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NEUTRAL CITATION NO. 2025:MPHC-IND:30528

IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE JAI KUMAR PILLAI

SECOND APPEAL No. 2217 of 2025

GOVIND THROUGH LR
Versus
SMT. SAYARBAI AND OTHERS

Appearance:
Shri Sulabh Samaiya–Advocate for the appellants

Reserved on : 07/10/2025

Delivered on : 16/10/2025

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J U D G M E N T

Heard on the question of admission.

This Second Appeal under Section 100 of CPC has been filed by the appellants/defendants being aggrieved by the judgment and decree dated 12/08/2025 passed by Principal District Judge, Dhar, District-Dhar (M.P.) in RCA No.70/2023, whereby the judgment and decree dated

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30/10/2023 passed by IInd Additional Civil Judge, Senior Division, Dhar, District-Dhar (M.P.) in RCS-A No.54/2020, was affirmed.

Facts of the case, in short are as under :-

2. The respondents/plaintiffs have presented this suit regarding declaration of title, partition, permanent injunction and declaration of will No. MP119002018A3396478 dated 07/06/2018 regarding the land survey Nos.37/1/1, 37/2/3, 38/2, 38/3, area 1.077, 1.517, 0.778, 1.025, total plot 04, total area 4.397 hectare (hereinafter referred as the disputed land) situated in Village-Nipawali, Tehsil-Dhar, declaring void/ineffective in respect of the respondents/plaintiffs.

3. Respondents/plaintiffs case before the Trial Court was that Defendant No.1 - Govind, fraudulently obtained a bogus Will for the disputed ancestral land (Survey No.37/1/1, measuring 1.077 hectares) by taking advantage of Ambaram's poor health and diminished capacity and had it registered without Ambaram's or the plaintiffs' knowledge on 07/06/2018. Relying on this Will, mutation proceedings were initiated after Ambaram's death without notice to the plaintiffs, who only became aware of the Will during Tehsildar proceedings on 04/06/2019. Despite their objections, the mutation was approved without a proper hearing. The plaintiffs contended that the land was ancestral and Ambaram had no

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legal authority to bequeath it unilaterally in the presence of his wife and other heirs. They further claimed that Ambaram had already partitioned the property among all heirs during his lifetime and each party had been in separate possession of their share. Following threats by the defendants to dispossess them in June 2020, the plaintiffs sought a declaration that the will was void, recognition of their 1/5 share each, partition by metes and bounds, and a permanent injunction restraining interference. No relief was sought against Defendant No.4, the State of Madhya Pradesh, which remained a formal party without filing a reply or written statement.

4. The appellants/defendants submitted that Defendant No.4, the State of Madhya Pradesh, was made a formal party against whom no relief was sought. Defendant Nos.2 and 3, represented by Advocate Mr. Ashok Chauhan had attempted to file a written statement however, it was not properly signed or verified in compliance with Order 6, Rule 14 and rule 15 of the Civil Procedure Code (CPC). The written statement lacked the signatures of the defendants and was not supported by an affidavit, as required. Consequently, the Court held that the submission could not be treated as a valid reply, effectively considering that no reply had been filed by these defendants. Furthermore, they had failed to cross-examine the plaintiffs nor present their own evidence, resulting in *ex parte* proceedings being initiated against them from 14/06/2023. Defendant No.1 - Govind, in his written statement, had denied the plaintiffs'

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allegations and claimed that their father, Ambaram, had executed a valid will in his favor in the presence of witnesses, including the plaintiffs. He contended that Ambaram had already distributed shares among all legal heirs during his lifetime and, in appreciation of Govind's service, had granted him the remaining land, which he possessed and cultivated as owner. Govind maintained that he had not interfered with the plaintiffs' enjoyment of their respective portions and argued that they were not entitled to claim a 1/5 share each or seek further partition. He therefore requested that the plaintiffs' claim to be dismissed.

5. The learned Trial Court after considering the material placed on record and evaluating the evidence of both parties allowed the suit filed by the respondents/plaintiffs and found that the plaintiffs were the rightful landowners of 1/5 and 1/5 shares of land under Khata No.39/2007-08, covering Survey Nos.37/1/1, 37/2/3, 38/2, and 38/3, with a total area of 4.397 hectares located in Village-Nipawali, Tehsil-Dhar. This ownership was certified based on a document executed in their favour on 07/06/2018. It was also found that $1/5^{th}$ of the 4.397 hectares of land had been washed away. The Court further held that the plaintiffs were entitled to receive vacant possession of their respective 1/5 shares in the disputed land through partition. Furthermore, Will No.119002011803396478 dated 07/06/2018 was declared void and without legal effect. Lastly, the

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defendants were prohibited from interfering with the plaintiffs' possession of their 1/5 share of the disputed land.

