IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 617 of 2008
Reserved on: 30.10.2026
Date of Decision: 23.11.2026

Chet Ram ...Appellant

Versus

Deep Ram ...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] No

For the Appellant : Mr Mohinder Verma, Advocate.

For the Respondent : Mr Pranshul Sharma, Advocate.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment and decree dated 03.09.2008, passed by the learned District Judge, Solan, H.P. (learned Appellate Court), vide which the judgment and decree dated 18.01.2008, passed by learned Civil Judge (Senior Division) Kasauli, District Solan, HP (learned Trial Court) were set aside. (*The parties shall hereinafter be referred to*

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

2026:HHC:50394

in the same manner as they were arrayed before the learned Trial Court for convenience).

2. Briefly stated, the facts giving rise to the present appeal are that the plaintiff filed a civil suit before learned Trial Court for a declaration that he is the owner in possession of the suit land described in para-1 of the plaint, and that the revenue entries showing the defendant to be the owner in possession on the basis of the mutation No. 656 are wrong and illegal. A consequential relief of permanent prohibitory injunction for restraining the defendant from interfering with the suit land, creating any charge or alienating it in favour of any person was also sought. It was asserted that the suit land was earlier Ajhudaya and possessed by Krishnia. He died, and his widow, Ajhudaya Devi, inherited the suit land, but the mutation of inheritance was attested in favour of the defendant. The plaintiff is the legal heir of the deceased Krishnia, and the attestation of mutation in favour of the defendant is wrong and illegal. The plaintiff is hearing and speech-impaired. Deceased Krishnia was not in good health due to illness and advanced age. He could not have executed any Will. The defendant is not related to Krishnia, and he started knowing Krishnia only after

2026:HHC:50394

purchasing a certain portion of land from him. The defendant proclaimed himself to be the owner in possession of the suit land based on mutation. Hence, the suit was filed for seeking the relief mentioned above.

3. The suit was opposed by filing a written statement denying the contents of the plaint. It was asserted that the defendant was cultivating and possessing the land with the deceased Krishnia, who was unable to take care of the land because of old age. The plaintiff is a stranger and has no relation to the deceased Krishnia. The plaintiff is the widow of Gokul Chand and has projected a false claim before the Court. The wife of Krishnia had died much before his death. The plaintiff has no right, title or interest in the suit land. Krishnia was satisfied with the services rendered by the defendant to him, and he had executed a Will in favour of the defendant in his sound disposing state of mind. The defendant has been in possession of the suit land for more than 15 years continuously to the knowledge of the neighbours and general public. The plaintiff has no cause of action to file the suit. Hence, it was prayed that the suit be dismissed.

2026:HHC:50394

4. A replication denying the contents of the written statement and affirming those of the plaint was filed.

5. The following issues were framed by the learned Trial Court on 23.11.2000 and on 03.03.2006:

1. Whether the plaintiff is the owner in possession of the suit land as alleged? OPP.
2. Whether the revenue entries showing the defendant as owner in possession on the basis of mutation No. 656 are wrong? OPP.
3. Whether the plaintiff is entitled to the relief of permanent and mandatory injunction as prayed for? OPP.
4. Whether the plaintiff has no locus standi? OPD.
5. Whether the plaintiff has no cause of action to file the present suit?OPD

5-A Whether the deceased Krishania has executed the Will in favour of the defendant, as alleged?OPD

6. Relief.

6. The parties were called upon to produce the evidence, and the plaintiff examined Deep Ram (PW1). The defendant no.1 examined himself (DW1), Chintamani (DW2), Roop Ram (DW3), and Babu Ram (DW4). The plaintiff examined Mohan Lal (PW2) in rebuttal.

7. The learned Trial Court held that the Will propounded by the defendant was proved on record. The mere fact that Krishnia had excluded Ajhudaya Devi and given the

entire property to the defendant cannot cast any doubt regarding the authenticity of the Will. There were no suspicious circumstances surrounding the execution of the Will. The mutation was rightly attested in favour of the defendant based on the Will. The defendant was in possession of the suit land since the lifetime of Krishnia. The entries in the revenue record were correct. The plaintiff had no locus standi to file the suit. Hence, the learned Trial Court answered issues 1 to 3 in the negative, issues 4 to 5A in the affirmative and dismissed the suit.

