



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No. 109 of 1992 (O&M)

Surmukh Singh and others

..... Appellants

Versus

Smt. Debo and others

..... Respondents

1	The date when the judgment was reserved	17.04.2026
2	The date when the judgment is pronounced	06.07.2026
3	The date when the judgment is uploaded on the website	06.07.2026
4	Whether only operative part of the judgment is pronounced or whether the full judgment is pronounced	Full
5	The delay, if any, of the pronouncement of full judgment, and reasons thereof.	Not applicable

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Argued By:-Mr. Ashok Kumar Khubbar, Advocate
for the appellants-plaintiffs.

Mr. S.P. Laler, Advocate with
Mr. Shubham Saroha, Advocate
for respondent Nos. 4 & 5-defendant Nos. 4 & 5.

HARKESH MANUJA, J.

The plaintiffs are in appeal. First appeal filed by the plaintiffs was also dismissed by the learned First Appellate Court. For the sake of convenience, the parties are referred to as per their status in the Civil Suit.

[2] By way of present appeal, challenge has been laid to the judgment and decree dated 17.07.1991 passed by the Court of learned Additional District Judge, Ambala (**hereinafter to be referred as “First Appellate Court”**), whereby an appeal filed at the instance of appellants-plaintiffs against the judgment and decree dated 07.12.1987 passed by the Court of learned Additional Senior Sub Judge, Jagadhri (**hereinafter to be referred as “trial Court”**), dismissing their suit for possession of the suit land, was dismissed; thereby affirming the judgment and decree passed by the learned trial Court.

FACTS

[3] Briefly stating the facts, one Bishan Singh alias Bishna was owner of agricultural land measuring 23 bighas 19 biswas comprised in Khewat No. 117, Khasra Nos. 628 to 631, 869/633, 634, 635 situated in Village Sankhera, Tehsil Jagadhri (**hereinafter referred to as “suit land”**), which was allegedly ancestral in his hands *qua* the plaintiffs and their deceased father-Beli Ram. It was pleaded in the plaint that the said Bishan Singh was unmarried and died issueless on 24.08.1979 and was real brother of deceased-Beli Ram (father of plaintiffs). It was further pleaded that Bishan Singh executed a Will about 40 years before institution of the suit in favour of his nephews/defendant Nos. 2 & 3, namely, Hukam Chand and Kuldip Chand and later on, Bishan Singh executed a Will of his property in favour of his alleged wife-Smt. Debo (defendant No. 1); Bishan Singh also suffered a consent decree in the Civil Court in respect of the suit land in favour of defendant No. 1. It was further pleaded that the deceased-Bishan Singh was not having sound

mind at the time of alleged Will in favour of defendant No. 1, therefore, he was not capable of executing a valid Will and making any valid transfer by way of decree etc. of the suit land, however, half of the suit land had wrongly been mutated in the name of defendant No. 1 on the basis of a consent and collusive decree. The plaintiffs challenged the validity of the Will in favour of defendant No. 1, the Will in favour of defendant Nos. 2 & 3 as well as the decree suffered by Bishan Singh in favour of defendant No. 1 on the ground that Smt. Debo was not the legally wedded wife of Bishan Singh and the suit land being ancestral in his hands, he had no right to bequeath or transfer the same in favour of any person as he was a Jat by Caste and governed by General Custom of Zamindra, according to which no proprietor could alienate his immovable property in the presence of collaterals. During pendency of the suit, defendant No. 1 (Smt. Debo) transferred some portion of the suit land in favour of defendant Nos. 4 & 5, namely, Zora Singh and Nasib Singh respectively and the validity of that sale was also challenged in the amended plaint; hence the suit was filed.

[4] Upon notice, defendant No. 1 (Smt. Debo) filed written statement while pleading that Bishan Singh contracted a *Karewa* marriage with her about five years before his death and the Will executed by Bishan Singh on 15.03.1976 as well as the decree suffered by him in her favour are valid.

[4.1] Defendant Nos. 2 & 3, namely, Hukam Chand (minor) and Kuldip Chand (minor) respectively filed a written statement admitting the material averments of the plaint, whereas defendant Nos. 4 & 5, namely,

Zora Singh and Nasib Singh respectively filed a joint written statement wherein they pleaded that they are *bona fide* purchasers of half (1/2) share of the suit land for a valuable consideration of Rs. 30,000/- without any notice, therefore, their rights are protected under Section 41 of the Transfer of Property Act 1882.

