

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

% **Reserved on: 27th January, 2023**

Pronounced on: 20th March, 2023

+ **TEST.CAS. 11/2007 and I.A. Nos. 12041/2007, 12221/2014 and 9062/2020**

SHRI BHARAT GUPTA

..... Petitioner

Through: Ms.Mala Goel and
Mr.Parvinder, Advocates

versus

STATE AND OTHERS

..... Respondents

Through: Mr.Brajesh Kumar
Srivastava and Mr.Manoj Yadav,
Advocates for R-2 and 3

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant petition has been filed under Section 222 of the Indian Succession Act, 1925 for grant of probate to the petitioner with respect to the registered will dated 17.9.2000 of the deceased Sh. R.N. Gupta.

FACTUAL MATRIX

2. The matter has arisen out of the facts as detailed hereunder:

- a. Sh. R.N. Gupta, father of the petitioner died on 14th February 2006 having left behind a Will that is the

subject matter of the instant petition, dated 17th September 2000 with respect to his properties at Delhi. The said Will is attached as Annexure B to the Petition.

- b. Vide the said Will, the wife of testator was declared to be the beneficiary and heir of all the properties of the testator. After the death of the testator, the instant petition for probate has been filed by the son of the deceased, which is being objected to by the daughters of the deceased.
- c. The main dispute *qua* the parties is regarding the grant of probate with respect to the undivided share of the deceased in the property of D.R. Gupta & Sons HUF (hereinafter referred to as "DRG HUF") i.e., Bungalow no.4, University Road, Delhi measuring 25750 sq. yards i.e. 5.3 acres, shares and considerable movable assets in bank accounts.
- d. Petitioner/Executor is the son of the deceased and Objectors/Respondents no. 2 & 3 are the daughters of the testator.

SUBMISSIONS

3. Learned counsels for the parties have raised their contentions and submissions in writing as well as through oral submissions during the proceedings. In response to the petition, reply has been filed by the Respondents and rejoinder thereto has been filed by the Petitioner.

Written Submissions have also been filed by the respondents. The entirety of the pleadings on the record have been perused and the submissions made therein by the parties are detailed hereunder:

Petitioners' Submissions

4. Learned counsel appearing on behalf of the Petitioner submitted that Shri R.N. Gupta, father of the petitioner died on 14th February 2006 having left behind a Will dated 17th September 2000 with respect to his properties at Delhi. It is submitted that the said Will is his last testament and was not changed by him at any time before his death. It is stated that the deceased had movable and immovable properties at Delhi. His close relatives included his wife, two daughters and a son who is the petitioner himself.

5. It is submitted that under the Will, late Shri R.N. Gupta has bequeathed all his moveable and immovable assets to his wife Mrs. Raj Gupta, to the exclusion of all the three children. The deceased bequeathed his one-fifth share in the HUF property 4, University Road, Delhi, which he had received upon partition of DRG HUF on 18.1.1999, to his wife Smt. Raj Gupta, and has given her absolute disposing power over the said property which included enjoying the same, selling it or gifting it.

6. It is submitted that the deceased had recorded that there was a family settlement amongst the coparceners regarding the HUF property at Bungalow no.4, University Road, Delhi. It is submitted that Memorandum of Family Settlement dated 1.4.1999 of the DRG HUF,

records that there has been Partial Partition on 26.3.1977 and Oral Partition on 18.1.1999.

7. It is also submitted that the deceased has also stated in the said Will dated 17.9.2000, that in case of his wife Smt. Raj Gupta predeceasing him, then the manner in which his moveable and immovable assets will be distributed. Respondent Nos.2 and 3 through their counsel issued a notice dated 3.1.2007 calling upon the Petitioner to invalidate the Will of the deceased to the extent of his share acquired from DRG HUF.

8. It is submitted that the registered Will dated 17.9.2000 is the last Will of the deceased and all his assets have to be distributed in accordance with the same. The Petitioner as executor of the said Will is seeking the grant of Probate on the same.

Respondents' Submissions

9. *Per contra*, learned counsel for the respondents submitted that the petition for probate is primarily regarding undivided share of one of the coparceners of a Joint Hindu family governed by Mitakshara Hindu law namely DRG HUF and considerable movable assets in bank accounts & shares.

