

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

RSA-1021-1997(O&M)

Reserved on:-15.3.2023

Date of Pronouncement:-28.3.2023

Chand Singh and others

...Appellants

Versus

Jaswant Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.M.L. Sarin, Sr.Advocate with
Ms.Hemani Sarin, Advocate
for the appellants.

Mr.Sanjiv Manrai, Sr.Advocate with
Mr.Aayush Arora, Advocate
for the respondents.

H.S. MADAAN, J.

1. Shortly put, facts of the case are that plaintiff Chanan Singh son of Lal Singh, resident of village Machaki Mal Singh, Tehsil & District Faridkot had filed a suit for possession of land measuring 158 kanals 14 marlas situated in the revenue estate of village Machaki Mal Singh against defendants Chand Singh,

Kulwant Singh, Jabarjang Singh, residents of village Kameana.

2. As per the version of the plaintiff, he and his real brother Hakam Singh constituted a joint Hindu family and they owned 331 kanals 11 marlas of land, which had nature of ancestral and joint Hindu family property; the suit land was in the possession of Hakam Singh as per his share; Hakam Singh died issueless and as a widower, as such the plaintiff succeeded him by way of survivorship.

3. Inter alia, the plaintiff alleged that Hakam Singh was physically and mentally weak having poor understanding; he was an illiterate and a rustic villager and he had suffered attack of paralysis about 6-7 years prior to his death. It was further pleaded that Surjit Singh and his wife Gurdeep Kaur are shrewd and resourceful persons, as such Surjit Singh started cultivating the land of Hakam Singh 6-7 years earlier as a tenant and slowly he tried to become owner of the land by suppressing Hakam Singh.

According to the plaintiff, when he consulted the revenue record, he came to know that Surjit Singh had got the land mutated in the name of his sons i.e. the defendants on the basis of fake decree dated 14.5.1984. The plaintiff sought setting aside of that decree on various grounds i.e. the defendants had put forward their claim on the basis of adverse possession but it could not be so, as some of the defendants were of very young age, as such incapable of exercising

adverse possession; at the time of the filing of the suit Kulwant Singh was aged about 5 years and Jabarjang Singh 3 years only; in the revenue record, the defendants were shown to be in possession only 5-6 years back and that too as tenants; in the jamabandi for the year 1983-84 their possession was recorded as tenants on batai, therefore there was no question of their acquiring a title in the property by way of adverse possession; the defendants, who are plaintiffs in the suit filed by them against Hakam Singh had not impleaded the present plaintiff Chanan Singh, who was a co-owner of the land; as a matter of fact, the consent was obtained from Hakam Singh by exercising undue influence upon him by parents of the defendants inasmuch as Hakam Singh was not allowed to take any advise from any independent person and the suit had been filed by defendants through counsel Sh.M.S. Romana, Advocate, whereas deceased Hakam Singh was represented by Sh.R.S. Romana, Advocate son of Sh.M.S. Romana, Advocate and they were both joint in practice; a written statement was got thumb marked from Hakam Singh without allowing him to know as to what had been written therein; the father of the defendants had got the mutation sanctioned clandestinely in favour of defendants in order to create record because Hakam Singh was not related to defendants in any manner; the defendants had no pre-existing right in the suit property, as such they could not acquire title therein by getting a fake and fictitious decree.

It was further pleaded by the plaintiff that in the plaint of the suit filed by the defendants, there was a reference of the Will, though Hakam Singh had not executed any such Will as he was not capable of doing so being mentally and physically unfit; Hakam Singh could not have transferred the suit land without legal necessity and except for the benefit of the estate since the nature of the land in question was ancestral and coparcenary; Chand Singh was a minor at the time of filing of the suit but he was shown as major. According to the plaintiff, he called upon the defendants to admit his claim but they did not do so, as such he filed the suit in question.

