

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

RSA No. 690 of 2015 (O & M)

Date of Decision: February 15, 2019

Satbir Singh & Anr.

.....Appellants

Versus

Smt. Bimla

.....Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Ashok Sharma Nabhewala, Advocate for the Appellants.

None for the Respondent.

SUDIP AHLUWALIA, J.

This Appeal has been preferred against the impugned Judgment and Decree passed by the Ld. Addl. District Judge, Mewat in Civil Appeal No.57 of 2014 dated 13.1.2015, vide which the original Judgment & Decree passed by the Ld. Civil Judge (Junior Division) Mewat in Civil Suit No.18 of 2010 dated 16.8.2014 against the present Appellants/Defendants was set aside.

2. The Suit had been filed by the Respondent Smt. Bimla who happens to be the daughter of deceased Bhagwani Devi, who was the owner and in possession of 2/9th share in the suit land situated within the revenue estate of Tauru, Tehsil Tauru, District Mewat more fully described in Para No.1 of the Plaint. Now according to the Plaintiff/Respondent, her mother transferred 1/9th share of her aforesaid share in the suit land in favour of her other daughter Smt. Ombati and left the remaining 1/9th share for the

Plaintiff. It may be mentioned that the specific pleadings of Plaintiff in this regard are noted in Para No. 2 of the original Plaint, which are set out below -

“2. That previously the mother of the plaintiff, Smt. Bhagwani, was owner and in possession of 2/9th share in the suit land detailed in para No.1 of the plaint and she transferred her 1/9th share in the suit land in favour of her daughter Smt. Ombati and remaining 1/9th share left by her for the plaintiff. Because Smt. Bhagwani was succeeded by her two daughters, one Smt. Ombati and plaintiff and there is no other legal heir/successors in interest of deceased Smt. Bhagwani except the plaintiff and her sister Smt. Ombati.”

3. Thereafter according to the Plaintiff/Respondent, taking advantage of the old age of her mother Smt. Bhagwani Devi, the Appellants/Defendants on 20.6.2007 took her for Eye Check-up and they secretly obtained her thumb impressions on some blank papers, and thereafter by playing fraud and cheating, fabricated a false and forged Will, bearing Vasika No.37 dated 20.6.2007 in respect of 1/9th share of Smt. Bhagwani Devi in their favour. It is noteworthy that in the relevant Para No.3 of the Plaint, the Respondent/Plaintiff did not make any hint as to how her mother Smt. Bhagwani Devi was acquainted with the Defendant/Appellants, or whether there was any relationship between her and the Defendants. On the other hand in the same Paragraph thereafter, according to the Plaintiff/Respondent, her mother Bhagwani Devi actually executed a registered Will, bearing Vasika No.30/3 dated 23.4.2008 in her favour, and in which she clearly stated that 'the same is her first and last Will.' Therefore according to the Plaintiff, it becomes clear that her mother never executed the earlier Will dated 20.6.2007, which was not even in her knowledge at the time of execution and registration of her Will dated 23.4.2008 on

account of which, the impugned Will relied upon by the Appellants/Defendants is liable to be set aside, cancelled, being a false and forged document.

4. Furthermore according to the Plaintiff/Respondent, after the death of her mother, she visited the Tehsildar Office, Tauru and moved an Application dated 5.11.2009 for entering the said registered Will, bearing Vasika No.30 dated 23.4.2008, which was forwarded to the Halqa Patwari for incorporation in the revenue record to enter in the Mutation in favour of the Plaintiff. But the Halqa Patwari in collusion with the Defendants wrongly, illegally and in contravention of the direction of the Tehsildar, Tauru incorporated the impugned Will dated 20.6.2007, vide Mutation No.12954 in their favour, which fact was kept concealed from the Plaintiff. However, the Defendants subsequently threatened to dispossess her from the suit land on the strength of the aforesaid false and forged Will. The Plaintiff repeatedly requested them to admit her as true owner to the disputed suit land, but the Defendants refused to do so. Thereafter, the Plaintiff came to know about the false and forged Will dated 20.6.2007 in the month of January 2010 when the Defendants had come to the suit land and tried to dispossess her therefrom. After taking this plea in Para 9 of the original Complaint, the Plaintiff/Respondent has also specifically averred that she along with her husband visited the office of Sub Registrar, Tauru on 20.06.2007 and obtained the certified copy of Will dated 20.06.2007, and hence the present suit is within limitation.

