

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

1. RSA No.4647 of 2009 (O&M)
Date of decision : 25.03.2019

Sh. Sutinder Parkash Jain and others

...Appellants

Versus

Salesh Chand Jain and others

...Respondents

2. XOBS-11-C-2012 (O&M) in
RSA No.4647 of 2009 (O&M)
Date of decision : 25.03.2019

Sutinder Parkash Jain and others

...Appellants

Versus

Salesh Chand Jain and others

...Respondents

3. RSA No.3041 of 2010 (O&M)
Date of decision : 25.03.2019

Sheetal Prasad Jain

...Appellant

Versus

Sh. Sutinder Prakash Jain and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Munish Gupta, Advocate, for the appellants.
(In RSA No.4647 of 2009)
for respondent Nos.1 to 7 (In RSA No.3041 of 2010)

Mr. Pankaj Jain, Advocate, for respondent no.9.
(In RSA No.4647 of 2009)

Mr. Sudhir Aggarwal, Advocate for respondent no.8.
(In RSA No.4647 of 2009)
for the appellant (In RSA No.3041 of 2010)

Mr. Rajesh Arora, Advocate, for respondent no.15.
(In RSA No.4647 of 2009)

Mr. Vikas Bahl, Sr. Advocate, with
Mr. Nikhil Sabharwal, Advocate, and
Ms. Vedika Gandhi, Advocate,
for respondents no.17 to 25 (in RSA No.4647-2009)

Mr. Amit Jain, Advocate,
for respondents no.40 to 43, 46, 54, 100, 101 and 104.

ANIL KSHETARPAL, J.

By this judgment, RSA No.4647 of 2009, RSA No.3041 of 2010 and Cross Objection No.11-C of 2012 shall stand disposed of.

Plaintiff as well as defendants have filed these set of appeals/cross objection.

In the considered view of this Court, questions of law which require consideration are:-

- 1) Whether a childless widow before coming into force of Hindu Women's Right to Property Act, 1937 (hereinafter to be referred as 'the Act of 1937') and the Hindu Succession Act, 1956 (hereinafter to be referred as 'the Act of 1956') was entitled to inherit the property of her husband or not?

- 2) Whether a testament (Will) executed by widow on the day she was having limited life estate and thereafter having become absolute owner on coming into force of the Act of 1956, would entitle the beneficiary to become owner of the property particularly when the bequest is with respect to ownership of the property bequeathed?
- 3) Whether abandonment of a right in the litigation on statement of the counsel at the time of final arguments has to be specific, categoric and not suffering from any vagueness?
- 4) Whether the findings of the First Appellate Court that the property is joint hindu family coparcenary property of the family is result of misreading and non-appreciation of evidence in proper perspective?

To understand inter se relationship between the parties, it would be appropriate to draw a pedigree table:-

Rur Mal								
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/			/					
Kirpa Ram			Chiranji Lal (died in 1933) married with Smt. Dhapan who died in 1961					
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/			/					
Anoop Chand deft. No.1 died in 1975			Nemi Chand died in 1936		Khazanchi Mal Jain @ Makkar (pltt.) is alleged to have been adopted by Chiranji Lal			
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It is apparent that Chiranji Lal son of Rur Mal died in the year 1933. He left behind Smt. Dhapan who also died in the year 1961. Plaintiff-predecessor-in-interest of the appellant i.e. Khazanchi Mal Jain filed this suit claiming that he is adopted son of Chiranji Lal, although he is natural son of Anoop Chand. He claimed that the entire property, a long list given in the plaint is a joint hindu family property and, therefore, plaintiff is owner to the extent of one half share. He also prayed for partition of the property by metes and bounds.

Defendants filed detailed written statements contesting the suit. It was pleaded by the defendants that the properties are not joint hindu family coparcenary properties. The claim of Khazanchi Mal Jain to the effect that he was adopted, was disputed and it was further pleaded that Khazanchi Mal Jain has also not succeeded to the properties of Dhapan on the basis of the testament (Will).

