Project

On

Will under Indian Succession Act and kinds of will

Submitted by

SHAILESH JAYPRAKASH SINGH

Seat No - LLB20350,

Semester - II, LLB-3Yrs

Under the Guidance

of

Prof. N. M. RAJADHYAKSHA

Bharatratna Dr. Babasaheb Ambedkar Law College Bhiwandi

Session 2020-21

INDEX

The Indian Succession Act, 1925

Laws of Succession relate to legal principles of distribution of assets of a deceased individual. These include the order in which one person in preference of any or one person after another or any one person in particular shares with any other person succeeds to the property/estate of the deceased person.

The Indian Succession Act, 1925 can be broadly divided into several parts:

1. Title & Definitions [Section 1, 2 & 3]
2. Law Of Domicile [Section 4 -19]
3. Marriage [Section 20, 21 & 22]
4. Concept of consanguinity [Section 23 - 28]
5. Intestate Succession [Section 29 - 56]
6. Testamentary Succession [Section 57 - 166]

The Indian Succession Act, 1925 deals with both testamentary and intestate succession. Firstly, where deceased has left behind a valid and enforceable 'Will'; and secondly, where a person died without leaving behind such 'Will'

Will

As per definition under Section - 2 (h) of The Indian Succession Act, 1925
"Will" means the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death.

Description:

A will or testament is a legal declaration which authorizes the testator to name the people who would inherit his estate after his death. He can specify his intentions which he wishes to be fulfilled after his death and clarify all confusion regarding the distribution of his property. A will once made can be revoked by the testator only during his lifetime. It cannot be changed or disregarded after the event of his demise and thus it is the best way to dispose off one's property. However, one thing has to be kept in mind. A testator can only make declarations regarding his self-acquired property by way of a will. He cannot give away the joint family property or any other property not solely belonging to him.

The Indian Succession Act applies to all religious communities across the board. This act however does not apply to **Muslims** who are governed by their personal laws. A person is deemed to die intestate in respect of all property of which he has made testamentary disposition i.e. document of 'Will', etc. which is capable of taking effect, Section 30.

A person is said to have died testate when he or she left his or her 'Will'.
The man who makes a 'Will' is called **'testator'**. The woman who makes a 'Will' is called **'testatrix'**.

Essential characteristics of a valid Will :

The essential characteristics of a valid will are:

1. **Legal Declaration** - The document purporting to be a will or testament must be legal. It means that, it must satisfy certain legal requirements relating to a will. In other words, such a document must be in conformity with the provisions relating to execution, signature and attestation formalities prescribed under law.

2. **Disposition of the property** - The declaration should be regarding the disposition of property of the testator. If there is no reference to the disposal of the property the document shall not amount to a will.

3. **The testator must be the owner of the property** - The property proposed to be disposed off, must belong to the testator.

4. **Document intended to take effect after death of testator** - Testator must have statutory or lawful power to dispose. It must be intended to come into effect after the death of the executant, it is ambulatory and revocable during his life.

5. **Document is revocable during the life-time of the testator (Revocability)** - The essential characteristic of a will is that, it is always revocable at any time during the life-time of the testator.

6. **Will may be conditional** - A will may be so expressed as to take effect only in the event of the happening of some contingency or condition, and if a will is so expressed and the contingency does not happen or the condition fails, the will is not entitled to probate.

Conditions for a Valid Will (Section 63 of the Indian Succession Act, 1925)

- The testator should sign or affix his mark (e.g., thumb mark)
- The Will must be attested by 2 or more witnesses
- The witnesses must have seen the testator sign or affix his mark to the Will
- Each witness shall sign the Will in the presence of the testator.
- The witness should not be a beneficiary under the Will.

Types of Will

1. Joint Wills

When two or more people agree to make a conjoint will, such testamentary documents are known as Joint Wills. These are generally created between married couples, with an intention to leave the property to their spouse after one of them dies. A joint will can also be created with an intention to take effect after the death of all the testators. In such Joint Wills till all the testators are alive, a single testator cannot revoke the will alone. He/ She would require the consent of other testators to revoke their joint will. Only when all other testators have died, the sole surviving testator can revoke the will alone.

