MAHARASHTA (MAHARASHTRA)

.....RESPONDENTS

(NONE)

……

This petition coming on for admission this day, the court passed the following:

O R D E R

This petition under Article 226 of Constitution of India has been filed seeking the following reliefs :-

> *"(i)To issue a writ in the nature of certiorari order dated 15/6/2021 (Annexure P/5) and 17/1/2024 (Annexure P/6) may kindly be quashed.*
>
> *(ii)To issue a writ in the nature of mandamus Tehsildar may kindly be restrained to change the revenue entry on the basis of order passed by the Addl.Commissioner dated 17/1/2024..*
>
> *(iii)Any other writ or direction as the Hon'ble Court may deem fit in the circumstances of the case."*

2. It is submitted by counsel for petitioners that as per the M.P. Bhu-Rajaswa Sanhita (Bhu-Abhilekhon main Namantaran) Niyam, 2018 (In short '**Niyam, 2018**'), the name can be mutated in the revenue records on the basis of Will, therefore, revenue authorities are well within their rights to direct the mutation of names on the basis of Will.

3. Considered the submissions made by counsel for petitioners.

4. There is no doubt that a title can be acquired by virtue of Will and once the title can be acquired, then the name can also be mutated

in the revenue records irrespective of fact as to whether there is any rule in that regard or not? Even otherwise as per Niyam, 2018, the names can be mutated on the basis of Will.

5. It is the case of petitioners that in case if somebody is aggrieved by Will, then he has to file a civil suit challenging the Will. The aforesaid submission made by counsel for petitioners cannot be accepted. If somebody wants to take advantage of a document, then first of all, he has to prove the same in accordance with law. Sections 67 and 68 of Evidence Act prescribe the requirements and nature of proof which must be satisfied by the parties, who rely on a document in the Court of law.

6. It is well established principle of law that party propounding a Will or otherwise making a claim under a Will is under obligation to prove the document. Unlike other documents, Will is a document which speaks from the death of testator and the testator, who has already migrated to the other world cannot appear and depose as to whether he has executed such document or not? The propounder is required to show by satisfactory evidence that Will was signed by testator, that testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of dispositions and had put his signature on the document of his own volition.

7. Furthermore, Will may be surrounded by suspicious circumstances and burden is on the propounder of the Will, not only to prove the document but to remove all the suspicious circumstances. The Supreme Court in the case of **H. Venkatachala Iyengar v. B.N. Thimmajamma and others** reported in **AIR 1959 SC 443** has held 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. Sections 67 and 68 of the Evidence Act are relevant for this purpose. Under Section 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 Sections 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, Sections 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? Stated broadly it is the decision of these questions which determines the nature of the finding on the question of the proof of wills. It would prima facie be true to say that the will has to be proved like any other document except as to the special requirements of attestation prescribed by Section 63 of the Indian Succession Act. As in the case of proof of other documents so in the case of proof of wills it would be idle to expect proof with mathematical certainty. The test to be applied would be the usual test of the satisfaction of the prudent mind in such matters.

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* [(1946) 50 CWN 895] "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.

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29. According to the decisions in *Fulton* v. *Andrew* [(1875) LR 7 HL 448] "those who take a benefit under a will, and have been instrumental in preparing or obtaining it, have thrown upon them the onus of showing the righteousness of the transaction". "There is however no unyielding rule of law (especially where the ingredient of fraud enters into the case) that, when it has been proved that a testator, competent in mind, has had a will read over to him, and has thereupon executed it, all further enquiry is shut out". In this case, the Lord Chancellor, Lord Cairns, has cited with approval the well-known observations of Baron Parke in the case of *Barry* v. *Butlin* [(1838) 2 Moo PC 480, 482] . The two rules of law set out by Baron Parke are:"first, that the *onus probandi* lies in every case upon the party propounding a will; and he must satisfy the conscience of the court that the instrument so propounded is the last will of a free and capable testator"; "the second is, that, if a party writes or prepares a will under which he takes a benefit, that is a circumstance that ought generally to excite the suspicion of the court and calls upon it to be vigilant and zealous in examining the

