

**In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side**

**The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Uday Kumar**

F.A. No.55 of 2023

+

CAN 2 of 2024

+

CAN 3 of 2025

+

CAN 4 of 2025

**Smt. Sarojini Mondal and others
Vs.
Sukumar Naskar and others**

For the appellants	:	Mr. Sourav Sen, Sr. Adv., Mr. Partha Chakraborty, Mr. Muhammad Obaid, Ms. Debdatta Manna
For the respondent nos.1 & 2	:	Mr. Ayan Banerjee, Mr. Abhishek Verma, Mr. Atulya Sinha Verma, Ms. Brihanwita Debnath, Ms. Aparna Sarkar, Mr. Swaraj Naskar
For the respondent no. 3	:	Mr. Kushal Chatterjee, Mr. Debrup Choudhury
Heard on	:	26.06.2025, 10.07.2025 & 04.08.2025
Reserved on	:	04.08.2025
Judgment on	:	21.08.2025

Sabyasachi Bhattacharyya, J.:-

1. The objectors in a probate proceeding under Section 276 of the Indian Succession Act have preferred the present appeal against the grant of probate in respect of the last Will and testament dated January 7, 2004 of one Badal Chandra Naskar. By the said Will, the testator bequeathed his properties to the plaintiff/respondent no. 1 - Sukumar Naskar and proforma respondent no. 3 - Arabinda Naskar, his two sons, without granting anything to his five daughters, being the present appellants and the proforma respondent nos. 2 and 4. Learned senior counsel for the appellant assails the Will on the ground that the same was not read over and explained to the testator, who put his Left Thumb Impression (LTI) on the Will. There is no evidence on record to indicate that it was ever read over and explained, despite the testator having affixed his LTI, which itself vitiates the execution of the Will.
2. It is further argued that despite being literate, the testator put his LTI on the Will, which itself is a suspicious circumstance shrouding the execution of the Will.
3. Learned senior counsel argues that the due execution of the Will was never proved in terms of Section 63 of the Indian Succession Act, read with Section 68 of the Indian Evidence Act. There was patent contradiction between the depositions of the plaintiffs' witnesses. It is argued that PW 2, one of the grandsons of the testator (son of one of

the beneficiaries), an attesting witness, did not state in his evidence whether the other attesting witness signed in presence of the testator. Thus, the ingredients of Section 63(c) of the Succession Act have not been proved.

4. Learned senior counsel next contends that the testator, being the father of the contesting parties, was forcibly taken away from Namita Naskar, his youngest daughter, with whom he was residing, by the two sons/beneficiaries of the testator on July 4, 2004, whereas the Will was allegedly executed on June 7, 2004. Learned senior counsel also submits that an application under Order XLI Rule 27 of the Code of Civil Procedure, bearing CAN 3 of 2025, has been filed in the present appeal to bring on record the police complaint by the daughters of the testator in that regard dated January 28, 2004 and also a Will executed by the mother of the parties previously and the judgment dismissing the probate application in connection with the same. The mother of the parties, by the said Will, had granted her property purportedly to her grandsons as well.
5. Learned senior counsel for the appellants further submits that the testator admittedly executed and had registered two Wills on the self-same date, that is, on June 7, 2004, one of which being the present disputed one, being registered at Barasat, and the other at Salt Lake. The evidence of PW 1 indicates that the disputed Will was presented for such registration at the Registration Office at Barasat from 11:00 AM to

4:00 PM and, thus, the Salt Lake Will must have been the second and last Will of the testator. However, no probate was obtained in respect of the Will registered at Salt Lake where the grandsons, that is the sons of the testator's sons, were bequeathed his property. There is no explanation forthcoming as to how and why two Wills were registered, bequeathing the self-same property to different persons, on the self-same date. This itself, it is argued, shows that the testator was of a feeble mind, being 86 years old at the relevant juncture and the propounder and other beneficiaries, who were his two sons, were in a position to dictate terms to the testator. Hence, the Will was not executed by the testator of his own volition.

