

A.F.R.
Judgment reserved on: 18.02.2026
Judgment delivered on: 18.03.2026
Neutral Citation No. - 2026:AHC:55029

Court No. - 38

Case :- FIRST APPEAL No. - 129 of 2026

Appellant :- Mohd Mubin and Another

Respondent :- Ateeq Ahmad Kaif and 12 Others

Counsel for Appellant :- Devansh Misra, Mohd. Afzal

Counsel for Respondent :- Prem Chandra, Sudhanshu Kumar

Hon'ble Sandeep Jain,J.

1. The instant appeal has been filed under Section 96 C.P.C. against the impugned judgment and decree dated 20.01.2026, passed by the Court of Civil Judge (Senior Division), Kasganj, in Original Suit No. 174 of 2016 (Mohd. Mubin and another vs. Ateeq Ahmad Kaif and others), whereby the plaintiffs' suit seeking cancellation of the registered sale deed dated 24.10.2016, executed by the defendants of the second set in favour of the defendants of the first set, and also seeking the relief of permanent injunction restraining the defendants from interfering with their peaceful possession of the disputed property, has been rejected.

Plaint Case

2. The factual matrix is that the plaintiffs instituted Original Suit No. 174 of 2016 against defendants nos. 1 to 3, who are referred as defendants of the first set, who have purchased disputed property through sale deed dated 24.10.2016, from defendants no.4 to 13, who are the legal heirs of Mohd. Iliyas and Mohd. Anas, referred as defendants of 2nd set. Defendant no. 4, Mohd. Uwais is the son of deceased Mohd. Iliyas, and defendants nos. 5 to 13, are the legal heirs of deceased Mohd. Anas.

3. It was averred in the plaint that Mohd. Anas died on 12.10.2015, leaving behind his legal heirs, namely plaintiff no. 1, Mohd. Mubin, and defendants nos. 5 to 13.

4. It was further pleaded that Mohd. Iliyas died on 29.01.2016, leaving behind his son, plaintiff no. 2 Mohd. Parvez, and defendant no. 4 Mohd. Uwais, as well as wife, one more son and nine daughters. However, the said legal heirs were not impleaded as parties to the suit.
5. The plaintiffs further averred that Mohd. Anas and Mohd. Iliyas were close friends, who jointly carried on a handloom business under the name and style of Ajnam Standard Store, Ganjdundwara; M. Textile, Sujawalpur; and Standard Cold Storage, Ganjdundwara, in which they were having 1/2-1/2 ownership.
6. It was further averred that Mohd. Anas and Mohd. Iliyas had jointly purchased through sale deed dated 01.05.2004, a two-storey shopping complex at Kasganj. It was also averred that Mohd. Anas, prior to his death, executed a Will dated 16.08.2015, and similarly, Mohd. Iliyas executed a Will dated 07.01.2016. On the basis of the aforesaid Wills, the plaintiffs became joint owners in possession of an equal half share in the disputed property, in respect of which the defendants have no right, title, or interest.
7. It was further averred that the mother and other siblings of plaintiff no.1, who were arrayed as defendants no.5 to 13 and the siblings of plaintiff no.2 bore enmity towards the plaintiffs, who were trying to interfere in the peaceful possession of the disputed property, which was with the plaintiffs.
8. It was further averred that the disputed property, which is in the nature of shops and house was in the possession of the plaintiffs, some of which has been rented regarding which rent receipts have been issued.
9. It was further averred that no formal partition has taken place between the plaintiffs regarding the disputed properties, and after the death of Mohd. Anas and Mohd. Iliyas, the plaintiffs became owner of equal share in the disputed property.

10. It was further averred that the defendants of the second set, who are legal heirs of deceased, Mohd. Iliyas and Mohd. Anas, who are defendants no.4 to 13, have illegally executed the sale deed of the disputed property without any right, title and interest in favour of the defendants of the first set on 24.10.2016, which was void ab initio and liable to be cancelled.

11. It is the specific case of the plaintiffs that the defendants have got no right title or interest in the disputed property.

12. In the above backdrop, the plaintiffs have claimed the following reliefs:-

(i). By decree of the Court, the sale deed dated 24.10.2016 regarding the disputed property, which has been executed by the defendants of the second set in favour of the defendants of the first set be declared void ab initio and cancelled and its information be sent to the concerned Sub Registrar.

(ii). By decree of permanent injunction granted in favour of the plaintiffs against the defendants, the defendants, their family members, servants and representatives be restrained from illegally occupying, constructing, altering and executing a sale deed in respect of the disputed property and also from interfering in the peaceful possession of the plaintiffs.

Written Statement of the defendants

13. The defendants submitted their written statement before the trial court, in which, they denied that Mohd. Anas had executed a Will on 16.08.2015 and Mohd. Iliyas had executed a Will on 07.01.2016. The defendants claimed that since they have inherited the disputed property, they had a right to execute the sale deed regarding the disputed property in favour of the defendants of the 1st set.

14. It was specifically pleaded that both the above alleged Wills were forged and fabricated documents, on the basis of which, no right title and interest has accrued to the plaintiffs in the disputed property.

15. It was further averred that Mohd. Anas had equal love and affection for his all the sons, daughters and wife, as such, there was no reason for

Mohd. Anas to execute the Will in favour of the plaintiff no.1 Mohd. Mubin.

16. It was further averred that no family settlement took place between Mohd. Anas and his son Mohd. Mateen on 31.05.2012 whereby the son was debarred from inheriting the properties of the deceased. It was further averred that after the death of Mohd. Iliyas, all his legal heirs became the owners of the disputed property as such, the defendants of the 2nd set had executed the sale deed regarding their respective share in the disputed property, in favour of defendants of the 1st set. It was further averred that as owner of M.M.Textiles, the name of Mohd. Uwais and Mohd. Ameen was recorded in District Industries Centre Kasganj, hence, no Will could have been executed regarding this property by Mohd. Anas and Mohd. Iliyas. Similarly, the ownership of Standard Cold Storage vested in Mohd. Anas, Mohd. Iliyas, Mohd. Iqbal, Mohd. Anwar, Mohd. Farruq, Mohd. Zaki, Mohd. Taki and Mohd. Mubin as such, Mohd. Anas and Mohd. Iliyas could not have executed the Will regarding the entire Cold Storage.

17. It was further averred that the ownership of Standard Handloom Store vested in Mohd. Anas, Mohd. Iliyas, Mohd. Zaki and Mohd. Iqbal as such, Mohd. Anas and Mohd. Iliyas could not have alone executed the Will regarding this property.

18. It was further averred that the house which was bequeathed to the wife of Mohd. Anas was jointly owned by Mohd. Anas and Mohd. Bilal, as such, no Will could have been executed regarding this house by Mohd. Anas. It was further averred that after the death of Mohd. Anas and Mohd. Iliyas, the names of their legal heirs were mutated as owners in the agricultural land and thereafter, Smt.Naseem Begum the wife of deceased Mohd.Iliyas, executed the sale deed of her share in the agricultural land in which the plaintiff Mohd. Pervez was a witness, which also proves that the alleged Wills are forged and fabricated.

19. It was further averred that the house bequeathed to Smt. Naseem Begum by Mohd. Iliyas was purchased through 2 sale deeds. One sale deed was executed in favour of Mohd. Iliyas and Mohd. Iqbal whereas, the other sale deed was executed in favour of Mohd. Shareef and Mohd. Younis, as such, Mohd. Iliyas was not the sole owner of that house who could not have executed the Will regarding it. It was further averred that in the alleged Will's, shops situated in Mohalla Ganeshpur are constructed on agricultural land, the ownership of which is vested in the legal heirs of Mohd. Anas and Mohd. Iliyas, hence no Will could have been executed by them regarding these shops. It was further averred that plaintiffs are neither owner of the disputed property nor in its possession. The plaintiff's suit is barred under Section 31 and 41 of the Specific Relief Act. The plaintiff's have got no right to get the sale deed cancelled.

20. It was also averred that the Will was also related to some agricultural property of which registration was required. It was also averred that according to the Muslim Law, the alleged Wills could not have been executed.

Issues framed by the trial court

21. The trial court on the basis of the pleadings of the parties framed the following issues:-

(i). Whether the plaintiffs are the owner in possession of the disputed property, as described in the plaint?

(ii). Whether the sale deed dated 24.10.2016, has been illegally executed regarding the disputed property which is void ab initio?

(iii). Whether a Will has been executed on 16.08.2021 regarding the disputed property?

(iv). Whether the suit has been insufficiently valued?

(v). Whether the court fees paid is insufficient?

(vi). Whether the suit is barred by Sections 34, 38 and 41 of the Specific Relief Act, 1963?

(vii). Where any cause of action has accrued to the plaintiffs?

(viii). To what relief, the plaintiffs are entitled?

Oral Evidence of the parties

22. The plaintiffs examined Mohd. Pervez as PW-1, Khalilurrahman as PW-2, Mohd. Taki as PW-3 and Naeem Akhtar as PW-4, whereas the defendants examined Ateeq Ahmed as DW-1 and Mohd. Abbas as DW-2.

