



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

Reserved on: 17.04.2023

Date of decision: 04.07.2023

+ **TEST.CAS. 29/2015**

MAHENDRA KUMAR

..... Petitioner

Through: Mr. Neeraj Jain, Adv. with
petitioner in person.

versus

STATE & ORS

..... Respondents

Through: Mr. Divyam Nandrajog, Panel
Counsel for GNCT/R-1 with
Mr. Mayank Kamra, Adv.
Mr. Saurabh Jain, Adv. for R-2.
Mr. Nitin Prakash, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

JUDGMENT

1. The present petition has been filed by the petitioner under Section 276 of the Indian Succession Act, 1925 seeking grant of Probate of Will dated 11.04.2013 allegedly left behind by the petitioner's father Sh. Karan Singh (hereinafter referred to as the 'Testator'), who died on 28.04.2013 in Gurgaon.

2. It is the case of the petitioner that the Testator left behind the following Legal Heirs:

i. Sh. Mahendra Kumar, son of the Testator, the petitioner herein.

ii. Sh. Rajesh Kumar, son of the Testator, the respondent no.2 herein.

iii. Smt. Savita Chauhan, daughter of the Testator, the respondent no.3 herein.

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3. The petitioner states that the Testator, before his death, executed a Will dated 11.04.2013 (hereinafter referred to as the 'Subject Will'), bequeathing the following assets in equal share between his two sons, that is, the petitioner and the respondent no.2 herein:-

"i. Farm House Fh-10, Bijwasan, Main
Bamnoli Bus Stand, New Delhi-110027,
Measuring 1100 sq.yds.
ii. Land measuring 2500 sq. yds., Village
Chomma, Gurgaon, Haryana"

4. The petitioner herein has filed a civil suit, bearing No. 63/2014 titled ***Mahendra Kumar v. Rajesh Kumar & Anr.***, before the Learned District Judge, Dwarka Courts, New Delhi, which was adjourned *sine die* for want of probate of the Will, which is the subject matter of this case.

Preliminary proceedings in the petition:

5. Notice of the petition was issued to the State and the Chief Revenue Controlling Officer vide order dated 16.04.2015, with a direction to file a valuation report with respect to the subject properties. Notice was also issued to the respondents and citations were directed to be published in the "Times of India" Delhi and Rajasthan Edition. Thereafter, by an order dated 28.04.2015, the above order was modified to the limited extent that citation was directed to be published in the 'Times of India' Gurgaon and Rajasthan edition instead of Delhi edition. Vide order dated 10.08.2015, fresh notices were issued on the respondents and the State, along with direction for the citation to be published in the 'Indian Express' (English Edition) and 'Jansatta' (Hindi Edition). I



publication was made in compliance with this order, though in compliance with the order dated 16.04.2015, publication had been made in the 'Times of India' Delhi and Rajasthan Edition.

Objections of respondent nos. 2 and 3:

6. The petition is contested by the respondent nos. 2 and 3, who in their Written Statement/Objections submits that the Subject Will is forged, fabricated, and even the execution of the alleged Will is surrounded by suspicious circumstances.

7. The respondent no.2, son of the Testator, in his Objections asserts that the Testator in 2013 was confined to his bed and had lost his mental faculty. The Testator was also completely dependent on the respondent no.2 as he was not of sound mind in the last months of his life. The Testator during his lifetime had signed all his documents and never inscribed his thumb impressions on any document. He submits that, therefore, the Subject Will that allegedly bears the thumb impressions of the Testator, is a forged and fabricated document.

8. It is further asserted that the petitioner never cared for the Testator. The Testator was residing with the respondent no.2, who had taken care of and looked after him.

9. It is further asserted in the Objections that the verification of Sh. Ram Narain, an alleged witness of the Subject Will in the amended petition is false and fabricated. Sh. Ram Narain changed his statement on oath and even the signatures of Sh. Ram Narain on the original petition and the amended petition are different. It is asserted that the petitioner forged the Witness Clause in the petition to make the petition maintainable.