5. Thereafter, the Plaintiff filed the Suit for declaration that she is owner and in possession of the suit land, in which the Defendants have no right, title or interest, and that the impugned Will, bearing Vasika No.37 dated

20.6.2007 is illegal and *non est*, with a further prayer for restraining them from dispossessing her from the suit land in any manner, or from alienating the said land to any other person, with a further alternative prayer for possession of the suit land in case the Defendants succeed in dispossessing her from the same during the pendency of the Suit.

6. The suit was contested by the Appellants/Defendants, who denied all the material allegations of the Plaintiff. It was their contention that the Plaintiff/Respondent had not only raised false pleadings, but had also willfully suppressed several material facts which would prove that her case was out and out false. The substance of the defence raised by the Defendants is that the land in question was originally belonged to Dhan Singh husband of deceased Bhagwani Devi, who held 1/3rd share in the same alongwith his other co-sharers. The Plaintiff and her sister Ombati were born to Bhagwani Devi and Dhan Singh. After the death of Dhan Singh, Bhagwani Devi remarried one Sukhi Ram from which wedlock, one Mahavir, father of the Defendants was born. As such according to the Defendants, they are the grandsons of deceased Bhagwani Devi from her second marriage with Sukhi Ram and thus became entitled to succeed to her property. However, Bhagwani Devi was apprehensive that her 1/9th share in the land inherited by her after the death of Dhan Singh could devolve upon her step children born to Sukhi Ram from his first marriage with one Smt.Misri. In order to avoid the aforesaid situation, she executed her registered Will dated 20.6.2007 bequeathing her said share in favour of her own grandsons i.e. the Defendants, who are both sons of her son Mahavir born from her second marriage with Sukhi Ram. Hence according to the Appellants/Defendants, the entire story of the execution of the subsequent

Will dated 23.4.2008 by the Plaintiff as also of her other pleadings and averments in the Plaint are out and out false and created after wilful suppression of the true facts.

7. After recording evidence of both the sides and considering the submissions raised on their behalf, the Ld. Trial Court dismissed the Suit of the Plaintiff/Respondent as it was of the view that the Will dated 23.4.2008 relied upon by her was surrounded in very mysterious and suspicious circumstances, on account of which the Plaintiff could not be held to be the owner in the disputed land on the strength of such Will.

8. This Court now proceeds on to take notice of various facts and circumstances considered by the Ld. Trial Court in arriving at the above decision, and which are contained in Paras 22 to 24 of its impugned Judgment dated 16.8.2014, and which are set out as below -

“22. In the present case since the plaintiff has asserted her right on the basis of Will Ex.PW1/B, burden lies upon her to prove execution of Will beyond shadow of reasonable suspicious circumstances and the burden of proof is very strict. Plaintiff has to prove that the Will reflects the genuine intention of the executant. In the present case in order to establish the veracity of Will, plaintiff has got examined as many as five witnesses but she herself abstained from appearing before the court. Although it is acknowledged that a husband having power of attorney and privy to all facts in the knowledge of wife is competent to depose on her behalf (Sukhdev Singh Vs. Baldev Singh [2013 (5) RCR Civil 249]) but a husband who himself stated on oath before the court, that he was not present during the entire transaction cannot be said to be having knowledge of all the facts and he cannot be said to be a competent witness on behalf of his wife. In the present case when Kiran Singh (plaintiff's husband) appeared into the witness box, he categorically stated that he never accompanied Smt. Bhagwani to Tehsil Office Palwal for execution of Will and he later reached Tehsil after receiving a telephone call from his son. Meaning

thereby he was not present with Smt. Bhagwani or Smt. Bimla during the execution of Will Ex.PW1/B, then how can he be said to be having complete knowledge of facts. Furthermore, Smt. Bimla was the star witness of the case, being the beneficiary and being present with Smt. Bhagwani during the execution of Will Ex.PW1/B and her examination was very necessary but she abstained herself from the court and avoided her cross examination.

