IN THE HIGH COURT OF MADHYA PRADESH AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 21st OF JULY, 2025

SECOND APPEAL No. 77 of 2014

SHAHID @ PAPPU (DEAD) TH: LRS:- SMT. NOORJAHA AND OTHERS

Versus

KALLU KHAN

Appearance:

Shri J.S. Kaurav, Advocate for the appellants.

Shri Rajeev Shrivastava, Advocate for the respondent.

JUDGMENT

This second appeal, under Section 100 of CPC, has been filed against the judgment and decree dated 28.11.2013 passed by X Additional District Judge, Gwalior in RCA No. 44A of 2013, as well as, judgment and decree dated 30.07.2012 passed by XI Civil Judge Class I, Gwalior in Civil Suit No. 30A/2012.

2. This appeal has been filed by the plaintiffs, who have lost their case from both the Courts below.

3. Original plaintiff Shahid alias Pappu and defendant are related to each other. Shahid is the brother-in-law and defendant is the husband of Shahid's

sister. The suit property was earlier owned by Munna Khan, son of Kalli Khan. Original plaintiff filed a suit for eviction as well as for recovery of rent on the ground that the defendant was inducted as a tenant of House No. 1475/3 situated at Gende Wali Sadak, Lashkar, Gwalior on a monthly rent of ₹1000/-, and since June 2006, he has not paid the rent. A notice dated 10.08.2007 was issued for demand of arrears of rent as well as for vacating the suit premises, but the defendant not only failed to pay the rent but also started claiming himself to be the owner of the property. The suit premises was also required bonafidely by the plaintiff for himself and his family members, and accordingly, a suit for eviction was filed under Section 12(1)(a), 12(1)(c), and 12(1)(f) of the Madhya Pradesh Accommodation Control Act (*for short "the Act")*.

4. During the pendency of the suit, plaintiff amended the plaint and claimed that the original owner Munna Khan had executed a Will on 09.11.1998 in favour of the plaintiff, and after the death of Munna Khan, the plaintiff is the owner of the property in dispute by virtue of the said Will.

5. Defendant filed his written statement and denied the plaint averments. It was denied that the plaintiff is the owner of the property in dispute. Zubeda, Shahnaz and Shahid alias Pappu were the niece and nephew of previous owner Munna Khan. Munna Khan had executed a Will dated 01.07.1999 in favour of the wife of defendant, namely Zubeda. The name of the wife of the defendant is also recorded in the records of the Municipal Corporation.

6. The trial court, after framing issues and recording evidence, dismissed the suit by holding that the plaintiff has failed to prove the landlord-tenant relationship.

7. Being aggrieved by the judgment and decree passed by the trial court,

the plaintiff preferred an appeal, which too has been dismissed.

8. Challenging the judgments and decrees passed by the Courts below, it is submitted by counsel for the appellant that the defendant has failed to prove that Munna Khan had ever executed a Will in favour of the wife of the defendant. It is further submitted by counsel for the appellant that it was the case of the defendant that Munna Khan, after cancelling the Will executed in favour of the original plaintiff, had executed another Will in the name of the wife of the defendant. Since the defendant has not produced any such Will, therefore, the admission made by him that Munna Khan had cancelled the Will executed in favour of plaintiff clearly shows that Munna Khan had earlier executed a Will in favour of plaintiff. Accordingly, following substantial questions of law were proposed by the appellant:-

> "I. Whether the Courts below have committed manifest error of law and fact in constituting the real dispute as involved between the parties so the judgement and decree as passed by the Courts below are sustainable.
> II. Whether the Courts Below could ignore the vital evidence on record and come to a finding that there was no relationship of landlord and tenant.
> III. Whether the Courts below were justified in dismissing the suit of the appellant?
> IV Whether of the facts and circumstances of the case a documentary and oral evidence as produced by the plaintiff the judgement and decree passed by the learned Trial Court are not liable to do set aside?"

9. Before considering the facts and circumstances of the case, this Court would like to consider the law governing the field of Will.

