IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 158 of 2009

Reserved on: 11.05.2026

Date of Decision: 15.06.2026

Ram Krishan ...Appellant.

Versus

Pankaj & ors. ...Respondents.

Coram

Hon'ble Mr Justice Rakesh Kainthla**, **Judge.

Whether approved for reporting?[1] Yes

For the Appellant	: Mr Mohinder Verma, Advocate.
For Respondents No.1, 3 to 5	: Mr Bhupinder Gupta, Senior Advocate, with Mr Ajeet Pal Singh Jaswal, Advocate.

Respondent No.4 stands deleted vide order dated 25.06.2024.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment and decree dated 25.02.2009 passed by learned District Judge Kinnaur at Rampur Bushaher (learned Appellate Court) vide which the judgment and decree dated 31.05.2008 passed by learned Civil Judge, Senior Division, Rampur Bushaher District Shimla (learned Trial Court) were upheld. (*The parties shall*

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

hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience).

2. Briefly stated, the facts giving rise to the present appeal are that the plaintiff filed a civil suit before the learned Trial court seeking a declaration that the Will dated 02.09.1996, stated to have been executed by Puran Chand, is null and void. A consequential relief of separation of the plaintiff's share and possession of the property was also prayed. It was asserted that Puran Chand was the owner in possession of the suit land described in Para-1 of the plaint. He had inherited the property from his father late Hiru and the nature of the property in the hands of Puran Chand was ancestral. Plaintiff and defendant No.1 are the sons of Puran Chand. They acquired a birthright in the ancestral property as per the Mitakshara School of Hindu Law. The plaintiff used to look after late Puran Chand. Plaintiff was forced to reside separately with his mother in the village of Kui. Plaintiff got the property from his mother late Smt. Bhajnu Devi. Puran Chand was under the influence of his second wife, Smt. Vidya Devi and her children. He was forced to execute the Will under their influence. The will was not attested by the witnesses as required under the law. Puran Chand was not competent to

execute the Will because the nature of the property in his hands was ancestral. Puran Chand died on 09.03.2005, and the defendant propounded a Will stated to have been executed by Puran Chand. Hence, the suit was filed to seek the relief mentioned above.

3. The suit was opposed by the defendants by filing a written statement taking preliminary objections regarding the lack of maintainability, *locus-standi* and cause of action, the plaintiff being estopped from filing the present suit by his act, conduct, omission and commission, and the suit having not been properly valued for Court fees and jurisdiction. On merits, it was admitted that Puran Chand was the owner in possession of the suit land. However, the rest of the plaintiff's claim was denied. It was asserted that the plaintiff had been residing in village Kui with his mother for more than 30 years. Plaintiff never looked after the suit land or Puran Chand. Puran Chand executed a Will in his sound disposing state of mind in favour of the defendant. The suit was filed without any basis. Hence, it was prayed that the suit be dismissed.

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

5. The learned Trial Court framed the following issues on 17.01.2006.

1. Whether Puran and his son had constituted a coparcenary inter se them, as alleged? OPP.

2. If issue No.1 is proved in affirmative, whether the plaintiff could be held entitled to 1/3rd share in the suit property, as alleged? OPP.

3. Whether Sh. Puran Chand, during his lifetime, had executed a Will dated 02.09.1996 with his free volition? OPD.

4. Whether Will dated 02.09.1996 could be held to be the result of undue influence and pressure exercised by the defendants upon Puran Chand? OPP.

5. Whether the plaintiff is estopped by his act and conduct from filing the present suit? OPD.

6. Whether suit has not been properly valued for the purposes of the court fee and jurisdiction, if so, what is the correct valuation? OPD.

7. Relief.

6. The parties were called upon to produce the evidence, and the plaintiff examined himself (PW-1). Defendant No.2 examined herself (DW1), Molak Ram (DW2), K.K. Sharma (DW3), and Bhagwan Chand (DW4).

