in the witness box to establish his plea that he was adopted by Matto Bai and Labh Singh or was treated as a son by them. Kesar Singh appeared in the mutation proceedings and in his statement Ex. D14, he tried to establish that he is the natural son of Labh Singh and Matto Bai, contrary to what has been sought to be put up before the civil court.

Indisputably, there is no evidence adduced by the plaintiffs-appellants that any ceremony of giving and taking Kesar Singh in adoption was performed between the natural parents of Kesar Singh and the alleged adoptive parents namely Labh Singh and Matto Bai. There is no documentary evidence to prove adoption of Kesar Singh by Labh Singh and Matto Bai. The Appellate Court has noticed that the plaintiffs did not produce any document like school certificate, voter card, Ration card etc. as an evidence of Kesar Singh being recorded as son of Labh Singh and Matto Bai. The revenue records referred to by counsel for the appellants pertains to the period subsequent to death of Labh Singh who passed away in December 1978. In the given scenario, the appellants cannot be heard to say that since in the revenue records Kesar Singh is reflected to be son of Malik, the same is sufficient either to establish that Kesar Singh was adopted son of Labh Singh and Matto Bai or to set aside findings of the Appellate Court on this aspect of the matter by relying upon the Division Bench judgment of this Court in **Jagjit Singh's case (supra)** wherein the court has answered issue of adoption on the basis of direct evidence of Mehar Singh, the adoptive father of Jagjit Singh who accepted adoption and treated Jagjit Singh as his son. In this view of the matter, I do not find an

error much less perversity in findings of the Appellate Court negating plea of the appellants that Kesar Singh is adopted son of Sh. Labh Singh and Matto Bai or plaintiffs No. 1 to 3 being sons of Kesar Singh are the real grand sons of Labh Singh and Matto Bai. The effect of recital in Will dated 14.10.1978 that Labh Singh has six daughters and one son would be discussed in later part of the judgment while dealing with the question of validity of Will dated 14.10.1978.

Coming to Will dated 14.10.1978 purported to be executed by Sh. Labh Singh in favour of Matto Bai, the Appellate Court has taken into consideration various circumstances that cast suspicion over validity and genuineness of the Will in question.

Counsel for the appellants would argue that one of the circumstances taken note of by the Appellate Court is that the Will in question had not seen the light of day till 1990 when the same was produced by Khiwa Singh son of Bishan Singh and Dial Singh Lambardar before the revenue authorities for sanction of mutation as per Rapat Roznamcha dated 24.5.1990 Ex. D5. It is argued that since daughters of Labh Singh did not raise a dispute in respect of their right to inherit to the estate of Sh. Labh Singh nor they approached the revenue authorities for sanction of mutation on the basis of natural inheritance, non-production of Will before the revenue authorities since December 1978 till May 1990 is of no consequence. It is further argued that the Will has been proved in view of testimony of Khiwa Singh PW6, in consonance with the provisions of Section 68 of the Evidence Act. According to counsel, defendants examined a Forensic expert in respect of the Will dated 25.1.1990 but they did not

seek any opinion of the said expert with regard to signatures of Labh Singh on the Will dated 14.10.1978. It is argued with vehemence that the circumstances that weighed in mind of the Appellate Court are not valid to reject Will dated 14.10.1978 executed by Labh Singh in favour of Matto Bai, his wife.

Counsel representing the respondents has supported findings of the Appellate Court rejecting Will dated 14.10.1978 which has been manufactured by Kesar Singh in connivance with his brother Khiwa Singh and Darshan Singh son of Khiwa Singh with a clear intent to deprive the respondents of inheritance to Labh Singh and Matto Bai. It is further argued that the appellants created Will dated 14.10.1978 in order to seek inheritance to the estate of Labh Singh on the basis of Will purported to be executed by Matto Bai in favour of plaintiffs No. 1 to 3. It is further argued that Khiwa Singh attesting witness of the Will is the real brother of Kesar Singh being son of Bishan Singh and Sukhdev Singh scribe of the Will is the son of Khiwa Singh Pw6.