23. *Another important fact which goes against the plaintiff's case is that when PW1 stepped into the witness box he categorically stated that Smt. Bhagwani was brought to Tehsil Palwal in a car belonging to Kiran Singh (PW5) and Kiran Singh himself was driving the car. The contradictory version of PW1 and PW5 raises strong suspicion. Furthermore, during the course of evidence it has duly come on record that during execution of Will Ex.PW1/B, the plaintiff (beneficiary) and her husband remained present with Smt. Bhagwani, hence, a possibility of influencing the decision making power of Smt. Bhagwani cannot be ruled out (Bhadri & anr. Vs. Suma Devi & Ors. [2013(2) LJR 281 relied]).*

24. *In the present case when the evidence adduced by plaintiff is carefully perused numerous discrepancies are also pointed out and few of them can be enumerated as follows :-*

(a) During the course of evidence when PW1 and PW5 stepped into the witness box they admitted that Smt. Bhagwani is not the owner of any property in Tehsil Palwal. Moreover, when PW5 stepped into the witness box he categorically stated that in the Will which was got typed by him he has not written that Smt. Bhagwani is the owner of any property at Palwal but Will Ex.PW1/B talks about property of Smt. Bhagwani at Palwal. Such like situation can arise only in two circumstances :-

- (i) Either Smt. Bhagwani was not having a deposing state of mind at the time of execution of Will Ex.PW1/B, or*
- (ii) The Will was got executed without her notice and knowledge and same was not read over to her.*

(b) Another important fact which creates a shadow of doubt is that if the witnesses were present in Tehsil office

Palwal while execution of Will Ex.PW1/B then why was the names of witnesses and date, not typed in the Will but was later scribed by pen. Although plaintiff has got examined five witnesses but none of them could give a reasonable explanation for the same.

(c) Another suspicion about execution of Will Ex.PW1/B is caused by the fact that Will was executed at Tehsil office Palwal despite the fact that Smt. Bhagwani was a permanent resident of Tauru and she was neither residing at Palwal nor having any property at Palwal.

(d) Another important fact which completely destroys the plaintiff's case is that when plaintiff's husband stepped into the witness box as PW5, he categorically admitted that on 20.6.2007 i.e. the day when Will bearing vasika no.37 dated 20.6.2007 was executed Smt. Bimla (plaintiff) and her husband were present in the office of Sub Registrar Tauru and on the very next day Smt. Bimla obtained a certified copy of the Will Ex.D1. Meaning thereby on 20.6.2007, plaintiff and her husband were very well aware about the execution and registration of will Ex.D1 and despite this fact they got incorporated a clause in Will Ex.PW1/B that it was the first and last Will of Smt. Bhagwani.

Hence, in view of aforesaid discussion, this court is of the considered view that execution of Will Ex.PW1/B is surrounded by suspicious circumstances. Accordingly, present issue is decided against the plaintiff and in favour of the defendants.”

9. The Ld. Lower Appellate Court, being the Court of Ld. Addl. District Judge, Mewat however, did not concur with the aforesaid findings of the Trial Court, and held *inter-alia* in its impugned Judgment -

