averment can in no way be said to be unambiguous or clear admission of parties being together as on that date.

10. We are satisfied, on hearing the parties and making our enquiry as aforesaid, parties are entitled to divorce by mutual consent. The averments in the petition are true. Hence, we declare the marriage solemnized on 6th December, 2004 to be dissolved by mutual consent. The decree be drawn up expeditiously.

11. The appeal is disposed of.

(2025) 4 ILRA 955
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 21.04.2025

BEFORE

THE HON'BLE RAJNISH KUMAR, J.

Second Appeal No. 361 of 2018

Ram Baran ... Appellant
Versus
Sheetla Prasad Yadav & Anr.
...Respondents

Counsel for the Appellant:
Mohammad Ehtesham Khan

Counsel for the Respondent:
C.B. Singh, Anshuman Singh Rathore, Bhoomika Bajpai, Raghaw Ram Upadhyay

Civil Law - Civil Procedure Code, 1908 – Section 100 – U.P. Zamindari Abolition and Land Reforms Act, 1950 – Section 229-B – Jurisdiction of Civil Court – Suit for Cancellation of Sale Deed – Fraud, Cheating, and Impersonation – Prima Facie Title of Recorded Tenure Holder – Concurrent Findings of Fact – Scope of Interference in Second Appeal.

Held:

The appellant challenged the judgment and decree dated 10.12.2013 by the Additional Civil Judge, Sultanpur, and the appellate court's confirmation on 29.09.2018, which cancelled a sale deed dated 20.04.1987 on grounds of fraud, cheating, and impersonation. The appeal was admitted on the substantial question of whether the civil court had jurisdiction to entertain the suit for cancellation of the sale deed, given that the plaintiff's predecessor-in-interest was not recorded as the tenure holder, or if the suit was maintainable only in the revenue court under Section 229-B of the U.P.Z.A. & L.R. Act. The Court held that a civil court has jurisdiction to try a suit for cancellation of a sale deed when the plaintiff's predecessor-in-interest was the recorded tenure holder with prima facie title, and the suit alleges fraud, as per *Shri Ram v. Ist Addl. Distt. Judge, (2001) 3 SCC 24*. The plaintiff's husband, Ram Dev, was the recorded tenure holder, and after his death, the plaintiff, as his legal heir, had prima facie title. The sale deed was not supported by evidence of execution or payment of consideration, and the defendant/respondent no.2, a beneficiary, supported the plaintiff's claim of fraud. Concurrent findings of fact by both courts below, based on evidence, were not perverse and thus not liable to interference under Section 100 CPC. The substantial question of law did not arise, as the civil court was competent to entertain the suit. The appeal was dismissed for lack of merit.

Second Appeal dismissed.

Case Law Discussed:

1. Shri Ram Vs Ist A.D.J., (2001) 3 SCC 24* – Civil court's jurisdiction to entertain suit for cancellation of sale deed by recorded tenure holder alleging fraud.

2. Kamla Prasad Vs Kishna Kant Pathak, (2007) 4 SCC 213* – Suit for declaration of rights in revenue court required if plaintiff's name not recorded in revenue records.

3. Ram Padarath Vs II A.D.J., Sultanpur, 1989 AWC (FB) (LB) 290* – Recorded tenure holder can seek cancellation of void document in civil court without needing declaration in revenue court.

4. Jai Ram Singh Vs 1st A.D.J., Bijnore, 2007 (25) LCD 283* – Civil court's jurisdiction for cancellation of sale deed on grounds of fraud if plaintiff or predecessor-in-interest recorded in revenue records.

5. Suryakunwari Vs Nanhu, 2019 (37) LCD 2346* – Concurrent findings of fact not to be interfered with in second appeal unless perverse.

6. Jangi Singh Vs Brij Mohan Singh, 2012 (30) LCD 2616 – No interference in second appeal if findings based on evidence.

7. Kapil Kumar Vs Raj Kumar, (2022) 10 SCC 281* – No interference with concurrent findings unless perverse.

8. Shivah Balram Haibatti Vs Avinash Maruthi Pawar, (2018) 11 SCC 652* – Concurrent findings binding in second appeal absent perversity.

