

Court No. - 48

1. **Case :-** WRIT - B No. - 46438 of 2011

Petitioner :- Vinod Kumar

Respondent :- D.D.C. And Others

Counsel for Petitioner :- N.L. Pandey, Kailash Nath Singh, L.N. Shukla

Counsel for Respondent :- C.S.C., Lal Chandar Yadav, Y.C. Yadav

2. **Case :-** WRIT - B No. - 18285 of 2014

Petitioner :- Vinay Kumar

Respondent :- The D.D.C. And 8 Ors.

Counsel for Petitioner :- S.C. Tripathi

Counsel for Respondent :- C.S.C.

3. **Case :-** WRIT - B No. - 1275 of 2023

Petitioner :- Vinod Kumar

Respondent :- Deputy Director Of Consolidation And 2 Others

Counsel for Petitioner :- Kailash Nath Singh

Counsel for Respondent :- C.S.C., Lal Chandra Yadav

4. **Case :-** WRIT - B No. - 419 of 2021

Petitioner :- Vinod Kumar

Respondent :- Deputy Director Of Consolidation And Another

Counsel for Petitioner :- Kailash Nath Singh

Counsel for Respondent :- C.S.C.

Hon'ble Saurabh Shyam Shamsbery, J.

1. Heard Sri Kailash Nath Singh, learned counsel for petitioner and Sri Lal Chandra Yadav, learned counsel for respondents in leading writ petition as well as other respective counsel in other writ petitions.

2. Learned counsel for the parties are in agreement that the leading cases would be Writ Petition No.46438 of 2011 and Writ Petition No.18285 of 2014 and a judgment thereof would cover

other two writ petitions, which were filed later on.

3. The issue for consideration is validity of an unregistered Will dated 8.10.1963 *vis-a-vis* a registered Will dated 20.1.1986. The following pedigree is not in dispute:



4. This is the second round of litigation. In first round, Consolidation Officer vide order dated 26.6.1999 has allowed objections filed by the petitioner and held that Will in question was proved. The Consolidation Officer has decided the case by a very short order and relevant part thereof is mentioned hereinafter:

" सम्स्त आपत्तियों के अवलोकन से स्पष्ट है कि मूल विवरणीय बिन्दु यह कि विवादित अराजी का वास्तविक हक्दार कौन है भुलई या प्रभावती, दोनों आपत्तिकर्ताओं के अभिकथन के प्रकाश में विवेचन किया गया। भुलई द्वारा प्रस्तुत वसीयतनामा जगई द्वारा लिखा गया है जो श्रीमती भावन्ती (मृतक) के पति थे और मूलतः अराजियात के मालिक काबिज थे। वसीयतनामे के मूल पाठ से ही स्पष्ट है कि श्रीमती भावन्ती के मरने के उपरान्त वह जायदाद भुलई को प्राप्त होगी। अब प्रश्न यह कि क्या वसीयतनामा सही है या नहीं। वसीयतनामा शंभुनारायण लाल पटवारी द्वारा लिखा गया है तथा मुन्नी लाल व बाबूराम यादव द्वारा उसका तस्दीक किया गया है। फतावली में शंभुनारायण लाल व बाबूराम यादव के क्यान संलग्न है। जिसमें उन्होंने वसीयत लिखा जाना प्रमाणित किया है। चूंकि वसीयत प्रमाणित हो गयी है। चूंकि भुलई दौरान मुकद्दमा फौजदारी कर गये हैं, अतः विनोद कुमार विरेन्द्र कुमार व विनय कुमार पुत्राण भुलई नाम प्रतिस्थापित हो चुका है।

जहां तक प्रभावती के खारिज होने का सवाल है वह जमीन्दारी अधिनियम की धारा 171 के तहत वारिस होना चाहती हैं जो नहीं है। क्योंकि वह मृतक जगई की सन्तान नहीं है व भावन्ती के प्रथम पति की पुत्री है। जमींदारी विनाश अधिनियम के धारा 172 के तहत व अधिकारिणी हो सकती थी, यदि जगई ने स्वयं अपनी सम्पत्ति का वसीयतनामा न किया होता। अतः आपत्ति प्रभावती निराधार है और उक्त संशोधन प्रार्थनापत्र स्वीकार योग्य नहीं है। "

5. Aforesaid order was challenged by contesting respondents by way of filing an appeal, which was allowed vide order dated 18.7.2001 and matter was remitted back to the Consolidation

Officer.

