
(2016) 07 SHI CK 0120
In the High Court Of Himachal Pradesh
Case No : RSA No. 553 of 2004

Onkar Singh

APPELLANT

Vs

Malka Devi

RESPONDENT

Date of Decision : 20-07-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Succession Act, 1925 — Section 63

Citation : (2016) AIRCC 3326 : (2017) 1 CivCC 365 : (2016) 4 HimLR 2330

Hon'ble Judges : Ajay Mohan Goel, J.

Bench : Single Bench

Advocate : Mr. Y.P. Sood, Advocate, for the Respondents No. 1 to 3; Mr. A.K. Dhiman, Advocate, for the Appellants

Final Decision : Dismissed

Judgement

Ajay Mohan Goel, J. - By way of present appeal, the appellant has assailed the judgment and decree passed by the Court of learned Addl. District Judge-I, Kangra at Dharamshala in Civil Appeal No. 114-D/2002, vide which judgment the learned appellate court has upheld the judgment and decree passed by the Court of learned Senior Sub Judge, Kangra at Dharamshala in Civil Suit No. 320 of 1993 dated 26.7.2002 vide which the suit of the plaintiff therein was dismissed.

2. This appeal was admitted on 3.6.2005, on the following substantial question of law:-

"Whether a "Will" can be termed as genuine and free from suspicion if it contains a factually incorrect and false recitation as its contents?

3. Facts in brief necessary for adjudication of the present case are that the predecessor-in-interest of present appellant i.e. plaintiff Onkar Singh filed a suit for declaration to the effect that "Will" dated 20.4.1992 said to be executed by late Salo Ram was fraud, fictitious, fabricated and was an act of undue influence, coercion and misrepresentation and was liable to be cancelled and "Will" dated

29.6.1987 executed by late Salo Ram was genuine, natural and binding on parties in suit to inherit the suit property and further that the parties were governed by agricultural customs in the matters of alienation of the property which prohibits alienation of ancestral property without consent of the near reversioner and as such all legal heirs of deceased Salo Ram are entitled to inherit his property as per customs with consequential relief of permanent injunction restraining defendants Nos. 1 to 3 from interfering in the peaceful ownership and possession of plaintiff to the extent of his share in the property of deceased Salo Ram. It was stated in the suit that deceased Salo Ram was the father of plaintiff, defendants Nos. 2, 3, 5 to 9 and husband of defendants Nos. 1 and 4. He owned land situated in Mauza Nerti, Tehsil and District Kangra and this entire land was ancestral property. Salo Ram was an old man and unable to work in the fields and was also suffering from Asthma. The entire agricultural land of deceased Salo Ram was in possession of plaintiff being the eldest son, though deceased Salo Ram during his lifetime had distributed his entire land to his three sons and two wives in the year 1986. It was further stated in the suit that deceased Salo Ram executed a "Will" dated 29.6.1987 which was duly registered "Will" executed in presence of persons of the locality and by way of said "Will", deceased Salo Ram executed property in favour of his three sons and two wives. After the death of his father, plaintiff enquired from local Patwari how to bring the legal heirs of deceased on record, on which he was told by Patwari that his step-mother (defendant No. 1) had produced a "Will" dated 20.4.1992 for mutation in her name. As per the plaintiff it was on this occasion when he first time came to know about the "Will" dated 20.4.1992. Thereafter he applied for copy of said "Will" before Registrar, Dharamshala and after he obtained the same, he came to know about the contents of the "Will". As per him the "Will" was a false "Will" and was a result of fraud, undue influence, coercion, misrepresentation because Salo Ram was an old person suffering Asthma and was unable to move and to understand the things properly. It was further averred that there was no witness from the locality or from the surrounding area who could identify the executant and as such the same was result of fraud, misrepresentation and undue influence. It was further averred that on the basis of the said "Will" the defendants were trying to grab the entire property of deceased including the agricultural land which was in possession of the plaintiff. According to the plaintiff, he was entitled to inherit the property of deceased to the extent of his share on the basis of "Will" dated 29.6.1987 which was a genuine and natural "Will" executed by Salo Ram. Thus it was on these bases the suit was filed by the plaintiff.

