

Pradip Agarwal vs State & Ors

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Court : Delhi

Decided On : Mar-13-2026

Judge : Hon'Ble Ms. Justice Jyoti Singh

Appeal No. : TEST.CAS./28/2012

Appellant : Pradip Agarwal

Respondent : State & Ors

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved on: 14th October 2025 Date of Decision: 13th March, 2026 + TEST.CAS. 28/2012 & I.A. 8572/2025 PRADIP AGARWALPetitioner Through: Mr. Jayant Bhushan, Senior Advocate with Mr. Saurabh Agrawal, Ms. Komal Mundhra, Mr. Amartya Bhushan, Mr. Yojit, Mr. Ashutosh Singh Rana and Mr. Rishay Raj, Advocates.

versus

STATE & ORSRespondents Through: Mr. Jayant Mehta, Senior Advocate with Mr. D.S. Parmar, Ms. Mrinal Gopal, Mr. Saurabh Singh and Mr. Vikramaditya Sanghi, Advocates for R-5. + TEST.CAS. 8/2013,

I.A. 974/2013, I.A. 5327/2013, I.A. 39619/2024 & I.A. 8573/2025 MANJU AGGARWALPetitioner Through: Mr. Jayant Mehta, Senior Advocate with Mr. D.S. Parmar, Ms. Mrinal Gopal, Mr. Saurabh Singh and Mr. Vikramaditya Sanghi, Advocates.

versus

STATE & ORSRespondents Through: Mr. Jayant Bhushan, Senior Advocate with, Mr. Saurabh Agrawal, Ms. Komal Mundhra, Mr. Amartya Bhushan, Mr. Yojit, Mr. Ashutosh Singh Rana and Mr. Rishay Raj, Advocates for R-6. By:KAMAL KUMAR TEST.CAS. 28/2012 & connected matter Page 1 of 60

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J.

1. TEST.CAS. 28/2012 is filed by Shri Pradip Agarwal (Pradip) under

Section 278 of Indian Succession Act, 1925 (1925 Act) for grant of Letters of Administration in respect of Will dated 15.01.2001. TEST.CAS. 8/2013 is filed by Ms. Manju Aggarwal (Manju) under Section 276 of 1925 Act for grant of probate in respect of the estate of late Shri S.M. Aggarwal (hereinafter referred to as Testator) under a Will dated 21.04.2010. By

order dated 07.05.2012, TEST.CAS. 28/2012 was treated as one under

Section 276 instead of Section 278 of 1925 Act. On 29.01.2015, both petitions were consolidated and trial was held on common issues and hence, both petitions

are being decided by this common judgment. I.A. 8573/2025 (u/O VIII Rule 1A(3) r/w Section 151 CPC) in TEST.CAS.

2. This application is filed on behalf of Respondent No. 6 for taking on

record the expert opinion on forensic document examination of signature samples of Late Shri S.M. Aggarwal by International Forensic Sciences, Forensic Science Department dated 28.03.2025.

3. Mr. Jayant Bhushan, learned Senior Counsel, at the outset, does not press this application.

4. Application stands disposed of as not pressed. TEST.CAS. 28/2012

5. Case set up by Pradip in this petition is that he is the son of the Testator, who during his lifetime executed a Will dated 15.01.2001, which was duly registered in the Office of Sub Registrar of Assurances VII under By:KAMAL KUMAR TEST.CAS. 28/2012 & connected matter Page 2 of 60

Registration No. 562, Additional Book No. 3, Volume No. 239 on pages 54 to 56. The will is the last will and Testament executed by the Testator. At the time of death of the Testator, he left behind the following Class-I legal heirs:-

6. It is stated that immovable property bearing House No. K-101, Hauz

Khas Enclave, New Delhi (Hauz Khas property) in Schedule of Properties (Annexure A-1) was the permanent residence of the Testator, where he resided for most part of his life after the property was purchased by him. The Testator bequeathed his entire estate to Pradip under Will dated 15.01.2001 and Smt. Vimla Agarwal (Vimla), Smt. Nirmla Garg (Nirmla) and Smt. Asha Agarwal (Asha), the three sisters of Pradip, being Respondents No. 2 to 4 have accorded No Objection to the Will by executing their respective affidavits dated 12.02.2012 and thus there is no legal impediment in grant of probate of the said will in favour of Pradip.

7. Reply was filed on behalf of Vimla in which she stated that she was

the attesting witness to the second will of the Testator executed on 21.04.2010, in which the sole beneficiary was Manju, who had filed TEST.CAS. 8/2013 for grant of probate of the said will. She further stated By:KAMAL KUMAR TEST.CAS. 28/2012 & connected matter Page 3 of 60

that Will dated 15.01.2001 was not the last will of the Testator in light of the second and last will dated 21.04.2010, which deserves to be probated in favour of Manju. Vimla refuted the contents as also signatures on the No Objection affidavit filed by Pradip and took a position that she had never signed such an affidavit at any point of time and her actual signatures were completely different from the signatures on the alleged affidavit.

8. In rejoinder to the reply filed by Vimla, Pradip averred that the

alleged signatures of the Testator appearing on Will dated 21.04.2010 were not Testators signatures and were forged and fabricated, which was evident from a bare comparison of the signatures on the forged will with original signatures of the Testator. It was stated that not only the signatures were forged but contents of the will were also untrue as under no circumstances, Testator would have desired to revoke the earlier will and exclude Pradip from his estate. Will dated 21.04.2010 was prepared under active connivance of Manju with Vimal and the third sister Ms. Sarla Gupta (Sarla). In respect of the No Objection affidavit by Vimla, it was averred in the rejoinder that the signatures on the affidavit were the genuine signatures of Vimla and the stand that she never signed on the affidavit was an afterthought. The affidavit dated 12.02.2012 was signed by Vimla at the same time when similar affidavits were signed by Nirmla and Asha and in the presence of both of them as also her husband.

9. Replies were filed by Nirmla and Asha in which they took a common

stand that the Testator had executed the Will dated 15.01.2001 and the same was duly registered. They also admitted having signed the No Objection affidavits on 12.02.2012 and reiterated that they continued to have no objection to grant of probate in favour of Pradip. By:KAMAL KUMAR TEST.CAS. 28/2012 & connected matter Page 4 of 60

10. Manju also filed her reply and propounded a Will dated 21.04.2010

allegedly executed in her favour by the Testator. It was not disputed in the reply that Testator had earlier executed Will dated 15.01.2001 in favour of Pradip, however, it was denied that it was his last will. It was stated that Testator had executed Will dated 21.04.2010 due to multiple reasons stated in the will: (a) change in behaviour of Pradip, especially, after the death of the Testators wife; (b) Manju and her husband were looking after him; and

(c) all other daughters were well off compared to Manju and with Hauz

Khas property, her status will become equal to others. The will was executed in presence of and signed by Vimla as one of the attesting witnesses, bequeathing the entire estate in favour of Manju, to the exclusion of all other legal heirs and thus the earlier will stood revoked and there was no impediment in law in probating the second will. Manju also referred to the petition filed by her for probate of the will.

11. In rejoinder, Pradip averred that Will dated 21.04.2010, propounded

by Manju was a forged will inasmuch as not only were the signatures forged but the contents were also untrue as Testator could have never desired to exclude Pradip from his estate. Pradip denied that Manju looked after the Testator and urged that only Asha, Vimla and he looked after the Testator and that the Testator lived either in Hauz Khas when he was in Delhi or in Hong Kong with Pradip and these facts were fortified by documentary evidence. The alleged second will was a

document fabricated by Manju, in connivance with Vimla and her husband and Will dated 15.01.2001 was the last and only will of the Testator. Sarla Gupta also filed a short reply in which she took a position that the will executed in favour of Pradip on 15.01.2001 was revoked by the Testator. The Testator was not keeping good

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health after his wifes death and when Sarla Gupta visited in April, 2010 at Hauz Khas to enquire about his health, she was told by the Testator that Pradip Agarwal had completely abandoned him and he was being looked after by Manju and Nirmla and therefore, he had revoked his earlier will and executed a new will bequeathing the house in favour of Manju, who was economically very weak and more in need of money than Nirmla. Hence, she supported the case of Manju and submitted that Will dated 21.04.2010 be probated in favour of Manju. TEST.CAS. 8/2013

12. This petition is filed by Manju for probate of Will dated 21.04.2010.

It is averred in the petition that the Testator had executed Will dated 15.01.2001 in favour of Pradip bequeathing certain portion of the property in his favour, however, later, he executed Will dated 21.04.2010 in favour of Manju in presence of two attesting witnesses, namely, Vimla and Sanjeev and that Vimla had no objection to grant of probate in her favour, while Sarla had already accorded her no objection to the will being probated. In light of this, it was prayed that Will dated 21.04.2010 be probated in favour of Manju as all required parameters of a valid will were satisfied.

13. Nirmla and Asha filed objections to the petition and stated that the

petition was filed by Manju to grab the subject property and Will dated 21.04.2010 was a fabricated document on which signatures of the

Testator were forged by Manju in connivance with the two attesting witnesses in the will. The fact that signatures were forged was visible to a naked eye. Testator could not have desired or wished to execute the second will and exclude Pradip. Testator was very happy with the care given by Pradip and

By:KAMAL KUMAR TEST.CAS. 28/2012 & connected matter Page 6 of 60 his immediate family members and regularly visited Hong Kong and stayed with Pradip for months together. In fact, Pradip used to remit funds from Hong Kong regularly to take care of his father.

14. It was stated in the objections that Nirmla was in regular touch with

her father and was taking care of all medical expenses and requirements when he was in India, which were later reimbursed to her by Pradip, when he visited India. The submission of Manju that Testator visited Mumbai or called Manju to stay with him for weeks together is totally false and frivolous. Falsity of the will is also apparent from the fact that it is stated in the will that possession of the property was being given to Manju, whereas the property was in physical and actual control of Pradip. Sarla and Vimla along with Manju did attempt to interfere in the peaceful and physical possession of Pradip and it is a matter of record that Suit bearing No.

