

**Reportable/Non-reportable****IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA****ON THE 30th DAY OF SEPTEMBER, 2022****BEFORE****HON'BLE MR. JUSTICE SATYEN VAIDYA****REGULAR SECOND APPEAL No. 261 OF 2009****Between: -**

1. SH. UTTAM RAM @ UTTAM SINGH  
SON OF SH. SINGH SON OF SH. LALA
2. SH. DHAMESHWAR SON OF SH. DHANDEV
3. SH. BHUSHAN SON OF SH. KHAJANA  
SON OF SH. LALA  
RESIDENTS OF VILLAGE GUDWAHAN,  
P.O. REWALSAR, TEHSIL SADAR,  
DISTRICT MANDI, H.P.

**APPELLANTS/DEFENDANTS****(BY MR. R. L. CHAUDHARY, ADVOCATE)****AND**

1. SMT. PURNU WIDOW OF LATE SH. DHANNA
2. SMT. ROSHNI DEVI, DAUGHTER OF  
LATE SH. DHANNA WIFE OF SH. PHABBA
3. SMT. CHANDI DEVI DAUGHTER OF  
LATE SH. DHANNA, WIFE OF JEET RAM  
ALL RESIDENTS OF VILLAGE AND POST OFFICE  
SARKIDHAR, TEHSIL SADAR,  
DISTRICT MANDI, H.P.
4. SMT. TULSI DEVI DAUGHTER OF  
SH. DHANNA WIFE OF KHEM CHAND.  
RESIDENT OF KHAKHRANA, TEHSIL SADAR,  
DISTRICT MANDI, H.P.
5. SMT. SARLA DEVI DAUGHTER OF DHANNA  
WIFE OF GIAN CHAND, RESIDENT OF TAKREHAD,  
POST OFFICE GEHRA, TEHSIL SADAR,  
DISTRICT MANDI, H.P.

**RESPONDENTS/PLAINTIFFS**

6. SH. PAWAN SON OF SH. DHANDEV,  
MINOR THROUGH HIS FATHER

- SH. DHANDEV, NATURAL GUARDIAN,  
RESIDENT OF VILLAGE & POST OFFICE,  
SARKIDHAR, TEHSIL SADAR, DISTRICT MANDI, H.P.**
- 7. (a) NEERA DEVI WIDOW OF LATE DHAN DEV**
- 7. (b) DHAMESHWAR SON OF LATE DHAN DEV**
- 7.(c) PAWAN SON LATE DHAN DEV**  
**ALL RESIDENTS OF VILLAGE AND POST OFFICE**  
**SARKIDHAR, TEHSIL SADAR, DISTRICT MANDI, H.P.**
- 8. MS. NIMA DAUGHTER OF SH. SINGH SON OF**  
**SH. LALA, RESIDENT OF VILLAGE & POST OFFICE**  
**SARKIDHAR, TEHSIL SADAR, DISTRICT MANDI, H.P.**
- 9. SMT. KANTI WIDOW OF LATE SH. BHAGAT,**  
**RESIDENT OF PANYALI, TEHSIL SARKAGHAT,**  
**DISTRICT MANDI, H.P.**
- 10. MS. ANJU @ MANJU DAUGHTER OF LATE**  
**SH. BHAGAT, RESIDENT OF VILLAGE AND**  
**POST OFFICE JANI, TEHSIL SARKAGHAT**  
**DISTRICT MANDI, H.P.**
- 11. MS. REENA DAUGHTER OF LATE SH. BHAGAT,**  
**RESIDENT OF VILLAGE PANYALI, VPO GEHRA,**  
**TEHSIL SARKAGHAT, DISTRICT MANDI, H.P.**
- 12. MS. SAPNA DAUGHTER OF SH. BHAGAT,**  
**WIFE OF SH. NIKU, RESIDENT OF VILLAGE**  
**AND POST OFFICE BHADRWAR, TEHSIL**  
**SARKAGHAT, DISTRICT MANDI, H.P.**
- 13. SH. VICKY SON OF SH. BHAGAT RAM,**  
**MINOR THROUGH HIS FATHER SH. BHAGAT**  
**RAM, SON OF SH. LALA, RESIDENT OF**  
**VILLAGE PANYALI, P.O. GEHRA, TEHSIL**  
**SADAR, DISTRICT MANDI, H.P.**
- 14. SH. KHAJANA SON OF LALA, RESIDENT OF**  
**VILLAGE GUDWAHAN, POST OFFICE,**  
**REWALSAR, TEHSIL SADAR, DISTRICT MANDI, H.P.**

