



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

REGULAR SECOND APPEAL NO. 1644 OF 2025 (DEC)

BETWEEN:

VYKUNTAIAH
S/O LATE JAVARAIAH,
AGED ABOUT 65 YEARS,
RESIDING AT
SOMANAHALLI VILLAGE
AND POST, KASABA HOBLI,
HUNSUR TALUK - 571 106.

...APPELLANT

(BY SRI BALAKRISHNA SHASTRY G., ADVOCATE)

AND:

RAVIRAJ,
S/O PUTTAIAH,
AGED ABOUT 34 YEARS,
R/AT SOMANAHALLI VILLAGE
AND POST, KASABA HOBLI,
HUNSUR TALUK - 571 106.

...RESPONDENT

(BY SRI PUNITH C., ADVOCATE)

THIS RSA FILED U/S 100 CPC AGAINST THE JUDGMENT
AND DECREE DATED 05.07.2025 PASSED IN RA NO.190/2022
ON THE FILE OF VIII ADDITIONAL DISTRICT AND SESSIONS
JUDGE, MYSURU, SITTING AT HUNSUR, ALLOWING THE
APPEAL AND SETTING ASIDE THE JUDGMENT AND DECREE

Digitally signed
by ANUSHA V
Location: High
Court of
Karnataka



DATED 28.02.2022 PASSED IN OS NO.51/2018 ON THE FILE OF ADDITIONAL SENIOR CIVIL JUDGE AND JMFC, HUNSUR.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 22.01.2026, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE RAVI V HOSMANI

CAV JUDGMENT

Challenging judgment and decree dated 05.07.2025 passed by VII Additional District and Sessions Judge, Mysuru, (Sitting at Hunsur), in R.A.no.190/2022 and judgment and decree dated 28.02.2022 passed by Additional Senior Civil Judge and J.M.F.C., Hunsur, in OS no.51/2018, this appeal is filed.

2. Though matter was listed for admission, since records were received and both learned counsel consented for final disposal of appeal on substantial question of law proposed, matter was heard affording opportunity to both counsel.

3. Sri G. Balakrishna Shastry, learned counsel for appellant submitted that appeal was by plaintiff in OS no.51/2018 filed seeking for declaration of plaintiff as absolute



owner and for permanent injunction restraining defendant from interfering with plaintiff's possession and enjoyment of dry land bearing Sy.no.169/1 measuring 02 Acres 22 guntas out of 03 Acres 28 guntas of Maradur village, Kasaba Hobli, Hunsur Taluk (**'Suit Property'**, for short).

4. In plaint, it was stated that one Sannaiah @ Kengaiah of Somanahalli left behind two sons by name Javaraiah and Purle Javaraiah, who had also since died. It was stated late Javaraiah left behind three children namely Smt.Thimmamma, Smt.Varanandamma and plaintiff - Sri Vykunthaiah. Likewise, late Purle Javaraiah left behind only daughter Smt.Varanandamma, who was married to Shivaiah, but both had later died.

5. It was stated, amongst other properties of late Sannaiah, extent of 03 Acres 30 guntas of land in Sy.no.169/1 belonged to Javaraiah. Out of same, extent of 02 Acres 22 guntas was mutated in name of Smt.Varanandamma D/o Purle Javaraiah as per family settlement. However, as she was unable to cultivate it, plaintiff was cultivating it even as on date of suit. It was stated that Smt.Varanandamma died on



20.10.2017. And he performed her obsequies. And while searching in records, plaintiff found registered *Will* dated 19.10.2017 executed by Smt.Varanandamma bequeathing *suit property* in favour of plaintiff. For having his name mutated on basis of *Will*, plaintiff obtained revenue records, but, found entry of name of defendant, even though he was not a relative of Smt.Varanandamma. On enquiry, he found out that defendant was working as Assistant to one HR Jagadeesh, a Deed Writer at Hunsur. In connivance with him, defendant had managed to create false and fictitious documents to wrest title over *suit property*. It was stated that taking undue advantage of illiteracy of Smt.Varanandamma, defendant had got created another false and fictitious *Will*, as if she had bequeathed *suit property* in his favour.

6. On enquiry, defendant not only threatened plaintiff, but also disputed his title over *suit property*. Though plaintiff approached revenue authorities, they did not consider his claims. Therefore, he filed suit.

7. On entering appearance, defendant filed written statement denying plaint averments *in toto* and specifically



denying relationship with plaintiff as brother and sister. Tracing lineage to one Sannahaida, as propositus, it was submitted, he married Manchamma and had two children, Doddahaida and Kalaiah, among whom, Doddahaida and his wife Smt.Cheluvamma had died leaving behind defendants i.e., Tharunaiah, Javaraiah and Bundaiah. Tharunaiah and his wife Smt.Kallamma did not have any children, while Javaraiah had two wives by name Manchamma and Devamma. And that Devamma bore three children - Thimmamma, Varanandamma and plaintiff - Vykuntaiah, while Manchamma did not have children. Further, third son - Bundaiah and his wife Halamma died leaving behind eight children namely, Chaluvi, Vairaiiah, Varanandamma, Thimmaiah, Shivaiah, Chaluvaiah, Puttaiah and Narayana.

8. It was further stated, second son of Sannahaida i.e., Kalaiah and his wife Thimmamma died leaving behind two sons - Sannsannaiah @ Kengaiah and Bundaiah @ Mannaiah, wherein, Sannsannaiah and his wife Puttamma died leaving behind four sons - Javaraiah @ Javara, Sannaiah, Avannappa and Papaiah, while Bundaiah and his wife Siddamma died



leaving behind Varanandamma, who died survived by her husband Shivaraju @ Shivaiah.

9. It was stated, land bearing Sy.no.169/1 measuring 3 Acres and 28 guntas and Sy.no.169/2 measuring 3 Acres and 18 guntas was belonging to Kalaiah. He had two sons namely Sannannaiah @ Kengaiah and Bundaiah @ Mannaiah Purle Javaraiah. As Varanandamma was born to him late, entries in revenue records in respect of suit property stood in name of Javaraiah @ Javara s/o Sannasanaiah. Said Javaraiah executed Relinquishment Deed in name of Varanandamma and her name was entered in respect of 2 Acres and 28 guntas out of total extent of 3 Acres and 30 guntas in Sy.no.169/1. And remaining extent continued with Javaraiah.