2. Mutual Wills

Mutual wills are the kind of wills in which two people agree to formulate a will on the mutually agreed terms and conditions. The testator creates the other person as his/her legatee in these wills. Generally, married couples who have children from their first marriage create such wills to ensure the interest of those children. The terms and conditions of the will remain binding on the surviving partner after the death of the first partner. Mutual Will helps to ensure that the property passes on to the children of the deceased and not a new spouse of the surviving partner in case they remarry.

3. Contingent/Conditional Wills

Execution of these wills are dependent on the happening of an event and if that event occurs in the future only then the will is to become effective. These wills are created for multiple purposes. If the testator wants to motivate a loved one for doing something good, like 'my son will get my property only if he graduates from his law school with a 70% score' or want to make safe appropriations of his property in case of his death while touring abroad[6], he can make a contingency regarding the same in his will. Any condition which is contrary to the law or is invalid in nature cannot be incorporated in a will.

4. Holograph Wills

Wills which are handwritten by the testator himself are known as Holographic Wills. These kinds of will have their own merit. Due to the fact that they are completely handwritten by the testator himself, raises a strong presumption[9] pertaining to their regularity and execution. It is held in various judicial pronouncements that "*If there is hardly any suspicious*

circumstances attached to the will, it will require "very little" evidence to prove due execution and attestation of such a will".

5. Privileged and Unprivileged Wills

Indian Succession Act, 1925 provides certain privileges to a soldier, an airman and a mariner at sea employed in an expedition or engaged in actual warfare. These privileges are enacted keeping in mind the complicated predicament a soldier is in during the tenure of his service. Provisions pertaining to such privileges are mentioned under section 66 of the Act and such wills are called Privileged Wills (Section 65 of the Indian Succession Act, 1925). Provisions allowing word of mouth in presence of witnesses to be considered as valid will and written instructions to be considered as a valid will after the death of a soldier are some of the prime examples of such privileges. Wills created by a testator not being a soldier, an airman and a mariner at sea employed in an expedition or engaged in actual warfare are known as Unprivileged Wills. Unprivileged Wills are governed under section 63 of the Act.

6. Concurrent Wills

Normally a testator prepares a single will for his/her testamentary declarations. The testator according to his wish or for the sake of convenience can make different wills for the property located in different geographical locations. Hence, co-existing wills, dealing with testamentary declarations of a single testator are known as Concurrent Wills.

7. Duplicate Wills

As the name suggests, when there are two copies of a will, then those wills are called Duplicate Wills. There are two copies of the will although it is considered as a single will. It is very simple to create a duplicate of the will. The testator has to make a second copy of the will and shall sign it and get it attested in the way that he did for the original will as per Section 63 of the Indian Succession Act, 1925. One copy can be kept with the testator and the other might be kept in safe custody somewhere like in a bank locker, with a trustee, the drafting attorney or with the executor. The testator with an intention to protect the execution of the will after his death makes a copy of the will. If the testator destroys the copy of the will that he has in his custody then, that would automatically revoke the other will.

Duplicate wills are strong and valid proof of the testamentary objectives until the original will is not on record. Otherwise, the authenticity of the duplicate will remain questionable. Presumption that the original will stands

revoked will prevail in case original will is not filed with the duplicate copy in petition for probate.

Testamentary Capacity [Section 59]

The testamentary capacity is to be considered with reference to the particular Will in question where the testamentary capacity of testator is proved by evidence of competent and disinterested witness, is sufficient evidence of testamentary capacity.

1. **Sound Mind** -
   A person is incapable of making a valid Will unless he is of sound mind, memory and understanding. A man is competent to make his Will if he has sufficient memory and intelligence to be able to perform the mental acts.

2. **Minor** -
   Where the party opposing the Will alleges that the testator was a minor at the time it was executed, the onus of proving that the testator was not a minor lies on the party propounding the Will and not on the person challenging it.

3. **Deaf, Dumb, Blind Persons** -
   One who is a deaf and dumb from his nativity is in presumption of law incapable of making a Will, but such presumption may be rebutted and if he understands and what a testament means and has a desire to make on, then he may by sign and tokens declare his testament.

4. **Lunatic** - during Lucid intervals
   If a lunatic person has clear or calm intermission (usually called lucid intervals) then during the time of such quietness and freedom of mind he may make his testament, appointing executors and disposing of his goods at pleasure.

