

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

**RSA No.2939 of 2008 (O&M)
Date of Order:20th March, 2019**

Inder Singh

..Appellant

Versus

Sumitra and others

..Respondents

RSA No.3018 of 2008 (O&M)

Inder Singh

..Appellant

Versus

Sumitra and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashok Singla, Advocate with
Mr. Aakash Singla, Advocate
for the appellant(in both cases)

Mr. Birinder Singh Rana, Sr. Advocate, with
Ms. Divya Bajaj, Advocate,
for respondents no.1 to 4 (in both cases)

Mr. Akshay Kumar Goel, Advocate,
for respondent no.6 (in both cases)

ANIL KSHETARPAL, J.

This judgment shall dispose of RSA Nos.2939 and 3018 of of
2008 arising from a suit.

In the considered opinion of this court following substantial

questions of law arise for consideration.-

- “(1) *Whether a testament-unprivileged Will is required to be attested by only 2 attesting witnesses, not more, and whether evidence of attesting witness who is not amongst first 2 attesting witnesses is to be ignored while deciding the issue of proof of the Will?*
- (2) *Whether it is permissible to rely upon the documents which neither exhibited nor proved?*
- (3) *Whether the judgment passed by the first appellate court is result of misreading of evidence?”*

FACTS

Late Sh. Chandan, who died in the year 1976, was owner of the property. He was having 4 daughters apart from wife but no son (male child). It is alleged by the defendants that he executed a testament (Will) dated 21.08.1975 Ex.D1 bequeathing his entire property in favour of Inder Singh, defendant-appellant alleged adopted son. Inder Singh is natural son of Bhagwan, who was brother of Chandan. It is alleged to have been thumb marked by Chandan. The testament is also thumb marked by three daughters (who were major at the relevant time) and wife of Chandan. The testament is also thumb marked and signed by Saroop Singh, Ganeshi Nambardar, Sobha Ram, Roop Chand and Kartar Singh. In the Will, Inder Singh was recorded/recited as adopted son of the testator-Chandan. As per mutation entered in the year 1979, it is written that he died approximately one year before entering the mutation. However, the date of death of Chandan is not of much significance.

On the death of Chandan, mutation of the property which is in

three small parts situated in three adjoining different villages was sanctioned in favour of wife-Dharmo and three daughters-Basanti, Vidya and Ishwanti.

Inder Singh had filed a suit on 17.02.1979 as adopted son of Chandan against Smt. Dharmo, widow, Smt. Basanti, Smt. Vidya and Smt. Ishwanti daughters of Chandan in which defendants admitted the claim and suffered statement in judgment and decree dated 23.02.1979 Ex.P7 and Ex.P8. At this stage, it may be noted that copy of the plaint, written statement and statements of the defendants are neither exhibited nor proved in accordance with law, however, they are part of the record. It has also come on record that pursuant to the judgment and decree, entries in the revenue record were changed and Inder Singh, defendant-appellant was recorded as owner in possession of the suit land. Smt. Dharmo i.e widow of Chandan also died.

The present suit was filed by four daughters of Chandan Basanti, Vidyawati, Yashwanti (although referred to as Ishwanti) and Sumitra against Inder Singh claiming declaration with consequential relief of permanent injunction. It is claimed that on the death of Chandan, natural heirs i.e widow and four daughters became owners. Defendant-Inder Singh is their cousin given land on lease but had not paid lease money from crop Rabi 1995 and claims to be owner. On further investigation it was found that on the basis of a false and incorrect decree, revenue record has been changed. Thus, the plaintiffs claimed that such judgment and decree dated 23.02.1979 is illegal and void.

Defendant-Inder Singh filed written statement contested the suit and pleaded that he was adopted by late Sh. Chandan. He also relied

upon the Will dated 21.08.1975 executed by Chandan. He further pleaded that the suit filed by the plaintiffs is barred by time. He has further pleaded that he has been giving customary gifts at the time of marriage of the daughters of Basanti and Vidya. He has also got performed marriage of Sumitra in the year 1985. Plaintiffs in order to prove their case examined PW1 Balbir Singh, PW2 Sumitra, PW3 Raj Kumar (husband of Sumitra) and PW4 Vidyawati. It may be mentioned here that during the pendency of the suit major part of the suit land, was sold and purchasers were impleaded as defendants no.2 and 3.

