

## IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

**BEFORE** 

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HON'BLE SHRI JUSTICE G. S. AHLUWALIA ON THE 14th OF OCTOBER, 2024 MISC. PETITION No. 3574 of 2024

RAMSUARSHAN (DIED) THROUGH LEGAL HEIRS MST. SUGANDHI AND OTHERS

Versus

## JANKI PRASAD

## **Appearance:**

Shri Manoj Kumar Pandey – Advocate for the petitioners.

Shri Abhishek Tiwari – Advocate for the respondent.

## ORDER

This petition under Article 226 of Constitution of India has been filed seeking the following reliefs:-

- "(i) It is, therefore, prayed that this Hon'ble court may kindly be pleased to quash the impugned order dated 05-06-2024 passed in case No.486/Appeal/2019-2020 passed by Additional Commissioner, Rewa, Division Rewa (M.P.) and impugned order dated 21-11-2019 passed in case No.89/A-74/Appeal/2019-2020 and also further may kindly be pleased to set aside the order dated 27-07-2019 (Annexure P-1).
- (ii) To grant any other relief, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case including cost of the litigation in favour of the petitioner."

2. It is submitted by counsel for the petitioners that the respondent Janki Prasad filed an application for mutation of his name on the basis of a Will purportedly executed by one Rameshwar Prasad. The application for mutation on the basis of Will was allowed and Survey Nos.1, 8, 9, 10, 12 and 16, total area 3.320 hectares, situated in Village Alhawa Katan, Tahsil Hanumana, District Rewa and Survy No.7/1, 14/1, 15/2 situated in Village Kerha Khurd, Tahsil Hanumana, District Rewa were directed to be mutated in the name of the respondent. The appeal filed by the petitioner was rejected by SDO, Hanumana, District Rewa by order dated 21.11.2019 passed in Case No.89/A-74/Appeal/2019-20. The appeal filed by the petitioner against the said order has also been dismissed by Additional Commissioner, Rewa Division, Rewa by order dated 5.6.2024 passed in Appeal No.486/Appeal/2019-20. By referring to the judgment passed by the Supreme Court in the case of Jitendra Singh v. State of Madhya Pradesh on 06.09.2021 in SLP (civil) No.13146/2021 and an order passed by this Court in the case of Anand Kumar Jain And Another Vs. Chandra Kumar Jain and Others passed in M.P. No.4458/2023 decided on 16<sup>th</sup> of February, 2024, it is submitted by counsel for petitioners that in case if the propounder of a Will wants to take advantage of the Will, then he has to seek a declaration from the civil court and only after the Will is held to be genuine, the property can be mutated in the name of beneficiary. It is further submitted that the revenue authorities have no jurisdiction to decide the correctness and genuineness of the Will.

3. Per contra, the petition is vehemently opposed by the respondent. It is submitted that since the Will in question has not been challenged by the petitioner, therefore, the revenue courts did not commit any mistake by mutating the name of the respondent.

3

- **4.** Heard the learned counsel for the parties.
- 5. The Supreme Court in the case of **Jitendra Singh (supra)** has held as under:-
  - "6. Right from 1997, the law is very clear. In the case of Balwant Singh v. Daulat Singh (D) By Lrs., reported in (1997) 7 SCC 137, this Court had an occasion to consider the effect of mutation and it is observed and held that mutation of property in revenue records neither creates nor extinguishes title to the property nor has it any presumptive value on title. Such entries are relevant only for the purpose of collecting land revenue. Similar view has been expressed in the series of decisions thereafter.
  - 6.1 In the case of Suraj Bhan v. Financial Commissioner, (2007) 6 SCC 186, it is observed and held by this Court that an entry in revenue records does not confer title on a person whose name appears in record-of-rights. Entries in the revenue records or jamabandi have only "fiscal purpose", i.e., payment of land revenue, and no ownership is conferred on the basis of such entries. It is further observed that so far as the title of the property is concerned, it can only be decided by a competent civil court. Similar view has been expressed in the cases of Suman Verma v. Union of India, (2004) 12 SCC 58; Faqruddin v. Tajuddin (2008) 8 SCC 12;

4

M.P.No.3574/2024

Rajinder Singh v. State of J&K, (2008) 9 SCC 368; Municipal Corporation, Aurangabad v. State of Maharashtra, (2015) 16 SCC 689; T. Ravi v. B. Chinna Narasimha, (2017) 7 SCC 342; Bhimabai Mahadeo Kambekar v. Arthur Import & Export Co., (2019) 3 SCC 191; Prahlad Pradhan v. Sonu Kumhar, (2019) 10 SCC 259; and Ajit Kaur v. Darshan Singh, (2019) 13 SCC 70."

