IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 387 of 2008
Reserved on: 19.3.2026
Date of Decision: 12.05.2026

Brahma Ram ...Appellant

Versus

Kamla Devi & ors. ...Respondents

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?[1] Yes.

For the Appellant : Mr G.R. Palsra, Advocate.

For the Respondents : Mr Lovneesh Kanwar, Senior Advocate, with Mr Tek Chand, Advocate.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment and decree dated 19.5.2008, passed by the learned Additional District Judge, Mandi, H.P. (learned Appellate Court) vide which the judgment and decree dated 18.4.1997, passed by the learned Sub Judge First Class, Sarkaghat, District Mandi, HP, (learned trial Court) were upheld. (*The parties shall hereinafter be referred*

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

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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 seeking a declaration that the Will dated 22.4.1991 is invalid and not binding on the plaintiff. A consequential relief of a permanent prohibitory injunction for restraining defendant No.1 from interfering with the suit land, described in para no. 1 of the plaint, was also sought. It was asserted that Puran Chand was the owner-in-possession of the suit land. Plaintiff is Puran Chand's sister, who became the owner in possession of the suit land after his death. Mutation No.144, dated 7.5.1991, was attested in her favour. Defendant No.1 produced a forged and fictitious Will stated to have been executed on 22.4.1991, whereas Puran Chand had died on 21.4.1991. The suit land is ancestral, and Puran Chand was not competent to execute a Will regarding it. Hence, the suit was filed for seeking the relief mentioned above.

3. The suit was opposed by defendant No.1 by filing a written statement taking preliminary objections regarding the lack of *locus standi* and the plaintiff being estopped by her act

and conduct to file the present suit. The contents of the plaint were admitted regarding the ownership of Puran Chand and the description of the land. It was asserted that the plaintiff never resided in Village Sherpur or Chama Naun. The mutations were set aside by the Divisional Commissioner. Puran Chand executed a registered Will in favour of the defendant on 22.4.1991. He died on 23.4.1991 in CHC, Ratti. A wrong entry was recorded in the Panchayat record regarding Puran Chand's death on 21.4.1991. The defendant performed the death ceremonies and also went to Haridwar. The Mutations No. 135 and 144 were attested clandestinely. The suit was filed without any basis; hence, it was prayed that the suit be dismissed.

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

5. Learned trial Court framed the following issues on 31.10.1996: -

1. Whether the plaintiff is owner-in-possession of the property owned and possessed by deceased Puran Chand, as alleged? OPP.
2. Whether, in the alternative, the plaintiff is entitled for possession? OPP.
3. Whether deceased Puran Chand has executed a valid Will dated 22.4.1991 in favour of the defendant? OPD.

4. Whether the plaintiff has no locus standi to file the present suit? OPD.
5. Whether the plaintiff is estopped to file the suit by her act and conduct? OPD.
7. Relief.

6. Parties were called upon to produce the evidence, and the plaintiff examined Balwant Singh (PW1), Parma Nand (PW2), and Narain Singh (PW3). The defendants examined Inder Singh (DW1), defendant No.1 (DW2), Pratap Singh (DW3), Roshan Lal (DW4), Ghanshyam (DW5), Puran Chand (DW6) and Darshan Singh (DW7).

7. The learned Trial Court held that the execution and attestation of the Will propounded by the defendant was shrouded in suspicious circumstances. The beneficiary had actively participated in the execution of the Will. The testator was moved from CHC, Ratti, to Mandi and was brought back. He breathed his last on 21.4.1991. The date of death was manipulated to 23.4.1991. It was difficult to believe that a person undergoing treatment at CHC, Ratti, would visit Mandi for the execution of the Will and thereafter would die within less than 24 hours of the execution. The Will propounded by the defendant was not a genuine document. Hence learned Trial Court

answered Issues No.1 and 2 in the affirmative, issues No.3 to 5 in negative and decreed the suit.

