

Pawan Jolly and Another Vs. State

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SooperKanoon Citation : sooperkanoon.com/948647

Court : Delhi

Decided On : Feb-22-2012

Judge : Manmohan Singh

Appeal No. : TEST. CAS. No.21 of 1995

Appellant : Pawan Jolly and Another

Respondent : State

Judgement :

MANMOHAN SINGH, J.

1. The petitioners filed the above-mentioned petition under Section 276 of the Indian Succession Act, 1925 for grant of probate in respect of the registered Will dated 05.02.1991 executed by deceased Shri Brij Bhushan Jolly with regard to his estate. The said Shri B.B. Jolly died on 21.01.1995.

2. The particulars of legal heirs of the deceased Shri B.B.Jolly are given as under:-

(i) Mr. Pawan Jolly - Son (Petitioner No.1)

(ii) Mrs. Nirmal Jolly - Widow (Petitioner No.2)

(iii) Mr. Anil Jolly - Son (Objector)

(iv) Mrs. Beena Mehra - daughter

(v) Mr. Rakesh Jolly - Son

3. The above said Will and testament of the deceased Shri B.B.Jolly was duly executed and registered with the Registrar vide Book No.606, Volume No.III, Addl. Book No.588, Pages 153-157 on 05.02.1991. The petitioner No.2 who was the widow of the deceased, died on 07.05.2007 during the pendency of the present proceedings.

4. It is alleged that a plot was purchased on 08.09.1969 by the deceased Shri B.B.Jolly and subsequently constructed a building thereon in the year 1971. The property consists of 1.1/2 storey building at that point of time and later on, the first floor of the said property was sold in the year 1984 to Mr. O.P. Hasija and the Barsati Floor of the property was sold in the year 1989 to Mrs. Mala Sahgal.

5. It is also submitted that later Shri B.B.Jolly and petitioners No.1 and 2 have been residing on the ground floor and the terrace rights of the building are also with the beneficiary of the aforesaid Will.

6. The particulars of the immovable and movable properties left by the deceased Shri B.B.Jolly are mentioned in Schedule-A filed along with the petition. The details of the same are given as under:-

Sr. No.	Particulars	Amount
1.	Immovable property bearing No.J-38, New Delhi South Extension Part-I, New Delhi.	-----
2.	Movable Property	Rs.10,00,000/-

7. As per the petitioners, the deceased Shri B.B.Jolly had executed his last Will and testament dated 05.02.1991 in the presence of the following two witnesses:-

(i) Shri A.K.Bajpai, Advocate, 40/3, Kidwai Nagar (East), New Delhi-110023.

(ii) Smt. Beena Mehra, A-40, Defence Colony, New Delhi-110024.

8. The suit property as mentioned in the Will as property No.J-38, New Delhi South Extension Part-I, New Delhi was transferred in favour of the petitioners.
9. The petition is contested by the Objector, Shri Anil Jolly, who in his written statement, has inter-alia challenged the petition on the following grounds:-
- (a) Shri B.B.Jolly died intestate and he had not made any Will and much less a conscious one and of his free consent.
- (b) Purported Will has been fraudulently brought into existence in conspiracy with the witnesses and was not a conscious exercise of Shri B.B.Jolly.
- (c) Shri B.B.Jolly much prior to the purported date of Will was suffering from mental disorder, imbalance and paralysis and had been confined to bed and was at a mercy of petitioner No.1.
10. Citations of these proceedings were effected in the newspapers "The Statesman" (New Delhi Edition) and "Hindustan" (Hindi Edition). The valuation was also received and placed on record.
11. Vide order dated 27.10.1998, the following issues were framed:-
1. Whether the testatrix at the relevant time was mentally infirm and was not at all in a disposing state of mind?
 2. Whether the Will dated 05.02.1991 is a forged document?
 3. Relief and costs.
12. In order to prove their case, the petitioners examined three witnesses, namely, Mrs. Beena Mehra (daughter of the deceased) as PW.1, Shri L.S. Rawat, Upper Division Clerk in the office of the Sub-Registrar, Asaf Ali Road, New Delhi as PW.2, Shri A.K.Bajpai, Advocate as PW.3. Besides them, petitioner No.1 examined himself as PW.4.
13. On the other hand, the objector Anil Jolly filed his own affidavit only as RW-1.

