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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 1320 of 1995

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J. C. DOSHI

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Approved for Reporting	Yes	No
		No
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HARISHCHANDRA R PEDNEKAR (DECEASED) THROUGH LEGAL HEIRS
& ORS.
Versus
BHASKAR R PEDNEKAR (SINCE DECEASED THROUGH LEGAL HEIRS) &
ORS.

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Appearance:

MR KV SHELAT(834) for the Appellant(s) No. 1.1,1.2,1.3,1.4
MR. PANAM C SONI(7035) for the Defendant(s) No. 1.1,1.2,1.3,1.4

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CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI

CAV JUDGMENT

1. By way of this first appeal under section 96 of the Code of Civil Procedure, 1908 (“**CPC**” for short) along with provisions of Indian Succession Act, 1925 (“**the Act, 1925**” for short) deceased – appellant Harishchandra Pednakar questions legality and proprietary of judgment drawn by learned Judge, City Civil Court, Ahmedabad dated 16.03.1995 in Civil Suit No.1601 of 1986 (Probate Application No.558 of 1982), whereby, learned Judge granted probate of property mentioned in Will in favour of deceased – Bhaskar Pednekar respondent herein (expired during pendency of this appeal).

2. Mr. Bhaskar Pednakar was plaintiff and Mr. Harishchandra Pednakar was defendant before the learned Trial Court.

3. For sake of convenience, parties are referred to their original status before the learned Trial Court.

4. Facts of the case are as under :-

4.1. The Plaintiff and the defendant are real brothers, being sons of the late Shri Ramchandra, who expired on 26.07.1981. At the time of his demise, the deceased was residing with the Plaintiff. It is the Plaintiff's case that the deceased, while in a sound and disposing state of mind, executed his Will dated 18.07.1981. Under the said Will, the Plaintiff was appointed as the sole executor, and the immovable property being Tenement No. 34, New Arvindnagar Cooperative Housing Society, Vibhag-2, Nikol Road, Bapunagar, Ahmedabad (hereinafter referred to as the "**disputed Property**") was bequeathed to him.

4.2. The Plaintiff contended that the Will was drafted and typed by Advocate Mr. Joshi and duly executed in presence of two witnesses. Subsequent to the death of deceased, the Plaintiff approached the concerned Co-operative Society on the strength of the Will for the mutation of his name in his favour. However, the Society insisted for production of a Probate from a competent court. Consequently, the Plaintiff instituted Probate Application No. 558 of 1982 before the Learned City Civil Court, Ahmedabad, under the provisions of the Act, 1925.

4.3. Summons was issued as per Rules and pursuant to which defendant appeared and contested probate application. As the matter became contentious, the proceedings were converted into a Civil Suit. To be noted that conversion of probate application into suit proceedings is in ignorance of section 295 of the Act, 1925. As per section 295 of the Act, 1925, in contentious probate proceedings has to be conducted in the form of regular civil suit applying provisions of CPC and not as civil suit.

4.4. Besides, plaintiff and defendant, deceased Ramchandra had no class I heir.

5. In light of the aforementioned facts, the Plaintiff prayed for the grant of Probate in respect of the Will dated 18.07.1981 executed by the late Shri Ramchandra.

6. The defendant initially resisted the application and subsequently filed his Written Statement at Exh. 23. After denying the averments made in the Probate Application, the defendant contended that the deceased Shri Ramchandra never executed any Will during his lifetime. The defendant contended that the purported Will propounded by the plaintiff is fraud and fabricated document, and only executed with intention to grab disputed Property.

6.1. It is further contended that at the time of execution of Will, the deceased was suffering from cancer of the jaw and tongue. The defendant submits that medical condition of deceased creates serious doubt about sound and disposing state

of mind.

6.2. Furthermore, the defendant contended that he was nominee in the records of the Co-operative Society and after demise of Shri Ramchandra, the Suit Property was transferred in name of defendant and as such he is owner of disputed property. In support of his possession, the Defendant contended that deceased used to collect rent from tenant; however, upon the tenant vacating the premises, vacant possession was handed over directly to the Defendant. Therefore, the Plaintiff has no right over the property, and this litigation is an attempt to grab the property under the guise of probate, which has to be nipped in the bud.

6.3. Mainly upon above submission, it is contended to dismiss probate application.

7. Since, probate application had become contentious, learned Trial Judge framed issues and permitted both the parties to lead evidence and at the end of hearing arguments of both sides, was pleased to pronounce aforesaid judgment. Being aggrieved by said judgment, appellant – original defendant has preferred present appeal.

8. Heard learned advocate Mr.K.V.Shelat for the appellant – original defendant and learned advocate Mr.Soni for respondent – plaintiff. Both the learned advocates have filed written submission, which are taken on record.

