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THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 21.03.2012

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FAO(OS) 124/2012

ANIL JOLLY

..... APPELLANT

Vs

STATE & ORS.

..... RESPONDENTS

Advocates who appeared in this case:

For the Appellant: Mr Raman Kapur, Sr. Adv. with Mr Dhiraj Sachdeva & Mr Aviral Tiwari, Advocates.

For the Respondents: Nemo.

CORAM :-

HON'BLE MR JUSTICE SANJAY KISHAN KAUL

HON'BLE MR JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

CM No. 5184/2012 (Exemption)

Allowed subject to just exceptions.

FAO(OS) No. 124/2012 & CM No. 5183/2012 (Stay)

1. This is an appeal directed against a judgment of the learned single Judge dated 22.02.2012, whereby probate has been granted qua Will (Ex. PW1/1) dated 05.02.1991 executed by late Sh. Brij Bhushan Jolly in favour of respondent no. 2. Since it is a substantive appeal against a final judgment, we had called for the original record filed before the learned Single Judge. In support of the appeal, submissions were advanced by Mr Raman Kapur, Sr. Advocate, instructed by Mr Dhiraj Sachdeva. Before we deal with the submissions of Mr Raman Kapur, it may be relevant to sketch out background facts and circumstances, which gave rise to the original probate proceedings.

FACTS

2. It appears that late Sh. Brij Bhushan Jolly had purchased a plot bearing No. J-38 situate at South Extension Part-I, New Delhi (hereinafter referred to as the South Extension property). On the said plot, construction was carried out. The super structure consisted of the ground, first and barsati floors. The first floor was sold in 1984 to one Sh. O.P. Hasija, while the barsati floor was sold in 1989, to one Mrs Mala Sehgal.

3. It is not in dispute that the appellant had filed a partition suit in which late Sh. Brij Bhushan Jolly, i.e., father was arrayed as a party. Evidently proceedings were also initiated by the father, i.e, late Sh. Brij Bhushan Jolly, against the appellant. The inter se proceedings culminated in a compromise deed dated 06.01.1989 (Mark A) (in short the Compromise Deed) being executed between the appellant and late Sh. Brij Bhushan Jolly. By virtue of the said compromise deed, both the appellant as well as late Sh. Brij Bhushan Jolly agreed: (i) to withdraw civil and criminal proceedings filed against each other; (ii) that the appellant or his legal heirs will have no claim over the movable or immovable property of late Sh. Brij Bhushan Jolly; (iii) similarly, late Sh. Brij Bhushan Jolly or his legal heirs would have no claim over the movable or immovable property of the appellant; and (iv) lastly, the appellant agreed to hand over vacant possession of the second floor of the super structure built in the South Extension property. There was also a declaration made to the effect that what was included in the compromise deed were “*self-acquired property/ies*” of late Sh. Brij Bhushan Jolly.

3.1 The impugned Will (Ex. PW1/1) was executed by late Sh. Brij Bhushan Jolly, on 05.02.1991. The Will (Ex. PW1/1) has been attested by respondent no. 3, (the sister of the appellant) and one Sh. A.K. Bajpai, an advocate, who apparently was also instrumental in helping late Sh. Brij Bhushan Jolly in drafting the Will.

3.2 Importantly, in paragraphs 3 and 7 of the Will (Ex. PW1/1) the executant, i.e., late Sh. Brij Bhushan Jolly has set out reasons for disinheriting the appellant, and what compelled him to sell the second floor (i.e., the barsati floor) of the South Extension property. We propose to address this aspect of the matter in the latter part of our judgment.

