

(1991) 12 DEL CK 0061
In the Delhi High Court
Case No : First Appeal No. 107 of 1986

Rajrani Sehgal

APPELLANT

Vs

Parshottam Lal and Others

RESPONDENT

Date of Decision : 18-12-1991

Acts Referred:

Succession Act, 1925 — Section 276

Citation : (1992) 46 DLT 263

Hon'ble Judges : S. Duggal, J

Bench : Single Bench

Advocate : M.L. Lonial, V.K. Makhija and S.L. Choudhry, for the Appellant;

Judgement

Santosh Duggal, J.

(1) The appellant Smt. Rajrani Sehgal is one of the daughters of deceased Shri Godar Mal, respondent No. 1, Dr. Parshottam Lal, being the son. The said Shri Godar Mal died on 14th February, 1980 and shortly thereafter a petition for grant of probate/letter of administration under the provisions of Section 276/278 of the Indian Succession Act, 1925 (for short "the Act") was filed by respondent No. 1 on the basis of a will, dated 9th September, 1974 alleged to have been executed by his late father, bequeathing all his moveable and Immovable properties to him. All the daughters of the deceased including the present appellant were impleaded as respondents; two of whom, namely appellant Smt. Rajrani and Smt. Shakuntla, respondent No. 5 in the petition filed objections to the grant of probate/letter of administration in favor Dr. Parshottam Lal. The other two daughters Smt. Shanti Devi and Savitri Devi and legal heirs of a pre-deceased daughter named Smt. Bimla Devi did not, however, file any objections. The petition was allowed after rejection of all the objections by order dated 3rd March, 1986, and it is this order which is subject matter of the present appeal.

(2) The appellant contends that the will suffered from a legal infirmity inasmuch as it offended the rule against perpetuity as contemplated by Section 114 of the

Act. The objection is elaborated by reference to the terms of the will, (Ex. P. 1) whereby as per appellant's contentions, the testator had created perpetuity in his family and had tended to limit the absolute enjoyment of the estate for an indefinite period because the impugned will imposed restrictions on the legatee, namely, his son against alienation, sale or transfer and thereafter on son's sons, son's sons and so on. It is contended that this is tantamount to creation of successive life estates, which was prohibited by law, and was not permissible under the Hindu Law of Inheritance and thus the entire bequest by this will was void and inoperative, and the learned District Judge erred in holding the objections in this respect to be not tenable, and that it was a case where bequest in favor of the son was absolute, certain restrictions imposed, which being repugnant to the main purpose of the will, were liable to be ignored.

(3) The appellant has also reiterated other objections taken in her objections filed in the probate proceedings, namely, as to the execution of the will having not been proved and the will propounded by respondent No. 1 not being a genuine will of the deceased father and not in any case the last one, and that there were certain suspicious circumstances surrounding the will, which had not been explained by the propounder, and for that reason also, the order of grant of letter of administration was liable to be set aside.

(4) Another objection set forth is as to the petition itself not having been filed in the manner required by law in as much as the will in original though in existence was not annexed with the petition and no case for filing a copy of the certified copy of the Registrar's office was made out.

(5) During bearing, Mr. Lonial appearing for the appellant pressed all these contentions. In respect to the first objection, namely, the will being void and inoperative for reason of offending the rule against perpetuity, the learned Counsel argued that a bare reading of the will Ex. P1 makes manifest the intention of the testator to restrict the bequest in favor of the son, only to a life estate, expressing a wish that "the said son shall not sell or mortgage or transfer or pawn the Immovable properties during his life time". A similar desire was expressed in respect to the grandsons and daughter-in-law or sons or daughters of the grandsons. He contended that it was a case where the deceased unmistakably intended each one of the heir in succession to enjoy only life estate and that this was nothing but creation of successive life estates or creating a perpetuity in the settlors' family and that in view of the clear prohibition against such a bequest u/s 114 of the Act, the will was invalid, because it was a case of disposition without vesting all the properties bequeathed in the legatee or his heir-in-succession, and that of indefinitely deferring the absolute right of enjoyment of the estate.

