

IN THE HIGH COURT AT CALCUTTA
(Testamentary & Intestate Jurisdiction)
ORIGINAL SIDE

Present:

The Hon'ble Justice Krishna Rao

TS No. 4 of 2022
(PLA No. 309 of 2012)

In The Goods Of :
Ajit Kumar Sengupta, (Deceased)

-And-

Tapati Sengupta

-Vs-

Smt. Manashi Sengupta Bhadra

Mr. Suparna Mukherjee, Sr. Adv.

Mr. Sarbajit Mukherjee

Mr. Abhijit Sarkar

Ms. Abhipriya Sarkar

.... For the plaintiff.

Mr. Kallol Guha Thakurta

Mr. Vinod Kumar Singh

Mr. Barun Ghosh

Md. Wasim Rahaman

Mr. Dipankar Dutta

Mr. Saurav Mitra

Mr. Rajesh Nath Goswami

...For the defendant.

Hearing Concluded On : 22.09.2025

Judgment on : 11.11.2025

Krishna Rao, J.: -

1. The plaintiff, namely, Tapati Sengupta, W/o Late Ajit Kumar Sengupta has initially filed an application being P.L.A. No. 309 of 2012 praying for grant of probate of the Last Will and Testament of the deceased Ajit Kumar Sengupta dated 29th February, 2008. On receipt of citation, Snehajit Sengupta being the son of the testator had filed caveat and affidavit-in-support of the caveat. On receipt of caveat, the probate application being P.L.A. No. 309 of 2012 is converted to Testamentary Suit No. 4 of 2022. During the pendency of the suit, Snehajit Sengupta passed away. Upon his death, his wife Smt. Manashi Sengupta Bhadra was substituted as defendant.
2. As per the case of the plaintiff, Ajit Kumar Sengupta executed his last Will and Testament on 29th February, 2008 by appointing his wife Tapati Sengupta and his daughter Amgana Sengupta as joint executrixes of his last Will. The testator died on 22nd September, 2011 at Bridgeport Hospital, Bridgeport, Fairfield, United States of America leaving behind his wife, Smt. Tapati Sengupta, his son Snehajit Sengupta and his daughter Amgana Sengupta. The daughter has affirmed an affidavit by giving her consent for grant of probate of the

last Will and Testament of the deceased in favour of her mother. The son has not given consent but has filed caveat and affidavit in support of caveat objecting for grant of probate.

3. As per the case of the original defendant, he was the only son of the testator of his first wife. The testator was the Judge of this Court as well as the Allahabad High Court. The mother of the original defendant died intestate at the University College Hospital, London, United Kingdom on the date of his birth. After the death of his mother, his father remarried to the plaintiff herein and in their wedlock, his sister Amgana was born. The death of the testator was never communicated to the defendant either by the plaintiff or her daughter.
4. Mr. Kallol Guha Thakurta, Learned Advocate representing the defendant submits that the defendant came to know about the death of his father through the advertisement/ obituary published in the News Paper, namely, Ananda Bazar Patrika, Siliguri Edition, dated 14th October, 2011, due to which the defendant could not perform the last ritual rites and customs of his father.
5. Mr. Thakurta submits that the alleged Will is vague, untrue, false, forged and fabricated from its very first line to its very last line. The signatures, as well as the initials, are also false and forged. The alleged Will in question also does not include the details of other various properties owned by the deceased. He submits that the manner of

language in which the so called Will has been drawn up, cannot be that of the eminent retired High Court Judge.

- 6.** Mr. Thakurta submits that the purported Will is motivated, malafide, manufactured, purported and concocted one. He submits that the defendant is a Tea-Planter by profession and Tea Garden situated at Jalpaiguri due to which he has no other option but to stay-away from Calcutta. He submits that the testator was an aged person, suffering from various ailments and senility and was not in a sound mind and body and was fully dependent upon his wife. Due to his prolonged absence from Calcutta, the plaintiff got an opportunity to contrive against the defendant and fulfill their sweet desire by putting undue influence, pressure and coercion upon the testator.
- 7.** Mr. Thakurta submits that no probate should be granted on the basis of the alleged Will and the property left behind by the testator should be divided and distributed in accordance with the Hindu Succession Act, 1956.
- 8.** On completion of argument, the Learned Counsel for the defendant has filed written notes of argument. After completion of argument and filing written notes of argument, the defendant has filed an application being G.A. No. 9 of 2025 praying for obtaining Handwriting Expert report from the Central Forensic Science Laboratory with regard to the signatures of the testator appearing in the alleged Will. In support of

