

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO 100/2013**

% **20th March, 2014**

GEETA ROY

.....Appellant

Through: Mr. Ravi Gupta, Sr. Advocate with Mr.
Rajat Joneja, Mr. Manmohan Sharma, Mr. Ajay
Mohan Gupta, Advocates

VERSUS

THE STATE AND ANR.

..... Respondents

Through: Mr. Rajveer Singh, Mr. Gurmit Singh
Hans, Advocates with Mrs. Illa Roy, wife and Ms.
Rajni Roy, daughter of respondent no. 2.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This first appeal is filed under Section 299 of the Indian Succession Act, 1925 challenging the judgment of the probate court dated 15.12.2012 dismissing the probate petition filed by the appellant. By the petition probate was sought of the Will dated 11.1.2007 of Sh. Himanshu Kumar Roy. Sh. Himanshu Kumar Roy was the real brother of the appellant/petitioner as also the respondent no.2/objector. Petitioner

propounded the Will dated 11.1.2007 and contended that the same stands proved in view of the depositions of both the attesting witnesses one Ms. Juthika Roy and Mr. R.S. Rathore. As per the petitioner, the attesting witnesses as also the petitioner have proved the due execution and attestation of the Will Ex.PW2/1 and also the fact that the deceased was in sound disposing mind, and consequently, probate petition ought to have been allowed and not dismissed. It was also the case of the petitioner/appellant that there were no suspicious circumstances as was contended on behalf of the objector.

2. The objector/respondent no.2, and who is also the real brother of the deceased Sh. Himanshu Kumar Roy, filed his written statement/objections and contended that the Will was forged and fabricated document; that the signatures of the deceased Sh. Himanshu Kumar Roy on the Will were pleaded to be forged signatures; the Will was stated to be a collusive document and fabricated by the petitioner in collusion with the two attesting witnesses i.e Dr. Ms. Juthika Roy and Mr. R.S. Rathore; Dr. Ms. Juthika Roy is the ex-wife of respondent no. 2 and was therefore inimical with the respondent no.2/objector; the other attesting witnesses Sh. R. S. Rathore was the paramour of Dr. Ms. Juthika Roy. It was also the case of the

objector/respondent no.2 that the deceased was not in a mentally fit condition because he was suffering from diarrhea and pneumonia for about four days before his death and which aspect is to be taken with the fact that the Will is dated 11.1.2007 and the deceased testator died on the next date i.e 12.1.2007 in the hospital. In sum and substance the respondent no.2/objector contends that the Will is a forged and fabricated document, there are suspicious circumstances and deceased testator was not in a sound disposing mind for executing the subject Will dated 11.1.2007.

3. The probate court has held that the Will in question though is proved as per the case of the petitioner by examination of attesting witnesses, Dr. Ms. Juthika Roy and Mr. R.S. Rathore, however, the probate court has found that the Will is a forged and fabricated document because the signatures on the Will are not the signatures of the deceased testator. The probate court has also held that there are far too many suspicious circumstances with respect to the Will, and therefore, no probate can be granted of the Will, which has been held not to be a valid Will of the deceased testator Sh. Himanshu Kumar Roy.

4. Following are the some of the conclusions given by the probate court for dismissing the probate petition:-

(i) The deceased testator was not of sound disposing mind on 11.1.2007 when the Will is said to have been made. As per the death summary report Ex.RW3/4 as also the deposition of the doctor RW3 Sh. Anil Sharma it was clear that the deceased testator was suffering from fever, cough, chest pain and loose motions accompanied by weakness for the last four days prior to making of the Will. It was not possible for the deceased testator in such sick condition to have accompanied the petitioner and PW2/ Dr. Ms. Juthika Roy (ex-wife of objector) to the house of PW3/Sh. R.S. Rathore for making of the Will.

(ii) The Will was found to be bearing the stamp and seal of a notary Advocate Sh. K.C. Jain and who as RW-2 deposed that the rubber stamp of his name and registration number found on the Will were neither his rubber stamps nor the other stamps showing attestation by himself as notary. This witness RW2 also stated that the Will did not bear his signatures at point Z1 and which were purported to be his signatures. This witness has deposed that someone would have got the stamp prepared and affixed the same on the subject Will. This witness categorically deposed that the subject Will was not notarized by him and the rubber stamp and signatures appearing on it were forged and fabricated.

