

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

Reserved on: 14.10.2015
Pronounced on: 07.12.2015

+ **FAO(OS) No.279/2013**
& CM No.9143/2013

MS. SITA KASHYAP (SINCE DECEASED) THR. LR MS. BENU
PURI Appellant

Through: Mr. Praveen Kumar, Advocates.

Versus

HARBANS KASHYAP & ORS. Respondents

Through: Mr. Ashish Kapur, Advocate for
respondent No.1.
Ms. Maldeep Sindhu, Advocate for respondents
No.2 & 3.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT
%

1. This appeal is preferred against the order of a learned single judge which disregarded a Will propounded by Benu Puri. She complains that the impugned judgment is in error because the Will of late Sita Kashyap (the testatrix, her maternal aunt) had been proved in accordance with law.

2. The antecedents material to this appeal at hand concern a partition suit, where the plaintiffs were two sisters,(Sita Kashyap and Leela Puri). The defendants arrayed were Harbans Kashyap (brother) and the legal representatives (LRs) of their deceased brother Jagdish Chander Kashyap. A preliminary decree of partition of property No. 5A, Guru Gobind Singh Marg, New Rohtak Road, Karol Bagh, New Delhi was passed by a learned single judge of this court on 10.05.2007, holding each party (i.e the two sisters each and their two brothers) having one-fourth undivided share in this property. Subsequently, a final decree of partition was passed on 19.11.2007, directing sale of the said property by public auction; the parties entitled to bid therein to the exclusion of their shares.

3. After the final decree, Sita Kashyap died and the applicant Benu Puri, who is the daughter of Leela Kashyap sought substitution in her (Sita Kashuyap's) place on the basis of a Will dated 14.06.2004. The defendants disputed the said Will. The applicant/Appellant Benu Puri examined herself as PW1 and relied on the testimonies of two witnesses Vaneeta Kapoor,(PW2) and Mr. Naveen Kumar Jaggi, (PW-3, who drafted the said Will). Harbans Kashyap the first defendant examined himself as D1/W1. No evidence was led by the second and third defendants (LRs of deceased brother Jagdish Chander Kashyap).

4. The learned single judge rejected the appellant's application for substitution in place of Sita Kashyap as her heir. The reasons that led to the learned single judge to conclude that the appellant failed to prove the Will as genuine and executed in accordance with law was

five fold. The first reason concerned, the manner in which it was produced i.e. its knowledge vis-à-vis the appellant. Second, the learned single judge felt that the materials on record disclosed that the testatrix was aged and more importantly infirm since she had developed cataract and was unable to see. Consequently he concluded that the Will was not the result of exercise of free choice and volition and rather was the outcome of undue influence and mental coercion on her mind influenced by the beneficiary i.e. the appellant. The third important reason was a discrepancy in the dates. Whereas one of the dates on the document showed that it was executed on 14th of June 2004, the other date on the Will was 15th of June 2004. There were two sets of attesting witnesses and according to the learned single judge, those deposed that the Will was duly proved on 15th of June 2004 did not inspire confidence. The fourth circumstance was that the testatrix was inaccurate about her own age, which lent a high degree of improbability as to its due execution and further, that the testatrix was unaware about the extent of her estate, particularly what her movable possessions were. The fifth and last circumstance which led to the learned single judge to suspect the due execution of the Will , was the suspicion that the propounder, i.e. the appellant in all likelihood had played an important role in its execution. All these constituted suspicious circumstances, which led the court to disbelieve that the Will was not free from suspicion.

Contentions of the parties

5. Learned Counsel for the appellant submitted that the single judge fell into error in concluding that the testatrix was unaware as to the extent of her estate and made dispositions of properties of which she was not an owner or did not exist. It was contended that the fact that the testatrix was of sound discretion and mental disposition – in no way was undermined by the fact that she suffered from cataract. It was submitted that PW-3 Shri Jaggi, who drafted the Will, clearly stated that the testatrix was carrying a magnifying glass to read the document and her signatures were rather expanded on account of the vision defect. At the same time the witness stated that the contents (of the Will) were known to her and she gave all particulars to him which were correct at that point of time. The changes indicated by the testatrix were duly carried out. It was submitted next that the fact that some properties particularly the movable assets such as the contents of the locker not being available at the time of the testatrix's death, was not an important circumstance. Learned Counsel highlighted that whereas the Will was made and executed on 15-06-2004, the testatrix herself passed away on 06.08.2009 i.e. more than 5 years later. As a consequence the learned single judge did not appreciate the state of flux which movable assets were inherently capable of. He was of the opinion that the bank locker contents were not available at that time.

