

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

**RSA-1013-2018(O&M)
Reserved on : 05.07.2023
Date of decision:18.07.2023**

Dinesh Kumar Grover

....Appellant

Versus

Prem Lata Grover and others

..Respondents

CORAM: HON'BLE MR JUSTICE ANIL KSHETARPAL

Present:- Mr. Prateek Gupta, Advocate and
Mr. Prashant Puri, Advocate for the appellant

Mr. Rajbir Singh Guron, Advocate for the respondents

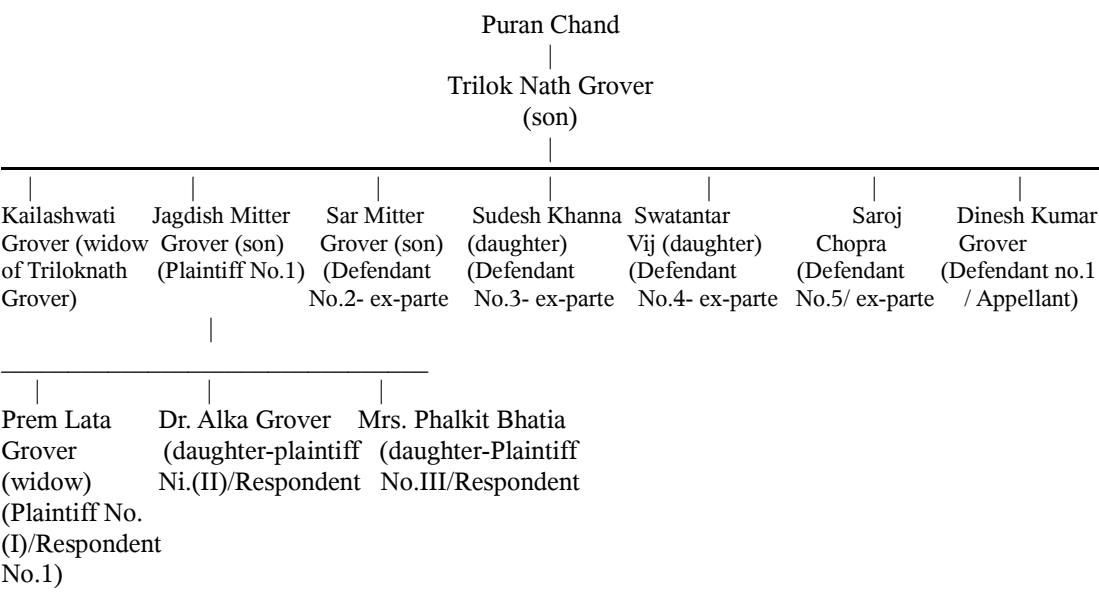
ANIL KSHETARPAL, J

1. The correctness of findings of fact arrived at by the courts below is being challenged by defendant no.1 in this appeal. After having heard the learned counsel representing the parties, the following questions of law arise for adjudication:-

(a) Whether a Will, that establishes a life estate/ interest in favour of the testator's wife in the first instance and upon her demise bequeath the property absolutely in favour of the testator's son is enforceable and valid with respect to the testator's son?

(b) Whether the propounder of the Will is required to provide evidence that the testator was of sound mind and capable of making rational decisions at the time of execution of the Will, even in the absence of any allegations challenging the testator's mental state at that time?

2. In order to comprehend the relationship between the parties involved in the legal dispute, a family tree is created as follows:-



3. Sh.Jagdish Mitter Grover (the plaintiff) filed a suit for possession of 1/6th share in H.No.3050 Sector 19-D, Chandigarh with further declaration that he is entitled to 1/6th share in the immovable property left behind by late Sh.Trilok Nath Grover and his wife Kailash Wati Grover with rendition of accounts in respect of all movable properties including the cash, ornaments, bank deposits etc. left by them. The plaintiff’s claim here is based on the principles of natural succession whereas defendant no.1(appellant herein) claims the exclusive right over the properties on the basis of the registered will dated 11.12.1982 executed by the testator-Sh.Trilok Nath Grover. While filing the said suit the plaintiff has claimed that late Sh.Puran Chand was a businessman in the Mandi Bhaodeen Sodhra Pakistan having his own house, shops etc. In the year 1947, Late Sh.Puran Chand died in Pakistan. In year 1933 Late Sh.Trilok Nath Grover was married to Smt. Kailash Wati and she had no brother. Consequently, the property of her

father late Sh.Vaishno Dass was also inherited by her. After partition of both the countries, Sh.Trilok Nath Grover alongwith his family migrated to India and the rehabilitation Department in the year 1958 awarded the claim of the property left by late Sh.Trilok Nath Grover in Pakistan. Out of the compensation received from the Rehabilitation Department, Sh.Trilok Nath Grover bought 1 kanal residential plot no. 3050, Sector 19-D, Chandigarh. The plaintiff being the eldest child joined service with the State of Punjab and started contributing to the family income to meet the expenses of the large family apart from contributing towards the construction of the said house. Sh.Trilok Nath Grover died on 28.03.2001 after a prolonged illness whereas late Smt. Kailash Wati Grover died on 03.11.2005. Sh.Trilok Nath Grover was not competent to execute any Will as the property was ancestral property and therefore, the Will is not enforceable. He was also not competent to bequeath the property only in favour of defendant no.1. Smt. Kailash Wati Grover became the absolute owner of the property in view of the provisions of Section 14 of the Indian Succession Act, 1956, and after becoming the absolute owner, died intestate. The alleged Will was obtained by the defendant no.1 by exercising undue influence, misrepresentation and fraud and the Will was not the result of free consent.