Defendant no.1-Inder Singh examined himself as DW1, also examined DW2 Khem Chand and DW3 Mahabir on his behalf. Neither the attesting witnesses nor scribe of the Will was examined in evidence by defendant no.1. Purchasers, who were not members of the family, thereafter, examined DW1 Tek Chand (wrongly numbered as DW1) as alleged scribe of the Will, DW2 Sobha Ram, attesting witness of the Will and DW3 Raju.

Learned trial court on appreciation of evidence found that the judgment and decree dated 23.02.1979 is not proved to be result of fraud. The court further found that the Will executed by Chandan has been proved. However, the learned trial court held that such Will or decree would not affect the right of Sumitra, one of the plaintiff as she is neither party to the suit nor referred to in the Will, thus the court decreed the suit to the extent of 1/4th share.

However, in two first appeals preferred by the plaintiffs and defendant no.1, the judgment of the trial court has been reversed and held that neither judgment and decree dated 23.02.1979 is binding as it is not

based on correct facts nor the Will can be relied upon being surrounded by suspicious circumstances. The court held that adoption as asserted by defendant no.1 by Chandan has not proved. The court further held that no attesting witness has been examined and therefore, the Will is neither proved in accordance with law apart from being surrounded by suspicious circumstances.

Now let's answers the questions of law framed above.

As regards Question No.1, Section 63 (c) of the Succession Act, 1925 stipulate that the testament (the Will) shall be attested by two or more witnesses. Thus, there is no restriction in getting the Will attested from more than two witnesses. The requirement of the Act is that a unprivileged Will must be attested by minimum two witnesses. Section 63 of the Succession Act is extracted as under:-

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 acknowledgment of his signature or mark, or of 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.”*

It is apparent from the reading of Section 63 that the legislature

did not provide that the Will must be attested only by two witnesses and not more. Still further, there is no provision in the Act which provides that other persons apart from executant who have signed the Will cannot be treated as attesting witnesses particularly when while appearing in evidence, such signatory of the Will fulfills the requirements of Section 68 or Section 69 of the Indian Evidence Act. Accordingly, question no.(1) is answered.

As regards Question No.(2), it may be mentioned that as per Rules and Orders of Punjab and Haryana High Court, Volume-I, Chapter-I, Part-9, Rule 14 provides that the documents produced in evidence are required to be exhibited by the Presiding Judge. Wherever the document produced in evidence are not admitted in evidence, the same shall only be marked as Rule 15. Exhibition of a document only result in admitting such document in evidence. A word of caution were admission of a document in evidence does not amount to proof of the document. The party is required to lead evidence to prove the document in accordance with the Evidence Act. However, unexhibited and marked documents are not to be read in evidence. Accordingly Question No.(2) is also answered.

Question no.3 shall be dealt with in the end because it is emanating from the evidence led by the parties.

Now let's discuss the evidence which have been produced.

Plaintiffs have examined Balbir Singh as PW1. He is resident of the village. He has feigned ignorance about the land having been transferred pursuant to the decree in favour of Inder Singh. However, he admits that Inder Singh had performed all the ceremonies which a brother is expected to perform at the time of marriage of Sumitra. When he was given

suggestion that all the villagers treat Inder Singh as adopted son of Chandan, he denied that fact.

Smt. Sumitra, one of the plaintiff appeared as PW2 in evidence. She has stated that when her father died, she was about 10 years old. She has further stated that her marriage with Raj Kumar took place on 08.05.1985. In cross-examination, Smt. Sumitra has admitted that her mother and sisters had admitted Inder Singh to be adopted son of late Sh. Chandan in the previous litigation which resulted into judgment and decree dated 23.02.1979. She further admitted that Inder Singh is owner and revenue entries were changed from the name of her mother and sisters in favour of Inder Singh. She further admitted that after the death of late Sh. Chandan (her father), Inder Singh is in possession of the suit land. She further admits that all the ceremonies which a brother is expected to perform were performed by Inder Singh and villagers know Inder Singh as son of late Sh. Chandan. She further admits that her sister Vidya is 10th pass and Vidya and Basanti have daughters. She further admits that Inder Singh had been giving customary gifts to her sisters every year. She further states that Inder Singh had sold certain part of the land in dispute and delivered possession to the purchasers.

Next witness is Raj Kumar PW3, husband of Smt. Sumitra. He has got married to Sumitra in the year 1985 and admits that a suit was filed in the year 1979 and pursuant to the judgment and decree revenue entries in the revenue record were changed from the names of Smt. Dharmo, widow and 3 sisters to Inder Singh on the basis of judgment and decree and since then Inder Singh is in possession. Although, he states that Inder Singh did not perform the marriage of Sumitra but he admits that at the time of his

marriage with Sumitra, Inder Singh performed the ceremonies as a brother.

