

Ramesh Kumar Vs. Kaushalya Devi and ors.

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SooperKanoon Citation : sooperkanoon.com/707652

Court : Delhi

Decided On : Nov-07-2001

Reported in : 94(2001)DLT925

Judge : Devinder Gupta, A.C.J. and; Sanjay Kishan Kaul, J.

Acts : [Indian Succession Act, 1925](#) - Sections 63

Appeal No. : F.A.O. (O.S.) No. 108 of 1979

Appellant : Ramesh Kumar

Respondent : Kaushalya Devi and ors.

Advocate for Def. : V.N. Sharma, Adv.

Advocate for Pet/Ap. : Bawa Shiv Charan Singh, Sr. Adv. and Rakesh Saini, Adv

Disposition : Appeal allowed

Judgement :

Sanjay Kishan Kaul, J.

1. The absence of direct legal descendants of late Smt. Sham Devi Kapoor has resulted in contentious litigation between the heirs of her husband on one side and the beneficiary of her alleged Will on the other side.

2. The present appeal arises from the impugned order dated 4.4.1979 of the learned Single Judge dismissing the Probate Petition No. 13/1972 filed by Shri Ramesh Kumar Anand, the appellant in respect of the Will of late Smt. Sham Devi Kapoor, alleged to have been executed on 26.2.1972 and registered with the Sub-Registrar, Delhi on 28.3.1972. The petition was contested by the legal heirs of Shri J.R. Kapoor, husband of late Smt. Sham Devi Kapoor, who would be the beneficiary of the estate of Smt. Sham Devi Kapoor in the absence of any Will. Shri J.R. Kapoor married twice. The first wife of Mr. J.R. Kapoor was Smt. Puran Devi and the second wife was Smt. Sham Devi Shri J.R. Kapoor had three children-one son and two daughters. The son Shri Chaman Lal also passed away sometime in 1960 prior to the demise of Shri J.R. Kapoor, who died in 1962. Smt. Sham Devi passed away on 29.4.1972. From the first marriage, apart from the son Shri Chaman Lal, there were two daughters namely Smt. Kaushalya Devi and Smt. Prakash Wati. The said two daughters are respondents 1 and 2 in the present appeal and Smt. Chand Rani, wife of late Shri Chaman Lal, son, is the 3rd respondent. The State is the fourth respondent.

3. In terms of the Will dated 26.2.1972 the appellant has been appointed as the Sole Executor. The appellant is also the sole beneficiary of the estate of late Smt. Sham Devi Kapoor. It is stated in the Will that Smt. Sham Devi has been residing separately in a house at Shakurbasti, Delhi and that her step children had not been taking any interested in looking after her. It is also stated in the Will that the appellant was treated like a son both by Smt. Sham Devi and her husband J.R. Kapoor though there had not been any formal adoption. It is further stated that the appellant had been residing with her since childhood and supporting her financially and due to natural love and affection she was desirous that her estate consisting of both movable property and the immovable property No. 118(Old) with New plot no. B-13, Rani Bagh, Shakurbasti, Delhi should devolve on the appellant.

4. There are 5 witnesses to the Will. In the sequence they have signed the witnesses are Shri Karanjit Singh, resident of Shakurbasti, Shri Man Mohan Singh Sawhney, Advocate, Shri Mohan Lal Saigal, resident of Mori Gate, Dr. Rupla Kukreja and Shri Ram Lal, Councillor, Municipal Corporation of Delhi.

5. Dr. Rupla Kukreja while signing the Will as a witness has also stated that she has examined Smt. Sham Devi who had understood the contents of the Will and was in full disposing state of mind and was capable of understanding the contents of Will. It may be relevant to record at this stage that it is not disputed that late Smt. Sham Devi passed away in the house of the appellant and his father at Mori Gate on 29.4.1972. Late Shri J.R. Kapoor, husband of Smt. Sham Devi also expired in 1962 in the house of the father of the appellant in Mori Gate. It is also not disputed that the last rites of both Shri J.R. Kapoor and Smt. Sham Devi were performed by the appellant, though the reason for that is dispute.

