



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

RSA-1368-2019(O&M)
Reserved on : 05.07.2024
Pronounced on :12.07.2024

Surender and another **...Appellants**

Vs.

Smt. Sheela Devi and others	...Respondents
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CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. V.K. Jindal, Sr. Advocate with
Mr. Akshay Jindal, Advocate and
Mr. Pankaj Gautam, Advocate
for the appellants.

Mr. Shailendra Jain, Sr. Advocate with
Ms. Navneet Kaur, Advocate
for respondents No. 1 and 2.

ANIL KSHETARPAL, J.

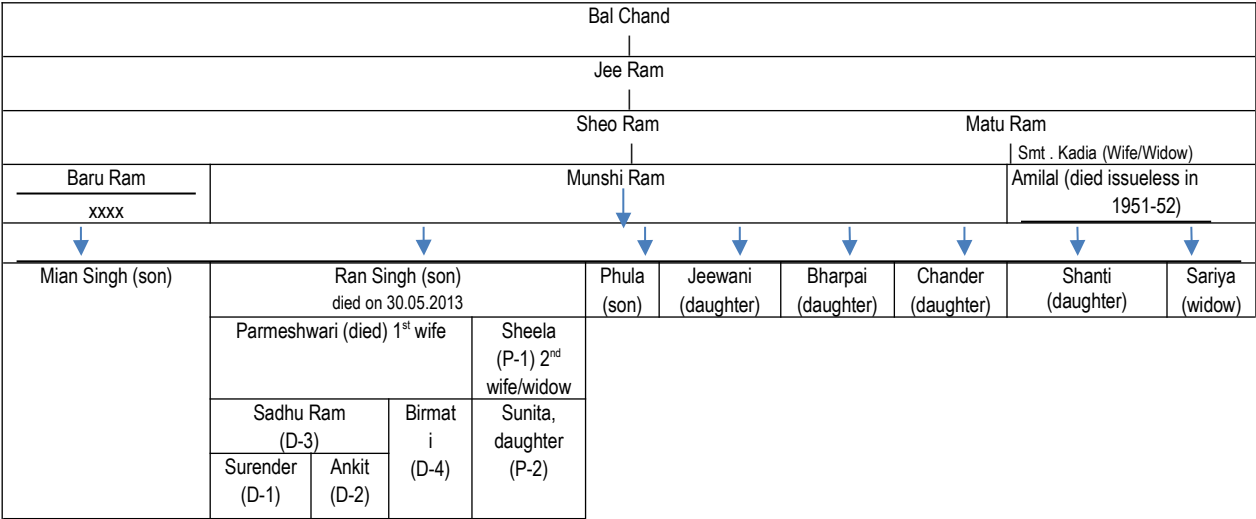
1. **The Factual compass:-**

1.1 In this regular second appeal, the defendants assail the correctness of the First Appellate Court's judgment, which in turn has reversed the trial Court's judgment. In substance, the dispute is with regard to succession of the property left behind by Sh. Ran Singh, who was common ancestor of the parties.

1.2 In order to comprehend the issues involved in the present case, some relevant facts, in brief, are required to be noticed.



1.3 In order to understand the relationship between the parties, a small family tree is drawn as under:-



1.4 As per jamabandi for the year 1939-40, Smt. Kadia, widow of Sh. Matu Ram, was the owner of half share of the land, whereas, Sh. Munshi Ram, Sh. Ami Lal and Sh. Baru were co-owner in remaining half share of the land. As per revenue record, on the death of Sh. Sheo Ram, who was the owner of ½ share of the land measuring 231 bigas 08 biswas, the property was mutated in favour of his three sons, namely, Sh. Baru, Sh. Munshi Ram and Sh. Ami Lal. Vide mutation No. 1425 dated 30.10.1990, Sh. Sheo Ram died on 11 kartik Samvat 1990. The classical Vikram Samvat is generally 57 years ahead of Gregorian Calendar. Hence, Sh. Sheo Ram appears to have died in the year 1933. In the year 1951-52, on the issueless death of Sh. Ami Lal, his share was mutated in favour of Sh. Munshi Ram and Sh. Baru in equal share vide mutation No. 2300, Ex. PW2/D. On the death of Sh. Munshi Ram his property was inherited by his widow and four daughters, namely, Jeewani, Bharpai, Chander and Shanti and three sons, namely, Ran Singh, Mian Singh and Phula



Singh in equal share. In other words, on the death of Sh. Munshi Ram, the property was inherited by as many as eight heirs including widow, four daughters and three sons under Section 8 of the Hindu Succession Act, 1956. As per jamabandi for the year 1974-75, they were owners of the land measuring 474 kanals 06 marlas.

1.5 Sh. Phula, Sh. Ran Singh and Sh. Mian Singh sons of Sh. Munshi Ram filed civil suit No. 105 dated 23.03.1967, against Sh. Baru, their uncle, claiming half share in the land measuring 474 kanals 06 marlas on the basis of adverse possession. Sh. Baru filed a written statement admitting the plaintiffs' claim. He also made a statement to that effect, which resulted in decreeing the suit on 03.04.1967, Ex.DC. On the basis of the aforesaid decree, mutation No. 3292 dated 24.05.1970, Ex. DD was sanctioned. Sh. Munshi Ram died in the year 1970.

1.6 Smt. Sariya widow of Sh. Munshi Ram died in the year 1992. Her share was inherited by four daughters and three sons. Thereafter, four daughters namely, Jeewani, Bharpai, Chander and Shanti vide registered deed dated 25.01.2000, transferred their 2/7th share in the land measuring 474 kanals 06 marlas equally in favour of their three brothers, namely, Sh. Ran Singh, Sh. Mian and Sh. Phula Singh.

1.7 Sh. Ran Singh died on 30.05.2013. He left behind two daughters, widow (second wife) and son, namely, Sh. Sadhu Ram and two grandsons, namely, Sh. Surender and Sh. Ankit. The plaintiffs, namely, Smt. Sheela Devi and Smt. Sunita claimed 79 kanals 02 marlas in equal share being 1/6th share



of the land measuring 474 kanals 06 marlas. While claiming that Sh. Ran Singh never executed any Will, they being class I heirs claimed share in the property. They also claimed that the suit property was joint Hindu family ancestral property. Hence, Sh. Ran Singh had no right to execute the Will. The defendants on the other hand, claimed that Sh. Ran Singh by virtue of a registered Will bearing No. 135 dated 05.01.2012 bequeathed the property in favour of his two grandsons, namely, Sh. Surender and Sh. Ankit as the suit property is not ancestral joint Hindu family property.

1.8 The trial court dismissed the suit, however, the First Appellate Court decreed the suit while reversing the trial Court's judgment.

2. **Submissions by learned counsel representing the appellants:-**

2.1 Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book alongwith the written arguments submitted by the learned counsel representing the parties.

2.2 The relevant part of the appellant's submissions reads as under:-

“1. That the Ld. First Appellate Court has given the finding that it was the coparcenary joint Hindu family property and the transfers of the shares by the females in favour of Ran Singh is nothing but a blending of the property in favour of Ran Singh. That the Ld. First Appellate Court has not dealt with the fact that after the death of Smt. Sariya mother of Ran Singh, when her share was transferred to all legal heirs including Ran Singh under Section 8 of the Hindu Succession Act how this property will become a property of joint Hindu family property and is an act of blending.



