



RSA No.6143 of 2018 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.6143 of 2018 (O&M)

Reserved on: 05.03.2025

Pronounced on: 20.03.2025

Sujata Prashar and another

.....Appellants

Vs.

Babita Bhanot and others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Sanjiv Gupta, Advocate for the appellants.
Mr. K.S. Dadwal and Ms. Neha Jain, Advocates
for the respondents.

DEEPAK GUPTA, J.

Suit for declaration and permanent injunction regarding property in dispute filed by plaintiff - Babita Bhanot (*contesting respondent herein*) was decreed by the trial Court of learned Civil Judge (Junior Division), Chandigarh vide judgment dated 21.04.2015. Appeal filed by contesting defendants No.1 and 2 (*appellants herein*) against trial court judgment, was dismissed by the First Appellate Court of learned District Judge, Chandigarh on 29.01.2018. Against the concurrent findings of the Courts below, defendants No.1 and 2 have approached this Court by way of the present Regular Second Appeal.

2. Trial Court record was called. The same has been perused. In order to avoid any confusion, parties shall be referred as per their status before the learned Trial Court.

3. Dispute pertains to House No.3003, Sector 38-D, Chandigarh, which was admittedly owned by late Shri Karam Chand, who expired on 02.11.1995. His wife Smt. Sushila had pre-deceased him on 23.05.1995. Late Karam Chand left behind three natural legal heirs, namely, Satinder (son) and two daughters, namely, Manju and Babita. Son Satinder expired on 16.09.2002 and he is succeeded by his wife Sujata and daughter Sugandha.

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4. Suit has been brought by one of the daughters of Karam Chand, namely, Babita by impleading Sujata and Sugandha as defendants No.1 and 2; and Manju i.e. another daughter of Karam Chand as defendant No.5. Chandigarh Administration through its Administrator; and Estate Officer, U.T. Estate Office, Chandigarh have been impleaded as defendants No.3 and 4.

5.1 Plaintiff claims 1/3rd share in the suit property on the basis of natural succession. It is the case of the plaintiff that after his retirement in 1993, Karam Chand did not shift to the house in dispute and rather, preferred to stay in the house of his son-in-law, namely, Hari Pal Sharma, the husband of defendant No.5- Manju. On the other hand, Satinder, the brother of the plaintiff had shifted to Chandigarh in 1989-90 and then after the vacation of the house by the tenant, had started residing in the house in dispute in 1993. It is alleged that relations between Karam Chand and Satinder were not cordial. It is also the case of the plaintiff that after the death of Sh. Karam Chand, Satinder along with his wife visited the plaintiff at Jalandhar, where she was residing with her in-laws and told him that property in dispute was to be transferred in the name of legal heirs of Sh. Karam Chand, as Sh. Karam Chand had left no Will in favour of any of the heirs. Plaintiff signed on some blank and stamp papers on the asking of her brother suspecting no foul play or without doubting his integrity.

5.2 It is further the case of the plaintiff that after the death of her brother Satinder on 16.09.2002 in a train accident, she had gone to Chandigarh to console her sister-in-law - *Bhabhi* and stayed at Chandigarh till Kirya ceremony, who never talked about the issue of the property left behind by late Sh. Karam Chand. However, in April, 2006, when plaintiff came to Chandigarh, she found her *Bhabhi* Sujata in Panchkula at her parental home and when she confronted her about the arrangements made regarding the house in dispute, brother of Sujata appeared on the scene and while insulting her, told that house had been transferred in the name of defendants No.1 and 2, with which plaintiff has no concern.

