

**IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA**

RSA No. 188 of 2006

Date of Decision: 28.02.2017

Ram Chander & Others	Versus Appellants.
Gaura Devi & others		... Respondents.

Coram:

The Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? Yes.

For the Appellants : Mr. Ramakant Sharma, Senior Advocate, with Ms. Soma Thakur, Advocate.

For the Respondents: Mr. Karan Singh Kanwar, Advocate.

Sandeep Sharma, Judge(oral)

Instant Regular Second Appeal filed under Section 100 of the Code of Civil Procedure, is directed against the judgment and decree dated 20.2.2006, passed by learned District Judge, Sirmaur at Nahan, H.P., in Civil Appeal No.02-CA/13 of 2005 and Civil Appeal No.03-CA/13 of 2005, affirming the common judgment and decree dated 29.11.2004, passed by learned Civil Judge(Junior Division) Court No.1, Paonta Sahib, District Sirmaur, H.P in Civil Suit No. 31/1 & 32/1 of 2003, whereby Civil Suit No.31/1 of 2003 having been filed by the appellants/plaintiffs for declaration was dismissed, whereas Civil Suit No.32/1/2003 having been filed by defendant No.1, Gauri Devi was decreed and she was held to be owner in

...2...

possession of the estate belonging to deceased Ram Rakha@
Rakha Ram.

2. Briefly stated facts, as emerged from the record are that appellants/plaintiffs namely Ram Chander and others (*hereinafter referred to as the plaintiffs*) filed suit for declaration and injunction against Smt. Gauro Devi (*hereinafter referred to as defendant No.1*), seeking declaration to the effect that plaintiffs are owner in possession of entire estate of late Sh. Ram Rakha alias Rakha Ram son of late Sh. Basanta Ram, situated at mauza Behrampur Salamatpur(Sainwala) Pargana Doon, Situated at Mauza Majra, Tehsil Paonta Sahib on the basis of registered Will, dated 5.10.2002, executed by Sh. Ram Rakha alias Rakha Ram in favour of the plaintiffs. Plaintiffs further prayed that the defendants be restrained from causing any interference in the suit land in any manner. Plaintiffs averred in the plaint that Sh. Ram Rakha alias Rakha Ram, who was the real brother of Sh. Mara Ram, who is grandfather of the plaintiffs, was residing with the plaintiffs and their father. Plaintiffs further claimed that wives of Sh. Ram Rakha and Sh. Mara Ram were real sisters. Sh. Ram Rakha had no male issue and had only one daughter Smt. Gauro Devi, defendant No.1, who was married to Sh. Singhu Ram, defendant No.2 about 40 years back. Plaintiffs further claimed that in lieu of love and affection and services rendered by them as well as their father,

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late Sh. Ram Rakha executed a Will Ex.PW3/A on 5.10.2002 at Paonta Sahib in his sound disposing state of mind in the presence of witnesses, bequeathing thereby landed property including house in favour of the plaintiffs in equal share. Plaintiff further claimed that Will was duly registered before the Sub-Registrar and the same is the first and last Will of late Sh. Ram Rakha.

3. Plaintiffs by way of civil suit also claimed themselves to be the owner of the land, owned and possessed by testator Sh. Rakha Ram, details whereof find mentioned in the plaint, on the strength of Will Ex.PW3/A allegedly executed in their favour by testator Sh. Rakha Ram before his death. Plaintiffs further averred that after the death of Sh. Ram Rakha alias Rakha Ram, they acquired every right, title and interest in his share in the suit property and the defendants being stranger to the same have no right, title and interest. Apart from above, plaintiffs alleged that defendants never visited the house of the plaintiffs during the life time of Sh. Ram Rakha and never took care of his health including shelter, food and clothes etc. Since, plaintiffs No. 1 to 4 were minor, they filed civil suit against the defendants through their natural guardian namely Sh. Chiranji Lal and Sh. Baldev Singh sons of late Sh. Mara Ram for declaration and permanent prohibitory injunction.

