*Before Hon'ble R. P. Sethi & H. S. Bedi, JJ.*

SMT. BHAGYA WATI JAIN AND OTHERS,—*Petitioners.*

*versus*

GENERAL PUBLIC AND OTHERS,—*Respondents.*

*Letters Patent Appeal No.* 1150 *of* 1985

February 2, 1994.

*Indian Succession Act,* 1925—*Section* 58, *and* 63—*Will—Its characteristics—Execution of Will—Proof of execution.*

*Held,* that the essential characteristics of a Will are :

(a) There must be a legal declaration.

(b) Such declaration must be with respect to the property of the testator ; and

(c) The declaration must be intended to operate after the death of the testator.

(Para 5)

*Held,* that in order to prove proper execution of the will, the following criteria has to be applied :

(a) The testator must have a disposing mind free from all extraneous influences with sound mental mind ;

(b) The testator is presumed to be sane having a mental capacity to make a valid Will until contrary is proved ;

(c) The Will should be executed in accordance with the provisions of the Act as incorporated in Section 63 of the Act read with sections 67 and 68 of the Evidence Act. In other words, the testator should have signed or affixed his mark to the Will in the presence of the two witnesses who are required to see the testator signing or affixing his mark on the Will and each of the witnesses should sign the Will in the presence of the testator ;

(d) The onus of proof of the Will is on the propounder or beneficiary of the Will ;

(e) The existence of suspicious circumstances make the onus of proof very heavy and such circumstances are required to be removed by the propounder before the document is accepted as a last Will of the testator ;

(f) The mode of proving the Will does not ordinarily differ from that of providing any other document except the special circumstances as incorporated in Section 63 of the Act ; and

(g) In order to ascertain the free disposing mind free from extraneous considerations, the whole of the attending circumstances in a particular case are required to be taken note of.

(Para 19)

R. K. Chhibbar, Senior Advocate with Anand Chhibbar, Advocate, Miss Rattan Laxmi, Advocate, *for the Appellants.*

S. K. Goyal, Advocate with S. B. Goyal, Advocate, *for the Respondent.*

JUDGMENT

*R. P. Sethi, J.*

(1) Rival claims have been preferred in this case with respect to the estate of Shri Amar Nath Jain who died on 25th August, 1983 leaving behind the properties mainly the properties at Ambala and Bombay. The facts giving rise to the filing of the present appeal are that the appellants filed a petition under Section 278 of the Indian Succession Act, 1925 (hereinafter to be referred to as the 'Act') for the grant of Letters of Administration with respect to Will allegedly executed by Shri Amar Nath Jain, deceased, on 19th August, 1983. It was contended that the deceased had left two wives, three sons and five daughters and that Smt. Bhagya Wati Jain was his second wife. The Will was sought to be lying with Shri B. N. Sehgal, Advocate, Ludhiana. It was claimed to be the last Will and testament of the deceased executed in the presence of the witnesses. The first wife of the deceased Smt. Maya Wati Jain, her daughters and mother of Shri Amar Nath Jain contested the petition denying the execution of the Will which was stated to be a fabricated document. It was alternatively pleaded that Shri Amar Nath Jain was not in disposing mind at the time of the alleged execution of the Will as he was stated to be under the influence of strong narcotic and sedative drugs. After the death of Shri Amar Nath Jain, Smt. Bhagyawati Jain, his alleged second wife, is stated to have entered into an agreement on her on behalf and on behalf of her three sons acknowledging therein that the Will allegedly executed by the deceased was invalid and be cancelled. It was further agreed that the parties will divide the property left by the deceased among themselves by mutual agreement. The execution of the said agreement was vehemently denied by the appellants herein.

On the pleadings of the parties, the following issues were framed :

1. Whether Amar Nath Jain executed the Will dated 19th August, 1983 ? OPP.

2. Whether the two agreements dated 30th September, 1983 were entered into by petitioner No. 1 with respondents 2 to 8 ? If so, what is its effect ? OPR.

