BHARPUR SINGH & ORS. A

v.

SHAMSHER SINGH

(Civil Appeal No. 7250 of 2008)

DECEMBER 12, 2008 B

[S.B. SINHA AND CYRIAC JOSEPH, JJ.]

Indian Succession Act, 1925 – ss. 63 and 61 – Will – Execution of –Execution of Will by old lady in favour of 'Agnate' separated by five degrees, disinheriting her daughter – Beneficiary of Will mortgagee and tenant of testatrix – Allegation of suspicious circumstances by legal heirs of testatrix – Trial court holding that beneficiary failed to prove execution of legal and valid Will – However, appellate court as also High Court holding that execution of Will proved – On appeal, held: Court should adopt rational approach and satisfy its conscience as existence of suspicious circumstances play an important role – Appellate court as also High Court did not consider these aspects – Even though Will was registered, statutory requirements of proving Will need to be complied with – Thus, order of High Court as also appellate court set aside – Matter to be considered afresh. C D E

RD, aged 75 years, executed a will in 1962 and bequeathed her property in favour of the respondent. She expired in 1990 and was survived by two daughters. Appellants are legal heirs and representatives of RD. In 1993, the respondent filed suit against appellants for setting aside the order of mutation passed in favour of appellants. Respondent contended that he looked after RD during the life time; that RD expired in his daughter's house; that RD had disinherited her daughters; and that he was mortgagee and tenant in respect of some of the properties of RD. Appellants contended that RD did not execute any will in view of services rendered by F G H

A respondent; that RD lost her balance of mind 60 years ago when her husband died and had not been possessing sound mental faculties; and that RD's daughters were looking after her. Trial court held that the respondent failed to prove that RD executed a legal and
B valid will in his favour out of sound disposing mind. It granted a decree for declaration to the effect that the respondent was owner-in-possession of the land and restrained the appellants from alienating that part of the land. However, it rejected the other reliefs. Both the parties filed appeals. Appellate Court as also High Court
C held that the execution of the will was proved and was not surrounded by suspicious circumstances. Hence the present appeal.

Allowing the appeal, the Court

D HELD:1.1. A will must be proved having regard to the provisions contained in clause (c) of Section 63 of the Indian Succession Act, 1925 and Section 68 of the Evidence Act, 1872, in terms whereof the propounder of a will must prove its execution by examining one or more
E attesting witnesses. Where, however, the validity of the Will is challenged on the ground of fraud, coercion or undue influence, the burden of proof would be on the caveator. In a case where the Will is surrounded by suspicious circumstances, it would not be treated as the last testamentary disposition of the testator. [Para 11]
F [527-G, H; 528-A]

1.2. The provisions of Section 90 of the Evidence Act keeping in view the nature of proof required for proving a Will have no application. A Will must be proved in terms of the provisions of Section 63(c) of the Indian
G Succession Act, 1925 and Section 68 of the Evidence Act, 1872. In the event the provisions thereof cannot be complied with, the other provisions contained therein, namely, Sections 69 and 70 of the Evidence Act providing for exceptions in relation thereto would be attracted.
H Compliance with statutory requirements for proving an

ordinary document is not sufficient, as Section 68 of the Evidence Act postulates that execution must be proved by at least one of the attesting witness, if an attesting witness is alive and subject to the process of the Court and capable of giving evidence. [Para 14] [531-B-D] A

1.3. Suspicious circumstances like the following may be found to be surrounded in the execution of the Will: (i) The signature of the testator may be very shaky and doubtful or not appear to be his usual signature. (ii) The condition of the testator's mind may be very feeble and debilitated at the relevant time. (iii) The disposition may be unnatural, improbable or unfair in the light of relevant circumstances like exclusion of or absence of adequate provisions for the natural heirs without any reason. (iv) The dispositions may not appear to be the result of the testator's free will and mind. (v) The propounder takes a prominent part in the execution of the Will. (vi) The testator used to sign blank papers. (vii) The Will did not see the light of the day for long. (viii) Incorrect recitals of essential facts. The circumstances narrated are not exhaustive. Subject to offer of reasonable explanation, existence thereof must be taken into consideration for the purpose of arriving at a finding as to whether the execution of the Will had duly been proved or not. [Paras 17 and 18] [532-F-H; 533-A-B] B C D E

