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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY & INTESTATE JURISDICTION**

**TESTAMENTARY SUIT NO.61 OF 1989
IN
TESTAMENTARY PETITION NO.233 OF 1988**

1-A)	Mr.Idrian Bryan Lobo	)	
		)	
1-B)	Mr.Glen Bryan Lobo	)	
		)	
	Great Grandsons of the deceased	)	
	Both residing at 99, L.T. Nagar,	)	
	6 th Road, Goregaon (West)	)	
	Mumbai – 400 104	)	
		)	
2)	Mr.Ashley P. Lobo	)	
		)	
3)	Mr.Noel A. Lobo	)	
		)	
	Nirmala Apartment, 2 nd Floor,	)	
	203, Murdha Village, Uttan -	)	
	Bhayander Road (West)	)	
	District Thane	)	...Plaintiffs

....Versus....

1)	Mrs.Creesie S. Vaz	)	
	Of Bombay, Indian Christian	)	
	Inhabitant residing at 320/2552,	)	
	Motilal Nagar, Part II, M.G. Road,	)	
	Goregaon (West), Bombay – 62.	)	
		)	
2)	Mrs.Edwiges Fernandes	)	
	Of Bombay, Indian Christian	)	
	Inhabitant residing at 99,	)	
	Lokmanya Tilak Nagar, 6 th Road,	)	
	Goregaon (West), Bombay – 62.	)	
		)	

3) Mrs.Olga Rodrigues)
Of Bombay, Indian Christian)
Inhabitant residing at "Davesh")
Flat No.22, St.Francis Tech. School)
Nandpeshwar Road, Borivli)
Bombay – 400 103.) ...Defendants

Mr.Ramgopal Tripathi for the Plaintiffs.

Mr.Vincent Pereira for the Defendants.

CORAM : R.D. DHANUKA, J.

RESERVED ON : 3RD AUGUST, 2017

PRONOUNCED ON : 10th OCTOBER, 2017

JUDGMENT :-

1. Mr.John Damasceno Lobo, who claimed to be the executor of the alleged Will dated 3rd January, 1975 of late Mr.Reginald Cajetan Lobo @ Mr.Reginald C. Lobo @ Mr.R.C. Lobo @ Mr.Lobo Raginald filed Petition No.233 of 1988 *inter-alia* praying for probate of the alleged Will dated 3rd January, 1975 in this Court. Some of the relevant facts for the purpose of deciding this testamentary suit are as under :

2. It was the case of the original plaintiff that the said Mr.Reginald Cajetan Lobo had alleged to have executed his last Will and Testament on 3rd January, 1975 and had appointed him as the sole executor of the said Will. The said alleged Will was executed and

signed in presence of the two witnesses i.e. Mr.Prabhakar Bhalchandra Kamat and Mr.Jaygopal Naidu. It was the case of the original plaintiff that under the said alleged Will, the deceased had bequeathed substantial part of his estate to him.

3. It was the case of the original plaintiff that the said Mr.Reginald Cajetan Lobo (for the sake of brevity described as the said “deceased”) left behind him a son by name Mr.John Damasceno Lobo its original plaintiff and four married daughters i.e. (i) Mrs.Lizzie Rodrigues, (ii) Mrs.Cressie S. Vaz, (iii) Mrs.Olga Rodrigues and (iv) Mrs.Edwiges Fernandes. The said deceased died on 7th January, 1976.

4. The citation was served upon the legal heirs of the said deceased. The defendants herein filed the caveat, and joint affidavit of Mrs.Edwiges Fernandes and Mrs.Cressie S.Vaz for themselves and on behalf of Mrs.Olga Rodrigues dated 27th November, 1989 and raised various objections to the grant of probate in favour of the original plaintiff. Mrs.Lizzie Rodrigues did not file caveat. The petition was converted into Testamentary Suit No.61 of 1989.

5. The defendants in the affidavit in support of the caveat alleged that the Will was bogus, false and fabricated and was not signed by the said deceased. It was alleged that the signature on the said Will had been obtained by force, coercion and undue influence

and also when the said deceased was not in sound state of mind and was sick. The relationship between the said deceased and the plaintiff was always strained and he was not taking care of the said deceased and used to quarrel with him. The original plaintiff used to harass him. It was alleged that the original plaintiff had not even cared to look after the said deceased during the life time of the said deceased.

6. It was alleged in the affidavit in support of the caveat that in the affidavit of Mr.Jaygopal Naidu, who was one of the alleged attesting witness, it was stated that the date of execution of the Will was 3rd January, 1976. The original plaintiff, who claimed to be the executor of the alleged Will of the said deceased died on 5th August, 2006, leaving behind his three legal heirs i.e. Mr.Bryan J. Lobo, Mr.Ashely P. Lobo and Mr.Noel A. Lobo. Those three persons applied for amendment of the testamentary suit and for conversion of the probate petition to the Letters of Administration with the Will annexed. On 30th November, 2006, this Court allowed the said Chamber Order for amendment. Pursuant to the said order passed by this Court, the said three legal heirs of the original plaintiff were brought on record in the plaint. During the pendency of this suit, Mr.Bryan J. Lobo expired. His legal heirs i.e. Mr.Idrian Bryan Lobo and Mr.Glen Bryan Lobo were impleaded as the plaintiffs nos.1-A and 1-B in place of

Bryan J. Lobo.

7. On 13th July, 2007, this Court framed the following issues :-

Sr.No.	Issues	Findings
1]	Whether the deceased duly executed the Will dated 3 rd January, 1975 as alleged in paragraph 3 of the Petition ?	In negative.
2]	Whether the deceased was not capable of executing any Will for the reasons and as alleged in paragraphs 3, 4 and 5 of the affidavit in support of the caveat ?	In affirmative.
3]	What orders, if any ?	As per order.

8. On 23rd March, 2010, the plaintiff no.1 filed his affidavit of evidence with the list of documents in the testamentary suit. By an order dated 19th November, 2010, passed by this Court, the Will and six counter foils of the rent receipts were marked as Exhibits “A” and “B” collectively respectively. This Court appointed a Court Commissioner to record evidence of the parties. The plaintiff no.1 entered the witness box on behalf of the plaintiffs. The plaintiffs also examined Mr.Prabhakar Bhalchandra Kamat, who was one of the alleged attesting witness of the alleged Will. Both those witnesses

were cross-examined by the learned counsel for the defendants extensively. The defendant no.1 filed her affidavit of evidence dated 21st November, 2011 on behalf of herself and other two caveators with a list of documents. No other witness was examined by the defendants.

