

Sanjeev Juneja vs.state & Ors.

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SooperKanoon Citation : sooperkanoon.com/1209486

Court : Delhi

Decided On : Sep-27-2017

Appellant : Sanjeev Juneja

Respondent : State & Ors.

Advocate for Def. : Mr. Akhil Sibal, Mr. Anshul Narayan, Mr. Rakesh Sachdeva, Mr. Sanjay Vashishtha, Mr. L.A. Vashistha

Advocate for Pet/Ap. : Ms. Jyoti Singh, Mr. Avadh Kaushik, Mr. Devashish Maharishi

Judgement :

\$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

13. h September, 2017 Pronounced on:27th September, 2017 + FAO3681999
SANJEEV JUNEJA Appellant Through: Ms. Jyoti Singh, Sr. Adv. with Mr. Avadh Kaushik & Mr. Devashish Maharishi, Advs. versus STATE & ORS.

... RESPONDENTS

Through: Mr. Akhil Sibal, Sr. Advocate with Mr. Anshul Narayan, Adv. for R-4. Mr. Rakesh Sachdeva, Adv. for R-5. Mr. Sanjay Vashishtha with Mr. L.A. Vashistha, Advs. for R-6. CORAM: HON'BLE MR. JUSTICE R.K.GAUBA JUDGMENT1 The appellant is one of the sons of Jaswant Lal Juneja who had passed away on 15.02.1991, statedly leaving behind his Will and testament executed and registered on 19.10.1990. The appellant had moved the Court of District Judge,

Delhi by petition under Section 264 of Indian Succession Act, 1925 praying for grant of probate in respect of the said Will, the petition presented on 31.08.1991 having been registered as probate case No.216/1991 (later re-numbered as 619/1994). Since the petition was contested by some of the children of the deceased Jaswant Lal Juneja, the case was put to trial. Upon its conclusion, the court of Additional District Judge passed judgment on 08.01.1999 dismissing the petition. It is the said decision which is assailed by the appeal at hand presented under Section 299 of Indian Succession Act, 1925.

2. From the pleadings of the parties before the trial court, as indeed in the appeal before this Court and also from the evidence that was adduced on both sides of the divide, certain facts have emerged as indisputable or admitted. The same may be taken note of at the outset.

3. Jaswant Lal Juneja (hereinafter referred to, for the sake of convenience, as the testator), a Hindu, aged about 77 years in October, 1990, was a well educated person, holding the degrees of B.A. and LL.B, he being conversant with different languages (Hindi, English and Urdu), having served till about 1974 as Section Officer with Life Insurance Corporation (LIC). He was the owner of immoveable property described as C-29, Soami Nagar, New Delhi, he having acquired the said plot of land admeasuring 300 sq. yards, comprised therein as member of Delhi Dayalbagh Cooperative House Building Society Ltd. and having raised the superstructure thereupon incurring expenditure from out of his own savings, his other assets including moveable property in the form of gold jewellery kept in locker No.A-59, New Bank of India, Panchsheel Enclave, New Delhi. His wife Krishna Kumari Juneja, having already died in October 1984, those in normal line of succession in his relation on the relevant date (19.10.1990) included two daughters and three sons, they being Asha Jagota (43 years - married daughter), Sushma Arora (41 years - married daughter), Shabad Sarup (37 years - married son), Gursarup (31 years - married son) and Sanjeev (28 years - unmarried son). The eldest child - daughter Asha Jagota - was living in her matrimonial home with her husband N.L. Jagota (PW-4) initially in property No.A-1, Soami Nagar, New Delhi and later in another property in Andrews Gang Extn., New Delhi. The second daughter Sushma Arora was living with her

husband, presumably since her marriage, in Canada. The elder son Shabad Sarup (R3W1) had admittedly started living separately from his father (the testator) from 1983 onwards, he describing himself to be in service and a resident of a property in Janak Puri.

4. In July, 1987, the testator had suffered paralytic stroke which affected right side of his body including the upper limb, the aftermath including speech impairment. At that point of time, he was living in the property of Soami Nagar with his two sons namely Gursarup and Sanjeev.

