



RSA-4512-2012 (O&amp;M)

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

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**RSA-4512-2012 (O&M)  
Reserved on:-09.09.2025  
Date of Decision : 15.09.2025**

Sukhpal Kaur and Others

...Appellants

VERSUS

Balbir Singh

...Respondents

**CORAM : HON'BLE MS. JUSTICE MANDEEP PANNU**

Present: Mr. Avnish Mittal, Advocate,  
Ms. Aparna Singhal, Advocate for the appellants.

Mr. G.P.S.Bal, Advocate for the respondent.

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**MANDEEP PANNU,J.**

1. The present Regular Second Appeal has been filed by the appellants/defendants challenging the concurrent findings of the courts below, whereby the learned trial court vide judgment and decree dated 10.08.2010 decreed the suit of the respondent/plaintiff, and the learned Lower Appellate Court vide judgment and decree dated 08.09.2012 dismissed the appeal filed by the appellants/defendants, thereby upholding the decision of the learned trial Court.

**Brief Facts**

2. The plaintiff filed a suit for declaration against the defendants to the effect that the plaintiff is owner in possession of 1/6th share in the suit property as detailed in the headnote of the plaint, situated at village Pattar Kalan, Tehsil and District Jalandhar. The plaintiff also sought relief of permanent injunction



restraining the defendants from interfering in his possession over the suit property, and in the alternative also prayed for a decree of possession against the defendants.

3. The brief facts of the case are that the plaintiff ordinarily resides in the United Kingdom and came to India in connection with the death of his father, Tara Singh. He executed a Special Power of Attorney on 06.12.2003 in favour of Manjinder Singh, son of Manohar Singh, resident of village Chitti, District Jalandhar, authorising him to file the suit on his behalf. Tara Singh, father of the plaintiff, was the exclusive owner of the suit property. The plaintiff is the only son of his father Tara Singh, since deceased, and he succeeded to his estate including the suit property on the basis of natural succession. The plaintiff became owner in possession of the suit property on the basis of natural succession after the death of his father Tara Singh.

4. It is further pleaded that the defendants started proclaiming their ownership over the suit property on the basis of some registered Will alleged to have been executed by Tara Singh in their favour. The Will so set up by the defendants is a forged, fabricated, illegal and void document and is the result of impersonation. The plaintiff further pleaded that the property is ancestral property and constitutes joint Hindu family property of the plaintiff with his father Tara Singh, and hence no such Will could have been executed with respect thereto. Accordingly, the plaintiff filed the suit for declaration, permanent injunction, and possession in the alternative against the defendants.

5. Upon notice, the defendants appeared and joint filed written statement alleging therein that the plaintiff has not come to the Court with clean hands and has suppressed material facts. It was pleaded that the suit is not maintainable in the present form and does not lie against defendants No. 2 and 3 on account of their



minority status. It was further contended that the attorney-holder of the plaintiff is not competent to file the suit. It was also pleaded that the plaintiff has no right, title or interest in the suit property.

6. On merits, it was pleaded that the plaintiff has permanently settled in the United Kingdom and he never came to see his father Tara Singh, nor did he look after or maintain him. Tara Singh, since deceased, was living with the defendants, and it was they who took care of him in his old age. Husband of defendant No. 1, Sukhpal Kaur, had expired in the year 1994, and thereafter Tara Singh was looked after and cared for by the defendants. Tara Singh was suffering from breathing problems and was treated by the defendants. The plaintiff never came to see his ailing father Tara Singh in the hospital. It was the defendants who performed the cremation and Bhog ceremony of Tara Singh. His last remains were also immersed at Kiratpur Sahib by defendant No. 1, Sukhpal Kaur.

7. It was further pleaded that Tara Singh was holding a joint account with defendant No. 1, Sukhpal Kaur. Tara Singh treated defendant No. 1 as his daughter-in-law and defendants No. 2 and 3 as his grandsons. Tara Singh executed a valid registered Will dated 22.06.1999 in favour of the defendants out of his free will and sound disposing mind, thereby making them the owners of the suit property. On the basis of the said registered Will dated 22.06.1999, the defendants became owners in possession of the suit property. Accordingly, dismissal of the suit was prayed for.

