



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

**CM-10666-C-2019, CM-4124-C-2019  
CM-5532-C-2019, CM-5533-C-2024  
CM-5856-C-2024 in RSA-3487-2011 (O&M)**

**Date of decision : 28.01.2025**

Jagdish Chander

....Appellant

Versus

Shalinder Nagpal and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN**

Present :     Mr. Kulbhushan Sharma, Advocate for the appellant.

Mr. Pankaj Nanhera, Advocate for the applicant/respondents.

**PANKAJ JAIN, J. (ORAL)**

Since the present *lis* pertains to the year 2011 and the matter is listed *qua* hearing on the misc. applications, counsels for the parties pray that the main appeal be heard.

Keeping in view the aforesaid prayer, appeal is taken on Board today itself for hearing.

**RSA-3487-2011 (O&M)**

Defendant is in second appeal.

2.             For convenience, the parties hereinafter are referred to by their original position in the suit i.e. the appellant as the defendant and the respondents and plaintiffs.

3.             Shorn of the details, the brief facts are that the parties are closely related to each other. Common ancestor of parties Beli Ram had a



son Jagdish Chander and a daughter Laxmi Devi Gogia. The dispute in the *lis* relates to estate left by Laxmi Devi Gogia. Laxmi Devi Gogia had no child. Plaintiffs claimed that Laxmi Devi Gogia adopted Savita Nagpal. Plaintiffs are sons of Savita Nagpal. Laxmi Devi Gogia died on 01.10.1989. Suit was filed seeking decree of declaration to the effect that the plaintiffs are owners in possession in equal shares to the extent of 1/2 share in the suit property, as detailed out in the headnote of the plaint on the basis of the said Will dated 26.08.1983 executed by Laxmi Devi Gogia.

4. Suit was resisted by the defendant. Ownership of Laxmi Devi Gogia was admitted. It was denied that the plaintiffs are owners in possession of the suit land or that Savita Nagpal was adopted by Laxmi Devi Gogia during her lifetime. Execution of the Will was also disputed. It was claimed that Laxmi Devi Gogia after death of her husband, lived with the defendant. The Will dated 26.08.1983 is a forged and fabricated document.

5. On the basis of the pleadings, following issues were framed :

- “1. Whether the plaintiffs are the owners in possession of equal share i.e. half share each of the property specifically described in para No.1 of the plaint? OPP.
2. Whether the change of allotment carried out by the DDA vide letter No.1112 dated 16.08.1995 is illegal and not binding on the plaintiffs? OPP.
3. Whether the present suit is not maintainable in the present form? OPD.
4. Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD.



5. Whether the suit has not been properly valued for the purpose of court fee and jurisdiction? OPD.
6. Whether the civil court has no jurisdiction to decide the present suit? OPD.
7. Relief.”
6. Parties led their respective evidence in support of their rival claims.
7. After analysing the evidence threadbare, Trial Court held under issues No.1 and 2 that the Will propounded by the plaintiffs stands fully proved from the testimony of the attesting witnesses. It thus decided issues No.1 and 2 in favour of the plaintiffs and against the defendant.
8. Issues No.3 to 5 were also decided in favour of the plaintiffs and against the defendant. Suit was decreed.
9. Defendant assailed the impugned judgment and decree passed by the Court of First Instance before the Lower Appellate Court. The findings stand affirmed and the appeal stands dismissed by the Lower Appellate Court.
10. Mr. Sharma while assailing the impugned judgments and decrees passed by the Courts below refers to the statement made by PW-5 Sh. V.K. Sharma, Advocate, the attesting witness to the Will. He submits that as per the testimony of PW-5, witness never knew Laxmi Devi Gogia before she was introduced to him by Savita Nagpal 1/2 days prior to execution of the Will. He submits that since Savita Nagpal has not been examined, the identity of the testator remains unproved. Mr. Sharma further