ISSUES NO.1 and 2

14. Mrs. Beena Mehra (PW.1) has deposed that she was an attesting witness to the Will in question dated 05.02.1991, marked as Exh.PW-1/1. She proved the execution of the same. PW-2, Shri L.S. Rawat, Upper Division Clerk in the office of the Sub-Registrar, Asaf Ali Road, New Delhi had brought the summoned record, i.e. the register containing the Will of the deceased Shri B.B.Jolly as document No.606 on pages 153 to 157 in Book No.3, Volume No.588 on 05.02.1991 and proved the same. Shri A.K.Bajpai, Advocate was examined as PW.3. He was also an attesting witness to the Will in question. His examination-in-chief was recorded on affidavit which was exhibited as Exh.PW-3/A. In his cross-examination, he deposed that he had signed the Will only as a witness and in no other capacity. He also deposed that the Will was drafted by him on the instructions of the deceased Shri B.B.Jolly and he along with Mrs. Beena Mehra and deceased Shri B.B.Jolly were present in the office of the Sub-Registrar when the Will was registered. He denied the suggestion that at the time of execution of the Will, the deceased was not in a good health and of sound mind.

15. Petitioner No.1 examined himself as PW.4. His examination-in-chief was also produced by way of affidavit. In his cross-examination, he denied that late Shri B.B.Jolly (his father) was admitted in hospital for treatment immediately before the execution of the Will. He, in fact, deposed before the Court by reiterating the facts stated in the petition.

16. The objector Shri Anil Jolly (RW.1) filed his affidavit in evidence. In his cross-examination, he admitted that during the life time of the deceased, he had filed a civil suit against him. He also admitted that during the lifetime of his father, he had vacated the suit property. No other affidavit as evidence was filed by the objector and vide order dated 25.01.2008 his evidence was closed. Later on, he moved an application under Section 151 CPC being I.A. No.2625/2008, inter-alia, praying for allowing him to place on record the report of the handwriting expert to challenge the signatures of the testator on the Will in question.

17. The report of the handwriting expert, namely, Shri B.N.Srivastava along with his affidavit was filed by the objector. The said handwriting expert had opined in his affidavit that the signatures of the testator/deceased Shri B.B.Jolly on the Will have not been written in normal course and were not the signatures by a person of sound mind, as there were unnatural inconsistencies in the formation of letters, lack of legibility and smoothness of strokes in the signatures of the testator. In his cross-examination, the said handwriting expert admitted that he is not a medical practitioner and is not clinically certified to comment upon the mental condition of a person. He also deposed that there is no authority which says that the handwriting expert can comment on the mental condition of a person. He also admitted that illegibility of the strokes in the handwriting of a person might be due to poor health, tremors of old age and in all such cases it is not possible that the illegality is because of the unsound mind. He also commented that there are two types of writings, skilled and semi-skilled, and the features of semi-skilled handwriting are letters not showing good speed, letters are not clear cut, letters are not well-formed and there may be stoppages in formation of letters and signatures. He also opined that semi-skilled writing does not mean that the person/author of the same is of unsound mind.

18. It is the admitted position that the objector in the present case has not led any medical evidence in support of his contention that the deceased Shri B.B.Jolly at the time of his death was not of a sound health and had no disposing mind. In the written statement, the said objector contended that his father was suffering from mental disorder, imbalance and paralyses. However, in the cross-examination of PW-4, when he was suggested that the deceased was having heart problem and diabetes, the said suggestion was denied by the said witness.

