IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 339 of 2012
Reserved on: 02.03.2026
Date of Decision: 12.05.2026

Laxmi Dutt ...Appellant

Versus

Beasa Devi & others ...Respondents

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] Yes

For the appellant	:	Mr Bhupinder Gupta, Senior Advocate, with Mr Pranjal Munjal, Advocate.
For the respondents	:	Mr .G.R. Palsra, Advocate.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment and decree dated 24.03.2012, passed by the learned Additional District Judge (Fast Track Court), Mandi, District Mandi, H.P. (Learned Appellate Court) vide which the judgment and decree dated 30.09.2009, passed by the learned Civil Judge (Senior Division), Court No. II, Mandi, District Mandi, H.P. (learned

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[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

Trial Court) were set aside. (*For the sake of convenience, the parties shall be referred to in the same manner as they were arrayed before the learned Trial court.*

2. Briefly stated, the facts giving rise to the present appeal are that the plaintiff filed a civil suit for a declaration that the 'Will' dated 15.01.1994 stated to have been executed by late Bhadar Singh is null and void, and the 'Will' dated 6.07.1997, stated to have been executed by Bhadar Singh, is his last testament. A decree for permanent prohibitory injunction was also sought for restraining the defendants from interfering with the land comprised in Khewat No. 109, Khatauni No. 127, 128, 129, 130, 131, 132, 133, bearing Khasra number (Kittas 13), measuring 7-15-11 bighas, situated in Muhal 'Bhadyall' 211, Illaqa Balh, Tehsil Sadar, District Mandi, H.P. (hereinafter referred to as the suit land). It was asserted that Bhadar Singh had $1/4^{th}$ share in the suit land. The nature of the suit land is coparcenary property. Bhadar Singh died on 20.02. 1999, leaving behind the plaintiff and defendant, as his legal heirs, based on the 'Will' dated 06.07.1997. The defendant propounded a forged Will stated to have been executed by Bhadar Singh on 15.01.1994, which is shrouded in suspicious circumstances. The defendant

got a mutation attested in his favour based on the 'Will'. The plaintiff requested the defendant to acknowledge his title, but in vain. Hence, the suit was filed to seek the relief mentioned above.

3. The suit was opposed by filing a written statement and an additional written statement taking preliminary objections regarding the suit being barred by limitation, non-joinder of necessary parties, and the suit not being maintainable. It was admitted that Bhadar Singh was the owner in possession of the suit land. It was asserted that the Khasra numbers of the suit property were not specified, which is a violation of the mandatory provisions of law. Bhadar Singh also owned the property in Mauza Paunta, Tehsil Sarkaghat, District Mandi, H.P., which he had gifted to the plaintiff during his lifetime. Plaintiff and his family members shifted to the village Paunta. They did not care for Bhadar Singh. The defendant, his mother and other family members took care of Bhadar Singh; therefore, he bequeathed the property in favour of the defendant. The plaintiff has forged the 'Will'. Therefore, it was prayed that the suit be dismissed.

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4. The defendant also filed an additional written statement on 27.12.2023, taking preliminary objections regarding the suit being bad for non-joinder of necessary parties, the suit being barred by limitation, and the plaint not supported by an affidavit. The contents of the plaint were admitted to the extent that Bhadar Singh was the owner of the suit land. It was asserted that Bhadar Singh also owned the property in Mauza Paunta, which had given by him to the plaintiff. Plaintiff and his family members shifted to village Paunta, and the property in village Bhadyal was given to the defendant to maintain harmony between the parties. The plaintiff did not take care of Bhadar Singh during his lifetime. Ganga Ram, father of the defendant, used to maintain the property of Bhadar Singh and take care of Bhadar Singh and his wife. Manchali Devi, mother of the defendant and other family members, took care of Bhadar Singh after the death of Ganga Ram. Bhadar Singh executed a 'Will' in favour of the defendant after being satisfied with the services rendered by the relatives of the defendant. The plaintiff's daughter-in-law was practising with Uttam Singh Thakur Advocate. Yadvinder Sharma is the co-contractor with the son of the plaintiff. The 'Will'

propounded by the plaintiff is shrouded in suspicious circumstances, which does not confer any right upon him. Therefore, it was prayed that the suit be dismissed.

5. A replication denying the contents of the written statement and affirming those of the plaint was filed.

6. The Ld. trial Court framed the following issues on 12.07.2004

1. Whether Will dated 6.7.1997 is a valid and last will as alleged, if so its effect? OPP
2. Whether Will dated 15.1.1994 is a forged Will and is liable to be declared null and void as alleged, if so its effect? OPP
3. Whether the suit property is a Joint Hindu Coparcenary property in the hands of Sh. Bhadar Singh, as alleged? OPP
4. Whether the suit is barred by limitation? OPD.
5. Whether the suit is bad for non-joinder of necessary parties? OPD
6. Whether the plaintiff has no cause of action to file the present suit? OPD.
7. Whether the suit has not been properly valued for the purpose of court fees and jurisdiction? OPD.
8. Relief.

7. The plaintiff was called upon to produce the evidence, and the plaintiff examined himself (PW-1), Uttam

Singh (PW-2) and Yadvinder Sharma (PW-3). The defendant examined Vishal Sharma (DW-1), Laxmi Dutt (DW-2), Bhagi Rath (DW-3), D.N.Sharma (DW-4) and Nand Kishore (DW-5).

8. The learned Trial Court held that the 'Will' propounded by the plaintiff was shrouded in suspicious circumstances and was not proved to be a valid 'Will' of Bhadar Singh. The 'Will' propounded by the defendant was genuine. Manchali Devi and defendant Laxmi Dutt used to look after Bhadar Singh and his wife. The property located at Paunta was given to the plaintiff, and the property located at Bhadyal was given to the defendant. This was an equitable distribution of the property. The nature of the suit property was not proved to be ancestral. The suit was within limitation; hence, the learned Trial Court answered all the issues in negative and dismissed the plaintiff's suit.

9. Being aggrieved by the judgment and decree passed by the learned Trial Court, the plaintiff filed an appeal, which was decided by the learned Additional District Judge (Fast Track Court), Mandi, District Mandi (learned Appellate Court). The learned Appellate Court held that the learned Trial Court erred in holding that the 'Will' propounded by the plaintiff was shrouded

in suspicious circumstances. The execution and attestation of the 'Will' propounded by the plaintiff were properly proved. Yadvinder Singh (PW-3) had written the Will as per the wishes of the deceased in the presence of the witnesses. Learned Trial Court erred in holding that the witnesses and the scribe were interested and had a special affinity towards the plaintiff. The suspicious circumstances found by the learned Trial Court were not, in fact, suspicious. The property was distributed equally amongst the parties. It was not proved that the plaintiff was gifted any property at Paunta. Therefore, the learned Appellate Court set aside the judgment and decree passed by the learned Trial Court and decreed the plaintiff's suit.