4. Defendant no.1 while contesting the suit submitted that Late Sh. Puran Chand did not leave behind any property and Sh. Trilok Nath who was in service, purchased the property in question. It has been projected that late Sh. Trilok Nath Grover obtained his diploma in Engineering from Rasool, Pakistan and being a topper in the studies

joined the Punjab Irrigation Department as Officer in joint Punjab before partition of the countries. Late Sh. Trilok Nath Grover was married in 1933 and the plaintiff was born in 1936. It was also disputed that late Sh. Vaishno Dass had any property, which may have been inherited by Smt. Kailash Wati Grover. The plaintiff joined the service in the year 1960-61 and got married in the year 1963 and thereafter, he separated from the family in the year 1963 itself and starting staying in a Government accommodation in Sector 7, Chandigarh. After his retirement, he has built his own house No.3060 Phase VII, Mohali. Sh. Trilok Nath Grover exclusively constructed the house under the supervision of late Smt. Kailash Wati Grover. Sh. Trilok Nath Grover during his lifetime executed a registered Will by virtue of which defendant no.1 became the exclusive owner of the property.

5. The remaining defendants did not contest the suit.
6. The trial court framed the following issues for adjudication:-

“I. Whether the plaintiff is entitled to the decree for possession of 1/6th share in House No.3050, Sector 19-D, Chandigarh by way of partition by metes and bounds? OPP.

II. Whether plaintiff is entitled to decree for declaration as prayed for? OPP.

III. Whether plaintiff is entitled to decree for rendition of accounts as prayed for? OPP.

IV. Whether suit is not properly valued for the purpose of court fee? OPD

IVA. Whether the Will dated 11.11.1982 executed by Trilok Nath is valid or not? OPD. (additional issue added vide order date 4.3.2014)

V. Whether the suit is not maintainable in the present form? OPD.

VI. Whether the plaintiff has no locus standi to file the present suit? OPD.

VII. Relief.”

7. The plaintiff in order to prove the case examined herself as PW1 Smt. Premlata Grover widow of Sh.Jagdish Mitter Grover, PW2-Vinit Syal, Junior Assistant from the office of Estate Office, Chandigarh, PW3- Surjit Singh, Clerk, Haryana State Cooperative Apex Bank Limited, PW4-Mohan Lal, Officer, Punjab National Bank. Documentary evidence was also produced by them in support of their claim.

8. On the other hand, defendant no.1 examined himself as DW1, DW2-V.N.Sachdeva, Advocate, District Court, who is a scribe and the attesting witness of the Will, DW3-Vineet Syal, Junior Assistant, Estate Office, Chandigarh, DW4-Sh.O.S.Khanna, attesting Will of the alleged Will, DW5-Sh.V.P.Sood, who was a tenant in the house in question, DW6, Pawan Shah, Clerk, Punjab National Bank, DW7-Ravinder Singh, Registry Clerk, office of Sub-Registrar, Chandigarh deposed on behalf of the defendant. Defendant no.1 also produced the documentary evidence.

9. The trial court found the Will to be invalid and unenforceable on the following premise:-

i) no specific reason was assigned in the Will for the exclusion of the other heirs.

ii) Late Smt. Kailashwati Grover was not aware about the alleged Will while swearing affidavits submitted to the Bank in December, 2001.

iii) the attesting witnesses were not known to the testator-Late Sh.Trilok Nath Grover.

iv) No deposition as to the sound and rational mind of the testator in the testimony of the defendant's witnesses has been made.

10. On a careful study of the judgment passed by the First Appellate Court, it becomes evident that the First Appellate Court has given following two additional reasons for discarding the Will as invalid and unenforceable:-

i) Though Sh. O.S.Khanna was an old friend of the beneficiary but he was not a frequent visitor to the house of the testator. In such circumstances, it has been doubted as to why the testator called him though he had sufficient acquaintance in the area.

ii) The Will was executed and presented for registration on 11.11.1982 but registered only on 17.11.1982.

11. The First Appellate Court has relied upon the judgment passed by the Full Bench of Gujarat High Court in **Shantil Babubhai and others Vs. Bal Channi and others 1973 AIR (Guj) 146** to hold that the subsequent residuary bequeath in favour of subsequent donee is not valid. This Court has carefully read the aforesaid judgment. In para 1 of the aforesaid judgment itself, the question which arose for consideration is about the nature and quality of interest created under the Will to Smt. Laxmi the widow of Sh.Zaverbhai. The Full Bench after noticing that the decisions of the Courts can be broadly divided into three categories held that the nature and quality of interest created under the Will was absolute in favour of Smt. Laxmi the widow. The first category

as noticed by the Court was with respect to cases where testator granted as absolute interest to the first donee expressly and in so many terms and then attempted to give residue of the property (i.e the remaining property) at the death of first donee to the subsequent donee absolutely. The courts have held that the subsequent disposition of the residue of the property in favour of subsequent donee is repugnant to the absolute interest granted to the first donee and hence, the same was void. The second category was with respect to the interests which comprised cases where it is not clear from the language used by the testator, whether the interest granted to the first donee is the absolute interest or a limited interest. In such circumstances, the courts have been taking a view that the grant in favour of the first donee should be no more than a limited interest. The decisions did not hold that in second category the bequest in favour of the subsequent donee is illegal. The third category of decisions consisted of those where interest created to the first donee is clearly and manifestly a life interest and the court held that such course is permissible in law. In the particular facts of the case, the Full Bench held that the bequest created in favour of Smt. Laxmi was absolute and hence, the subsequent bequest of residuary property left behind, after the death of first donee being repugnant is not enforceable. It may be noted here that during the lifetime Smt.Laxmi the widow of Sh.Zaverbhai made a Will as well as gift in favour of Chhani. It was in that context the dispute arose.

12. The Appellate Court has also relied upon the judgment passed by this Court in **Gurdev Singh Vs. Bhajan Singh 2013 (2) CCC**

89. While dismissing the appeal in limine the Court upheld the findings of the court below with regard to the applicability of Section 14 (2) of the Hindu Succession Act, 1956.

13. Heard the learned counsel representing the parties at length and with their able assistance perused the judgments passed by the courts below alongwith the requisitioned trial court record and written notes of submissions submitted by the learned counsel representing the parties.