5. **Drunkenness -**
   If at the time of execution of the Will the testator was not under the excitement of liquor, he was to be considered capable at the time of making his Will and therefore it was therefore valid.

6. **Old age illness, infirmity, etc** -
   A person suffering from paralysis and infirmity which makes his physical movement difficult is still competent to make a Will, if he is perfectly conscious and fully understands what he is doing at the time.

Testamentary guardian [Section - 60] -
A father, whatever his age may be may by Will appoint a guardian or guardians for the child during minority.

Will Obtained by fraud, coercion or importunity [Section - 61] -
A Will or any part of a Will, the making of which has been caused by a fraud or coercion or by such importunity as takes away the free agency of the testator, is void.

'Fraud' means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent1, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract

'Coercion' is the committing, or threatening to commit, any act forbidden by the Indian Penal Code (45 of 1860) or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

'Importunity' means any act, gesture or conduct which takes away from the testator free agency. It must be such an importunity as he is too weak to resist.

'undue influence' where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

Probate:

Probate is basically 'proving of Will' or 'establishing validity of the Will'. Probate is only required under jurisdiction of High courts of erstwhile presidency towns, namely Mumbai, Kolkata and Chennai. In other places, probate is not necessary, except for properties situated within jurisdiction of Mumbai, Kolkata and Chennai.

For obtaining probate, Executor of the Will shall make suitable Petition stating:

He is named Executor in the Will
the date and time of the testator's death
that the document enclosed is last Will of the Testator

that the Will has been properly signed and witnessed
the amount of assets likely to come to the Petitioner's hand
that the Court has the jurisdiction based on domicile of Testator or some immovable property being situate therein.

REVOCATION OF WILL

Will may be revoked or altered -
A Will is liable to be revoked or altered by the makers of it at any time when he is competent to dispose of his property by Will.

So long as a testator is living, he may at any moment cancel his Will and make a totally different disposition on his property. This power he possesses upto the hour of his death, provided, he is competent then to execute a valid Will.

A will can be revoked in the following manner
1. By execution of a subsequent will (Section-70)
2. By some writing and declaring an intention to revoke the will (Section-70)
3. By burning of the will
4. By tearing of the will
5. Otherwise destroying the will
6. Revocation by marriage (Section- 69)
7. WHEN A WILL IS LOST, IT IS CONSIDERED TO BE REVOKED

ADVANTAGES

1. The most important thing about a will is that it leaves comprehensible and explicit instructions about the deceased’s property and estate.

2. A will specify the inheritor of each share of the property and lessens the scope of any confusion that might arise in future. It therefore helps in mitigating family disputes.

3. A will let one choose those people whom one would like to inherit their property after their death. In case one dies intestate, the property devolves by intestate succession under the Hindu Succession Act and those people whom one might not like may also inherit the property.

4. A person making a will creates a safety garb for his minor children. He can appoint a guardian of his choice and also make any financial arrangements for them.

5. A will can be instrumental in protecting one's business. One can pass on their company and power of attorney to one's preferred heirs thereby reducing friction in business ventures.

6. In case of remarriage, a will helps one to ensure that the children from the first marriage are not left out from inheritance in any manner.

7. Wills may not only specify the inheritance in favour of friends and family members but may also include a charity or any other organisation.

8. The best thing about a will is that it is not an irrevocable instrument. A will can be revoked during the lifetime of the testator. A will can also be modified. If circumstances change and the testator becomes dissatisfied with the behaviour of any of his relatives, he can exclude his name from his will.

9. If a person dies intestate then laws of inheritance and succession apply. Such laws are extremely complicated and difficult to interpret. They are vague like any other personal laws and people interpret them according to their own interests. This results in a lot of family feuds with respect to the deceased's property. To add to it all, these laws vary among people of different religions.

10. Another advantage of will is that one can make one's own will. There is no legal requirement to get a will made by a lawyer. Thus, the pain of visiting the lawyer everyday can be done away with.

SUMMARY

A Will is made for disposition of property according to the wishes of the testator, after death

What is 'Will' ?

Will takes effect only after the death of the testator.

When a 'Will' takes effect ?

A MAJOR person of SOUND MIND.
A person with a disability (impaired hearing, vision or speech).
An insane person in a lucid interval of sanity.
Foreigners and convicts

Who can make a 'Will' ?

