Before Amol Rattan Singh, J.

BHARPUR SINGH AND OTHERS—*Appellants*

versus

SUKHJINDER SINGH AND OTHERS—*Respondents*

RSA No. 3707 of 2013

May 15, 2017

(A) ***Limitation Act, 1963—S.3—Code of Civil Procedure, 1908—O.14 Rl.1—Civil Suit— Limitation—Non-framing of issue—Not a ground to discard question of limitation.***

Held that, as a matter of fact, the first question of law that arises for consideration in this case, is the one framed at Sr. no.(vii) hereinabove and though no issue on whether the plaintiffs' suit was within limitation or not was ever framed by the learned Sub Judge in the suit, and no objection thereto is ever seen to be raised, however, limitation being a basic issue, this Court would not discard that question framed by learned counsel at Sr. no.(vii) hereinabove.

(Para 52)

(B) ***Indian Evidence Act, 1872—Sections 63, 68 and 69—Registered Will—Standard of proof —Held, a registered Will needs to be proved first strictly in terms of Section 63 and 68—Further, witnesses not alive then Will needs to be proved as per Section 69.***

Held that, it is first to be stated that without doubt, even a registered will, unlike any other registered document, has to be proved first strictly in terms of Section 63 of the Indian Succession Act, and then as per Section 68 of the Indian Evidence Act, with at least one of the attesting witnesses examined, if such witness be alive, and if not, then by taking recourse to Section 69 of the Evidence Act. Therefore, it needs to be seen whether the will in question is duly so proved, or not.

(Para 53)

(C) ***Indian Evidence Act, 1872—S.69—Proof of Will—Section 69 has provision of two conditions attached to it; first is, in the absence of attesting witness, the attestation is recognized to be in the hand of that witness and the second is, the signature of the person executing the document is in the handwriting of that person.***

Held that, Section 69 has two conditions attached to it; the first being that in the absence of an attesting witness, the attestation is

recognized to be in the hand of that witness and the second being that the signature of the person executing the document is in the hand writing of that person. In the present case, PW3 Niranjan Singh testified that he was the son-in-law of Kartar Singh, one of the attesting witnesses and he identified the signature of his father-in-law on the will. Similarly, one Amrik Singh (PW2), a 70 year old retired teacher of village Sahera, deposed that he identified the signatures of witness Hazura Singh, who was a co-villager and died at the age of 92 years about 4-5 years prior to the date of the testimony of this witness, which is seen to have been recorded on 16.05.1994.

(Para 58)

(D) ***Indian Evidence Act, 1872—S.63, 68 and 69—Delay in production of registered Will— When not fatal—Material showed that it was when defendants got mutation entered in their favour that plaintiff actually instituted suit seeking a declaration and permanent injunction in his favour, on the basis of Will—Though delay in producing the Will after death of Ram Devi, this Court would not consider it fatal to the plaintiffs' case.***

Held that, further, she having died in 1990, 28 years after the wills' execution, naturally, it could not have been operative before that. However, even the 3 year gap during which the will was never produced by the plaintiff, in the entire circumstances of the case, would not negate the will, in my opinion, though such a long gap may otherwise be a reason to doubt a will. This is for the reason, as would be seen further also, that the suit land was in possession of the plaintiff either in the capacity of a mortgagee or otherwise, during the entire life time of Ram Devi, and the contention being that she was living with his daughter, sometimes visiting him and sometimes her own daughters, his possession would seem to be with her complete consent. Hence, it was only when the defendants, i.e. the daughters of Ram Devi, got a mutation entered in their own favour qua the suit land, that the plaintiff actually instituted the suit seeking a declaration and permanent injunction in his favour, on the basis of the will. Thus, though the delay is obviously there, in producing the will after Ram Devis' death, this Court would not consider it fatal to the plaintiffs' case.

(Para 63)

(E) ***Indian Evidence Act, 1872—S.63—Registered Will—Plea of unsoundness of mind challenged—Immaterial, when not supported by medical evidence.***

Held that, no medical evidence, whatsoever, was produced by the defendants to show that even in 1962, their mother Ram Devi was not in a sound state of mind. This is further to be read with the testimony of DW1 Karamjit Singh, i.e. the defendants' witness, as has been referred to by the Courts below, to the effect that he testified that Ram Devi was "fully conscious till her death". Hence, that statement would seem to show that at no stage was she in any unfit mental condition, which, to repeat again, has to be seen with the fact that there is no medical evidence whatsoever, to sustain that contention of the defendants. Therefore, as regards the mental condition of Smt. Ram Devi at the time when she is stated to have executed the will in 1962, it has to be held that she was in a healthy state of mind, in view of the lack of any medical or other evidence to the contrary, as also in the light of the testimony of DW1, Karamjit Singh.

(Para 66)

(F) ***Indian Evidence Act, 1872—S.63—Registered Will—Challenge to Will being in favour of nephew ignoring natural succession—Not acceptable, when reason for diverting natural succession found to be given in Will.***

Held that, hence, it is not a case where the will does not even refer to the natural heirs of the testatrix and would therefore be disbelievable on that score alone. In the instrument, good reason for diverting natural succession have been given; to the effect that with two daughters of the testatrix having pre-deceased her, and two having been married off with enough given to them on their marriage and other occasions and the marriages also having been performed with the help of the plaintiffs' father; with the father having looked after every need of the testatrix, and he (the plaintiff) also having looked after her, in my opinion, the diversion from natural succession would be for sufficient cause shown.

(Para 67)

(G) ***Limitation Act, 1963—Arts.58 and 65—Indian Evidence Act, 1872—S.63—Registered Will—Suit filed after 3 years of death of Testatrix—Thus, not time-barred.***

Held that, as regards the question of limitation qua the suit property sought to be declared to be in the ownership of the plaintiff, on the basis of the will of Ram Devi, as already stated, such declaration being on the basis of title to the property, in turn based on the will executed in favour of the plaintiff by the testatrix, there would be no limitation to seek such a declaration, in the opinion of this Court,

despite what is stipulated in Article 58 of the said Schedule. Part III of the schedule relates to suits relating to declaration, with Articles 56 and 57 being in respect of declaration of an instrument being forged and a declaration of an invalid adoption respectively Article 58 is the residue clause that pertains to the limitation towards any other declaration. Thus, a suit seeking any other declaration, i.e. other than that which is subject matter of Articles 56 and 57, is covered under Article 58, which stipulates a period of three years within which a suit must be filed, the three years beginning from the time that the right to sue first accrued.

Further held that, viewed in isolation from that angle, it would seem that Ram Devi having died on 09.06.1990, the limitation to seeking a suit for declaration that the plaintiff was the owner in possession of the suit property, would expire on 08.06.1993. However, Part V of the Schedule to the Limitation Act, specifically relates to the institution of suits relating to immoveable property. Article 65, which falls within Part V, stipulates that for possession of immoveable property or any interest therein based on title, the limitation to file a suit is 12 years, with the 12 years commencing from the date when the possession of the defendant becomes adverse to the plaintiff. That is to say that if 12 years have elapsed, with the defendant in the suit being in possession of the suit land, open and hostile to the true owner of the property, such defendant may become entitled to a decree in his favour, that his possession has perfected into ownership by way of adverse possession and as such, the title of the property has passed on to such defendant.

(Para 71)

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AMOL RATTAN SINGH, J.

(1) The appellants in these two regular second appeals before this Court, are in a second round of litigation after the stage of the judgment and decree of the learned Sub Judge Ist Class, Kharar, passed on 24.08.1995.

The suit of plaintiff Shamsher Singh (now represented in both

the appeals by his legal representatives), having been partly decreed by that Court, both, the plaintiff and the two defendants, appealed against the said judgment and decree dated 24.08.1995, before the first appellate Court, which at that stage, allowed both the appeals and wholly reversed the aforesaid judgment and decree.

The suit was however still only partly decreed but by complete reversal, inasmuch as, the 2nd issue pertaining to land claimed by the plaintiff to be in his ownership and possession on the basis of a will was decreed by the first appellate Court at that stage, whereas the 3rd and 4th issues framed by the trial Court pertaining to whether the plaintiff had become owner of the land that he was in possession of as a mortgagee, were decided against him and in favour of the defendants. The learned Subordinate Judge had, on the other hand, held the second issue against the plaintiff and the 3rd and 4th issues in his favour and against the defendants.

(2) The judgment and decree of the learned first appellate Court having been earlier challenged before this Court by the legal representatives of the defendants, by way of a regular second appeal (RSA No.604 of 2000), that appeal was dismissed by a judgment of a co-ordinate Bench, dated 17.08.2006, essentially holding as follows:-

> "The will in question was executed on 30.03.1962 and the testator is said to have died on 19.06.1990. The fact that during this entire period, the testator did not have any second thoughts goes to show about the clarity of the intention of the testator. The fact that it was registered only lends more credence to the validity of the will. It is also in evidence that Gurdial Kaur and Kako were not staying with their mother and had not supported her during her life time. In their testimony, they have stated that they came to know about the death of Ram Devi about 5 to 6 days after she had expired. In fact, all the defence witnesses have admitted this fact. This is a reflection and a measure of the relationship of Gurdial Kaur and Kako were having with their mother at the time of her death. On the other hand, Ram Devi is said to have died in the house of Iqbal Kaur, daughter of the plaintiff-respondent. This was sufficient reason for the testator to have deprived the natural heirs of the right to succession."

(3) That judgment was challenged by way of Civil Appeal no.7250 of 2008 (arising out of SLP (Civil) no.1400 of 2007), before

the Supreme Court, and was disposed of by their Lordships, setting aside the judgment of this Court as also that of the first appellate Court, remitting the matter back to that Court (the first appellate Court), to be decided afresh in the light of the observations made in the judgment of the Apex Court, as would be seen further in this judgment.

(4) Pursuant to the said direction dated 12.12.2008, the impugned judgment and decree have been passed by the learned first appellate Court on 18.03.2013, challenged by both, the legal representatives of the late plaintiff (Shamsher Singh), as also by the surviving defendant and the legal representatives of her sister, i.e. the first defendant (Dialo @ Gurdial Kaur).

(5) Presently, in RSA no.3707 of 2013, the first two appellants are the sons and legal heirs of the first defendant in the suit, (Dialo @ Gurdial Kaur, daughter of Ram Devi) and the 3rd appellant is the second defendant in the suit, Kako also daughter of Ram Devi.

The respondents in this appeal are the sons and legal representatives of plaintiff Shamsher Singh.

The second appeal before this Court, i.e. RSA no.3776 of 2013, has been instituted by three of the sons and legal representatives of plaintiff Shamsher Singh, with the respondents being the first three appellants in RSA no.3707 of 2013, i.e. the legal heirs of the first defendant, and the second defendant herself, with the remaining four respondents being the brothers of the appellants, i.e. the other four sons of plaintiff Shamsher Singh, who have been all impleaded as proforma respondents.

(6) In the aforesaid background, the facts of the civil suit, as taken from the judgments of the Courts below, are given hereinafter.

Civil Suit no.305/17.07.1993 was instituted against two defendants by plaintiff Shamsher Singh, seeking a declaration that he was the owner in possession of land measuring 56 bighas and 7 biswas, as described in the *jamabandi* for the year 1988-89, situated at village Gharuan, Tehsil Kharar, on the basis of a registered will dated 30.03.1962, executed by Ram Devi, widow of Jiwan Singh, mother of the two defendants in the suit. In the prayer clause, he also sought a declaration on the equity of redemption in respect of land bearing khewat no.25, khasra no.59, on the ground that the period to redeem the mortgage had expired, more than 30 years having gone by since the mortgage was executed. Shamsher Singh further sought a decree of permanent injunction restraining the defendants from alienating the suit

land in any manner, or interfering in his possession of the land.

(7) As per the plaintiff, Smt. Ram Devi, (mother of the two defendant ladies), was the owner of the suit land, who had died on 09.06.1990 at Rajpura, District Patiala, in the house of Iqbal Kaur, daughter of plaintiff Shamsher Singh. It was further contended that during Ram Devis' life time, Bijla Singh, father of plaintiff Shamsher Singh and the plaintiff himself, used to look after her and for that reason, Ram Devi had executed the aforesaid will in favour of the plaintiff, in a fully sound and disposing mind, bequeathing her entire property to him.

Ram Devi had four daughters, of whom only the two defendants were still living, but she had dis-inherited them "after due consideration".

It was further contended that during the life time of Ram Devi, the plaintiff used to cultivate the suit land and after her death, he had become owner in possession thereof. However, the defendants had got mutation no.12275 sanctioned in their favour, "since the plaintiff was a bit lazy in doing so".