The Will dated 14.10.1978 (Ex. P2) is surrounded by a number of suspicious circumstances which the plaintiffs-appellants have miserably failed to dispel. Indisputably, Labh Singh died in December 1978. The Will was produced for the first time in May 1990 by Khiwa Singh and Dial Singh Lambardar and not by the beneficiary under the Will. Contention raised by counsel for the appellants to justify the time lag between death of Labh Singh and production of Will before the revenue authorities, is beyond pleadings and is the result of after thought by a lawyer representing the appellants before the Court. The respondents-defendants in the written

statement raised a specific plea that the Will had not seen the light of day till the year 1990 and the same is a forged and fabricated document. The plaintiffs filed replication to the written statements of both the sets of respondents/defendants but there is not a whisper in the replication as to why there was delay in producing the Will and it was produced by Khiwa Singh and Dial Singh Lamberdar in place of Smt. Matto Bai. In the given scenario, the Appellate court has rightly taken a serious view of non-production of the Will for a period of about 12 years.

The Will is not scribed by a Deed Writer much less a registered Deed Writer. The same has been scribed by none else but son of Khiwa Singh real brother of Kesar Singh. The Will is not a registered document. This court is not oblivious of the fact that Will does not require compulsory registration. There is no denial that Sh. Labh Singh was the Sarpanch of village for a period of about 15 years. It is difficult to digest that if Sh. Labh Singh actually wanted to execute a Will, he would not have gone to the Deed Writer for scribing the Will and thereafter getting it registered. The second attesting witness of the Will has not been examined, may be, he was not available.

Perusal of recitals in the Will would reveal that the Will was executed on account of the testator being satisfied with the services of his wife and to compensate her for the same. This recital in the Will gets falsified and belied in view of statement of Sona Singh @ Santa Singh plaintiff No. 1 as he stated in his cross examination that Labh Singh and Matto Bai had been maintaining separate residence. The appellate Court, on a detailed consideration of various circumstances highlighted by counsel

for the respondents therein, has rightly reversed findings of the trial court in respect of Will dated 14.10.1978. Counsel for the appellants has failed to advance any argument much less meaningful to convince this Court that circumstances noticed by the Appellate court are either not material and relevant or have not been rightly appreciated in the light of materials on record. In this view of the matter, findings of the Appellate Court in respect of Will dated 14.10.1978 need affirmation and ordered accordingly.

This brings the Court to Will dated 25.1.1990 registered on 30.1.1990 purported to be executed by Shmt. Matto Bai. Before adverting to Will dated 25.1.990, it is pertinent to note that even if findings of the court qua this Will are affirmed, plaintiffs No. 1 to 3 would be entitle to only 1/7th share in the estate of Sh. Labh Singh as Matto Bai became entitle to 1/7th share of land in question on the basis of natural succession.

The Appellate court in sub paras 1 to 7 of para 36 of the judgment has noticed suspicious circumstances put forth by counsel for the respondents surrounding the Will Ex. P1/D2. In paras 38 to 42, the court has noticed the contentions raised by counsel for the appellants. In paras 44 onwards, the court has discarded the circumstances highlighted by counsel for the respondents and eventually accepted the Will Ex. P1/D2 and affirmed findings of the trial court on issue No. 2.

Counsel for the respondents would argue that Will is dated 25.1.1990 but the same was registered on 30.1.1990. There is no explanation forthcoming from the attesting witnesses as to why if the Will was executed by Matto Bai on 25.1.1990 and she was present in the Tehsil office on that date, the Will was not presented for registration on that date

itself. It is further argued that testimony of Dial Singh PW3 one of the attesting witnesses of the Will is not worthy of credence and reliance in the face of document Ex. D1 and the facts elicited in the concluding lines of his cross examination. Jit Singh PW4 belongs to a different village namely Marekalan and he was not related to family of Matto Bai, therefore, there was no reason for Matto Bai to call Jit Singh for attestation of the Will. In addition, it is argued that spacing in between the lines of the Will Ex. P1, detailed in the report prepared by Forensic Expert Sh. Anil Kumar Gupta remains unexplained and sufficient to hold that Will was prepared on thumb impression already available and for that reason, the Will was not got registered on the day it was purportedly executed by Smt. Matto Bai. It is further argued that Kesar Singh has failed to establish his plea that he was adopted by Labh Singh and Matto Bai, therefore, beneficiaries under the Will were not the grand sons of Matto Bai and Labh Singh rather they were grand sons of Bishan Singh real brother of Labh Singh. It is further argued that since Sona Singh, Banta Singh and Kanta Singh sons of Kesar Singh were not the real grandsons of Smt. Matto Bai, there was no reason for Matto Bai to exclude her daughters or their children from inheritance in preference to grandsons of Bishan Singh. It is also argued that the Will contains a recital that Sona Singh and others beneficiaries were rendering services to Smt. Matto Bai but Banta Singh and Kanta Singh were minors even at the time of institution of the suit in 1995, therefore, there was no occasion for them to render any services to Smt. Matto Bai. According to counsel, there is no evidence on record that either Kesar Singh or his children had been rendering services to Smt. Matto Bai which could be the

reason for the deceased to execute Will in favour of Sona Singh and others to the exclusion of her real daughters.

