

Smt. Chandra Vasa Vs. Smt. Dulesari Devi

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Court : Allahabad

Decided On : May-24-2004

Reported in : AIR2004All350; 2004(4)AWC2930

Judge : Tarun Agarwala, J.

Acts : [Succession Act, 1925](#) - Sections 63; [Evidence Act, 1872](#) - Sections 111

Appeal No. : Second Appeal No. 9 of 1990

Appellant : Smt. Chandra Vasa

Respondent : Smt. Dulesari Devi

Advocate for Def. : Sankatha Rai, ;Vinod Rai and ;K.P.S. Yadav, Advs.

Advocate for Pet/Ap. : R.N. Singh and ;S.N. Singh, Advs.

Disposition : Appeal dismissed

Judgement :

Tarun Agarwala, J.

1. The plaintiff filed a suit for the cancellation of the will dated 2-2-83 executed by Smt. Muneshwari Devi bequeathing the entire property, etc. in favour of the defendant Smt. Chandravasa Devi. The plaintiff Smt. Duleshwari and the defendant are real sisters and their mother is the person, who had executed the

will. The plaintiff alleged that the property was owned by her father Basdeo, who died about 25 years ago and upon his death, the entire property was inherited by her mother, Smt. Muneshwari Devi. It was alleged that the plaintiff's mother was an illiterate, rustic and a pardahnashin lady and had died on 25-6-1983 at the age of 75 years. The plaintiff alleged that she used to stay with her mother from time to time in order to help her out in her household affairs. Between October 1982 to May 1983, the plaintiff could not visit her mother, as she herself, was unwell on account of a shooting pain in her stomach, which was later on, diagnosed as appendicitis. When she got well, she again came and stayed with her mother and looked after her. The plaintiff alleged that, ten days before her mother's death, she became unwell and at that time, she desired to execute a will in favour of the plaintiff and the defendant. The husband of the defendant, Sri Vipin Bihari Pandey stated that there was no need to execute a will, as upon the mother's death, both her daughters would inherit the property in equal share. After her mother's death, the husband of the defendant moved an application for mutation of the name of the defendant in the revenue records on the basis of the will dated 2-2-83. It was then the plaintiff came to know about the fraud played by the defendant and her husband.

2. The plaintiff alleged that her mother had orally gifted a piece of land to a priest. Sri Ram Awadh Pandey, a couple of years ago and wanted to execute a sale deed/gift deed in his favour. For this purpose she had gone with the defendant and her husband on 2-2-83 to get the sale deed executed in favour of Ram Awadh Pandey. The defendant and her husband, without the mother's knowledge and consent, also got her to place her thumb impression on some loose papers and got prepared a forged will. The plaintiff alleged that her mother was also hard of hearing and that she did not execute the will knowingly or willingly and that she had no intention to bequeath the entire property in favour of the defendant. The plaintiff alleged that the husband of the defendant used to look after the affairs of the mother and that the defendant and her husband had played a fraud upon the plaintiff's mother and got a will executed in favour of the defendant without her consent and knowledge. The plaintiff prayed that the alleged will dated 2-2-83 which had been registered before the Sub-Registrar be cancelled and, that, she was entitled to the possession of her share of the property left by her mother.

3. The defendant contested the suit and Submitted that the plaintiff never stayed with her mother nor looked after her. The plaintiff was a teacher in a Government school and was residing in another village and therefore, the question of staying with her mother did not arise. The defendant further alleged that she was the younger daughter of her mother and after her marriage, she along with her husband continued to stay with her mother and looked after her. The defendant also alleged that her mother always favoured her. The defendant further submitted that her mother was an intelligent woman and knew the wordly affairs and was not a rustic or a pardahnashin lady. She had a bank account, paid electricity bills, got a tube well installed and paid off the loan. She had also executed a sale deed and knew the procedures at the Sub-Registrar's office. The defendant alleged that her name existed in the voter's list and also in the Kutumb Register and that she was in possession of the property in question. She further alleged that her children also lived with her grandmother and that she wanted to execute the will, which was executed according to her wishes.

4. The trial Court framed various issues and after considering the evidence brought on the record of the case, dismissed the suit, holding, that the will was duly executed by the testatrix according to her wishes after understanding the contents of the will and that the will was not executed on the basis of a fraud committed by the defendant and her husband. The trial Court further found that the testatrix was not a pardahnashin lady and that the plaintiff never stayed with her mother. The testatrix trusted her son-in-law, and that she always had the intention to bequeath the entire property in favour of the defendant on the reasoning that the bank account was in the joint names of testatrix and the defendant.

