

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 356 of 2009

Reserved on: 11.03.2026

Date of Decision: 22.04.2026

Amar Chand (deceased) through LRs

...Appellants.

Versus

Banarsi Dass and Ors

...Respondents.

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ Yes.

For the Appellants

: M/s Deepak Gupta, Rahul Sharma
and Avnish Mandhotra,
Advocates.

For Respondents No.1 to 7, 9 : M/s Rohit Sharma and Anuj
and 10 Gupta, Advocates.

Respondent No.8 proceeded against ex parte vide order dated
07.03.2025

Rakesh Kainthla, Judge

The present appeal is directed against the judgment
and decree dated 23.05.2009 passed by learned Additional
District Judge (II) Kangra at Dharamshala (learned Appellate

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

Court) vide which the judgment and decree dated 31.12.2003 passed by learned Civil Judge (Junior Division), Dehra (II), District Kangra, H.P. (learned Trial Court) were affirmed. *(Parties shall 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 plaintiffs filed a civil suit before the learned Trial Court for seeking declaration that they have become the owners of the suit land mentioned in the head note of the plaint after the death of Rulia Ram as per Will dated 24.05.1995 executed by Rulia Ram in favour of the plaintiffs and defendant No.1 in equal share, and mutation to the contrary regarding Mahaal, Kamlot, Mauza Kohala, Tehsil Dehra, District Kangra, H.P. were wrong, illegal, null and void, which did not affect the ownership and rights of the plaintiffs. A relief of permanent prohibitory injunction for restraining the defendants from changing the nature/user of the suit land or raising construction, cutting, felling or removing the trees existing over the suit land was also prayed. It was prayed in the alternative that a declaration be granted to the effect that the plaintiffs, defendant No.1 and Rulia Ram were coparceners in the suit land

and Rulia Ram had no right to execute any Will in favour of defendant No.1 beyond $1/4^{\text{th}}$ share as coparcener and the Will dated 31.05.1993 executed in favour of defendant No.1 beyond $1/4^{\text{th}}$ share is wrong, illegal, null and void, which does not affect the rights of the parties.

3. It was asserted that plaintiffs, and defendant No.1, are the sons and defendant Nos. 2 to 4 are the daughters of Rulia Ram, who had expired on 03.06.1995. The suit land was earlier owned and possessed by Sh. Khiala, the grandfather of the plaintiffs, and it devolved upon Rulia Ram by mutation No. 35 dated 28.01.1937 regarding Tika Loharda now Thehra and mutation No. 15 regarding Tika Darogu now Kamlota. Rulia Ram executed a Will of his property on 24.05.1995 in favour of the plaintiffs and defendant No.1, and the plaintiffs acquired a $2/3^{\text{rd}}$ share in the suit land. The nature of the suit land is ancestral qua the parties. No coparcener has a right to alienate the joint land more than his share. The Will propounded by defendant No.1, stated to have been executed by Rulia Ram beyond $1/4^{\text{th}}$ share, is null and void and does not affect the rights of the plaintiffs. The revenue authorities attested a mutation No.40 dated 24.08.1995 regarding the suit land, which is wrong and illegal and does not

affect the rights of the plaintiffs. The defendants interfered with the suit land and threatened to change its nature, and cut and remove the standing trees existing on the suit land, despite requests. Hence, the suit was filed to seek the relief mentioned above.

4. The suit was opposed by filing a written statement taking preliminary objections regarding the lack of maintainability, the suit having not been properly valued for the purpose of Court fees and jurisdiction, the plaintiffs being estopped by their act and conduct from filing the suit, and the suit being bad for non-joinder of Sushil Kumar. The contents of the plaint were denied on the merits. It was specifically denied that Rulia Ram had executed a Will in favour of the plaintiffs and defendant No.1 on 24.05.1995 or that the plaintiffs rendered any services to late Sh. Rulia Ram. It was claimed that Rulia Ram executed a registered Will on 12.11.1971 in favour of his three sons and Smt. Jatto Devi, his wife. The plaintiff Bidhi Chand started maltreating and ignoring his parents after the execution of the Will. He separated from his parents and never helped his father with his daughters' marriages. The deceased Rulia Ram revoked his earlier Will and executed a Will on 10.08.1988. The

plaintiff was never on talking terms with his parents after 1973. Amar Chand was taking their care. The plaintiff and his family members never remained in the village, and they never cared for Rulia Ram. Mother of the parties expired in the year 1991, and her share was given to defendant No.1 by executing another registered will on 31.05.1993. The plaintiffs never remained associated in the last rites of their mother, and all the ceremonies were performed by defendant No.1. Rulia Ram has delivered the possession of the property to various parties during his lifetime. It was admitted that mutation No. 40 was attested by the revenue authorities. However, it was denied that the mutation was wrong. The ancestral nature of the property was also denied. Hence, it was prayed that the suit be dismissed.

5. A separate written statement was filed by defendant No. 2 admitting the contents of the plaint. It was asserted that defendant No. 2 is one of the marginal witnesses of the Will dated 24.05.1995, which was executed by deceased Rulia Ram in his sound disposing state of mind. Hence, it was prayed that the suit be decreed.

6. A similar written statement was filed by defendant No. 4 admitting the execution of the Will dated 24.05.1995 and praying that the suit be decreed.

