



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1619-1992 (O&M)

Tulsi Dass

. . . . Appellant

Vs.

Kishan Lal and Others

. . . . Respondent

Reserved on: 07.11.2025
Pronounced on: 10.11.2025

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Argued by:- Mr. Sandeep Punchhi, Advocate
for the appellant.

Mr. J.S. Gill, Advocate for
respondent Nos.1 to 5.

DEEPAK GUPTA, J.

This Regular Second Appeal has been filed by one of the defendants, Tulsi Dass, assailing the judgment and decree dated 07.08.1992 passed by the learned Additional District Judge, Sirsa, whereby the appeal filed by the sole plaintiff Kishan Lal was allowed by setting aside the judgment of the learned Sub-Judge 1st Class, Sirsa, dated 25.07.1990, and the plaintiff's suit for declaration was decreed.

2. To avoid confusion, the parties are referred to as per their status before the trial court.

3. ***Pleadings*** : The property in dispute was admittedly owned by Smt. Shanti Devi, wife of Surja Ram, who died on 11.10.1985 leaving behind eight natural heirs—seven sons and one daughter. One of the sons, Kishan Lal, filed the suit seeking declaration that he and his siblings were owners in possession of the property in equal shares by natural succession. He further sought a



declaration that the Will dated 08.08.1985 allegedly executed by Smt. Shanti Devi in favour of three of her sons—Tulsi Das, Roshan Lal, and Rajesh (defendants 1 to 3), was forged and fabricated, and that the consequent mutation No.1648 dated 23.07.1986 was null and void.

4. The defendants Nos.1 and 5 to 7 contested the suit, asserting that during her lifetime, Smt. Shanti Devi had voluntarily executed the said Will out of her own free will in favour of the three unmarried sons, who were living with and serving her, while the remaining sons and daughter were already married and had been provided with sufficient property. The other defendants were proceeded ex parte.

5. ***Findings by Trial court :*** The learned trial court, after framing issues and evaluating the evidence, held that the Will dated 08.08.1985 (Ex.D1) was genuine, duly executed, and properly attested. Relying upon the testimony of DW-5 Gurcharan Singh, one of the attesting witnesses, the court found that the execution stood proved in accordance with law. Consequently, the suit filed by the plaintiff was dismissed on 25.07.1990.

6. ***Proceedings before first appellate court & its findings :*** Aggrieved plaintiff preferred an appeal. Before the appellate court of learned Additional District Judge, Sirsa, during pendency of the appeal, he filed an application under Order XLI Rule 27 CPC, which was allowed on 24.08.1991 permitting additional evidence.

7. In the additional evidence, the plaintiff examined Anil Kumar Gupta, handwriting and fingerprint expert, who opined that the disputed thumb impression on the Will (marked D-1) did not match the standard thumb impressions (S-1 to S-3) of Smt. Shanti Devi. These standard impressions were taken from judicial records of a prior civil suit instituted by Smt. Shanti Devi and her husband against one Jagannath. The defendants chose not to adduce any rebuttal evidence, and their counsel made a statement that they did not wish to lead evidence in reply to the expert's report.



8.1 Upon re-appreciating the entire evidence, the first appellate court held the Will to be forged and fabricated, mainly on the basis of the expert testimony. The court found that the Will was also surrounded by several suspicious circumstances, in as much as, it was written by DW-4 Har Bhagwan, who was not a regular deed writer and had never written any other document; that the Will was unregistered though the testatrix lived for over two months thereafter; and the recital that some of the sons and the daughter had already been given landed property, was false because no such evidence was adduced.

8.2 It was, therefore, concluded that the Will had not been duly executed and that the recitals therein were untrue. Consequently, the appellate court reversed the judgment of the trial court and decreed the suit. However, while distributing the shares, it held that the plaintiff Kishan Lal and his brother Banwari Lal were each entitled to 1/8th share, and since defendants 5 to 7 had supported the propounder of the Will, they would be deemed to have relinquished their shares in favour of defendants 1 to 3, who were declared owners of the remaining 6/8th share. The Will and mutation were declared void.

9. ***Contentions before this Court:*** In the present appeal, learned counsel for the appellant argued that the first appellate court erred in suspecting the genuineness of the Will merely because it was **unregistered** or written by a **non-professional deed writer**. It was contended that neither registration nor scribing by a licensed deed writer is mandatory. Ld. Counsel maintained that the attesting witness DW-5 or the scribe had no reason to depose falsely and that the expert's report was unreliable, since the standard thumb impressions allegedly belonging to Smt. Shanti Devi were never proved.

10. On the other hand, learned counsel for the respondents contended that the expert's opinion remained unrebutted; that the Will was surrounded by serious suspicious circumstances, and that the false recital regarding prior distribution of property clearly revealed the document to be concocted. It was



further urged that the finding of 'deemed relinquishment' was wholly unsustainable.

11. ***This Court's Analysis*** : After hearing both sides and examining the record, this Court is of the view that the first appellate court committed no error in discarding the Will. The propounder (s) of a Will must establish its due execution and attestation in accordance with Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872, and where suspicious circumstances exist, they must dispel them by cogent evidence. The principle has been consistently reiterated in ***H. Venkatachala Iyengar v. B.N. Thimmajamma (AIR 1959 SC 443)***, ***Smt. Jaswant Kaur v. Smt. Amrit Kaur and ors. (1977) 1 SCC 369***, and ***Ramesh Verma (dead) through legal representative v. Lajesh Saxena (dead) through legal representatives and another (2017) 1 SCC 257***.

12. In the present case, the foundation of the Will itself stands shaken. The expert's report (Ex.PW-4/1) clearly demonstrates that the thumb impression on Will Ex.D1 does not match Smt. Shanti Devi's genuine impressions obtained from judicial records. These standard thumb impressions, having been taken from official court files, where she had herself appeared as plaintiff, were presumptively authentic. The defendants did not controvert the existence of those thumb impressions on the said file nor led any rebuttal evidence. Hence, the Court finds no reason to doubt the expert opinion.

13. Moreover, the Will contains a false recital that certain heirs had already been allotted property, a statement disproved by the record. The non-registration of the Will, though not fatal in law, coupled with the above circumstances and the choice of an inexperienced scribe, adds weight to the conclusion that the document was not executed in the ordinary course.

14. Once the thumb impression itself is found to be not genuine, the very execution of the Will by Smt. Shanti Devi collapses. The first appellate court



rightly held that the Will was not proved and that the property devolved by natural succession.

15. However, the appellate court fell into error in concluding that since defendants 5 to 7 had supported the propounder (s) – defendants N: 1 to 3 of the Will, they should be deemed to have relinquished their shares. Relinquishment of an existing share in immovable property cannot be inferred from conduct or pleadings, as it must be effected by a registered document or a proven family arrangement. In absence thereof, all heirs retain their statutory entitlement.

16. **Conclusion :** In view of the above discussion, this Court upholds the finding that the **Will dated 08.08.1985 (Ex.D1)** and the consequent **Mutation No.1648 dated 23.07.1986** are **invalid and ineffective**. Nevertheless, the finding regarding “deemed relinquishment” is set aside.

17. It is accordingly declared that upon the intestate death of Smt. Shanti Devi, all her eight children i.e., namely the appellant and the seven respondents, shall inherit the suit property in equal shares of 1/8th each. The decree of the first appellate court is modified to that extent.

18. The appeal stands disposed of in the above terms. All pending applications, if any, are also disposed of. There shall be no order as to costs.

(DEEPAK GUPTA)
JUDGE

10.11.2025
Neetika Tuteja

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No