8. Being aggrieved by the judgment and decree passed by the learned Trial Court, the defendant filed an appeal, which was decided by the learned Additional District Judge, Mandi, H.P. (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 shrouded in suspicion. The death certificate (Ex.DW3/A) showed that Puran Chand had died on 21.4.1991. The entry was manipulated in the hospital record regarding Puran Chand's death. It was difficult to believe that a person who was admitted to the hospital would move alone to Mandi for the execution of the Will and would die in the hospital within 24 hours of the examination. Ghanshyam, the real brother-in-law of the defendant Brahma Ram, had actively participated in the execution of the Will. Pratap Singh (DW3) is the resident of the same village to which Ghanshyam, Advocate, belongs. The defendant had failed to remove the suspicious circumstances surrounding the execution of the Will. Hence, the appeal filed by the defendant was dismissed.

9. Being aggrieved by the judgment and decree passed by the learned Courts below, the defendant has filed the present appeal, which was admitted on the following substantial questions of law on 13.8.2008: -

1. Whether both the courts below have misread, misinterpreted and misconstrued the oral as well as documentary evidence of the parties, especially document Ext. DW3/A Will dated 22.4.1991, document Ext. PW3/A, death certificate issued by the Secretary, Panchayat concerned, Ext. PW1/A death certificate of Puran issued by the hospital authority, statements of DWI to DW7, and also the law relating to execution and attestation of a Will?
2. Whether a scribe and identifier can be one person?
3. Whether the courts below have committed a jurisdictional error while deciding the issues together and not by giving separate issue-wise findings, which have materially prejudiced the case of the appellant?
4. Whether adverse inference should have been taken against the plaintiffs by not appearing as a witness?
5. Whether the death entry contained in document PW1/A is admissible under Section 35 of the Indian Evidence Act?

10. I have heard Mr G.R. Palsra, learned counsel for the appellant/ defendant and Mr Lovneesh Kanwar, learned Senior Advocate, assisted by Mr Tek Chand, learned counsel for the respondent.

11. Mr G.R. Palsra, learned counsel for the appellant/defendant, submitted that the learned Courts below

erred in appreciating the evidence on record. It was duly proved by the statements of defendants' witnesses that Puran Chand had died on 23.4.1991, and the conclusion drawn by the learned Courts below that he had died on 21.4.1991 is incorrect. The defendant's witnesses proved the due execution and attestation of the Will. The learned courts below erred in rejecting the testimonies. Therefore, he prayed that the present appeal be allowed and the judgments and decrees passed by the learned Courts below be set aside.

12. Mr Lovneesh Kanwar, learned Senior Advocate for the respondent, submitted that the learned Courts below have consistently held that the execution and attestation of the Will were shrouded in suspicious circumstances. It was duly proved by the statement of Narain Singh (PW3), Secretary, Gram Panchayat, Kamlah, that Puran Chand had died on 21.4.1991. Therefore, the execution of the Will on 22.4.1991 was not possible. The learned Courts below had rightly held that Puran Chand could not visit Mandi alone for the execution of the Will. The beneficiary had taken an active part in the execution of the Will. Pratap Singh (DW3) did not say that he had identified Puran Chand. No prejudice was caused to any party by clubbing the

issues together. The non-examination of the plaintiff was not material because her relationship with Puran Chand was not disputed. Therefore, he prayed that the present appeal be dismissed.

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

Substantial Question of Law No.1:

14. 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."

15. 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.

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."

16. 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 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***).

17. Brahma Ram (DW2) stated in his examination-in-chief that Puran Chand was admitted to the hospital at the time of the execution of the Will. He had taken leave from the doctor, and he died on 23.4.1991. Dr Inder Singh, Senior Medical Officer, stated that Puran Chand had died on 23.4.1991 at 10:10 PM. Brahma Ram had filed an application on 22.4.1991 for taking Puran Chand to the Court. He stated in his cross-examination that Kaura Sharma, wife of Brahma Ram, also used to work in the hospital as a Female Supervisor. Puran Chand was normal at the time of filing the application.

18. The statement of this witness is contrary to the statement of Brahma Ram, who had stated that the application was filed by Puran Chand. The record was not requisitioned from the hospital to resolve the conflict in the oral testimonies. This was necessary because, as per the statement of Narain Singh (DW3) and the record brought by him, Puran Chand had died on 21.4.1991. He specifically stated in his cross-examination that he had complete knowledge regarding the death of Puran Chand on

21.4.1991 because he resided adjacent to the house of this witness. Even as per the hospital record, Puran Chand had died on 23.4.1991. Thus, the hospital record was necessary to establish the circumstances in which the application was filed.

