

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

BEFORE:

The Hon'ble Justice Soumen Sen

And

The Hon'ble Justice Siddhartha Roy Chowdhury

F.A.T. 355 of 2012

With

I.A No. CAN 2 of 2013

(Old No. CAN 4782 of 2013) CAN 3 of 2022

Tapan Kumar Mitra

Versus

Dibyendra Nath Banerjee

For the Appellant	: Mr. Souradipta Banerjee, Adv. Mr. Arnab Roy, Adv. Ms. Fatema Hassan, Adv.
For the Respondent	: Mr. Suddhasatva Banerjee, Adv. Mr. Sounak Bhattacharyya, Adv. Mr. Subhrangsu Ganguly, Adv.
Hearing Concluded On	: 15 th September, 2022
Judgement On	: 28 th September, 2022

Siddhartha Roy Chowdhury, J.: Challenge in this appeal is to the judgement and decree passed by learned Judge, 5th Bench, City Civil Court, Kolkata in O.C. 18 of 2007 on 30th June, 2007.

Briefly stated, Smt. Labanya Banerjee, widow of Nipendra Nath Banerjee at the age of 82 executed her last Will on 18th July, 2016 to bequeath her half share in respect of Premises No. 59/2 Raja Rammohan Sarani, P.S. Amherst Street, Kolkata-700009 in favour of Samir Kumar Ghosh, Santanu Ghosh and Shubhrangshu Ghosh. The testatrix had no issue. Dibyendra Nath Banerjee and Dipyendra Nath Banerjee are the two sons of her brother in-law Manindra Nath Banerjee, since deceased. But

the testatrix did not want them to inherit the property. Sri Tapan Mitra was appointed as the executor of the purported Will of the testatrix Labanya Banerjee. Labanya Banerjee died on 14th December, 2006 and the executor Tapan Kumar Mitra filed the petition under Section 286 of the Indian Succession Act seeking grant of probate before the learned Chief Judge, City Civil Court at Calcutta under Act of 39 of 1925.

Pursuant to citation, Dibyendra Nath Banerjee entered into appearance and challenged the Will as false and fake instrument and a product of undue influence on importunity.

According to Dibyendra Nath Banerjee, Labanya Banerjee on the relevant date was suffering both physically and mentally and she was fallen prey to coercion and undue influence and importunity. It is contended that the Will does not contain any narrative as to why Labanya Banerjee decided to bequeath the said property. The Will was written in English and there was no indication that she was made to understand the content in Bengali as Labanya Banerjee was mentally and physically weak.

It is further contended that Tapan Kumar Mitra is the advocate on record representing the beneficiaries, Samir Kumar Ghosh, Santanu Ghosh and Shubhrangshu Ghosh in Title Suit No. 1833 of 200. According to Caveator, alleged Will cannot be considered to be the last testament to Labanya Banerjee.

Pursuant to such objection, the Probate proceeding became contentious and was transferred to the Court of learned 10th Judge in the

City Civil Court at Calcutta. Learned Trial Court after considering the pleadings of the parties framed following issues :

1. Is the case maintainable in its present form and prayer?
2. Did Labanya execute the Will dated 18th July, 20006?
3. Was Labanya physically fit and mentally sound at the time of execution of Will of the allege Will dated 18th July, 2006?
4. Is the allege Will dated 18th July, 2006 suffering from suspicious circumstances.
5. Is the plaintiff as execute entitled to get probate of Will as prayed for?

Learned Trial court was pleased to decide all the issues except issue no. 1 against the Plaintiff/Propounder.

Hence the appeal.

Learned Advocate for the appellant Mr. Souradipta Banerjee assailing the impugned judgment argued that learned Trial Court failed to appreciate the evidence properly and arrived at an erroneous finding on misreading of evidence. It is submitted that Labanya had the education to understand English language and she had written letters and authored other documents in English.