10. It is stated that the testator was one of the five sons & Karta of DRG HUF which was formed by his father D. R. Gupta in which the Petitioner, the Objectors, sons and daughters of other four brothers are also coparceners. Petitioner/alleged executor is the son and

Objectors/Respondents no. 2 & 3 are daughters and the major alleged beneficiary is the wife of testator.

11. Learned counsel for the Respondents submitted that the Will came into light under suspicious circumstances after a span of 6 years. It is submitted that the Will is not a product of a sound disposing mind and correct recital of essential facts as testator never had 1/5th share in DRG HUF. The said immovable property is still in name of DRG HUF and no Partition till date with respect to the same has been carried out. Therefore, the Will in question is not a valid will and the testator was not competent to bequeath the same. It is also stated that the contents of Will clearly establishes it as conditional/contingent Will which has been obtained by coercion and importunity with uncertain recitals.

12. It is stated that mere registration of the Will is not sufficient to dispel all suspicion regarding the validity and genuineness of the Will. It is also submitted that the subject matter of the Will does not belong to testator, hence the bequest is uncertain and is void under Section 89 of the Indian Succession Act, 1925. In any case, it is stated that the Will has not been signed by the Testator.

13. It is submitted that the Conduct of the Petitioner as a Beneficiary is *mala fide* and he is making attempts to carry out misappropriation of properties & huge amount from the estate of testator just after his death. Executor of the instant Will is basically a trustee who has to act diligently, fairly and honestly which is not being done by him.

14. It is further submitted that Section 81 of Indian Succession Act, 1925 prohibits extrinsic evidence. Reliance has also been placed on various judgments of the Hon'ble Supreme Court to state that the will is shrouded in suspicious circumstances and requires a closer scrutiny by the Court. In view of the above, it is submitted that there is no case made out for grant of probate and accordingly the instant petition merits to be dismissed.

15. Heard learned counsels appearing on behalf of parties at length and perused the record.

ISSUE

16. Upon a perusal of the facts and circumstances of the case, the issues framed for consideration and to be adjudicated by this Court in the instant proceedings were whether the Will dated 17th September 2000 is valid in law and any consequential relief that can be granted to the petitioner. In its essence, this Court is required to consider whether the probate in respect to the Will in question can be granted to the petitioner.

ANALYSIS

17. For a better appreciation of the case at hand, it is pertinent to peruse and analyse the provisions of law invoked in the instant petition before delving deeper into the facts of the case.

Law Regarding Wills

18. The Indian Succession Act, 1925 is the law governing Wills and matters relating thereto. It applies, *inter alia*, to Hindus by the mandate of

Section 30 of the Hindu Succession Act, 1956. The said provision provides as under:

“30. Testamentary succession.— Any Hindu may dispose of by will or other testamentary disposition any property, which is capable of being so disposed of by him or by her, in accordance with the provisions of the Indian Succession Act, 1925 (39 of 1925), or any other law for the time being in force and applicable to Hindus.

Explanation.—The interest of a male Hindu in a Mitakshara coparcenary property or the interest of a member of a tarwad, tavazhi, illom, kutumba or kavaru in the property of the tarwad, tavazhi, illom, kutumba or kavaru shall, notwithstanding anything contained in this Act, or in any other law for the time being in force, be deemed to be property capable of being disposed of by him or by her within the meaning of this section.”

19. Section 2(h) of the Indian Succession Act, 1925 defines Will, in the following terms:

“(h) “will” means the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death.”

20. A bare perusal of the definition reveals that there are three essential characteristics of a Will, as delineated hereunder:

- (i) there must be a legal declaration;
- (ii) the declaration must be with respect to the property of the Testator; and

(iii) the declaration must be to the effect that it is to operate after the death of the Testator, i.e. it should be revocable during the life of the Testator.

21. As per the scheme of the Indian Succession Act, 1925, there are two types of Wills, namely – Privileged Wills and Unprivileged Wills. Privileged Wills have been provided for under Section 65 of the Act. It provided that any soldier being employed in an expedition or engaged in actual warfare, or an airmen so employed or engaged, or any mariner being at sea, may, if he has completed the age of eighteen years, dispose of his property by a Will made in the manner provided in Section 86 of the said Act. All residual Wills, other than Privileged Wills, fall into the category of Unprivileged Wills.