3.3 The executant of the Will died on 21.01.1995. Consequently, a petition under Section 276 of the Indian Succession Act, 1995 was instituted in this Court by respondent no. 2 alongwith Smt. Nirmal Jolly, the wife of the executant and the mother of the appellant, respondent nos. 2 and 3. These proceedings were registered as Testamentary Case No. 21/1995. The details of the estate owned by late Sh. Brij Bhushan Jolly were set out in schedule 'A' of the petition. The particulars as set out in Schedule 'A' are as follows:

S. No.	Particulars	Amount
1.	Immovable property bearing No. J-38, New Delhi South Extension Part – I, New Delhi	Rs.10,00,000/-
2.	Movable property	Nil/- ”

3.4 In the aforementioned petition the details of the legal heirs of late Sh. Brij Bhushan Jolly, other than petitioners, were set out in paragraph 2, which included the appellant, respondent no. 3 and the third son of late Sh. Brij Bhushan Jolly, i.e., one Rakesh Jolly.

3.5 The appellant filed his objections in the form of a written statement to the petition. Upon completion of pleadings, the court was pleased to frame the following issues in the testamentary case:

- “(i) Whether the Testatrix at the relevant time was mentally infirm and was not at all in a disposing state of mind?
- (ii) Whether the Will dated 05.02.1991 is a forged document?
- (iii) Relief and Costs.”

3.6 Thereafter the matter proceeded to trial. On evidence being recorded, the learned Single Judge heard the matter and passed the impugned judgment. By virtue of the impugned judgment probate was granted in favour of respondent no. 2, being the only other beneficiary under the impugned Will (Ex. PW1/1) in respect of the estate of late Sh. Brij Bhushan Jolly, as in the meanwhile, the mother Smt. Nirmal Jolly had expired.

4. Being aggrieved the instant appeal has been filed.

SUBMISSIONS OF COUNSEL

5. Before us Mr Raman Kapur confined his submissions to two aspects even though several grounds are set out in the appeal :-

5.1 The first submission of Mr Kapur was that the learned Single Judge had erred in appreciating the testimony of the propounder of the Will, i.e., respondent no. 2 (PW4) when seen in the light of the testimony of the two attesting witnesses, i.e., Sh. A.K. Bajpai, Advocate (PW3) and respondent no. 3 (PW1). It was Mr Kapur's submission that a perusal the testimony of respondent no. 2 (PW4) would show that while he deposed that the Will (Ex. PW1/1) was executed at the house of late Sh. Brij Bhushan Jolly, the attesting witnesses seem to suggest that the Will (Ex. PW1/1) was executed in the office of the advocate Sh. A.K. Bajpai (PW3). This aspect was sought to be supported by relying upon the testimony of the sister, i.e., respondent no. 3 (PW1). It was thus the submission of the learned senior counsel that this by itself would suggest that the impugned Will (Ex. PW1/1) was a fabricated document.

5.2 The other submission of Mr Kapur was that at the time of execution of the Will (Ex. PW1/1) the testator, i.e., late Sh. Brij Bhushan Jolly was not of a "sound disposing mind". For this purpose Mr Kapur sought to rely upon the testimony of Sh. B.N. Srivastava (RW2) a handwriting expert. It was Mr

Kapur's submission that as a matter of fact the appellant had all along attempted to save the properties of late Sh. Brij Bhushan Jolly, which included the South Extension property. It was the learned senior counsel's contention that proceedings which were filed against late Sh. Brij Bhushan Jolly, were a step in that direction. To buttress this submission Mr Kapur drew out attention to the aforementioned compromise deed. It was Mr Kapur's submission that the appellant virtually walked out of the South Extension property without claiming any compensation in lieu of the same as he had always the interest of his late father in his mind.