14. While reiterating his oral submissions, the learned counsel representing the appellant in his written note has submitted as under:-

“I) **Exclusion of other legal heirs of Triloknath Grover:**

The learned trial Court has relied heavily on the exclusion of the other legal heirs of Triloknath Grover. It is pertinent to note that out of 6 siblings only one-Jagdish Mitter Grover had filed the suit arraying Dinesh Grover as defendant No.1 and the other siblings as defendant Nos, 2 to 5. However, none of the other defendants appeared or challenge the Will, and were therefore proceeded ex parte. In fact, Sarv Mitter Grover, who was settled in the USA, vide Letter (Exhibit D-4) dated 17.03.2006 had stated that before executing the Will in 1982 their father had consulted him, expressing his desire to bequeath the entire property to Dinesh Grover. The three daughters were married and well-settled in their families and the plaintiff and his wife did not look after the testator and his wife. The appellant/defendant No.1-Dinesh Grover, had in fact even after being settled in Ludhiana in the year 1974 had been visiting Chandigarh every week with his family to look after his parents. Out of this love and affection the testator had executed the Will dated 11.11.1982 leaving a life estate in favour of his wife and thereafter the said estate to be inherited by Dinesh Grover. A perusal of the Will, if read in holistic manner would reflect the clear intention of the testator to pass on his estate to Dinesh Grover. Dinesh Grover in the Will is also described to be

residing with his parents at House No.3050 Sector 19D, Chandigarh.

*It is also submitted that the law with respect to exclusion of other LRs is well-settled. This Hon'ble Court in **2022(4) RCR (Civil) 665 Mohinder Singh Vs. Charan Singhand 2018 (5) R.C.R (Civil) 799 Bant Singh and another VS Didar Singh and others** has held that the exclusion of a legal heir by itself, is not sufficient to discard a Will. The testamentary disposition is a solemn document and the Courts must exercise restraint to interfere with such a document unless the said document is surrounded with suspicious circumstances. Similar, view has been taken by this Hon'ble Court in **2014(5) RCR (Civil) 829 Mukhtiar Singh Vs. Randhir Singh**. The Hon'ble Supreme Court also in **(2014) 15 SCC 578 Ved Mitra Verma Vs. Dharam Deo Verma** has also held that exclusion of other legal heirs by the testator for the sole benefit of one, by itself is not a suspicious circumstance. Similar view has been taken by this Hon'ble Court also in **Amrik Singh Vs. Charan Singh (Doc Id# 2126086)** wherein it was held by this Hon'ble Court that the purpose of executing a will is to deviate from natural line of succession.*

In view of the above, the findings of the Court below, with respect to the Will being surrounded with suspicious circumstances as other LRs have been excluded, deserves to be set aside in the suit or to be dismissed, as it has come on record that Dinesh Grover was visiting his parents at Chandigarh to take care of them and this is further corroborated by the fact that Kailashwati after her husband's death also resided with Dinesh Grover at Ludhiana

It is submitted that Triloknath Grover passed away at PGI, Chandigarh on 28.03.2001 (Exhibit D-2) and thereafter Kailashwati Grover passed away on 03.11.2005 at Ludhiana (Exhibit D-2) where she was residing with Dinesh Grover (defendant No.1). A certificate issued by the Punjab National Bank, Sector 22, Chandigarh on 07.06 2006 (Exhibit D-5) also certifies Triloknath Grover, Kailashwati

Grover and Dinesh Grover to be holding a locker No 182 since 31.12.1996 with PNB.

11) Kailashwati Grover was not aware about the alleged Will:-

The learned Courts below have also relied heavily on Exhibit PW-4/1 and Exhibit PW- 4/2, being affidavits signed by Kailashwati and submitted to the Bank for release of amounts in the joint saving accounts of her husband. Exhibit PW-4/1 is dated 07.02.2002 which is less than year after her husband's death on 28.03.2002 and Exhibit PW-4/2 is dated December, 2001 which is again less than 7 months after her husband's death wherein the plaintiff has identified the signatures of Kailashwati. The Courts below have failed to appreciate the natural maternal instincts and sentiments of a widow aged 86 years of age who had just loss her husband less than a year back. No mother would want to see her children live with disputes amongst each other. The present litigation is an affirmation to that fear, which got initiated post the death of the parents. At that time and stage Kailashwati Grover out of motherly affections may not have mentioned the existence of the Will dated 11.11.1982 in favour of the youngest son to the exclusion of the other LRs. Under the circumstances, the said non-disclosure cannot be stated to be a suspicious circumstance. Further Exhibit PW-4/2 is only signed by Kailashwati Grover and attested by Jagdish Mitter Grover (plaintiff). It is also quite possible, that since Kailashwati was an uneducated lady who was born around the year 1915-16 and was married at a young age (as per Passport Exhibit PW-3/9), the eldest child plaintiff Jagdish Mitter Grover was born on 20.03.1936, In the pre-partition, pre-independence times it was not common for women to be educated/literate. Thus, the affidavits executed in English were only signed by the mother for withdrawing the amounts exclusively in her name, which she was otherwise entitle to as per the Will of her husband. It is also submitted that the said evidences relied by courts below are beyond pleadings as the plaint is silent on the aspects of execution of these affidavits and letters and it is settled law the evidence beyond pleadings cannot be considered.

III) No pleadings as to the sound disposing mind of the testator in the testimony of the witness:-

As per the suit and the (amended plaint) the plaintiff has challenged the Will dated 11.11.1982 only on the following grounds that the suit property was an ancestral property in the hands of Triloknath Grover and he had no right to bequeath the same through Will as the property was purchased by Triloknath Grover from the compensation received by him in lieu of the property left by Puran Chand, the grand-father of the plaintiff and father of Triloknath Grover in Pakistan. It is submitted that there is no evidence on record that Triloknath Grover received any compensation. The only evidence on record as Exhibit-P7, whereby Triloknath Grover has written to the Estate Office, Capital Project, Chandigarh, whereby an amount of Rs.3,000/- on account of price of the plot was paid from the compensation payable to the father-in-law of Triloknath-Sh. Vashno Dass. Even otherwise the adjustment of compensation received by the father-in-law of Triloknath Grover would not make the suit property as an ancestral in nature.

