

A.F.R.

Court No. - 49

Case :- WRIT - B No. - 3357 of 2023

Petitioner :- Awadhesh Singh

Respondent :- State Of Uttar Pradesh And 5 Others

Counsel for Petitioner :- Punit Kumar Upadhyay

Counsel for Respondent :- C.S.C.,Pankaj Kumar Gupta,Satendra Bahadur Yati

Hon'ble Syed Qamar Hasan Rizvi,J.

1. Heard Sri Arun Kumar Gupta, learned Senior Advocate assisted by Sri P.K.Upadhyay, learned Counsel for the petitioner; Sri Satendra Bahadur Yati, learned counsel for respondent no.2/caveator; Sri Anshul Nigam, learned Standing Counsel for the State-respondent nos. 1, 4, 5 & 6 and Sri Pankaj Kumar Gupta, learned Counsel for the Gaon Sabha- respondent no.3.

2. With the consent of the learned counsel for the parties, this Court proceeded to decide the present Writ Petition at the admission stage itself.

3. By means of the present writ petition, the petitioner has prayed for the following relief:

“(I) to issue a writ, order or direction in the nature of certiorari quashing the impugned judgment and order dated 31.7.2023 passed in Second Appeal No. SA/1509/2022/Basti Computerised No. R-20221714001509 passed by the Board of Revenue U.P. Lucknow (Annexure No. 17 to this writ petition)

(II) to issue a writ, order or direction in the nature of mandamus commanding and directing the Sub Divisional Officer Harraiya, Basti, respondent no.5, to proceed and comply the direction issued by judgement and order dated

10.6.2022 passed by the Additional Commissioner (Administration), Basti Division Basti (Annexure No.14 to this writ petition) within stipulated time as may deem fit and proper in the interest of justice.

(III) to issue any other suitable writ, order or direction in the mature as this Hon'ble Court may deem fit and proper to meet the ends of justice under the facts and circumstances of the present case.

(IV) to award cost of writ petition to the petitioner.”

4. The relevant facts in brief, as narrated by the petitioner, in the writ petition are that the petitioner and respondent no. 2 are siblings and their father purchased an agricultural plot of land bearing khata No. 0006 Gata No. 21M ad-measuring area 2.0510 Hectare, situated at village Pikaura Sani, Tappa Nawai, Pargana Nagar Pashchim, Tehsil Harraiya, District Basti. The father of the petitioner, namely, Ram Komal Singh died on 20.12.1985 and after his death, the respondent no. 2 claiming her right over half of the property, on the basis of an unregistered WILL dated 24.1.1994, moved a mutation application dated 18.07.1994. The Naib Tehsildar, Harraiya vide order dated 23.09.1994 allowed the aforesaid application for mutation in favour of respondent no. 2, namely, Smt. Asha Devi.

5. Against the aforesaid order dated 23.09.1994, the petitioner moved an application for recall of the said order on 17.10.1996. The said recall application was rejected vide order dated 03.03.2000 passed by the Naib Tehsildar, Gaur (Harraiya), District Basti.

6. Aggrieved by the said order dated 03.03.2000, the petitioner preferred an Appeal No. 38 of 2001 (Awadhesh Singh versus Asha Singh) under

Section 210 of the U.P. Land Revenue Act, 1901, before the Sub Divisional Officer, Harraiya (respondent no. 5). The said Appeal was dismissed vide order dated 21.08.2001.

7. Thereafter, the petitioner filed a Revision under Section 219 of the U.P. Land Revenue Act, 1901, before the Divisional Commissioner, Basti Division, Basti which was also dismissed vide order dated 20.01.2005 passed by the Additional Commissioner (Administration), Basti.

8. The petitioner preferred a Writ Petition bearing W.P. No. 13751 of 2005, assailing the aforesaid orders passed by the Revenue Courts. This Court vide judgment and order dated 04.08.2017 declined to exercise its writ jurisdiction to interfere with the orders passed by the Revenue Courts in summary proceedings. However, while dismissing the said Writ Petition vide Order dated 04.08.2017, this Court left it open to the parties to get their rights determined before the Competent Court of Law in regular proceedings. Paragraph no. 43 of the aforesaid order passed by this Court is extracted hereinbelow,

“43. I do not find any good ground to interfere in the orders passed by the Revenue Courts, moreso, when it is settled law that this Court should not interfere in writ jurisdiction in the orders passed in summary proceedings by Revenue Courts. It is always open to the parties to get their rights determined before the Competent Court of Law in regular proceedings.”