6. Petitioners thereafter filed a revision petition which was allowed vide order dated 6.4.2009 with direction that instead of remitting the matter to Consolidation Officer it was directed that Appellate Authority shall decide the case on merit. Said order was upheld by this Court vide order dated 14.5.2009 passed in Writ Petition No.25224 of 2009.

7. In aforesaid circumstances, Settlement Officer of Consolidation considered appeal afresh and it was allowed and order passed by the Consolidation Officer dated 26.6.1999 was set-aside. Relevant part thereof is mentioned hereinafter:

"उभय पक्षों के विद्वान अधिवक्ता के तर्कों को सुनने व फावली में उपलब्ध साक्ष्यों एवं अन्तर न्यायालय कि वाद फावली का विधिवत परीक्षण करने के बाद विचरणीय बिन्दु यह है कि ग्राम मझगावा कला के चक सं० 445 व चक परे अरजीयात का मालिक व वारिस अपीलान्ट प्रभावती है अथवा उत्तरवादी गण विनोद कुमार अदि है। सजरा खनदान से स्पष्ट है कि गया, रामकसन, जाई, फौजदार, बाबू नन्दन, पुत्र गण विशेषर सगे भाई है। जिसमें गया की साख से भुलई व भुलई के मरने के बाद उनके लड़के विनोद कुमार अदि है, जो अपील में उत्तर वादी है। विवाद जाई की अराजी बात है जाई की पत्नी भागवन्ती व भागवन्ती की पुत्री प्रभावती अपीलान्ट है। राम कसन पुत्र विशेषर एक मात्र लड़की केवलपत्नी है, जिसके हक में वसीयत नामा राम कसन ने लिखा है। उसी वसीयतनामा में अपने भाई जाई व भाभी भागवन्ती की मृत्यु का उल्लेख करते हुए कहा है कि उनके एक मात्र वारिस श्रीमती प्रभावती उनकी लड़की है, इसलिए भाई व भाभी के मरने के बाद उनकी जायदाद को प्रभावती को देकर काबिज करा दिया और इसके बाद यह पंजीकृत वसीयतनामा 20-1-86 को लिखा है। जिसका विरोध उत्तर वादी गण विनोद कुमार अदि के विद्वान अधिवक्ता द्वारा यह कर किया गया कि यह दौरान मुकद्दमा तैयार किया गया है। अपीलान्ट की अप्रति धारा 12 में सा० च० अ० के यहाँ दाखिल हुई है, जिसे चकबन्दी अधिकारी ने अपनी विवेचना में यह लिखते हुए खारिज किया कि ज० वि० धारा 172 के तहत वह अधिकारिणी हो सकती थी किन्तु जाई ने स्वयं कि सम्पत्ति का वसीयत करा दिया है। ऐसी स्थिति में प्रभावती के अप्रति को निराधार मानते हुए निस्त कर दिया, जब कि जाई द्वारा रेस्पॉण्डेंट्स के पक्ष लिखा गया वसीयत नामा अपंजीकृत है। और काफ़ी जीर्ण-शीर्ण स्थिति में है। और कसन द्वारा उक्त मुकद्दमे में दाखिल जवाबदेही में जिसमें उन्होंने साक्ष्य दाखिल किया है। और भागवन्ती का वारिस का प्रभावती को माना है। इस प्रकार चकबन्दी का अधिकारी का आदेश सरसरी तौर पारित किया है, जिसे पूर्वाधिकारी द्वारा दिनांक 18-7-2001 को प्रभावती की अपील स्वीकार करते हुए चकबन्दी अधिकारी का आदेश दिनांक 26-6-1999 निस्त कर दिया और चकबन्दी अधिकारी को गुण दोष के आधार पर निस्तारण हेतु प्रत्यावर्तित किये जाने का आदेश पारित किया जिसके विरुद्ध निगरानी न्यायालय में निगरानी सं० 718/4996 सन् 2001 अन्तर्गत धारा 48 (1) विनोद कुमार अदि बनाम प्रभावती, उत्तर वादी गण द्वारा दाखिल की गई जिससे स्वीकार करते हुए अपीलिय न्यायालय को इस निर्देश के साथ वापस किया गया कि अपीलकर्ता द्वारा अपील सभी बिन्दुओं पर पक्षों को सुनकर नियमानुसार गुण दोष पर