REASONS

6. Having heard the learned senior counsel for the appellant and perused the original record, in our view, the following quite clearly emerges from the record:

6.1 The impugned Will (Ex. PW1/1) bore the signature of two attesting witnesses, i.e., respondent no. 3 (PW1) and A.K. Bajpai (PW3). Respondent no. 3 (PW1) in her testimony quite clearly stated that she had appended her signatures on the Will (Ex. PW1/1) in her capacity as the attesting witness. She has also deposed that late Sh. Brij Bhushan Jolly had signed all five pages of the Will (Ex. PW1/1) and more particularly he was "***hale and hearty and in the best of his health***" when he executed the Will. Respondent no. 3 (PW1) quite categorically stated in her deposition that the executant had signed the Will (Ex. PW1/1) in her presence. She went on to say that she in turn had signed the Will (Ex. PW1/1) in the presence of the executant, the father, and that the other attesting witness, i.e., Sh. A.K. Bajpai (PW3) had signed the Will (Ex. PW1/1) in her presence and that of the executant. A suggestion was made to respondent no. 3 (PW1) that the executant had suffered a paralytic attack in 1989 because of which he was suffering for paralysis on the date of the execution of the impugned Will, i.e., 05.02.1991. This suggestion was roundly

denied by respondent no. 3 (PW1). In particular, respondent no. 3 (PW1) denied the suggestion in the cross-examination that the executant was unable to move out of his bed, in 1991. The suggestion to the effect that the father had died intestate was also emphatically denied.

6.2 On the aspect as to who drafted the impugned Will (Ex. PW1/1) and where exactly the Will (Ex. PW1/1) was prepared, Mr Kapur relied upon the following portion of the testimony of respondent no. 3 (PW1):

“My father instructed his lawyer A.K. Bajpai to draft the Will. I was present when the instructions were given to the lawyer. I cannot give the date when the instructions were given. The instructions were given at my father’s residence, that is, J-38, New Delhi South Extension Part – I, New Delhi. I cannot say what was the time when the instructions were given. I do not remember if there was anybody else at the time the instructions were given. I do not know who typed the Will. I do not know how many days prior to its execution the Will was drafted.”

6.3 In so far as the other attesting witness was concerned, i.e., Sh. A.K. Bajpai (PW3), he supported the testimony of respondent no. 3 (PW1). PW3 adverted to the fact that the impugned Will (Ex. PW1/1) was signed by late Sh. Brij Bhushan Jolly in the office of the Sub-Registrar, Asaf Ali Road, New Delhi, when he alongwith respondent no.3 (PW-1) were also present. The witness also went on to state that he had appended his signatures on the impugned Will (Ex. PW1/1) as an attesting witness. PW3, further deposed that the Will (Ex. PW1/1) was drafted on the instructions of late Sh. Brij Bhushan Jolly and that it was typed in his office. The suggestion made to the contrary was repelled by PW3. The said witness (PW3) also testified that respondent no. 3 (PW1), the other attesting witness, had appended her signatures on the Will (Ex. PW1/1) in his presence. The witness (PW3), however, accepted the fact that the testamentary case was instituted by him, to begin with, and that he had later on withdrawn his Power of Attorney as the counsel for the petitioners

in the said testamentary case. The PW3, also repelled the suggestion that at the point in time when the Will (Ex. PW1/1) was prepared in his office late Sh. Brij Bhushan Jolly was not present. Suggestions to the effect that late Sh. Brij Bhushan Jolly was not in good health or in a sound state of mind at the time of executing the Will (Ex. PW1/1) or at the time of its registration was also repelled.

6.4 The propounders of the Will (Ex. PW1/1) also examined Sh. L.S. Rawat (PW2), who at the relevant time was working as an upper division clerk in the office of the Sub-Registrar, New Delhi. The said witness proved the fact that the Will (Ex. PW1/1) was registered based on the record available with the office of the Sub-Registrar.

6.5 In so far as respondent no. 2 (PW4) is concerned, he in his examination-in-chief which was carried out by way of submission of an affidavit more or less replicated what had been stated in the petition. The said affidavit was formally tendered as evidence on 01.11.2006 and marked as exhibit PW4/A. In the cross-examination, PW4, repelled the suggestion that his father was suffering from any heart ailment or was diabetic. PW4 testified that he along with his mother and father were residing on the ground floor of the South Extension property and that after the death of his father, late Sh. Brij Bhushan Jolly, he along with his mother, continued to reside in the said portion of the property. The witness (PW4), also adverted to the fact that on the date of execution of the Will (Ex. PW1/1), he was residing in the South Extension property but was not present in the house. PW4, however, repelled the suggestion that the impugned Will (Ex. PW1/1) was forged. It was the say of PW4 that he became aware of the impugned Will (Ex. PW1/1) only after the death of his father upon being informed in respect of the same, by his mother.