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5.3 Suspecting some foul play, plaintiff represented to defendant No.4 for furnishing the documents pertaining to the house in dispute but in vain. Ultimately, the plaintiff was constrained to file Civil Writ Petition No.11870 of 2006 before this Court for a direction to defendant No.4 to supply the information as sought by her regarding disputed house. It is only after the orders passed by the High Court that the plaintiff came to know about the fraud and deceit perpetrated by her late brother Satinder Prashar and subsequently, by defendants No.1 and 2, as it was found that late Satinder Prashar in connivance with his in-laws family had forged a Will dated 01.06.1995, in which Tilak Raj Sharma, the father-in-law of Satinder Prashar was shown to be a witness to the Will. The Will was shown to have been executed on 23.05.1995 i.e. hardly eight days after the death of the mother of the plaintiff and when the entire family was in grief. There was no mention of the two daughters in the Will. The said Will was kept concealed by late Sh. Satinder Prashar for about four years. Plaintiff alleged the said Will to be forged and fabricated document and as such, sought necessary declaration and injunction.

6. Defendants No.1 and 2 contested the suit by submitting that plaintiff as well as defendant No.5 were well aware about the Will dated 01.06.1995 since beginning. According to them, after the death of Sh. Karam Chand Sharma, the house in question was transferred in the name of Sh. Satinder Prashar on 09.11.1999. It is contended that plaintiff as well as defendant No.5 had given their affidavits dated 26.05.1999 in favour of their real brother Sh. Satinder Prashar and the said affidavits were duly attested by the Executive Magistrate in their presence and, therefore, there is no question of concealment of the Will of Shri Karam Chand. After the death of Sh. Satinder Prashar, the suit property was transferred in the name of defendants No.1 and 2. Denying any fraud or fabrication in the Will and controverting all the allegations of the plaintiff, defendant No.1 and 2 prayed for dismissal of the suit.

7. Defendants No.3 and 4 in their separate written statement also

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supported the case of defendants No.1 and 2 to the effect that it is on the basis of the separate affidavits dated 26.05.1999 duly attested by the Executive Magistrate, Chandigarh given by plaintiff and defendant No.5 to the effect that they did not have objection in transfer of the house in the name of their real brother Satinder Sharma on the basis of Will of Shri Karam Chand that the house was transferred in the name of Sh. Satinder Prashar after completing all necessary formalities; and that after the death of Satinder Prashar, the house was transferred in the name of defendant No.1 and 2 being the legal heirs of Satinder Prashar.

8. Defendant No.5 - Manju Sharma filed separate written statement admitting the entire claim of the plaintiff.

9. Necessary issues were framed. Evidence produced by the parties was taken on record. Trial Court held that Will propounded by the defendants was not proved and was surrounded by various suspicious circumstances and as such, discarded the Will. Consequently, the suit was decreed by declaring the plaintiff to be entitled to 1/3rd share in the suit property on the basis of natural succession. Defendants No.1 and 2 were also restrained from alienating, transferring or disposing of the suit property in any manner. Defendants No.3 and 4 were restrained from issuing any NOC in favour of any person. The said judgment dated 21.4.2015 passed by trial court was upheld by learned First Appellate Court of District Judge, Chandigarh, in the appeal filed by the defendants No.1 and 2 i.e. appellants herein, as their appeal was dismissed vide judgment dated 29.01.2018.

10. Assailing the aforesaid concurrent findings of facts as recorded by the Courts below, it is contended by the learned counsel for the appellants - defendants No.1 and 2 that both the Courts below have failed to appreciate the evidence on record in the right perspective. It is ignored by the Courts below that Will Ex.D-3 dated 1.6.1995 of Sh. Karam Chand was duly proved by the testimony of DW-2 Nirdesh Kumar Punj, one of the

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attesting witnesses to the Will. Not only this, based upon affidavits Ex.D-1 and D-2 dated 26.5.1999 of plaintiff and defendant No.5, duly attested by the Executive Magistrate, Chandigarh, the house in question was transferred in the name of Sh. Satinder Prashar on the basis of Will of Sh. Karam Chand. After the death of Satinder Prashar, the house was then transferred in favour of defendants No.1 and 2, being the legal heirs of said Satinder Prashar. Plaintiff did not raise any objection till her brother Sh. Satinder Prashar was alive and rather, filed the present suit in February, 2007 and so, suit is clearly barred by limitation. It is further the contention that plaintiff is estopped from filing the present suit on account of her own act and conduct. All these aspects have been ignored by the Courts below. Prayer is made to set aside the impugned judgments and decrees as passed by the Courts below and to dismiss the suit of the plaintiff by allowing this appeal.