15. It was further stated that the attesting witnesses on Will dated

21.04.2010 i.e. Vimla and her husband Sanjeev are both interested witnesses. The only will executed by the Testator during his lifetime was on 15.01.2001, whereby he bequeathed his estate in favour of Pradip. Testator was admitted in hospital in Faridabad before his death, where he passed away and it was Nirmla who was looking after him at that time. It was affirmed by Nirmla that whenever Testator met her, he stated that he was happy with Pradip and was confident that his son would take care of his sisters and thus, there was no reason to exclude him from the

estate. It was stated that the subject property was acquired by funds remitted by Pradip from Hong Kong from time to time. Significantly, Will dated 15.01.2001 was disclosed after the funeral of the Testator and in presence of Manju and

By:KAMAL KUMAR TEST.CAS. 28/2012 & connected matter Page 7 of 60 Vimla but neither of them objected or even mentioned about the alleged Will dated 21.04.2010.

16. Sarla filed a short reply supporting Manju and stating that Will dated

15.01.2001 was revoked by her father when he executed Will dated 21.04.2010 in favour of Manju. Pradip had completely abandoned his father and the Testator was being looked after and taken care of by Manju and Nirmla. Sarla visited her father in April, 2010 and he told her that his son had completely changed and abandoned him and therefore, he had revoked his earlier will and executed a new will.

17. Pradip also filed objections more or less on the same lines as his

Probate Petition and reiterated that Will dated 21.04.2010 was forged and Will dated 15.01.2001 was the last will of the Testator. He brought out that Will dated 15.01.2001 was duly registered, while Will dated 21.04.2010 was unregistered and even after the funeral ceremony of the Testator, there was no mention of the second will. As for Sarla, he stated that she had broken family ties since 1996 and was no longer in touch with the family, including Vimla, who was supporting her in the present litigation and this is substantiated by the fact that Sarla was not invited for the weddings in the families of other sisters and she never invited other sisters for the weddings of her daughters and thus her version could not be trusted.

18. It was also stated by Pradip in the objections that prior to his death,

Testator was the absolute owner of the Hauz Khas property, having purchased the same from M/s Galaxy Mercantile Ltd. (Galaxy) by virtue of a registered Sale Deed executed on 17.08.1998 and the sale consideration was paid from the funds remitted by Pradip. Galaxy was earlier a joint Company of the Testator and Sarlas husband, namely, Prem Chand Gupta

By:KAMAL KUMAR TEST.CAS. 28/2012 & connected matter Page 8 of 60 and Testator was a Director. As and when Pradip visited India, he lived in the subject property along with his father and at no point, physical possession was given to any other member of the family.

19. Pradip highlights in his objections that Vimla, Sarla and Sanjeev had

conspired with Manju to prepare the document propounded by Manju as the last will. Vimla had earlier given an affidavit dated 12.02.2012 recording her no objection to Will dated 15.01.2001, however, later she fraudulently changed her stand at the instance of Manju that she was made to sign on blank papers during one of the meetings with Asha over a cup of tea and she had no reason to doubt Asha as both had cordial relations. This stand is false and an afterthought in light of affidavits of Asha and Nirmla, both of whom have stated that the no objection affidavit was signed by Vimla in their presence and out of her free will. Manju filed rejoinder to Pradips reply denying the averments and reiterating her stand in the petition.

20. After the pleadings were completed in the petitions, admission/denial

of documents was carried out and completed on 19.11.2014. On 29.01.2015, the following common issues were settled by the Court on the basis of pleadings:- i. Whether the deceased S.M. Aggarwal had executed a valid Will dated 15.01.2001 and if so, its effect? OP Pradeep Aggarwal ii. Whether the Will dated 21.04.2010 had superseded the

earlier Will dated 15.01.2001 of deceased S.M. Aggarwal, if so its effect?
OP Manju Aggarwal.

21. Parties were directed to file their list of witnesses and evidence

affidavits and it was agreed that Manju will lead evidence first. By this order, both the petitions were consolidated. Manju did not file list of witnesses as reflected from order dated 30.05.2017, however, statement was made that she would examine only two witnesses, namely, Vimla and By:KAMAL KUMAR TEST.CAS. 28/2012 & connected matter Page 9 of 60

Sanjeev, the attesting witnesses of Will dated 21.04.2010. In order

dated 16.04.2015 in TEST.CAS. 28/2012, it was clarified that the onus to prove the second issue will be on Manju, in accordance with law. Thereafter, consolidated evidence was recorded and matter was fixed for final hearing.

22. Pradip (R6W2) tendered his evidence by way of affidavit,

Ex.R6W2/A, in which he stated that he was the son of the Testator who expired on 04.06.2010 at Faridabad and during his lifetime, Testator had executed a registered Will dated 15.01.2001, which was his last will and Testament and was never revoked. He stated that other than him, the Testator was survived by five daughters, of which Vimla, Nirmla and Asha had given No Objection to Will dated 15.01.2001 by executing respective affidavits. He stated that Will dated 15.01.2001 was personally disclosed by him to all sisters except Sarla, after the funeral of his father when Vimlas husband Sanjeev was also present. The will propounded by Manju was a forged document, prepared by her in connivance with Vimla and Sanjeev and the signatures on Will dated 21.04.2010 were not of his deceased father and were forged and fabricated. He stated that not only the signatures were forged but also contents of the will were untrue and under no circumstances, the contents of the will could disclose the true desire of his father.

23. Pradip further stated that neither the two sisters, Manju and Vimla nor

Sanjeev whispered a word about the Will dated 21.04.2010 when he disclosed the Will dated 15.01.2001 immediately after his fathers funeral and the forged Will surfaced for the first time in response to the Probate Petition TEST.CAS. 28/2012, filed by him. He stated that a false and forged will was being propounded by Manju only to grab the Hauz Khas property

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unlawfully. The documents showing money transfers by Pradip in the account of his father close to purchase of the property substantiates that Pradip had contributed to the sale consideration and thus it does not stand to reason or rationale that his father would have bequeathed the said property to Manju, revoking the will made in favour of Pradip.

24. Pradip deposed that Galaxy was a Private Limited Company of his

father and Sarlas husband and Galaxy had purchased the Hauz Khas property in 1981, for which the entire purchase money was remitted by Pradip from his own funds from Hong Kong. His father was in absolute possession and control of the property right from the date of its purchase and was residing therein. He was also the Chairman of Galaxy. He stated that as and when he visited India, he lived in the Hauz Khas property along with his father and no one else had possession at any point in time. In 1998, he decided to purchase the property in his fathers name and on 17.08.1998, Galaxy executed the Sale Deed in the name of his father after Pradip paid the money since his father did not have that kind of money in his bank account.

25. He stated that differences arose between him and Sarlas husband in

1996 and relationship became sour such that ties between family members, including Pradips father, mother and other sisters got severed with Sarla and she did not even attend the funeral of her father. He further stated that whenever his father was in India, Nirmla was taking care of him albeit the entire expenses incurred by her, including medical expenses, were reimbursed by Pradip, as and when he visited India.

26. The witness further stated that he was regularly remitting funds to his father from Hong Kong for more than three decades and his father and By:KAMAL KUMAR TEST.CAS. 28/2012 & connected matter Page 11 of 60

mother regularly visited Hong Kong. Even after his mother passed away in 2007, his father continued to visit and lived for months every year with him. In fact, he had got an identity card (Ex.R6W2/2) issued for his father from the Government Authorities in Hong Kong to facilitate his visits. He stated that his father was happy with him and his family, comprising of his wife and two children. While in Hong Kong or even when Pradip was travelling, he would call his father and talk to him regularly and in these circumstances, there was no trigger/reason for the Testator to execute the Will dated 21.04.2010.

27. Pradip deposed that the Testator was admitted to hospital in Faridabad

by Nirmla, three days prior to his death, where he went into coma and remained in ICU on dialysis and finally passed away. Manju lived in Mumbai and never took care of their father and the claim by her that their father regularly visited Mumbai is false. Testator may have travelled occasionally, once in 2-3 years and no more. Manju would visit Delhi during summer vacations occasionally and stay with her father for 10-15 days, but this was only a casual visit like any daughter would do and stay with parents. The witness exhibited the following documents:-

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28. Pradip was cross examined on 30.04.2019 by counsel for Manju and

he stated that Sale Deed of Hauz Khas property was executed in 1998 in favour of his father though he could not recollect the exact amount of sale consideration, but it was approximately Rs. 40,00,000/-. He stated that he used to transfer certain amounts from time to time in his fathers account which were also used to purchase the property. He stated that he had made

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one transfer for Rs. 27,00,000/- and the second for Rs. 19,00,000/- and denied the suggestion that he had not transferred Rs. 19,00,000/- to his father albeit he could not remember whether Rs. 19,00,000/- was transferred in his fathers name or in the name of his mother. He stated that Rs.19,14,500/- was transferred in the name of his mother on 17.07.1998. Since the matter was old, he could not remember how much money he had transferred in 1981 for purchase of property. He stated that he was on his way to Delhi when his father expired and stayed for about 10 days to 2 weeks after his death.

29. Pradip examined one of the attesting witnesses Shri G.P. Kabra (G.P.

Kabra), who tendered his evidence by way of affidavit, Ex.R6W1/A. He deposed in his affidavit that he was the attesting witness of the last will and Testament dated 15.01.2001. He further stated that the Testator executed the will on 15.01.2001 and put his signatures in the presence of Mrs. Krishna Kabra (Krishna Kabra) and in his presence. Witness also signed the will as attesting witness in Testators presence and similarly, Krishna Kabra signed as the other witness in his presence and the presence of the Testator. The will was exhibited as Ex. R6W1/1 and the witness identified his signature at place marked A. G.P. Kabra identified the signatures of Krishna Kabra, who was his wife and marked the

signature as B. He further stated that the Testator had put his signature out of his own free will and had a sound disposition of mind and health and also understood the nature and effect thereof. In cross examination, G.P. Kabra stated that he was not a summoned witness and deposed that he used to visit Testators house of and on and on the date of execution of the will he visited the house on Testators call and the will was drafted, though he did not remember the date. He stated

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that he read the will and put his signatures on the same. He further stated that the Testator had one son and five daughters but he did not enquire as to why nothing was given to the daughters and volunteered that it was a trend of only giving to the sons. He denied the suggestion that Testator had signed the will prior to his reaching the house as also that he and his wife did not sign the will in presence of the Testator or in presence of each other.

30. Manju examined herself as PW1 and tendered evidence by way of

affidavit, Ex.PW1/1. She stated in the affidavit that she was the daughter of the Testator, who was permanent resident of Delhi. She admitted to the execution of Will dated 15.01.2001 in favour of Pradip bequeathing some portion of the property but further stated that later he executed Will dated 21.04.2010 in the presence of two attesting witnesses, Vimla and Sanjeev, bequeathing the Hauz Khas property along with area underneath in her favour and hence, she was entitled to grant of probate or Letter of Administration from this Court.