10. But as Varanandamma was unwell, she executed *Ili-bhogya patra* in favour of Puttaiah s/o Bundaiah on 14.02.1997 and obtained money. And she along with her husband executed another *Bhogya Patra* in name of defendant's father on 22.03.2005. Since, she did not have children, on 06.09.2011, executed registered *Will bequeathing suit property* in favour of defendant. After her death, defendant



was in possession and got his name mutated in revenue records. Thereafter, he had executed deed of simple mortgage in respect of suit property on 20.02.2018 and obtained loan.

11. It was contended, plaintiff's claim on basis of *Will* dated 19.10.2017 was suspicious, as testator had died very next day i.e. on 20.10.2017. Therefore, plaintiff's claim was untenable and sought for dismissal.

12. Based on pleadings, trial Court framed following:

ISSUES:

1. *Whether the plaintiff proves that he has become the owner and in possession of the suit schedule property by virtue of alleged Will dated 19.10.2017 executed by Late Smt.Varanandamma in favour of the plaintiff?*
2. *Whether the plaintiff proves the alleged interference by the defendant?*
3. *Whether the plaintiff is entitled for the relief as claimed in the plaint?*
4. *What order or decree?*

AND ADDITIONAL ISSUES:

1. *Whether the defendant prove that the plaintiff has concocted the Will dated 19.10.2017 that alleged to have been executed by Late Varanandamma bequeathing the suit schedule property in favour of the plaintiff?*
2. *Whether the defendant proves that Late Varanandamma executed a will on 06.09.2011*



bequeathing suit schedule property in favour of the defendant and the said will is valid in the eyes of law as it has not been revoked by it's as tester contemplated under law?

13. In trial, plaintiff examined himself and two others as PWs.1 to 3 and got marked Exhibits-P1 to P18. On other hand, defendant examined himself and two others as DWs.1 to 3 and got marked Exhibits-D1 to D11.

14. On consideration, trial Court answered issues no.1 to 3 in affirmative; additional issues no.1 and 2 in negative and answering issue no.4, it decreed suit with costs.

15. Aggrieved, defendants preferred RA no.190/2022 on various grounds, based on which, first appellate Court framed following:

POINTS:

1. *Whether the trial court erred in passing judgment in O.S.No.51/2018 dated 28.02.2022?*
2. *Whether the trial court has committed an error by decreeing the suit of the plaintiff?*
3. *Whether the judgment and decree of the trial court calls for interference by this court?*
4. *What order or decree?*



16. On consideration, first appellate Court answered points no.1 to 3 in affirmative, it answered point no.4 by allowing appeal, set-aside judgment and decree passed by trial Court and dismissed suit. Aggrieved, plaintiff was in appeal.

17. Learned counsel submitted both plaintiff and defendant were claiming right or title over suit property on basis of respective registered *Wills*. While plaintiff was staking claim over suit property on basis of Ex.P.18 – *Will* dated 19.10.2017; defendant was staking claim under Ex.D11 – *Will* dated 06.09.2011 and trial Court had framed issues no.1 and additional issues no.1 and 2 regarding proof of said *Wills*. But first appellate Court failed to frame necessary point regarding validity of *Wills* and thereby violated provisions of Order XLI Rule 31 of CPC.

18. It was submitted, under Ex.D1, a charge was created for Rs.1 Lakh with monthly interest at 2% registered within seven minutes after execution of Ex.D11 – registered *Will* bequeathing said property, would be a grave suspicious circumstance. Especially, when DW.1 admitted he did not have money to lend to Smt.Varanandamma and failed to examine



Govinda Rao Chauvan from whom he claimed to have borrowed money for execution of Ex.D1. And contrary to recital in Ex.D1 about delivery of possession, DW.3 admitted Smt.Varanandamma continued to cultivate land till her death.

19. Further, defendant was a licenced bond writer and was working as assistant of Sri Jagadeesh - deed writer, who was scribe of both Exs.D1 and Ex.D11 and defendant's father acted as attestor of Ex.D11 - *Will*. It was further submitted, DW.1 admitted that he did not have any material to establish that Smt.Varanandamma was under his care till her death. Moreover, he admitted she died in her own house. Therefore, Ex.D11 - *Will* was shrouded in suspicious circumstances.

20. Apart from above, it was submitted, Smt.Varanandamma died issueless and her husband predeceased her. Therefore, plaintiff as her cousin would inherit her property as a reversioner and natural successor. However, admittedly no reasons were mentioned in *Will* for exclusion of natural heir and for bequeathal in favour of defendant, who was a stranger with no proven relationship.



21. It was further contended that first appellate Court failed to record any findings about validity or proof of Ex.D11 – *Will*. On other hand, plaintiff not only propounded bequeathal under Ex.P18 – registered *Will*, but also examined its attestor as PW.2, who identified LTM of testator as well as signature of other attestor. Insofar as sole suspicious circumstance about said *Will* that testator died a day after it's execution was sufficiently explained by PW.1, who stated that Smt.Varanandamma felt chest pain at 12:30 a.m. As there was no means of transport at night, she was given some hot water and while waiting for day break, she died around 6:00 a.m. Thus, considering death of testator a day after execution of *Will*, could not be viewed as suspicious circumstance, when plaintiff being natural successor would succeed to her property even in absence of bequeathal. Thus, there was misreading of Ex.P18 – *Will*.

22. It was further submitted, Exs.P3 to P11 - RTCs did not show entry of name of Puttaiah – legatee under Ex.D11 - *Will*. Therefore, defendant failed to prove possession. Above circumstances would establish that first appellate Court failed



to re-appreciate oral and documentary evidence in proper perspective. Hence, prayed for allowing appeal on following substantial question of law:

- a) Whether reversal of judgment and decree of trial Court by first Appellate Court is contrary to oral and documentary evidence?
- b) Whether first appellate Court erred in not considering suspicious circumstances surrounding Ex.D11 – Will?
- c) Whether first appellate Court erred in ignoring plaintiff was natural heir of testator and entitled to succeed to suit property even in absence of any *Will*?

23. On other hand, Sri Punith C., learned counsel for defendant opposed appeal. It was stated both plaintiff and defendant were claiming right over property of Smt.Varanandamma as legatees. While Ex.D11 – registered *Will* in favour of defendant was dated 06.09.2011, Ex.P18 – *Will* propounded by plaintiff was dated 19.10.2017. But, admittedly, without any recital about cancellation of earlier *Will*. Apart from above, fact that *Will* was claimed to have been executed one day prior to her death, would be a grave suspicious circumstance, more so, in light of admission by PW.1 that she was unwell about three months prior to it and admittedly, testator was old aged. While passing impugned judgment, trial



Court had failed to take note of above facts and circumstances and therefore, first appellate Court was justified in reversing findings in appeal.