10. Being aggrieved by the judgment and decree passed by the learned Appellate Court, the defendant has filed the present appeal, which was admitted on the following substantial questions of law on 03.07.2012: -

> 1. When there were two Wills propounded by respective parties for consideration before the Court, and the Trial Court upheld the validity of Ex.DW-3/A, the Will propounded by defendant-appellant, has not the Lower Appellate Court acted in an erroneous and perverse manner in upholding the validity of Ex.PW-2/A by ignoring the findings of the Trial Court with respect to the legality and validity of both the Wills, i.e. Ex. PW-2/A and Ex.

DW-3/A? Was not it incumbent for the Lower Appellate Court, while reversing the findings of the Trial Court, to have given findings on the due execution and attestation of Ex. DW-3/A also?

2. Whether the Lower Appellate Court has recorded erroneous, illegal and perverse findings upholding the validity of Ex. PW-2/A by observing that the role of the Court to examine the legality and validity of the Will is very limited?

11. I have heard Mr Bhupinder Gupta, learned Senior Advocate, assisted by Mr Pranjal Munjal, learned counsel for the appellant and Mr G.R. Palsra, learned counsel for the respondents.

12. Mr Bhupinder Gupta, learned Senior Advocate for the appellants, submitted that the Learned Trial Court had rightly discarded the 'Will' propounded by the plaintiff. Learned Appellate Court failed to displace the reasons assigned by the learned Trial Court. Defendant and his relatives were taking care of Bhadar Singh and his wife, and Bhadar Singh had executed a Will in favour of the defendant after being satisfied with the services rendered by the defendant and his family members. Learned Appellate Court erred in discarding the 'Will' executed by the defendant. Hence, he prayed that the present appeal be allowed and the judgment and decree passed by the learned Appellate Court be set aside.

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13. Mr G.R. Palsra, learned counsel for the respondents, submitted that the plea taken by the defendant that the property in the village Paunta was given to the plaintiff was not proved. The disposition of the property in the Will propounded by the defendant was unequal. It was proved that the plaintiff had also taken care of the deceased, and the defendant's version that only he and his family members had taken care of the deceased was not proved on record. Therefore, he prayed that the present appeal be dismissed. He relied upon the following judgments in support of his submissions: -

1. ***Kalyan Singh vs. Smt. Chotti and others, AIT 1973 Rajasthan 263;***
2. ***Daulat Ram and others vs Sodha and others (2005) 1 SCC 40***
3. ***Benga Behera and another vs. Braja Kishore Nanda and others (2007) SCC 728;***
4. ***Bharpur Singh, others vs. Shamsher Singh (2009) 3 SCC 687;***
5. ***Gurbakhsh Singh & others vs. Buta Singh and another (2018) 6 SCC 567***
6. ***V. Prabhakara vs. Basavaraj K. (dead) by legal representatives and another (2022) 1 SCC 115;***

14. I have given a considerable thought to the submissions made at the bar and have gone through the records carefully.

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15. Before adverting to the substantial questions of law framed by the Court, it is necessary to dispose of an application filed by the plaintiff for amendment of the plaint. It has been asserted that the complete details of the property owned by Bhadar Singh could not be mentioned inadvertently. The plaintiff wants to amend the plaint by describing the remaining land situated at Mohal Bhadyal and Mohal Badhoie. The proposed amendment is necessary and formal in nature. The plaintiff came to know about the defect when he engaged the senior counsel in the High Court. Therefore, it was prayed that the present application be allowed and the details of the property owned by Bhadar Singh be permitted to be mentioned.

16. The application is opposed by filing a reply taking preliminary objections regarding the lack of maintainability and the applicants being stopped from filing the present application by their act, conduct, omission and commission. It was asserted that the suit was instituted regarding the land mentioned in the plaint. The matter remained pending before the learned trial Court for almost 7 years. The appeal remained pending before the learned First Appellate Court for three years, and no steps

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were taken to amend the plaint. The application is not maintainable at this stage. The inclusion of the property would change the nature of the suit and would cause prejudice to the defendant, which can not be compensated in terms of money; therefore, it was prayed that the present application be dismissed.

17. A rejoinder denying the contents of the reply and affirming those of the application was filed.

18. I have heard Mr G.R. Palsra, learned counsel for the applicants/respondents and Mr Bhupinder Gupta, learned Senior Advocate, assisted by Mr Pranjal Munjal, learned counsel for the non-applicant/respondents.

19. Mr G.R. Palsra, learned counsel for the applicants/respondents, submitted that the application is necessary to include the whole property of Bhadar Singh. The details of the property could not be mentioned earlier inadvertently, and this fact came to the notice of the applicants during the pendency of the appeal before this Court. Therefore, he prayed that the present application be allowed and the applicant be permitted to amend the plaint. He relied upon the following judgments in support of his submissions: -

1. *Kedar Nath Agarwal (dead) and another vs. Dhanraji Devi (dead) by LRs and another (2004) 8 SCC 76*

2. *Gurbakhsh Singh & others vs. Buta Singh and another (2018) 6 SCC 567*

3. *Raj Kumar Bhatia vs. Subhash Chander Bhatia (218) 2 SCC 87*

4. *Mohinder Kumar Mehra vs. Roop Rani Mehra & others (2018) 2 SCC 132*

5. *N.C. Bansal vs. Uttar Pradesh Financial Corporation and another (2018) 2 SCC 347*

6. *Prem Singh @ Prema vs. Satya Devi, Latest HLJ 2021(HP (2)1158;*

7. *Rukmani Devi (since deceased), through her legal representative, Sh. Gulab Singh, son of the late Sh. Tule Ram vs. Prem Lata Latest HLC 2020(HP)(1) 199; and*

8. *Prem Singh @ Prema vs. Satya Devi 2021 (4) Shim. LC 2310;*

20. Mr Bhupinder Gupta, learned Senior Advocate, for non-applicants/respondents, submitted that the application has been filed belatedly. The application for amendment of the pleading cannot be filed after the commencement of the trial unless the party applying for the amendment satisfies the court that they could not apply for the amendment earlier, despite the exercise of due diligence. The applicants have failed to show any

due diligence in the matter; hence, he prayed that the present application be dismissed.

