

(2003) 07 MP CK 0034
In the Madhya Pradesh High Court
Case No : First Appeal No. 242/94

Shri Mahaveerdas Shastri

APPELLANT

Vs

Shri Sadguru Seva Sangh and Another

RESPONDENT

Date of Decision : 29-07-2003

Acts Referred:

Evidence Act, 1872 — Section 45, 47, 68, 73
Succession Act, 1925 — Section 63, 68
Transfer of Property Act, 1882 — Section 3

Citation : (2004) 1 MPHT 383 : (2004) 1 MPJR 529

Hon'ble Judges : Dipak Misra, J;A.K. Shrivastava, J

Bench : Division Bench

Advocate : L.S. Baghel and Abhay Raj Singh, for the Appellant; Ravish Agrawal and Pranay Verma, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Shrivastava, J.

Feeling aggrieved by the judgment and decree dated 5th July, 1993 passed by the learned District Judge, Satna in Civil Suit No. 51 -A/87, dismissing his suit, the plaintiff has preferred this appeal u/s 96 of the Code of Civil Procedure, 1908.

In brief, the case of plaintiff is that Mahant Ranchhor Das Jee (hereinafter referred to as "Mahant Ji"), Janki Kund, Chitrakut, District Satna gave Tilak and Kanthi to the plaintiff and accepted him as his "Vairagi Chela" in presence of certain saints and hence, the plaintiff became Vairagi Chela of Mahant Ji and to bring him up to the mark the plaintiff was sent to Varanasi Vishwa Vidyalaya, Varanasi where he was educated and passed different examinations. After passing matriculation examination the plaintiff took admission in Kashi Vidyapeetha for his education of Shastri (B.A. Standard) which he passed in the year 1975, thereafter he passed M.A. Degree in the year 1978 from Kashi Vidyapeetha, Varanasi. According to the plaintiff, he is a well educated and highly qualified Chela amongst all the Chelas of Mahant Ji and according to him Mahant

Ji loved and graced him most.

According to the plaint averments as the plaintiff was the most qualified and beloved Chela of Mahant Ji, looking to his efficiency, capability of managing the affairs, Mahant Ranchhor Dasji executed a "Will" in his favour on 14th October, 1969 stating in the document of the "Will" that he would inherit the entire property shown in the Schedules A, B, C, D, E, F, G (hereinafter referred to as "the disputed property") along with the plaint and would have control to protect them and to manage the affairs of three institutions, namely, Shri Raghuvir Mandir, Janki Kund, Chitrakut, District Satna; Registered Institution of Shri Manav Rahat Mandal, Bombay; and Registered Institution Shri Sadguru Seva Sangh, Indore, after the death of Mahant Ji. As per the plaint, Mahant Ji further stated in the "Will" that he is the founder and controller of all the aforesaid institutions, and the disputed properties and also looking after and managing the affairs of all the institutions and properties. As Mahant Ji had become weak on account of his old age as such he had an intention, strong desire and Will that the entire property should vest in the plaintiff and accordingly the properties mentioned in the "Will" were bequeathed to him including the administration and management of those properties. As per pleadings, none of the other Chelas would inherit the property of Mahant Ji and would not be entitled to control and manage the affairs of the above said three institutions and properties.

In Para 8 of the plaint, it has been pleaded that Mahant Ji also stated in the "Will"--

(a) That, at present his Chela Thakurdasji is performing the Puja of Shri Raghuvir Bhagwan and after his demise Virakt, unmarried Sadhoo would be appointed to perform Pooja of Shri Raghubir Bhagwan.

(b) That, Vaishnav Dasji would co-operate in administering the affairs of Raghubir Mandir for his whole life time as usual.

(c) That Sadhoos visiting the Raghubir Mandir would be entertained as usual.

(d) That Shri Ram Sanskrit Pathshala would be run by the Institution as usual.

It has been putforth in the plaint that Mahant stated in his "Will" that he was confident that the plaintiff would perform all the acts according to his directions and wishes incorporated in the "Will" and all the "Wills" executed earlier would stand revoked.