24. It was submitted, on one hand, plaintiff claimed Smt.Varanandamma was under his care and after death of her husband, she was residing with him and therefore, he would have knowledge of any of her activities. On contrary, he admitted that *Will* was found in a trunk in *her house*. It was submitted, PW.1 refused to give clear answer to suggestion that photograph of Smt.Varanandamma on *Will* would suggest that she was unable to move around by a counter question.

25. It was submitted, PW.2 also admitted, since some time prior to execution of alleged *Will*, she was unwell. He also admitted, testator confiding in him that she was often unwell. He also admitted that one or two days prior to execution of *Will*, she was unwell. Same would give rise to suspicious circumstance. Appreciating said circumstances, first appellate Court had rightly reversed trial Court findings and dismissed suit. Since there was re-appreciation of entire material and conclusions arrived on due appreciation, substantial questions



of law proposed do not arise for consideration and prayed for dismissal of appeal.

26. In support of his submission, learned counsel relied on following decisions:

- i. **SR Srinivasa & Ors. v. S. Padmavathamma**, reported in **(2010) 5 SCC 274** (paras-60, 63 and 65);
- ii. **Myra Philomeno Collaco v. Lilian Coelho and Ors.**, reported in **2025 SCC Online Bom 5530** (paras-119 and 129);
- iii. **Union of India & Ors. v. Vasavi Co-Operative Housing Society Ltd. & Ors.**, reported in **(2014) 2 SCC 269** (paras-15 and 19);
- iv. Judgment of this Court in **Krishna & Anr. v. Sangeeta & Ors.**, reported in **2025:KHC-D:11306** (paras-15 and 22);
- v. **Mallappa Ramappa Naik v. Ittappa Kamappa Banti**, reported in **2020 SCC OnLine Kar 3347** (para-18).

27. Heard learned counsel, perused impugned judgment and decree of both Courts.

28. This appeal is by plaintiff against divergent findings in a suit for declaration of title on basis of Ex.P18 – *Will* dated 19.10.2017 and for permanent injunction, wherein trial Court



decreed suit, while first appellate Court reversed same and dismissed suit.

29. As noted above, suit was opposed by defendant, who set up rival claim of bequeathal in his favour by very same testator under Ex.D11 - *Will* dated 06.09.2011. Plaintiff disputes said *Will* alleging it to be concocted.

30. Since both parties are staking claim over suit property on basis of respective *Wills*, it would be useful to refer to law about claims based on *Will*. Hon'ble Supreme Court in case of ***Kavita Kanwar v. Pamela Mehta***, reported in **(2021) 11 SCC 209**, examined it in detail as follows:

"Will — Proof and satisfaction of the Court:

23. It remains trite that a will is the testamentary document that comes into operation after the death of the testator. The peculiar nature of such a document has led to solemn provisions in the statutes for making of a will and for its proof in a court of law. Section 59 of the Succession Act provides that every person of sound mind, not being a minor, may dispose of his property by will. A will or any portion thereof, the making of which has been caused by fraud or coercion or by any such importunity that has taken away the free agency of the testator, is declared to be void under Section 61 of the Succession Act; and further, Section 62 of the Succession Act enables the maker of a will to make or alter the same at any time when he is competent to dispose of his property by will. Chapter III of Part IV of the Succession Act



makes the provision for execution of unprivileged wills (as distinguished from privileged wills provided for in Chapter IV) with which we are not concerned in this case.

23.1. Sections 61 and 63 of the Succession Act, relevant for the present purpose, could be usefully extracted as under:

"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. ...

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 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."

23.2. Elaborate provisions have been made in Chapter VI of the Succession Act (Sections 74 to 111), for construction of wills which, in their sum and substance, make the intention of legislature clear that any irrelevant mis-description or error is not to operate against the will; and approach has to be to give effect to a will once it is found to have been executed in the sound state of mind by the testator while exercising his own free will. However, as per Section 81 of the Succession Act, extrinsic evidence is inadmissible in case of patent ambiguity or deficiency in the will; and as per Section 89 thereof, a will or bequest not expressive of any definite intention is declared void for uncertainty. Sections 81 and 89 read as under:

"81. Extrinsic evidence inadmissible in case of patent ambiguity or deficiency.—*Where there is an ambiguity or deficiency on the face of a will, no extrinsic evidence as to the intentions of the testator shall be admitted. ...*

89. Will or bequest void for uncertainty.—*A will or bequest not expressive of any definite intention is void for uncertainty."*

Moreover, it is now well settled that when the will is surrounded by suspicious circumstances, the Court would expect that the legitimate suspicion should be removed before the document in question is accepted as the last will of the testator.

23.3. As noticed, as per Section 63 of the Succession Act, the will ought to be attested by two or more witnesses. Hence, any document propounded as a will cannot be used as evidence unless at least one attesting witness has been examined for the purpose of proving its execution,



if such witness is available and is capable of giving evidence as per the requirements of Section 68 of the Evidence Act, that reads 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."

24. We may now take note of the relevant principles settled by the consistent decisions in regard to the process of examination of a will when propounded before a court of law.

24.1. In H. Venkatachala Iyengar v. BN Thimmajamma, AIR 1959 SC 443, a three-Judge Bench of this Court traversed through the vistas of the issues related with execution and proof of will and enunciated a few fundamental guiding principles that have consistently been followed and applied in almost all the cases involving such issues. The synthesis and exposition by this Court in paras 18 to 22 of the said decision could be usefully reproduced as under: (AIR pp. 451-52)