Next witness is Smt. Vidya, again one of the plaintiff. She has denied almost everything except admitting sale by Inder Singh and the factum that she is matric pass. She has admitted that the suit land is being cultivated by Inder Singh. However, she denied that a suit was filed by Inder Singh, wherein she along with her sisters and mother had conceded to the claim made. She has further stated that neither marriage of Sumitra was got performed by Inder Singh nor he had been giving her customary gifts which a brother is expected to give to her or her sister Basanti.

On the other hand, defendant no.1 has examined himself as DW1. He could not tell when he was adopted, however, he has stated that probably he was adopted on 21.08.1975 i.e the day of Will. He admits that he joined service in the year 1970 wherein Bhagwan i.e. the natural father has recorded as father's name.

He has examined Khem Chand resident of village Livaspur where a part of suit land is situated. He has deposed generally. Next witness examined is Mahavir, who is Nambardar of village Livaspur.

As noticed earlier, defendant no.1 did not examine either the scribe or attesting witness of the Will. However, purchasers examined Tek Chand as DW1. It may be noted that two witnesses have been assigned numbers as DW1, one Inder Singh and second Tek Chand. Hence, it would be appropriate to refer the witnesses by their names. Tek Chand has stated that he was working as a clerk with Chaudhary Dalpat Singh, Advocate from 1968 to 1996. He has stated that he had scribed the Will and read over the same to late Sh. Chandan and the witnesses present. He has stated that he knew late Sh. Chandan personally. He has stated that who all were

present at the time of execution of the Will including late Sh.Chandan, the testator, his wife and 3 daughters. In cross-examination, he has stated that Chaudhary Dalpat Singh, Advocate and late Sh. Chandan were friends. He has stated that Ganeshi, Nambardar was of village "Joshi Jaat".

DW2 is Sobha Ram, signatory to the Will dated 21.08.1975. He has fulfilled the requirements of Section 68 of the Evidence Act by stating that Chandan had put his thumb impressions in his presence and they had put their thumb impressions/signatures in the presence of Chandan. He has also identified his signatures on Ex.D1. However, he has also stated that Inder Singh was taken in adoption by Chandan on 21.08.1975.

Next witness is DW5-Raju, who is again resident of village Livaspur.

Learned first appellate court while reversing the finding of the trial court has held that since signatures of Sobha Ram is not at the place where 2 attesting witnesses have signed, therefore, Sobha Ram cannot be treated as an attesting witness. Learned first appellate Court has further held that the Will is surrounded by following suspicious circumstances extracted as under:-

“(a) As per the statement of DW1 Tek Chand, DW2 Shobha Ram and also the testimony of Inder, they had come to Sonepat courts on 21.08.1975 and that Will was scribed at the Kothi of Chaudhary Dalpat Singh, Advocate. As per DW Inder, Chaudhary Dalpat Singh had called his clerk i.e Tek Chand. Said Tak Chand is not a regular deed writer as per his own admission. It is absolutely not explained that why Will was not got scribed from a regular deed writer. Even if it be taken that regular deed writer was not available due to closing of the court, it is not explained that why the Will was not scribed by

Chaudhary Dalpat Singh himself, who was admittedly present at that time and who had called his clerk.

- (b) *Will has been scribed on a paper, which is used for drafting pleadings as per the statement of DW1 Tek Chand. It becomes significant in view of statement by DW1 Tek Chand that they used to have legal briefs of Chandan. Besides DW2 Shobha Ram says that paper for writing the Will was brought by Chandan himself and the same was already prepared with him. Said statement is totally contrary to his own statement made in examination-in-chief and also contrary to the statement of DW1 Tek Chand.*
- (c) *The most glaring suspicious circumstance is that as per the text of Will, it is mentioned by testator that he has only three daughters. It is despite the fact that testator Chandan has admittedly four daughters namely Basanti, Vidhya Wati, Ishwanti and Sumitra i.e plaintiffs of the present case. The fact that Sumitra is daughter of Chandan is the admitted position. Said fact is specifically admitted by DW Inder in his cross examination. It has also come in the statement of Inder that at the time of his adoption and Will, sumitra was 9-10 years of age. Meaning thereby despite the fact that Chandan had four daughters, three of whom he had married; whereas 4th daughter Sumitra was a minor of 9-10 years of age, it is mentioned in the Will that testator had three daughters. Why the testator would conceal about the existence of his 4th daughter, is not explained. Had the contents of Will been read over to him, he would have immediately pointed out that he had four and not three daughters. Disinheriting a daughter is one thing but not even admitting the existence of daughter is entirely different thing. The fact that there is no*

reference of 4th daughter Sumitra in the Will creates the most serious doubt regarding the genuineness of the Will and said suspicious circumstance has remained totally unexplained.

