2026 INSC 669

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.10990 OF 2016

SARDARI LAL **...APPELLANT**

VERSUS

BISHAN DASS & ORS. **...RESPONDENTS**

J U D G M E N T

MANOJ MISRA, J.

1. This is plaintiff's appeal against the judgment and order of the High Court of Himachal Pradesh at Shimla[1] dated 18.07.2016 in Regular Second Appeal (for short, RSA) No.475/2003, whereby, the second appeal of the defendants[2] was allowed and the judgment and decree of the First Appellate Court, affirming the decree passed

1 The High Court

2 The respondents herein

by the Trial Court, was set aside and the suit was dismissed.

The Suit

2. Predecessor-in-interest of the appellant, namely, Bhambo Devi wife of Chhajju, instituted Civil Suit No.51/1993 against Bishan Dass (Respondent No.1)[3] and Ram Singh, who is represented by his legal representatives i.e., Respondent Nos.2 to 5[4], for declaring plaintiff the sole owner and in possession of the suit schedule property left by her husband, late Chhajju Ram. Plaintiff also sought the relief of prohibitory injunction and, in the alternative, in the event of being found dispossessed, possession.

3. Plaint, in short, states as follows: Chhajju, the plaintiff's husband, was an illiterate agriculturist; he was the sole owner of the suit schedule property; he died intestate on 05.02.1992, leaving no issue; the plaintiff is his sole heir; defendants have no right, title or interest over the suit schedule property; yet, basis a forged will dated

[3] For short, R-1
[4] For short, R-2 to R-5

06.11.1974, the defendants got the revenue records mutated in their favour *vide* mutation no.66 dated 14.08.1992; Chhajju never executed any will; the Will is an act of fraud / undue influence and as such void; besides, Chhajju had no reason to disinherit his wife (i.e., the plaintiff); the plaintiff is in possession of the suit schedule property; cause of action arose when the defendants interfered in the possession of the plaintiff based on the mutation, and again when the defendants declined to admit the plaintiff's right over the suit schedule property.

4. Defendants contested the suit by claiming, *inter alia*, that though Chhajju was the owner of the suit schedule property, on 06.11.1974 he executed a registered will of his entire movable and immovable properties in favour of the defendants; the will was executed in a sound state of mind, out of love and affection and as a reward for the services rendered by them to the testator and the plaintiff, and they are still rendering service to the plaintiff by providing her food, residence and other

necessities of life; besides, the plaintiff was throughout aware of the will and she raised no objection; in fact, the suit has been instituted at the instigation of her relatives, namely, Sri Ram Dass, Shri Surat Ram and Lakhu Ram, who want to grab the property by hook or crook; based on the will, mutation was sanctioned on 14.08.1992 in presence of the plaintiff, then the plaintiff raised no objection, rather she admitted the will; hence, the suit is liable to be dismissed.

Facts on which there was no dispute

5. A close look at the pleadings would reflect that there is no challenge to the suit being instituted by the plaintiff and there is no *lis* between the parties on the following facts:

a) that the original owner of the suit schedule property was Chhajju Ram, who was an illiterate agriculturist; and

(b) Chhajju Ram died, leaving no issues, therefore the plaintiff, in absence of a testamentary

disposition, would be the sole successor to the estate of late Chhajju Ram.

Main Issue before the Trial Court & the Evidence led

6. As the impugned judgment is of reversal, we will look at the main issue and the evidence led by the parties. Though multiple issues were framed by the Trial Court, the main issue was as regards execution of the will by Chhajju Ram in favour of the defendants. To prove execution of the will, the defendants produced three witnesses, namely:

(i) Ram Singh -DW-1 (i.e., defendant no.2) deposed that the property in suit was owned and possessed by Chhajju Ram, who was his paternal uncle. Chhajju had executed the registered Will out of free will, during his lifetime, on 06.11.1974, and he died in the month of April 1992. Both, Chhajju and the plaintiff were served by the defendants. Last rites of Chhajju were performed by the defendants. Even during the lifetime of

Chhajju, the land in the suit was cultivated by the defendants as Chhajju had no issues and after his death, the defendants are owners and in possession of the suit land. The plaintiff was not willing to institute the suit; in fact, the suit has been instituted at the instigation of Sant Ram and Lakhu. During cross-examination, DW-1 admitted that his father's father is Sunder whereas Chhajju's father is Baisakhi; he also admitted that when the Will was executed, he was a student and his brother Bishan Dass was in service. He, however, denied the suggestion that Chhajju had a separate house. He also denied the suggestion that the plaintiff has been residing separately. He also denied the suggestion that his father had got a forged will prepared. He also denied the suggestion that the plaintiff is in possession of the suit land.

(ii) Hariram (DW-2) - Attesting witness to the Will. DW-2 deposed that he had been the Pradhan of Gram Panchayat Behri for about 20-25 years. He knew Chhajju personally. Chhajju was in his senses when the Will was scribed at his instance. The deed writer had read over the Will to him and, thereafter, Chajju had put his thumb impression in his presence and at the insistence of Chhajju, DW-2 had also signed as a witness. Besides, one Jagdish Ram (i.e., the other attesting witness) had also signed as a witness. He stated that Chhajju had brought the Will to the Tehsildar; they had accompanied Chhajju for registration of the Will. He proved attestation of the Will. He admitted that Jagdish, the other attesting witness, is alive and managing a shop. During cross examination, he admitted that Chhajju was illterate, though clever. He denied the

suggestion that he has deposed as a witness in a number of cases. However, he admitted of having deposed as a witness in case of one Kartar Singh, which was about a will. He denied the suggestion that he was a witness in another case of one Shakti Singh. He, however, admitted that Chhajju was dependent on agriculture and used to cultivate his land. He also admitted that he had good relations with his wife i.e., the plaintiff and that plaintiff used to attend to the deceased. However, sometimes sons of Natha (i.e., the defendants) used to prepare meals for Chhajju. He also stated that one of the sons of Natha (i.e., one of the beneficiaries of the Will) at the time of execution of the Will was aged between 8 and 10 years. He, however, could not tell the age of the other son of Natha. He also could not disclose as to how many sisters Chhajju had. As regards

the day when the will was executed, he stated that they had all assembled at the village and from there they proceeded to Amb. The Will was scribed by Somnath at the instruction of Chhajju. He stated that judicial paper was purchased by Chhajju from a stamp vendor. He, however, denied the suggestion that Natha (i.e., father of the defendants) was his relative. He also denied the suggestion that Chhajju was not known to him.

(iii) Shanti Lal (DW-3) – Examined to prove signature of Som Nath i.e., the scribe of the Will. DW-3 stated that Som Nath, who is now dead, was his nephew. He used to sell stamp paper. He saw Som Nath writing deeds and is aware of his signatures. He stated that the signature on the Will appears to be that of Som Nath. In his cross examination, he denied the suggestion that Som Nath was not related to him.

Trial Court Finding / Observations

7. After considering the evidence led by the parties and perusing the Will (Ex. DW-2/A), the Trial Court held as follows:

> "10. I have perused Will (Ex. DW2/A). Perusal of which goes to show that when it was executed, Chhajju had excluded plaintiff from succession on the ground that she had sufficient ornaments and cash and therefore nothing was required to be given to her. This Will was executed in the year 1974 and is without details of value of ornaments and cash. There being no details of property which she had with her, exclusion cannot be said to be bona fide, but smacks of suspicion in the transaction. Had Chhajju intended to exclude the plaintiff from his estate despite the fact that she was having good relations with him and was putting up with him, details of ornaments or cash should have been given or some other provision for her maintenance should have been made, but the provisions disclosed in the will do not go to establish that she was excluded on some genuine grounds. Thus, this exclusion which remains unexplained does not appeal to the conscience of the court and is a suspicious circumstance *qua* validity of the Will in question or its execution. Perusal of this Will from its backside where endorsement has been made by Sub-Registrar makes it more suspicious. In place of name of Chhajju Ram, firstly, name of someone else i.e. Laxmi Kant Bassi had been written which has thereafter been tampered and then Chhajju Ram has been entered. This cutting does not bear signatures of Sub-Registrar who had done the cutting. Had the cutting been effected at the office of Sub-Registrar, he ought to have put his initials over this cutting. Name which has been cut seems to be Laxmi Kant Bassi which after cutting has been replaced by the name of Chhajju. Such cutting is at three places. Endorsement has been made by some official and not by Sub-Registrar

who appears to have put his signatures only at the stamps affixed by the official concerned and seems not have gone through the will. Had it been not so, he must have made some proper endorsement. Regarding this cutting and deletion of name is again a suspicious circumstance which has not been explained by anyone. To remove this doubt, the then Sub-Registrar ought to have been examined, but that has not been opted for.....nor report from the office of Sub-Registrar has been called as to who Laxmi Kant was and why this cutting was made. Thus, as per perusal of record, there are number of suspicions which are emerging. Firstly, it is statement of defendant who claimed that he was rendering services along with his brother without explaining nature of those services and as to what made them to go for these services when he was a school student and his parents were alive and they were joint with Chhajju. It has not been pointed out as to whether father of the defendants was also putting up with Chhajju, if so, why, and in case it was so, as to why complete details have not been provided. Statement of DW2 and DW3 also create suspicion. Another suspicious circumstance is exclusion of plaintiff who was sole heir to have survived the deceased and the most serious suspicious circumstance is cutting made on the endorsement made by Sub-Registrar Amb. All these suspicious circumstances have not been explained and, I feel that the will falls in the category of suspicious documents. At the same time, there is nothing on the file to suggest that there was any occasion for Chhajju Ram to execute will in the year 1974 whereas he survived up to the year 1992. Thus, taking into consideration all these suspicious circumstances, the only conclusion which could be reached at is that deceased Chhajju had not executed a valid will of his estate on 06.11.1974 in sound state of mind. Defendants have also not been established to be in possession of suit land on the basis of this will. The issue is disposed of accordingly."