10. A Will may be surrounded by suspicious circumstances and burden is on the propounder of the Will not only to prove the document but to remove all the suspicious circumstances. The Supreme Court in the case of **H.**

Venkatachala Iyengar v. B.N. Thimmajamma and others reported in **AIR 1959 SC 443** has held as under:

> "**18.** What is the true legal position in the matter of proof of wills? It is well-known that the proof of wills presents a recurring topic for decision in courts and there are a large number of judicial pronouncements on the subject. The party propounding a will or otherwise making a claim under a will is no doubt seeking to prove a document and, in deciding how it is to be proved, we must inevitably refer to the statutory provisions which govern the proof of documents. Sections 67 and 68 of the Evidence Act are relevant for this purpose. Under Section 67, if a document is alleged to be signed by any person, the signature of the said person must be proved to be in his handwriting, and for proving such a handwriting under Sections 45 and 47 of the Act the opinions of experts and of persons acquainted with the handwriting of the person concerned are made relevant. Section 68 deals with the proof of the execution of the document required by law to be attested; and it provides that such a document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. These provisions prescribe the requirements and the nature of proof which must be satisfied by the party who relies on a document in a court of law. Similarly, Sections 59 and 63 of the Indian Succession Act are also relevant. Section 59 provides that every person of sound mind, not being a minor, may dispose of his property by will and the three illustrations to this section indicate what is meant by the expression "a person of sound mind" in the context. Section 63 requires that 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 that the signature or mark shall be so made that it shall appear that it was intended thereby to give effect to the writing as a will. This section also requires that the will shall be attested by two or more witnesses as prescribed. Thus the question as to whether the will set up by the propounder is proved to be the last will of the testator has to be decided in the light of these

provisions. Has the testator signed the will? Did he understand the nature and effect of the dispositions in the will? Did he put his signature to the will knowing what it contained? Stated broadly it is the decision of these questions which determines the nature of the finding on the question of the proof of wills. It would prima facie be true to say that the will has to be proved like any other document except as to the special requirements of attestation prescribed by Section 63 of the Indian Succession Act. As in the case of proof of other documents so in the case of proof of wills it would be idle to expect proof with mathematical certainty. The test to be applied would be the usual test of the satisfaction of the prudent mind in such matters.

19. However, there is one important feature which distinguishes wills from other documents. Unlike other documents the will speaks from the death of the testator, and so, when it is propounded or produced before a court, the testator who has already departed the world cannot say whether it is his will or not; and this aspect naturally introduces an element of solemnity in the decision of the question as to whether the document propounded is proved to be the last will and testament of the departed testator. Even so, in dealing with the proof of wills the court will start on the same enquiry as in the case of the proof of documents. The propounder would be called upon to show by satisfactory evidence that the will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the dispositions and put his signature to the document of his own free will. Ordinarily when the evidence adduced in support of the will is disinterested, satisfactory and sufficient to prove the sound and disposing state of the testator's mind and his signature as required by law, courts would be justified in making a finding in favour of the propounder. In other words, the onus on the propounder can be taken to be discharged on proof of the essential facts just indicated.

20. There may, however, be cases in which the execution

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

21. Apart from the suspicious circumstances to which we have just referred, in some cases the wills propounded disclose another infirmity. Propounders themselves take a prominent part in the execution of the wills which confer on them substantial benefits. If it is shown that the propounder has taken a prominent part in the execution of the will and has received substantial benefit under it, that itself is generally treated as a suspicious circumstance attending the execution of the will and the propounder is required to remove the said suspicion by clear and satisfactory evidence. It is in connection with wills that

present such suspicious circumstances that decisions of English courts often mention the test of the satisfaction of judicial conscience. It may be that the reference to judicial conscience in this connection is a heritage from similar observations made by ecclesiastical courts in England when they exercised jurisdiction with reference to wills; but any objection to the use of the word "conscience" in this context would, in our opinion, be purely technical and academic, if not pedantic. The test merely emphasizes that, in determining the question as to whether an instrument produced before the court is the last will of the testator, the court is deciding a solemn question and it must be fully satisfied that it had been validly executed by the testator who is no longer alive.