4. There are three written statements on record. One written statement has been filed by defendants Nos. 1 to 3. There is another written statement which was filed on behalf of defendant No. 4 and there is third written statement along with counter claim which has been filed by defendants Nos. 5 to 9. Defendants Nos. 1 to 3 denied the claim of plaintiff and stated that deceased had gifted away major portion of his landed property in the name of all his three sons who were in

possession of their respective shares since the lifetime of deceased. According to them, deceased owned land in addition to the land situated in Mauza Nerti, Tehsil and District Kangra and deceased was fully competent to deal with his property as absolute owner and the property in question was not ancestral. It was further averred that replying defendants No. 1 to 3 along with plaintiff and defendant No. 4 were helping Salo Ram in the cultivation of landed property during his lifetime. It was further averred that "Will" dated 20.4.1992 was a genuine "Will" and was binding on the legal heirs of deceased including the plaintiff. According to replying defendants, the deceased Salo Ram was full owner of the property and no agricultural custom could have estopped him in the matter of alienation. It was further stated that the "Will" was duly witnessed by the witnesses and the executant was also duly identified, therefore, on these bases the claim of the plaintiff was disputed and denied.

5. Defendant No. 4 (real mother of plaintiff) in her written statement stated that defendant No.1 was not legally wedded wife of deceased Salo Ram. It was further averred by said defendant that the suit land was ancestral and has to be inherited by plaintiff and defendants along with defendants Nos. 5 to 9 and the customs prevailing between the parties. Defendants Nos. 5 to 9 also partially supported the case of plaintiff and stated that property being ancestral and replying defendants being Class-I legal heirs were also entitled to inherit it as per the provision of Hindu Succession Act and deceased had never sought their consent before execution of the "Will" in favour of plaintiff and any other person. They denied the factum of any "Will" having been executed by Salo Ram either in favour of plaintiff or in favour of defendants.

6. On the basis of pleadings of the parties and material placed on record, the learned Trial Court framed the following issues:-

"1. Whether the "Will" dated 29.6.1987 executed by late Shri Salo Ram is genuine and is binding upon the parties to the suit ? OPP.

2. Whether the suit land is ancestral and the parties are governed by the agricultural custom of Kangra District in the matters of alienation, if so its effect ? OPP.

3. Whether the plaintiff is entitled to joint possession, as alleged ? OPP.

4. Whether the "Will" dated 20.4.1992 executed by late Shri Salo Ram is genuine, if so its effect ? OPD-1 to 3.

5. Whether deceased Salo Ram has gifted away a major portion of his landed property in the names of his three sons and they are in cultivating possession of their respective shares, as alleged, if so its effect ? OPD-1 to 3.

6. Whether the plaintiff is estopped by his act and conduct and acquiescence from filing the present suit ? OPD-1 to 3.

7. Whether the plaintiff has no cause of action against defendants? OPD-1 to 3.

8. Whether defendant No.1 is not legally wedded wife of late Sh. Salo Ram Ram, if so its effect ? OPD-4.

9. Whether the defendants 1 to 3 are not the legal representatives of deceased Salo Ram, if so, its effect ? OPD-4.

10. Whether the defendants 5 to 9 are entitled to get their shares in the suit land as per custom being Class-I legal heirs as alleged? OPD-5 to 9.

11. Relief."

7. The learned Trial Court returned the following findings on the said issues:-

"Issue No.1 : No.

Issue No.2 : No.

Issue No.3 : No.

Issue No.4 : Yes.

Issue No.5 : Yes.

Issue No.6 : No.

Issue No.7 : Yes.

Issue No.8 : No.

Issue No.9 : No.

Issue No.10 : No.

Relief :The suit dismissed as per operative part of the judgment."

8. The learned trial court dismissed the suit by holding that "Will" dated 20.4.1992 executed by late Salo Ram was a genuine "Will". The learned trial court held that in view of the facts pleaded and the evidence led, though it stood proved that deceased Salo Ram had executed "Will" dated 29.6.1987, however, the same was superseded by executing another "Will" dated 20.4.1992. "Will" dated 20.4.1992 was duly registered in the office of Sub Registrar as was evident from the deposition of Registration Clerk DW1 Sukhdev. DW2, B.K. Sood, Advocate had stated that "Will" Ext. DW2/A was written in the hand writings of his father-in-law, Sh. Angat Ram Sood, Document Writer, Dharamshala and he had also produced copy of Register Ext. DW2/C which was maintained by his father-in-law. The learned trial court further held that S.S. Karki and S.K. Shashtri had entered into the witness box as DW3 and DW4 who were the attesting witnesses of "Will" Ext. DW2/A. Both these witnesses in unison stated that the "Will" was scribed by Sh. Angat Ram Sood, Document Writer on 20.4.1992 on the instructions of Salo Ram and thereafter the same was read over and explained to Salo Ram and after admitting the same to be correct, he appended his thumb impression on "Will" Ext. DW2/A in their presence. The

