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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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1) RSA-9688-2018 (O&M)
Decided on : 27.07.2023

Ved Kapoor . . . Appellant(s)

Versus

Prem Kapoor and others . . . Respondent(s)

2) RSA-9851-2018 (O&M)

Sheela Devi and others . . . Appellant(s)

Versus

Prem Kapoor and others . . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Amit Jhanji, Sr. Advocate with
Ms. Eliza Gupta, Advocate
for the appellant(s).

Mr. Parshant Bansal, Advocate
for respondents No.1 & 2

SANJAY VASHISTH, J. (Oral)

1. This judgment shall dispose of two Regular Second Appeals (RSAs) i.e. RSA-9688-2018 (O&M) & RSA-9851-2018 (O&M), as both have arisen out of one common judgment & decree dated 03.03.2015, passed in the proceedings of one and the same Civil Suit No.82RT/2013 of 17.05.2007. However, for brevity, the facts are being extracted from RSA-9688-2018 (O&M).

2. Appellant – Ved Kapoor (sole plaintiff) s/o Sh. Hassa Nand, filed a suit for declaration, separate possession, mandatory injunction, rendition of account & permanent injunction, against the total seven

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defendants i.e.; (1) Sheela Devi d/o Sh. Hassa Nand (w/o Sh. Sat Pal), (2) Shakuntala Devi d/o Sh. Hassa Nand (w/o Sh. Om Parkash), (3) Prem Kapoor s/o Sh. Hassa Nand, (4) Sat Pal Kapoor s/o Sh. Hassa Nand, (5) Sunita Rani d/o Sh. Hassa Nand (w/o Sh. Pardeep Kumar Verma), (6) Meena Kumari d/o Sh. Hassa Nand (w/o Sh. Mohinder Kumar Bhatia), and (7) Nirmala Devi d/o Sh. Hassa Nand (w/o Sh. Shanker Lal Khatri).

Thus, plaintiff and all the seven defendants are sons and daughters of Hassa Nand.

3. By way of civil suit, plaintiff pleaded that he along with all the seven defendants, being next legal heirs of Sh. Hassa Nand, their father as well as Sh. Khattoo Ram, who died issueless, are entitled to 1/8th share each, out of the properties mentioned in the head note of the plaint as A, B & C. Properties marked as A & B are situated within the municipal limits of Rajpura, and property mentioned in head note C is situated at Patiala. In regard to the claim in the properties in the capacity of 1/8th share, plaintiff bifurcated the prayers in following manner:-

“Suit for separate possession by way of partition by metes and bounds regarding the properties mentioned at Head Notes A, B and c; AND

For Mandatory injunction directing the defendant No.3 to disclose the names of the persons who been inducted as tenants in 8 shops as well as one room constructed in the Eastern and Southern Portion of property shown at Head Note ‘A’ as per the site plan attached herewith, AND

For Rendition of accounts regarding the rent being recovered by the defendant No.3 Prem Kapoor from different tenants inducted by him AND For permanent injunction restraining the defendants their agents and attorneys from alienating

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*transferring or otherwise encumbering the properties in dispute
AND*

*From making additions and alterations by raising construction
and changing the nature of the properties sin dispute by other
unlawful means.*

*A) Plot No.1 & Plot No.2, Block-C4, Town No.2, Rajpura
Township Property shown by words A B D C and B D E F
Bounds as under, situated at Rajpura Town.*

*North- Plot No.3
South- Road
East- Road
West- House Plot No.1958-A*

*B) Shop No.109 Shown by words G H I J in the site plan
attached and bounded as under situated at Rajpura Town.*

*North- Shop of Jaswinder Jeweller
South- Existing Shop
East- Shop
West- Road*

*C) House Plot No.93 situated at Tripariy Town Patiala shown
by words K L M N in the site plan attached and bounded as
under:-*