Hence, he also challenged the legality of the said mutation entry, on the plea that it was sanctioned without issuing notice to him and consequently, he was not bound by the same and further, the defendants, on the basis of that entry, were threatening to alienate the suit land and dispossess the plaintiff therefrom.

In the aforesaid circumstances, Civil Suit no.305 was instituted by the plaintiff on 17.07.1993, making the prayers already referred to hereinabove.

(8) Upon notice issued to them, the two defendants appeared and filed a joint written statement admitting that their late mother, Ram Devi, was the owner of the suit land; however, denying that she had died at the house of the plaintiffs' daughter, further denying that the plaintiff or his father ever looked after Ram Devi. Naturally, having denied the aforesaid, the will set up by the plaintiff in his favour was also denied to be a true will of the late mother of the defendants.

The defendants further contended that their father, Jiwan Singh, was murdered about 60 years earlier and due to that shock, Ram Devi had lost her balance of mind and thereafter was being served and looked after by her daughters, i.e. the defendants.

In the aforesaid background, the mutation entry in favour of the

defendants, qua the suit land, was also contended to be legal and valid.

Additional objections were also taken in the written statement, to the effect that the plaintiff was estopped by his own act and conduct in claiming the ownership of the suit land and that he was not in any case related to their mother at all and as such, he had no right in the land.

(9) The plaintiff having filed a replication controverting the contents of the written statement and reiterating those of the plaint, the following issues were framed by the learned Sub Judge:-

> "1. Whether the plaintiff is owner in possession of the suit land? OPP
>
> 2. Whether Smt. Ram Devi executed a legal and valid will dataed 30.3.1962 in favour of the plaintiff, if so its effect? OPP
>
> 3. Whether the plaintiff has been mortgaged in possession of land bearing kh/kh, no. 25/59 described in head note of the plaint? OPD
>
> 4. If issue no. 3 is proved, whether equity of redemption has been extinguished? OPD
>
> 5. Whether plaintiff is entitled to decree of permanent injunction prayed for? OPD
>
> 6. Whether the plaintiff is stopped by his act and conduct to file the present suit? OPD
>
> 7. Relief"

(10) By way of evidence, the Plaintiff examined himself as PW5 and further examined one Suresh Chander Puri, son of the person who is stated to have scribed the will of Ram Devi, i.e. Pritam Chand Puri; Pritam Singh son of the late Sarwan Singh, Sub-Registrar; Niranjan Singh, son-in-law of one of the attesting witnesses (Kartar Singh); and Amrik Singh son of Sada Singh, who identified the signatures of Hazura Singh/Rura Singh on the will, Ex.P2.

(The numbering of these witnesses, as given in the judgment of the Sub-Judge is not being specifically referred to because it is seen that there is a discrepancy in the numbering when compared with the record of that Court, though no objection has been raised by either counsel with regard to the reference to the actual testimonies of these

witnesses, in the judgment of that Court).

As per the learned Sub-Judge, Suresh Chander Puri brought the register of his father for the year 1962, showing therein that there was an entry at Sr. no.56, dated 30.03.1962 (pertaining to the will of Ram Devi).

Pritam Singh identified the signatures of his father, Sarwan Singh, Sub-Registrar, on the will.

Niranjan Singh identified the signatures of his father-in-law, Kartar Singh.

The plaintiff Shamsher Singh identified his own signatures on the will, further stating that after executing the will in his favour, Ram Devi had died at Rajpura in the house of his daughter, Iqbal Kaur and that he and his father used to look after her and serve her.

(11) By way of documentary evidence, the judgment of the Sub-Judge refers to various documents including the will in question and the entry pertaining thereto in the register of the scribe. Other than that it refers to *jamabandies* (records of rights) of various years, starting from the years 1952- 53 to 1993-94, pertaining to the suit land.

(12) As regards the defendants, in the judgment, the testimonies of five defence witnesses are referred to, i.e. Karamjit Singh, Numberdar of village Gharuan, Kirpal Singh and Babu, both residents of village Madiana, (the village where the defendants were shown to be residing), defendant no.1 Dialo (DW4) and Kirpal Singh, AOK (a revenue official), who testified as DW5 in respect of record pertaining to a resolution dated 08.01.1953, on which the thumb impressions of deceased Ram Devi were contended to have been present, but as per the said witness, they were superimposed.

DW1 Karamjit Singh, Numberdar, was referred to as having testified to the effect that Ram Devi was not mentally alert and that she used to reside sometimes with her daughters at village Madiana and at sometimes at village Gharuan.

DWs2, 3 and 4 referred to above are all shown to have testified in terms of the written statement of the defendants.

(13) In the light of the aforesaid evidence, the learned Sub Judge found that though the will dated 30.03.1962 was shown to be a registered document, not cancelled till the date of the death of Ram Devi, on 09.06.1990, however, it was shrouded by suspicious

circumstances for the reasons given hereinafter.

Firstly, it was found that though the plaintiff had pointed out from the will that he was related to the testatrix as the nephew of her husband, no such relationship was actually proved, so as to believe that Ram Devi would bequeath her entire property to him, to the complete exclusion of her own daughters.

Second, it was found by that Court that no evidence at all had been led by the plaintiff to show that he and his father had actually served Ram Devi till her death, other than the plaintiffs' statement to that effect. No person from the village had deposed to that effect and even the sole witness from village Gharuan, i.e. the place of residence of the plaintiff, Pritam Singh (PW1), had not testified to that effect.

Not even a ration card or a voters' card was produced to show that Ram Devi was actually living with the plaintiff, so as to establish that he had served her.

Thirdly, it was held that the contention of the plaintiff that Ram Devi had died at Rajpura in the house of his daughter, Iqbal Kaur, also was not believable, with no explanation as to why she was residing there, with neither Iqbal Kaur, nor anybody from Rajpura, examined to establish that fact.

Fourth, it was held that a perusal of the revenue record showed that the plaintiff and his father had been in possession of a part of the suit land as tenants and over the remaining as mortgagees. The conclusion drawn from this fact, by the learned Sub Judge, was that if the plaintiff and his father were indeed looking after and serving Ram Devi, there would be no need for her to mortgage a part of the suit land to them and give them the remaining land on rent. Thus, according to that Court, the aforesaid fact proved that the relationship between the plaintiff and deceased Ram Devi was only "professional and business type" and therefore, there would be no reason for Ram Devi to execute a will in his favour out of any love and affection.

The last reason given by the learned Sub Judge to disbelieve the will, was that it was not even the case of the plaintiff that relations between Ram Devi and her daughters were strained, so as to exclude her own natural heirs from succession to her property.

(14) On the aforesaid reasons, further citing a judgment of this

Court in ***Nimbo and others*** versus ***Satyabir Singh***[1], it was held that the circumstances surrounding the will were not such as would make it a believable and valid document by which the testatrix excluded her own daughters from her property.

Hence, issue no.2, on the validity of the will, was decided against the plaintiff.

(15) On issues no.3 and 4, i.e. the issues relating to whether the plaintiff was a mortgagee in possession of land bearing khewat/khatoni no.25/59, and whether the equity of redemption stood extinguished by his long possession thereof, those issues were decided in favour of the plaintiff, on the basis of the documentary evidence led to that effect.

It was found that as per the *jamabandies* (records of rights) for the years 1952-53 till 1993-94, first the plaintiff and his father, and thereafter the plaintiff himself, were shown to be in possession of the aforesaid land as mortgagees and there was nothing on record to show that the mortgage had been redeemed till then.

Hence, holding that the limitation for redemption of mortgaged land is 30 years, and more than that period having expired since the mortgage was executed (i.e. at least since 1952), the defendants' rights to get it redeemed stood extinguished.

(16) On the aforesaid findings, it was held in respect of issue no.1 that the plaintiff was owner in possession of khewat/khatoni no.25/59, khasra no.1644 (5-0), 1645 (3-0), 1646 (6-5), 1647 (6-5) and 1648 (5-10) measuring 26 bighas of land, but was not owner in possession of land bearing khewat/khatoni no.24/58, khasra nos.1643, 1649, 1650 and 1643/1 and khasra/khatoni no.24/58 and 26/60.

As regards the prayer for permanent injunction, it was decreed to the effect that the plaintiff was entitled to such decree restraining the defendants from alienating the suit land contained in khewat/khatoni no.25/59 but not from the remaining suit land.

(17) As already noticed at the outset, the aforesaid judgment and decree was challenged before the learned first appellate Court (Additional District Judge), Rupnagar, by both, the defendants as also the plaintiff in the suit, in respect of the issues decided against the respective parties.

That Court, after noticing the pleadings of the parties, the issues

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framed by the Sub Judge, and the evidence led before the lower Court, first went on to discuss issues no.3 and 4 pertaining to the land claimed be mortgaged with the plaintiff, observing that though the plaintiff had claimed that he had become owner thereof by virtue of more than 30 years having expired since the mortgage was executed, with it not redeemed till then, however, in the pleadings no reference had been made with regard to the mortgage of the land, as no particulars had been given as to when and by which document it had been mortgaged and what the nature of the mortgage was and the consideration for the mortgage, (i.e. the mortgage amount).

It was further noticed that even in evidence the original mortgage deed had not been produced and merely because the revenue record for 30 years was produced, the trial Court could not decide those issues in favour of the plaintiff.

Further holding that the two issues pertaining to the mortgage were erroneously framed, with no pleadings to that effect and evidence also led beyond the pleadings which was not permissible, especially as the mortgage had only been referred to in the head note of the plaint, the findings of the trial Court on issues no.3 and 4 were reversed, and those issues were decided in favour of the defendants, against the plaintiff.

(18) Taking up issue no.2, pertaining to whether the will set up was a legal and valid will executed in favour of the plaintiff, it was held that the will was validly proved for various reasons, the first being that it was a registered will, not cancelled for a period of 28 years after its registration on 30.03.1962, i.e. till the death of the testatrix on 09.06.1990.

Secondly, it was found that a death certificate, Ex.P5, had been exhibited by the plaintiff showing that Ram Devi had died at house no.B-1/311, behind Ravi Dass Mandir, Old Rajpura, District Patiala. A certificate issued by the Municipality, Ex.P16, also showed that the house was owned by Smt. Iqbal Kaur, widow of Sukhdev Singh, daughter of the plaintiff, Shamsher Singh.

It was further found that, firstly, even defendant no.1 had admitted as DW4 that she came to know about her mothers' death only 5 to 6 days later and her cremation had also taken place by then, and also, DWs 1 and 2, Karamjit Singh and Kirpal Singh, had testified to similar effect, with DW1 further admitting that Ram Devi was fully conscious till her death.

That Court further recorded a finding that defendant Dialo had admitted that she had gone to village Gharuan where the plaintiff was residing. She also contradicted her own witnesses by saying that two days before her mothers' death, her mother had become mentally insane. That testimony, however, was not borne out by any of the other witnesses and in any case none had deposed that when the will was executed in the year 1962, Ram Devi was not of sound mind.

It was also recorded by the first appellate Court that those witnesses had also deposed that Ram Devi sometimes used to visit the defendants and sometimes used to go to village Gharuan. Hence, it was concluded that obviously she was not permanently living with the defendants and therefore, their claim with regard to them serving her, were false.

Yet further, it was found by that Court that DW1 Karamjit Singh had admitted that Ram Devi had sold her house at village Gharuan, which supported the case of the plaintiff that Ram Devi used to reside with him whenever she visited there, and that most of the time she was living with his daughter at Rajpura.

The testimonies of the defence witnesses were also held by that Court to support the case of the plaintiff, that his father had been rendering services to Ram Devi during her life time and therefore, with no other death certificate having been produced, showing that she died either at village Gharuan or at village Madiana (the latter where the defendants resided), it was held that Ram Devi lived at Rajpura, thereby being looked after by the plaintiffs' daughter and when she visited Gharuan, she was looked after by the plaintiff, and before him, his father.

(19) It was also held that the will was a 30 year old document which came from proper custody, i.e. from the custody of the plaintiff in whose benefit it was executed, and with the scribe, the attesting witnesses and the Sub-Registrar before whom it was registered, all having died, the plaintiff had sought to prove it in terms of Section 69 of the Evidence Act, by examining the son of the deceased scribe, the son of the Sub-Registrar, as also a person who proved the signatures of one of the attesting witnesses, Hazura Singh.

An argument having been raised on behalf of the defendants that even the thumb impression of the testatrix was required to be proved, the first appellate Court (in the first round of litigation before that Court), repelled it by noticing that the plaintiff had himself also signed

the will and though he had not stated so in his examination-in-chief, however, in cross-examination, he had stated that the thumb impression was taken by the Clerk in his presence. (The inference taken being that it was that of the testatrix). He had also testified that the Sub-Registrar had obtained their signatures.

