



2025:DHC:10235-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment reserved on: 17.09.2025

Judgment pronounced on: 21.11.2025

+ **FAO (OS) 30/2010
VIKRAM CHOPRA**

.....Appellant

Through: Mr. Navin Prakash, Mr. Ved
Vyas Tripathi and Mr. Vaibhav
Verma, Advs.

versus

STATE & OTHERS

.....Respondents

Through: Ms. Richa Kapoor, Mr. Kunal
Anand, Ms. Aditi Rathore, Ms.
Sanchari Banerjee and Ms.
Atika Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

J U D G M E N T

ANIL KSHETARPAL, J.

1. The Appellant [Petitioner before the learned Single Judge] assails the correctness of the Judgment dated 11.09.2009 [hereinafter referred to as 'Impugned Judgement'] passed by the learned Single Judge in TEST CASE 13/1996 captioned ***Vikram Chopra vs. State & Ors.***, while refusing to grant probate of the registered will executed by Late Sh. Praveen Malhotra [hereinafter referred to as 'the Testator'] bequeathing his certain moveable and immoveable properties in favour of Ms. Shalini Asha Chopra [hereinafter referred to as 'the Beneficiary'].



FACTUAL MATRIX

2. In order to comprehend issues involved in the present case, the relevant facts in brief are required to be noticed.

3. The Appellant/Mr. Vikram Chopra, is the son of the Beneficiary and is also the Executor of the Will in question.

4. The Testator was married to Ms. Shalini Malhotra, who predeceased him in April, 1989. Thereafter, the Testator, along with his parents (Sh. O. P. Malhotra/Father and Smt. Kanta Malhotra/Mother) and his sister (Ms. Reet A. Anand) faced criminal prosecution for the offences relating to dowry death, which remained pending till the Testator's demise on the intervening night of 19–20.12.1994.

5. The Testator was residing on the first floor of the premises namely, A-111, Defence Colony, New Delhi, whereas, the Beneficiary and her family lived in a rented accommodation in C-Block of the same colony.

6. The association between the Testator and the Chopra family began in the year 1980 when the Testator sought to purchase a vintage car from them. It is claimed that the Testator and the Appellant remained in touch and developed friendship despite there being a significant age difference of almost 6 to 7 years.

7. It is claimed by the mother of the Testator, Smt. Kanta Malhotra/Objector that on 02.04.1994 her son/the Appellant had executed an Agreement to Sell in her favour concerning Flat No.5,



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Golf Apartment, Sujan Singh Park, New Delhi – 110003 [hereinafter referred to as “Suit Property”].

8. On 21.04.1994, the Testator met with an accident in Banaras, Uttar Pradesh and sustained head injury after falling from a rickshaw in which he was travelling.

9. Upon his return to Delhi, the Testator got himself admitted to East West Medical Center, 38, Golf Links, New Delhi – 110003 on 25.04.1994 [hereinafter referred to as ‘Medical Center’] while complaining of headache. At that time, his parents were in Dehradun. Though his sister who resides in Delhi was informed, however, there is no material on record to suggest that she visited him or attended to him during his hospitalisation or ever took care of his brother.

10. The record reflects that a Memorandum of Understanding (‘MoU’) dated 04.03.1994 had earlier been executed between the Testator and the Beneficiary concerning the Suit Property, including its basement and car parking, situated at Plot No. 5, Ground Floor and Basement, Golf Apartments, Maharshi Raman Marg, near Khan Market, New Delhi.

11. On 30.04.1994, the Testator was discharged from the Medical Center and subsequently, on the very next day, 01.05.1994, he executed an Agreement to Sell with respect to the Suit Property in favour of the Beneficiary in lines with the MoU.

12. As per the recitals in the Agreement, the Beneficiary paid the Testator Rs.50,000/- on 04.04.1994 and another Rs.50,000/- on 01.05.1994, out of the total sale consideration of Rs.4,75,000/-. In



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addition to this, the Testator through Written Statement filed by him in CS 2018/911 captioned ***O.P. Malhotra v. Praveen Malhotra*** has acknowledged the above stated transactions and receipt of Rs.1,00,000/-

13. On 19.07.1994, the Testator cancelled the Power of Attorney earlier granted to his father, Late Sh. O. P. Malhotra, which was registered on 05.10.1994 in presence of two attesting witness.

14. Shortly thereafter, on 21.07.1994, the Testator and the Beneficiary opened a joint bank account and on 22.07.1994, the Testator deposited an amount of Rs.79,05,000/- therein, being the maturity amount received from IDBI bonds.

15. On 25.07.1994, Rs.70,00,000/- were transferred from the account of the firm to ITC Classic Finance Ltd. On the same day, a Property Development Agreement was executed concerning a property of the Beneficiary situated in Allahabad between the Testator and the Beneficiary, wherein Rs.79,00,000/- was reflected as a security deposit.

16. On 26.07.1994, the Testator executed a General Power of Attorney [hereinafter referred to as 'GPA'] in favour of the Beneficiary and the Appellant and a Will bequeathing certain movable and immovable properties in favour of the Beneficiary. Both the documents were duly attested by two witnesses, one Sh. Padmanabhan M. and Sh. Inder Kumar and subsequently registered on 27.07.1994 before the Sub-Registrar, New Delhi.



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17. On 28.07.1994, a CT scan of the head of the Testator was carried out, wherein Dr. J. S. Khurana, while comparing to previous scan dated 25.04.1994, observed that “ventricular system is dilated suggesting development of communicating hydrocephalus while left cerebral hemisphere, mid brain, pons and the cerebellum are normal”.

18. On 02.08.1994, the Testator was examined at Moolchand Hospital and was prescribed Eposolin tablets for three weeks as a prophylactic measure against possible post-traumatic fits. Subsequently on 28.08.1994, the Testator was examined by Dr. N. P. S. Chawla and was diagnosed with viral fever and was advised to take rest.

19. On 09.09.1994, the Testator’s father, Sh. O. P. Malhotra, instituted a civil suit against the Testator seeking an injunction to restrain dispossession from the property of the Testator located in golf Apartments (*supra*), asserting that he was a tenant in possession thereof.

20. On 30.09.1994, the Testator’s mother, Smt. Kanta Malhotra, also filed a suit for Specific Performance claiming Agreement to Sell dated 02.04.1994 was executed by the Testator in her favour concerning the suit property. In this suit, the Testator, his father and the Beneficiary were arrayed as Defendants.