his submissions for obtaining Handwriting Expert report, the defendant has relied upon the judgment in the case of ***Rama Avatar Soni Vs. Mahanta Laxmidhar Das and Others*** reported in ***(2019) 11 SCC 415***.

9. Mrs. Suparna Mukherjee, Learned Senior Advocate representing the plaintiff submits that the testator during his life time bequeathed the properties both movable, immovable and personal articles to the plaintiff as his wife for her life time and after the death of the plaintiff to his daughter. She submits that the testator in his last Will and Testament declared that he had no relation with his son for the last 15 years and his son Snehajit Sengupta shall not be entitled to inherit any share in the property of the deceased.
10. Mrs. Mukherjee submits that the plaintiff has proved the last Will and Testament by examining the two attesting witnesses and the witness who drafted the Will and was kept the Will in his possession as per the advice of the testator. She submits that the attesting witnesses of the Will during their examination have categorically stated that the testator has executed his last Will and Testament in their presence.
11. Mrs. Mukherjee submits that though in the affidavit-in-support of caveat the defendant has taken the stand that the testator has not executed the Will and the Will is forged one and signatures appearing in the Will is not of the testator but during the cross-examination of the

plaintiff's witnesses, the defendant has admitted that the signature appearing in the Will is of the testator.

- 12.** Mrs. Mukherjee submits that the plaintiff has complied with the provisions of Section 63 of the India Succession Act, 1925 by examining the two attesting witnesses and has proved the Will. She submits that the defendant has not able to prove that the Will is a forged document and not signed by the testator. It is the specific case of the plaintiff that the testator has executed his last Will and Testament while possessing good health and fit state of mind but on contrary the defendant has not brought any evidence that the testator was not in a fit state of mind.
- 13.** Mrs. Mukherjee submits that in one hand the defendant has made out a case that the Will is a forged document and on the other hand, it is stated that the plaintiff has procured Will by coercion. She submits that in the month of January, 2012 itself the defendant had the knowledge about the Will.
- 14.** Mrs. Mukherjee submits that the defendant has cross-examined the plaintiff's witnesses and the defendant herself examined as D.W.1 and the plaintiff has cross-examined the defendant. The defendant has argued the matter and filed written notes of argument and subsequently, he has filed an application for obtaining Handwriting Expert report which is not maintainable. She further submits that from

the trend of cross examination of the plaintiff's witness it is proved that the defendant has admitted the signature of the testator in the Will.

15. Mrs. Mukherjee in support of her case, she has relied upon the following judgments:

- (i) ***Madhukar D. Shende Vs. Tarabai Aba Shedage*** reported in (2002) 2 SCC 85.
- (ii) ***Sridevi and Others Vs. Jayaraja Shetty and Others*** reported in (2005) 2 SCC 784.
- (iii) ***Bagai Construction through its proprietor Lalit Bagai Vs. Gupta Building Material Store*** reported in (2013) 14 SCC 1.

16. To prove the Will, the plaintiff has examined four witnesses, namely:

- (i) Mrs. Tapati Sengupta Executrix
- (ii). Mr. Gautam Kumar Mitra ... Attesting Witness of the Will
- (iii) Mr. Surendra Deo Dube ... Attesting Witness of the Will
- (iv) Mr. U.S. Menon, Drafted the Will and Kept the Will in his possession as per the instructions of the Testator.

17. At the time of examination of the plaintiff and his witnesses, eight (8) documents were exhibited, namely :

Exhibit-A: Signature of Amgana Sengupta in the affidavit of Amgana Sengupta.

Exhibit-B (Collectively): Signatures and initials of Ajit Kumar Sengupta in the Will.

Exhibit-C: Will.