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4. Defendants by way of filing written statement resisted and contested the suit of the plaintiffs on the plea of locus-standi and cause of action. On merits, defendants admitted that Sh. Ram Rakha was real brother of Sh. Mara Ram and wives of Ram Rakha and Mara Ram were real sisters, however denied that Ram Rakha was residing with the plaintiffs. Defendants further claimed that plaintiffs are minors and are dependent on others. Defendant No.1 claimed herself to be the only daughter of Sh. Ram Rakha and she used to look after and maintain him. Defendant further stated that Sh. Ram Rakha was of old age and due to his old age, his hearing and mental faculties were badly affected for the last more than two years and his eye sight had also gone weak. Defendant further alleged that there was no occasion, whatsoever, for Sh. Ram Rakha to disinherit his daughter, defendant No.1 without assigning any reason. Defendant further stated that the alleged Will of Sh. Rakha Ram as propounded by the plaintiffs is an unnatural disposition and as such illegal and void. Defendants further claimed that alleged Will is result of fraud and collusion.

5. At this stage, it may be noticed that subsequent to filing of aforesaid suit by the appellants/plaintiffs, defendant namely Smt. Gauro Devi also filed civil Suit No.32/1 of 2003 against the present appellants/plaintiffs for declaration to the effect that she is owner in possession on the basis of

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inheritance of suit land and the will dated 5.10.2002 propounded by the appellants/plaintiffs & others is result of fraud and collusion.

6. Civil Suit No.32/1 of 2003 having been filed by defendant No.1, Smt. Gauro Devi was resisted and contested by plaintiffs Ram Chander and others by filing written statement. The learned trial Court vide order dated 16.9.2003, consolidated the aforesaid suits having been filed by the respective parties.

7. Subsequently, on the basis of the pleadings of the parties, the learned trial Court framed the following issues:-

1. Whether the plaintiffs are owners in possession of the suit land? OPP.
2. Whether Sh. Ram Rakha alias Rakha Ram executed a valid will dated 5.10.2002 in favour of plaintiffs? OPP.
3. Whether plaintiffs are entitled to the relief of permanent injunction as prayed for? OPP.
4. Whether plaintiffs have no cause of action? OPD.
5. Relief:-

8. The learned trial Court on the basis of the evidence adduced on record by the respective parties, dismissed the civil suit bearing No.31/1 of 2003 having been filed by the plaintiffs/appellants, however civil suit No.32/1 of 2003 having been filed by defendant No.1, Smt. Gauro Devi was decreed to

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the effect that Smt. Gauro Devi is owner in possession of the estate belonging to deceased Sh. Ram Rakha. The learned Court below further held that Will Ex.PW3/A, dated 5.10.2002 is invalid and illegal.

9. Feeling aggrieved and dissatisfied with the impugned judgment dated 20.2.2003, passed by learned trial Court, appellants/plaintiffs filed two separate appeals under Section 96 CPC in the Court of learned District Judge, Sirmaur, H.P, which came to be registered as Civil Appeal No. 02-CA/13 of 2005 and Civil Appeal No.03-CA/13 of 2005, however fact remains that both the appeals having been preferred by the appellants/plaintiffs were partly allowed by the learned District Judge by a common judgment, dated 20.2.2006. Vide aforesaid judgment learned Appellate Court upheld the judgment and decree passed by the learned trial Court but set-aside the finding qua the relief of permanent injunction granted in favour of Smt. Gauro Devi. The learned Appellate Court also restrained the defendant (Smt. Gauro Devi) from interfering the suit land till the time they are evicted in accordance with law. In the aforesaid background, the present appellants-plaintiffs approached this Court by way of Regular Second Appeal, praying therein for decreeing their suit after setting aside the judgment and decree passed by the Courts below.

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10. This Court vide order dated 24.7.2006 admitted the instant Regular Second Appeal on the following substantial questions of law:-

“1. Whether the two courts below have not appreciated the evidence with regard to the execution of the will correctly and this has led to miscarriage of justice?’