The learned first appellate Court also recorded that a perusal of the original will showed that only Ram Devi had thumb marked it whereas the witnesses had signed it.

(20) On the aforesaid findings, it was held that with the document being 30 years old, it stood proved in terms of Section 62 read with Section 90 of the Evidence Act and therefore, the signatures of Ram Devi also stood proved to be genuine.

Yet further, what is of significance is that it was noticed by that Court that in their written statement, the defendants had not stated that the thumb impression of Ram Devi was forged on the will.

Hence, the will was held to be duly proved by the plaintiff.

(21) That Court thereafter went on to examine the suspicious circumstances surrounding the will, including the fact that natural heirs had been ignored, with there being no proof of the plaintiff rendering services to the testatrix.

The argument on behalf of the defendants that the plaintiff having taken active part in the execution of the will and even having signed it, it could not be taken to be a genuine document, was also duly noticed.

It was also noticed by that Court that other than signing the will, the plaintiff had also admitted in Court that he had brought one witness, i.e. Kartar Singh, whereas the other witness was already present there (at the time of execution of the will). The testatrix was stated to have been brought from Rajpura to Kharar for executing the will, her age being 75 years at that time.

(22) However, all the aforesaid circumstances were held to be not enough to dislodge the authenticity of the will by holding that, firstly, Ram Devi never tried to cancel the will for 28 years, and further, that she had no male child, with the plaintiff addressing her as *"Tayee"*, as per his witnesses.

Thereafter, stating that with the plaintiff being an active participant in the will, that would be a very suspicious circumstance,

especially with the daughters having being ignored from the estate, it was further observed that therefore a very heavy burden fell upon the plaintiff to prove the genuineness of the document.

Yet, reiterating essentially what had already been held as regards the will having been proved, with Ram Devi not living with her daughters and having been proved to have died while she was living with the plaintiffs' daughter, it was held that she obviously had close relations with the plaintiff and hence, the suspicious circumstances stood dispelled.

That Court further went on to hold that complete details had been given in the will, including the fact that of Ram Devis' four daughters, two had already died. Thus, as per the reasoning of the Court, if the plaintiff had been a complete stranger, he would not have known of that fact.

(23) The reasoning of the trial Court to the effect that since some land was lying mortgaged with the father of the plaintiff and therefore, no personal relationship stood established, was a reasoning that was also reversed by the first appellate Court, holding that simply because of that fact, it did not prove that there were only commercial relations between the parties.

Further, again reiterating that the original mortgage deed had never been led in evidence, it was held to be not proved as to whether the land was actually mortgaged by the plaintiff or his father, or whether they had purchased the mortgage rights from somebody else.

(24) On the aforesaid findings, the 2nd issue was decided in favour ofthe plaintiff, thereby reversing the judgment of the Sub Judge.

As a result of the aforesaid findings, the 5th issue, with regard to a a decree of permanent injunction, was also decided in favour of the plaintiff.

(25) Eventually, the first appeal filed by the defendants was accepted qua issues no.3 and 4 and the appeal of the plaintiff was also accepted, qua issues no.1, 2 and 5. Thus, the suit of the plaintiff was partly decreed to the extent that he was held to have become owner in possession of the suit land on the basis of the registered will executed by Ram Devi on 30.03.1962 and a decree of permanent injunction was also issued restraining the defendants from alienating it or interfering in the peaceful possession of the plaintiff over the suit property in any manner. The suit of the plaintiff qua extinguishment of the right of

redemption of the mortgage was however dismissed.

(26) It is to be noticed here that at that stage the plaintiff did not challenge the judgment and decree of the first appellate Court, qua the findings against him on issues no.3 and 4 and the dismissal of the suit qua those issues. Only the defendants, i.e. the legal representatives of the first defendant and the 2nd defendant herself, challenged the aforesaid judgment and decree of the first appellate Court, by filing RSA no.604 of 2000 before this Court.

(27) This Court (co-ordinate Bench), having noticed the facts, as also the judgments of both the Courts below, and the arguments raised before it at that stage, eventually also came to the same conclusion as had the first appellate Court, and dismissed the appeal by also taking support of three judgments in ***Satya Pal Gopal Das*** versus ***Smt. Panchubala Dasi and others***[2], ***Hamida and others*** versus ***Mohd. Kahlil***[3] and ***Harbhajan Singh*** versus ***Chanan Singh and others***[4].

The first of the aforesaid judgments was also quoted to the following effect:-

> "As we said there are certain outstanding features of the case which should dispel all suspicion that may possibly otherwise attach itself to the will. The will was registered on June 30, 1946 and the testator died on March 12, 1950. That is to say, the testator lived for nearly four years after the execution and registration of the will and yet he took no steps to have the will cancelled or to revoke it. It could not be that the will was somehow brought into existence and the signatures of Nrisingha Prosad Das were obtained on the will by practicing some fraud. The endorsements on the will show that Nrisingha Prosad Das himself had presented the will for registration to the Sub- Registrar and that the Sub Registrar had been called to the residence of Nrisingha Prosad Dass for the purpose of registered the will. Nrisingha Prosad Das affixed his signature twice again in, the presence of the Sub Registrar, as shown by the endorsements. The endorsements also show that execution was admitted by Nrisingha Prosad Dass. As earlier mentioned by us, every

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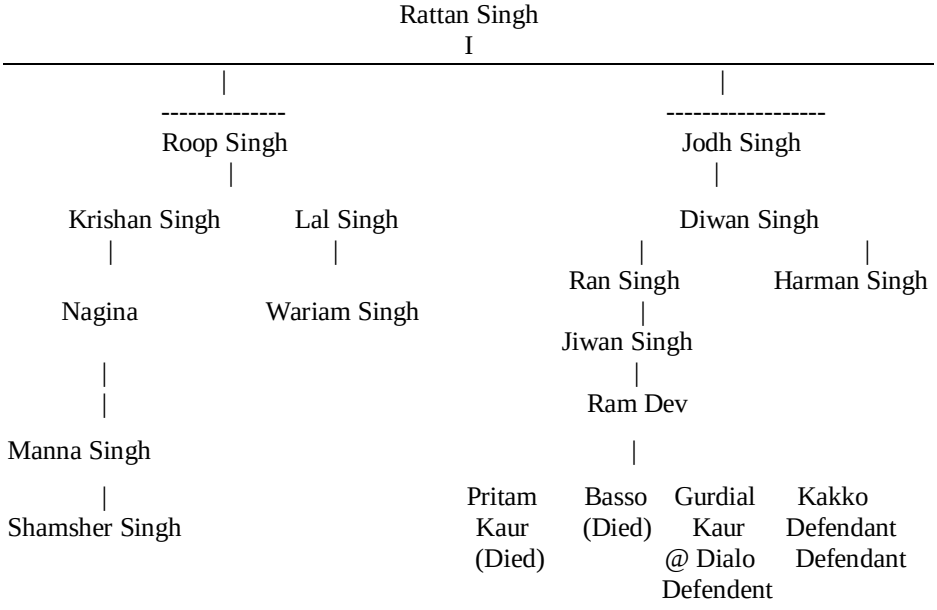
[2] AIR 1985 SC 500
[3] AIR 2001 SC 2282
[4] AIR 1964 Punjab 1170

page of the will has been signed by Nrisingha Prosad Das and at the foot of the will, a note listing the various corrections made has also been signed by Nrisingha Prosad Das. Therefore, there cannot even be the slightest doubt that the document was executed by Nrisingha Prosad Dass, that its execution was admitted by Nrisingha Prosad Das before the Sub Registrar and that Nrisingha Prosad Das himself presented it to the Sub Registrar having called him to his own residence for that purpose."

(28) The judgment of this Court was further challenged by the defendants (present appellants), before the Supreme Court as already stated.

The Apex Court, in its judgment dated 12.12.2008, first reproduced the genealogical table going back to a common ancestor between the plaintiff Shamsher Singh and the defendants, Gurdial Kaur and Kako, such ancestor being one Rattan Singh. That table is as below:-



(It is to be noticed at this stage itself that Ram Devi was actually the wife of Jiwan Singh, as has been the admitted case of the parties and not his daughter, as would seem to appear from the aforesaid table).

(29) Thereafter, their Lordships specifically referred to the following arguments of learned counsel for the appellants, as made

before them:-

"i. The first appellate court as also the High Court must be held to have committed a serious error in arriving at the aforementioned findings insofar as they failed to take into consideration that the respondent/plaintiff did not produce the will before the Revenue authorities and furthermore did not make any attempt to file a suit on the basis thereof for a period of three years from the date of death of the testatrix.

ii. The plaintiff had not been able to prove that the relationship between Ram Devi and her daughters was strained.

iii. An agnate separated by five degrees cannot be said to be a relation, which would be a sufficient ground for an old lady to execute a will in his favour.

iv. No reason has been assigned as to why the daughters have been disinherited by the testatrix.

v. The left thumb impression of the testatrix was not compared with her left thumb impression appearing in the deed of mortgage which was said to have been executed in favour of the plaintiff and, thus, no reliance could have been placed thereupon.

vi. The beneficiary of the will being mortgagees and tenants coupled with other factors, it should have been held by the courts below that the will was surrounded by suspicious circumstances."

The following arguments of learned counsel for the plaintiff were also noticed as follows:-

"i. Shamsher Singh being one of the collaterals and he having been looking after Ram Devi, the testatrix, the execution of the will must be said to have been proved.

ii. The will being a registered one, its genuineness should be presumed. The same in any event having been executed on 30.03.1962, its execution must be held to have been proved being a document more than 30 years old.

iii. The fact that the appellants, although daughters, came to know about their mother's death six days after the same had taken place, evidently shows that they had not been looking after their mother during her old days.

iv. Appellants have failed to prove that they had been maintaining any relationship with their mother and at her old age she was being looked after by them."

(30) Having noticed the aforesaid, it was held that a will must be proved having regard to the provisions contained in Section 63(c) of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872, in terms of which the propounder of the will must prove its execution by examining one or more attesting witnesses.

It was further held that where the validity of the will is challenged on the ground of it having been obtained by virtue of coercion or undue influence, the burden of proof thereof would be on the caveator. Yet further, it was held that where a will is surrounded by suspicious circumstances, such will cannot be accepted to be the last testamentary disposition of the testator.

Quoting from the judgment in ***H. Venkatachala Iyengar v. B. N. Thimmajamma*** (AIR 1959 SC 443), the following part of the judgment was reproduced, on the touchstone of which a will must be proved:- "i. that the will was signed by the testator in a sound and disposing state of mind duly understanding the nature and effect of disposition and he put his signature on the document of his own free will, and

ii. when the evidence adduced in support of the will is disinterested, satisfactory and sufficient to prove the sound and disposing state of testator's mind and his signature as required by law, Courts would be justified in making a finding in favour of propounder, and

iii. If a will is challenged as surrounded by suspicious circumstances, all such legitimate doubts have to be removed by cogent, satisfactory and sufficient evidence to dispel suspicion."

Further quoting from that judgment and thereafter from ***Niranjan Umeshchandra Joshi*** versus ***Mrudula Jyoti Rao &***

ors.[5], their Lordships then went on to notice what was also held by the trial Court in the present *lis*, that the plaintiff was a mortgagee on land belonging to the testatrix and also a tenant on some of her properties. It was further observed that the testatrix was not shown to be an educated lady, she having affixed her left thumb impression on the will.

Hence, it was held that in that situation, the question that should have been posed (by the courts), was as to whether she could have had independent advice in the matter.

It was also held that for the purpose of proof of the will, it was also necessary to consider the fact situation prevailing in the year 1962 and that even if it was presumed by subsequent events that the defendants had not been looking after their mother, that would not be of much significance.

(31) The Supreme Court also held that Section 90 of the Evidence Act would have no application towards proving a will, which must be proved in terms of Section 63(c) of the Act of 1925 and Section 68 of the Evidence Act. In this context, what was held by their Lordships (in the present *lis*), was as follows:-

> "The Provisions of Section 90 of the Indian Evidence Act keeping in view the nature of proof required for proving a will have no application. A will must be proved in terms of the provisions of Section 63(c) of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872. In the event the provisions thereof cannot be complied with, the other provisions contained therein, namely, Sections 69 and 70 of the Indian Evidence Act providing for exceptions in relation thereto would be attracted. Compliance with statutory requirements for proving an ordinary document is not sufficient, as Section 68 of the Indian Evidence Act postulates that execution must be proved by at least one of the attesting witness, if an attesting witness is alive and subject to the process of the Court and capable of giving evidence. {See B. Venkatamuni v. C.J. Ayodhya Ram Singh & ors. [(2006) 13 SCC 449]}."