*North- House Plot No.92
South- Plot No.94
East- Road
West- Plot No.71 ”*

4. In the written statement filed by defendant No.3, it was pleaded that Khattoo Ram and Hassa Nand were real brothers. Khattoo Ram died in the year 1974 and Hassa Nand died on 17.06.1973. There was a specific denial that the properties described at points A, B & C in the head note of the plaint, were jointly owned and possessed by Khattoo Ram and Hassa

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Nand. Death of Khattoo Ram being issueless was also denied. The stand of defendant No.3 pleaded in the written statement, is reproduced herein-below:-

“..... The factual position is that Khattoo Ram and Hassa Nand were real brothers. Khattoo Ram was got married with one Jashoda Bai and as Khattoo Ram and Jashoda Bai were not having any issue, that is why they showed intention of adopting the answering defendant No. 3 to his father Hassa Nand. Hassa Nand who was having other two sons agreed to give the answering defendant No. 3 in adoption to Khattoo Ram and Jashoda Bai and as such the answering defendant No. 3 was adopted by Khattoo Ram and Jashoda Bai as their son. However no document of adoption was executed between the parties keeping in view the relationship between them. Although all the other ceremonies of adoption like giving taking ceremonies, distribution of Gur and Ladoos etc. were performed at that time. It shall not be out of place to mention here that the answering defendant No.3 was only of the age of one year when he was adopted by Khattoo Ram and Jashoda Bai. In this manner after the adoption, the answering defendant No. 3 used to be treated as their son by Khattoo Ram and Jashoda Bai and it were they who took care of answering defendant No. 3 as their son. Moreover, it was answering defendant No. 3 who used to serve and look after Ram and Jashoda Bai during their life Khattoo time.

As far as Khattoo Ram is concerned he predeceased Jashoda Bai as Khattoo Ram died in the year 1974. After the death of Khattoo Ram all his properties were inherited by Jashoda Bai and answering defendant No. 3 being his wife and adopted son respectively. Jashoda Bai died in the year 1984, but she did not die intestate, rather had executed a valid WILL dated 25-9-1981 registered on 29-9-1981 vide Vasika No. 88 which she bequeathed her entire properties in favour of answering defendant No. 3 due to the services rendered by answering

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defendant No. 3 and also being their adopted son. The copy of the said original WILL is attached herewith which may kindly be read as part of the pleadings. It is worth mentioning here that the plaintiff was also one of the witnesses of the said valid WILL dated 25-9-1981 registered on 29-9-198 vide Vasika No. 88 and he duly put his signatures in English and at the time of scribing of the said WILL, he was also present at the time of registration of the WILL before the office of Sub Registrar, Rajpura on 21-9-1981. In this manner, after the death of Khattoo Ram and his wife Jashoda Bai it is answering defendant No. 3 who succeeded to their properties exclusively being their adopted son and on the basis of registered valid WILL dated 25-9-81 registered on 29-9-81 vide Vasika No. 88 . In this manner, the plaintiff has intentionally and deliberately concealed the above said true facts from this Hon'ble Court, although he was very much within the knowledge of this fact at the time of the filing of the present suit.”

5. Relevant pleaded paragraph No.3 in the written statement is also reproduced herein-below:-

“3. That the contents of Para No. 3 of the plaint are correct to the extent that Hassa Nand had preformed first marriage with Smt. Kundan Bai who had given birth to defendant No.1 and 2 and after the death of Kundan Bai the father of the plaintiff Hassa Nand performed second marriage with Smt. Mangli Devi and out of this wedlock of Sh. Hassa Nand and Smt. Mangli Devi the plaintiff and defendants No. 3 to 7 were born. The remaining contents of this Para of the plaint are wrong and therefore denied. It is absolutely wrong that Khattoo Ram died issueless and the property left behind by Khattoo Ram has been inherited by the plaintiff as well as the defendants in equal share to the extent of 1/8 share each as alleged. It is also wrong that the property left behind by Hassa Nand was also inherited by the plaintiff and the defendants in equal shares as alleged. It is also wrong that now the plaintiff as

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well as the defendants are the exclusive owners of the properties mentioned at points A, B and C in the head note of the plaint as alleged. It is further wrong that the property has never been partitioned till today in any manner and is still lying joint as alleged. However, it is correct that plaintiff is residing at Patiala and is running a jewelry shop. However, it is wrong that he do visits at Rajpura as well as Patiala as alleged.