Both the Courts on appreciation of evidence, decided the suit. Learned trial Court held that the plaintiff failed to prove that the properties are joint hindu family coparcenary properties. The Court further held that the registered alleged Will executed by Dhapan would not result in bequeathing the properties in favour of the plaintiff. It was further held that plaintiff has failed to prove adoption in the family of Chiranji Lal. Thus, the trial Court dismissed the suit in entirety.

However, learned First Appellate Court has modified the judgment passed by the learned trial Court while upholding the findings of

the trial Court that there was no adoption of the plaintiff and late Smt. Dhapan was not competent to execute the Will. However, first appellate court has held that since Khazanchi Mal Jain is natural son of Anoop Chand, therefore, being member of joint hindu family is entitled to 1/18th share in the agricultural land except agricultural land mentioned in para 2 (B) of the plaint. Preliminary decree for partition has been passed to the extent of 1/18th share with respect to the suit properties mentioned in sub para (D) to (P) except sub para (K). It has further been ordered that alienation effected during the pendency of the suit will be subject to adjustment at the time of final partition, keeping in view the value of the property.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by both the Courts below and the voluminous record.

Alongwith the appeal, application for additional evidence has also been filed.

After hearing the arguments, this Court is of the view that two basic issues require determination:-

- a) Whether Khazanchi Mal Jain was adopted by Chiranji Lal and his wife Dhapan or not?
- b) Whether Dhapan was competent to bequeath the property held by her after the death of her husband Chiranji Lal, in favour of Khazanchi Mal Jain or not?

As regards first issue, both the Courts have recorded that Khazanchi Mal Jain has failed to prove his adoption. After examination of

the documents, this Court is also of the same view. First document which is claimed to be testament of late Smt. Dhapan by the plaintiff and claimed to be a deed of settlement by the defendants is dated 04.09.1934 Ex.D1. In the aforesaid document, plaintiff Khazanchi Mal is referred to as grandson. Khazanchi Mal Jain has not been referred to as adopted son. No doubt, it is recorded in the document that Khazanchi Mal would be owner of more share as compared to other heirs and he would further be entitled to continue to reside in the house where Smt. Dhapan use to reside, however, it does not refer to Khazanchi Mal Jain as adopted son. Second document which is a written contract dated 20.09.1934 signed by Khazanchi Mal clearly proves that Khazanchi Mal has referred himself as son of Lala Anoop Chand. Both the Courts have found that signatures of Khazanchi Mal are proved on the written contract dated 20.09.1934. Still further, on the death of Anoop Chand in the year 1975, Khazanchi Mal had inherited a share in the property of his natural father. The last document which require attention of the Court is registered Will allegedly executed by late Smt. Dhapan in the year 1955. In the aforesaid Will also, Khazanchi Mal is not referred to as adopted son although it is recorded that he is residing in the house alongwith Dhapan. Residence with the old lady who is related to the parties is not sufficient to infer adoption. In view of the overwhelming evidence, the findings of the Courts below do not require any interference on this aspect.

Now let us decide issue No.(b). In issue No.(b), there are three documents which require interpretation. First document is dated 04.09.1934. It is claimed by the defendants that this is a settlement deed whereas

Khazanchi Mal-plaintiff claims that it is a Will (testament) executed by late Smt. Dhapan. The original document is in Urdu, translated copy in Hindi language is available on record. Learned counsel appearing for the respondents-defendants has handed over a translated copy of the document, correctness whereof is not being disputed by learned counsel for the appellants. Although, the translation is not happily worded, however, this Court has also got the original Urdu document read over and the sense which is being conveyed in the translation thereof is proper. The complete translated copy is extracted as under:-