4. On notice, the defendants appeared and filed a joint written statement contesting the suit raising preliminary objections that Smt.Jasmail Kaur @ Gurdeep Kaur mother of the defendants was adopted by Hakam Singh; Har Kaur widow of Hakam Singh and the suit was bad for non-joinder of Jasmail Kaur @ Gurdeep Kaur and Har Kaur; the plaintiff had no locus standi to file the suit during the life time of Har Kaur and Jasmail Kaur @ Gurdeep Kaur.

On merits, the defendants denied that the property in the name of Hakam Singh was ancestral joint Hindu family property, rather the defendants pleaded that the property had been acquired by Hakam Singh and he was exclusive owner of the same; after his death Hakam Singh was succeeded by his widow Har Kaur and daughter Jasmail Kaur @ Gurdeep Kaur; moreover, Hakam Singh

had executed a Will in favour of defendants bequeathing his entire property to them; since Hakam Singh was issueless, he had adopted Jasmail Kaur @ Gurdeep Kaur, mother of the defendants, who was none-else but daughter of brother of his wife Smt.Har Kaur; Jasmail Kaur @ Gurdeep Kaur was brought up by Hakam Singh as his daughter; Hakam Singh was of sound mind and excellent understanding and he was not suffering from any physical disability; Jasmail Kaur @ Gurdeep Kaur adopted daughter of Hakam Singh had been serving him and neither she nor her husband exercised any undue influence on Hakam Singh; a decree was secured by defendants against Hakam Singh and mutation was sanctioned in favour of the defendants on the basis of decree, which is binding upon Hakam Singh and on his heirs and decree cannot be challenged.

As the version of the defendants proceeded, previously, the father of the defendants was in possession as owner; thereafter the defendants came into possession and their such possession had ripened into ownership; the property in question was exclusively owned by Hakam Singh with which the plaintiff had no concern; in the suit filed by the defendants against Hakam Singh, Hakam Singh had himself appeared and made a statement admitting their claim; thereafter, the decree was passed, mutation was sanctioned on the basis of decree in a big gathering in village and it was not kept as a guarded secret; Har Kaur was widow of Hakam Singh and her name

was mentioned in the voter list as wife of Hakam Singh; her name is also included in the ration card showing her to be wife of Hakam Singh; Hakam Singh and Har Kaur had a joint account in a bank; Hakam Singh had also executed a valid Will in favour of the defendants by operation of which also, the defendants became owners. The defendants denied that after death of Hakam Singh, the plaintiff inherited his property being his brother, rather according to the defendants Hakam Singh being exclusive owner of the suit property could alienate the same in any way, he felt like. Refuting the remaining allegations, the defendants prayed for dismissal of the suit.

5. The plaintiff had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

6. On the pleadings of the parties, following issues were framed:

1. Whether the suit land is the ancestral and coparcenary property? If so to what effect? OPP.
2. Whether Hakam Singh had executed a valid Will in favour of the defendants? OPD.
3. Whether Jasmail Kaur, defendants' mother was adopted by Hakam Singh? If so to what effect? OPD.
4. Whether Har Kaur and Jasmail Kaur are necessary parties? OPD.

5. Whether the plaintiff has locus standi to file the suit? OPP.
6. Whether decree dated 14.5.84 is binding upon Hakam Singh as well as upon the defendants? OPD.
7. Relief.

7. Both the parties led evidence in respect of their claims.

8. During the course of his evidence, the plaintiff examined Jagga Singh, a resident of village Machaki Mal Singh as PW1, who supported his case contending that Hakam Singh had died issue-less without leaving any wife and the suit land had been acquired by Hakam Singh from his father and grand-father; Hakam Singh was a simpleton; he did not know about his profit and loss; he was suffering from paralysis about 6-7 years prior to his death and was unable to move.

PW2 Jang Singh, another resident of village Machaki Mal Singh deposed on the similar lines as that of PW1 Jagga Singh.

