

Hari Singh and ors. Vs. State and ors

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Court : Delhi

Decided On : Jan-28-2011

Judge : Mool Chand Garg, J.

Acts : Indian Succession Act - Section 63; Code of Civil Procedure (CPC) - Order 1 Rule 10; Delhi Land Reforms Act - Section 50; Code of Criminal Procedure (CrPC) (Cr. P.C) - Section 145

Appeal No. : FAO 330/2008

Appellant : Hari Singh and ors.

Respondent : State and ors

Advocate for Def. : Mr.Raj Kumar Sherawat, Adv.

Advocate for Pet/Ap. : Ms. Kamlesh Mahajan, Adv.

Judgement :

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

1. Appellants have filed this appeal to assail the Order of the Additional District Judge Delhi in having dismissed their probate case No. 344/1995 filed by them for seeking Letters of Administration of the Will allegedly executed by

deceased/testator Shri Laik Ram on 01.05.1991. Vide impugned order the petition was dismissed by holding that the said will besides being shrouded with suspicious circumstances was also not proved under Section 63 of the Indian Succession Act to have been executed by the deceased in view of the Contradictions noticed in the deposition of the two attesting witnesses examined by the appellants. It is this finding which has been assailed in this appeal. Even though the objectors to the aforesaid will had set up another will but they have also failed to prove the same. However they have not filed any cross appeal though are opposing the prayers made in the Appeal and have even filed written submissions in this regard.

2. Briefly stating the facts of this case are; that the appellants No. 1 & 2 are the nephews of the deceased/testator while appellants No. 3(a) to 3(f) are the legal heirs of their nephew, since deceased during the Course of hearing. They are the beneficiaries under the Will dated 1.5.91 propounded by them. The deceased also left behind three daughters but they are not the beneficiaries. After the citations were published and notices were issued to the near relatives, the daughters filed objections to the grant of probate. It is there case that the appellants have no locus-standie to file the probate petition, which is even otherwise bad for mis-joinder and non-joinder of necessary parties. The petition has also not been verified in accordance with law.

3. On the basis of a separate application filed under Order 1 Rule 10 CPC Azad Singh, Ranbir Singh and Angrezo were impleaded as respondents No. 5, 9 & 10. Azad Singh filed separate objections and propounded another will dated 09.01.1995 stated to have been executed by the deceased in his favor thereby bequeathing his entire property to him. He denied the execution of the Will propounded by the appellants and has stated that on the basis of the Will dated 09.01.1995 he has even got the property mutated in his name. It is also the case of Shri Azad Singh that probate petition filed by the appellants was also not maintainable in view of various provisions of Delhi Land Reforms Act. It has been also stated by him that the petitioners have no right, title or interest in the land left by deceased Laiq Ram as they were neither the Bhumidars nor in any way interested in the same and therefore after the death of the deceased, they being

the sons of Shri Kehar Singh, real brother of the deceased, were entitled only to succeed to the extent of half share under Section 50 of the Delhi Land Reforms Act whereas the remaining half share is to be inherited by the objectors. It is stated that the very fact that Laiq Ram himself filed a suit for partition against the appellants and objectors goes a long way to show that he never executed any Will in favor of the appellants, rather he wanted his share to be separated from the objectors so that he becomes the exclusive Bhumidar thereof and enjoy its fruits. It has been further stated that the Will does not disclose the factum of filing the partition suit against them and the objectors. In fact the Will is a manufactured document and got scribed by the appellants for their advantage. Moreover the deceased was an illiterate person and could only sign in urdu whereas, the Will has been scribed in English. It is further stated that the deceased was being looked after by the objectors during his life time and therefore he could not have made the Will of the land in favor of the appellants. It has been further stated that proceedings under Section 145 Cr.PC were initiated between Laiq Ram and his daughters and a civil suit for permanent injunction was filed by Laiq Ram against his daughters. It is also stated that during his lifetime, deceased did not disclose about the factum of executing the Will to anyone. It is stated that these are the suspicious circumstances which casts clouds over the genuineness and authentication of the will. Separate objections were filed by Ranbir Singh and Angrezo etc. According to Ranbir the will is not in accordance with Section 281 of the Indian Succession Act. Moreover the appellants have not been named as executor of the Will and as such have no locus standi to file the probate petition. He also pleaded that the will propounded by the appellants appears to have been procured by way of undue influence and coercion exercised by the appellants for their unlawful gains and motives. Moreover the witnesses to the Will are unreliable and unworthy of credit since they are the relatives and interested persons and have been procured for material gain by the appellants. Same is the case set up by Respondent No.10, Smt. Angrezo in her separate objections. She has only added that the signatures/thumb impression on the Will are not that of Laiq Ram; registration of the Will is also not in accordance with law; it is vague; and has also not been validly executed or attested as per the provisions of law. She also stated that the deceased was not in a state of sound disposing mind after the death of his