“That I, the executor Dhapa widow of Lala Chiranji Lal, caste Jain Aggarwal am resident of Village Garhi Harsaru, Tehsil Gurgaon, District Gurgaon. That I, the executor, am an old lady issueless. Life is not certain and nobody knows when the end would come. At present I, the testator/executor, am owner in possession of my entire property i.e. movable as well as immovable and my property is free from all kinds of encumbrances. The persons named Trilok Chand and Khajanchi Mal sons of Lala Anup Chand and Babu Motilal son of Lala Nemi Chand, caste Jain Aggarwal, residents of Garhi Harsaru are my grandsons in relation. They have been serving me and taking care/looking after me from all aspects and I, the testator, am very much pleased with their service and I, the testator, have full trust in them to the effect that they would serve me for the rest of my life and they would perform my last rites after my death. Now I, in my sound disposing mind and free will and consent, have agreed upon by way of the present document i.e. by executing the present document that after my death, the above named Khajanchi Mal shall be owner of all types of my jewellery/ornaments and cash amount, clothes,

utensils etc and my 1/4th share in big Haveli in which I, the testator, am residing and the other persons named Trilok Chand and Babu Motilal shall be owner in equal shares of my remaining property either movable or immovable including agriculture land. The testator/executor shall remain in possession of the entire property during her life time and after my death, the above mentioned persons named Trilok Chand and Khajanchi Mal and Babu Moti Lal shall be owner of the same as detailed by me above. And during my life time, I cannot sell away or mortgage my whole property to any other third person or cannot dispose it of in any manner and apart from this I also shall not execute any other Will. If I would execute, the same should be treated as illegal and the other persons and legal heirs/representatives shall have no concern or connection with my property. If anybody shall raise any dispute relating to above property, the same would be treated as baseless and without any effect. I cannot sell away the above mentioned property to any other person. After my death the above mentioned person Khajanchi Mal would continue to reside in my house. Thus, these few words have been reduced into writing in the form of a Will for proof and for the purpose they can be used in the eventuality of requirement. Place: big haveli.

Uncultivated land Girdhari Singh Rajput, Rasta and door of haveli

House Risal Singh Rajput, passage

Document reduced into writing on 4th September, 1934 as per Bhadon Badi 11 Sammat 1991 on day Tuesday, by the document writer Jamna Dass, Document Writer, Gurgaon.

Note:- I have been giving this information. At line number 10 word Mankula is written.

Signatures/thumb impressions are affixed on each and every

page. Scribed by document writer bearing register number 1728.

Thumb impression: Executor Dhapa

Lala Anup Chand son of Lal Kripa Ram Jain Aggarwal, Garhi Har Saru, signatures of Anup Chand

Lala Nemi Chand son of Lala Kripa Ram Garhi Haru Saruf, signatures of Nem Chand

Witness Shudh Lala Mangat Rai son of Lala Mansa Ram Jain Aggarwal, now resident of City Delhi, signatures of Mangat Ram.

Lala Daulat Ram son of Lal Manu Lal now resident of city Delhi, signatures of Daulat Ram

Lala Ulfat Rai son of Lala Deen Dyal, caste jain Aggarwal, resident of Harsaru, signatures of Ulfat Rai

Lala Dharamdass son of Lal Ganga Dass Aggarwal resident of Farookh Nagar, Sd/- Dharamdass

Lala Utter Chand son of Lala Ujagarmal Jain Aggarwal resident of Garhiharsaru, Sd/- Utar Chand

Stamp of document writer Jamna Dass, Gurgaon”

It is apparent that both the Courts have misread this document while concluding that this is a deed of settlement. She has used the words Executor/Testator repeatedly. She has also stated that she would remain owner during her lifetime and this document would come into operation after her death. She has also stated that she would not execute any other testament. Both the Courts were impressed by the fact that it is signed by large number of persons and she had got written that I shall not sell or mortgage the property. However, such sentence would not convert a Will (Testament) into a deed of settlement. Both the Courts erred on that account.

Second document is an agreement dated 20.09.1934 executed

by Tilok Chand, Khazanchi Mal and Moti Lal. As per that agreement, execution of the Will by Dhapan reproduced above had been acknowledged and property falling to the share of each one has been noted. However, this agreement is not signed by Smt. Dhapan, therefore, such document cannot bind Smt. Dhapan.

