

**(2025) 2 ILRA 48**  
**APPELLATE JURISDICTION**  
**CIVIL SIDE**  
**DATED: LUCKNOW 28.02.2025**

**BEFORE**

**THE HON'BLE RAJNISH KUMAR, J.**

Second Appeal No. 42 of 2013

**Juggi Lal** **...Appellant**  
**Versus**
**Guru Prasad** **...Respondent**

**Counsel for the Appellant:**

Ved Prakash Misra, Anuj Pandey, Nishant Shukla, Vijay Krishna

**Counsel for the Respondent:**

Sampurnanand Shukla, Ashok Kumar Bhatnagar, Suresh Singh

**Civil Law - Code of Civil Procedure, 1908 - Order 41 - Rule 31 - Registration Act, 1908 - Sections 34 & 35 - A plea has been taken if Will was executed on basis of fraud, father of plaintiff-respondent could have told about it before Registering Authority in enquiry - Not taken before Courts below - No evidence has been adduced and pointed out by appellant - D.W.2, witness of Will not given any evidence of registration of Will or presentation of father of respondent before registering authority and as per endorsement on Will, executor has been identified by D.W.2 and Patandeen - Thus, misconceived, not tenable. (Para 25)**

**Perusal of judgment passed by lower appellate court indicates no points of determination have been framed but all 7 issues framed by trial court considered separately and independent findings recorded after considering pleadings, evidence and material on record - Substantial compliance of rule - Findings recorded by courts below regarding parentage of respondent and fraud in execution of Will are based on evidence on**

**record, does not suffer from any illegality. (Para 27, 31)**

**Appeal dismissed. (E-13)**

**List of Cases cited:**

1. Mrugendra Indravadan Mehta & ors. Vs Ahmedabad Municipal Corporation; (2024) 6 S.C.R. 594, (Para 30)
2. Badri & ors. Vs Jata Shankar & anr., Second Appeal No.162 of 2011, order dated 03.02.2020
3. Dhannulal & ors. Vs Ganeshram & anr.; 2015(12) SCC 301, (Para 19)
4. Meena Pradhan Vs Kamla Pradhan & anr.; 2023 9 SCC 734, (Paras 10, 11)
5. Suryakunwari Vs Nanhu & ors.; 2019(37) LCD 2346, (Paras 11 to 16)

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

1. Heard Sri Vijay Krishna, learned counsel for the defendant-appellant and Sri Ashok Kumar Bhatnagar, learned counsel for the plaintiff-respondent.

2. The instant second appeal under Section 100 of the Civil Procedure Code 1908 (hereinafter referred as CPC) has been filed against the judgment and decree dated 23.01.1984 passed in Regular Suit No.197/91(Guru Prasad versus Juggi Lal) by the 6th Additional Munsif, Faizabad(now Ayodhya) and judgment and decree dated 04.01.2013 passed in Civil Appeal No.044/1984(Juggi Lal versus Guru Prasad) by the Additional District Judge, Court No.5, Faizabad(now Ayodhya).

3. The following substantial question of law has been formulated in this appeal by means of the order dated 04.02.2013:-

*“Whether the finding recorded by courts below, regarding parentage of plaintiff and also regarding fraud in execution of Will, is against the evidence on record and perverse.”*

4. Learned counsel for the appellant submitted that the plaintiff-respondent is the son of Mata Dei and her previous husband(Chhedi). The evidence to this effect was adduced i.e. Birth Certificate and Pariwar Register of plaintiff-respondent but without considering it and relying on the evidence of the plaintiff-respondent who was an interested witness, the finding has been recorded that the plaintiff-respondent Guru Prasad was the son of Lodhe and Mata Dei. He had also argued that in the villages, the villagers have a tendency of taking Gaza and Liquor, therefore, merely because Lodhe was taking liquor, it cannot be said that the Will Deed was got executed in it's influence. He further submitted that the allegation that the Will Deed was got executed by the defendant-appellant in collusion with the attesting witnesses of the Will in a fraudulent manner is not sustainable for the reason that the Will has been proved by one of the attesting witness of the Will but the learned courts' below without considering that in case Will was being got executed in a fraudulent manner, Lodhe who had executed the Will, would have stated the same before the registering authority in the enquiry under Section 34 and 35 of the Registration Act. He further submitted that the provisions of Order 41 Rule 31 CPC have been violated and the points of determination have not been framed. Thus, the submission is that the impugned judgment and decrees passed by the courts below are not sustainable in the eyes of law and liable to be set aside.

