Kavita Kanwar vs Mrs. Pamela Mehta on 19 May, 2020

Equivalent citations: AIR 2020 SUPREME COURT 2614, AIRONLINE 2020 SC 544

Author: Dinesh Maheshwari

Bench: Dinesh Maheshwari, A.M.Khanwilkar

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3688 OF 2017

KAVITA KANWAR.

Vs.

MRS. PAMELA MEHTA & ORS.

JUDGMENT

Dinesh Maheshwari, J.

INTRODUCTION WITH BRIEF OUTLINE

1. This appeal by special leave is directed against the judgment and order dated 27.06.2014 in FAO No. 36 of 2010, whereby the High Court of Delhi at New Delhi has dismissed the appeal preferred by the present appellant and has affirmed the judgment and order dated 23.11.2009 as passed by the Additional District Judge, West District, Tis Hazari Courts, Delhi in Probate Case No. 465 of 2006, resulting in rejection of the appellant's prayer for grant of probate in relation to the Will dated 20.05.2003, said to have been executed by the mother of the contesting parties1.

1 Hereinafter also referred to as 'the contested Will' or 'the Will in question' or the 'document in question'.

2. The prayer of the appellant for grant of probate in relation to the Will in question has been declined concurrently by the Trial Court and by the High Court essentially after finding several unexplained suspicious circumstances surrounding the Will in question. Being aggrieved, the petitioner-appellant, who was appointed as the executor of the Will in question and who was,

admittedly, the major beneficiary thereunder, has preferred this appeal while maintaining that execution of Will by the testatrix with due compliance of all the requirements of law has been clearly established on record and there has not been any such suspicious circumstance which might operate against the genuineness of the Will in question.

3. Therefore, essentially the point for determination in this appeal is as to whether the Trial Court and the High Court were justified in declining to grant probate in relation to the Will dated 20.05.2003 as prayed for. THE PARTIES AND THE WITNESSES

4. For comprehension of the subject-matter and for effective determination of the questions raised in this appeal, we may take note of the principal parties and the witnesses involved in the matter with their respective roles as infra:

4.1. The testatrix:

Smt. Amarjeet Mamik wife of Lt. Col. (Rtd.) D. S. Mamik.

Her husband Lt. Col. (Rtd.) D. S. Mamik had expired on 20.10.2002.

The testatrix herself expired on 21.05.2006, leaving behind two daughters and one son, who are the contesting parties herein.

4.2. The appellant: Smt. Kavita Kanwar She is the younger daughter of the testatrix. She is shown as the executor of the Will in question and she is the major beneficiary thereunder, though with certain conditions. She had filed the petition seeking probate that has been declined by the Trial Court and the High Court.

4.3. Respondent No. 1: Smt. Pamela Mehta2 She is the elder and widowed daughter of the testatrix. The conditions stated in the contested Will are purportedly aimed at making a provision for her residence. Initially, she did not file the written statement of contest but at the later stage of proceedings and during the evidence of the appellant, she attempted to file her written statement. However, the prayer so made by her was declined by the Trial Court. Nevertheless, she has continuously contested the matter, as shall be noticed hereafter.

2 The respondent No. 1 of the present appeal was on record as respondent No. 2 in the Trial Court and High Court. Therefore, reference to her in the impugned judgments and other proceedings shall appear with description as ‘respondent No. 2’. However, for continuity of expressions in this judgment, she is referred to as ‘the respondent No. 1’ with contextual clarification wherever required.

4.4. Respondent No. 2: Col. (Rtd.) Prithiviraj Mamik3 He is the son of the testatrix. By way of bequeath in the Will in question, he has been given ‘credit balance’ lying in the bank accounts of the testatrix but with clarification that he shall not inherit any

portion of the immovable assets of testatrix. He had filed the written statement and has consistently contested the claim for probate of the Will in question.

4.5. The attesting witnesses:

PW-2: Shri. Urvinder Singh Kohli, who is said to be a friend of the appellant and his daughter got married to the son of a cousin of the appellant; and PW-3: Major General Manjit Ahluwalia, who is son of the sister of testatrix.

THE IMMOVABLE PROPERTY INVOLVED: ANNALS DESCRIPTION

5. We may also notice at the outset that the immovable property, a part whereof forms the subject of bequeath and which is the major bone of contention in this case, has its own chronicle of different transfers as per the desire of its original owner, father of the contesting parties. For comprehension of the relevant factual aspects as also salient features of this case, it is equally necessary to take note of the description of immovable property in question as also the past dealings in relation thereto.

3 Similar to FN 2 ibid., the respondent No. 2 of the present appeal was on record as respondent No. 3 in the Trial Court and High Court. Therefore, in the impugned judgments and other proceedings he is described as 'respondent No. 3'. However, for continuity of expressions in this judgment, he is referred to as 'the respondent No. 2' with contextual clarification wherever required.

5.1. The property in question is identified as bearing number D-179, Defence Colony, New Delhi admeasuring 325 square yards and comprising of a building having ground floor, first floor, terrace and annexe block of garage and servant quarter. The whole property originally belonged to Lt. Col. (Rtd.) D. S. Mamik, father of the contesting parties who, in his lifetime, gifted the ground floor of this property to the appellant by way of a registered Gift Deed dated 25.01.2001; and thereafter, he bequeathed the remaining portion/s, that is, the first floor, terrace and the annexe block of garage and servant quarter in favour of his wife Smt. Amarjeet Mamik through a registered Will dated 14.02.2001. Lt. Col. (Rtd.) D. S. Mamik expired on 20.10.2002. Hence, after his demise, Smt. Amarjeet Mamik, mother of the contesting parties, became owner of the first floor and other portions of the said property except the ground floor. 5.2. It is also noteworthy that at the time of execution of the contested Will dated 20.05.2003, the testatrix Smt. Amarjeet Mamik was residing at the ground floor of this property (which had otherwise been gifted to the appellant by her father). The first floor of this property (which had otherwise been bequeathed to the testatrix by her husband) has remained in occupation of respondent No. 1, the widowed daughter of the testatrix.
THE WILL IN QUESTION

6. The contested Will dated 20.05.2003 has been placed on record as Ex. PW1/H. A vast variety of features related with this Will form the subject of dispute in this case. The Trial Court and the High Court have also analysed and taken into account several of the suspicious circumstances

surrounding this Will and the long length of arguments of the learned counsel for the contesting parties in this appeal have also revolved around this Will. Having regard to the questions involved, it would be apposite to take note of the features and attributes of the contested Will to appreciate the stand of the contesting parties as also the findings in the impugned judgments.

6.1. The contested Will is drawn up in two pages. It is a partly holograph document in the manner that its opening and concluding passages/clauses are handwritten whereas the other paragraphs/clauses are of electronic print. This Will is said to have been executed on 20.05.2003 by Smt. Amarjeet Mamik while residing on the ground floor of the property in question at D-179, Defence Colony, New Delhi in the presence of the attesting witnesses and the appellant.

7. The Will in question reads as under: -

> "WILL I Amarjit Mamik aged 77 years w/o Lt. Col. (Retd) D.S. MAMIK r/o Ground floor D. 179, Defence Colony New Dlhi – 110024 c/o hereby make This my will and testament on This 20 day of May 2003 at New Delhi.
>
> 1. WHEREAS I was married to Lt. Col. (Rtd.) D.S. Mamik from which union the following children were born:
>
> 1. Mrs. Pamela Mehta - Daughter, aged 60 years
>
> 2. Col. (Rtd.) Prithivijit Mamik - Son, aged 57 years
>
> 3. Mrs. Kavita Kanwar - Daughter, aged 50 years
>
> 2. AND WHEREAS my said husband was the owner of the said building bearing No. D-179, Defence Colony, New Delhi – 110024, constructed on a plot of land admeasuring 325 sq. yds. and comprising of a ground floor, first floor, terrace thereon and the annexe block of garage and servant quarters thereon.
>
> 3. AND WHEREAS during his life time my said husband had executed a duly registered Gift Deed dated 25.1.2001 in respect of the ground floor of the said building in favour of my aforementioned youngest daughter Mrs. Kavita Kanwar who has after the execution of the said Gift Deed granted a licence to use the same floor for my residential purposes out of natural love and affection.
>
> 4. AND WHEREAS my said husband has vide Will dated 14.2.2001, validly executed and duly registered, bequeathed to me the first floor, the terrace thereon and all other portions of the said building, hereinafter referred to as the property, save and except the said ground floor of the same building.

I am in my full senses and disposing mind and I fully understand what is right and wrong. I am on my own accord voluntary, without any force, pressure, coercion or influence of any kind am making

this Will in order to direct as to the manner of the inheritance of my aforementioned assets upon my demise. I hereby and hereunder revoke any wills or codicils that I may have made in the past.

1. I hereby give, devise and bequeath to my youngest daughter the said Mrs. Kavita Kanwar my entire share in the aforementioned immovable property, namely the first floor and the terrace including all other portions, save and except the ground floor with specific directions that my said daughter Mrs. Kavita Kanwar will carry out either of the 2 options as deemed proper by her, namely

(a) construct on the terrace of the said building such residential facility of such covered area as is permissible under the Municipal Building Bye-laws at the time of my demise and hand over possession of the same construction to my elder daughter, namely Mrs. Pamela Mehta, who shall thereafter acquire sole exclusive title to the said portion with the terrace rights thereon continuing to vest in favour of the said Mrs. Kavita Kanwar, OR

(b) demolish the said building and carry out such new construction as is permissible under the Municipal Building Bye-laws and be the sole exclusive owner of the entire building thus constructed, save and except such constructed residential portion on the highest floor of such building, which portion shall vest solely and exclusively in favour of my said elder daughter Mrs. Pamela Mehta, while the terrace rights thereon shall continue to vest in favour of my said daughter Mrs. Kavita Kanwar.

2. I also direct that in the event of my acquiring any further movable or immovable assets hereinafter or any other assets that I may have forgotten to mention in the present Will the same shall devolve upon my daughter Mrs. Kavita Kanwar.

3. I hereby give, devise and bequeath to my son, Col.

Prithivijit Mamik, the credit balance lying in my Bank Accounts. I however, clarify that my said son shall not inherit any portion of my aforementioned immovable assets.

4. I hereby appoint my said daughter Mrs. Kavita Kanwar as the Executor of my Will.

In witness whereof, I Amarjit Mamik have set and subscribed my hand to this my last will as also to each of the 2 pages that comprise it having understood the contents thereof and endorsing thereby and giving my approval to the bequest made therein.

I fully endorse the manner in which my assets shall devolve as stated hereinabove in my will made out in 2 pages. Each of which page has been signed by me.

Amarjeet Mamik
Testator

Signed by the Testator in the presence of
the witnesses and the witnesses have
signed in the presence of the Testator

(Sd/-)

Witness No. 1: (Sd/-)
Maj Gen Manjit Ahluwalia
D-34 Defence Colony
20 May 2003

Witness No. 2: (Sd/-)
(Sd/-) 20/5/03 Urvinder S. Kohli

S/o S. Navinder S. Kohli
227 Jor Bagh N. Delhi"

(Note: The bold italicised portions are in the handwriting of the testatrix whereas unbold italicised portions are in the handwriting of the respective witnesses. All other contents are of electronic print)
SUMMARY OF PLEADINGS, ISSUES AND EVIDENCE AS ALSO THE RELEVANT PART OF PROCEEDINGS IN THE TRIAL COURT

8. Having taken note of the particulars of the parties and the property involved as also the contents of the Will in question, we may now summarise the pleadings of the parties, the issues framed by the Trial Court, the material aspects of evidence led by the parties and the relevant part of the proceedings in the Trial Court, which have bearing on the questions involved herein.

8.1. Briefly put, the petition leading to this appeal was filed by the appellant on 06.11.2006 in the Court of District Judge at Delhi under Section 276 of the Indian Succession Act, 1925 4 for grant of probate of the Will in question, said to have been executed by her mother Smt. Amarjeet Mamik while arraying the State (N.C.T., Delhi) as the party respondent. Thereafter, by filing amended memo of parties, the present respondent Nos. 1 and 2 were arrayed as respondent Nos. 2 and 3 respectively. The appellant stated the facts relating to the children of the testatrix as also the said gift of the ground floor made by the father in her favour and then, asserted in the petition that by the Will in question, the testatrix had bequeathed the first floor and other portions except the ground floor of the 4 Hereinafter also referred to as 'the Succession Act'. said property at No. D-179, Defence Colony, New Delhi in her favour with directions to carry out one of the two options, i.e., either to construct on the terrace of the first floor of the said property or to demolish the said building and to re-construct and give the highest floor of the said building to Mrs. Pamela Mehta (other daughter of testatrix) while retaining the terrace rights thereon; and had bequeathed the balance in her savings bank account maintained with Central Bank of India in favour of her son Col. (Rtd.) Prithivijit Mamik. While stating that the Will in question was duly executed in the presence of the aforesaid two witnesses and that the testatrix expired on 21.05.2006, the appellant asserted that she was the executor and beneficiary of the Will in question and was entitled to seek its probate. 8.2. For their relevance, we may usefully take note of the material contents of the said petition as also those of Schedule A and Schedule B attached to the petition, giving out respectively the particulars of the natural heirs of the deceased Smt. Amarjeet Mamik and a list of assets of the deceased as under:-

" *** *** ***

4. That the "WILL" dated 20.05.2003 was duly executed by Smt. Amarjeet Mamik in the presence of two witnesses namely Major Gen. Manjit Ahluwalia r/o D- 34, Defence Colony, New Delhi and Sh. Urvinder S.Kohli s/o S.Narinder S.Kohli r/o 227 Jor Bagh, New Delhi-110003.

5. That the deceased was the owner of first floor, the terrace thereon and all other portions of premises no. D-179, Defence Colony, New Delhi-110024, save and except the ground floor of the said building, as mentioned in the will and the said property, is likely to come to the hands of the petitioner and her sister namely Mrs. Pamela Mehta as per the "WILL".

6. That the husband of the deceased was the owner of property bearing no. D-179, Defence Colony, New Delhi-110024 constructed on a plot of land measuring 325 square yards and comprising of a ground floor, first floor, terrace thereon and an annexe block of garage and servant quarters thereon.

7. That during his lifetime the husband of the deceased had executed a duly registered gift deed dated 25.01.2001 in respect of the ground floor of the said building in favour of his youngest daughter i.e. Smt. Kavita Kanwar.

8. That the husband of the deceased vide 'Registered Will' dated 14.02.2001 bequeathed to the deceased the first floor, the terrace thereon and all other portions of the said building to the deceased, save and except the ground floor.

9. That Smt. Amarjeet Mamik died on 21.05.2006 at Delhi within the jurisdiction of this Court.

10. That the deceased Smt. Amarjeet Mamik was a Hindu by religion and she left behind, besides the petitioner the following relatives/legal heirs :

(i) Mrs. Pamela Mehta	Daughter
(ii) Col. (Rtd.) Prithvijit Mamik	Son

The complete addresses of the above heirs are given in the annexures marked as schedule 'A' attached with this petition. Except the above legal representatives there is no legal heir of the first class as mentioned in the Hindu Succession Act.

11. That the petitioner is one of the beneficiaries of the "WILL" dated 20.05.2003 and the petitioner is also the executor of the said "WILL". The immoveable property which is likely to come to the hands of the petitioner is having the worth of about Rs. 18 Lakhs.

12. That the assets which are likely to come in the hands of the petitioner are the first floor and other portions of the property no. D-179, Defence Colony, New Delhi-

110024 save and except the ground floor of the building and to carry out the two options of constructing either on the terrace of the first floor of the said building or to demolish the said building and to re-construct and give highest floor of the said building to Mrs. Pamela Mehta and retaining the terrace rights there on.

13. That the balance in the Savings Bank account No. 1001020597 maintained with the Central Bank of India, Defence Colony, New Delhi as mentioned in the Schedule-B attached to the petition will go to Col.

(Rtd.) Prithivijit Mamik and the petitioner does not claim the same.

*** *** ***

SCHEDULE A

Name and Addresses of the L.Rs of the deceased Smt. Amarjeet Mamik S. No. Name Relationship Address

1. Mrs. Pamela Mehta Daughter D-179,Defence Colony, New Delhi-

110024.