evidence in support of the instrument in favour of which it ought not to pronounce unless the suspicion is removed, and it is judicially satisfied that the paper propounded does express the true will of the deceased". It is hardly necessary to add that the statement of these two rules has now attained the status of a classic on the subject and it is cited by all text books on wills. The will propounded in this case was directed to be tried at the Assizes by the Court of Probate. It was tried on six issues. The first four issues referred to the sound and disposing state of the testator's mind and the fifth to his knowledge and approval of the contents of the will. The sixth was whether the testator knew and approved of the residuary clause; and by this last clause the propounders of the will were made the residuary legatees and were appointed executors. Evidence was led at the trial and the Judge asked the opinion of the jurors on every one of the issues. The jurors found in favour of the propounders on the first five issues and in favour of the opponents on the sixth. It appears that no leave to set aside the verdict and enter judgment for the propounders notwithstanding the verdict on the sixth issue was reserved; but when the case came before the Court of Probate a rule was obtained to set aside the verdict generally and have a new trial or to set aside the verdict on the sixth issue for misdirection. It was in dealing with the merits of the finding on the sixth issue that the true legal position came to be considered by the House of Lords. The result of the decision was that the rule obtained for a new trial was discharged, the order of the Court of Probate of the whole will was reversed and the matter was remitted to the Court of Probate to do what was right with regard to the qualified probate of the will.

30. The same principle was emphasized by the Privy Council in *Vellasawmy Servai* v. *Sivaraman Servai* [(1929) LR 57 IA 96] where it was held that, where a will is propounded by the chief

beneficiary under it, who has taken a leading part in giving instructions for its preparation and in procuring its execution, probate should not be granted unless the evidence removes suspicion and clearly proves that the testator approved the will.

31. In *Sarat Kumari Bibi* v. *Sakhi Chand* [(1928) LR 56 IA 62] the Privy Council made it clear that "the principle which requires the propounder to remove suspicions from the mind of the Court is not confined only to cases where the propounder takes part in the execution of the will and receives benefit under it. There may be other suspicious circumstances attending on the execution of the will and even in such cases it is the duty of the propounder to remove all clouds and satisfy the conscience of the court that the instrument propounded is the last will of the testator". This view is supported by the observations made by Lindley and Davey, L. JJ., in *Tyrrell* v. *Painton* [(1894) P 151, 157, 159] . "The rule in *Barry* v. *Butlin* [(1838) 2 Moo PC 480, 482] , *Fulton* v. *Andrew* [(1875) LR 7 HL 448] and *Brown* v. *Fisher* [(1890) 63 LT 465] , said Lindley, L.J., "is not in my mind confined to the single case in which the will is prepared by or on the instructions of the person taking large benefits under it but extends to all cases in which circumstances exist which excite the suspicions of the court".

32. In *Rash Mohini Dasi* v. *Umesh Chunder Biswas* [(1898) LR 25 IA 109] it appeared that though the will was fairly simple and not very long the making of it was from first to last the doing of Khetter, the manager and trusted adviser of the alleged testator. No previous or independent intention of making a will was shown and the evidence that the testator understood the business in which his adviser engaged him was not sufficient to justify the grant of probate. In this case the application for probate made by the widow

of Mohim Chunder Biswas was opposed on the ground that the testator was not in a sound and disposing state of mind at the material time and he could not have understood the nature and effect of its contents. The will had been admitted to the probate by the District Judge but the High Court had reversed the said order. In confirming the view of the High Court the Privy Council made the observations to which we have just referred.

33. The case of *Shama Charn Kundu* v. *Khettromoni Dasi* [(1899) ILR 27 Cal 522] on the other hand, was the case of a will the execution of which was held to be not surrounded by any suspicious circumstances. Shama Charn, the propounder of the will, claimed to be the adopted son of the testator. He and three others were appointed executors of the will. The testator left no natural son but two daughters and his widow. By his will the adopted son obtained substantial benefit. The probate of the will with the exception of the last paragraph was granted to Shama Charn by the trial Judge; but, on appeal the application for probate was dismissed by the High Court on the ground that the suspicions attending on the execution of the will had not been satisfactorily removed by Shama Charn. The matter was then taken before the Privy Council; and Their Lordships held that, since the adoption of Shama Charn was proved, the fact that he took part in the execution of the will and obtained benefit under it cannot be regarded as a suspicious circumstance so as to attract the rule laid down by Lindley, L.J., in *Tyrrell* v. *Painton* [(1894) P 151, 157, 159] . In *Bai Gungabai* v. *Bhugwandas Valji* [(1905) ILR 29 Bom 530] the Privy Council had to deal with a will which was admitted to probate by the first court, but on appeal the order was varied by excluding therefrom certain passages which referred to the deed-poll executed on the same day by the testator and to the remuneration of the solicitor who prepared the will and was