8. After holding as above, the Trial Court proceeded to decide the other issues. In respect of the issue as to whether the plaintiff is the owner and in possession of the suit property, the Trial Court held that though the plaintiff did not appear as a witness, the site plan (Ex. DW-1/A), which disclosed *Abadi* of the plaintiff, as per spot position, was duly proved. Besides, Chajju's ownership of the house was not disputed; rather, it was admitted by the defendants. Therefore, by virtue of intestate succession, the plaintiff would be the owner in possession thereof. The relevant observations of the Trial Court are extracted below:

> "Since defendants have not adduced any evidence or even deposed clearly that suit land along with house was put into their possession by deceased Chhajju during his lifetime, I feel it cannot be presumed that possession is with the defendants. Had the possession been delivered, in that respect specific plea ought to have been raised and evidence should have been adduced, but defendants have failed to do so. The revenue record is depicting Chhajju to be owner in possession of suit land and after death of Chhajju there being no evidence to this fact that possession was taken by defendants at any stage out of free will of the plaintiff or someone it was handed over at any later stage. Thus, it cannot be presumed in any manner that the defendants are in possession of the suit land."

9. The Trial Court also considered *Jamabandi* entries and, thereafter, observed:

> "As per the perusal of the Ex. P-1, copy of *Jamabandi* for the year 1986-87, Chhajju has been recorded the owner in possession and in the column of remarks, it has been recorded that mutation on 14.08.1992 of the estate of Chhajju had been attested in the favour of defendants and, at the same time, in remarks column, it has been recorded that redemption of mortgage by State of HP has been done in the name of Bhambo meaning thereby that the mortgage created by Chhajju was redeemed by her and mutation was attested accordingly. Had the possession been that of the defendants, in that respect, some remarks ought to have been given in this column, but perusal of entries make it clear that earlier land was mortgaged with State on account of loan taken by Chhajju and thereafter, it was redeemed by plaintiff and in this respect, mutation was also attested on 14.08.1992. The same day, mutation was attested in the name of defendants on the basis of Will. When both mutations were attested at the same day, it was incumbent upon the revenue authorities to make clear factum of possession, but that has not been done. Same authority had sanctioned mutation of succession in favour of defendants and in the next mutation no.67 land has been mutated to have been redeemed by plaintiff from the State of HP meaning thereby that title came to plaintiff after death of her husband and she got it redeemed and question of mutation in favour of defendants does not arise and it ought to have been decided by the revenue officer properly, but that has not been done. Perusal of remarks column militates against plea of possession which at that time is claimed to be that of the defendants and even today they claim to be in possession, but possession can be presumed to be with the plaintiff. Ex. P-2, copy of Jamabandi for the year 1989-90 again records Chhajju to be the owner in possession. In remarks column, it has been recorded that correction has been ordered by the settlement authorities i.e. by Naib Tehsildar. Again, note was given that decision *qua* Will executed by Chhajju in favour of defendants is pending. Thus, perusal of these documents goes to

> establish that possession is that of the plaintiff. Perusal of Ex. P-1/A goes to show that Smt. Bhambo is in possession of house, which is adjoining to house of defendants. There is nothing on record to rebut contents of Ex. P-1/A. Thus, I feel that the site plan Ex. P-1/A cannot be treated to be a wrong site plan. Thus, the only conclusion which could be reached at is that plaintiff is in possession of the suit land along with house as owner."

10. Based on the above findings, the Trial Court decreed the suit, thereby declaring the plaintiff as owner in possession of the suit schedule property, and issued permanent prohibitory injunction restraining the defendants from interfering with the possession of the plaintiff over the suit property.

Impleadment of Appellant as Plaintiff's L.R. in First Appeal

11. Aggrieved by Trial Court's decree, the defendants filed Civil Appeal no.144/1996. During pendency of the appeal, the original plaintiff died. One Prakash Chand, who claimed to have succeeded to the estate of the original plaintiff, got himself impleaded and accepted the defendants' case. However, on the next day, an application for impleadment was filed by Sardari Lal (the

appellant herein) claiming himself to be the legal representative of the deceased plaintiff. However, as the appeal had already been disposed of, consequent to acceptance of the defendants' claim by Prakash Chand, the prayer for impleadment was rejected. As a result, Sardari Lal filed RSA No.295/2002 before the High Court. The High Court, *vide* order dated 08.11.2002, set aside the judgment and decree passed by the appellate court, restored the appeal to its original number and ordered for its fresh consideration. Thereafter, the first appellate court heard parties on the issue as to who could be considered the legal representative of the original plaintiff and, *vide* order dated 14.08.2003, allowed the application of Sardari Lal, thereby bringing him on record as legal heir of the original plaintiff.

First Appellate Court's Decision

12. Before the Appellate Court, one of the submissions on behalf of the appellant was that no witness appeared on behalf of the plaintiff to raise a doubt in respect of valid execution of the Will and therefore, once the execution

of the Will was proved, there was no occasion to reject the Will. The court also noticed another submission on behalf of the defendants, which was that since the issue of the Will being vitiated by fraud and undue influence was decided in favour of the defendant, for want of evidence led by the plaintiff, the Will ought to have been accepted. Negating both the submissions, the first appellate court held that will is a solemn document and judicial conscience of the court must be satisfied as to its execution, and where the will is shrouded in suspicious circumstances, the propounder of the will must explain the same and dispel the doubts.

13. The first appellate court, after considering the evidence on record enumerated the suspicious circumstances for its consideration, as under:

(i) The plaintiff, being the only legal heir and legally wedded wife of the testator was disinherited without any rhyme or reason.

(ii) Relationship of the beneficiary as nephew of the testator, mentioned in the Will, was not made out.

(iii) Execution of the Will in the year 1974 itself creates a doubt when the testator lived till the year 1992.

(iv) There is no witness of the Will from the village of the testator.

(v) The unwarranted cuttings at the time of registration of the Will remain unexplained, and the cumulative effect of all the above circumstances would result in an inference that the Will is not proved to be a valid document.

14. The first appellate court thereafter proceeded to discuss each of the above circumstances separately. The reasons recorded by the first appellate court for affirming the trial court decree, and in discarding the Will, could be summarized as under:

(i) No cogent reason, except a bald statement in the Will that the testator had made provisions for his wife in the form of jewellery and cash, was forthcoming to deprive the testator's wife of her right to succeed to the estate of the deceased. DW-2, the marginal witness of the Will, had deposed that so long Chhajju Ram (i.e., the testator) remained alive, he was looked after by his wife. Thus, there was no plausible reason to disinherit her. In absence of any cogent reason to disinherit her, the suspicious circumstance in that regard remained unexplained.

(ii) Relationship of the testator with the legatee as one of uncle and nephew was not established. The witnesses had failed to prove that there was any such relationship between the testator and

the legatee. Moreover, it was noticed that the beneficiary was a mere student at the time of execution of the Will. Therefore, the plea that the propounder of the Will was taking care of the testator at the time of its execution appears doubtful. More so, when the testimony of DW-2 discloses that the original plaintiff i.e., wife of the testator had been taking care of her husband till his last breath. Thus, in the first appellate court's view, this too remained an unexplained suspicious circumstance.

(iii) There was no good reason to execute the Will in the year 1974 when the testator was hale and hearty and had survived up to 1992. Besides, there was nothing on record to demonstrate that the testator was not keeping good health, or was in any manner dissatisfied with his

wife, or was so dependent on the legatees for his living that he decided to execute the Will in their favour. Further, there was no evidence on record to show that the testator, during his lifetime, was provided any financial assistance by the legatees, or that he was residing with them in their house.

(iv) In respect of the witness to the Will not being a resident of the village where the testator resided, the first appellate court observed that, admittedly, the marginal witnesses to the Will were residents of other village and there was no reason shown as to why any member of testator's own village was not made a witness to the Will. This, in the view of the first appellate court, was a suspicious circumstance, not satisfactorily explained. The appellate

court also observed that though there is no such rule of law or procedure that a marginal witness should be from the same village, the omission in that regard generates suspicion in the peculiar facts of the case.