31. Manju further deposed that Will dated 21.04.2010 was duly executed

and the original was filed separately as Exhibit/Mark A. She stated that the said will was the last will and Testament executed by the Testator. She referred to all the legal heirs of the Testator and admitted that he

was residing in the Hauz Khas property, which was his fixed place of abode. Manju was cross examined by counsel for the Pradip on 04.05.2016, wherein she denied for want of knowledge that Galaxy was a joint company of the Testator and husband of Sarla. She also denied having any knowledge on whether Galaxy had purchased the property in 1981. Manju denied the suggestion that money for purchase of the property was given by Pradip and volunteered that Pradip was an employee of Sarla's husband, who had

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business in Hong Kong but she did not know the nature and name of the business. She admitted that there were some differences between Pradip and Prem Chand Gupta in 1996 and volunteered that Pradip had committed some fraud while working under Prem Chand Gupta.

32. Manju further stated in her cross examination that she was not aware

from whom the property was purchased by her father and did not know anything about Galaxy. On the aspect of family ties with Sarla, Manju stated that it was correct that she had not attended the marriage functions of both her daughters but volunteered to state that at the time of marriage of one of the daughters, she was out of India and at the time of marriage of the other daughter, she was sick and could not attend, though she had sent the Shaguns and later attended the marriage of her son. She also stated that she attended the marriage of daughter of Nirmla but was not aware if Sarla attended.

33. Manju stated in cross examination that she did not know the source of

income of her father and admitted that she had never supported him financially as she was herself in a difficult financial position. The witness denied the suggestion that her father used to visit Pradip in Hong Kong regularly, approximately twice in a year or stayed with him for about 3-4 months in a year. When confronted with the Identity Card issued by Hong

Kong Government in favour of her father, she stated she had no knowledge. Pradips counsel questioned her about the photograph of her father on the card, but on an objection raised by counsel for Manju, the question was disallowed by the learned Joint Registrar.

34. In further cross examination on 29.05.2017, Manju stated that she had heard that Pradip had committed some fraud with Prem Chand Gupta but By:KAMAL KUMAR TEST.CAS. 28/2012 & connected matter Page 16 of 60

she did not remember when and from whom she gathered this information. She admitted that her father had no source of income in the years 1995 and 1996 and thereafter but denied the suggestion that in 1998, Pradip remitted the funds from Hong Kong to the account of her father, from which the Hauz Khas property was purchased by her father. She stated that her father purchased the property after selling her mothers jewellery and denied the suggestion that no jewellery was sold albeit she accepted that she did not remember the exact amount for which the jewellery was sold as she was not present at the time of sale. She stated that her father visited Hong Kong once a year and when he was in India, Nirmla and her husband took care of him.

35. Manju volunteered during cross examination that she was also taking

care of her father and he used to stay with her three months at a time and denied the suggestion that he never visited Mumbai. She also denied the suggestion that she was not in a financial position to take care of her father and stated that she possessed documents to prove that her father regularly visited Mumbai and paid for his own travel. She denied knowledge of the expenses incurred by Nirmla and her husband on her father and/or any reimbursements by Pradip. She also admitted as correct that when her father fell ill, he was taken to the hospital by Nirmla and her husband on 31.05.2010/01.06.2010, however, after she met him, he died within an hour. Manju denied the suggestion that throughout

hospitalization her father was in coma and not in a position to talk to anybody. She also denied that Sarla or any of her family members did not attend the funeral of her father though admitted that after the funeral, Pradip had disclosed about the Will dated 15.01.2001 in the presence of all brothers and sisters, except Sarla. She further admitted that at the time of disclosure of Will dated 15.01.2001,

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there was no mention by her of the existence of Will dated 21.04.2010 and volunteered that 2-3 days later after Pradip had gone back to Hong Kong and she was going through the documents, she came across the Will dated 21.04.2010, whereafter she informed Pradip about the same and he filed the case i.e., TEST.CAS. 28/2012. She also stated that she was alone in the room when Will dated 21.04.2010 was discovered. She denied the suggestion that signatures appearing on Will dated 21.04.2010 were not of the Testator.

36. Cross examination was deferred and thereafter resumed on

30.05.2017 during which Manju stated that she could not read or write English and volunteered that her husband explained the contents of documents in vernacular. She also stated that she did not know what other documents were there when she was looking for the documents. Manju denied the suggestion that she had forged the signatures of her father on Will dated 21.04.2010 or that the contents of the will were false. Manju also denied the suggestion that her father had never executed Will dated 21.04.2010 and the same was a false and fabricated document.

37. Manju was cross examined by counsel for Nirmla and Asha and

denied the suggestion that her father wanted to bequeath the Hauz Khas property to Pradip only as he had remitted the funds for its purchase. She also denied the suggestion that Will dated 21.04.2010 was false and fabricated.

38. R4W1 Asha tendered evidence by way of affidavit Ex.R4W1/A. She

deposed that during his lifetime her father executed a registered Will dated 15.01.2001 and except for this will, he never executed any other will and hence, Will dated 15.01.2001 was the last Testament of her deceased father, By:KAMAL KUMAR TEST.CAS. 28/2012 & connected matter Page 18 of 60

which was never revoked. Her father was always happy with the treatment meted out to him by Pradip and there was no reason or occasion for the Testator to revoke the will executed in his favour. Her father was always proud to have a son like Pradip and was full of praises for him. The Testator always wanted to bequeath the property at Hauz Khas to Pradip on account of love and affection and the care given by him, apart the fact that money for purchase of the property was remitted by Pradip into the fathers account.

39. Asha stated that Nirmla lived with the Testator many times at his

house and would regularly take him to her house in Faridabad. The will propounded by Manju was a fictitious document and the signatures of her father were forged by Manju in connivance with the attesting witnesses and the contents were false. She stated that her father had handed over all his belongings and cash to Pradip. She was categorical that physical possession of the property remained with the Testator and after his demise, Pradip was in possession.

40. Asha testified that Testator was regularly visiting Hong Kong and

stayed with Pradip for months together. Will dated 15.01.2001 was disclosed by Pradip after the funeral of her father in presence of all parties, except Sarla and there was no mention of Will dated 21.04.2010. After the demise of her father, the three daughters, Nirmla, Vimla and Asha had executed affidavits of no objection in favour of Will dated 15.01.2001. The affidavits were signed by all three at the same time and

in presence of each other and that she could identify the signatures of her sisters on the affidavits dated 12.02.2012, which were exhibited as Ex.RW1/1, Ex.RW1/2 and Ex.RW1/3, respectively. Asha confirmed that her father was admitted in the hospital in Faridabad, three days prior to his death. She supported Pradip

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and stated that Manju had made a false claim on the basis of a forged will. In cross examination by counsel for Manju on 12.12.2018, Asha affirmed that Pradip used to help her father financially though she did not know how much money was sent by him. She accepted that she knew that Vimla had denied the execution of Ex.R4W1/1 but volunteered to state that Vimla was lying. She stated that it was incorrect that her father had executed Will dated 21.04.2010 and volunteered that it was a fake will. She also denied that her father had disclosed about Will dated 21.04.2010 in the hospital to her and her other sisters.

41. RW3 Nirmla tendered her affidavit of evidence in examination-in-

chief, Ex. RW3/A. She stated in the affidavit that her father had executed a registered Will dated 15.01.2001 and except for this will, he had not executed any other will. She further stated that she regularly met her father and stayed with him at his residence on many occasions and many times took him to her residence at Faridabad. Her father always desired that all his assets should be inherited by Pradip as he was happy with the treatment meted out to him by him and was confident that he would take care of his sisters. Pradip always supported her father and continued to support till he expired and thus there was no reason or occasion for the Testator to act otherwise. She further stated that the Will propounded by Manju was fictitious with forged signatures of the Testator and the contents were false.

42. Nirmla further deposed that Manju never took care of her father

during his ill health and did not provide proper food. She would visit Delhi during summer vacations and attend to her parents. She never travelled specially from Mumbai to Delhi to take care of the parents. The impression given in the purported will that Manju was the only person attending to their By:KAMAL KUMAR TEST.CAS. 28/2012 & connected matter Page 20 of 60

father is absolutely false and the story in the will that Pradip confirmed paying Rs. 5 crores to Manju is also false. She affirmed that the Testator always wanted to bequeath the property at Hauz Khas to Pradip and she was aware that the money for purchase was provided by Pradip. The recital in the will that possession of the property given to Manju from the date of the will is absolutely false as the possession always remained with her father and Pradip continues to be in possession after his demise. She further deposed that the allegation that Pradip did not treat his father well is a wild imagination of Manju only for grabbing the property. Her father regularly visited Hong Kong and stayed with Pradip for months together and Pradip used to remit funds from Hong Kong to take care of him. She was in regular touch with her father and taking care of his health and medical expenses whenever he was in India but the expenses were reimbursed by Pradip, when he came to India. The attesting witnesses on the will propounded by Manju conspired with Manju and fabricated the said document.

43. Nirmla further stated that after the funeral when Will dated

15.01.2001 was disclosed by Pradip, all family members except Sarla were present but there was no mention of Will dated 21.04.2010. After her fathers demise, she, Asha and Vimla executed affidavits giving no objections in favour of Will dated 15.01.2001 and signed on them at Delhi at the same time and in presence of each other and that she was in a position to identify the signatures of the sisters. She also testified to the illness of her father and his hospitalization in Faridabad three days prior to his demise. She repeatedly stated that Will dated 21.04.2010 was

false and forged.

44. In cross examination on 15.07.2019 by counsel for Manju, Nirmla stated that Pradip was not in Delhi when the Testator expired and reached By:KAMAL KUMAR TEST.CAS. 28/2012 & connected matter Page 21 of 60

later on the same day and stayed at Delhi for about 10 days. She further stated that she had seen the will after the death of her father when shown by Pradip. She admitted that the Testator had not executed the will in her presence but volunteered that he had informed her about the will. Nirmla stated that she had not spent money on the treatment of his father since Pradip was reimbursing and bearing the expenses. As per her, Will dated 21.04.2010 was disclosed to her at the time of inauguration of Manjus house and she denied the suggestion that the will was a valid document or executed by her father. She also denied the suggestions that Pradip did not give money towards purchase of property or was not taking care of his father or not giving money towards medical expenses and/or no affidavits were signed by the three sisters giving no objection in favour of Pradip.