2. Co. (Rtd.) Prithvijit Mamik Son Madhuban Gian Vatika, Khalini, Shimla(H.P.)

3. Mrs. Kavita Kanwar Daughter S-45, Panchshila Park, New Delhi-3 *** *** *** SCHEDULE B IMMOVEABLE PROPERTY:

First floor, the terrace thereon and all other portions of premises no. D-179, Defence Colony, New Delhi-110024, save and except the ground floor of the said building.

MOVEABLE ASSETS:

1. Balance in Savings Account No. 1001020597 maintained with Central Bank of India, Defence Colony, New Delhi. Rs. 577389.00" *** *** ***"

9. The said petition seeking probate was eventually transferred to the Court of Additional District Judge, Delhi for consideration. After requisite publication and due notice, the respondents put in appearance but, on 18.04.2007, it was given out on behalf of the present respondent No. 1 that she did not wish to file objections to the petition. However, the objections with documents were indeed filed on behalf of the present respondent No. 2, who refuted the claim of the appellant and contended, inter alia, that the Will in question was forged and fabricated, where the appellant was the major beneficiary as also the executor; that there was no reason for exclusion of the respondents and grandchildren from the legacy; and that the property in question being an ancestral property, belongs to all the legal heirs of late Shri D.S. Mamik. The replying respondent maintained that there existed no dispute between testatrix and himself and there was no reason for the mother to have excluded him from the Will. He also contended that the property bequeathed in favour of the appellant was worth crores of rupees and hence, it was impossible to comprehend that his mother had left him merely a sum of Rs. 5,77,389/- when the relations between him and his mother were cordial.

10. The Trial Court framed the following issues for determination of the questions involved in the matter: -

"1. Whether the Will dated 20-5-2003 of Smt. Amarjeet Mamik is proper and valid? OPP

2. Whether the Will dated 20-5-2003 of Smt. Amarjeet Mamik is forged and fabricated? OPR-3

3. Whether the petitioner is entitled to the grant of Probate/Letter of Administration in respect of Will dated 20-5- 2003 of Smt. Amarjeet Mamik? OPP

4. Relief"

11. In evidence, the appellant examined herself as PW-1; and the two attesting witnesses of the contested Will, Shri Urvinder Singh Kohli and Major General Manjit Ahluwalia as PW-2 and PW-3 respectively. Shri Nikhil Kanwar, son of the appellant, was also examined as PW-4. In documentary evidence, the Will in question was marked as Ex. PW1/H. 11.1. It had been the consistent case of the appellant that she had no prior knowledge that the Will was being executed on the given day and that it was the testatrix who invited the appellant to her residence. The appellant asserted in her evidence that only after reaching her mother's house on the given day, it came to her knowledge that her mother was executing a Will.

She further stated that she was not aware of the contents of the Will. It had also been the assertion of the appellant that her parents had special love and affection for her and that had been the reason for them having gifted and bequeathed the said property to her only. The appellant also stated in the cross-examination: (i) that she did not know the educational qualification of the testatrix but she (testatrix) knew how to read and write in English; (ii) that she and the testatrix were not residing together for the last 20-22 years;

(iii) that the testatrix neither discussed the contents of the Will with her nor mentioned as to who had drawn and typed the Will in question; (iv) that she came to know about the existence of the Will on 20-21 May, 2003; (v) that her mother had not called respondent Nos. 1 and 2 on the day of execution of the Will; (vi) that respondent No. 1 was living on the floor above the testatrix and was looking after the testatrix, who was suffering from cancer;

(vii) that the testatrix had called the attesting witnesses; (viii) that she did not know when the testatrix discussed the Will with the respondents; (ix) that the testatrix had discussed the contents of the Will with the attesting witnesses (x) that she remembered the testatrix writing something but was not sure whether it was on the Will or something else 5; and (xi) that the relations of the testatrix and the respondent No. 2 were strained. 11.2. PW-2 and PW-3, the attesting witnesses, both specifically deposed that on their arrival at the house of Smt. Amarjeet Mamik, they found that the appellant was already present there; that the testatrix wrote something on the Will in their presence

before signing it; and that they were unaware of the contents of the Will as the same was not discussed with them. PW-2 also maintained that on 18.05.2003, the appellant had called him to the house of her mother on 20.05.2003. On the other hand, PW-3 deposed that it was the testatrix who invited him to her house that day; that he was having good relations with the appellant and the respondents; that the testatrix was having good relations with respondent No. 2 and also that when Smt. Amarjeet Mamik wrote something on the Will, she copied it from a draft which she had with her.

12. In opposition, the contesting respondents deposed as R2W-1 and R3W-1 respectively. Shri Ram Gopal Meena from the Post Office, Defence Colony was examined as R3W-2; Shri S.P. Sharma from State Bank of India as R3W-3; Shri R.S. Negi from Defence Colony Association Club as R3W-4; and Shri S.P. Khamra from Central Bank of India was examined as R3W-5. Several documents produced by the respondents like family photographs, birthday card sent by testatrix to respondent No. 2 etc. shall also be referred to at the appropriate juncture, to the extent of relevancy. 5 Though in the affidavit-in-evidence, the appellant had mentioned that her mother had written the introduction portion as also the concluding portion on the Will. 12.1. The respondent No. 1 in her evidence, inter alia, deposed that their mother was not even 10th standard pass and that she was having cordial relations with herself as also with the respondent No. 2. 12.2. The respondent No. 2 in his evidence, inter alia, deposed that he was having good relations with his mother; and, as he was serving in Indian Army, the mother would talk to him over the phone and would even send letters and birthday card wishing him all the happiness.

13. Before proceeding further, one of the peculiar aspects of the matter, which carry its own bearing on the relevant questions and emanates from the record of proceedings of the Trial Court, may be noticed as infra. 13.1. It appears that at the initial stage of proceedings in the Trial Court, the relations of the appellant and the respondent No. 1 (who was respondent No. 2 in the Trial Court) had not gone into any discord. As noticed, the present respondent No. 1 stated before the Trial Court on 18.04.2007 that she did not wish to file any objections to the petition. However, it appears that during the course of evidence of the appellant, differences and disputes spurted between the appellant and the respondent No. 1 and the appellant filed a separate civil suit for injunction against the respondent No. 1. In sequel to this new position of conflict of interests, the respondent No. 1 attempted to put forward direct contest of the petition seeking probate and, on 24.03.2008, moved an application under Section 151 of the Code of Civil Procedure ('CPC') before the Trial Court, seeking opportunity of further cross-examination of the appellant. In this application, the respondent No. 1, inter alia, raised a plea about the alleged third page of the Will in question. The application so moved was rejected by the Trial Court on 25.03.2008 and, as regards the point concerning the alleged third page of the Will, the Court observed as under:

> "25.03.2008 *** *** *** Point No. 2: From the point No. 2, it appears that respondent No. 2 now is raising a totally different and new stand regarding the 3rd page of the Will. She has not produced the original or copy of the alleged 3 rd page along with this application. The story of this 3rd page has come on record first time through this application which cannot be believed when nothing in this regard was asked in the cross examination of PW-1. Non filing of any objections against this Will

despite taking opportunities prima facie leads to the inference that respondent No. 2 accepted the Will as correct. She was also given some portion in the property under the Will and thus kept quite without disputing Will and now is challenging the genuineness of the Will all of a sudden simply on the ground that petitioner has filed a civil suit for injunction claiming exclusive ownership of the property. In the probate proceedings, the question of the ownership or title is not decided and court is only concerned with the fact whether the Will is genuine or not. Counsel for the petitioner during arguments stated that the rights given to the respondent No. 2 under the Will shall be protected. Keeping in view these above circumstances, I am of the view that no permission can be granted to the respondent No. 2 to cross examine further at point No. 2 mentioned in para No. 4 of the application." 13.2. On 24.03.2008, another part of the proceedings had been that the Court closed the opportunity for cross-examination of some of the witnesses of the appellant by the respondent No. 2. After the aforesaid proceedings, an application under Order IX Rule 7 CPC was filed on behalf of the respondent No. 2. On the other hand, an application seeking permission to file written statement and for condonation of delay was filed on behalf of the respondent No. 1. In that application, the present respondent No. 1 again referred to the alleged third page of the Will; and such an assertion was again emphatically denied by the appellant while maintaining that the Will in question was only in two pages and there was no third page of the Will as alleged.

13.2.1. The aforesaid two applications were dealt with by the Trial Court in its order dated 03.07.2008. While the application filed by the respondent No. 2 was granted on costs but the application moved by the respondent No. 1 was rejected with costs. In regard to the aspects concerning the alleged third page of the Will, the Trial Court, observed as under:

"In this application u/s 5 of Limitation Act, respondent no. 2 has relied upon alleged 3rd page of the Will whereas petitioner stated that the Will consisted of only 2 pages and it has no 3rd page. Respondent No. 2 has placed on record photocopy of that alleged 3rd page but even if this photocopy is seen and compared with original Will, then prima facie it can be said that it was not a part of the original Will the alleged 3rd page appears to be some another document and prima facia it is not certainly 3 rd page of the Will. Otherwise alleged 3rd page of the Will can not be relied upon because in the cross examination of PW-1 respondent no. 2 has not referred about it any where or confronted her with it though admittedly it was in her possession since beginning." 13.3. The respondents yet persisted with their assertion about existence of the third page of Will in question and now, the respondent No. 2 moved an application under Order XI Rule 12 and 14 CPC seeking production of the same. This application was also resisted by the appellant while denying existence of any such third page and even with the allegation that this third page had been fabricated by the respondents in connivance with each other. The Trial Court dealt with and rejected the application so moved by the respondent No. 2 (who was respondent No. 3 in the Trial Court) by way of its order dated 23.08.2008, inter alia, with the following

observations:-

"Counsel for Respondent no. 3 during arguments read the cross examination of the petitioner as well as the contents of the alleged third page of the Will to show that, that the movable properties was distributed by the deceased during her life time in accordance with the contents of the third page of the Will so it can be said that the Will in fact consisted of three pages and not two pages as alleged by the petitioner, however, I am not convinced with this submission. In the cross examination of the petitioner the alleged third page of the Will was never put to confront her in order to substantiate the plea that the Will consists of three pages. Even in the cross examination of PW-2 attesting witness of the Will no suggestion was given that the Will was of three pages and not of two pages. The Will Ex. PW-1/H is of two pages and even the handwritten endorsement at the end of it point out that it consisted of only two pages. The alleged third page of the Will, photocopy of which was placed on record by the respondent no. 2 does not bear any date or signatures of any attesting witnesses. The alleged third page has already been found not a part of the Will as per order dated 3-7-2008. The respondent no. 3 in his objection has described the entire Will as forged and fabricated but now cannot be allowed to take a contradictory stand that the third page is genuine and other two pages are forged on the ground that admittedly the movable property was distributed in accordance with the alleged third page among the legal heirs. In this case, the claim is made by the petitioner in respect of one immovable property and one bank account and no claim is made in respect of any movable property. Even if it is presumed that deceased during her life time distributed her personal belongings, cash and jewellery in accordance with the third page then also that third page has now become useless because the distribution of the movable assets took place during life time of the deceased whereas the Will has to take effect after the death of the testatrix. Accordingly, in this case only subject matter remains is immovable property and the bank account.

Petitioner has denied the existence of this alleged third page and also denied having possession of the same. She has also denied supplying of the copies of this alleged third page to the respondents at the time of service of the petition. The reply is supported by an affidavit of the petitioner, so in such situation also no direction can be given to the petitioner to produce the original of alleged third page of the Will which is being relied upon by the respondent no. 3 now. Petitioner infact is saying that this third page has been fabricated by the respondents in connivance with each other.

Accordingly, I find no merits in the application of respondent no. 3 especially when in the cross examination of PW-1 and PW-2 no such third page was put for confrontation and relying upon this alleged third page now is contradictory from the contents of the objections filed to the petition. Application is thus, dismissed with cost of Rs. 1000/- to be paid to the petitioner."

14. Hereinabove, we have expansively recounted the part of the proceedings in the Trial Court concerning the alleged third page of the Will.

As could be readily noticed, while the contesting respondents, one way or the other, kept on insisting that there had been a third page of the Will but, per contra, existence of any such third page of the Will in question was categorically denied by the appellant; rather the appellant alleged that the said third page had been fabricated by the respondents in connivance with each other. The Trial Court also accepted the submission of the appellant that no such third page existed, particularly after noticing that the appellant was never confronted with any such third page of the Will. The Trial Court even observed that distribution of movable assets of testatrix was complete during her lifetime and the only subject-matter remaining was the immovable property and the bank account. The relevance of these aspects shall appear in the later part of this judgment, when we shall be dealing with the effect of a different stand taken by appellant in the High Court. FINDINGS OF THE TRIAL COURT

15. Having glanced through the pleadings and evidence of the parties, having taken note of the contents and frame of the Will in question, and having also taken note of the relevant parts of proceedings before the Trial Court, we may look at the findings of the Trial Court in its judgment dated 23.11.2009, particularly the reasons that weighed with it while declining the prayer for probate of the Will in question.

15.1. As regards the objection of respondent No. 2 that the property in question was an ancestral property, the Trial Court referred to the decision of this Court in Chiranjilal Shrilal Goanka v. Jasjit Singh: (1993) 2 SCC 507 and held that the said objection would not be entertained because the 'question of right, title, share and ownership is not to be decided in the probate proceedings'. The Trial Court also found that the testatrix was of sound mind at the time of execution of the Will, particularly when she was handling her own affairs including bank account and property; was leading a very active life till her death; and was also attending club and driving her own car.

15.2. However, thereafter, the Trial Court took into account various circumstances which appeared to be suspicious. In the first place, the Trial Court referred to the decisions in H. Venkatachala Iyengar v. B.N. Thimmajamma: AIR 1959 SC 443, Indu Bala Bose v. Manindra Chandra Bose: (1982) 1 SCC 20 and Surendra Pal v. Dr. Saraswati Arora: (1974) 2 SCC 600 and observed that if propounder of the Will takes an active part in the execution of the Will and receives substantial benefit under it, then such a circumstance is generally treated as suspicious one. As regards the facts of the case at hand, the Trial Court found that the appellant played an active role in execution of the Will in question and at the same time, she was the major beneficiary thereunder where she was not only given the first floor but also the terrace rights and all other portions of the property in question.

15.3. Secondly, the Trial Court was of the view that the exclusion of the only son from the immovable property was also a suspicious circumstance. The Court took into consideration the birthday card Ex. RW3/1 sent by the testatrix to respondent No. 2 and was of the view that the words of praise in the said card belied the suggestion that the relationship between them was strained. The Trial Court also took into consideration the family photographs making out that the testatrix was present at the

second marriage of respondent No. 2 and observed that the said photographs were not challenged or questioned by the appellant. The Trial Court also observed that the testatrix would not have given him the amount in the bank account if their relations were strained.

15.4. Thirdly, the Trial Court also found that the other daughter of the testatrix (the respondent No. 1 herein) virtually did not get any substantial share. The Trial Court was of the view that the exclusion of respondent No. 1 from the Will, when there was no proof of strained relationship of testatrix with her, made the Will unnatural and unfair; and this was another strong suspicious circumstance to reject the Will.

15.5. Fourthly, the Trial Court did not feel satisfied about the manner of writing and execution of the Will and observed that the testatrix had not completed her education and was not a computer literate; that a few portions of the Will were handwritten and there were traces of pencil lines beneath the handwritten portions, making out that the testatrix was asked to write as per dictation on the particular portion; and that certain portions of the Will contained technical and legal words not known to a layperson. The Trial Court observed that the relevant facts as to how the Will was typed and how the testatrix was made to write the particular clause in the Will in her own handwriting were not clarified and the manner of execution of Will was another suspicious circumstance.

15.6. Fifthly, the Trial Court was of the view that the attesting witnesses were unreliable and the possibility of PW-3 being bribed was not ruled out as the appellant had given an amount of Rs. 25,000/- to his daughter. On the other hand, PW-2 admitted in his cross-examination that he hardly knew the testatrix.

15.7. Sixthly, the Trial Court also took into consideration the contradictions in the statements of the witnesses, which raised doubts as to the genuineness to the story of the appellant. The Trial Court pointed out that as per the appellant, she had no knowledge of the execution of the Will prior to 20.05.2003 but as per the testimony of PW-2, it was the appellant who called him on 18.05.2003 for the purpose of attestation of the Will. 15.8. Seventhly, the Trial Court also observed that there were vague recitals in the Will such as, ‘other portions of the building’, when the said property consisted only of the ground floor and first floor.