6. In order to prove the Will the appellant examined Shri Man Mohan Singh Swahney, Advocate PW2 who had drafted the Will. Mr. Sawhney stated that he knew the appellant and his father who was residing at Mori Gate near to residence of Mr. Sawhney, Mr. Sawhney has also stated that he had originally gone with the rough draft to which some minor changes have been suggested by the testatrix and the draft was retyped. The document being Will is stated to have been signed after Smt. Sham Devi admitted all the facts mentioned therein. Mr. Sawhney has identified signatures of the testatrix and her thumb impression on the Will which are stated to have been affixed in the presence of Mr. Sawhney and with his assistance. Mr. Sawhney also identified his signature as a witness and the signature of the other attesting witnesses. Mr. Sawhney was cross-examined at length but stood by his statements. Mr. Sawhney also explained though he had drafted the document, he had witnessed the Will as the signatures were obtained by him and the thumb impression was also obtained by him. Mr. Sawhney has further mentioned that two copies of the Will were prepared.

7. Apart from Mr. Sawhney, three other attesting witnesses to the Will have also have also been examined. Mr. Ram Lal, Councillor, Municipal Corporation of Delhi has been examined as PW 10. It has stated that he was the visitor to the house of Shri J.R. Kapoor and that he was called by Smt. Sham Devi in connection with the execution of the Will. Mr. Ram Lal has affirmed that Will exhibited P-1 was executed by Smt. Sham Devi at the hours of Shri Ram Nath in Mori Gate. Mr. Ram Lal identified his signature and the signature of Smt. Sham Devi. He has further affirmed that the other witnesses had signed in his presence and that the contents

of the Will has been explained to Smt. Sham Devi at which stage he had the second copy of the Will with him and was going through it to verify that the Will was correctly being explained to Smt. Sham Devi. The third witness examined is Shri Ram Nath Anand. PW12 who is the father of the appellant.

8. Mr. Ram Nath has explained his association with Shri J.R. Kapoor and Smt. Sham Devi. It is stated that Shri J.R. Kapoor had a shop opposite to the shop of the maternal uncle of Shri Ram Nath in Randhawa Market, Guru Bazar, Amritsar. Shri Ram Nath shifted to Delhi in November 1947 and took up residence at the property at Mori Gate wherein Shri J.R. Kapoor shifted after about a month of the shifting of Shri Ram Nath. It is further stated that one room was sub-let to Shri Kapoor by Shri Ram Nath at the insistence of the maternal uncle of Shri Ram Nath. This room was situated on the ground floor of the house. It is also been stated that Shri J.R. Kapoor has two houses at Amritsar and both the houses were given to the widow of Chaman Lal, the son from the first marriage of Shri J.R. Kapoor, though one house was in the name of Smt. Sham Devi, Shri Kapoor stayed at Mori Gate till 1954 and thereafter shifted to his house in Shakurbasti which house was in the name of Smt. Sham Devi. It is also been stated that respondents 1 and 2 never visited Shri Kapoor and that respondent No.1 was living at Amritsar and shifted to Delhi only after the death of Shri Kapoor in 1962. Respondent No. 2 is stated to have been living in Delhi. The appellant is the youngest son of Ram Nath, Shri Ram Nath having four sons and one daughter. The appellant is stated to have been born during the time when Shri J.R. Kapoor was staying at Mori Gate. It is further stated that Shri J.R. Kapoor shifted to his house at Rani Bagh. He requested that the appellant should shift with him. The appellant is thus stated to have been residing with Shri J.R. Kapoor and Smt. Sham Devi and was admitted to a school at Shakurbasti. The name of the appellant was included in the ration card obtained by Shri J.R. Kapoor. Later on the appellant shifted to a different school at Fatehpuri when he was in Vth class for better education. It is also stated that Shri Kapoor passed away in the house of Shri Ram Nath and the funeral pyre was lit by the appellant. The house at Shakurbasti except one room is stated to be let out to the different parties. It is also stated that respondent No.2 and her husband were present at the funeral of Shri J.R. Kapoor. It is also been stated that appellant No.1 did not stay with Smt. Sham Devi when she shifted to

Delhi from Amritsar. Smt. Sham Devi is stated to have shifted to the house of Shri Ram Nath towards the end of December, 1971/beginning of January, 1972. The Will is stated to have been executed at the behest of Smt. Sham Devi. It is further been stated that Smt. Sham Devi died at the house of Shri Ram Nath and the appellant informed the step daughters being respondents 1 and 2 but none of them came for the cremation and the last rites were performed by the appellant. It is further stated that even the Kriva and the Chautha were not attended by respondents 1 and 2.