9. Consequently, the petitioner filed a Suit under Section 144 of the U. P. Revenue Code, 2006 which was registered as Case No. 91 of 2017 and later on numbered as Case No. 4481 of 2017 (Computerised No. T-

2017171453014481), before the Sub Divisional Officer, Harraiya, District Basti (respondent no. 5); claiming his rights on the basis of being the only son and male descendent of Late Ram Komal Singh who was the owner of land in question.

10. In the said case, an application was also moved by the petitioner on 22.09.2021, praying for the examination of genuineness of testator's signature, namely, Late Ram Komal Singh, on the Will in dispute dated 24.01.1984 propounded by respondent no.2; from the handwriting expert, with the specimen of the signature of the testator.

11. The Court of learned Sub Divisional Officer (respondent no. 5) dismissed the said Suit vide judgment and order dated 08.10.2021 and rejected the aforesaid application dated 22.09.2021 as unwarranted.

12. Against the aforesaid judgment and order dated 08.10.2021 passed in the Suit, bearing Case No. 4481 of 2017 (Computerised No. T-2017171453014481), the petitioner preferred an appeal bearing Appeal No. 629 of 2021 under Section 207 of the U.P. Revenue Code, 2006, before the learned Court of Commissioner, Basti. The Additional Commissioner (Administration), Basti allowed the said Appeal vide Order dated 10.06.2022 by setting aside the judgment and decree dated 08.10.2021 and remanded the matter to the learned Court of Sub Divisional Officer, Harraiya (respondent no.5) with the direction to decide the matter afresh, on merits, after affording adequate opportunity of hearing and leading evidence; to both the parties, in respect of their title

and possession. The said Appellate Court of Commissioner while remanding the matter vide order 10.06.2022 made a categorical observation that it would be legitimate for the trial court to decide the matter only after getting the signature of Late Ram Komal Singh duly verified by an expert.

13. Assailing the aforesaid judgment and order dated 10.06.2022, the respondent no. 2 preferred a Second Appeal under Section 208 of the U.P. Revenue Code, 2006, before the learned Board of Revenue, U.P. at Lucknow (respondent no.6) which was registered as Second Appeal No. SA/1509/2022/Basti.

14. The learned Board of Revenue (respondent no. 6) vide judgement and order dated 31.07.2023 allowed the aforesaid Second Appeal and set-aside the judgment and order dated 10.06.2022 passed by the Additional Commissioner (Administration), Basti.

15. Being aggrieved by the aforesaid judgment and order dated 31.07.2023, the petitioner herein preferred the instant writ petition praying for a Writ in the nature of Certiorari quashing the impugned judgment and order dated 31.07.2023 passed by the Board of Revenue U.P., Lucknow (respondent no.6) in Second Appeal No. SA/1509/2022/Basti.

16. Assailing the impugned judgment and order dated 31.07.2023, the contention of Sri Arun Kumar Gupta, learned Senior Advocate appearing on behalf of the petitioner is as under:

16.1. It has been asserted by the learned Senior Counsel that the learned Board of Revenue (respondent no. 6) allowed the Second Appeal vide the impugned judgment and order dated 31.07.2023 without formulating 'any substantial questions of law' and thereby acted in utter disregard to the provisions of Section 208(2) of the U.P. Revenue Code, 2006 read with Section 100 of the Code of Civil Procedure, 1908. In support of his submission, the learned Senior Counsel has relied upon the judgment dated 07.08.2023 passed by the Hon'ble Supreme Court in the case of **Bhagya Shree Anant Gaonkara versus Narendra alias Nagesh Bharna Holkar and others, Civil Appeal No. 4935 of 2023** wherein the Hon'ble Apex Court has been pleased to hold that under section 100 of the Code of Civil Procedure, 1908, the High Court cannot admit regular second appeal without framing substantial question of law.

