CDJLawJournal

Citation : CDJ 2026 SC 816

Court : Supreme Court of India

Case No : Civil Appeal No. 6859 of 2014 (Arising Out of SLP (Civil) No. 12822 of 2013)

Judges : THE HONOURABLE MR. JUSTICE UJJAL BHUYAN & THE HONOURABLE MR. JUSTICE VIJAY BISHNOI

Parties : Parvathi Nairthi (Dead) & Others Versus Laxmi Nairthy (Dead) Through Lrs. & Others

Appearing Advocates : For the Petitioner: ------ For the Respondent: -----

Date of Judgment : 21-05-2026

Head Note :

Indian Evidence Act, 1872 - Section 68 -

Comparative Citation:
2026 INSC 521,

Judgment :

Vijay Bishnoi, J.

1. The present appeal has been preferred by the Appellants challenging the Final Judgment and Order dated 15.11.2012 (hereinafter referred to as "Impugned Judgment") passed by the High Court of Karnataka at Bangalore (hereinafter referred to as "the High Court") in Regular Second Appeal No. 1970 of 2012, by which the High Court dismissed the appeal preferred by the Appellants herein and thereby affirmed the judgments and orders passed by the Trial Court as well as the First Appellate Court.

FACTUAL MATRIX

2. The brief facts are that one B. Sheena Nairi was a Permanent Resident of Bombay and was working as a Chartered Accountant at five big reputed companies. Besides owning a residential flat in Bombay, he owned substantial other immovable properties situated at Brahmavar and Chanthar Village, Udupi Taluk, Karnataka, consisting primarily of agricultural lands and ancestral properties.

3. B. Sheena Nairi had two sisters and two brothers, namely, Akkanni Nairi (elder sister), Laxmi Nairthy

(younger sister), B. Jagannatha Nairi (elder brother), and B. Lakshmana Nairi (younger brother). B. Sheena Nairi had lost his elder sister, and after her demise, he took care of her two daughters and performed their marriages.

4. B. Sheena Nairi was married to Parvathi Nairthi (Appellant No.1), and they had five children, namely, Prabhakar Nairi (Appellant No. 2), Jayanth Nairi (Appellant No. 3), Leela Prabhu (Respondent No. 2), Sundara Nairi (Respondent No. 3), and Usha Nairi (Respondent No. 4) herein. For the management of certain properties, B. Sheena Nairi had executed a Power of Attorney (hereinafter referred to as "the POA") in favour of his brother-in-law Krishnayya Nairi on 30.04.1960 and 08.04.1961.

5. B. Sheena Nairi executed his last Will dated 15.05.1983 (hereinafter referred to as "the Will") bequeathing all the plaint schedule properties in the favour of his only sister Laxmi Nairthy, who is the Plaintiff and Respondent No. 1 herein, and cancelled the POA executed in favour of his brother-in-law. B. Sheena Nairi (hereinafter referred to as "the testator") passed away on 30.11.1983, at the age of 69 years, due to heart attack in Delhi.

6. After the death of the testator, an application was made by his wife, being Appellant No. 1, before the Tehsildar, Udupi for the transfer of her husband's properties in her favour. The Tehsildar, Udupi, vide order dated 01.02.1984, issued notice under the Karnataka Land Revenue Act, 1964 and called for the objections with respect to the said properties. Subsequently, the Tehsildar, Udupi, vide order dated 06.04.1984, passed mutation order transferring the properties in favour of Appellant No. 1.

7. On 22.11.1990, Laxmi Nairthy, being the Plaintiff and Respondent No. 1, instituted a civil suit bearing O.S. No. 186 of 1990 before the Court of the Additional Civil Judge (Senior Division), Udupi (hereinafter referred to as the "Trial Court") on the basis of the Will executed by the testator. The suit was filed seeking a declaration that the Plaintiff is the absolute owner of the plaint schedule properties under the Will; a decree of perpetual injunction restraining the wife and children of the testator from interfering with her peaceful possession of Item Nos. 1 to 3 of plaint schedule properties; recovery of possession of Schedule Item Nos. 4 to 12 of the plaint schedule properties, which had been given to Krishnayya Nairi under the Power of Attorney; mesne profits; and compensation till the delivery of possession.