The execution of the Will by the testatrix Labanya Banerjee has not been challenged by the defendant/respondent Dibyendra Nath Banerjee. Three months prior to her execution of Will, the testatrix executed money receipt of Rs. 50,000/- which demonstrates the soundness of mind of the testatrix. She was contesting a suit for Partition being Title Suit no. 874 of

2005. Even after execution of Will on 18th July, 2006, Labanya executed and registered a Power of Attorney together with the Caveator and his siblings. These activities of the testatrix are sufficient to demonstrate that she was physically fit and mentally alert.

Learned Counsel for the appellant further argued that the object of execution of Will is to alter the order of succession which learned Trial Court failed to appreciate. There was nothing unnatural on the part of Labanya to exclude Dipyendra Nath Banerjee, Keya Mukherjee and Dibyendra Nath Banerjee from her property particularly Dibyendra Nath Banerjee because of the strained relationship between them.

The learned Trial Court had no reason to refuse the probate on the ground that legal heirs, who would have stepped into the shoes of the testatrix had there been no such Will, were deprived.

Mr. Banerjee, learned Counsel for the appellant took us to the oral testimony of one of the attesting witnesses Manas Chakraborty who adduced evidence as PW 2 and categorically stated that Labanya Banerjee put her signature in his presence. The other attesting witness Rakesh Verma also put his signature in his presence and PW 2 Manas Chakraborty put his signature on the Will as requested by Labanya Banerjee. He identified the signature of Labanya Banerjee, the testatrix and Rakesh Verma on the reverse side of the first page of the Will and stated that they put their signature at the Registry Office. The Will which was typed in the chamber of Suresh Chandra Chatterjee was admitted into evidence as Exhibit-2. According to the learned Counsel for the appellant the evidence of PW 2 is sufficient to satisfy the requirement of

Section 68 of the Evidence Act and 63 (c) of the Indian Succession Act, 1925. Since the Will is a registered instrument, this fact further extends support to the genuineness of the instrument which learned Trial Court failed to appreciate. It is strenuously argued that the attesting witness PW 2 has proved the execution of the Will and he withstood the test of cross examination.

Our attention is drawn to the evidence of DW 1 Dibyendra Nath Banerjee who during cross examination admitted to have filed a suit for partition against Labanya Banerjee. He was confronted with a document containing signature of Labanya Banerjee, which he admitted to be genuine.

Learned Counsel for the appellant has drawn our attention to the content of letter admitted as Exhibit-4 written by Labanya Banerjee to the Chief Manager of State Bank of India, giving instruction regarding operation of locker and in the second paragraph of the said letter Labanya Banerjee pointed out that she was assaulted physically by the husband of Anjana Banerjee, whose name was included as the joint operator of locker standing in the name of Labanya Banerjee. The key of the locker was lost sometime in the month of September and on 15th December the key was found on the corridor.

According to Mr. Banerjee, learned Counsel for the appellant the content of the letter unerringly indicates the acrimonious relationship between the Caveator, Dibyendra Nath Banerjee his wife and the testatrix Labanya Banerjee. Labanya Banerjee had no faith and confidence in Dibyendra Nath Banerjee, his brother and sister, and she decided to

bequeath her property in favour of Samir Kumar Ghosh and his two sons, who took care of the old lady at a point of time when her so called relations failed to show any compassion, rather tried to put her into trouble by filing suit for Partition, petition for injunction. According to Mr. Banerjee, learned Trial Court had no reason to pass the impugned judgement on the ground that the testatrix had no reason to bequeath property to her tenant. According to Mr. Banerjee, when PW 2 proved the execution of the Will learned Trial Court should have granted the probate instead of sitting on appeal on the desire of the testatrix. Mr. Souradipta Banerjee, learned Counsel representing the appellants, to buttress his argument placed his reliance upon the following judgements:- ***Sabitri Das vs. Tapan Kumar Nandi & Ors.*** reported in **2022 SCC OnLine Cal 1645**, ***Rabindra Nath Mukherjee & Anr. vs. Panchanan Banerjee (dead) by Lrs. & Ors.*** reported in **1995 (4) SCC 459**, ***Goutam Bhowmick vs. Shrimati Sabitri Bhuiya*** reported in **AIR 2012 Cal 57**, ***Savithri & Ors. vs. Karthyayani Amma & Ors.*** reported in **2007 (11) SCC 621**, ***Pentakota Satyanarayana & Ors. vs. Pentakota Seetharatnam & Ors.*** reported in **2005 (8) SCC 67**.