(v) Though it is not a requirement of the law that both the attesting witnesses must be examined, in the facts of the case, non-examination of the other witness, though alive, raised a suspicion and, therefore, required an explanation.

(vi) Cuttings at the back of the Will changed the name of the person who presented/ executed the document from Laxmi Kant to Chhajju Ram. Such cuttings had no explanation. The first appellate court noticed that there is no explanation for cutting the father's name of the testator. Besides, the age was first mentioned as

50 years and later zero was crossed to make it 55. These cuttings raised a serious doubt as regards the valid execution of the Will, particularly when there was no explanation for those cuttings coming from any of the witnesses examined by the propounder of the Will. According to the first appellate court, the propounder was required to at least get the Sub Registrar, in whose presence the Will was registered, examined, or to examine the clerk in whose presence and handwriting the certificate of registration was endorsed. Based on the aforesaid analysis, the court concluded that there was some '*hanky-panky*' in the execution of the Will. The relevant observations of the first appellate court in this regard are found in paragraph 19

of its judgment, which is reproduced below:

> "19. The close scrutiny of the back of Will Ext. DW-2/A goes to show that there are cuttings at least on 7-8 places. Suffice it to say it does not appeal to reason that the entire process of registration *qua* the Will was effected in the name of Laxmi Kant and later on name of Chhajju was incorporated by cutting the name of Laxmi Kant. Even with respect to the presentation of the Will there is name of Laxmi Kant aged 50 years and the contents of the Will were also stated to have been read over to said Laxmi Kant. Though Hari Ram, one of the marginal witness, stated that thumb marks were put by Chhajju Ram in his presence at the time of the registration of the Will, but if that be so why name of Laxmi Kant Bassi was mentioned on both the places as well as *qua* the presentation of the said Will. As pointed out earlier the discrepancy thus could have been explained either by the Sub-Registrar or by the marginal witnesses to the Will Hari Ram and Jagdish Ram. As regard Hari Ram DW-2, I have pointed out that he has failed to utter even a single word in his examination-in-chief in this regard and the other marginal witness of the Will Jagdish Ram despite his availability was not examined which thus raises a material doubt in the valid execution of the Will. Apart from, be it stated even the scribe of the Will could not be examined as he had died by then and in his place DW-3 Shanti Lal was examined.

Thus, I have purposely mentioned as the scribe of the will could have thrown light *qua* the valid execution of the Will more so *qua* the discrepancy noted. The fact that the Sub Registrar had merely appended his signatures on a stamp which goes to show that the thumb impressions as well as the signatures are taken in his presence rather goes to postulate that the attestation of the will as such was done by the Sub-Registrar in a most casual and mechanical manner. In case there had been due application of mind at the time of attestation of the Will by the Sub Registrar, he would have noticed discrepancy *qua* the cuttings effected and to initial the same. Needless to say in the absence of any initials of the Sub Registrar on the cuttings so effected, and for want of positive evidence with respect to the said cuttings being effected at the time of its registration, possibility cannot be ruled out that these cuttings were made conveniently at a later time or the testator had not at all appeared before the Sub Registrar when the said registration was done. At the cost of repetition be it stated there remains every possibility that a person of the name of Laxmi Kant Bassi might have appeared before the Sub Registrar and afterwards in order to show that the Will was registered and got executed by the testator Chhajju Ram these cuttings were effected or else there would have been no reason for not appending a note *qua* the said cuttings and to have initialed duly by the Sub Registrar. Consequently, the said circumstance which was also dealt with at length by the ld. trial court

> and was rightly held to be suspicious one in the valid execution of the will thus is proved to be so and is reaffirmed by this court accordingly."

15. Predicated on the observations and findings delineated above, the first appellate court concluded that the propounder has failed to discharge its onus to explain the suspicious circumstances and dispel the doubts shrouding the valid execution of the Will. In consequence, the Will was discarded and the trial court decree was affirmed.

High Court's View in Second Appeal

16. Aggrieved by the judgment and decree of the two courts below, the defendants preferred a second appeal before the High Court. The High Court framed the following substantial question of law for its consideration:

> "Whether the suspicious circumstances relied upon by two courts below in declaring the impugned will Ex. DW-2/A as invalid are suspicious circumstances surrounding the execution of said Will, and, if so, whether the suspicious circumstances had been satisfactorily explained?"

17. The High Court set aside the judgment and decree passed by the courts below and dismissed the suit. In its

judgment, the High Court observed that though other attesting witness was not examined, DW-2, as an attesting witness, proved the execution of the will. It was observed that the requirement of the law is not that both attesting witnesses must be examined. Besides, the mere fact that the attesting witness/ witnesses is/ are not from the same village is not a ground to discard his/ their testimony, particularly when no evidence was led by the plaintiff to discredit the testimony of the witness. The High Court also observed that the testator is free to choose his witnesses and if he reposes trust in a particular witness, his testimony cannot be discredited merely on the ground that he resides in some village other than where the testator resides. According to the High Court, the attesting witness produced had proved due execution of the Will in terms of Section 63[5] of the

[5] **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 seen some other person sign the Will, in the presence and by the direction of the testator, or has received from

Succession Act. Besides, once attestation and execution of the will was proved by DW-2, cuttings existing on the back of the Will, even if they remained uninitialed by the Registering Officer would not discredit the testimony of the attesting witness so as to disprove the due execution of the Will, more particularly, when there appears no cutting on the front page of the will. The High Court further observed that the trial court and the first appellate court should not have laid much emphasis on absence of details of the service allegedly rendered by the legatees to the testator which constituted a motive for execution of the Will.

18. In a nutshell, the High Court took the view that when attestation of the Will is duly proved by the attesting witness, the execution of the Will would stand proved, and the Will, being a registered document, ought not to have been discarded for the reasons assigned by the courts below.

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the testator a personal acknowledgement 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.

19. Aggrieved by the judgment and order passed by the High Court, the legal representative of the plaintiff is in appeal before us.

20. We have heard Ms. Radhika Gautam, learned counsel for the appellant; and Shri Rajesh Gupta, learned counsel for the respondents.

Submissions on behalf of the Appellant

21. Learned counsel for the appellant submitted as follows:

(i) Plaintiff's case that the suit schedule property was that of Chhajju Ram and on his death, the plaintiff, as his widow, was the sole surviving legal heir is not denied in the written statement. Once those basic facts are admitted, they stand proved, and therefore, no evidence was required from the plaintiff's side. Besides, there is no claim that there are other class one heirs of the deceased. In such circumstances, even if no witness of fact was examined by the plaintiff, merely on that ground, the suit cannot be defeated.

(ii) As far as execution of the Will is concerned, the burden of proof lay on its propounder. Besides, a will being a solemn document, its execution must be proved to the satisfaction of the court's judicial conscience. Here, the Will was shrouded in suspicious circumstances such as:

(a) there being no reason for the testator either to execute a will in favour of the defendants or to disinherit his own wife who had been with the testator throughout, taking care of him;

(b) there being no reason to execute a will in 1974 when the testator was hale and hearty and there was no moral obligation to recompense the legatees;

(c) the legatees could not have served the testator when the Will was executed and therefore, there was no basis to recompense them for their services rendered to the testator;

(d) neither of the witnesses to the Will were residents of the village where the testator resided nor were persons of his confidence, therefore, absence of explanation as to why they were chosen to witness its execution raises doubt about the Will;

(e) the back page of the Will, where the Registrar had made an endorsement, had cuttings to the extent that the name of the presenter/ executor of the document stood changed, and such changes were not initialled, in such circumstances, the benefit of certificate of registration is not available.

(iii) Whether execution of the Will had been duly proved and/or the Will is genuine, is a question of fact. Likewise, the existence of suspicious circumstances and their explanation are essentially a question of fact.

Once the trial court and the first Appellate court enlisted those suspicious circumstances and, after discussing them in detail, found them not satisfactorily explained to the satisfaction of the court's conscience, the finding so returned was not amenable to interference in exercise of the power under Section 100 of the Code of Civil Procedure, 1908[6].

(iv) The High Court exceeded its jurisdiction by overturning well considered findings of facts returned by the trial court and the first appellate court and, therefore, the High Court's order is liable to be set aside.