It has been further pleaded that the Mahant Ji passed heavenly abode on 19th April, 1970 and since his death the plaintiff has been looking after the affairs of the aforesaid Institutions and the disputed properties in accordance with the wishes and directions of Mahant Ji. It came to the knowledge of plaintiff that defendants in order to grab all the disputed properties and the institutions and for their illegal gains, cooked a fraudulent document "Adhikarpatra" purported to be executed by the Mahant Ji on 14-2-1969 and on this basis the defendants applied for registration of Shri Raghubir Mandir, Sada Bart Ashram, Janki Kund,

Chitrakut before the Registrar, Public Trust, District Satna and got it registered under the Public Trust Act on 17-9-1971 which according to the plaintiff is an illegal act, as the basic document viz. "Adhikarpatra" is an illegal, forged, inoperative, null and void, because Mahant Ji never executed any "Adhikarpatra" in favour of defendants, the signature on the said document is not of Mahant Ji and he never put his signature on the said document and the said deed is unregistered and as such has no legal effect.

After the death of Mahant Ji the plaintiff became owner and administrator of Shri Raghubir Mandir, Janki Kund, Chitrakut, Satna and above said two religious institutions and the disputed properties. The defendants have no title over the disputed property and they did not have any administrative control over them.

The defendants by illegal means dis-possessed the plaintiff on 22-3-1982 from the disputed property. According to the plaintiff, the cause of action arose on 19-4-70 when Mahant Ji left for heavenly abode and on 10-3-1982 when the plaintiff obtained a photocopy of the said "Adhikarpatra" and on 22-3-1982 when he was dis-possessed by the defendants.

In Para 19 it has been pleaded by the plaintiff that he filed a suit earlier (Civil Suit No. 6-A/82 on 17-11-1982) in the Court of Civil Judge, Class-II, Satna in which the defendants in their written statement raised objection that as no consequential relief has been claimed by the plaintiff, the suit was under valued and the proper Court fee had not been paid, hence the Court had no jurisdiction to try the suit. On this the plaintiff withdrew the suit seeking permission of the Court to file it in a proper Court which was allowed to him on 23-12-1983 and hence, the present suit came to be filed.

On the basis of above said pleadings, the plaintiff prayed for a decree in following terms :--

- (i) it be declared that he is the administrator and owner of the religious institutions of Shri Raghubir Mandir, Janki Kund, Chitrakut, Satna, Registered Institution Shri Manav Rahat Mandal, Bombay and Registered Institution Shri Sadguru Seva Sangh, Indore at present Bombay, as per the schedules filed along with the plaint;
- (ii) the Court may further declare that the deed "Adhikarpatra" purported to be executed by Mahant Ji is illegal, forged, fabricated, inoperative, null and void and;
- (iii) the possession of the disputed properties be delivered to the plaintiff.

The defendants by filing the written statement denied the plaint averments. It has been denied by them that by giving Tilak and Kanthi, Mahant Ji accepted the plaintiff as his Vairagi Chela. The plaintiff had never been appointed a Vairagi Chela or any type of Chela by Mahant Ji and is only an imposter having assumed that character with the single object of extorting some money from the trustees of Sadguru Seva Sangh Trust or Raghubir Mandir Sadabart Ashram by harassment, blackmail and false claims in the Court. The other contentions of

plaintiff regarding his education has also been denied and it has been pleaded that plaintiff should produce the documents regarding his education.

It has been emphatically denied that plaintiff ever came near Mahant Ji, he was never seen in the company or near about Mahant Ji or even mentioned by him. The plaintiff is from every angle is an imposter who suddenly appeared from no where in the year 1979 to take his fraudulent claim over the alleged properties of Mahant Ji.