refers to Exhibit DW3/F i.e. the judgment dated 22.01.1998 passed in Civil Suit No.301 of 21.08.1997 titled as ‘Savita Nagpal vs. Jagdish Chander’. He submits that Savita Nagpal filed suit for declaration against Jagdish Chander claiming that she was daughter of Jagdish Chander and constituted joint Hindu family along with him and was entitled to share in the suit properties. This belies the story of adoption of Savita Nagpal. He thus submits that the Will which has been based upon adoption of Savita Nagpal by Laxmi Devi Gogia, is suspicious and cannot be relied upon. He further submits that one of the suit properties i.e. a residential house at Delhi was got mutated in favour of the defendant by none-else but husband of Savita Nagpal. Thus the Will propounded by the plaintiffs is under serious dispute.

11. Per contra, Mr. Nanhera submits that there is no plea challenging the adoption of Savita Nagpal by Laxmi Devi Gogia and thus the said issue cannot be gone into at this stage of regular second appeal. He further refers to the issues framed by the Trial Court and submits that there is no issue w.r.t. adoption of the Savita Nagpal and thus the same is not germane to the instant *lis*. He submits that in order to prove Will dated 26.08.1983, attesting witness namely Sh. V.K. Sharma, Advocate as well as scribe Arjun Singh were examined. Sh. V.K. Sharma, Advocate proved execution of the Will in terms of Section 63(c) of the Indian Succession Act, 1928. Requirements under Section 68 of the Indian Evidence Act, 1872 having been met, the Will stands proved. He submits that the challenge to



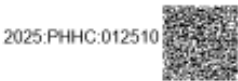
the Will was raised claiming forgery and fabrication. No positive evidence was led to prove the same. He further submits that reliance upon Exhibit DW3/F is also misplaced as the suit filed by Savita Nagpal was finally dismissed. Defendant while appearing as DW-3 admitted signatures of Laxmi Devi Gogia on the Will, in question, and thus, the appellants cannot raise plea of impersonation of Laxmi Devi Gogia.

12. I have heard counsel for the parties and have gone through records of the case.

13. The primary issue in dispute relates to execution of the Will by Laxmi Devi Gogia.

14. Law w.r.t. Will stands settled by Supreme Court in the case of **‘H. Venkatachala Iyengar vs. B.N. Thimmajamma and others, AIR 1959 Supreme Court 443** holding that mere registration of Will does not prove legality and genuineness thereof. Wherever party opposing the Will, spells out suspicious circumstance, the onus lies heavily upon the propounder of the Will to dispel those suspicious circumstance.

15. Onus is always upon the propounder to prove the execution of the Will in terms of Section 63(c). Mode of proof has been described under Section 68 of the Evidence Act. Scribe of the Will appeared as PW-1. Attesting witness appeared as PW-5. The issue raised by Mr. Sharma w.r.t. non-examination of Savita Nagpal and the question of cloud on the Will would arise only if the appellant/defendant proves that it was not Laxmi



Devi Gogia, who thumb-marked and signed the Will in question. Not only such evidence is missing, rather defendant appearing as DW-3 after admitting the signatures of Laxmi Devi Gogia on the Will, left no scope for such inference as proposed by Mr. Sharma.

16. So far as filing of suit by Savita Nagpal is concerned, the said issue cannot be agitated against the plaintiffs. The document cannot be relied upon to non-suit the plaintiffs for two reasons-

- (i) The suit was finally dismissed; and
- (ii) In case, it is taken to be a plea raised by Savita Nagpal in the earlier *lis*, the same cannot be read in evidence until and unless the same is put to Savita Nagpal by examining her as witness. Admittedly the same was not resorted to.

17. There being no such effort made by defendant, this Court does not find any reason to interfere in the well reasoned findings recorded by the Courts below upholding the Will propounded by the plaintiffs.

18. As a sequel of the discussion held hereinabove, finding no merit in the instant appeal, the same is ordered to be dismissed.

19. Pending misc. application(s), if any, shall also stands disposed off.

January 28, 2025

Dpr

(Pankaj Jain)  
Judge

Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No