8. The plaintiff filed replication wherein he reiterated the averments made in the plaint and denied those of the written statement.

9. From the pleadings of the parties, the following issues were framed by the learned trial Court:



1. Whether the plaintiff is entitled to the relief of declaration that he is exclusive owner in possession of the suit land, being the only Class-I legal heir of late Tara Singh? OPP
  2. Whether the plaintiff is entitled to the permanent injunction as prayed for? OPP
  3. If issue No. 1 is not proved, whether in the alternative the plaintiff is entitled to a decree for possession of the suit land? OPP
  4. Whether the plaintiff has not come to the Court with clean hands as he has suppressed material facts from the Court? OPD
  5. Whether defendants No. 2 and 3 are minors and, therefore, the present suit could not be filed against them? OPD
  6. Whether late Tara Singh executed a legal and valid registered will dated 22.06.1999 in favour of the defendants? OPD
  7. Relief.
10. In order to prove his case, the plaintiff entered the witness box as PW1 and examined himself as his own witness, and thereafter closed his evidence.
11. On the other hand, defendant No. 1, Sukhpal Kaur, examined herself as DW1 besides examining DW2 Amarjit Singh, attesting witness of the Will, and DW3 Joginder Singh. The defendants also tendered in evidence documents Ex. DX and Mark C to Mark F. Thereafter, the defendants closed their evidence.

### **Findings of the Trial Court**

12. On conclusion of the evidence and arguments, the learned trial Court decreed the suit of the plaintiff for declaration and possession in the alternative, while declining the relief of permanent injunction. Accordingly, vide judgment and decree dated 10.08.2010, the suit of the plaintiff was partly decreed.

**Findings of the Lower Appellate Court**

13. The learned Lower Appellate Court, after hearing counsel for the parties, first dealt with the contention raised on behalf of the defendants that defendants No. 2 and 3 were minors and that no guardian had been appointed for them in the proceedings before the learned trial Court.

14. The learned Lower Appellate Court, observed that defendant No. 1, Sukhpal Kaur, the natural guardian and mother of minor defendants No. 2 and 3, had filed the joint written statement on her own behalf as well as on behalf of the minors and had contested the proceedings throughout. The Court held that the rule of appointment of next friend or guardian *ad litem* is for the protection of minor defendants, and that since their natural guardian had herself contested the proceedings in her own interest as well as in the interest of the minors, the representation of defendants No. 2 and 3 was substantial. It was further observed that Sukhpal Kaur had a common interest with the minors in the suit property, and she had set up the Will on their behalf as well as her own, and contested the suit to the best of her ability. Being the natural guardian under the Hindu Minority and Guardianship Act, she was competent to represent the minor defendants. Accordingly, the court concluded that the minors had been properly represented in the trial court proceedings and no prejudice had been caused to them.

15. Upon a careful appreciation of the evidence, the learned Lower Appellate Court concurred with the findings of the learned trial court that the Will set up by the defendants was not free from suspicious circumstances. The Court noted that as per Ex.D1, the Will dated 22.06.1999, Tara Singh, aged about 72 years at the time of execution, had disinherited his only son, Balbir Singh, without assigning any valid reason. The Court observed that ordinarily a father would not



exclude his only son from inheritance without compelling circumstances, and that no such circumstances had been shown in the present case. There was no evidence on record of any estrangement, bad blood, or litigation between the plaintiff and his father Tara Singh. The only ground suggested was that the plaintiff resided abroad, which by itself was not a valid reason to disinherit him.

16. The Court further found that the disposition under Ex.D1 was unnatural and improbable, and that where a disposition appears unnatural, it raises strong suspicion which the propounder of the Will must dispel. The defendants, being the beneficiaries under the Will, had failed to discharge this burden. The Court also found that there was no documentary evidence to prove that Tara Singh ever resided with the defendants, nor was there any medical evidence to show that they had treated him during illness. On the contrary, defendant No. 1 Sukhpal Kaur herself admitted that Tara Singh used to cultivate his land during his lifetime.

17. The Court also observed that the second attesting witness, Harinder Pattar, had not been examined, and that even DW2 Amarjit Singh did not depose that Harinder Pattar had attested the Will in his presence or in the presence of Tara Singh. His testimony was totally silent on this aspect. Further, the scribe of the Will was also not examined. Thus, the requirement of attestation by two witnesses in terms of Section 63 of the Succession Act was not duly proved.