8. Being aggrieved by the judgment and decree passed by the learned Trial Court, the plaintiff filed an appeal which was decided by the learned District Judge, Solan (learned Appellate Court). The learned Appellate Court held that the plaintiff was proved to be the wife of Krishnia. No reason was assigned for excluding her from the inheritance. The Will was shrouded in suspicious circumstances, and the learned Trial Court erred in dismissing the suit. Hence, the appeal was allowed and the judgment and decree passed by the learned Trial Court were ordered to be set aside, and the suit was decreed.

9. Being aggrieved by the judgment and decree passed by the learned Appellate Court, the defendant has filed the present appeal, which was admitted on the following substantial question of law on 20.11.2008:

> 1. Whether suspicious circumstances as noticed by learned District Judge to disbelieve registered Will (Ext.D1) by Krishnia in favour of appellant are not legal and valid, and in view of observations as made by learned District Judge below, himself, that claim of plaintiff is falsified, therefore the appeal was required to be dismissed?

10. I have heard Mr Mohinder Verma, learned counsel for the appellant/defendant and Mr Pranshul Sharma, learned counsel for the respondent/plaintiff.

11. Mr Mohinder Verma, learned counsel for the appellant, submitted that the learned Appellate Court had erred in reversing the well-reasoned judgment passed by the learned Trial Court. The suspicious circumstances pointed out by the learned Appellate Court were discussed and repelled by the learned Trial Court. The learned Appellate Court was required to come to close quarters with the reasoning assigned by the learned Trial Court before reversing the judgment and decree of the learned Trial Court. The learned Appellate Court had failed to discharge this duty, and the judgment and decree passed by

2026:HHC:50394

the learned Appellate Court are not sustainable. Hence, he prayed that the present appeal be allowed and the judgment and decree passed by the learned Appellate Court be set aside.

12. Mr Pranshul Sharma, learned counsel for the respondent/plaintiff, submitted that the statement of the marginal witness to the Will is not sufficient to prove the execution of the Will. The learned Appellate Court had rightly held that the exclusion of the plaintiff from the inheritance was not explained and no reason was assigned for it. It is highly unlikely that a person would disinherit his wife who was residing with him without assigning any reason. The learned Appellate Court had rightly reversed the judgment and decree passed by the learned Trial Court. This Court should not re-appreciate the evidence while deciding the regular second appeal. Hence, he prayed that the present appeal be dismissed.

Substantial Question of Law No.1:

13. The law relating to the execution of the Will was explained by the Hon'ble Supreme Court in ***Meena Pradhan v. Kamla Pradhan, (2023) 9 SCC 734: (2023) 4 SCC (Civ) 449*** as under:

"*10.1*. The court has to consider two aspects: firstly, that the will is executed by the testator, and secondly, that it was the last will executed by him.

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

10.3. 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;
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> (*b*) It is mandatory to get it attested by two or more witnesses, though no particular form of attestation is necessary;
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> (*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;
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> (*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.

10.4. 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;

10.5. 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;

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

10.7. 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;

10.8. 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;

10.9. The test of judicial conscience has evolved for dealing with those cases where the execution of the will is surrounded by suspicious circumstances. It requires consideration of 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; a sound, certain and disposing state of mind and memory of the testator at the time of execution; the testator executed the will while acting on his own free will;

10.10. 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.

10.11. Suspicious circumstances must be "real, germane and valid" and not merely "the fantasy of the doubting mind [***Shivakumar v. Sharanabasappa, (2021) 11 SCC 277***]". Whether a particular feature would qualify as "suspicious" would depend on the facts and circumstances of each case. Any circumstance raising suspicion, legitimate in nature, would qualify as a suspicious circumstance, for example, a shaky signature, a feeble mind, an unfair and unjust disposition of

property, the propounder himself taking a leading part in the making of the will under which he receives a substantial benefit, etc."