A very specific denial has been made in the written statement regarding the "Will" that the "Will" as putforth by the plaintiff is forged and a false document. Mahant Ji never executed any "Will" dated 14-10-1969 referred to by the plaintiff in his favour. Mahant Ji never own the disputed property or any property shown in the schedule and they belong to Public Trust. Mahant Ji was a Godly and Saintly man with super powers having was a Godly and Saintly man with super natural powers having inspired to do social service and contribute towards the establishment and running of religious Charitables and educational institutions. Although Mahant Ji himself owned nothing, he remained their guide, friend and philosopher and also the "Gum". According to the defendants, a Godly man like Mahant Ji could not have executed a Will when he owned nothing or entrust to the care of a single man of unknown identity such vast Charitable and service organisations which has its Chairman the well known business magnate of the country like Arvind Mafatlal and which runs a tree Charitable Hospital in the jungle area of Janki Kund which undertakes as many as twelve thousand free eye operations conducted by famous doctors from Bombay etc. every year and does other countless social and charitable acts. As putforth by the defendants, one could not imagine that a person like Mahant Ji who was worshipped like a God by the well known families of the country and whose word was of a command from heaven, would even if he owned any property or had otherwise the power of transfer of trust properties from the management and control, ever think of handing over or placing them under the control of an insignificant non-entity. It would have been the greatest hoax of the decade and he done so. But, he never did so and the cock and bull story that the plaintiff has fabricated either by himself or there is some invisible hand behind the same deserved to be dismissed as pure hoax.

In very specific terms, it has been pleaded by the defendants that Mahant Ji had been seriously ailing for about more than a year before he look to heavenly abode on 19-4-1970 at Bombay. In August, 1969, he (Mahant Ji) was at Bangalore where he suddenly fell ill and was admitted in the local nursing home and when his condition did not improve, he was flown to Bombay on 5-9-1969 and then he was shifted to Pune where he strictly remained confined to bed on account of his impaired health. He was throughout in the supervision of medical experts. He remained there till 5-3-1970 except on 23-12-1969 when he was at Bombay for check up. On 6-3-1970 he was brought to Bombay and kept at Surya Apartment at the residence of Shri Ram Bhai who was his most dedicated

devotee where he remained till he left for heavenly abode on 19-4-1970. Hence, the story put forth by the plaintiff for execution of "Will" by Mahant Ji on 15-10-1969 at Chitrakoot is totally false and the alleged "Will" is a forged document. It has also been pleaded that a previous suit was filed by the plaintiff in the Court of Civil Judge, IIInd Class, Satna where he filed a different forged "Will". It has been emphatically denied by the defendants that the plaintiff became the owner of the suit property by virtue of the alleged "Will". The Mahant Ji never wished that plaintiff should look after the affairs of the institutions nor the plaintiff ever did so.

As proposed by the defendants in their written statement Mahant Ji built a temple and installed the deity Raghuraj Ji in that temple. This temple had been built on land of Khasra Nos. 930, 931 situated in Village Nayagaon. Mahant Ji had also been granted rights over 1616 bighas 11 biswas of forest area by ruler of Paldco-Nayagaon by registered deed of endowment Ranchor Das Ji dedicated all the temple property and the forest land unto the idol of Raghuraj Ji and made himself the first shebait of the temple to manage the properties in the trust with power to nominate the next shebait. Mahantji named all the properties the temple the land as the forest area owned by him and later dedicated and conveyed to the deity of Raghuraj Ji as "Raghuraj Mandir Sadabart Ashram Janki Kund, Chitrakoot".

The "Adhikarpatra" dated 14-2-1969 executed by Mahant Ji is a genuine document and was executed when he was taking rest at Pushkar, Ajmer. By virtue of the "Adhikarpatra" the entire management and the control of the Raghuraj Mandir was handed over to the trustees who after the death of Mahant Ji applied for registration under the Public Trust Act. The Registrar after satisfying himself registered it as a public trust. It has been denied by the defendants that the "Adhikarpatra" is a forged document and has been fabricated to grab the property of Raghuraj Mandir. The Adhikarpatra executed by Mahant Ji is a legal, valid and effective document. It does not purport to transfer any property and merely confers on the Sadguru Seva Sangh Trust the power and authority to manage the affairs of Raghuraj Mandir Sadabart Ashram which is the property of the deity Raghuraj Ji. The plaintiff never became the owner and administrator of Raghuraj Mandir Sadguru Seva Sangh Trust and Manav Rahat Mandal.