wife Smt. Chhoto on 05.04.1991, with whom he had deep love, affection and attachment. His mental faculties were temporarily impaired and he was not in a position to discriminate what is good and bad for him.

4. On the pleadings of the parties following issues were framed:

(1) Whether the Will dated 01.05.1991, propounded by the appellant is the last Will and testament of deceased Laiq Ram and that it had been executed by him in sound disposing mind and with his own free will and that it is a valid Will? OPP.

(2) Whether the appellant has no locus standi to file this petition. OP Objector.

(3) Whether the petition is not maintainable for the reason stated in preliminary objection No.1 filed by Smt. Bimla Devi, O.P. Objector.

(4) Whether the petition is bad for non-joinder and mis- joinder of the parties? OPO

Whether the petition has not been verified and it is not maintainable for the reasons stated in paras 4 & 5 of the preliminary objections of objector Bimla Devi?

(6) Relief.

5. Appellants to prove their case examined four witnesses. PW-1 Shri Khem Chand and PW-2 Ram Singh are the attesting witnesses of the Will dated 01.05.1991. PW-3 is UDC from the office of Sub-Registrar-I, Kashmere Gate. He produced record of the registration of the Will Ex.Pw1/1. PW-4 Shri Hari Singh is the propounder of the will and is also one of the appellant. He tendered his affidavit Ex. PW-4/1 to support his petition. Respondents No. 2 to 4 produced three witnesses. Respondent No.2 also appeared as R2W1. RW-2 is Dr. J.C. Rai who has proved the medical certificate dated 31.03.1991 of Laiq Ram to prove state of his health. He deposed that he had diagnosed the patient and stated that at that time the patient was suffering from anxiety and neurosis with depression.

6. Respondent No.5 Azad Singh examined four witnesses in support of his objections and to prove the execution of the will propounded by him. He examined himself as R5W1. R5W2 is the record keeper from the office of Divisional

Commissioner, Delhi. He produced the record of the case of Hari Singh v. Laiq Ram pertaining to Goshwara No. 610. The certified copies of the statements of Chanda, Daulat Ram, Bimla Devi, Girdhari, Hari Singh, Ram Singh, Ranbir Singh and Samay Singh recorded before Tehsildar on 21.04.1995 were also filed and were exhibited as Ex. R5W2A to Ex. R5W2/H. He also tendered copies of applications Exbt. R5W2/1 to R5W2/N. The certified copy of the order dated 11.05.1995 passed by Tehsildar has also been filed as Exbt. R5W2/O. None of these witnesses were examined in Court except Chanda. Both Sh.Chanda who appeared as RW-5 and Sh.Daulat Ram, who was also examined by Sh.Azad Singh as the second attesting witnesses to the Will dated 09.1.1995 have not supported Sh.Azad Singh. In fact, they were declared hostile and were even permitted to be cross-examined by the said respondent.

7. In the light of the evidence which has come on record, the lower Court has dismissed all the objections raised by the respondents and has decided issues No. 2 to 5 in favour of the appellants. However, Issue No. 1 has been decided against the appellants thereby the Addl. District Judge has dismissed the probate petition, holding that the appellants have failed to prove due execution of the Will dated 01.05.1991 in accordance with law. At the same time the Addl. District Judge also disbelieved the version of the 5th respondent who propounded the Will dated 09.01.1995 inasmuch as the Court observed that both the attesting witnesses examined by the 5th respondent to prove the said Will also turned hostile.