5. Per contra, learned counsel for the plaintiff-respondent submitted that Lodhe was the father of the plaintiff-respondent Guru Prasad and to prove it, the High School certificate of Guru Prasad and Caste Certificate with parentage of Lodhe were filed and no cogent evidence contrary to it could be produced. The letters written by the father of the plaintiff-respondent Lodhe have also been placed on record, in which he has addressed the plaintiff-respondent as his son. The money order receipts showing the money sent by the plaintiff-respondent to his father Lodhe were also placed on record. Thus, there is ample evidence to show that the plaintiff-respondent was the real son of Lodhe and Mata Dei. He further submitted that the doubt has been tried to be created by filing a copy of the Pariwar Register showing parentage as Chhedi, which has been signed by the same Gram Pradhan who had signed the Caste Certificate of the plaintiff-respondent showing the father's name Lodhe but he has not been produced to prove the same. Thus, the submission was that the plaintiff-respondent is the son of the deceased Lodhe and the findings have been rightly recorded by the courts below in regard to the parentage of the plaintiff-respondent, which are not contrary to the evidence on record and there is no perversity in it. He further submitted that it has been proved that the Will was got executed by defendant-appellant, who was confident of Lodhe being son of his sister, who used to look after Lodhe in absence of the plaintiff-respondent as he was in service and out. The courts below have recorded a finding for setting aside the Will executed in favour of the defendant-appellant on the basis of cogent evidence on record and considering the evidence of both the parties and there is no illegality or perversity in it.

6. So far as the plea of Section 34 and 35 of Registration Act is concerned, it has been submitted that this plea was not taken before the courts below, therefore, it cannot be developed at this stage without any evidence, hence it cannot be considered. He lastly submitted that merely because the points of determination have not been framed by the lower appellate court, the judgment passed by it cannot be said to be in violation of Order 41 Rule 31 CPC because all the issues involved in the case have been considered by the lower appellate court and findings have been recorded on the basis of pleadings, evidence and material on record. In this regard he relies on judgment of the Hon'ble Supreme Court in the case of *Mrugendra Indravadan Mehta and others versus Ahmedabad Municipal Corporation*; (2024) 6 S.C.R. 594 and judgment and order dated 03.02.2020 passed by this Court in *Second Appeal No.162 of 2011; Badri and others versus Jata Shankar and Another*.

7. I have considered the submissions of learned counsel for the parties and perused the records.

8. The suit for cancellation of Will Deed dated 19.09.1980 executed by Lodhe in favour of the defendant-appellant was filed by the plaintiff-respondent alleging therein that he is the only legal heir/representative of deceased Lodhe and owner and in possession of his all movable and immovable properties. He is resident of Village Chakwara, Pargana Magalsi, Tehsil and District Faizabad. The plaintiff-respondent is in Central Government Service in PP office GPO on the post of UDC for the last 9 years. The defendant-appellant is cousin (fuera bhai) of the plaintiff-respondent and real brother-in-law (Sadhu) of the plaintiff-respondent who

is permanent resident of Village Chakwara, Pargana Magalsi, Tehsil and District Faizabad. The father of the plaintiff-respondent had married twice i.e. to Smt. Durpata (who has died) and Smt. Mata Dei i.e. mother of the plaintiff-respondent. The plaintiff-respondent is the son of Lodhe and Smt. Mata Dei. Lodhe died on 08.10.1980. The father of the plaintiff-respondent was an illiterate and rustic man and habitual of taking liquor. He was ill for the last 4-5 years prior to his death. Lodhe loved the plaintiff-respondent since beginning. There is a real sister Phoola of the plaintiff-respondent, who was also born from Lodhe and Mata Dei. The defendant-appellant, being the close relative, used to come to their house. The plaintiff-respondent being in government service was posted out and used to send money to his father Lodhe. Lodhe was seriously ill for the last 1 year prior to his death on account of age, bad health and taking liquor. He was unable to understand things and came under the influence of defendant-appellant. The defendant-appellant had informed about his serious illness on the death of Lodhe to the plaintiff-respondent. The defendant-appellant gave an application for mutation in the court of Consolidation Officer, Sadar Faizabad after some time of death of the father of the plaintiff-respondent. Then he came to know that the defendant-appellant has got the Will deed executed from his father without his knowledge or by impersonation by some other person. The Will Deed has been got executed by undue influence and deceiving by the defendant-appellant. The father of the plaintiff-respondent had lost capacity to understand things and he was seriously ill for the last one year. The Will deed is against the nature. The Will has been got executed by defendant-appellant in collusion with Patandeen and Santram. The father of the

plaintiff-respondent has not executed the Will with his free Will. Both the wives of the father of the plaintiff-respondent were alive at the time of execution of Will, therefore, there was no occasion to execute the Will and no justification has also been given for not keeping anything for them and even they have not been referred in the Will. Thus, the Will Deed is liable to be set aside.