21. On 11.10.1994, the Testator executed another agreement pursuant to the earlier Property Development Agreement dated 25.07.1994.



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22. On 17.11.1994, the Testator filed his Written Statement in the suit instituted by his father, categorically denying the alleged tenancy and asserting that the Agreement to Sell and Rent Deed relied upon by his father were forged. In addition to this, on 19.11.1994, the Testator filed his Written Statement in the suit filed by his mother affirming the genuineness of the Agreement to Sell dated 01.05.1994 executed by him in favour of the Beneficiary and expressly refuting execution of any Agreement to Sell in favour of his mother with respect to the suit property.

23. On 01.12.1994, the Testator shifted to a guest house arranged by the Beneficiary, after his father published a notice in the newspaper disowning him and declaring that he had no further connection with his son.

24. On the intervening night of 19-20.12.1994, the Testator unfortunately passed away at the guest house. His post-mortem was conducted on 20.12.1994 night itself. The father of the Testator registered a First Information Report ('FIR') bearing No.127/1995 at Police Station, Kotla Mubarakpur, New Delhi against the Beneficiary and her family under Sections 302, 120B and 34 Indian Penal Code, 1860 alleging her to be responsible for the death of the Testator. All accused were subsequently discharged.

25. As already noticed, the learned Single Judge recorded a finding that the Will was executed and registered on 27.07.1994 and stood duly proved by examining one of the attesting witnesses Sh. Padmanabhan M. Nevertheless, the learned Single Judge declined to



grant probate holding that the Will was surrounded by sixteen suspicious circumstances.

CONTENTIONS ON BEHALF OF THE APPELLANT

26. Learned counsel for the Appellant contends that the learned Single Judge has erred in declining the probate despite the Will being duly executed, attested, and proved in accordance with law. It is contended by the learned counsel that the Testator was in a sound and disposing state of mind at the time of execution and registration on 27.07.1994, satisfies all statutory requirements under Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872. Further, it is contended that there are no allegations or proof of undue influence, coercion, or fraud, and the Appellant has discharged the burden of proof required to establish the Will.

27. Furthermore, it is urged that the relationship between the Testator and his parents had become strained on account of the criminal prosecution arising out of the dowry death of his wife, in which the parents and the sister were named as accused. The disinheritance of the natural heirs is, therefore, neither unnatural nor improbable. The Beneficiary is a person in whom the Testator had reposed confidence and reliance, as she took care of his meals, medical needs and personal requirements during his illness and thus, such reliance and trust cannot be construed as coercion.

28. Learned counsel for the Appellant also contends that the medical record does not establish incapacity. The CT scan dated 28.07.1994 was a routine investigation, while the subsequent scan



dated 02.08.1994 revealed no neurological deficit. The postmortem report confirms that the death was natural. It is further contended that a probate petition of an alleged prior Will dated 15.11.1994 in favour of the Testator's maternal uncle, Mr. Subhash, had already been dismissed. The Property Development Agreement between the Testator and the Beneficiary, records payment of Rs.79,00,000/- out of Rs.1 crore, thereby establishing legitimate financial dealings between them. The findings of the learned Single Judge are, therefore, based on conjectures and surmises and are contrary to the evidence on record.

CONTENTIONS ON BEHALF OF THE RESPONDENTS

29. *Per contra*, learned counsel for the Respondents supports the findings of the learned Single Judge and submits that the Beneficiary was a complete stranger to the Testator's family, whose acquaintance dates back only a few months prior to execution of the Will. It is contended by the learned counsel that the Will and several contemporaneous documents were executed in close succession, creating inherent suspicion regarding their genuineness. The Testator, being merely 36 years of age, had no occasion to dispose of his entire estate in favour of a stranger while completely excluding his natural heirs.

30. It is further contended by the learned counsel for the Respondents that the mental and physical condition of the Testator stood compromised due to head injury, hydrocephalus, and alcoholism, as reflected in the CT scan and medical records. The active role of the Beneficiary in arranging, preparing and registering



the Will and related agreements is indicative of undue influence and manipulation. The existence of two conflicting Agreements to Sell—one in favour of the mother for Rs. 7.5 lakhs and another in favour of the Beneficiary for Rs. 4.75 lakhs—further reflects inconsistency and casts serious doubt on the Testator's intent. The learned counsel for the Respondents contended that the Will is not the product of the free volition of the Testator but a result of exploitation of his vulnerable condition by the Beneficiary.

FINDINGS & ANALYSIS

31. Heard learned counsel representing the parties at length and with their able assistance perused the paper book, along with the requisition record and their written submissions.

32. Before proceeding to analyse the alleged suspicious circumstances, it is pertinent to note certain salient facts of the case:

- i. The record of the case reveals that the Testator fell from a rickshaw on 21.04.1994 in Banaras, Uttar Pradesh and at that time he was alone. There is no evidence to prove that he was ever examined by a Doctor in Banaras or anywhere else before 25.04.1994 when he was admitted in the Medical Center with symptoms of headache in temporal region of the head.
- ii. Perusal of further cross-examination of the mother of the Testator, Smt. Kanta Malhotra, dated 27.07.2005 confirms the fact that at that time, she along with her husband were at Dehradun, Uttarakhand.



iii. It is the case of the mother of the Testator, Smt. Kanta Malhotra, that they returned to Delhi on the night of 25.04.1994 and her daughter received them from the railway station. It is at this moment when she got to know about the accident of her son and the fact that he was admitted at the Medical Center.

iv. The facts of the case reveal that she went to the hospital alone, to visit her son. Neither any evidence is led to prove that either Ms. Reet A. Anand or Sh. O. P. Malhotra went to the Medical Center nor they have been examined or have stepped into the witness box, in this context.

v. The sister of the Testator, Ms. Reet A. Anand, who lives in the same city as her brother, was informed about her brother's accident, but there is no evidence that she ever visited him to comfort or check upon her brother. Furthermore, cross-examination of Smt. Kanta Malhotra dated 25.07.2005 reveals that the Testator called his sister, informing the fact of his admission at the Medical Center, but she had gone to pick up the child and was not available. However, there is no evidence to prove that she visited her brother who was hospitalized.

vi. A perusal of discharge summary of the Medical Center does not show any serious head injury because it is recorded that after 6 days of hospitalization his condition has improved.

vii. It is nowhere recorded in the discharge summary that the Testator is alcoholic.



viii. The post-mortem report which though filed but not exhibited on the record does not reflect that the Testator had consumed liquor.

ix. Additionally, this Court can place reliance on the judicial record of Criminal Writ No. 117/96 captioned ***O. P. Malhotra vs. State and Ors.***, wherein a report of March 1995 (within 03 months after the death of the Testator) conducted by the Medical Board, All India Institute of Medical Sciences, New Delhi [hereinafter referred to as “AIIMS”] submitted by the Respondents, wherein it is stated that “there is nothing suggestive of chronic Alcohol intake and its withdrawal seizures”, which clearly rules out any signs of chronic alcoholism.