The factual position is that Khattoo Ram has adopted the answering defendant No. 3 as his son as has been detailed herein above. In this manner, it is wrong that Khattoo Ram died issueless. Rather after his death it is the answering defendant No. 3 being his adopted son who inherited his entire properties after the death of his wife Jashoda Bai who had also executed a valid registered WILL in favour of answering defendant No. 3 as has been detailed herein above. As far as the properties in question as detailed at point A, B and C in the head note of the plaint are concerned they are neither owned nor possessed by the plaintiff or any other person. As far as the properties detailed at point A and B in the head note of the plaint are concerned they are exclusively owned and possessed by answering defendant No. 3 as has been detailed herein above. However, the property detailed at point C in the head note of the plaint is concerned that is exclusively owned and possessed by defendant No.4 as has been detailed herein above. In this manner, the plaintiff is having no concern whatsoever with the properties in question. He is neither owner nor in possession of the same. As such question of his having any shop as claimed by him does not arise. The properties were never owned and possessed at any point of time by the plaintiff and the defendants jointly as wrongly alleged by the plaintiff in this Para of the plaint. The plaintiff is having malafide intention of grabbing the valuable properties belonging to the answering defendant No. 3 and defendant No. 4 as has been detailed herein above and that is why the plaintiff has filed the present suit by concealment of material facts from the Hon'ble Court and by not disclosing the true facts to the Hon ble Court as has

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been detailed by the answering defendant No. 3 in the preceding paras of the written statement. When the properties in dispute are not jointly owned and possessed by the plaintiff and defendants question of partitioning the same as alleged does not arise.”

Thus, factual position pleaded in the written statement is that properties were never jointly owned and possessed by the parties, and question of sharing of the properties as 1/8th share of each of the plaintiff and defendants does not arise.

6. After filing replication to all the written statements by the plaintiff, learned Trial Court vide order dated 18.03.2013, framed the following issues:-

- “1. Whether plaintiff is entitled for declaration as prayed for? OPP*
- 2. Whether plaintiff is entitled for separate possession by way of partition as prayed for.*
- 3. Whether plaintiff has no locus standi to file the present suit? OPD*
- 4. Whether plaintiff is estopped from filing the present suit? OPD*
- 5. Whether plaintiff has not come to the Court with clean hands and suppressed material facts from the court? OPD*
- 6. Whether suit is hit by principles of res-judicata? OPD*
- 7. Whether present suit is not maintainable? OPD*
- 8. Relief.”*

7. While deciding issue No.1, 2 & 5, learned Trial Court agreed with the contentions raised on behalf of defendants No.3 & 4, and also held that defendants failed in leading the sufficient oral as well as documentary

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evidence. While taking note of the precedent reported in ***Chand Ram v. Rajinder Parshad, 2010(1) CCC-473 (P&H)***, learned Trial Court held that defendant No.3 – Prem Kapoor failed in proving that he was duly adopted by Khattu Ram. Thus, when the required acts of giving and taking and consent of parties for adoption remains unproved, due to lack of evidence, the remaining pleadings also left unproved. Therefore, plaintiff failed to prove the pleadings in its entirety.

8. While dealing with the evidence regarding the conduct of plaintiff – Ved Kapoor, learned Trial Court has made a specific mention in its judgment. There is a registered Will dated 25.09.1981 executed by Jashoda Bai in favour of Prem Kapoor. On the registered Will, plaintiff – Ved Kapoor has affixed his signatures, but the plaintiff stated that these signatures were on blank papers, and under misrepresentation. Except of saying so, nothing was mentioned or even explained in the pleadings or during the course of evidence before the Trial Court.