7. No replication was filed.

8. The learned Trial Court framed the following issues on 03.03.2000 and an additional issue on 13.02.2002: -

1. Whether deceased Shri Rulia Ram had executed a legal and valid Will dated 14.05.1995 in favour of plaintiffs and defendant No.1, as alleged? OPP.
 - 1-A. Whether plaintiffs, defendant No.1 and deceased Rulia Ram were coparceners over the suit property, if so, its effect? OPP.
 2. Whether deceased Shri Rulia Ram had executed a legal and valid Will dated 31.05.1993 in favour of the defendant No.1, as alleged? OPD-1.
 3. Whether this is not maintainable in the present form? OPD-1.
 4. Whether the plaintiff is estopped by his act and conduct? OPD.
 5. Relief.
9. The parties were called upon to produce the evidence, and the plaintiffs examined Jagjit Singh (PW1), Banarsi Dass (PW2), Shamsher Singh (PW3), Mohinder Singh (PW4), Prithi Chand (PW5), Om Parkash (PW6), Banarsi Dass (PW7) and Jagannath (PW8). The defendant examined defendant No.1 Amar

Chand (DW1), Deep Raj (DW2), Karam Chand (DW3), Salig Ram (DW4), Jiwan Dass (DW5) and Pushpa Devi (DW6).

10. The learned Trial Court held that the plea taken by defendant No.1 that Rulia Ram did not have a cordial relation with plaintiff No. 2, Bidhi Chand, was not supported by his witness Karam Chand (DW3). The execution of the Will propounded by the plaintiffs was proved satisfactorily. The mere fact that it was unregistered was not sufficient to doubt it. The plaintiffs removed all the suspicious circumstances surrounding the execution of the Will. The issue regarding the coparcenary nature of the property was not pressed. The suit was maintainable, and the plaintiffs were not estopped from filing the present suit. Hence learned Trial Court answered issue No.1 in the affirmative, the rest of the issues in the negative and decreed the suit filed by the plaintiffs.

11. Being aggrieved by the judgments and decree passed by the learned Trial Court, defendant No.1, Amar Chand, filed an appeal, which was decided by the learned Additional District Judge (II) Kangra at Dharamshala (learned Appellate Court). The learned Appellate Court concurred with the findings recorded by

the learned Trial Court that the execution of the Will propounded by the plaintiffs was duly proved. There were no suspicious circumstances surrounding the execution and attestation of the Will. The execution of the Will could not be doubted simply because the Will was not registered. There was no evidence that Rulia Ram was not of sound disposing state of mind at the time of the execution of the Will. The Court will not interfere with the Will simply because it finds that the property was bequeathed inequitably. The whole idea behind the execution of the Will is to disturb the natural line of succession, and the disinheritance of a successor is not a suspicious circumstance. Learned Trial Court had taken a reasonable view of the matter. Hence, the appeal was dismissed.

12. Being aggrieved by the judgments and decrees passed by learned Courts below, defendant No.1 filed the present appeal, which was admitted on the following substantial question of law on 09.12.2009: -

1. Whether the findings of the Court below are a result of complete misreading, misinterpretation of the evidence and material on record and against the settled position of law?

13. I have heard M/s Deepak Gupta, Rahul and Avnish Mandhotra, learned counsel for the appellant and M/s Rohit Sharma and Anuj Gupta, learned counsels for respondents No. 3 to 5, 9 and 10.

14. Mr Deepak Gupta, learned counsel for the appellants, read the evidence led before the learned Trial Court and submitted that the conclusions drawn by the learned Courts below were not supported by the evidence on record. The Will propounded by the plaintiffs was unregistered, whereas the deceased Rulia Ram had executed a registered will on earlier occasions, and he had no reason to execute an unregistered Will. The deceased Rulia Ram died within 9 days of the execution of the Will propounded by the plaintiffs, which by itself is a suspicious circumstance. Both the learned Courts below failed to properly appreciate the material on record. Hence, he prayed that the present appeal be allowed and the judgments and decree passed by the learned Courts below be set aside. He relied upon the following judgments in support of his submissions: -

- (i) *M.L. Abdul Jabbar Sahib Vs. H.V. Venkata Sastri & Sons & ors. AIR 1969 SC 1147;*

- (ii) *Jagdish Chand Sharma Vs. Narain Singh Saini (dead) through LRs & ors. (2015) 8 SCC 615;*
- (iii) *Benga Behera and Anr Vs. Braja Kishore Nanda and others (2007) 9 SCC 728; and*
- (iv) *Janki Narayan Bhoir vs. Narayan Namdeo Kadam (2003) 2 SCC 91*

15. Mr Rohit Sharma, learned counsel for respondents No. 3 to 5, 9 and 10, submitted that the learned Courts below had properly appreciated the evidence on record and there is no perversity in the findings recorded by them. This Court cannot re-appreciate the evidence while deciding a Regular Second Appeal. Hence, he prayed that the present appeal be dismissed. He relied upon the following judgments in support of his submissions:-

- (i) *Ram Chander and others Vs. Gaura Devi and ors. Latest HLJ 2017 (HP) 315;*
- (ii) *Pawan Kumar & ors. Vs. State of H.P. Latest HLJ 2015 (HP) 1424;*
- (iii) *Dhani Ram & anr. Vs. Amar Singh & ors. Latest HLJ 2011 (HP) 221;*
- (iv) *Satpal & ors. Vs. Vyas Dev & ors. Latest HLJ 2012 (HP) 1339;*