18. In these circumstances, the Lower Appellate Court held that the Will Ex.D1 dated 22.06.1999 was surrounded by suspicious circumstances and had not been proved to have been validly executed by Tara Singh. The Court therefore concurred with the learned trial Court that the defendants had failed to establish the validity of the Will.



19. Consequently, the Court upheld the finding of the learned trial Court that the plaintiff, being the sole Class-I heir of Tara Singh, was entitled to inherit the suit property. It further held that since it was further found that the plaintiff was not in possession of the suit property, the trial court had rightly granted the decree of declaration and possession in the alternative, while declining the relief of injunction. The appeal filed by the defendants was thus dismissed.

20. Feeling aggrieved the appellants challenge the impugned judgments and decrees dated 10.8.2010 and 8.9.2012 of the Courts below, in this Regular Second Appeal.

21. Upon notice, respondent appeared and contested the appeal.

**Submissions of learned counsel for the appellants**

22. It is argued that finding of the Courts below that “no reason for disinheriting the plaintiff -Balbir Singh has been given is wholly unsustainable. On the admitted facts the testator lived with and was cared for by the appellants/defendants in his old age while the respondent/plaintiff had been residing abroad for decades, those background facts constitute a valid explanation for the testator’s disposition.

23. It is further contended by learned counsel for the appellant that the learned Courts below erred in holding that the registered Will (Ex.D1) dated 22.6.1999 was not proved merely because one of the attesting witnesses-Harinder Pattar was not examined. The Will is a registered instrument and the mandatory proof under Section 68 of the Evidence Act was complied with by examining one attesting witness DW-2 Amarjit Singh. Non-examination of the co-attesting witness was not fatal in the circumstances of the case.



24. It is further contended that the lower Courts misapplied the legal standards laying down an over-strict requirement that both attesting witnesses must be examined and must have signed the Will in each other's presence and in the simultaneous presence of the testator; there is no such rigid requirement in law and the lower courts wrongly went beyond pleadings in this regard.

25. Learned counsel further submitted that the trial court's and appellate court's adverse reliance on "suspicious circumstances" that were never pleaded or established (for example, alleged absence of documentary proof of residence and medical bills) is unjustified; mere absence of documents of certain kinds cannot displace the positive testimony and the registered nature of Ex.D1.

26. The Courts below failed to appreciate that registration of the instrument gives rise to a strong presumption in favour of genuineness, and that the burden to establish suspicious circumstances lies on the party assailing the will, a burden which the plaintiff failed to discharge.

27. The learned Courts below overlooked material admissions in the cross-examination of PW-1- plaintiff in particular his admission about delay in arrival of son of testator, lack of his participation in last rites/cremation, his ignorance about who lit the pyre, admissions about his longtime residence abroad, all of which go to show the plausibility of the testator's making a will in favour of those who actually looked after him.

28. The learned Courts below erred in holding that the suit was maintainable against minor defendants without adequate representation. In any event the natural guardian had contested the suit on their behalf and no prejudice is shown.

**Submission of learned counsel for the Respondent**

29. Learned counsel for the respondent strongly opposed the grounds of appeal and urged that it is a case of unnatural disposition. The Will (Ex.D1) disinherits the only natural Class-I heir, the plaintiff, which is an unnatural and improbable disposition and therefore attracts suspicious circumstances. Ordinarily a father does not disinherit his only son without compelling reasons and no such reasons are on record.

30. It is further contended that there are deficiencies in proof and attestation. Ex.D1 purportedly has two attesting witnesses but the defendants produced only one i.e. DW-2 Amarjit Singh in evidence. Harinder Pattar, the other attesting witness, was not examined and no cogent explanation has been given. The testimony of DW-2 is silent about the presence and attestation by Harinder Pattar i.e., DW-2 did not state that Harinder Pattar also attested the Will in her presence and in the presence of the testator. Scribe was also not examined. These lacunae impair the credibility of the propounded Will.