"18. What is the true legal position in the matter of proof of wills? It is well known that the proof of wills presents a recurring topic for decision in courts and there are a large number of judicial pronouncements on the subject. The party propounding a will or otherwise making a claim under a will is no doubt seeking to prove a document and, in deciding how it is to be



proved, we must inevitably refer to the statutory provisions which govern the proof of documents. Sections 67 and 68, Evidence Act are relevant for this purpose. Under Section 67, if a document is alleged to be signed by any person, the signature of the said person must be proved to be in his handwriting, and for proving such a handwriting under Sections 45 and 47 of the Act the opinions of experts and of persons acquainted with the handwriting of the person concerned are made relevant. Section 68 deals with the proof of the execution of the document required by law to be attested; and it provides that such a document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. These provisions prescribe the requirements and the nature of proof which must be satisfied by the party who relies on a document in a court of law. Similarly, Sections 59 and 63 of the Indian Succession Act are also relevant. Section 59 provides that every person of sound mind, not being a minor, may dispose of his property by will and the three illustrations to this section indicate what is meant by the expression "a person of sound mind" in the context. Section 63 requires that the testator shall sign or affix his mark to the will or it shall be signed by some other person in his presence and by his direction and that the signature or mark shall be so made that it shall appear that it was intended thereby to give effect to the writing as a will. This section also requires that the will shall be attested by two or more witnesses as prescribed. Thus the question as to whether the will set up by the propounder is proved to be the last will of the testator has to be decided in the light of these provisions. Has the testator signed the will? Did he understand the nature and effect of the dispositions in the will? Did he put his signature to the will knowing what it contained? Stated broadly it is the decision of these questions which determines the nature of the finding on the question of the proof of wills. It would prima facie be true to say



that the will has to be proved like any other document except as to the special requirements of attestation prescribed by Section 63 of the Indian Succession Act. As in the case of proof of other documents so in the case of proof of wills it would be idle to expect proof with mathematical certainty. The test to be applied would be the usual test of the satisfaction of the prudent mind in such matters.

19. However, there is one important feature which distinguishes wills from other documents. Unlike other documents the will speaks from the death of the testator, and so, when it is propounded or produced before a Court, the testator who has already departed the world cannot say whether it is his will or not; and this aspect naturally introduces an element of solemnity in the decision of the question as to whether the document propounded is proved to be the last will and testament of the departed testator. Even so, in dealing with the proof of wills the Court will start on the same enquiry as in the case of the proof of documents. The propounder would be called upon to show by satisfactory evidence that the will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the dispositions and put his signature to the document of his own free will. Ordinarily when the evidence adduced in support of the will is disinterested, satisfactory and sufficient to prove the sound and disposing state of the testator's mind and his signature as required by law, Courts would be justified in making a finding in favour of the propounder. In other words, the onus on the propounder can be taken to be discharged on proof of the essential facts just indicated.

20. There may, however, be cases in which the execution of the will may be surrounded by suspicious circumstances. The alleged signature of the testator may be very shaky and doubtful



and evidence in support of the propounder's case that the signature in question is the signature of the testator may not remove the doubt created by the appearance of the signature; the condition of the testator's mind may appear to be very feeble and debilitated; and evidence adduced may not succeed in removing the legitimate doubt as to the mental capacity of the testator; the dispositions made in the will may appear to be unnatural, improbable or unfair in the light of relevant circumstances; or, the will may otherwise indicate that the said dispositions may not be the result of the testator's free will and mind. In such cases the Court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last will of the testator. The presence of such suspicious circumstances naturally tends to make the initial onus very heavy; and, unless it is satisfactorily discharged, Courts would be reluctant to treat the document as the last will of the testator. It is true that, if a caveat is filed alleging the exercise of undue influence, fraud or coercion in respect of the execution of the will propounded, such pleas may have to be proved by the caveators; but, even without such pleas circumstances may raise a doubt as to whether the testator was acting of his own free will in executing the will, and in such circumstances, it would be a part of the initial onus to remove any such legitimate doubts in the matter.

21. Apart from the suspicious circumstances to which we have just referred in some cases the wills propounded disclose another infirmity. Propounders themselves take a prominent part in the execution of the wills which confer on them substantial benefits. If it is shown that the propounder has taken a prominent part in the execution of the will and has received substantial benefit under it, that itself is generally treated as a suspicious circumstance attending the execution of the will and the propounder is required to remove the



said suspicion by clear and satisfactory evidence. It is in connection with wills that present such suspicious circumstances that decisions of English Courts often mention the test of the satisfaction of judicial conscience. It may be that the reference to judicial conscience in this connection is a heritage from similar observations made by ecclesiastical Courts in England when they exercised jurisdiction with reference to wills; but any objection to the use of the word "conscience" in this context would, in our opinion, be purely technical and academic, if not pedantic. The test merely 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 deciding a solemn question and it must be fully satisfied that it had been validly executed by the testator who is no longer alive.

22. It is obvious that for deciding material questions of fact which arise in applications for probate or in actions on wills, no hard-and-fast or inflexible rules can be laid down for the appreciation of the evidence. It may, however, be stated generally that a propounder of the will has to prove the due and valid execution of the will and that if there are any suspicious circumstances surrounding the execution of the will the propounder must remove the said suspicions from the mind of the Court by cogent and satisfactory evidence. It is hardly necessary to add that the result of the application of these two general and broad principles would always depend upon the facts and circumstances of each case and on the nature and quality of the evidence adduced by the parties. It is quite true that, as observed by Lord Du Parc in *Harmes v. Hinkson* [*Harmes v. Hinkson*, 1946 SCC OnLine PC 20: AIR 1946 PC 156: (1945-46) 50 CWN 895], "where a will is charged with suspicion, the rules enjoin a reasonable scepticism, not an obdurate persistence in



disbelief. They do not demand from the Judge, even in circumstances of grave suspicion, a resolute and impenetrable incredulity. He is never required to close his mind to the truth". It would sound platitudinous to say so, but it is nevertheless true that in discovering truth even in such cases the judicial mind must always be open though vigilant, cautious and circumspect."

(emphasis supplied)

24.2. In *Purnima Debi* [*Purnima Debi v. Kumar Khagendra Narayan Deb*, (1962) 3 SCR 195: AIR 1962 SC 567], this Court referred to aforementioned decision in *H. Venkatachala Iyengar* and further explained principles which govern proving of a will as follows : (*Purnima Debi* case [*Purnima Debi v. Kumar Khagendra Narayan Deb*, (1962) 3 SCR 195 : AIR 1962 SC 567], AIR p. 569, para 5)