16. While elaborately dealing with all the suspicious circumstances concerning the Will and unreliability of the evidence led by the appellant, the Trial Court found that the appellant had not been able to remove the suspicions and hence, dismissed the petition.

CONCURRENCE OF THE HIGH COURT

17. Being aggrieved by the said judgment of the Trial Court, the appellant approached the High Court in FAO No. 36 of 2010 that has been considered and dismissed by the impugned judgment dated 27.06.2014. Having regard to the questions involved, we may notice the reasons that prevailed with the High Court in upholding the decision of the Trial Court in requisite details.

17.1. In the impugned judgment dated 27.06.2014, the High Court in the first place took note of the relevant material on record; the suspicious circumstances surrounding the Will in question as indicated by the Trial Court; and the contentions of respective parties. Thereafter, the High Court referred to the basic ingredients for due execution of a Will as per Section 63 of the Succession Act and Section 68 of the Indian Evidence Act, 1872 6 and the principles exposited by this Court in the cases of H. Venkatachala 6 Hereinafter also referred to as 'the Evidence Act'. Iyengar v. B.N. Thimmajamma (supra); Rani Purnima Debi v. Kumar Khagendra Narayan Deb: (1962) 3 SCR 195, Smt. Jaswant Kaur v. Smt. Amrit Kaur and Ors.: (1977) 1 SCC 369; Babu Singh and Ors. v. Ram Sahai @ Ram Singh: AIR 2008 SC 2485; Gurdial Kaur and Ors. v. Kartar Kaur and Ors.: 1998 SCR (2) 486; P.P.K. Gopalan Nambiar v. P.P.K. Balakrishnan Nambiar and Ors.: AIR 1995 SC 1852, Benga Behera and Anr. v. Braja Kisore Nanda and Ors.: (2007) 9 SCC 728 and B. Venkatamuni v. C.J. Ayodhya Ram Singh and Ors.: (2006) 13 SCC 449 as also in a Division Bench decision of Madras High Court in J. Mathew and Ors. v. Leela Joseph : (2007) 5 MLJ 740 and observed that as per settled law, mere proof of signatures on the Will was not sufficient to prove its due execution; and it was the duty of the party seeking probate to satisfy the conscience of the Court as regards due execution of the Will by the testator and for that matter, the Court can probe deeper into the matter to satisfy its conscience that the testator/testatrix had duly executed the Will after understanding its contents. The High Court, thus formulated the point for consideration as under:-

> "28. The question for consideration is whether the evidence led by the appellant i.e., propounder satisfies the conscience of the court that the Will in question was duly executed." 17.2. Thereafter, the High Court took up the crucial finding of the Trial Court that the evidence on record did not establish that while signing the Will Ex. PW1/H, the testatrix understood the contents thereof.
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> 17.2.1. In regard to this fundamental aspect as to whether the testatrix understood the contents of the document Ex. PW1/H, the High Court meticulously examined the material on record and observed that the appellant, in her evidence, did not mention that the testatrix was aware of the contents of the Will. The High Court further referred to the testimony of the appellant to the effect that she was not made aware by the testatrix as to who had drawn and typed the Will in question; that she was made aware about the Will only on the day of its execution; that she was not aware if testatrix had discussed the Will with respondent Nos. 1 and 2; that she was not directed by the testatrix to call respondent Nos. 1 and 2 on the day of execution of the Will; and that though she remembered the testatrix writing something, but she was unsure whether it was on the document of Will. A major discrepancy was observed by the High Court in her deposition with regard to the attesting witnesses where the appellant stated that the testatrix had discussed the contents of the Will with PW-2 and PW-3 while those witnesses denied the same in their evidence. Thus, after having thoroughly examined the testimony of the appellant, the High Court concluded that nothing was brought on record to show that the testatrix was aware of the contents of the Will. The High Court said,-

"30. The evidence on record in this regard is examined. The appellant has nowhere stated in her evidence by way of affidavit Ex.P1 that testatrix was aware of the contents of the Will Ex.PW1/H. In her cross-examination, she has stated that her mother i.e. testatrix did not discuss the contents of the Will Ex.PW1/H with her before drawing it nor her mother told her as to who had drawn and typed the said Will. The appellant has further stated in cross-examination that she does not know when Will Ex.PW1/H was got typed. She has further stated that she had come to know about the said Will Ex.PW1/H only on 20-21 May, 2003. The appellant has also deposed that she does not know whether her mother i.e., testatrix had discussed the Will Ex.PW 1/H with respondent no.2 or respondent no.3. Her mother did not ask her to call respondent nos.2 and 3 on that day. In cross-examination, she has further stated that her mother had discussed the contents of the Will with the witnesses i.e. PW2 and PW3 whereas PW2 and PW3 in their evidence have denied the same. The appellant has further deposed that she does not know if any professional or any deed writer was engaged for drafting/typing of the Will Ex.PW 1/H. The appellant has also deposed that on that day her mother had written something but she does not know whether it was on the Will or something else. From her evidence, it cannot be said that testatrix was aware about the contents of the Will Ex.PW1/H." 17.2.2. The High Court also examined the evidence of attesting witnesses PW-2 Shri Urvinder S. Kohli and PW-3 Major General Manjit Ahluwalia, who deposed that the testatrix did not discuss the contents of the Will with them nor did they question her about the same; and that after they had arrived at the residence of testatrix, she went ahead to write something more on the Will before signing it. The High Court observed that from their testimonies too, nothing was proved if the testatrix understood the contents of the document in question and said,-

" 33. Even from the evidence of attesting witnesses i.e. PW2 and PW3 it can't be said that testatrix had put her signatures on the Will Ex. PW1/H after understanding its contents or that while signing she was aware of its contents." 17.2.3. Proceeding further, the High Court also took note of the statement of the respondent No. 1 that the testatrix was not even 10th pass; and also referred to the statement of the appellant that she was not aware of the educational qualification of her mother but her mother could read and write in the English language. The High Court referred to the fact that the testatrix was not computer literate and had no legal knowledge; and the language used in the Will showed that the same was drafted by a lawyer. The High Court observed that no evidence was led in as to who drafted and typed the Will Ex. PW1/H and considered the same to be a suspicious circumstance with reference to the decision of this Court in Smt. Jaswant Kaur (supra). The High Court also took into account the feature that the document in question was partly typed and partly handwritten with no plausible explanation for the same and found that the document was not prepared in one sitting. Thus, after thorough analysis, the High Court concluded that from the evidence led in by the appellant, it cannot be said that the testatrix had understood the typed portion or that the same was read over to her before she put her signatures on the Will. Accordingly, the High Court affirmed the findings of the Trial Court in regard to such a suspicious circumstance while observing and finding as under: – "35. ...The Will Ex. PW1/H is partly typed and partly hand written i.e. opening and closing para of the Will Ex. PW1/H. The evidence shows that the Will Ex. PW1/H was also not prepared in one sitting. The first and last para of Will Ex. PW1/H is in the handwriting of testatrix. The rest of the Will Ex. PW1/H is typed one. No explanation has been given in evidence as to why the Will is partly handwritten and partly typed. During arguments, learned counsel for appellant has submitted that first and last para are handwritten so as to give more

weightage to the Will in question. However, the reasoning given is not understandable. Further, no evidence is led by the appellant to show from where the Will in question was got typed. The first para of Will in question gives the name and other details of testatrix and last para is the closing para of the Will in question. The typed portion gives the details of alleged bequeath in the Will Ex. PW1/H whereby major portion has been given to the appellant and one floor as per choice of the appellant is alleged to have been bequeathed in favour of respondent No. 2. Reading the evidence led by the appellant it can't be said that the testatrix had understood the typed portion or same was read over to her before she had put her signatures on the Will Ex. PW1/H. The learned ADJ has rightly held the above as the suspicious circumstance....." 17.3. The High Court thereafter examined the bequeathing contents of the Will in question and observed that nothing was available in the petition or evidence of the appellant as to why the major portion of immovable property was given to her though she was not staying with the testatrix for about 20- 22 years and it was not her case that she was looking after the testatrix who was a cancer patient. On the other side of the picture, the High Court noticed that the widowed daughter of the testatrix (respondent No. 1 herein) was, at the relevant time, living on the first floor of the house where testatrix was residing; and, as per the evidence on record, respondent No. 1 was looking after her mother and was taking her to Army Hospital. Having thus taken note of the overall scenario and setup, the High Court found it rather inexplicable that the respondent No. 1 was left at the mercy of the appellant; that in the Will in question, no time limit was provided as to when the appellant would construct the floors and about the nature and quality of the construction; and that respondent No. 1 shall have to be dispossessed for the purpose of the expected construction.

17.4. The High Court also dealt with another major factor pertaining to this case that the appellant, the major beneficiary, indeed played an active role in execution of the Will in question; and noticed material contradictions in the testimonies of appellant and her witness PW-2. The High Court found that the appellant was unable to satisfy the conscience of the Court in regard to such suspicious circumstance in the following passages:-

> "40. Reading the Will in question, it is the appellant who is the major beneficiary of the Will. The evidence on record shows that she has also played an active role in the preparation of the alleged Will. She was present when the Will in question was allegedly executed. The attesting witness Urvinder S Kohli, PW-2 is very well known to the appellant being her friend for the past 30 years. He has deposed that he had known deceased through appellant and later the appellant's cousin's son got married to his daughter in the year 1994 and since 1994 he had visited testatrix only twice or thrice on social occasions. Reading his evidence it can't be said that he was close to the testatrix. In these circumstances, testatrix could not have called him of her own for attesting the Will Ex.PW1/H. Though in the evidence, appellant has deposed that her mother i.e., testatrix had called the said witnesses whereas the witness PW2 has deposed that on 18.5.2003, he was called by the appellant who told him to come to her mother's house on 20.5.2003 as her mother wanted to executed the Will.
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> 41. The evidence on record shows that appellant has taken a prominent part in execution of Will Ex.PW1/H which confers on her a substantial benefit worth crores

of rupees. This itself is a big suspicious circumstance as has been held by Supreme Court in Niranjan Umesh Chandra Joshi vs. Mridula Jyoti Rao: 2007 (1) AD SC 477. It has also been held by Supreme Court in Surinder Pal vs. Saraswati Arora: (1974) 2 SCC 600 that where propounder takes prominent part in the execution of Will which confers on him a substantial benefit that is itself one of the suspicious circumstance which he must remove by clear evidence. In the present case no evidence is led by appellant to satisfy the conscience of the court to clear the aforesaid suspicious circumstance existing at the time of making of Will Ex.PW1/H. The propounder was required to remove the doubts by clear and satisfactory evidence." 17.5. Turning on to the respondent No. 2 (son of the testatrix), the High Court found that absolutely no reason was provided in the Will for excluding him from the said immovable property and for limiting his benefit under the Will to the balance amount in the savings bank account of the testatrix. The High Court observed that though the appellant had deposed that there were strained relations between the testatrix and respondent No. 2 but, on the contrary, the witness PW-3 Major General Manjit Ahluwalia, son of sister of the testatrix, as also respondent No. 1 had deposed that their relations, in fact, were satisfactory. The High Court again referred to the documentary evidence as regards regular maintaining of good relations between the testatrix and her son, like those of birthday card and the family photographs, and observed that if at all there were strained relations, the testatrix would not have even bequeathed any amount to her son. Again, after a thorough analysis of the evidence on record, the High Court found that there was no sufficient evidence of strained relations between the testatrix and her son to such an extent that she would have excluded him from her immovable property. Hence, the exclusion of respondent No. 2 from bequeath was also taken to be that of a grave suspicious circumstance casting doubt on the genuineness of the Will in question. The High Court, inter alia, observed,-

"46. There is no evidence coming forth to explain the suspicious circumstance of excluding respondent no.3 from bequeath of the immovable property. As noted above, there is no evidence that deceased had understood the contents of the Will Ex.PW1/H before signing it. In this background, exclusion of respondent no.3 is also a grave suspicious circumstance which has also remained unexplained. The same cast doubt as to the genuineness of Will Ex.PW1/H." 17.6. Yet further, the High Court also noticed that though respondent No. 1 resided only one floor above the testatrix and was also maintaining good relations with her, but only the appellant was called at the time of execution of the Will and no reason was provided for not calling the respondent No. 1. That apart, the High Court also took note of the fact that respondent No. 1 was made aware of the execution of the Will only after three years from the date of its execution. The execution of the Will in secrecy, without informing the other legal heirs, and without affording explanation for such an act, was also considered as another unexplained suspicious circumstance. 17.7. The High Court also referred to various contradictions in the testimonies of the appellant and the said two attesting witnesses on the material aspects concerning the execution of Will by testatrix, particularly as to how the handwritten portion was scribed on the document and as regards discussion concerning the contents of the document; and found such contradictions to be serious in nature, creating doubt about the execution of Will Ex. PW1/H in accordance with law. After examining the relevant parts of

evidence, the High Court observed and found as under:-

> "48. Further, there are serious contradictions in the testimony of attesting witnesses i.e. PW2 and PW3 and that of appellant on material aspects pertaining to the execution of the Will. In affidavit Ex. P1 the appellant has stated that the testatrix had brought out a partly typed Will and further wrote in her own hand the opening and closing paragraphs of the Will Ex. PW1/H. In cross-examination, she has stated that she does not know whether she had written on the Will or something else. Sh. Urvinder S. Kohli PW2 has stated that the handwritten portion on the Will Ex. PW1/H was written by the testatrix of her own. Sh. Manjit Ahluwalia PW3 has stated in cross-examination that the testatrix was having one draft out of which she copied something in her own handwriting on Will Ex. PW1/H. All the three witnesses have deposed differently as to how handwritten portion was written on Will Ex. PW1/H. There is also contradiction as regards discussion about the contents of Will Ex. PW1/H by testatrix with the attesting witnesses. The appellant has stated in her cross- examination that her mother had discussed the contents of Will with the witnesses whereas both the attesting witnesses have denied that the contents of Will were discussed by the testatrix. PW2 has also stated in the cross-examination that he even did not question the testatrix on the same. There is also contradiction about the manner of taking out of Will at the time the witnesses had reached the house of testatrix. The attesting witness PW2 has deposed that the Will was not produced before him when he was present with the testatrix and appellant. According to him, when PW3 had come, only then the Will was produced. On the other hand, Sh. Manjit Ahluwalia PW3 has deposed that when he had reached the house of testatrix Will Ex. PW1/H had already been taken out by the testatrix before he reached her house. The above contradictions are serious in nature and create a doubt about the execution of Will Ex. PW1/H in accordance with law." 17.8. Taking into comprehension the aforesaid observations and findings, it is apparent that the High Court, after an independent analysis of the evidence on record, concurred with the major findings of the Trial Court as regards various suspicious circumstances which remained unexplained and which operated against genuineness of the document propounded as Will of the mother of the parties. However, that was not the end of the matter because another doubtful factor was also analysed by the High Court as regards payment of a sum of Rs. 25,000/- by the appellant to the daughter of the attesting witness PW-3 Major General Manjit Ahluwalia, through cheque from an account jointly maintained in the name of testatrix and the appellant but, after the death of the testatrix. The contesting respondents claimed that the aforesaid payment was made in order to garner favour from the attesting witness PW-3. In this regard, the stand of the appellant had been that such an amount was paid not only to the daughter of PW-3 but also to the daughter of respondent No. 1 and to the sons of appellant as the testatrix wanted to gift the said amount to them. Interestingly, in order to buttress this stand of the appellant that the amount was paid to the daughter of PW-3 as per the wishes of testatrix, the learned counsel for the appellant before the High Court referred to the alleged third page of the Will. After noticing such a