> appointed an executor and trustee thereof. The Privy Council held that "the onus was on the solicitor to satisfy the court that the passages omitted expressed the true will of the deceased and that the court should be diligent and zealous in examining the evidence in its support, but that on a consideration of the whole of the evidence (as to which no rule of law prescribed the particular kind required) and of the circumstances of the case the onus was discharged". In dealing with the question as to whether the testator was aware that the passages excluded by the appeal court from the probate formed part of the instrument, the Privy Council examined the evidence bearing on the point and the probabilities. In conclusion Their Lordships differed from the view of the appeal court that there had been a complete failure of the proof that the deed-poll correctly represented the intentions of the testator or that he understood or approved of its contents and so they thought that there were no grounds for excluding from the probate the passages in the will which referred to that deed. They, however, observed that it would no doubt have been more prudent and business-like to have obtained the services of some independent witnesses who might have been trusted to see that the testator fully understood what he was doing and to have secured independent evidence that clause 26 in particular was called to the testator's attention. Even so, Their Lordships expressly added that in coming to the conclusion which they had done they must not be understood as throwing the slightest doubt on the principles laid down in *Fulton* v. *Andrew* [(1875) LR 7 HL 448] and other similar cases referred to in the argument."

8. The Supreme Court in the case of **Surendra Pal and others v. Dr. (Mrs.) Saraswati Arora and another**, reported in **(1974) 2 SCC 600** has held that propounder has to show that the Will was signed by testator, that he was at the relevant time in a sound disposing state of

mind, that he understood the nature and effect of the dispositions, that he put his signature to the testament of his own free Will, that he has signed it in the presence of the two witnesses who attested it in his presence and in the presence of each other. Once these elements are established, the onus which rests on the propounder is discharged. Furthermore, there may be cases in which the execution of the Will itself is surrounded by suspicious circumstances, such as, where the signature is doubtful, the testator is of feeble mind or is overawed by powerful minds interested in getting his property, or where in the light of relevant circumstances the dispositions appears to be the unnatural, improbable and unfair, or where there are other reasons for doubting that the dispositions of the Will are not the result of testator's free Will and mind. It has also been held that in all such cases where there may be legitimate suspicious circumstances those must be reviewed and satisfactorily explained before the Will is accepted and the onus is always on the propounder to explain them to the satisfaction of the Court before it could be accepted as genuine.

9. The Supreme Court in the case of **Gorantla Thataiah v. Thotakura Venkata Subbaiah and others**, reported in **AIR 1968 SC 1332** has held as it is for those who propound the Will to prove the same.

10. The Supreme Court in the case of **Murthy and others v. C. Saradambal and others**, reported in **(2022) 3 SCC 209** has held that intention of testator to make testament must be proved, and propounder of Will must examine one or more attesting witnesses and remove all suspicious circumstances with regard to execution of Will. It has been held as under:

"31. One of the celebrated decisions of this Court on proof of a will, in *H. Venkatachala Iyengar* v. *B.N. Thimmajamma* [*H. Venkatachala Iyengar* v. *B.N. Thimmajamma*, AIR 1959 SC 443] is in *H. Venkatachala Iyengar* v. *B.N. Thimmajamma*, wherein this Court has clearly distinguished the nature of proof required for a testament as opposed to any other document. The relevant portion of the said judgment reads as under: (AIR p. 451, para 18)

> "*18*. … 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. Sections 67 and 68 of the Evidence Act are relevant for this purpose. Under Section 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 Sections 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, Sections 59 and 63 of the 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? Stated broadly it is the decision of these questions which determines the nature of the finding on the question of the proof of wills. It would prima facie be true to say that the will has to be proved like any other document except as to the special requirements of attestation prescribed by Section 63 of the Indian Succession Act. As in the case of proof of other documents so in the case of proof of wills it would be idle to expect proof with mathematical certainty. The test to be applied would be the usual test of the satisfaction of the prudent mind in such matters."