9. Narendra Vs Ajabrao, (2018) 11 SCC 564* – Interference in second appeal permissible only for perverse findings or legal errors.

10. Dalip Singh Vs Bhupinder Kaur, (2018) 3 SCC 677* – No interference in second appeal absent perversity.

11. Gautam Sarup Vs Leela Jetly, (2008) 7 SCC 85* – Alternative pleas permissible but not mutually destructive.

12. State Bank of India Vs S.N. Goyal, (2008) 8 SCC 92* – Substantial question of law must impact the decision in the case.

Observation:

The Court noted that the defendant/respondent no.2, a beneficiary of the sale deed, supported the plaintiff's claim of fraud, denying execution and payment of consideration. The appellant's claim of execution and possession was not substantiated by evidence, and the absence of any provision for the plaintiff's livelihood by her husband, Ram Dev, further supported the inference of fraud. The concurrent findings of the courts below, based on oral and documentary evidence, were not perverse, and the civil court was competent to entertain the suit given the plaintiff's prima facie title as the legal heir of the recorded tenure holder.

(Delivered by Hon'ble Rajnish Kumar, J.)

1. Heard, Shri Mohammad Ehtesham Khan, learned counsel for the appellant alongwith Shri Shashi Kant Mishra, Sri Raghaw Ram Upadhyay, learned counsel for the respondent no.1 and Shri Anshuman Singh Rathore, learned counsel for respondent no.2.

2. The instant Second Appeal has been filed under Section 100 of the Civil Procedure Code, 1908 (here-in-after referred as CPC) against the judgment and decree dated 10.12.2013 passed in Regular Suit No.1129 of 1992; Pran Dei (deceased) substituted by legal heir Smt. Karma Dei versus Ram Baran and another by Additional Civil Judge (Jr.Div.), Court No.31, Sultanpur and judgment and decree dated 29.09.2018 passed in Civil Appeal No.36 of 2014; Ram Baran Versus Sheetala Prasad and others by the VIth Additional District Judge, Sultanpur.

3. The appeal has been admitted on the following substantial question of law framed in the memo of appeal:-

"Whether the civil court was competent to entertain a suit for cancellation of sale deed dated 22.04.1987 on behalf of Mst. Pran Dei who was not recorded over the land in question or the said suit was maintainable before the revenue courts in terms of the provisions contained under Section 229-B of the U.P.Z.A.& L.R. Act?"

4. A suit for cancellation of sale deed dated 20.04.1987 was filed by the predecessor-in-interest of plaintiff/respondent no.1 i.e. Pran Dei with the allegation that the land in dispute bearing Gata No.839 having an area of 2 bigha, 4 biswa and 17 dhur, situated in village Salahpur, Pargana-Meeranpur, Tehsil and District-Sultanpur was recorded in the name of Ram Dev son of Nohar. He remained in possession of the said land during his life time. He died in the year 1987. He had only one daughter, namely, Smt. Karma Dei, who was married to Ram Akbal, resident of Village-Mainapur, Pargana-Aldemau, Tehsil-Kadipur, District-Sultanpur. The suit was filed by Smt. Pran Dei, wife of Ram Dev, claiming that she is widow of deceased Ram Dev and is only legal heir and after his death she is owner and in possession of all immovable and movable properties of the deceased Ram Dev. The deceased Ram Dev had not executed any sale deed or Will deed in favour of anybody in his life time. The defendant/respondent no.2 herein i.e. Radhey Shyam had got the land in dispute recorded in his name on the basis of a Will. On coming to know about the same she filed an application on 17.09.1992 for removal of his name from the revenue records, which is pending. On 20.09.1992 when she inquired from the defendants about the forged order made in their favour then it came to light that a sale deed has also been executed in favour of the defendants i.e. the defendant/appellant and defendant no.2/respondent no.2. She was astonished to hear it and she moved an application for certified copy of the documents, which was received by her on 09.10.1992. 10.10.1992 and 11.10.1992 were holidays, therefore, she filed the suit for cancellation of sale deed on 12.10.1992. The suit was filed alleging therein that the sale deed in question dated 20.04.1987 in favour of defendants is illegal. There was no talks between the husband of the plaintiff i.e. predecessor-in-interest of the plaintiff/respondent no.1 and the defendants i.e. the defendant no.1/appellant and defendant/respondent no.2 for sale of the land in dispute. He had also not executed the sale deed of the land in dispute in favour of the defendants. It was further alleged that the deceased Ram Dev had no need to sell the land in dispute. He had also not received any sale consideration. The sale deed in question is an outcome of fraud and forgery. The deceased Ram Dev was very old. He was aged about 80 years at that time. He was unable to differentiate between good and bad. On coming to know about the sale deed in question she asked to the defendants to get the same cancelled, but they were not ready and they had completely denied on 11.10.1992, therefore, she had to file the suit.