> submission made on behalf of the appellant with reliance on the alleged third page of the Will, the High Court referred to the very same proceedings of the Trial Court which we have referred in detail hereinbefore, where the respondents wanted to produce the alleged third page of the Will but the appellant denied the very existence of any such third page of the Will in question. The High Court found that the said third page of the Will was never produced before the Trial Court; and observed that even if existing, the alleged third page of the Will does not dispel the suspicious circumstances. This part of the discussion and observations of the High Court, in paragraph 49 of the impugned judgment, could be usefully extracted as under: – "49. It has also come in the evidence that Rs. 25000/-

was paid by the appellant to the daughter of the attesting witness Major General Manjit Ahluwalia PW3 through cheque Ex. R3W1-C from account jointly in the name of testatrix and the appellant after the death of testatrix. The stand of respondent No. 2 and 3 is that the aforesaid payment was made in order to get favour from the attesting witness PW3 as such his evidence is not reliable. On the other hand, the stand of the appellant is that the said amount was not only paid to the daughter of PW3 but was also paid to the daughter of respondent No. 2 and to the son of appellant as the deceased/testatrix wanted to gift the said amount to them. In support of the stand, learned counsel for appellant has referred to the alleged third stage of Will in question. It may be mentioned that the alleged third page of the Will Ex.PW1/H is never produced by the appellant. Rather, when the respondent No. 3 had moved an application for production of the alleged third page of the Will, appellant had denied the existence of said page. The third page of the Will is never proved before the learned ADJ. Even assuming the alleged third page exists, the same does not dispel the suspicious circumstances as have been noted above. In these circumstances, the contention of the appellant that the alleged third page of Will Ex. PW1/H proves its validity has no force." 17.9. After taking note of the aforesaid inexplicable features, unusual circumstances and unreliability of the witnesses, and finding no fault or malafide in the respondent No. 1 contesting the matter at the later stage, the High Court in its impugned judgment dated 27.06.2014, while concurring with the findings of the Trial Court, dismissed the appeal and held that mere signature on the Will by the testatrix was not sufficient to prove that the said Will was duly executed after understanding the contents thereof. The High Court concluded on the matter as follows:-

> "51. In view of above discussion, the findings of learned ADJ that Will Ex.PW1/H is surrounded by various suspicious circumstances which has remained unexplained and the possibility of aforesaid Will not duly executed by the deceased after understanding its contents are confirmed. No illegality or perversity is seen in the findings given by the learned ADJ. No case is made out for interference with the impugned judgment." RIVAL CONTENTIONS The Appellant

18. Being aggrieved by the judgment so passed by the High Court dismissing her appeal and maintaining rejection of her prayer for grant of probate, the petitioner-appellant has preferred this appeal by special leave. Assailing the impugned judgments, learned counsel for the appellant has strenuously contended that due execution of the Will as per the requirements of the Succession Act having been proved in accordance with procedure prescribed by the Evidence Act; and no cogent

reason or circumstance having been established on record against the genuineness of the contested Will, a clear case for grant of probate is made out but the Trial Court as also the High Court have proceeded to reject the prayer of the appellant on entirely baseless considerations while doubting the Will on the so-called suspicious circumstances, though there is none. 18.1. Elaborating on her submissions, the learned counsel for the appellant has submitted that a Will has to be proved like any other document but, it has to satisfy the requirements of Section 63 of the Succession Act in the manner that for due execution, the testator has to sign or affix his mark on the Will or it has to be signed by some other person in the presence of testator and under his direction; and the Will has to be attested by two or more witnesses, each of whom has seen such signing or affixation by testator or by other person acting as per the directions of the testator. Further to that, as per Section 68 of the Evidence Act, at least one attesting witness has to be examined in proof of a Will. The learned counsel would submit that in the present case, all the requirements of Section 63 of the Succession Act are duly satisfied in the execution of the Will in question; and the same has been duly proved with examination of both the attesting witnesses before the Court as PW-2 and PW-3. The learned counsel has contended that the appellant having duly discharged her burden and nothing concrete having been brought on record so as to create any legitimate suspicion, there is no reason to deny probate as prayed for. 18.2. While asserting the case of the appellant for grant of probate in relation to the Will in question, the learned counsel has, in the first place, questioned the standing and stance of the respondents in attempting to raise certain issues about the Will in question.

18.2.1. As regards respondent No. 1, learned counsel for the appellant has contended that she has no locus either to lead evidence or to doubt the validity and genuineness of the Will for the reason that she did not file any objections before the Trial Court and as such, inevitably, had accepted the execution of the Will in question as being the last testament of her mother. The learned counsel would submit that the applications filed by respondent No. 1, for recall of the appellant for the purpose of further cross-examination and for permission to file written statement were rejected by the Trial Court and she did not challenge the orders so passed against her and thereby, such orders have attained finality. The learned counsel has submitted, with reference to Section 268 of Succession Act with Order VIII Rule 10 of CPC as also Order XIV Rule 1 (6) read with Order XV Rule 2 CPC, that the status of respondent No. 1 remains to be that of a defendant who is not at issue with the plaintiff; and in the given circumstances, all the suggestions sought to be made on her behalf deserve no consideration. With reference to the decision in Bachhaj Nahar v. Nilima Mandal and Anr.: (2008) 17 SCC 491, the learned counsel has submitted that evidence led in without pleadings by the respondent No. 1 remains inadmissible. The learned counsel has also submitted that it is for the first time before this Court that a new plea of fact was introduced by the respondent No. 1 in the written submissions as regards the status of relationship between the respondent No. 1 and her mother; and that the provisions under Order VI Rule 7 of CPC prevent introduction of new grounds of claim except by way of amendment. The learned counsel has emphatically argued that from the very beginning, the premise of respondent No. 1 had been that she admitted the genuineness of the Will and therefore, a stand contrary to the same cannot now be raised by her before this Court.

18.2.2. As regards respondent No. 2, learned counsel for the appellant has referred to the objections filed by him and has submitted that most of the objections being totally baseless and untenable, were clearly rejected by the Trial Court like those suggested as if the Will in question was forged and

fabricated or those seeking to question the disposing state of mind of the testatrix. The learned counsel has also submitted that the respondent No. 2 went on to suggest ancestral character of the property in question and the Trial Court has rightly rejected such objections too with reference to the decision in Chiranjilal (supra) because title of the property is not to be decided in probate proceeding. The learned counsel has further submitted that the suggestions by this respondent about his cordial relations with the testatrix have not been established on record and a few photographs and letters produced by him do not establish that he was in thick of relations with the testatrix; rather, as per the evidence on record, he remained away and detached from the family and he was not even aware about the ailment of the testatrix. Thus, according to the learned counsel, even the objections of respondent do not make out a case of any such suspicious circumstance for which the genuineness of the Will in question may be doubted. 18.3. As regards the testimonies of the two attesting witnesses, the learned counsel would submit that they have clearly proved the material facts relating to due execution of Will and attestation by them; and the doubts sought to be thrown upon them with reference to some minor and natural discrepancies, or their acquaintance with the appellant are of no consequence. The learned counsel has contended that the Will was executed in the year 2003 while the testimonies of the witnesses were recorded only in the year 2008 and therefore, minor variations on details as to who arrived first or what portion was written on the Will etc., do not affect the substance of their evidence.

18.4. The learned counsel has referred to various decisions like those in H. Venkatachala Iyengar (supra), Madhukar D. Shende v. Tarabai Aba Shedage: (2002) 2 SCC 85; and Joyce Primrose Prestor v. Vera Marie Vas: (1996) 9 SCC 324 to submit that though the initial onus to prove the Will is on the propounder but once that burden is discharged, any suspicion alone cannot form the foundation of judicial verdict; and any suggestion about suspicion ought to be examined by the Court while guarding against conjectures and mere fantasy of a doubting mind. The learned counsel has iterated the principles in the decisions aforesaid that there ought to be real, germane and valid suspicious features for which the propounded Will may be called in question, but there had been no such feature or circumstance in the present case.

18.5. As regards the manner of execution of the Will in question, the learned counsel has submitted that the ratio of Joyce Primrose Prestor (supra), that greater degree of presumption arises in the case of a “holograph” Will, is applicable to the present case too, where the significant contents relating to the particulars of the testatrix and her unequivocal bequeath, in the opening and concluding passages, were duly written in her own hand by the testatrix.

18.6. While dealing with the suspicious circumstances taken into consideration by the Trial Court and the High Court, the learned counsel has submitted that the alleged circumstances were either non-existent, or were not pleaded, or were not of any suspicion at all. 18.6.1. The learned counsel would submit that the circumstances like the appellant being the major beneficiary; she playing an active role in execution of the Will; exclusion of son from the benefit of estate; the other daughter virtually not getting any share; and the manner of writing of the Will were neither specifically pleaded nor they operate against the genuineness of the Will in question. Further, according to the learned counsel, the circumstances like non-information of execution of Will to the legal heirs; vague contents of Will; and contradictions in the statements of witnesses are, on the face of it,

imaginary and conjectural and could only be ignored.

18.6.2. The learned counsel has contended, with reference to the decisions in Leela Rajagopal and Ors. v. Kamala Menon Cocharan and Ors.:

> (2014) 15 SCC 570, Ved Mitra Verma v. Dharam Deo Verma: (2014) 15 SCC 578; Mahesh Kumar v. Vinod Kumar and Ors.: (2012) 4 SCC 387;

Savithri and Ors. v. Karthyayani Amma and Ors.: (2007) 11 SCC 621; Pentakota Satyanarayana and Ors. v. Pentakota Seetharatnam and Ors.: (2005) 8 SCC 67; Uma Devi Nambiar and Ors.v. T.C. Sidhan:

> (2004) 2 SCC 321; Ramabai Padmakar Patil and Ors. v. Rukminibai Vishnu Vekhande and Ors.: (2003) 8 SCC 537 and Rabindra Nath Mukherjee and Anr. v. Panchanan Banerjee and Ors.: (1995) 4 SCC 459, that mere presence of the propounder/beneficiary of a Will at the time of its execution; or exclusion of the natural heirs from any benefit; or acquaintance of the propounder with any witness are not of such suspicious circumstances as to create legitimate doubts on the genuineness of the Will.

18.6.3. As regards the question of monetary benefits to the attesting witnesses, it is maintained on behalf of the appellant that there had not been any monetary benefit to PW-2; and monetary benefit to the daughter of PW-3 has to be seen in the background that the said witness is a Major General and was closely related to the testatrix; there is no allegation as to the credibility of the said witness; and the frivolous doubt is being raised on his credibility only where an amount of Rs. 25,000/- 'out of love and affection' has been given in the year 2006.

18.7. Thus, it is submitted that the Will in question is the genuine last Will of the mother of parties; and the appellant being the executor, may be granted probate as prayed for.

19. While countering the submissions made on behalf of the appellant, learned counsel for the respondent No. 2, son of testatrix who had filed the objections and has consistently contested the matter, has recounted the suspicious circumstances taken into account by the Trial Court and the High Court and has contended that the appellant has utterly failed to explain any of them and hence, the Will in question cannot be said to have been made by the testatrix after understanding the meaning and purport of its contents. 19.1. In the forefront of arguments, learned counsel for the respondent No. 2 has submitted that the appellant, who is admittedly the major beneficiary of the disputed bequest, indeed played a prominent role in execution of the Will in question and then, tried to deliberately conceal this fact of her active role in making of the document. The learned counsel has elaborated on these submissions with reference to the pleadings and averments of the appellant at various stages of proceedings where she consistently maintained that she 'had role in the making and execution' of the Will in question. The learned counsel has also referred to the statement of the appellant in the cross-examination to the effect that the testatrix did not ask her to find witnesses to the Will and that she might have called the witnesses to the Will on her own. These assertions of the

appellant, according to the learned counsel, are effectively contradicted by PW-2 Urvinder S Kohli, who maintained that it was the appellant who, on 18.05.2003, asked him to come to the testatrix's house and thereupon he agreed to come on 20.05.2003. With reference to the decision in H. Ventakachala Iyengar (supra), the learned counsel has argued that when the propounder plays an active role in execution of Will and gets major benefit thereunder, that itself is a suspicious circumstance and the propounder must remove the suspicion by clear and satisfactory evidence, which the appellant has failed to adduce.

19.2. Further, the learned counsel for the respondent No. 2 has referred to the other parts of the testimony of PW-2 Urvinder S Kohli to submit that this witness was barely known to the testatrix whereas he was close to the appellant for about 30 years. With reference to the decision of this Court in Ramchandra Rambux v. Champabai and Ors.: AIR 1965 SC 354 and that of Delhi High Court in Rajesh Chand and Ors. v. Dayawati and Ors.:

> ILR (1981) 2 Delhi 477, the learned counsel has contended that closeness of attesting witness of the Will with the propounder is itself a suspicious circumstance; and the appellant has failed to explain this circumstance either.
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> 19.3. The learned counsel for the respondent has further made scathing remarks in relation to the bequest as proposed in the Will in question and has submitted that without any rhyme or reason, such unjust and unreasonable distribution of the assets of the testatrix has been proposed which was not likely to be made by the mother of parties, particularly when she had nothing against her son and against the other daughter.
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> 19.3.1. The learned counsel would submit that in fact, the other daughter (respondent No. 1) of the testatrix was a widow with an unmarried daughter;

and she had been given the first floor of the house (which was the property of testatrix) for residence; and she was taking care of testatrix, who was suffering from cancer. In the given circumstances, there was no reason that testatrix would have left her widowed and needy daughter at the mercy of the appellant with vague and uncertain conditions of raising upper story construction by the appellant, as found in the Will in question. The learned counsel would also submit that the bequeath made by the testatrix could be limited to her property alone and cannot include a property constructed by another person; that a property constructed using one's own money will be the exclusive property of that person and as such, the conditional bequest made in the present case, to appear as if the respondent No. 1 was likely to get some property, had, in fact, been sham and illusory. According to the learned counsel, such wordings in the Will as also the payments and handing over car to the daughter of respondent No. 1 seems to have precluded her from contesting the matter in the first place but that does not give any weight or support to the Will in question.

19.3.2. While relying on the same decisions and with reference to the material on record, the learned counsel has submitted that respondent No. 2, though having remained away because of his

enlistment in the Army, had always been in good terms with his parents; and there was no reason that his mother, the testatrix, would have given him only a pittance of amount in the bank while disinheriting him from the immovable property. 19.3.3. The learned counsel has relied on the decision in Rani Purnima Debi (supra) and has also referred to the decision in Ram Piari v. Bhagwant and Ors.: AIR 1990 SC 1742 to submit that disinheritance among heirs of equal degrees without providing any reason for exclusion of daughter also amounts to a suspicious circumstance. 19.4. The learned counsel has also questioned the manner of writing and executing the document in question. The learned counsel has referred to the inconsistencies in the depositions of the witnesses in regard to the questions as whether the contents of the Will in question were made known to the testatrix and whether the same were discussed with the witnesses. The learned counsel would submit that the testatrix was barely 10th standard pass and was, obviously not conversant with such legal jargon as would appear in the body of the Will in question. The appellant has attempted to say that she had no role in typing/scribing of the document and as per the witnesses, the contents were not discussed with them. In such a scenario, there remains another unexplained suspicious circumstance, as to who had drafted the Will in question and who prepared the alleged note for the testatrix wherefrom, she was to write at the opening and closing parts of the Will. The learned counsel has submitted that when the main part of the Will was typed, it is questionable why the inconsequential portion was handwritten; and these lacunas in the evidence of the appellant raises a possibility that the Will was neither prepared nor understood by the testatrix. The learned counsel has referred to the decision in Krishan Dass Gupta v. The State & Ors: 2012 SCC OnLine DEL 977 19.5. Another long deal of arguments by the learned counsel for the respondent No. 2 has been with reference to the alleged third page of the Will. The learned counsel has referred to the very same proceedings in the Trial Court which we have recounted hereinbefore; and has submitted that in the Trial Court, appellant consistently maintained that there was no third page of the Will but when the issue of payment of a sum of Rs. 25,000/- to the daughter of the attesting witness PW-3 cropped up before the High Court, such a payment was sought to be justified with reference to the very same third page of the Will in question. Such shifting stand of the appellant, according to the learned counsel, gives rise to more suspicions; and it appears seriously questionable if the Will in question was indeed the last Will of the testatrix and was executed with the contents as desired by her.

20. On the other flank of opposition, learned counsel for respondent No. 1 has maintained that this respondent has all through disputed the very execution of the Will by her mother; and the suspicious circumstances having not been removed, the prayer for grant of probate has rightly been rejected.