Refuting such argument, learned Advocate for the defendant/respondent Mr. Suddhasatva Banerjee submits that though the apparent relation between Dibyendra Nath Banerjee and Labanya Banerjee, the testatrix was not good in 1997 but with the passage of time the old lady started depending on him. Labanya Banerjee did not have any reason to bequeath her property to a stranger like Samir Kumar Ghosh, his two sons who came in contact with the testatrix only 4-5 months prior

to the execution of the Will. It is adverted by Mr. Banerjee, learned Counsel for the Caveator/respondent that the circumstances regarding execution of Will is shrouded with suspicion and onus lies upon the propounder to clear such suspicious circumstances.

It is further argued that the Advocate Tapan Kumar Mitra and his senior Advocate Suresh Chandra Chatterjee used to represent the beneficiaries in the title suit filed by Samir Kumar Ghosh. Labanya Banerjee had no reason to approach Suresh Chandra Chatterjee for preparing this Will in question, when she had her own lawyer representing Labanya Banerjee before the Court of law. If this situation is considered from the point of view of human probability it should strike the mind of any man of ordinary prudence as to why did Labanya Banerjee approach someone not known to her to prepare her Will. Suresh Chandra Chatterjee, Advocate who drafted the Will did not appear before the learned Trial Court to adduce evidence. Oral testimony of Suresh Chandra Chatterjee would have indicated the reason as to why he was approached by Labanya Banerjee. PW 2 sated that the Will was executed in the Registry Office. PW 2 happens to be the Clerk of Suresh Chandra Chatterjee who drafted the Will. Tapan Kumar Mitra happens be the Junior of Suresh Chandra Chatterjee, who was appointed as Executor of the Will; it was an in-house arrangement. There is no evidence that Labanya Banerjee requested Manas Chakraborty PW 2 to be one of the attesting witnesses. It is not clear as to who asked this witness PW 2 to go to the Registry Office on that particular day to become a witness to the execution of Will of Labanya Banerjee.

Supporting the impugned judgement Mr. Banerjee learned Counsel for the respondent submits that Samir Kumar Ghosh and his two sons took advantage of the feeble physical and mental condition of the old lady, got the document prepared and singed. Labanya Banerjee did not execute the Will on her own. The element called free will was glaringly absent in the whole process of making of Will.

Learned Advocate for the respondent has strenuously argued that the circumstances under which the Will was executed, is shrouded with suspicion. There is no evidence as to when Labanya Banerjee took the decision to make a Will, to whom she disclosed her mind.

To buttress his argument Mr. Suddhasatva Banerjee relied upon the following judgements:- ***Radhika Prosad Saha & Anr. vs. Sm. Katyayani Dasi & Ors.*** reported in **75 CWN 63**, ***H. Venkatachala Iyengar vs. B.N. Thimmajamma & Ors.*** reported in **AIR 1959 SC 443**, ***Sabitri Das vs. Tapan Kumar Nandi & Ors.*** reported in **2022 SCC OnLine Cal 1645**. Mr. Banerjee prays for dismissal of the appeal.

We have perused judgements relied upon by the learned Counsels representing the parties to this appeal. These judgements were pronounced in particular factual matrix not in pari materia with the facts of this particular case.

Therefore, we do not consider it expedient to discuss all those judgements in detail particularly when the legal principles regarding proof of a Will are no longer res-integra. It is required to be attested and proved as provided in Section 63 (c) of the Indian Succession Act, 1925 and

Section 68 of the Indian Evidence Act, 1872. It cannot be used as evidence until one of the attesting witnesses is called for the purpose of proving its execution. In addition, it has to justify the requirements of Section 63 of the Indian Succession Act, 1925. In order to ascertain whether the Will has been validly executed and is a genuine document the propounder has to show that at the relevant point of time the testator was in sound and disposing state of mind and signed the Will in presence of at least 2 witnesses who attested the Will in her presence and in presence of each other. Once these elements are established the onus of propounder is said to have been discharged.