11. On the other hand, learned counsel for the contesting respondent-plaintiff contends that the Courts below have correctly appreciated the entire evidence on record and that there is no scope for interference in the concurrent findings of facts. Learned counsel contends that the defendants could not dispel the suspicious circumstances surrounding the Will. It is pointed out that plaintiff has duly explained as to how her signatures were obtained by her brother by foul play. Not only this, one of the attesting witnesses to the Will namely, Niradesh Kumar, examined by the defendant could not prove necessary ingredients required to prove validity of a Will. It is also pointed out that when the Will was produced before the Estate Officer Chandigarh, he had found that the signatures of Sh. Karam Chand did not match with his signature available on the record and had asked Satinder Prashar to produce necessary documents. It is contended that the Courts below have rightly held that once Estate Officer had doubted the signatures of Sh. Karam Chand - the testator of the Will, it was required for him to ask Satinder Prashar to obtain necessary decree from the Court regarding the same. With these

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submissions, learned counsel prayed for dismissal of the appeal.

12. This Court has considered the submissions of both the sides and have appraised the entire evidence on record thoroughly and carefully, including the Trial Court record.

13. Simply put, plaintiff claims 1/3rd share in the suit property of her father on the basis of natural succession; whereas, defendants No.1 and 2 claim exclusive ownership to the suit property on the basis of the Will dated 01.06.1995 of Sh. Karam Chand in favour of Sh. Satinder Prashar, their predecessor, i.e. the brother of the plaintiff and defendant No.5. Both the Courts have discarded the Will propounded by the defendants and have held the plaintiff to be entitled to 1/3rd share on the basis of natural succession.

14. The most material issue involved in the case is *as to whether the Will dated 1.6.1995 (Ex.D3) is proved or not?* It may be noted that as per legal position, 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 [Section 63](#) of the Indian Succession Act, which reads as under:-

"63. Execution of unprivileged wills. - Every testator, not being a soldier employed in an expedition or engaged in actual warfare) or an airman so employed or engaged or a mariner at sea, shall execute his will according to the following rules:

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

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

(c) The will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the will or has seen some other

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person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment 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."

15. Apart from above, [Section 68](#) of the Evidence Act is quite relevant regarding proving the execution of a WILL. This reads as under:

"68. Proof of execution of document required by law to be attested. -- If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the [Indian Registration Act, 1908](#) (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied."

16. The conjoint reading of above provisions make it quite clear that at least one out of the two attesting witnesses must be called to prove due execution of the WILL. Further, it is required for the attesting witness to prove that he had seen the testator sign or affix his mark to the WILL in his presence; or that he received from the testator a personal acknowledgment of his signature or mark of the signature of such other person and each of the witnesses shall sign the WILL in the presence of testator. Reliance can be placed on [Pentakota Satyanarayana Vs. Pentakota Seetharatnam 2006\(1\) C.C.C.563](#), wherein it has been held by Hon'ble Supreme Court that to prove due execution of Will, attesting witness must state that each of the two witnesses has seen the executor sign or affix his mark to the instrument or has seen some other person sign the instrument in his presence and by the direction of the execution. Witness should further state that each of the

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attesting witness signed the instrument in the presence of the executant. Hon'ble Supreme Court held that these are the ingredients of attestation and they have to be proved by the witnesses.