20.1. In the first place, learned counsel for respondent No. 1 has vehemently countered the submissions that this respondent had accepted the claim of the appellant for probate of the Will in question and she is not entitled to make the submissions in contest. The learned counsel has referred to the facts that even if this respondent did not file her written statement, she indeed led evidence rebutting the case of the appellant and the Courts have returned concurrent findings that her contest was neither an afterthought nor malafide. The learned counsel has referred to the aforementioned decisions in H. Venkatachala Iyengar, Rani Purnima Debi and Smt. Jaswant Kaur to submit that Probate Court is a Court of conscience; and where the propounder is to satisfy the conscience of the Court with removal of suspicious circumstances, the respondent No 1, elder and

widowed daughter of the testatrix, has every right to make submissions to assist the Court in such an enquiry. Without prejudice, the learned counsel has further submitted that even in a civil case where right of filing written statement is closed, the defendant is not precluded from demonstrating that the evidence led by the plaintiff is not sufficient to make out a case for grant of relief as prayed for. The learned counsel has, inter alia, referred to Section 58 of the Evidence Act; Order VIII Rule 5(2) and Order VIII Rule 10 CPC and has relied on the decision in Balraj Taneja and Anr. v. Sunil Madan and Anr.: (1999) 8 SCC 396. The learned counsel has also pointed out that appellant never objected to the evidence of the respondent No. 1 and while relying on the decision in Modula India v. Kamakshya Singh Deo: (1988) 4 SCC 619, has contended that the submissions of respondent No. 1 cannot be discarded. 20.2. The learned counsel has referred to the position of respondent No. 1 and her relationship with the testatrix with the submissions that respondent No. 1 is the eldest daughter of the testatrix, being 10 years older to the appellant and three years older to the respondent No. 2; that the testatrix being aware of her adverse circumstances, had given her the first floor of the property (which is the subject-matter of the present proceeding); that the relationship between the testatrix and the respondent No. 1 had always been very good; that testatrix being a cancer patient, the respondent No. 1 was taking her for treatment to Army Hospital; that due to the physical proximity while residing in the same building, the testatrix and the respondent No. 1 had special bonds between them. In the given setup, according to the learned counsel, it seems quite unnatural that the testatrix would leave the respondent No. 1 at the mercy of appellant with such uncertain stipulations as contained in the contested Will. 20.3. Arguing further, the learned counsel has contended that though the appellant has attempted to suggest that the respondent No. 1 was excluded from the first floor of the property in question but, there had not been any reason for such exclusion. The learned counsel has contended what has been created by the Will in question is only an illusory and vague bequest in relation to the respondent No. 1 for: a) the bequest to respondent No.1 is of a floor above the first floor, which is not in existence; b) no time frame is provided within which the appellant may choose to execute either of the two options and no corresponding option is provided to respondent No.1 meaning thereby, that the bequest made by virtue of the Will in favour of respondent No.1 has been indefinitely postponed; c) the entire property is vested in the appellant immediately upon the demise of the testatrix including the bequest made to respondent No. 1; and d) the nature and quality of the expected construction has not been specified. According to the learned counsel, practically there is no effective bequest in relation to the respondent No. 1 and there is no reason for the testatrix adopting the course as suggested.

20.4. The learned counsel has relied on the decisions of this Court in B. Venkatamuni v. C.J. Ayodhya Ram Singh & Ors. : (2006) 13 SCC 449; H. Ventakachala Iyengar; and Rani Purnima Debi (supra) amongst others, to submit that the Probate Court can investigate into the matter of a Will despite the fact that the signature found thereon has been proved or ingredients of Section 68 of the Evidence Act has been complied with. The learned counsel has referred to the definition of the expression “suspicion” in P. Ramanatha Aiyar’s Advanced Law Lexicon and has also relied upon the decision in Indu Bala (supra) to submit that suspicion permits the Court to realistically imagine any doubtful or distrustful facet of a case; and in testamentary jurisdiction, the Courts are permitted to ferret out doubtful circumstances, which cannot be described as conjecture or surmise. 20.5. The learned counsel has again recounted various circumstances, including manner of making of the Will and contradictions/inconsistencies in the statements of the witnesses examined by the appellant,

which have been taken into account in the impugned judgments and have also been referred by the learned counsel for the respondent No. 2; which need not be repeated. The learned counsel has also placed before us a flow chart reflecting thirteen aspects of findings, including those of suspicious circumstances, which have been returned concurrently against the appellant and has contended that no case for interference with such concurrent findings is made out. The counsel has additionally relied on the decision in Apoline D'Souza v. John D'Souza: AIR 2007 SC 2219. 20.6. In another line of arguments, learned counsel for the respondent No. 1 has contended that the Will in question cannot have greater sanctity only because the opening and closing parts are handwritten; rather it is strange that the testatrix chose not to write the main bequest by hand and then, the handwritten portion of the Will in question is placed in a squeezed manner and is not attested by any witness. The learned counsel would submit that such interlineations only go to show that additions have been made in the Will subsequent to its execution and failure to assign the reason behind such a course is fatal to the case put up by the propounder. The learned counsel has relied on the decision in Dayananadi v. Rukma D. Suvarna & Ors.: (2012) 1 SCC 510 in support of these contentions.

21. We have bestowed anxious consideration to the rival submissions with reference to the law applicable and have also scanned through all the records pertaining to this case, including the records of the Trial Court and the High Court.

WILL – PROOF AND SATISFACTION OF THE COURT

22. As noticed, the basic point for determination in this appeal is as to whether the Trial Court and the High Court were justified in declining to grant probate in relation to the Will dated 20.05.2003 as prayed for. Obviously, a just and proper determination of this point would revolve around the legal principles applicable as also the relevant factual aspects of the case. Before entering into the factual aspects and the questions in controversy, appropriate it would be to take note of the applicable legal provisions and principles concerning execution of a Will, its proof, and its acceptance by the Court.

23. It remains trite that a Will is the testamentary document that comes into operation after the death of the testator. The peculiar nature of such a document has led to solemn provisions in the statutes for making of a Will and for its proof in a Court of law. Section 59 of the Succession Act provides that every person of sound mind, not being a minor, may dispose of his property by Will. A Will or any portion thereof, the making of which has been caused by fraud or coercion or by any such importunity that has taken away the free agency of the testator, is declared to be void under Section 61 of the Succession Act; and further, Section 62 of the Succession Act enables the maker of a Will to make or alter the same at any time when he is competent to dispose of his property by Will. Chapter III of Part IV of the Succession Act makes the provision for execution of unprivileged Wills (as distinguished from privileged Wills provided for in Chapter IV) with which we are not concerned in this case.

23.1. Sections 61 and 63 of the Succession Act, relevant for the present purpose, could be usefully extracted as under: – "61. Will obtained by fraud, coercion or importunity.- A Will or any part of a Will, the making of which has been caused by fraud or coercion, or by such importunity as takes

away the free agency of the testator, is void.

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63. Execution of unprivileged Wills.-Every testator, not being a soldier employed in an expedition or engaged in actual warfare, or an airman so employed or engaged, or a mariner at sea, shall execute his Will according to the following rules:-

(a) The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.

(c) The Will shall be attested by two or more witness, each of whom has 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 acknowledgment of his signature or mark, or the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary." 23.2. Elaborate provisions have been made in Chapter VI of the Succession Act (Sections 74 to 111), for construction of Wills which, in their sum and substance, make the intention of legislature clear that any irrelevant misdescription or error is not to operate against the Will; and approach has to be to give effect to a Will once it is found to have been executed in the sound state of mind by the testator while exercising his own free will. However, as per Section 81 of the Succession Act, extrinsic evidence is inadmissible in case of patent ambiguity or deficiency in the Will; and as per Section 89 thereof, a Will or bequest not expressive of any definite intention is declared void for uncertainty. Sections 81 and 89 read as under:-

"81. Extrinsic evidence inadmissible in case of patent ambiguity or deficiency.- Where there is an ambiguity or deficiency on the face of a Will, no extrinsic evidence as to the intentions of the testator shall be admitted.

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89. Will or bequest void for uncertainty.- A Will or bequest not expressive of any definite intention is void for uncertainty." Moreover, it is now well settled that when the Will is surrounded by suspicious circumstances, the Court would expect that the legitimate suspicion should be removed before the document in question is accepted as the last Will of the testator.

23.3. As noticed, as per Section 63 of the Succession Act, the Will ought to be attested by two or more witnesses. Hence, any document propounded as a Will cannot be used as evidence unless at least one attesting witness has been examined for the purpose of proving its execution, if such witness is available and is capable of giving evidence as per the requirements of Section 68 of the Evidence Act, that reads as under: – "68. Proof of execution of document required by law to be attested.-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:

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied."

24. We may now take note of the relevant principles settled by the consistent decisions in regard to the process of examination of a Will when propounded before a Court of law.

24.1. In the case of H. Venkatachala Iyengar (supra), a 3-Judge Bench of this Court traversed through the vistas of the issues related with execution and proof of Will and enunciated a few fundamental guiding principles that have consistently been followed and applied in almost all the cases involving such issues. The synthesis and exposition by this Court in paragraphs 18 to 22 of the said decision could be usefully reproduced as under:-

"18. What is the true legal position in the matter of proof of wills? It is well known that the proof of wills presents a recurring topic for decision in courts and there are a large number of judicial pronouncements on the subject. The party propounding a will or otherwise making a claim under a will is no doubt seeking to prove a document and, in deciding how it is to be proved, we must inevitably refer to the statutory provisions which govern the proof of documents. S. 67 and 68, Evidence Act are relevant for this purpose. Under S. 67, if a document is alleged to be signed by any person, the signature of the said person must be proved to be in his handwriting, and for proving such a handwriting under Ss. 45 and 47 of the Act the opinions of experts and of persons acquainted with the handwriting of the person concerned are made relevant. Section 68 deals with the proof of the execution of the document required by law to be attested; and it provides that such a document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. These provisions prescribe the requirements and the nature of proof which must be satisfied by the party who relies on a document in a Court of law. Similarly, Ss. 59 and 63 of the Indian Succession Act are also relevant. Section 59

> provides that every person of sound mind, not being a minor, may dispose of his property by will and the three illustrations to this section indicate what is meant by the expression "a person of sound mind" in the context. Section 63 requires that the testator shall sign or affix his mark to the will or it shall be signed by some other person in his presence and by his direction and that the signature or mark shall be so made that it shall appear that it was intended thereby to give effect to the writing as a will. This section also requires that the will shall be attested by two or more witnesses as prescribed. Thus the question as to whether the will set up by the propounder is proved to be the last will of the testator has to be decided in the light of these provisions. Has the testator signed the will? Did he understand the nature and effect of the dispositions in the will? Did he put his signature to the will knowing what it contained?
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> 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 S. 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.
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> 19. However, there is one important feature which distinguishes wills from other documents. Unlike other documents the will speaks from the death of the testator, and so, when it is propounded or produced before a Court, the testator who has already departed the world cannot say whether it is his will or not; and this aspect naturally introduces an element of solemnity in the decision of the question as to whether the document propounded is proved to be the last will and testament of the departed testator.

Even so, in dealing with the proof of wills the Court will start on the same enquiry as in the case of the proof of documents. The propounder would be called upon to show by satisfactory evidence that the will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the dispositions and put his signature to the document of his own free will. Ordinarily when the evidence adduced in support of the will is disinterested, satisfactory and sufficient to prove the sound and disposing state of the testator's mind and his signature as required by law, Courts would be justified in making a finding in favour of the propounder. In other words, the onus on the propounder can be taken to be discharged on proof of the essential facts just indicated.

20. There may, however, be cases in which the execution of the will may be surrounded by suspicious circumstances. The alleged signature of the testator may be very shaky and doubtful and evidence in support of the propounder's case that the signature in question is the signature of the testator may not remove the doubt created by the appearance of the signature; the condition of the testator's mind may appear to be very feeble and debilitated; and evidence adduced may not succeed

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

21. Apart from the suspicious circumstances to which we have just referred in some cases the wills propounded disclose another infirmity. Propounders themselves take a prominent part in the execution of the wills which confer on them substantial benefits. If it is shown that the propounder has taken a prominent part in the execution of the will and has received substantial benefit under it, that itself is generally treated as a suspicious circumstance attending the execution of the will and the propounder is required to remove the said suspicion by clear and satisfactory evidence. It is in connection with wills that present such suspicious circumstances that decisions of English Courts often mention the test of the satisfaction of judicial conscience. It may be that the reference to judicial conscience in this connection is a heritage from similar observations made by ecclesiastical Courts in England when they exercised jurisdiction with reference to wills; but any objection to the use of the word ‘conscience’ in this context would, in our opinion, be purely technical and academic, if not pedantic. The test merely emphasizes that, in determining the question as to whether an instrument produced before the Court is the last will of the testator, the Court is deciding a solemn question and it must be fully satisfied that it had been validly executed by the testator who is no longer alive.

22. It is obvious that for deciding material questions of fact which arise in applications for probate or in actions on wills, no hard and fast or inflexible rules can be laid down for the appreciation of the evidence. It may, however, be stated generally that a propounder of the will has to prove the due and valid execution of the will and that if there are any suspicious circumstances surrounding the execution of the will the propounder must remove the said suspicions from the mind of the Court by cogent and satisfactory evidence. It is hardly necessary to add that the result of the application of these two general and broad principles would always depend upon the facts and circumstances of each case and on the nature and quality of the evidence adduced by the parties. It is quite true that, as observed by Lord Du Parcq in Harmes v. Hinkson, 50 Cal W N 895 : (AIR 1946 PC 156), "where a will is charged with suspicion, the rules enjoin a reasonable scepticism, not an obdurate persistence in disbelief. They do not demand from the Judge, even in circumstances of grave suspicion, a resolute and impenetrable incredulity. He is never required to close his mind to the truth". It would sound platitudinous to say so, but it is nevertheless true that in discovering truth even in such cases the judicial mind must always be open though vigilant, cautious and circumspect.” (emphasis supplied) 24.2. In Rani Purnima Debi (supra), this Court referred to the aforementioned decision in

H. Venkatachala Iyengar and further explained the principles which govern the proving of a Will as follows:-

> "5. Before we consider the facts of this case it is well to set out the principles which govern the proving of a will. This was considered by this Court in H. Venkatachala Iyengar v. B. N. Thimmajamma, (1959) Supp (1) SCR 426: AIR 1959 SC 443. It was observed in that case that the mode of proving a will did not ordinarily differ from that of proving any other document except as to the special requirement of attestation prescribed in the case of a will by S. 63 of the Indian Succession Act. The onus of proving the will was on the propounder and in the absence of suspicious circumstances surrounding the execution of the will proof of testamentary capacity and signature of the testator as required by law was sufficient to discharge the onus. Where, however, there were suspicious circumstances, the onus would be on the propounder to explain them to the satisfaction of the Court before the will could be accepted as genuine. If the caveator alleged undue influence, fraud or coercion, the onus would be on him to prove the same. Even where there were no such pleas but the circumstances gave rise to doubts, it was for the propounder to satisfy the conscience of the Court. Further, what are suspicious circumstances was also considered in this case. The alleged signature of the testator might be very shaky and doubtful and evidence in support of the propounder's case that the signature in question was the signature of the testator might not remove the doubt created by the appearance of the signature. The condition of the testator's mind might appear to be very feeble and debilitated and evidence adduced might not succeed in removing the legitimate doubt as to the mental capacity of the testator; the dispositions made in the will might appear to be unnatural, improbable or unfair in the light of relevant circumstances; or the will might otherwise indicate that the said dispositions might not be the result of the testator's free will and mind. In such cases, the Court would naturally expect that all legitimate suspicions should be completely removed before the document was accepted as the last will of the testator. Further, a propounder himself might take a prominent part in the execution of the will which conferred on him substantial benefits. If this was so it was generally treated as a suspicious circumstance attending the execution of the will and the propounder was required to remove the doubts by clear and satisfactory evidence. But even when where there suspicious circumstances and the propounder succeeded in removing them, the Court would grant probate, though the will might be unnatural and might cut off wholly or in part near relations." (emphasis supplied) 24.3. In the case of Indu Bala Bose (supra), this Court again said,-

"7. This Court has held that the mode of proving a Will does not ordinarily differ from that of proving any other document except to the special requirement of attestation prescribed in the case of a Will by Section 63 of the Succession Act. The onus of proving the Will is on the propounder and in the absence of suspicious circumstances surrounding the execution of the Will, proof of testamentary capacity and the signature of the testator as required by law is sufficient to discharge the onus. Where however there are suspicious circumstances, the onus is on the propounder to

explain them to the satisfaction of the court before the court accepts the Will as genuine. Even where circumstances give rise to doubts, it is for the propounder to satisfy the conscience of the court. The suspicious circumstances may be as to the genuineness of the signatures of the testator, the condition of the testator's mind, the dispositions made in the Will being unnatural, improbable or unfair in the light of relevant circumstances, or there might be other indications in the Will to show that the testator's mind was not free. In such a case the court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last Will of the testator. If the propounder himself takes a prominent part in the execution of the Will which confers a substantial benefit on him, that is also a circumstance to be taken into account, and the propounder is required to remove the doubts by clear and satisfactory evidence. If the propounder succeeds in removing the suspicious circumstances the court would grant probate, even if the Will might be unnatural and might cut off wholly or in part near relations.