8. The wife and children of the testator, namely Appellant Nos. 1 to 3 and Respondent Nos. 2 to 4, filed a written statement and contended that the Will is false and fabricated; that the testator has never executed any such Will; and that the signature affixed on the said Will does not belong to him. It was further contended that after the death of the testator, the said Will was created by his brothers, namely, B. Jagannatha Nairi and Lakshmana Nairi, in collusion with each other and that the plaint schedule properties were never in possession of the Plaintiff and the testator had never revoked the POA executed in favour of Krishnayya Nairi.

JUDGMENT OF THE TRIAL COURT

9. The Trial Court, vide Judgment and Decree dated 16.12.2008, allowed the suit of the Plaintiff and declared that the Plaintiff is the owner of the plaint schedule property as per the Will and ordered to handover the possession of Schedule Item Nos. 4 to 12 of the plaint schedule property to the Plaintiff and opened enquiry under Order XX Rule 12 of the Code of Civil Procedure (hereinafter referred to as "CPC") for mesne profits. The Trial Court held that:-

a. The Plaintiff produced her brother B. Jagannatha Nairi-PW2, who was one of the

attesting witnesses to the Will. PW2 categorically deposed that the testator, being his brother, had executed the Will in his presence and that the signature appearing on the Will belonged to the testator. However, the wife and children of the testator, except filing the written statement, had not produced any witness and had not appeared for cross-examination in order to prove their allegations. On their behalf, only the POA holder appeared and had given his evidence which was doubtful. Also, the wife and the children had not specifically cross-examined the Plaintiff and B. Jagannatha Nairi-PW2 to prove the Will as fraudulent.

b. With regard to the dispute concerning signature of the testator on the Will, it was held that the signature in the POA executed by the testator was accepted by the wife and children of the testator and when that accepted signature was compared with the signatures appeared on every page of the Will, it appeared to be the same, observing sufficient coordination in the writing, the placement of dots in the signature and the formation of underline, thereby concluding that the signatures were made by the same person.

c. Further, it was also held that the testator, during his lifetime, executed the POA in respect to Schedule Item Nos.4 to 12 of the plaint schedule property in favour of Krishnayya Nairi through licence authority in 1961. However, the said POA was revoked after the death of the testator and Krishnayya Nairi had the possession of the said property as a licensee only. Except accepting the possession of the schedule property, Krishnayya Nairi had not denied the ownership of the property of the testator and had not prayed for any authority or ownership and so, the Plaintiff was entitled to recover the possession of Schedule Item Nos. 4 to 12 as per the Will.

d. However, it was observed that due to non-production of any reliable documents or any complaint lodged by the Plaintiff before the police regarding the alleged illegal interference of the wife and children of the testator, and in view of the fact that no eye witnesses were produced to prove the said incident, no case was made out for grant of a stay order in favour of the Plaintiff.

10. Aggrieved by the Judgment and Decree dated 16.12.2008, the wife and children of the testator preferred an appeal bearing R.A. No. 4 of 2009 before the District & Sessions Judge at Udupi. However, the said appeal was transferred to the Fast Track Court, Udupi (hereinafter referred to as “the First Appellate Court”) for disposal in accordance with law.

JUDGMENT OF THE FIRST APPELLATE COURT

11. The First Appellate Court, vide Judgment and Decree dated 06.08.2012, dismissed the appeal and affirmed the findings of the Trial Court. The First Appellate Court observed that the Plaintiff had already given her representation without any delay to the Tehsildar, Udupi on 10.02.1984 which disclosed all relevant facts including execution of the Will in her favour. Further, the wife and children of the testator, despite being the best persons to deny the plaint, had not stepped into the witness box to deny the contents of the plaint. Furthermore, the First Appellate Court relied upon the evidence of B. Jagannatha Nairi and inferred that the testator and the attesting witness had signed the Will in the presence of each other. Moreover, it was held that the Trial Court had rightly compared the disputed signature of the testator on the Will with the admitted signature on the POA, and since the Trial Court itself possesses such power, there was no necessity of a handwriting expert. Accordingly, the First Appellate Court concluded that no interference with the findings of the Trial Court was warranted.