19. Darshan Singh Kalia (DW7) stated that he had registered the Will (Ex.DW3/A) at the instance of Puran Chand and on the identification of Pratap Singh, Advocate. Puran Chand put his thumb mark, and the witnesses put their signatures. He stated in his cross-examination that he had not known Puran Chand personally and could not say that Puran Chand was admitted to the hospital. The scribe and identifier of the Will were the same person. Usually, Scribe is not taken to be an identifier, but since he was an Advocate, there was no ground for suspicion.

20. The statement of this witness shows that he did not know Puran Chand personally and had relied upon the identification made by the Scribe.

21. The Will (Ex.DW3/A) mentions the name of the executor as Puran Chand alias Jogi, with the words ‘alias Jogi’ scored off. No person stated that Puran Chand was also known as

Jogi. If Will was written as per the dictation of Puran Chand, there was no reason to write 'alias Jogi'. This aspect was not explained, and it makes the identification of the person executing the Will suspicious.

22. Ghanshyam (DW5) stated that the Will was written by Pratap Chand, Advocate, at the instance of Puran Chand, which was read over and explained to Puran Chand. Puran Chand put his signature. He and Roshan put their signatures. The Will was presented before the Sub Registrar for registration. Sub Registrar read over and explained the Will to Puran Chand, who acknowledged its correctness. He stated in his cross-examination that he is the real brother-in-law of defendant Brahma Ram. Pratap Singh belongs to his village. Puran Chand was walking properly. Pratap Chand belongs to his village. He denied that Puran Chand was ill and had died on 21.4.1991.

23. Learned Courts below had rightly held that he is a close relative of the beneficiary. The Will was scribed by Pratap Singh, who is a resident of the same village as this witness.

24. The death certificate (Ex.PW1/A) mentions the cause of death as cardio-respiratory failure. The period between the

commencement of the deceased's illness and death was mentioned as 15 days. This certificate falsifies the defendant’s version that the deceased was hale and hearty and, in a position, to move to Mandi from Ratti. The admission of the deceased to the hospital with a complaint of cardio-respiratory failure 15 days before his death shows that his condition was critical, and he could not have moved without the life-support system. This certificate falsifies the statement of Ghanshyam (DW5) that the deceased was healthy at the time of execution of the Will.

25. Pratap Singh, Advocate, (DW3) stated that Puran Chand came to him on 22.4.1991 and expressed his desire to execute a Will. He wrote the Will (Ex. PW3/A) as per the wishes of Puran Chand. He read over and explained the contents of the Will to Puran Chand, who acknowledged them to be correct. Roshan Lal and Ghanshyam, Advocate, were also present at the time of the execution of the Will. Puran Chand acknowledged the correctness of the Will and put his thumb impression, and thereafter, the witnesses put their signatures. He stated in his cross-examination that he had written 2-3 Wills. He knew Puran Chand for 5-6 years. He was on visiting terms with the house of Puran Chand. He knew Brahma Ram, and he was on a visiting

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term to the house of Brahma Ram, where he started knowing Puran Chand. Ghanshyam was also a resident of his village. Puran Chand had told that he was admitted to the hospital but had taken leave. Puran Chand died on 23.4.1991.

26. The statement of this witness shows that he is known to Brahma Ram, the beneficiary. He became acquainted with Puran Chand because of his acquaintance with Brahma Ram. He claimed that Puran Chand had died on 23.4.1991. He was not closely known to Puran Chand and had no reason to remember the date of death of Puran Chand. His acquaintance with Brahma Ram and the fact that he remembered the date of death of Puran Chand make it difficult to rely upon his testimony, and learned Courts below had rightly discarded his statement.

27. Pratap Singh (DW3) is an Advocate. He was told by Puran Chand that he was admitted to the hospital and had taken leave from the hospital. He was not alarmed by the fact that a person who was admitted to the hospital had left it solely for the execution of the Will, when the patient could have easily summoned the scribe, the attesting witnesses and the Sub

Registrar to the hospital. All these circumstances make the testimony of this witness doubtful.