निस्तारण करने का निर्देश प्राप्त हुआ है। जैसा कि उपसंचालक चकबन्दी श्री आर० एल० प्रजापति के आदेश दिनांक 6-4-09 से स्पष्ट है निगरानी न्यायालय के इसी आदेश के विरुद्ध अपीलान्त प्रभावती द्वारा माननीय उच्च न्यायालय के सम्मक्ष रिट संख्या 25224 स्न् 09 प्रभावती बनाम डी० डी० सी० व अन्य दाखिल हुई जिससे माननीय न्यायालय द्वारा दिनांक 14-5-2009 को रिट पिटीशन खारिज करते हुए उपसंचालक चकबन्दी के निर्णय को सही माना है।

चकबन्दी अधिकारी द्वारा पारित आदेश अपने आप में पूर्ण नहीं है क्योंकि राम करन की उज्ज्वारी व दाखिल रजिस्टर्ड बैनामा को संज्ञान में नहीं लिया गया है और अपंजीकृत और कटे-फटे वसीयत नामा के आधार पर आदेश पारित करके त्रुटि किया है। गवाहों के बयान व जाई के रसो भाई राम करन ने स्वयं इस बात को स्वीकार किया है कि अपीलान्त प्रभावती पुत्री भागवन्ती है और वही बतौर (लडकी) कानूनी उत्तराधिकारी मानी जानी चाहिए न कि भतीजा भुलई के वारिसान विनोद कुमार अदि जिनके पक्ष में लिखा गया वसीयतनामा अपंजीकृत है और मानने योग्य नहीं है ऐसी स्थिति में अपील स्वीकार किये जाने योग्य है और चकबन्दी अधिकारी का आदेश कायम रहने योग्य नहीं है स्वयं चकबन्दी अधिकारी ने अपने आदेश की विवेचना में इस बात का उल्लेख किया है कि प्रभावती ज० वि० की० धारा 172 के तहत वारिस हो सकती थी। किन्तु जाई द्वारा लिखे गये अपंजीकृत वसीयतनामा को संज्ञान में लेते हुए पारित कर दिया और प्रभावती के प्रार्थना पत्र की निस्त कर दिया तथा अन्य उज्ज्वारियों व साक्ष्य जी प्रभावती को भावन्ती वेवा जाई की पुत्री साबित करते थे का उल्लेख आदेश में नहीं किया है। चकबन्दी अधिकारी का आदेश दिनांक 26-6-99 निस्त किया जाता है। अपील स्वीकार किये जाने योग्य है प्रभावती पुत्री भागवन्ती वेवा जाई का कानूनी उत्तराधिकार (पुत्री) घोषित किया जाना न्यायोचित है।"

8. In aforesaid circumstances, petitioners herein filed revision petitions which was rejected vide order dated 22.7.2011. Relevant part thereof is mentioned hereinafter:

"उभयपक्षों के विद्वान अधिवक्तागण के तर्कों को सुना गया तथा पत्रावली का सम्यक् अवलोकन किया गया। पत्रावली में प्रतिपक्षी प्रभावती की लिखित बहस भी उपलब्ध है। लिखित बहस में कहा गया कि कथित वसीयतनामों जाई को वृद्ध एवं जईफ कहा गया है। जबकि प्रभावती द्वारा दाखिल पौती जाई जो अविवादित है, जाई की मृत्यु 45 वर्ष की अवस्था में हुई है 45 वर्ष का व्यक्ति कर्तई वृद्ध एवं जईफ नहीं कहा जा सकता। कथित वसीयतनामों में पुत्री प्रभावती के रख-रखाव शादी विवाह कौन करेगा, का कोई विवरण नहीं है। इस प्रकार वसीयतनामा अपूर्ण एवं सदिध है तथा विश्वसनीय नहीं है। वसीयत के किसी गवाह ने वसीयतनामा को साबित नहीं किया है। प्रमाणकरण के लिए आवश्यक है कि वसीयतनामा सम्मक्ष गवाह वसीयतकर्ता लिखा जाय तथा पढकर सुनाया जाय सम्मक्ष गवाहन वसीयत दस्तावेज पर वसीयतकर्ता पर का हस्ताक्षर हो और वसीयतकर्ता के सम्मक्ष उसकी उपस्थिति तथा उसके निर्देश पर गवाहन द्वारा हस्ताक्षर किया जाय। ऐसा बयान उनके किसी गवाहन ने नहीं दिया है, इस प्रकार का बयान न होने की स्थिति में वसीयतनामा कर्तई विश्वसनीय नहीं है वसीयतनामा के आधार पर भुलई का कोई प्रार्थना-पत्र दाखिल खारिज का नहीं है। भुलई जो आपत्ति दी गयी है उसमें वसीयतनामा का कोई जिक्र नहीं है न तो वसीयतनामों के आधार पर किसी अनुतोष की मांग की गयी है। भावन्ती के मरने के बाद, दाखिल खारिज का केवल एक प्रार्थना-पत्र प्रभावती द्वारा सहायक चकबन्दी अधिकारी के न्यायालय में दाखिल हुआ जिस पर भुलई द्वारा दिनांक 16-7-80 को आपत्ति किया है, कोई दाखिल खारिज प्रार्थना पत्र भुलई द्वारा नहीं दिया गया। परिवार के एक मात्र जिन्दा भाई रामकरन थे। रामकरन बयान