9. It was the case of the original plaintiff that the said deceased had a half share in the immovable property with his son i.e. bungalow (Lobo Villa) situated at Goregaon (West) comprising of eight rooms and was residing with his family. Out of the eight rooms, six rooms were in possession of the said deceased and his son's family and two rooms were occupied by Mrs.Edwiges Fernandes, one of the daughter of the said deceased and her husband and one unmarried daughter Mrs.Olga Rodrigues. It was the case of the original plaintiff that the elder daughters Mrs.Lizzie Rodrigues and Mrs.Cressie S. Vaz were married during the life time of the deceased and two remaining then unmarried daughters were married after the death of the said deceased.

10. Mr.Tripathi, learned counsel for the plaintiffs invited my attention to the averments made in the testamentary petition, in the affidavit in support of the caveat and also various portions of the oral evidence led by both the parties in this suit. He submits that since one of the attesting witness i.e. Mr.Jaygopal Naidu died, the plaintiffs

had examined another attesting witness i.e. Mr.Prabhakar B. Kamat. Insofar as the issue no.1 i.e. "Whether the deceased duly executed the Will dated 3rd January, 1975 as alleged in paragraph 3 of the Petition ? " is concerned, learned counsel for the plaintiffs placed reliance on paragraphs 8 and 9 of the affidavit in lieu of the examination in chief of Bryan J. Lobo dated 23rd March, 2010, who is the plaintiff no.1 in the suit and would submit that the said affidavit would clearly show that the said deceased had duly signed and executed the said Will on 3rd January, 1975 and in the presence of the witnesses and his signature was supported by the counter foils of the rent receipts signed by the said deceased and several other documents.

11. Learned counsel placed reliance on Articles Of Agreement dated February, 1960 between the said deceased and Mr.A.N. D'Souza and would submit that the said document was signed by the said deceased as R.C. Lobo on each page of the said document. He also placed reliance on the documents on pages 339, 342, 344, 345 and 346 of Volume-D and would submit that on several documents produced on record, the said deceased had signed as R.C. Lobo. He submits that only on the Conveyance Deed, which was on record in this proceeding, the said deceased had affixed his full signature since the full signature was required on the Conveyance Deed. He submits

that the signatures of the said deceased on various documents as R.C. Lobo has not been challenged by the defendants. He submits that the plaintiff no.1 as well as the attesting witness has proved the due execution and attestation of the Will in question left by the said deceased.

12. Mr.Tripathi, learned counsel for the plaintiffs also invited my attention to the answer given by the plaintiff no.1 (PW-1) on the issue of execution of the alleged Will and more particularly the answers to questions 125, 280 to 285, 290 to 292 and also placed reliance on the answers given by the witness examined by the defendants and more particularly the answers to the questions 153 to 167 and 168 to 177. He also placed reliance on the answers given by the said witness to questions 193 to 199.

13. Insofar as issue no.2 i.e. "Whether the deceased was not capable of executing any Will for the reasons and as alleged in paragraphs 3, 4 and 5 of the affidavit in support of the caveat ? " is concerned, learned counsel for the plaintiffs submits that the attesting witness Mr.Prabhakar B. Kamat had specifically deposed in paragraphs 3 and 11 of his affidavit in lieu of examination in chief that the said deceased was of sound mind. He submits that the relationship between the said deceased and the original plaintiff were always cordial. In support of this submission, he invited my attention

to the answers given by the attesting witness and in particular to questions 28 to 31 regarding the execution of Will and questions 32 to 36, 41, 58 and 68 about the relation of the deceased with the original plaintiff.

14. It is submitted that though the said deceased died of heart attack, his mind was always sound at the time of execution of the alleged Will. He also placed reliance on the reply of the attesting witness to questions 101 to 104, 105 to 110, 124 to 128 and 135 to 174. He also invited my attention to some of the portions of the evidence of DW – 1 – Mrs.Edwiges Fernandes and submits that in the affidavit in lieu of examination in chief filed by the said witness, it was not deposed by the said witness that the said deceased was of unsound mind. He submits that most of the questions asked to the witness examined by the defendants were relating to the properties. There were no questions on the aspect of undue influence, fraud, fabrication, which was alleged in the affidavit in support of the caveat. There were also not much questions on the issue of the alleged unsound mind of the said deceased. He submits that all the daughters of the said deceased were sufficiently provided by the said deceased during his life time. He submits that there is no delay in filing the testamentary petition by the original plaintiff.

15. Learned counsel for the plaintiffs placed reliance on the

judgment of this Court in case of **Madhuri Pukharaj Baldota vs. Omkarlal Daulatram Banwat & Ors. 2015(4) Mh.L.J. 327** and in particular paragraph 16 in support of the submission that the onus was on the defendants to prove that there was any fraud committed on the said deceased by the original plaintiff in execution of the said Will which the defendants failed to prove by leading any cogent evidence. He submits that the plaintiffs have sufficiently proved the execution and attestation of the said Will under section 63 of the Indian Succession Act, 1925.

16. Learned counsel for the plaintiffs placed reliance on the judgment of the Supreme Court in case of **Pushpavati & Ors. vs. Chandraja Kadamba & Ors. AIR 1972 SC 2492** in support of the submission that the signatures of the said deceased on several documents as R.C. Lobo was not challenged by the defendants at all and was duly proved by the plaintiffs in leading oral as well as documentary evidence. The plaintiff has discharged all the burden of proof cast on him. He submits that there is no substance in any of the defences raised by the defendants in the affidavit in support of the caveat and thus the objections raised by the defendants deserves to be rejected and this Court shall allow the testamentary petition filed by the original plaintiff.

17. Learned counsel for the plaintiffs relied on the judgment in

case of *Kamlesh Singh Harnamsingh Chowhan v. Kishorsingh Gangasingh Chowhan* **(2010 (1) Mh.L.J., 238)** for the proposition that this Court cannot decide the title of the property in a testamentary suit, but only can decide the validity and genuineness of the Will.