28. Roshan Lal (DW4) stated that Puran Chand met him on 22nd April and told him that he wanted to execute a Will. He asked him to accompany him to the Court. The Will was dictated to the Advocate. It was read over and explained to Puran Chand. Puran Chand put his thumb impression. Ghanshyam was also present at the time. Puran Chand put his signature, then corrected to say that Puran Chand put his thumb impression. He stated in his cross-examination that Puran Chand had died on 23.4.1991. He was not aware of the cause of the death. The distance between his house and Sherpur is about 8-10 kms. Puran Chand had disclosed that he was coming from Ratti. There was no other person with Puran Chand. He was not aware that Puran Chand had died on 21.4.1991, and his dead body was carried in a tractor on 22.4.1991.

29. The statement of this witness is highly unsatisfactory. He is a resident of a different village and has not assigned any reason why Puran Chand should associate him as a witness. He could not say it positively that Puran Chand had died

on 21.4.1991, and his dead body was carried in a tractor on 22.4.1991. He would have denied this fact specifically because, according to him, Puran Chand was alive on 22.4.1991. This evasive denial makes it difficult to rely on his testimony that Puran Chand had died on 23.4.1991 or that Puran Chand had got the Will executed in his presence.

30. The Will mentions that Brahma Ram was taking care of the deceased, who wanted to give something to Brahma Ram. Roshan Lal (DW4) stated in his cross-examination that the deceased used to take care of himself. He is a witness produced by the defendant, and his statement in the cross-examination that Puran Chand was taking care of himself would make the recital in the Will doubtful that the defendant Brahma Ram was taking care of Puran Chand.

31. Puran Chand (DW6) stated that Brahma Ram was taking care of Puran Chand, and he was managing his property. He stated in his cross-examination that Puran Chand was residing in the village of Chama Noun. Sometimes Puran Chand used to cook food for himself, and sometimes the wife of Brahma Ram used to cook food for him.

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32. The statement of this witness was rightly discarded by the learned Courts below. He is a resident of a different village. He claimed that Puran Chand used to cook food for himself, and sometimes the wife of Brahma Ram used to cook food for him, which shows that the recital in the Will that Brahma Ram was taking care of the deceased is not correct.

33. A heavy reliance was placed upon the death certificate (Ex.PW1/A) in which the date of death was mentioned as 23.4.1991. Dr. Inder Singh did not produce any record of the treatment of Puran Chand. He stated that the deceased had a chest infection, which is contrary to the contents of the certificate that the deceased was admitted with a complaint of cardio-respiratory failure. Therefore, the learned Courts below had rightly discarded the statement of Dr Inder Singh and the certificate.

34. The learned Courts below had rightly held that the Will was shrouded in suspicious circumstances. This was a pure finding of fact and cannot be interfered with in the absence of 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).

35. 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.
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> 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.
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> 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."

36. 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."

37. 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."

38. 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."

39. 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."

40. 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."

41. Thus, it is not permissible for this Court to reappreciate the evidence when no perversity has been shown.

Since, in the present case, the learned courts below have recorded their findings on the evidence, it is not permissible to interfere with it. Hence, this substantial question is answered accordingly.

Substantial Question of Law No.2:

42. No provision was brought to the notice of this Court that prohibits the scribe from identifying the testator. Reference was made to the statement of Darshan Singh Kalia (DW7), who stated in his cross-examination that usually the scribe is not treated as an identifier. However, this statement is not supported by any provision of law and cannot be used to conclude that the scribe and identifier cannot be the same person. Hence, this substantial question of law is answered accordingly.