22. In support of her submissions, learned counsel for the appellant relied on the following precedents:

(a) H. Venkatachala Iyengar v. B.N. Thimmajamma & Ors.[7];

(b) Sir Chunilal V. Mehta and Sons Ltd. v. Century Spinning and Manufacturing Co. Ltd.[8];

[6] CPC
[7] 1959 Supp (1) SCR 426: AIR 1959 SC 443: 1958 SCC OnLine SC 31
[8] 1962 Supp (3) SCR 549: AIR 1962 SC 1314: 1962 SCC OnLine SC 57

(c) *Rani Purnima Debi & Anr. v. Kumar Khagendra Narayan Deb & Anr.*[9];
(d) *Kondiba Dagadu Kadam v. Savitribai Sopan Gujar & Ors.*[10];
(e) *Veerayee Ammal v. Seeni Ammal*[11] ;
(f) *Rur Singh (Dead) Thru LRs & Ors. v. Bachan Kaur*[12] ;
(g) *Kavita Kanwar v. Pamela Mehta & Ors.*[13];
(h) *Shivakumar & Ors. v. Sharanabasappa & Ors.*[14]; *and*
(i) *Meena Pradhan & Ors. v. Kamla Pradhan & Anr.*[15]

Submissions on behalf of the Respondents

23. On behalf of the respondents, it was submitted:

(i) The testator and his wife (i.e., the plaintiff) were a childless couple. They used to reside in a common village house with the defendants, who used to serve and take care of them, and also cultivate their fields. Though Chhajju is distantly related to the defendants, he was given affection as an elderly figure and therefore, Chhajju decided to execute a Will in their favour. Mere

[9] (1962) 3 SCR 195: AIR 1962 SC 567: 1961 SCC OnLine SC 89
[10] (1999) 3 SCC 722
[11] (2002) 1 SCC 134
[12] (2009) 11 SCC 1
[13] (2021) 11 SCC 209
[14] (2021) 11 SCC 277
[15] (2023) 9 SCC 734

disinheritance of near and dear ones is not sufficient to discard an otherwise validly executed Will.

(ii) Plaint has self-contradictory pleas. At one place, the Will is called a bogus document, and at another, it is claimed to be a result of fraud, undue influence and importunity. To substantiate the plea of fraud, undue influence and importunity, no evidence has been led. As far as execution of the Will is concerned, it is proved by the attesting witness. Therefore, there was no justification for the trial court and the first appellate court to discard the Will. Hence, the High Court was justified in reversing the decision of the courts below.

(iii) Plaintiff had examined only one witness i.e., PW-1, who is a formal witness, to prove the site plan. His evidence is otherwise of no use. In the circumstances, there is no evidence to doubt the execution of the Will. Besides, there is no proper

cross examination to discredit the testimony of DW-2 regarding execution of the Will.

(iv) Cuttings on the back side of the Will would have no material bearing as the Will is recorded on the front page, which has no cuttings and it bears the thumb impression of the testator as well as signatures of the attesting witness. Therefore, execution of the Will, which is not a compulsorily registerable document, cannot be doubted merely because those cuttings were not initialled by the Sub-Registrar at the time of registration.

(v) The High Court while exercising powers under Section 100 of CPC did not exceed its jurisdiction as the question whether suspicious circumstances exist, and/or are duly explained, is a mixed question of law and fact. Likewise, if the burden of proof is placed on a wrong party, the second appellate court can always interfere. In such circumstances, since the two courts

below had erred in placing burden of proof on the defendants, when due execution of the Will was proved as per Section 63 of the Succession Act, the High Court was justified in reversing the lower courts' verdict.

24. In support of his submissions, learned counsel for the respondent relied on the following precedents:

(a) *Madhukar D. Shende v. Tarabai Aba Shedage*[16]*;*

(b) *Sridevi & Ors. v. Jayaraja Shetty & Ors.*[17]*;*

(c) *Mohd. Yunus v. Gurubux Singh*[18]*;*

(d) *Krishna Mohan Kul & Anr. v. Pratima Maity & Ors.*[19]*;*

(e) *Sebastiao Luis Fernandes (Dead) Thru LRs. & Ors. v. K.V.P. Shastri (Dead) Thru LRs & Ors.*[20]*; and*

(f) *Hafazat Hussain v. Abdul Majeed & Ors.*[21]

Issues

25. Upon consideration of the submissions and perusal of the record, in our view, the following issues arise for our consideration:

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[16] (2002) 2 SCC 85
[17] (2005) 2 SCC 784
[18] 1995 Supp (1) SCC 418
[19] (2004) 9 SCC 468
[20] (2013) 15 SCC 161
[21] (2001) 7 SCC 189

1. Whether the pleadings of the plaintiff were deficient and self-contradictory as to lay a proper challenge to the Will? If so, its consequence?

2. Whether non-examination of the plaintiff, or any witness of fact on its behalf, was sufficient to dismiss the suit?

3. Whether there were suspicious circumstances shrouding the execution of the Will? If so, whether those suspicious circumstances were explained, and doubts dispelled, to the satisfaction of the Court's conscience?

4. Whether the High Court exceeded its jurisdiction under Section 100 of CPC in interfering with the concurrent findings of fact of the two courts that the Will was shrouded in suspicious circumstances which its propounder failed to explain so as to dispel the doubts about its valid execution to the satisfaction of the Court's judicial conscience?

Discussion/ Analysis

26. Before we take up the issues for discussion, a general survey of the law regarding proof of Wills would be necessary.

Law regarding proof of Wills

27. In ***Rani Purnima Debi (supra),*** a three-Judge Bench of this Court, after considering another three-Judge Bench decision rendered in ***H. Venkatachala Iyengar (supra),*** summarized the law as under: The mode of proving a Will does not ordinarily differ from that of proving any other document except as to the special requirement of attestation prescribed in the case of a will by Section 63 of the Indian Succession Act, and its mode of proof as prescribed in Section 68 of the Indian Evidence Act, 1872[22]. The onus of proving the Will is on the propounder and in the absence of suspicious circumstances surrounding the execution of the will, proof of testamentary capacity and signature of the testator as required by law is sufficient to discharge the

[22] See also: Bhagwan Kaur v. Kartar Kaur & Ors., (1994) 5 SCC 135, paragraph 4

onus. Where, however, there are suspicious circumstances, the onus would be on the propounder to explain them to the satisfaction of the court before the Will could be accepted as genuine. If the caveator alleges undue influence, fraud or coercion, the onus is on him to prove the same. Even where there are no such pleas, but the circumstances give rise to doubts, it is for the propounder to satisfy the conscience of the court. The suspicious circumstances might be as to: (a) the alleged signature of the testator; (b) the condition of the testator's mind; (c) the dispositions made in the Will, which may appear unnatural, improbable or unfair in the light of relevant circumstances; or the Will might otherwise indicate that the said dispositions might not be the result of the testator's free will and mind; and (d) the propounder taking a prominent part in the execution of the Will which confers substantial benefits upon him. If the propounder succeeds in removing the suspicious circumstances, the court would grant probate, even if

the will might be unnatural and might cut off, wholly or in part, near relations[23].

28. In ***Smt Jaswant Kaur v. Smt. Amrit Kaur***[24], a three-Judge Bench decision of this Court, it was held:

> "9. 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."
>
> (Emphasis supplied)

29. In ***Kalyan Singh, London Trained Cutter, Johri Bazar, Jaipur v. Smt. Chhoti and Ors.***[25], a three-Judge Bench of this Court held:

> "20. …a will is one of the most solemn documents known to law. The executant of the will cannot be called to deny the execution or to explain the circumstances in which it was executed. It is, therefore, essential that trustworthy and unimpeachable evidence should be produced before the court to establish genuineness and authenticity of the will. It must be stated that the factum of execution and validity of the will cannot be determined merely by considering the evidence produced by the propounder. In order to judge the credibility of witnesses and disengage the truth from falsehood the court is not confined only to their testimony and demeanor. It would be open to the court to consider circumstances brought out in the evidence or which appear from the nature and contents of the documents itself. It would be also

[23] See also: Constitution Bench decision of this Court in Shashi Kumar Banerjee & Ors. v. Subodh Kumar Banerjee (since deceased) through LRs & Ors., AIR 1964 SC 529: 1963 SCC OnLine SC 114, paragraph 5
[24] (1977) 1 SCC 369
[25] (1990) 1 SCC 266

open to the court to look into surrounding circumstances as well as inherent improbabilities of the case to reach a proper conclusion on the nature of the evidence adduced by the party."

(Emphasis supplied)

What could be considered 'suspicious circumstance'

30. Elaborating upon as to what could be considered 'suspicious circumstance' in the context of a will, in ***Shivakumar* (supra)**, a three- Judge Bench of this Court held:

> "12.6. A circumstance is "suspicious" when it is not normal or is "not normally expected in a normal situation or is not expected of a normal person". As put by this Court, the suspicious features must be "real, germane and valid" and not merely the "fantasy of the doubting mind".
>
> 12.7. As to whether any particular feature or a set of features qualify as "suspicious" would depend on the facts and circumstances of each case. A shaky or doubtful signature; a feeble or uncertain mind of the testator; an unfair disposition of property; an unjust exclusion of the legal heirs and particularly the dependents; an active or leading part in making of the will by the beneficiary thereunder etcetera are some of the circumstances which may give rise to suspicion. These circumstances above noted are only illustrative and by no means exhaustive because there could be any circumstance or set of circumstances which may give rise to a legitimate suspicion about the execution of the will. On the other hand, any of the circumstances qualifying as being suspicious could be legitimately explained by the propounder. However, such suspicion or suspicions cannot be removed by mere proof and sound and disposing state of mind of the testator and his signature coupled with the proof of attestation.
>
> 12.8. The test of satisfaction of the judicial conscience comes into operation when a document propounded as the will of the testator is surrounded by suspicious

circumstance(s). While applying such test, the court would address itself to the solemn questions as to whether the testator had signed the will while being aware of its contents and after understanding nature and effect of the dispositions in the will.

