
(2001) 03 MP CK 0059

In the Madhya Pradesh High Court

Case No : Letters Patent Appeal No. 256/97

Kishan Singh Ahluwalia

APPELLANT

Vs

Sheela Saxena and Others

RESPONDENT

Date of Decision : 14-03-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1, Order 41 Rule 27
Succession Act, 1925 — Section 276, 281, 63

Citation : AIR 2001 MP 250 : (2001) 2 JLJ 287 : (2001) 4 MPHT 300 : (2001) 2 MPLJ 117

Hon'ble Judges : S.P. Srivastava, J; R.B. Dixit, J

Bench : Division Bench

Advocate : H.D. Gupta, for the Appellant; M.M. Kaushik, H.K. Shukla, P.D. Agrawal and K.L. Mangal, for the Respondent

Final Decision : Allowed

Judgement

R.B. Dixit, J.

The subject matter in this Letters Patent Appeal arises out of the Probate proceedings numbered as Probate Case No. 71/87, whereunder, respondent Smt. Sheela Saxena had filed an application dated 14-7-1987 u/s 276 of the Indian Succession Act praying for issue of letter of Administration annexed with the Will dated 4-6-1987, claimed to have been executed by Smt. Rajendra Kaur alias Harisnaran aged about 85 years in her favour and in favour of Naveen Kumar, her son as well as Balbir Bava, her sister, Smt. Rajendra Kaur, the testatrix had died on 25-6-1987.

The learned Trial Court by order dated 25-6-90 allowed the application and granted letter of Administration in favour of Smt. Sheela Saxena. However, in Misc. Appeal No. 102/90, preferred by another daughter of testatrix Shakuntala Jhamb, the order dated 25-9-96, was set aside with the direction of remanding the matter back to the Court below providing however, that before rehearing the matter, other heirs of Rajinder Kaur who are indicated hereinabove, shall be

noticed and they shall also be heard. When objections are filed afresh, if any, on that and also on objections already on record, the Probate Court shall frame points of determination and proceed to try the application for Probate on the basis of points settled for determination. Evidence on record shall be read but other evidence, if so advised may be led by parties and that too shall also be read in disposing of afresh the matter. It was further directed while allowing the application under Order 41 Rule 27 of CPC, that documents detailed in the application shall also form part of the record of the Trial Court.

Present appellant had also moved a Misc. Appeal No. 101/92, against order dated 30-3-92 of the Trial Court wherein, it was contended that he was not allowed reasonable opportunity to prove his case. This Court therefore, by order dated 11-9-92, made it clear that the respondent/objector Shakuntala Jhamb can cross-examine afresh Smt. Sheela Saxena if she had not been cross-examined for the second time after passing of remand order. From the orders passed in C.R. No. 41/92 and M.A. No. 33/92, also it transpires that the objectors were allowed to cross-examine and further to adduce evidence on their behalf.

After completing remaining formalities of recording evidence, the learned Trial Court vide order dated 2-5-95, came to the conclusion that there are suspicious circumstances in execution of alleged Will which the Propounder Smt. Sheela Saxena has not been able to explain. The wrong mentioning of name of her daughter in law, her relationship with the petitioner Smt. Sheela Saxena, interpolation of the words in Para 11 of the Will, the drafting of Will by mysterious Saxena Advocate, the non-examination of Notary J.C. Katiyar, exclusion of Smt. Indira Talwar and Smt. Shakunlala Jhamb who admittedly took care of testatrix, are some of the circumstances which were not satisfactorily explained. It was also found that there is absence of attestation of witnesses of applicant as required under the provisions of Section 281 of Indian Succession Act (hereinafter referred in short as "Act").

4-A. The learned Trial Court in the circumstances, dismissed the application against which Misc. Appeal No. 178/95 was preferred by respondent Sheela Saxena.

It is to be noticed that another Letters Patent Appeal No. 279/97 was also filed against the impugned order by Shakuntala Jhamb another objector, however, later on, she moved an application under Order 23 Rule 1 of CPC, for withdrawal of appeal on the ground that the dispute between appellant and contesting respondent Smt. Sheela Saxena has been amicably settled and therefore, appellant has abandoned her claim. This Court therefore, by the order dated 9-2-99, dismissed the appeal.

