

Rajesh Arora Vs. State and ors.

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Court : Delhi

Decided On : Mar-25-2009

Reported in : AIR2009Delhi111

Judge : Reva Khetrapal, J.

Acts : Indian Succession Act, 1995 - Sections 63 and 278; Evidence Act - Sections 68; [Indian Succession Act, 1925](#); Code of Civil Procedure (CPC) - Order 1, Rule 10

Appeal No. : Test Cas. 15/1997

Appellant : Rajesh Arora

Respondent : State and ors.

Advocate for Def. : V.S. Chauhan, Adv. for R-2 and 3

Advocate for Pet/Ap. : Sanjay Gupta,; Ajay Monga,; Ateer Mathur and;

Judgement :

Reva Khetrapal, J.

1. The genuineness of the will dated 1st June, 1995 of one Shri Tilak Raj Akalgarhia is in issue in the present case. The petitioner seeks probate of the said will by virtue of the provisions of Section 278 of the Indian Succession Act, while

the respondents No. 1 and 2, who are the real brothers of the petitioner, maintain that the will under which the petitioner is the sole beneficiary cannot be probated by this Court as the same is not a genuine document.

2. The petitioner claims that the testator Shri Tilak Raj Akalgarhia expired on January 18, 1997 at Delhi after executing during his lifetime a will dated 01.06.1995, which was duly registered with the Sub-Registrar, Kashmere Gate, as Document No. 24927, Additional Book No. III, Volume No. 2376 on Page 142. The deceased Shri Tilak Raj Akalgarhia was survived by the following class I legal heirs:

(i) Shri Rajesh Arora (son) - Petitioner (ii) Shri Anil Kumar (son) - Respondent No.2
(iii) Shri Nutan Kumar (son) - Respondent No.3 (iv) Smt. Anita Nagpal (daughter) - Respondent No.4 (v) Smt. Neelam Sadana (daughter) - Respondent No.5

3. The wife of the deceased Shri Tilak Raj Akalgarhia, namely, Smt. Sita Rani had pre-deceased him. By his alleged last will and testament, the testator bequeathed his property, i.e., House No. 18, State Bank Colony, G.T. Karnal Road, Delhi, of which he was the absolute owner, to the petitioner - his youngest son to the exclusion of the respondents No. 2 and 3, being his two other sons. The will, apart from bearing the signature of the testator Shri Tilak Raj Akalgarhia purports to be signed by two attesting witnesses Shri Yashpal Singh and Shri R.R. Bhardwaj, Advocate, whose signatures appear on the left side of the will while on the right side are the signatures of one Dr. Balbir Singh under the signatures of the testator himself.

4. Notice of the institution of the petition for the grant of the probate was issued to the respondents. A joint written statement was filed by the respondents No. 2 and 3 disputing the validity of the will on various grounds to which I shall presently advert. The respondents No. 4 and 5, who also filed a joint written statement, however, did not dispute the validity of the will, and stated that they had no objection if probate was granted in favour of the petitioner. Additionally, the statement of Mr. Sumit Bansal, the counsel appearing for the respondents No. 4 and 5 was also recorded by the Court on October 14, 1998, who stated that the respondents No. 4 and 5 had no objection if a probate was granted in respect of

the will in favour of the petitioner. It was also stated by him that their no objection certificate was on record.

5. The petitioner filed a rejoinder to the written statement of the respondents No. 2 and 3 and on the pleadings of the parties, the following issues were framed by the Court for adjudication on 04.10.1999:

(1) Whether the deceased Tilak Raj Akalgarhia had duly executed will dated 1.6.1995, if so to what effect?

(2) Whether the verification on the petition under Section 278 of the Indian Succession Act bears the verification by Shri R.R. Bhardwaj, Advocate, if not to what effect?

(3) If issue No. 2 is proved against the plaintiff whether the plaintiff is liable to be proceeded for contempt of court?

(4) Relief.