2. That the Ld. First Appellate Court has erred when it has been observed at page No.84 that some property in the hands of Ran Singh was ancestral and some property was self-acquired property and in case this finding is accepted it will be deemed to be self-acquired property if the same cannot be segregated and identified. The Ld. First Appellate Court has not gone into the fact of segregation that how much property is self acquired and how much property is ancestral and furthermore to identify that which numbers are self acquired and which are ancestral. The Ld. First Appellate Court has taken the total property of 158 kanal 5 marla coming from different sources i.e on the basis of relinquishment deed, on the basis of decree and furthermore, the property succeeded by Smt. Sariya on the basis of succession not survivorship similarly, the property received by Ran Singh was also on the basis of Section 8 of the Hindu Succession Act so this property can never be terms as ancestral property.

3. The Ld. First Appellate Court has further failed to appreciate that the execution of the will has been duly proved supported by both the attesting witnesses as well as scribe of the will who has made specific statement in compliance of Section 63 of the Indian Evidence Act as well as Hindu Succession Act so the will has been duly proved to be executed. The only ground of suspicion which has been taken by the Ld. First Appellate Court is that the daughter has not been explained the name of the present plaintiffs has not been mentioned, though her reference is there that he has two daughters one is married one is unmarried and admittedly, the unmarried daughter is the plaintiff. Secondly



the reason given is exclusion of present plaintiff and the widow from natural succession on the basis of the will.

4. The Ld. First Appellate Court has failed to appreciate that the purpose of will is only of exclusion and the best reason known to the executor and when he has son and grandsons who are the beneficiaries of the will then in natural circumstances the property is not given to the females and even apparent from the facts also the property succeeded by sister of Ran Singh was transferred to him similarly the property succeeded by Smt. Sariya widow of Munshi was again transferred to him, so it is a general practice that the females are not given the property, these properties are taken away either through the decree or through the will and this practice has been followed in this family also and as such, that is apparent reason of exclusion and Ex.DE mutation in favour of Munshi Ram was never challenged, so the findings of the Ld. First Appellate Court is wrong and illegal. "

3. **Submissions by learned counsel representing the respondents:-**

3.1 On the other hand, learned counsel representing the respondent has made the following submissions:-

“Written Submissions:-

1. **The main contention that arises for adjudication**
Whether the Will dated 05.01.2012 was a genuine Will or based on fraud, misrepresentation, undue influence and same is under suspicious circumstances?
The following evidence has been produced on this issue:-

ORAL AND DOCUMENTARY EVIDENCE BY PLAINTIFFS		
The following evidence was led by the plaintiffs:-		
Plaintiffs’ oral evidence		
PWs	Examination/Cross Examination statement of witnesses	Produced/Proved document
PW1–Sunita	She tendered her Affidavit Ex.PW1/A wherein she reiterated the assertions of the plaint	Ex.P1, P2, P3



D/o Ran Singh, Plaintiff No.2	of the Civil Suit xxxxn It is wrong that me and my mother Sheela Devi severed her relations with Ran Singh in 2006 by leaving her. It is wrong that Ran Singh has rightly bequeathed his property by virtue of Will dated 05.01.2012 in favour of his grandchildren. It is wrong that Ran Singh at the time of making the Will was completely of sound mind.Ran Singh was ill for the last 4-5 years before his death. On account of the illness, he had difficulty in moving and walking. He was always on the Charpai. This was the only ailment and no other ailment. The Will was wrong. It is wrong that the property is not the joint Hindu family property. Ran Singh died on 30.05.2013.	
PW3– Ranveer Mor S/o Dal Singh R/o Smalpur, Tehsil Narwana, District Jind, real nephew being son of Jiwni sister of Ran Singh,	He tendered his Affidavit Ex. PW3/A and photo copy of first page of album as Ex.PW3/B Stated that my maternal aunt was living with my maternal uncle namely Ran Singh. Ran Singh died on 30.05.2013. He had visiting terms with Mama & Mami The relations between both of them were very cordial. Mami never left my Mama. Sunita got married on 23.03.2014 in village Kahon, Tehsil and District Hisar by her maternal grandfather. She studied till 10 th Grade in Bithmara. He has brought the album of her wedding & produces first page thereof on record. xxxxn I went to the wedding of Sunita but I cannot say about my photographs exist or not in the wedding album. It is wrong that Sunita did not live in Village Bithmara. The Aadhar Card of Sunita has the name of Village Bithmara. It is wrong that there were strained relations between Sunita, Sheela and Ran Singh. It is also wrong that Sheela left Ran Singh in 2006-07.The backside of the will bears photo of Ran Singh. Sunita studied till 10 th in Bithmara/She studied from 11 th to 14 th in Uklana. I do not know in which year Sunita passed out 11 th . When she passed 11 th she has been residing in Bithmara. It is wrong that Sunita was not residing in Bithmara. It is wrong that at the time of wedding Sunita resided at Bithmara.	Ex.PW3/B—Copy of album of Happy Wedding of Sunita on 23.03.2014 with Narender.
Plaintiffs' documentary evidence		
Ex. P7	Ration card of Ran Singh S/o Munshi showing 7 members including plaintiffs, defendant No.3, Sheela Devi, Mukesh, Preeti	
Ex. P8	Passbook of Punjab National Bank, Bithmara, District Hisar of Sheela W/o Ran Singh and joint holder Sunita at Bithmara, District Hisar issued on 26.06.2012	
Ex. P9	Gas connection of Sheela Devi W/o Ran Singh dated 08.02.2012 (Gas issued shown till 17.10.2017)	
ORAL AND DOCUMENTARY EVIDENCE BY DEFENDANTS:-		
DEFENDANTS ORAL EVIDENCE		
DWs	Examination/Cross Examination statement of witnesses	Proved document
DW1–Jai Bhagwan Kundu, Advocate, Uklana examined on 01.09.2013	Stated that I have seen the original Will. This Will has been typed by me on the instructions of Ran Singh S/o Munshi. I have read and made to understand this Will to him. The executant has affixed his thumb impression on the Will in my presence after taking it as correct. <u>The two witnesses also affixed their thumb impressions in my presence and I have also put my signature on the said Will.</u> Original Will is Ex.P1, on which I identify my signatures. xxxxn I do not know Ran Singh personally. He had not come through anyone but had come directly. At present, there is only one Deed Writer in Uklana. At that time,	