- (v) *Narotam Vs. Smt. Laxmi Devi & ors.* 2016 (3) Civil Court Cases 706 HP;
- (vi) *Vinod Jaswal Vs. Anuradha*, Latest HLJ 2013 (HP) 91;
- (vii) *H. Venkatachalo Iyengar Vs. B.N. Thimmajamma & ors.* AIR 1959 SC 443;
- (viii) *Benge Behera & anr. Vs. Braja Kishore Nanda & ors.* AIR 2007 SC 1975;
- (ix) *Hans Raj & ors. vs. Ran Singh* 2012(1) Shim.L.C. 1;
- (x) *Chuhru Ram Vs. Dhani Devi & ors.* 2011 (1) Shim. L.C. 293;
- (xi) *Jaswant Kaur Vs. Amrit Kaur & ors.* AIR 1977 SC 74;
- (xii) *K. Laxmanan Vs. Thekkayil Padmini & ors.* AIR 2009 SC 951;
- (xiii) *Adivekka & ors. Vs. Hanamavva Kom Venkatesh (dead) by LRs & anr.* (2007) 7 SCC 91
- (xiv) *Chandrabhan (deceased) through LRs & ors. Vs. Sarswati & ors.* (2022) 20 SCC 199;
- (xv) *Gauri & ors. Vs. Munshi Ram & ors.* RSA No. 923 of 1951, decided on 4.11.1955 (P& H);
- (xvi) *Babu Singh & ors. Vs. Ram Sahai @ Ram Singh*, 2008 (3) ICC; and
- (xvii) *Indira Wati Vs. Kumari Ranjana & ors.* Latest HLJ 2013 (HP) 95.

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

17. Before advertng to the substantial questions of law framed by this Court, it is necessary to dispose of miscellaneous applications pending before this Court.

CMP No. 625 of 2011

18. The application has been filed for discharging the natural guardian of respondent Nos. 6, 7 and 8 on the ground that they have attained majority. This fact is duly supported by the copies of matriculation certificates showing that Praveen Lata was born on 30.03.1987, Apoorva Bhardwaj was born on 19.08.1989, and Harsh was born on 10.01.1993, and they have attained majority. Consequently, the application is allowed, and the legal guardians are discharged.

19. Application stands disposed of.

CMP No. 454 of 2011

20. The present application has been filed for leading additional evidence by summoning the handwriting expert to exhibit his opinion regarding the signatures of the deceased

Rulia Ram in the Will dated 24.05.1995. It has been asserted that the signatures of Rulia Ram on the Will dated 24.05.1995 are forged as they do not tally with the signatures of Rulia Ram. The opinion of the expert was annexed as Annexure-PA4. This opinion was not available and was obtained on 20.03.2010. The whole controversy between the parties relates to the execution of the Will, and the report of the handwriting expert is essential to resolve the controversy. Hence, it was prayed that the present application be allowed and the handwriting expert be summoned to prove his report.

21. The application is opposed by filing a reply taking preliminary objections regarding lack of maintainability, the application having been filed at a belated stage, and the application not assigning any reason for not producing the report at an appropriate stage. The contents of the application were denied on the merits. It was asserted that the application has been filed to prolong the proceedings. The opinion of a handwriting expert is not material to determine the controversy. Hence, it was prayed that the application be dismissed.

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

23. The plaintiffs had filed the civil suit on 31.08.1995. The application is silent as to why the opinion of a handwriting expert was not obtained before the learned Trial Court or the learned Appellate Court. The applicant could have obtained the report of the handwriting expert before the learned Courts below, and it is not sufficient for him to say that the report was obtained in the year 2010. It was held in *Sopanrao v. Syed Mehmood*, (2019) 7 SCC 76: (2019) 3 SCC (Civ) 467: 2019 SCC OnLine SC 821, that where no explanation was provided for the non-production of the documents, they cannot be taken on record. It was observed at page 81:

“13. At this stage, it would be pertinent to point out that the appellant-defendants, during the course of this appeal, have filed a number of applications to place on record certain documents which were not on the record of the trial court. No explanation has been given in any of these applications as to why these documents were not filed in the trial court. These documents cannot be looked into and entertained at this stage. The defendants did not file these documents before the trial court. No application was filed under Order 41 Rule 27 of the Code of Civil Procedure, 1908, for leading additional evidence before the first appellate court or even before the High Court. Even the applications filed before us do not set out any reasons for not filing these documents earlier, and do not

meet the requirements of Order 41 Rule 27 of the Code of Civil Procedure. Hence, the applications are rejected, and the documents cannot be taken into consideration.”

24. It was held in *Jagdish Prasad Patel v. Shivnath*, (2019) 6 SCC 82: (2019) 3 SCC (Civ) 112: 2019 SCC OnLine SC 492 that the additional evidence can be led when the Trial Court had refused to admit the evidence, the evidence was not available despite the exercise of due diligence and the evidence is required by the Court to effectively adjudicate the dispute pending before it. It was observed at page 96: -

“29. Under Order 41 Rule 27 CPC, the production of additional evidence, whether oral or documentary, is permitted only under three circumstances, which are:

- (I) where the trial court had refused to admit the evidence, though it ought to have been admitted;
- (II) The evidence was not available to the party despite the exercise of due diligence; and
- (III) The appellate court required the additional evidence so as to enable it to pronounce judgment or for any other substantial cause of like nature.

An application for the production of additional evidence cannot be allowed if the appellant was not diligent in producing the relevant documents in the lower court. However, in the interest of justice and when satisfactory reasons are given, the court can receive additional documents.”

