Dhanpat vs Sheo Ram (Deceased) Through His Lrs. on 19 March, 2020

Equivalent citations: AIR 2020 SUPREME COURT 2666, AIRONLINE 2020 SC 394

Author: Hemant Gupta

Bench: Hemant Gupta, L. Nageswara Rao

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1960 OF 2020
(ARISING OUT OF SLP (CIVIL) NO. 22496 OF 2014)

DHANPAT ....

VERSUS

SHEO RAM (DECEASED) THROUGH LRS. &
ORS. .....R

JUDGMENT

HEMANT GUPTA, J.

1. The challenge in the present appeal is to an order passed by the High Court of Punjab & Haryana on 27th March, 2014 whereby the concurrent findings of fact recorded by both the courts below were set aside and the suit filed by the respondent-plaintiff was decreed.

2. The High Court has framed the following two substantial questions of law:

> "1. Whether the Will dated 30.4.1980 Ex.D-3 was surrounded by suspicious circumstances and due execution thereof was also not proved, in accordance with the requirements of Section 63 of the Succession Act;

> 2. Whether the learned courts below have completely misread, misconstrued and misinterpreted the evidence available on record, particularly the Will Ex.D-3, because of which the impugned judgments cannot be sustained."
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> 3. The admitted facts are that one Misri was the grandfather of the Plaintiff-Sheo Ram and defendant No.5-Sohan Lal and defendant Nos.7-9 were his granddaughters. Chandu Ram was the father of the plaintiff and defendant Nos.5, 7-9 and the husband of Chand Kaur had inherited the suit land from his father, Misri.
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> 4. The plaintiff filed a suit for declaration that he along with his mother, Chand Kaur and his sisters, defendants Nos. 7-9, were the owners and in possession of equal shares of the suit land measuring 489 kanals 4 marlas. He asserted that he belonged to the Jat community and was governed by Punjab Customary Law.

Further, that his brother, defendant No. 5, got a Will dated 30 th April, 1980 executed in favour of his sons, from Chandu Ram. Such a Will contravened Jat Customary Law and was the result of fraud and misrepresentation. Defendant No.5 and his sons, the beneficiaries under the Will filed a common written statement and asserted that the custom had been abrogated after passing of the Hindu Succession Act, 19561 and that Chandu Ram had separated all his sons during his life time and given sufficient amount to his daughters, defendant Nos.7-9, in the shape of dowry and other ceremonial and customary festivities. In this regard, sufficient land had also been given to the plaintiff, therefore, there was no Joint Hindu Family. The Will had been executed by Chandu Ram out of his natural love and affection and was without any inducement or 1 for short, 'Act' fraud or misrepresentation.

5. The learned trial court framed as many as 12 issues but for the purpose of deciding the present appeal, Issue Nos. 1, 3 and 7 are relevant which read as under:

> "1. Whether the plaintiff and the proforma defendants are the owners and in possession of the property in dispute?
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> xx xx xx
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> 3. Whether the Will dated 30.4.1980 was validly executed by Chandu Ram in favour of defendants No. 1 to 4?
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> xx xx xx
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> 7. Whether deceased Chandu had separated all his sons during his life time and had given sufficient amount to his daughters in the shape of dowry etc. and land to his sons as alleged in preliminary objection no. 5 of the written statement? If so to what effect?"

6. In respect of Issue No. 7 relating to the partition of the property by Chandu Ram, the defendants relied upon a judgment and decree in a suit filed by the Plaintiff-Sheo Ram and defendant No.5, Sohan Lal against their father Chandu Ram. Chandu Ram admitted the fact of partition and that a judgment (Ex.D-21) and decree (Ex.D-22) to this effect was passed. Thereafter, a mutation was also sanctioned. Chandu Ram had filed a suit for permanent injunction to the effect that the property in dispute fell to his share while the defendant (present plaintiff) was given 50 acres of land situated in Village Gawar, 15½ acres of land in Village Bairan, 10 acres of land in Village Hariawas and 6 acres of land in Village Baliali, totaling 81½ acres. It was also pleaded that the defendant therein sold 50 acres of land of Village Gawar and 15½ acres of land of Village Bairan after this partition. The defendant therein asserted that the properties mentioned above were purchased by him from his exclusive funds and, therefore, he has right to sell the same. The certified copy of judgment and decree are Ex. D-17 and D-18. Therefore, the learned trial court held that Chandu Ram had separated his sons during his life time and had settled his daughters as well. Such findings were affirmed by the learned First Appellate Court.