	there were two. At that time, the two were namely Vinod Kumar and Ram Singh. <u>I do not maintain any register of deed writer.</u> The two deed writers who were at that time working kept the register of deed writer and I do not know as to whether they used to get the signatures of executant thereupon or not. Ran Singh was illiterate. <u>The line which has been marked on thumb impression is put by me.</u> Question: When the time for writing of the witness on the document comes, do you type the name of the witness or not? Answer: We do not type the name of the witness. Question: Can you tell any reason as to why even when the witness is present, you do not type the name of the witness on the document? Answer: We do not do this as the person who gets the document written says so for not writing his name as the witness goes away and he instructs us to write it by hand. Question: Whether you have ever typed the name of the witness on the document? Answer: Yes, I have typed the names of the witnesses on the document on the instructions. Question: How does the party get to know whether you should be instructed in the above manner or not? Answer: This is said as the area is a local area and the witness because of his work goes in between somewhere. Question: Do you apply this principle to the local area or for villagers? Answer: I say villagers also have local area as the villages are nearby. I cannot say as to how much time was spent on drafting the Will. I even cannot say that how many documents were prepared on that day.	
DW2–Ravinder Kumar, WBL, Tehsil Office, Uklana examined on 14.09.2017	Original Will (Ex.D1) is correct as per Will pasted on register brought by me today in the court. Copy of the same is Ex.D2 (objected to). xxxxn I had no personal knowledge about the Will (Ex.D2). It was not registered before me. I cannot identify the signatures of Joint Sub Registrar, because I have not worked under him. I do not know the parties and attesting witnesses mentioned in the Will.	Original Will bearing no.135 dated 05.01.2012 (Ex. D1) is correct as per copy of Will (Ex.D2) pasted on register brought by him
DW2–Balwan Singh, attesting witness of execution of Will	He tendered his affidavit Ex. DW2/A on 11.10.2017 Stated that I have seen the original Will. The Will was got prepared in my presence by Ran Singh through his Sh. Jai Bhagwan Kundu, Advocate. Sh. Jai Bhagwan Kundu, Advocate after typing the Will, read over and made understand the same to Ran Singh, who had affixed his thumb impression on the same after taking it as correct. I have also affixed my thumb impression as an attesting witness on the said Will and the other witness Mohar Singh, Nambardar has also affixed his thumb impression on the said Will in my presence and in the presence of Ran Singh as attesting witness. After that I, Ran Singh, Mohar Singh, Nambardar appeared before the Tehsildar, who also made the Will read and made to understand to Ran Singh and	

	after clicking of photographs I, Ran Singh and Mohar Singh affixed their thumb impressions in front of Tehsildar. I knew Ran Singh personally and on the date of execution of the Will, Ran Singh was fit and sound physically and mentally. Xxxxn on 11.10.2017 I do not know on which date Ran Singh has died. Volunteered it was month of Jeth. <u>At that time, his age was 75-76 years.</u> At that time, his legal representatives his daughter Birmati was not present. <u>His son Sadhu Ram was present in the Tehsil.</u> Cross examination deferred. Xxxxn on 24.11.2017 <u>Sheela left Ran Singh 10 to 12 years ago.</u> Ran Singh, Sheela and Sadhu Ram resided together. When Ran Singh died, Sunita was not got married. I do not know for what time Sheela had given the land for cultivation after the death of Ran Singh. I cannot say what has been written in the Will nor <u>can I say as to whether Sheela left Ran Singh 10-12 years or not.</u> Whether such recital has been made in the Will, I cannot say. I cannot say as to whether voter and card ration of Sunita, Sheela and Ran Singh has issued at the same house. I cannot say about any settlement made in the Will regarding the marriage of Sunita. I cannot say that besides the suit land, Sunita and Sheela had any other source of income.<u>The age of Ran Singh was 71-72 years on the date of the Will.</u> <u>Kundu, Advocate brought the stamp paper of Rs.10/-, which was a simple paper and was white in color. I cannot tell whether the paper was one or 8-10. After the writing of the Will on Rs.10/- Stamp paper, Ran Singh took away the same.</u>Ran Singh gave that paper in Tehsil. Tehsildar later gave it back to Ran Singh. I cannot tell whether stamp papers made were one or many and how many copies of the Will were made. I cannot tell for how many copies Kundu, Advocate brought the stamp paper. <u>I cannot tell as to where his thumb marks have been affixed on the Will (Ex.D2) after seeing it. I cannot tell who made tickmarks at Mark 'A' and Mark 'B'. I cannot tell who wrote the names in Hindi at Mark 'A' and Mark 'B', but they were written in my presence.</u> I cannot tell who wrote my name, whether Tehsildar or clerk in the Tehsil. However, the same was read over to me and I affixed my thumb marks. <u>Tehsildar wrote the names on Mark 'A' and Mark 'B' on the Will in my presence.</u> I cannot tell the time. Type material, which is typed on backside of page No.2 at Mark 'C' was typed by Kundu, Advocate. Kundu, <u>Advocate got my, Ran Singh, Mohar Singh, Nambardar's signatures/thumb impressions in the register maintained by him.</u> Nobody except three of us signed/thumb marked in Tehsildar's Register.	
DW3–Sadhu Ram, defendant No.3 was examined on 26.10.2017	He tendered his affidavit as Ex.DW3/A reiterating the assertions in the written statement filed by him. Stated that the age of <u>Ran Singh at the time of his death was 82 years.</u> Xxxxn on 16.01.2018 Sheela Devi was my Mausi. My father did second marriage with Sheela	1. Ex. D2/1– Middle examination certificate dated

	when I was a child. I was not brought up by Sheela. <u>She had run away leaving me. She had run away since 14-15 years ago. When I was a child and between 14-15 years, Sheela used to live at home. Sheela had not been living with Ran Singh. She had a separate residence. The Ration Card of Sheela and Ran Singh was common. When Ran Singh was alive, Sheela would cast her vote for Panch, Sarpanch and MLA in Bithmara.</u> Sunita is my sister, who was born 23-24 years ago.I do not know whether a common ration card is made of Sunita along with Sheela and Ran Singh. At the time of death of Ran Singh, Sunita was of 18-19 years of age. At the time of death of Ran Singh, Sunita was unmarried. I got marriage of Sunita done. It was not done by her maternal grandfather. The marriage of Sunita is prior to the filing of the suit. I do not remember the month and year of marriage of Sunita. Sunita's relationship was got fixed by me..... <u>No photographs of the marriage were clicked. I do not have any proof of joining the marriage. Nor can I produce written proof of the same.Her marriage was solemnized in Village Bithmara and not Kanoh. She was married at my house and not at the house of Ran Singh.</u> Sheela was not living at Bithmara. Sheela has one Baithak and one Chubara in Bithmara and the same is locked.<u>Sunita has passed 10+2. She studied in Uklana. Bithmara is 8 Kms. away from Uklana. Sunita used to come daily from Kanoh. Now Bithmara has a school for girls upto 10+2. Earlier the same was upto 10th. Sunita was never read in Bithmara. She has studied from 1st to 12th in Uklana.</u> <u>Xxxn on 23.01.2018</u> <u>Sunita, Sheela both had left. They had left 10-12, 13, 14 years ago. Sunita had studied till 5th in Uklana. I do not know in what school of Uklana she studied from 8th to 10th. I do not know as to why Sheela left Ran Singh. I do not know as to what was the dispute between them. I have seen the certificate of middle and secondary examination of Sunita as well as Aadhar Card, on which there is photo of Sunita. The original of the same is Ex.D2/1 to Ex.D2/3. I do not know, as to whether there was made a wedding card of Sunita or not. Who would give me the marriage card of Sunita. I did not get the marriage card of Sunita (Ex.D2/4-objected to). I do not remember the date, month and year of wedding of Sunita. It is wrong that the wedding of Sunita did not happen prior to the filing of the suit and the same had happened later and I voluntarily made this false statement.</u> Sheela would not have any bank account etc. in Bithmara.It is wrong that Sheela, Sunita and Ran Singh lived together till the death of Ran Singh. <u>The age of Ran Singh was 82 years at the time of his death.</u> He was illiterate. He died due to heart attack at Johad. What was written about Sheela in the Will, I do not know as I was not present. The Will was revealed after the summons by the court.	February, 2008 of Govt. Girls High School, Bithmara, Hisar 2. Ex. D2/2– Secondary Examination Certificate dated March, 2010 of Govt. Girls High School, Bithmara, Hisar 3. Ex. D2/3– Aadhar Card Showing address of Sunita D/o Ran Singh R/o Village Bithmara, District Hisar 4. Ex. D2/4– Wedding Card of programmes of Marriage Ceremonies of Sunita on 22/23.03.2014 at Village Kanoh, District Hisar
DW4–Mohar Singh, attesting witness of execution of Will	He tendered his affidavit Ex.DW4/A Stated that I have seen the original Will. The Will was got prepared in my presence by Ran Singh through his Sh. Jai Bhagwan Kundu, Advocate. Sh. Jai Bhagwan Kundu, Advocate after typing the Will, read over and made understand the same to	

