

C S Aggarwal vs.state

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Court : Delhi

Decided On : Mar-29-2019

Appellant : C S Aggarwal

Respondent : State

Judgement :

\$~ * % + IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

29. h March, 2019 TEST.CAS. 8/1995 C S AGGARWAL

... Petitioner

Through: Mr.Anil K. Kher, Senior Advocate and with Ms.Vasundhara Nayyar, Advocates Mr.D.R. Bhatia STATE versus Through: Mr.Manoj Swarup and Mr.Akshat Respondent Goel, Advocates CORAM: HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT

1 The petitioner is seeking letters of administration in respect of the will dated 02nd August, 1988 of late Shanti Devi Aggarwal (hereinafter referred to as Shanti Devi).

2. The petitioner instituted this petition on 22nd February, 1995 on the averments that Shanti Devi died at New Delhi on 04th January, 1995; Shanti Devi was the permanent resident of Delhi at the time of her death and she was staying at flat No.3, 4th floor, Jeevan Deep Building, Parliament Street, New Delhi-110001 at the

time of her death; Shanti Devi executed her last will and testament dated 02nd August, 1988 duly registered with the Sub- Registrar as document No.5217 in Book No.3, Volume No.473 at pages 146 to 160 on 08th November, 1988; the husband of late Shanti Devi pre- deceased her and there were no class-I legal heir; Shanti Devi was the owner of the properties mentioned in the will; Shanti Devi bequeathed Rs.20,000/- to her domestic servant, Bidhi Chand and the balance estate to a charitable trust, Asa Ram Shanti Devi Memorial Charitable Trust of which H.L. Bedi and C.S. Aggarwal (the petitioner) shall be the first trustees; the petitioner is Test.Cas.8/1995 Page 1 of 82 the executor of the will and is entitled to grant of the probate. The petitioner has placed on record the original death certificate of Shanti Devi; original will dated 02nd August, 1988 and the copy of the complaint dated 16th February, 1995 made to SHO, P.S. Parliament Street against certain relatives of late Shanti Devi.

3. Notice of this petition was issued to Jitender Aggarwal and Surinder Aggarwal (nephews of the husband of the late Shanti Devi) and Mr. Bidhi Chand (domestic servant of late Shanti Devi) on 02nd March, 1995. However, the summons were not served on them and vide order dated 16th April, 1996, this Court directed substituted service in pursuance to which the citation of this petition was published in the Statesman on 29th April, 1996.

4. The petitioner examined two witnesses, namely, C.S. Aggarwal (the petitioner) as PW-1 and Anil Sharma as PW-2. Vide ex-parte judgment dated 16th July, 1997, this Court granted the probate to the petitioner in respect of the will dated 02nd August, 1988 executed by late Shanti Devi.

5. On 26th July, 1997, Surinder Aggarwal, nephew of the husband of the testator filed I.A.10969/1997 under Order IX Rule 13 of the Code of Civil Procedure for setting aside the ex-parte judgment dated 16th July, 1997 on various grounds inter-alia that H.L. Bedi who was appointed as a trustee by the testator in the trust deed dated 30th June, 1988 expired during the life time of the late Shanti Devi and therefore, the testator revised her will dated 02nd August, 1988 by executing a subsequent will dated 21st October, 1994 in which she appointed six trustees who had the option to co-opt the petitioner as a trustee as he was the tax consultant of

the testator; the testator bequeathed Rs.50,000/- to her domestic servant, Bidhi Chand and the balance estate to the trust. Copy of the will dated 21st October, 1994 was Test.Cas.8/1995 Page 2 of 82 filed by Surinder Aggarwal along with I.A.10969/1997.

6. On 25th May, 1998, Jitender Aggarwal, other nephew of the husband of the testator, filed I.A.10434/1998 under Order IX Rule 13 of the Code of Civil Procedure for setting aside the ex-parte judgment dated 16th July, 1997 on the ground that he was not served with the summons. The applicant pleaded that the testator was very close to her; had great affection towards the applicant and had met her several times in her life time. According to the applicant, the petitioner connived with his brother, Surinder Aggarwal with the intention to keep the applicant out of the property of the testator and included the names of his favourites as trustees in the will dated 21st October, 1994.

7. On 26th March, 2001, I.A.10434/1998 and I.A.10969/1997 were allowed on the no objection of the petitioner. The respondents were directed to file the reply to the probate petition and Surinder Aggarwal was directed to produce the original will dated 21st October, 1994. However, no reply was filed either by Surinder Aggarwal or by Jitender Aggarwal.

8. On 25th April, 2003, Sneh Lata, niece of the husband of the testator filed I.A.4743/2003 under Order IX Rule 13 of the Code of Civil Procedure for setting aside the ex-parte judgment dated 16th July, 1997 on various grounds inter-alia that Shanti Devi had no issue; the applicant used to look after her; Shanti Devi was alone and most of the time, she used to live with the applicant; Shanti Devi had full confidence and faith in the applicant and she used to treat the applicant just like her own daughter and she had even opened a joint savings bank account (SB-5923) with the applicant with the Union Bank of India at Kaithal, Haryana; Shanti Devi lived under the love and care of the applicant in the last days of her life and Shanti Devi out of Test.Cas.8/1995 Page 3 of 82 love and affection voluntarily, without any pressure and in her full consciousness, executed a will dated 07th December, 1994 in favour of the applicant, making the applicant sole and absolute owner of all her bank accounts, shares and FDRs; the will dated 07th

December, 1994 was the last and final will of Shanti Devi; and the applicant was the only person legally entitled to inherit the properties mentioned in the said will. The applicant further pleaded that the petitioner was, in no way, related to late Shanti Devi; the husband of late Shanti Devi was an Advocate by profession and he expired on 17th January, 1986; C.S. Aggarwal was a junior Advocate with late Sh. Asa Ram Aggarwal (husband of late Shanti Devi), who used to file Income Tax and Wealth Tax returns of Shanti Devi after her husband's death; Shanti Devi never executed the alleged will dated 02nd August, 1988; the signatures of Shanti Devi, if any, on the alleged will dated 02nd August, 1988 had been fraudulently obtained by C.S. Aggarwal under the garb of filing Income Tax and Wealth Tax returns; Shanti Devi only knew Hindi and Urdu and did not know English language but could sign in English; and it is very unlikely that a person who did not know English would execute a will written in English.

9. Vide order dated 22nd September, 2000, this Court directed Surinder Aggarwal, the objector, to file the original will referred in his application. Surinder Aggarwal was again directed to produce the original will on 18th January, 2002. Last and final opportunity was granted to Surinder Aggarwal on 31st October, 2002 to produce the original will subject to cost of Rs.3,000/-. However, Surinder Aggarwal did not produce the original will dated 21st October, 1994 and he stopped appearing before this Court on 22nd January, 2003. Test.Cas.8/1995 Page 4 of 82

10. Vide order dated 21st May, 2004, this Court allowed I.A.4743/2003 filed by Sneh Lata and set aside the judgment dated 16th July, 1997. On 03rd March, 2005, Sneh Lata produced the original will dated 07th December, 1994 which was taken on record.

11. On 23rd May, 2005, this Court framed the following two issues: 1. Whether the will dated 7.12.1994 is the last legal and valid testament of late Smt. Shanti Devi Aggarwal?. Onus on the propounder of the will.

2. If issue No.1 is decided against the propounder of the will dated 7.12.1994 whether the will dated 2.8.1988 is the last legal and valid testament of late Smt. Shanti Devi Aggarwal. 12. The objector, Sneh Lata cross-examined the petitioners witnesses, namely, PW-1, C.S. Aggarwal and PW-2, Anil Sharma. Sneh Lata

examined her son, Dr. Gagan Singla as OW-1 and she herself appeared in the witness box as OW-2.

13. PW-1, C.S. Aggarwal deposed that late Shanti Devi was resident of flat no.3, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi and she died on 04th January, 1995 at Delhi. The death certificate was exhibited as Ex.P/1. PW-1 further deposed that the testator, Shanti Devi left behind a will dated 02nd August, 1988 duly registered with the Sub-Registrar as document No.5217 in Book No.3, Volume No.473 at pages 146 to 160 on 08th November, 1988. The original will was marked as Ex.P/2. First Schedule to the will is the statement of the total wealth and assets of the testator. The Second Schedule to the will is the Trust created by the testator for charitable purposes. The testator appointed PW-1 as the executor of the will dated 02nd August, 1988. Test.Cas.8/1995 Page 5 of 82

14. PW-2, Anil Sharma deposed that he witnessed the will dated 02nd August, 1988 executed by late Shanti Devi. He deposed that late Shanti Devi signed the will in his presence and in the presence of the other witness A. Jhunjhunwala, a Chartered Accountant. He identified the signatures of the testator on the will at point Mark A, his signatures at point Mark B and the signatures of A. Jhunjhunwala at point Mark C on Ex.P/2. PW-2 deposed that the contents of the will were read over to the testator and she signed the will and the Schedules after understanding the contents of the will in his presence and in the presence of A. Jhunjhunwala. PW-2, in cross- examination, deposed that he was filing the Income Tax and Wealth Tax returns of the testator and the testator asked him to witness the will dated 02nd August, 1988. He further deposed that the will was registered in 1988 and the testator, Shanti Devi as well as both the witnesses were present at the time of the registration of the will. He denied the suggestion that the will dated 02nd August, 1988 was got signed and registered through mis- representation that the document was relating to taxation.

15. OW-1, Dr. Gagan Singla deposed that he was studying MBBS from PGI, Rohtak from 1993 to 2000 and was residing in the college hostel. He deposed that the late Shanti Devi was his maternal grandmother; again said she was the aunt of his mother (wife of the brother of maternal grandfather). He deposed that the will dated 07th December, 1994 (Ex.OW1/1) was in his handwriting. He further

deposed that Hansraj, the other attesting witness, was a resident of Patiala and has since died. He deposed that he came to Delhi from his hostel at Rohtak when Hansraj was already present there. Hansraj was his uncle i.e. brother of his father. He further deposed that he came to Delhi on a routine visit and was not aware why Hansraj had come to Test.Cas.8/1995 Page 6 of 82 Delhi. He further deposed that the will was attested by the Notary Public and he as well as Shanti Devi and Hansraj signed the register of the Notary Public. He deposed that the will was written on 07th December, 1994 itself but he did not remember the exact time when the will was written.

16. OW-2, Sneh Lata deposed that she was the real niece of the husband of late Shanti Devi who had no issue and she used to look after her and most of the time, Shanti Devi used to live with her and used to treat her like a daughter. Shanti Devi executed the will dated 07th December, 1994 in her favour. The will dated 07th December, 1994 was attested by her son, Dr. Gagan Singla and Hansraj as the attesting witnesses. She further deposed that she filed an application under Section 372 of the Indian Succession Act before the learned Civil Judge (Senior Division), Kaithal, Haryana for grant of Succession Certificate on the basis of the will dated 07th December, 1994 for which the Succession Certificate was granted to her on 06th March, 1997. The petitioner filed an application for setting aside of the ex-parte order on 08th May, 1997 which was dismissed vide order dated 27th July, 2000. The petitioner thereafter filed an appeal against the order dated 27th July, 2000 before Punjab and Haryana High Court in which the Succession Certificate was stayed. She further deposed that the petitioner was a Junior Advocate with late Asa Ram Aggarwal (husband of late Shanti Devi) and he used to file Income Tax and Wealth Tax returns of late Shanti Devi after her husband's death. She further deposed that C.S. Aggarwal fraudulently obtained the signatures of late Shanti Devi on the will dated 02nd August, 1988 under the garb of filing of Income Tax and Wealth Tax returns. She further deposed that Late Shanti Devi knew Hindi and Urdu and didn't know English. She further deposed that she was in possession of the residential Test.Cas.8/1995 Page 7 of 82 house of the testator and she handed over the vacant possession to Life Insurance Corporation of India, which was the landlord. She further deposed that she donated the articles lying in the above house to Anath Ashram at Daryaganj, New

Delhi. OW-2, in her cross-examination, deposed that late Asa Ram Aggarwal (husband of late Shanti Devi) was a Judge of the Supreme Court and he resigned from there and started his practice of law. She was not aware of the names and addresses of any of the close friends of late Asa Ram Aggarwal and late Shanti Devi. She also could not give the names of the neighbors of late Shanti Devi. She deposed that Shanti Devi was suffering from cancer and died because of cancer. However, she could not tell when the cancer was detected. She was not even aware of the complete name of the doctor who treated late Shanti Devi. She further deposed that late Shanti Devi could walk within her house in the last year of her life. She was not aware of the year of death of late Asa Ram Aggarwal. She could not tell when the joint bank account with late Shanti Devi was opened.