12. Aggrieved by the Judgment and Decree dated 06.08.2012, the wife and children of the testator preferred a second appeal bearing R.S.A No. 1970 of 2012 before the High Court of Karnataka.

IMPUGNED JUDGMENT

13. The High Court, vide Final Judgment and Order dated 15.11.2012, dismissed the second appeal. The High Court held that it was not the case of the Appellants that the First Appellate Court had failed to consider any particular ground or point urged by the Appellants. It was further observed that the First Appellate Court, in order to confirm the judgment of the Trial Court, had given detailed reasoning on each of the grounds canvassed in the appeal, though the points for consideration may not have been properly formulated. Therefore, the High Court held that merely on the technical grounds that the points formulated by the First Appellate Court were not in conformity with Order XLI Rule 31 of CPC, the findings of the First Appellate Court could not be set aside. With regard to the contention that the wife and the children of the testator had been excluded from the properties of the testator without any reason, the High Court held that the Will itself clearly recited that the testator had already given sufficient properties to his wife and children. However, for reasons best known to them, the wife and children of the testator did not enter the witness box and failed to furnish any particulars regarding the movable or immovable properties or cash allegedly given to them by the testator. Even the evidence of B. Jagannatha Nairi had not been seriously challenged by the Appellants and that it was not difficult for the Appellants to summon another attestor to the Will, if he had not attested the Will. Therefore, the High Court held that no substantial question of law arose for consideration in the appeal and accordingly, the appeal was dismissed.

14. Being aggrieved by the Impugned Judgment, the Appellants are before us.

SUBMISSIONS ON BEHALF OF THE APPELLANTS

15. Ms. Meenakshi Arora, learned Senior Counsel, appearing on behalf of the Appellants submitted that the suit was filed by the Plaintiff after 7 years of execution of the Will and 6 years after mutation and conversion of the land in favour of the Appellants, for which no explanation was given by the Plaintiff. Even no explanation was given as to why the testator would make a Will only for the lands and not for other assets, in favour of the Plaintiff, to the exclusion of his own wife and children.

16. Further, the learned Senior Counsel submitted that the Respondent No. 1 never objected to the mutation taking place in favour of the Appellants before the Tehsildar, Udupi in 1984 and no copy of the Will was produced at that time. No explanation was also given to the document filed by the Plaintiff showing practice of signatures of the testator.

17. Furthermore, the learned Senior Counsel also submitted that the testimony of B. Jagannatha Nairi, the attesting witness in the Will, stated the place of death of the testator to be Bombay and that he did not know about the contents of the Will.

18. Moreover, it is submitted that the Impugned Judgment categorically stated that the points of consideration framed by the First Appellate Court were “general” in nature and thereafter, erroneously arrived at the conclusion that all the Courts had scrutinised the entire evidence and facts on record, treating the same as “mere technicalities”. Thus, the First Appellate Court failed to comply with Order XLI Rule 31 of CPC.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

19. Mr. Vinay Navare, learned Senior Counsel appearing on behalf of the Respondents submitted that

once specific allegations of forgery or fraud were made in respect of the Will and the Plaintiff had duly proved the execution of the Will, the burden shifted on the Appellants to prove their plea of forgery. However, the Appellants never asked for sending the Will for examination by a handwriting expert nor chose to examine any expert witness and thus, the specific plea of forgery was not even attempted to be proved.

20. The learned Senior Counsel also submitted that the proceedings throughout were initiated by Ganesha @ Ganapayya Nairi, namely Respondent No. 5, whereas the legal heirs of the testator, namely his wife and children, remained passive throughout the proceedings. This is evident from the fact that the written statement was signed, verified and affirmed solely by Respondent No. 5; only Respondent No. 5 was examined as DW1; and the application for stay before the First Appellate Court was verified and affirmed by Respondent No. 5 alone. It is submitted that the same was for protecting his interest in the property as the testator had given possession of the property to the father of Respondent No. 5 as the POA holder and he was enjoying the possession. But the real beneficiaries of succession, namely the wife and children of the testator, did not enter the witness box either to prove the plea of forgery or to deny the execution of the Will.