25. It was laid down in *the North Eastern Railway Administration. vs. Bhagwan Das*, (2008) 8 SCC 511, that the

provisions of Order 41 Rule 27 do not enable an unsuccessful litigant to patch up the weak parts of his case. It was observed:-

“13. Though the general rule is that ordinarily the appellate court should not travel outside the record of the lower court and additional evidence, whether oral or documentary is not admitted but Section 107 CPC, which carves out an exception to the general rule, enables an appellate court to take additional evidence or to require such evidence to be taken subject to such conditions and limitations as may be prescribed. These conditions are prescribed under Order 41 Rule 27 CPC. Nevertheless, the additional evidence can be admitted only when the circumstances as stipulated in the said Rule are found to exist. The circumstances under which additional evidence can be adduced are:

(i) the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted [clause (a) of sub-rule (1)], or

(ii) the party seeking to produce additional evidence establishes that, notwithstanding the exercise of due diligence, such evidence was not within the knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed [clause (aa), inserted by Act 104 of 1976], or

(iii) the appellate court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause [clause (b) of sub-rule (1)].

14. It is plain that under clause (b) of sub-rule (1) of Rule 27 Order 41 CPC, with which we are concerned in the instant case, evidence may be admitted by an appellate authority if it “requires” to enable it to pronounce judgment, or for any other substantial cause. The scope of

the Rule, in particular of clause (b), was examined way back in 1931 by the Privy Council in *Parsotim Thakur v. Lal Mohar Thakur* [AIR 1931 PC 143]. While observing that the provisions of Section 107 as elucidated by Order 41 Rule 27 are clearly not intended to allow the litigant, who has been unsuccessful in the lower court, to patch up the weak parts of his case and fill up omissions in the court of appeal, it was observed as follows : (AIR p. 148)

“... Under clause (1)(b), it is only where the appellate court ‘requires’ it (i.e. finds it needful) that additional evidence can be admitted. It may be required to enable the court to pronounce judgment, or for any other substantial cause, but in either case, it must be the court that requires it. This is the plain grammatical reading of the sub-clause. The legitimate occasion for the exercise of this discretion is not whenever before the appeal is heard a party applies to adduce fresh evidence, but ‘when on examining the evidence as it stands some inherent lacuna or defect becomes apparent’.”

15. Again in *K. Venkataramiah v. A. Seetharama Reddy* [AIR 1963 SC 1526 : (1964) 2 SCR 35] a Constitution Bench of this Court while reiterating the aforementioned observations in *Parsotim case* [AIR 1931 PC 143] pointed out that the appellate court has the power to allow additional evidence not only if it requires such evidence “to enable it to pronounce judgment” but also for “any other substantial cause”. There may well be cases where even though the court finds that it is able to pronounce judgment on the state of the record as it is, and so, it cannot strictly say that it requires additional evidence “to enable it to pronounce judgment”, it still considers that in the interest of justice something which remains obscure should be filled up so that it can pronounce its judgment in a more satisfactory manner. Thus, the question whether looking into the documents, sought to be filed as additional evidence, would be necessary to pronounce

judgment in a more satisfactory manner, has to be considered by the Court at the time of hearing of the appeal on merits.”

26. It was laid down by the Hon’ble Supreme Court in *Gobind Singh v. Union of India*, 2026 SCC OnLine SC 339, that the parties can lead evidence before the appellate court after satisfying the conditions provided under Order 41 Rule 27 of CPC. It was observed:

“11.2. In order to properly appreciate the controversy involved, it is necessary to first advert to the statutory provision applicable to the case at hand. Order XLI Rule 27 CPC reads as follows:

“27. *Production of additional evidence in the appellate court.* –

(1) *The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the appellate court. But if–*

(a) ...

(aa) *the party seeking to produce additional evidence establishes that, notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or*

(b) *...the appellate court may allow such evidence or document to be produced, or a witness to be examined.*

(2) *Wherever additional evidence is allowed to be produced by an appellate court, the Court shall*

record the reason for its admission.” (emphasis supplied)

11.3. Rule 27, being couched in negative terms, makes it abundantly clear that parties to an appeal are not entitled to adduce additional evidence, whether oral or documentary, save and except in the circumstances expressly enumerated therein. The provision contemplates only three eventualities in which additional evidence may be permitted: *first*, where the court which passed the decree has refused to admit evidence which ought to have been admitted; *second*, where the party seeking to adduce such evidence establishes that, notwithstanding the exercise of due diligence, the evidence was not within its knowledge or could not have been produced at the time when the decree under appeal was passed; and *third*, where the appellate court itself requires any document to be produced or any witness to be examined in order to enable it to pronounce judgment or for any other substantial cause.

11.4. Accordingly, it is only upon satisfaction of any of the aforesaid three contingencies that an application under Order XLI Rule 27 CPC can be entertained. Sub-rule (2) of the said provision further mandates that where the appellate court forms an opinion that additional evidence is required to be admitted, it must record the reasons for such admission. While elucidating the scope and object of Order XLI Rule 27 CPC, this Court, in *Union of India v. Ibrahim Uddin* (2012) 8 SCC 148, undertook an exhaustive analysis of the provision. The relevant extract is reproduced hereinafter:

“36. The general principle is that the appellate court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order 41 Rule 27 CPC enables the appellate court to take additional evidence in exceptional circumstances. The appellate court may permit additional evidence only and only if the conditions laid down in this Rule are found to exist. The parties are not entitled, as of

right, to the admission of such evidence. Thus, the provision does not apply when, on the basis of the evidence on record, the appellate court can pronounce a satisfactory judgment. The matter is entirely within the discretion of the court and is to be used sparingly. Such a discretion is only a judicial discretion circumscribed by the limitation specified in the Rule itself.

...

38. Under Order 41 Rule 27 CPC, the appellate court has the power to allow a document to be produced and a witness to be examined. But the requirement of the said court must be limited to those cases where it found it necessary to obtain such evidence for enabling it to pronounce judgment. This provision does not entitle the appellate court to let in fresh evidence at the appellate stage, where even without such evidence it can pronounce judgment in a case. It does not entitle the appellate court to let in fresh evidence only for the purpose of pronouncing judgment in a particular way. In other words, it is only for removing a lacuna in the evidence that the appellate court is empowered to admit additional evidence.

