GAHC010133892025

2026:GAU-AS:16369

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Test.App./6/2025

PRADEEP KUMAR BHATTACHARJEE
S/O LATE DULAL CH. BHATTACHARJEE, RESIDENT OF NEELAMPATH, HOUSE NO-21 HATIGARHCHARIALI, P.S- GITANAGAR GUWAHATI- 781024, DISTRICT - KAMRUP(M), ASSAM.

VERSUS

SABITA SARMA
W/O DR. APURBA KUMAR SARMA, D/O- LATE NRIPENDRA KUMAR BARUAH, RESIDENT OF 19 ASSAM CARBON (NIRIBILI) PATH NO.1, BIRKUCHI, NARENGI, P.S- NOONMATI, GUWAHATI- 781026, DIST. KAMRUP (M), ASSAM.

Advocate for the appellant : Mr. S.M. Baruah

Advocate for the respondent : Mr. P. Choudhury

Date on which judgment is reserved : **21.08.2026**

Date of pronouncement of judgment : **06.11.2026**

Whether the pronouncement is of the operative part of the judgment? : N/A

Whether the full judgment has been pronounced? : Yes

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

JUDGMENT & ORDER (CAV)

Heard Mr. S.M. Baruah, learned counsel for the appellant. Also heard Mr. P. Choudhury, learned counsel for the respondent.

2. This appeal, under Section 299 of the Indian Succession Act, 1925, is directed against the judgment and order, dated 19.03.2025, passed by the learned Additional District Judge (FTC) No. 3, Kamrup(M), Guwahati, in Probate Title Suit No. 17/2021, arising out of Misc. (Probate) Case No. 30/2017.

3. It is to be noted here that vide impugned judgment and order, dated 19.03.2025, the learned Additional District Judge (FTC) No. 3, Kamrup(M), Guwahati ('trial Court', for short) has dismissed the Probate Title Suit No. 17/2021.

Background facts:

4. The background facts, leading to filing of the present appeal, are briefly stated as under:

> "The appellant herein, namely, Shri Pradip Kumar Bhattacharjee, had filed an application under Section 276 of the Indian Succession Act, 1925, for grant of probate in his favour, in respect of the immovable and movable properties of Late Munindra Chandra Baruah (testator), son of Late Gokul Chandra Baruah, who, by virtue of his last Will and Testament, dated 11.05.2009, had appointed the appellant as executor of the aforesaid Will dated 11.05.2009. The appellant herein happens to be the nephew of Late Munindra Chandra Baruah, who is the maternal uncle of

the appellant who suffered demise on 15.02.2017, due to old age ailment. Smti. Mrinalini Baruah was the wife of Late Munindra Chandra Baruah and they had no children out of their wedlock. And as such, at the time of his death, Late Munindra Chandra Baruah did not have any children. While filing the said application, under Section 276 of Indian Succession Act, 1925, the appellant had arrayed Sri Mahendra Chandra Baruah, the brother of the Late Munindra Chandra Baruah; Smti. Ranee Baruah and Smti. Anu Baruah, sisters-in-law of Late Munindra Chandra Baruah as an opposite parties, and since Smti. Mrinalini Baruah, wife of Late Munindra Chandra Baruah was one of the beneficiary of the said Will, dated 11.05.2009, she was not arrayed as an opposite party, and she was aware of the execution of the Will, dated 11.05.2009, by Late Munindra Chandra Baruah. Upon the aforesaid application, Misc. (Probate) Case No. 30/2017 was registered.

While notice was issued in the said Misc. (Probate) Case No. 30/2017, upon the opposite parties, then they did not appear, for which the learned trial Court proceeded ex-parte against them. But, during the pendency of the proceeding, wife of Late Munindra Chandra Baruah, Smti. Mrinalini Baruah, got herself impleaded as opposite party/defendant and she had filed objection before the learned trial Court in respect of the movable and immovable properties of Late Munindra Chandra Baruah.

Thereafter, upon hearing learned counsel for the parties, the learned trial Court had arrayed Smti. Mrinalini Baruah as defendant and converted the Misc. (Probate) Case No. 30/2017, to Probate Title Suit No. 17/2021. During the trial, the appellant herein being the plaintiff, had examined himself as P.W.1, one Sri Satyabrata Sarma as P.W.2, and Smti. Ranjana

Sarma as P.W.3. P.W.2 and P.W.3 are attesting witnesses of the Will and also he had examined one Sri Barun Chandra Barman as P.W.4., who happens to be the caretaker of Late Munindra Chandra Baruah. During the pendency of the suit, Smti. Mrinalini Baruah, wife of Late Munindra Chandra Baruah suffered demise and thereafter, Smti. Sabita Sarma, the legal heir of Late Mrinalini Baruah, had filed an application, under Order 21 Rule 4(1) and Order 1 Rule 10(2), read with Section 151 of the CPC, for impleading herself as defendant/respondent in the said probate title suit, and upon hearing both the parties, the learned trial Court had arrayed Smti. Sabita Sarma as defendant in the suit. However, she did not adduce any evidence in the said suit.

