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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION**

**APPEAL NO. 43 OF 2017  
IN  
TESTAMENTARY SUIT NO. 36 OF 2010**

Tarun Narainsingh Advani  
Aged 50 years, Hindu, Indian Inhabitant  
of Mumbai, Occ.: Business, residing at  
Flat No. 14, 2<sup>nd</sup> Floor, Sea View, 14A Road,  
Khar West, Mumbai - 400052 ... Appellant

**V/s.**

1. Deepak Matai  
Hindu Inhabitant, at present residing  
at Flat 14, Sea View, Road 14-A,  
Khar (West), Mumbai – 400 052.
2. Veena Alias Meera Punjwani,  
Hindu Inhabitant, at present residing  
at 605, Raheja Crest – 1, Off. Link Road,  
Andheri (W), Mumbai – 400 053. ... Respondents  
(Original Defendants)

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Mr. Tejas Vora a/w Mr. D.R.Mishra i/b G.K.Vora and Bina  
Shivhare for Appellant.

Mr. Rashmin Khandekar a/w Mr. Anand Mohan a/w Ms.  
Mrunalini Vijay Panchal i/b MRK Law and Associates Advocate  
for the Respondent No. 1.

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This order is corrected pursuant to the speaking to minutes order dated 15<sup>th</sup> April, 2024.

**CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. &  
ARIF S. DOCTOR, J.**

**RESERVED ON : 11<sup>th</sup> MARCH, 2024**

**PRONOUNCED ON : 12<sup>th</sup> APRIL, 2024**

**JUDGMENT: ( PER ARIF S. DOCTOR, J.)**

1. The challenge in the present Appeal is to an order dated 25<sup>th</sup> October, 2016 by which the caption Testamentary Suit filed by the Appellant seeking letters of administration of a Will dated 18<sup>th</sup> March, 1991 ("the said Will") stated to be the last will and testament of one Girdharilal Chellaram Matai ("*the Testator*") came to be dismissed.

2. Before advertng to the rival contentions, it is useful to set out the following facts viz.

- i. The Testator passed away on 21<sup>st</sup> April 1991 leaving behind him, three wives, namely Ishwaribai, Savitribai and Lata and eight children from his three wives, i.e. five children from his first wife and three children from his second wife. The Respondents are the son and daughter of the Testator from his second wife.

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- ii. On 13<sup>th</sup> July, 2006 Respondent No. 1 propounding a Will stated to be of the Testator dated 30<sup>th</sup> December, 1984 filed Testamentary Petition No. 556 of 2006 seeking letters of administration in respect of that Will. The Testamentary Petition was opposed by the Appellant who is the executor of the Will of Lata, the testatrix's third wife. It was thus that the said Testamentary Petition was converted into Testamentary Suit No. 52 of 2006.
- iii. The Appellant then in the year 2009 propounding the said Will filed Testamentary Petition No. 856 of 2009 seeking Letters of Administration in respect of the said Will. By the said Will, the entire estate of the Testator, which essentially comprises of one flat was bequeathed exclusively to the third wife of the Testator, i.e. Lata to the exclusion of all the other legal heirs of the Testator. It is the Appellant's case that Lata had by her last will and testament bequeathed the said flat to the Appellant who is stated to be the nephew of the Testator.

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iv. Testamentary Petition No. 856 of 2009 was opposed by Respondent Nos. 1 and 2 and was therefore converted into the captioned Testamentary Suit in which the following Issues were framed for determination, namely, viz.

*"1. Whether the last Will and Testament of the Testator Girdharilal Chellaram Matai dated 18<sup>th</sup> March 1991 was validly executed.*

*2. Whether the said Will has been forged and fabricated.*

*3. What relief, if any, the Plaintiff is entitled?"*

v. It is not in dispute that the Appellant filed Affidavits of Evidence of two witnesses, namely Mr. Sunder Govind Bhandary and Dr. Haresh Chulani both in their capacity as attesting witnesses. However, only Mr. Bhandary submitted himself for cross examination. It is also not in dispute that Mr. Bhandary was the advocate of the Testator. Since the Impugned Order is based entirely upon the appreciation of certain answers given by Mr. Bhandary in cross examination it is useful at this stage to set out those answers viz.,