5. Aggrieved by the decision of the trial Court, the plaintiff filed an appeal, which was allowed, and the suit of the plaintiff was decreed. The appellate Court held that the plaintiff used to stay with her mother from time to time and that the relations between the testatrix and the plaintiff were cordial. The appellate Court further found that the defendant admitted that she had a good relations with the plaintiff. The appellate Court held that the burden of proof had wrongly been placed upon the plaintiff and that the burden of proof was upon the defendant to prove that the will was duly executed by the testatrix, which the defendant did not

discharge. The appellate Court found that the testatrix did not willingly execute the will and that the defendant and her husband played a fraud upon the testatrix and that the testatrix executed the will under the impression that she was executing a sale deed. The appellate Court held that the execution of the will was an outcome of a fraud and accordingly cancelled the will and further held that the plaintiff was entitled to her share in the properties left by the testatrix.

6. The defendant has now preferred the second appeal before this Court. At the time of the admission of the second appeal, the following substantial questions of law was framed:

'(1) Whether, in the facts and circumstances of the present case, the finding recorded by the lower appellate Court in respect of the validity of the will dated 2-2-1983 executed by Smt. Munesari Devi in favour of Smt. Chandra Vasa is clearly vitiated in law due to the fact that the lower appellate Court has misread paragraph 16 of the written statement filed by Smt. Chandra Vasa and due to the fact that the lower appellate Court has been swayed away by irrelevant considerations while holding that the will dated 2-2-1983 is a farji document?'

7. However, at the time of the hearing of the appeal, the learned counsel submitted that the following questions of law be also framed namely--

'Whether, in the facts and circumstances of the present case, the lower appellate Court has been justified in reversing the decree passed by the trial Court without upsetting the various reasonings given by the trial Court in favour of the validity of the will dated 2-2-83 specially, when there were no particulars of fraud pleaded in the plaint?'

8. This Court in the interest of justice and fair play permitted the learned counsel to argue on the aforesaid questions of law.

9. Heard Sri S. N. Singh, the learned counsel for the defendant appellant and Sri Sankatha Rai, the learned Senior counsel assisted by Sri K.P.S. Yadav, Advocate for the plaintiff-opposite party.

10. The learned counsel for the appellant submitted that the lower appellate Court committed an error in misconstruing para 16 of the Written statement and was swayed by irrelevant consideration in holding that the will dated 2-2-83 was a forged and a fabricated document. The learned counsel further submitted that the lower appellate Court was not justified in reversing the decree passed by the trial Court without upsetting the findings and the reasonings given by the trial Court while upholding the validity of the will. The learned counsel urged that no particulars of fraud were pleaded in the plaint and whereas the trial Court held that no fraud was played, no finding on this aspect was given by the lower appellate Court. The learned counsel further submitted that the Will was duly registered and that due weightage should be given to a registered document, which had also been proved by the attesting witness. The learned counsel submitted that the burden of proof was wrongly placed upon the defendant and that the burden of proof was upon the person who alleged it, especially, when fraud was alleged.

11. On the other hand the learned counsel for the plaintiff/opposite party contended that the defendant had only made a bald denial of para 6 of the plaint in her written statement and therefore the contents of para 6 of the plaint was deemed to be admitted by the defendant. It was further urged that the testatrix was an old lady and was wholly dependant on her son-in-law who misused his position and played a fraud upon the testatrix and got a Will executed without the testatrix knowledge.

12. The learned counsel further alleged that the execution of the Will had not been proved and that this Court should not reappreciate the evidence in the second appeal. The learned counsel further submitted that no substantial questions of law arose and that the second appeal should be dismissed with cost.

13. Before adverting to the rival submissions made by the learned counsel for the parties, it is necessary to cull out the admitted facts of the case as per the findings given by the Courts below.

14. The Courts below found that the testatrix was not a rustic or a pardahnashin lady. The testatrix had complete faith in her son-in-law, i.e. the husband of the defendant. The husband of the defendant used to look after the affairs of the

testatrix. Further finding is that the defendant and her husband used to stay permanently with the testatrix and that the plaintiff used to come off and on and stayed with the testatrix and looked after her. It has also come on record that the children of the plaintiff stayed with the testatrix for some period of time and went to school in the local village. The Courts below have also held that the relationship between the plaintiff and the testatrix, and between the plaintiff and the defendant were cordial and were not strained. These findings given by the Courts below are based on appreciation of evidence, which are findings of fact and cannot be interfered in the second appeal.