21. I have given a considerable thought to the submissions made at the bar and have gone through the records carefully.

22. Proviso to Order VI Rule 17 lays down that a party seeking the amendment of the pleading shall not be permitted to do so unless it satisfies the Court that it could not have applied for amendment before the commencement of the trial despite the exercise of due diligence. In the present case, the suit has been decided, the first appeal filed before the learned Appellate Court has been decided, and the matter is pending in regular second appeal before this Court. Therefore, the applicants needed to plead that they could not have applied for an amendment despite the exercise of due diligence.

23. It was laid down by the Hon'ble Supreme Court in ***Pandit Malhari Mahale versus Monika Pandit Mahale and Others, (2020) 11 SCC 549,*** that the Court has to record a finding that it is satisfied that the party could not introduce the amendment before the commencement of the trial despite the exercise of due diligence. It was held:

> "7. From the evidence on record, it does appear that evidence had begun, and thereafter an amendment application was filed. Without there being any finding by the Court as contemplated by Order VI Rule 16 proviso, the Court ought not to have allowed the amendment.
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> 8. In the present case, the Civil Judge has not returned any finding that the Court is satisfied that, in spite of due diligence, the party could not have raised the matter before the commencement of the trial. In ***Vidyabai & Ors. vs. Padmalatha & Anr., (2009) 2 SCC 409***, this Court observed in para 19 as under:
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>> "19. It is the primary duty of the Court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. However, the proviso appended to Order VI Rule 17 of the Code restricts the power of the court. It puts an embargo on the exercise of its jurisdiction. The court's jurisdiction in a case of this nature is limited. Thus, unless the jurisdictional fact, as envisaged therein, is found to be existing, the court will have no jurisdiction at all to allow the amendment of the plaint."
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> 9. There being no finding by the Court that the Court is satisfied in spite of due diligence, the party could not introduce an amendment before the commencement of the trial, the order of the Trial Judge is unsustainable. The High Court has not adverted to the above aspect of the matter. In view of the aforesaid, we allow the appeal and set aside the order of the High Court as well as of the Civil Judge; the amendment application stands dismissed."

24. In the present case, the details of the property were available to the plaintiff at the time of the institution of the suit, yet these were not mentioned. It was asserted that the applicants came to know about the property when they engaged a Senior

Advocate before this Court. This is no reason because the plaintiff was supposed to produce the complete papers before the Advocate engaged by him before the learned Trial Court, and failure to produce the complete document does not show any due diligence.

25. It has been asserted that the detail could not be mentioned inadvertently. This is no reason at all because inadvertence is a form of negligence and does not constitute the exercise of due diligence[2].

26. Mr G R Palsra learned that counsel has relied upon the judgments of ***Raj Kumar (supra);*** however, it will not help the applicants because the suit was filed in the years 1979, when the provisions of Order 6 Rule 17 did not contain any requirement of pleading, the exercise of due diligence before seeking the amendment. In ***Mahinder Kumar Mehra (supra),*** the amendment application was filed before the evidence was led by the plaintiff and no prejudice was noticed by the Hon'ble Supreme Court. In the present case, the evidence has been concluded, and the judgments have been delivered by the learned Trial Court and

[2] Pohu Lal vs Kamla Devi 2001 (2) Shim. LC 384

Appellate Court. Therefore, the cited judgments will not assist the plaintiff.

27. In ***N.C. Bansal (supra)***, the Hon'ble Supreme Court held that the amendment was made before the commencement of the trial, and it does not apply to the present case.

28. In ***Gurbaksh Singh (supra)***, the amendment was regarding a Civil Suit filed in the year 1968, the record of which was not traceable. Therefore, it was held that the applicant could not obtain the record. In the present case, no such inability has been shown, as the record was available, and the judgment does not apply. In ***Kedar Nath Aggarwal*** (supra), the case was filed in the year 1983, and the proviso does not apply to it. Therefore, none of the cited judgments applies to the present case.

30. Thus, the plaintiff/applicant has failed to assign any cogent reason for the amendment of the plaint. Consequently, the present application fails, and it is dismissed.

Substantial questions of law Nos. 1 and 2

31. Both substantial questions of law are interconnected; hence, they are being taken up together for consideration.

32. The law relating to the execution of the Will was explained by the Hon'ble Supreme Court in ***Meena Pradhan v. Kamla Pradhan, (2023) 9 SCC 734: (2023) 4 SCC (Civ) 449*** as under:

> "*10.1.* The court has to consider two aspects: firstly, that the will is executed by the testator, and secondly, that it was the last will executed by him.
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> *10.2.* It is not required to be proved with mathematical accuracy, but the test of satisfaction of the prudent mind has to be applied.
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> *10.3.* A will is required to fulfil all the formalities required under Section 63 of the Succession Act, that is to say:
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> > (*a*) The testator shall sign or affix his mark to the will, or it shall be signed by some other person in his presence and by his direction, and the said signature or affixation shall show that it was intended to give effect to the writing as a will;
> >
> > (*b*) It is mandatory to get it attested by two or more witnesses, though no particular form of attestation is necessary;
> >
> > (*c*) Each of the attesting witnesses must have seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of such signatures;
> >
> > (*d*) Each of the attesting witnesses shall sign the will in the presence of the testator; however, the presence of all witnesses at the same time is not required.
>
> *10.4.* For the purpose of proving the execution of the will, at least one of the attesting witnesses, who is

alive, subject to the process of court, and capable of giving evidence, shall be examined;

10.5. The attesting witness should speak not only about the testator's signatures but also that each of the witnesses had signed the will in the presence of the testator;

10.6. If one attesting witness can prove the execution of the will, the examination of other attesting witnesses can be dispensed with;

10.7. Where one attesting witness examined to prove the will fails to prove its due execution, then the other available attesting witness has to be called to supplement his evidence;

10.8. Whenever there exists any suspicion as to the execution of the will, it is the responsibility of the propounder to remove all legitimate suspicions before it can be accepted as the testator's last will. In such cases, the initial onus on the propounder becomes heavier;

10.9. The test of judicial conscience has evolved for dealing with those cases where the execution of the will is surrounded by suspicious circumstances. It requires consideration of factors such as awareness of the testator as to the content as well as the consequences, nature and effect of the dispositions in the will; a sound, certain and disposing state of mind and memory of the testator at the time of execution; the testator executed the will while acting on his own free will;

10.10. One who alleges fraud, fabrication, undue influence, etc., has to prove the same. However, even in the absence of such allegations, if there are circumstances giving rise to doubt, then it becomes the duty of the propounder to dispel such suspicious circumstances by giving a cogent and convincing explanation.