3. Relief."

(2) In order to prove their case, the appellants produced Shri B. N. Sehgal, Advocate, Shri Baljit Singh, Advocate, Smt. Avtar Kaur, Advocate, Notary Public, Smt. Bhagyawati Jain, Shri Jagan Nath Jain, Shri Amarjit Singh Bhan, Shri K. N. Prasad, Shri Swaran Singh and Shri Bahadur Singh as PWs. and relied upon various documents proved and executed at the trial of the case.

(3) In rebuttal, the respondents produced Dr. Naresh Kaushal, Shri Kashmira Singh, Shri Gurdev Singh Gill, Shri Siri Pal Mittal, Shri Hukam Chand, Shri Mohan Lal, Shri O. K. Singla and Ms. Anita Rani as RWs. and relied upon number of documents produced and proved at the trial.

(4) The learned single Judge after appreciating the evidence led in the case and assigning various reasons, detailed in the judgment, held that the Will had not been proved to have been executed in accordance with the law and dismissed the petition, hence this appeal.

(5) Under the Act Will has been defined to mean a legal declaration of the intention of the testator with respect to his property which he desires to be carried into effect after his death. Under the General Clauses Act Will includes a codicil making a voluntary posthumous disposition of property intended to take effect after the death of the testator. According to Halsbury's Laws of England, a Will or testament is a declaration in the prescribed manner of the intention of the person making it with respect to the matters which he wishes to take effect upon or after his death. A Will made for disposal of property of the testator after his death and of appointing an executor, for appointing a testamentary guardian, for exercising a power of appointment and for revoking or altering a previous Will. The essential characteristics of a Will are :

(a) There must be a legal declaration ;

(b) Such declaration must be with respect to the property of the testator : and

(c) The declaration must be intended to operate after the death of the testator.

In order to hold a document to be a Will it has to be proved that the same is in conformity with the provisions as regards the execution and attestation as provided under Section 63 of the Act and executed by a person competent to make it. The Will must relate to the property of the maker which he intends to dispose of and if no reference is made to the disposal of the property, the document cannot be termed to be a Will. The declaration intended to take effect after the death of the testator impliedly means that declaration should not be meant to take effect immediately and if it does so then it is not a Will. The testamentary document can be revoked by the testator during his life-time. A Will can be executed in any form but to be effective it is required to be signed and attested by the witnesses as required under the Act. No specific form or language is required to be applied while executing the Will. As the Will diverts the rule of natural succession, its execution is required to be satisfactorily proved in accordance with the provisions of the law and keeping in view the judgments delivered by the Apex Court and the various High Courts in the country. The origin of the Will can be referred to ancient times as it is shown to be in existence as in Babylon and Assyria. It was considered that the idea of disposition by Will was the gift of Rome's expiring civilisation to Rome's rude conquerors, awakened at last, by closer contact with that civilisation to a better life. The laws prevalent in various civilised countries concede to the owner of the property the right of determining by Will to whom the effects which he leaves behind him shall pass. Such a right is, however, subject to statutory restrictions imposed, if any. It is common knowledge that instincts and affections determine and will lead the man to decide for those who are nearest to him in kindred and who in life has been the object of his affection. It is reasonably presumed that a man leaving the world and going back to his creator would naturally distribute his property amongst his children or nearest relatives on the judged opinion based upon his experience in life and not being influenced by extraneous considerations. The concept of making the Will was unknown under the ancient Hindu Law as no name equivalent or pseudonymous to Will has been traced either in Sanskrit or in the vernacular languages. The absence of testamentory disposition of the property under the old Hindu Law can be attributed to the joint family system and the custom of adoption prevalent amongst the Hindus. The joint Hindu family system was consistered to be inconsistent with the independent dominion over property and perhaps it was the main reason to ignore the testamentory disposition. However, with the growth, development and chance of law regarding succession, the power of Hindu to create