(6) Mr. Lonial placed strong reliance on a judgment of the Judicial Committee reported as Xii Indian Appeals 103, Sookhmoy Chander and Another v. Srimati Manohurr Dasi, holding that : "Where It clearly appeared that a Hindu testator's Intention was that his estate itself should not be disposed of, but to make a gift

simply with reference to the enjoyment of the profits, the object being to create a perpetuity as regards the estate, and to limit for an indefinite period the enjoyment of the profits of it; by Hindu Law the whole will was invalid."

(7) I have given my earnest thought to this contention raised on behalf of the appellant because it goes to the root of the matter and as per appellant's contention invalidates the bequest in its entirety. On a careful reading of the will, the objection appears to be misconceived, and betrays an attempt at a misreading of the actual intention of the testator as reflected in the will in dispute.

(8) It is settled law that in construing a will, the Court has to read, and keep in mind the whole of the document, and then determine as to what was the dominant intention of the testator and give effect to the same accordingly. It will be expedient to take note of rule of interpretation in respect to construction of wills, which as held in Air 1932 Madras 489, (Bondada) Manumallaswami and Another v. Riniseti Chinna Narayanswami and Others is to construe a will in such a manner, so as to give effect as far as possible to all the words used by the testator, and the true way to do so would be to form an opinion apart from the decided cases and then to see whether the decided cases required any modification of that opinion, not to begin by considering how far the will in question resemble other will upon which decisions have been given.

(9) A similar note of caution was struck by the Supreme Court in Ramachandra Shenoy and Another Vs. Mrs. Hilda Brite and Others, laying down that in the matter of construction of a will, authorities or precedents are of no help, as each will has to be construed in its own terms, in the setting in which the clauses occur.

(10) Mr. Makhija appearing for respondent No. 1, rightly argued that the foremost task of the Court is to determine the real intention of the testator, and that is to be seen from whole of the context, and once the Court is satisfied that the testator wanted to give his all to the named legatee, son in the present case, then all subsequent restrictions would be void as being repugnant to the predominant intention of passing the entire estate to the heir.

(11) At this stage reproduction of the operative part of the Will would facilitate in arriving at a proper conclusion in respect to the intention of the testator. After stating his age and his state of health in general, the deceased gave details of his entire properties, movable as well immovable including the bank account, insurance policy, locker etc. He then proceeded to state that he had one son and five daughters) whose names were all given. There is then the recital that all of them are married. He further made his mind clear by saying that all the daughters were given dowry according to his capacity and he had nothing more to pay them and he also desired that his heirs did not enter into any litigation after his death and then provided that :

"I wish that after my death my son Dr. Parshotam Lal will be entitled to the

whole of my properties i.e. house No. T-23,01d Moti Nagar and shop No. 5571 and 5569, Nai Sarak, Delhi and shop No. T-23, Harbhjan Singh Road, Karol Bagh, New Delhi and movable properties from the banks, insurance policy and cash and ornaments from lockers, but he shall have to pay Rs. 1,000.00 (Rs. one thousand only) at the time of the marriage of his sister's daughters and Rs. 500.00 at the time of sister's son's marriage. I also wish that my son Dr. Parshotam Lal shall not sell or mortgage or transfer or pawn the immovable properties during his life time. I also wish that my grandsons or my daughter in law shall not sell, transfer or mortgage the properties to any body after the death of Parshotam Lal. I also further wish that the sons or daughters of my grandsons shall not sell, transfer or mortgage the properties to any body. My son shall have the right to collect the rent to use the properties for residential/commercial purposes. I also wish that my son should give Rs. 50.00 per month to Smt. Bimla Rani Bhasin after my death. This is my 1st and last will which is irrevocable."

(12) The recital in the will makes it abundantly clear that the deceased was In no doubt that he had given, all that was required, to his daughters at the time of their marriages and nothing else remained to be given to them and that it was his son whom he described as very obedient, who "will be entitled to whole of my properties", (emphasis supplied), which properties were described in detail firstly in the preamble, and then in the bequest portion including the bank account, insurance policy, cash and ornaments from locker. He also made a provision for some amounts to be given at the time of marriages of the sons and daughters of his daughters, and made obligatory on his son to whom the properties were being bequeathed, to ensure that a specified amount was given on each occasion.