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*"Q-29 :- So, do we take it that according to you, when Mr. Girdharilal Matai gave you instructions, you were not aware whether it was his Last Will or not?*

*A : At the time of instructions, I was not certainly not aware that, that was his Last Will.*

*Q-30:- Did you or did you not ask him whether it was his Last Will?*

*A : In fact, I had asked him, but he had a different version of his Will, later on.*

*Q-31:- Would it be right to say that Mr. Girdharilal Matai had given instructions which were not discernible and therefore you have stated in reply to Question No. 12 that the Will was perhaps drafted by you ?*

*A: I was quite clear and discernible and there was no confusion in his instructions to prepare his Will, in the beginning.*

*Q-32 :- Do we take it that, according to you, there was confusion at a later point of time?*

*A : I don't want to use the word "confusion", but for some reason, later he changed his mind and he told me why he is changing his Will.*

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*Q-40:- Were you aware that there were disputes among the family members of Mr. Girdharilal Matai?*

*A : I don't know the meaning of family members, but Mr. Girdharilal Matai used to tell me that his wife is not happy with the Will that I had drafted on his instructions and that he wanted to change the Will, because he is unable to face his Wife with the Will that I had drafted on his instructions. I know only this dispute, nothing else.*

*Q-41 :- According to you, did you change Mr. Girdharilal Matai's Will?*

*A: I did not myself change it, but I was instructed by Mr. Girdharilal Matai later that to prevent any fight between himself and his wife, although he was not willing to do so, he wanted to change the Will.*

*Q-42 :- Are you aware of any subsequent Will of Mr. Girdharilal Matai?*

*A: The only Will that I know is the Will in question.*

*Q-59:- According to you, did you explain to Mr. Girdharilal Matai what was there in the Will?*

*A : Mr. Girdharilal Matai was a qualified, educated person and he knew the contents and I and himself discussed the contents several times and although the Will was not his real Will, but he was in a way compelled to give his*

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*property to his wife to purchase peace at home and therefore he knew the contents very well”.*

3. It was on the basis of the above evidence that the Learned Judge placing reliance upon Section 61<sup>1</sup> of the Indian Succession Act, 1925 (“Succession Act”) went on to hold as follows viz.,

*“17. Section 61 of the Succession Act requires that a Will must be made entirely of the Testator’s free agency and volition. Bhandary’s evidence indicates a lack of this volition. It matters little what those external influences or pressures were: this evidence tells us that the Will being propounded was not one that Girdharilal wanted to make. It is, in a word, a reflection of another’s intentions and desires, not his own, and that lack of free agency invalidates the Will in its entirety”.*

#### **Submissions of Mr. Tejas Vora on behalf of the Appellant:-**

4. Mr. Vora, Learned Counsel appearing on behalf of the Appellant at the very outset submitted that the Learned Judge had failed to properly construe the evidence of Mr. Bhandary. He submitted that Mr. Bhandary was called to depose as an attesting witness to the said Will and that the evidence of Mr.

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<sup>1</sup> *“61. Will obtained by fraud, coercion or importunity- A will or any part of a will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator, is void.”*

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Bhandary left no manner of doubt that the said Will had been duly executed by the Testator. In support of his contention, he invited our attention to the Affidavit of Evidence of Mr. Bhandary and pointed out therefrom that Mr. Bhandary had expressly deposed as follows, viz.

*"3. That thereupon I, this Deponent and the said Dr. Haresh Chulani and Chandru Mirpuri did at the request of the said Testator and in his presence and in the presence of each other all being present at the same time set and subscribed our respective names and signatures at the foot of the said testamentary paper as witnesses thereto."*

*"5. That at the time of said Testator so subscribed, his signature "G C Matai" to the said Will as aforesaid the Testator was of sound and disposing mind, memory and understanding and to the best of my belief made published the name of his free Will and pleasure".*

Placing reliance on the above he submitted that Mr. Bhandary had adequately deposed to the factum of due execution of the said Will by the Testator. He then pointed out that the Respondent had not in cross examination in any manner been able to discredit the evidence of Mr. Bhandary insofar as the same pertained to due execution of the said Will. He thus submitted that the Appellant had succeeded in proving that the said Will was duly executed by the Testator and had therefore discharged the burden which was cast upon the Appellant

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under Section 63<sup>2</sup> of the Indian Succession Act 1925 ("Succession Act").

