

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**Second Appeal No. 772 of 2013  
With  
Civil Application No.13646 of 2013**

Suryabhan S/o Namdeo Vakte  
Died, through legal representatives  
And Others.

**.. Appellants.**

**Versus**

Bhagirathibai @ Vatsalabai  
Tulshidas Chavan  
Since deceased through legal  
representatives & Others.

**.. Respondents.**

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Shri. V.J. Dixit, Senior Advocate, instructed by Shri. N.D.  
Sonavane, Advocate, for appellants.

Shri. Sanket S. Kulkarni, Advocate, for respondent  
Nos.1A to 1J.

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**CORAM: T.V. NALAWADE, J.**

**DATE : 14<sup>th</sup> SEPTEMBER 2015**

**ORDER:**

1) The appeal is filed to challenge the judgment and decree of Special Civil Suit No.31/1999 which was pending in the Court of the Civil Judge, Senior Division, Kopergaon and also to challenge the judgment and order

of Regular Civil Appeal No.50/2003 which was pending in the District Court Kopargaon. Respondent No.1 had filed suit for partition and separate possession in respect of immovable and movable property. Half share is given to respondent, plaintiff by the Courts below. Original defendant Nos. 3,7 and 8 have challenged the decision. Both sides are heard.

2) It is the case of the plaintiff that suit property was joint Hindu family property of her father Ananda and her uncle Namdeo. It is the case of the plaintiff that she is only heir left behind by Ananda. It is the case of the plaintiff that defendant No.1 Namdeo is uncle of the plaintiff, defendant No.2 is wife of defendant No.1 and defendant Nos.3 to 10 are the issues of defendant Nos.1 and 2. It is contended that Ananda and Namdeo each had one-half share in the suit property and after death of Ananda, plaintiff became entitled to get share of Ananda. Ananda died on 6-4-1990 at Jeur Kumbhari when he was aged about 91 to 92 years. It is contended that partition had not taken place between Ananda and Namdeo.

3) It is the case of the plaintiff that Ananda used to discuss the matter of joint Hindu family property with her and he had promised that he would see that in his life time he would partition the property and he would give one-half share to the plaintiff. It is contended that when after the death of Ananda, the plaintiff asked the defendants to partition the property, defendants said that Ananda has left behind a will in their favour and she is not entitled to get anything from the suit property. It is contended by the plaintiff that if at all there is such will, that must have been obtained by fraud by the defendants as Ananda had never expressed desire to give his share to the defendants. It is contended that the defendants must have obtained signatures of Ananda by making false representation by saying that it was partition document. It is contended that the said will is void and it is not binding on her.

4) It is the case of the plaintiff that Ananda used to live in Kopargaon and she used to send tiffin for Ananda. It is the case of the plaintiff that the defendants must have taken Ananda to Jeur Kumbhari in her

temporary absence and by misusing his old age and the fact that he was not able to understand the things, they must have obtained signatures on some document and so the said document was not executed out of free consent.

5) It is the case of the plaintiff that after death of Ananda, the defendants said that the property is partitioned amongst themselves. It is her case that they have done it to create complications and to defeat the claim of the plaintiff.

6) Defendant No.3 and 8 have filed joint written statement. They admitted relationship of the plaintiff with them. Except one property like one plot and one motor cycle they have admitted that Ananda had one half share in remaining suit property. They have contended that when Ananda was living in Jeur Kumbhari, on 21-3-1990, he made a will voluntarily to give his property to defendant No.3. It is contended that the will was registered on 22-3-1990. It is contended that due to relationship of defendant No.3 with other defendants he allowed to partition the entire property amongst all the

defendants. It is their case that the will was not got executed fraudulently. They specifically contended that plot No.6 from the suit property was acquired by defendant No.8 from his own income, from his salary income and it was not joint Hindu family property. Defendant No.7 adopted this written statement. Written Statement of defendant Nos.1,2,4 to 6, 9 and 10 is similar to the written statement of defendant Nos.3 and 8. Defendant No.11 has also adopted written statement of these defendants.