Thereafter, the learned trial Court had framed the following issues and additional issues for disposal of the suit:

(i) Whether Munindra Ch. Baruah duly executed the WILL, dated 11-05-2009, as the last WILL in favour of the plaintiff?

(ii) Whether the WILL was procured by fraud ?

(iii) Whether the Will has been duly attested by the attesting witnesses?

(iv) Whether the plaintiff is entitled to the relief as claimed?

Additional issues:

(v) Whether the executor can make a WILL under the provision of the Indian Succession Act?

(vi) Whether at the time of the execution of the WILL, Munindra Ch. Baruah was of sound disposing mind?

Thereafter, hearing the learned counsel for both the parties, and also

considering the evidence brought on record, the learned trial Court had decided the issue Nos. (i) to (iv) in negative, and additional issue Nos. (v) and (vi) in negative, and accordingly, dismissed the suit."

5. Being aggrieved, the appellant has preferred the present appeal on the following grounds:

(i) The learned trial Court erred in law while holding proposition of law pertaining to prove of validity of the Will on the ground of timing of draft of the Will and the execution of the same for the reason that as per settled principles of law, the appellant is not required to prove the timing of draft of the Will and execution of the same. Moreover, the learned trial Court erred in facts in holding that P.W.2 and P.W.3, in their cross-examination, stated that at the time of execution of the Will, except them, nobody was present, contrary to their evidence-in-chief, and nowhere in their cross-examination, the P.W.2 and P.W.3 stated the same as held by the learned trial Court. Due to absence of scribe of the Will, who typed the Will and absence of signature of the wife of the testator in the Will, timing of the Will could not be verified, as held by the learned trial Court, went beyond the settled principles of law as regards Will.

(ii) That, the learned trial Court has held that the attesting witnesses are duty bound to inform the close relatives, friends and wife of the testator about existence of the Will, and not informing the same, by the attesting witnesses is a ground, as held by the learned trial Court, in holding that preparation of the Will in the year 2009, is not proved, and such requirement to inform by the attesting witnesses as held by the learned trial Court, is alien to the probate jurisprudence.

(iii) That, the learned trial Court erred in law as well as in facts in holding that in absence of independent witnesses as well as witnesses of other close family members and friends of the testator, it creates doubt about the authenticity of Will, and as such, the evidence of the P.W.2 and P.W.3 cannot be believed. But, the learned trial Court had failed to appreciate that the defendant had refused to give any evidence and the said findings of the learned trial Court is perverse in nature, and as such, the learned trial Court castes doubts as regards authenticity of the Will in absence of any independent witnesses and on the other hand, it had held that owing to absence of close relatives and friends of the testator, the authenticity of the Will cannot be believed, and as such, the impugned judgement and order, dated 19.03.2025, is liable to be set aside and quashed.

(iv) That, the learned trial Court had discarded the evidence of P.W.4, who is the caretaker of the testator, as he did not know the term Parkinson and Nephropathy disease and the relationship between the appellant and the witnesses. Further, the learned trial Court erred in holding that the amount of Rs. 1,00,000/- could not have been given to the children of the P.W.4, before the grant of probate, and the testimony of P.W.4 should have been supported by evidence of defendant No. 4 (wife of the testator) without appreciating the fact that the defendant No. 4 refused to adduce any evidence before the learned trial Court.

Submissions:

6. Mr. Baruah, learned counsel for the appellant has reiterated the aforesaid grounds, so taken in the memo of appeal, at the time of hearing. He submits that non-examination of the scribe and absence of signature of the wife

of the testator, who was present at the relevant time, does not caste any doubt and is not a requirement for granting probate. He also submits that the finding of the learned trial Court in the aforesaid aspect is not at all acceptable. Mr. Baruah further submits that the learned trial Court had observed that the attesting witnesses did not inform the relative of the testator regarding the execution of the Will, but in fact, there is no such requirement under the law.

6.1. Mr. Baruah has further pointed out that the evidence of P.W.4 should not have been rejected by the learned trial Court and had the wife of the testator, defendant No. 4, been examined, then she would have definitely supported the evidence of P.W.4. He further submits that the evidence of the witnesses, so examined by the appellant, has clearly established the case, and dismissal of the suit by the learned trial Court is illegal and liable to be interfered with.

