

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

**The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
And
The Hon'ble Mr. Justice Supratim Bhattacharya**

FA No.98 of 2025

**Sri Supratik Guha and Another
Vs.
Smt. Narayani C. Guha**

For the appellants	:	Mr. Partha Pratim Roy, Mr. Dyutiman Banerjee, Mr. Boddhisattya Halder
For the respondent	:	Mr. Arindam Banerjee, Sr. Adv., Mr. Adil Naser
Heard on	:	19.02.2026, 26.02.2026, 12.03.2026 & 17.03.2026
Reserved on	:	17.03.2026
Judgment on	:	23.03.2026

Sabyasachi Bhattacharyya, J.:-

1. The present appeal has been preferred against the grant of probate in respect of the last Will and Testament dated December 29, 2025 executed by one Sujit Guha, since deceased.
2. The present respondent Smt. Narayani C. Guha, the second wife of the Testator, was appointed as the Executrix in the said Will. The subject-matter of the Will is a three-storied residential house at Premise No.1/397A,

Gariahat Road (South) also known as 397A, Jodhpur Park, P.S. Lake, Kolkata – 700 068. In terms of the Will, absolute right to possess and occupy the entire building was given to the Executrix, Narayani during her lifetime, with absolute right to sell, transfer, lease or mortgage the entire second floor thereof, including the car-parking space and roof and proportionate undivided share in the land in the said premises. Upon the demise of Narayani, as per the Will, the rest of the property, that is, the ground and first floors, would devolve absolutely on the present appellants, being the son and daughter from the first marriage of the Testator.

- 3.** Learned counsel for the appellants contends that the Will was surrounded by suspicious circumstances and was vitiated by undue influence exerted by the Executrix Narayani on the Testator to execute the Will.
- 4.** Learned counsel contends that the Executrix/propounder Narayani failed to prove that she was the second wife of the Testator. Although, in her deposition, the Executrix mentioned that she had given her marriage certificate to her advocate, the same was not produced before the Court. In her cross-examination, the Executrix stated that she would file the original marriage certificate but eventually did not, apparently since her advocate had decided not to file the same in court. Thus, it is submitted that the Executrix was not the legally married wife of the Testator, late Sujit Guha and her misstatement in that regard hampered her credibility as a witness.
- 5.** Learned counsel for the appellants next argues that there are a number of discrepancies in the statement of P.W.1, Jayanta Kumar Bose, who was allegedly one of the attesting witnesses of the Will. Whereas the said

deponent stated in his evidence that he knew the Testator intimately, subsequently the witness stated that he could not recollect the death of the Testator or as to the ailment of which he died. Further, he could not state the residential address of the Testator prior to his death and was admittedly unaware that the Testator had Cancer. P.W.1 also stated that he did not visit the Testator's house frequently. Later on, however, the witness stated that he was in the hospital on the date of the Testator's death.

6. Initially, it is submitted, P.W.1 stated that the Executrix was not present in the house where the Will was executed. However, subsequently, he stated that the Executrix was present therein.
7. Learned counsel next argues that none of the attesting witnesses of the Will were friends of the Testator. While P.W.1 was a business partner of the Executrix, the other attesting witness, who did not adduce evidence, was allegedly a Yoga instructor of the Testator. It is submitted that it is strange that the Testator did not ask any of his close acquaintances to be attesting witnesses in respect of his last Will.
8. P.W.2, the Executrix, stated in her evidence that she did not remember the number of Chemotherapies administered to her husband. She further admitted that P.W.3, the alleged driver of the Testator, is currently her employee. P.W.2 stated that she would not produce any documents bearing the signature of the Testator, although she allegedly possessed the same. P.W.2 further admitted that she is, at present, running a business along with P.W.1, Jayanta Kumar Bose, thus, establishing the nexus between

P.W.1, an attesting witness and P.W.2., the Executrix and one of the beneficiaries.

9. In contradiction with the statement of the attesting witness P.W.1, P.W.2 admitted in her evidence that she was not present when the Will was executed by the Testator.
10. Learned counsel next argues that the description of the bequest in the purported Will is ambiguous and raises more questions than it answers. Hence, the Will was not properly drafted, which, according to the appellants, raises questions of the mental capacity of the Testator during his illness.
11. It is contended that in a probate proceeding, the objector has only to demonstrate that a reasonable suspicious circumstance is in existence and there could not have been a situation where the Will was executed by the Testator himself. In the present case, such suspicious circumstances have been sufficiently raised, but the propounder failed to dispel the same.
12. In support of his contentions, learned counsel for the appellants cites *Kavita Kanwar v. Pamela Mehta and others*, reported at (2021) 11 SCC 209.
13. In reply, learned senior counsel appearing for the respondent/Executrix argues that the Will was duly proved in terms of Section 63 of the Indian Succession Act, 1925 by P.W.1, one of the attesting witnesses. The issue raised by the appellants as to the propounder/respondent not being the legal wife of the Testator, as rightly found by the learned Trial Judge, is irrelevant for the consideration of the court in a probate proceeding.
14. Learned senior counsel submits that the appellants' contention as to unjust disposition of the Testator's property by the Will is baseless, since

allocations have been made therein for all the heirs of the Testator, that is, the parties to the present proceeding. The learned Trial Judge, it is submitted, rightly reasoned that the Testator admittedly loved and cared for the propounder/respondent, which was apparent from the examination-in-chief of D.W.1 herself.

- 15.** On the basis of the evidence of P.W.1, it is contended, the learned Trial Judge correctly recorded satisfaction about proper execution of the Will in compliance with Section 63 of the Indian Succession Act. Non-examination of the scribe, Sri Animesh Das, Advocate did not afford any ground to doubt the compliance of Section 63.
- 16.** Regarding the testamentary capacity of the Testator, it is argued that there is no evidence to suggest that the mental capacity of the Testator had reduced to a considerable extent merely because he was suffering from Cancer. On the contrary, P.W.3, the driver of the Testator, deposed that the Testator used to visit the nursing home in his own car with the said driver till one week prior to his death, which aspect could not be negated by the defendants/appellants, which D.W.1 (appellant no.2) admitted in her cross-examination.
- 17.** Mere presence of the propounder at the place of the execution of the Will, it is argued, cannot be regarded by itself as a suspicious circumstance.
- 18.** The test of active participation of the beneficiary, which may be germane in considering suspicious circumstances, is absent in the present case, nor pleaded by the defendants/appellants.

19. It is reiterated that since P.W.1, one of the attesting witnesses, duly proved the execution of the Will as per Section 63 of the Indian Succession Act, 1925 and there was no suspicious circumstance surrounding the execution of the Will and as there is no proof of lack of testamentary capacity of the Testator at the time of execution of the Will, the challenge to the Will is not sustainable.
20. Learned senior counsel for the respondent further argues that D.W.2 (defendant/appellant no.1) falsely alleged undue influence but in his testimony, belied such allegation by admitting that his sister, brother-in-law and their daughter had easy access to the Testator.
21. D.W.2, it is submitted, made wild allegations in his examination-in-chief, stating that the Will is manufactured and does not contain the real signature of the Testator, while, in the same breath, stating that if the signature was proved to be genuine, on account of the illness, the Testator was not in a position to execute the same consciously and voluntarily. However, no proof in support of such statement could be adduced.
22. Learned senior counsel, in support of his contentions and to elaborate the tests to be considered in a probate proceeding vis-à-vis suspicious circumstances, cites the following judgments:
 - (i) (2010) 4 SCC 387 [*Mahesh Kumar (Dead) by LRs. v. Vinod Kumar and others*];
 - (ii) (2005) 8 SCC 67 [*Pentakota Satyanarayana and others v. Pentakota Seetharatnam and others*];

(iii) 1958 SCC OnLine SC 31 [*H. Venkatachala Iyengar v. B.N. Thimmajamma and others*].

23. Upon hearing learned counsel for the parties and perusing the materials on record, the Court comes to the following conclusions:

24. The first limb of argument of the appellants is that the propounder/Executrix/respondent Narayani failed to prove her valid marriage with the Testator. In the same breath, however, the appellants, respectively as D.W.1 and D.W.2, consistently alleged the intimate relationship between the Testator and the Executrix. In fact, in the written statement filed subsequently by defendant/appellant no.1 (initially a joint written statement was filed by both the defendants/appellants), he alleged that the Executrix had a relationship with his father, the Testator. It was stated in the written statement of appellant no.1 that the relationship between the Executrix and the Testator grew further, resulting in the Executrix moving in with the Testator to his flat at Greater Kailash-II, New Delhi in March, 1993 and ultimately got married to the Testator in May, 1993. It was further alleged by the appellant no.1 that after marriage, the Executrix shifted with the Testator to Kolkata and started staying at the Testator's house at Premise No.1/397A, Gariahat Road (South), also known as 397A, Jodhpur Park, P.S. Lake, Kolkata – 700 068. Thus, the appellants categorically admitted the marriage between the Executrix and the Testator in May, 1993 as well as the factum of the demise of their mother, the first wife of the Testator, in 1991. Thus, the argument that there was no valid

marriage between the Executrix and the Testator is diametrically contrary to the pleadings of the appellants themselves.

- 25.** Furthermore, in view of the admitted intimate relationship between the Executrix and the Testator, it is rendered irrelevant as to whether the Executrix was married to the testator, since, in a testamentary proceeding, the court is only to see as to whether there was unnatural disposition of the property. By the very allegations made by the appellants as to the intimacy between the Executrix and the Testator, they strengthened the justification for the Testator to bequeath a part of his property to the Executrix/respondent.
- 26.** The appellants also insinuate deprivation of the appellants in the Will. However, such allegation is utterly unfounded. In Paragraph 10 of the Will, the Testator, in unambiguous terms, bequeathed life interest in the entire property to his second wife, the Executrix, restricted to her possession and occupation of the entire property. Only insofar as the second floor of the property was concerned, absolute right was bequeathed to the Executrix to sell, transfer, lease and/or mortgage the same, along with the car parking space, roof and proportionate undivided share in the land.
- 27.** Upon the demise of the Executrix, as per the Will, the remaining parts of the property (that is, the ground and the first floor along with the ancillary common rights/facilities which went therewith) were to devolve absolutely on the appellants, being the son and daughter from the first marriage of the testator, as joint owners with equal shares.

28. Hence, the bequest in the Will was as fair as can be. Out of the three floors of the property, two were given jointly to the two appellants, the children of the Testator from the first marriage and one (the second floor) was given to the Executrix/second wife of the Testator with absolute right to alienate the property. Insofar as the entire property was concerned, only life interest, restricted to possession, was given to the Executrix Narayani.
29. Thus, the argument as to deprivation of the two children of the Testator, being the appellants herein, is totally baseless.
30. The appellants argue that the Will was complex in nature, which could not have been executed by the Testator in his ailing state at the relevant juncture.
31. However, P.W.3, the driver of the Testator, categorically stated in his evidence that the Testator used to drive with P.W, 3 to the nursing home for his treatment till a week prior to his demise, that is, much after the execution of the Will. Such statement could not be demolished in his cross-examination.
32. That apart, mere sufferance from Cancer does not *per se* debilitate a person to such an extent that he loses his mental capacity to execute a Will. The onus lay on the objectors/appellants to prove the lack of testamentary capacity of the Testator by cogent evidence. Having utterly failed to do so, it does not now lie in the mouth of the appellants to suggest that the Testator had lack of testamentary capacity at the relevant juncture. Moreover, the appellants' pleadings and evidence as to the Testator being in a relationship with the Executrix and thereafter having moved in with her to his residence

as well as other associated allegations go on to strengthen the presumption that the Testator was in full control of his life and in prime mental condition at the time of execution of the Will.

- 33.** The appellants try to cast aspersions on the attesting witnesses on the ground that they were not acquainted with the Testator. However, P.W.1, the deposing attesting witness, clearly stated in his evidence that he had long acquaintance with the Testator. As per his deposition in his cross-examination, he did not know the reason of Sujit Guha's death, however, he was also in the hospital on the date of death of Sujit Guha (the Testator) having undergone an operation for a different ailment.
- 34.** P.W.1 further stated in his cross-examination that he was not aware that the Testator was suffering from Cancer on the day he went to sign the Will as attesting witness, and reiterates that the Testator was not bedridden on the said date and was physically fit at that point of time. The said witness goes on to state that he got the news of the Testator's death from his wife as they were family friends and his wife had visited the Testator on the day he returned from the hospital and further that his wife and the Executrix Narayani Guha are friends and still continue to be so.
- 35.** Thus, P.W.1 was not only acquainted with the Testator but he and his wife were family friends of the Testator and his wife Narayani. The mere fact that he was a business partner of the Executrix does not take anything away from his credibility as an attesting witness; rather, the chances of acquaintance between the Testator and the business partner of his wife are obvious. Merely because the said attesting witness did not know about the

ailment of the Testator on the date of signing the Will or that he did not frequently visit the testator's house does not, in any manner, create any suspicious circumstance.

- 36.** Hence, the aspersion cast on the veracity of P.W 1 as an attesting witness is flimsy and cannot be accepted.
- 37.** Even the other attesting witness has been stated in evidence to have been a Yoga instructor of the testator. We do not find any suspicious circumstance *per se* in one's physical instructor being chosen as the attesting witness of his Will.
- 38.** Even otherwise, there is no real discrepancy between the evidence of the attesting witness or the Executrix, respectively P.W 1 and P.W 2. Whereas P.W 1 states in answer to a question put to him in cross-examination that the Executrix was present at the time of execution of the Will, P.W 2 stated in her cross-examination that she was not present "in the room" when the Will was executed by the Testator. There is no discrepancy between the two statements. The statement of the P.W. 1 as to the presence of the P.W 2, the Executrix, has to be read in the context of the immediately preceding question asked to him. In the cross-examination of P.W.1, the sentence immediately prior to the one being discussed was "I cannot say the address of the residence where Sujit Guha stayed when he died probably at Jodhpur Park". The next sentence is that, the P.W.1 himself, Ranjit Dutta, Animesh Das (Advocate) and Sujit Guha's wife (the Executrix) were present at the time of his executing the Will". Read in conjunction, it is evident that the P.W. 1 was referring to the Executrix being present not in the exact room

where the Will was being signed but in the residential address of the Testator which was being referred to in the immediately preceding question.

39. Thus, we do not find any discrepancy on such score as well.
40. In the present case, there is no proof of any “active participation” of the Executrix in the preparation of the Will in any manner. Mere presence of the Executrix in the same house at the time of execution of the Will is not a suspicious circumstance at all from any perspective whatsoever.
41. The appellants also allege that P.W. 3, the driver of the Testator, is currently the employee of the Executrix. Such turn of events is but natural, since the driver of the deceased husband carrying on as an employee of his widow is not unnatural but, rather, normal.
42. Hence, not an iota of suspicious circumstance worth the name has been raised at all by the appellants, which was required to be dispelled by the propounder. The appellants rely on *Kavita Kanwar (supra)*¹, where the Hon’ble Supreme Court discussed *H. Venkatachala Iyengar (supra)*² to elaborate the yardsticks to be applied in a testamentary matter in case of suspicious circumstances having been raised. The respondent, on the other hand, has relied on *H. Venkatachala Iyengar (supra)*² itself. In the said report, the Hon’ble Supreme Court reiterated that in cases where “legitimate” suspicions are raised, those should be completely removed before the document is accepted as the last Will of the Testator. Here,

¹ ***Kavita Kanwar v. Pamela Mehta and others*, reported at (2021) 11 SCC 209**

² **1958 SCC OnLine SC 31 [*H. Venkatachala Iyengar v. B.N. Thimmajamma and others*]**

however, there is no legitimacy in the purported suspicious circumstances alleged by the appellants.

- 43.** Even in the cited report, the illustrations of suspicious circumstances given were more serious than any raised in the present case, such circumstances being that the signature of the Testator was shaky and doubtful, the condition of the Testator's mind appearing to be very feeble and debilitated and unnatural, and an improbable or unfair dispossession being made, none of which tests are present in the instant case.
- 44.** Again, the Hon'ble Supreme Court held in the report under discussion that if a caveat is filed on the basis of exercise of undue influence, fraud or coercion in respect of the execution of the Will propounded, such pleas have to be proved by the caveators, which is also consonance with the provisions of Order VI Rule 4 of the Code of Civil Procedure, which mandate particulars of fraud, etc. to be pleaded.
- 45.** In the present case, no case of undue influence has been established by the appellants, apart from alleging that the Executrix (who later married the Testator) had an amorous relationship with the Testator. It is to be noted that all influences are not "undue". Rather, the 'influence' which the Executrix might have had over the Testator due to the natural love and affection of the Testator for the Executrix, which is consistently admitted by the appellants themselves throughout their pleadings and deposition, was sufficient justification for the Testator to be minded to bequeath her a portion of his property. Notably, however, the Testator did not lose his sense of balance but conferred equal title and rights in the subject-property in

favour of all his heirs, including his second wife, the Executrix, and his two children, that is, the appellants herein.

46. It is a well-settled proposition of law in testamentary jurisprudence that mere deviation from the line of succession is not *per se* a suspicious circumstance, since the very purpose of a Will is to deviate from the natural line of succession. The said principle was clearly reiterated in *Pentakota Satyanarayana and others (supra)*³, where it was observed by the Hon'ble Supreme Court that the circumstance of depriving the natural heirs should not raise any suspicion because the whole idea behind the execution of a Will is to interfere in the normal line of succession and so natural heirs would be debarred in every case of the Will, whether partially or totally.
47. However, in the present case, there is no such deprivation at all *inter se* the heirs, since the bequest was as equitable as possible.
48. The Hon'ble Supreme Court, in *H. Venkatachala Iyengar (supra)*⁴, reiterated that "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 was further observed that while discovering the truth, even in such cases, the judicial mind must always be "open, though vigilant, cautious and circumspect". The general rule is, it was observed, that the *onus*

³ (2005) 8 SCC 67 [*Pentakota Satyanarayana and others v. Pentakota Seetharatnam and others*]

⁴ 1958 SCC OnLine SC 31 [*H. Venkatachala Iyengar v. B.N. Thimmajamma and others*]

probandi lies in every case upon the party propounding a Will and he must satisfy the conscience of the Court that the instrument so propounded is the last Will of a free and capable Testator.

49. In the evidence of P.W.1 and P.W.2, it has amply come out that the Testator was in fine mental senses and physical capacity at the time of execution of the Will, which stands unrebutted by any cogent evidence adduced on the part of the defendants/appellants.
50. In *Mahesh Kumar (Dead) (supra)*⁵, the Hon'ble Supreme Court followed the proposition laid down in *H. Venkatachala Iyengar (supra)*⁶. Even in *Pentakota Satyanarayana and others (supra)*⁷, the Hon'ble Supreme Court reiterated the same principles.
51. Thus, even applying the principles laid down by the Hon'ble Supreme Court in the cited reports, the Testamentary Court was perfectly justified in granting probate of the Will, in the absence of any suspicious circumstance whatsoever. Rather, the allegations made by the appellants against the Executrix, with regard to her alleged intimacy with the Testator before his demise, all the more justify the bequest of a portion of the Testator's property in her favour. As admitted in the subsequent separate written statement filed by the appellant no.1, the Executrix had married the Testator after the demise of his first wife, the mother of the appellants. Thus, bequest of one floor of the Testator's residential house out of three to

⁵ (2010) 4 SCC 387 [*Mahesh Kumar (Dead) by LRs. v. Vinod Kumar and others*]

⁶ 1958 SCC OnLine SC 31 [*H. Venkatachala Iyengar v. B.N. Thimmajamma and others*]

⁷ (2005) 8 SCC 67 [*Pentakota Satyanarayana and others v. Pentakota Seetharatnam and others*]

the Executrix, his wife, along with life interest restricted to possession regarding the two other floors, which two floors were bequeathed absolutely to the appellants jointly in equal share after the Executrix's demise, is a patently fair disposition, untainted by any discrimination between the Testator's heirs.

52. As such, not even an iota of suspicious circumstance has been established by the appellants which was required to be dispelled by the propounder/Executrix.
53. Hence, this Court does not find any illegality, either in fact or in law, in the impugned judgment granting probate of the said Will.
54. Accordingly, the appeal fails.
55. FA No. 98 of 2025 is, thus, dismissed on contest, thereby affirming the impugned judgment and decree dated May 20, 2024 passed by the learned Additional District Judge, Ninth Court at Alipore, District: South 24 Parganas in Original Suit No. 16 of 2010.
56. There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)