7. The learned Trial Court held that Puran Chand had executed a Will in his sound disposing state of mind. The Will was duly registered before the Sub-Registrar. The plaintiff had

left Puran Chand and started residing with his mother. The nature of the property was not proved to be ancestral. Hence, the learned Trial Court answered Issue No.3 in the affirmative, the rest of the issues in the negative and dismissed plaintiff's suit.

8. Being aggrieved by the judgment and decree passed by the learned Trial Court, the plaintiff filed an appeal, which was decided by the learned District Judge, Kinnaur Civil Division at Rampur Bushaher (learned Appellate Court). The learned Appellate Court concurred with the findings recorded by the learned Trial Court that the execution and attestation of the Will were proved as per the law. The plaintiff was residing separately from Puran Chand, and Puran Chand had executed a Will in his sound disposing state of mind. The nature of the suit land was not proved to be ancestral. There was no infirmity in the judgment and decree passed by the learned Trial Court. Hence, the appeal was dismissed.

9. Being aggrieved by the judgment and decree passed by the learned Courts below, the plaintiff has filed the present appeal, which was admitted on the following substantial questions of law;

(2026:HHC:22046)

1. Whether the findings recorded by both the Courts below about validity of Will Exhibit DW-3/A are vitiated on account of mis-reading and mis-appreciation of pleadings of the parties as well as evidence on record?

2. Whether the deceased Sh. Puran Chand, having succeeded to the property in suit through his father, late Sh. Hiru, and since the plaintiff succeeded to the same from the date of his birth, therefore, Exhibit DW-3/A is not legal and valid.

3. Whether the property in suit being Joint Hindu and Ancestral Property, therefore, plaintiff and defendant No.1 got 1/3rd share each from date of their respective births, and they became joint owners in possession of the property in suit. Therefore, deceased Puran Chand could not execute the Will in question with respect to the entire property in suit.

4. Whether the appellant could not have been deprived of his share in the Joint Hindu Ancestral Property by his father, the late Sh. Puran Chand by executing a Will?

5. Whether Exhibit DW-3/A is not a legal and genuine document, and the same has not been prepared with the knowledge and consent of the deceased Sh. Puran Chand, and rather same is as a result of undue influence and pressure as exercised by the appellant upon him?

6. That real point of controversy having not been put to trial by framing issues, therefore, findings are liable to be set aside.

7. Whether Will Exhibit DW-3/A has not been prepared with the knowledge, consent and free Will of deceased Sh. Puran Chand and in any case, the same could not be in excess of 1/3rd share of the Late Sh. Puran Chand?

8. What is the competency of the father to execute the Will in the ancestral property which he acquired from his father, late Sh. Hiru.

(2026:HHC:22046)

10. I have heard Mr Mohinder Verma, learned counsel for the appellant and Mr Bhupinder Gupta, learned Senior Advocate, assisted by Mr Ajeet Pal Singh Jaswal, learned counsel for Respondents No.1, 3 to 5.

11. Mr Mohinder Verma, learned counsel for the appellant, submitted that the learned Courts below erred in appreciating the material on record. The nature of the property was proved to be ancestral. This fact was admitted by Defendant No.2 in her examination. Puran Chand was not competent to execute a Will regarding the ancestral property. The learned Courts below erred in ignoring this aspect. The execution of the Will is shrouded in suspicion, and learned Courts below erred in relying upon the Will. Hence, he prayed that the present appeal be allowed and the judgments and decrees passed by the learned Courts below be set aside. He relied upon the following judgments in support of his submissions:

1. K.Laxmanan vs. Thekkayil Padmini (2009) 1 SCC 354;

2. Bharpur Singh vs. Shamsher Singh (2009) 3 SCC 687;

3. S.R. Srinivasa vs. S. Padmavathamma (2010) 5 SCC 274;

4. Joseph John Peter Sandy vs. Veronica Thomas Rajkumar (2013) 3 SCC 801;

5. Surjit Singh vs. Gurdeep Singh (2025) PHHC 147454.

12. Mr Bhupinder Gupta, learned Senior Advocate, for Respondents No. 1, 3 to 5, submitted that the learned Courts below have rightly held that the nature of the property in the hands of Puran Chand was self-acquired. The plaintiff had separated from Puran Chand and was residing with his mother. He had inherited the property of his mother. The defendant was taking care of Puran Chand and his property. Puran Chand excreted a Will in his sound disposing state of mind. The present appeal does not involve any substantial question of law. Hence, he prayed that the present appeal be dismissed. He relied upon the judgment of this Court in ***Pratap Singh versus Gurdev Singh 2023 HHC 9322*** in support of his submission.

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

Substantial Question of Law Nos.2, 3 and 4:

14. These substantial questions of law are interconnected and are being taken up together for consideration and disposal.

15. Vidya Devi (DW1) admitted in her cross-examination that Puran Chand had got the property from her father. It was submitted that the nature of the suit land was proved to be ancestral, and the learned Courts below erred in holding that the nature of the property was self-acquired. This submission will not help the appellant. The plaintiff filed a copy of Mutation (Ext. PW-1/C), in which the suit land was shown to be owned by Devta Koteswar, and Mandholi and Hiru were shown to be tenants. An entry was recorded in the column of remarks that Hiru had died, and his share was to be mutated in favour of Joban Dass, Puran Chand, Mani Ram, Girja Nand and his sons. The mutation was attested on 29.12.1948. This mutation shows that the predecessor in interest of Puran Chand was recorded as a non-occupancy tenant and not an owner. It was laid down by this Court in ***Ram Asra and others vs. Chinti and others, AIR 1986 HP 55,*** that where a person acquired proprietary rights, the nature of the property in his hand would be self-acquired and not ancestral, it was observed.

(2026:HHC:22046)

> 8. As pointed out earlier above, Smt. Hazari succeeded to the estate of her husband as his widow. Her husband was an occupancy tenant of the land in dispute and acquired proprietary rights therein by operation of law. As such, it became his self-acquired property. Once it is found that the property inherited by Smt. Hazari was not ancestral; it can be safely held that the alleged custom will not apply to the land in dispute. As such, the sale made by Smt. Hazari's favour for the plaintiffs is valid, and they are entitled to the possession thereof.

16. A similar view was taken in ***Krishan Chand and another versus Kaushalya and another, 1997(2) Shimla Law Cases 259,*** wherein it was observed:

> 4. Another point raised by Shri Gupta learned Counsel for the appellants is that under the general Jaw then applicable, Phulan has no right to inherit Marusi rights of her father Shibu and by oral gift dated 19-02-1941.she was given only the life estate which did not mature into full rights under Hindu Succession Act, 1956, as such, she had no right to execute gift of the property in dispute in favour of her son, Defendant No. 2. This argument, though, looks attractive, but on examination it is found without any substance. It is not in dispute that only Marusi rights in the land in dispute were gifted by Shibu in favour of his daughter Phuian, and by the coming into force of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953, which was applicable to the area where the land in dispute is situated, her Marusi rights matured into Proprietary rights under Section 3 of the said Act. After acquiring proprietary rights, the land in dispute became self-acquired property in the name of Phulan, which she could alienate by gift to her own son, Defendant No. 2, on 18-03-1968. Legal position in this regard has been settled as held in ***Amba Prasad v. Mahaboob AH Shah, AIR 1965 SC 54; Smt. Sonawati v Sri Ram, AIR 1968 SC 466 and Bishwa Vijay Bharati v. Fakhrul Hassan, AIR 1976 SC 1485.***

17. Therefore, the nature of the suit land cannot be said to be ancestral in the hands of Puran Chand, and the plaintiff cannot claim a 1/3rd share in it from the date of his birth, and Puran Chand could not have deprived the plaintiff of his 1/3rd share. Hence, these questions of law are answered accordingly.