45. PW2 Vimla also gave her statement. Vimla stated that she recognized

the signatures of her father on the document on which she was also called to sign. She identified the signatures of the Testator on Will dated 21.04.2010 (Ex.PW2/1) at points A to C as also her own signatures at point D. She stated that her father had appended his signatures at points A to C simultaneously in her presence and in the presence of her husband, who had accompanied her. In cross examination by counsel for Pradip, she denied being aware of execution of Will dated 15.01.2001 earlier but volunteered that she was told by her father about the same at the time of execution of Will dated 21.04.2010. Vimla denied the suggestion that Nirmla and her husband looked after the father and took care of his day-to-day needs or that she was not looking after the father

and taking care of his medical requirements. She volunteered that Manju was more involved in taking care of the father. She also volunteered to state that father spent most of his time

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in Mumbai and travelled by air but there was no documentary evidence to support the travel details. She stated that her father did not visit any doctor in Mumbai. The witness agreed to the suggestion that Manju was not in a sound financial condition but also stated that her husband Satish Aggarwal had a house in Kamla Nagar, Delhi.

46. Vimla further stated that she was present at the funeral of the Testator

and remained there even after the funeral with her husband. She denied the suggestion that after the funeral, Pradip disclosed the Will dated 15.01.2001. Vimla deposed that she had disclosed about Will dated 21.04.2010 to Manju on 21.04.2010 itself through telephone, after signing the same as an attesting witness though she did not recollect the time when she had attested the will and further stated that at the time of execution of will, her husband was also present. She stated that normally she did not carry a pen and so she signed with the same pen as used by her father. With respect to her husband, she stated that he had used another pen while appending his signature at point E.

47. Vimla stated in cross examination that she could not say from where

Will dated 21.04.2010 was prepared and typed as her father did not discuss the contents. She denied the suggestion that the will was prepared in connivance with Manju and Sanjeev and/or that the three of them had connived in preparing a forged will. She admitted that the Hauz Khas property was in physical possession of Pradip albeit illegally but was not aware whether any case for recovery of possession was pending against him.

48. Vimla further stated that her father did not reside with Pradip, whereas Pradip used to reside with her father and denied the suggestion that the Testator regularly visited Hong Kong or that whenever he visited, he By:KAMAL KUMAR TEST.CAS. 28/2012 & connected matter Page 23 of 60

stayed for 4-6 months. She also denied the suggestion that Pradip used to send money to her father regularly and stated that he had enough money to look after himself as he had an IST Watch Factory at Gurgaon, which was started in 1983-1984 and continued till about 2004 and denied the suggestion that this statement was false and an afterthought or that she was deposing falsely.

49. PW3 Sanjeev also gave a statement that the Testator was his father-in-

law and identified his signatures at point A to C on Ex.PW2/1. He stated that the Testator had called him and his wife to sign a document which he identified as Will dated 21.04.2010 and which he stated was signed by the Testator in his presence and in the presence of his wife. He denied that he was aware of Will dated 15.01.2001 and stated that he was told about the will when he was called for attesting Will dated 21.04.2010. He denied that Nirmla and her husband were taking care of the Testator or that he was taking care and stated that as and when called, he used to go with his wife and nobody was taking care of the Testator. Sanjeev stated that he was not present at the time of funeral of the Testator and was thus not aware if after the funeral, Pradip disclosed Will dated 15.01.2001 to his sisters, except Sarla. He stated that he had not disclosed about Will dated 21.04.2010 to anyone and was not aware if his wife did.

50. Sanjeev admitted that the Testator regularly visited Hong Kong but

denied that he stayed for 4-6 months and volunteered that sometimes he stayed for 15 days or one month. He stated that Testator was capable of

maintaining himself and he was not aware if Pradip was sending money to him. He denied the suggestion that Testator was either staying at Delhi or in Hong Kong and volunteered that his father-in-law used to go to Mumbai to

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Manju. He deposed that the financial condition of Manju was not sound. As to his signatures on the will, he stated that he had signed on Will dated 21.04.2010 in the day time though he did not remember the approximate time. The suggestion that he had prepared a forged will in connivance with Vimla and Manju was denied. He stated that he did not recollect the pen he had used while signing the will. CONTENTIONS ON BEHALF OF PRADIP

51. The Testator duly executed Will dated 15.01.2001, whereby he

bequeathed the Hauz Khas property in favour of Pradip. The will is not only registered but is also undisputed and therefore, there is no requirement of proving the same albeit one of the attesting witnesses G.P. Kabra was examined, who stated that the Testator had executed the said will in his presence as also in the presence of Krishna Kabra, his wife, the second attesting witness and both of them had signed in presence of each other. He identified his signatures as also the signatures of his wife as he had seen her write and sign. He also stated that at the time of execution of the will, Testator had put his signatures out of his own free will and had a sound disposition of mind and health and also understood the nature and effect thereof. Moreover, Will dated 21.04.2010 propounded by Manju itself refers to Will dated 15.01.2001. All other legal heirs have admitted the execution of this will. Will has been proved in accordance with Sections 63 and 68 of the Indian Evidence Act, 1872 (Evidence Act) and there is no legal impediment in probating the said will. There are no suspicious circumstances attached

to the will or even pleaded by anyone.

52. The unregistered Will dated 21.04.2010 propounded by Manju is a forged and fabricated document, prepared after Pradip filed the testamentary By:KAMAL KUMAR TEST.CAS. 28/2012 & connected matter Page 25 of 60

case, with a view to illegally and unlawfully usurp the Hauz Khas property. Forgery has been committed by Manju, Vimla and Sanjeev in connivance with each other, knowing fully well that property was bequeathed by the Testator in favour of Pradip as per his wish and desire and is in his physical possession. Admittedly, there was no mention of or reference to this will prior to filing of TEST.CAS. 28/2012.

53. Under the law relating to testamentary dispositions, execution of a

will by the Testator can be proved essentially in two ways: (a) by examining a handwriting expert, who will prove the signatures of the Testator; or (b) by examining the attesting witnesses, in accordance with law. Onus of proving a disputed will is on the propounder as held in H. Venkatachala Iyengar v. B.N. Thimmajamma and Others, 1958 SCC OnLine SC 31; Kavita Kanwar v. Pamela Mehta and Others, (2021) 11 SCC 209; and Bharpur Singh and Others v. Shamsheer Singh, (2009) 3 SCC 687. Additionally, in the instant case, vide order dated 16.04.2015 Court had directed that the onus of proving the disputed will propounded by Manju, will lie on her. Manju has not examined any handwriting expert and thus, the only other way to prove the will was by examining the attesting witnesses i.e., Vimla and Sanjeev. Vimla is the real sister of Manju and Sanjeev is Vimlas husband and hence, both are interested witnesses. To grant probate it is not enough that the attesting witnesses have been examined. It is important that Courts conscious is satisfied that witnesses are speaking the truth and the will propounded is genuine and last will of the Testator, since he is not available to prove the truth. To support the proposition, reliance was placed on the judgments in

Bhaiya Girja Datt Singh v. Gangotri Datt Singh, 1955 SCC OnLine SC 67; Dharam Vir v. State (Govt. of NCT Delhi), 2022 SCC

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OnLine Del 4528; and Kavita (supra).

54. Section 63 of 1925 Act provides that a will has to attested by two or

more witnesses, each of whom has seen the Testator sign or affix his mark to the will and each of the witnesses have signed the will in the presence of the Testator. However, if the will is surrounded by suspicious circumstances, the onus is on the propounder of the will to remove the suspicion. In the present case, Will dated 21.04.2010 propounded by Manju is surrounded by suspicious circumstances and Manju has failed to discharge the heavy onus on her to remove the legitimate suspicions. There are several contradictions and inconsistencies in the testimonies of witnesses Vimla, Sanjeev and Manju on material aspects of execution and discovery of the purported will. Vimla stated that she informed Manju of the execution of Will dated 21.04.2010 on the very same day i.e., 21.04.2010 telephonically, however, Manju denies being aware of the will until she discovered the same on her own while going through some documents, 2-3 days after Pradip left for Hong Kong post the funeral of their father. Vimla denied that Pradip had informed everyone of the existence of registered Will dated 15.01.2001 at the time of funeral, which included all legal heirs, except Sarla. Manju, however, stated in her cross examination that after the funeral of her father, Pradip had disclosed the said will in presence of all sisters, except Sarla. Manju stated that Nirmla and her husband were taking care of the father when he was in India since he used to visit Hong Kong once in a year. She also stated that her father stayed with her for three months at a time in Mumbai. Vimla, on the other hand, stated that Nirmla and her husband did not look after the father and it was Manju who was more involved. Sanjeev, on the other hand, stated that nobody was taking care of the father and as

By:KAMAL KUMAR TEST.CAS. 28/2012 & connected matter Page 27 of 60 and when he called, both he and Manju used to go and this belies one of the crucial reasons to bequeath the property in the purported will in favour of Manju that she was mainly looking after the Testator.

55. The credibility of Vimla as an attesting witness is under cloud as she

had earlier signed an affidavit dated 12.02.2012, giving No Objection in favour of Pradip in the presence of Asha and Nirmla, who have both deposed that this affidavit, Ex.R4-W1/1 was signed in their presence. Even at that time, Vimla did not inform any legal heir of the existence of the purported Will dated 21.04.2010. Later, she retracted from the affidavit stating that it was not signed by her and the signatures on the said affidavit did not match with her actual signatures, but no evidence was led that the signatures on the affidavit were forged.

56. The purported will states that the subject matter of the will was known

to all daughters and the son, which is contradicted by Manju who stated that she was not aware of the will until she discovered the document after the funeral of the Testator and Vimla, who stated that she informed Manju about the will on the date of its execution. It is stated in the will that physical possession of the property had been handed over to Manju so that nobody could claim any right on the property from the date of execution of the will, which stands completely contradicted by the fact that physical possession of the property continues to be with Pradip till date and the testimonies of Manju and Vimla that they were visiting the Testator at the house in Hauz Khas, where he lived. After Testators death, Pradip has been and continues to be in physical possession of the property and no evidence was led by Manju to show that physical possession was handed over to her and if so, when and how. There was thus no reason for the Testator to have made this

57. Will dated 21.04.2010 saw the light of the day only after Pradip filed

the TEST.CAS. 28/2012, whereafter Manju also filed TEST.CAS. 8/2013. Given the fact that the first will was disclosed immediately after the funeral, it is completely unnatural for Manju to have not disclosed Will dated 21.04.2010 at that time, if she knew about it before Testators death as per Vimlas version or not disclose it till 2012, when she herself admits that the will was discovered in close proximity of the funeral, more particularly, when Pradip was in possession of the property. Manju stated that the will was discovered when we were going through the documents. No evidence is led on the description/location of the room from where the will was discovered and/or where in the room the will was lying, considering that a document of this nature could not be lying in the open. This is not to overlook the fact that Manju cannot not read English and the will is typed in English language and admittedly, no one else was present in the room to explain to her the nature or contents of the alleged document.