23. PW-1 Mohd. Pervez deposed in his examination in chief that Mohd. Anas died on 12.10.2015 leaving behind his wife Smt. Shakila, 4 sons and 5 daughters, as his heirs. Similarly, Mohd. Iliyas died on 29.1.2016 leaving behind his 3 sons, 9 daughters and wife Smt. Naseem Begum. He further deposed that Mohd. Iliyas and Mohd. Anas were very close friends, who had a joint business, who used to frequently visit the handloom business, which was in the name and style of Standard Store, Ganjdundwara, M. Textile Sujawalpur and Standard Cold Storage Ganjdundwara, in which they were having equal share of 1/2-1/2. He further deposed that the disputed property was jointly owned by Mohd. Iliyas and Mohd. Anas, which was purchased through sale deed dated 1.5.2004. He further deposed that prior to his death Mohd. Anas had executed a Will on 16.8.2015, by which his property was bequeathed to his legal heirs. He further deposed that Mohd. Anas had entered into a family settlement with his son Mohd. Mateen on 31.5.2012, as such, Mohd. Mateen was not bequeathed any property. He further deposed that similarly Mohd. Iliyas had executed a Will on 07.1.2016 bequeathing his property to his legal heirs. He deposed that on the basis of the above Wills, the plaintiffs are the owner in possession of the disputed property, in which the defendants have got no right title and interest. He further deposed that vide sale deed dated 24.10.2016 executed by defendant of the 2nd set, the disputed property has been sold to defendant of the 1st set, without any right, the sale deed being void-ab-initio, whose cancellation is necessary.

24. In cross-examination, PW-1 deposed that the wife of Mohd. Ilyas, who is also his mother, namely Naseem Begum has died on 26.8.2021. He accepted that when his father Mohd. Ilyas died on 29.1.2016, his mother and all siblings were alive. He also accepted that the wife of Mohd. Anas, namely Shakila Begum has died in the year 2021. He accepted that when Mohd. Anas died his wife, sons and daughters were alive. He accepted that Mohd. Anas and Mohd. Ilyas were Sunni Muslim. He accepted that he has not impleaded his sisters in the suit. He accepted that the property on which Standard Handloom Store, Ganjdundwara was situated, was owned by Mohd. Anas and Mohd. Ilyas along with others. He also accepted that in the business of Standard Handloom in the year 2015, there were 4 partners namely Mohd. Anas, Mohd. Ilyas, Mohd. Pervez and Mohd. Mubin. He accepted that he has not seen the sale deeds of the properties owned by Mohd. Anas and Mohd. Ilyas. He failed to disclose the names of partner and director of the firms Standard Handloom and Standard Cold Storage. He admitted that besides his brother Mohd. Uwais and himself, none of his siblings have been impleaded as a party to the suit.

25. He further disclosed that on the day his father Mohd. Ilyas executed his alleged Will, he did not accompany him. The Will was written on stamp papers of ₹ 10/- denomination, which were purchased by his father from Patiyali, the Will was scribed by Kishan Chand. Patiyali is the tehsil of Ganjdundwara. He denied the suggestion that the alleged Will of his father was a forged and fabricated document, which does not contain the signature and thumb impression of his father. He accepted that sale deed of the disputed property was executed in favour of defendants of the 1st set, by his brother, sisters and mother. He also accepted that in the property of Standard Cold Storage there were several partners namely Mohd. Anas, Mohd. Ilyas, Mohd. Iqbal, Mohd. Anwar, Mohd. Farooq, Mohd. Zaki, Mohd. Taki and Mohd. Mubin. He also accepted that in the property Standard Handloom Mohd. Anas, Mohd. Ilyas, Mohd. Zaki and

Mohd. Iqbal were partners. He also accepted that after his father's death, insofar as the agricultural land was concerned, the names of his mother, his other brothers including himself and unmarried sisters were mutated. He also accepted that the heirs were free to sell the property, as per the Will. He also accepted that he is the attesting witness of the sale deeds, executed regarding the land, which was sold by his mother and sisters. He also accepted that the house which was bequeathed to his mother by the alleged Will of his father, was purchased by his father Mohd. Iliyas and his(father's) brothers, through 2 sale deeds. He also accepted that when his father had executed his alleged Will, at that time Mohd. Anas had already died on 12.10.2015.

26. Khalilurrahman PW-2 deposed in his examination-in-chief that Mohd. Anas had executed a Will on 16.8.2015 in favour of Mohd. Mubin, on which he signed as attesting witness alongwith Nathoo Shah. The Will was scribed on the direction of Mohd. Anas by Kishan Chand Saxena, deed writer Tehsil Sahawar, District Kasganj, on stamp papers, which was signed and thumb affixed by Mohd. Anas after reading it, in his and Nathoo Shah's presence. The Will was written on four stamp papers of ₹ 20/- denomination. On this Will photographs of the testator and attesting witnesses were pasted.

27. PW-2 deposed in cross-examination that he met Mohd. Anas for the first time in the year 1995, when his(Mohd.Anas) factory in industrial area, Sahawar road, Sujawalpur was under construction. Mohd. Mubin is the son of Mohd. Iliyas, he knows Mohd. Mubin for the last 35 years, he has family relations with him. He was told by Mohd. Mubin to give his testimony. There was a difference in age of 20 years between him and Mohd. Anas. He participated in the funeral of Mohd. Anas, who died on 12.10.2015 in Apollo Hospital, Delhi. He used to have talks with Mohd. Anas, but no talks regarding his(Mohd.Anas) children ever took place. He was never told by Mohd. Anas regarding the properties he possessed. Mohd. Anas never had any talk with him regarding any Will. Mohd. Anas

never went with him to Etah. He was never told by Mohd. Anas that he will get a deed prepared by deed writer in Tehsil Sahawar. He has no knowledge whether Mohd. Anas and Mohd. Iliyas went to Tehsil Sahawar for preparation of any deed. The alleged Will was scribed by Kishan Chand Saxena. He reached around 1:30 – 2:00 PM, he was telephoned by Mohd. Anas, Mohd Mubin was not present, the Will was prepared in his presence, which was dictated by Mohd. Anas, but he was not aware, which property was bequeathed to whom. He does not remember anything about the contents of the Will, but he remembers, that a Will was prepared. He was never told by Mohd. Anas whether a dispute exists or not, between him and his children regarding property. The children of Mohd. Anas were not present, when the Will was prepared. He accepted that the agricultural land of Mohd. Anas was included in the Will. He was not aware who, when and from where the stamps were purchased, he was not aware whether the stamps were available or not, in Tehsil Sahawar. He further deposed that it took about 3 hours for preparing the Will. He was called by Mohd. Anas at Standard Cold Storage, Ganjdundwara for the preparation of Will, and was not directed to come to Tehsil Sahawar. He denied the suggestion that no such alleged Will was executed by Mohd. Anas, which was prepared fraudulently by him in collusion with Mohd. Mubin.

28. Mohd. Taki PW-3 deposed in his examination-in-chief that plaintiff Mohd. Pervez is the son of Mohd. Iliyas, in whose favour a Will was executed on 7.1.2016 by Mohd. Iliyas , on which he along with Rasool Ahmed Ansari had signed as attesting witness. He further deposed that the Will was prepared on the direction of Mohd. Iliyas by Kishan Chand Saxena, deed writer, Tehsil Sahawar, District Kasganj, on stamp papers, in his handwriting. After its preparation, it was signed and thumb impression was affixed on it, by Mohd. Iliyas in his and Rasool Ahmed Ansari's presence. The Will was prepared on 4 stamps of Rs.10/- denomination, on

which the photographs of the testator and attesting witnesses were also pasted.

29. PW-3 in cross-examination deposed that Mohd. Anas was his brother, who died on 12.10.2015. Mohd. Anas has 4 sons and 4 daughters, whose wife is not alive. He was not aware whether Mohd. Anas equally loved his children or not. He knew Mohd. Iliyas for the last 30 – 40 years, who has 3 sons and 9 daughters, whose wife died about 3 – 4 years back. Mohd. Iliyas and Mohd. Anas started their business in partnership about 50 years back, from clothes in Standard Handloom. When this witness was asked whether he was the co-owner of Standard Cold Storage along with Mohd. Anas, Mohd. Iliyas and others, then he feigned ignorance about it, which is very surprising. Mohd. Iliyas knew both Hindi and English. An accountant was employed in Standard Handloom, who used to keep accounts, which was frequently checked by Mohd. Iliyas and Mohd. Anas. He accepted that all the properties of Mohd. Iliyas were situated in Tehsil Patiyali. He accepted that Mohd. Iliyas bequeathed his agricultural land to all his heirs, because he saw that deed, which was prepared on 7.1.2016 at Standard Handloom. He was called to Standard Handloom, at that time Mohd. Iliyas, Rasool Ahmed and some scribe were present. Prior to 7.1.2016, he had no conversation with Mohd. Iliyas regarding the Will. At that time, no employee of Standard Handloom was present. He reached there after having lunch, he does not remember the time when he reached. He knew Rasool Ahmed previously, who was a clerk in a school. He was not aware which property was bequeathed to whom in the Will. He never went to Sahawar and Patiyali with Mohd. Iliyas regarding the preparation of Will. Mohd. Iliyas had taken out 4 stamps of ₹ 10/- denomination each and a white paper in his presence and then dictated the Will. The stamps were not purchased by him, he was not aware by whom and when, they were purchased. He accepted that Mohd. Mubin and Mohd. Pervez used to sit at Standard Handloom. He was not aware whether Mohd. Iliyas used to equally love his children or not. He never

had any talk with Mohd. Iliyas in this regard. He was not consulted about the Will by Mohd. Iliyas. He denied the suggestion that the Will was prepared fraudulently in collusion with him, by Mohd. Mubin and Mohd. Pervez. He was not aware regarding the Will of Mohd. Anas.