9. In support of his submission, learned advocate Mr.Shelat relied on judgment of Hon'ble Apex Court in the case of **Ramesh Chand v/s. Suresh Chand [2025 AIR (SC) 4108]; Shivakumar v/s. Sharanabasappa [2020 AIR (SC) 3102]** and **Guro v/s. Atma Singh [1992 (2) SCC 507]**.

10. Learned advocate Mr.Soni in support of his submission relied on judgment in case of **Meenakshiammal v/s. Chandrasekaran [2005 AIR (SC) 52]; Sonaji Raghala Chaudhari v/s. Akha Diwala Chaudhari [2022 (1) GLR 536 – Gujarat High Court]; Meena Pradhan v/s. Kamla Pradhan [2023 AIR (SC) 4680]** and **Derek Ac Lobi v/s. Ulric MA Lobo [2024 (15) SCC 202]**.

11. Submission of learned advocate Mr. K.V.Shelat for the appellant are noted as under :-

(a) that deceased Ramchandra expired on 26.07.1981 within one week from execution of alleged Will.

(b) that the deceased was suffering from advance jaw and tongue cancer. In January 1981, he underwent surgery at Akhanand Hospital for tumor removal, followed by an intensive treatment at the Gujarat Cancer Research Institute. The Defendant submits that on such prolong illness, deceased lacked sound and disposing state of mind at the time of the alleged execution of Will.

(c) While narrating suspicious circumstances on execution of Will, it is submitted by learned advocate Mr.Shelat that apart from deceased was suffering from jaw

and tongue cancer, which itself raise suspicion that deceased was not in sound disposing state of mind, alleged Will is conspicuously kept silent with respect to other family members and no reasons are supplied in the Will to exclude other family members from bequeath of the property; and what were reasons to avoid bequeath of the property to other family members.

(d) It is submitted that except disputed property no other movable or immovable properties are mentioned in the Will. It is something unusual. The person who is making his last Will, generally mentions all properties, be it movable or immovable.

(e) That Will is silent about property already transferred in name of defendant.

(f) That Will is silent regarding any bequeath of movable property in form of PPF / bank account etc.

(g) That it is duty of propounder to remove all suspicious circumstances.

(h) That merely stating that Will is genuine and executed in sound disposing mind free from any bias and leading evidence of interested witness, that itself is not sufficient to believe that Will was executed.

(i) That in the complaint filed by deceased at Exh.59 against parties to the proceedings and other family members, whereby compromise arrived later on speaks that deceased was fed up with the attempt of plaintiff - respondent herein from taking away disputed property, as he had taken away title papers of the disputed property.

(j) That so called interested witness has close connection with plaintiff - respondent. One of them Mr. Shailesh examined at Exh.74 was Sales Tax Consultant in factory where plaintiff was working.

(k) That Will executed on 18.07.1981 having no reason to register has been registered on 09.11.1981 by two attesting witnesses in Sub Registrar Office. That learned advocate Mr.Shelat for defendant raise doubt that Will is registered only to show that it is authentic Will, however, posthumous registration of Will would not preclude Will from being pass through test of section 63 of the Act, 1925 and section 68 of the Evidence Act.

(l) That there is inconsistency in oral evidence in regards to signature on the Will in deposition of plaintiff, attesting witnesses and scribe. That sufficiently cast doubt that Will does not carry signature of deceased Ramchandra.

(m) That installment / payment of disputed property was paid by defendant.

(n) That maintenance charge of disputed property is paid by defendant.

11.1. Raising aforesaid arguments contending them as suspicious circumstances shrouded on the Will, learned advocate Mr.Shelat submitted that plaintiff who propounded Will before the learned City Civil Court was required to remove all the clouds and suspicious over Will, however, he failed to do so, yet learned City Civil Court granted Probate ignoring settled principle of law and provisions thereof.

11.2. Upon above submissions, learned advocate Mr.Shelat submitted to allow this appeal and quash and set aside impugned judgment and award and further to dismiss probate proceedings.

12. Learned advocate Mr.Soni as against aforesaid submission after referring to factual aspects of the case, mainly supported impugned judgment and award and submitted that plaintiff being propounder of Will entered into witness box and deposed that deceased was living with him at the time of his death. Defendant i.e other son did not take care of deceased Ramchandra. Deceased executed Will on his own. He went to Narol Court to meet advocate Mr.Joshi, got prepared Will and in presence of two independent witnesses got Will attested. It is submitted that one of the attesting witness Mr.Shailsh entered into witness box at Exh.74.It is also submitted that Mr.Joshi advocate and who has scribed Will entered into witness box at Exh.77. All these three oral evidence are sufficient and meet essential requirement of proving Will under section 63 of the Act, 1925 read with section 68 of the Evidence Act. It is also submitted that merely some doubt is raised in the mind of defendant would not be suspicious circumstances. Learned advocate Mr.Soni submitted that it is deceased's last testimony, he chooses to bequeath property to the plaintiff. He would further submit that not mentioning other properties in the Will may be circumstances but is not a reason to disbelieve that deceased has not executed the Will. It is submitted that ailment of cancer cannot be reason to believe that deceased was not in

sound disposing mind. It is submitted that when it is argued by defendant that alleged Will is executed under undue influence, then onus of proving undue influence is upon person making such allegations.