2.1. Respondent was a mortgagee of the lands belonging to the testatrix. He is also said to be the tenant in respect of some of the properties of the testatrix. It has not been shown that she was an educated lady. She had put her left thumb impression. In the aforementioned situation, the question, which should have been posed, was as to whether she could have an independent advice in the matter. For the purpose of proof of will, it would be necessary to consider what was the fact situation prevailing in the year 1962. Even assuming the subsequent event, viz., the appellants had not been looking after their mother as has been inferred from the F G H

A **fact that they received the news of her death only six days after her death took place, is true, the same would be of not much significance. [Para 14] [530-G-H; 531-A-B]**

2.2. The court is required to adopt a rational approach and is furthermore required to satisfy its B **conscience as existence of suspicious circumstances play an important role. Unfortunately, the first appellate court as also the High Court did not advert to these aspects of the matter. [Para 15] [531-E-F; 532-C]**

2.3. The Will was a registered one, but the same by C **itself would not mean that the statutory requirements of proving the Will need not be complied with. Therefore, in view of the peculiar facts and circumstances of the case, the impugned judgment of the High Court as also the first appellate court is set aside and the matter is directed to** D **be considered afresh in the light of the observations made by the first appellate court. [Paras 18 and 19] [533-C-D]**

H. Venkatachala Iyengar vs. B.N. Thimmajamma **AIR (1959) SC 443;** *Niranjan Umeshchandra Joshi vs. Mrudula Jyoti Rao & Ors.* **(2006) 14 SCALE 186;** *B. Venkatamuni vs.* E *C.J. Ayodhya Ram Singh & Ors.* **(2006) 13 SCC 449;** *Anil Kak vs. Kumari Sharada Raje & Ors.* **(2008) 7 SCC 695 and** *Jaswant Kaur vs. Amrit Kaur & Ors.* **(1977) 1 SCC 369, referred to.**

Case Law Reference:

F **AIR (1959) SC 443**	**Referred to**	**Para 12**
(2006) 14 SCALE 186	**Referred to**	**Para 13**
(2006) 13 SCC 449	**Relied on**	**Para 14**
(2008) 7 SCC 695	**Referred to**	**Para 15**
G **(1977) 1 SCC 369**	**Referred to**	**Para 16**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7250 of 2008.

From the final Judgment and Order dated 17.8.2006 of the High Court of Punjab and Haryana at Chandigarh in R.S.A. No.

H

604 of 2000. A

Neeraj Kumar Jain, Bharat Singh, Sandeep Chaturevedi, Sanjay Singh and Ugra Shankar Prasad for the Appellants.

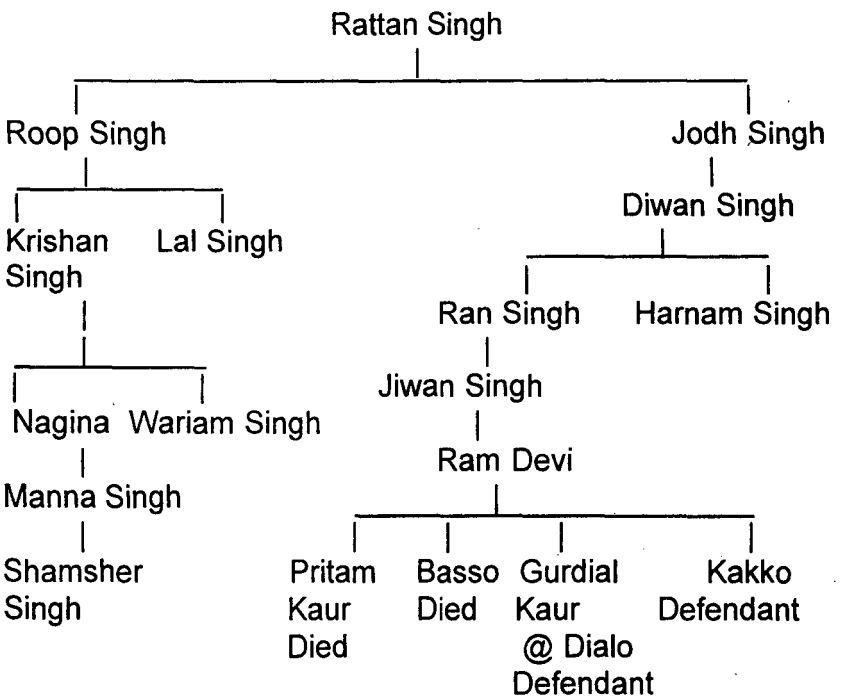
S.D. Sharma, Balbir Singh Gupta for the Respondent.