6. Being aggrieved by this judgement and decree, the appellants/defendants preferred an appeal before the First Appellate Court, which, after due consideration, dismissed the appeal and affirmed the judgment and decree passed by the Trial Court.

7. Being aggrieved by which, the appellants/defendants preferred the present second appeal proposing the following substantial questions of law :-

1. *"Whether the provisions of Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act are required to be applied to the executed Will, when the plaintiffs, defendants, and other family members have already entered into a compromise before the Court admitting the execution of the Will?*
2. *Whether the statements of family members recorded in writing along with the compromise application, and the statements recorded by the subordinate and appellate courts while accepting the Will, cannot be taken into evidence?*
3. *Whether there is any provision for the cancellation of the statements and evidence of the plaintiffs and defendants on record after the dismissal of the compromise application before the Court, or whether there is any provision for their admission as evidence?*

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4. *Whether the burden of proving the Will to be doubtful or fraudulent was on the plaintiffs, and whether the subordinate and appellate courts failed to consider this issue?*

5. *Whether the Appellate Court was required to prove the facts even after the partition was approved by accepting the registered Will by mutual consent under Section 53 of the Indian Evidence Act, 2023, when the statements made by the plaintiffs and defendants under the Adhinama were already on record before the Court?*

6. *Whether the application filed by the appellant under Order 7 Rule 7 of the CPC and Section 107 of the IPC for allowing the evidence of a witness to the executed Will should not have been rejected by the Appellate Court at this stage, considering the factual circumstances?"*

8. The learned counsel for appellants/defendants pleads that in civil suit No.54A/2020 a mutual compromise was submitted and recorded between the plaintiffs and defendants No.1, 2 and 3 on 29/04/2024 regarding the disputed agricultural land. This compromise included express statements from the plaintiffs acknowledging that defendant no. 1, Govind, had rightfully received 1.077 hectares of land under Survey No. 37/1/1 through a registered will executed by his father, Ambaram. The statements confirming the will were recorded in court by the involved parties, including Shayar Bai, Sangeeta Bai, Govind, and Kamla Bai. Despite this, the Subordinate Court declared the will void and ordered partition of the entire 4.397 hectares of land into 1/5 shares each, disregarding the compromise and the will.

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9. The learned counsel for the appellants/defendants further asserts that both the Trail Court and the First Appellate Court failed to consider that the compromise had resolved the dispute between defendants No.1, 2 and 3 and that the plaintiffs had accepted Govind's ownership under the will. The Courts overlooked the absence of any evidence contesting Ambaram's capacity to execute the will, which had been registered lawfully with witnesses. The learned First Appellate Court also rejected the defendants' request to present witness testimony under Order 7 Rule 7 and Section 107 of the CPC. Although the plaintiffs had earlier acknowledged the Will and the partition, the Courts still upheld the claim for partition. The learned First Appellate Court, while citing Sections 63 of the Indian Succession Act, 1925 and 68 of the Indian Evidence Act, 1872 acknowledged that there was no proof being the Will invalid. However, both Courts ignored the legal affidavits and the mutual consent reflected in the compromise, and thus wrongly affirmed the partition of land, disregarding the legally binding Will.

Analysis and Conclusion :-

10. Heard learned counsel for the appellants/defendants at length and perused the entire records available.

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11. It is settled law that section 100 CPC confers jurisdiction on the High Court to entertain a second appeal only when it is satisfied that the case involves a substantial question of law. In **Suresh Lataruji Ramteke vs. Sumanbai Pandurang Petkar & Ors, (2023) 17 SCC 624 (2-Judge Bench)** the scope of interference by a High Court in a second appeal has been enunciated by the Hon'ble Apex Court as follows :

> *"**12**. The jurisprudence on Section 100 CPC is rich and varied. Time and again this Court in numerous judgments has laid down, distilled and further clarified the requirements that must necessarily be met in order for a second appeal as laid down therein, to be maintainable, and thereafter be adjudicated upon. Considering the fact that numerous cases are filed before this Court which hinge on the application of this provision, we find it necessary to reiterate the principles.*
> *"**13**. The requirement, most fundamental under this section is the presence and framing of a "substantial question of law". In other words, the existence of such a question is sine qua non for exercise of this jurisdiction.* ***[Panchugopal Barua v. Umesh Chandra Goswami, (1997) 4 SCC 713 (two-Judge Bench)]***
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> *"**15.** In* ***Santosh Hazari v. Purushottam Tiwari [Santosh Hazari v. Purushottam Tiwari, (2001) 3 SCC 179*** *a Bench of three Judges, held as under in regard to what constitutes a substantial question of law:*
> *(a) Not previously settled by law of land or a binding precedent;*
> *(b) Material bearing on the decision of case; and*
> *(c) New point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. Therefore, it will depend on facts of each case."*