(13) By excluding his daughters from inheritance, it is manifest that the testator was very diary in his mind that he wanted his son to get all the properties owned by him, whether moveable or immovable, in whatever form. He unequivocally expressed the desire that except for discharging certain obligations on specified occasions, the son would be entitled to all his moveable and Immovable properties.

(14) There is no gainsaying the proposition that in case these are unambiguous dispositive words in the will, they should be given full effect consistent with the intention of the testator, and in case any restrictive or qualifying expression is used to circumscribed the enjoyment of the devise so made, then that has to be ignored as being repugnant to the real intention of the deceased.

(15) This proposition has been laid down and endorsed in a catena of authorities. In a Division Bench judgment of Andhra Pradesh High Court reported as Air 1958 Andhra Pradesh 447, Sangavarapu venkatasubba Rao v. Mylavarapu Krishnamurthy and Others, where the words used were "the property shall pass to S", it was held that this expression was consistent with the creation of an absolute interest and any subsequent restriction in derogation of devolution of absolute estate are to be treated as being repugnant to the preceding absolute estate.

(16) Although no two will can be identical, but the present case is as closely similar to the case before the Andhra Pradesh High Court, as can be envisaged because here the words used are "entitled to"

(17) The plain dictionary meaning of this "term, as contained in the New Webster and Encyclopedic Dictionary of English Language, 88th edition at page 292 is, inter alia, "to give an effect, or title to, or to furnish with a title, right or claim."

(18) When the testator after making his intention clear of not desiring to give anything to the daughters, said that his son would be entitled to receive all, and then narrated in minute details the particulars of all his assets, moveable and immovable; the unmistakable inference is that he intended to confer full title to the estate to be left by him on his only son. There is another Inbuilt indication in the body of the will which lends support to this interpretation of the will, that the deceased Shri Godar Mal had desired to pass on the entire estate to his son because there is a recital in the will that whereas the son was very obedient, his grandsons were not so and were always pestering the testator. In this setting, it could never have been the intention of the testator to restrict the rights of the son, towards full and natural enjoyment of the estate to be inherited by him, and binding him down to leave everything for his sons or sons' sons. It is thus a case where the restrictions imposed against alienation etc. are to be treated as repugnant to the dominant intention of the testator, and thus liable to be ignored.

(19) This view is fortified by certain decided cases on which the learned District Judge also placed reliance. For instance, in the case reported as Air 1929. P.C. 283, Raghunath Prasad Singh and Another v. Deputy Commissioner, Partabgarh and Another, where the words used were that, "the estate shall vest in P", and he shall be testator's "heir and successor" it was held that these were clear dispositive words, creating an absolute estate in P, and various clauses that followed these provisions containing restrictions against alienation had to be treated as an attempt to impose repugnant conditions upon the estate so created and were Therefore void.

(20) To the same effect is another judgment of the Privy Council reported as AIR 1940 70 (Privy Council) where the will provided that testator's widow would be exclusive owner of certain property and after her death whatever remained would be owned by testator's nephew's sons, but the widow and nephew's sons were prohibited from selling the Immovable property. It was held that the widow has to be treated to have been made an absolute owner and the prohibition against selling had to be disregarded as repugnant to the absolute will to the widow.

(21) In another case, relating to a will by a Parsi, reported as Air 1923P.C. 122, Putlibai and Others v. Sorabji Naoroji Gandhi and Others, where while conferring rights on his progeny, the testator directed postponement of division of the estate to a specific period or event, it was held that such a direction is to be regarded as inoperative, the interest to which it attaches being absolute.

(22) The Orissa High Court in a Division Bench judgment *Bandura Ramamurty Vs. Koppula Vajram and Others*, , also propounded the same proposition that where the properties both moveable and Immovable have been bequeathed to the mother with all rights, the subsequent conditions imposed were in the nature of cutting down her absolute estate to a limited one and the same was held to be void.

(23) The High Court of Gujarat, in a Full Bench judgment *Shantilal Babubhai and Others Vs. Bai Chhani and Others*, , held that where there was a clear provision for "Malik Hak" making testator's wife full and absolute owner of all the properties, any subsequent provision that the remainder was to go to certain other heirs would not detract from the absolute ownership of the wife.