33. In order to bring clarity, tabulated information on the alleged suspicious ground as enumerated by the learned Single Judge in the Impugned Judgement in Para 112 resulting in discarding the will and the reasons given by the division bench are compiled:

S. No.	Reason given by the Learned Single Judge [hereinafter referred to as “LSJ”]	Observations made by this Court
i.	Praveen received head injuries on 21st April, 1994 at Banaras in an accident and since thereafter he never recovered from his injuries and was constantly under medical treatment. Rather his mental condition continued to	Undisputed that the Testator sustained head injuries in Banaras, Uttar Pradesh when he fell from rickshaw in which he was travelling, as someone hit it from behind on 21.04.1994. However, there is no material to prove that he required and was provided any medical attention over a period of next four days. He travelled from Banaras to New



deteriorate.	Delhi and was admitted at the Medical Center while complaining about a headache on 25.04.1994 but discharged within next 06 days on 30.04.1994. Medical discharge summary does not reflect any serious damage or improvement. CT scan conducted on 28.07.1994, suggested development of communicating hydrocephalus (ventricular dilation) which means internal bleeding. However, left cerebral hemisphere, midbrain, pons and cerebellum were normal. The AIIMS report analysing medical history of the Testator observes that <i>“He never lost his consciousness, there was no neurological deficit, no bleeding from ear, nose and throat and there was no loss of memory at any time. He remained conscious, coherent and well oriented during his whole stay in the Hospital.”</i> The Testator was not advised any admission. He was again examined at Moolchand hospital on 02.08.1994 and Eposolin tablet was prescribed to prevent fits. Thereafter on 28.08.1994 he was diagnosed with viral fever by Dr. Chawla. Hence, the finding of the LSJ to the effect that he never recovered from injuries and was constantly under medical treatment is not substantiated. Therefore, the LSJ has erred in recording that his
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		mental condition continued to deteriorate.
ii.	He was chronic alcoholic and generally remained under the influence of liquor.	The fact of the Testator being a chronic alcoholic is neither in the medical discharge summary which was issued by the Medical Center on 30.04.1994 nor in any other medical record. The Respondents are relying upon an OPD card issued by Ram Manohar Lohia Hospital where he was examined by Dr. Arun Gupta, who in his evidence has stated that he examined the Testator on 08.11.1994. For the first time it is in this OPD card that the Testator is shown to be as 'chronic alcoholic'. This Court finds that the credibility of this OPD card is indeed doubtful due to the discrepancies as to the name of patient and the date of examination, which is brought to the notice of the Court through the cross-examination of Dr. Arun Gupta and Dr. Vishwadarshi Jaiswal. Moreover, the post-mortem report of the Testator does not prove that he had consumed liquor or there was any damage to his internal organs due to excessive consumption of liquor. Furthermore, the AIIMS report, which was not perused or taken into consideration by the LSJ, while adjudicating the Probate Petition, clearly refutes the fact of the Testator being a chronic



		alcoholic by stating that “ <i>there is nothing suggestive of chronic Alcohol intake and its withdrawal seizures</i> ” and thus, LSJ’s observation to the same is erroneous.
iii.	Soon after the execution of the impugned Will on 27.7.1994 he had to get CT scan of head done on 28.7.1994 from Imaging and Research Centre, which suggests that at the time of execution of the Will, he was not of sound capable mind and his faculties were not normal.	LSJ has also erred in concluding the mental incapacity of the testator on the basis of conjectures and surmises. Merely because the Testator got CT scan of his head does not prove that he was not of sound capable mind and his faculties were not normal in absence of cogent evidence in this regard. Further a fall from rickshaw, which is not a auto rickshaw may or may not result in any serious injury. Respondents has not presented any evidence that the Testator has received any serious injury because he travelled to New Delhi and got admitted in the Medical Center after 04 days of the accident. Discharge summary also does not prove the Testators’ decision-making power stood compromised because of the accident. Through the affidavit and cross-examination of the attesting witness and the testimony of the Officer from the Sub-Registrar’s Office, it has been clearly established that the Testator signed Will at the Sub-Registrar’s Office



	in his sound capacity. This Court finds that the LSJ considered the examination of both the witnesses but failed to take into consideration the above stated fact of the Testator being of sound mind at the time of execution and registration of the Will. The LSJ has tried to focus on two major aspects: (i) lack of any sound will on account of alcoholism; and (ii) poor mental condition owing to the head injury. The first aspect has been dealt in the observation made by this Court in Paragraph No.ii of this table. In respect of the second aspect relating to the deteriorating mental condition of the Testator, this Court finds that post the CT scan report dated 28.07.1994 there is no averment made by the Respondent, even no evidence has been adduced on their part establishing any treatment or admission in any hospital subsequent to the diagnosed issue in the above-mentioned report dated 28.07.1994. It is pertinent to note had it been such a serious mental injury/condition, some kind of treatment would have been carried out. Additionally, the written statement filed in the Petition shows that the Will is being objected to primarily on the ground of Testator being an alcoholic. It is only at the evidence stage that the aspect of
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		deteriorating mental condition on account of head injury was given more focus. The same has never been taken as a ground in other cases filed by his parents against him. Thus, this aspect of evidence is an improvement and an afterthought. Therefore, the LSJ's observation in absence of any cogent evidence as to the Testator's unsoundness and abnormality at the time of execution of will is found erroneous. Thus, in view of the aforesaid observation, the observation made by the LSJ in Para No.iii stands refuted.
iv.	The transactions entered into between Shalini and Praveen from 19th July, 1994 till 29.7.1994 started with cancellation of Power of Attorney executed by Praveen in favour of his father to the opening of a joint bank account, floating of the partnership business, withdrawal of the money from the account of Praveen and its deposit in favour of Shalini in the joint account, deposit of the said amount in the form of FDR by Shalini in her own name, after execution of the Will the status of the joint account changed to	Similarly, the conclusion drawn in Paragraph No.iv does not appear to be correct as the LSJ overlooked that these events date back to 04.03.1994, when the MoU between the Testator and the Beneficiary concerning the Suit Property was executed. This has to be examined in the context of the Testator's position during that time. He being accused in the case of alleged death of his wife in 1989, and having strained relations with his parents, and sister (only sibling) resulting in him residing on the first floor of his parental home and later being thrown out of his house and residing at a guest house, does showcase the fact of strained relationship of the Testator with his family. Subsequent