10.11. Suspicious circumstances must be "real, germane and valid" and not merely "the fantasy of the

> doubting mind [***Shivakumar v. Sharanabasappa [Shivakumar v. Sharanabasappa, (2021) 11 SCC 277]***]". Whether a particular feature would qualify as "suspicious" would depend on the facts and circumstances of each case. Any circumstance raising suspicion, legitimate in nature, would qualify as a suspicious circumstance, for example, a shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the will under which he receives a substantial benefit, etc."

33. This position was reiterated in ***Gurdial Singh v. Jagir Kaur, 2025 SCC OnLine SC 1466,*** wherein it was observed:

> "**11.** A Will has to be proved like any other document subject to the requirements of Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872, that is, examination of at least one of the attesting witnesses. However, unlike other documents, when a Will is propounded, its maker is no longer in the land of the living. This casts a solemn duty on the Court to ascertain whether the Will propounded had been duly proved. Onus lies on the propounder not only to prove due execution but to dispel from the mind of the court all suspicious circumstances which cast doubt on the free disposing mind of the testator. Only when the propounder dispels the suspicious circumstances and satisfies the conscience of the court that the testator had duly executed the Will out of his free volition without coercion or undue influence, would the Will be accepted as genuine. In ***Smt. Jaswant Kaur v. Smt. Amrit Kaur (1977) 1 SCC 369***, this Court, referring to ***H. Venkatachala Iyengar v. B.N. Thimmajamma 1959 Supp (1) SCR 426*** enumerated the principles relating to proof of Will:—
>
> "**10.** ***** **** **** ****
>
> "1. Stated generally, a will has to be proved like any other document, the test to be applied being the usual test of the satisfaction of the prudent

mind in such matters. As in the case of proof of other documents, so in the case of proof of wills, one cannot insist on proof with mathematical certainty.

2. Since Section 63 of the Succession Act requires a will to be attested, it cannot be used as evidence until, as required by Section 68 of the Evidence Act, 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.

3. Unlike other documents, the will speaks from the death of the testator, and therefore, the maker of the will is never available for deposing as to the circumstances in which the will came to be executed. This aspect introduces an element of solemnity in the decision of the question whether the document propounded is proved to be the last will and testament of the testator. Normally, the onus which lies on the propounder can be taken to be discharged on proof of the essential facts which go into the making of the will.

4. Cases in which the execution of the will is surrounded by suspicious circumstances stand on a different footing. A shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the will under which he receives a substantial benefit and such other circumstances raise suspicion about the execution of the will. That suspicion cannot be removed by the mere assertion of the propounder that the will bears the signature of the testator or that the testator was in a sound and disposing state of mind and memory at the time when the will was made, or that those like the wife and children of the testator who would

> normally receive their due share in his estate were disinherited because the testator might have had his own reasons for excluding them. The presence of suspicious circumstances makes the initial onus heavier and, therefore, in cases where the circumstances attendant upon the execution of the will excite the suspicion of the court, the propounder must remove all legitimate suspicions before the document can be accepted as the last will of the testator.
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> 5. It is in connection with wills, the execution of which is surrounded by suspicious circumstances, that the test of satisfaction of the judicial conscience has been evolved. That test emphasises that in determining the question as to whether an instrument produced before the court is the last will of the testator, the court is called upon to decide a solemn question, and by reason of suspicious circumstances, the court has to be satisfied fully that the will has been validly executed by the testator.
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> 6. If a caveator alleges fraud, undue influence, coercion, etc., in regard to the execution of the will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the will may raise a doubt as to whether the testator was acting of his own free will. And then it is a part of the initial onus of the propounder to remove all reasonable doubts in the matter."

The Court further held:—

> "**9.** In cases where the execution of a will is shrouded in suspicion, its proof ceases to be a simple lis between the plaintiff and the defendant. What, generally, is an adversary proceeding becomes in such cases a matter of the court's conscience, and then the true question which arises for consideration is whether the evidence led by the propounder of the will is such as to satisfy the

> conscience of the court that the will was duly executed by the testator. It is impossible to reach such satisfaction unless the party which sets up the will offers a cogent and convincing explanation of the suspicious circumstances surrounding the making of the will."

> **12.** Similarly, in ***Ram Piari v. Bhagwant (1993) 3 SCC 364,*** this Court held that when suspicious circumstances exist, Courts should not be swayed by the due execution of the Will alone:

> "**3.** ....Unfortunately, none of the courts paid any attention to these, probably because they were swayed with due execution even when this Court in ***Venkatachaliah case [AIR 1959 SC 443: 1959 Supp (1) SCR 426]*** had held that, proof of signature raises a presumption about knowledge, but the existence of suspicious circumstances rebuts it................"

> **13.** There is no cavil when suspicious circumstances exist and have not been repelled to the satisfaction of the Court, the Court would not be justified in holding that the Will is genuine since the signatures have been duly proved and the Will is registered. (***AIR 1962 SC 567***).

34. A similar view was taken in ***Kalyan Singh (supra), Prem Singh @ Prema (supra)***, ***Daulat Ram (supra)***, ***Benga Behera (supra)***, ***Bharpur Singh Others (supra)*** and ***V. Prabhakara* (supra)**, and it is not necessary to refer each judgment to avoid repetition of the principles.

35. Learned Trial Court held that the 'Will' propounded by the plaintiff was shrouded in suspicious circumstances because the scribe and witnesses were interested, who had a special affinity towards the plaintiff. Reliance was placed upon

the judgment of this Court in ***Sarwan vs Ashok Kumar, AIR 2007 NOC 607***. Learned appellate Court, on the other hand, held that the learned Trial Court erred in holding that attesting witnesses and scribe are interested who had a special affinity towards the plaintiff. The suspicious circumstance was not pleaded, proved, or suggested to any of the witnesses. The property was given to both parties, and the plea taken by the defendant that the property was given to the plaintiff in village Paunta was not proved by any evidence on record.

36. It is apparent from the judgment of the learned Appellate Court that it had come into the close quarters of the reasoning assigned by the learned trial Court and had displaced the reasons of the learned trial Court by assigning its independent reason. Therefore, it cannot be said that the learned Appellate Court had reversed the findings of the learned Trial Court without assigning any reasons.