6. It would be pertinent to note at this juncture that prior to the framing of issues, an application, being IA No. 8766/1998 under Order I Rule 10 of the Code of Civil Procedure was filed by Shri R.R. Bhardwaj, Advocate, alleged to be an attesting witness of the will, seeking impleadment of his name as one of the respondents in the petition, to which a detailed reply was filed by the petitioner. This application, as it appears from the record, was never disposed of, possibly in view of the fact that Shri R.R. Bhardwaj, Advocate subsequently died. Specific reference is being made to the application for the reason that while the respondents 2 and 3 place implicit reliance upon the application to buttress their contention that the will is not a genuine document, it is the contention of the petitioner that the application was filed by the said Shri R.R. Bhardwaj at the behest of the respondents No. 2 and 3 and in collusion with the aforesaid respondents. I do not propose to dwell any further on this aspect at this juncture as this aspect will be more elaborately dealt with by me at the appropriate time.

7. With regard to the issues framed on 4th October, 1999, the parties adduced their respective evidence. The petitioner in order to prove his entitlement to the

grant of probate examined himself as PW1 and categorically testified that House No. 18, State Bank Colony, New Delhi was the self-acquired property of his father, who had executed a will dated 1st June, 1995 in respect thereof. Originally, he stated, this will was lying in the locker, which was held jointly by his father and him. He had never operated the locker after the death of his father. During his lifetime, his father was residing with him in House No. 18, State Bank Colony. He had seen his father writing and signing and was well-acquainted with his signatures. He could identify the signatures and writing of his father. He had seen photocopy of the will, which was marked as 'B', which bears the signatures of his father at the place marked as 'C'. He further stated that his father was not having cordial relations with his two brothers, namely, Anil Kumar and Nutan Kumar (the respondents No. 2 and 3), who were not giving due respect to him. His lawyer Mr. Sanjay Gupta had told him that the petition was required to be verified and signed by the attesting witness of the will and so he had contacted Mr. R.R. Bhardwaj, Advocate, as he was an attesting witness of the will. He signed the verification clause of the petition in his presence with his left hand. He had seen the petition signed by Mr. R.R. Bhardwaj, Advocate, which was marked as 'D'. According to the will, the property bearing House No. 18, State Bank Colony was bequeathed in his favour, so now he was the owner thereof after the death of his father.

8. Having gone through the evidence adduced by the parties and heard Mr. Sanjay Gupta, the learned Counsel for the petitioner and Mr. V.S. Chauhan, the learned Counsel for the respondents No. 2 and 3, it is proposed, in the first instance, to deal with issue Nos. 1 and 2, which pertain to the validity of the will executed by the deceased Shri Tilak Raj Akalgarhia and as to whether the petitioner is entitled to the grant of probate in respect of the said will. For the aforesaid purpose, it is deemed expedient to dwell on the contentions raised at the Bar in respect of the will in question. But first a glance at the evidence on record.

9. PW1 Mr. Rajesh Arora was cross-examined at length in the course of which he stated that it was correct that for the purpose of getting the signatures of Mr. R.R. Bhardwaj on the verification clause of the petition, he was given only one page of the petition which contained the verification clause. He also stated that he did not know if the date 28th April, 1997 was written by his counsel on the said verification

clause. He, however, denied the suggestion that the verification clause was not signed by Mr. R.R. Bhardwaj, though he admitted that he did not know Mr. R.R. Bhardwaj before the death of his father and that the address of Mr. R.R. Bhardwaj was not given on the will. He further volunteered to state that his father had told him that he had got the will attested by Mr. R.R. Bhardwaj, who works in the Kashmere Gate area. With regard to the other attesting witness, namely, Yashpal, he stated in the cross-examination that he did not know Yashpal, that the will contained the address of Yashpal as WZ-6, Palam Colony, but he did not know whether Yashpal was residing at the said address as he had never tried to contact him. He categorically denied the suggestions put to him that the alleged will was not signed by his father or by Yashpal or by R.R. Bhardwaj or by Dr. Balbir Singh and the further suggestion that the signatures on the verification clause were not those of R.R. Bhardwaj by his left hand. No other worthwhile cross-examination of this witness was conducted.