interests in property during his life time leads to the power to create interests in the property of his death. From a pretty long time the testamentory power of a Hindu has been recognised and he is authorised to make Will regarding his self acquired property. Such a right has got statutory sanction after the passing of the Act. Before the passing of the Act, no part of the corparcenary property could be disposed of by making a Will which was restricted only to self acquired property. However, Section 30 of the Indian Succession Act now enables the Hindus to dispose of by Will his share in the coparcenary property at the time of his death. The Act has consolidated the law applicable to intestate and testamentary succession of India and is applicable to all the testaments made in the country subject to the exceptions made in Sub-Section 1 of Section 58 of the Act. Section 63 of the Act regulates the execution of the Will providing that the testator shall sign or affix his mark to the Will or it shall be signed by some other person in his presence and by his directions. Signature or mark of the testator, or the signature of the person signing for him shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will. Such a Will is required to be attested by two or more witnesses, each of whom is required to see the testator signing or affixing his mark to the Will or see some other person signing the same, in the presence and by directions of the testator or should have received a personal acknowledgement of his signature from the testator, or of the signature of such other person; and each of the witnesses should sign the Will in the presence of the testator. It is, however, not necessary that more than one witness be present at the same time, and no particular form of attestation is necessary.

(6) Learned counsel appearing in the case have referred to and relied upon a number of judgments of the Apex Court and various High Courts in the country in support of their rival contentions.

(7) In *H. Venkatachala Iyengar* v. *B. N. Thimmajamma and others* (1), it was held that the party propounding a Will or otherwise making a claim under it is required to prove the document in accordance with the provisions of law as laid down under the Act and Sections 67 and 68 of the Evidence Act. The propounding or beneficiary of the Will is, therefore, required to prove that the testator was of sound mind, not a minor, should have affixed his

(1) A.I.R. 1959 S.C. 443.

signatures in the presence of the requisite number of witnesses and should have also signed after having understood the nature and effect of the disposition in the Will. The witnesses should have also affixed their signatures in the presence of the testator. *Prima facie* the Will is to be proved like any other document except as to the special requirement of attestation prescribed by Section 63 of the Act. The test to be applied is a usual test of satisfaction of the prudent mind in such matters.

The Court further held :—

> "However, there is one important feature which distinguishes Wills from other documents. Unlike other documents the Will speaks from the 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 in dealing with the proof of Wills the Court will start on the same enquiry as in the case of the proof of documents. The propounder would be called upon to show by satisfactory evidence that the Will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the dispositions and put his signature to the document of his own free Will. 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 propounder. In other words, the onus on the propounder can be taken to be discharged on proof of the essential facts just indicated."

(8) The Supreme Court further commented that there may be cases in which execution of the Will may be surrounded by suspicious circumstances and in such cases, "Court would naturally expect that all legtimate suspicious should be completely removed before the document is accepted as a last Will of the testator. The presence of such suspicious circumstances naturally tends to make the initial onus very heavy and unless it is satisfactorily discharged. Courts would be reluctant to treat the document as the last Will of the testator." Apart from suspicious circumstances the Wills propounded may also disclose other infirmities and 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 generally is treated as a suspicious circumstance attending the execution of the Will requiring the propounder to remove the said suspicion by clear and satisfactory evidence. Referring to the cautions to be taken note of while deciding the application under the Act the Supreme Court in this case observed as under :—

> "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 Pareq in *Harmes* v. *Hinckson*, 50 Cal. W.N. 895 : (A.I.R. 1916 P.C. 150)" where a Will is charged with suspicion, the rules enjoin a reasonable scapticism, not an obdurate persistence in disbelief. They do not demand from the Judge, even in circumstances of grave suspicion are solute 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 vigilent, cautions and circumspect."

(9) Following their judgment in *H. Venkatachala's case* (supra), the Supreme Court again in *'Shashi Kumar Banerjee and others* v. *Subodh Kumar Banerjee* (2), dealt with the question of mode of onus of proof in the matter of determining due execution of the Will and laid down the following principles :—

> ".....The mode of proving a Will does not ordinarily differ from that of proving any other document except as to the

(2) A.I.R. 1964 S.C. 529.