37. It was laid down by the Hon'ble Delhi High Court in ***S. Amarjit Singh v. State, 1998 SCC OnLine Del 398 = AIR 1999 Delhi 33***, that the suspicious circumstances have to be pleaded and proved; those cannot be urged for the first time before the Appellate court. It was observed: -

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“10. I agree with the contention of Mr Mariaputham that suspicious circumstances ought to have been pleaded and urged. Those cannot be pleaded or urged for the first time before the appellate Court specially when the foundation of such a suspicious circumstance was not laid before the Probate Court nor pleaded otherwise Supreme Court in the case of ***P.P.K. Gopalan Nambiar v. Balakrishnan Nambiar reported in 1995 Supp (2) SCC 664 : (AIR 1995 SC 1852)*** observed that any suspicious circumstance ought to be urged by the objector should be pleaded and proved. Without such pleading and proof, it cannot be taken into consideration. A similar view was expressed by the Apex Court in the case of ***Trojan and Co. Ltd. v. Nagappa Chettiar reported in 1953 SCR 789: (AIR 1953 SC 235)***, as well as in the case of ***Srivenkataramana Devaru v. State of Mysore reported in 1958 SCR 895 : (AIR 1958 SC 255 at p. 263, para 14***) where the Apex Court laid down the law as such :

> "The object of requiring a party to put forward his pleas in the pleadings is to enable the opposite party to controvert them and to adduce evidence in support of his case. And it would be neither legal nor just to refer to evidence adduced with reference to a matter which was actually in issue and on the basis of that evidence, to come to a finding on a matter which was not in issue, and decide the rights of the parties on the basis of that finding. We have accordingly declined to entertain this contention."

11. In this view of the matter, this Court is not inclined to entertain such suspicious circumstances, which were neither pleaded nor proved before the probate Court...”

38. Thus, the learned Appellate Court was justified in holding that no notice of suspicious circumstances could be taken without any pleading or proof.

39. The defendant had asserted in the amended written statement that Rakesh Wallia, son of Inder Singh, had procured a license for a legal practice. His wife was in junior to Sh. Uttam Singh Thakur, Advocate. Yadvinder Sharma (PW-2) was a co-contacter with Rakesh Wallia. All these persons had forged the Will. Uttam Singh Thakur (PW-2) admitted in his cross-examination that Rakesh Wallia and his wife, Urvashi Wallia, used to practice at Mandi, and they remained associated with him. Therefore, he has not tried to conceal his association with Rakesh Wallia and Urvashi Wallia. Yadvinder Shrma (PW-3) stated in his cross-examination that he knew Bhadar Singh because he was the grandfather of Rakesh Wallia, and he used to visit the house of Rakesh Wallia. He also admitted his relationship to Utttam Thakur, Advocate. Hence, the learned Trial Court erred in holding that the witnesses had attempted to conceal their association.

40. Learned Trial Court had relied upon the judgment of this Court, ***Sarwan Kumar (supra);*** however, the Court had found

many suspicious circumstances and contradictions, which made the execution and the attestation of the 'Will' suspicious. It was held in this context that the scribe, being a friend and class fellow of the defendant, and one of the witnesses being his servant, cannot be said to be independent witnesses. Thus, the cited judgment does not apply to the facts of the present case.

41. Uttam Singh Thakur was the best person to be associated with the execution of the Will since he was known to Bhadar Singh and his grandson; therefore, Bhadar Singh would have trusted Uttam Singh Thakur, Advocate. Further, the 'Will' did not confer the benefit upon the plaintiff alone, to the exclusion of the defendant, but bequeathed the property to the plaintiff and the defendant equally; therefore, it cannot be said that any advantage was taken by Uttam Singh Thakur, Advocate, by conferring a benefit upon the plaintiff exclusively. It was laid down in ***Prem Singh v. Padam Singh, 1999 SCC OnLine HP 40=AIR 2000 H.P. 103*** that generally known persons are associated as witnesses and there is nothing suspicious in it. It was observed:

> "26. The plaintiff also relied on the alleged suspicious circumstance that the marginal witnesses of the Will Ex.DW-2/A are closely related to defendant Padam Singh, the beneficiary under the Will. This circumstance cannot be

> treated as suspicious because the execution of a Will in the natural course will be attested by known persons, which may include the near relations of the beneficiary. There is no evidence whatsoever to show that defendant Padam Singh himself was present at the time of the execution of the Will and acted to bring about the Will in a manner which may render it a suspicious document. The learned District Judge has, therefore, rightly concluded that the Will in question is a duly executed, valid Will of deceased Nanda."

42. Similar is the judgment in ***Bhago vs. Ram Kumar, RSA 368 of 1996, decided on 30.06.2008: 2008:HHC:2319, wherein*** it was held:

> "The mere fact that he was related to the defendants in one way or another is not sufficient to hold that he could not have been associated as an attesting witness. The Will is normally written in the presence of one of the persons known to the executants, and it is only at times that unknown persons are associated if they are holding some office of the Panchayat and are other respectable persons of the locality. The mere fact of joining DW-3 Siri Ram related to the 6 defendants distantly, cannot be said to be a suspicious circumstance which has been clearly discussed by the learned first Appellate Court."

43. This position was also recognised by the Hon'ble Supreme Court in ***Indu Bala Bose Versus Manindra Chandra Bose (1982) 1 SCC 20,*** wherein it was held:

> "With regard to the circumstance that the scribe and the attesting witnesses were either employees or friends or relations of the propounders' group, the answer is simple. Nobody would normally invite a stranger or a foe to be a scribe or a witness of a document executed by or in his favour; normally, a known and reliable person, a friend or a relation is called for the purpose. The same argument applies to P.W. 3, who is said to be a partisan witness for the reason that he was

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the testator's advocate. But there is nothing to show that he was not telling the truth in his deposition."

44. Therefore, the execution of the 'Will' cannot be doubted simply because Uttam Singh Thakur and Yadvinder Sharma are known to Rakesh Wallia, the plaintiff's son.

45. The 'Will' (Ext.PW-2/A) mentions that Inder Singh and Laxmi Dutt were taking care of Bhadar Singh. He was happy with the services provided to him, and he wanted to confer the benefits upon Inder Singh and Laxmi Dutt. Therefore, he was bequeathing the property in favour of both Inder Singh and Laxmi Dutt. The earlier 'Will' executed in favour of Laxmi Dutt should be treated as cancelled.