- (d) There is absolutely no provision in the Will about wife Smt. Dharmo and minor daughter Sumitra. Even if, it be assumed for the sake of arguments that testator wanted to disinherit his three married daughters, there could be no question of disinheriting the 4th daughter, who was still unmarried. No provision for her maintenance or for the maintenance of Smt. Dharmo has been made in the Will.*
- (e) It has been proved on record that defendant Inder was not adopted by Chandan. Adoption is not proved on record and therefore, the bequeathing of the property in favour of nephew despite the fact that wife and four daughters were living, is not explained.*
- (f) Beneficiary Inder was present throughout at the time of alleged execution of the Will. As per his own testimony, Will was handed over to him immediately after the execution and it remained in his possession. Despite this fact, Will was not produced before the revenue authorities for sanctioning of the mutation on the death of Chandan in October, 1976. There is absolutely no reference of such Will prior to filing of the Civil Suit in February, 1979.*
- (g) Had Smt. Dharmo, Basanti, Vidhya Wati and Ishwanti were aware about the contents of the Will and had they put their thumb impression knowing the contents of the Will, they would have immediately pointed out that testator Chandan was not having three daughters and*

rather, he had four daughters including Sumitra.

(h) From the date of execution of the Will, testator Chandan remained alive for a period of more than one year as he died on 21.10.1976 as per certified copy of the plaint of civil suit no.143 of 1979. Despite this, Will was not got registered.

(i) If defendant Inder was having a Will in his favour at the time of death of Chandan, he could have produced the said Will before the revenue authorities for getting the mutation sanctioned in his favour regarding the property left by Chandan. He did not do so, which is again a strong circumstance creating doubt about his bonafide.”

As regards, attesting witnesses, this Court has noticed that the Succession Act, 1925 does not put any ceiling on maximum numbers of witnesses who should attest the Will as attesting witnesses. On careful perusal of the Will, it may be noted that the Will is written on plain paper on the front as well as on the reverse side. Sh. Chandan who claimed himself to be 53 years old, resident of village Livaspur has got recited that he does not have any male child. He refers to his property situated in three different villages. He has stated that after his death, Inder Singh, defendant no.1-appellant would be owner in possession of the property and no one else would have any right, title or interest. He gets recited that he is blessed with 3 daughters who are already married, settled after marriage blessed with their own children. It is also recited in the Will that Inder Singh is his adopted son, serves him as well as his wife and therefore he does not wish to bequeath anything in favour of his wife or daughters. Chandan had put his thumb impressions on the reverse of the first page where narration/recitals of the Will comes to an end. Two persons have

thumb marked under the head “attesting witness” i.e Saroop Singh and Ganeshi, Nambardar. Thereafter, there are thumb impressions of Basanti, Vidya and Yashwanti @ Ishwati. Thereafter, there is thumb impression of Smt. Dharmo. Thereafter there are 3 signatures, one by Sobha Ram, second by Roop Chand and third by Kartar Singh.

Section 63 of the Succession Act does not require any particular form of attestation of the Will by the attesting witnesses. It is only provided that the Will should be attested by 2 or more witnesses who have either seen the testator, putting his sign or affixing his mark or has seen some other person signed the Will in the presence and by the direction of the testator or has received personal acknowledgment of the testator about his signatures or mark. In such circumstances, first question is whether the other persons who have signed the testament are attesting witnesses or not apart from the 2 attesting witnesses?

In the considered view of this court, once there is no ceiling on the number of attesting witnesses, the other persons who have signed the Will in the presence of the testator as well as each other, their evidence cannot be ignored by the court on the ground that signatures have been put by 2 witnesses under the head “attesting witnesses” have not been examined in evidence. Thus, the first appellate court was incorrect in recording a finding that Sobha Ram is not an attesting witnesses,

Now let's analyse the reasons for recording a finding that the Will is surrounded by suspicious circumstances extracted above.