30. Naeem Akhtar PW-4, who was a tenant in the disputed property, deposed in his examination in chief that he is the tenant of Mohd. Mubin and Mohd. Pervez, who are his landlords, to whom rental of the shop at the rate of ₹ 7,150/- per month is being paid by him. He deposed that besides Mohd. Mubin and Mohd. Pervez, none other family member has demanded rent from him. He further deposed that originally his brother Mohd. Haseeb was the tenant in the shop, and after he vacated the shop, now he's the tenant. He was aware that Mohd. Mubin and Mohd. Pervez are the owners of the disputed property on the basis of Will executed by their father.

31. In cross-examination, he disclosed that he has filed a case against defendants of the 1st part, for obtaining compensation regarding damage caused to his shop. He denied that he has written anything in his evidence affidavit regarding the alleged Will of Mohd. Anas and Mohd. Iliyas.

32. Ateeq Ahmed, defendant no.1 examined himself as DW-1, who deposed in his examination-in-chief that the plaintiffs are not the owner in possession of the disputed property. He deposed that the disputed property was owned by Mohd. Anas and Mohd. Iliyas, who purchased it through sale deed dated 01.5.2004, and after their death, on the basis of mutual consent, the defendants of the 2nd set, became the owner in possession of the disputed property, which was sold by them to the defendants of the 1st set through sale deed, and now defendants of the 1st set are the owners in possession of the disputed property, which has been sold to them through the above sale deed. He specifically denied that no Will was ever executed by Mohd. Anas and Mohd. Iliyas during their lifetime, the alleged Will was forged and fabricated, which was prepared to usurp the disputed property and depriving the other legal heirs of their rights in the

disputed property. It was further deposed that Mohd. Anas and Mohd. Iliyas equally loved their children and wife, as such, the alleged Will which created difference between their wife and children, could not have been executed by them. It was further deposed that Mohd. Anas and Mohd. Iliyas were aware that as per the Sunni Muslim law they could not have bequeathed their entire property through Will, as such no question arises of executing of any Will regarding the entire property.

33. It was further deposed that the business of MM textiles, Sujawalpur was registered in the ownership of Mohd. Uwais and Mohd. Ameen, in District Industries Centre Kasganj, as such no question arises of execution of any Will by Mohd. Anas and Mohd. Iliyas regarding this property.

34. Ateeq Ahmed DW-1 further deposed in his examination-in-chief that the plaintiffs are not the owners in possession of the disputed property. The disputed property was purchased by Mohd. Anas and Mohd. Iliyas and after their death, in accordance with the oral agreement reached between their legal heirs, the defendants of the 2nd set became the owners in possession of the disputed property, which was subsequently sold to defendants of the 1st set through sale deed. It was further deposed that Mohd. Anas and Mohd. Iliyas never executed any Will during their lifetime in favour of the plaintiffs and the alleged Will was forged which was fabricated to usurp the property of the deceased and to deprive the legal heirs from their rightful share in the disputed property. It was further deposed that Mohd. Anas and Mohd. Iliyas used to equally love their children and wife as such, the alleged Will which accorded differential treatment to the children, could never have been executed by them. It was further deposed that Mohd. Anas and Mohd. Iliyas were well aware that as per the Sunni Muslim law they cannot execute any Will regarding their entire property, as such, the alleged Will regarding the entire property could not have been executed by them. It was further deposed that the business of MM Textiles Sujawalpur was registered in the name of Mohd. Uwais and Mohd. Ameen at District Industries Centre Etah, currently

District Industries Centre Kasganj, as such, Mohd. Anas and Mohd. Iliyas could not have executed any Will regarding this property.

35. It was further deposed that the ownership of Standard Cold Storage vested in Mohd. Anas, Mohd. Iliyas, Mohd. Iqbal Hussain, Mohd. Anwar, Mohd. Farruq, Mohd. Zaki, Mohd. Taki and Mohd. Mubin as such, Mohd. Anas and Mohd. Iliyas could not have executed the Will regarding the entire Cold Storage.

36. It was further deposed that the ownership of Standard Handloom Store vested in Mohd. Anas, Mohd. Iliyas, Mohd. Zaki and Mohd. Iqbal Hussain as such, Mohd. Anas and Mohd. Iliyas could not have executed any Will regarding the above property. It was further deposed that the house bequeathed to the wife of Mohd. Anas and Mohd. Iliyas, did not belong to Mohd. Anas and Mohd. Iliyas as such, no Will could have been executed regarding that house.

37. It was further deposed that insofar as the agricultural land was concerned, the names of all the legal heirs of the deceased Mohd. Anas and Mohd. Iliyas were mutated in the revenue records and thereafter, Smt. Naseem Begum, who is the wife of Mohd. Iliyas executed the sale deed in respect of her share in the agricultural land, in which the plaintiff No. 2 Mohd. Pervez was a witness, which also proves that the alleged Will's are forged and fabricated. It was further deposed that the plaintiffs are not the owners in possession of the disputed property, who have fabricated forged rent deeds and receipts.

38. It was further deposed that the defendants of the 1st set are the owner in possession of the disputed property on the basis of sale deeds executed in their favour by the defendants of the 2nd set. Further, the defendants of the 1st set are bonafide purchasers of the disputed property as such, the plaintiffs have got no right to get the alleged sale deed cancelled.

39. DW-1 in cross-examination accepted that Mohd. Anas and Mohd. Iliyas were the owners of the disputed property, which has been purchased by him through sale deed dated 24.10.2016. He further deposed that he came to know about the family settlement between the legal heirs of Mohd. Anas and Mohd. Iliyas, from some of the legal heirs of the deceased. Standard Cold Storage was auctioned by bank on 24.8.1997, in favour of Mohd. Anas, Mohd. Iliyas, Mohd. Iqbal Hussain, Mohd. Anwar, Mohd. Farruq, Mohd. Zaki, Mohd. Taki and Mohd. Mubin. He accepted that he is not a family member or relative of Mohd. Anas and Mohd. Iliyas. He further accepted that in the instant suit there was no dispute insofar as the property of Standard Handloom, Standard Cold Storage or any other property of Mohd. Anas and Mohd. Iliyas was concerned.

40. Mohd. Abbas DW-2 deposed in his examination in chief that his father was Mohd. Iliyas, who has 3 sons namely Mohd. Abbas, Mohd. Ubais, Mohd. Pervez besides 9 daughters. He further deposed that prior to purchasing the disputed property, defendant Ateeq Ahmed contacted him, who was told that the disputed property was purchased by Mohd. Anas and Mohd. Iliyas, and after their death, as per the consensus reached between their legal representatives, the disputed property was sold to the defendants of the 1st set. He further deposed that the alleged Will executed by Mohd. Anas and Mohd. Iliyas was a forged and fabricated document. This witness also reiterated the earlier examination in chief of DW-1. He further deposed that after the death of Mohd. Anas and Mohd. Iliyas, all their legal heirs, became the owners of the disputed property, as such the defendants of the 2nd set executed sale deed in respect of their share in the disputed property, in favour of defendant's of the 1st set, which was perfectly legal.

41. DW-2 accepted in his cross-examination that he was not a party to the suit. He further accepted that the disputed property was purchased through sale deed dated 1.5.2004 in which Mohd. Anas and Mohd. Iliyas had equal 1/2 share.

Reasoning of the trial court

42. The trial court considered the Muslim law elaborately and concluded that a Sunni Muslim cannot execute Will in excess of 1/3rd of his share, and after relying upon certain precedents concluded that if there was no consent of the other legal heirs, then no such Will of any share could have been executed by Mohd. Anas and Mohd. Iliyas and in view of this, the trial court considered the alleged Wills to be illegal and concluded that on the basis of the alleged Wills, the plaintiffs have got no right title and interest in the disputed property.

43. The trial court also considered the evidence of PW-1 Mohd. Parvez (plaintiff no.2), who is the son of Mohd. Iliyas and after appreciating his evidence concluded that even the plaintiff never acted upon the Will himself, who admitted in his deposition that after the death of his father, the names of all the heirs were mutated in the revenue record regarding the agricultural land. The trial court also concluded that the testator Mohd. Iliyas was not the sole owner of the disputed property, as such, he could not have executed the Will regarding the entire property.

