



\$-

* **IN THE HIGH COURT OF DELHI AT NEW DELHI****BEFORE****HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV**+ **RFA 835/2019 & CM APPL. 41708/2019**

Between: -

SMT. MEENU NANDA

W/O SHRI KAMALJEET SINGH NANDA

R/O X/926, CHAND MOHALLA,
GANESH PARK, GANDHI NAGAR,
DELHI

.....APPELLANT NO.1

KAMALJEET SINGH NANDA

S/O SHRI RANJEET SINGH NANDA

R/O X/926, CHAND MOHALLA,
GANESH PARK, GANDHI NAGAR,
DELHI.

.....APPELLANT NO.2

*(Through: Mr. T. S. Ahuja, Mr. Varun S. Ahuja and Ms. Ridhi Kapoor,
Advocates)***VERSUS****SH. KARTAR SINGH KOCHAR**

S/O LATE SHRI TAKHAT SINGH

R/O B-87, SECTOR-41, NOIDA, UP.

.....RESPONDENT

(Through: Mr. S. M. Chugh, Advocate)

%

Reserved on: 10.07.2024
Pronounced on: 07.08.2024

Signature Not Verified

Digitally Signed
By: MAANAS JAJORIA
Signing Date: 07.08.2024
19:09:50

Signature Not Verified

Digitally Signed
By: PURUSHAINDRA
KUMAR KAURAV

J U D G M E N T

This appeal under Section 96 of the Code of Civil Procedure, 1908 is directed against the final judgment and decree dated 30.05.2019 passed by Additional District Judge-03 East, Karkardooma Courts, Delhi decreeing the suit filed by the plaintiff/respondent herein for possession and permanent injunction.

DESCRIPTION OF PARTIES

2. The appellant no.1 is the wife of appellant no.2. The appellants herein were defendants before the trial court and the respondent herein was the original plaintiff.

3. The description of parties is represented in the tabular chart as under:-

S.No	Names of the parties	Before trial court	Before this Court
1	Smt. Meenu Nanda	Defendant No.2	Appellant no. 1
2	Sh. K.S. Nanda	Defendant No.1	Appellant no. 2
3	Sh. Kartar Singh Kochar	Plaintiff	Respondent

UNDISPUTED FACTUAL MATRIX

4. The brief facts of the case reveal that the property bearing no. X/926, measuring 475 sq. yards with structure in Khasra no. 119-121,

Chand Mohalla (Ganesh Park) Gandhi Nagar, Delhi (hereinafter referred to as '*subject property*') was originally owned by the late Sh. Sukha Singh, grandfather of respondent.

5. The grandfather of the respondent expired on 24.10.1971 and the subject property was inherited by his son late Sh. Takhat Singh, who died on 07.08.1984 and left behind the following legal heirs:-

A. Smt. Harbhajan Kaur (Widow)

B. Sh. Kartar Singh (Son, respondent/plaintiff)

C. Smt. Satnam Kaur [Widow of the deceased son, Sh. Harjit Singh (who died in the year 2003)]

6. On 22.01.2004, Smt. Harbhajan Kaur (respondent's mother) executed a registered relinquishment deed (Ex.PW 1/2) in favour of her daughter-in-law Smt. Satnam Kaur (spouse of Late Sh. Harjit Singh) *qua* her undivided share in the subject property. Smt. Harbhajan Kaur died in the year 2004.

7. Smt. Satnam Kaur, acting as the absolute owner of the subject property, sold 217 sq. yards of the subject property to the respondent *vide* a registered sale deed dated 07.03.2006 and the remaining portion of the subject property continued to remain in possession of Smt. Satnam Kaur till her demise on 04.05.2008 and she died issueless.

RESPONDENT/PLAINTIFF'S CASE

8. The respondent, while instituting the Civil Suit stated that as per Section 15 of the Hindu Succession Act, 1956 and the Schedule attached thereto, he inherited the rights of the deceased Smt. Satnam Kaur, and therefore, the title and the interest in the remaining subject property devolved upon him. As per the plaint, he stated that the

appellants, who claim themselves to be the distant relatives of the deceased Smt. Satnam Kaur, has no interest or title towards the subject property and the appellants used to pay regular visits to the deceased Smt. Satnam Kaur. He further stated that by taking advantage of the old age of the deceased, they removed all household articles, jewellery, other items etc. and placed a lock on the subject property of the deceased. The respondent further stated that he came to India on 05.02.2011. He visited the subject property around 10.02.2011 and contacted the appellants for the delivery of the keys but they refused to deliver them. The respondent, therefore, instituted the civil suit seeking to restrained the appellants, their servants, agents, etc. from selling, gifting, mortgaging, leasing and creating any type of third-party interests in the subject property in addition to seeking a decree of possession in his favour.

APPELLANTS/DEFENDANTS' CASE

9. While filing a written statement, it was stated that appellant no.1 was the exclusive owner of the subject property in terms of the Will dated 10.12.2007 (Ex.DW 1/1) executed by Smt. Satnam Kaur. The appellant no.1 claimed to have been residing in the subject property for several years and to have taken care of the deceased Smt. Satnam Kaur. The appellants stated that the respondent, who has been residing in the USA for the last several years, never cared for the deceased Smt. Satnam Kaur and never visited the subject property. According to appellants, Smt. Satnam Kaur was the real sister of Sh. Harbhajan Singh (father of appellant no.1) and Sh. Jaswant Singh. Smt. Satnam Kaur was married to Sh. Harjit Singh and they were issueless. After Sh. Harjit Singh's demise in 2003, both Sh. Harbhajan Singh (father of appellant no.1) and Sh. Jaswant Singh started living in

the subject property as their sister Smt. Satnam Kaur was left alone. Sh. Harbhajan Singh (father of appellant no.1) also passed away in 2005 and Sh. Jaswant Singh died unmarried in 2007. Appellant no.1 also started to live there.