6. It is further argued that there was a reversal of beneficiaries and executor in the Wills executed by the mother and the father of the parties. In the mother's Will, the grandsons were the beneficiaries whereas one of her sons was the executor, while in the father's Will it was just the reverse. Also, the typist and scribe of both the Wills were the same. Thus, a prominent role was played by the beneficiaries of the present Will in the reverse manner in the execution of the two Wills, which, according to the appellants, also casts a doubt on the due execution of the impugned Will.
7. Learned senior counsel for the appellants contends that whereas the mother's Will says that the daughters were happily married and did not look after their parents, the father's Will states that two of the

daughters were married not according to his choice and hence he is not satisfied with the daughters. Thus, there is a discrepancy in the explanations for depriving the daughters between the mother's and the father's Will.

8. The extensive schedule given in the impugned Will, it is argued, was unusual for a man of 86 years, that is, the testator to give. This, combined with the fact that the testator was taken away forcibly immediately prior to the execution of the disputed Will and his LTI was put on the Will despite him being literate, go on to show that the Will was executed under compulsion and duress, the testator having been coerced to do so by the beneficiaries/sons.
9. Learned senior counsel cites *Kavita Kanwar v. Pamela Mehta and others*, reported at (2021) 11 SCC 209, for the proposition that the propounder has to satisfy the conscience of the Testamentary Court irrespective of whether any plea has been taken by the objectors. By relying on *Rani Pnrnima Debi and another v. Kumar Khagendra Narayan Deb and another*, reported at AIR 1962 SC 567, it is argued that mere registration does not dispel all doubt and, by relying on *Bhagwan Kaur w/o Bachan Singh v. Kartar Kaur w/o Bachan Singh and others*, reported at (1994) 5 SCC 135, it is argued that even if there is endorsement by the Registrar it is not enough to prove the due execution of the Will.

10. The learned trial Judge, it is argued by the appellants, relied on *Rabindra Nath Mukherjee and another v. Panchanan Banerjee (dead) By LRs and others*, reported at (1995) 4 SCC 459 but the facts of the said case were different from the present, as there is no endorsement by the Registrar in the present case to the effect that the disputed Will was read over and explained to the testator, as opposed to the cited judgment.
11. The court is to take a rational approach as per *Anil Kak v. Kumari Sharada Raje and others*, reported at (2008) 7 SCC 695 and it is germane as to whether the other witness signed at the time of attestation, which is to be duly proved by evidence, as held in *M.B. Ramesh (D) By LRS. v. K.M. Veeraje Urs (D) BY LRS. and others*, reported at (2013) 7 SCC 490. Apart from the above two judgments, learned senior counsel cites *Leela Rajgopal and others v. Kamala Menon Cocharan and others*, reported at (2014) 15 SCC 570, in support of the proposition that there has to be an overall assessment of the evidence and the cumulative effect of all the factors and circumstances must weigh with the court.
12. *Meena Pradhan and others v. Kamla Pradhan and another*, reported at (2023) 9 SCC 734 is cited to show how a Will is to be executed.
13. Learned senior counsel appearing for the appellants cites *Gurdial Kaur and others v. Kartar Kaur and others*, reported at (1998) 4 SCC 384 for the proposition that the propounder should demonstrate that the Will

was executed of the own free volition of the testator and he must have been mentally fit to exercise his mind. *Abdul Jabbar Sahib v. Venkata Sastri & Sons and others*, reported at AIR 1969 SC 1147, is cited for the proposition that it is essential that the witness shall put his signature *animo attestandi*.

14. Learned counsel for the respondent no. 3, one of the beneficiaries of the Will, contends that there was no suspicious circumstance surrounding the execution of the Will. It is argued that the due execution of the Will was proved in accordance with Section 63 of the Succession Act, read with Section 68 of the Indian Evidence Act. PW 1, the propounder, proved the Will and PW 2, one of the attesting witnesses, as required by Section 68 of the Evidence Act, duly adduced evidence. Their examinations-in-chief were unshaken in cross examination.
15. The mere fact that the PW 2 did not specifically state that the other attesting witness was seen by the testator to sign the Will is immaterial, in view substantial proof of the execution of the Will having been adduced and no counter-suggestion having been put to that effect during the cross-examination of PW 2.
16. Learned counsel cites *Naresh Charan Das Gupta v. Paresh Charan Das Gupta*, reported at (1954) 2 SCC 800, for the proposition that where the execution of the Will by the testator has been proved beyond doubt and there is no cross-examination on the question of attestation to the

extent that the testator, having seen the attesting witness, signed the Will, it can be safely inferred that there was due attestation.