9. Dr. Rupla Kukerja, the fourth attesting witness, has been examined as PW 11 and she had confirmed that she found late Smt. Sham Devi in a sound disposing mind.

10. The appellant examined total number of 12 witnesses to substantiate his case. PW1 Raj Kumar, son of the sister of Smt. Sham Devi has confirmed that the appellant was like son to Smt. Sham Devi and that the appellant performed the last rites of Smt. Sham Devi. It is also stated that he had come to see Smt. Sham Devi in response to the letter of the appellant, when Smt. Sham Devi had told him that he should consider the appellant as a brother.

11. PW3, Satish Chander proved Exs. P-2 and P-3 being the certified copy of the relevant entries of the electoral role. Shri V.N. Shukla - PW4 proved the ration card Exs. PW4/1, PW4/2, PW4/3. PW5 Shri Satya Narain came from the fair price shop and brought the card register and proved the same.

Shri Paras Ram was examined as PW6 who is stated to be the Gumastha of Pt. Mohan Lal, Panda of Kapur Char Ghar of Amritsar. He brought the Bahi of Pt. Mohan Lal including the entry relating to the visit of Shri J.R. Kapoor dated 14th January (or July), 1960. It is stated that the original writing was of Shri Paras Ram and Exhibit PW6/1 was the true copy of the original entry. The visit of Smt. Sham Devi to Hardwar in phagun, Sambat 2019 was also entered in the record and a copy of which was proved at PW 6/2.

12. Shri Roshan Lal Jain, PW7 brought the admission register of the school which says that appellant was admitted to the Government Boys Hr. Sec. School,

Shakarapur on 4.11.1954 in the second standard and his address was shown as Rani Bagh Shakurbasti. He proved the original entries as Exhibits PW7/1 and PW7/2.

13. Shri Iqbal Singh Chinna, PW 8 was the Sub-Registrar in February, 1972 before whom the execution of the Will Exhibit P-1 was admitted and the Will was presented for registration. The Will was presented for registration at the residence of testatrix. The said witness has confirmed that he enquired from the testatrix about her execution of the Will, the contents of which were read out to her. It is stated that she admitted the contents of the Will and was found to be in sound disposing mind.

14. The appellant has appeared in the witness box as PW 9 and has deposed in favor of execution of the Will and his relationship between the parties and his relationship with Shri Kapoor where he was treated like a son though there was no formal adoption. The Will is stated to have been executed in his presence.

15. We have heard Mr. Bawa Shiv Charan Singh, learned Senior Counsel for the appellant and Mr. V.N.Sharma, learned Counsel for respondents 1 to 3 at length.

16. Mr. Bawa Shiv Charan Singh, learned Senior Counsel for the appellant, has assailed the impugned judgment dated 4.4.1979 of the learned Single Judge. The learned Senior Counsel contended that the learned Single Judge has failed to appreciate the close family relations between the family of the appellant and of the deceased testatrix. There was no suspicious circumstances, in the submission of the learned Senior Counsel for the appellant, in respect of Will which was duly registered and which had been executed in favor of a person who had for all practical purposes been treated like a son by Shri Kapoor. Learned Senior Counsel emphasis that admittedly there was no direct defendants of Smt. Sham Devi and both Shri J.R. Kapoor and Smt. Sham Devi expired at the residence of the appellant and his father. The fact that the last rites of the Kapoor's were performed by the appellant and they resided with the appellant at the time of their demise were stated as reasons to show that the appellant was like a son to the Kapoor's.

17. The learned Single Judge broadly referred to the following factors as reasons enough not to grant of probate of the Will:

(1) It had not been found that the appellant was residing with the testatrix since his birth.

(2) The non-examination of any tenants of the Kapoor's staying at Shakurbasti.

(3) The Disbelieving of the entry exhibit as PW6/1,PW6/2 regarding the appellant as a Dharmputra of the Kapoor and counter singed by Shri J.R. Kapoor.

(4) No clear indication to the circumstance under which Smt. Sham Devi went to the house of the appellant and his father.

(5) The prominent part played by the appellant and his father in execution of the Will.

(6) Mr. Sawhney, Advocate being the executor of the Will and also being attesting witness.

(7) Disbelieving of the testimony of Dr. Rupla Kukreja.