7) Issues were framed by the trial Court. Both sides gave evidence. The trial Court and the first appellate Court have held that due execution of will is not proved by the defendants. It is held that there are suspicious circumstances surrounding the will due to which the will cannot be held as a valid will. The Courts below have held that the plaintiff is entitled to get one half share in the suit property except aforesaid plot and one motor cycle (plaint property No.1-E and one motor cycle).

8) Learned counsel for the appellants submitted that on the following points mentioned as the grounds (Grounds V to IX) in appeal memo, substantial questions of law need to be formulated.

"V. Whether both the learned lower Courts have committed error by ignoring the admission given by the plaintiff herself that her mother has expired while she was four years old and her father deceased Ananda was residing jointly with defendants till his death and thus, it is sufficient to hold that the defendants were taking care of deceased Ananda and, therefore, it is but natural that out of affection and considering the fact that Suryabhan being elder brother amongst nephews has rightly executed the will in favour of Suryabhan ?

VI. Whether both the learned lower Courts have committed error by not considering the fact that, once it has been proved by evidence of scribe and the attesting witness that the deceased Ananda was in good mental and physical condition and he signed the will in their presence and so also attesting witness have signed before the deceased Ananda, it is sufficient to hold that will has been proved?

VII. Whether both the learned lower Courts have failed to appreciate that in the first place, the plaintiff had no right to claim any partition as she has got married, as per her evidence prior to the Hindu Succession Act came into force?

VIII. Whether both the learned lower Courts have committed error in shifting the burden on the defendants as regards not giving any share to the plaintiff, when it is not the test for holding the will as illegal. On that count and, therefore, whether both the lower Courts have committed an error of law by wrongly shifting a burden on wrong party ?

IX. It ought to be held that it is settled principle of law that when a will is executed by a testator, the real intention behind the execution of said will has to

be gathered and the circumstances of deprivation of natural heir should not raise any suspicion, because the whole idea behind execution of the will is to interfere with the normal law of succession and so, natural heirs would be debarred in every case of will either fully or partly and thus even if will might be unnatural that it has cut off whole or in part real relation, does not render the will either illegal or void and does not amount to suspicious circumstance."

9) The defendants have not disputed relationship. They have not disputed that till death Ananda and defendant No.1, two real brothers, were living in joint Hindu family and the properties, except aforesaid two properties, were the joint Hindu family properties. Thus, the defendants are admitting that Ananda had one-half share in these properties. In ordinary course, plaintiff being the sole heir of Ananda would be entitled to get one-half share in these properties and so there is no dispute over the extent of share to which the plaintiff was entitled. Before appreciating the material and considering the challenges raised by the defendants, it needs to be kept in mind that only three heirs of defendant No.1 Namdeo (now deceased) have challenged the decision when all the defendants wanted to show that Ananda had given his property to defendant No.3 but this property is partitioned

amongst all the heirs of Namdeo.

10) From the pleadings, it can be said that plaintiff has not seriously disputed that the disputed document bears signature of deceased Ananda. Document at Exhibit 111 shows that on the last page of this document, will, signature of testator is appearing. Date of execution is shown as 21-3-1990 and the date of registration is shown as 22-3-1990.

11) Provision of section 63 of the Indian Succession Act (hereinafter referred to as "the Succession Act") relates to "due execution" of will. It runs as under :-

**"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 been 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."

12) In view of the wording of this provision, even if signature of testator is admitted, that itself will not be sufficient to dispense with the burden of proof of will as provided under section 63 of the Act. This section shows that in addition to proof of execution of will, signature, propounder of will is required to prove following things in a case like present one :

- (i) that at least two attesting witness signed the will and the signatures were made by them after seeing that the testator had signed in their presence, both of them were present when the testator had signed on the will;
- (ii) that both attesting witnesses had signed on the will as the witnesses in the presence of the testator. However, it is not necessary when one attesting witness signs in presence of testator the other was also present there.
- (iii) that signature of testator was so placed that it shall appear that it was intended thereby to give effect to writing as a will.

13) Provision of section 68 of the Evidence Act 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.”