**..PROFORMA RESPONDENTS**

**(MR. G. R. PALSRA, ADVOCATE,  
FOR RESPONDENTS NO. 1 TO 3).**

**Reserved on: 22.09.2022**

**Decided on: 30.09.2022**

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This appeal coming on for pronouncement of judgment

this day, the Court passed the following: -

J U D G M E N T

By way of this second appeal, the appellants have assailed judgment and decree dated 24.04.2008 passed by learned District Judge, Mandi, H.P. in Civil Appeal No. 10 of 2005 whereby the judgment and decree dated 01.12.2005 passed by learned Civil Judge (Sr. Division), Mandi, District Mandi, H.P. in Civil Suit No. 4/2002 has been reversed.

2. The parties hereinafter shall be referred to the same status which they held before the learned trial Court.

3. Saraswati had five sons namely Dhanna, Singh, Dhandev, Bhagat Ram and Khajana and also had six daughters, who were married. Dhanna had pre-deceased his mother. Plaintiffs are the successors of Dhanna. Defendants No. 6 to 9 were the other sons of Saraswati, whereas defendants No. 1 to 5 are the grand-sons of Saraswati.

4. After the death of Saraswati, a dispute arose in respect of her estate. Defendants No. 1 to 5 claimed inheritance to the estate of Saraswati on the strength of

registered Will dated 17.3.1997 executed by Saraswati. Plaintiffs raised dispute regarding execution of Will and alleged the same to be a document fabricated by the plaintiffs. It was also alleged that taking advantage of old age, illiteracy, feeble state of mind, physical incapacity of Saraswati, defendants had manipulated a forged Will dated 17.3.1997 in her name. It was further alleged that Saraswati had relinquished her share in favour of the plaintiffs. As per plaintiffs, they were in possession of the property which fell to the share of Saraswati.

5. Defendants contested the suit by filing separate written statements. Whereas, defendants No. 2 to 4 filed a separate written statement, defendants No. 1, 5 and 7 to 9 joined to file another written statement. The common grounds of objections were as to maintainability of the suit, cause of action, valuation, estoppel and limitation etc. On merits, the allegations levelled in the plaint were denied in generality. It was specifically pleaded that Saraswati had executed legal and valid Will dated

17.3.1997 in favour of defendants No. 1 to 5. The plea of Saraswati having relinquished her share in favour of plaintiffs was denied. The Will executed by Saraswati on 17.3.1997 was stated to be her genuine Will having been executed by Saraswati in sound disposing state of mind and further having been registered with the Sub Registrar, Mandi.

6. On the basis of pleadings of the parties, learned trial Court framed the following issues:

1. *Whether the deceased Saraswati Devi executed legal and valid Will dated 17.3.97 in a sound state of mind, in favour of defendants Nos. 1 to 5 as alleged? OPD*
2. *If issue No.1 is proved in affirmative, whether the alleged Will executed by Saraswati Devi, on dated 17.3.97 is forged and fictitious documents? OPP*
3. *If issue No.2 is proved in affirmative, whether the deceased Saraswati Devi, relinquished her share, in favour of the plaintiff, during her life time, if so its effect? OPP*
4. *Whether the plaintiffs are the joint owner in possession of the suit land alongwith the defendants Nos. 6 to 9, as alleged? OPP*

5. *Whether the plaintiffs are entitled for the relief of the permanent prohibitory injunction, as prayed? OPP*
6. *Whether the suit is not maintainable? OPD*
7. *Whether the plaintiff has no cause of action? OPD*
8. *Whether the suit is not properly valued for the purposes of Court fees and jurisdiction, if so, what is the correct valuation? OPD*
9. *Whether the suit is barred by limitation? OPD*
10. *Relief.*

Learned trial Court decided issues No.1 and 4 in affirmative, all other issues were decided in negative. The suit of the plaintiffs was accordingly dismissed. The Will dated 17.3.1997 was held to be legal and valid document having been executed by Saraswati in favour of defendants No. 1 to 5. Plaintiffs were also held to be joint owners in possession of the suit land alongwith defendants No. 6 to 9.

7. The plaintiffs assailed the judgment and decree passed by learned trial Court in First Appeal under Section 96 of the Code of Civil Procedure. Learned District Judge, Mandi, allowed the appeal of the plaintiffs vide impugned

judgment and decree by setting aside the judgment and decree passed by learned trial Court. It was declared that the Will dated 17.3.97 was not valid and genuine and estate of Saraswati was held liable for inheritance in accordance with the provisions of Hindu Succession Act.