9. The suit for cancellation of Will Deed was contested by the defendant-appellant by filing written statement denying the averments made in the plaint. It was stated in the written statement that the plaintiff-respondent is not the son of Lodhe. Lodhe had illicit relation with Smt. Mata Dei, therefore, he had kept her. The plaintiff-respondent was born from Mata Dei and Chhedi. They had also a girl Phoola. During lifetime of Chhedi, Mata Dei had come to the house of Lodhe with plaintiff-respondent and Phoola. Lodhe had confidence in the defendant-appellant as he used to look after him, therefore, before his death he had executed the Will of his movable and immovable properties on 19.09.1980 in favour of defendant-appellant, which was executed by him with his free will. There was no fraud in it. The defendant-appellant had done the cremation of Lodhe as the plaintiff-respondent was in other state. The defendant-appellant is in possession of the properties of Lodhe. The Court has no jurisdiction to try the suit and it is barred by Section 331 of the U.P. Zamindari Abolition and Land Reforms Act and it is liable to be abated under Section 5 of the Consolidation Act. Thus, the suit is liable to be dismissed.

10. After considering the pleadings of the parties, seven issues were framed by the trial court, which are extracted hereinbelow:

"1:- क्या वाद पत्र की धारा 15 में अभिकथित आधारों के आधार पर वसीयतनामा दिनांकित 19.9.80 अवैध है और निरस्त होने योग्य है।

2:- क्या वादी विवादित सम्पत्ति का स्वामी है जैसा कि वाद-पत्र में अभिकथित है।

3:- क्या वादी मृतक लोधे का पुत्र नहीं है, जैसा कि प्रतिवाद पत्र की धारा 20 में अभिकथित किया गया है।

4:- क्या वाद धारा 331 जमींदारी विनाश अधिनियम से बाधित है।

5:- क्या वाद धारा 5 चकबन्दी अधिनियम के अन्तर्गत अबेट होने योग्य है।

6:- क्या वाद का मूल्यांकन कम किया गया है और न्याय शुल्क अपर्याप्त अदा किया गया है।

7:- वादी किस उपशम को पाने का अधिकारी है।"

11. Thereafter after oral as well as documentary evidence adduced by the parties, the suit was decreed by the trial court by means of the judgment and decree dated 13.01.1984. Being aggrieved, the civil appeal was filed by the defendant-appellant, which has been dismissed by the lower appellate court. Hence this second appeal has been filed, which has been admitted on the aforesaid substantial question of law.

12. The learned trial court dealt with the issue no.3 first, which is as to whether the plaintiff-respondent is the son of Lodhe or not as has been stated in paragraph 20 of the written statement. While considering the issue, the trial court considered the pleadings, evidence and material placed on record by the parties. The trial court has recorded that D.W.1 Juggi Lal i.e. defendant-appellant who has got himself examined in evidence is of 25 years, therefore, he could not prove as to when Guru Prasad was born. D.W.2 Santram has stated in his evidence that he does not know as to when Guru Prasad was born. However, he stated that Mata Dei had

come to the house of Lodhe 35 years ago and the age of Phoola is 20-22 years. Thus Smt. Phoola was born from Smt. Mata Dei and Lodhe and from the evidence of this witness, it is apparent that Guru Prasad was son of Lodhe because the age of Guru Prasad is also 35 years and it is not the case of the defendant-appellant that Mata Dei had any relationship with her earlier husband after coming to the house of the Lodhe. D.W.3 Ram Raj has stated that he does not know as to when Guru Prasad was born and how much Phoola is younger from Guru Prasad. He also could not tell about the birth of both. However, he has stated that after 3-4 years of coming of Mata Dei to the house of Lodhe, zamindari was broken. Thus Mata Dei must have come to the house of Lodhe in the year 1947-48. Thus from the evidence of this witness also, it is proved that Guru Prasad and Phoola are children of Lodhe and the statement of D.W.2 that Guru Prasad and Phoola were born in Village Shekhpur is false because the age of Phoola is 20-22 years and as per evidence of defendant-appellant Smt. Mata Dei had come to the house of the father of the plaintiff-respondent about 35 years back. The plaintiff-respondent has produced the High School certificate of High School Examination 1966, in which the parentage of Guru Prasad has been mentioned as Lodhe and date of birth of Guru Prasad is 15.08.1948. The transfer certificate of Uchta Madhyamik Vidyalaya, Faizabad has also been produced, in which also in the column of name of the father of the plaintiff-respondent, Lodhe is mentioned. In the Caste Certificate dated 09.12.1968 issued by the District Magistrate also, the name of the father of the Guru Prasad, Lodhe is mentioned. No contrary evidence could be adduced by the defendant-appellant and these documents also indicate