Moreover, the plaintiff has not challenged the signatures of Triloknath on the Will nor has he stated that the Triloknath Grover was not of sound disposing mind while executing the Will. PW1- Prem Lata in her cross-examination admits the signatures of her father-in-law. Rather, it is the pleaded case of the plaintiffs that the Will has been executed in favour of defendant No.1 on account of undue influence, misrepresentation and fraud. The requirements of Order 6 Rule 4 CPC are not fulfilled as there are no specific pleadings regarding the same. Also, the onus to prove averments made in the plaint has to be discharged under section 101 of Indian Evidence Act. The onus to prove undue influence, misrepresentation, and fraud, as per law was upon the plaintiff once the Will has been proved in view of the Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act. Once the said requirements are met, the propounder of the Will has discharged its onus of proving the execution of the Will. The appellant herein

was not involved in the execution of the will, as he was at Ludhiana during the execution of the Will. Triloknath Grover not being in a sound disposing mind was not even pleaded by the plaintiffs and therefore, there was no occasion for the defendant to respond to the same in his written statement.

*However, DW-4 OS Khanna in his cross-examination has specifically stated that Mr. Triloknath Grover was keeping good health at the time of the execution of the Will and Mr. Triloknath Grover had come to his house a day before for the execution of the Will. Thus, the findings of the Courts below on facts as well as in law is unsustainable as the attesting witnesses had specifically stated with respect to the health and disposing mind of the testator. Moreover, in the cross-examination of DW-2 VN Sachdeva there is no suggestion put to the said witness as regards the sound disposing mind of the testator however, this witness has stated that the Will was typed at the directions of Triloknath Grover and the same was read out to him in the presence of the other attesting witness OS Khanna. It is also pertinent to mention that the witnesses have been examined almost 30 years after the execution of the Will The Hon'ble Supreme Court in **Sri Devi VS Jaya Raja Shetty (2005) 2 SCC 784** has held that in case the person contesting the Will alleges undue influence, fraud or coercion, the onus will be on him to prove the same. The Plaintiff have failed to discharge this Onus by leading any cogent evidence with regard to fraud, misrepresentation or undue-influence.*

IV) The attesting witness were not known to the testator:-

The learned Appellate Court has held that the first attesting witness DW-1VN. Sachdeva (also scribe) was not known to the testator. It is submitted that it is not necessary that all the witnesses should be known to the testator. The other witness DW4-OS Khanna was known to the testator and it has come on record that the testator visited the house of OS Khanna a day before the execution of the Will. It has also come on record that OS Khanna was a college friend of Dinesh Grover and he has visited the house of Dinesh Grover many times. The lengthy cross- examination by the

plaintiff could not impeach the credibility of this witness. Even otherwise the first witness VN Sachdeva was an Advocate and the testator visited his office for drafting of the Will as people have faith in legal practitioners in the matters of Wills and thus VN Sachdeva not knowing the testator before is not a suspicious circumstance, even otherwise the execution of the Will stands fully proved by the testimonies of the attesting witnesses who have deposed consistently even after 30 years of the execution of the Will. Therefore, the findings of the learned Courts below are based upon conjectures as there is nothing on record to suggest that the Will was surrounded by suspicious circumstances and further, this fact is further corroborated by the other children of Triloknath Grover who did not choose to challenge the Will dated 11.11.1982. This Hon'ble Court in 2015 (48) R.C.R (Civil) 916 in Ashok Kumar (deceased) through LR VS Devi Rani and others has held that it is not necessary that testator of Will should be personally known to the witness.

The relevant portion of oral evidences of the attesting witnesses is as under :-

i. ***DW2-VN Sachdeva, Advocate District Court, Sector 17, Chandigarh*** has specifically stated that Triloknath Grover was accompanied with OS Khanna and had approached VN Sachdeva for execution of Will. He has also stated that the same was typed by Vinayak Typist and record beyond 7 to 10 years is destroyed by his office. The Will was executed on 11.11.1982 and the suit was filed in the year 2006 after the death of Triloknath Grover in 2001 and Kailashwati Grover in 2005, almost after a period of 20 years from the execution of the Will. VN Sachdeva had obtained signatures of OS Khanna after checking his ID Card and had specifically stated that Triloknath Grover and OS Khanna were known to each other. He has also stated that the Will has been prepared according to his direction. He has further stated that after typing the same the testator-Triloknath Grover, OS Khanna-attesting witness and himself appeared before the Sub-Registrar, Chandigarh for registration. Endorsement for registration at the back of the Will was also typed by him and was signed by Triloknath Grover in the presence of the witnesses.

ii. **DW4- OS Khanna /attesting witness** has also been cross-examined at length. He has stated consistently that he has known Triloknath Grover since 1973-74, when Dinesh Grover and he was studying in Roorkee University. He has also stated that Dinesh Grover was a close friend and he had accompanied Dinesh Grover to Triloknath Grover's house a couple of times. He has also stated that a day before the execution of the Will the Triloknath Grover had approached him at his house Sector 15 and thereafter on 11.11.1982 he had accompanied Triloknath Grover to the District Court Sector 17, Chandigarh by having the same scribed. He has also specifically stated that Triloknath Grover keeping good health at the time of execution of the Will. The said fact is evident that the testator lives for almost 20 years after the execution of the Will and never in his lifetime executed any other testament. He has also denied the suggestion that the Will was not presented for registration on 11.11.1982.

iii. **DW5-VP Sood, tenant in House No.3050 Sector 19 First Floor** has also been examined. He has stated that he has been a tenant since 2000 and had been paying rent to Triloknath Grover, he has also stated that Jagdish Mitter used to visit Triloknath Grover after 2-3 months however his wife did not come along every time. She was seen only 2-3 times in the period of 12 years. He has also stated that after the death of Triloknath Grover he had offered rent to Kailashwati Grover but she said that the same be paid to Dinesh Grover. After the death of Triloknath Grover, the possession of the house was taken by Dinesh Grover as Kailashwati accompanied Dinesh Grover to Ludhiana.