5. The second son Gursarup was married to Meenakshi Juneja (R4-5/W1) on 20.12.1987 and from out of their wedlock, a daughter Ridhi Juneja @ Heena Juneja was born. The couple i.e. Gursarup and Meenakshi Juneja, with their daughter, lived with the testator in the Soami Nagar property till May, 1990. Meenakshi Juneja, the daughter-in-law had some issues with her husband and in-laws, including the testator. She lodged a complaint attributing harassment for dowry with the police station Hauz Khas, New Delhi in 1990 and then started living with her husband, setting up residence elsewhere. FAO3681999 Page 3 of 29 6. All along, the appellant (petitioner), the youngest son of the testator, was living with him under the same roof.

7. The document described as final will of the testator purporting to have been executed on 19.10.1990 by the testator was registered (as per certified copy Ex.PW-2/1) on same date with the Sub-Registrar, Asaf Ali Road, New Delhi, it bearing the signatures as attesting witnesses of N.L. Jagota (PW-4), the husband of the married daughter Asha Jagota besides that of Gopal Kapoor, son of S.R. Kapoor, resident of B-32, Lajpat Nagar, New Delhi, admittedly a close acquaintance. The Will, thus registered, as per certified copy (Ex.PW-2/1), bears the thumb impression described to be the left thumb impression of the testator.

8. By the above-mentioned document (Ex. PW2/1), the testator is shown to have dis-inherited two of his sons. The eldest son, Shabad Sarup, was denied any share in the estate for the reason that he and his wife were well off, possessed everything in life were living separately in their own house, the testator having spent enough on the marriage and business of the said son, and he (the said son)

and his wife having never cared to serve him (the testator) during his illness or distress. The second son, Gursarup, was similarly deprived of any share in the estate, the testator explaining the reasons to include that he (the said son) and his wife Meenakshi Juneja (R4-5/W1) had not cared to serve or feed him during his illness or paralysis, the said daughter-in-law having picked up fights with his other children, not maintaining cordial relationship, the parents and elder married sister of the daughter-in-law having interfered and quarreled with FAO3681999 Page 4 of 29 this family even dragged the testator and family to police station on false complaint, on which account and, for the reasons of old age, paralysis and serious speech disorder, the testator had been left with no option but to separate his said son and his wife.

9. The document registered as the last Will of the testator shows the bequest of the built up structure comprising of two bed rooms, one living-cum-dining room, Kitchen, bath and WC in favour of the appellant, he to hold the right of sole ownership of such property. By the same document, rights are also sought to be bequeathed in favour of the daughters, Asha Jagota and Sushma Arora, to build at the first floor over and above the existing structure and on the unbuilt area of plot at ground floor respectively. The moveable property (gold jewellery) was bequeathed in three equal shares to the said daughters Asha Jagota and Sushma Arora and youngest son Sanjeev (the appellant).

10. For completion of narration, it may be added at this very stage that as per registered document (Ex.PW-2/1), the testator was unable to put his signatures due to paralysis affecting his hands and other portions of the body and consequently had executed the Will by putting his thumb impression in place of signatures, the document further revealing that the testator had thereby constituted and nominated the appellant as the executor of the Will.

11. The testator died on 15.02.1991. His second son, Gursarup Juneja, the husband of Meenakshi Juneja (R4-5/W1), had died a few days prior to his death i.e. on 10.02.1991, he having committed suicide. FAO3681999 Page 5 of 29 12. While seeking the grant of probate, the petition having been presented with verification by the attesting witness Gopal Kapoor in terms of Section 281 of Indian

Succession Act, 1925, the appellant relied on the certified copy (Ex.PW-2/1) issued by the office of Sub- registrar, Delhi explaining that the original Will had been lost a report in this regard having been made, the FIR No.172/1991 of police station Malviya Nagar, New Delhi, referred in such context.

13. In response to the notices that were issued on the probate petition, objections were filed by the elder son Shabad Sarup (R3W1) and daughter-in-law Meenakshi Juneja (R4-5/W1), she claiming under her deceased husband Gursarup.

14. The probate petition was put to trial on the basis of following issues framed on 11.04.1994:-

"1) Whether the deceased Shri Jaswant Lal Juneja had executed his will dated 19.10.1990?.

2) Whether the Will was duly attested by witnesses?.

3) Whether the deceased was in sound and disposing mind at the time of execution of this Will?.

4) Whether the original Will has been lost?.

5) Whether the petitioner is entitled to probate/letters of administration on the basis of copy of Will?. Relief

6) 15. All sides led evidence at the trial. The petitioner (the appellant) examined four witnesses, they including Constable Surender Balmiki (PW-1), to prove copy of FIR No.172/1991 of police station Malviya Nagar; Narender Kumar (PW-2), an official from the office of Sub- Registrar to prove the certified copy of Registered Will (Ex.PW-2/1); FAO3681999 Page 6 of 29 the petitioner himself (PW-3); and, N.L. Jagota (PW-4), the second attesting witness. On the other hand, the objectors examined themselves, they being Shabad Sarup (R3W1) and Meenakshi Juneja (R4-5/W1).