that Lodhe has never denied that plaintiff-respondent was his son. The defendant-appellant in support of his contention placed on record copy of the Pariwar Register dated 25.11.1980 to show that Guru Prasad was the son of Chhedi but it is not believable because it has been obtained in the year 1980 and it has been issued by the signature of Gram Pradhan Ram Dularey, whereas the same Gram Pradhan had signed the Caste Certificate dated 09.12.1968 showing the parentage of plaintiff-respondent as Lodhe. Therefore this document has been got prepared only for the purpose of the case.

13. The learned trial court has further recorded that Lodhe has admitted Smt. Mata Dei as his wife because in the copy of the voter list produced by the defendant-appellant, Lodhe is mentioned as husband of Mata Dei and since this document has been produced by the defendant-appellant, he cannot deny the same and that Smt. Mata Dei is not wife of Lodhe. The defendant-appellant by producing copy of the birth certificate of the year 1944 of Mauja Shekhpur, Police Station Ronahi has tried to prove that the plaintiff-respondent was son of Chhedi as the son was born to Chhedi in the year 1944 but the defendant-appellant has not denied the age of the plaintiff-respondent to be 33 years in his written statement, which has been shown by him in his plaint. Therefore the same does not match with the age of the plaintiff-respondent and it cannot be proof of the birth of the plaintiff-respondent. Besides it, D.W.1 Juggi Lal i.e. defendant-appellant has admitted in his evidence that he had sent telegram i.e. Paper No.59(Ga) to plaintiff-respondent indicating the illness of Lodhe so that he may not fear. This telegram was sent after the death of Lodhe. Consequently it can be

inferred that at the time of sending the telegram it was in the mind of D.W.1 i.e. Juggi Lal that being son of Lodhe, the plaintiff-respondent may not lose his mental balance upon hearing the death of his father and if it was known to the defendant-appellant that plaintiff-respondent is not the son of Lodhe, then he would not have any hesitation in sending the telegram of death of Lodhe. Thus it is proved that the plaintiff-respondent is the son of the deceased Lodhe.

14. The lower appellate court, after considering the aforesaid findings as recorded by the trial court and the evidence of PW1, P.W.2, P.W.3, P.W.4 and D.W.1, D.W.2 and D.W.3 and the documentary evidence placed on record by the plaintiff-respondent alongwith list 26(Ga) which includes the inland letters, post cards, receipts of money order, marksheet of Class 9, appointment letter, pumping set receipts, school leaving certificate etc., Paper No.28(Ga) format 4 in which the owner of House No.637 has been mentioned Lodhe son of Narayan, Smt.Durpata and Smt.Mata Dei wife of Lodhe, Paper No.51 (Ga), the receipt of telegram which was sent by Juggi Lal to Guru Prasad in which it is mentioned that the health of maternal uncle is serious come soon, Paper No.55(Ga) to 58(Ga) and 64(Ga) and 73(Ga) i.e. the inland letters which have been written by Lodhe to Guru Prasad addressing him as his son, Paper No.73(Ga) i.e. the appointment letter of Guru Prasad son of Lodhe in the office of Zila Parishad Faizabad, Paper No.75(Ga) leaving certificate mentioning Guru Prasad as son of Lodhe, has recorded the findings. It has also been recorded that the plaintiff-respondent has also placed on record original certificate of High School Examination 1966, Leaving certificate

alongwith List 126 (Ga) and Caste Certificate as 129(Ga), which all shows that father of the plaintiff-respondent was Lodhe. Considering the evidence of P.W.1 to P.W.4, finding has also been recorded by the lower appellate court that plaintiff-respondent Guru Prasad is son of Lodhe because his mother Mata Dei has come back to his maika after his gauna after one year leaving the house of Chhedi and Lodhe brought her from his maika to his house Pilkhawa, where Guru Prasad and Phoola were born from them. Thus after considering the pleadings, evidence and material on record the trial court as well as appellate court have recorded a finding regarding parentage of plaintiff-respondent that Lodhe was the father of plaintiff-respondent, who was born from Lodhe and Mata Dei.