	Ran Singh, who had affixed his thumb impression on the same after taking it as correct. I have also affixed my thumb impression as an attesting witness on the said Will and the other witness had also affixed his thumb impression on the said Will in my presence and in the presence of Ran Singh as attesting witness. After that I, Ran Singh appeared before the Tehsildar, who also made the Will read and made to understand to Ran Singh and after photographs I, Ran Singh and other witnesses affixed their thumb impressions in front of Tehsildar. I knew Ran Singh personally and on the date of execution of the Will, Ran Singh was fit and sound physically and mentally Xxxxn on 12.02.2017 I do not know when Ran Singh died.After death of Ran Singh, Sunita got married. <u>The preparation for wedding of Sunita took place in Village Bithmara and the expenditure was made by Sadhu Ram. The marriage was done by maternal grandfather.</u> I do not know whether Ran Singh, Sheela and Sunita lived together or not.Ran Singh was not ill. He died of heart attack, when he had come at a Johad. I cannot tell whether Sheela took him to the doctor. I cannot tell when Ran Singh had a heart attack, Sheela was at home or not. I cannot tell at the time, when Ran Singh died, where was Sunita.I cannot tell for how many years, Ran Singh and Sheela had been living together. <u>The stamp paper was written by Advocate himself. The stamp paper had two papers. I cannot tell whether the Will was typed or not. I was sitting at the Tehsil. The Will was not written in my presence. My signatures were got done after the writing of the Will. I cannot identify my thumb impressions on original Will (Ex.D1) but my thumb impression were made at two places. The name at thumb impression may have been written by the Advocate. I do not know who wrote Mark 'Z' & Mark 'Z1'. It was not written in my presence. The person writing did not get my single thumb impression on the register. I do not know whether the thumb impression of Ran Singh were got done or not, as I was present in Tehsil.</u> The writer of the Will was Jai Bhagwan, Kundu. <u>I do not know when Mark 'C' was written by Jai Bhagwan as I am illiterate. For getting my thumb impressions, papers were brought by Balwan and Ran Singh.</u> They said grandchildren are beneficiaries. On my asking they told me that the property has to be done in favour of grandsons. At that time, I was sitting in park. I was to be called when number were to come. I do not know how many witnesses I did on that day. I did 4-5 witnesses. I do not remember whose 4-5 witnesses I did on that day.Will (Ex.D1) was printed from computer by the Advocate. I do not remember whether the Advocate had clerk with him or not. Mark D on Ex.D1 may have been written by Advocate but the Advocate printed it from the computer. <u>When I put the thumb impressions, there was nobody except Ran Singh and Balwan. The photograph of Advocate was not clicked. The Advocate did not sign or thumb marked in my presence. I did not put my signatures in the presence of the Advocate.</u>	
DW5–Om Prakash, Retd.	Stated that he has seen the Will dated 05.01.2012 bearing No.135. The attesting witnesses have put their signatures in front of me.	The signatures on points Mark 'C' and

Sub Registrar	Xxxxn on 03.01.2018 The will was not written in my presence. I do not know the parties of the Will. Ran Singh had appeared before me. I do not know him. I do not know his age. I do not remember which witness appeared before me. I do not remember the names of the witnesses nor do I know about their age. I have not seen the medical certificate of anybody. Nor I get the same done. I do not know about the medical condition of Ran Singh. I have not seen the Tehsil record today. Photo was not clicked in my presence. <u>The signatures at Mark 'A' and Mark 'B' on Ex.D1 happened in my presence.</u> The writing of Mark 'D' on Ex.D1 was not done by me. Similarly, on Ex.D1, the writing of Mark 'C' was not done by me.....The writing of Mark 'C' and Mark 'D' is on Ex.D1. <u>The tickmarks upon thumb impressions at Mark 'A' and Mark 'B' were made by me.</u>	Mark 'D' of original Will (Ex. D1)
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2. The following deficiencies or imperfections from the above evidence of the defendants elucidated during the cross examination of the defendants/appellants witnesses, which clearly shows that the Will (Ex.D1) of Ran Singh was got prepared by Sadhu Ram in collusion with witnesses and scribe with the active participation of staff of Sub Registrar, Uklana, District Hisar proving the following facts and conclusion to the hilt:-
- i. The Will (Ex.D1) was not scribed by the Regular Deed Writer sitting in the Tehsil office who take signatures of the executant in his register in token of correctness of the document. The evidence of DW1-Jai Bhagwan Kundu, reproduced above, may kindly be perused in this regard.
 - ii. DW1-Jai Bhagwan alleged scribe though does not claim that Will (Ex.D1) was drafted before witnesses, yet he says that witnesses thumb marked the same before him but witnesses DW3–Balwan Singh is very categoric by stating that Will (Ex.D1) was not written in his presence nor he thumb marked it before Sh. Jai Bhagwan.
 - iii. Further, Jai Bhagwan, Advocate DW1 says during cross examination that he marked the line on the thumb impression of Ran Singh and witnesses on the Will (Ex.D1), which is shattered by DW2-Ex. Sub Registrar, Om Parkash, who claimed that he had marked the line on the thumb impressions.
 - iv. The witnesses states that the Will (Ex.D1) was written on Stamp paper of Rs.10/- brought by Sh. Jai Bhagwan which I have not seen in the light of the day. DW1-Jai Bhagwan says that he does not keep register of scribing the documents but witness Balwan Singh DW2 and Mohar Singh DW4 says that Jai Bhagwan got their signatures/thumb impression as well as of Ran Singh in his register.
 - v. The names of the two witnesses were not typed on the Will (Ex.D1), which shows that they were not present but were introduced later on.
 - vi. There are line marks on the thumb impression of Ran Singh and both the witnesses meaning thereby paper was typed in their absence and was handed over for getting their thumb impressions on the place of tick marks.
 - vii. The proceedings of registration were typed before presenting it to the Sub Registrar, as admitted by DW5-Om Parkash, Retired Tehsildar.
 - viii. The so called witnesses Balwan Singh and Mohar Singh, who do not



know the contents of the Will (Ex.D1) stated that the endorsement Mark 'C' appearing on the back of the page 2 of the Will (Ex.D1) was typed by Jai Bhagwan-DW1.

- ix. Sub Registrar says that thumb impression Mark 'A' and Mark 'B' were put before him while DW1-Jai Bhagwan says these were put before him but he did not go to the Tehsil Office.
- x. DW5-Om Parkash is specifically admitting that endorsement Mark 'C' and Mark 'D' were not typed before him but were already typed when the Will (Ex.D1) was prepared. As such, to say that he read over the Will (Ex.D1) or the executant after admitting it to be correct put thumb impression is out of question.