12.9. In the ultimate analysis, where the execution of a will is shrouded in suspicion, it is a matter essentially of the judicial conscience of the court and the party which sets up the will has to offer cogent and convincing explanation of the suspicious circumstances surrounding will."

(Emphasis supplied)

31. In ***Lilian Coelho & Ors. v. Myra Philomena Coalho***[26], while laying stress on the obligation of the propounder to explain the suspicious circumstances so as to satisfy the conscience of the Court, it was observed:

"13. At the same time, if it is taken that the learned Single Judge had only recorded that the plaintiff had succeeded in proving the execution in terms of the provisions under Section 63 of the Succession Act, 1925 and Section 68 of the Evidence Act, 1872 in the light of well-nigh settled position of law, it would be open to the court to consider, rather, it is the irrecusable duty of the Court in case the objector raises suspicious circumstances, to call upon the propounder to remove such suspicious circumstances to satisfy its conscience."

32. Survey of judicial precedents makes it clear that the burden to prove the Will lies on its propounder. Besides, the exercise of proving the Will is not confined to proving its execution in terms of Section 63 of the Succession

[26] (2025) 2 SCC 633

Act by the mode prescribed by Section 68 of the Evidence Act. This is just the first step in that exercise. The exercise is complete when the propounder satisfies the Court's conscience that the testator had signed the Will with free will, being aware of its contents, and after understanding the nature and effect of the dispositions in the Will. And, if there are suspicious circumstances raising doubts about the Will, it is the duty of the propounder to explain those suspicious circumstances to dispel the doubts and satisfy the Court's conscience. As to what would be considered a 'suspicious circumstance' depends on the facts and circumstances of each case. Broadly, any circumstance, or set of circumstances, which gives rise to a legitimate suspicion about the valid execution of the Will could be considered a suspicious circumstance. However, those suspicions must not be a figment of imagination or fantasy of a doubting mind.

Issue Nos.1 & 2

33. As issues 1 & 2 are interrelated, we propose to address them together.

34. Plaintiff's suit is essentially for declaration that she is the sole owner in possession of the suit schedule property being the only surviving class I heir of her late husband who, admittedly, was the sole owner thereof. Other reliefs such as for permanent prohibitory injunction and declaration that mutation entry is void are ancillary.

35. For seeking such relief(s), the plaintiff, *inter alia*, pleaded that she is the lawfully wedded wife of Chhajju i.e., the sole owner of the suit schedule property; Chhajju died intestate, issueless, leaving the plaintiff as his sole Class I heir; the defendants had obtained mutation behind her back by setting up a will of Chhajju; the said Will is bogus, Chhajju had never executed any Will; and that the Will is an outcome of fraud, undue influence and importunity.

36. The plea that the Will is an outcome of fraud, undue influence, etc. is in addition to the main pleas that Chhajjju never executed any will, and the Will set up is bogus. The respondents, however, latched on to this alternative/ additional plea of the plaintiff to submit that,- (a) it is inconsistent with the plea that no will was executed, and amounts to admitting execution of the Will; and (b) once execution of the Will is admitted, the burden to prove that the Will is an outcome of fraud, undue influence, etc. lies on the plaintiff and since the plaintiff neither examined herself nor any witness on its behalf to prove fraud, undue influence, etc., the suit had to fail.

37. In our view, the aforesaid argument on behalf of the respondents is misconceived for the following reasons:

(i) A plaintiff may rely upon different rights alternatively and there is nothing in the Code of Civil Procedure to prevent a party from making two

or more inconsistent sets of allegations for claiming relief thereunder in the alternative[27].

(ii) A plea in the alternative to assail the Will on grounds of fraud, undue influence, etc., without admitting that the Will was signed or executed by the testator, does not amount to admitting execution of the Will by the testator because to constitute an admission, the statement must be clear, unequivocal and unconditional[28].

(iii) Before a statement in a pleading is construed as an admission of a fact in issue, the pleading must be read in its entirety to find out whether the statement is unequivocal, unambiguous and unconditional regarding that fact in issue. A plea in the alternative, to raise a doubt about the Will, cannot, on its own, be construed as an admission regarding execution of the Will by the testator particularly when there exists a categoric plea that the Will was never executed by the testator.

[27] Srinivas Ram Kumar Firm v. Mahabir Prasad & Ors., 1951 SCC 136, paragraph 12
[28] Vikrant Kapila & Anr. v. Pankaja Panda & Ors., (2024) 18 SCC 695, paragraph 32.

(iv) Non-examination of the plaintiff, or any other witness of fact on its behalf, by itself, is not sufficient to dismiss the present suit for the following reasons:

(a) Suit is based on intestate succession to the estate of her late husband.

(b) Plaintiff's plea that she is the legally wedded wife of late Chhajju who was the exclusive owner of the suit schedule property and that the plaintiff is his sole surviving class I heir is not traversed in the written statement. Therefore, those facts stand admitted by 'doctrine of non-traverse' enshrined in Order VIII Rule 5 of CPC[29].

(c) Facts admitted need not be proved.[30]

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[29] **Order VIII Rule 5 (1)**

Specific denial.- (1) Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability:

Provided that the court main its discretion require any fact so admitted to be proved otherwise than by such admission.

[30] **Section 58 of the Indian Evidence Act, 1872**:

Facts admitted need not be proved.- No fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:

Provided that the court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

Therefore, non-examination of a witness would not make a material difference.

(d) In the circumstances, to deprive the plaintiff of her right to the suit schedule property, testamentary disposition set up by the defendants had to be proved. Burden to prove execution of a testamentary disposition lies on its propounder. No doubt, burden to prove fraud, undue influence, etc. vitiating execution of the Will lies on the plaintiff/ challenger of the Will. However, failure to lead evidence in that regard by the plaintiff is not sufficient to defeat the suit because, in any case, the propounder of the Will would have to prove due execution of the Will. If due execution of the Will is not proved, the plaintiff would be entitled to the relief sought based on the admitted case.

(e) In the present case, the plaintiff had challenged the execution of the Will,

therefore, the burden to prove due execution of the Will lay on its propounder regardless of their being no evidence to substantiate the alternative plea of fraud, undue influence, etc. taken in the plaint.

We, therefore, do not find any reason to dismiss the plaintiff's suit merely on the ground that there were inconsistent pleas in the plaint and that neither she, nor any witness of fact on her behalf, entered the witness box. Issue Nos.1 & 2 are decided in the above terms.

Issue No.3

38. Proof of will is not just an exercise to prove the signature of the testator on the Will and its attestation in terms of Section 63 of the Succession Act; rather it is an exercise to satisfy the Court's conscience that the testator had signed the Will with free will being aware of its contents and after understanding the nature and effect of the dispositions in the Will. Where there are suspicious circumstances regarding the execution of the Will, the propounder must explain those circumstances and

dispel all reasonable doubts regarding its execution. Judicial pronouncements have left the phrase 'suspicious circumstances' open-ended so as to encompass any circumstance which creates doubt about the Will being expression of the free will of the testator, though it would not include a figment of imagination or fantasy of a doubting mind. Such doubt may arise from a shaky or doubtful signature of the testator; a feeble or uncertain mind of the testator; an unfair disposition of property; an unjust exclusion of the legal heirs, particularly the dependents; active or leading part played by the beneficiary in making of the will etcetera.

39. In ***Kalyan Singh (supra),*** this Court went to the extent of observing that the factum of execution and validity of the will cannot be determined merely by considering the evidence produced by its propounder. To assess the credibility of witnesses and disengage the truth from falsehood, it is open to the court to consider circumstances brought out in the evidence or which appear from the nature and contents of the documents

itself. It would also be open to the court to look into the surrounding circumstances as well as inherent improbabilities of the case to reach a proper conclusion.

40. In that light, we shall consider the suspicious circumstances considered by the first appellate court to discard the Will set up by the defendant-respondents. The first appellate court found: (a) no cogent reason for the testator to disinherit his wife who had been, all throughout, taking care of him; besides, the reason mentioned in the will that she had been well provided with jewellery and cash appeared flimsy; (b) no cogent reason for the testator to bequeath property in favour of the beneficiaries, and the reasons mentioned in the Will, namely, that the beneficiaries had served the testator for long and were nephews of the testator, were found not correct by the evidence on record; (c) no cogent reason for the testator to execute the Will in 1974 when admittedly he lived up to 1992; (d) attesting witnesses were not of the village where the testator resided; besides, out of the two surviving witnesses, only one was

examined; and (e) the execution of the Will by Chhajju was doubtful inasmuch as at the back of the Will, where the sub-registrar had made his endorsement, the testator's name, at multiple places, was mentioned Laxmi Kant, and Chhajju's name was entered by cutting the name of Laxmi Kant but such cuttings were not initialled by the sub-registrar. Besides, there was no explanation for such cuttings and overall the evidence did not inspire confidence that the will was duly executed.