15. The trial court, while considering the issue no.1 as to whether the Will Deed dated 19.09.1980 is legal and liable to be set aside on the grounds mentioned in paragraph 15, considered the oral as well as documentary evidence adduced by the parties. Learned trial court, considered the evidence of witnesses and documentary evidence. P.W.1 Guru Prasad, who has stated that he is son of deceased Lodhe and working as clerk in GPO Allahabad. He has also stated that he always used to send money for the treatment of his father and also made correspondence with him being his father. He has also stated that the defendant-appellant Juggi Lal is his brother-in-law and son of his bua who used to come to his house. He has also stated that when the plaintiff-respondent was posted in Tehri Garhwal he has told the defendant-appellant to look after his father. His father was illiterate and rustic person to whom he used to send the money. P.W.2 has stated in

his evidence that Lodhe had got the plaintiff-respondent educated and when he started job he used to send money to him. He has also stated that Lodhe was happy with his son Guru Prasad. Mata Dei mother of the plaintiff-respondent has appeared as P.W.3. She also admitted in his evidence that after employment of Guru Prasad he used to send money to her husband for his treatment. She has also stated that Lodhe was ill for the last one year prior to his death. P.W.4 Ranjit Prasad Mishra supported the evidence of P.W.1 Guru Prasad and stated that Guru Prasad used to send money to Lodhe. D.W.1 Juggi Lal i.e. the defendant-appellant also admitted in his evidence that plaintiff-respondent Guru Prasad used to send money to Lodhe. D.W.2 Santram stated in his evidence that Guru Prasad lived with Lodhe since beginning. Lodhe got him educated and married him. He also stated that on saying of Lodhe, he used to write letter to Guru Prasad. He also admitted that Guru Prasad used to send money to Lodhe. Thus it is proved that there were no differences between the plaintiff-respondent and his father deceased Lodhe.

16. It has also been recorded that D.W.2 Santram admitted that letters placed on record as Paper No.27(Ga), 57(Ga), 58(Ga) and 59(Ga) are the letters written by him on the saying of Lodhe and Mata Dei. He also admitted that Paper No.34(Ga), 46(Ga) and 49(Ga) have been written by him. Paper No.30(Ga) is the receipt of money order which indicates that Rs.100 was sent by Guru Prasad to Lodhe in the year July 1973. Similarly 31(Ga) to 50(Ga) are the receipts of money order, which were sent by Guru Prasad to deceased Lodhe from time to time. The defendant-appellant has not stated in his written statement that there were any

differences between deceased Lodhe with his wife Durpata and Mata Dei and his son Guru Prasad. Thus, it is apparent that the plaintiff-respondent admittedly lived with his father deceased Lodhe and admittedly Mata Dei and Durpata are the wives of Lodhe and it is also proved from evidence on record that deceased Lodhe has confidence on Smt. Durpata, Smt. Mata Dei and Guru Prasad. In these circumstances there was no question for execution of Will on 19.09.1980 in the life time of deceased Lodhe, particularly when at the time of death of Lodhe his wives Durpata and Mata Dei were alive. In these circumstances execution of Will in dispute by the deceased Lodhe creates a doubt. It is also strange that wives of Lodhe Smt. Durpata and Smt. Mata Dei have no knowledge of the Will.

17. The learned trial court, after considering the evidence of P.W.1, P.W.2, P.W.3, P.W.4, D.W.1, D.W.2 and D.W.3 in which prosecution witnesses admitted that the deceased was ill for the last one year prior to his death and P.W.3 Mata Dei, who has stated that Lodhe was a patient of asthma (dama) and P.W.4 Ranjit Prasad Mishra, who stated that the deceased Lodhe had come for Gaudan 8 days prior to his death and also supported the evidence of other prosecution witnesses in regard to his illness prior to his death and that there is contradiction in evidence of D.W.1 and D.W.2 because D.W.1 Juggi Lal stated that the deceased Lodhe was not ill and he died suddenly, whereas D.W.2 Santram has stated in his evidence that he was ill for the last one week prior to his death and he was a patient of heart and he has also stated that he was not in a condition to even walk since 4-5 days prior to his death, recorded a finding that it is proved that the deceased Lodhe was ill

prior to his death. He was seriously ill and had lost his capacity to understand things. Thereafter, after considering the evidence of P.W.1, P.W.2 and D.W.2 trial court has recorded a finding that Lodhe was fond of taking liquor, which is not disputed by learned counsel for the appellant before this Court as he has stated that villagers used to take ganza and liquor. Thus execution of Will during lifetime of his wives, son and daughter in favour of the defendant-appellant creates a doubt and suspicion in its execution, particularly when he was ill and was an illiterate and rustic person. Thus the Will Deed was got executed by deceiving the deceased Lodhe.

18. It has also been recorded that D.W.1 Juggi Lal has also admitted that Durpata lived in the house of Lodhe till his death and he also admitted that Mata Dei was living in the house since prior to his memory. D.W.2 Santram has also admitted in his evidence that the defendant-appellant Juggi Lal lived in Village Chakwara. Thus it is also not proved that he used to look after Lodhe and Lodhe was happy with him. Thus the trial court has recorded a finding that there was no justification of writing Will in dispute by Lodhe with his free Will and consent.