(8) Shri Ram Lal being an interested witness, having known the family of the appellant.

18. The learned Single Judge though observed that:

'I have already observed that there were good family relations between the family of Kapur and Ram Nath Anand but from the mere fact, assuming it to be true, that the petitioner had lit the pyre of Kapur it is not possible to hold that Kapur had either adopted the petitioner as a son or treated him as a son, especially in view of the various circumstances to which I have adverted earlier.'

19. Thus the learned Single Judge was of the view that heavy burden lay on the appellant view of the alleged suspicious circumstances surrounding the execution of the Will which according to the learned Single Judge had not been discharged by the appellant.

20. Bawas Shiv Charan Singh, learned Senior Counsel for the appellant, contended that the motive in execution of Will cannot be questioned and the Will has to be read as a whole. The scribe and the attesting witnesses have been examined along with Dr. Rupla Kukreja who had testified to the mental status of the executrix. Further the Will is a registered Will and the Sub-Registrar had also been examined. It was thus contended that the appellant had discharged the onus of proving the Will and the burden lay on the respondents of proving the allegations of forgery and fraud which they have failed to discharge.

21. It is relevant to note that the respondents 1 to 3 had not disputed the fact that late Smt. Sham Devi passed away at Mori Gate. However, it was stated in their objections that the Will was not in accordance with the provisions of Section 63 of the [Indian Succession Act, 1925](#) and that the thumb impression and signatures were not of the deceased testatrix. It was further stated that in case the signatures and thumb impression were found to be that of the deceased testatrix, then in any case the testatrix did not know what she had written in the alleged Will. The presence of the testatrix at the residence of the father of the appellant was explained by stating that she was taken away on the pretext of giving better medical facilities. Subsequently respondents 1 to 3 were prevented from visiting Smt. Sham Devi. It was also stated that Smt. Sham Devi was an illiterate person and that there were suspicious circumstances surrounding the execution of the alleged Will, the terms of the Will being not only unnatural but also unreasonable and inofficious. It was categorically stated that the appellant had never stayed with Smt. Sham Devi or Shri Kapoor and that if such an alleged Will has been executed it was by fraud and coercion. It may also be stated that further plea was also taken that the property was of late Jeevan Ram Kapoor and it was Benami in the name of late Smt. Sham Devi.

22. The learned Senior Counsel for the appellant thus contended that none of the aforesaid pleas stated by respondents 1 to 3 in their defense had been substantiated by the said respondents.

23. Mr. Bawa Shiv Charan Singh, learned Senior Counsel for the appellant, referred to various judgments of the Supreme Court dealing with the issue of

Execution of Wills. Learned Senior Counsel referred to the judgment of H. Venkatachala Iyengar v. B.N. Thimmajamma and Ors., : AIR 1959 SC443 . The Supreme Court had set out in the said judgment the requirements for proof of Will where onus of proof is on the propounder. It was held that the 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. However, Court has to examine whether the execution of the Will was surrounded by suspicious circumstances. The Supreme Court observed as under:

'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 testor'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 the 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 suspicious 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 connection with Wills that present such suspicious circumstances that decision 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 deciding a solemn question and it must be fully satisfied that it had been validly executed by the testator who is no longer alive.'

24. Mr. Bawa Shiv Charan Singh, learned Senior Counsel for the appellant also referred to the judgment of Surender Pal and Ors. v. Saraswati Arora and Anr., : [1975]1SCR687 , to advance the proposition that once the propounder has shown that the Will has been signed by the testator, the testator was in a sound disposing state of mind and understood the nature and effect of dispositions and thereafter put his signature to the testament of his own very Will and that he has signed it in the presence of two witnesses who attested it in the presence of each other, the onus which rests on the propounder is discharged. However, where there are suspicious circumstances the onus will be on the propounder to explain them to the satisfaction of the Court before the Will could be accepted as genuine. It was further observed that where the caveator alleges undue influence, fraud and coercion the onus is on him to prove the same and if the caveator does not discharge the burden which rests upon him in establishing the circumstances which show that Will had been obtained by fraud or undue influence, the probate was liable to be granted. It was thus contended that the respondents 1 to 3 had failed to discharge the burden arising from the allegation of undue influence and fraud.