- 17.** Learned counsel argues that the story about the father/testator being taken forcibly from the custody of the youngest daughter Namita was never established. Namita Naskar herself, who would have been the best person to prove such allegation, never faced the witness box, thus, subjecting herself to adverse inference being drawn.
- 18.** The good health and sound mind of the testator was proved by the plaintiff's witnesses in evidence, along with the due execution of the Will. The LTI, as explained by the witnesses, was put by the testator since his fingers were trembling due to old age. The testator, admittedly, was literate and there was no question of reading over and explaining the Will separately to him. The testator was a reputed law clerk/Moharar of the Sealdah Court and as such, was fully aware of the implication of the execution of a Will. The DW 1, the only defendants' witness, clearly admitted that the testator did not take any food or financial assistance from his sons or from Namita, his youngest daughter, with whom he was allegedly living. Thus, the strength of mind and will-power of the testator at the relevant juncture was proved sufficiently.
- 19.** Learned counsel for the respondent no. 3 argues that the propounder having discharged the onus of proving the Will and due execution of the same, the burden of proving fraud, coercion and other similar

allegations shifts on the person making such allegation, which duty was never discharged by the defendants/appellants. In support of such proposition, learned counsel cites *Niranjan Umeshchandra Joshi v. Mridula Jyoti Rao and others*, reported at (2006) 13 SCC 433. Where on looking at the depositions and facts of the case, it is established that the attesting witnesses signed the Will in presence of the testator, proof with mathematical certainty is not required and the test is always the satisfaction of a prudent man. For such proposition, learned counsel cites *Gopal Swaroop v. Krishna Murari Mangal and others*, reported at (2010) 14 SCC 266, and *Pranati Ghosh and others v. Anil Kumar Ghosh*, reported at 2022 SCC OnLine Cal 2736.

- 20.** Regarding the allegation of the testator being forcibly taken away from Namita's custody on January 4, 2004, it was Namita who had to come to the witness box to adduce such evidence. None else can be given a Power of Attorney or the authority to prove such fact, unless the said witness had personal knowledge of the fact. DW 1 Sumita did not have any such personal knowledge since, as per the defendants' allegation, the testator was taken away from Namita's custody. Thus, the evidence of DW 1 in that regard ought to be discarded altogether. Learned counsel cites *Rajesh Kumar v. Anand Kumar and others*, reported at 2024 SCC OnLine SC 981, in support of the said argument.
- 21.** CAN 4 of 2025 has been filed by the appellant for bringing on record as additional evidence the other Will executed on July 7, 2004 at Salt

Lake. However, the same was produced by the propounder in the trial court and was all along on record, but never sought to be exhibited by either side. Thus, Order XLI Rule 27 of the Code of Civil Procedure does not permit production of the document at this stage. For this proposition, learned counsel cites *Sunderlal and Son v. Bharat Handicrafts (P) Ltd.*, reported at AIR 1968 SC 406.

- 22.** It is lastly submitted by the respondent no. 3 that affixation of the thumb impression of the testator is permissible under Section 63 of the Indian Succession Act, as held in *Sushila Bala Saha v. Saraswati Monday*, reported at AIR 1991 Cal 166.
- 23.** Upon hearing learned counsel for the parties, the court comes to the following **CONCLUSIONS**:

(i) Testator's LTI on disputed Will

- 24.** Two limbs of arguments have been advanced by the appellants on this issue.
- 25.** Taking first things first, it is argued that the Will was never proved to be read over and explained to the testator, despite his LTI appearing on the Will.
- 26.** However, PW 2 (Koushik Naskar), a grandson of the testator and one of the attesting witnesses, in his examination-in-chief, categorically stated that the LTI was put by his grandfather on the Will in his presence and

that he could sign but due to old age, executed the Will by putting his thumb impression.

- 27.** The Will, as per PW 2, was prepared as per the instruction of the testator.
- 28.** It was further elicited in evidence that the testator was a registered Moharar at the Barasat Court. It has been also contended by the parties that he was a law clerk of some repute.
- 29.** PW 2, in his evidence, also explained that that the testator put his LTI instead of his signature as, due to his advanced years (he was 86 years old at the time of executing the Will), his hands/fingers were trembling and shaking at the time of signing. Section 63(c) of the Succession Act categorically permits either his signature to be put or his mark to be affixed by the testator on the Will. In view of sufficient explanation having been furnished by the plaintiff's witnesses for LTI being affixed by the testator instead of his signature, such fact itself does not create any suspicious circumstance. Also, there does not arise any question as to why the Will should be separately read over and explained to an admittedly literate testator and as to why the concerned Register, of the registration office where the Will was registered, should adduce evidence in that regard.
- 30.** The second limb of argument is that an admittedly literate testator affixing his LTI is a suspicious circumstance, which, as discussed above, has been dispelled by the unshaken evidence of PW 2, an

attesting witness, that due to his advanced years, LTI was put by the testator on the Will. There is no rebuttal evidence to destroy the said explanation. Section 63 (c) of the Indian Succession Act permits either a signature to be put or the mark of the testator to be affixed to the Will. Thus, either of the two modes of execution of a Will are valid in law.

- 31.** That apart, the two pleas are self-contradictory and mutually destructive. In the same breath, the appellants contend that the Will was not read over and explained while on the other hand, that there is no explanation as to why LTI was put by the testator, who was literate. The admitted literacy of the testator renders irrelevant any necessity to have the Will read over and explained to him. On the other hand, there being sufficient explanation for the LTI being affixed instead of the signature by the testator, such arguments of the appellants cannot be accepted by the Court.

(ii) Non-compliance of Section 63 of the Indian Succession Act

- 32.** The appellants have vociferously argued that PW 2, the only attesting witness who gave evidence, did not specifically state that the other attesting witness signed the Will in the presence of the testator.
- 33.** However, no counter-suggestion to the effect that the other attesting witness did not sign in the presence of the testator was put to the said witness by the appellants in his cross-examination. In his

examination-in-chief, PW 2 stated that he was a witness to the disputed Will, that his grandfather (the testator) executed the Will by putting his thumb impression in the presence of PW 2 and that the testator was quite hale and hearty at the time of execution of the Will. He further stated that the testator could sign but due to old age he put thumb impression, as his right hand started trembling about two years before his death, which facts are generally corroborated by PW 1. PW 2 states further that he put his signature as an attesting witness as per instruction of the testator and thereafter the Will was taken to the Barasat Registration Office and that the testator put his LTI in the TI Book written in the Registration Office. PW 2 identified the signatures of his grandfather, the testator, in the Will in his examination-in-chief and stated that he had himself signed as an attesting witness. He also identified his own signature.

- 34.** PW 2, in his cross-examination, states that at the time of execution of the Will, there were no outsiders except himself, the other attesting witness, the two sons of the testator, the learned Advocate and Moharar.
- 35.** On a composite reading of the said evidence, it is clearly seen that all the necessary ingredients of Section 63 of the Indian Succession Act have been satisfied. From the cross-examination of PW 1, we find that the testator had put his LTI in the Will first and his name was written through the pen by his nephew Kaushik Naskar. Both the attesting

witnesses, as per PW 2, signed on the Will after the name of the testator was written by one of them.

- 36.** Thus, from a cumulative assessment of the evidence, it is crystal clear that both the witnesses were present when the testator signed the Will and they signed almost simultaneously with the testator putting his LTI on the Will. Hence, the necessary elements of Section 63 are satisfied and have been proved by PW 2, one of the attesting witnesses, in terms of Section 68 of the Evidence Act.
- 37.** The Supreme Court categorically held in *Gopal Swaroop (supra)*¹ that where the execution of the Will has been substantially proved, proof with mathematical precision is not required. The test is the satisfaction of a prudent mind, which has sufficiently been complied with in the present case. The same principle was reiterated by our Court in *Pranati Ghosh (supra)*². The element of suspicion, as per the said decision, takes a backseat when the execution of the Will in terms of Section 63 of the Succession Act has been substantially proved, as in the present case. The same proposition also stems from *Naresh Charan Das Gupta (supra)*³.
- 38.** Despite the testamentary court being a court of conscience, the satisfaction of conscience has to be on the test of a prudent man on

1. *Gopal Swaroop v. Krishna Murari Mangal and others*, reported at (2010) 14 SCC 266

2. *Pranati Ghosh and others v. Anil Kumar Ghosh*, reported at 2022 SCC OnLine Cal 2736

3. *Naresh Charan Das Gupta v. Paresh Charan Das Gupta*, reported at (1954) 2 SCC 800

preponderance of probabilities. The vigilance of a testamentary court cannot be converted to Paranoia to such a extent that every minor gap in the evidence has to be taken as a suspicious circumstance.

- 39.** A cumulative reading of the evidence in the present case fully justifies the conclusion of the probate court that the execution of the Will was duly proved. The Appellate Court, as per the well-settled principle of law, shall not adopt a fault-finding approach but shall only interfere where there is a palpable error of law or fact in the impugned judgment granting probate. We, frankly, do not find any such lacuna in the impugned judgment.
- 40.** Importantly, DW 1 herself admitted the execution of the disputed Will in favour of the sons of the testator on January 7, 2004 and the factum that the same was registered. She alleged that the execution and registration were done by force and coercion, which the appellants have miserably failed to prove by cogent evidence. Once the due execution of the Will is proved, the onus shifts on the persons alleging fraud or coercion to prove such circumstance, which is completely absent in the present case. The Supreme Court, in *Niranjan Umeshchandra Joshi (supra)*⁴, clearly laid down that once the onus of due execution is discharged by the propounder, the burden to prove fraud, coercion and the like shifts on the objectors.

4. *Niranjan Umeshchandra Joshi v. Mridula Jyoti Rao and others*, reported at (2006) 13 SCC 433

- 41.** Certain flimsy grounds have also been taken by the objectors to dispute the Will. It has been argued that the extensive schedule of the Will was unusual for an 86 years old person. We are completely at a loss as to why it should be so. The testator in the present case was not only literate but a Moharar of a court of law and has been proved to be in sound and mental condition by the deposition of PWs 1 and 2, which has not been rebutted by any cogent evidence whatsoever by the defendants. A person having knowledge of law, who instructed his advocate to draft the Will and put his LTI thereon, would obviously insist upon an extensive schedule. It is beyond understanding as to why it should be otherwise just because of the advanced years of the testator.
- 42.** The testator was strong-willed, as per the admission of DW 1 to the effect that he did not take any financial assistance either from his youngest daughter Namita, with whom he was allegedly living, or his sons, and did not taken any meal from his sons. The testator, till his demise, maintained his own family. A person of such nature would not, obviously, be amenable to coercion by his sons.
- 43.** The story of abduction of the testator by his sons on July 4, 2004 is absolutely without any basis and unsupported by any evidence. DW 1, Sumita Naskar, has stated in her evidence regarding such alleged abduction. However, admittedly, the testator was residing with Namita, his youngest daughter, and vivid description has been given as to how

the sons of the testator, being the beneficiaries of the Will, allegedly called out the name of Namita at her house on July 4, 2004 and thereafter broke open, threw out household articles, allegedly assaulted Namita and forcibly took away their father.

- 44.** Surprisingly, Namita did not come to the witness box at all. Withholding of Namita, the best witness, casts suspicion not on the execution of the Will but on the allegation of abduction itself. By way of Order XLI Rule 27 of the Code of Civil Procedure (CAN 3 of 2025), a purported police complaint by the daughters dated January 28, 2004 has been sought to be brought in. However, the said application is hit by Order XLI Rule 27(1)(aa), in the absence of any explanation as to why the 2004 complaint was never produced in the testamentary court.
- 45.** That apart, the timings are also crucial. The Will was executed and registered on January 7, 2004 and the alleged abduction took place on July 4, 2004, three days prior to the Will. However, a complaint was purportedly lodged by the daughters, who were deprived in the Will, as late as on January 28, 2004. The gap of 24 days between the alleged incident and the complaint, even if the complaint was to be taken on record, and the fact that the complaint was lodged only after the execution and registration of the Will, throws sufficient doubt on the veracity of the complaint. Rather, the complaint reeks of being an afterthought. Hence, introduction of the said complaint at this stage as additional evidence would not only be impermissible but also irrelevant.

- 46.** By way of CAN 4 of 2025, the appellants seek to disclose the other Will, purportedly executed on the self-same day as the disputed Will, that is, January 7, 2004. Although the said document was produced by the propounder himself in the testamentary court and was on record all along, no effort was made by either party to have the same marked as an exhibit. Hence, there is no explanation whatsoever for the slumber of the appellants throughout the testamentary proceeding in not having the same marked as an exhibit and suddenly waking up at the appellate stage to seek such marking.
- 47.** In any event, since the document came from the custody of the appellants themselves and they themselves disclosed it, *per se* the said document does not create any suspicious circumstance and/or vitiate the execution of the disputed Will.
- 48.** In any event, by the other Will of even date, the property was bequeathed to the grandsons of the testator, that is, the sons of the beneficiaries of the disputed Will. Hence, nothing would hinge on the execution of the second Will, since in any event even if the said Will was executed as the last Will of the testator, the property would come to the sons of the present beneficiaries and there could be no conceivable impetus at all for the beneficiaries of the disputed Will to manufacture such a Will. Moreover, one of the grandsons of the testator, who would be a beneficiary of the other Will, himself acted as an attesting witness

to the disputed Will and adduced evidence to prove its execution as PW2.

- 49.** That apart, the execution and registration of both the Wills is admitted by the defendants/appellants. Also, it is not impossible for two Wills executed by the testator to be registered in the Barasat and Salt Lake Registration Offices on the same day, since both the said places are on the northern fringe of the city of Kolkata and are not so far apart from each other that the respective registrations could not be completed within the same day.
- 50.** Thus, nothing turns on the execution of the said other Will and CAN 4 of 2025 is accordingly also to be disallowed.
- 51.** The Will of the mother of the parties, it has been argued, indicates a *quid pro quo* between the parties. It has been alleged that the scribe and the typist of both the mother's and the father's Will are the same and the beneficiaries and executants in the said Wills are just the reverse of each other, apparently suggesting a reciprocity. We are unable to understand how the aforesaid fact creates any suspicion. It would only be natural that the parents of the parties would choose the same persons to act as scribe and typist in their respective Wills. In view of the very nature of the Will executed by the mother of the parties, by which she bequeathed the property to the grandsons, that is the sons of her sons (present beneficiaries), it was possible that the father might be in two minds as to whom to bequeath the property,

whether to his grandsons or his sons, for which he might very well have executed two Wills on the relevant date.

- 52.** Reciprocity between Wills of two spouses is not unknown and, rather than being a suspicious circumstance, is but natural.
- 53.** In any event, one important aspect is that the mother's Will clearly states that her husband, the testator of the present disputed Will, had an intention to bequeath his property to his sons, which does not vitiate, but validates the present Will, the bequest made in the latter being thus borne out by the statements made in the earlier Will of the mother. Hence, the reliance on the mother's Will by the appellants not only is not in their favour but demolishes the suspicion sought to be cast by the appellants on the Will in dispute.
- 54.** Hence, in spite of applying our mind as a 'Court of Conscience', we do not find any suspicious circumstance surrounding the Will. Rather, the due execution of the Will having been substantially proved on the yardstick of a prudent person, we are of the opinion that the learned Testamentary Court was perfectly within law and jurisdiction on the facts of the case to grant a probate in respect of the said Will.
- 55.** Furthermore, in view of the above observations, the two applications under Order XLI Rule 27 of the Code of Civil Procedure filed by the appellants are also to be dismissed.
- 56.** Accordingly, CAN 3 of 2025 and CAN 4 of 2025 are dismissed on contest.

- 57.** F.A. No. 55 of 2023 is also dismissed on contest, thereby affirming the judgment and deemed decree dated January 19, 2023 passed by the learned Additional District Judge, Seventh Court at Barasat, District: North 24 Parganas in O.S. Case No. 20 of 2006, thereby granting probate of the last Will and testament of Late Badal Chandra Naskar dated January 7, 2004 in favour of the plaintiffs/respondent no. 1.
- 58.** CAN 2 of 2024 stands consequentially disposed of.
- 59.** There will be no orders as costs.
- 60.** Urgent certified copies, if applied for, be supplied to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)