22. It is obvious that for deciding material questions of fact which arise in applications for probate or in actions on wills, no hard and fast or inflexible rules can be laid down for the appreciation of the evidence. It may, however, be stated generally that a propounder of the will has to prove the due and valid execution of the will and that if there are any suspicious circumstances surrounding the execution of the will the propounder must remove the said suspicions from the mind of the court by cogent and satisfactory evidence. It is hardly necessary to add that the result of the application of these two general and broad principles would always depend upon the facts and circumstances of each case and on the nature and quality of the evidence adduced by the parties. It is quite true that, as observed by Lord Du Parcq in *Harmes* v. *Hinkson* [(1946) 50 CWN 895] "where a will is charged with suspicion, the rules enjoin a reasonable scepticism, not an obdurate persistence in disbelief. They do not demand from the Judge, even in circumstances of grave suspicion, a resolute and impenetrable incredulity. He is never required to close his mind to the truth". It would sound platitudinous to say so, but it is nevertheless true that in discovering truth even in such cases the judicial mind must always be open though vigilant, cautious and circumspect.

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29. According to the decisions in *Fulton* v. *Andrew* [(1875) LR 7 HL 448] "those who take a benefit under a will, and have been instrumental in preparing or obtaining it, have thrown upon them the onus of showing the righteousness of the transaction". "There is however no unyielding rule of law (especially where the ingredient of fraud enters into the case) that, when it has been proved that a testator, competent in mind, has had a will read over to him, and has thereupon executed it, all further enquiry is shut out". In this case, the Lord Chancellor, Lord Cairns, has cited with approval the well-known observations of Baron Parke in the case of *Barry* v. *Butlin* [(1838) 2 Moo PC 480, 482] . The two rules of law set out by Baron Parke are:"first, that the *onus 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"; "the second is, that, if a party writes or prepares a will under which he takes a benefit, that is a circumstance that ought generally to excite the suspicion of the court and calls upon it to be vigilant and zealous in examining the evidence in support of the instrument in favour of which it ought not to pronounce unless the suspicion is removed, and it is judicially satisfied that the paper propounded does express the true will of the deceased". It is hardly necessary to add that the statement of these two rules has now attained the status of a classic on the subject and it is cited by all text books on wills. The will propounded in this case was directed to be tried at the Assizes by the Court of Probate. It was tried on six issues. The first four issues referred to the sound and disposing state of the testator's mind and the fifth to his knowledge and approval of the contents of the will. The sixth was whether the testator knew and approved of the residuary clause; and by this last clause the propounders of the will were made the residuary legatees and were appointed executors. Evidence was led at the trial and the Judge asked the opinion of the jurors on every one of the issues. The jurors found in favour of the propounders on the first five issues and in favour of the opponents on the sixth. It appears that no leave to set aside the verdict and

enter judgment for the propounders notwithstanding the verdict on the sixth issue was reserved; but when the case came before the Court of Probate a rule was obtained to set aside the verdict generally and have a new trial or to set aside the verdict on the sixth issue for misdirection. It was in dealing with the merits of the finding on the sixth issue that the true legal position came to be considered by the House of Lords. The result of the decision was that the rule obtained for a new trial was discharged, the order of the Court of Probate of the whole will was reversed and the matter was remitted to the Court of Probate to do what was right with regard to the qualified probate of the will.

30. The same principle was emphasized by the Privy Council in *Vellasawmy Servai* v. *Sivaraman Servai* [(1929) LR 57 IA 96] where it was held that, where a will is propounded by the chief beneficiary under it, who has taken a leading part in giving instructions for its preparation and in procuring its execution, probate should not be granted unless the evidence removes suspicion and clearly proves that the testator approved the will.

31. In *Sarat Kumari Bibi* v. *Sakhi Chand* [(1928) LR 56 IA 62] the Privy Council made it clear that "the principle which requires the propounder to remove suspicions from the mind of the Court is not confined only to cases where the propounder takes part in the execution of the will and receives benefit under it. There may be other suspicious circumstances attending on the execution of the will and even in such cases it is the duty of the propounder to remove all clouds and satisfy the conscience of the court that the instrument propounded is the last will of the testator". This view is supported by the observations made by Lindley and Davey, L. JJ., in *Tyrrell* v. *Painton* [(1894) P 151, 157, 159] . "The rule in *Barry* v. *Butlin* [(1838) 2 Moo PC 480, 482] , *Fulton* v. *Andrew* [(1875) LR 7 HL 448] and *Brown* v. *Fisher* [(1890) 63 LT 465] , said Lindley, L.J., "is not in my mind confined to the single case in which the will is prepared by or on the instructions of the person taking large benefits under it but extends to all cases in which circumstances exist which excite the

suspicions of the court".