44. The trial court also considered that the alleged Will of Mohd. Anas was executed in the year 2015, and the Will of Mohd. Iliyas was executed in the year 2016, and when the alleged Will of Mohammed Iliyas was executed, then Mohd. Anas had already died, but in the alleged Will of Mohd. Iliyas, there was no mention of the death of Mohd. Anas.

45. To the contrary, the Will of Mohd. Iliyas mentioned that the owner of half share is Mohd. Anas, whereas, Mohd. Anas had died earlier, as such, there was no requirement of mentioning that Mohd. Anas was the owner of half share of the property. The trial court opined that on the basis of alleged Will of Mohd. Anas, his son/plaintiff no.1 Mohd. Mubin was the

owner of the half share of the property, but this fact was not mentioned in the alleged Will of Mohd. Iliyas which rendered both the Wills suspicious.

46. The trial court also considered the evidence of attesting witnesses of the Will i.e. PW-2 Khalilurrahman and PW-3 Mohd. Taki and concluded that there was a contradiction regarding the place of execution of the Will and on this basis also concluded that, there were suspicious circumstances surrounding the execution of the Will.

47. The trial court also concluded that the defendants were in possession of the disputed property. The trial court also concluded that PW-4 (Naeem Akhtar), was a tenant who admitted that he was inducted into the tenancy by original landlord, Mohd. Anas and Mohd. Iliyas, but in the instant case, there was a dispute between the legal heirs of the above persons, as such, his evidence was not relevant for deciding the controversy.

48. The trial court opined that the alleged Wills were barred by the provisions of Hanafi law, their execution was surrounded by suspicious circumstances since as per evidence on record, there was a dispute regarding the place of their execution and on the basis of the above, the plaintiff's suit was dismissed, which has been challenged by plaintiffs by filing the instant appeal.

Submissions of the learned counsel of the parties

49. Learned counsel for the plaintiffs-appellants submitted that the plaintiffs are the owner of the disputed property on the basis of Wills executed by Mohd. Anas and Mohd. Iliyas, which was duly proved in accordance with law, but still the trial court has held otherwise.

50. It was further submitted that the defendants of the second set had got no right title and interest in the disputed property, as such, the sale deeds executed by them in favour of the defendants of the first set was illegal and void ab initio regarding which the relief of cancellation was claimed from the trial court which ought to have been decreed, but it has been erroneously rejected by the trial court on perverse reasoning.

51. It was submitted that the trial court has not appreciated the evidence in correct perspective and has also mis-interpreted the provisions of Muslim law.

52. With these submissions, it was prayed that the appeal be admitted for hearing.

53. Per-contra learned counsel for the defendants-respondents submitted that the execution of the alleged Wills was specifically denied by the defendants in their written statement, but even then the relief of declaration regarding the alleged Wills was not claimed by the plaintiffs.

54. It was further submitted that the execution of the Wills was never proved in accordance with law and execution was surrounded by suspicious circumstances which was never dispelled by the plaintiffs.

55. It was further submitted that even the ownership of the testators regarding the disputed property was in doubt, as such, they could not have executed the alleged Wills regarding the entire disputed property.

56. It was further submitted that the testators were bound by the provisions of Sunni Muslim law, and they could not have executed a Will in respect of any share of their disputed property, more particularly when there was no consent of the other legal heirs of the deceased.

57. Learned counsel submitted that the plaintiffs have neither claimed the relief of declaration of the Wills, nor relief of partition of disputed property, as such, the trial court has not erred in dismissing the plaintiffs' suit.

58. I have heard the learned counsel of both the parties and perused the impugned judgment and documents submitted with the appeal.

59. On the basis of the submissions of the learned counsel of the parties, perusal of the impugned judgment and the documents submitted with the appeal, the following questions arise for determination by this Court, in this appeal:-

(1) Whether the alleged Will of Mohd. Anas and Mohd. Ilyas which has been executed regarding their entire share in the disputed property in favour of their legal heirs(sons)/plaintiffs, without the consent of their other legal heirs, is a valid Will, which confers any right title and interest in the plaintiffs in the disputed property?

(2) Whether the alleged Will of Mohd. Anas and Mohd. Ilyas was surrounded by suspicious circumstances, which has not been dispelled by the plaintiffs, in accordance with law ?

(3) Whether in the absence of the relief of partition of the disputed property, the plaintiffs were entitled to claim relief of cancellation of sale deed of the disputed property and also relief of permanent injunction against the true owners of the disputed property ?

Sunni Muslim Law on Wills

60. Since the execution of Will in a Sunni Muslim Sect is governed by Hanafi Law, it is appropriate to examine the requisite conditions for a valid Will. Chapter IX of Mulla's Principles of Mahomedan Law, deals with Will and Section 115 provides for the person capable of making Wills. Section 116 provides that the forms of Will is immaterial. Section 117 provides for bequest to heirs & Section 118 provides limit of testamentary power. Sections 115, 116, 117 & 118 reads as under:-

***“115. Persons capable of making wills-** Subject to the limitations hereinafter set forth, every Mahomedan of sound mind and not a minor may dispose of his property by will.*

***116. Form of will immaterial-** A will (Vasiyat) may be made either verbally or in writing.*

***117. Bequests to heirs-** A bequest to an heir is not valid unless the other heirs also consent to the bequest after the death of the testator. Any single heir may consent so as to bind his own share.*

A bequest to an heir, either in whole or in part, is invalid, unless consented to by other heir or heirs and whosoever consents, the bequest is valid to that extent only and binds his or her share. Neither inaction nor silence can be the basis of implied consent.

Explanation- In determining whether a person is or is not an heir, regard is to be had, not to the time of the execution of the Will, but to the time of the testator's death.

118. Limit of testamentary power- A Mahomedan cannot by will dispose of more than a third of the surplus of his estate after payment of funeral expenses and debts. Bequests in excess of the legal third cannot take effect, unless the heirs consent thereto after the death of the testator."

61. The Apex Court in the case of **Zoharbee and Another vs Imam Khan (D) Thr. LRS. and Others 2025 SCC OnLine SC 2252**, held as under:-

"8. In view of the above, the view taken by the First Appellate Court and the High Court cannot be faulted with. The property agreed to be sold was, at the relevant time still the property of Chand Khan and therefore would be subject to division of property as per the applicable law. In other words, said property would form part of 'matruka' property which has been defined by the Courts as under:

In Jamil Ahmad v. Vth ADJ, Moradabad, (2001) 8 SCC 599:

"11. The property (both movable as well as immovable) left by a deceased Muslim is called matruka. The scheme of distribution of matruka among the heirs of a deceased Muslim is that first that part of the matruka which is covered by a will of the deceased, if there is a valid will (subject to a maximum of 1/3rd of the total matruka provided it is not in favour of an heir) will be separated and given to the legatee. The balance of matruka alone is distributable among the heirs and in the proportion ordained under the Mohammedan law. However, in regard to bhumiswami land the distribution of matruka will be governed by Sections 169 and 171 of the ZALR Act. Consequently the limitation placed under the Mohammedan law that the bequest should not exceed 1/3rd of the matruka of the deceased and it should not be in favour of an heir; will not apply; so also classification of heirs and the proportion in which they will inherit matruka under the Mohammedan law is replaced with the provisions of Section 171 of the ZALR Act in which a different order of succession is provided."

A judgment of fairly recent vintage also refers to the pronouncement above. In Trinity Infraventures Ltd. v. M.S. Murthy, 2023 SCC OnLine SC 738, it was observed:

“93. Before we proceed further, it may be necessary to decode certain words and expressions used in these proceedings from the beginning. If not, they will continue to haunt and frighten the reader. Therefore, a glossary is presented as under:

<i>(i)</i>	<i>Matruka:</i>	<i>The property, both movable as well as immovable left by a deceased muslim is called Matruka.</i>
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9. Reference may also be made to John T Platts' A Dictionary of Urdu, Classical Hindi and English' which defines 'matruka' as the estate of a deceased person. Also, as per the Rekhta Dictionary, 'matruka' is a word of Arabic origin and means "abandoned from his possession (property etc.)[,] left by immigrants (property etc.) [,] inherited wealth and property etc. It is clear from the above that matruka property simply refers to property left behind by deceased person and nothing more. Regarding the devolution of matruka property, it has to be observed that the Will is the first document that is to be satisfied subject to the limits imposed by Muslim Law, namely, that it cannot exceed one-third of the estate and cannot ordinarily be made in favour of an heir without the consent of the other heirs, and then whatever remains hereafter, is to be distributed strictly as per the rules of intestate succession prescribed in Muslim Law."

62. The High Court of Chhattisgarh in the case of ***Sulaxani and Another vs Sattar Ali and Others 2022 SCC OnLine Chh 803***, held as under:-

"22. From the above stated provisions, it is quite vivid that following conditions must be filled up for a valid Will executed by Mahomedan.

