

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 330 of 2016

Reserved on: 16.09.2026

Date of Decision: 29.09.2026

Sunder Singh	..Appellant
Versus	
Tara Chand & ors.	...Respondents

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting? No

For the Appellant	: Mr Mohinder Verma, Advocate.
For the respondents	: Mr H.C. Sharma, Advocate.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment and decree dated 23.04.2016 passed by learned District Judge Kinnaur, Civil Division at Rampur Bushehar, District Shimla (learned Appellate Court) vide which the judgment and decree dated 29.10.2015 passed by learned Civil Judge (Senior Division) Rampur, Bushehar District, Shimla H.P. (learned Trial Court) were upheld. (*The parties shall hereinafter be referred to in the*

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

same manner as they were arrayed before the learned Trial Court for convenience).

2. Briefly stated, the facts giving rise to the present appeal are that the plaintiff filed a civil suit for declaration that the Will executed by late Sh. Roop Chand on 21.05.1998 and registered on 20.06.1998 before Sub-Registrar, Shimla Rural, was the only true and genuine Will, the Will dated 29.04.2010 stated to have been executed by Roop Chand and registered before Sub-Registrar, Theog, is not the genuine Will of Roop Chand and the mutation of inheritance attested based on the Will executed in the year 2010 was null and void. It was asserted that Roop Chand, father of the plaintiff and defendant Nos. 1 to 3, owned land, orchard and houses in Mauza Pamalai, Bharasa, Bhargaon and Maori in Tehsil Kumarsain, in Mauza Delath of Sub Tehsil Nankhari of District Shimla and Mauza Kasumpti in village Shakralla in District Shimla. He had his ancestral house in Mauza Pamalai, but he used to reside in the apple orchard at Village Shakralla in Mauza Kasumpti, wherein he had constructed a residential house and used to reside with his wife, Dasi Devi. Roop Chand executed a Will on 21.05.1998 at Shimla, which was registered on 20.06.1998. He was not in good health,

and his health deteriorated 6 months before his death. He was unable to recognize any person who used to visit him. He was also unable to walk independently. He was shifted to his ancestral house at village Pamalai on 29.04.2010 at the instance of defendant No. 1, Sunder Singh, who got the vehicle parked on the way at Theog and asked Dasi Devi to remain in the vehicle, and he took Roop Chand on the pretext that he was taking Roop Chand for a checkup by a private doctor. Subsequently, it was found that a Will was executed by Roop Chand. This Will is suspicious because it bears the thumb impression of Roop Chand, whereas Roop Chand used to put his signature on the documents. No person from the locality of the parties had witnessed the Will. Roop Chand died, and defendant no. 1 propounded the Will as having been executed by Roop Chand. Hence the suit was filed for seeking the relief mentioned above.

3. The suit was opposed by filing a written statement by defendant no. 1 taking preliminary objections regarding the improper valuation, lack of cause of action, and the plaintiff being estopped from filing the suit by his act and conduct. It was not disputed that Roop Chand was the owner of various properties. It was asserted that Roop Chand had partitioned his

immovable property amongst his four sons and one daughter on 11.03.1984. Roop Chand used to reside with defendant No. 1. The defendant No. 1 constructed a single-storied house at Mauja Shakrala. The Will dated 21.05.1998, registered on 20.06.1998, was the result of inducement and fraud played by the plaintiff upon Roop Chand and was not a genuine and valid document. He was shifted to his native village on 29.04.2010 as per his wishes. He expressed his intention to execute a last Will at Theog. Roop Chand knew Prem Singh Verma of Theog and said that he would assist in the execution of the Will. The driver stopped the vehicle in front of the shop of Prem Singh Verma, where all the occupants of the vehicle were served with tea. Roop Chand asked Prem Singh Verma to accompany him to the office of the Sub-Registrar for the execution of the Will, and all the occupants of the vehicle went to the office of the Sub-Registrar. Defendant No. 4 remained in the vehicle, and the testator Roop Chand and Prem Singh went to the nearby document writer. The Will was duly executed in the presence of the witnesses. A mutation of inheritance was sanctioned based on the Will dated 29.04.2010 regarding the property located at Kasumpti in the presence of the plaintiff and other co-sharers who acknowledged the

correctness of the Will. The suit was filed without any basis. Hence, it was prayed that the same be dismissed.

4. A separate written statement was filed by defendants No. 2 and 3, admitting the contents of the plaint. It was asserted that the witnesses to the Will had no connection to late Sh. Roop Chand and they might have been managed by the defendant No. 1, Sunder Singh, as he has got relatives at Theog. Therefore, it was prayed that the suit be decreed.

5. A separate written statement was filed by defendant No. 4, admitting the contents of the plaint. It was asserted that defendant No. 1, Sunder Singh, had persuaded the defendant No. 4 to shift Roop Chand from Kasumpti to Pamlai. He had chosen the date of shifting and had arranged the vehicle. The defendant No. 4 was told by Roop Chand that he had executed a Will, and when the defendant No. 4 looked into the trunk, he found the Will, which was taken by Sunder Singh from the defendant No. 4 for getting the mutation attested. However, he failed to return the Will; hence, it was prayed that the suit be decreed.

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

7. The following issues were framed by the learned Trial Court on 21.11.2012:

1. Whether the plaintiff is entitled to the decree of declaration that the 'Will' executed on 21.05.1998, registered on 26.06.1998, is the only true and genuine 'Will' as alleged? OPP.
2. Whether the alleged 'Will' executed by Roop Chand on 21.05.1998 was the result of inducement and fraud played by the plaintiff, as alleged? OPD.
3. Whether the 'Will' dated 29.4.2010 under registration No. 54/10 is a true and genuine 'Will' as alleged? OPD.
4. Whether the present suit has not properly valued for the purpose of court fee and jurisdiction? OPD.
5. Whether the plaintiff has no cause of action? OPD
6. Whether the plaintiff is estopped to file the present suit from his own acts, conduct, omissions, and commissions? OPD.
7. Relief.