[5] Replication controverting the averments made in the written statements was filed. On the basis of pleadings of the parties, the trial Court framed the following issues vide orders dated 03.03.1981 & 19.02.1985:-

- “1. *Whether the suit property was ancestral in the hands of Bishan Singh qua the plaintiff? OPP*
2. *Whether the plaintiff and Bishan Singh were governed by custom? If so, what that custom is? OPP*
3. *Whether Bishan Singh could not execute Will of his property as alleged? OPP*
4. *Whether defendant No. 1 is widow of Bishan Singh and Bishan Singh had executed a valid Will in her favour? OPD 1*
5. *Whether the decree in question in respect of half of the property of Bishan Singh in favour of defendant No. 1 is null and void as alleged? OPP*
6. *Whether the plaintiff is estopped from alleging that Bishan Singh had no right to execute a Will? OPD 1*
- 6 A). *Whether the defendants No. 4 and 5 are bonafide purchaser for valuable consideration and are protected under section 41 of the T.P. Act? OPD*
- 6 B). *Whether the plaintiffs are estopped from filing the present suit as alleged? OPD*
- 6 C). *Whether the present suit is barred under order 2 rule 2 CPC as alleged? OPD*

6 D). Whether the suit is not maintainable as alleged?OPD

7. Relief. ”

[6] The trial Court, vide its judgment and decree dated 07.12.1987, dismissed the suit of the appellants-plaintiffs.

[7] Aggrieved thereof, the appellants-plaintiffs filed the first appeal, which also came to be dismissed with costs vide judgment and decree dated 17.07.1991 passed by the learned First Appellate Court. Hence, the present Regular Second Appeal.

CONTENTION(S):

ON BEHALF OF THE APPELLANT(S)-PLAINTIFF(S):

[8] Impugning the aforementioned judgments and decrees dated 07.12.1987 and 17.07.1991, learned counsel for the appellants-plaintiffs submitted that though a plea was set up by defendant No. 1-respondent No. 1 (Smt. Debo) with respect of she having performed *Karewa* marriage with Bishan (since deceased), however, he pointed out that Bishan was a Jat by caste, whereas respondent No. 1 happened to be of Rajput community and as such, there was no question of any *Karewa* ceremony performed between her and the deceased-Bishan. In support, learned counsel placed reliance upon a decision dated 11.01.2017 passed by this Court in ***RSA No. 1625 of 1994***, titled ***“Karan Singh (since deceased) through his LRs and others Versus Bhagwani (since deceased) through her LRs”***. Relevant portion from the aforesaid decision dated 11.01.2017 is extracted hereunder:-

“Counsel for the appellant is not in a position to substantiate plea of the defendant (Lado) that she could

perform Karewa with Mir Singh as Karewa marriage permitted under customary law can be performed only with a relative of previous husband. This apart, counsel for the appellants has not referred to any document or text on customary law permitting Karewa between a male Jat with a female of some other caste in District Sonapat. That being so, no error much less illegality can be noticed in the findings of Courts that alleged marriage of Lado with Mir Singh was not valid. The mere entry in the records by the election staff for the purpose of preparing the voter list is not a sufficient evidence of marriage. As a matter of fact, marriage was required to be proved in accordance with the provisions of the Hindu Marriage Act or under the customary law which the defendant miserably failed to do.”

[8.1] Further, learned counsel for the appellants-plaintiffs pointed out that in an earlier ***Civil Suit No. 368***, dated **28.08.1979** titled as ***“Hukam Chand Versus Debo”***, respondent No. 1 Debo appeared as DW-1 and stated that she was previously married to one Chattar Singh and similarly the brother of Debo, namely, Sunder appeared as DW-2 and deposed that his sister-Debo was married to one Tulsi Ram. Learned counsel also submitted that both the statements of Debo who appeared as DW-1 and Sunder who appeared as DW-2 were proved on record as Exhibit P-12 & Exhibit P-13. He thus submitted that once, Debo previously married and there was no evidence available on record with respect to his divorce with the previous husband, her pleadings with respect to *Karewa* marriage with Bishan were not established.