10. Next, PW2 Shri Devender Kumar, working as a clerk in the Punjab National Bank, was summoned with the record pertaining to the locker of the deceased from where the will of the deceased was recovered by the Local Commissioner appointed by the Court, but was subsequently given up as he produced some other records instead.

11. PW3 is Mr. A. Rehman, UDC from the office of the Sub-Registrar-I, Kashmere Gate, New Delhi, who brought the summoned record relating to the will, which was registered in the office of the Sub-Registrar (I) vide Document No. 24927, Additional book No. 3, Volume No. 2376 at Page No. 142 on 01.06.1995. In the course of his testimony, the certified copy of the will was marked as Exhibit 'X-I', which was stated to be produced from the record of the Sub-Registrar by the witness.

12. The testimony of PW4 Shri Yashpal is significant. Though this witness was declared hostile, he testified that he was working as a clerk with a document writer named Shri Vinod Kumar, at Kashmere Gate, since 1995. His work related to rendering help for registration of the documents in the office of the Sub-Registrar, Kashmere Gate. He was doing the job of completing the documents for the

purpose of registration and many times he signed such documents in the capacity of witness. He identified his signatures on the personal bond dated 16.02.2004 at Point 'X' exhibited as Exhibit PW4/1 and on the personal bond dated 17.10.2003 at Point 'Y' exhibited as Exhibit PW4/2, he having appeared in response to bailable warrants issued to him by the Court. He stated that he had seen the will dated 01.06.1995 in original. The signatures on the said will at Point 'Z' were his signatures. The will was exhibited as Exhibit PW4/3. He denied that the testator of the will, the other witness and he had signed the will dated 01.06.1995 in the presence of each other, and went on to volunteer that will Exhibit PW4/3 already bore the signatures of the testator and the second witness when he signed it.

13. At this stage, the counsel for the plaintiff moved an application, being IA No. 1803/2004 for permission to declare PW4 Shri Yashpal a hostile witness and to cross-examine him. Accordingly, on 16th September, 2005, PW4 Yashpal was declared hostile and was cross-examined by the counsel for the plaintiff. In the course of his cross-examination, PW4 Yash Pal, inter-alia stated that he was working with one Mr. Narender Kumar Mehra, Advocate, who was having seat at Kashmere Gate, Delhi. In the context of the will in the instant case, he stated that the second witness had already signed the will (Exhibit PW4/3) before he signed the same at Point 'Z' and further volunteered to state that he had signed on the will in the evening on that day to complete the said document. He further stated that some one had asked him that his name had been written as a witness on the document, so he should sign the same. On a specific query put to him as to whether he could point out the place where the second witness had signed the document, he answered that the second witness had signed the document, Exhibit PW4/3 at the point which had been stamped as R.Bhardwaj. On being cross-examined by the learned Counsel for the respondent Nos. 2 and 3, he however, categorically denied that the will (Exhibit PW4/3) did not bear his signatures.

14. No other witness was examined by the petitioner. An affidavit by way of evidence of the respondent No. 2, Anil Kumar was submitted on behalf of the respondent Nos. 2 and 3 and the respondent No. 1 was subjected to cross-examination on behalf of the petitioner.

15. I have heard the learned Counsel for the petitioner, Mr. Sanjay Gupta and the learned Counsel for the respondent Nos. 2 and 3, Mr. V.S.Chauhan and gone through the contents of the original registered will of the testator, duly stamped by the Office of the Sub-Registrar. The said document is a one page document bearing the signatures of the testator on the foot of the document on the right hand side and one Dr. Balbir Singh's signatures appear beneath the signatures of the testator. On the left hand side, under the caption 'Witnesses', two witnesses purport to have signed the will, namely Yashpal and R.Bhardwaj. The stamp 'Drafted by : R.Bhardwaj' is affixed at the place where his signatures appear. The back page of this document, Exhibit PW4/3 bears the stamps of the Office of the Sub-Registrar with the date 1.6.1995 and is signed by the Sub-Registrar at three places. It is also signed by the testator at two places and bears the thumb impression of the testator at two places. The document (Exhibit PW4/3) on its front side also contains a photograph of the testator.