10. The respondent no.3, the daughter of the Testator, in her Objections also states that the Subject Will is forged and fabricated. She asserts that the Testator was not in a mental condition to execute any document and was completely dependent on the respondent no.2 and his family members. She states that the Testator was an educated person, who has managed, purchased, and acquired number of immovable properties in his lifetime and has also left behind huge amounts in his bank accounts. The respondent no.3 asserts that the petitioner, in connivance with the alleged witnesses and other interested persons, got the Subject Will forged to deprive the respondent no.3 of her bequest. She states that the attesting witnesses are friends of the petitioner, who were intentionally kept as attesting witnesses to support the forged Subject Will.

11. She states that there was no occasion for the Testator to execute the Subject Will only in favour of both the sons, as the respondent no.3, being the daughter, had cordial relations with respondent no.2 and the Testator. On the other hand, the petitioner never extended any love or affection towards the respondent no.3 and her family. She states that the Testator, during his lifetime, stated repeatedly that all his immovable and movable properties shall be devolved on all the three children and there was no occasion to deprive the respondent no.3 of her share of the estate left behind by the Testator.

12. She states that it is possible that both the petitioner and the respondent no.2 have connived with each other to deprive the respondent no.3 from her valuable rights in the estate of the Testator.



Response of the petitioner:-

13. The petitioner, in his Replication, controverted all the assertions made in the Written Statement/Objections filed by the respondent no. 2 and 3, and further stated that the Testator, father of the parties, had put his thumb impressions instead of signing the Subject Will as the Testator suffered stiffness in his hands since March 2013, due to which he could not sign the documents. He states that the Testator had put his thumb impressions on the Subject Will in the presence of the witnesses and in the presence of Sh. S.C. Jain, Advocate, who had drafted the Subject Will.

Issues:

14. The following issues were framed on 06.10.2016:-

“(i) Whether the deceased, late Sh. Karan Singh, has left behind a duly executed Will dated 11.4.2013?OPP

(ii) Whether the Will dated 11.4.2013 of late Sh. Karan Singh is a forged and fabricated Will? OPD

(iii) Relief.”

Consideration of the Preliminary Objection:

15. The learned counsels for the respondent nos.2 and 3 submit that as the petitioner is admittedly not appointed as an executor of the alleged Will dated 11.04.2013, the present petition seeking probate is not maintainable. They submit that the petitioner could have only applied for grant of a Letter of Administration, with the Will annexed.

16. I have considered the submission made. Though, it is correct that the probate can be granted only to an executor appointed by the Will, however, in, ***Prem Prakash Dabral v. State & Ors.***, 2019 SCC



OnLine Del 8506, in a similar situation, a co-ordinate bench of this court has held that a petition seeking grant of Probate of a Will can be allowed to be converted into a petition for seeking Letters of Administration with the Will annexed where there is no conceivable reason as to why the beneficiary of a Will must be prohibited from continuing the said proceedings. The relevant extract from the judgment is as under:

“26. This court, in light of the decisions of the Supreme Court in FGP Ltd. vs. Saleh Hooseini Doctor,(2009) 10 SCC 223 and Shambhu Prasad Agarwal v. Bhola Ram Agarwal (2000) 9 SCC 714 and various High Courts in Shirin Baman Farazarzi of Bombay Zoroastrian Iranian inhabitant v. Zubin Boman Faramarzi, reported in 2014 (4) MHLj 217, Inder Chand Nayyar v. Sarvadeshik Arya Pratinidhi Sabha, reported in AIR 1997 Del 34, Sanjay Suri v. State & Ors, reported in AIR 2004 Del 9 and Lallubhai Chhotabhaiu by LRs v. Vithalbhai Parshottambhai, reported in AIR 1982 Guj 222, is of the view that Petition seeking grant of Probate of a will can be allowed to be converted into a petition for Letters of Administration with Will annexed. Thus, there is no conceivable reason as to why the beneficiary/Petitioner herein must be prohibited from continuing the said proceedings. Directing the Petitioner to seek a formal conversion of the proceedings from one for grant of probate to one for issuance of letters of administration would be futile, since, it is not in dispute that Petitioner is entitled to file a petition for issuance of Letter of Administration with the will annexed. Since the Petitioner has been deprived of the benefits enshrined in the will for a considerable time, it is in interest of justice that the Petition should not be dismissed merely on this highly technical ground and should come to an end as early as possible.”