17. Further, it is the settled proposition of law that it is the propounder of the Will, who has to prove its due execution. Besides, mere proving the signatures of the testator on the Will is not sufficient. Reference in this regard can be made to ***Ganpat Vs. Siri Chand 1992(1) LJR 252 and Janki Narayan Bhoir Vs. Narayan Namdeo Kadam 2003(2) LJR 646***, wherein it has been held that due and valid execution of the Will cannot be proved by simply proving that the signatures on the Will was that of the testator. It must be proved that attestations were also made properly as required by clause (c) of [Section 63](#) of the Succession Act, 1925.

18. In the light of abovesaid legal position, it is required to be seen as to whether the due execution of the Will dated 1.6.1995 set up by defendants, has been proved in this case or not.

19. Perusal of the Will dated 1.6.1995 Ex.D-3 relied by the defendants would reveal that it is purported to be executed by Karam Chand. It is one page typed document. Tilak Raj Sharma and Nirdesh Kumar Punj are shown to be the attesting witnesses. There is no mention as to who had scribed/typed the Will. In order to prove this Will, defendants have relied upon the testimony of DW-2 Nirdesh Kumar Punj, one of the attesting witnesses. Another attesting witness, namely, Tilak Raj Sharma, who is admittedly the father-in-law of Satinder Prashar i.e. father of the appellant-defendant Sujata has not been examined.

20. The testimony of DW-2 Nirdesh Kumar Punj has been rightly ignored by the Courts below, as he has not been found to be reliable witness and it is found that his testimony fall short of proving the legal requirements of the Will. Though DW-2 Nirdesh Kumar Punj says that the Will dated 01.06.1995 Ex.D-3 was signed by executant in his presence and also in the presence of another attesting witness Tilak Raj and that they had

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attested the Will in the presence of the executant but it has come in his evidence that he did not have the knowledge prior to the going to the house of the executant that Will was to be executed and the typed Will was with the executant. He did not know as to who had typed the Will. The said Will was neither read over to the witness nor it was read over by the witnesses and he was not aware about its contents. It was rightly observed by the First Appellate Court that since the Will in question was not hand written of the executant, therefore, it was necessary that contents of the Will are read over and explained to the executant before appending his signatures. It is not in the testimony of DW-2 Nirdesh Kumar Punj that executant had admitted, before appending his signatures that the document had been got scribed by him with his free will and as such, the contents of the Will were required to brought to the notice of the executant and the attesting witnesses. It has been rightly observed further that neither scribe of the Will in question has been examined nor he is named. The Will is silent as to who had typed the Will. There is no mention as to from where it was typed and who got it typed.

21. DW-1 - Sujata, one of the defendants says that she was also present, when the Will was executed and that she had seen Karam Chand Sharma writing the Will but her said testimony is absolutely not believable, inasmuch as the Will Ex.D-3 is not hand-written by Sh. Karam Chand Sharma and rather, it is a typed Will. It is not in the testimony of DW-1 Sujata that she had seen Sh. Karam Chand typing the Will. She also says that her role was only serving tea, biscuits etc. and that she did not know anything about the contents of the Will. In these circumstances, it has been rightly held by the Courts below that the testimony of either DW-2 Nirdesh Kumar Punj or that of DW-1 Sujata is insufficient to prove the validity of the Will.

22. The most important factor as noticed by the Courts below is regarding the signatures of the testator itself on the Will. In this regard, it would be relevant to reproduce the observations made by the First Appellate Court in para No.22 of its judgment:-