Circumstance of Disinheriting the wife

41. The circumstance of disinheriting a wife may or may not be considered suspicious. It all depends on the facts of a case. Ordinarily, where beneficiaries under the Will are other class I heirs of the testator, such as son or daughter, a bequest made in their favour by depriving the wife, by itself, may not raise suspicion as the testator may be contemplating arranging his estate for the future with the hope that those beneficiaries would take care of his wife. But disinheriting a wife, who had all throughout

been with the testator and had cordial relations with him, in favour of a stranger, or a distant relative, raises suspicion, thereby creating a doubt whether the Will is free expression of will of the testator made with full understanding of the disposition made therein.

42. In the present case, the beneficiaries under the Will are not the natural heirs of the testator. Therefore, on the face of it, the disposition appears abnormal and creates doubt. In such circumstances, to satisfy the judicial conscience of the Court that the Will is an expression of free will of the testator and has been executed with full understanding of the nature of disposition made therein, an explanation was required. The explanation offered in the Will is two-fold. One, that the testator's wife had jewellery and sufficient cash for her living; and, second, the testator had no issues, and the legatees had not only been looking after his estate but also providing food and clothes to him and his wife, therefore, to recompense them, the bequest was made so that the testator did not carry a burden on his conscience.

43. There is no rule of law that a will must assign reasons for the bequest. But where reasons are provided in the Will, the Court may consider whether those reasons are truthful or just moonshine, put forth only to justify the preparation of the Will. If they are found not truthful, it may raise a doubt as to whether the testator executed the Will with free will and full understanding of the nature and effect of the disposition made therein.

44. In the present case, the explanation offered for the disposition has been found to be untenable by the first appellate court for the following reasons: (a) cash and jewellery with wife is no ground to disinherit her, more so, when its extent is not disclosed; (b) site plan on record depicts that the testator and his wife resided together, separate from the legatees; (c) the evidence on record indicated that the testator had a caring wife who took care of the testator till his death; and (d) the legatees were not in a position to serve the testator and his wife on or about the date of the alleged execution of the Will as one of them had to remain out of station in

connection with his service and the other was too young, just a student. Besides, the statement in the Will that legatees were the nephews of the testator could not be substantiated by the respondents. Importantly, the correctness of these reasons recorded by the first appellate court have not been doubted by the High Court. Though, the High Court was of the view that these reasons do not have a material bearing on the validity of the Will as its execution was duly proved by the attesting witness.

45. In our view, the first appellate court, for the reasons recorded by it, was justified in holding that disinheritance of the testator's wife while making a disposition in favour of the defendant-respondents, who were not close relatives, was a suspicious circumstance which remained unexplained.

46. At this stage, we propose to consider the decision of this Court in ***Madhukar D. Shende (supra)*** cited by the learned counsel for the respondent(s). In that case, a two-Judge Bench of this Court was dealing with an

appeal where the plaintiff's suit based on a Will was dismissed by all three courts below, holding the Will to be shrouded in suspicion. The question before this Court was whether the approach of the courts below in holding the Will not proved was vitiated by error of law. The High Court had summarized the suspicious circumstances centering around the execution of the Will, as under: (a) at the time of execution of the Will, the testator was aged 80 years and there was no medical evidence to show that the testator had a sound mind; (b) the Will was executed on 22.09.1963 and within two days thereafter, on 24.09.1963, the testator expired; (c) the sub-registrar went to the house of the testator for registration of the Will though his office was situated only half a furlong away from the residence of the testator and no reason was assigned as to why the testator could not have gone to the office of the sub-registrar if the testator was in a sound mental and physical state; (d) the plaintiff i.e., beneficiary under the Will, was not examined and his son, who was examined in evidence was not a witness to

the execution of the Will; and (e) the two attesting witnesses to the Will, examined in court, were classmates of the beneficiaries' son. In that context, this Court surveyed the evidence and while discarding the findings of the courts below reasoned thus:

> "10. The factum of will having been executed by Bhagubai in favour of Chingubai, the sister's daughter, bequeathing the suit property is specifically alleged in the plaint. In the written statement excepting for a bare dial, there is no other pleading raised questioning the sane disposing capacity of Bhagubai at the time of execution of the will. It is true that the plaintiff Chingubai did not appear in the witness box but that is because she was indisposed. Her son has appeared in the witness box. The two attesting witnesses on account of being known to Chingubai's son, being his classmates, were known to the family, and therefore, were natural witnesses to be called to attest to the execution of the will. On account of their acquaintance with the family, they could have naturally known and identified the executant. Merely because of being classmates they would be interested in obliging their classmate's mother so as to benefit her and go to the extent of falsely deposing is too far-fetched an inference to draw. The contents of the will, coupled with oral evidence, show that for the last 25/30 years, Chingubai had taken care of Bhagubai and it was due to love and affection of Bhagubai for Chingubai that the former was bequeathing her properties in favor of Chingubai. Chingubai is none other than Bhagubai's sister's daughter and probably the only heir. There is nothing to suggest that Bhagubai had anyone else than Chingubai who could be closer heir or relation of Bhagubai and with whom Bhagubai could have spent her last days. No other relation of Bhagubai, who would have succeeded to the estate of Bhagubai if the will would not have been there, has come forward to dispute or to object to the will. The

challenge is thrown by a stranger to the family and one who has trespassed upon the property.

*** *** *** ***

15. Other reasonings of the trial court and the first appellate court, for holding the will not proved, too, to say the least, verge on absurdity. Bhagubai died a day after the execution and registration of the will. There is nothing to show that Bhagubai was physically or mentally incapacitated from executing the will. On the one hand, the courts below have questioned the propriety of the sub registrar having come to the house of Bhagubai for registering the will on the ground as to why Bhagubai could not have gone to the office of the registrar on an assumption that she was fit to do so and yet the mental capacity of Bhagubai to execute the will has been doubted. The two attesting witnesses have been held to be interested on the ground of their being class fellows of Chingubai's son and on the other hand, it has been doubted whether they would have known and identified the executant. There is nothing to doubt the mental and physical capacity of Bhagubai but the same has been suspected because of 'complete absence of any medical evidence, of a doctor which would show that the testator was in a sound and disposing state of mind'. There is no rule of law or of evidence which requires a doctor to be kept present when a will is executed. In short, the courts below have allowed their findings to be influenced by such suspicion and conjectures as have no foundation in the evidence and have no relevance in the facts and circumstances of the case and unwittingly allowed their process of judicial thinking to be vitiated by irrelevant reasonings and considerations. The weighty factor that the factum of execution of the will by Bhagubai was being denied by a rank trespasser without raising any specific pleadings and the fact that no relation of Bhagubai has chosen to lay a challenge to the will, have been simply overlooked. In our opinion the High Court ought not to have sustained such a perverse finding which would result in the property of a rightful owner being lost to a trespasser."

. (Emphasis supplied)

47. While holding so, in ***Madhukar D. Shende (supra),*** on the law regarding proof of will, this Court observed as under:

> **"8.** The requirement of proof of a will is the same as any other document excepting that the evidence tendered in proof of a will should additionally satisfy the requirement of Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872. If after considering the matters before it, that is, the facts and circumstances as emanating from the material available on record of a given case, the court either believes that the will was duly executed by the testator or considers the existence of such fact so probable that any prudent person ought, under the circumstances of that particular case, to act upon the supposition that the will was duly executed by the testator, then the factum of execution of will shall be said to have been proved. The delicate structure of proof framed by a judicially trained mind cannot stand on weak foundation nor survive any inherent defects therein but at the same time ought not to be permitted to be demolished by wayward pelting of stones of suspicion and supposition by wayfarers and waylayers. What was told by Baron Alderson to the jury in *R.* v. *Hodge* [(1838) 2 Lewis CC 227] may be apposite to some extent:
>
> "The mind was apt to take a pleasure in adapting circumstances to one another and even in straining them a little, if need be, to force them to form parts of one connected whole, and the more ingenuous the mind of the individual, the more likely was it, considering such matters, to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete."
>
> The conscience of the court has to be satisfied by the propounder of will adducing evidence so as to dispel any suspicions or unnatural circumstances attaching to a will provided that there is something unnatural or suspicious about the will. The law of evidence does not permit conjecture or suspicion having the place of

> legal proof nor permit them to demolish a fact otherwise proved by legal and convincing evidence. Well-founded suspicion may be a ground for closer scrutiny of evidence but suspicion alone cannot form the foundation of a judicial verdict — positive or negative.
>
> **9.** It is well settled that one who propounds a will must establish the competence of the testator to make the will at the time when it was executed. The onus is discharged by the propounder adducing prima facie evidence proving the competence of the testator and execution of the will in the manner contemplated by law. The contestant opposing the will may bring material on record meeting such prima facie case in which event the onus would shift back on the propounder to satisfy the court affirmatively that the testator did know well the contents of the will and in sound disposing capacity executed the same. The factors, such as the will being a natural one or being registered or executed in such circumstances and ambience, as would leave no room for suspicion, assume significance. If there is nothing unnatural about the transaction and the evidence adduced satisfies the requirement of proving a will, the court would not return a finding of "not proved" merely on account of certain assumed suspicion or supposition. Who are the persons propounding and supporting a will as against the person disputing the will and the pleadings of the parties would be relevant and of significance."
>
> (Emphasis supplied)

48. Relying on the observations of this Court in ***Madhukar D. Shende (supra),*** learned counsel for the respondents strenuously argued that since the respondents had examined the attesting witness of the Will to prove its execution by the testator, the burden shifted on the plaintiff to prove that its execution was vitiated by fraud,

undue influence, etc. and, since no witness of fact was examined by the plaintiff, that burden was not discharged; therefore, the High Court was justified in overturning the decision of the two courts below.