“11. After hearing rival contentions and going through the lower court case file in my considered view, the appeal deserves to be allowed. In this case, the main question is as to whether the Will dated 23.4.2008 alleged to have been executed by Smt. Bhagwani with respect to the suit land in favour of the appellant is valid and genuine. Section 63 of the Indian Succession Act regulates the execution of the Will. It says that 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. 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. Such a Will is required to be attested by two or more witnesses, each of whom is required to see the testator signing or affixing his mark to the Will or see some other person signing the Will, in the presence and by direction of the testator or should have received a personal acknowledgment of his signature from the testator, or of the signature of such other person and each of the witnesses should sign the Will in the presence of the testator. It is, however, not necessary that more than one witnesses be present at the same time, and no particular form of attestation shall be necessary. It is settled law that onus to prove execution of Will always lies in every case upon the person propounding Will and he must satisfy the conscience of the court that the instrument so propounded is the last Will of a free and capable testator. If disinterested and satisfactory evidence in this respect has been brought on the record, the finding in favour of the propounder would be justified. Another rule, however, is that if the circumstances create suspicion and whatever their nature be, it is for those who propound the Will to remove such suspicion and prove the fact that the testator knew the contents of the Will. It is only where this is done that the onus shifts to those who oppose the Will to prove fraud or undue influence or whatever they rely upon to displace the case of the propounder. From the judicial verdicts given by the various Hon'ble High Courts as well as the Apex Court the position which emerges for holding proper execution of the Will is that :

- (a) The testator must have a disposing mind free from all extraneous influences with a sound mental mind;*
- (b) The testator is presumed to be sane having a mental capacity to make a valid Will until contrary is proved;*
- (c) The Will should be executed in accordance with the provisions of the Act as incorporated in section 63 of the Act read with Sections 67 and 68 of the Evidence Act. In other words, the testator should have signed or affixed his mark to the Will in the presence of the two*

witnesses who are required to see the testator signing or affixing his mark on the Will and each of the witnesses should sign the Will in the presence of the testator;

(d) The onus of proof of the Will is on the propounder or beneficiary of the Will;

(e) The existence of suspicious circumstances make the onus of proof very heavy and such circumstances are required to be removed by the propounder before the document is accepted as a last Will of the testator;

(f) The mode of proving the Will does not ordinarily differ from that of proving any other document except the special circumstances as incorporated in Section 63 of the Act; and

(g) In order to ascertain the free disposing mind free from extraneous consideration, the whole of the attending circumstances in a particular case are required to be taken note of.

*The same law has been laid down in **Charan Singh vs. Amar Singh 2012(1) Law Herald (P&H) page 946.***

12. *In the case in hand in order to prove the execution of the Will dated 23.4.2008 Ex.PW1/B, the appellant has examined to Sh. Jitender Rawat, Advocate as PW1. He has testified that he was one of the attesting witnesses of the said Will. It was executed by Smt. Bhagwani Devi in favour of her daughter Bimla. It was scribed by Sh. O.P. Ahuja, Advocate. After scribing the same, the contents thereof were read over and explained to the executant, who put her thumb impression thereunder in token of acceptance and thereafter he and the co-attesting witness signed the same. The said Will was registered in the office of Sub-registrar on the same day. His version is also supported and corroborated by the scribe O.P. Ahuja PW4. He has deposed that the executant Bhagwani Devi was known to him. On 23.4.2008 she came to him in the District Court, Palwal and showed her willingness to execute a Will in favour of her daughter Bimla Devi. As per her instruction, he prepared a rough draft of the Will in the presence of witnesses. Thereafter the will was typed. The executant put her thumb impression after considering the contents thereof as correct. The witnesses also signed the same. Thereafter, the Will was produced before the Sub-registrar for registration. Ram Kishore, ARC office of Sub-registrar, Tehsil at Palwal, PW3 has proved the registration of the Will at serial no.30/3*

dated 23.4.2008. He has deposed that the executant Bhagwani also affixed her thumb impression on endorsement before the Sub-registrar. The Will was also attested by Sh. Jitender Rawat, Advocate and Narender. PW5 has testified that the beneficiary Bimla was his wife and daughter of the executant Smt. Bhagwani. At the time of execution of the Will, the executant was mentally as well as physically fit to take rational decision. The Will was voluntarily executed by Bhagwani with her free will and consent. These witnesses were cross-examined by ld. counsel for the opponent at length but he failed to impeach their creditworthiness. The discrepancies as to whether the executant was having immovable property at Palwal, presence of beneficiary at the time of execution of the Will, non-typing of the names of the witnesses and not getting the recital about the previous will made in the subsequent Will as pointed out by ld. counsel for the respondents are not sufficient to render the Will in suspicion”