19. Mr. Raman Kapur, learned counsel appearing on behalf of the objector has argued that the Will had been fraudulently brought into existence in the conspiracy with the witnesses. The deceased was totally an invalid patient without sound disposing mind. Actually, he was at the mercy of petitioner No.1. He was also suffering from mental disbalance, paralysis and was confined to bed. Otherwise, no person would affix his signatures in the manner as has been

done upon the impugned Will. The learned counsel also argued that the evidence led by the petitioners is not trust-worthy and the same cannot be relied upon, rather the opinion of the expert witness whose report is Exh.RW-2/1 proved the case of the objector and the said report clinches the issue in question. He further argued that the statement of Mr. A.K.Bajpai, Advocate (PW.3) does not meet the requirement of law and the same is not reliable. Similarly, the statement of Mrs. Beena Mehra cannot be relied upon, as she is also not a trust-worthy witness. Her signatures at different places are different on record. His last submission is that there is total discrepancy in the evidence of the two witnesses and as the petitioners have failed to prove the Will in question beyond any doubt and suppression, the petition is liable to be rejected. In support of his submissions, the learned counsel has relied upon the following judgments:-

(i) **Vijay Kumar Tiwari (Sh.) vs. The State and Anr.**, reported in 2009 I AD (Delhi) 496, the relevant para of which reads as under:-

“21. The law relating to the wills is clear that the proof of due execution of will always lies upon its propounder who must satisfy the judicial conscience that the instrument is the last will of a free and capable testator. Though no specific standard of proof can be enunciated which must be applicable to all the cases as every case depends on its circumstances, courts must be vigilant and zealous in examining evidence for the reason a will is a solemn document and speaks for the dead. Suspicious circumstances are the presumptions which hold against a will. Greater is the suspicion more heavy would be the onus to be discharged by he who propounds the will. Unless suspicious circumstances are satisfactorily explained by removing the cloud of suspicion, a court would not readily accept the document propounded as the last legal and valid testament of the deceased. It may be true that nature of proof required to prove a will is not different from that required to prove other documents except the requirement of attestation prescribed under Section 63 of the Indian Succession Act but it cannot be lost sight of that what distinguishes a will from other documents is that the testator is not available to testify the same as his last will. Thus, an element of solemnity is introduced in the decision. The proof of a will is to be tested on

the satisfaction of a prudent mind. Unnatural disposition, improbable or unfair in the light of relevant circumstances or other indications that the disposition was not the result of the testator's free will and mind cast a very heavy initial onus on the propounder and unless satisfactorily discharged the court would not be justified in treating the document as the last will of the testator. A sound mind required under Section 59 of the Indian Succession Act may not mean that the testator should have his mental faculty in their fullest vigour, but it means that at least the testator should have the capacity to understand the nature of his property; memory to remember the relations and persons normally having claim on his bounty and also a judgment.

(ii) **Des Raj Gupta vs. State**, reported in 159 (2009) Delhi Law Times 738, the relevant para of which reads as under:-

“19. A “Will” is one of the most solemn documents known to law. It is essential for the propounder of the “Will” that trustworthy evidence should be produced before the Court to establish genuineness and authenticity of the “Will”. The Court has not only to consider the testimony of the witness and the manner in which witnesses changed stances but it is open to the Court to consider the circumstances brought out from the evidence. In the present case, the testator was under treatment in the hospital. He was a well-known personality and was being taken care of by the Doctors in a very well manner in a private room of a hospital of repute. The Doctor who did not even know him personally, allowed the discharge of the patient without payment of the bill merely because he was sure that the payment from family of such a well-known personality will not be withheld. There was no necessity for the patient to move to his home for executing the “Will”. The activity of the execution of the “Will” gained momentum soon after discharge of the patient from the hospital. The evidence of PW-1 shows that the “Will” in question was finalized within 3 days of the discharge of the patient.....”

(iii) **Vidya Rani and Anr. vs. Surinder Kaur and Anr.**, reported in 1998 VI AD (Delhi) 522, the relevant para of which reads as under:-