(iii) One Sh. Sudeep Cecil, Advocate is said to have prepared the Will, however, not only Sh. Sudeep Cecil, Advocate was not examined on behalf of the petitioner as a witness, but there were contradictions in the depositions of PW1 Ms. Geeta Roy/petitioner who deposed in her cross examination that Sh. Sudeep Cecil, Advocate was not present at the time when the Will was made, but the attesting witness Dr. Ms. Juthika Roy in her cross examination said that Sh. Sudeep Cecil, Advocate was present. I may note that no evidence has been led and no reason has been given before the probate court as to why Sh. Sudeep Cecil, Advocate was not summoned to depose on behalf of the appellant/petitioner.

(iv) Whereas the objector/respondent no.2 filed the handwriting expert's report and proved the same as Ex. RW 4/1 through handwriting expert RW4, no expert's report was filed on behalf of the appellant/petitioner to dispute the expert's report Ex.RW4/1.

5. The relevant findings of the court below/probate court are contained in the following portions of the impugned judgment:-

“ISSUE NO.1

Whether the Will dated 11.1.2007 propounded by the petitioner is the duly executed last and final Will of late Shri Himanshu Kumar Roy in sound disposing mind? OPP

'The testator', who, as per the history sheet Ex.RW3/3 and the death summary Ex.RW3/4, was suffering from fever, cough, chest pain, loose motions for the last four days and weakness and low urine output for two days and was admitted in the hospital at 10.30 a.m. on 12.1.07 and died the same day i.e. 12.1.2007 at 9.30 p.m., is said to have executed 'the Subject Will' Ex.PW2/1, a day before his death i.e. 11.1.2007. It is a notarized Will. As per the propounder of the Will i.e. the petitioner, who is the beneficiary under the Will and appeared as PW1, 'the Subject Will' was executed by 'the testator' in her presence and in the presence of the attesting witnesses, who have appeared as PW2 and PW3. Petitioner-PW1 is the sister of 'the testator' and as per her version, 'the testator', who was her elder brother and a bachelor, have been residing together at N-18, Ground Floor, Malviya Nagar, New Delhi, which flat had come in her joint ownership with 'the testator', under a family arrangement arrived at, after the demise of their parents. Also, as per the version of petitioner-PW1 in her deposition by way of affidavit Ex.P1, 'the testator' had cut off all his relationships with the respondent no.2 way back in 1985 and that, the petitioner and 'the testator' lived and ate together till the demise of 'the testator'. 'The Subject Will' has however, come to be executed only a day before the death of 'the testator', in the condition above-said. As regards the execution of 'the Subject Will', PW1 in her deposition by way of affidavit Ex.P1, has deposed that on 11.1.2007, 'the testator' had expressed his desire to execute the Will and that, the Will dated 11.1.2007, was prepared by Sh. Sudeep Cecil, Advocate under the instructions of 'the testator' and was read over to 'the testator'. Sh. Sudeep Cecil, Adv., who, as per the deposition of PW1, prepared 'the Subject Will' on the instructions of 'the testator', for the reasons unexplained, is however, neither examined by the petitioner nor 'the Subject Will' records anything for 'the Subject Will' having been either prepared or having been read over to 'the testator' by Sh. Sudeep Cecil, Adv. Be that as it may, as per the deposition of the petitioner-PW1, a day before his death, 'the testator' expressed the desire to execute a Will and on the same day, the

Will came to be prepared by the Advocate, under the instructions of 'the testator'. It is a computer generated print out. Where was it so generated? During cross, PW1 says that 'the Subject Will' was typed in the house of Sh.R.S. Rathore, who is none else but an attesting witness to 'the Subject Will'. Did the Advocate Sudeep Cecil accompany 'the testator' and the petitioner to the house of the said attesting witness R.S. Rathore and there, on the instructions of 'the testator', he prepared the Will at the house of said attesting witness R.S. Rathore, neither the petitioner-PW1 nor the attesting witnesses have deposed so. The attesting witness PW2, who is the divorced wife of the objector/respondent no. 2, in her deposition by way of affidavit, as regards the execution of 'the Subject Will', has deposed as under :

“4. I say that on 11.1.2007, when I had gone to visit the Deceased Testator and the Petitioner, the Deceased Testator expressed his willingness to execute a Will in respect of his immovable and movable properties. Thereafter, I took the deceased testator and the Petitioner to the house of Mr. R.S. Rathore, the other attesting witness to the Will, where the Deceased Testator signed the Will in my presence and in the presence of Mr. R.S. Rathore.