...

41. The words “for any other substantial cause” must be read with the word “requires” in the beginning of the sentence, so that it is only where, for any other substantial cause, the appellate court requires additional evidence, that this Rule will apply e.g. when evidence has been taken by the lower court so imperfectly that the appellate court cannot pass a satisfactory judgment.” (emphasis supplied)

Thus, a holistic reading of the aforesaid decision makes it clear that the appellate court's inquiry, while considering an application for leading additional evidence, is confined to examining whether such evidence is necessary to remove a lacuna in the case. More importantly, the appellate court may permit additional

evidence only upon being satisfied that the conditions expressly stipulated under Order XLI Rule 27 CPC are fulfilled. The parties do not possess any vested or automatic right to seek admission of additional evidence at the appellate stage. Consequently, the provision has no application where the appellate court is in a position to render a satisfactory and reasoned judgment on the basis of the evidence already available on record.

11.5. In *State of Karnataka v. K.C. Subramanya* (2014) 13 SCC 468, the appellants therein had moved an application before the appellate court under Order XLI Rule 27 CPC seeking leave to produce a map of the area to establish that the disputed land constituted a public road. This Court, while affirming the High Court's decision to reject the said application, held as follows:

“4. ...On perusal of this provision, it is unambiguously clear that the party can seek liberty to produce additional evidence at the appellate stage, but the same can be permitted only if the evidence sought to be produced could not be produced at the stage of trial in spite of exercise of due diligence and that the evidence could not be produced as it was not within his knowledge and hence was fit to be produced by the appellant before the appellate forum.

5. It is thus clear that there are conditions precedent before allowing a party to adduce additional evidence at the stage of appeal, which specifically incorporate conditions to the effect that the party, in spite of due diligence, could not produce the evidence, and the same cannot be allowed to be done at his leisure or sweet will.”
(emphasis supplied)

This Court thus categorically held that unless the requirements stipulated under Order XLI Rule 27 CPC are strictly satisfied, a party cannot be permitted to adduce additional evidence at the appellate stage. Such permission cannot be granted as a matter of course, nor can additional evidence be introduced at the whim or convenience of a litigating party.

11.6. Where the appellate court permits additional evidence to be adduced, Order XLI Rule 27(2) CPC casts a mandatory obligation upon the court to record the reasons for such admission. In *Ibrahim Uddin* (supra), this Court elucidated the rationale underlying the requirement of recording reasons in the following terms:

“42. Whenever the appellate court admits additional evidence, it *should record its reasons* for doing so (sub-rule (2)). It is a salutary provision which operates as a check against too easy a reception of evidence at a late stage of litigation, and the statement of reasons may inspire confidence and disarm objection. Another reason for this requirement is that, where a further appeal lies from the decision, the record of reasons will be useful and necessary for the court of further appeal to see if the discretion under this Rule has been properly exercised by the court below. *The omission to record the reasons must, therefore, be treated as a serious defect.* But this provision is only Directory and not mandatory, if the reception of such evidence can be justified under the Rule.”

11.7. The procedural framework under Order XLI of CPC makes it abundantly clear that an appeal is ordinarily to be decided on the evidence adduced before the trial court. The appellate court is not expected to embark upon a fresh fact-finding exercise or permit production of additional evidence as a matter of routine. Where the appellate court is satisfied that the material already available on record is sufficient to enable it to pronounce judgment, it is well within its jurisdiction to confine its consideration to the evidence forming part of the record of the courts below.”

27. In the present case, the report of the handwriting expert could have been obtained before the learned Courts below and since no reason has been assigned for not obtaining the

report or proving it before the learned Courts below, therefore the application cannot be allowed and is dismissed.

Substantial Question of Law:

28. 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.

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.

10.3. A will is required to fulfil all the formalities required under Section 63 of the Succession Act, that is to say:

(a) The testator shall sign or affix his mark to the will, or it shall be signed by some other person in his presence and by his direction, and the said signature or affixation shall show that it was intended to give effect to the writing as a will;

(b) It is mandatory to get it attested by two or more witnesses, though no particular form of attestation is necessary;

(c) Each of the attesting witnesses must have seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of such signatures;

(d) Each of the attesting witnesses shall sign the will in the presence of the testator; however, the presence of all witnesses at the same time is not required.

10.4. For the purpose of proving the execution of the will, at least one of the attesting witnesses, who is alive, subject to the process of court, and capable of giving evidence, shall be examined;

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

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

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

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

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

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

10.11. Suspicious circumstances must be “real, germane and valid” and not merely “the fantasy of the doubting mind [*Shivakumar v. Sharanabasappa* [*Shivakumar v. Sharanabasappa*, (2021) 11 SCC 277]]”. Whether a particular feature would qualify as “suspicious” would depend on the facts and circumstances of each case. Any circumstance raising suspicion, legitimate in nature, would qualify as a suspicious circumstance, for example, a shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the will under which he receives a substantial benefit, etc.”

29. 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.”

The Court further held:—

“9. In cases where the execution of a will is shrouded in suspicion, its proof ceases to be a simple lis between the plaintiff and the defendant. What, generally, is an adversary proceeding becomes in such cases a matter of the court's conscience, and then the true question which arises for consideration is whether the evidence led by the propounder of the will is such as to satisfy the conscience of the court that the will was duly executed by the testator. It is impossible to reach such satisfaction unless the party which sets up the will offers a cogent and convincing explanation of the suspicious circumstances surrounding the making of the will.”

