2026:AHC:227077

HIGH COURT OF JUDICATURE AT ALLAHABAD

SECOND APPEAL No. - 820 of 2026

Smt. Meena Devi and another

.....Appellant(s)

Versus

Aadesh (also described as Aadesh Kumar Tyagi)

.....Respondent(s)

Counsel for Appellant(s)	:	Esha Chaturvedi, Prajit Chaturvedi
Counsel for Respondent(s)	:	Dharmendra Kumar Tripathi, Shashank Tripathi

Court No. - 53

HON'BLE VIKAS BUDHWAR, J.

1. Vakalatnama filed by Sri Raj Kumar Kesari (A/R 0137/2012) on behalf of defendant- respondent is taken on record.

2. Heard Sri Rahul Agarwal, learned Senior Counsel assisted by Sri Rajeev Chaturvedi, counsel for the plaintiff-appellants and Sri Raj Kumar Kesari, counsel for the defendant- respondent.

3. Impugned in the present proceedings under Section 100 of the Code of Civil Procedure, 1908 (in short 'CPC') is the judgement and the decree dated 17.07.2026 (signed on 04.08.2026) passed by Additional District Judge/ Special Judge (POCSO Act), Hapur in Civil Appeal No. 16/2025 (Aadesh versus Smt. Meena Devi and others) whereby the civil appeal preferred by the defendant- respondent against the judgement and the order dated 28/02/2025 and the decree dated 07.03.2025 passed by Civil Judge (Junior Division) - I, Hapur in O.S. No. 119/2015 (Smt. Meena Devi and others versus Aadesh) was set aside and the suit which was instituted by the plaintiff-appellants and was decreed by the trial court came to be dismissed.

4. Broadly the facts are that the plaintiff-appellants herein instituted O.S. no. 119/2015 before the court of Civil Judge (Junior Division)-I, Hapur (Smt. Meena Devi and others versus Aadesh and others) seeking a declaration that the sale deed dated 18.10.2005 executed by the father of the plaintiff-appellants, Narendra Kumar in favor of the defendant- respondent being void and a further decree restraining the defendant- respondent herein from dispossessing the plaintiff-appellants. The suit came to be verified on 03.11.2015. Allegation in the suit is/ was that the plaintiff-appellants are the daughters of late Narendra Kumar who happened to be the owner of the demise land being Khata No. 373 Khasra No. 1159, Raqba 3.836 hectares. Allegation as set out in the plaint that the father of the plaintiff-appellants, Narendra (since deceased) was living all alone and the plaintiff-appellants

being the daughters were married and they were residing in their matrimonial house. It is contended that the defendant- respondent happened to be the son of the paternal uncle of the plaintiff-appellants and is a clever person. He on account of his extra qualities became quite close to the father of the plaintiff-appellants, Narendra (since deceased) and they entered into a joint venture with regard to agriculture activities and a joint bank account came to be opened in the name of the father of the plaintiff-appellants and the defendant- respondent in which the sale proceeds of the agriculture produced was being deposited. Allegation is to the extent that on 18.10.2005 while exerting pressure, coercion and undue influence, a sale deed was got executed in the favour of the defendant- respondent by the father of the plaintiff-appellants, Narendra (since deceased) of the land bearing Khata no. 373 Khasra no. 1159, raqba 1.012 hectares out of the total 3.836 hectares situated at village Hasaura, Tehsil Hapur, District- Hapur. In nutshell the allegation in the plaint is/ was that the sale deed dated 18.10.2005 was on account of undue influence not with free mind and will and there was no occasion to execute the sale deed on 18.10.2005 by the father of the plaintiff-appellants in favour of the defendant- respondent that too with the sale consideration of 10 lakh rupees, particularly, when it was the stand of the defendant- respondent that he was treated as an adopted son being a relative who was living and was carrying on business jointly with the father of the plaintiff-appellants. In the plaint, it was also alleged that on 16.11.2006, a will deed was executed by the father of the plaintiff-appellants, Narendra Kumar in favour of the plaintiff-appellants with respect to the Khata no. 373, Arazi no. 1159 admeasuring 2.571 hectares out of the total 3.836 hectares. It was claimed that the father of the plaintiff-appellants expired on 12.09.2008. In the suit, the trial court on 14.07.2016, framed the following issues:

> (a) whether on the basis of the grounds taken in the plaint, the sale deed dated 18.10.2005 is a void instrument?
>
> (b) whether the plaintiff-appellants are entitled to the possession over the property in question?
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> (c) whether the suit is adequately valued?
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> (d) whether appropriate stamp court fees has been paid?
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> (e) whether any cause of action has arisen for institution of the suit?
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> (f) whether the suit is barred by order VII Rule 11 CPC?
>
> (g) whether the suit is barred by order XXVI Rule 2 of the CPC?
>
> (h)whether the plaintiff-appellants are entitled to any cost if yes how much?
>
> (i) as to what relief, the plaintiff-appellants are entitled for?