6. Learned Counsel next submitted that the discrepancy in age i.e. that the testatrix was 82 years of age and therefore could not have stated that she was 76 years, should not have been given much

importance given that under such circumstances either the testatrix herself was not accurate in mentioning her age or even more likely, the misstatement was a genuine mistake by the person who recorded it. These possibilities could not be ruled out. By itself, submitted counsel, this was of no consequence. Counsel also highlighted that the learned single judge erred by assuming that the Will stated something about the testatrix's place of birth but in reality she was born somewhere else. It was highlighted that whereas the testatrix was born in Kandansian, the fact is that it was also in the region of Sialkot. In fact that place is a village in the district of Sialkot. Therefore it is common for everyone who migrated to India from that region to say that they belonged to Sialkot, simply because it was more prominently known. However the learned single judge without any material before him, held that there was a discrepancy about the testatrix's actual place of birth and the place which is mentioned in the Will .

7. Next it was urged that the single judge fell into error in giving importance to the fact that neither of the attesting witnesses of 14.06.2004, (Neeraj Puri and Rajesh Puri) were examined. Counsel highlighted that what was necessary was that at least one attesting witness should have been produced and examined which was indeed done when Mrs. Vaneeta Kapoor was produced as a witness to speak about the due attestation and execution of the Will. She was witness to the registration of the Will; PW-3 Mr. Jaggi, who wrote the Will was also produced as a witness. He deposed that he had instructions to write the Will and after doing so it was read over by late Ms. Kashyap

who understood its contents and acknowledged her signatures and asked him to register the Will. Mrs.Vaneeta Kapoor and Mr. Deepak Kohli attested the Will for registration. It was submitted that the appellant was not in Delhi at the time when the Will was executed or registered and there was no suggestion to the contrary in the cross-examination. On the other hand, she deposed – in cross examination- that she was working in Jaipur since 1989 and used to come to Delhi after obtaining leave. This did not belie the due execution of the Will by the testatrix. It was lastly urged that given the bitter nature of the litigation and the dispute between the testatrix and her brothers, it was natural that she excluded them from the bequest and instead nominated the niece i.e. her sister's daughter as sole legatee.

8. Learned Counsel conceded that if the court is persuaded that there are significant suspicious circumstances warranting it not to accept exhibit due execution of the Will, the Will shall undoubtedly become liable for rejection. That being said, counsel also submitted that on the other hand if cogent and convincing material duly establishing that the Will was executed in accordance with law by a testatrix possessed of sound and disposing mind voluntarily making the bequest of her choice is present, the court should not interfere with the due implementation of such testamentary document by magnifying small discrepancies, that are at best, inconsequential inconsistencies, into grave suspicious circumstances.

9. Learned counsel for the respondent urged that the findings of the learned single judge should not be disturbed. It was argued that the

deceased, Ms. Sita Kashyap was aged and dependent upon the propounder, and was under her constant undue influence. Learned counsel submitted that place of birth of Sita Kashyap mentioned in Will as her native place, i.e Sialkot was incorrect, as she was born at Kandansian, and not at Sialkot. Further, the chronology of her brothers and sister as given in the Will was incorrect in that her sister Leela was next to her and not to her brother Harbans Kashyap as is mentioned in the Will. Further, not only her age was wrongly mentioned as 76 years as against 82, but the ages of her brothers and sister as mentioned were also incorrect. Learned counsel also submits that the suit filed by the defendants against the plaintiffs in respect of Shop No. 2378 was decreed in the year 2001 to her knowledge, the bequeathing of the tenancy rights in respect of the said shop in the Will, was apparently incorrect. Further, Sita Kashyap also knew that the probate case (42/98) filed by her in respect of the Will of her mother Kartar Devi was dismissed much before 2004, and thus, the mention of this in the Will was also incorrect. Further, he submits that Will mentions of bequeathing a plot measuring 200 sq. yds., which she never owned or possessed. There was no number, description or identity of this plot mentioned in the Will. Learned counsel further submits that there was no bank account or locker possessed by Ms. Kashyap and the mention thereof in the Will was also incorrect.