Thereafter, counsel for the plaintiff had tendered in evidence documents Ex.P1 to Ex.P7 and closed the evidence of the plaintiff.

9. On the other hand, defendants examined Kashmir Singh, Cashier-cum-Clerk, Punjab & Sind Bank, Main Branch, Faridkot as DW1, who brought the account opening form as well as record having specimen signature of Hakam Singh and Har Kaur proving photocopies of the same as Ex.D1, D2 and D3. He stated that there

was a joint account of Hakam Singh and Har Kaur, which could be operated by either of the two.

DW2 Roop Singh, a resident of village Machaki Mal Singh, an attesting witness of Will executed by Hakam Singh in favour of defendants testified in that regard proving the Will as Ex.D4. He otherwise supported the case of the defendants on material points.

DW3, Swaran Dass, a resident of village Kameana, the second attesting witness of Will Ex.D4 deposed with regard to execution of Will by Hakam Singh in favour of the defendants and otherwise supported the case of the defendants.

DW4 Jagdish Raj, Sub-Inspector, Food & Supply Deptt., Faridkot had brought the summoned record including form of Har Kaur widow of Hakam Singh proving its copy as Ex.DW4/1. He proved the ration card for the year 1981-82 issued by the Department as Ex.DW4/2.

DW5 Malkit Singh, deposed on oath the case of defendants as given in the written statement.

DW6 Gurdit Singh, who was aged about 80 years at the time of recording his statement, resident of village Machaki Mal Singh having his house near the house of Hakam Singh supported the case of the defendants contending that Hakam Singh had married twice, firstly with Partap Kaur and secondly with Har Kaur; Hakam

Singh had contracted a second marriage with Har Kaur since his first wife could not give birth to any child for 7-8 years. He stated that he had attended both the marriages of Hakam Singh, further stating that Har Kaur was married with Hakam Singh by way of Anand Karaj and she is used to reside with Hakam Singh as his wife; Hakam Singh was not blessed with any child from his wedlock with Har Kaur also, then Hakam Singh and his wives had adopted Gurdeep Kaur @ Jasmail Kaur as their daughter and Sarwan Singh and his wife, the natural parents of Gurdeep Kaur @ Jasmail Kaur had handed over over the girl to Hakam Singh and his wives at village Machaki Mal Singh; there was a gathering at the time of adoption and PATASAS were distributed; Gurdeep Kaur @ Jasmail Kaur was aged about 2-3 years at that time and she was brought up by Hakam Singh and Har Kaur as their daughter; Hakam Singh had married off Gurdeep Kaur @ Jasmail Kaur and she used to come to Machaki even after marriage treating Hakam Singh and Har Kaur as her parents. This witness further stated that Har Kaur is residing at village Machaki in the house of Hakam Singh and two children were born to Gurdeep Kaur @ Jasmail Kaur at village Machaki in the house of Hakam Singh.

DW7 Mukhtiar Singh aged about 76 years stated that he knew Hakam Singh deceased, who was his brother-in-law; he was married with Partap Kaur daughter of Hazara Singh, who was his

uncle from brotherhood. He further stated that the marriage had taken place about 65 years back and he was aged about 10 years at that time; he had seen that marriage; subsequently Hakam Singh got married with Har Kaur daughter of Hazara Singh after performing marriage with Partap Kaur and he had attended that marriage also, which was performed according to Sikh religious rites i.e. by way of Anand Karaj and then Hakam Singh and Har Kaur used to reside at village Machaki as husband and wife; no child was born out of two wedlock, as such Hakam Singh had adopted daughter of Sarwan Singh, his brother-in-law, that girl was brought up by Hakam Singh and Har Kaur; her marriage was also performed by Hakam Singh.

DW8 Kartar Singh, a resident of village Kauni aged about 65 years, a collateral of Hazara Singh also deposed on the similar lines with regard to Hakam Singh having firstly got married with Partap Kaur and then with Har Kaur but not blessed with child from either of the wedlock. He stated that Har Kaur was residing in the house Hakam Singh at village Machaki.