8. At this stage, it would be relevant to take note of some of the observations made by the Addl. District Judge in para 26 of the order which reads as under:-

26.The Will dated 01.05.1991 Exbt. PW-1/1 is a typed document running in four pages and bearing the signatures of the executant Shri Laiq Ram on all the four pages. The will is bearing the attestation of two witnesses i.e. Shri Ram Singh and Shri Khem Chand. The Will has been scribed by Shri Amar Nath Mann, advocate. It also bears his signatures on the foot of the last page of the Will. Petitioners have produced both the attesting witnesses with a view to prove the will. PW-1 shri Khem Chand in his affidavit has stated that Shri Laiq Ram had executed the Will without any threat, pressure or coercion and that the will was signed by Shri Laiq

Ram in his presence before he appended his thumb impression as witness to the same. He further stated that the first attesting witness Shri Ram Singh also appended his signatures in his presence as also in the presence of Shri Laiq Ram. Regarding his acquaintance with Laiq Ram, he stated that he knew Laiq Ram since childhood and that his relation with Laiq Ram became strong when he became the Pradhan of the area. He stated that the Will was prepared on 01.05.1991 but was got registered on 02.05.1991. PW-2 Shri Ram Singh in his affidavit stated that Shri Laiq Ram had signed the Will in his presence and thereafter, he signed the Will as a witness to the same. He further stated that the second attesting witness Shri Khem Chand also appended his thumb impression on the Will. With regard to his acquaintance with laiq Ram, he stated that he knew laiq Ram as granddaughter of Laiq Ram namely Saroj was married to his son Virender Singh.

9. However, the Court has not believed the statement of PW1 Khem Chand regarding attestation of the signatures of the deceased laiq Ram on the will dated 01.05.1991 by observing that PW1 Khem Chand in his cross examination has stated that he cannot identify the signatures of executants Laiq Ram because he could not recollect the number of pages of the Will and on how many places on the Will he had put his thumb impression. He also could not tell if the Will is a fabricated document. Although, in his affidavit, he has stated that Laiq Ram was known to him since childhood and his relations with him grew stronger when the deponent became the Pradhan of the area but he could not tell the name of the wife of the deceased. Regarding the state of mind, of the deceased PW- 1 in cross examination states that he does not know if Shri Laiq Ram was in a fit condition/mental state after the death of his wife.

10. Similarly as to the evidence of the other attesting witness Ram Singh (PW-2) it has been observed by the Court below that in his cross examination the said witness has stated, that the Will was executed on a stamp paper and that one of the papers was having Ashoka Emblem. The Court has also observed that Will Ex. PW-1/1 stands typed on plain papers and not on stamp paper having Ashoka Emblem. Moreover PW-2 could not tell the time taken in preparation and typing of the Will. He also stated that his name and address etc. as well as that of Khem

Chand were typed on the Will but in fact, they are hand written. He could not tell the name of the typist or the chamber number where the Will was typed. He could not tell the number of signatures/ thumb impressions put by him, Khem Chand and Laiq Ram. According to him, they had signed on each page of the Will but the Will bears only the signatures of Shri Laiq Ram on all the four pages while signatures/thumb impressions of the witnesses are only on the last page of the Will. The Court has also observed that in further cross-examination of the said witness recorded on 18.08.2003, he stated that the will was signed by him at two places i.e. on the first page and on the last page. He contradicted himself by stating at one place in cross examination that they reached the court at about 4.00 PM on the day the will was executed but in the later part of the cross examination, he stated that they reached the court at about 10.00 AM for the purpose of execution of the Will. PW-2 could not recollect as to how many copies of the will were prepared and on how many pages Khem Chand had put his signatures.

11. In addition to that the Lower Court also observed that there are other infirmities which also cannot be overlooked. In this regard the Court has also observed that will Exbt. PW-1/2 bears the endorsement that it has been drafted by Shri Amar Nath Mann, Advocate and also bears his signatures as the scribe of the will which is also admitted by PW-2 in his cross examination. Appellant in his cross examination admits that Shri Amar Nath Mann, Advocate was his advocate in partition suit filed by deceased Laiq Ram during his lifetime. The vakalatnama of appellant in favour of Shri Amar Nath Mann filed in the civil suit, has been proved as Exbt. PW-4/DX4. Appellant Hari Singh is one of the beneficiaries of the Will. Drafting of the Will of Laiq Ram by the advocate of appellant thus becomes a very serious suspicious circumstance about the execution of the Will. Moreover it has also come in the cross examination of PW-2 that Shri Ajit Singh, son of the appellant was also present at Tis hazari Court at the time of execution of the Will. This witness also states that Ajit Singh had not accompanied them but he met them outside the chamber of Shri Amar Nath Mann, Advocate while they had gone there for getting the Will typed. He could not tell as to how he reached there. The presence of the son of the Appellant/petitioner at the time of execution of the Will creates further suspicion. The possibility that the petitioner and his son played a prominent role in getting the will executed, cannot be ruled out.