46. The defendant asserted that the plaintiff had shifted to village Paunta after the property was gifted to him, and he never cared for Bhadar Singh. He stated in his cross-examination that he was not sure whether the property located at Paunta was in the name of Bhadar Singh, and he had not annexed a copy of the Jamabandi to the plaint. He did not know the details of the property located at Paunta.

47. The cross-examination of this witness does not establish his version that the property located at Paunta was given by Bhadar Singh to the plaintiff. He had not produced the details of any property showing the plaintiff's name. He could not mention the details of the property given to the plaintiff. Therefore, the learned Appellate Court

had rightly rejected the plea taken by the defendant that Bhadar Singh had gifted the property located at Paunta to the plaintiff.

48. Nand Kishore (DW-5) stated in his cross-examination that all the property owned by Bhadar Singh was located in Bhadyal. This admission falsifies the defendant's version that Bhadar Singh had given the property located at Paunta to the plaintiff.

49. Uttam Singh Thakur (PW-2) stated that he knew Bhadar Singh. Bhadar Singh came to his office on 06.07. 1997 at about 11:00 a.m. with the witness Khinu Ram. Yadvinder Sharma (PW-3) was already present in the office. Bhadar Singh expressed a desire to get a 'Will' executed regarding his property in favour of his son, Inder Singh and grandson Laxmi Dutt. Bhadar Singh also expressed a desire to cancel the 'Will' earlier executed by him. Yadvinder Sharma (PW-3) wrote the 'Will' as per the wishes of Bhadar Singh in the presence of Khinu Ram and him (Uttam Singh Thakur). The 'Will' was read over and explained to Bhadar Singh and the witnesses. Bhadar Singh put his signature, and the witnesses put their signatures thereafter. Khinu Ram put his thumb impression on the 'Will', and Yadvinder Sharma (PW-3) put his signature as scribe.

50. He stated in his cross-examination that he did not have any relationship with the witnesses, and the grandson of Bhadar

Singh, Rakesh Wallia and his wife, Urvashi Wallia, had practised with him for some time. Bhadar Singh had visited his office to seek his opinion. Yadvinder Sharma (PW3) was already present in the office. Rakesh Wallia and Yadvinder Sharma had left the practice. Bhadar Singh had dictated the 'Will' in Mandiyali, and Yadvinder Sharma (PW-3) had translated it. Bhadar Singh had voluntarily visited his office, and he was not advised by Rakesh Wallia or his wife to visit his office. Khinu Ram was the son-in-law of Bhadar Singh.

51. He is an Advocate and has no reason to support the plaintiff. Merely because the plaintiff's son had practised with him, cannot lead to an inference that he would tell a lie to support the plaintiff's son. As already stated, the 'Will' does not confer any benefit upon the plaintiff and divides the property equally between the plaintiff and defendant.

52. Yadvinder Sharma (PW-3) stated that he was present in the office of Uttam Singh Thakur when Bhadar Singh came with Khinu Ram. Bhadar Singh expressed his desire to execute a 'Will' in favour of his son, Inder Singh and grandson, Laxmi Dutt. He also stated that he had executed a 'Will' in favour of the defendant, and he wanted to revoke it. Uttam Singh asked him (Yadvender Sharma) to scribe the 'Will'. He wrote the 'Will' as per the wishes of Bhadar Singh in the

presence of Uttam Singh and Khinu Ram. He read over and explained the 'Will' to Bhadar Singh in the presence of the witnesses. Bhadar Singh put his signature on the 'Will'. Witness Uttam Singh put his signature, and Khinu Ram put his thumb impression. He put the signatures on the 'Will" as a scribe.

53. He stated in his cross-examination that he was on visiting terms with Bhadar Singh. He had gone to the office of Uttam Singh to study. He had not appeared in the Court between 2000 and 2006, although he had appeared in some cases between 1996 and 2008. He denied that he was not practising as an advocate. Rakesh Wallia was running a shop. He was not aware whether Bhadar Singh had visited the office to get the Will executed. Bhadar Singh was speaking in Hindi or Mandyali. He had seen Khinu Ram. Uttam Singh had supplied the papers. He admitted that Uttam Singh had practised with Rakesh Wallia and Urvashi Wallia. He was related to Uttam Singh. He had told Bhadar Singh that two witnesses are required for the execution of the 'Will'. He denied that he had written the 'Will' at the instance of Rakesh Wallia.

54. The statements of these witnesses corroborated each other. His presence in the office of Uttam Singh was natural because

he was related to Uttam Singh. Therefore, his presence in the office cannot be doubted.

55. There is nothing suspicious surrounding the execution of the Will, and the learned Appellate Court had rightly held that the execution of the 'Will' propounded by the plaintiff was duly proved. Hence, the judgment of the learned Appellate Court cannot be said to be suffering from any perversity. It was laid down by the Hon'ble Supreme Court in ***Kashibai v. Parwatibai*, *(1995) 6 SCC 213*,** that it is not permissible for the High Court to interfere with the findings of fact related to the execution of the Will while hearing the second appeal. It was observed: -

> "**11.**..... In the present case, the trial court, after a close scrutiny and analysis of the evidence of Defendant 1, Smt. Parvati Bai, VirBhadra, Sheikh Nabi, Shivraj and Gyanoba Patil, who are witnesses to the Will, recorded the finding that none of them deposed that Lachiram had signed the said Will before them and they had attested it. None of them, except Sheikh Nabi, even deposed as to when the talk about the execution of Will was held. The witness, Sheikh Nabi, however, deposed that the talk about the Will also took place at the time of the talk about the adoption. But this witness too did not depose that deceased Lachiram had signed the alleged Will in his presence. In the absence of such evidence, it is difficult to accept that the execution of the alleged Will was proved in accordance with law as required by Section 68 of the Evidence Act, read with Section 63 of the Indian Succession Act and Section 3 of the Transfer of Property Act. It may be true, as observed by the High Court, that

the law does not emphasise that the witness must use the language of the section to prove the requisite merits thereof, but it is also not permissible to assume something which is required by law to be specifically proved. The High Court simply assumed that Lachiram must have put his signature on the Will Deed in the presence of the attesting witness, Sheikh Nabi, simply because the Deed of Adoption is admitted by the witness to have been executed on the same day. The High Court committed a serious error in making the observations that the broad parameters of Nabi's evidence would show that Lachiram executed the Will in his presence, that he signed the Will, being part of the execution of the testament, and this evidence, in its correct background, would go to show that what was required under Section 63 has been carried out in the execution of the Will. With respect to the High Court, we may say that these findings of the High Court are clearly based on assumptions and surmises and are totally against the weight of the evidence on record. *The trial court, on a close and thorough analysis of the entire evidence, came to a proper conclusion that the Will has not been proved in accordance with the law which finding has been further affirmed by the lower appellate court after an independent reappraisal of the entire evidence with which we find ourselves in agreement as there was hardly any scope or a valid reason for the High Court to interfere with.*