19. Learned lower appellate court, while considering the aforesaid issue, considered the aforesaid evidence of parties and recorded a finding that defendant-appellant was nephew (Bhanja) of Lodhe and was in a position to govern the Will of Lodhe. The lower appellate court, after considering the evidence of D.W.1, has recorded that he has admitted in his cross examination that he has mentioned the illness of Lodhe in the telegram so that Guru Prasad may not become afraid of it. He has also stated that before two days of

Will he had gone to village Chakwara and came back after two days of execution of Will. D.W.2 admitted in his evidence that Lodhe died after 19 days of execution of Will and he admitted in his evidence that Juggi Lal used to live in Chakwara. The lower appellate court, after considering the pleadings, evidence and material on record, recorded a finding that there is contradiction in evidence of D.W.1 and D.W.2 in regard to illness of Lodhe because D.W.1 stated that he was not ill at time of his death, whereas D.W.2 has stated that Lodhe was ill for the last one year prior to his death and he was patient of heart. His evidence is supported by evidence of P.W.3 Mata Dei, who stated that Lodhe was patient of Dama (Asthma). She has also admitted sending of money order by Guru Prasad to Lodhe. D.W.1 i.e. defendant-appellant Juggi Lal has also admitted that when Guru Prasad used to come to his house Pilkhawa, he used to give money to Lodhe. He has also admitted that at the time of death of Lodhe his wives Smt. Durpata and Smt. Mata Dei were alive and since Lodhe was ill he used to come to his house. He also admitted that at the time of death Lodhe was very old. Considering it, a finding has been recorded that the defendant-appellant Juggi Lal was in a position to govern the wishes of Lodhe.

20. The learned lower appellate court also recorded a finding that D.W.3 Santram has been found to be habitual of giving evidence as he was a witness in the Will of Budhram and hibanama and a sale deed. The learned lower appellate court has also recorded a finding that as per evidence both the wives of Lodhe were alive at the time of his death but no provision has been made by him for their livelihood in the Will. Thus, the Will in question is an outcome of undue influence and got

executed on account of his incapacity to think and understand the things on account of illness and deliberately there is no reference of both the wives in the Will.

21. This Court while considering the aforesaid findings recorded by the courts below and the pleadings, evidence adduced and material on record does not find any illegality or error in the impugned judgment and decrees passed by the courts below and that the findings have been recorded by the courts below regarding parentage of plaintiff and regarding fraud in execution of Will, after considering the pleadings, evidence and material on record and the same are not against the evidence on record. Therefore it cannot be said that the findings recorded by the courts below are perverse in any manner.

22. This Court also is unable to comprehend as to how a man would exclude his wives in the Will, with whom he had no differences, that too without any reference if he had any grudge or differences with them, if he was executing the Will in conscious state of mind with his free will and consent. Despite disclosure of the suspicious circumstances by the plaintiff-respondent, no evidence has been adduced by the defendant-appellant to clear it and it could not be removed by any cogent evidence. It deepens by the contrary evidence of D.W.1. and D.W.2 in regard to illness of Lodhe and admission of D.W.1 that he went to Chakwara two days prior to execution of Will and came back after two days of execution, which must have been done, if it was so, to show that he was not present on the date of execution of Will and Will was got executed in collusion with the aforesaid helpful hands. It is also apparent from admission of D.W.2 that the decision for execution of Will was taken two days

prior to execution. It is also very strange that the executor of Will did not know about his properties because it has been stated in the Will that Juggi Lal would be owner of his all movable and immovable properties, cash, commodities, jewellery, utensils, house, agricultural fields, grove trees, Kot, Bheet, Seer Sagar and total household goods etc., which ever property is found and appear in ownership and possession of executor and would get it recorded in his name after his death. It also indicates that he had not let even a single space or utensil for his wives, which itself creates suspicion in execution of Will and it has not been removed by the defendant-appellant by any cogent evidence.