- 6. This Court in the case of **Anand Kumar Jain (supra)** has held as under:-
  - **"16.** There is no doubt that a title can be acquired by virtue of Will and once the title can be acquired, then the name can also be mutated in the revenue records irrespective of fact as to whether there is any rule in that regard or not? Even otherwise as per Niyam, 2018, the names can be mutated on the basis of Will.
  - 17. It is the case of petitioner that in case if somebody is aggrieved by Will, then he has to file a civil suit challenging the Will. The aforesaid submission made by counsel for applicant cannot be accepted. If somebody wants to take advantage of a document, then first of all, he has to prove the same in accordance with law. Sections 67 and 68 of Evidence Act prescribe the requirements and nature of proof which must be satisfied by the parties, who relies on a document in the Court of law.
  - 18. It is well established principle of law that party propounding a Will or otherwise making a claim under a Will is under obligation to prove the document. Unlike other document Will is a document which speaks from the death of testator and the testator, who has already migrated to the other world cannot appear and depose as to whether he has

executed such document or not? The propounder is required to show by satisfactory evidence that Will was signed by testator, that testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of dispositions and had put his signature on the document of his own volition.

19. Furthermore, 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 wellknown 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 Section 67, if purpose. Under 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 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 signed the will? testator Did understand the nature and effect of the dispositions in the will? Did he put his signature to the will knowing what it

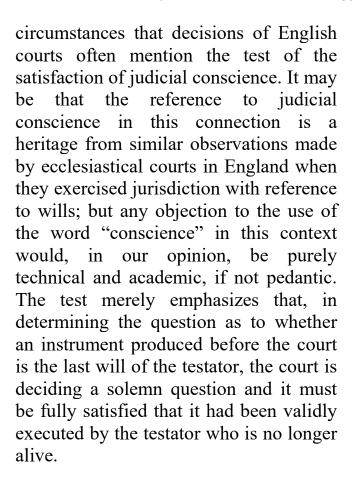
contained? Stated broadly it is the decision of these questions which determines the nature of the finding on the question of the proof of wills. It would prima facie be true to say that the will has to be proved like any other document except as to the special requirements of attestation prescribed 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 documents. Unlike other 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 circumstances, it would be a part of the initial onus to remove any such legitimate doubts in the matter.

suspicious **21.** Apart from the circumstances to which we have just referred, in some cases the wills propounded disclose another infirmity. Propounders themselves take prominent part in the execution of the wills which confer on them substantial benefits. If it is shown that 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



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



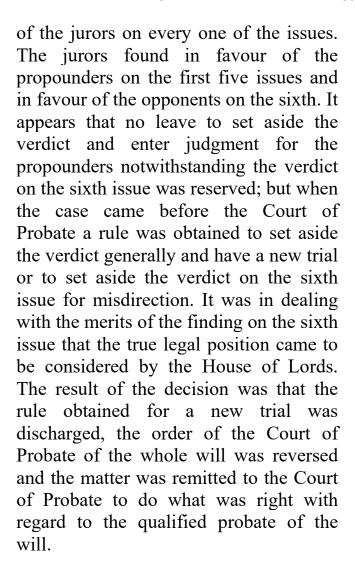
upon the facts and circumstances of each case and on the nature and quality of the evidence adduced by the parties. It is quite true that, as observed by Lord Du Parcq in Harmes v. Hinkson [(1946) 50 CWN 895] "where a will is charged with suspicion, the rules enjoin a reasonable scepticism, not an obdurate persistence in disbelief. They do not demand from the Judge, even in circumstances of suspicion, a grave resolute 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 the decisions to 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 approval the well-known with 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 iudicially 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 appointed executors. Evidence was led at the trial and the Judge asked the opinion



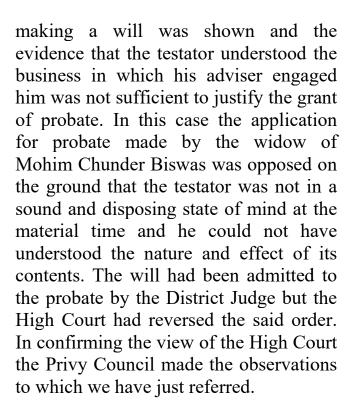
30. The same principle was emphasized by the Privy Council in *Vellasawmy Servai* v. *Sivaraman Servai* [(1929) LR 57 IA 96] where it was held that, where a will is propounded by the chief beneficiary under it, who has taken a leading part in giving instructions for its preparation and in procuring its 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. suspicious There mav be other 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. in Tyrrell v. Painton [(1894) P 151, 157, "The 159]. 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