Smt. Dhapan had executed a subsequent registered Will (Testament) as also she cancelled her earlier Will executed in the year 1934 Ex.D1 specifically. There are two documents, one is cancellation of the Will executed in the year 1934 vide cancellation deed dated 27.06.1955, which is again registered and on the same day, she had also executed another Will in favour of Khazanchi Mal bequeathing certain properties, detailed whereof have been given in the Will. Both the Courts have ignored the documents executed in the year 1955 on the ground that Dhapan was left with no right, title or interest after execution of the deed of settlement on 04.09.1934 and since she was not absolute owner of the property in the year 1955 i.e. before coming into force of the Act of 1956, hence, she could not bequeath property in favour of Khazanchi Mal.

In the considered opinion of this Court, both the reasons recorded by the learned Courts below are erroneous. The document dated 04.09.1934 is a testament and not a deed of settlement. It is well settled that the last Will of the Executor has to prevail. Smt. Dhapan had cancelled the testament dated 04.09.1934 by a registered instrument in the year 1955. Hence, document dated 04.09.1934 does not help the defendants to get ownership of the property. Ex.P1, the Will dated 27.06.1955, is a registered Will proved by examining attesting witness namely Surat Singh. It is not in

dispute that after the death of Smt. Dhapan, property left behind by her was mutated in favour of Khazanchi Mal and the defendants never challenged the correctness thereof except through the written statement filed in the present suit.

Now let us examine the reasons which have been given by the Courts to ignore the Will executed in favour of Khazanchi Mal.

First reason assigned by the Courts is that late Smt. Dhapan has executed a deed of settlement which has already been discussed and found to be incorrect.

Second reason assigned by the Courts is also equally erroneous as the Courts have held that in the year 1955, Dhapan was only having limited estate i.e. life interest and, therefore, she was not competent to execute the testament and bequeath her property. It is well settled that succession opens on the death of the person. The testament (Will) would also come into operation/effect only on the death of the Executor of the Will. It is undisputed that Smt. Dhapan died in the year 1961 i.e., after coming into force of the Act of 1956, therefore, in any case, even if she was having limited estate or life interest, her right would enlarge and she would become absolute owner, therefore, the Will which was executed by her would operate. In any case, there is no evidence that late Smt. Dhapan was having only life interest i.e. life estate.

Learned Senior Counsel appearing for some of the defendants has submitted that widow had no right to the property before coming into force of the Act of 1937. He further referred to the provisions of Act of 1937 to assert that the Act had no retrospective applicability. Hence, he

submitted that Smt. Dhapan was not the owner of the property and, therefore, the judgments passed by the Courts below are correct.

This Court has analyzed the arguments and find no substance therein. Learned Senior Counsel is not correct in asserting that limited estate of widow came to be recognized for the first time only in the Act of 1937.

On careful examination of famous book on Hindu Law by Sir Dinshaw Fardunji Mulla 21st Edition, it is apparent that devolution of property inherited by females is noted in Chapter XI of the Book in para 168 which is extracted as under:-

“168. Property inherited by females from male in territories other than Bombay State – (1) According to the Bengal School, the only females who can inherit the property of a male are: (1) the widow; (2) daughter; (3) mother; (4) father's mother; and (5) father's father's mother (§ 61).

(2) Before the Hindu Law of Inheritance (Amendment) Act, 1929, the only females who could inherit to a male were the five mentioned in sub-§ (1). By that Act, three more females were constituted as heirs, namely, the son's daughter, daughter's daughter and sister.

(3) The Madras School recognises not only the said five female heirs, but others and also, being those mentioned in § 56. These include the son's daughter, daughter's daughter and sister, who are expressly mentioned as heirs in the Act of 1929. The only difference is that while before the Act, they succeeded as bandhus, under the Act, they inherit with gotraja sapindas. (see § 43, nos 13A, 13B, 13C and § 61A).

(4) According to the Bengal, Benares, Mithila and Madras Schools, every female, whether she be a widow, daughter,

mother, father's mother, or father's father's mother, who succeeds as heir to the property of a male, takes only a limited estate in the property inherited by her, and on her death the property passes not to her heir, but to the next heir of the male from whom she inherited it (as to Bombay school, see § 170).