14) This provision shows that for proof of the execution and also for due execution of a will even if it is registered, one attesting witness needs to be examined. Though it is not necessary that both the attesting witnesses need to be examined but one attesting witness who gives evidence in the Court must satisfy the conditions laid down in section 68 which are mentioned above. The evidence of the attesting witness must establish that aforesaid procedure was followed in respect of the points.

15) Provision of section 59 of the Succession Act runs as under :-

**“59. Person capable of making Wills.--** Every person of sound mind not being a minor may dispose of his property by Will.

*Explanation 1.--* A married woman may dispose by Will of any property which she could alienate by her own act during her life.

*Explanation 2.--* Persons who are deaf or dumb or blind are not thereby incapacitated for making a Will if they are able to know what they do by it.

*Explanation 3.--* A person who is ordinarily insane may make a Will during interval in which he is of sound mind.

*Explanation 4.--* No person can make a Will while he is in such a state of mind, whether arising from intoxication or from illness or from any other cause, that he does not know what he is doing.

#### *Illustrations*

(i) A can perceive what is going on in his immediate neighbourhood, and can answer familiar questions, but has not a competent understanding as to the nature of his property, or the persons who are of kindred to him, or in whose favour it would be proper that he should make his Will. A cannot make a valid Will.

(ii) A executes an instrument purporting to be his Will, but he does not understand the nature of the instrument, nor the effect of its provisions. This instrument is not a valid Will.

(iii) A, being very feeble and debilitated, but capable of exercising a judgment as to the proper mode of disposing of his property, makes a Will. This is a valid Will.”

16) Explanation 4 of this section shows that when there were circumstances like illness or other cause (underlined) like old age (in the present case age of the testator was 91 years), it becomes necessary to ascertain whether the testator knew what he was disposing i.e. the contents of the will and that he was in a position to understand the consequences of such disposition. Competent understanding is relevant and not condition of body but when there are other circumstances like such old age, it becomes necessary to show that the deceased was active in life and he was in a position to understand the effect of what he was doing. Thus in a case like present one, old age itself can be treated as "other cause" mentioned in explanation 4 to section 59 of the Succession Act.

17) The pleadings in the plaint show that there is allegation of fraud, existence of circumstances similar to fraud. In view of this contention, the provision of section 61 of the Succession Act needs to be seen. Section 61 runs 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.

*Illustrations*

(i) A, falsely and knowingly represents to the testator, that the testator's only child is dead or that he has done some undutiful act and thereby induces the testator to make a will in his, A's favour; such Will has been obtained by fraud, and is invalid.

(ii) A, by fraud and deception, prevails upon the testator to bequest a legacy to him. The bequest is void.

(iii) A, being a prisoner by lawful authority, make his Will. The will is not invalid by reason of the imprisonment.

(iv) A, threatens to shoot B, or to burn his house or to cause him to be arrested on a criminal charge, unless he makes a bequest in favour of C. B, in consequence, makes a bequest in favour of C. The bequest is void, the making of it having been caused by coercion.

(v) A, being of sufficient intellect, if undisturbed by the influence or others, to make a Will yet being so much under the control of B that he is not a free agent, makes a Will dictated by B. It appears that he would not have executed the Will but for fear of B. The Will is invalid.

(vi) A, being in, so feeble a state of health as to be unable to resist importunity, is pressed by B to make a Will of a certain purport and does so merely to purchase peace and in submission to B. The Will is invalid.

(vii) A, being in such a state of health as to be capable of exercising his own judgment and volition, B uses urgent intercession and persuasion with him to induce him to make a Will of a certain purport. A,

in consequence of the intercession and persuasion, but in the free exercise of his judgment and volition makes his Will in the manner recommended by *B*. The Will is not rendered invalid by the intercession and persuasion of *B*.

(viii) *A*, with a view to obtaining a legacy from *B*, pays him attention and flatters him and thereby produces in him a capricious partiality to *A*. *B*, in consequence of such attention and flattery, makes his Will, by which he leaves a legacy to *A*. The bequest is not rendered invalid by the attention and flattery of *A*."

18) Illustrations (i), (ii) and (vi) are relevant for the present matter.