7. In respect of Issue No. 3, the learned trial court held that the Will is duly proved on the basis of statement of DW-3 Maha Singh, an attesting witness, DW-4 Advocate D.S. Panwar, the scribe, DW-5 Sohan, the defendant and Krishan Kant, Registration Clerk as DW 2. The Court noticed that DW-4 D.S. Panwar was Chandu Ram's advocate in the cases before the Civil Court who had scribed the Will at his instance and Maha Singh had put his signatures on the original Will in his presence. DW-4 D.S. Panwar deposed that the original Will was stated to have been lost and that he was not sure as to whether Ex. D-3 was the correct photocopy of the original Will. Chand Kaur, wife of Chandu Ram was examined as PW-1 who had deposed that Chandu Ram had ousted her from his house. Therefore, the Court found that it was natural for Chandu Ram to execute the Will in favour of Defendant No.5, Sohan Lal's sons. The Court did not find any merit in the argument that a deviation from natural succession will make the Will doubtful. It was also held that the scribe cannot be treated as an attesting witness but that since two attesting witnesses have signed the Will, the execution of the Will is proved by examining one of the attesting witnesses. With the aforesaid findings, the learned trial court dismissed the suit filed by the plaintiff.

8. The learned First Appellate Court affirmed the findings recorded by the trial court and dismissed the suit filed by the plaintiff vide judgment and decree dated 11th May, 1987. It was held that the Will had been executed by Chandu Ram in favour of the defendant Nos. 1 to 4, i.e. the sons of Defendant No.5, Sohan Lal and was not surrounded by suspicious circumstances.

9. In second appeal, the learned High Court allowed the appeal filed by the plaintiff holding that the Will dated 30 th April, 1980 was surrounded by suspicious circumstances. The substantial question of law framed by the High Court was only to this effect. It was argued by the defendants that the finding that the Will stands executed and was not surrounded by suspicious circumstances and has been illegally interfered by the High Court.

10. The High Court had held that only Maha Singh was examined as attesting witness as DW-3 whereas the second attesting witness Azad Singh was not produced, therefore, the Will was not proved. It also held that the Will had been completely misread, misconstrued and misinterpreted.

The High Court found that in the Will, there was no mention of Chandu Ram's wife and the other son i.e. the Plaintiff, and therefore, such fact was a suspicious circumstance to doubt the genuineness of the Will. The High Court referred to the judgment of the trial court dated 7th December, 1981 filed by Chandu Ram to prove that the house and agricultural land were ancestral property though no substantial question of law on the said aspect relating to the nature of land was framed. In fact, the judgment dated 7th December 1981 (Ex- D-17) in the suit filed by Chandu Ram, has been produced by the respondent with the present appeal. A perusal of the judgment shows that Chandu Ram had asserted partition of the property about 8-10 years back. The Plaintiff-Sheo Ram had asserted that he is in joint possession of the property. In the said suit, a decree for permanent injunction was passed restraining the defendant from interfering with the disputed property after returning a finding on Issue No. 5 that a family partition had taken place and that the property cannot be said to be joint property of the parties. The High Court has not referred to the findings recorded in the suit filed by the Plaintiff-Sheo Ram.

11. It may be noticed that in view of Constitution Bench judgment of this Court in Pankajakshi (D) through LRs & Ors. v. Chandrika & Ors.2, substantial question of law may not be required to be framed in Punjab and Haryana but still, the finding of fact recorded cannot be interfered with even in terms of Section 41 of the Punjab Courts Act, 1918. The said question was examined by this Court in Randhir Kaur v. Prithvi Pal Singh and Others3, wherein, the 2 (2016) 6 SCC 157 3 Civil Appeal No. 5822 of 2019 decided on 24th July, 2019 scope for interference in the second appeal under Section 41 of the Punjab Courts Act applicable in the States of Punjab and Haryana was delineated and held as under:

> "16. A perusal of the aforesaid judgments would show that the jurisdiction in second appeal is not to interfere with the findings of fact on the ground that findings are erroneous, however, gross or inexcusable the error may seem to be. The findings of fact will also include the findings on the basis of documentary evidence. The jurisdiction to interfere in the second appeal is only where there is an error in law or procedure and not merely an error on a question of fact.
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> 17. In view of the above, we find that the High Court could not interfere with the findings of fact recorded after appreciation of evidence merely because the High Court thought that another view would be a better view. The learned first appellate court has considered the absence of clause in the first power of attorney to purchase land on behalf of the Plaintiff; the fact that the plaintiff has not appeared as witness."
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> 12. In support of the findings recorded by the High Court, Mr. Manoj Swarup, learned senior counsel for the plaintiff-respondent argued that in terms of Section 69 of the Indian Succession Act, 1925, a Will is required to be attested by two witnesses who have seen the testator and in which the testator and two of the attesting witnesses sign in presence of each other. It is argued that Maha Singh, DW-3 had not deposed that all three were present at the same time, therefore, the finding of the High Court has to be read in that context, when the Will was found to be surrounded by suspicious circumstances as the second attesting witness was not examined. It is also

argued that the original Will has not been produced and no application for leading secondary evidence was filed. Therefore, the secondary evidence could not be led by the defendant to prove the execution of the Will.

13. Section 65(c) of the Indian Evidence Act, 1872 4 is applicable in the facts of the present case as the defendants asserted that the original Will is lost. The Section 65 reads as under:

"65. Cases in which secondary evidence relating to documents may be given. – Secondary evidence may be given of the existence, condition, or contents of a document in the following cases:-

(a) xx xx xx

(b) xx xx xx

(c) when the original has been destroyed or lost, or

when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(d) xx xx xx

(e) xx xx xx

(f) xx xx xx

(g) xx xx xx

In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible.

xx xx xx"

14. The defendants produced a certified copy of the Will obtained from the office of the Sub-Registrar. The defendants also produced the photocopy of the Will scribed by DW 4- D.S. Panwar.

15. In a judgment reported as M. Ehtisham Ali for himself and in place of M. Sakhawat Ali, since deceased v. Jamna Prasad,

4 for short, 'Evidence Act' since deceased & Ors.5, the appellants-plaintiffs filed a suit on the basis of a sale deed. During trial, the stand of the plaintiffs was that the original sale deed was lost but since it was registered, secondary evidence by way of a certified copy prepared by the office of the Registrar was produced. It was not disputed that the copy produced was not the correct copy of the

registered document. The suit was dismissed for the reason that the plaintiffs have not succeeded in satisfactorily establishing the loss of the original sale deed. The Court held as under:

> "It is, no doubt, not very likely that such a deed would be lost, but in ordinary cases, if the witness in whose custody the deed should be deposed to its loss, unless there is some motive suggested for his being untruthful, his evidence would be accepted as sufficient to let in secondary evidence of the deed. And if in addition he was not cross-examined, this result would follow all the more. There is no doubt that the deed was executed, for it was registered, and registered in a regular way, and it is the duty of the registrar, before registering, to examine the grantor, or some one whom he is satisfied is the proper representative of the grantor, before he allows the deed to be registered."
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> 16. In another judgment reported as Aher Rama Gova & Ors. v.

State of Gujarat6, the secondary evidence of dying declaration recorded by a Magistrate was produced in evidence. This Court found that though the original dying declaration was not produced but from the evidence, it is clear that the original was lost and was not available. The Magistrate himself deposed on oath that he had given the original dying declaration to the Head Constable whereas 5 AIR 1922 PC 56 6 (1979) 4 SCC 500 the Head Constable deposed that he had made a copy of the same and given it back to the Magistrate. Therefore, the Court found that the original dying declaration was not available and the prosecution was entitled to give secondary evidence which consisted of the statement of the Magistrate as also of the Head Constable who had made a copy from the original. Thus, the secondary evidence of dying declaration was admitted in evidence, though no application to lead secondary evidence was filed.

17. Even though, the aforesaid judgment is in respect of the loss of a sale deed, the said principle would be applicable in respect of a Will as well, subject to the proof of the Will in terms of Section 68 of the Evidence Act. In the present case as well, the Will was in possession of the beneficiary and was stated to be lost. The Will is dated 30th April, 1980 whereas the testator died on 15th January, 1982. There is no cross-examination of any of the witnesses of the defendants in respect of loss of original Will. Section 65 of the Evidence Act permits secondary evidence of existence, condition, or contents of a document including the cases where the original has been destroyed or lost. The plaintiff had admitted the execution of the Will though it was alleged to be the result of fraud and misrepresentation. The execution of the Will was not disputed by the plaintiff but only proof of the Will was the subject matter in the suit. Therefore, once the evidence of the defendants is that the original Will was lost and the certified copy is produced, the defendants have made out sufficient ground for leading of secondary evidence.