(a) A bequest may be executed by any Muslim to another including institution and a class of people.

(b) The persons entitled to make or take a Will must have capacity to make or take a Will.

(c) A bequest must be made of some subject.

(d) Formalities of making a Will must be fulfilled.

(e) Only one-third property can be bequeathed.

(f) Bequest to heirs is restricted.

(g) Conditional contingent and future bequest are void.

23. The essentials of a valid Will have been explained in a very lucid manner by Hon'ble High Court of Patna in Abdul Manan Khan v. Murtuza Khan AIR1991Pat154 as under:—

(i) Any Mahomedan having a sound mind and not a minor, may make a valid will to dispose of the property.

(ii) So far as a deed of will is concerned, no formality or a particular form is required in law for the purpose of creating a valid will. An unequivocal expression by the testator serves the purpose.

(iii) A bequest in favour of an heir is invalid unless the other heirs consent to it after the testator's death. For the purpose of giving effect to a will whereby a testator has bequeathed more than 1/3rd interest either to a testator or to a heir, consent is required in relation thereto of the heirs only after the death of the testator. Thus even a consent by the heirs of the testator during his lifetime in such a case does not sub-serve the requirement of law. For these reasons only, a provision has been made to obtain consent of the heirs after the death of the testator; if by reason of a will more than 1/3rd of the properties is sought to be bequeathed to an outsider, and to any extent to a heir.

*24. *****

25. Hon'ble High Court Madras in Noorunissa v. Rahaman Bi (2001)3 Mad LJ 141, has held at paragraph 13 as under:—

“13. In support of the abovesaid views that the testator or testatrix cannot bequeath more than one-third share of his own assets the following legal positions are taken into consideration:

(i) In Chapter XXIII of Mohammadan Law of Wills Second Edition 1965, by T.R. Gopalakrishnan, under the head Limits of testamentary power in Mohammadan Law, it has been commented that the power of Mohammadan to dispose of by Will is above, we find the following : Page 12 of 17 circumscribed in two ways and the first limit is to the extent. A Mohammadan. can validly bequeath only one third of his net assets, when there are heirs. This rule is based on a tradition of the prophet and the Courts in India have enforced the rule from early times. The object of this rule is to protect the rights of the heirs and where there is no heirs and when all the heirs agree and give their consent the one-third limit may be exceeded. While the rule is that a muslim can bequeath only one third of his assets, a bequest in excess of one third is rendered valid by the consent of the heirs whose rights are infringed thereby or where there are no heirs at all.

(ii) Sec. 189 in Chapter XIII of Mohammedan Law deals with Bequest to heirs. A bequest to an heir is not valid except to the extent to which the persons who are the heirs of the testator at the time of his death, expressly or impliedly consent to the bequest after his death. It is evident from the abovesaid section of Mohammedan Law that while it permits the making of a Will to a limited extent in favour of stranger or strangers, it does not allow undue preference being given to a particular heir or heirs and bequest to such heir or heirs without the consent of other heirs. It is also evident from the abovesaid provision of law that bequest to an heir or heirs without the consent of other heirs Will be altogether invalid. It is also evident from Sec. 195 of the Mohammedan Law that testator may revoke a bequest at any time either expressly or impliedly."

(iii) In Bayabai v. Bayahai, AIR 1942 Bom 328, it has been held by His Lordship Chagla, J. as follows:

"Under Sunni Mahammedan Law, by which the parties are governed, there is a two fold restriction on the testamentary capacity of a testator. He cannot dispose more than one-third of his property, and even with regard to that one-third he cannot bequeath it to his heirs. In this case the deceased had purported to dispose of the whole of his estate, and all the affective bequests made by him are in favour of his heirs. These bequests could have been validated by the consent of the heirs after the death of the testator."

The principles laid down with regard to bequeathing of property of a Mohammedan would clearly go to show that a Mohammedan cannot bequeath more than one third of his property and even with regard to that one third he cannot bequeath it to his heirs. If the bequest is to an heir it can be validated by the consent of all the heirs after the death of the testator. It is also clear that bequest in excess of one third of estate cannot take effect unless such bequest is consented by heirs after the death of the testator....”

63. The High Court of Kerala in the case of ***Mohammed Haneefa vs Salim 2011 SCC OnLine Ker 3700***, held as under:-

"18. Section 118 is limiting the testamentary power of a Mohammedan. It applies to all bequests, whether the legatee under the will is a stranger or heir or some of the heirs. The bequest could only be in respect of the legal one third of his properties. A Mohammedan cannot execute several wills in favour of different heirs or/and strangers so as to limit the bequest under each will to less than the legal one third and thereby circumvent the bar provided under S. 118. The total bequest shall not exceed the legal one third. The excess would be valid only if all other heirs give their consent, after the death of the testator. If no such consent is given, the bequest to the extent of the excess of the legal one third is invalid.

19. Section 117 deals with the bequest only to the heir. If such bequest is in favour of an heir or some of the heirs leaving the other heirs, it is invalid. If consent of other heirs is given, after the death of the testator, the bequest will be valid. If only some of the heirs give their consent, the bequest will be valid only to the extent of their shares. The restrictions provided under S. 118, restricting the testamentary capacity to the extent of legal one third cannot be watered down by limiting the restrictions to the bequest in favour of each of the bequest. When S. 117 specifically provides that a bequest to an heir is not valid, unless the other heirs consent to the bequest after the death of the testator, even if such bequest is in respect of the one third of the surplus left by the testator, the bequest will not be valid unless all the heirs had given consent to the bequest subsequent to the death of the testator, though any single heir may consent so as to bind his own share. But, such consent will not operate as against the other heirs who did not give consent."

64. Similarly, the High Court of Kerala in the case of ***Mohamed vs Kunhalankutty and others RSA No.607 of 2023*** Neutral Citation:2023:KER:65466 decided on 19.10.2023, held as under:-

"13. To be on the legal question, how far a Mahomedan can dispose of his properties by a Will? the power of a Mahomedan to dispose of his property by Will is limited in two ways. Firstly, as regards the persons to whom the property may be bequeathed, and, secondly, as regards the extent to which the property may be bequeathed. The only case in which a testamentary disposition is binding upon the heirs is where the bequest does not exceed the legal third and it is made to a person who is not an heir. But a bequest in excess of the legal third may be validated by the consent of the heirs; similarly, a bequest to an heir may be rendered valid by the consent of the other heirs. The reason is that the limits of testamentary power exist solely for the benefit of the heirs, and the heirs may, if they like to forgo the benefit by giving their consent. For the same reason, if the testator has no heirs, he may bequeath the whole of his property to a stranger: (see Baillie, 625). Where by the same Will a legacy is given to an heir and a legacy also to a non-heir, the legacy to the heir is invalid unless assented to by the other heirs, but the legacy to the non-heir is valid to the extent of one-third of the property. Say for example, A bequeaths 1/3 of his property to S, a non-heir, and 2/3 to H, one of his heirs. The other heirs do not assent to the bequest to H. The result is that S will take 1/3 under the Will, and the remaining 2/3 will be divided among all the heirs of A. Similarly, if A bequeaths the whole of his property to his wife and a non- heir, and the bequest to the wife is not assented to by the other heirs of A, the non-heir will take 1/3 under the Will (that being the maximum disposable under the Will), and the remaining 2/3 will be divided among the heirs of A.

14. In the case at hand, the father by executing Ext.B1 Will deed given properties to all the heirs including the plaintiff. In such a Will, definitely all the heirs must consent so as to effectuate the Will. To put it otherwise, a bequest to an heir by a Mahomedan is not valid unless others consent to the bequest after the death of the testator and the consent of the other legal heirs is the exception to the above rule. Similarly, when the bequest is in favour of a non-heir then the Will will be valid without consent of the legal heirs in so far as 1/3 of the property of the testator and not otherwise. Be it so, Ext.B1

Will will take effect only when the plaintiff also consent the same, since all others consented the Will."

65. The High Court of Himachal Pradesh in the case of ***Nazar Deen vs Sadar Deen 2013 SCC OnLine HP 1077***, while considering the position of law with respect to bequeathing the property to an heir through a Will under Muslim Law, held as under:-

"7. He submits that the settled position in Hanafi Law has been considered by the High Court of Karnataka in Narunnisa v. Shek Abdul Hamid, AIR 1987 Karnataka 222, holding : -

"8. The legal position is made clear by the judgment of the Privy Council in Salayjee v. Fatimabi, AIR 1922 PC 391.

"The Mahomedan Law does not allow a testator to leave a legacy to any of his heirs unless the other heirs agree, but any single heir may so agree as to bind his own share and the burden of proving the consent of a particular heir is upon the legatee." (head note).

To the same effect is the decision in Ghulam Mohammad v. Ghulam Hussain, AIR 1932 PC 81.

"Under the Hanafi law a bequest to an heir is invalid unless consented to by the other heirs after the testator's death."