	either or survivor and all done in a very short span of time and haste;	cancellation of registered Power of Attorney in favour of his fathersubstantiates the relationship status and faith of Testator in his family. The relationship between the Testator and his parents, as well as sister, was not cordial; despite being informed of his accident and hospitalisation, by the Testator, his sister, Mrs. Reet A. Anand did not visit the Medical Center stating her non-availability as she had gone to pick up her child. The Written Statement filed by the Testator in the suits filed against him by his parents being CS 2018/94 and CS 2232/94 further fortifies that he was having strained relationship with his family, wherein he states that his mother and father are “misusing without authority certain blank papers and letterheads which were signed by him and were kept with them”. He even submitted that the said “suit is based on illegal, invalid and fabricated document” and prayed for its dismissal. Furthermore, he affirmed his stance of not entering any Agreement to Sell in regards to the suit property in favour of his mother, rather he submitted to have entered into an MoU dated 04.03.1994 and subsequent ATS dated 01.05.1994 in favour of Smt. Shalini Asha Chopra/Beneficiary in regards to the suit property.
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	He had longstanding association with the executor namely, Sh. Vikram Chopra and frequently visited their house, who were residing in the same colony. Furthermore, there is evidence of the Respondents, to show that Testator's parents were not too concerned when the Testator left their residence on 01.12.1994 because on earlier occasion also he had been going and staying with the Appellant and his mother/Beneficiary. Thus, the Respondents' evidence itself is conclusively suggesting that the Testator was on very good terms with the Appellant and the Beneficiary. In these circumstances, the execution of various documents including cancellation of the Power of Attorney previously given to his father cannot be considered suspicious. In fact, the Testator executed two revocation deeds: one notarized on 12.07.1994 and attested by Sh. Uma Shankar and Sh. Inder Kumar and another revocation dated 19.07.94 which was registered on 05.10.1994 in presence of two attesting witness. The Respondents have not presented any evidence to question the validity of these revocations. It is evident that the Testator did not receive any emotional support from his parents and only sibling;
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		and consequently, he relied on the parents of his friend, who resided in the same colony and had known him and his family for nearly 14 years, prior to the execution of these documents. Moreover, the property at Allahabad was owned by the Family of Chopra's and the Testator's role was limited to undertaking commercial development of a portion of it. These factors collectively demonstrate that the execution of the documents was not hasty, as these transactions had been in progress since March 1994.
v.	Execution of agreement to sell in respect of flat No.5, Golf Apartments, Sujan Singh Park, New Delhi on 1.5.1994 in favour of Shalini immediately on the next following day after his discharge from the hospital i.e. before the execution of the Will but does not find mention in the Will.	This Court finds that the reason given by LSJ in Paragraph No.v is also not appropriate. It is evident from the Written Statement filed by the Testator in the suits filed against him by his parents captioned CS 2018/94 and CS 2232/94 that he entered into an MoU on 04.03.1994 with Smt. Shalini Asha Chopra with respect to the Suit Property. Thus, the Agreement to Sell dated 01.05.1994 which was in continuation of MoU 04.03.1994. Rather, it affirms that the Testator executed the Agreement to Sell in accordance with the MoU which was entered by him prior to the said accident. Furthermore, the Testator bequeathing the Suit Property confirms his intention of giving the



		same in favour of the Beneficiary, thereby discarding all other claims of his family members with regard to the Suit Property.
vi.	Execution of property development agreement dated 25.7.1994 between the parties in respect of property No.17/23, Kamla Nehru Road, Allahabad describing the said property free from all encumbrances whereas SBI had a charge on it being hypothecated property.	Similarly, ground recorded in Paragraph No.vi is not correct because there is no restriction on the development of property which is encumbered by the bank.
vii.	Execution of GPA by Praveen in favour of Shalini on 26.7.1994 a day before execution of the Will and its registration along with Will on 27.7.94.	Similarly, the reason recorded in Paragraph No.vii is erroneous. This Court finds that the fact that the Testator on 26.07.1994 executed the GPA which was registered on the next date, i.e., 27.07.1994 along with execution and registration of the Will is not a suspicious circumstance, to refuse probate of a duly executed and registered will, that too which has been proved in accordance with the procedure laid down under Section 68 of the Indian Evidence Act, 1872.
viii.	Shalini was a complete stranger to the family and came to know the deceased only four months prior to the making of the Will. Shalini met the	The reasons recorded in Paragraph No. viii is result of misreading of evidence. Sh. Vikram Chopra has stated categorically that he first came in contact with the Testator in early 1980's when the Testator sought to purchase a vintage car



deceased only in April, 1994 and the Will was executed in her favour within three months of Praveen coming to know to her.	from his family. Over the years the Testator and Sh. Vikram Chopra became friends, and the Testator developed a close association with the Chopra family. It be noted that both the families reside in the same locality, i.e., the Defence Colony. It was way back on the invitation of Late Sh. O. P. Malhotra, father of the Testator the parents of the Appellant attended a social gathering hosted by Sh. O. P. Malhotra. Even all the important documents belonging to the Testator were kept in safe custody in a drawer of the house of the Chopra's showcasing the Testator's confidence in the Appellant and his family. The observations made by this Court in Para No.iv of this table cover the aspect of strained relations of the Testator with his family and his good relations with the Appellant and his family. The LSJ has erred in assuming the Beneficiary as a stranger, known only four months before the execution of the Will. Both the Beneficiary and the Executor who has been examined have categorically stated that the Testator used to come to their residence and the Testator regularly visited their residence and often requested home-cooked food, which was provided. This fact of frequent visits and
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		hospitality of Chopra's has even been affirmed by the Respondent Witness. These facts demonstrate a longstanding relationship and explain the Testator's familiarity and trust with the Chopra family.
ix.	There was misrepresentation of facts and undue influence exercised by Shalini in getting the Will executed in her favour from Praveen of his entire moveable and immovable properties which is apparent from the recitals of the Will wherein Plot admeasuring 380 sq. yds. in DLF Phase-IV, Gurgaon, Haryana did not belong to the deceased at all. Rather it is owned by O.P. Malhotra.	Similarly, reasons recorded in Paragraph No.ix would not be sufficient to doubt the Will only because one of the properties in fact belongs to the Testators' father and not him. Furthermore, even if this fact is believed to be true, no cogent evidence has been adduced by the Respondent to prove that Sh. O. P. Malhotra is the owner of the said property in Gurgaon. This observation of the LSJ is erroneous as it does not cast doubt on the genuineness of the Will. The observation as to misrepresentation and undue influence lacks substance especially when no other evidence to prove the same exists corroborating the doubt.
x.	Will is in favour of a stranger. No reason was mentioned in the Will as to why the natural heirs of the testator were being ignored whereas he had cordial relationship with his parents. No enmity between the testator and his parents has been proved. He was about	Likewise, the reasons recorded in Paragraph No.x are erroneous. The LSJ has overlooked the fact that the Will was not in favour of a stranger. The observations made by this Court in Para No. iv of this table cover the aspect of strained relations of the Testator with his family and his good relations with the Appellant and his family.