12. For the aforesaid reasons the Addl. District Judge concluded that the appellants failed to prove due execution and attestation of the Will Ex.PW-1/1 in accordance with law. It is also observed that the appellants have also failed to explain or remove the suspicious circumstances surrounding the preparation of the Will.

13. Similarly as regards the Will dated 09.01.1995 propounded by Azad Singh in his favour, the Court has observed that he also failed to prove the same in the light of the deposition of the attesting witnesses examined by him. In view of that the Court has decided issue No.1 against the appellants and dismissed the probate petition.

14. While the appellants have filed this appeal the respondents including respondent No.5 have neither filed any cross appeal or any independent appeal challenging any of the findings returned even against the execution of the will dated 9.1.95.

15. According to the appellants the observation made by the Addl. District judge that the execution of the Will has not been proved by the appellants in accordance with law is erroneous inasmuch as at least one of the witnesses has proved the execution of the Will. He has also proved the attestation of the Will by two witnesses. He has deposed the Will was signed by the testator and was attested by two witnesses. It is stated that the circumstances pointed out by the respondents/ objectors were of no consequence. The will propounded by Azad Singh was not proved and therefore the Will propounded by the appellants ought to have been considered as the genuine Will of deceased Shri Laiq Ram and thus the Court should have granted the probate thereof.

16. It is also the case of the appellants that the observations made by the Additional District Judge that the statements of Khem Chand and the second witness suffers from any infirmity are not correct inasmuch as, minor diversions of the attesting witnesses are not of much significance once they had proved the execution of the Will by the deceased testator and the attestation thereof by two witnesses in presence of the testator and in the absence of each other. It is also submitted that merely because Sh.Amar Nath Mann, Advocate was an advocate

for one of the appellants would make no difference. It is therefore prayed that the order of the Addl. District Judge in having dismissed the probate petition qua Will dated 01.05.1991 be set aside and letters of administration of Will dated 01.05.1991 annexed be granted in their favour.

17. On the other hand respondent No.5 in his written synopsis while supporting the judgment delivered against the appellants has submitted that the order of the lower Court in disbelieving the Will dated 09.01.1995 propounded by this respondent is not sustainable. In this regard it has been submitted that even though witnesses examined by this respondent for attesting the Will having turned hostile yet the execution of the Will dated 09.01.1995 was proved by Daulat Ram who identified the signatures of deceased Laiq Ram as also by Chanda. The registration of Will was also proved by the record keeper. However while justifying the order refusing the grant of probate in favor of the appellants it was also submitted that various khasras of the land in question were never partitioned by meets and bounds and major chunk of the land bearing Khasra No. 75, 76, 78, 155, 227, 228, 230, 231, 232, 233, 336, 333 and 340 and were the subject matter of proceeding under Section 145 Cr.PC to which Shri Laiq Ram was also a party. In fact the SDM in those proceedings upheld the cultivation and physical possession in favour of Bimla, Darshana and Savitri. The judgment of SDM was upheld by Shri Narender Kumar, Addl. District Judge Rohini. By virtue of those judgments Bimla, Darshana and Savitri acquired right and title over the said land. It was further stated that as held by the Hon'ble Supreme Court in the case of Rani Poornima Debi v. Kumar Khagendra Narain Deb AIR 1962 SC 567, mere registration of the Will would not remove the suspicion over the execution of the said Will. It is submitted that while the order of the Trial Court dismissing the petition of the appellants is correct it should be held that the Will propounded by Ajit Singh stands proved.

18. The respondents No. 2 to 4 have also filed written synopsis and have asserted that although the Will propounded by the appellants is fabricated even otherwise the deceased testator had no competence or authority under law to execute a will in respect of a property which is subject matter of Will as the property is an ancestral and joint family property and no partition by meets and bounds had

taken place. Further respondent Nos 2 to 4 are real daughters of the deceased and as per Hindu Succession Act had equal right in the ancestral property. They had also submitted that they are in legal and physical possession of property in question for last more than 25 years and the possession has been held by Ld. S.D.M in 145 Cr.P.C proceedings and the order of Ld. S.D.M has been upheld by Ld. A.S.J. vide judgment dated 04.12.2007. Respondents No. 6 to 8 who have also filed separate objections almost on similar grounds as taken by the respondent No.5 as well as respondent No. 2 to 4, the judgment delivered by the Addl. District Judge has been justified.