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12. This Court is of considered opinion that the Will marked as Exhibit P-12 has not been legally or validly proved in accordance with the law. The plaintiffs, Smt. Sayarbai (PW-1) and Smt. Sangeetabai (PW-2), are both illiterate women from rural backgrounds who use thumb impressions instead of signatures, as did the alleged testator, Ambaram, their father. During the trial, the plaintiffs produced only a copy of the Will (Exhibit P-12), and not the original document. Defendant No.1, Govind Singh (DW-1), did not produce the original Will during his evidence, nor did he testify about its voluntary execution in any meaningful manner. The Will itself contains a thumb impression of Ambaram but no clear evidence was presented to prove that it was indeed affixed voluntarily and knowingly. In such circumstances and considering the rural and illiterate status of the parties, the Court finds that the genuineness and due execution of the Will remains unestablished.

13. This Court is further of considered opinion that the testimony of PW-1 and PW-2 strongly indicates that the Will was executed without their knowledge and under questionable circumstances. Both witnesses, in paragraphs 5 and 6 of their examination in chief, stated that they came to know abot the Will only after their lawyer discovered it while handling a mutation case filed by Defendant Govind. They alleged that during Ambaram's illness, Govind took him to Dhar, under the pretext of medical treatment, and secretly had the Will executed. These allegations

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were reiterated by both witnesses during cross-examination, and crucially, these statements were not challenged or contradicted by the defendant. In her cross-examination, PW-1 maintained that Govind had forcibly and fraudulently arranged the Will behind the plaintiffs' backs. No contradiction was elicited on these key points. Similarly, PW-2's assertions in paragraphs 5 and 6 of her examination remained unrefuted. Thus these unchallenged statements carry significant evidentiary weight.

14. This Court is also of considered opinion that the mandatory requirements under Section 68 of the Indian Evidence Act, 1872, for proving a Will were not fulfilled by Defendant No.1. Specifically, no attesting witness was produced to testify that the Will was executed by Ambaram in a sound state of mind, voluntarily and with knowledge of its contents. As per the settled legal principles, the burden of proof lies heavily on the beneficiary of the Will, in this case, Govind had to establish that the document was executed in accordance with law. However, DW-1 Govind, in his examination-in-chief, made no statement asserting that the Will was executed by Ambaram in full awareness and free from undue influence. The absence of medical evidence does not disprove these claims, especially since they were not contested in cross-examination. Moreover, Govind failed to satisfy the four foundational conditions for proving the genuineness of the Will as laid down in relevant precedents.

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15. With regard to the compromise as argued by the counsel for the appellants/defendants, the Hon'ble Supreme Court held in the case of **Gurpreet Singh v. Chatur Bhuj Goel, (1988) 1 SCC 270 : 1987 SCC OnLine SC 424 at page 276:-**

> ***10.*** *Under Rule 3 as it now stands, when a claim in suit has been adjusted wholly or in part by any lawful agreement or compromise, the compromise must be in writing and signed by the parties and there must be a completed agreement between them. To constitute an adjustment, the agreement or compromise must itself be capable of being embodied in a decree. When the parties enter into a compromise during the hearing of a suit or appeal, there is no reason why the requirement that the compromise should be reduced in writing in the form of an instrument signed by the parties should be dispensed with. The court must therefore insist upon the parties to reduce the terms into writing.*
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> ***11.*** *In our considered opinion, the view to the contrary expressed by the High Court in* ***Manohar Lal v. Surjan Singh [1983 Punj LJ 402]*** *that the first part relates to a lawful agreement or compromise arrived at by the parties out of court, does not seem to be correct. Sandhawalia, C.J. speaking for himself and Tewatia, J. observes that the word "or" makes the two parts disjunctive and they visualise two distinct and separate classes of compromise. According to the learned Judges, the first part relates to a lawful agreement or compromise arrived at by the parties out of court, while the second is applicable where the defendant satisfies the plaintiff in respect of the whole or any part of the subject matter of the suit. Such a restricted construction is not warranted by the language used in Rule 3. The word*