16.2. Further, he submitted that the request made by the petitioner to the learned Court of Sub Divisional Officer (respondent no.5) regarding the verification of genuineness of the signature on the Will dated 24.01.1984 by an expert was illegally denied by the learned Sub Divisional Officer (respondent no.5) vide order dated 08.10.2021 by ignoring the settled legal position on the said issue. He narrates that it is this finding of the learned Sub Divisional Officer (respondent no.5) which was set aside vide order dated 10.06.02022 passed by the Court of learned Additional Commissioner (Administration), Basti wherein it was observed that it would be legitimate for the trial court to decide the matter only after

getting the signature of Late Ram Komal Singh verified by an expert. It is the case of the petitioner that the learned Board of Revenue (respondent no. 6) has committed a manifest error of law while holding that verification of the genuineness of the signature of the testator in the alleged Will is not required. In support of this contention, he has relied upon the judgment passed by the Hon'ble Supreme Court in the case of **H. Venkatachala Iyengar versus B.N. Thimmajamma and others**, reported in **AIR 1959 SC 443** and **Meena Pardhan and Others versus Kamala Pradhan and Another**, Civil Appeal No. 3351 of 2014 decided on 21.09.2023.

16.3. The next submission on behalf of the petitioner is that the Board of Revenue (respondent no.6) while passing the impugned order dated 31.07.2023, has committed manifest error amounting to perversity by holding that the alleged unregistered Will was validated by this Court vide judgment and order dated 04.08.2018 passed in Writ- C No.- 13751 of 2005.

16.4. Further, the learned Senior Counsel submits that the Board of Revenue has committed serious error of law by taking the mutation proceedings as a basis of the genuineness of the Will in dispute, while deciding the Second Appeal arising out of regular Suit filed under section 144 of the U.P. Revenue Code, 2006, despite the glaring fact that only the mutation proceedings in the instant case had been concluded by the judgment and order dated 04.08.2017 passed by this Court in Writ-C No. 13751 of 2005.

17. Refuting the arguments made on behalf of the petitioner, Sri Satendra Bahadur Yati, learned Counsel appearing on behalf of the respondent no.2 advanced the following submissions:

17.1. Sri Yati, learned Counsel for the petitioner has vehemently argued that although, no substantial question of law was framed by the learned Board of Revenue (respondent no.6), yet, on finding obvious and blatant perversity in the Order dated 10.06.2022 passed by the Additional Commissioner (Administration), Basti, it became incumbent upon the Board of Revenue (respondent no. 6) to set-aside the said illegal order dated 10.06.2022 and in the facts of the present case, there needs no interference by this Court under Article 226 of the Constitution of India, with regard to the impugned order dated 31.07.2023 passed by the Board of Revenue (respondent no. 6).

17.2. The learned Counsel further defended the findings recorded by the Board of Revenue (respondent no. 6) which held the Will in question to be a valid and genuine document on the basis of the orders passed by the Revenue Courts that attained finality vide judgment and order dated 04.08.2017 passed by this Court in Writ Petition No. 13751 of 2005 and contended that it is a well-established principle of law that if the Will is duly signed, rational on the face of it and genuinely appears to be duly executed, it is presumed, in the absence of evidence to the contrary, to be valid. He strongly contended that the signature on the Will is a substantial proof of its validity, till the contrary is proved by the party alleging the

said Will to be invalid on the basis of disputed signature of the testator and as such the onus, if any, for proving that the Will to be invalid, falls upon the petitioner and not the private-respondent no.2.

18. Except the above, no other point in argument has been pressed by the learned counsels for the parties during the course of hearing.

19. Having heard the learned counsels for the parties; the moot point for consideration by this Court in the instant case is that while entertaining the Second Appeal No. SA/1509/2022 (Asha Devi versus Awadesh Singh), under Section 208 of the U.P. Revenue Code, 2006, was it mandatory for the learned Board of Revenue (respondent no.6) to frame 'substantial question of law'.

20. At the very outset, it is imperative to reiterate the law on the subject of Appeal. It is a well-settled legal position that the right of appeal stems from a statute and it is the statute that sets the scope of jurisdiction of a Court of law to hear an Appeal. In the present case, the scope of Second Appeal has been set in by Section 208 of the U.P. Revenue Code, 2006.

For a ready reference, the same is quoted below,

“208. Second Appeal— (1) Where in any suit, application or proceeding specified in column 2 of the Third Schedule, any final order or decree is passed in any first appeal filed under section 207, and any party to such appeal is aggrieved by it, such party may prefer a second appeal to the Court specified against it column 5.

(2) The Appellate Court shall not entertain a second appeal unless it is satisfied that the case involves a substantial question of law.

(3) The period of limitation for filing a second appeal under this section shall be ninety days from the date of the order or decree appealed against.”