58. The disposition of the property in favour of Manju to the exclusion of

other legal heirs, more particularly, Pradip who was the sole beneficiary under the registered will in the purported will, is wholly unnatural and is also a suspicious circumstance surrounding the will. Adding to this is the suspicious circumstance that Testator had stated in Will dated 15.01.2001 that he had given enough to his daughters at the time of their marriage and yet in the alleged will he bequeathed the property to Manju stating that she was not as well off as the other daughters. Even otherwise, this is

Manjus husband owns property bearing No. D-68, Kamla Nagar in Delhi.

59. The other reason stated in support of the bequeath was that Manju

took care of him. Manju lived in Mumbai and while she stated that she will be able to demonstrate that Testator resided with her for months at a time at Mumbai and would place documents substantiating the visits, no such evidence was produced. It is stated in the purported will that Pradip was being excluded since his attitude and loyalty towards the Testator changed and he and his wife did not want him to come and stay in Hong Kong. Pradips wife made the Testators wife work the whole day in the house and many a times, the couple would go out on tours making the Testator and his wife feel lonely and give a feeling that they should not visit anymore. This is a false and unbelievable statement in the will, inasmuch as the Testator visited Pradip at Hong Kong from 2001 till the end i.e. for 9 years, till he lived. Almost all witnesses have deposed to this effect. If Pradip was meting out ill treatment to the Testator and his wife, there was no reason for them to regularly visit Hong Kong for nine long years after execution of the will in

2001. Pradip has placed on record copy of the passport of the Testator as

also Identity Card issued by the Government of Hong Kong in the name of the Testator. There is no evidence that there was any dispute or falling out between the Testator and Pradip. In fact, Pradip has placed on record evidence in the form of documents showing foreign inward remittances from 25.03.1997 onwards. From time to time, Pradip transferred monies to the tune of Rs. 5,00,000/-, Rs. 27,40,000/-, Rs. 19,14,500/- etc. through foreign remittances as also demand drafts in the sum of Rs. 5,79,536/- etc. in favour

of the Testator. If there was a dispute between father and the son, there was no reason or compulsion for Pradip to transfer huge sums of money to his father. In fact, the Hauz Khas property was bought by the Testator from these contributions since he himself had no money in the bank to purchase, which is borne out from the testimony of Manju who admitted that her father had no source of income from 1995 onwards. Asha and Nirmla have consistently and repeatedly asserted that Pradip used to transfer funds to the Testator for purchase of property and as and when he came to India, he reimbursed whatever expenses they incurred on day-to-day care of the Testator as also on his medical treatment. Both affirmed the fact that the Testator was visiting Pradip regularly.

60. The falsity of the purported will as also of Manjus stand is further

evident from her deposition that the property was purchased from the sale of the jewellery of her mother. This is in stark contrast to the disputed will itself, wherein it is stated that in the last ten years, Testator had handed over all jewellery and cash to Pradip and his family members, who were staying in Hong Kong. This also belies the stand of Manju that Pradip had no role or contribution towards purchase of the property inasmuch as if the Testator had no source of income and no one else admittedly contributed, wherefrom the money came for paying the sale consideration. This also dents the theory of Manju that the Testator desired to make her the sole beneficiary under the purported will and makes one wonder why the Testator would exclude Pradip from his estate once he was the actual care giver and the one who paid for the property. Will dated 21.04.2010 is not a true and correct reflection of the intent and desires of the Testator and is forged and fabricated document. Manju has failed to discharge the onus of removing the

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suspicious circumstances and the unregistered Will dated 21.04.2010 cannot be
probated. CONTENTIONS ON BEHALF OF MANJU

61. Manju is the daughter of the Testator who expired on 04.06.2010 at

Faridabad in the hospital. During his lifetime, Testator had executed a will on 15.01.2001 in favour of Pradip, his only son, bequeathing certain portions of Hauz Khas property in his favour. However, on 21.04.2010, the Testator executed another will in favour of Manju in the presence of two attesting witnesses, Vimla and Sanjeev. It is trite that in order to secure a probate, propounder of the will needs to establish: (a) will was signed by the Testator; (b) will was made with Testators free will; (c) Testator was in sound state of mind to understand the effect of the dispositions therein;

(d) will is signed by the Testator in the presence of two attesting witnesses;

and (e) two attesting witnesses attested the will in Testators presence and in presence of each other. [Ref.: Meena Pradhan and Others v. Kamla Pradhan and Another, 2023 SCC OnLine SC 1198; and Daulat Ram and Others v. Sodha and Others, (2005) 1 SCC 40]. Manju has proved all parameters required in law to prove a will and is entitled to probate of the said will.

62. First attesting witness Vimla has identified the signature of the

Testator and has deposed that Testator signed the will in her presence and she stood by her testimony in her cross examination. She also stated that her husband Sanjeev was the second attesting witness who was present with her at the time when the will was signed by the Testator. Likewise, Sanjeev identified the signatures of the Testator and deposed that the Testator had signed the will in his presence and his wifes presence. In the cross

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examination, he denied that the will was prepared in connivance with or that the signatures were forged.

63. It is a settled that in matters of proof of will, primary importance has

to be accorded to the testimony of attesting witnesses as held by this Court in Meenu Nanda and Another v. Kartar Singh Kochar, 2024 SCC OnLine Del 5441. Once both the attesting witnesses in their respective depositions have proved the signatures of the Testator, affixed on the will in their presence, the propounder of the will has discharged the onus to prove the will and nothing further is required for grant of probate. The burden to prove that the will was forged was on Pradip, who made these allegations and has to be discharged beyond reasonable doubt, which Pradip failed to discharge. [Ref.: Daulat Ram (supra), Ryali Kameswara Rao v. Benapudi Suryaprakasarao and Others, 1960 SCC OnLine AP 25 and Meenakshiammal (Dead) Through LRs. and Others v. Chandrasekaran and Another, (2005) 1 SCC 280]. Moreover, it is not enough for the objector to make a bald statement that the signatures on the will are forged. Expert evidence is required to be led to prove the forgery, which was not led in the instant case. Though Pradip in his list of witnesses in TEST.CAS. A belated application dated 31.03.2025 being CM No. 8573/2025 was filed in TEST.CAS. 8/2013 under Order VIII Rule 1(A) CPC, but the application was not pressed and there is no explanation till date as to why the opinion of a handwriting expert was not sought.

64. Pradip attempted to raise several alleged suspicious circumstances to cause prejudice and challenge the authenticity of the will, however, none of the points raised and/or alleged contradictions/inconsistencies pointed out, By:KAMAL KUMAR TEST.CAS. 28/2012 & connected matter Page 33 of 60

relate to the execution of the will. It is settled law that suspicious circumstances raised must relate to the execution of the will and must also be real, germane and valid and not merely a fantasy of the doubting mind as held by the Supreme Court in Shivakumar and Others v. Sharanabasappa and Others, 2020 SCC OnLine SC 385. Further, the

suspicious circumstances must be inherent in the making of the will itself and not borne out from a conflict of testimonies, as held by the Calcutta High Court in *Jarat Kumari Dassi v. Bissessur Dutt*, 1911 SCC OnLine Cal 144.

65. The contention of Pradip that Will dated 21.04.2010 is unregistered

and raises a suspicion since the first will was registered, is of no consequence. Non-registration of a will in itself is not a suspicious circumstance. It is a settled law that unregistered will can revoke a registered will. [Ref.: *Rajeev Kumar v. State of Uttar Pradesh and Others*, 1978 SCC OnLine All 825]. No negative inference can be drawn on account of non-registration of a will. [Ref.: *Ishwardeo Narain Singh v. Kamta Devi and Others*, 1953 SCC OnLine SC 34]. In *Daulat Ram* (supra), Court accepted the later unregistered will as against an earlier registered will.

66. Discovery of the second will from the room and that too by Manju

who did not understand English cannot be a suspicious circumstance, as alleged. Manju in her cross examination only stated that she discovered the second will but did not say that she understood the contents of the document when she saw it. In fact, later in her cross examination, she stated that her husband explains documents to her in vernacular. No subsequent question was put to her to ascertain as to when she realised that the document she

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discovered was the second will. Moreover, Manju did state that she signs in English.

67. The non-disclosure of the second will by Manju or Vimla at the time

of funeral when Pradip disclosed the first will is not a suspicious circumstance. Probate proceedings are not mandatory in Delhi and therefore, only after Pradip filed the probate proceedings, basis the first will, Manju disclosed the will in her probate petition. [Ref.: Baldev Raj Ahuja v. State, N.C.T. of Delhi and Others, 2023 SCC OnLine Del 327]. In fact, it is Pradip who has failed to offer any explanation as to why he sought probate of the first will, if at that time he had no inkling of the execution of the second will.

68. Unnecessary emphasis is laid on minor discrepancies in the evidence

of Manju and Vimla. Whether Manju lived with the Testator when she was in Delhi or with Sarla and/or that no documents were filed by Manju to support the visit of her father to Mumbai, are questions and circumstances which have no relationship either with the execution of Will dated 21.04.2010 or to testamentary capacity of the Testator and cannot cast any doubt on the authenticity of the said will. It is settled that suspicious circumstances must and must only relate to the execution of the will and not to happenings or conversations or communications exchanged between the legal heirs, post the execution of the will. Much is emphasised on behalf of Pradip that the Testator visited him regularly at Hong Kong but no evidence has been filed to substantiate this. Copies of passport and identity card have been produced but duration or frequency of such visits is not established.

69. Several documents are filed on behalf of Pradip to show remittances of monies from Hong Kong to the Testators account in the form of demand By:KAMAL KUMAR TEST.CAS. 28/2012 & connected matter Page 35 of 60

drafts or foreign inward remittances, but this cannot aid him inasmuch as there is no assertion even in the first will that the Hauz Khas property was bequeathed to Pradip because it was purchased fully or partly from his funds. Secondly, the payments alone cannot conclusively establish a

link with the sale consideration. In any case, such a transaction would be hit by the Prohibition of Benami Property Transactions Act, 1988 (1988 Act). Even if it is assumed that the property was purchased from Pradips money, it will make no difference to the present case since a Probate Court does not adjudicate title of the bequeathed property and is only concerned with the validity of the will. Probate Court cannot concern itself with whether the bequest was morally correct or not. Even the argument that no evidence is led to show that there was any rift or dispute between the Testator and Pradip is of no help since these circumstances also do not relate to the execution of the will or the testamentary capacity of the Testator.