9. Mr. A.A.A. Fayzee, in his book "Cases in the Mohamedan Law of India and Pakistan" in the Chapter "Gift and Will Compared" has extracted the following passage from the judgment in *Ranee Khujooroonissa v. Mussammut Roushun Jehan, (1876) 3 Ind App 291.*

"The Policy of the Mohamedan Law appears to be to prevent a testator interfering by will with the course of the devolution of property according to law among his heirs, although he may give a specified portion, as much as a third, to a stranger". (Page 308).

10. In *Mahomed Ata Husain Khan v. Husain Ali Khan, AIR 1944 Oudh 139* it is held:

"Under the Mahomedan Law one of the heirs may consent to a Will and as far as he is concerned it will be held to be valid and none of his heirs can challenge it subsequently." (Head note).

11. In *Rahummuth Ammal v. Mohammed Mydeen Rowther*, (1978) 2 Mad LJ 499 the Court was dealing with a case, where the bequest was to an heir coupled with a bequest to a non-heir; after quoting a few decisions on that point, the Court observed thus:

“13 xxx xxx xxx

No doubt, as has already been pointed out the bequest to an heir coupled with a bequest to a non-heir has to be reconciled as far as possible and the totality of the instrument cannot on a hypertechnical ground be rejected in toto. If this is the method by which such an instrument has to be understood and interpreted, then it should be held that the bequest to the first defendant who is an heir in this case is not valid, because it is against the personal law, but in so far as the bequest to a non-heir, namely the second defendant is concerned, it would be operative to the extent of a third of the estate of Sceni Rowther.” (Underlining is ours).

12. The well established position, in our opinion, is that a bequest to an heir, either in whole or in part, is invalid, unless consented to by other heir or heirs and whosoever consents, the bequest is valid to that extent only and binds his or her share. That it is so is clear from the following enunciation in *Mahaboobi v. Kempaiah* (Second Appeal No. 99/150-51) : AIR 1955 Mys NUC 705;

“A Muhammadan cannot by will dispose of more than a third of the surplus of his estate after payment of funeral expenses and debts. But a bequest of more than the legal third can be validated by the consent of the heirs; and similarly a bequest to an heir may be rendered valid by the consent of the other heirs. The limits of testamentary power exist solely for the benefit of the heirs and they may if they like forego the benefit by giving their consent. : (Headnote C). (Underlining is ours)” (p.225)

8. Lastly, learned counsel urges that the consent has to be clearly expressed. He relies upon the decision of the Madras High Court in *Sajathi Bi v. Fathima Bi*, AIR 2002 Madras 484, holding : -

“3. Though there are five defendants including the 1st respondent Fathima Bi, by the propounder of the Will, 1st defendant-mother, defendants 2 and 3 brothers and 5th defendant-sister, the appellant herein remained ex parte.

16. A Mohammedan cannot by Will dispose of more than 1/3 of the surplus of his share after payment of funeral expenses and debts. Bequests in excess of the share cannot take effect, unless the heirs consent to that and that too after the death of the testator.

17. Both the Courts below would correctly find that the Will is not valid as there is no consent and as such, the plaintiff would be entitled to 10/48 shares. However, unfortunately, the lower appellate Court concluded that the Will is valid insofar as the shares of the defendants 1, 2 and 5, inasmuch as there is implied consent. To conclude that there was an implied consent on the part of the defendants, the lower appellate Court inferred the said consent as implied consent, since the other defendants remained ex parte.

18. Though it is stated in Section 117 of the principles of Mohammedan Law by Mulla that a bequest to a heir is not valid unless the other heirs consent to the bequest after the death of the testator and any single heir may consent so as to bind his own share, mere silence by not participating in the concerned proceedings and by remaining ex parte cannot be considered to be even as implied consent as stated in the very same book." (pp.485-486)"

Conclusion by this Court

66. From the above law laid down by the Privy Council, Apex Court as well as the High Courts of Chhattisgarh, Patna, Madras, Bombay, Kerala, Himachal Pradesh and Karnataka, it is evident that a bequest made by a Mohammedan to a heir is not valid unless the other heirs consent to the bequest after the death of the testator and any single heir can consent so as to bind his/her share. It is further evident that the rule of one-third is not applicable on the bequest made to a heir, it is only applicable on the bequest made to a stranger, who is not heir. Without the consent of other heirs, no bequest to a heir can be made by a Mohammedan of his any share.

67. In this case the plaintiffs are the legal heirs of Mohd. Anas and Mohd. Iliyas, who claim that a Will was executed by Mohd. Anas on 16.8.2015 and Mohd. Iliyas on 07.01.2016 in their favour, but this has been denied by the defendants in their written statement and oral evidence, who have

averred that the above alleged Wills are forged and fabricated document, on the basis of which no right title and interest has been created in favour of the plaintiffs in the disputed property.

68. It is further evident that Mohd. Anas and Mohd. Iliyas bequeathed their entire property to their sons, daughters and wife but since the defendants no.4 to 13, who are the legal heirs of Mohd. Anas and Mohd. Iliyas are disputing the execution, authenticity and legality of the above Wills, as such, without the consent of all the heirs of the deceased, the Will cannot be effectuated and it remains inoperative. It is further apparent that the plaintiffs are not strangers, but they are legal heirs(sons) of the deceased Mohd. Anas and Mohd. Iliyas, who have inherited certain share of the property as per Hanafi law of inheritance, on the death of Mohd. Anas and Mohd. Iliyas as such, the rule of one-third is not applicable in the instant case. In view of the above legal position, without the express consent of all the legal heirs of the deceased, the Wills remain inoperative and in view of this, on the basis of the alleged Wills, the plaintiffs do not get any right title and interest in the disputed property.

69. It is further apparent that the plaintiffs have impleaded all the legal heir's of deceased Mohd. Anas in the suit but only one son of deceased Mohd. Iliyas namely defendant No. 4 Mohd. Uwais has been impleaded in the suit leaving behind the wife, 9 daughters and one son. It is apparent that under Mohammedan law the consent of the legal heirs to the bequest made to an heir must be express, and on the basis of implied consent, it cannot be assumed that the other legal heirs of the deceased Mohd. Iliyas have consented to the existence/execution of the alleged Will of Mohd. Iliyas. The plaintiffs should have impleaded all the legal heirs of the deceased Mohd. Iliyas to the suit as defendants, and in the absence thereof, the suit is bad for non-joinder of the necessary parties.

Proof of execution of Will and suspicious circumstances surrounding the execution of Will

70. The Apex Court in the case of ***H.Venkatachala Iyengar vs. B.N.Thimmajamma & Others, 1958 SCC OnLine SC 31 (By 3 Judges)***, while examining the issues related with execution and proof of Will has enunciated a few fundamental guiding principles that have consistently been followed and applied in almost all the cases involving such issues. The exposition of law made by the Apex Court is as under:-

“18. 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.

19. However, there is one important feature which distinguishes wills from other documents. Unlike other documents the will speaks from the death of the testator, and so, when it is propounded or produced before a court, the testator who has already departed the world cannot say whether it is his will or not; and this aspect naturally introduces an element of solemnity in the decision of the question as to whether the document propounded is proved to be the last will and testament of the departed testator. Even so, in dealing with the proof of wills the court will start on the same enquiry as in the case of the proof of documents. The propounder would be called upon to show by satisfactory 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, that he understood the nature and effect of the dispositions and put his signature to the document of his own free will. Ordinarily when the evidence adduced in support of the will is disinterested, satisfactory and sufficient to prove the sound and disposing state of the testator's mind and his signature as required by law, courts would be justified in making a finding in favour of the propounder. In other words, the onus on the propounder can be taken to be discharged on proof of the essential facts just indicated.

20. There may, however, be cases in which the execution of the will may be surrounded by suspicious circumstances. The alleged signature of the testator may be very shaky and doubtful and evidence in support of the propounder's case that the signature, in question is the signature of the testator may not remove the doubt created by the appearance of the signature; the condition of the testator's mind may appear to be very feeble and debilitated; and evidence adduced may not succeed in removing the legitimate doubt as to the mental capacity of the testator; the dispositions made in the will may appear to be unnatural, improbable or unfair in the light of relevant circumstances; or, the will may otherwise indicate that the

said dispositions may not be the result of the testator's free will and mind. In such cases the court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last will of the testator. The presence of such suspicious circumstances naturally tends to make the initial onus very heavy; and, unless it is satisfactorily discharged, courts would be reluctant to treat the document as the last will of the testator. It is true that, if a caveat is filed alleging the exercise of undue influence, fraud or coercion in respect of the execution of the will propounded, such pleas may have to be proved by the caveators; but, even without such pleas circumstances may raise a doubt as to whether the testator was acting of his own free will in executing the will, and in such circumstances, it would be a part of the initial onus to remove any such legitimate doubts in the matter.