5. The suit was contested by the defendant/appellant-Ram Baran, who was defendant no.1 in the suit denying the averments made in the plaint. It was further alleged that the deceased Ram Dev son of Nohar was the sole owner of the land in dispute bearing Gata No.839. He was in need of money, therefore, he want to execute the sale deed of the land in dispute, for which he had talked to the defendant No.1/appellant. Thereafter, he in his good health and with independent mind without any coercion executed the sale deed of the land in dispute after receiving the total sale consideration before the witnesses. After the sale deed the defendant no.1/appellant; Ram Baran entered into possession on his portion of the land in dispute. The predecessor-in-interest of the plaintiff/respondent no.1 had the

knowledge of it since the beginning, but no action was taken during life time of the deceased-Ram Dev. She was old therefore some persons got the wrong and forged suit filed by her by undue influence, whereas she has no concern with the land in dispute. The suit was filed in the year 1992, therefore, it is beyond limitation. The names of the defendant No.1/appellant and defendant/respondent no.2 were recorded in the revenue records. Thus the suit is not maintainable and liable to be dismissed.

6. On the basis of the pleadings of the parties seven issues were framed. Thereafter oral as well as documentary evidence was adduced by the parties. The plaintiff/respondent no.1 filed the copy of the sale deed in favour of Ram Baran and Radhey Shyam, copy of the Khatauni. The defendant No.1/appellant placed on record the original sale deed. Predecessor-in-interest of the plaintiff/respondent no.1-Pran Dei got herself examined as P.W.-1 and Radhey Shyam i.e. the defendant/respondent no.2 as P.W.2 in oral evidence. The defendant no.1/appellant got himself examined as D.W.-1, Sadhu Yadav as D.W.-2 and Rati Pal as D.W.3. The learned Trial court after considering the pleadings of the parties, evidence and material on record decreed the suit and cancelled the sale deed dated 20.04.1987 by means of the judgment and decree dated 10.12.2013.

7. Being aggrieved by the aforesaid decree passed by the trial court, the defendant no.1-appellant; Ram Baran filed a civil appeal under Section 96 and Order 41 Rule (1) CPC challenging the judgment and decree dated 10.12.2013 passed by the trial court. The appellate court considered the appeal after framing four points for determination and considering the pleadings, evidence and material on record dismissed the appeal and confirmed the judgment and decree passed by the trial court. Hence this Second Appeal has been filed by the defendant no.1/appellant, which has been admitted on the aforesaid substantial question of law.

8. The suit for cancellation of sale deed dated 20.04.1987 was filed by the predecessor-in-interest of the plaintiff/respondent no.1-Mst.Pran Dei, who was wife of Ram Dev. Ram Dev was the original tenure holder of the land in dispute bearing Gata No.839 having an area of 2 bigha, 4 biswa and 17 dhur, situated in village Salahpur, District-Sultanpur. Ram Dev and Pran Dei had no son. They had only one daughter, namely, Smt. Karma, who was married to Ram Akbal. Ram Dev died in the year 1987. Thus after death of Ram Dev, his widow Pran Dei was the only legal heir of his immovable and movable properties except for the sale deed challenged in the suit. These facts are not disputed.

