

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.07.2017

DELIVERED ON : 07.09.2017

CORAM

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
AND
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

ORIGINAL SIDE APPEAL NO.173 OF 2013
AND M.P.NO.1 OF 2013

Baldev G.Wadhwa .. Appellant

Vs.

1. Kumar Gobindram Wadhwa

2. Narain Gobindram Wadhwa ... Respondents

Prayer : Appeal filed under Order XXXVI Rule 9 of Original Side Rules read with Clause 15 of the Letters Patent, against the Judgement and Decree dated 21.08.2012 in T.O.S.No.19 of 2006, on the file of this Court.

For Appellant : Mr.Sandeep S.Shah
for Messrs Shah & Shah

For Respondents: Mr.K.Harishankar

JUDGEMENT

RAJIV SHAKDHER, J.

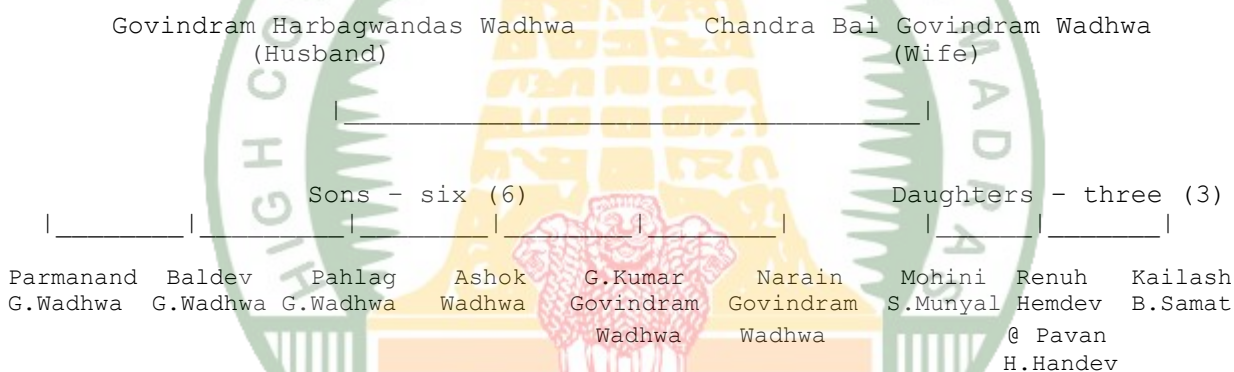
PREFACE :

1. This appeal is directed against the judgement and decree dated 21.08.2012, passed in T.O.S.No.19 of 2006. By virtue of the impugned judgement and decree, the learned Single Judge has granted probate of the last Will and Testament of one Chandra Bai Gobindram Wadhwa (in short 'Chandra Bai') dated 09.12.1994.

2. The appellant, i.e. Baldev G.Wadhwa (in short 'Baldev') is one of the sons of Chandra Bai. The appellant / Baldev is a practicing Advocate, who, apparently, resides in Mumbai.

3. The dispute with regard to the Subject Will (Ex.P1), as it appears from the records has only been raised by the appellant / Baldev. It may be relevant to trace out the genealogical root of the Wadhwa family to appreciate the contours of the dispute raised before this Court.

GENEALOGY



4. As would be evident from the family tree set out above, Govindram Harbagwandas Wadhwa had fathered six (6) sons and three (3) daughters. The record would also show that Wadhwa family had floated three partnership firms, viz., (i) Hargo's Alloy Foundry; (ii) M/s.Wadhwa Brothers Engg.; and (iii) Shri Harinaryana Metal Alloy. The reference to these firms is found in the subject Will (Ex.P1).

4.1. The record further shows that Chandra Bai is said to have executed a registered Will dated 09.12.1994 (Ex.P1) and, that, she expired on 16.11.1998. The subject Will (Ex.P1) refers Kumar and Narain i.e. the respondents herein, as the executors.

4.2. It appears that in their capacity as executors, a probate petition was filed by Kumar and Narain which was numbered as : O.P.No.303 of 2004. The said petition was preferred under Sections 222 and 276 of the Indian Succession Act, 1925 (in short 'Succession Act').

4.3. Caveat in the probate petition was filed only by the appellant/Baldev, whereupon, it was converted into a testamentary suit and was, as indicated above, numbered as T.O.S.No.19 of 2006.

4.4. The record also show that the appellant / Baldev, being the only contesting party, was arrayed as a defendant, whereupon, a written statement was filed by him. The other siblings, as would be evident from the record, had chosen not to contest the probate petition and, hence, were not arrayed as defendants. Evidently, all siblings gave their no objection to the subject Will (Ex.P1), except Ashok G.Wadhwa (in short 'Ashok'). Pertinently, though Ashok, did not sign and file a consent affidavit, he did not contest the probate petition either, and, thus, in a sense, accepted the genuineness of the subject will (Ex.P1).

4.5. The suit was tried. Messrs Kumar and Narain cited three (3) witnesses, i.e. P.Ws.1 to 3, and marked eight (8) documents, i.e. Exs.P1 to P8.

4.6. The appellant / Baldev, on the other hand, only examined himself and was identified as D.W.1. The appellant / Baldev, in support of his case, filed documents, which were marked as Exs.D1 to D5.

4.7. As indicated at the outset, the learned Single Judge, upon appreciation of the evidence placed before him, came to the conclusion that the prayer made for grant of probate, qua, subject Will (Ex.P1) had to be allowed.

4.8. Being aggrieved, the appellant / Baldev, i.e., the sole defendant in the suit, has preferred this appeal.

SUBMISSIONS OF COUNSELS :

5. On behalf of the appellant / Baldev, arguments have been advanced by Mr.Sandeep S.Shah, Advocate, whereas, on behalf of Messrs Kumar and Narain, rebuttal submissions have been made by Mr.K.Harishankar.

6. The submissions made by Mr.Sandeep S.Shah can, broadly, be paraphrased as follows:

(i). Even though Chandra Bai died on 16.11.1998, and probate petition was signed on 24.12.2001, it was presented in this Court only on 22.02.2002, i.e. after a period of more than three years, post the death of Chandra Bai.

(ii). The learned Single Judge failed to deal with the following issues raised before him :

(a). Non-compliance of provisions of Order XXV Rule 9 of the Original Side Rules of the Madras High Court, 1956 (in short, "OS Rules"), which requires explanation to be given where probate proceedings are filed after a period of three years.

(b). No assertion is made in the affidavits of the attesting witnesses about the interlineations, alterations, erasures or obliterations as required under Order XXV Rule 19 of the OS Rules. In other words, there is no explanation as to whether the said changes in the subject Will (Ex.P1) were made before its registration or thereafter.

(c). Nothing is placed on record, which would prove, to the satisfaction of the Court, that the subject Will (Ex.P1) was read over to Chandra Bai i.e. testatrix, prior to its execution by her. Chandra Bai, the testatrix, was a person, who was not conversant with the English language, which is the language, in which the subject Will (Ex.P1) has been executed. In this regard, reference was made to Order XXV Rule 23 of the OS Rules.

(d). The provisions of Order XXV Rule 31 of the OS Rules and Section 20 of the Tamil Nadu Registration Act, 1908 read with Rule 23 were not noticed.

(e). The learned Single Judge erred in so far as he failed to give weight to the suspicious circumstances, which were pointed out and elicited during the course of cross examination of P.W.1, P.W.2 and P.W.3. The suspicious circumstances, which were pointed out were as follows:

(e.1) P.W.1 is an attesting witness, who, in his proof affidavit, had not indicated as to the place where the Will (Ex.P1) was executed.

(e.2) There is contradiction in the position taken in this behalf by P.W.1 in as much as in paragraph 2 of his affidavit, marked as Ex.P3, he has stated that he was present in the office of the Sub-Registrar, Periamet together with Mr.S.Sridhar (P.W.3), and that, they saw Chandra Bai / testatrix, set and subscribe her name at the foot of the testamentary paper in Hindi. Whereas, in his cross examination on 08.08.2008, he has stated that the subject Will (Ex.P1) was first signed by testatrix at her residence, and thereafter, signed at the Sub-Registrar's office.

(e.3) P.W.1, in his affidavit, marked as Ex.P3, has stated that the attesting witnesses had subscribed their name and

signature at the foot of the subject Will (Ex.P1) as witnesses. Similar observation was also made in the very same affidavit, qua, Chandra Bai/testatrix. However, a perusal of the subject Will (Ex.P1) would show that, firstly, it does not contain the names of the attesting witnesses and that of Chandra Bai/testatrix as asserted in P.W.1's affidavit. Furthermore, the signatures of Chandra Bai / testatrix and those of the attesting witnesses are set out in the subject Will (Ex.P1) only once, and therefore, there is contradiction to the extent it is asserted that signatures were first appended on the testamentary document at the residence, and thereafter, at the Sub-Registrar's office.

(e.4) P.W.1, in his cross examination on 08.08.2008, had asserted that there were no corrections in the subject Will (Ex.P1), whereas, a bare perusal of the said testamentary document would show that there are both handwritten corrections as well as those which were carried out by use of a typewriter. Furthermore, P.W.1, in his cross examination, has admitted that none of the corrections have been endorsed either by Chandra Bai/testatrix or by the attesting witnesses.

(e.5) P.W.1, in his cross examination, has asserted that Chandra Bai/testatrix, in the first instance, signed the subject Will (Ex.P1) at her residence, and thereafter, appended her signature at the Sub-Registrar's office. The testimony of P.W.1 also discloses that there is an admission with regard to the fact that he and the testatrix resided in the same building, while Chandra Bai/testatrix was residing on the second floor and he was residing on the first floor of the same building. Having said so, P.W.1 in his cross examination further went on to state that he did not remember as to the date on which the subject Will (Ex.P1) was typed and that who had brought the typewritten Will to him. Even while asserting that the typewritten Will was signed by Chandra Bai/testatrix, immediately, upon being put before her, P.W.1 accepted the fact in the testimony that the subject Will (Ex.P1) was executed in his presence and in the presence of his wife. The aforesaid would lead to an inference that the subject Will (Ex.P1) was executed at the residence of P.W.1 and at that point of time, when it was executed, Mr.Sridhar (P.W.3) was not present. The testimony would also show that the contents of the subject Will (Ex.P1) were not read out and explained to Chandra Bai / testatrix.

(e.6) P.W.1 in his cross examination had admitted that apart from the subject Will (Ex.P1), there was no other Will executed by Chandra Bai / testatrix. Furthermore, P.W.1 accepted in his cross examination that he had accompanied the appellant / Baldev to the office of Advocate Mr.Goklaney for issuance of notice in

connection with the purported execution of the Will by Chandra Bai / testatrix. The question which, therefore, arises is : if there was no other Will in existence, apart from the subject Will (Ex.P1) what was the need for P.W.1 to accompany the appellant / Baldev, to the office of Advocate Goklaney, for issuance of a notice by him ?

(e.7) P.W.2 in his cross examination has stated that all siblings signed the subject Will (Ex.P1). The two pages which are said to have contain the signatures of the siblings are not part of the subject Will (Ex.P1). On the other hand, Ex.D1, which is a copy of the subject Will is accompanied by the last two pages of the subject Will (Ex.P1) which contains the signatures of all the siblings. At the point in time, when the original Will was filed, the two page document containing the signatures of all the siblings were also filed.

(e.8) P.W.2 in his cross examination, in the first instance, stated that he accompanied P.W.1 to Advocate Goklaney's office for issuance of notice to the effect that the subject Will (Ex.P1) was a fabricated Will and, immediately, thereafter changed his statement by deposing that he had accompanied P.W.1 till "Parrys Corner" and had not accompanied him to the office of the said lawyer. From these contradictory statements of P.W.2 it can be inferred that either there is another Will in existence or the subject Will (Ex.P1) is a fabricated Will. If this was not so, there was no good reason for the attesting witness P.W.1 to accompany P.W.2 to Advocate Goklaney's office for having the notice issued.

(e.9) P.W.2 in his cross examination has stated that he dropped P.W.1 and Chandra Bai / testatrix at the Sub-Registrar's office. This would lead to an inference that when the subject Will (Ex.P1) was signed by Chandra Bai / testatrix, the other attesting witness, i.e Mr.Sridhar (P.W.3), was not present at the residence.

(e.9.1) Mr.Sridhar (P.W.3), who is the other attesting witness, has stated in his proof affidavit that he was present along with P.W.1 in the office of Sub Registrar at Periamet. P.W.3 further goes on to say that he and P.W.1, the other attesting witness, saw Chandra Bai / testatrix append her signature at the foot of the testamentary document in Hindi, and thereafter, at her request, both he and P.W.1 in her presence and in the presence of each other had subscribed their names and signatures at the foot of the said testamentary document (Ex.P1) in their capacity as witnesses. In the cross examination, when it was put to P.W.3 as to whether what he had stated in his deposition was correct, as against what had been stated by P.W.1, he went on to state that his version was correct, and

that, he did not know as to what P.W.1 had stated in his deposition. Thus, having regard to the deposition of P.W.1 and P.W.3, it is clear that the stand taken by the two attesting witnesses contradicts each other. While P.W.1 states that the subject Will (Ex.P1) was executed at his residence, P.W.3, on the other hand, asserts that the Will was executed at the Sub-Registrar's office.

(e.9.2) The aforementioned contradiction in the stand of witnesses creates a suspicion with regard to whether Chandra Bai / testatrix and the attesting witnesses P.W.1 and P.W.3 were present at the same time when the subject Will (Ex.P1) is said to have been executed.

(e.9.3) When suspicious circumstances are brought to the notice of the Court, the Court ought to view them carefully as the initial onus on the propounder of the Will is heavy. Unless, the onus on the propounder of the Will is discharged, satisfactorily, the Court ought to be slow in treating the purported testamentary document as the last Will and Codicil of the testator. This submission was sought to be supported, by relying upon the judgement of the Supreme Court rendered in : H.Venkatachala Iyengar Vs. B.N.Thimmajamma and others, AIR 1959 SC 443.

(e.10) The fact that signatures of Chandra Bai / testatrix were obtained on blank sheet of paper is demonstrable from the fact that P.W.1, while, appending his signature on any document had the habit of putting down a date alongside his signature. In support of this plea, reliance was placed on letters (Ex.D.2 series), which were addressed by P.W.1 to his sibling, i.e., the appellant/Baldev.

7. Mr.K.Harishankar, on the other hand, attempted to rebut the submissions advanced by Mr.Sandeep S.Shah, on behalf of the appellant / Baldev.

7.1. The learned counsel submitted that there was no contradiction in the testimony of P.W.1 and P.W.3, as regards, the place of execution of the subject Will (Ex.P.1). It was further stated that upon a close perusal of the testimony of the said witnesses, it would become clear that the subject Will (Ex.P1) was executed by Chandra Bai / testatrix, in the first instance, at her residence and thereafter, all three, appended their signatures, once again, in the office of the Sub-Registrar, as an act of admittance, of the factum of execution of subject Will (Ex.P1).

7.2. The attempt to show that signature of Chandra Bai / testatrix was obtained on blank sheets, by adverting to the

fact, that P.W.1, normally, append a date along side his signature, was suitably clarified by P.W.1, in his cross examination. P.W.1 had stated that he was not always in the habit of putting down a date along side his signature. Furthermore, in the written statement, filed on behalf of the appellant / Baldev, there is no assertion with regard to the fact that blank sheets of paper were used to prepare the subject Will (Ex.P1). The case on this line was sought to be set out by the appellant / Baldev, during the course of cross examination of P.W.1 and later on followed by an assertion made to that effect in the appeal.

7.3. The submission made that the probate petition was filed belatedly, has been made, for the first time, in the present appeal. A perusal of the impugned judgement, would show, that the learned Single Judge, has carefully recorded all contentions and/or submissions, advanced on behalf of the appellant / Baldev. Furthermore, a perusal of the written statement, filed on behalf of the appellant / Baldev, would show that no such issue was raised.

7.4. In any event, the occasion to file a probate petition could have only arisen when opposition was raised by the appellant / Baldev. The record would show that all the legal heirs except the appellant / Baldev and Ashok, had executed consent affidavits. Thus, it was only, when, the appellant / Baldev refused to give his consent, that the occasion arose to file a probate petition. Therefore, there was no delay in filing the petition as alleged or at all.

7.5. The assertion made on behalf of the appellant / Baldev that OS Rules were not followed, is an assertion, which is not of much substance. The OS Rules are only directory and not mandatory in nature. Procedural rules are brought into play only to aid adjudication, and therefore, are subservient to the cause of justice. Reliance in this behalf was placed on the following judgement of the Supreme Court rendered in : Rani Kusum Vs. Kanchan Devi and others, 2005(4)L.W. 277.

7.6. Reference made to "testimonial inconsistencies" to suggest that suspicious circumstances surround the execution of the subject Will (Ex.P1), is a submission, which ought to be rejected. The propounders of the Will, have proved due execution of the subject Will (Ex.P1), as required under Section 68 of the Indian Evidence Act, 1872 (in short 'the Evidence Act') and therefore, once execution is proved, it is for the caveator, in this case, the appellant / Baldev, to prove his allegations of undue influence, coercion and fraud. The record shows that no such evidence has been led by the appellant / Baldev, which would suggest, that, undue influence, coercion and

fraud was employed on Chandra Bai / testatrix in getting her to execute the subject Will (Ex.P1).

7.7. In support of his submissions, the learned counsel relied on the following judgements : (i) Naresh Charan Das Gupta Vs. Paresh Charan Das Gupta, AIR 1955 SC 363 (ii) Seth Beni Chand Vs. Smt.Kamla Kunwar and others, (1976) 4 SCC 554 (iii) Madhukar D.Shende Vs. Tarabai Aba Shedage, 2002 (1) CTC 244 (iv) Palaniswami Vs. P.Vellingiri Gounder, 2003-3-L.W. 363 (v) Dr.Shantha Vs. Sharada, 2003 (4) CTC 470 (vi) Meenakshiammal Vs. Chandrasekaran and another, (2005) 1 SCC 280 (vii) Sridevi and others Vs. Jayaraja Shetty and Others, (2005) 2 SCC 784 (viii) Hazara Bradri and others Vs. Lokesh Datta Multani, (2005) 13 SCC 278 (ix) Savithri & Others Vs. Karthyayani Amma & Others, 2008-1-L.W.255.

REASONS :

8. We have heard the learned counsel for the parties and perused the records.

9. The undisputed fact is that there is a document on record, i.e. subject Will (Ex.P1) which, according to Messrs Kumar and Narain, i.e. the original plaintiffs, was executed by Chandra Bai/testatrix, i.e., their mother.

9.1. As indicated above, Chandra Bai / testatrix was married to one Gobindram Harbagwandas Wadhwa. Chandra Bai / testatrix from this wedlock gave birth to six (6) sons and three (3) daughters. The names of the sons and daughters are already referred to by us, in the family tree, set forth above.

9.2. Chandra Bai/testatrix, admittedly, died on 16.11.1998. There is no dispute raised with regard to the date of her death. There is also no dispute raised that the probate petition was filed, in and about 22.02.2002, by Messrs Kumar and Narain, who are named as executors in the subject Will (Ex.P1).

9.3. It is important to note that the appellant / Baldev filed his caveat bearing No.281 of 2005 on 21.11.2005, followed by a counter affidavit. The counter affidavit was filed by the appellant / Baldev, apparently, on 20.03.2006, whereupon, on 11.05.2006, O.P.No.303 of 2004, was converted into a testamentary suit i.e. T.O.S.19 of 2006. The appellant / Baldev, being arrayed, as the only defendant, on account of the fact, that, all other siblings, except Ashok, who had been arrayed as respondents had filed their consent affidavits. Consequently, the appellant / Baldev filed his written statement on 16.02.2008. In response to the written statement, a

replication, was filed by Messrs Kumar and Narain on 02.07.2008. The record shows that issues were framed in the first instance on 27.03.2008 and, thereafter, it appears, they were framed, once again, albeit, inadvertently, on 24.07.2008. A comparison of the two set of issues would show that they are more or less identical. The impugned judgement, though, is based on issues framed on 27.03.2008.

9.4. Be that as it may, the impugned judgement was delivered on 21.08.2012. Messrs Kumar and Narain, as indicated above, cited three witnesses viz.P.W.1 to P.W.3, while, the appellant / Baldev examined only himself and was identified as D.W.1.

9.5. In so far as Messrs Kumar and Narain are concerned, they produced, in addition, documentary evidence. The documents produced were marked as : Exs.P1 to P8. Likewise, the appellant / Baldev also filed documentary evidence. These documents were marked as : Exs.D1 to D5.

10. Given this state of the pleadings and the evidence, which included oral evidence, the core issue, that is required to be dealt with is : as to whether the appellant / Baldev is right in his assertions that the subject Will (Ex.P1) was executed in circumstances which gives rise to suspicion with regard to its genuineness ?

10.1. Before we go to the specifics, with regard to suspicious circumstances and inconsistency in the testimonies, as alluded to by the appellant / Baldev, it may be relevant to advert to the testimonies of the attesting witnesses, who sought to prove that Chandra Bai / testatrix executed the Will in their presence and that they in turn had also appended their signatures on the subject Will (Ex.P1) in her presence and in the presence of each other.

10.2. Furthermore, whether, at the time when the subject Will (Ex.P1) was executed, Chandra Bai / testatrix was in a sound and disposing state of mind.

10.3. In this behalf, we intend to advert to and extract the relevant part of the testimony of the two attesting witnesses i.e. P.W.1 and P.W.3. It would also be relevant to note that P.W.1 is the eldest amongst the siblings and is not a beneficiary under the subject Will (Ex.P1). P.W.3 (Mr.S.Sridhar), on the other hand, is a Practicing Advocate. P.W.1 (Paramanand G.Wadhwa), in his proof affidavit dated 29.07.2008, inter alia, in paragraphs 2 and 3 has stated as follows:

".... 2. I state that on 09.12.1994 I

was present together with Mr.S.Sridhar, the other attesting witness in the office of the Sub-Registrar, Periamet. The testatrix signed her name in Hindi language in the Will executed by her and thereafter, we signed our respective names at the foot of the testamentary paper which may be marked as Exhibit A1.

3. I state that at the time of testatrix executing the Will, she was in a sound and disposing state of mind, memory and understanding."

(emphasis is ours)

10.4. Similarly, P.W.3, in his proof affidavit, dated 15.02.2010, in paragraphs 1 to 5, has stated as follows:

"1. I state that I am the Attesting Witness in the Will dated 9th December 1994 of the deceased and I was well acquainted with the deceased abovenamed.

2. I state that on the 9th day of December 1994, I was present together with Mr.Paramanand G.Wadhwa in the Office of the Sub-Registrar of Periamet. Myself and Mr.Paramanand G.Wadhwa saw the Testatrix signing her name at the foot of the testamentary paper in the Hindi language. I state that the said Will is her last Will and testament.

3. I state that thereupon I and the said Mr.Paramanand G.Wadhwa at the request of the said deceased and in her presence and in the presence of each other all being present at the time set and subscribe our respective names and signatures at the foot of the testamentary paper as witnesses thereto.

4. I state that the name and signature subscribed at the foot of the testamentary paper is in the proper handwriting of the Testatrix and the name, signature also subscribed and written at the foot of the said testamentary paper are the respective handwritings of the said Mr.Paramanand G.Wadhwa and of me.

5. I state that at the time the said Testatrix so subscribed her name and signature to the said Will as aforesaid late Mrs.Chandra Bai Gobindram was of sound and disposing mind, memory and understanding and

to the best of my belief made and published
the same of her free will and pleasure."
(emphasis is ours)

10.5. The cross examination of P.W.1 and P.W.3 could not dislodge the assertion that Chandra Bai / testatrix had executed the subject Will (Ex.P1), in the presence of the aforementioned two attesting witnesses, i.e. P.W.1 and P.W.3, and that, they, in turn, had appended their signatures on the said testamentary document in her presence.

10.6. Furthermore, the assertions of P.W.1 and P.W.3 in their proof affidavit / examination-in-chief, that Chandra Bai / testatrix, at the time of execution of the subject Will (Ex.P1), was in a sound and disposing state of mind remained steadfast. This being the position, once the propounders of the subject Will (Ex.P1) have proved the Will, in the manner prescribed under Section 68 of the Evidence Act read with Section 63(c) of the Succession Act, save and except, the purported suspicious circumstances put forth against them, qua which, they were required to furnish an explanation, the onus to prove undue influence and coercion would lie on the party opposing the grant of probate or letters of administration, in respect of the Will in issue.

11. Therefore, what we are required to consider, hereafter, is : as to what are those suspicious circumstances which have been put forth, qua, the subject Will (Ex.P1) and, are those, in fact, made out.

11.1. The first and foremost circumstance, which is, adverted to on behalf of the appellant / Baldev is that there is a contradiction in the testimony of P.W.1 and P.W.3 as regards the place at which the subject Will (Ex.P1) was executed.

11.2. In this regard, one may only allude to the following assertions made by P.W.1 in his cross examination carried out on 08.08.2008:

"The Will was signed first in my residence and thereafter it was signed at the Registrar's office."

11.3. Furthermore, during the course of his cross examination, he also stated as follows:

"I went to Sub-Registrar's office along with my mother and the first plaintiff Advocate Sridhar also came to Sub-Registrar's Office."

11.4. P.W.3, similarly, in his cross examination, asserted

that the subject Will (Ex.P1) was executed at the residence of the testatrix; a fact which, though, was not stated in the proof affidavit. This is evident upon perusal of the following statement made by P.W.3 in his cross examination:

"Ex.P1 Will (sic) executed at the residence of the testatrix. It is not stated in my proof affidavit. I do not remember the time when the Ex.P1 was executed. I am sure that other attesting witness and the testatrix were present at the time of execution of Ex.P1 Will."

11.5. This testimony of P.W.3 (which was recorded during his cross examination on 20.04.2010), is to be read along side, what is stated by him in his proof affidavit; an extract of which has already been culled out hereinabove by us. Quite clearly, upon reading of the testimony of P.W.1 and P.W.3, holistically, and upon perusing the registered subject Will (Ex.P1) what emerges is that there is no inconsistency in the stand taken by P.W.1 and P.W.3 that the subject Will (Ex.P1) was executed in the first instance at the residence, and, thereafter, while, being registered in the presence of the Sub-Registrar, signatures were appended by not only Chandra Bai / testatrix, but also by the two attesting witnesses i.e. P.W.1 and P.W.3.

11.6. Therefore, the suggestion that there was inconsistency in the stand of P.W.1 and P.W.3, which gave rise to a suspicious circumstance qua execution of the Will (Ex.P.1), according to us, at least, on this score, is not made out.

12. Let us now advert to the other suspicious circumstance which has been alluded to on behalf of the appellant / Baldev. It is stated, in this behalf, that the subject Will (Ex.P1) is set forth in English language, the contents of which, possibly, could not have been understood by Chandra Bai / Testatrix, as she was not conversant with the language. A fact which is sought to be established by placing reliance on her signatures, which are appended in Hindi. In this behalf, it was submitted that there is no assertion in the proof affidavit filed by P.W.1, P.W.2 and P.W.3 that the contents of the subject Will (Ex.P1) were read over and explained to Chandra Bai / testatrix.

12.1. According to us, this submission advanced on behalf of the appellant / Baldev is untenable for the following reasons:

(a) While it is true that in the proof affidavit / examination-in-chief of P.W.1, there is no reference to the fact that the contents of the Will (Ex.P.1) were read over and explained to Chandra Bai/testatrix, in his cross examination, though, on 08.08.2008, P.W.1 alludes to the following which

gives the background, in which, the subject Will (Ex.P1) was executed by Chandra Bai / testatrix:

"..... Whatever was the wishes of my mother was told to me, I had written it down and handed it over to the first plaintiff to get it drafted by an advocate and he in turn handed it to an advocate and when it was brought to me and I had read out the same to my mother. She affirmed the contents and signed and then the Will was registered. I knew what would be the contents even before the Will was executed."

(emphasis is ours)

(b) Furthermore, on 21.08.2008, in this behalf, P.W.1 stated the following:

"..... Apart from Ex.P1 there is no other Will executed by Mrs.Chandra Bai Gobindram. I have not produced the notes taken down by me and handed over by me to Mr.Kumar. Now I am not in a position to say as to with whom the said notes is available. I compared the hand written notes with the typed version of the Will. I do not know on which date the Will was typed. I do not remember as to who brought the type written Will to me. My mother was present when the type written Will was brought to me and was compared with hand written note. The type written said Will was signed by the testatrix immediately. The Will was registered on the 12 or 13th of December 1994. It was registered in the evening. It was registered in the registration office at Periamet. It is situated in the ground floor. It is situated in the Poonamallee high road."

(empahsis is ours)

(c) The stand taken by P.W.1 that only he had taken instructions with regard to the subject Will (Ex.P1), from Chandra Bai/testatrix is also borne out from the testimony of P.W.2 i.e. Kumar, given on 02.12.2008:

"..... I do not know when my mother instructed Paramanand Wadhwa to prepare the Will. Paramanand Wadhwa handed over a cover to me and asked me to hand over the same to the advocate. I was not aware of the contents inside the cover which was handed over to me. I had handed over the said cover

to advocate by name Mr.Sridhar."
(emphasis is ours)

12.2. The testimony of P.W.1 that he had got the Will prepared on the instructions of Chandra Bai / testatrix, and that, he had read over and explained the contents to her prior to its execution by her, in the presence of the two attesting witnesses, has a ring of truth in it.

12.3. As indicated at the very outset, P.W.1, who is the eldest amongst the siblings, is not a beneficiary under the subject Will (Ex.P1). The attempt by the appellant / Baldev (D.W.1) to inject suspicion into the circumstances surrounding the execution of the subject Will (Ex.P1) appears to emanate from the fact that he was not satisfied, perhaps, from what he got out of the family settlement, which had been reached, at an earlier point in time, amongst the members of the family. The record shows that the appellant / Baldev had, concededly, filed a suit for specific performance in a Court situate in Mumbai, when, despite a family understanding arrived at, in and about 06.04.1979, followed by the same understanding being replicated in a subsequent memorandum dated 31.07.1979, he was not accorded proprietary rights in the flat located in Mumbai, in which, he was residing, at least, at that point in time.

12.4. The record also shows that the appellant / Baldev has chosen to oppose the relief claimed in the testamentary suit on the stated ground that he only wants his legitimate share in the estate of Chandra Bai / testatrix. As a matter of fact, a question mark has been raised by him over the Chandra Bai / testatrix's title to the assets dealt with in the subject Will (Ex.P1).

12.5. As rightly concluded by the learned Single Judge, this aspect cannot be the subject matter of an enquiry in a testamentary suit - but, as indicated by us above, the stand of the appellant / Baldev taken before the learned Single Judge is a testament of the fact that doubts are sought to be raised with regard to the genuineness of the Subject Will (Ex.P1) only because the appellant / Baldev had not received any substantial benefit under the subject Will (Ex.P.1). The only bequest made in favour of the appellant / Baldev under the subject Will (Ex.P.1) is a diamond ring - which is, something, that has upset him, and therefore, propelled him to challenge the authenticity of the subject Will (Ex.P.1).

12.6. To our minds, the evidence on record is suggestive of the fact - (an aspect, which has been duly appreciated by the

learned Single Judge as well), that, given the strained relationship between Chandra Bai / testatrix and the appellant / Baldev, his exclusion from the benefits of the estate, except to the extent indicated above, was not unusual.

13. Moving on further, the other suspicious circumstance to which reference has been made on behalf of the appellant / Baldev is the fact that the subject Will (Ex.P1) contains interlineations, alterations, and changes.

13.1. We have perused the subject Will (Ex.P1). The said testament is a type written document. There are some alterations which have been made with the use of a typewriter, while others are handwritten. The alterations are, clearly, not material.

13.2. We may, briefly, advert to the changes that are made in the typed document. In the first line of the document, where the name of the testatrix has been given, the middle name of the testatrix which is "BAI" incorporates a slight alteration, in so far as the alphabet "A" is concerned.

13.3. Similarly, in the third line of the document, where Chandra Bai / testatrix's age is given as 79 years, the figure "9" appears to have been overwritten manually.

13.4. The first line of paragraph 6(d) of the testamentary document (Ex.P.1) contains the word "Surpra", which, inadvertently appears to have been misspelt. It appears that correction has been made by use of a typewriter in as much as the third alphabet in the said word, which is "r" has been scored out. The corrected word read as "supra".

13.5. Similarly, in the 4th line of paragraph 6(d) spellings of the word "paid" used therein has been corrected; evidently, by making use of a typewriter once again.

13.6. There is also an alteration carried out in paragraph 7 of the testamentary document (Ex.P.1) by insertion of the words "out of the above share amount". Chandra Bai / The testatrix, having bequeathed shares scrips held by her in certain companies to Messrs Kumar and Narain, perhaps, wanted them to deposit a sum of Rs.40,000/- to a trust account mentioned therein, out of the amount that fell to her estate to meet the expenses related to her obsequies and the ceremonies, which would follow year after year post her demise.

13.7. We may also point that in the third but last line of paragraph 7, there is also a slight alteration with regard to

the spelling of the word "Kumar". This change is also, apparently, made by taking assistance of a typewriter. A close perusal of the entire paragraph would show that insertion of the words "out of the above share amount" has been made in the ordinary course, which falls in line with what is stated before and after the said insertion.

13.8. As indicated above, the alteration in the spellings of the name "Kumar" are also in line with the intent of Chandra Bai/testatrix with what is stated in paragraph 7 of the testamentary document Ex.P.1.

13.9. Besides this, in paragraph 9, the spellings of the word "right" have also been corrected. The changes have, once again, been made by making use of a typewriter.

14. Having regard to the above, the question, which arises is : Do these changes/alterations, as contended on behalf of the appellant / Baldev, point in the direction that the subject Will (Ex.P1) is not a genuine testamentary document ? As has been alluded to above by us, none of the changes, in our view and, as also held by the learned Single Judge, are suggestive of the fact that the subject Will (Ex.P1) is not genuine. Clearly, at the relevant point in time, when the subject Will (Ex.P.1) was executed, manual typewriters were still in vogue, and therefore, as was the usual practice, typewriters were used to make ordinary and usual changes in documents and, at times, if the changes were not substantial, they were carried out manually as well. None of the changes, according to us, are material, as would be obvious, from the narration, set out above. The argument, however, does not end here, it has been submitted on behalf of the appellant / Baldev that these changes / alterations needed to be initialed by the Chandra Bai/testatrix and/or the attesting witnesses.

14.1. We have already noticed that, what was produced, at the time of execution of the subject Will (Ex.P1), was a typed document. This, as indicated above, clearly emerges from the testimony of P.W.1. Therefore, in the natural course of things, all three, which included the Chandra Bai/testatrix and the two attesting witness, i.e. P.W.1 and P.W.2, appended their signatures at the time when the said testamentary document was presented before them. It did not, perhaps, occur to them at that point in time that the alterations in the typed testamentary document (Ex.P1) had to be initialed as well. We may have, if, the circumstances pointed in that direction entertained a suspicion that Will (Ex.P.1) was not genuine, had it not been presented before the Sub-Registrar. The evidence on record does show that the subject Will (Ex.P.1) was presented to the Sub-Registrar and at that stage, once again, signatures were

appended on the document registered before the Sub-Registrar by all three, i.e. Chandra Bai/testatrix and two attesting witnesses, i.e. P.W.1 and P.W.3.

14.2. Furthermore, the finding of the learned Single Judge that, when, he compared the certified photo copy of the registration sheet with the subject Will (Ex.P1) produced before him, he found that they were identical - that is, all corrections / alterations, which were found in the subject Will (Ex.P1), were also found incorporated in the certified photo copy of the said document produced before him - lends credence to the stand that none of the alterations / changes were made after the execution of the subject Will (Ex.P.1) and/or without the knowledge of Chandra Bai/testatrix, P.W.1 and P.W.3. The relevant observations made by the learned Single Judge in that behalf, for the sake of convenience, are set out hereafter:

".... In order to show that there is no alteration made after the registration of the Will, the Plaintiffs have produced a certified xerox copy of the registration sheets to be compared with Ex.P1 Will. A comparison of the same would show that all the corrections found in Ex.P1-Will had been carried out while typing the registration sheet and with such corrections alone, the document was registered. It also makes it clear that no alteration much less material alteration has been made in the Will after its registration."

14.3. In support of this objection, reference was made to Order XXV Rule 19 and 23 of the OS Rules. A perusal of the provisions of Order XXV Rule 19 of OS Rules would show that it does require that wherever interlineations, alterations, erasures or obliterations (in short, "alterations") appear in a Will, a statement, if possible, should be made in the affidavit of the attesting witnesses whether or not such alterations were incorporated in the Will either before or after its execution.

14.4. Similarly, sub-section (1) of Section 20 of the Registration Act, 1908 (in short, "Registration Act"), gives discretion to the Registering Officer to refuse to accept, for registration, any document, which contains interlineations, blanks, erasures or alterations, unless the persons executing the document attest their signatures or initial such interlineations, blanks, erasures or alterations. Sub-Section (2) of Section 20 of the Registration Act, provides that, if, the Registering Officer registers any such document, he shall, at the time of registering the same, make a note in the

prescribed register of all such interalinations, blanks, erasures or alterations.

14.5. A conjoint reading of Sub-section (1) and (2) of Section 20 of the Registration Act would show that, firstly, discretion is given to the Registering Officer to refuse acceptance of documents presented before him for registration, which contain alterations. Secondly, if, the Registering Officer chooses to register such document, he shall make a note of such alterations.

14.6. The document produced before us shows that Chandra Bai/testatrix, along with the attesting witnesses, was present before the Sub-Registrar, and, at that point in time, signatures were appended by all three, that is, Chandra Bai/testatrix and the two attesting witnesses, in the presence of the Sub-Registrar. Therefore, this fact read along side the findings returned by the learned Single Judge, to which we have made a reference above, would show that the Sub-Registrar had received the original Will (Ex.P.1), with alterations, and it was only after he had satisfied himself that he chose to exercise his discretion to register the Subject Will (Ex.P.1).

14.7. In so far as the provisions of Order XXV, Rule 23 of the OS Rules are concerned, it only mandates that probate or letters of administration is not be granted, where, it is executed by a blind or, obviously illiterate or, ignorant person unless it is proved by an affidavit or otherwise to the satisfaction of the Court that the said will was read over to the testator before its execution or that the testator had at such time knowledge of its contents. This aspect of the matter has been dealt with by us, in detail, in paragraph 12 above. We do not intend to reiterate the discussion. In sum, we have noticed, and thus, concluded that the evidence shows that the subject Will (Ex.P.1) was drawn up on the instruction of Chandra Bai/testatrix and thereafter, read over and explained to her prior to its execution. सत्यमेव जयते

14.8. Therefore, in our view, the provisions of Order XXV, Rule 19 and 23 stand, substantially, complied with, which would also include the provisions of Section 20 of the Tamil Nadu Registration Act, 1908.

15. The other suspicious circumstance to which reference has been made on behalf of the appellant / Baldev is that P.W.1, in his affidavit (Ex.P3), had asserted that name and signature of the testatrix and the attesting witnesses, which included himself, has been appended on the subject Will (Ex.P1).

15.1. The argument is that the subject Will (Ex.P1) bears only the signatures of the testatrix and the attesting

witnesses, and therefore, by inference, it is suggested that we must come to the conclusion that the subject Will (Ex.P.1) is not genuine.

15.2. According to us, this objection is, completely, untenable as, when, ordinary persons (as against experts and stock witnesses), depose, they do not distinguish between name and signature. To most, signature and name is the same thing. Even otherwise, in our view, it would be incorrect to state that the ordinary meaning of the word "signature" would not include subscription of name of a person on the document. Some persons do append their signatures by simply subscribing their name on a document.

15.3. Thus, to our minds, the objection raised in this behalf has really no material substance in it and the same is, accordingly, rejected.

16. The appellant / Baldev also tried to raise a spectre of suspicion by alluding to the fact that given the circumstance that P.W.1, was already aware of the fact that the subject Will (Ex.P1) had been executed, what was the need for him to accompany him to Advocate Goklaney's office for issuance of a notice.

16.1. In this behalf, there is also a reference to the fact that P.W.2 i.e. Kumar in his testimony, in the first instance, said that he had accompanied P.W.1 to Advocate Goklaney's office for issuance of a notice and, thereafter, had changed his response by stating that he had left him at Parrys Corner. Based on these purported inconsistency in the testimony of P.W.1 and P.W.2, it is sought to be suggested that apart from the subject Will (Ex.P1) there was, perhaps, another Will in existence. According to us, what is quite clear, is that, the Wadhwa family, which comprises of nine siblings, at least at that point in time, was beset with acute distrust amongst themselves.

16.2. P.W.1, who is not a beneficiary under the subject Will (Ex.P1), did concede in his cross examination that there were disputes obtaining amongst the family members. It is, perhaps, upon the death of Chandra Bai/testatrix that the factum of execution of the subject Will (Ex.P1) would have been brought to light. It is, possibly, at that point in time, when, the fact that the original Will was in the custody of Advocate Goklaney may also have been revealed. Quite clearly, it is at that stage, that P.W.1 and the appellant / Baldev would have decided to visit Advocate Goklaney's office. The trip to Advocate Goklaney's office may not have been taken for the purpose as sought to be suggested by the appellant / Baldev that there was

another Will in existence, apart from the subject Will (Ex.P1).

16.3. On behalf of the appellant / Baldev much emphasis is laid on that part of the testimony, where P.W.1 seems to have indicated that he accompanied the appellant / Baldev to Advocate Goklaney's office for issuance of a notice in connection with the Will. That part of the testimony, to our minds, is not suggestive of the fact, as it is sought to be emphasised, on behalf of the appellant / Baldev, that there was another Will in existence. Moreover, it is quite possible, given the mistrust amongst the members of the Wadhwa family, issuance of notice was on their minds, and that, after having met Advocate Goklaney, they may have decided to await the revelation of the subject Will (Ex.P.1) at the 12th day ceremony related to the demise of Chandra Bai / testatrix. For the sake of convenience, the relevant part of the testimony of P.W.1, to which, we had made a reference above, is extracted hereafter:

".....There was a dispute between the family members."

"I accompanied second defendant to Advocate Goklaney office for issuing notice in connection with the Will. I do not remember whether first plaintiff also accompanied us to the Advocate office. When we asked for copy of the Will, we were told that we will be given copy at the 12th day ceremony and hence only we went to Advocate's office. I only asked the second plaintiff and he had only replied that the copy will be given on the 12th day ceremony."

(emphasis is ours)

16.4. It is no doubt true that P.W.2, i.e. Kumar, did, initially, say that he had accompanied P.W.1 (Paramanand G.Wadhwa) to meet the Advocate for issuance of a notice, to the effect, that the subject Will (Ex.P.1) was fabricated and that, immediately, thereafter, he went on to state that he had dropped P.W.1 at Parrys Corner. This aspect is borne out from the following extract of the testimony of P.W.2:

"..... I have accompanied Paramanand Wadhwa to meet the advocate to issue notice stating that the Will is fabricated. Now the witness says I accompanied him up to Parrys Corner and not accompanied to Lawyer's office. I just dropped P.W.1 at the Parrys Corner."

(emphasis is ours)

16.5. When this part of the testimony is read with what we have extracted above vis-a-vis P.W.1 the preponderance of

probability is that P.W.2 did not accompany P.W.1 to Advocate Goklaney's office. This appears to be the correct position as P.W.1 in his testimony has clearly stated that he did not recollect P.W.2 accompanying him to the Advocate's office. The testimony also seeks to establish what we have been able to gather from the evidence on record, which is that, because there was an element of distrust amongst the family members, P.W.2 may have, perhaps, initially, without basis, come to the conclusion that he was not a beneficiary of the subject Will (Ex.P1), and therefore, attempted to lodge a caveat via a legal notice with regard its genuineness.

17. Thus, given the state of the evidence and the overall circumstances, as also the fact that the subject Will (Ex.P.1) was in the custody of Advocate Goklaney, who, evidently, enjoyed the trust of all parties, save and except, the appellant / Baldev - we have been unable to come to the conclusion that apart from the subject Will (Ex.P1), there was in existence another Will.

17.1. The other objection taken on behalf of the appellant / Baldev is with regard to the belated institution of the probate. Admittedly, the probate petition was filed in and about 22.02.2002, while, Chandra Bai/testatrix died on 16.11.1998. The record shows that the propounders of the Will, i.e. Messrs Kumar and Narain, had called upon the other siblings to file their consent affidavits. Consent affidavits were executed before a Notary Public on various dates, as is evident from Exs.P2, P4 to P7. The date on which the said exhibits were executed are as follows:

"Ex.P2	:	22.02.2001
Ex.P4	:	08.12.2001
Ex.P5	:	09.12.2001
Ex.P6	:	27.11.2001
Ex.P7	:	13.12.2001"

18. The appellant / Baldev has placed on record, in this connection, four letters (i) letter dated 04.12.2001 (Ex.D3 series) (ii) letter dated 21.01.2002 (Ex.D3 series) (iii) letter dated 15.02.2002 (Ex.D4) and (iv) letter dated 24.04.2002 (Ex.D2 series).

18.1. A perusal of these letters would show that the siblings were attempting to close the matter with regard to the subject Will (Ex.P1) by having the appellant / Baldev sign a consent affidavit, and therefore, in consonance with the mandate of the subject Will (Ex.P1) moneys were remitted to him in the first instance.

18.2. This is evident upon reading letters dated 04.12.2001 (Ex.D3 series) and 21.01.2002 (Ex.D3 series). These letters

were, evidently, sent by Kumar to the appellant / Baldev. The appellant / Baldev, however, took the stand that the subject Will (Ex.P1) was not genuine vide his letter dated 15.02.2002 (Ex.D4). As a rejoinder to the said communication Kumar (Respondent 1) wrote a letter dated 22.04.2002 (Ex.D2 series). Clearly, the refusal to act in accordance with the subject Will (Ex.P1) came about in and about 15.02.2002. Therefore, according to us, not only the delay in filing the probate action is explained, but it is also lodged within the prescribed period of limitation of three years. Thus, in our opinion, there is sufficient explanation available on record for the perceived delay, as is required under the provisions of Order XXV Rule 9 of the OS Rules.

18.3. It was also suggested on behalf of the appellant / Baldev that the subject Will (Ex.P1) was not a genuine document as the signature of P.W.1 which was obtained on the Will was not accompanied by a date, which was the usual practice adopted by P.W.1 whenever he append his signatures on any document. For this purpose, reference was made to letters dated 07.02.1987 (Ex.D2 series) and 08.05.1987 (Ex.D2 series).

18.4. P.W.1, in his cross examination, has stated that the aforementioned letters shown to him, bore his signatures along with the dates. However, he went on to say that he was not always in the habit of noting the date along side his signature. He denied the suggestion made to him during the cross examination that since the testament was drawn up on what was a blank sheet of paper, he had not put down the date alongside his signature on the subject Will (Ex.P1).

18.5. According to us, the assertions made in this behalf by P.W.1, in his cross examination, appear to be correct, as even when signatures were appended by P.W.1, on the testamentary document, at the time of its registration by the Sub-Registrar, no date was put down by him alongside his signature. As asserted by P.W.1 in his deposition, he does not appear to have consistently followed the practice of putting down the date alongside his signature on documents generated by him from time to time. Therefore, in our opinion, nothing turns on this objection as well.

19. To conclude, it is our view the propounders of the subject Will (Ex.P.1), i.e. Messrs Kumar and Narain, have proved the genuineness of the subject Will (Ex.P1), in accordance with the provisions of Section 63 of the Succession Act and Section 68 of the Evidence Act.

19.1. The explanation given qua suspicions circumstances adverted to on behalf of the appellant / Baldev are tenable.

19.2. The propounders of the subject Will (Ex.P1) have been able to satisfy the conscience of this Court that there are no unnatural circumstances surrounding the execution of the aforesaid testament.

19.3. The approach to be adopted in these matters has been summarised by one of us (Rajiv Shakti, J.) in the judgement dated 01.07.2010, rendered in Narender Nath Nanda Vs. The State [2010 (118) DRJ 719]. The relevant parts of the judgement are extracted hereafter, for the sake of convenience :

".... 8. Therefore, the execution of a valid Will stands proved if the propounder of the Will is able to prove that: at the time of execution of the Will the testator was in a sound disposing state of mind; the execution was made by the testator of her own volition and the execution of the Will was witnessed by two or more persons. In India to prove attestation of a Will, the examination of one witness would suffice. (See Rammol (Das) Koch Vs Hakol Koli Kochini : 22 CWN 315).

9. It is only when the propounder of the Will has proved the execution of a Will in accordance with law, which includes proof of attestation, would the Court be required to examine, if at all, the alleged suspicious circumstances put forth by the objectors. As is obvious if, the propounder fails to prove the execution of the Will in accordance with law, then the Court would not have to necessarily proceed to the next step in the enquiry, which is, examination of the suspicious circumstances. As regards suspicious circumstances there may arise myriad situations impugning the genuineness of the Will, such as: where, the signatures of the testator are in doubt; the condition of the testator's mind is unsound either for the reasons of insanity, intoxication or even illness; the dispositions of property made, are unnatural, improbable, or unfair when, seen in the light of relevant facts and circumstances, or that there are indications that the testator's mind was not free. However, merely because a Will bequeaths the property of the testator to persons outside the immediate family, or excludes one or the

other members of the family would not by itself put it in the category of a suspicious circumstance; as a Will by its very nature is a document which breaks the normal line of succession. Once suspicious circumstances are present, the onus is on the propounder of the Will to remove the doubts so created, on account of suspicious circumstances, and if that is done, the Court will have to give effect to the Will even if the dispositions of property provided therein exclude one or all family members or near relations of the testator. [See Pushpawati & Ors. vs Chandraraja Kadamba : 1973(3) SCC 291]

9.1. If, there is any doubt as to the execution of the Will, the Court should examine the explanations offered by the propounder of the Will, by applying the test of a "prudent mind". By that the Courts have meant that the requirement is not that the propounder of the Will is called upon to adduce "mathematical proof". The propounder must, "remove the suspicion, if any, attaching to the execution of the Will and if there be any doubt regarding the due execution, he must satisfy the conscience of the Court that the testator had a sound and disposing state of mind and memory when he made the Will". "Reasonable scepticism, not an obdurate persistence in disbelief nor a resolute and impenetrable incredulity is demanded of the testamentary judge. He is never required to close his mind to the truth." [See Seth Beni Chand vs Smt Kamla Kunwar & Ors.: (1976) 4 SCC 554]

9.2. Before arriving at a conclusion that the dispositions made under a Will are unnatural, the improbability of such dispositions should be weighed against the evidence led by the propounder of the Will as regards the due execution of the Will by the testator by putting his signatures, and its attestation, as required by law. The evidence placed before Court as regards improbability of disposition should not only be "clear" and "cogent" but must altogether constitute an "impossibility". [See Vrindavanibai Sambhaji Mane vs Ramchandra Vithal Ganeshkar & Ors.:

(1995) 5 SCC 215 at Para 14]

9.3. The propounder of the Will, while satisfying the court's "conscience" should attempt to dispel any suspicious or unnatural circumstances surrounding the execution of the Will provided such unnatural suspicious circumstances attach to the Will. The law does not permit conjecture or suspicion to take place of "legal proof". Well grounded suspicion can be a ground for closer scrutiny of evidence but suspicion alone, cannot be the basis for arriving at a conclusion one way or the other. [See Madhukar D Shende vs Tarabai Aba Shedage: (2002) 2 SCC 85].

(emphasis is ours)

20. Having regard to the foregoing discussion, we are of the view that the appeal has no merit. Accordingly, the appeal is dismissed leaving parties to bear their own costs. Consequently, the pending application shall also stand disposed of.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

kk/gg

To

1. The Sub Assistant Registrar (Original Side),
High Court, Madras.

+1cc to Mr.Sandeep S.Shah, Advocate, S.R.No.65141
+2ccs to Mr.K.Harishankar, Advocate, S.R.No.64713

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and M.P.No.1 of 2013

VD(CO)
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