70. Manju has duly proved that the Testator had the mental capacity to

execute the will and this was not questioned by any party. She has also proved that the will was signed in presence of Vimla and Sanjeev, both of whom have supported this position in their testimonies. No evidence has been led to disprove the will in accordance with law and none of the suspicious circumstances alleged relate to execution of the will or testamentary capacity of the Testator. Therefore, seen holistically, the objections raised by Pradip to the Will dated 21.04.2010 deserve to be dismissed and the will deserves to be probated in favour of Manju.

71. Heard learned Senior Counsels for the parties and examined their respective submissions.

72. Before proceeding to examine the rival contentions of the parties and
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the evidence on record, it would be pertinent and useful to closely look at the legal principles in respect of execution and proof of wills, for a proper determination of the contentious issues raised by the parties. It needs no reiteration that will is a testamentary document that comes into operation after the death of the Testator and is one of the most solemn documents

known to law, where the Executant of the will is not available to either deny the execution of the will or explain the circumstances in which it is executed. In this backdrop, the Supreme Court has consistently held that it is therefore necessary that trustworthy and unimpeachable evidence must come on record before the Court to establish the genuineness and authenticity of the will. In *Kalyan Singh, London Trained Cutter, Johri Bazar, Jaipur v. Smt. Chhoti and Others*, (1990) 1 SCC 266, the Supreme Court held that 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, Court examination is not confined only to their testimonies and demeanour and it is open to the Court to consider circumstances brought out in the evidence or which appear from the nature and contents of the document itself. It would also be 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 evidence adduced by the parties.

73. In *H. Venkatachala (supra)*, the Supreme Court enunciated the

fundamental guiding principles, which Courts must consider while dealing with proofs of will. The exposition of law is in passages 18 to 22 of the judgment, which are extracted hereunder for ready reference:- 18. What is the true legal position in the matter of proof of wills? It is well-known that the proof of wills presents a recurring topic for decision

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in courts and there are a large number of judicial pronouncements on the subject. The party propounding a will or otherwise making a claim under a will is no doubt seeking to prove a document and, in deciding how it is to be proved, we must inevitably refer to the statutory provisions which govern the proof of documents. Sections 67 and 68 of the Evidence Act

are relevant for this purpose. Under Section 67, if a document is alleged to be signed by any person, the signature of the said person must be proved to be in his handwriting, and for proving such a handwriting under Sections 45 and 47 of the Act the opinions of experts and of persons acquainted with the handwriting of the person concerned are made relevant. Section 68 deals with the proof of the execution of the document required by law to be attested; and it provides that such a document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. These provisions prescribe the requirements and the nature of proof which must be satisfied by the party who relies on a document in a court of law. Similarly, Sections 59 and 63 of the Indian Succession Act are also relevant. Section 59 provides that every person of sound mind, not being a minor, may dispose of his property by will and the three illustrations to this section indicate what is meant by the expression a person of sound mind in the context. Section 63 requires that the testator shall sign or affix his mark to the will or it shall be signed by some other person in his presence and by his direction and that the signature or mark shall be so made that it shall appear that it was intended thereby to give effect to the writing as a will. This section also requires that the will shall be attested by two or more witnesses as prescribed. Thus the question as to whether the will set up by the propounder is proved to be the last will of the testator has to be decided in the light of these provisions. Has the testator signed the will? Did he understand the nature and effect of the dispositions in the will? Did he put his signature to the will knowing what it contained? Stated broadly it is the decision of these questions which determines the nature of the finding on the question of the proof of wills. It would *prima facie* be true to say that the will has to be proved like any other document except as to the special requirements of attestation prescribed by Section 63 of the Indian Succession Act. As in the case of proof of other documents so in the case of proof of wills it would be idle to expect proof with mathematical certainty. The test to be applied would be the usual test of the satisfaction of the prudent mind in such matters.

19. 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

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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 has received substantial benefit under it, that itself is generally treated as a suspicious circumstance attending the execution of the will and the propounder is required to remove the said suspicion by clear and satisfactory evidence. It is in connection with wills that present such suspicious circumstances that decisions of English courts often mention the test of the satisfaction of judicial conscience. It may be that the

reference to judicial conscience in this connection is a heritage from similar observations made by ecclesiastical courts in England when they exercised jurisdiction with reference to wills; but any objection to the use of the word conscience in this context would, in our opinion, be purely technical and academic, if not pedantic. The test merely emphasizes that, in determining the question as to whether an instrument produced before the court is the last will of the testator, the court is deciding a solemn question and it must be fully satisfied that it had been validly executed by the testator who is no longer alive.

22. It is obvious that for deciding material questions of fact which arise in

applications for probate or in actions on wills, no hard and fast or inflexible rules can be laid down for the appreciation of the evidence. It may, however, be stated generally that a propounder of the will has to prove the due and valid execution of the will and that if there are any suspicious circumstances surrounding the execution of the will the propounder must remove the said suspicions from the mind of the court by cogent and satisfactory evidence. It is hardly necessary to add that the result of the application of these two general and broad principles would always depend upon the facts and circumstances of each case and on the nature and quality of the evidence adduced by the parties. It is quite true that, as observed by Lord Du Parc in *Harmes v. Hinkson*¹ where a will is charged with suspicion, the rules enjoin a reasonable scepticism, not an obdurate persistence in disbelief. They do not demand from the Judge, even in circumstances of grave suspicion, a resolute and impenetrable incredulity. He is never required to close his mind to the truth. It would sound platitudinous to say so, but it is nevertheless true that in discovering truth even in such cases the judicial mind must always be open though vigilant, cautious and circumspect.

74. The relevant observations of the Supreme Court can be safely

summed up as: in dealing with proof of wills, to begin with the Court will embark on the same enquiry as in the case of proof of documents and the propounder will be called upon to show by leading evidence that the will was signed by the Testator; Testator was in a sound and disposing state of mind at the time of signing the will; he understood the nature and effect of the disposition; and put his signatures of his own free will. The onus on the propounder will be discharged by proving these essential facts. However, there may be cases where execution of the will may be surrounded

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by suspicious circumstances. The Supreme Court delineated such circumstances illustratively, as where Testators mind may be feeble and debilitated, dispositions may be unnatural, unfair or improbable etc. Presence of suspicious circumstances will make the initial onus very heavy and unless it is satisfactorily discharged, Courts will be reluctant to treat the document as the last will of the Testator. It could also be that the will is executed under undue influence, fraud or coercion and/or there may be instances where propounder plays a prominent part in the execution of the will, which confers on him substantial benefits. To the same effect are the decisions of the Supreme Court in Rani Purnima Debi and Another v. Kumar Khagendra Narayan Deb and Another, 1961 SCC OnLine SC 89 and Shashi Kumar Banerjee and Others v. Subodh Kumar Banerjee since deceased and after him his legal representatives and Others, 1963 SCC OnLine SC 114. It would be useful to refer to the landmark judgment of the Supreme Court in Smt Jaswant Kaur v. Smt. Amrit Kaur and Others, 1976 SCC OnLine SC 368 at this stage, where the Supreme Court elucidated the following principles :- 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.

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 SC 443 : 1959 Supp 1 SCR 426] . The Court, speaking through Gajendragadkar, J., laid down in that case the following propositions :
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1. Stated generally, a will has to be proved like any other document, the test to be applied being the usual test of the satisfaction of the prudent mind in such matters. As in the case of proof of other documents, so in the case of proof of wills, one cannot insist on proof with mathematical certainty.

2. Since Section 63 of the Succession Act requires a will to be

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

3. Unlike other documents, the will speaks from the death of the

testator and therefore the maker of the will is never available for deposing as to the circumstances in which the will came to be executed. This aspect introduces an element of solemnity in the decision of the question whether the document propounded is proved to be the last will and testament of the testator. Normally, the onus which lies on the propounder can be taken to be discharged on proof of the essential facts which go into the making of the will.

4. Cases in which the execution of the will is surrounded by

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

5. It is in connection with wills, the execution of which is

surrounded by suspicious circumstances that the test of satisfaction of the judicial conscience has been evolved. That test emphasises that in determining the question as to whether an instrument produced before the court is the last will of the testator, the court is called upon to decide a solemn question and by reason of

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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.

75. In Guro (Smt) v. Atma Singh and Others, 1992 SCC OnLine SC

344, the Supreme Court came to a conclusion that the will set up by the propounder was not a genuine document basis the following suspicious circumstances and this decision is closely applicable to the present case:- 4. In the instant case, the appellate court noticed the following suspicious circumstances:

(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.

(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.

76. It may also be noted that in Pentakota Satyanarayana and Others v.

Pentakota Seetharatnam and Others, (2005) 8 SCC 67, the Supreme Court ruled that active participation of the propounder or beneficiary to the exclusion of the natural heirs need not necessarily lead to an inference that By:KAMAL KUMAR TEST.CAS. 28/2012 & connected matter Page 43 of 60

the will was not genuine. Relevant passage is as follows:- 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 SCC 784] . 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 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.

77. Following the decision in Jaswant Kaur (supra), the Division Bench

of this Court in Raja Ram Singh v. Arjun Singh & Anr., 2002 SCC OnLine Del 281, did place a word of caution and held that if the propounder has taken prominent part in the execution of the will which confers substantial

benefits on him, Court should proceed in a vigilant and conscious manner. Relevant paragraph is as follows:- 13. It is a well settled principle or 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 v. Kartar Kaur, AIR 1998 SC 2861, Smt. Jaswant Kaur v. Smt. Amrit Kaur, AIR 1977 SC 74, Gorantla Thataiah v. Thotakura Venkata Subbaiah, AIR 1968 SC 1332, Ramchandra Rambux v. Champabai, AIR 1965 SC 354. 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. If, however, the propounder has taken a prominent part in the execution of the will which confers substantial benefits on him that itself is a suspicious circumstances 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

By:KAMAL KUMAR TEST.CAS. 28/2012 & connected matter Page 44 of 60 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 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 Deb v. Kumar Khagendra Narayan Deb, AIR 1962 SC 567.