special requirement of attestation prescribed in the case of a Will by Section 63, Succession Act. The onus of proving the Will is on the propounder and in the absence of suspicious circumstances surrounding the execution of the Will, proof of testamentary capacity and the signature of the testator as required by law is sufficient to discharge the onus. Where however there are suspicious circumstances, the onus is on the propounder to explain them to the satisfaction of the Court before the court accepts the Will as genuine. Where the caveator, alleges undue influence, fraud and coercion the onus is on him to prove the same. Even where there are no such pleas but the circumstances give rise to doubts, it is for the propounder to satisfy the conscience of the Court. The suspicious circumstances may be as to the genuineness of the signature of the testator, the condition of the testator's mind, the dispositions made in the Will being unnatural improbable or unfair in the light of relevant circumstances or there might be other indications in the Will to show that the testator's mind was not free. In such a case the court would naturally expect that all legtimate suspicion should be completely removed before the document is accepted as the last Will of the testator. If the propounder himself takes part in the execution of the Will which confers a substantial benefit on him, that is also a circumstance to be taken into account, and the propounder is required to remove the doubts by clear and satisfactory evidence. If the propounder succeeds in removing the suspicious circumstances the court would grant probate, even if the Will might be unnatural and might cut off wholly or in part near relations."

In that case, the Supreme Court noted the fact that the Will was a holograph Will and in the hand of the testator wherein the testator had stated that he had signed the Will in the presence of witnesses and the witnesses had signed it in his presence and the presence of each other raised a strong presumption of its regularity and therefore being duly executed at a later stage. The absence of suspicious Will require a very little evidence to prove due execution and attestation of the Will.

(10) The test laid down by the Court in *H. Venkatachala's case* (supra) was approved by the Supreme Court in *'Rani Purnima Devi and another v. Kumar Khagendra Narayan Deb and another* (3).

(3) A.I.R. 1962 S.C. 567.

The Supreme Court again in *'Ram Chandra Rambux* v. *Champabai and others* (4), held that in all cases in which the Will is alleged to have been prepared under circumstances raising suspicion, it is for the propounders of the Will to remove that suspicion. The mode of proving the Will does not ordinarily differ from that proving any other document except as to the special requirement of attestation prescribed in the case of Will by Section 63 of the Act.

(11) In *Smt. Jaswant Kaur* v. *Smt. Amrit Kaur and others* (5), the law laid down in *H. Venkatachala's case* (supra) was approved and it was held :—

> "There is a long line of decision 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 *R. Venkatachala Iyengar* v. *B. N. Thimmajamma,* (1959) Suppl. (1) S.C.R. 426=(A.I.R. 1959 S.C. 443). The Court, speaking through Gajendragadkar J., laid down in that case the following propositions :—
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> 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 certainity.
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> 2. Since Section 63 of the Succession Act requires a Will to be attested, it cannot be used as evidence untill, as required by Section 68 of the Evidence Act, one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, the subject to the process of the Court and capable of giving evidence.
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> 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

(4) A.I.R. 1965 S.C. 354.

(5) A.I.R. 1977 S.C. 74.

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 legtimate 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 circumstances 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, 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 doubt in the matter."

(12) It was further held that in case where the execution of the Will is shrouded in suspicion, its proof ceases to be a simple lis between the parties and is such a case it becomes the duty of the Court to satisfy itself as to whether the evidence led by the propounder of the Will is such as to satisfy the conscience of the court that the Will was duly executed by the testator. The party propounding the Will has to eliminate the existence of suspicious circumstances.

(13) If any genuine, reasonable or *bona fide* doubt is created regarding the execution of the Will or the mental faculty of the testator, a duty is cast upon the propounder and the beneficiary of the Will to remove the suspicious circumstances by placing satisfactory material on record. In *Kalyan Singh* v. *Smt. Chooti and others* (6).

> "A Will is one of the most solemn documents known to law. The executant of the Will cannot be called to deny the execution or to explain the circumstances in which it was executed. It is, therefore, essential that trustworthy and unimpeachable evidence should be produced before the Court to establish genuineness and authenticity of the Will. It must be stated that the factum of execution and validity of the Will cannot be determined merely be considering the evidence produced by the propounder. In order to judge the credibility of witnesses and disengage the truth from falsehood the court is not confined only to their testimony and demeanour. It would be open to the court to consider circumstances brought out in the evidence or which appear from the nature and contents of the documents itself. It would be also open to the Court to look into surrounding circumstances as Well as inherent improbabilities of the case to reach a proper conclusion on the nature of the evidence adduced by the party."