17. In view of the above, the objection of the respondent no. 2 and 3 on the maintainability of the present petition is rejected.

Evidence of the parties:

18. The petitioner in support of his case examined himself as PW-1 and tendered his evidence by way of affidavit dated 25.11.2016, which is Ex. PW1/A.

19. The petitioner states that the Testator was of sound mind and was capable of understanding and had put his thumb impressions instead of signing the Subject Will for the reason that, since March 2013, he suffered stiffness in his hand due to which he could not sign the documents. The petitioner states that the Testator had put the thumb impressions on the Subject Will in the presence of the witnesses and the Subject Will was also attested by the Notary Public namely, Mr.Zaheer Mian, Advocate.

20. The petitioner was extensively cross examined by the learned counsels for the respondent nos.2 and 3. In the course of his cross examination, he admitted that the Testator had a good relationship with the respondent no.3. He stated that the Testator never asked for any medical treatment for the alleged stiffness in his hand. Most importantly, he stated as under:

“At the time of execution of the Will Satbir Rana (neighbour), Satish (my cousin brother), in laws of respondent no.2 and Kusum Malik (Mausi) were present. I was also present at that time. Except the above mentioned persons no other person was present at the time of execution of the Will.

My father used to sign the documents when he used to do business till 1995 approximately. Even after 1995 my father used to sign the documents. Volunteered: March 2013 onwards



my father stopped signing the documents due to his hand stiffness.”

21. The petitioner further examined Mr.Ashok Kumar, son of late Sh.Ram Narain, as PW2. PW2 identified the signature of late Sh.Ram Narain, the alleged witness to the subject Will, on the Will. In his cross-examination, he stated that his father had told him of signing the Will.

22. The respondent no.2 examined himself as RW-1. In his affidavit of evidence (Ex.RW1/1), he states that in the year 2013, the Testator was not only confined to his bed but had also lost his mental condition. He states that the Testator was totally dependent on RW-1 during his lifetime, who had looked after and cared for the Testator. He states that the alleged Will dated 11.04.2013 was never executed by the Testator and is a forged and fabricated document. He states that during his lifetime, the Testator always used to sign the documents and never put his thumb impressions on any document. He denied the fact of the execution of the Subject Will by the Testator.

23. In his cross-examination, he denied that the Testator suffered from any stiffness in his fingers. He stated that the Testator was doing his daily chores himself and was able to eat food himself. He denied the suggestion that the Testator was physically and mentally fit during his last days.

24. The respondent no.3 examined herself as RW-2. In her affidavit of evidence (Ex.RW2/1), she states as under:

“2. That I state that the alleged Will dated 11.4.2013 is a forged and fabricated document. Late Karan Singh never executed any will at any point of time in his life time. In fact before his death on 28.4.2013, he was



totally confined to bed and lost his mental and physical faculties and was not in a mental condition to execute any document. His understanding was totally lost. He was dependent upon his son Rajesh Kumar and his family members. The respondent No. 2 herein who was looking after him, got treated him and even spoon feeding him in the last two months prior to his death. The alleged attested witness of the will are totally imaginary and not present at all at the time of alleged execution of the will. Moreover, late Karan Singh was an educated person, always writing, signing his own hand writing in English and Hindi. He has managed, purchased and acquired number of immoveable properties in his life time and also left behind huge amount in his bank accounts. He was also having several F.D.Rs. and also invested huge amount which was received by him as compensation of his land which was acquired by the Government.”

25. The respondent no.3 further states that the Testator was having a cordial relationship with her, and, in fact, it was the petitioner who never cared or extended any love or affection towards her and her family members.

26. In the cross-examination of the respondent no. 3 recorded on 09.01.2020, she states as under:

“It is correct that Lt. Sh. Karan Singh was physically and mentally fit during his last days. Again said, he was not mentally fit. Vol. he was not doing his personal work and he was living his life with the help of others. He was taking his meals himself. Again said, he was also taking his meals with the help of others. It is wrong to suggest that there was any stiffness in his fingers. It is wrong to suggest that the petitioner was looking after Lt. Sh. Karan Singh during his last days. Vol. my younger brother Mr. Rajesh was looking after Lt. Sh. Karan Singh during his last days.