learned trial court also held that defendant No.1, Malkan Devi who entered into the witness box as DW5 had deposed that her husband was physically and mentally sound in the year 1992. She had further stated that plaintiff had also given 3rd share in the residential house and one room of cattle shed by Salo Ram as per "Will" Ext. DW2/A. This witness also stated that second wife, Smt. Phulan Devi was getting family pension of Salo Ram and her husband Salo Ram had also gifted major portion of property in favour of his three sons during his lifetime and the sons were in possession of the landed property. DW6 Ram Singh also categorically stated that Salo Ram had two wives and his wife Smt. Phulan Devi was getting family pension, whereas there was no provision for maintenance of defendant No.1, therefore, deceased Salo Ram executed "Will" dated 20.4.1992 in favour of defendant No.1. He also deposed that "Will" dated 20.4.1992 was also in favour of plaintiff as he was also given 3rd share in the residential house and one room in the cattle shed.

9. On these bases, the learned trial court concluded that not only "Will" Ext. DW2/A was a legal and genuine "Will", it also stood proved from the statements of witnesses on record that at the time of execution of said "Will" its testator was mentally sound. Therefore, on the said basis, the learned trial court concluded that "Will" dated 20.4.1992 Ext. DW2/A was a genuine "Will" and it accordingly dismissed the suit of the plaintiff.

10. Feeling aggrieved by the said judgment passed by the learned trial court the plaintiff filed an appeal which was dismissed by the learned appellate court, vide judgment and decree dated 5.11.2003. The learned appellate court upheld the findings returned by the learned trial court. It was held by the learned appellate court that as far as execution of earlier "Will" Ext. PW1/A dated 29.6.1987 the same was not seriously disputed by the defendants. However, as per the learned appellate court it also stood proved on record that Ext. DW2/A was the last "Will" executed by testator Salo Ram which was dated 20.4.1992. It further held that a perusal of "Will" Ext. DW2/A demonstrates that Salo Ram had not exclusively executed the "Will" in favour of defendant No.1 but had also given 3rd share in the house and one room in the cattle shed to the appellant. It further held that there was no material on record from where it could be deduced that there was some suspicious circumstance attending the execution of second "Will" Ext. DW2/A and on these bases it held that "Will" dated 20.4.1992 was validly executed "Will". Learned appellate court also held that the appellant had failed to prove that "Will" dated 29.6.1987 was the only genuine "Will" executed by Salo Ram and it further held that in fact the appellant had suppressed the fact that in the subsequent "Will" which was executed by his father, he had been given share in the residential house and cattle shed. On these bases, the learned appellate court dismissed the appeal and upheld the judgment and decree passed by the learned trial court.

11. Feeling aggrieved by the said judgments and decrees passed by both the learned courts below the appellant filed the present appeal.

12. I have heard learned counsel for the parties and also gone through the records of the case as well as judgments passed by both the courts below.

13. Section 63 of the Indian Succession Act clearly lays down that every testator 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 acknowledgment of his signature or mark, or of 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.

14. In the present case the scribe of the "Will" was Sh. Angat Ram Sood who was since died. His son-in-law B.K. Sood, entered into the witness box as DW2 who was an Advocate by profession. He stated that document writer Sh. Angat Ram Sood was his father-in-law who had since died and the record of Angat Ram Sood was in his possession. He also deposed that he was very well acquainted with the signatures of Angat Ram Sood. He identified the signatures of Angat Ram Sood on "Will" Ext. DW2/A as the scribe of the "Will". He also produced on record the register maintained by his father-in-law, in which factum of his having scribed the "Will" was recorded. A perusal of his cross-examination reveals that the trustworthiness of the statement of this witness could not be impinged by the plaintiff. Similarly, S.S. Karki entered into the witness box as DW3 and deposed that "Will" Ext. DW2/A dated 20.4.1992 was scribed by Angat Ram Sood which was signed by him as an attesting witness. He has clearly stated that the "Will" was scribed on the asking of Salo Ram by Sh. Angat Ram Sood. He also deposed that the "Will" was written in his presence and in the presence of Sh. S.K. Shastri both Advocates and the testator was in his senses and was mentally stable when he got the "Will" scribed. He has further stated that testator had appended his thumb impression on the "Will" in his presence and that the "Will" was read over and after accepting the contents therein to be correct he (testator) appended his thumb impression. Similarly, DW4 S.K. Shastri has also deposed that the "Will" was scribed by Sh. Angat Ram Sood on the asking of the testator who appended his signature upon the "Will" in his presence after the "Will" was read over to him. He has also deposed that he has signed the "Will" as an attesting witness and the same was registered with the Registrar in his presence. A perusal of cross-examination of both the witnesses reveals that the plaintiff