19. It has been submitted by the said respondent that while the judgment of the Additional District Judge in having dismissed the probate petition filed by Hari Singh and others in respect of the Will dated 1.5.1991 needs to be upheld, it is submitted that the order of the Additional District Judge in holding the Will dated 9.1.1995 propounded by them has not been proved by the aforesaid respondent is not correct.

20. The law with regard to the execution and proof of un-privileged Will stands well-settled in the case of Sridevi and Others Vs Jayaraja Shetty and Others, (2005) 2 SCC 784 , wherein the Apex Court has held that:- It is well settled proposition of law that mode of proving the Will does not differ from that of proving any other document except as to the special requirement of attestation prescribed in the case of a Will by Section 63 of the Indian Succession Act, 1925. The onus to prove the Will is on the propounder and in the absence of suspicious circumstances surrounding the execution of the Will, proof of testamentary capacity and proof of the signature of the testator, as required by law, need be sufficient to discharge the onus. Where there are suspicious circumstances, the onus would again be on the propounder to explain them to the satisfaction of the court before the Will can be accepted as genuine. Proof in either case cannot be mathematically precise and certain and should be one of satisfaction of a prudent mind in such matters. In case the person contesting the Will alleges undue influence, fraud or coercion, the onus will be on him to prove the same. As to what are suspicious circumstances has to be judged in the facts and circumstances of each particular case.

14. The propounder of the Will has to show that the Will was signed by the testator; that he was at the relevant time in sound disposing state of mind; that he understood the nature and effect of dispositions and had put his signatures to the testament of his own free will and that he had signed it in the presence of the two witnesses who attested in his presence and in the presence of each other. Once these elements are established, the onus which rests on the propounder is discharged.

21. It would also be appropriate to take note of the decision delivered by the Apex Court in the case of Savithri Vs Karthyayani Amma, 2007 (11) SCC 621 wherein it has been held that deprivation of a due share to the natural heirs itself is not a factor which would lead to the conclusion that there exists suspicious circumstances. The relevant extract is produced here under:-

Therein, this Court also took into consideration the decision of this Court in H. Venkatachala Iyengar¹, wherein the following circumstances were held to be relevant for determination of the existence of the suspicious circumstances:

"34. (i) when a doubt is created in regard to the condition of mind of the testator despite his signature on the will; (ii) when the disposition appears to be unnatural or wholly unfair in the light of the relevant circumstances;

(iii) where propounder himself takes prominent part in the execution of will which confers on him substantial benefit."

21. We do not find in the fact situation obtaining herein that any such suspicious circumstance was existing. We are not unmindful of the fact that the court must satisfy its conscience before its genuineness is accepted. But what is necessary therefore, is a rational approach.

22. Deprivation of a due share by the natural heirs itself is not a factor which would lead to the conclusion that there exist suspicious circumstances. For the said purpose, as noticed hereinbefore, the background facts should also be taken into consideration. The son was not meeting his father. He had not been attending to him. He was not even meeting the expenses for his treatment from 1959, when he

lost his job till his death in 1978. The testator was living with his sister and her children. If in that situation, if he executed a will in their favour, no exception thereto can be taken. Even then, something was left for the appellant.

23. In *Ramabai Padmakar Patil v. Rukminibai Vishnu Vekhande* this Court held:

"8. A will is executed to alter the mode of succession and by the very nature of things it is bound to result in either reducing or depriving the share of a natural heir. If a person intends his property to pass to his natural heirs, there is no necessity at all of executing a will. It is true that a propounder of the will has to remove all suspicious circumstances. Suspicion means doubt, conjecture or mistrust. But the fact that natural heirs have either been excluded or a lesser share has been given to them, by itself without anything more, cannot be held to be a suspicious circumstance, especially in a case where the bequest has been made in favour of an offspring."