14. This position was reiterated in ***Gurdial Singh v. Jagir Kaur, 2025 SCC OnLine SC 1466,*** wherein it was observed:

> **"11.** A Will has to be proved like any other document subject to the requirements of Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872, that is, examination of at least one of the attesting witnesses. However, unlike other documents, when a Will is propounded, its maker is no longer in the land of the living. This casts a solemn duty on the Court to ascertain whether the Will propounded had been duly proved. The onus lies on the propounder not only to prove due execution but to dispel from the mind of the court all suspicious circumstances which cast doubt on the free disposing mind of the testator. Only when the propounder dispels the suspicious circumstances and satisfies the conscience of the court that the testator had duly executed the Will of his free volition without coercion or undue influence, would the Will be accepted as genuine. In ***Smt. Jaswant Kaur v. Smt. Amrit Kaur (1977) 1 SCC 369***, this Court, referring to ***H. Venkatachala Iyengar v. B.N. Thimmajamma 1959 Supp (1) SCR 426***[1] enumerated the principles relating to proof of Will:—
>
> **"10.** ***** **** **** ****
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> "1. Stated generally, a will has to be proved like any other document, the test to be applied being the usual test of the satisfaction of the prudent mind in such matters. As in the case of proof of other documents, so in the case of proof of wills, one cannot insist on proof with mathematical certainty.
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> 2. Since Section 63 of the Succession Act requires a will to be attested, it cannot be used as evidence until, as

2026:HHC:50394

required by Section 68 of the Evidence Act, 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.

3. Unlike other documents, the will speaks from the death of the testator, and therefore, the maker of the will is never available to depose as to the circumstances in which the will came to be executed. This aspect introduces an element of solemnity in the decision of the question whether the document propounded is proved to be the last will and testament of the testator. Normally, the onus which lies on the propounder can be taken to be discharged on proof of the essential facts which go into the making of the will.

4. Cases in which the execution of the will is surrounded by suspicious circumstances stand on a different footing. 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 and such other circumstances raise suspicion about the execution of the will. That suspicion cannot be removed by the mere assertion of the propounder that the will bears the signature of the testator or that the testator was in a sound and disposing state of mind and memory at the time when the will was made, or that those like the wife and children of the testator who would normally receive their due share in his estate were disinherited because the testator might have had his own reasons for excluding them. The presence of suspicious circumstances makes the initial onus heavier and, therefore, in cases where the circumstances attendant upon the execution of the will excite the suspicion of the court, the propounder must remove all legitimate suspicions before the document can be accepted as the last will of the testator.

5. It is in connection with wills, the execution of which is surrounded by suspicious circumstances, that the test of satisfaction of the judicial conscience has been evolved. That test emphasises that in determining the question as to whether an instrument produced before the court is the last will of the testator, the court is called upon to decide a solemn question, and by reason of suspicious circumstances, the court has to be satisfied fully that the will has been validly executed by the testator.

6. If a caveator alleges fraud, undue influence, coercion, etc., in regard to the execution of the will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the will may raise a doubt as to whether the testator was acting of his own free will. And then it is a part of the initial onus of the propounder to remove all reasonable doubts in the matter."

15. The Court further held:—

"**9.** In cases where the execution of a will is shrouded in suspicion, its proof ceases to be a simple lis between the plaintiff and the defendant. What, generally, an adversary proceeding becomes in such cases a matter of the court's conscience, and then the true question which arises for consideration is whether the evidence led by the propounder of the will is such as to satisfy the conscience of the court that the will was duly executed by the testator. It is impossible to reach such satisfaction unless the party that sets up the will offers a cogent and convincing explanation of the suspicious circumstances surrounding the making of the will."

12. Similarly, in ***Ram Piari v. Bhagwant (1993) 3 SCC 364,*** this Court held that when suspicious circumstances exist, Courts should not be swayed by the due execution of the Will alone:

"**3.** .....Unfortunately, none of the courts paid any attention to these, probably because they were swayed by due execution even when this Court in ***Venkatachaliah***

> *case [AIR 1959 SC 443: 1959 Supp (1) SCR 426]* had held that proof of signature raises a presumption about knowledge, but the existence of suspicious circumstances rebuts it.....
>
> **13.** There is no cavil when suspicious circumstances exist and have not been rebutted to the satisfaction of the Court; the Court would not be justified in holding that the Will is genuine since the signatures have been duly proved and the Will is registered. (***AIR 1962 SC 567***).