8. Defendants No. 1,2 & 5 have assailed the judgment and decree passed by learned lower Appellate Court by way of instant appeal.

9. The appeal was admitted on 06.09.2014 on the following substantial questions of law:

1. *Whether deceased Saraswati Devi has executed a valid and legal Will dated 17.3.1997 Exhibit DW-4/A in favour of appellants/defendants No. 1 to 5 as per the requirement of Sections 67 and 68 of Evidence Act and 63 of Indian Succession Act in view of documentary as well as oral evidences of DW-1 to DW-5?*
2. *Whether the Ld. First Appellate Court has rightly reversed the well-reasoned judgment of the Ld. Trial Court while passing the impugned judgment and decree ignoring the fact that neither the respondents/plaintiffs have questioned the authenticity of registration nor*

*any witness was examined to this effect from the office of Sub Registrar?*

3. *Whether the Ld. First Appellate Court has based its findings on conjectures, surmises and hypothesis by mis-interpreting the evidences of DW1, DW2, DW3, DW4 and DW5?*
4. *Whether the respondents/plaintiffs have proved on record that Exhibit DW4/A is a result of fraud and mis-representation without questioning the authenticity of registration of the document?*
5. *Whether the Ld. First Appellate Court has rightly given undue weightage for the name written in Hindi of marginal witnesses in view of the registration of Ex. DW-4/A dated 17.3.1997, without questioning the authenticity of registration of the alleged document?*

10. I have heard learned counsel for the parties and have also gone through the records of the case carefully.

11. Learned counsel for the appellants has contended that the impugned judgment and decree passed by learned lower Appellate Court is against well settled canons of law. The non-existent facts have been culled out as suspicious circumstances, by ignoring the fact that the execution of Will was duly proved in accordance with law.



12. Per contra, learned counsel for respondents No. 1 to 5/plaintiffs has supported the judgment and decree passed by learned lower Appellate Court being in accordance with law.

13. The original Will dated 17.3.1997 has been placed on record as Ext. DW-4/A. The perusal of this document reveals that it ostensibly had the thumb impression of Saraswati as the testatrix. Her thumb impression is also purportedly there on the first page of the Will and on the reverse of the pages where the stamps have been affixed by the office of the Sub Registrar, Sadar, Mandi. The document is in two pages. The marginal witnesses of the Will have been named as Jeet Ram and Dumnu Ram. Sh. Pushp Raj Sharma, Advocate, Mandi has been mentioned as identifier. The Will is stated to be scribed by the document writer Sh. Bhagirath Sharma at Mandi. The evidence of registration of the document in the office of Sub Registrar Sadar, Mandi is also visible on Ext. DW-4/A.

14. Plaintiff No.1 appeared as her own witness and was examined as PW-1. In her examination-in-chief, she stated that Saraswati was not keeping good health for 6-7 months before her death and for 2-3 months before death she was not even conscious. As per plaintiff No.1, Saraswati had grown old and the defendants had taken benefit of her old-age and had manipulated a forged Will.

15. Plaintiffs examined another witness named Bharvu. As per this witness, he was closely associated with Saraswati and he was never apprised by Saraswati about the execution of any Will by her. He also stated that before death, the mental state of Saraswati was not perfect and she was not in a position to execute the Will.

16. On the other hand, defendants examined DW-4 Dumnu Ram and DW-5 Jeet Ram as marginal witnesses of the Will. DW-4 stated that he had accompanied Saraswati, her son Khazana Ram and Jeet Ram to Mandi. Saraswati had got scribed her Will from Bhagirath. After typing the document, the same was read by Bhagirath to

the Saraswati. She admitted the contents of the Will to be correct and affixed her thumb mark in front of the witnesses and the witnesses also signed the Will thereafter in her presence. Pushp Raj was the Advocate. Thereafter, they went to Tehsil office, the “old lady” had handed over the document to Tehsildar and had stated that since her grand-sons were looking after her and hence, she had willed her property in their favour. DW-4 identified his signatures as well as signatures of other witness Jeet Ram. He also identified the thumb mark of Saraswati. In cross-examination, it was suggested to him that Saraswati was impersonated by Kagdu Devi and a forged Will was prepared.