6.6 As indicated above, what interested Mr Kapur is the following portion of the testimony of PW4, which we have briefly paraphrased above:

“....I was residing in the property on the date of execution of the Will Ex. PW1/1 but I was not present in the house at the moment it was executed.”

6.7 As against this, the appellant examined himself as a witness and filed his examination-in-chief also by way of an affidavit. The appellant (RW1) reiterated his assertions which were broadly as follows: (i) that the will was forged; (ii) the executant of the impugned Will had died intestate; (iii) the executant was incapacitated since 1989 uptill his death on 21.01.1995; (iv) that late Sh. Brij Bhushan Jolly had sold a portion of the property to help respondent no. 2 in his business; (v) that since the executant late Sh. Brij Bhushan Jolly was residing with respondent no. 2 and was incapacitated, he had taken undue advantage of this situation, and thus, got the impugned Will executed; (vi) and lastly, that since late Sh. Brij Bhushan Jolly had died intestate, the estate of the deceased should enure to the benefit of all legal heirs.

6.8 In his cross-examination, however, the appellant (RW1) accepted the fact that he had started coal business in the name of style of A.J & Co. He, however, refuted the suggestion that his father late Sh. Brij Bhushan Jolly had extended financial help for the said purpose; though he volunteered that his maternal grand father had provided funds for the said purpose. He also stated that since his father had no money the funds were provided by his maternal grand father. The witness (RW1), also accepted the fact that the first floor of the South Extension property was sold in 1984 to one Sh. O.P. Hasija. RW1 accepted the fact that he had filed a civil suit against late Sh. Brij Bhushan Jolly and that it continued for two years; whereupon it was amicably settled. Curiously, RW1 disputed his signatures on the document marked ‘A’, (which is the compromise deed) appended at point ‘X’. This aspect is significant, as in the appeal it is specifically averred by the appellant as follows:

“....A compromise was arrived at vide compromise deed dated 6.1.1989 between appellant and the deceased and both parties withdrew the cases and appellant handed over vacant possession of the second floor, to let deceased sell the same. Appellant did not take a single paise...”

6.9 As a matter of fact arguments were advanced by Mr Kapur to portray the character of the appellant in a gentler light by stressing on the fact that the appellant walked away from the South Extension property without demanding or accepting any compensation in lieu thereof. The suggestions that he had assaulted his parents were denied. RW1, however, accepted the fact that he had moved to the second floor of the South Extension property, in 1984, upon having got married. RW1, however, denied information that late Sh. Brij Bhushan Jolly had taken out a notice which was published in January, 1997 disowning him as the legatee. RW1, however, accepted the fact that he had vacated the South Extension property; albeit in the year 1988. The appellant (RW1), though, denied the suggestion, as indicated above, that he had accepted any recompense in the form of cash and gold in lieu of the same. Quite interestingly, he failed to recollect as to whether he had received a cheque in the sum of Rs 35,000/- from late Sh. Brij Bhushan Jolly at that point in time, that is at the time of his having to vacate the second floor of the South Extension property. The witness (RW1), however, insisted that the said sum of Rs 35,000/- was not given for vacating the second floor of the suit property. The exact deposition on this aspect of the matter being of some importance, is extracted hereinafter:

“I do not remember if a cheque of Rs. 35 thousand was given to me by my father at that time but it was not for vacating the suit property. Volunteered, it may be that cheque is given to me by father for withdrawing the money from the bank if at all, any cheque was given to me by father. It is correct that after I vacating the second floor of the suit property, second floor of the property was sold by my father. Volunteered, it was sold on the same day when I

had vacated the second floor of the suit property.”