32. In *Rash Mohini Dasi* v. *Umesh Chunder Biswas* [(1898) LR 25 IA 109] it appeared that though the will was fairly simple and not very long the making of it was from first to last the doing of Khetter, the manager and trusted adviser of the alleged testator. No previous or independent intention of making a will was shown and the evidence that the testator understood the business in which his adviser engaged him was not sufficient to justify the grant of probate. In this case the application for probate made by the widow of Mohim Chunder Biswas was opposed on the ground that the testator was not in a sound and disposing state of mind at the material time and he could not have understood the nature and effect of its contents. The will had been admitted to the probate by the District Judge but the High Court had reversed the said order. In confirming the view of the High Court the Privy Council made the observations to which we have just referred.

33. The case of *Shama Charn Kundu* v. *Khettromoni Dasi* [(1899) ILR 27 Cal 522] on the other hand, was the case of a will the execution of which was held to be not surrounded by any suspicious circumstances. Shama Charn, the propounder of the will, claimed to be the adopted son of the testator. He and three others were appointed executors of the will. The testator left no natural son but two daughters and his widow. By his will the adopted son obtained substantial benefit. The probate of the will with the exception of the last paragraph was granted to Shama Charn by the trial Judge; but, on appeal the application for probate was dismissed by the High Court on the ground that the suspicions attending on the execution of the will had not been satisfactorily removed by Shama Charn. The matter was then taken before the Privy Council; and Their Lordships held that, since the adoption of Shama Charn was proved, the fact that he took part in the execution of the will and obtained benefit under it cannot be regarded as a suspicious circumstance so as to attract the rule laid down by Lindley, L.J.,

in *Tyrrell* v. *Painton* [(1894) P 151, 157, 159] . In *Bai Gungabai* v. *Bhugwandas Valji* [(1905) ILR 29 Bom 530] the Privy Council had to deal with a will which was admitted to probate by the first court, but on appeal the order was varied by excluding therefrom certain passages which referred to the deed-poll executed on the same day by the testator and to the remuneration of the solicitor who prepared the will and was appointed an executor and trustee thereof. The Privy Council held that "the onus was on the solicitor to satisfy the court that the passages omitted expressed the true will of the deceased and that the court should be diligent and zealous in examining the evidence in its support, but that on a consideration of the whole of the evidence (as to which no rule of law prescribed the particular kind required) and of the circumstances of the case the onus was discharged". In dealing with the question as to whether the testator was aware that the passages excluded by the appeal court from the probate formed part of the instrument, the Privy Council examined the evidence bearing on the point and the probabilities. In conclusion Their Lordships differed from the view of the appeal court that there had been a complete failure of the proof that the deed-poll correctly represented the intentions of the testator or that he understood or approved of its contents and so they thought that there were no grounds for excluding from the probate the passages in the will which referred to that deed. They, however, observed that it would no doubt have been more prudent and business-like to have obtained the services of some independent witnesses who might have been trusted to see that the testator fully understood what he was doing and to have secured independent evidence that clause 26 in particular was called to the testator's attention. Even so, Their Lordships expressly added that in coming to the conclusion which they had done they must not be understood as throwing the slightest doubt on the principles laid down in *Fulton* v. *Andrew* [(1875) LR 7 HL 448] and other similar cases referred to in the argument."

11. The Supreme Court in the case of **Surendra Pal and others v. Dr. (Mrs.) Saraswati Arora and another**, reported in **(1974) 2 SCC 600** has held that propounder has to show that the Will was signed by 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 he put his signature to the testament of his own free Will, that he has signed it in the presence of the two witnesses who attested it in his presence and in the presence of each other. Once these elements are established, the onus which rests on the propounder is discharged. Furthermore, there may be cases in which the execution of the Will itself is surrounded by suspicious circumstances, such as, where the signature is doubtful, the testator is of feeble mind or is overawed by powerful minds interested in getting his property, or where in the light of relevant circumstances the dispositions appears to be the unnatural, improbable and unfair, or where there are other reasons for doubting that the dispositions of the Will are not the result of testator's free Will and mind. It has also been held that in all such cases where there may be legitimate suspicious circumstances those must be reviewed and satisfactorily explained before the Will is accepted and the onus is always on the propounder to explain them to the satisfaction of the Court before it could be accepted as genuine.