16. The Will (Ext.D1) was attested by Chintamani (DW2) and Jeet Ram. Chintamani (DW2) stated that he was Up Pradhan of Gram Panchayat, Badlak, with effect from 1990 till 1995. Chet Ram (DW1) called him on 20.07.1992, stating that Krishnia wanted to execute a Will in favour of Chet Ram (DW1). He went to Solan, where S.R. Pandiyar drafted the Will, which was registered by the Sub-Registrar. He (Chintamani) was cited as a witness in the Will. Krishnia had executed a Will in favour of Chet Ram (DW1) in his sound disposing state of mind. The suit land is in possession of the defendant.

17. The affidavit (Ext.DW2/A) containing the examination-in-chief of Chintamani (DW2) does not satisfy the requirements of Section 63 of the Indian Evidence Act. He has nowhere stated that Krishnia had put his signatures/thumb impression in his presence and that he had put the signatures

2026:HHC:50394

on the Will after having seen Krishnia putting his thumb impression or receiving the acknowledgement from Krishnia. Hon'ble Supreme Court held in ***N. Kamalam v. Ayyasamy*, *(2001) 7 SCC 503: 2001 SCC OnLine SC 905*** that the executant must put or acknowledge his signatures in the presence of two or more witnesses, who put their signatures in the presence of the testator. It was observed at page 517:

> "**22.** As regards the requirement of attestation, ***Halsbury's Laws of England*** has the following to state:
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> > "The testator's signature must be made or acknowledged by him in the presence of two or more witnesses present at the same time. Each witness must then either attest and sign the will or acknowledge his signature, in the testator's presence. The testator's complete signature must be made or acknowledged when both the attesting witnesses are actually present at the same time, and each witness must attest and sign, or acknowledge, his signature after the testator's signature has been so made or acknowledged. Although it is not essential for the attesting witnesses to sign in the presence of each other, it is usual for them to do so. Each witness should be able to say with truth that he knew that the testator had signed the document, but it is not necessary that the witness should know that it is the testator's will. There is, however, no sufficient acknowledgement unless the witnesses either saw or had the opportunity of seeing the signature, even though the testator expressly states that the paper to be attested is his will or that his signature is inside the will." (***Halsbury's Laws of England: 4th Edn., Vol. 50, para 312***)

2026:HHC:50394

23. It is in this context that reference may be made to ***Williams on Wills*** wherein it has been stated vis-à-vis the position of attestation in a will as below:

> "Section 9(*e*) does not specify where the witnesses are to sign (*f*), and the signatures may therefore be placed on any part of the will, if it is clear that they were placed there with the intention of attesting the signature of the testator (*g*). The attestation may be on the sheet next to where the testator has signed, i.e. overleaf (*h*), or on a separate sheet so long as it is attached (*i*). Where the will is signed on more than one sheet, it seems that the signature on the last sheet should be duly attested, but the decisions on the point are not uniform (*j*). It is clear, however, that no part of the will which is shown to be written after attestation is valid (*k*)."

24. Incidentally, be it noted that though no special form of the attestation clause is essential, there are two well-recognised forms of this clause showing that the requirements of the statute have been complied with and one of them should always be used to avoid any difficulty in securing a grant.