12.1. It is further submitted by learned advocate Mr.Soni that in the present case, defendant alleges that plaintiff remained present at the time of execution of Will, would not per se prove that Will was executed under influence. It is submitted that in view of section 82 of the Act, 1925, Will has to be read in its entirety and meaning of any provision of Will has to be collected from entire instrument and clause of Will are to be construed with reference to each other; piecemeal reading of the Will is not permitted. Learned advocate Mr.Soni submitted that Will is instrument of testamentary disposition of property being a legally acknowledged mode of bequeathing testator's acquisition during his life time and to be acted upon only on his demise and wish of the deceased has to be given weight. It is further submitted that as per section 63 of the Act, 1925 read with section 68 of the Evidence Act, evidence of only one attesting witness is sufficient which in the present case, plaintiff has done so by leading evidence of Mr.Shailesh at Exh.74 and nothing has been culled out contrary to case of plaintiff or supporting case of defendant. Therefore, it is submitted by learned advocate Mr.Soni that various circumstances raised by appellant – defendant in the appeal is nothing but just dispel of his mind. It is further submitted that whether a particular feature would qualify as suspicious would depend on facts of each case and therefore, doubt raised by the appellant on the execution of the

Will would not survive. It is submitted that learned City Civil Court has discussed entire evidence and thereafter granted probate in favour of plaintiff qua disputed property. It is submitted that such reasoned order deserve no interference and therefore, present appeal be dismissed at threshold.

12.2. Upon above submissions, it is submitted to dismiss the First appeal.

13. Having heard learned advocates and having gone through Record and Proceedings, it is noticed that learned Trial Judge instead of conducting probate proceedings in line of section 295 of the Act, 1925 “as nearly as may be, in the form of a regular suit” converted probate proceedings into civil suit and also granted “decree”. Such practice and procedure adopted by learned City Civil Court is unknown to the provisions of the Act, 1925. Be that as it may. Another anomaly which could be noticed is that though Will at Exh.80 does not appoint any executor, yet in the opening part of the judgment, it is observed that plaintiff was executor and also beneficiary and thereafter, continued probate proceedings. Perusal of Will at Exh.80 states that plaintiff is just beneficiary, he is not appointed as executor.

14. In view of section 222 of the Act, 1925, probate can be given only to appointed executor. The person who is beneficiary to the Will has claim letter of administrator with or without Will annexed. Though there is thin different, it has large aftermath effect and this thin line difference perhaps has not been understood by learned Trial Court. Effect of probate is stated in

section 227 of the Act, 1925, which reads as under :-

“227. Effect of probate.— Probate of a Will when granted establishes the Will from the death of the testator, and renders valid all intermediate acts of the executor as such.”

15. In view of section 227 of the Act, 1925, the grant of Probate establishes the Will from the death of the testator and renders valid all intermediate acts of the executor as such. At the cost of repetition, it is observed that in Will at Exh.80, deceased Ramchandra has not appointed plaintiff as executor. Under the terms of the said Will, the Plaintiff is chosen to be beneficiary and therefore, the plaintiff was legally required to seek letter of administration with or without Will annexed. Be that as it may. This Court without going into technicalities, refers to judgment of Hon'ble Apex Court in the case of **Vatsala Srinivasan v/s. Shyamal Raghunathan [(2016) 13 SCC 253]**, whereby, probate proceedings was converted into proceedings for getting letter of administration, and Hon'ble Apex Court held that ultimately in testamentary jurisdiction the Court was required to examine whether Will alleged to be executed by the deceased is valid and in sound disposing mind.

16. In aforesaid premises, this Court proceed further to decide the rival submissions.

17. Learned Trial Court framed the issues at Exh.20 which reads as under :-

“(i) It is proved that the Will dated 18.07.1981 was duly

executed by deceased Ramchandra ? If yes, is it proved that it is the last Will and the testament of the deceased ?

(ii) What order and decree ?”

17.1. Issue No.1 was answered in affirmative to grant probate in favour of plaintiff and issue no.2 was answered as per final order.

18. From aforesaid rival arguments, issues / point of determination arise for consideration of this Court are as under :-

(a) Whether plaintiff being propounder of Will dated 18.07.1981 has successfully dispelled suspicious circumstances shrouded on the execution of the Will dated 18.07.1981 ?

(b) Whether suspicious circumstances with regard to Will alleged by the appellant defendant are created doubt in the mind and not real and genuine ?

(c) Whether learned Trial Court has rightly passed impugned order in favour of the plaintiff ?

(d) What order ?

19. Before delving into facts of the case and addressing same, it is pertinent to reproduce relevant provisions dealing with the validity of the execution of the Will. They read as under as under :-

Section 63 of the Act, 1925 -

“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 witnesses, 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 acknowledgement 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.