15. Much stress has been laid by the learned counsel for the appellant that para 16 of the written statement was misread by the lower appellate Court. Para 16 of the written statement states that the plaintiff never stayed with the testatrix nor ever looked after her and that she was working as a teacher and that the plaintiff lived with her in-laws in a different village, which was fourteen miles away. The appellate Court, after appreciating the evidence found that the plaintiffs children had stayed with the testatrix and studied in the local school. From the evidence given by the plaintiff and the defendant, the appellate Court found that the plaintiff also used to come off and on and stayed with her mother. In my view, the lower appellate Court, has not misread para 16 of the written statement. The findings of the appellate Court are based on appreciation of evidence.

16. Proof of Will has always been a recurring subject for a large number of judicial pronouncements. The legal position is that the party propounding a Will or otherwise making a claim under a Will must prove the existence and validity of the Will.

17. A Will has to be proved like any other document except as to the special requirement of attestation prescribed by Section 63 of the Indian Succession Act. Section 63 of the Indian Succession Act requires that the testator shall sign or affix his marks 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 each

of whom has seen the testator sign or affix his mark to the Will in the presence and by the direction of the testator. Under Section 67 of the Evidence Act, a document signed by a person, the signature of the said person must be proved to be in his handwriting. Section 68 of the Evidence Act provides that such a document shall not be used as evidence until one attesting witness has been called for the purpose of proving its execution.

18. Thus, the Will set up by the propounder is required to be proved in the light of these provisions. 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.

19. Thus, the propounder would be called upon and give satisfactory evidence that the Will was signed by the testator and that the testator at the relevant time was in a sound and disposing state of mind and that he understood the contents of the Will and further prove that the testator had put his signature to the Will of his own free will in the presence of the witnesses and that the witnesses had placed their signatures in the presence and by the direction of the testator. When the aforesaid is proved by adducing evidence, the Courts would be justified in holding that the execution of Will stands proved, and thus, the onus on the propounder is discharged.

20. However, there may be cases, where the execution of the Will may be surrounded by suspicious circumstances in which case the Court may require the propounder to remove the suspicion completely before the document is accepted as the last Will of the testator. The Court would be reluctant to treat the document as the last Will of the testator until the suspicious circumstances is discharged by the propounder.

21. The Supreme Court in *H. Venkatachala Iyengar v. B. N. Thimmajamma*, AIR 1959 SC 443, held--

'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 circumstances attending the execution of the Will and the propounder is required to remove the said suspicion by clear and satisfactory evidence.'

22. In the light of these considerations, which has been culled out from various decisions of the Supreme Court in AIR 1955 SC 443, AIR 1962 SC 529, AIR 1965 SC 354, AIR 1971 SC 2236, AIR 1974 SC 1999, AIR 1977 SC 63, AIR 1977 SC 74, AIR 1982 SC 133, AIR 1987 SC 767, AIR 1990 SC 396, AIR 1990 SC 1742 and (1992) 2 SCC 507, this Court is basically required to consider whether the Will had been duly proved in the present case and whether the suspicious circumstances had been satisfactorily discharged.

23. Before advertng to the aforesaid issue, much stress has been laid by the learned counsel for the appellant that the appellate Court had wrongly placed the burden of proving the Will upon the defendant-appellant. The learned counsel submitted that the plaintiff alleged the exercise of fraud and undue influence in respect of the execution of the Will and, therefore, the burden of proof was upon the plaintiff to prove that the Will was executed on account of a fraud committed by the defendants. In support of his submissions, the learned counsel for the appellant placed reliance on AIR 1963 SC 1279, AIR 1964 SC 529, AIR 1940 PC 98 and (1991) 5 JT (SC) 378 : (AIR 1992 SC 1555).

24. There is no dispute in the aforesaid proposition. A plea of undue influence, is a special plea and in view of Section 103 of the Evidence Act, it places the burden of substantiating such a plea on the party which sets it up. In the present case there is no plea of undue influence alleged by the plaintiff. There is no plea that the defendant dominated the will of the testatrix in executing the Will in favour of the defendant. However, the plaintiff has alleged that the husband of the defendant used to look after the affairs of the testatrix and that while executing the sale deed in favour of Ram Awadh Pandey, he made the testatrix to place her thumb impressions on the Will without her knowledge and without knowing the contents thereof. This plea of fraud, was further based on the fact that the husband of the defendant was looking after the affairs of the testatrix and that he was a man of confidence and that the testatrix had full confidence in him. In such a case, the

burden of proving the genuineness of the Will lay on the party who was in a position of active confidence, as contemplated under Section 111 of the Evidence Act. In Iyengar's case (AIR 1959 SC 443) (supra) the Supreme Court held--

'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.'