16. Apart from the original will, Exhibit PW4/3, there are on record two other copies of the will. One is the certified copy of the will tendered in evidence by PW2, Mr. A.Rehman from the Office of the Sub-Registrar-I(I), Kashmere Gatge, who testified that he had brought the summoned record relating to the will, which was registered in the Office of the Sub-Registrar-I vide Document No. 24927, Additional Book No. 3, Volume No. 2376 at page-142, registered on 1.6.1995. He further testified that certified copy of the said will was 'X-1'. This will on a comparison of the front page and the back page is identical with the original will, Exhibit PW4/3.

17. The learned Counsel for the respondent Nos. 2 and 3 has assailed the will principally on the following grounds:

(i)Tilak Raj Akalgarhia during his life time had not executed any will dated 01.06.1995 in favour of the petitioner and no such will was registered with the Sub-Registrar, Kashmere Gate, as alleged.

(ii) The verification of the plaint purportedly signed by Shri R.R.Bhardwaj is false and fabricated as also the signatures of the said witness on the will.

(iii) In any case attestation of the will must be proved in accordance with Section 63(c) of the Indian Succession Act and the petitioner has failed to prove the same. Shri R.R.Bhardwaj was the scribe and the scribe cannot be an attesting witness to the will which he scribes.

(iv) The other attesting witness, PW4 Yashpal had failed to prove the attestation of the will and was declared a hostile witness. In any case, PW4 Yshpal was a fictitious person as the address of PW4 Yashpal as given in the will was WZ-6,, Palam Colony, while he was summoned in the Court at the address of the Registrar of Assurances, Kashmere Gate. The address given by him in Court at the time of recording of his testimony is Azad Nagar, Barod, U.P.

(v) The petitioner had failed to produce Dr. Balbir Singh, who was also an attesting witness to the will.

18. Per contra, the learned Counsel for the petitioner contended that so far as the first contention of the learned Counsel for the respondent Nos. 2 and 3 is concerned, the following four facts are significant. Firstly, the signatures of the testator of the will had not been disputed by the respondent Nos. 2 and 3, who have nowhere stated that the will is not signed by their father. Secondly, it is not in dispute that the will bears the photograph of the testator Tilak Raj Akalgarhia. Thirdly, the registration of the will has been duly proved by PW2 Mr. A.Rehman, who had produced the original records before the Court. Not even a suggestion was put to this witness that the will was not registered with the Office of the Sub-Registrar and the records had been tampered with. Fourthly, it is not in dispute that the locker standing in the joint name of the testator Tilak Raj Akalgarhia and the petitioner was not operated upon after the death of the deceased and it is from this locker that the will was retrieved and produced by the local commissioner appointed by this Court to operate the locker and to place on record the will of the testator. Fifthly, the daughters of the testator (respondent Nos. 4 and 5) have raised no objection to the will and have not disputed the signatures of their father on the said will. It is not even the case of the respondent Nos. 2 and 3 that the daughters of the testator are colluding with the petitioner. A written statement has been filed by the respondent Nos. 4 and 5 to state that they have no objection to

the will being probated.