17. DW-5 Jeet Ram was the other marginal witness. He deposed that Saraswati was his aunt. In 1997, he alongwith Khazana Ram, Singh, Saraswati and Dumnu Ram had visited Mandi. Saraswati had expressed her intention to execute Will in favour of her grand-sons. We had gone to Pushp Raj, Advocate. Thereafter, Saraswati

told Bhagirath that she wanted to bequeath her property in favour of her grand-sons. Bhagirath scribed the Will, read over the same to Saraswati, who affirmed its contents in presence of the witnesses and also thumb marked the same in their presence. Both marginal witnesses also appended their respective signatures in her presence. All visited the Tehsil office and Saraswati presented the Will to Tehsildar. She disclosed to the Tehsildar that she had willed her property in favour of her grand-sons. There also the marginal witnesses were made to sign the document. Saraswati also appended her thumb impression again. As per this witness, Saraswati was in her senses. In cross-examination, the same defence was put to DW-5 that Khazana Ram in connivance with Pushp Raj, Advocate had got Saraswati impersonated by Kagdu Devi and it was Kagdu Devi, who had appended her thumb marks.

18. By examining both the marginal witnesses of the Will, defendants had complied with requirement of Section 68 of the Evidence Act. In addition to examination of

marginal witnesses, defendants had also examined DW-2, who was working as Document Writer and had scribed the Will of Saraswati. Sh. Pushp Raj, Advocate was also examined as DW-1. Both these witnesses had also deposed that the Will was scribed by Bhagirath on the asking of Saraswati. DW-1 Pushp Raj, Advocate knew Saraswati personally and had thus identified her.

19. The registration of Will Ext. DW-4/A under the Registration Act has not been denied. Plaintiffs had only contested the fact that the Will propounded by the defendants was not a genuine and valid document. Whereas in pleadings, the reason for alleging the Will to be a forged document was the old age, illiteracy and physical incapacity of Saraswati. In cross-examination, on the defence witnesses, a defence was set up that Saraswati had neither appended her thumb impression on the Will nor had presented the same before the Registrar. It was specifically put in the form of suggestion to the defendants'

witnesses that Saraswati was impersonated by Kagdu Devi and it was Kagdu, who had thumb marked the Will.

20. Thus, the Will by Saraswati was proved to have been executed in accordance with Section 63 of Indian Succession Act and also became a piece of legal evidence on compliance of section 68 of Indian Evidence Act.

21. The first substantial question of law is accordingly decided in affirmative.

22. Learned lower Appellate Court has disbelieved the Will on following grounds:

- (i) The statement of DW-1 Pushp Raj, Advocate was discrepant with respect to date of execution of Will.
- (ii) The names of testatrix and identifier were typed on the second page of the Will, whereas the names of marginal witnesses were not typed and rather were written in hand.
- (iii) Beneficiaries of the Will had actively participated in its execution.
- (iv) The marginal witnesses were not having cordial relations with plaintiff No.1.

23. Learned lower Appellate Court considered the aforesaid circumstances as suspicious and had arrived at the conclusion that since defendants had failed to remove suspicion surrounding the execution of Will, the document Ext.DW-4/A was not the valid and genuine Will of Saraswati.

24. Before delving upon the findings recorded by learned lower Appellate Court, it will be apt to notice at this stage that learned lower Appellate Court had miserably failed to consider the most relevant and significant aspects of the case

24.1 The document Ext. DW-4/A is a registered document. The factum of its registration has not been challenged. It bears an endorsement of the Registrar according to which the document was presented by Saraswati herself and was read-over and explained to her as per the requirement of Sections 58 to 60 of the Registration Act. Since there is legal presumption to the

correctness of endorsement, learned lower Appellate Court could not have ignored the same.

24.2 Further, the plaintiffs had come up with specific defence that Saraswati was impersonated by Kagdu Devi. Save and except for suggesting this fact to the witnesses of defendants, no effort was made by plaintiffs to substantiate such plea. Admittedly, there were thumb impression marks on Will Ext. DW-4/A. In case plaintiffs wanted the Court to believe its plea of impersonation, they should have led evidence to establish their stand. No effort was made by plaintiffs to get the thumb impression on Will Ext. DW-4/A examined by an expert. It is trite that merely suggesting some fact in cross-examination to a witness and denied by such witness, will not be deemed to have been proved.

25. Thus, the statements of defendants' witnesses had sufficiently proved that the Will Ext. DW-4/A bore the thumb impressions of Saraswati and was also presented for registration by her. That being so, the circumstances



considered by learned lower Appellate Court as suspicious should have been considered in light of existence of proof of above noticed facts.