	35 years of age i.e. very young to execute a Will	It is pertinent to note that the Testator in Written Statement dated 17.11.1994 and 19.11.1994 (1 month prior to the death of the Testator) in the suits filed against him by his parents captioned CS 2018/94 and CS 2232/94 respectively, wherein he clearly states that <i>“Relations between him, his father and his mother, have been strained for some time. There are serious differences between them.”</i> While alleging misuse of blank signed documents by his parents, he further submits that <i>“In spite of the relations between them having become strained, the father did not return any of the said unused signed documents, papers and letterheads to the Testator”</i>. He further alleged that his parents <i>“have apparently used some of these blank signed papers and letterheads and have fabricated and forged documents in an attempt to show that there is an ATS in favour of his mother and also an alleged tenancy agreement with his father in respect of the suit property.”</i> The propounder is not required to establish any active enmity between the Testator and his parents. To the contrary, the Respondents in their evidence themselves conclusively suggest that the Testator was having strained relations with his family and is on very good terms with the Appellant and the Beneficiary.
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		This Court finds that LSJ has ignored the forestated observations and sequence of events which clearly reflects the deterioration of familial relations and thus, erred in observing the circumstances as suspicious. This Court finds that it is clear from the conduct of Testator since March 1994 till one month prior to his death that is November 1994, time and again Testator has explicitly showcased his strained relations with his family and his inclination towards Chopra's. Furthermore, the subsequent disinheritance through a public notice dated 01.12.1994 by the father of the Testator and consequent shift of the Testator to the guest house, justifies their non-inclusion as beneficiaries in the Will.
xi.	In the Will words used are "do hereby revoke all previous Wills and codicils if any....." There was no reason for the testator to mention these words when he knew that there was no previous Will executed by him.	Portion of sentence in Paragraph No.xi is Standard clause to avoid ambiguity and to revoke a previous Will, if any executed. This cannot be ground to doubt the correctness of the registered Will particularly when the photograph of the Testator is affixed and the Respondents initially disputed the signatures of the Testator, but subsequently gave up the aforesaid plea. The statement so pointed out by the LSJ is a nomenclature in registered wills to avoid ambiguity. In the present case, the



		Testator has already alleged collusion, forgery by his parents and had doubt that they might have fabricated another Will to take over his properties. It is pertinent to note that the Probate Petition 34/1995 filed by the Testator's uncle Sh. Subhash Chander Vij, fortifies his concern of presence of a fabricated will. Though, the said Petition was dismissed as withdrawn on 18.07.2000 since the LR's of Sh. Subhash Chander Vij failed to produce the Will, allegedly executed by the Testator. In view of the forestated observations, this suspicious circumstance also stands refuted.
xii.	The propounder of the Will actively participated in the execution of the Will, which conferred substantial benefit on her despite the fact that the parties were litigating with each other and litigation between the respondents and Praveen was also pending especially pertaining to the properties which find mention in the Will and bequeathed in favour of Shalini.	Reasons recorded in Paragraph No.xii are also without any cogent evidence as there is evidence only to the effect that Shalini, the Beneficiary travelled in a separate car to the office of Sub registrar. Moreover, there is neither any evidence of undue influence nor her presence at the time of execution or registration of the Will to imply coercion. The Testator has since March, 1994 been observed entering into voluntary transactions with Smt. Shalini Asha Chopra, thereby refuting any chance of coercion and undue influence at the time of execution of the Will. In the Will also, he states that the beneficiary has been taking care of him and thus he wants to bequeath his



		properties to her. Thus, the LSJ has erred in observing this as a suspicious circumstance.
xiii.	All the documents including the Will were in the custody of the petitioner and Shalini. These documents were produced by them and placed along with the Will on the record after petitioner had filed the instant petition before the Allahabad High Court seeking probate of the impugned Will. Respondents came to know of the Will only thereafter.	LSJ erred in concluding suspicion on this fact. Rather reasons recorded in Paragraph No.xiii prove that the relationship between the Testator and the Chopra family were very cordial and he was emotionally dependent on Chopra family particularly, when his own family abandoned him. Further, instituting Probate Petition in Allahabad High Court, is not a ground to doubt the correctness of the will. Particularly when the Probate Petition was later transferred to High Court of Delhi by the Supreme Court, and doing so it was never held that Allahabad High Court had not jurisdiction. Moreover, it might have been instituted there on account of incorrect legal advice. Thus, this suspicion of LSJ is also unsupported and does not affect genuineness of a duly registered, duly attested and proved will.
xiv.	The Will lacks description of the moveable assets like shares, stocks, bank lockers, bank account, etc. There existed no stocks or shares in the name of deceased Praveen. No capital was invested in the firm M/s.	Similarly, reason in Paragraph No.xiv cannot be a ground to doubt the Will particularly when the testator has given description of his all immovable properties and just did not give description of his moveable properties. Moreover, it has not been proved that that the Testator had invested in shares, stocks etc.