21. Apart from the suspicious circumstances to which we have just referred, in some cases the wills propounded disclose another infirmity. Propounders themselves take a prominent part in the execution of the wills which confer on them substantial benefits. If it is shown that the propounder has taken a prominent part in the execution of the will and has received substantial benefit under it, that itself is generally treated as a suspicious circumstance attending the execution of the will and the propounder is required to remove the said suspicion by clear and satisfactory evidence. It is in connection with wills that present such suspicious circumstances that decisions of English courts often mention the test of the satisfaction of judicial conscience. It may be that the reference to judicial conscience in this connection is a heritage from similar observations made by ecclesiastical courts in England when they exercised jurisdiction with reference to wills; but any objection to the use of the word "conscience" in this context would, in our opinion, be purely technical and academic, if not pedantic. The test merely emphasizes that, in determining the question as to whether an instrument produced before the court is the last will of the testator, the court is deciding a solemn question and it must be fully satisfied that it had been validly executed by the testator who is no longer alive.

22. It is obvious that for deciding material questions of fact which arise in applications for probate or in actions on wills, no hard and fast or inflexible rules can be laid down for the appreciation of the evidence. It may, however, be stated generally that a propounder of the will has to prove the due and valid execution of the will and that if there are any suspicious circumstances

*surrounding the execution of the will the propounder must remove the said suspicions from the mind of the court by cogent and satisfactory evidence. It is hardly necessary to add that the result of the application of these two general and broad principles would always depend upon the facts and circumstances of each case and on the nature and quality of the evidence adduced by the parties. It is quite true that, as observed by Lord Du Parcq in *Harmes v. Hinkson* [(1946) 50 CWN 895] “where a will is charged with suspicion, the rules enjoin a reasonable scepticism, not an obdurate persistence in disbelief. They do not demand from the Judge, even in circumstances of grave suspicion, a resolute and impenetrable incredulity. He is never required to close his mind to the truth”. It would sound platitudinous to say so, but it is nevertheless true that in discovering truth even in such cases the judicial mind must always be open though vigilant, cautious and circumspect.”*

71. The Constitution bench of the Apex Court in the case of ***Shashi Kumar Banerjee and others vs. Subodh Kumar Banerjee and others, 1963 SCC OnLine SC 114*** , while examining the law relating to the manner and onus of proof and also the duty cast upon the court while dealing with the case based upon a Will, has held as follows:-

"The mode of proving a Will does not ordinarily differ from that of proving any other document except as to the special requirement of attestation prescribed in the case of a Will by Section 63 of the Indian Succession Act. The onus of proving the Will is on the propounder and in the absence of suspicious circumstances surrounding the execution of the Will, proof of testamentary capacity and the signature of the testator as required by law is sufficient to discharge the onus. Where however there are suspicious circumstances, the onus is on the propounder to explain them to the satisfaction of the court before the court accepts the Will as genuine. Where the caveator alleges undue influence, fraud and coercion, the onus is on him to prove the same. Even when there are no such pleas but the circumstances give rise to doubts, it is for the propounder to satisfy the conscience of the court. The suspicious circumstances may be as to the genuineness of the signature of the testator; the condition of the testator's mind, the dispositions made in the Will being unnatural, improbable or unfair in the light of relevant circumstances or there might be other indicators in the Will

to show that the testator's mind was not free. In such a case the court would naturally expect that all legitimate suspicion should be completely removed before the document is accepted as the last Will of the testator. If the propounder himself takes part in the execution of the Will which confers a substantial benefit on him, that is also a circumstance to be taken into account, and the propounder is required to remove the doubts by clear and satisfactory evidence. If the propounder succeeds in removing the suspicious circumstances the court would grant probate, even if the Will might be unnatural and might cut off wholly or in part near relations."

72. The Apex Court in the case of ***Shivakumar and others vs. Sharanabasappa and others (2021)11 SCC 277***, after traversing through the relevant decisions, has summarised the principles governing the adjudicatory process concerning proof of a Will as follows:-

"12. For what has been noticed hereinabove, the relevant principles governing the adjudicatory process concerning proof of a will could be broadly summarised as follows:

12.1. Ordinarily, a will has to be proved like any other document; the test to be applied being the usual test of the satisfaction of the prudent mind. Alike the principles governing the proof of other documents, in the case of will too, the proof with mathematical accuracy is not to be insisted upon.

12.2. Since as per Section 63 of the Succession Act, a will is required to be attested, it cannot be used as evidence until at least one attesting witness has been called for the purpose of proving its execution, if there be an attesting witness alive and capable of giving evidence.

12.3. The unique feature of a will is that it speaks from the death of the testator and, therefore, the maker thereof is not available for deposing about the circumstances in which the same was executed. This introduces an element of solemnity in the decision of the question as to whether the document propounded is the last will of the testator. The initial onus, naturally, lies on the propounder but the same can be taken to have been primarily discharged on proof of the essential facts which go into the making of a will.

12.4. The case in which the execution of the will is surrounded by suspicious circumstances stands on a different footing. The presence of suspicious circumstances makes the onus heavier on the propounder and, therefore, in cases where the circumstances attendant upon the execution of

the document give rise to suspicion, the propounder must remove all legitimate suspicions before the document can be accepted as the last will of the testator.

12.5. If a person challenging the will alleges fabrication or alleges fraud, undue influence, coercion etcetera in regard to the execution of the will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the will may give rise to the doubt or as to whether the will had indeed been executed by the testator and/or as to whether the testator was acting of his own free will. In such eventuality, it is again a part of the initial onus of the propounder to remove all reasonable doubts in the matter.

12.6. A circumstance is “suspicious” when it is not normal or is “not normally expected in a normal situation or is not expected of a normal person”. As put by this Court, the suspicious features must be “real, germane and valid” and not merely the “fantasy of the doubting mind”.

12.7. As to whether any particular feature or a set of features qualify as “suspicious” would depend on the facts and circumstances of each case. A shaky or doubtful signature; a feeble or uncertain mind of the testator; an unfair disposition of property; an unjust exclusion of the legal heirs and particularly the dependants; an active or leading part in making of the will by the beneficiary thereunder etcetera are some of the circumstances which may give rise to suspicion. The circumstances abovenoted are only illustrative and by no means exhaustive because there could be any circumstance or set of circumstances which may give rise to legitimate suspicion about the execution of the will. On the other hand, any of the circumstances qualifying as being suspicious could be legitimately explained by the propounder. However, such suspicion or suspicions cannot be removed by mere proof of sound and disposing state of mind of the testator and his signature coupled with the proof of attestation.

12.8. The test of satisfaction of the judicial conscience comes into operation when a document propounded as the will of the testator is surrounded by suspicious circumstance(s). While applying such test, the court would address itself to the solemn questions as to whether the testator had signed the will while being aware of its contents and after understanding the nature and effect of the dispositions in the will?

12.9. In the ultimate analysis, where the execution of a will is shrouded in suspicion, it is a matter essentially of the judicial conscience of the court

and the party which sets up the will has to offer cogent and convincing explanation of the suspicious circumstances surrounding the will.”

73. It is apparent from the above law laid down by the Apex Court in the case of ***H.Venkatachala Iyengar*** (supra), ***Shashi Kumar Banerjee*** (supra) and ***Shivakumar*** (supra) that where the execution of the Will is surrounded by suspicious circumstances, then the onus lies on the propounder to remove all legitimate suspicions before the document can be accepted as the last Will of the testator. It is also apparent that such suspicion or suspicions cannot be removed by mere proof of sound and disposing state of mind of the testator and his signature coupled with the proof of attestation. It is also apparent that where the execution of Will is shrouded in suspicion, it is a matter essentially of the judicial conscience of the Court and the party which sets up the Will has to offer cogent and convincing explanation of the suspicious circumstances surrounding the Will.

Suspicious circumstances surrounding the Wills

(i) Will of Mohd. Iliyas mentions that Mohd. Anas is alive, whereas he was dead:-

74. From the evidence of PW-1 Mohd. Pervez it is evident that Mohd. Anas and Mohd. Iliyas were close friends who had a joint business, who used to sit together. It is further apparent that the alleged Will of Mohd. Anas was executed earlier on 16.8.2015 whereas, the alleged Will of Mohd. Iliyas was executed on 7.1.2016. It is evident that when the Will of Mohd. Iliyas was executed, at that time Mohd. Anas was already dead, who had died earlier on 12.10.2015 and being close friends, Mohd. Iliyas should have been aware that Mohd. Anas has died but still the Will of Mohd. Iliyas mentions that the owner of half of the disputed property is Mohd. Anas, which is incorrect. Had the alleged Will been executed in reality by Mohd. Iliyas, this factual error would not have occurred because the factum of death of Mohd. Anas could never have been concealed from

Mohd. Ilyas because they were very close friends, who used to sit and work together.

