

IN THE HIGH COURT OF HIMACHAL PRADESH AT  
SHIMLA

**RSA No. 337 of 2019**

**Reserved on: 24.9.2019**

**Decided on: 30.9.2019**

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**Kala Devi and others**

**..Appellants**

**Versus**

**Tek Singh and others.**

**..Respondents**

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Coram

**Hon'ble Mr. Justice Sureshwar Thakur, Judge.**

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Whether approved for reporting? yes

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**For the Appellants: Mr. H.S. Rangra, Advocate.**

**For the defendants : Mr. Devinder K. Sharma,  
Advocate, for respondent No.  
1.**

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**Sureshwar Thakur, Judge**

The instant appeal, is, directed by the aggrieved plaintiffs, against, the concurrently recorded judgments, made initially, by the learned trial Judge, and, latter by the learned first appellate Court, (a) wherethrough their strivings, for, a, rendition, of, a declaratory decree, for, annulling, the, testamentary disposition, executed by, the, deceased testator, one Durgu, and, wherethrough

he constituted, the, defendants as his legatees, became negated. Becoming aggrieved therefrom, the plaintiffs, through casting, the, instant Regular Second Appeal, strive to beget reversal(s) thereof. However, for the reasons assigned hereinafter, no question of law, muchless, any substantial question of law, arises, for determination.

2. Ext. DW1/A, is, the registered testamentary disposition, executed, by, the deceased testator one Durgu. For ensuring adduction, of, valid proof, vis-à-vis, satiation, being meted, vis-à-vis, the preemptory statutory ingredients, embodied, in, Section 63, of, the Indian Succession Act, provisions whereof, stand extracted hereinafter:

**“63. Execution of unprivileged Wills\_**

*Every testator, not being a soldier employed in an expedition or engaged in actual warfare [ for 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 given 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 been 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 of 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.”*

The attesting marginal witnesses thereto, one Bhajan Lal, upon, his stepping into, the, witness box, as DW-3, hence with the requisite animus-attestendi, rendered echoing(s), and, therethrough he also proves, the, mandatory statutory ingredients, embodied therein,(i) inasmuch, as, he articulates qua the deceased testator, appending his signatures, upon Ext. DW1/A, hence in his presence, and, thereafter, in the presence of the deceased testator, his subscribing his signatures thereon. Furthermore, thereonwards, with both DW-3, and, DW-4, making categorical communication(s), in their respective

deposition(s), vis-à-vis, the preparation, of, Ext.DW1/A, occurring at the behest, of, the deceased testator, (ii) and also vis-à-vis, the appending by the latter, of, his signatures thereon, being a sequel of his being explained, and, thereafter, his fully comprehending, all the contents thereof, (iii) hence any purported suspicious circumstances, surrounding, the, execution, of, Ext. DW1/A, and, purportedly, sparked, by, the, deceased testator, under, the influence of liquor, executing Ext. DW1/A, becoming, both benumbed, and, blunted. Added efficacy, vis-à-vis, the afore inference, is, garnered, from, the factum of both DW-3, and, DW-4, remaining unscathed, during, the ordeal, of their exacting respective cross-examination(s), and, also when the signatures, of, the deceased testator, embodied, in, Ext. DW1/A, are not contested, to be suffering from any vice, of, any falsity or spuriousness, (iv) and with no evidence, becoming adduced, vis-à-vis, the afore witnesses' rather conniving, with the defendants, in, ensuring, the, preparation, of, a false testamentary disposition. Furtheronwards, with Ext. DW1/A, being a registered testamentary disposition, and, with, the, thereon(s) made statutory endorsements, hence, by the Sub-Registrar concerned, also voicing

clear, and, candid echoing(s), vis-à-vis, the validity, of, making(s), of, the apt statutory sealed signed endorsement(s), becoming preceded, by, the Sub Registrar concerned, reading-over and explaining its contents, vis-à-vis, the deceased testator, and, also, his ensuring vis-a-vis, all the contents thereof, becoming fully comprehended, by, the deceased testator, and, when therealongwith, hence thereon(s), also, the, signatures, of, the deceased testator hence exist, (iv) and with DW-4 also appending his signatures thereon, (v) thereupon it is to be invincibly concluded, emphatically with, the all afore proven statutory ingredients, and, also all the afore proven validly made statutory endorsements, rather remaining un-rebutted, hence theirs holding an aura, of, veracity, and, hence the drawing, of, Ext. DW1/A, is, concluded, to be, a, volitionally, made bequest (vi) besides a further concomitant inference, is sparked qua, in contemporaneity, vis-à-vis, the drawing of Ext. DW1/A, its' executant, rather holding the requisite *compos mentis*.

3.               There is no merit in the instant appeal, and, the same is dismissed. The impugned judgment(s) and decree(s), pronounced, by both the learned Courts

below, are, affirmed and maintained. All pending application(s), if any, are disposed of.

**30.9.2019**

Kalpana

**(Sureshwar Thakur)**  
**Judge**