32. In fact, the legal principles with regard to the proof of a will are no longer res integra. Section 63 of the Succession Act, 1925 and Section 68 of the Evidence Act, 1872, are relevant in this regard. The propounder of the will must examine one or more attesting witnesses and the onus is placed on the propounder to remove all suspicious circumstances with regard to the execution of the will.

33. In the abovenoted case, this Court has stated that the following three aspects must be proved by a propounder: (*Bharpur Singh case* [*Bharpur Singh* v. *Shamsher Singh*, (2009) 3 SCC 687 : (2009) 1 SCC (Civ) 934] , SCC p. 696, para 16)

> "*16*. … (*i*) that the will was signed by the testator in a sound and disposing state of mind duly understanding the nature and effect of disposition and he put his signature on the document of his own free will, and

(*ii*) 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 propounder, and

(*iii*) if a will is challenged as surrounded by suspicious circumstances, all such legitimate doubts have to be removed by cogent, satisfactory and sufficient evidence to dispel suspicion. In other words, the onus on the propounder can be taken to be discharged on proof of the essential facts indicated therein."

34. In *Jaswant Kaur* v. *Amrit Kaur* [*Jaswant Kaur* v. *Amrit Kaur*, (1977) 1 SCC 369] , this Court pointed out that when a will is allegedly shrouded in suspicion, its proof ceases to be a simple lis between the plaintiff and the defendant. What generally is an adversarial 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 let in by the propounder of the will is such as would satisfy the conscience of the court that the will was duly executed by the testator. It is impossible to reach such a satisfaction unless the party which sets up the will offers cogent and convincing explanation with regard to any suspicious circumstance surrounding the making of the will.

35. In *Bharpur Singh* v. *Shamsher Singh* [*Bharpur Singh* v. *Shamsher Singh*, (2009) 3 SCC 687 : (2009) 1 SCC (Civ) 934] , this Court has narrated a few suspicious circumstance, as being illustrative but not exhaustive, in the following manner: (SCC p. 699, para 23)

"*23*. Suspicious circumstances like the following may be found to be surrounded in the execution of the will:

(*i*) The signature of the testator may be very shaky and doubtful or not appear to be his usual signature.

(*ii*) The condition of the testator's mind may be very feeble and debilitated at the relevant time.

(*iii*) The disposition may be unnatural, improbable or unfair in the light of relevant circumstances like exclusion of or absence of adequate provisions for the natural heirs without any reason.

(*iv*) The dispositions may not appear to be the result of the testator's free will and mind.

(*v*) The propounder takes a prominent part in the execution of the will.

(*vi*) The testator used to sign blank papers.

(*vii*) The will did not see the light of the day for long.

(*viii*) Incorrect recitals of essential facts."

36. It was further observed in *Shamsher Singh case* [*Bharpur Singh* v. *Shamsher Singh*, (2009) 3 SCC 687 : (2009) 1 SCC (Civ) 934] that the circumstances narrated hereinbefore are not exhaustive. Subject to offering of a reasonable explanation, existence thereof must be taken into consideration for the purpose of arriving at a finding as to whether the execution of the will had been duly proved or not. It may be true that the will was a registered one, but the same by itself would not mean that the statutory requirements of proving the will need not be complied with.

37. In *Niranjan Umeshchandra Joshi* v. *Mrudula Jyoti Rao* [*Niranjan Umeshchandra Joshi* v. *Mrudula Jyoti Rao*, (2006) 13 SCC 433] , in paras 34 to 37, this Court has observed as under: (SCC pp. 447-48)

"*34*. There are several circumstances which would have been held to be described by this Court as suspicious circumstances:

> (*i*) when a doubt is created in regard to the condition of mind of the testator despite his signature on the will;
>
> (*ii*) When the disposition appears to be unnatural or wholly unfair in the light of the relevant circumstances;
>
> (*iii*) where propounder himself takes prominent part in the execution of will which confers on him substantial benefit.