ADDITIONAL ARGUMENTS ON THE BEHALF OF APPELLANT

1. The Plaintiff failed to comply with Order 6 Rule 4 CPC as there are no specific pleadings as to undue-influence, misrepresentation, and fraud. Further, the Plaintiff failed to discharge the onus of proof as mandated by Section 101 Indian Evidence Act. The Ld. Courts erred in law by considering the Will to be surrounded with suspicious circumstances, in the absence of specific pleadings as to fraud, undue influence or misrepresentation.

The signatures of the testator or his sound disposing mind is not challenged by the Plaintiff.

2. *The bare perusal of the relief clause of the amended plaint shows that No declaration is sought qua the Registered Will dated 11.11.1982 and The Ld. Courts erred in law by not considering this aspect.*

3. *There is no specific pleading regarding the discovery of the Will by the Plaintiff, as to how and when they discovered the Registered Will. No challenge was made to the registered will for around 30-years and neither the Testator changed his Will during these years.*

4. *The exclusion of other legal heirs is established from the surrounding facts and circumstances, ie, PW-1 admitted living at Mohali and she also admitted that her parents-in-law never stayed with them. Therefore, Dinesh Grover was the only one taking care of his parents among other siblings.*

5. *It is established on record that Dinesh Grover was in possession of the suit property and the Plaintiff stayed in Mohali. Therefore, proper court fee should have been affixed in a suit claiming possession.*

6. *The Ld. Lower Appellate did not return any issue wise findings as mandated by law. In view of the above, the present Appeal deserves to be allowed and the suit of the Plaintiff/Respondents deserves to be dismissed.”*

15. On the other hand, learned counsel representing the respondents has filed a synopsis while reiterating the oral arguments.

The relevant extract of the aforesaid written arguments is as under:

“The Ld. Trial court observed that both the witnesses DW2 Sh.V.N.Sachdeva and DW4 O.S.Khanna have not deposed that the executant Late Sh.Triloki Nath Grover had full disposing and sound mind so as to fulfill the provisions of Section 59 of the Indian Succession Act. Furthermore, the Ld. Trial Court held that DW2 Sh.V.N.Sachdeva has admitted that he was not know to Sh.Triloki Nath Grover before

the date of the Will I.e 11.11.1982 and also did not come forward to state the name of the typist to who typed the Will. The Ld. Court also held that the second witness DW4 O.S.Khanna has also stated in his cross examination that he does not know how many sons and daughters deceased Sh.Triloki Nath Grover had been survived by, and who resided with Sh.Triloki Nath Grover till his death. The said witness further admitted that he defendant no.1/appellant herein was residing at Ludhiana during the lifetime of Sh.Triloki Nath Grover. Furthermore, the Ld. Trial Court also held that the registration of the Will is only a presumption but the will is still required to be proved as per section 68 of the Evidence Act and as such the Ld. Trial Court held that the alleged Will dated 11.11.1982 is suffering from various suspicious circumstances more so that even Smt. Kailashwati Grover was not aware of the alleged Will, and that both the attesting witnesses are not known to the testator deceased Sh. Triloki Nath Grover and that there is no pleading of sound and disposing mind of the testator in the testimony of any of the defence witnesses and no reason has been assigned in the alleged Will to exclude the other legal heirs as such held the will is not to be proved on the basis of preponderance and probability.

That the Ld. First Appellate Court vide judgement and Decree dated 02.08.2017, upheld the Judgment and Decree of the Ld. Trial Court holding that neither of the witness deposed about the sound disposing mind of the testator Sh. Triloki Nath Grover which is in an essential requirement of proof of the Will and further held that DW 4 Sh. O.S. Khanna is none else, but an old friend of beneficiary (Dinesh Grover appellant herein) and the said witness was also not a frequent visitor to the house of the testator and further held that the scribe and the attesting witness DW 2 V.N. Sachdeva was also not known to the testator prior to the date of the Will and that it is a common knowledge in case the execution of the Will the testator always seeks the help of known and trusted persons. Reliance was placed on the case titled Ashok Kumar and others v/s Pardeep Kumar and others 2016(3) RCR Civil 263. It also weighed in

the mind of the Id. First Appellate Court that it was strange that the testator called Os Khanna who was not even a frequent visitor to attest the Will when the testator had sufficient acquaintance in the area. It also weighed in the mind of the Ld Court that the widow of Sh. Triloki Nath Grover, namely Smt. Kailashwati Grover was not even aware of the Will and that the appellant had also filed documents stating that the deceased left no will, furthermore, the Will is stated to be executed and registered on the same day i.e. 11.11.1982 but the evidence on record shows that the Will has been registered on 17.11.1982. Be that as it may, the Ld. First Appellate court upheld the findings of the Ld. Trial Court holding that the Will is surrounded by suspicious circumstances which the propounder of the Will failed to dispel. Reliance was placed on the case titled Meera and another v/s Harcare 1989(1) RLR 145.

Lastly the Ld. First Appellate court also held that perusal of the Will shows that the testator has given the property absolutely to his wife Smt. Kailanhwati Grover, and that any attempt to give the property to the appellant beneficiary after the death of Smt. Kailashwati Grover would be repugnant to the absolute interest granted to Smt. Kailashwati Grover and as such the subsequent disposition to the appellant is void being repugnant to the absolute estate granted to Smt. Kailashwati Grover. Reliance was placed on the case titled Shantilal Babubhai and others v/s Bal Channi and others 1973 AIR (Gujrat) 146 Full Bench

The Ld. First Appellate Court further held that in case two clauses of the gift in the Will are reconcilable and cannot stand together hence the last clause Will prevail where again Smt. Kailashwati Grover was declared to be the sole beneficiary and Legatee and appointed and constituted as the sole executrix of the will. Reliance was placed on the case titled Gurdev Singh v/s Bhajan Singh 2013 (2) CCC 89.”