31. It is further submitted that there is absence of supporting documentary proof. The defendants failed to produce documentary evidence to show that the testator habitually resided with them as no ration card, no voter card in their favour or medical bills or hospital records to show sustained treatment by the defendants has been produced. The absence of such corroborative material weakens the defendants' case.

32. Learned counsel for the respondent/plaintiff further argued that possibility of forgery/impersonation/undue influence cannot be ruled out. The plaintiff pleads that Ex.D1 was procured by impersonation and undue influence and that the testator lacked testamentary capacity. The defendants have not rebutted



these allegations by cogent evidence. The onus is on the propounder to show freeness of will and due execution. Mere registration of Will and a single attesting witness are insufficient where suspicious circumstances exist.

33. The plaintiff relied upon a judgment of Hon'ble Supreme Court in the case of *Lalitaben Jayantilal Popat Vs. Pragnaben Jamnadas Kataria & Others 2009(1) RCR (Civil) 715* which hold that the Will must be properly attested and that suspicious circumstances will invalidate a will unless the propounder sufficiently explains them. It was argued that the lower courts correctly held Ex.D1 to be suspicious and their concurrent findings deserve to be upheld.

### **Findings**

34. This Court has considered the respective contentions of learned counsel for the parties and gone through the record as well as concurrent findings of the courts below.

35. Regarding disinheritance of only son by the testator, being unnatural. it is here by submitted that the testator, Tara Singh, was an elderly man about 72 years at the time of Ex.D1 and had no near relatives to look after him. It is not disputed that his wife was deceased and his only son, the plaintiff, had settled abroad for many years. The evidence of DW-1 Sukhpal Kaur and DW-3 Joginder Singh shows that the defendants looked after the testator during his last years. They provided care and treatment. These background facts are relevant and legitimate considerations for the testator to execute a will in favour of those who nursed him. PW-1 has admitted in cross-examination that he was resident abroad for a very long period; that he did not attend to his father in his illness; that he came to India three weeks after the death and that he did not know who lit the pyre. He did not bring his father to UK. He did not produce medical bills or other



documentary proof to contradict defendants' claim of caregiving. These admissions fatally undermine the plaintiff's allegation that the will is a product of forgery/impersonation/undue influence. Background facts justify disposition. The legal maxim is that the testator's motive is a matter for consideration. Disinheritance of a distant son who has not discharged filial obligations and who has lived abroad for decades is not inherently unnatural when the son had effectively ceased performing filial duties and other near relatives provided care. The trial and appellate courts ignored these salient background facts. The trial and appellate courts ought to have evaluated the Will in that background.

36. Support is derived from the judgment of Hon'ble Supreme Court in ***Savithri & Others Vs. Karthyayani Amma & Ors. [2007(4) RCR (Civil) 749]***. The Hon'ble Court in para 19 thereof observed as under:-

*“19. Deprivation of a due share by the natural heirs itself is not a factor which would lead to the conclusion that there exist suspicious circumstances. For the said purpose, as noticed hereinbefore, the background facts should also be taken into consideration. The son was not meeting his father. He had not been attending to him. He was not even meeting the expenses for his treatment from 1959, when he lost his job till his death in 1978. The testator was living with his sister and her children. If in that situation, if he executed a Will in their favour, no exception thereto can be taken. Even then, something was left for the appellant.*

Keeping in view the aforesaid facts and settled position of law, this Court is of the considered view that there is nothing unnatural if a class-I legal heir is disinherited by the testator under a validly executed Will. The law recognizes the



right of a testator to dispose off his property in accordance with his wishes, and the mere exclusion of natural heir does not by itself render the Will suspicious or invalid. What is material is the free volition of the testator and the due execution and attestation of the Will in accordance with law, which stand duly proved in the present case.

37. Coming to the finding of the Courts below that non-examination of other attesting witness does not prove the due execution of the Will and that both the attesting witnesses have not put their signatures on Will simultaneously at same in the presence of each other and testator. This court does not find itself in agreement with this .Proof by one attesting witness is sufficient under the circumstances. While Section 63 of the Succession Act requires attestation, Section 68 of the Evidence Act permits proof of execution by examination of at least one attesting witness. In the present case DW-2 Amarjit Singh, an attesting witness, was examined and has deposed to the formal execution of Ex.D1 in the presence of the testator. The co-attesting witness Harinder Pattar was resident abroad (Spain) and could not be produced; this non-production is explicable and not suspicious per se. The law does not require that both attesting witnesses must be examined in every case Examination of one credible attesting witness and the registered instrument are adequate unless the plaintiff points to strong contrary circumstances. The mere fact of non-examination of the second attesting witness is not ipso facto fatal.