"5. Before we consider the facts of this case it is well to set out the principles which govern the proving of a will. This was considered by this Court in *H. Venkatachala Iyengar v. B.N. Thimmajamma* [*H. Venkatachala Iyengar v. B.N. Thimmajamma*, AIR 1959 SC 443: 1959 Supp (1) SCR 426]. It was observed in that case that the mode of proving a will did not ordinarily differ from that of proving any other document except as to the special requirement of attestation prescribed in the case of a will by Section 63 of the Indian Succession Act. The onus of proving the will was on the propounder and in the absence of suspicious circumstances surrounding the execution of the will proof of testamentary capacity and signature of the testator as required by law was sufficient to discharge the onus. Where, however, there were suspicious circumstances, the onus would be on the propounder to explain them to the satisfaction of the Court before the will could be accepted as genuine. If the caveator alleged undue influence, fraud or coercion, the onus would be on him to prove the same. Even where



there were no such pleas but the circumstances gave rise to doubts, it was for the propounder to satisfy the conscience of the Court. Further, what are suspicious circumstances was also considered in this case. The alleged signature of the testator might be very shaky and doubtful and evidence in support of the propounder's case that the signature in question was the signature of the testator might not remove the doubt created by the appearance of the signature. The condition of the testator's mind might appear to be very feeble and debilitated and evidence adduced might not succeed in removing the legitimate doubt as to the mental capacity of the testator; the dispositions made in the will might appear to be unnatural, improbable or unfair in the light of relevant circumstances; or the will might otherwise indicate that the said dispositions might not be the result of the testator's free will and mind. In such cases, the Court would naturally expect that all legitimate suspicions should be completely removed before the document was accepted as the last will of the testator. Further, a propounder himself might take a prominent part in the execution of the will which conferred on him substantial benefits. If this was so it was generally treated as a suspicious circumstance attending the execution of the will and the propounder was required to remove the doubts by clear and satisfactory evidence. But even where there were suspicious circumstances and the propounder succeeded in removing them, the Court would grant probate, though the will might be unnatural and might cut off wholly or in part near relations."

(emphasis supplied)

24.3. In *Indu Bala Bose* [*Indu Bala Bose v. Manindra Chandra Bose*, (1982) 1 SCC 20], this Court again said: (SCC pp. 22-23, paras 7-8)

"7. This Court has held that the mode of proving a will does not ordinarily differ from that of



proving any other document except to the special requirement of attestation prescribed in the case of a will by Section 63 of the Succession Act. The onus of proving the will is on the propounder and in the absence of suspicious circumstances surrounding the execution of the will, proof of testamentary capacity and the signature of the testator as required by law is sufficient to discharge the onus. Where however there are suspicious circumstances, the onus is on the propounder to explain them to the satisfaction of the court before the court accepts the will as genuine. Even where circumstances give rise to doubts, it is for the propounder to satisfy the conscience of the court. The suspicious circumstances may be as to the genuineness of the signatures of the testator, the condition of the testator's mind, the dispositions made in the will being unnatural, improbable or unfair in the light of relevant circumstances, or there might be other indications in the will to show that the testator's mind was not free. In such a case the court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last will of the testator. If the propounder himself takes a prominent part in the execution of the will which confers a substantial benefit on him, that is also a circumstance to be taken into account, and the propounder is required to remove the doubts by clear and satisfactory evidence. If the propounder succeeds in removing the suspicious circumstances the court would grant probate, even if the will might be unnatural and might cut off wholly or in part near relations. [Ed. : See Shashi Kumar Banerjee v. Subodh Kumar Banerjee, AIR 1964 SC 529; H. Venkatachala Iyengar v. B.N. Thimmajamma, AIR 1959 SC 443 : 1959 Supp (1) SCR 426; Rani Purnima Devi v. Kumar Khagendra Narayan Dev, AIR 1962 SC 567 : (1962) 3 SCR 195]

8. Needless to say that any and every circumstance is not a "suspicious"



circumstance. A circumstance would be "suspicious" when it is not normal or is not normally expected in a normal situation or is not expected of a normal person."

(emphasis supplied in original)

24.4. We may also usefully refer to the principles enunciated in *Jaswant Kaur* [*Jaswant Kaur v. Amrit Kaur*, (1977) 1 SCC 369] for dealing with a will shrouded in suspicion, as follows: (SCC p. 373, para 9)

"9. In cases where the execution of a will is shrouded in suspicion, its proof ceases to be a simple *lis* between the plaintiff and the defendant. What, generally, is an adversary proceeding becomes in such cases a matter of the court's conscience and then the true question which arises for consideration is whether the evidence led by the propounder of the will is such as to satisfy the conscience of the court that the will was duly executed by the testator. It is impossible to reach such satisfaction unless the party which sets up the will offers a cogent and convincing explanation of the suspicious circumstances surrounding the making of the will."

(emphasis supplied)

24.5. In *Uma Devi Nambiar* [*Uma Devi Nambiar v. T.C. Sidhan*, (2004) 2 SCC 321], this Court extensively reviewed the case law dealing with a will, including the Constitution Bench decision of this Court in *Shashi Kumar Banerjee v. Subodh Kumar Banerjee* [*Shashi Kumar Banerjee v. Subodh Kumar Banerjee*, AIR 1964 SC 529] , and observed that mere exclusion of the natural heirs or giving of lesser share to them, by itself, will not be considered to be a suspicious circumstance. This Court observed, *inter alia*, as under: (*Uma Devi Nambiar* case [*Uma Devi Nambiar v. T.C. Sidhan*, (2004) 2 SCC 321], SCC pp. 332-34, paras 15-16)



"15. Section 63 of the Act deals with execution of unprivileged wills. It lays down that 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. It further lays down that the will shall be attested by two or more witnesses, each of whom has seen the testator signing or affixing his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator and each of the witnesses shall sign the will in the presence of the testator. Section 68 of the Indian Evidence Act, 1872 (in short "the Evidence Act") mandates examination of one attesting witness in proof of a will, whether registered or not. The law relating to the manner and onus of proof and also the duty cast upon the court while dealing with a case based upon a will has been examined in considerable detail in several decisions [H. Venkatachala Iyengar v. B.N. Thimmajamma, AIR 1959 SC 443: 1959 Supp (1) SCR 426] , [Purnima Debi v. Kumar Khagendra Narayan Deb, (1962) 3 SCR 195: AIR 1962 SC 567] , [Shashi Kumar Banerjee v. Subodh Kumar Banerjee, AIR 1964 SC 529] of this Court. ... A Constitution Bench of this Court in Shashi Kumar Banerjee case [Shashi Kumar Banerjee v. Subodh Kumar Banerjee, AIR 1964 SC 529] succinctly indicated the focal position in law as follows : (AIR p. 531, para 4)

'4. ... The mode of proving a will does not ordinarily differ from that of proving any other document except as to the special requirement of attestation prescribed in the case of a will by Section 63 of the Indian Succession Act. The onus of proving the will is on the propounder and in the absence of suspicious circumstances surrounding the execution of the will, proof of testamentary capacity and the signature of the testator as required by law is sufficient to discharge the onus. Where however there are suspicious circumstances, the onus is on the propounder