(24) Oudh High Court, in a Full Bench judgment reported as Air 1928 Oudh 49, *Jagmohan Singh v. Sheoraj Kuar and Others*, also laid down that where it is found that the testator had intended to give an absolute estate but attempted to limit the rights of the holder owing to an erroneous view of the power, the attempt to limit the rights must be rejected on the ground of repugnancy.

(25) The Lahore High Court also took a similar view in a Division Bench judgment reported as Air 1933 Lah 201, *Umrao Singh v. Baldev Singh and Another*, holding that where a Hindu testator declared in a will that his three sons were his heirs and were absolute owners in equal shares of his moveable and Immovable properties, but in a subsequent clause of the will he tried to restrict their power of alienation up to a certain point, it was held that this restriction was clearly repugnant to the absolute estate created in the earlier part of the will and, Therefore, invalid.

(26) In face of preponderance of judicial authorities, the solitary judgment relied upon by the learned Counsel for the appellant in the case of *Sookhmoy Chunder Dass (supra)* does not advance her case particularly when a cumulative reading of all the terms of the will in that case make it clear that the predominant intention of the testator there was that "the estate shall remain intact". It was in that context that it was held that the true construction and effect of the will, because of the testator having said distinctly and repeatedly that "the estate shall remaining intact", and then specifying that his heirs "shall be entitled to enjoy profits thereof was indicative of the intention that the testator did not want to give away the estate but all that he intended was to permit enjoyment of properties to the persons mentioned in the will. It was in that setting of facts that it was held that he intended to create a perpetuity which was not permissible under Hindu Law and thus the whole will would be void.

(27) It was noted in this judgment itself that the whole question resolved itself into what was the intention of the testator to be gathered from the will. A clear distinction was made between cases where the testator had expressed the intention to pass on an estate and then added a clause against alienation, holding that in such a case only the clause against alienation would be void. It

was only on the facts of the case before their Lordships that it was held that the provision against alienation was confirmatory of the other part of the will. It is thus clear from this judgment that where the intention of passing of the whole estate, as in the present case, was apparent and there was only an added clause against alienation, then only subsequent clause was to be treated as void and the bequest shall stand.

(28) As observed at the outset that the right way to construe a will is to give effect as far as possible to all the words used by the testator and determine his real intention and thereafter to examine as to whether any of the decided cases could be applied to a given case or whether there was any resemblance of the will in question with other wills on which decisions had been given. Adopting this rule of interpretation, I have no hesitation in saying that the expression used in the present case is totally distinguishable from the one used in *Sookhmoy Chunder Dass* (supra), and more akin to the cases on which reliance has been placed by learned Counsel for respondent no. I, and which have been noted in the foregoing discussion.

(29) There is support for interpreting the will in this manner also from the provisions of Section 136 of the Indian Succession Act, 1925 which provides as under:

"138.Direction that fund be employed in particular manner following absolute bequests of same to or for benefit of any other Where a fund is bequested absolutely to or for the benefit of any person, but the will contains a direction that it shall be applied or enjoyed in a particular manner, the legatee shall be entitled to receive the fund as if the will had contained no such direction."

(30) The only contention Mr, Lonial raised in respect to this provision was that the expression used was "fund" which in ordinary parlance means a given sum of money. But this limited view which the learned Counsel for the appellant sought to canvass for interpreting Section 138 is not tenable for the reason that the heading of the chapter in which this Section occurs indicates that this Section as well as succeeding Sections deal with bequests in general ,and there are decisions where the term "fund" has been understood as being inclusive of moveable as well as Immovable properties.

(31) This Interpretation is supported from a .Division Bench judgment of the Calcutta High reported as *Kedar Nath Poddar Vs. Gaya Nath Poddar and Others*, where although the issues involved and propositions propounded were different; the provisions of Section 138 of the Act were held to be applicable to a case of devolution of properties including moveable properties other than cash and also Immovable properties.

(32) To the same effect is an earlier judgment of the Calcutta High Court reported as *Xxiv The Indian Law Reports (Calcutta Series) 406, Lala Ramjewan Lal v. Dal Koer*, where the provisions of Section 125 of the Indian Succession Act, 1965 were under reference. It was held that the term "fund" used therein would

apply to moveable and Immovable properties. It is to be noted that Section 138 of the Act of 1925 is *pari materia* with Section 125 of 1865 Act.