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

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

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

30. A similar view was taken in *Ram Chander and others* (supra), *Dhani Ram & anr.*, (supra), *Satpal & ors.*, (supra), *Narotam*, (supra), *H. Venkatachalo Iyengar* (supra), *Benge Behera & anr.* (supra), *Hans Raj & ors.* (supra), *Chuhru Ram* (supra), *Jaswant Kaur* (supra) and *K. Laxmanan* (supra), *Adivekka & ors.* (supra) , *Gauri & ors.* (supra), *Babu Singh & ors.* (supra) and *Indira Wati* (supra), and it is not necessary to reproduce them to avoid the prolixity and repetition. *Pawan Kumar & ors.* (supra) deals with narcotics, and *Vinod Jaswal* (supra) deal with annulment of marriage and have nothing to do with the present case.

31. Pushpa Devi (DW6) is the daughter of Rulia Ram. She stated that Rulia Ram had 3 sons (Banarsi Dass, Amar Chand and Bidhi Chand) and 3 daughters (she, Kamlesh Kumari and Shakuntla Devi). Banarsi Dass, Amar Chand and Bidhi Chand were looking after Rulia Ram, who died on 03.06.1995. Her mother expired on 19.12.1990. All the people were residing together till the death of her mother. Rulia Ram had executed a Will in favour of all 3 sons, and she had witnessed the Will. She and Mohinder Singh had put their signatures on the Will as per the direction of Rulia Ram. The Will was dictated by Rulia Ram in

her presence and in the presence of the witnesses at Thehra. She had gone to Thehra to enquire about the well-being of her father. She stated in her cross-examination by learned counsel for the plaintiffs that the Will was written by Shamsheer Singh (PW3) as per the directions of Rulia Ram. She and Mohinder Singh (PW4) were present at the time of the writing of the Will. Rulia Ram had put his signature in her presence. She and Mohinder Singh (PW4) had put their signatures at the instance of Rulia Ram. She stated in her cross-examination by learned counsel for defendant No. 1 that Rulia Ram had separated his sons after the death of his wife. Rulia Ram died due to a stomachache. Amar Chand used to take Rulia Ram to Hamipur and Dharamshala. She volunteered to say that Bidhi Chand was residing in the village, and he used to take Rulia Ram to the hospital. She denied that Rulia Ram had executed a Will on 31.05.1993. She stated that Rulia Ram had not told this fact to anyone, including her. She had voluntarily gone to her parental home to enquire about the well-being of Rulia Ram. Mohinder Singh (PW4) and Shamsheer Singh (PW3) did not belong to her community or the village. Rulia Ram was 71–72 years of age at the time of his death. His hands used to tremble. Shamsheer

Singh (PW3) had visited the house voluntarily and was not called by any person. The Will was written at about 10-11 AM. She returned on the same day. She denied that she was making a false statement at the instance of Bidhi Chand and Banarsi Dass.

32. She is the sister of the parties and the daughter of Rulia Ram. She was disinherited by the execution of the Will, and she has no reason to support the Will. The fact that she has supported the Will shows that the deceased had executed the Will in his sound disposing state of mind in her presence.

33. Kamlesh, another sister of the parties, also filed a written statement admitting the correctness of the Will. She specifically stated in her written statement that Rulia Ram had executed a Will on 24.05.1995 in favour of the plaintiffs and defendant No.1 in equal share, and she had no objection in case the suit was decreed. Thus, she, being another legal heir, has also not disputed the execution of the Will.

34. Jiwan Dass (DW5), the husband of Kamlesh, the daughter of Rulia Ram, also admitted in his cross-examination that Rulia Ram had executed a Will in favour of his three sons before his death.

35. Mohinder Singh (PW4) is the marginal witness to the Will. He stated that he knew Rulia Ram and had cordial relations with him. The Will (Ext.PW3/A) was written by Shamsher Singh (PW3) at the instance of Rulia Ram, which was read over and explained to him. Rulia Ram acknowledged its correctness and put his signature. Rulia Ram dictated the Will, and Shamsher Singh (PW3) wrote the Will as per Rulia Ram's dictation. Shamsher Singh (PW3) signed the Will after the signature of Rulia Ram. He and Pushpa Devi (DW6) also signed the Will as marginal witnesses. He stated in his cross-examination that Bidhi Chand had called him at about 9:30 AM. The Will was written at about 11-11:30 AM. Shamsher Singh (PW3) and Pushpa Devi (DW6) were already present, and he did not know who had called them. The pen belonged to Shamsher Singh (PW3), and the paper was produced by Bidhi Chand. The family of Bidhi Chand resided in the village. It took about 15-20 minutes to write the Will. He was not aware that Rulia Ram was ill, and the sons of Rulia Ram had been residing separately since 1973. He left after the execution and attestation of the will whereas, Pushpa Devi (DW6) and Bidhi Chand remained in the house.

Rulia Ram disclosed that he had earlier executed the wills, but he wanted to settle the dispute.