3. **The following facts elucidated during evidence reproduced above show that the Will (Ex.D1) is shrouded in suspicious circumstances:-**

- i. The age of the deceased is written in the Will (Ex.D1) as 62 years, while he was 82 years old as admitted by his son Sadhu Ram DW3. Had the deceased executed the Will (Ex.D1) of his free and conscious mind, then he would have given correct age, but age of 62 was got written in the Will (Ex.D1) dated 05.01.2012 by interested person to show that the testator was in a good state of mind, whereas, he died on 30.05.2013 within 1¼ years of the alleged Will (Ex.D1). Discrepancy in age is not explained on record (**Para No.20 of judgment in Ram Rachhpal V/s Kailash Chander & Others; Law Finder Doc ID # 141396 can be cited with advantage on this point**).
- ii. The deceased was having wife Sheela-Plaintiff No.1 and unmarried daughter Sunita-Plaintiff No.2 at the time of alleged Will (Ex.D1). There is no mention in the Will (Ex.D1) whether his wife is alive or dead or whether the daughter was married or unmarried or they were not having good relations with him. There was complete silence in the Will (Ex.D1). It is most artificial and unnatural for a man to disinherit his wife completely without any provision for maintenance.
- iii. Similarly, father could not have thought of making any provision for unmarried daughter. The defendant No.3-Sadhu Ram in order to overcome this suspicion took a false plea in the written statement that relations between plaintiffs and Ran Singh were strained and due to strained relations, plaintiffs left the society of deceased in the year 2006, which fact has not been mentioned in the Will (Ex.D1).
- iv. This allegation was found false in view of the documents (Ex.D2/1 to Ex.D2/4, Ex.PW7, PW8 and PW9) and making the Will (Ex.D1) to be suspicious, unnatural, unrealistic, unfair and improbable.
- v. Thus, omitting the name of the wife and unmarried daughter having no income and disinheriting them makes the Will (Ex.D1) to be ingenuine and not free from suspicion.
- vi. The following judgments can be cited with advantage:-
 - i. Kalyan Singh V/s Chhoti; Law Finder Doc ID 88956
 - ii. Jagdish Chand Sharma V/s Narain Singh Saini (dead); Civil Appeal No.4181-4182 of 2015 D/o 01.05.2015
 - iii. Adivekka V/s Hanamavva Kom Venkatesh D by LR's; Law Finder Doc ID 129161
 - iv. Bhajan Kaur (since deceased) through LR's and Another V/s Hazara Singh (since deceased) through LR's; Law Finder Doc ID 532104
 - v. Dhan Kaur (Smt.) V/s Parkash Singh & Others; Law Finder Doc

- ID 129272
- vi.

Jagir Singh V/s Ranjit Kaur; Law Finder Doc ID 19172
- vii.

Suresh & Another V/s Fateh Singh & Others; Law Finder Doc ID 576414
- viii.

Kishan Chand V/s Basanti Devi (died) through LRs; Law Finder Doc ID 36845
- ix.

Gurdial Kaur & Another V/s Chand Kaur (deceased) through LRs; Law Finder Doc ID 362764
- x.

Hira Nand V/s Maya Devi; Law Finder Doc ID 515300
- xi.

Ram Rachhpal V/s Kailash Chander; Law Finder Doc ID 141396

The issue No.1 w.r.t. plaintiff’s entitlement to declaration on the grounds as prayed for is discussed as under:-

1. Admittedly, initially land of Jee Ram was received by his son Sheo Ram and then by grandsons Munshi, Amilal and Baru Ss/o Sheo Ram vide Mutation (Ex.2/B). Admittedly total land of forefathers of Munshi Ram etc. was 474K-06M situated at village Bithmara, District Hisar. The following documentary evidence has been lead by the parties to the civil suit:-

Sr. No.	Exhibits	Particulars of material facts
1	(Jamabandi 1907-08; Ex.P4 in Urdu and Ex.P4/A in Hindi),	Jee Ram S/o Bal Chand and Matu S/o Jee Ram in equal shares as co-owners of suit land
2	(Jamabandi 1911-12; Ex.P5 in Urdu and Ex.P5/A in Hindi)	-Do-
3	(Jamabandi 1939-40; Ex.P6 in Urdu),	Certified copy. Mark-A Hindi Translation
4	(Mutation No.253; Ex.P11 in Urdu & Ex.P11/A in Hindi)	1/2 Share of Jee Ram mutated in f/o Sheo Ram in Samvat 1965]
5	(Mutation No.1425 dt. 30.10.1990; Ex.2A in Urdu & Ex.P2/B in Hindi)	1/2 share of Sheo Ram S/o Jee Ram mutated in equal shares in f/o (1) Munshi, (2) Baru and (3) Amilal
6	(Mutation No.2300 dt. 05.09.2005; Ex.2C in Urdu & Ex.P2/D in Hindi)	1/3 share of Ami Lal mutated in equal shares in f/o (1) Munshi, (2) Baru, after his demise issueless in the year 1951-52 (Vikrami Samvat 2005)
7	Jamabandi 1951-52 (Ex.2/E), Jamabandi 1955-56 (Ex.2/F), Jamabandi 1959-60 (Ex.2/G), Jamabandi 1964-65 (Ex.2/H)	(1) Munshi, (2) Baru in equal shares as co-owners in possession of the suit land
8	Plaint (Ex.DA), Admission WS (Ex.DB), Statement of Baru (Ex.DC), Mutation No.3292 dated 24.05.1970 (Ex.DD)	Decree dated 03.04.1967 in CS No.105 titled as <u>Phula etc. V/s Baru</u> by Ld. Sub Judge, 2 nd Class, Narwana, of ownership of ½ share of suit land in f/o (1) Phula, (2) Ran Singh (3) Mian Singh Ss/o Munshi from Baru Ram S/o Sheo Ram
9	Jamabandi 1969-70 (Ex.2/I)	Munshi ½ share & (1) Phula, (2) Ran Singh, (3) Mian Singh in

		equal shares in ½ share as co-owners in possession of suit land;
10	Mutation No.3441 dated (Ex.DE) dated 30.09.1972	½ share of Munshi Ram S/o Sheo Ram mutated in f/o (1) Sariya widow, (2) Jeewni, (3) Bharpai, (4) Chander, (5) Shanti daughters, (6) Phula, (7) Ran Singh, (8) Mian Singh sons to the extent of 1/7 th share each, after death of Munshi Ram;
11	Jamabandi 1974-75 (Ex.2/J)	(1) Sariya widow, (2) Jeewni, (3) Bharpai, (4) Chander, (5) Shanti daughters each holding 1/5 th share in equal shares of 5/16 th share and (6) Phula, (7) Ran Singh, (8) Mian Singh sons each holding 1/3 rd share in equal shares of 11/16 th share as co-owners in possession of suit land
12	[Jamabandi 1979-80 (Ex.2/K), Jamabandi 1984-85 (Ex.2/L), Jamabandi 1989-90 (Ex.2/M)	-Do-
13	Mutation No.4323 (Ex.DF)	1/7 th share of Sariya (29K-13M) mutated in f/o (1)Jeewni, (2) Bharpai, (3) Chander, (4) Shanti daughters, (5) Phula, (6) Ran Singh, (7) sons of Munshi Ram s/o Sheo Ram in equal shares, after the demise of Sariya widow of Munshi
14	Jamabandi for the year 1994-95 (Ex.2/N)	1/3 rd share in equal shares of (1) Phula, (2) Ran Singh, (3) Mian Singh sons of Munshi, of 5/7 th share of suit land and 1/4 th share in equal share (4) Jeewni, (5) Bharpai, (6) Chander, (7) Shanti daughters of Munshi, of 2/7 th share of suit land, as co-owners in possession
15	Mutation No.235 dated 04.04.2000 (Ex.DG)	2/7 th share (474K-6M) of (1) Jeewni, (2) Bharpai, (3) Chander, (4) Shanti daughters mutated in f/o (1) Phula, (2) Ran Singh, (3) Mian Singh sons vide relinquishment deed dated 25.01.2000
16	Jamabandi 1999-2000 (Ex. PW2/O)	1/3 rd share of Phula, Ran Singh, Mian Singh in equal shares as co-owners in possession of suit land
17	Jamabandi 2004-05 (Ex.PW2/P), Jamabandi 2009-10 (Ex.PW2/Q)	-Do-
18	(Ex.P1 and Ex.D1 & Ex.D2) Mutation No.5679 dated 28.06.2013 (Ex.P2)	1/3 rd share of the Suit land mutated in f/o <u>Surender and Ankit Ss/o of Ran Singh in equal shares</u> on the basis of alleged Will bearing No.135 dated 05.01.2012 of Ran Singh S/o Munshi Ram
19	Jamabandi, 2014-15 Ex.PW2/R)	Gajender S/o Bimla D/o Phula 1/3 rd share, <u>Surender and Ankit Ss/o of Ran Singh in equal shares in 1/3rd share,</u> Krishan Pal, Inder Pal, Virender sons of Mian Singh 1/3 rd share

