

discrepancy in the findings recorded by the courts below, it will not make any difference because since the plaintiff-appellant has failed to prove that it has not been executed in accordance with law. Even otherwise he is not entitled for any share in the ancestral property of the deceased Ram Kishore, therefore he could not have challenged the will deed executed in favour of the father of the defendant-respondent and even if it is set aside, the plaintiff-appellant would not get any right over the property of the deceased Ram Kishore in view of Section 171 of the Act of 1950.

39. It is also settled law as disclosed above that the concurrent findings recorded by the two courts below cannot be set aside by this Court in second appeal unless the findings are perverse and without jurisdiction, which is not the case herein because the learned courts below have passed the judgment and decrees in accordance with law after considering pleadings, evidence and material on record by passing a reasoned and speaking orders and dealing the same and the same are not perverse and without jurisdiction. Even otherwise any defect in the findings recorded by the courts below in regard to the will which does not affect the merits of the case regarding claim of half share in the property in dispute or the jurisdiction of the court because the plaintiff-appellant has also failed to prove the title and possession on the land in dispute, cannot be a ground for interference by this Court. Thus, impugned judgment and decrees cannot be reversed or modified in view of Section 99 of CPC. The aforesaid substantial questions of law formulated in this appeal are answered accordingly. Thus, the appeal has been filed on misconceived and baseless grounds and is liable to be dismissed.

40. The second appeal is dismissed. No order as to costs.

(2025) 1 ILRA 701

APPELLATE JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 16.01.2025

BEFORE

THE HON'BLE KSHITIJ SHAILENDRA, J.

Second Appeal No. 12 of 2018

Prem Chand & Ors.	...Appellants
Versus	
Charat Kumar Bansal	...Respondent

Counsel for the Appellants:

Sri Jagdish Prasad Mishra, Sri Prem Prakash Chaudhary

Counsel for the Respondent:

Sri Nipun Singh, Sri Sumit Daga

Civil Law – Code of Civil Procedure, 1908 – Section 100 - Order XLI Rule 5 - Order XLII Rule 1 - Order XLIII Rule 1 - Code of Civil Procedure (UP Amendments) – Section 115, 115(4)- Second Appeal – Appeal is pending at admission stage - issue of Summoning VIS-À-VIS Retaining or Returning the Original Record - The respondent's counsel raised an issue regarding the return of the original record of the first Appellate Court and the trial court, which had been summoned by the High Court without admitting the appeal - **Legislative Mandate on Stay of Proceedings** - The court discussed the legislative mandate under Order XLI Rule 5 of the Code of Civil Procedure and U.P. amendments in Section 115 of C.P.C., which St. that mere filing of an appeal or revision does not operate as a stay against the proceedings – court finds that, - the Supreme Court, in the case of Asian Resurfacing of Road Agency P. Ltd., directed that photocopies or scanned copies of records should be summoned instead of the original records – However, the Supreme Court's decision in Asian Resurfacing was later reversed by the Constitution Bench in a case of High Court Bar Association, Allahabad Vs St. of

Uttar Pradesh, but the directions regarding summoning photocopies/scanned copies of records remained unaffected – held, - the office is directed to summon only photocopies/scanned copies of records unless specifically directed otherwise and to remit back any original records previously summoned – directions are also issued to the Registrar General to issue necessary Circular / communication to the office of this court as well as all the district judgeships to act as per directions - Appeal is pending. (Para – 9, 10, 11, 12, 13)

Second Appeal Pending. (E-11)

List of Cases cited:

1. Asian Resurfacing of Road Agency P. Ltd. Vs Central Bureau of Investigation - Supreme Court Order dated 25.04.2018 - (2018) 16 SCC 299),
2. High Court Bar Association, Allahabad Vs St. of U.P. & ors. (2024) 6 SCC 267.

(Delivered by Hon'ble Kshitij Shailendra, J.)

**ON THE ISSUE OF SUMMONING
VIS-A-VIS RETAINING OR
RETURNING THE ORIGINAL
RECORD**

1. Shri Sumit Daga, learned counsel for the respondent, raised an issue which prima facie appears to be quite small, but has a significant value. The matter is being treated as of general importance qua a limited issue that is coming up before this Court in many cases.

2. The case was mentioned in the morning, not for the purposes of its hearing as the time constraints otherwise do not allow hearing of the matter today, but making a prayer as regards return of the original record of the first Appellate Court and the trial court which, earlier, had been summoned by this Court without admitting the appeal.