Section 68 of the Evidence Act 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.

20. Bare reading of section 63 of the Act, 1925, makes it clear that essential requirement for execution of Will must be proved in terms of section 68 of the Evidence Act. Apt to note that Will

is an instrument of testamentary disposition of property otherwise than inheritance. It is instrument declaring last testimony of the deceased to dispose of his property before his death. Thus, it is legally acknowledged mode of bequeathing a testator's property during his life time to be acted upon his death and carries with it a element of sanctity. It speaks from the death of testator. To be noted that Will being last speak of testator has to be given effect post his death. The testator at the time of testing the document i.e. Will for its validity, would not be available for deposing as to the circumstances in which the Will was executed. In this circumstances, stringent requisites for the proof thereof have been statutorily enjoined to rule out the possibility of any manipulation. In the case of **Meena Pradhan (supra)**, Hon'ble Apex Court relying on judgment in the famous case of **H.Venkatachala Iyengar v/s. B.N.Thimmajamma [1959 Supp (1) SCR 426** and other judgments, in para 10 has laid down principles being essential for proving the validity and execution of Will. Para 10 of said judgment reads as under :-

"10. Relying on [H. Venkatachala Iyengar v. B.N. Thimmajamma](#), 1959 Supp (1) SCR 426 (3Judge Bench), [Bhagwan Kaur v. Kartar Kaur](#), (1994) 5 SCC 135 (3Judge Bench), [Janki Narayan Bhoir v. Narayan Namdeo Kadam](#), (2003) 2 SCC 91(2Judge Bench) [Yumnam Ongbi Tampha Ibema Devi v. Yumnam Joykumar Singh](#), (2009) 4 SCC 780 (3Judge Bench) and [Shivakumar v. Sharanabasappa](#), (2021) 11 SCC 277 (3Judge Bench), we can deduce/infer the following principles required for proving the validity and execution of the Will:

- i. The court has to consider two aspects: firstly, that the Will is executed by the testator, and secondly, that it was the last Will executed by him;*
- ii. It is not required to be proved with mathematical*

accuracy, but the test of satisfaction of the prudent mind has to be applied.

iii. A Will is required to fulfil all the formalities required under [Section 63](#) of the Succession Act, that is to say:

(a) The testator shall sign or affix his mark to the Will or it shall be signed by some other person in his presence and by his direction and the said signature or affixation shall show that it was intended to give effect to the writing as a Will;

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

(c) Each of the attesting witnesses must have seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of such signatures;

(d) Each of the attesting witnesses shall sign the Will in the presence of the testator, however, the presence of all witnesses at the same time is not required;

iv. For the purpose of proving the execution of the Will, at least one of the attesting witnesses, who is alive, subject to the process of court, and capable of giving evidence, shall be examined;

v. The attesting witness should speak not only about the testator's signatures but also that each of the witnesses had signed the will in the presence of the testator; vi. If one attesting witness can prove the execution of the Will, the examination of other attesting witnesses can be dispensed with;

vii. Where one attesting witness examined to prove the Will fails to prove its due execution, then the other available attesting witness has to be called to supplement his evidence;

viii. Whenever there exists any suspicion as to the execution of the Will, it is the responsibility of the propounder to remove all legitimate suspicions before it can be accepted as the testator's last Will. In such cases, the initial onus on the propounder becomes heavier.

ix. The test of judicial conscience has been evolved for

dealing with those cases where the execution of the Will is surrounded by suspicious circumstances. It requires to consider factors such as awareness of the testator as to the content as well as the consequences, nature and effect of the dispositions in the Will; sound, certain and disposing state of mind and memory of the testator at the time of execution; testator executed the Will while acting on his own free Will;

x. One who alleges fraud, fabrication, undue influence et cetera has to prove the same. However, even in the absence of such allegations, if there are circumstances giving rise to doubt, then it becomes the duty of the propounder to dispel such suspicious circumstances by giving a cogent and convincing explanation.

xi. Suspicious circumstances must be 'real, germane and valid' and not merely 'the fantasy of the doubting mind' 1. Whether a particular feature would qualify as 'suspicious' would depend on the facts and circumstances of each case. Any circumstance raising suspicion legitimate in nature would qualify as a suspicious circumstance for example, a shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the Will under which he receives a substantial benefit, etc.

21. In the case of **Smt. Jaswant Kaur v/s. Smt. Amrit Kaur [(1977) 1 SCC 369]**, Hon'ble Apex Court in para 9 has held as under :-

"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.”

22. In the case of **Kavita Kanvwar v/s. Pamela Mehta [(2021) 11 SCC 209]**, Hon'ble Apex Court in para 23.1., 23.2 and 23.3 held as under :-

“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.

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.”