DW9 Bansi Ram, Petition Writer stated that he had scribed Will Ex.D4 at the instance of Hakam Singh and thereafter read over the contents to him and Hakam Singh had thumb marked the Will after admitting it as correct; the Will was attested by the witnesses in presence of Hakam Singh and Hakam Singh thumb marked the Will in presence of attesting witnesses. He stated that he

had entered the Will in his register at Serial No.108 dated 18.4.1979. He proved photocopy of his register as Ex.D4/1.

DW10 Daya Kaur widow of Sarwan Singh son of Hazara Singh aged about 80 years, resident of village Sauni stated that Partap Kaur and Har Kaur were her sisters-in-law (husband's sister); both of them were married with Hakam Singh; earlier Partap Kaur was married with Hakam Singh but no child was born from that wedlock, as such Har Kaur was married with Hakam Singh; that marriage was performed by way of Anand Karaj; Har Kaur had been residing in the house of Hakam Singh as his wife; Hakam Singh and Har Kaur were not blessed with any child, as such she (this witness) had given her daughter to Har Kaur in adoption; the adoption ceremony had taken place at village Machaki; she and her husband had put their daughter in the lap of Har Kaur and Hakam Singh and Partap Kaur also consenting party to that adoption; the *Paath* of Shri Guru Granth Sahib was done and jaggery was distributed; Gurdeep Kaur @ Jasmail Kaur used to address Har Kaur as mother and Hakam Singh as father and they used to treat her as their daughter; Gurdeep Kaur @ Jasmail Kaur had given birth to children at the house of Hakam Singh.

DW11 Har Kaur supported the case of the defendants on material points with regard to she being legally wedded wife of Hakam Singh, residing with him in his house, not being blessed with

any child and then she her sister Partap Kaur, who was first wife of Hakam Singh and Hakam Singh having adopted Gurdeep Kaur @ Jasmail Kaur in a gathering before Shri Guru Granth Sahib where natural parents of the girl had given her in adoption to her in presence of Partap Kaur and Hakam Singh and thereafter Gurdeep Kaur @ Jasmail Kaur was brought up by them and then married off. She stated that Gurdeep Kaur @ Jasmail Kaur was treating her and Hakam Singh as her parents, whereas they were treating her as their daughter. She further deposed regarding ration card of the family stating that she had a joint account with Hakam Singh in Punjab and Sind Bank and further Hakam Singh had executed a Will in favour of sons of Gurdeep Kaur @ Jasmail Kaur of his own free Will and with her consent.

DW12 Surjit Singh, husband of Gurdeep Kaur @ Jasmail Kaur and father of defendants deposed in consonance with the case of the defendants.

DW 13 Dewan K.S. Puri, Handwriting Expert, Patiala stated that he had examined the disputed thumb impressions marked as Q1 and Q2 on Ex.D4 comparing those with the specimen thumb impressions marked as S1 and S2 on the specimen card produced by the bank and in his opinion the thumb impressions were identical and were of one and the same person. He proved his report as Ex.DW13/A and photographic chart as Ex.DW13/B.

Thereafter, counsel for the defendants tendered in evidence documents Ex.D5 and Ex.D6 and closed the evidence of defendants.

10. In rebuttal, Gurmail Singh son and attorney of plaintiff Chanan Singh appeared as PW3 and repeated on oath the case of the plaintiff as given in the plaint.

PW4 Dan Singh lent support to the case of the plaintiff.

PW5 Girish Kumar, DRK, Faridkot has brought the summoned file of case titled 'Chand Singh Versus Hakam Singh', decided on 14.5.1983 by the Court of Sub Judge III Class, Faridkot.