could not impinge the credibility or trustworthiness of both these witnesses. DW1, Malkan Devi has entered into the witness box as DW5 and has deposed that vide "Will" dated 20.4.1992 plaintiff had been given 3rd share in the residential house and one room of cattle shed. She has also categorically stated that at the time when the "Will" was executed the testator was in a good mental condition and he was in a position to understand what was good for him and what was bad for him. To same effect is the deposition of Ram Singh who has also categorically stated that at the time when the "Will" in issue was executed by testator he was in a good mental condition.

15. The Hon"ble Supreme Court in Pentakota Satyanarayana and others v. Pentakota Seetharatnam and others, (2005) 8 Supreme Court Cases 67 has held that though the initial onus to prove the "Will" is on the propounder of the "Will" but thereafter it shifts to the party alleging undue influence or coercion in execution of the "Will".

16. In my considered view in the present case the appellant has not brought any material on record from where it could establish that "Will" Ext. DW2/A was not a valid "Will" but was a result of either a fraud or misrepresentation of undue influence exercised by the propounder of the "Will" on its testator.

17. It has been held by Hon"ble Supreme Court in H. Venkatachala Iyengar v. B.N. Thimmajamma and others, AIR 1959 Supreme Court 443 as under:-

"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."

18. The Hon"ble Supreme Court in Mahesh Kumar (dead) by LRs v. Vinod Kumar and others (2012) 4 Supreme Court Cases 387, has recapitulated the said legal position and relevant paras of the said judgment are quoted herein below:-

28. In one of the earliest judgments in H. Venkatachala Iyengar v. B.N.

Thimmajamma, the three Judge Bench noticed the provisions of Sections 45, 47, 67 and 68 of the Indian Evidence Act, 1872 and Sections 59 and 63 of the 1925 Act and observed: (AIR pp. 451-52, paras 18-21)

"18. ???.. 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." (emphasis supplied)

29. The ratio of H. Venkatachala Iyengar's case was relied upon or referred to in *Rani Purnima Devi v. Kumar Khagendra Narayan Deb* (AIR 1962 SC 567), *Shashi Kumar Banerjee v. Subodh Kumar Banerjee* (AIR 1964 SC 529), *Surendra Pal v. Saraswati Arora*, AIR 1974 SC 1999, *Seth Beni Chand v. Kamla Kunwar* (AIR 1977 SC 63), *Uma Devi Nambiar v. T.C. Sidhan* (AIR 2004 SC 1772), *Sridevi v. Jayaraja Shetty* (AIR 2005 SC 780), *Niranjan Umeshchandra Joshi v. Mrudula Jyoti Rao* (AIR 2007 SC 614) and *S.R. Srinivasa v. S. Padmavathamma* (2010 AIR SCW 3955) .

30. In *Jaswant Kaur v. Amrit Kaur*, AIR 1977 SC 74 the Court analysed the ratio in *H. Venkatachala Iyengar* case and culled out the following propositions: (*Jaswant Kaur* case, SCC pp. 373-74, para 10)

"1. Stated generally, a will has to be proved like any other document, the test to be applied being the usual test of the satisfaction of the prudent mind in such matters. As in the case of proof of other documents, so in the case of proof of wills, one cannot insist on proof with mathematical certainty.

2. Since Section 63 of the Succession Act requires a will to be attested, it cannot be used as evidence until, as required by Section 68 of the Evidence Act, 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.

3. Unlike other documents, the will speaks from the death of the testator and therefore the maker of the will is never available for deposing as to the circumstances in which the will came to be executed. This aspect introduces an element of solemnity in the decision of the question whether the document propounded is proved to be the last will and testament of the testator. Normally, the onus which lies on the propounder can be taken to be discharged on proof of the essential facts which go into the making of the will.