5. The Court of Civil Judge (Junior Division)-I, Hapur partially decreed the

suit on 28.02.2025 by virtue of the judgement and the order dated 28.02.2025 while holding that the sale deed dated 18.10.2005 so executed by the father of the plaintiff-appellants, Narendra Kumar (since deceased) in favor of the defendant- respondent is void, however, so far as the possession is concerned, the trial court was of the opinion that the said relief cannot be accorded by it and for the same, the plaintiff-appellants have to approach the revenue courts.

6. Being aggrieved against the judgement and the decree of the trial court, the defendant- respondent preferred regular Civil Appeal no. 16/2025 (Aadesh v. Smt. Meena Devi) before the court of District Judge, Hapur which came to be transferred to the court of Additional District Judge/ Special Judge (POCSO Act), Hapur in which the following 2 issues were framed by the lower appellate court, namely;

> (i) whether the defendant- respondent had got the sale deed executed on 18.10.2005 while playing fraud?
>
> (ii) whether the sale deed dated 18.10.2005 was executed and registered without any sale consideration?

7. The Additional District Judge/ Special Judge (POCSO court), Hapur/ lower appellate court by virtue of the judgement and the order dated 17.07.2026 allowed the regular civil appeal and dismissed the suit.

8. Questioning the judgement and the decree dated 17.07.2026 (signed on 04.08.2026) passed by the Additional District Judge/ Special Judge (POCSO Act), Hapur in Civil Appeal No. 16/2025 (Aadesh v. Smt. Meena Devi and others) the present second appeal has been preferred.

9. In the appeal, the following substantial question of laws have been framed:

> *"(A) Whether the lower appellate court, having reversed a decree founded on a finding of undue influence without framing a point on, discussing or reversing that finding, has acted contrary to Order XLI Rule 31 CPC, rendering the judgment unsustainable?*
> *(B) Whether, where the transferee by his own pleadings and sworn statements stood as the adopted son and caretaker of an old and ailing vendor, the burden of proving the fairness of the transaction lay on the transferee under Section 16(3) of the Contract Act and Section 111 of the Evidence Act, and whether the lower appellate court erred in casting it on the plaintiffs?*
> *(C) Whether the lower appellate court could base a finding of payment of consideration on a version (payment by the defendant's father) that the defendant never pleaded and that contradicts his own pleading and evidence?*
> *(D) Whether the finding of payment of consideration is perverse, having*

been recorded by ignoring material evidence and misreading the khatauni (Annexure No. 5) and the respondent's prior sworn statements?
(E) Whether the presumption attached to a registered sale deed survives where the transferee stands in a fiduciary relationship with the vendor and no payment of price is proved, and whether Dahiben (supra) was misapplied in the face of Kewal Krishan (supra)?"

10. Shri Rahul Agarwal, learned Senior Counsel who appears for the plaintiff-appellants has sought to argue that the judgement and the decree of the lower appellate court reversing the findings recorded by the trial court cannot be sustained even for a single moment. Elaborating the said submission, it is contended that the Trial Court had meticulously analysed the case on facts and law and had proceeded to decree the suit wherein relief was sought for declaring the sale deed dated 18.10.2005 as void. Submission is that the plaintiff-appellants happened to be the real daughters of Narendra (since deceased) who was the owner of the said piece of land/ property. There was no occasion for the father of the plaintiff-appellants to have transferred the land in favour of the defendant- respondent, particularly, when already the plaintiff-appellants happened to be two real daughters. Contention is that the plaintiff- appellants were married daughters and they were living in their matrimonial house, however, while exerting undue influence, pressure and coercion, the sale deed came to be executed on 18.10.2005 whereby the land of the property in question is stated to have been transferred by the father of the plaintiff- appellants, Narendra Kumar (since deceased) in favour of the defendant- respondent. It is also contended that though in the sale deed dated 18.10.2005, the sale consideration has been shown to be of Rs. 10 lakhs but no documentary evidence has been brought on record which can probably the passbook of the concerned bank which could have thrown light regarding payment or non payment of the sale consideration, thus, it is contended that in view of the provisions under Section 25 of the Indian Contract Act, 1872, any sale without consideration is void. Thus, no benefit whatsoever can be claimed by the defendant-respondent. Argument is to the extent that the trial court had recorded a categorical finding based upon the evidences so adduced before it that it was the case of undue influence so exerted by the defendant- respondent over the father of the plaintiff- appellants, Narendra (since deceased) who was an old aged person living all alone and was under the control of the defendant-respondent but the lower appellate court has proceeded on misconception and has misdirected itself while deciding the case and coming to the conclusion that it was not a case of fraud. Submission is that there is a marked difference between undue influence and fraud, thus, they cannot be intermingled with each other. It has also been argued on behalf of the plaintiff- appellants that that had it been the intention of Narendra (since deceased), the father of the plaintiff- appellants to deprive the plaintiff-appellants from inheriting any land or property then there was no occasion to have executed a will deed in favour of the plaintiff- appellants, thus, the lower appellate court has misdirected itself and has without returning any finding which is sustainable in the eyes of law, reversing the judgement and the order of the trial court. It is thus prayed that the judgement and the