23. Another decision deserve to be cited is in the case of **Leela Rajagopal v/s. Kamala Menon Cocharan [(2014) 15 SCC 570]**, whereby, Hon’ble Apex Court summarized 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. The Hon’ble Court has held as under : -

“13. A will may have certain features and may have been executed in certain circumstances which may appear to be somewhat unnatural. Such unusual features 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. Recently, Hon’ble Apex Court in the case of **Gurdial Singh v/s. Jagir Kaur [2025 (SCR) 8 257]** reiterated the aforesaid principle.

25. Being expose of above legal provision, coming back to the facts of the case, let examine whether plaintiff has successfully discharged burden of being propounder of the Will and whether he has dispelled the suspicious circumstances shrouded on the Will.

26. In order to prove the Will, plaintiff – Bhaskar entered into witness box as PW-1 at Exh.24. In his chief examination, he said that his father Ramchandra prepared Will on 18.07.1981 by giving instruction to advocate Mr. Joshi and once Will was typed, deceased Ramchandra made his signature and at that time, he was present along with him Mr.Harishbhai Shukla and Mr.Shaileshkumar Nirmal were also present. He also deposed that his father has signed the Will with blue ink and he identifies his father signature and also signature of Mr.Hairshbhai Shukla and Mr.Shaileshkumar Nirmal who are attesting witness to the Will, both of them signed Will in his presence. He further deposed that his father was previously living with defendant but since 1979, his father started living with him; his father was suffering from malignant neoplasm. In cross examination, he admitted that his father was suffering from jaw and tongue cancer. He also deposed that Dr.Devendra Patel was treating his father and his father was admitted in Cancer Hospital, Ahemdabad. It is further admitted that two or three months prior to his death, his father was admitted in hospital for treatment of malignant neoplasm; biopsy of jaw and tongue was carried to determine malignancy. It is further admitted that deceased had expressed an intent to bequeath the suit property

to the Plaintiff on the grounds that another property in Bapunagar had already been given to the defendant. It is further admitted in cross examination that when his father has executed Will, he has called Mr.Vipin Joshi and Mr.Joshi having taken notes, typed the Will and prepared draft Will but he states that he does not know whether draft Will was prepared or not. He on his own state that his father went to Narol Court at 11.00 in the morning alone and informed that he is going to meet advocate. In cross examination, he deposed that his father has told him that society people or administrator of the society are saying that for transfer of property, Will is required. He further admitted that in evening 6.00 pm, when he came back from service, advocate Mr.Vipin was sitting in his house; Mr.Harishbhai Shukla and Mr. Shaileshkumar Nirmal came to visit his father were also sitting and at that time, Mr. Vipin has taken signature of his father as well as signature of Mr.Harishbhai Shukla and Mr.Shaileshkumar Nirmal as attesting witness.

27. Attesting witness – Mr.Shaileshkumar Nirmal – PW-2 entered into witness box at Exh.74. In his examination in chief, he deposed that he personally knows deceased Ramchandra as they used to frequently met at Pan shop. He deposed that on 18.07.1981, he visited the residence of the deceased to enquire about his health. Upon arrival, he found Advocate Mr. Joshi and Mr. Shukla sitting with deceased. He further deposed that the deceased informed him about preparation of his Will. According to the witness, the deceased affixed his signature to the Will in his presence and requested him to sign as an attesting witness. PW-2 stated that he signed the document first, followed by Mr.

Shukla, he identified his signature on the Will. In cross-examination, this attesting witness admitted that when he reached to house of deceased Ramchandra on 18.07.1981, plaintiff – Bhaskar was not present. He further admitted that he was knowing that deceased Ramchandra was suffering from malignancy. He further admitted that deceased has introduced him to advocate Mr.Joshi. He admitted that advocate Mr.Joshi has explained him that deceased Ramchandra has executed Will and he has to sign the Will as attesting witness along with him, deceased Ramchandra also told to sign the Will.

28. Plaintiff examined Mr.Vipin Josh who has scribed the Will as PW – 3 at Exh.77. In chief examination, he has stated that he has prepared Will as per instructions received from deceased Ramchandra. It is further deposed that he has firstly taken instructions on paper; then typed it; prepared Will and thereafter, went to the house of deceased Ramchandra. He further deposed that when he reached to house of Ramchandra, two witnesses were already present there. He read and explained Will and once it was cleared by deceased Ramchandra, he took signature of deceased Ramchandra and two witnesses. He has further deposed that he has not signed Will. Along with other documentary evidence, aforesaid evidence has been produced by plaintiff to prove the Will.

29. Aforesaid deposition of witnesses has to be scrutinized on the factual aspect that prior to execution of Will, deceased was suffering from malignancy in jaw and tongue; tumor has been

removed from jaw, as such he underwent knife to remove malignancy tumor. He had been admitted in Akhand Anand hospital as well as in Cancer Research Institute. Relevant documents to that effect are produced on record at Exh.95. Deceased was examined by Gujarat Cancer and Research Institute on 27.03.1981. Finding of clinical examination reads as under :-

“Swelling on right lower alveolus leukoplatia potholes on tongue buccal surface. Bleeding on tongue, firm comics tenancy. Hard fixed mass to body of mandible. Hard unpile hole on rt. side of neck.”