19) In view of provision of section 102 (illustration b) of the Evidence Act, the burden to prove the fraud is ordinarily on the party who alleges fraud. In a case where the due execution of will is required to be proved, the party against whom there is possibility of existence of aforesaid circumstances is dead and so the suspicious circumstances in that regard need to be explained by the propounder of the will. Illustration (vi) to section 61 also shows that it is sufficient to a party like plaintiff who has no personal knowledge, to show on the basis of some circumstances that a probability as mentioned in illustrations (i), (ii) and (vi) is there. Thus when the point

of due execution of will is involved in the matter, the burden which is ordinarily on the plaintiff, as mentioned in section 102 of the Evidence Act is not there and the plaintiff can rely on the circumstances which are appearing on the record and those may be there even without the efforts of the plaintiff.

20) Whether will is surrounded by suspicious circumstances or not is essentially a question of fact. Similarly, testamentary capacity of the testator is also a question of fact. Suspicious circumstances may be with regard to the due execution of will as mentioned in section 63 of the Succession Act or they may be with regard to the testamentary capacity of the testator as mentioned in section 59 of the Succession Act. The suspicious circumstances may be about probability of fraud or absence of voluntariness as mentioned in section 61 of the Succession Act. However, it needs to be kept in mind that when the case fails on the ground of absence of proof of "due execution" as mentioned in section 63 of the Succession Act, the other exercise with regard to the provisions of sections 59 and 61 of the Succession Act

becomes unwarranted. So in that sequence the evidence needs to be marshelled and appreciated.

21) One defendant Baban Vakte has given evidence for all the defendants. He was not present at the time of execution or registration of the will as per the evidence given by the so called attesting witness and the so called scribe. He has given evidence that his uncle Ananda was intelligent and he was in social life and as Ananda had no son, he was treating the sons of defendant No.1 as his own sons. He has deposed that as Ananda had no son, Ananda bequeathed his property to defendant No.3. As the witness was not present at the time of execution of will or registration of will, only aforesaid part of the evidence of the defendant is there for propounder of the will about testamentary capacity. There is evidence of one more defendant like Pandhari, defendant No.8. His evidence on the point involved is similar in nature.

22) The only attesting witness Namdev Runjaji Avhad examined by the defendants has given evidence that Ananda had taken him to the office of the Sub

Registrar for making the will. He has given evidence that when the will was made, he, defendant No.3 (propounder) and other attesting witness like Ananda Wable were present. According to him, the scribe Rahene wrote the contents of the will and the contents were read over to Ananda. He has deposed that as the testator made signature on the will in his presence, he put his signature as attesting witness on the will. There is no evidence with regard to requirement that his signature was made in the presence of the testator. He has given evidence that Ananda gave his property under the will to defendant No.3. This evidence as it is does not satisfy one condition laid down in Section 63 of the Succession Act.

23) In the cross examination, the attesting witness has deposed that defendant No.3, propounder of the will, had taken them to the office of Sub Registrar in a jeep. Again he has stated in the evidence that he was not taken before the Sub Registrar on that date. His evidence shows that deceased Ananda had love and affection for his daughter, plaintiff. He does not know as to whether anything was given to the plaintiff by Ananda. He has

deposed that he does not know anything about the contents of the will. Though he is only the attesting witness, he was supposed to know as to what was the intention of Ananda. Thus, the evidence does not satisfy one more condition laid down in Section 63 of the Succession Act.

24) The scribe Rahene has given evidence that the contents of the will, Exhibit 111, were written by him as per the instructions given by Ananda. He has deposed that he had read over the contents to Ananda and then Ananda had signed on it. He has deposed that the attesting witnesses had signed it. In the cross examination, he has stated that he does not know as to why on 21-3-1990, the date of execution, the document was not registered. He admits that he does not know as to who signed in the presence of whom. In the cross examination he admits that all the persons who had come to him on 21-3-1990 had come on 22-3-1990 also and they were in all four persons. In the cross examination, he could not say as to whether the testator Ananda had become infirm due to his old age.