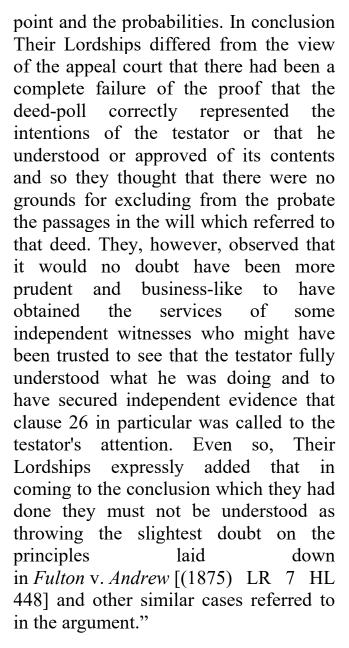




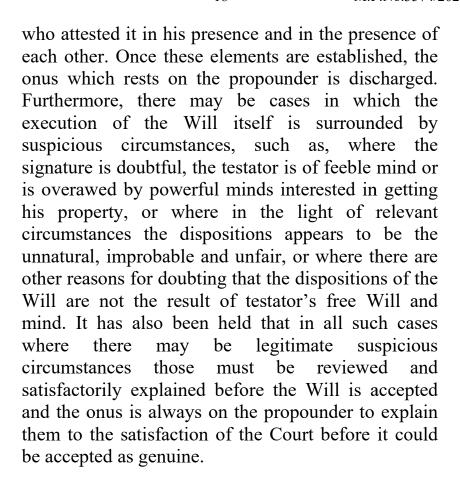
of Shama **33.** The case Charn Kundu v. Khettromoni Dasi [(1899) ILR 27 Cal 522] on the other hand, was the case of a will the execution of which was held to be not surrounded by any suspicious circumstances. Shama Charn, the propounder of the will, claimed to be the adopted son of the testator. He 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 Lindlev. 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 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



20. 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



- 21. 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.
- 22. 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)

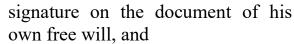
"18. ... The party propounding a will or otherwise making a claim under a will is no doubt seeking to prove a document and, in deciding how it is to be proved, we must inevitably refer to the statutory provisions which govern the proof of documents. Sections 67 and 68 of the Evidence Act are relevant 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. provisions prescribe These 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."

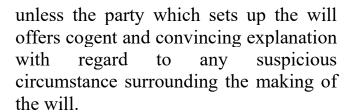
- 32. In fact, the legal principles with regard to the proof of a will are no longer res integra. Section 63 of the Succession Act, 1925 and Section 68 of the Evidence Act, 1872, are relevant in this regard. The propounder of the will must examine one or more attesting witnesses and the onus is placed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



- (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."

Kaur v. Amrit **34.** In Jaswant Kaur [Jaswant Kaur v. Amrit (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, 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





- 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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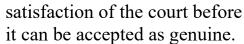
- 35. We may not delve deep into the decisions cited at the Bar as the has recently been question considered by this Court in B. Venkatamuni v. C.J. Ayodhya Ram Singh [B. Venkatamuni v. C.J. Avodhya Ram Singh, (2006) 13 SCC 449], wherein this Court has held that the court must satisfy its conscience 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 suspicious 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."

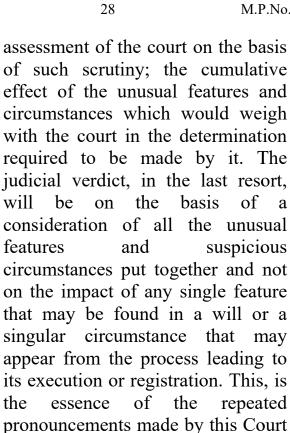
**38.** This Court in Anil Kak v. Sharada Raje [Anil Kak v. Sharada Raje, (2008) 7 SCC 695], held as under: (Bharpur Singh case [Bharpur Singh v. Shamsher Singh, (2009) 3 SCC 687: (2009) 1 SCC (Civ) 934], SCC p. 698, para 20)

*"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 rational a 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 suspicious there exists circumstances the party seeking to obtain probate and/or letters administration with a copy of the will annexed must also evidence adduce to the



- 53. As an order granting probate is a judgment in rem, the court must also satisfy its conscience before it passes an order.
- 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.
- 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



23. 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.

subject

decisions referred to and relied upon

including

the

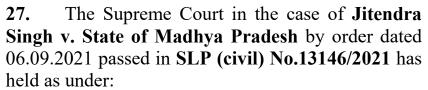
before us."

24. 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



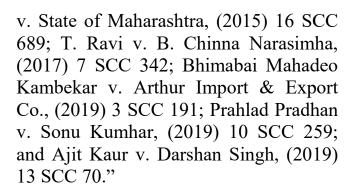
must prove its execution by examining one or more attesting witnesses and propounder of Will must prove that the Will was signed by the testator in a sound and disposing state of mind duly understanding the nature and effect of disposition and he put his signature on the document of his own free Will.