8. The parties were called upon to produce the evidence, and the plaintiffs examined Hari Krishan (PW1), Lalit Sharma (PW2), Narain Singh (PW3), Rajender Singh Dogra (PW4), himself (PW5), Shiv Lal Verma (PW6), Sohan Lal (PW7), Umesh (PW8). The defendants examined Subhash Sasra (DW1), Sunder Singh (defendant No. 1) (DW2), Bihari Lal (DW3) and Sohan Lal (DW4).

9. Learned Trial Court held that the Will propounded by the plaintiff was duly proved to be executed by Roop Chand.

There was nothing suspicious in the execution and attestation of the Will. Defendant No. 1 had also not disputed the signatures of Roop Chand on the Will propounded by the plaintiff. The plea taken by defendant no. 1 that the Will was got executed by practising fraud was not proved, as no particulars of fraud were given by defendant no. 1. The Will propounded by defendant no. 1 was shrouded in suspicion. No reason was assigned to divest defendant no. 4 from the inheritance. Roop Chand used to put his signature; however, he had put the thumb impression on the Will, and it was not properly explained. The name of Sohan Lal, an attesting witness, was not typed but was written in hand, and this fact was also not explained. Sunder Singh, defendant No. 1, remained with Roop Chand during the execution of the Will. He had derived a substantial benefit under the Will, and this created a suspicion regarding the due execution of the Will. Roop Chand died shortly after the execution of the Will propounded by defendant no. 1, which is another suspicious circumstance. Hence the learned Trial Court answered issue No. 1 in affirmative, issue Nos. 2 to 6 in negative and decreed the suit filed by the plaintiff.

10. Being aggrieved by the Judgment and decree passed by the learned Trial Court, the defendant No. 1 filed an appeal which was decided by the learned District Judge, Kinnaur, Civil Division at Rampur Bushehar, District Shimla, HP (learned Appellate Court). The learned Appellate Court concurred with the findings recorded by the learned Trial Court that the Will propounded by defendant No. 1 was shrouded in suspicious circumstances. Roop Chand was old, infirm and sick at the time of the execution of the Will. The attesting witnesses were not related to Roop Chand. Roop Chand used to put his signature. However, he had put the thumb impression on the Will. Defendant No. 1 had taken a prominent part in the execution of the Will. The reason for disinheriting Defendant No. 4 was not stated. Mentioning the name of the attesting witness by hand created a suspicion regarding his presence on the spot. The Will propounded by the plaintiff was duly established, and there was no infirmity in the judgment and decree passed by the learned Trial Court. Hence, the appeal was dismissed.

11. Being aggrieved by the judgment and decree passed by the learned Courts below, the defendant no.1 has filed the

present appeal which was admitted on the following substantial questions of law on 29.11.2016:

1. Whether findings recorded by both the courts below are vitiated on account of mis-reading, mis-appreciation and misconstruction of the pleadings of the parties as well as oral and documentary evidence on record?
 2. Whether there are material admissions on the part of the respondent/plaintiff about the genuineness and validity of subsequent Will dated 29.4.2010 executed by late Sh. Roop Chand, but all these admissions have wrongly been ignored?
 3. Whether learned District Judge below has acted illegally by way of not taking into consideration grounds of appeal which were preferred by appellant and also which were stressed at the time of hearing?
 4. Whether respondent/plaintiff is estopped to challenge the validity of the subsequent registered Will dated 29.4.2010 executed by late Sh. Roop Chand, keeping in view the fact that mutation was attested with the knowledge and consent of respondent/plaintiff and he applied for family partition qua land situated at Kasumpti?
 5. Whether subsequent suit filed by respondent No.1 before learned Civil Judge Rampur Bushahr was not maintainable on the ground that he already filed earlier suit between the same parties and with respect to same subject matter of dispute in the court of learned Civil Judge Shimla and whether subsequent suit was required to be stayed?
12. I have heard Mr Mohinder Verma, learned counsel for the appellant and Mr HC Sharma, learned counsel for the respondents.

13. Mr Mohinder Verma, learned counsel for the appellant, submitted that the learned Courts below failed to properly appreciate the material on record. It was duly proved by the evidence on record that Roop Chand was in his sound disposing state of mind. He had expressed an intention to execute a Will, and the Will was executed in the presence of the witnesses. The Will was duly registered, which shows that the same was free from any suspicion. Mere old age of the testator is no ground to doubt the mental capacity, and medical evidence is required to establish the mental infirmity. No such evidence was brought on record. Mere presence of the beneficiary at the time of the execution of the Will does not amount to any suspicious circumstance. A valid explanation was provided that the hands of Roop Chand used to tremble because of a tremor in his body, which was ignored by the learned Courts below. The purpose of execution of the Will is to divest the legal representative from the inheritance, and the learned Courts below erred in holding that the execution of the Will was shrouded in suspicion because defendant No. 4 was disinherited by Roop Chand. Therefore, he prayed that the present appeal be allowed and the judgment and decree passed by the learned Courts below be set aside. He relied

upon the judgment of this Court in *Vinod Kumar vs. Hari Singh* 2023:HHC 12051 in support of his submissions.

14. Mr HC Sharma, learned counsel for the respondents, submitted that the learned Courts below have concurrently held that the Will executed in favour of the plaintiff was executed by Roop Chand and the Will propounded by defendant No. 1 is shrouded in suspicion. These are concurrent findings of fact, and this Court should not interfere with the concurrent findings of fact, even if these are erroneous. There is no perversity in the findings recorded by the learned Courts below. Hence, he prayed that the present appeal be dismissed. He relied upon the judgment of the Hon'ble Supreme Court in *Russi Fisheries P. Ltd. and Anr. Vs. Bhavna Seth & Ors* 2026 INSC 339, in support of his submission.

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

Substantial Question of Law No.1:

16. The law relating to the execution of the Will was explained by the Hon'ble Supreme Court in *Meena Pradhan v.*

Kamla Pradhan, (2023) 9 SCC 734: (2023) 4 SCC (Civ) 449 as under:

“10.1. The court has to consider two aspects: firstly, that the will is executed by the testator, and secondly, that it was the last will executed by him.

10.2. It is not required to be proved with mathematical accuracy, but the test of satisfaction of the prudent mind has to be applied.