The argument of learned counsel for the appellant in the present Letters Patent Appeal is two-fold. First, the learned Single Judge, by the impugned order had allowed the appeal under wrong assumptions of facts as well as of law. When

there were directions in Misc. Appeal No. 102 of 1990, by order dated 2-4-91, of this Court, the application had to be decided afresh on merits, and secondly, the learned Single Judge totally failed to appreciate the evidence on record, regarding suspicious circumstances, surrounding the execution of the alleged Will. We first propose to deal with the contention of learned counsel of the appellant whether, there was no direction in the remand order for examining afresh the question of execution of alleged Will.

The learned Single Judge in Para 21 of the impugned order has observed that the High Court in M.A. No. 102/90, had not expressed any opinion in respect of genuineness of the Will and therefore, the matter was remanded only on the point of jurisdiction to execute the Will. The Trial Court was therefore, misled to examine again the fact of execution and attestation of the Will. The prayer of appellant was rejected only on the point that the Will was found to be suspicious. In the earlier order, the Trial Court had found that the Will was properly executed and proved by the attesting witnesses. The mere fact that the Notary was not examined, could not go against the genuineness of the Will. Since all the points raised on behalf of objector were already examined and enquiry was also made earlier by the Addl. Distt. Judge and after recording necessary evidence by his order dated 25-6-90, the learned Addl. Judge found that the Will was properly executed and proved on record. In that order, entire evidence was considered and the Court had found that the Will was properly executed by Smt. Rajinder Kaur. The findings of learned Trial Court, therefore, rejecting the application, on Will being suspicious, are totally uncalled for. It was further observed that the case was remanded by the High Court only on the point as to whether, Smt. Rajinder Kaur was the owner of the property and she had no right to execute the Will. The Trial Court was totally misled merely having suspicious mind in respect of the execution of the and did not record any finding in respect of the ownership of Smt. Rajinder Kaur.

Here we will like to mention that the learned Single Judge had failed to notice the effect of remand order dated 2-4-91 passed in M.A. No. 102/90, wherein, it had been directed that the impugned order dated 25-6-90, is set aside and the matter goes back to the Court below for rehearing, other heirs who are to be noticed and they shall also be heard. When objections are filed afresh, if any, the Probate Court shall frame point of determination and proceed to try the application for Probate on the basis of points settled for determination. Evidence on record shall be read but other evidence if so advised, may be led by the parties and that too shall also be read in disposing of afresh the matter. This order clearly indicated that the earlier order of Trial Court allowing the application, was set aside and the Trial Court was ordered to decide afresh by recording further evidence.

The learned Single Judge further failed to appreciate the effect of subsequent revision and Misc. Appeal preferred by the parties, this Court had further directed cross-examination of the witnesses already recorded and right to adduce

evidence by the objectors. In such a situation, in our opinion, no notice of the earlier order which was set aside by this Court could be taken for testing the validity of subsequent order passed by the Trial Court. The learned Single Judge, therefore, in our considered opinion had proceeded on wrong assumptions that the findings of earlier order which was set aside by this Court, could be taken into consideration ignoring the subsequent order of the Court based on merits taking into consideration further examination and cross-examination of the witnesses.

In so far as suspicious circumstances surrounding execution of the Will is concerned, the learned counsel for the appellant has invited our attention to the judgment of the Trial Court, wherein, not one but 15 suspicious circumstances based on appreciation of evidence on record, have been cited. Unfortunately, out of which, the learned Single Judge had taken up only two circumstances for the discussion. It is also pertinent to note that these two suspicious circumstances discussed by the learned Single Judge, are also not properly explained. It has further been argued that the learned Single Judge has totally ignored to refer in the impugned judgment remaining 13 instances indicating suspicion on the execution of the alleged Will detailed in the judgment of learned Trial Court. On the other hand, the learned counsels for the respondents have contested the arguments on the ground that no such suspicious circumstances are proved from the evidence on record.

We have given our thoughtful consideration to the rival contentions of the learned counsel for the parties and have perused the evidence on record. The suspicious circumstances referred in the judgment of the Trial Court on the basis of appreciation of evidence on record are detailed hereinbelow.

No Sr. Number of Register of Notary has been mentioned in the Will, nor Notary Shri J.S. Katiyar was examined in the Trial Court. The vague explanation, that the Notary is not available, is also not trustworthy because, Shri J.S. Katiyar works and attends the Courts at Gwalior. Sheela Saxena herself, is an Advocate, and is very well expected to know whereabouts of Shri J.S. Katiyar and in the circumstances, non-examination of Notary is fatal to the applicant. It has been held in a decision rendered by Karnataka High Court in the case of V.R. Kamath Vs. Divisional Controller, Karnataka State Road Transport Corporation and others, , that the affidavit sworn before an Oath Commissioner should contain Sr. Number of Register and also place of attestation. The affidavit cannot be said to be duly sworn in absence of such a compliance.