हुआ। रामकरन ने प्रभावती को जाई व भावन्ती के नुतफे से पैदा पुत्री कहा है। भावन्ती की मृत्यु दिनांक 27-5-80 के समय भाईयों में केवल रामकरन जिन्दा वारिस था उसके द्वारा दिनांक 20-01-86 को अपनी जमीन का वसीयतनामा अपनी पुत्री को किया गया तथा उसी वसीयतनामे में भावन्ती व जाई से प्राप्त जमीन का वसीयतनामा प्रभावती पुत्री वसीयतनामा प्रभावती पुत्री भावन्ती को किया। वसीयतनामा रामकरन बहक केवलपत्नी का दाखिल खारिज भी हो गया है। राम करन की मृत्यु 1990 में हो चुकी है उसकी जमीन पर उसकी पुत्री केवलपत्नी का नाम वसीयतनामों के आधार पर दाखिल खारिज हो चुका है। तात्पर्य यह है कि वसीयतनामा एक बार साबित हो चुका है बार-बार साबित किये जाने का औचित्य नहीं है मुताबिक वसीयतनामा प्रभावती, भावन्ती पत्नी जाई की वसीयती वारिस साबित है। दस्तावेज वसीयतनामा दिनांक 20-01-86 अविवादित है इस प्रकार प्रभावती मृतक भावन्ती पत्नी जाई की लड़की एवं कानूनी वारिस है। विवादित भूमि के मूल मालिक जाई पुत्र विशेष रहे जिनकी मृत्यु दिनांक 02-05-64 को हो गयी। मृत्यु के पश्चात् उनकी जमीन पर उनी स्त्री भावन्ती का नाम दर्ज हुई। भावन्ती की मृत्यु दिनांक 27-5-80 को हुई। इस प्रकार विवादित भूमि पर भावन्ती का नाम ज० वि० अ० 1950 व हिन्दू उत्तराधिकारी अधिनियम 1956 के बाद होकर अन्तिम रहा। खानदान सजरे के अनुसार विशेषर के लड़के गया, रामकरन जाई फौजदार व बाबुनन्दन थे तथा विवादित भूमि मूल रूप से जाई की थी। प्रश्नात विवाद में विवाद जाई की सगी पुत्री प्रभावती व जाई के भतीजे भुलई के लड़के विनोद कुमार बिरेन्द्र वसीयतनामा दिनांक 08-10-63 का है, जाई की मृत्यु दिनांक 02-05-64 को हो गयी जाई की पश्चात् भावन्ती के पक्ष में जो दाखिल खारिज हुआ वह वसीयतनामा के आधार पर नहीं है। यदि वसीयतनामों के आधार पर दाखिल खारिज होता तो उसी समय वसीयत की पुष्टि हो गयी तथा यह निश्चित हो गया होता कि जब भावन्ती मरेगी तब विवादित भूमि के मालिक भुलई पुत्र गया होगा। इस प्रकार का कोई आदेश निगरानीकर्तागण द्वारा न अवर न्यायालय के समक्ष न तो निगरानी न्यायालय के समक्ष ही प्रस्तुत किया गया। जब भावन्ती की मृत्यु वर्ष 1980 में हुई उसके बाद दाखिल खारिज का प्रार्थना पत्र प्रभावती द्वारा दिया गया उसमें आपत्ति दिनांक 16-7-80 को भुलई पुत्र गया द्वारा दी गयी इस आपत्ति में भी भुलई पुत्र गया द्वारा यह कहीं नहीं लिखा गया है कि जाई द्वारा उनके साथ में कोई वसीयत गयी थी। ऐसी स्थिति में निगरानीकर्तागण द्वारा जो वसीयत जाई के नाम से दिनांक 08-10-63 को दर्शाई गयी है वह अफ़्टर खाट है जो 1980 में ज० बि० अ० 1971 के नियम के अन्तर्गत सगे भाई का अधिकार विवाहित पुत्री के पहले है। भावन्ती की मृत्यु दिनांक 27-05-80 करे हुई उस समय जाई के भाई राम करन जीवित थे तथा राम करन ही विवादित भूमि के उत्तराधिकारी थे परन्तु रामकरन द्वारा दिनांक 20-1-86 को एक पंजीकृत वसीयतनामा लिखी गयी जिसमें उन्होंने अपनी भूमि का वारिस पुत्री केवलपत्नी को बनाया गया तथा जाई वाली भूमि जो भावन्ती मृतक के नाम थी। उस भूमि का वारिस प्रभावती पुत्री जाई को बनाया गया। इस प्रकार रामकरन जो जाई के सगे भाई थे उनके द्वारा प्रभावती को जाई की पुत्री माना तथा अपने स्वयं वारिस कहते हुए पंजीकृत वसीयतनामा लिख दिया, स्वयं राम करन ने न्यायालय में अफ़र स्वीकर किया है। यहाँ यह उल्लेखनीय है कि वसीयतनामा निष्पादित करने वाला व्यक्ति स्वयं न्यायालय में अफ़र वसीयतनामे को स्वीकार करता है तो ऐसी स्थिति में वसीयत का पृथक से सिद्ध करने की आवश्यकता नहीं है। निगरानीकर्तागण द्वारा जो साक्ष्य दिये गये हैं कि प्रभावती जाई की पुत्री नहीं है, वह विश्वसनीय नहीं है। रामकरन के बयान व रामकरन के पंजीकृत वसीयतनामा के आधार पर यह सिद्ध है कि प्रभावती जाई की लड़की है तथा जाई के वारिस रामकरन द्वारा प्रभावती के पक्ष में पंजीकृत वसीयतनामा निष्पादित की गयी। उक्त वसीयतनामों के आधार पर केवलपत्नी का नाम दर्ज हो चुका है तथा प्रभावती के प्रकरण में विवाद चल रहा है। इस प्रकार निगरानीकर्तागण द्वारा जाई द्वारा कथित अपंजीकृत वसीयतनामा जो वर्ष 63 का दर्शाया गया है। वह अफ़्टर थाट एवं संदिग्ध है तथा उसके आधार पर भुलई के पक्ष में वसीयतनामा साक्ष्यों के आधार पर स्वाभाविक रूप से प्रमाणित नहीं है। अवर न्यायालय द्वारा प्रभावती के पक्ष में आदेश पारित करके सही निर्णय लिया गया है, उस आदेश में हस्तक्षेप की आवश्यकता नहीं है। अतः विनोद कुमार व बीरेन्द्र कुमार व बिनय

