



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

% Judgment reserved on: 22.01.2025
Judgment delivered on: 18.03.2025

+ **FAO 283/2018**

ASHVAL VADERAA

.....Appellant

versus

AMITABH NARAYAN & ORS

.....Respondent

Memo of Appearance

For the Petitioner: Mr. Ramesh Kumar, Learned Advocate

For the Respondent: Mr. Suraj Prakash, Learned Advocate for R-1

Mr. Dayan Krishnan, Learned Senior Advocate with Mr.
Ravikesh K. Sinha and Mr. Sanjeevi, Learned Advocates
for R-2 & R-4

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

MANOJ JAIN, J

1. Question posed herein is two-fold.

(i) *Firstly, whether Testatrix was in sound disposing mind at the time of execution of her 'Will'.*

(ii) *Secondly and more importantly, what should be the approach of court in granting probate where Will is executed by the maker, while admitted in a hospital.*

2. Appellant takes exception to order dated 08.03.2018 passed by learned Additional District Judge (West), Tis Hazari Courts whereby while discarding the objections taken by the appellant herein, probate has been granted to respondent No.1.

3. For the sake of convenience, I would refer to the parties as per their nomenclature before the learned Probate Court.



4. The probate petition was filed by respondent No.1-Mr. Amitabh Narayan and, therefore, he would be referred to as ‘Petitioner’ in the present judgment. It was appellant Mr. Ashval Wadhera, who had filed objection in the abovesaid Probate Petition and, therefore, he would be referred to as ‘Objector’. The *Will* is of Ms. Karuna Raj Vadheraa and she would be referred to as ‘Testatrix’ herein.

5. The averments made in the probate petition are very concise. These can be summarized as under: -

a) Karuna Raj Vadheraa (Testatrix) was residing at E-24, E-25, NDSE-II, New Delhi-110049. She had three sons and details of her such sons and daughters-in-law are as under:-

S. No.	Description	Relationship with Deceased
1	Shri Ashwal Vadera (Objector)	(son)
2.	Shri Asheesh Vadera	(son)
3.	Shri Kanishka Vadera	(son)
4.	Smt. Monica Vadera (Wife of Shri Asheesh Vadera)	(daughter-in-law)
5.	Smt. Meetinder Vadera (Wife of Shri Kanishka Vadera)	(daughter-in-law)

- b) The parents and the husband of Testatrix had pre-deceased her.
- c) Testatrix executed her last *Will* on 05.02.2003 which was registered with the Sub Registrar-III New, Delhi.
- d) Such *Will* was stated to be her last *Will* and Testament.
- e) Testatrix made reference of immovable and movable properties



left by her and these are as under: -

LIST OF IMMOVEABLE PROPERTY LEFT BEHIND BY TESTATRIX

S.No.	Description
1.	E-24, N.D.S.E., Part – 11, New Delhi - 49
2.	Co-ownership rights in lands at Lado Sarai at 5-A Mehrauli Road, New Delhi: (a) Khasra No.679/672/48/ 1, measuring 4 Bighas and 16 Biswas (b) Khasra No.679/ 6721 48 / 2 measuring 15 Biswas
3.	Property situated at Vadera Farms, Station Road, Garhi, Haryana Gurgaon, Haryana

LIST OF MOVEABLE PROPERTY

S.No.	Description
1.	F.D.R. in the Bank of Rajasthan Ltd. E-17, 1st Floor, South Extension 11, New Delhi
2.	F.D.R. in the Central Bank of India M-2, South Extension 11, New Delhi
3.	Bank Account in the Bank of Rajasthan Ltd. E-17, 1 st Floor, South Extension 11, New Delhi

- f) The Testatrix had appointed petitioner Mr. Amitabh Narayan as Executor of the *Will*.
- g) She expired on 24.04.2007.
- h) The probate petition was filed which accompanied verification of Mukul Bhatnagar and Dr. Vinod Rai who claimed that they were the witnesses of the abovesaid *Will* and were present when the Testatrix had affixed her signatures on said *Will*.



6. Learned Trial Court directed issuance of citation to be published in *Hindustan Times* besides the same to be affixed on the Notice Board of Court and Collectorate concerned, where such immovable properties were situated.
7. Notice was also issued to state through Chief Secretary.
8. Pursuant to such publications and citations, Objector Ashval Vaderaas appeared and submitted his objections.
9. Asheesh Vaderaas and his wife Monica Vaderaas (respondents No.3 and 5 in probate petition) submitted written statements contending that they had no objection to the grant of probate.
10. As far as Mr. Kanishka Vaderaas (respondent No.4 in probate petition) was concerned, he, though, contended that he did not have any objection for grant of probate but supplemented that they resided in E-24 and E-25, NDSE part-II New Delhi which were adjoining and interconnected properties, having a common staircase and such fact was not specified appropriately in the petition. His wife Meetinder Vaderaas did not file any response.
11. As per Objector Mr. Ashval Vaderaas (appellant herein), the *Will* in question was a forged and fabricated document. He asserted that at the relevant time, when the abovesaid *Will* was allegedly executed on 05.02.2003, his mother i.e. Testatrix was rather in a hospital and was unconscious and under the influence of drugs and medicines, administered to her during her such hospitalization and, therefore, she was never in sound disposing state of mind. Objector also wondered as to why his mother would bequeath property to her other son i.e. Mr. Asheesh Vaderaas, with whom she had civil and criminal litigation. It was claimed that Mr. Asheesh Vaderaas



had been pursuing such litigation through Mr. Kamal Narayan, Advocate and it was not believable that his son (petitioner Amitabh Narayan) would be appointed by her as administrator or Executor of the *Will*.

12. It was also contended that no reason had been assigned in the *Will* for unequal and unfair distribution and moreover, it was impossible to imagine that Testatrix would execute *Will* for the benefit of one who had rather humiliated her and entangled her in litigation.

13. Based on the pleadings, the learned Probate Court framed following issues: -

*“1. Whether late Smt. Karuna Raj Vadera duly executed Will dated 05.02.2003 in her sound disposing mind?
OPP.*

2. Whether petitioner being Executor of Will dated 05.02.2003 of Smt. Karuna Raj Vadera is entitled for grant of Probate as claimed? OPP

3. Relief”

14. In order to prove his case, the petitioner examined PW-1-Dr. Vinod Rai (attesting witness) and PW-2 Mr. Mukul Bhatnagar (attesting witness).

15. Indeed, such *Will* had been executed by the Testatrix, while being admitted in *Mool Chand Hospital*. It looks perplexing and baffling to comprehend, as to why such a vital fact, had not been divulged in the probate petition.

16. Though there is no mandate of law that any such *Will* has to be compulsorily registered but fact remains that *Will* in question was a registered *Will* and as per the case of the petitioner, the concerned Sub-Registrar, on a request made in this regard, had come to the abovesaid hospital and registered the *Will* after due examination of the Testatrix.

17. Unfortunately, even such important aspect that the Sub Registrar had



come to the Hospital has not been revealed in the probate petition.

18. Dr. S K Thakur was examined as CW1. He was, reportedly, working as Consultant Gastroenterologist at Mool Chand Hospital in the year 2003 and Ms. Karuna Raj Vadera was stated to be under his care. When he entered into witness box on 20.03.2017, he was shown one certificate dated 03.02.2003 (Ex-CW-1/1) which he admitted issuing.

19. It will also be important to mention that the petitioner did not examine anyone from the office of Sub-Registrar.

20. The concerned Sub-Registrar was also not examined.

21. Mrs. Monika Vadera, then, sought permission to examine the concerned official from the office of Sub-Registrar. Such request was though opposed on the ground that it was an attempt to fill up lacuna in evidence which was not permissible as the petitioner himself never expressed any such wish, fact remains that such application was allowed on 01.11.2013 and, accordingly, R5W1 Mr. S K Sharma (LDC, Office of Sub Registrar-III Asaf Ali Road, New Delhi) entered into witness box.

22. The Objector i.e. Mr. Ashval Vadera examined 5 witnesses.

23. These are OW-1 Ashval Vadera (Objector himself), OW-2 Anil Dhawan (Nephew of Testatrix, who has been examined in order to demonstrate that Testatrix was very serious and was not in her senses and that she was not even able to speak as she was under the influence of medication on 05.02.2003), OW-3 Virender Singh (for proving ITR of Testatrix). OW-4 Mr. Sushil Kumar Kala (the official who has brought the record pertaining to OMP No. 110/1987) and OW- 5 Mr. Digambar Singh (official from Mool Chand Hospital, Lajpat Nagar).



24. Learned Probate Court allowed the Probate Petition and rejected the contentions of the Objector holding that there was *nothing to show that there was any gross illegality or irregularity with respect to execution and registration of Will at the hospital*. It held that merely because there was no document to show as to when and how the application was made to the sub-Registrar and how such official came at the hospital would be mere procedural irregularity and would not affect the basic essence of the legality of the registration of the *Will* at the hospital.

25. It also went on to hold that Testatrix, while being admitted in hospital on 05.02.2003, was in sound disposing state of mind and physically stable. It also held that merely because no reason had been assigned in the *Will* for unequal distribution would not mean anything substantial. Thus, it rejected the contentions of the Objector that the *Will* was forged and fabricated. Relying upon the testimony of the concerned attesting witnesses and Dr. Thakur, it returned findings with respect to the above said issues in favor of the petitioner and held him entitled for probate to the above said *Will*, while directing him to obtain requisite court fee and to submit administration bond.

26. Such order dated 08.03.2018 is under challenge in the present appeal.

27. Mr. Ramesh Kumar, learned counsel for Objector submits that there are inexplicable and mysterious circumstances surrounding execution of the *Will* and that these have not been appreciated by learned Probate Court in the desired manner. His prime contentions can be summarised as under: -

- i. *Testatrix remained admitted in two different hospitals. Her initial admission was in Mool Chand Hospital from 31.01.2003*



to 07.02.2003. Since her condition did not improve and some surgical intervention was required, she was, reportedly, shifted to Ganga Ram Hospital where she remained admitted from 07.02.2003 to 14.02.2003. Such vital fact that Testatrix was in hospital when the Will was executed has not even been whispered in the entire petition. Nobody knows as to who got her admitted. Nobody knows as to who bore her medical expenses. Moreover, no such family member who remained with her during her such hospitalization, has even graced the witness box.

- ii. Mr. Kumar, learned counsel for the Objector does admit that even the Objector is her son but since she seems to have been admitted by the other son, it was obligatory and mandatory for such other son to have entered into witness box. Such other son could have provided much needed clarity about medical condition and sound disposing mind of the Testatrix.*
- iii. Nobody ever knew as to who had drafted the Will. It surfaced only during the appeal that it was petitioner only who had drafted the same. Being petitioner, there was no one who could have prevented him to disclose the same during trial.*
- iv. There is nothing which may indicate that the Testatrix was in sound disposing mind when the Will was allegedly executed by her. The date of execution of such Will is 05.02.2003, but there is no certificate of any doctor of Mool Chand Hospital certifying that on said date i.e. on 05.02.2003 she was*



physically and mentally fit to execute a Will. Such Will is a complicated one running into 12 pages and, therefore, keeping in mind the fact that the Testatrix was admitted in the hospital, all such suspicious circumstances should have been appropriately clarified but nothing has been done to elucidate those.

- v. Neither the Executor of the Will nor the beneficiary of the Will have entered into witness box. They must have been in the Hospital with the Testatrix during the period of her hospitalization and, therefore, it should have been apprised by them as to why there was a sudden need of executing a Will, when she rather required a surgical intervention.*
- vi. It is a case where the Sub-Registrar had rather, as projected, come to Mool Chand Hospital for effecting registration of the Will. For any such execution, happening at a place other than the office of Sub-Registrar, there are certain compulsory pre-requisites and there is nothing on record which may indicate that any such pre-requisites were ever complied with.*
- vii. In any such situation when somebody executes a Will in a Hospital and the maker of the Will is an aged and infirm person, Sub Registrar has to record his complete satisfaction about the mental and physical health of such person. In the case in hand, there is nothing which may show whether such Sub-Registrar had even tried to contact the Medical Superintendent or any attending Doctor under whose supervision, the Testatrix*



remained admitted. There is nothing which may indicate that any such Doctor had assured the Sub-Registrar that the Testatrix was in sound disposing mind.

- viii. *It was also imperative for the petitioner to have examined such Sub-Registrar but it was never even contemplated.*
- ix. *There is also no record which may indicate that any request in advance was sent to such Sub-Registrar for registering the Will at the Hospital. It is also not clear as to who kept the Will, after its execution.*
- x. *As per the Will, the Testatrix wanted to create a trust with the name of “Karuna Raj Vadera Charitable Trust”. Since she remained alive for around four years after the execution of Will and since nothing was done by her for the purposes of creating such Trust, perhaps, she was not even aware about creation of any such Trust.*
- xi. *The alleged previously registered Will dated 07.10.2002 has neither been pleaded nor proved.*
- xii. *It was Mr. Asheesh Vadera who was calling the shots and got the Will in question prepared, while knowing fully-well that his mother was not in sound disposing mind.*
- xiii. *Since neither the Executor nor Mr. Asheesh Vadera himself graced the witness box, the initial onus does not stand discharged.*

28. Appellant has relied upon several judgments. These have been categorized as under: -



Sr. no.	Title	On the point of
1.	i) Leela and Others. Vs. Muruganantham and Others.; <i>2025 SCC OnLine SC 16</i> ii) Meena Pradhan and Others Vs. Kamla Pradhan and Another; <i>2023 SCC OnLine SC 1198</i> iii) Niranjana Umeshchandra Joshi Vs. Mrudula Jyoti Rao and Others; <i>(2006) 13 SCC 433</i> iv) Bharpur Singh and Others Vs. Shamsher Singh; <i>2008 SCC OnLine SC 1867</i> v) H. Venkatachala Iyengar Vs. B.N. Thimmajamma and Others; <i>1958 SCC OnLine SC 31</i> vi) Smt Jaswant Kaur Vs. Smt Amrit Kaur and Others; <i>1976 SCC OnLine SC 368</i> vii) Shashi Kumar Banerjee and Others Vs. Subodli Kumar Banerjee since deceased and after him his legal representatives and Others; <i>1963 SCC OnLine SC 114</i> viii) Uma Devi Nambiar and Others Vs. T.C. Sidhan (Dead); <i>2003 SCC OnLine SC 1371</i> ix) Harish Chander Kawatra Vs. State & Others; <i>2009 SCC OnLine Del 1480</i> x) Sita Kashyap Thru LRs Vs. Harbans Kashyap &Ors.; <i>2013 SCC OnLine Del 1971</i> xi) Yashoda Gupta Vs. Suniti Goyal and others; <i>2001 SCC OnLine Del 383</i>	Suspicious Circumstance
2.	i) Benga Behera and Another Vs. Braja Kishore Nanda and Others; <i>2007 SCC OnLine SC 699</i> ii) Vijay Kumar Tiwari Vs. State and Anr.; <i>2008 SCC OnLine Del 682</i> iii) Raja Ram Singh Vs. Arjun Singh &Anr.; <i>2002 SCC OnLine Del 281</i> iv) Ajit Singh vs Nand Singh and Others; <i>1982 SCC OnLine Del 154</i> v) Desh Raj Gupta Vs. State and Others; <i>2010 SCC OnLine Del 2356</i> vi) Vijay Kumar Banerjee Vs. Arun Kumar Chakravarty and others; <i>2003 SCC OnLine All 1106</i> vii) Vidhyadhar Vs. Manikrao and Another; <i>1999 SCC OnLine SC 294</i>	Onus to prove the Will is always on Propounder



3.	i) Oil and Natural Gas Corporation Limited, Dehradun Through Managing Director Vs. Commissioner of Income Tax, Dehradun; <i>2010 SCC OnLine SC 363</i> ii) Desh Raj Gupta Vs. State and Others; <i>2010 SCC OnLine Del 2356</i>	Conduct of Executor
4.	i) Rani Pnrnima Debi and Another Vs. Kumar Khagendra Narayan Deb and Another; <i>1961 SCC OnLine SC 89</i> ii) Rani Vs Kaliammal, M. Murugan and Smt. Pasurat; <i>MANU/TN/0337/2008</i> iii) Iswar Bhai C. Patel alias Bachu Bhai Patel Vs. Harihar Behera and Another; <i>1999 SCC OnLine SC 286</i> iv) Ramesh DuttSalwan Vs. State Of Delhi; <i>AIR 1989 (DEL) 47</i>	Mere registration of Will does not dispel suspicion.
5.	i) Niranjana Umeshchandra Joshi vs Mrudula Jyoti Rao and Others; <i>2006 SCC OnLine SC 1420</i>	Appreciation of evidence when attesting witness visits in hospital during non- visiting hours
6.	i) Benga Behera and Another Vs. Braja Kishore Nanda and Others; <i>2007 SCC OnLine SC 699</i> ii) H. Venkatachala Iyengar Vs. B.N. Thimmajamma and Others; <i>1958 SCC OnLine SC 31</i> iii) Desh Raj Gupta Vs. State and Others; <i>2010 SCC OnLine Del 2356</i> iv) Saradindunath Ray Chowdhury Vs. Sudhir Chandra Das; <i>1922 SCC OnLine Cal 278</i>	Sound and Disposing mind

29. All such contentions have been refuted by Mr. Asheesh Vadera and his wife.

30. Mr. Dayan Krishnan, learned Senior Counsel represents them and submits that there is no merit or substance in the present appeal and, thus, it is liable to be dismissed. His contentions are as under: -



- i. *The nature of inquiry to be conducted by any probate Court is a summary one and its scope and ambit is very limited, as such Court is, merely, to ascertain whether there is requisite compliance of the relevant provisions of Indian Succession Act, 1925 or not. The prime duty of the Court is to find out whether the Will has been executed in the presence of two or more witnesses, and whether, at least one such attesting witness has entered into the witness box and has proved the execution of the Will.*
- ii. *There is no suspicious circumstance of any nature whatsoever and, the Testatrix was, though, admitted in Mool Chand Hospital but was of sound disposing mind.*
- iii. *Reliance has been placed upon the testimony of Dr. S.K. Thakur who has, in no uncertain terms, deposed that Testatrix was of sound disposing mind at the relevant time. Such testimony coupled with the testimony of the two attesting witnesses, clearly, suggests that the Will is unblemished.*
- iv. *The sound medical condition of the Testatrix also stands corroborated from the fact that she died approximately four years after the execution of the above said Will dated 05.02.2003.*
- v. *Mere fact that there was unequal distribution amongst the natural heirs cannot, in itself, be taken as a suspicious circumstance.*
- vi. *There is also nothing on record which may indicate that there*



was any conflict of interest between the Testatrix on one side and the propounder on the other.

- vii. *The Objector has pointed out certain discrepancies between the two Wills submitted during trial i.e. Will produced by the Executor (Ex-PW1/A) and the Will produced by the official from the office of Sub Registrar Office (ExRW-1/A) and these are, merely, in the nature of typographical discrepancies and do not, even otherwise, materially alter the bequest and these might have happened because of the fact that the execution of Will had taken place at a Hospital and, therefore, no significance can be attached to such discrepancies.*
- viii. *Mr. Amitabh Narayan, Mr. Asheesh Vadera and Mrs. Monica Vadera were never involved either with respect to execution or with the registration of the Will.*
- ix. *The assertion that execution and registration was at behest of Mr. Asheesh Vadera is totally false. Testatrix and her son- Mr. Asheesh Vadera, were on good terms and, in fact, she completely relied on him and trusted him extensively. There was never any acrimony between them, at any point of time. Moreover, there is nothing which may indicate that Mr. Asheesh Vadera has got a lion's share under the Will, supplementing that the contentions in this regard have been made, simply, to prejudice the mind of the Court.*

31. Mr. Krishnan, learned Senior Counsel also relies upon the following precedents: -



Sr. no.	Title	On the point of
1.	i) Meena Pradhan and Others Vs. Kamla Pradhan and Another; <i>2023 SCC OnLine SC 1198</i> ii) Uma Devi Nambiar and Others Vs. T.C. Sidhan; <i>(2004) 2 SCC 321</i>	Suspicious Circumstances
2.	i) Gian Chand and Others Vs. State of Haryana; <i>(2013) 14 SCC 420</i>	Adverse inference cannot be drawn in relation to an aspect, without having given witness an opportunity to explain that aspect.
3.	i) State of U.P. Vs. Nahar Singh (Dead) and Others; <i>(1998) 3 SCC 561</i>	Impact of no cross-examination of witness on a particular aspect.
4.	i) Kishore Samrite Vs. State of Uttar Pradesh and Others.; <i>(2013) 2 SCC 398</i>	Person, not coming with clean hands, is not entitled to any relief.
5.	i) Ravindra Nath Mukherjee and Another Vs. Panchanan Banerjee and Others; <i>(1995) 4 SCC 459</i>	Person close to maker of Will cannot be suspected merely because he is Executor. Will, if voluntary, has to be accepted.
6.	i) P.S. Sairam and Another Vs. P.S. Rama Rao Pisseey and Others; <i>(2004) 11 SCC 320</i>	Appreciation of evidence
7.	i) Sridevi and Others Vs. Jayaraja Shetty and Others; <i>(2005) 2 SCC 784</i> ii) Meenakshiammal (Dead) Through Lrs and Others Vs. Chandrasekaran and Another; <i>(2005) 1 SCC 280</i> iii) Durlabh Chandra Bhattacharjee Vs. Atul Barthakur; <i>(2005) 09 GAU CK 0068</i> iii) Daulat Ram and Others Vs. Sodha and Others; <i>(2005) 1 SCC 40</i>	Onus to prove the Will is always on Propounder



32. I have given my thoughtful consideration to the above said contentions, gone through the judgments and precedents cited at the Bar and also, carefully, perused the Trial Court record.

33. Though numerous precedents have been cited by both the sides, this Court would not mince any word in observing that the present case is little peculiar in nature.

34. Though, there cannot be any dispute with the settled legal position, fact also remains that each case has its own peculiarity and, therefore, the precedent cannot be applied mechanically. Since one slight change in the facts may lead to a different conclusion altogether, it is not, generally, appropriate to blindly follow any precedent, without appreciating the factual matrix.

35. The expression “Will” is defined under Section 2(h) of *Indian Succession Act, 1925* which is nothing but a legal declaration of “*the intention of testator with respect to his property which he desires to be carried into effect after his death*”. Section 59 of *Indian Succession Act, 1925* governs the capability of a person to make a Will and it reads as under:-

“59. Person capable of making Wills.—

Every person of sound mind not being a minor may dispose of his property by Will.

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

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

Explanation 3.—A person who is ordinarily insane may make a



Will during interval in which he is of sound mind.

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

36. As would be clear and obvious from above said expression used in Section 59, every such person has to be of sound mind. It stipulates that every person (not being a minor) “of sound mind” may dispose of his property by *Will*. The second explanation appended to the said provision clarifies that persons who are “deaf or dumb or blind” are not incapacitated by such condition for making a *Will* “if they are able to know what they do by it”. The third explanation makes the basic principle pellucid by adding that even a person who is “ordinarily insane” may make a *Will* during the interval in which “he is of sound mind”. The fourth explanation renders it even more lucent by putting it negatively in words to the effect that if the person “does not know what he is doing” for any reason (such as intoxication, illness or any other such cause) he is incompetent to make a *Will*. The focal pre-requisite, thus, is that at the time of expressing his desire *vis-a-vis* the disposition of the estate after his demise, he must clearly know and understand its purport and import.

37. A testamentary court is a court of conscience and one of the essential pre-requisites is to show that maker of the *Will* was in sound disposing mind at the relevant time. This vital ingredient has to be established. It cannot be left for imagination, particularly when such maker is a lady in her eighties and is admitted in hospital.

38. The execution of an unprivileged *Will*, as the case at hand relates to, is governed by Section 63 of the Indian Succession Act, 1925. Any such *Will*



requires attestation by minimum two witnesses, though, it is not obligatory for any such propounder or petitioner to examine both of them. The important aspect is the presence of the testator when the witnesses attest and testimony of one of such witnesses. In this regard, reference can be made to Section 67 and 68 of *Indian Evidence Act, 1872* (Sec 65 and 67 of *Bharatiya Sakshya Adhiniyam, 2023*).

39. There is no straight jacket formula to decide valid execution of any such *Will* and its due attestation.

40. This has to be deciphered from the evidence led on record and various attendant circumstances.

41. Needless to say, Court is, generally, required to take a holistic view of the situation.

42. Who gets less and who gets more also does not matter much unless such bequeath shakes judicial conscience, completely. 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 all or some of the natural heirs. If a person intends his property to pass to his natural heirs, there is, apparently, no necessity of executing any *Will*. Nonetheless, 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, or one or few of them, by itself without anything more, cannot be held to be a suspicious circumstance.

43. There are series of judgments which lay down general propositions for proving execution of any such *Will* and I may refer to a recent judgment of



Meena Pradhan vs Kamla Pradhan (supra) relied upon by both the parties. In the above said case also, the Hon'ble Supreme Court, after taking into consideration various previous judgments, culled out the principles. The relevant paras of said judgment read as under:-

“9. A Will is an instrument of testamentary disposition of property. It is a legally acknowledged mode of bequeathing a testator's property during his lifetime to be acted upon on his/her death of the testator. Since the testator/Testatrix, at the time of testing the document for its validity, would not be available for deposing as to the circumstances in which the Will came to be executed, stringent requisites for the proof thereof have been statutorily enjoined to rule out the possibility of any manipulation.

10. Relying on H. Venkatachala Iyengar v. B. N. Thimmajamma, 1959 Supp (1) SCR 426 (3-Judge Bench), Bhagwan Kuar v. Kartar Kaur, (1994) 5 SCC 135 (3- Judge Bench), Janki Naryan Bhoir v. Narayan Namdeo Kadam, (2003) 2 SCC 91 (2-Judge Bench) Yumnam Ongbi Tampha Ibema Devi v. Yumnam Joykumar Singh, (2009) 4 SCC 780 (3-Judge Bench) and Shivakumar v. Sharanabasappa, (2021) 11 SCC 277 (3-Judge Bench), we can deduce/infer the following principles required for proving the validity and execution of the Will:

i. 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;

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

iii. 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;

iv. 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;

v. 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;

vi. If one attesting witness can prove the execution of the Will, the examination of other attesting witnesses can be dispensed with;

vii. 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;

viii. 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.

ix. 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;

x. One who alleges fraud, fabrication, undue influence etcetera 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.

xi. Suspicious circumstances must be 'real, germane and valid' and not merely 'the fantasy of the doubting mind'. 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, 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 circumstance."

44. In the instant case, the entire thrust of the Objector is with respect to the fact that there is unexplained mystery which shrouds the execution of the Will and sound disposing state of Testatrix. As per afore-extracted principles, whenever there is 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 and, therefore, the initial onus on the propounder becomes heavier. Judicial conscience has to have complete guarantee while dealing with cases where the execution of the Will



is surrounded by suspicious circumstances and, therefore, the court needs to consider factors, *inter alia*, *sound, certain and disposing state of mind of the testator at the time of execution*. It has also been observed therein 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, including a feeble mind.

45. Let me now weigh up the suspicious circumstances, alleged herein.

46. The suspicious circumstances highlighted by the Objector, primarily, revolve around two facets.

47. Firstly, Testatrix was admitted in the hospital at the relevant time and there is nothing on record which may remotely indicate that she was in sound disposing mind.

48. Secondly, there is whole lot of cloud under what circumstances, the concerned Sub-Registrar had come to the hospital. The Objector also expresses astonishment as to where are the mandatory pre-requisites. It is argued that there is nothing which may indicate that any advance information was sent to office of Sub-Registrar. He also raises his eyebrow the manner in which the sub-Registrar has gone ahead with the execution, without even bothering to contact the concerned doctor under whose examination and supervision, the Testatrix was admitted in the hospital.

49. Therefore, it will be appropriate to first deal with the above said vital aspects.

50. As noticed already, any and every circumstance is not a suspicious circumstance. Even where any beneficiary takes active participation in



execution of the *Will*, it has been held that such fact, by itself, is not sufficient to create any doubt either about the testamentary capacity or the genuineness of the *Will*. At times, mere presence of the beneficiary at the time of execution would not be enough to prove that the beneficiary had taken prominent part in the execution of the *Will*. Reference in this regard be made to *Pentakota Satyanarayana vs. Pentakota Seetharatnam*, (2005) 8 SCC 67.

51. In *Hari Singh & Anr Vs. The State & Anr*. 2010 (120) DRJ 716, this Court observed that law does not prescribe or expect that only very close family friends or associates should witness *Will*. It also observed that courts are not expected to be satisfied that a bequeathal is rational or not; what has to be considered is whether the bequest was so unnatural that the Testator could not have made it. In *Hari Singh (supra)*, the Hon'ble High Court made reference to *Jagdish Lal Bhatia vs Madan Lal Bhatia*: 2008(100) DRJ 98 which deals with the legal burden of proof when a *Will* is propounded and also spelt as to what would constitute suspicious circumstances and what form of affirmative proof should be sought by the court to satisfy the judicial conscience that the document propounded is the last legal and valid custom of the testator. These principles are as under:

"I. 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 last Will of a free and capable testator.

II. 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 the law. The contestant opposing the Will may bring material on record meeting such prima facie 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. (see the decision of the Supreme Court in Madhukar D. Shende v Tarabai Aba Shedge, AIR 2002 SC 637).

III. No specific standard of proof can be enunciated which must be applicable to all the cases. Every case depends upon its circumstances. Apart from other proof, conduct of parties is very material and has considerable bearing on evidence as to the genuineness of Will which is propounded. Courts have to be vigilant and zealous in examining evidence. Rules relating to proof of Wills are not rules of laws but are rules of prudence.

IV. Expanding on the care and caution to be adopted by the courts, and presumptions to be raised, in the decision reported as (1864) 3 Sw & Tr. 431 In The Goods of Geale, it was opined that where a person is illiterate or semi literate or the Will is in a language not spoken or understood by the Executor, the court would require evidence to affirmatively establish that the testator understood and approved all the contents of the Will.

V. One form of affirmative proof is to establish that the Will was read over by, or to, the testator when he executed it. If a testator merely casts his eye over the Will, this may not be sufficient.

VI. Courts have to evaluate evidence pertaining to the circumstances under which the Will was prepared. If a Will is prepared and executed under circumstances which raise a well grounded suspicion that the Executor did not express his mind under the Will, probate would not be granted unless that suspicion is removed.

VII. A word of caution. Circumstances can only raise a suspicion if they are circumstance attending, or at least relevant to the preparation and execution of the Will itself.

VIII. Another point that has to be considered is about the improbability in the manner in which the instrument is scripted. Instance of suspicious circumstances would be alleged signatures of testator being shaky and doubtful, condition of the testator's mind being feeble and debilitated, bequest being unnatural, improbable and unfair.

IX. Suspicious circumstances are a presumption to hold against the Will. Greater is the suspicion more heavy would be the onus to be discharged by he who propounds the Will.

X. A Will is normally executed by a person where he intends to alter the rule of succession or where he desires a particular form of inheritance and to that extent, nature of bequest is not of much substance to invalidate a Will, but consistent view taken by the courts is that this could be treated as a suspicious circumstance. What weightage has to be attached to this suspicion would depend upon case to case. XI. Suspicion being a presumptive evidence, is a



weak evidence and can be dispelled.”

52. As per the specific case of the Executor, the Testatrix was admitted in hospital when the *Will* was executed. And, that the concerned Sub-Registrar himself had come to the hospital for registration, pursuant to request sent to him.

53. I have already referred to the averments appearing in the probate petition. In the petition, it has, merely, been stated that Mrs. Karuna Raj Vadera executed her last *Will* on 05.02.2003 which was registered as document No. 539 in Addl. Book No. III, Vol No. 1216. It is not comprehensible as to why such a crucial fact that the Testatrix was admitted in a hospital and that the sub-Registrar had come to the hospital has not even been whispered in the petition. There was, actually speaking, no reason whatsoever to have ignored, overlooked and disregarded the above said important aspects, while presenting the petition.

54. Petitioner- Amitabh Narayan claims that he is the Executor.

55. Surprisingly, it was only during the course of the pendency of the present appeal that it came to fore that the *Will* in question had been drafted by him. When the written synopsis was filed by Mr. Amitabh Narayan before this Court, he divulged the above said aspect for the first time that he was the one who had drafted the *Will* as per the request and instructions of Testatrix. He claimed that since he was family lawyer of Vadera family, he consented to such request. He claimed that he prepared two printouts of the *Will* which were got collected by Testatrix through her representative from his office, *a day or two before the date of execution of Will*. He also revealed that after going through such *Will*, the Testatrix called him (Amitabh



Narayan) over the phone and told him that she wanted to make minor changes in certain clauses of *Will* and communicated such changes to him over the phone and on such instructions, Mr. Amitabh Narayan generated two more printouts of such changed *Will* which were also got collected by Testatrix through her representative on same day i.e. on 05.02.2003. He also claimed that the date as 05.02.2003 was mentioned in the *Will* as per the request and the instructions of the Testatrix. He also revealed that same evening, the Testatrix again called him to inform that she had executed the *Will* in Mool Chand Hospital and had even got the same registered and that she had made him (Mr. Amitabh Narayan) Executor of such *Will*.

56. He also claimed that such original *Will*, after it was duly registered, was sent by her to him in a sealed cover through her representative and thereafter, such *Will* remained in his possession till it was submitted before the probate Court.

57. Interestingly, Mr. Amitabh Narayan also claimed in his such written submissions that he was not present at Mool Chand Hospital at the time of execution/registration of *Will* and it appeared that by mistake, the Testatrix might have signed a printout which was already lying with her before the date of execution and which was required to be altered and that she also signed the other printout, which was incorporating the changes, which had been sent to her by him on 05.02.2003. He has, thus, tried to explain the differences in the two copies of the *Wills*, in the above manner.

58. The question is how to take these belated revelations?

59. I strongly feel that these disclosures cannot be kept aside in an unconcerned manner.



60. These seem to have been made with calculated objective i.e. to take sheen out of the contentions made by the Objector respecting such deviations. The Objector had claimed that there were material changes in the two copies of the *Will*, one produced by the Executor and the one brought from the office of the Sub-Registrar and Mr. Amitabh Narayan has come up with a fantastical explanation, which, hardly seems believable in the present context. As already noted, he does not even mention in the petition that at the time of execution of *Will*, the Testatrix was in the hospital. He does not even mention that the Sub-Registrar had come to the Hospital. He also does not mention that he was the one who had prepared the *Will* as per the instructions of Testatrix. He does not mention that, initially, the *Will* was prepared on 03.02.2003 and then on the basis of some further instructions, he carried out certain changes and prepared another *Will* on 05.02.2003.

61. Nobody knows as to who is that representative who collected the *Will* from him on the said two occasions. Despite being the family lawyer and also being named as Executor, and despite the fact that the *Will* was drafted by him as per the instructions of the Testatrix, he was not even present at the hospital at the time of alleged execution.

62. Since there were certain changes between the two sets of the *Wills* i.e. the first set which was prepared one or two days before the execution and the other set prepared on same day, in order to clear the entire air, it was imperative for Mr. Amitabh Narayan to have elaborated all these facts in the probate petition itself.

63. To make things worse, he does not even think of entering into witness box.



64. This according to me is nothing but a suspicious circumstance in itself.

65. The next aspect would be to assess the medical condition of the Testatrix.

66. It has to be seen whether the Testatrix was in sound disposing mind at the relevant time or not.

67. I need not re-emphasize the fact that since the probate petition has been filed by the Executor, the initial onus and responsibility is on the shoulders of such propounder and Executor to clearly show to the Court that there is no distrust with respect to the execution of the *Will* and that the Testatrix was in sound disposing mind.

68. The petition contains verification of two attesting witnesses i.e. Mr. Mukul Bhatnagar and Dr. Vinod Rai and along with the petition, the petitioner had merely filed two documents i.e. original *Will* and certified copy of death certificate.

69. No other document was filed with the probate petition.

70. The Executor seemed to be of the notion that the moment, the above said two attesting witnesses are examined, the onus would stand discharged successfully and it would be, then, for his adversary to establish any suspicious circumstance with respect to the execution of the *Will*.

71. Such thinking on the part of Executor is not comprehensible at all.

72. The Testatrix was admitted in the hospital.

73. *Her son Mr. Asheesh Vadera must have been taking care of his mother.*



74. Testatrix, initially, remained in Mool Chand Hospital and since her condition did not improve and since there was requirement of some surgical intervention, she was shifted to Ganga Ram Hospital. However, before her such shifting to Ganga Ram Hospital, the *Will* in question was, allegedly, executed by her.

75. The present case is little unusual in the sense that the *Will* was executed in the hospital and, therefore, it is really baffling as to why the medical records of Testatrix were not attached with the probate petition. No such document was placed on record either by the petitioner or for that matter by her such other son Mr. Asheesh Vadera and his wife Mrs. Monica Vadera.

76. Curiously, medical record has rather been placed on record by none other than Objector Mr. Ashval Vadera.

77. Not only did he produce the record with respect to the above said hospitalization, but also submitted record of hospitalization of her mother for the other period as well and there is no enlightenment from the side of the petitioner and from Mr. Asheesh Vadera as to why they themselves did not produce any such record.

78. The execution of the *Will* is at the hospital.

79. As a rule, any such registration is to take place in the office of Sub-Registrar. The exception is contained in section 31 of Registration Act, 1908 which states that on special cause being shown, such registration can take place at the residence of any person. Section 31 of Registration Act, 1908 reads as under:-

“31. Registration or acceptance for deposit at private residence.



- In ordinary cases the registration or deposit of documents under this Act shall be made only at the office of the officer authorised to accept the same for registration or deposit:

Provided that such officer may on special cause being shown attend at the residence of any person desiring to present a document for registration or to deposit a Will, and accept for registration or deposit such document or Will."

80. Obviously, it is not a case where the registration has taken place at the residence of Testatrix but keeping in mind the spirit and objective of the abovesaid provision, it can be assumed that such registration can even take place at a hospital.

81. However, wherever such execution takes place at a hospital, the task becomes much more onerous and as a necessary consequence, the initial onus on the part of any propounder also becomes extra-rigorous. In such a situation, it is rather obligatory for any such petitioner to, categorically, demonstrate that at the relevant time when the *Will* was executed in the hospital, the Testatrix was in sound disposing mind and also that all the formalities with respect to summoning of a Sub-Registrar to a hospital were duly carried out.

82. Here, as already stated above, the petitioner assumed his job to be over by examining the two attesting witnesses.

83. Let's assume a situation where such Objector does not even choose to lead evidence.

84. Whether merely on the basis of the testimony of the attesting witnesses, a court, in such a situation, can reach a definite conclusion that the Testatrix was in a sound disposing mind and that all such requisite



formalities regarding sending request to Sub-Registrar stood clearly proved on record.

85. The answer has to be an emphatic 'no'.

86. As noted already, neither any medical record has been placed by the petitioner himself, nor has the other son, who must be taking care of his mother, thrown some light over the same. Her medical condition could have been confirmed by those family members who got her admitted. It really does not matter whether they were also beneficiaries. No doctor or any medical certificate issued by such doctor for said date, is before us to vouch for her sound disposing state.

87. There is also no record suggesting sending of advance information to the concerned Sub-registrar and, therefore, it is really surprising to understand as to how the onus stood shifted on to the Objector.

88. Thus, quite evidently, the initial onus was never discharged by the petitioner in the desired manner.

89. Of course, the two attesting witnesses entered into witness box but in view of the peculiar facts of the present case, that was not, in itself, sufficient.

90. Let me now come to the *Will*.

91. Such *Will* has been proved as Ex-PW-1/A.

92. In such *Will*, the Testatrix has claimed as under:-

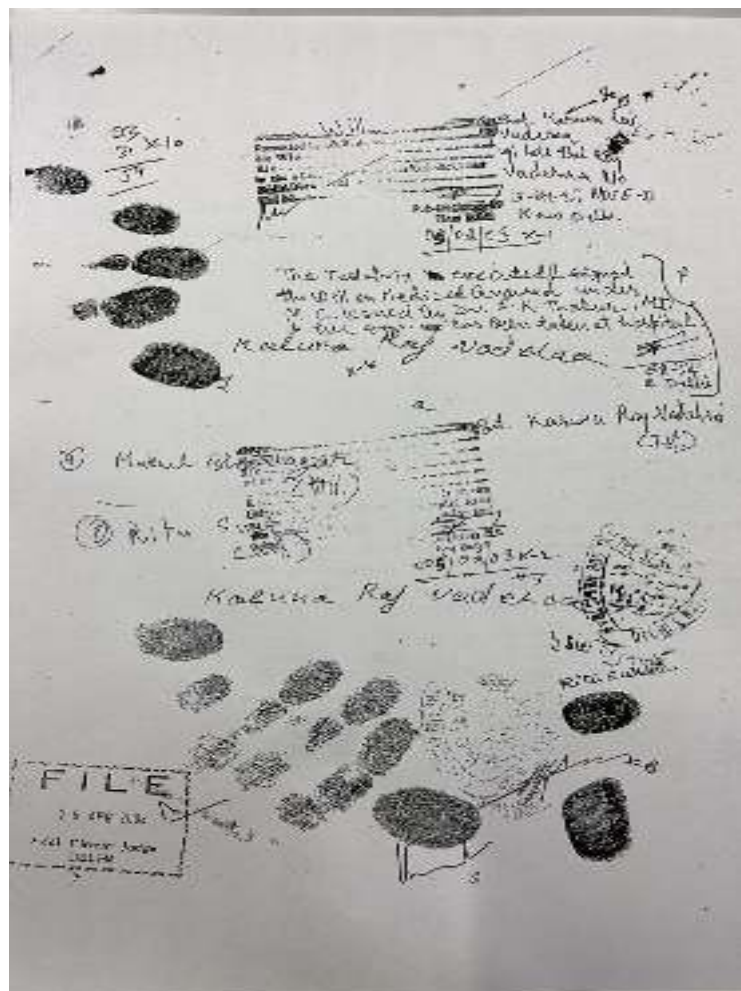
*"I am advanced in age but mentally alert and sound and to obviate any dispute about the succession to my estate, I am executing this Will in respect of my moveable and immovable properties.
I am executing this Will on my own, voluntarily without any pressure from any quarter."*



93. As per the petitioner, he had drafted the above said *Will* as per the instructions, he also knew that at that time, the Testatrix was admitted in hospital. It is really intriguing as to why such an important fact that at the time of execution of her such *Will*, she was admitted in a hospital has not even been typed in the *Will*. Such crucial omission also cannot be disregarded nonchalantly.

94. There are two important pages of the above said *Will* which I need to extract in the judgment.

95. These relate to the attesting witnesses and the endorsement given by the concerned Sub-Registrar. These are as under:-





12

we the witnesses have signed, in her presence and in the presence of each other.

WITNESSES

1. (MUKUL BHATNAGAR)
S/o Dr. K.C. BHATNAGAR
R/o C-2/91C LAURENCE ROAD
DELHI-110035
DE No. - P94/21575
Valid upto 11/9/2026/RT

2. RITU SURI
(RITU SURI)
W/o CAPT B.K. SURI
SA/154 W-PA, KAROL BAGH
NEW DELHI-110005
PAN No ABCP36641N.

3. I have talked with KARNIA RAO VADERAA. I find her in sound mind and memory and she has signed the will and affixed her thumb impression as well as the finger impression of her LEFT hand in my presence and I along with the other attesting witnesses have signed in the presence of each other.

T

T

T

DR. VINOD RAI
S
B-461 NEW ARCADES
COLONY, POC 19575

JAIN NARAIN
Advocate
Clt. No. 659 Western Wing
Tis Hazari Delhi-54.

96. The abovesaid description would indicate that Mr. Mukul Bhatnagar and Ms. Ritu Suri have been shown witnesses and they signed in such capacity.

97. Thereafter, Dr. Vinod Rai has also signed as witness.



98. Mr. Ramesh Kumar, learned counsel for the Objector contends that a bare glimpse of the above said page i.e last page of the *Will*, would suggest that the name of Dr. Vinod Rai has been added subsequently to somehow offer some extra impetus to the case of the petitioner. Surprisingly, Dr. Vinod Rai, though, records that he had talked to Ms. Karuna Raj Vadera and found her in sound mind and mentally alert, no such endorsement is there from the other two witnesses viz Mr. Mukul Bhatnagar and Ms. Ritu Suri. Mr. Kumar, learned counsel also submits that thereafter, there is also an endorsement of Mr. Jai Narayan, Advocate, to the effect that the Testatrix had admitted the contents and that she and witnesses had signed in his presence. Said advocate has also not entered into witness box for the reasons best known to the petitioner.

99. The endorsement made by Sub-Registrar–III, New Delhi reads as under:-

“The Testatrix executed and signed the Will on medical ground under M C issued by Dr. S K Thakur, MD and her signature has been taken at hospital.”

100. Such endorsement does not indicate that the Sub-Registrar had met Dr. Thakur. It merely mentions about one M.C. (Medical certificate).

101. Interestingly, there is no endorsement by Sub-Registrar–III to the effect that the Testatrix was in sound disposing mind.

102. Before dealing with the testimony of the two attesting witnesses, let me straightaway come to the testimony of the Dr. (Col.) S.K. Thakur. It assumes importance because as per the endorsement of Sub-Registrar, the medical certificate had been issued by Dr. S.K. Thakur.



103. As already noticed, Dr. Thakur was examined at the behest of Mrs. Monica Vadera and in his deposition dated 20.03.2017, he stated that he was working as consultant Gastroenterologist at Mool Chand Hospital. He deposed that he had seen the discharge summary of Mrs. Karuna Raj Vadera which was EX-OW-1/5.

104. As per further deposition of Dr. Thakur, the Testatrix remained admitted in Mool Chand Hospital from 31.01.2003 to 07.02.2003. She was admitted with *sub-acute intestinal obstruction* and throughout her admission, under his care during the above said period, apart from abdominal pain and vomiting, she was conscious, alert and oriented. He deposed that none of the medicines which she had received during her such hospitalization, had any effect on her state of consciousness and alertness. He also deposed that at no point of time, her condition required her to be shifted to Intensive Care Unit (ICU). He also deposed that he remembered giving a medical fitness pertaining to her alertness during her period of hospitalization.

105. When Dr. Thakur was tendered for cross examination, a medical fitness certificate was shown to him by none other than counsel for Mr. Asheesh Vadera and Ms. Monica Vadera and in such cross-examination, he admitted that such certificate was issued by him. Accordingly, such certificate was exhibited as Ex-CW-1/1.

106. Such certificate is of 03.02.2003 and reads as under:-

“This is to certify that Mrs. Karuna Raj Vadera is admitted in Moolchand Hospital on 31.01.2003 as a case of sub acute Intestinal Obstruction. However, her mind is in sound and proper condition.”

107. There are two aspects with respect to the above said medical certificate.



108. Firstly, it is not explained as to why this important medical certificate was held back for all these years. Ideally, it should have been placed on record either with the petition or when the written statement was filed by Mr. Asheesh Vadera.

109. Secondly, and most importantly, this medical certificate is of 03.02.2003.

110. Need I remind myself that the date of execution of the *Will* is 05.02.2003.

111. Medical condition of any person, admitted in hospital, can deteriorate in no time and here, there is a gap of around 48 hours which is not a small time-window. It beats my imagination as to how said certificate, even if it is believed to be a genuine one, is going to serve any real purpose. This certificate cannot establish that the Testatrix continued to remain in the same sound disposing condition and was physically and mentally alright on 05.02.2003 as well and, therefore, such medical certificate does not serve the requisite purpose at all. It is, therefore, not digestible as to how the Sub-Registrar, if at all he had seen the same, could have relied upon the same. I may also stress that there is no other certificate, except the above. I have already extracted above the relevant endorsement made by the Sub-Registrar. He merely mentions about the medical certificate issued by Dr. Thakur. He did not even find it prudent to retain any such medical certificate.

112. That's why there was, actually speaking, a dire necessity of having deposition of Sub-Registrar concerned.



113. Yes, in normal circumstances, the Court, generally, does not direct for personal examination of any such Sub-Registrar. The aspect of registration can be proved through any other official of such office, besides with the help of testimony of the attesting witnesses.

114. However, the present case is an exception to the general rule.

115. Here, the Sub-Registrar had come to the hospital and such visit is on the basis of request, made in advance. As per the Section 31 of Registration Act, a special cause has to be shown as to why such officer should leave his office and to come to some other place for registration.

116. According to Objector, the pre-requisites in this regard are, though, not given either in the *Registration Act* or in *Delhi Registration Rules, 1976*, the information in this regard was sought by the Objector by moving applications under *Right to Information Act* and such information clearly indicates that in any such situation, a request is to be made in advance to concerned Sub-Registrar to visit the hospital for registration of the *Will*. The prescribed fee for purposes of such visit and registration of *Will* on medical ground is required to be deposited, besides the travelling allowance. Any such written request has to accompany the document in duplicate to be executed by any such testator and also with the medical certificate, issued by the concerned hospital. Reference in this regard be made to information given by Sub-Registrar III on 02.02.2013 which has been proved as Ex-R5W1/02.

117. Here there is nothing which may indicate as to whether any advance information was sent to the Sub-Registrar.

118. Nobody knows as to what intimation was sent and how.



119. Nobody knows whether along with such intimation in writing, any copy of the *Will* and any medical certificate was also sent to the concerned Sub-Registrar.

120. There is no such record whatsoever.

121. To make things worse, Mr. Asheesh Vadera has maintained eerie silence.

122. Even if he was having *no objection* to the grant of probate, he should have graced the witness box to repel all these mysterious circumstances shrouding the execution of the *Will* and medical condition of his mother. He, however, does not bother to enter into witness box and when Dr. Thakur enters into witness box, he (Mr. Asheesh Vadera) shows him one medical certificate purported to have been issued by Dr. Thakur.

123. Be that as it may, there is nothing to indicate as to how and when request was sent to Sub-Registrar. This aspect is not mere procedural in nature and existence of such record cannot be left for imagination.

124. Even if, for a moment, I disregard the non-availability of such written request, the manner in which such officer has done the registration leaves much to be desired.

125. Any such Sub-Registrar, while coming to hospital for a specific purpose of execution of a *Will*, has to make himself *sure and certain* that the maker of the *Will* is in sound disposing mind. The very fact that Sub-Registrar has been requested to visit to hospital for special purpose puts him on guard and before doing anything else, such Sub-Registrar has to first meet the Medical Superintendent of the hospital or for that matter, the attending doctor to reassure himself about the physical and mental faculties



of such maker of the *Will*. There is nothing which may indicate that the concerned Sub-Registrar had met any doctor that day or had assured himself about the medical condition of Testatrix. Without even bothering to verify the identity of the Testatrix, he simply endorsed that she had executed the *Will* on Medical ground on the basis of some medical certificate issued by Dr. Thakur, which was not even retained by him. He does not even record anywhere that he had met Dr. Thakur that day or that he had called Dr. Thakur at the time of registration or execution of *Will*. Dr. Thakur also nowhere deposed that he ever met such Sub-Registrar at the hospital that day.

126. To have complete clarity about the abovesaid aspects, the ideal scenario was to have examined the above said Sub-Registrar. His examination was, virtually, *sine qua non* to clear the air.

127. Only he could have apprised the Court as to under what circumstances, he had gone to hospital for registration. He could have apprised as to where is such written request to him. He could have apprised as to how and when the requisite fee in this regard had been paid or deposited. He could have been deposed as to whom he contacted in the hospital to assure himself about the identity and medical condition of Testatrix before registering document.

128. Unfortunately, such Sub-Registrar has not been examined by the petitioner which, itself, puts a big question mark with respect to the fact whether the Testatrix was, actually, in a sound disposing mind or not at the relevant time on 05.02.2003.



129. Obviously, her condition did not improve and since there was some surgical intervention required, she was shifted to Ganga Ram Hospital on 07.02.2003.

130. This Court also cannot be ignorant of the fact that she was 80 years of age when she had allegedly executed her said *Will* and, therefore, in such a peculiar situation, it was expected of petitioner to have discharged his onus absolutely and completely, leaving no misgiving and apprehensiveness about the fitness of Testatrix. Instead, the onus has been shifted to Mr. Ashval Vadera to establish the existence of suspicious circumstances, if any.

131. *Let me now see testimony of the attesting witnesses.*

132. If the case of the petitioner is to be believed then there are three attesting witnesses viz. Mr. Mukul Bhatnagar, Ms. Ritu Suri and Dr. Vinod Rai. Though Objector would contend that the attesting witnesses, at best, could be Mr. Mukul Bhatnagar and Ms. Ritu Suri only and not Dr. Vinod Rai, leaving aside such contention for a moment, let me see the testimony of two attesting witnesses who have graced the witness box.

133. PW1 Dr. Vinod Rai, in his affidavit of examination-in-chief (Ex. P-1), stated that he was medical practitioner for last twenty-years and had gone to Mool Chand Khairati Lal Hospital to sign as an attesting witness. He deposed that Smt. Karuna Raj Vadera read the *Will* in his presence and stated that it was in accordance with her wishes. He also deposed that she was mentally alert and in a sound disposing mind, which he could discern after talking to her. He deposed that thereafter, she signed on each page of the *Will* and put her thumb impression on each page and in his presence as well as in the presence of Mr. Mukul Bhatnagar and Sub-Registrar. He



deposed that immediately thereafter, Mr. Mukul Bhatnagar and he himself also signed the *Will* as attesting witnesses.

134. Before touching his cross-examination, I need to highlight one material aspect.

135. In his entire affidavit of examination-in-chief (Ex. P-1), he did not even whisper about the other attesting witness Ms. Ritu Suri. *His such affidavit is conspicuously silent even with respect to mere presence of Ms. Ritu Suri at the time of execution of such Will.*

136. Though Dr. Vinod Rai claims that he was practicing since 1989 but when certain questions were put to him to assess his knowledge about the medical terms, he failed to provide satisfactory answers as he was unable to explain about the full form of several such terms viz. ANTG, SAIO & PSVT. He failed to apprise as to why injection NTG is administered to anyone. Though it may not be of great relevance in any other situation but keeping in mind the fact that Testatrix was admitted in hospital, this Court expected that being doctor, he would be aware about these medical terms, more so when he also endorses in writing about her sound condition. As noticed, the other two witnesses, while appending their signatures, did not mention anything about the sound mind and mental alertness of the Testatrix whereas Dr. Rai has mentioned so while putting his signatures.

137. He admitted in his further deposition that he knew that Testatrix had cardio-respiratory and intestinal problem since 2000. He claimed that he was called by the Testatrix in the hospital on 05.02.2003. She had called him up on telephone and told him that she was going to execute a *Will* and, therefore, requested him to attest the same. He reached hospital at about



3.00 to 3.30 PM and stayed there for about 30 to 45 minutes. He also deposed that he had learnt about her hospitalization in advance from Ms. Asheesh Vadera. He deposed that Testatrix took about 15-20 minutes in reading out the *Will*. He also deposed that he was not carrying any identification card with him to show that he was a doctor. He also deposed that he had not seen history-sheet of Testatrix though she had intestine obstruction problem at the relevant time. He claimed that he was told in this regard by the Testatrix as well as Mr. Asheesh Vadera that she was suffering from intestine obstruction problem. He, however, deposed that he did not know as to who got her admitted in the hospital and what medicines had been prescribed to her. He also deposed that none of the doctor of the aforesaid hospital had written anything on the *Will* in his presence. *He also deposed that he did not know whether any officer from the office of Sub-Registrar was present in the room at that time or not. He also claimed that he had met one lady Ms. Suri or Ms. Puri, once prior to 05.02.2003 and he met her perhaps on a dinner in the house of Testatrix.*

138. In cross-examination, he also claimed that there was no formal introduction with that lady on 05.02.2003. He claimed that he did not make any enquiries from Testatrix as to from where she had got the *Will* prepared and to whom she had given her property. Surprisingly, he also claimed that he did not know as to who prepared his affidavit Ex. P-1. In his further cross-examination, he also claimed that no certificate was given by any doctor at the hospital at the time of execution of such *Will*.

139. As regards Sub Registrar, he deposed that he did not know whether Sub Registrar had written or made any endorsement on the *Will*. He claimed



that such Sub Registrar did not read over the *Will* to the Testatrix. He also does not know whether the Sub Registrar had done anything after the execution of the *Will*. He denied that the *Will* was a fabricated one which was prepared in connivance with Mr. Asheesh Vadera and other witnesses. He never visited Testatrix at Ganga Ram Hospital. So much so, he claimed that he was not aware about her admission in Ganga Ram Hospital. *Most surprisingly, he also claimed that he did not meet any family member of Testatrix in the hospital at the time of execution of Will.*

140. Though, initially, he feigned ignorance about certain medical terms & conditions, when further question was put to him in this regard on 07.03.2012 in cross-examination, he came up with an *evasive answer* by deposing that a patient, who was suffering from high blood pressure and was not passing stool for two-three days and was suffering from SAIO and to whom injection Nitroglycerin had been administered, *may or may not be* in a serious condition. Such deposition rather raises eyebrows regarding Testatrix, being in sound condition.

141. Be that as it may, even if, for a moment, it is assumed that Dr. Rai was also one of the attesting witnesses, his testimony does not inspire much confidence as regards physical and mental condition of Testatrix. His endorsement on the *Will*, therefore, also does not have much reliability.

142. PW2 Mr. Mukul Bhatnagar is the other attesting witness and his examination-in-chief is also virtually on the same lines.

143. In his such affidavit (Ex. PW2/A), he also claimed that Testatrix had signed the *Will* in his presence and in the presence of Dr. Vinod Rai and Sub Registrar. *His examination-in-chief also does not contain even a whisper*



about the presence of Ms. Ritu Suri. He knew Testatrix as he was her Chartered Accountant. He also deposed that he was called by the Testatrix herself for the execution of said Will. He reached her room in the hospital at about 2.00 PM. He deposed that he did not get the pass prepared for such visitation. In his cross-examination through he claimed that there was one more lady Ms. Ritu Suri present in the room of the hospital but also claimed that he did not know her. He does not recall whether during his stay in the aforesaid room, any nurse or any other staff of the hospital visited there but as far as visit of any doctor is concerned, he was very specific and deposed that during his stay in the room, no doctor from the hospital visited that room. He also does not recollect whether official from the Sub Registrar office had consulted any doctor from the hospital. He knew Mr. Amitabh Narayan who was the lawyer of Mr. Asheesh Vadera, Mr. Ashval Vadera and Testatrix. His deposition is in synchronization with the testimony of other attesting witnesses as he also deposed that Will was read by Testatrix and she took around 20-35 minutes to read it out and after reading out the Will, she signed the Will. However, as regards any endorsement made by the Sub Registrar, he was blissfully ignorant as he deposed that he could not recollect whether such official had written anything on the Will or not. He also could not throw any light with respect to the overwriting appearing in the dates by contending that he did not recollect whether these were made in his presence or not.

144. When the Will was shown to him, he admitted that such official from the office of Sub Registrar had not written the name of Dr. Vinod Rai. He



supplemented that Sub Registrar had only written his name as well as the name of Mrs. Suri.

145. PW2 Mukul Bhatnagar also does not recall whether any medical certificate of Testatrix was handed over to the Sub Registrar at the time of registration of the *Will* in the hospital to show her medical condition. He does admit that Testatrix was undergoing certain medical problems but supplemented that he was not aware whether she had undergone any operation or not. in his cross-examination too, he claimed that he did not know Mrs. Ritu Suri. It was suggested to him that he had forged the *Will* in connivance with Mr. Asheesh Vadera to which he answered in negative. He denied that no Sub Registrar had come to the room of Testatrix on the day of execution and registration, and also denied that her aforesaid *Will* was forged and fabricated and that no such *Will* was executed by her at the hospital or anywhere.

146. I may also highlight two important aspects related to testimony of said two attesting witnesses.

147. I have already extracted the relevant portion where there is also endorsement of Sub-Registrar. There is reference of names of attesting witnesses near such endorsement and if the same is to be believed, the attesting witnesses were Mr. Mukul Bhatnagar and Ms. Ritu Suri and no one else.

148. There is no whisper about the name of Dr. Vinod Rai.

149. Had he been also an attesting witness and was also present when the concerned Sub-Registrar had come for Registration of *Will*, his name would have certainly been mentioned there. The omission in this regard, coupled



with the manner in which his name is reflected in the last cannot be overlooked and such facts, virtually, invalidate his presence even at the time of execution and registration of the *Will*. Importantly, the Sub-Registrar does not sign on the last page where only such endorsement and signatures of Dr. Rai appears. Moreover, if at all, Dr. Rai was there in the hospital, there was no one to have prevented the Sub Registrar in not mentioning his name on the *Will* on the page where Sub-Registrar had given his endorsement. Moreover, being a doctor, Sub Registrar would have been, naturally, tempted to enquire from him directly about the health of Testatrix, instead of merely making reference to some medical certificate.

150. Secondly, both the attesting witnesses i.e. Mukul Bhatnagar and Dr. Vinod Rai, in their examination-in-chief have not even whispered about the presence of Ms. Ritu Suri and their cross examination would indicate, as if they never knew such Ms. Ritu Suri beforehand. Fact remains that prior to the *Will* in question, the Testatrix had also executed another *Will* on 07.10.2002. Such *Will* is also a registered one. It is though on record, but not proved by the petitioner. However, if such *Will* is to be believed then there were three attesting witnesses even at that time i.e. Dr. Vinod Rai, Mr. Mukul Bhatnagar and Ms. Ritu Suri. In such a situation, it cannot be believed that they were not knowing her already.

151. It is also perplexing that none of the attesting witnesses met any of the family members of the Testatrix at Mool Chand Hospital.

152. The medical record has been placed by Objector only and in his examination-in-chief, he rather claimed that since intestines of her mother were blocked and since she had not passed stool for nine days, she was in



very uncomfortable condition and was hypertense. He also deposed that because of drugs, his mother was not physically and mentally fit. Thus, the Objector seems to be in thick of things. He deposed about her medical condition and he also produced the medical record. There is no challenge to such testimony in the sense that no other family member has entered into witness box to rebut the same or to prove the same in discharge of primary onus.

153. Since, Testatrix was hospitalised and was in a serious condition, her family members would have been around. However, testimony of attesting witnesses is conspicuously silent about presence of any such family member including Mr. Asheesh Vadera. They do not see or meet any family member, at all. This does not look plausible. Assuming that the Testatrix had sent request directly to them, it does not look believable that these witnesses would not have even seen any family member at the hospital. At least, one such other family member should have entered into witness box and should have assured the Court about the sound disposing condition of the Testatrix. Mr. Jai Narayan, advocate was also present at the time of alleged execution and he also did not enter into witness box.

154. I have already referred to the testimony of both the attesting witnesses and they both deposed that the Testatrix had read out the *Will* for thirty minutes. It also seems puzzling and surprising as the *Will* is not a small one. It is running into twelve pages and it has not been explained as to why the Testatrix, while admitted in a hospital and while undergoing treatment, would have to, herself, read out the entire *Will*. Such version does not convince the Court.



155. As already noticed, the medical record was never produced by the petitioner or for that matter by Mr. Asheesh Vadera. Surprisingly, when Dr. Thakur entered into witness box, Mr. Asheesh Vadera confronted him with a medical certificate. If he was, at all, having medical record with him, he should have rather produced the entire record. His selective approach in this regard conveys something else and who knows even this medical certificate might have been procured or got prepared, later on.

156. It also needs to be stressed that despite the fact that the medical record was, rather, produced by the Objector, when the Objector was cross-examined, certain unexpected questions were put to him. Besides checking his medical knowledge, which was least warranted, he was asked whether he was in a position to produce any certificate or prescription or any other medical record of any doctor of Mool Chand Hospital. Some such questions and corresponding answers are extracted here:-

“Q Are you in a position to produce any certificate or prescription or any other medical record of any doctor of Moolchand Hospital, who treated your mother during her stay during the period 31.01.2003 to 07.02.2003 wherein it is mentioned that "your mother was not in sound mind" and that "her condition was unstable"?

Ans. I have already filed on record all medical documents with regard to state of mind of deceased and soundness of medical health. I have no other document to show her other medical condition.

Q. Are you in a position to produce any certificate of any treating doctor of your mother wherein it is specifically mentioned that "your mother was not in sound mind" and that "her condition was unstable"?

Ans. My answer to this question is as stated above.

It is wrong to suggest that I am avoiding answers to the



above questions as the same are unfavorable and inconvenient to me.

Q. Are you in a position to produce any document or show in any of the documents already produced by you that the treating doctors of Moolchand Hospital ever advised you that she should be shifted or admitted to Intensive Care Unit because of her serious health condition?

Ans. I have already filed all the original medical documents on record apart from them I have no other medical document.

It is wrong to suggest that I am avoiding answer to the above question as the same is unfavorable and inconvenient to me.

Q Are you in a position to produce any document in support of your aforesaid statement i.e. to show that on 4th February, 2003 her pulse rate had gone upto 250 per minute?

Ans. I did not state that her pulse rate had gone upto 250 per minute However, as per my earlier statement dated 07.12.2015, I had mentioned that the pulse rate may have gone upto 250 per minute because on 04.02.2003 she had PSVT wherein as per medical knowledge, the pulse rate goes up till 250 per minute in such conditions.

Q. On 07.12.2015 you stated in answer to my question that "I can make efforts to produce above said reports" meaning thereby day to day reports of your mother's health during the period 31.01.2003 to 07.02.2003 when she was admitted to Moolchand Hospital.

Did you make any effort to collect those reports for their production in the court or you did not make any effort?

Ans. I have not brought the above said documents because I did not make any efforts.

Q I put it to you that while you have produced only the discharge summary and investigation results of Mrs. Karuna Raj Vadera of Mool Chand Hospital for the period 31.01.2003 to 07.02.2003, you are 'intentionally withholding



the daily recordings and notes of nurses and treating doctor with relevant treatment sheets.

Ans. It is wrong."

157. Thus, though the initial onus is on propounder to show that there is no suspicious circumstance surrounding the execution of *Will* and he also has to demonstrate by convincing and definite evidence that the Testatrix was in sound disposing condition of, instead of discharging such burden, the above said questions were put to the Objector, thereby shifting the onus, which is neither justifiable nor permissible.

158. Moreover, in view of the revelations made by Mr. Amitabh Narayan, it is not at all clear to the Court, as to which was that *Will* which the Testatrix wanted to execute. Moreover, there is some interpolation with respect to the date appearing on the *Will* and it not clear whether the *Will* was executed on 05.02.2003 or 06.02.2003. In the above said factual matrix, it was imperative for the petitioner to have rather examined the concerned Sub-registrar. Interestingly, none of the witness while signing as attesting witness dared to put date under their respective signatures which also becomes somewhat unusual in the context of the present case. Is it a sheer coincidence or a deliberate ploy, remains a puzzle.

159. Undoubtedly, it is entirely the discretion of such maker of the *Will* to bequeath the property in the manner it so desires. From such prospective, this Court would not be tempted to compare the manner in which property was distributed at the time of earlier registered *Will* dated 07.10.2002 and in the *Will* in question i.e. *Will* dated 05.02.2003. However, with respect to *Will* dated 05.02.2003, there are several concerns which are left unanswered.



Thus, her testamentary capacity should have been corroborated in much more effective manner, instead of leaving doubts and dodges.

160. A caveat, right here.

161. Merely because maker of *Will* is admitted in a hospital would not, *ipso facto*, mean that he is not in sound disposing mind. This court does not say so, at all. Capacity of any such maker to understand the testament cannot be undermined and understood as impaired, merely on account of old age and hospitalization. The suspicion arises because of holding back best evidence and other attendant circumstances. Testatrix had already executed a registered *Will* in 2002 and if her condition was not serious, as claimed by the petitioner, where was the ‘tearing hurry’ to get another *Will* executed in hospital, more so when she, rather, required surgical intervention.

162. The hush and hurry is the main worry.

163. The discharge summery (Ex. OW1/5) indicates that her condition became little concerning on 04.02.2003 and she was discharged on 07.02.2003 as she required surgical intervention. She was shifted to another hospital for better management. In between, the *Will* has been executed and, therefore, the court must be provided extra guarantee about her sound disposing mind on 05.02.2003. It cannot be presumed so, merely because *Will* is attested.

164. In *Niranjan Umeshchandra Joshi (supra)*, it has been observed by Hon’ble Supreme Court that only the concerned attending doctor can state about the frame of mind of such maker. Though, Dr. Thakur is stated to be such doctor, he never certified about medical condition of Testatrix on 05.02.2003 and also never met Sub-Registrar.



165. The conclusion is, thus, irresistible.

166. The primary onus is always on the propounder to dispel any suspicious circumstance surrounding the execution of the *Will*. In *Raja Ram Singh (supra)*, this Court has, in no uncertain words, observed that it is settled principle of law that if there is a suspicious circumstance about the execution of a *Will*, it is the duty of the person, seeking relief, to dispel any suspicious circumstance. In *Deshraj Gupta (supra)*, Division Bench of this Court has observed that the *onus probandi* lies upon the party propounding the *Will* and such party must satisfy the conscience of the Court that the instrument so propounded is the last *Will* of the Testatrix. It also observes that if there are suspicious circumstances, such onus becomes heavy and has to be satisfactorily discharged. The following observations made in *Vijay Kumar Tiwari (supra)* are germane in the present context: -

“21. The law relating to the Wills is clear that the proof of due execution of Will always lies upon its propounder who must satisfy the judicial conscience that the instrument is the last Will of a free and capable testator. Though no specific standard of proof can be enunciated which must be applicable to all the cases as every case depends on its circumstances, courts must be vigilant and zealous in examining evidence for the reason a Will is a solemn document and speaks for the dead. Suspicious circumstances are the presumptions which hold against a Will. Greater is the suspicion more heavy would be the onus to be discharged by he who propounds the Will. Unless suspicious circumstances are satisfactorily explained by removing the cloud of suspicion, a court would not readily accept the document propounded as the last legal and valid testament of the deceased. It may be true that nature of proof required to prove a Will is not different from that required to prove other documents



except the requirement of attestation prescribed under Section 63 of the Indian Succession Act but it cannot be lost sight of that what distinguishes a Will from other documents is that the testator is not available to testify the same as his last Will. Thus, an element of solemnity is introduced in the decision. The proof of a Will is to be tested on the satisfaction of a prudent mind. Unnatural disposition, improbable or unfair in the light of relevant circumstances or other indications that the disposition was not the result of the testator's free Will and mind cast a very heavy initial onus on the propounder and unless satisfactorily discharged the court would not be justified in treating the document as the last Will of the testator. A sound mind required under Section 59 of the Indian Succession Act may not mean that the testator should have his mental faculty in their fullest vigour, but it means that at least the testator should have the capacity to understand the nature of his property; memory to remember the relations and persons normally having claim on his bounty and also a judgment."

167. In *Benga Behera and Another (supra)*, the Hon'ble supreme Court observed that the existence of suspicious circumstance, itself, may be held to be sufficient to arrive at a conclusion that the execution of the Will has not been duly proved. The principles propounded in *Meena Pradhan and Others (supra)* have already been extracted in the earlier part of the judgment and even as per the above said principles and the settled position of law, wherever there is any suspicion as to the execution of the Will, it is the responsibility of the propounder to remove those before such Will is accepted as last Will of the testator. It is also supplemented therein that in such cases, where there existed any suspicion, the initial onus of the propounder becomes heavier. In *H Venkatachala Iyengar (supra)*, it is observed that the test of conscience merely emphasizes that, in determining



the question as to whether an instrument produced before the court is the last *Will* of the testator, the court decides a solemn question and it must be fully satisfied that it had been validly executed by the testator who is no longer alive.

168. In the present case, my foregoing discussion would indicate that there are several suspicious circumstances which have not been explained and elucidated by the propounder in any manner whatsoever. Though the propounder is not expected to prove the *Will* by *mathematical precision* and is required to demonstrate execution in terms of the essential statutory requirements under the Act, where there are specific averments of existence of suspicious circumstances, Court would expect elimination of such suspicion by the propounder itself. Only, thereafter, such *Will* can be taken as a 'validly executed last *Will*'. There cannot be any confusion with respect to discharge of onus. The initial onus is always on propounder which becomes heavier when the opposite side raises suspicion. The onus on to adversary would shift only where such adversary pleads forgery, fabrication, coercion, undue influence etc. Here, the primary and basic onus has not been discharged to the satisfaction of the court. Various suspicious circumstances and glaring infirmities in the instant case can be summed up as under: -

- a) The Testatrix was admitted in the hospital and such fact is neither stated in the *Will* nor in the petition.
- b) The petitioner had drafted the *Will* and such fact was never divulged during the trial.
- c) The Testatrix was earlier admitted in Mool Chand Hospital but since her condition deteriorated and there was urgent need of surgical



intervention, she was shifted to Ganga Ram Hospital. In such a situation, extra assurance was required from petitioner and propounder about the sound disposing mind of the Testatrix, which is lacking.

- d) No family member, except the Objector himself, has entered into witness box. All others are mute spectators in the trial. Mr. Asheesh Vadera, presumably the one taking care of his ailing mother when she was in the hospital, also does not bother to enter into witness box. His shying away from deposing cannot be taken casually. He also does not feel it sensible to place on record medical documents to firmly demonstrate that the Testatrix was in a sound disposing mind at the relevant time. No doctor is called from the said hospital with relevant record. One official was summoned from the above said hospital, that too by the Objector, who rather claimed that the record was no longer available with them.
- e) After the first draft of the *Will* was prepared, the Testatrix, allegedly, directed to incorporate certain changes and accordingly, another draft was prepared but as per the propounder himself, the Testatrix had signed the 'first draft' as well as the 'second draft' before the Sub-Registrar and, therefore, it is not clear as to what was the exact desire and last testament of the maker of the *Will* –one mentioned in the first draft or one in the second draft. Though certain changes may be mere clerical, there are differences qua bequeath as well, *albeit*, not very substantial. The petitioner, who had drafted these *Wills*, does not grace the witness box. Thus, the best evidence has been held back and



primary and initial onus does not stand discharged, merely by examining the two attesting witnesses.

- f) The testimony of two attesting witnesses does not inspire enough of confidence. There is strong doubt whether Dr. Vinod Rai was, actually, present when the *Will* was being registered in the hospital.
- g) The deposition of CW1 Dr. Thakur also does not inspire much confidence as his evidence does not depict his presence at the crucial juncture i.e. at the time of the execution of the *Will* in the hospital. The medical certificate purportedly issued by him has been produced belatedly and moreover, it, being prior in time, is of not much consequence.
- h) There is nothing to show that the Sub-Registrar had ever contacted any doctor or had made any inquiry himself from the Testatrix about her sound disposing mind and health condition. Normally, the Court does not insist for examination of Sub-Registrar, who discharges his official duties while registering any such document but in an exceptional situation like the one here, when a Sub-Registrar was rather requested to register the *Will* at hospital, he is under 'indispensable obligation' to make himself 'sure and certain' about the sound disposing mind of such maker of the *Will* who is an octogenarian and admitted in hospital. It is imperative for him not only to make specific inquiry in this regard from the attending doctor but also to 'personally enquire' from such maker about its sound disposing state. The evidence on record does not suggest so. Mere reference of one medical certificate, which is not even contemporary,



is of no avail and cannot be sufficient to hold that Testatrix was perfectly alright even at execution of *Will*. The fitting response, if at all, could have come from such Sub-Registrar but he was not even called for deposition. To dispel the dark clouds hovering over such execution, the propounder should have, himself, made a request to call such Sub-Registrar in Witness Box. Again, the best evidence has been held back for the reasons, best known to propounder and Mr. Asheesh Vadera. In *H Venkatachala Iyengar (supra)*, a celebrated case which is frequently cited in probate matters, the Sub-Registrar had gone to the residence of the maker of the *Will* who was ill and bed-ridden. The Hon'ble Supreme Court observed that non-examination of the concerned Sub-Registrar, in whose presence the documents was registered, was to be taken as a circumstance.

- i) There is also nothing on record which may indicate as to in what manner the request, if any, was sent to Sub-Registrar to come at the Hospital and to register the *Will*. There is no record to the above said request. Generally, intimation is sent in advance along with medical certificate and a copy of the document to be registered but in the present case, nothing was produced before the Trial Court to show compliance thereof.
- j) Though, this Court may assume that the Sub-Registrar had come at the hospital, the crucial aspects - whether Testatrix was, actually, in a sound disposing mind or not and whether such vital fact was duly inquired into by Sub-Registrar, do not stand duly proved.



169. Thus, the propounder has miserably failed to discharge its primary onus and there is mystery surrounding the execution of the *Will* and complete lack of assurance about maker, being in sound disposing state.

170. As an upshot of my foregoing discussion, the issue No. 1 is decided against the petitioner, the onus of which was, even otherwise, on the petitioner. Since the issue No. 1 is decided against the petitioner, as a necessary corollary, issue No. 2 is also decided against the petitioner.

171. Resultantly, the present appeal is allowed and judgment dated 08.03.2018 is set aside.

172. All pending applications stand disposed of in aforesaid terms.

MANOJ JAIN, J

March 18, 2025/sw