The Judgment of the Court was delivered by B

S.B. SINHA, J. 1. Leave granted.

2. Ram Devi, the testatrix, widow of Jiwan Singh resident of Village Gharuan, Tehsil Kharar, District Ropar, Punjab, whose legal heirs and representatives are the appellants, executed a will on or about 30.3.1962 when she was aged about 75 years of age. She breathed her last on 19.6.1990. C

To show the relationship between the parties, we may at the outset notice the genealogical table.



D E F G

Admittedly, the two surviving daughters of the testatrix, namely, Smt. Gurdial Kaur alias Dialo and Smt. Kakko were married and had been living at far away places. Respondent being the beneficiary under the said Will filed a suit in the year H

A 1993 against the appellants, *inter alia,* praying for setting aside an order of mutation passed in their favour on the premise that relying on or on the basis thereof, the appellants had threatened to alienate the suit land and dispossess him therefrom.

Plaintiff – Respondent in his plaint alleged that during the B life time of the testatrix, he used to look after her and in fact she expired in the house of his daughter Iqbal Kaur.

3. Admittedly, she had four daughters, out of whom the defendants were alive but were disinherited by her in the said Will. However, when an order of mutation was passed in favour C of appellants, the said suit was filed.

4. Appellants in their written statement denied and disputed the contentions raised by the plaintiff that Ram Devi used to be looked after by the plaintiff. According to them, no will had been executed by Ram Devi in view of services D rendered by him as alleged or at all. According to them, as Jiwan Singh, the husband of Ram Devi was murdered about 60 years back, she lost her balance of mind and had not been possessing sound mental faculties. According to the defendants, she was being looked after by her daughters.

E 5. The learned Subordinate Judge, 1st Class, Kharar, in view of the pleadings of the parties, framed the following issues:

"1. Whether the plaintiff is owner in possession of the suit land?

2. Whether Smt. Ram Devi executed a legal and valid will F dated 30.3.1962 in favour of the plaintiff, if so, its effect?

3. Whether the plaintiff has been mortgagee in possession of land bearing Kh/Kh. No. 25/59 described in head note of the plaint?

4. If issue No. 3 is proved, whether equity of redemption G has been extinguished?

5. Whether plaintiff is entitled to decree of permanent injunction prayed for?

6. Whether the plaintiff is estopped by his act and conduct H to file the present suit?

7. Relief" A

The learned trial judge held that 'the plaintiff had failed to prove that Ram Devi executed a legal and valid will in his favour out of sound disposing mind.'

Inter alia, opining that the plaintiff was an outsider, it was furthermore held: B

"Although in the will it finds mention that the legatee Shamsher Singh is nephew of husband of testatrix and that Bijla Singh father of Shamsher Singh helped testatrix at the time of marriage of her daughters, but the plaintiff in his pleadings has nowhere pleaded so, nor did any C evidence in that regard. Thus these contentions in the will are obviously contrary to factual position and it comes out that Shamsher Singh is not related to Ram Devi in any way. The plaintiff did not lead even an iota of evidence to establish that he had been looking after and serving the D testatrix till her death. Except the solitary statement of plaintiff which is a self-serving, no other person from the village came forward to support the plaintiff on this point. PW4 Pritam Singh the only witness from village Ghruan examined by the plaintiff did not utter even a single word E in that regard. The plaintiff did not produce any evidence to prove that he had joint ration card with Smt. Ram Devi and Ram Devi was having a vote at his address. The contention of the plaintiff that Ram Devi expired at Rajpura in the house of his daughter Iqbal Kaur, does not make any F sense since he is silent as to what Ram Devi was doing at the house of his daughter at that time. Furthermore, the plaintiff did not examine Iqbal Kaur or anybody else from Rajpura to establish that Ram Devi was putting up with Iqbal Kaur, widowed daughter of the plaintiff. The plaintiff has nowhere pleaded in his pleadings that Smt. Ram Devi G had been residing with his daughter Iqbal Kaur at Rajpura and Iqbal Kaur has been looking her. A perusal of the file goes to show that the plaintiff and prior to his father have been in possession of a portion of suit land as tenant and ever the remaining suit land as mortgagee. If relations H

between the plaintiff, his father on one side and Ram Devi on other side were so cordial and the former had been looking after and serving the latter, there was no need for Ram Devi to mortgage a portion of suit land with them and to give the remaining land on rent to them. That goes to show that relations between them were professional and business type. It cuts at the root of the case of plaintiff that he had been looking after and serving Ram Devi and Ram Devi executed a will in his favour out of love and affection."