5. I further say that I and Mr. R.S. Rathore in turn signed the Will as witnesses in the presence of the Deceased Testator and in the presence of each other. I identify the signatures of the Deceased Testator on the Will at point 'A' as he signed in my presence and I also identify the signatures of Mr. R.S. Rathore at point “B”, who signed the Will as a witness.”

The above-said deposition, no way even suggests that when PC-43/07 Page 19/26 the attesting witness PW2 accompanied 'the testator' and the petitioner to the house of the other attesting witness PW3 Sh. R.S. Rathore, Sh.Sudeep Cecil, Adv. had accompanied them nor does the petitioner-PW1 or the other attesting witness PW3, have deposed so. Who then called for

Sh.Sudeep Cecil, Adv. and where did he arrive and as to whether 'the Subject Will' was prepared by said Sh. Sudeep Cecil, Adv. on the instructions of 'the testator', there is no worthwhile evidence. Suffice to say, neither the attesting witness PW2 nor the other attesting witness PW3 have deposed for 'the Subject Will' having been drafted and/or read over by Sh. Sudeep Cecil, Adv. to 'the testator', in their presence. Then, PW2 and PW3, have only deposed for 'the Subject Will' having been executed by 'the testator' in their presence. In their depositions, there is not even an iota of any reference that at the time of such execution, either the petitioner or Sh. Sudeep Cecil, Adv. was present there. Interestingly, the attesting witness PW3 in his deposition by way of affidavit Ex.P3, as regards the execution of 'the Subject Will', has deposed as under :

“3. I say that on 11.01.2007, Deceased Testator, the Petitioner and Dr. Mrs. Juthika Roy came to my house when Dr. Mrs. Juthika Roy told me that the Deceased Testator had expressed his willingness to execute a Will PC-43/07 Page 20/26 in respect of his immovable and movable properties. Dr. Juthika Roy and the Deceased Testator requested me to be a witness to the Will of the Deceased Testator, pursuant to which the deceased Testator signed the Will in my presence and in the presence of Dr. Mrs. Juthika Roy.

4. I further say that I and Dr. Mrs. Juthika Roy in turn signed the Will as witnesses in the presence of the Deceased Testator and in the presence of each other. I identify the signatures of the Deceased Testator on the Will at Point 'A' as he signed in my presence and I also identify the signatures of Dr. Mrs. Juthika Roy at Point 'C', who signed the Will as a witness.”

As per the above-said deposition of the attesting witness PW3, 'the testator' had accompanied the other attesting witness PW2 to his house and both of them had simply requested him to be a witness to the Will of 'the testator'. In other words, till the time, both 'the testator' and the other attesting witness, reached the house of PW3, PW3 was not even aware of the purpose of

their visit to his house. During cross, PW3 has then also
deposed that the Will was only printed at his house. In
other words, 'the testator' had not given any instructions to the
Advocate either in his presence or at his instance. Deposition
of PW3 as such, is only to the effect that 'the testator'
accompanied with the other attesting witness PW2 had come to
his house and there, at his house, 'the Subject Will' was printed
and there, 'the testator' signed and executed 'the Subject Will'
in each others' presence. Let it be so. PW3 has signed
'the Subject Will' as an attesting witness. Was he a person,
with whom 'the testator' was having any friendly terms
so that 'the testator' would repose full confidence in him
for the purpose? Said PW3 during cross, on this vital aspect,
on a suggestion, deposed that he did not know 'the
testator', only to depose again, that he knew 'the testator' since
the year 1980 and that, 'the testator' had visited his
house on one or two occasions. Let the improved version
of PW3 be taken to be true, but, the fact that during the period
from 1980 till the purported execution of the Will in July, 2011
i.e. in a period of almost 31 years, 'the testator' visited him only
on one or two occasions, by itself, is indicative of the fact that
'the testator' was not having any close acquaintance much less
being on any friendly terms. Cross of PW3, only goes to show
that he was a better acquaintance of the other attesting witness
PW2, who was a Doctor and the Medical In-charge of CGHS
dispensary, of which PW3 was a beneficiary. During cross,
PW3 has deposed that he knew the other attesting witness PW2
since the year 1977, but then, also went on to deny the
suggestion that he knew her husband Sh.A.K. Roy.
Interestingly, said A.K. Roy is none else, but, the divorced
husband of the other attesting witness PW2. Is it not then to be
taken that PW3 joined to sign as a witness to 'the Subject Will'
only at the instance of PW2 and not at the instance of
'the testator'? All circumstances suggest that only.
Estranged wife of objector/respondent no.2, wishing ill of him
and being instrumental in the preparation of 'the Subject Will',
therefore, can not be ruled out. Be that as it may, in the given
facts and circumstances, in my considered view, PW2 cannot be

said to be an independent witness to 'the Subject Will'. So, would follow for PW3.