“5. The position with regard to proving of the Will is no longer in doubt. It is for the propounder of the Will to prove it. Propounder has to give proof of the testamentary capacity and signature of the testatrix. Propounder has also to explain the condition of testatrix's mind, the deposition made in the Will being not unnatural, improbable or unfair and that the testatrix's mind was free from pressure. It is only when propounder succeeds in removing the suspicious circumstance the Court would give effect to the Will even if the Will might have been unnatural in the sense it has cut off wholly or in part any legal heir of the testatrix. Where the signature of the testatrix are challenged on the ground of forgery or fabrication as in the present case, and the propounder failed to establish through authentic evidence that the 'Will' bore the signatures of the testatrix coupled with the fact that the 'Will' had neither been produced through a public authority or from a Court but produced by the appellants who are major beneficiaries under the 'Will' and the 'Will' being an unregistered document, to my mind, this will caste suspicion about the genuineness of the 'Will'. More so when the 'Will' saw the light of the day in July, 1991 i.e. after about nine years of its execution. Since the signature on the 'Will' alleged to be that of the testatrix were denied by the respondent and her witnesses who happened to be real brother and nephew of the testatrix burden shifted on the appellants to prove that the signature on the 'Will' were of Iqbal Kaur and that she knew how to sign in Gurmukhi. When the signature on the 'Will' were denied then the burden shifted on the appellants to prove the same by proving from Government record or from any authentic document that the signature on the 'Will' were that of deceased Iqbal Kaur and that the testatrix knew how to sign in Gurmukhi and that she had been putting her signatures on the documents. But the appellants failed to discharge this burden. This by itself may not cast suspicion but this circumstance coupled with other circumstances discussed above compel this Court to draw inference that the execution of the 'Will' is not free from doubt.”

20. The learned counsel appearing on behalf of the petitioners has refuted the submissions made on behalf of the objector. His submission is

that the objector has not been able to show as to how the Will is forged. He further argued that due to the facts and circumstances of the present case and

the evidence adduced in the matter, the objector has not, in fact, denied the execution of the Will, but has merely challenged the manner in which the Will had been executed, inter-alia, on the ground that the Will was not a conscious act on the part of the deceased and was not made by him out of his free consent. The said contention has not been proved in evidence by the said objector. Therefore, the decisions referred by the learned counsel for the objector do not help the case of the objector.

21. In support of his submissions, the learned counsel for the petitioners has relied upon the following judgments:-

(i) **Meenakshiammal (Dead) through LRs. and others vs. Chandrasekaran and another**, reported in (2005) 1 Supreme Court Cases 280, the relevant para of which reads as under:

“16. We do not find any merit in this civil appeal. The onus of proving 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, is sufficient to discharge the onus. Where, however, there are suspicious circumstances, the onus is on the propounder to explain them to the satisfaction of the court before it accepts the will as genuine. Even where the circumstances give rise to doubts, it is for the propounder to satisfy the conscience of the court. The suspicious circumstances may be regarding the genuineness of the signature of the testator, the condition of the testator's mind, the disposition made in the will being unnatural, improbable or unfair in the light of relevant circumstances, or there might be other indications in the will to show that the testator's mind was not free. In such a case, the court would normally expect that all legitimate suspicions should be completely removed before the document is accepted as the last will of the testator.”

(ii) **Sridevi and others vs. Jayaraja Shetty and others**, reported in AIR 2005 Supreme Court 780, the relevant para of which reads as under:

“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. DW-2 the scribe, in his testimony has categorically stated that the Will was scribed by him at the dictation of the testator. The two attesting witnesses have deposed that the testator had signed the Will in their presence while in sound disposing state of mind after understanding the nature and effect of dispositions made by him. That he signed the Will in their presence and they had signed the Will in his presence and in the presence of each other. In cross-examination, the appellants failed to elicit anything which could persuade us to disbelieve their testimony. It has not been shown that they were in any way interested in the propounders of the Will or that on their asking they could have deposed falsely in court. Their testimony inspires confidence. The testimony of the scribe (DW-2) and the two attesting witnesses (DWs-3 and 4) is fully corroborated by the statement of the handwriting expert (DW-5). The Will runs into 6 pages. The testator had signed each of the 6 pages. The handwriting expert compared the signatures of the testator with his admitted signatures. He has opined that the signatures on the Will are that of the testator. In our view, the Will had been duly executed.”