Non-compliance of the provisions of Section 281 of Indian Succession Act, has also been cited as material to dismiss the application. Reference is made to a decision of Allahabad High Court in the case of Nand Kishore Rai and Another Vs. Mst. Bhagi Kuer and Others, . However, in a decision of this Court in the case of Jamuna Bai v. Surendra Kumar, reported in 1996 MPLJ 113, it has been made clear that the provisions envisaged u/s 281 of the Act, about verification of petition, is recommendatory and not mandatory.

Smt. Shakuntala Jhamb had stated that while in the hospital, her mother could not recognise any of her four daughters and even at the time when she was brought to her house, she was unconscious. The Doctors had advised to take her back to home as any further medical treatment was useless. On 4-6-1987, her mother, the testatrix was not in a position to understand anything.

Hema Ahluwalia, the daughter of Mnnmohan Singh, the deceased son of Smt. Rajendra Kaur (testatrix) had stated that she and her brother had been near her grand-mother for about one month before her death and when she was admitted in the hospital, nobody could meet her, When her grandmother had come back from the hospital to the house, she was not conscious and she could not think or talk. After coming from the hospital, no medical treatment was being provided to her as the Doctors had stated that she had reached due to old age providing any medical treatment will be of no use. During the period 31-5-1987 to June, 1987, Rajendra Kaur did not talk to anybody as she could not talk at all and even she was unable to recognise any person.

The learned Single Judge holding that the Trial Court was totally misled and further had erroneously rejected the application merely on the basis of the suspicion and without recording any finding in regard to the ownership of Smt. Rajendra Kaur, the appeal had been allowed observing that the applicant had successfully proved the execution and attestation of the Will.

In cases where the execution of a Will is shrouded in suspicion, its proof ceases to be a simple his between the plaintiff and the defendant. In such cases, it becomes a matter of 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.

The onus, therefore, is on the propounder to prove that the Will was by a free and capable testator and if there are suspicious circumstances surrounding the execution of the Will and its attestation the propounder has to remove them to the satisfaction of the Court. The burden is still greater where the execution of the Will is surrounded by suspicious circumstances in which case the propounder has to prove affirmatively that the testator knew and approved of the contents of the Will.

Further, the proof of the signature of the testator in the Will is a vital matter which requires to be proved. It is true that the evidence insisted by the law is that of the attestator but that is not to say that any other kind of evidence is shut out by law. If there is anything suspicious about the signature of the testator then the evidence of the attestator could be corroborated or contradicted by expert opinion.

It should also be not lost sight of that under the law there can be no attestation

before the execution and the deprivation of the natural heirs by the testatrix by itself should not give rise any suspicion, because the whole idea behind execution of the Will is to interfere with the normal rule of succession. The execution of the Will itself pre-supposes a change in the normal rule of succession. But if the natural heir is disinherited, it may give rise to a suspicion (considering the attending circumstances) which has to be explained.

If a person takes an active part in getting a Will prepared or executed and gets a benefit under the Will, the propounder must adduce the best evidence to remove suspicion regarding the Will on account of such a circumstance. While active participation or taking undue interest in the execution of the Will by a person who is a beneficiary under the Will may raise legitimate suspicion, the mere presence of such a person without more cannot be a ground for suspecting the genuineness of the Will.

Some of the suspicious circumstances as indicated by the Apex Court in its decision in the case of *Vrindavanibai Sambhaji Mane Vs. Ramachandra Vithal Ganeshkar* and others, are (a) The propounder taking a prominent part in the execution of a Will which confers substantial benefits on him; (b) Shaky signature; (c) A feeble mind which is likely to be influenced; and (d) Unfair and unjust disposal of the property.

It may, however, be observed that apart from the aforesaid, an incorrect recital of a fact in the Will may also raise a suspicion. We may, further hasten to add that every incorrect recital in a Will does not expose it to suspicion. What creates suspicion in view of such a recital is the fact that a testator of sound mind could not have been a party to such an incorrect recital.