PW6 Jagdip Singh, Process Server in the Court of Senior Sub Judge, Faridkot after seeing the record stated that summons sent for the service of defendants Hakam Singh and Har Kaur in case Chand Singh Versus Hakam Singh were not accompanied by copies of the plaint.

PW7 Ajaib Singh, Clerk of Sh.R.S. Romana, Advocate stated that the plaint of the summoned file produced by PW5 bears signatures of Sh.Mohinder Singh Romana, Advocate and the written statement dated 30.3.1984 was signed by Sh.R.S. Romana, Advocate, who is son of Sh.Mohinder Singh Romana, Advocate, who are running practice jointly.

With that the rebuttal evidence of the plaintiff stood closed.

11. After hearing arguments, the trial Court of Senior Sub Judge, Faridkot decided issue No.1 against the plaintiff holding that property in hands of Hakam Singh was not ancestral property; issue No.2 was decided in favour of the defendants against the plaintiff holding that the Will in dispute was executed by Hakam Singh of his own free Will in favour of the defendants and it was not shrouded by suspicious circumstances; issues No.3 and 4 were decided in favour of the defendants holding that Gurdeep Kaur @ Jasmail Kaur was adopted by Hakam Singh as his daughter and Har Kaur is widow of Hakam Singh, as such during life time of Gurdeep Kaur @ Jasmail Kaur and Har Kaur, the plaintiff has no right to acquire the property; issue No.5 was decided against the plaintiff observing that he has no locus standi to file the suit; issue No.6 was decided in favour of the defendants holding that the impugned decree was valid. As a result of findings on the issues, the suit of the plaintiff was dismissed with costs vide judgment and decree dated 17.2.1990.

12. Feeling aggrieved, the plaintiff through his LRs had preferred an appeal before District Judge, Faridkot, which was assigned to Additional District Judge, Faridkot, who vide judgment and decree dated 11.3.1997 accepted the appeal, set aside the judgment and decree passed by the trial Court and decreed the suit of the plaintiff.

13. Now it was turn of the defendants to feel dissatisfied and

they had filed the present regular second appeal before this Court, notice of which was issued to the respondents, who are LR's of the plaintiff, who have appeared through counsel.

14. I have heard learned counsel for the parties besides going through the record.

15. I find that the judgment passed by the trial Court dismissing the suit of the plaintiff was based upon proper appraisal and appreciation of evidence and correct interpretation of law. It did not suffer from any illegality or infirmity. But the First Appellate Court of Additional District Judge, Faridkot by total misunderstanding of facts, wrong analysis of the evidence brought on file by the parties and erroneous interpretation of law set aside the judgment and decree passed by the trial Court. The judgment passed by First Appellate Court of Additional District Judge, Faridkot cannot stand judicial scrutiny and is liable to be set aside.

16. The plaintiff had miserably failed to prove his case and his claim was rightly rejected by the trial Court. He had approached the Court contending that the nature of the land in the hands of Hakam Singh was ancestral coparcenary property but then he had been unable to show that. Although he had got the excerpts Ex.P5 prepared to show the ancestral nature of the land but as has been observed by the trial Court in para No.6 while deciding issue No.1, the excerpts do not show that the property in dispute was owned by

Chanan Singh and the plaintiff has not produced the record prepared during consolidation proceedings to show that the land in question was allotted in lieu of land once owned by Lal Singh father of Hakam Singh. Furthermore, there is nothing to show that property had come to Hakam Singh by inheritance and not by way of testamentary succession etc.

17. One more ground on which the land was not held to be ancestral property was that Hakam Singh was earlier recorded as Adna Malik, whereas the King of Faridkot was shown as Ahla Malik in the previous revenue record and Hakam Singh had become full-fledged owner later on by operation of law. Therefore, the property could not be taken to be ancestral coparcenary property.