38. Similarly, evidence of scribe or simultaneous signing is not necessary. The defendants were not obliged to call the scribe or prove simultaneous signing in the precise mechanical manner the lower courts required. DW-2 has deposed to the facts of execution; silence as to whether the other attesting witness signed



“simultaneously” does not impeach the will. The lower courts erred in drawing an adverse inference merely because the scribe or the second attesting witness was not examined when a reasonable explanation of foreign residence exists.

39. For this, support is also derived from the judgment of Hon’ble Supreme Court in ***Ramabai Padamakar Patil (D) through LRs and Others Vs. Rukminibai Vishnu Vekhande [2003(4) RCR (Civi) 92***. In para 5 of the said judgment, it has been held as under:-

*“5. ....it will be useful to briefly notice the legal position regarding acceptance and proof of a Will. Section 63 of Indian Succession Act deals with execution of unprivileged Wills. It lays down that 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. It further lays down that the Will shall be attested by two or more witnesses, each of whom has seen the testator signing or affixing his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator and each of the witnesses shall sign the Will in the presence of the testator. Section 68 of the Evidence Act mandates examination of one attesting witness in proof of a Will, whether registered or not.”*

A similar view has been taken by Hon’ble Supreme Court in ***Ganesan (D) through LRs Vs. Kalanjiam and Others [2019(3) RCR (Civil) 843]*** where the Hon’ble Supreme Court was of the view that :-

*“Where a testator asks a person to attest his Will, it is a reasonable inference that he was admitting that the Will had been executed by him. There is no express prescription in the statute that the testator*



*must necessarily sign the will in presence of the attesting witnesses only or that the two attesting witnesses must put their signatures on the will simultaneously at the same time in presence of each other and the testator.”*

40. Learned counsel for the respondent relied on ***Lalitaben Jayantilal Papat’s case (supra)*** a decision which emphasises the need for proper attestation and the desirability (in many cases) of examining attesting witnesses. That decision, however, is distinguishable on its facts from the present case for the following reasons:

1. In the reported decision relied upon, the factual matrix required either both attesting witnesses to be examined or there were other material circumstances which rendered examination of both necessary for satisfactorily establishing the Will. The present case is materially different: Ex.D1 is a registered instrument and one credible attesting witness (DW-2) has been examined and has identified the execution.
2. In the reported case the facts also involved such lacunae and contradictions in the attesting witness’s testimony or glaring irregularities which warranted rejection of the will. In contrast, in the present case the attesting witness DW-2 has spoken consistently about the execution; the non-examination of Harinder Pattar is explained by his residence abroad and is not shown to be a deliberate concealment.
3. Therefore, the ratio of the cited authority cannot be applied in rigid form so as to require exclusion of Ex.D1 in the face of a registered will and credible testimony of one attesting witness, coupled with plaintiff’s own admissions which weaken his challenge.



For these reasons, the judgment cited by the respondent is not a parallel or controlling precedent on the facts and cannot be invoked as a ground to sustain the concurrent finding that Ex.D1 is vitiated by fatal suspicious circumstances.

41. Keeping in view the mandate of Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act, it is well settled that although the law requires a Will to be attested by at least two witnesses, the examination of one attesting witness is sufficient to prove its due execution, provided that such witness unequivocally supports the execution and attestation of the Will. The non-examination of the other attesting witness does not vitiate the proof of the document, so long as the statutory requirement of examining one attesting witness stands satisfied.

42. This Court has no hesitation in holding that the law does not mandate the examination of the scribe of the Will as a condition precedent for proving its due execution. What is material is the compliance with Section 63 of the Indian Succession Act and Section 68 of the Evidence Act, and once an attesting witness has duly proved the execution and attestation of the Will, the mere non-examination of the scribe does not cast any doubt on its validity.