(33) I am Therefore of my clear view that the objections of the appellant were rightly dismissed and there is no error in the view taken by the learned District Judge to the effect that present was a case of a will, where absolute title was devised in favor of the son, and the subsequent conditions imposing restriction on his right to sell etc. were to be ignored as being repugnant, and this Is the only view possible on a total view of the intention of the testator, as embodied in the will.

(34) In addition to arguing in respect to legality of the will as a whole, as discussed above, Mr. Lonial also reiterated the objection as to execution of the will having not been proved and further that the probate petition having not been accompanied by the original will, it could not be entertained and that the grant of letter of administration was vitiated in view of this initial defect.

(35) In so far as the first objection as to the will having not been duly proved to have been executed in the manner required by law, the contention is that out of the two alleged attesting witnesses of the will, namely, Jagdish Lal and Harbans Lal, only, one of them Jagdish Lal (Public Witness . 1) was examined and that he too deposed in such a manner that the execution of the will as propounded by the petitioner, was not free from suspicion.

(36) It is to be noted that the will bearing the date 9th September, 1974 is a registered will bearing Sub Registrar's endorsement under the date 11th September, 1974. The original will has also come on record having been filed during pendency of the proceedings by Shri S.L. Chaudhry, Advocate of Delhi who happens to be husband of one of the daughters of the deceased, being respondent No. 3 in the probate proceedings. The certified copy from the office of the Sub Registrar obtained by the petitioner and annexed with the petition has been proved as Ex. P. I which bears signatures of the executant as well as the attesting witnesses Jagdish Lal, one of the attesting witnesses examined as PW. I, deposed that he knew deceased Shri Godar Mal who was President of their Khokha Association during the period 1972 to 1976 of which the witness was a member, and that on the date the will was to be executed, Shri Godar Mal had .come to his shop and taken him to Kashmere Gate Delhi and that the will was got typed by the deceased himself from a typist in Kashmere Gate Court and the said typist read over and explained the contents of the will to the deceased after typing and thereafter Shri Godar Mal put his signatures on the will in his presence as well as in presence of Harbans Lal at point "A" and thereafter Harbans Lal and he also signed the will as attesting witnesses. He identified his signatures at point "B" and those of Harbans Lal at point "C". It is thus a case where the requirements of Section 63(e) of the Act have been fully satisfied and the will duly proved in the manner laid down by Section 68 of the India? Evidence Act.

(37) The only question that remains to be seen is as to whether the present is a case where there existed any such dubious circumstances that ought to have aroused suspicion of the Court and impelled it to require the propounder to lead any further evidence to satisfy the Court as to whether the will propounded by him was the true and genuine will of his father, Shri Godar Mal. On a careful consideration of all the facts that have come on record, I have no doubt in my mind that there were no such circumstances existing in this case, and the learned District Judge was right in coming to the conclusion that the will set up by the propounder was genuine will, and duly proved to have been voluntarily executed.

(38) It is pertinent to note that the appellant is the only heir out of the four daughters, and heirs of the fifth pre-deceased daughter to have persisted in her contest of the petition and both she and her husband had come into the witness box. The only other daughter, (respondent No. 5), who had filed objections does not seem to have pursued them as no evidence was adduced by her and it was eventually closed by order dated 21st January, 1985.

(39) In so far as the appellant is concerned, it is on record that she along with her husband and children had been living with the deceased for a number of years before the execution of this will in part of the property, namely, house No T-23, Old Moti Nagar, New Delhi. The other daughter of the deceased, namely, Smt. Shanti Rani, used to live in the second portion of the property No. T-12, Old Moti Nagar, New Delhi. It is appellant's own case that the deceased lived with her and her family. It is also an established fact that the son Dr. Parshottam Lal, who is beneficiary of the will, was throughout posted out of Delhi and had been at different places in the State of U.P. and that at the time of death of his father, he was posted at Ghaziabad and at that time his father was staying with him. He has clearly deposed that the deceased had started living with him from 1976 onwards. There is not even an iota of suggestion to respondent No. 1 during his cross-examination on behalf of the objectors including the appellant that he had visited Delhi during or any time before September 1974 when the will is purported to have been executed. It is thus a case where the appellant, who is main objector or, along with her husband and other family members was living with the testator in Delhi for a number of years in the same house, the son had been posted outside and had not even visited Delhi around the time the will is stated to have been executed. The authorities cited by Mr. Lonial to the effect that the propounder setting up a will must dispel the suspicious circumstances surrounding it do not, therefore, arise for consideration because there are no suspicious circumstances accompanying the execution of the will.