18. The trial Court has referred to judgment **Nachhattar Singh Versus Budh Singh, 1977 RLR 366** in that regard and this judgment has also been cited by learned counsel for the appellants before this Court wherein it was held as under:

Held, that after the abolition of Ala malkiat rights, all rights, title and interest of Ala Malik would vest in the Adna Malik free from all encumbrance. It would clearly be an enlargement of the rights of an adna malik. The moment the Ala Malik's rights are abolished, the institution of Adna Malik also comes to an end, and both the interests come to vest in one and the same person. The rights of Adna Malik are enlarged, as the

institution of inferior rights comes to an end. The Adna Malik did not have the full rigfhts of an owner and it was after the abolition of the Ala Malkiat rights that he became the full owner for all intents and purposes. A new kind of estate in the Adna Malik has been created, and the nature and character of the land in his hands is altered and it does not remain ancestral.

19. Learned counsel for the appellants has argued that Adna Malik is just like occupancy tenant, who had become full owner of land from the date of enforcement of the Act and such occupancy tenant is to be taken as owner of that property, which cannot be treated as ancestral in his hands. In support of his that contention, he has referred to judgment **Hem Raj and others Versus Sona Singh and others, 1978 RLR 333** by a Single Judge of this Court.

Therefore, the plaintiff could not claim any right in the suit property belonging to his brother Hakam Singh after death of the latter by way of survivor-ship.

20. The next ground taken was that Hakam Singh had died issue-less and without leaving any wife. However, the defendants have successfully negated those contentions by bringing on record enough cogent and convincing evidence both oral as well as documentary. From the statements of DW6 Gurdit Singh, DW7 Mukhtiar Singh and DW8 Kartar Singh, it clearly comes out that

Hakam Singh had married twice firstly to Partap Kaur and Secondly to her sister Har Kaur, in that way, Har Kaur is legally wedded wife of Hakam Singh, however, Hakam Singh was not blessed with any child from either of the wedlock.

21. The next question that arises is as to whether Jasmail Kaur @ Gurdeep Kaur, mother of the defendants had been taken in adoption by Hakam Singh and Har Kaur. The defendants have brought enough cogent and convincing evidence in that regard. DW11 Har Kaur has categorically stated so with regard to she and Hakam Singh having taken Jasmail Kaur @ Gurdeep Kaur in adoption from her brother Sawran Singh and his wife Daya Kaur in gathering in presence of Shri Guru Granth Sahib at village Machaki Mal Singh and ceremony regarding distribution of jeggary etc. having taken place. Daya Kaur appearing as DW10 has also deposed in that regard. Then name of Jasmail Kaur @ Gurdeep Kaur is mentioned along with Hakam Singh and Har Kaur in the ration card, in the Will executed by Hakam Singh in favour of the defendants though the same is under challenge in the suit. Hakam Singh had mentioned that her wife Har Kaur was alive. He had married twice, first wife Partap Kaur who had died, whereas Har Kaur was there and since he had not been blessed with any child, he had brought daughter of his wife's brother Sarwan Singh, namely, Jasmail Kaur @ Gurdeep Singh, brought her up and then married her off and he

had executed the Will in favour of three sons of Jasmail Kaur @ Gurdeep Kaur. All that evidence goes to show that Jasmail Kaur @ Gurdeep Kaur is adopted daughter of Hakam Singh and Har Kaur and after death of Hakam Singh, he was survived by his wife Har Kaur and adopted daughter Jasmail Kaur @ Gurdeep Kaur. Though the plaintiff had alleged that Hakam Singh was a simpleton and he could not understand what was good or bad for him and he was not possessed of sound mental faculties etc. but except some oral evidence brought on file by the plaintiff, there is nothing to show that. On the contrary, the defendants have brought enough evidence to show that Hakam Singh was possessed of sound disposing mind and there is nothing to point out that he was a simpleton or not having sound mental faculties. A person, who can appear in the Court, go to the office of Sub-Registrar for the purpose of registration of the Will and doing other normal work cannot be taken to be possessed of weak mental faculties. The plaintiff has not brought any medical evidence to prove such assertions. Therefore, these allegations are found to be bald and sweeping, which are not established on the record at all.

