

PROVING OF WILLS IN SUSPICIOUS CIRCUMSTANCES BEFORE A PROBATE COURT

INTRODUCTION:

The Apex Court dealt with the issue of “suspicious circumstances” that could render the Will unenforceable, in a Special Leave Petition in the case of Kavita Kanwar v. Pamela Mehta & Ors. (R/Criminal Misc. Application No. 6178 of 2020). The Apex Court on 19th May, 2020 has pronounced a comprehensive judgment on issues pertaining to the execution of a Will, factors that may constitute suspicious circumstances to invalidate a Will and grant of probate in the matters of testamentary and succession under the Indian Succession Act, 1925.

FACTS:

The case in hand refers to the Will dated 20th May, 2006 of the testatrix Smt. Amarjeet Mamik (mother) who expired on 21st May, 2006, leaving behind two daughters and one son. The property in question came to the testatrix through the Will of the Father dated 14th February, 2001 who was the Original owner of the Assets. The father in his life time had gifted on 25th January, 2001, the ground floor of the property to Mrs. Kavita Kanwar whereas the first floor and other portions came to the testatrix. Mrs. Kavita Kanwar (The Appellant), the younger daughter of the testatrix was not only the major beneficiary but also the Executor of the Will in question. Ms. Pamela Mehta (Respondent No. 1) the elder and widowed daughter of the testatrix who was living with her unmarried daughter on the 1st Floor and also taking care of the testatrix who was suffering from cancer received no bequest but only conditions had been stated in the Will which purportedly aim at making a provision for her residence. Col. (Retd.) Prithviraj Mamik (Respondent No. 2) was bequeathed the ‘credit balance’ lying in the bank accounts to the tune of Rs. 5,77,389/- with a clarification that he shall not inherit any portion of the immovable assets of the testatrix.

The Appellant being the executor of the Will filed for probate under section 276 of the Indian Succession Act, 1925 and which application was challenged. The Trial Court framed the following issues for consideration:

1. Whether the Will dated 20.5.2003 of Smt. Amarjeet Mamik is proper and valid?
2. Whether the Will dated 20-5-2003 of Smt. Amarjeet Mamik is forged and fabricated?

3. Whether the Petitioner is entitled to the grant of Probate? Letter of Administration in respect of Will dated 20.5.2003 of Smt. Amarjeet Mamik
4. Relief.

The Trial Court in its Judgment dated 23rd November, 2009, declined the prayer for grant of probate of the Will in Question by taking into account the circumstances which appeared to be suspicious thereby dismissing the Petition on the ground that the Appellant failed to satisfy the conscience of the Court with regard to authenticity of the Will and *inter alia* cited the below mentioned reasons:

1. If the propounder of the Will plays an active role in the execution of the Will and receives substantial benefit under it, such a circumstance qualifies to be a suspicious circumstance.
2. Exclusion of the only son (Respondent No. 2) from the immovable property
3. The elder daughter Respondent No. 1 also did not get any substantial share although the relationship between the mother and daughter were not strained.
4. The Trial Court was not satisfied in the manner of writing and execution of Will.
5. The attesting Witnesses were unreliable.
6. There were vague recitals in the Will such as “other portions” of the building when the property consisted only of ground and first floor.

Being aggrieved by the decision of the Trial Court, the Appellant approached the High Court. The High Court in its Judgment also

observed that the Appellant was also actively involved in the execution of the Will and noticed material contradictions in the testimonies of the Appellant and her witness. Further, the High Court observed that although the Respondent No. 1 was residing just one floor above the testatrix and was maintaining good relations with her, yet, only the Appellant was called at the time of execution of the Will and no reason was provided for not calling the Respondent No. 1. Furthermore, the Respondent No. 1 was made aware of the execution of such a will only 3 years after the date of its execution. Secrecy, without informing heirs and without affording an explanation for such act was yet another suspicious circumstance recorded by the High Court. The High Court also observed major contradictions in the Testimonies of the witnesses.

In the circumstances, the High Court vide Judgment dated 27th June, 2014, concurred and upheld the view of the Trial Court. Being aggrieved by the Judgment of the High Court the Appellant preferred a Special Leave Petition before the Supreme Court.

ISSUE FOR CONSIDERATION BEFORE THE SUPREME COURT:

Whether the Trial Court and the High Court were justified in declining to grant probate in relation to the Will as prayed for.