10. It was submitted by the respondents that the reference in the Will to unfair denial of the share in the shop itself was a give-away because the share had been denied on account of a court order. That

being the fact and since the testatrix could not have been further aggrieved, because it was not the unilateral act of the brother, recording of a non-event itself was a suspicious circumstance. It was submitted next that the bequest in the Will was the share in the suit property. That share could not have been given since the testatrix was not possessed of it. Like in the case of the bank locker, which in fact belonged to the testatrix's mother, she did not have any property rights over that share at the time she made the Will. Furthermore, the reference to a plot in Jaipur was also misleading because no such property existed at the time of her death. It was submitted next that the Will bore the date of 14.06.2004 and was witnessed by one set of attesting witnesses; however, it was registered the next day when it was said to have been executed all over again in the presence of another set of witnesses. Only one of the second set of witnesses deposed or spoke about it. In these circumstances, the reliance upon the testimony of someone who was not even designated as an attesting witness, i.e. the lawyer –PW-3 Mr. Jaggi could not have been the basis for accepting its veracity. In fact, neither the witnesses, i.e. Mrs. Vinita Kapoor nor Mr. Jaggi had seen the testatrix sign the Will. The other witnesses had not been brought to Court.

11. It was lastly urged that the propounder's knowledge about the existence of the Will itself was shrouded in suspicion. Learned counsel submitted that the learned Single Judge quite correctly surmised that in all probability the propounder had played a prominent

role in the execution of the Will and, therefore, it ought not to have been accepted.

Analysis and reasoning

12. In the present case, the Will was executed in mid-June 2004; in fact it was registered on 15.06.2004. The first controversy, which to some extent influenced the learned Single Judge, was the two sets of attesting witnesses for the Will and that these two sets of attesting witnesses signed the Will on two separate dates. Now on this aspect, the explanation of the propounder - based upon the testimony of attesting witnesses themselves, is that the first two attesting witnesses were unwilling to come to Court or even have it registered. This compelled the testatrix to have the Will, which in a sense had been executed on 14.06.2004, attested all over again. The attesting witness, i.e. PW-2 who appeared before the Court and deposed about the Will was unequivocal about what was witnessed by her. PW-2 spoke about the fact that the testatrix had told her that she executed the Will. Section 68 of the Evidence Act and Section 63 of the Indian Succession Act are relevant here. Section 68 (of the Evidence Act) reads as follows:

“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.]”

Section 63 of the Succession Act reads as follows:

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

(a) The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.

(c) The will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.”

13. The requirement of Section 63 is that the Will must be witnessed by two attesting witnesses. That provision does not mandate that the testator or testatrix, i.e. the maker of the Will must read its contents either to them or in their presence. All that it required is that the testator or testatrix must acknowledge that he or she has signed the Will (*“personal acknowledgment of his signature or mark”*). Now the testimony of PW-2 is very categorical on this aspect. This is what she deposed in her affidavit (in examination in chief):

“On reaching the High Court Chamber of the lawyer Mr. Navin Kumar Jaggi, I attested the said Will in the presence of Ms. Sita Kashyap and on her acknowledging and representing that the said Will was her last Will and that I should also attest it. In the office of the counsel of Mr. Navin Kumar Jaggi, Advocate, I signed the said Will when another assisting counsel Mr. Deepak Kohli working with Mr. Navin Kumar Jaggi also signed as he was also requested by late Ms. Sita Kashyap and he was also requested the Will be registered in the Office of the Sub Registrar at Asaf Ali Road.”

PW-2 withstood her cross-examination:

“It is incorrect to suggest that I had never seen Ms. Sita Kashyap signing any document or that I am not able to identify her signatures. It is incorrect to suggest that it is on the basis of request of Ms. Benu Puri that I had signed Ex. PW1/1 as a witness in order to help Ms. Benu Puri or that I had signed to merely help her in the litigation.”