As regards first reason, it may be noted that the attesting witnesses as well as Inder Singh, defendant who was accompanying have stated that they first went to the Court at Sonapat but by the time they

reached, courts had closed and therefore they went to the residence of Chaudhary Dalpat Singh, Advocate, who called his clerk and directed him to scribe the Will. As noticed above, Chaudhary Dalpat Singh, Advocate, and Chandan were friends and the clerk i.e Tek Chand personally knew Chandan, the executor of the Will. Hence, the reason assigned by the learned first appellate court that why Chaudhary Dalpat Singh, Advocate, himself did not scribe the Will is not based on sound reason. Reason why the Will could not be got scribed from regular scribe stands explained.

As regards next reason, the learned first appellate court has picked holes in the oral evidence without realizing that the witnesses were being examined in the court after a period of approximately 29 years as the Will was scribed in August, 1975 whereas statement of Tek Chand and Sobha Ram were being recorded in the Court in December, 2004. In such circumstances, minor variation in the statement of scribe and attesting witnesses as also defendant no.1 himself should have been ignored by the court.

Next reason, is no doubt glaring, as the testator refers only to his 3 daughters and not 4th one, although, he had 4 daughters. However, in the considered view of this court suspicious circumstance stands explained. The Will is in the year 1975. The parties were residents of a village situated in the interiors in the State of Haryana. Chandan was not educated. On the death of Chandan, revenue authorities also mutated the property left by Chandan in favour of widow and 3 daughters who were major. This is the position with regard to all the three villages. Pedigree table which has been drawn by the revenue official also refers to 3 daughters and not to 4th one-minor-Sumitra. She claims that she was 9-10 years old. Still further Inder

Singh filed a suit in the year 1979 in which he again impleads mother (although disputed by the plaintiffs) and 3 daughters of Chandan (his sisters) but not 4th one as in the revenue record, ownership is recorded in favour of widow and 3 major daughters only. In such circumstances, the alleged suspicious circumstance is to be examined. As noticed above, the Will is also thumb marked by Smt. Dharmo and 3 major daughters, namely, Vidyawati, Yashwanti @ Ishwati and Basanti. No cogent evidence has been led to prove that thumb impressions and signatures on the Will were not put by them. In such circumstances, a written document i.e. the Will cannot be ignored.

As regards next alleged suspicious circumstance, it may be noted that the testator had got recited in the Will that Inder Singh is serving him and his wife and would continue to serve. Once the testator had specifically got recited that he does not wish to give anything to his widow, such exclusion cannot be treated as suspicious circumstance in the facts of the present case particularly when Dharmo during her life time has neither challenged the correctness of the Will nor judgment and decree passed on 23.02.1979.

As regards next reason, no doubt Inder Singh has failed to prove as to when and where he was adopted. However, from reading of the Will which was followed by a judgment and decree, it is established that the claim of Inder Singh on the basis of being adopted son is not without any substance. This court is not recording that the adoption has been proved. However, keeping in view the evidence of Sumitra, one of the plaintiff who had admitted that Inder Singh performed all the ceremonies on her marriage, which are expected of a brother and he was sending customary gifts each

year to all the sisters and the entire village treats Inder Singh as son of Chandan, there was hardly any doubt left with regard to the correctness of the claim made by Inder Singh that he was adopted son of late Sh. Chandan.

As regard next suspicious circumstance, it is noted that Inder Singh was no doubt present at the time of execution of the Will, however, there is no evidence that he either played any active role or was instrumental in influencing the wish of the testator. Learned first appellate court has further noticed that since Will was not produced at the time of sanction of the mutation, therefore, it is a suspicious circumstance, it may be noted that mutation was sanctioned in the year 1979 and not in 1976. Before that Inder Singh had filed a suit which was decreed. Hence, such suspicious circumstance is without foundation.

Next reason assigned under sub-para(g) is also without basis as there is no evidence except bald denial by Vidyawati while appearing in Witness box that the thumb impressions of Dharmo, Basanti and Vidyawati and Yashwati alias Ishwati were not on the Will. It was for the plaintiff to produce evidence that the alleged thumb impressions of aforesaid 4 ladies affixed on the alleged Will do not belong to them.

As regards next reason under sub-para (h), it may be noted that the Will is not required to be compulsory registered. Registration of the Will is optional and therefore, non registration cannot be taken as suspicious circumstance.

Last reason i.e. in sub-para (i) is again repetition of ground referred to in sub-para (g) and therefore, stands answered accordingly.

The judgment passed by the learned first appellate court is also erroneous as the complete statement of Sumitra has not been noticed.