कुमार पुत्राण जाई द्वारा प्रस्तुत निगरानी निस्स्त करते हुए बन्दोबस्त अधिकारी चकबन्दी (पुरानी इक्वई) जौनपुर द्वारा पारित आदेश दिनांक 26.05.10 की पुष्टि की जाती है। अवर न्यायालय की फत्रावली वापस भेजी जाए तथा इस न्यायालय की फत्रावली संचित अभिलेखागार हो। "

9. Aforesaid orders passed by Settlement Officer of Consolidation and Deputy Director of Consolidation are impugned in the present writ petition.

10. Learned counsel for the petitioner has placed heavy reliance on an order passed by Consolidation Officer that scribe and the witness of an unregistered Will dated 8.10.1963 (Shambhu Narain Lal and Babu Ram Yadav) were examined, who have proved the Will and submitted that no suspicious circumstances surrounded the said Will. However, he fairly submitted that Consolidation Officer has not framed any issue in this regard as well as that in the objection, averments in respect of claim on the basis of Will was not mentioned. Learned counsel for petitioner has assailed the order passed by Settlement Officer of Consolidation on ground that circumstances as held to be suspicious were not based on any material. Once a Will was proved, it could not be disputed on a ground being unregistered.

11. Learned counsel for the petitioner further submitted that even the order passed by Appellate Authority could be assailed on ground that no issue was framed. Even the parties were asked to submit their evidence. Impugned order was passed only on basis of assumption as well as on surmises and same error was erupted in the order passed by Revisional Authority.