18. Mr. Vincent Pereira, learned counsel for the defendants on the other hand invited my attention to various objections raised by the defendants in the affidavit in support of the caveat opposing grant of probate in favour of the plaintiffs. He submits that the alleged Will was dated 3rd January, 1976, whereas the said deceased died on 7th January, 1976. He invited my attention to the affidavit dated 1st February, 1988 filed by Mr. Jaygopal Naidu claiming to be one of the attesting witness, which affidavit was annexed to the testamentary petition filed by the original plaintiff. He submits that in paragraph 2 of the said affidavit, originally it was alleged that on 3rd day of January, 1976, the said alleged attesting witness together with Mr. Prabhakar B. Kamat was present at the residence of the deceased and subscribed his signature on the alleged Will and Testament. He submits that the date mentioned as 3rd day of January, 1976 was corrected by the plaintiff as 3rd January, 1975 purportedly under an order dated 30th November, 2006 passed by the Court allowing the plaintiff to carry out the amendment. He submits that there was in fact no such amendment to the date permitted by this Court by the said

order.

19. It is submitted that the defendants had raised a specific objection in the affidavit in support of caveat about the date mentioned in the affidavit of the said alleged attesting witness as 3rd day of January, 1976, whereas the alleged Will of the deceased annexed to the petition was dated 3rd January, 1975. The defendants had contended in the said affidavit in support of the caveat that the alleged Will was thus bogus and was not signed by the said deceased. He submits that the plaintiff has unilaterally carried out the said amendment in the affidavit of the alleged attesting witness though there was no such order granting such permission to carry out the amendment insofar as the date of the alleged Will is concerned. The said alleged attesting witness had also not initialled the correction.

20. It is submitted that the testamentary petition came to be filed by the original plaintiff after expiry of about 12 years from the date of death of the said deceased. The plaintiff has not explained the delay in the testamentary petition though was obliged to explain as per the provisions of the Bombay High Court (Original Side) Rules. He submits that the testamentary suit thus deserves to be dismissed on this ground itself.

21. It is submitted by the learned counsel that during the

pendency of the suit, the original plaintiff expired. Bryan J. Lobo was one of the son of the said deceased, also expired. One of the grand-son of the said deceased was examined as a witness by the plaintiff, who was nine years old on the date of the alleged execution of the said Will. He submits that there was no age of the said deceased mentioned on the said alleged Will. Further the said deceased must be of about 75 years old on the date of the execution of the alleged Will. He submits that two of the daughters of the said deceased were admittedly residing with the said deceased on the date of his death.

22. It is submitted by the learned counsel for the defendants that the description of the property mentioned on page 16 of the testamentary suit i.e. part of the alleged Will of the said deceased was a jointly owned property of the said deceased and one of the daughter. Learned counsel for the defendants placed reliance on the Deed of Gift dated 20th May, 1969 executed by the said deceased in favour of one of the daughter Ms.Olga and grand-son of the said deceased Bryan J. Lobo. He submits that the said gift was given by the said deceased and his wife. Learned counsel submits that the said Deed of Gift thus could not have been cancelled by the said deceased under the said alleged Will and could not have given the said property to the original plaintiff.

23. It is submitted by the learned counsel that the said

deceased was not in proper state of mind on the date of the execution of the alleged Will. He placed reliance on the Deed of Conveyance dated 13th April, 1959 between Mr.Rameshwar Pitambar Bhatt and Mr.Chimanlal Poonamchand as vendors and the said deceased and Mr.John D.Lobo as the purchasers. He submits that admittedly the said property i.e. Lobo Villa was jointly purchased by the said deceased along with his wife. However,in the said alleged Will, the said entire property is alleged to have been given by the said deceased to the original plaintiff exclusively. He submits that several discrepancies about the entitlement of the said deceased in the alleged Will to bequeath the said properties in favour of the original plaintiff itself created a suspicious circumstances.

24. It is submitted that the said deceased was expected to know the ownership of the property he had allegedly bequeathed in favour of the original plaintiff. It would also show that the said deceased was not in proper mind on the date of the execution of the alleged Will.

25. Learned counsel for the defendants invited my attention to page no.17 of the testamentary suit on the 4th page of the alleged Will stating the date "3rd" and would submit that the said date mentioned on page 17 (internal page 4 of the alleged Will) is not in the handwriting of the said deceased. There are no initials in front of the

said date mentioned by hand. He submits that the ink used for writing the date and the alleged signatures on the said alleged Will is different. The deceased used to make full signature on the documents and was not signing as "R.C. Lobo". In support of this submission, learned counsel for the defendants invited my attention to the Deed of Conveyance dated 13th April, 1959 executed by the vendors of the plot in favour of the said deceased and Mr. John D. Lobo and would submit that on the said document, the said deceased had affixed his full signature.

26. Insofar the Articles of Agreement dated February, 1960 relied upon by the plaintiffs is concerned, it is submitted that there was a gap between the alphabets "R." & "C." and the surname "Lobo" of various signatures on the said document. There was no such gap in the signature on the alleged Will. He submits that similarly on the rent receipts also there was a gap between the alphabets "R." & "C." and the surname "Lobo". He submits that the signature of the said deceased on the said Will has been forged by the propounder of the said Will.

27. Learned counsel for the defendants invited my attention to the affidavit in lieu of examination in chief of Bryan J. Lobo, who was examined by one of the witnesses of the plaintiff. He submits that the said witness has admitted that the said deceased, who was the

grand-father of the said witness was 71 years old at the time of his death. He admitted that the leg of the said deceased was imputed some years ago and that the said deceased died by heart attack. In paragraph 6 of the affidavit of evidence, he has deposed that the said deceased never informed the said witness of any Will that he had executed. The said deceased had also not informed the late father of the said witness that the said deceased had left any Will. After the death of the said deceased, Mr.Jaygopal Naidu and Mr.Prabhakar B. Kamat, the friends of the said deceased had informed the late father of the witness about the said Will alleged to have been executed by the said deceased. He has deposed that he was present when his father was informed by the said Mr.Jaygopal Naidu and Mr.Prabhakar B. Kamat had informed about the alleged Will to his father by the said deceased.

28. Learned counsel for the defendants invited my attention to further examination in chief of the plaintiff no.1, who deposed that Mrs.Lizzie Rodrigues and Mrs.Cressie S. Vaz were the daughters not staying with the deceased in the "Lobo Villa". He admitted that the said deceased had undergone the surgical operation of imputation of leg some time in the year 1972. He invited my attention to the answer given by the said witness in reply to questions 69 and 70 in the examination in chief admitting that he was not personally aware of the

Will of the said deceased and had not personal knowledge. The said witness admitted that on the date of retirement of the said deceased in 1969, the said witness was not even born.

29. Learned counsel for the defendants invited my attention to reply to question no.91 and would submit that the said witness admitted that the said "Lobo Villa" property was purchased by the said deceased and Mr.John D. Lobo and that the said deceased was aware of it that the said property was jointly purchased by him and Mr.John D. Lobo. He also admitted that the said "Lobo Villa" was jointly standing in the name of the deceased and Mr.John D. Lobo. Whereas the water tax and the bills were also standing in the joint names.