5. Mr. Vora then placed reliance upon a judgement of the Hon'ble Supreme Court in the case of *Daulatram & Ors. V. Sodhu & Ors.*<sup>3</sup> to submit that once the propounder of a Will had proved due execution the onus would shift upon the party who alleges that the Will was forged and/or obtained under undue influence and/or coercion, to prove the same. He pointed out that in the present case the Respondents' primary ground of challenge to the said Will was that the signature of the Deceased was forged however the Respondents had not led any evidence in support of the said contention. He submitted that the Learned Judge had therefore correctly answered Issue No. 2 in the negative. He submitted that the Appellant having proved due execution, the *onus probandi* had been duly

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2 63. Execution of unprivileged wills.—Every testator, not being a soldier employed in an expedition or engaged in actual warfare, [or an airman so employed or engaged,] or a mariner at sea, shall execute his will according to the following rules:—

- (a) The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.
- (b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.
- (c) The will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

3 (2005) 1 SCC 40

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discharged by the Appellant and therefore the Appellant was entitled to the grant of Letters of Administration in respect of the said Will.

6. Mr. Vora then placing reliance upon a judgement of the Hon'ble Supreme Court in the case of ***Naresh Charan Das Gupta vs. Paresh Charan Das Gupta***<sup>4</sup> and a Division Bench judgement of this Court in the case of ***Anuradha Anil Bhagwat & Ors. vs Kirit Navnitlal Damania & Anr.***<sup>5</sup> to point out that once it was proved that a will had been executed with due solemnity by a person of competent understanding, and apparently a free agent, the burden of proving that a Will was executed under undue influence was upon the party who alleges it. He pointed out from the judgment of the Hon'ble Supreme Court in the case of ***Naresh Charan Das Gupta*** (supra) that not every influence which was brought upon a Testator could be said to be an undue influence. He submitted that it was always open to a person to plead his case before a testator and persuade such testator to make a disposition in his favour. He pointed out that if the testator retained his mental capacity and there was no

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4 AIR. 1955 S. C. 363

5 AIR 2019 Bom. 41

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element of fraud and/or coercion, the said influence would not qualify as being undue influence as per Section 61 of the Succession Act. He thus submitted that in the present case, the Respondent having failed to prove either fraud or coercion or that the Testator was not of sound and disposing mind, the Learned Judge had gravely erred in concluding *that the said Will was a reflection of another's intentions and desires and not of the Testator's, own free agency.*

7. Mr. Vora then submitted that what the Learned Judge was required to consider were the circumstances which existed at the time of execution of the said will, and not reference to any past events etc. He submitted that the answers extracted above, and upon which great reliance had been placed by the Learned Judge were merely in the context of past events and/or incidence and did not in any manner disprove the fact that the Testator had freely and of his own volition duly executed the said will as per Section 63(c) of the Succession Act. He thus submitted that the answers given by Mr. Bhandary in cross examination could never have been construed to mean that the said Will was not executed by the

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Testator of his own volition or was made under undue influence as contemplated under Section 61 of the Succession Act. He thus submitted that the conclusion reached by the Learned Judge that "*the Will being propounded was not one that Girdharilal wanted to make*" was totally incorrect.

8. Mr. Vora also pointed out that the Learned Judge had failed to consider that the attesting witness had not stated the time period during which the testator had informed him that the third wife of the Testator i.e. Lata was not happy with the Will drafted by Mr. Bhandary as per his instructions and that he wanted to change the Will because he was unable to face his wife etc. He submitted that the answers given by the attesting witness to the above extracted questions also did not in any manner establish that the said Will was made by the Testator under coercion and/or compulsion of his third wife, Lata. He submitted that the Learned Judge had failed in appreciating the evidence of the attesting witness to the effect that the attesting witness was a qualified/educated person, who was conscious of his actions, and he knew the content of the said Will which he

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had discussed several times with the attesting witness and had duly executed.