Substantial Question of Law Nos.1, 5, 7 and 8.

18. These substantial questions of law are interconnected and are being taken up together for disposal.

19. 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;
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> *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.
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> *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."

20. 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.
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> 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.
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> 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.

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.

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."

21. 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, 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 that 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***).

22. A similar view was taken in ***Partap Singh*** (supra), ***Bharpur Singh*** (supra), ***S.R. Srinivasa*** (supra), ***K. Laxmanan*** (supra), ***Surjit Singh*** (supra), and it is not necessary to reproduce the paragraph cited by the learned counsel for the appellant.

23. The Will (Ext. DW 3/A) mentions that the testator was an old man aged about 70 years, who was unable to look after and manage his property. He had two sons and three daughters. One son, Ram Kishan, had been residing separately for the last so many years. His son, Pankaj, looked after him and provided all the essentials of life. The testator had given a share of his mother's property to Ram Kishan and purchased the land in his name when he was aged six years. An orchard was raised upon this land. Ram Kishan has no claim on the property of Puran Chand. He divided the property amongst Vidya, Pankaj, Suman, Poonam and Seema.

24. Plaintiff Ram Kishan (PW1) admitted in his cross-examination that he had been residing in the parental home of his mother since 1980. He admitted that he had a litigation with Ajeet Singh, and he came into possession of the property after he succeeded in the litigation. He admitted that Puran Chand and Joban Dass had purchased the property.

25. These admissions corroborate the recitals of the Will that Ram Kishan was residing separately from Puran Chand, who was enjoying the property of his mother. These admissions also corroborate the recital that Puran Chand had purchased the property at Nirmand.

26. K.K. Sharma (DW3) scribed the Will. He stated that Puran Chand had come to his office on 02.09.1996 at about 9:00 A.M. and asked him to write a Will. He wrote the Will as per the wishes of Puran Chand. He read over and explained the Will to Puran Chand, who acknowledged its correctness. Bhagwan Chand and Subhash Chand had accompanied Puran Chand. Puran Chand put his signature first, and thereafter the witnesses put their signatures. He put the signatures as a scribe. Puran Chand was in a sound disposing state of mind at the time of execution of the Will, and the Will was written as per the wishes of Puran Chand. He stated in his cross-examination that Bharat Bhushan, the typist, was employed by him for the whole time. The judicial papers were demanded from Puran Chand. Puran Chand and the witnesses came to him together. The registration can be made at any time. He had issued a certificate, which was signed by Puran Chand. He denied that the signatures of Puran Chand were obtained on

the blank papers. He knew Puran Chand for about 20 years, but Puran Chand had not disclosed his wishes to execute the Will before that day. He denied that Pankaj and his mother had brought the Will, and he had put the signatures. He admitted that he had put the date 01.09.1996, but explained that this was done inadvertently.

27. Molak Ram (DW2) stated in his proof affidavit (Ext. DW2/A) that he had gone to the office of Tehsildar on 02.09.1996, where Puran Chand met him and told him that the Registrar was asking for an identifier. He identified Puran Chand before the Sub-Registrar. Puran Chand was in a sound disposing state of mind. Sub-Registrar explained the contents of the Will to Puran Chand, and Puran Chand acknowledged its correctness. He stated in his cross-examination that he had retired as Tehsildar in 1988. He was also posted in the SDM office in Rampur. Puran Chand had told him that he was executing a Will, and he should be identified before the Sub-Registrar. The Will was already written by that time. He and Puran Chand went together to the sub-Registrar. He admitted that his signatures were obtained on the Will after the Sub-Registrar had marked the Will to the Registration Clerk.