9. Section 9 of CPC provides that the courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred, which is extracted here-in-below:-

"9. Courts to try all civil suits unless barred .- The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Explanation [I].-A suit in which the right to property or to an office is contested is a suit of a civil nature,

notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

[Explanation II .-For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.]"

10. In view of above, every person has an inherent right to file a suit of civil nature unless there is an express or implied bar of taking cognizance of a suit of the nature which has been filed. Thus the courts under CPC have jurisdiction to try all types of suits unless the same is barred specifically or by necessary implication in any law.

11. Section 229-B provides declaratory suit by person claiming to be an asami of a holding or part thereof or bhumidhar. Thus the suit before the revenue court can be filed, if a person is claiming a right of bhumidhar, whereas he may not have a claim otherwise. Section 229-B is extracted here-in-below:-

"[229-B. Declaratory suit by person claiming to be an asami of a holding or part thereof.- [(1) Any person claiming to be an asami of a holding or any part thereof, whether exclusively or jointly with any other person, may sue the landholder for a declaration of his rights as asami in such holding or part, as the case may be].

(2) In any suit under sub-section (1) any other person claiming to hold as asami under the land-holder shall be impleaded as defendant.

(3) The provisions of sub-sections (1) and (2) shall mutatis mutandis apply to a suit by a person claiming to be a [bhumidhar] [Substituted by U.P. Act No. 37 of 1958.] [* * *] [Omitted by U.P. Act No. 8 of 1977 (w.e.f. 28.01.1977).] with the amendment that for the word "landholder" the words "the State Government and the [Gaon Sabha] [Substituted by U.P Act No. 33 of 1961.] are substituted therein.]"

12. The Hon'ble Supreme Court, in the case of **Shri Ram and another Versus Ist Addl. Distt.Judge and others; (2001) 3 SCC 24**, has held that where a recorded tenure-holder having a prima facie title and being in possession files suit in the civil court for cancellation of sale deed having been obtained on the ground of fraud or impersonation he cannot be directed to file a suit for declaration in the Revenue Court, the reason being that in such a case, prima facie, the title of the recorded tenure holder is not under cloud and he does not require declaration of his title to the land.

13. The Hon'ble Supreme court, in the case of **Kamla Prasad and others Versus Kishna Kant Pathak and others; (2007) 4 SCC 213**, has held that a suit in which the name of the purchaser was mutated on an admission of the execution of sale deed by the plaintiff himself, who appeared as a witness before the mutation court, the plaintiff would have to go before the Revenue Court for declaration of his rights also.

14. This court, in the case of **Jai Ram Singh and another versus 1st Additional Distt. Judge, Bijnore and others; 2007 (25) LCD 283**, relying on a Full Bench decision of this court in the case of **Ram Padarath Versus II ADJ, Sultanpur and others; 1989 AWC(FB)(LB) 290 and Shri Ram and another Versus 1st Addl. District Judge and others; AIR 2001 SC 1250**, has held that a person who questions

sale deed executed or purported to be executed by him in respect of agricultural land can file the suit for its cancellation before civil court if it is alleged by him that the sale deed is void or viodable on the ground of fraud, coercion, undue influence, misrepresentation or impersonation. Similarly sale deed executed or purported to be executed by predecessor-in-interest of a plaintiff can also be challenged by him before civil court on the same grounds. However, in such situation it is necessary that immediately before the execution of the sale deed, the plaintiff or his predecessor-in-interest must undisputedly be recorded in the revenue records. Conversely, if a person challenged the sale deed executed by any person claiming right over the land though his name was not recorded then he will have to go before a revenue court for declaration of his rights because in such case the challenge in real sense is to the position and affairs in existence immediately before execution of sale deed. The paragraphs 8 and 9 are extracted here-in-below:-

"8. In view of the above authorities, including the Full Bench authority a person who questions sale deed executed or purported to be executed by him in respect of agricultural land can file the suit for its cancellation before civil court if it is alleged by him that the sale deed is void or viodable on the ground of fraud, coercion, undue influence, misrepresentation or impersonation. Similarly sale deed executed or purported to be executed by predecessor-in-interest of a plaintiff can also be challenged by him before civil court on the same grounds. However, in such situation it is necessary that immediately before the execution of the sale deed, the plaintiff or his predecessor-in-interest must undisputedly be recorded in the revenue records.