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35. We may not delve deep into the decisions cited at the Bar as the question has recently been considered by this Court in *B. Venkatamuni* v. *C.J. Ayodhya Ram Singh* [*B. Venkatamuni* v. *C.J. Ayodhya Ram Singh*, (2006) 13 SCC 449] , wherein this Court has held that the court must satisfy its conscience as regards due execution of the will by the testator and the court would not refuse to probe deeper into the matter only because the signature of the propounder on the will is otherwise proved.

36. The proof of a will is required not as a ground of reading the document but to afford the Judge reasonable assurance of it as being what it purports to be.

37. We may, however, hasten to add that there exists a distinction where suspicions are well founded and the cases where there are only suspicions alone. Existence of suspicious circumstances alone may not be sufficient. The court may not start with a suspicion and it should not close its mind to find the truth. A resolute and impenetrable incredulity is not demanded from the

Judge even if there exist circumstances of grave suspicion."

38. This Court in *Anil Kak* v. *Sharada Raje* [*Anil Kak* v. *Sharada Raje*, (2008) 7 SCC 695] , held as under: (*Bharpur Singh case* [*Bharpur Singh* v. *Shamsher Singh*, (2009) 3 SCC 687 : (2009) 1 SCC (Civ) 934] , SCC p. 698, para 20)

"*20*. This Court in *Anil Kak* v. *Sharada Raje* [*Anil Kak* v. *Sharada Raje*, (2008) 7 SCC 695] opined that the court is required to adopt a rational approach and is furthermore required to satisfy its conscience as existence of suspicious circumstances plays an important role, holding: (SCC p. 714, paras 52-55)

'*52*. Whereas execution of any other document can be proved by proving the writings of the document or the contents of it as also the execution thereof, in the event there exists suspicious circumstances the party seeking to obtain probate and/or letters of administration with a copy of the will annexed must also adduce evidence to the satisfaction of the court before it can be accepted as genuine.

53. As an order granting probate is a judgment in rem, the court must also satisfy its conscience before it passes an order.

54. It may be true that deprivation of a due share by (*sic* to) the natural heir by itself may not be held to be a suspicious circumstance but it is one of the factors which is taken into consideration by the courts before granting probate of a will.

55. Unlike other documents, even animus attestandi is a necessary ingredient for proving the attestation.' "

39. Similarly, in *Leela Rajagopal* v. *Kamala Menon Cocharan* [*Leela Rajagopal* v. *Kamala Menon Cocharan*, (2014) 15 SCC 570 : (2015) 4 SCC (Civ) 267] , this Court opined as under: (SCC p. 576, para 13)

> "*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."

11. Similar law has been laid down by Supreme Court in the case of **Dhanpat v. Sheo Ram (Deceased) through legal representatives and others**, reported in **(2020) 16 SCC 209** and in the case of **V. Kalyanaswamy (Dead) by legal representatives and another v. L. Bakthavatsalam (Dead) by legal representatives and others**, reported in **(2021) 16 SCC 543**.

12. The Supreme Court in the case of **Bharpur Singh and others v. Shamsher Singh**, reported in **(2009) 3 SCC 687** has held that it may be true that Will was a registered one, but the same by itself would not mean that the statutory requirements of proving the Will need not be complied with. In terms of Section 63(c), Succession Act, 1925 and Section 68, Evidence Act, 1872, the propounder of a Will must prove its execution by examining one or more attesting witnesses and propounder of Will must prove that the Will was signed by the testator in a sound and disposing state of mind duly understanding the nature and effect of disposition and he put his signature on the document of his own free Will.

13. The Supreme Court in the case of **Niranjan Umeshchandra Joshi v. Mrudula Jyoti Rao and others**, reported in **(2006) 13 SCC 433** has held that mere proof that testator had signed the Will is not enough. It has also to be proved that testator has signed out of his free will having a sound disposition of mind and not a feeble and debilitated mind, understanding well the nature and effect thereof. The Court will also not refuse to probe deeper in the matter merely because propounder's signature on the Will is proved. Similar law has been laid down by Supreme Court in the cases of **Savithri and others v. Karthyayani Amma and others**, reported in **(2007) 11 SCC 621**, **Balathandayutham and another v. Ezhilarasan**, reported in **(2010) 5 SCC 770**, **Pentakota Satyanarayana and others v. Pentakota Seetharatnam and others,** reported in **(2005) 8 SCC 67** and **Meenakshiammal (Dead) through legal representatives and others v. Chandrasekaran and another**, reported in **(2005) 1 SCC 280**.