	Grace Traders and Promoters which finds mention in the Will.	Furthermore, the Court has also erred in observing that no capital was invested by the Testator because it has become evident that an amount of more than Rs.79,00,000/- was deposited in the Joint Account which was transferred by the Testator and the Beneficiary in favour of Property Development Agreement.
xv.	There is no evidence to prove that Shalini had treated the deceased like her son.	Reason recorded in Paragraph No.xv is not sufficient to discard a registered Will. Sh. Vikram Chopra and the Testator were friends for a long time. Mother of Sh. Vikram Chopra used to treat the Testator as a son of Chopra family. A friend of a son is treated as a son and not a stranger particularly, when there is a long association.
xvi.	Praveen died within five months of the execution of the Will and his deteriorating mental capabilities were well known to Shalini when the Will was allegedly executed.	Reason recorded in Paragraph No.xvi do not appear to be correct particularly when the Testator's mental capabilities were not compromised. In fact, the Respondents have examined Dr. Arun Gupta and Dr. Vishwadarshi Jaiswal, however, there is no cogent evidence to prove that up to 19 th -20 th December 1994 decision making power of the Testator was compromised. Opinion given by Dr. Vishwadarshi Jaiswal in the year 2002 after examining CT scan cannot be made basis to hold that decision-making power of the Testator was compromised



	particularly, when there is no history of the Testators hospitalization for a period of 5 months after the execution of the registered will in favour of the Beneficiary. The AIIMS Medical Board Report, while examining the Testator's medical history, records that, "<i>As per records on 25.4.1994 he was admitted in a Hospital with a complaint of headache and pain in neck after one Road Traffic Accident on 21.4.94. His treatment records reveal that henever lost his consciousness, there was no neurological deficit, no bleeding from Ear, Nose and Throat and there was no loss of memory at any time.</i> <i>He remained conscious, coherent and well oriented during his whole stay in the Hospital and he was only treated symptomatically and was never given or advised Epsolin (Phenytoin-sodium) at any stage after the accident excepting the last prescription i.e. on 2.8.94 and during this period he was only admitted for investigation and further evaluation. There is nothing suggestive indicative on the medical and circumstantial record (inquest papers) that he ever had any neurological deficit in the form of seizures/convulsion/fits of any type till his death."</i> It further observed that, "<i>there is</i>
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	<i>nothing suggestive of chronic Alcohol intake and its withdrawal seizures.”</i> Furthermore, the board also opined that, <i>“There are no findings to suggest intoxication or influence of alcohol/phenytoin/any other common poisons. There is no finding or evidence to suggest any kind of seizures (fits)/ withdrawal seizures from Alcohol or Barbiturate (Like Epsolin-phenytoin sodium) or like drugs nor there any reason or findings to believe of such occurrence being possible in this case.”</i> This Court is of the view that there is nothing on the record to prove that the Testator used to drink excessively, which affected his mental capabilities. Even, the post-mortem report and chance examination of his viscera does not prove that he died due to heavy drinking. Thus, this observation of LSJ with regard to deteriorating mental capabilities of the Testator is erroneous, as he was of sound mind at the time of execution of Will and even at the time of later transactions. The aspect of Shalini taking undue advantage of these mental deteriorations is clearly ruled out. The record has revealed that execution of Will and other documents in favour of the Beneficiary was a conscious
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		decision of the Testator. Rather this has to be examined in the context of the fact that the Testator's parents had filed two separate suits against their own son and the fact that the Testator had cancelled power of attorney previously issued in favour of his father and also mentioned about his strained relations and misuse of his signed blank cheques and papers by his parents. Therefore, this observation of LSJ is contrary to evidence on record and is thus erroneous.
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34. It is pertinent to note that none of these suspicious circumstances surrounding the Will were put to Sh. Padmanabhan M., the attesting witness, nor was any foundational basis of the same laid in objections. It is equally significant to note that Smt. Kanta Malhotra has not proved these alleged circumstances. Furthermore, Sh. O. P. Malhotra and Mrs. Reet A. Anand, father and sister respectively, of the Testator fail to enter witness box.

35. At this stage, it is pertinent to recall the settled position of law governing the appreciation of a will alleged to be surrounded by suspicious circumstances. In ***H. Venkatachala Iyengar v. B. N. Thimmajamma***¹, the Three Judge Bench of the Supreme Court held that:

“19. ...Ordinarily when the evidence adduced in support of the will is disinterested, satisfactory and sufficient to prove the sound and disposing state of the testator's mind and his signature as required by law, courts would be justified in making a finding in favour of the

¹AIR 1959 SC 443.



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

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21. ...If it is shown that the propounder has taken a prominent part in the execution of the will and has received substantial benefit under it, that itself is generally treated as a suspicious circumstance attending the execution of the will and the propounder is required to remove the said suspicion by clear and satisfactory evidence. It is in connection with wills that present such suspicious circumstances that decisions of English courts often mention the test of the satisfaction of judicial conscience...

*22. It is obvious that for deciding material questions of fact which arise in applications for probate or in actions on wills, no hard and fast or inflexible rules can be laid down for the appreciation of the evidence. It may, however, be stated generally that a propounder of the will has to prove the due and valid execution of the will and that if there are any suspicious circumstances surrounding the execution of the will the propounder must remove the said suspicions from the mind of the court by cogent and satisfactory evidence. It is hardly necessary to add that the result of the application of these two general and broad principles would always depend upon the facts and circumstances of each case and on the nature and quality of the evidence adduced by the parties. It is quite true that, as observed by Lord Du Parcq in *Harmes v. Hinkson*¹ “where a will is charged with suspicion, the rules enjoin a reasonable scepticism, not an obdurate persistence in disbelief. They do not demand from the Judge, even in circumstances of grave suspicion, a resolute and impenetrable incredulity. He is never required to close his mind to the truth”. It would sound platitudinous to say so, but it is nevertheless true that in discovering truth even in such cases the judicial mind must always be open though vigilant, cautious and circumspect.”*

36. In the present case, the Will in question stands duly executed and attested in accordance with law. One of the attesting witnesses, Sh. Padmanabhan M., entered the witness box and proved its execution and no material contradiction has been elicited in his cross-examination.

37. The Appellant/Executor was not a recent acquaintance but a long-standing family friend of the Testator for over a decade. The record reflects that after the Testator's relations with his parents



deteriorated and his father, Late Sh. O.P. Malhotra, disinherited him on 01.12.1994 through a public notice, it was the Chopra family who extended moral and logistical support to him. This association and trust find reflection in several contemporaneous transactions, including execution of the MoU dated 04.03.1994 in favour of the Beneficiary, and subsequent execution of Agreement to Sell dated 01.05.1994 in lines with the prior MoU, cancellation of Power of Attorney in favour of his father, change of residence address, direction to deposit cheques at the Appellant's house address, and retention of personal papers there, demonstrates a deliberate, voluntary decision to benefit the Appellant's family. Thus, the participation was a natural outcome of this long-standing trust and not a product of undue influence.