9. It is noticed that the Will is a registered document, which is presumed genuine, unless, same is rebutted properly. There is no pleading that under what kind of misrepresentation, signatures of plaintiff – Ved Kapoor were obtained. Suit was filed by plaintiff – Ved Kapoor, in the year 2007. Thus, keeping in view the silence maintained by the plaintiff – Ved Kapoor for these many long years i.e. more than 26 years, without moving any complaint/application to any of the authorities, giving explanation of obtaining signatures by misrepresentation, it is clear that plaintiff – Ved Kapoor has not approached the Court with clean hands, more for the reason that he already had knowledge about the said registered Will, which is signed by him at more than one places. Thus, his claim to the extent of 1/8th

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share in the property in question also fails. Court has also taken note of the fact that in regard to the properties mentioned at point 'B' and point 'C', for which, plaintiff – Ved Kapoor claims his 1/8th share, already vide sale-deeds (Ex.D2 & Ex.D3), same person i.e. plaintiff – Ved Kapoor, has already sold his 3/4th share to Prem Kumar, and also sold 3/4th share to Satpal Kapoor. Thus, it does not lie in the mouth of the plaintiff to claim 1/8th share in the property, when he himself has already sold his 3/4th share of these properties through aforesaid registered sale-deeds. While considering the conduct of the appellant/plaintiff, it is also noticeable that no such document has been brought on record by the plaintiff to rebut the sale-deeds (Ex.D2 & Ex.D3, respectively).

The specific observation of the Trial Court *qua* appellant/plaintiff of not approaching the Court with clean hands, in paragraph No.12, is as under:-

“12. After perusing the file meticulously and hearing the submissions of Ld. Counsel for the parties this Court agrees with the contentions raised by Ld. counsel for answering defendants no.3 and 4 and is of the considered opinion that plaintiff has miserably failed to establish his case as he remained fail to lead sufficient oral as well as documentary evidence. The plaintiff has relied upon judgment titled as Pentakota Satyararayana & ors Vs. Pentakota Seetharatnam & Ors, 2006(1) CCC-563 (S.C.) in which the Hon'ble Supreme Court of India has held that “according to Hindu Adoption and Maintenance Act, 1956, S.16-Adoption- No muhurtham fixed-For Hindus fixing of Muhurtham or auspicious time is a very important even even for the smallest of functions and it is unbelievable that no muhurtham was fixed-Held, adoption is not proved.” Ld. Counsel for the plaintiff has contended that as per this judgment answering defendant no.3 has not proved that he was adopted by

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*Khattu Ram. Ld. Counsel for the plaintiff has further relied upon case titled as Senthilkumar Vs. Dhandapani & Ors, 2005(2) CCC-392(Madras) in this it has been held that “for a valid adoption, the physical act of giving and taking is an essential requisite, a ceremony imperative in all adoptions whatever the caste-this requisite is satisfied in its essence only by the actual delivery and acceptance of the boy, even through there exists an expression of consent or an executed deed of adoption.” And further held that “Adoption-Proof-should be free from all suspicion of fraud and so consistent and probable as to given no occasion for doubting its truth-face of adoption must be proved in the same way as any other fact.” Ld. Counsel for the plaintiff has further relied upon case titled as **Chand Ram Vs. Rajinder Parshad, 2010 (1) CCC-473 (P&H)** in which it has been held that “mere treating as son is not proof of adoption in absence of proof of legal requirements of adoption-it is not sufficient to say that adoption took place in the hoary past and it is not possible to prove the same by way of positive evidence-in the absence of evidence of actual giving and taking, at the time of adoption and ceremonies performed at the time of adoption it is not sufficient to hold adoption on the basis of voters list and membership of co-operative Societies.” As per law laid down by the Hon'ble Courts, defendant no.3 Prem Kapoor remained fail to prove that he was duly adopted by Khattu Ram. Adoption deed, act of giving and taking and consent of the parties not proved by defendant no.3, which are the basic requirement for adoption. The plaintiff remained fail to prove his remaining version. PW-1 Rajinder Bajaj, draftsman has admitted in his cross-examination that he did not visit the spot before preparing site plan. PW-2 Shakuntla Devi in her cross-examination stated that she has not put her stand in the property in dispute and PW-3 Meena Kumari has also admitted in her cross-examination that she did not try to put her claim in respect of the properties in dispute. Regarding adoption PW-5 Sheela Devi has admitted in her cross-examination that Prem Kapoor was adopted by Khattu Ram and Jashoda Bai and after death of Khattu Ram, his entire*