8 . Needless to say that any and every circumstance is not a “suspicious” circumstance. A circumstance would be “suspicious” when it is not normal or is not normally expected in a normal situation or is not expected of a normal person.” (emphasis supplied) 24.4. We may also usefully refer to the principles enunciated in the case of Jaswant Kaur (supra) for dealing with a Will shrouded in suspicion, as follows: – “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 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.” (emphasis supplied) 24.5. In the case of Uma Devi Nambiar (supra), this Court extensively reviewed the case law dealing with a Will, including the Constitution Bench decision of this Court in the case of Shashi Kumar Banerjee and Ors. v. Subodh Kumar Banerjee and Ors.: AIR 1964 SC 529, and observed that mere exclusion of the natural heirs or giving of lesser share to them, by itself, will not be considered to be a suspicious circumstance. This Court observed, inter alia, as under:-

> “15. Section 63 of the Act deals with execution of unprivileged Wills. It lays down that the testator shall sign or shall affix his mark to the Will or it shall be signed by some other person in his presence and by his direction. It further lays down that the Will shall be attested by two or more witnesses, each of whom has seen the testator signing or affixing his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator and each of the witnesses shall sign the Will in the presence of the testator. Section 68 of the Indian Evidence Act, 1872 (in short the “Evidence Act”) mandates examination of one attesting witness in proof of a Will, whether registered or not. The law relating to the manner and onus of proof and also the duty cast upon the court while dealing with a case based upon a Will has been examined in considerable detail in several decisions of this Court ..... A Constitution Bench of this Court in Shashi Kumar Banerjee's case succinctly indicated the focal position in law as follows: (AIR p. 531, para 4) "The mode of proving a Will does not ordinarily differ from that of proving any other document

except as to the special requirement of attestation prescribed in the case of a Will by Section 63 of the Indian Succession Act. The onus of proving the Will is on the propounder and in the absence of suspicious circumstances surrounding the execution of the Will, proof of testamentary capacity and the signature of the testator as required by law is sufficient to discharge the onus. Where however there are suspicious circumstances, the onus is on the propounder to explain them to the satisfaction of the court before the court accepts the Will as genuine. Where the caveator alleges undue influence, fraud and coercion, the onus is on him to prove the same. Even where there are no such pleas but the circumstances give rise to doubts, it is for the propounder to satisfy the conscience of the court. The suspicious circumstances may be as to the genuineness of the signature of the testator, the condition of the testator's mind, the dispositions made in the Will being unnatural, improbable or unfair in the light of relevant circumstances or there might be other indications in the Will to show that the testator's mind was not free. In such a case the court would naturally expect that all legitimate suspicion should be completely removed before the document is accepted as the last Will of the testator. If the propounder himself takes part in the execution of the Will which confers a substantial benefit on him, that is also a circumstance to be taken into account, and the propounder is required to remove the doubts by clear and satisfactory evidence. If the propounder succeeds in removing the suspicious circumstances the court would grant probate, even if the Will might be unnatural and might cut off wholly or in part near relations."

16. A Will is executed to alter the ordinary mode of succession and by the very nature of things it is bound to result in earlier 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 is true that a propounder of the Will has to remove all suspicious circumstances. Suspicion means doubt, conjecture or mistrust. But the fact that natural heirs have either been excluded or a lesser share has been given to them, by itself without anything more, cannot be held to be a suspicious circumstance specially in a case where the bequest has been made in favour of an offspring. As held in P.P.K. Gopalan Nambiar v. P.P.K. Balakrishnan Nambiar and Ors.: [1995] 2 SCR 585, it is the duty of the propunder of the Will to remove all the suspected features, but there must be real, germane and valid suspicious features and not fantasy of the doubting mind. It has been held that if the propounder succeeds in removing the suspicious circumstances, 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. ..... In Rabindra Nath Mukherjee and Anr. v . Panchanan Banerjee (dead) by LRs. and Ors.: AIR 1995 SC 1684, it was observed that the circumstance of deprivation of natural heirs should not raise any suspicion because the whole idea behind execution of the Will is to interfere with the normal line of succession and 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 some cases partly." 24.6. In the case of Mahesh Kumar (supra), this Court indicated the error of approach on the part of the

High Court while appreciating the evidence relating to the Will as follows:-

"44. The issue which remains to be examined is whether the High Court was justified in coming to the conclusion that the execution of the will dated 10-2-1992 was shrouded with suspicion and the appellant failed to dispel the suspicion? At the outset, we deem it necessary to observe that the learned Single Judge misread the statement of Sobhag Chand (DW3) and recorded something which does not appear in his statement. While Sobhag Chand categorically stated that he had signed as the witness after Shri Harishankar had signed the will, the portion of his statement extracted in the impugned judgment gives an impression that the witnesses had signed even before the executant had signed the will.

45. Another patent error committed by the learned Single Judge is that he decided the issue relating to validity of the will by assuming that both the attesting witnesses were required to append their signatures simultaneously. Section 63(c) of the 1925 Act does not contain any such requirement and it is settled law that examination of one of the attesting witnesses is sufficient. Not only this, while recording an adverse finding on this issue, the learned Single Judge omitted to consider the categorical statements made by DW 3 and DW 4 that the testator had read out and signed the will in their presence and thereafter they had appended their signatures.

46. The other reasons enumerated by the learned Single Judge for holding that the execution of will was highly suspicious are based on mere surmises/conjectures. The observation of the learned Single Judge that the possibility of obtaining signatures of Shri Harishankar and attesting witnesses on blank paper and preparation of the draft by Shri S.K. Agarwal, Advocate on pre-signed papers does not find even a semblance of support from the pleadings and evidence of the parties. If Respondent 1 wanted to show that the will was drafted by the advocate after Shri Harishankar and attesting witnesses had signed blank papers, he could have examined or at least summoned Shri S.K. Agarwal, Advocate, who had represented him before the Board of Revenue. ....." 24.7. Another decision cited on behalf of the appellant in the case of Leela Rajagopal may also be referred where this Court summarised the principles that ultimately, the judicial verdict in relation to a Will and suspicious circumstances shall be on the basis of holistic view of the matter with consideration of all the unusual features and suspicious circumstances put together and not on the impact of any single feature. This Court said,-

"13. A will may have certain features and may have been executed in certain circumstances which may appear to be somewhat unnatural. Such unusual features appearing in a will or the unnatural circumstances surrounding its execution will definitely justify a close scrutiny before the same can be accepted. It is the overall assessment of the court on the basis of such scrutiny; the cumulative effect of the unusual features and circumstances which would weigh with the court in the determination required to be made by it. The judicial verdict, in the last resort, will be on the basis of a consideration of all the unusual features and suspicious circumstances put together and not on

the impact of any single feature that may be found in a will or a singular circumstance that may appear from the process leading to its execution or registration. This, is the essence of the repeated pronouncements made by this Court on the subject including the decisions referred to and relied upon before us." 24.8. We need not multiply the references to all and other decisions cited at the Bar, which essentially proceed on the aforesaid principles while applying the same in the given set of facts and circumstances. Suffice would be to point out that in a recent decision in Civil Appeal No. 6076 of 2009: Shivakumar & Ors. v. Sharanabasppa & Ors., decided on 24.04.2020, this Court, after traversing through the relevant decisions, has summarised the principles governing the adjudicatory process concerning proof of a Will as follows:– "1. Ordinarily, 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. Alike the principles governing the proof of other documents, in the case of Will too, the proof with mathematical accuracy is not to be insisted upon.

2. Since as per Section 63 of the Succession Act, a Will is required to be attested, it cannot be used as evidence until at least one attesting witness has been called for the purpose of proving its execution, if there be an attesting witness alive and capable of giving evidence.

3. The unique feature of a Will is that it speaks from the death of the testator and, therefore, the maker thereof is not available for deposing about the circumstances in which the same was executed. This introduces an element of solemnity in the decision of the question as to whether the document propounded is the last Will of the testator. The initial onus, naturally, lies on the propounder but the same can be taken to have been primarily discharged on proof of the essential facts which go into the making of a Will.

4. The case in which the execution of the Will is surrounded by suspicious circumstances stands on a different footing. The presence of suspicious circumstances makes the onus heavier on the propounder and, therefore, in cases where the circumstances attendant upon the execution of the document give rise to suspicion, the propounder must remove all legitimate suspicions before the document can be accepted as the last Will of the testator.

5. If a person challenging the Will alleges fabrication or alleges fraud, undue influence, coercion et cetera 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 give rise to the doubt or as to whether the Will had indeed been executed by the testator and/or as to whether the testator was acting of his own free will. In such eventuality, it is again a part of the initial onus of the propounder to remove all reasonable doubts in the matter.

6. A circumstance is "suspicious" when it is not normal or is 'not normally expected in a normal situation or is not expected of a normal person'. As put by this Court, the suspicious features must be 'real, germane and valid' and not merely the 'fantasy of the doubting mind.'

7. As to whether any particular feature or a set of features qualify as "suspicious" would depend on the facts and circumstances of each case. A shaky or doubtful signature; a feeble or uncertain mind of the testator; an unfair disposition of property; an unjust exclusion of the legal heirs and

particularly the dependants; an active or leading part in making of the Will by the beneficiary thereunder et cetera are some of the circumstances which may give rise to suspicion. The circumstances above-noted are only illustrative and by no means exhaustive because there could be any circumstance or set of circumstances which may give rise to legitimate suspicion about the execution of the Will. On the other hand, any of the circumstance qualifying as being suspicious could be legitimately explained by the propounder. However, such suspicion or suspicions cannot be removed by mere proof of sound and disposing state of mind of the testator and his signature coupled with the proof of attestation.

8. The test of satisfaction of the judicial conscience comes into operation when a document propounded as the Will of the testator is surrounded by suspicious circumstance/s. While applying such test, the Court would address itself to the solemn questions as to whether the testator had signed the Will while being aware of its contents and after understanding the nature and effect of the dispositions in the Will?

9. In the ultimate analysis, where the execution of a Will is shrouded in suspicion, it is a matter essentially of the judicial conscience of the Court and the party which sets up the Will has to offer cogent and convincing explanation of the suspicious circumstances surrounding the Will." CONTEST OF THE MATTER BY RESPONDENT NO.1

25. Having taken note of the principles which shall be the guiding factor in dealing with the main questions posed in this matter, we may examine the rival contentions. Before entering into the contentions relating to the suspicious circumstances concerning the Will in question, it would be appropriate to deal with and dispose of a preliminary objection of the learned counsel for the appellant as regards contest of the matter by respondent No.1. As noticed, it has been submitted with reference to Section 268 of the Succession Act, Order VIII Rule 10, Order XIV Rule 1(6) and Order XV Rule 2 CPC and the case of Bachhaj Nahar (supra) that the status of respondent No.1 remains that of a defendant who has not filed the written statement and who is not at issue; and hence, the contentions urged on her behalf need no consideration and the evidence led by her remains inadmissible. The submissions have been countered with reference to the principles in H. Venkatachala Iyengar and Rani Purnima Debi (supra) as also with reference to Order VIII Rule 5(2), Order VIII Rule 10 CPC and the decision in Balraj Taneja (supra). It is submitted that ultimately, the Probate Court is a Court of conscience and the respondent No.1, being the elder daughter of the testatrix, has every right to make submissions concerning the Will in question. In our view, the submission made on behalf of the appellant seeking exclusion of respondent No.1 remains totally baseless and could only be rejected.

25.1. The objection on behalf of the appellant does not stand in conformity with the law declared in H. Venkatachala Iyengar and Rani Purnima Debi (supra) and scores of other decisions where this Court has consistently held that the probate proceeding is ultimately a matter of conscience of the Court; and irrespective of whether any plea in opposition is taken or not, a propounder of Will is required to satisfy the conscience of the Court with removal of all the suspicious circumstances. By the very nature and consequence of this proceeding, filing or non-filing of written statement or objections by any party pales into insignificance and is of no effect. The probate proceeding is not

merely inter-partes proceeding but leads to judgment in rem and, therefore, even when no one contests, it does not ipso facto lead to grant of probate. The probate is granted only on proof of Will as also on removal of suspicious circumstances, if there be any, to the final satisfaction of the conscience of the Court.

25.2. In view of the above, reference to the provisions of Order VIII Rule 10, Order XIV Rule 1(6) and Order XV Rule 2 7 remains inapposite in relation to the proceeding before a Probate Court. We may hasten to observe that even in a regular civil suit, merely for want of written statement by a defendant, it is not necessary that a judgment would always follow in favour of the plaintiff without proof of the basic facts and without making out a clear case of right to relief. Similarly, the decision in the case of Bachhaj Nahar (supra) that relief cannot be granted in any Court without requisite pleadings has hardly any application to the question at hand. 7 The referred provisions of CPC read as under:-

> Order VIII Rule 10:
>
> "10.Procedure when party fails to present written statement called for by Court.-Where any party from whom a written statement is required under rule 1 or rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up." Order XIV Rule 1(6):
>
> "1. Framing of issues.-
>
> *** *** *** (6) Nothing in this rule requires the Court to frame and record issues where the defendant at the first hearing of the suit makes no defence." Order XV Rule 2(1):
>
> "2. One of several defendants not at issue.- (1) Where there are more defendants than one, and any one of the defendants is not at issue with the plaintiff on any question of law or of fact, the Court may at once pronounce judgment for or against such defendants and the suit shall proceed only against the other defendants.
>
> *** *** ***" 25.3. In the case of Balraj Taneja (supra), this Court examined the provisions contained in sub-rule (2) of Rule 5 of Order XVIII of CPC 8 and said that,-

"11. Sub-rule (2) provides that if the defendant has not filed his written statement, it would be lawful for the court to pronounce judgment on the basis of the facts contained in the plaint. The rule further proceeds to say that notwithstanding that the facts stated in the plaint are treated as admitted, the court, though it can lawfully pass the judgment, may before passing the judgment require such fact to be proved...." Apart from the above, even as regards Rule 10 of Order XVIII, this Court said,-

"27. In view of the above, it is clear that the court, at no stage, can act blindly or mechanically. While enabling the court to pronounce judgment in a situation where no written statement is filed by the defendant, the court has also been given the discretion to pass such order as it may think fit as an alternative. This is also the position under Order 8 Rule 10 CPC where the court can either pronounce judgment against the defendant or pass such order as it may think fit." 25.4. We need not multiply the authorities and discussion in this regard. Suffice it to say that even in a regular civil suit, mere non-filing of written statement by the defendant does not always lead to a judgment in favour of the plaintiff. Noteworthy it is that regular civil suit usually leads to a judgment inter-partes and not in rem. Even then, the requirement of proof is not obviated. When the proceeding is solemn in nature like that for 8 The referred provisions of CPC read as under:

> Order VIII Rule 5(2) "5. Specific denial.-
>
> *** *** *** (2) Where the defendant has not filed a pleading, it shall be lawful for the Court to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability, but the Court may, in its discretion, require any such fact to be proved.
>
> *** *** ***" probate, which leads to judgment in rem, it is beyond the cavil that mere non-filing of caveat or opposition is not decisive of the matter. The propounder, in every matter for grant of probate, irrespective of opposition or even admission by any party, is required to satisfy the conscience of the Court, with removal of suspicious circumstances, if any.