38. While discussing the positions laid down in ***H. Venkatachala Iyengar case*** (*supra*), the Supreme Court in the case of ***Jaswant Kaur v. Amrit Kaur***² observed as under:

“10. There is a long line of decisions bearing on the nature and standard of evidence required to prove a will. Those decisions have been reviewed in an elaborate judgment of this Court in H. Venkatachala Iyengar v. B.N. Thirumajamma & Others., (1959) Supp. 1 SCR 426. The Court, speaking through Gajendragadkar J., laid down in that case the following propositions:

1. Stated generally, a will has to be proved like any other document, the test to be applied being the usual test of the satisfaction of the prudent mind in such matters. As in the case of proof of other documents, so in the case of proof of wills, one cannot insist on proof with mathematical certainty.

2. Since Section 63 of the Succession Act requires a will to be attested, it cannot be used as evidence until, as required by Section 63 of the Evidence Act, one attesting witness at least has been called for the purpose of proving

²(1977) 1 SCC 369



its execution, if there be an attesting witness alive and subject to the process of the court and capable of giving evidence.

3. Unlike other documents, the will speaks from the death of the testator and therefore the maker of the will is never available for deposing as to the circumstances in which the will came to be executed. This aspect introduces an element of solemnity in the decision of the question whether the document propounded is proved to be the last will and testament of the testator. Normally, the onus which lies on the propounder can be taken to be discharged on proof of the essential facts which go into the making of the will.

4. Cases in which the execution of the will is surrounded by suspicious circumstances stand on a different footing. A shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the will under which he receives a substantial benefit and such other circumstances raise suspicion about the execution of the will. That suspicion cannot be removed by the mere assertion of the propounder that the will bears the signature of the testator or that the testator was in a sound and disposing state of mind and memory at the time when the will was made, or that those like the wife and children of the testator who would normally receive their due share in his estate were disinherited because the testator might have had his own reasons for excluding them. The presence of suspicious circumstances makes the initial onus heavier and therefore, in cases where the circumstances attendant upon the execution of the will excite the suspicion of the court, the propounder must remove all legitimate suspicions before the document can be accepted as the last will of the testator.

5. It is in connection with wills, the execution of which is surrounded by suspicious circumstance that the test of satisfaction of the judicial conscience has been evolved. That test emphasises that in determining the question as to whether an instrument produced before the court is the last will of the testator, the court is called upon to decide a solemn question and by reason of suspicious circumstances the court has to be satisfied fully that the will has been validly executed by the testator.

6. If a caveator alleges fraud, undue influence, coercion etc. in regard to the execution of the will, such pleas have to be proved by him, but even in the absence of such pleas,



the very circumstances surrounding the execution of the will may raise a doubt as to whether the testator was acting of his own free will. And then it is a part of the initial onus of the propounder to remove all reasonable doubts in the matter.”

39. Applied to the present case, these principles reinforce that mere benefit to the Beneficiary, and disregarding natural heirs, cannot by itself invalidate the Will. The Will itself records the affection and regard of the Testator for the Beneficiary and her family. Notably, the MoU predates the accident on 21.04.1994, directly undermining any contention that the Testator was under undue influence or lacked soundness of mind at the time of these testamentary acts. The continuity of dealings from March 1994 onwards, much before the Testator’s accident, further dispels any inference that the Will or related documents were executed in suspicious circumstances. The Testator’s deliberate contemporaneous actions, in favour of the Beneficiary, demonstrate consistency of intent, voluntary execution, and sound judgment.

40. Likewise, in ***Rani Purnima Debi v. Kumar Khagendra Narayan Deb***³, the four-judge bench of the Supreme Court referred to the aforementioned decision in ***H. Venkatachala Iyengar*** (*supra*) and further explained the principles which govern the proving of a Will as follows:

“5.even when where there are suspicious circumstances and the propounder succeeded in removing them, the Court would grant probate, though the will might be unnatural and might cut off wholly or in part near relations.”

³1962 3 SCR 195



Similar approach was followed in **Sridevi v. Jayaraja Shetty**⁴, where the Supreme Court held that:

“11. 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 have to be judged in the facts and circumstances of each particular case.

12. In the light of this settled position of the law, we have to examine as to whether the will under consideration had been duly executed and the propounders of the will had dispelled the suspicious circumstances surrounding the will.

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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.”

41. In the present case, the Will in question is a registered document, executed in accordance with statutory requirements and duly attested by two witnesses. The circumstances referred to in the Impugned Judgment do not, upon close scrutiny, constitute such suspicious circumstances as to discredit the genuineness of the testament. On the contrary, the evidence on record, coupled with the testator’s prior independent acts and consistent dealings with the beneficiaries, supports the inference that the execution was the result

⁴ (2005) 2 SCC 784



of a conscious and voluntary decision. The allegations of undue influence or coercion remain unsubstantiated and speculative.

42. Most recently the entire series of case law was considered by the Supreme Court in **Kavita Kanwar v. Pamela Mehta**⁵ reiterating the parameters laid down by a three-judge bench of the Supreme Court in **Shivakumar & Ors. v. Sharanabasappa & Ors.**⁶, wherein the Supreme Court after traversing through the relevant decisions, has summarised the principles governing the adjudicatory process concerning proof of a Will and held as under:

“24.8...We need not multiply the references to all and other decisions cited at the Bar, which essentially proceed on the aforesaid principles while applying the same in the given set of facts and circumstances. Suffice would be to point out that in a recent decision in Civil Appeal No. 6076 of 2009: Shivakumar & Ors. v. Sharanabasappa & Ors., decided on 24.04.2020, this Court, after traversing through the relevant decisions, has summarised the principles governing the adjudicatory process concerning proof of a Will as follows:

- 1. Ordinarily, a Will has to be proved like any other document; the test to be applied being the usual test of the satisfaction of the prudent mind. Alike the principles governing the proof of other documents, in the case of Will too, the proof with mathematical accuracy is not to be insisted upon.*
- 2. Since as per Section 63 of the Succession Act, a Will is required to be attested, it cannot be used as evidence until at least one attesting witness has been called for the purpose of proving its execution, if there be an attesting witness alive and capable of giving evidence.*
- 3. The unique feature of a Will is that it speaks from the death of the testator and, therefore, the maker thereof is not available for deposing about the circumstances in which the same was executed. This introduces an element of solemnity in the decision of the question as to whether the document propounded is the last Will of the testator. The initial onus, naturally, lies on the propounder but the same can be taken to have been primarily discharged on*

⁵(2021) 11 SCC 209

⁶AIR 2020 SC 3102



proof of the essential facts which go into the making of a Will.