Byles J., while addressing Jury in *Swinfen* v. *Swinfen* (7), summarised the law relating to the testamentary capacity or disposition of a person making the Will in the following words :—

> "To constitute a good testamentary disposition the testator must retain a degree of understanding to comprehend

(6) A.I.R. 1990 S.C. 397.

(7) (1858) 175 E.R. 862 (F) at page 866.

what he is doing—to have a volition, or power of choice, so that what he does really be his own doing, and not the doing of anybody else.

The faculties, in those two great divisions, of the understanding and the Will, must still exist. They have declined from their former comprehensiveness and vigour; they may be, and often are on such occasions, weak, and actually on the point of being estinguished; still, though they may be, as it were, flickering on the socket, yet, if they suffice to show the genuine and last behests of a rational creature, and a free agent, that is a good Will in point of law. Wills are too frequently made by the sick and dying: the degree of understanding, therefore, which the law requires, is such as may reasonably be expected from persons in that condition. It is not enough that a testator is able to answer familiar and usual questions. That has always been laid down. He must be able to exercise a competent understanding as to the general nature of the property. As to the state of his family, and as to the general conditions and claims of the objects of his bounty; as to the nature of the instrument which he executes, and as to the general nature and general objects of the provisions which it contains; if he can do that, though he may be very feeble and debilitated in understanding, and be at the point of death, it is enough."

Again in *'Harwood* v. *Baker'* (8), the Privy Council on appeal from the Prerogative Court of Canterbury stated as follows :—

"But their Lordships are of opinion, that in order to constitute a sound disposing mind, a Testator must not only be able to understand that he is his Will giving the whole of his property to one object of his regard; but that he must also have capacity to comprehend the extent of his property, and the nature of the claims of others, whom, by his Will, he is excluding from all participation in that property: and that the protection of the law is in no cases more needed, than it is in those where the mind has been too much enfeebled to comprehend more objects than one, and most especially when that one object may be so forced upon the attention of the invalid, as to shut out all others that might require consideration: and therefore,

(8) (1840) 3 M.O.O. P.C. 282 (G).

the question which their Lordships propose to decide in this case, is not whether Mr. Baker knew when he was giving all his property to his wife, and excluding all his other relations from any share in it, but whether he was at that time capable of recollecting who those relations were, of understanding their respective claims upon his regard and bounty, and of deliberately forming an intelligent purpose of excluding them from any share of his property.

(4) If he had not the capacity required, the properiety of the disposition made by the Will is a matter of no importance. If he had it, the injustice of the exclusion would not affect the validity of the disposition, though the justice or injustice might cast some light upon the question as to his capacity."

(15) The onus probandi lies in all cases upon the person propounding a Will or being its main beneficiary and he is under a legal obligation to satisfy the conscience of the Court that the instrument so propounded or relied was the last Will of a free and capable testator. The mere fact that Will was not registered is no ground to ignore it or to hold that it was not properly executed.

(16) Deprivation of the legal heirs from succession may be one of the suspicious circumstance alongwith others but that by itself is not a sufficient ground to raise the presumption against the Will.

(17) If satisfactory evidence is led to support of the Will and the Court is satisfied that such evidence disinterested, satisfactory and sufficient to prove the sound and disposing mind of the testator, an inference in favour of the propounder of the Will can be drawn but if the suspicious circumstances suggests that the Will was unnatural, improbable are brought to the notice of the Court, the onus is upon the propounder to satisfactorily explain the absence of such suspicious circumstances.

(18) It has been held by this Court in *Charan Singh and another* v. *Balwant Singh and others* (9), that as a general rule, until the contrary is established, a testator is presumed to be sane and to have a mental capacity to make a valid Will. However, if the contesting part brings to the notice of the Court circumstance creating

(9) A.I.R. 1975 Punjab and Haryana 179.

a suspicion, a heavy duty is cast upon the propounder of the Will to eliminate the existence of such suspicious circumstances.