14. Therefore, in order to take advantage of Will for getting his name mutated in the revenue records, beneficiary must prove that Will was a genuine one and must remove all suspicious circumstances which are attached to it by examining at least one of the attesting witnesses as well as by proving the mental status of testator, willingness of testator, understanding of testator etc. All these findings cannot be given by revenue authorities.

15. The Supreme Court in the case of **Jitendra Singh v. State of Madhya Pradesh** by order dated 06.09.2021 passed in **SLP (civil) No.13146/2021** has held as under:

> **"6.** Right from 1997, the law is very clear. In the case of Balwant Singh v. Daulat Singh (D) By Lrs., reported in (1997) 7 SCC 137, this Court had an occasion to consider the effect of mutation and it is observed and held that mutation of property in revenue records neither creates nor extinguishes title to the property nor has it any presumptive value on title. Such entries are relevant only for the purpose of collecting land revenue. Similar view has been expressed in the series of decisions thereafter.
>
> **6.1** In the case of Suraj Bhan v. Financial Commissioner, (2007) 6 SCC 186, it is observed and held by this Court that an entry in revenue records does not confer title on a person whose name appears in record-of-rights. Entries in the revenue records or jamabandi have only "fiscal purpose", i.e., payment of land revenue, and no ownership is conferred on the basis of such entries. It is further observed that so far as the title of the property is concerned, it can only be decided by a competent civil court. Similar view has been expressed in the cases of Suman Verma v. Union of India, (2004) 12 SCC 58; Faqruddin v. Tajuddin (2008) 8 SCC 12; Rajinder Singh v. State of J&K, (2008) 9 SCC 368; Municipal Corporation, Aurangabad v. State of Maharashtra, (2015) 16

> SCC 689; T. Ravi v. B. Chinna Narasimha, (2017) 7 SCC 342; Bhimabai Mahadeo Kambekar v. Arthur Import & Export Co., (2019) 3 SCC 191; Prahlad Pradhan v. Sonu Kumhar, (2019) 10 SCC 259; and Ajit Kaur v. Darshan Singh, (2019) 13 SCC 70."

16. Counsel for petitioners also conceded that revenue authorities have no jurisdiction to decide the question of title but only contention is that since mutation can also be done on the basis of Will, therefore, the revenue authorities are well within their rights to mutate the name of a person on the basis of Will. Unfortunately this general proposition of law which is being suggested by counsel for petitioners cannot be accepted. Unless and until Will is duly proved, it cannot be acted upon and the revenue authorities have no jurisdiction to decide the authenticity, correctness, genuineness of a Will which can only be done by Civil Court. Thus, in the light of fact that revenue authorities cannot decide the genuineness of the Will, the rule which permits the mutation of name of a beneficiary on the basis of Will has to be interpreted that the name of a beneficiary can be mutated provided the Will is duly proved and for that purposes the beneficiary has to approach the Civil Court for declaration of his title. Even otherwise in none of the previous judgments it has been held that in spite of a declaration by Civil Court the name of a beneficiary of a Will cannot be mutated. The word "Will" as mentioned in Niyam, 2018 necessarily means a valid and genuine Will and not any piece of paper. Therefore, even in the light of Niyam, 2018 it cannot be said that there is any material change in the law.

17. It is submitted by counsel for petitioners that in the Niyam, 2018 it is nowhere mentioned that before acting upon Will it should be duly proved. Thus, even an unproved Will can be relied upon and the use of word "Will" in the Niyam, 2018 has created all sorts of confusion in the minds of the authorities.

18. Considered the submissions made by counsel for petitioners.

19. It is well established principle of law that while interpreting a provision or word, the Court must try to give a meaning, which would make the provision sensible and as per law and should avoid giving any meaning, which would make the word either redundant or contrary to the law. If the submission made by counsel for petitioners that unless and until it is mentioned in the Rules that it can be acted upon only after it is duly proved is concerned, it is suffice to mention here that this interpretation as suggested by counsel for petitioner cannot be accepted. If it is directed that even an unproved Will can be acted upon by the revenue authorities, then it would mean that this Court will be giving a complete go bye to the provisions of Evidence Act.