23. The Hon'ble Supreme Court, in the case of ***Dhannulal and others versus Ganeshram and another; 2015(12) SCC 301***, has held that the proof of Will stands in a higher degree in comparison to the other documents. The relevant paragraph 19 is extracted hereinbelow:-

*19. Proof of a Will stands in a higher degree in comparison to other documents. There must be a clear evidence of the attesting witnesses or other witnesses that the contents of the Will were read over to the executant and he, after admitting the same to be correct, puts his signature in presence of the witnesses. It is only after executant puts his signature, the attesting witnesses shall put the signatures in the presence of the executant."*

24. The Hon'ble Supreme Court, in the case of Meena ***Pradhan versus Kamla Pradhan and Another; 2023 9 SCC 734***, has deduced the principles required for proving the validity and execution of the Will in paragraph 10. The Hon'ble Supreme Court in paragraph 10.10 has held that the

test of judicial conscience has been evolved for dealing with those cases where the execution of the Will is surrounded by suspicious circumstances, which requires to consider factors such as awareness of the testator as to the content as well as the consequences, nature and effect of the disposition in the Will; sound, certain and disposing state of mind and memory of the testator at the time of execution; testator executed the Will while acting on its own free will. It has further been held in paragraph 10.10 that even in the absence of allegations of fraud, fabrication, undue influence etc, if there are circumstances giving rise to doubt then it becomes duty of the propounder to dispel such suspicious circumstances by giving cogent and convincing explanation. The relevant paragraph 10 and 11 are extracted hereinbelow:-

*10. Relying on H. Venkatachala Iyengar v. B.N. Thimmajamma (three Judge Bench) Bhagwan Kaur v. Kartar Kaur (three Judge Bench), Janki Narayan Bhoir v. Narayan Namdeo Kadam (two Judge Bench)), Yumnam Ongbi Tampha Ibema Devi v. Yumnam Joykumar Singh (three Judge Bench) and Shivakumar v. Sharanabasappa (three Judge Bench), we can deduce/infer the following principles required for proving the validity and execution of the will;*

*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 acknowledgment 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 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 been evolved for dealing with those cases where the execution of the will is surrounded by suspicious circumstances. It requires to consider 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; sound, certain and disposing state of mind and memory of the testator at the time of execution; testator excluded the will while acting on his own free will;*

*10.10 One who alleges fraud, fabrication, undue influence et cetera 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". 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.*

*11. In short, apart from statutory compliance, broadly it has to be proved that: (a) the testator signed the will out of his own free will, (b) at the time of execution he had a sound state of mind, (c) he was aware of the nature and effect thereof and (d) the will was not executed under any suspicious circumstances."*

25. A plea has been taken that if the Will was being got executed on the basis of fraud, Lodhe could have told about it before the Registering Authority in enquiry under Section 34 and 35 of Indian Registration Act. Firstly this plea was not taken before Courts below. Secondly no evidence in this regard has been adduced and pointed out by learned counsel for the defendant-appellant. D.W.2 Sant Ram, who is a witness of Will has not given any evidence of registration of Will or presentation of Lodhe i.e. father of plaintiff-respondent before registering authority and as per endorsement on Will, the executor has been identified by Sant Ram; D.W.2 and Patandeen. Thus the plea is misconceived and not tenable and is hereby repelled.

26. One of the grounds raised by the defendant-appellant was that without framing the points of determination and without complying with the provisions of Order 41 Rule 31 CPC, the lower appellate court has decided the appeal. Order 41 Rule 31 CPC provides that the judgment of the appellate court shall be in writing and shall state the points of determination, the decision thereon, the reasons for the decision and where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.

27. Perusal of the judgment passed by the lower appellate court indicates that though no points of determination have been framed but all the 7 issues framed by the trial court have been considered separately and independent findings have been recorded thereon after considering the pleadings evidence and material on record. Therefore merely because the points of determination have not been framed, it cannot be said that the judgment passed by

the lower appellate court is not in compliance of Order 41 Rule 31 CPC because when all the issues involved in the appeal have been considered and findings have been recorded considering the pleadings, evidence and material on record, there is substantial compliance of the rule.

28. The Hon'ble Supreme Court, in the case of **Mrugendra Indravadan Mehta and others versus Ahemdabad Municipal Corporation (supra)**, has held that even if the first appellate court does not separately frame the points of determination arising in the first appeal, it would not prove fatal as long as that Court deals with all the issues that actually arise for deliberation in the said appeal. Substantial compliance with the mandate of Order 41 Rule 31 CPC in that regard is sufficient. The relevant paragraph 30 is extracted hereinbelow:

*30. Thus, even if the first appellate Court does not separately frame the points for determination arising in the first appeal, it would not prove fatal as long as that Court deals with all the issues that actually arise for deliberation in the said appeal. Substantial compliance with the mandate of Order 41 Rule 31 CPC in that regard is sufficient. In this regard, useful reference may be made to G. Amalorpavam and others vs. R.C. Diocese of Madurai and others<sup>8</sup>, wherein this Court held as under:-*