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“It was also pointed out that the signatures of the executant on the Will Ex.D3 did not tally with the standard signatures of the executant in the service record and record of the Estate Office. The argument of learned counsel for appellants was that direct evidence of DW.2 Nirdosh Kumar Punj regarding execution of Will in question was to prevail and the testimony of handwriting expert being only opinion evidence given at the instance of the party engaging him could not be attached much weight. The further argument was that the standard signatures of the executant had been made at different intervals of time and therefore, there was bound to be variations and could not be said to be sufficient material for comparison. As already pointed out DW.2 Nirdosh Kumar simply stated that signatures were put by the executant, on the text of Will, which was already typed and not even read over in his presence and that he had no knowledge before reaching the house of executant that Will was to be executed. So much so when confronted with the standard signatures of Karam Chand Sharma on the documents Ex.P1 to Ex.P9 which was part of his personal file of office record of his department and also on documents Ex.PW4/2 to Ex.PW4/7 which were from the record of Estate Office, U.T., Chandigarh, the witness stated that he could not identify the said signatures. The said documents bore the standard signatures of Karam Chand deceased and have been proved by the officials of the department to have been appended by Karam Chand. It may be that DW.2 Nirdosh Kumar is not hand writing expert but his not identifying the standard signatures of deceased Karam Chand certainly discredits his testimony. On the other hand, plaintiff examined PW Devinder Parshad, Handwriting Expert who carried out the comparison of questioned signatures of Karam Chand Sharma on Will with his standard signatures and vide his report Ex.PW7/A and photographs Ex.PW7/B to Ex.PW7/B6 opined that they did not tally. It may be that handwriting expert had been engaged by the plaintiff but the report and reasons furnished in support of the report have to be considered for accepting or rejecting the report. It may be that standard signatures taken for comparison had been made at different intervals of time and it is normal that variations are there naturally in the signatures due to time gap. However, if we scrutinize the report of the

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aforesaid expert, we find that he had taken into account the said factors and specifically noticed the basic characteristics of the disputed and standard handwriting of signatures. The points of dissimilarities have been amply described with reasons. On the whole, the report is well reasoned and therefore, is liable to be accepted. It may be that deceased Karam Chand Sharma as per record was not signing in the same fashion. He is appending signatures as “K.C. Sharma”; “Karam Chand”; or “Karam Chand Sharma”. However, the material provided for comparison to expert in the circumstances of the case was sufficient. I have also myself carried out comparison of the disputed signatures of Karam Chand on the Will in question with the standard signatures and find that apparently these do not match.”

23. Not only above, when Mr. Satinder Prashar applied to the Estate Officer for transfer of the property in his name on the basis of Will of Sh. Karam Chand, it was noticed by the Estate Officer that signatures of Sh. Karam Chand on the Will were not resembling with his signatures in their record. In this regard, it would be relevant to reproduce the observations made by the First Appellate Court made in para Nos.27 and 28 of its judgments which reads as under:-

“27. The further argument was relying upon the said affidavits of the other heirs, the Estate Officer after following the due procedure allowed the transfer of the property in dispute in the name of Satinder Prashar on the basis of the Will of Karam Chand, vide order dated 9.11.1999. It is matter of record that defendant Estate Officer raised objection to the application of Satinder Prashar for seeking transfer of the property in dispute and two letters dated 9.7.1999 and 31.8.1999 Ex.PW5/A and Ex.PW5/B had been written for calling upon him to prove the authentic record of signatures of Karam Chand because his signatures on the Will in question were not resembling with the signatures in their record. But Satinder Prashar instead of complying with the directions of the Estate Officer produced his indemnity bond for allowing the transfer. In such an eventuality the Estate Officer was duty bound to ask Satinder Prashar to approach the Civil Court for seeking declaration on the basis of Will in question.

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28. It may be that PW.6 Sanjay Vats from Estate Office, U.T., Chandigarh Administration, made statement that all the necessary formalities of furnishing the requisite documents had been completed by Satinder Prashar before allowing the transfer of the property in dispute from the name of Karam Chand Sharma to the name of Satinder Prashar on the basis of Will in question. But we find that once the document of title i.e. unregistered Will in question had been noticed to be doubtful by the Estate Officer and the applicant Satinder Prashar was asked to furnish authentic record of signatures of executant, it was inappropriate on the part of Estate Officer to have accepted simply the indemnity bond for allowing the transfer. Even the other legal heirs could be called in person for verification. But no such legally permissible modes had been adopted by the Estate Officer and the last recourse was also not followed by asking the applicant to get the title declared from civil Court. It, therefore, cannot be said that plaintiff Babita Bhanot was estopped from denying the execution of Will in question. The argument is accordingly repelled.”