17. During the course of the hearing dated 05th December, 2018, this Court examined the objector, Sneh Lata and her son, Dr. Gagan Singla in exercise of power under Section 165 of the Indian Evidence Act. The objector, Sneh Lata admitted that she was present when the will dated 07th December, 1994 was signed by late Shanti Devi who handed over the will to her immediately after the execution. She deposed that she met the testator times in 1993 and twice in 1994. The signatures of late Shanti Devi on various documents were shown to the objector. She denied the signatures of late Shanti Devi on the will, Ex.P/2.

18. Dr. Gagan Singla in his statement dated 05th December, 2018, under Test.Cas.8/1995 Page 8 of 82 Section 165 of the Indian Evidence Act, could not tell the date, month and year of death of late Shanti Devi. He could not tell the date, month and year when he met her last time. He could not even tell when Shanti Devi last visited his house. He admitted the signatures of the testator on the will, Ex.P/2. He met the testator once in 1994 but did not remember the date of meeting her. He deposed that late Shanti Devi asked her to prepare a will whereupon he prepared the will which was signed by the testator in his presence and in the presence of his uncle, the other attesting witness.

19. Will dated 02nd August, 1988 Test.Cas.8/1995 Page 9 of 82 Test.Cas.8/1995 Page 10 of 82 Test.Cas.8/1995 Page 11 of 82 Test.Cas.8/1995 Page 12 of 82

Test.Cas.8/1995 Page 13 of 82 Test.Cas.8/1995 Page 14 of 82 Test.Cas.8/1995 Page 15 of 82 Test.Cas.8/1995 Page 16 of 82 Test.Cas.8/1995 Page 17 of 82 Test.Cas.8/1995 Page 18 of 82 Test.Cas.8/1995 Page 19 of 82 Test.Cas.8/1995 Page 20 of 82 Test.Cas.8/1995 Page 21 of 82 Test.Cas.8/1995 Page 22 of 82 20. Will dated 21st October, 1994 Test.Cas.8/1995 Page 23 of 82 Test.Cas.8/1995 Page 24 of 82 Test.Cas.8/1995 Page 25 of 82 Test.Cas.8/1995 Page 26 of 82 Test.Cas.8/1995 Page 27 of 82 Test.Cas.8/1995 Page 28 of 82 21. Will dated 07th December, 1994 Test.Cas.8/1995 Page 29 of 82 Submissions of the petitioner 22. Learned counsel for the petitioner urged at the time of the hearing that the will dated 02nd August, 1998 (Ex.P/2) of late Shanti Devi has been proved by the attesting witness, Anil Sharma who appeared in the witness box as PW-2. As per the said will, Shanti Devi bequeathed Rs.20,000/- to her domestic servant, Bidhi Chand and the balance estate to a charitable trust, Asa Ram Shanti Devi Memorial Charitable Trust of which H.L. Bedi and C.S. Aggarwal (the petitioner) shall be the first trustees. Copy of the Trust Deed dated 30th June, 1988 is Second Schedule to the will. It was further submitted that the wills dated 21st October, 1994 and 07th December, 1994 set up by the objector were forged and fabricated documents; it is in the handwriting of her son, Dr. Gagan Singla, who is one of the attesting witnesses and the other attesting witness who is the brother of the husband of the objector; the objector, Sneha Lata took prominent part in the execution of the will dated 07th December, 1994 which confers substantial benefits on them; the propounder has failed to remove the suspicions; and the assets of the testator have to be used for charitable purposes. Reliance is placed on *H. Venkatchala Iyengar v. B.N. Thimmajamma*, AIR 1959 SC443 and *Balathandayutham v. Ezhilarasan*, (2010) 5 SCC770 Submissions of the objector 23. Learned counsel for the objector urged at the time of the hearing that these proceedings be transferred to the District Court on the ground that the pecuniary jurisdiction is less than Rs.2 crores. It is further submitted that the petitioner has not been verified by the attesting witness in terms of Section 281 of the Indian Succession Act. On merits, it was submitted that the will dated 07th December, 1994 is the last will and valid will of the testator. It is Test.Cas.8/1995 Page 30 of 82 further submitted that the presence of the objector at the time of the execution of the will dated 07th February, 1994 does not ipso-facto invalidate it, in any

manner. Reliance was placed on *Malkani v. Jamadar*, (1987) 1 SCC610 and *Pentakota Satyanarayana v. Pentakota Seetharatnam*, (2005) 8 SCC67. Reliance was also placed on the will dated 21st October, 1994 set up by Surinder Aggarwal in Para-3 of the Written Submissions which is reproduced hereunder:-

"3. That this intention is further manifested by execution of the document of will dated 21.10.1994 (already present on record). Where in the testatrix records the following:-

"I have made a Will earlier also but due to change in my views and circumstances and due to demise of Shri H.L. Bedi, who was proposed as a Trustee in my earlier Will and I am convinced that my earlier Will should be changed, I hereby cancel and revoke all my oral and written Wills made and executed by me prior to this Will and declare this to be my last and final Will. 24. It was further submitted that this Court wrongly exercised the jurisdiction under Section 165 of the Indian Evidence Act to examine the objector, Sneha Lata and her son, Dr. Gagan Singla. It was submitted that Section 165 of the Indian Evidence Act has to be used very sparingly after recording of reasons. It was further submitted that the direction of the Court to the counsel to explain the consequences of making a wrong statement to the objector and her son was improper. It was further submitted that the objector and her son, Dr. Gagan Singla were shown signatures on the various documents on record without showing the complete document, which was improper. It was submitted that the entire document should have been shown to the objector at the time of the examination. It was further submitted that no expert has been examined by the petitioner to prove that the will dated 07th December, 1994 was forged and fabricated. Test.Cas.8/1995 Page 31 of 82 Principles relating to mode of proving a will 25. Section 63 of the Succession Act, 1925 provides that a will has to be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence, and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the will in the presence of the testator. If the execution of a will is surrounded by the suspicious circumstances, such as doubt on the mental capacity of the testator; the

propounder taking prominent part in the execution of the will which confers substantial benefit on the propounder; or unnatural, improbable or unfair dispossessions, the onus is on the propounder of the will to remove the suspicions. The probate can be granted only after the judicial conscience of the Court is satisfied that the will was executed by the testator and the propounder has removed all legitimate suspicions.

26. In *H. Venkatachala Iyengar v. B.N. Thimmajamma*, AIR 1959 SC443 the Supreme Court laid down the principles which govern the proving of a will. The Supreme Court held that the Court has to consider whether 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. The onus of proving the will is on the propounder. If there are any 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. Apart from suspicious circumstances, the will may suffer from infirmity where the propounder takes prominent part in the execution of the will which confers on him substantial benefits. Such Test.Cas.8/1995 Page 32 of 82 infirmities are also treated as suspicious circumstances. Even where there were no such pleas but the circumstances gave rise to doubts, the propounder has to satisfy the conscience of the Court. Relevant portion of the said judgment is reproduced hereunder: 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 s. 63 of the Indian Succession Act. As in the case of proof of other documents so in the case of proof of wills it would be idle to expect proof with mathematical certainty. The test to be applied would be the usual test of the satisfaction of the prudent mind in such matters.

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

20. There may, however, be cases in which the execution of the will may be surrounded by suspicious circumstances. The alleged signature of the testator may be very shaky and doubtful and evidence in support of the propounder's case that the signature, in question is the signature of the testator may not remove the doubt created by the appearance of the signature; the condition of the testator's mind may appear to be very feeble and debilitated; and evidence adduced may not succeed in removing the legitimate doubt as to the mental capacity of the testator; the dispositions made in the will may appear to be unnatural, improbable or unfair in the light of relevant circumstances; or, the will may otherwise indicate that the said dispositions may not be the result of the testator's free will and mind. In such cases the court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last will of the testator. The presence of such suspicious circumstances naturally tends to make the initial onus very heavy; and, unless it is satisfactorily discharged, courts would be reluctant to treat the document as the last will of the testator. It is true that, if a caveat is filed alleging the exercise of undue influence, fraud or coercion in respect

of the execution of the will propounded, such pleas may have to be proved by the caveators; but, even without such pleas circumstances may raise a doubt as to whether the testator was acting of his own free will in executing the will, and in such circumstances, it would be a part of the initial onus to remove any such legitimate doubts in the matter. 21. Apart from the suspicious circumstances to which we have just referred, in some cases the wills propounded disclose another infirmity. Propounders themselves take a prominent part in the execution of the wills which confer on them substantial benefits. If it is shown that the propounder has taken a prominent part in the execution of the will and as received substantial benefit under it, that itself is generally treated as a suspicious circumstance attending the execution of the will and Test.Cas.8/1995 Page 34 of 82 the propounder is required to remove the said suspicion by clear and satisfactory evidence. (Emphasis supplied) 27. In *Purnima Devi v. Kumar Khagendra Narayan Dev*, 1962 AIR567 the Supreme Court reiterated the principles laid down in *H. Venkatachala Iyengar* (Supra) governing the mode of proof of the will. Relevant portion of the said judgment is reproduced hereunder: 5. Before we consider the facts of this case it is well to set out the principles which govern the, proving of a will. This was considered by this Court in *H. Venkatachala Iyengar v. B. N. Thimmajamma*. It was observed in that case that the mode of proving a will did 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 was 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 was sufficient to discharge the onus. Where, however, there were' 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 caveats alleged undue influence, fraud or coercion, the onus would be on him to prove the same. Even where there were no such plea, but the circumstances gave rise to doubts, it was for the propounder to satisfy the conscience of the Court. Further, what are suspicious circumstances was also considered in this case. The alleged signature of the testator might be very shaky and doubtful and evidence in support of the propounder's case that the signature in question was the signature

of the testator might not remove the doubt created by the appearance of the signature., The condition of the testator's mind might appear to be very feeble and debilitated and evidence adduced might not succeed in removing the legitimate doubt as to the mental capacity of the testator ; the dispositions made in the will might appear to be unnatural, improbable or unfair in the light of Test.Cas.8/1995 Page 35 of 82 relevant circumstances ; or I the will might otherwise indicate that the said dispositions might 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 was accepted as the last will of the testator. Farther, a propounder himself might take a prominent part in the execution of the will which, conferred on him substantial benefits. If this was so it was generally treated as a suspicious circumstance attending the execution of the will and the propounder was required to remove the doubts by clear and satisfactory evidence. But even where' there were suspicious circumstances and the propounder succeeded in removing them, the Court would grant probate though the will might be unnatural and might cut off wholly or in part near relations.