12. Aforesaid submissions are opposed by learned counsel for respondents. He has placed reliance on an order passed by Appellate Authority and Revisional Authority and submitted that not only the contents of Will were disputed, but it was surrounded by suspicious circumstances also. Initially, no objection was filed on basis of a Will and it was introduced later on.

13. Heard learned counsel for parties and perused the records.

14. Before entering into the merits of the case and to consider

rival submissions as to whether Will was surrounded by suspicious circumstances or not, I have carefully perused the order passed by Consolidation Officer, Settlement Officer of Consolidation and Revisional Authority.

15. The order passed by Consolidation Officer was challenged mainly on the ground that the issue of validity of Will was decided in a very cursory manner without even framing issues.

16. This Court while passing an order on 14.5.2009 has held that since authorities have allowed the parties to lead evidence, therefore, non-framing of issue could not be a ground to remand matter, therefore, Settlement Officer of Consolidation was directed to decide the matter on merits.

17. This Court has not put a caveat that Appellate Authority cannot frame issues or invite evidence, but Appellate Authority has proceeded only on basis of material available and without even framing any issue decided the appeal in a very cursory manner only on ground that Consolidation Officer has not taken note of the subsequent registered Will and that Consolidation Officer has erred in placing reliance on a very old unregistered Will which was in a very torn condition. The Appellate Authority has not adverted to statements of witnesses to the Will. The same error was committed by the Deputy Director of Consolidation and further the Revisional Authority has considered a subsequent Will dated 20.1.1986, which was not even considered by Consolidation Officer and Settlement Officer of Consolidation.

18. This Court has considered the issue as to how a Will has to be proved in **Chhatrapal Vs. D.D.C. & Ors, Neutral Citation No.2023:AHC:172664**, relevant paras 27, 33, 34 and 35 thereof are mentioned hereinafter:

"27. The revision petition filed by petitioner and his two brothers was rejected by a detailed order dated 12.09.2019 and above referred findings of Appellate Authority were confirmed as well as Revisional Authority has taken note of certain ambiguity and contradictions in the testimonies of witnesses whether 'will' was hand written or typed as well as whether it was registered or not. In the above background

before considering the rival submission, it would be apposite to refer few paragraphs of judgment passed by Supreme Court in the case of Raj Kumari and Others Vs. Surinder Pal Sharma, (2021) 14 SCC 500 where issue of 'how a 'will' be proved', was considered in detail, which are reproduced hereinafter :-

"14. Sections 68 and 71 of the Evidence Act, which relate to proof of documents required by law to be attested, read as under:

"68. Proof of execution of document required by law to be attested.—If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence: Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.

71. Proof when attesting witness denies the execution.—If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence."

xxx

xxx

16. After referring to H. Venkatachala Iyengar (supra), this Court in Jaswant Kaur (supra) had laid down the following propositions of law:

"10....(1) Stated generally, 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 in such matters. As in the case of proof of other documents, so in the case of proof of wills, one cannot insist on proof with mathematical certainty.

(2) Since Section 63 of the Succession Act requires a will to be attested, it cannot be used as evidence until, as required by Section 68 of the Evidence Act, one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the court and capable of giving evidence.

(3) Unlike other documents, the will speaks from the death of the testator and therefore the maker of the will is never available for deposing as to the circumstances in

which the will came to be executed. This aspect introduces an element of solemnity in the decision of the question whether the document propounded is proved to be the last will and testament of the testator. Normally, the onus which lies on the propounder can be taken to be discharged on proof of the essential facts which go into the making of the will.

(4) Cases in which the execution of the will is surrounded by suspicious circumstances stand on a different footing. A shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the will under which he receives a substantial benefit and such other circumstances raise suspicion about the execution of the will. That suspicion cannot be removed by the mere assertion of the propounder that the will bears the signature of the testator or that the testator was in a sound and disposing state of mind and memory at the time when the will was made, or that those like the wife and children of the testator who would normally receive their due share in his estate were disinherited because the testator might have had his own reasons for excluding them. The presence of suspicious circumstances makes the initial onus heavier and therefore, in cases where the circumstances attendant upon the execution of the will excite the suspicion of the court, the propounder must remove all legitimate suspicions before the document can be accepted as the last will of the testator.

(5) It is in connection with wills, the execution of which is surrounded by suspicious circumstances that the test of satisfaction of the judicial conscience has been evolved. That test emphasises that in determining the question as to whether an instrument produced before the court is the last will of the testator, the court is called upon to decide a solemn question and by reason of suspicious circumstances the court has to be satisfied fully that the will has been validly executed by the testator.