A person who is intoxicated or ill to a level that hampers his Comprehension.
Corporate bodies are incapable of making a Will.

Who cannot make a 'Will' ?

The person making the Will should have the testamentary capacity, sound disposing mind, knowledge of contents of the Will, Free from undue influence/ fraud/ coercion, and the making of a Will should be a voluntary act.

BASIC CRITERIA FOR MAKING A WILL (Section 59 of the Indian Succession Act)

The testator should sign or affix his mark (e.g., thumb mark), The Will must be attested by 2 or more witnesses, The witnesses must have seen the testator sign or affix his mark to the Will; or Received an acknowledgment from the testator that he has signed the Will; and Each witness shall sign the Will in the presence of the testator. The witness should not be a beneficiary under the Will.The witness can also be appointed as an executor under the Will.

CONDITIONS FOR MAKING OF A VALID WILL

A Will can be made on a plain paper. No stamp paper is required.

PAPER ON WHICH WILL CAN BE MADE

Notarization by Notary Public or Attestation by an Oath Commissioner is not required.

IS NOTARIZATION OF WILL REQUIRED?

Not Compulsory.
But, it is always advisable to get the Will registered as,
If registered and not contested after the death of the testator, probate of the Will may not be necessary.
Transmission of properties becomes easy.
Higher authenticity is attached to the Will.

REGISTRATION OF WILLS

A Will can be altered or revoked by its maker anytime, (Section 67-73 of the Indian Succession Act)
By execution of a new Will.
By revocation of the earlier Will.
By registration of the new Will (only in case the old Will is registered).
By the destruction of the old Will. By the inclusion of a codicil.
In case of the marriage of a Parsi or a Christian testator, his/her Will stands revoked
(This, however, does not apply to Hindus, Sikhs, Jains, and Buddhists).

REVOCATION AND ALTERATION OF WILL (Section 62 of the Indian Succession Act, 1925)

Yes, registration of Will even after death is possible.
(Sec. 40 of the Indian Registration Act, 1908)

REGISTRATION OF WILL AFTER DEATH

A Will can be registered at the office of the Sub- Registrar.

PROCEDURE FOR REGISTRATION OF WILL

CASE LAW On Will in Indian Succession Act, 1925

Citation	(1932) 34 BOMLR 1371
Parties	Ganpatrao Khandero Vijaykar vs Vasantrao Ganpatrao Vijaykar
Court	Bombay High Court
Judgement Date	29 June, 1931
Bench	Wadia

THE FACTS OF THE CASE

This is a petition for probate of the last will and testament of Sonabai, wife of Rao Saheb Ganpatrao Khanderao Vijayakar, who is the first petitioner. She died at Bombay on November 28, 1930, and her will is dated July 18, 1930. The 2nd petitioner is the son-in-law of the deceased and the first petitioner, being the husband of their predeceased daughter Sundrabai. The petitioners are the executors of the will. Sundrabai died in 1925 leaving a son Vasudeo, who is still a minor. The caveator, Vasantrao, is the only son of the deceased and the first petitioner. In the affidavit in support of his caveat he alleges that the will propounded by the petitioners is not the will of his deceased mother, that the signature on the will is not her signature and that she never understood nor approved of its contents, as she was demented and of a weak and inert mind since April 1928 down to the date of her death, He further alleges that the will was executed under the undue influence of the petitioners or either of them.

The will is in the Marathi language except for the attesting clause which is in English. It has been attested by Shapurji Edalji Bamji and Moreehwar Vinayak Pradhan, two advocates of this Court. According to the evidence led on behalf of the petitioners, the first petitioner and his deceased wife were at Lonavla in or about June 1930, and the 1st petitioner was at the time operated upon in the Lonavla hospital in his right hand. At that time the deceased conceived the idea of making her will, and accordingly she wrote out in her own hand certain heads of instructions for the preparation of her will. Thereafter she asked her husband the 1st petitioner after he had recovered to make a fair copy of the same as she herself wrote in a bad hand, but her husband said that he would do so on their return to Bombay. I may here mention that the 1st petitioner stated at first in his