6.2. In support of his submission, Mr. Baruah has referred to the following decisions:

(i) **Sri Shibu Thakur vs. Kanti Devi and Ors., in Intest.Cas No. 2/2016.**

(ii) **Bikash Chandra Prodhani vs. On the death of Bhupesh Prodhani his legal heirs Swapna Prodhani and Ors., in Test.App. No. 12/2011.**

(iii) **Bina Samir Telivala vs. Sunil Ijjatarai Shah,** reported in **2026 SCC OnLine Bom 3073.**

(iv) **Nand Kishore Rai and Anr. vs. Mst. Bhagi Kuer and Ors.,** reported in **1957 SCC OnLine All 340.**

7. Per contra, Mr. Choudhury, learned counsel for the respondent, has supported the impugned judgment and order, dated 19.03.2025, passed by the learned trial Court. Mr. Choudhury has pointed it out that the appellant herein

has not impleaded the wife of the testator as opposite party and according to him this is a suspicious circumstance. He also submits that at the relevant time of execution of the Will, the testator was suffering from Parkinson and Nephropathy disease and as such, he was not in a state of right frame of mind to execute the Will, and the appellant herein has failed to establish the fact that the Will was executed with free will and mind. Mr. Choudhury has also pointed out that no witness was present at the relevant point of time except however, the P.W.2 and P.W.3, who are the brother and sister-in-law of the appellant and this is also a highly suspicious circumstance. Mr. Choudhury further submits that the propounder has failed to prove the Will and that there cannot be any condition in the Will. Mr. Choudhury also submits that schedule of the immovable properties and movable properties were also not there in the petition for probate, and that the Will cannot be executed in part and it should have been as a whole. Mr. Choudhury has further pointed out that as required by Section 281, the verification is also not there in the petition and that Section 60 of the Indian Evidence Act, 1872 requires substance of the Will to be proved, but the same is not there, and that the learned trial Court has rightly rejected the petition, and there is no merit in this appeal and therefore, he has contended to dismiss the same.

7.1. In support of his submission, Mr. Choudhury has referred to the following decisions:

(i) **Janki Narayan Bhoir vs. Narayan Namdeo Kadam,** reported in **(2003) 2 SCC 91.**

(ii) **Meena Pradhan vs. Kamla Pradhan and Anr.,** reported in **(2023) 9 SCC 734.**

(iii) **Yumnam Ongbi Tampha Ibemma Dev vs. Yumnam Joykumar**

Singh and Ors., reported in **(2009) 4 SCC 780.**

8. In reply to the submission of Mr. Choudhury, Mr. Baruah, learned counsel for the appellant submits that Section 281 is directory in nature and that the attesting witness has been examined herein this case and the Will has been proved, and under such circumstances, he has contended to allow this appeal by setting aside the impugned judgment and order, passed by the learned trial Court and to grant probate of the Will.

9. Having heard the submission of learned counsel for both the parties, this Court has carefully gone through the memo of appeal and the grounds mentioned therein, and also perused the impugned judgment and order, dated 19.03.2025, and the decisions referred by learned counsel for both the parties.

Legal Proposition:

10. Before a discussion is directed to the points raised by learned Advocates of both sides, it would be apposite to discuss the relevant provision of law, and also the decisions of Hon'ble Supreme Court presently holding the field.

11. 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 and carries with it an element of sanctity. It speaks from the 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.

12. It is to be noted here that Section 63 of the Indian Succession Act, 1925 provides for execution of the unprivileged wills, which read as under:-

"**Every testator, not being a soldier employed in an**

expedition or engaged in actual warfare, or an airman so employed or engaged, or a mariner at sea, shall execute his Will according to the following rules:-

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

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

(c) The Will shall be attested by two or more witnesses, each of whom has been 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 or personal acknowledgement of his signature or mark, or the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary."

13. Section 68 of Indian Evidence Act 1872 reads as under:-

"**68. Proof of Execution of document required by law to be attested:**

If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence: xxx"

14. Thus, a bare reading of the above-mentioned provisions would show that the requirements, enshrined under Section 63 of the Indian Succession Act, have to be categorically complied with for the execution of the Will to be proven in terms of Section 68 of the Evidence Act.