(iii) **L.C. Lai and Ors. vs. State**, reported in 2002 (65) DRJ 130, the relevant paras of which read as under:

“10. The law is well settled that the burden of establishing that at the time of the execution of the Will the deceased was in a sound disposing mind is on the petitioner who propounds the Will but this burden is very light for the reason that there is a presumption of soundness of mind in favor of every testator. Unless there is some cogent material on record to doubt his capacity to dispose, the Court must go by this presumption. The propounder of the Will stands discharged of the onus of establishing sound disposing state of mind if he asserts that the testator was in sound disposing mind and there is nothing on

record to show that the testator was not in a sound disposing mind. It is also equally settled that mere deprivation of the natural heirs in a Will by a testator should not be taken as a suspicious circumstance because the whole idea behind execution of the Will is to interfere with the normal course of succession. Ordinarily in every Will natural heirs are either debarred or their shares are interfered with by a testator and, therefore, this in itself cannot be taken as a suspicious circumstance. A Will contains the last desire of a testator and as such, the Courts should normally act in accordance with the wishes of a testator. However, if a Will is clouded by some suspicious circumstance and the propounder fails to remove the suspicion, the Will should not be propounded. The judgment of the Apex Court in **Rabindra Nath Mukherjee and Another v. Panchanan Banerjee and Others**, AIR 1995 SC 1684 lays down guidelines for the approach to be adopted by the Courts in Probate petitions. In **Pushpawati and Others v. Chandraja Kanamba and Others**, AIR 1972 SC 2492 and **Surendra Pal and Others v. Dr. (Mrs.) Saraswati Arora and Another**, AIR 1974 SC 1999, the Supreme Court of India held that the burden of proving a Will is on the propounder and where there are suspicious circumstances, the propounder of the Will has to explain them away to the satisfaction of the Court. It is, therefore, clear that only those suspicious circumstances have to be explained which are brought to the notice of Court. A Propounder is not expected to presume them and then explain each and every imaginary suspicious circumstance. A suspicious circumstance may be as to the genuineness of the signatures of the testator, condition of the testator's mind, the unnaturalness of the disposition made in the Will or any other indication to show that the testator's mind was not free. Once the propounder is in a position to show that at the relevant time the testator was in a sound disposing state of mind and understood the nature and effect of the disposition and signed the Will of his own free volition in the presence of the two witnesses in terms of Section 63 of the Indian Succession Act, the onus on the propounder stands discharged and the burden gets shifted to the objector who alleges something to the contrary. It has to be reiterated that the mere fact that the testator has chosen to divest a legal heir in itself is not a suspicious circumstance. Keeping in view the aforesaid guiding principles, this Court has to find out as to whether at the time

of execution of the Will, Exhibit PW 1/2, the deceased testator was in a sound disposing state of mind or not.”

(iv) **Khazan Singh vs. State etc.**, reported in 45 (1991) Delhi Law Times 352 (DB), the relevant paras of which read as under:

“20. As mentioned above, the learned Single Judge however has enumerated 7 “suspicious” circumstances. It is well settled that any and every circumstance is not suspicious circumstance. A circumstance would be suspicious when it is not normal and is not normally expected in a normal situation or is not expected of a normal person. The said circumstances in the light of the evidence adduced by the appellant, it is urged, would show that most of the stated circumstances are by no means suspicious. We have considered the matter thoughtfully and feel inclined to agree with.

21. In so far as the exclusion of close relatives and Class-I heirs of the testatrix is concerned, a Will in favour of husband or *vice-versa* to the exclusion of others, stands on a different footing as compared to a Will in favour of other heirs or strangers. The concept of Will itself envisages preference to one over the other. In our society it is not unnatural or unusual for husband or wife to bequeath his/her whole property to each other to the exclusion of their progeny. It is often resorted to keep up amity in the family and sometimes to ensure proper care, status and respect to the living spouse after the demise of the other. Furthermore, in the instant case, although contesting respondent has set up a case that the Will is not genuine, he has not produced any evidence in support thereof. In our opinion, therefore, the stated circumstance is not suspicious. In our view, facts in the instant case are clearly distinguishable from the facts prevailing in **Kalyan Singh v. Chhoti and others (supra)** and **Ram Pyari v. Bhagwant (supra)** relied upon by the learned counsel for the respondent.”