43. It is relevant to mention here that plaintiff has taken contradictory pleas regarding the execution of the will. The plaintiff's charges on the one hand speak of impersonation (i.e., some other person appeared in place of testator), and on the other hand of undue influence being exercised upon the testator. These two lines of attack are inconsistent and, crucially, none is supported by material evidence such as medical records, contemporaneous conduct, or credible eyewitness account. The plaintiff has failed to produce any medical evidence to



show the testator lacked testamentary capacity, and has failed to show any evidence of undue influence or impersonation.

44. The Court cannot ignore the fact that the testator lived for months after execution of Ex.D1 (till October 2003). His longevity after the execution of will militates strongly against an assumption that he was of unsound mind on the date of execution.

45. Moreover, in relation to registered Will and presumption of genuineness, the Court finds that the instrument Ex.D1 is a registered Will and registration raises a strong presumption of genuineness. The presumption which is rebuttable, shifts the burden on the party attacking the Will to show suspicious circumstances. The plaintiff has not placed on record cogent circumstances sufficient to rebut that presumption. The reasoning finds corroboration from the decision of Hon'ble Supreme Court in *Metpalli Lasum Bai (since dead) and Others Vs. Metapalli Muthaih (D) by LRs [2025 INSC 879]* wherein the Hon'ble Court affirmed the trial Court's decision in para 9 as below-mentioned:-

*“The Will, is a registered document and thus there is a presumption regarding genuineness thereof. The trial Court accepted the execution of the Will based on the evidence led before it. As the Will is a registered document, the burden would lie on the party who disputed its existence thereof.”*

This Court is persuaded to hold that it is well settled that although a Will is not compulsorily registerable under law, yet its registration carries a presumption of genuineness in favour of the document. The fact of registration, coupled with the endorsement of the registering authority, lends assurance to the sound and disposing state of mind of the testator at the time of execution, and acts



as an additional circumstance dispelling suspicion surrounding the Will. While non-registration does not detract from its validity, registration, where available, serves as a valuable corroborative factor in proving its due execution.

46. On weighing probabilities, the combination of (i) Ex.D1 being registered, (ii) the credible testimony of DW-2 who attested the will, (iii) admissions by PW-1 about his long absence abroad and non-involvement in the testator's final days, and (iv) absence of convincing, cogent evidence of impersonation/undue influence or lack of testamentary capacity, persuades this Court that the presumption in favour of the genuineness of Ex.D1 has not been successfully displaced by the plaintiff.

47. On the point of the natural guardian/minors, the Lower Appellate Court correctly observed that Sukhpal Kaur as natural guardian filed joint written statement and contested the suit on behalf of the minor defendants. No substantial prejudice to the minors appears on record; this limb of attack is without merit.

48. On the above premises, the impugned findings that Ex.D1 is surrounded by suspicious circumstances are unsustainable and the decree granted to plaintiff should be set aside. The registered will should be accepted as genuine.

49. On the point of the natural guardian/minors, the Lower Appellate Court correctly observed that Sukhpal Kaur as natural guardian filed joint written statement and contested the suit on behalf of the minor defendants. No substantial prejudice to the minors appears on record; this limb of attack is without merit.

### **Conclusion**

50. For the reasons recorded above:

1. The registered will Ex.D1 dated 22.6.1999 propounded by the defendants has been satisfactorily proved on the record by the



testimony of an attesting witness (DW-2 Amarjit Singh) and by the fact of registration. The presumption of genuineness that arises from registration and the credible oral testimony has not been displaced by the plaintiff.

2. The concurrent findings of the courts below rejecting Ex.D1 as tainted by suspicious circumstances are unsustainable on the record because (a) the plaintiff has not proved impersonation or undue influence or lack of testamentary capacity with cogent material, and (b) the non-examination of the second attesting witness and scribe is not in the circumstances fatal.

3. Accordingly, the Regular Second Appeal is allowed. The impugned judgments and decrees dated 10.8.2010 (trial court) and 8.9.2012 (lower appellate court) are set aside.

4. The plaintiff's suit for declaration and possession is dismissed.

51. Pending application(s), if any, also stands disposed off.

September 15, 2025  
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**(MANDEEP PANNU)**  
**JUDGE**

Whether speaking/non-speaking : Speaking  
Whether reportable : Yes