decree of the lower appellate court be set aside and the appeal be allowed *in toto* and the suit be decreed.

11. Countering the submissions so made by the learned Senior Counsel for the plaintiff- appellants, Shri Rajkumar Kesari who appeared for the defendant- respondent has submitted that none of the contentions are raised by the plaintiff- appellants has any legs to stand. Submission is that first of all, what would be important, would be the fact that there happens to be a registered sale deed executed on 18.10.2005 by the father of the Narendra (since deceased) in favour of the defendant- respondent and in the sale deed, there happens to be a specific recital of the sale consideration i.e. Rs. 10 lakhs and also the names of the witnesses, proving the fact that the payments of the sale consideration had been made. It is further contended that had there been any truth in the allegation that the sale deed dated 18.10.2005 was an account of undue pressure, fraud or coercion then nothing prevented the father of the plaintiff- appellants, late Narendra to have instituted proceedings before competent court of law questioning the sale deed dated 18.10.2005, however that was not done and he expired on 12.09.2008. Contention is to the extent also that Narendra (since deceased) who happened to be the father of the plaintiff- appellants was well aware about the execution of the sale deed dated 18.10.2005 and that is why while executing a will in favour of the plaintiff- appellants, the residue portion of the land remained after execution of the sale deed dated 18.10.2005 was bequeathed by way of a will on 16.11.2006. Meaning thereby that it was within the knowledge of their deceased father that there was a sale deed executed on 18.10.2005 in favour of the plaintiff- appellants' father.

12. I have heard the submissions so made across the bar and perused the record carefully.

13. Facts are not in issue, it is not in dispute that the father of the plaintiff-appellants, Narendra (since deceased) was the owner of a piece of land being Khata No. 373, Khasra No. 1159, Raqba 0.386 hectares. It is also not in dispute that the plaintiff- appellants happens to be the real daughters of the deceased, Narendra (since deceased) and they were married and living in their matrimonial house.

14. The bone of contention between the rival parties is whether the sale deed which is stated to have been executed on 18.10.2005 by Narendra (since deceased) in favour of the defendant- respondent is void or not. In order to address the said issue, what would be relevant, would be the nature of the sale transaction whether it is registered or not. Parties are in agreement that the sale deed dated 18.10.2005 is a registered document. Now another question arises as to whether there is any sale consideration or not which became the part and the parcel of execution of the sale deed. As per the recitals contained in the sale deed dated 18.10.2005, the total sale consideration is stated to be Rs. 10 lakhs. As per the stand taken by the

defendant- respondent, Rs. 10 lakhs was paid to the father of the plaintiff-appellants, Narendra (since deceased), the defendant- respondent appeared in the witness box as D.W. 1 while coming up with a stand that payment of Rs. 10 lakhs was made by him to the deceased Narendra as sale consideration. However, D.W. 2, Krishnaveer Tyagi had also stepped into the witness box and he deposed that the sale consideration of Rs. 10 lakh was paid to Narendra Kumar (since deceased) by the father of the defendant- respondent i.e. Subhash Chandra Tyagi on 01.10.2005 in the presence of one Ramveer Singh, the trial court opined that there was a contradiction in the deposition of D.W. 1 and D.W. 2, where according to D.W. 1 i.e. defendant-respondent, the sale consideration was paid by him to Narendra (since deceased), whereas D.W. 2 came up with a stand that the same was paid by the father of the defendant- respondent in presence of one independent witness, Rajveer Singh. Thus, the theory so sought to be propounded by the defendant- respondent is unbelievable and was disbelieved. The lower appellate court came to the conclusion that the said inconsistency in the statement cannot be said to be fatal or it can be a ground to dispel the stand taken by the defendant- respondent. The trail court had also gone to the extent that since no document had been produced to show that payment of sale consideration was made and the amount of Rs. 10 lakhs is a huge amount, thus, the involvement of income tax would come into play so the defendant- respondent was unable to prove that sale consideration was parted.