The son's daughter, daughter's daughter, and sister, who are expressly mentioned as heirs in the Hindu Law of Inheritance (Amendment) Act, 1929, also take a limited estate, according to these schools, in the property inherited by them from the last male owner.”

It may be noted that this para has been extracted without illustrations given in the book. Similarly, if one examines Treatise on Hindu Law and Usage by Mayne's, similar fact is noticed in paras 527 and 528 extracted as under:-

“527. Widow heir to separate property – *Vijnanevara's conclusion is that the widow is entitled to inherit to her husband, if he died separated and not reunited and left no male issue; it is immaterial whether the division was in status only or was followed by a division by metes and bounds. The text of the Mitakshara is: “Therefore, it is a settled rule, that a wedded wife, being chaste, takes the whole estate of a man, who being divided from his co-heirs and not subsequently reunited with them, dies leaving no male issue”. And this rule which necessarily followed from the view taken by the Mitakshara of the rights of undivided members, applied, till recently, in the Mitakshara jurisdictions. Even where a man died undivided but left separate or self-acquired property, his widow succeeded to it though the undivided property passed by survivorship to his coparceners, as was settled by the Shivaganga case.*

Their Lordships referring to the Mitakshara (II, 1, 39) observed: "The text is propounded as a qualification of the larger and more general proposition in favour of widows; and consequently in construing it, we have to consider what are the limits of that qualification rather than what are the limits of the right". According to the Dayabhaga, on the other hand, which proceeded on the ground of her right to offer funeral oblations to her deceased husband, a widow succeeded to her husband's share when he was undivided, just as she would to the entire property of one who was separated. But as in a Dayabhaga joint family the husband's interest is held in quasi-severalty, the distinction is merely a verbal one.

Before Hindu Women's Rights to Property Act – Now, however the two systems are assimilated in this respect by the Hindu Women's Rights to Property Act, 1937, which has repealed the rules of the Mitakshara and the Dayabhaga so as to make a Mitakshara widow succeed to the coparcenary interest of her husband in the partible property of the joint family and, along with the male issue, to his separate property, and to enable a Dayabhaga widow to succeed along with the male issue in all cases.

Prior to 1937, under Hindu Law governed by Mitakshara School of Law, a Hindu widow is entitled to maintenance from out of the joint family property of her husband/coparcener. In 1937, the Hindu Women's Right to Property Act was passed bringing about a change in the rights of a woman. It confers for the first time a share in the joint family property equivalent to that of her husband though she is not entitled to claim partition or file a suit for partition, when partition of joint family property is effected she is entitled to a share.

528 – According to the Mitakshara, the wives of sagotra

sapindas are themselves sagotra sapindas and they are included in Yajnavalkya's term 'gotrajah'. But while the wives of the ancestors are expressly recognized by the Mitakshara as heirs, it is silent as regards, the wives of descendants and collaterals. The son's widow, the grandson's widow, the brother's widow and the widows of other sapindas, cannot come in as there is no place for them in the compact series of heirs up to the brother's son and grandson. Nor can they come in before the male sapindas up to the seventh degree. Logically there does not seem to be any insuperable objection why wives of descendants and collaterals within seven degrees should not come in after all the male sapindas are exhausted and before the samandodakas (Mit. II, v. 6). But the decisions of all the courts, except in Bombay, have refused to recognise their rights.

Widow is only heir to husband – *A widow therefore can only succeed to her husband's property or rights, that is, to the property which was actually vested in him, either in title or in possession, at the time of his death. She must take at once at his death, or not at all. No fresh right can accrue to her as widow in consequence of the subsequent death of some one to whom her husband would have been heir if he had lived. Hence, no claim as heir could, before the Hindu Women's Rights to Property Act, be set up on behalf of the widow of a son, or of a grandson, or can even now be set up on behalf of the widow of a daughter's son, or of a brother, or of an uncle, or of a cousin. While in some of the cases the contest was between the widow of a sapinda and some other heir, who was held to have a preferential title, in others, however, she was excluded on the general principle that she did not come within the line of heirs at all. Finally, it was held that the Crown would take by escheat in preference to her. This is still the law of Bengal, Benares and Madras*

subject, of course, to the two new statutory exceptions.