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

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

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

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

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

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

10.5. The attesting witness should speak not only about the testator's signatures but also that each of the

witnesses had signed the will in the presence of the testator;

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

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

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

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

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

10.11. Suspicious circumstances must be “real, germane and valid” and not merely “the fantasy of the doubting mind [*Shivakumar v. Sharanabasappa*, (2021) 11 SCC 277]”. Whether a particular feature would qualify as “suspicious” would depend on the facts and circumstances of each case. Any circumstance raising suspicion, legitimate in nature, would qualify as a

suspicious circumstance, for example, a shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the will under which he receives a substantial benefit, etc.”

17. This position was reiterated in *Gurdial Singh v. Jagir Kaur*, 2025 SCC OnLine SC 1466, wherein it was observed:

“11. A Will has to be proved like any other document subject to the requirements of Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872, that is, examination of at least one of the attesting witnesses. However, unlike other documents, when a Will is propounded, its maker is no longer in the land of the living. This casts a solemn duty on the Court to ascertain whether the Will propounded had been duly proved. The onus lies on the propounder not only to prove due execution but to dispel from the mind of the court all suspicious circumstances which cast doubt on the free disposing mind of the testator. Only when the propounder dispels the suspicious circumstances and satisfies the conscience of the court that the testator had duly executed the Will of his free volition without coercion or undue influence, would the Will be accepted as genuine. In *Smt. Jaswant Kaur v. Smt. Amrit Kaur* (1977) 1 SCC 369, this Court, referring to *H. Venkatachala Iyengar v. B.N. Thimmajamma* 1959 Supp (1) SCR 426, enumerated the principles relating to proof of Will:—

“10. *****

“1. Stated generally, a will has to be proved like any other document, the test to be applied being the usual test of the satisfaction of the prudent mind in such matters. As in the case of proof of other documents, so in the case of proof of wills, one cannot insist on proof with mathematical certainty.

2. Since Section 63 of the Succession Act requires a will to be attested, it cannot be used as evidence until, as required by Section 68 of the Evidence Act, one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the court and capable of giving evidence.

3. Unlike other documents, the will speaks from the death of the testator, and therefore, the maker of the will is never available for deposing as to the circumstances in which the will came to be executed. This aspect introduces an element of solemnity in the decision of the question whether the document propounded is proved to be the last will and testament of the testator. Normally, the onus which lies on the propounder can be taken to be discharged on proof of the essential facts which go into the making of the will.

4. Cases in which the execution of the will is surrounded by suspicious circumstances stand on a different footing. A shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the will under which he receives a substantial benefit and such other circumstances raise suspicion about the execution of the will. That suspicion cannot be removed by the mere assertion of the propounder that the will bears the signature of the testator or that the testator was in a sound and disposing state of mind and memory at the time when the will was made, or that those like the wife and children of the testator who would normally receive their due share in his estate were disinherited because the testator might have had his own reasons for excluding them. The presence of suspicious circumstances makes the initial onus heavier and, therefore, in cases where the circumstances attendant upon the execution of the will excite the suspicion of the court, the propounder must remove all legitimate

suspicious before the document can be accepted as the last will of the testator.

5. It is in connection with wills, the execution of which is surrounded by suspicious circumstances, that the test of satisfaction of the judicial conscience has been evolved. That test emphasises that in determining the question as to whether an instrument produced before the court is the last will of the testator, the court is called upon to decide a solemn question, and by reason of suspicious circumstances, the court has to be satisfied fully that the will has been validly executed by the testator.

6. If a caveator alleges fraud, undue influence, coercion, etc., in regard to the execution of the will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the will may raise a doubt as to whether the testator was acting of his own free will. And then it is a part of the initial onus of the propounder to remove all reasonable doubts in the matter.”

18. The Court further held:—

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

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

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

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

19. The present appeal has to be decided as per the parameters laid down by the Hon’ble Supreme Court.

20. The Will propounded by defendant no. 1 is inherently suspicious. It is contrary to normal human course that a person visiting his native place from his place of residence would stop on the way and execute a Will in favour of another when there is no evidence that the place on the way was familiar to the testator or that people of his confidence resided there. Sunder Singh, defendant no. 1, stated in the written statement that Roop Chand was being shifted to Pamalai and he disclosed on the way that he intended to execute his last Will because Kumarsain was at a considerable distance from Pamalai. Therefore, he intended to execute the Will at Theog. The testator had been personally acquainted with Sh. Prem Singh Verma of Theog and

stated that he, Prem Singh Verma, would assist in the execution of the Will. Sunder Singh (DW1) stated in his cross-examination that the distance between Pamlai and Theog was 50 to 55 km. He admitted that Pamlai falls within the jurisdiction of Tehsil Kumarsain. He admitted that the Tehsil office at Kumarsain is located adjacent to the road. The explanation provided by Sunder Singh is not at all plausible. Roop Chand was going to Pamlai in a vehicle, and he could have visited Kumarsain from Pamlai if he intended to execute a Will after associating with people of his confidence. The tehsil office at Kumarsain was located adjacent to the road, and Roop Chand had no difficulty in going to the office in the vehicle. It is an admitted version that Roop Chand was residing at Shimla where he had executed an earlier Will. He had not expressed any such desire to execute a Will at Shimla before going to Pamlahi and it is highly improbable that he would have expressed any such desire on the way.

21. Sunder Singh (DW2) admitted in his cross-examination that his sister-in-law's daughter is married to the son of Prem Singh Verma, which shows that Prem Singh Verma was related to defendant No. 1. Prem Singh Verma was not

examined as a witness to explain his acquaintance with Roop Chand and the reason why Roop Chand would repose such confidence in Prem Singh Verma that he would ask the latter to fetch the witnesses.