(40) It is also noteworthy that the appellant and her husband have taken conflicting stands in respect to this will in their testimony. In the first instance, it is significant to note that there is no suggestion either to Pw1 Jagdish Lal or to respondent No. 1 as Pw2 that the signature which have been proved at point "A" of Ex. P. 1 to be those of deceased Shri Godar Mal were not, in fact, his

signatures; there being only a bald statement that the will was a forged one, without any evidence to support it. The plea as to will being forged one has been rightly dismissed as unsubstantiated, in the absence of any suggestion in respect to signatures not being genuine signatures.

(41) In fact, in part of the testimony the appellant admitted the existence of this will because what she stated was that her brother had got executed the will forcibly from her father in the year 1974, which fact she claimed to have been informed the deceased some time in the year 1979. There is again no evidence to support this assertion and the allegation of petitioner having coerced his father is not credible for the reason that neither the petitioner is shown to have visited Delhi around the time the will was executed nor the deceased is shown to have been with the petitioner or under his Influence at the relevant time.

(42) APPELLANT'S husband went a step further and asserted that the deceased Shri Godar Mal was not in right possession of his mental faculties. Again he could not substantiate this allegation about the deceased being mentally upset or mentally unfit at the time this will was executed and. in fact at any other given time. Although during cross-examination he claimed to have taken the deceased for treatment but could not produce any record. No suggestion was put to the attesting witness that the deceased was not a mentally fit person.

(43) In fact, appellant's husband contradicted himself about this fact, when he deposed that his father-in-law used to manage all his affair till the time of his death. He also deposed the deceased was keeping a wooden khokha constructed in Karol Bagh area which corroborates the statement of Jagdish Lal(PW.I). All that this witness stated was that the said khokha was demolished during Emergency some time in the year 1976. This means, on his own showing the deceased was having a khokha as deposed by Public Witness . I in the year 1974 and to that extent Jagdish Lal was a likely person to be associated by the deceased with the execution of his will. He went on to say that after the khokha was demolished deceased removed his safe to the house but kept the keys himself and used to operate it and he kept all the ornaments in the bank lockers which he also operated himself and bank account was also operated by him till the time of his death. If that was so, the statement made by him that the deceased was not possessed of right mental faculty, has to be dismissed as false and a made up story with a view to defeat the prayer of the son who is beneficiary under the will to grant of probate. The appellant has also deposed that her father also used to operate the bank account as also the locker himself, and that he used to draw cheques for withdrawing the amounts. She could not say at what point of time deceased ceased doing so. The inference would be inescapable that he remained throughout fit, and mentally sound, and at no point of time had been reduced to such a condition that he could not look after his interest or manage his affairs ,and certainly he was not so in the year 1974 when the will was executed.

(44) Being aware of this situation, when the will could not be faulted on account

of existence of any suspicious circumstances, and present being a case where the propounder who is beneficiary of the will had been nowhere near the testator around the time will was executed. Mr. Lonial tried to fall back on technical objections to ensure success for the appellant but on a conspectus of the circumstances and cumulative consideration of the evidence of the attesting witness, I do not think that there is any flaw in the manner of proof of the will or that of its execution. It is true that the second witness Harbans Lal has not been examined but that does not make the evidence suffer from any legal infirmity or become suspect because u/s 68 of the Indian Evidence Act, examination of one of the attesting witnesses was sufficient. Non-examination of Harbans Lal does not give rise to any suspicion for the reason that it is not a case where respondent No. 1 deliberately avoided Harbans Lal nor any ulterior motive can be attributed or adverse inference drawn to say that he was not examined for the reason that result for the pro-pounder may have been different, in the event of his being examined. As, although the requirement of law was that the petition for probate should be verified by one of the attesting witnesses, the petition contains verification by both the witnesses, namely, Jagdish Lal and Harbans Lal.

