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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 105 of 2012
Reserved on: 06.03.2026
Date of Decision: 09.04.2026

Shiv Dayal & Anr ...Appellants.

Versus

Kanshi Ram & Anr. ...Respondents.

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] ***Yes***

For the Appellants : Mr R.K. Bawa, Senior Advocate, with Mr Abhinav Thakur, Advocate.

For the Respondents : Mr Bhupinder Gupta, Senior Advocate, with Mr Harshit Sharma, Advocate.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment dated 10.01.2012 passed by the learned Additional District Judge (Fast Track Court), Mandi, District Mandi, H.P. (learned Appellate Court) vide which the judgment and decree dated 30.11.2010 passed by learned Civil Judge (Junior Division)

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

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Chachiot at Gohar, Mandi, District Mandi, H.P. (learned Trial Court) were set aside. *(Parties shall hereinafter be referred to 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 plaintiffs filed a civil suit before the learned Trial Court seeking a declaration that the Wills dated 20.03.2007 and 11.04.2007 stated to have been executed by Dharam Chand were null and void, which had no binding effect upon the plaintiffs' rights. A decree for possession was also sought in case the defendants succeeded in forcibly dispossessing the plaintiffs. A consequential relief of permanent prohibitory injunction for restraining the defendants from interfering in the suit land described in para 1 of the plaint was also sought.

3. It was asserted that the suit land was owned and possessed by Dharam Chand, who was the plaintiffs' cousin. Purshottam, plaintiffs' father, and Moti Ram, father of the deceased Dharam Chand, were real brothers. The plaintiffs used to look after Dharam Chand and supply him with all the necessities of life. The defendants propounded two Wills dated

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20.03.2007 and 11.04.2007, stated to have been executed by Dharam Chand in their favour. The plaintiffs, being a relative of Dharam Chand, were entitled to inherit the suit land. The plaintiffs are in possession of the suit land, and the defendants threatened to interfere with his possession based on the Will. Hence, the suit was filed to seek the relief mentioned above.

4. The suit was opposed by filing a written statement admitting that Dharam Chand was the owner of the suit land. The remaining contents of the plaint were denied on the merits. It was asserted that Dharam Chand had executed two wills on 20.03.2007 and 11.04.2007 in the defendants' favour voluntarily in his free, sound and disposing state of mind in consideration of the services provided by the defendants to him. The Will dated 20.03.2007 had a mistake in it, and Dharam Chand executed a Will on 11.04.2007. The defendants remained in possession of the suit land. Dharam Chand had also filed an application before Tehsildar Thunag for taking action against the plaintiffs and their family members regarding the unlawful interference with his land. The suit was filed without any basis. Hence, it was prayed that it be dismissed.

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5. No replication was filed.

6. The learned Trial Court framed the following issues on 11.11.2008: -

1. Whether Dharam Chand was a relative of the plaintiffs, being the son of their uncle Moti Ram, as alleged? OPP.
2. Whether Dharam Chand was looked after during his life time by the plaintiffs, as alleged? OPP.
3. Whether the suit property was ancestral in nature? OPP.
4. Whether the Wills dated 20.03.2007 and 11.04.2007 are a result of fraud, coercion, undue influence and misrepresentation and are liable to be declared null and void, as alleged? OPP.
5. Whether the plaintiff is also entitled to the relief of a permanent prohibitory injunction as prayed for? OPP.
6. Whether the plaintiff in the alternative is entitled to the relief of possession, as prayed for? OPP
7. Whether the Wills dated 20.03.2007 and 11.04.2007 were voluntarily executed got registered by Dharam Chand of his free will and consent and out of love and affection to the defendants? OPD
8. Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD
9. Whether the present suit has not been properly valued for the purpose of court fees and jurisdiction? OPD
10. Relief.

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7. The parties were called upon to produce the evidence, and the plaintiff examined Ramesh Kumar (PW1) and Prem Singh (PW2). The defendants examined Shobha Ram (DW1), Satish Kumar (DW2), Jai Ram (DW3), Shiv Dayal (DW4), Daulat Ram (DW5), and Hari Singh (DW6). Plaintiff examined Brij Lal (RPW1) and Rajender Kumar (RPW2) in rebuttal.

8. The learned Trial Court held that the execution and attestation of the Will were duly proved. The explanation provided by the defendants that the second Will was executed to rectify the clerical mistake in the first was acceptable. The suspicious circumstances pointed out by the plaintiffs were duly explained. The plaintiffs' plea that they were in possession of the suit land was also not established on the balance of probability. Hence, the learned Trial Court answered issues Nos 1 and 7 in the affirmative, issue Nos. 2, 4, 5, & 6 in the negative, issue No.3 partly in the affirmative and issue Nos. 8 and 9 as not pressed, and dismissed the suit.