22. Every person of sound mind, who is not a minor, may dispose of his property by Will. Section 59 of the Indian Succession Act, 1925 that deals with the capacity of a person to dispose of his property by way of a Will, reads as under:

“59. Person capable of making wills.—Every person of sound mind not being a minor may dispose of his property by will.

Explanation 1.—A married woman may dispose by will of any property which she could alienate by her own act during her life.

Explanation 2.—Persons who are deaf or dumb or blind are not thereby incapacitated for making a will if they are able to know what they do by it.

Explanation 3.—A person who is ordinarily insane may make a will during interval in which he is of sound mind.

Explanation 4.—No person can make a will while he is in such a state of mind, whether arising from intoxication or from illness or from any other cause, that he does not know what he is doing.”

23. Therefore, it is crucial that the person making a Will and disposing the property (ies) must be of sound mind. In order to satisfy the criteria of “Sound Testamentary Capacity”, three conditions must exist simultaneously, *firstly*, the Testator must understand that he/she is giving his property to one or more persons of his/her regard, *secondly*, he/she must understand and recollect the extent of his/her property; and *thirdly*, he/ she must also understand the nature and extent of claims of both the parties, i.e. of those whom he/she is including in the Will and of those whom he/she is excluding from the Will.

24. A Will is rendered void in cases of it being polluted by the sin of fraud and other defects. The relevant provision being Section 61 of the Indian Succession Act, 1925 reads as under:

“61. Will obtained by fraud, coercion or importunity.—A will or any part of a will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator, is void.”

25. Section 63 of the Indian Succession Act, 1925 deals with the execution of Unprivileged Wills and reads as under:

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

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

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

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

26. What emerges from a bare perusal of the aforementioned provision is that the Testator shall sign or affix his mark to the Will. Alternatively, it can be signed by some other person in his presence and by his direction. The signature or mark shall be placed in such a manner that it can be inferred that it was intended to give effect to the writing as a Will.

27. Next comes the aspect of attestation by witnesses. The Will needs to be signed by two or more witnesses in the presence of the Testator, if they have seen the Testator or some other person sign or affix his mark. Only those persons are eligible to attest, who have received personal

acknowledgment from the Testator, of his signature or mark, or of the signature of such other person.

28. It may be noted that under the General Clauses Act, 1897, the expression "sign" with reference to the person who is unable to write his name and includes "mark". However, although the Testator can execute the Will by affixing his mark, the attesting witnesses are to sign and do not have the liberty to affix their mark.

29. Section 2(f) of the Indian Succession Act, 1925 defines Probate and reads as under:

“(f) “probate” means the copy of a will certified under the seal of a court of competent jurisdiction with a grant of administration to the estate of the testator;”

30. Once the Probate is granted, it establishes the Will from the time of the death of the Testator and renders valid, all action of the executor during the interim period, i.e. from the time of the death of the Testator to the grant of Probate.

31. Probate is conclusive evidence of the testamentary capacity of the Testator and due execution and validity of the Will. The finding of the Probate court as to the due execution of the Will is conclusive. The grant of Probate vests all the property in the person in whose favour the Probate is granted.

32. In the recent case of **Murthy v. C. Saradambal, (2022) 3 SCC 209**, the Hon'ble Supreme Court has summarised the law regarding Wills as under:

31. *One of the celebrated decisions of this Court on proof of a will, in H. Venkatachala Iyengar v. B.N. Thimmajamma [H. Venkatachala Iyengar v. B.N. Thimmajamma, AIR 1959 SC 443] is in H. Venkatachala Iyengar v. B.N. Thimmajamma, wherein this Court has clearly distinguished the nature of proof required for a testament as opposed to any other document. The relevant portion of the said judgment reads as under: (AIR p. 451, para 18)*

“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 of the 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 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.”