(45) Mr. Makhija also submitted, and to which there was no contradiction that even during evidence Harbans Lal was summoned twice, but since he was not available, he gave up. The witness who has been examined, namely, Jagdish Lal has categorically deposed that Harbans Lal had also signed the will in the presence of the testator as well as in his presence after the deceased had signed the same in the presence of both of them. He has also stated that Harbans Lal put his signatures in a language which was neither English nor Urdu. The signatures in fact appear to be in Mundi both on the will at point "C" and also under the verification on the petition, purported to have been made by Harbans Lal. The discrepancies which occurred in the statement of this witness Jagdish Lal like all three of them having proceeded to the office of Sub Registrar on the same day the will was signed do not appear to be of such a material nature as to detract from the genuineness of the will when there is a preponderance of circumstances specifically proving the execution of the will by the deceased. It contains minute details about the properties of the deceased including locker number, bank number and the insurance policy number which could have been known only to the deceased because it is the case of the appellant as that of her husband during their evidence that the deceased managed all his affairs himself. There is also no suggestion to the petitioner that he had any access to the papers of the deceased around the time will is shown to have been executed.

(46) The bequest by the deceased also does not strike to be as unnatural because the deceased had given reasons for excluding the daughters, and he was also empowered to dispose of his properties, by testamentary disposition in favor of one heir to the exclusion of others. He has not completely forgotten them and the direction to the son that he should spend specific amount on the occasion of the marriages of the daughters and sons of his sisters and also pay something monthly to one of his sisters shows that this will embodies all the

desires of the deceased In respect to his properties, and there is nothing unnatural. After stating that he has spent adequate amounts as per his status on (he marriages of his daughters and the son being very obedient he had decided to leave all assets, moveable and immovable, to the son. He does not forget that there was an obligation to spend something at the time of marriages of sons and daughters of the daughters and he thus puts an obligation on the son in that respect, and also make a provision for one of his daughters. All these minute details and extensive description leave no doubt as to the genuineness of the will.

(47) The mere fact that the deceased did not disclose the fact of execution of the will to his son or had not handed over the will to him. though before his death he had started living with his son, would not detract from the genuineness of the will because the original will has come now voluntarily from the custody of one of his sons-in-law, namely, Shri S.L. Chaudhry, Advocate. Nobody can delve into the working of the mind of the deceased, as to why he handed over the will to his son-in-law and not to the son, and as to why Mr. Chaudhry did not immediately disclose the fact of existence of the will to respondent No 1. Nevertheless, there is no delay in filing of the probate petition because the death of the testator occurred in February 1980 and respondent No. 1 has deposed that he had come to know about the existence of the will from Jagdish Lal, PW.I sometime in August, 1980 and soon thereafter he applied for certified copy of the will from the Sub Registrar's office and after he was able to get the certified copy, he filed the probate petition, which was in November, 1980. As to why Mr. Chaudhry chose to conceal the factum of existence of will from respondent no. 1 is not on record, but the fact remains that he is husband of one of the heirs, who had been excluded from inheritance.

(48) The present is not the case such as the one which was before their Lordships of the Supreme Court in the case of Smt. Jaswant Kaur v. Smt. Amrit Kaur and Others (1977) 1 S.C. 369. On the facts of that case it was held:

"IN cases where the execution of a will is shrouded in suspicion, its proof ceases to be a simple lis between the plaintiff and the defendant. What, generally, is an adversary proceeding becomes in such cases a matter of the Court's conscience and then the true question which arises for consideration is whether the evidence led by the propounder of the will is such as to satisfy the conscience of the Court that the will was duly executed by the testator. It is Impossible to reach such satisfaction unless the party which sets up the will offers a cogent and convincing Explanation of the suspicious circumstances surrounding the making of the will."

(49) As already discussed, there are no suspicious circumstances surrounding the making of the will in the present case and as such no more duty was fastened on the propounder than what was enjoined by the legal requirements of Section 63(e) of the Indian Succession Act and Section 68 of the Indian Evidence Act, both of whom are duly satisfied and, as observed in the cases of Smt. Jaswant Kaur (supra), it is a question of satisfying the conscience of the Court

that a particular will was duly executed by the testator. In the present case, such a satisfaction can be fully derived from the facts and circumstances on record, and taken note of in preceding discussion.