19. As regards the second contention of the learned Counsel for the respondent Nos. 2 and 3 that the signatures of R.R.Bhardwaj on the will are forged and fabricated, the learned Counsel for the petitioner has drawn my attention to the fact that there are no pleadings in the written statement to state that the signatures on the verification signed by R.R.Bhardwaj are forged and fabricated. Then again, it is contended that R.R.Bhardwaj, though he has stated that the will was not executed by Tilak Raj Akalgarhia in his presence, that he is not an attesting witness to the said will, that the said will is not drafted by him and does not bear a stamp and that the plaint in the probate case is not verified and signed by him, nowhere disputes his signatures on the will. The learned Counsel contends that the application filed by R.R.Bhardwaj at the behest of the respondent Nos. 2 and 3 to state the aforesaid facts conclusively showed that he had been won over by the respondent Nos. 2 and 3. When he could file an application at the instance of the respondent Nos. 2 and 3, he could have said that the will was not signed by him, but he nowhere denies his signatures on the will for reasons which are not far to seek. In the aforesaid circumstances, there can be no manner of doubt that R.R.Bhardwaj was won over by the respondent Nos. 2 and 3. The fact that he could not be subjected to cross-examination, also weighs heavily against the petitioner and in such circumstances, implicit reliance cannot be placed upon his affidavit filed prior to his death.

20. As regards the third contention of the learned Counsel for the respondent Nos. 2 and 3, it is urged by the learned Counsel for the petitioner that R.R.Bhardwaj was not the scribe of the will in question. No doubt, he had drafted the will, but he had not scribed the same. Even otherwise, it is nowhere held that a scribe cannot be an attesting witness to the will.

21. As regards the fourth contention of the learned Counsel for the respondent Nos. 2 and 3 that PW4 Yashpal was a fictitious person on account of the fact that his address as mentioned in the will was WZ-6, Palam Colony and his address as recorded by the Court is Azad Nagar, Barod, U.P., the learned Counsel for the petitioner has pointed out that the address mentioned in the will was the residential

address of the witness, while the address given by the witness in U.P., in his testimony, was his permanent address. He also pointed out that his address was also mentioned by him when he appeared in the witness box as Old Court, Kashmere Gate where the Office of the Registrar, Assurances is located. In any case, no suggestion was given to the witness by the learned Counsel for the respondent Nos. 2 and 3 to suggest that he was a fictitious person and not the same Yashpal who had signed the will nor the witness was confronted in his cross-examination about the address mentioned by him in the will. Apart from giving a suggestion to the witness that the signatures on the will were not his, no other question or suggestion was posed to the witness in any manner to challenge his testimony.

22. As regards the fifth contention of the learned Counsel for the respondent Nos. 2 and 3, it is contended by the learned Counsel for the petitioner that the name of Dr. Balbir Singh is not mentioned in the column of attesting witnesses either on the front page of the will (Exhibit PW4/3) or on the back page of the will. On the back page where the names of the attesting witnesses are mentioned, the names of only R.R.Bhardwaj and Yashpal find mention as attesting witnesses. In the list of witnesses filed by the petitioner also Dr. Balbir Singh was cited as witness No. 5, but not described as an attesting witness. Dr. Balbir Singh's signatures appear just below the signatures of the testator and he had possibly signed as a doctor. There was no occasion to summon him as no challenge was raised by the respondent Nos. 2 and 3 that the testator was not of sound disposing mind. If the respondents wanted, they could have summoned Dr. Balbir Singh to prove that he had not signed the will, but they did not choose to do so.

23. In view of the aforesaid, the learned Counsel for the petitioner submitted that he had discharged the onus of proving issue No. 1 that the deceased Tilak Raj Akalgarhia had duly executed the will in question. The mere fact that the attesting witnesses to the will had been won over by the respondent Nos. 2 and 3 was not enough to non-suit the petitioner. The learned Counsel for the petitioner also heavily relied upon the diary of the testator to contend that the relations of the testator with his other two sons viz., the respondent Nos. 2 and 3 were strained and uncomfortable and it was the intention of the testator to make the petitioner

the sole beneficiary of his estate. Significantly, RW1 Shri Anil Kumar (respondent No. 2) when he appeared in the witness box, admitted the handwriting of his father in the aforesaid diary, which was marked as Exhibit RW1/1. The relevant notings in the said diary, which go to show the nature of the testator's relationship with his son Anil Kumar and Nutan Kumar, respondent Nos. 2 and 3 read as follows:

Take it guaranteed that Smt. Neelam D/o Shri Roshan Lal must not be allowed to remain in our residence. She thinks that Shri Nutan is in her pocket. This is the fact I believe also that her parents education to her daughter to separate Nutan from his parents.