In the present case, the Will in question contained three incorrect recitals of a grave nature. Firstly, it had been recited therein that Smt. Sheela Saxena, the propounder of the Will was like a daughter to the testatrix who had treated her like her mother. It is nobody's case that the testatrix was not the real mother of Smt. Sheela Saxena. That being so, there could be no occasion for the testatrix to say that Sheela Saxena was just like a daughter to her. The recital contained in Paragraph 1 of the Will suggests as if Sheela Saxena was not the real daughter of the testatrix. The testatrix could never be a party to such an inaccurate recital in the Will.

The second incorrect recital of the fact is that the testatrix intended to dispose of her immovable and movable properties whether situate in Gwalior or any where so that after her death, there may not be litigation between her heirs in regard to the said properties and they may continue to maintain their sweet relations.

The inaccuracy of the aforesaid statement is apparent from the fact that according to the evidence led by the propounder herself, the testatrix had strained relations with Manmohan Singh, her son and his wife i.e., her daughter-in-law. The effort to avoid litigation and quarrel with respect to the properties could not be there in case the two daughters, daughter-in-law and the grand-son

and grand-daughter were disinherited. After all it is this disinheritance which has given rise to this litigation and the quarrel is still persisting.

The third incorrect recital of the fact is contained in Paragraph 2 of the Will wherein Amrit Kaur was disclosed to be the second wife of Manmohan Singh. From the evidence on the record and also on the own showing of Smt. Sheela Saxena, the propounder, Amrit Kaur was not the second wife of Manmohan Singh but his one and only wife.

The aforesaid incorrect recitals as occurring in the Will if taken into consideration along with the recitals contained in Mukhtyarnama (Exhibit P-8) and the affidavit (Exhibit P-9) admitted by the propounder to have been executed by the testatrix then there is another suspicious circumstance to the effect that according to the testatrix herself, she had strained relations with Gurbax Singh, Karamjit and Suryamani and was not at all happy with them. The testatrix had made various deposits in the shape of fixed deposit receipts in their names. Suryamani as has been indicated hereinabove, claimed to be a widow of Manmohan Singh. She could not, however, succeed as her application seeking probate had been dismissed. In the affidavit (Exhibit P-9), the testatrix stated that her four daughters i.e., Indira Talwar, Shakuntala Jhamb, Balbir Bava and Sheela Saxena had served her well and she had, therefore, given them shares in her immovable and movable properties. But she was very much pained on account of the conduct of Gurbax Singh, Karamjit and Suryamani who had not served at all. On the other hand, their most unbecoming behaviour had troubled her and in that view of the matter, she did not think it appropriate to give them any share in her properties and they were being disinherited. If on 22-6-1987, according to the testatrix, she had given shares to all of her four daughters in the immovable property, there could be no occasion for disinheriting two of them in the Will claimed to have been executed on 4-6-1987. The affidavit which according to the propounder herself had been sworn by the testatrix on 22-6-1987 totally belied her case in regard to the Will dated 4-6-1987 where no share at all had been given to two of her daughters by the testatrix.

It may be noticed that according to the propounder herself, the testatrix had not read the Will which had been read out to her by the Notary and thereafter by the attesting witness, Satwant and she had put her signatures thereafter. This was so stated in Paragraph 10 of her statement recorded on 27-4-1988. In the Will, the age of the testatrix was disclosed to be 85 years. In Paragraph 13 of her statement, the propounder had asserted that the testatrix had feeble eye-sight who could do her work after wearing spectacles. She had also stated that she had become hard of hearing and could hear from near only. When the Will had been brought, at that lime, besides Sheela Saxena, the Notary, the Advocate, attesting witnesses Satwant Nanda and Smt. Hardeep Kapoor and Balbir Bava, the other beneficiary were present. In Paragraph 14 of her statement, it was asserted that Indira Talwar and Shakuntala Jhamb, the other two sisters had gone out to visit the city. Smt. Hardeep Kapoor, the attesting witness had also

stated that the Will had been read out to Rajendra Kaur, the testatrix by the Advocate and Smt. Nanda and thereafter she had put her signature. At the time when the Will was executed, the persons present were Hardeep Kapoor, Smt. Nanda, Smt. Sheela, Balbir Bava, the Advocate and the Notary. She categorically admitted that Rajendra Kaur had herself not read the Will (Exhibit P-3).

Smt. Shakuntala Jhamb had stated that her mother at the relevant time could neither speak nor was able to understand anything. In fact, the Will was not signed by her at all.

Hema Ahluwalia, one of the daughters of Manmohan Singh who had been examined on 6-3-1990 also stated that Rajendra Kaur could not talk and could not even recognise any person at the relevant time.