9. Being aggrieved by the judgment and decree passed by the learned Trial Court, the plaintiffs filed an appeal, which was decided by the learned Additional District Judge (Fast Track

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Court), Mandi, District Mandi, H.P. (learned Appellate Court). Learned Appellate Court held that the conclusion of the learned Trial Court regarding the due execution of the Will was not sustainable. Satish Kumar (DW2), the scribe, Daulat Ram (DW5), the marginal witness or Hari Singh (DW6), the identifier, did not say that the witnesses to the Will had put their signatures in the presence of Dharam Chand. Shiv Dayal (DW4) and Ganga Devi (beneficiaries to the Will) were present at the time of the execution of the Will. They had also put their signatures on the Will. No reason for excluding the natural heirs was assigned. Mere registration of the Will does not make it valid. The defendants had failed to remove the suspicious circumstances surrounding the execution of the Will. Therefore, the judgment and decree passed by the learned Trial Court were set aside, and the suit was ordered to be decreed.

10. Being aggrieved by the judgment and decree passed by the learned Appellate Court, the defendants/appellants have filed the present appeal, which was admitted on the following substantial questions of law on 12.06.2012: -

1. Whether the mere presence of the beneficiary at the time of execution of the Will can be a ground to doubt

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the testamentary capacity of the testatrix and genuineness of the Will?

2. Whether the learned lower Appellate Court erred in holding that the Will was shrouded by the suspicious circumstances, which suspicion was neither real, germane or valid and, in fact, was fantasy of doubting mind?

11. I have heard Mr R.K. Bawa, learned Senior Counsel, assisted by Mr Abhinav Thakur, Advocate, for the appellants and Mr Bhupinder Gupta, learned Senior Counsel, assisted by Mr Harshit Sharma, learned counsel for the respondents.

12. Mr R.K. Bawa, learned Senior counsel for the appellants/defendants, submitted that the learned Appellate Court erred in holding that due execution and attestation of the Will were not proved. It is evident from the holistic readings of the statements that the testator had put his signature on the Will first, and thereafter, the attesting witnesses had put their signatures. The mere presence of the beneficiary at the time of the execution of the Will is not sufficient to invalidate it. Hence, he prayed that the present appeal be allowed and the judgment and order passed by the learned Appellate Court be set aside. He relied upon ***Shashi Kumar Banerjee and others vs. Subodh Kumar Banerjee, deceased, and after him his legal representatives and***

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others 1963 SCC Online SC 114, Smt. Sushila Devi vs. Pandit Krishna Kumar Missir and others 1971(3) SCC 146, Pushpavathi and others vs. Chandraraja Kadamba and others (1973) 3 SCC 291, Rabindra Nath Mukherjee and another vs. Panchanan Banerjee (dead) by LRs and others. (1995) 4 SCC 459, Union of India and another vs. S.S. Ranade (1995) 4 SCC 462, Ramabai Padmakar Patil (dead) through LRs and others vs. Rukminibai Vishnu Vekhande and others (2003) 8 SCC 537, Uma Devi Nambiar and others vs. T.C. Sidhan (dead) (2004) 2 SCC 321, Pentakota Satyanarayana and others vs. Pentakota Seetharatnam and others (2005) 8 SCC 67, Gurdev Kaur and others vs. Kaki and others (2007) 1 SCC 546, Jasbir Singh v. Punjab & Sind Bank and others (2007) 1 SCC 566, Savithri and others vs. Karthyayani Amma and others (2007) 11 SCC 621, Mahesh Kumar (Dead) by LRs vs. Vinod Kumar and others (2012) 4 SCC 387, Leela Rajagopal and others vs. Kamala Menon Cocharan and others (2014) 15 SCC 570, Ved Mitra Verma vs. Dharam Deo Verma (2014) 15 SCC 578, Meena Pradhan and others vs. Kamla Pradhan and Anr 2023INSC847, Smt. Kalo (since deceased) through legal heirs Smt. Meera Devi and others vs. General Public and others decided on 06.11.2019, Shakuntla Devi vs. Savitri Devi, AIR 1997 HP 43, Smt. Bhanumat Chouhan vs. Chetan Singh and others, AIR 1997

HP 48, Pentakota Satyanarayana and others vs. Pentakota Seetharatnam and others, AIR 2005 SC 4362, Bhikha Ram & Anr. vs. Govind Ram & Ors. RSA No. 582 of 2004, decided on 22.03.2006, United India Insurance Co. Ltd vs. Tilak Singh and Ors Civil Appeal No. 2291 of 2000, decided on 04.04.2006, Gun Parkash and another vs. Bhola Nath, AIR 1997 HP 27, Sukhjinder Kaur vs. Jaswant Singh, AIR 1997 SC 3821 and Gurdial Singh vs. Rattan Kaur AIR 1996 Punjab and Haryana 265 in support of his submission.

13. Mr Bhupinder Gupta, learned Senior Advocate for th respondents, submitted that the propounder of the Will is required to prove due execution and attestation of the Will by examining the witnesses to establish that the testator had signed the Will in the presence of the witnesses and the witnesses had also signed the Will in the presence of the testator. Such evidence was lacking in the present case. The active participation by the beneficiary is a suspicious circumstance and the learned Appellate Court was justified in discarding the Will because of the suspicious circumstances surrounding the execution of the Will. The learned Appellate Court had taken a reasonable view while appreciating the evidence, and this Court should not interfere with the findings

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of fact recorded by the learned Appellate Court while deciding the Regular Second Appeal. Hence, he prayed that the present appeal be dismissed. He relied upon ***Murthy & others vs. C. Saradambal & others (2022) 3 SCC 209, Bharpur Singh & others vs. Shamsher Singh (2009) 3 SCC 687, Shivakumar & others vs. Sharanabasappa & others (2021) 11 SCC 277, Raj Kumari & others vs. Surinder Pal Sharma (2021) 14 SCC 500, Mona Devi vs. Amba Dutt Sharma & Anr. Latest HLJ 2013 (HP) 1142, Savithri & others vs. Karthyayani Amma & others (2007) 11 SCC 621*** and ***Bal Krishan & another vs. Shangri Devi & others, Latest HLJ 2008 (HP) 799,*** in support of his submissions.

14. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

Substantial Question of Law No.1:

15. Learned Appellate Court held that the beneficiaries were present at the time of the execution of the Will, and that was a suspicious circumstance. This finding cannot be sustained. It was laid down by the Punjab & Haryana High Court in ***Tirath Singh Versus Sajjan Singh 1997 (2) Civil Court Cases 299 (P&H)*** that the mere fact that the beneficiary accompanied the

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testator from the village and was present when the Will was being scribed is no ground to make the execution of the Will suspicious. It was held:

> "Kartar Singh (D.W.3) also stated in his cross-examination that when they started from the village, he, Tirath Singh, Ralla, Harbhajan Singh, and Karnail Singh were together. According to the learned counsel for the respondent, it clearly goes to show that Tirath Singh and Karnail Singh appellants, had taken an active part in getting the Will executed from Ralla in their favour. There is no substance in this contention. It was not elicited from Gobind Parshad (D.W.2) and Kartar Singh (D.W.3) as to how and in what manner Tirath Singh and Karnail Singh had taken an active part in the execution of the Will, or that Ralla was influenced by them to execute that Will in their favour. The mere fact that at the time of scribing the Will, they were present or that they had accompanied Ralla from the village to the Court compound where the Will was scribed, is not sufficient to draw an inference that they had exercised any undue influence on Ralla and, under the influence, Ralla had executed the Will in their favour."

16. This Court also held in ***Leela v. Drumti Devi, 2000 SCC OnLine HP 20 = AIR 2000 HP 7*** that the mere presence of the beneficiary or his accompanying the testator will not establish the exercise of undue influence in the execution of the Will. It was held:

> "Otherwise, also, the presence of the beneficiary or such beneficiary accompanying the testator for the execution of a Will would not show that undue influence was exercised by the beneficiary in the execution of the Will.

The Will was registered on the same day, and the endorsement of the Sub-Registrar shows that the contents of the Will were read over and explained to Shri Dilu by the Sub-Registrar, who admitted the contents to be correct. It is now well settled that the mere presence of the beneficiary or their accompanying the testator would not show the exercise of undue influence in the execution of the Will (See ***Tirath Singh v. Sajjan Singh (Died) through his LRs. 1998 (1) SLJ 232)***. In ***Gun Parkash v. Bhola Nath, AIR 1997 Him Pra 27***, the Will was scribed in the presence of family members of the beneficiary. The testator was an old lady, and her natural heirs were deprived by her. In this context, it was observed :

> "No doubt, the presence of the family members of the defendants has been stated to be there by the plaintiff's witnesses, but that by itself will not make the Will suspicious unless something more than that is established. The Will in question in the instant case is registered, and the deceased was identified by an Advocate before the Sub-Registrar. Simply because the testator was an old lady and natural heirs have been deprived by her is not by itself a suspicious circumstance to discard the same....."

23. It may be remembered that deceased testator Shri Dilu was living at the relevant time with defendant No. 1, and there is nothing unnatural in the defendant, the beneficiary, being present at the time of execution of the Will.

17. Similarly, it was held in ***Kartar Chand Versus Mathura Dass 2004 Latest HLJ 105*** that the mere fact that the beneficiary was accompanying the testatrix, who was at an advanced age, is not a suspicious circumstance. It was held:

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> "10. This Court in ***Smt. Leela alias Bali Devi (supra)***, relying upon ***Tirath Singh and others v. Sajjan Singh (Died) through his L.Rs. and others, 1998(1) S.LJ. 232*** and ***Gun Parkash and another v. Bhola Nath, AIR 1997 H.P 27***, held that the fact that the beneficiary accompanied the testator for the execution of a Will would not show that undue influence was exercised by the beneficiary in the execution of the Will. The presence of the family members of the beneficiary in itself will not make the Will suspicious unless something more than that is established. Simply because the testatrix was an old lady, suffering from tuberculosis, and the fact that her natural heirs were deprived in itself will not be a suspicious circumstance to discard the Will."

18. Hon'ble Supreme Court also held in ***Sridevi v. Jayaraja Shetty, (2005) 2 SCC 784: 2005 SCC OnLine SC 186*** that mere presence at the time of the execution of the Will does not show the active participation by the beneficiary. It was observed at page 791:

> **"16.** Counsel for the appellants argued that Respondent 13 had taken a prominent part in the execution of the Will, as he was present in the house at the time of the alleged execution of the Will. We do not find any merit in this submission. Apart from establishing his presence in the house, no other part is attributed to Respondent 13 regarding the execution of the Will. Mere presence in the house would not prove that he had taken a prominent part in the execution of the Will. Moreover, both attesting witnesses have also stated that the daughters were also present in the house at the time of execution of the Will. The attesting witnesses were not questioned regarding the presence of the daughters at the time of the execution of the Will in the cross-examination. The presence of the daughters in the house at the time of execution of the Will

> itself dispels any doubt about the so-called role which Respondent 13 had played in the execution of the Will. They have not even stepped into the witness box to say as to what sort of role was played by Respondent 13 in the execution of the Will."