		in 4/5 th share, Mian Singh S/o Munshi 1/15 th share, as co-owners in possession of suit land
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2. The suit land having descended from his forefather was thus a coparcenary property. To prove the coparcenary nature of the suit land, it is not necessary to trace out the property passing through three generations of male descendants upon Sh. Ran Singh. Any property inherited upto four generations is termed as ancestral property. Even otherwise, plaintiffs had proved that initially Jai Ram ancestor of Ran Singh was owner of the land and on his death it was inherited by Sheo Ram through mutation No.253 (Ex.P11) and on death of Sheo Ram it was inherited by his three sons Munshi Ram, Ami Lal and Baru Ram vide mutation No.1425 (PW2/A). Ami Lal died issueless and through survivorship his share was succeeded by surviving members namely Munshi Ram and Baru Ram. On the death of Munshi Ram it was inherited by Phul Singh, Ran Singh and Mian Singh vide mutation No.3441 (Ex.DE) and since mutation No.3441 was wrongly sanctioned in favour of sisters as well, therefore, they returned the land vide registered relinquishment deed as per mutation No.235 (Ex.DG). Baru Ram was issueless and he transferred his share in favour of surviving members through consent decree dated 03.04.1967. Legally, whenever father gets a property from whatsoever source from grandfather or from any source, his sons have a share in that property and it will become part of joint Hindu family property of his son and grandson and other members who form joint Hindu family with him. Chain of three generations upto Ran Singh was complete. It was no body case that forefather of Ran Singh acquired any part of land through purchase from personal income or it was different land from the land of above mutations.
3. The meaning of "joint Hindu family property" is that in which daughter is entitled to share from 09.09.2005 while wife was already having share. As per Hindu Law once father inherits the properties of his father which was his self-acquisition becomes ancestral property qua his son as held in 2013(1) CCC 391; 2014(3) PLR 84; 2018(1) PLR 79. As per para No.213 of Hindu Law by Mulla along with genesis of coparcenary as shown in Table XII-2 conception of a joint Hindu Family constituting a coparcenary is that of a common male ancestor with his lineal descendants in the male line within four degrees counting from and inclusive of such ancestor. There was no need to produce excerpts when revenue record along with original record



was got produced. PW2–Om Parkash Patwari Muhrar DC Office connected the land as well. There was presumption of coparcenary property as it was standing jointly in the name of brothers in equal share. No evidence was produced by defendants to show that land was different or was self acquired. Even the witness of defendants namely Balwan Singh–DW3 admitted that the suit land was ancestral in the hands of Ran Singh.”

4. **Analysis, Reasoning and Conclusion:-**

4.1 The following reasons have been recorded by the First Appellate Court while reversing the trial court's judgment:-

1. Originally, the property was in the hands of Sh. Jee Ram, which was inherited by way of survivorship by Sh. Sheo Ram. When Sh. Sheo Ram died, his property was inherited by way of survivorship by his three sons, namely, Sh. Munshi Ram, Sh. Baru and Sh. Ami Lal.
2. Sh. Ami Lal died issueless in the year 1951-52 and his share was inherited by way of survivorship by two male members, namely, Sh. Munshi Ram and Sh. Baru.
3. Sh. Baru son of Sh. Sheo Ram transferred his entire property to Sh. Ran Singh and Sh. Phula by way of civil court decree dated 03.04.1967. This transfer was made in favour of male members of the joint Hindu family.
4. On the death of Sh. Munshi Ram, the property was inherited by his widow, four daughters and three sons. Hence, it is proved that Sh. Ran Singh never purchased the property. The daughters transferred the property back to the male members vide civil court decree dated 25.01.2000, which also proved that the property was a coparcenary property.



5. It is proved that Sh. Ran Singh inherited the property from his fore-fathers by way of survivorship, whereas, some part of the property was inherited by him from his uncle, namely, Sh. Ami Lal, Sh. Baru and aunt. This property was never separated, hence, by operation of the doctrine of blending, the entire property became joint Hindu family property.

4.2 Thus, the court concluded that the property in the hands of Sh. Ran Singh was ancestral. Further, with respect to the registered Will, the First Appellate Court has recorded the following reasons:-

- 7(i). There are line marks on the thumb impression of Sh. Ran Singh. Both the witnesses claimed that the Will was not typed in their presence and it was handed over to them to get their thumb impression on the place with tick marks.
- 7(ii) The Will was not scribed by a regular deed scribe.
- 7(iii) DW3-Sh. Balwan Singh categorically states that the Will was not written in his presence nor he thumb marked it before Sh. Jai Bhagwan.
- 7(iv) DW1-Sh. Jai Bhagwan does not maintain a register of scribing documents. Whereas, Sh. Bal Singh and Sh. Mohar Singh state that Sh. Jai Bhagwan got their signatures/thumb impressions in the register.
- 7(v) Sh. Jai Bhagwan states that he did not go to the office of sub Registrar.



7(vi) The Will resulted in depriving the property in favour of the widow and daughter but the Will does not make any reference in this respect.

7(vii) The Will was not executed with free mind.

4.3 The six essential characteristics of a Hindu coparcenary explained by the Supreme Court in para 8 of the judgment passed in **'Controller Of Estate Duty Madras vs Alladi Kuppuswamy' 1977 AIR 2069**, are extracted as under:-

“Thus analysing the ratio of the aforesaid case regarding the incidents of a Hindu coparcenary it would appear that a Hindu coparcenary has six essential characteristics, namely:

- (1) that the lineal male descendants up to the third generation acquire an independent right of ownership by birth and not as representing their ancestors;
- (2) that the members of the coparcenary have the right to work out their rights by demanding partition;
- (3) that until partition, each member has got ownership extending over the entire property conjointly with the rest and so long as no partition takes place, it is difficult for any coparcener to predicate the share which he might receive;
- (4) that as a result of such co-ownership the possession and enjoyment of the property is common,
- (5) that there can be no alienation of the property without the concurrence of the other coparceners unless it be for legal necessity; and
- (6) that the interest of a deceased member lapses on his



death and merges in the coparcenary property.”