25. It is also relevant to note that the Supreme in the aforesaid judgment referred to the decision in *Motibai Hormusjee Kanga v. Jamsetjee Hormusjee Kanga*, AIR 1924 P C 28 , to the following effect:

'It is quite clear that the onus of establishing capacity lay on the petitioner. It is also clear that if the caveator impugned the Will on the ground that it was obtained by the exercise of undue influence, excessive persuasion or moral coercion, it lay upon him to establish that case.'

'A man may act foolishly and even heartlessly; if he acts with full comprehension of what he is doing the Court will not interfere with the exercise of his volition.'

26. The judgment of the Supreme Court in *Rabindra Nath Mukherjee and Anr. v. Panchanan Banerjee (dead) by L.Rs. and Ors.*, : AIR 1995 SC1684 , was referred for the proposition that Will debarring natural heirs should not raise any suspicion because the whole idea behind execution of Will is to interfere with the normal line of succession. Thus it was held that natural heirs would be debarred in every case of a Will; or course, in some cases they have fully debarred in others only partially. It was further held by the Supreme Court that if a Will was registered and the Sub-Registrar certified that the Will had been read over to the executor who, on doing so, admitted the contents thereof, then the fact that witnesses testifying to the document were interested, loses significance.

27. Learned Senior Counsel of the appellant also referred to the judgment of *Beni Chand (since dead) now by L.Rs. v. Kamla Kunwar and Ors.*, : [1977]1SCR578 , to contend that there was no prohibition in a scribe being an attesting witness to the Will.

28. Mr. V.N. Sharma, learned Counsel for respondents 1 to 3, on the other hand contended that impugned judgment was in accordance with law since the Will was executed in suspicious circumstances. Learned Counsel contended that the recitals of the Will have to be seen which show that the alleged Will is stated to be based on the fact that the appellant, though not adopted as a son, was for all practical purposes treated like a son, the appellant from inception had lived with the testatrix and her husband, and the appellant had even looked after the

financial needs of the testatrix. Mr. Sharma, learned Counsel for the respondents, submitted that all these averments were found to be factually incorrect by the learned Single Judge. It was contended that the appellant had failed to establish that he was staying with the testatrix or her husband and except for a short period of a year or so there was nothing on record to show that the appellant ever stayed with the testatrix Smt. Sham Devi. This fact was further established when the appellant shifted to a different school which was near to the residence of his father Shri Ram Nath. It was further contended that there was no occasion for the appellant to look after financial needs of Smt. Sham Devi as Smt. Sham Devi expired on 29.4.1972 while the appellant was gainfully employed only just a short period before that date.

29. Learned Counsel for the respondent also referred to the testimony of the appellants as PW 9 and contended that the appellant has stated in his testimony 'Registrar had handed over the Will and its carbon copy to Sham Devi' and thus if that was the position on 24.3.1972, there would have been no occasion for the registration of the Will on 28.3.1972. Learned Counsel also sought to attack the Will by referring to the mode of typing etc. but on a question from a Court conceded that there had been no cross-examination on this issue to any of the material witnesses being the attesting witnesses.

30. Mr. Sharma, learned Counsel for the respondents, also referred to the fact the other attesting witness to the Will were not examined even though Shri M.L.Seigal was a resident of Mori Gate. Though the factum of the appellant performing the Kirya ceremony both on the death of Smt. Sham Devi and her husband Shri J.R. Kapoor was conceded by the learned Counsel for the respondent it was contended that there was no son alive who would have performed the last rites and Shri Ram Nath was a close family friend of Shri J.R. Kapoor. It was further contended that intimation has not been sent in time to respondents 1 to 3.

31. Learned Counsel for the respondents contended that the recital of the Will were factually incorrect and thus cast serious doubt on the authenticity of the Will. Learned Counsel referred to the statement in the Will that the appellant had been supporting her financially to contend that since the appellant had joined the Citi

Bank only around 3.12.1971 while Smt. Sham Devi expired on 29.4.1972 there would have no occasion to give any financial help. Learned Counsel also referred to the statement that the appellant had been residing with the testatrix to contend that this fact was also incorrect and so established on record. A further reference has been made to the averments in the Will that the appellant has been residing with the testatrix since birth-hood to state that the said fact on the face of it is incorrect. A further reference was made to Exhibit PW6/2, the record of the Panda Brij Mohan Sharma, to contend that there is a reference of 'Dharamputra' of Chaman Lal, the deceased son of Shri J.R. Kapoor from his first wife. In a nut shell the contention was that all the averments were incorrect and if as stated by Shri Sawhney PW2 that the draft of the Will had been read out to the testatrix who had suggested changes, there would have been no occasion for the factual mis-statements to occur in the Will. The contention was that mis-statements in the Will show that the Will was never read out to testatrix nor did she understand the contents and purport thereof.