10. Thereafter in the succeeding Paragraphs of its impugned Judgment, the Ld. Lower Appellate Court also observed that no adverse inference ought to be drawn simply because the Testator used to live in Tauru, had executed her Will at Palwal, since the distance between the two places is only 40 to 45 Kilometers. The Ld. Lower Appellate Court thereafter was also of the view that again no adverse inference ought to have been drawn on account of the fact that the Plaintiff herself had not stepped into the witness box, but had led the evidence from her side through her husband/Power of Attorney Holder Kiran Singh, who deposed as the Principal Witness (PW-5) in the Suit on her behalf.

11. Thus, in the opinion of the Ld. Lower Appellate Court -

“15. The discrepancies in the version of the witnesses regarding the presence of beneficiary at the time of execution of the Will, non-typing of the names of the witnesses and non-getting of the recital about the previous Will given in the alleged subsequent Will are not sufficient to render the Will in suspicion.

There is no evidence at all that at the time of execution of the Will the executant was not mentally or physically fit to dispose of her property or that the beneficiary had got executed the Will by playing fraud upon her by undue influence. The beneficiary is real daughter of the executant. There is nothing unnatural for the executant to dispose of the property in favour of her daughter born out of the wedlock of the previous husband from whom she had inherited the said property whereas obviously the respondents have succeeded the property of their father, who was the second husband of Smt. Bhagwani.

16. From the above discussion it is held that there is no illegality or infirmity in the Will no.30 dated 23.4.2008 relied upon by the appellant/plaintiff. Its validity and genuinity has been duly proved as per the provisions of Indian Succession Act read with Evidence Act. Though while filing the suit the appellant has also challenged the validity and genuinity of the previous Will no.37 dated 20.6.2007 allegedly executed by the same executant Smt. Bhagwani in favour of the defendants on the grounds of fraud and misrepresentation but she has miserably failed to substantiate this plea yet the Will dated 23.4.2008 being subsequent and last shall prevail over the previous Will dated 20.6.2007.”

12. Having carefully considered the aforesaid conflicting observations/conclusions of both the Ld. Courts below, there is no doubt that the final fate of the controversy hinges on overall credibility of the case of the Plaintiff/Respondent, not only taking into account the controversial suspicious circumstances considered by both the Courts below but also revelation of certain facts from the defence version, in which the original Plaintiff was conspicuously silent and subdued.

13. When seen in totality, the picture thus emerging before this Court certainly tends to discredit the Plaintiff version of the facts rather badly. This is so because, as already noted earlier in Para 3, the allegation against the

Appellants/Defendants was that they had taken the old woman Bhagwani

Devi on the pretext of her Eye Check-up and thereafter had secretly obtained her thumb impressions on some blank papers, which were ostensibly misused for creating the forged and fabricated Will dated 20.6.2007. But there was no indication in the Complaint whatsoever as to how the said Bhagwani Devi was acquainted with the Defendants who allegedly took her with them on the pretext of her Eye Check-up, when it was own case of Plaintiff/Respondent that Bhagwani Devi used to live with her. Also the Complaint is altogether silent regarding existence of any relationship whatsoever between Bhagwani Devi and the Defendants, and on the contrary, it was the categorical case in Para 2 of the Complaint as already reproduced earlier, that apart from the Plaintiff and her sister Ombati, Bhagwani Devi had no other legal heirs/successors.