16. The Additional District Judge, by his judgment dated 08.01.1999, which is impugned by the appeal at hand, answered each issue. He concluded that the petitioner had not been able to establish the loss of original Will but observed that

he might be granted probate, or letters of administration, of the Will on the basis of certified copy obtained from the office of Sub-Registrar if he could establish its due execution and attestation. He held that it had been proved that on the day the Will was stated to have been executed, the testator was possessed of necessary capacity to execute his Will. He, however, was of the view that from the evidence of the parties certain suspicious circumstances surrounding the execution and attestation of the Will had emerged which having remained unexplained from the side of the petitioner, serious doubts were created as to the genuineness of the Will being propounded and consequently declined to grant the probate.

17. The circumstances set out as those giving rise to suspicion about the genuineness of the Will, as appearing in (para 18 of) the impugned judgment, may be summarized thus:-

"(i). There is serious contradiction in the testimonies of PW-3 & PW-4 on the issue as to under whose instructions the Will was prepared, reference to the testator himself giving the dictation to the typist being at variance from the FAO3681999 Page 7 of 29 version that a draft document was used, the pleadings of speech disorder suffered by the testator rendering the claim of he having given the dictation questionable; (ii). The depositions of PW-3 and PW-4 denying the existence of any cuttings, additions or alterations in the Will has been contradicted by its certified copy (Ex. PW2/1) revealing addition of a line in the third paragraph at fourth page; (iii). The certified copy (Ex. PW2/1) reveals that the date of the Will (19.10.1990) had been added by hand which, in turn, shows that the document in question was got typed by the petitioner before the day of its execution and registration rendering it a case where there is no legal evidence on record to show that the said Will was prepared on the instructions of the testator himself.; (iv). The case of the petitioner about the fact of paralytic stroke being the reason for the testator to put his thumb mark on the Will, instead of signatures, is not credible, not satisfying the judicial conscience of the court, for the reasons the evidence otherwise would show that he had been capable of going about the ordinary chores of life like taking meals, attending to natural calls, taking bath on his own, he (the testator) having been mobile for all intents and purposes at the relevant point of time, the claim of the petitioner in the evidence (as PW-3) about the

testator having started putting thumb mark whenever required FAO3681999 Page 8 of 29 having been later contradicted by the testimonies to the effect that, prior to this instrument, no other document had been executed in this manner by the testator who was well educated and conversant with different languages, having always followed the practice of signing in English; (v). The petitioner had taken a prominent role in the execution of the Will, to the extent of giving dictation to the typist and being present at the time of execution and registration, both the attesting witnesses being interested parties, N.L. Jagota (PW-4) being a beneficiary, the other witness Gopal Kapoor not having been examined; (vi). The language employed in the Will shows that it was not voluntary disposition, the evidence of objector Shabad Sarup (R3W1) about cordial relations of the testator with all his children during his lifetime having remained unchallenged, the reasons for divestment of the objectors of a share in the estate being not supported from any legal evidence; (vii). The Will cannot be admitted to probate as the site plan of the immovable property referred to in fourth para on the first page (of document Ex. PW2/A) has not been produced in evidence; (viii). The original Will appears to have been deliberately withheld as its loss has not been established; and (ix). The possibility of the petitioner having manipulated the Will with the aid and assistance of his sister Asha Jagota, FAO3681999 Page 9 of 29 one of the beneficiaries, cannot be ruled out as there is evidence to show that she (Asha Jagota) had operated the bank locker of the testator on 15.02.1991, the same day as on which death had occurred around 9/10.00 a.m., even while the dead body was lying in the house awaiting it to be taken for cremation.