28. Bhagwan Chand (DW4) stated that he had gone to the office of K.K. Sharma on 02.09.1996 with Puran Chand and Subhash. Puran Chand stated that he wanted to execute a Will, and the witnesses were required. Puran Chand asked K.K. Sharma to write the Will. KK Sharma read over and explained the contents of the Will to Puran Chand, and Puran Chand put his signature after acknowledging their correctness. He stated in his cross-examination that he was posted as a Patwari in September 1996. A meeting was scheduled in the Tehsil office on 02.09.1996. Puran Chand met him at the bus stand. Subash had also visited the office for the meeting. They went to the office of the Advocate at about 9:00 a.m. It took about 30 minutes to write the Will. His name and the name of Subhash were not typed. He could not give any reason why their names were not typed. Puran Chand remained in the office throughout.

29. It was submitted that there are suspicious circumstances surrounding his execution of the Will. The names of the witnesses were handwritten and not typed. This was highly improbable because the names of the witnesses would have been typed had they been present in the office. This submission will not help the appellant. The testimony of

Bhagwan Chand that the Will was written in his presence and in the presence of Subhash Chand has remained unshaken. Nothing was suggested to him in his cross-examination as to why he should be deposing falsely. Therefore, the execution of the Will cannot be doubted simply because the names of Bhagwan Chand and Subhas Chand were not typed in the Will.

30. It was submitted that the Will was written on 02.09.1996, whereas the witness K.K. Sharma mentioned the date 01.09.1996. K.K. Sharma explained in his cross-examination that it happened due to a mistake. Anybody can be mistaken for the date, and an error in the date will not make his testimony doubtful.

31. It was submitted that the testimonies of the witnesses contradicted each other, which made the execution of the Will doubtful. This submission cannot be accepted. It was laid down by the Hon'ble Supreme Court in ***Meenakshiammal v. Chandrasekaran, (2005) 1 SCC 280 = 2004 SCC OnLine SC 1397*** that the suspicion must be one inherent in the transaction itself and not a suspicion that arises from a conflict of testimonies. It was observed:

> "20. In the case of ***Ryali Kameswara Rao v. Bendapudi Suryaprakasarao, AIR 1962 AP 178,*** the Court, while discussing the provisions of Section

> 63 of the Succession Act, 1925, has held that the suspicion alleged must be one inherent in the transaction itself and not the doubt that may arise from a conflict of testimony which becomes apparent on an investigation of the transaction. That suspicious circumstances cannot be defined precisely. They cannot be enumerated exhaustively. They must depend upon the facts of each case. When a question arises as to whether a will is genuine or forged, normally, the fact that nothing can be said against the reasonable nature of its provisions will be a strong and material element in favour of the probabilities of the will. Whether a will has been executed by the testator in a sound and disposing state of mind is purely a question of fact, which will have to be decided in each case on the circumstances disclosed and the nature and quality of the evidence adduced. When the will is alleged to have been executed under undue influence, the onus of proving undue influence is upon the person making such allegation, and the mere presence of motive and opportunity is not enough."

32. Similarly, it was held by this Court in ***Shakuntala Devi v. Savitri Devi, 1996 SCC OnLine HP 12= AIR 1997 HP 43*** that contradictions in the statements of witnesses do not amount to suspicious circumstances. It was held:

> "23. The District Judge has relied heavily on the contradictions appearing in the depositions of DW.1 Satya Devi, DW. 2 Keshav Ram, DW 3 Sher Singh and DW.4 Amar Singh with regard to the execution of the Will. Such contradictions, which are of a minor nature, will not be a suspicious circumstance. The memory fades away with the passage of time, and when evidence is being given after a lapse of six years, the witnesses cannot be expected to make a parrot-like statement on each and every minor aspect of the cast Therefore, the District Judge has erred in relying upon such minor

> contradictions coming in the statements of various witnesses."