26. In addition to above, another fact clearly escaped the notice of learned lower Appellate Court. The Will was executed on 17.3.1997. Plaintiffs had alleged that Saraswati was not having sound disposing mind since 2-3 months prior to her death. No evidence was led as to the date of death of Saraswati. However, it was revealed from the evidence that Saraswati died somewhere in the year 2000. In this view of the matter, plaintiffs have miserably failed to prove that Saraswati was physically or mentally incapacitated from executing the Will in March, 1997. No material has been placed on record to show that her mental or physical health was not proper at the time of execution of Will.

27. DW-1 Pushp Raj, Advocate in his examination-in-chief stated that Saraswati had come to him on 12.03.1997 and the Will was executed. The discrepancy

that instead of 17.03.1997, this witness mentioned the date of execution of Will as 12.03.1997 has been considered as a suspicious circumstance by learned lower Appellate Court. It has not been appreciated that the statement of DW-1 was recorded in the Court in August, 2005 i.e. after about eight years from the date of execution of the Will. DW-1 had represented Saraswati only as a professional Advocate and, as such, he was neither supposed to remember the exact date nor expected to do so. Even otherwise, the due execution of Will was proved by the marginal witnesses. Corroboration was provided by the scribe DW-2 Bhagirath. Additionally, the Will was a registered document. Keeping in view all attending circumstances, discrepancy in mentioning the date by DW-1 Pushp Raj, Advocate could not have been considered as a suspicious circumstance insofar as the execution of the Will is concerned.

28. In my considered view, learned lower Appellate Court has also attached more than required attention to

the fact that the names of marginal witnesses were not typed on the Will, whereas the names of testatrix and identifier were typed. Learned lower Appellate Court has thus drawn an inference that the Will was not genuine. The cross-examination of DW-2 scribe of Will reveals that no question was put to him in respect of non-typing of the names of witnesses. In absence of any such clarification being sought from DW-2, the inference drawn by learned lower Appellate Court cannot be said to be justified. The only important aspect was the execution of the Will in accordance with the provisions of section 63 the Indian Succession Act and placing it on record as legal piece of evidence as per Section 68 of the Evidence Act. Both the conditions stood satisfied in the case. DW-4 and DW-5 had admitted their signatures on the Will as marginal witnesses. Their testimonies were not shattered on the issue of execution of Will. In this view of the matter, even if the names of marginal witnesses were not typed, could not have been taken as a circumstance much less

suspicious circumstance to discredit the entire execution of the Will.

29. As regards the participation of beneficiaries, it has come on record that DW-3 Khazana Ram one of the sons of Saraswati was accompanying her at the time of execution of Will. He had arranged the witnesses. Admittedly, Saraswati was old lady. She was not local resident of Mandi town where she could visit the Court premises or the office of the Sub Registrar of her own. The parties belonged to rural area having some distance from the town. In such circumstances, it was natural that Saraswati was accompanied by someone and there could not be a better person than her own son. Simply because the son of DW-3 Khajana Ram was one of the beneficiaries of the Will, does not vitiate the execution thereof. Further, the arrangement of witnesses by the son of testatrix also cannot be said to be a suspicious circumstance in the given facts of the case. The execution of Will, in the instant case was not an abrupt decision. Saraswati had to visit

Mandi town for the purpose of execution and registration of Will. She could not have expected the persons known to her to be immediately available at the time of execution of Will, therefore, she had to arranged the witnesses in advance.

30. DW-4 and DW-5 had stated that they were not having cordial relations with plaintiff No.1. That by itself does not mean that they had been privy to a fraud or manipulated document. It is not the case that the marginal witnesses were not knowing the testatrix or her family. Had they been stranger having inimical relations with plaintiff No.1, there might have been some substance in drawing an inference as to such circumstance being suspicious.

31. In view of above discussion, the judgment and decree passed by learned lower Appellate Court below cannot be sustained. Substantial questions of law Nos 2 to 4 are accordingly answered in negative.

32. Resultantly, the appeal succeeds. Judgment and decree dated 24.04.2008 passed by learned District Judge, Mandi, H.P. in Civil Appeal No. 10 of 2005 is set-aside and the judgment and decree dated 01.12.2005 passed by learned Civil Judge (Sr. Division), Mandi, District Mandi, H.P. in Civil Suit No. 4/2002, is affirmed.

The appeal stands disposed of in the aforesaid terms, so also the pending application(s) if any.

**30<sup>th</sup> September 2022**  
**(GR)**

**Satyen Vaidya**  
**Judge**