8. Another suspicious circumstance is that the respondent gets the sole benefit under the will subject to the maintenance of the wife and the sister and he was certainly taking part in the execution of the will on the date it was executed. In such, circumstances the respondent was required to remove the said suspicion by clear and satisfactory evidence. Whether he has done so or not will be considered by us later. In *Shashi Kumar Banerjee v. Subodh Kumar Banerjee*, AIR1964 28. SC529 the Constitution Bench of the Supreme Court ruled on the principles governing mode of proof of a will. Referring to H. Venkatachala Iyengar (Emphasis supplied) (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 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 the propounder and in

Test.Cas.8/1995 Page 36 of 82 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 indication 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 In *Jaswant Kaur v. Amrit Kaur*, (1977) 1 SCC369 the Supreme 29. Court following *H. Venkatachala Iyengar* (supra) crystallized the law into (Emphasis Supplied) the following propositions: 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. Test.Cas.8/1995 Page 37 of 82 10. There is a long line of decisions bearing on the nature and standard of evidence required to prove a will. Those decisions have been reviewed in an elaborate judgment of this Court in *R. Venkatachala Iyengar v. B.N. Thimmajamma* [AIR 1959 SC443:

1959. Supp 1 SCR426 . The Court, speaking through Gajendragadkar, J., laid down in that case the following propositions : 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 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 substantial benefit and Test.Cas.8/1995 Page 38 of 82 them. The of presence signature of the testator or that the testator was in a sound and disposing state of mind and memory at the time when the will was made, or that those like the wife and children of the testator who would normally receive their due share in his estate were disinherited because the testator might have had his own reasons for excluding 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) 30. In *Kalyan Singh v. Chhoti*, (1990) 1 SCC266 the Supreme Court held that the trustworthy and unimpeachable evidence should be produced before the Court to establish genuineness and authenticity of the will. Relevant portion of the said judgment is reproduced hereunder: Test.Cas.8/1995 Page 39 of 82 20. It has been said almost too frequently to require repetition that 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 demeanour. 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 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. xxx xxx xxx 22. The will in the present case, constituting the plaintiff as a sole legatee with no right whatever to the testator's wife seems to be unnatural. It casts a serious doubt on genuineness of the will. The will has not been produced for

very many years before the court or public authorities even though there were occasions to produce it for asserting plaintiff's title to the property. The plaintiff was required to remove these suspicious circumstances by placing satisfactory material on record. He has failed to discharge his duty. We therefore, concur with the conclusion of the High Court and reject the will as not genuine. (Emphasis supplied) 31. In *Guro v. Atma Singh*, (1992) 2 SCC507 the Supreme Court held the will set up by the propounder to be not a genuine document on account of the following suspicious circumstances detailed in para 4 of the judgment: (1) The will mentions that the testator had been ill for a long time and was seriously ill at the time of execution of the will. Test.Cas.8/1995 Page 40 of 82 32. (2) While mentioning that he had one brother who had died, the testator has stated that he did not have any sister, which was not correct. (3) Respondent 1, Atma Singh, the sole legatee, has been wrongly described as the real brother of the testator. (4) No reasons are mentioned in the will why the appellant, who was the natural heir of the testator was being ignored. (5) Although the testator was literate, the will does not bear his signatures and bears his thumb impression. (6) The will is an unregistered document not scribed by a regular deed writer and as such could be prepared at any time. (7) The will was executed on October 2, 1968 and within eight days of the execution of the will the testator died on October 10, 1968. In *Pentakota Satyanarayana v. Pentakota Seetharatnam*, (2005) 8 SCC67 the Supreme Court held 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 and each case has to be judged in the facts and circumstances of that case. Para 25 is reproduced hereunder: 25. It is settled by a catena of decisions that any and every circumstance is not a suspicious circumstance. Even in a case where active participation and execution of the Will by the propounders/ beneficiaries was there, it has been held that that by itself is not sufficient to create any doubt either about the testamentary capacity or the genuineness of the Will. It has been held that the mere presence of the beneficiary at the time of execution would not prove that the beneficiary had taken prominent part in the execution of the Will. This is the view taken by this Court in *Sridevi v. Jayaraja Shetty* [(2005) 2 SCC784 . In the said case, it has been held that the onus to prove the Will is on the propounder and in the absence of

suspicious circumstances surrounding the execution of the Will, proof of testamentary capacity and the proof of signature of the testator as required by law would not be sufficient to discharge the Test.Cas.8/1995 Page 41 of 82 onus. In case, the person attesting the Will alleges undue influence, fraud or coercion, the onus will be on him to prove the same and that as to what suspicious circumstances which have to be judged in the facts and circumstances of each particular case. 33. In *Niranjan Umeshchandra Joshi v. Mrudula Jyoti Rao*, (2006) 13 SCC433 the Supreme Court classified the suspicious circumstances which have to be removed by the propounder of a will in para 20 of the judgment which is reproduced hereunder: When a doubt is created in regard to the condition of There are several circumstances which would have been held to be described by this Court as suspicious circumstances :-

"(i) mind of the testator despite his signature on the Will; (ii) When the disposition appears to be unnatural or wholly unfair in the light of the relevant circumstances; (iii) Where propounder himself takes prominent part in the execution of Will which confers on him substantial benefit. 34. In *Balathandayutham v. Ezhilarasan*, (2010) 5 SCC770 the Supreme Court held that when a will is surrounded by suspicious circumstances, the person propounding the will has a very heavy burden to discharge. Relevant portion of the said judgment is as under: 14. When a will is surrounded by suspicious circumstances, the person propounding the will has a very heavy burden to discharge. This has been authoritatively explained by this Court in *H. Venkatachala Iyengar v. B.N. Thimmajamma* [AIR 1959 SC443. P.B. Gajendragadkar, J.

(as His Lordship then was) in para 20 of the judgment, speaking for the three-Judge Bench in *H. Venkatachala* [AIR 1959 SC443 held that in a case where the testator's mind is feeble and he is debilitated and there is not sufficient evidence as to the mental capacity of the testator or where the deposition in the will is unnatural, improbable or unfair in the light of the circumstances or it appears that the bequest in the will is not the result of the testator's free will and mind, the court may consider that the Test.Cas.8/1995 Page 42 of 82 will in question is encircled by suspicious circumstances. (Emphasis supplied) 35. In *Raja Ram Singh v. Arjun Singh*, AIR2002 Delhi 338, the Division Bench of this Court following *Jaswant Kaur*

(supra) held that if the propounder has taken prominent part in the execution of the will which confers substantial benefits on him, the Court should proceed in a vigilant and conscious manner. The Division Bench further held that the Court has to look into the surrounding circumstances and if the circumstances raise the suspicion that the will does not express the mind of the testator, the Court would reject the evidence of the attesting witness. Relevant portion of the said judgment is reproduced hereunder: 13. It is a well settled principle of law that if there is a suspicious circumstance about the execution of a Will, it is the duty of the person seeking relief to prove the validity of the Will and to dispel such suspicious circumstance. For support reliance can be placed on the decision of the Supreme Court in the case of Gurdial Kaur and Ors. v. Kartar Kaur and Ors., ; Gorantla Thataiah v. Thotakura Venkata Subbaiah and Ors., ; Ramchandra Rambux, v. Champabai and Ors., . In all these cases the Apex Court considered as to what are the suspicious circumstances and came to the conclusion that those have to be judged in the facts and circumstances of each particular case. the propounder has taken a prominent part in the execution of the Will which confers substantial benefits on him that itself is a suspicious circumstance attending the execution of the Will and in appreciating the evidence the Court should proceed in a vigilant and cautious manner. Moreover, if the circumstance raises a suspicion of the Court that the Will does not express the mind of the testator then the Court would be right in rejecting the evidence of the attesting witnesses and scribe as well as of the propounder of the Will with regard to the execution of the Will by the testator. In order to appreciate the credibility of the witnesses, the Court can look into the surrounding circumstances. The mere fact that the Will was registered by itself is not a circumstance to show that If, however, Test.Cas.8/1995 Page 43 of 82 the Will is genuine. Nor this circumstance in itself is sufficient to dispel the suspicion regarding the validity of the Will where suspicion exists. In this regard reference can be made to the decision of Supreme Court in the case of Rani Purnima Debi and Anr. v. Kumar Khagendra Narayan Deb and Anr., reported. (Emphasis supplied) In Vidya Sagar Soni v. State, 2006 SCC OnLine Del 965, this Court 36. further elucidated the principles relating to the mode of proving the will. Relevant portion of the judgment are reproduced hereunder: that the the Court 5. Section 2(h) of the Indian Succession Act, 1925 defines a Will 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.

6. The legal burden to prove due execution always lies upon the person propounding a Will. The propounder must satisfy the judicial conscience of instrument so propounded is the last will of a free and capable testator.

7. A Will is a solemn document, being written by a person who is dead and who cannot be called in evidence to testify about the due execution of the Will. It is the living who have to establish the Will. It naturally throws a heavy burden on the Court to satisfy its judicial conscience that the burden of proof of due execution is fully discharged and every suspicious circumstance explained.

8. No specific standard of proof can be enunciated which must be applicable to all the cases. Every case depends upon its own circumstances. Apart from other proof, conduct of parties is very material and has considerable bearing on evidence as to the genuineness of the Will which is propounded. Courts have to be vigilant and zealous in examining evidence. Rules relating to proof of wills are not rules of laws but are rules of prudence. Normally, a Will is executed by a person where he desirous, to either alter the normal rule of succession, or where he desirous to settle his estate in a particular manner amongst the legal heirs. Therefore, though to be kept in mind, as to what is the nature of bequest the disproportionate nature of a bequest. However, as observed in importance cannot be attached too much to Test.Cas.8/1995 Page 44 of 82 (dead) v. Panchanan Banerjee (1995) 4 SCC459: AIR 1995 SC1684 Rabindra Nath by LRs, Mukherjee disproportionate nature of a bequest is no doubt a suspicious circumstance to be kept in mind, but, being a mere suspicion, it is capable of being dispelled by other evidence to show voluntary character of the document.

9. Therefore, the first rule to appreciate evidence is to peruse the Will. Normally, if there is rationality in a Will, a presumption arises about due execution. Of course, being a presumption, it is rebuttable.

10. As observed in AIR1962 Punjab 196, Smt. Kamla Devi v. Kishori Lal Labhu Rant, the omission of a close relation from the bounty of a testator raises a

presumption in favour of some undue influence. The probative force of such a testament rises and falls in inverse ratio to its unreasonableness.

11. The more unreasonable an instrument is, the less probative value it carries. Where the terms of a Will are unusual and the evidence of testamentary capacity doubtful, or due execution doubtful, the vigilance of the Court will be roused and before pronouncing the Court would microscopically examine the evidence to be satisfied beyond all reasonable doubt that the testator was fully conversant of the contents and executed the Will fully aware of what he was doing.

12. Expanding on the care and caution to be adopted by Courts, and presumptions to be raised, in the decision (1864) 3 Sw and Tr. 431 in *The Goods of Geale*, it was opined that where a person is illiterate or semi-literate or the Will is in a language not spoken or understood by the executor, the Court would require evidence to affirmatively establish that the testator understood and approved all the contents of the Will.

13. This affirmative proof of the testator's knowledge and approval must be strong enough to satisfy the Court, in the particular circumstances, that the Will was duly executed.