3. Referring to the order dated 19.01.2018, it is contended that, till today, the instant appeal has not been admitted but the Court had summoned the original record seven years ago, and, on 07.03.2019, an order was passed to the effect that mere pendency of appeal would not mean passing of any interim order staying execution of decree. Submission is that the matter is being adjourned for last several years and though the appeal has not been admitted, since the original record is lying before this Court for hearing on admission, the execution proceedings are held up. He requests the Court to remit back the original record to the District Judgeship.

4. It is quite common and part of proceedings of this Court that whenever this Court summons the record of the proceedings of sub-ordinate court, particularly those decided finally, it is done so as to facilitate consideration of the matter before it, either for admission or for final hearing. Reason is that the Court wants to peruse the documents forming part of the record of sub-ordinate Court. Therefore, irrespective of the fact that the appeal or revision has or has not been admitted, summoning the original record would create some unforeseen problems.

5. Legislative mandate contained under Order XLI Rule 5 of Code of Civil Procedure or U.P. amendments made in Section 115 of C.P.C. is clear to the effect that mere filing of an appeal or revision would not operate as stay against the proceedings. The said provisions are quoted for a ready reference:-

**Order XLI Rule 5 of
Code of Civil Procedure**
**"5. Stay by Appellate
Court- (1) An appeal shall not
operate as a stay of proceedings**

under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree."

Sub-section (4) of Section 115 of Code of Civil Procedure (U.P. Amendment)

"(4) A revision shall not operate as a stay of suit or other proceedings before the court except where such suit or other proceedings is stayed by the superior court."

6. By virtue of **Order XLII Rule 1** of Code of Civil Procedure, 1908, provisions of Order XLI are also made applicable to **appeals from appellate decrees** and, hence, Rule 5 of Order XLI would also apply to second appeals. It is quoted hereunder:-

"1. Procedure- The rules of Order XLI shall apply, so far as may be, to appeals from appellate decrees."

7. Similarly, vide **Order XLIII Rule 1** of Code of Civil Procedure, 1908, provisions of Order XLI are also made applicable to appeals from orders and, hence, Rule 5 of Order XLI, as quoted above, would also apply to appeals from orders.

8. In this regard, this Court called for relevant circular/notification etc. from the office of this Court so as to understand as to on what basis original/photostat copy

of the record is summoned. The officials concerned placed before the Court a copy of order dated 25.04.2018 passed by the Supreme Court in *Asian Resurfacing of Road Agency P. Ltd. and another vs. Central Bureau of Investigation*, and submitted that it is pursuant to the directions contained in the said order that now the **photostat copy** of the record is being summoned and not its original. For a ready reference, the order dated 25.04.2018 is quoted hereunder:-

"1. Heard learned counsel for the parties.

2. In view of judgment of three Judge Bench dated 28th March, 2018 and after considering the material on record, we do not find any ground to interfere with the order framing charge.

3. Accordingly, the trial court is directed to proceed with the matter pending before it. All contentions of the parties are left open which may be gone into by the trial court. Parties are directed to appear before the trial court on 14th May, 2018.

4. **To give effect to directions in judgment of this Court dated 28th March, 2018, noted above, we direct that wherever original record has been summoned by an appellate/revisional court, photocopy/scanned copy of the same may be kept for its reference and original returned to the trial courts forthwith.**

5. We also direct that if in future the trial court record is summoned, the trial courts may send photocopy/scanned copy of the record and retain the original so

that the proceedings are not held up. In cases where specifically original record is required by holding that photocopy will not serve the purpose, the appellate/revisional court may call for the record only for perusal and the same be returned while keeping a photocopy/scanned copy of the same.

6. A copy of this order be sent to all the High Courts. The appeals are disposed of."

9. The aforesaid order was passed by the Supreme Court in the matter of *Asian Resurfacing* (supra) and, later on, a judgment was passed in same matter reported in (2018) 16 SCC 299 containing directions in paragraphs 36 and 37 of it regarding automatic vacation of interim orders after expiry of six months. The said directions were, later on, set aside by the Constitution Bench of the Supreme Court in *High Court Bar Association, Allahabad vs. State of Uttar Pradesh and others*, (2024) 6 SCC 267. This Court finds that reversal of previous decision in *Asian Resurfacing* by the subsequent decision in *High Court Bar Association* (supra) is an authority on the issue as to whether stay order granted by the High Court would automatically lapse after expiry of six months period. The judgment of the Supreme Court, with great respect, would not affect the directions contained in the order dated 25.04.2018 insofar as summoning of the photostat/scanned copy of the record of subordinate court is concerned nor did the said issue form subject matter of deliberations or consideration before the Apex Court.