12. The Supreme Court in the case of **Gorantla Thataiah v. Thotakura Venkata Subbaiah and others**, reported in **AIR 1968 SC 1332** has held as it is for those who propound the Will to prove the same.

13. The Supreme Court in the case of **Murthy and others v. C. Saradambal and others**, reported in **(2022) 3 SCC 209** has held that intention of testator to make testament must be proved, and propounder of

Will must examine one or more attesting witnesses and remove all suspicious circumstances with regard to execution of Will. It has been held as under:

> **"31.** One of the celebrated decisions of this Court on proof of a will, in *H. Venkatachala Iyengar* v. *B.N. Thimmajamma* [*H. Venkatachala Iyengar* v. *B.N. Thimmajamma*, AIR 1959 SC 443] is in *H. Venkatachala Iyengar* v. *B.N. Thimmajamma*, wherein this Court has clearly distinguished the nature of proof required for a testament as opposed to any other document. The relevant portion of the said judgment reads as under: (AIR p. 451, para 18)
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> > "*18*. … The party propounding a will or otherwise making a claim under a will is no doubt seeking to prove a document and, in deciding how it is to be proved, we must inevitably refer to the statutory provisions which govern the proof of documents. Sections 67 and 68 of the Evidence Act are relevant for this purpose. Under Section 67, if a document is alleged to be signed by any person, the signature of the said person must be proved to be in his handwriting, and for proving such a handwriting under Sections 45 and 47 of the Act the opinions of experts and of persons acquainted with the handwriting of the person concerned are made relevant. Section 68 deals with the proof of the execution of the document required by law to be attested; and it provides that such a document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. These provisions prescribe the requirements and the nature of proof which must be satisfied by the party who relies on a document in a court of law. Similarly, Sections 59 and 63 of the Succession Act are also relevant. Section 59 provides that every person of sound mind, not being a minor, may dispose of his property by will and the three illustrations to this section indicate what is meant by the expression "a person of sound mind" in the context. Section 63 requires that 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 that the signature or mark shall be so made that it shall appear that it was

> intended thereby to give effect to the writing as a will. This section also requires that the will shall be attested by two or more witnesses as prescribed. Thus, the question as to whether the will set up by the propounder is proved to be the last will of the testator has to be decided in the light of these provisions. Has the testator signed the will? Did he understand the nature and effect of the dispositions in the will? Did he put his signature to the will knowing what it contained? Stated broadly it is the decision of these questions which determines the nature of the finding on the question of the proof of wills. It would prima facie be true to say that the will has to be proved like any other document except as to the special requirements of attestation prescribed by Section 63 of the Indian Succession Act. As in the case of proof of other documents so in the case of proof of wills it would be idle to expect proof with mathematical certainty. The test to be applied would be the usual test of the satisfaction of the prudent mind in such matters."

32. In fact, the legal principles with regard to the proof of a will are no longer res integra. Section 63 of the Succession Act, 1925 and Section 68 of the Evidence Act, 1872, are relevant in this regard. The propounder of the will must examine one or more attesting witnesses and the onus is placed on the propounder to remove all suspicious circumstances with regard to the execution of the will.

33. In the abovenoted case, this Court has stated that the following three aspects must be proved by a propounder: (*Bharpur Singh case* [*Bharpur Singh* v. *Shamsher Singh*, (2009) 3 SCC 687 : (2009) 1 SCC (Civ) 934] , SCC p. 696, para 16)

> "*16*. … (*i*) that the will was signed by the testator in a sound and disposing state of mind duly understanding the nature and effect of disposition and he put his signature on the document of his own free will, and
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> (*ii*) when the evidence adduced in support of the will is disinterested, satisfactory and sufficient to prove the

sound and disposing state of the testator's mind and his signature as required by law, courts would be justified in making a finding in favour of propounder, and

(*iii*) if a will is challenged as surrounded by suspicious circumstances, all such legitimate doubts have to be removed by cogent, satisfactory and sufficient evidence to dispel suspicion. In other words, the onus on the propounder can be taken to be discharged on proof of the essential facts indicated therein."