14. One form of affirmative proof is to establish that the Will was read over by, or to, the testator when he executed it. If a testator merely casts his eye over the Will, this may not be sufficient [see 1971 P.62 *Re Moris*]. In the report published as (1867) 1 P.D. 359, *Goodacre v. Smith*, it was held that another form of affirmative proof is to establish that the testator gave instructions the Will, in favour of

Test.Cas.8/1995 Page 45 of 82 to to evaluate evidence pertaining for his Will and that the Will was drafted in accordance with those instructions.

15. Courts have the circumstances under which the Will was prepared. If a Will is prepared and executed under circumstances which raise a well grounded suspicion that the executor did not express his mind under the Will, probate would not be granted unless that suspicion is removed.

16. As held in the report published as (1838) 2 Moo P.C. 480, *Barry v. Butlin*, a classic instance of suspicious circumstances is where the Will was prepared by a person who took a substantial benefit under it. Another instance is as opined in the report published as (1890) 63 LT465 *Brown v. Fisher* where a person taking benefit under the Will has an active role to play in the execution of the Will.

17. A word of caution. Circumstances can only raise a suspicion if they are circumstances attending, or at least relevant to the preparation and execution of the Will itself.

18. How the legal heirs acted and how and when a Will was propounded after the death of the executor are also relevant to decide upon, where the Will is genuine or a created or a procured document.

19. Another point that has to be considered is about the improbability in the manner in which the instrument is scripted. As observed in the report published as AIR 1959 SC443 *H. Venkatachala Iyengar v. B.N. Thimmajamma*, instance of suspicious circumstances would be alleged signatures of the testator being shaky and doubtful, condition of the testator's mind being feeble and debilitated, bequest being unnatural, improbable or unfair. Apart from these infirmities, propounder taking a prominent part in the execution of the Will, more so when substantial benefits flow to them are all presumptive of the Will not being duly executed and or of suspicious circumstances.

20. Suspicious circumstances are a presumption to hold against the Will. Greater is the suspicion more heavy would be the onus to be discharged by he who propounds the Will.

21. Reference to satisfaction of judicial conscience is a heritage inherited by Court's since time immemorial for the reason, as noted above, a Will is a solemn declaration as per which the living Test.Cas.8/1995 Page 46 of 82 have to carry out the wishes of a dead person. (Emphasis supplied) 37. In *Harish Chander Kawatra v. State*, ILR (2009) IV Delhi 423, this Court rejected the petition for grant of probate on the ground that the witness did not depose that the will was read over and explained to the testator. This Court further held that if the naked eye

comparison of the signatures of the deceased on the will with other admitted signatures of the deceased show various dissimilarities, the onus to obtain the expert opinion on the signatures on the will is on the propounder. Relevant portion of the said judgment is reproduced hereunder: 40. The said witness did not depose in his affidavit that the will was read over and explained to the deceased. In his cross- examination also he did not depose that the will was read over and explained to the testator. The alleged will is not a handwritten will of the testator and so it cannot be inferred that he must have had the knowledge of the contents of the will. The witness rather deposed that that the contents of the will were dictated in his presence and were written by the deed writer. The witness did not explain as to who dictated the will. The witness also categorically deposed that it was handwritten by the deed writer. The document Ex Pw

however, is a typed document in Hindi. These are major infirmities in the deposition of the witness. xxx xxx xxx 43. In his testimony on affidavit, the said witness did not depose that the will was read over and explained to testator. This has not been deposed by him that the testator had dictated the will to the typist. If the will was got typed by the scribe, then the will should have been read over and explained to the testator or it should have been read by the testator. There is no evidence to this effect that the will was read over and explained to the testator or the testator had read the will. The deposition of the alleged attesting witness that the will is handwritten whereas the will is typed in Hindi is a major infirmity in his deposition. In his affidavit dated 29th June, 2004, the witness rather deposed that he signed the will Test.Cas.8/1995 Page 47 of 82 as a witness in the presence of Shri H.C. Kukreja. If the will was not read over and explained to the testator and it was also not read by him, then it cannot be held that the will was properly executed by the testator. From the testimony of this alleged attesting witness it has not been established in the facts and circumstances that the will was duly executed by the testator. xxx xxx xxx 45. The onus of proving the will was on the petitioner who has propounded it. It was for the petitioner to establish that the will was signed by late Shri Sikandar Lal Kwatra with a sound disposing mind. The burden to prove certain facts are on a party which will fail in case no evidence is led by either of the parties. Therefore it was for the petitioner to prove that the signature on the will was of his father/testator. The respondent No.2 has produced

various documents allegedly bearing the signatures of late Shri Sikandar Lal Kwatra. The petitioner cannot deny the partnership deed dated 2nd April, 1975 which is Exhibit D1 which was executed between the petitioner's father, petitioner and respondent No.2. The respondent No.2 has denied that the will was signed by the testator. The naked-eye comparison of the signatures of the deceased on the will with other admitted signatures of the deceased show various dissimilarities. In order to prove that the will was signed by late Shri Sikandar Lal Kwatra, in the facts and circumstances, the petitioner should have obtained an expert's opinion comparing the admitted signature of the deceased on the partnership deed dated 2nd April, 1975 which was also signed by the petitioner and the alleged will. In the circumstances, it has not been established by the petitioner that the will, Exhibit PW

is signed by the testator as the petitioner has failed to discharge his burden. xxx xxx 53. In the circumstances, the petitioner has failed to establish that Late Shri Sikander Lal Kwatra executed the alleged will dated 10th May, 1983. The issue No.1 is therefore, decided against the petitioner and it is held that the said will is not a legally and validly executed will and it is a forged document and issue No.2 is decided in favor of respondent No.2. (Emphasis Supplied) Test.Cas.8/1995 Page 48 of 82 Truth should be the Guiding Star in the Entire Judicial Process 38. Truth is the foundation of justice. Dispensation of justice, based on truth, is an essential feature in the justice delivery system. People would have faith in Courts when truth alone triumphs. The justice based on truth would establish peace in the society.

39. Krishna Iyer J.

in *Jasraj Inder Singh v. Hemraj Multanchand*, (1977) 2 SCC155 described truth and justice as under: 8. Truth, like song, is whole, and half-truth can be noise! Justice is truth, is beauty and the strategy of healing injustice is discovery of the whole truth and harmonising human relations. Law's finest hour is not in meditating on abstractions but in being the delivery agent of full fairness. This divagation is justified by the need to remind ourselves that the grammar of justice according to law is not little litigative solution of isolated problems but resolving the conflict in its wider bearings. 40. In *Union Carbide Corporation v. Union of India*, (1989) 3

SCC38 the Supreme Court described justice and truth to mean the same. The observations of the Supreme Court are as under: (Emphasis supplied) 30. when one speaks of justice and truth, these words mean the same thing to all men whose judgment is uncommitted. Of Truth and Justice, Anatole France said : Truth passes within herself a penetrating force unknown alike to error and falsehood. I say truth and you must understand my meaning. For the beautiful words Truth and Justice need not be defined in order to be understood in their true sense. They bear within them a shining beauty and a heavenly light. I firmly believe in the triumph of truth and justice. That is what upholds me in times of trial.... (Emphasis supplied) Test.Cas.8/1995 Page 49 of 82 41. In Mohanlal Shamji Soni v. Union of India, 1991 Supp (1) SCC271 the Supreme Court observed that the presiding officer of a Court should not simply sit as a mere umpire at a contest between two parties and declare at the end of the combat who has won and who has lost and that there is a legal duty of his own, independent of the parties, to take an active role in the proceedings in finding the truth and administering justice.

42. In Chandra Shashi v. Anil Kumar Verma, (1995) 1 SCC421 the Supreme Court observed that to enable the Courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, pre-variation and motivated falsehoods have to be appropriately dealt with, without which it would not be possible for any Court to administer justice in the true sense and to the satisfaction of those who approach it in the hope that truth would ultimately prevail. People would have faith in Courts when they would find that truth alone triumphs in Courts.

43. In A.S. Narayana Deekshitulu v. State of A.P., (1996) 9 SCC548 the Supreme Court observed that from the ancient times, the constitutional system depends on the foundation of truth. The Supreme Court referred to Upanishads, Valmiki Ramayana and Rig Veda.

44. In Mohan Singh v. State of M.P., (1999) 2 SCC428 the Supreme Court held that effort should be made to find the truth; this is the very object for which Courts are created. To search it out, the Court has to remove chaff from the grain. It has to disperse the suspicious, cloud and dust out the smear of dust as all these things

clog the very truth. So long chaff, cloud and dust remains, the criminals are clothed with this protective layer to receive the benefit of doubt. So it is a solemn duty of the Courts, not to merely conclude Test.Cas.8/1995 Page 50 of 82 and leave the case the moment suspicions are created. It is onerous duty of the Court, within permissible limit to find out the truth. It means, on one hand no innocent man should be punished but on the other hand to see no person committing an offence should get scot free. There is no mathematical formula through which the truthfulness of a prosecution or a defence case could be concretised. It would depend on the evidence of each case including the manner of deposition and his demeanors, clarity, corroboration of witnesses and overall, the conscience of a judge evoked by the evidence on record. So Courts have to proceed further and make genuine efforts within judicial sphere to search out the truth and not stop at the threshold of creation of doubt to confer benefit of doubt. What is Truth and how to discover it 45. The Indian Evidence Act does not define truth. It defines what facts are relevant and admissible; and how to prove them.

46. Truth in law is synonymous with facts established in accordance with the procedure prescribed by law. The purpose of judicial inquiry is to establish the existence of facts in accordance with law.

47. Sections 3, 114 and 165 of the Indian Evidence Act lay down the important principles to aid the Court in its quest for duly proved relevant facts.

48. Section 3 of the Indian Evidence Act defines the expressions proved, disproved, and not proved. A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. Evidence of a fact and proof of a fact are not synonymous terms. Test.Cas.8/1995 Page 51 of 82 Proof, in the strict sense, means the effect of evidence.

49. If on consideration of all the matters before it, the Court believes a fact to exist or considers its existence probable, the fact is said to be proved. On the other hand, if the Court does not believe a fact either to exist or probable, such fact is said to be disproved. A fact is said to be not proved if it is neither proved nor

disproved.

50. The test whether a fact is proved is such degree of probability as would satisfy the mind of a reasonable man as to its existence. The standard of certainty required is of a prudent man. The Judge like a prudent man has to use its own judgment and experience and is not bound by any rule except his own judicial discretion, human experience, and judicial sense.

51. Nothing can be said to be proved, however much material there may be available, until the Court believes the fact to exist or considers its existence so probable that a prudent man will act under the supposition that it exists. For example, ten witnesses may say that they saw the sun rising from the West and all the witnesses may withstand the cross-examination, the Court would not believe it to be true being against the law of nature and, therefore, the fact is disproved. In mathematical terms, the entire evidence is multiplied with zero and, therefore, it is not required to be put on judicial scales. Where the Court believes the case of both the parties, their respective case is to be put on judicial scales to apply the test of preponderance. Reference be made to *Garib Singh v. State of Punjab*, 1972 (3) SCC418 *M. Narsinga Rao v. State of Andhra Pradesh*, (2001) 1 SCC691 *R. Puthunainar Alhithan v. P.H. Pandian*, (1996) 3 SCC624 *Vijayee Singh v. State of U.P.*, (1990) 3 SCC190, *State of U.P. v. M.K. Anthony*, (1985) 1 SCC505, *Bundhoo Lall v. Joy Coomar*, MANU/WB/ 0198/1882, *Bipin Test.Cas.8/1995* Page 52 of 82 *Kumar Mondal v. State of West Bengal*, (2010) 12 SCC91 *Johnson Scaria v. State of Kerala*, MANU/KE /0367/2006 and *Ved Prakash Kharbanda v. Vimal Bindal*, 198 (2013) DLT555 with respect to the scope of Section 3 of Indian Evidence Act.