19. In the present case, nobody deposed that the beneficiary had prevailed over the testator. Satish Kumar (DW2) stated in his cross-examination that Shiv Dayal (DW4) and Ganga Devi were sitting beside him. He voluntarily stated that all the persons were sitting with him at the time of writing the Will. Thus, it cannot be said that there was any active participation, and the learned Appellate Court erred in holding that the mere presence of the beneficiary at the time of the execution of the Will was sufficient to invalidate it. In ***Bal Krishan*** (*supra*), the propounder had taken an active participation in the execution of the Will, and the cited judgment does not apply to the facts of the present case. Hence, the substantial question of law No.1 is answered accordingly.

Substantial Questions of Law No.2: -

20. 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:

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"*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;

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

(*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;

(*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 [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."

21. 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. 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 out 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*** enumerated the principles relating to proof of Will:—
>
> "**10.** ***** **** **** ****
>
> "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

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other documents, so in the case of proof of wills, one cannot insist on proof with mathematical certainty.

2. Since Section 63 of the Succession Act requires a will to be attested, it cannot be used as evidence until, as 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 for deposing 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

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> 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 excites 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."

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, is an adversary proceeding becomes in such cases a matter of the court's conscience, and then the true question which arises

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> 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 which 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 circumstance exists, 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 with 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 repelled 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***).

22. A similar view was taken in ***Savithri*** (supra), ***Mona Devi*** (supra), ***Raj Kumari*** (supra), ***Shivakumar*** (supra), ***Bharpur Singh*** (supra), ***Murthy*** (supra), ***Shashi Kumar*** (supra), ***Pushpavathi*** (supra), ***Ramabai Padmakar Patil (dead) through LRs***(supra), ***Pentakota Satyanarayana*** (supra), ***Gurdev Kaur*** (supra), ***Mahesh Kumar (Dead) by LRs*** (supra), ***Kalo Devi (since deceased)*** (surpa), ***Shakuntla Devi*** (supra) and ***Gun Parkash***

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(supra). Therefore, it is not necessary to refer to each judgment and quote the relevant paragraphs.

23. Learned Appellate Court held that the Will was shrouded in suspicious circumstances. In this regard, it is to be noticed that the plaintiff had not pleaded the suspicious circumstances. It was laid down by the Hon'ble Delhi High Court in ***S. Amarjit Singh v. State, 1998 SCC OnLine Del 398 = AIR 1999 Delhi 33***, that the suspicious circumstances have to be pleaded and proved; those cannot be urged for the first time before the Appellate court. It was observed: -

> "10. I agree with the contention of Mr Mariaputham that suspicious circumstances ought to have been pleaded and urged. Those cannot be pleaded or urged for the first time before the appellate Court specially when the foundation of such a suspicious circumstance was not laid before the Probate Court nor pleaded otherwise Supreme Court in the case of ***P.P.K. Gopalan Nambiar v. Balakrishnan Nambiar reported in 1995 Supp (2) SCC 664 : (AIR 1995 SC 1852)*** observed that any suspicious circumstance ought to be urged by the objector should be pleaded and proved. Without such pleading and proof, it cannot be taken into consideration. A similar view was expressed by the Apex Court in the case of ***Trojan and Co. Ltd. v. Nagappa Chettiar reported in 1953 SCR 789: (AIR 1953 SC 235)***, as well as in the case of ***Srivenkataramana Devaru v. State of Mysore reported in 1958 SCR 895 : (AIR 1958 SC 255 at p. 263, para 14***) where the Apex Court laid down the law as such :

> "The object of requiring a party to put forward his pleas in the pleadings is to enable the opposite party to controvert them and to adduce evidence in support of his case. And it would be neither legal nor just to refer to evidence adduced with reference to a matter which was actually in issue and on the basis of that evidence, to come to a finding on a matter which was not in issue, and decide the rights of the parties on the basis of that finding. We have accordingly declined to entertain this contention."
>
> 11. In this view of the matter, this Court is not inclined to entertain such of suspicious circumstances, which were neither pleaded nor proved before the probate Court..."

24. Therefore, it was impermissible for the learned Appellate Court to hold that the Will was shrouded by suspicious circumstances in the absence of any pleading. Further, the suspicious circumstances pointed out were the presence of the beneficiaries at the time of the execution of the Will and the exclusion of the natural heirs. It has already been found above that the presence of the beneficiary at the time of the execution of the Will is not a suspicious circumstance. It was laid down by the Hon'ble Supreme Court in ***Rabindra Nath Mukherjee v. Panchanan Banerjee*, *(1995) 4 SCC 459*,** that the exclusion of the natural heir is not a suspicious circumstance because the whole

idea behind executing the Will is to interfere with the natural line of succession. It was observed at page 461:

> "**4.** As to the first circumstance, we would observe that this should not raise any suspicion, because the whole idea behind the execution of a will is to interfere with the normal line of succession. So natural heirs would be debarred in every case of will; of course, it may be that in some cases they are fully debarred and in others only partially...."