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26. The effect of subscribing a signature on the part of the scribe cannot in our view be identified to be of the same status as that of the attesting witnesses. The signature of the attesting witness, as noticed above, on a document requiring attestation (admittedly in the case of a will, the same is required), is a requirement of the statute; thus, it cannot be equated with that of the scribe. The Full Bench judgment of the Madras High Court in ***H. Venkata Sastri and Sons v. Rahilna Bi [AIR 1962 Mad 111 : (1962) 1 MLJ 78 (FB)***] wherein Ramachandra Iyer, J. speaking for the Full Bench in his inimitable style and upon reliance on Lord Campbell's observation in ***Burdett v. Spilsbury [(1842-43) 10 Cl & F 340: 8 ER 772]*** has the following to state pertaining to the meaning to be

attributed to the word "attestation": (AIR pp. 113-14, paras 3-4)

> "(3) ... The definition of the term 'attested ', which is almost identical with that contained in Section 63(*c*) of the Indian Succession Act, has been the result of an amendment introduced by Act 27 of 1926. Prior to that amendment, it was held by this Court that the word 'attested' was used only in the narrow sense of the attesting witness being present at the time of execution. In ***Shamu Patter v. Abdul Kadir Ravuthan [ILR (1912) 35 Mad 607: 39 IA 218 (PC)],*** the Privy Council accepted the view of this Court that attestation of a mortgage deed must be made by the witnesses signing his name after seeing the actual execution of the deed and that a mere acknowledgement of his signature by the executant to the attesting witness would not be sufficient. The amending Act 27 of 1926 modified the definition of the term in the Transfer of Property Act so as to make a person who merely obtains an acknowledgement of execution and affixes his signature to the document as a witness an attestor. It will be noticed that although Section 3 purports to define the word 'attested ', it has not really done so. The effect of the definition is only to give an extended meaning of the term for the purpose of the Act; the word 'attest' is used as a part of the definition itself. It is, therefore, necessary first to ascertain the meaning of the word 'attest' independent of the statute and adopt it in the light of the extended or qualified meaning given herein. The word 'attest' means, according to the *Shorter Oxford Dictionary* ', to bear witness to, to affirm the truth of genuineness of, testify, certify'. In ***Burdett v. Spilsbury [(1842-43) 10 Cl & F 340: 8 ER 772]*** Lord Campbell observed at p. 417:
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> > 'What is the meaning of an attesting witness to a deed? Why, it is a witness who has seen the deed executed, and who signs it as a witness.'

2026:HHC:50394

The Lord Chancellor stated,

> ‘The party who sees the will executed is in fact a witness to it; if he subscribes as a witness, he is then an attesting witness’.

The ordinary meaning of the word would show that an attesting witness should be present and see the document signed by the executant, as he could then alone vouch for the execution of the document. In other words, the attesting witness must see the execution and sign. Further, attestation being an act of a witness, i.e., to testify to the genuineness of the signature of the executant, it is obvious that he should have the necessary intention to vouch for it. The ordinary meaning of the word is thus in conformity with the definition thereof under the Transfer of Property Act before it was amended by Act 27 of 1926. Before that amendment, admission of execution by the executant to a witness who thereupon puts his signature cannot make him an attestor properly so called, as he, not being present at the execution, cannot bear witness to it; a mere mental satisfaction that the deed was executed cannot mean that he bore witness to execution.

(4) After the amendment of Section 3 by Act 27 of 1926, a person can be said to have validly attested an instrument if he has actually seen the executant sign, and in a case where he had not personally witnessed execution, if he has received from the executant a personal acknowledgement of his signature, mark, etc. Thus, of the two significant requirements of the term ‘attest’, namely, (*1*) that the attestor should witness the execution, which implies his presence, then, and (2) that he should certify or vouch for the execution by subscribing his name as a witness, which implies a consciousness and an intention to attest, the amending Act modified only the first; the result is that a person can be an attesting witness, even if he had not witnessed the actual execution, by merely

> receiving personal acknowledgement from the executant of having executed the document and putting his signature. But the amendment did not affect in any way the necessity for the latter requirement, namely, certifying execution, which implies that the attesting witness had the animus to attest."

18. It was further held that Section 63 of the Indian Succession Act read with Section 68 of the Evidence Act and Section 3 of the Transfer of Property Act makes a mandatory obligation to have the document attested and evidence of such attestation be made available before the court at the time of the trial.