Lt. Sh. Karan Singh was suffering from diabetes and heart disease and blood pressure. I do not know what medicines my father was taking. Vol. I was not living there. I do not know that Lt. Sh. Karan Singh was under the treatment of which doctor. I have not seen any medical record of Lt. Sh. Karan Singh.”

Submissions of the learned counsels for the respondent nos. 2 and 3 on merits:

27. The learned counsels for the respondent no.2 and 3 submit that the petitioner has been unable to prove the Subject Will. They submit that in the verification to the original petition filed, the alleged witness to the Will, Sh.Ram Narain, has stated that the Testator had signed the alleged Will in his presence. They submit that the alleged Will admittedly does not bear the signatures of the Testator. They submit that on the said fact being pointed out in the objections filed by the respondents, the petitioner amended the petition by filing a fresh verification from Sh.Ram Narain, this time stating that the Testator had put his thumb impressions on the Subject Will. They submit that though the amendment was allowed by this Court vide its order dated 05.04.2016, it was made clear that all defence of the respondents are preserved. They submit that, therefore, the petitioner has been unable to prove the Subject Will and has, in fact, produced a false testimony.

28. They submit that the Testator always used to append his signatures to all the documents. They state that the petitioner has forged the Will by showing it to be bearing the thumb impressions of the Testator.

29. They submit that the petitioner has failed to produce the attesting witnesses to the Will. Though, the petitioner claimed that



other witnesses were also present at the time of the execution of the Subject Will by the Testator, none of these witnesses were also produced.

30. They submit that the alleged Will also excludes the respondent no. 3 from the estate of the Testator, though the Testator had a good relationship with the respondent no.3 and there was no reason to exclude her from the bequest.

Submissions of the learned counsel for the petitioner:

31. The learned counsel for the petitioner, on the other hand, submits that the petitioner has been able to prove the subject Will through the evidence of PW2- Mr.Ashok Kumar, son of late Sh.Ram Narain, the witness to the Subject Will, and through his own evidence.

32. He submits that there is nothing unnatural in the Subject Will, as the Will itself gives the reasons for excluding the respondent no. 3 from the bequest.

ANALYSIS AND FINDINGS:

33. I have considered the submissions made by the learned counsels for the parties.

Principles Applicable to a petition seeking grant of Letters of Administration with Will annexed/Probate:

34. Before advertng to the specific challenge of the respondent nos.2 and 3 to the present petition on merits, it would be relevant to consider the test laid down by the Supreme Court on the nature of proof and the principles to be applied to petitions seeking grant of the Letters of Administration with Will annexed.



35. The Supreme Court, in ***Smt. Jaswant Kaur v. Smt. Amrit Kaur & Ors.*** (1977) 1 SCR 925, has stated the test as under:

“8. The defendant who is the principal legatee and for all practical purposes the sole legatee under the will, is also the propounder of the will. It is he who set up the will in answer to the plaintiff's claim in the suit for a one-half share in her husband's estate. Leaving aside the rules as to the burden of proof which are peculiar to the proof of testamentary instruments, the normal rule which governs any legal proceeding is that the burden of proving a fact in issue lies on him who asserts it, not on him who denies it. In other words, the burden lies on the party which would fail in the suit if no evidence were led on the fact alleged by him. Accordingly, the defendant ought to have led satisfactory evidence to prove the due execution of the will by his grandfather Sardar Gobinder Singh.

9. In cases where the execution of a will is shrouded in suspicion, its proof ceases to be a simple lis between the plaintiff and the defendant. What, generally, is an adversary 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 led by the propounder of the will is such as to satisfy the conscience of the court that the will was duly executed by the testator. It is impossible to reach such satisfaction unless the party which sets up the will offers a cogent and convincing explanation of the suspicious circumstances surrounding the making of the will.

10. There is a long line of decisions bearing on the nature and standard of evidence required to prove a will. Those decisions have been reviewed in an elaborate judgment of this Court in R. Venkatachala Iyengar v. B.N. Thimmajamma. The Court, speaking through Gajendragadkar, J., laid down in that case the following propositions :

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“1. Stated generally, a will has to be proved like any other document, the test to be applied being the usual test of the satisfaction of the prudent mind in such matters. As in the case of proof of other documents, so in the case of proof of wills, one cannot insist on proof with mathematical certainty.

