2026:AHC:234994

HIGH COURT OF JUDICATURE AT ALLAHABAD

SECOND APPEAL No. - 871 of 2026

Smt Chanarpati And 6 Others

.....Appellant(s)

Versus

Magdhu And 4 Others

.....Respondent(s)

Counsel for Appellant(s) : Kanhaiya Lal Tiwari
Counsel for Respondent(s) :

Court No. - 53

HON'BLE VIKAS BUDHWAR, J.

1. Heard.

2. Challenge in this appeal at the instance of the plaintiff-appellants is the judgement and the order dated 10.03.2022 and the decree dated 21.03.2022 passed by 10th Additional Civil Judge (Junior Division), Court No. 23, Basti in O.S. No. 253 of 1999 (Smt. Chanarpati and others v. Magdhu) whereby the suit so instituted by the plaintiff-appellants for cancellation of the sale deed dated 07.09.1998 and for permanent injunction came to be dismissed as well as the judgement and the order dated 17.09.2026 and the decree dated 18.09.2026 passed by the Additional District Judge, Court No. 1, Basti in Civil Appeal No. 11 of 2022 (Smt. Chanarpati and others v. Magdhu) affirming and upholding the judgement of the trial court.

3. Broadly the facts as worded in the appeal are that the original plaintiff-appellants, Smt. Chanarpati claimed to be the widow of Gharbharan @ Ramesar who was a recorded owner of Arazi No. 3 Raqba 0.317, Arazi No. 5 Sa, raqba 0.40 and Arazi No. 10, rabba 0.918 totaling to 0.1715. Allegation in the plaint that the defendant-respondents planted an imposter and got a registered sale deed executed in their favour wherein the vendor was shown to be the husband of the original plaintiff-appellants. The O.S. seeking cancellation of the sale deed dated 07.09.1998 and permanent injunction, O.S. No. 253 of 1999 came to be instituted before the trial court which was dismissed on 10.03.2022 by the court of 10th Additional Civil Judge (Junior Division), Court No. 23, Basti. Aggrieved of the same, the plaintiff-appellants preferred Civil Appeal No. 11 of 2022 before the court of District Judge, Basti which came to be transferred to the court of Additional District

Judge, court No. 1, Basti which met with the same fate while dismissing on 18.09.2026.

4. Assailing the judgement and the decree of the trial court as well as the lower appellate court, the present appeal has been preferred.

5. The following substantial questions of law have been framed:

> *"I. Whether the holding that since the sale deed in question is a registered sale deed and the plaintiff has not examined any attesting witness of the sale deed and as such there would be a presumption regarding the genuiness of the sale deed in as much as there is no need to examine the attesting witnesses under the law for proving the validity of the sale deed and merely because a sale deed is registered one and its presumption would not be conclusive and as such the presumption regarding its genuiness has been controverted by the plaintiff? courts below committed illegality in*
> *II. Whether the appellate court committed illegality in holding that unless the registered document is cancelled there would be a presumption regarding its genuiness in as much as the present civil suit has been filed for the cancellation of sale deed dated 07.09.1998 and the plaintiff has proved that the sale deed in question has been obtained by the defendant by standing some imposter and without paying any consideration to the husband of the plaintiff?*
> *III. Whether the brudon of proof would lie upon the defendant to prove regarding the genuiness of the registered sale deed and also regarding the payment of the consideration being the result of free and independent mind of the husband of the plaintiff and the defendant has failed to prove the burdon placed upon him and wrongly the burdon of proof has been placed upon the plaintiff?*
> *IV. Whether the law which is applicable to pardasnashin lady will also equally apply to a male who is a male highly vulnerable due to illness, old age, illiteracy, or mental weakness and as such the husband of the plaintiff being quite illiterate vulgar, issueless and old ,the burdon of proof would lie upon the defendant to prove its genuiness and the payment of the consideration and it cannot be said to be have been proved merely on the account of being a registered deed?*
> *V. Whether merely the sale deed is registered by the Sub-Registrar and the through sale deed, the possession has been delivered to the defendant before the Sub-Registrar it cannot be said that the sale deed is valid in as much as the plaintiff has always remained in possession and as such the relief regarding permanent injunction can be granted to the plaintiff and the plantiff has proved her ownership and possession?*

VI.Whether the findings recorded by the courts below are illegal, erroneous, perverse and suffer from conjectures and surmises?"

6. Learned counsel for the plaintiff-appellants has submitted that the judgement and the decree of the trial court as well as the lower appellate court is wholly unsustainable in the eyes of law. Submission is that though a sale deed is stated to have been executed by the husband of the original plaintiff-appellants and the father of the deceased, Ramshabd on 07.09.1998 but the same is forged and fictitious as the impostor was planted in order to get the sale deed executed in favor of the defendant- respondents. Submission is that there was no occasion to have executed the sale deed as the land was the only source of livelihood and there had been no interaction or any negotiation which took place between the the original tenure holder being the husband of the original plaintiff-appellants and the father of the substituted plaintiff-appellants and the defendant- respondents. Further contention is that on being noticed the defendant-respondents did not enter their appearance, thus, the allegations and the assertions in the plaint stood unrebutted which gave force to the plaintiff-appellants to get relief in that regard. It is further contended that even the witnesses of the sale deed are related to the defendant- respondents, thus, the very basis for staking the claim by the defendant- respondents stood eroded. Argument is to the extent that the issues have not been framed in that regard.

7. I have heard the submission so made by the learned counsel for the plaintiff-appellants and perused the record.

8. Apparently, in the present proceedings, the plaintiff-appellants is confronted with concurrent findings recorded by the court below. The jurisdiction to be exercised under Section 100 of the CPC is not gaining of regular first appeal under Section 96 of the CPC. Thus, this Court is not required to reappreciate or re-evaluate the evidences available on record. What would be relevant, would be the applicability and the availability of the substantial questions of law so as to entertain and admit the second appeal. Records reveal that the original plaintiff-appellants being the widow of the deceased instituted the subject suit for cancellation of the sale deed dated 07.09.1998 and for injunction. Coming up with the stand that the said sale deed was an element of fraud. Interestingly, the sale deed dated 07.09.1998 is a registered document. Once the document itself is registered then in order to dispel or discard the same a heavy onus and burden lies upon

the party who alleges fraud. Notably, the provisions contained under Sections 58, 59 and 60 of the Registration Act, 1908 applies. Barring the allegation that an impostor came to be planted for getting the sale deed executed and the husband of the original plaintiff-appellants and the father of the substituted plaintiff-appellants had no occasion or circumstances to alienate the said property in favour of the defendant- respondents is neither here not there, particularly, when the sale deed contains the recitals of sale consideration to the tune of Rs. 30,000. No evidence has been adduced by the plaintiff-appellants to substantiate that an impostor had been planted and it was not a case of party, no sale consideration was there so as to attract the bar contained under Section 25 of the Indian Contract Act, 1890. Merely making allegation that there had been no sale consideration and there was no negotiation of meeting with the defendant- respondents and the deceased would not suffice. No evidence worth consideration has been adduced to show that any fraud has been practiced that though only allegations have been made without substantiating the same. Merely because the defendants have not put in their appearance would not be a ground to out-rightly decree the suit as the plaintiff-appellants is to stand on its own legs.

9. Viewing the case from the four corners of law, no good ground is made out to interfere in the present appeal as no substantial questions of law stands applicable.

10. Resultantly, the appeal is **dismissed** in view of Order XLI Rule 11 of the CPC

November 17, 2026
Ashu

(Vikas Budhwar,J.)

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