(6) If a caveator alleges fraud, undue influence, coercion, etc. 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 raise a doubt as to whether the testator was acting of his own free will. And then it is a part of the initial onus of the propounder to remove all reasonable doubts in the matter."

(emphasis supplied)

X X X

33. In order to prove a 'will', the evidence of attesting witnesses and its scribe are relevant. It would be relevant to note here that at relevant time registration of a 'will' was not an essential requirement and in present case as referred above both attesting witnesses were examined and witness Leeladhar and Ram Singh have specifically stated it was executed in their presence and testator and scribe were also present, however, as referred above by Revisional Authority and it would be clear from perusal of statements which are part of supplementary affidavit filed before this Court, that they mentioned the 'will' was in handwriting, whereas undisputedly, contents of 'will' were typed by typewriter, as clearly evident from the photocopy i.e. in Hindi typing on a non-judicial paper and was notarized also and at bottom it was mentioned that being drafted by and typed by Jaidev Gargaon, Advocate, therefore, it has created a doubt that whether witnesses were present, when 'will' was executed and signed by the testator.

34. There is yet another circumstance which also creates suspicion about truthfulness of witnesses, since witness Leeladhar has stated that 'will' was registered and all persons have appeared before Registrar, whereas undisputedly alleged 'will' was never registered but it was only notarized though the other witness Ram Singh has stated that it was not registered. The other witness Jaidev Gargaon, Advocate has stated that 'will' was scribed by him by pen having new nib but as referred above it was a typed document though he has stated that it was not registered, therefore, it also appears that said advocate was not truthful before authority.

35. In the background of above doubtful witnesses account, the consideration of other circumstances would become more relevant and for that findings returned by Appellate Court and Revisional Court referred above, become crucial for consideration whether the 'will' was proved, or not especially when alleged 'will' was executed in exclusion of children of testator. In order to consider above suspicious circumstances surrounded the 'will', the paragraph number 25 of a recent judgment passed by Supreme Court in case of Swarnlatha and others versus Kalavati and others, 2022 SCC online 381 would be relevant that:-

"25. The law relating to suspicious circumstances surrounding the execution of a Will is already well-settled and it needs no reiteration. It is enough if we make a reference to one of the recent decisions of this Court in Kavita Kanwar v. Mrs. Pamela Mehta, AIR 2020 SC 544 where this Court referred to almost all previous decisions right from H. Venkatachala Iyengar v. B.N. Thimmajamma, AIR 1959 SC 443. But cases in which a suspicion is created are essentially those where either the signature of

the testator is disputed or the mental capacity of the testator is questioned. This can be seen from the fact that almost all previous decisions of this Court referred to in Kavita Kanwar (supra) list out circumstances, which in the context of the lack of sound and disposing state of mind of the testator, became suspicious circumstances. In the matter of appreciating the genuineness of execution of a Will, there is no place for the Court to see whether the distribution made by the testator was fair and equitable to all of his children. The Court does not apply Article 14 to dispositions under a Will."

19. Supreme Court in the case of ***State Bank of India And Another v. Ajay Kumar Sood, (2023) 7 SCC 282***, has reiterated the procedure to write a judgment so that the issues involved, arguments raised and the conclusion thereof may be crystalized in a judgment and for reference relevant paragraphs thereof are mentioned hereinafter:

"12. *In Shakuntala Shukla v. State of U.P. [Shakuntala Shukla v. State of U.P., (2021) 20 SCC 818 : 2021 SCC OnLine SC 672] as well, a two-Judge Bench of this Court, was faced with an order [Swami Nath Yadav v. State of U.P., 2018 SCC OnLine All 5465] of the High Court of Judicature at Allahabad which made it difficult to discern between the submissions of counsel and the reasons of the court. Laying emphasis on the purpose of a judgment, this Court elaborated on what should be the content of a judgment. The Court observed that: (Shakuntala Shukla case [Shakuntala Shukla v. State of U.P., (2021) 20 SCC 818 : 2021 SCC OnLine SC 672] , SCC para 9)*

"9. ...9.2. ... "Judgment" means a judicial opinion which tells the story of the case; what the case is about; how the court is resolving the case and why. "Judgment" is defined as any decision given by a court on a question or questions or issue between the parties to a proceeding properly before court. It is also defined as the decision or the sentence of a court in a legal proceeding along with the reasoning of a Judge which leads him to his decision. The term "judgment" is loosely used as judicial opinion or decision. Roslyn Atkinson, J., Supreme Court of Queensland, in her speech once stated that there are four purposes for any judgment that is written:

- (i) to spell out Judge's own thoughts;*
- (ii) to explain your decision to the parties;*
- (iii) to communicate the reasons for the decision to the public; and*
- (iv) to provide reasons for an appeal court to consider.*

9.3. It is not adequate that a decision is accurate, it must also be reasonable, logical and easily comprehensible. ... What the court says, and how it says it, is equally important as what the court decides.