Quoting from ***Anil Kak*** versus ***Kumari Sharada Raje and***

[5] 2006(14) SCALE 186

others[6], to the effect that the Court must satisfy its conscience in determining whether or not suspicious circumstances exist before granting probate in a will, it was finally held that the first appellate Court in the present *lis*, as also this Court, did not advert to these aspects of the matter.

(32) Thereafter, the judgment in ***Jaswant Kaur*** versus ***Amrit Kaur and others***[7] was referred to, wherein it was held that when a will is allegedly shrouded in suspicion, proof of the will ceases to be a simple *lis* between the plaintiff and defendant.

The following circumstances were then enumerated by the Supreme Court, which could be termed as suspicious circumstances surrounding the execution of a will:-

> i. The signatures of the testator may be very shaky and doubtful or not appear to be his usual signature.
>
> ii. The condition of the testator's mind may be very feeble and debilitated at the relevant time.
>
> iii. The disposition may be unnatural, improbable or unfair in the light of relevant circumstances like exclusion of or absence of adequate provisions for the natural heirs without any reason.
>
> iv. The dispositions may not appear to be the result of the testator's free will and mind.
>
> v. The propounder takes a prominent part in the execution of the will.
>
> vi. The testator used to sign blank papers.
>
> vii. The will did not see the light of the day for long.
>
> viii. Incorrect recitals of essential facts."

It was then observed that even the aforesaid circumstances are not the only circumstances (which may be considered to be suspicious circumstances) and that as regards the will in question, even if it was registered, that by itself would not be reason enough to hold it to be proved as per statutory requirements.

(33) Consequently, the judgment of this Court in RSA no.604 of

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[6] (2008) 7 SCC 695
[7] (1997) 1 SCC 369

2000, as also of the learned first appellate Court, were set aside and the matter was remitted to the first appellate Court itself, to be decided afresh in the light of the observations made (by the Apex Court).

(34) Upon such remand, the learned first appellate Court referred to the factum of the earlier appeal filed before this Court, its dismissal and the judgment of the Supreme Court, specifically referring to what was held by their Lordships on the kind of suspicious circumstances that may be found to hold a will to be executed in such circumstances (as reproduced in paragraph 32 hereinabove).

In the light of the aforesaid observations of the Supreme Court, in this very *lis*, the learned first appellate court, vide the impugned judgment and decree, went on to decide issue no.2 framed by the trial Court, pertaining to the validity of the will propounded by plaintiff Shamsher Singh.

(35) It was found by that Court that Shamsher Singh, in the evidence led in support of his plaint, had mainly examined the aforementioned Suresh Chander Puri, deed-writer, son of the deed-writer who was stated to have scribed the will on 30.03.1962.

The testimony of all the witnesses for the plaintiff, as have already been referred heretofore, were noticed by the first appellate Court, including that of PW4 Pritam Singh, who deposed that the plaintiff was in possession of about 50-55 bighas of the suit property other than the 25/26 bighas that he was in possession of as a mortgagee, since the age of discretion of this witness (PW4).

The *jamabandies, khasra girdawaries* and the death certificate of Ram Devi (Ex.P5), that were all led by way of documentary evidence by the plaintiff, were also referred to by the learned Additional District Judge.

As regards the evidence led by the defendants, it was first noticed that DW1 Karamjit Singh, resident of the village where the suit property is situate, as also DW2 Kirpal Singh, resident of the village where the defendants were residing, both supported the stand taken in the written statement, as had DW3 Babu Singh and the first defendant, Dialo @ Gurdial Kaur, herself.

The judgments cited by counsel on both sides were also noticed by the learned first appellate Court, observing thereafter that though none of them was specifically applicable to the circumstances in the present case, however were useful to determine whether the trial Court

had decided the issue correctly or not.

(36) That Court then found that the stand taken by the defendant in the original written statement filed, was that Smt. Ram Devi did not actually execute any will and if there was a will, then the thumb impression of Ram Devi might have been taken without disclosing the contents of the document to her, with the plaintiff exercising undue influence upon her.

Stating that the will admittedly being a registered document, bearing the thumb impression of Ram Devi, it was found by that Court that the defendants did not actually dispute that the document did not bear the thumb impression of their mother.

(37) It was again found (in the 2nd round between that Court), that as per the death certificate exhibited by the plaintiff (Ex.P5), Ram Devi had died at Rajpura, with the place of death shown to be the same address as was certified by the Municipal Committee, Rajpura, to be the house of Smt. Iqbal Kaur, daughter of the plaintiff, as per the certificate Ex.P16.

On the other hand, it was also found that the defendants had not produced any 'counter certificate' to show that Ram Devi had either died in village Gharuan or in village Madiana, where the defendants resided.

(38) The learned lower appellate Court again recorded a finding that as per the version of DW1 Karamjit Singh, the defendants came to know about the death of their mother four days after her death and that it was also admitted by the defendants' witness that Ram Devi was fully conscious till her death.

Though the first defendant, while testifying as DW3, was found to have stated that her mother went to village Gharuan and was mentally sick before her death, however, that testimony was not believed by the Court and instead, the testimony of DW1 was believed, also for the reason that he had deposed that Smt. Ram Devi had sold her house in Gharuan and was also visiting the plaintiff.

(39) Having recorded findings as above, the first appellate Court went on to examine whether or not Ram Devi was in a sound disposing mind at the time when the will was executed.

Finding that there was no medical record produced by the defendants to show that Ram Devi was not of good health and mind, and with her having remained alive for about 28 years after the

execution of the will, with her age given to be 75 years in the will, it was held that she was of sound mind and body at the time that it was executed.

Further, it was held that with the scribe of the will, the attesting witnesses and the Sub-Registrar in whose presence it was registered, all having died, the plaintiff did what was possible, i.e. to examine the son of the scribe, the son-in-law of an attesting witness (Kartar Singh) and the son of the Sub-Registrar, to identify their respective signatures. [Note: It is to be noticed that at this stage the learned Additional District Judge erroneously recorded that the Sub-Registrar before whom the will was registered, was Hazura Singh, whose signatures were identified by PW2 Amrik Singh. Actually, as seen from the judgment of the trial Court, Hazura Singh was one of the witnesses to the will, with the name of the late Sub-Registrar being Sarwan Singh, whose signatures were identified by his son, Pritam Singh, who is again shown to be PW1 in the record of the trial court, with Suresh Chander Puri (son of the scribe) also numbered as PW1].

Like the predecessor first appellate Court the first time, the successor court also held that the will was produced from the proper custody of the person who would normally be in its possession, i.e. the beneficiary thereof (the plaintiff), it being a document more than 30 years old, which therefore stood proved even in terms of Section 90 of the Indian Evidence Act.

It was also found that the plaintiff, Shamsher Singh, though was seen to have signed the will dated 30.03.1962, he had not stated so in his examination-in-chief but while facing cross-examination, he had recorded that the thumb impression of Smt. Ram Devi was taken by the Clerk in his presence, in the office of the Sub-Registrar and that the Sub-Registrar had also obtained their signatures.

(40) Yet again, it was also held that simply because the plaintiff had some land mortgaged in his name from Ram Devi, that did not detract from the otherwise close relationship between the plaintiff, his father and Smt. Ram Devi, both of whom looked after her, as did the plaintiffs' daughter.

Hence, the reasoning given by the learned Sub Judge to the effect that because the land stood mortgaged by Ram Devi in favour of the plaintiff and his father, even as per the plaintiffs' own stand, and therefore it was only a business relationship between them, was a reasoning which was not found to be sound by the first appellate Court,

for the 2nd time.

(41) Converse reasoning to what had been given by the Sub Judge with regard to the plaintiff not having produced any ration card etc. to show that Ram Devi was living with him, was applied by the first appellate Court, to the effect that the defendants had not produced any such document to show that their mother was actually living with them.

It was further found as a fact that the will had the complete details of the family of Ram Devi and therefore, it was actually executed to divert natural succession.

(42) Again the first appellate Court (like in the first round), recorded that Ram Devi had only appended one thumb impression on the will whereas the witnesses had all signed the same.

Thereafter, as regards proving the will in terms of Section 60(3) of the Succession Act, 1925 and the Section 68 of the Evidence Act, the same reasoning was again given, to the effect that the will not having been cancelled by Ram Devi till 09.06.1990, the intention of the testatrix was to bequeath her property to the plaintiff, which intention should be given effect to by the Court and simply because the plaintiff did not use the will before a mutation entry was sanctioned in favour of the defendants qua the suit property, the will could not be thrown away, even though the attesting witness, the Sub-Registrar and the scribe could not be examined, but with their signatures and writings having been identified by the plaintiffs' witnesses, i.e. by the relatives and/or "known persons" of those deceased people.

Further, (erroneously), the Court held that it is mentioned in the will that the plaintiff was the husband of Ram Devi and that his father, Bijla Singh, helped Ram Devi at the time of the marriages of her daughters. It held that though that fact was not pleaded by the plaintiff, but that could not still be held against him.

Though, surprisingly, the learned lower appellate Court also recording a finding that in the will it is mentioned that the plaintiff was the husband of Ram Devi at the time of marriage of her daughter and that fact was pleaded in the plaint, however, as per the translated version of the will (originally written in Urdu) put up to this Court, the will does not state to that effect. The reference to the marriage of the testatrixs' daughters is in the context of the fact that the plaintiffs' father Bijla Singh @ Manna Singh had performed the marriages.

(43) Further reason to believe the will, as has been given by the learned lower appellate Court, is that had the "will been prepared by the plaintiff", he would have forged and fabricated other documentary evidence also, by entering the name of Ram Devi in his own ration card and that of his father, and he would also have procured documents as regards her right to vote from the place where he and his father were residing.

Next, that Court cited from the genealogical table reproduced in the judgment of the Supreme Court, to hold that since Rattan Singh was a common ancestor of the parties, the plaintiff was related to the defendants and therefore, Ram Devi executed the will in his favour depriving her living daughters from her property, after the death of her other two daughters. The reasoning given for that by the lower appellate Court was that the defendants being married, were living far away from their mother, with the plaintiff "being agnate separated by five decrees can be said to be relation" (*Sic* degrees).

It was next held that the plaintiff was not required to prove that the defendants had strained relations with their mother because the circumstances favoured the plaintiff, with the defendants not looking after her.

(44) As regards the thumb impression of Ram Devi, it was held that the defendants did not deny it as per the case set up by them in the written statement, nor did they get it compared with her standard thumb impression, for the reason that they had not actually set up any such case in their defence.

Thereafter, again going on to state that the document, being more than 30 years old, carries a presumption of due execution, under Section 90 of the Evidence Act, it could therefore not be discarded only on the ground that the testatrix had dis-inherited her daughters

On the aforesaid findings, it was held that the will stood proved.

(45) On issue no.3 and 4, i.e. the mortgaged part of the suit land, it was found by the first appellate Court that, firstly, the finding of that Court in the first round of litigation, in favour of the defendants, had never been challenged by the plaintiff before this Court, nor before the Supreme Court. Only the legal representatives of the first defendant, and the second defendant herself, had challenged, by way of RSA No.604 of 2000 and the Supreme Court by way of Civil Appeal no.7250 of 2008, the finding on the will in favour of the plaintiff and the partial decree issued in his favour.

Yet, the contention of the counsel for the defendants to the effect that the plaintiff had therefore lost his right to agitate on that issue, was rejected on the ground that the Supreme Court had set aside the entire judgment and decree issued earlier by the first appellate Court and by this Court and thereafter had remanded the matter to the first appellate Court.

However, on the issue itself, it was further found that though in the head note and in the prayer clause, a declaration had been sought to the effect that the defendant had lost the right to redeem of the mortgaged land, however, in the plaint itself, no reference at all was made to the mortgaged land. Therefore, it was again held that the trial Court had, in fact, framed an issue which should not have been framed, it being beyond pleadings contained in the plaint, which consequently, were not replied to by the defendants.

(46) Having observed as above, that Court went on to hold that it would still not be proper to strike out those issues (issues no.3 and 4) and that it would be proper to decide them as per oral as well as documentary evidence available on record.

Three judgments, on the plea of adverse possession not being available to a plaintiff but only to the defendants, were thereafter cited by the first appellate court.

(It seems that an argument on adverse possession was raised before that Court though not specifically referred to by the Court).\

Holding as above, the discussion on issues no.3 and 4 was concluded as follows by the Court:-

> "Therefore, the contention of learned counsel for the plaintiff raised with regard to both the issues is not found to be sustainable from any angle and resulting of which, all the finding returned by the learned lower trial court with regard to these issues consequently are reversed in favour of the defendants and both the issues decided in favour of the plaintiff by the learned trial court, are now decided in favour of both the defendants."