25.5. Apart from the aforementioned general principles, it is also significant to notice in the present case that the respondent No.1 is none other but the elder widowed daughter of testatrix regarding whom, some semblance of right, via the construction to be carried out by the appellant, is proposed in the Will in question. Looking to her status as elder widowed daughter of the testatrix and looking to the stipulation in the Will in question, it is evident that even without filing any written statement, the respondent No.1 is entitled to show that the purported grant of some right to her is illusory or is, in fact, no grant at all; and that her mother would not have put her in such an insecure position as would be the result of the Will. As a necessary corollary, her right to demonstrate the suspicious circumstances is inherent in the very process envisaged for the Probate Court. This is apart from the fact that the respondent No.1 has indeed examined herself as a witness without objection by the appellant.

25.6. Thus, the objection against contest by the respondent No.1, as raised on behalf of the appellant, deserves to be, and is hereby rejected. SUSPICIOUS CIRCUMSTANCES CONCERNING THE WILL IN QUESTION

26. While examining the relevant factual aspects and circumstances of this case on the anvil of the principles aforesaid, we may usefully observe that in the case of Leela Rajagopal (supra), this Court found justified the concurrent findings on due execution of Will and, in the context of facts, participation of the beneficiary in execution of the Will and his acquaintance with one of the

attesting witness were found to be reasonably explained. However, significantly, in the said case, this Court also cautioned against repeated reappreciation of evidence, particularly in the appeal lodged only by way of special leave, in the following words:-

> "17. Before parting we would like to observe that the very fact that an appeal to this Court can be lodged only upon grant of special leave to appeal would indicate the highly circumscribed nature of the jurisdiction of this Court. In contrast to a statutory appeal, an appeal lodged upon grant of special leave pursuant to a provision of the Constitution would call for highly economic exercise of the power which though wide to strike at injustice wherever it occurs must display highly judicious application thereof. Determination of facts made by the High Court sitting as a first appellate court or even while concurring as a second appellate court would not be reopened unless the same gives rise to questions of law that require a serious debate or discloses wholly unacceptable conclusions of fact which plainly demonstrate a travesty of justice. Appreciation or reappreciation of evidence must come to a halt at some stage of the judicial proceedings and cannot percolate to the constitutional court exercising jurisdiction under Article 136." (emphasis supplied) 26.1. In the present case too, the Trial Court has returned the findings against the appellant after due appreciation of evidence and the High Court has affirmed such findings after independent and thorough examination of evidence. There appears hardly any scope for disturbing such concurrent findings by entering into the process of reappreciation of entire evidence yet, in view of the submissions made and in the interest of justice, we have gone through the material on record to find if there be any such perversity which might result in serious miscarriage of justice. We find none.
>
> 27. As noticed, there has not been any question on the testamentary capacity and soundness of mind of the testatrix; and her handwriting as also signatures on the Will in question are also beyond controversy.

However, the Trial Court and the High Court have concurrently found some such suspicious circumstances which are of material bearing and which have remained unexplained. Put in a nutshell, the unexplained suspicious circumstances so found are: (a) that appellant, the major beneficiary, played an active role in execution of the Will in question and attempted to conceal this fact before the Court; (b) that there had not been any plausible reason for non-inclusion of the only son and other daughter of the testatrix in the process of execution of the Will and for excluding them from the major part of the estate in question; (c) that there was no clarity about the construction supposed to be carried out by the appellant; (d) that the manner of writing and execution of the Will with technical and legal words was highly doubtful; and (e) that the attesting witnesses were unreliable and there were contradictions in the statements of the witnesses. Because of these major circumstances coupled with various supplemental factors, the Trial Court and the High Court felt dissatisfied on the root question as to whether the testatrix duly executed the Will in question after understanding its contents.

28. There is no doubt that any of the factors taken into account by the Trial Court and the High Court, by itself and standing alone, cannot operate against the validity of the propounded Will. That is to say that, the Will in question cannot be viewed with suspicion only because the appellant had played an active role in execution thereof though she is the major beneficiary; or only because the respondents were not included in the process of execution of the Will; or only because of unequal distribution of assets; or only because there is want of clarity about the construction to be carried out by the appellant; or only because one of the attesting witnesses being acquaintance of the appellant; or only because there is no evidence as to who drafted the printed part of the Will and the note for writing the opening and concluding passages by the testatrix in her own hand; or only because there is some discrepancy in the oral evidence led by the appellant; or only because of any other factor taken into account by the Courts or relied upon by the respondents. The relevant consideration would be about the quality and nature of each of these factors and then, the cumulative effect and impact of all of them upon making of the Will with free agency of the testatrix. In other words, an individual factor may not be decisive but, if after taking all the factors together, conscience of the Court is not satisfied that the Will in question truly represents the last wish and propositions of the testator, the Will cannot get the approval of the Court; and, other way round, if on a holistic view of the matter, the Court feels satisfied that the document propounded as Will indeed signifies the last free wish and desire of the testator and is duly executed in accordance with law, the Will shall not be disapproved merely for one doubtful circumstance here or another factor there.

29. Keeping the applicable principles in view, we may examine the factors and circumstances which are suspicious in character and their overall impact on the document in question.

29.1. While entering into the facts and circumstances related with the Will, profitable it would be to recapitulate the background and the set up in which the contested Will is said to have been executed. The immovable property in question at No. D-179, Defence Colony, New Delhi was originally of the ownership of father of the contesting parties, husband of testatrix. The ground floor of this property was given in gift to the appellant on 25.01.2001, whereas the first floor and the other portion/s came to the testatrix by way of the Will of her husband dated 14.02.2001. The husband of testatrix expired on 20.10.2002. The appellant, married daughter of the testatrix, was admittedly living in a different locality, that is, at Panchshila Park for 20-22 years, whereas son of the testatrix, who was serving in Army, remained posted outside and was lastly residing in Shimla. The testatrix was a cancer patient and was under regular treatment in an Army Hospital at Delhi. Significantly, the testatrix was residing at the said ground floor portion of the building in question (which had already become property of the appellant by virtue of the gift by her father). The respondent No.1, the widowed daughter of the testatrix, was residing at the first floor of the same building with her own daughter. Admittedly, the said first floor of the house was the property of testatrix by virtue of the Will of her husband. It is not a matter of much dispute that respondent No.1, while living in the same building, was taking care of the testatrix and was even taking her to Army Hospital for treatment.

29.2. In the given set-up, a basic question immediately crops up as to what could be the reason for the testatrix being desirous of providing unequal distribution of her assets by giving major share to

the appellant in preference to her other two children. The appellant has suggested that the parents had special affection towards her. Even if this suggestion is taken on its face value, it is difficult to assume that the alleged special affection towards one child should necessarily correspond to repugnance towards the other children by the same mother. Even if the parents had special liking and affection towards the appellant, as could be argued with reference to the gift made by the father in her favour of the ground floor of the property in question, it would be too far stretched and unnatural to assume that by the reason of such special affection towards appellant, the mother drifted far away from the other children, including the widowed daughter who was residing on the upper floor of the same house and who was taking her care. In the ordinary and natural course, a person could be expected to be more inclined towards the child taking his/her care; and it would be too unrealistic to assume that special love and affection towards one, maybe blue-eyed, child would also result in a person leaving the serving and needy child in lurch. As noticed, an unfair disposition of property or an unjust exclusion of the legal heirs, particularly the dependants, is regarded as a suspicious circumstance. The appellant has failed to assign even a wee bit reason for which the testatrix would have thought it proper to leave her widowed daughter in the heap of uncertainty as emanating from the Will in question. Equally, the suggestion about want of thickness of relations between the testatrix and her son (respondent No.2) is not supported by the evidence on record. The facts about the testatrix sending good wishes on birthday to her son and joining family functions with him, even if not establishing a very great bond between the mother and her son, they at least belie the suggestion about any strain in their relations. Be that as it may, even if the matter relating to the son of testatrix is not expanded further, it remains inexplicable as to why the testatrix would not have been interested in making adequate and concrete provision for the purpose of her widowed daughter (respondent No.1).

29.3. The aforesaid factor of unexplained unequal distribution of the property is confounded by two major factors related with making of the Will in question: one, the active role played by the appellant in the process; and second, the virtual exclusion of the other children of testatrix in the process. As noticed, an active or leading part in making of the Will by the beneficiary thereunder has always been regarded as a circumstance giving rise to suspicion but, like any other circumstance, it could well be explained by the propounder and/or beneficiary. In the present case, it is not in dispute that out of the three children of testatrix, the appellant alone was present at the time of execution of the Will in question on 20.05.2003. As noticed, at the relevant point of time, the appellant was admittedly living away and in a different locality for about 20-22 years, whereas testatrix was residing at the ground floor of the building and the respondent No.1 was at the first floor. Even if we leave aside the case of the respondent No.2 who was living in Shimla, there was no reason that in the normal and ordinary course, the testatrix would not have included the respondent No.1 in execution of the Will in question, particularly when she was purportedly making adequate arrangements towards the welfare of respondent No.1. In other words, if the Will in question was being made without causing any prejudice to the respondent No.1, there was no reason to keep her away from this process. Admittedly, the Will in question was not divulged for about three years. Therefore, the added feature surrounding the execution of the Will had been of unexplained exclusion of the respondent No.1 from the process. 29.4. Apart from the above, active participation of the appellant in making of the Will in question cannot be left aside as one of the minor factors for the reason that the appellant indeed attempted to project a face of innocence by suggesting that the

testatrix did not discuss the Will with her; that she was not aware as to who drafted the Will and where was it typed; and that she came to know about the Will only on 20/21.05.2003. The appellant even stated that she did not call the witnesses and that the testatrix herself might have called them. The witness PW-2 has clearly contradicted the appellant by deposing that on 18.05.2003, it was the appellant who invited him to her mother's place. Thus, the appellant, by her conduct of attempting to avoid the fact that she was aware of making of Will, at least two days before its execution, has only strengthened the suspicion arising because of her active participation in execution of the Will while keeping the other children of the testatrix excluded from the process. 29.5. Yet further, when we look at the Will in question itself and examine the evidence adduced in regard to its execution, a few more factors of suspicion emerge on the face of the record.

29.5.1. In regard to the contents and frame of the document in question, learned counsel for the appellant has submitted that greater degree of presumption that arises in the case of a "holograph" Will, as enunciated in the case of Joyce Primrose Prestor (supra), is applicable to the present case too, where the significant contents relating to the particulars of the person and bequeath, in the opening and concluding passages, are duly written in her own hand by the testatrix. The submissions so made on behalf of the appellant carry their own shortcomings and demerits for the reason that the Will in question does not directly answer to the description of a "holograph" Will because, except for the opening and concluding passages, the entire Will is in electronic print. The core of bequeathing part is also in print and not in handwriting. In the case of Joyce Primrose Prestor, the entire Will was handwritten, which is not the case here. Coupled with this remains the admitted fact that even the handwritten portions are not of the diction of the testatrix herself. She had only copied them from a note available with her; and it is apparent from the document that such handwritten portions are jotted down on the base lines drawn on the paper.

29.5.2. Thus, practically, it was a case of the testatrix merely copying, on the dotted lines, the text already given to her. The sanctity attached to a bequeath in the handwriting of the testator presupposes a co-ordinated work of a free hand and a free mind, that is, the hand writes what comes out of and given by the mind. In the present case, it is difficult to be satisfied that what is found written in hand by the testatrix had been dictated by her own mind so as to make it an expression of her own free will. 29.5.3. Moreover, the handwritten portions carry such formal and legal expressions like "testament" and "set and subscribed my hand", which are the tools of the language employed by a person who is conversant with legal format and requirements for execution of such a document; and, ordinarily, a layperson like the testatrix is not expected to be conversant with them. The printed portion also carries the expressions like "codicil", "give, devise and bequeath", which are not the expressions of a layperson. In the given circumstances, the want of evidence as to who drafted the printed portion and the said note (for copying on the dotted lines) becomes an added factor towards suspicion as to whether the contents of the document in question are, in fact, expressive of the actual desire of the testatrix towards succession of her property.

29.5.4. This set of suspicious circumstances concerning the process of execution of the document in question reaches to impenetrable finale by another major part of contradictions in oral evidence. The appellant asserted in her testimony that the testatrix discussed the contents of the Will with the attesting witnesses but both of them (PW-2 and PW-3) consistently maintained that the contents

were not discussed with them. Thus, the appellant has failed to clear the doubts as to whether what is found written in the document in question (both by hand and in print) carry and convey the last wish of the testatrix.

30. Going yet further, when the core contents of the document in question are examined, what we find is another load of several unclear doubts and variety of uncertainties. We would hasten to observe that as per Section 81 of the Succession Act, if there is an ambiguity or deficiency on the face of a Will, no extrinsic evidence as to the intentions of the testator shall be admitted. Thus, everything related with the true intention of testatrix in the present case is to be gathered from the contents of the Will in question itself.

30.1. As per the stipulation in Clause 1 of the bequeathing contents, the first floor, terrace and all other properties except the ground floor are given to the appellant with directions that she would carry out either of the two options as deemed proper, namely, either to construct on the terrace of the building such residential facility as may be permissible under the Municipal Building Bye-laws at the time of demise of the testatrix and to hand over possession of the construction to respondent No.1 while retaining terrace rights thereon; or in the alternative, to demolish the entire building and carry out such construction as may be permissible under the Municipal Building Bye-laws and become exclusive owner thereof, save and except that the highest floor of such building shall go to the respondent No.1, while again, the terrace rights shall remain with the appellant. At the first blush, it may appear as if by these stipulations, the testatrix was duly taking care of the interests of respondent No.1. However, a closer look gives rise to manifold questions which carry no plausible answer.

30.2. In the said stipulations, neither any time frame is provided for the appellant to carry out the expected construction nor the nature, quality and extent of such construction has been spelt out. It is also not clear as to what would happen in the event of the appellant not carrying out such construction, that is, as to whether she would stand divested of the property already bequeathed?

30.3. Apart from all the aforesaid aspects, the fundamental fact remains that none of the stipulations could have been legally made by the testatrix, nor they could be enforced in any proceedings. This is for the reason that nowhere in the document any provision has been made for carrying out such construction out of the estate of the testatrix. It remains questionable if the testatrix was entitled to issue such directions in the testament, which could have been executed only through the property of the legatee and not from her own estate?

30.4. Yet further, the stipulation in the alternative in sub-clause (b) of Clause 1 of the Will remains non-est on the face of the record. Admittedly, the ground floor of the building in question is the property of the appellant for having been gifted by her father. The direction for demolition of the entire building as contained in the said sub-clause (b) includes in it the direction to demolish the ground floor too. The testatrix could not have given any such direction because that amounts to intrusion into the property rights of the appellant in such a manner so as to direct her to pull down her own property and lose value thereof and then, to invest further by raising a new construction.

30.5. Moreover, whether as per sub-clause (a) or as per sub-clause (b), if at all the appellant were to make any such construction as expected, it would become her own property; and the question would yet remain as to how the respondent No. 1 shall enforce conveyance of the appellant's title to herself?

30.6. It remains trite that no one can convey a better title than what he had; as expressed in the maxim: 'Nemo dat quod non habet'9. The testatrix never had any right over the property belonging to the appellant and could not have conveyed to the respondent No.1 any property which was of the ownership of the appellant or which might be acquired or raised by the appellant in future by her own funds. On this ground alone, the Will in question is required to be considered void as per Section 89 of the 9 See, for example, Narinder Singh Rao v. Air Vice-Marshal Mahinder Singh Rao & Ors.:

> (2013) 9 SCC 425, where the testatrix had bequeathed property in excess to her share and this Court held that the bequest has to be treated only to the extent of the share held by the testatrix.

Succession Act, when the principal bequeathing stipulation in the Will suffers from uncertainty to the hilt.

30.7. A close look at the Will in question brings forth yet another interesting, nay disturbing, feature of its contents. Whilst in the first alternative in sub-clause (a) of Clause 1 of the bequeathing part of the Will, the testatrix expected that the appellant shall construct "residential facility of such covered area as is permissible under the Municipal Building Bye-laws at the time of my demise", whereas, in sub-clause (b) thereof, the testatrix provided the alternative that the appellant shall carry out new construction "as is permissible under the Municipal Building Bye-laws". The expression "at the time of my demise", as occurring in sub-clause (a) does not occur in sub-clause (b). Now, it remains elementary that if a construction is to be raised, it has to conform to the Building Bye-laws or Regulations as in force and as applicable at the relevant time of construction. The testatrix could not have overridden the operation of law by providing that the construction could be raised as permissible under the Bye-laws at the time of her demise. If that was not the meaning of sub-clause (a), then it remains questionable as to why the expression "at the time of my demise" at all occurred there and the question further remains as to why the same was omitted in sub-clause (b)?