Satwant Kaur, the other attesting witnesses in her deposition given in the year 1988 had come out with the first version that the Will was signed first by Hardeep Kapoor and thereafter by her and thereafter by Rajendra Kaur. It was read out to Rajendra Kaur by the Notary. She said nothing about the Will having been read out by the Advocate or Hardeep Kapoor. She had changed her version in her deposition recorded on 6-5-1994. She denied the suggestion that she had signed first and thereafter Rajendra Kaur had put her signatures and volunteered that how it could be possible, stating further that the Will was signed by Rajendra Kaur, thereafter by her and thereafter Hardeep Kapoor. When she was confronted with her earlier statement recorded on 13-10-1988, she admitted that she had in fact said so but the explanation furnished by her was that she had come to the Court for the first time, therefore, she might have said so but what she was stated on 6-5-1994 was correct.

The question which arises for consideration is as to whether the inaccurate recitals contained in the Will are sufficient pointer towards the incapability of the testatrix to understand the contents of the Will. If the Will according to the propounder had been read out twice to the testatrix and she had been able to hear what was read out to her, it is not understandable as to why these inaccuracies were not rectified then and there.

As has already been noticed hereinabove, the propounder in her deposition had stated that the matter in regard to the execution of the Will was kept as a secret and the whole process of execution and attestation of the Will was got completed in quite hurry so that the two sisters who had been disinherited may not come to know about the same. It had come in the evidence that Indira Talwar and Shakuntala Jhamb, both of her sisters continued to remain in the house at the relevant period when the Will is alleged to have been executed. The story about their going to visit the city of Gwalior appears to be a cooked up story as taking into account the purpose of the visit of the two sisters and the nature of the illness of their mother a situation had been created where such an activity was highly improbable.

Further, according to the propounder, corrections had been made in the Will in

hand-writing as is evident from a perusal of Paragraph 11 of the Will (Exhibit P-3). One of the attesting witnesses had stated that she was unable to say as to whether any such correction was there when she had attested the Will. It has come on the record that Smt. Rajendra Kaur was hard of hearing and could hear from very near. She herself had not read the Will. The inaccurate recitals in such circumstances are sufficient to indicate that in fact Smt. Rajendra Kaur, the testatrix had not been able to understand the contents of the Will and the disposition of the properties indicate that neither the testatrix knew nor could have approved of its contents. The suspicion instead of being removed or explained gets deepened from the fact that in her affidavit sworn on 22-6-1988, the testatrix had in clear terms indicated that she had disposed of her immovable property giving shares to all of her four daughters but the Will (Exhibit P-3) purports to exclude two of her daughters and disinherited them from getting anything in the immovable properties.

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

In another decision of Apex Court in the case of Ramchandra Rambux Vs. Champabai and Others, , it has been pointed out that in all cases in which, a Will is prepared under circumstances which arouse the suspicion of the Court that it does not express the mind of the testator, or that it was prepared under highly

suspicious circumstances, it is for the propounder of the Will to remove that suspicion. Where it appears that the Propounder has taken prominent part in the execution of the Will which confers substantial benefit that itself is generally treated as suspicious circumstances attending execution of the Will.

The Hon"ble Supreme Court in the case of Gorantla Thataiah Vs. Thotakura Venkata Subbaiah and Others, , had observed that in a case in which a Will is prepared under circumstances which raise the suspicion of the Court that it does not express the mind of the testator, it is for those who propound the will to remove that suspicion. What are suspicious circumstances must be judged in the facts and circumstances of each particular case. If, however, the propounder takes a prominent part in the execution of the Will which confers substantial benefits on him that itself is a suspicious circumstance attending the execution of the Will and in appreciating the evidence in such a case, the Court should proceed in a vigilant and cautious manner.

In the case of Pushpavathi and Others Vs. Chandraraja Kadamba and Others, , it was held that where the signature of the testator is challenged as forged signature and the Will does not come from the custody of a public authority or a family Solicitor the fact that the disposition made in the Will were unnatural improbable or unfair, would undoubtedly create some doubt about the Will.

In the case of Surendra Pal and Others Vs. Dr. (Mrs.) Saraswati Arora and Another, , it was further made clear that the Will was signed by the testator, that he was at the relevant time in a sound disposing state of mind, that he understood the nature and effect of dispositions, that he put his signature to the testament of his own free Will and that he has signed it in the presence of the 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. But where there are suspicious circumstances the onus will be on the propounder to explain them to the satisfaction of the Court before the Will could be accepted as genuine; and where the caveator alleges undue influence, fraud and coercion the onus is on him to prove the same.