(47) On the issue of ownership and possession of the suit land, the entitlement of the plaintiff to a decree of permanent injunction, and whether he was estopped by his act and conduct to file the suit (issues no.1, 5 and 6), it was held that because the plaintiff had become the owner of the suit property on the basis of the will dated 30.03.1962, the

findings of the trial Court on those issues are "corrected and the issues decided partly in favour of the plaintiff by the learned trial Court, therefore, are now decided totally in favour of the plaintiff".

Finally, in the relief clause, it was held as follows:-

> "15. The contention of the learned counsel for the plaintiff raised in composite manner with regard to all the grounds of the appeal filed by the plaintiff is found to be sustainable from all corners while the contention of the learned counsel for the defendants raised in composite manner with regard to all the grounds of the appeal filed by the defendants also in the shape of written arguments is found to be sustainable from all corners."

Thereafter, Civil Appeal no.236 of 07.09.1995 preferred by the plaintiff and Civil Appeal no.241 of 27.09.1995 preferred by the defendants, against the judgment and decree dated 24.08.1995 of the learned Sub Judge, were both held to have been allowed, with the suit filed by the plaintiff partly decreed without costs, further holding that the plaintiff had become owner in possession of land measuring 56 bighas and 7 biswas, bearing khasra nos.1643 (13-15), 1649 (5-18), 1656 (8-16) comprised in khewat/khatoni no.24/58, land bearing khasra no.1644 (5-0), 1645 (3-0), 1646 (6-5), 1647 (6-5) and 1648 (5-10) comprised in khewat/khatoni no.25/59 and the land bearing khasra no.1643/1 (2-0) comprised in khewat/khatoni no.26/60, as per jamabandi for the year 1988-89, situated in the area of village Gharuan, Tehsil Kharar, the then District Ropar, on the basis of the registered will. (The date wrongly given in the judgment and the decree sheet as 13.03.1962).

(48) A perusal of the aforesaid part of the judgment and decree shows that the land described hereinabove is only the land that was claimed in the head note of the plaint to be the land falling to the plaintiff on the basis of the will dated 30.03.1962.

The head note also referred to the land in respect of which the equity of redemption was claimed to have been extinguished, as comprised in khewat/khatoni no.25/59, with no khasra numbers given therein.

Hence, the first appellate Court decreed that the plaintiff had become owner of the land claimed by him on the basis of the will executed in his favour by Ram Devi.

(49) This Court is now to look essentially at, firstly, whether the will has been correctly held to be a valid will by the lower appellate Court, thereby reversing the judgment of the trial Court, and whether the mortgaged land, which was not described in detail even in the head note or the prayer clause of the plaint, was correctly made the subject matter of issues no.3 and 4 by the trial Court, or, as observed by the lower appellate Court in both rounds of litigation before it, that those issues should not have been framed at all; and if it is held that they were correctly framed, whether they were correctly decided by either of the two Courts below.

(50) Substantial questions of law have been framed separately in both these appeals, the appellants in each appeal being aggrieved of the issues decided against each of them by the learned lower appellate Court.

The questions framed in both the appeals are being reproduced hereinunder.

(51) In RSA no.3707 of 2013, which is the second appeal on behalf of the defendants in the suit, the questions framed are as follows:-

i) Whether in view of the material evidence available on record the findings returned by the learned trial Court on issue no.1 and 2 deserved to be interfered with by the first appellate Court?

ii) Whether the findings recorded by the first appellate court on issue no.1 to 4 are not perverse and based on no evidence?

iii) Whether the non consideration of material facts that the plaintiff has no where pleaded that he was related toSmt. Ram Devi although in Ex.P2 it finds mentioned that the legatee is nephew of the husband of the testatrix has vitiated the impugned judgment and decree?

iv) Whether the non examination of Iqbal Kaur or anybody else from Rajpura to establish that Ram Devi was putting up with Iqbal Kaur widowed daughter of respondent does not disprove the whole case of the respondent?

v) Whether it is the case of the respondent that relation

between Ram Devi and his daughters were strained and because of that said RamDevi has desired to transfer her property to a stranger instead of letting natural heirs succed to the same?

vi) Whether in the facts and circumstances of the present case, the will Ex.P2 has been proved to be valid and genuine?

vii) Whether the suit of the plaintiff is within limitation?

viii) Whether the law of res-judicata is applicable on the findings given by the lower appellate Court on issues no.3 and 4?

In RSA no.3776 of 2013, i.e. the appeal filed by three legal representatives of plaintiff Shamsher Singh, the following questions of law have been framed:-

i) Whether a presumption of truth is attached with the revenue record under section 44 of the Punjab Revenue Act?

ii) Whether the land in dispute has been redeemed till date?

iii) Whether the appellant discharged the onus regarding issues no.3 and 4 by leading cogent and convincing evidence?

iv) Whether the learned Ist appellate court misread the entire revenue record placed by the plaintiff?

RSA no.3707 of 2013 is being taken up first for consideration **RSA no.3707 of 2013**

(52) As a matter of fact, the first question of law that arises for consideration in this case, is the one framed at Sr. no.(vii) hereinabove and though no issue on whether the plaintiffs' suit was within limitation or not was ever framed by the learned Sub Judge in the suit, and no objection thereto is ever seen to be raised, however, limitation being a basic issue, this Court would not discard that question framed by learned counsel at Sr. no.(vii) hereinabove.

As regards the question of *res judicata*, that has obviously been raised in view of the fact that the plaintiff actually never challenged the judgment of the lower appellate Court before this Court in the first

round of litigation (i.e. before the matter was remanded by the Supreme Court to the lower appellate Court leading to the passing of the judgment of that Court presently impugned in these two appeals). Hence, the contention of the appellants-defendants is to the effect that the issues on the mortgaged part of the property having been decided against the plaintiff in the first judgment of the lower appellate Court, and that part of the judgment not having been challenged earlier, the plaintiff is precluded from filing a second appeal before this Court in the second round of litigation.

Hence, the three questions of law that actually arise for consideration in RSA no.3707 of 2013, are as follows:-

i) Whether in the entire facts and circumstances of the present case, the will Ex.P2 has been proved to be valid and genuine?

ii) Whether the suit of the plaintiff was within limitation?

iii) Whether the law of res-judicata is applicable on the findings given by the lower appellate Court on issues no.3 and 4?

(53) Coming to the challenge in this appeal, by the defendants in the suit, to the impugned judgment of the learned lower appellate Court, reversing the finding of the trial Court and partly decreeing the suit of the plaintiff, holding that the will dated 30.03.1962 is a valid will, duly proved, even with the circumstances surrounding it not enough to hold it to be an invalid will.

It is first to be stated that without doubt, even a registered will, unlike any other registered document, has to be proved first strictly in terms of Section 63 of the Indian Succession Act, and then as per Section 68 of the Indian Evidence Act, with at least one of the attesting witnesses examined, if such witness be alive, and if not, then by taking recourse to Section 69 of the Evidence Act. Therefore, it needs to be seen whether the will in question is duly so proved, or not.

(54) In this context, Section 63 of the Indian Succession Act, 1925, is first reproduced hereinunder:-

Indian Succession Act, 1925

"**63. Execution of unprivileged Wills**. —Every testator, not being a soldier employed in an expedition or engaged in actual warfare, [or an airman so employed or engaged,] or a

mariner at sea, shall execute his Will according to the following rules:-

(a) The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.

(c) The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of his signature or mark, or the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary."

Thus, as per Section 63(a) of the Indian Succession Act of 1925, a testator is required to sign or affix his mark on the will or get it signed by some other person in the testators' presence and on his direction.

In the present case, the will was found to be thumb marked on each page by what was contended by the plaintiff to be the thumb mark of the testatrix, Ram Devi. The defendants in their written statement, however, had stated that actually she never executed any such will but if there was a will in favour of the plaintiff, it was the result of Ram Devi affixing her thumb impression thereon on account of the plaintiff having exercised undue influence over her.

Hence, though the plaintiff never led any evidence in the form of a fingerprint expert to prove that the thumb impressions on the will were actually those of Ram Devi, however, the Courts below have accepted it that with the alternative plea of undue influence having been taken in the written statement, the thumb impression was actually not doubted to be that of the testatrix herself.

Whether this Court would also agree with that finding or not, would be seen presently, also discussing as to on whom the onus to

prove or disprove the thumb impression actually lies.

(55) As per Section 63 (b) of the Act of 1925, the signature or the mark of the testator, or of the other person who has affixed it on his direction, should be placed on the will so as to appear that it was intended to give effect to the writing as a will. On that, it may be stated that though the courts below have not stated anything with regard to the thumb marks not being at the places that they should be, on a perusal of the original will itself (which is written in Urdu), the thumb marks are actually seen on each page, at the places where they normally would be, i.e. in the margins of the first two pages and beneath the writing on the last page, as pointed out by learned counsel for the respondents.

Hence, Section 63 (b) would be complied with, if the thumb impressions of the testatrix are accepted to be hers.

(56) Coming then to Section 63(c) of the Act of 1925, the will is seen to be attested by four persons, i.e. Kartar Singh, Naurang Singh, Hazura Singh (the Sarpanch of the Gram Panchayat of village Sahera) and Nagar Singh. The first of these two witnesses, i.e. Kartar Singh and Naurang Singh have signed in the margin of the first page of the will, on either side of the thumb impression of the testatrix, whereas Hazura Singh and Nagar Singh are seen to have signed in the margin of the second page of the will, again on either side of the thumb impression of the testatrix.

Hazura Singh and Nagar Singh are also seen to have signed on the reverse of the first page, beneath the endorsement made by the Sub-Registrar, with the plaintiff, Shamsher Singh, also having signed on that page, and with the thumb impression of the testatrix again being present beneath the endorsement.

(It may be stated here that the original will in Urdu has been got compared with the translated version (in *Gurmukhi*-Punjabi), that has come with the record of the learned lower appellate Court).

The signatures of Kartar Singh, Naurang Singh and Hazura Singh are seen to be in *Gurmukhi* whereas those of the plaintiff are in English (on the reverse of the first page as already noticed). Nagar Singh is seen to have put his thumb impression on the second page of the will, with his name written beneath the impression, in the Persian script.

It is to be further noticed that the 3rd page of the will is seen to carry the thumb impression of the testatrix at two places and as per the translated version in *Gurmukhi*, the name of the scribe to the will,

Pritam Chand Puri, appears on the right hand side.

Thus, as per appearance, the conditions stipulated in clause (c) of Section 63 of the Succession Act are seen to be fulfilled, with at least two witnesses seen to have signed even the endorsement behind the first page of the will before the Sub-Registrar, in the presence of the testatrix, whose thumb impression is also seen on the said page, as already noticed. Hence, there would be actually no reason to believe that the signatures of those witnesses on the first two pages of the will, appearing on either side of the testatrixs' thumb impression, would not also have been affixed at the time of registration of the will, if the document is accepted to be a genuine document.

(57) Coming to whether the will has been proved in terms of Section 68 of the Indian Evidence Act.

The said provision is reproduced hereinunder:-

Indian Evidence Act, 1872

"68. Proof of execution of document required by law to be attested.- If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence: [Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.]"

In the present case, the document being a will, its registration alone would not suffice to prove it. And with none of the attesting witnesses stated to be alive, Section 69 of the Evidence Act would need to be reverted to, to prove any document, including a will. The said provision is reproduced hereinunder:-

"**69. Proof where no attesting witness found**.—If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that

person."

Thus, the will having been executed in the year 1962 and the testatrix admittedly having died in June 1990, i.e. more than 28 years later, it cannot be disbelieved that the attesting witnesses were also no longer alive, the age of the testatrix herself shown to be over a 100 years when she died, she being 75 years of age at the time of execution of her will.

(58) Section 69 has two conditions attached to it; the first being that in the absence of an attesting witness, the attestation is recognized to be in the hand of that witness and the second being that the signature of the person executing the document is in the hand writing of that person.

In the present case, PW3 Niranjan Singh testified that he was the son-in-law of Kartar Singh, one of the attesting witnesses and he identified the signature of his father-in-law on the will. Similarly, one Amrik Singh (PW2), a 70 year old retired teacher of village Sahera, deposed that he identified the signatures of witness Hazura Singh, who was a co-villager and died at the age of 92 years about 4-5 years prior to the date of the testimony of this witness, which is seen to have been recorded on 16.05.1994.

(59) Thus, it would seem that the first condition of Section 69 would be fulfilled, if the testimonies of these two witnesses are not to be discarded for any reason. Nothing has been pointed out to this Court so as to hold to that effect.