36. Shamsheer Singh (PW3) scribed the Will. He stated that he had written the Will (Ext.PW3/C) at the instance of Rulia Ram. He read over and explained the Will to Rulia Ram, who put his signature after acknowledging its correctness. He (Shamsheer Singh) put his signature after Rulia Ram. Pushpa Devi (DW6) and Mohinder Singh (PW4) signed the Will thereafter. He stated in his cross-examination that Rulia Ram was a Brahmin by caste, whereas he was a Rajput. His mother used to call Rulia Ram uncle. His house is located at a distance of about one kilometre, and the house of Mohinder Singh (PW4), ex-Pradhan, was located at a distance of $\frac{3}{4}$ kms from the house of Rulia Ram. Bidhi Chand had brought the paper. Rulia Ram was lying on the bed. He (Shamsheer Singh) was not called by any person, and he had gone to enquire about the well-being of Rulia Ram. He reached the house of Rulia Ram at about 9 AM. Bidhi Chand had gone to call Mohinder Singh (PW4). He volunteered to say that Rulia Ram had directed Bidhi Chand to call Mohinder Singh (PW4). Amar Chand and his family members were not present at the home at the time of execution

of the Will. Pushpa Devi (DW6) was already present at the house. Mohinder Singh (PW4) arrived about one hour after his arrival. The rough draft of the Will was prepared first, and the writing of the Will was completed by 11 AM. He returned at about 11:45 AM. The rough draft was torn. It took about 15-20 minutes to write the Will. He and Mohinder Singh (PW4) returned together, and Bidhi Chand remained in the house. The age of Rulia Ram was about 70 years. Rulia Ram had only put signatures in his presence once on the date of execution of the Will. Amar Chand and his family members also used to reside in the same house in which Rulia Ram was residing. Amar Chand, etc., used to reside in another room. The last rites of Rulia Ram were performed by Amar Chand. He admitted that Amar Chand had got Rulia Ram treated at Dharamshala, Jawalamukhi and Hamipur. He volunteered to say that Bidhi Chand had also got Rulia Ram treated. Rulia Ram was an educated person. The Will was written with the help of a pen brought by him because he always keeps the pen with him and had also brought the pen to the Court with him. He denied that no Will was executed by Rulia Ram, and he was making a false statement.

37. It was submitted that there are various contradictions in the statements of the witnesses, which make the execution of the Will highly suspicious. 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 are not enough.”

38. 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.”

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

40. In the present case, the contradictions relate to the production of paper for writing the Will and the persons who remained and left after the execution of the Will. These are minor contradictions and bound to come with time due to lapse of memory. Hence, these contradictions cannot be used to doubt the execution of the Will.

41. It was submitted that the marginal witnesses Mohinder Singh (PW4) and the scribe Shamsheer Singh (PW3) belong to a different village, 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 is 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.

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.”

42. 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.

43. It was submitted that Bidhi Chand had called Mohinder Singh (PW3) and had produced the document for

writing the Will, and this is a suspicious circumstance. This submission cannot be accepted. It was laid down by the Punjab & Haryana High Court in *Tirath Singh Versus Sajjan Singh 1997 (2) Civil Court Cases 299 (P&H)* that the participation by the beneficiary is not a suspicious circumstance when he had not influenced the wishes of the testator. It was held:

“Kartar Singh (D.W.3) also stated in his cross-examination that when they started from the village, he, Tirath Singh, Ralla, Harbhajan Singh, and Karnail Singh were together. According to the learned counsel for the respondent, it clearly goes to show that Tirath Singh and Karnail Singh, the appellants, had taken an active part in getting the Will executed from Ralla in their favour. There is no substance in this contention. It was not elicited from Gobind Parshad (D.W.2) and Kartar Singh (D.W.3) as to how and in what manner Tirath Singh and Karnail Singh had taken an active part in the execution of the Will, or that Ralla was influenced by them to execute that Will in their favour. The mere fact that at the time of scribing the Will, they were present or that they had accompanied Ralla from the village to the Court compound where the Will was scribed, is not sufficient to draw an inference that they had exercised any undue influence on Ralla and, under the influence, Ralla had executed the Will in their favour.”

44. Similarly, it was held in *Leela v. Drumti Devi, 2000 SCC OnLine HP 20 = AIR 2000 HP 7* that the mere presence of the beneficiary does not establish the exercise of undue influence in the execution of the Will. It was held:

“Otherwise, also, the presence of the beneficiary or such beneficiary accompanying the testator for the execution of a Will would not show that undue influence was exercised by the beneficiary in the execution of the Will. The Will was registered on the same day, and the endorsement of the Sub-Registrar shows that the contents of the Will were read over and explained to Shri Dilu by the Sub-Registrar, who admitted the contents to be correct. It is now well settled that the mere presence of the beneficiary or their accompanying the testator would not show the exercise of undue influence in the execution of the Will (See *Tirath Singh v. Sajjan Singh (Died) through his LRs.* 1998 (1) SLJ 232). In *Gun Parkash v. Bhola Nath*, AIR 1997 Him Pra 27, the Will was scribed in the presence of family members of the beneficiary. The testator was an old lady, and her natural heirs were deprived by her. In this context, it was observed :

"No doubt, the presence of the family members of the defendants has been stated to be there by the plaintiff's witnesses, but that by itself will not make the Will suspicious unless something more than that is established. The Will in question in the instant case is registered, and the deceased was identified by an Advocate before the Sub-Registrar. Simply because the testator was an old lady and natural heirs have been deprived by her is not by itself a suspicious circumstance to discard the same....."

23. It may be remembered that deceased testator Shri Dilu was living at the relevant time with defendant No. 1, and there is nothing unnatural in the defendant, the beneficiary, being present at the time of execution of the Will.