11. Mr. Ramakant Sharma, learned Senior Advocate duly assisted by Ms. Soma Thakur, Advocate, vehemently argued that the impugned judgment and decree passed by the learned Courts below are not sustainable as the same are not based upon the correct appreciation of the evidence adduced on record by the respective parties and as such, same deserve to be quashed and set-aside. While referring to the impugned judgment passed by the learned First Appellate Court, Mr. Sharma, forcibly contended that impugned judgment and decree is the result of complete misreading, misappreciation of oral as well as documentary evidence led on record by the parties and as such, same cannot be allowed to sustain. To substantiate his aforesaid arguments, Mr. Sharma, made this Court to travel through the entire evidence led on record by the plaintiffs to suggest that plaintiffs successfully proved on record that late Sh. Ram Rakha executed valid Will with sound disposing state of mind in favour of the plaintiffs bequeathing his entire share in the suit land. Mr. Sharma, further stated that

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learned Lower Appellate Court totally misconstrued the provisions of Section 63 of the Indian Succession Act, especially in view of specific evidence led on record by the plaintiffs in the shape of PW-1 and PW-6 because Will Ex.PW3/A was proved to the hilt and by no stretch of imagination could be declared to be invalid. Mr. Sharma, further contended that once it was proved that Will Ex.PW3/A was a registered Will, a presumption ought to have been drawn in favour of its valid execution, more particularly when the appellants were the minors. He further contended that learned Courts below erred in concluding that appellants being minors could not be said to have been maintaining the testator of the Will because admittedly there is no bar for executing the will in favour of the minors. Mr. Sharma, specifically invited attention of this Court to the statement of PW-4, Baru Ram to state that bare perusal of testimony of aforesaid witness clearly suggests that requirement of law, as envisaged under Section 68 of the Indian Succession Act as well as Section 63 of the Indian Succession Act were duly complied with at the time of execution of Will Ex.PW3/A and as such, contrary findings qua the same rendered by the Court below deserve to be quashed and set-aside. Mr. Sharma, further contended that by no stretch of imagination, circumstances as detailed by the learned trial Court in paragraphs 28 and 29 could be termed to be

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suspicious circumstances, which could be sufficient to hold that Will Ex.PW3/ A is null and void. In the aforesaid background, Mr. Sharma, strenuously argued that instant appeal may be accepted and the suit having been filed by the plaintiffs may be decreed after setting- aside the judgment and decree passed by the Courts below.

12. Mr. Karan Singh Kanwar, learned counsel representing the respondents-defendants, supported the judgment passed by both the Courts below. While referring to the judgment passed by the Courts below, Mr. Kanwar forcibly contended that bare perusal of the judgment and decree suggests that the same are based upon the correct appreciation of the evidence available on record and there is no scope, whatsoever, to re-appreciate the evidence, especially in view of concurrent findings of fact and law recorded by both the Courts below. With a view to rebut the arguments having been advanced by the learned counsel representing the appellants/plaintiffs, Mr.Kanwar, specifically invited the attention of this Court to the statement of PW-1 i.e. natural guardian of plaintiffs No.1 and 2, Ram Chander and Mela Ram, to demonstrate that Will Ex.PW3/A was rightly held to be invalid by the Courts below because PW-1 in his cross-examination specifically admitted that he and his brother had got the Will scribed. He also invited the attention of this Court to other

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plaintiffs witnesses to demonstrate that none of plaintiffs witnesses were able to prove on record that Will Ex.PW3/A was executed in accordance with law, more particularly in terms of provisions as contained under Section 63 of the Indian Succession Act. While concluding his arguments, Mr. Kanwar contended that this Court has very limited jurisdiction to re-appreciate the evidence, especially in view of the concurrent findings recorded by the Courts below. In this regard, to substantiate his aforesaid plea, he placed reliance upon the judgment passed by Hon'ble Apex Court in *Laxmidevamma and Others vs. Ranganath and Others*, (2015)4 SCC 264.

13. I have heard learned counsel for the parties and have gone through the record of the case.

14. During arguments having been made by learned counsel for the respective parties, this Court had an occasion to peruse the entire evidence led on record by the respective parties, perusal whereof, nowhere suggest that Courts below have failed to appreciate the evidence with regard to the execution of Will in its right perspective and have returned wrong findings, rather this Court after carefully perusing the entire evidence led on record by the respective parties is of the view that plaintiffs have miserably failed to prove the valid execution of Will Ex.PW3/A, allegedly executed by Sh. Rakha Ram in favour of the plaintiffs.