If Nutan desires to live with her separately we should not mind but not in this house....

I could not forgive Anil as he made allegation against my character on 12.12.89. I should not mind if Anil want to live outside the house. I should not give full independence, they should be limited to one room if they desire to remain in this house. Sd/- (12.12.89)

a chance again given to Shri Anil during the period 15.12.89 to 24.1.90 that he should have mend his way but he could not set himself right. I cannot explain the so abuses that Anil has given to Anita & Neelam (Sisters) on 23.1.90.

Considering all his + & - Points I am being compelled myself that I should be silent if he leaves the house & I should not go after him to come back.

24. After carefully considering the respective submissions of the parties and the evidence relied upon by them in juxtaposition with the law laid down by the Hon'ble Supreme Court with regard to the manner of proving an unprivileged will, I have no hesitation in concluding that the will in the instant case stands duly proved by its propounder. It is trite that a will is a document which speaks from the death of the testator. After the testator has departed from this world, if he leaves behind a bequest, his wishes with regard to his earthly possession and the manner in which he wants the same to be exploited must be honoured. It goes without saying that when a testator executes a will, he does so for the reason that he wants to

interfere with the line of succession of his estate, which ordinarily would be apportioned in equal portions between his legal representatives. Thus the whole idea behind execution of the will is to interfere with the normal course of succession so that some or all of natural heirs would be debarred from inheriting the whole or part of the property of the testator. [See Rabindra Nath Mukherjee and Ors. v. Panchanan Banerjee (Dead) by LRs and Ors. : AIR 1995 SC1684]

25. One other aspect of the matter upon which I wish to dwell is with regard to the legal position of a registered will. I am conscious of the fact that the mere fact that a will is registered, will not by itself be sufficient to dispel all suspicion regarding it where suspicion exists. I am also conscious of the fact that registration may take place without the executant really knowing what he was executing and having registered Rani Purnima Debi v. Kumar Khagendra Narayan Deb : [1962]3SCR195 , but that is not the case here. Here, there are no suspicious circumstances shrouding the execution of the will. Suspicious circumstances have neither been pleaded nor proved in the instant case, nor is it the case of the respondents that the testator was an unlettered man who did not know what he was bequeathing. It is also not the case of the respondents that the testator was not of a sound disposing state of mind at the time of bequeathing his estate to the petitioner as sole beneficiary thereof. Certainly, in my view, in such circumstances, the fact that the will is a registered one, must weigh heavily in favour of the propounder. That the will was duly registered has been proved by the Office of the Sub-Registrar and that it bears the photograph of the testator. The signatures on the will have also not been seriously disputed by the respondents and, as a matter of fact, the respondent Nos. 4 to 6 have admitted the same. PW4 Yashpal has also not denied his signatures on the will and, as a matter of fact, has stated that the will had been signed by the testator and by R.R. Bhardwaj when he affixed his signatures on the same. That he did so to complete the execution of the will, will make no difference. Not an iota of evidence has been adduced by the respondent Nos. 2 and 3 to dispute their father's signatures on the will nor the opinion of handwriting expert has been sought by them to disprove the same. The fact that the witnesses to the document, being strangers have been won over by the respondent Nos. 2 and 3 and may be termed as 'interested', is of no significance and cannot be considered as a suspicious circumstance by itself. The controversy

whether both the attesting witnesses were present at the same time or not, is also wholly irrelevant as Section 63(c) of the Indian Succession Act, 1995 does not require the presence of the attesting witnesses at the same time. The evidence, therefore, in my view probablises the execution of the will by the testator and I am satisfied that the will (Exhibit PW4/3) has been established as the last legal and valid testament of the deceased. The onus of proving the will was on the petitioner and he has satisfactorily discharged the same.