Discussion:-

16. In this case the interpretation of the registered Will dated 11.11.1982 is crucial, as it is the most important document. Due to its significance, it requires a close scrutiny. After the introduction and details of his property, the testator has made his bequest in the following manner:-

“WHEREAS I am making this Will in my full senses without any fraud, coercion, undue influence, inducement, threat, promise and external pressure from anybody and out of sweet love, natural & free love, as I am 71 years old and God knows when my mortal body may collapse

I hereby leave, give and bequeath absolutely and for ever my moveable and immoveable property to Shrimati Kailash Wati Grover wife of Sh.Trilok Nath Grover, resident of H.No.3050, Sector 19-D, Chandigarh for her use and benefits absolutely for ever which subsists and standing in my name.

As Smt. Kailash Wati Grover is about 66 years old and after her death, the whole property I.e immoveable and moveable as described above will go in favour of my son Dinesh Grover aged 31 years, resident of H.No.3050, Sector 19-D, Chandigarh.

Accordingly I declare Shrimati Kailash Wati Grover as my sole beneficiary and legatee of my this Will and I hereby appoint and constitute my sole executrix of this Will.

In witness whereof I have hereunto set and subscribed my hand and signatures on this 11th day of November, 1982 at Chandigarh in the presence of witnesses who have also subscribed their respective signatures as attesting witnesses.

*Sd/-
EXECUTANT”*

17. Endorsement made on the Will by the Sub-Registrar, Chandigarh, at the time of registration, reads as under:-

“This deed of Will is presented before me by Shri Trilok Nath Grover, aged about 71 years, resident of kothi No.3050, Sector 19-D, Chandigarh, occupation Retired Executive Engineer, on this 11th

day of November, 1982 between hours 3 to 4 for registration in the office of Sub-Registrar, Chandigarh.

Sd/-
PRESENTOR

Sd/-
SUB REGISTRAR CHANDIGARH

The Executor of this Will Sh. Trilok Nath Grover admits its due execution and contents therein to be true and correct. The executant is identified to my satisfaction by
V.N.Sachdeva, Advocate
Sh.O.S.Khanna 3301/15-D, Chandigarh

Both the witnesses are known to each other and the first witness is personally known to me.

Sd/-
EXECUTANT

Sd/-
SUB REGISTRAR CHANDIGARH

Witness No.1 Sd/-
V.N.Sachdeva, Advocate
District Courts,
Chandigarh

Witness No.2 Sd/-
O.S.Khanna
S/o SH. S.R.Khanna
3301, Sector 15-D,
Chandigarh”

18. Sh.V.N.Sachdeva, Advocate was not only the scribe of the Will but was also the attesting witness to the Will. The second attesting witness of the Will is Sh.O.S.Khanna. Both of them have appeared to prove the Will in support of defendant no.1- the appellant. It is also evident from the endorsement note that the Will was presented for registration before the Sub-Registrar, Chandigarh on 11.11.1982 between 3 to 4 hours. Late Sh.Trilok Nath Grover signed the endorsement at the time of presentation of the Will for registration as well as at the time of registration. Both the attesting witnesses have also signed the Will not

only at the time of execution but also at the time of registration. At this stage, it is important to clarify that after copying the extract of the Will, the certificate of registration was issued on 17.11.1982 under the signatures of the Sub-Registrar.

19. Now at the first stage the Bench proceeds to analyze the reasons recorded by the learned trial court. The first reason which has been heavily relied upon by the trial court is the exclusion of other heirs of late Sh.Trilok Nath Grover. From a perusal of the family tree, it is evident that late Sh.Trilok Nath Grover left behind as many as seven class I heirs including his wife. Late Sh.Trilok Nath Grover took care of his wife while making a provision of life interest for her in the registered Will in dispute. He had left behind three married daughters. Though they were the parties but none of them chose to contest. He had left behind three sons including Dinesh Grover-appellant. Sh.Sarv Mitter Grover has also chosen not to contest the litigation. He is stated to have settled in USA. He vide letter dated 17.03.2006 stated that before executing the Will in 1982, his father consulted him while expressing his desire to bequeath the entire property to Sh. Dinesh Grover. Moreover, it has come in evidence that late Sh.Jagdish Mitter Grover-plaintiff separated from the family in 1963-64 and started living in a separate Govt. accommodation. On a careful reading of the Will, it is evident that the testator has made his intentions clear while making the Will. The Will has been made operative in two stages. At the first stage, the life interest in the property has been created in favour of his wife to the exclusion of every other class I heir. At the second stage, i.e after the

death of his wife (end of life interest), the property has been bequeathed absolutely in favour of the appellant-Dinesh Grover to the exclusion of the other Class I heirs. Section 63 of the Indian Succession Act, 1925 (hereinafter referred to as 'the 1925 Act') does not require the executant to explain the reasons for excluding the other class I heirs. The Will is a solemn document through which the testator expresses his wishes and desires as to how he wants to bequeath his property that he had acquired during his life time. Ordinarily, a Will is executed in order to change the normal course by which a property is inherited amongst the class I heirs. Hence, it will not be appropriate to look at every Will with the prism of suspicion unless a strong case is made out. It is not the case of the plaintiff that any of the Class I heirs was financially weak or required the support of their parents. Moreover, as already noticed, it is only the plaintiff-Jagdish Mitter who chose to contest. He was also well settled in life. Both husband and wife were working in the Government service and after their retirement they built their own house in Mohali. In these circumstances, the courts have erred in observing that the registered Will is required to be declared invalid and unenforceable as the reasons for exclusion of other Class I legal heirs have not been explained by the plaintiff.

20. In **Ved Mitra Verma vs. Dharam Deo Verma (2014) 15 SCC 578** the Supreme Court held that exclusion of other legal heirs by the testator for the sole benefit of the one, by itself is not a suspicious circumstance.

21. The second reason assigned by the courts below is based upon Ex.DW4/1, a form submitted to the Bank to claim the amount left behind by late Sh.Trilok Nath Grover. The Will is a registered Will and Smt.Kailashwati Grover may not be knowing about the Will in question. Moreover, there has been no declaration by her that late Sh.Trilok Nath Grover has not left behind any testamentary disposition. In the considered opinion of the Court, non-disclosure of the Will in the form submitted in the Bank is only for the purpose of withdrawing the amount, which was exclusively in her name and such non-disclosure would not result in causing loss to someone. Even as per the Will, she was entitled to withdraw that particular amount. In these circumstances, it would not be appropriate to discard the Will solely on the ground of non-disclosure of Will in a Bank form solely meant for withdrawing the amount.