30. Insofar as Goa property is concerned, the said witness admitted that the said property was standing in the name of Ms.Olga, Bryan Lobo and Mr.Ashley P. Lobo in Goa record of rights. The said Goa property was gifted by the said deceased in the name of those three persons by a registered Gift Deed.

31. Learned counsel for the defendants invited my attention to the answers given to question 116 by the PW-1, who deposed that the said deceased expired at his residence in Goregaon (West) whereas actually the deceased had expired in the hospital.

32. Learned counsel for the defendants invited my attention to the answers given to questions 129 to 131 of the cross-examination of PW 1, who admitted that the said deceased and Mr. John D. Lobo used to collect the rent from the tenants. He however, had no idea upto which period they had collected the rent or that the father of the witness was issuing the rent receipts to the tenants.

33. In reply to question 136, the said witness replied that he did not have personal knowledge of the property prior to 1966. The witness admitted in reply to question 139 that in respect of the balance two rooms, his aunt Ms. Olga, who was unmarried, was residing there. In reply to question 45, the witness deposed that the relation of his father with the defendants and other sister were strained. In reply to question 170, the witness admitted that he remembered that the leg of the said deceased was imputed twice. However, he could not say as to when his leg was imputed for the first time or second time. My attention is invited to the reply of the PW-1 to question 171 deposing that he was not aware of the Will when he was asked as to how he came to know that the said deceased had executed the Will.

34. It is submitted by the learned counsel that though the mother and sister of the said witness are the legal heirs of Mr. John D. Lobo, they are not impleaded as parties to the present proceedings.

He admitted that after imputation of the leg of the said deceased above the knees, he used to walk with crutches. In reply to question 199, the witness admitted that two of the daughters of the said deceased were residing in bedroom where the said deceased and his wife was staying. Their names were Ms.Olga Lobo and Mrs.Edwiges Fernandes. In reply to question 239, the witness admitted that in the year 1976, he was nine years old and his sister was 11 years old. There was no maid servant in the house in the year 1975. He admitted that in 1975, Mrs.Edwiges Fernandes and Mrs.Olga Lobo were staying in the suit property till they were married. In reply to question 284, the witness admitted that his father used to prepare the rent receipts. However, he deposed that his father used to take the signature of the said deceased on the rent receipts.

35. It is submitted by the learned counsel that on the basis of the evidence led by the witness, examination of the plaintiffs, it is clear that their evidence was shaky and inconsistent. PW 1 had no personal knowledge about the alleged execution of the Will. He submits that execution of the alleged Will as well as attestation of the Will is this not proved. The Will is *ex-facie* forged and fabricated.

36. It is submitted by the learned counsel that Mr.Jaygopal Naidu was not examined as a witness by the plaintiff. The plaintiff did not produce any proof of the date of death of Mr.Jaygopal Naidu. He

invited my attention to the deposition of Mr.Prabhakar B. Kamat, one of the alleged attesting witness. In his examination in chief, the said witness admitted that he was a regular visitor to the house of the said deceased. In paragraph 2 of his affidavit, he deposed that on 3rd January, 1975, he along with Mr.Jaygopal Naidu had visited the residence at about 6:30 p.m. Only the deceased was present with the said witness and Mr.Jaygopal Naidu. He had deposed that the deceased had not called them to his house that day. After little discussion, the deceased asked them whether they would become the witness to his Will to which the witness and the said Mr.Jaygopal Naidu agreed. In paragraph 3 of the said affidavit, the witness deposed that the said deceased was of a sound and capable mind when he signed the Will.

37. Learned counsel invited my attention to some of the questions asked to the said witness by his advocate by way of his further examination in chief. The witness deposed that he had not read the petition. In reply to question 29 in his examination in chief, the witness admitted that he had not seen the Will at all and was shown the Will for the first time on the date of his further examination in chief. In his examination in chief, he deposed that he did not know the full name of Mr.R.C. Lobo. He did not know the contents of the Will. He did not know as to how many children the said deceased

had. He did not know where Mr. John D. Lobo was staying. He used to visit "Lobo Villa" whenever he got time.

38. Learned counsel for the defendants invited my attention to some of the answers given by the said witness in the cross-examination. The said witness admitted that he did not know as to in which year the said deceased visited the Churchgate station. The said witness deposed that he knew the deceased since 1957 and knew him upto 1972 and thereafter he had no contact with him. It is submitted by the learned counsel that even according to the said alleged attesting witness, he knew the said deceased only upto 1972 and thereafter had no contact with him, he could not have attested the Will in the month of January, 1975 or 1976. The said witness did not know the other children of the said deceased though he claimed to have acquaintance with the said deceased since 1957 and had claimed to have visited the said deceased many times. He was not aware as to whether the wife of the said deceased was alive or dead on the date of funeral of the said deceased.

39. In reply to question 117, the witness admitted that the said deceased was not able to walk of his own in the year 1975-76. It is submitted by the learned counsel that the said alleged attesting witness was admittedly not with by the said deceased for attesting the said alleged Will. He did not know anything about four daughters of

the said deceased, some of whom were all through out staying with the said deceased though the said alleged witness was allegedly visiting the residence of the said deceased for about 18 years. He submits that the evidence of the said witness was totally false and cannot be relied upon.

40. Learned counsel for the defendants invited my attention to the examination in chief of Mrs.Edwiges Maria Fernandes, denying the execution of the attestation of the Will, on the issue of unsoundness of the said deceased on the date of execution of the said Will, on the issue of forgery and fabrication of the alleged Will and various issues. It is submitted that there was no cross-examination of DW 1 on her deposition that the Will was fabricated, forged and that the said deceased had died in the hospital and that his leg was amputated.

41. It is submitted that since the Will was surrounded by suspicious circumstances set out and proved by the defendants, the plaintiffs were to dispel the suspicious circumstances to the satisfaction of this Court. He submits that the burden was on the plaintiff to prove the execution and attestation of the alleged Will which the plaintiff failed to prove. Learned counsel for the defendants placed reliance on the judgment of the Delhi High Court in case of **Satish Chander Sabharwal & Anr. vs. State & Ors., AIR 2005**

Delhi 125, the judgment of the Supreme Court in case of **Niranjan Joshi vs. Mrudula Rao, AIR 2007 SC, 614** in support of the aforesaid submissions.