4.4 In this case when Sh. Matu Ram died, his property was inherited by his widow as would be evident from jambandi for the year 1939-40. Moreover, on the death of Sh. Sheo Ram in the year 1933, Smt. Kadia widow of Sh. Matu Ram became owner to the extent of half share in the land measuring 231 bigas 08 biswas. Thus, it is evident that the first characteristic of coparcenary is not fulfilled because Sh. Sheo Ram and Sh. Matu Ram were lineal descendants upto the third generation. On the death of Sh. Matu Ram, the property was not only inherited by Sh. Sheo Ram or his children but it was inherited by Smt. Kadia widow of late Sh. Matu Ram.

4.5 When Sh. Sheo Ram died, the property was inherited by Sh. Baru, Sh. Munshi Ram and Sh. Ami Lal. There was no evidence to the effect that at the time of Sh. Sheo Ram's death, his widow was alive or he had daughters. Sh. Ami Lal died issueless in the year 1951-52. The property was mutated in favour of Sh. Baru and Sh. Munshi Ram. Subsequently, Sh. Mian Singh, Sh. Ran Singh and Sh. Phula filed civil suit with respect to half share of the land measuring 474 kanals, 06 marlas claiming to have become owner by way of adverse possession. Sh. Baru admitted the plaintiffs' claim. Hence, decree dated 03.04.1967, Ex. DC was passed and mutation Ex.DD on the basis of the aforesaid decree was sanctioned. Thus, Sh. Ran Singh became owner of 1/6th share in the land measuring 474 kanals 06 marlas by virtue of the above mentioned civil court decree. Hence, the entire land was not inherited by Sh. Ran Singh. When, Sh. Munshi Ram died, the property was inherited by his



widow, three sons and four daughters. The mutation was sanctioned in accordance with Section 8 of the Hindu Succession Act, 1956. In view of Supreme Court judgments in 'Commissioner of Wealth Tax, Kanpur etc. vs. Chander Sen and others', 1986(3)SCC 567, 'Yudhishter Vs. Ashok Kumar' 1987(2) SCC 204 and 'Uttam Vs. Saubhag Singh and others', 2016(4) SCC 68, the property can no longer be claimed to be a coparcenary. This is further confirmed from the fact that when widow of Sh. Munshi Ram died, her share was mutated in favour of four daughters and three sons vide Ex. DS. Moreover, Sh. Ran Singh also received the property from his four sisters vide transfer deed dated 25.1.2000, which have been proved vide mutation Ex. DG. In these circumstances, it is evident that the First Appellate Court erred in observing that the property is a coparcenary property. In fact, the First Appellate Court has without any evidence observed that the property from Sh. Sheo Ram was inherited by way of survivorship. Unless, there is an evidence to prove that at that time Sh. Sheo Ram's widow was alive and she was not given any share, it was not appropriate for the Court to record such finding.

4.6 The First Appellate Court further erred in observing that Sh. Baru transferred the property in favour of only male members. Sh. Mian Singh, Sh. Ran Singh and Sh. Phula filed a civil suit claiming to be owner of the property by way of adverse possession. At that time, Sh. Munshi Ram was alive, hence, the share received by Sh. Ran Singh i.e 1/6th of 474 kanals 06 marlas was not inherited by male lineal descendants as laid down by the Supreme Court. Moreover, the court has also erred in observing that by



operation of the doctrine of blending the property became joint Hindu family property. In fact, the Court has erred in overlooking the fact that once the coparcenary property is so intrinsically mixed up with the non-coparcenary property that it becomes impossible to identify the coparcenary property out of the total pool. Thus, the entire property will be considered as non-coparcenary. It has been laid by the judgment passed by the Hon'ble Supreme Court in 'Mara and others vs. M.S.T. Nikko alia Punjab Kaur', AIR 1964 SC 1821 that if the ancestral and self-acquired property is mixed up and the party fails to identify ancestral property then the entire property is considered as self-acquired.

4.7 The First Appellate Court has factually erred in observing that the sisters of Sh. Ran Singh transferred the property by virtue of a consent decree. It was by virtue of a transferred deed and not a consent decree as would be clear from mutation Ex. DG.

4.8 With respect to the Will, the First Appellate Court's first reason is that there are line marks on the thumb impression of Sh. Ran Singh and both the attesting witnesses, namely, Sh. Balwan Singh and Sh. Mohar Singh. It would be noted here that in this case, the defendants has examined DW1- Sh. Jai Bhagwan Kundu, Advocate, the scribe of the Will. DW2, official from the office of sub-Registrar, who brought the original record from the sub-Registrar office with respect to registration of Will. DW2-Sh.Balwan Singh one of the attesting witnesses, who is resident of the same village i.e. Bithmara, where the testator used to live has also been examined. DW4-Sh. Mohar Singh, Headman



of Village Bithmara, who was attesting witness and DW5-Sh. Om Prakash retired sub Registrar were also examined.

4.9 The Will is available on the trial Court record. It has been scribed on two plain papers. The first page is thumb marked by Sh. Ran Singh. On the second page, line marks are visible in the three thumb impressions appended by the testator and two attesting witnesses. However, the executor has appended his thumb impression on the Will at the time of registration on the reverse side of the first page. On the reverse side of the second page of the Will, the photograph of the executant alongwith his thumb impression exist. There is no line marks, either on the first page or on the reverse of the first page or on the reverse of the second page. On the reverse side of the second page, the photograph of both the attesting witnesses alongwith their thumb impressions have been appended. There are no line marks in these thumb impressions. The First Appellate Court has wrongly drawn inference by observing that line marks proved that the Will was typed in their absence. DW2-Sh.Balwan Singh, attesting witness has specifically stated that he was present when the Will was typed by Sh. Jai Bhagwan Kundu, Advocate. He was also present when Sh. Ran Singh appended his thumb impression. DW4-Sh. Mohar Singh, Headman of the village has stated that he was sitting in the adjoining park, when Sh. Ran Singh and Sh. Balwan Singh brought the typed Will and he on the request of Sh. Ran Singh appended his thumb impression. Hence, the First Appellant Court's first reason is erroneous. The second reason is also wrong because the Will has been scribed by an Advocate, who has



stated that he was executant of the Wills. An Advocate is practicing in Tehsil Uklana, which is a small sub Urban area. He has appeared in evidence, which took the cross-examination. Even if he was not maintaining a register of the documents scribed by him, however, that could not itself make the Will doubtful. The third reason is a result of misreading of evidence. Sh. Balwan Singh has categorically stated that he was present when the Will was typed and when Sh. Ran Singh appended his signature. In fact, DW4-Sh. Mohar Singh has stated that he was sitting in the adjoining park waiting for call from the sub Registrar. However, he has stated that Sh. Ran Singh and Sh. Balwan Singh both came to him to get his thumb impression appended.

4.10 The forth reason of the Lower Appellate Court is also erroneous. The Will was executed in 2012, whereas, the witnesses were being examined in November, 2017. Both the witnesses have although stated that they appended their thumb impressions in the register of the Scribe, however, that itself would not be sufficient to discard the Will, particularly, when its execution and registration has been proved by examining both the witnesses. Human memory is not perfect, sometimes it can fail. However, the Court is required to analyze the entire evidence rather than to look for small errors.