32. It was lastly contended by the learned Counsel for the respondents that since the Will sought to disinherit respondents without there being any cause for the same and bequeath the estate to a third person, a duty had been cast on the appellant to dispel suspicious circumstances which the appellant had failed to discharge. A reference in this behalf was also made to the fact that a prominent role was played by the appellant and his father Shri Ram Nath who is also a witness to the Will. It was contended that the Advocate was an Advocate of the family of Shri Ram Nath, the doctor was also brought by the appellant though she was not regularly treating Smt. Sham Devi and even Shri Ram Lal, Municipal Councillor was known well to the family of Shri Ram Nath. The Will was thus stated not to have been executed in transparent circumstances and witnessed by independent persons. Reference was made to the objection petition.

33. We have duly considered the submissions made at the Bar. The first aspect which is to be appreciated while considering the grant of probate of a Will is the fact that in the absence of a Will the estate would go by succession and thus the Will normally changes the inheritance by succession. In our considered view it would not be proper to doubt the authenticity of the Will merely because it

bequeaths the estate contrary to the normal line of succession or inheritance. In fact that is the very purpose of the Will since if the testator wants normal line of succession for inheritance to take place there would hardly be an occasion for a Will other than by specifying the mode of division. It is no doubt true that execution of the Will has to be proved duly in accordance with law and if there are suspicious circumstances surrounding the due execution of Will then the same have to be dispelled by the person propounding the Will. The registration of the Will lends a greater authenticity to the proper execution of the Will. The document has to be read as a whole and once the burden is discharged by the propounder of the Will and the Will is held to be properly executed and witnessed, the onus shifts to the person seeking to challenge the Will to establish the reasons why probate of the said Will should not be granted.

34. A material fact which has to be kept in mind in the present case is the undisputed fact of close family relations between Smt. Sham Devi, the testatrix, her husband Shri J.R. Kapoor and the family of the appellant. This fact is even recorded as a finding by the learned Single Judge which has been reproduced herein before in this judgment. The relationship between these two families did not rest only on what can be called good family relations. It went even further. It is an admitted position that the appellant had lit pyre of late Shri J.R. Kapoor as also the testatrix Smt. Sham Devi. Thus a strong bond is established between the two families even to the extent that both Shri J.R. Kapoor and Smt. Sham Devi passed away in the house of the appellant and his father. It is nobody's case that the appellant was ever formally adopted by Shri J.R. Kapoor and Smt. Devi. Smt. Sham Devi in terms of the Will bequeathed her property to the appellant because she treated him as a son. There is great importance in Hindus to the lighting of the pyre of a deceased person which is the normal prerogative of the eldest male child or the eldest male descendants. There was no direct male descendants of Shri J.R. Kapoor in view of the prior death of his son. This task was performed by the appellant not only for Shri J.R. Kapoor but also for Smt. Sham Devi. This lends great weight to the contention of the appellant that the said two persons treated the appellant like a son. The subsequent rites of Chautha was also performed by the appellant.

35. The aforesaid fact has also to be considered along with another important fact-the death of both Shri J.R. Kapoor and Smt. Sham Devi at the residence of the appellant and his father at Mori Gate. Insofar as the death of Shri J.R. Kapoor is concerned, the respondents have sought to contend that Shri J.R. Kapoor is concerned the respondents have sought to contend that Shri J.R. Kapoor had gone for a family function of Shri Ram Nath when he suddenly expired. But no Explanation is forthcoming why the last rites of Smt. Sham Devi were also performed by the appellant and she passed away at the house of Shri Ram Nath. The contention of the respondents that Smt. Sham Devi was taken away for better medical treatment by Shri Ram Nath and thereafter Shri Ram Nath did not permit access to the respondents to meet Smt. Sham Devi is difficult to believe. If Smt. Sham Devi was not well and the respondents 1 to 3 were close to her as family members, it is the respondents who would have been providing a medical treatment to Smt. Sham Devi. This does show that Smt. Sham Devi had greater faith in Shri Ram Nath and the appellant.