evidence that his wife actually made a draft in her own hand, and that on returning to Bombay he copied it out word for word ; but subsequently he said that his first statement was a mistake, and that what he did in Bombay was to make out a draft will according to the heads of instructions written out by his wife in Lonavla by following the same as closely as possible. He submitted the fair draft of the will to one Narayan Jayakar, a managing clerk in the office of Messrs. Little & Co., solicitors, and he said that Mr. Jayakar made one or two verbal alterations in the draft, The will was thereupon engrossed by the 1st petitioner for execution. At the same time he wrote out his own will, and he gave both wills to his deceased wife for safe custody. Thereafter lie and his wife went by previous appointment to the office of Mr. Bamji in the afternoon on July 18,1930, for execution of both the wills, Sonabai produced her own will from the fold of her "sari". Mr. Bamji found that there was no attestation clause at the end, and he accordingly dictated one in English to the 2nd petitioner. The deceased then signed the will as Sonabai Ganpatrao, and it was duly attested by Mr. Bamji and Mr. Pradhan. The will was not read out to her in Mr. Bamji's office, nor was she asked whether she had read it. It is, however, not usual to read out the contents of a will before attesting witnesses. Moreover, it is written in the Marathi language, and it is clear from the evidence that the deceased could read and write well in Marathi, and there is no reason to believe that the will was not read by her at some time Ganpatrao Khandero Vijaykar vs Vasantrao Ganpatrao Vijaykar on 29 June, 1931 before it was brought to Mr. Bamji's office for execution. The will is written out on one side of several foolscap papers. Each paper is initialled in the left corner at the end by the two attesting witnesses, and the blank spaces at the back have been crossed out and intialled by the attesting witnesses, The date on the will in Marathi was filled in by the 1st petitioner in Mr. Bamji's office at the time. There is also an endorsement at the foot of the will which has been signed by the 1st petitioner and attested by the same witnesses, Immediately after the execution of the will, the let petitioner's will was atso executed in Mr. Bamji's office and attested by the same witnesses, There is a similar indorsement at the foot of the will which is signed by the deceased Sonabai, and her signature has also been attested. All this happened about 3 p. m. in the afternoon on July 28, 1930, in Mr. Bamji's office, and he has made an entry in respect of the attestation in his diary.

ISSUES UNDER CONSIDERATION

As I have said before, the will has been challenged by the caveator. He alleges that the will is not that of the deceased nor does it bear her signature, that since April 1928, she was not of the sound disposing mind necessary for the validity of the will, and that she had not sufficient capacity to deal with or appreciate the dispositions of her property by her will. Counsel for the caveator in his argument cited several cases, English and Indian, regarding the execution and proof of wills in cases where the will is challenged, but the important principles are now well settled and may be thus summarised -

1. Generally speaking, the law presumes sanity, and where the will is not challenged, it is enough for the purpose of establishing the will that it was duly executed by the testator, that he was not a minor, and was otherwise capable of making a will under the law by which he was governed.

2. If the testator's sanity is disputed, the burden of proof lies upon the person propounding the will to prove affirmatively that the testator was of sound mind at the date of its execution, and that he knew, understood and approved of its contents (see Balkrishna v. Gopikabai (1905) 7 Bom. L.R. 175).

3. If the insanity of the testator before the date of the will is once established, the burden of proof lies on the person propounding the will to show that it was made after the testator's recovery or during a lucid interval. If, however, it is not established, or habitual insanity does not exist, the burden of proving actual insanity at the date of the execution of the will shifts to the person impeaching the will (See Halsbury, Vol. XXVIII, p. 533),

4. If the person propounding the will takes an appreciable benefit under it, that is an element of suspicion, of more or less weight according to the facts of each case, and the burden lies upon him to show that it is the will of the testator, and no probate can issue unless the Court is satisfied that the person propounding the will has led sufficient evidence which on a close and careful examination removes that suspicion, The same rule also applies to other circumstances which create suspicion in the mind of the Court (see Barry v. Butlin (1838) 2 M.P.C. 480, Vellasawmy Servai v. Sivaraman Servai (1929) 32 Bom. L.R. 611, P.C., and Mallappa v. Tipava .