9. Conversely, if sale deed executed by a person is challenged by another person on the ground that even though immediately before the sale deed only the name of vendor / vendors was undisputedly recorded in the revenue records, still plaintiff had a right in the said land, then such suit is not maintainable before civil court, as it primarily involves question of declaration of right in the agricultural land. In such situation it is not actually the sale deed and state of affairs coming in existence by execution of the sale deed which is being challenged. The challenge in such situation in real sense is to the position and affairs in existence immediately before the execution of the sale deed. If a person asserts that apart from the recorded tenure-holder he also has got a right in the agricultural land then his only remedy lies in filing a suit for declaration before the revenue Court."

15. A Full Bench of this court, in the case of **Ram Padarath and others Versus IInd Additional District Judge, Sultanpur and others; 1989 AWC (FB) (LB) 290**, has held that a recorded tenure holder having prima facie title in his favour can hardly be directed to approach the revenue court in respect of seeking relief for cancellation of a void document, which made him to approach the court of law and in such case he can also claim ancillary relief even though the same can be granted by the Revenue Court. Relevant paragraph 41 is extracted here-in-below:-

41. We are of the view that the case of Indra Deo v. Smt. Ram Piari, 1982 (8) ALR 517 has been correctly decided and the said decision requires no consideration, while the Division Bench

case, Dr. Ayodhya Prasad v. Gangotri, 1981 AWC 469 is regarding the jurisdiction of consolidation authorities, but so far as it bolds that suit in respect of void document will lie in the revenue court it does not lay down a good law. Suit or action for cancellation of void document will generally lie in the civil court and a party cannot be deprived of his right getting this relief permissible under law except when a declaration of right or status of a tenure-holder is necessarily needed in which event relief for cancellation will be surplusage and redundant. A recorded tenure-holder having prima facie title in his favour can hardly be directed to approach the revenue court in respect of seeking relief for cancellation of a void document which made him to approach the court of law and in such case he can also claim ancillary relief even though the same can be granted by the revenue court."

16. This court, in the case of **Ram Tahal Singh Versus Deputy Director of Consolidation, Sultanpur and others; Writ-B No.4512 of 1985** by means of judgment and order dated 22.12.2023 passed by me after considering the aforesaid Full Bench judgment, has held that the recorded tenure holder having prima facie title in his favour can hardly be directed to approach the revenue court in respect of seeking relief for cancellation of a void document.

17. In view of above, it is clear that in such types of cases where the rights or title are not mainly involved and the question involved is only for cancellation of a sale deed, it is the civil court only which has jurisdiction to try the suit and cancel the sale deed. However, a person filing a suit is required to show that he/she has title in the land in dispute and his/her name or the name of the predecessor-in-interest of him/her was recorded in the revenue records showing title in their name, except for the sale deed under challenge and he/she would not have favoured/consented for mutation during mutation proceedings.