34. In *Jaswant Kaur* v. *Amrit Kaur* [*Jaswant Kaur* v. *Amrit Kaur*, (1977) 1 SCC 369] , this Court pointed out that when a will is allegedly shrouded in suspicion, its proof ceases to be a simple lis between the plaintiff and the defendant. What generally is an adversarial 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 let in by the propounder of the will is such as would satisfy the conscience of the court that the will was duly executed by the testator. It is impossible to reach such a satisfaction unless the party which sets up the will offers cogent and convincing explanation with regard to any suspicious circumstance surrounding the making of the will.

35. In *Bharpur Singh* v. *Shamsher Singh* [*Bharpur Singh* v. *Shamsher Singh*, (2009) 3 SCC 687 : (2009) 1 SCC (Civ) 934] , this Court has narrated a few suspicious circumstance, as being illustrative but not exhaustive, in the following manner: (SCC p. 699, para 23)

"*23*. Suspicious circumstances like the following may be found to be surrounded in the execution of the will:

(*i*) The signature of the testator may be very shaky and doubtful or not appear to be his usual signature.

(*ii*) The condition of the testator's mind may be very feeble and debilitated at the relevant time.

(*iii*) The disposition may be unnatural, improbable or unfair in the light of relevant circumstances like

exclusion of or absence of adequate provisions for the natural heirs without any reason.

(*iv*) The dispositions may not appear to be the result of the testator's free will and mind.

(*v*) The propounder takes a prominent part in the execution of the will.

(*vi*) The testator used to sign blank papers.

(*vii*) The will did not see the light of the day for long.

(*viii*) Incorrect recitals of essential facts."

36. It was further observed in *Shamsher Singh case* [*Bharpur Singh* v. *Shamsher Singh*, (2009) 3 SCC 687 : (2009) 1 SCC (Civ) 934] that the circumstances narrated hereinbefore are not exhaustive. Subject to offering of a reasonable explanation, existence thereof must be taken into consideration for the purpose of arriving at a finding as to whether the execution of the will had been duly proved or not. It may be true that the will was a registered one, but the same by itself would not mean that the statutory requirements of proving the will need not be complied with.

37. In *Niranjan Umeshchandra Joshi* v. *Mrudula Jyoti Rao* [*Niranjan Umeshchandra Joshi* v. *Mrudula Jyoti Rao*, (2006) 13 SCC 433] , in paras 34 to 37, this Court has observed as under: (SCC pp. 447-48)

"*34*. There are several circumstances which would have been held to be described by this Court as suspicious circumstances:

(*i*) when a doubt is created in regard to the condition of mind of the testator despite his signature on the will;

(*ii*) When the disposition appears to be unnatural or wholly unfair in the light of the relevant circumstances;

(*iii*) where propounder himself takes prominent part in the execution of will which confers on him substantial benefit.

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35. We may not delve deep into the decisions cited at the Bar as the question has recently been considered by this Court in *B. Venkatamuni* v. *C.J. Ayodhya Ram Singh* [*B. Venkatamuni* v. *C.J. Ayodhya Ram Singh*, (2006) 13 SCC 449] , wherein this Court has held that the court must satisfy its conscience as regards due execution of the will by the testator and the court would not refuse to probe deeper into the matter only because the signature of the propounder on the will is otherwise proved.

36. The proof of a will is required not as a ground of reading the document but to afford the Judge reasonable assurance of it as being what it purports to be.

37. We may, however, hasten to add that there exists a distinction where suspicions are well founded and the cases where there are only suspicions alone. Existence of suspicious circumstances alone may not be sufficient. The court may not start with a suspicion and it should not close its mind to find the truth. A resolute and impenetrable incredulity is not demanded from the Judge even if there exist circumstances of grave suspicion."

