**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**ORDINARY ORIGINAL CIVIL JURISDICTION**

**APPEAL NO.69 OF 2021**
**IN**
**TESTAMENTARY SUIT NO.67 OF 1997**
**IN**
**TESTAMENTARY PETITION NO.360 OF 1995**

Ashim Chatterjee
and another .....Appellants
Versus
Shanta Ashok Tolat .....Respondent

**.....**
**WITH**
**INTERIM APPLICATION NO.2251 OF 2020**
**IN**
**APPEAL NO.69 OF 2021**
**-----**

Mr. S.U. Kamdar, Senior Advocate a/w. V.Y. Sanglikar, Archana Gaware, for the Appellants.
Mr. Virendra J. Tulzapurkar, Senior Advocate a/w. Ms. Shreya Jha, Ms. Mansi Shah, Ms. Bhavana Dubepatil, Mihir Boghani i/b. M/s. Pravin Mehta and Mithi & Co. for the Respondent.
Mr. Baravkar, Court Receiver, High Court, is present.
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CORAM : SARANG V. KOTWAL &
RANJITSINHA RAJA BHONSALE, JJ.

RESERVED ON : 17th SEPTEMBER, 2026
PRONOUNCED ON : 07th OCTOBER, 2026

**JUDGMENT : [PER SARANG V. KOTWAL, J.]**

1. The Appellants have challenged the judgment and order passed by a learned Single Judge of this Court on 13.2.2020 in Testamentary Suit No.67/1997 in Testamentary Petition No.360/1995. By the impugned order, the probate of the last will and testament of Tarapada Chatterjee was granted.



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**2.** Heard Mr. S.U. Kamdar, learned Senior Counsel for the Appellants and Mr. Virendra Tulzapurkar, learned Senior Counsel for the Respondent.

**3.** The Appellants were the original Defendants. They are the legal heirs of the original Defendant Avijit Chatterjee. Testamentary Petition was filed by Ms. Shanta Chatterjee alias Shanta Ashok Tolat, who is the Respondent in the present Appeal. For convenience, the parties are referred to by their status in Testamentary Suit No.67/1997. Hence, Ms.Shanta Chatterjee alias Shanta Ashok Tolat is referred to as the Plaintiff, Ashim Chatterjee and Anouk Chatterjee are referred to as the Defendants. The original Defendant Avijit Chatterjee was the real brother of the Plaintiff. He passed away during the pendency of the Suit.

**4.** The Petition was affirmed on 30.6.1995 by the Plaintiff. It was mentioned that Tarapada Chatterjee died at Bombay Hospital on 24.8.1990. At that time, he had a fixed place of residence at 32A, Jaldarshan, Nepean Sea Road, Bombay – 400 036. He had left a writing which was his last Will and Testament dated 21.3.1989. A copy of the same was annexed at Exhibit-A to the Petition. It was executed on 21.3.1989. The Plaintiff was the sole executrix named in the Will. Exhibit-B to the Petition mentioned all the properties and credits which



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the deceased had possessed or was entitled to at the time of his death which are likely to come to his hands was bequeathed to the Plaintiff. The Plaintiff was not aware of the necessity to apply for Probate and it was prayed that the delay in filing the Probate be condoned. The Petition further mentions the estimated value of the assets. It was mentioned that Tarapada's wife Ruby had predeceased him and he was survived by the Plaintiff who was the daughter and the original Defendant who was the son. This, in short, were the main averments in the Petition.

**5.** The original Defendant Avijit Chatterjee filed a caveat. He filed an affidavit in support of his caveat. Some important averments in that affidavit are as follows :

The citation of the Petition for grant of Probate of the Will was belatedly served on his Advocate on 23.7.1997 and that he was filing the affidavit to oppose grant of Probate. It was further mentioned that the Petitioner (the Plaintiff) was his sister and Shri Tarapada Chatterjee was his father. He had half share in the estate left behind by his father. His father had left behind himself and his sister as the only heirs and legal representatives. Their mother had predeceased their father. He had further stated that their father died intestate and never



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made any Will. The document which was tried to be passed off as a Will did not bear his father's signature. He was familiar with his father's signature. The Plaintiff had never mentioned existence of the Will of their father. Even when he had filed a Suit being Suit No.852/1995 in the High Court and had obtained an ad-interim order appointing Court Receiver on 5.4.1995, after about two weeks of notice there was no mention of any Will; though the Plaintiff was represented through an Advocate. His father had died in August, 1990 and even after that till June, 1995, the Plaintiff had never mentioned about existence of the Will. On these grounds, he opposed grant of Probate. He further mentioned that he reserved his right to file a detailed reply dealing with the properties left behind by his father, at a later stage.

**6.** A Single Judge of this Court vide the order dated 6.1.2011 framed the following issues :

1] Whether the last Will and Testament of the deceased Tarapada Chatterjee was validly executed; and

2] What relief, if any, the Plaintiff was entitled to ?.

**7.** The Plaintiff, in support of her case, examined four witnesses. Those witnesses and the relevant extract from their depositions are as follows :



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1) PW-1 was Sandeep Dave. He was one of the two attesting witnesses on the Will. He filed an affidavit supporting the case of the Plaintiff. He has stated that he was working as an Advocate / Articled Clerk with M/s. Kanga & Company. On 21.3.1989, Shri Sandeep Junnarkar, the then Partner with their Firm, requested him to visit the residence of late Mr. Tarapada Chatterjee at Jaldarshan, Nepean Sea Road, Mumbai to attest his Will. He visited the residence of the deceased with the Plaintiff, who introduced him to one Dr. N.M. Kriplani. He further mentioned in his affidavit that in presence of himself and Dr.Kriplani, the deceased set and subscribed his name at the foot of his Will. Thereafter, at the request of the deceased and in his presence and in the presence of Dr. N.M. Kriplani, he (Sandeep Dave) set and subscribed his name and signature at the foot of the Will. He even saw Dr.N.M. Kriplani subscribing his name and signature at the same time. After that he left the house of the deceased and returned to his office.