4.11 The fifth reasons of Lower Appellate Court is also erroneous because Sh. Jai Bhagwan was not present in the Tehsildar's office. The Will was presented by Sh. Ran Singh while accompanied by both the witnesses. Moreover, the statement of Sh. Om Parkash to the effect that the endorsement was not typed in his presence and it may have been typed by the Scribe, would



not create any doubt on the genuineness of the Will because the sub Registrar admits his signatures. Even if the endorsement to be printed at the time of registration was typed by Advocate as the Will was proposed to be registered, would not be sufficient to make the Will doubtful.

4.12 The First Appellate Court's reason No. 6 is again a result of misreading. The testator while executing the Will has specifically stated that he has one son and two daughters. His son and one daughter are married. Hence, it is wrong on the part of the First Appellate Court to observe that there is no reference to the daughter. It has come in evidence that Smt. Sheela Devi left Sh. Ran Singh, 10-12 years before Sh. Ran Singh died. In these circumstances, Sh. Ran Singh did not refer to Smt. Sheela Devi, his widow in the Will. However that would not be sufficient to ignore the Will.

4.13 Similarly, the First Appellate Court's last reason is without any basis because the First Appellate Court has not made reference to any evidence which may prove that Sh. Ran Singh did not independently, without any coercion execute the Will. Sh. Ran Singh remained alive for nearly one year and five months after the execution of the Will. If it was not on account of his free Will, he would have changed his bequest.

4.14 Moreover, it is evident that the beneficiaries are testator's grand children. It has come in evidence that Sh. Sadhu Ram son of Sh. Ran Singh made arrangements for marriage of his step-sister, namely, Smt. Sunita, who was unmarried on 13.08.2013, at the time of death of Sh. Ran Singh.

Immediately, the suit was filed in September, 2013. Still, Sh. Sadhu Ram



undertook the expenses of marriage of his step-sister, which took place on 23.03.2014.

4.15 Now, this Court proceed to examine, analyze and evaluate the arguments of the learned counsel representing the plaintiffs (respondents). The first submission is with reference to oral evidence. In the first part of this submission, the evidence of Smt. Sunita has been referred to. She states that Sh. Ran Singh was ill for the last 4-5 years before his death, however, no medical evidence was produced. She also admits that Sh. Ran Singh was not suffering from any ailment but he used to remain on bed. Similarly, statement of PW3-Sh. Ranbir Mor, who is nephew of Sh. Ran Singh has been produced. He has stated that Smt. Sheela Devi never left the Company of Sh. Ran Singh and Smt. Sunita got married in 2014. In the considered view of the court such statements would not make any difference because there is a Will. At the most, his statement to the effect that Smt. Sunita and Smt. Sheela Devi continued to reside with Sh. Ran Singh can be considered.

4.16 Thereafter, the plaintiffs referred to documentary evidence Ex. P-7 (Ration Card), Ex.P-8 (Passbook) and Ex.P-9 (Gas Connection). The date of issuance of ration card is not clear, however, it appears to have been issued in the year 2013. This ration card at the most proves that Smt. Shushila was staying with Sh. Ran Singh, however, that itself is not sufficient. Ex.P8 is a pass-book of the Punjab National Bank with respect of joint account of Smt. Sheela Devi and Smt. Sunita. Ex. P-9 is a receipt of refill of LPG Gas, which is in the name of Smt. Sheela Devi. It is not an evidence to prove that Smt.



Sheela Devi was residing in village Bithmara, because Smt. Sheela Devi and Smt. Sunita filed the suit in the year 2013, whereas, Smt. Sunita was married in 2014 and her in-laws reside in the village Kahon. Thereafter, some parts of oral statements of DW-1, DW-2, DW-3, DW-4 and DW-5 has been referred. This evidence has already been appreciated.

4.17 The second argument of the learned counsel representing the plaintiff is under various sub-clauses as provided in his written arguments. The contention under Clause (i) has already been examined. The submission under Clause (ii) lack substances because the Will is required to be executed in the presence of witnesses or they should receive acknowledgment from the testator that he has signed it. The drafting of the Will and the typing of the Will in the presence of witnesses is not necessary. Section 63 of the Indian Succession of Act, 1925 provides that the Will shall be attested by two or more witnesses, each of whom has either seen the testator's sign or affixed his mark to the Will or has received acknowledgment from the testator that he has signed the Will. Hence, both the witnesses are not required to be simultaneously present at one place. With regard to submission under Clause (iii), it would be noticed that a small discrepancy in the oral statement is not sufficient to discard a registered Will, particularly, when the plaintiff has not produced any evidence that the Will was result of fraud or Sh. Ran Singh never thumb marked the testament. Same is the position with regard to submission under Clause (iv), (v), (vi) and (vii). With respect to contention under (viii), it would be noted that the witnesses are not required to know the contents of the Will. They are required



to attest the signatures of the testator. With regard to submission under Clause (ix), it would be noted that the thumb impression Mark A and B are on the second page of the Will. This is also a small discrepancy in the statement of sub Registrar. Similar is the position with regard to Mark C and D, which are endorsements.

4.18 With regard to question No. 3, it would be noted that there is no concrete evidence to prove that Sh. Ran Singh was 82 years old. The plaintiffs themselves have produced a copy of ration card. It is claimed by the learned counsel representing the plaintiff that this ration card was issued in the year 2013. As per the aforesaid ration card, the age of Sh. Ran Singh was 60 years. In oral evidence Sh. Sadhu Ram has stated that his father was 82 years old. Be that as it may. He remained alive for more than 1 year after the registration of the Will. Furthermore, the judgment relied upon by the learned counsel has been decided in the peculiar facts of the case and hence not applicable. Submission No.(ii) is factually incorrect because there is specific reference to Smt. Sunita in the Will.

4.19 With reference to submission No. (iii), it would be noticed that it is for the testator to take a decision. At the cost of repetition, it is case of the defendant that Smt. Sheela Devi and Smt. Sunita were not residing with Sh. Ran Singh.

4.20 Submission No. (vi) is again with respect to the fact that Smt. Sheela Devi continued to reside with Sh. Ran Singh. It would be noted here that civil cases are required to be decided on pre-ponderance of evidence.



Overwhelming evidence has been produced to prove the Will. Submission under Clause (v) has already been examined. Under Clause (vi), a large number of judgments have been referred, which are in the peculiar facts of the case.

4.21 With regard to argument of the property being coparcenary, the matter has already been examined and hence, need no further deliberation. The old revenue record is in Urdu. Its translation was produced by the plaintiffs and sought to be proved by Sh. Om Parkash, Patwari, however, he admits that he does not know Urdu and someone else had translated it. However, the aforesaid translator has not been examined. In any case, it is proved on record that the property is not proved to be coparcenary property because it has not come through male lineal descendants. In between, there was a civil court decree, transferred deed of some property. Moreover, after the death of Sh. Munshi Ram, the property was inherited under Section 8 of the Hindu Succession Act, 1956 and not as a coparcenary property.

4.22 Argument No. 2 is also same and hence need no further deliberation. Argument No. 3 is required to be considered in the context of the Hon'ble Supreme Court judgments, which has already been relied upon. In this case, it has been proved that Sh. Ran Singh received the property from different sources including ownership by way of adverse possession as well as receipt of the property from his aunt. Hence, the property is not coparcenary.

5. Decision:-

5.1 Keeping in view the aforesaid discussion, the judgment passed by the First Appellate Court is not sustainable. Hence, set aside and that of the

trial Court is restored.

5.2 The appeal stands allowed.

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

(ANIL KSHETARPAL)
JUDGE

12.07.2024
neeraj

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