[8.2] Furthermore, learned counsel for the appellants-plaintiffs submitted that since in the present case, it was concurrently recorded by the Courts below that the subject property was ancestral in nature at the

hands of Bishan (since deceased) and he being Jat from District Rohtak was governed by the customary law, therefore, he could not have created an intestate document with respect to the said property under the customary law.

[8.3] Besides it, learned counsel for the appellants submitted that the Will dated 15.03.1976 proved on record as Exhibit D-1 was surrounded by the following suspicious circumstances and thus was required to be discarded:-

- (i) one of the attesting witnesses, namely, Lal Chand who appeared as DW-2 was not resident of Village Sankhera, Tehsil Jagadhri, District Ambala (now District Yamuna Nagar) to which Bishan was permanent resident and the subject property belonged, whereas Lal Chand was resident of Village Ganoli.
- (ii) At the time of execution of Will dated 15.03.1976, the beneficiary Debo herself was accompanying the testator-Bishan alongwith her brother Sunder and thus influenced the testator.

ON BEHALF OF RESPONDENT NOS. 4 & 5-DEFENDANT NOS. 4 & 5 / PURCHASERS

[9] On the other hand, learned counsel for respondent Nos. 4 & 5-purchasers while relying upon judgment and decree dated 15.02.1985 passed in *Civil Suit No. 368 of 1979* titled “*Hukam Chand and another Versus Smt. Debo Devi*”, contended that a specific issue about the validity of the Will dated 15.03.1976 was framed therein and the findings were recorded in favour of respondents-defendants while upholding the validity

of execution of the said Will in her favour by the deceased-Bishan. Learned counsel pointed out that in the aforesaid Civil Suit No. 368 of 1979, the plaintiffs-Hukam Chand and Kuldip Chand being minors were represented through Beli Ram i.e. their real uncle and thus, the said Beli Ram was estopped by his own act and conduct about assailing the validity of the execution of Will dated 15.03.1976 in favour of respondent No. 1-defendant No. 1 by the deceased-Bishan.

[9.1] Learned counsel further submitted that in the given facts and circumstances, it was not disputed that half of the holdings owned and possessed by the deceased-Bishan were transferred in favour of respondent No. 1-Debo by virtue of judgment and decree dated 22.03.1978 passed in **Civil Suit No. 397 of 1977** titled as “***Debo Devi Vs Bishna***”. He also pointed out that in the judgment and decree dated 22.03.1978 which was proved on record as Exhibit D-8 and Exhibit D-9, respondent No. 1-defendant No. 1 (Debo) was shown as wife of Bishan and this fact was never denied or disputed by the deceased-Bishan. He thus submitted that once, the deceased-Bishan admitted respondent No. 1-Debo as his wife, the appellants-plaintiffs were having no cause of action to dispute the relationship between the deceased-Bishan and Debo.

[9.2] Learned counsel for respondent Nos. 4 & 5 also submitted that once, it was established on record that Bishan and Debo were residing together since long and Debo used to serve Bishan, it was a valid cause for the deceased-Bishan to execute the registered Will dated 15.03.1976 in favour of Debo (respondent No. 1) irrespective of the fact that the matrimonial relationship or *Karewa* marriage between them was proved or

not. In support, learned counsel placed reliance upon a decision dated 09.03.2022 rendered by the Hon'ble Apex Court in ***Civil Appeal No. 1731 of 2009***, titled "***Mohinder Singh (D) Thr. LRs & Ors. Versus Mal Singh (D) Thr. LRs & Ors.***". Relevant portion from the said decision dated 09.03.2022 is extracted hereunder:-

"9. In our view, the whole approach of the trial Court and First Appellate Court in this third round is completely fallacious. If one may say the reasoning is based only on a social belief that the man staying with a woman, who is not his wife and giving his property to her is something immoral and improper and she should not be the beneficiary of gift deed even if the donor stands by the gift deed.

10. If one may say, even the belief of the original plaintiffs and now the appellants before us is predicated on this prejudice that they have an inherent right to get the benefit of the properties as being the brothers of the deceased and the lady who stayed with him, wife or not, is not entitled for the same. It is in these circumstances that one of the issues framed originally was also whether Pritam Kaur enjoyed the status of a wife or not. In our view, if the donor is making a gift out of his own free will and volition and is the exclusive owner of the properties, it is nobody's concern as to whom he gives the properties to."