- 25. The Supreme Court in the case of Niranjan Umeshchandra Joshi v. Mrudula Jvoti 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 representatives others legal and Chandrasekaran and another, reported in (2005) 1 SCC 280.
- 26. Therefore, in order to take advantage of Will for getting his name mutated in the revenue records, beneficiary must prove that Will was a genuine one and must remove all suspicious circumstances which are attached to it by examining at least one of the attesting witnesses as well as by proving the mental status of testator, willingness of testator, understanding of testator etc. All these findings cannot be given by revenue authorities.



**"6.** Right from 1997, the law is very clear. In the case of Balwant Singh v. Daulat Singh (D) By Lrs., reported in (1997) 7 SCC 137, this Court had an occasion to consider the effect of mutation and it is observed and held that mutation of property in revenue records neither creates nor extinguishes title to the property nor has it any presumptive value on title. Such entries are relevant only for the purpose of collecting land Similar view revenue. has been expressed in the series of decisions thereafter.

**6.1** In the case of Suraj Bhan v. Financial Commissioner, (2007) 6 SCC 186, it is observed and held by this Court that an entry in revenue records does not confer title on a person whose name appears in record-of-rights. Entries in the revenue records or jamabandi have only "fiscal purpose", i.e., payment of land revenue, and no ownership is conferred on the basis of such entries. It is further observed that so far as the title of the property is concerned, it can only be decided by a competent civil court. Similar view has been expressed in the cases of Suman Verma v. Union of India, (2004) 12 SCC 58; Fagruddin Tajuddin (2008) 8 SCC 12; Rajinder Singh v. State of J&K, (2008) 9 SCC 368; Municipal Corporation, Aurangabad



28. Counsel for applicant also conceded that revenue authorities have no jurisdiction to decide the question of title but only contention is that since mutation can also be done on the basis of Will. therefore, the revenue authorities are well within their rights to mutate the name of a person on the basis of Will. Unfortunately this general proposition of law which is being suggested by counsel for applicant cannot be accepted unless and until Will is duly proved, it cannot be acted upon and the revenue authorities have no jurisdiction to decide the authenticity, correctness, genuineness of a Will which can only be done by Civil Court. Thus, in the light of fact that revenue authorities cannot decide the genuineness of the Will, the rule which permits the mutation of name of a beneficiary on the basis of Will has to be interpreted that the name of a beneficiary can be mutated provided the Will is duly proved and for that purposes the beneficiary has to approach the Civil Court for declaration of his title. Even otherwise in none of the previous judgments it has been held that in spite of a declaration by Civil Court the name of a beneficiary of a Will cannot be mutated. The word "Will" as mentioned in Rules, 2018 necessarily means a valid and genuine Will and not any piece of paper. Therefore, even in the light of Niyam, 2018 it cannot be said that there is any material change in the law.



- 29. It is submitted by counsel for petitioners that a Coordinate Bench of this Court by order dated 07.10.2023 passed in W.P.No.3499/2022 has already referred the question as to whether revenue authorities have a jurisdiction to mutate the names of the beneficiaries of a will or not. However, it is submitted that High Court cannot held as to whether judgment passed by Supreme Court is *per incuriam* or not?
- **30.** It is submitted by counsel for respondents that since, the aforesaid question is already under reference, therefore the hearing of this case may be deferred awaiting outcome of W.P.No.3499/2022.
- **31.** Considered the submission made by counsel for parties.
- 32. It is well established principle of law that even if an order has been referred to a Larger Bench but still it would hold the field unless and until the same is set aside. The prayer for deferment of hearing of this case is hereby rejected."
- 7. Thus, it is clear that in case if a propounder of the Will wants to take advantage of a Will, then he has to seek a declaration from the competent Court of civil jurisdiction and the revenue authorities have no jurisdiction to adjudicate the correctness and genuineness of the Will.
- **8.** Accordingly, the order dated 5.6.2024 passed by Additional Commissioner, Rewa Division, Rewa in Appeal No.486/Appeal/2019-20, order dated 21.11.2019 passed by SDO, Hanumana, District Rewa in Appeal No.89/A-74/Appeal/2019-20 and order dated 27.7.2019 passed by Tahsildar, Tahsil Hanumana, District Rewa in Revenue Case No.36/A-6/2019-20 are hereby **set aside.**

33

M.P.No.3574/2024

- 9. Tahsildar, Tahsil Hanumana, District Rewa is directed to record the names of all the legal heirs of deceased-owner of the land in dispute. However, the respondent shall be free to file a civil suit for declaration of his title on the basis of Will and if such suit is filed, then the trial court shall decide the same without getting influenced or prejudiced by any of the findings given by the revenue courts. The mutation shall be subject to final outcome to the civil litigation.
- 10. With aforesaid observation, the petition is allowed.

(G.S. AHLUWALIA) JUDGE

TG/-