Provisional diagnosis reads as under :-

*Ca. Rt. lower alveolus c sec. in neck. Leukoplakia on tongue.
Ca. rt. Submandbular salivary gland.*

30. The clinical diagnosis of the deceased in March, 1981 assumes significance on the reason that deceased according to plaintiff executed Will on 18.07.1981 nearly four months subsequent to detection of cancer. It is further noticed that deceased died on 26.07.1981 within one week from date of execution of Will, although dying within this period by executing Will cannot by itself considered as suspicious circumstances but it assumes significance on the ground that deceased was suffering from malignancy on jaw and tongue. Surgical procedure was carried to remove tumor in this time period. In

this circumstances, question arise that whether deceased was in position to walk alone to Narol Court from Bapunagar i.e. approximately 10 km; and whether he was in position to speak in presence of malignancy in jaw and tongue?. These are serious issues which are shrouded by suspicious circumstances. The plaintiff was required to lead evidence to the extent that though deceased Ramchandra was suffering from malignancy and, still he was in sound mental state condition and was capable of disposing of his property.

31. Plaintiff except examining himself, attesting witness and scribe, did not lead any evidence, more particularly medical person, or nearby relative or neighbors to show case that deceased despite having such serious ailment was regular in his daily chores and was carrying routine work and was used to travel alone for nearly 10 kms and was also able to call advocate.

32. Doubt is also raised whether the deceased was able to speak anything; the malignancy on the tongue give rise to such doubt. Such doubt underpin on the reason that deceased had underwent surgical procedure to remove tumor from jaw. Thus, the plaintiff was required to lead evidence to prove same in addition to proving execution of Will in accordance with section 63 of the Act, 1925 read with section 68 of the Evidence Act.

33. As per section 63(c) of the Act, 1925 to prove execution of unprivileged Will, the Will shall be attested by two more witnesses, 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 testator a personal acknowledgment of the signature or mark or his signature of the signature of such other person; and each of witnesses has signed 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. In **Gopal Swaroop v/s. Krishna Murari Mangal [(2010) 12 Scale 470]**, Hon'ble Apex Court has observed that a Will is required to be attested by two or more witnesses each of whom has seen the testator signing or affixing his mark on the Will or has seen some other person signing the Will in the presence and by the direction of the Testator or has received from the Testator a personal acknowledgment of the signature or mark or his signature or the signature of such other persona and that each of the witnesses has signed the Will in the presence of Testator.

34. In light of aforesaid provision of law, let revisit deposition of PW-1, PW-2 and PW-3 ie. Exh. 24, 74 and 77 respectively.

35. Propounder deposed that he was present on the date of execution of Will. He further deposed that his father and two attesting witnesses have signed the Will in his presence and it was prepared by advocate Mr.Joshi. He further deposed that he does not know whether advocate Mr.Joshi has prepared draft Will or not. He deposed that his father went to Narol Court from Bapunagar at 11.00 in morning. He further deposed that on the date of execution of Will, he came back to home at 6.00 evening.

He further deposed that when he reached home, his father and advocate Mr.Vipin Joshi were sitting together and after reaching home two other attesting witnesses viz. Harishbhai and Shaileshbhai came. He further deposed that advocate Mr.Joshi had taken signature of his father and then signature of Harishbhai and Shaileshbhai.

36. Now let examine deposition of attesting witness Shaileshbhai. According to his version on 18.07.1981, he went to house of deceased Ramchandra to inquire about his health. When he reached home of deceased Ramchandra, Vipin Joshi and one person viz. Shailehbhai were sitting next to him. According to this witness, deceased told him that he has prepared Will and thereafter, he signed the Will and told attesting witness to sign the Will and thereafter, he signed the Will as attesting witness. In cross examination, he has admitted that plaintiff Bhaskar was not present when he reached home of deceased Ramchadra. It is further admitted that deceased Ramchandra has introduced advocate Mr.Joshi and thereafter, advocate Mr.Joshi explained him that he has prepared Will as directed by deceased and then Mr.Joshi told to sign the Will. Along with him, deceased Ramchandra also told to sign the Will as attesting witness.

36.1. The oral evidence of both the witnesses – propounder as well as attesting witness are intended to prove execution of unprivileged Will as per section 63(c) of the Act, 1925 read with section 68 of the Evidence Act. However, plain reading of them stipulate that there is a contradiction regarding the sequence of

arrival and the presence of the parties at the time of execution of Will. Such contradictions goes to the root of the matter and creates doubt on the execution of the Will.