2. Since Section 63 of the Succession Act requires a will to be attested, it cannot be used as evidence until, as required by Section 68 of the Evidence Act, one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the court and capable of giving evidence.

3. Unlike other documents, the will speaks from the death of the testator and therefore the maker of the will is never available for deposing as to the circumstances in which the will came to be executed. This aspect introduces an element of solemnity in the decision of the question whether the document propounded is proved to be the last will and testament of the testator. Normally, the onus which lies on the propounder can be taken to be discharged on proof of the essential facts which go into the making of the will.

4. Cases in which the execution of the will is surrounded by suspicious circumstances stand on a different footing. A shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the will under which he receives a substantial benefit and such other circumstances raise suspicion about the execution of the will. That suspicion cannot be removed by the mere assertion of the propounder that the will bears the signature of the testator or that the testator was in a sound and disposing state of mind and memory at the time when the will was made, or that those like the wife and children of the testator who would normally receive their due share in his estate were disinherited because the testator might have had his own



reasons for excluding them. The presence of suspicious circumstances makes the initial onus heavier and therefore, in cases where the circumstances attendant upon the execution of the will excite the suspicion of the court, the propounder must remove all legitimate suspicions before the document can be accepted as the last will of the testator.

5. It is in connection with wills, the execution of which is surrounded by suspicious circumstances that the test of satisfaction of the judicial conscience has been evolved. That test emphasises that in determining the question as to whether an instrument produced before the court is the last will of the testator, the court is called upon to decide a solemn question and by reason of suspicious circumstances the court has to be satisfied fully that the will has been validly executed by the testator.

6. If a caveator alleges fraud, undue influence, coercion etc. in regard to the execution of the will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the will may raise a doubt as to whether the testator was acting of his own free will. And then it is a part of the initial onus of the propounder to remove all reasonable doubts in the matter.”

36. In **Shiva Kumar & Others v. Sharanabasappa & Ors.** (2021) 11 SCC 277, the Supreme Court has reiterated the principles applicable, as under:

*“12. For what has been noticed hereinabove, the relevant principles governing the adjudicatory process concerning proof of a will could be broadly summarised as follows:
12.1. Ordinarily, a will has to be proved like any other document; the test to be applied being the usual test of the satisfaction of the prudent mind. Alike the principles governing the proof of other documents, in the case of*



will too, the proof with mathematical accuracy is not to be insisted upon.

12.2. Since as per Section 63 of the Succession Act, a will is required to be attested, it cannot be used as evidence until at least one attesting witness has been called for the purpose of proving its execution, if there be an attesting witness alive and capable of giving evidence.

12.3. The unique feature of a will is that it speaks from the death of the testator and, therefore, the maker thereof is not available for deposing about the circumstances in which the same was executed. This introduces an element of solemnity in the decision of the question as to whether the document propounded is the last will of the testator. The initial onus, naturally, lies on the propounder but the same can be taken to have been primarily discharged on proof of the essential facts which go into the making of a will.

12.4. The case in which the execution of the will is surrounded by suspicious circumstances stands on a different footing. The presence of suspicious circumstances makes the onus heavier on the propounder and, therefore, in cases where the circumstances attendant upon the execution of the document give rise to suspicion, the propounder must remove all legitimate suspicions before the document can be accepted as the last will of the testator.

12.5. If a person challenging the will alleges fabrication or alleges fraud, undue influence, coercion et cetera in regard to the execution of the will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the will may give rise to the doubt or as to whether the will had indeed been executed by the testator and/or as to whether the testator was acting of his own free will. In such eventuality, it is again a part of the initial onus of the propounder to remove all reasonable doubts in the matter.

12.6. A circumstance is “suspicious” when it is not normal or is “not normally expected in a normal situation or is not expected of a normal person”. As put by this Court, the suspicious



features must be “real, germane and valid” and not merely the “fantasy of the doubting mind”.