42. Mr.Tripathi, learned counsel for the plaintiffs in rejoinder submits that even if the description of one of the property or the ownership in respect of those properties is not mentioned correctly, the same would not make the Will invalid. This Court has to see whether the Will executed by the said deceased was genuine or not. The validity of the Will cannot be disputed on the basis of the wrong ownership of the deceased mentioned in the Will. He submits that since the said Mr.Jaygopal Naidu expired in the year 2010, he could not have been examined by the plaintiffs. He submits that only one attesting witness is required to be examined to prove the execution and attestation of the Will and the said attesting witness was already examined by the plaintiffs. He submits that the execution and attestation of the Will is thus proved by the plaintiffs.

43. Insofar as the allegations of forgery and fabrication made by the defendants is concerned, it is submitted that the defendants did not examine any handwriting expert to prove such allegations. He submits that there is no substance in any of the objections raised by the defendants. He submits that this Court thus shall pass an order for grant of Letters of Administration with the Will annexed in favour of

the plaintiffs.

REASONS AND CONCLUSIONS

44. Both the issues are inter connected and are thus dealt with together.

45. The said deceased has alleged to have executed his last will and testament dated 3rd January, 1976 and died on 7th January, 1976. In the testamentary petition, however, in paragraph no.4, the original petitioner had averred that the said will was duly executed at Bombay on or about 3rd January, 1976. The date mentioned as 3rd January, 1976 in paragraph no.4 is corrected by hand in pencil as 3rd January, 1975. The said deceased died leaving behind four legal heirs and next of kin i.e. the defendants herein and Mrs.Lizzie Rodrigues. The question as to whether the alleged will was dated 3rd January, 1975 or 3rd January, 1976 will be dealt with in the later part of this judgment.

46. Under the said alleged will, the said deceased had alleged to have appointed the only son i.e. Mr.John Damasceno Lobo as executor and had alleged to have bequeathed the major portion of the property alleged to have been owned by the said deceased. Out of four daughters of the said deceased, three of them filed affidavit in support of caveat alongwith caveat.

47. In the affidavit in support of caveat, the caveators raised

various objections to the grant of probate in favour of the original petitioner. The caveators had disputed the execution and attestation of the alleged will and have contended that the same was bogus, false and fabricated document and was not signed by the said deceased. The said deceased used to sign on all important documents in full as "Reginald C. Lobo" and not in short "R.C. Lobo". The caveators had also referred to the affidavit filed by the attesting witness Mr.Jaygopal Naidu stating that the will was executed on 3rd day of January, 1976 by the said deceased. The photocopy annexed to the testamentary petition and more particularly the last page thereof indicates that the alleged will was dated 3rd January, 1975.

48. In view of the caveat and affidavit filed in support of the caveat by the three daughters out of four daughters, the testamentary petition was converted into the testamentary suit. Mrs.Lizzie did not file any caveat and affidavit in support though was served with citation.

49. Alongwith the testamentary petition, the original petitioner filed affidavit in support of the alleged attesting witness Mr.Jaygopal Naidu affirmed on 15th January, 1988. In paragraph no.2 of the said affidavit, the said alleged attesting witness averred that on 3rd day of January, 1976, he was present togetherwith Shri Prabhakar Bhalchandra Kamat at the residence of the deceased and he and the

said Prabhakar Bhalchandra Kamat then and there saw the said deceased who set and subscribed his signature at the foot of the testamentary paper in English language and character. The said alleged attesting witness and said Mr.Prabhakar Kamat thereafter set and subscribed their respective names and signatures at the foot of the said testamentary paper as witnesses therein. It is also averred in the said affidavit that at the time when the said deceased so subscribed his name and signature to the said will, he was of sound and disposing mind, memory and understanding and to the best of his belief, had made and published the said will as of his free will and pleasure.

50. During the pendency of the testamentary suit, the original plaintiff Mr.John Damasceno Lobo expired leaving behind him three legal heirs. The first legal heir of the original petitioner Mr.Bryan John Lobo, one of the legal heirs of Mr.John Damasceno Lobo i.e. Mr.Bryan John Lobo who was impleaded as plaintiff no.1 also expired during the pendency of this testamentary suit. His two sons were accordingly brought on record in place and in substitution of said Mr.Bryan John Lobo.

51. The plaintiffs examined the said Mr.Bryan John Lobo as PW-1 and filed his affidavit in lieu of examination-in-chief dated 23rd March, 2010. The said witness was the grandson of the said

deceased. His father died on 5th August, 2006. The said deceased died due to heart attack. In reply to question no.69, when a question was asked whether he was personally aware of the will of the deceased of his grandfather, he deposed that he was not personally aware. The said deceased had retired from the services of the Western Railway in the year 1969. In reply to question no.88, the said witness admitted that at the time of retirement of the said deceased in 1969, the said witness was not even born. He was not aware, for how many years, the said deceased remained at Dadar and as to when the said deceased went to Goregaon.

52. In reply to question nos.125 to 129, the witness deposed that his grandfather and Mr.John Lobo used to collect rent from the tenants. He had no idea as to for what period, they had collected the rents. In reply to question no.36, when the witness was asked whether prior to 1966, he had any personal knowledge of the property, the witness answered that he did not have personal knowledge of the property except the documents. The witness was asked as to where his father and mother were staying when the deceased grandfather expired, he deposed that his father and mother were staying in 'Lobo Villa'. In the balance two rooms, his aunt Olga Lobo, who was unmarried at that time, was residing. In reply to question no.45, the witness answered that relations between his

father and his sister were strained. In reply to question no.170, the witness admitted that the leg of the said deceased was amputated twice. In reply to question no.179 when the witness was asked as to how he came to know that his grandfather had executed the will, the witness answered that he was not aware of the will. The witness admitted that the leg of said deceased was amputated above the knees. In reply to question no.199, the witness admitted that his two aunts were unmarried and were staying in the bed room of his grandfather.

53. In reply to question nos.239 and 240, the witness admitted that in the year 1975, he was 9 years old and his sister was approximately 11 years old. There was no maid servant in the house in the year 1975. In 1975, the aunts Mrs.Edwiges and Mrs.Olga were staying in the suit property and continued to stay till they were not married. The leg of the grandfather was amputated in the year 1972.

54. In reply to question nos.281 to 285, when the witness was put a suggestion by the learned counsel for the defendants that he did not have any document to show that the said deceased used to sign as "R.C. Lobo" on the rent receipts, the witness deposed that the rent receipts have already been produced in the Court. The witness admitted that his father used to prepare the rent receipts. He however, further deposed that his father used to take his

grandfather's signature and then issue to the tenants for the payments.

55. The plaintiffs examined Mr.Prabhakar Bhalchandra Kamat who was one of the alleged attesting witnesses to the said alleged will. In his affidavit in lieu of examination-in-chief dated 19th March, 2010, he deposed that he knew the deceased since last 18 years prior to 1975 and was a regular visitor to the house of the deceased. In paragraph no.2 of his affidavit, he deposed that on 3rd January, 1975, he alongwith Mr.Jaygopal Naidu had visited the deceased at his residence at about 6-30 p.m. Only the deceased was present with him. The deceased had not called him and the other witness to his house that day. The deceased thereafter asked them whether they would become witnesses to his will. The witnesses agreed to his request. It is deposed that the said deceased thereafter signed the will in presence of both the witnesses and also put his signature on each page of the will. It is further deposed that after putting his signature, he put the figure upon "3rd" in the blank space of the date on the will.

56. The witness deposed in his affidavit that he was not aware as to who had drawn up the said will. The witness deposed that all of them were present on 3rd January, 1975, at the time the will was signed by the said deceased and thereafter they had put their

signatures on the will. In paragraph no.3 of the affidavit, it is deposed that the said deceased was in a sound mental state when he signed the will. He also deposed that though the leg of the said deceased was amputated, the deceased was of sound mind and had never complained of any sickness to the said witness. He deposed that the said deceased and Mr.John Lobo were on friendly terms and when the said witness was present at the house, John Lobo also used to sit and talk with all of them in the presence of the deceased without any objection from the deceased.

57. The said witness Mr.Jaygopal Naidu was asked further questions in examination-in-chief. In reply to question no.29 of his further examination-in-chief when the witness was asked as to whether he had seen the original will, the witness answered that he had not seen the will at all. It is only that day he had been shown the will. He deposed that he had signed the will on 3rd January, 1975 and after that date till today, he was not aware of the will. He did not know the full name of R.C. Lobo. When he was asked, since when he knew R.C. Lobo, he deposed that the said Mr.R.C.Lobo used to come some times to the headquarters of Western Railway at Churchgate when the said witness and Mr.Jaygopal Naidu used to work with him in the Personnel Department. The witness did not know the name of the house where the said deceased was residing.

He did not know how many children the said deceased had. In his cross-examination, when he was asked whether he knew where Mr.John Lobo was residing, he answered that he did not know. In reply to question No.49, when he was asked whether he was regularly visiting 'Lobo Villa', he answered that whenever he had leisurely time, he used to visit 'Lobo Villa'.

58. In reply to question nos.65 and 66, when the witness was asked, how many times the said Mr.R.C. Lobo had visited the Churchgate office, the witness answered that he did not know. He also deposed that he did not know in which year the said Mr.R.C.Lobo had visited Churchgate office. In reply to question nos.68 and 69, when the witness was asked, for how many years, he knew Mr.R.C. Lobo, he answered that he knew Mr.R.C.Lobo since 1957 and upto 1972. Thereafter, he had no contact with him. In reply to question no.72, when the witness was asked as to whether he knew how many children the said deceased Mr.R.C. Lobo had, the witness answered that he knew only Mr.John Lobo. The witness had seen the daughters of the said deceased only now. He was asked to tell, how many times, he had visited the deceased R.C.Lobo's residence, he answered that he had visited the said Mr.R.C.Lobo many times. He, however, could not state the exact number of years. When he was asked whether he knew, when Mr.R.C.Lobo died, the

witness answered that he did not know. In reply to question no.97, when he was asked whether wife of Mr.R.C.Lobo was alive or dead on the day of his funeral, the witness answered that he did not know.

59. The witness was asked that in 1974, what was the condition of the said deceased, the witness answered that he was in sound state of mind. He, however, did not know whether the said deceased was hospitalized in the year 1974-1975. He answered that he was not able to walk in the year 1974-75. His one leg was amputated and he used to walk with crutches. In reply to question no.149 when the witness was asked whether figure "3" was written by the deceased by the same pen, the witness replied that he did not remember.

60. The defendants examined Mrs.Edwiges Maria Fernades, one of the defendants as their witness who filed affidavit in lieu of examination-in-chief dated 21.11.2011. In her affidavit, she has deposed that she and her sisters were looking after the household affairs of the said deceased. The witness was staying in 'Lobo Villa' alongwith her parents and sister Olga till the said witness got married on 24.1.1976. The said witness produced a copy of the marriage certificate. In paragraph no.6 of her affidavit, the witness deposed that prior to the death of the said deceased, he was suffering from high blood pressure and also suffered a heart attack. His right leg

was amputated twice on 7.9.1972 and 21.12.1972. Both the parents never stayed with the original petitioner at any time. The said deceased used to stay with the said witness and her sister Olga in 'Lobo Villa' separately. In paragraph no.7 of her affidavit, she deposed that in view of the heart attack of the said deceased in the year 1975, he was not in proper state of mind and was admitted in Nanavati Hospital in the month of January / February, 1975. He suffered another massive heart attack on 27.12.1975 and was admitted in Cooper Hospital on 5.1.1976 in ICU and expired on 7.1.1976 at Cooper Hospital. She deposed that she alongwith her sister had paid the hospital charges for the treatment of the said deceased. The original petitioner was never looking after the parents.

61. In paragraph no.8 of the affidavit of the said witness in lieu of examination-in-chief, she deposed that the said witness and her sister Olga were always residing at 'Lobo Villa' alongwith their parents. She had never seen the alleged witnesses i.e. Mr.Prabhakar B. Kamat and Mr.Jaygopal Naidu nor had they ever visited their house. The said witness and her sister Cressie had seen the alleged witness Mr.Prabhakar Kamat for the first time at his residence at the time of his evidence. She has deposed that the said alleged will of the said deceased is bogus, false and fabricated document and had not been signed by the said deceased. She deposed that the said

deceased used to always sign on important documents in full "Reginald Cajetan Lobo" and not in short "R.C. Lobo". She further deposed that the relations between the said deceased and the original petitioner were always strained and they were not on talking terms and often used to quarrel. The original petitioner used to harass the said deceased father. the original petitioner never took care of the said deceased during the life time of the deceased.

62. In paragraph no.9 of the said affidavit, the said witness deposed that in the affidavit filed by the alleged attesting witness Mr.Jaygopal Naidu and in the testamentary petition, it is stated that the will was executed on 3rd January, 1976, whereas the will of the deceased annexed to the petition was dated 3rd January, 1975.

63. In paragraph no.9 of the said affidavit, the witness has deposed that the date "3rd" on the will was written in different handwriting and was in different ink put subsequently by the petitioner and it was not initialed by the said deceased. In paragraph no.12 of the said affidavit, the said witness deposed that the immovable property situated at Goa as mentioned in the alleged will has been jointly owned by the deceased and by the mother of the witness Mrs.Jacinta R. Lobo, who had jointly gifted the said property to Mrs.Olga Rodrigues and their grand sons by registered gift-deed dated 31.5.1969 bearing Registration No.24475. She produced a

copy of the gift deed alongwith the said affidavit.

64. The said witness was cross-examined by the plaintiffs' Advocate. In reply to question no.9, the witness deposed that she had gone through the copy of the will annexed to the petition in 1989. Her reply to the petition was filed on the basis of copy of the alleged will, which she had gone through. In reply to question no.11, the witness deposed that she had never seen the original will earlier when she was shown the original will at the time of cross-examination. She deposed that the alleged original will was shown to the Court by the Advocate for the plaintiffs and at that time, she had seen the original will. In reply to question no.61 when the witness was asked as to for how many years, she was staying with her husband at 'Lobo Villa', she deposed that she stayed with her husband at 'Lobo Villa' since marriage. She deposed that she had not shifted with her husband from 'Lobo Villa' after her marriage.

65. A perusal of the aforesaid evidence led by both the parties clearly indicates that the said deceased used to affix his full signature on all the important documents, which obviously would include the execution of a will also. A perusal of the alleged will indicates that on the said document, the alleged signature of the said deceased was not in full but was as "R.C.Lobo". There was gap between the alphabets "R" and "C" and between "C" and "Lobo", which was not

found in the rent receipts, which were alleged to have been signed by the said deceased.

66. A perusal of the evidence led by the PW-1 clearly indicates that he had no personal knowledge about the execution and attestation of the alleged will. He admitted that the said deceased was 71 years old at the time of his death. In the year 1976, the PW-1 was 9 years old, whereas his sister was 11 years old. The PW-1 had never seen the alleged original will and was not even aware of the alleged will. The alleged attesting witness examined by the plaintiffs admitted in his evidence that he had not seen the will at all and was shown the will for the first time on the date of his further examination-in-chief. He did not know the full name of R.C.Lobo. He did not know as to how many children the said deceased had. He did not know where Mrs.John Lobo was staying. He used to visit 'Lobo Villa' whenever he got time.

67. The said witness claimed that he knew the deceased since 1957 and knew him upto 1972 and thereafter he had no contact with him. The said witness did not know the other children of the said deceased though he claimed to have acquaintance. The said witness was not aware as to whether the wife of the said deceased was alive or dead on the date of funeral of the said deceased.

68. A perusal of the evidence of the said Mr.Prabhakar B.

Kamat clearly indicates that according to the said witness, the said deceased had not called him and Mr.Jaygopal Naidu to his house on the date of alleged execution of the will. Though he claimed to have visited the residence of the said deceased number of times, he did not know who else was staying with the said deceased including their names. In his affidavit of attesting witness filed alongwith copy of the petition, he averred that the will was signed on 3rd January, 1976, whereas copy of the alleged will annexed to the petition was dated 3rd January, 1975.

69. During the course of the arguments, Mr.Tripathi, learned counsel for the plaintiffs, contended that an amendment in the testamentary suit was carried out pursuant to an order passed by the learned Prothonotary and Senior Master in the Chamber Order. A perusal of the Chamber Order clearly indicates that there was no prayer for carrying out any amendment in the testamentary suit insofar as the date of the alleged will mentioned in the petition as 3rd January, 1976, or in the affidavit of the attesting witness. A perusal of the original testamentary petition clearly indicates that the year 1976 is corrected in pencil as 1975 without any initials in the testamentary petition as well as in the affidavit of attesting witness filed by Mr.Jaygopal Naidu. Even the date mentioned in the said affidavit of Mr.Jaygopal Naidu as 3rd January, 1976, is corrected by pencil as 3rd

January, 1975. Neither there is any initial put by the deponent on the said affidavit nor by the original petitioner who had verified the testamentary petition.

70. Though this issue was specifically raised by the defendants in the affidavit in support of caveat, the plaintiffs did not examine Mr.Jaygopal Naidu as a witness. The plaintiffs did not produce any death certificate of the said witness Jaygopal Naidu. Though Mr.Prabhakar B. Kamat was examined as a witness and who also claimed to be present on the date of alleged execution and attestation of the alleged will, he did not prove that there was a so called mistake in the date of 3rd January, 1976, in the petition as well as in the affidavit of Mr.Jaygopal Naidu filed alongwith testamentary petition. I am, therefore, of the considered view that the alleged will was ex-facie fabricated and forged by the propounder of the said alleged will. The said deceased was in hospital from 3rd January, 1976 and expired on 7th January, 1976.

71. A perusal of the evidence of the alleged attesting witness indicates that though he claimed that he had acquaintance of long period with the said deceased and used to visit his house on several occasions, he was not able to inform the Court in his cross-examination the names of the family members of the said deceased and more particularly two daughters who had been staying with the

said deceased in the house 'Lobo Villa' alongwith the said deceased. He also was not aware as to whether the wife of the said deceased was alive on the date of funeral of the said deceased. It is thus clear beyond reasonable doubt that the said alleged attesting witness had filed a false affidavit with a view to mislead this Court and to support the false case of the original petitioner. Two daughters of the said deceased who were staying with the said deceased had never seen the said witness at the residence of the deceased.

72. The first witness examined by the plaintiffs had no personal knowledge at all of the alleged execution of the will. The execution and attestation is thus not proved by the plaintiffs, though the onus to prove was on the plaintiffs. The issue no.1 is accordingly answered in negative.

73. Insofar as issue no.2 is concerned, a perusal of the record clearly indicates that the said deceased was suffering from various diseases and his leg was amputated twice above the knee. The witness examined by the defendants has deposed about the sickness of the said deceased in her deposition. She has also brought on record that the said deceased was suffering from heart attack and blood pressure. Few days prior to his death, he had suffered from severe heart attack and was admitted in ICU in Nanavati Hospital. Within few days of his admission in the hospital, the said deceased

died. The hospital bills of the said deceased are also borne by the defendants. The witness examined by the plaintiffs has admitted in his evidence that the relations of his father with the defendants were strained. The witness examined by the defendants have also brought on record that the original petitioner never used to take care of the said deceased and was harassing and quarreling with the said deceased. This part of the deposition in the affidavit in lieu of the examination-in-chief of the defendants' witness was not controverted in the cross-examination. Substantial part of the evidence of the defendants' witness in her examination-in-chief remained uncontroverted and was not shattered in the cross-examination.

74. None of the witnesses examined by the plaintiffs could prove before this Court by any cogent evidence that the deceased was capable of executing any will or was of sound and disposing mind on the date of execution of the alleged will. The witnesses examined by the plaintiffs admitted that the said deceased was suffering from various diseases. The first witness of the plaintiffs was hardly 9 years old on the date of death of the said deceased and had no personal knowledge of the fact whether the said deceased was of sound and disposing mind and was capable of executing any will or not. The second witness examined by the plaintiffs also could not prove that the said deceased was of sound and disposing mind. On

the contrary, the allegations made by the defendants in paragraph nos.3,4 and 5 of the affidavit in support of the caveat have been proved by the witness examined by the defendants and by cross-examining the witnesses examined by the plaintiffs.

75. A perusal of the record further indicates that the first witness examined by the plaintiffs has admitted in his cross-examination that various properties, which were alleged to have been bequeathed by the said deceased in the alleged will did not belong to the said deceased exclusively or did not belong to him or ceased to belong to him in view of the said deceased and his wife having gifted one of such properties in favour of the family members. A person who was not the owner of the property exclusively or was part owner of any property would not have bequeathed that property exclusively in favour of a party knowing fully well that he was not authorized to deal with such property. Though the testamentary Court cannot decide the issue of title in respect of the properties of the deceased testatrix, a deceased dealing with the property, which did not belong to him exclusively or partly, would in ordinary course would not have made a bequest of such property.

76. The alleged will is ex-facie surrounded by suspicious circumstances. The date of alleged will also was surrounded by suspicious circumstances. It was in these circumstances, the onus

was on the plaintiffs to dispel such surrounding circumstances to the satisfaction of this Court by leading cogent evidence, which the plaintiffs failed miserably.

77. In my view, the learned counsel for the defendants is right in his submission that since the relations of the said deceased with the original petitioner were strained, the said deceased would not have given the entire property to the original petitioner and disinheriting the two daughters who were all throughout staying with the said deceased and were exclusively taking care of him. The plaintiffs, in my view, failed to dispel such suspicious circumstance to the satisfaction of this Court by leading any cogent evidence.

78. This Court in the case of *Madhuri Pukharaj Baldota* (supra) held that the onus lies on the propounder of the will that the same was validly executed, that the testator had understood the contents of the document to which he put his signature and that he did so in his own volition. Any legitimate doubts raised in the mind of the Court with regard to the validity of the execution of the will must also be put to rest by the propounder independent of whether any accusations made by any caveator or not. In this case, the defendants had not only made various allegations and having pointed out various surrounding suspicious circumstances in execution of alleged will but had proved the same by leading evidence, the plaintiffs had failed to

dispel such suspicious surrounding circumstances. The principles laid down by this Court in case of *Madhuri Pukharaj Baldota* (supra) would thus assist the case of the defendants and not the case of the plaintiffs.

79. Insofar as judgment of the Supreme Court in case of *Pushpavati & others* (supra) relied upon by the learned counsel for the plaintiffs is concerned, it is held by the Supreme Court in the said judgment that the proof of execution and attestation is on the propounder of the will especially when it is alleged to be a forgery. In my view, the said judgment would clearly support the case of the defendants. The plaintiffs have failed to prove that the will was executed and attested in accordance with law and had not removed the suspicious circumstances.

80. Insofar as judgment of this Court in case of *Kamlesh Singh Harnamsingh Chowhan* (supra) relied upon by the learned counsel for the plaintiffs is concerned, there is no dispute about the proposition of law that the Court only decides the question of genuineness and validity of the will and does not enter into the question of title. This Court has not decided any question of title in respect of the estate of the said deceased in this judgment.

81. Delhi High Court in case of *Satish Chander Sabharwal & Another* (supra) relied upon by the learned counsel for the defendants

has held that if there are suspicious circumstances in execution of the will and has created doubt on veracity of will and if there are glaring contradictions and discrepancies in evidence of witnesses of the plaintiffs, will cannot be probated by the testamentary Court. In my view, the said judgment would squarely apply to the facts of this case and would support the case of the defendants.

82. The Supreme Court in case of *Niranjan Joshi* (supra) relied upon by the learned counsel for the defendants has held that there are several circumstances which would have been held to be described by the Supreme Court as suspicious circumstances, such as, (1) when a doubt is created in regard to the condition of mind of the testator, his signature on the will; (2) when the disposition appears to be unnatural or wholly unfair in the light of the relevant circumstances; and (3) where propounder himself takes prominent part in the execution of the will, which confers on him substantial benefit. It is held that the burden of proof that the will has been validly executed and is a genuine document is on the propounder. The propounder is required to prove that the testator has signed the will and that he had put his signature out of his own free will having a sound disposition of mind and had understood the nature and effect thereof.

83. In my view, the principles laid down by the Supreme Court

in the aforesaid judgment clearly applies to the facts of this case. The plaintiffs have failed to prove even the correct date of the alleged will. The corrections made in the testamentary petition and in the affidavit of the attesting witness insofar as year is concerned, by pencil and without initials and even without any order allowing such amendment that itself creates a serious doubt. There are neither any initials on the said correction made in pencil nor any such order came to be passed by this Court allowing such amendment. Within few days of the date of alleged execution of will i.e. 3rd January, 1976 mentioned in the testamentary petition as well as in the affidavit of attesting witness, the said deceased expired in the hospital.

84. In my view, the said alleged will cannot be accepted as proved before this Court also on the ground that the said deceased would not have disinherited the two daughters atleast who were all throughout were staying with him and were taking absolute care of the said deceased and would not have bequeathed his entire property in favour of the original petitioner whose relations with the said deceased were strained and who was never taking care of the said deceased. The alleged will, in my view, is unnatural in these circumstances and cannot be accepted. The issue no.2 is accordingly answered in affirmative.

85. I, therefore, pass the following order.

ORDER

The Testamentary Suit No.61/1989 is dismissed with costs quantified at Rs.1,00,000/- (Rupees one lakh only), which shall be paid by the plaintiffs to the defendants within two weeks from today.

(R.D. DHANUKA, J.)