'The Subject Will' is having the photograph of 'the testator' affixed on it and is also notarized. Attesting witness PW2 during cross, has deposed that 'the Subject Will' was not notarized in her presence, whereas, PW3 during cross, has deposed that photograph of the deceased was not pasted on 'the Subject Will' at the time of signing of the Will, whereas, during cross, he has also deposed that he could not say, as to when, was the Will notarized. As per their such depositions, 'the Subject Will' was neither having the photograph of 'the testator' affixed on it nor was it notarized at the time of its execution. Notarization is by the affixation of seals in the name of K.C. Jain, Notary Public. Sh. K.C. Jain, Adv. has appeared as RW2 and has categorically deposed that 'the Subject Will' does not bear either his seals or his signatures. In other words, the rubber stamps and his signatures appearing on the Will are forged and fabricated. The petitioner, who is the propounder of 'the Subject Will' on her part has utterly failed to explain due notarisation of 'the Subject Will' or belie the testimony of RW3. It is thus, well established that 'the Subject Will' is fudged.

As per the depositions of the attesting witnesses, as also the petitioner-PW1, 'the Subject Will' came to be executed around 4.30/5.00 p.m. on 11.1.2007. 'The testator' died the very next day i.e. 12.1.2007, having been admitted in the hospital at about 10.30 a.m. As said earlier, 'the testator' was admitted in the hospital with the history of fever, cough, chest pain, loose motions for the last four days and weakness and low urine output for two days. In such sick condition, 'the testator' having accompanied the petitioner and PW2, who is none else, but, the divorced wife of the objector-respondent no. 2, to the house of PW3, who is in fact an acquaintance of PW2 rather than 'the testator' and having executed 'the Subject Will', in my considered view, is shrouded by serious suspicion, for its due execution in a sound disposition of mind by 'the testator'. Here, it is also worthwhile to note that none of the attesting

witnesses PW2 and PW3 have deposed for 'the Subject Will', which, as per the deposition of petitioner-PW1, was prepared by Sh. Sudeep Cecil, Advocate, having been signed by 'the testator', on reading its contents, implying thereby, having understood its contents. There is thus, no cogent evidence on record that the testator signed 'the Subject Will', having read and understood its contents.

The handwriting expert RW4 proving his report Ex.RW4/1, has also opined that the signature on 'the Subject Will' not tallying with the admitted signatures of 'the testator'. To rebut such opinion, the petitioner has not led any cogent evidence. In the written submissions filed, though it is submitted that the signatures on the Will are compared with the signature on a complete blank cheque, without date and amount and that, it also does not mention as to who has issued it, there is nothing on record, much less a suggestion, that RW4 did not make comparison with admitted signatures of 'the testator'. Mere contention raised to the contrary is therefore, of no avail to the petitioner. In totality of the given facts and circumstances, I am of the considered view that the petitioner has miserably failed to prove that 'the Subject Will' was signed and executed by 'the testator' in his sound disposition of mind. Consequently, the issue in hand is answered in the negative.” (underlining added)

6. I completely agree with the aforesaid findings and conclusions of the probate court inasmuch as the facts as having emerged on record show that the propounded Will is a forged and fabricated document which does not bear the signatures of the deceased testator. Also, there are more than enough suspicious circumstances or unnatural circumstances as have been found by the probate court that propounded for holding that the Will is not a valid Will of the deceased testator. Also, the probate court has rightly come

to a finding that the deceased testator was not in a sound disposing mind to execute a Will on 11.1.2007. I have already stated in the earlier para 4 of this judgment the conclusions which have been given by the trial court and I reiterate the same without reproducing them herein to avoid repetition.

7. In addition to the conclusions of the probate court, I would also like to add the following additional conclusions which show that the probate petition has been rightly dismissed:-

(i) No reason has been given by the petitioner and nor have any of the witnesses who have deposed on her behalf, as to why Sh. Sudeep Cecil, Advocate, and who was really a crucial witness, was not brought into the witness box. Obviously, Sh. Sudeep Cecil, Advocate was not brought in the witness box, because he would have been guilty of perjury by deposing and consequence of which would have been well known to him as he was an Advocate. It is also very much possible that Sh. Sudeep Cecil, Advocate knew that he could not stand the test of his own cross examination with respect to his deposition of the propounded Will and hence refused to appear.