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> *'satisfies' denotes satisfaction of the claim of the plaintiff wholly or in part, and for this there need not be an agreement in writing signed by the parties. It is open to the defendant to prove such satisfaction by the production of a receipt or payment through bank or otherwise. The satisfaction of the claim could also be established by tendering of evidence. It is for the court to decide the question upon taking evidence or by affidavits as to whether there has in fact been such satisfaction of the claim and pass a decree in accordance with Order XXIII, Rule 3 of the Code.*

16. This Court is of the considered view that plaintiffs Sayarbai and Sangeetabai, along with defendants Govind, Mangilal, and Kamlabai, were all necessary and essential parties to the compromise that was purportedly entered into. For any compromise to attain legal sanctity and be binding upon the parties, it is imperative that all concerned parties, whose rights and interests are likely to be affected by such compromise, must voluntarily agree to its terms and signify their consent, preferably through their signatures on the compromise deed. In the present matter, it is an admitted position that Mangilal, who is a co-defendant and whose rights are directly involved in the subject matter of the dispute, was neither a party to the said compromise nor has he signed the compromise deed. The absence of his participation and consent renders the compromise incomplete and legally unenforceable. A compromise that affects the rights of multiple parties cannot be given effect to unless it reflects the voluntary and informed consent of all such parties. The law

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does not recognize a partial compromise that seeks to bind some parties while excluding others who are equally interested and affected. Therefore, in the absence of Mangilal's participation and his signature, the alleged compromise lacks the essential legal ingredients required under law, particularly under Order XXIII Rule 3 of the Code of Civil Procedure. Consequently, this Court holds that the said compromise does not possess legal sanctity and cannot be acted upon for the resolution of the present dispute.

17. Therefore, This Court is of considered opinion that the conclusions arrived upon by the learned Trial Court and affirmed by the learned First Appellate Court are correct in both perspective of law and fact. The Will marked Exhibit/P-12, bearing e-registration No.MP119002018A3346478, dated 07/06/2018 and purportedly executed by Ambaram in favour of Defendant No.1 Govind Singh, has been rightly declared void and ineffective. The plaintiffs successfully demonstrated that they were not aware of the execution of the Will and that it was not executed freely or in compliance with legal standards. Therefore, the property in dispute—land in survey Nos.37/1/1 (1.077 hectare), 37/2/3 (1.517 hectare), 38/2 (0.778 hectare) and 38/3 (1.025 hectare) totaling 4.397 hectares—was rightly awarded to the plaintiffs. Thus, this Courts holds that the plaintiffs are entitled to a 1/5–1/5 share each and can seek vacant possession after

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partition. Accordingly, the finding of the Trial Court and Appellate Court stands affirmed.

18. However, it is well settled by a consistent line of decisions of the Hon'ble Supreme Court that interference with concurrent findings of fact is permissible only when such findings are perverse or manifestly contrary to the material on record. The Court may refer to **Narayan Rajendran and Anr. v. Lekshmy Sarojini and Others [(2009) 5 SCC 264], Hafazat Hussain v. Abdul Majeed and Others [(2001) 7 SCC 189], Union of India v. Ibrahim and Another [(2012) 8 SCC 148], D.R. Rathna Murthy v. Ramappa [(2011) 1 SCC 158], Vishwanath Agrawal v. Sarla Vishnath Agrawal [(2012) 7 SCC 288], Vanchala Bai Raghunath Ithape v. Shankar Rao Babu Rao Bhilare [(2013) 7 SCC 173], and Laxmidevamma and Others v. Ranganath and Others [(2015) 4 SCC 264]**, wherein it has been repeatedly held that mere disagreement with the findings of fact cannot justify interference, unless such findings are palpably perverse or unsupported by any evidence. In the present case, the concurrent findings of fact recorded by the courts below have been arrived at after a careful and meticulous appreciation of the evidence on record. The findings are neither perverse nor devoid of evidentiary support. Therefore, there exists no legal justification for this Court to interfere with the same under Section 100 of the Code of Civil Procedure.

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19. Thus, in view of the aforesaid discussion and upon due consideration of material available on record and considering the law laid down by the Hon'ble Apex Court, this Court does not find any illegality in the judgment and decree of the appellate Court, dismissing the appeal of the appellants/defendants.

20. Resultantly in absence of any substantial question of law, this Second Appeal fails and is hereby **dismissed**.

21. Pending applications, if any, shall also stands disposed off accordingly.

(Jai Kumar Pillai)
Judge

Aiyer*
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