25) Exhibit 111, will, shows that it is shown to be executed on 21-3-1990. It was Wednesday. The signature of the testator appears only on one page i.e. page 5, the last page of the document. Even when it is shown to be registered on 22-3-1990 the signatures of the testator are not appearing on the remaining pages of the will. Many probabilities are created due to the place where the signatures were put by the testator and the witnesses and the place shows that the document was first written and places were left for different persons like testator and witnesses by the scribe himself. The signature appearing on the endorsement of registration dated 22-3-1990 shows that different witnesses were taken to the office of Sub Registrar at the time of registration of the will. No explanation is given as to why different witnesses were taken before the Sub Registrar when the attesting witnesses were available on 21-3-1990 and there is no explanation as to why the will was not registered on 21-3-1990. In view of these circumstances, it was necessary for defendant No.3, propounder of the will, to examine himself and explain these circumstances. The aforesaid evidence shows that propounder had taken the deceased

and the witnesses with him to Kopargaon. These are the suspicious circumstances and so it was necessary for the propounder to step into the witness box. As he has not stepped in the witness box the circumstances remained unexplained and further adverse inference can be drawn against him.

26) Evidence is given by the defendants that except aforesaid two properties, other properties were joint Hindu family properties and both the testator and defendant No.1 had one-half share each in these properties. In the will, Exhibit 111, it is mentioned that all these properties were owned by deceased Ananda only (there is mention as "*Maze Swattahache Malkiche*"). When defendant No.1, real brother of the testator, was there and when defendant No.1 had many male issues, there is mention in the will that only Suryabhan (defendant No.3) was the heir of the testator. There is mention of the plaintiff as daughter and it is mentioned that there was no intention of the testator to give anything to the plaintiff. Evidence is given by two defendants that the deceased was living with them and all of them were taking care of

him. No reason is given as to why nothing was given to the real brother and to other sons of real brother by the testator.

27) It is true that appending medical certificate to the will regarding fitness of the testator is not the requirement of law but when age of testator was 91 years and he died within 15 days of the date of execution of the will and when there are aforesaid circumstances, the absence of fitness certificate itself has become a suspicious circumstance in the present matter. It creates doubt about due execution, competency of the testator and voluntariness of the testator.

28) Copy of mutation is produced to show that on 26-5-1990 (Mutation No.2900) name of defendant No.3 was entered in revenue record of the suit lands on the basis of the will. However, there is one more mutation shown to be sanctioned on 30-12-1998 (Mutation No.3389) and it shows that all these properties were equally divided amongst all sons of defendant No.1. These circumstances are also suspicious circumstances. If

defendant No.3 had become absolute owner under the will as per intention of testator, such transfer of his property to others by mutation was not possible in law and this circumstance creates probability that all the defendants had joined hands to see that some how the plaintiff is deprived of the suit property.

29) The burden to explain all the aforesaid suspicious circumstances was on the propounder of the will but he avoided to step into witness box. On the other hand, plaintiff examined herself and gave evidence which is consistent with her pleadings. Evidence on the record and the submissions show that the deceased was in social life when he was active. As per the revenue record, he was also acting as karta of the aforesaid joint family. From the record, no reason can be gathered for depriving the plaintiff, own daughter, by the testator of her entitlement to succeed to his property. If testator really wanted to see that property remains in the family of Vakte, he would have taken different and concrete steps and he would not have created the record of will having aforesaid surrounding circumstances. It is already observed that

contents of the will are not as per real state of affairs. All these circumstances have created probabilities that due to old age of the deceased and his health condition, in hurry the record of will was created. Due to these circumstances, this Court holds that the defendants have failed to prove due execution of will. Further, in view of the aforesaid suspicious circumstances surrounding the will, it is not possible to accept the will as valid will. It is difficult to hold that it is a will made by a person having understanding as required by section 59 of the Succession Act and it was made voluntarily as required in section 61 of the Succession Act.