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15. Needless to say that law regarding nature and onus of the proof of the Will is by way of propounder and in that regard the manner, in which the evidence is required to be appreciated, has been duly prescribed in the judgment passed by the Hon'ble Apex Court in *H.Venkatachala Iyengar vs. B.N. Thimmajamma and others*, AIR 1959 SC 443.

16. Guidelines framed in *H.Venkatachala Iyengar* case (*supra*) were further reiterated by Constitutional Bench of Hon'ble Apex Court in *Shashi Kumar Banerjee and Others vs. Subodh Kumar Banerjee since deceased and after him his legal representatives and others*, AIR 1964 SC 529. The Court held:

"4. *The principles which govern the proving of a will are well settled; (see H. Venkatachala Iyengar v. B. N. Thimmajamma, 1959 (S1) SCR 426 : 1959 AIR(SC) 443) and Rani Purniama Devi v. Khagendra Narayan Dev, 1962 (3) SCR 195 : 1962 AIR(SC) 567). The mode of proving a will does not ordinarily differ from that of proving any other document except as to the special requirement of attestation prescribed in the case of a will by S. 63 of the Indian Succession Act. The onus of proving the will is on the propounder and in the absence of suspicious circumstances surrounding the execution of the will, proof of testamentary capacity and the signature of the testator as required by law is sufficient to discharge the onus. Where however there are suspicious circumstances, the onus is on the propounder to explain them to the satisfaction of the Court before the Court accepts the will as genuine. Where the caveator alleges undue influence, fraud and coercion, the onus is on him to prove the same. Even where there are no such pleas but the circumstances give rise to doubts, it is for the propounder to satisfy the conscience of the Court. The suspicious circumstances may be as to genuineness of the signature of the testator, the condition of the testator's mind, the dispositions made in the will being unnatural improbable or unfair in the light of relevant circumstances or there might be other indication in the will to show that the testator's mind was not free. In such a case the Court would naturally expect that all legitimate suspicion should be completely removed before the document is accepted as the last will of the testator. If the propounder himself takes part in the execution of the will which confers a substantial benefit on him, that is also a circumstance to be taken into account, and the propounder is*

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required to remove the doubts by clear and satisfactory evidence. If the propounder succeeds in removing the suspicious circumstances the Court would grant probate, even if the will might be unnatural and might cut off wholly or in part near relations. It is in the light of these settled principles that we have to consider whether the appellants have succeeded in establishing that the will was duly executed and attested.

(Page-531)

17. Though normally onus to prove the execution and validity of the Will lies upon the propounder but in case when it is alleged by the opposite party that Will is not genuine document, onus shifts on the person who alleges the Will to be forged, to prove the same.

18. In *Daulat Ram and Others vs. Sodha and Others*, (2005)1 SCC 40, the Hon'ble Apex Court held:

"10. Will being a document has to be proved by primary evidence except where the Court permits a document to be proved by leading secondary evidence. Since it is required to be attested, as provided in Section 68 of the Indian Evidence Act, 1872, it cannot be used as evidence until one of the attesting witnesses 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. In addition, it has to satisfy the requirements of Section 63 of the Indian Succession Act, 1925. In order to assess as to whether the Will has been validly executed and is a genuine document, the propounder has to show that the Will was signed by the testator and that he had put his signatures to the testament of his own free will; that he was at the relevant time in a sound disposing state of mind and understood the nature and effect of the dispositions and that the testator had signed it in the presence of two witnesses who attested it in his presence and in the presence of each other. Once these elements are established, the onus which rests on the propounder is discharged. But where there are suspicious circumstances, the onus is on the propounder to remove the suspicion by leading appropriate evidence. The burden to prove that the will was forged or that it was obtained under undue influence or coercion or by playing a fraud is on the person who alleges it to be so."

(Page 43)

...13...