10. Appellant no.1, Smt. Meenu Nanda is the only daughter of Sh. Harbhajan Singh i.e., the only niece of Smt. Satnam Kaur. After the demise of Sh. Harbhajan Singh and Sh. Jaswant Singh, appellant no.1 was the only person who looked after Smt. Satnam Kaur. She served Smt. Satnam Kaur during her lifetime. Smt. Satnam Kaur possessed the subject property as the owner and out of natural love and affection, she executed the Will in question, bequeathing the subject property as well as the movables etc to appellant no.1.

11. The trial court after hearing the parties, framed following issues, which are reproduced as under:-

“(i) Is the plaintiff entitled to a decree of possession of the property at X-926 situated in Khasra No. 119 to 121, Abadi Chand Mohalla (Ganesh Park), Gandhi Nagar, Delhi? OPP

(ii) Is the Will dated 10th December 2007 genuine and if yes, is Defendant no.2 the absolute owner of the suit property by virtue of the Will dated 10th December 2007? OPD

(iii) Has the plaintiff suppressed material facts and the effect thereof? OPD

(iv) Has the plaint been properly valued for the purposes of court fees and jurisdiction? OPD

(v) Relief”

12. Before the learned Trial Court, two witnesses were examined on behalf of the respondent namely PW-1 Sh. Kartar Singh (plaintiff /respondent himself), PW-2 Sh. Shakti Singh, Data Entry Operator from the office of Sub-Registrar, 8 Geeta colony, Delhi-31; and three witnesses were examined by the appellants namely, Smt. Meenu

Nanda DW-1 (appellant no.1), Sh. Kamaljeet Singh Nanda DW-2 (appellant no.2) and Smt. Baljeet Kaur DW-3 who is the next door neighbor to the subject property and is also an attesting witness to the Will dated 10.12.2007.

13. After recording and appreciating the evidence led by the respective parties, the trial court decreed the suit in the following terms:-

“29. Relief - Plaintiffs suit stands decreed in the following terms: - (A) Plaintiff is entitled to the relief of possession of the property in dispute i.e. property no. X-926 situated in Khasra No. 119 to 121, Abadi Chand Mohalla (Ganesh Park), Gandhi Nagar, Delhi (as shown bounded in red colour in the site plan Ex. PW1/4), (B) Defendants are hereby restrained from selling, gifting, mortgaging, leasing or creating any third party interest in the property in dispute, and (C) Costs of the suit awarded to the plaintiff.

30. Decree sheet be drawn up. File be consigned to record room.”

14. The appellants, therefore, challenged the impugned judgment and decree before this Court on various counts.

APPELLANTS' SUBMISSIONS

15. Mr. T. S. Ahuja, learned counsel appearing for the appellants has made the following broad submissions:-

15.1 He submitted that the trial court has gravely erred in decreeing the Civil Suit on the basis of irrelevant material and has given erroneous findings. He submitted that the Will was duly proved by testimonies of the attesting witnesses, who unequivocally supported the factum of execution of a lawful Will. He submitted that the trial court has exceeded its jurisdiction in finding fault with the Will, while taking into

consideration the minor discrepancies which are bound to occur in the evidence of the attesting witnesses, if the evidence is recorded after substantial time.

15.2 He further submitted that when no specific questions were put to attesting witnesses with respect to the discrepancies relied upon by the trial court, the trial court ought not to have considered the aforementioned aspects. According to him, the respondent moved to the USA in 1957 and had only come for a while in the year 1979 and thereafter in the year 2011. He had never taken care of the deceased Smt. Satnam Kaur, had not maintained any relations with his blood relatives, never attended the funeral of any of his close relatives or parents and merely to usurp the property of the deceased he instituted the suit.

15.3 He submitted that when the identities of the executant and the person in whose favour the Will was executed are not disputed, the execution of documents was not controverted, and the contents of the Will are substantially proved by the attesting witnesses then merely reasons that from where the typewriter was brought or whether the Will was typed in Hindi or English will have no material bearing to question the execution of the Will itself. He has extensively read over the evidence of the witnesses and has taken the Court to the findings of the trial court. He, therefore, strongly criticised the manner in which the trial court has considered irrelevant aspects and has decreed the suit. He has also placed reliance on the decisions of the Supreme Court in the

case of *Dhani Ram v. Shiv Singh*¹ and *S.R.Srinivasa v. S.Padmavatham*².

RESPONDENT'S SUBMISSIONS

16. *Per contra*, Mr. S. M. Chugh, learned counsel appearing for the respondent/plaintiff vehemently opposed the submissions made by the appellants and submitted that the trial court had rightly decreed the suit while holding that the appellants were not able to prove the Will dated 10.12.2007 and miserably failed to discharge their onus to prove Issue no. 2 in their favour. He, therefore, has taken this Court to impugned judgment and decree and has submitted that the evidence of DW-1, DW-2, and DW-3 are in stark contravention of each other.

17. He further submitted that a mere plain reading of the testimonies of the witnesses would reveal that they do not inspire any confidence of this Court and by no stretch of imagination, such inconsistent evidence could be the basis to prove the execution of a Will. To substantiate his submissions, he has placed reliance on a decision of this Court in the case of *Vidya Sagar Soni v. State and Ors.*,³ and submitted that under the facts of the present case, no interference is called for.

ANALYSIS

18. I have heard the learned counsel appearing for the parties and perused the record. While reserving the judgment on 10.07.2024, the Court granted liberty to the parties to place written submissions alongwith relevant decisions by 15.07.2024, however, they have not

¹ 2023 SCC OnLine SC 1263.