18. Adverting to the facts of the present case, it is not in dispute that Ram Dev son of Nohar was the recorded tenure holder of the land in dispute. The plaintiff-Pran Dei (now deceased) was the wife of Ram Dev. They had no son and only a daughter, therefore, after death of Ram Dev his widow i.e. Pran Dei was the only legal heir of movable and immovable properties of Ram Dev. The suit was filed for cancellation of sale deed on the ground that the sale deed in question dated 20.04.1987 in favour of defendants i.e. the defendant No.1/appellant and defendant/respondent no.2 is illegal for the reasons that there was no talk between the husband of the plaintiff and the defendants for sale of the land in dispute and there was no agreement for execution of sale deed and no sale deed has been executed by the husband of plaintiff in favour of the defendants and there was no need of sale of the land in dispute by the said Ram Dev i.e. the husband of the plaintiff and Ram dev had not got the sale consideration and the sale deed is an outcome of fraud, cheating and impersonation and Ram Dev was very old and in 1987 he was aged about 80 years and he had no sense of good and bad since prior to two years of his death. Thus the suit was filed alleging that it is an outcome of the fraud, cheating and impersonation by the defendants and prima facie title of the plaintiff can not be denied because her husband was a recorded tenure holder and after him the plaintiff was the only legal heir, except for the sale deed alleged to have been executed by her husband.

19. The suit was contested by by the defendant no.1/appellant denying the allegations and stating that Ram Dev executed the sale deed in favour of him and his brother after receiving the sale consideration from them and they are in possession of the land in dispute. However it was not contested by the defendant/respondent no.2, who appeared in evidence as P.W.-2 on behalf of plaintiff/respondent no.1 and supported her/his case. Radhey Shyam; defendant/respondent no.2 appeared as P.W.2. The sale deed is also in favour of Radhey Shyam. P.W.-2 stated in his examination-in-chief that he had neither got executed the sale deed from Ram Dev nor paid any money. He also stated that his brother had asked him for getting the sale deed executed from Ram Dev by impersonation by somebody else in his place, but he had declined. He also stated that the land in dispute is of Ram Dev and his widow is in possession of the same and he and his brother have no concern with the same. He also stated in his cross examination that no sale deed was executed by Ram Dev in favour of him and his brother Ram Baran. He also stated that Ram Dev was old and Ram Baran had took him for treatment. He was not with them. Their relations with Ram Dev were cordial and both reside in the same house. Ram Baran also resides in the same house. There was no talks during life time of Ram Dev for execution of sale deed between them. He also stated that the relations of Ram Dev and Ram Baran were also cordial. The land in dispute is in possession of Pran Dei and the purchasers are not in possession of the same. P.W.-1 Pran Dei also stated in her evidence that land-in-dispute is in her possession.

20. The defendant No.1/appellant; Ram Baran appeared as D.W.-1 in the witness box. He stated that the sale deed was executed by the deceased Ram Dev in favour of him and his brother after thinking and with his free will and without any coercion. The sale deed was executed in consideration of Rs.35,000/-. He further stated that the sale consideration was paid in 2-3 installments six months prior to the sale deed. The last installment of Rs.5,000/- was paid about 4-6 days back. The money was given by him and his brother Radhey Shyam together, whereas he while appearing as P.W.2 has denied of paying any money. He also stated that Gokul and Ravindra Kumar Singh were the witness of the sale deed and at the time of execution of sale deed Radhey Shyam, Pran Dei, Gokul and Ravindra Kumar Singh were present and the sale deed was read over to all of them. He further stated that after execution of the sale deed, he and his brother Radhey Shyam are in possession of the land in dispute, whereas Radhey Shyam has denied the possession and stated that Pran Dei is in possession after his husband, who remained in possession during his life time. He also stated that he has got the sale deed executed of whole of the property of Ram Dev and Ram Dev has not left anything for livelihood of his wife. He also stated that there was nobody from village including Gokul present at the time of payment of sale consideration. He also admitted that no money was paid before the Registrar. He also stated that Rs.20,000/- was paid towards expenses, which was included in Rs.35,000/-.

21. D.W.-2 Sadhu Yadav has stated that neither the sale deed was executed before him nor the payment was made

before him. In regard to possession, he stated that Ram Dev used to cultivate the land in dispute during his life time and after his death Pran Dei is doing the same. D.W.-3 Rati Pal stated that Ram Dev had executed the sale deed of his whole property and nothing was left for his wife. The house had also come in favour of Ram Baran and Radhey Shyam.