18. This Court in Bipin Shantilal Panchal v. State of Gujarat & Anr.7, deprecated the practice in respect of the admissibility of any material evidence, where the Court does not proceed further without passing order on such objection. It was held that all objections raised shall be decided by the Court at the final stage. The Court held as under:

> "14. When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence-taking stage regarding the admissibility of any material or item of oral evidence the trial court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document the court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed).
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> 15. The above procedure, if followed, will have two advantages. First is that the time in the trial court, during evidence-taking stage, would not be wasted on account of raising such objections and the court can continue to examine the witnesses. The witnesses need not wait for long hours, if not days. Second is that the superior court, when the same objection is recanvassed and reconsidered in appeal or revision against the final judgment of the trial court, can determine the correctness of the view taken by the trial court regarding that objection, without bothering to remit the case to the trial court again for fresh disposal.

We may also point out that this measure would not cause any prejudice to the parties to the litigation and would not add to their misery or expenses." 7 (2001) 3 SCC 1

19. This Court in Z. Engineers Construction Pvt. Ltd. & Anr. v.

Bipin Bihari Behera & Ors.8, held that even in respect of deficiency of stamp duty in the State of Orissa where a question arose as to whether possession had been delivered in pursuance of a registered power of attorney, the same was a question of fact which was required to be decided after the evidence was led.

20. There is no requirement that an application is required to be filed in terms of Section 65(c) of the Evidence Act before the secondary evidence is led. A party to the lis may choose to file an application which is required to be considered by the trial court but if any party to the suit has laid foundation of leading of secondary evidence, either in the plaint or in evidence, the secondary evidence cannot be ousted for consideration only because an application for permission to lead secondary evidence was not filed.

21. Now, coming to the question as to whether the defendants have proved the due execution of the Will, reference will be made to a judgment reported as H. Venkatachala Iyengar v. B.N. Thimmajamma & Ors.9. This Court while considering Section 63 of the Act and Section 68 of the Evidence Act laid down the test as to whether the testator signed the Will and whether he understood the nature and effect of the dispositions in the Will. The Court held as under:

> "18. ...Thus the question as to whether the will set up by the propounder is proved to be the last will of the testator 8 2020 SCC OnLine SC 184 9 AIR 1959 SC 443 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."

22. This Court in a judgment reported as Seth Beni Chand (since dead) now by LRs. v. Smt. Kamla Kunwar & Ors.10 held that 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 Court held as under:

> "9. The question which now arises for consideration, on which the Letters Patent Court differed from the learned Single Judge of the High Court, is whether the execution of the will by Jaggo Bai is proved satisfactorily. It is well- settled 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. [See Jarman on Wills (8th Edn., p. 50) and H. Venkatachala Iyengar v. B.N. Thimmajamma, AIR 1959 SC 443 : 1959 Supp (1) SCR 426] By "free and capable testator" is generally meant that the testator at the time when he made the will had a sound and disposing state of mind and memory. Ordinarily, the burden of proving the due execution of the will is discharged if the propounder leads evidence to show that the will bears the signature or mark of the testator and that the will is duly attested. For proving attestation, the best evidence would naturally be 10 (1976) 4 SCC 554 of an attesting witness and indeed the will cannot be used as evidence unless at least one attesting witness, depending on availability, has been called for proving its execution as required by Section 68 of the Evidence Act...."

23. In view of the aforesaid judgments, at least one of the attesting witnesses is required to be examined to prove his attestation and the attestation by another witness and the testator. In the present case, DW-3 Maha Singh deposed that Chandu Ram had executed his Will in favour of his four grandsons and he and Azad Singh signed as witnesses. He deposed that the testator also signed it in Tehsil office. He and Azad Singh were also witnesses before the Sub-Registrar. In the cross-examination, he stated that he had come to Tehsil office in connection with other documents for registration. He deposed that Ex.D-4-the Will, was typed in his presence. He denied the question that no Will was executed in his presence. There was no cross-examination about his not being present before the Sub-Registrar. Once the Will has been proved then the contents of such

document are part of evidence. Thus, the requirement of Section 63 of the Act and Section 68 of the Evidence Act stands satisfied. The witness is not supposed to repeat in a parrot like manner the language of Section 68 of the Evidence Act. It is a question of fact in each case as to whether the witness was present at the time of execution of the Will and whether the testator and the attesting witnesses have signed in his presence. The statement of the attesting witness proves the due execution of the Will apart from the evidence of the scribe and the official from the Sub-Registrar's office.