78. In *K. Laxmanan v. Thekkayil Padmini and Others*, (2009) 1 SCC

354, the Supreme Court reiterated that in terms of Section 68 of 1925 Act, the position in law was not in doubt that onus of proving the will is on the propounder but when there are suspicious circumstances regarding the execution of the will, the onus is heavier on the propounder to explain them to the satisfaction of the Court and only when such onus is discharged, the Court will accept the will as genuine albeit where allegations of fabrication, coercion, fraud etc. are levelled, the one who raises them has to prove. Even where there are no such pleas, but circumstances give rise to doubts, it is on the propounder to satisfy the conscience of the Court and all legitimate suspicions must be completely removed before the document is accepted as the last will of the Testator.

79. In *Shivakumar (supra)*, the Supreme Court reaffirmed the position of

law that mere proof of execution of the will in accordance with Section 63 of 1925 Act and Section 68 of Evidence Act is not final and conclusive where suspicious circumstances exist. It was further observed that a fishing enquiry with digging of the faults and lacuna is not to be resorted to while examining a will but at the same time, the real and valid suspicions which arise because of anything standing beyond normal happening or conduct cannot be ignored.

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80. In *Kavita (supra)*, after referring to several judgments on law of wills,

the Supreme Court referred to the decision in *Shivakumar (supra)* and the principles governing the adjudicatory process concerning proof of a will. I may quote the relevant passage from the judgment in *Kavita (supra)* as under:- 24.8. We need not multiply the references to all and other decisions cited at the Bar, which essentially proceed on the aforesaid principles while applying the same in the given set of facts and

circumstances. Suffice would be to point out that in a recent decision in *Shivakumar v. Sharanabasappa* [*Shivakumar v. Sharanabasappa*, (2021) 11 SCC 277], this Court, after traversing through the relevant decisions, has summarised the principles governing the adjudicatory process concerning proof of a will as follows : (SCC pp. 309-10, para 12)

12. 12.1. Ordinarily, 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. Alike the principles governing the proof of other documents, in the case of will too, the proof with mathematical accuracy is not to be insisted upon. 12.2. Since as per Section 63 of the Succession Act, a will is required to be attested, it cannot be used as evidence until at least one attesting witness has been called for the purpose of proving its execution, if there be an attesting witness alive and capable of giving evidence. 12.3. The unique feature of a will is that it speaks from the death of the testator and, therefore, the maker thereof is not available for deposing about the circumstances in which the same was executed. This introduces an element of solemnity in the decision of the question as to whether the document propounded is the last will of the testator. The initial onus, naturally, lies on the propounder but the same can be taken to have been primarily discharged on proof of the essential facts which go into the making of a will. 12.4. The case in which the execution of the will is surrounded by suspicious circumstances stands on a different footing. The presence of suspicious circumstances makes the onus heavier on the propounder and, therefore, in cases where the circumstances attendant upon the execution of the document give rise to suspicion, the propounder must remove all legitimate suspicions before the document can be accepted as the last will of the testator. 12.5. If a person challenging the will alleges fabrication or alleges fraud, undue influence, coercion etcetera 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 give rise to the doubt or as to whether the will had indeed been executed by the testator and/or as to whether the testator was acting of his own free will. In such eventuality, it is again a part of the initial onus of the propounder to remove all reasonable doubts in the matter. 12.6. A circumstance is suspicious when it is not normal or is not normally expected in a normal situation or is not expected of a normal person. As put by this Court, the suspicious features must be real, germane and valid and not merely the fantasy of the doubting mind. 12.7. As to whether any particular feature or a set of features qualify as suspicious would depend on the facts and circumstances of each case. A shaky or doubtful signature; a feeble or uncertain mind of the testator; an unfair disposition of property; an unjust exclusion of the legal heirs and particularly the dependants; an active or leading part in making of the will by the beneficiary thereunder et cetera are some of the circumstances which may give rise to suspicion. The circumstances abovenoted are only illustrative and by no means exhaustive because there could be any circumstance or set of circumstances which may give rise to legitimate suspicion about the execution of the will. On the other hand, any of the circumstances qualifying as being suspicious could be legitimately explained by the propounder. However, such suspicion or suspicions cannot be removed by mere proof of sound and disposing state of mind of the testator and his signature coupled with the proof of attestation. 12.8. The test of satisfaction of the judicial conscience comes into operation when a document propounded as the will of the testator is surrounded by suspicious circumstance(s). While applying such test, the court would address itself to the solemn questions as to whether the testator had signed the will while being aware of its contents and after understanding the nature and effect of the dispositions in the will? 12.9. In the ultimate analysis, where the execution of a will is shrouded in suspicion, it is a matter essentially of the judicial conscience of the court and the party which sets up the will has to offer cogent and convincing

explanation of the suspicious circumstances surrounding the will.

81. It would also be useful to refer to the observations in paragraphs 27 and 28 of the judgment where the Supreme Court observed that the will in By:KAMAL KUMAR TEST.CAS. 28/2012 & connected matter Page 47 of 60

question cannot be viewed with suspicion only because the Appellant had played an active role in execution thereof though she was a major beneficiary or only because the Respondents were not included in the execution process or there was unequal distribution of assets etc. The relevant consideration would be about the quality and nature of each of the factors and then the cumulative effect and impact of all of them upon making of the will with free agency of the testatrix. In other words, an individual factor may not be decisive but, if after taking all factors together, conscience of the Court is not satisfied that the will in question truly represents the last wish and disposition of the Testator, the will cannot get the approval of the Court, but if on a holistic view of the matter Court feels satisfied that the document propounded as will indeed signifies the last free wish and desire of the Testator and is duly executed in accordance with law, the will shall not be disapproved merely for one doubtful circumstance.

82. At this stage and particularly in the context of this case, it is also

useful to refer to observations of this Court in Vidya Sagar Soni v. State & Ors., 2006 SCC OnLine Del 965 as follows:- 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 the Court that the 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 facts. By: KAMAL KUMAR TEST.CAS. 28/2012 & connected matter Page 48 of 60

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 is desirous, to either alter the normal rule of succession, or where he is 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 too much importance cannot be attached to the disproportionate nature of a bequest. However, as observed in (1995) 4 SCC 459 : AIR 1995 SC 1684, *Rabindra Nath Mukherjee v. Panchanan Banerjee (dead) by LRs*, 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 AIR 1962 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 in favour of the will, 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 By:KAMAL KUMAR TEST.CAS. 28/2012 & connected matter Page 49 of 60 instructions for his will and that the will was drafted in accordance with those

instructions.

15. Courts have to evaluate evidence pertaining to 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 LT 465, 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 SC 443, 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 have to carry out the wishes of a dead person.

83. Coming to the applicable statutory provisions, Section 2(h) of 1925 Act defines a will to mean a legal declaration of the intention of a Testator with respect to his property which he desires to be carried into effect after By:KAMAL KUMAR TEST.CAS. 28/2012 & connected matter Page 50 of 60

his death. Section 63 of 1925 Act 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. Will must be proved by calling at least one attesting witness in accordance with Section 68 of the Evidence Act. In the context of proving the will, the Supreme Court has held that Court has to consider whether the testator signed the will; whether he understood the nature and effect of the disposition in the will; whether he was in sound state of mind; and whether he put his signature on the will, knowing what it contained. The legal burden to prove due execution lies on the propounder of the will. No specific standard of proof can be enunciated and every case depends on its own circumstances. Courts have to be vigilant in examining evidence. Normally, a will is executed when a person desires to either alter the normal rule of succession or where he wishes to settle his estate in a particular manner.

84. Courts have repeatedly held that will is a solemn document and unlike

other documents, the will speaks from the death of the testator and thus the maker of the will is never available for deposing as to the circumstances in which the will came to be made. Therefore, where the will is shrouded in suspicious circumstances, such as doubt on the mental capacity of the testator, propounder plays prominent part in execution of the will which confers substantial benefits on him, unnatural or unfair dispositions, etc., the case stands on a different footing and the proof of the will no longer remains a simple lis between the parties involved. Presence of suspicious circumstances makes the initial onus on the propounder heavier and he must remove all legitimate suspicions, before the document can be accepted as the last will of the testator. It is here that the test of judicial conscience of the

By:KAMAL KUMAR TEST.CAS. 28/2012 & connected matter Page 51 of 60 Court has been involved and the Court must satisfy itself that the instrument so propounded is the last will of a free and capable testator.

85. The judgements relied upon by learned Senior Counsel for Manju lay

down legal propositions concerning the execution and proof of will and cannot be disputed. Two principles governing the wills have been correctly put forth and highlighted: the suspicious circumstances must relate to the execution of the will; and that if the objector alleges fraud, forgery, coercion etc., the burden of proving such pleas is on him. However, it is equally settled that 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. [Ref.: Vidya Sagar Soni (supra)].

86. Keeping the principles elucidated by the Courts in the backdrop, I

may now come back and examine the wills in question in the instant case. Shri S.M. Aggarwal expired on 04.06.2010 while he was

hospitalized in a hospital at Faridabad. Indisputably, he was a resident of Delhi and owned the Hauz Khas property and lived there for a large part of his life. Testator's wife had pre-deceased him and the Class I legal heirs are Pradip, Sarla, Manju, Nirmla, Vimla and Asha. Testator executed Will dated 15.01.2001, which was duly registered, whereby he bequeathed his movable and immovable properties in favour of Pradip, to the exclusion of all other Class I legal heirs.

87. Pradip filed TEST.CAS. 28/2012 for probate of Will dated

15.01.2001 and Manju filed a reply propounding a second Will dated 21.04.2010, wherein the Testator allegedly bequeathed the Hauz Khas property to her to the exclusion of all other Class I legal heirs, including By: KAMAL KUMAR TEST.CAS. 28/2012 & connected matter Page 52 of 60

Pradip. Manju also filed TEST.CAS. 8/2013 seeking probate of Will dated 21.04.2010, in which objections were filed by Pradip. Insofar as the first will is concerned, the same is undisputed and even otherwise Pradip led evidence to prove the execution of the will, in accordance with law. One of the attesting witnesses, G.P. Kabra stepped into the witness box and stated that the deceased had put his signatures on the will in his presence on 15.01.2001 and also in the presence of second attesting witness, namely, Mrs. Krishna Kabra and both the attesting witnesses had signed in the presence of each other and in the presence of the Testator. He identified his signatures on Ex. R6W1/1 at place A as also of second witness, marked as B, whom he had seen writing and signing. He also identified the signatures of the Testator at places C, C1 and C2 on the will. Asha and Nirmla supported Pradip and testified that Will dated 15.01.2001 was the last will and testament of the Testator and Will dated 21.04.2010 was forged and fabricated.