Substantial Question of Law No.3:

43. Learned Trial Court discussed issues No.1 to 3 together, which related to the ownership and possession of the plaintiff and the execution of the Will by Puran Chand. The ownership of the plaintiff was dependent upon the proof of the Will because if the Will was proved, the plaintiff could not have

been the owner of the suit land, as her title would have been defeated by the Will. Therefore, these issues were connected, and the learned Trial Court cannot be faulted for taking them together. It was laid down by this Court in ***Hiru vs. Mansa Ram 2003 (1) Curr. L.J. 133*** that the judgment of the court is not bad simply because issues were taken together for discussion. It was observed:

> "8. A bare perusal of this rule shows that the Court has to give a decision on each of the issues along with reasons thereof unless the findings upon any one or more of the issues are sufficient for the decision of the suit. There is nothing in the language of Rule 5 of Order 20 which indicates that two or more issues cannot be clubbed together for discussion and findings in the context of the evidence on record. What is required by rule 5 is that the Court has to give its findings on all the issues unless the findings on any one or more of the issues are sufficient for the decision of the suit. The provision is aimed at curbing unnecessary protraction of litigation. The true import of rule 5 of order 20, as pointed out by a Division Bench of Patna High Court in ***Ram Ranbijaya Prasad Singh v. Sukar Ahir, AIR 1947 (34) Patna 334***, is that the Courts of fact must decide all the issues of fact which arise between the parties so that if the appellate court takes a different view, the parties are saved from further harassment. However, clubbing most of the issues and writing a conclusion at the end of the judgment would not contravene rule 5 of order 20 of the Code, nor would it vitiate the findings for that reason.
>
> 9. It is true that sometimes Judicial Officers as a convenience club together all or most of the issues and write a judgment though not often without applying their

> minds on a particular matter that has to be decided under each issue and then conclusions on several issues are given at the end of the judgment but even such a judgment cannot be said to contravene the provisions of rule 5 of Order 20 of the Code which requires no more than that reasons should be given for the findings in respect of each issue. Such a judgment may be open to criticisms, but it cannot be said to be no judgment in the eyes of the law."

44. This position was reiterated in ***Jagat Singh vs. Shanti Swaroop 2007 HLJ 192,*** wherein it was held:

> "13. Now coming to the question with regard to the discussion and decision by the learned trial court of issues Nos. 1, 3 and 6 together. As far as Issues No.1 and 3 are concerned, I am of the opinion that there was no error committed by the trial court in discussing or deciding these issues together because both issues overlap to some extent. Though normally, the trial court should endeavour to decide every issue separately, there is no bar to two or more issues being decided together. Issues that overlap or where the same evidence has to be considered, and where points to be decided are similar in nature, can always be decided together. In the present case, I find that issue No.1 is with regard to the entitlement of the plaintiff to claim possession and issue No.3 is whether he was estopped by his acts, conduct and acquiescence from claiming possession. These could have been conveniently decided together by the learned trial court."

45. In the present case, the issues were related to each other and would have involved the repetition of the evidence; therefore, the learned Trial Court was justified in discussing the issues together. No prejudice has been shown to the parties by

the discussion of the issues together. Hence, the substantial question of law is answered in the negative.

Substantial Question of Law No.4:

46. The plaintiff asserted in para No. 2 of the plaint that she is the sister of the deceased Puran Chand. This plea was not specifically denied in the written statement. It was stated in para 2 of the written statement that the plaintiff never resided or visited Sherpur or Chama Naun during the defendant's lifetime, and the question of her being the owner in possession does not arise at all. It was not stated that the plaintiff is not a sister of the deceased. It was laid down by the Hon'ble Supreme Court in **from** ***Badat and Co. v. East India Trading Co., 1963 SCC OnLine SC 9 : (1964) 4 SCR 19 : (1965) 1 SCJ 747: AIR 1964 SC 538*** that a fact not denied specifically amounts to an admission and does not require any proof. It was observed:

> "**11.** Order 7 of the Code of Civil Procedure prescribes, among others, that the plaintiff shall give in the plaint the facts constituting the cause of action and when it arose, and the facts showing that the court has jurisdiction. The object is to enable the defendant to ascertain from the plaint the necessary facts so that he may admit or deny them. Order 8 provides for the filling of a written statement, the particulars to be contained therein and the manner of doing so; Rules 3, 4 and 5 thereof are relevant to the present enquiry, and they read:

> "*Order 8 Rule 3.* It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages.
>
> *Rule 4*. Where a defendant denies an allegation of fact in the plaint, he must not do so evasively, but answer the point of substance. Thus, if it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances.
>
> Rule 5. Every allegation of fact in the plaint, if not denied specifically, or by necessary implication or stated to be not admitted, the pleading of the defendant shall be taken to be admitted except as against a person under disability.
>
> Provided that the court may, in its discretion, require any fact so admitted to be proved otherwise than by such admission."