14. A combined reading of Section 63 of the Succession Act with Section 68 of the Evidence Act, reveals that the propounder of a Will has to prove that the Will was duly and validly executed. That can be done by not merely proving the testator's signature on the Will, but also establishing that attestations were also made properly as required by clause (c) of Section 63 of the Succession Act. Section 68 of the Evidence Act does not require the examination of both or all the attesting witnesses. Yet, at least one attesting witness should be examined to prove the due execution of a Will as mandated by Section 63. Although Section 63 of the Succession Act requires that a Will has to be attested at least by two witnesses, Section 68 of the Evidence Act provides that a document, which is required by law to be attested, shall not be used as evidence until one attesting witness at least has been examined for the purpose of proving its due execution if such witness is alive and capable of giving evidence and subject to the process of the court. Therefore, it is imperative that one attesting witness has to be examined and he (or she) should be in a position to prove the execution of a Will. Therefore, if one attesting witness can prove execution of the Will in terms of clause (c) of Section 63 viz. attestation by two attesting witnesses in the manner contemplated, the examination of the other attesting witness can be dispensed with. The sole attesting witness so examined, should be able to establish the attestation of a Will by him and the other attesting witness for proving there was due execution of the Will. (See *Janki Narayan Bhoir v. Narayan Namdeo Kadam*, (2003) 2 SCC 91; *Seth Beni Chand –vs- Kamla Kanwar* AIR 1977 SC 63; *H. Venkatachala Iyengar* (supra)).

The first task of the court is to, therefore, see whether the plaintiff proves that the Will was executed in accordance with law. In *Janki Narayan Bhoir v Narayan Namdeo Kadam*(2003) 2 SCC 91, while dealing with the question elaborately, the Supreme Court held:

"8. To say will has been duly executed the requirement mentioned in Clauses (a), (b) and (c) of Section 63 of the Succession Act are to be complied with i.e., (a) the testator has to sign or affix his mark to the will, or it has got to be signed by some other person in his presence and by his direction; (b) that the signature or mark of the testator, or the signature of the person signing at his direction, has to appear at a place from which it could appear that by that mark or signature the document is intended to have effect as a will; (c) the most important point with which we are presently concerned in this appeal, is that the will has to be attested by two or more witnesses and each of these witnesses must have seen the testator sign or affix his mark to the Will, or must have seen some other person sign the Will in the presence and by the direction of the testator, or must have received from the testator a personal acknowledgement of signature or mark, or of the signature of such other person, and each of the witnesses has to sign the Will in the presence of the testator."

As regards compliance of the provision of [Section 68](#) of the Evidence Act, it was held as follows:-

"In a way, [Section 68](#) gives a concession to those who want to

prove and establish a will in a Court of law by examining at least one attesting witness even though will has to be attested at least by two witnesses mandatorily under [Section 63](#) of the Succession Act. But what is significant and to be noted is that that one attesting witness examined should be in a position to prove the execution of a will. to put in other words, if one attesting witness can prove execution of the will in terms of Clause(c) of [Section 63](#), viz., attestation by two attesting witnesses in the manner contemplated therein, the examination of other attesting witness can be dispensed with. The one attesting witness examined, in his evidence has to satisfy the attestation of a will by him and the other attesting witness in order to prove there was due execution of the will. If the attesting witness examined besides his attestation does not, in his evidence, satisfy the requirements of attestation of the will by other witness also it falls short of attestation of will at least by two witnesses for the simple reason that the execution of the will does not merely mean the signing of it by the testator but it means fulfilling and proof of all the formalities required under [Section 63](#) of the Succession Act. Where one attesting witness examined to prove the will under [Section 68](#) of the Evidence Act fails to prove the due execution of the will then the other available attesting witness has to be called to supplement his evidence to make it complete in all respects. Where one attesting witness is examined and he fails to prove the attestation of the will by the other witness there will be deficiency in meeting the mandatory requirements of [Section 68](#) of the Evidence Act."