19. It was held in ***Pazhanathal v. Alamathal, 2026 SCC OnLine SC 1575*** that the proof of the attestation of the Will is essential before it can be acted upon. Where the witness only proved his signatures, the requirement was not satisfied. It was observed:

> "**51.** The provision requires proof of three distinct acts. First, the testatrix must sign or affix her mark to the instrument. Secondly, the placement of that signature or mark must indicate an intention to give effect to the writing as her Will. Thirdly, the Will must be attested by at least two witnesses in the manner stated in clause (c). Each attesting witness must either witness the act of signing or affixing the mark, witness another person signing on the testatrix's direction, or receive a personal acknowledgement from the testatrix. Each witness must

thereafter sign the instrument in the presence of the testatrix.

52. It is not necessary that both attesting witnesses should be present simultaneously, but what is indispensable is the substance of the statutory ceremony, that is the testatrix's execution or acknowledgement, the witnesses' awareness of that execution or acknowledgement, and their subscription of the instrument in her presence with the intention of bearing witness to that act.

53. The ordinary statutory mode of proving those acts was contained in Section 68 of the Evidence Act, which reads:

> *"68. **Proof of execution of document required by law to be attested.***
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> *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:*
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> ***Provided** that it shall not be necessary to call an attesting witness in proof of the execution of any document, **not being a will**, which has been registered in accordance with the provisions of the Indian Registration Act, 1908, unless its execution by the person by whom it purports to have been executed is specifically denied."*

54. The words "not being a will" in the proviso are significant. Even a registered Will remains subject to the requirement of proof through an attesting witness where such a witness is alive, available and capable of giving evidence. Registration may furnish a supporting circumstance regarding genuineness, but it does not dispense with proof of testamentary execution and attestation.

55. Sections 63 of the Indian Succession Act and Section 68 of the Evidence Act perform related but distinct

functions. Section 63 of the Indian Succession Act prescribes what must have occurred when the Will was executed. Section 68 of the Evidence Act prescribes the ordinary manner in which the occurrence of those acts must be proved before the Court. The two provisions must be read cumulatively. Proof of the testatrix's signature or thumb impression alone does not establish due execution of a Will unless the statutory attestation is also proved.

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57. The principle is that the initial burden does not stand discharged merely by establishing that the mark appearing on the document belongs to the testatrix. The propounder must establish that the instrument represents the testamentary act of a free and capable testatrix and that it was attested in the manner required by Section 63(c) of the Indian Succession Act and free of suspicious circumstances.

58. In ***Janki Narayan Bhoir v. Narayan Namdeo Kadam, (2003) 2 SCC 91***, this Court further explained the relationship between Sections 63 of the Indian Succession Act and 68 of the Evidence Act. The Court held that due execution cannot be established merely by proving the testator's signature, but proper attestation must also be proved. Although Section 68 permits the examination of only one attesting witness, the witness so examined must be capable of proving the complete statutory execution of the Will, including attestation by both witnesses in the manner contemplated by Section 63(c) of the Indian Succession Act. The decisive part of the ruling is:

> "**10.** *But what is significant and to be noted is that one attesting witness examined should be in a position to prove the execution of a will. To put it in other words, if one attesting witness can prove execution of the will in terms of clause (c) of Section 63, viz. attestation by two attesting witnesses in the manner contemplated therein,*

> *the examination of the other attesting witness can be dispensed with.* ***The one attesting witness examined, in his evidence, has to satisfy the attestation of a will by him*** *and the other attesting witness in order to prove there was due execution of the will.* ***If the attesting witness examined, besides his attestation, does not, in his evidence, satisfy the requirements of attestation of the will by the other witness also, it falls short of attestation of the will by at least two witnesses for the simple reason that the execution of the will does not merely mean the signing of it by the testator, but it means fulfilling and proof of all the formalities required under Section 63 of the Succession Act…"***
>
> ***(emphasis added)***
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> **59.** Thus, the concession granted by Section 68 of the Evidence Act concerns the number of witnesses required to be examined in Court, and it does not dilute the requirement that the Will itself must have been attested by at least two witnesses. One attesting witness may prove the entire ceremony. But where the witness examined proves only his own signature and is unable to prove the participation of the second attesting witness, the evidence falls short of establishing due execution under Section 63(c) of the Indian Succession Act.