25. The plaintiff had come out with a specific case that the testatrix had gone with the defendant and her husband to get a sale deed executed in favour of Ram Awadh Pandey. The husband of defendant was a man of confidence, who used to look after the affairs of the testatrix. Under the garb of executing the sale deed, the husband of the defendant got the testatrix to place her thumb impression on the Will unknowingly and without knowing the contents of the said document. The plea of fraud was made in order to highlight suspicious circumstances surrounding the execution of the Will and this initial burden had been successfully discharged by the plaintiff. Further, the fact that the defendant and her husband took an active part in the execution of the Will which conferred upon them, the entire legacy of the testatrix, leads to an irresistible conclusion that the onus was upon the defendant to remove the suspicious circumstances by clear and satisfactory evidence. The fact that the husband of the defendant was a man of confidence and that the testatrix reposed full confidence in him, the onus was again upon the defendant, as per Section 111 of the Evidence Act, to prove the validity of the Will and to remove the suspicious circumstances surrounding the execution of the Will.

26. Thus, I hold that in the given circumstances, especially, when the defendant was the beneficiary under the alleged Will, the onus was upon the defendant to prove that the Will was a genuine document and had been validly executed. The onus became heavier upon the defendant, when suspicious circumstances revolved around the execution of the Will and the onus was upon the defendant to remove the suspicious circumstances by clear and satisfactory evidence. The

appellate Court was therefore, justified in holding that the burden and onus to prove the Will and remove the suspicious circumstances was upon the defendant. The trial Court in this regard committed an error in placing the burden upon the plaintiff.

27. Coming back to the question as to whether the execution of the Will had been proved or not, both the parties have led evidence. The scribe and the two witnesses to the Will have appeared and gave their statements.

28. Triguni Nath Rai, P.W. 2, was one of the attesting witness to the Will. He had been produced by the plaintiff. He stated that he was in the tehsil on 2-2-1983 on account of his own personal work and that he had met Ram Awadh Pandey, who informed him that a sale deed was being executed in his favour, and requested Triguni Nath Rai to sign the sale deed as a witness. He further stated that he knew Ram Awadh Pandey and when he went to sign the sale deed, the document had already been written and the thumb impression of the testatrix was already existing on the document. He signed at the places as directed. He stated that he signed the document thinking it to be the sale deed in favour of the Ram Awadh Pandey. At the time of signing the document, there was no talk about the execution of any Will, This witness further stated that the contents of the document were never read out or made known to him. After signing the document, he left, but was later on called again to place his signatures before the Sub-Registrar. He was taken to the Sub-Registrar Office, where again he placed his signatures at the places directed. The witness in his cross-examination further stated that the testatrix was present before the Sub-Registrar and that the contents of the document was never read out. He further stated that he never knew the testatrix or the defendant and came to know during his evidence, that the plaintiff was the daughter of the testatrix. He further stated Padamnath Upadhyay did not sign the document in his presence.

29. The second witness to the Will Padamnath Upadhyay was produced by the defendant, who deposed that the Will was written in front of him in the presence of the testatrix and that the testatrix had placed her thumb impressions after the contents of the Will was read out to her. This witness also deposed that the

testatrix placed her thumb impression in his presence and that the witnesses also signed and placed their signatures in the presence of the testatrix. In cross-examination this witness categorically stated that he had signed as a witness only on one document and further stated that only the Will was executed by the testatrix on that date and that no other document was executed. The scribe of the Will was also produced by the defendant, namely, Bhagwan Das, D.W. 5, who deposed that he had written the Will. He further stated that the testatrix was identified by Triguni Nath Rai and Padamnath Upadhyay after he had written the Will.