22. The plaintiff has further challenged the Will in favour of the defendants. However, as has been rightly observed by the trial Court vide detailed discussion, the defendants have successfully proved that Hakam Singh while being possessed of a sound disposing

mind had executed a legal and valid Will Ex.D4 in their favour. As already discussed above, the defendants are none-else but sons of Jasmail Kaur @ Gurdeep Kaur adopted daughter of Hakam Singh and Har Kaur. The testator had mentioned so in the recital of the Will. It has been established on the record by the defendants by bringing enough cogent and convincing evidence oral as well as documentary that Jasmail Kaur @ Gurdeep Kaur was taken in adoption by Hakam Singh and Har Kaur with the consent of first wife of Hakam Singh, namely, Partap Kaur, who was alive at that time and then she was brought up as their daughter by them, thereafter she was married off and she had given birth of two sons in the house of Hakam Singh. Therefore, it is natural that Hakam Singh had got love and affection for Jasmail Kaur @ Gurdeep Kaur and her family and for that reason, he had bequeathed his property to defendants, who were none-else but sons of his adopted daughter. The Will is a registered document carrying presumption of due execution. The Sub Registrar, a public servant acting in discharge of his official duties would not have registered the Will if he had even an iota of doubt that the testator was not executing the Will voluntarily or that he was under any pressure or coercion at that time or in any way, he was not possessed of sound mental faculties to execute the Will. The endorsement by the Sub-Registrar on the Will goes to show that Will had been presented by Hakam Singh testator

for registration and the Sub Registrar had read over the contents of Will to the testator, who had admitted the same and thereafter the Will was registered. The defendants have examined both the attesting witnesses of the Will as well as the scribe. From the statements of attesting witnesses, it comes out that Hakam Singh was possessed of sound disposing mind at the time of Will and he was not under any pressure or coercion to do so. Of the attesting witnesses DW2 Roop Singh, happened to be Lambardar of village Machaki Mal Singh to which the testator belonged and the second witness DW3 Swaran Dass belonging to village Kameana, but as stated by DW3 both the villages are situated nearby having adjoining fields. The Will comes out to be a natural disposition and not surrounded by any suspicious circumstance. Therefore, the execution of the Will by Hakam Singh in favour of the defendants stands proved.

23. Learned counsel for the appellants has referred to judgment **Joginder Singh and others Versus Surinder Singh (Deceased) and others, 1997(1) PLR 83**, wherein it was observed by this Court that registration of Will itself is a big circumstance proving its genuineness and when testator was endorsed by Registrar to be in sound disposing state of mind, discrepancy in evidence of attestator does not vitiate the validity of the Will. It was further observed that registered Will ordinarily cannot be thrown in the dust-bin on mere ipso dixit of contesting litigant.

24. Learned counsel for the appellants also relied upon judgment i.e. **Chander Versus Mst.Nihali, 1992(2) HLR 23**, wherein it was observed by this Court that when a Will is duly written by Deed Writer and registered, the registration of a document is a solemn act to be performed in the presence competent official appointed as Registrar, under that circumstances the execution of the Will was duly proved and valid.

25. In judgment **Satya Pal Gopal Das Versus Smt.Panchubala Dasi and others, AIR 1985 SC 500**, it was a case when the testator had executed the Will in favour of a person, who had been brought up as a child by the family of the testator, the testator had bequeathed all his properties to that person not making any provision for wife and widowed daughter-in-law; the will had been executed and presented for registration by testator himself; the testator had died after four years of execution and registration of the Will but taken no steps to cancel or revoke it. It was observed that circumstances dispels any suspicion that may attach to the Will.

26. Similarly, it is established on the record that Hakam Singh during his life time had suffered a consent decree in favour of the defendants on the basis of which mutation had been entered and sanctioned in their favour.