The learned Subordinate Judge, 1st Class, Kharar, Punjab, by his judgment and decree dated 24.8.1995 decided issue nos. 1 and 2 in favour of the appellants. The learned Judge granted a decree for declaration to the effect that the plaintiff-respondent was owner-in-possession of the land bearing Kh/ Kh. No. 25/59 Kh. No. 1644(5-0), 1645 (3-0), 1646 (6-5), 1647 (6-5), 1648 (5-10) situated at village Gharuan as per Jamabandi of the year 1988-89 with the consequent relief of permanent injunction restraining the defendants-appellants from alienating that part of the land in suit. However, other reliefs prayed for in the suit were not granted.

6. Being aggrieved by and dissatisfied therewith, both the parties preferred appeals thereagainst.

7. By reason of a judgment and order dated 1.10.1999, Appellate Court held that the execution of the will must be held to have been proved and all suspicious circumstances have been dispelled, stating:

"... the only conclusion that can be drawn is that will is a genuine document and was executed more than 28 years back by the deceased out of her own free will and she never tried to cancel the same. The fact that some land of the deceased was lying mortgaged with the father of the plaintiff in the revenue record does not mean that there was only commercial relations between the parties. First of all, the original mortgage deed has not come on the file to indicate whether plaintiff or his father got the land in mortgage or whether they purchased the mortgagee rights from somebody else. The fact that Shamsher Singh

participated in the execution of the will itself does not indicate that he exercised any influence over deceased Ram Devi. If it was so there was no reason as to why Ram Devi did not get it cancelled within more than 28 years of her life after the execution. The defendants on the other hand have not proved any ration card or voter list as claimed by Dialo in her statement on oath, to indicate that the deceased was permanently living with them. In the will, complete details have been given. It is mentioned that deceased has four daughters and two of them have already died. If the plaintiff is a stranger, he will not know this fact. The will is always executed to deviate from the natural succession. If the deceased wanted that her daughter would succeed her then there was no need to execute the will..."

The appellate court allowed both the appeals, stating:

"As a result of fore-going discussion, the appeal titled as Dialo etc. Vs. Shamsher Singh No. 241 of 27.9.1995, RT No. 148/27.9.1995/27.2.1999 is accepted as issues No. 3 and 4 are decided in favour of the defendants and against the plaintiff. The appeal titled as Shamsher Singh Vs. Dialo etc. No. 236/7.9.1995, RT No. 439/7.9.1995, 2.6.1999 is also accepted on account of my findings on issues No. 1 and 2 and 5. As a result thereof, the suit of plaintiff is partly decreed and declaration is granted to the effect that he has become owner in possession of the suit land fully detailed in the head note of the plaint on the basis of registered will Ex. P2 dated 30.3.1962 executed by Ram Devi widow of Jiwan Singh. Permanent injunction is also granted restraining the defendants from alienating the suit property in any manner or interfering in the peaceful possession of the plaintiff in any manner. Further, the suit qua relief on the basis of non-redumption of mortgagee rights is dismissed."

8. The Second Appeal preferred by appellants herein was dismissed by the High Court by reason of the impugned judgment, holding:

"The Will in question was executed on 30.3.1962 and the testator is said to have died on 19.6.1990. The fact that during this entire period, the testator did not have any second thoughts goes to show about the clarity of the intention of the testator. The fact that it was registered only lends more credence to the validity of the Will. It is also in evidence that Gurdial Kaur and Kako were not staying with their mother and had not supported her during her life time. In their testimony, they have stated that they came to know about the death of Ram Devi about 5 to 6 days after she had expired. In fact, all the defence witnesses have admitted this fact. This is a reflection and a measure of the relationship of Gurdial Kaur and Kako were having with their mother at the time of her death. On the other hand, Ram Devi is said to have died in the house of Iqbal Kaur, daughter of the plaintiff-respondent. This was sufficient reason for the testator to have deprived the natural heirs of the right to succession."