20. In the present case, the testimony of Chintamani (DW2) does not establish the due attestation of the Will.

21. The other witness, Jeet Ram, was also not examined by the defendant; even Chintamani (DW2) has not stated that Jeet Ram was present at the time of the execution of the Will. Thus, there was no evidence of the due attestation of the Will by the marginal witness.

22. Scribe S.R. Pandiyar was not examined before the learned Trial Court, and there is no evidence that the Will was written as per the wishes of the deceased, that it was read over and explained to the deceased Krishnia or that he acknowledged its correctness.

23. Learned Courts below have concurrently found that the plaintiff was the wife of Krishnia. The Will (Ext.D1) does not mention any reason for excluding the plaintiff from the inheritance. In fact, the Will is silent regarding the relationship between the deceased Krishnia and the plaintiff. The learned Appellate Court had rightly held that the exclusion of the plaintiff was a suspicious circumstance.

24. It was submitted that the whole idea of execution of the Will is to exclude some legal heir. Therefore, the exclusion of the plaintiff cannot be called a suspicious circumstance. This submission cannot be accepted. It was laid down by the Hon'ble Supreme Court in ***Gurdial Singh v. Jagir Kaur, 2025 SCC OnLine SC 1466,*** that deprivation of the heirs may not be a suspicious circumstance, but the absence of reasons for exclusion of the heirs will make it suspicious. It was observed:

16. We are conscious that deprivation of a natural heir, by itself, may not amount to a suspicious circumstance because the whole idea behind the execution of the Will is to interfere with the normal line of succession. (***1995) 4 SCC 459, (2004) 2 SCC 321 and 1995 Supp (2) SCC 664***). However, in ***Ram Piari*** (supra), this Court 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 an inkling to the mind of the testator to enable the court to judge that the disposition was a voluntary act. ***(1990) 3 SCC 364***, Para 2.)

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20. In this background, we have no hesitation in holding that the non-mention of the 1st respondent or the reasons for her disinheritance in the Will is an eloquent reminder that the free disposition of the testator was vitiated by the undue influence of the appellant.

21. We are not impressed with reference to ***Dhanpat v. Sheo Ram (deceased) through LRs. (2020) 16 SCC 209,*** that mere non-mention of some natural heirs would not vitiate the Will. In ***Dhanpat*** (Supra), the wife, who had been disinherited, herself admitted that she had been ousted by her husband. On the other hand, DW3 unequivocally stated that she was living with her husband till his death and the specious rationale given that she may have been disinherited, as Maya Singh's monies had been settled in her favour and she was entitled to pension, is hardly convincing. No evidence was led to show whether the quantum of money said to be settled in favour of the 1st respondent was reasonable and would satisfy the conscience of a man of ordinary prudence with regard to her complete expungement in the Will.

2026:HHC:50394

25. In the present case, no reason was assigned, and the Learned Appellate Court was justified in holding that the exclusion of the plaintiff from inheritance would be a suspicious circumstance.

26. The Learned Appellate Court held, after appreciation of the evidence, that execution of the Will was not proved. This was a pure finding of fact. It was laid down by the Hon'ble Supreme Court in ***Kashibai v. Parwatibai*, *(1995) 6 SCC 213***, that it is not permissible for the High Court to interfere with the findings of fact related to the execution of the Will while hearing the second appeal. It was observed: -

> "**11**..... In the present case, the trial court, after a scrutiny and analysis of the evidence of Defendant 1, Smt. Parvati Bai, Vir Bhadra, Sheikh Nabi, Shivraj and Gyanoba Patil, who are witnesses to the Will, recorded the finding that none of them deposed that Lachiram had signed the said Will before them and they had attested it. None of them, except Sheikh Nabi, even deposed as to when the talk about the execution of the Will was held. The witness, Sheikh Nabi, however, deposed that the talk about the Will also took place at the time of the talk about the adoption. But this witness too did not depose that the deceased, Lachiram, had signed the alleged Will in his presence. In the absence of such evidence, it is difficult to accept that the execution of the alleged Will was proved in accordance with law as required by Section 68 of the Evidence Act, read with Section 63 of the Indian Succession Act and Section 3 of the Transfer of Property