30) Learned Senior Counsel appearing for the appellants placed reliance on some reported cases which are as under :

- (1) **2003 AIR SCW 4018 (Ramabai Patil v. Rukminibai Vekhane)**
- (2) **2012 (4) Mh.L.J. 482 (Mahesh Kumar v. Vinod Kumar)**
- (3) **2010 (7) Mh.L.J. 657 (Purushottam v. Ambadas)**
- (4) **2009 (4) Mh.L.J. 266 (Subhash v. Padmakar).**
- (5) **2009 (6) Mh.L.J.431 (Savita v. Nishikant)**

- (6) **2008 (6) Mh.L.J. 386 (Janardan v. Mortibai)**
- (7) **2014 AIR SCW 155 (Sebastiao Fernandes v. K.V.P. Shastri)**
- (8) **AIR 2007 SC 1808 (Makhan Singh v. Kulwant Singh)**
- (9) **2014 AIR SCW 5233 (Leela Rajgopal v Kamala Menon Cocharan)**
- (10) **2008 (6) Mh.L.J. 1 (SC) (Vidya Wanti v. Durga Dass)**
- (11) **2006 AIR SCW 2404 (Gurudev Kaur v. Kaki)**
- (12) **2007 AIR SCW 6787 (Savithri v. Karthyayani)**
- (13) **AIR 2004 SC 1772 (Uma Devi v. T.C. Sidhan).**
- (15) **2012 (6) Mh.L.J. 1 (Vishwanath v. Sarla).**
- (16) **2014 (3) Mh.L.J. 760 (Chandabai v. Mehmood Khan).**

31) In the first three cases (cited supra) observations are made regarding the manner in which the execution and attestation of the will can be proved. In fourth and fifth cases (cited supra) it is observed that it is not necessity of law that certificate regarding fitness issued by the Doctor needs to be appended to the will. In sixth case it is observed that the burden is on the plaintiff, the party challenging the will, to show that testator was not in fit state of mind. In seventh case there

is again observations regarding the burden of proof. In the eighth case there is observation that mere participation of propounder at the time of execution of will is itself not a suspicious circumstance. In the ninth case observations are made that circumstance that the attesting witness was interested witness, relative or belonging to the same village cannot be itself a suspicious circumstance. In tenth to fourteenth cases observations are made that exclusion or deprivation of legal heirs of the property cannot be itself a suspicious circumstance. In the fifteenth case it is observed that when due execution of the will is proved, non examination of propounder is not fatal to his case. In the remaining cases it is observed that when relevant material is not considered or the finding themselves are erroneous or perverse, substantial questions of law can be formulated on said points.

32) This Court has already observed that the question of existence or absence of suspicious circumstance is a question of fact and the question of competency of the testator is also a question of fact. At the time of appreciation of the evidence of the witnesses

necessary weight needs to be given to the findings given regarding truthfulness of the witness by the Court which had opportunity to observe the witnesses. On all these points, the Courts below have given concurrent finding and those findings are on question of facts.

33) There cannot be dispute over propositions made in the cases cited supra. Whether a circumstance is suspicious or not depends on facts and circumstances of that case. In one case it can be said that due to old age of the testator it was necessary to have certificate of fitness given by Doctor but in other case the Court may come to the conclusion that there was no such requirement of certificate. Similarly in one case, on the basis of nature of evidence, the Court may come to conclusion that due execution of will is not proved. In one case, registration of will may not be sufficient to make the will acceptable if the basic test of due execution of will is not passed. In one case, the exclusion or deprivation of legal heirs and participation of propounder of will in the execution of will can become a suspicious circumstance. In one case the conduct of the propounder to avoid to step in witness box

may itself becomes sufficient to discard the will. All the aforesaid circumstances are relevant in the present matter and it is one such case where due to aforesaid circumstances the Courts below have held that due execution of the will is not proved and the suspicious circumstances are not explained. Findings are given on the basis of material available on the record. In view of the facts and circumstances of the present case and the position of law which is settled, this Court holds that no substantial question of law as such is involved and on the grounds which are already quoted no case is made out for formulation of substantial questions of law.

34) In the result, the appeal stands dismissed. Civil application is disposed of.

35) The learned counsel for the appellants requested for continuation of the interim relief for a period of four weeks as the interim relief was there. Learned counsel for the respondents has strong objection. The interim relief to continue for a period of four weeks.

Sd/-  
**(T.V. NALAWADE, J. )**

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