(emphasis supplied)

21. From the bare reading of the above quoted Section 208 of the U.P. Revenue Code, 2006, it is abundantly clear that the jurisdiction of the Appellate Court to entertain Second Appeal is embedded with the condition that the case before it involves a 'substantial question of law'. The difference between the substantial questions involved in the first and the second appeal has been discussed by the Hon'ble Supreme Court in the case of **Bhagya Shree Anant Gaonkara versus Narendra alias Nagesh Bharna Holkar and others** (*Supra*). The relevant paragraph of the same is extracted hereinbelow,

"...This would clearly indicate that the First Appellate Court is the final court on questions of facts but only if there is any substantial question of law, a second appeal could be considered and raised by the High Court and such substantial question(s) of law ought to be answered."

22. It is noteworthy that the Hon'ble Apex Court in the case of **Municipal Committee, Hoshiarpur versus Punjab SEB** reported in (2010) 13 SCC 216 has laid stricter emphasis upon the inherent limitations on the jurisdiction of second appellate court by cautioning against the expansive exercise of its jurisdiction. For ready reference, paragraph 16 of the said judgment is quoted hereinbelow:

"16. ... A second appeal cannot be decided merely on equitable grounds as it lies only in a substantial question of law, which is distinct from substantial question of fact. The court cannot entertain a second appeal unless a substantial question of law is involved, as the second appeal does not lie on the ground of erroneous findings of fact based on an appreciation of the relevant evidence. The existence of substantial question of law is a condition precedent for entertaining the second appeal; on failure to so, the judgment cannot be maintained."

23. In furtherance of the aforesaid restriction placed on second appellate courts; the Hon'ble Supreme Court in the case of **Arulmighu Nellukadai Mariamman Tirukkoil versus Tamilarasi (Dead) by LRS.** reported in **AIR 2019 WC 3027** made it obligatory upon the second appellate court to either formulate a substantial question of law or to dismiss a second appeal that lack substantial question of law in limine, without service of any notice to the respondent(s) after recording a finding in the dismissal order that the appeal does not involve any substantial question of law, by recording reasons in support of the dismissal order.

24. Further, the Hon'ble Supreme Court in the case of **Gobind Raju versus Mariamman** reported in **AIR 2005 SC 1008**; **Kashmir Singh versus Harnam Singh** reported in **AIR 2008 SC 1749**, **Damodar Lal versus Sohan Devi and others** reported in **(2016) 3 SCC 78** and in a series of decisions has been pleased to clarify that in order to constitute a 'substantial question of law', the question should be debatable, not previously settled by law or by any binding precedent and must have a material bearing on the decision of the case. A perversity of fact recorded by the lower court or the ignorance of certain fact shall not constitute a substantial question of law.

25. In addition to this, a 'substantial question of law' is not just a legal point on which there may be multiple opinions or one which is of general importance but a question of law which is involved in the case as between

the parties where there is room for difference of opinions on it or where the court thinks it necessary to deal with that question at some length. This proposition finds support from the judgment passed by the Hon'ble Supreme Court in the case of **Hero Vinoth versus Seshammal** reported in **(2006) 5 SCC 545**, wherein the Hon'ble Court was pleased to hold as follows:

“21... However, it is clear that the legislature has chosen not to qualify the scope of “substantial question of law” by suffixing the words “of general importance” as has been done in many other provisions such as Section 109 of the Code or Article 133(1)(a) of the Constitution. The substantial question of law on which a second appeal shall be heard need not necessarily be a substantial question of law of general importance.”

26. Moreover, to meet the condition *“unless it is satisfied that the case involves a substantial question of law”* as provided under Section 208(2) of the U.P. Revenue Code, 2006; certain prerequisites must be met by a legal question to be a ‘substantial question of law involved in the case’. Firstly, there must be a basis for this question which has been established in either the pleadings, legal arguments or submissions of the party/parties. Secondly, this question should naturally arise from the substantial facts established by the fact-finding Court and the determination of this legal question must be imperative for a fair and just outcome of the case, i.e., the question should strike at the core of the matter under consideration.

27. The Hon'ble Supreme Court in the case of **Amar Singh and others versus Dalip Singh and others**; reported in **(2012) 13 SCC 405**, has been

pleased to hold that the purpose of framing of substantial question of law is to give the parties an opportunity to come prepared on the particular question and the Hon'ble Court has further observed that when the substantial question of law is formulated by the Court then the same must be made known to the parties and thereafter they have to be given an opportunity to advance arguments thereon.