18. The expression Will is defined by Section 2(h) of Indian Succession Act, 1925 to mean the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death. Section 59 of Indian Succession Act, 1925 governs the capability of a person to make a Will. It reads thus:-

"59. Person capable of making Wills.- Every person of sound mind not being a minor may dispose of his property by Will. Explanation 1.-A married woman may dispose by Will of any property which she could alienate by her own act during her life. Explanation 2.-Persons who are deaf or dumb or blind are not thereby

incapacitated for making a Will if they are able to know what they do by it. Explanation 3.-A person who is ordinarily insane may make a Will during interval in which he is of sound mind. Explanation 4.-No person can make a Will while he, is in such a state of mind, whether arising from intoxication or from illness or from any other cause, that he does not know what he is doing. FAO3681999 Page 10 of 29 19. Section 59 thus declares that every person (not being a minor) of sound mind may dispose of his property by Will. The second explanation appended to the said provision clarifies that persons who are deaf or dumb or blind are not incapacitated by such condition for making a Will if they are able to know what they do by it. The third explanation makes the basic principle pellucid by adding that even a person who is ordinarily insane may make a Will during the interval in which he is of sound mind. The fourth explanation renders it even more lucent by putting it negatively in words to the effect that if the person does not know what he is doing for any reason (such as intoxication, illness or any other such cause) he is incompetent to make a Will. The focal pre-requisite, thus, is that at the time of expressing his desire vis--vis the disposition of his estate after his demise he must know and understand its purport or import.

20. The execution of an unprivileged Will, as the case at hand relates to, is governed by Section 63 of the Indian Succession Act, 1925, which reads thus:-

"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. FAO3681999 Page 11 of 29 (b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will. (c) The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal 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. 21. The plain words used in above quoted clause make it abundantly clear that the executant of a Will need not put his signatures and that affixing his mark is sufficient mode of authentication. As shall also be noted with reference to rule of evidence that while the law requires attestation by minimum two witnesses, it is not mandatory that both must have been present at the time when the testator executed the document, the presence of the testator being more important when the witnesses attest and further that, for proof of such execution and attestation, the testimony of only one of such witnesses is enough, that also only if such witness is alive and available.

22. The provisions contained in Section 67 and 68 of the Indian Evidence Act, 1872, also being germane to the discussion here, may be quoted:-

"67. Proof of signature and handwriting of person alleged to have signed or written document produced.-If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that persons handwriting must be proved to be in his handwriting.

68. Proof of execution of document required by law to be attested.-If a document is required by law 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: 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. 23. The judgment of the Supreme Court in the case reported as H. Venkatachala Iyengar vs. B.N. Thimmajamma, AIR 1959 SC443 is one of the early and celebrated judgments on the subject. After construing, amongst others, the above statutory clauses, the court ruled thus:-

"18. the question as to whether the will set up by the propounder is proved to be the last will of the testator has to be decided in the light of these provisions. Has the testator signed the will?. Did he understand the nature and effect of the dispositions in the will?. Did he put his signature to the will knowing what it contained?. Stated broadly it is the decision of these questions which determines the nature of the finding on the question of the proof of wills. It would prima facie be true to say that the will has to be proved like any other document except as to the special requirements of attestation prescribed by Section 63 of the Indian Succession Act. As in the case of proof of other documents so in the case of proof of wills it would be idle to expect proof with mathematical certainty. The test to be applied would be the usual test of the satisfaction of the prudent mind in such matters.

19. there is one important feature which distinguishes wills from other documents. Unlike other documents the will speaks from the death of the testator, and so, when it is propounded or produced before a court, the testator who has already departed the world cannot say whether it is his will or not; and this aspect naturally introduces an element of solemnity in the decision of the question as to whether the document propounded is proved to be the last will and testament of the departed testator. Even so, in dealing with the proof of wills the court will start on the same enquiry as in the case of the proof of documents. The propounder would be called upon to show by satisfactory evidence that the will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the dispositions and put his signature to the document of his own free will. Ordinarily when the evidence adduced in support of the will is disinterested, satisfactory and sufficient to prove the sound and disposing state of the testator's mind and his signature as required by law, courts would be justified in making a finding in favour of the propounder. In other words, the onus on the propounder can be taken to be discharged on proof of the essential facts just indicated.

20. There may, however, be cases in which the execution of the will may be surrounded by suspicious circumstances. The alleged signature of the testator may be very shaky and doubtful and evidence in support of the propounder's case