33. Therefore, the contradictions cannot be used to discard the Will.

34. It was submitted that the marginal witnesses belonged to different villages, and this is a suspicious circumstance. This submission cannot be accepted. It was laid down by this Court in ***Naudha alias Budhia Versus Sudershan Singh 1998 (1) S.L.C. 388*** that the witnesses belonging to a different village are not a suspicious circumstance to invalidate the execution of the Will. It was observed:

> "12. In ***Ishwar Dutt v. Smt. Leela Devi and others, 1997 (1) SLJ 684,*** a question arose whether the joining of attesting witnesses who did not belong to the village of the testator would be a suspicious circumstance. It was held that the mere fact that attesting witnesses are not from the village of the testator would not be a suspicious circumstance.
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> 13. The High Court of Punjab and Haryana, also in ***Tara Singh v. Smt Shanti and others, 1988 PLJ 77,*** has held that it is not by itself sufficient to disbelieve the witnesses or create any suspicion if the attesting witnesses of the will are not from the village of the testator."

35. Similarly, it was held in ***Jagdish v. Shibi Devi, 2019 SCC OnLine HP 1008 = 2019 (3) Civil Court Cases 564***, that a Will cannot be doubted on the ground that the

attesting witnesses did not belong to the village of the testator.

36. Both the learned Courts below have concurrently held that the execution and due attestation of the Will were properly proved. This is a pure finding of fact. 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 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).

37. 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."

38. 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."

39. 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.
>
> **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."

40. 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 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."

41. 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 finding of facts 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."

42. 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 Mallisserilllath M.N. [Taliparamba Education Society v. Moothedath Mallisserilllath 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."

43. A similar view was taken in ***Chandrabhan (deceased) through LRs & ors.*** (supra) wherein it was observed at page 210:

> **"32.3.** The general rule is that the High Court will not interfere with findings of fact arrived at by the courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where (*i*) the courts below have ignored material evidence or acted on no evidence; (*ii*) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (*iii*) the courts have wrongly cast the burden of proof. When we refer to "decision based on no evidence", it not only refers to cases where there is a total dearth of evidence, but also refers to any case where the evidence, taken as a whole, is not reasonably capable of supporting the finding."

44. Thus, it is not permissible for this Court to re-appreciate the evidence when no perversity has been shown. Since, in the present case, the learned courts below have recorded their findings on the evidence, there is no perversity in their judgments.

45. The plaintiff had asserted that Puran Chand was under the influence of Vidya Devi, but this was not proved. Hence, the judgment in **Joseph John Peter Sandy** (supra) does not apply to the present case.

46. Thus, the learned Courts below had rightly held that the Will was validly executed by Puran Chand in his sound disposing state of mind; there is no misappreciation or misreading of the evidence, and the plaintiff failed to establish his case of undue offence of pressure; therefore, these substantial questions of law are answered accordingly.

Substantial question of law No.6

47. The learned Trial Court had framed the issues in the presence of learned counsel for the parties. It was specifically mentioned in the order sheet dated 17.01.2006 that the issues were read over and explained to the parties, and no other issue arose not pressed. It was laid down by the Hon'ble Supreme Court in ***Wali Singh v. Sohan Singh, (1953) 2 SCC 431: 1953 SCC OnLine SC 137: AIR 1954 SC 263*** that when the counsel says that no other point in dispute remains, the issue is deemed to have been given up and cannot be agitated subsequently. It was observed:

> **"9.**But we notice that the above aspect has not at all been raised in the courts below. There is no mention of it in the grounds of appeal to the High Court or in the case filed for the respondent in this Court. The abovementioned facts were relied on in the courts below only to make out pleas of acquiescence, estoppel or ratification, which have been found against. Besides, it appears from the record that when the issues were framed by the Trial Court, it was expressly recorded as

follows in a statement signed by the counsel for both parties.

> "There is no other point in the dispute or any issue to be framed. We give it up if a mention of it is made in the pleadings."

In these circumstances, it is too late to allow this point to be raised at this stage. Besides, the plaintiff has a subsisting title, and his legal right as a three-fourth sharer has been denied at least in these proceedings. There is, therefore, no purpose served by dismissing this suit and by driving the parties to another litigation."