19. In the instant case, plaintiffs on the strength of Will Ex.PW3/A, claimed themselves to be owner in possession of the suit land, as described in the plaint. Perusal of Ex.PW3/A, suggests that Will in question was attested by two witnesses namely Baru Ram and Duggal but interestingly, Duggal has not been examined, whereas Baru Ram while appearing as PW-4, nowhere stated that at whose instance Will in question was scribed and whether testator signed the same in presence of two attesting witnesses or testator was of sound disposing state of mind at the time of execution of the Will. PW-4, Baru Ram stated that he knows Ram Rakha, who had executed a Will Ex.PW3/A in his presence. He further stated that Will was executed by the testator in the name of his four grandsons about 1 ½ years back. It has also come in his statement that Will was got scribed from one Gupta. It has also come in his statement that scribe of the Will and Tehsildar readover and explained the Will to the attesting witnesses and the testator and testator admitted the same to be correct. He also stated that Duggal also signed the Will and Sh. Rakha Ram i.e. testator, put his thumb mark on the same.

20. Aforesaid witness also admitted that defendant No.1 is the daughter of Sh. Ram Rakha. He also admitted that testator was having love and affection with his daughter Smt.

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Gauro Devi, who had been visiting him regularly. Similarly, in his cross-examination, he denied the suggestion that testator was bed ridden for the last three years. Most importantly, he admitted that the document upon which he appended his signature was got prepared by Chiranji and Baldev i.e. natural guardian of the plaintiffs. Though, he has self stated that testator Rakha Ram was also present. Interestingly, aforesaid witness specifically admitted in his cross-examination that he put his signature on the Will Ex.PW3/A at mark 'C' before the Tehsildar. In the same breath, this witness admitted that due to old age, Rakha Ram was suffering from poor vision and was also hard of hearing. He also admitted that Rakha Ram was unable to understand good and bad for him.

21. PW-1, Chiranji Lal, father of plaintiffs No.1 and 2 stated that Sh. Ram Rakha alias Rakha Ram was his real Uncle and he had no son and had only one daughter namely Gauro Devi, who was married to defendant No.2. As per PW-1, Rakha Ram executed a Will Ex.PW3/A around 1 ½ years back in favour of the plaintiffs. He also stated that Rakha Ram was hale and hearty at the time of Will and was having good vision. He further stated that Rakha Ram used to reside with him and his brother and they used to look after him and cultivate his land. PW-1, further stated that defendants have no right, title and

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interest in the land and they picked up a quarrel with them one year back, therefore, they filed suit against her. He further stated that plaintiffs are being looked after by him and they have no source of income. He also admitted that Ram Rakha was taking pension from PWD and he was owner of 17 bighas of land. Most importantly, PW-1 in his cross-examination admitted that Will was got scribed by him and his brother, however, he denied that Sh. Ram Rakha had not put his thumb impression on any of the document.

22. PW-2, Ram Singh Chauhan, produced the record from the District Office and stated that the Will dated 5.10.2002 is/was registered in the office of Sub-Registrar, Paonta Sahib as per his record.

23. PW-3, Rakesh Gupta, the scribe of the Will stated that he has been working as Document Writer for the last so many years. He also produced his register and stated that on 5.10.2002, Sh. Rakha Ram son of Sh. Basanta had got the will scribed from him. He also stated that Will was scribed by him on the instructions of Sh. Rakha Ram and thereafter, was readover and explained to him and after admitting the same to be correct, he had put his thumb mark on the same. He further stated that witnesses Baru Ram and Duggal also put their signatures on the document. As per him, testator was of sound

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disposing state of mind at the time of execution of Will. In cross-examination, he denied that the Will was prepared at the instance of Chiranji and Baldev. He also denied that neither the Will was got scribed from him nor the same was readover and explained to him.

24. PW-5, Smt. Surender Kaur, who happened to be Ex. Pradhan of Gram Panchayat Majra, stated that she identified Sh. Rakha Ram before the Tehsildar, Tomar Singh. She further stated that Tehsildar had readover and explained the Will to Sh. Rakha Ram before registration. In her cross-examination, she denied that entire proceeding took place in the office of Clerk. She further denied that Sh. Rakha Ram was not in a sound disposing state of mind.