that the signature, in question is the signature of the testator may not remove the doubt created by the appearance of the signature; the condition of the testator's mind may appear to be very feeble and debilitated; and evidence adduced may not succeed in removing the legitimate doubt as to the mental capacity of the testator; the dispositions made in the will may appear to be unnatural, improbable or unfair in the light of relevant circumstances; or, the will may otherwise indicate that the said dispositions may not be the result of the testator's free will and mind. In such cases the court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last will of the testator. The presence of such suspicious circumstances naturally tends to make the initial onus very heavy; and, unless it is satisfactorily discharged, courts would be reluctant to treat the document as the last will of the testator. It is true that, if a caveat is filed alleging the exercise of undue influence, fraud or coercion in respect of the execution of the will propounded, such pleas may have to be proved by the caveators; but, even without such pleas circumstances may raise a doubt as to whether the testator was acting of his own free will in executing the will, and in such circumstances, it would be a part of the initial onus to remove any such legitimate doubts in the matter. (emphasis supplied) 24. In *Shashi Kumar Banerjee vs. Subodh Kumar Banerjee*, AIR 1964 SC529 a Constitution Bench of the Supreme Court had the occasion to rule on the principles governing mode of proof of a Will before a probate court. Referring, inter alia, to the earlier decision of H. Venkatachala Iyengar (*supra*), the court held :-

"4. 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 S.63 of the Indian Succession Act. The onus of proving the will is on the propounder and in the absence of suspicious circumstances surrounding the execution of the will, proof of testamentary capacity and the signature of the testator as required by law is sufficient to discharge the onus. Where however there are suspicious circumstances, the onus is on the propounder to explain them to the satisfaction of the Court before the Court accepts the will as genuine. Where the caveator alleges undue influence, fraud and coercion, the onus is on him to prove the same. Even

where there are no such pleas but the circumstances give rise to doubts, it is for the propounder to satisfy the conscience of the Court. The suspicious circumstances may be as to genuineness of the signature of the testator, the condition of the testator's mind, the dispositions made in the will being unnatural improbable or unfair in the light of relevant circumstances or there might be other indications in the will to show that the testator's mind was not free. In such a case the Court would naturally expect that all legitimate suspicion should be completely removed before the document is accepted as the last will of the testator. If the propounder himself takes part in the execution of the will which confers a substantial benefit on him, that is also a circumstance to be taken into account, and the propounder is required to remove the doubts by clear and satisfactory evidence. If the propounder succeeds in removing the suspicious circumstances the Court would grant probate, even if the will might be unnatural and might cut off wholly or in part near relations. (emphasis supplied) 25. In *Jaswant Kaur vs. Amrit Kaur*, (1977) 1 SCC369 after analyzing the ratio in *H. Venkatachala Iyengar* (supra), the Supreme Court culled out the following propositions:-

"FAO3681999 Page 16 of 29 (1) Stated generally, a will has to be proved like any other document, the test to be applied being the usual test of the satisfaction of the prudent mind in such matters. As in the case of proof of other documents, so in the case of proof of wills, one cannot insist on proof with mathematical certainty.

(2) Since Section 63 of the Succession Act requires a will to be attested, it cannot be used as evidence until, as required by Section 68 of the Evidence Act, one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the court and capable of giving evidence.

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

the essential facts which go into the making of the will.

(4) Cases in which the execution of the will is surrounded by suspicious circumstances stand on a different footing. A shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the will under which he receives a substantial benefit and such other circumstances raise suspicion about the execution of the will. That suspicion cannot be removed by the mere assertion of the propounder that the will bears the signature of the testator or that the testator was in a sound and disposing state of mind and memory at the time when the will was made, or that those like the wife and children of the testator who would normally receive their due share in his estate were disinherited because the testator might have had his own FAO3681999 Page 17 of 29 reasons for excluding them. The presence of suspicious circumstances makes the initial onus heavier and therefore, in cases where the circumstances attendant upon the execution of the will excite the suspicion of the court, the propounder must remove all legitimate suspicions before the document can be accepted as the last will of the testator.

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

(6) If a caveator alleges fraud, undue influence, coercion, etc. in regard to the execution of the will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the will may raise a doubt as to whether the testator was acting of his own free will. And then it is a part of the initial onus of the propounder to remove all reasonable doubts in the matter. (emphasis supplied)

26. The decisions of the Supreme Court in Uma Devi Nambiar vs. T.C. Sidhan, (2004) 2 SCC321 and Pentakota Satyanarayana vs. Pentakota Seetharatnam,

(2005) 8 SCC67 are authorities on the principle that active participation of the propounder or beneficiary in the execution of the Will or exclusion of the natural heirs need not or necessarily lead to an inference that the Will was not genuine. One may quote, with advantage, the following observations in Uma Devi Nambiar (supra):-