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property was inherited by Jashoda Bai and Prem Kapoor and further she has admitted the claim of the Prem Kapoor in her cross-examination. Ved Kapoor Vs. Sheela Devi 19 Ved Kapoor plaintiff in his cross-examination has admitted that Will dated 25.9.1981 which was executed by Jashoda Bai in favour of Prem Kapoor bears his signature but he stated that same were obtained on blank papers and under misrepresentation but plaintiff remained fail to prove that how his signature were obtained on blank papers because the original Will dated 25.9.1981 is a registered document. The registered documents are presumed to be genuine unless there are rebutted properly. The plaintiff also remained fail to prove that under which misrepresentation his signatures were taken on the Will. Perusal of the Will reveals that it is a document of dated 25.9.1981 whereas suit was filed in the year 2007 and the plaintiff remained fail that why he kept mum for such a long period and no application has been filed by him that defendant no.3 has got his signatures on blank papers. Further this witness is also not clear regarding his stand and in his cross-examination he admitted that Jashoda Bai has executed Will dated 25.9.1981 which was got registered on 29.9.1981 in the office of Sub Registrar, Rajpura. Case of the answering defendants is that property as mentioned at point-A was allotted to Khattu Ram and this version of the defendants has been admitted by the plaintiff that allotment in respect of plot C-1 was made by PTDB and Khattu Ram was the highest bidder of plot no.2 and except Khattu Ram, plot no.2 was not allotted to any other person and Khattu Ram never transferred house/plot no.2 in favour of any person during his life time. Perusal of documents brought on record, it is clear that Jashoda Bai was wife of Khattu Ram and after death of Khattu Ram, she executed a registered Will regarding her property which was inherited by her after death of Khattu Ram, her husband and as per Will executed by Jashoda Bai property plot no.1 and 2 are also goes to the defendant no.3 through Will dated 25.9.1981. Moreover as per Ex-P6 and Ex-P7 judgment and decree dated 27.3.1976 by the Court of Sh. O.P.Goel, the then Ld. Sub Judge,

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*Ist Class, Rajpura, Jashoda Bai was declared as owner of plot no.1 and 2. As per allotment letters brought on record these properties were taken by Khattu Ram from the PTDB being the highest bidder in open auction. In property mentioned at point-B and C plaintiff has also claimed his right being owner of 1/8th share but from perusal of sale deeds Ex-D2 and Ex-D3 it is clear that plaintiff Ved Kapoor has already sold his 3/4th share to Prem Kumar and also sold 3/4th share to Satpal Kapoor and plaintiff remained fail to prove that when he has already sold his 3/4th share from these properties, then how he can claim 1/8th share from these properties. Sale deeds Ex-D2 and Ex-D3 are duly registered documents and presumption of truth is attached to these documents and no document has been brought on record by the plaintiff to rebut these documents. From these facts and circumstances the Court is of the considered view that plaintiff has already sold 3/4th share to the defendants no.3 and 4, the plaintiff has not come to the Court with clean hands and has suppressed the fact that he put his signature on the Will dated 25.9.1981 and was present at the time of its execution in favour of defendant no.3. Moreover, plaintiff has also concealed that he has already executed sale deeds Ex-D2 and Ex-D3 in favour of defendants no.3 and 4 respectively regarding suit land. It has been held by the Hon'ble Supreme Court of India in case titled as **Mahanagar Telephone Nigam Limited Vs. State of Maharashtra & ors. 2014(1) CCC-111(SC)** has held that “clean hands-a person who approaches Court for grant of relief, equitable or otherwise, is under a solemn obligation to candidly disclose all the material/important facts which have bearing on the adjudication of the issues raised in the case-he owes a duty to the Court to bring out all the facts and refrain from concealing/suppressing any material fact within his knowledge or which he could have known by exercising diligence expected of a person of ordinary prudence-if he is found equity of concealment of material facts or making an attempt to pollute the pure stream of justice, the Court not only has the right but a duty to deny relief to such person.” Accordingly, all these issues*