28. In this regard, the Hon'ble Supreme Court in the case of **Sir Chunilal V. Mehta and sons versus Century Spg. and Mfg. Co. Ltd.**, reported in **AIR 1962 SC 1314**, laid the test to be followed for determining whether a question of law that is raised in a particular case, is in fact, a substantial question of law. The paragraph 6 of the same is reproduced below,

“6. ... The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law.”

29. From all that is mentioned hereinabove, the principle that comes to light is that the formulation of substantial question of law is *sine qua non* to Section 208 of the U.P. Revenue Code, 2006. The very jurisdiction of the Board of Revenue in entertaining a second appeal is founded on the formulation of a substantial question of law. The appellate jurisdiction of

the Board of Revenue under section 208 of the U.P. Revenue Code, 2006 is not akin to the appellate jurisdiction under Section 207 of the U.P. Revenue Code, 2006; it is restricted to such substantial question(s) of law that may arise from the final order and decree appealed against. Second Appeal is entertainable by the Board of Revenue under section 208 of the U.P. Revenue Code, 2006 only upon its satisfaction that a substantial question of law is involved in the matter. It is, however, open to the Board of Revenue to re-frame substantial question of law or frame substantial question of law afresh or hold that no substantial question of law is involved at the time of hearing of the second appeal but reversal of the final order and decree passed in appeal by the court below in exercise of its jurisdiction under section 208 of the U.P. Revenue Code, 2006 is impermissible without formulating substantial question of law and a decision on such question. Needless to say that where the Code deals expressly with a particular manner, the provision should normally be regarded as exhaustive.

30. The sub-section (2) of section 208 of the U.P. Revenue Code, 2006 specifically provides that “The Appellate Court shall not entertain a second appeal unless it is satisfied that the case involves a substantial question of law”. (emphasis supplied). The term ‘shall not’ followed by the term ‘unless’ itself reflects restrictive nature of Section 208 of the U.P. Revenue Code, 2006 and the language of the same is indicative of the legislative intention that the legislature did not want Second Appeal to

become a 'third trial on facts'. It would not be out of place to mention here that the term 'shall not' in its ordinary significance is a mandatory prohibition and the courts should ordinarily give that interpretation to that term unless such an interpretation leads to some absurd or inconvenient consequence or be it variance with the intent of the legislature, to be collected from other parts of the Act. It is a settled principle of rule of interpretation that whenever a statute requires a particular act to be done in a particular manner, then such act has to be done in that manner only and in no other manner.

31. In the instant case, the learned Board of Revenue (respondent no.6) has admittedly reversed the order passed by the First Appellate Court while allowing the Second Appeal; but has neither framed nor formulated any substantial question of law, thereby ignoring the mandatory provision as contemplated under Section 208 of the U.P. Revenue Code, 2006. As such, the Board of Revenue (respondent no.6) exercised its jurisdiction in abdication of the duty casted upon the second appellate court under section 208 of the U.P. Revenue Code, 2006.

32. As far as the rival contentions of the contesting parties regarding the necessity of verification of signature of the testator, on the Will dated 24.01.1984, are concerned, this court, at the very inception deems it imperative to note certain fundamental and well accepted principles on the subject of validity of a Will. It is a well settled principle that the *onus probandi* lies in every case upon the party propounding a Will and such

propounder of the Will must satisfy the conscience of the Court that the instrument so propounded is the last Will of a free and capable testator. However, in absence to any conclusive proof to the contrary, the Will is presumed to be correct when it is duly attested with the signature of the testator.

33. At this stage, it would be apposite to refer to the judgment passed by the Hon'ble Supreme Court in the case of **H. Venkatachala Iyengar versus B.N. Thimmajamma and others**, reported in **AIR 1959 SC 443** wherein the Hon'ble Apex Court has been pleased to hold that the party propounding a Will or otherwise making a claim under a Will is no doubt seeking to prove a document. It would not be out of place to mention here that as per Section 67 of the Indian Evidence Act, 1872, if a document is alleged to be signed by a person, the said signature must be proved to be in his handwriting and for proving such a hand writing under sections 45 and 47 of the Act, the opinion of experts and of persons acquainted with the handwriting of the person concerned are made relevant. For a ready reference paragraph 19 of the said judgment is reproduced hereinbelow,