Exhibit-D: Signature of Gautam Kumar Mitra on the declaration.

Exhibit-E: Signatures of Ajit Kumar Sengupta at the last page of the Will.

Exhibits- E/1 & E/2: Initials of Ajit Kumar Sengupta at page nos. 1 and 2 of the Will.

Exhibit-F: Signature of Surendra Deo Dube appearing at the last page of the Will (Attested by him).

Exhibit-G: Signature of Gautam Kr. Mitra appearing at the last page of the Will (Attested by him).

Exhibit-H: Affidavit of Surendra Deo Dube dated 10th October, 2012.

Exhibit-H/1: Signature of Surendra Deo Dube at page no. 2 in the affidavit dated 10th October, 2012.

- 18.** The defendant has examined herself as D.W.1 and during her evidence, five (5) documents were exhibited which are as follows:

Exhibit-I: Letter issued by the Learned Advocate of the defendant to the plaintiff dated 10th January, 2012.

Exhibit-J: Reply to the letter dated 10th January, 2012 issued by Mr. U.S. Menon to the Learned Advocate for the defendant dated 24th January, 2012.

Exhibit-K: Letter issued by the Learned Advocate of Mr. U.S. Menon dated 10th February, 2012.

Exhibit-L: Reply of Mr. U.S. Menon to the Learned Advocate of the defendant dated 18th February, 2012.

Exhibit - M (Collectively): Communications between Mr. U.S. Menon and Learned Advocate for the defendant between 17th February, 2012 to 13th August, 2012.

- 19.** During cross-examination of the executrix, the Counsel for the defendant in question nos. 76, 77, 125, 163 and 166 has put the following questions:

“Q. 76. (Shown front page and third page of the Will) – you will find there are two handwritten dates – is there any initial by Justice Sengupta against these handwritings?”

Ans. Yes, initials are there

Q.77. (Shown page 1 and page 3) Besides the line in which this handwritten date surfaced, is there any initial of Justice Sengupta?”

Ans. No. But there is an initial at the bottom of the entire page.

Q. 125. (Shown the Will once again) – In these three pages of the Will save and except the last page i.e. in the first two pages, Justice Sengupta had put his initials at the bottom of the page. But I am showing you the certified copy of the Sale Deed (shown) – where in case of correction Justice Sengupta has put his full signature – what do you say to that in this respect (object to by Learned Counsel Suparna Mukherjee, as this question is repeated and the witness had to wait near about

15 minutes and after that a repetitive question is put to the witness which was put vide Q. 82 to Q. 84) (Mr. Guha Thakurta objected to such objection)?

Ans. I don't know what he would do. That is up to Justice Sengupta.

Q. 163. *(Shown the Will once again the signature of Justice Ajit Sengupta) – are you hundred per cent sure that this is the very signature of Justice Ajit Sengupta? (objected to by Learned Counsel Suparna Mukherjee on the ground that the question is repeated.*

Ans. Yes, it is Justice Sengupta's signature.

Q. 166. *You have just deposed that all these signatures are of Justice Ajit Sengupta and all these signatures are tallying with each other – but in none of the occasions you are present at the venue when Justice Sengupta was putting his signatures in this document – is it correct?*

Ans. Yes, that is so.”

- 20.** From the trend of cross-examination of the witness no.1 of the plaintiff, it is find that the defendant has admitted the signature of the testator. The defendant has not put any question to the genuineness of the signatures and the initials of the testator.
- 21.** At the time of examination of attesting witness, namely, Gautam Kumar Mitra his signature in the Will is marked as Exhibit-D and Exhibit-G, Signatures of Ajit Kumar Sengupta are marked as Exhibit-E and initials of Ajit Kumar Sengupta are marked as Exhibits- E-1 and E-2. Signature of another attesting witness, namely, Surendra Deo Dube is marked as Exhibit-F. Mr. Gautam Kumar Mitra during his evidence stated that Justice Ajit Kumar Sengupta signed his Will in his presence

and in presence of another attesting witness, namely, Surendra Deo Dube. He has also stated that in the last page of the Will, the testator has signed as his full signature and first and second page, the testator has made initials as AKS. At the time of cross-examination of Gautam Kumar Mitra, the following questions were put to the witness:

“33. *(Shown page 3 of Ext. E)- According to you this is the signature of Justice Ajit Kumar Sengupta and he has put his signature in front of you? /Yes.*

34. *(Shown two pages of the Will i.e. page 1 and page 2) – whether the initials of Justice Ajit Kumar Sengupta were there? /Yes, you are correct.*

35. *(Shown Ext. E1 & E2) – these two initials have also been signed by Justice Ajit Kumar Sengupta? / Yes, this was in my presence.”*

22. Mr. Surendra Deo Dube being another attesting witness stated that the testator has called him to the residence to sign in the Will as attesting witness and on 29th February, 2008, he had been to the residence of the testator and in his presence and in presence of another attesting witness, namely, Gautam Kumar Mitra, the testator has signed his Will. He identified the Will and signatures appearing in the last page i.e. page no.3 as signature of testator, signature of Gautam Kumar Mitra and his signature. He also stated that in other two pages of the Will i.e. page no.1 and page no.2, the testator has put his initials in his presence and in presence of another attesting witness.

23. Learned Counsel for the defendant during cross-examination of Surendra Deo Dube, the following questions was put to the witness:

“55. On the request of Justice Sengupta you have visited his place to put your signature as an attesting witness – Is it correct? / Yes.”

- 24.** Mr. U.S. Menon, being P.W.4 stated that when he has attended the conference with Justice Ajit Kumar Sengupta, he requested him to draft a Will and as per instructions of Justice Ajit Kumar Sengupta, he has drafted the Will and thereafter Justice Ajit Sengupta corrected the Will. He then kept ready the Will sometimes in the year 2007 or 2008. The testator kept the Will with him for some time and in the month of February or March 2008, he told that he has signed the Will in presence of attesting witnesses and requested to keep the Will in safe custody and also told to him to give the said Will to his wife after his demise and accordingly, he kept the Will in his locker or almirah at his home. He further stated that after the death of Justice Ajit Sengupta, he has informed his wife.
- 25.** Learned Counsel for the defendant has not denied that the testator has not given any instructions to the said witness or he has not drafted the said Will or has kept the Will with him as per instructions of the testator.
- 26.** The defendant has examined herself as witness. During her evidence, the defendant has not brought any evidence to prove that the Will relied by the plaintiff is forged one. The defendant has also not adduced any evidence to say that the testator was not possessing good health or was not in fit state of mind. From the evidence of defendant, it is clear that

the defendant was not residing with the testator. The case which the defendant has made out in her examination-in chief was not the case in the written statement (caveat and affidavit in support of caveat). In her examination-in-chief, the defendant has made out a new case.

27. Section 63 of the Indian Succession Act, 1925, reads as follows:

“63. Execution of unprivileged Wills.—

Every testator, not being a soldier employed in an expedition or engaged in actual warfare, 1 [or an airman so employed or engaged,] or a mariner at sea, shall execute his Will according to the following rules:—

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

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

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

28. Section 63(c) of the Indian Succession Act, 1925 outlines the requirements for the valid execution of a Will. Specifically it mandates

that, the Will must be signed by the testator in presence of at least two attesting witnesses. The witnesses must attest the Will in presence of the testator, confirming they saw the testator sign or acknowledge the signature. The attestation must be performed by at least two witnesses who are present at the time of signing of the testator. The Will must be signed by the witnesses with the intent to attest to the testator's signature and intent to create the Will.

- 29.** The propounder of the Will has to prove that (i) the Will was signed by the testator in the presence of two attesting witnesses, (ii) The attesting witnesses should have been seen the testator sign the Will or else, the attesting witnesses should depose that they were been told by the testator that the Will is that of the testator and it is the testator who has signed the Will and (iii) It is not necessary that both or all the attesting witnesses of the Will must be examined to prove the Will, rather, at least one attesting witness should be called to prove the due execution of the Will.
- 30.** Section 68 of the Indian Evidence Act, 1972, necessitates that a document which is required by law to be attested shall not be used as evidence, until and unless, at least one attesting witness to that document has been called in evidence for the purpose of proving its execution. Thus, according to mandate of Section 68 of the Indian Evidence Act, 1972, if there be an attesting witness to a document, alive and capable of giving evidence, then that attesting witness subject

to the process of the Court has to be necessarily examined before the document required by law to be attested can be used as evidence.

- 31.** On combined reading of Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1972, it is clear that a person propounding the Will must prove that the Will was duly and validly executed, and this cannot be done by simply proving that the signature on the Will is that of the testator by also proving that the attestations made on the Will are in the manner as required by clause (c) of Section 63 of the Indian Succession Act, 1925.
- 32.** Whether a particular Will is surrounded by suspicious circumstances or not is a question of fact and it depends upon the facts and circumstances, the propounder has to explain these circumstances and has to remove the suspicion in order to satisfy the conscience of the Court. *“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 substantial benefits and interlineations, obliterations and alterations in the Will, are all in the nature of circumstances which hoist suspicion about the execution of the Will”.*

Such suspicions cannot be removed by mere assertion of the propounder that the Will bears the signature of the testator or that the testator was in sound mind and disposing state of mind 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 of proof heavier on the propounder of the Will and thus in cases where the circumstances attended upon the execution of the Will, excite the suspicion of the Court, the propounder must remove all the legitimate suspicion before the document can be accepted as the last Will of the testator.

- 33.** In the case of **Sridevi and Others (Supra)**, the Hon'ble Supreme Court held that :

“11. It is well settled proposition of law that mode of proving the Will does not 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, 1925. The onus to prove the Will is on the propounder and in the absence of suspicious circumstances surrounding the execution of the Will, proof of testamentary capacity and proof of the signature of the testator, as required by law, need be sufficient to discharge the onus. Where there are suspicious circumstances, the onus would again be on the propounder to explain them to the satisfaction of the court before the Will can be accepted as genuine. Proof in either case cannot be mathematically precise and certain and should be one of satisfaction of a prudent mind in such matters. In case the person contesting the Will alleges undue influence, fraud or coercion, the onus will be on him to prove the same. As to what are suspicious circumstances has to be judged in the facts and circumstances of each particular case. (For this see H. Venkatachala Iyengar v. B.N. Thimmajamma and the subsequent judgments Ramchandra Rambux v. Champabai, Surendra Pal v. Dr. Saraswati Arora, Jaswant Kaur v. Amrit Kaur and Meenakshiammal v. Chandrasekaran.)

12. *In the light of this settled position of the law, we have to examine as to whether the Will under consideration had been duly executed and the propounders of the Will had dispelled the suspicious circumstances surrounding the Will.*

14. *The propounder of the Will has to show that the Will was signed by the testator; that he was at the relevant time in sound disposing state of mind; that he understood the nature and effect of dispositions and had put his signatures to the testament of his own free will and that he had signed it in the presence of the two witnesses who attested in his presence and in the presence of each other. Once these elements are established, the onus which rests on the propounder is discharged. DW 2, the scribe, in his testimony has categorically stated that the Will was scribed by him at the dictation of the testator. The two attesting witnesses have deposed that the testator had signed the Will in their presence while in sound disposing state of mind after understanding the nature and effect of dispositions made by him. That he signed the Will in their presence and they had signed the Will in his presence and in the presence of each other. In cross-examination, the appellants failed to elicit anything which could persuade us to disbelieve their testimony. It has not been shown that they were in any way interested in the propounders of the Will or that on their asking they could have deposed falsely in court. Their testimony inspires confidence. The testimony of the scribe (DW 2) and the two attesting witnesses (DWs 3 and 4) is fully corroborated by the statement of the handwriting expert (DW 5). The Will runs into 6 pages. The testator had signed each of the 6 pages. The handwriting expert compared the signatures of the testator with his admitted signatures. He has opined that the signatures on the Will are that of the testator. In our view, the Will had been duly executed.”*

34. In the Case of **Madhukar D. Shende (supra)**, the Hon’ble Supreme Court held that:

*“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 Indian Succession Act, 1925 and Section 68 of the Indian 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 was 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 ingenuous 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.”*

- 35.** In the present case, the plaintiff’s witnesses no.2 and 3, namely, Gautam Kumar Mitra and Surendra Deo Dube being the attesting witnesses of the Will of the testator have categorically stated in their evidence that as per the request of the testator, they had been to the residence of the testator on 29th February, 2008 and in their presence, the testator has signed the Will and as per request of the testator, the witnesses have signed in the Will as attesting witnesses in presence of the testator.

- 36.** The another circumstances to prove the Will is the evidence of the plaintiff's witness no.4, namely, Mr. U.S. Menon who as per instructions of the testator has drafted the Will and the testator after finalizing the Will and after execution of the Will has handed over to the said witness with the instruction to hand over the same to wife of the testator after his demise.
- 37.** The defendant though in his written statement/ affidavit in support of caveat has taken the stand that the Will is vague, untrue, false, forged and fabricated one but the defendant has failed to prove that the Will is false and forged. The defendant even has not given any suggestion that the testator or the attesting witnesses have not signed the Will on the other hand during the cross-examination the defendant admitted the Will, signatures of the testator and signatures of the attesting witnesses.
- 38.** At the flag end, i.e. after completion of argument and even after filing of written notes of argument by the defendant, the defendant has filed an application being G.A. No. 9 of 2025 praying for forwarding the Will and admitted signatures of the testator for obtaining Handwriting Expert report. In support of his contention, has relied upon the judgment in the case of ***Rama Avatar Soni (supra)*** wherein the Hon'ble Supreme Court held that:

“8. As pointed out earlier, the appellant has filed the suit CS No. 2/34 of 2008/2003 challenging the genuineness of alleged Will executed by Natabar Das in favour of the first

respondent and seeking revocation of the probate of the will. As submitted by the learned Senior Counsel appearing for the appellant, in the said suit, Issue No. 3 has been framed that “Has the Defendant no. 1 by practising fraud managed to get the Will probated, which was a fabricated and manufactured one?” Hence, the genuineness of the Will in question needs to be decided, that is, whether the signature in the Will dated 12-3-1989 allegedly executed by Natabar Das could be ascertained only by sending the document to handwriting expert. As discussed above, earlier in WP(C) No. 14997 of 2013, while setting aside the order of the District Judge dated 18-6-2013, the High Court has observed that the application filed under Order 26, Rule 10A CPC can be considered at a later stage of the proceedings, that is, after closure of the evidence from both sides. After their witnesses were examined, the appellant/plaintiff again reiterated the prayer for sending the Will in question to hand-writing expert. If the scientific investigation of the document in question facilitates the ascertaining of truth, in the interest of justice, naturally it has to be ordered. Having regard to the issue raised in the suit, the District Judge was right in allowing the application to send the Will in question dated 12-3-1989 to the hand-writing expert.

9. *The High Court was not right in saying that, in the plaint, the appellant has challenged only the genuineness of the will and nowhere made allegations with regard to the genuineness of the signature of Mahanta Natabar Das. To challenge the genuineness of the will inter alia indicates challenge to the genuineness of the signature of Mahanta Natabar Das. In our view, the High Court was not right in saying that there was no specific allegation disputing the genuineness of the signature of Mahanta Natabar Das. In the earlier WP (C) No. 14977 of 2013 when the High Court has observed that the prayer under Order 26 Rule, 10A CPC can be considered at a later stage, the High Court was not right in setting aside the order of the District Judge dated 15-3-2016 in CS No. 2/34 of 2008/2003 and the impugned order is liable to be set aside.”*

39. The plaintiff has objected the application filed by the defendant had submitted that the defendant has filed the application after the argument has concluded. The defendant has not taken any steps at the evidence stage. She submits that the defendant has filed the present application only to drag the matter. The plaintiff has relied upon the judgment in the case of **Bagai Construction (supra)** wherein the Hon'ble Supreme Court held that:

“11. In Velusamy even after considering the principles laid down in Vadiraj Naggappa Vernekar and taking note of Section 151 CPC, this Court concluded that :

“22. ... in the interests of justice and to prevent abuse of the process of the court, the trial court [is free to consider] whether it was necessary to reopen the evidence and if so, in what manner and to what extent....”

12. Further, it observed that the evidence should be permitted in exercise of its power under Section 151 of the Code. The following principles laid down in that case are relevant:

“19. We may add a word of caution. The power under Section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be bona fide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to compensate for the delay. Secondly, the court

should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly, if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs.”

14. *The perusal of the materials placed by the plaintiff which are intended to be marked as bills have already been mentioned by the plaintiff in its statement of account but the original bills have not been placed on record by the plaintiff till the date of filing of such application. It is further seen that during the entire trial, those documents have remained in exclusive possession of the plaintiff but for the reasons known to it, still the plaintiff has not placed these bills on record. In such circumstance, as rightly observed by the trial court at this belated stage and that too after the conclusion of the evidence and final arguments and after reserving the matter for pronouncement of the judgment, we are of the view that the plaintiff cannot be permitted to file such applications to fill the lacunae in its pleadings and evidence led by him. As rightly observed by the trial court, there is no acceptable reason or cause which has been shown by the plaintiff as to why these documents were not placed on record by the plaintiff during the entire trial. Unfortunately, the High Court taking note of the words “at any stage” occurring in Order 18 Rule 17 casually set aside the order of the trial court, allowed those applications and permitted the plaintiff to place on record certain bills and also granted permission to recall PW 1 to prove those bills. Though power under Section 151 can be exercised if ends of justice so warrant and to prevent abuse of process of court and court can exercise its discretion to permit reopening of evidence or recalling of witness for further examination/cross-examination after evidence led by the parties, in the light of the information as shown in the order of the trial court, namely, those documents were very well available throughout the trial, we are of the view that even by exercise of Section 151 CPC, the plaintiff cannot be permitted.*

15. *After change of various provisions by way of amendment in CPC, it is desirable that the*

recording of evidence should be continuous and followed by arguments and decision thereon within a reasonable time. This Court has repeatedly held that courts should constantly endeavour to follow such a time schedule. If the same is not followed, the purpose of amending several provisions in the Code would get defeated. In fact, applications for adjournments, reopening and recalling are interim measures, could be as far as possible avoided and only in compelling and acceptable reasons, those applications are to be considered. We are satisfied that the plaintiff has filed those two applications before the trial court in order to overcome the lacunae in the plaint, pleadings and evidence. It is not the case of the plaintiff that it was not given adequate opportunity. In fact, the materials placed show that the plaintiff has filed both the applications after more than sufficient opportunity had been granted to it to prove its case. During the entire trial, those documents have remained in exclusive possession of the plaintiff, still the plaintiff has not placed those bills on record. It further shows that final arguments were heard on a number of times and the judgment was reserved and only thereafter, in order to improve its case, the plaintiff came forward with such an application to avoid the final judgment against it. Such course is not permissible even with the aid of Section 151 CPC.”

- 40.** The facts of the case relied by the defendant are distinguishable from the facts and circumstances of the present case. In the present case, though the defendant has taken the stand in the written statement/affidavit in support of caveat that the Will is false and forged one but till the argument is over, the defendant has not made any endeavor for sending the Will to Handwriting Expert for obtaining report. The attesting witnesses of the Will have categorically stated that the testator has signed the Will in their presence and the witnesses have also signed the Will in presence of the testator. The defendant has

categorically put the question with regard to the signature of the testator and the witnesses have stated that in the last page, the testator has signed the Will as full signature and in page no.1 and page no.2, the testator has put his initial as 'AKS'.

41. Considering the above, this Court finds that the application filed by the defendant being G.A. No. 9 of 2025 is misconceived and accordingly, the same is rejected.

42. This Court finds that the plaintiff has proved the last Will and testament of the testator dated 29th February, 2008 and is entitled to get probate of the Will. The department is directed to issue probate of the Will dated 29th February, 2008 of the testator to the plaintiff on compliance of all formalities. At the time of grant of probate, the copy of the Will be made part of the probate. Decree be drawn accordingly.

43. T.S. No. 4 of 2022 is disposed of.

(Krishna Rao, J.)