This Court is, therefore, of the opinion that the learned Single Judge fell into error in inferring suspicious circumstance merely because the

set of attesting witnesses who saw the testatrix sign upon the Will on the previous day did not in fact appear before the Court and rather the witness to whom the testatrix acknowledged due execution, deposed about it; the Will was registered on the day the attesting witness signed on it, in the testatrix's presence.

15. The next issue, which raised the suspicions of the learned Single Judge, was the mention of the testatrix's age. The Will stated that the testatrix was 76 years. PW-3 had deposed that the testatrix *"In the year 2004, she claimed herself to be around 83/84 Years old"*. PW-1 stated in cross-examination that she was unable to say whether the testatrix was 82 years of age in 2004; she volunteered to say that she appeared to be younger. She was not aware of her mother's year of birth either. In the opinion of this Court, in these circumstances, as to whether the testatrix's age was 76 or 82 or indeed 84 as of the date when the Will was executed is of no consequence. All that can be stated is that either the testatrix did not specifically or accurately mention her date of birth, or that the person recording it did not do so efficiently. It is a matter of fact that the testatrix did have a look at the Will as deposed to by PW-2. The objectors had urged that the testatrix was stricken with vision defect as she had suffered from cataract and was in fact unable to see for almost two years. Aside from the fact that this version is based upon oral testimony of Harbans Kashyap, and no other material on record or testimony, there is nothing to show that the cataract that the testatrix had developed had rendered her sight impossible. In fact, the testimony of PW-2 is that the testatrix used a

magnifying glass to see the Will. Consequently, the submission that the cataract so visually impaired the testatrix as to render it impossible for her to sign is hard to believe. Furthermore, the version of Harbans Kashyap that the testatrix was confined to the bed, is not believable, because both PW-2 and PW-3 in their unshaken testimony deposed that she had gone to her lawyer's office, where the Will was attested and then got it registered. In the opinion of this Court, the learned Single Judge was unduly swayed by the submissions by the objectors in this regard. The objector's contention therefore, that the Will could not have been executed or that it was not executed with due exercise of volition, is therefore rejected.

16. As far as the allegation that the testatrix was unable to move on her own since she had to come from Jaipur, again PW-2 specifically stated that the testatrix had come down to Delhi on her own. There is no worthwhile cross-examination of this part of the testimony. Consequently, as to the so-called vision defect and the general state of health, the Court is unable to agree with the findings of the learned Single Judge.

17. So far as the existence of property - much of which was highlighted to the learned Single Judge and who was persuaded to accept the objector's submissions in this regard, this Court notices that the bank locker was very much in existence and was in fact searched by the Local Commissioner appointed by the Court. Furthermore, 200 square yards plot was apparently in existence in 2004 but was subsequently sold by the testatrix. Even otherwise, if one considers

that the testatrix prepared a Will in June 2004, but survived it for five more years, the probability of all properties referred to in the Will being or continuing to exist on the date of her death would not have been very high. The learned Single Judge, in our opinion, fell into error in not noticing this salient feature and the subsequent developments which had taken place after the execution of the Will.

18. The learned Single Judge faulted the propounder and raised, in our opinion, undue suspicion upon her on account of two factors. The first is the intrinsic factor that the Will sought to cut out a brother. The learned Single Judge was of the opinion that the denial of a share in the shop to the testatrix was itself not natural. It is a matter of record that the parties, i.e. the testatrix and her sisters, (i.e. the mother of the propounder) were in litigation with the two brothers. There was no love lost between the two of them. In these circumstances, it was but natural and to be expected that the testatrix would exclude her brother from the benefits of her estate. As to the fact that the testatrix did not ultimately secure a share in the property or the shop, that itself is a fact regardless of whether the Court held it to be so or otherwise. The share in the shop was denied by the brother; that such stand was upheld by the Court did not negate the fact that the sister stood excluded from its enjoyment on account of brother's position. In other words, the vindication of a legal position would not in any way render the sense of grievance meaningless or unjustified. The expression of this grievance was, therefore, quite natural. The Court is also conscious of the fact that Will or testamentary documents are made with the

express or avowed object of interrupting the natural line of succession. Therefore, there is nothing inherently wrong in cutting out someone who, in the perception of the testator, has caused him injury or deprived him of a valuable benefit. In the overall circumstances, the exclusion of the brother from the inheritance of the bequest could not be *per-se* treated as unnatural. If one further notices the fact that the preliminary decree itself was made on 10.05.2007 based upon a compromise, which later crystallized in final decree of 19.11.2007, the fact remained that the disputes inter-parties, i.e. brothers and the sisters was very much a reality when the Will was prepared.