22. In view of above it is apparent that the execution of sale deed by Ram Dev and payment of sale consideration could not be proved by the defendant No.1/appellant as the defence witnesses and P.W.-2, who himself is a beneficiary of the sale deed as per the sale deed, have not supported the case of the defendant No.1/appellant in regard to payment of sale consideration, execution of sale deed and possession of the land in dispute.

23. It is also very strange that nothing would have been left by Ram Dev for the livelihood of his wife. The defendant no.1/appellant admitted that nothing was left by him for the wife for her livelihood, but no reason could be shown as to why nothing was left by him. It is not believable that a husband would not leave anything or make any arrangement for the livelihood of his wife in case of his death during life time of his wife, unless there is any cogent reason for it with proof thereof, which could not be shown and proved, therefore, execution of sale deed by Ram Dev itself creates doubt and it can be safely inferred that it would have been an outcome of fraud, cheating and impersonation by the defendant No.1/appellant, in regard to which P.W.-2 Radhey Shyam, in whose favour also the sale deed has been executed, has specifically stated that the defendant No.1/appellant had asked him to get the sale deed executed from Ram Dev by impersonation by some other person. The courts' below have recorded the findings considering the above on the basis of pleadings, evidence and material on record and nothing could be shown contrary to it.

24. An argument was raised by learned counsel for the defendant No.1/appellant that since after execution of the Will by Ram Dev, he had executed the sale deed of the fertile land in favour of the defendant No.1/appellant, therefore, his brother Radhey Shyam colluded with the plaintiff/respondent no.1 and gave evidence in his favour. This contention does not seem to be correct for the reason that P.W.-2 Radhy Shyam i.e. defendant/respondent no.2 was also beneficiary of the sale deed, therefore, it is totally misconceived and not tenable.

25. It is settled law that the concurrent findings of facts recorded by the two courts below cannot be set aside in the Second Appeal, unless they are perverse. This Court, in the case of **Suryakunwari versus Nanhu and Others 2019(37)LCD 2346**, considering several judgements has held that the concurrent findings of facts recorded by the two courts are not liable to be set aside unless and until the findings are perverse. The relevant paragraphs 11 to 16 are extracted here-in-below:-

"11. In this case, there are concurrent findings on facts by both the courts below. The Hon'ble Apex Court in catena of judgments has laid down the law that the concurrent findings of fact recorded by two courts below should not be interfered by the High Court in Second

Appeal, unless and until the findings are perverse.

12. In a recent case of Shivah Balram Haibatti Vs. Avinash Maruthi Pawar (2018)11 SCC 652 the Apex Court has held as under:-

"..... These findings being concurrent findings of fact were binding on the High Court and, therefore, the second appeal should have been dismissed in limine as involving no substantial question of law."

13. In another recent case of Narendra and others Vs. Ajabrao S/o Narayan Katare (dead) through legal representatives, (2018) 11 SCC 564 the Hon'ble Apex Court held as under:-

"...interference in second appeal with finding of fact is permissible where such finding is found to be wholly perverse to the extent that no judicial person could ever record such finding or where that finding is found to be against any settled principle of law or pleadings or evidence. Such errors constitute a question of law permitting interference in Second Appeal."

14. In one more recent case Dalip Singh Vs. Bhupinder Kaur, (2018) 3 SCC 677 the Hon'ble Apex Court has held that if there is no perversity in concurrent findings of fact, interference by the High Court in Second Appeal is not permissible.

15. In Gautam Sarup v. Leela Jetly and Ors. [(2008) 7 SCC 85], the Apex Court held that a party is entitled to take an alternative plea. Such alternative pleas, however, cannot be mutually destructive of each other.