Coming then to the issue of recognition of the signatures of the person executing the document, which in this case would be the thumb impression of the testatrix, Ram Devi.

With all the attesting witnesses, the scribe and the Sub-Registrar before whom the document is stated to have been registered, all having died, the only other person who is seen to be a signatory on the will, is the plaintiff himself, Shamsher Singh, who, as per the learned trial Court, testified firstly in terms of his plaint, and thereafter deposed that Ram Devi, after having executed the will in his favour, had died at Rajpura in the house of his daughter, Iqbal Kaur and that he and his father used to look after and serve her.

As recorded by the lower appellate Court, in the presently impugned judgment, the plaintiff closed his evidence by bringing on record the *jamabandies* and *khasra girdawaries* Exs. P3, P4, P6 to P11

as also the death certificate of Ram Devi, Ex.P5, on record, other than the assessment for the year 1979-80 as Ex.P13.

As already noticed, he also testified to the effect that the signatures and thumb impressions on the will were taken in the presence of the Clerk in the Sub-Registrars' office, as also before the Sub-Registrar himself.

Towards proving that the signatures of the Sub-Registrar, on the endorsement behind the will, were actually his, the plaintiff examined the Sub-Registrars' son, Pritam Singh who, as per the judgments of the learned Courts below, testified to the effect that the signatures were indeed of his father, Sarwan Singh (Sub-Registrar).

(60) It has been held by the lower appellate Court that the defendants never refuted the thumb impression of Ram Devi on the will. Though in the written statement they did state that she executed no will, thereafter they went on to say that even if it was executed by Ram Devi, she was not in a sound disposing mind.

In this very *lis* (in Civil Appeal no.7250 of 2008), while holding that a will must be proved in terms of Section 63 of the Act of 1925 and Section 68 of the Evidence Act, it was also held by the Supreme Court as follows:-

> "Where, however, the validity of the will is challenged on the ground of fraud, coercion or undue influence, the burden of proof would be on the caveator. (Reference paragraph 11 of the judgment).

The same has also been held in ***Sridevi*** versus ***Jayaraja Shetty***[8], ***Krishna Mohan Kul @ Nani Charan Kul & Anr.*** versus ***Pratima Maity & Ors.***[9] and ***Babu Singh and others*** versus ***Ram Sahai @ Ram Singh***[10].

Thus, with the present appellants (defendants) having stated in the written statement that the will was firstly not executed by Ram Devi, but subsequently it was stated that even if it was so executed it was due to undue influence, the burden of proving either fabrication of the will, or that it was obtained by coercion or undue influence, was on the appellants-defendants. However, they never attempted to lead any

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[8] 2005 (1) RCR (Civil) 795
[9] AIR 2003 SC 4351
[10] (2008) 14 SCC 754

evidence in the form of any report of a fingerprint expert, or otherwise, so as to prove that the thumb impressions on the will were not those of the testatrix. Consequently, with the signatures of the attesting witness and of the Sub-Registrar having been duly identified by persons who would normally recognise those signatures, and with no evidence led by the defendants to disprove that the thumb impressions on the will were not those of their mother, Ram Devi, their only substantive contention otherwise being that such thumb impressions, even if taken, were so taken by undue influence, this Court would also hold that the thumb impressions on the will, purported by the plaintiff to be those of the testatrix, were actually her thumb impressions. Therefore, the conditions laid down in Section 63(a) and (c) of the Act of 1925 would also be seen to be fulfilled. Whether the thumb impressions of Ram Devi were obtained by undue influence or not, would be discussed further ahead.

(61) Hence, in the opinion of this Court, as regards the conditions necessary to prove the authenticity of the will in terms of Section 63 of the Indian Succession Act, 1925 and Section 68 read with Section 69 of the Indian Evidence Act, 1872, the will was duly proved by the plaintiff.

(62) Having held as above, it is now to be seen as to whether the will is to be discarded due to the suspicious circumstances surrounding it, despite it having been otherwise proved to have been executed by the testatrix thereof, i.e. Ram Devi. That is to say, whether she executed it with the intention of diverting natural succession to her property, in a sound disposing mind, of her own accord, or due to any influence or pressure exercised over her by the plaintiff.

The first suspicious circumstance would be the active participation of the plaintiff himself in the execution of the will, he admittedly being present at the time of its execution and registration before the Sub- Registrar, even in fact being a signatory before the Sub-Registrar, though only as regards the endorsement made by that authority.

The next highly suspicious circumstance would be as to why Ram Devi would exclude her own daughters from her property and bequeath it to the plaintiff who is not her immediate relative.

The other fact which may lend suspicion to the will, is that it was first produced by the plaintiff when it was led by way of evidence in his suit, in this *lis* instituted in 1993.

(63) However, despite the strong presumption against the plaintiff due to the aforesaid facts, in the opinion of this Court also, the entire circumstances seen together would not take away the validity of the will.

It needs to be noticed here, that as per the genealogical table produced before the Supreme Court, it is seen that the plaintiff and the defendants do have a common ancestor, Rattan Singh, but they are cousins to each other five times removed, which would explain the plaintiff addressing the late Ram Devi as his "*Tayee"* (fathers' elder brothers' wife). Though that would be the correct term by which he would normally have addressed her, given the relationship, however, very obviously the relationship was not otherwise close enough for Ram Devi to have, in the normal course, executed a will in the plaintiffs' favour, to the exclusion of her daughters.

Yet, this Court cannot ignore that the will was executed in the year 1962, with Ram Devi having no male child. Two daughters admittedly pre-deceased her and the other two daughters were living in their in-laws' home. She, in those circumstances, would either be living alone after her husbands' death, or going from relative to relative, including of course, her own daughters. This, in fact, is what seems to be borne out even from the testimony of DW1, as referred to by the courts below. Thus, if she was indeed being helped by first the plaintiff and his father and thereafter by the plaintiff alone, it would not be unnatural for her to bequeath her property to the plaintiff.

Further, she having died in 1990, 28 years after the wills' execution, naturally, it could not have been operative before that. However, even the 3 year gap during which the will was never produced by the plaintiff, in the entire circumstances of the case, would not negate the will, in my opinion, though such a long gap may otherwise be a reason to doubt a will. This is for the reason, as would be seen further also, that the suit land was in possession of the plaintiff either in the capacity of a mortgagee or otherwise, during the entire life time of Ram Devi, and the contention being that she was living with his daughter, sometimes visiting him and sometimes her own daughters, his possession would seem to be with her complete consent. Hence, it was only when the defendants, i.e. the daughters of Ram Devi, got a mutation entered in their own favour qua the suit land, that the plaintiff actually instituted the suit seeking a declaration and permanent injunction in his favour, on the basis of the will. Thus, though the delay is obviously there, in producing the will after Ram Devis' death, this

Court would not consider it fatal to the plaintiffs' case.

(64) Coming back to whether or not the plaintiff had exercised undue influence over her at that time, the possibility of such influence being exercised, in the opinion of this Court, would not otherwise be ruled out, with the plaintiff being, in fact, a signatory to the registration of the will. Yet, even having said so, what this Court cannot ignore is the fact that unless Ram Devis' thumb impressions are held to be not actually hers, i.e. they are forged thumb impressions, the chances of her having executed the will due to undue influence or pressure, have to be eventually discounted, because if she indeed had executed the will under undue influence or pressure, then, there would be no reason for her to not disclose to her daughters, on her visits to them, that she had been coerced or wrongly influenced or pressurised to execute the will and that they should help her to take steps to nullify the instrument.

This is further to be seen with the fact that the defendants' witnesses deposed that Ram Devi sometimes came to visit her daughters (in Madiana) and sometimes used to go to Gharuan (to the plaintiffs' house). Hence, if she was under any undue influence to execute the will, there was nothing stopping her, in 28 years, from telling her daughters that a will had been forcibly, or with undue influence, got executed from her at the instance of the plaintiff. Therefore, as regards undue influence of the plaintiff in getting the will executed in her favour, I see no reason to hold that such influence was exercised by him, despite which she did not tell that fact to her daughters, even when she came to visit them over a period of 28 years.

Of course, the converse argument would be that if the will itself was a fabricated document, Ram Devi would not know of it and and therefore, there would be no occasion for her to mention it to her daughters. However, with the thumb impression of Ram Devi on the will not having been disproved in any manner by the defendants, and the will being a registered document, also more than 30 years old, with the signatures of two attesting witnesses and of the Sub-Registrar having been duly proved in terms of Section 69 of the Evidence Act, it cannot be held to be a fabricated document.

(65) Another fact that cannot be ignored is that the plaintiff was admittedly in possession of the suit land, even as per the revenue record. It would therefore be very strange that during Ram Devis' life time, neither she nor her daughters ever attempted to recover the land by any proceedings, either by way of redemption of any mortgaged land, or by way of a suit for possession etc. Yet, only after their

mothers' death, her daughters got the land mutated in their own names.

It would, therefore, seem to be obvious that the daughters during their mothers' lifetime never attempted to coax her into trying to get back possession of the property, obviously knowing her intention, but after her death started trying to take it back.

In the opinion of this Court therefore, whether any land was mortgaged with the plaintiff, or whether he was in possession as a tenant over any land of testatrix, or it was otherwise in his possession, all such possession would be with the consent of Ram Devi who therefore in her life time, never attempted to recover it from him in any manner, which in turn, would point to the fact that she had indeed intended to will it to him after her death, vide the will in question.

(66) Next, on the issue of Ram Devi not being in a sound disposing mind at the time of its execution, it is to be noticed that even the defendants' own witness (DW1), admitted that she was in a fully sound mind right till her death.

The hon'ble Supreme Court has also observed in the present case that the situation to be seen is that as existed at the time when the testatrix executed the will on 30.03.1962 and not the subsequent conduct of her daughters possibly not looking after her, or she not residing with them.

In this context, it needs to be reiterated that with none of the witnesses to the will, or even the scribe thereof, shown to be alive at the time of institution of the suit, the issue of the mental condition of the testatrix can only be inferred from either medical evidence or from the testimony of witnesses who claimed to know her.

No medical evidence, whatsoever, was produced by the defendants to show that even in 1962, their mother Ram Devi was not in a sound state of mind. This is further to be read with the testimony of DW1 Karamjit Singh, i.e. the defendants' witness, as has been referred to by the Courts below, to the effect that he testified that Ram Devi was “fully conscious till her death”. Hence, that statement would seem to show that at no stage was she in any unfit mental condition, which, to repeat again, has to be seen with the fact that there is no medical evidence whatsoever, to sustain that contention of the defendants.

Therefore, as regards the mental condition of Smt. Ram Devi at the time when she is stated to have executed the will in 1962, it has to be held that she was in a healthy state of mind, in view of the lack of

any medical or other evidence to the contrary, as also in the light of the testimony of DW1, Karamjit Singh.

(67) Next coming to whether the will is to be disbelieved because it benefits a very distant relative, to the exclusion of the testatrixs' own daughters.

In this context, it first needs to be stated that sometimes a will is executed only to ensure that natural heirs are benefitted in the manner that the testator wishes, and sometimes it is executed to completely or partly divert natural secession. In this case, as has been found by the learned lower appellate Court, the Will, Ex. P-2, actually states that the testatrix had given enough to her daughters at the time of their marriage and on festive occasions and that the plaintiff and his father had looked after her, after her husbands' death 30-35 years earlier, with the plaintiffs' father also helping her to perform the marriages of her daughters and looking after her in every way. It also states that therefore, her daughters would have no right to the testatrixs' property, and Shamsher Singh alone would have a right to it.

The aforesaid finding is actually borne out by a reading of the translated version of the will put up to this Court, as part of the record of the lower appellate Court.

Hence, it is not a case where the will does not even refer to the natural heirs of the testatrix and would therefore be disbelievable on that score alone. In the instrument, good reason for diverting natural succession have been given; to the effect that with two daughters of the testatrix having pre-deceased her, and two having been married off with enough given to tem on their marriage and other occasions and the marriages also having been performed with the help of the plaintiffs' father; with the father having looked after every need of the testatrix, and he (the plaintiff) also having looked after her, in my opinion, the diversion from natural succession would be for sufficient cause shown.

Consequently, for all the aforesaid reasons, there would be no reason for this Court to hold that the will executed in 1962, was either fabricated, or the result of undue influence or pressure by the plaintiff, even in the face of the fact that he was obviously present at the time of its registration and its execution, both events having taken place on the same date, i.e. 30.03.1962.