"FAO3681999 Page 18 of 29 16. A will is executed to alter the ordinary mode of succession and by the very nature of things, it is bound to result in either reducing or depriving the share of natural heirs. If a person intends his property to pass to his natural heirs, there is no necessity at all of executing a will. It is true that a propounder of the will has to remove all suspicious circumstances. Suspicion means doubt, conjecture or mistrust. But the fact that natural heirs have either been excluded or a lesser share has been given to them, by itself without anything more, cannot be held to be a suspicious circumstance especially in a case where the bequest has been made in favour of an offspring. As held in P.P.K. Gopalan Nambiar v. P.P.K. Balakrishnan Nambiar [1995 Supp (2) SCC664 it is the duty of the propounder of the will to remove all the suspected features, but there must be real, germane and valid suspicious features and not fantasy of the doubting mind. It has been held that if the propounder succeeds in removing the suspicious circumstance, the court has to give effect to the will, even if the will might be unnatural in the sense that it has cut off wholly or in part (See Pushpavathi v. Chandraraja near Kadamba [(1973) 3 SCC291. In Rabindra Nath Mukherjee v. Panchanan Banerjee [(1995) 4 SCC459 it was observed that the circumstance of deprivation of natural heirs should not raise any suspicion because the whole idea behind execution of the will is to interfere with the normal line of succession and so, natural heirs would be debarred in every case of will. Of course, it may be that in some cases they are fully debarred and in some cases partly. relations. (emphasis supplied) 27. Following the above rulings, the Supreme Court in Mahesh Kumar (dead) by LRs. Vs. Vinod Kumar & Ors., (2012) 4 SCC387 held, in the facts and circumstances of the said case that the evidence unmistakably showing that the objectors had separated from the FAO3681999 Page 19 of 29 family, taking their respective shares, not bothering to look after the parents in their old age, there was nothing unnatural or unusual in the decision of the testator (the father) to give his share in the joint family property to the son who, along with

his wife and children, had taken care of the parents, adding that (A)ny person of ordinary prudence would have adopted the same course and would not have given anything to the ungrateful children from his/her share in the property. 28. In Hari Singh & Anr. vs. The State & Anr., 2010 (120) DRJ716 a division bench of this Court, after noting the law declared, inter alia, in Uma Devi Nambiar (supra), observed thus:-

"31 Courts are not expected to be satisfied that a bequeathal is rational or not; what has to be considered is whether the bequest was so unnatural that the testator could not have made it. There is nothing in law that prescribes that the testamentary document has to be made and executed on the same day. Law does not mandate that each of the witnesses must be aware of the contents of the Will and the nature of the bequests. The rigours of attestation endeavour to eradicate manipulation and fabrication of such a testament by mandating that the testator as well as the witnesses should be simultaneously present at the time of its execution; nothing more and nothing less. Though there is no categorical evidence coming forth on the record, we do not find this fact to be legally anomalous or suspicious as to impeach the entire case of the appellant/petitioner. (emphasis supplied) FAO3681999 Page 20 of 29 29. On careful reappraisal of the evidence led before the trial court, it is noted that there is no credible material adduced by any party, particularly the objectors, from which it could be inferred that the testator was not a person of sound mind on the date (19.10.1990) on which the document (Ex.PW-2/1) came to be registered as a Will executed by him. On the contrary, his son Shabad Sarup (R3W1) would himself volunteer in the course of his deposition that the testator was quite active right till the time of his death as he would not only move around on his own but also go out of station to Agra to attend religious congregations. Even during cross-examination, when pointedly asked, he was not in a position to deny the case of the appellant that the deceased was in a fit state of mind at the relevant point of time. Against this stand of Shabad Sarup (R3W1), corroborating the case of the appellant about testator being of sound disposition of mind on the date he executed the Will, the version of Meenakshi Juneja (R4-5/W1) about the mental condition of the deceased testator having been affected due to paralysis does not come out as very convincing. As noted earlier, the paralytic stroke was suffered by the testator in July, 1987 and Meenakshi

Juneja (R4-5/W1) got married to his son Gursarup in December, 1987. She had left the society of the testator in May, 1990, the Will being executed later. Given the quarrels in which she was engaged not only with the testator, but also with the rest of the family including her own husband, leading to she even filing a criminal complaint of dowry FAO3681999 Page 21 of 29 harassment, her unfounded statement on this score against the consistent word of rest of the members of the family must be rejected.