88. Will dated 15.01.2001 is duly registered and Manju and Vimla have

admitted its execution and registration. There are no suspicious circumstances surrounding this will and none have been pleaded or argued by Manju, Vimla and/or Sanjeev. Therefore, applying the principles enunciated by the Supreme Court in the judgments referred to above as also looking into the evidence on record, both oral and documentary, this Court is satisfied that Will dated 15.01.2001, Ex.R6W1/1, executed by the Testator in favour of Pradip and in the presence of G.P. Kabra and Krishna Kabra, who attested the will, stands duly proved.

89. Manju has propounded Will dated 21.04.2010, which is a typed will allegedly executed by the Testator, bequeathing the Hauz Khas property to her and the attesting witnesses are Vimla and Sanjeev. Manju is right in By:KAMAL KUMAR TEST.CAS. 28/2012 & connected matter Page 53 of 60

arguing that merely because a will is unregistered that be itself is no ground to doubt its veracity and Courts have probated unregistered wills over registered ones in many cases. However, each case has to turn on its own facts. On a holistic analysis of the evidence on record, I am of the view that Will dated 21.04.2010 is shrouded in suspicious circumstances as follows:-

(i) Will dated 21.04.2010 is unregistered whereas Will dated

15.01.2001 is a registered will and it is unlikely, given the facts and circumstances that have emerged in the instant case, that the Testator would have revoked the registered will and excluded Pradip;

(ii) there are several inconsistencies/contradictions in the testimonies of the witnesses as follows:-

(a) Manju stated in her cross-examination on 29.05.2017 that

(Vol. however, after 2-3 days, when Pradip Aggarwal have gone back to Hong Kong, when we were going through the documents, we came across the Will dated 21.04.2010. Thereafter I inform Pradip Aggarwal with regard to the same and thereafter he filed case against me). I was alone in the room when this Will of 21.04.2010 was discovered. In contrast to this, Vimla stated that I have disclosed about the Will dated 21.04.2010 (Ex.PW2/1) to my sister Mrs. Manju Aggarwal on 21.04.2010 itself through telephone, after signing the same as a attesting witness. I called her from my mobile to her mobile.. At the time of execution of Will dated 21.04.2010 (Ex.PW2/1), apart from myself, my husband and my father were present. There is thus suspicion on the very discovery of the will, which is a crucial dent in

By:KAMAL KUMAR TEST.CAS. 28/2012 & connected matter Page 54 of 60 the case set up by Manju. There is no evidence on where the room was and where in the room the document was found lying. It is difficult to believe that the Testator, who was well read and had earlier taken steps to get the will registered, would leave a document as solemn as a will, lying at any place in a room.

(b) Manju admitted that she did not know what other documents

were there when she was looking for the documents and that she was alone in the room. In cross-examination on 29.05.2017, Manju stated that after discovering the Will dated 21.04.2010, she called Pradip and informed him of the will, but on 30.05.2017 she stated that she cannot read or understand documents in English and her husband explains the contents in vernacular albeit she can sign in English. If Manju was unable to read English, it is not understood how she knew that the document suddenly discovered by her was a will without any assistance.

(c) Vimla stated that she was present at the time of her fathers

funeral and remained there even after the funeral along with her husband, while Sanjeev stated that he was not present at the time of funeral of his father-in-law and was thus not aware if after the funeral Pradip disclosed the Will dated 15.01.2001. It is unexplained why Sanjeev did not attend the funeral of his father-in-law, who was so close to him and trusted him so much that he made him an attesting witness to a confidential document such as the will.

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(d) Vimla signed on the no objection affidavit dated

12.02.2012 in favour of Pradip yet she signed as an attesting witness on the Will dated 21.04.2010. Vimla took a stand in her reply to TEST.CAS. 28/2012 that she had never signed on any such affidavit and the signatures on the affidavit are different from the actual signatures. Both Asha and Nirmla stated that the three sisters had signed the no objection affidavits in presence of each other. However, no evidence was led to substantiate that the signatures were different and/or that the affidavit was not signed in the presence of Asha and Nirmla, which is sufficient to dislodge the credibility of the attesting witness.

(e) Vimla denied that Pradip had informed everyone of the

existence of registered Will dated 15.01.2001, however, Manju stated in her cross-examination that after the funeral of her father, Pradip had disclosed about the said Will in presence of all sisters, except Sarla.

(f) Manju stated that Nirmla and her husband were taking care

of the father when he was in India and he visited Hong Kong once in a year. She also stated that her father stayed with her for three months at a time. Vimla, on the other hand, stated that Nirmla and her husband did not look after the father and it was Manju, who was more involved.

Sanjeev stated that nobody was taking care of the father as he maintained himself and as and when called, he and Vimla used to go. Manju deposed that her father lived with her for nearly 3

By:KAMAL KUMAR TEST.CAS. 28/2012 & connected matter Page 56 of 60 months at a time when he travelled to Mumbai and that she would produce documents to prove the travel, but no document was filed.

(g) As per the Will dated 21.04.2010, the subject matter of the

Will was known to the all daughters and the son, which is contradicted by Manju who stated that she was not aware of the said Will until she discovered the document after the funeral of the Testator. As per the Will, physical possession of the Hauz Khas property was handed over to Manju so that nobody could claim any right on it from the date of execution of the Will. However, as a matter of fact, the physical possession of the property till date continues to be with Pradip and no evidence to the contrary is led by Manju and/or Vimla.

(h) If Manju is to be believed that she discovered the Will 2-3

days after Pradip left for Hong Kong post the funeral of his father, it is not explained why the Will was not disclosed until the filing of the testamentary case by Pradip in 2012.

(i) It is proved by Pradip that he sent substantial amount of

money closer to the purchase of the subject property and Manju has admitted that in the years 1995-1996, Testator had no source of income. Manjus stand that the property was bought from the jewellery of the mother is belied by the Will itself, wherein it is stated that in the last 10 years the Testator had handed over all the jewellery and cash to Pradip. The financial crunch of Manju is belied by the evidence of Vimla,

By:KAMAL KUMAR TEST.CAS. 28/2012 & connected matter Page 57 of 60 where she stated that Manju has a house in Mumbai and her husband used to come to Delhi where he had a house in Kamla Nagar.

(iii) The disposition of the property in favour of Manju to the

exclusion of other legal heirs including Pradip is unnatural, considering that in the registered Will, Pradip was the sole beneficiary and admittedly, the Testator was travelling to Hong Kong to stay with Pradip every year for nearly 9 years. No evidence of any fall out or dispute between the Testator and Pradip has come on record. Pradip proved transfer of money from time to time in the bank account of the Testator through foreign inward remittances and demand drafts, closer to the purchase of Hauz Khas property. Manju has not led any evidence to show any other source from which money came to the Testator to purchase the property, sale consideration of which nearly matched with the total money sent by Pradip and in fact, she admitted that around 1998 when the property was purchased, the Testator had no source of income. It is unnatural and a suspicious circumstance that the Testator would have desired to exclude Pradip from his estate when he was the one who was sending money to him and even otherwise looking after him when he travelled to Hong Kong and paid for his expenses by reimbursing whatever was spent by Nirmala, as deposed by her.

(iv) It has come in evidence that Pradip revealed existence of Will

dated 15.01.2001 right after the funeral of Testator in front of all the sisters, except Sarla. The purported will was allegedly executed on 21.04.2010 in the presence of Vimla and Sanjeev. Vimla in her By:KAMAL KUMAR TEST.CAS. 28/2012 & connected matter Page 58 of 60

statement dated 21.07.2018 stated that she was present at the time of Testators funeral and remained there after the funeral with her husband Sanjeev. Manju was also present when the registered will was disclosed.

It is unnatural that neither of the three disclosed the purported will at this stage. In fact, this will did not come to light till TEST.CAS. 28/2012 was filed by Pradip.

(v) It is stated in the Will dated 21.04.2010 that Pradip had earlier

confirmed to the Testator that he would pay a sum of Rs.5,00,00,000/- to clear the debts of Manju or Testator may give the Hauz Khas property to Manju as the same is not in Pradips use, given that he is a permanent resident of Hong Kong. No evidence has been led by Manju to prove that she was under debts and/or the nature of such debt(s), which prompted the Testator to tell Pradip to clear the debts and/or why Pradip was obliged to clear her debts. In her affidavit dated 18.09.2018, Nirmla states that the story mentioned in the will that Pradip confirmed of paying Rs. 5 crores to Manju is absolutely false.

(vi) An assertion has been made that Testator revoked the registered

will owing to the changed attitude of Pradip and his wife. If that was true, it is not understood what compelled the Testator to travel to Hong Kong, every year for nine long years. The factum of yearly visits is not denied by Manju or Vimla and also stands confirmed by testimony of Sanjeev. It is intriguing why the will was not revoked for nine long years, if the Testator and his wife were not treated well by Pradip and his family and that the Testator expired on 04.06.2010 i.e. within less than two months from the execution of the will dated

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21.04.2010.

(vii) There is no evidence that the will was read over and explained to the Testator or the Testator read the will.

90. The aforesaid suspicious circumstances, in my view, are grave and cast a doubt on the genuineness of will dated 21.04.2010. Manju has failed to discharge the onus of removing the legitimate suspicions and hence both

issues are decided in favour of Pradip and against Manju. The argument of

Manju that if the money was paid by Pradip, purchase of the property was a Benami transaction, is inconsequential and irrelevant for this case and is hit by Manjus own stand that a probate Court does not decide the title of a property.

CONCLUSION

91. The Will dated 15.01.2001 Ex.R6W1/1 executed by late Shri S.M. Aggarwal is proved to be his last and true Will. Will dated 21.04.2010 propounded by Manju is disproved.

92. TEST.CAS.28/2012 is allowed and probate of Will dated 15.01.2001

is granted to the Petitioner, subject to furnishing requisite Court fee. Since Pradip is the sole beneficiary of Will dated 15.01.2001, the requirement of furnishing administrative bond and undertaking of a surety is dispensed with.

93. TEST.CAS. 8/2013 is consequently, dismissed.

94. Both petitions are disposed of along with pending applications. JYOTI SINGH, J MARCH 13 , 2026/S.Sharma/YA By:KAMAL KUMAR TEST.CAS. 28/2012 & connected matter Page 60 of 60

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