(ii) Ownership of Standard Handloom Store, M.M.Textiles and Standard Cold Storage:-

75. As per the alleged Wills of Mohd. Anas and Mohd. Ilyas they were the joint owners of the above properties but from the documentary and oral evidence on record, it is evident that they were not the sole owners of the above property. PW-1 Mohd. Pervez accepted in cross-examination that in the property of Standard Cold Storage there were several partners namely Mohd. Anas, Mohd. Ilyas, Mohd. Iqbal, Mohd. Anwar, Mohd. Farooq, Mohd. Zaki, Mohd. Taki and Mohd. Mubin. He also accepted that in the property Standard Handloom Store Mohd. Anas, Mohd. Ilyas, Mohd. Zaki and Mohd. Iqbal were partners. He also accepted that in the business of Standard Handloom in the year 2015, there were 4 partners namely Mohd. Anas, Mohd. Ilyas, Mohd. Pervez and Mohd. Mubin.

76. DW-1Ateeq Ahmed deposed that the business of MM textiles, Sujawalpur was registered in the ownership of Mohd.Uwais and Mohd.Ameen, in District Industries Centre Kasganj, as such no question arises of execution of any Will by Mohd. Anas and Mohd. Ilyas regarding this property.

77. It is improbable that Mohd. Anas and Mohd. Ilyas were unaware that they were not the sole joint owners of the above properties as such, had the Wills in reality been executed by them, then they would never have mentioned in the Wills, that they are the sole joint owners of the above property.

(iii) Propounder of the alleged Will of Mohd. Anas not appearing in the witness box:-

78. The Apex Court in the case of *Gurdial Singh (Dead) through Lrs. vs. Jagir Kaur (Dead) and Another* 2025 SCC OnLine SC 1466 has held

that the onus is on the propounder to dispel suspicious circumstances surrounding the Will to the satisfaction of the conscience of the court.

79. It is apparent that in the instant case the propounder of the alleged Will of Mohd. Anas, plaintiff no.1 Mohd. Mubin has not appeared in the witness box, to dispel the suspicious circumstances surrounding the execution of the alleged Will.

(iv)Place of execution of the alleged Wills:-

80. The appellants have filed the certified copies of the alleged Wills of Mohd. Anas and Mohd. Ilyas which disclose that these Wills were prepared by Kishan Chandra Saxena, deed writer at Sahawar, District Kasganj whereas, as per the testimony of PW-2 Khalilurrehman, who is the attesting witness of the alleged Will of Mohd. Anas, the Will was prepared at Standard Cold Storage, Ganjdundwara.

81. Similarly, PW-3 Mohd. Taki, who is the attesting witness of the alleged Will of Mohd. Ilyas, discloses that the alleged Will was prepared at Standard Handloom, Ganjdundwara. This contradiction in the place of preparation of the alleged Wills also creates suspicion regarding the execution of the alleged Wills.

(v)Ownership of house bequeathed to Smt. Naseem Begum wife of Mohd. Ilyas:-

82. PW-1 Mohd. Pervez accepted in his cross-examination that the house which was bequeathed to his mother by the alleged Will of his father, was purchased by his father Mohd. Ilyas and his (father's) brothers, through 2 sale deeds.

83. DW-1 Ateeq Ahmed also deposed that the house bequeathed to the wife of Mohd. Anas and Mohd. Ilyas, did not belong to Mohd. Anas and Mohd. Ilyas as such, no Will could have been executed regarding that house.

84. It is improbable that Mohd. Anas and Mohd. Iliyas were unaware that the house bequeathed by them to their wife does not exclusively belong to them. Had the above alleged Wills in reality been executed by Mohd. Anas and Mohd. Iliyas then certainly it would not have been mentioned by them that the above house belongs to them. This circumstance also creates suspicion regarding the execution of the alleged Will's.

Final Conclusion

85. It is apparent that the above suspicious circumstances surrounding the execution of the alleged Wills do not inspire the confidence of the court, as such, the trial court has rightly disbelieved the execution of the alleged Wills of Mohd. Anas and Mohd. Iliyas.

86. It is further apparent that if the alleged Wills of Mohd. Anas and Mohd. Iliyas are disbelieved even then, the plaintiffs being the legal heirs(sons) of Mohd. Anas and Mohd. Iliyas do have a legal share in the disputed property along with defendants no.4 to 13 and other legal heirs of deceased Mohd. Iliyas, i.e. wife, 9 daughters and a son, who have not been impleaded as defendants in the suit, who were necessary parties to the suit. Since, the plaintiffs have not claimed the relief of partition of the disputed property, as such, their share in it cannot be determined by the court. It is further apparent that the defendants of the 2nd set(no.4 to13) being the legal heirs of deceased Mohd. Anas and Mohd. Iliyas have executed the alleged sale deed dated 24.10.2016 in favour of the defendants of the 1st set, on the ground that they have also inherited the disputed property. It has not been denied by the plaintiffs that the defendants of the 2nd set are not the legal heirs of the deceased Mohd. Anas and Mohd. Iliyas, as such, the alleged sale deeds executed by the defendants of the 2nd set in favour of the defendants of the 1st set cannot be declared void ab initio. It is possible that the defendants of the 2nd set might have executed the sale deeds exceeding their inherited share in the disputed property, but no relief of cancellation of sale deed has been claimed by the plaintiffs on this ground.

87. As analysed previously, since the alleged Wills were made in favour of the plaintiffs who are the legal heirs(sons) of the deceased Mohd. Anas and Mohd. Ilyas, which was vehemently opposed by the defendants of the 2nd set, as such, legally without the express consent of the other legal heirs of the deceased Mohd. Anas and Mohd. Ilyas, the alleged Will's remained inoperative and on the basis of the alleged Wills, no right title and interest in the disputed property has accrued to the plaintiffs, to enable them to file the instant suit.

88. The Apex Court in the case of ***Padhiyar Prahladi Chenaji (Deceased) Thr. LRS. vs. Maniben Jagmalbhai (Deceased) Thr. LRS. And others (2022) 12 SCC 128***, held as under:-

“18. Even otherwise on merits also, the courts below have erred in passing the decree of permanent injunction restraining Defendant 1 from disturbing the alleged possession of the plaintiff. Assuming for the sake of argument that the plaintiff is found to be in possession, in that case also, once the plaintiff has lost so far as the relief of declaration and title is concerned and Defendant 1 is held to be the true and absolute owner of the property in question, pursuant to the execution of the sale deed dated 17-6-1975 in his favour, the true owner cannot be restrained by way of an injunction against him. In a given case, the plaintiff may succeed in getting the injunction even by filing a simple suit for permanent injunction in a case where there is a cloud on the title. However, once the dispute with respect to title is settled and it is held against the plaintiff, in that case, the suit by the plaintiff for permanent injunction shall not be maintainable against the true owner. In such a situation, it will not be open for the plaintiff to contend that though he/she has lost the case so far as the title dispute is concerned, the defendant — the true owner still be restrained from disturbing his/her possession and his/her possession be protected.”

89. The Apex Court in the case of ***Ratnagiri Nagar Parishad vs. Gangaram Narayan Ambekar and Ors. (2020) 7 SCC 275*** has held that when it is made amply clear that when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in

case of breach of trust, an injunction cannot be granted. The scheme of Section 41 of the 1963 Act predicates that the civil court must refuse to grant injunction in the situations referred to therein vide clauses (a) to (j).

90. The Apex Court in the case of ***Sanjay Paliwal and Another vs. Bharat Heavy Electricals Ltd. Through its Executive Director*** 2026 ***SCC OnLine SC 83*** held as under:-

“16. As is evident from Section 41(h) of the Specific Relief Act, 1963, one of the statutory grounds for refusal of an injunction is the availability of an equally efficacious remedy. This rule, being expressly prescribed by the statute, circumscribes the discretion of courts in granting injunctive relief where such an alternative remedy exists. The expression “equally efficacious remedy”, as rightly explained by the High Court, denotes a remedy which would place the Plaintiffs in the same position in which he would have been had the relief of injunction not been sought....”

91. It is further apparent that the plaintiffs could have claimed partition of their share in the disputed property, but they have not claimed this relief. It is apparent that the defendants of the 1st set are the owners in possession of the disputed property on the basis of sale deed executed in their favour by defendants of the 2nd set, who are the legal heirs of deceased Mohd. Anas and Mohd. Iliyas, who have certainly inherited a share in the disputed property as per the applicable Hanafi Law. In view of this, no relief of permanent injunction can be granted to the plaintiffs against the true owners of the disputed property, without seeking the efficacious remedy of partition of the disputed property, hence, the plaintiff 's suit is also barred by Section 41(h) of the Specific Relief Act, 1963, in light of the judgment of the Apex Court in ***Padhiyar Prahladji Chenaji*** (supra), ***Ratnagiri Nagar Parishad*** (supra) and ***Sanjay Paliwal*** (supra) .

92. In view of the above analysis, the trial court has not erred in dismissing the plaintiffs suit, which does not warrant any interference from this Court in exercise of its appellate jurisdiction. The appeal is

meritless and is liable to be dismissed at the admission stage under Order 41 Rule 11 CPC.

93. Accordingly, the instant appeal is dismissed at the admission stage. Consequently, the impugned judgment and decree dated 20.1.2026 is affirmed.

Order Date:- 18.03.2026

Jitendra/Himanshu/Mayank

(Sandeep Jain,J.)