In Para 16 of their written statement the defendants have demonstrated that how the averments of the plaintiff are untrue. It has been stated that according to the plaintiff, he was possessing the properties from 1970 to 22-3-82, implying that the defendants allowed him to remain in possession for more than 12 years and then one fine morning of 22-3-1982 bundled him out.

In the written statement, it has been pleaded that the suit is barred by time and there is defect of non-joinder of necessary parties. According to them, the plaintiff has not implicated the trustee.

The Trial Court after having framed the issues and after recording the evidence of

the parties dismissed the suit on the following grounds :--

- (i) Mahant Ji never executed any "Will" on 14-10-1969 in Chitrakoot in favour of plaintiff;
- (ii) the plaintiff by virtue of "Will" dated 14-10-1969 never became the owner and administrator of the disputed property;
- (iii) after the death of Mahant Ji, the plaintiff was not put in possession and he did not possess the disputed property;
- (iv) the plaintiff was not dis-possessed by the defendants on 22-3-1982;
- (v) the "Adhikarpatra" dated 14-2-1969 is not a forged document;
- (vi) the disputed property is in possession of the defendants;
- (vii) the plaintiff is not entitled to have possession of the disputed property nor he is entitled for any declaration to be the administrator of the suit property.

Feeling aggrieved by the judgment of dismissal of his suit, the plaintiff has preferred this appeal. It has been contended by Shri L.S. Baghel, learned Senior Counsel that the approach of the learned Court below holding that the "Will" is not proved is erroneous. According to him the Will executed by Mahant Ji is a genuine document and has been duly approved. The suit of plaintiff is liable to be decreed as by virtue of the "Will" (Ex. P-1) Mahant Ji bequeathed not only the suit property to the plaintiff but also appointed him as the administrator to take care of the entire property.

Combating the aforesaid submissions of learned Counsel for the appellant, Shri Ravish Agarwal, learned Senior Counsel for the defendant has argued that it has been proved like a noon day that the alleged "Will" (Ex. P-1) is a forged document and no right, title or interest ever passed to the hands of the plaintiff by virtue of the said "Will". According to him, the Trial Court has rightly dismissed the suit.

The entire claim of the plaintiff is based on the "Will" (Ex. P-1) which according to him was executed on 14-10-1969 in his favour by Mahant Ji, bequeathing the entire suit property to him and by the said "Will" powers have been conferred on him to manage the entire affairs of the suit property to control over it. Hence, the basic document (Ex. P-1) is the "Will" and if the Will goes the suit of plaintiff would not stand.

The law regarding to execution and attestation of a Will is enshrined in Section 63 of the Indian Succession Act, 1925 which reads as under :--

"63. Execution of unprivileged Wills.-- Every testator, not being a soldier employed in an expedition or engaged in actual warfare [or an airman so employed or engaged], or a mariner at sea, shall execute his Will according to the following rules :--

(a) The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.

(c) The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has been some other person sign the Will, in the presence and by the direction of the testatory, or has received from the testator a personal acknowledgment of his signature or mark or the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

On going through the above said provision, it would reveal that Section 63 lays down the formalities required to be observed in execution and attestation of the "Will". The "Will" comes in operation only after the death of the testator and hence it should be scrutinised with great care and caution. According to Clause (a) the testator of the Will should sign or affix his mark to the Will or the Will should be signed by some other person in his presence and by his direction. Under Clause (b) the signature or mark of the testator or the signature of a person signing for him should be so placed in the Will that it should appear that it was intended by the testator to give effect to the writing as a Will. The another most important thing has been embodied in Clause (c) is that the "Will" should be attested by at least two or more witnesses, each of whom has seen the testator signing or affixing his mark on the Will or has been some other person signing the Will on his behalf and in the presence and in the direction of the testator or has received from the testator a personal acknowledgment of his signature or mark or the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator. However, it would not be necessary that more than One witness be present at the same time and no particular form of attestation is necessary. Thus, before any credence could be given to the Will, it should be borne in the mind that there must be positive evidence to the effect that the testator has signed or has made his personal acknowledgment of his signature on the Will before the witnesses and the witnesses should also sign the Will in presence of the testator of the Will. Thus according to this provision a "Will" should be attested by the witnesses in the mode prescribed there. The word "attested" has not been defined in the Indian Succession Act. However, it has been defined in Section 3 of the Transfer of Property Act, 1882 which reads thus :--