30.8. Therefore, literal reading of the Will in question makes it clear that the purported provision for the respondent No.1 is illusory and an eye wash because on the practical side, the provision is inexecutable and unenforceable; and the respondent No.1 is not likely to get anything thereunder.

31. In the ultimate analysis, we are satisfied that the Will in question is surrounded by various suspicious circumstances which are material in nature and which have gone unexplained. The cumulative effect of these suspicious circumstances is that it cannot be said that the testatrix was aware of and understood the meaning, purport and effect of the contents of the Will in question. The appellant, while seeking probate, has not only failed to remove and clear the aforesaid suspicious circumstances but has even contributed her own part in lending more weight to each and every

suspicious circumstance. The Will in question cannot be probated from any standpoint.

The curious case of alleged third page of the Will

32. For what has been discussed hereinabove, it is but evident that the Will in question is besieged by multiple suspicious circumstances, which have not been cleared; rather every suspicious circumstance is more baffling than the other. Even this is not the end of the matter.

33. There remains yet another, and perhaps the most confounding part of the matter, which leaves nothing to doubt that the prayer for probate of the Will in question could only be declined. It is the curious case of alleged third page of the Will in question and the vacillating stand of the appellant in that regard. This aspect, perforce, needs a little elaboration as infra. 33.1. As noticed in the preceding paragraph 13 and its sub-paragraphs, during the course of trial, on 24.03.2008, the respondent No. 1 moved an application under Section 151 CPC seeking opportunity to further cross-examine the appellant. In this application, the respondent No. 1, inter alia, attempted to raise a plea relating to the alleged third page of the Will in question. This application was rejected by the Trial Court on 25.03.2008, inter alia, with the observations that the story of this third page, as coming on record for the first time cannot be believed, particularly when nothing in that regard was asked in the cross-examination of PW-1. 33.1.1. Thereafter, the respondent No. 1 filed another application seeking permission to file her written statement and seeking condonation of delay. Again, the respondent No. 1 attempted to refer to the said third page of the Will, inter alia, with the following submissions:-

> "4. The Respondent No. 2 submits that due to her lack of knowledge about the existence of the third-page of the purported Will and being all through assured by the Petitioner that the Respondent No. 2 would get her share as per Will, the Respondent No. 2 did not file objections at the initial stage.
>
> 5. The Respondent No. 2 submits that the purported Will in question was lying in the custody of the Petitioner and she can only give proper clarification and explanation about the handwritten portion thereon and with regard to the third-page of the said Will, which the Petitioner did not produce before this Learned Court with some ill-motive." In reply to the aforesaid part of the application, the present appellant stoutly denied the existence of any third page of the Will and, inter alia, submitted as under:
>
> "4.That para No. 4 of the application is wrong and hence denied. It is denied that there is any third page of the Will, as alleged or otherwise. This Hon'ble Court has already dealt with this false contention of the Respondent No. 2 vide its order dated 11.04.2008. Even the perusal of the Will clearly reveals that the Will is in two pages. The averments to the contrary are absurd, frivolous and devoid of any merits. It may be appreciated that the Respondent No. 2 admits that the Will, that is, the subject matter of the present petition, but owing to her malafide intentions is now seeking to take self contradictory stand, which is not permissible under law. It may be

appreciated that the Respondent No. 2 is an educated lady and the averments with regard to lack of any knowledge etc., is wrong and hence denied. It is denied that the Petitioner has given any such assurances, as alleged or otherwise." The application so filed on behalf of respondent No. 1 and another application filed on behalf of respondent No. 2 under Order IX Rule 7 CPC were decided together by the Trial Court in its order dated 03.07.2008, inter alia, with the observations that, 'the alleged 3rd page appears to be some another document and prima facie it is not certainly 3rd page of the Will'.

33.1.2. Yet again, an application filed on behalf of respondent No. 2 under Order XI Rule 12 and 14 CPC seeking production of the same alleged third page of the Will was rejected by the Trial Court by its order dated 23.08.2008, inter alia, with the observations that the respondent No. 2 had described the entire Will as forged and fabricated so he 'cannot be allowed to take a contradictory stand that the third page is genuine and other two pages are forged'. The Trial Court also observed that the claim of the appellant was only in respect of one immovable property and one bank account and no claim had been made in respect of any movable property.

The Trial Court further went on to observe that 'even if it is presumed that deceased during her life time distributed her personal belongings, cash and jewellery in accordance with the third page then also that third page has now become useless because the distribution of the movable assets took place during life time of the deceased whereas the Will has to take effect after the death of the testatrix.' 33.2. Thus, in the Trial Court, at a late stage, the respondents attempted to suggest, rather persist, with the submission that there had been a third page of the Will but this suggestion was specifically denied by the appellant even with the allegation that the said third page had been fabricated by the respondents. The Trial Court accepted the submission of the appellant to the extent that no such third page existed. The Trial Court even observed that distribution of movable assets of testatrix was complete during her lifetime and the only subject-matter remaining was the immovable property and the bank account.

33.3. In continuity with what has been observed hereinabove, we may also add that prima facie, the suggestion about any such third page of the Will made by the testatrix appears doubtful because the Will is question is drawn up in two pages; the testatrix has specifically written in her own hand that the Will is so made in two pages; and the document effectively ends at the bottom of the second page with signatures of testatrix and two attesting witnesses.

33.3.1. However, all the observations and findings of Trial Court (as regards the alleged third page of the Will in question) and even the prima facie impression given by the document Ex.PW1/H against existence of any such third page of Will are shaken to the core when we take into account the strange turnabout and volte-face of the appellant in the High Court, where it was asserted on her behalf that she had indeed acted as per the "directions" of the testatrix in the said third page!

34. The above-noted strange shift in stand of the appellant, where she asserted having acted as per the said third page had its own background. As noticed, during the course of trial, a fact surfaced

that before filing the petition for probate, the appellant had made payment of a sum of Rs. 25,000/- to the daughter of the attesting witness PW-3; and the Trial Court even observed that the possibility of this witness being bribed was not ruled out. This very aspect was seemingly pressed again before the High Court by the respondents. While countering such contentions made on behalf of the respondents as also while asserting that the respondent No. 1 was not fair in her conduct, the appellant asserted before the High Court that though this third page was a creation of the respondents but, she (the appellant) had acted according to the desire of the testatrix as stated in the said third page. It was specifically stated on behalf of the appellant that payments were made by way of four cheques, in the sum of Rs. 25,000/- apiece, in favour of the daughter of PW-3, the daughter of the respondent No. 1 and two sons of her own (the appellant) 'in compliance with the directions in the said "3rd page", which is a separate directive of the deceased de hors the Will'. It was further asserted on behalf of the appellant that she had 'faithfully acted upon the directions' set out in the said third page and handed over the car to the daughter of respondent No. 1 and even gave the jewelleries to the respondent No. 1 herself! It was sought to be argued on behalf of the appellant that the said third page rather proves the validity of the Will in question.

34.1. What has been noted hereinabove, being the entirely different stand of the appellant regarding the said third page, is specifically found in the written arguments filed on her behalf in the High Court. The relevant part of such written arguments may be usefully extracted as under:-

> "1. That in the first place there is no challenge from either of the 2 Respondents to the signatures and the hand writing of the Testatirix on the Will; indeed there is sufficient admission of the validity of the Will in the following manner:
>
> ADMISSIONS
>
> (a) Respondent No. 2 files no objections to the Probate Petition.
>
> (b) Respondent No.2, who had been granted the license to reside in the suit property, clandestinely attempts its alienation, constraining the Petitioner to file a suit for injunction (Annexure A-14 on page 176 --- please see page 181 for the prayer), as per legal advice received as against an Application for restraint in the Probate Petition itself.

Respondent No.2 retaliates by committing a volte face and filing an Application for permission to further cross examine the Petitioner with regard to (i) the holograph portion of the Will, (ii) the existence of a third page to the Will, (iii) doubting the fatherhood of the Petitioner and (iv) establishing the extent of her rights in the suit property under the Will. The Application is dismissed vide Order dated 25.03.2008 (Annexure A-7 on page 93) but the flip-flop stands of the Respondent No.2 may be noted to deny any credence to her contradictory submissions in the instant Appeal and the contention of the existence of a 3rd page to the Will tantamounting to the admission of the validity of the 2 paged Will propounded by the Petitioner.

The so called "3rd page" is Annexure A-8 on page 97, which does not form part of the Will but was signed separately by the Testatrix and has indeed been acted upon to the benefit of, amongst others, Respondent No.2 herself and her daughter.

It is not comprehensible as to how then the Respondent's challenge the Petitioner's issuance of the 4 Nos. cheques, all in the sums of Rs.25,000/- apiece favouring Gen. Ahluwalia's daughter, Respondent No.2's daughter and the Petitioner's 2 sons in compliance with the directions in the said "3rd page", which is a separate directive of the deceased de hors the Will.

Also in compliance with the said directives the Respondent No.2's daughter has been given the car belonging to the deceased by the Petitioner after the demise of the deceased.

**** **** ****

12. That at the hearing R-3 relies upon a litany of FALSEHOODS in order to advance her case against the Will, as set out hereunder:

> Sr.No. Submissions at the Manifest Falsehood Bar ****
>
> (ii) The Petitioner has The averment is once given Rs.25,000/- to again false to the the daughter of one knowledge of R-3 in as of the witnesses to much as it is he and R-2 the Will in order to who have propounded a influence him. paper described as "the 3rd page" of the Will in question wherein the Testatrix has directed the manner of the distribution of her movable assets, though not in the form of a Will, but the Petitioner has faithfully acted upon the directions set out therein (Annexure A-

8, page 97) and paid Rs.25,000/- not only to the daughter of the witness Mandira Ahluwalia but has also paid a sum of Rs.25,000/- besides various jewelries and a car to R-2's daughter Nomita Mehta as also various jewelries to R-2 herself as per the directions contained in the said "3rd page" *** *** ***

13. That at the hearing, R-2, taking a leaf out of R-3's book, relies upon a further litany of FALSEHOODS in order to advance her case against the Will, as set out hereunder:

Sr.No.	Submissions at the Bar	Manifest Falsehood
***		
(iv)	The Petitioner's distribution of moneys and other movable assets left behind by the Testatrix arouses suspicion that she was either "buying out" Respondent No.2 and one of the	The false allegation is bellied by the so-called "3rd page" of the Will propounded by R-2 & R-3 and the Petitioner has made the various payments and disbursed various movables after the demise of the Testatrix

attesting witnesses or misappropriating the joint bank account held by the Testatrix with the Petitioner.

faithfully in terms of the said page which was duly signed by the Testatrix but did not form part of the "2 paged Will" or can be deemed to be a codicil but the Petitioner honoured the dictate of the Testatrix as set out on a piece of paper signed by her.

*** *** ***"

(underlining supplied for emphasis)

34.2. In paragraph 49 of the impugned judgment, the High Court noticed such a stand of the appellant, seeking to rely on the very same disputed third page of the Will and observed that this third page was never produced by the appellant; rather when the respondent No. 2 sought its production, the appellant denied the same. The High Court also observed that the said third page of the Will was never proved before the Trial Court; and even if it was assumed to be existing, the suspicious circumstances were not dispelled.

35. In our view, though the High Court has rightly observed that even if this third page is assumed to be existing, it does not remove the suspicious circumstances but the High Court has stopped short of going a little further and has not noticed that volte-face of the appellant regarding this third page tilts the preponderance of probabilities heavily, rather conclusively, against her. Noteworthy it is that the said third page has not been exhibited in evidence. The flip-flops of the appellant regarding this third page compels us to examine several of the possibilities concerning other assets of the testatrix.

35.1. As noticed, the Will in question (Ex.PW1/H) is drawn on two pages and is complete in itself and does not leave any scope for any other codicil concerning the estate of the deceased, particularly when bequeath has been made not only of the immovable property and the bank account but also as regards the other assets of testatrix in the residuary clause, which reads as under: – "2. I also direct that in the event of my acquiring any further movable or immovable assets hereinafter or any other assets that I may have forgotten to mention in the present Will the same shall devolve upon my daughter Mrs. Kavita Kanwar." 35.1.1. Now, from the evidence on record and from the stand of the appellant, there is little to doubt that there had been several other assets of the testatrix apart from the said immovable property and the bank account. By virtue of the aforesaid residuary clause, all such other assets are bequeathed to the appellant. In the given scenario, two serious questions perforce acquire immediate attention. One that while making the application seeking probate, the appellant did not divulge all other assets which were to come in her hands by virtue of the said residuary clause of the Will in question10. Secondly, when there had not been any direction in the two page Will in question for making payment to anyone or parting with any movable to anyone, what had been the reason for the appellant making payment to different persons, including her own

sons, the daughter of the attesting witness and the daughter of the respondent No. 1 apart from giving car to the daughter of the respondent No. 1 and jewelleries to the respondent No. 1 (as alleged in the written submissions before the 10 In paragraph 8.2 hereinbefore, we have reproduced the major contents of the application seeking probate with its Annexure-B wherein, only the said immovable property and the amount lying in the bank account were stated; and in paragraph 12 of the application, the appellant mentioned the immovable property as the only asset likely to come in her hands with the referred stipulations.

High Court). Both these questions on the conduct of the appellant only thicken the suspicious circumstances surrounding the Will in question. 35.2. On the other hand, as soon as the possibility of existence of such third page carrying the desire and directions of the testatrix about distribution of her other movable property is taken into account 11, the document Ex.PW1/H loses all its worth because it cannot be said the testatrix executed the same after understanding the meaning and purport of its contents. If she had the desire of distribution of movable property in a different manner and to different persons (as alleged by the appellant before the High Court), the aforesaid residuary clause would not have occurred in the Will in question at all. Secondly, if it is assumed that the testatrix issued separate directions about distribution of her assets de hors the Will then, the Will in question ceases to be her last Will.

36. Hence, to cap all the suspicious circumstances, the aforesaid equivocal stand of the appellant, as regards the third page of the Will and her assertion of having acted in accordance with the "directions" in the said third page of the Will, effectively knocks the entire case of the appellant down to the bottom. The suspicions arising because of the facts and factors noticed hereinbefore, including the unnatural exclusion of the respondents from estate; uncertain and rather inexecutable stipulation about construction by the appellant for the purpose of the respondent No.1; active role played by the appellant in execution of the Will and yet seeking to avoid 11 As per the submissions made before the High Court, the appellant indeed carried out the directions contained in such third page of the Will. the factum of her role by incomplete and vague statements; and the witnesses having contradicted the appellant on material particulars etc., have not only gone unexplained but are confounded beyond repair with such vacillating stand of the appellant regarding the said third page of the Will of the testatrix.

Summation

37. The discussion foregoing is sufficient to find that thick clouds of suspicious circumstances are hovering over the Will in question which have not been cleared; rather every suspicious circumstance is confounded by another and the curious case of the alleged third page of the Will effectively and completely demolishes the case of the appellant. Put differently, it is difficult to be satisfied that what is literally coming out of the document in question had been the last wish and desire of the testatrix as regards succession of her estate. On the contrary, we find enough and cogent reasons to affirm the material findings of the Trial Court and the High Court that it cannot be said that the testatrix executed and signed the document in question as her Will after having understood the meaning, effect and purport of the contents.

38. The result, inevitable, is that this appeal deserves to be dismissed. With the concurrent findings having been affirmed and when the appellant is found wanting in forthrightness at various stages of proceedings, costs ought to follow the result of dismissal of this appeal. Conclusion

39. Accordingly, and in view of the above, this appeal fails and is, therefore, dismissed with costs quantified at Rs. 50,000/- (rupees fifty thousand), payable by the appellant equally to the respondent No. 1 and respondent No. 2.

.....J. (A.M.KHANWILKAR) .....J. (DINESH MAHESHWARI)
New Delhi, Dated: 19th May, 2020.