22. The next reason assigned by the trial court is with regard to the failure of the attesting witness to depose about the sound and rational disposing mind of the testator. In this regard, it is significant to mention here that a detailed plaint was filed by the plaintiff. He doubted the correctness of the Will by making detailed assertions. It is not the case of the plaintiff that late Sh.Trilok Nath Grover was not having sound disposing mind. The plaintiff never laid the base for such ground. When Smt. Prem Grover appeared in evidence on behalf of the plaintiff she also did not allege that late Sh.Trilok Nath Grover was not of sound disposing mind at the time of the execution of the Will. There was no suggestion to the attesting witnesses in this regard by the learned counsel

representing the plaintiff. Moreover, on a careful perusal of Section 63 of the 1925 Act and Section 68, 69, 70 of the Indian Evidence Act, 1872, it is evident that the statutory law does not require the attesting witnesses to depose with regard to the sound disposing mind of the testator at the time of the execution of the Will. Once the plaintiff did not doubt the Will on the ground of lack of sound disposing mind of the testator, in the plaint, it was inappropriate for the trial court to make out a new case for the plaintiff. Moreover, DW4-O.S.Khanna has specifically stated that late Sh.Trilok Nath Grover was keeping good health at the time of execution of the Will and he had come to his house a day before for the execution of the Will. The second attesting witness-Sh.V.N.Sachdeva was also not given any suggestion by the learned counsel representing the plaintiff that late Sh.Trilok Nath Grover was not of sound disposing mind. In **Sri Devi and others vs. Jayaraja Shetty and others (2005) 2 SCC 784** the Supreme Court held that a person contesting the Will on the ground of undue influence, fraud or coercion is required to prove the same. In these circumstances, the courts below were not justified in discarding the Will on this count, which has not even been disputed by plaintiff in his plaint and examination of witnesses.

23. The next reason assigned by the Court is in fact the result of misreading of evidence. Sh.O.S.Khanna has specifically stated that he knew the testator Sh. Trilok Nath Grover since 1973-74. While explaining he stated that Dinesh Grover had studied with him in Roorkee University. In such circumstances, as to why the testator selected him for being attesting witness of the Will can only be known to the testator.

The court is not required to go into it. Once Sh.O.S.Khanna successfully explained that he personally knew the testator from the last 8-9 years before the execution of the Will, the court was not required to enter into the field of conjectures and surmises. Sh.O.S.Khanna has stated that the testator came to his house, a day prior to the execution of the Will in order to request him to be a witness to the Will. Learned First Appellate Court has also erred in observing that the Will was registered only on 17.11.1982. First of all, when the official from the office of Sub Registrar appeared in evidence, learned counsel representing the appellant did not ask for any clarification. Secondly, it is evident that the testator accompanied by both the attesting witnesses represented the Will for registration on the same day between 3 to 4 pm. The endorsement of the Sub Registrar on the reverse side of the first page of the Will proves this particular fact. The Sub-Registrar signed the registration of the Will on 11.11.1982. The First Appellate Court referred to a certificate of registration which is appended on the reverse side of the second page. This certificate is with regard to entry of the Will at Sr.No.979, book no.3, vol.178 at page 137 to 141. Thus, the certificate is only with respect to the fact that the Will has been entered in the books maintained by the Registrar. The First Appellate Court has erred in assuming that the Will was registered on 17.11.1982. Moreover, on a careful reading of the deposition of the official from the office of the Sub Registrar namely Ravinder Singh DW7, it is evident that in the official records brought by him in Court, the hand written contents of the Will are entered in the books of the office of the Sub Registrar, which is signed by the Sub

Registrar. It is not the case of the plaintiff that the contents of the Will entered in the books of the Registrar was not a normal practice. Moreover, the courts have erred in misreading the endorsement of the Sub-Registrar on the registered Will. The Sub-Registrar has noted that both the witnesses have known each other and the first witness Sh.V.N.Sachdeva, Advocate is also an acquaintance. Thus, obviously the Sub-Registrar is referring to the fact that Sh.V.N.Sachdeva is known to him. The Sub-Registrar has never stated that Sh.V.N.Sachdeva is known to the testator. Whereas the courts have held that such statement in the Will is incorrect. There is a clear misreading of the Will. As far as second witness is concerned, Sh.V.N.Sachdeva, Advocate was a professional. His services were engaged by the testator to execute the Will. He was also requested to append the signatures as attesting witness besides drafting the Will. It is not the requirement of law that both the attesting witnesses must be personally acquainted with the testator. The attesting witnesses are required to attest the Will in order to certify that the testator has either signed or marked the Will in their presence or they have received a personal acknowledgment from the testator about his signatures or mark. In view of the aforesaid discussion, the findings of the courts are based upon conjectures and surmises as there is no evidence on record to suggest that the Will is surrounded by the suspicious circumstances.

24. In this case, if we carefully examine the contents of the Will, it is evident that the first clause gives an impression that the testator created an absolute interest in the favour of his wife. For proper

interpretation of the Will, the relevant Sections of the 1925 Act, are extracted as under for clarity:-

“82. Meaning or clause to be collected from entire Will.—The meaning of any clause in a Will is to be collected from the entire instrument, and all its parts are to be construed with reference to each other.

83. xxxxx

84. xxxxx

85. No part rejected, if it can be reasonably construed.—No part of a Will shall be rejected as destitute of meaning if it is possible to put a reasonable construction upon it.

86. xxxx

87. Testator’s intention to be effectuated as far as possible.—The intention of the testator shall not be set aside because it cannot take effect to the full extent, but effect is to be given to it as far as possible.

88. The last of two inconsistent clauses prevails.—Where two clauses of gifts in a will are irreconcilable, so that they cannot possibly stand together, the last shall prevail.”