(68) Having said that, one fact which still needs to be looked at, is that the plaintiff never examined his own daughter, Iqbal Kaur, in whose house Ram Devi is stated to have died, even as per the death

certificate led in evidence by the plaintiff, as Ex.P5. Though her non-examination would obviously go against the contention of the plaintiff to that effect, however, I find myself unable to disagree with the finding of the first appellate Court, that with no other death certificate (or any other evidence) led by the appellant-defendants to prove that Ram Devi did not actually die at Rajpura in the plaintiffs' daughters' house, that contention of the plaintiff has to be accepted, firstly because of the death certificate led by way of evidence by him, and further, in view of the fact that the defence witnesses, including defendant no.1 herself, in their testimonies, admitted the fact that the defendants came to know of Ram Devis' death only 4 to 6 days after the occurrence thereof, and after she had already been cremated. Though this Court would hold it against the plaintiff that he did not even inform the daughters of Ram Devi of her death immediately thereafter, however, that cannot take away from the fact that very obviously she did not die anywhere near where the defendants were living, and consequently, it has to be accepted that she died at Rajpura, at the address proven to be that of the plaintiffs' daughters, in terms of the death certificate, and the certificate of the municipality, Ex.P16.

(69) Consequently, in the light of the entire discussion heretofore, I see no reason to allow this appeal, i.e. RSA no.3707 of 2013 and therefore, the first question of law framed by this Court in paragraph 52 hereinabove, is answered to the effect that the will in question is very much a valid and genuine will, duly proved, in terms of Section 63 of the Indian Succession Act, 1925, and Sections 68 and 69 of the Indian Evidence Act, 1872, as also on account of the suspicious circumstances surrounding it, having been duly dispelled.

(70) Coming to the second question of law framed, i.e. as to whether the suit of the plaintiff was within limitation or not. In this context, it is first to be repeated that this was never any issue framed by the learned Sub Judge and does not seem to have been ever objected to at any stage earlier by the defendants. However, even so, since a basic question has been raised even at this stage, what is to be seen by this Court is that the suit in question was instituted by the respondent-plaintiff on 17.07.1993 and though Ram Devi died on 09.06.1990, i.e. three years, one month and eight days prior to the filing of the suit, the suit was one seeking a declaration on the basis of title to the suit property, on the basis of a will by which the property was contended to have been bequeathed to the plaintiff.

The second part of the suit sought a decree to the effect that the

equity of the right to redemption of mortgaged land stood extinguished at the hands of the defendants, more than 30 years having passed since the land was contended to have been mortgaged.

Though the second prayer has not been pressed by learned counsel for the plaintiff in the accompanying appeal, as would be seen presently, however, even if what will be discussed and dealt with while considering that appeal, i.e. RSA no.3776 of 2013, with regard to the maintainability of the suit itself qua the mortgaged land, at this stage it is simply to be stated that the Supreme Court having held authoritatively in ***Singh Ram (Dead) through legal representatives*** versus ***Sheo Ram and others***[11], that there is no limitation to the right to redeem a mortgage, even in terms of Article 61 of the Schedule to the Limitation Act, thus, qua that aspect of the suit, obviously there is no question of it being barred by limitation.

(71) As regards the question of limitation qua the suit property sought to be declared to be in the ownership of the plaintiff, on the basis of the will of Ram Devi, as already stated, such declaration being on the basis of title to the property, in turn based on the will executed in favour of the plaintiff by the testatrix, there would be no limitation to seek such a declaration, in the opinion of this Court, despite what is stipulated in Article 58 of the said Schedule. Part III of the schedule relates to suits relating to declaration, with Articles 56 and 57 being in respect of declaration of an instrument being forged and a declaration of an invalid adoption respectively Article 58 is the residue clause that pertains to the limitation towards any other declaration. Thus, a suit seeking any other declaration, i.e. other than that which is subject matter of Articles 56 and 57, is covered under Article 58, which stipulates a period of three years within which a suit must be filed, the three years beginning from the time that the right to sue first accrued.

Viewed in isolation from that angle, it would seem that Ram Devi having died on 09.06.1990, the limitation to seekin a suit for declaration that the plaintiff was the owner in possession of the suit property, would expire on 08.06.1993. However, Part V of the Schedule to the Limitation Act, specifically relates to the institution of suits relating to immoveable property. Article 65, which falls within Part V, stipulates that for possession of immoveable property or any interest therein based on title, the limitation to file a suit is 12 years, with the 12 years commencing from the date when the possession of

[11] (2014) 9 SCC 185

the defendant becomes adverse to the plaintiff. That is to say that if 12 years have elapsed, with the defendant in the suit being in possession of the suit land, open and hostile to the true owner of the property, such defendant may become entitled to a decree in his favour, that his possession has perfected into ownership by way of adverse possession and as such, the title of the property has passed on to such defendant.

In the present case, there being no issue of adverse possession raised by the defendants at any point of time, they obviously having taken a plea that the property fell to them by inheritence, and possession as per revenue record also being with the plaintiff, the question of the suit having been filed beyond limitation does not arise.

Consequently, that question of law is also decided against the appellants in this appeal, and in favour of the respondent-plaintiff.

(72) Coming then to the issue of as to whether the plaintiff was not entitled to re-agitate the issue of extinguishment of the right to redemption of any part of the property as he claimed had been mortgaged to him and his father, on the principle of *res judicata*, after the matter had been remanded to the lower appellate Court by the Supreme Court, I find myself in agreement with what has been held by the learned lower appellate Court in the presently impugned judgment, that the plaintiff did not lose his right to agitate on that issue, even though he had not earlier challenged the judgment of that Court dated 01.10.1999 before this Court by way of any appeal. This would be so because the Supreme Court having setting aside that judgment, as also the judgment of this Court in RSA no.604 of 2000, filed by the present appellants-defendants, the entire matter was to be reconsidered and decided by the first appellate Court, which would therefore be again seized of both the appeals filed at the initial stage by the plaintiff and defendants, both against the judgment and decree of the Sub Judge, dated 24.08.1995.

Hence, that question of law is also decided against the appellants in RSA no.3707 of 2013, though actually it has become a reduntant issue, the main issue in the accompanying appeal of the plaintiff, i.e. RSA no.3776 of 2013, not having been pressed by learned counsel for the appellant-plaintiff, in view of the judgment of the Supreme Court in *Singh Rams'* case (supra), as would be seen immediately hereinafter, while still considering that appeal before this Court.

(73) Consequently, in view of what has been discussed *in extensor* hereinabove, there is no ground to allow this appeal, i.e. RSA

no.3707 of 2013, which has therefore to be dismissed.

RSA no.3776 of 2013

(74) As already observed hereinabove, actually this appeal would seem to require no further consideration, Mr. Jaideep Verma, learned counsel for the appellants-plaintiff having very fairly admitted that in the light of the judgment of the Full Bench of this Court in ***Ram Kishan and others*** versus ***Sheo ram and others***[12], upheld by the Supreme Court in *Singh Rams'* case (supra), that there is no limitation to redeem a usufructuary mortgage even as per Article 61(a) of the Schedule to the Limitation act, 1963, as the period of 30 years stipulated therein would only relate to recover the possession of mortgaged land, after the mortgage amount had been paid by the mortgagor to the mortgagee.

It was held by their Lordships in *Singh Rams'* case (supra) as follows:-

> "22. We, thus, hold that special right of usufructuary mortgagor under Section 62 of the TP Act to recover possession commences in the manner specified therein i.e. when mortgage money is paid out of rents and profits or partly out of rents and profits and partly by payment or deposit by the mortgagor. Until then, limitation does not start for the purpose of Article 61 of the Schedule to the Limitation Act. A usufructuary mortgageee is not entitled to file a suit for declaration that he had become an owner merely on the expiry of 30 years from the date of the mortgage. We answer the question accordingly."

Consequently, that issue being well settled, obviously the respondents-defendants would be within their right to redeem any land which has been proved to be standing mortgaged to the plaintiff and owned by the defendants, (but which is not subject matter of the land which has been claimed by the plaintiff to be belonging to him on the basis of the will executed in his favour by Ram Devi. Such land is fully described in the head note of the plaint itself).

(75) Yet, the lower appellate Court, in the impugned judgment, as also in the judgment of its predecessor Court, dated 01.10.1999, having extensively dealt with the issue of the suit not being

[12] AIR 2008 P&H 77

maintainable in the first place, qua the issue of extinguishment of the right to redemption, on the ground that no reference at all to any mortgaged land was made in the main body of the plaint and the reference to the extinguishment of any such right was made by the plaintiff only in the head note and the prayer clause of the plaint, it is considered necessary by this Court to go into that issue, especially as this is the second round of litigation even before this Court, in the present *lis* itself, more so because one specific khewat/khatoni number (no.25/59), was contended to be land mortgaged to the plaintiff/his father by Ram Devi, in respect of which he had sought a declaration that the right to redeem that land stood extinguished in the hands of the defendants, due to passage of time. However, it is seen that five khasra numbers in that khewat/khatoni (1644, 1645, 1646, 1647 and 1648), were also calimed to be in the ownership of the plaintiff on the basis of the will executed in his favour by Ram Devi.

Hence, it would be necessary to deal with that aspect in this appeal, filed by the plaintiff against the finding of the lower appellate Court, dismissing his suit qua the issue of extinguishment of the right of the defendants to redeem any mortgaged land. This is considered necessary in view of the overlapping khewat/khatoni numbers shown in the head note of the plaint qua the two reliefs sought by the plaintiff, the first in respect of the land executed in his favour and the second in respect of the land alleged to have been mortgaged by Ram Devi to him/his father.

(76) This Court, in fact, does not find any error in the observation of the learned lower appellate Court, in the impugned judgment and decree dated 18.03.2013, holding that with actually no pleadings existent in the plaint itself, on the details of the land stated to have been mortgaged by the late Ram Devi to the father of plaintiff Shamsher Singh, i.e. Manna Singh @ Bijla Singh, other than the numbers of the khewat and khatoni (25/59), issues no.3 and 4 should have been framed accordingly by the learned Sub Judge, to the effect that with no details of the mortgaged land provided in the pleadings and not even a reference made to such mortgaged land in the main body of the plaint, the suit qua extinguishment of the right to redeem the mortgage was not maintainable in the first place.

(77) Thus, despite what has been very fairly not seriously challenged by learned counsel for the appellants in this appeal, the questions of law that would actually arise for consideration in this appeal (RSA no.3776 of 2013), are as follows:-

i) Whether issue no.3 was correctly framed by the learned Sub Judge Ist Class, Kharar, vide his judgment and decree dated 24.08.1995, in view of the fact that there were no pleadings at all in the main body of the plaint pertaining to any land mortgaged to the appellant-plaintiff by Smt. Ram Devi or her husband Jiwan Singh?

ii) If the first question of law herein above is held in favour of the plaintiff, that the suit was maintainable,simply on the basis of the head note and the prayer clause alone, qua land falling in khewat/khatoni no.25/59 without any khasra numbers described therein, then was the land validly proved to have been mortgaged to the plaintiff by Ram Devi or her husband Jiwan Singh?

iii) If so, whether the right to redeem such land stands extinguished, as held by the learned trial Court?

(78) As regards the first question, i.e. in the absence of any substantive pleading contained in the plaint, of when the mortgage was executed, and with no specific khasra numbers given of the land stated to have been mortgaged, and any other details thereof, issues no.3 and 4, in the opinion of this Court, were incorrectly framed by the learned Sub Judge. The issue that should have been framed, was whether the suit, qua the land stated to have been mortgaged by Ram Devi or her land husband, Jiwan Singh, to the plaintiff or his father, was maintainable in the absence of any specific pleadings on that issue.

In this context, it is to be seen that Order 7 Rule 1 of the Code of Civil Procedure, 1908, stipulates as follows:-

> "1**. Particulars to be contained in plaint.-** The plaint shall contain the following particulars:—
>
> (a) the name of the court in which the suit is brought;
>
> (b) the name, description and place of residence of the plaintiff;
>
> (c) the name, description and place of residence of the defendant, so far as they can be ascertained;
>
> (d) where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that affect;

(e) the facts constituting the cause of action and when it arose;

(f) the facts showing that the court has jurisdiction;

(g) the relief which the plaintiff claims;

(h) where the plaintiff has allowed a set off or relinquished a portion of his claim the amount so allowed or relinquished; and

(i) a statement of the value of the subject matter of the suit for the purposes of jurisdiction and of court fees, so far as the case admits."

Rules 3, 5 and 7 of Order 7 further read as follows:-

"3. Where the subject-matter of the suit is immovable property.- Where the subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers.

xxxxx xxxxx xxxxx

"**5. Defendant's interest and liability to be shown.-** The plaint shall show that the defendant is or claims to be interested in the subject-matter, and that he is liable to be called upon to answer the plaintiff's demand."

xxxxx xxxxx xxxxx

"**7. Relief to be specifically stated.-** Every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for. And the same rule shall apply to any relief claimed by the defendant in his written statement.