9. Mr. Vora submitted that in the present case, the said Will was executed in the year 1991 and the attesting witness had been cross examined after a period of 25 years. He submitted that in these circumstances, it was not unusual for minor discrepancies to exist in the evidence of an attesting witness. He then placed reliance upon a Judgment of the Calcutta High Court in the case of *Alok Kumar Aich V. Asoke Kumar Aich and others*<sup>6</sup> to submit that such minor discrepancies in evidence recorded after a long time would not really affect the credibility of the witness.

10. Mr. Vora, thus basis the above submitted that the Learned Judge had gravely erred in dismissing the Suit and not granting the Appellant letters of administration in respect of the said Will.

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<sup>6</sup> AIR 1982 Cal. 599

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**Submissions of Mr. Rashmin Khandekar on behalf of Respondent No. 1**

11. *Per contra*, Mr. Khandekar, Learned Counsel appearing on behalf of Respondent No.1 submitted that there was no infirmity whatsoever with the Impugned Order. He submitted that the answers given by Mr. Bhandary in cross examination made it clear and beyond any doubt that the said Will was executed by the Testator and not of his own free volition but under the pressure exerted upon the Testator by his third wife i.e. Lata. He thus submitted that basis the evidence of Mr. Bhandary it was clear that Will would fall squarely within the provisions of Section 61 of the Succession Act. It was thus he submitted that the Learned Judge had correctly held that the evidence of Mr. Bhandary was damning.

12. Mr. Khandekar then invited our attention to the judgement in the case of *Hall vs Hall*<sup>7</sup> and from the said judgement, placed reliance upon the following paragraph, viz.

*"Sir J. P. WILDE summed up as follows on the subject of undue influence:- To make a good will, a man must be a free agent ; but all influences are not unlawful. Persuasion, appeals to the affections or ties of kindred, to a sentiment of gratitude for past services, or pity for future destitution, or the like : these are all*

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<sup>7</sup> (1868) LR1 P&D 481

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*legitimate, and may be fairly pressed on a testator. On the other hand, pressure of whatever character, whether acting on the fears or the hopes of an individual, if so exerted as to overpower the volition without convincing the judgment, is a species of restraint under which no valid will can be made. Importunity or threats such as the testator has not the courage to resist ; moral command asserted and yielded for the sake of peace and quiet, or for escaping from distress of mind or social discomfort, these, if carried to a degree in which the free play of the testator's judgment, discretion, or wishes is overborne, will constitute undue influence, though no force is either used or threatened. In a word, a testator may be led but not driven, and his will must be the offspring of his own volition and not that of another.” (emphasis supplied)*

He submitted that in light of the answers of Mr. Bhandary to Question No. 40 and 59 there was no manner of doubt that the said Will was not a result of the Testators free agency but was only as a result of the pressure exerted upon the Testator by his third wife, Lata. He submitted that thus the judgement in the case of **Hall vs Hall** (supra) squarely applied and it was thus that the Learned Judge had correctly placed reliance upon the same when dismissing the Suit.

13. Mr. Khandekar then submitted that the evidence of Mr. Bhandary could not be read in the myopic and restricted manner as suggested by the Appellant. He placed reliance upon a judgment of the Hon'ble Supreme Court in the case of **Gurdial**

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***Kaur & Ors. vs Kartar Kaur & Ors.***<sup>8</sup> and pointed out therefrom that when considering the genuineness of a Will it was the duty of the Court to satisfy its conscience not only that the will in question was executed and attested in the manner required under Section 63 of the Succession Act **but also** that the Will in question was a result of the Testator's **free volition**. He pointed out from the said judgment that where there existed any suspicious circumstances, the obligation was cast upon the propounder i.e. the Appellant in this case, to dispel such suspicious circumstances.

14. Mr. Khandekar also placed reliance upon another judgement of the Hon'ble Supreme Court in the case of ***Yumnam Ongbi Tampha Ibema Devi vs Yumnam Joykumar Singh & Ors.***<sup>9</sup> and pointed out therefrom that even in cases where a caveat was filed alleging the exercise of undue influence, fraud, or coercion in execution of a Will while such pleas would have to be proved by the caveators, however even in the absence of any such pleas, circumstances may raise a doubt as to whether the testator was acting of his own free will

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8 (1998) 4 SCC 384

9 (2009) 4 SCC 780

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and in such circumstances, it would be a part of the initial onus cast upon the propounder to remove any such legitimate doubts in the matter. He submitted in such cases the initial burden which was a heavy one was required to be discharged by the propounder of the Will i.e. the Appellant in the present case. He submitted that the Appellant had in the present case had not even attempted to do so.