22. Sunder Singh (DW2) admitted in his cross-examination that Roop Chand used to put his signatures on the documents in Hindi. It is undisputed that the Will propounded by defendant No. 1 was thumb-marked. Sunder Singh (DW2) stated in his proof affidavit that Roop Chand had put his thumb impression in the presence of the witnesses. He denied in his cross-examination that Roop Chand was unable to stand or put his signature because of his medical condition. Bihari Lal (DW3), the marginal witness to the Will, stated that Roop Chand used to walk with the assistance of a stick and he had a tremor in his hand. His statement does not show that Roop Chand was unable to put the signatures on the Will. It was laid down by the Hon'ble Supreme Court in *Ram Piari v. Bhagwant*, (1990) 3 SCC 364: 1990 SCC OnLine SC 151 that where the testator could sign but had thumb-marked the Will. It would be a suspicious circumstance. It was observed at page 366:

3. Coming now to facts, it has been found by all the three courts below that the testator was a migrant from West Pakistan who, after migration, resided in village Rupena, was ill for some time and lived with his daughter and her sons, who are the beneficiaries, six months prior to his death. It was further found that the appellant was also one of the daughters. No finding was recorded that she or her sons had any sore or sour relations with the testator. But the most important finding was that even though the testator could sign yet he put his thumb mark on it. It was found to be genuine. The execution was thus held beyond doubt. But it was sufficient to put the courts on alert, especially when the professional scribe fetched by the beneficiary's father admitted that when he reached the beneficiary's residence where the will was executed, he found the testator covered with a quilt in the afternoon of August, with whom he did not talk nor enquire about his health.

23. This position was reiterated in *Gullan Devi v. Puna*, 1988 SCC OnLine J&K 16 wherein it was held:

9....Coupled with the fact, as stated by respondent No. 1, the plaintiff, which is also not denied by the appellant, that deceased Rasila Singh used to sign in Dogri; whereas the alleged 'will' contains the finger impressions numbering five on Ex. D1 against the normal practice of putting only the thumb impression, establishes more doubt on the genuineness of the 'will'. Though it

24. It was held in *Guro (Smt) v. Atma Singh*, (1992) 2 SCC 507: 1992 SCC OnLine SC 344 that where the testator was a literate person but had thumb-marked the Will, and he had died within 8 days of the execution of the Will; the Will was suspicious. It was observed at page 513:

“7.....The High Court has not even noticed the fact that the testator had died within eight days of the execution of the will and there is a recital in the will that the testator had been ill for a long time and was seriously ill at the time of execution of the will. In view of the said recital, it was necessary for the plaintiff-respondent 1 to adduce satisfactory evidence with regard to the nature of the illness of the testator and about his mental capacity to execute the will. The incorrect statements in the will with regard to the testator having no sister and respondent 1 being his real brother have to be considered in this background. The circumstance that the testator had not put his signature and had put only his thumb impression on the will has been brushed aside by the High Court on the view that there is no evidence on record with regard to the literacy of the testator. We find that the scribe, Manohar Lal, PW 1, has stated that Ganga Singh was a literate person and had been writing receipts etc. even earlier. In the circumstances, it was necessary for the plaintiff-respondent to adduce satisfactory evidence to show why, instead of signatures, the thumb impression of the testator was obtained on the will.....”

25. A similar view was taken in *Surinder Pal & Anr. vs. Satya Devi and others, 1997 (suppl.) Civil Court Cases 667*, wherein it was observed:

What was the reason for thumb-marking this document when the executant was an educated person? This again creates a doubt, as one of his arms was amputated and may be there was no proof in existence to compare the thumb-impression of the executant.

26. This position was reiterated in *Dorairaj v. Doraisamy, 2026 SCC OnLine SC 152* wherein it was observed:

“35. Likewise, on the issue of the Will dated 24.11.1989 (Ex. B-200), the High Court's reasoning is both legally and factually compelling. It noted that the testator was habitually signing documents but affixed only a thumb impression as far as this document is concerned; that the Will was allegedly executed barely 72 hours prior to death; that it was scribed by a close relative instead of a professional scribe; and that the scribe's presence itself was doubtful due to election duty. These circumstances clearly warranted a finding of suspicion.”

27. In *Vinod Kumar* (supra), the Will was thumb-marked, whereas the executed testator used to put the signatures. However, there was evidence that he had suffered a paralytic attack, and this was held to be a valid explanation. In the present case, there is no such explanation and the cited judgment does not apply to the present case.

28. Therefore, learned Courts below were justified in doubting the execution of the Will on the ground that Roop Chand had put his thumb mark, when he was illiterate and used to put his signatures on various documents.

29. Defendant No. 1 Sunder Singh (DW2) admitted the signatures of Roop Chand on the Will (Ext.PW5/B) were put by the plaintiff. Both the learned Courts below have concurrently held that the execution of this Will was validly proved. It was mentioned in it that all the properties, movable and immovable,

including the residential house wherein he was living, would be succeeded by Smt. Dasi Devi after his death, and in case Dasi Devi pre-deceased Roop Chand, the property at Village Shakrala would be succeeded by Dharam Singh, Gyan Chand and Tara Chand in equal share and residential house consisting of 4 Biswa shall be succeeded by Uma Devi, testator's daughter. Sunder Singh was excluded from succeeding to any property located in Village Shakrala because a huge amount had been spent equal to his share in the properties for constructing a separate house for Sunder Singh. The Will propounded by defendant No. 1, Sunder Singh (Ext. DW4/B), mentions that the testator had given the property to Uma Devi. All the sons were looking after Dasi Devi, and he was satisfied with the services rendered by the sons. Hence, he was giving the property located at Pamalai to Tara Chand and Sunder Singh, the property located at Chak Maori to Dharam Singh and Gyan Chand, the property located at Bhargaon to Dharam Singh, Tara Chand and Sunder Singh, the property located at Chak Delath to Gyan Chand and Tara Chand, and the property located at Chak Kasumpti to all the children. All the sons would be liable to maintain Dasi Devi after the death of Roop Chand.

30. It is not explained why Roop Chand, who had made a specific provision for Dasi Devi and had mentioned that he was not giving any property located at Shakrala to Sundar Singh, chose to exclude Dasi Devi and confer a benefit upon Sunder Singh. It was laid down by the Hon'ble Supreme Court in *Gurdial Singh v. Jagir Kaur*, 2025 SCC OnLine SC 1466, that deprivation of the heirs may not be a suspicious circumstance, but the absence of the reasons for exclusion of the heirs will make it suspicious. It was observed:

16. We are conscious that deprivation of a natural heir, by itself, may not amount to a suspicious circumstance because the whole idea behind the execution of the Will is to interfere with the normal line of succession. (1995) 4 SCC 459, (2004) 2 SCC 321 and 1995 Supp (2) SCC 664). However, in *Ram Piari* (supra), this Court held that prudence requires reason for denying the benefit of inheritance to natural heirs and an absence of it, though not invalidating the Will in all cases, shrouds the disposition with suspicion, as it does not give an inkling to the mind of the testator to enable the court to judge that the disposition was a voluntary act. ((1990) 3 SCC 364, Para 2.)