It is again said that the Court does not sit in appeal over the right or wrong of the testator's decision. The role of the Court is limited to examining whether the instrument propounded as the last Will of the deceased is or is not by the testator and whether it is the product of the free and sound disposing mind.

A Will, it goes without saying, is executed to alter the mode of succession and by the very nature of things it is bound to result in either reducing or depriving the share of a natural heir. If a person intends his property to pass to his natural heir there is no necessity to execute a Will.

We may rely with profit upon the celebrated decisions of Hon'ble Apex Court on proof of a will, reported in **AIR 1959 SC 443** is in the case of **H. Venkatachala Iyenger vs. B.N. Thimmajamma**. The relevant portion of the said judgement reads as under:-

"18. The party propounding a will or otherwise making a claim under a will is no doubt seeking to prove a document and, in

deciding how it is to be proved, we must inevitably refer to the statutory provisions which govern the proof of documents. Sections 67 and 68, Evidence Act are relevant for this purpose. Under Section 67, if a document is alleged to be signed by any person, the signature of the said person must be proved to be in his handwriting, and for proving such a handwriting under Sections 45 and 47 of the Act the opinions of experts and of persons acquainted with the handwriting of the person concerned are made relevant. Section 68 deals with the proof of the execution of the document required by law to be attested; and it provides that such a document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. These provisions prescribe the requirements and the nature of proof which must be satisfied by the party who relies on a document in a court of law. Similarly, Sections 59 and 63 of the Indian Succession Act are also relevant. Section 59 provides that every person of sound mind, not being a minor, may dispose of his property by will and the three illustrations to this section indicate what is meant by the expression "a person of sound mind" in the context. Section 63 requires that the testator shall sign or affix his mark to the will or it shall be signed by some other person in his presence and by his direction and that the signature or mark shall be so made that it shall appear that it was intended thereby to give effect to the writing as a will. This section also requires that the will shall be attested by two or more witnesses as prescribed. Thus the question as to whether the will set up by the propounder is proved to be the last will of the testator has to be decided in the light of these provisions. Has the testator signed the will? Did he understand the nature and effect of the dispositions in the will? Did he put his signature to the will knowing what it contained? Stated broadly it is the decision of these questions which determines the nature of the finding on the question of the proof of wills. It would *prima facie* be true to say that the will has to be proved like any other document except as

to the special requirements of attestation prescribed by Section 63 of the Indian Succession Act. As in the case of proof of other documents so in the case of proof of wills it would be idle to expect proof with mathematical certainty. The test to be applied would be the usual test of the satisfaction of the prudent mind in such matters."

In the above noted case, the Hon'ble Supreme stated that the following three aspects must be proved by a propounder:-

"(i) that the will was signed by the testator in a sound and disposing state of mind duly understanding the nature and effect of disposition and he put his signature on the document of his own free will, and

(ii) when the evidence adduced in support of the will is disinterested, satisfactory and sufficient to prove the sound and disposing state of the testator's mind and his signature as required by law, courts would be justified in making a finding in favour of propounder, and

(iii) if a will is challenged as surrounded by suspicious circumstances, all such legitimate doubts have to be removed by cogent, satisfactory and sufficient evidence to dispel suspicion. In other words, the onus on the propounder can be taken to be discharged on proof of the essential facts indicated therein."

Here in this case Tapan Kumar Mitra, PW 1 is the propounder of the Will who claims to have been appointed as Executor by the testatrix. From his evidence we find that on 18th July, 2006 as usual he attended the chamber of Senior Suresh Chandra Chatterjee, Advocate at 8.00 a.m., at about 8.30 a.m. Labanya Banerjee came to the chamber of Suresh Chandra Chatterjee, Advocate being accompanied by one Rakesh Verma

in his presence Suresh Chandra Chatterjee read over and explained the content of the Will to Labanya but he left before the execution of the Will. Suresh Chandra Chatterjee was the custodian of the original Will. After the demise of Labanya on 4th December, 2006, Suresh Chandra Chatterjee made over the Will together with death certificate of Labanya and PW 1 applied for grant of probate.