9. Mr. Neeraj Kumar Jain, learned counsel appearing on behalf of appellants would submit:-

i. The first appellate court as also the High Court must be held to have committed a serious error in arriving at the aforementioned findings insofar as they failed to take into consideration that the respondent/plaintiff did not produce the Will before the Revenue authorities and furthermore did not make any attempt to file a suit on the basis thereof for a period of three years from the date of death of the testatrix.

ii. The plaintiff had not been able to prove that the relationship between Ram Devi and her daughters was strained.

iii. An agnate separated by five degrees cannot be said to be a relation, which would be a sufficient ground for an old lady to execute a will in his favour.

iv. No reason has been assigned as to why the

daughters have been disinherited by the testratix. A

v. The left thumb impression of the testatrix was not compared with her left thumb impression appearing in the deed of mortgage which was said to have been executed in favour of the plaintiff and, thus, no reliance could have been placed thereupon. B

vi. The beneficiary of the will being mortgagees and tenants coupled with other factors, it should have been held by the courts below that the Will was surrounded by suspicious circumstances.

10. Mr. S.D. Sharma, learned Senior Counsel appearing C on behalf of the respondent, on the other hand, would contend:-

i. Shamsher Singh being one of the collaterals and he having been looking after Ram Devi, the testatrix, the execution of the Will must be said to have been proved. D

ii. The Will being a registered one, its genuineness should be presumed. The same in any event having been executed on 30.3.1962, its execution must be held to have been proved being a document more than 30 years old. E

iii. The fact that the appellants, although daughters, came to know about their mother's death six days after the same had taken place, evidently shows that they had not been looking after their mother during her old days. F

iv. Appellants have failed to prove that they had been maintaining any relationship with their mother and at her old age she was being looked after by them.

11. The legal principles in regard to proof of a will are no G longer *res integra*. A will must be proved having regard to the provisions contained in clause (c) of Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872, in terms whereof the propounder of a will must prove its execution by examining one or more attesting witnesses. Where, however, the validity of the Will is challenged on the H

A ground of fraud, coercion or undue influence, the burden of proof would be on the caveator. In a case where the Will is surrounded by suspicious circumstances, it would not be treated as the last testamentary disposition of the testator.

12. This Court in *H. Venkatachala Iyengar vs. B.N. Thimmajamma* [AIR 1959 SC 443] opined that the fact that the propounder took interest in execution of the Will is one of the factors which should be taken into consideration for determination of due execution of the Will. It was also held that one of the important features which distinguishes Will from other documents is that the Will speaks from the date of death of the testator, and so, when it is propounded or produced before a court, the testator who has already departed the world cannot say whether it is his will or not; and this aspect naturally introduces an element of solemnity in the decision of the question as to whether the document propounded is proved to be the last will and testament of the departed testator.

It was also held that the propounder of will must prove:

(i) that the Will was signed by the testator in a sound and disposing state of mind duly understanding the nature and effect of disposition and he put his signature on the document of his own free will, and

(ii) when the evidence adduced in support of the Will is disinterested, satisfactory and sufficient to prove the sound and disposing state of testator's mind and his signature as required by law, Courts would be justified in making a finding in favour of propounder, and

(iii) If a Will is challenged as surrounded by suspicious circumstances, all such legitimate doubts have to be removed by cogent, satisfactory and sufficient evidence to dispel suspicion.

In other words, the onus on the propounder can be taken to be discharged on proof of the essential facts indicated therein.

It was moreover held:- A

"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 B testator may not remove the doubt created by the appearance of the signature; the condition of the testator'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; C the dispositions made in the will may appear to be 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 suspicions should be completely D 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 E 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 F 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."

13. This Court in *Niranjan Umeshchandra Joshi vs. Mrudula Jyoti Rao & Ors.* [2006 (14) SCALE 186], held: G

"33. The burden of proof that the Will has been validly executed and is a genuine document is on the propounder. The propounder is also required to prove that the testator has signed the Will and that he had put his signature out of his own free will having a sound disposition of mind and H

A understood the nature and effect thereof. If sufficient evidence in this behalf is brought on record, the onus of the propounder may be held to have been discharged. But, the onus would be on the applicant to remove the suspicion by leading sufficient and cogent evidence if there exists any. In the case of proof of Will, a signature of a testator alone would not prove the execution thereof, if his mind may appear to be very feeble and debilitated. However, if a defence of fraud, coercion or undue influence is raised, the burden would be on the caveator. [See *Madhukar D. Shende v. Tarabai Shedage* (2002) 2 SCC 85 and *Sridevi and Ors. v. Jayaraja Shetty and Ors.* (2005) 8 SCC 784]. Subject to above, proof of a Will does not ordinarily differ from that of proving any other document.

34. There are several circumstances which would have been held to be described (sic) by this Court as suspicious circumstances:

(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.