15. In the opinion of the Court, the findings recorded by the trial court while disbelieving the stand taken by the defendant- respondent is not a correct approach for variety of reasons. First of all, what would be relevant, would be the fact that the sale came to be executed on 18.10.2005 and the father of the plaintiff- appellants, namely, Narendra Kumar (since deceased) expired on 12.09.2008. However, he during his lifetime at no point of time questioned the sale deed dated 18.10.2005. Meaning thereby that no such allegation was there in existence so as to trigger a cause of action for institution of a suit for cancellation of the sale deed dated 18.10.2005. Secondly, the sale deed dated 18.10.2005 is a registered document and it is not the case of plaintiff- appellants that it is an unregistered document meaning thereby that the burden to prove otherwise heavily rest upon the plaintiff- appellants. Interestingly, the sale deed dated 18.10.2005 recites that the Khata No. 373, Khasra No. 1159, Raqba is 3.836 hectares, out of which 1.012 hectares was being transferred in favour of the defendant-respondent only and subsequently on 16.11.2006, the residue land was transferred by the father of the plaintiff- appellants, Narendra Kumar (since deceased) in favour of the plaintiff- appellants. Meaning thereby that neither there was any objection nor any resentment about the execution of the sale deed on 18.10.2005 in favour of the defendant- respondent, particularly, when the father of the plaintiff- appellants was well aware that he had parted with a certain portion of land by virtue of a registered sale deed in favour of the defendant- respondent. What is more interesting is that in case, there was any allegation of undue influence exerted by the defendant- respondent upon

the father of the plaintiff- appellants i.e. Narendra Kumar (since deceased) then proceedings before the competent court of law could have been triggered when the will deed dated 16.11.2006 was executed.

16. As regards the issue relatable to carving out of a new case of fraud despite the fact that the allegation of the plaintiff- appellants was of undue influence and non-framing of the said issue while bestowing consideration and returning finding is concerned, the same at the first blush appears to be attractive but it is liable to be rejected out-rightly for the simple reason that mere change of words would not in any manner whatsoever dilute or extinguish a event and a contingency as though the allegation was of undue influence but looking into the redeeming features so available herein in particular, (a) non-challenge to the sale deed dated 18.10.2005 by the vendor/ seller, the father of the plaintiff- appellants, Narendra Kumar (since deceased) during his lifetime; (b) bequeathing by way of a will deed dated 16.11.2006 excluding the land which had already been subject matter of the sale deed dated 18.11.2005 in favour of plaintiff- appellants, (c) registered sale deed dated 18.11.2005, (d) the payment of consideration itself depicts that there was no suspicious circumstances so as to hold the sale deed dated 18.10.2005 as void, though a feeble attempt has been made by the plaintiff-appellants so as to paint a case.

17. Certainly, the appellate court while reversing the finding of the trial court are required to frame an issue in that regard, however, here in the present case in view of the discussions made hereinabove with regard to the redeeming features, it cannot be said that the lower appellate court had committed any illegality so as to make the entire case fatal, particularly, when finding has been recorded that the sale deed dated 18.11.2005 was a registered document duly proved and there were no suspicious circumstances.

18. Nonetheless mere making, an allegation of undue influence does not absolve the party who alleges the same and the burden only shifts once the said onus is discharged by the party making the said allegation, however, barring making allegation, there is no evidence available on record so as to suggest even otherwise that it was a case of undue influence in the wake of the fact that the sale consideration as well as the execution of the sale deed stood proved by the defendant- respondent.

19. Viewing the case from the four corners of law, this Court does not find the present case to be a fit case so as to entertain and admit the appeal on the substantial questions of law framed by the plaintiff- appellants in the present proceedings. Resultantly, the appeal being devoid of merits and is liable to be **dismissed**.

November 2, 2026
Ashu

(Vikas Budhwar,J.)

Digitally signed by :-
ASHUTOSH KUMAR PRAJAPATI
High Court of Judicature at Allahabad