15. In the case of **Meena Pradhan** (supra), Hon'ble Supreme Court, relying upon some of its earlier decisions in **H. Venkatachala Iyengar v. B.N. Thimmajamma**, reported in **1959 Supp (1) SCR 426 (3- Judge Bench), Bhagwan Kaur v. Kartar Kaur**, reported in **(1994) 5 SCC 135 (3-Judge Bench), Janki Narayan Bhoir (supra)**, **Yumna Ongbi Tampha Ibema Devi (supra)** and **Shivakumar v. Sharanabasappa**, reported in **(2021) 11 SCC 277 (3-Judge Bench)**, had deduced/inferred the following principles, required for proving the validity and execution of the Will:-

i. That, 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 acknowledgement 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 etc. 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 the 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.

16. It is further held that in short, apart from statutory compliance, broadly it has to be proved that –

(a) The testator signed the Will out of his own free Will,

(b) At the time of execution he had a sound state of mind,

(c) He was aware of the nature and effect thereof and

(d) The Will was not executed under any suspicious circumstances.

17. It is also settled in a plethora of decisions of Hon'ble Supreme Court that powers of probate court are limited viz., to examine whether the will in question was executed without coercion and undue influence, to gauge if the testator was of a sound disposing mind and whether the will was duly attested or not. It is also well settled that a probate court can never go into the question of title and while granting a probate, the court would not decide any dispute with regard to title.

17.1. Reference in this context can be made to following decisions:-

(i) **K.K. Birla v. R.S. Lodha, (2008) 4 SCC 300**;

(ii) **Kanwarjit Singh Dhillon v. Hardayal Singh Dhillon, (2007) 11 SCC 357**;

(iii) **Chiranjilal Srilal Goenka (Dead) By LRs v. Jasjit Singh & Ors., (2000) Supp. 5 SCR 313**.

18. In the instant case, in view of the points raised by learned counsel for both the parties, the issues to be decided in this appeal, are formulated as under:

(i) Whether the petitioner/respondent has succeeded in establishing execution of the last Will by the testator, Late Munindra Chandra Barua?

(ii) Whether at the time of execution he had a sound state of mind and that he was aware of the nature and effect thereof in executing the WILL?

(iii) Whether there is any suspicious circumstance and whether the appellant herein, has succeeded in removing the same?

Discussion and Analysis:-

Issue No.(i)

19. Herein this case, the appellant, as plaintiff, had examined himself as P.W.1, Sri Satyabrata Sarma who is his brother-in-law as P.W.2 and Smti. Ranjana Sarma, who is his sister as P.W.3 and Sri Barun Chandra Barman, who is the caretaker of Late Munindra Chandra Baruah, as P.W.4. The respondent herein had not examined any witness.

19.1. It also appears from a perusal of the Will - (Ext.2), that Late Munindra Chandra Baruah had left a plot of land measuring 2 kathas; covered by Dag No. 482 (old), 3000 (new); Patta No. 63 (old), 2279 (new); situated at Revenue Village No. 1, Japorigog, under Beltola Mouza of Dispur Revenue Circle, in Kamrup(M) district, and the same was the only immovable property and the balance amount lying in the State Bank of India account of Late Munindra Chandra Baruah, bearing No. 10821607597, Dispur Branch and also in account No. 10142277591, Geetanagar Branch have been bequeathed to Late Mrinalini Baruah, his wife, and the balance amount lying in the Zoo Road Sub-Post Office Monthly Income Scheme has also been bequeathed to Late Mrinalini Baruah, and the investment made by the testator in Unit Trust of India has been bequeathed to the respective nominees as movable properties. It also appears that a sum of Rs. 1,00,000/- was bequeathed in the name of the son of P.W.4, namely, Sri Himangsu Barman and another sum of Rs. 1,00,000/- in the name of the daughter P.W.4, namely, Smti. Dipti Barman, and the Assam Type House on the roof of the first floor of the RCC building has been bequeathed to P.W.4.

19.2. It also appears from the evidence of P.W.2 and P.W.3 that they are the attesting witnesses, in whose presence, the Will dated 11.05.2009, was

executed by Late Munindra Chandra Baruah in the house of the appellant, Pradeep Kumar Bhattacharjee. The evidence of P.W.2 and P.W.3, both, reveals that Late Munindra Chandra Baruah had executed the will in the house of the appellant, Pradeep Kumar Bhattacharjee, who has also testified to that effect.

19.3. Thus, from the aforesaid discussion, it appears that the Will/Ext.2, dated 11.05.2009, is the last Will of Late Munindra Chandra Barua. But, it could not be ascertained as to whether he put his signature out of his own free will or not, and as such, this finding in respect of this issue is subject to the outcome of discussion in respect of issue No. (ii).

Issue No.(ii)

20. Moving forward to the Issue No.(ii), this Court finds from the contention made in the written statement, filed by Late Mrinalini Baruah, defendant No.4, and also from the documents enclosed therewith that the testator, Late Munindra Chandra Baruah, was suffering from Parkinson disease and Nephropathy.

20.1. But, unfortunately, she has not entered into the witness box to prove the said contention and to prove the documents to establish that Late Munindra Chandra Baruah was suffering from Parkinson disease and Nephropathy. It is well settled in the case of **Vidhyadhar vs. Manikrao & Another,** reported in **(1999) 3 SCC 573,** that where a party to the suit In view of above, said contention cannot be accepted.

20.2. But, P.W.3, in her cross-examination, had admitted in no certain terms that Late Munindra Chandra Baruah was suffering from Parkinson during his last stage. And this admission fortified the stand taken by the respondent No. 4/wife of Late Munindra Chandra Baruah. Thus, Issue No.(ii) has to be answered in

negative and accordingly the same stands answered.

21. Now, moving forward to the Issue No. 3, this Court finds that while dealing with the issue of suspicious circumstance Hon'ble Supreme Court in the case of **H. Venkatachala Iyengar (supra)** has held as under:-

> **20. There may, however, be cases in which the execution of the will may be surrounded by suspicious circumstances. The alleged signature of the testator may be very shaky and doubtful and evidence in support of the propounder's case that the signature in question is the signature of the testator may not remove the doubt created by the appearance of the signature; the condition of the testator's mind may appear to be very feeble and debilitated; and evidence adduced may not succeed in removing the legitimate doubt as to the mental capacity of the testator; the dispositions made in the will may appear to be unnatural, improbable or unfair in the light of relevant circumstances; or, the will may otherwise indicate that the said dispositions may not be the result of the testator's free will and mind. In such cases the court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last will of the testator. The presence of such suspicious circumstances naturally tends to make the initial onus very heavy; and, unless it is satisfactorily discharged, courts would be reluctant to treat the document as the last will of the testator. It is true that, if a caveat is filed alleging the exercise of undue influence, fraud or coercion in respect of the execution of the will propounded, such pleas may have to be proved by the caveators; but, even without such pleas circumstances may raise a doubt as to whether the testator was acting of his own free will in executing the will, and in such circumstances, it would be a part**

of the initial onus to remove any such legitimate doubts in the matter.

21. Apart from the suspicious circumstances to which we have just referred, in some cases the wills propounded disclose another infirmity. Propounders themselves take a prominent part in the execution of the wills which confer on them substantial benefits. If it is shown that the propounder has taken a prominent part in the execution of the will and has received substantial benefit under it, that itself is generally treated as a suspicious circumstance attending the execution of the will and the propounder is required to remove the said suspicion by clear and satisfactory evidence. It is in connection with wills that present such suspicious circumstances that decisions of English courts often mention the test of the satisfaction of judicial conscience. It may be that the reference to judicial conscience in this connection is a heritage from similar observations made by ecclesiastical courts in England when they exercised jurisdiction with reference to wills; but any objection to the use of the word "conscience" in this context would, in our opinion, be purely technical and academic, if not pedantic. The test 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 is deciding a solemn question and it must be fully satisfied that it had been validly executed by the testator who is no longer alive.

22. It is obvious that for deciding material questions of fact which arise in applications for probate or in actions on wills, no hard and fast or inflexible rules can be laid down for the appreciation of the evidence. <u>It may, however, be stated generally that a propounder of the will has to prove the due and valid execution of the</u>

will and that if there are any suspicious circumstances surrounding the execution of the will the propounder must remove the said suspicions from the mind of the court by cogent and satisfactory evidence. It is hardly necessary to add that the result of the application of these two general and broad principles would always depend upon the facts and circumstances of each case and on the nature and quality of the evidence adduced by the parties. It is quite true that, as observed by Lord Du Parcq in Harmes v. Hinkson:(1946) 50 C.W.N. 895, "where a will is charged with suspicion, the rules enjoin a reasonable scepticism, not an obdurate persistence in disbelief. They do not demand from the Judge, even in circumstances of grave suspicion, a resolute and impenetrable incredulity. He is never required to close his mind to the truth". It would sound platitudinous to say so, but it is nevertheless true that in discovering truth even in such cases the judicial mind must always be open though vigilant, cautious and circumspect." (emphasis supplied)

21.1. In the case of **Smt. Indu Bala Bose and Ors. v. Manindra Chandra Bose and Anr.** reported in **(1982) 1 SCC 20,** which may also be taken note of as under: –

"**7. This Court has held that the mode of proving a Will does not ordinarily differ from that of proving any other document except to the special requirement of attestation prescribed in the case of a Will by Section 63 of the Succession Act. The onus of proving the Will is on the propounder and in the absence of suspicious circumstances surrounding the execution of the will, proof of testamentary capacity and the signature of the testator as required by law is sufficient to discharge the onus. Where however there are suspicious circumstances, the onus is on the propounder to explain them to the**

satisfaction of the court before the court accepts the Will as genuine. Even where circumstances 35 give rise to doubts, it is for the propounder to satisfy the conscience of the court. The suspicious circumstances may be as to the genuineness of the signatures of the testator, the condition of the testator's mind, the dispositions made in the Will being unnatural, improbable or unfair in the light of relevant circumstances, or there might be other indications in the Will to show that the testator's mind was not free. In such a case the court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last Will of the testator. If the propounder himself takes a prominent part in the execution of the will which confers a substantial benefit on him, that is also a circumstance to be taken into account, and the propounder is required to remove the doubts by clear and satisfactory evidence. If the propounder succeeds in removing the suspicious circumstances the court would grant probate, even if the will might be unnatural and might cut off wholly or in part near relations.: AIR 1964 SC 529. Needless to say that any and every circumstance is not a "suspicious" circumstance. A circumstance would be "suspicious" when it is not normal or is not normally expected in a normal situation or is not expected of a normal person."

21.2. Again in the case of **P.P.K. Gopalan Nambiar v. P.P.K. Balakrishnan Nambiar and Ors.:** reported in **[1995] 2 SCR 585,**

"**It is the duty of the propunder of the Will to remove all the suspected features, but there must be real, germane and valid suspicious features and not fantasy of the doubting mind. It has been held that if the propounder succeeds in removing the suspicious circumstances, the court has to give effect to the Will,**

even if the Will might be unnatural in the sense that it has cut off wholly or in part near relations. ……

22. From the aforesaid discussion, it becomes apparent that each and every circumstances is not a suspicious circumstance. A circumstance would be 'suspicious' when it is not normal or is not normally expected in a normal situation or is not expected of a normal person.

22.1. In the instant case from the given facts and circumstances on the record and also from the submissions of learned counsel for both the parties the following suspicious circumstances emerge:

(i) Late Mrinalini Baruah, wife of the testator, was not impleaded in the miscellaneous (probate) case as opposite party.

(ii) The wife of the testator, Late Mrinalini Baruah had been deprived of the immoveable property and she did not put her signature over the Will, though she was allegedly present at the relevant point of time of execution of the Will, in the house of the appellant/P.W.1.

(iii) The name of the scribe is not there in the said Will (Ext.2) and he has not been examined.

(iv) The sons and daughters of P.W.4, the cleaner of the testator, had received a sum of Rs. 2,00,000/- before grant of probate in respect of the Will, Ext.2.

(v) There was no verification of the probate petition.

(vi) The schedule of the property had not been mentioned in the Ext.2, the Will, though the same has been mentioned in the evidence-on-affidavit filed by the appellant.

(vii) The Death Certificate (Ext.1) of Late Munindra Chandra Baruah was

obtained by the appellant without any authority of his wife Late Mrinalini Baruah. This shows that the appellant herein is interested and being the beneficiary, he played a leading role.

(viii) There is absence of independent witness of execution of the Will.

23. Now, it is to be seen how far the appellant herein has succeeded in removing the aforementioned suspicious circumstances.

23.1. In respect of the suspicious circumstance No.(i), the appellant, in his evidence, had stated that since Late Mrinalini Baruah was one of the beneficiaries of the Will, she had not been arrayed as an opposite party in the miscellaneous (probate) case. It is a settled legal proposition that a beneficiary of a will is not automatically required to be impleaded as a party in a probate proceeding. However, impleadment is necessary under following circumstances:-

(i) The beneficiary disputes the will, its execution, or the grant of probate.

(ii) The beneficiary has a caveatable interest and seeks to contest the grant.

(iii) The proceeding concerns an issue that cannot be effectively decided without that beneficiary in situation like a distinct claim, administration dispute, or revocation issue where the executor does not adequately represent the beneficiary's interest.

(iv) The beneficiary alleges that the executor/petitioner has suppressed material facts or that necessary interested persons were excluded; as held by Hon'ble Supreme Court in the case of **S. Leorex Sebastian and Another v. Sarojini and Others reported in (2026 INSC 400),** and in **G. Gopal v.**

C. Bhaskar reported in **(2008) 10 SCC 489 and Krishna Kumar Birla v. Rajendra Singh Lodha** reported in **(2008) 4 SCC 300,** where it has been held that any person with a caveatable interest in the estate (even a slight interest or bare possibility of interest) is entitled to be served/cited before the final order and may file a caveat or seek revocation if the grant was obtained without notice.

23.2. In the case in hand, Late Mrinalini Baruah, after filing of the Misc Probate Case by the appellant herein, had later on, filed an application for her impleadment in the miscellaneous (probate) case upon which the miscellaneous (probate) case was converted to probate title suit, and thereafter, she had filed her written statement denying the statements and averments made in the plaint of the title suit, and also disputed the claim of the appellant herein.

23.3. In view of above factual and legal matrix, the explanation so put forwarded left this Court unimpressed. And this suspicious circumstance cannot be said to be removed by the appellant herein.

24. It also appears that the wife of the testator, Late Mrinalini Baruah, had been deprived of the immoveable property and she also did not put her signature over the Will, though she was allegedly present at the relevant point of time of execution of the Will, in the house of the appellant/P.W.1. But, it is well settled i**n the case of Rabindra Nath Mukherjee and Anr. v. Panchanan Banerjee (dead) by LRs. and Ors.:** reported in **AIR 1995 SC 1684,** it was observed that:-

> "**The circumstance of deprivation of natural heirs should not raise any suspicion because the whole idea behind execution of the Will is to interfere with the normal**

> **line of succession and so, natural heirs would be debarred in every case of Will. Of course, it may be that in some cases they are fully debarred and in some cases partly."**

24.1. In view of aforesaid legal proposition, depriving Late Mrinalini Baruah of the immoveable property, cannot be considered as a suspicious circumstance.

24.2. But, in the case of **Ram Piari v. Bhagwant,** reported in **(1990) 3 SCC 364,** Hon'ble Supreme Court has held that prudence requires reason for denying the benefit of inheritance to natural heirs and an absence of it, though not invalidating the Will in all cases, shrouds the disposition with suspicion, as it does not give inkling to the mind of the testator to enable the court to judge that the disposition was a voluntary act.

24.3. Further, absence of her signature over the Will, inspite of being present at the time of execution of the Will in the house of the appellant, also cannot be said to be a circumstance herein this case. However, the absence of her signature could become relevant only when considered with other facts, such as:

(i) She was a major beneficiary or natural heir, but was excluded without explanation.

(ii) She was actively involved in preparing, drafting, or procuring the Will, yet did not sign.

(iii) Her presence was used to suggest that she approved the dispositions, while the Will in fact disinherited her or treated her unfairly.

(iv) There are other red flags: a shaky signature, feeble mental condition, unnatural or unfair distribution, or a beneficiary playing a leading

role in making the Will.

24.4. Here in this case the wife is a beneficiary, besides being natural heir, but was excluded without proper and justifiable explanation. The appellant has used her presence to suggest that she approved the dispositions, while the Will in fact treated her unfairly. Further, the appellant herein is interested and being the beneficiary, he played a leading role. He hurriedly obtained the Death Certificate of the Testator and filed the case. Moreover, the Will was allegedly executed in the house of the appellant herein.

24.5. Thus, the appellant herein has failed to remove this suspicious circumstance.

25. It also appears that before the probate of Ext.2 was granted, a sum of Rs. 2,00,000/- had been bequeathed in the name of the son and daughter of the P.W.4, and the same also casts a serious doubt about the contention of the appellant and his witnesses. Extending the benefit of the Will arises only when probate is granted. The learned trial Court had rightly observed the same.

25.1. Usually assets that pass under a will i.e. 'probate assets' typically those solely in the deceased's name without beneficiary designations, generally require the will to be proved and an executor authorized via probate (or equivalent) before formal distribution. Distributing before proper authority can create liability for the person acting, title problems, or challenges from creditors/heirs.

25.2. Under the given fact situation, this circumstance cannot be a suspicious circumstance.

26. Admittedly, the scribe of the Will (Ext.2) has not been examined and it is also apparent that while the Will (Ext.2) was executed in the house of

P.W.1/appellant herein, the wife of the testator Late Mrinalini Baruah was also present, but she did not put her signature in the Will. Further, from the evidence, adduced by the plaintiff, especially from the cross-examination of P.W.3 and the pleadings, it becomes apparent that at the relevant point of time, the testator was suffering from Parkinson and Nephropathy disease. So, this circumstance has to be considered in the light of these circumstances.

26.1. However, there is no mandatory legal requirement that a will must disclose the scribe's name or that the scribe must sign it, or be produced in evidence, for the will to be valid or proved. It is well settled that non-disclosure of the scribe's name or non-production of the scribe does not, by itself, prevent a will from being held proved.

26.2. Thus, non-examination or non-production of the scribe can add to existing suspicions in a particular case, especially when combined with other doubts, but it is not automatically fatal or a standalone suspicious circumstance. The propounder must still dispel real, germane doubts through other evidence e.g., attesting witnesses, which the appellant herein could not dispel.

27. Now, it is to be seen whether absence of verification of the probate petition is suspicious circumstance or not. It is well settled that verification is a procedural requirement for the petition filed in court, not evidence about how the Will was made. Section 280 of the Indian Succession Act, 1925 requires the petition to be signed and verified by the petitioner and Section 281 requires verification, when procurable, by at least one attesting witness.

27.1. It is further well settled that non-compliance with the verification requirements is a curable irregularity, not a fatal defect and not a suspicious circumstance regarding the Will. It does not cast doubt on the free will,

capacity, or knowledge and approval of the testator when the Will was executed. It is therefore not classified as a 'suspicious circumstance' in the sense used in probate jurisprudence, as held in the case of **Bina Samir Telivala** (supra), so referred by Mr. Baruah, learned counsel for the appellant.

28. Moving forward to the circumstance of absence of independent witness of execution of the Will (Ext.2) by the testator, this Court finds that P.W.2 happens to be the brother-in-law of the appellant and P.W.3 is his own sister. Further, P.W.4 also cannot be said to be an independent witness, since he has derived benefit from the same.

28.1. But, absence of independent/disinterested witnesses may be treated as one possible factor in the overall assessment, not a standalone ground of suspicion. It is well settled that wills, attested by known persons, such as friends, relations, or employees of the parties, when execution is otherwise properly proved and no other real suspicion exists, can be accepted. When testimony of witnesses, who are related to or associated with the beneficiary/propounder, is to be viewed with greater caution and may strengthen a case of suspicion when combined with other factors. It does not automatically invalidate the will.

28.2. While independent witnesses are preferable as a matter of prudence, they reduce the risk of challenge and make proving easier, their absence alone does not create a suspicious circumstance sufficient enough to defeat a will. The decisive test remains whether the propounder has satisfied the court that the document represents the free and voluntary act of a testator of sound disposing mind.

28.3. Thus, it is well settled that related or interested attesting witnesses,

whose testimony appears self-serving together with other circumstances is a suspicious circumstance, which the propounder must remove to the satisfaction of the court's conscience. But, in the instant case the appellant herein has failed to remove the same.

29. It has been indicated in the case of **Leela Rajagopal vs. Kamala Menon Cocharan** reported in **(2014) 15 SCC 570,** that when unusual features appear in a Will or unnatural circumstances surround its execution, the Court must undertake a close scrutiny and make an overall assessment of the unusual circumstances before accepting the Will.

30. In the instant case the appellant has failed to dispel the suspicious circumstances mentioned above, to the satisfaction of the Court's conscience.

31. When all the aforesaid abnormal, curious and rather mysterious circumstances are put together, the inescapable conclusion is that the document in question i.e. Ext.2, the Will cannot be accepted as the last Will of the testator. The unexplained, unusual and abnormal features pertaining to the document only lead to the logical deduction that the document in question was not genuine.

31.1. Thus, Issue No.(iii) has to be answered in negative and accordingly, the same stands answered.

32. Of course some of the observations made by the learned trial Court appear to be not in conformity with the probate jurisprudence. Mr. Baruah, learned counsel for the appellant has rightly pointed this out and this Court finds force in his submission. The learned trial Court has observed that the timing of the draft of the Will has not been mentioned, but the same is not the requirement of the relevant provision of the law.

33. It is also a fact that the appellant herein did not disclose to his relatives, friends and wife of the testator about existence of the Will, but the same is not the ground to dismiss the title suit. Authenticity of the Will cannot be doubted for the aforementioned reason and as such, the observation made by the learned trial Court fails to withstand the legal scrutiny.

34. This Court has also carefully gone through the other decisions relied upon by both Mr. Baruah, learned counsel for the appellant and Mr. Choudhury, learned counsel for the respondent. However, in order to dispose of the present appeal, directing a discussion to the aforesaid decisions, is not at all required and therefore, this Court is not inclined to discuss in detail the ratios laid down in the aforesaid decisions.

35. The learned trial Court has disbelieved the evidence adduced by the plaintiff and his witnesses and thereafter, refused to grant probate. Having examined the said finding, in the light of the facts and circumstances on the record, this Court is of the considered opinion that the same suffers from no infirmity requiring any interference of this Court.

36. In the result, this Court finds no merit in this appeal, and accordingly, the same stands dismissed.

35. Registry shall send back the TCR, along with a copy of this judgment and order forthwith.

JUDGE

Comparing Assistant