30. The appellate Court relied upon the statement of Triguni Nath Rai and found that Triguni Nath Rai was an independent witness and that his statement was genuine. The appellate Court disbelieved the statement of Padamnath Upadhyay. Padamnath Upadhyay had categorically deposed that he had only signed one document, i.e., the Will as a witness and that he did not sign any other document other than the Will. This witness also categorically stated that only one document was executed and that was the Will. The appellate Court found that two documents were executed on that date, namely, a sale deed in favour of Ram Awadh Pandey and the Will. The appellate Court found that in both these documents Padamnath Upadhyay was an attesting witness and therefore, held that Padam Nath Upadhyay was not stating the correct facts and therefore, disbelieved his statement. The appellate Court also disbelieved the statement of the scribe Bhagwan Das on the ground that the said witness could not state as to whether any other document was written by the testatrix on that date. The appellate Court further found that the said witness could not state as to whether he wrote the Will or not and therefore, disbelieved his statement.

31. In my view, the appellate Court after appreciation of the evidence on record had correctly relied upon the evidence of Triguni Nath Rai and had rightly discarded the evidence of Padamnath Upadhyay and Bhagwan Das.

32. In my opinion, the findings arrived at by the lower appellate Court was based on appreciation of evidence. In Santosh Hazari v. Purshottam Tiwari, 2001 Revenue Decision 336 : (AIR 2001 SC 965) the Supreme Court held that the first

appellate Court is the final Court of facts and that pure findings of fact remain immune from challenge before the High Court in a second appeal. The Supreme Court further held--

'Now the first appellate Court is also the final Court of law in the sense that its decision on a question of law even if erroneous may not be vulnerable before the High Court in the second appeal because the jurisdiction of the High Court has now ceased to be available to correct the errors of law or the erroneous findings of the first appellate Court even on questions of law unless such questions of law be a substantial one.'

33. In *Dudh Nath Pandey v. Suresh Chandra Bhattasali*, AIR 1986 SC 1509, the Supreme Court held that the High Court could not make a fresh appraisal of the evidence and arrive at a different finding contrary to the findings recorded by the first appellate Court in exercising of the power under Section 100, C.P.C.

34. In *Deity Pattabhiramaswamy v. Hanymayya*, AIR 1959 SC 57, the Supreme Court held that the provisions of Section 100, C.P.C. are clear and ambiguous and there is no jurisdiction to entertain a second appeal on the ground of an erroneous finding of fact, however gross the error may seem to be. The Supreme Court further held that the High Court has no jurisdiction to interfere in the second appeal with the findings of fact given by the appellate Court, which is based on an appreciation of the relevant evidence.

35. In *Kondiba Dagadu Kadam v. Savitribai Sopan Gujar*, (1999) 3 SCC 722 : (AIR 1999 SC 2213, Para 5) the Supreme Court held 'It is not within the domain of the High Court to investigate the ground on which the findings arrived at by the last Court of fact, being the first appellate Court. It is true that the lower appellate Court should not ordinarily reject witnesses accepted by the trial Court in respect of the credibility but even where it has rejected the witnesses accepted by the trial Court, the same is no ground for interference in second appeal, when it is found that the appellate Court has given satisfactory reasons for doing so. In a case where from a given set of circumstances two inferences are possible, one drawn by the lower appellate Court is binding on the High Court in the second appeal. Adopting any other approach is not permissible. The High Court cannot substitute its opinion for

the opinion of the first appellate Court unless it is found that the conclusion drawn by the lower appellate Court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of the pronouncements made by the Apex Court, or was based on inadmissible evidence or arrived at without any evidence.'

36. In the present case, the trial Court has been swayed by irrelevant consideration in coming to a conclusion that the Will was executed validly by the testatrix. In the first instance, the trial Court placed the burden of proof upon the plaintiff and held that the burden was upon the plaintiff to prove that the defendant had committed a fraud. As I have held earlier, the plea of fraud was made by the plaintiff to show the suspicious circumstances surrounding the execution of the Will and therefore, the burden was wrongly placed upon the plaintiff. The burden was upon the defendant to prove that the Will was validly executed, and that she was further required to remove the suspicious circumstances surrounding the execution of the Will. The trial Court presumed that the testatrix must have also placed her thumb impression on the Will on the footing that she had also placed her thumb impression on the sale deed and therefore, presumed that she had knowledge about the contents of the Will. The trial Court further found that the defendant was a nominee or a joint holder in the bank accounts held by the testatrix and therefore, presumed that the defendant was a valid beneficiary to the Will and that the testatrix had the intention to execute the Will in favour of the defendant. On these findings the trial Court came to the conclusion that the Will was validly executed by the testatrix and that no fraud had been committed. In my view, the conclusion drawn by the trial Court is purely based on presumption. No finding has been given as to whether the Will has been proved in accordance with the provisions of Section 68 of the Evidence Act and Section 63 of the Indian Succession Act. On the other hand the appellate Court after considering the evidence on record has relied upon the evidence of Triguni Nath Rat and concluded that the Will had not been duly executed nor proved in accordance with the provisions of Section 68 of the Evidence Act read with Section 63 of the Succession Act. Triguni Nath Ral in his deposition had categorically stated that the contents of the document was never read out in front of him nor was the testatrix present when he had signed the document. The said witness further stated that

when he had signed the document, the thumb impression, presumably of the testatrix, was already existing. Thus, the ingredients of Section 63(c) of the Succession Act and Section 68 of the Evidence Act have not been proved.