12. Further, it may not be out of place to mention that sub-section (1) of Section 100 of the Code of Civil Procedure explicitly provides that an appeal shall lie to the High Court from every decree passed in appeal by any court subordinate to the High Court if the High Court is satisfied that the case involves a substantial question of law. Sub-section (4) of Section 100 provides that when the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question. But surprisingly enough, the High Court seems to have ignored these provisions and proposed to

> reappreciate the evidence and interfere with the findings of fact without even formulating any question of law. *It has been the consistent view of this Court that there is no jurisdiction to entertain a second appeal on the ground of an erroneous finding of fact, based on an appreciation of the relevant evidence. There is a catena of decisions in support of this view.* Having regard to all the facts and circumstances of the present case discussed above, we are satisfied that there was no justification for the High Court to interfere with the well-reasoned findings of the two courts below. Consequently, this appeal must succeed." (Emphasis supplied).

56. It was laid down by the Hon'ble Supreme Court in ***Rur Singh v. Bachan Kaur, (2009) 11 SCC 1: (2009) 4 SCC (Civ) 387: 2009 SCC OnLine SC 320*** that it is not permissible for the High Court to interfere with the concurrent findings of fact regarding the execution of the Will. It was observed:

> "13. The High Court, while exercising its jurisdiction under Section 100 of the Code of Civil Procedure, exercises a limited jurisdiction. It may interfere with a finding of fact arrived at by the trial court and/or the first appellate court only in the event that a substantial question of law arises for its consideration.
>
> 14. The High Court framed only one substantial question of law, viz., whether the will had been duly proved and/or was otherwise genuine. It is essentially a question of fact. The learned trial Judge as also the first appellate court in opining that the will was genuine and free from suspicious circumstances inter alia took into consideration the existing materials on record viz. the parties ordinarily do not want their agricultural land to go out from the family and in that view of the matter if Kehar Singh had bequeathed his agricultural land only in favour

> of his sons and excluding the daughters from inheritance, no exception thereto could be taken.
>
> 18. The High Court essentially entered into the arena of the appreciation of evidence. It interfered with the concurrent findings of fact arrived at by the courts below."

57. It was held in ***Lisamma Antony v. Karthiyayani, (2015) 11 SCC 782***, that it is impermissible to interfere with the findings of fact under Section 100 of CPC. It was held:

> "**11.** It is a settled principle of law that a second appeal under Section 100 of the Code of Civil Procedure, 1908, cannot be admitted unless there is a substantial question of law involved in it. As to what is a substantial question of law, in ***Kondiba Dagadu Kadam v. Savitribai Sopan Gujar [Kondiba Dagadu Kadam v. Savitribai Sopan Gujar, (1999) 3 SCC 722]***, this Court has explained the position of law as under : (SCC pp. 725-26, para 6)
>
> > "*6.* If the question of law termed as a substantial question stands already decided by a larger Bench of the High Court concerned or by the Privy Council or by the Federal Court or by the Supreme Court, its merely wrong application on the facts of the case would not be termed to be a substantial question of law. Where a point of law has not been pleaded or is found to be arising between the parties in the absence of any factual format, a litigant should not be allowed to raise that question as a substantial question of law in a second appeal. The mere appreciation of the facts, the documentary evidence or the meaning of entries and the contents of the document cannot be held to be raising a substantial question of law. But where it is found that the first appellate court has assumed jurisdiction which did not vest in it, the same can be adjudicated in the second appeal, treating it as a substantial question of law. Where the first appellate court is shown to

have exercised its discretion in a judicial manner, it cannot be termed to be an error either of law or of procedure requiring interference in the second appeal."

12. In view of the above position of law, the question formulated by the High Court in the present case, as quoted above, cannot be termed a question of law, much less a substantial question of law. The above question formulated is nothing but a question of fact. Merely for the reason that, on appreciation of evidence, another view could have been taken, it cannot be said that the High Court can assume the jurisdiction by terming such a question as a substantial question of law.

13. Having gone through the impugned order challenged before us and after considering the submissions of the learned counsel for the parties, we are of the view that the High Court has simply re-appreciated the evidence on record and allowed the second appeal and remanded the matter to the trial court."

58. A similar view was taken in ***Narendra v. Ajabrao*, *(2018) 11 SCC 564***, wherein it was observed: -

"**17.** In the first place, we find that the High Court decided the second appeal like a first appeal under Section 96 of the Code inasmuch as the High Court went on appreciating the entire oral evidence and reversed the findings of fact of the first appellate court on the question of adverse possession. Such an approach of the High Court, in our opinion, was not permissible in law.

18. Second, the High Court failed to see that a plea of adverse possession is essentially a plea based on facts, and once the two courts, on appreciating the evidence, recorded that a finding may be of reversal, such a finding is binding on the second appellate court. It is more so as it did not involve any question of law, much less a substantial question of law. This aspect of law was also overlooked by the High Court.

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> **19.** Third, the High Court has the jurisdiction, in appropriate cases, to interfere in the finding of fact provided such finding is found to be wholly perverse to the extent that no judicial person could ever record such a finding or when it is found to be against any settled principle of law, pleadings or evidence. Such errors constitute a question of law and empower the High Court to interfere. However, we do not find any such error here."

59. It was held in ***Ramathal v. Maruthathal, (2018) 18 SCC 303,*** that it is not appropriate for the High Court to disturb the concurrent findings of facts by re-appreciating the evidence and its jurisdiction is confined to the substantial question of law. It was observed:-

> "**13.** It was not appropriate for the High Court to embark upon the task of reappreciation of evidence in the second appeal and disturb the concurrent findings of fact of the courts below, which are the fact-finding courts. At this juncture, for better appreciation, we deem it appropriate to extract Sections 100 and 103 CPC, which read as follows:
>
> > "**100.** ***Second appeal.***—(1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.
> >
> > (2) An appeal may lie under this section from an appellate decree passed ex parte.
> >
> > (3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(5) The appeal shall be heard on the question so formulated, and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such a question:

***

103. ***Power of the High Court to determine issues of fact***.— In any second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue necessary for the disposal of the appeal—

(*a*) which has not been determined by the lower appellate court or by the court of first instance, and the lower appellate court, or

(*b*) which has been wrongly determined by such court or courts by reason of a decision on such question of law as is referred to in Section 100."