During cross-examination PW 1 stated that he was the lawyer of the beneficiaries of the Will. The Will was drafted by Suresh Chandra Chatterjee who was present inside the Court room on 28th January, 2009 when PW 1 was cross-examined.

From the oral testimony of PW 1 we find that I.G.R. issued by the Registering Authority was in the custody of Suresh Chandra Chatterjee. PW 1 stated that he had document to show that he was appointed by Labanya as her Advocate at some point of time. PW 2 Manas Chakraborty who is one of the attesting witnesses stated that Labanya Banerjee on 18th July, 2006 executed the Will by putting her signature in his presence. Thereafter, Rakesh Verma put his signature and PW 2 put his signature. He identified all the signatures appearing on the reverse side of the first page of the Will. They put their signatures at the Registry Office. From his cross-examination we find that PW 2 is Clerk of Suresh Chandra Chatterjee, Advocate. He did not take Labanya Devi to Suresh Chandra Chatterjee for making the Will. Suresh Chandra Chatterjee read over and explained the content of such Will in his presence. As he is not well conversant in English language, the witness could not say about the content of the Will read over and explained by Suresh Chandra Babu in

Bengali to the testatrix. If we consider the evidence of the PW 2 one of the attesting witnesses we find that Labanya Banerjee put signature on the document Exhibit-2 in his presence at the Registry Office on 18th July, 2006 and Rakesh Verma the other attesting witness also put his signature in presence of PW 2. Therefore, the evidence of PW 2 is sufficient to satisfy the statutory requirement as laid down under Section 68 of the Evidence Act and 63 of the Indian Succession Act.

PW 1 stated during cross-examination that he had document to show that he was engaged by Labanya Banerjee as her Advocate. No such document was produced.

The Executor, PW 1 admitted that he was the lawyer of the beneficiaries of the Will. After the execution and registration his senior Suresh Chandra Chatterjee, Advocate kept the I.G.R. with him. From the evidence of PW 1 it has transpired that Suresh Chandra Chatterjee prepared the draft of the Will, which was not filed before the Court. Labanya Banerjee engaged one Sm. Bishnupriya Basu as her lawyer to represent her in the suit for Partition. It is natural for her to approach the said lady Advocate instead of going to the chamber of Sri Suresh Chandra Chatterjee, Advocate. Suresh Chandra Chatterjee though remained present in the Court room during the proceeding; he preferred to remain away from the witness box. He should have been examined on dock to say as to when for the first time he received the instruction from Labanya Banerjee regarding preparation of Will and who brought Labanya Banerjee, the testatrix to him. But having played a very vital role in the whole episode of making of Will, keeping the I.G.R. in his custody and,

thereafter, obtaining the original registered Will from the Registering Authority, Suresh Chandra Chatterjee made over the same to his junior PW 1. Being the propounder PW 1 should have examined his senior Sri Suresh Chandra Chatterjee to keep the record straight.

Evidence of PW 1 suggests that he went to the chamber of his Senior Suresh Chandra Chatterjee, Advocate on 18th July, 2006 at about 8.00 a.m. Labanya came at about 8.30 a.m. being accompanied by Mr. Rakesh Verma and in his presence Suresh Chandra Chatterjee read over and explained the content of the Will to Labanya Banerjee. But before execution he left the chamber.

Rakesh Verma was not examined. Apart from being an attesting witness he was the man who took Labanya Banerjee, the testatrix to the lawyer Mr. Suresh Chatterjee. Then it can be presumed that Labanya Banerjee might have expressed her mind to make a Will in respect of her properties to that person, who happens to be Khalasi of the Truck. But there is no evidence suggesting previous acquaintance between the testatrix and Rakesh Verma.