37. In my view, the lower appellate Court has given satisfactory reasons in holding that the Will had not been proved. The conclusion drawn by the lower appellate Court were neither erroneous nor contrary to the mandatory provisions of the law applicable. Thus, I affirm the finding of the lower appellate Court and hold that the Will has not been validly proved, as required under Section 68 of the Evidence Act read with Section 63 of the Succession Act.

38. It would also be necessary at this stage to consider whether the execution of the Will, in the present case, was surrounded by any suspicious circumstances. The suspicious circumstances that surrounded the execution of the Will are that the sale deed and the Will were executed on the same day. The sale deed and the Will were written by different scribes and there were different set of witnesses, except Padamnath Upadhyay, who was a witness in both the sale deed and the Will. Secondly, the defendant and her husband played a prominent part in the execution of the Will in which the defendant was the sole beneficiary of the entire estate of the testatrix. This, by itself, created a suspicious circumstance surrounding the execution of the Will. The third suspicious circumstance is that the relationship between the plaintiff and the testatrix and between the plaintiff and the defendant were cordial and were not strained and therefore a question arises as to why was the plaintiff excluded from the Will.

39. The plaintiff has come out with a clear case, namely, that the husband of the defendant used to look after the affairs of the testatrix and was a man of confidence. It has also come in evidence that the testatrix had gone to the tehsil with her son in law and the defendant to execute a sale deed in favour of Ram Awadh Pandey in order to legalise the gifting of the land, which the testatrix had gifted earlier. The plaintiff had categorically stated that on the pretext of executing the sale deed, the husband of the defendant made the testatrix to execute a Will without her knowledge. The plaintiff had also categorically stated that ten days prior to the testatrix death, the testatrix desired to execute a Will in favour of both

the daughters. This statement has not been denied specifically by the defendant in her written statement. There is only a bald denial. On the other hand, the appellate Court has found that there was no ill will between the plaintiff and the defendant and in fact, there was a cordial relationship between the plaintiff and the defendant and between the plaintiff and the testatrix. The appellate Court also found that the plaintiff used to come off and on and stay with the mother and also used to look after her. In view of these findings, the exclusion of the plaintiff, as a beneficiary in the Will seems very strange. The Will does not indicate as to why the testatrix excluded the plaintiff as a beneficiary. If the testatrix wanted to give the entire property to the defendant to the exclusion of the plaintiff, it would be natural for the testatrix to indicate some reason in the Will indicating why she was excluding the plaintiff as a beneficiary from the Will. These suspicious circumstances surrounding the execution of the Will has not been removed by any satisfactory evidence by the defendant. The exclusion of the plaintiff in the Will appears to be unnatural, improbable and unfair in the light of the relevant circumstances, and this also indicates that the Will was not executed as a result of the testatrix free will and mind,

40. A Will is a solemn document and the Court must be fully satisfied that it was the last will and testament of the testatrix. The propounder of the Will had to prove that the Will was validly executed and there existed no suspicious circumstances surrounding the execution of the Will and if there existed, any suspicious circumstances surrounding the execution of the Will, the propounder, which in the present case, was the beneficiary was required to remove the said suspicion from the mind of the Court by cogent and satisfactory evidence. In my view, the defendant has not given any satisfactory evidence and has not been able to remove the suspicious circumstance that surrounded the execution of the Will. In my opinion, the Will appears to be on the whole improbable, unnatural and an unfair instrument. The appellate Court was justified in reversing the decree passed by the lower appellate Court. The appellate Court was not swayed by any irrelevant consideration while holding that the Will was not validly executed. The reasonings given by the trial Court was based on presumptions and was rightly discarded by the appellate Court.

41. In view of the aforesaid, I see no circumstances in interfering with the judgment of the appellate Court. The second appeal is devoid of any merit and is dismissed with costs.

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