5. If there is sufficient evidence to displace the suspicion, and the will has been made and is apparently in proper form, and the evidence of the attesting witnesses is trustworthy, it does not lie in the mouth of any party to say that the

testator ought not to have made such a will, and to attempt Ganpatrao Khandero Vijaykar vs Vasantrao Ganpatrao Vijaykar on 29 June, 1931 to re-create another for him. (See Suna Ana Arunachellam v. Ramaswami Chetty (1916) 18 Bom. L.R. 408, p. c.),

6. In order that a will may be found good it is not necessary that the testator should have been in perfect state of health and that his mind should have been so clear as to enable him to give complicated instructions for his will. It is sufficient if, when the will was read out to him and explained to him, or also as I take it, when he reads it himself, he was capable of understanding that his instructions in the main had been carried out (see Gordhari das v. Bai Suraj (1921) 33 Bom. L.R. 1068).

COURT OBSERVATIONS -

It is the caveator's contention that the will propounded by the petitioners is not his mother's will and that it does not bear her signature. I will deal with the question of the signature first. The will has been attested by two advocates of this Court who have given evidence and sworn that they both saw the testatrix sign the will in their presence, They are both reliable and independent witnesses, and I am not prepared to accept the suggestion that they have perjured themselves, I accept their evidence, and the fact that one of them shares his chambers with the 2nd petitioner and the other belongs to the same community as the testatrix does not in the least detract from its value. Counsel for the caveator suggested that the handwriting of the signature is not that of the testatrix. According to the Indian Evidence Act the ordinary methods of proving a disputed handwriting are :- (a) under Section 47 by calling a person or persons acquainted with the handwriting of the person by whom the disputed document is alleged to have been written or signed, (b) under Section 45 by calling an expert qualified to express an opinion on the disputed handwriting, or (c) by a comparison of some or more of the admitted or proved specimens of handwriting or signature of the person with the handwriting on or signature of the disputed document alleged to have been written or signed by him. Such comparison must be made in accordance with the terms of Section 73 of the Act. Counsel for the caveator said that there was a marked difference between the signature on the will and some of the admitted signatures on documents which have been exhibited, and he wanted to call an expert in handwriting in support of his contention, I have myself carefully examined the signature on the will as well as on the other documents, and I find no appreciable difference between them. I say " appreciable ", because it is a matter of common knowledge that no two signatures of one and same person are exactly alike. I did not, therefore, think it

necessary that the Court's time should be further taken up by calling expert evidence. It was also pointed out to me that the signature on the will is not the full signature of the deceased, her full signature being Sonabai Ganpatrao Vijayakar. The will, however, begins by giving the name of the testatrix as Sonabai Ganpatrao, and the will is signed accordingly. It was also suggested that the will was subsequently got up. This is a suggestion which like many others made by the caveator rests merely in allegation and has not been proved, I hold that the signature on the will is genuine.

JUDGEMENT BY HONOURABLE HIGH COURT -

I have already expressed my opinion before that on the evidence led before me I am satisfied that the will propounded by the petitioners is the last will and testament of the deceased. A reference was made to the decision of the Appeal Court in Mallappa v. Tipava , but in that case there were many elements which created suspicion, one of which was that the will itself contained a false statement which the testater could not have made

The will is also challenged by the caveator on the ground that the petitioners or either of them exercised undue influence on the deceased. In order to prove this allegation it is necessary for the caveator to prove that the petitioners were in a position to dominate her mind. The only allegation made in evidence was that the 1st petitioner could get her to do as he liked by threatening her with another branding. Such an allegation was never even put to the 1st petitioner, There is no evidence before me that the deceased was acting under compulsion, and she did not appear to the attesting witnesses to be acting in that manner. As was observed in by Sir Gorell Barnes in Spiers v. English [1907] P. 122, 124 the plea of undue influence ought never to be put forward unless the party who pleads it has reasonable grounds upon which to support it. No grounds have really been made out by the caveator. It was pointed out by their Lordships of the Privy Council in Bur Singh v. Uttam Singh (1910) L.R. 38 I.A. 13, 22 : s.c. 13 Bom. L.R. 59 that it is necessary not merely to show that the person propounding the will had the opportunity to exercise undue influence, but clear evidence must be led to prove that such influence was exercised. The undue influence in the case before me is only an insinuation on the part of the caveator and has not been proved. Taking all the evidence, documentary and oral, into consideration, there is sufficient evidence for the Court to come to the conclusion that the testatrix knew what she was doing and was capable of making a will and understanding the dispositions of her property which she made thereunder. The will, therefore, in my opinion, is established, and ought to be admitted to probate.