19. The last set of circumstances, which persuaded the learned Single Judge to decline the claim of Benu Puri was that, the Will did not accurately mention the place of birth of the testatrix. According to the learned Single Judge, she was born in Kandasian; not in Sialkot. This was because the Will stated that she was from Sialkot. In the facts and circumstances of this case, we are of the opinion that the appellant's contention cannot here be ignored. The learned Single Judge ought not to have gone into this matter without appreciating the full circumstances. During the submissions, it was stated that the village where the testatrix was born was part of a larger Sialkot district; the reference to Sialkot was natural since the testatrix's parents had migrated from there, to India during partition. The other ground which impressed the learned Single Judge to reject Benu Puri's claim was the manner of her discovery of the Will or rather its knowledge. Now, there is no evidence on the record in the form of

anyone's testimony suggestive of the fact that Beni Puri was in fact a participant - active or otherwise - at the time of the making of the Will. In other words, there was nothing suggestive of the fact that Beni Puri lived with the testatrix or at least, even more crucially, had got the Will prepared and was anywhere in the vicinity at the time of its execution. Unless there were some clear-cut evidence to that effect or irresistible implication arising out of the other circumstances pointing out to that event, the Court, in our opinion, should not have surmised that she played a prominent role in its execution merely because she was unable to withstand some part of cross-examination as to how she became aware of the Will. While the Court has the duty to satisfy itself that the technical requirements with regard to the validity of a Will are duly proved and that no suspicious circumstances attended its making, at the same time, the Court is not expected to exaggerate small errors or discrepancies in description given by witnesses, keeping in mind the fact that the memories fade and the witnesses also grow old. In the present case, the Will was made in 2004, the testatrix passed away in 2009. The application claiming benefit of the Will and the substitution to the extent it granted testatrix's share to the applicant was made on 06.10.2009. In these circumstances, the deposition as to the making of the Will took place almost seven years after its preparation. Quite naturally, some inaccuracies were bound to occur. Considering these facts, the Court ought to have undoubtedly gone into the matter with some care but not exaggerated the discrepancies and elevated it to the level of "*suspicious circumstances*" to discard what, in our opinion, was a validly executed Will.

20. It is well established that the intention of a testator, in executing a Will, is to disturb or interfere with the normal line of succession. Therefore, unless something unusual and grossly unfair is shown in the disposition, the mere fact that some heirs are excluded is not a ground to conclude that it was executed under suspicious circumstances. (See *RabindraNath Mukherjee –vs- Panchanan Banerjee* 1995 (4) SCC 459; *Sadasivam-vs- K. Doraiswamy* 1996 (8) SCC 624; *P.P.K. GopalanNambiar –vs- P.P.K. Balakrishnan Nambiar* 1995Supp (2) SCC 664). In *Vrindavanibai Sambhaji Mane v. Ramchandra Vithal Ganeshkar*, (1995) 5 SCC 215 the Supreme Court listed out what are the “usual suspects” in terms of unnatural circumstances which would make courts pause, and consider whether such features are “suspicious circumstances”:

“(1) The propounder taking a prominent part in the execution of a Will which confers substantial benefits on him; (2) Shaky signature; (3) A feeble mind which is likely to be influenced; (4) Unfair and unjust disposal of property..”

21. Having regard to the entirety of circumstances, this Court holds that the Will propounded by the appellant could not have been faulted as a document the execution of which was surrounded by suspicion. For these reasons, the impugned order is set aside. I.A. Nos. 13192/2009 and 14802/2010 are hereby allowed in favor of the appellant who shall be recorded as the LR of the late Sita Kashyap

entitled to claim her share in the property. The appeal is allowed in the above terms with no order as to costs.

**S. RAVINDRA BHAT
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

DECEMBER 07, 2015