15. Mr. Khandekar then pointed out that in the present case, the said will bore the signatures of three attesting witnesses, namely Chandru Mirpuri, Sundar Bhandary and Dr. Haresh Chulani. He pointed out that Dr. Haresh Chulani had filed three affidavits in each of which a contrary stand was taken by him. From the three affidavits of Dr. Chulani, he pointed out the following, viz.

- i. In the *first* affidavit (dated 15<sup>th</sup> September 2009) which was filed along with the captioned Suit he had stated that he was present at the time the said Will was executed.

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- ii. In the *second* affidavit, (dated 16<sup>th</sup> November 2009) he had *inter alia* stated that he had not signed the first affidavit and that the same was forged.
- iii. In the *third* affidavit (dated 3<sup>rd</sup> April 2010) he had stated that the second affidavit had been signed by him without reading the contents thereof and that his signature had been obtained by misrepresentation and fraud by the Respondent and his brother against whom he had filed police complaints.

He submitted that none of the above was either explained and/or clarified by the Appellant nor was Dr. Chulani examined as a witness despite being available. He thus submitted that the factum of due execution of the said Will was also under a cloud and the circumstances surrounding the same were highly suspicious. He pointed out that the Appellant had completely glossed over these facts in the present Appeal.

16. Mr. Khandekar then submitted that even aside from the three Affidavits of Evidence of Dr. Chulani there existed the following additional suspicious circumstances, viz.,

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- i. That the said Will comprised of only four paragraphs and did not disclose any reason for excluding all the eight children of the Testator.
- ii. That Mr. Bhandary who was the advocate of the Testator had unequivocally stated that such unexplained exclusion was most probably the result of the pressure exerted upon the Testator by his third wife, i.e. Lata.
- iii. That the Appellant had despite categorical answers given by Mr. Bhandary in cross examination, chosen not to re-examine him.
- iv. That the Appellant had chosen not to lead any evidence himself nor present Dr. Chulani for cross examination.
- v. That the testator passed away within one month from the date of the said Will.

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17. Mr. Khandekar thus submitted that since the evidence of Mr. Bhandary coupled with the fact that the Appellant had not so much as attempted to dispels the suspicious circumstances surrounding the said Will, there was neither need nor occasion for the Respondents to have led any evidence in the matter.

18. Basis the above, he submitted that the Impugned Order had been correctly passed and no interference with the same was warranted.

### Reasons and Conclusions

19. We have heard Learned Counsel for the parties, considered the case law upon which reliance was placed and also the evidence of Mr. Bhandary and after a careful appreciation of law and evidence, find that the present Appeal warrants dismissal for the following reasons, viz.

- A. It is now well settled and as held by the Hon'ble Supreme Court in the case of *H. Venkatachala Iyengar v. B.N. Thimmajamma*<sup>10</sup> [referred to in the

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<sup>10</sup> [1959] Su. 1 S.C.R. 426

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judgement of the Hon'ble Supreme Court in the case of *Yumnam Ongbi Tampha Ibema Devi* (supra) relied upon by the Respondent], that where suspicious circumstances exist surrounding the genuineness of a Will, the burden to dispel such suspicious circumstances is a heavy one and lies upon the propounder. The Hon'ble Supreme Court has also in the said judgement unequivocally held that suspicious circumstances would include dispositions that are *unnatural, improbable and unfair* or which *may not be the result of the testator's free will and mind*.