45. Similarly, it was held in *Kartar Chand Versus Mathura Dass* 2004 Latest HLJ 105 that the mere fact that the beneficiary

was accompanying the testatrix, who was at an advanced age, is not a suspicious circumstance. It was held:

10. This Court in *Smt. Leela alias Bali Devi (supra)*, relying upon *Tirath Singh and others v. Sajjan Singh (Died) through his L.Rs. and others*, 1998(1) S.L.J. 232 and *Gun Parkash and another v. Bhola Nath*, AIR 1997 H.P 27, held that the fact that the beneficiary accompanied the testator for the execution of a Will would not show that undue influence was exercised by the beneficiary in the execution of the Will. The presence of the family members of the beneficiary in itself will not make the Will suspicious unless something more than that is established. Simply because the testatrix was an old lady, suffering from tuberculosis, and the fact that her natural heirs were deprived in itself will not be a suspicious circumstance to discard the Will.

46. In the present case, the Will was executed in favour of all the sons by excluding the daughters. No unequal benefit was granted to the plaintiffs. Therefore, the mere fact that the plaintiff Bidhi Chand had called Mohinder Singh (PW4) or had produced the document will not make the execution of the Will suspicious.

47. It was submitted that the Will propounded by the plaintiffs was not registered, and this makes it suspicious. This submission cannot be accepted. It was laid down by this Court in *Baru Ram Versus Kishan* 1992(1) Shim. L.C. 115 that registration of a Will is no guarantee of its genuineness. It was observed:

“5. Sh. K D. Sood, learned Counsel for Sh. Baru Ram and others, has urged that since the will was registered, a presumption of its correctness and genuineness arises in the facts and circumstances of the present case This argument deserves to be rejected outrightly in view of the law laid down in *Gopal Das and another v. Sri Thakurji and other*, AIR 1943 Privy Council 83, that even after the endorsement of Registrar made under section 60 (2) of the Registration Act is proved, it remains to be shown that the person admitting execution before the Registrar was Balandue The registration of the will does not create any presumption of its genuineness, which is to be proved independently and statement of the Registrar is only a piece of evidence which is to be assessed to judge how far it proves that the execution of the will is in accordance with section 63 of Indian Succession Act It is to be kept in mind that the Registrar cannot be a statutory attesting witness. (Please refer to *Karri Nokarajuv. Putra Venkatarao and others* AIR 1974 And Pra 13; *In the Goods of Late Shri C. Rai, Barrister-at-law*, 1980 RLR 346, *Punjab and Haryana High Court*; *Labh Singh and others v. Piara Singh (deceased by L Rs) and another*, AIR 1984 P & H. 270 and *Dharam Singh v. A. S. O and another*, 1990 (Supp) SCC 684.”

48. Similarly, it was held in *Dharam Chand vs. Mansa Devi* 2010 Latest HLJ 992 that no presumption applies to a registered Will. It was observed:

11. At the very outset I would like to say whether the Will is registered or unregistered, it would have the same value, but it is imperative on its propounder to prove it like a crucial case beyond doubt in accordance with law and repel all the suspicious circumstances. The judgment cited by the learned Counsel for the appellant in *Suraj Lamp and Industries Private Limited v. State of Haryana and another*, (2009) 7 SCC 363 is not applicable in the case of a Will. Further, no presumption can be drawn in favour of

the registered Will about its genuineness.

49. The defendants pleaded that the plaintiff Bidhi Chand completely ignored his parents, and only Amar Chand was taking care of them. This plea was not established. Pushpa Devi (DW6), sister of defendant No.1, categorically stated that Bidhi Chand was residing at home, and he used to take care of Rulia Ram. Salig Ram (DW4) stated that Bidhi Chand was residing at home, and he was taking care of the estate of Rulia Ram. This falsifies the version of the defendants that plaintiff Bidhi Chand had stopped taking care of Rulia Ram after the execution of the Will.

50. Amar Chand (DW1) stated in his proof affidavit that his father fell ill in the year 1994. His hands started trembling. He and his wife had taken care of Rulia Ram till his death. Rulia Ram had lost his consciousness, and his mental condition was not proper. The Will dated 24.05.1995 was fake. He admitted in his cross-examination that Rulia Ram was an agriculturist and he used to advise other people regarding the land. He admitted that Bidhi Chand used to reside in the village. He admitted that his father had executed a Will in favour of all three sons on 12.11.1971. He admitted that Prithvi Chand remained Pradhan of

the village for about 17 years. The relationship of Rulia Ram remained cordial with his 3 daughters. He volunteered to say that the relationship with Kamlesh was not cordial. He admitted that Rulia Ram used to cultivate the land himself.

51. This witness tried to demonstrate that the mental condition of Rulia Ram was not proper before his death, but this fact was falsified by his sister. Therefore, the learned Courts below had rightly held that the execution of the Will was duly proved as per the law.

52. 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 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 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 reappraise 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).

53. 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.”

54. 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.”

55. A similar view was taken in *Narendra v. Ajab Rao*, (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.”

56. 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.”

57. 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.”

58. 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 reappraise the evidence just to replace the findings of the lower courts. ... Even assuming that another view is possible on a reappraisal 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 Mallisserillath M.N.* [*Taliparamba Education Society v. Moothedath Mallisserillath 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."

59. 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.”

60. 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, it is not permissible to interfere with the same.

61. No other point was urged.

62. In view of the above there is no misreading, misinterpretation of the evidence and material on record and the judgments passed by the learned Courts below is as per the settled position of law. Hence, this substantial question of law is answered accordingly.

Final order:

63. In view of the above, the present appeal fails, and it is dismissed.

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

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

CMP No. 16181 of 2024

66. The application has been filed for allowing the applicant/non-appellants No.1 and 2 to receive the amount of compensation. Since the appeal has been decided, the application has become infructuous and is dismissed as infructuous.

(Rakesh Kainthla)
Judge

22nd April, 2026
(Nikita)