(ii) Petitioner's witnesses have sought to fill in the lacunae with respect to the petitioner deposing that Sh. Sudeep Cecil, Adv. was not present at the

time when the Will was executed and attested on 11.1.2007, by getting it so said by the subsequent witness PW-2 Dr. Ms. Juthika Roy, and this contradiction becomes material indeed to show that actually the propounded Will is not a valid Will.

(iii) The doctor RW-3 Mr. Anil Sharma who deposed on behalf of the objector in answer to a specific question as to whether the deceased testator was critical on 12.1.2007 i.e. next day after making of the Will, stated that the deceased testator was indeed in a critical condition.

(iv) Admittedly, the deceased testator was living with the petitioner for about 20 years, and in this huge period, he never made any Will in favour of the petitioner. If the deceased testator really wanted to make a Will in favour of the petitioner, he could have well done so in this very very long period.

(iv) An attesting witness is a person who has to be trusted by the testator however, petitioner-appellant has not led any evidence as to how the ex-wife of the objector Dr. Ms. Juthika Roy and Sh R.S. Rathore who is said to be her paramour were so much trusted by the deceased testator for becoming attesting witnesses to the Will. In fact, Dr. Ms. Juthika Roy deposed that she

had not come on being called by the deceased testator for attesting of the Will but she was only casually present.

8. Learned senior counsel for the petitioner firstly argued that the probate petition should have been allowed inasmuch as the Will Ex.PW2/1 stands proved by the depositions of both the attesting witnesses and whose depositions satisfy the requirements of Section 63 of the Indian Succession Act, 1925. This argument urged on behalf of the appellant/petitioner is misconceived because a court is not bound to necessarily believe persons who deposed by stating that they are attesting witnesses. Merely because, the deposition satisfy the requirements of Section 63, cannot mean that it should automatically thereafter be held that there was a valid Will. Courts would still have to examine that whether at all the Will was duly executed and attested and whether the attesting witnesses are really genuine attesting witnesses to a valid Will. In the present case, I have already reproduced the relevant observations/findings/conclusions of the probate court and which rightly show that the Will was forged and fabricated because it did not bear the signatures of the deceased testator and also that the depositions of the attesting witnesses cannot be believed in the facts of the present case where there are too many suspicious circumstances/unnatural circumstances. Also,

even assuming that there is proved execution and attestation of the Will, it was necessary to prove that the testator was mentally and physically capable, and in proving this, the appellant-petitioner has miserably failed because RW-3 Dr. Anil Sharma has proved that the deceased was not in such a physical condition so as to travel out of his home for making of the Will at least for 4 days prior to the death of the testator on 12.1.2007 and was in a critical condition when we came to the hospital on 12.1.2007. Instead of repeating the conclusions of the trial court, I reiterate the same and which have already been reproduced above, and it is accordingly held that neither there is due execution and attestation of the propounded Will and nor was the testator of sound disposing mind for making of the Will.

9. The second argument which is raised on behalf of the appellant is that the probate court has erred in unnecessarily stressing the aspect that Sh. Sudeep Cecil, Adv. ought to have been brought into the witness box. In my opinion, the probate court was fully justified in the facts of the present case, where there was a huge role of Sh. Sudeep Cecil, Adv. towards drafting of the Will, preparing the final print of the Will not in his office but at the residence of the attesting witness who was present at the time of making of the Will, and after the Will having been executed and attested to have taken

the same in his possession, as per cross-examination of the petitioner as PW-1 allegedly for completion of certain formalities. As already otherwise stated in this judgment, no reason whatsoever has been proffered on behalf of the appellant, as to why Sh. Sudeep Cecil, Adv. was not summoned in the witness box for deposing as regards the important role he played for preparing the Will and being present when the same was being executed and attested. Probate court has therefore rightly drawn adverse conclusion against the appellant for not bringing Sh. Sudeep Cecil, Adv. into the witness box.

