



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

**RSA-496-2001 (O&M)
Reserved on: 12.05.2025
Date of decision: 02.06.2025**

GIAN PARKASH

..Appellant

Versus

CHANDRO & ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Satpal Bhasin, Advocate
for the appellant.

Mr. Rajinder Goel, Advocate
Mr. Harjyot Singh, Advocate
for respondent No.2 to 8 & 10.

ANIL KSHETARPAL, J.

1. The dispute in this appeal is with respect to property left behind by late Sh. Jage Ram. As per Section 68 of the Indian Evidence Act, 1872 (hereinafter referred to as the "1872 Act"), the examination of at least one attesting witness is necessary for proving a testamentary disposition. However, if no attesting witness is available, the Will must be proved by establishing that the signature of at least one attesting witness is in his handwriting, and that the signature of the testator is in the handwriting of the person executing the document. In this case, plaintiff has not examined any of the attesting witness, whereas, defendant has examined one attesting witness namely Sh. Lakhi Ram, however, he refused to take oath. As per Section 4 and 5 of the Indian Oaths Act, 1969 (in short 1969 Act'), the witness is required to either take oath or make solemn affirmation.



2. For the sake of clarity, Section 4 and 5 of the '1969 Act' are extracted as under:-

“4. Oaths or affirmations to be made by witnesses, interpreter and jurors.—(1) Oaths or affirmations shall be made by the following persons, namely:—

(a) all witnesses, that is to say, all persons who may lawfully be examined, or give, or be required to give, evidence by or before any court or person having by law or consent of parties authority to examine such persons or to receive evidence;

(b) interpreters of questions put to, and evidence given by, witnesses; and

(c) jurors: Provided that where the witness is a child under twelve years of age, and the court or person having authority to examine such witness is of opinion that, though the witness understands the duty of speaking the truth, he does not understand the nature of an oath or affirmation, the foregoing provisions of this section and the provisions of section 5 shall not apply to such witness; but in any such case the absence of an oath or affirmation shall not render inadmissible any evidence given by such witness nor affect the obligation of the witness to state the truth.

(2) Nothing in this section shall render it lawful to administer, in a criminal proceeding, an oath or affirmation to the accused person, unless he is examined as a witness for the defence, or necessary to administer to the official interpreter of any court, after he has entered on the execution of the duties of his office, an oath or affirmation that he will faithfully discharge those duties.

5. Affirmation by persons desiring to affirm.—A witness, interpreter or juror may, instead of making an oath, make an affirmation.”

3. It is evident that Section 4(1) requires that all the witnesses shall take oath or affirmation before deposing in the Court. On a perusal of deposition of DW-3 Sh. Lakhi Ram, it is evident that he refused to take oath in the name of God, however, he was also not called upon to make solemn affirmation. Learned counsel representing the defendant also did not offer him the second option i.e. affirmation. Hence, both the Courts have correctly



held that the deposition of Sh. Lakhi Ram cannot be read in evidence.

4. However, the First Appellate Court has held that the second Will dated 14.10.1982 is proved because Sh. Gian Parkash himself produced Will dated 14.10.1982 for sanction of the mutation and thereafter, mortgaged his share for taking loan from Sonapat Cooperative Agri Land Development Land Mortgage Bank and Punjab National Bank. The finding of the First Appellate Court to this effect is not correct because Section 68 of the 1872 Act requires examination of one attesting witness in the Court. Section 70 of the 1872 Act will not be applicable because Sh. Gian Parkash is not a party to the attested document i.e. Will.

5. Consequently, the property of Sh. Jage Ram would devolve upon his heirs in accordance with the provisions of Hindu Succession Act, 1956. His two widows, namely Smt. Chandro and Smt. Natho would inherit half of the property left behind by Sh. Jage Ram, whereas, remaining part will be inherited by Sh. Gian Parkash. Consequently, Smt. Chandro (defendant) will inherit 1/4th of the property. She has sold 1/3rd share of 51 kanals and 7 marlas to the defendants, which is in excess of her share. However, the Court is required to examine, “whether they are bonafide purchasers of the property or not?”. Issue No.vii as culled out by the trial Court is to the aforesaid effect, wherein, the trial Court held that defendant No.2 to 6 were not the bonafide purchasers, however, the First Appellate Court reversed the aforesaid finding. The sale deed was executed for a valuable consideration of Rs.90,000/- as stated by DW-6 Sh. Randhir Singh and DW-7 Sh. Bhupesh Gupta. But it was executed during the pendency of the suit because the suit was instituted on 24.02.1989, whereas, the sale deed was executed on 01.06.1990. Hence, defendants No.2 to 6 cannot claim



benefit of bonafide purchasers because they have failed to prove that they are not governed by rule of *lis pendens*.

6. Consequently, the appellant's appeal is partly allowed and it is declared that sale deed in favour of defendant No.2 to 6 shall be valid only to the extent of 1/4th share of total land measuring 51 kanals and 7 marlas left behind by Sh. Jage Ram.

7. With these observations, the appeal is partly allowed.

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

02nd June, 2025

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No