(v) **Santosh Kakkar and Ors. vs. Ram Prasad and Ors.**, reported in 71 (1998) Delhi Law Times, 147. Relevant para 15 reads as under :

“15. The propounder has been able to show by cogent and satisfactory evidence that the Will in question is signed by the testator; the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the disposition and put his signatures to the document of his own free Will.”

(vi) **Smt. K. Kusuma Kumari vs. Grandhi Surya Bhaghawan and others**, reported in AIR 1982 Andhra Pradesh 163, the relevant para of which reads as under:

“10. Modi in his book on Medical Jurisprudence, 19th Edition at page 388 classified mental defectiveness as falling chiefly under three grades known as idiocy, imbecility and feeble-mindedness, Dealing with idiocy, he observed:

"This is a congenital condition due to the defective development of the mental faculties. All grades of this condition exist from the helpless life mere vegetable organism to one which can be compared with the life of young children, as far as mental development is concerned. An idiot is wanting in merely and willpower, is devoid of emotions, has no initiative of any kind, is unable to fix attention any subject and "is unable to guard himself against common physical dangers". He is usually quiet, gentle and timid, though he can be easily irritated. He cannot express himself by articulate language, but he may be able to make himself understood by certain signs, cries or sounds. In some cases he is able to recognise his relatives, and learn with great difficulty. He is usually filthy in his habit and had no concern as to what he eats or drinks. He is very often depraved in morals, and is sometimes cruel to weaker children as well as animals. There is always some bodily deformity or peculiarity, such as a small (Microcephalic), large (Microcephalic, hydrocephalic) or misshapen head, cleft or highly arched palate, irregularly set teeth, enlarged tonsils, adenoids, curved bones etc".

Dealing then with imbecility, Modi observed:

"This is a minor form of idiocy, any may or may not be congenital. Imbeciles are "incapable of managing themselves or their affairs or in the case of children, of

being taught to do so,". They are able to speak, though their command of language is very poor. Their memory is very feeble. In some cases it is highly developed, though not the intellect. They can mechanically repeat without any mistake what is taught to them, but cannot understand its meaning. They are easily roused to passion, and may consequently become dangerous. They commit theft or even murder. Owing to their repulsive manners and habits it is not possible to associate with them, but with a little patience and perseverance they can be taught to dress decently, to eat properly and to control their animal instincts."

Dealing then with feeble-mindedness, Modi observed:

"Under the Mental Deficiency (England) Act, 1913 feeble-minded persons or morons are defined as persons in whose early age mental defectiveness not amounting to imbecility, yet so pronounced that they require care, supervision and control for their own protection, or for the protection of others, or, in the case of children that they by reason of such defectiveness appear to be permanently incapable of receiving proper benefit from instruction of ordinary schools. Feeble-minded individuals do not as a rule, present bodily deformities and stigmata of degeneration, and are often capable of making their own living although they lack in initiative and ability or any work of responsibility. Such persons, however, develop various or criminal propensities, especially of a sexual nature, and are apt to commit assaults or even murders, as are incapable of restraining their impulses."

Taylor in his Principles and Practice of Medical Jurisprudence Volume-I, 11th Edition at page 545 stated that sanity must be presumed, and insanity proved to the satisfaction of a Judge, before it can be legally accepted. He classified mentally defective persons as idiots, imbeciles and feeble-minded persons. Under the heading idiots, imbeciles or feeble-minded persons, he described all these three exist from birth or from an early age, mental defectiveness of varying degrees as stated by him. The definition of idiot as made by Taylor is clear that idiocy is not always congenital. It can be either congenital or the mental defectiveness may set in from an early age. True, Modi has described

idiocy as a congenital condition, but in saying so the opinion expressed by Modi runs counter to that expressed by Taylor. The dictionary writers have described idiocy as a necessary congenital condition but in so defining the term, the definition runs counter to the views expressed by Taylor in his Principles and Practice of Medical Jurisprudence.”