49. We do not find much substance in the aforesaid submission. Firstly, because, the law is consistent that where there are suspicious circumstances shrouding the execution of the Will, the propounder of the Will must explain those circumstances to satisfy the judicial conscience of the Court and, secondly, in ***Madhukar D. Shende (supra)***, the legatee was none other than the sister's daughter of the testator and probably the only heir of the testator. Besides, no challenge was laid to the Will by any of the heirs of the testator. There, in fact, the challenger was a stranger and a trespasser to the property left by the testator. In such circumstances, the Court observed that suspicious circumstances enlisted by the High Court were imaginary and, consequently, the Will which was proved by the attesting witnesses was liable to be accepted.

50. In the present case, the testator is an illiterate agriculturist who could only thumb-mark a document. The challenge to the Will is by the only surviving class I heir of the testator, namely, his wife, and the legatee happens to be a non-relative. Therefore, here, the bequest appears unnatural and pinches the Court's conscience. As a result, the Court needed to be circumspect and cautious in testing the evidence led by the propounder to find out whether the Will was executed by the testator with free will and full understanding of the nature of dispositions being made by him.

51. The other decision relied by the respondent is rendered by this Court in ***Sridevi v. Jayaraj Shetty (supra),*** where this Court reiterated the settled legal position as under:

> 11. 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 proof of the signature of the testator, as required by law, need be sufficient to discharge the onus. Where there are suspicious circumstances, the onus would again be on the propounder to explain them to the satisfaction of the court before the

> Will can be accepted as genuine. Proof in either case cannot be mathematically precise and certain and should be one of satisfaction of a prudent mind in such matters. In case the person contesting the will alleges undue influence, fraud or coercion, the onus will be on him to prove the same. As to what are suspicious circumstances has to be judged in the facts and circumstances of each particular case."
>
> (Emphasis supplied)

52. In ***Sridevi*** **(supra),** by the will in question, the testator had bequeathed certain properties in favour of his two sons and had given other heirs the right to receive compensation of properties which had vested in the State Government. In that context, while upholding the Will, it was observed:

> "15. ... It is not a case where the father had deprived his other children totally from inheritance. Reasons for unequal distribution have been given in the will itself. This had been done by him to balance the equitable distribution of the properties in favor of all his children."

53. The facts in ***Sridevi (supra)*** are in stark contrast with the present case. Here, the sole Class I heir, namely, the wife of the testator, has been completely deprived of her right to succeed to the estate of her husband by the Will which is in favour of non-relative(s). This, being an unnatural disposition raises suspicion and, therefore, solicited an explanation from the propounder of the Will.

Execution of Will in 1974

54. Though the first appellate court found execution of the Will in 1974 a suspicious circumstance because the testator survived till 1992, in our view, the timing of executing a will is the prerogative of the testator and, therefore, timing of its execution may by itself not be a ground to doubt the Will. However, here the timing assumes importance when considered in conjunction with other circumstances such as disinheritance of a caring wife who had many years to live. Because when a person has a dependent with whom he has no grudge, and that dependent has many years to live, there is a high probability that some arrangement would be made in the testamentary disposition for that dependent before bequeathing the estate to a person who is under no legal obligation to take care of the testator's dependent. Therefore, in our view, though the timing of execution of the Will on its own might not be sufficient to doubt the Will, it becomes a factor in conjunction with

the other circumstances to doubt valid execution of the Will.

Attesting witness not resident of the village

55. While considering the circumstance that the attesting witnesses were not residents of the village of the testator, the first appellate court accepted the legal position that there is no requirement of law that a marginal witness to a will must be from the same village to which the testator belongs. This view, according to us, is correct. However, in the opinion of the first appellate court, this was an important circumstance when considered along with other circumstances of the case. In our view, choice of an attesting witness depends on multiple factors. If the testator wishes to secret the Will from his natural heirs, who are being deprived by the disposition, he may choose a person in whom he could repose confidence, and such person may be a resident of some place out of the influence of the testator's natural heirs. There may also be a situation where the testator may choose one or more of his natural heirs or relatives to the exclusion of

others to bequeath his property, yet he may choose those excluded to be a witness to the Will to obviate a dispute in the future. Therefore, nothing turns on the choice of an attesting witness or the place of residence of an attesting witness unless it is shown that that witness has been chosen deliberately to prepare a bogus will, or that the witness does not know the testator/ executant.

56. In the present case, nothing could be elicited from the attesting witness to show that he did not know the testator or that he was the beneficiaries' pocket witness. Therefore, in our view, the place of residence of the attesting witness was not a material circumstance, and to this extent, the first appellate court was not justified in raising suspicion.

Cuttings on the Will

57. Both the trial court and the first appellate court found cuttings on the Will a suspicious circumstance of a grave nature, which demolished the execution of the Will by the testator. It is for this reason we had called for the original records. The Will is executed on a '*Himachal*

Government Judicial Paper'. The front page of the same bears a hand-written will carrying a thumb mark, alleged to be of "Chhajju", the testator, and signatures of Jagdish and Hari Ram, the two attesting witnesses. What is interesting is the back of the Will, which bears endorsement of the Sub-Registrar before whom the Will was presented for registration. At the back of the Will, the name of the person who presented the Will, as *'Vasiyat Karta*' i.e., the testator, is mentioned as Laxmi Kant Basi. However, name of Laxmi Kant Basi has been cut at multiple places and by hand 'Chhajju' is written. What is important is that there are no initials/endorsements of the Sub Registrar over any of the cuttings. This creates an impression that the cutting was done after the Sub Registrar had made his endorsement. The first appellate court, in paragraph 19 of its judgment, took this circumstance as indicative of the Will being presented by Laxmi Kant for registration and, later, name of 'Chhajju' was added by interpolation.

58. The argument on behalf of the respondent is that there is no cutting in the body of the Will. The cutting is only at the back page of the Will. Since the front page of the Will does not have any cutting and it bears thumb impression of the testator as also signatures of the attesting witnesses, the execution of the Will cannot be doubted merely on the ground that cuttings/ overwriting at the back of the Will have not been initialed by the Sub-Registrar. Besides, registration of a will is optional, and the Will, the original of which was produced, has been proved in terms of Section 63 of the Succession Act by examining the attesting witness as is required by Section 68 of the Evidence Act. It is argued that a duly registered will cannot be obliterated by a faulty registration.

59. No doubt, a will is not a compulsorily registerable document. Registration of a will is optional. Execution of the Will and its registration are two separate events unless they are so inextricably linked to each other that if one is not proved, the other would fail automatically. Therefore, to test the aforesaid submission, we have

carefully read the testimony of DW-2 Hari Ram i.e., the attesting witness, and have carefully examined the original will which is part of the record as Ex. DW-2/ A.

60. According to DW-2, the Will was prepared on a paper purchased by Chhajju from a stamp vendor; after purchase of the paper, the Will was scribed by Som Nath, the deed writer, at the instructions of Chhajju, and the same was read over to Chhajju; whereafter, Chhajju put his thumb impression on it in the presence of the two witnesses, and the two witnesses signed the Will in Chhajju's presence. Thereafter, Chhajju took the Will to the Tehsildar (i.e., the Sub Registrar) for registration; where again, the Will was read over to Chhajju; he endorsed the Will by putting his thumb mark on the Will and there, the witnesses again signed the Will.

61. During cross-examination, DW-2 admitted that Chhajju was illiterate, though clever. According to respondents, Chhajju had thumb-marked the Will. These two circumstances indicate that Chhajju himself could not have read and understood the contents of the Will unless

it was read over and explained to him. Now, comes the crucial question. If the will was drafted as per the instructions of Chhajju, would it contain facts that are incorrect to his knowledge? If it would not, could it be said that Chhajju executed the Will after fully understanding the nature of the dispositions made therein.