"attested", in relation to an instrument, means [and shall be deemed always to have means] attested by two or more witnesses each of whom has been the executant sign or affix his mark to the instrument, or has seen some other person sign the instrument in the presence and by the direction of the executant,

or has received from the executant a personal acknowledgment of his signature or mark, or of the signature of such other person, and each of whom has signed the instrument in the presence of the executant; but it shall not be necessary that more than one of such witnesses shall have been present at the same time, and no particular form of attestation shall be necessary;"

Section 68 of the Indian Evidence Act, 1872 provides the proof of executing of document required by law to be attested and according to this Section if a document is required to be attested it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence. The proviso to this section is important so far as the execution of a "Will" is concerned, which we would like to reproduce as under :--

"Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied."

Thus, except the document of Will, it would not be necessary to call an attesting witness in proof of execution of any document if the same has been registered in accordance with the provisions of the Indian Registration Act meaning thereby the attestation of the Will is to be proved by examining at least one attesting witness and unless attesting witness is examined to prove the Will, the same shall be deemed not to have been proved. Thus, unless the attestation of the Will is not proved, a Will can not be said to be proved.

The entire case set-forth by the plaintiff rests on the pivot of the "Will", dated 14-10-1969. According to him, a valid Will has been executed in his favour by Mahant Ji. On the other hand, the execution of the Will has been emphatically denied by the defendants by saying the said document is a forged document. It is well settled in law that the propounder of the Will has to prove the due execution of the Will and should remove all the suspicions regarding the execution of the Will. Heavy burden has been cast on the propounder of the Will to prove the due execution and attestation of the Will. Thus, in this context, the evidence of the attesting witness of the Will, as the plaintiff, is the propounder of the Will has to be scrutinised in detail.

In Para 6 of the plaint, the plaintiff has pleaded that Mahant Ji executed a Vasiyatnama (a Will) on 14-10-1969. However, the Will (Ex. P-1) which has been placed on record is not dated 14-10-1969 but the date, 15-10-1969 has been mentioned in it. The document in question (Ex. P-1) is a photocopy and is not the original. At the bottom of this document name of Ranchhor Das has been mentioned and further it has been mentioned "Sadar Sarai Kali Hoon" The document has been witnessed by Sakal Narain Pandey, Ganesh Prasad Das of

Sant Nagar, District Darbhanga and Tuchai Das of place Matras, District Darbhanga. The signature of one Khushidas Laxman Meen is also there on the document.

Before considering to the testimony of plaintiff, we would like to examine the evidence of the attesting witness to the Will. Though, the Will is said to have been witnessed by Sakal Narain, Ganesh Prasad Das, Tuchai Das and Khushi Das but the plaintiff has examined only one attesting witness and he is Ganesh Das (P.W. 2).

Before we examine the evidence of Ganesh Das, the attesting witness to the Will, it would be relevant to mention that the original Will has not been produced in the Court and a photocopy thereof (Ex. P-1) has been placed on record. In this regard, we have perused the order sheet of the Trial Court dated 1-9-1992 in which the Trial Court allowed the photocopy of Will to be adduced as secondary evidence because the original Will which was initially filed in the Court, was taken back later on by the plaintiff for producing it in some other cases. Hence the plaintiff filed an application on 16-6-1992 (I.A. No. 8 of the Trial Court) for adducing secondary evidence. In the said application, it has been mentioned that in the first week of September, 1991 the plaintiff for attending his Court case at Dev Sthan Kachari, Jaipur went to Jaipur. On 5-9-1991 the plaintiff was travelling in the train and was going from Jaipur to Ajmer, one unknown person stole his bag in which the original Will and some other documents were kept. The plaintiff lodged a report in this regard in G.R.P. Phulera, Rajasthan on 5-9-1991 and also made complaint to S.P., Railway Ajmer but as no response has been received, and hence the plaintiff may be allowed to prove the photocopy of the Will by way of secondary evidence. The Trial Court vide its order dated 1-9-1992 the application and in this manner the photocopy of the Will (Ex. P-1), has been placed on record.