37. Now, I come back to evidence of propounder. He deposed that he was present at the time the attesting witnesses arrived, suggesting they may have arrived together. He further says that firstly, deceased Ramchandra signed the Will and then both attesting witness signed the Will. Attesting witness – PW-2 deposed that upon his arrival, Advocate Mr. Joshi and the other witness, Mr. Shukla, were already present. PW-2 maintains that the deceased informed him to prepare Will and requested to sign immediately after the deceased had signed. The sequence of attestation described by the attesting witness contradicts the version given by the propounder. Further, inconsistency exists regarding the physical presence of the parties; the Propounder claims to have been present during the execution of Will, while the attesting witness admits during cross-examination that the Propounder was not present when he affixed his signature. The conflicting version creates doubt about genuineness of the Will.

38. Now it is turn to peruse deposition of advocate Mr. Joshi – PW-3. He has read over Will to deceased Ramchandra and he stated that Will is 'Ok'. This critical assertion regarding acknowledgment of contents in the Will is missing from testimonies of other witnesses including attesting witnesses. Thereafter, he deposed that he has taken sign of deceased Ramchandra and attesting witnesses. Thus, his testimony

regarding the sequence of obtaining of signature from the deceased and the attesting witnesses creates a significant inconsistency against the evidence of the other two witnesses examined by the plaintiff.. Hence, there is complete inconsistency in evidence of three witnesses examined by plaintiff and it raise serious doubt about execution of Will. As the document in question is unprivileged Will, it has to be proved as per section 63(c) of the Act, 1925 and onus lies on the propounder to dispel suspicious circumstances shrouded on the Will.

39. Now let examine Will at Exh.80. Firstly, it can be notice that on the first page of Will, there is no signature of deceased and secondly, Will is prepared only for one property viz. disputed property belonging to deceased Ramchandra. Although, admittedly, deceased Ramchandra had other movable and immovable property, the Will does not describe any other movable or immovable property of deceased. It is not case of the plaintiff that deceased Ramchandra did not have any other property be it movable or immovable. To be noted that there is no illegality in disposing only one of the property by way of Will but it is unusual. Generally, testator who decided to dispose of property by Will, would dispose of all the property or at least mention other properties, be it movable or immovable and how he has been taken care of other properties during his life time in his Will. On bare reading of Will at Exh.80, it appears that perhaps Will is prepared only for House No.34, Arvindnagar Vibhag – 2, Nikol Road; no other purpose / property is seen. Even names of other heirs are missing in the Will. The absence

of names of legal heirs from the Will suggests intention to grab a specific property. These aspects need to be analysed in factual background that propounder deposed that administrator or Arvindnagar Society where house no.34 is situated was demanding Will to transfer property in name of plaintiff. This may not be complete suspicious circumstances but it is unusual mode of executing Will and to counter suspicious circumstances, it is needed to be clarified by leading cogent evidence. It is also required to be noted that within 7 days of execution of Will, deceased Ramchandra expired. The plaintiff did not bring the evidence that how deceased was keeping in his last days. It becomes relevant on aspect that deceased was suffering from jaw and tongue cancer.

40. At this juncture, worthy reference can be made to judgment of Hon'ble Apex Court in the case of **A.Kamala Bai (D) v/s. B. Kanna Rao [2025 J4X(SC) 1531]**, wherein, in para 14, Hon'ble Apex Court has held as under :-

“14. To prove the execution of will, one of the attesting witnesses is to be examined mandatorily, however, when the sole attesting witness examined before the Court admits that his chief affidavit i.e. the examination in chief was not recorded under his instructions nor does he know the contents of his examination in chief, the evidentiary value of his statement in cross-examination is seriously dented. Even if it is not necessary for a attesting witness to know the contents of the will, the question remains that he has to depose in Court, in no uncertain terms, that he has prepared the chief affidavit under his own instructions so that the credibility of the witness is assessed in the Court as a true attestor as required under [Section 63 \(c\)](#) of the Succession

Act and Section 68 of the Indian Evidence Act. If there is slightest doubt about the credibility of the sole attesting witness, holding the will to be a genuine one would be extremely difficult for the Court.”

41. To recollect, PW-1 plaintiff as well as PW-3 advocate Mr. Joshi deposed that deceased went to Narol Court on 18.07.1981 and instructed advocate Mr. Joshi to prepare Will and Will was prepared on the same day and in evening of that, deceased and attesting witnesses have signed the Will. In this factual aspect it has to be noticed that despite Will being typed, prepared and executed on the same day, the date on Will is in handwriting at two places. This creates significant suspicious circumstances. The propounder was required to clear that why dates on Will were in handwriting when entire Will is typed, prepared on the same day i.e. 18.07.1981 and executed on evening of 18.07.1981. Plaintiff or his witness does not speak whisper of words to clear doubt. In this circumstances, doubt creates on genuineness of Will. This dent or discrepancy doubt credibility of Will. This Will might have been prepared subsequently, after death of late Ramchandra and used to get house no.34.