25. This position was reiterated in ***Uma Devi Nambiar v. T.C. Sidhan*, *(2004) 2 SCC 321: 2003 SCC OnLine SC 1371,*** wherein it was observed at page 333:

> "**6.** A Will is executed to alter the ordinary mode of succession, and by the very nature of things, it is bound to result in either reducing or depriving the share of natural heirs. If a person intends his property to pass to his natural heirs, there is no necessity at all of executing a Will.....It has been held that if the propounder succeeds in removing the suspicious circumstance, the court has to give effect to the Will, even if the Will might be unnatural in the sense that it has cut off wholly or in part near relations. (See ***Pushpavathi v. Chandraraja Kadamba [(1973) 3 SCC 291: AIR 1972 SC 2492***].) In ***Rabindra Nath Mukherjee v. Panchanan Banerjee [(1995) 4 SCC 459***], it was observed that the circumstance of deprivation of natural heirs should not raise any suspicion because the whole idea behind the execution of the Will is to interfere with the normal line of succession, and so, natural heirs would be debarred in every case of a Will. Of course, it may be that in some cases they are fully debarred and in some cases partly."

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26. Therefore, the Will cannot be said to be suspicious simply because of the exclusion of the natural heirs.

27. Learned Trial Court further held that the due attestation of the Will was not proved because the witnesses had not stated that they had signed the Will in the presence of the testator, which was necessary. This finding cannot be sustained. It was laid down by the Hon'ble Punjab and Haryana High Court in ***Gauri v. Munshi Ram, 1955 SCC OnLine Punj 114: ILR (1956) 1 P&H 157*** that even if the witness had not specifically deposed that the testator had put his signatures in the presence of the witnesses but it is apparent from the circumstances that witnesses and the testator were present at the same time, compliance of Section 63(c) of Indian Succession Act was duly proved. It was observed at page 160:

> "On the question of whether the requirements of section 63 of the Indian Succession Act were complied with, Mr Pandit cited three rulings of this Court, ***Onkar Pershad v. Jagdish Pershad, etc. [1951 P.L.R. 81.], Gian Chand, etc. v. Surrinder Kumar, etc. [1951 P.L.R. 251.]*** and ***Rura Ram v. Munshi Ram and others [1950 P.L.R. 413.]***. In all these cases, the view taken was that if the attesting witness of a will does not, in explicit terms, say that the testator signed the will in his presence and that he affixed his attesting signature in the presence of the testator, then the evidence of the witness is worthless in so far as the proof of the will is concerned. This, with great respect to

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the Honourable Judges, is a wholly erroneous view. The law requires that the provisions of section 63 of the Indian Succession Act should be complied with. This compliance can be proved either by means of oral evidence or in any other manner. Section 63 does not lay down how the fact of compliance is to be proved. The question of proof is a wholly different matter. Where a witness comes before the Court and narrates his story, the Court must satisfy itself what that story proves, and even if a witness does not in explicit terms say that he signed the will in the testator's presence and that the testator signed in his presence, the Court may come to the conclusion that this is what the witness meant. The question of proof is dealt with in section 3 of the Indian Evidence Act. A fact may be proved by direct evidence or by secondary evidence, by oral evidence or by documentary evidence or merely by circumstantial evidence. A witness may, owing to inadvertence, omit to say that the testator signed in his presence, although this fact may be clearly discernible from the story which he has narrated on oath. I am constrained to say, though not without a great deal of reluctance, that the learned Judges appear to have confused the factum of compliance with the provisions of section 63 with the proof of such factum. I do not think it can be laid down that a witness must use certain words before his evidence can be accepted as proof of a certain fact. The witnesses in the present case say that the will was drawn up and executed in their presence, and they signed the will as attesting witnesses. There was no cross-examination to show that the attestation took place at a different time and place, and, therefore, it cannot be held that the evidence of the witnesses does not prove the factum of compliance. The question of whether a certain fact has or has not been proved depends not upon the exact words used by a witness but upon the evidence given by the witnesses as a whole and the impression this evidence leaves on the mind of a prudent man. Upon going through the evidence of these witnesses, I have no doubt whatsoever in my

mind that these witnesses were present when the testator executed the will, and they attested the will in his presence. The entire transaction took place at one time and place, and there was no question of the witnesses being absent when the testator signed it or the testator being absent when the witnesses signed it. The circumstances clearly indicate that the proceedings lasted a short time and took place in the presence of everyone concerned.

A recent decision of their Lordships of the Supreme Court places this matter beyond all doubt. It was held in ***Naresh Charan v. Paresh Charan [A.I.R. 1955 S.C. 363.]*** —

> "It cannot be laid down as a matter of law that because the witnesses did not state in examination-in-chief that they signed the will in the presence of the testator, there was no due attestation. It will depend on the circumstances elicited in evidence whether the attesting witnesses signed in the presence of the testator. This is a pure question of fact depending on the appreciation of evidence."