21. Further, the learned Senior Counsel submitted that Mohammad Saheb, one of the attestors of the Will, filed an affidavit on 20.12.1990, which was even prior to the filing of the written statement by the Appellants on 18.02.1991. Therefore, the First Appellate Court rightly observed that, when the Trial Court had not issued any notice to him, the question arose as to how he came to know about the pendency of the suit and for what reason he had filed the said affidavit.

22. Furthermore, it is also submitted that, sometime after the death of the testator, the Plaintiff made an application dated 10.02.1984 to the Tehsildar, Udupi requesting him to change the patta of the plaint schedule properties in her name in the mutation register. Copies of the said application were also forwarded to the Secretary, Bramhavara, Udupi Taluk, the Assistant Commissioner, Kundapura, and the Revenue Inspector, Bramhavara. However, the Plaintiff came to know that Krishnayya Nairi had managed to get the names of the wife and children of the testator entered in the records of rights in respect of the plaint properties without issuing any notice to the Plaintiff or conducting any enquiry. It is submitted that only in October, 1990, when Krishnayya Nairi along with his son, Ganesha @ Ganapayya Nairi, attempted to threaten the Plaintiff and cut the standing crops, the Plaintiff was constrained to file the suit. Therefore, there was no delay in producing the Will before the Trial Court.

23. Additionally, it is submitted that the testator, in the Will itself, specifically stated that “I am doing no injustice to my wife and children or other relatives…I have given enough and more to my wife and children who are residing at Bombay” and thus, the wife and children had already been provided with sufficient properties.

24. Moreover, it is submitted that in the cross-examination of B. Jagannatha Nairi, being the only living attesting witness to the Will, he specifically stated that his brother’s daughter came to his house and took his signature on a paper, the contents of which were not informed to him and thus, the affidavit of B. Jagannatha Nairi relied upon by the Appellants is a self-created affidavit by the Appellants and thus, cannot be relied upon.

ANALYSIS

25. We have heard both the learned Senior Counsel appearing on behalf of the parties and have perused the relevant material placed on record.

26. The issue that arises for our consideration is whether there are sufficient grounds that warrant interference with the concurrent findings of the facts of all the Courts upholding validity of the Will.

Principles for the Validity and Execution of a Will

27. Before adverting to the facts of the case, it is pertinent to refer to the relevant provisions governing the validity and execution of a Will. Section 68 of the Indian Evidence Act, 1872 reads as follow-

"Section 68- Proof of Execution of document required by law to be attested-- If a document is required by law to be attested, it shall not be used as evidence until 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: xxx"

28. It has been categorically stated in the case of Meena Pradhan and Others v. Kamla Pradhan and Another (2023 SCC OnLine SC 1198.) that-

"9. A Will is an instrument of testamentary disposition of property. It is a legally acknowledged mode of bequeathing a testator's property during his lifetime to be acted upon on his/her death and carries with it an element of sanctity. It speaks from the death of the testator. Since the testator/testatrix, at the time of testing the document for its validity, would not be available for deposing as to the circumstances in which the will came to be executed, stringent requisites for the proof thereof have been statutorily enjoined to rule out the possibility of any manipulation."

29. With regard to the principles pertaining to the validity and execution of a Will, reliance is placed on the judgments passed by 3 Judges Bench and 2 Judges Bench of this Court in H. Venkatachala Iyengar v. B.N. Thimmajamma And Others (1958 SCC OnLine SC 31.), Bhagwan Kaur v. Kartar Kaur And Others ((1994) 5 SCC 135.), Janki Narayan Bhoir v. Narayan Namdeo Kadam ((2003) 2 SCC 91.), Yumnam Ongbi Tampha Ibema Devi v. Yumnam Joykumar Singh And Others ((2009) 4 SCC 780.), and Shivakumar And Others v. Sharanabasappa And Others ((2021) 11 SCC 277.), from which the following principles required for proving the validity and execution of a Will may be deduced:

"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 acknowledgment 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 been evolved for dealing with those cases where the execution of the will is surrounded by suspicious circumstances. It requires to consider 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; sound, certain and disposing state of mind and memory of the testator at the time of execution; testator executed the will while acting on his own free will;

10.10. One who alleges fraud, fabrication, undue influence et cetera 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.”