42. Moreover, plaintiff could not clear doubt that how he secured presence of attesting witness to register the Will posthumously. These witness according to deposition of PW-1 and PW-2 came to inquiry about health of deceased and not known to plaintiff. The plaintiff was required to explain as to why Will was executed just seven days prior to death of Ramchandra and why Will registered before Sub Registrar Office

on 09.11.1981 posthumously and why plaintiff was required to register Will after death of deceased Ramchandra and what were compelling circumstances to register Will posthumously. This is another suspicious circumstances.

43. In light of various suspicious circumstances noted above, the plaintiff was required to remove the same by leading evidence. Mere registration of Will does not establish genuineness of Will. It is case where propounder failed to dispel the suspicious circumstances surrounding execution of Will and mere registration would not validate the Will which is shrouded in suspicion. In the case of **Rani Purnima Debi v/s. Kumar Khagendra Narayan Deb [AIR 1962 SC 567]**, Hon'ble Apex Court in para 23 has held as under :-

“23. There is no doubt that if a will has been registered, that is a circumstance which may, having regard to the circumstances, prove its genuineness. But the mere fact that a will is registered will not by itself be sufficient to dispel all suspicion regarding it where suspicion exists, without submitting the evidence of registration to a close examination. If the evidence as to registration on a close examination reveals that the registration was made in such a manner that it was brought home to the testator that the document of which he was admitting execution was a will disposing of his property and thereafter he admitted its execution and signed it in token thereof, the registration will dispel the doubt as to the genuineness of the will. But if the evidence as to registration shows that it was done in a perfunctory manner, that the officer registering the will did not read it over to the testator or did not bring home to him that he was admitting the execution of a will or did not satisfy himself in some other way (as, for example, by seeing the testator reading the will) that the testator knew that it was a will the execution of which he was admitting,

the fact that the will Was registered would not be of much value. It is not unknown that registration may take place without the executant really knowing what he was registering. Law reports are full of cases in which registered wills have not been acted upon (see' for example, Vellasaway Sarvai v. L. Sivaraman Servai, (1) Surendra Nath Lahiri v. Jnanendra Nath Lahiri (2)and Girji Datt Singh v. Gangotri Datt Singh)(3). Therefore, the mere fact of registration may not by itself be enough to dispel all suspicion that may attach to the execution and attestation of a will; though the fact that there has been registration would be an important circumstance in favour of the will being genuine if the evidence as to registration establishes that the testator admitted the execution of the will after knowing that it was a will the execution of which he was admitting.”

44. Exh.61 is important document. It is application tendered by deceased on 09.10.1979 to police station, Gomtipur against plaintiff and defendant showing his apprehension that both the sons are handing over title of house no.34 to him which is subject matter of Will. It also appears from record that in Criminal case, compromise was arrived between the parties and at that time, title papers of house no.34 being subject matter of Will was lying with plaintiff. This incident took place 9 to 10 months prior to execution of Will. In these circumstances, there are several shrouded doubtful circumstances on the execution of Will. The plaintiff was required to remove the same by leading evidence.

45. In the case of **Ram Piari v/s. Bhgwant [(1993) 3 SCC 364]**, the Hon'ble Apex Court held when suspicious circumstance exists, Courts should not be swayed by due execution of the Will alone. The Hon'ble Apex Court held as

under :

“3.Unfortunately none of the courts paid any attention to these probably because they were swayed with due execution even when this Court in [Venkatachaliah](#) case [AIR 1959 SC 443] had held that, proof of signature raises a presumption about knowledge but the existence of suspicious circumstances rebuts it.....”

46. This brings us to the next issue i.e. what are the suspicious circumstances which may vitiate the disposition. **In Indu Bala Bose & Ors. vs. Manindra Chandra Bose & Anr. [(1982) 1 SCC 20]**, the Hon’ble Apex Court held any and every circumstance is not a “suspicious” circumstance.

“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.”

47. The Privy Council’s elucidation in **Hames v. Hinkson [AIR 1946 PC 156]** in regards to suspicious circumstances held as follows:

“17.....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.”

48. In case on hand, several non normal circumstances remained unexplained turn to suspicious circumstances. In absence of removal of all these doubts, plaintiff cannot avail

benefit of testamentary disposition. Thus, the appeal deserves merit.

49. Insofar as judgments relied by learned advocate for the respondent – plaintiff is concerned, facts of the present case are different from the facts of the those case and therefore, they are not helpful to the respondent.

50. For the aforesaid reasons, according to this Court, learned Trial Court has swayed by execution of Will and granted probate to the beneficiary of the Will. It is clear flaw on the part of learned Trial Court.

51. In wake of above reasons, the appeal deserves consideration and is allowed. Impugned judgment is quashed and set aside. Probate proceedings in form of civil suit is dismissed. Record and proceedings, if any, be send back to learned Trial Court concerned.

SATISH

(J. C. DOSHI,J)