Certain remarks in Williams on Wills, Volume I, page 66, based upon a number of English decisions, would appear to go even further, although in point of fact, these remarks merely amount to this that the due execution of a will must be proved like any other fact and in some cases, presumptions may be made where such presumptions arise in law. Williams observes—

> "If a will, on the face of it, appears to be duly executed, the presumption is in favour of due execution, applying the principle *omnia praesumuntur rite esse acta*. If the witnesses are entirely ignorant of the details of the execution, the presumption is the same."
>
> I would therefore hold that there was full compliance with the provisions of section 63, Indian Succession Act."

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28. It was held in ***Naresh Charan Das Gupta v. Paresh Charan Das Gupta*, *(1954) 2 SCC 800: 1954 SCC OnLine SC 56*** that where the testator and the witnesses gathered, they would have been present till the time the matter was finished. It was observed at page 807:

> "**13.** It was also argued for the appellant that there was no proof that the will was duly attested as required by Section 63 of the Indian Succession Act, and that it should therefore be held to be void. PWs 1 and 2 are the two attestors, and they stated in examination-in-chief that the testator signed the will in their presence and that they attested his signature. They did not add that they signed the will in the presence of the testator. Now, the contention is that in the absence of such evidence, it must be held that there was no due attestation. Both the courts below have held against the appellant on this contention. The learned Judges of the High Court were of the opinion that as the execution and attestation took place at one sitting at the residence of PW 1, where the testator and the witnesses has assembled by appointment, they must all of them have been present until the matter was finished, and as the witnesses were not cross-examined on the question of attestation, it could properly be inferred that there was due attestation. It cannot be laid down as a matter of law that because the witnesses did not state in examination-in-chief that they signed the will in the presence of the testator, there was no due attestation. It will depend on the circumstances elicited in evidence whether the attesting witnesses signed in the presence of the testator. This is a pure question of fact, depending on the appreciation of evidence. The finding of the court below that the will was duly attested is based on a consideration of all the materials and must be accepted. Indeed, it is stated in the judgment of the Additional

> District Judge that "the fact of due execution and attestation of the will was not challenged on behalf of the caveator at the time of the hearing of the suit". This contention of the appellant must also be rejected.

29. It was held in ***Dhruba Sahu v. Paramananda Sahu, 1982 SCC OnLine Ori 83: AIR 1983 Ori 24*** that omission to state the fact that the witness had signed in the presence of the executant is not material when both the executant and the witness were present at the same time, and the transaction had concluded in one sitting. It was observed:

> "**7.** Section 68 of the Evidence Act provides that 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. This Section contains a proviso 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 Registration Act, 1908, unless its execution by the person by whom it purports to have been executed is specifically denied. Execution of the deed of gift having been specifically denied, the proviso does not apply to the present case."

30. In ***M.B. Ramesh v. K.M. Veeraje Urs, (2013) 7 SCC 490: (2013) 3 SCC (Civ) 576: 2013 SCC OnLine SC 417***, the witness had not deposed specifically that the testator had put his signature in the presence of the marginal witnesses. It was contended that

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the will was not proved to have been duly executed. Rebutting this contention, the Hon'ble Supreme Court held at page 503:

> **"24.** In the present case, we may note that in Para 21 of his cross-examination, P. Basavaraje Urs has, in terms, stated, "Mr Mallaraje Urs and Smt Nagammanni, myself and one Sampat Iyanger were present while writing the will". One Mr Narayanmurti was also present. In Para 22, he has stated that Narayanmurti had written Ext. 3 (will) in his own handwriting continuously. The fact that M. Mallaraje Urs was present at the time of execution of the will is not contested by the defendants by putting it to PW 2 that M. Mallaraje Urs was not present when the will was executed. As held by a Division Bench of the Calcutta High Court in a matter concerning a will, in para 10 of ***A.E.G. Carapiet v. A.Y. Derderian [AIR 1961 Cal 359***]: (AIR p. 362)
>
> > "*10.* ... Wherever the opponent has declined to avail himself of the opportunity to put his essential and material case in cross-examination, it must follow that he believed that the testimony given could not be disputed at all. ... It is a rule of essential justice."
>
> As noted earlier, the will was executed on 24-10-1943 in the office of Advocate Shri Subha Rao situated at Mysore, and was registered on the very next day at Mysore. The fact that the will is signed by Smt Nagammanni in the presence of PW 2 on 24-10-1943 has been proved, and that PW 2 signed in her presence has also been proved. Can the signing of the will by Smt Nagammanni in the presence of M. Mallaraje Urs and his signing in her presence as well not be inferred from the above facts on record? In our view, in the facts of the present case, the omission on the part of PW 2 to specifically state that the signature of M. Mallaraje Urs on the will (which he identified) was placed in the presence of Smt Nagammani, and that her signature (which he identified) was also placed in the presence of M. Mallaraje Urs, can be said to be a facet of not recollecting about the same. This

deficiency can be taken care of by looking to the other evidence of attendant circumstances placed on record, which is permissible under Section 71 of the Evidence Act.

25. The issue of the validity of the will in the present case will have to be considered in the context of these facts. It is true that in the case at hand, there is no specific statement by PW 2 that he had seen the other attesting witness sign the will in the presence of the testatrix, but he has stated that the other witness had also signed the document. He has proved his signature, and on top of it, he has also stated in the cross-examination that the other witness (Mr Mallaraje Urs), Smt Nagammani, himself and one Sampat Iyanger and the writer of the will were all present while writing the will on 24-10-1943, which was registered on the very next day. This statement, by implication and inference, will have to be held as proving the required attestation by the other witness. This statement, along with the attendant circumstances placed on record, would certainly constitute proof of the will by other evidence as permitted by Section 71 of the Evidence Act.