It becomes a very relevant question as to when Rakesh Verma came to know that Labanya Banerjee wanted to make a Will. Evidence of PW 1 suggests that on 18th July, 2006, Rakesh Verma brought Labanya Banerjee to the chamber of Suresh Chandra Chatterjee at about 8.30 a.m. she instructed to draft the Will. Accordingly the Will was drafted and, thereafter, a fair copy must have been prepared and typed which was produced before the Registrar after execution for registration of the same. It was presented by Labanya Banerjee as it appears from the document at

about 12.45 p.m. This proximity of time suggests an orchestrated action on the part of Suresh Chandra Chatterjee, Rakesh Verma and PW 2 Manas Chakraborty and PW 1 Tapan Kumar Mitra. Evidence of PW 1, the propounder of the Will fails to satisfy our conscience by removing the cloud of suspicion, surrounding the execution of the Will.

There is no doubt that almost with mathematical precision the execution of the Will has been proved. But as a Court of conscience, we cannot grant probate only taking into consideration the compliance of Section 68 of the Evidence Act and 63 (c) of the Indian Succession Act, particularly when we find certain circumstances pricking our conscience.

In this regard we may rely upon the decision of Hon'ble Apex Court in **Anil Kak v. Sharada Raje** reported in **(2008) 7 SCC 695** held as under:-

"52. Whereas execution of any other document can be proved by proving the writings of the document or the contents of it as also the execution thereof, in the event there exists suspicious circumstances the party seeking to obtain probate and/or letters of administration with a copy of the will annexed must also adduce evidence to the satisfaction of the court before it can be accepted as genuine.

53. As an order granting probate is a judgment in rem, the court must also satisfy its conscience before it passes an order.

54. It may be true that deprivation of a due share by (sic to) the natural heir by itself may not be held to be a suspicious circumstance but it is one of the factors which is taken into consideration by the courts before granting probate of a will.

55. Unlike other documents, even animus attestandi is a necessary ingredient for proving the attestation."

In ***Jaswant Kaur v. Amrit Kaur & others*** reported in (1977) 1 SCC 369, Hon'ble Apex Court held:-

“9. In cases where execution of Will is shrouded in suspicion, its proof ceases to be a simple lis between the plaintiff and the defendant. What generally is an adversarial proceeding, becomes in such cases, a matter of the Court's conscience and then, the true question which arises for consideration is, whether, the evidence let in by the propounder of the will is such as would satisfy the conscience of the Court that the will was duly executed by the testator. It is impossible to reach such a satisfaction unless the party which sets up the will offers cogent and convincing explanation with regard to any suspicious circumstance surrounding the making of the Will.”

Recital of the Will suggests that Samir Kumar Ghosh and his two sons won the heart of the old lady within 4 months and she decided to bequeath her property in their favour. If we consider the kind of faith, the testatrix reposed upon them, she could have asked them to take her to advocate, instead of going to Mr. Suresh Chatterjee with a Khalasi of Truck, who appeared on the date of execution of Will to play his part and withered away soon thereafter.

Did the lady carry with herself her mind while executing the Will? It is yet another question that peeps into our mind when we find that Will is all about the Premises No. 59/2, Raja Rammohan Sarani though after few months the testatrix executed a Power of Attorney for sale out a property in Jharkhand together with the Caveator of the Will and his siblings. There is no whisper in the Will about the said property. This observation

may not be termed as surmise or conjecture when we find the recital of the Will contains only those informations as is known to the beneficiaries.

The testatrix undoubtedly knew how to write her name in English. The Will was executed by her with a trembling hand. She was 82 years old lady, but from the document Exhibit-2 we do not find anything to suggest that the Will was read over to her or she herself read it. True it is PW 2 Manas Chakraborty stated that the Will was read over to Labanya Banerjee by Sri Suresh Chatterjee, Advocate, but the very document does not demonstrate any such thing. In view of Section 91 of the Evidence Act which does not allow proving of the content of writing otherwise than by writing itself, such oral testimony of PW 2 cannot be said to have any probative value. All these surrounding circumstances lead to irresistible conclusion that the testatrix did not carry her mind while putting her signature on the Will.