7. The appellant (RW1) in his cross-examination reiterated the objections taken in his written statement that late Sh. Brij Bhushan Jolly was suffering from ill health and was bed-ridden; the suggestion that he was in a sound state of mind was repelled. The witness (RW1) alluded to the fact that at the time the impugned Will (Ex. PW1/1) was prepared the executant was not in a sound state of mind. The appellant (RW1) volunteered that the signatures on the Will (Ex. PW1/1) appear as Brij Bhushan Goel, whereas his father went by the name of Brij Bhushan Jolly. The witness (RW1) also repelled the suggestion that a police complaint was filed by his parents.

7.1 In support of his objections, the appellant, as indicated above, had also produced a hand writing expert, one Sh. B.N. Srivastava (RW2). In his examination-in-chief which is filed as affidavit of evidence the witness (RW2) concluded as follows:

“..On the cumulative effect of the reasons stated above, I am of the opinion that signatures of Brij Bhushan Jolly on pages of Will, including signature on the back of 1st page have not been written in the normal course as unnatural inconsistencies are found in the formation of letters, lack of legibility, smoothness of strokes and the writer has written wrong surname and so the signatures have not been written by a person of sound mind...”

7.2 In his cross-examination the witness (RW2), accepted that since he was not a medical practitioner, he could not comment on the mental condition of the executant of the document, i.e., the impugned Will (Ex. PW1/1). The expert witness also accepted in his cross-examination that there are two types of writings – “skilled” and “semi-skilled”; and that semi-skilled handwriting is depicted where letters show lack of good speed, the letters are not clear or not well-formed. The witness also accepted the fact that in a semi-skilled hand writing one may notice stoppages in the formation of the letters and signatures.

Quite significantly, RW2 accepted the fact that semi-skilled hand writing would not necessarily lead to a conclusion that the executant of the document was a person of unsound mind.

7.3 Since much stress has been laid by the appellant on the testimony of the expert witness (RW2) we propose to relevant portion of the said testimony.

“It is wrong to suggest that no microscope has been used by me for examination of the signatures. I am not a medical practitioner. It is correct that I am not clinically (medically) certified to comment upon the mental condition of a person. Volunteered, whenever I find unnatural inconsistencies, difference in spelling, illegibility of the strokes, we consider that the man has not signed in a proper/ sound frame of mind. I am not aware about the facts of the present case. I have not gone through the case file of the present case. I was engaged by the counsel for respondent no. 4. I did not try to find out the age of the person whose signatures have been examined by me. It is wrong to say that handwriting of persons become shaky with advancement of age. Volunteered, it may shake in some cases. The shakiness in the writing occurs due to tremors of old age or any ailment. I have no personal knowledge about the person whose signatures were examined by me.

Q. Is there any authority/references which say that a handwriting expert can comment on the mental condition of a person?

A. I cannot quote any authority in this regard.

It is correct that writing style of making letters of a signature differs from person to person. It is correct that in parlance of handwriting experts there are two types of writings, i.e., skilled and semi skilled. The features of semi skilled handwriting are letters not showing good speed, letters are not clear cut, and sometimes letters are not even well formed, there may be stoppages in the formation of the letters and signatures.

Q. Is it correct that semi skilled handwriting does not mean that the said handwriting is of a person of an unsound mind?

A. Yes, it is correct that semi skilled writing wherever found will not always be of a person of unsound mind.

Q. Is it correct that legibility of the stroke itself does not mean that the person is a lunatic and is of unsound mind?

A. It is a wrong question. A person of sound mind will write legibly.

Q. Is it correct that the a illegible hand writing stroke does not mean that the strokes have been made by the person of unsound mind?