25. Conjoint reading of aforesaid material evidence led on record by the appellants/plaintiffs, leaves no doubt in the mind of the Court that plaintiffs miserably failed to prove on record that Will Ex.PW3/A was validly executed in terms of Section 63 of Indian Succession Act. At this stage, it would be profitable to reproduce Section 63 of the Indian Successions Act, 1925 as well as Section 68 of Indian Evidence Act:

“Section 63 of Indian Succession Act, 1925

“63. Execution of unprivileged Wills. —Every testator, not being a soldier employed in an expedition or engaged in actual warfare, ¹² [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.”**

“Section 68 of 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: 1[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

...18...

Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.]”

26. At the cost of repetition, it may be stated that attesting witness Duggal was not examined for the reasons better known to the plaintiffs because as per the judgment rendered by the learned trial Court second attesting witness namely Duggal Singh was present in the Court but was given by the learned counsel appearing for the plaintiffs. PW-1, in his cross-examination in no uncertain terms admitted that Will Ex.PW3/A was got scribed by him as well as his brother. If aforesaid specific admission having been made by PW-1 is read and analyzed juxtaposing the statement of PW-4, Baru Ram, who happened to be attesting witness, it certainly compels this Court to conclude that Will was not scribed at the instance of the testator Sh. Rakha Ram, rather same was got scribed by Chiranji and his brother, who happened to be the natural guardians of the plaintiffs. PW-4 like PW-1 also admitted in his cross-examination that the document upon which he put his signatures was got prepared by Chiranji and Baldev. Aforesaid candid admission having been made by PW-1 and PW-4 clearly belies the stand taken by PW-3, Rakesh Gupta, scribe of the Will that he scribed the Will at the instance of testator Sh. Ram Rakha.

27. True, it is that PW-3, Rakesh Gupta scribe of the Will deposed that Will Ex.PW3/A was scribed by him on the instructions of Sh. Rakha Ram and thereafter readover and explained to him, but PW-1 himself admitted that he got the Will scribed. PW-4, Baru Ram also admitted that due to old age, Rakha Ram was suffering from poor vision and was also hard of hearing. Aforesaid statement having been made on behalf of the PW-4 clearly suggests that Rakha Ram was not in a position to get the Will scribed from PW-3, as claimed by him in his statement. PW-4 specifically stated that though Sh. Rakha Ram was present at the time of scribing of the Will but same was prepared by Chiranji Lal and Baldev. Hence, this Court sees no infirmity and illegality in the findings returned by the Courts below that Will Ex.PW3/A is shrouded by suspicious circumstances. Similarly, this Court notices material contradictions in the statements of the witnesses adduced on record by the appellants/plaintiffs. PW-3, Rakesh Gupta though stated that the Will Ex.PW3/A was scribed by him on the instructions of Sh. Rakha Ram and he had readover and explained the contents of the Will to Sh.Rakha Ram and after admitting the same to be correct, Rakha Ram put his thumb mark on the same but admittedly there is nothing in his statement suggestive of the fact that he readover and explained the contents of the Will in the presence of the

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Tehsildar. Similarly, PW-3, denied that testator was hard of hearing due to old age, whereas PW-4, Baru Ram specifically admitted that Sh. Rakha Ram was hard of hearing and had poor vision. He also stated that Will was got scribed from one Gupta and Sh. Rakha Ram was not having good health at that time. He further stated that Sh. Rakha Ram was identified by Smt. Surender Kaur. But interestingly, there is nothing as such in the statement of Rakesh Gupta i.e. PW-3 from where it could be inferred that will was scribed by him in the presence of Tehsildar. PW-3, nowhere stated that he readover and explained the contents of the Will to testator Sh. Rakha Ram in the presence of Tehsildar. PW-5, Smt. Surender Kaur also stated that Tehsildar readover and explained the Will to Sh. Rakha Ram. She nowhere stated that the Will was scribed in the presence of Tehsildar and thereafter contents of the same were readover and explained to him by the scribe Rakesh Gupta and thereafter by Tehsildar. It is also not understood that why Tehsildar i.e. Tomar Singh, in whose presence the contents of the Will were readover and explained to Sh. Rakha Ram, was not brought to the witness box to prove the genuineness and correctness of the Will Ex. PW3/A.