(50) As held in *Smt. Ladhi Bai Vs. Thakur Shriji and Others*, , where the attesting witness, while giving evidence of attestation Inadvertently omits some details but narrates the sequence of events in a manner which lead to the inference that he had attested in the presence of the testator, then omission would not invalidate the will. In this view of the matter simply because Jagdish Lal said that Harbans Lal was also present before the Sub Registrar on that day, would not detract from the genuineness of the will.

(51) This being the case where the propounder had not taken any part, much less prominent part in execution of the will, and it having not come from his custody but official custody of the Sub Registrar's office, or that of Shri S.L Chaudhry, Advocate who cannot be said to be a person interested in setting up will in favor of the son, to the exclusion of the daughters, including his wife, the will cannot be considered to be attended with any suspicious circumstances and when the deceased has been shown to be a person of competent understanding and apparently a free agent and not in any case under the influence of propounder, no doubt can legitimately be entertained about the genuineness of the will and the appellant must fail in her opposition to the grant of letters of administration in favor of respondent no. 1.

(52) Before concluding, I would like to deal with a technical objection raised by learned Counsel for the appellant as to the original will having not been filed with the petition under Sections 276/278 of the; Act .It is in evidence that original will was not in possession of the petitioner nor he had any access to it and even no knowledge of the fact as to in whose possession it was. He did his next best, and applied for a certified copy to the Sub Registrar's office and after obtaining the same applied for probate, annexing the said copy with the petition. The objection raised by Mr. Lonial seems to be misconceived, based on a misreading of provisions of law because all that Section 276 of the Act requires is that the application for probate or letters of administration shall be made with the will annexed. This will could be the original will or the certified copy from the Sub Registrar's office, which has to be treated on an equal footing with the original because of the provisions of Section 62 of the Indian Evidence Act.

(53) It is a matter for judicial notice that the copy, which is filed before the Sub Registrar is the one prepared at the same time as the original, and bears signatures of the testator, and the attesting witnesses, and when a certified copy is given of such a document it is to be treated as good as original. As noted by Sarkar in *Law of Evidence*, 13th edition, Volume I, page 631 that in cases where copies of original documents are made under public authority, these rank as primary evidence. He has given illustration of the probate of a will. Certified copy of the will is also prepared under official authority, and prepared from the will filed in original containing signatures of the testator and the attesting witnesses,

and can certainly be treated as primary evidence. Moreover, the irregularity, if any, had been cured at the initial stage of the proceedings because the learned District Judge got the certified copy produced from the office of the Sub Registrar and have it placed on record after the clerk from that office slated that he had brought the record maintained in the office of the Sub Registrar, Kashmere Gate and that register contained a copy of the will signed by the testator and the attesting witnesses and that it was equivalent to the original. From the very wordings of Section 276 of the Act. it cannot be said that the failure to annex the original will would be fatal. The defect if any. had been cured and condoned by the District Judge when he received the certified copy from the Sub Registrar's office, after satisfying that a duly signed and attested copy of the will existed in the records of the Sub Registrar and was as good as primary evidence of the original. Even the law contemplates grant of probate in certain cases as contained in Sections 237 to 239 of the Act, in the absence of original will. The failure. therefore ,to annex the will in original with the probate petition would not vitiate the proceedings nor invalidate grant of letters of administration.

(54) The intention appears to be that the original will should be on record so that the signatures of the testator and the attesting witnesses are open for examination of the objector, if any. That situation has been taken care of because the certified copy that was produced also contained signatures and had been proved as Ex. P. I and in any case the original will had also subsection quietly come on record and there is not even a whisper of a suggestion from the side of the appellant that the signatures on the will purporting to be that of deceased Shri Godar Mal are not his genuine signatures.

(55) On a resume of the aforesaid discussion, I am of my clear view that the learned District Judge was right in allowing the petition and granting letter of administration to respondent No. 1, and the appeal has no merits .The same is accordingly dismissed, with costs. Counsel's fee Rs. 1000.00 Appear dismissed.