32. *In fact, the legal principles with regard to the proof of a will are no longer res integra. Section 63 of the Succession Act, 1925 and Section 68 of the Evidence Act, 1872, are relevant in this regard. The propounder of the will must examine one or more attesting witnesses and the onus is placed on the propounder to remove all suspicious circumstances with regard to the execution of the will.*

33. *In the abovenoted case, this Court has stated that the following three aspects must be proved by a propounder:*

(Bharpur Singh case [Bharpur Singh v. Shamsheer Singh, (2009) 3 SCC 687 : (2009) 1 SCC (Civ) 934] , SCC p. 696, para 16)

“16. ... (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.”

34. In Jaswant Kaur v. Amrit Kaur [Jaswant Kaur v. Amrit Kaur, (1977) 1 SCC 369] , this Court pointed out that when a will is allegedly 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.

35. In Bharpur Singh v. Shamsheer Singh [Bharpur Singh v. Shamsheer Singh, (2009) 3 SCC 687 : (2009) 1 SCC (Civ) 934] , this Court has narrated a few suspicious circumstance, as being illustrative but not exhaustive, in the following manner: (SCC p. 699, para 23)

“23. Suspicious circumstances like the following may be found to be surrounded in the execution of the will:

(i) The signature of the testator may be very shaky and doubtful or not appear to be his usual signature.

(ii) The condition of the testator's mind may be very feeble and debilitated at the relevant time.

(iii) The disposition may be unnatural, improbable or unfair in the light of relevant circumstances like exclusion of or absence of adequate provisions for the natural heirs without any reason.

(iv) The dispositions may not appear to be the result of the testator's free will and mind.

(v) The propounder takes a prominent part in the execution of the will.

(vi) The testator used to sign blank papers.

(vii) The will did not see the light of the day for long.

(viii) Incorrect recitals of essential facts.”

36. *It was further observed in **Shamsher Singh case [Bharpur Singh v. Shamsher Singh, (2009) 3 SCC 687 : (2009) 1 SCC (Civ) 934]** that the circumstances narrated hereinbefore are not exhaustive. Subject to offering of a reasonable explanation, existence thereof must be taken into consideration for the purpose of arriving at a finding as to whether the execution of the will had been duly proved or not. It may be true that the will was a registered one, but the same by itself would not mean that the statutory requirements of proving the will need not be complied with.”*

37. *In **Niranjan Umeshchandra Joshi v. Mrudula Jyoti Rao [Niranjan Umeshchandra Joshi v. Mrudula Jyoti Rao, (2006) 13 SCC 433]**, in paras 34 to 37, this Court has observed as under: (SCC pp. 447-48)*

“34. There are several circumstances which would have been held to be described by this Court as suspicious circumstances:

(i) when a doubt is created in regard to the

condition of mind of the testator despite his signature on the will;

(ii) When the disposition appears to be unnatural or wholly unfair in the light of the relevant circumstances;

(iii) where propounder himself takes prominent part in the execution of will which confers on him substantial benefit.

35. We may not delve deep into the decisions cited at the Bar as the question has recently been considered by this Court in *B. Venkatamuni v. C.J. Ayodhya Ram Singh* [*B. Venkatamuni v. C.J. Ayodhya Ram Singh*, (2006) 13 SCC 449], wherein this Court has held that the court must satisfy its conscience as regards due execution of the will by the testator and the court would not refuse to probe deeper into the matter only because the signature of the propounder on the will is otherwise proved.

36. The proof of a will is required not as a ground of reading the document but to afford the Judge reasonable assurance of it as being what it purports to be.

37 [**Ed.:** Para 37 corrected vide Official Corrigendum No. F.3/Ed.B.J./86/2007 dated 5-12-2007.] . We may, however, hasten to add that there exists a distinction where suspicions are well founded and the cases where there are only suspicions alone. Existence of suspicious circumstances alone may not be sufficient. The court may not start with a suspicion and it should not close its mind to find the truth. A resolute and impenetrable incredulity is not demanded from the Judge even if there exist circumstances of grave suspicion.”

33. The Hon’ble Supreme Court in *Anil Kak v. Sharada Raje*, (2008) 7 SCC 695, opined that the Court is required to adopt a rational approach while considering the question of grant of probate and is furthermore

required to satisfy its conscience as existence of suspicious circumstances plays an important role. The Hon'ble Supreme Court 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."

34. The Hon'ble Supreme Court in ***Leela Rajagopal v. Kamala Menon Cocharan***, (2014) 15 SCC 570, opined as under:

"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.”