10. In view of the above, since, even after reversal of the decision in *Asian*

Resurfacing (supra), the Registry is summoning the photostat/scanned copy of the records of the courts subordinate to this Court, **following directions** are issued to the office of this Court:-

(a) Henceforth, the **original record** shall not be summoned by the office, unless otherwise specifically directed by this Court in a particular case and only **photostat/scanned copy** of the same shall be summoned.

(b) Whenever, in the past, original record has been summoned by this Court, office shall remit back the same to the concerned District Judgeship with a direction to the concerned District Judgeship to immediately send photostat/scanned copy of the said record to this Court and, thereafter, it is the said photostat/scanned copy that shall be kept for the purpose of consideration of the matter by this Court pursuant to previous directions issued by it.

11. Insofar as the present case is concerned, since the Court has already summoned the original record for hearing on admission, this Court is of the view that photostat copy of the record would serve the purpose.

12. Office is directed to remit back the original record of the courts below to the District Judgeship within two weeks. The District Judgeship, after receipt of record, shall get photostat copy of the same and shall forthwith send the same to this Court. It shall, then, be placed before this Court whenever the matter is listed for hearing on admission.

13. **The Registrar General is directed to issue necessary**

circular/communication to the office of this Court as well as all the District Judgeships to act as per directions contained in paragraph No 10 of this order.

(2025) 1 ILRA 705

APPELLATE JURISDICTION

CIVIL SIDE

DATED: LUCKNOW 20.01.2025

BEFORE

THE HON'BLE RAJNISH KUMAR, J.

Second Appeal No. 400 of 2011

Zila Ganna Utpadak Sahkari Samiti Ltd.

...Appellant

Versus

Union of India & Ors.

...Respondents

Counsel for the Appellant:

Rajeev Kumar Sinha

Counsel for the Respondents:

Dr. Ravi Kumar Mishra, I H Farooqui, I S Farooqui

Civil Law - Code of Civil Procedure, 1908 - Sections 34 & 80 - General Rules (Civil), 1957 - Rule 6 - National Savings Certificate (Vith issue) Rules, 1981 - Rules 7, 8, 9, 11 - Government Savings Certificate Act, 1959 - Section 2(a), 12 - Maturity amount - Appellant invested amount of Rs.1,50,000/- on 27.09.1984 in NSC Vith issue and amount of Rs.3,02,250/- was to be paid on maturity on 19.09.1990, but amount was not paid on maturity - Appellant filed suit for recovery of amount , dismissed without considering pleadings, evidence and records - Appellant filed civil appeal, partly allowed and held holder not entitled for interest - The learned courts below failed to consider that NSC can be issued in name of society and appellant society rightly invested on behalf of its members in accordance with law. (Para 4)

Held, appellant can't be held guilty of issuance of NSCs in name of society in irregular manner and contravention of rules but respondents are also guilty of it, as issued without verifying properly as to whether it was in accordance with law or not, respondents didn't detect during whole period of NSCs but thereafter for long time and detected after correspondence by appellant and thereafter respondents no.2 called consent of appellant for payment of SB interest on Public Accounts on deposited amount, consent was not given, invested amount was not returned and thus appellant entitled for interest of 6% p.a applicable on SB Public Accounts from date of deposit till date payment. (Para 28)

Appeal partly allowed. (E-13)

List of Cases cited:

1. U.P. Forest Corporation Employees' Provident Fund Trust Vs U.O.I.& ors., Writ Petition No.4393 of 1990, order dated 10.9.1996
2. Mahesh Chandra Bansal Vs Krishna Swaroop Singhal & ors., reported in (1997) 10 SCC 681, (Para 4)
3. Municipal Board, Chandpur Vs U.O.I.& ors.; 2002 SCC OnLine All 323
4. Romeo Sam Arambhan Vs U.O.I.& ors.; 2004 (1) Mh.L.J. 56
5. Tyrreli Leth Lodge Vs U.O.I.; AIR 2004 Gujarat 340, (Para 6)
6. Arulmighu Dhandayudhapaniswamy Thirukoil, Palani, Tamil Nadu, thr. Its Joint Commissioner Vs The Director General of Post Offices, Department of Posts & Ors., Civil Appeal No.4995 of 2006, order dated July 13, 2011
7. Postmaster, Dargamitta H.P.O., Nellore Vs Raja Prameelamma (Ms), 1995 Legal Eagle (SC) 587 (1998 (9) SCC 706)
8. Superintendent of Post Offices & ors. Vs Helpline Grahak Mandal & anr.by National