14. On the contrary, the Defendants/Appellants have made out a case that both of them are the real grandsons of Bhagwani Devi, being the sons of Mahavir, who was born to her after her second marriage with Sukhi Ram following the death of her first husband Dhan Singh. Now it is interesting to note that when a suggestion was put to the Plaintiff's Attorney/husband that Bhagwani Devi was the grandmother of the Defendants, he initially admitted the correctness of the suggestion, but thereafter hurriedly corrected himself, and stated voluntarily that Bhagwani Devi was not the grandmother of the Defendants. We might choose to gloss over this retracted admission by the Plaintiff's husband as an isolated case of unintentional slip of tongue. However, in the very next statement of his cross-examination which is on Pages 179 and 180 of the Paper Book of the Trial Court's record, there is a categorical admission of PW5 that Bhagwani Devi was the widow of Sukhi Ram, although he denied the suggestion that she had remarried after the

death of her original husband Dhan Singh. Thereafter, the witness admitted that Bhagwani Devi had inherited the share of Dhan Singh after his death, and that she thereafter gave birth of Mahavir, who was sired from the loins of Sukhi Ram, and that Sukhi Ram only had one issue from his first wife Misri. Now from these admissions of the principal witness PW5, who deposed on behalf of the Plaintiff, being her husband and Attorney leave no scope for doubt that the Defendants are actually the grandsons of the Plaintiff's mother Bhagwani Devi *albeit* from a different father, namely Sukhi Ram, and that by the own admission of PW5, Bhagwani was the widow of Sukhi Ram.

15. Now DW3 namely Gian Chand, who happens to be the Lambardar of Tauru itself had specifically deposed in his evidence that Bhagwani was earlier wife of Dhan Singh after whose death, she entered into a 'Karewa' marriage with Sukhi Ram, from whom she gave birth to father of the Defendants namely Mahavir. It may be observed here that the Custom of 'Karewa' i.e. widow's remarriage after the death of her husband in the rural areas of Haryana is not uncommon. It would therefore, be reasonable to give credence to the defence version that the Defendants are her grandsons, being the sons of her son Mahavir from her second marriage with Sukhi Ram. The absolute silence of the Plaintiff regarding the existence of such blood relationship between Bhagwani Devi and the Defendants in the Plaint as drafted, in which there is not even an attempt to explain as to how Bhagwani Devi was in contact with the Defendants or could have been misled into giving her thumb impressions on blank papers while being taken by them on the pretext of her Eye Check-up, even though she was residing with the Plaintiff and not the Defendants almost becomes deafening. But

this is not at all, considering the furthermore incriminating and suspicious circumstances putting the credibility of the Plaint case into even more serious doubts as noted in the following Paragraphs.

16. As already mentioned in earlier Para 4 of this Judgment and in Para 9 of the original Plaint, the Plaintiff/Respondent had specifically averred that she alongwith her husband had visited the office of Sub Registrar, Tauru on 20.6.2007 (i.e. the date of execution of the impugned Will in favour of the Defendants) and obtained a certified copy of that Will. This prejudicial averment indicating that the Plaintiff was aware of the execution of the impugned Will on the relevant date itself leaves practically no scope for the Plaintiff/Respondent to make out a case that she was not aware about the aforesaid impugned Will before coming to know about the Mutation No.12954 allegedly made by the Halqa Patwari on the strength of that Will. So much so, that even in his cross-examination (on Pages 180 and 181 of the Trial Court's record/Paper Book), PW5 had even admitted on oath that he alongwith his wife (i.e. the Plaintiff) had gone to the office of Sub Registrar, Tauru on 20.6.2007 and had obtained a certified copy of the impugned Will.

17. However, while not agreeing with the conclusion of the Trial Court regarding the very suspicious circumstances surrounding the Plaintiff's own Will, the Ld. Lower Appellate Court in its impugned Judgment nevertheless chose not to make any reference to this very material fact regarding visit of the Plaintiff and her husband to the Sub-Registrar's Office on 20.6.2007 itself and of having obtained a certified copy of the said Will, which was specifically noted by the Trial Court in Para 24 (d) of its Judgment.