35. In view of the above, the legal principles with regard to the proof of a Will have been well-settled. It is true that mere registration of a Will does not mean that the statutory requirements of proving the Will need not be complied with. Section 63 of the Indian Succession Act, 1925 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.

36. 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. Therefore, what is required to be tested is whether the testator had signed the will. Next, it is to be seen whether he understood the nature and effect of the dispositions in the will. Lastly but importantly, whether he put his signature to the will knowing what it contained.

37. It is also a settled law 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. The test to be applied would be the usual test of the satisfaction of the prudent mind in such matters.

38. The propounder of the will must examine one or more attesting witnesses and the onus is placed on the propounder to remove all suspicious circumstances with regard to the execution of the will. In a probate case, the burden of proof that is to be thus discharged by the petitioner is to establish beyond reasonable doubt 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 that he put his signature on the document of his own free will.

39. It is also a settled law that 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, the Court would be justified in making a finding in favour of propounder.

40. In cases where the 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. Therefore, the ultimate scrutiny of the evidence for removal of suspicion as to the circumstances is to be carried out on the anvil of the judicial conscience.

41. Having perused the provisions regarding the execution of an Unprivileged Will as well as the law applicable to the grant of probate in detail, it is now pertinent to apply the same to the facts and circumstances of the case at hand.

42. The relevant portion of the Will is reproduced hereunder:

“That I state and affirm that this is my last Will and Testament made on this day of the month and year mentioned above and I am in sound disposing mind and good health at the time of making this Will and there is no pressure whatsoever source on me for making this Will. This Will shall come into operation after my death. I also appoint my son Bharat Gupta as the Executor of this Will.”

43. At the first instance, what is required to be tested is whether the testator in the instant case had signed the Will dated 17th September 2000. Next, it is to be seen whether he understood the nature and effect of the dispositions in the will. Lastly it is required to be verified whether he put his signature to the will knowing what it contained. In the instant case, the statements by Mr. S K Mehra, Advocate examined as PW-2, Ms. Mukta Kapoor, Advocate examined as PW-4, and Ms. Anupama Kaul, Advocate examined as PW-5 clearly establish that the testator had signed the Will.

44. The PW-2 during examination deposed as under:

“I knew Late Sh. R.N. Gupta. I have seen the original Will, Ex.PW1/2 dated 17.9.2000 which bears my signatures at Point A on the last page thereof. I also identify the signatures of the Executant of the said Will, Sh. R.N. Gupta on each page thereof at Points B to G. The said Executant had signed this Will in my presence. I also identify the signatures of the witnesses namely Ms. Mukta Kapur, my daughter at Point H and Ms. Anupama Kaul, Advocate, at Point J, who was my Junior and working in my Chamber. The said Will was drafted by me under the instructions of the said Executant. After registration the Executant had handed over to me, the said Will to be kept in a

sealed cover. I sealed the said Will in his presence in an envelope. The Executant had told me that the said envelope had to be opened after his death in the presence of his wife, if she would be alive and in the presence of his children i.e. his son and his daughters. The said sealed envelope remained in my possession.”

45. The PW-4 during the examination deposed as under:

“I knew Mr. R.N. Gupta since my childhood. I have seen the Will Ex. PW1/2 and it bears my name, old chamber address and signatures on the reverse of the first page thereof in the portion encircled at point A. My signatures are in the portion encircled at Point PW4/1 whereas name and old chamber address are mentioned in the other encircled portion PW4/2.

It also bears my name and old Chamber address in the portion encircled at Point X and my signatures at Point H on the last page thereof.

Ex. PW1/2 is the Will dated 17.9.2000 of Mr. R.N. Gupta which bears his signatures at Point G and that of Ms. Anupama Kaul at Point J on the last page thereof. I signed Ex. PW1/2 as a witness.”

46. The PW-5 during the examination deposed as under:

“I have seen Ex.PW1/2 and it bears my signatures,at Point J and the encircled portion at Point XI is in my handwriting. The said encircled portion at point XI was written by me and signatures were put at Point J on Ex.PW1/2 in the residence-cum- office of Mr. S.K. Mehra, Advocate. On that date in the presence of Mr.R.N. Gupta, Mr. S.K. Mehra, Advocate had told myself and Mrs. Mukta Kapur to write down the particulars and also put her signatures on Ex.PW 1/2 which we accordingly did.”