Hon'ble Supreme Court in ***Leela Rajagopal & others v. Kamala Menon Cocharan and others*** reported in **(2014) 15 SCC 570** held:-

“13. A will may have certain features and may have been executed in certain circumstances which may appear to be somewhat unnatural. Such unusual features appearing in a will or the unnatural circumstances surrounding its execution will definitely justify a close scrutiny before the same can be accepted. It is the overall assessment of the court on the basis of such scrutiny; the cumulative effect of the unusual features and circumstances which would weigh with the court in the determination required to be made by it. The judicial verdict, in the last resort, will be on the basis of a consideration of all the unusual features and suspicious circumstances put together and

not on the impact of any single feature that may be found in a will or a singular circumstance that may appear from the process leading to its execution or registration. This, is the essence of the repeated pronouncements made by this Court on the subject including the decisions referred to and relied upon before us.”

A registered document no doubt raises a presumption under Section 114 [Illustration (e)] of the Evidence Act to the effect that the events contained in the endorsement of registration duly performed and correctly recorded but it does not contemplate the factum of attestation within the meaning of Section 63 (c) of the Succession Act or Section 68 of the Evidence Act being certified by Registrar of the document. In this regard, we can place our reliance with profit in decision pronounced in **Bhagat Ram & Anr. vs. Suresh & Ors.** reported in **(2003) 12 SCC 35** wherein the Hon’ble Supreme Court held:-

“23. Registration of a document does not dispense with the need of proving the execution and attestation of a document which is required by law to be proved in one manner as provided in Section 68 of the Evidence Act. Under Section 58 of the Registration Act the Registrar shall endorse the following particulars on every document admitted to registration:

(1) the date, hour and place of presentation of the document for registration;

(2) the signature and addition of every person admitting the execution of the document, and, if such execution has been admitted by the representative, assign of agent of any person, the signature and addition of such representative, assign or agent;

(3) the signature and addition of every person examined in reference to such document under any of the provisions of this Act, and

(4) any payment of money or delivery of goods made in the presence of the registering officer in reference to the execution of the document, and any admission of receipt of consideration, in whole or in part, made in his presence in reference to such execution.

24. Such particulars as are referred to in Sections 52 and 58 of the Registration Act are required to be endorsed by Registrar alongwith his signature and date on document under Section 59 and then certified under Section 60. A presumption by reference to Section 114 (Illustration (e)) of the Evidence Act shall arise to the effect that the events containing in the endorsement of registration, were regularly and duly performed and are correctly recorded. None of the endorsements, require to be made by the Registrar of Deeds under the Registration Act, contemplates the factum of attestation within the meaning of Section 63(c) of the Succession Act or Section 68 of the Evidence Act being endorsed or certified by the Registrar of Deeds.”

Though, we are not inclined to endorse the view of learned Trial Court that exclusion of the nephews of her husband, makes the Will suspicious, but we cannot shut our eyes from the attending facts surrounding the preparation and execution of Will, where Sri Suresh Chandra Chatterjee, Advocate took a lead role but who did not come to witness-box, though he was inside the Court room, to say how he got instructed, why did he take the Will in his custody after registration, instead of making over the same to the testatrix. He would have been the most competent person to remove all suspicious circumstances surrounding the execution of the Will. His presence during trial without being present himself as the witness in the backdrop of many questions

and serious doubts affecting the due execution of the Will is an important matter which cannot be ignored.

It is trite to say that granting probate of Will is judgement in rem and in such a case satisfaction of conscience of the Court is a pre-condition.

The circumstances as indicated hereinabove unerringly suggest that the entire case is shrouded with shadow of suspicion which the propounder has failed to remove in order to satisfy the conscience of the Court.

We express our inability to accept the appeal. Impugned judgement and decree stand affirmed.

Consequently the appeal fails. Applications, if any, stands disposed of.

Department is directed to send down the Lower Court Records immediately.

Urgent Photostat certified copy of this judgement, if applied for, should be made available to the parties upon compliance with the requisite formalities.

I agree

(Siddhartha Roy Chowdhury, J.)

(Soumen Sen, J.)