(19) From the judicial verdicts noted in this judgment and various other pronouncements relied upon by the counsel for the parties, the position which emerges for holding proper execution of the Will is that :—

(a) the testator must have a disposing mind free from all extraneous influences with sound mental mind ;

(b) the testator is presumed to be sane having a mental capacity to make a valid Will until contrary is proved ;

(c) The Will should be executed in accordance with the provisions of the Act as incorporated in Section 63 of the Act read with Sections 67 and 68 of the evidence Act. In other words, the testator should have signed or affixed his mark to the Will in the presence of the two witnesses who are required to see the testator signing or affixing his mark on the Will and each of the witnesses should sign the Will in the presence of the testator ;

(d) The onus of proof of the Will is on the propounder or beneficiary of the Will ;

(e) the existence of suspicious circumstances make the onus of proof very heavy and such circumstances are required to be removed by the propounder before the document is accepted as a last Will of the testator :

(f) the mode of proving the Will does not ordinarily differ from that of proving any other document except the special circumstances as incorporated in Section 63 of the Act ; and

(g) in order to ascertain the free disposing mind free from extraneous considerations, the whole of the attending circumstances in a particular case are required to be taken note of.

(20) An analytical analysis of the evidence produced in the case establishes that the deceased Shri Amar Nath was found to be suffering from Cancer at Bombay in the month of February, 1983 and was brought to Ludhiana on 23rd July, 1983. The propounders and the alleged beneficiaries of the Will with whom the testator

was living alone at Bombay did not get any Will deed executed from him. The testator appears to have been brought at Ludhiana on 23rd July, 1983 where he is proved to have met his legally wedded wife Smt. Maya Wati Jain and her daughters. Smt. Bhagya Wati Jain who has been claiming to be the 2nd wife of the testator had admittedly come with him at Ludhiana whereafter about a month the Will Ex. P.1 was executed. Apparently there does not appear to be any extraneous influence upon the testator of either Smt. Bhagya Wati Jain or her Children. It is also in the evidence that the doctors had opined regarding the early death of the testator which perhaps prompted him or necessitated the execution of the Will for the purpose of settlement of whole of his property. At the time of the execution of the Will Ex. P.1 none of the legal heirs were shown to have been associated. The Will was executed through Shri B. N. Sehgal, Advocate, PW1, and attested by another advocate namely Shri Baljit Singh, PW2. It was got attested by the Notary Public Avtar Kaur, PW3.

(21) The learned Single Judge did not rely upon the testimony of Shri Baljit Singh, PW2, mainly on the ground that as he was not earlier known to the testator, there was no case or occasion to be present at the time of execution of the Will and become a witness thereof. The witness has, however, categorically stated that the Will was read over and explained to the testator by Shri B. N. Sehgal who admitted the contents to be correct and thereafter signed the same in his presence and the presence of the other witness Avtar Kaur, PW 3. No enemity is attributed to the said witness for allegedly making false statement nor any circumstance has been brought on record to suggest that he was interested in favour of a party or had strained relations with the other. The only criticism attributed to the witness is that his presence at the time of execution of the Will was highly improbable and that he had received a sum of Rs. 100 as fee for attesting witness. The circumstances of the case suggest that the testator being fully conscious of this early death and surrounded by him two wives with their children appears to have decided not to associate any of his relations or legal heirs with the execution of the Will for which he procured the services of the aforesaid PWs., who all happens to be from the legal profession. It is true that a witness should not have charged any fee from the testator but that by itself is not a ground to reject his testimony unless any other circumstance is brought to the notice of the Court. Had Shri Baljit Singh, PW, been a stalled witness or his services procured only for the purposes of making deposition nothing prevented him from omitting to make a mention of the receipt