Counsel representing the appellants, on the contrary, has supported findings of the courts in respect of Will Ex. P1 which is a registered document. It is argued that the Appellate Court, on a detailed consideration of rival submissions made by counsel for the parties, has rightly rejected the alleged suspicious circumstances, highlighted by counsel for the respondents (appellants therein) before the first Appellate Court. It is argued that the appellants examined both the attesting witnesses of the Will and the Appellate Court has rightly condemned conduct of Narinder scribe of the Will who failed to appear as a witness on behalf of the plaintiffs despite issuance of summons by the court but later caused appearance on behalf of the respondents-defendants though he was declared hostile.

I have gone through the original records, testimony of Dial Singh PW3, Jit Singh PW4, Narinder DW4 and Anil Kumar Gupta DW7, relevant in the context of Will in question. Indisputably, the Will is dated 25.1.1990 but was registered on 30.1.1990. As has been rightly pointed out by counsel for the respondents that there is no explanation given by the attesting witnesses as to why the Will was not got registered on 25.1.1990 if the testator was actually present in Tehsil office on that date. The scribe of the Will has not supported cause of the appellants nor any register maintained by him at the relevant time has seen light of the day.

On examination of the Will with naked eye, it is sufficiently clear that space in the upper 8 or 9 lines is more as compared to the next

lower 8 or 9 lines. The space in the last four lines is too less as compared to the upper portion. Had this document been typed in a normal and natural course, spacing between the lines would have been uniform and not inconsistent as is visible in the disputed Will. There was no need for the typist to decrease or change spacing between the lines had the thumb impression been not present prior to body writing. The Will has been typed in an abnormal and unnatural course. Not only this, the position of thumb impression on the first page of the Will is not below name of the executant whereas the thumb impressions of the alleged attesting witness are below their names and particulars. Above all, it has been mentioned in the last line that in the presence of witnesses and after hearing and understanding, left thumb impression has been affixed. If the executant had affixed the thumb impression after completion of body writing of the Will and the same was read over and understood by the testator, there was no occasion for the scribe/typist to mention that left thumb impression has been affixed after hearing and understanding the contents in the presence of attesting witnesses. Irregular spacing between the lines, the position of thumb impression of the alleged testator when examined in the light of there being no explanation as to why the Will not got registered on 25.1.1990 if testator alongwith attesting witnesses was present in Tehsil Office on that date, goes a long way to conclude that the testator was not present on 25.1.1990 and this Will has been prepared on blank thumb impressions already existing on the paper used for preparing the Will. Neither the Appellate Court nor the trial court has examined the aspect of difference of dates of execution and registration from the aforesaid point of view.

Dial Singh PW3 is the Lambardar and one of the attesting witnesses of the Will. A relevant extract from his testimony in the concluding lines of cross examination reads as follows:-

“I have given affidavit Ex. D1 to Kakka Singh but he said that he has to take a loan. I put my thumb impression. I do not know what was written in it. If a person comes to me for getting thumb impression on a paper, I affix my thumb impression without reading the same.”

If the aforesaid statement of Dial Singh is accepted on its face value, it can be safely held that testimony of such a witness is not worthy of credence and reliance and documents attested by such a witness cannot be given weightage. On the contrary, if his statement that he put his thumb impression on a blank document on which affidavit Ex. D1 is prepared is rejected, it falsifies and belies his statement that the Will in question was actually executed and attested in the manner, deposed by him. I would hasten to add that as per document Ex. D1, it has been mentioned that Dial Singh had affixed his thumb impression on blank paper as was being done by him usually being Lambardar of the village. The Appellate Court has not adverted to the aforesaid extract from cross examination of Dial Singh while dealing with Ex. D1.

The other attesting witness belongs to village Mare kalan. There is no explanation given by Jit Singh PW as to why Matto Bai reposed confidence in him for the purpose of preparing a Will in preference to any panch, sarpanch or lambardar of her own village.