The only attesting witness who has been examined by the plaintiff is Ganesh Das (P.W. 2). He has stated that he knows the plaintiff and saw him in Chitrakoot. He used to reside in Janki Mandir, however, this witness forgot the name of the Guruji. He has further stated that on the occasion of Ram Navmi, Guruji accepted the plaintiff to be his Chela and at that time he was residing near Janki Kund. After some days, Swami Ji took out a paper and showed that he had executed a Will in favour of the plaintiff thereafter he had put his signature on that paper. First of all Narain Pandey put his signature on the Will. The signature of this witness is on place "ka to ka" on Ex. P-1. Buchai Das also put his signature. On Ex. P-1 the signature of Swami Ji is at place "A to A". This witness remained for 2-3 years at Chitrakoot and thereafter he went to Jaganpur. According to this witness, Maharaj Ji told him that the properties of Bombay etc. and all other properties had been given to the plaintiff. In the cross-examination he has admitted that except by the name "Ganesh Das" he is not known by any other name. He also used to sign by the same name only. When he was confronted whether he could sign firstly he stated that he could not sign because he has

forgotten how to sign. The Trial Court at this juncture directed the witness to sign on a paper and accordingly he signed on a paper which is Ex. D-20. On this paper (Ex. D-20), the Trial Court obtained three signatures of this witness. It is found from the evidence that after noting down the demeanor of the witness the Trial Court directed this witness to sign. This witness has further stated that he is the resident of Sant Nagar, District Darbhanga. A very important fact has crept in, in the evidence of this witness that the date on which Swami Ji gave Kanthi to the plaintiff on the same day only the "Will" was executed in his favour and on the same day this witness left Chitrakoot. He has deposed that the paper was being kept by Swami Ji in his pocket and he took out that paper and asked him to sign. Before he signed the paper, the signature of Swami Ji was already there, and he did not have any talk with the Swami Ji. He all of a sudden came there. Swami Ji was not even knowing his name. Thereafter, when his signature on Ex. P-1 was confronted to him with that of specimen signatures which were obtained on Ex. D-20, firstly he said that he could not say whether they are tallying with each other or not but thereafter he said that if they are not tallying he was helpless. Later on a very important question was put to him that Ex. P-1 does not bear his signature but bears the signature of some other person, the witness maintained silence in this regard.

We have compared the specimen signature of this attesting witness which was taken in Court (Ex. P-20) with the signature appeared at place "Ka to Ka" on Ex. P-1 and on going through it we find that no where from any angle these specimen signatures which are three in number do tally with the signature "ka to ka" on Ex. P-1. u/s 73 of the Evidence Act, the Court has ample power to compare the admitted signatures with the disputed signatures and we think it proper to refer to Section 73 which reads thus :--

"73. Comparison of signature, writing or seal with others admitted or proved.-- In order to ascertain whether a signature, writing, or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose. The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person."

The Supreme Court in the case of Ajit Savant Majagavi Vs. State of Karnataka, , has held that Section 73 does not specify by whom the comparison shall be made. However, looking to the other provisions of the Act, it is clear that such comparison may either be made by a handwriting expert u/s 45 or by anyone familiar with the handwriting of the person concerned as provided by Section 47 or by the Court itself. Though the Apex Court held that it should normally not be made by the Court but equally it has been held that it would not mean that the Court has not the power to compare the disputed signature with the admitted

signature as this power is clearly available u/s 73 of the Evidence Act.