Sumitra, one of the plaintiff has made significant admissions which have been ignored by the learned first appellate court. Once she admits that the entire village treats Inder Singh as son of late Sh. Chandan and he is in possession of the suit land while discharging all the responsibilities, expected of a brother including giving customary gifts and marriage of Sumitra's sister, there was no doubt left with regard to correctness of the claim made by Inder Singh.

Learned first appellate court has also clearly erred in taking into consideration documents which have neither been exhibited nor proved on file. Learned first appellate court has referred to the assertions made in the plaint filed in a suit which was filed in the year 1979. The aforesaid plaint is neither exhibited nor proved in accordance with law. Learned first appellate court has further committed an error by recording a finding that the assertions made by Inder Singh in the plaint filed in the year 1976, were incorrect. It may be noted that all the 4 ladies, namely, Dharmo, Basanti, Vidyawati and Yashwanti @ Ishwati had admitted the contents of the aforesaid suit. No evidence has been led to prove that these defendants had not filed their written statement or had not appeared in evidence in the Court and suffered a statement. Plaintiffs ought to have produced and proved the plaint as well as their statement and established in the present suit that either they were either impersonated or there was any misrepresentation. The judgment and decree passed by the court, may be with the consent of parties, is never the less is a judgment and decree and the court should be slow in doubting its correctness without cogent evidence available on the file in a subsequent suit. The jurisdiction of the court to go behind the previous judgment and decree is very limited. Unless the party doubting

correctness thereof establishes by cogent evidence that either such pleadings were result of fraud or misrepresentation or due to coercion, the court in a subsequent suit has no jurisdiction to go behind the judgment and decree.

The learned first appellate court has further erred in recording a finding that mutation in 3 villages were sanctioned in October, 1976 in favour of widow and 3 daughters. Whereas assertion has been made in the suit filed in the year 1979 that the Will has been ignored, it may be noted that, although, the court has based its findings on the basis of documents which are neither exhibited nor proved, however, the aforesaid assertions are to be examined in the context of the fact that for 3 years, revenue authorities had not sanctioned the mutation in respect of all the 3 villages where land was situated. Mutation of land situated in village Hassamabad is on 17.06.1979, whereas mutation of land situated in Livaspur is again in June, 1979. Therefore, the reluctance by the revenue authorities to sanction the mutation on the basis of unregistered Will is normal. Hence, the first appellate court has erred on this count also.

Learned first appellate court also erred in recording a finding that in sub-para (f) reproduced above that mutation was sanctioned in October 1976, which is contradictory and against the record.

Now let's recapitulate the series of events.

Chandan, who was not having son, a rustic villager, adopts his brother's son. Thereafter, he executes a Will in favour of the adopted son which is not only thumb marked by him but by as many as 9 persons including wife and 3 major daughters. Thereafter, wife and 3 major daughters suffer a decree in favour of the adopted son admitted the adopted son to be owner of the entire suit land. Adopted son is admittedly

in possession of the property from the time of death of the testator. Sh. Inder Singh, the adopted son discharges all the responsibilities and performs all the functions which a brother is expected to perform. He take care of widow of late Sh. Chandan (his mother). He married off his unmarried sister. He gives customary gifts to sisters whenever required. Coupled with this, neither the correctness of the Will nor the decree passed is challenged during the life time of Smt. Dharmo. The correctness of the Will and the decree is challenged after a period of 20 years from the date of death of Chandan and 18 years from the date of the judgment and decree is passed. During all this time, undisputedly Inder Singh has remained in possession. Inder Singh during the pendency of the suit sells major part of the land and thereafter does not examine any attesting witness as required to prove the execution of the Will.

Learned first appellate court has further overlooked that the suit filed by the plaintiffs was time barred. Admittedly, Inder Singh, defendant-appellant has continued in possession since the time when Inder Singh died in the year 1976. Present suit was filed by the plaintiffs on 17.10.1996 i.e. after a period of 20 years. In the meantime, from 1979 onward after the passing of the judgment and decree dated 23.02.1979, defendant all along was recorded as owner of the property. There was a judgment and decree passed by the Civil Court in his favour. Smt. Dharmo during her life time did not challenge the correctness of judgment and decree passed on 23.02.1979. Therefore, the suit filed by the plaintiffs was barred by time.

Accordingly, question no.3 is also answered in favour of the appellant. Hence, the judgment passed by the first appellate court and that part of the judgment passed by the trial court which partly decreed the suit

are set aside. Hence, the suit filed by the plaintiff shall stand dismissed.

Both the appeals are allowed.

20th March , 2019
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No