[9.3] Learned counsel further contended that the submission made on behalf of the appellants-plaintiffs that as per custom in the district, the deceased Bishan being Jat could not have bequeathed his share in the ancestral property was wholly misplaced in view of the law laid down by this Court in case titled "***Nathu Ram and others Versus Jug Lal (Died) and represented by his LRs Atma Ram son of Jug Lal***", reported as ***1981 PLR 754***. In support, he placed reliance upon para-3 thereof which is extracted hereunder:-

" 3. It is then urged on behalf of Jug Lal that the parties are governed by special custom as contained in the Riwaj-e-am of Ambala district because the parties belong to

Tahsil Thanesar, which at one time was part of Ambala and, therefore, the special custom of Ambala would govern the parties. My attention has been invited to Question No. 69 of the Riway-e-am of Ambala district, which is as follows:-

"If a proprietor by verbal or written direction disposes of his property after his death ?

Ans. The replies given are as a rule curiously wide of the mark and are in themselves quite sufficient evidence of the fact that wills are never made, and that the nature of a will is not understood. If their recorded statements could be trusted, a majority of the tribes would agree that wills either oral or written could be made so as to defeat the rights of the heirs. It was abundantly clear at attestation that nothing was further from this intention. The only tribe having any custom on the point are the Sayyads. They agree that a will is legal whether oral or written but they only allow its limited application to special articles and a small portion of the property, and do not recognise its effect as regards immovable property so to defeat the heirs. A few other Muhammadans appear to understand what is meant by executing a will, but say that none ever is executed unless with the intention of making it quite sure that the property shall descend according to custom and not by Muhammadan Law. The Hindu tribes without exception agree that a will is unknown and all that they meant by their recorded replies was that where a man had assigned a part of his property to any particular heir during his lifetime, and where this assignment had been made publicly and with the consent of the collaterals, effect would be given to his wishes after his death. This practically amounts to a gift made during life, and the only proper answer to the question is that wills are entirely unknown.

1918. Wills and legacies are unknown as far as ancestral immovable property is concerned."

Then, my attention was invited to Question No. 70, which is with regard to gifts of ancestral property, the answer to which is that gifts were opposed to custom prevalent among Jats. The point for our consideration is not of gifts but gifts in respect of a sonless proprietor and no such special custom has been shown. Accordingly, Question No. 70 and the answer thereto would not have any bearing on the decision of this case. Therefore, we have to fall back upon the general custom which clearly makes a provision for a gift by a sonless proprietor to a near agnate for services rendered. In the present case, Amar Nath was a near agnate as also a person who had rendered services to Raja Ram and, therefore, Raja Ram could validly make a gift in his favour."

No other point was raised by the parties.

DISCUSSION AND REASONING

[10] Having heard learned counsel for the parties and gone through the paper-book/record, I am unable to find substance in the submissions made by the appellants.

VALIDITY OF THE WILL

[11] It is well-settled principle of law that a Will is required to be proved in the manner contemplated under Section 63 of the Indian Succession Act, 1925 read with Section 68 of the Indian Evidence Act, 1872 and that suspicion, if any, surrounding its execution must be real and substantial, not fanciful or speculative. The Hon'ble Supreme Court in

Murthy v. C. Saradambal reported as **2022 (3) SCC 209** while referring to the previous judgments on proof of will stated that:

“....In fact, the legal principles with regard to the proof of a will are no longer res integra. Section [63](#) of the Indian Succession Act, 1925 and Section [68](#) of the Evidence Act, 1872, are relevant in this regard. The propounder of the will must examine one or more attesting witnesses and the onus is placed on the propounder to remove all suspicious circumstances with regard to the execution of the will.....”

[11.1] A perusal of the record shows that DW-2, namely, Lal Chand, who, after identifying the original Will, deposed that it was scribed at the instance of Bishan by Geeta Ram at Jagadhri, was read over and explained to him, that Bishan thereupon, affixed his thumb-impression (a valid mode of execution under Section 63(a)) and that DW-2 himself signed as attesting witness in Bishan's presence; the document also being attested by an Advocate. This testimony was independently corroborated by the notarial endorsement of Shri B.R.S. Caushish, Advocate and Notary, appearing on the document itself.