48. Even this Court held in ***Roshan Lal vs. Sumati Prakash, Latest HLJ 2005(2) 1380 (HPHC): 2006(1) SLJ 177*** that the parties cannot agitate the non-framing of issues for the first time in appeal when the matter has been decided against them. It was observed:

> "8. The Next question to be considered is whether a fresh issue was required to be framed in this case or not. The original issue was framed in the year 1994. The parties merrily proceeded with the case and led evidence till the year 2001 when the arguments were heard. During this entire period, no objection was raised with regard to the issues framed. Even when the application for framing additional issues was filed in the year 2001 by the plaintiffs. No fresh issue was sought to be framed with regard to the right of easement or the customary right to repair the wall. For eight long years, the suit proceeded without the parties complaining that appropriate issues had not been framed.
>
> 9. No doubt, issue No.1, which is an omnibus issue, is not happily worded. Whoever, the parties were well aware of their respective case and were fully aware of the questions and issues involved in the case. They have not been surprised that they have not been prejudiced by the non-framing of the issue. They have led evidence on both the questions of easement as well

as the customary rights. There is no complaint that they were prevented from leading such evidence because no issue has been framed in this regard.

10. It is no doubt true that primarily, it is the duty of the Court to frame the issues. As observed above, issue No.1 is not happily framed. However, the parties should be vigilant and should raise objections at the earliest. They cannot permit the proceedings to go on for years and end without raising any objections, and then, after the matter is decided against one party, they raise the point that a particular issue should have been framed.

11. The Apex Court in ***Nedunuri Kameshwaramma v. Sampati Subba Rao, AIR 1968 SC 884***, considered the effect of non-framing of issues and held as follows:-

> "No doubt, no issue was framed, and the one, which was framed, could have been more elaborate, but since the parties went to trial fully knowing the rival case and led all the evidence not only in support of their contentions but in refutation of those of the other side, it cannot be said that the absence of an issue was fatal to the case, or that there was that mis-trial which vitiates proceedings. We are, therefore, of the opinion that the suit could not be dismissed on this narrow ground, and also that there is no need for a remit, as the evidence which has been led in the case is sufficient to reach the right conclusion."

12. This Court in ***Khem Chand v. Hari Saran and others, AIR 1988 HP 10***, held as follows:-

> "The mere omission, on the part of a Trial Court to frame an issue on a matter in controversy between the parties cannot be regarded as fatal unless, upon examination of the record, it is found that the failure to frame the issue had resulted in the parties having gone to the trial without knowing that the said question was in issue between them and having, therefore, failed to adduce evidence on that point.

13. Where the lower appellate Court ordered de novo trial on all the issues which were duly framed and on

> which the parties had adduced evidence and gone to trial and on which findings were also recorded by the Trial Court merely because there was a failure on the part of the Trial Court to frame one of the issues and also an omission on the part of the parties to lead evidence relatable to the said issue, the order of remand was illegal and hence set aside."
>
> 14. The law, as is apparent from the decisions cited above, is well settled that where the parties go to trial with the knowledge that a particular question is in issue, and adduce evidence on the issue, then the mere fact that no specific issue has been framed is not a sufficient ground to set aside the judgment. In the present case, I also find that the parties were well aware of each other's cases. The evidence by both sides has been led on all issues, including the most important controversies with regard to the easementary and customary rights of the plaintiff to use the defendant's land to repair their shops. Both parties were fully aware that there were contentions between them. It is true that the issues framed are not happily worded. The Court has framed omnibus issues covering a lot of points. Issues are framed were very widely worded and definitely covered the disputes, which the defendant has raised and which are the subject matter of the issues re-cast/freshly framed by the learned lower Appellate Court."

49. In the present case, all the issues that were required to be framed have been framed, and it cannot be said that the point in controversy was not put to the parties issue-wise. Hence, this substantial question of law does not arise.

Final Order:

50. No other point was urged.

51. In view of the above, the present appeal fails and is dismissed. The records of learned Courts below be sent back forthwith.

(Rakesh Kainthla)
Judge

15th June, 2026
(ritu)