52. Section 114 of the Indian Evidence Act is a useful device to aid the Court in its quest for truth by using common sense as a judicial tool. Section 114 recognizes the general power of the Court to raise inferences as to the existence or non-existence of unknown facts on proof or admission of other facts.

53. Whether or not a presumption can be drawn under the section in a particular case depends ultimately upon the facts and circumstances of each case. No hard and fast rule can be laid down. Human behaviour is so complex and room must be left for play in the joints. It is not possible to formulate a series of exact

propositions and con-flue human behaviour within straitjackets.

54. No rule of evidence can guide the Judge on the fundamental question whether evidence as to a relevant fact should be believed or not. Secondly, assuming that the Judge believes very few cases, guide him on the question what inference he should draw from it as to assist a Judge in the very smallest degree in determining the master question of the whole subject - whether and how far he ought to believe what the witnesses say?. The rules of evidence do not guide what inference the Judge ought to draw from the facts in which, after considering the statements made to him, he believes. In every judicial proceeding whatever these two questions - Is this true, and, if it is true what then?. - ought to be constantly present in the mind of the Judge, and the rules of evidence do not throw the smallest portion of light Test.Cas.8/1995 Page 53 of 82 upon them. Reference be made to Izhar Ahmad Khan v. Union of India, AIR 1962 SC1052 Kali Ram v. State of Himachal Pradesh, (1973) 2 SCC808 Tukaram Ganpat Pandare v. State of Maharashtra, (1974) 4 SCC544 Syad Akbar v. State of Karnataka, (1980) 1 SCC30 Sodhi Transport Co. v. State of U.P., (1986) 2 SCC486 State of W.B. v. Mir Mohammad Omar, (2000) 8 SCC382 M. Narsinga Rao v. State of Andhra Pradesh, (2001) 1 SCC691 Limbaji v. State of Maharashtra, (2001) 10 SCC340and Ved Prakash Kharbanda v. Vimal Bindal, 198 (2013) DLT555with respect to the scope of Section 114 of Indian Evidence Act.

55. Section 165 of the Indian Evidence Act invests the Judge with plenary powers to put any question to any witness or party; in any form, at any time, about any fact relevant or irrelevant. Section 165 is intended to arm the Judge with the most extensive power possible for the purpose of getting at the truth. The effect of this section is that in order to get to the bottom of the matter before it, the Court will be able to look at and inquire into every fact and thus possibly acquire valuable indicative evidence which may lead to other evidence strictly relevant and admissible. The Court is not, however, permitted to found its judgment on any but relevant statements.

56. The object of a trial is, first to ascertain truth by the light of reason, and then, do justice upon the basis of the truth and the Judge is not only justified but

required to elicit a fact, wherever the interest of truth and justice would suffer, if he did not.

57. The Judge contemplated by Section 165 is not a mere umpire at a wit- combat between the lawyers for the parties whose only duty is to enforce the rules of the game and declare at the end of the combat who has won and who has lost. He is expected, and indeed it is his duty, to explore all avenues Test.Cas.8/1995 Page 54 of 82 open to him in order to discover the truth and to that end, question witnesses on points which the lawyers for the parties have either overlooked or left obscure or willfully avoided. A Judge, who at the trial merely sits and records evidence without caring so to conduct the examination of the witnesses that every point is brought out, is not fulfilling his duty.

58. The Supreme Court in Ram Chander v. State of Haryana, (1981) 3 SCC191 observed that under Section 165, the Court has ample power and discretion to control the trial effectively. While conducting trial, the Court is not required to sit as a silent spectator or umpire but to take active part within the boundaries of law by putting questions to witnesses in order to elicit the truth and to protect the weak and the innocent. It is the duty of a Judge to discover the truth and for that purpose he may "ask any question, in any form, at any time, of any witness, or of the parties, about any fact, relevant or irrelevant.

59. In Ritesh Tewari v. State of Uttar Pradesh, (2010) 10 SCC677 the Supreme Court held that every trial is a voyage of discovery in which truth is the quest. The power under Section 165 is to be exercised with the object of subserving the cause of justice and public interest, and for getting the evidence in aid of a just decision and to uphold the truth. It is an extraordinary power conferred upon the Court to elicit the truth and to act in the interest of justice. The purpose being to secure justice by full discovery of truth and an accurate knowledge of facts, the Court can put questions to the parties, except those which fall within exceptions contained in the said provision itself.

60. In State of Rajasthan v. Ani, (1997) 6 SCC162, the Supreme Court held that Section 165 of the Indian Evidence Act confers vast and Test.Cas.8/1995 Page 55 of 82 unrestricted powers on the Court to elicit truth. Reticence may be good in

many circumstances, but a Judge remaining mute during trial is not an ideal situation. A taciturn Judge may be the model caricatured in public mind. But there is nothing wrong in his becoming active or dynamic during trial so that criminal justice being the end could be achieved. A Judge is expected to actively participate in the trial to elicit necessary materials from witnesses in the appropriate context which he feels necessary for reaching the correct conclusion.

61. In Sessions Judge Nellore Referring Officer v. Intha Ramana Reddy, 1972 CriLJ1485 the Andhra Pradesh High Court held that every trial is a voyage of discovery in which truth is the quest. It is the duty of a presiding Judge to explore every avenue open to him in order to discover the truth and to advance the cause of justice. For that purpose he is expressly invested by Section 165 of the Evidence Act with the right to put questions to witnesses. Indeed the right given to a Judge is so wide that he may ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact, relevant or irrelevant.

Discussions and Findings

62. Shanti Devi expired at New Delhi on 04th January, 1995. Late Shanti Devi was permanent resident of flat No.3, 4th floor, Jeevan Deep Building, Parliament Street, New Delhi-110001 at the time of her death. Asa Ram, husband of late Shanti Devi had predeceased her. There is no class-I legal heir of late Shanti Devi.

63. The petitioner is the executor of the will dated 02nd August, 1988 (Ex.P/2) executed by late Shanti Devi which was duly registered with the Sub-Registrar as document No.5217 in Book No.3, Volume No.473 at pages Test.Cas.8/1995 Page 56 of 82 146 to 160 on 08th November, 1988. The will dated 02nd August, 1988 has two Schedules. The First Schedule to the will is statement of the wealth and total assets of the testator whereas the Second Schedule is the Trust created by the testator for charitable purposes.

64. The petitioner appeared in the witness box as PW-1 and proved the death certificate as Ex.P/1. Anil Sharma, appeared in the witness box as PW- 2 and deposed that late Shanti Devi executed the will, Ex.P/2 in his presence and in the presence of A. Jhunjhunwala, Chartered Accountant. PW-2 further deposed that the contents of the will were read over to the testator and she signed the will and

the Schedules after understanding the contents in his presence and in the presence of the other witness. PW-2 identified the signatures of the testator, his signatures as well as signatures of other witness at points A, B and C on the will, Ex.P/2. He further deposed that the will was registered and the testator as well as both the witnesses were present at the time of registration. He deposed, in his cross-examination, that he was filing Income Tax and Wealth Tax returns of the testator and the testator asked him to witness the will dated 02nd August, 1988.

65. The objector, Surinder Aggarwal admitted the will dated 02nd August, 1988 but pleaded that the testator executed a subsequent will dated 21st October, 1994. However, Surinder Aggarwal failed to produce the original will dated 21st October, 1994 and stopped appearing after 22nd January, 2003.

66. The objector, Sneh Lata challenged the will dated 02nd August, 1988 on the sole ground that the petitioner was a junior Advocate with late Asa Ram Aggarwal (husband of late Shanti Devi) and he used to file Income Tax and Wealth Tax returns of Shanti Devi and he fraudulently obtained the Test.Cas.8/1995 Page 57 of 82 signatures of C.S. Aggarwal in the garb of filing Income Tax and Wealth Tax returns. However, Sneh Lata has relied upon the will dated 21st October, 1994 set up by Surinder Aggarwal. It is on record that PW-2, Anil Sharma was filing Income Tax and Wealth Tax returns of the testator and he deposed that the will was read over to the testator and she signed the will after understanding its contents. The will, Ex.P/2 and the Schedules are signed by the testator at points Mark A. The testator and the witnesses appeared before the Sub-Registrar on 08th November, 1988 for registration the will. The objections of Sneh Lata to the will dated 02nd August, 1988 are baseless, without any merit and are rejected.

67. There are no suspicious or other circumstances with respect to the validity of the will dated 02nd August, 1988. Late Shanti Devi had no Class-I legal heir. Late Shanti Devi created a Trust named as Asa Ram Shanti Devi Memorial Charitable Trust by executing a trust deed dated 30th June, 1988 in which she appointed C.S. Aggarwal, Advocate as one of the trustees. Late Shanti Devi bequeathed Rs.20,000/- to her domestic servant, Bidhi Chand and the balance estate to the Charitable Trust. The will was drafted by Mr.Anil Kher, Senior Advocate which is

mentioned in the will. The will was witnessed by Mr. Anil Sharma who was well known to the testator as he was filing the Income Tax and Wealth Tax returns of the testator and other witness is a Chartered Accountant. The will was duly registered before the Sub-Registrar on 08th November, 1988. Neither the executor nor the witnesses to this will are the beneficiaries of the will.

68. Applying the principles and the judgments discussed in paras 25 to 61 above to the facts of the present case and on careful consideration of all the matters before this Court including statements of the witnesses, documents, Test.Cas.8/1995 Page 58 of 82 circumstances and presumptions, this Court is satisfied that the will dated 02nd August, 1988 (Ex.P/2) executed by late Shanti Devi in the presence of Anil Sharma (PW-2) and A. Jhunjhunwala who attested the will in her presence and in the presence of each other has been duly proved.

69. The objector, Snehlata has propounded the will dated 07th December, 1994 which is a hand written will alleged to have been executed by testator, Shanti Devi at her residence on 07th December, 1994. The objector claims to be at the residence of late Shanti Devi on 07th December, 1994; Hansraj, brother of the husband of Snehlata, came there from Patiala; the objector's son, Gagan Singla came there from Rohtak; and Late Shanti Devi asked Gagan Singla to prepare the will whereupon he prepared a will which was signed by her in his presence and in the presence of Hansraj and they both signed the will. Snehlata was present there at that time.