A. The illegibility of strokes may be due to poor health, tremors of old age. It is not possible that in all such cases the illegibility is because of the unsound mind.

Q. Is it correct that signatures of a person does not always connote his name or that the name cannot be identified from the signature?

A. If a man is of unsound mind he has a frame of his signatures in his mind and he will always write similar type of letters and use same words. It may not be possible sometimes to read the name of the individual from the signatures.”

7.4 It is also important to note, on a specific question being put to RW2 as to whether, the six signatures [which were appended obviously on the different pages of the Will (Ex. PW1/1)] were of the same person, RW2 responded by saying that he had made the inter se comparison of the signatures and he could not say with certainty as to whether they were handwriting of the same person. Importantly, a specific suggestion was made to RW2 that none of the signatures could be read as ‘goel’ as adverted to in his report Ex. RW2/1. The RW2, however, denied this suggestion.

8. Having thus perused the testimony of the two attesting witnesses, PW1 and PW3, we have no manner of doubt that late Sh. Brij Bhushan Jolly executed the impugned Will (Ex. PW1/1). The said Will (Ex. PW1/1) has been executed in accordance with law, in as much as, two attesting witnesses have appended their signatures on the Will (Ex. PW1/1) and each of them have deposed to the effect that they have attested the Will (Ex. PW1/1) in the presence of each other, and as also in the presence of the executant. The attesting witnesses have also deposed quite categorically that late Sh. Brij Bhushan Jolly had appended his signatures in their presence. In so far as the legal validity of the impugned Will (Ex. PW1/1) is concerned it is beyond

doubt.

8.1 The argument of Mr Kapur that the execution of the impugned Will (Ex. PW1/1) was made in suspicious circumstances is, in our view, also misconceived. As indicated above, in this regard Mr Kapur had attempted to draw our attention to the testimony of respondent no. 2 (PW4) to demonstrate that he had deposed to the effect that the Will (Ex. PW1/1) was executed at the house, whereas Sh. A.K. Bajpai (PW3) had deposed to the effect that the impugned Will (Ex. PW1/1) was prepared in his office and the signatures were appended on the Will (Ex. PW1/1) in the office of the Sub-Registrar.

8.2. In our view, a close reading of the said portions of testimony of respondent no. 2, which have also been extracted hereinabove by us, does not suggest anything of the sort that Mr Kapur seems to suggest. All that respondent no. 2 (PW4) has stated that, at the time when the Will (Ex. PW1/1) was executed he was residing in the South Extension property. This course of events is not disputed by the appellant as admittedly the appellant vacated the second floor of the south extension property in an around January, 1989. The appellant also does not dispute the fact that both the first floor as well as the second floor of the property were sold. As noticed hereinabove by us, the first floor of the property was sold in 1984 to one Sh. O.P. Hasija, a fact once again not denied by the appellant. Similarly, the second floor was sold in 1989, to one Ms Mala Sehgal, a fact which is also not denied by the appellant. Therefore, the first part of the testimony that on 05.02.1991 the executant, i.e., late Sh. Brij Bhushan Jolly was living with respondent no. 2 was a fact which cannot be denied and emerges clearly from the record. The other part of the testimony based on which Mr Kapur sought to contend that the Will (Ex. PW1/1) was according to the said witness (PW4) executed in the house, is not what emerges from the deposition as, all that respondent no. 2 has stated is that at the time the Will (Ex. PW1/1) was executed, he was not present in the house.

By a convoluted reading of the testimony, Mr Kapur sought to contend that since respondent no. 2(PW4) had indicated in the first part of his testimony (on which reliance was placed) that he was residing in the property on the date of execution of the Will, but was not present in the house at the moment when it was executed is made to appear as if the impugned Will (Ex. PW1/1) was executed at the house and not as deposed by Sh. A.K. Bajpai (PW3) in the office of the Sub-Registrar.