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are decided against the plaintiff and in favour of the answering defendants no.3 and 4.”

10. After failing before the Trial Court, appellant/plaintiff – Ved Kapoor, filed a joint appeal along with Sheela Devi (defendant No.1), Shakuntala Devi (defendant No.2), Sunita Rani (defendant No.5) and Meena Kumari (defendant No.6). Meaning thereby, daughters and sons of Hassa Nand, joined their hands and challenged the findings of the learned Trial Court. Finding of the learned Trial Court was again affirmed in appeal before the learned First Appellate Court. However, after examining the complete record, learned First Appellate Court, has taken specific note *qua* signatures over the Will in paragraphs No.14, 15 & 16.

11. In the present Regular Second Appeal(s), Mr. Amit Jhanji, learned Senior counsel for the appellant(s), argued that in the absence of compliance of the provision of law i.e. Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872, Will in question dated 25.09.1981, cannot be held to be a proved document. Regarding this, Court has given a specific finding that there is admission of one of the attesting witnesses. It is also observed that the plaintiff - Ved Kapoor, has put his signatures on the said Will, as a witness, not only for its execution on 25.09.1981, but also for registration of the same on 29.09.1981. Even in the replication, the execution and registration Will dated 25.09.1981/29.09.1981, has been admitted. Meaning thereby, plaintiff himself admitted the execution of Will by Jashoda Bai in favour of defendant No.3 (respondent No.1 herein, in both the appeals), and also admitted the genuineness of the same, as he had denied the only factum of adoption of defendant No.3 – Prem Kapoor, mentioned in the said Will.

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Again, while examining the conduct of the plaintiff, learned First Appellate Court has made an observation that at the first instance, plaintiff while appearing as PW6, explained at the time of cross-examination that the signatures were obtained on blank papers. However, subsequently, he forwarded another explanation that his signatures were obtained under misrepresentation by defendant No.3, and the Will was not the same, as the original one. Even, he admitted the execution of the Will dated 25.09.1981, and also admitted its registration on 29.09.1981, with the office of Sub-Registrar, Rajpura. This time, he alleged that the Will was executed in favour of all his brothers and sisters. Relevant finding recorded by learned First Appellate Court in regard to the Will, is extracted from paragraph No.20, and the same is reproduced as under:-

*“..... Undoubtedly a Will has to be proved as per section 63 of Indian Succession Act, 1925 and section 68 of Indian Evidence Act, 1872 by examining at least one of the attesting witnesses. It was argued by Ld. counsel for plaintiff that Ld. lower court wrongly gave a finding with regard to execution and genuineness of the Will merely considering it to be a registered document. On the other hand it was argued on behalf of defendants No. 3 and 4 that the plaintiff had duly admitted the execution of Will dated 25/09/1981 in his pleadings(replication) and examination in Chief. Ld. counsel for plaintiff placed reliance on judgement of Hon’ble Apex Court in the case titled as **S.R.Srinivasa vs S.Padmavathamma 2010 (3) Civil Court Cases 359 (SC)** wherein it was held that admission of making of the Will does not amount to admission of genuineness of the same. Even in cases where the execution of the Will is admitted, at least one attesting witness of the Will has to be examined to receive the Will in evidence. In the cited case law, the other party had merely stated that the Will had been executed and there was no admission with regard to execution or genuineness*