XXXXXX

20. In this background, we have no hesitation in holding that non-mention of the 1st respondent or the reasons for her disinheritance in the Will is an eloquent reminder that the free disposition of the testator was vitiated by the undue influence of the appellant.

21. We are not impressed with reference to *Dhanpat v. Sheo Ram (deceased) through LRs. (2020) 16 SCC 209* that mere non-mention of some natural heirs would not vitiate the Will. In *Dhanpat* (Supra), the wife who had been disinherited herself admitted that she had been ousted by her husband. On the other hand, DW3 unequivocally stated that she was living with her husband till his death and the specious rationale given that she may have been disinherited as Maya Singh's monies had been settled in her favour and she was entitled to pension is hardly convincing. No evidence was led to show whether the quantum of money said to be settled in favour of 1st respondent was reasonable and would satisfy the conscience of a man of ordinary prudence with regard to her complete expungement in the Will.

31. Therefore, the learned Courts below had rightly held that not providing any reason for excluding Dasi Devi will make the execution of the Will suspicious.

32. It was submitted that the whole idea of execution of the Will is to disinherit a legal heir; otherwise, there is no justification for executing a Will. This submission will not help the defendant No. 1. The deceased had specifically provided the property to Dassi Devi and had excluded her in the Will propounded by defendant No. 1 without assigning any reason. Her inclusion in the earlier Will shows that the testator never intended to exclude her from his property. What transpired after the execution of the Will in the year 1998, till the execution of

the Will in favour of defendant No. 1, is not explained on record. Therefore, the exclusion of Dasi Devi from the inheritance of the deceased would make the execution of the Will (Ext.DW4/B) suspicious.

33. It was submitted that the Will (Ext.DW4/B) is registered and it is to be accepted as correct. This submission will not help defendant No. 1. It was laid down by the Hon'ble Supreme Court in *Rani Purnima Debi v. Kumar Khagendra Narayan Deb*, 1961 SCC OnLine SC 89: (1962) 3 SCR 195: AIR 1962 SC 567 that the registration will not confer legitimacy upon the Will. It was observed:

“23. There is no doubt that if a will has been registered, that is a circumstance which may, having regard to the circumstances, prove its genuineness. But the mere fact that a will is registered will not by itself be sufficient to dispel all suspicion regarding it where suspicion exists, without submitting the evidence of registration to a close examination. If the evidence as to registration on a close examination reveals that the registration was made in such a manner that it was brought home to the testator that the document of which he was admitting execution was a will disposing of his property and thereafter he admitted its execution and signed it in token thereof, the registration will dispel the doubt as to the genuineness of the will. But if the evidence as to registration shows that it was done in a perfunctory manner, that the officer registering the will did not read it over to the testator or did not bring home to him that he was admitting the

execution of a will or did not satisfy himself in some other way (as, for example, by seeing the testator reading the will) that the testator knew that it was a will the execution of which he was admitting, the fact that the will was registered would not be of much value. It is not unknown that registration may take place without the executant really knowing what he was registering. Law reports are full of cases in which registered wills have not been acted upon : (see, for example, *Vellasamay Servai v. L. Sivaraman Servai* [(1930) ILR 8 Ran 179], *Surendra Nath Lahiri v. Jnanendra Nath Lahiri* [AIR 1932 Cal 574] and *Girji Datt Singh v. Gangotri Datt Singh* [AIR 1955 SC 346]. Therefore, the mere fact of registration may not by itself be enough to dispel all suspicion that may attach to the execution and attestation of a will; though the fact that there has been registration would be an important circumstance in favour of the will being genuine if the evidence as to registration establishes that the testator admitted the execution of the will after knowing that it was a will the execution of which he was admitting.

34. It was laid down by this Court in *Baru Ram Versus Kishan* 1992(1) Shim. L.C. 115 that registration of a Will is no guarantee of its genuineness. It was observed:

“5. Sh. K D. Sood, learned Counsel for Sh. Baru Ram and others, has urged that since the will was registered, a presumption of its correctness and genuineness arises in the facts and circumstances of the present case This argument deserves to be rejected outrightly in view of the law laid down in *Gopal Das and another v. Sri Thakurji and other*, AIR 1943 Privy Council 83, that even after the endorsement of Registrar made under section 60 (2) of the Registration Act is proved, it remains to be shown that the person admitting execution before the Registrar was Balandue The registration of the will does not create any presumption of its genuineness, which is to be

proved independently and statement of the Registrar is only a piece of evidence which is to be assessed to judge how far it proves that the execution of the will is in accordance with section 63 of Indian Succession Act It is to be kept in mind that the Registrar cannot be a statutory attesting witness. (Please refer to *Karri Nokarajuv. Putra Venkatarao and others AIR 1974 And Pra 13; In the Goods of Late Shri C. Rai, Barrister-at-law, 1980 RLR 346, Punjab and Haryana High Court; Labh Singh and others v. Piara Singh (deceased by L Rs) and another, AIR 1984 P & H. 270 and Dharam Singh v. A. S. O and another, 1990 (Supp) SCC 684.*”

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

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

36. It was laid down by the Hon'ble Supreme Court in *Bhagat Ram v. Suresh, (2003) 12 SCC 35: 2003 SCC OnLine SC 1319* that the registration of the Will does not dispense with the proof of attestation. It was observed at page 45:

Question 3

21. Registration of a document does not dispense with the need of proving the execution and attestation of a document which is required by law to be proved in the manner as provided in Section 68 of the Evidence Act. Under Section 58 of the Registration Act, the Registrar shall endorse [[Ed.: See also Section 52, Registration Act, 1908.]] the following particulars on every document admitted to registration:

- (1) the date, hour and place of presentation of the document for registration;
- (2) the signature and addition of every person admitting the execution of the document, and, if such execution has been admitted by the representative, assign or agent of any person, the signature and addition of such representative, assign or agent;
- (3) the signature and addition of every person examined in reference to such document under any of the provisions of this Act; and
- (4) any payment of money or delivery of goods made in the presence of the registering officer in reference to the execution of the document, and any admission of receipt of consideration, in whole or in part, made in his presence in reference to such execution.