26. While drawing the appropriate inference in a matter like this, a court cannot disregard the evidence on the attendant circumstances brought on record. In this context, we may profitably refer to the observations of a Division Bench of the Assam High Court in ***Mahaluxmi Bank Ltd. v. Kamakhyalal Goenka [AIR 1958 Ass 56]***, which was a case concerning the claim of the appellant Bank for certain amounts based on the execution of a mortgage deed. The execution thereof was being disputed by the respondents, amongst other pleas, by contending that the same was by a purdahnashin lady, and the same was not done in the presence of witnesses. Though the evidence of the plaintiff was not so categorical, looking to the totality of the evidence on record, the Court held that the execution of the mortgage had been duly proved. While arriving at that inference, the Division Bench observed: (AIR p. 62, para 11)

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> "*11.* ... It was, therefore, incumbent on the plaintiff to prove its execution and attestation according to law. It must be conceded that the witnesses required to prove attestation has (sic) not categorically stated that he and the other attesting witnesses put their signatures (after having seen the execution of the document) in the presence of the executants. Nevertheless, the fact that they actually did so can be easily gathered from the circumstances disclosed in the evidence. It appears that the execution and registration of the document all took place at about the same time in the house of the defendants. The witnesses not only saw the executants put their signatures on the document, but that they also saw the document being explained to the lady by the husband, as well as by the registering officer.
>
> They also saw the executants admit receipt of the consideration, which was paid in their presence. As all this happened at the same time, it can be legitimately inferred that the witnesses also put their signatures in the presence of the executants after having seen them sign the instrument. ...
>
> ... There is no suggestion here that the execution and attestation was not done at the same sitting. In fact, the definite evidence here is that the execution and registration took place at the same time. It is, therefore, almost certain that the witnesses must have signed the document in the presence of the executants."

27. The approach to be adopted in matters concerning wills has been elucidated in a decision on a first appeal by a Division Bench of the Bombay High Court in ***Vishnu Ramkrishna v. Nathu Vithal [AIR 1949 Bom 266]***. In that matter, the respondent Nathu was the beneficiary of the will. The appellant filed a suit claiming possession of the property, which was bequeathed in favour of Nathu by the testatrix Gangabai. The suit was defended on the basis of the will, and it came to be dismissed, as the will was held to be duly proved. In appeal, it was submitted that the

dismissal of the suit was erroneous because the will was not proved to have been executed in the manner in which it is required to be under Section 63 of the Succession Act. The High Court was of the view that if at all there was any deficiency, it was because of not examining more than one witness, though it was not convinced that the testatrix Gangabai had not executed the will. The Court remanded the matter for additional evidence under its powers under Order 41 Rule 27 CPC. The observations of Chagla, C.J., sitting in the Division Bench with Gajendragadkar, J. (as he then was in the Bombay High Court) in para 15 of the judgment are relevant for our purpose: (AIR pp. 270-71)

> "*15.* ... We are dealing with the case of a will, and we must approach the problem as a court of conscience. It is for us to be satisfied whether the document put forward is the last will and testament of Gangabai. *If we find that the wishes of the testatrix are likely to be defeated or thwarted merely by reason of want of some technicality, we, as a court of conscience, would not permit such a thing to happen*. We have not heard Mr Dharap on the other point; but assuming that Gangabai had a sound and disposing mind and that she wanted to dispose of her property as she in fact has done, the mere fact that the propounders of the will were negligent—and grossly negligent—in not complying with the requirements of Section 63 and proving the will as they ought to have, should not deter us from calling for the necessary evidence in order to satisfy ourselves whether the will was duly executed or not." (emphasis supplied)

31. Therefore, in view of the binding precedents of the Hon'ble Supreme Court, the totality of the circumstances has to be seen to determine whether the will was executed in terms of Section 63(c) of the Indian Succession Act or not and the court is

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not guided by the words used by the witnesses. If it can be inferred from the evidence on record that the witnesses and testator were present at one place where the will was written and signed, it can be inferred that they had signed in the presence of the testator in the absence of any evidence that the witness or the testator had left the spot without completing the transaction.

32. In the present case, Satish Kumar (DW2) stated in his examination-in-chief that he had read over and explained the Will to Dharam Chand, who signed it. Hari Singh (DW6), Prem Singh (PW2) and Daulat Ram were present at the time of the signatures. Daulat Ram (DW5) stated that the Will was written by the Document Writer Satish Kumar (DW2) as per the wishes of the testator in his presence. Dharam Chand put the signatures in his presence. Lambardar put the signatures as an identifier, and the witnesses signed the Will. Hari Singh (DW6) stated in his examination-in-chief that Dharam Chand got the Will written from the Document Writer, Satish Kumar (DW2), who read over and explained the Will to Dharam Chand. Dharam Chand admitted the Will to be correct and put his signature. Thereafter, he and the witnesses signed, and all of them went to the Sub

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Registrar. Therefore, the statements of the witnesses show that the testator, the identifier and the witnesses were present at the time of the execution of the Will. The testator, Dharam Chand, signed first, and the witnesses put their signatures afterwards. The transaction had taken place in one sitting, and a mere discrepancy in the cross-examination will not make the execution and attestation of the Will suspicious.