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of the Will. But in the case in hand, it is not an admission by contesting party rather it is an admission by one of the attesting witnesses. Perusal of the Will Ex.DX, indicates that the plaintiff had put his signatures on the said Will as a witness not only for execution on 25/09/1981 but also for registration of the same on 29/09/1981. In the replication filed by plaintiff to the written statement of defendant No. 3, it has been mentioned in para No. 3 on page 4 that “ It is correct that she had executed a registered Will dated 25.9.81/29.9.81 in favour of defendant No. 3. However, it is wrongly mentioned in the Will dated 25.9.81/29.9.81 that Sh. Prem Kapoor was ever adopted as son by late Khattoo Ram and his wife Smt. Jashoda Bai.” Similarly while appearing as witness, plaintiff in his duly sworn affidavit Ex.PW6/A had again mentioned in para No. 2 at page no.2 of his affidavit that “ Smt. Jashoda Bai had executed a registered Will dated 25.9.81/29.9/81 in favour of defendant No. 3 Prem Kapoor but, it wrongly mentioned in the Will dated 25.9.81/29.9/81 that Prem Kapoor was ever adopted as son by Late Khattoo Ram and his wife Smt. Jashoda Bai”. Meaning thereby the plaintiff had not only admitted the execution of the Will by Jashoda Bai in favour of defendant No. 3 but also admitted the genuineness of the same as he had denied only the factum of adoption of defendant No. 3 mentioned in the said Will. It is pertinent to mention here that in his cross-examination as PW6, plaintiff took altogether a new stand that his signatures on Ex. DX, the Will in question were obtained on blank papers. Subsequently in his cross-examination he put forward another stand that his signatures were obtained under misrepresentation by defendant No. 3 and the Will was not the same as the original was typewritten. Again in his cross-examination he admitted that Jashoda Bai had executed a Will dated 25/09/1981 which was got registered on 29/09/1981 with the office of Sub Registrar, Rajpura but stated that the same was executed in favour of all his brothers and sisters. He stated that he had seen the said Will shown to him by Jashoda Bai but the same had not been produced on record by the plaintiff. When the plaintiff was

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*confronted with the statement in his affidavit with regard to execution of the Will in favour of defendant No. 3, he stated that it was only qua the extent of 1/8 share of defendant No. 3. The entire testimony of plaintiff with regard to Will in question indicates that he had been changing his version in cross-examination with regard to execution and genuineness of the Will despite admitting the same in his pleadings (replication) and examination in Chief, which raises doubt on the credibility of his testimony. Thus the Will in question stands duly proved as its execution and genuineness had been admitted by one of the attesting witnesses, plaintiff himself. Reference here can be made to judgement by Hon'ble Supreme Court in the case titled as **Nagindas Ramdas vs Dalpatram Ichharam 1974 (1) SCC 242**, wherein it was observed "Admissions, if true and clear are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible under Section 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand, evidentiary admissions which are receivable at the trial as evidence, are by themselves, not conclusive. They can be shown to be wrong."*

21. *In view of the afore made discussion, plaintiff failed to prove that he is entitled to 1/8 share in the properties as mentioned under head A of the plaint i.e. plots No. 1 and 2 and house number 1958B."*

Thus, the argument raised by the appellants(s)/plaintiff(s) that the provisions of Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872, are not complied with, carries no weight. Even on the other aspects also, learned First Appellate Court has gone in minute details.

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12. At the time of arguments before this Court also, appellant/plaintiff has completely failed to satisfy the Court as to how the findings recorded by the learned Courts below are perverse or unsustainable. Besides, no question of law, much less, any substantial question of law arises for consideration in the present appeal for interference in the impugned judgments & decrees passed by the Courts below.

Thus, finding no substance in the submissions addressed by learned Senior counsel, the present appeal(s) stands dismissed, and the judgments & decrees passed by the learned Courts below, are affirmed.

Pending miscellaneous application(s), if any, also stands disposed of.

(SANJAY VASHISTH)
JUDGE

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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No