*'9. The question whether in a particular case there has been substantial compliance with the provisions of Order 41 Rule 31 CPC has to be determined on the nature of the judgment delivered in each case. Non-compliance with the provisions may not vitiate the judgment and make it wholly void, and may be ignored if there has been substantial compliance with it and the second appellate court is in a position*

*to ascertain the findings of the lower appellate court. It is no doubt desirable that the appellate court should comply with all the requirements of Order 41 Rule 31 CPC.*

*But if it is possible to make out from the judgment that there is substantial compliance with the said requirements and that justice has not thereby suffered, that would be sufficient. Where the appellate court has considered the entire evidence on record and discussed the same in detail, come to any conclusion and its findings are supported by reasons even though the point has not been framed by the appellate court there is substantial compliance with the provisions of Order 41 Rule 31 CPC and the judgment is not in any manner vitiated by the absence of a point of determination.*

*Where there is an honest endeavour on the part of the lower appellate court to consider the controversy between the parties and there is proper appraisal of the respective cases and weighing and balancing of the evidence, facts and the other considerations appearing on both sides is clearly manifest by the perusal of the judgment of the lower appellate court, it would be a valid judgment even though it does not contain the points for determination.*

*The object of the rule in making it incumbent upon the appellate court to frame points for determination and to cite reasons for the decision is to focus attention of the court on the rival contentions which arise for determination and also to provide litigant parties opportunity in understanding the ground upon which the decision is founded with a view to enable them to know the basis of the decision and if so considered appropriate and so advised to avail the remedy of second appeal conferred by Section 100 CPC.'*

29. This Court, in the case of ***Badri and others versus Jata Shankar and Another(Supra)***, after considering several judgments of the Hon'ble Supreme Court, has held that merely because the points of determination have specifically not been stated in the judgment may not vitiate it because it can be ignored if there has been substantial compliance with the provisions i.e. Order 41 Rule 31 CPC and the higher appellate court is able to ascertain the findings of the lower appellate court.

29. Adverting to the facts of the present case, the lower appellate court has considered all the 7 issues framed by the trial court and recorded its findings on the basis of the pleadings, evidence and material on record and upheld the judgment and decree passed by the trial court recording that the judgment and decree in question dated 23.01.1984 is in accordance with law, which does not require any interference. This Court is of the view that there is substantial compliance of Order 41 Rule 31 CPC and judgment passed by the lower appellate court cannot be said to be vitiated and perverse or against law in any manner.

30. It is also settled law that findings of facts recorded by two Courts below cannot be interfered in second appeal unless they are totally perverse. A coordinate Bench of this Court, in the case of ***Suryakunwari versus Nanhu and Others; 2019(37) LCD 2346***, considering several judgments has held that the concurrent findings of fact 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 Katore (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."*

31. In view of above, this Court is of the view that the impugned judgment and decrees have been passed in accordance with law after considering the pleadings, evidence and material on record and it cannot be said that the findings recorded by the courts below regarding parentage of plaintiff-respondent and also regarding fraud in execution of Will are against the evidence on record and perverse, whereas they are based on evidence and material on record and does not suffer from any illegality, error or perversity, which may call for any interference by this Court. The substantial question of law formulated in this appeal is decided accordingly. The appeal has been

filed on misconceived and baseless grounds, which is liable to be dismissed.

32. The appeal is, accordingly, **dismissed**. No order as to costs.

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**(2025) 2 ILRA 61**  
**ORIGINAL JURISDICTION**  
**CIVIL SIDE**  
**DATED: ALLAHABAD 13.02.2025**

**BEFORE**

**THE HON'BLE AJIT KUMAR, J.**

Matters Under Article 227 No. 1401 of 2025

<b>Shreeram Yadav</b>	<b>...Petitioner</b>
	<b>Versus</b>
<b>Sanjay Mall &amp; Ors.</b>	<b>...Respondents</b>

**Counsel for the Petitioner:**  
 Shiv Om Vikram Singh Chauhan

**Counsel for the Respondents:**  
 Sushil Kumar Mishra

**Civil Law — U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Constitution of India, Article 227— Release application — Co-owner's maintainability to seek release — Tenant's objection that purchaser of undivided property has no possessory right rejected — Held, tenant cannot object to release application on ground that landlord is only a co-owner — Notional possession of co-owner sufficient to maintain release application — Proceedings under Rent Act summary in nature — Issue of exclusive title or partition not germane — Petition under Article 227 against rejection of amendment in objection found devoid of merit — Petition dismissed. (Paras 5 and 6) **HELD:****

Having heard learned counsel for the respective parties and having perused the records, I find merit in the submissions advanced by Sri O.P. Singh, learned Senior Advocate appearing for the respondents. A tenant cannot take an