9.4. Every judgment contains four basic elements and they are (i) statement of material (relevant) facts, (ii) legal issues or questions, (iii) deliberation to reach at decision, and (iv) the ratio or conclusive decision. A judgment should be coherent, systematic and logically organised. It should enable the reader to trace the fact to a logical conclusion on the basis of legal principles. It is pertinent to examine the important elements in a judgment in order to fully understand the art of reading a judgment. In the Path of Law, Holmes, J. has stressed the insentient factors that persuade a Judge. A judgment has to formulate findings of fact, it has to decide what the relevant principles of law are, and it has to apply those legal principles to the facts. The important elements of a judgment are:

- (i) Caption*
- (ii) Case number and citation*
- (iii) Facts*
- (iv) Issues*
- (v) Summary of arguments by both the parties*
- (vi) Application of law*
- (vii) Final conclusive verdict*

9.5. The judgment replicates the individuality of the Judge and therefore it is indispensable that it should be written with care and caution. The reasoning in the judgment should be intelligible and logical. Clarity and precision should be the goal. All conclusions should be supported by reasons duly recorded. The findings and directions should be precise and specific. Writing judgments is an art, though it involves skilful application of law and logic. We are conscious of the fact that the Judges may be overburdened with the pending cases and the arrears, but at the same time, quality can never be sacrificed for quantity. Unless judgment is not in a precise manner, it would not have a sweeping impact. There are some judgments that eventually get overruled because of lack of clarity. Therefore, whenever a judgment is written, it should have clarity on facts; on submissions made on behalf of the rival parties; discussion on law points and thereafter reasoning and thereafter the ultimate conclusion and the findings and thereafter the operative portion of the order. There must be a clarity on the final relief granted. A party to the litigation must know what actually he has got by way of final relief. The aforesaid aspects are to be borne in mind while writing the

judgment, which would reduce the burden of the appellate court too. We have come across many judgments which lack clarity on facts, reasoning and the findings and many a times it is very difficult to appreciate what the learned Judge wants to convey through the judgment and because of that, matters are required to be remanded for fresh consideration. Therefore, it is desirable that the judgment should have a clarity, both on facts and law and on submissions, findings, reasonings and the ultimate relief granted."

20. I have carefully perused the order passed by Settlement Officer of Consolidation and Deputy Director of Consolidation and both have failed not only in respect of consideration of validity of a Will whether registered or not as well as have not considered evidence (oral and documentary) on record but also in respect of writing the orders. Both the authorities have passed orders in a very cryptic manner and it appears that orders were passed in haste. The orders impugned are bereft of complete facts, legal issues, deliberations and conclusions. Therefore, the impugned orders dated 22.7.2011 passed by Deputy Director of Consolidation and 26.5.2010 passed by Settlement Officer of Consolidation are set-aside and the matter is remitted to the Settlement Officer of Consolidation to pass a fresh order and if necessary, frame issues and grant opportunity of hearing or to lead evidence to the parties if circumstances so warrant and thereafter pass appropriate order in accordance with law expeditiously within a period of six months from today.

21. The prayer sought in **Writ Petition No. 419 of 2021** is to quash order dated 02.02.2021, passed in revision petition by Deputy Director of Consolidation, whereby an application for transfer was disposed of with direction for reconstruction of file. By above order, matter was remitted to Settlement Officer of Consolidation for fresh consideration, therefore, no order is required to be passed in this writ petition.

22. The prayers sought in **Writ Petition No.1275 of 2023** is to quash order dated 17.03.2023 passed by Deputy Director of Consolidation, whereby revision petition was posted for hearing.

Since by this judgment matter is remitted to Settlement Officer of Consolidation for fresh consideration, therefore, no interference is warranted in impugned order.

23. With the aforesaid directions all the writ petitions are **disposed of**.

Order Date :-19.10.2023

SB