14. A clear reading of Sections 100 and 103 CPC envisages that a burden is placed upon the appellant to state in the memorandum of grounds of appeal the substantial question of law that is involved in the appeal, then the High Court, being satisfied that such a substantial question of law arises for its consideration, has to formulate the questions of law and decide the appeal. Hence, a prerequisite for entertaining a second appeal is a substantial question of law involved in the case, which has to be adjudicated by the High Court. It is the intention of the legislature to limit the scope of a second appeal only when a substantial question of law is involved, and the amendment made to Section 100 makes the legislative intent clearer that it never wanted the High Court to be a fact-finding court. However, it is not an absolute rule that the High Court cannot interfere in a second appeal on a question of fact. Section 103 CPC enables the High Court to consider the evidence when the same has been wrongly determined by the courts below, on which a substantial

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> question of law arises, as referred to in Section 100. When the appreciation of evidence suffers from material irregularities, and when there is perversity in the findings of the court which are not based on any material, the court is empowered to interfere on a question of fact as well. Unless and until there is absolute perversity, it would not be appropriate for the High Courts to interfere in a question of fact just because two views are possible; in such circumstances, the High Courts should refrain from exercising the jurisdiction on a question of fact.
>
> **15.** When the intention of the legislature is so clear, the courts have no power to enlarge the scope of Section 100 for whatsoever reasons. Justice has to be administered in accordance with the law. In the case at hand, the High Court has exceeded its jurisdiction by reversing the well-considered judgment of the courts below, which is based on cogent reasoning. The learned Judge ought not to have entered the arena of reappreciation of the evidence, hence the whole exercise done by the High Court is beyond the scope and jurisdiction conferred under Section 100 CPC."

60. It was laid down by the Hon'ble Supreme Court in ***Gurnam Singh v. Lehna Singh*, *(2019) 7 SCC 641 : (2019) 3 SCC (Civ) 709: 2019 SCC OnLine SC 374*,** that where the First Appellate Court had appreciated the facts regarding the execution of the Will, it is not permissible for the High Court to interfere with this findings of fact in second appeal under Section 100 of CPC. It was observed:

> "**15.** Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, we are of the opinion that the High Court has erred in reappreciating the evidence on record in the second appeal under Section 100 CPC. The High Court has materially erred in interfering with the findings recorded

> by the first appellate court, which were on reappreciation of evidence, which was permissible by the first appellate court in the exercise of powers under Section 96 CPC. Cogent reasons, on appreciation of the evidence, were given by the first appellate court. The first appellate court dealt with, in detail, the so-called suspicious circumstances which weighed with the learned trial court, and thereafter it came to the conclusion that the will, which as such was a registered will, was genuine and did not suffer from any suspicious circumstances. The findings recorded by the first appellate court are reproduced hereinabove. Therefore, while passing the impugned judgment and order [***Lehna Singh v. Gurnam Singh, Civil Regular Second Appeal No. 2191 of 1985, order dated 27-11-2007 (P&H)***], the High Court has exceeded its jurisdiction while deciding the second appeal under Section 100 CPC."

61. Similarly, it was held in ***C. Doddanarayana Reddy v. C. Jayarama Reddy, (2020) 4 SCC 659,*** that the High Court cannot interfere with the concurrent findings of fact unless there is perversity or the same is *de hors* the evidence led before the Courts:

> "**25.** The question as to whether a substantial question of law arises has been a subject matter of interpretation by this Court. In the judgment in ***Karnataka Board of Wakf v. Anjuman-E-Ismail Madris-Un-Niswan [Karnataka Board of Wakf v. Anjuman-E-Ismail Madris-Un-Niswan, (1999) 6 SCC 343]***, it was held that findings of fact could not have been interfered with in the second appeal. This Court held as under : (SCC pp. 347-48, paras 12-15)
>
> > "*12.* This Court had repeatedly held that the power of the High Court to interfere in a second appeal under Section 100 CPC is limited solely to deciding a substantial question of law if at all the same arises in the case. It has deprecated the practice of

> the High Court routinely interfering in pure findings of fact reached by the courts below, without coming to the conclusion that the said finding of fact is either perverse or not based on material on record.

13. In ***Ramanuja Naidu v. V. Kanniah Naidu [Ramanuja Naidu v. V. Kanniah Naidu, (1996) 3 SCC 392]***, this Court held : (SCC p. 393)

> 'It is now well settled that concurrent findings of fact of the trial court and the first appellate court cannot be interfered with by the High Court in the exercise of its jurisdiction under Section 100 of the Civil Procedure Code. The Single Judge of the High Court totally misconceived his jurisdiction in deciding the second appeal under Section 100 of the Code in the way he did.'

14. In ***Navaneethammal v. Arjuna Chetty [Navaneethammal v. Arjuna Chetty, (1996) 6 SCC 166]***, this Court held : (SCC p. 166)

> 'Interference with the concurrent findings of the courts below by the High Court under Section 100 CPC must be avoided unless warranted by compelling reasons. In any case, the High Court is not expected to reappreciate the evidence just to replace the findings of the lower courts. … Even assuming that another view is possible on a reappreciation of the same evidence, that should not have been done by the High Court as it cannot be said that the view taken by the first appellate court was based on no material.'

15. And again in ***Taliparamba Education Society v. Moothedath MallisseriIllath M.N. [Taliparamba Education Society v. Moothedath MallisseriIllath M.N., (1997) 4 SCC 484]***, this Court held: (SCC p. 486, para 5)

> *5.* … The High Court was grossly in error in trenching upon the appreciation of evidence under Section 100 CPC and recording a reverse finding of fact, which is impermissible."

62. Thus, it is impermissible for this Court to re-appreciate the evidence when there is no perversity; hence both substantive questions of law are answered accordingly.

Final Order

63. In view of the above, the present appeal fails, and it is dismissed, so also the pending application(s), if any.

64. The record of the learned Courts below be returned along with a copy of this judgment.

(Rakesh Kainthla)
Judge

12th May, 2026
(ravinder)