38. This Court in *Anil Kak* v. *Sharada Raje* [*Anil Kak* v. *Sharada Raje*, (2008) 7 SCC 695] , held as under: (*Bharpur Singh case* [*Bharpur Singh* v. *Shamsher Singh*, (2009) 3 SCC 687 : (2009) 1 SCC (Civ) 934] , SCC p. 698, para 20)

"*20*. This Court in *Anil Kak* v. *Sharada Raje* [*Anil Kak* v. *Sharada Raje*, (2008) 7 SCC 695] opined that the court is required to adopt a rational approach and is furthermore required to satisfy its conscience as existence of suspicious circumstances plays an important role, holding: (SCC p. 714, paras 52-55)

> '*52*. Whereas execution of any other document can be proved by proving the writings of the document or the contents of it as also the execution thereof, in the event there exists suspicious circumstances the party seeking to obtain probate and/or letters of administration with a copy of the will annexed must also adduce evidence to the satisfaction of the court before it can be accepted as genuine.
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> *53*. As an order granting probate is a judgment in rem, the court must also satisfy its conscience before it passes an order.
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> *54*. It may be true that deprivation of a due share by (*sic* to) the natural heir by itself may not be held to be a suspicious circumstance but it is one of the factors which is taken into consideration by the courts before granting probate of a will.
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> *55*. Unlike other documents, even animus attestandi is a necessary ingredient for proving the attestation.' "

39. Similarly, in *Leela Rajagopal* v. *Kamala Menon Cocharan* [*Leela Rajagopal* v. *Kamala Menon Cocharan*, (2014) 15 SCC 570 : (2015) 4 SCC (Civ) 267] , this Court opined as under: (SCC p. 576, para 13)

> "*13*. A will may have certain features and may have been executed in certain circumstances which may appear to be somewhat unnatural. Such unusual features appearing in a will or the unnatural circumstances surrounding its execution will definitely justify a close scrutiny before the same can be accepted. It is the overall assessment of the court on the basis of such scrutiny; the cumulative effect of the unusual features and circumstances which would weigh with the court in the determination required to be made by it. The judicial verdict, in the last resort, will be on the basis of a consideration of all the unusual features and

> suspicious circumstances put together and not on the impact of any single feature that may be found in a will or a singular circumstance that may appear from the process leading to its execution or registration. This, is the essence of the repeated pronouncements made by this Court on the subject including the decisions referred to and relied upon before us."

14. Similar law has been laid down by Supreme Court in the case of **Dhanpat v. Sheo Ram (Deceased) through legal representatives and others**, reported in **(2020) 16 SCC 209** and in the case of **V. Kalyanaswamy (Dead) by legal representatives and another v. L. Bakthavatsalam (Dead) by legal representatives and others**, reported in **(2021) 16 SCC 543**.

15. The Supreme Court in the case of **Bharpur Singh and others v. Shamsher Singh**, reported in **(2009) 3 SCC 687** has held that it may be true that Will was a registered one, but the same by itself would not mean that the statutory requirements of proving the Will need not be complied with. In terms of Section 63(c), Succession Act, 1925 and Section 68, Evidence Act, 1872, the propounder of a Will must prove its execution by examining one or more attesting witnesses and propounder of Will must prove that the Will was signed by the testator in a sound and disposing state of mind duly understanding the nature and effect of disposition and he put his signature on the document of his own free Will.

16. The Supreme Court in the case of **Niranjan Umeshchandra Joshi v. Mrudula Jyoti Rao and others**, reported in **(2006) 13 SCC 433** has held that mere proof that testator had signed the Will is not enough. It has also to be proved that testator has signed out of his free will having a sound disposition of mind and not a feeble and debilitated mind, understanding well

the nature and effect thereof. The Court will also not refuse to probe deeper in the matter merely because propounder's signature on the Will is proved. Similar law has been laid down by Supreme Court in the cases of **Savithri and others v. Karthyayani Amma and others**, reported in **(2007) 11 SCC 621**, **Balathandayutham and another v. Ezhilarasan**, reported in **(2010) 5 SCC 770**, **Pentakota Satyanarayana and others v. Pentakota Seetharatnam and others,** reported in **(2005) 8 SCC 67** and **Meenakshiammal (Dead) through legal representatives and others v. Chandrasekaran and another**, reported in **(2005) 1 SCC 280**.