In the case of Seth Beni Chand (Since Dead) Now by L.Rs. Vs. Smt. Kamla Kunwar and Others, , the testatrix an old woman aged eighty years made a Will five days prior to her death bequeathing her extensive properties in favour of her son's wife and children to the exclusion of her son and another wife and their progeny. During probate proceeding the son alleged that the Will was executed when his mother was unconscious and that a daughter's son of the testatrix included in the execution of the Will it was held that the Will propounded by the testatrix was the last Will and it was made while she was in a sound and disposing state of mind and memory. The son's behaviour was far too unfilial and remorseless for him to find a place in the affections of his mother. He had bruised her so badly that she could not possibly reward him with a precious inheritance. However, it is to be noticed that in the present case, there is no explanation as to why two of the real daughters of the testatrix were excluded

from the array of beneficiaries particularly when in subsequent document Exs. P-8 and P-9, it has been stated that the testatrix is satisfied with them and about the service rendered by all the daughters towards her.

The Hon'ble Apex Court in the case of Smt. Indu Bala Bose and Others Vs. Manindra Chandra Bose and Another, , has again reiterated the principles regarding mode of proving a Will, by emphasising that the onus proving the Will is on the Propounder and in the absence of suspicious circumstances surrounding the execution of the Will, proof of testamentary capacity and the signature of the testator as required by law is sufficient to discharge the onus. However, if there are suspicious circumstances, the onus is on the Propounder to explain them to the satisfaction of the Court before the Court accepts the Will as genuine. Even where circumstances give rise to doubts, it is for the Propounder to satisfy the conscience of the Court. The suspicious circumstances may be as to the genuineness of the signatures of testator, the condition of the testator's mind the dispositions made in the Will being unnatural improbable or unfair in the light of relevant circumstances, or there might be other indications in the Will to show that the testator's mind was not free. In such a case the Court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last Will of the testator. If the Propounder himself takes a prominent part in the execution of the Will which confers a substantial benefit on him, that is also a circumstance to be taken into account, and, the Propounder is required to remove the doubts by clear and satisfactory evidence.

It is true that debarring natural heirs is always not a suspicious circumstance as has been held in the case of Rabindra Nath Mukherjee and another Vs. Panchanan Banerjee (dead) by L.Rs. and others, , because the whole idea behind execution of Will is to interfere with the normal line of succession. So natural heirs would be debarred in every case of Will; of course, it may be that in some cases they are fully debarred and in others only partially. However, on perusing facts and circumstances in the present case, debarring of two real daughters naturally create doubt on the execution of alleged Will as has been held in the case of Gurdial Kaur and others Vs. Kartar Kaur and Others, , that onus is always on the Propounder of a "Will" to dispel the suspicious circumstances existing in respect of the execution of the Will. Grounds that some of natural heirs were disinherited, legatees to Will not saying anything about existence of said Will and doubts to executant of Will, therefore, the order rejecting valid execution of the Will was upheld.

In a Division Bench decision of this Court in the case of Om Prakash Sharma Vs. Smt. Saraswatibai and Others, , it has been pointed out that the burden lies only on the person who sets up theory of Will to prove its due execution, and to remove the suspicious circumstances surrounding the document/Will.

In another decision of Vipin Parera Vs. David Laghran and Another, , it has been again reiterated that the Propounder of the Will has to satisfy the conscience of the Court by dispelling the suspicious circumstances. The Court may have a

reasonable scepticism but cannot dwell on adamantine obstinacy. The Court has also to abandon the Coleridgean concept of willing suspicious of disbelief. The approach has to be conscious, probing, rational, objective and necessarily that of a person in search of truth-the-truth, as far one can scan to arrive applying the parameters of human experience.

Taking into consideration the facts and circumstances of the present case and the implications arising out of the various decisions referred to hereinabove, regarding attestation and due execution of Will, we are of the considered opinion that the learned Single Judge has totally ignored to refer to various suspicious circumstances brought on record and had been taken into consideration and discussed by the learned Trial Court who had the opportunity to note the demeanour of the witnesses should not have been rightly brushed aside in appeal by the learned Single Judge, in our opinion therefore, the impugned judgment is not sustainable on facts as well as in law.

For the reasons stated hereinabove this Letters Patent Appeal succeeds and is allowed. The impugned judgment is hereby set aside and that of the learned Trial Court is confirmed.

Letters Patent Appeal allowed.