22. Such particulars as are referred to in Sections 52 and 58 of the Registration Act are required to be endorsed by the Registrar along with his signature and date on the document under Section 59 and then certified under Section 60. A presumption by reference to Section 114 [Illustration (e)] of the Evidence Act shall arise to the effect that the events contained in the endorsement of registration were regularly and duly performed and are correctly recorded. None of the endorsements required to be made by the Registrar of Deeds under the Registration Act contemplates the factum of attestation, within the meaning of Section 63(c) of the Succession Act or Section 68 of the Evidence Act, being endorsed or certified by the

Registrar of Deeds. The endorsements made at the time of registration are relevant to the matters of the registration only (see *Kunwar Surendra Bahadur Singh v. Thakur Behari Singh* [AIR 1939 PC 117 : (1939) 2 MLJ 762]). On account of registration of a document, including a Will or codicil, a presumption as to correctness or regularity of attestation cannot be drawn. Where, in the facts and circumstances of a given case, the Registrar of Deeds satisfies the requirement of an attesting witness, he must be called in the witness box to depose to the attestation. His evidence would be liable to be appreciated and evaluated like the testimony of any other attesting witness.

37. Therefore, not much advantage can be derived from the registration of the Will.

38. The Will (Ext.DW4/B) is computer printed. However, the name of Sohan Lal is handwritten. Bihari Lal (DW3), the Document Writer, stated in his cross-examination that he had not computer printed the name of the second witness because the witnesses were saying that their vehicle was leaving. Sohan Lal (DW4) stated in his cross-examination that his name was not computer printed because another witness was present on the spot and it was not clear who was to be cited as a witness. Therefore, the explanation for not computer printing the name of the other witness is contradictory.

39. Bihari Lal (DW3), the scribe of the Will, stated that Prem Singh Verma and 3-4 persons were sitting with him at the time of the execution of the Will. Sunder Singh (DW2) stated in his cross-examination that Prem Singh Verma had told the document writer that the Will of Roop Chand was to be executed. This admission makes it doubtful that the Will was written as per the wishes of the testator.

40. It is undisputed that defendant No. 4, Dassi Devi, was also present in the vehicle. However, she had not accompanied Roop Chand to the office of the Sub-Registrar of the document writer. This fact was specifically mentioned in the written statement filed by defendant No. 1. Sunder Singh (DW2) stated that he had not told anything to his mother about where they were going. His mother and his wife remained in the vehicle. Had Roop Chand intended to execute the Will, he would have revealed this fact to his wife, who was present with him and would have asked her to accompany him to the Document Writer for the office of the Sub-Registrar. However, he had not done so, and this made the execution of the Will suspicious.

41. Therefore, learned Courts below had rightly held that the Will propounded by defendant No. 1 was shrouded in suspicion which could not be given any effect. It was laid down by the Hon'ble Supreme Court in *Kashibai v. Parwatibai*, (1995) 6 SCC 213, that it is not permissible for the High Court to interfere with the findings of fact related to the execution of the Will while hearing the second appeal. It was observed: -

“11..... In the present case, the trial court, after a scrutiny and analysis of the evidence of Defendant 1, Smt. Parvati Bai, Vir Bhadra, Sheikh Nabi, Shivraj and Gyanoba Patil, who are witnesses to the Will, recorded the finding that none of them deposed that Lachiram had signed the said Will before them and they had attested it. None of them, except Sheikh Nabi, even deposed as to when the talk about the execution of the Will was held. The witness, Sheikh Nabi, however, deposed that the talk about the Will also took place at the time of the talk about the adoption. But this witness too did not depose that deceased Lachiram had signed the alleged Will in his presence. In the absence of such evidence, it is difficult to accept that the execution of the alleged Will was proved in accordance with law as required by Section 68 of the Evidence Act, read with Section 63 of the Indian Succession Act and Section 3 of the Transfer of Property Act. It may be true, as observed by the High Court, that the law does not emphasise that the witness must use the language of the section to prove the requisite merits thereof, but it is also not permissible to assume something which is required by law to be specifically proved. The High Court simply assumed that Lachiram must have put his signature on the Will Deed in the

presence of the attesting witness, Sheikh Nabi, simply because the Deed of Adoption is admitted by the witness to have been executed on the same day. The High Court committed a serious error in making the observations that the broad parameters of Nabi's evidence would show that Lachiram executed the Will in his presence, that he signed the Will, being part of the execution of the testament, and this evidence, in its correct background, would go to show that what was required under Section 63 has been carried out in the execution of the Will. With respect to the High Court, we may say that these findings of the High Court are clearly based on assumptions and surmises and are totally against the weight of the evidence on record. *The trial court, on a close and thorough analysis of the entire evidence, came to a proper conclusion that the Will has not been proved in accordance with the law, which finding has been further affirmed by the lower appellate court after an independent reappraisal of the entire evidence, with which we find ourselves in agreement, as there was hardly any scope or a valid reason for the High Court to interfere with.*

12. Further, it may not be out of place to mention that sub-section (1) of Section 100 of the Code of Civil Procedure explicitly provides that an appeal shall lie to the High Court from every decree passed in appeal by any court subordinate to the High Court if the High Court is satisfied that the case involves a substantial question of law. Sub-section (4) of Section 100 provides that when the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question. But surprisingly enough, the High Court seems to have ignored these provisions and proposed to reappraise the evidence and interfere with the findings of fact without even formulating any question of law. *It has been the consistent view of this Court that there is no jurisdiction to entertain a second appeal on the ground of an erroneous finding of fact, based on an appreciation of the*

relevant evidence. There is a catena of decisions in support of this view. Having regard to all the facts and circumstances of the present case discussed above, we are satisfied that there was no justification for the High Court to interfere with the well-reasoned findings of the two courts below. Consequently, this appeal must succeed.” (Emphasis supplied).