70. The will dated 07th December, 1994 set up by the objector, Snehlata suffers from following serious suspicious circumstances:-

"70.1 Snehlata admitted in her cross-examination that Late Shanti Devi was suffering from cancer at the time of execution of will dated 07th December, 1994 but no evidence has been placed on record by the objector to show her physical and mental condition at that time. 70.2 Late Shanti Devi died on 04th January, 1995 i.e. within 28 days of the will dated 07th December, 1994. 70.3 The will dated 02nd December, 1994 is an unregistered document not scribed by any regular deed writer. 70.4 Snehlata took prominent part in the execution of will which confers the entire estate of the testator on her. 70.5 The will is in the hand writing

of the objectors son, Gagan Test.Cas.8/1995 Page 59 of 82 Singla. 70.6 There is no evidence to the effect that the will was read over and explained to the testator or the testator read the will. 70.7 The depositions made in the will dated 07th December, 1994 appear to be unnatural, improbable or unfair in the light of relevant circumstances. The will dated 02nd August, 1988 (Ex.P/2) records that the testator had a desire that her estate be applied for charitable purposes for which purpose she had set up a trust named Asa Ram Shanti Devi Memorial Charitable Trust. The testator attached the statement of total wealth/assets to the will as First Schedule which contains the list of the entire estate and the trust deed as Second Schedule to the will. The will Ex.P/2 was drafted by her counsel. No reference has been made either to the will dated 02nd August, 1988 or the Charitable Trust created by the testator and no reasons have been mentioned in the will for changing the earlier will. 70.8 The signatures on the will dated 21st December, 1994 and 07th December, 1994 do not match with the signatures of the testator on the will dated 02nd August, 1988. The signatures of late Shanti Devi on the will dated 02nd August, 1988 (Ex.P/2) are trembling whereas the signatures on the will dated 21st October, 1994 as well as the will dated 07th December, 1994 are not trembling. Late Shanti Devi was aged about 76 years at the time of execution of will dated 02nd August, 1988 whereas she was aged more than 80 years at the time of execution of second and third wills. In Harish Chander Kawatra v. State (Supra), this Court held that if the naked eye comparison of the signatures of the will show various dissimilarities, onus is on the propounder of the will to Test.Cas.8/1995 Page 60 of 82 obtain expert opinion and prove the signatures of the testator. 70.9 Late Shanti Devi did not call or invite the propounder as well as the two alleged witnesses to visit her on 07th December, 1994. The propounder and the two witnesses have not explained why they came to the testators residence on 07th December, 1994. The entire story of visit of the propounder of the will to the testator is highly doubtful. 70.10 No independent person, neighbor or a person known to the testator, was present at the time of execution of the will although the testator was staying in a prime location near Reserve Bank. Late Shanti Devi had a domestic servant, Bidhi Chand. Even he was not present at the time of the will. 70.11 It is unbelievable that the testator who had earlier executed the registered will dated 02nd August, 1988 and had created

a charitable trust, did not summon any neighbor or acquaintance to witness the will and signed the will propounded by the beneficiary. If the testator was desirous of executing of a will, she would presumably summon close friends/acquaintance to witness the execution of the will. 70.12 Surinder Aggarwal admitted the will dated 02nd August, 1988 (Ex.P/2) but claimed that it was superseded by subsequent will dated 21st October, 1994 in which the testator appointed six trustees of the charitable trust. However, Surinder Aggarwal did not produce the original will and stopped appearing in 2003. On 25th April, 2003, Sneh Lata filed I.A.4743/2003 in which he set up the will dated 07th December, 1994. Sneh Lata relied upon the will dated 21st October, 1994 set up by Surinder Aggarwal. If the testator had decided to give his entire estate for a charitable purpose in the will dated 02nd August, 1988 as well Test.Cas.8/1995 Page 61 of 82 as 21st October, 1994, then why did she suddenly change her mind to bequeath the entire estate to Sneh Lata. 70.13 Sneh Lata claimed in I.A. 4743/2003 that she used to look after Shanti Devi and most of the time Shanti Devi used to live with her and used to treat her as her daughter and even in the last days of her life, Shanti Devi lived under the love and care of the applicant. Jitender Aggarwal claimed in I.A. 10434/1998 that the testator was very close to her and had great affection towards him. All these claims appear to be false. Sneh Lata appeared in the witness box as OW-2 and admitted in cross-examination that she was not even aware of the names and addresses of any close friends of Asa Ram and Shanti Devi. She was also not aware of the names of their neighbors. She was not even aware that which Doctor treated Shanti Devi for cancer and when was cancer detected. She was not even aware of the year of death of Asa Ram. She was not even aware of the professional status of Asa Ram and stated that Asa Ram was Judge of the Supreme Court and he resigned to start the practice of law. If Sneh Lata was close to Asa Ram and Shanti Devi, she would have naturally known all these facts by heart. The objector, Sneh Lata claimed that the testator lived under her care in the last days of her life whereas in her statement under Section 165 of the Indian Evidence Act, she admitted that she met the testator only twice in the year 1994.

71. The aforesaid suspicions are very grave and they cause a serious doubt on the genuineness of the will dated 07th December, 1994. The suspicions establish a high degree of probability that both the wills dated 21st October, 1994 and 07th

December, 1994 are fabricated documents. The onus to remove the above suspicions was on the objector. However, the objector Test.Cas.8/1995 Page 62 of 82 miserably failed to remove the suspicions.

72. The conscience of this Court is not satisfied that the wills dated 21st October, 1994 and dated 07th December, 1994 are genuine wills of the testator. Both the wills appear to be wills of the objectors. It appears that the objectors are dishonest litigants who have fabricated the wills to grab the property of the testator.

73. There is no merit in the objection that the proceedings be transferred to the District Court on the ground that this Court does not have pecuniary jurisdiction to hear cases with valuation of less than Rs.2 crores. Under Section 300 of the Succession Act, the High Court and District Court have concurrent jurisdiction in probate matters. However, despite clear position of law, counsel for the objector raised this objection in desperate attempt to derail the hearing before this Court which is clear from the fact that the objection was raised at the fag end of the case after substantial hearing had taken place and after knowing the mind of the Court. The plea raised by the learned counsel appears to be judicial adventurism in an attempt to overreach this Court. The most basic obligation of the litigant and his lawyer is to plead the case truthfully and not to deceive or mislead the Court. This responsibility extends to every function including the presentation and interpretation of facts, drafting of pleadings and documents, legal arguments and other submissions or communications with the Court. The duty not to intentionally mislead or deceive is only the bare minimum required of an advocate. As an officer of the Court, he is expected to advance the public interest in the fair administration of justice even if it would jeopardize his client's interests. He is required to inform the Court of all relevant decisions and legislative provisions of which he is aware whether the effect is Test.Cas.8/1995 Page 63 of 82 favorable or unfavorable towards his client or the contention for which he argues. In the same context, he is prohibited from advancing submissions, opinions or propositions which he knows are contrary to the well settled law. He is bound not to make any statements which are inaccurate, untrue and misleading.

74. There is no merit in the objection that the petition be rejected as it has not been verified by the attesting witness as required under Section 281 of the Succession Act. Section 281 of the Succession Act is directory and the petition cannot be rejected on this ground. Reference is made to Nand Kishore Rai v. Mst. Bhagi Kuer, AIR1958 All 329 and Krishan Dass Gupta v. State, 2012 SCC OnLine Del 977.

75. There is no merit in the objection to the examination of the Sneh Lata and Dr. Gagan Singla on oath under Section 165 of Indian Evidence Act. Reference be made to Ram Chander (supra), Ritesh Tewari (supra), Ani (supra) and Intha Ramana Reddy (supra) mentioned in paras 56 to 58 above with regard to the scope of the Section 165 of Indian Evidence Act.

76. Applying the principles and judgments discussed, in paras 25 to 61 above to the facts of the present case and on careful consideration of all the matters before this Court including statements of the witnesses, documents, circumstances and presumptions, this Court is of the view that both the wills dated 21st October, 1994 and 07th December, 1994 are forged documents and the objectors have raised false claims before this Court. Both the wills dated 21st October, 1994 as well as 07th December, 1994 are therefore disproved.

77. False claims and defences are really serious problems with real estate litigation, predominantly because of ever escalating prices of the real estate. Litigation pertaining to valuable real estate properties is dragged on by Test.Cas.8/1995 Page 64 of 82 unscrupulous litigants in the hope that the other party will tire out and ultimately would settle with them by paying a huge amount.

78. It is a matter of common experience that Courts otherwise scarce time is consumed or more appropriately, wasted in a large number of uncalled for cases. It is the duty of the Courts to see that such wrongdoers are discouraged at every step and even if they succeed in prolonging the litigation, ultimately they must suffer the costs of all these years long litigation. Imposition of actual, realistic or proper costs and/or ordering prosecution in appropriate cases would go a long way in controlling the tendency of filing false cases.

79. The greatest challenge before the judiciary today is the frivolous litigation. The judicial system in the country is choked with false claims and such litigants are consuming Courts time for a wrong cause. False claims are a huge strain on the judicial system.

80. The Supreme Court and this Court have time and again held that heavy costs should be imposed in frivolous cases and in appropriate cases, prosecution be ordered to maintain purity and sanctity of judicial proceedings.

81. In *Subrata Roy Sahara v. Union of India*, (2014) 8 SCC470 the Supreme Court observed that the Indian judicial system is grossly afflicted with frivolous litigation and ways and means need to be evolved to deter litigants from their compulsive obsession towards senseless and ill- considered claims. Relevant portion of the said judgment is as under: 191. The Indian judicial system is grossly afflicted, with frivolous litigation. Ways and means need to be evolved, to deter litigants from their compulsive obsession, towards senseless and ill-considered claims. Test.Cas.8/1995 Page 65 of 82 (Emphasis supplied) 82. In *Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria*, 2012 (3) SCALE550 the Supreme Court held that false claims and defences are serious problems with real estate litigation, predominantly because of ever escalating prices of the real estate. The Supreme Court further held that heavy costs and prosecution should be ordered in cases of false claims and defences. The relevant portion of the judgement is reproduced hereunder:-

"False claims and false defences 84. False claims and defences are really serious problems with real estate litigation, predominantly because of ever escalating prices of the real estate. Litigation pertaining to valuable real estate properties is dragged on by unscrupulous litigants in the hope that the other party will tire out and ultimately would settle with them by paying a huge amount. This happens because of the enormous delay in adjudication of cases in our Courts. If pragmatic approach is adopted, then this problem can be minimized to a large extent.

85. This Court in a recent judgment in *Ramrameshwari Devi and Ors.* (supra) aptly observed at page 266 that unless wrongdoers are denied profit from frivolous litigation, it would be difficult to prevent it. In order to curb uncalled for and

frivolous litigation, the Courts have to ensure that there is no incentive or motive for uncalled for litigation. It is a matter of common experience that Court's otherwise scarce time is consumed or more appropriately, wasted in a large number of uncalled for cases. In this very judgment, the Court provided that this problem can be solved or at least be minimized if exemplary cost is imposed for instituting frivolous litigation. The Court observed at pages 267-268 that imposition of actual, realistic or proper costs and/or ordering prosecution in appropriate cases would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the Test.Cas.8/1995 Page 66 of 82 parties. In appropriate cases, the Courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings. (Emphasis supplied) 83. In Dalip Singh v. State of U.P., (2010) 2 SCC114 the Supreme Court observed that a new creed of litigants have cropped up in the last 40 years who do not have any respect for truth and shamelessly resort to falsehood and unethical means for achieving their goals. The observations of the Supreme Court are as under:-

"1. For many centuries, Indian society cherished two basic values of life i.e., 'Satya' (truth) and 'Ahimsa' (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has over shadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings. In last 40 years, a new creed of litigants has cropped 2. up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief,

interim or final. (Emphasis supplied) 84. In *Satyender Singh v. Gulab Singh*, 2012 (129) DRJ128 the Division Bench of this Court following *Dalip Singh v. State of U.P.* (supra) Test.Cas.8/1995 Page 67 of 82 observed that the Courts are flooded with litigation with false and incoherent pleas and tainted evidence led by the parties due to which the judicial system in the country is choked and such litigants are consuming Courts time for a wrong cause. The observations of this Court are as under:-