27. The the plaintiff has tried to find faults with that decree contending that no pre-existing right was there in favour of the

defendants and the decree is bad for non registration etc. But I find that these objections are without any element of merit. There is no requirement of registration of the decree. Hakam Singh naturally had a desire to pass on the property belonging to him to the family of his adopted daughter and for that reason, he suffered a decree in favour of his sons the defendants besides executing a will in their favour.

28. Learned counsel for the appellants has referred to judgment **Harpal and others Versus Smt.Ram Piari and others, 1981 PLJ 492** when in a suit where a consent decree was challenged being collusive and fraudulent passed on plea which was factually, it was observed that the Court in second suit cannot go behind earlier decree and find out as to whether it was passed on right or wrong facts.

29. Learned counsel for the appellants further pressed into service judgment **Gurdev Kaur and others Versus Mehar Singh and others, 1989 PLJ 182** wherein a Division Bench of this Court had observed that a compromise or consent decree even if it creates title in respect of immovable property of the value of Rs.100/- or more, provided it is subject matter of suit and even if title created in favour of the decree holder for the first time under the decree whether with consideration or without consideration, does not require registration.

30. Learned counsel for the appellants further placed reliance upon judgment **Jagtar Singh and others Versus Ind Kaur,**

Vol.CLXII-(2011-2), PLR 535, wherein it was observed that transfer of property by way of a decree deviating from natural succession requires registration of the decree would not be applicable where conferment of proprietary rights are also by way of registered Will and right to challenge a decree on the ground of fraud is only available to the person against whom fraud has been played and not by a third party.

31. As regards the judgment i.e. **Nilima Mukherjee Versus Kanta Bhusan Ghosh, 2001(4) RCR(Civil) 599** by the Apex Court referred to by learned counsel for the respondents, that judgment is not helpful to the respondents for the reason that the defendants have brought sufficient oral as well as documentary evidence to show that Gurdeep Kaur mother of the defendants had been legally and validly adopted by Hakam Singh and Har Kaur with the consent of first wife of Hakam Singh, namely Partap Kaur.

32. As regards the next judgment i.e. **Biru Versus Nanhi, 2007(3) RCR(Civil) 810** referred to by learned counsel for the respondents, wherein it was observed that consent decree transferring land does not confer valid title without registration, again this judgment is not helpful to the respondents because in this case not only a decree has been suffered by Hakam Singh in favour of his grandsons – the defendants, who are sons of his adopted daughter Jasmal Kaur @ Gurdeep Kaur but he had also executed a Will in

their favour mention of which is there in the impugned judgment itself.

33. As regards the judgment **Rani Purnima Debi and another Versus Kumar Khagendra Narayan Deb and another AIR 1962 567**, since the Will is not surrounded by suspicious circumstances and comes out to be a natural document, the due execution of which stands proved on there record, there is no ground to reject the Will.

34. For the similar reasons, the other judgment **Balkar Singh Versus Gurnam Singh etc., 1982 CLJ (C&Cr.) 251** referred to by learned counsel for the respondents is not helpful to the respondents.

35. Arguments advanced by learned counsel for the respondents that defendants are rank outsiders having no concern with the deceased has been found to be without merit, rather defendants come out to be grandsons of the deceased testator being sons of his adopted daughter. Therefore, there is no question of the dispossession being unnatural.

36. The judgment and decree passed by the trial Court are well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law and it was wrongly upset by learned Additional District Judge, Faridkot. That wrong is being undone by acceptance of the present appeal.

37. Resultantly the judgment and decree passed by

Additional District Judge, Faridkot are set aside and the judgment and decree passed by the trial Court dismissing the suit of plaintiff are restored.

38. The appeal stands allowed accordingly with costs.

Since the main appeal stands allowed, the miscellaneous application(s), if any, stand disposed of accordingly.

28.3.2023

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No