4. The case in which the execution of the Will is surrounded by suspicious circumstances stands on a different footing. The presence of suspicious circumstances makes the onus heavier on the propounder and, therefore, in cases where the circumstances attendant upon the execution of the document give rise to suspicion, the propounder must remove all legitimate suspicions before the document can be accepted as the last Will of the testator.

5. If a person challenging the Will alleges fabrication or alleges fraud, undue influence, coercion et cetera in regard to the execution of the Will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the Will may give rise to the doubt or as to whether the Will had indeed been executed by the testator and/or as to whether the testator was acting of his own free will. In such eventuality, it is again a part of the initial onus of the propounder to remove all reasonable doubts in the matter.

6. A circumstance is "suspicious" when it is not normal or is 'not normally expected in a normal situation or is not expected of a normal person'. As put by this Court, the suspicious features must be 'real, germane and valid' and not merely the 'fantasy of the doubting mind.'

7. As to whether any particular feature or a set of features qualify as "suspicious" would depend on the facts and circumstances of each case. A shaky or doubtful signature; a feeble or uncertain mind of the testator; an unfair disposition of property; an unjust exclusion of the legal heirs and particularly the dependants; an active or leading part in making of the Will by the beneficiary thereunder et cetera are some of the circumstances which may give rise to suspicion. The circumstances above-noted are only illustrative and by no means exhaustive because there could be any circumstance or set of circumstances which may give rise to legitimate suspicion about the execution of the Will. On the other hand, any of the circumstance qualifying as being suspicious could be legitimately explained by the propounder. However, such suspicion or suspicions cannot be removed by mere proof of sound and disposing state of mind of the testator and his signature coupled with the proof of attestation.



8. *The test of satisfaction of the judicial conscience comes into operation when a document propounded as the Will of the testator is surrounded by suspicious circumstance/s. While applying such test, the Court would address itself to the solemn questions as to whether the testator had signed the Will while being aware of its contents and after understanding the nature and effect of the dispositions in the Will?*

9. *In the ultimate analysis, where the execution of a Will is shrouded in suspicion, it is a matter essentially of the judicial conscience of the Court and the party which sets up the Will has to offer cogent and convincing explanation of the suspicious circumstances surrounding the Will."*

43. Having said that, the material question is:

Which circumstance qualifies to be 'suspicious'?

Taking lead from the guiding principles as laid down by Supreme Court in **Shivakumar's case** (*supra*) and reiterated in **Kavita Kanwar's case** (*supra*), it can be held that circumstance is 'suspicious' when it is not normal or is not normally expected in a normal situation or is not expected from a normal person. The law presumes testator to be a man of ordinary prudence. He is believed to have acted as a normal person.

44. In **Motibai Harmusjee v. Jemsetjee Hormusjee**⁷, it was held:

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

Relying upon the afore-stated observations made by Privy Council in **Motibai Harmusjee's case** (*supra*), Supreme Court in **Surendra Pal v. Dr. (Mrs.) Saraswati Arora**⁸ held that:

"It is not for us to fathom the motivations of a man. His actions and reactions are unpredictable as they depend upon so many circumstances. There is, however, always some dominant and impelling circumstance which motivates a man's action though in

⁷AIR 1924 PC 28

⁸(1974) 2 SCC 600



some cases even a trivial and trifling cause impels him to act in a particular way which a majority of others may not do. At times psychological factors and the frame of mind in which he is, may determine his action."

45. Same view was followed by this Court in the case of **Smt. Rajeshwari Rani Pathak v. Smt. Nirja Guleri and others**⁹, wherein while dealing with the issue of suspicious circumstance and the conscience of the Court, this Court observed as under:

".....In the final analysis, it is the conscience of the Court that has to be satisfied and as such, the nature and quality of proof must be commensurate with the requirement to satisfy that conscience. The important question in each case is: What is the suspicion which a reasonable man will entertain in the circumstances of a case."

46. A careful reading of the above circumstances, in the light of the guiding principles in aforementioned precedents, establishes following essential considerations for rejecting claims of suspicious circumstances:

- i. Suspicious circumstances must be clearly pleaded and proved by evidence, not assumed or speculative.
- ii. Mere benefit to a non-relative or disinheritance of natural heirs is not sufficient ground to discard a will.
- iii. Evidence of sound mental capacity and voluntary execution shifts the burden to objectors to prove undue influence or incapacity.
- iv. Registration of the Will and corroboration by attesting witnesses strengthens the presumption of genuineness.

⁹1977 AIR (P&H) 123



v. Events before, during, and after execution, if behavior is consistent with testamentary intent, the same would affirm genuineness rather than create suspicion.

47. Having considered the present matter in its totality while keeping the principles aforesaid in view, we have not an iota of doubt that the learned Single Judge erred in observing existence of sixteen suspicious circumstances. Here, the objectors have failed to produce any definite evidence of undue influence, coercion, or incapacity. The deliberate and voluntary acts of the Testator before and after the accident, dispel any notion of impropriety. In the present case, the execution of the Will having been proved and there being no circumstance to show that testator acted in a manner which a normal prudent man would not, this Court finds that the Courts below erred in dislodging the Will spelling out circumstances which cannot be held to be abnormal or suspicious.

48. In conclusion, this Court observes that the Will dated 26.07.1994, registered on 27.07.1994, stands proved through the testimony of one attesting witness, Sh. Padmanabhan M. and corroborated by the Sub-Registrar's office. This Court finds that the learned Single Judge failed to appreciate that once due execution is proved in the manner prescribed under Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872 the burden shifts to the objectors to establish any undue influence or lack of testamentary capacity, which the objectors have failed to discharge.



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49. For the foregoing reasons, this Court finds that the learned Single Judge erred in refusing probate of the duly executed and registered Will. In light of the above authorities and evidence, this Court holds that the Appellant/Executor has duly discharged the burden of proving due execution and attestation, while the Respondents/Objectors have failed to establish any real suspicious circumstance. The Will, read conjointly with the contemporaneous documents, clearly represents the Testator's voluntary and conscious decision. This Court finds that the rejection of probate by the learned Single Judge thus stands contrary to the settled guidelines of the Supreme Court.

50. With these observations, the present Appeal is allowed, while setting aside the Impugned Judgment dated 11.09.2009 passed by the learned Single Judge and thus the registered Will dated 27.07.1994 is accordingly held to be genuine, validly executed, and deserving of a probate.

51. The present Appeal stands disposed of.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

NOVEMBER 21, 2025

s.godara/dev