24. Mr. Swarup referred to judgment of this Court reported as M.L. Abdul Jabbar Sahib v. M.V. Venkata Sastri & Sons & Ors. 11. The primary issue discussed therein was a summary suit for recovery wherein an application for leave to defend was granted on the condition of furnishing a security for a sum of Rs.50,000/-. The question examined was whether the security bond is attested by the two witnesses and, if not, whether it was invalid. While considering the attestation, this Court discussed the question of attestation of witnesses as well and held as under:

> "8. "In every case the Court must be satisfied that the names were written animo attestandi", see Jarman on Wills, 8th Edn., p. 137. Evidence is admissible to show whether the witness had the intention to attest. "The attesting witnesses must subscribe with the intention that the subscription made should be complete attestation of the will, and evidence is admissible to show whether such was the intention or not," see Theobald on Wills, 12th Edn., p. 129. In Girja Datt v. Gangotri [AIR 1955 SC 346, 351] , the Court held that the two persons who had identified the testator at the time of the registration of the will and had appended their signatures at the foot of the endorsement by the sub-Registrar, were not attesting witnesses as their signatures were not put "animo attestandi". In Abinash Chandra Bidvanidhi Bhattacharya v. Dasarath Malo [ILR 56 Cal 598] it was held that a person who had put his name under the word "scribe" was not an attesting witness as he had put his signature only for the purpose of authenticating that he was a "scribe". In Shiam Sunder Singh v. Jagannath Singh [54 MLJ 43] , the Privy Council held that the legatees who had put their signatures on the will in token of their consent to its execution were not attesting witnesses and were not disqualified from taking as legatees." 11 (1969) 1 SCC 573

25. In the aforesaid case, it had been held that the person who put his name under the word "scribe" was not an attesting witness, further that the legatees who had put their signatures on the Will were not attesting witnesses. In the present case, Maha Singh and Azad Singh have signed the Will as attesting witnesses not only at the time of execution but also at the time of registration before the Sub-Registrar. Therefore, the said judgment is not helpful to the argument raised.

26. Mr. Swarup relied on judgment reported as N. Kamalam (Dead) & Anr. v. Ayyasamy & Anr.12 that in the absence of Maha Singh deposing that he is the attesting witness along with Azad Singh, his statement cannot be treated to be that of attesting witness. We do not find any merit in the said argument. In the aforesaid case, it was the scribe who was said to be the attesting witness. This Court held as under:

> "27. ...The animus to attest, thus, is not available, so far as the scribe is concerned: he is not a witness to the will but a mere writer of the will. The statutory requirement as noticed above cannot thus be transposed in favour of the writer, rather goes against the propounder since both the witnesses are named therein with detailed address and no attempt has been made to bring them or to produce them before the court so as to satisfy the judicial conscience. Presence of scribe and his signature appearing on the document does not by itself be taken to be the proof of due attestation unless the situation is so expressed in the document itself — this is again, however, not the situation existing presently in the matter under consideration. Some grievance was made before this Court that sufficient opportunity was not being made available, we are however, unable to record our concurrence therewith. No attempt whatsoever has 12 (2001) 7 SCC 503 been made to bring the attesting witnesses who are obviously available."

27. The said judgment has no applicability inasmuch as Maha Singh is the attesting witness and has been examined as such by the defendant.

28. Mr. Swarup further relied upon a judgment of this Court reported as Janki Narayan Bhoir v. Narayan Namdeo Kadam13 to contend that if one attesting witness is examined, he has to depose about the presence of the second attesting witness by relying upon the following findings:

> "10. ...The one attesting witness examined, in his evidence has to satisfy the attestation of a will by him and the other attesting witness in order to prove there was due execution of the will. If the attesting witness examined besides his attestation does not, in his evidence, satisfy the requirements of attestation of the will by the other witness also it falls short of attestation of will at least by two witnesses for the simple reason that the execution of the will does not merely mean the signing of it by the testator but it means fulfilling and proof of all the formalities required under Section 63 of the Succession Act. Where one attesting witness examined to prove the will under Section 68 of the Evidence Act fails to prove the due execution of the will then the other available attesting witness has to be called to supplement his evidence to make it complete in all respects. Where one attesting witness is examined and he fails to prove the attestation of the will by the other witness there will be deficiency in meeting the mandatory requirements of Section 68 of the Evidence Act."