42. It was laid down by the Hon’ble Supreme Court in *Gurnam Singh v. Lehna Singh*, (2019) 7 SCC 641 : (2019) 3 SCC (Civ) 709: 2019 SCC OnLine SC 374, that where the First Appellate Court had appreciated the facts regarding the execution of the Will, it is not permissible for the High Court to interfere with this finding of facts in second appeal under Section 100 of CPC. It was observed:

“15. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, we are of the opinion that the High Court has erred in reappreciating the evidence on record in the second appeal under Section 100 CPC. The High Court has materially erred in interfering with the findings recorded by the first appellate court, which were on reappreciation of evidence, which was permissible by the first appellate court in the exercise of powers under Section 96 CPC. Cogent reasons, on appreciation of the evidence, were given by the first appellate court. The first appellate court dealt with, in detail, the so-called suspicious circumstances which weighed with the learned trial court, and thereafter it came to the conclusion that the will, which as such was a registered will, was genuine and did not suffer from any suspicious circumstances. The findings recorded by the first appellate court are reproduced hereinabove. Therefore, while passing the

impugned judgment and order [*Lehna Singh v. Gurnam Singh, Civil Regular Second Appeal No. 2191 of 1985, order dated 27-11-2007 (P&H)*], the High Court has exceeded its jurisdiction while deciding the second appeal under Section 100 CPC.”

43. It was laid down by the Hon'ble Supreme Court in *Russi Fisheries (P) Ltd. v. Bhavna Seth, 2026 SCC OnLine SC 555* that the High Court cannot interfere with an erroneous finding of fact recorded by the learned Trial Court and the learned First Appellate Court unless there is perversity. It was observed:

“31. It is settled in law that the findings of fact, however erroneous, cannot be reopened and disturbed in second appeal which is required to be adjudicated only upon the substantial question of law, if any, arising therein. Thus, the argument that the High Court in second appeal ought to have examined the evidence to ensure the correctness of the findings of the First Appellate Court has no legs to stand and fails.

32. Long back in 1981, three judges of this Court in the case of *Bholaram v. Ameerchand (1981) 2 SCC 414* had ruled that even if findings of fact by courts below are wrong or grossly inexcusable, that by itself would not entitle the High Court to interfere under Section 100 CPC in the absence of clear error of law. A similar view was reiterated in *Madhavan Nair v. Bhaskar Pillai (Dead) by Lrs. (2005) 10 SCC 553*, wherein it has been laid down that even if the First Appellate Court commits an error in recording a finding of fact, that itself will not be a ground for the High Court to upset the same.

33. In *Kashibai w/o Lachiram v. Parwatibai w/o Lachiram (1995) 6 SCC 213*, a similar proposition of law was laid down by this Court and it was held that the High Court cannot reappreciate the evidence and interfere with the

findings of fact unless a substantial question of law or a question of law duly formulated is to be decided. The second appeal does not lie on the ground of erroneous findings of fact based on appreciation of the relevant evidence.

34. Similar is the situation in the case at hand. The High Court has not found any substantial question of law or a question of law worth consideration in the second appeal and, therefore, there was no occasion for it to have reappreciated the evidence so as to come to a different conclusion.

35. Again, in *Kulwant Kaur v. Gurdial Singh Mann (Dead) by Lrs* (2001) 4 SCC 262: AIR 2001 SC 1273, it was emphasised that the fact remains that in a second appeal, a finding of fact, even if erroneous, will not be disturbed unless it is found that it stands vitiated for want of perversity. No such case for interference has been made out in the present case.

44. No perversity has been established in the present case, and it is not possible to interfere with the pure finding of facts recorded by learned Courts below.

45. Thus, there is no misreading or misconstruction of the pleadings of the parties and oral and documentary evidence on record. Hence, this substantial question of law is answered accordingly.

Substantial Question of Law No. 2:

46. The plaintiff Tara Chand (PW1) denied in his cross-examination that Roop Chand was residing with Sunder Singh,

who used to take care of him. He stated that Roop Chand had kept 6 bigha of land, wherein he had constructed a house with him and had not partitioned it. He denied that Roop Chand was residing with Sunder Singh during his lifetime. He denied that Dassi Devi had not got any share in the partition or that she was to be maintained by all the children. He denied, for want of knowledge, that Sunder Singh had taken Roop Chand to Pamalai as per his wishes. He denied that Roop Chand had executed the Will on 29.04.2010. He admitted that his mother had told him about the execution of the Will on 30.04.2010. He admitted that the mutation was attested in his favour.

47. It was submitted that the statement made by the plaintiff shows that Dassi Devi had revealed the execution of the Will on 30.04.2010 and he had not protested regarding the mutation based upon the Will. These submissions will not help the defendant no. 1. The Will propounded by defendant no. 1 is shrouded in suspicion, and its mere admission of the execution will not dispel the suspicious circumstances surrounding the execution of the Will. Further, there is no evidence that Dassi Devi had admitted the execution of the Will in favour of the defendant no. 1. Therefore, the admission made by Dassi Devi

will not confer legitimacy on the Will. It was held in *Danat Kaur v. Harbans Kaur*, 1994 SCC OnLine P&H 389, that the mutation proceedings do not amount to admission. It was observed:

7. In order to prove that she is the daughter of Banta Singh, the defendant had not led any evidence on record. However, pressing copy of mutation No. 2040 Ex. D-2 into service, learned counsel for the appellant has vehemently argued that from the order of the Mutation Officer, it is evident that the plaintiff had admitted that she and the defendant were sisters and further that affidavits of the number of persons had also been filed before the said Officer in support of the said fact and, therefore, the said admission was binding on the plaintiff and now she could not take the stand that the defendant was not the daughter of Banta Singh. In order to appreciate the said argument, I have carefully examined mutation Ex. D-1. In the order dated 14.1.1982 of the Assistant Collector 2nd Grade recorded on the said mutation, no doubt it mentioned that Harbans Kaur had stated that they were two sisters, but at the same time it is also mentioned therein that Smt. Danat Kaur had asserted to be the only daughter of the deceased. Be that as it may, the fact remains that the mutation proceedings are summary proceedings. Statements of the parties are not recorded on oath, and the other side has no opportunity to cross-examine the witnesses and rebut the evidence led by its adversary. Therefore, such a recital in the order sanctioning the mutation was not an admission which could bind the party alleged to have made it.