26. The principles, which govern proving of a will are well settled. See H. Venkatachala Iyengar v. B.N. Thimmajamma : AIR 1959 SC443 ; Rani Purnima Debi v. Kumar Khagendra Narayan Deb : [1962]3SCR195 and Shashi Kumar Banerjee v. Subodh Kumar Banerjee : AIR 1964 SC529 . Undoubtedly, the burden is heavier where the propounder is also the beneficiary of the bequest and he must discharge the onus of proof of capacity of the testator as well as the factum of execution, from which the knowledge and the assent to its content by the testator will be assumed. There is, however, no unyielding rule of law that merely because the bequest is in favour of the propounder, the will is not to be adjudged as a genuine one.

27. To quote the well known observations of Baron Parke in the case of Barry v. Butlin (2) Moo Privy Council 480:

First, that the onus probandi lies in every case upon the party propounding a will; and he must satisfy the conscience of the court that the instrument so propounded is the last will of a free and capable testator;

The second is, that, if a party writes or prepares a will under which he takes a benefit, that is a circumstance that ought generally to excite the suspicion of the court and calls upon it to be vigilant and zealous in examining the evidence in support of the instrument in favour of which it ought not to pronounce unless the suspicion is removed, and it is judicially satisfied that the paper propounded does express the true will of the deceased.

28. A word of caution, however, has been sounded by Lord Du Parcq in Harmes v. Hinkson as follows:

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.

29. Another facet, which cannot be lost sight of apart from the registration of the will in the instant case and which has bolstered its authenticity, is that the respondents have neither pleaded nor proved any suspicious circumstance to excite the scepticism of this Court in accepting the will as a genuine document nor, as a matter of fact, is there any aspersion cast upon the propounder of having exerted under influence on the testator. It need not also be stated that the undue influence required to be pleaded in the case of an unprivileged will must be of the nature of fraud or duress See *Gomati Bai v. Kanchhedilal and Ors.* . In the instant case, neither fraud nor undue influence have been pleaded and the question of fraud or duress is, therefore, rendered academic and need not detain us any further.

30. It is also not denied that the propounder was all along residing with the testator whereas evidence on record shows that the respondent No. 2, Anil Kumar is residing at Bangalore with his family, while the respondent No. 3 is also residing separately at Pitampura since the year 1986 (though in cross-examination RW1 has stated that the respondent No. 3 was residing separately only for the last seven years). It is nobody's case that the petitioner was not a dutiful son who all along aboded with his father and bowed to his every wish. This, in my view, apart from the factum of registration of the will, probablises the testator leaving his residential house to the son who was residing with him, the others having chosen to part ways and to lead their own independent lives.

31. In the final analysis, suffice it to say that the will in the instant case, which has been half heartedly assailed by the respondent Nos. 2 and 3, must be held to be duly executed and attested, as required under Sections 68 of the Evidence Act and Section 63 of the Indian Succession Act. The law is well settled that the

conscience of the Court must be satisfied that the will in question was not only executed and attested in the manner required by the [Indian Succession Act, 1925](#), but it should also be found that the will was the product of the free volition of the executant after knowing and understanding the contents thereof. Tested on the anvil of judicial conscience too, the will passes muster and cannot be said to be an unfair or unjust disposal of the property of the testator or against the normal course of human conduct or to defy logic and reasoning. Indubitably, it interferes with the normal line of succession, but a bequest is not a bequest which toes the line of succession, for, the whole purpose of a testament is to cloth the beneficiary with assets, which he would not have otherwise been inherited by him.

In view of the above discussion and having regard to the facts and circumstances of the case, it is ordered that probate of the Will be granted in favour of the petitioner on his depositing the requisite court fee and on his furnishing the administration bond for due administration of the estate of the deceased in accordance with law. The original Will shall be kept in safe custody. The petition stands disposed of along with pending applications.

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