- B. In the present case, it is not in dispute that the said Will (i) completely excludes all the eight children of the Testator (ii) is entirely silent on the reason for such exclusion (iii) is cryptic and short (iv) the Appellant's own witness has unequivocally stated that the Testator was in a way compelled to give his property to his third wife, i.e. Lata and (v) the Testator passed away within a month from the date of the said Will. Thus, clearly in our view the circumstances when viewed as a whole

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would qualify as being gravely suspicious and thus cast a heavy burden upon the Appellant to dispel. However, we find that the Appellant has not so much as even attempted to dispel these gravely suspicious circumstances. The Appellant has infact solely relied upon the evidence of Mr. Bhandary to prove the genuineness of the said Will. The Appellant has in toto accepted the answers given by Mr. Bhandary and did not even make any attempt to re-examine Mr. Bhandary. Given this, in our view the Appellant has failed to discharge the heavy burden cast upon the Appellant to remove/dispel all suspicious circumstances and prove the genuineness of the said Will as is required in law and as has been held by the Hon'ble Supreme Court in the case of *H. Venkatachala Iyengar*(supra)

- C. Also, we are unable accept the contention of Mr. Vora that the evidence of Mr. Bhandary had proved due execution of the said Will and nothing further was to be seen and/or considered. It is well settled as held by the

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Hon'ble Supreme Court in the case of ***State of Haryana vs Harnam Singh & Ors.***<sup>11</sup> that the requirement of Section 63 of the Succession Act cannot be said to be fulfilled by mechanical compliance of the stipulations therein. It is equally well settled and as also held by the Hon'ble Supreme Court in the case of ***Lalitaben Jayantilal Popat vs Pragnaben Jamnadas Kataria & Ors.***<sup>12</sup> in dealing with the law in regard to proof of a valid Will the Hon'ble Supreme Court held that "*It is trite law that execution of a Will must be held to have been proved, not only when the statutory requirements for proving the Will are satisfied, but the Will is also found to be ordinarily free from suspicious circumstances. When such evidences are brought on record, the Court may take aid of the presumptive evidences also.*" Thus, given that when the genuineness of a Will is called into question the conscience of the Court has to be satisfied that the Will in question was not only executed and attested in the manner required under the Succession Act but also that

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11 (2022) 2 SCC 238

12 2008 (15) SCC 365

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the same was the product of the free volition of the executant, it is not possible for us to read the evidence of Mr. Bhandary in the myopic and restrictive manner suggested by the Appellant. It is open to the Court to consider all the material on record as also all the circumstances surrounding the said Will and not restricting itself to only the mere factum of execution of the said Will in question before satisfying itself that the Will in question was genuine in all respects.

- D. We also find no merit in the contention that the Learned Judge had erred in placing reliance upon Section 61 of the Succession Act and holding "*that the said Will was a reflection of another's intentions and desires and not of the Testators, own free agency*" despite the fact that the Respondents had not led any evidence in the Suit. As already held by us above, the evidence of Mr. Bhandary cannot be read in the restrictive manner as suggested by the Appellant. Having said that, the evidence of Mr. Bhandary, who was the Appellant's witness and also the advocate of the

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Testator in no uncertain terms stated that the Testator “*was in a way compelled to give his property to his wife to purchase peace at home*”. The Appellant has neither re-examined Mr. Bhandary nor led any evidence to dispel and/or clarify this position. It is therefore not possible for us to ignore the same or construe it differently from the manner in which the Learned Judge has correctly construed the same. We find that given categorical answers of Mr. Bhandary, the same would in our view squarely qualify as being undue influence in as contemplated in Section 61 of the Succession Act and not mere persuasion as contended by the Appellant. Thus, we find that the judgement of the Hon’ble Supreme Court in the case of ***Naresh Chandra Das Gupta***.(supra) will be of no assistance.

- E. Equally, we find that the judgement of the Calcutta High Court in the case of ***Alok Kumar Aich*** (supra) and the Hon’ble Supreme Court in the case of ***Daulat Ram & Ors.*** (supra) are also entirely inapplicable to the facts of the present case. The Appellant’s reliance upon ***Alok***

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*Kumar Aich* (supra) was in support of the contention that minor discrepancies in evidence ought to be disregarded especially where a witness is examined after a longtime. In the present case however, there are no discrepancies in the evidence of Mr. Bhandary, on the contrary, the same is clear and unequivocal. Also, the judgement in the case of *Daulat Ram & Ors.*(supra) judgement would be of no assistance to the Appellant since we find that the Appellant has not in the present case, discharged the initial burden cast upon him to dispel the suspicious circumstances.

20. Thus, for the aforesaid reasons, the Appeal is dismissed.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)

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