62. There are two material statements in the Will which have been found incorrect, namely, that the beneficiaries are the testator's nephews and that the testator resides with them, and that they had been providing food and clothing to the testator and his wife. Both these statements were found incorrect, in as much as, (a) there is no worthwhile evidence to show that the legatees' father and the testator were brothers or close relatives; and (b) DW-2 admitted that the testator had his own separate house. Besides, the site plan proved by PW-1 disclosed that the testator and the so-called beneficiaries had separate residences. Moreover, DW-2

admitted that Chhajju's wife had been taking care of him.

63. Once the aforesaid circumstance is considered in conjunction with the circumstance that the testator was an illiterate agriculturist, the whole perception about the Will changes. In our view, illiteracy of the testator coupled with incorrect statements in the Will raises a serious doubt as to whether the testator executed the Will after fully understanding its content. In such circumstances, registration of the Will with proper endorsement of the Sub-Registrar would have been of some help to the propounder, but there are cuttings at the back of the Will where endorsement of the Sub-Registrar is recorded and there is no initial of the Sub-Registrar against those cuttings, which make things worse for the propounder.

64. At this stage, we may have a look at the relevant provisions of the Registration Act, 1908. Section 32 describes the persons who may present documents for registration. Section 34 (3) enjoins upon the registering

officer a duty to enquire whether, or not, such document was executed by the person(s) by whom it purports to have been executed. Clause (b) of sub-section (3) of Section 34 requires the registering officer to satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document. Section 35 provides that if all persons executing the document appear personally before the registering officer and are personally known to him, or if he be otherwise satisfied that they are persons they represent themselves to be, and if they all admit the execution of the document, the registering officer shall register the document as directed in Sections 58 to 61. Section 52 casts a duty on the registering officer to, *inter alia*, ensure that the signature of every person presenting a document for registration is endorsed on the document at the time of its presentation. Section 58 requires that on every document admitted to registration, *inter alia*, following particulars shall be endorsed: (a) signature of every person admitting the execution of the document,

(b) signature of every person examined in reference to such document; and (c) any payment of money or delivery of goods made in the presence of the registering officer in reference to the execution of the document, and any admission of receipt of consideration, in whole or in part, made in his presence in reference to such execution. Section 59 provides that the registering officer shall affix the date and his signature to all endorsements made under Sections 52 and 58, relating to the same document and made in his presence on the same day. Section 60, *inter alia*, provides that after the procedure contemplated in Sections 34, 35, 58 and 59 as applicable to any document presented for registration has been complied with, the registering officer shall endorse thereon a certificate containing the word 'registered'. Sub-section (2) of Section 60 provides that such certificate shall be signed, sealed and dated by the registering officer, and shall then be admissible for the purpose of proving that the document has been duly registered in the manner provided under the Act, and

that the facts mentioned in the endorsement referred to in Section 59 have occurred as therein mentioned. Section 2(5) defines 'endorsement' and 'endorsed'. It states 'endorsement' and 'endorsed' include and apply to any entry in writing by registering officer on a rider or covering slip to any document tendered for registration under this Act.

65. A reading of the relevant provisions of the Registration Act would make it clear that the executant of a document or his agent or representative or assignee can alone present a document for registration. Further, the document so presented must be duly endorsed by the presenter, and the registering officer would have to not only enquire whether or not such document was executed by the persons by whom it purports to have been executed but also satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document. In the context of the aforesaid provisions, when we see the endorsement at the back of the Will before us, we find that the executant

of the Will was mentioned 'Laxmi Kant Bassi', though, later, this name was struck off and replaced by 'Chhajju'. When was it struck off and who struck it off is not clear from the evidence. Most importantly, there is no initial or signature against the name of 'Chhajju'. In such circumstances, it cannot be said with certainty that while issuing the certificate of registration, the registering officer followed the requisite procedure as contemplated under the Registration Act. In consequence, the benefit of the presumption that the Will was read out to 'Chhajju' by the registering officer or that Chhajju admitted execution of the Will before the registering officer is not available. Therefore, to this extent, the uninitialed cuttings at the back of the Will assume importance because it deprives the propounder of the Will the benefit of its registration which would have otherwise raised a presumption that the contents of the Will were read over to its executant. In effect, the doubt as regards valid execution of the Will by Chhajju

arising from suspicious circumstances dealt with above is not dispelled by the registration of the Will.

66. We, therefore, summarize our analysis on Issue No.3 as follows:

(a) Chhajju i.e., the testator was an illiterate person, therefore, the burden was heavy on the propounder of the Will to satisfy the judicial conscience of the Court that the Will was executed by the testator with free will and full understanding of its contents.

(b) Disposition in favour of the respondents, who were not close relatives, while disinheriting the widow i.e., the sole Class I heir of the testator, was unnatural and raised suspicion and, therefore, the Court had to be circumspect while testing the evidence led by the propounder of the Will to satisfy its conscience as to whether the Will was executed by the testator with free will and full understanding of the nature and effect of the dispositions made therein.

(c) Based on the evidence led by the propounder of the Will, the first appellate court found that the

explanation offered in the Will to disinherit the sole Class I heir (i.e., the wife of the testator) was incorrect. This essentially is a finding on a question of fact.

(d) Incorrect statement in the Will, alleged to be scribed on the instructions of the testator, coupled with the fact that the testator was an illiterate person, who could only use his thumb impression to execute a document, raises serious doubt as to whether the Will was executed by the testator with free will and full understanding of the nature and effect of the dispositions made therein. This doubt could not be dispelled by registration of the document because of uninitialed cuttings at the back of the Will which raises a serious doubt as to who presented the Will for its registration.

(e) In a nutshell, there were suspicious circumstances shrouding the execution of the Will which remained unexplained by its propounder to dispel the doubts regarding its valid execution by the testator. Once that is the position, the finding of the

first appellate court discarding the Will as one which fails to satisfy its judicial conscience, is a finding which cannot be said to be perverse or irrational. Issue No.3 is decided accordingly.

Issue No.4

67. In ***H. Venkatachala Iyengar (supra)***, this Court had observed that what circumstances would be regarded as suspicious cannot be precisely defined or exhaustively enumerated. More so, that inevitably is a question of fact. Similar view is taken by this Court in ***Lalitaben Jayantilal Popat v. Pragnaben Jamnadas Kataria & Ors.***[31]

68. In ***Mansinghrao Yeshwant Rao Patil & Ors. v. Ramchandra Govindrao Patil & Ors.***[32] a three-Judge Bench of this Court had observed that use of time-honored phrases like "the conscience of the Court being satisfied" cannot convert a question of fact into one of law. The relevant observations are extracted below:

> "7. … The use of time-honored phrases like "the conscience of the Court being satisfied" cannot

[31] (2008) 15 SCC 365, paragraph 20
[32] (1954) 1 SCC 688: 1954 SCC OnLine SC 96

> convert a question of fact into one of law. The phrase is only a rule of prudence and is nothing more than a picturesque way of saying that when the legal heirs to property are being divested in whole, or in part, of their inheritance by a man who is no longer available for examination as a witness great caution should be employed before upholding such an act. But despite all this the question remains one of fact."

69. Where, however, a court of fact rejects the Will by taking into consideration such circumstances as suspicious, which are figments of imagination or fantasy of a doubting mind and are not real or germane to the valid execution of the Will, a question of law may arise, and the decision may be interfered with in a second appeal, like in ***Madhukar D. Shende (supra)***. Similarly, if the decision of a court of fact is vitiated by an erroneous approach in law, like placing onus to establish allegations of fraud, undue influence etc. on the caveator, the Court may interfere with the finding of fact.

70. However, here, as we have discussed above, the testator was an illiterate agriculturist, who could just thumb-mark a document, and the Will deprived his sole Class I heir in favour of persons who were not his close relatives, and the Will contained incorrect recitals *qua* (a)

relationship of legatee(s) with the testator and (b) the testator's food and lodging with the legatees. All these circumstances put together raised a serious doubt that the Will was executed by the testator with free will and full understanding of the nature and effect of the dispositions made therein. In that context, if the judicial conscience of a final court of fact is not satisfied about the valid execution of the Will, it raises no substantial question of law for the second appellate court to interfere with the findings returned by the first appellate court. We are, therefore, of the considered view that the High Court exceeded its jurisdiction under Section 100 of CPC in interfering with a well-reasoned order of the first appellate court. Issue No.4 is decided in the aforesaid terms.

Conclusion & Order

71. Having regard to our conclusions on the issues discussed above, we hold that the Will was rightly discarded by the first appellate court and the trial court. Therefore, taking into consideration the finding of the

trial court and the first appellate court that the plaintiff was in possession, which remain undisturbed by the High Court, in our view, the decree passed by the trial court as affirmed by the first appellate court was not liable to be interfered with in exercise of powers under Section 100 of CPC. Consequently, the appeal is allowed. The impugned judgment and order of the High Court is set aside. The decree passed by the trial court as affirmed by the first appellate court is affirmed. There is no order as to costs.

72. All pending applications, if any, shall stand disposed of.

.....**J.**
(Manoj Misra)

.....**J.**
(K.V. Viswanathan)

New Delhi;
July 06, 2026