"2. As rightly observed by the Supreme Court, Satya is a basic value of life which was required to be followed by everybody and is recognized since many centuries. In spite of caution, courts are continued to be flooded with litigation with false and incoherent pleas and tainted evidence led by the parties. The judicial system in the country is choked and such litigants are consuming courts time for a wrong cause. Efforts are made by the parties to steal a march over their rivals by resorting to false and incoherent statements made before the Court. Indeed, it is a nightmare faced by a Trier of Facts; required to stitch a garment, when confronted with a fabric where the weft, shuttling back and forth across the warp in weaving, is nothing but lies. As the threads of the weft fall, the yarn of the warp also collapses; and there is no fabric left. (Emphasis supplied) 85. In *Padmawati v. Harijan Sewak Sangh*, 154 (2008) DLT411 this Court noted as under: 6. The case at hand shows that frivolous defences and frivolous litigation is a calculated venture involving no risks situation. You have only to engage professionals to prolong the litigation so as to deprive the rights of a person and enjoy the fruits of illegalities. I consider that in such cases where Court finds that using the Courts as a tool, a litigant has perpetuated illegalities or has perpetuated an illegal possession, the Court must impose costs on such litigants which should be equal to the benefits derived by the litigant and harm and deprivation suffered by the rightful person so as to check the frivolous litigation and prevent the people from reaping a rich harvest of illegal acts through the Courts. One of the aim of every judicial system has to be to Test.Cas.8/1995 Page 68 of 82 discourage unjust enrichment using Courts as a tool. The costs imposed by the Courts must in all cases should be the real costs equal to deprivation suffered by the rightful person. xxx xxx xxx 9. Before parting with this case, I consider it necessary to pen down that one of the reasons for over-flowing of court dockets is the frivolous litigation in which the Courts are

engaged by the litigants and which is dragged as long as possible. Even if these litigants ultimately lose the case, they become the real victors and have the last laugh. This class of people who perpetuate illegal acts by obtaining stays and injunctions from the Courts must be made to pay the sufferer not only the entire illegal gains made by them as costs to the person deprived of his right and also must be burdened with exemplary costs. Faith of people in judiciary can only be sustained if the persons on the right side of the law do not feel that even if they keep fighting for justice in the Court and ultimately win, they would turn out to be a fool since winning a case after 20 or 30 years would make wrong doer as real gainer, who had reaped the benefits for all those years. Thus, it becomes the duty of the Courts to see that such wrong doers are discouraged at every step and even if they succeed in prolonging the litigation due to their money power, ultimately they must suffer the costs of all these years long litigation. Despite settled legal positions, the obvious wrong doers, use one after another tier of judicial review mechanism as a gamble, knowing fully well that dice is always loaded in their favour, since even if they lose, the time gained is the real gain. This situation must be redeemed by the Courts. (Emphasis supplied) 86. Raising a false claim before the Court is an offence under Section 209 of Indian Penal Code which is reproduced here under:-

"Section 209 - Dishonestly making false claim in Court - Whoever fraudulently or dishonestly, or with intent to injure or annoy any person, makes in a Court of Justice Test.Cas.8/1995 Page 69 of 82 any claim which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine. 87. In H.S. Bedi v. National Highway Authority of India, 2016 (155) DRJ259 this Court examined the scope of Section 209 of the Indian Penal Code and held as under: 15.1 Section 209 of the Indian Penal Code makes dishonestly making a false claim in a Court as an offence punishable with imprisonment upto two years and fine. 15.2 The essential ingredients of an offence under Section 209 are: (i) The accused made a claim; (ii) The claim was made in a Court of Justice; (iii) The claim was false, either wholly or in part; (iv) That the accused knew that the claim was false; and (v) The claim was made fraudulently, dishonestly, or with intent to injure or to annoy any person. 15.3 A litigant makes a claim before a Court of Justice for the purpose of Section 209

when he seeks certain relief or remedies from the Court and a claim for relief necessarily impasses the ground for obtaining that relief. The offence is complete the moment a false claim is filed in Court. 15.4 The word claim in Section 209 of the IPC cannot be read as being confined to the prayer clause. It means the claim to the existence or non-existence of a fact or a set of facts on which a party to a case seeks an outcome from the Court based on the substantive law and its application to facts as established. To clarify, the word claim would mean both not only a claim in the affirmative to the existence of fact(s) as, to illustrate, may be made in a plaint, writ petition, or an application; but equally also by denying an averred fact while responding (to the plaint/petition, etc.) in a written statement, counter affidavit, a reply, etc. Doing so is making a claim to the non-existence of the averred fact. A false denial, except when the person responding is not aware, would constitute making a claim in Court under Section 209 IPC. 15.5 The word claim for the purposes of Section 209 of the Penal Code would also include the defence adopted by a defendant in the suit. The reason for criminalising false claims Test.Cas.8/1995 Page 70 of 82 and defences is that the plaintiff as well as the defendant can abuse the process of law by deliberate falsehoods, thereby perverting the course of justice and undermining the authority of the law. 15.6 Whether the litigants claim is false, is not considered merely from whatever he pleads (or omits to plead): that would be to elevate form over substance. To make out the offence, the Court does not merely inspect how a litigants pleadings have been drafted or the case has been presented. The real issue to be considered is whether, all said and done, the litigants action has a proper foundation which entitles him to seek judicial relief. 15.7 Section 209 was enacted to preserve the sanctity of the Court of Justice and to safeguard the due administration of law by deterring the deliberate making of false claims. Section 209 was intended to deter the abuse of Court process by all litigants who make false claims fraudulently, dishonestly, or with intent to injure or annoy. 15.8 False claims delay justice and compromise the sanctity of a Court of justice as an incorruptible administrator of truth and a bastion of rectitude. 15.9 Filing of false claims in Courts aims at striking a blow at the rule of law and no Court can ignore such conduct which has the tendency to shake public confidence in the judicial institutions because the very structure of an ordered life is put at stake. It would be a great public disaster if the

fountain of justice is allowed to be poisoned by anyone resorting to filing of false claims. 15.10 The Courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. More often than not, process of the Court is being abused. Property-grabbers, tax-evaders, bank-loan- dodgers and other unscrupulous persons from all walks of life find the Court-process a convenient lever to retain the illegal gains indefinitely. A person, who's case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation. 15.11 The disastrous result of leniency or indulgence in invoking Section 209 is that it sends out wrong signals. It Test.Cas.8/1995 Page 71 of 82 creates almost a licence for litigants and their lawyers to indulge in such serious malpractices because of the confidence that no action will result. 15.12 Unless lawlessness which is all pervasive in the society is not put an end with an iron hand, the very existence of a civilized society is at peril if the people of this nature are not shown their place. Further if the litigants making false claims are allowed to go scot free, every law breaker would violate the law with immunity. Hence, deterrent action is required to uphold the majesty of law. The Court would be failing in its duties, if false claims are not dealt with in a manner proper and effective for maintenance of majesty of Courts as otherwise the Courts would lose its efficacy to the litigant public. (Emphasis supplied) 88. In Sanjeev Kumar Mittal v. State, (2011) 12 DRJ328 a petition for probate was filed in respect of a forged will. The police registered an FIR against the petitioner under Sections 420, 467, 468, and 471 of the Indian Penal Code. This Court examined the scope of Section 340 Cr.P.C. for prosecution of the petitioner therein for raising false claims and the offences against the public justice system and held that it is expedient in the interest of justice to make an enquiry into the offences committed by the petitioner and others in relation to the proceedings. This Court held that preliminary enquiry in Second Part of Section 340 Cr.P.C. is not mandatory. However, if the Court considers the preliminary enquiry necessary, the Court can direct the police to investigate and file a report. This Court following Pushpa Devi Jatia vs. M.L. Wadhavan, AIR 1987 SC1156 and other judgments on this issue, directed the preliminary inquiry to be conducted by Delhi Police with respect to the forgery of a will. The relevant portion of the said judgment is reproduced hereunder: 6.13. A party, whether he is a petitioner or a respondent, or

a witness, has to respect the solemnity of the proceedings in the Test.Cas.8/1995 Page 72 of 82 court and he cannot play with the courts and pollute the stream of justice. It is cases like this, with false claims (or false defences) which load the courts, cause delays, consume judicial time and bring a bad name to the judicial system. This case is a sample where the facts are glaring. Even if they were not so glaring, once falsehood is apparent, to not take action would be improper. 6.14. The judicial system has a right and a duty to protect itself from such conduct by the litigants and to ensure that where such conduct has taken place, the matter is investigated and reaches its logical conclusion and depending on the finding which is returned in such proceedings, appropriate punishment is meted out. 6.15. It is perhaps the general reluctance, as also noticed by the Hon'ble of Punjab, (2000) 5 SCC668 Supreme Court in Swaran Singh v. State 36. Perjury has also become a way of life in the law courts. A trial Judge knows that the witness is telling a lie and is going back on his previous statement, yet he does not wish to punish him or even file a complaint against him. He is required to sign the complaint himself which deters him from filing the complaint.. that has made the situation reach such levels where pleadings contain false averments and parties make false averments with impunity in the hope that in all probability the opposite party will cough up something, and even if he does not, in the end he will have the last laugh, for a prosecution of perjury, although consciously committed and persisted in, will have a probability of punishment as good as nil. The gain far exceeds the risk. 6.16. In an effort to redeem the situation, not only realistic costs and full compensation in favour of the winning party against the wrongdoer are required, but, depending on the gravity of the wrong, penal action against the wrongdoers is also called for. Unless the judicial system protects itself from such wrongdoing by taking cognizance, directing prosecution, and punishing those found guilty, it will be failing in its duty to render justice to the citizens. Litigation caused by false claims and defences will come to be placed before the courts, load the dockets and Test.Cas.8/1995 Page 73 of 82 delay delivery of justice to those who are genuinely in need of it. Let us then examine the procedures in this regard.

7. Of false evidence and offences against public justice 7.1. Chapter XI of the Indian Penal Code is titled Of false evidence and offences against public justice system. Section 191 defines giving of false evidence as an offence while Section

193 prescribes the punishment. There are also other provisions with regard to false evidence, but at this stage, I need not go into details except that these provisions are there to enable the Court to punish those who make false averments in the pleadings or file forged documents and thus serve to protect the stream of justice from being soiled. xxx xxx xxx 10.2. A common thread that can be culled out from these decisions is that perjury, which includes false averments in pleadings, is an evil to eradicate which every effort must be made. The reluctance of the courts to order prosecution encourage parties to make false averments in pleadings before the Court and produce forged documents. 10.3. While restitution and costs as calculated, and ordered by this court in Padmawati's case (supra) (Rs. 15.10 lakhs) will suffice for such wrongdoing as does not fall within the definition of offences under Chapter XI (particularly Sections 191, 192 and 193), where it (the wrongdoing) does fall, it is the duty of the Court, except when it is not expedient to do so in the interests of justice, to order an inquiry under Section 340 Cr. P.C. 10.4 The gravity of the offence, the substantiality of the offenders, the calculated manner in which the offence appears to have been committed and pernicious influence such conduct will have in the working of the Courts and the very faith of the common man in Courts and the system of the administration of justice, all have been reckoned in arriving at a conclusion that action under Section 340 is fully justified. 10.5 In the present case, a deliberate and calculated fabrication of documents has been prima facie made out. It was not a case of inaction. Considerable time and strain of brain had been involved in drafting and forging the will with such meticulous hints and advice on fabrication and the petition containing false Test.Cas.8/1995 Page 74 of 82 statement on oath and forged documents have been filed in this Court. The petitioner has ventured to stab truth, so recklessly and so seriously, that it should not go unnoticed by a Court of law which works under the constitutional symbol proclaiming to the world that Truth, and truth alone, ultimately flourishes. 10.6 I have carefully considered the material on record and am of the opinion that it is expedient in the interest of justice that an inquiry be made into the offences alleged to have been committed by the petitioner and others in relation to the proceedings before this Court.