These three rules form an integrated code dealing with the manner in which allegations of fact in the plaint should be traversed and the legal consequences flowing from its non-compliance. The written statement must deal specifically with each allegation of fact in the plaint, and when a defendant denies any such fact, he must not do so evasively, but answer the point of substance. If his denial of a fact is not specific but evasive, the said fact shall be taken to be admitted. In such an event, the admission itself being proof, no other proof is necessary. The first para of Rule 5 is a reproduction of Order 19, Rule 13 of the English rules made under the Judicature Acts. But in mofussil Courts in India, where pleadings were not precisely drawn, it was found in practice that if they were strictly construed in terms of the said provisions, grave

injustice would be done to parties with genuine claims. To do justice between those parties, for which Courts are intended, the rigour of Rule 5 has been modified by the introduction of the proviso thereto. Under that proviso, the court may, in its discretion, require any fact so admitted to be proved otherwise than by such admission. In the matter of mofussil pleadings, Courts, presumably replying upon the said proviso, tolerated more laxity in the pleadings in the interest of justice. But on the original side of the Bombay High Court, we are told, the pleadings are drafted by trained lawyers, bestowing serious thought and precision. In construing such pleadings, the proviso can be invoked only in exceptional circumstances to prevent obvious injustice to a party or to relieve him from the results of an accidental slip or omission, but not to help a party who designedly made vague denials and thereafter sought to rely upon them for non-suiting the plaintiff. The discretion under the proviso must be exercised by a court having regard to the justice of a cause with particular reference to the nature of the parties, the standard of drafting obtaining in a locality, and the traditions and conventions of a court wherein such pleadings are filed. In this context the decision this context the decision in ***Tildesley v. Harper [(1878) LR 7 Ch D 403]*** will be useful. There, in an action against a lessee to set aside the lease granted under a power, the statement of claim stated that the donee of the power had received from the lessee a certain sum as a bribe, and stated the circumstances; the statement of defence denied that that sum had been given, and denied each circumstance, but contained no general denial of a bribe having been given. The court held, under rules corresponding to the aforesaid rules of the Code of Civil Procedure, that the giving of the bribe was not sufficiently denied and therefore it must be deemed to have been admitted. Fry, J. posed the question thus: What is the point of substance in the allegations in the statement of claim? and answered it as follows:

> "The point of substance is undoubtedly that a bribe was given by Anderson to Tildesley, and that point of substance is nowhere met ... no fair and substantial answer is, in my opinion, given to the allegation of substance, namely, that there was a bribe. In my opinion it is of the highest importance that this rule of pleading should be adhered to strictly, and that the court should require the defendant, when putting in his statement of defence, and the plaintiff, when replying to the allegations of the defendant, to state the point of substance, and not to give formal denials of the allegations contained in the previous pleadings without stating the circumstances. As far as I am concerned, I mean to give the fullest effect to that rule. I am convinced that it is one of the highest benefits to suitors in the court".

It is true that in England the concerned rule is inflexible and that there is no proviso to it as is found in the Code of Civil Procedure. But there is no reason why, in Bombay, on the original side of the High Court, the same precision in pleadings shall not be insisted upon except in exceptional circumstances. The Bombay High Court, ***in Laxminarayan v. Chimniram Girdhari Lal [(1917) ILR 41 Bom 89; 92],*** construed the said provisions and applied them to the pleadings in a suit filed in the court of the Joint Subordinate Judge of Ahmednagar. There, the plaintiffs sued to recover a sum of money on an account stated. For the purpose of saving limitation, they relied in their plaint upon a letter sent by the defendant firm. The defendants, in their written statement, stated that the plaintiff's suit was not in time and that "the suit is not saved by the letter put in from the bar of limitation". The question was raised whether, in that state of pleadings, the letter could be taken as admitted between the parties and, therefore, unnecessary to be proved. Batchelor, Ag., C.J., after noticing the said provisions, observed:

> "It appears to us that on a fair reading of para 6, its meaning is that though the letter put in by the plaintiffs is not denied, the defendants contend that