33. The plaintiffs examined Brij Lal (RPW1) and Rajender Kumar (RPW2) to prove that the mental condition of the deceased was not proper before this death. However, the plaintiff had never pleaded that the deceased was of an unsound state of mind. Ramesh Chand (PW1) only stated that Dharam Chand was ill before his death and never stated anything about his state of mind. Brij Lal (RPW1) admitted in his cross-examination that he was related to the plaintiff, and he cannot be said to be an independent person. He also admitted that he had met Dharam Chand 2-3 times, and he was talking normally. He has not given any instance to show that the mental capacity of Dharam Chand was impaired. He is not an expert, and his testimony cannot be said to be sufficient to prove that Dharam Chand was not of a sound disposing state of mind.

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34. Rajender Kumar (RPW2) only stated that Dharam Chand was talkative and was not of sound disposing state of mind. Merely because a person was talkative cannot lead to an inference that he was not in a sound disposing state of mind. Therefore, these statements were not sufficient to make the mental capacity of a testator suspect.

35. The Will was registered. It was laid down in ***Gurpal* Singh *vs. Darshan Singh 1998 1 SLJ 774*** that where the Will was registered by the testator on the same day, the burden is upon the other person to show that the deceased was not of a sound disposing state of mind. It was observed:

> ".....The Will Ext. D3 is a registered document. From this, a presumption arises that the testator of a Will was having a sound disposing mind at the time of making the Will and it was executed by him, especially when there is no evidence to show that at the time of execution of the Will, Phuman Singh was suffering from any mental ailment....."

36. A similar view was taken by this Court in ***Tirath Singh Versus Sajjan Singh 1988 (1) S.L.J. 232,*** wherein it was observed:

> "The Will was registered on December 13, 1972. It carries the endorsement of the Sub-Registrar. Harbhajan Singh Lambardar and Kartar Singh (DW.3), attesting witnesses of the Will, were also present at

> that time. The Sub-Registrar certified that the Will was read over to Ralla, who admitted the contents of it as correct, and then he thumb-marked the same. From this, it has to be presumed that at the time of registration of the Will, Ralla was having a sound disposing mind, and it was executed by him while in his full senses. From the mere fact that the testator of the Will, namely Ralla, was of advanced age, "no presumption can be drawn that he did not having sound disposing mind. Therefore, the contention in that respect is repelled."

37. It was laid down in ***Ashok Baury v. State, 2021 SCC OnLine Del 1248= 2021 (279) DLT 561*** that there is a presumption in favour of sanity and the burden lies on the person who challenges it to prove that the person was insane. It was observed:

> "8. Soundness of mind, for contracting, is defined in Section 12 of the Indian Contract Act, 1872 and which in my view would have application in the matter of soundness of mind requisite for making a Will as well. As per the said provision, (i) a person is said to be of sound mind, if, at the time of the making of the contract, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests; (ii) a person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind; and, (iii) a person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.
>
> 9. As would be obvious from the above, a common thread is found to run between Section 12 of the Contract Act and Section 59 of the Indian Succession Act.

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10. Chapter VII, titled "Of the Burden of Proof", of Part III titled "Production and Effect of Evidence", of the Evidence Act deals with the issue with which this Court is concerned herewith. Per Section 101 thereunder, whosoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts, which he asserts, must prove that those facts exist. Since the propounder of a Will, as per Section 59 of the Indian Succession Act, is required to prove that the testator at the time of the making of the Will was of sound mind, the burden of proof would be on the propounder. However, that would be so where none is opposing the Will propounded, and the Will has to be proved for the satisfaction of the Court. However when a document propounded as a Will is contested, what would be required to be proved is only what is in issue and only if the party disputing the document propounded as a Will disputes/controverts that the testator/testatrix, at the time of making the Will was of sound mind, would soundness of mind be in issue and required to be proved. However, if the soundness of mind is not specifically denied, then, as per the Rules aforesaid contained in Order VIII Rule 5 of the CPC, soundness of mind shall be deemed to have been admitted. In the event of denial of the soundness of mind, the question as herein arises, on whom the onus should be, whether on the propounder or the opposite party, arises.

11. Section 114 under the aforesaid Chapter VII of Part III of the Evidence Act enables the Court to presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the case.

12. The common course of natural events and human conduct is soundness of mind and unsoundness of mind, an aberration. If a testator/testatrix has led a normal life, and performed day-to-day functions in the normal course of human conduct, the presumption under Section

> 114 would be of soundness rather than unsoundness of mind."

38. The plaintiffs' evidence was not sufficient to rebut the presumption of sanity, and the learned Appellate Court erred in holding that the Will was shrouded by suspicious circumstances, and the substantial questions of law are answered accordingly.

Final Order:

39. In view of the above, the present appeal is allowed, and the judgment and decree passed by the learned First Appellate Court are ordered to be set aside, and the judgment and decree passed by the learned Trial Court are ordered to be restored.

40. The present appeal stands disposed of and so are the pending miscellaneous application(s) if any.

(Rakesh Kainthla)
Judge

9th April, 2026
(Nikita)