*to explain them to the satisfaction of the court before the court accepts the will as genuine. Where the caveator alleges undue influence, fraud and coercion, the onus is on him to prove the same. Even where there are no such pleas but the circumstances give rise to doubts, it is for the propounder to satisfy the conscience of the court. The suspicious circumstances may be as to the genuineness of the signature of the testator, the condition of the testator's mind, the dispositions made in the will being unnatural, improbable or unfair in the light of relevant circumstances or there might be other indications in the will to show that the testator's mind was not free. In such a case the court would naturally expect that all legitimate suspicion should be completely removed before the document is accepted as the last will of the testator. **If the propounder himself takes part in the execution of the will which confers a substantial benefit on him, that is also a circumstance to be taken into account, and the propounder is required to remove the doubts by clear and satisfactory evidence.** If the propounder succeeds in removing the suspicious circumstances the court would grant probate, even if the will might be unnatural and might cut off wholly or in part near relations.'*

16. A will is executed to alter the ordinary mode of succession and by the very nature of things, it is bound to result in either reducing or depriving the share of natural heirs. If a person intends his property to pass to his natural heirs, there is no necessity at all of executing a will. It is true that a propounder of the will has to remove all suspicious circumstances. Suspicion means doubt, conjecture or mistrust. But the fact that natural heirs have either been excluded or a lesser share has been given to them, by itself without anything more, cannot be held to be a



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suspicious circumstance especially in a case where the bequest has been made in favour of an offspring. As held in *P.P.K. Gopalan Nambiar v. P.P.K. Balakrishnan Nambiar* [*P.P.K. Gopalan Nambiar v. P.P.K. Balakrishnan Nambiar*, 1995 Supp (2) SCC 664], it is the duty of the propounder of the will to remove all the suspected features, but there must be real, germane and valid suspicious features and not fantasy of the doubting mind. It has been held that if the propounder succeeds in removing the suspicious circumstances, the court has to give effect to the will, even if the will might be unnatural in the sense that it has cut off wholly or in part near relations. ... In *Rabindra Nath Mukherjee v. Panchanan Banerjee* [*Rabindra Nath Mukherjee v. Panchanan Banerjee*, (1995) 4 SCC 459], it was observed that the circumstance of deprivation of natural heirs should not raise any suspicion because the whole idea behind execution of the will is to interfere with the normal line of succession and so, natural heirs would be debarred in every case of will. Of course, it may be that in some cases they are fully debarred and in some cases partly."

24.6. In *Mahesh Kumar* [*Mahesh Kumar v. Vinod Kumar*, (2012) 4 SCC 387 : (2012) 2 SCC (Civ.) 526], this Court indicated the error of approach on the part of the High Court while appreciating the evidence relating to the will as follows: (SCC pp. 405-06, paras 44-46)

"44. The issue which remains to be examined is whether the High Court was justified in coming to the conclusion that the execution of the will dated 10-2-1992 was shrouded with suspicion and the appellant failed to dispel the suspicion? At the outset, we deem it necessary to observe that the learned Single Judge misread the statement of Sobhag Chand (DW 3) and recorded something which does not appear in his statement. While Sobhag Chand categorically stated that he had signed as the



witness after Shri Harishankar had signed the will, the portion of his statement extracted in the impugned judgment gives an impression that the witnesses had signed even before the executant had signed the will.

45. Another patent error committed by the learned Single Judge is that he decided the issue relating to validity of the will by assuming that both the attesting witnesses were required to append their signatures simultaneously. Section 63(c) of the 1925 Act does not contain any such requirement and it is settled law that examination of one of the attesting witnesses is sufficient. Not only this, while recording an adverse finding on this issue, the learned Single Judge omitted to consider the categorical statements made by DW 3 and DW 4 that the testator had read out and signed the will in their presence and thereafter they had appended their signatures.

46. The other reasons enumerated by the learned Single Judge for holding that the execution of the will was highly suspicious are based on mere surmises/conjectures. The observation of the learned Single Judge that the possibility of obtaining signatures of Shri Harishankar and attesting witnesses on blank paper and preparation of the draft by Shri S.K. Agarwal, Advocate on pre-signed papers does not find even a semblance of support from the pleadings and evidence of the parties. If Respondent 1 wanted to show that the will was drafted by the advocate after Shri Harishankar and the attesting witnesses had signed blank papers, he could have examined or at least summoned Shri S.K. Agarwal, Advocate, who had represented him before the Board of Revenue."

24.7. Another decision cited on behalf of the appellant in Leela Rajagopal [Leela Rajagopal v. Kamala Menon Cocharan, (2014) 15 SCC 570: (2015) 4 SCC (Civ) 267] may also be



referred wherein this Court summarised the principles that ultimately, the judicial verdict in relation to a will and suspicious circumstances shall be on the basis of holistic view of the matter with consideration of all the unusual features and suspicious circumstances put together and not on the impact of any single feature. This Court said: (SCC p. 576, para 13)

"13. A will may have certain features and may have been executed in certain circumstances which may appear to be somewhat unnatural. Such unusual features appearing in a will or the unnatural circumstances surrounding its execution will definitely justify a close scrutiny before the same can be accepted. It is the overall assessment of the court on the basis of such scrutiny; the cumulative effect of the unusual features and circumstances which would weigh with the court in the determination required to be made by it. The judicial verdict, in the last resort, will be on the basis of a consideration of all unusual features and suspicious circumstances put together and not on the impact of any single feature that may be found in a will or a singular circumstance that may appear from the process leading to its execution or registration. This, is the essence of the repeated pronouncements made by this Court on the subject including the decisions referred to and relied upon before us."

24.8. We need not multiply the references to all and other decisions cited at the Bar, which essentially proceed on the aforesaid principles while applying the same in the given set of facts and circumstances. Suffice would be to point out that in a recent decision in Shivakumar v. Sharanabasappa (2021) 11 SCC 277, this Court, after traversing through the relevant decisions, has summarised the principles governing the adjudicatory process concerning proof of a will as follows : (SCC pp. 309-10, para 12)



"12. ... 12.1. Ordinarily, 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. Alike the principles governing the proof of other documents, in the case of will too, the proof with mathematical accuracy is not to be insisted upon.

12.2. Since as per Section 63 of the Succession Act, a will is required to be attested, it cannot be used as evidence until at least one attesting witness has been called for the purpose of proving its execution, if there be an attesting witness alive and capable of giving evidence.