36. Another important aspect is that Smt. Sham Devi did not have any child of her own and respondents 1 to 3 were related to her through the first wife of her husband Shri J.R. Kapoor. It is thus not a case where a testator has disinherited any direct descendants. The close relationship of Smt. Sham Devi with the appellant and the sister of Smt. Sham Devi and would possibly be the closest relation of Smt. Sham Devi prior to her marriage who has come in the witness box and deposed in support of the appellant. The fact that a close relation of Smt. Sham Devi has also stepped in to the witness box to depose in support of the appellant further lends credence to the relationship between the appellant and Smt. Sham Devi.

37. It is important to note that each of these facts individually may not be conclusive enough but when considered together to establish that there was nothing unusual or suspicious in Smt. Sham Devi bequeathing her property to the appellant.

38. The learned Single Judge has laid considerable emphasis on one fact-the inability of the appellant to prove that he had been continuously staying with Smt.

Sham Devi or that he had been brought up by Kapoors. The learned Judge has concluded that the failure of the appellant to establish that he had been residing with Smt. Sham Devi since her birth despite the averments to this effect, casts doubt on the Will. In this behalf learned Single Judge has relied upon the factum of appellant's shifting his school in 1953-1954. The learned Single Judge found that there were lot of circumstantial evidence on record to suggest that petitioner had not stayed with Shri Kapoor or Smt. Sham Devi atleast after 1957. In our considered view this cannot be a major factor in refusing to grant probate of the Will specially taking into consideration the established facts mentioned above. The special relationship between Shri J.R. Kapoor and Smt. Sham Devi with Shri Ram Nath and the appellant is clearly established as at the relevant time when Smt. Sham Devi require medical treatment and was at the end of her life, she shifted with Shri Ram Nath so that she could be looked after and the appellant performed her last rites. The Will was executed thus naturally at the residence of Shri Ram Nath. It cannot be expected that the testatrix would have gone looking for a lawyer of her own. She naturally requested Shri Ram Nath and the appellant to get a lawyer who could draft her Will and complete the necessary formalities. This is what was done. Not only this the Will is witnessed by independent persons including Shri Ram Lal who has stated his deposition that he was requested by Smt. Sham Devi to witness the Will. In fact the Will is witnessed by more persons than is required in law possibly on the side of cautious. A doctor has also witnessed the Will after examining the condition of the testatrix. The lawyer who drafted the Will and discussed it with the testatrix has also signed as a witness. It is not of relevance that the lawyer PW2 has signed as a witness without stating that he drafted the Will. In our considered view the authenticity of the Will is fully established and the Will stands duly proved.

39. The Bahi maintained by the Pandit of Kapur Char Ghar of Amritsar i.e. Mohan Lal, was produced by the Gumastha of the said Pt. Mohan Lal as a witness which has recorded the visit of Shri J.R. Kapoor to Hardwar in 1960. The visit of Smt. Sham Devi to Hardwar in phagun, 2019 is also proved and this witness has stated that he appeared in the witness box as Pt. Mohan Lal had gone out of town. The entry of Shri J.R. Kapoor is also signed by Shri J.R. Kapoor.

40. The learned Single Judge referred to a copy of the entry Ex. PW9/8 and has noted that there is equal spacing between the lines except the last line which appear to have been squeezed in. We have perused the said document and find no such squeezing of the last line. The signature of Shri J.R. Kapoor appears below the last line in a natural place. There would have been no occasion to sign at the said place by Shri J.R. Kapoor if the last sentence would not have existed. The learned Single Judge has also considered the date under the signature of Shri J.R. Kapoor and recorded that as 14.1.1960 rejecting the contention of Bawa Shiv Charan, learned Counsel for the appellant, that it is actually 14.7.1960. We have examined the document and in our considered view the date is 14.7.1960. The date and the month of 14 Sawan, Sambad 2017 correspond to 29th July, 1960 as is noted by the learned Single Judge. The entry which has been marked as 'A to A' in Ex. PW 6/1 which is a copy of Exhibit PW 9/8 is not interpolated. The learned Single Judge has recorded that the entry earlier to this bears the dated 7th July, 1960. Doubt has been cast on this entry in view of the reading entry as one of January, 1960 and not July, 1960. It is on this basis that the learned Single Judge has cast doubt on the entry as the deceased son of Sh. J.R. Kapoor is stated to have been alive in January, 1960 and there would have no question of adopting the appellant who has been recorded as 'Dharmputra'. Once this entry is read as of July, 1960 there would be no doubt on this proposition that the appellant has been recorded as the 'Dharamputra'. In our considered view this is again a material document which has been wrongly disbelieved by the learned Single Judge and which is authenticated by the signature of late Shri J.R. Kapoor himself. We see no reason to doubt this contemporaneous document. It further established the relationship of the appellant with Shri J.R. Kapoor and Smt. Sham Devi.