22. In view of the decisions referred by the learned counsels for the parties, it is necessary at this stage to refer paras-3 and 7 of the Will in question, which read as under:-

“3. That I have got three sons, namely, 1. Anil Jolly, 2. Pawan Jolly and 3. Rakesh Jolly and one daughter Smt. Bina Mehra wife of Shri Ajay Mehra. Sh. Anil Jolly never maintained good relation with me however, keeping in view the responsibility of father I helped him and got started his business in the name and style of M/s. A.J. and Company and I invested lot for his business but he never paid me back single penny or to my family and his treatment was unbearable and inhuman towards me and never took care of fulfilling his duties towards parents and on the contrary he started harassing and abusing, beating me and my wife and ultimately I asked him to separate and to occupy second floor for his use but after sometime he again started misbehaving and abusing and beating me and my wife and always demanded money from me. When limit was crossed I debarred him and gave pargati to him which was published in Newspaper. Due to his constant nagging I was not able to bear tensions and on his pressurize I had to pay Rs.35,000/- by cheque and Rs.15,000/- in cash and 30 tulas of gold and then only he vacated and gave possession of said second floor. Since I had not funds as money was taken by Anil Jolly the circumstances compelled me to sell second floor. Due to his behavior and circumstances I have decided once for all that I shall not give anything from my movable and immovable property or any share to Anil Jolly and his heirs, successors and representatives.

7. It I leave any cash or other assets that shall also go to my wife and thereafter to Pawan Jolly only. I do appoint my wife as the Executor of this Will. In case my wife predeceases me, then after my death my above said house and the other

movable assets including jewellery, cash and other house-hold luggage, goods and furniture etc. shall go to my son Pawan Jolly only and he shall become the absolute owner of all the moveable and immoveable properties whatsoever.”

23. I agree with the submissions of the learned counsel for the petitioners that the objector has failed to prove his objections by way of evidence or any material on record. It is not in dispute that the Will which is the subject matter of the petition, is a registered one and it has been proved beyond any doubt. It also clarifies the reason for not making any provision in favour of the objector who has not denied the fact that he had filed the civil suit against his deceased father for partition and later on, the dispute was resolved and he vacated the suit property as per his own sweet will. It further appears from the evidence that the deceased and the objector were not having cordial relations, as the objector had been misbehaving with the deceased. Both the witnesses to the Will have been examined. The Will of the deceased stands proved. PW.1, who is the sister of petitioner No.1 and the objector, was one of the witnesses to the Will and she has confirmed the execution of the same. She, in fact, has deposed before the Court without looking her own interest in the property. Similarly, PW-3, Shri A.K.Bajpai, Advocate has also confirmed the execution of the Will as a witness. It is a registered Will.

24. There is no evidence on behalf of the objector to the effect that the Will had not been executed. Only the manner, in which the Will had been executed, has been challenged by the objector. Thus, the question of suspicion does not arise. No medical evidence has been produced or proved by the objector. The Will executed by the deceased appears not unnatural, improbable or unfair in the present case due to the facts and circumstances mentioned therein, as the objector was, allegedly, not having cordial relations with the deceased. Further, he already vacated the suit premises when the deceased was alive. As far as the decisions referred by the learned counsel for the objector are concerned, in these decisions, the law related to the Wills has been discussed for which proposition of law cannot be disputed by anyone. However, these decisions do not help the case of the objector, rather the principles laid down in these cases go in favour of the petitioners, as the objector has failed to discharge his burden

on the objections raised by him in his written statement.

25. In view of the aforesaid reasons, both the issues are decided in favour of petitioner No.1 and against the objector, as the burden to prove these issues was upon the objector and he has failed to discharge the same. This Court has no hesitation in concluding that the evidence on record shows that at the time of execution of the Will in question, the deceased testator Shri B.B.Jolly was in a sound disposing state of mind.

ISSUE No.3/RELIEF and COSTS

26. It appears that the Will has been proved beyond any shadow of doubt. Under these circumstances, the present petition is allowed. The probate is granted in favour of petitioner No.1 (since petitioner No.2 already expired during the pendency of these proceedings) qua the Will dated 05.02.1991, in respect of the estate of the deceased Shri B.B. Jolly as detailed in Schedule-A filed along with the petition.

27. The probate petition is accordingly disposed of, but no order as to costs.