[See *H. Venkatachala Iyengar v. B.N. Thimmajamma and Ors.* AIR 1959 SC 443 and *Management Committee T.K. Ghosh's Academy v. T.C. Palit and Ors.* AIR 1974 SC 1495]"

G 14. Respondent was a mortgagee of the lands belonging to the testatrix. He is also said to be the tenant in respect of some of the properties of the testatrix. It has not been shown that she was an educated lady. She had put her left thumb impression. In the aforementioned situation, the question, which H should have been posed, was as to whether she could have

an independent advice in the matter. For the purpose of proof of will, it would be necessary to consider what was the fact situation prevailing in the year 1962. Even assuming the subsequent event, viz., the appellants had not been looking after their mother as has been inferred from the fact that they received the news of her death only six days after her death took place, is true, the same, in our opinion, would be of not much significance.

The provisions of Section 90 of the Indian Evidence Act keeping in view the nature of proof required for proving a Will have no application. A Will must be proved in terms of the provisions of Section 63(c) of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872. In the event the provisions thereof cannot be complied with, the other provisions contained therein, namely, Sections 69 and 70 of the Indian Evidence Act providing for exceptions in relation thereto would be attracted. Compliance with statutory requirements for proving an ordinary document is not sufficient, as Section 68 of the Indian Evidence Act postulates that execution must be proved by at least one of the attesting witness, if an attesting witness is alive and subject to the process of the Court and capable of giving evidence. {See *B. Venkatamuni vs. C.J. Ayodhya Ram Singh & ors.* [(2006) 13 SCC 449]}

15. This Court in *Anil Kak vs. Kumari Sharada Raje & Ors.* [(2008) 7 SCC 695] opined that court is required to adopt a rational approach and is furthermore required to satisfy its conscience as existence of suspicious circumstances play an important role, holding:

> "52. Whereas execution of any other document can be proved by proving the writings of the document or the contents of it as also the execution thereof, in the event there exists suspicious circumstances the party seeking to obtain probate and/ or letters of administration with a copy of the Will annexed must also adduce evidence to the satisfaction of the court before it can be accepted as genuine.

A 53. As an order granting probate is a judgment in rem, the court must also satisfy its conscience before it passes an order.

54. It may be true that deprivation of a due share by (sic to) the natural heir by itself may not be held to be a B suspicious circumstance but it is one of the factors which is taken into consideration by the courts before granting probate of a Will.

55. Unlike other documents, even animus attestandi is a necessary ingredient for proving the attestation."

C Unfortunately, the first appellate court as also the High court did not advert to these aspects of the matter.

16. We may notice that in *Jaswant Kaur vs. Amrit Kaur & ors.* [(1977) 1 SCC 369] this Court pointed out that when the Will is allegedly shrouded in suspicion, its proof ceases to be D a simple lis between the plaintiff and defendant. An adversarial proceeding in such cases becomes a matter of Court's conscience and propounder of the Will has to remove all suspicious circumstances to satisfy that Will was duly executed by testator wherefor cogent and convincing explanation of E suspicious circumstances shrouding the making of Will must be offered.

17. Suspicious circumstances like the following may be found to be surrounded in the execution of the Will:

i. The signature of the testator may be very shaky and F doubtful or not appear to be his usual signature.

ii. The condition of the testator's mind may be very feeble and debilitated at the relevant time.

iii. The disposition may be unnatural, improbable or unfair in the light of relevant circumstances like G exclusion of or absence of adequate provisions for the natural heirs without any reason.

iv. The dispositions may not appear to be the result of the testator's free will and mind.

H v. The propounder takes a prominent part in the

execution of the Will. A

vi. The testator used to sign blank papers.

vii. The Will did not see the light of the day for long.

viii. Incorrect recitals of essential facts.

18. The circumstances narrated hereinbefore are not exhaustive. Subject to offer of reasonable explanation, existence thereof must be taken into consideration for the purpose of arriving at a finding as to whether the execution of the Will had duly been proved or not. B

It may be true that the Will was a registered one, but the same by itself would not mean that the statutory requirements of proving the Will need not be complied with. C

19. We, therefore, keeping in view the peculiar facts and circumstances of this case, are of the opinion that the impugned judgment of the High Court as also the first appellate court should be set aside and the matter be directed to be considered afresh in the light of the observations made hereinbefore by the first appellate court. It is ordered accordingly. D

The appeal is allowed with the aforementioned observations and directions. However, in the facts and circumstances of the case, there shall be no order as to costs. E

N.J. Appeal allowed.