Widow remarrying: Karewa marriage in Punjab – A widow on remarriage ceases to be the widow of her late husband and becomes the wife of the man she has married. She thus forfeits her right which is really one of maintenance from the income of the deceased's property, there being no universal custom amongst the Jats of Punjab by which a widow does not forfeit her life estate in her husband's property by reason of her remarriage with her husband's brother. Thus as per the law prevalent in the Princely State of Jind (as in the year 1942) widows forfeit their right in the estate of deceased husband on their re-entering a karewa marriage.”

On careful examination, it is apparent that contention of learned counsel for the defendants is not correct. Before coming into force of Act of 1937, widow had right in the property of her husband. By Hindu Law of Inheritance (Amendment) Act, 1929, three more females were constituted as heirs, but widow was already considered as an heir of her husband. In the present case, we are dealing with estate of a childless widow. Childless widow in any case would be entitled to the property.

Registered Will dated 27.06.1955 of late Smt. Dhapan has been proved by examining Sh. Surat Singh, attesting witness.

In view of the aforesaid discussion, questions Nos.1 and 2 are answered in favour of the appellants. It is declared that before coming into force of Act of 1937, widow was entitled to succeed to the property left behind by her husband, may be limited estate/life interest. She may not have right to alienate but her right would enlarge once she continues to live upto the enforcement of the Act of 1956. It is further declared that Courts erred in

holding that widow had no right to execute the Will with respect to the property received from her husband before coming into force of the Act of 1956. Once the Will would come into operation after the death of the widow which took place in the year 1961, the Will would operate in favour of the beneficiary.

Application for additional evidence has been filed by the appellants to produce on record large number of documents. Plaintiff through these documents wish to produce the alleged admissions of the defendants in various litigation admitting plaintiff to be adopted son of Chiranji Lal and Dhapan.

In the considered view of this Court, once the Will has been upheld and Khazanchi Mal has succeeded to the property of her natural father i.e. Anoop Chand, the alleged admissions of the defendants would not confer the plaintiff-Khajanchi Mal with a status of adopted son of Chiranji Lal and Dhapan. The alleged admissions of the defendants would not be helpful in establishing that Chiranji Lal and Dhapan had adopted Khazanchi Mal. Had there been any adoption, Chiranji Lal would have severed his relationship in the family he was born and, therefore, he would not have succeeded to the property. Hence, application for additional evidence is dismissed.

The Will dated 27.06.1955 is held to be valid and operative and Khazanchi Mal would succeed to the property as per the Will apart from 1/18th share which he has inherited as per the judgment of the First Appellate Court being member of Joint Hindu Family Property. There shall be preliminary decree also with regard to the property mentioned in the

registered Will executed by Smt. Dhapan in June, 1955. It may be significant to note here that counsels appearing for the respondents have brought to the notice of this Court that the plaintiff had given up his claim with respect to property which had been sold/alienated before institution of the suit as noted in the order by this Court while deciding Regular Second Appeal No.2044 of 1978 decided on 21.11.1990 in previous round, that would be binding on the plaintiff.

Now let us deal with question No.3.

Learned counsel appearing for the respondents has drawn attention of the Court to para 28 of the judgment of the trial Court in which it has been noticed that the plaintiff has not pressed issue No.6 to the extent that Smt. Dhapan was not competent to execute the Will Ex.D1 and Ex.P2. It has been contended that the plaintiff now cannot claim anything under the aforesaid Will (Testament). It may be noted that in para 28 of the judgment, counsel appearing for the plaintiff has not abandoned his claim under the Will Ex.P2. Only competence of Dhapan to execute the Will was conceded. However, such concession neither can be treated as absolute nor it can affect the rights of the plaintiff. There are two types of concessions/abandonments, one is concession on law given by the counsel and second is concession on fact given by the counsel or the party. As far as concession on a legal issue, it is always permissible for the party to prove that such concession was wrong and such concession is not binding on him. However, when concession or admission is on a fact, the same is binding. Para 28 of the judgment passed by the trial Court is extracted as under:-