² (2010) 5 SCC 274.

³ 2006 SCC OnLine Del 965.

filed the same and therefore, their right to file the written submissions stands closed and the Court deems it fit to proceed on basis of the record as it exists on that date.

19. The first and foremost issue which needs immediate consideration is whether the Will dated 10.12.2007 has been legally executed and fulfils the essentials of a valid Will?

20. Before proceeding to deal with the aforesaid issue, it would be appropriate to have a look at provisions of Section 68 of the Indian Evidence Act, 1872 (hereinafter referred to as '*Evidence Act*') which delineates the essential requirements in law to prove a Will. Section 68 of the Evidence Act reads as under:-

“68. Proof of execution of document required by law to be attested. - *If a document is required by law to be attested, it shall not be used as evidence until 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:*

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.”

21. Section 63 of the Indian Succession Act, 1925 (hereinafter referred to as '*Succession Act*') prescribes the mode and method of execution of a Will and to the extent relevant, it 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).

(b).

(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 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.”

22. The Supreme Court in the case of **Janki Narayan Bhor v. Narayan Namdev Kadam**⁴, has held that to prove that a Will has been validly executed, the requirements in clauses (a), (b) and (c) of Section 63 of the Succession Act have to be complied with. The Will has to be attested by two or more witnesses and each of those witnesses must have seen the testator, sign or affix his mark to the Will or must have seen some other person sign the Will in the presence of and by the directions of the testator or must have received from the testator a personal knowledge of his signature or mark of the signature or mark of such other persons, and each of these witnesses has to sign the Will in the presence of the testator, separately in point of time or together at the same time.

23. It was further held that a person propounding a Will has to prove that the Will was duly and validly executed and that cannot be done by simply proving that the signature on the Will was that of the testator, as the propounder must also prove that the attestations were made properly, as required by Section 63(c) of the Succession Act. The apposite observations of the Supreme Court have been quoted and

approved in a later decision in the case of *Lalitaben Jayantilal Popat v. Pragnaben Jamnadas Kataria*⁵.

24. Undoubtedly, as has been held in the case of *Shyamlal Ghosh v. State of West Bengal*⁶, that where evidence was given after a lapse of several years, in the context of the attestation of a Will, contradictions of minor nature, should not be taken to be a suspicious circumstance, as memory would fade after a lapse of a long period of time. However, the essential requirements for proving valid execution of a Will are not completely dispensed with.

25. Recently, the Supreme Court in the case of *Meena Pradhan v. Kamla Pradhan*⁷, while relying on the earlier decisions of *H. Venkatachala Iyengar v. B.N. Thimmajamma*⁸, *Bhagwan Kaur v. Kartar Kaur*⁹, *Janki Narayan Bhoir v. Narayan Namdeo Kadam*¹⁰, *Yumnam Ongbi Tampha Ibema Devi v. Yumnam Joykumar Singh*¹¹, and *Shivakumar v. Sharanabasappa*¹² set out the legal principles for ascertaining the validity of the Will. The pertinent observations of the Court in the said decision read as follows:-

“10.1. The court has to consider two aspects : firstly, that the will is executed by the testator, and secondly, that it was the last will executed by him;

10.2. It is not required to be proved with mathematical accuracy, but the test of satisfaction of the prudent mind has to be applied.

⁵ (2008) 15 SCC 365.

⁶ (2012) 7 SCC 646.

⁷ (2023) 9 SCC 734.

⁸ 1959 Supp (1) SCR 426.

⁹ (1994) 5 SCC 135.

¹⁰ (2003) 2 SCC 91.

¹¹ (2009) 4 SCC 780.

¹² (2021) 11 SCC 277.

10.3. *A will is required to fulfil all the formalities required under Section 63 of the Succession Act, that is to say:*

(a) 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 the said signature or affixation shall show that it was intended to give effect to the writing as a will;

(b) It is mandatory to get it attested by two or more witnesses, though no particular form of attestation is necessary;

(c) Each of the attesting witnesses must have 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 such signatures;

(d) Each of the attesting witnesses shall sign the will in the presence of the testator, however, the presence of all witnesses at the same time is not required;

10.4. *For the purpose of proving the execution of the will, at least one of the attesting witnesses, who is alive, subject to the process of court, and capable of giving evidence, shall be examined;*

10.5. *The attesting witness should speak not only about the testator's signatures but also that each of the witnesses had signed the will in the presence of the testator;*

10.6. *If one attesting witness can prove the execution of the will, the examination of other attesting witnesses can be dispensed with;*

10.7. *Where one attesting witness examined to prove the will fails to prove its due execution, then the other available attesting witness has to be called to supplement his evidence;*

10.8. *Whenever there exists any suspicion as to the execution of the will, it is the responsibility of the propounder to remove all legitimate suspicions before it can be accepted as the testator's last will. In such cases, the initial onus on the propounder becomes heavier.*

10.9. *The test of judicial conscience has been evolved for dealing with those cases where the execution of the will is surrounded by suspicious circumstances. It requires to consider factors such as awareness of the testator as to the content as well as the consequences, nature and effect of the dispositions in the will; sound, certain and disposing state of*

mind and memory of the testator at the time of execution; testator executed the will while acting on his own free will;

10.10. *One who alleges fraud, fabrication, undue influence et cetera has to prove the same. However, even in the absence of such allegations, if there are circumstances giving rise to doubt, then it becomes the duty of the propounder to dispel such suspicious circumstances by giving a cogent and convincing explanation.*