17. In the present case, neither the plaintiff entered in the witness box nor any of the attesting witnesses of the will were examined by him.

18. One Ramswaroop (PW1) appeared on behalf of the plaintiff on the strength of power of attorney (Ex.P/1). Admittedly, the Will was not executed in the presence of Ramswaroop. Ramswaroop has not stated that the Will was ever read out to the testator. There is nothing on record to suggest that testator was in fit state of mind or was enjoying good health. In paragraph 16 of his cross-examination, he has stated that he was told by the plaintiff that Will was executed by Munna Khan. Although in paragraph 16 of his cross-examination, this witness has stated that the Will was executed by Munna Khan, but it appears from the Will (Ex.P/4) that testator was Munna S/o Kalli, **Caste – Hindu**, R/o Gende Wali Sadak, Nagar Lashkar and on the date of execution of Will (Ex.P/4), the testator was 90 years of age. This witness has stated that he was told by Shahid @ Pappu that Munna Khan was hale and hearty. This witness has admitted that in Will (Ex.P/4) it was mentioned by the testator that in case if the beneficiary does not take care of him, then he can cancel the Will. He denied for want of knowledge that Munna Khan was suffering from cancer in the year 1998-99. In paragraph

18, it was specifically admitted by this witness that at the time of execution of Will, he was not present. In paragraph 18, it was further stated by this witness that Munna Khan was a Muslim and denied the suggestion that Munna Khan was not Muslim and also denied the suggestion that Munna Khan was a hindu. He denied the suggestion that property in dispute was owned by Munna S/o Kalli, Caste Hindu.

19. Thus, it is clear that neither the Will was proved by the plaintiff in accordance with S.63 of Indian Succession Act nor any evidence was led by the plaintiff to the effect that the Will was executed by the testator out of his own volition and without pressure. There is nothing on record to suggest that the testator of the Will was able to understand the document. There is nothing on record to suggest that the draft of the Will was ever read out to the testator and the testator had signed the Will in presence of witnesses and the witnesses had signed the same in presence of the testator. Thus, all the suspicious circumstances which are attached to the Will were not removed by the plaintiff. Merely because defendants had taken a stand that Munna Khan had cancelled the Will executed in favour of Shahid alias Pappu and had executed another Will in favour of Zubeda, that by itself would not be sufficient to hold that Will (Ex.P/4) was executed by testator out of his own volition and free consent. Furthermore, it is well established principle of law that plaintiff has to stand on his own legs and cannot take advantage of weakness of defendant. Even otherwise, defendant has not filed copy of the Will which was allegedly executed by testator in favour of Zubeda.

20. There is another aspect of the matter which cannot be lost sight of. It is claimed by plainitff that name of testator was Munna Khan S/o Kalli Khan, Caste- Muslim, whereas in the Will (Ex.P/4), name of testator has been mentioned as Munna S/o Kalli, **caste Hindu**, aged about 90 years, R/o Gende

Wali Sadak, Nagar Lashkar and surname "Khan" is also not mentioned. Thus, it is clear that there is a serious dispute as to whether the property belongs to Munna or Munna Khan.

21. Both the Courts below have given concurrent finding of fact that appellants have failed to prove the Will (Ex.P/4). This Court has also independently examined the evidence led by plaintiff and did not find any perversity in the findings recorded by the Courts below. Since there is a serious dispute as to whether testator was Hindu or Muslim, therefore, this Court is also not in a position to hold that when both the parties have failed to prove the Will allegedly executed in their favour, then who will succeed the property.

22. Accordingly, it is held that no substantial question of law arises in the present appeal. *Ex consequenti,* judgment and decree dated dated 28.11.2013 passed by X Additional District Judge, Gwalior in RCA No. 44A of 2013, as well as, judgment and decree dated 30.07.2012 passed by XI Civil Judge Class I, Gwalior in Civil Suit No. 30A/2012 are, hereby, affirmed.

23. Appeal fails and is, hereby, dismissed.

(G.S. Ahluwalia)
Judge

(and)