24. It is, thus, clear from the afore-said facts and circumstances that it is highly doubtful that the Will Ex.D-3 carried the signatures of Sh. Karam Chand. This fact was noticed not only by the Estate Officer, Chandigarh, when application for transfer of the property was made by Satinder Prashar. Even the expert examined by the plaintiff proved that signatures of Sh. Karam Chand did not match with the disputed signatures on the Will Ex.D-3. DW-2 Nirdesh Kumar Punj, who has been long standing colleague of Sh. Satinder Prashar, obliged his friend by appending his signatures on the Will and the other attesting witness was Tilak Raj Sharma, the father-in-law of Sh. Satinder Prashar. In these circumstances, the Courts below have rightly held that the Will in question was not proved as per the legal requirements of law.

25. Apart from above, the Courts below have rightly noticed numerous suspicious circumstances surrounding the Will, which could not be dispelled by the defendants-appellants. As has come in the testimony of DW-1 Sujata, the beneficiary i.e. Sh. Satinder Prashar as well as she (Sujata)

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were present at the time of the execution of the Will. Although presence of beneficiary in itself cannot be a ground to discard the Will, but in the facts and circumstances of the present case, presence of the beneficiary is highly suspicious considering the fact that both the attesting witnesses are either a close relative or a dear friend of Sh. Satinder Prashar, inasmuch as Tilak Raj Sharma was the father-in-law of Sh. Satinder Prashar and Nirdesh Kumar Punj was his friend/colleague.

26. DW-1 Sujata claims in her testimony that plaintiff as well as defendant No.5 were also present in the house, when the Will was executed. This statement is absolutely not believable. Had this been the fact, the defendants would have certainly mentioned it in their written statement. However, the said statement is absolutely beyond pleadings. At no point of time, it was pleaded that the Will was executed in the presence of the plaintiff or defendant No.5.

27. Another suspicious circumstance as already noticed is that there is no evidence as to who had typed the Will. There is no evidence as to who got it typed, from where it was got typed and whether it was read over and explained to the testator Sh. Karam Chand or not.

28. The timing of the Will is also very important, inasmuch as wife of Sh. Karam Chand Sharma i.e. mother of plaintiff and Sh. Satinder Prashar had expired on 23.5.1995. The religious rites were to be completed up to 4.6.1995. During the mourning period of 13 days, normally the family members remain at home and relations come to express condolences. In these circumstances, it was quite unusual that during mourning period, the executant could have thought of executing the Will by remaining absent from the religious ceremonies.

29. Further, though the Will is normally executed to change the normal course of succession and it is also not unusual to ignore married daughters, who are well settled in life, but there must be some mention in the Will about all the children. However, perusal of the Will Ex.D-3 would

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reveal that there is not even any whisper that the testator had two daughters or they were married and happily settled. So much so, even there is no mention of the wife of the executant, who had expired just eight days prior to the alleged execution of the Will.

30. It has also been rightly noticed by the Courts below that as per the recital of the Will Ex.D-3, beneficiary Sh. Satinder Prashar was residing with the testator and looking after him. However, this is factually incorrect, as it has come in evidence led by the plaintiff that the executant and his wife had been residing in H. No. 3511, Sector 22, Chandigarh, which had been allotted to Sh. Hari Pal Sharma, the husband of defendant No.5 and after retirement of Sh. Karam Chand Sharma, it is Satinder Sharma and his family who had shifted to the disputed house i.e. No.3003, Sector 38D West, Chandigarh.

31. The doubtful signatures of testator - Sh. Karam Chand Sharma had been noticed by the Estate Officer as has already been pointed out and it has come in evidence through the expert examined by the plaintiff that signature on the Will did not tally with the standard signatures of Sh. Karam Chand Sharma.