“19. What is the true legal position in the matter of proof of wills ? It is well-known that the proof of wills presents a recurring topic for decision in courts and there are a large number of judicial pronouncements on the subject. The party propounding a will or otherwise making a claim under a will is no doubt seeking to prove a document and, in deciding how it is to be proved, we must inevitably refer to the statutory provisions which govern the proof of documents. Sections 67 and 68 of the Evidence Act are relevant for this purpose. Under section 67, if a document is alleged to be signed by any person, the signature of the said person must be proved to be in his handwriting, and for proving such a handwriting under sections 45 and 47 of

the Act the opinions of experts and of persons acquainted with the handwriting of the person concerned are made relevant. Section 68 deals with the proof of the execution of the document required by law to be attested; and it provides that such a document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. These provisions prescribe the requirements and the nature of proof which must be satisfied by the party who relies on a document in a court of law. Similarly, sections 59 and 63 of the Indian Succession Act are also relevant. Section 59 provides that every person of sound mind, not being a minor, may dispose of his property by will and the three illustrations to this section indicate what is meant by the expression "a person of sound mind" in the context. Section 63 requires that 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 that the signature or mark shall be so made that it shall appear that it was intended thereby to give effect to the writing as a will. This section also requires that the will shall be attested by two or more witnesses as prescribed. Thus the question as to whether the will set up by the propounder is proved to be the last will of the testator has to be decided in the light of these provisions. Has the testator signed the will ? Did he understand the nature and effect of the dispositions in the will ? Did he put his signature to the will knowing what it contained ? Stated broadly it is the decision of these questions which determines the nature of the finding on the question of the proof of wills. It would prima facie be true to say that the will has to be proved like any other document except as to the special requirements of attestation prescribed by section 63 of the Indian Succession Act. As in the case of proof of other documents so in the case of proof of wills it would be idle to expect proof with mathematical certainty. The test to be applied would be the usual test of the satisfaction of the prudent mind in such matters."

34. The above mentioned legal position has also been appreciated by the Hon'ble Supreme Court as well as by the High Courts in a plethora of judgments, notably, in the case of **Jaswant Kaur versus Amrit Kaur and others** reported in (1977) 1 SCC 369, **Bharpur Singh and others versus Shamsher Singh**, Civil Appeal No. 7250 of 2008 decided on 12.12.2008,

Raj Kumari and others versus Surinder Pal Sharma, Civil Appeal No. 9683 of 2019 decided on 17.12.2018, **Meena Pradhan and others versus Kamla Pradhan and another, Civil Appeal No. 3351 of 2014** decided on 21.09.2023, **Shiv Mangal versus D.D.C., Consolidation No. 317 of 2011** (Lucknow Bench of Allahabad High Court) decided on 22.08.2014.

35. However, the cases in which the execution of the Will is surrounded by suspicious circumstances stand on a different footing, the Hon'ble Supreme Court in the case of **Jaswant Kaur versus Amrit Kaur and others** reported in (1977) 1 SCC 369, laid down a different approach in the cases where the Will is under suspicion. The Hon'ble Court has been pleased to hold that the propounder must remove all legitimate suspicions before the said document can be accepted as the last Will of the testator. For ready reference, the paragraphs (4) and (5) of the aforesaid judgment passed by the Hon'ble Apex Court is extracted hereinbelow,

“(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 suspicions 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.”

36. Further, more recently, the Hon’ble Supreme Court in the case of **Meena Pardhan and Others versus Kamala Pradhan and Another, Civil Appeal No. 3351 of 2014** decided on 21.09.2023 was pleased to hold that whenever there exists any suspicion as to execution of the Will, the initial onus on the propounder becomes heavier to remove all legitimate suspicions.

37. From the perusal of propositions of law as laid down by the Hon’ble Supreme Court in the cases mentioned above, it is evident that in a case involving suspicion on the signature of the testator of the Will, its proof ceases to be a simple *lis* between the plaintiff and the defendant and the propounder of the Will would be called upon to show cogent, satisfactory and sufficient evidence that the Will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, the testator understood the nature and effect of the disposition and has put the signature on the document without any influence, in order to dispel suspicion.

38. At this juncture, it is also pertinent to point out that the Will may be a registered Will and there may be broad statements by the witness that he had witnessed the testator admitting execution of the Will but the same itself would not mean that the statutory requirements of proving the Will need not be complied with. It is the judicial conscience that has to be satisfied, else no letters of administration in favour of the propounder can be granted and in order to satisfy its conscience, the court may call upon evidences in this regard. However, it is obvious that before deciding the material questions of fact which arise in application for probate or in actions on Wills, no hard and fast or inflexible rules can be laid down for the appreciation of evidence.