25. From a careful reading of various provisions contained in Chapter VI with respect to the constructions of the Will of the Indian Succession Act, 1925, it is evident that each clause of the Will is required to be read and the meaning of the clause is to be interpreted from reading of the entire Will. Section 82 of the 1925 Act provides that the meaning of any clause in a Will is to be collected from the entire instrument or its part must be construed with reference to each other. Section 85 of the 1925 Act provides that no part of a Will shall be rejected as having no clear meaning if it is possible to put a reasonable construction by linking it to the entire Will. Section 87 of the 1925 Act mandates that the intention of the testator shall not be set aside only because it cannot take

effect to the full extent. Section 87 of the 1925 Act mandates that testator's intention is to be effectuated as far as possible. Section 88 of the 1925 Act provides that where two clauses of gifts in Will are irreconcilable, the last clause shall prevail. Thus, the entire intention of the statute is to provide for the harmonious construction of a Will in order to give effect to the testator's intention.

26. Though on a perusal, the first clause gives an impression that the first bequest in favour of Smt. Kailashwati Grover was absolute, however, once we read the second clause, it becomes evident that the testator intended to bequeath a limited life interest to Smt. Kailashwati Grover. Moreover, during her lifetime, Smt. Kailashwati Grover never claimed that she was the absolute owner of the property. She died intestate without disturbing the wishes of her late husband. Even if it is construed that clause 1 and 2 of the Will are totally irreconcilable, still as per Section 88 of the 1925 Act the last of the two irreconcilable provisions will prevail. In **Jogi Ram vs. Suresh Kumar and others (2022) 4 SCC 274** the Supreme Court held that the limited estate created by a Will in favour of a wife will not enlarge/expand into absolute ownership in view of Section 14(1) of Hindu Succession Act, 1956. Moreover, it may be noted that it is not the case of the plaintiff that Smt. Kailashwati Grover bequeathed the property in lieu of her right to maintenance. No evidence to this effect has been led by the plaintiff.

27. It may be noted here that in various judgments passed by the Supreme Court such clauses have been interpreted in the similar manner. Reliance in this regard can be placed on **Sadhu Singh vs.**

Gurdwara Sahib Narike and others 2006 (8) SCC 75, Sharad Subramanyan vs. Soumi Mazumdar and others 2006 (8) SCC 91, Kaivelikkal Ambunhi vs. H. Ganesh Bhandary 1995 (5) SCC 444 and Bhura and others vs. Kashi Ram 1994 (2) SCC 111.

28. This Court has also examined the written synopsis filed by the learned counsel representing the plaintiff. First of all learned counsel has referred to Section 59 of the 1925 Act, which provides that every person of a sound mind, not being a minor is entitled to dispose of his property by the way of making a Will. As already noticed, it is not the case of the plaintiff either in the pleadings or in the evidence that the testator was not of sound disposing mind. As per the Will, the testator was 71 years old. Thereafter, he continued to live nearly 8 and half years after the execution of the Will. Section 59 of the 1925 Act does not provide that even in the absence of any allegation, on the part of the party, who was questioning the correctness of the Will, the propounder is bound to prove that the testator was of sound disposing mind at the time of execution of the Will. In fact, a Will is required to be proved in accordance Sections 68, 69, 70 and 71 of the Indian Evidence Act, 1872. The Will is also required to be proved to have been executed in accordance with Section 63 of the 1925 Act. Hence, both the provisions do not mandate that the propounder is required to prove the sound disposing mind of the testator even if there is no allegation by the other side.

29. The next argument put forth by the learned counsel is with regard to the fact that once an absolute bequest was made in favour of

Smt. Kailashwati Grover, the subsequent clause bequeathing the property in favour of Sh. Dinesh Grover being repugnant of the first one is not enforceable. In this respect, it may be noted that Chapter VI of the 1925 Act itself provides that efforts should be made not to reject any part of the Will unless harmonious construction thereof is not possible and the testator's intention must be effectuated. Moreover, Section 87 of the 1925 Act provides that efforts must be made to effectuate testator's intention as far as possible. In case of any repugnancy which is irreconcilable arising between the last two clauses, the latter clause will prevail as per Section 88 of the 1925 Act. Smt. Kailashwati Grover during her lifetime never claimed that the bequest is the absolute in her favour or she is absolute owner of the property, to defeat the rights of the subsequent legatee. By her conduct, Smt. Kailashwati Grover has accepted the fact that she has only been bestowed life interest in her favour in the property in dispute. In such circumstances, this case would fall in category 2 as noticed by the Full bench of Gujarat High Court in the case of **Shantil Babubhai's case(supra)**.

30. Learned counsel representing the plaintiff relies upon the judgment passed by the Supreme Court in **Mauleshwar Mani vs. Jadgish Prashad AIR 2002 (SC) 727**. This Court with greatest respect has read the judgment. In that case, the bequest was at the first instance made in favour of the second wife Sona Devi and the subsequent bequest was in favour of his daughters' sons from both the wives. The Supreme Court held that the first clause conferred the absolute estate and therefore, the subsequent bequest was not valid as Smt. Sona Devi was

also given a right of alienation. However, with great deference, the attention of the Hon'ble Supreme Court was not drawn to Section 88 of the 1925 Act. In the aforesaid judgment reliance has been placed on **Ramkishorilal and another vs. Kamal Narayan AIR 1963 (SC) 890**. In that judgment also unfortunately the attention of the Court was not drawn to Section 88 of the 1925 Act.

31. According to the opinion of this Court, there is no conflict between both the clauses that cannot be reconciled. However, in the alternative, even if it is construed that both the clauses cannot be reconciled, then as per Section 88 of the 1925 Act, the last of the two inconsistent clauses shall prevail. The last clause bequeaths life interest in favour of the wife and then a bequest in favour of the appellant. Moreover, in view of Section 87 of the 1925 Act, a harmonious construction of both the clauses is required by law.

32. Keeping in view the aforesaid facts and discussion, the conclusion is inevitable. While allowing the appeal, the judgments and decrees passed by both the courts are set aside. Resultantly, the plaintiff's suit shall stand dismissed.

33. All the pending miscellaneous applications, if any, are also disposed of.

18.07.2023

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE