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

Reserved on :24th May, 2018

Date of Decision: 11th July, 2018

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RFA 467/2016

ASHOK ARORA

..... Appellants

Through: Mr. R. K. Naroola, Mr. Udayan Mukerji, Mr. Kopal Shrivastava and Ms. Eesha Govilla, Advocates.
(M:9910014041)

versus

PRAMOD ARORA

..... Respondents

Through: Mr. Kunal Kalra, Advocate.
(M:9871028645)

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. Late Sh. Piyare Lal Arora was the owner of two properties bearing no.A-173, Gujranwala town, Delhi (*hereinafter 'residential house'*) and a shop at plot no.11, Meerdard Road, Gandhi Marg, New Delhi 110002 (*hereinafter 'shop'*). He had two sons and two daughters. Sh. Ashok Arora - the Appellant/Plaintiff (*hereinafter, 'Plaintiff'*) is the elder son and Sh. Pramod Arora - the Respondent/Defendant (*hereinafter, 'Defendant'*) is the second son of late Sh. Piyare Lal Arora. The daughters – Smt. Meera Madan and Smt. Aruna Dhingra were both married and one of them is a widow.

2. The subject suit for permanent injunction was filed by Sh. Ashok Arora - the Plaintiff against his brother Mr. Pramod Arora seeking an injunction restraining the Defendant from interfering with the Plaintiff's

rights to carry out construction over the First Floor in the residential house and also seeking possession of the area of the shop above the Ground Floor.

The reliefs prayed for are as under:

“(a) pass a decree of permanent injunction in favour of the plaintiff and against the defendant restraining the defendant, his men, agents, servants or any person acting through or under him from interfering in the plaintiff carrying out construction over the First Floor of property bearing No.A-173 Gujrawala Town, Delhi;

(b) a decree of possession be passed in favour of the plaintiff and against the defendant directing the defendant to hand over vacant and peaceful possession of the area above the Ground Floor of Shop No.11 Meerdard Road, Gandhi Market, New Delhi;

(c) pass a decree for cost of the suit in favour of the plaintiff and against the defendant; and

(d) pass such other and further orders as this Hon’ble Court may deem just and necessary in the facts and circumstances of the case in favour of the plaintiff and against the defendant.”

3. The case of the Plaintiff is that the father of the parties, as per his Will dated 4th December, 1992 had bequeathed the Ground Floor of the residential house and the shop, in favour of the Defendant. The First Floor and the right to raise construction thereupon was bequeathed in favour of the Plaintiff. The Plaintiff is in possession of the First Floor of the residential house and sought to raise construction above the First Floor which was not permitted by the Defendant. Further, the Plaintiff also stated that the Defendant had constructed above the Ground Floor of the shop which had fallen in the share of the Plaintiff hence the filing of the suit.

4. In the written statement, the Defendant pleaded that the Will was a sham and was executed under suspicious circumstances. It was claimed that

the father was not in good health as he suffered a paralytic stroke in 1984. The Defendant also averred that he lived with his father all along and had in fact joined his father's business at the shop. Upon the father suffering a stroke, he had continued the business of the father and the gift deed dated 29th September, 1984 had been executed by Late Sh. Piyare Lal Arora, by which the entire shop was gifted to the Defendant. The fact that this gift deed did not find a mention in the Will itself rendered the Will bogus and fraudulent. The Defendant further pleaded that the Plaintiff never lived with the father and was all along living in Mumbai. It was the Defendant who had taken care of the father. When the matter was listed for framing of issues on 3rd August 2009, this Court passed the following order:

“CS(OS) 2257/2007

The Court has heard the submissions on the question of issues. The plaintiff contends that although the Gift Deed made by the deceased Piyare Lal Arora on 29.09.1984 in respect of Shop No.11, Meerdard Road, Gandhi Marg, New Delhi 110002 is not disputed, yet in view of the intention of the said testator in the Will propounded by the plaintiff, the property rights to construct upon the said shop survived.

The defendant contends that once the Gift Deed was executed by the testator, his wishes to have any ownership rights in respect of property ended and he could not have, therefore, indicated any disposition in the alleged Will.

The Court has considered the submissions. It is evident from the pleadings that the plaintiff is not disputing the terms of the Gift Deed set up by the defendant. As such, no restrictive term in the Gift Deed was brought to the notice of the Court, limiting the property rights gifted to the defendant.

In the circumstances, this Court is of the opinion that the relief claimed in para 12(b) cannot be granted.

The other issues, however, would survive for consideration.

After hearing counsel for parties and with their consent, following issues are framed:

1. Does the plaintiff prove that the last Will and testament mentioned by him, dated 04.12.1992, is genuine and validly executed? OPP.

2. Does the plaintiff prove entitlement to the suit property, A-173, Gujranwala Town, Delhi, on the basis of the last Will and testament of his father, dated 04.12.1992? OPP.

3. Does the defendant prove that the Will alleged by the plaintiff is unsustainable and was obtained by undue influence upon the deceased Piyare Lal Arora? OPD.

4. Is the plaintiff's entitled to decree of permanent injunction, as claimed in the suit? OPP.

5. Relief.

List before the Joint Registrar on 21.10.2009, for recording evidence.

List before the Court on 02.02.2010."

Thus, as per the above order and the issues framed, the *lis* between the parties is restricted to the residential house.

5. Plaintiff led evidence as PW-1. In his evidence, he primarily relied upon the Will dated 4th December, 1992. In his cross-examination, he admitted that between 1970-89, he lived in Mumbai with his family, and thereafter in 1990, he joined a company in Faridabad till 2005. From 2005 till 2008, he lived in Pune and thereafter in Mumbai till 2009. He stated that his father has suffered from paralytic stroke in 1982 and his younger brother- the Defendant was always working with his father. He stated that though the construction on the First Floor was got made by his father, the funds were contributed from the Plaintiff's provident fund account. He stated that the

Defendant had not contributed to the construction on the First Floor. He also admitted that from 1982, his father had stopped going to the shop. He stated that the Will was not executed in his presence and he was not aware as to where the Will was written. His cross-examination in respect of the Will is relevant and is set out herein below:

"The Will of my father was not executed in my presence. It is correct that I do not know as to where the said Will was got written. My father was 8th or 10th pass. It is correct that he was not conversant with the English Language. Volunteered, he could understand English. It is correct that the Will Ex.PW1/1 does not bear the signature of my father. It is correct that my father had not put thumb impression on the said Will in my presence and therefore, I cannot identify his thumb impression: It is correct that the shop no.11, Gandhi Market, Meer Dard Road, was gifted by my father in favour of the defendant vide gift deed dated 29.09.1984 which was got registered on 01.10.1984. I do not know if the shop in question has been mutated in the name of the defendant on the basis of the said gift deed in the year 1993. It is incorrect to suggest that my father did not have sound disposing mind at the time of execution of the Will Ex.PW1/1. It is incorrect to suggest that by coercion, thumb impression of my father was obtained on the Will Ex.PW1/1. It is incorrect to suggest that because of the constant nagging, I coerced my father to execute the Will in question. It is incorrect to suggest that my father did not understand the meaning of the word 'Will' and he was not mentally aware as to what he was executing. It is incorrect to suggest that I forced my father to execute the said Will. It is incorrect to suggest that since, he was not understanding he was made to aver with regard to the shop no.11, Meer Dard Road Gandhi Market, New Delhi in the Will though he had already gifted it to the defendant.

I did not apply for probate of the Will. It is

correct that I have two sisters. After the death of my father, I did not write to my sisters or my brother mentioning about the Will in question.”

6. He claimed that he had given a photocopy of the Will to his brother and that his sisters were already aware of the Will. He also stated that he was paying the house tax for the First Floor of the residential house. He was also clearly not aware as to the doctors and hospital where his father was being treated. He tried to produce his bank account passbook to prove that he had spent money for construction, but there was no entry in respect of construction which was raised. He again claimed that he was paying house tax both for the First Floor and terrace. He admitted that he had not filed any probate in respect of the Will.

7. Mr. G.C. Kohli, one of the witnesses to the Will appeared as PW-2. He claimed that he knew the Plaintiff since 1984-85. However, he knew the Plaintiff only since 1994 personally, though earlier he was familiar with him as he was working in the same company but was posted in Delhi. He claimed to know Sh. Piyare Lal Arora- father of the parties since 1975 through a common acquaintance working in the same office i.e., Sh. Kwatra who was related to Sh. Piyare Lal Arora. He claimed that Sh. Kwatra was the Sadhu (brother-in-law) of Sh. Piyare Lal Arora. He claimed that he used to visit the house of Sh. Piyare Lal and also attended marriages in the family. He attended the Plaintiff's marriage. He did not know the Defendant by his real name but knew him by his nick name. He identified the Defendant by his nick name Bhapa. In respect of the Will, he states as under:

“It is correct that the Will in question was not drafted in my presence. I do not know about the educational

qualification of Mr. Piyare Lal. I cannot admit or deny the suggestion that Mr. Piyare Lal was 8th passed only. I went to the house of Mr. Piyare Lal and took him in my car to the office of Sub-Registrar, Kashmere Gate, Delhi. There was no other person in my car. On 02.12.1992, I received a call of Mr. Piyare Lal and on his asking, I went to his house on 04.12.1992. I cannot say if Mr. Piyare Lal was not in a position to telephone on 02.12.1992. Volunteered, I had received his telephone on that day. When I went to the house of Mr. Piyare Lal, there was no other person in the house except him. I do not know if wife of Mr. Bhapa was also in the house at that time. I do not know Mr. D.P. Singh, Advocate. I do not know whether he is alive or dead. I do not know what was the age of Mr. D.P. Singh at the time of execution of the Will. Besides the Will, I have not seen Mr. D.P. Singh writing or signing. I cannot say whether Mr. Piyare Lal did not [sic not] know English. Volunteered, he read the Will and put his thumb impression on the Will in my presence. It is incorrect to suggest that Mr. Piyare Lal did not read the Will as he did not used to understand English. It is incorrect to suggest that Mr. Ashok Arora had also accompanied us to the office of Sub-Registrar, Kashmere Gate, Delhi. It is incorrect to suggest that Mr. Piyare Lal was physically or mentally incapable of executing the Will. I did not attend the death of Mr. Piyare Lal Arora as I was not here. I am not aware if Mr. Piyare Lal had gifted the said shop to Mr. Pramod Arora. I had read the Will. Mr. Piyare Lal had told me about the contents of the Will while we were on the way to the office of Sub-Registrar in my car. I do not remember if I asked Mr. Piyare Lal as to who was Mr. Pramod Arora. Mr. Piyare Lal had no telephone connection in his house in house in 1992. I do not know as to where Mr. Ashok Arora was on 04.12.1992. I do not know if at that time, Mr. Ashok Arora was residing on the first floor of the house of Mr. Piyare

Lal. I did not disclose about the Will to any of the family members of Mr. Piyare Lal. I knew only sons and Sadhu of Mr. Piyare Lal. I do not know if Mr. Piyare Lal had two daughters. Volunteered, I knew only about one. It is incorrect to suggest that Mr. Piyare Lal did not voluntarily execute the Will.....”

8. The Defendant- Sh. Pramod Arora appeared as DW-1. He exhibited the gift deed dated 29th September, 1984. He stated that the residential house was purchased by his father from his own funds. He also stated that after the paralytic stroke, his father could not sign and would only use thumb impression. He stated that the Plaintiff pays the house tax for the First Floor. He could not produce any documents to show that the First Floor was built from joint funds. The property continues to remain in the name of the father. He stated that the residential house should belong to all four LR's of his father and that he has conveyed to his sister that they have a share in the property.

9. Smt. Aruna Dhingra, one of the sisters of the parties, appeared as DW-2. She stated in her affidavit that her father had never informed either of the sisters about any Will and that there was no Will. She also alleged that the same must have been obtained by the Plaintiff by exercising undue influence. She also claimed that the construction on the First Floor was raised from the funds of the business. In her cross-examination, she conceded that she has not filed any document to show that the property was purchased from joint family funds or that the First Floor was constructed from the joint family funds. She stated that she had not demanded her share of the suit property from her brothers.

10. The Trial Court, on the basis of the evidence held that the Will

appears to be executed under suspicious circumstances and thus, dismissed the suit.

11. In the present appeal, the submission of the Plaintiff is that the Will is clear in its bequest. The circumstances were not suspicious inasmuch as the attesting witness- Sh. G.C. Kohli was a colleague of Sh. Kwatra. The wives of Sh. Piyare Lal and Sh. Kwatra were real sisters. Thus, the familiarity of Sh. G.C. Kohli with Sh. Piyare Lal Arora is nothing unusual. The document is a registered Will and can be enforced at any point. Probate is not compulsory. The Will was in the possession of Sh. G.C. Kohli. On the other hand, the counsel for the Defendant submits that the Will contradicts the gift deed and by itself makes the Will suspicious. The fact that the Will was not brought forward from 1992 till 2007 creates suspicion about its existence. The Plaintiff has not given any explanation as to how he came across the Will. The Defendant further argued that mere registration does not prove that the Will is genuine and that no officer from Sub-Registrar's Office was produced to establish the contents of the Will.

12. The only question that arises in this case is whether the Will is genuine or not. The clauses in the Will dated 4th December, 1992 read as under:

"...That I have two sons namely, ASHOK KUMAR ARORA AND PARMOD KUMAR ARORA and two daughters namely MRS. MEERA MADAN AND MRS. ARUNA DHINGRA who are all married. Both the daughters are fully well settled. I have given the sufficient dowry and articles to the daughters. Two sons are residing in the house bearing No. A-173, Gujranwala Town, Part-I, Delhi-110009.

Whereas I am the owner and in possession of the said House bearing No.A-173, situated at Gujranwala Town, Delhi, and one shop bearing No.11, Meerdard

Road, Gandhi Market, New Delhi-2. The said shop is fully occupied by the Younger son Shri PARMOD ARORA, who is running the said shop.

I hereby devise and bequeath that after my death the entire ground floor of the property No.A-173, Gujranwala Town, Delhi, shall go, belong and devolve to my Younger son SHRI PARMOD KUMAR ARORA and he shall have no right, title or interest, on the first floor, or above in the said property only except the ground floor

And the entire first floor shall go, belong and devolve to my elder son namely ASHOK KUMAR ARORA in respect of the said property and above. He shall have full right to enjoy, use and occupy the entire first floor and the above and shall have right to raise construction over the first floor or above in any manner. The elder son SHRI ASHOK KUMAR ARORA shall have right to use the passage from the first floor to ground floor for his own use and for the quests and family members etc. and the Younger son namely PARMOD KUMAR ARORA shall have no right to enjoy the first floor and above.

The elder son shall have right to raise construction over the shop bearing No.11 Meerdard Road, Gandhi Market, New Delhi-2. The Younger son shall raise no objection for the same and the Younger son shall have no right title or interest in the said shop, on the first floor and the elder son shall have no interference in the use of the said shop on the ground floor.

In case my other heirs, successors, or legal representatives, shall raised any objection for the same shall be treated as null and void. This Will shall be deemed as first and final Will, made by me and any other Will, if any bequeathed by me shall be shall stand cancelled henceforth and the present Will bequeathed by me shall be deemed as final and irrevocable.

In the end I declare that I have made this Will

voluntarily, without any pressure, coercion and in full senses.”

13. A perusal of the above shows that the Will is in respect of both the properties. In respect of the residential house, except the Ground Floor all other rights have been bequeathed to the Plaintiff. Apart from this, in respect of the shop, the Plaintiff was given the right to raise construction over the shop. There is no reference to the gift deed dated 29th September, 1984. The said gift deed, however, is an admitted document and has not been disputed by the Plaintiff. The relevant clauses of the gift deed are as under:

“...WHEREAS the Donor is the exclusive owner and in possession of Govt. Built shop No.11 built on land measuring 26sq. yds. situated at Mirdard Road, New Delhi by virtue of lease and Conveyance Deed Regd. as No.8680-8681 in addl. book No.I, Vol.No.1661 on pages 140 to 142 and 143 to 144 regd. on 12.2.1966 in the office of the Sub-Registrar, New Delhi executed by the President of India in favour of the Donor.

AND WHEREAS, the Donee is the real son of the Donor in blood relation and the Donor is desirous to transfer the above mentioned shop alongwith the lease hold rights of the land underneath unto the Donee out of natural love and affection and without any monitary [sic monetary] consideration.

NOW THIS GIFT DEED WITNESSETH AS UNDER:

1. That the Donor hereby transfer, convey and assign the above mentioned Govt. built shop No.11 situated at Mirdard Road, New Delhi by way of Gift unto the Donee absolutely and forever out of natural love and affection and without any monitary [sic] consideration alongwith the lease hold rights of the land underneath and all his rights, title, interests, options, easement, privileges and appurtenances thereto.

2. That the Donee is already in possession of the above mentioned property under Gift and the Donor has

delivered only the proprietary possession of the above mentioned shop unto the Donee at the time of registration of this Gift Deed.

3. That the Donee shall hereafter hold, use, enjoy and transfer the above mentioned property without any hindrance, claim or demand whatsoever from the Donor or any other person claiming under or through him."

14. A perusal of this gift deed reveals that, what was gifted to the Defendant was the shop and the lease hold rights of the land underneath the same. Thus, the entire property where the shop was located was gifted to the Defendant. This is also established by a perusal of the certified copy of the lease deed which is on record. The site plan of the shop shows that the Ground Floor and the First Floor is constructed. In any case, the terms of the gift deed are clear that "*the shop along with leasehold rights of the land underneath*" have been given to the Defendant. This is a registered gift deed and admitted between the parties. The absence of any reference to this gift deed, in the Will is extremely conspicuous. It is not possible for a person of sound mind who has unconditionally gifted a property to one of his sons to again make a bequest in a different manner, in a Will executed 8 years later, that too without making a mention of the gift deed in the Will. The non-mention of the gift deed and a contrary bequest in the Will makes the Will suspect.

15. In addition, the testimony of the attesting witness also does not inspire confidence inasmuch as there are various contradictions in his testimony. PW-2 admitted that the testator had no telephone connection in his house, though he claimed that he received a telephonic call from him asking him to join for the registration of the Will. He was not able to clarify as to from

where the testator telephoned him. He was also not aware whether the Plaintiff was residing on the First Floor of the residential house, though he did have familiarity with the family. He was not aware that he had two daughters and he only knew about one daughter. No official from the Sub-Registrar's office was summoned. The attesting witness was also not aware that the shop had been gifted to the Defendant. It is quite strange that the witness was not even aware of the name of the Defendant. He claimed that he read the Will on his way to the Sub-Registrar's Office and the Will specifically mentions the name of the Defendant. Any person who had read the Will would have known the persons in whose favour it was being executed. The attesting witness said in his cross examination that:

“.....I do not know if Mr. Piyare Lal was running his shop with Mr. Pramod Arora i.e., defendant no.1. I never said Mr. Pramod Arora in the shop of Mr. Piyare Lal. I do not know Mr. Pramod Arora. I do not know if the name of the younger son of Mr. Piyare Lal is Pramod Arora. Volunteered, he was called by the name of Bhapa. I know Mr. Bhapa. I do not know about the educational qualification of Mr. Bhapa. I do not know if Mr. Bhapa had also done diploma in engineering. The defendant present in the court today (the witness is referring to the defendant Mr. Pramod Arora) is Mr. Bhapa.”

This part of his testimony clearly shows that he was not aware of basic facts such as the Defendant running the business from the shop, his name etc., Thus, the entire testimony of the attesting witness is suspicious and does not inspire confidence.

16. Moreover, the claim of the Plaintiff that he did not have knowledge of the Will is also not credible, that too for a period of 15 years. The Plaintiff is

not clear as to when he acquired knowledge of the Will. In his cross-examination, he claimed that his father was not conversant with English. He claimed that after the death of his father he gave a photocopy to his sister. The date or period when he supposedly gave a photocopy to his sister is not mentioned. The Plaintiff has also not been able to prove that he had ever asserted the Will prior to 2007. The testimony of the sister and the Defendant are consistent.

17. All these circumstances leads to the conclusion that the Will has been executed under suspicious circumstances as held by the Supreme Court in ***Bharpur Singh & Ors v. Shamsher Singh AIR 2009 SC 1766***. In ***Mahesh Kumar v. Vinod Kumar (2012) 4 SCC 387*** (hereinafter, '*Mahesh Kumar*') it was clearly held by the Supreme Court, that if the propounders themselves receive prominent part of bequest, that itself constitutes a suspicious circumstance, which the propounder will have to remove with satisfactory and clear evidence. The Supreme Court in ***H. Venkatachala Iyenger v. B.N. Thimmajamma AIR 1959 SC 443*** held as under:

“20. There may, however, be cases in which the execution of the will may be surrounded by suspicious circumstances. The alleged signature of the testator may be very shaky and doubtful and evidence of the testator may not remove doubt created by the appearance of the signature; the conditions of the testator’s mind may appear to be very feeble and debilitated; and evidence adduced may not succeed in removing the legitimate doubt as to the mental capacity of the testator; the dispositions may not be the result of the testator’s free will and mind. In such cases the court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last will of the testator.

The presence of such suspicious circumstances naturally tends to make the initial onus very heavy; and, unless it is satisfactorily discharged, courts would be reluctant to treat the document as the last will of the testator. It is true that, if a caveat is filed alleging the exercise of undue influence, fraud or coercion in respect of the execution of the will propounded, such pleas may have to be proved by the caveators; but, even without such pleas circumstances may raise a doubt as to whether the testator was acting of his own free will in executing the will, and in such circumstances, it would be a part of the initial onus to remove any such legitimate doubts in the matter.

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

This view has been followed in ***Mahesh Kumar (supra)***.

18. In the present case, the non-mention of the admitted gift deed in the Will is a major circumstance which reflects upon the testator's soundness of mind and lack of decision-making capacity. It also reflects upon the testator having not been conscious of what he was doing. The Plaintiff asserting the Will, 15 years after its execution is also a suspicious circumstance. The Will has also not been asserted with any municipal authorities for effecting mutation etc.

19. Though, there is no doubt that after the paralytic stroke, the testator

did not use his full signature but only his thumb impression even in the gift deed, that will not be the only determining factor in the present case. There are other circumstances as narrated above which render the Will suspicious. The Plaintiff sought to rely upon ***Pushpavathi and Ors v. Chararaja Kadamba and Ors (1973) 3 SCC 291*** to argue that the non-suiting of the daughters by itself does not render the Will suspicious. The Supreme Court in ***Rani Purnima Debi & Anr. v. Kumar Khagedndra Narayan Deb & Anr. AIR 1962 SC 567*** has held as under:

“23. There is no doubt that if a will has been registered, that is a circumstance which may, having regard to the circumstances, prove its genuineness. But the mere fact that a will is registered will not by itself be sufficient to dispel all suspicion regarding it where suspicion exists, without submitting the evidence of registration to a close examination. If the evidence as to registration on a close examination reveals that the registration was made in such a manner that it was brought home to the testator that the document of which he was admitting execution was a will disposing of his property and thereafter he admitted its execution and signed it is token thereof, the registration will dispel the doubt as to the genuineness of the will. But if the evidence as to registration shows that it was done in a perfunctory manner, that the officer registering the will did not read it over to the testator or did not bring home to him that he was admitting the execution of a will or did not satisfy himself in some other way (as, for example, by seeing the testator reading the will) that the testator knew that it was a will the execution of which he was admitting, the fact that the will was registered would not be of much value. It is not unknown that registration may take place without the executant really knowing what he was registering. Law reports are full of cases in which registered wills have

not been acted upon (see, for example, Vellasaway Sarvai v. L. Sivaraman Servai (I.L.R.(1930) 8 Ran. 179), Surendra Nath Lahiri v. Jnanendra Nath Lahiri AIR1932Cal574 and Girji Datt Singh v. Gangotri Datt Singh AIR1955SC346). Therefore, the mere fact of registration may not by itself be enough to dispel all suspicion that may attach to the execution and attestation of a will; though the fact that there has been registration would be an important circumstance in favour of the will being genuine if the evidence as to registration establishes that the testator admitted the execution of the will after knowing that it was a will the execution of which he was admitting.”

20. There is no doubting the proposition that if the Will is executed in favour of the brothers, by non-suited other heirs, that by itself may not lead to suspicion, but that itself cannot be a factor to uphold the Will. The long gap of time, the non-mentioning of the gift deed, the non-production of an official from the Sub-Registrar's Office, non-familiarity of the testator with English language, the absence of essential facts narrated in the Will and the absence of credibility of the attesting witness, all go to show that the Will was executed under suspicious circumstances. Further, the lack of knowledge of the Will, by any of the daughters and the son i.e. the Defendant with whom the testator lived right till the end, further raises questions as to the genuinity of the Will. Under these circumstances, the Trial Court's judgment is not liable to be interfered with.

21. The Appeal is accordingly dismissed with no order as to costs.

**PRATHIBA M. SINGH
JUDGE**

JULY 11, 2018/Rahul