30. Coming back to the present factual matrix, after a careful perusal of the relevant material on record and applying the settled proposition of law, it is evident that the Will was duly executed by the testator voluntarily out of his free will in a sound state of mind and the same stands proved through the testimony of one of the attesting witnesses, namely B. Jagannatha Nairi, who was examined as PW2 by the Trial Court. This witness categorically stated that the testator executed the Will in question in his presence, and that both he and the testator signed the Will in the presence of each other.

Claim of Title Based on a Will

31. The contention of the Appellants that there was an unexplained delay of 7 years in producing the Will after the death of the testator is liable to be rejected. The said contention has been considered by all the Courts, which concurrently held that the Plaintiff had already given a representation before the Tehsildar, Udupi vide notice dated 10.02.1984 to mutate her name, and the said notice was received by the concerned authorities as evidenced by the postal certificate. Although, there was no material which disclosed that the Plaintiff had produced the copy of the Will before the concerned authority, but the said notice itself disclosed all relevant facts, including the execution of the Will in favour of the Plaintiff, without any delay. All the Courts have duly examined the said issue thoroughly and have recorded concurrent findings and thus, we are also in conformity with the same. As regards the contention of the Appellants that they had obtained mutation entries in the year 1984, it is well settled that such mutation entries do not confer title and it is effected merely for fiscal purposes, namely, to enable the State to realize tax from the person whose name is recorded in the revenue records, as held in Balwant Singh And Another v. Daulat Singh (Dead) By LRs. And Others ((1997) 7 SCC 137.). Also, the contention that the Will is unregistered has no significant bearing on its validity, as this Court in the case of Ishwardeo Narain Singh v. Kamta Devi And Others ((1953) 1 SCC 295.) has clearly held that:-

"6. …There is nothing in law which requires the registration of a will and wills are in a majority of cases not registered at all. To draw any inference against the genuineness of the will on the ground of its non-registration appears to us to be wholly unwarranted."

Scope of Suspicious Circumstances to Vitiate a Will

32. The contention of the Appellants that the Appellants, being the natural heirs of the testator, have been outrightly excluded without any reason and that such exclusion constitutes a suspicious circumstance surrounding the execution of the Will is legally untenable. It is well-established that mere deprivation of natural heirs, by itself, may not amount to a suspicious circumstance because the whole idea behind the execution of a Will is to interfere with the normal line of succession, as categorically held in Rabindra Nath Mukherjee and Another v. Panchanan Banerjee (Dead) by LRs and Others ((1995) 4 SCC 459.). However, in the case of Ram Piari v. Bhagwant and Ors. ((1990) 3 SCC 364.), this Court also 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 suspicious as it does not give inking to the mind of the testator to enable the Court to judge that disposition was a voluntary act.

33. This brings us to the next issue i.e., what are the suspicious circumstances which may vitiate the disposition of a Will. In Indu Bala Bose & Ors. v. Manindra Chandra Bose & Anr. ((1982) 1 SCC 20.), this Court held that-

"8. Needless to say that any and every circumstance is not a "suspicious" circumstance. A circumstance would be "suspicious" when it is not normal or is not normally expected in a normal situation or is not expected of a normal person."

34. With regard to the prudence to be drawn while determining the suspicious circumstances, all the Courts have unambiguously opined that the Will in question was validly executed. It is trite to state that when the validity of a Will is to be determined, the overall terms of a Will, the intention of the testator and the surrounding circumstances have also to be seen. Mere exclusion of the natural heirs from the property of the testator, by itself, cannot be construed as a suspicious circumstance so as to invalidate a Will outrightly. A testator is legally entitled to dispose of his property according to his own wishes, and

unless the exclusion is accompanied by suspicious circumstances affecting the genuineness or due execution of a Will, such exclusion alone does not render a Will invalid. Thus, we are of the considered view that the exclusion of the natural heirs cannot be sufficient to vitiate the Will in question, particularly when the Will clearly specifies that the testator has not done any injustice to his wife, children, or other relatives, and that he has given enough to his wife and children who are residing at Bombay.