We have given our anxious consideration to the testimony of the attesting witness and after analysing his evidence, it could not be said that the attestation of the Will has been duly proved in terms of Section 63(c) of the Indian Succession Act and in the manner prescribed in Section 3 of the Transfer of Property Act. No where, it has been said by this witness that the testator viz. Ranchhor Das Ji put his signature or acknowledged it before him nor he has stated that he put his signature on the "Will" in the presence of the testator and hence, the attestation of Will is not at all proved.

The Supreme Court as early as in the case of *Girja Datt Singh Vs. Gangotri Datt Singh*, , has laid down the law that in order to prove the due attestation of the Will, the attesting witness is required to prove that he saw the testator signing the Will in his presence or has given the personal acknowledgment that as well as they also signed in presence of the testator. Mere presence of the signature or the proof of the signature on a document of Will would not be sufficient and one can not presume that the attestation has been proved and accordingly the Will has been proved. Similar is the view of Supreme Court in the case of *Kashi Bai and Anr. v. Parvati Bai and Ors.*, 1995 AIR SCW 4631.

At this juncture, we may quote profitably Para 8 of the decision of *Janki Narayan Bhoir Vs. Narayan Namdeo Kadam*, , which reads thus :--

"8. To say a will has been duly executed the requirements mentioned in Clauses (a), (b) and (c) of Section 63 of the Succession Act are to be complied with, i.e., (a) the testator has to sign or affix his mark to the will, or it has got to be signed by some other person in his presence and by his direction; (b) that the signature or mark of the testator, or the signature of the person signing at his direction, has to appear at a place from which it could appear that by that mark or signature the document is intended to have effect as a Will; (c) the most important point with which we are presently concerned in this appeal, is that the Will has to be attested by two or more witnesses and each of these witnesses must have seen the testator sign or affix his mark to the Will, or must have seen some other person sign the Will in the presence and by the direction of the testator, or must have received from the testator a personal acknowledgment of signature or mark, or of the signature of such other person, and each of the witnesses has to sign the Will in the presence of the testator."

A Will has to be proved like any other document except as to the special requirement of attestation prescribed by Section 63 of the Succession Act. The burden of proof is on the propounder who is 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 understood the nature and effect of the disposition; and put his signature to the document of his own free Will. When the Will is surrounded by suspicious circumstances, the burden of proof is heavier. We have discussed hereinabove by scrutinising the evidence of

the attesting witness Ganesh Das that how the Will is suspicious. The propounder of the Will viz., the plaintiff did not remove any suspicion and, therefore, the Will is suspicious and it can not be acted upon. In this context, we would like to rely the judgment of the Supreme Court rendered in the case of Kalyan Singh Vs. Smt. Chhoti and Others, and Smt. Jaswant Kaur Vs. Smt. Amrit Kaur and Others, .

One more peculiar fact which raises a great suspicion on the genuineness of the Will is that, it was not produced at the earlier point of time. It is said that the Will was executed on 15-10-1969 and for the first time on 8-2-1984 or we may say on 17-11-1982 when the suit was filed in the Court which was not competent to decide the suit, disclosing the existence of the alleged Will, the plaintiff never tried to act upon on the basis of the said Will to get his name mutated in the Municipality etc. In this view of the matter, the Will is to be seen in a very suspicious manner. At this juncture, the case of Major Singh Vs. Rattan Singh (Dead) by LRs. and others, , is relevant on the point of attestation of the Will and how a Will is to be proved, we may like to rely a decision of Single Bench of this Court in the case of Mannudas v. Govinddas and Ors., 1997 (2) Vidhi Bhasvar 199, wherein while dealing the point in question it was held that so as to prove the due attestation of the Will it should come in the evidence of the attesting witness that the testator had signed before, him and the attesting witness had also signed the Will in the presence of the testator. In the present case, as we have already held that the attestation is not at all proved and, therefore, no credence could be attributed to the impugned Will.