10.11. *Suspicious circumstances must be “real, germane and valid” and not merely “the fantasy of the doubting mind [Shivakumar v. Sharanabasappa, (2021) 11 SCC 277]”. Whether a particular feature would qualify as “suspicious” would depend on the facts and circumstances of each case. Any circumstance raising suspicion legitimate in nature would qualify as a suspicious circumstance, for example, 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, etc.*

11. *In short, apart from statutory compliance, broadly it has to be proved that : (a) the testator signed the will out of his own free will, (b) at the time of execution he had a sound state of mind, (c) he was aware of the nature and effect thereof and (d) the will was not executed under any suspicious circumstances.”*

26. Elementary it is, however, to be noted that the legal burden to prove due execution always lies upon the person propounding a Will. The propounder must satisfy the judicial conscience of the Court that the instrument so propounded is the last Will of a free and capable testator. The Supreme Court in the case of ***H. Venkatachala Iyengar*** (*supra*) has held that instances of suspicious circumstances would be alleged signatures of the testators being shaky and doubtful, conditions of the testator's mind being feeble and debilitated, the request being unnatural, improbable or unfair. Apart from these infirmities, propounders taking a prominent part in the execution of the Will, more so when substantial benefits flow to them, are all presumptive of the Will not being duly executed and of suspicious circumstances.

27. Bearing in mind the aforesaid legal principles, it is seen that the onus of proving Issue No. 2 rested on the appellants and they have examined three witnesses as has been noted hereinabove. DW-1, appellant no.1 herself was a beneficiary. She states *inter alia* that the deceased Smt. Satnam Kaur deputed her husband to call the document writer. At the time of writing of the Will, Smt. Satnam Kaur, appellant no.1 herself, her husband, Smt. Baljeet Kaur (DW-3), and the document writer were present. She further states that Smt. Baljeet Kaur (DW-3) was a close neighbour of Smt. Satnam Kaur and Smt. Satnam Kaur had affectionate relations with her.

28. DW-2, Sh. Kamaljit Singh Nanda, happens to be the appellant no.2 here and is the husband of appellant no. 1, and is one of the attesting witnesses. He stated that the deceased Smt. Satnam Kaur put her thumb impression on the Will. The Will was typed by a typist under the dictation of the deceased Smt. Satnam Kaur. The dictation was given by the Advocate in English, Smt. Satnam Kaur directly contacted the Advocate etc.

29. The DW-3 Smt. Baljeet Kaur, the other attesting witness stated that the deceased Smt. Satnam Kaur telephoned the Advocate and called the said Advocate at her residence. The telephone call was made in her presence. The deceased executed Will in the presence of the appellants and her husband besides the Advocate and the Typist.

30. After going through the cross-examinations of the DW-1, DW-2 and DW-3, the trial court came to the conclusion that the Will in question was a forged document. The entire fulcrum of the trial court's reasoning, as enumerated in paragraph 20 of the impugned decision, rests on the rationale that there was no evidence to show from where

the typewriter was procured, or whether the Will was read in Hindi or English, or whether there was a signature of the Advocate on the Will etc. For the sake of convenience, the relevant extracts of the impugned decision are reproduced herein:-

“20. The Will appears to have been typed with a manual typewriter and consists of two sheets. Oral evidence of DW1, DW2 and DW3 makes it appear that the Will was drafted and executed in a single sitting at the residence of the deceased. It contains no name(s) of any Advocate, or any typist, much less any document writer. It does not, on the face of it, refer to having been drafted by any Advocate or any document writer. The identities of the so-called document writer, the Advocate and the typist are unknown and shrouded in mystery; none of them have been examined. Further, it is not defendants' case that they had a typewriter at their house. But, neither do the defendants say that the typewriter had been brought by the document writer, or the advocate, or the typist. It has not come in defendants' evidence as to how the typewriter was procured at deceased's residence. Next, DW1 and DW2 contradict each other on the aspect as to who it was who had drafted the Will. DW1 says that it was a document writer who had drafted the Will. On the other hand DW2 says that it was actually an Advocate together with a typist who had drafted the Will. Needless to say, a document writer need not necessarily be an Advocate. DW1 and DW2 also differ on the manner of drafting of the Will. From the evidence of DW1 it appears that document writer had himself typed the Will, albeit on instructions of the deceased. However, the evidence of DW2 shows that deceased's instructions were conveyed to the unknown Advocate who then gave dictation in English to the typist. DW1 and DW2 also differ as to who had summoned the draftsman, be it the document writer or the Advocate together with the typist. DW1 says that deceased Smt. Satnam Kaur deputed her husband to call the document writer. On the other hand, DW2 says that Smt. Satnam Kaur directly contacted the Advocate. As per DW3, deceased Satnam Kaur had telephoned the Advocate. Either ways draftsman's identity could not have remained a mystery and unbeknownst to all. If it was Kamaljeet Singh Nanda, who had called the document writer (as deposed by DW1 Ms. Meenu Nanda) then he ought to have known him. If deceased Satnam Kaur had herself contacted the Advocate telephonically then too the defendants would have, in all probability, known to him. The Advocate called by Satnam Kaur would certainly not have been a stranger, but someone

known to her. Defendants had been living with Satnam Kaur for the last several years. And consequently, it is unlikely that the defendants would not actually know or even endeavoured to know the identity of that Advocate, if at all summoned by Satnam Kaur herself. The fact that the DW1 and DW2 differ on very-very vital aspects of execution of the Will cannot be explained away by saying that memory of a witness fails with the passage of time. The aspects on which they differ are vital, fundamental and go to the root of the matter. The issue as to whether the Will had been drafted by a document writer all alone or by an Advocate through dictations in English to a typist is something that is vital and fundamental and any contradiction on this score would be a material one. And this would be more so when identities of the document writer /Advocate /typist remain inscrutable. Further, the evidence on record does not disclose whether narration of the Will by Satnam Kaur to the draftsman was in Hindi or in Punjabi or in some other language. Next, defendants no. 1 and 2, who are the beneficiary and the attesting witness respectively as also husband and wife duo, appear to have played a major role in execution of the Will. These suspicious circumstances indicate that the Will was not executed in the manner in which the defendants want this Court to believe and there is actually something more to it.....It may be mentioned here that in the absence of complete information about the Will in examination-in-chief of DW1, DW2 and DW3 no benefit of absence of cross-examination, if any, in that regard can be given to the defendants. It was primarily for the defendants to set forth all the requisite details about the Will in their examination-in-chief. Incomplete information sought to be disclosed regarding the Will cannot enure to defendants' benefit merely because there was no cross-examination on certain aspects thereof. This is for the reason that due execution of will is a matter of satisfaction of judicial conscience."

31. At this juncture, it is relevant to point out that one grave error that the trial court committed was that instead of highlighting the inconsistencies, if any, in the statements of DW2 and DW3, who were the attesting witnesses, it focused on the testimonies of DW1 and DW2. It is the trite law as enumerated hereinabove, that in order to raise doubts over the genuineness of the Will, the testimonies of the attesting witnesses are of elementary importance. This proposition of law is not only borne out from the precedents discussed above but also

from a plain meaning of Section 68 of the Evidence Act. For the sake of convenience, the cross-examination of DW2 and DW3 are reproduced herein below:-

DW2 K.S. Nanda (Attesting Witness)

The Will Ex.DW1/1 was written at the residence of deceased Satnam Kaur. The same was got typed by the typist under the instructions of deceased Smt. Satnam Kaur. It is correct that the dictation was given by the Advocate in English. Smt.Satnam Kaur directly contacted the Advocate. At the time of preparation of the Will Ex.DW1/1, deceased Satnam Kaur, my wife, Advocate, typist and Smt. Baljeet Kaur were present. Deceased Satnam Kaur put her thumb impressions on the Will Ex.DW1/1 first.

It is wrong to suggest that the Will Ex.DW1/1 is a forged document or that the same was written by my wife with my help. It is also wrong to suggest that deceased Smt. Satnam Kaur did not put her thumb impression on the Will Ex.DW1/1 at point A. It is also wrong to suggest that I along with my wife used the undue influence upon the deceased Smt. Satnam Kaur at the time of execution of the Will. It is also wrong to suggest that deceased Smt. Satnam Kaur did not want to execute nor executed any such Will Ex.DW1/1. It is also wrong to suggest that Smt. Baljeet Kaur was not present at the time of execution of the Will Ex.DW1/1. It is further wrong to suggest that the Ex.DW1/1 was prepared by my wife in connivance with me at the office of the Advocate. It is further wrong to suggest that I am deposing falsely.

DW3 Baljeet Kaur (Attesting Witness)

The deceased Smt. Satnam Kaur telephone the advocate and called the advocate at her residence for the purpose of execution of the WILL in question. The telephone call was made in my presence in the afternoon, I happened to be in the residence of the deceased Smt. Satnama Kaur. At the time of writing and execution of the WILL, I along with Smt. Meenu Nanda, her husband Sh. K. S. Nanda, one advocate and one typist were present.

The WILL was got typed under the instructions of the deceased Smt. Satnam Kaur. Smt. Satnam Kaur was not suffering from any disease except routine type of disease due to old age like fever etc. Smt. Satnam Kaur put her thumb impression first on the WILL before signature of any other person on the WILL. Smt. Satnam Kaur used to put her

thumb impression and did not used to put her signatures. After putting the thumb impression of Satnam Kaur, I put my signature on the WILL and thereafter the husband of Smt. Meenu Nanda put his signature on the said WILL. Smt. Meenu Nanda is the niece of deceased Satnam Kaur. It is wrong to suggest that the WILL was a forged document and same was not executed by the deceased nor the deceased put any thumb impression on the said WILL. It is wrong to suggest that I am conniving with Smt. Meenu Nanda and her husband in order to grab the property.

15 As it is evident from the bare perusal of the statements of the attesting witnesses that both the attesting witnesses unequivocally deposed that Smt. Satnam Kaur had called the Advocate and expressed her desire for a Will, the Will was typed under her instructions and she affixed her thumb imprint before the attesting witnesses. Moreover, the statement of DW3 reveals that after Smt. Satnam Kaur had put her thumb imprint and DW3 and DW2 put their signatures. Thus, the statements of the attesting witnesses make it clear that there is no inconsistency with respect to the manner of drafting the Will and the essentials of a valid Will. Therefore, the initial burden to prove the genuineness of the Will was rightly discharged by the attesting witnesses and the trial court gravely erred in not appreciating the same. The evidence of DW2 and DW3 is consistent and creditworthy and there was no reason for the Trial Court to discard the same except on a presumed suspicion. The said course of action was impermissible in law as after the primary onus was successfully discharged by the propounder of the Will, it was for the opposite party to impeach the same.

32. Furthermore, once the initial onus on the propounders of the Will stands discharged in terms of Section 63 of the Succession Act and Section 68 of the Evidence Act, it is upon the rival contestant to show any suspicious circumstances to raise any clouds of doubts over

the validity of a Will. The observations of the Supreme Court in this regard in the case of **Meenakshiammal (Dead) through Lrs. v. Chandrasekharan**¹³, reads as under:-

“19. In the case of Chinmoyee Saha v. Debendra Lal Saha-it has been held that if the propounder takes a prominent part in the execution of the will, which confers a substantial benefit on him, the propounder is required to remove the doubts by clear and satisfactory evidence. Once the propounder proves that the will was signed by the testator, that he was at the relevant time in a sound disposing state of mind, that he understood the nature and effect of the disposition and put his signature out of his own free will, and that he signed it in presence of the witnesses who attested it in his presence, the onus, which rests on the propounder, is discharged and when allegation of undue influence, fraud or coercion is made by the caveator, the onus is on the caveator to prove the same.

20. In the case of Ryali Kameswara Rao v. Bendapudi Suryaprakasarao this Court while discussing the provisions of Section 63 of the Succession Act, 1925, has held that the suspicion alleged must be one inherent in the transaction itself and not the doubt that may arise from conflict of testimony which becomes apparent on an investigation of the transaction. That suspicious circumstances cannot be defined precisely. They cannot be enumerated exhaustively. They must depend upon the facts of each case. When a question arises as to whether a will is genuine or forged, normally the fact that nothing can be said against the reasonable nature of its provisions will be a strong and material element in favour of the probabilities of the will. Whether a will has been executed by the testator in a sound and disposing state of mind is purely a question of fact, which will have to be decided in each case on the circumstances disclosed and the nature and quality of the evidence adduced. When the will is alleged to have been executed under undue influence, the onus of proving undue influence is upon the person making such allegation and mere presence of motive and opportunity are not enough.”

33. The decision in the case of **Madhukar D. Shende v. Tarabai Aba Shedage**¹⁴, is also of prime importance, wherein the Supreme

¹³ (2005) 1 SCC 280.

¹⁴ (2002) 2 SCC 85.

Court reiterated that the onus of showing any suspicious circumstance casting uncertainties over the validity of the Will rests on the rival contestant. The relevant observations of the Court read as under:-

*“8. The requirement of proof of a will is the same as any other document excepting that the evidence tendered in proof of a will should additionally satisfy the requirement of Section 63 of the Evidence Act, 1872. If after considering the matters before it, that is, the facts and circumstances as emanating from the material available on record of a given case, the court either believes that the will was duly executed by the testator or considers the existence of such fact so probable that any prudent person ought, under the circumstances of that particular case, to act upon the supposition that the will was duly executed by the testator, then the factum of execution of will shall be said to have been proved. The delicate structure of proof framed by a judicially trained mind cannot stand on weak foundation nor survive any inherent defects therein but at the same time ought not to be permitted to be demolished by wayward pelting of stones of suspicion and supposition by wayfarers and waylayers. What was told by Baron Alderson to the jury in *R. v. Hodge* may be apposite to some extent:*

‘The mind is apt to take a pleasure in adapting circumstances to one another and even in straining them a little, if need be, to force them to form parts of one connected whole, and the more ingenious the mind of the individual, the more likely was it, considering such matters, to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete.’

The conscience of the court has to be satisfied by the propounder of will adducing evidence so as to dispel any suspicions or unnatural circumstances attaching to a will provided that there is something unnatural or suspicious about the will. The law of evidence does not permit conjecture or suspicion having the place of legal proof nor permit them to demolish a fact otherwise proved by legal and convincing evidence. Well-founded suspicion may be a ground for closer scrutiny of evidence but suspicion alone cannot form the foundation of a judicial verdict - positive or negative.

9. It is well-settled that one who propounds a will must establish the competence of the testator to make the will at the time when it was executed. The onus is discharged by the

propounder adducing prima facie evidence proving the competence of the testator and execution of the will in the manner contemplated by law. The contestant opposing the will may bring material on record meeting such prima facie case in which event the onus would shift back on the propounder to satisfy the court affirmatively that the testator did know well the contents of the will and in sound disposing capacity executed the same. The factors, such as the will being a natural one or being registered or executed in such circumstances and ambience, as would leave no room for suspicion, assume significance. If there is nothing unnatural about the transaction and the evidence adduced satisfies the requirement of proving a will, the court would not return a finding of 'not proved' merely on account of certain assumed suspicion or supposition. Who are the persons propounding and supporting a will as against the person disputing the will and the pleadings of the parties would be relevant and of significance."

34. At this stage, it is apropos to lend credence to the observations of the Supreme Court made in paragraph no. 16 of **Derek A C Lobo v. Ulric M A Lobo**¹⁵, which give an imprimatur that once the preliminary weight on the propounders of the Will stands discharged, the responsibility would be on the contestant opposing to show *prima facie* the existence of suspicious circumstances so as to transfer the onus on the propounder to dispel them. As a natural corollary, without knowing the suspicious circumstances, the propounder would not be able to dispel them. Paragraph no. 16 of the said decision reads as under:-

"16. In the light of the aforesaid decisions, it can be safely said that once the burden to prove is discharged by the propounder in terms of Section 63 of the Succession Act and Section 68 of the Evidence Act, and by adducing prima facie evidence proving the competence of the testator, *the onus is on the contestant opposing to show prima facie the existence of suspicious circumstances so as to shift the onus on the propounder to dispel them. Without knowing the circumstances, which according to the contestant opposing are suspicious, how will the propounder be able to*

dispel them and to convince the court about its genuineness and validity. We are saying that the contestant opposing the Will has to raise surrounding suspicious circumstances specifically and not vaguely or in a general manner. A case of well-founded suspicion has to exist to cause shifting of onus back to the propounder once he discharged his burden to prove the execution of the Will. We may hasten to add that we shall not be understood to have held that failure of the party/parties to plead suspicious circumstances would automatically make the court to take a Will as validly proved even where the circumstance(s) raising doubt is inherent in the document. Certainly, in such circumstances the propounder has to convince the court and dispel such suspicious circumstances.”

35. Considering the case in hand, as highlighted hereinabove, the statements of the attesting witnesses show no inconsistencies with respect to the fulfilment of the statutory requirements of essentials of a valid Will, therefore, once the initial burden was discharged, the onus transposes to the rival contestant to show any presence of suspicious circumstances or raise any doubt over the sanctity of a Will.

36. In the present case, a bare perusal of the impugned judgment would show that the entire edifice of the trial court’s reasoning rested on the foundation that there was no evidence to show from where the typewriter was procured, or whether the Will was read in Hindi or English, or whether there was a signature of Advocate on the Will etc. However, the cross-examination of DW2 and DW3 as reproduced above would reveal that no categorical questions were put to the attesting witnesses regarding such aspersions, which surprisingly forms the entire basis of the trial court’s judgment. Once it is found that no such questions with respect to alleged suspicious circumstances were put to the attesting witnesses, there was no obligation on them to dispel the same before the Court as highlighted in the decisions cited above. In an adversarial proceeding, especially

in a civil proceeding, it is of utmost importance that before attaching importance to any adverse fact appearing against any party, a fair opportunity is given to that party to explain the same. The purpose of evidence in general and of cross-examination in particular is rooted in this principle. Therefore, on the conspectus of the settled legal position as enumerated in the decisions of the Supreme Court in ***Derek A C Lobo (supra)***, ***Madhukar D. Shende (supra)*** and ***Meenakshiammal (supra)***, the trial court committed a grave error while decreeing the suit in favour of the respondent on that score.

37. Before proceeding further, it is relevant to take a brief detour over some pertinent facts of the case revolving around the family discourse of the respondent. In his cross-examination, he accepted the fact that after the death of his brother, Smt. Satnam Kaur was living alone and her brothers started living alongwith her. He also accepted that he had not attended the funerals of his parents, brother and his sister-in-law i.e., the deceased Smt. Satnam Kaur. He also said that since 1959, he visited India only 7-8 times. Though he said, he helped Smt. Satnam Kaur financially, after the death of her husband, but he could not furnish any document to prove the same.

38. In light of such pertinent facts, it is not wrong to assume that after the death of her husband, Smt. Satnam Kaur was taken care of by her brothers who lived with her till their death and afterwards by Mrs. Meenu Nanda, who was the real niece of the deceased Smt. Satnam Kaur. In such a scenario, it is not improbable or there is remote possibility that out of love and affection, Smt. Satnam Kaur executed this Will in favour of Mrs. Meenu Nanda, who cared for her till her last breath. Moreover, the severance of the blood relations over the

caretaker, while drafting a Will does not make a Will invalid per se in

the eyes of the law. Reliance can be placed on the observations of the Supreme Court in the case of **Ramabai Padmakar Patil v. Rukminibai Vishnu Vekhande**¹⁶, on the aforesaid aspect, which reads as under:-

“8. A Will 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 heirs, there is no necessity at all of executing a Will. It is true that a propounder of the Will has to remove all suspicious circumstances. Suspicion means doubt, conjecture or mistrust. But the fact that natural heirs have either been excluded or a lesser share has been given to them, by itself without anything more, cannot be held to be a suspicious circumstance, especially in a case where the bequest has been made in favour of an offspring. In P.P.K. Gopalan Nambiar v. P.P.K. Balakrishnan Nambiar [1995 Supp (2) SCC 664 : AIR 1995 SC 1852] it has been held that it is the duty of the propounder of the Will to remove all the suspected features, but there must be real, germane and valid suspicious features and not fantasy of the doubting mind. In this case, the fact that the whole estate was given to the son under the Will depriving two daughters was held to be not a suspicious circumstance and the finding to the contrary recorded by the District Court and the High Court was reversed. In Pushpavathi v. Chandraraja Kadamba [(1973) 3 SCC 291 : AIR 1972 SC 2492] it has been held that if the propounder succeeds in removing the suspicious circumstance, the court would have to give effect to the Will, even if the Will might be unnatural in the sense that it has cut off wholly or in part the near relations. In Rabindra Nath Mukherjee v. Panchanan Banerjee [(1995) 4 SCC 459] it was observed that the circumstance of deprivation of natural heirs should not raise any suspicion because the whole idea behind execution of the Will is to interfere with the normal line of succession and so, natural heirs would be debarred in every case of Will. Of course, it may be that in some cases they are fully debarred and in some cases partly. The concurrent finding recorded by the District Court and the High Court for doubting the genuineness of the Will on the aforesaid ground was reversed.”

39. Reliance can be placed upon the decision of the Supreme Court in the case of **Savithri v. Karthyayani Amma**¹⁷, wherein it was again iterated that mere deprivation of the due share to the natural heirs does not *ipso facto* give birth to an assumption of suspicious circumstances sufficient for questioning the validity of a Will. The Supreme Court in the said decision observed as under:-

“21. We do not find in the fact situation obtaining herein that any such suspicious circumstance was existing. We are not unmindful of the fact that the court must satisfy its conscience before its genuineness is accepted. But what is necessary therefor, is a rational approach.

22. Deprivation of a due share to the natural heirs itself is not a factor which would lead to the conclusion that there exist suspicious circumstances. For the said purpose, as noticed hereinbefore, the background facts should also be taken into consideration. The son was not meeting his father. He had not been attending to him. He was not even meeting the expenses for his treatment from 1959, when he lost his job till his death in 1978. The testator was living with his sister and her children. If in that situation, if he executed a will in their favour, no exception thereto can be taken. Even then, something was left for the appellant.”

40. At this stage, reliance can be placed upon the decision of the Supreme Court in the case of **Uma Devi Nambiar v. T.C. Sidhan**¹⁸, wherein, while dealing with the law related to the essentials of a valid Will relied upon the decision of the Constitution Bench in the case of **Shashi Kumar Banerjee v. Subodh Kumar Banerjee**¹⁹ and observed that mere exclusion of the natural heirs or giving of lesser share to them, by itself, will not be considered to be a suspicious circumstance. The Court observed, *inter alia*, as under:-

“15. Section 63 of the Act deals with execution of unprivileged wills. It lays down that the testator shall sign or

¹⁷ 2007 SCC OnLine SC 1257.

¹⁸ (2004) 2 SCC 321.

¹⁹ AIR 1964 SC 529.

shall affix his mark to the will or it shall be signed by some other person in his presence and by his direction. It further lays down that the will shall be attested by two or more witnesses, each of whom has seen the testator signing or affixing his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator and each of the witnesses shall sign the will in the presence of the testator. Section 68 of the Indian Evidence Act, 1872 (in short "the Evidence Act") mandates examination of one attesting witness in proof of a will, whether registered or not. The law relating to the manner and onus of proof and also the duty cast upon the court while dealing with a case based upon a will has been examined in considerable detail in several decisions [H. Venkatachala Iyengar v. B.N. Thimmajamma, AIR 1959 SC 443 : 1959 Supp (1) SCR 426] ' [Purnima Debi v. Kumar Khagendra Narayan Deb, (1962) 3 SCR 195 : AIR 1962 SC 567] ' [Shashi Kumar Banerjee v. Subodh Kumar Banerjee, AIR 1964 SC 529] of this Court. ... A Constitution Bench of this Court in Shashi Kumar Banerjee case [Shashi Kumar Banerjee v. Subodh Kumar Banerjee, AIR 1964 SC 529] succinctly indicated the focal position in law as follows : (AIR p. 531, para 4)

'4. ... The mode of proving a will does not ordinarily differ from that of proving any other document except as to the special requirement of attestation prescribed in the case of a will by Section 63 of the Indian Succession Act. The onus of proving the will is on the propounder and in the absence of suspicious circumstances surrounding the execution of the will, proof of testamentary capacity and the signature of the testator as required by law is sufficient to discharge the onus. Where however there are suspicious circumstances, the onus is on the propounder to explain them to the satisfaction of the court before the court accepts the will as genuine. Where the caveator alleges undue influence, fraud and coercion, the onus is on him to prove the same. Even where there are no such pleas but the circumstances give rise to doubts, it is for the propounder to satisfy the conscience of the court. The suspicious circumstances may be as to the genuineness of the signature of the testator, the condition of the testator's mind, the dispositions made in the will being unnatural, improbable or unfair in the light of relevant circumstances or there might be other indications in the will to show that the testator's mind was not free. In such a case the court would naturally expect that all legitimate suspicion should

be completely removed before the document is accepted as the last will of the testator. If the propounder himself takes part in the execution of the will which confers a substantial benefit on him, that is also a circumstance to be taken into account, and the propounder is required to remove the doubts by clear and satisfactory evidence. If the propounder succeeds in removing the suspicious circumstances the court would grant probate, even if the will might be unnatural and might cut off wholly or in part near relations.'

16. A will is executed to alter the ordinary mode of succession and by the very nature of things, it is bound to result in either reducing or depriving the share of natural heirs. If a person intends his property to pass to his natural heirs, there is no necessity at all of executing a will. It is true that a propounder of the will has to remove all suspicious circumstances. Suspicion means doubt, conjecture or mistrust. **But the fact that natural heirs have either been excluded or a lesser share has been given to them, by itself without anything more, cannot be held to be a suspicious circumstance especially in a case where the bequest has been made in favour of an offspring. As held in P.P.K. Gopalan Nambiar v. P.P.K. Balakrishnan Nambiar [P.P.K. Gopalan Nambiar v. P.P.K. Balakrishnan Nambiar, 1995 Supp (2) SCC 664] , it is the duty of the propounder of the will to remove all the suspected features, but there must be real, germane and valid suspicious features and not fantasy of the doubting mind. It has been held that if the propounder succeeds in removing the suspicious circumstances, the court has to give effect to the will, even if the will might be unnatural in the sense that it has cut off wholly or in part near relations. ... In Rabindra Nath Mukherjee v. Panchanan Banerjee [Rabindra Nath Mukherjee v. Panchanan Banerjee, (1995) 4 SCC 459] , it was observed that the circumstance of deprivation of natural heirs should not raise any suspicion because the whole idea behind execution of the will is to interfere with the normal line of succession and so, natural heirs would be debarred in every case of will. Of course, it may be that in some cases they are fully debarred and in some cases partly."**

16 Therefore, in light of the consistent judicial pronouncements discussed above, it is amply clear that severance of the legal heirs from the subject property, in itself, does not give rise to any reasonable suspicion sufficient for questioning the validity of a Will

and moreover, when the facts of the case are crystal clear that it was the beneficiary/propounder, who served the testator and took care of her till her last breath, the purportedly suspicious circumstances of such nature hold no feet.

CONCLUSION

41. Therefore, on a conspectus of the settled legal position as enumerated above, authorities cited and arguments advanced, the Court comes to the conclusion that the trial court gravely erred in decreeing the suit in favour of the respondent. The appellants were successful in discharging their burden for proving the Will in question in accordance with the settled parameters, and the respondent failed to adduce any evidence, let aside any credible evidence, to establish any suspicious circumstances.

42. Accordingly, the appeal is allowed and the judgment and decree dated 30.05.2019 stand set aside alongwith pending applications. Consequently, the suit also stands dismissed.

43. The decree sheet be drawn accordingly.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

AUGUST 07, 2024/MJ