



2026 INSC 1085

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No(s). 13004/2026
(Arising out of SLP (C) No. 513/2026)

GOPAL PATHAK

APPELLANT (S)

VERSUS

NITIN ALIAS PAPPU & ANR.

R-1: NITIN ALIAS PAPPU

R-2: OMPRAKASH

RESPONDENT (S)

O R D E R

Heard Ms. Neelakshi Bhadauria, learned counsel for the appellant and Ms. Tanya Raizada, learned counsel for the respondents.

2. Leave granted.

3. The challenge in the appeal is to the order dated 27.10.2025 passed by the High Court of Madhya Pradesh at Gwalior in M.P. No. 5813/2025, by which the High Court has overturned the decision of the Trial Court. It is pertinent to note that the Trial Court had rejected the prayer of the respondents-tenant for sending the "Will" in question to the handwriting expert on the ground that it

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competent to take a call on the same. However, the High Court, by the impugned order, has held that sending the "Will" in question to the handwriting expert is 'essential' for determining the

genuineness of the same.

4. Learned counsel for the appellant contends that the High Court failed to appreciate that the Second Sale Deed dated 20.10.1981 expressly records that the father of the respondents was a tenant. He emphasises that the respondents have admitted the said second sale deed dated 20.10.1981 in their application under Section 39 of Bharatiya Sakshya Adhiniyam, 2023. He contends that the respondents cannot be permitted to simultaneously rely upon and repudiate the same document.

5. He points out that the application for expert opinion was filed by the respondents four years after trial proceedings commenced in 2020 and after recording of petitioner's and respondents' evidence. He contends that permitting an expert examination at this stage would reopen the entire evidentiary process.

6. He submits that the approach of the High Court is erroneous as it is the discretion of the Court whether to decide the matter itself, or for assistance, send it to an expert and to take a final call based on the opinion.

7. Per contra, learned counsel for the respondent submits that the "Will" was not a genuine document and thus the only remedy left to the respondents was to make a request to the Court for sending it to a handwriting expert for comparison, which has rightly been upheld by the High Court. Learned counsel relied on a decision of this Court in the case of *Thiruvengada Pillai v. Navaneethammal &*

Anr. (2008) 4 SCC 530, the relevant portion being at paragraph No. 16, to contend that where there is a dispute with regard to handwriting/signature/finger impression, the opinion or finding by the Court could be hazardous and risky and therefore the matter should be sent to an expert.

8. We have heard the parties at length. The short point involved is whether it would be 'essential', as has been held by the High Court, to send the document to obtain expert opinion under Section 39 of the Bharatiya Sakshya Adhiniyam, 2023 for determining the genuineness of the Will or whether the same can be ascertained by comparison in accordance with Section 72 of Bharatiya Sakshya Adhiniyam, 2023, which is reproduced hereinbelow:

72. Comparison of signature, writing or seal with others admitted or proved.

(1) In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.

(2) The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

(3) This section applies also, with any necessary modifications, to finger impressions.

9. Having considered the matter, we find that the impugned order cannot be sustained.

10. This Court is of the view that the law gives discretion to the Court concerned to form an opinion as to whether it would itself compare the signatures on its own or seek an expert opinion.

11. This Court is further of the view that it is the duty of the Court to compare the signature or writing and come to its own

conclusion and the same cannot be avoided by recourse to a statement that the Court is not an expert. In fact, the evidence of an expert is only an opinion which is not binding on the Court. Consequently, the finding of the High Court that obtaining expert opinion under Section 39 of the Bhartiya Sakshya Adhiniyam, 2023 is essential for determining the genuineness of the Will is untenable in law. However, the Court has full discretion to seek expert opinion like where it has any doubt or the writing/impression is smudgy, vague or very light.

12. Furthermore, what was disputed and compared in *Thiruvengada Pillai v. Navaneethammal & Anr. (2008) 4 SCC 530*, was a finger impression and not a handwriting or signature. This Court is therefore of the view that the observation of this Court at paragraph no. 16 of judgment in *Thiruvengada Pillai v. Navaneethammal & Anr. (2008) 4 SCC 530* cannot be read to mean that it is essential to examine an expert witness in all cases which involve a disputed handwriting/signature/finger impression.

13. We find no infirmity in the view taken by the Trial Court. Further, what is ultimately held by the Trial Court is always amenable to further challenge by the party aggrieved.

14. Accordingly, on a short point as discussed above, the appeal is allowed. The order impugned is set aside. The order of the Trial Court dated 06.10.2025 passed by the 12th Civil Judge, Junior Division, District Gwalior in RCSA No. 577A/2020 stands restored. However, the Court observes that the matter being one of eviction,

the same be expedited and taken to its logical conclusion expeditiously in accordance with law.

15. Pending applications, if any, stand disposed of.

.....J.
(AHSANUDDIN AMANULLAH)

.....J.
(MANMOHAN)

NEW DELHI
SEPTEMBER 18th, 2026

ITEM NO.25

COURT NO.8

SECTION III

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

PETITION FOR SPECIAL LEAVE TO APPEAL (C) NO.513/2026

[Arising out of impugned final judgment and order dated 27-10-2025 in MP No.5813/2025 passed by the High Court of Madhya Pradesh at Gwalior]

GOPAL PATHAK

Appellant(s)

VERSUS

NITIN ALIAS PAPPU & ANR.

Respondent(s)

IA No. 3863/2026 - EXEMPTION FROM FILING O.T.

Date: 18-09-2026 This matter was called for hearing today.

CORAM: HON'BLE MR. JUSTICE AHSANUDDIN AMANULLAH
HON'BLE MR. JUSTICE MANMOHAN

For Appellant(s) : Ms. Neelakshi Bhadauria, Adv.
Mr. Sarthak Karol, Adv.
Ms. Akriti Chaubey, AOR
Mr. Shashank Sharma, Adv.
Ms. Tanishka Pawar, Adv.
Mr. Darshan Sejwal, Adv.

For Respondent(s) : Ms. Tanya Raizada, AoR

O R D E R

Heard Ms. Neelakshi Bhadauria, learned counsel for the appellant and Ms. Tanya Raizada, learned counsel for the respondents.

2. Leave granted.

3. The appeal is allowed in terms of the reportable signed order which is placed on the file.

4. Pending applications, if any, stand disposed of

(SACHIN KUMAR SRIVASTAVA)
COURT MASTER (SH)

(ANJALI PANWAR)
ASSISTANT REGISTRAR