16. In State Bank of India and others Vs. S.N. Goyal; (2008) 8 SCC 92 the Hon'ble Supreme Court has held as under :-

"Second appeals would lie in cases which involve substantial questions of law. The word 'substantial' prefixed to 'question of law' does not refer to the stakes involved in the case, nor intended to refer only to questions of law of general importance, but refers to impact or effect of the question of law on the decision in the lis between the parties. 'Substantial questions of law' means not only substantial questions of law of general importance, but also substantial question of law arising in a case as between the parties. In the context of section 100 CPC, any question of law which affects the final decision in a case is a substantial question of law as between the parties. A question of law which arises incidentally or collaterally, having no bearing in the final outcome, will not be a substantial question of law. Where there is a clear and settled enunciation on a question of law, by this Court or by the High Court concerned, it cannot be said that the case involves a substantial question of law."

26. Similar view has been taken by this Court, in the case of **Bhagauti Singh @ Chedi Singh S/O Madhuban Singh versus Mata Prasad Singh S/O Bhaggu Singh; 2022(40)LCD 2461**, in which it has been held that it is crystal clear that the High Court in exercise of power under Section 100 CPC should not interfere in the findings of fact recorded by the first appellate court, which is a final court of fact or concurrent findings of fact unless the same are based on no evidence or perverse.

27. This Court, in the case of **Jangi Singh versus Brij Mohan Singh and others; 2012(30)LCD 2616**, has held that both the courts below have recorded their finding on the basis of the evidence on record, which does not give any rise to the substantial question of law as raised by the defendant-appellant.

28. The Hon'ble Supreme Court, in the case of **Kapil Kumar versus Raj Kumar; (2022) 10 SCC 281**, has held that unless the concurrent findings recorded by the courts below were found to be perverse, the same were not required to be interfered with by the High Court in exercise of powers under Section 100 CPC.

29. In view of above and considering the overall facts and circumstances of the case this court is of the view that the impugned judgment and decrees have been passed in accordance with law by reasoned and speaking order, which does suffer from any illegality, error or perversity. Thus the substantial question of law formulated by this court does not arise in this case because the suit for cancellation of sale deed can be filed by a person, who has a prima facie title of the land in dispute and the predecessor-in-interest of the plaintiff/respondent no.1 had the title except for the sale deed in question, which was challenged, which was an out come of fraud, cheating and impersonation as discussed above. The Second Appeal has been filed on misconceived and baseless grounds, which lacks merit and is liable to be dismissed.

30. The Second Appeal is, accordingly, **dismissed**. No order as to costs.

(2025) 4 ILRA 965
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 17.04.2025

BEFORE

THE HON'BLE ABDUL MOIN, J.

First Appeal from Order No. 151 of 2013

Smt. Sarba Maurya & Ors. ...Appellants
Versus
The Oriental Insurance Co. Ltd. & Ors. ...Respondents

Counsel for the Appellants:
Y.K. Pandey Rakesh Pratap Singh

Counsel for the Respondent:
Mukund Tewari, Satyajit Banerji, Surendra Pal Singh

A. Motor Accident Act, 1988 – Compensation – Enhancement in loss of consortium, loss of eSt., funeral expenses claimed – Entitlement – *Pranay Sethi's case* and *Babita's case* relied upon – Held, the amount towards loss of eSt., loss of consortium and funeral expenses as awarded by the learned Tribunal stand enhanced to Rs.15,000/-, Rs.40,000/- & Rs.15,000/- respectively. Each of the claimants would be entitled to loss of consortium of Rs.40,000/-. Rate of interest on the amount as has been awarded by the learned Tribunal is also enhanced to 9% per annum. (Para 21, 23 and 24)

B. Motor Accident Act, 1988 – Compensation – Future prospects – Determination – *Savita's case* relied upon – Held, the notional income is increased by 30% being the future prospect. Said amount would be added to the notional income of the deceased, upon which deduction as done by the learned Tribunal on actual income would be done. (Para 22 and 24)

Appeal allowed. (E-1)

List of Cases cited:-

1. National Insurance Comp. Ltd. Vs Pranay Sethi & ors.; (2017) 16 SCC 680

2. Savita Vs Bindar Singh & ors.; (2014) 4 SCC 505

3. Civil Appeal No. 2222 of 2024; Babita & ors. Vs Karnataka Road Lines Pvt Ltd. & ors.