Compliance of Order XLI Rule 31 of CPC

35. The contention of the Appellants that the First Appellate Court, while deciding the first appeal, has not complied with Order XLI Rule 31 of CPC is hereby rejected. Rule 31 reads thus-

"Rule 31. Contents, date and signature of judgment-The judgment of the Appellate Court shall be in writing and shall state-

(a) the points for determination;

(b) the decision thereon;

(c) the reasons for the decision; and

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled,

and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein."

36. This Court in G. Amalorpavam And Others v. R. C. Diocese of Madurai and Others ((2006) 3 SCC 224.) also held that:-

"9. The question whether in a particular case there has been substantial compliance with the provisions of Order 41 Rule 31 CPC has to be determined on the nature of the judgment delivered in each case. Non-compliance with the provisions may not vitiate the judgment and make it wholly void, and may be ignored if there has been substantial compliance with it and the second appellate court is in a position to ascertain the findings of the lower appellate court. It is no doubt desirable that the appellate court should comply with all the requirements of Order 41 Rule 31 CPC. But if it is possible to make out from the judgment that there is substantial compliance with the said requirements and that justice has not thereby suffered, that would be sufficient. Where the appellate court has considered the entire evidence on record and discussed the same in detail, come to any conclusion and its findings are supported by reasons even though the point has not been framed by the appellate court there is substantial compliance with the provisions of Order 41 Rule 31 CPC and the judgment is not in any manner vitiated by the absence of a point of determination. Where there is an honest endeavour on the part of the lower appellate court to consider the controversy between the parties and there is proper appraisement of the respective cases and weighing and balancing of the evidence, facts and the other considerations appearing on both sides is clearly manifest by the perusal of the judgment of the lower appellate court, it would be a valid judgment even though it does not contain the points for determination. The object of the rule in making it incumbent upon the appellate court to frame points for determination and to cite reasons for the decision is to focus attention of the court on the rival contentions which arise for determination and also to provide litigant parties opportunity in understanding the ground upon which

the decision is founded with a view to enable them to know the basis of the decision and if so considered appropriate and so advised to avail the remedy of second appeal conferred by Section 100 CPC."

37. In view of the above position of law, we are of the view that mere non-compliance with Order XLI Rule 31 of CPC may not vitiate the judgment and make it wholly void and may be ignored if there has been substantial compliance with it and the rule should not be interpreted technically to compromise substantial justice. The findings in the decision passed by the First Appellate Court have properly scrutinised the evidence on record, even if the points of consideration are general, and thus, the same does not suffer from any illegality.

Evidentiary Value of Affidavits

38. The contention of the Appellants that the affidavits of both the attesting witnesses to the Will, denying that they had signed the same, render the Will invalid is unsustainable. In this regard, this Court in Ayaaubkhan Noorkhan Pathan v. State of Maharashtra and Others ((2013) 4 SCC 465.) has categorically held that an affidavit is not an "evidence" within the meaning of Section 3 of the Indian Evidence Act, 1872 and the same can be used as "evidence" only if, for sufficient reasons, the Court passes an order under Order XIX of CPC and thus, the filing of an affidavit cannot be regarded as sufficient evidence for any Court or Tribunal, on the basis of which it can come to a conclusion as regards a particular fact situation. However, in a case where the deponent is available for cross-examination, and opportunity is given to the other side to cross-examine him, the same can be relied upon. In the present case, it is also important to note that those affidavits were filed even prior to the filing of the written statement, and the same has been rightly dealt by all the Courts, which questioned as to how the witnesses came to know about the enquiry regarding the validity of the Will despite no notice having been issued by the Court calling upon them to submit such affidavits. Thus, in view of the same, the affidavits filed by the attesting witnesses to the Will cannot be relied upon.

CONCLUSION

39. Therefore, we are of the opinion that the concurrent findings of all the Courts have rightly given a well-reasoned decision upholding the validity of the Will and the same does not warrant interference of this Court.

40. For the aforesaid reasons, we affirm the Impugned Judgment and hence, the present appeal is dismissed.

41. Pending application(s), if any, shall stand disposed of. No order as to costs.

CDJLawJournal