As per testimony of Dial Singh and Jit Singh, the Will was got

registered at the residence of registering authority on 30.1.1990. Jit Singh in his cross examination has stated that after scribing the Will, they had gone back to their houses. Matto Bai said that he should come again after 4-5 days meaning thereby that on 25.1.1990, it was not fixed between Matto Bai and attesting witnesses to come to Tehsil office on 30.1.1990 for the purpose of registration of the Will. If there was no such agreement/consensus between the testator and the attesting witnesses and in absence of evidence that attesting witnesses were informed to come on 30.1.1990 at a particular time, it is difficult to believe that by co-incidence, all of them could be present there on 30.1.1990 at the time of registration. In this view of the matter, it can safely be held that testimonies of both the attesting witnesses of the Will do not inspire confidence to establish beyond doubt that Will in question was executed at the instance of Smt. Matto Bai or the same represents the true Wish and Will of the deceased as to how her property should be dealt with after her departure from the world. Both the courts have not examined testimonies of the witnesses in detail, therefore, committed gross error while accepting the Will being valid and genuine. As a matter of fact, plain but careful reading of findings of the Appellate Court makes it evident that the court was actually swayed in favour of the Will only on the ground that the Will in question is a registered document. The court has also failed to take into consideration conduct of the appellants-plaintiffs who had manufactured Will dated 14.10.1978 purported to be executed by Labh Singh with a clear intent to deprive daughters of Labh Singh and Matto Bai of their right to suit property by relying upon the registered Will dated 25.1.1990.

The appellate court has held that endorsement made by the registering authority on the Will is to be attached correctness under the relevant provision of the Registration Act, 1908. In the instant case, the Will was not registered in the office of registering authority but stated to be registered at the residence of said authority. There is no material on record as to the circumstances under which the registering authority entertained the testator at his residence even in absence of any special circumstances pleaded or proved. This apart, as per testimony of the attesting witnesses of the Will, except the testator and the attesting witnesses, no other person was present at the residence of the registering authority. It is not stated by the attesting witnesses that the original Will after registration was retained by the registering authority or a copy of the Will was kept for the purpose of making necessary entry in the register. In the circumstances, it remains a mystery as to how the office of the registering authority maintained any record with regard to the Will in question. The Appellate authority has not adverted to these aspects while accepting the Will on the premise that the same is a registered document.

The Will Ex. P1 does not make specific reference if Kesar Singh was adopted by Labh Singh and Matto Bai. On the contrary, it makes specific reference that she had six daughters who are married and were given dowry etc. at the time of marriage according to capacity of the family. It has further been mentioned in the Will that Matto Bai was being looked after by Sona Singh, Banta Singh and Kanta Singh sons of Kesar Singh. There is no clear evidence available on record as to what was age of Sona Singh in the year 1990. However, Banta Singh and Kanta Singh were

minors even at time of institution of suit in the year 1995. One of the attesting witnesses examined by the appellants had stated that one of the sons of Kesar Singh was only three years old at the time of examination of witnesses sometime in the year 1998. When these recitals in the Will are examined in the light of discussion made hereinbefore, it can safely be held that these recitals are incorrect and create doubt regarding the Will being executed by the deceased in lieu of services rendered by Sona Singh and others.

As per the settled position in law, it is the obligation of the propounder to dispel suspicious circumstances surrounding the Will. Equally settled is that it is obligation of the Court to ensure that a testament set up by a litigant represents the true wish and expression of the deceased who is no more available in the world to say something. The will is sacrosanct and the same must be proved beyond doubt. Taking a cumulative view from discussion made hereinbefore, it can safely be held that the courts below overlooked certain vital and material aspects while answering issue No. 2 in favour of the appellants-plaintiffs. Findings of the courts in respect of the Will in question suffer from grave error rather perversity, therefore cannot be allowed to sustain and accordingly set aside. In view of the above, plaintiffs No. 1 to 3 are not entitle to any share in the disputed land left behind by deceased Labh Singh or even 1/7th share that was inherited by Matto Bai on death of Labh Singh by way of natural succession. On the contrary, respondents-defendants being the daughters, (some of them are now dead and represented by their Lrs) shall be entitle to the suit land in equal shares. Kakka Singh plaintiff in Civil Suit No. 477

dated 11.12.2002 shall be entitle to recover possession of land measuring 96
kanal 16 marlas being one of the co-sharers along with others.

In view of what has been discussed hereinbefore, RSA Nos.
1344 of 2002 and 1422 of 2011 are dismissed. On the other hand, RSA
No. 2056 of 2002 is allowed in the aforesaid terms, leaving the parties to
bear their own costs.

(Rekha Mittal)
Judge

25.3.2019
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes