



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 1941 OF 2024

1. Mir Nasiri Ali Mujahid Nasir
Age : 75 years, Occu. : Business
R/o. House No. 20-1-330,
Kokabazar, Hyderabad
Andhra Pradesh.
2. Mohan s/o Kashinathrao Kale
Age : 60 years, Occu. : Agri. & Business
R/o. Dhanshree Dhanora Road,
Beed, Tq. & Dist. Beed.

.. Appellants

(Org. defendant Nos. 1 & 3)

Versus

1. Mir Azghar Ali Khalid Nasiri
S/o. Mir Akbar Asli Nasiri
Age : 68 years, Occu. : Business
R/o. House No. 20-1-330,
Kokabazar, Hyderabad
Andhra Pradesh.
2. Mir Ather Ali Farooq Nasiri s/o Mir
Akbar Ali Nasiri.
Age : 66 years, Occu. : Business
R/o. House No. 20-1-330,
Kokabazar, Hyderabad
Andhra Pradesh.
3. Mir Amjad Ali Zubair Nasiri s/o Mir
Ali Nasiri,
Age : 60 years, Occu. : Business
R/o. House No. 20-1-330,
Kokabazar, Hyderabad
Andhra Pradesh.

4. Mir Dwar Ali Tariq Nasiri s/o Mir Ali Nasiri
Age : 60 years, Occu. : Business
R/o. House No. 20-1-330,
Kokabazar, Hyderabad
Andhra Pradesh.
5. Mir Azam Ali Taha Nasiri s/o Mir Ali Nasiri
Age : 48 years, Occu. : Business
R/o. House No. 20-1-330,
Kokabazar, Hyderabad
Andhra Pradesh. .. (Org. Plaintiffs)
6. Amatul Yusuf Hafsa Nasiri s/o Mir Ali Nasiri,
Age : 60 years, Occu. : Business
R/o. House No. 20-1-330,
Kokabazar, Hyderabad
Andhra Pradesh.
Through their G.P.A. Holder
Mateen Khan s/o Khizer Khan,
Age : 44 years, Occu. : Business
R/o. Rhilla Galli, City Chowk
Aurangabad, Tq. & Dist. Aurangabad.
7. Amatul Butuool Siddiqua Nasiri
D/o Late Mir Akbar Ali Nasiri
Age : 46 years, Occu. : Business
R/o. House No. 20-1-330,
Kokabazar, Hyderabad
Andhra Pradesh. (Org. defendant No. 2)
.. Respondents

**WITH
CIVIL APPLICATION NO. 8563 OF 2024
IN
FIRST APPEAL NO. 1941 OF 2024**

1. Mir Nasiri Ali Mujahid Nasir
Age : 75 years, Occu. : Business
R/o. House No. 20-1-330,

Kokabazar, Hyderabad
Andhra Pradesh.

2. Mohan s/o Kashinathrao Kale
Age : 60 years, Occu. : Agri. & Business
R/o. Dhanshree Dhanora Road,
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.. Applicants
(Org. defendant Nos. 1 & 3)

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Age : 48 years, Occu. : Business
 R/o. House No. 20-1-330,
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 Andhra Pradesh.

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 D/o Late Mir Akbar Ali Nasiri
 Age : 46 years, Occu. : Business
 R/o. House No. 20-1-330,
 Kokabazar, Hyderabad
 Andhra Pradesh.

(Org. defendant No. 2)

.. Respondents

Mr. N. L. Jadhav, Advocate for the Appellants/Applicants.
 Mr. P. R. Katneshwarkar, Senior Advocate a/w Mr. Anuj A.
 Fulfagar, Advocate i/b Mr. Mohammad Aseem, Advocate for
 Respondent Nos. 1 to 6.

**CORAM : KISHORE C. SANT AND
 SUSHIL M. GHODESWAR, JJ.**

Date on which reserved for order : 29th January, 2026.

Date on which order pronounced : 28th April, 2026.

FINAL ORDER (*PER KISHORE C. SANT, J.*) :-

1. This appeal by original defendant Nos. 1 and 3 arises out of

the judgment and decree passed in Special Civil Suit No. 48/2013 by the learned Civil Judge Senior Division, Aurangabad dated 01.06.2024. By way of said judgment the suit is partly decreed with proportionate cost. It is held that the plaintiff Nos. 1 to 6 and defendant No. 1 and 2 are entitled to partition and separate possession of their respective shares as given i.e. plaintiff Nos. 1 to 5 and defendant No. 1 are held to be entitled to $1/7^{\text{th}}$ share each whereas, plaintiff No. 6 and defendant No. 2 are held to be entitled to $1/14^{\text{th}}$ share each. It is further declared that, the sale deed executed by defendant No. 1 in favour of defendant No. 3 is not binding on plaintiff Nos. 1 to 6 and defendant No. 2. Further, defendant Nos. 1 and 3 are restrained from creating third party interest in the suit property till actual partition and handing over the possession takes place. The Commissioner is directed to effect partition.

2. Record and proceedings is received and paperbook is also prepared. The appeal is therefore taken up for final disposal by consent of the parties at the stage of admission.

3. The relationship between the parties is that the plaintiffs and defendant Nos. 1 and 2 are real brothers and sisters. Their

father Mir Akbar Ali Nasiri died on 22.05.2010. The deceased was owner of the suit property. The suit property is plot No. 13 in Survey No. 12, C.T.S. No. 18315, admeasuring 112×150 sq. yards i.e. 1,51,200 sq.ft., near Deogiri College, Osmanpura, Aurangabad. Other properties are plot Nos. 4, 5 and 6 admeasuring 2349 sq. yards adjacent to Iddgah of Osmanpura, Aurangabad bearing old Municipal No. 5-5-2022, new no. 6-4-120/2, C.T.S. No. 18315/P as described more particularly in the suit.

4. Plaintiffs filed a suit with the case that there was a power of attorney executed in the year 2007 by deceased Mir Nasiri in favour of defendant No. 1 being elder son. The plaintiffs and defendant No. 2 had confidence in defendant No. 1. The deceased father was residing with plaintiffs at Hyderabad. It is alleged that the defendant No. 1 by playing mischief grabbed the suit properties claiming that it is orally gifted in January 2008 to him by the deceased father. When inquired, the deceased father denied execution of any gift deed and his signature on the so called gift deed. It is thus a case that the signature of father is obtained by defendant No. 1 by playing deceitful tactics. The defendant No. 1

thereafter moved an application in the year 2010 and mutated his name in city survey office for recording the property in his name. The authorities on receipt of such application issued notices to plaintiffs in February 2011. The receipts of notices were signed by defendant No. 1 and kept the plaintiffs in dark. When the plaintiffs asked for partition, defendant No. 1 disclosed about the Will executed by deceased father on 22.08.2008. It is their specific case that they never gave no objection for mutation in the name of defendant No. 1. It is on these grounds the suit came to be filed.

5. It is the case of the defendant No. 1 that the deceased father had executed a Will in his favour and after death of father the plaintiffs and defendant No. 2 have executed declaration cum consent deed giving no objection and validated the execution of the Will. Being a will executed for more than 1/3rd of property, as per Mohammeden Law, other heirs are required to give consent or no objection to Will. The plaintiffs have given consent as per law. The suit properties have thus validly come to him and he has become absolute owner of the suit properties. It is contended that since he became absolute owner of the property he had a right to dispose off the property and therefore sale deed is valid.

6. It is further case of the defendant No. 1 that he was looking after his father during his old age. The father, to avoid conflict, amongst the heirs executed registered Will in his favour on 22.08.2008. One Mrs. Rehana Sultana w/o Sayyad Imam and Mr. Mir Hussain Ali Bilal Nasiri, son of Mir Asghar Ali Khalid Nasiri i.e. plaintiff No. 1 have signed the Will as witnesses. After death of father on 22.05.2010 the plaintiffs and defendant No. 2 executed consent deed of declaration cum no objection in favour of defendant No. 1. Thus, the registered Will is validated as required under Mohammeden Law. On the strength of this Will the defendant No. 1 applied for mutation of his name in the property. Now the name of defendant No. 1 is entered in P.R. card by issuing notices to all the plaintiffs and defendant No. 2. The plaintiffs also appeared before the City Survey officer. Their objections were considered by the officer. It is only after hearing them the name was entered in the P.R. card by order dated 19.04.2011 whereby the objections of the plaintiffs and defendant No. 2 came to be rejected. The plaintiffs accepted the said order and there is no challenge raised to the entries in the revenue record. Except the property in the Will, other properties are shared between the successors. There is already a partition that took place between

the parties. On this say the defendant prayed for dismissal of the suit.

7. The defendant No. 3 also appeared in the suit and pleads that the defendant No. 1 had the authority to dispose off the property as he was rightful owner of the same.

8. The learned Trial Judge on the basis of pleadings framed the issues and decreed the suit by accepting the case of the plaintiffs holding that the plaintiff Nos. 1 to 6 and defendant No. 1 and 2 are entitled to the said property and separate possession. The Trial Judge on evidence held that the Will is surrounded by suspicious circumstances and disbelieved the same. A decree is passed as stated in the opening paragraph. So far as sale deed in favour of defendant No. 3 is concerned, it is held that, since defendant No. 1 had no authority to sale the property, the sale deed is not binding upon others.

9. The learned advocate Mr. N. L. Jadhav for the appellants vehemently argued the appeal. He submits that the learned Trial Judge has failed to appreciate that there was a Will voluntarily executed in favour of defendant No. 1. Once initial burden to

prove Will is discharged by the defendant, the burden to prove the genuineness of Will is wrongly placed upon the defendant No. 1. Since the Will is disputed by the plaintiffs it was for them to prove their case. The consent executed by the plaintiffs also would show that there are signatures appearing on the same and still the Court ignored the said fact. The plaintiffs' stand that under the pretext of submitting document to the City Survey officer for taking entries in the name of the plaintiffs the signatures were obtained is wrongly accepted by the Court. The plaintiffs are well educated persons. On knowing the contents of the document they have signed. It is not the case of the plaintiffs that the signatures and thumb impressions are not of the plaintiffs. The Court committed mistake in accepting the verification. The plaint is verified by the General Power of Attorney. This material aspect is not considered by the Trial Court as General of Power Attorney has verified plaint without personal knowledge to him.

10. He further submits that the theory of earlier partition is clearly accepted in the cross in the evidence of PW -1, Mir Dawar Ali Tariq Nasiri (Exh. 145-C) that there was earlier partition. In the cross examination it is further admitted by the witness for the

plaintiffs Mir Mohd. Ali. This witness could not state as to when his father met with an accident in the year 2007 he could not produce any document to that effect. He further accepted that because of the accident of father he was bedridden and could not make movement much. The evidence of Mohammad Abdul Qayyum - PW-3 is also not properly appreciated, in his submission. The power of attorney holder was examined as PW-4, he accepted that the power of attorney was executed after filing of the suit. So far as this witness is concerned, it is submitted that he was highly interested witness. The general power of attorney is signed by the plaintiffs on 11.10.2017 whereas the suit is of the year 2013. The Court failed to appreciate evidence of the defendant i.e. handwriting expert who deposed in favour of the defendant. The Court, however, failed to appreciate this fact that the said witness has clearly stated that the signatures on the consent deed were of the plaintiffs and defendant No. 2 without recording any finding as to how document of Will is suspicious. The Court has wrongly held the document to be suspicious when witness No. 2 of the defendant has clearly stated in his evidence that the memorandum/acknowledgment of past oral gift is accepted by the plaintiffs in presence of this witness. The theory that already the

land was gifted to the defendant No. 1 and in that view it was not required to execute Will again in his favour is taken to be suspicious thing. The Court failed to appreciate that the Will was executed as a precaution to avoid the disputes in future. Mir Asghar Ali, the witness to the Will is also examined in the Court. The plaintiffs have never disputed the signature on the consent deed. Mere suspicion about the Will is not sufficient to come to the conclusion. On all these grounds he submits that the learned Trial Court has wrongly passed the decree. He thus prays for allowing the appeal by setting aside the decree.

11. The learned senior advocate Mr. Katneshwarkar a/w learned advocate Mr. Anuj Fulfagar i/by Mohammad Aseem for respondent Nos. 1 to 6 vehemently argued that, to see as to whether the Will is proved, this Court has to see section 64 of the Evidence Act. He submits that the Will specifically needs to be proved. At least one witness needs to be examined to prove the contents. So far as suspicion is concerned, there is no evidence to show that it is the deceased who dictated the contents of the Will. The witness Rahana Sultana in her evidence stated that the Will was written by the deceased when in fact the Will is a typed

document and there was no question of writing the contents by the deceased. There is nothing to show that the executor of the Will has taken initiative. Thus, the evidence of this witness is not sufficient. From the cross examination of this witness he points out that the witness has accepted that the deceased was suffering from Glaucoma and thus he was not in a position to read the document. So far as theory of partition, he submits that, had there been really a partition of the properties, there would have been reference to all the properties. However, in the present case, there is no reference to the properties situated at Hyderabad. Thus, even this partition is suspicious. Handwriting expert's report is rightly considered. The conclusion of the expert is pointed out. He submits that the disputed signatures and admitted signatures show different speed of writing skill and penmanship. He justifies the judgment and submits that there is no substance in the appeal and appeal deserves to be dismissed with costs.

12. On these submissions and from the facts, the points arising for consideration are -

- (i) whether the Will is proved to be a genuine Will,
- (ii) whether the plaintiffs have given consent to the Will,

- (iii) whether the family partition had already taken place,
- (iv) whether the judgment and decree deserves to be quashed and set aside.

13. Learned advocate Mr. Jadhav for the appellants relies upon the following judgments judgment :

(i) Achambat Abdul Rahim Vs. Achambat Kunhalikutty Haji's Son Muhammed Haroon, 2022 3 ILR (Ker) 391.

(ii) Smt. Indu Bala Bose and others Vs. Manindra Chandra Bose and another, 1981 0 Supreme (SC) 479.

(iii) Shashi Kumar Banerjee and others Vs. Subodh Kumar Banerjee and others, 1964 0 AIR (SC) 529.

(iv) Naresh Charan Das Gupta Vs. Paresh Charan Das Gupta, 1955 AIR 363.

(v) Meena Pradhan Vs. Kamla Pradhan, AIR 2023 SC 4680.

(vi) Muddasani Sarojana Vs. Muddasani Venkat Narsaiah and Ors., 2007 AIR (A.P) 50.

(vii) Sridevi and Others Vs. Jayaraja Shetty and Others, 2005 (2) SCC 784.

(viii) Madhukar D. Shende Vs. Tarabai Aba Shedage, AIR 2002 SC 637.

(ix) O. Bharathan Vs. K. Sudhakaran, 1996 AIR (SC) 1140.

14. In the case of **Achambat Abdul Rahim** (*supra*), it is held that every Mahomedan of sound mind and not a minor can dispose of his property by Will. The same is not valid unless other heirs' consent to bequest after his death. In the said case it was inferred from the circumstances and conduct of the parties that there was a consent.

15. In the case of **Smt. Indu Bala Bose and others** (*supra*), the parties suspecting genuineness of Will were discussed such as an attempt of the propounder to conceal real nature of testators illness. The propounder's failure to tell the date when the testator went to his lawyer, non production of draft and no explanation etc.

16. In the case of **Shashi Kumar Banerjee and others** (*supra*), the constitution bench held that it is for the propounder to prove the Will. It is held that, in absence of suspicious circumstances surrounding the execution of Will, proof of testamentary capacity and the signature of the testator as required by law is sufficient to discharge the onus. Where there are suspicious circumstances, the propounder of Will has to explain them away to the satisfaction of the Court.

17. The judgment in the case of **Naresh Charan Das Gupta** (*supra*), it is again of the suspicious circumstances and the onus to prove that the Will is genuine or is suppressed from suspicious circumstances.

18. In the case of **Meena Pradhan Vs. Kamla Pradhan** (*supra*), the question was of section 63 of the Evidence Act. There the Will was accepted to be genuine on recording finding that the Will was executed by free Will and when the executor was in a sound depositing state of mind. This finding was recorded on the basis of evidence of the attesting witness. There was no any evidence to show that testator was not in a fit or suitable mental condition at the time of execution of the Will. No suspicious circumstances were found.

19. The judgment in the case of **Muddasani Sarojana** (*supra*) is on section 67 of the Indian Evidence Act which mandates that the signature and handwriting of a person on a written document can be proved only by examining the person concerned. This judgment is relied upon the appellants in support of his submission that the plaintiffs have not come forward to disclose signature of the testator.

20. In the case of **Sridevi and Others** (*supra*), the Court has considered provisions of section 63 of the Indian Succession Act and the mode of prove the Will. It is held that, same is as required to prove any other document. However, in addition, the party has to comply with the requirements of section 63 i.e. to produce at least one of the attesting witnesses. It is thereafter the onus would shift on the other side who dispute the genuineness of Will.

21. In the case of **Madhukar D. Shende Vs. Tarabai Aba Shedage**, (*supra*), the Hon'ble Apex Court considered section 63 of the Succession Act, 1925. In the said case, the Court found that the suspicion about the Will was without any foundation when there was nothing found unnatural. The evidence adduced was also satisfactory. It is held that, the Court would not record a finding that the Will is not proved merely on account of certain assumed suspicion or supposition.

22. The judgment in the case of **O. Bharathan** (*supra*), this Court finds that, this judgment is not of much help to the appellants.

23. Learned Senior Advocate Mr. Katneshwarkar for respondents

relies upon the following judgments :

(i) **Gorantla Thataiah Vs. Thotakura Venkata Subbaiah and Others**, AIR 1968 SC 1332.

(ii) **Ramrao Punjabrao Pawar & Others Vs. Sarubai Dalpatrao Pawar through L.R., Yavatmal**, 2006 (1) Mh.L.J. 610.

(iii) **B. Venkatamuni Vs. C. J. Ayodhya Ramsingh and Others**, 2007 AIR (SC) 311.

(iv) **Ashiq Ali (deceased) through his L.Rs. And others Vs. Yasin Mistri (deceased) through his L.Rs. And Others**, 2021 SCC OnLine HP 735.

24. In the case of **Gorantla Thataiah** (*supra*), it is held that, the suspicious circumstances must be judged in the facts and circumstances of each particular case. It is held that, when the propounder himself takes a prominent part in the execution of the Will which confers substantial benefits on him that itself is a suspicious circumstance.

25. In the case of **Ramrao Punjabrao Pawar** (*supra*), it was found that the Will was executed by taking advantage of fragile, physical and mental health of the deceased and his helplessness in the circumstances at the relevant time.

26. In the case of **B. Venkatamuni** (*supra*), the Court relied upon

the judgment in the case of **Dr. Surendra Pal and others Vs. Dr. (Mrs.) Saraswati Arora and another, (1974) 2 SCC 600**. It is held that, the propounder has to show that the Will was signed by the testator; that he was at the relevant time in a sound disposing state of mind, that he understood the nature and effect of the dispositions, that the putting the signature to the testament of his own free will and that he has signed it in the presence of two witnesses who attested it. It is necessary to be proved as necessary elements to satisfy the conscience and to remove suspicion with reasonable man may, in relevant circumstances of the cases, entertained.

27. In the case of **Ashiq Ali** (*supra*), the questions of law were framed as to whether adverse inference against the due execution of legal and valid Will could be drawn by the learned Appellate Court for not examining the scribe to prove the Will. The second question was in the facts of the case. It is held since it was in the facts of the case. This Court need not discuss the same.

28. In the case of **V. Prabhakara Vs. Basavaraj K. (Dead) By Lr., AIR 2021 SC 4830**, the Hon'ble Apex Court, on facts, recorded that, the brother of the appellant therein and other sister were

present at the time of execution of Will. No doubt was raised by them. In such circumstances, it is held that the Appellate Court unnecessarily suspected the execution when there was no reasonable ground to suspect. The presence of sister of the appellant was also doubted without any material on record and it is in that view the Will was taken to be proved.

29. In the case of **Ramesh Chandra Agrawal Vs. Regency Hospital Ltd. And Ors., AIR 2010 SC 806**. It is observed that, to rely upon the evidence of the handwriting expert it needs to be shown that the expert has made a special study of a subject or he has acquired special experience in the field. It is thereafter the evidence of such witness expert can be accepted. In the present case, this Court does not find that any case is made out to show that PW-5 was not having a requisite experience or expertise in the field.

30. The judgment in the case of **K. S. Vs. Shyla Joseph and others, AIROnline 2025 SC 1323**, this latest judgment is also in respect of Will. The testator in the said case allotted suit property to all his children/defendants except plaintiff. It was plaintiff's case that the Will is surrounded by suspicious circumstance. In

that case, the testator was examined after 24 years of the date of execution. The Court held that it was not expected that he would give every minute detail. Merely because he does not remember the minute detail cannot be said to be suspicious circumstance.

31. In the case of **Rani Purnima Debi and another Vs. Kumar Khagendra Narayan Deb and another**, AIR 1962 SC 567. In the said case, it was considered that, the testator had not made proper provision for his wife and the sister who were dependent upon him. The propounder was the sole beneficiary under the Will. The propounder himself had taken part in execution of Will. The signature of the testator was not appearing to be his usual signature. It was brought on record that the testator was in habit of signing blank papers. The contents of the Will and the signature of the testator were in a different way. It is in that view the propounder was required to explain the suspicious circumstances. The witness who was examined was interested witness and in that view the Court held that the Will suffers from suspicious circumstances.

32. On all these discussions, this Court finds that, in the present case, facts are required to be considered which are discussed below :

33. As already stated that the present case mainly revolves around two issues i.e. execution of a Will and secondly, the consent/NOC. Both the questions are material as no gift can be made and no Will can be executed beyond $1/3^{\text{rd}}$ share of a person in the property. In the present case, admittedly the alleged gift in the year 2008 and Will dated 22.08.2008, both are in respect of more than $1/3^{\text{rd}}$ share of the property as per Mohammeden Law. It is in that view, the defendant No. 1 was required to prove both these documents to be genuine. The contention of the defendant that the burden is wrongly shifted upon the defendant is not correct one, since the plaintiffs have sufficiently made out a case pointing out the suspicious circumstances giving rise to a reasonable doubt about the genuineness of the Will. It was in that circumstances the Trial Court expected defendant No. 1 to prove both the documents specifically. No fault can be found with the Trial Court in expecting defendant No. 1 to prove those documents.

34. It is admitted position that the parties are related to each other. The defendant No. 1 claims right over the property only on the basis of Will allegedly executed by the father of plaintiffs and

defendant Nos. 1 and 2. The Will is registered at Hyderabad. The property in the Will is situated at Aurangabad. Except this property under Will other properties are negligible. The deceased was suffering from Glaucoma and was 90 years of age when the Will was executed. He also claims that the plaintiffs and defendant No. 2 have ratified the Will by giving no objection or consent on 15.01.2011.

35. The plaintiffs have examined six witnesses whereas, the defendant No. 1 has examined three witnesses in his favour. The main documents on the record to be considered are first Will and secondly alleged consent deed. The documents on record showing health condition of deceased, General Power of Attorney executed in favour of defendant No. 1 by the plaintiffs and defendant No. 2 dated 11.10.2017, memorandum of understanding dated 11.10.2017, sale deed dated 26.02.2013 etc.

36. Main contention of the appellant that the burden to prove that Will is genuine is wrongly placed upon him. Therefore, the question is as to whether the Trial Court was right in putting the burden to prove the Will on the defendant No. 1. It is admitted fact that the deceased Mir Akbar Ali Nasiri was above 90 years of

age when he executed the Will. It is brought on record by the plaintiffs that the deceased was not in a proper condition to understand the things. He was also not in a condition to read the documents. It is admitted by the attesting witness Rehana that the deceased was suffering from illness. On one hand, it is the case of the defendant that the contents were in the handwriting of the deceased whereas, it has already come on record that the Will is typed. Another story of the defendant is that the deceased had executed a gift deed/memorandum of Hiba in his favour in the year 2008. The plaintiff's witness – PW-1 has clearly stated the Will dated 22.08.2008 is a fabricated and prepared document. So far as knowledge is concerned, he stated that, after the defendant No. 1 made an application for mutation entries in respect of the properties, the authorities had issued notice and it is on such notices they came to know about the Will. The Trial Court has further considered that, under the Mohammedan Law a person can bequeath his property only to the extent of $\frac{1}{3}^{\text{rd}}$ of his property.

37. It is also considered that the defendant was required to prove the consent/NOC dated 15.01.2011 executed by the

plaintiffs. The Trial Court has also considered that the plaintiffs have also produced evidence to show that the Will suffers from suspicious circumstances. It is brought on record that the deceased was suffering from Glaucoma and various other health issues. From the evidence of plaintiffs it is seen that the signatures on the consent/NOC are denied by the plaintiffs. It is specific case that their signatures are forged. The Plaintiffs witness No. 2 namely Mir Mohd. Mazher Ali Arif Nasiri filed an affidavit of evidence stating that the Will is fabricated document. The consent/NOC does not bear valid signatures. He clearly stated that, his father i.e. plaintiff No. 3 met with an accident in the year 2007 and suffered heavy injury. Since 2007 he was bedridden and he was not in a position to put signature on the documents in the year 2011 and thus, there was no question of his signing the consent/NOC. So far as PW-3 Mohammad Abdul Qayyum is concerned, who stated about the health condition of deceased father of the plaintiffs and defendants No. 1 and 2, he stated that he used to treat the deceased. He stated that the deceased was also suffering from some other diseases like kidney and lung diseases. He has also given the details of the hospital and doctors treating the deceased. PW-4 is the power of attorney holder of the

plaintiffs and defendant No. 2 which is executed on 11.10.2017. He, in clear terms, stated that the signatures of the plaintiffs on the form namuna nos. 9 and 12 used in the proceedings before the revenue authority are forged and are used in the office of city survey officer. The handwriting expert is also examined as PW-5. There is handwriting expert's opinion on record who has given opinion that the signatures of the plaintiffs do not match with the signatures on the alleged consent/NOC. Thus, the signatures on the form namuna nos. 9 and 12 are not of the plaintiffs. In spite of cross-examination his evidence remained unshattered.

38. So far as evidence of defendant No. 1 is concerned, to prove Will, he examined only DW-2 Rehana Sultana, an attesting witness. The learned Trial Judge also compared the signatures of the deceased appearing on the partition deed dated 28.08.2003 and the signature appearing on general power of attorney executed on 11.10.2017 with the signatures appearing on the Will. Trial Court found that the signature on the Will appears to be different from other two signatures appearing on Exh. 178 and Exh. 238 i.e. partition deed and general power of attorney executed on 11.10.2017. All this evidence coupled with the

evidence as regards health condition of deceased, the Court recorded a finding that the Will appears to be suspicious. She came to conclusion that the consent/NOC also appears to be fabricated. It is not shown that the deceased himself took initiative to execute the Will and to get it registered. There is also an opinion of handwriting expert which is believed by the Trial Court.

39. On taking overall view in the matter, this Court finds that, the Trial Court has taken a view which cannot be faulted with. There needs to be overwhelming reasons to set aside the findings and observations by the Trial Court. This Court is dealing with the first appeal and therefore, this Court has to consider as to whether the evidence is properly appreciated by the Trial Court, unless this Court comes to conclusion that the findings recorded by the Court and the observations made by the Court are against the evidence of record, no decree can be set aside. This Court has also needs to consider as to whether the Trial Court has rightly put the burden upon defendant No. 1 to prove the Will to be genuine.

40. This Court has already considered the judgments as discussed above. In the present case, this Court finds that, the

judgment in the case of **Rani Purnima Debi and another** (*supra*) is squarely applicable. It is brought on record that the property allegedly given to defendant No. 1 by alleged Will is the major property of the deceased. Other properties are just negligible. One can hardly believe that the deceased would give practically entire property to only one son/defendant No. 1. So far as consent is concerned, as already discussed, this Court finds that, even the consent/no objection is also not proved to be genuine. This Court does not find that the Trial Court has committed any mistake in coming to conclusion that the defendant No. 1 failed to prove the Will. There are enough suspicious circumstances appearing on record. Therefore, this Court finds that, there is no interference required in the impugned judgment and order. On this discussion all the points need to be answered against the appellant/defendant No. 1. As all the points are answered against defendant No. 1, it is clear that, he had no authority to transfer entire property in favour of defendant No. 3. Thus, even the sale deed is rightly held to be not binding on plaintiffs and defendant No. 2.

41. Considering all above, the first appeal deserves to be

dismissed and the same is hereby dismissed. No order as to costs.

42. In view of dismissal of first appeal, civil application does not survive and the same also stands disposed of.

(SUSHIL M. GHODESWAR, J.)

(KISHORE C. SANT, J.)

PS.B.