48. Thus, the mutation proceedings cannot amount to any admission. No other admission was proved, and this substantial question of law is answered accordingly.

Substantial Question of Law No.3:

49. The learned Appellate Court had dealt with all the points raised in the Memorandum of Appeal. The attention of this Court was not drawn to any point in the memorandum of appeal which was not considered by the learned Appellate Court. Therefore, this substantial question of law does not arise for determination.

Substantial Question of Law No. 4:

50. It was submitted that the plaintiff was present during the mutation and had not raised any protest. Hence, he is estopped from challenging it. This submission cannot be accepted. It was laid down by this Court in *Shiv Ditta v. Kidar Nath*, 1971 SCC OnLine HP 21: AIR 1972 HP 20, that the mutation proceedings do not amount to an estoppel. It was observed at page 22:

“8. The learned Judge had observed that the effect of these consistently given assents of Shiv Ditta at mutation proceedings was that the name of Smt. Suhago was shown as co-owner of the property of her late husband Thakur Dass. As the plaintiff-appellant had, according to the learned Judge, failed to assert his rights of succession as a reversioner when the forfeiture of the life-interest of Smt. Suhago took place, he was held to have been estopped from filing the suit under consideration. To

support this view, the learned Judge had relied on two cases of the Lahore High Court: *Ram Sarup v. Ram Saran*, AIR 1926 Lah 650: and *Arur Singh v. Mt. Santi*, AIR 1936 Lah 405.

9. In *Ram Sarup's case*, a Division Bench of the Lahore High Court had observed as follows:—

“Now, there is no doubt from the evidence that the plaintiffs were present, that they did make no objection to the gift and that they had every opportunity of objecting had they desired to do so. It is also quite clear that they knew what the nature of the proceedings and the mutation entry was. Under these circumstances, they are clearly estopped by the well-established rule of law and equity that a person is not entitled to do what is commonly known as blowing hot and cold. The maxim *allegans contraria non est audiendus* is incorporated in Section 115 of the Evidence Act. Upon the finding of the learned District Judge upon the Question of consent with which we are in entire agreement, we are of the opinion that the plaintiffs are estopped from now contesting this alienation.”

10. With due respect, we may observe that, in this case, important elements of the principles found in Section 115 of the Evidence Act appear to have been overlooked. There is no doubt that Section 115 incorporates an equitable doctrine which prevents a party from adopting two inconsistent positions. Nevertheless, the basis upon which equity operates against the party which makes a representation is that the party relying on the estoppel has been misled into altering its position to its disadvantage due to the representation. The party to which a representation is made must have been induced to act on the belief that the representation was true. Where all the facts are within the knowledge of both parties, there is no question of one party acting on the faith of an incorrect representation. In this case, we do not even know what representation the plaintiff made to

Smt. Suhago. Nor do we know under what bona fide but erroneous belief Smt. Suhago acted. She knew better than anyone else that she had been remarried. The evidence relating to what happened at these mutation proceedings and why Shiv Ditta, plaintiff-appellant, consented to the entry of the name of Smt. Suhago is lacking.

XXXX

14. We, therefore, think that it is essential to bear in mind the difference between a waiver and an estoppel. In the instant case, only an estoppel was pleaded. But an essential element of an estoppel was wanting when it was not shown how the defendant, Smt. Suhago acted on the strength of a representation so as to be induced by Shiv Ditta, appellant, to alter her position in any way; in fact, if the plaintiff-appellant had continued in possession of the property of Thakar Das, it was not necessary for him to enforce any rights which accrued by the forfeiture of the rights of Smt. Suhago. It is not unusual for entries to be made in favour of a widow to afford some sentimental satisfaction only to her. It was open to Smt. Suhago to have shown how any transfer of rights had taken place in her favour despite the forfeiture of her rights before the Hindu Succession Act, 1956. But, we are unable to find anything to show that. It may be observed here that all the mutation proceedings relied upon by the learned single Judge did not relate to the property left by Thakur Das. Only in one of these mutation proceedings was succession to the property left by Thakur Das involved. In the case before us, we are only concerned with rights in the property left by Thakur Das deceased.

15. The decision in *Arur Singh's case*, AIR 1936 Lah 405 (supra), relied upon by the learned single Judge, also appears to us, with great respect, to be open to the same objection as the judgment in *Ram Sarup's case*, AIR 1926 Lah 650 (1) (supra).

16. What is known as an “estoppel by record” in English law is substantially covered, under our law, by the

doctrine of res judicata, although, as was pointed out by one of us (Beg. C.J.), in *Sita v. State*. AIR 1969 All 342 at p. 351 (FB), an “estoppel by record” may sometimes stand for a wider principle than res judicata. The effect of that principle is as stated in “*American Jurisprudence*” (2nd Ed. Vol. 28, p. 600) and in “*Corpus Juris Secundum*” (Vol. 31, p. 193) is a “preclusion to deny the truth of matters set forth in a record whether Judicial or legislative”. But that principle is, in this country, sometimes applied by special statutory provisions. In the case before us, the statutory provisions only give the effect of entries made in revenue records as a result of mutation proceedings. That effect is confined to raising a rebuttable statutory presumption of their correctness. To go further than that and to uphold an estoppel, evidence has to be led to show what took place, at a mutation proceeding or elsewhere, so as to operate as an estoppel within the scope of Section 115 of the Evidence Act. As already stated, we have not been shown evidence in this case to establish such an estoppel.

51. Hence, this substantial question of law is answered accordingly.

Substantial Question of Law No. 5:

52. There is no evidence that an earlier suit was filed between the same parties related to the same cause of action. No such pleadings were brought on record. Hence, this substantial question of law does not arise in the present case.

Final Order:

53. In view of the above, there is no infirmity in the judgments and decrees passed by the learned Courts below. Hence, the present appeal fails, and the same is dismissed.

54. The appeal stands disposed of, so also the pending application(s), if any.

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

(Rakesh Kainthla)
Judge

29th September, 2026
(Nikita)