12.3. The unique feature of a will is that it speaks from the death of the testator and, therefore, the maker thereof is not available for deposing about the circumstances in which the same was executed. This introduces an element of solemnity in the decision of the question as to whether the document propounded is the last will of the testator. The initial onus, naturally, lies on the propounder but the same can be taken to have been primarily discharged on proof of the essential facts which go into the making of a will.

12.4. The case in which the execution of the will is surrounded by suspicious circumstances stands on a different footing. The presence of suspicious circumstances makes the onus heavier on the propounder and, therefore, in cases where the circumstances attendant upon the execution of the document give rise to suspicion, the propounder must remove all legitimate suspicion before the document can be accepted as the last will of the testator.

12.5. If a person challenging the will alleges fabrication or alleges fraud, undue influence, coercion et cetera 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 give rise to the doubt or as to whether the will had indeed been executed by the testator and/or as to whether the testator was acting of his own free will. In such eventuality, it is again a part of the initial onus of the propounder to remove all reasonable doubts in the matter.

12.6. A circumstance is "suspicious" when it is not normal or is 'not normally expected in a normal situation or is not expected of a normal person'. As put by this Court, the suspicious features must be "real, germane and valid" and not merely the "fantasy of the doubting mind".

12.7. As to whether any particular feature or a set of features qualify as "suspicious" would depend on the facts and circumstances of each case. A shaky or doubtful signature; a feeble or uncertain mind of the testator; an unfair disposition of property; an unjust exclusion of the legal heirs and particularly the dependants; an active or leading part in making of the will by the beneficiary thereunder et cetera are some of the circumstances which may give rise to suspicion. The circumstances above noted are only illustrative and by no means exhaustive because there could be any circumstance or set of circumstances which may give rise to legitimate suspicion about the execution of the will. On the other hand, any of the circumstances qualifying as being suspicious could be legitimately explained by the propounder. However, such suspicion or suspicions cannot be removed by mere proof of sound and disposing state of mind of the testator and his signature coupled with the proof of attestation.



12.8. The test of satisfaction of the judicial conscience comes into operation when a document propounded as the will of the testator is surrounded by suspicious circumstance(s). While applying such test, the court would address itself to the solemn questions as to whether the testator had signed the will while being aware of its contents and after understanding the nature and effect of the dispositions in the will?

12.9. In the ultimate analysis, where the execution of a will is shrouded in suspicion, it is a matter essentially of the judicial conscience of the court and the party which sets up the will has to offer cogent and convincing explanation of the suspicious circumstances surrounding the will.”

(emphasis supplied)

31. From rival submissions, suspicious circumstances propounded and explanation offered are as follows:

Ex.P18 - Will dated 19.10.2017

Suspicious circumstance	Explanation
Death of testator a day after date of execution and registration of Ex.P.18 – Will	Only elicitation from PW.1 was about testator complaining of chest pain at 12:30 am and breathing her last around 5:00 - 6:00 a.m. And stating that due to lack of transport facilities, she could not be taken to hospital.
Contradiction between statement of PW.1 that Will was found in house of testator, when he claimed she was living with him.	Contradiction was not grave enough to disprove Will.



Admission by PW.2 that testator was often unwell and stating that she was unwell two days prior to date of execution.	Mere admission of ill health, cannot be suspicious circumstance nor lead to presumption that it was of such nature as to cloud or incapacitate testator from exercising free will. Especially in absence of any suggestions to this effect.
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Ex.D11 - Will dated 06.09.2011

Suspicious circumstance	Explanation
Execution of Ex.D1 for mortgaging property but bequeathing same under Ex.D11 on same day, coupled with admission that mortgagee, did not have money to lend and failure to examine person from whom he claimed to have borrowed mortgage money.	Both Exs.D1 and D11 are registered deeds attracting presumptions. DW.2 stated, since he did not have money, he borrowed it from some other and gave it to testator. Therefore, there was no need to examine person from whom money was borrowed.
Admission by DW.3 about testator continuing to cultivate bequeathed property till her death contrary to recital in Ex.D.1 about delivery of possession.	Admission about testator continuing to cultivate bequeathed property can be attributed to frail memory.
Even legatee being a licensed deed writer and working as assistant of Sri Jagadeesh, who was scribe of both Ex.D.1 and D.11 and defendant's father acting as attester of Ex.D11 - <i>Will</i>	Engaging same person to write two deeds on same day has to be considered normal. To prove Ex.D1 mortgagee is examined and to prove Ex.D11, attester is examined. Nothing material is elicited in cross examination.
While plaintiff is cousin of testator and natural successor as reversioner, defendant is stranger to testator.	



32. In view of above ratio, it would be necessary to examine material to prove respective *Wills* in light of explanation offered for suspicious circumstances on test bed of behavior of normal person in normal circumstances, referred to in ***Kavita Kanwar's case (supra)***.

33. While passing impugned judgment first appellate Court erroneously proceeded on assumption that plaintiff's claim was under Ex.D11 – *Will* dated 06.09.2011, while that of defendant on Ex.P18 – *Will* dated 19.10.2017, which is diagonally opposed to facts.

34. Referring to defendant's assertion that during her lifetime, testator borrowed money from his father and executed Ex.D9 – *Ili bhogya patra* on 14.02.1997, delivered possession, later executed Ex.D10 – another *Bhogya Patra* on 22.03.2005 and thereafter executed Ex.D11 – *Will* on 06.09.2011, in light of mutation of his name in revenue records and claim about mortgaging suit property with *Krusha* Bank for obtaining loan as establishing defendant's possession. It draws adverse inference against plaintiff for failure to get his name entered on basis of *Will* as well as his failure to challenge revenue entries in favour



of defendant. On said observations, it holds plaintiff not entitled for relief of injunction.

35. Further, it observes, absence of plea about redemption and Ex.D1 being registered attracted presumption in favour of defendant. It thereafter noted death of testator a day after execution of *Will*, in light of recitals in Ex.D1 about ill-health to hold that testator was not in sound state of mind while executing *Will* in favour of plaintiff. It observes, deposition of PWs.1 to 3 corroborated Exs.D1 to D11 and about plaintiff being aware of ownership and possession of defendant over suit property. It also observes admission by PW.1 that he was unable to provide medical treatment to testator to conclude testator was suffering from ill-health and not having physical and mental health at time of executing *Will* in his favour.

36. However, first appellate Court failed to note that period of mortgage in Ex.D9 was eight years from 1997, five years from 2005 in Ex.D10 and there being no reference to possession in Ex.D1. Though, it relies heavily on mutation in name of defendant, MR H8/2017-18 was dated 09.01.2018. At



same time, it ignored admission by DW.3, one of witness of Ex.D9 that until her death testator was cultivating suit property. And his refusal to give straight answer to suggestion that plaintiff was cultivating it after her death would cast serious doubt about defendant's possession over suit property.