SUBMISSIONS ON BEHALF OF THE APPELLANT:

The Counsel for the Appellant submitted that the execution of the Will as per section 63 and section 68 had been satisfied and other requirements as per the Indian Succession Act have been fulfilled and no cogent reason or circumstance had been established on record against the genuineness of the Will.

Reliance was placed on the judgment of *Joyce Primrose Prestor v. Miss Vera Marie Vas & Ors*¹ that

greater degree of presumption arises in the case of a "holograph" Will, which is applicable to the present case too, where the significant contents relating to the particulars of the person and bequests, in the opening and concluding passages, are duly written in her own hand by the testatrix. The Counsel further placed reliance on various judgments namely *Leela Rajagopal V. Kamala Menon Cocharan*², *Ved Mitra Verma v. Dharam Deo Verma*³ wherein it was held that mere presence of the beneficiary of a Will at the time of its execution; or exclusion of the natural heirs from any benefit; or acquaintance of the propounder with any witness are not of such suspicious circumstances as to create legitimate doubts on the genuineness of the Will. In view of the above the Counsel for Appellant submitted that the Will in question is the genuine last Will of the testatrix and the Appellant for.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

The Counsel for the Respondent No. 1 countered the submission that the Respondent No. 1 had accepted the claim of the Appellant for probate of the Will and submitted that the Respondent had all throughout disputed the very execution of the Will by her mother. Counsel relied on the judgment of *H. Venkatachala Iyengar v. B. N. Thimmajamma*⁴, *Rani Purnima Debi v. Kumar Khagendra Narayan Deb*⁵ and *Smt. Jaswant Kaur v. Smt. Amrit Kaur*⁶ wherein it was held that a probate Court is a Court of Conscience where the propounder has to satisfy the conscience of the Court with removal of suspicious circumstances. A probate Court can also investigate into the matter of a Will despite the fact that the signature found thereon has been proved or ingredients of Section 68 of the Succession Act have been complied with.

² (2014) 15 SCC 570

³ (2014) 15 SCC 578

⁴ AIR 1959 SC 443

⁵ (1962) 3 SCR 195

The Counsel for the Respondent No. 2 submitted that without any rhyme or reason, such unjustified and unreasonable distribution of assets is not likely to be made by the testatrix especially keeping in mind the fact that the testatrix did not have strained relations with any of her children. The Counsel relied on the Judgment of *Ram Piari v. Bhagwant*⁷ which held that disinheritance among heirs of equal degrees without providing any reason for exclusion of daughter also amounts to suspicious circumstance. Further, the Counsel questioned the manner of writing and executing the Will and submitted that when the main part of the Will was typed it is questionable why the inconsequential portion was handwritten and such lacunas in evidence of Appellant raises a possibility that the Will was neither prepared nor understood by the testatrix.

HELD:

The Apex Court on examining the facts and evidence led in the present case has observed that "thick clouds of suspicious circumstances are hovering over the Will in question which have not been cleared; rather every suspicious circumstance is confounded by another and the curious case of the alleged third page of the will effectively and completely demolished the case of the Appellant".

The Supreme Court before entering into the factual aspects took note of the legal provisions and principles governing the execution of a Will, its proof and its acceptance in a court of law by placing reliance on various judgments to carve out the legal position.

The Supreme Court took note of the suspicious circumstances in the present case and **stated that any of the suspicious factors taken into account by itself and standing alone cannot operate against the validity of the propounded Will. The**

relevant consideration would be about the quality and nature of each of these facts and then the cumulative effect and impact of all of them upon making of the Will with free agency of the testatrix. After taking into consideration all the factors and holistic view, if the conscience of the Court is not satisfied only then a will is disapproved by the Court which unfortunately is the case in the present matter in hand. Negating the Argument of the Counsel for the Appellant, the Court held that in *Joyce Primrose Prestor (Supra)* the entire Will was handwritten as against the fact that in the present case only the opening and concluding paragraphs were handwritten. The Supreme Court also recorded that there were glaring contradictions in oral evidence.

In view of the above and taking in account the cogent reasons to affirm the material findings of the Trial Court and the High Court, the Apex Court held that the testatrix executed and signed the Will in question as her Will not having understood the meaning, effect and purport of the contents. Hence, the Supreme Court upholding the findings and Judgment of the Trial Court and High Court dismissed the Appeal with costs to the Appellant.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.