18. Now it would be worth considering another plea raised on behalf of

the Plaintiff/Respondent to the effect that in her subsequent Will dated 23.4.2008, the deceased Bhagwani Devi had specifically mentioned that it was her first and last Will, thereby ostensibly falsifying the genuineness of the impugned Will dated 20.6.2007 relied upon by the Appellants/Defendants. But this particular logic rather acts as a double edged sword in the facts and circumstances of the present case. This is so because if the reading of the one line in the recital of the Will dated 23.4.2008 is deemed to imply that Bhagwani Devi had never executed any earlier Will dated 20.6.2007 or at any other time, then another line in the same Will dated 23.4.2008 by the same logic would tend to falsify the genuineness of the said latter Will itself. The relevant line in the said Will dated 23.4.2008 (Ex.PX/1) happens to be “my two daughters Smt. Ombati and Smt. Bimla, daughter of Dhan Singh, adopted son of Ram Sarup are the only legal heirs. Apart from them I do not have any male or female issue. The only issues are females/daughters.....” As we have already seen, PW5 himself admitted in his cross-examination that Mahavir was the son of Bhagwani Devi and Sukhi Ram, while positive evidence regarding remarriage of Bhagwani Devi with Sukhi Ram as 'Karewa' has come on record from the deposition of PW3 Gian Chand Lambardar. The statement in the recital of the Will dated 23.4.2008 to the extent that the Testator has no other 'male' or female issue/child apart from the Plaintiff Bimla and her sister Ombati is therefore, factually incorrect and inconsistent even with the own admission of PW1 regarding parentage of Mahavir, father of the Defendants. The insertion of this particular statement in the Will dated 23.4.2008 therefore, clearly indicates a conscious attempt to make out a case that Bhagwani Devi had no son of her own on account of which, logically

there could not be any relationship of the Defendants to her through their own father.

19. Consequently, the inconsistencies and discrepancies in the overall surrounding circumstances pertaining to execution of the aforesaid Will dated 23.4.2008 as noted by the Ld. Trial Court cannot be simply wished away considering all these unusual circumstances not the least of which happens to be the manner of suspicious registration of aforesaid Deed, which even the Ld. Trial Court did not consider very deeply. That circumstance happens to be the fact that apart from execution of the Will in Palwal where the illiterate Testator admittedly had no property, her photograph upon the document was pasted manually. To this end, this Court can take judicial notice of the fact that all the Sub-Registrar's Offices within the territorial jurisdiction of this Court necessarily have the provision of Photographing the executants and their witnesses when a document is presented for registration, and such Photographs as a matter of course are taken from the pre-installed Web Camera in the concerned Sub-Registrar's Office. It is therefore, baffling beyond reasonable doubt limits as to how the impugned Will dated 20.6.2007 which was purportedly executed over ten months before the Will relied upon by the Plaintiff, did in fact bear the Photograph of the Testator as well as the witnesses taken from Web Camera installed in the Sub-Registrar's Office of that relatively small Tehsil Town of Tauru, while such routine Photographs from the Web Camera which certainly would have been operational at a later stage in the District Headquarter Town of Palwal more than ten months later, were missing in the Plaintiff's own Will (Ex.PX/1). In the backdrop of these consistencies when the date of execution as well as registration of the aforesaid Will

happens to be identical, i.e. 23.4.2008, and even the executant had specially gone to Palwal for the same purpose on that very date, the omission by way of Web-Photographing of the executant and witnesses in the Sub-Registrar's Office as in the normal course, actually renders the aforesaid Will to be a very suspicious document.

20. For the aforesaid reasons, this Court is of the view that the Ld. Lower Appellate Court was in error in setting aside the Trial Court's Judgment dismissing the Suit of the Respondent/Plaintiff. Consequently, the Appeal is allowed and impugned Judgment of the Ld. ADJ Mewat is set aside while the Trial Court's Judgment dated 16.8.2014 is restored.

(SUDIP AHLUWALIA)
JUDGE

February 15, 2019
AS/rittu

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