39. Defending the impugned order dated 31.07.2023 passed by the Board of Revenue, Sri Anshul Nigam, learned Standing Counsel for the State-respondents submitted that the validity and genuineness of the Will in question has been accepted by the Revenue Courts and that attained finality vide judgment and order dated 04.08.2017 passed by this Court in Writ Petition No. 13751 of 2005.

40. The above mentioned contention of the learned Standing Counsel is not substantial being a manifest misinterpretation of the aforementioned order dated 04.08.2017 whereby this Court dismissed the writ petition as not entertainable being arising out of the mutation proceedings and left it open for the parties to get their rights determined before the competent

Court of law in regular proceedings which, by no means of interpretation implies that this Court upheld the validity of the Will dated 24.01.1994.

41. It would not be out of place to reiterate, the settled legal position, that even if the entries in the revenue record carry value, that by itself would not confer any title upon the person claiming on the basis of the same. The mutation proceedings being of a summary nature drawn on the basis of possession do not decide any question of title and the orders passed in such proceedings do not come in the way of a person in getting his rights adjudicated in a regular Suit.

42. Further, the Hon'ble Supreme Court vide order dated 06.09.2021 in the case of **Jitendra Singh versus The State of Madhya Pradesh and Ors., SLP(C) No. 13146 of 2021**, has been pleased to hold as under,

"5.... Be that as it may, as per the settled proposition of law, mutation entry does not confer any right, title or interest in favour of the person and the mutation entry in the revenue record is only for the fiscal purpose. As per the settled proposition of law, if there is any dispute with respect to the title and more particularly when the mutation entry is sought to be made on the basis of the will, the party who is claiming title/right on the basis of the will has to approach the appropriate civil court/court and get his rights crystalised and only thereafter on the basis of the decision before the civil court necessary mutation entry can be made."

43. This Court in the case of **Amritansh Pandey versus State of U.P. and others**; reported in **2023 (161) RD 178** has held that in view of the settled legal position that the mutation in revenue records neither creates nor extinguishes title of the person and such entries are relevant only for the

purpose of collecting land revenue. As such, the court of competent jurisdiction while deciding the title over the property must not be influenced by any finding or observation made in the mutation orders or during mutation proceedings.

44. In the instant case, this Court finds that the Board of Revenue (respondent no.6) has not adverted to the substantial questions of law which may have been framed in the Appeal in as much as there is no reference of the same in the impugned order dated 31.07.2023. The Board of Revenue has decided the Second Appeal under Section 208 of the U.P. Revenue Code, 2006, in a manner as if it was an Appeal under Section 207 of the U.P. Revenue Code, 2006.

45. In view of the discussion made hereinabove, this Court is of the considered opinion that the learned Board of Revenue (respondent no. 6) has failed to follow the mandate as provided under Section 208 of the U.P. Revenue Code, 2006 while allowing the Second Appeal and thus committed a manifest error of law, calling for interference by this court under Article 226 of the Constitution of India, in the impugned judgment and order dated 31.07.2023. The present writ petition, thus, deserves to be allowed.

46. The impugned judgment and order dated 31.07.2023 passed by the learned Board of Revenue in Second Appeal No. SA/1509/2022/Basti (computerized No. R-20221714001509), is set aside. The matter is

remanded to the learned Board of Revenue (respondent no.6) to decide the Second Appeal afresh, strictly in accordance with law.

47. It is provided that the Board of Revenue (respondent no.6), if finds that any substantial question(s) of law arises in the case, shall frame such question(s) and then decide the appeal accordingly and in case it finds no substantial question of law is involved in the matter, then it shall record the reasons in support of its conclusion.

48. However, it is made clear that this Court is not expressing any opinion on the disputed factual matrix involved in the case, but formed an opinion to remand the case only due to the aforementioned legal infirmity noticed and the manner in which the aforesaid Second Appeal has been decided. The Board of Revenue (respondent no.6), therefore, should decide the said Second Appeal on its own merits, strictly in accordance with law.

49. The learned Board of Revenue (respondent no.6) shall decide the said Second Appeal expeditiously, preferably within a period of six month as provided under Clause 458 of the U.P. Revenue Court Manual.

50. Accordingly, The writ petition is **allowed** and disposed of in the aforesaid terms. No order as to costs.

Order Date :- 9.10.2023

A.N. Mishra