30. The evidence of PW-3, PW-4 and that of the objectors (R3W1) and (R4-5/W1), however, is consistent on the aftermath of the paralytic stroke that had generally affected the health of the testator from July, 1987 onwards. The right side of his body was affected and that would include the upper limb of the right side, this besides speech disorder. It does appear that the witnesses have used different phraseology in elaborating on such physical condition of the testator. While PW-4 would state that the speech had become blurred and the right hand had been twisted, in his testimony, the proponent of the Will (PW-3) only spoke about lack of control over the hands (hands were shaking), also conceding that the speech had become blurred. It is pointed out that in the reply filed in answer to the objections of Shabad Sarup, the appellant had stated (in paras 6 &

7) that the deceased had suffered speech disorder to some extent though he was in a condition of conveying partly through spoken words and partly through signs and gestures . In the considered view of this court, such pleadings cannot render the evidence of PW-3 or PW-4 to above effect unacceptable as to the capacity of the testator in communicating, particularly to the scribe (typist) of the document, as to what was his intent. The blurring of the speech may have left some handicap. But it is clear from the evidence FAO3681999 Page 22 of 29 that such handicap was not of the kind as would inhibit proper communication. It has to be borne in mind that the evidence unmistakably shows that the testator was quite agile and able to be on his own not only in daily chores but also in managing the affairs of his life. PW-3 has deposed, and there is nothing to impeach such testimony, that the deceased had been discussing the subject of Will for a few days prior to the execution and had even prepared a draft before approaching the office of the Sub Registrar on the date of its execution and registration. The speech disorder, thus,

cannot be a ground to raise suspicion about the genuineness of the Will.

31. There is no such cutting, addition or alteration in the document (Ex.PW-2/1) as can render it suspect. The document (Ex.PW-2/1) was proved as a certified copy of the Will registered with the office of sub-registrar on 19.10.1990. The adverse observation of the learned trial Judge pertaining to the third paragraph at fourth page of the said certified copy (Ex.PW-2/1) concerns the portion in italics, added by hand, the rest having been typed out, it reading : I do hereby constitute and nominate Shri Sanjeev Juneja R/o C-29, Soami Nagar, New Delhi-110017 as the executor of this Final Will and witness whereof I put my thumbs impression this day of 19th Oct., 1990. The reference by the trial Judge to such handwritten part of the said paragraph as an illustration of cuttings, additions or alterations is most unfair. By no stretch of argument it can be taken as cutting or alteration of the FAO3681999 Page 23 of 29 document. The insertion of the name and description of the person constituted and nominated as an executor was apparently after re-confirmation as to the permissibility of the main beneficiary being entrusted with such responsibility. It cannot be used to discredit the word of PW-3 or PW-4.

32. PW-3 and PW-4 are consistent in their evidence that the Will had been typed out, outside the office of the sub-registrar, on the same date as on which it was executed and registered. Merely because the date (19th) has been added, by hand, in the last two paragraphs of the fourth page does not mean that the preparation of the typed script would relate to some date other than that of its execution or registration. The doubts raised in this regard in the impugned judgment have no basis. For this reason, the further inference drawn by the trial Judge that there is no legal evidence to show that the Will was prepared on the instructions of the testator is also illogical and unfounded.

33. The inability of the testator to use his hand for putting signatures on the Will has been brought out by the evidence which is quite credible. The capability of the testator to go about the ordinary chores of life would not mean continued ability to sign his name in the same manner as he was used to do before.

34. It may be that the petitioner at one stage claimed that the testator had started putting thumb marks instead of signatures FAO3681999 Page 24 of 29 giving the

impression that there were other documents also similarly authenticated. But, the admission later made that the Will in question was the first such document should put to rest any anxieties on such score, particularly because the objectors have also not come up with any other such document.

35. The absence of other attesting witness Gopal Kapoor from the witness box is inconsequential. As mentioned earlier, the probate petition was filed with verification in terms of Section 281 of the Indian Succession Act, 1925 under the hand of the said attesting witness Gopal Kapoor. The examination of N.L. Jagota (PW-4), also the attesting witness, by the petitioner is sufficient compliance with the requirement of Section 68 of Indian Evidence Act, 1872. PW-3 and PW-4 have been quite upfront about the fact that both of them had assisted at the time of preparation of the Will followed by its execution and registration. They have deposed at length about their presence in the office of the sub registrar on 19.10.1990. The slight contradiction of the word of PW-3 by PW-4 as to the time of the arrival of the latter at the said place is insignificant and of no effect.