8.3 In support of the said plea, reliance was also placed on the testimony of PW3. We have closely examined the portion of the testimony relied upon by Mr Kapur we are, however unable to come to the conclusion that there is anything in the testimony of PW3 which would suggest that the impugned Will (Ex. PW1/1) was executed at the house, i.e., South Extension property. Therefore, this argument of Mr Kapur, in our view, has no merit, and is thus, rejected.

9. The other submission of Mr Kapur that, the manner in which the signatures of the executant are appended on the Will (Ex. PW1/1) would demonstrate that he was not in a sound disposing mind is not borne out from the record. Mr Kapur, in this regard, had relied upon the testimony of the hand writing expert (RW2). The learned senior counsel also attempted to buttress his submission by having us examine the signatures on the Will (Ex. PW1/1). It was the learned counsel's submission that not only did the signatures appended on each page of the impugned Will (Ex. PW1/1) varied but that the name Brij Bhushan was followed by 'Goel' as against 'Jolly'.

9.1 In order to examine the validity of this argument, we had in the earlier part of our judgment culled out in extenso the testimony of the expert witness (RW2) in great detail. In short the expert witness (RW2) quite categorically accepted the fact that since he was not a medical practitioner, he could not opine clearly as to what was the medical condition of the executant on the date

of execution of the Will (Ex. PW1/1). The opinion of the expert witness was based on the flow of the signatures. As against this, both respondent nos.2 (PW4) and 3 (PW1) have quite clearly stated that the executant was in good health and was in a sound state of mind between 1989 and 1991 and, in particular, on the date of the execution of the impugned Will. We have examined the testimony of the said witness. We find that they are credible and there are no contradictions and inconsistencies in the testimony of the said witnesses. Therefore, we have no difficulty in accepting the testimony of the said witnesses in so far as the mental health of the executant is concerned. This is more so in view of the fact that respondent no. 3 has derived no benefit from the impugned Will.

9.2 We are also not impressed with the argument of Sh. Kapur that the signatures of the executant appear to indicate that the name Brij Bhushan is followed by the surname 'Goel' as against 'Jolly'. Our ocular examination of the Will (Ex. PW1/1) does not lead to this conclusion. The signatures are definitely shaky and show that at the relevant point of time there may have been an element of tremor, which perhaps may have afflicted the executant at that point in time, but then, from this we are not able to conclude that the executant was not in a sound disposing mind at the time when he appended his signatures on the impugned will. As a matter of fact, the compromise deed (marked 'A'), which is a document not denied by the appellant bears the signature of the appellant which is equally depictive of the fact that the executant was perhaps inflicted with same kind of tremor. The manner in which the surname is written on this document is quite similar to that which appears on the impugned will (Ex.PW1/1). This document, that is, the compromise deed by itself has not been impugned by the appellant.

10. Our overall appreciation of the evidence brings us to the conclusion that, contrary to what has been portrayed by the appellant, there were no suspicious

circumstances in the execution of the will. On the other hand the circumstances quite clearly point to the fact that the relations between the appellant and his parents were less than cordial. As a matter of fact the Will (Ex. PW1/1) alludes to the fact that the parents were physically and mentally abused and that the appellant for vacating the second floor of the South Extension property had accepted recompense in the form of cash and gold. Despite, assertion to the contrary, we find it hard to believe that the appellant was a saint who walked away from a valuable property without seeking recompense when he had instituted proceedings against his father (i.e., late Sh. Brij Bhushan Jolly), which were withdrawn only after execution of the compromise deed (mark 'A'). What amazes us is that even though the appellant has accepted the execution of the compromise deed (mark 'A') he has in his cross-examination denied his signature at point 'x' on the very same document. The testimony of the appellant, therefore, leaves us much in doubt as regards its credibility.

11. For the foregoing reasons we find that there is no merit in the appeal and, therefore, it deserves to be dismissed. It is ordered accordingly.

SANJAY KISHAN KAUL,J

RAJIV SHAKDHER, J

MARCH 21, 2012

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