47. By way of the evidence adduced by the witnesses for the petitioner and on the basis of the statement of the attesters as reproduced hereinabove, all the aforementioned questions are answered in the affirmative.

48. The petitioner has filed evidence on record to suggest that the testator continued to act as Chairman/Director and took active interest in the affairs and functioning of various Trusts, Companies and Societies until his death, as opposed to the contentions made by the respondents that the testator was not in best of his health and incapable of understanding the nature and effect of dispositions made in the Will.

49. The Will need to be proved like any other document, except as to the special requirements of attestation as prescribed by Section 63 of the Indian Succession Act, 1925. In the instant case, the requirement as to the propounder of the Will examining one or more attesting witnesses has been fulfilled by way of examining Mr. S K Mehra, Advocate examined as PW-2, Ms. Mukta Kapoor, Advocate examined as PW-4, and Ms. Anupama Kaul, Advocate examined as PW-5. Accordingly, in the instant case, the conduct of the testator in making the said Will as well as the contents of the Will meet the usual test of the satisfaction of the prudent mind.

50. The burden of proof to be discharged by the propounder is to establish beyond reasonable doubt 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 out of his

own free will. By way of the statements of the witnesses as reproduced, discussed and analysed in the foregoing paragraphs, the said onus placed on the propounder to remove all suspicious circumstances with regard to the execution of the Will stands adequately discharged.

51. Thus, as per settled law, when the evidence adduced in support of the Will is satisfactory and sufficient to prove the sound and disposing state of the testator's mind and his signature as required by law, it is justified to make a finding in favour of the propounder. In the instant case, all of the above have been clearly met by cogent and reliable evidence.

52. This Court has perused the Memorandum of Family Settlement dated 1st April 1999 which is on record and which leaves no doubt to the effect that as per the settlement, the deceased testator was entitled to 1/5th of the share in the HUF property, and hence, competent to make a bequest with respect to the same.

53. When a Will is allegedly shrouded in suspicion, its proof ceases to be a simple *lis* between the parties in an adversarial proceeding, it rather becomes in such cases a matter of the satisfaction of Court's conscience and then, the true question which arises for consideration is, whether, the evidence presented by the propounder of the Will is of such quality that would satisfy the conscience of the court that the Will was duly executed by the testator. It is impossible to arrive at 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.

54. The court must satisfy its conscience as regards due execution of the Will by the testator and the court would not refuse to probe deeper into the matter only because the signature of the propounder on the Will is otherwise proved. However, what is important to be noted is that there exists a distinction where suspicions are well founded and the cases where there are mere suspicions without any substantive basis. Therefore, existence of suspicious circumstances alone may not be sufficient and the Court shall not start with a suspicion closing its mind to the quest of truth.

55. The suspicious circumstances as are being alleged are not well-substantiated. As already noted, there exists a distinction where suspicions are well founded and the cases where there are mere suspicions without any solid basis. Therefore, allegation of suspicious circumstances alone may not be sufficient to assail the validity of the will and the grant of probate. Accordingly, the aforementioned allegations are meritless.

CONCLUSION

56. In light of the foregoing discussion and analysis, this Court's conscience is satisfied as to the genuineness of the Will dated 17th September 2000 and the conditions for the grant of probate being met, this Court is inclined to conclude that the Petitioner has been able to prove the Will of the deceased as his last and final testament and thus successfully discharged his onus. There is no impediment to the grant of

probate in his favour, in view of the fact that the conscience of the Court as to the validity of the Will has been satisfied. Accordingly, the instant petition stands allowed and the probate with respect to the Will dated 17th September 2000 is granted, subject to payment of requisite stamp duty/court fees.

57. The valuation of the property has been carried out by Assistant Collector and the same is already on record.

58. The Petitioner shall furnish Administrative Bond with one surety to the satisfaction of the Registrar General of this Court.

59. On payment of the requisite court fee and completion of other formalities noted above, the Probate in respect of the Will dated 17th September 2000 shall be issued by the Registry.

60. Pending Applications, if any, also stand dismissed.

61. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

March 20, 2023
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