41. Another interesting aspect is that the learned Counsel for respondents 1 to 3 relied upon the entry of visit of Smt. Sham Devi recorded by the Pandit in which reference has been made to the 'Dharamputra' of Chaman Lal deceased son of Shri J.R. Kapoor to show that a grand son existed. The same entry also records the factum of the appellant being the 'Dharamputra' of Smt. Sham Devi. Respondents cannot blow hot and cold in the same breath.

42. The learned Single Judge while considering the testimony of Shri Raj Kumar has recorded the finding that the same left the learned Judge with an impression that his testimony is an interest one and not worthy of credence. We see no reason to disbelieve the testimony of Shri Raj Kumar who gains nothing from the Will. He is the relative of Smt. Sham Devi prior to her marriage being the son of Smt. Sham Devi's sister. Shri Raj Kumar has entered the witness box and deposed to the fact that Smt. Sham Devi considered the appellant as a son, the appellant performed her last rites and the appellant performed the Puja at the Chautha.

43. The learned Single Judge has also recorded that there was no clear evidence to show under what circumstances Smt. Sham Devi shifted to the house of Shri Ram Nath. What is to be appreciated is that in her old age she did shift to the house of Shri Ram Nath for medical help and lived there till her death. This fact in effect supports the stand of the appellant. The mere fact that the appellant and his father had taken a prominent part in the execution of the Will cannot be held against them. We have considered this aspect before to record that Smt. Sham Devi could not have been expected to do this on her own and for which she will naturally rely upon the person she was living with.

44. The learned Single Judge seems to have drawn an adverse inference from the fact that doctor has attested the Will which in view of the learned Single Judge was not required once PW 2 Shri Sawhney who was the Advocate found Smt. Sham Devi to be in normal health. We are unable to agree with this inference of the learned Single Judge. It is quite normal to advise that a doctor witnesses the Will who has also examined the testator specially when the testator is quite old. In the present case undoubtedly the testatrix was quite old and required medical help. In our considered view it would have been a prudent advice of the lawyer to have a doctor present in such a circumstance. The testimony of Dr. Rupla Kukerja has also been unnecessarily looked at with suspicions. In our considered view factors like doctor putting the official seal below her signatures can hardly be said to create doubt on the authenticity of the witness.

45. The last factor which weighed with the learned Single Judge was the fact recorded in the Will that Smt. Sham Devi was revoking any previous Will. The learned Single Judge was of the view that there was no requirement to include this clause if it was known whether a Will was or was not executed prior to the said Will. In our considered view a wrong adverse inference has been drawn since such a clause is a common practice in the Wills so that no previous documents, if any, could be relied upon contrary to the Will executed.

46. In our considered view the Will has been looked upon with suspicions without any cogent reason and the Will has been duly proved. Even the manner in which the bequeath has been made in favor of the appellant does not give rise to any suspicion keeping in mind the relationship between the testatrix and the family of the beneficiary being the appellant.

47. The appellant having discharged his burden the onus was on respondents 1 to 3 to have proved the allegations of forgery and fraud which they miserably failed to establish. We find no suspicious circumstances surrounding due execution of the Will Exhibit P-1 stands fully established with the testimony of the attesting witnesses.

49. The appeal is consequently allowed. The impugned order is set aside. The application for grant of probate is allowed. The appellant is granted probate of the Will dated 26.2.1972 Exhibit P-1.

50. The appellant will also get his costs of appeal quantified at Rs. 5,000/- from respondents 1 to 3.

51. The Probate Petition No. 13/1972 be now posted before the Joint Registrar for further follow up action on 26.11.2001.

52. Appeal allowed with cost.