28. Similarly, close scrutiny of aforesaid evidence led on record by the appellants/plaintiffs, nowhere proves any

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animosity or strained relation of late Sh.Rakha Ram with her daughter namely Smt. Gauro Devi, i.e. defendant No.1 rather plaintiff's own witness PW-4 admitted that Sh. Rakha Ram had love and affection towards Smt. Gauro Devi and she had been visiting him regularly. Hence, this Court sees no infirmity and illegality in the findings returned by the learned courts below that Will Ex.PW3/A is shrouded by suspicious circumstances. The attesting witness PW-4 while making statement before the Court failed to prove satisfactorily that he had appended his signatures on the will Ex.PW3/A at the time of scribing of the Will on the instructions of Sh. Rakha Ram. Similarly, he nowhere stated that he saw testator signing or fixing his thumb mark on the will, rather PW-4 himself stated that he appended his signature on the document got prepared by Chiranji and Baldev that too before the Tehsildar. After minute scrutiny of entire evidence led on record by the plaintiffs, this Court has no hesitation to conclude that the plaintiffs miserably failed to prove the valid execution of the Will Ex.PW3/A in terms of provisions contained under Section 68 of the Indian Evidence Act and Section 63 of Indian Succession Act, as such there is no infirmity and illegality in the judgment passed by the learned courts below, which are based upon the correct appreciation of the evidence available on record as well as law.

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29. Perusal of evidence led on record by the defendants clearly proves on record that DW-1, Smt. Gauro Devi was daughter of testator Sh. Rakha Ram and she had good relation with him during his life time. DW-1 i.e. defendant No.1 and DW-2, Sh.Nand Lal, categorically stated that before the Court that defendant No.1, namely Smt. Gauro Devi was having good relation with her father and both of them were visiting each other. It also come in the statement of DW-2 that testator Sh. Rakha Ram was ill and he was looked after by defendant No.1. The cross-examination conducted upon these aforesaid defendants witnesses, nowhere suggest that plaintiffs/appellants were able to extract anything contrary to what defendants stated in their statements before the Court. Moreover, this Court sees no suggestion, if any, put to aforesaid defendants witnesses with regard to inimical/strained relation, if any, between defendant No.1 and her father late Sh. Rakha Ram.

30. This Court is fully satisfied that both the Courts below have very meticulously dealt with each and every aspect of the matter and this Court sees no perversity in the impugned judgments, accordingly, there is no scope of interference, whatsoever, in the present matter. Since both the Courts below have returned concurrent findings, which otherwise appears to

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be based upon proper appreciation of evidence, this Court has very limited jurisdiction/scope to interfere in the matter. In this regard, it would be apt to reproduce the relevant contents of judgment rendered by Hon'ble Apex Court in *Laxmidevamma's* case supra, wherein the Court has held as under:

"16. Based on oral and documentary evidence, both the courts below have recorded concurrent findings of fact that the plaintiffs have established their right in A schedule property. In the light of the concurrent findings of fact, no substantial questions of law arose in the High Court and there was no substantial ground for reappreciation of evidence. While so, the High Court proceeded to observe that the first plaintiff has earmarked the A schedule property for road and that she could not have full-fledged right and on that premise proceeded to hold that declaration to the plaintiffs' right cannot be granted. In exercise of jurisdiction under Section 100 CPC, concurrent findings of fact cannot be upset by the High Court unless the findings so recorded are shown to be perverse. In our considered view, the High Court did not keep in view that the concurrent findings recorded by the courts below, are based on oral and documentary evidence and the judgment of the High Court cannot be sustained."

(p.269)

31. Consequently, in view of the detailed discussion made hereinabove, present appeal fails and same is dismissed.

Interim directions, if any, are vacated. All miscellaneous applications are disposed of.

28th February, 2017
(shankar)

(Sandeep Sharma)
Judge