> for one reason or another its effect is not to save the suit from the bar of limitation. We think, therefore, that ... the letter, Exhibit 33, must be accepted as admitted between the parties, and therefore, unnecessary to be proved."
>
> The written statement before the High Court, in that case, was one filed in a court in the mofussil; yet, the Bombay High Court applied the Rule and held that the letter need not be proved *aliunde* as it must be deemed to have been admitted in spite of the vague denial in the written statement. I, therefore, hold that the pleadings on the original side of the Bombay High Court should also be strictly construed, having regard to the provisions of Rules 3, 4 and 5 of Order 8 of the Code of Civil Procedure, unless there are circumstances wherein a court thinks fit to exercise its discretion under the proviso to Rule 5 of Order 8.

47. A similar view was taken in ***Lohia Properties (P) Ltd. v. Atmaram Kumar, (1993) 4 SCC 6***

48. The defendant stated in his cross-examination that he was not aware that Puran Chand had two sisters, Mahanti and Dhanni Devi. He volunteered to say that he had not seen them in the village during the last 50 years. Therefore, the defendant has not specifically denied the fact that the plaintiff is the sister of the deceased. The plaintiff claimed the title based on a relationship, and the defendant claimed the title based on the Will. Therefore, the burden was upon the defendant to prove the execution of the Will, and the plaintiff would have succeeded

based on the relationship. Thus, no adverse inference can be drawn against the plaintiff for non-appearance in the Court. An adverse inference can only be drawn when there is no evidence on record[2]. It was held in ***Rattan Dev v. Pasam Devi*, *(2002) 7 SCC 441: 2002 SCC OnLine SC 868***, that when other material existed on record, it is not possible to draw an adverse inference. It was observed at page 443:

> **5.** Learned counsel for the respondent has placed reliance on ***Iswar Bhai C. Patel v. Harihar Behera [(1999) 3 SCC 457]*** wherein this Court has emphasised that withholding of the plaintiff himself from the witness box and thereby denying the defendant an opportunity for cross-examination of himself results in an adverse inference being drawn against the plaintiff. That proposition of law is undoubtable. However, as we have already said, that is a fact to be kept in view and taken into consideration by the appellate court while appreciating other oral and documentary evidence available on record. Maybe, that from other evidence — oral and documentary — produced by the plaintiff, or otherwise brought on record, the plaintiff has been able to discharge the onus which lay on him, and, subject to the court forming that opinion, a mere abstention of the plaintiff himself from the witness box may pale into insignificance."

49. This Court also took a similar view in ***Bhag Singh v. Surinder Gandhi*, *2007 SCC OnLine HP 166 : (2007) 1 Latest HLJ 397*** and observed at page 900:

[2] Pandurang Jivaji Apte v. Ramchandra Gangadhar Ashtekar, (1981) 4 SCC 569

> "**11.** Drawl of adverse inference by the first Appellate Court against the appellants/plaintiffs for non-appearance of any one of them as a witness is also not justified. The case of the appellants/plaintiffs was based on documentary evidence, i.e. decree passed in the earlier suit, petition filed for execution of the said decree, warrant of possession and the report of the Kanungo, who executed the warrant. All these documents were produced by the appellants/plaintiffs. Oral testimony of the plaintiffs with regard to the filing of the suit for redemption and the delivery of possession in execution of the decree passed in that suit would have been meaningless and just a repetition of the contents of the aforesaid documents."

50. In the present case, the relationship was not specifically disputed; therefore, the question of adverse inference would not arise. Hence, this substantial question of law is answered accordingly.

Substantial Question of Law No.5:

51. The entry (Ex.PW1/A) was made by a public official in the discharge of his official duties and is *per se* admissible under Section 35 of the Indian Evidence Act. Hence, this substantial question of law is answered accordingly.

Final Order:

52. Therefore, there is no infirmity in the judgments and decree passed by the learned Courts below.

53. Hence, the present appeal fails, and it is dismissed.

54. Pending application(s), if any, also stand(s) disposed of.

55. Records of the learned Courts below be sent down forthwith.

(Rakesh Kainthla)
Judge

12th May, 2026
(Chander)