of Rs. 100 though not in the good taste yet being a beginner in the profession he accepted the amount and frankly conceded in the Court during cross-examination which adds to his credibility rather than to be a circumstance for rejecting his testimony. Similarly, Shri B. N. Sehgal, PW, who is admitted to have known to the deceased had proved the due execution of the Will by the testator. The anxiety of the testator to execute a Will without the knowledge of his legal heirs is evident from the statement of this witness who has deposed that "Will was executed at Ludhiana at the residence of Shri Amar Nath Jain which is in Atam Nagar. I do not remember the house number. In the room where the Will was being executed, no family member was present. "He has further deposed," at 10.30 we were at the residence of Shri Amar Nath Jain. When I met Shri Amar Nath Jain, Vijay Bansal withdrew and went away. Amar Nath Jain asked all other persons to get out of the room. Then only Amar Nath Jain and I remained in the room. I bolted the door from inside. He gave the details of the properties to be given and to whom. I noted all those details on a written rought note. With the written rought note I came back to the Courts and drafted the Will and got the same typed from one Stenographer called Chhutani. When I was with Amra Nath Jain, I found that he was in sound disposing mind and, therefore, I did not consider it proper to get him examined from a doctor to have his opinion that he was in sound disposing mind. "Similarly, Avtar Kaur, PW3, Notary Public, who had attested the Will stated that the Will was read out to Shri Amar Nath Jain in her presence. and in the presence of the attesting witness she attested the Will after being fully satisfied that the testator had a free disposing mind. The statement of the said witness has not been believed by the learned Single Judge mainly on the ground that there was some gap on the endorsement of the Rotary Public and the signatures of the testator. It is true that there is some gap between the last words of the endorsement and the signature of the testator. However, even without endorsement the Will is a complete document duly attested by the Notary Public bearing signatures of the testator and the attesting two witnesses leaving no doubt about its due execution. It appears that after attesting the Will, the Notary Public asked her Clerk to get the endorsement typed and appears to have got the same typed which left some blank between the last words of the attestation and the signatures of the testator. The endorsement by itself was not sufficient to create either any doubt or suspicion for holding that the Will has not been properly executed. The execution of Will is even admitted by the respondents as is event from Ex. D.1 which is signed by all the legal heirs of the deceased who are the parties in this appeal,

*Vide* the aforesaid agreement, the legal heirs of the deceased acknowledged the rights of each other in the property of the deceased and tried to apportion it themselves. Shri K. N. Prasad, PW 6, who is a Junior Scientific Officer (Documents), Central Forensic Science Laboratory, Chandigarh, has opined that the Will, Ex. P.1, bore the signatures of the deceased Shri Amar Nath Jain. Admittedly, being an expert, he has stated "The questioned signatures on the original Will Ex. P.1 were marked Q.1 to Q.4 and Q.9. The questioned signatures on the carbon copy Ex. PW3/3 were marked Q.5 to Q.8 and Q.10 Admitted signatures on the letters Exs. RW 7/8 and RW 7/9 were marked A.1 and A.2. I have compared and examined these signatures and in my opinion, the person who wrote the admitted signatures A.1 and A.2 also wrote the questioned signatures on the Will Ex. P1 and PW 3/3 marked Q.1 to Q.10."

(22) From the evidence produced in the case, it is proved beyond doubt that the testator namely Shri Amar Nath Jain and voluntarily and of his own free Will had executed a Will Ex. P.1 at a time when he had a free disposing mind and was not under the influence of either drugs or of his relations.

(23) Though admitting the execution of the document the respondents have tried to create a doubt about the capacity of the testator to make a Will on the ground of his not having a sound mind as he was suffering from Cancer of Eoesophagus. In order to proce their case, the respondents have produced Dr. Naresh Kaushal, RW 1, and some other witnesses. Dr. Naresh Kaushal and the other witnesses produced by the respondents have tried to explain that being a patient of Cancer which has been termed to be of terminal stage, the testator had no free disposing mind to make the Will. It is further submitted that because of the administration of strong drugs, pain and advance stage of the Cancer, the patient was in a drowsy and sleepy condition and could not think about his welfare or Well being. Some doubt has been created about the record of the Nursing Home of this witness which requires the Court to be put at caution in scrutinising his testimony. This witness has made statement mainly on the basis of his momery and was not in position to corroborate it from his record. In reply to one of the question, this witness stated that it was very difficult for the patient to write on 13th August, 1993 when he examined him. This assertion of the witnesses stands contradicted by the positive statement of Bahadur Singh postman, PW, who deposed in the Court that he delivered a registered letter to the deceased on 22nd

August, 1983 and obtained his signatures on the acknowledgement receipt which has been proved and exhibited as PW 9/3. In the cross-examination this R.W. has conceded "I did not specifically examine Amar Nath Jain from the point of view whether his mental faculities, brain or mind was working or not." The whole of the statement of this R.W. is based upon the presumption that as his patient was subjected to drugs he was not having a disposing mind. The witness has further stated, "there are grades of semi-consciousness and I cannot say in which case of Shri Amar Nath Jain would come. He was in a state of confusion. "It cannot be denied that a man who was aware of his early death must have been in a state of confusion but cannot be held to be not having a disposing mind. This doctor has further stated," that a person in a semi conscious state can sometimes see, talk and listen but at times he cannot see, listen and speak."