4. Cases in which the execution of the will is surrounded by suspicious circumstances stand on a different footing. 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 and such other circumstances raise suspicion about the execution of the will. That suspicion cannot be removed by the mere assertion of the propounder that the will bears the signature of the testator or that the testator was in a sound and disposing state of mind and memory at the time when the will was made, or that those like the wife and children of the testator who would normally receive their due share in his estate were disinherited because the testator might have had his own reasons for excluding them. The presence of suspicious circumstances makes the initial onus heavier and therefore, in cases where the circumstances attendant upon the execution of the will excite the suspicion of the court, the propounder must remove all legitimate suspicions before the document can be accepted as the last will of the testator.

5. It is in connection with wills, the execution of which is surrounded by suspicious circumstances that the test of satisfaction of the judicial conscience has been evolved. That test emphasises that in determining the question as to whether an instrument produced before the court is the last will of the testator, the court is called upon to decide a solemn question and by reason of suspicious circumstances the court has to be satisfied fully that the will has been validly executed by the testator.

6. If a caveator alleges fraud, undue influence, coercion etc. in regard to the

execution of the will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the will may raise a doubt as to whether the testator was acting of his own free will. And then it is a part of the initial onus of the propounder to remove all reasonable doubts in the matter."

31. In *Uma Devi Nambiar v. T.C. Sidhan* (AIR 2004 SC 1772), the Court held that active participation of the propounder/beneficiary in the execution of the Will or exclusion of the natural heirs cannot lead to an inference that the Will was not genuine. Some of the observations made in that case are extracted below: (SCC pp. 333-34, para 16)

"16. A Will is executed to alter the ordinary mode of succession and by the very nature of things, it is bound to result in either reducing or depriving the share of natural heirs. If a person intends his property to pass to his natural heirs, there is no necessity at all of executing a Will. It is true that a propounder of the Will has to remove all suspicious circumstances. Suspicion means doubt, conjecture or mistrust. But the fact that natural heirs have either been excluded or a lesser share has been given to them, by itself without anything more, cannot be held to be a suspicious circumstance especially in a case where the bequest has been made in favour of an offspring. As held in *P.P.K. Gopalan Nambiar v. P.P.K. Balakrishnan Nambiar* (AIR 1995 SC 1852) it is the duty of the propounder of the Will to remove all the suspected features, but there must be real, germane and valid suspicious features and not fantasy of the doubting mind. It has been held that if the propounder succeeds in removing the suspicious circumstance, the court has to give effect to the Will, even if the Will might be unnatural in the sense that it has cut off wholly or in part near relations. (See *Pushpavathi v. Chandraraja Kadamba* (AIR 1972 SC 2492).) In *Rabindra Nath Mukherjee v. Panchanan Banerjee* (AIR 1995 SC 1684) it was observed that the circumstance of deprivation of natural heirs should not raise any suspicion because the whole idea behind execution of the Will is to interfere with the normal line of succession and so, natural heirs would be debarred in every case of Will. Of course, it may be that in some cases they are fully debarred and in some cases partly."

(emphasis supplied)

The same view was reiterated in *Pentakota Satyanarayana v. Pentakota Seetharatnam* (AIR 2005 SC 4362) (supra).

19. The Hon^{ble} Supreme Court in *Pentakota Satyanarayana and others v. Pentakota Seetharatnam* (AIR 2005 SC 4362) and others, (2005) 8 Supreme Court Cases 67 held as under:-

"25. It is settled by a catena of decisions that any and every circumstance is not a suspicious circumstance. Even in a case where active participation and execution of the Will by the propounders/beneficiaries was there, it has been held that by itself is not sufficient to create any doubt either about the testamentary capacity or the genuineness of the Will. It has been held that the

mere presence of the beneficiary at the time of execution would not prove that the beneficiary had taken prominent part in the execution of the Will. This is the view taken by this Court in *Sridevi and Ors v. Jayaraja Shetty and Ors*. In the said case, it has been held that the onus to prove 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 proof of signature of the testator as required by law not be sufficient to discharge the onus. In case, the person attesting the Will alleges undue influence, fraud or coercion, the onus will be on him to prove the same and that as to what suspicious circumstances which have to be judged in the facts and circumstances of each particular case."

Therefore, it is apparent and evident from the discussion made herein above as well as from the ratio of the judgments cited herein above that "Will" Ext. DW2/A was a valid "Will" executed by its testator in favour of defendant No.1 and therefore, in my considered view there is neither any infirmity nor any perversity with the findings which have been recorded in this regard by both the learned courts below. Substantial question of law is answered accordingly and the present appeal being devoid of any merit is dismissed with costs.