10. The third argument urged on behalf of the appellant was that the deceased testator was of a sound disposing mind and it should have been so held by the probate court because of the depositions of the appellant-petitioner and the attesting witnesses. It is also argued that Dr. Anil Sharma is RW-3 had stated that when the deceased testator was admitted in the hospital, he was conscious and fit to give statement, and therefore it should be held that the deceased testator was of sound disposing mind one day earlier on 11.1.2007 when the Will was made. This argument also is without any merit because when the entire statement of Dr. Anil Sharma, RW-3 is read, the said deposition makes it more than abundantly clear that the

deceased testator for 4 days prior to his death on 12.1.2007 was suffering from acute diarrhea, internal bleeding and other ailments which put the deceased testator in such a physical and mental condition that it was impossible for him to have executed the Will and/or understand the contents of the Will. Also, once the movements of the testator was restricted because of his physical health, there did not arise any question of the testator having gone out of his house and made the Will at the house of Mr. R.S.Rathore/one of the attesting witnesses.

11. It was next argued on behalf of the appellant that handwriting expert's report, Ex.RW4/1 should not be believed because the handwriting expert had only compared the signatures on the Will of the deceased testator with the photocopy of a cheque. This argument which is urged on the basis of a stray line in the deposition of the expert RW-4 is a misconceived argument because in the deposition this witness RW-4 no doubt states that Ex. RW-4/1 is a notarized photocopy of the cheque but this reference is to the photocopy of the cheque attached with the report, and this witness in the very next line has clarified that he had seen the original cheque at the time of preparing of report and taking of photographs. This argument is therefore without any basis and is accordingly rejected.

12. Learned senior counsel for the appellant, then argued that the probate court has wrongly held that there are inconsistencies in the statement of the witnesses, and which have been considered by the probate court to hold that suspicious circumstances exist, however, the probate court could not have done so because suspicious circumstances according to learned senior counsel for the appellant should have been at the time of making of the Will and not at the time of deposition of the witnesses. I have very frankly failed to understand this argument because the deposition of the witnesses are obviously on a subsequent date of their depositions, but they refer to the facts and events as on the date of making of the Will. The probate court has also referred to the inconsistencies in the statements not only to show that unnatural circumstances existed at the time of making of the Will, but also that the deposition of the witnesses of the appellant-petitioner show that they lack credibility because of very vital contradictions made. Therefore, I do not find anything unusual or illegal for the probate court to draw conclusions of existence of suspicious circumstances on account of contradictions in the depositions of the witnesses. One such important contradiction I have already stated above is that PW-1/petitioner/appellant did not state that Sh. Sudeep Cecil, Adv. was present when the Will was executed in the house of Mr. Rathore, but realizing the error the lacunae was sought to be filled in by

making of such a statement by PW-2/ Dr. Ms. Juthika Roy, I also cannot agree with the argument urged on behalf of the appellant that the witnesses of the petitioner/appellant had to be cross-examined to show that Sh. Sudeep Cecil, Adv. was in fact not present on 11.1.2007, as in my opinion, this cross-examination was not necessary because it was perfectly open to the objector/respondent no.2 to take benefit of contradiction in the statement of the witnesses as also inferences to be drawn from the contradictory statements inasmuch as, cross-examination is really required on a very vital point and failing which the courts in facts of a particular case take lack of cross-examination as an admission of a fact. As already stated in the facts of the present case, there was no need of cross-examination on the aspect of presence of Sh. Sudeep Cecil, Advocate for the court to come to a conclusion that role of Sh. Sudeep Cecil, Adv. was crucial and that not only he was not brought into the witness box, but contradictions were found to exist with regard to his role, including of taking the final print out by such an Advocate in the residence of one of the attesting witnesses. There were hence unnatural circumstances surrounding the propounded Will as rightly held by the probate court.

13. At this stage, I also reject the argument urged on behalf of the appellant in placing reliance upon the judgment of this court in the case of **K.L. Malhotra Vs. Sudershan Kumar & Anr., 149 (2008) DLT 783** and which judgment was relied upon to argue that absence of evidence recording preparation of the Will should not be held fatal to the genuineness of the Will. There is no doubt with respect to this proposition of law that in certain cases, it is not necessary to lead evidence with regard to preparation of the Will before the Will is held to be genuine, but in the facts of the present case, in my opinion, it was very necessary to summon and depose of Sh. Sudeep Cecil, Adv. who had a crucial role of drafting the Will, taking the final print out of the Will and who was also present when the Will is said to have been executed and attested, and who also as per the stand of the appellant/petitioner took the Will after execution and attestation “for completing formalities”.

14. In view of the above, there is no merit in the appeal and the same is therefore dismissed, leaving the parties to bear their own costs.

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