20. Will has to be proved as per the provisions of Sections 67 and 68 of Evidence Act, apart from reversing all the suspicious circumstances, which are attached to it.

21. Accordingly, the counsel for petitioners was directed to point out as to whether the Niyam, 2018 would override the provisions of Evidence Act or not?

22. It is fairly conceded by counsel for petitioners that the provisions of Evidence Act would prevail and Niyam, 2018 would not override or bypass the provisions of Evidence Act. Therefore, in case if an interpretation is given to the word "Will" as mentioned in

Niyam, 2018 to the effect that even an unproved Will can be relied upon by the Tahsildar, then it would be contrary to the basic provisions of law.

23. Accordingly, the counsel for petitioners was directed to address that in the light of law laid down by the Supreme Court concerning the aspects, which are required to be proved before the Will can be relied upon, whether the revenue authorities can embark upon the said inquiry or not?

24. It was fairly conceded by counsel for petitioners that the authenticity of a document can only be decided by the civil court and not by the revenue court.

25. Under these circumstances, this Court is of considered opinion that even otherwise, the use of word "Will" in Niyam, 2018 would not make any difference and the Will cannot be acted upon unless and until it is duly proved and decided by the civil court of competent jurisdiction.

26. It is submitted by counsel for petitioners that a Coordinate Bench of this Court by order dated 07.10.2023 passed in W.P.No.3499/2022 has already referred the question as to whether revenue authorities have a jurisdiction to mutate the names of the beneficiaries of a will or not. However, it is submitted that High Court cannot held as to whether judgment passed by Supreme Court is *per incuriam* or not?

27. It was further submitted that since the aforesaid question is already under reference, therefore the hearing of this case may be deferred awaiting outcome of W.P.No.3499/2022.

28. Considered the submission made by counsel for petitioners.

29. It is well established principle of law that even if a judgment is under reference, still it would hold the field unless and until it is set aside. Therefore, merely because some judgment has been referred to a Larger Bench, it cannot be said that the judgment under reference has lost its efficacy.

30. Before parting with this order, this Court would like to comment upon the manner the Naib Tahsildar in the present case has dealt with the matter.

31. It appears that an application was filed by the petitioners for mutation of their names on the basis of Will by impleading only State of Madhya Pradesh. From the report of the Naib Tahsildar, it is clear that the other legal representative of the testator were neither made a party nor they were noticed. Thus, the malafide intention of petitioner of getting his name mutated in a clandestine manner is writ large.

32. Thus, the persons, who were vitally interested in the matter, were not given any opportunity to object to the so called Will, relied upon by the petitioners.

33. Furthermore, from the order, which has been passed by the Naib Tahsildar, it is clear that except mentioning that the witnesses have stated that the testator had signed the Will in his full senses, nothing else has been considered to judge the correctness of the Will.

34. This Court has already referred the law governing the field of proving the Will. As already pointed out in the previous paragraphs a Will without any formal proof cannot be acted upon in spite of Niyam, 2018.

35. Will means a valid Will, duly proved by the Propounder of the Will in accordance with the law laid down by the Supreme Court.

36. The manner in which the Naib Tahsildar has dealt with the matter giving a complete go bye to the basic law pertaining to proof of

Will coupled with the fact that he even did not care to issue notice to the other legal representatives of the Testator, clearly indicates that even otherwise the Naib Tahsildar had no basic knowledge about the law.

37. Accordingly the order dated 15.06.2021 passed by SDO, Division Adhartal, District Jabalpur in Revenue Case No.13/Appeal/202-21 and order dated 17.01.2024 passed by Additional Commissioner, Jabalpur Division, Jabalpur in Case No.158/APPEAL/2021-22 are hereby **affirmed**. Consequently, the order dated 30.03.2019 passed by Naib Tahsildar, Adhartal, Jabalpur in Revenue Case No.427/A-6/2018-19 is hereby **set aside.** The revenue authorities are directed to mutate the names of all the legal heirs of the owner of the property in dispute and the petitioners shall be free to approach the Civil Court for declaration of their title on the basis of Will. The mutation shall be subject to final disposal of civil litigation, if filed.

38. The petition fails and is hereby **dismissed.**

(G.S.AHLUWALIA)
JUDGE

TG/-