[11.2] The Hon'ble Supreme Court in **V. Kalyanaswamy (D) by LRs versus L. Bakthavatsalam (D) by LRs, 2020 SCC OnLine SC 584** relying upon **Kashibai W/o Lachiram v. Parwatibai W/o Lachiram 1995(6) SCC 213** authoritatively clarified the scope of Section 68 of the Evidence Act: where one attesting witness is examined under Section 68, that witness must depose not merely to his own act of attestation but must also prove the attestation by the other attesting witness, this being distinguishable from Section 69 (applicable only when witnesses are unavailable), where

proof of one witness's signature alone suffices. Since DW2, Lal Chand deposed that the Will was also attested by Shri B.R. Caushish, Advocate, in whose presence Bishan affixed his thumb-impression and DW-2 signed- thereby covering attestation by both witnesses through the one witness examined, as ***Kalyanaswamy's case*** (*supra*) requires. The relevant portion of ***Kalyanaswamy's*** case is extracted hereunder:-

" 69. The further question is, as posed by us, whether despite the fact that both the attesting witnesses were dead, the matter to be proved under Section 69 of the Evidence Act, is the same as a matter to be proved under Section 68 of the Evidence Act. In other words, under Section 68 of the Evidence Act, in the case of a Will covered under section 63 of the Indian Succession Act, it is indispensable that at least one attesting witness must not only be examined to prove attestation by him but he must also prove the attestation by the other attesting witness [See 1995(6)SCC 213]. This Court has taken the view that while it is open to prove the will and the attestation by examining a single attesting witness, it is incumbent upon him to prove attestation not only by himself but also attestation by the other attesting witness. "

[11.3] As regards the non-examination of scribe, the law has never treated his examination as mandatory; his function is confined to preparation of the document and is distinct in nature and purpose from that of an attesting witness, a distinction the Supreme Court itself drew while elaborating Section 68 in ***Civil Appeal No. 14286-14286 of 2024 (@SLP (C) No. 23721 of 2022) titled as Chinu Rani Ghosh v. Subhash Ghosh*** explaining that the object of attestation by a witness is wholly different from that of attestation by a scribe or draftsman. The relevant paragraph thereof is extracted hereunder:-

“16. On a perusal of Will (Ext.C), which is a testament of Smt. Kanaki Bala Ghosh dated 15.05.1995, it is no doubt clear that in the insofar as the witnesses columns are concerned, the names of the Shri. Gopal Devnath, Shri. Nilmohan Sarkar and Shri. Maran Dev Nath have been noted. As far as the scribe of the said testament is concerned, the name of Shri. Subajit Roy has been noted. We may at this stage itself state that the object and purpose by which a Will is attested by a witness is quite distinct from the object and purpose by which a scribe would attest a Will; an attesting witness would attest a Will on the request made by the testator for the purpose of due execution of the Will and in accordance with section [63](#) of the Succession Act. But the object and purpose with which a scribe or for that matter, a draftsman of the Will would attest the Will is not the same. Therefore, in the instant case, the evidence of Shri. Subajit Roy (DW-2) cannot be construed as that of an attesting witness.”

Once DW-2's testimony independently establishes due execution and attestation by both attesting witnesses and stands corroborated by the notarial endorsement on the document, the omission to separately examine the scribe does not detract from the sufficiency of proof under Section 63 of the Succession Act read with Section 68 of the Evidence Act. Thus, from the deposition of DW-2, Lal Chand validity of Will dated 15.03.1976 (Ex.D-1) in terms of Section 63 of the 1925 Act read with Section 68 of the 1882 Act was duly proved on record.

[12] The Hon'ble Supreme Court, in ***Murthy's case (supra)***, held that a Will, like any other document, is to be proved by satisfying the ordinary rules of evidence and the propounder must additionally remove all legitimate suspicions before the document can be accepted as the last Will of the testator. The relevant extract thereof is reproduced hereunder:-

“..... In the above noted case, this Court has stated that the following three aspects must be proved by a propounder:-

"(i) that the will was signed by the testator in a sound and disposing state of mind duly understanding the nature and effect of disposition and he put his signature on the document of his own free will, and

(ii) when the evidence adduced in support of the will is disinterested, satisfactory and sufficient to prove the sound and disposing state of the testator's mind and his signature as required by law, courts would be justified in making a finding in favour of propounder, and

(iii) if a will is challenged as surrounded by suspicious circumstances, all such legitimate doubts have to be removed by cogent, satisfactory and sufficient evidence to dispel suspicion. In other words, the onus on the propounded can be taken to be discharged on proof of the essential facts indicated therein....."