8. Relief founded on separate grounds.- Where the plaintiff seeks relief in respect of several distinct claims or causes of action founded upon separate and distinct grounds, they shall be stated as afar as may be separately and distinctly."

(79) Thus, clause (e) of Rule 1 of Order 7 stipulates that the facts constituting the cause of action, and when the cause of action arose, must be pleaded in the plaint; whereas a reading of the plaint in the present lis shows that no details with regard to when the suit property was mortgaged and when the rights of the defendants to redeem the mortgaged property ceased (as contended by the plaintiff), are even referred to in the plaint.

Further, Rule 3 of Order 7 stipulates that where the subject matter of the suit is immoveable property, a description of the property, sufficient to identify it, including by boundaries or numbers, must be given, if such boundaries are available in a record of settlement or survey.

Very obviously, immoveable property contained in a revenue estate is duly numbered in the revenue record with khewat, khatoni and khasra numbers, which is all the more obvious in the present lis from the fact that as regards the land claimed by the plainiffs on the basis of the will dated 30.03.1962, the complete details of that land have been given, including its khewat, khatoni and khasra numbers, alongwith the area contained in each khasra number. However, in the case of the land claimed on the basis of extinguishment of the right to redeem it, only the khewat and khatoni number has been given, with no further details of the exact area contained in any particular khasra number falling within that khewat and khatoni (25/59). Therefore, it must be held that the requirement of Order 7, Rule 1(e) and Rule 3 were not complied with in the plaint. It may have been a different matter if the plaintiff had claimed that the entire amount of land as falls within khewat/khatoni no.25/59 was mortgaged to him, but that is again obviously not so, as different khasra numbers falling within the said khewat and khatoni, have been described in detail in reference to the land claimed on the basis of the will.

Further, in any case, to repeat, even the reference to the khewat and khatoni number, is only in the head note and prayer clause, with no reference at all to mortgaged land in the main body of the plaint, so as to give the details of when such land was mortgaged and which land and how much land was so mortgaged to the plaintiff or his father by Ram Devi or her husband.

It needs to be also stated that though Rule 7 would otherwise seem to be complied with, inasmuch as the relief claimed in the plaint was stated in the head note and prayer clause, but again even there, other than the khewat and khatoni number, no khasra numbers and

other details of the land, stated to have been mortgaged, have been given.

Further, Rule 8 of Order 7 stipulates that where the plaintiff seeks relief in respect of several distinct claims or causes of action founded upon separate and distinct grounds, they shall be stated, as far as may be, separately and distinctly.

Very obviously, with not even a reference made to the manner and kind of mortgage allegedly executed by Ram Devi/Jiwan Singh, and no distinct field numbers (khasra numbers) given, the said Rule also is not seen to be complied with.

It also needs to be noticed that without a doubt, as can be seen from the judgment of the learned Sub Judge, the plaintiff relied upon various *jamabandies* (record of rights) from 1952-53 to 1993-94, which he exhibited as Exs.P6 to P11 and P14, wherein even the khasra numbers are given, by which the plaintiff and his father were shown to be mortgagees in possession of such specific khasra numbers; however, in the opinion of this Court, without any specific pleading to that effect, including the manner of mortgage contained in the main body of the plaint, simply relying upon documents, with no averment made in the plaint, qua what is sought to be relied upon in those documents, that would not be sufficient compliance of the aforesaid provisions contained in Order 7 of the Code of 1908.

(80) It also needs specific notice that no objection is seen to have been raised by the defendants, to the prayer made with regard to extinguishment of their right to redeem any mortgaged land, and if viewed in that context, it would be deemed admission of the factum of the existence of a mortgage and the extinguishment of such rights of redemption; however, in the opinion of this Court, it cannot be held that such non-denial amounts to curing the basic defect in the plaint itself.

Of course, correctly, even with regard to what is contained in the head note and the prayer clause of the plaint, the defendants should have raised either a preliminary or an additional objection in their written statement, but this Court would still not hold that their omission to do so cures the basic defect in the plaint.

(81) It also needs to be reiterated here that simple non-description of the details of immoveable suit property may otherwise not be held against a plaintiff, if details of boundaries and numbers of the immoveable suit property are not available; however, in the present case, firstly, there is not even a mention in the plaint as to when the

land was mortgaged and the exact extent of the mortgaged land, so as to enable the defendants to submit a reply thereto; and secondly, the full description of the suit land is very much available in the revenue record of an estate, as already said.

(82) Hence, as regards the first question of law framed in this appeal, it is held that a claim made simply in the head note and prayer clause of a plaint, cannot be accepted to be sufficient compliance of Order 7 Rules 1, 3, 5, 7 and 8 of the CPC, even with a list of documents in support of such prayer, accompanying the plaint in terms of Rule 14 of Order 7. Consequently, issue no.3 was incorrectly framed by the learned trial Court and the suit qua that issue was not maintainable.

Thus, the first question of law that arises in this appeal, i.e. RSA no.3776 of 2013, is answered in favour of the respondents-defendants.

(83) Having held as above, actually the 2nd question does not arise at all. However, in view of the fact that *jamabandies* from 1953 to 1984 were led by way of evidence by the plaintiff, in which the land was shown to be mortgaged to either the plaintiffs' father or to him, the factum of the mortgage would stand proved even if the mortgage was purchased by the plaintiffs' father and him from someone else, there being a presumption in favour of revenue entries in the records of rights and annual records as per Section 44 of the Punjab Land Revenue Act, 1887, with those revenue entries not rebutted. Still, it already having been held by this Court that the plainti itself was defective qua the issue of the mortgaged land, with that defect not cured and therefore the suit not maintainable qua such land, even the list of documents exhibited in the form of records of rights, i.e. Exs.P7 to P11, would have no meaning, there being no opportunity to the defendants to rebut any specific averment in that regard, made in the plaint.

(84) Yet, this Court would be still constrained to go into the issue a little further, this being the second round of litigation in the present *lis* before this Court, and moreover, the entries in the *jamabandi* are being referred to in some detail, also for the reason that to an extent, that other than the land claimed to be mortgaged, a *jamabandi* entry for the year 1960-61, may need to be referred to, some of the khasra numbers involved therein being a part of the remaining land as claimed by the plaintiff under the terms of the will propounded by him in his favour.

As already noticed earlier, the learned trial Court accepted that the plaintiff was a mortgagee in possession of khasra nos.1644 (5-0),

1645 (3- 0), 1646 (6-5), 1647 (6-5), 1648 (5-10), holding that these were reflected as land mortgaged to him and his father in the *jamanbandies* for the years 1960- 61, 1968-69, 1973-74, 1978-79, 1983-84, 1988-89 and 1993-94. However, a perusal of the *jamabandies* reveals that the land shown to be mortgaged is first reflected as such in the *jamabandi* for the year 1960-61, in respect of khasra no.1643/1 consisting of an area of 2 bighas - 0 biswa.

The remarks in column no.9 qua that land is "*Basra Malkan Bawajah Phak*", thereby reflecting a redemption of mortgage of 2 bighas of land contained in khasra no.1643/1 in that *jamabandi*, shown to be falling in khewat no.21, khatoni no.54 (with the khewat/khatoni numbers not necessarily remaining the same in each *jamabandi)*. The rest of the suit land, i.e. that contained in khasra nos.1643, 1644, 1645, 1646, 1647, 1648, 1649 and 1650, is shown to be falling in different khewat and khatoni numbers in that *jamabandi*, but in the remarks column, it is stated that Shamsher Singh (plaintiff) was an occupant thereof "*Basra Malkan Bawajah Kabza*", *i.e.* by way of possession, with column no.10 stating that the possession had continued for the same reason as given in respect of khewat no.1. However, none of the *jamabandies* as led by way of evidence before the trial Court by the plaintiff, are seen to be in respect of khewat no.1 at any stage. How the plaintiff came into possession of the suit land, including that contained in khewat/khatoni no.25/59, is not known by way of any documentary evidence led in that regard by him. So, whether there was any land mortgaged to him or his father by Ram Devi or her late husband, is not determinable even from the revenue record led by way of evidence in this *lis* and therefore, the finding of the learned Sub Judge, in paragraph 8 of his judgment to the effect that the aforesaid khasra numbers were actually reflected to be land mortgaged to the plaintiff by the owner, i.e. Ram Devi, is held to be an erroneous finding and the 2nd question of law is also decided in favour of the respondent-defendants, against the plaintiff.

(85) Coming then to the 3rd question of law that arises in this appeal, as to whether the right to redeem such land stands extinguished, as held by the learned trial Court but reversed by the lower appellate Court in favour of the defendants (respondents in this appeal) though on wholly different grounds, it is held, as per the ratio of *Singh Rams'* case (supra), that the defendants have not lost the right to redeem any land as does not find specific mention in the paint, which falls to the plaintiff on the basis of the will dated 30.03.1962.

It is thus clarified that the land claimed by the plaintiff by specific khasra numbers, in the plaint, to be land owned by him on the basis of the will executed by Ram Devi in his favour, would not be redeemable by the defendants, such specific land having already been held by this Court hereinabove, in RSA no.3707 of 2013, to have been legally and validly bequeathed by her to the plaintiff.

However, any other land of Ram Devi or her predecessor-in-interest, as is shown to have been in possession of the plaintiff or his father, by way of a mortgage, shall be redeemable by the defendants, i.e. the daughters of Ram Ram, in any appropriate proceedings, which would proceed wholly on their own merit and such proceedings would not be rejected simply on the ground that 30 years have elapsed, without the mortgaged land having been redeemed. If, however, it is shown by the plaintiff that actual redemption took place qua any part of any land proved to be mortgaged to him or his father, then obviously for possession of such redeemed land, the limitation prescribed in Article 61 of the Schedule to the Limitation Act would be operative, qua taking over of possession, with the date to calculate such limitation, starting from the proved date of any redemption of the land by way of repayment of the mortgage amount.

(86) It needs also to be stated at this stage itself, that though a perusal of the will propounded by plaintiff Shamsher Singh, Ex.P2 (which has been specifically referred to from the record of the lower courts by both learned counsel, to further their respective arguments), shows that the testatrix stated that she was bequeathing her entire property, moveable or immoveable, to plaintiff Shamsher Singh, yet, in his plaint, he chose to bifurcate the relief (in the head note and the prayer clause), by limiting the land he claimed under the will, to the specific khewat, khatoni and khasra numbers referred to in the head note, and chose to seek a separate relief qua land that he sated was falling in khewat/khatoni no.25/59 (without giving any khasra numbers), which he claimed was in his possession as a mortgageee from the testatrixs' husband. Actually it seems that the contention on the land having been mortgaged by Ram Devi to the plaintiff and his father, seems to have been raised in arguments before the learned Sub Judge, other than the claim made in the head note and prayer clause of the plaint, as can be seen from a perusal of the relevant part of paragraph 7 of the judgment of that Court, wherein it was held that if the relationship between the plaintiff and Ram Devi was so close that she would execute a will in his favour, then there would be no need for

her to rent out or mortgage a part of her land to him or his father.

(87) Therefore, even though the will of the testatrix bequeaths her entire property to the plaintiff, yet, with the plaintiff having limited his prayer to specific land that he claimed on the basis of the will, it is held that the land contained in khewat/khatoni no.25/59, other than khasra nos.1644 (5-0), 1645 (3-0), 1646 (6-5), 1647 (6-5) and 1648 (5-10) of that khewat, (as were claimed under the will), would not be subject matter of the suit land claimed by the plaintiff, on the basis of the will of Ram Devi.

(88) Therefore, any land proved to be mortgaged in any proceedings initiated by the legal representatives of Ram Devi, for redemption of the mortgaged land, would proceed on their own merit, except for such land as has been held to be in ownership of the plaintiff on the strength of the will in his favour.

(89) Hence, with the findings of the first appellate Court on non-extinguishment of the rights of the defendants to redeem any land proved to be mortgaged by them to the plaintiff, not being disturbed by this Court, except to clarify that land as has been decreed in favor of the plaintiff on the basis of the will in his favour, shall not be treated to be part of redeemable land, there is no ground to entertain even this appeal, filed by the plaintif against the findings on the issue of mortgaged land by that Court.

Consequently, RSA no.3776 of20l3 also has to be dismissed with the aforesaid clarification.

(90) In the light of the entire discussion heretofore, in both the appeals, they are both dismissed, with the parties left to bear their own costs.

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