32. Above discussed suspicious circumstances have not been satisfactorily explained by the appellants, who are the propounder of the WILL in question.

33. Appellants - defendants mainly rely upon the affidavits dated 26.05.1999 Ex.D-1 and D-2 of plaintiff and defendant No.5 so as to claim that they had given 'No Objection' to transfer the suit property in the name of their brother - Satinder Prashar on the basis of Will of their father - Sh. Karam Chand Sharma and, therefore, the plaintiff is estopped from denying the execution of the Will. However, as pleaded by the plaintiff and as has come in her testimony, her signatures and also that of defendant No.5 were obtained on blank papers by misrepresentation of facts by Sh. Satinder Prashar and thereafter, these papers were wrongly used to prepare the

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affidavits, which were not even sworn by them. The papers were misused by Satinder Prashar to get the suit property transferred in his name from the Estate Officer without any notice to the plaintiff and as such, doctrine of estoppel is not applicable in the case.

34. To rebut the case of the plaintiff in this regard, the defendants have examined Sh. P.K. Dass, Notary Public as DW-3, who had allegedly identified the plaintiff and defendant No.5 - Manju Sharma for swearing the affidavits Ex.D-1 and D-2. However, testimony of this witness would reveal that he did not know either plaintiff Babita Bhanot or defendant No.5 Manju Sharma personally. It is not in his testimony that he had asked for the identity proofs of Manju and Babita Bhanot. So much so, he admitted specifically in his cross examination that he did not ask for any such documents before identifying them. Most importantly, though DW-3 claims to be Notary Public but he was not maintaining any register for entering the documents notarized by him so as to obtain the signatures of executant of any document against the relevant entry.

35. It has been rightly observed by the First Appellate Court that though the above witness tried to absolve his liability by claiming that Executive Magistrate had ultimately attested the affidavits and he was to ensure the identification but endorsement of attestation by the Executive Magistrate under the affidavits was quite clear that same had been attested by him as per identification. No official has been examined from the Office of the Executive Magistrate so as to prove that the affidavits Ex.D-1 and D-2 were sworn by the plaintiff and defendant No.5 in his presence. Had the plaintiff been aware about the transfer of the property in the name of Satinder Prashar based upon their affidavit, there was no necessity for her to approach this High Court to give directions to the Estate Officer to supply the necessary documents regarding the house in dispute. It is the admitted case of the parties and also that of the defendant No.4- Estate Officer, U.T. Chandigarh that no notice was issued to the sisters of Satinder Prashar before transferring the property in dispute in the name of Sh. Satinder



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Prashar from that of Sh. Karam Chand Sharma.

36. In view of entire facts and circumstances as above, this Court holds that no illegality has been committed by any of the Courts below in discarding the Will, as it is not duly proved on record. Besides, there are numerous suspicious circumstances surrounding the Will, which could not be dispelled by the propounder of the Will.

37. Since plaintiff sought necessary declaration of title to the property in dispute by way of the natural succession, as such it has been rightly held that there is no limitation for claiming declaration on the basis of title unless defendants plead adverse possession. Apart from this, clear case of the plaintiff is that a transfer of property through Estate Officer had been obtained by Satinder Prashar by playing fraud and that plaintiff came to know about the said fraud only after getting the information from defendant No.4 in August, 2006 as per the directions of the High Court. As such, the Courts below have rightly held that the suit was not barred by time.

38. On account of the entire discussion as above, this Court does not find any ground whatsoever to interfere in the well-reasoned concurrent findings of facts as recorded by the Courts below. There is no scope for interference. There is neither any illegality nor any perversity in the findings, as there is neither any mis-appreciation nor any misreading of evidence. Learned counsel for the appellants could not point out that any material evidence has been ignored by the Courts below for the purpose of consideration. As such, holding the present appeal to be devoid of any merit, the same is hereby dismissed.

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(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No