In *P.P.K. Gopalan Nambiar v. P.P.K. Balakrishnan*

Nambiar reported as ***AIR 1995 SUPREME COURT 1852*** the Hon'ble Apex Court held that it is the duty of the propounder of the Will to remove all the suspected features, but there must be real, germane and valid suspicious features and not fantasy of the doubting mind which means that not every circumstance an objector chooses to characterize as doubtful.

[12.1] In the present case, the mere fact that one attesting witness, Lal Chand (DW-2), happened to be a resident of a neighbouring village rather than the village where the testator resided, is not by itself a suspicious circumstance sufficient to displace the presumption of due execution attached to a registered Will, particularly when there is no allegation, much less proof, of any disqualification of that witness to attest the document. Similarly, the presence of the beneficiary or her relatives at or about the time of execution does not, without more, amount to undue influence. The aforesaid view finds support from the observations of the Hon'ble Apex Court in ***Pentakota Satyanarayana & Ors vs Pentakota***

Seetharatnam & Ors 2005 (8) SCC 67 relying upon *Sridevi & Ors vs. Jayaraja Shetty & Ors, (2005) 2 SCC 784* held that it is settled by a catena of decisions that any and every circumstance is not a suspicious circumstance. Even in a case where active participation and execution of the Will by the propounders/beneficiaries was there, it has been held that that by itself is not sufficient to create any doubt either about the testamentary capacity or the genuineness of the Will. Mere presence of the beneficiary at the time of execution would not prove that the beneficiary had taken prominent part in the execution of the Will. The onus to prove the will is on the propounder and in the absence of suspicious circumstances surrounding the execution of the will proof of testamentary capacity and the proof of signature of the testator as required by law not be sufficient to discharge the onus. In case, the person contesting the Will alleges undue influence, fraud or coercion, the onus will be on him to prove the same and that as to what suspicious circumstances which have to be judged in the facts and circumstances of each particular case. No such proof of undue influence, fraud or coercion was brought on record by the appellants-plaintiffs thus, mere opportunity to influence is not equivalent to proof of actual exercise of undue influence or coercion. Thus, the Will dated 15.03.1976 (Ex.D-1) by Bishan Singh in favour of Smt. Debo is held to be valid in law.

STATUS OF SMT. DEBO AS WIFE

[13] As regards the status of Debo as the wife of Bishan Singh, it is significant that in the judgment and decree dated 22.03.1978 passed in Civil Suit No. 397 of 1977 (Exhibits D-8 and D-9), Debo was described

and recorded as the wife of Bishan Singh, and that decree, by which half of the suit land stood transferred in her favour, was suffered by Bishan Singh himself during his lifetime without demur. Bishan Singh never disputed the description of Debo as his wife in the decree of 1978, nor did he ever seek to have that decree set aside on the ground that she was not his wife or that the decree was obtained by fraud or collusion. That decree attained finality long ago and was never put in issue by way of any independent challenge, appeal, or application for its setting aside; it cannot now be permitted to be assailed collaterally in these proceedings, more so when half the suit land has already passed out of the estate of Bishan Singh by virtue of that decree.

[14] Even from the perusal of the record and as also noted by the learned Courts below, PW1, namely, Beli Ram admitted in his deposition that Smt. Debo had been visiting the house of Bishan for a long period and had been serving him. The deposition of DW3, namely, Karan Singh also supported that the Bishan and Debo used to reside together as husband and wife. This supports the proposition that Bishan and Debo had been residing together for a long period of time as also proved by Smt. Debo in her oral as well as documentary evidence which raises strong presumption of marriage arising from long cohabitation. In ***Kattukandi Edathil Krishnan and another versus Kattukandi Edathil Valsan and others, (2022) 16 SCC 7***, the Court held that where a man and a woman have lived together for long years as husband and wife, a presumption arises in favour of a valid marriage under Section 114 of the Evidence Act, and that

although the presumption is rebuttable, a heavy burden lies on the party seeking to deny the marital status.