(24) A perusal of the statement of the RWs shows that the testator was suffering from Cancer and was in a state of agony but that cannot be stretched to hold that he had no disposing mind at the time of the execution of the Will. The attending circumstances and the conduct of the parties establishes that being a patient of Cancer and aware of his death he had opted to settle his property by making a valid Will. He was conscious and aware of his all relations and the properties owned by him and his family members and had tried to justify the settlement by granting shares to the deserving according to the limits as estimated by him. The settlement of the property was and has infact affected the interest of some of his legal heris but no Court could help them as he admittedly being fully owner of the self acquired property had a right to dispose of in any manner he liked irrespective of the interests of his adversely affected heirs. The circumstances of suspicion or doubt tried to be created or proved are not sufficient to hold that the Will had not been properly executed or could not be made a basis for the grant of relief prayed for under the provisions of the Act.

(25) The learned Single Judge after being of the opinion that the Will had not been properly executed had tried to justify his conclusion by a reference to the various statement of the witnesses and assigning 14 reasons in the judgment impugned in this appeal. None of the circumstances referred to by the learned Single Judge in itself can be held to be sufficient circumstances to arrive at the conclusion regarding non execution of the Will in accordance with the provisions of the law. The mere fact that the testator was suffering from Cancer of throat and food-pipe which became known in February, 1983 could not be made the basis for rejecting the

proper execution of the Will rather such circumstances give credence to the execution of the Will in August, 1983 at Ambala instead of during the intervening period from February, 1983 when the testator was admittedly at Bombay with the so called beneficiaries of the Will. Minor discrepancies in the statement of Shri B. N. Sehgal, Mr. Baljit Singh and Ms. Avtar Kaur are infact a guarantee of their true depositions and cannot be made a basis for holding that they had not seen or attested the Will. The testimony of Shri B. N. Sehgal, Baljit Singh and Avtar Kaur, PWs., has not been relied upon by the learned Single Judge merely on the basis of hypothesis and imaginative falsehood attributed to such witnesses which in fact do not exist. The defect noted in the endorsement of the Notary Public cannot in any way by held to be a proof of the non-execution of the Will or to be a suspicion requiring the rejection of the Will in *toto*. The statement of the relations of the respondents made after the death of the testator could not be made basis for coming to the conclusion as has been done by the learned Single Judge.

(26) In view of what has been discussed herein above and in the light of the judicial pronouncement, it is held that the learned Single Judge had not properly appreciated the evidence while deciding Issue No. 1. The finding on Issue No. 1, is therefore, reversed and it is held that Shri Amar Nath Jain had legally and validily executed the Will Ex. P.1 of his free Will and accord at a time when he had disposing mind.

(27) In view of our finding on Issue No. 1, no judgment is required to be delivered on Issue No. 2.

(28) Under the circumstances while accepting the appeal, the judgment of the learned Single Judge is set aside and letters of administration of the Will Ex. P1 is directed to be issued to the appellants to have effect throughout India and in the form prescribed in Schedule VII of the Act. The parties are left to bear their own costs.

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*S.C.K.*

*Before Hon'ble Chief Justice S. P. Kurdukar & N. K. Sodhi, J.*

UNITED INDIA INSURANCE COMPANY LTD.,—*Appellant.*

*versus*

NARINDER MOHAN ARYA,—*Respondent.*

*Letters Patent Appeal No. 344 of 1991*

March 16, 1994.

*Constitution of India, 1950—Art. 12 & 226—Insurance Company registered under Companies Act—Such company whether a State*