In the case of Gnanambal Ammal Vs. T. Raju Ayyar and Others, , the Apex Court has laid down the law that the cardinal maxim to be observed by Courts in construing a Will is to endeavour to ascertain the intentions of the testator. This intention has to be gathered primarily from the language of the document which is to be read as a whole without indulging in any conjecture or speculation as to what the testator would have done if he had been better informed or better advised. In construing the language of the Will, the Courts are entitled and bound to bear in mind other matters than merely the words used. They must consider the surrounding circumstances, the position of the testator, his family relationship, the probability that he would use words in a particular sense, and many other things which are often summed up in the somewhat picturesque figure. "The Court is entitled to put itself into the testator's armchair".

In the light of the aforesaid decision of Gnambal Ammal (supra), it is impossible to conceive that Mahant Ji would have executed a Will in favour of a person (the alleged Chela) on the very day when he was accepted as the Chela. This is so, because it has come in the evidence of Ganesh Das that the day, plaintiff was accepted as Vairagi Chela by Mahant Ji, on the same day the Will was executed in his favour. We have no hesitation in holding at the cost of repetition that according to the testimony of the plaintiff, he was accepted as Chela in the year 1962 while according to the witness to the Will, he was accepted as Chela on the

date when the Will was executed, i.e., 15-10-1969. We would be failing in our duty if we do not mention that in very specific terms in the plaint it has been pleaded by the plaintiff that the Will was executed on 14-10-1969 while the document of Will (Ex. P-1) bears the date 15-10-1969. The plaintiff did not file any amendment application to clear the discrepancy. This creates a sense of suspicion, if we are permitted to say so, is difficult to avoid and impossible to obliterate.

Hence, it is luminously clear that the most important requirement of due attestation of a Will is its attestation by two or more witnesses. In the present case, on going through the evidence of Ganesh Das, the attestation of the Will is not at all proved and when the Will is not proved, the entire claim of the plaintiff is vanished. The important fact which has cropped up in the testimony of this witness is that the day on which the plaintiff was accepted as Chela by Mahant Ji, a Will was executed in his favour. The witness is saying something which is not the case of the plaintiff. The plaintiff's case is that in the year 1962 on the, auspicious day of Ramnavami, Mahant Ji accepted him as his Chela and thereafter he was sent for education at Varanasi and ultimately on 14-10-1969 the Will was executed in his favour by Mahant Ji but according to the attesting witness the day on which the plaintiff was accepted as the Chela, the Will was executed in his favour. Hence there is a material discrepancy in the case of plaintiff and the evidence of the attesting witness. No prudent man would digest this fact that the day on which a person is accepted as Chela by Mahant Ji on that very day he would execute a Will in his favour.

In this manner the Will appears to be suspicious and no credence could be given to it. The another important fact which is noticeable from the evidence of attesting witness Ganesh Das is that he kept silent when a specific question was put to him in regard to his signature on Ex. P-1. By taking recourse to silence and not answering the very relevant question, in our view, would indicate that Ex. P-1 does not bear the signature of this witness and hence, judged from any angle the Will is not at all proved and the entire claim of the plaintiff which is based on the Will has been foundered.

At this juncture, we may advert to another facet, the plaintiff examined himself as P.W. 1 and has stated that Mahant Ji was his Guru in the year 1962. During the holy festival of Navratri", on the date of "Ram Navmi", Mahant Ji gave him Kanthi and put a Tilak and accepted him his Vairagi Chela. As he was a brilliant student, Mahant Ji directed him to carry forward his studies at Kashi where he studied and passed M.A. in the year 1977-78. He has stated that on 15-10-1969, Mahant Ji executed a Will in his favour. We have given our anxious consideration to the evidence of the plaintiff and after scrutinising it in detail, we find the case of plaintiff to be concocted. The Trial Court has assigned the reasons in detail for dismissing the suit of plaintiff. The said findings are based on proper appreciation of evidence and the document in question. The learned Counsel for the plaintiff/appellant could not point out any infirmity in the reasons ascribed by the Trial

Court and hence, we give our stamp of approval to conclusions arrived at.

In the result, the appeal being devoid of any substance, is hereby dismissed with costs throughout. Counsel's fee as per schedule, if pre-certified.