36. In the face of the facts that PW-3 was the main beneficiary and further the fact that PW-4 was also to indirectly gain from the Will, in that his wife Asha Jagota is also to receive some part of the bequest, there was indeed a higher onus on the propounder of the Will to remove doubts that may FAO3681999 Page 25 of 29 consequently arise, by adducing clear and satisfactory evidence. In the considered view of this court, however, the said onus has been fully discharged by the appellant. As noted at the outset, objector Shabad Sarup (R3W1) had separated from the father in 1983. He is well settled in life and has all along been self-reliant, having the advantage of his own property in Janakpuri. Noting these facts, the Will (Ex.PW-2/1), through which the testator would speak, he has been disinherited also for the reason that neither he nor his wife would come over to assist the father at the time when he was suffering from serious health issues post-paralytic attack in July, 1987. R3W1 was not able to show facts to the contrary. The evidence also unmistakably establishes that Gursarup, the deceased husband of the other objector Meenakshi Juneja (R4-5/W1), was constrained to leave the society of the father in May, 1990 on account of the disputes that had arisen within the family after his marriage in December, 1987, the relationship having deteriorated to such

an extent that Meenakshi Juneja (R4-5/W1) had proceeded ahead and lodged a criminal complaint against the testator as well. There is nothing in the evidence led by the objector(s) to show that the said police complaint was for well-founded reasons or that the testator had been responsible for the domestic feud. Contrary to what Shabad Sarup (R3W1) projected, the relationship of the objectors with rest of the family was far from cordial. In these circumstances, it cannot be said that the denial of any share to the objectors was unnatural, improbable FAO3681999 Page 26 of 29 or unfair or a result of fraud, coercion or undue influence. Instead, as in the case of Mahesh Kumar (supra) the Will represents an act of a person of ordinary prudence who was reluctant to give anything to the children who had not been supportive.

37. It does appear that the petitioner had not been able to strictly prove the loss of the original Will on account of theft. But then, mere failure to muster clear proof about circumstances in which the original Will came to be lost does not mean it has been intentionally withheld. The certified copy of the Will (Ex.PW-2/1) is an authenticated record, the genuineness of the document thus registered not having been impeached.

38. The fact that the Will refers to a site plan which has not been filed is also of no consequence as the narration of the bequest thereby made leaves no room for doubt as to the manner in which the property is to be inherited by the beneficiaries in its accord.

39. The sister of the appellant (Asha Juneja) may have conducted herself improperly by proceeding to check the contents of the bank locker in the forenoon of the same date as on which the testator died. Such conduct may be an aberration. But, it cannot lead to inference that she was in a league with the petitioner to manipulate the Will. As shown by the evidence, the Will had been executed, and registered, on 19.10.1990. Her FAO3681999 Page 27 of 29 later conduct cannot relate back so as to create doubt about the genuineness of the Will, not the least so as to hold the appellant to be in league with her.

40. For the foregoing reasons, this court does not accept the circumstances set out in the impugned judgment as sufficient to doubt the genuineness or

authenticity of the Will. The execution of the Will has been duly proved by PW-3 and PW-4. Their evidence, coupled with the testimony of PW-2 proving the registration of the Will, leaves no reason as to why probate should not be granted as prayed.

41. Thus, the impugned judgment is set aside. The petition of the appellant is allowed. The probate of the Will of late Sh.Jaswant Lal Juneja, as per certified copy (Ex.PW2/A) executed and registered on 19.10.1990 is granted in favour of the appellant (petitioner) in respect of the estate left behind by him, as mentioned in detail above, subject to the requisite court fees/ stamp duty being furnished in accord with the valuation report and upon submission of admission bond and surety, in accordance with law, to the satisfaction of the trial court.

42. It is noted that the probate petition was filed in the court of the District Judge, Delhi on 07.09.1991. At that point of time, the entire Delhi constituted one civil district. Delhi has since been divided into eleven civil districts, each headed by a District Judge. Having regard to the address of the immovable property, which is a major part of the estate, the matter would now fall within the territorial jurisdiction of the District Courts for South Delhi District at Saket Courts Complex. Therefore, the parties are directed to appear on 01.11.2017 in the court of the District Judge (South) at Saket Courts Complex, New Delhi for further proceedings in accordance with law. The learned District Judge (South) may, in her discretion, retain the matter on her board or allocate it to the appropriate court of an Additional District Judge under her control.

43. The appeal is disposed of accordingly. SEPTEMBER 27 2017 nk/yg/vk
R.K.GAUBA, J.

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