[15] In this view of the matter, the submission of learned counsel for the appellants-plaintiffs, founded upon the decision of this Court in ***Karan Singh's case (supra)*** that no valid *Karewa* marriage could be performed between persons of different castes, does not require independent examination on facts, since the matter has already attained finality between the parties qua the decree of 1978 as well as qua the Will of 1976. Even otherwise, as held by the Hon'ble Supreme Court in case of ***Mohinder Singh (supra)***, a testamentary disposition by a sonless proprietor in favour of a person who has rendered services to him and resided with him does not necessarily stand or fall on proof of a valid matrimonial tie; long cohabitation and rendition of personal service constitute sufficient and valid consideration in law for such a disposition, independent of the question of marriage which was duly admitted by the appellants.

[16] Further, the conduct of appellants-plaintiffs does not help their case. Beli Ram (the original plaintiff in present suit and father of appellant no. 1 and 2) represented the minor defendant Nos. 2 & 3 in Civil Suit No. 368 of 1979 (Ex. D3), a suit for permanent injunction against Debo from alienating the part of the suit property. Though he did not sue in his personal capacity and suit was for permanent injunction, the Court framed the specific question regarding the Will dated (Ex. D1) and effectively adjudicated upon it, holding the Will to be valid. Beli Ram even appeared as PW-1 in the said suit thus, it cannot be said the

adjudication was not in his knowledge. The present appellants, claiming an interest in the subject property through the same line as Beli Ram, cannot disavow the evidentiary effect of his conduct and deposition in those proceedings.

[16.1] Also, in Civil Suit No. 167 of 1981 Surmukh Singh, appellant no.1, in the plaint (Mark-B), referred the suit property being acquired by Debo as *"was acquired by the vendor through inheritance from her allegedly late husband namely Bishan."* Validity of these documents was not challenged by plaintiffs nor plaintiffs adduced any evidence to rebut the truthfulness of these documents in the present case. A party that has, in one proceeding, acknowledged the vendor's title as flowing through inheritance from her husband cannot, in a subsequent proceeding, turn around and deny both the Will and the marital relationship that underpins that very title. The appellants cannot be permitted to approbate in one proceeding and reprobate in another. Such wholly inconsistent conduct does not inspire the confidence of this Court in the claims of the appellants.

CUSTOMS AND ANCESTRAL CHARACTER OF THE PROPERTY

[17] Assuming *arguendo* that the suit land was ancestral in the hands of Bishan Singh qua the plaintiffs, the submission that a Jat governed by custom could not at all alienate or bequeath such property in derogation of the rights of collaterals does not assist the appellants-plaintiffs to the extent claimed. As explained by this Court in *Nathu Ram's case(supra)*, while will in respect of ancestral immovable property may not find general recognition under custom, the general custom equally

and clearly permits a sonless proprietor to make a valid gift, or disposition in the nature of a gift, in favour of a person who has rendered services to him, such a person being treated analogously to a near agnate for that limited purpose. Further, it is well-settled principle of law that the custom must be established by clear and unambiguous evidence of usage, and that general propositions about a tribe's incapacity to alienate ancestral property admit of well-recognized exceptions, including alienation for consideration in the nature of services rendered to a sonless proprietor. No evidence was led by the appellants-plaintiffs to displace the existence of such an exception, or otherwise to establish a rigid custom excluding it.

[17.1] Bishan Singh, admittedly issueless, was entitled under the general custom to provide for a person, such as Debo, who had resided with him and rendered service to him in his lifetime. The objection founded purely on the customary incapacity to "will away" ancestral property therefore does not, by itself, invalidate the disposition in question, particularly when that disposition has, in any event, already been given effect to and acted upon by way of the unchallenged decree of 1978 in respect of half the holding, and stands independently fortified by the concurrent findings of the courts below. It is further noteworthy that the validity of the decree dated 22.03.1978 transferring half the suit land to Debo was never independently challenged in any proceedings whatsoever, and therefore her title to that extent stands on an independent and unassailable footing.

CONCLUSION

[18] For the reasons recorded above, I find no merit in the contentions raised on behalf of the appellants-plaintiffs. The findings recorded by the learned trial Court and affirmed by the learned First Appellate Court do not suffer from any illegality, perversity, or error of law warranting interference by this Court.

[19] Accordingly, the present Regular Second Appeal is dismissed and the judgment and decree dated 17.07.1991 passed by the learned First Appellate Court, affirming the judgment and decree dated 07.12.1987 passed by the learned trial Court, are upheld.

[20] Since, the main appeal has been decided, no orders are required to be passed in the pending application(s) and the same shall stand disposed off.

July 06, 2026
'dk kamra'

(HARKESH MANUJA)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>