11. Preliminary Inquiry under Section 340 Cr. P.C. 11.1. Another question, one of procedure, is about a preliminary inquiry. Section 340(1) Cr. P.C. uses the word

such court may, after such preliminary inquiry, if any, as it thinks necessary. xxx xxx 11.3. The preliminary inquiry in the second part of Section 340 is not mandatory. The use of the words if an is clearly indicative. This is so because situations can be such where there is strong suspicion, but there is not sufficient evidence to return a finding (although still prima facie) that it appears to have been committed. And there can be cases where there is sufficient material on record to return such a finding. In the former case, preliminary inquiry is necessary, in the latter case, it is not. 11.4. Further, the facts may be such that other evidence needs to be reached and made available to the Court. Then, other documents may be there which prove existence or non-existence and there may also be other persons who are involved. It is something which has to be seen from the facts of a particular case. 11.5. If the facts are sufficient to return a finding that an offence appears to have been committed and it is expedient in the interests of justice to proceed to make a complaint under Section 340 Cr. P.C. the Court need not order a preliminary inquiry. But if they are not and there is suspicion, albeit a strong one, the Court may order a preliminary inquiry. For that purpose, it can direct the State agency to investigate and file a report along with such other evidence that they are able to Test.Cas.8/1995 Page 75 of 82 gather. 11.6. Ordering of the preliminary inquiry also includes investigation by a State agency where the nature is such that a private party in civil proceedings could not possibly gather and place before the Court those facts, documents, etc. Many times, there can be suspicion, strong suspicion, or even suspicion that borders on conviction, and it is expedient in the interests of justice to proceed to lodge a complaint, but there may be no sufficient legal evidence on the record at that time to so proceed. 11.7. This is not a case where it is mere forgery of the will and ought to be disposed of on a report by the expert evidence of the document examiner. In order to reach to the others involved and unearth more evidence, this Court deems it necessary to order investigation by the police as a part of preliminary inquiry. xxx xxx xxx 12.2. Thus, the law is settled that the Court has a power to direct the police to investigate and report, which power has been readily exercised by the Courts whenever they felt that the facts of the case so warranted. 12.3. Often, the facts are such on which a private party cannot be expected to itself investigate, gather the evidence and place it before the Court. It needs a State agency exercising its statutory powers and with

the State machinery at its command to investigate the matter, gather the evidence, and then place a report before the Court along with the evidence that they have been able to gather. Moreover, the offence(s) may be a stand-alone or as a carefully devised scheme. It may be by a single individual or it may be in conspiracy with others. There may be conspirators, abettors and aiders or those who assisted, who are not before the Court, or even their identity is not known.

12.4. Where the facts are such on which the Court (or a subordinate officer) can conduct the inquiry, it will be so conducted, but where the facts are such which call for tracing out other persons involved, or collection of other material, or simply investigation, it is best carried out by a State agency. The Court has not only the power but also a duty in such cases to exercise this power. However, it may be clarified that a party Test.Cas.8/1995 Page 76 of 82 cannot ask for such direction as a matter of routine. It is only when the Court is prima facie satisfied that there seems to have been wrongdoing and it needs investigation by the State agency that such a direction would be given.

12.5. The present is a fit case where the investigation by the Police (Crime Branch) is necessary, otherwise many facts will remain hidden and the others involved will escape punishment. xxx xxx xxx

14. Directions to the Police

14.1. The material on the record and the facts as they appear are sufficient to return a finding as envisaged by clause (a) of Section 340 Cr. P.C. as also that criminal contempt of Court has been committed, and that it is expedient in the interests of justice to so proceed. However, the final orders are deferred, and as part of a preliminary inquiry, the Delhi Police (Crime Branch or the Economic Offences Wing, as the case may be) is directed to investigate the matter. For the purposes of investigation, the Police may register an appropriate case and then proceed to investigate according to law. The investigation and the report to this Court shall include the identity details and personal particulars of the petitioner; his address given in the will as 1219, Katra Sat Narain, Chandani Chowk, Delhi- 110006, his address(es) during the period 1st April, 1999 to 30th May, 1999, and 1st January, 2004 to 30th April, 2004 and thereafter till 31st December, 2007; the petitioner's contact or association with late Smt. Ram Piyari, resident of D-50, Greater Kailash Enclave-II, New Delhi; the petitioner's work, profession or activities during the period 1st April, 1999 to 30th May, 1999 and 1st January, 2004 to 30th April, 2004; bank accounts operated by the petitioner during

the period 1st January, 2004 to 30th April, 2004; mobile telephone numbers being used by the petitioner during the period 1st April, 1999 to 30th May, 1999, and 1st January, 2004 to 30th April, 2004; handwriting of letter dated 20th February, 2004 by the petitioner to DDA; execution of any: Agreement to Sell or G.P.A. as referred by the petitioner in the letter dated 20th February, 2004; handwriting of the words 11th May 1999 on the alleged will and the alleged MoU; who signed the alleged will dated 11th May, 1999 as (first witness) Rajat Kumar, son of Test.Cas.8/1995 Page 77 of 82 Shri Satya Prakash, resident of BH23C, Shalimar Bagh, Delhi 1100052, and also filed affidavit dated 12th April, 2004 in this Court; who appeared before the Notary for attestation of the said affidavit; who signed the alleged will dated 11th May, 1999 as second witness Ashok son of late Shri J.P. Sharma, resident of C-70 Jawahar Park, New Delhi 110062; which other persons were involved in the making of the claim (on the basis of the alleged will dated 11th May, 1999) before this Court; the connection of the witnesses with the petitioner whose names are given in the list of Witnesses dated 11th January, 2010 filed in this case; and generally, all other facts which will go to show the truth or otherwise of the claim placed before this Court by the said petitioner. 14.2. On completion of investigation, the Report shall not be filed before the Magistrate (per Section 173(2) Cr. P.C.) nor will the persons be forwarded to the Magistrate, but the Report shall be filed before this Court to enable it to continue with the Preliminary Inquiry as contemplated by Section 340 Cr. P.C. and also under the inherent powers of this Court. The Police will also place before this Court copies of the charge-sheet and reports of the experts on the documents. The Police may file any interim Report, if they deem it necessary. 14.3. Upon receipt of the report from the Police, this Court will consider whether the petitioner, or other persons as the Report might indicate, are to be heard and to what extent before the making of the complaint. Initiation of contempt proceedings will also be considered at that stage. (Emphasis supplied) Conclusion 89. The will dated 02nd August, 1998 (Ex.P/2) executed by late Shanti Devi is proved to be her last and true will.

90. The will dated 21st October, 1994 set up by Surinder Aggarwal and the will dated 07th December, 1994 set up by Sneh Lata are disproved.

91. This petition is allowed and probate/letters of administration in respect of the will dated 02nd August, 1998 (Ex.P/2) of late Shanti Devi is Test.Cas.8/1995 Page 78 of 82 granted to the petitioner upon filing of administration and surety bonds.

92. This Court is of the prima facie view that Surinder Aggarwal forged the will dated 21st October, 1994 and Sneh Lata forged the will dated 07th December, 1994 in connivance with the witnesses mentioned in the respective wills which is an offence under Section 467 I.P.C. The objectors have raised false claims before this Court which is an offence under Section 209 I.P.C.

93. The objectors have no respect for truth and have polluted the fountain of justice with tainted hands. This case warrants imposition of heavy cost as well as prosecution of the objectors.

94. The cost of Rs.1,00,000/- is imposed on the objector, Sneh Lata. The cost be deposited by Sneh Lata with the Registrar General of this Court within two weeks.

95. List for considering further directions against the objectors and the witnesses to the wills dated 21st October, 1994 and 07th December, 1994 on 16th April, 2019.

96. Surinder Aggarwal, Sneh Lata and Gagan Singla shall remain present in Court on the next date of hearing.

97. Mr. Sanjeev Sindhwani, Senior Advocate and Mr. B.S. Mor, Advocate are appointed as amicus curiae to assist this Court in this matter. Post Script 98. Forgery of a will is an offence under Section 467 of Indian Penal Code, 1860 punishable with imprisonment upto life. Section 467 of the Indian Penal Code is reproduced hereunder: - Section 467. Forgery of valuable security, will, etc.- Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which Test.Cas.8/1995 Page 79 of 82 purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance

or receipt for the delivery of any movable property or valuable security, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. life, or with for (Emphasis Supplied) 99. The essential ingredient of Section 467 of Code of Civil Procedure is forgery of a will. The term Forgery is defined in Section 463 I.P.C. The essential ingredient of Forgery is making a false document as defined in Section 464 of Indian Penal Code. In short, the person is said to have made a false document - (i) if he makes or executes the document claiming to be someone else or authorized by someone else; or (ii) if he altered or tampered a document; or (iii) obtained a document by practicing deception, or from a person not in control of his senses.

100. Section 463 defines Forgery and Section 464 defines Making a false document. Sections 465 to 477A provide punishment for different categories of forgery which are tabulated hereunder: S. No. Offences Sections Punishment 1. Punishment for forgery 465 2. Forgery of record of Court or 466 of public register 3. Forgery of valuable security, 467 will, etc.

4. Forgery cheating for purpose of 468 Imprisonment upto 2 years or fine or both Imprisonment upto 7 years and fine Imprisonment for life or upto 10 years and fine Imprisonment upto 7 years and fine Test.Cas.8/1995 Page 80 of 82 5. Forgery for purpose of 469 harming reputation 6. Using as genuine a forged 471 document 7. Making 472 Imprisonment upto 3 years and fine In the same manner as if he had forged such document or electronic record Imprisonment for life or upto 7 years and fine or to commit possessing counterfeit seal, etc., with intent forgery punishable under Section 467 possessing counterfeit seal, etc., with intent to commit forgery punishable otherwise 8. Making or 9. Having possession described of document in Section 466 or 467, knowing it to be forged and intending to use it as genuine for 10. Counterfeiting device or mark authenticating used documents in Section 467, or possession counterfeit marked material described 473 Imprisonment upto 7 years and fine 474 475 Part I - Imprisonment upto 7 years and fine Part II - Imprisonment for life or upto 7 years and fine Imprisonment for life or upto 7 years and fine 11. Counterfeiting device or mark 476 used for authenticating Sec.476 of IPC documents other than those described in Sec.467, counterfeit marked material possessing or Imprisonment upto 7 years and fine 12.

Fraudulent cancellation, destruction, etc., of will, authority to adopt, or valuable security 477 Imprisonment for life or upto 7 years and fine 13. Falsification of accounts 477A Imprisonment upto 7 years or fine or both 101. The punishment prescribed in Section 467 of IPC is aggravated form Test.Cas.8/1995 Page 81 of 82 of forgery and it is very serious offence. However, the Courts have seldom invoked it perhaps due to the ignorance.

102. Unless the judicial system protects itself from such wrongdoing by taking cognizance, directing prosecution, and punishing those found guilty, it will be failing in its duty to render justice to the citizens.

103. Copy of this judgment be sent to Mr. Sanjeev Sindhvani, Senior Advocate and Mr. B.S. Mor, Advocate.

104. Considering the principles of law discussed in this judgment, copy of this judgment be sent to the District Judge (HQs) Central as well as Delhi Judicial Academy. MARCH29 2019 dk/ds J.R. MIDHA (JUDGE) Test.Cas.8/1995 Page 82 of 82

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