“28. So far as the issue No.6 is concerned, the plaintiff has

not pressed the said issue to the extent that Smt. Dhapan was not competent to execute the Will Ex.D1 and Ex.P2 as the suit property is the coparcenary property but she had rightly cancelled the Will Ex.D1 through Ibtalnama Ex.P1. It is further submitted that the registered Will Ex.P2 rightly adjudged by the revenue authorities while sanctioning the mutation No.242 of Gopalpur as it was to prevail upon unregistered will in view of the law laid down in case titled as Brahama Nand and another Versus Roshani Devi 1988 Simla Law Journal 600, Nand Lal and another Versus Hans Raj 1955 The Lahore Law Times 16 and Surja and others Versus Isher Singh and others 1960 The Lahore Law Times 1.”

It is apparent that there was no concession or admission on fact. There was no abandonment of right under the Will. Only counsel had conceded that Dhapan was not competent to execute the Will. In subsequent paragraphs, trial Court discussed the execution of the Will and held it to be proved but ignored it on the ground that Smt. Dhapan was not competent. The First Appellate Court has also deliberated on the aforesaid issue and confirmed the findings of the learned trial Court. Hence, it cannot be said that the claim made by the plaintiff under the Will Ex.D1 and Ex.P2 has been abandoned.

Accordingly question No.3 is answered in favour of plaintiff.

4) Whether the findings of the First Appellate Court that the property is joint hindu family coparcenary property of the family is result of misreading and non-appreciation of evidence in proper perspective?

Now let us examine the findings of the learned First Appellate Court with respect to property being joint hindu family coparcenary

property and, therefore, plaintiff Khazanchi Mal was entitled to 1/18th share. It may be noted here that the learned First Appellate Court itself has found that Attar Chand had retired from the joint business. It has also come on record that Ulfat Rai was appointed as Arbitrator for the purpose of dissolving the firm M/s Roor Mal Hardev Sahai. He was having 1/4th share in the firm M/s Roor Mal Hardev Sahai. After settlement of the accounts on 27.09.1934, Anoop Chand and Nemi Chand are said to have mortgaged huge property in lieu of balance payment of ₹5,000/- payable to Attar Chand out of total payment found due to Attar Chand i.e. ₹9,000/-. Still further, Moti Lal-defendant No.12 has admitted that thereafter a new firm M/s Anoop Chand Nemi Chand was formed after separation of Attar Chand and Smt. Dhappan was having 1/4th share in the aforesaid firm. Still further, it is also clear from Ex.D1, the Will executed by Smt. Dhapan widow of Chiranji Lal that she was dealing with the property individually. The aforesaid Will was signed by Anoop Chand and Nemi Chand apart from others. Further, Ex.DW11/1 proves that the individual properties were owned by Smt. Dhapan and the aforesaid property was so agreed to be partitioned/divided between various members of the family. Both these documents Ex.D1 and Ex.DW11/1 were executed in the year 1934. Still further, Smt. Dhapan executed a registered deed cancelling previous testament (Will) dated 04.09.1934 executed by her. She further executed Will dated 27.06.1955 Ex.P2 bequeathing her certain property in favour of Khazanchi Mal. Learned First Appellate Court has committed an error by confusing the joint trading firm of the parties with joint hindu family coparcenary property. It is

established on the file that after Attar Chand separated, everyone was having specified share in the trading firms. Still further, as noted above, each member of the family was dealing with the property at individual level.

In view thereof, the findings of the learned First Appellate Court with regard to property being joint hindu family coparcenary property are set aside while answering question No.4 in favour of defendants.

Resultantly, it is declared that plaintiff is entitled to succeed to the property left behind by Smt. Dhapan in accordance with the registered Will dated 27.06.1955 subject to whatever rights were given up in RSA No.2044 of 1978 decided on 21.11.1990.

Accordingly, both the appeals as well as cross objections are disposed of.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

25.03.2019

Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**