Act. It may be true, as observed by the High Court, that the law does not emphasise that the witness must use the language of the section to prove the requisite merits thereof, but it is also not permissible to assume something which is required by law to be specifically proved. The High Court simply assumed that Lachiram must have put his signature on the Will Deed in the presence of the attesting witness, Sheikh Nabi, simply because the Deed of Adoption is admitted by the witness to have been executed on the same day. The High Court committed a serious error in making the observations that the broad parameters of Nabi's evidence would show that Lachiram executed the Will in his presence, that he signed the Will, being part of the execution of the testament, and this evidence, in its correct background, would go to show that what was required under Section 63 has been carried out in the execution of the Will. With respect to the High Court, we may say that these findings of the High Court are clearly based on assumptions and surmises and are totally against the weight of the evidence on record. *The trial court, on a close and thorough analysis of the entire evidence, came to a proper conclusion that the Will has not been proved in accordance with the law, which finding has been further affirmed by the lower appellate court after an independent reappraisal of the entire evidence with which we find ourselves in agreement, as there was hardly any scope or a valid reason for the High Court to interfere with.*

12. Further, it may not be out of place to mention that sub-section (1) of Section 100 of the Code of Civil Procedure explicitly provides that an appeal shall lie to the High Court from every decree passed in appeal by any court subordinate to the High Court if the High Court is satisfied that the case involves a substantial question of law. Sub-section (4) of Section 100 provides that when the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that

> question. But surprisingly enough, the High Court seems to have ignored these provisions and proposed to re-appreciate the evidence and interfere with the findings of fact without even formulating any question of law. *It has been the consistent view of this Court that there is no jurisdiction to entertain a second appeal on the ground of an erroneous finding of fact, based on an appreciation of the relevant evidence. There is a catena of decisions in support of this view.* Having regard to all the facts and circumstances of the present case discussed above, we are satisfied that there was no justification for the High Court to interfere with the well-reasoned findings of the two courts below. Consequently, this appeal must succeed." (Emphasis supplied).

27. It was laid down by the Hon'ble Supreme Court in ***Gurnam Singh v. Lehna Singh*, *(2019) 7 SCC 641 : (2019) 3 SCC (Civ) 709: 2019 SCC OnLine SC 374***, that where the First Appellate Court had appreciated the facts regarding the execution of the Will, it is not permissible for the High Court to interfere with this finding of facts in second appeal under Section 100 of CPC. It was observed:

> "**15.** Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, we are of the opinion that the High Court has erred in reappreciating the evidence on record in the second appeal under Section 100 CPC. The High Court has materially erred in interfering with the findings recorded by the first appellate court, which were on reappreciation of evidence, which was permissible by the first appellate court in the exercise of powers under Section 96 CPC. Cogent reasons, on appreciation of the evidence, were

> given by the first appellate court. The first appellate court dealt with, in detail, the so-called suspicious circumstances which weighed with the learned trial court, and thereafter it came to the conclusion that the will, which, as such, was a registered will, was genuine and did not suffer from any suspicious circumstances. The findings recorded by the first appellate court are reproduced hereinabove. Therefore, while passing the impugned judgment and order [***Lehna Singh v. Gurnam Singh, Civil Regular Second Appeal No. 2191 of 1985, order dated 27-11-2007 (P&H)***], the High Court has exceeded its jurisdiction while deciding the second appeal under Section 100 CPC."

28. Therefore, it is impermissible for this Court to set aside the findings recorded by the learned First Appellate Court in the absence of any perversity.

29. In the present case, there is no perversity in the finding recorded by the learned Appellate Court that the execution of the Will was shrouded in suspicious circumstances. Therefore, this substantial question of law is answered accordingly.

Final Order:

30. In view of the above, there is no infirmity in the judgments and decrees passed by the learned Appellate Court. Hence, the present appeal fails, and it is dismissed.

31. The appeal stands disposed of, so also the pending application(s), if any.

32. Records of the learned Courts below be sent down forthwith.

(Rakesh Kainthla)
Judge

23rd November, 2026
(Nikita)