29. We do not find any merit in the said argument as well. The 13 (2003) 2 SCC 91 statement of Maha Singh produced on record shows that he along with Azad Singh, the other attesting witness and the testator had signed the Will. In the cross-examination, the statement that he has signed the Will had not been disputed nor that the testator or the other attesting witness was not present at that time. Therefore, the ratio of the aforesaid judgment is not applicable to the facts of the present case. In fact, it is finding of fact, recorded by the First Appellate Court.

30. In respect of an argument that some of the natural heirs were not even mentioned in the Will, therefore, the Will is surrounded by suspicious circumstances is again not tenable. Mr. Rishi

Malhotra, learned counsel for the appellant referred to the judgment of this Court reported as Rabindra Nath Mukherjee & Anr. v. Panchanan Banerjee (Dead) by LRs. & Ors.14 wherein it had been held that the Will was executed for the exclusion of the natural heirs. The suspicious circumstances found by the High Court to deprive the natural heirs by the testatrix was not found to be sufficient. The Court held as under:

> "4. As to the first circumstance, we would observe that this should not raise any suspicion, because the whole idea behind execution of 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. As in the present case, the two executors are sons of a half-blood brother of Saroj Bala, whereas the objectors descendants of a full blood sister, the disinheritance of latter could not have been taken as a suspicious circumstance, when some of her descendants 14 (1995) 4 SCC 459 are even beneficiaries under the will."

31. Mr. Malhotra referred to another judgment of this Court reported as Ved Mitra Verma v. Dharam Deo Verma15 wherein this Court held that the exclusion of the children of the testator and execution of the Will for the sole benefit of one of the sons by the testator, is not a suspicious circumstance. This Court held as under:

> "8. The exclusion of the other children of the testator and the execution of the will for the sole benefit of one of the sons i.e. the respondent, by itself, is not a suspicious circumstance. The property being self-acquired, it is the will of the testator that has to prevail."

32. Mr. Malhotra also referred to the judgment of this Court reported as Leela Rajagopal & Ors. v. Kamala Menon Cocharan & Ors.16 wherein it was held that it is the overall assessment of the Court on the basis of the unusual features appearing in the Will or the unnatural circumstances surrounding its execution, that justifies a close scrutiny of the same before it can be accepted. Herein, the cumulative effect of the unusual features and circumstances surrounding the Will, would weigh upon the court in the determination required to be made by it. The judicial verdict will be based on the consideration of all the unusual features and suspicious circumstances put together and not upon the impact of any single feature that may be found in a Will or a singular circumstance that may appear from the process leading to its execution. The Court held as under:

> "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 15 (2014) 15 SCC 578 16 (2014) 15 SCC 570 appearing in a will or the unnatural circumstances surrounding its execution will definitely justify a close scrutiny before the same can be accepted. It is the overall assessment of the court on the basis of such scrutiny; the cumulative effect of the unusual features and circumstances which would weigh with the court in the determination required to be made by it. The judicial verdict, in the last resort, will be on the basis of a consideration of all the unusual features and suspicious circumstances put together and not on the impact of

> any single feature that may be found in a will or a singular circumstance that may appear from the process leading to its execution or registration. This, is the essence of the repeated pronouncements made by this Court on the subject including the decisions referred to and relied upon before us.
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> 14. In the present case, a close reading of the will indicates its clear language, and its unambiguous purport and effect. The mind of the testator is clearly discernible and the reasons for exclusion of the sons is apparent from the will itself…"

33. In view of the above, we find that the High Court has clearly erred in law in interfering with the concurrent findings of fact recorded by both the Courts below. The entire judgment runs on misconception of law and is, therefore, not sustainable in law. The same is set aside and the decree of the First Appellate Court is restored. Accordingly, the appeal is allowed and the suit is dismissed.

.....J. (L. NAGESWARA RAO) .....J. (HEMANT GUPTA) NEW DELHI;

MARCH 19, 2020.