12.7. As to whether any particular feature or a set of features qualify as “suspicious” would depend on the facts and circumstances of each case. A shaky or doubtful signature; a feeble or uncertain mind of the testator; an unfair disposition of property; an unjust exclusion of the legal heirs and particularly the dependants; an active or leading part in making of the will by the beneficiary thereunder et cetera are some of the circumstances which may give rise to suspicion. The circumstances abovenoted are only illustrative and by no means exhaustive because there could be any circumstance or set of circumstances which may give rise to legitimate suspicion about the execution of the will. On the other hand, any of the circumstances qualifying as being suspicious could be legitimately explained by the propounder. However, such suspicion or suspicions cannot be removed by mere proof of sound and disposing state of mind of the testator and his signature coupled with the proof of attestation.

12.8. The test of satisfaction of the judicial conscience comes into operation when a document propounded as the will of the testator is surrounded by suspicious circumstance(s). While applying such test, the court would address itself to the solemn questions as to whether the testator had signed the will while being aware of its contents and after understanding the nature and effect of the dispositions in the will?

12.9. In the ultimate analysis, where the execution of a will is shrouded in suspicion, it is a matter essentially of the judicial conscience of the court and the party which sets up the will has to offer cogent and convincing explanation of the suspicious circumstances surrounding the will.”

37. Reference also needs to be placed on **Murthy & Ors. v. C.**



the precedents on the subject, the Supreme Court reiterated that the onus is placed on the propounder of the Will to remove all suspicious circumstances with regard to the execution of the Will.

Consideration of the facts of the present petition on the above principles:

38. Now applying the above tests to the facts of the present case, what is important to be considered is the effect of the verification by Late Sh. Ram Narain on the original petition. In the original petition filed by the petitioner, the petitioner had attached the verification of the petition by Late Sh. Ram Narain, who stated that the Testator had put his signature on the Will in his presence and in the presence of the other witnesses. The same reads as under:

“Verification:

I, Ram Narain S/o Late Sh. Bharte Ram, R/o Village Bamnoli, P.O. Dhul Siras, New Delhi-110077 do hereby solemnly affirm and declare on this ... day of April, 2015 that I know the deceased who was my close friend and he executed the will in my presence and after understanding the content thereof the deceased put his signature on the will in my presence and in the presence of another witness namely Sh.M.L. Jindal and each of us signed the same and/ or put our thumb impression in the presence of each other and I can also identify my signatures on the said Will.

*Sd/-
(Ram Narain)”*

(Emphasis supplied)

39. In the affidavit filed with the petition, however, Late Sh. Ram Narain has clearly stated that the Testator has put his thumb



impressions on the alleged Will. The relevant paragraph from the affidavit is reproduced hereinbelow:

“1. That the Will dated 11th April, 2013 executed by late Shri Karan Singh and has put his thumb impression by late Shri Karan Singh (who died on 28th April, 2013) in my presence and I am one of the Witness in the said Will. At the time of execution of the said Will Late Karan Singh was having sound disposing mind.”

(Emphasis supplied)

40. The learned counsel for the petitioner has stated that there was a clerical mistake in the petition which was, thereafter, corrected by way of an amendment. I find merit in this submission. There appears to be a mistake in the Verification, however, in the peculiar facts of the case, this mistake would have a vital bearing on the outcome of the petition.

41. What is relevant is that the alleged Will is claimed to have been executed on 11.04.2013. It is an admitted fact that the Testator died almost immediately thereafter, on 28.04.2013. It has also been proved by the respondents, and not controverted by the petitioner, that the Testator used to sign all his documents, while the alleged Will dated 11.04.2013 bears his thumb impressions.

42. The petitioner seeks to explain to why the Testator affixed his thumb impressions rather than signing the Subject Will, by stating that in the month of March, 2013, that is, a month prior to the execution of the alleged Will, the Testator suffered stiffness in his hands. No medical record of the same has been produced by the petitioner. The



petitioner states that the Testator never sought any medical treatment for the same. This raises a huge suspicion on the validity of the Subject Will.

43. The alleged witness to the Subject Will, late Sh.Ram Narain, could not be cross-examined by the respondents, as he had died during the pendency of the petition. This is where the earlier alleged clerical mistake in his Verification will become relevant. His affidavit, without cross examination, cannot be accepted. He had earlier, even assuming inadvertently, stated that the Testator had affixed his signatures to the Will, which admittedly is incorrect. Was he, therefore, signing important document like the verification to the petition without even reading the same. No weightage can, therefore, be placed on his affidavit.

44. Though, the petitioner produced Mr.Ashok Kumar, son of late Sh.Ram Narain, as a witness (PW-2), he could only affirm the signature of late Sh.Ram Narain, and his testimony cannot be accepted as evidence of due execution of the Subject Will by the Testator. His testimony that Sh.Ram Narain told him of the execution of the Will, is merely hearsay, and cannot be considered as a proof of the Subject Will.

45. The petitioner in his cross-examination has stated that the execution of the Subject Will was also witnessed by Mr.Satbir Rana (neighbour), Mr.Satish (cousin brother), the in-laws of respondent no.2, and Ms.Kusum Malik (mausi). The Subject Will is also claimed to have been notarized by a Notary Public, Sh.Zaheer Mian, Advocate. The Subject Will is also stated to be prepared by Mr.S.C.Jain, Advocate, who allegedly on the Subject Will itself attested to the fact



that the Testator is unable to sign the Will properly, and for this reason, his thumb impressions had been taken. None of these persons, however, were produced by the petitioner as witnesses in this petition.

46. Coupled with the above, is the exclusion of the respondent no.3 from the legacy of the Testator. The petitioner admits in his cross-examination that the Testator was having cordial relations with the respondent no.3.

47. Though, with the petition, the petitioner has filed certain photographs claiming that the same are of the time when the Testator executed the alleged Will, he has made no attempts/endeavors to prove the said photographs. No reliance can, therefore, be placed on the same.

48. In *Murthy & Ors. v. C. Saradambal & Ors.* (supra), the Supreme Court, in almost similar circumstances, held the Will as not proved, observing as under:-

“44. The date of the will (Ext. P-1) is 4-1-1978. The testator E. Srinivasa Pillai died on 19-1-1978, within a period of fifteen days from the date of execution of the will. Even on reading of the will, it is noted that the testator himself has stated that he was sick and getting weak even then he is stated to have “written” the will himself which is not believable. It has been deposed by PW 2, one of the attestors of the will, that the will could not be registered as the testator was unwell and in fact, he was bedridden. It has also come in evidence that the testator had suffered a paralytic stroke which had affected his speech, mobility of his right arm and right leg. He was bedridden for a period of ten months prior to his death. Taking the aforesaid two circumstances into consideration, a doubt is created as to whether the testator was in a sound and disposing state of mind at the time of making of the testament which was fifteen days prior to his death.



45. *No evidence of the doctor who was treating the testator has been placed on record so as to prove that the testator was in a sound and disposing state at the time of the execution of the will.*

46. *The fact that the testator died within a period of fifteen days from the date of the execution of the will, casts a doubt on the thinking capacity and the physical and mental faculties of the testator. The said suspicion in the mind of the court has not been removed by the propounder of the will i.e. first plaintiff by producing any contra medical evidence or the evidence of the doctor who was treating the testator prior to his death.*

47. *In this context, it would be useful to place reliance on Section 63 of the Succession Act, 1925 which categorically states that the testator has to sign on the will and the signature of the testator must be such that it would "intend" thereby to give effect to the writing of a will. Hence, the genuineness of the will must be proved by proving the intention of the testator to make the testament and for that, all steps which are required to be taken for making a valid testament must be proved by placing concrete evidence before the court.*

48. *In the instant case, there is no evidence as to whom the testator gave instructions to, to write the will. The scribe has also not been examined. It is also not known as to whether the assistance of an advocate or any other trustworthy person was taken by the testator in order to make the testament and bequeath the property to only the son of the testator."*

49. Though the respondent nos.2 and 3 have also not led any evidence, in the form of documentary proof or otherwise, to prove that the Testator was mentally not in a condition to execute the subject Will, as the initial burden to prove the Will lies on the petitioner, the



Conclusion:

50. In view of the above, it is concluded that the subject Will dated 11.04.2013 is surrounded with suspicious circumstances and the petitioner has been unable to discharge the burden of proof to dispel the same. It is held that the petitioner has been unable to prove the Will dated 11.04.2013.

51. The present petition is accordingly dismissed. There shall be no order as to costs.

NAVIN CHAWLA, J

July 4, 2023/KP/Arya/ss