37. Apart from above, DW.3 mentions about testator borrowing money from defendant's father, but in cross-examination, fails to disclose amount and later denies knowing contents of Ex.D9. Yet another factor requiring consideration is, whether a normal person, who (according to legatee himself) was in need of money for medical treatment would execute a Deed of Mortgage for Rs.1,00,000/-, mortgage suit property and bequeath it in favour of mortgagee's son on same day? And when attestor of *Will* is mortgager himself and legatee's father, same would attract suspicion about bequeathal being under influence of lender or not in sound disposing state of mind. First appellate Court also failed to consider admission by DW.2, mortgagee and father of defendant no.1, that he did not have money at time of execution of Ex.D1 and though claimed



to have borrowed money from some other person, failed to examine said person. These factors would aggravate suspicion.

38. On other hand, suspicious circumstances surrounding Ex.P.18 - *Will* are death of testator a day after its execution and PW.2 admitting testator suffering from ill-health. But, perusal of entire deposition of PW.2 would not indicate any effort by defendant to elicit nature of illness and establish that it was of such nature as to cloud her sound disposing state of mind. Especially, when testator was aged 51 years at time of execution of Ex.P18 - *Will* and 45 years as on date of Ex.D11 - *Will*. Even admission by PW.1 that he was unable to avail medical treatment to testator after she suffered chest pain, cannot be treated as suspicious circumstance in absence of admission elicited that *Will* was got executed when testator was gravely sick. Admittedly, there is no material to establish that testator suffering from any severe ailments.

39. Hon'ble Supreme Court in **Santhosh Hazari v. Purushotam Tiwari** reported in **2001 (3) SCC 179**, has held, appellate Court cannot reverse findings of trial Court merely on ground that another view was possible on available material.



When trial Court had adverted to entire material on record and arrived at conclusion without arriving at a conclusion that said findings were perverse or capricious, first appellate Court would not be justified in interference.

40. While arriving at conclusion on issue no.1 and addl. issues no.1 and 2 regarding proof of respective *Wills*, trial Court observed claims by plaintiff and defendant under rival *Wills* and noted that both were registered and *Will* propounded by plaintiff was latest. It referred to fact that Ex.D1 – *Bhogya Patra* and Ex.D11 – *Will* were allegedly executed on same day and registered within seven minutes of each other as a suspicious circumstance by itself. It also noted, only attempt by defendant to dispel suspicious circumstance was assertion that it was registered much earlier than *Will* propounded by plaintiff and death of testator immediately after execution of *Will* in favour of plaintiff, would not be acceptable explanation. It observed, defendant himself was a licensed bond writer and working as assistant of Jagadeesh, who was scribe of *Will* as well as *Bhogya patra*. It also noted, father of defendant was attester of said *Will*. It also noted absence of any material to



indicate that bequeathal in favour of defendant was on account of love and affection or care. It also noted absence of any material to indicate that defendant had performed funeral ceremonies of testator or that she was residing with him. It noted, DW.1 admitted that she died in her own house. It examined combined effect of assertion by defendant that he was unaware about execution of *Will* and about testator visiting Sub-Registrar's office on 06.09.2011, when it's registration was within a span of seven minutes of execution of *Bhogya Patra* executed in favour of his father with Jagadeesh as scribe of both deeds. It held lack of explanation of above circumstances and held defendant had failed to prove *Will* dated 06.09.2011.

41. Trial Court also referred to failure of DW.2 – Mortgagee and father of legatee to remember Survey number of property as well as his admission that Testator was cultivating suit property till her death. Trial Court also referred to omissions in relation to Ex.D1 - *Bhogya Patra*, wherein DW-2 stated that he did not have Rs.1,00,000/- on date of its execution and later claiming to have borrowed it from someone else, which was beyond pleading. It drew adverse inference for



failure to examine person, who had lent money. Thus, trial Court examined entire facts and circumstances surrounding rival *Wills*, weighed explanation offered before arriving at reasoned conclusion about failure of defendant to prove Ex.D.11 – *Will* and plaintiff succeeding in proving Ex.P.18 – *Will*.

42. Though, learned counsel for respondent has relied on various decisions, in **SR Srinivasa's** case (supra), Hon'ble Supreme Court emphasized that burden would be on propounder of *Will* to explain suspicious circumstances surrounding it and need for satisfaction of judicial conscience while evaluating explanation of suspicious circumstances. In fact, twin facts noted in said decision were presence of beneficiary under *Will* at time of registration of *Will* as well as absence of satisfactory explanation for exclusion of natural successor. Both such factors are found against defendant herein.

43. Insofar as **Myra Philomena Collaco's** case (supra), both factors referred to in High Court of Bombay, namely definition of suspicious circumstance by Hon'ble



Supreme Court in **Shivakumar v. Sharanabasappa's** case (*supra*) as well as reference to clarification in **Indu Bala Bose v. Manindra Chandra Bose**, reported in **(1982) 1 SCC 20**, that every circumstance cannot be treated as suspicious circumstance, are referred to while referring to **Kavita Kanwar's** case (*supra*).

44. Even reliance on decision in **Vasavi Co-operative Housing Society Ltd's** case (*supra*), for proposition that in suit for declaration of title burden always lies on plaintiff to establish clear case and plaintiff cannot rely upon weakness of defence, would not be of much assistance to defendant herein as both plaintiff as well as defendant in this case are staking claim over suit property as legatees under respective *Wills*. Even decisions in **Krishna S. Deshpande** and **Mallappa Ramappa Naik's** cases (*supra*) are for proposition that Order XX Rule 5 of CPC, mandates trial Court to answer all issues framed, which would not be applicable in present case. Thus, decisions relied would not lend much credence to defendant's case.



45. For aforesaid, substantial questions of law are answered in affirmative.

46. Consequently, appeal is allowed; judgment and decree dated 05.07.2025 passed by VII Additional District and Sessions Judge, Mysuru, (Sitting at Hunsur), in R.A.no.190/2022 is set aside and judgment and decree dated 28.02.2022 passed by Additional Senior Civil Judge and JMFC., Hunsur, in OS no.51/2018 is restored.

**Sd/-
(RAVI V HOSMANI)
JUDGE**

PSG/GRD/AV
List No.: 1 Sl No.: 61