24. Strong reliance has been placed by the learned counsel on *Gurdial Kaur v. Kartar Kaur* wherein it was held:- "4. 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 under the Succession Act, 1925 but it should also be found that the said will was the product of the free volition of the executant who had voluntarily executed the same after knowing and understanding the contents of the will. Therefore, whenever there is any suspicious circumstance, the obligation is cast on the propounder of the will to dispel the suspicious circumstance. As in the facts and circumstances of the case, the court of appeal below did not accept the valid execution of the will by indicating reasons and coming to a specific finding that suspicion had not been dispelled to the satisfaction of the Court and such finding of the court of appeal below has also been upheld by the High Court by the impugned judgment, we do not find any reason to interfere with such decision. This appeal, therefore, fails and is dismissed without any order as to costs."

25. There is no dispute in regard to the proposition that the conscience of the court must be satisfied. In the instant case, the High Court has considered the relevant factors. It has been found that the will was the product of the free will. He had

executed the will after knowing and understanding the contents thereof.

26. Joseph Antony Lazarus v. A.J. Francis whereupon again reliance was placed, one of the circumstances was that the names of the two sons of the testator had not been mentioned therein. The said decision cannot be said to have any application to the instant case.

27. For the reasons aforementioned, we do not find any legal infirmity in the judgment of the High Court. The appeal is dismissed.

22. I have heard the parties and have perused the record, the impugned order as well as the written synopsis filed by the respondents. The appellant has sought probate in respect to the Will dated 01.05.1991, however the said Will does not satisfy the formalities required to prove its execution under Section 63 of Indian Succession Act in as much as both the attesting witnesses in their cross examination have given statements full of material infirmities and contradictions which only goes to show that the suspicious circumstances revolving around the attestation of the Will was not duly removed by the appellant. Further, the Will was drafted by one Sh.Amar Nath Mann, advocate and it is admittance on the part of the appellant that the same advocate who was the scribe of the Will was also the advocate of the appellant in a partition suit filed by the deceased testator in his lifetime against the appellant. Thus drafting of the Will of the deceased testator by the advocate of the appellant is the most suspicious circumstance which cannot be overlooked-. More so, it has also come in the cross-examination of PW-2 that Sh. Ajit Singh, son of the appellant was also present at Tis Hazari Court at the time of the execution of the Will. Pw-2 had also stated that Ajit Singh had not accompanied them but he met them outside the chamber of Sh. Amar Nath Mann, advocate while they had gone there for getting the Will typed. Sh Ajit Singh could not tell as to how he reached there, hence the presence of the son of the appellant at the time of the execution of the Will creates further suspicion. Therefore the possibility of the appellant and his son playing a prominent role in execution of the Will cannot be ruled out. Hence in such circumstances it cannot be said that the Will dated 01.05.1991 stands executed lawfully.

23. On the other hand, respondent No 5 even though propounded a subsequent Will dated 09.01.1995 in his favour and had also deposed that the Will has been attested by one Sh. Daulat Ram and one Shri Chanda as attesting witnesses which fact both the attesting witnesses have accepted in front of Naib Tehsildar, however before the Additional District Judge, the said witnesses did not support the Will and disowned the statements given by them before the Naib Tehsildar. A perusal of the statement Ex. R5W2/4 goes to show that the statement recorded before Tehsildar was without oath while the statement given by the witness before the lower Court was on oath, hence the learned Additional District Judge was right in giving more weightage to the statement given on oath vis-a-vis the statement recorded before the tehsildar without oath. Therefore, even respondent No 5 fails to prove that the Will dated 09.01.1995 was validly executed by the deceased testator in his favour.

24. Thus in the light of the legal position settled by the Apex Court as discussed above as also the factual matrix as noticed by the Addl. District Judge as well as by this Court on the basis of record perused by me, I have no hesitation but to hold that the findings returned by the Addl. District judge while deciding issue No.1 that neither the appellants nor respondents No.5 have been able to prove execution of either of the Will and the due attestation thereof in terms of the requirements of law under Section 63(c) of the Indian Succession Act as well as under Section 68 of the Indian Evidence Act. Moreover, the appellant also failed to remove clouds over the Will dated 01.05.1991 propounded by him, as noticed by the Addl. District judge which casts serious doubts and shrouds suspicious circumstances over the execution of the said Will. In these circumstances, I also find that the Addl. District Judge has rightly dismissed the probate petition and has further rightly disbelieved the version of the fifth respondent about the execution of the second Will dated 09.01.1995 as propounded by him. Therefore, I do not find any infirmity in the order passed by the lower Court. The appeal is dismissed with no orders as to cost.