During the examination-in-chief on behalf of the Plaintiff, he identified the signatures on the Will. He identified his own signature, the signature of Dr.Kriplani and the signature of Mr. Tarapada Chatterjee.

He was cross-examined on behalf of the Defendant. He deposed that his affidavit was drafted by Mr.N.R. Modi and it was



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signed by him. He had made suggestions or changes in the draft given to him by Mr.N.R. Modi. He was working with M/s. Kanga & Company between 1988 till 1992. He did not know whether the Plaintiff was a client of their Firm. He did not know her personally. He had not met her even casually. Mr. Junnarkar introduced him to the Plaintiff and instructed him to accompany her to Jaldarshan. He did not know whether Mr.Junnarkar had drafted the Will. Mr.Junnarkar introduced the Plaintiff as his friend. He (Sandeep Dave) did not know Dr. Kriplani. He had not met him before. He had not met Shri.Tarapada Chatterjee prior to 21.3.1989. He was introduced to Shri Tarapada Chatterjee by the Plaintiff. He was son of Smt. Nayana Dave who was an Advocate. He did not clearly remember whether his mother had mentioned that she was representing the Plaintiff in the Suit filed by the Defendant.

2) Hemant Vishnu Prabhu was the second witness for the Plaintiff. He was the Manager of Jaldarshan Co-operative Housing Society Limited from 2001 to 2006 and from 2009 till the date of deposition i.e. till 17th December, 2011. The Plaintiff by her letter dated 16.12.2011 made an application to the society to produce the original nomination form, which her father had filed with the society. In response to the said letter, Shri Prabhu (witness No.2) produced the



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original nomination form which was registered in the records of the society on 27.2.1989. His examination-in-chief was conducted on behalf of the Plaintiff. The letter of the Plaintiff and the nomination form were produced. The letter of the Plaintiff and the nomination dated 30.1.1989 made by Tarapada Chatterjee were produced on record and marked 'X' and 'X-1' respectively.

In the cross-examination, he stated that the Secretary of the Society verbally authorized him to produce the documents. It was practice of his society to produce the documents of the society in the Court of law as Manager of the society. He had submitted a letter of resignation to the society but it was not accepted till the time of his deposition. He knew the Plaintiff. He further stated that the representative of the Court Receiver had visited the flat on 16.7.2010 and had obtained his signature on the site report. His affidavit of evidence was prepared by Mr. Nilesh Mody but he had read the affidavit and after that he had signed it.

3) Jatindar Kumar Sethi was the third witness examined by the Plaintiff. He was a resident of Jaldarshan building and was a member of the Managing Committee from 1975 to 2009. He was a Treasurer and then Chairman of the society. He was acquainted with the deceased, his



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wife and the Plaintiff. He was well acquainted with the family. Smt. Ruby Chatterjee wife of Shri Tarapada Chatterjee had died in the year 1983. After her demise, Shri Tarapada Chatterjee and the Plaintiff were the only persons residing in the said flat bearing No.32A. The Plaintiff used to take good care of the deceased Tarapada. He had never seen the Defendant Avijit Chatterjee until 1992 when the Plaintiff got married to Shri Ashok Tolat on 1.5.1992. He and other members were not even aware that the deceased Shri Tarapada Chatterjee had a son named Avijit Chatterjee until he saw the Defendant Avijit Chatterjee for the first time in 1992. In December, 1988 their society had issued a circular to all the Members to re-file the nomination in the new form. On 30.1.1989, the deceased Tarapada contacted him and informed him of his intention to file a fresh nomination form. He gave triplicate forms dated 30.1.1989. They were signed by the deceased in his presence. He was in a position to identify Tarapada's signature. He had signed the nomination form in presence of this witness. The nominations were recorded in the minutes of the meeting held on 26.2.1989.

In the cross-examination, he has stated that there were 125 flats in the complex and there were 32 flats in Wing No.1 where he stayed. He could not state who was staying in Flat No.32A at the time of



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his deposition. He specifically stated in answer to a question that in 1989-90 Shri Tarapada was in a fairly good condition that he could walk. He was in a reasonable condition but he did not remember the exact health condition. The hand of the deceased was slightly shaky in 1989-90. He came to know later on that the deceased had Parkinson disease. He identified the signature of the deceased at Exhibit-P and according to him the signature was of a person in fairly good health.

4) The next witness examined by the Plaintiff was Dilip Pralhad Ahiwale. He was examined as a handwriting expert. The affidavit mentions that he had obtained training of forensic document examination at CID, Crime, Maharashtra State, Pune. He had examined more than three lakh documents and appeared as an expert witness in more than one thousand cases on behalf of the Government of Maharashtra in various Courts. In the year 2011, he was approached by the Plaintiff through her Advocate with a request to examine certain documents and give his opinion as handwriting expert on the signature of her late father Tarapada Chatterjee purporting on the Will dated 21.3.1989 and to submit a report to that effect and to given evidence on the basis of his report. The Plaintiff provided him with the documents described in his report. He visited Jaldarshan Co-operative Housing



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Society and took inspection of the original documents in the society records and took photographs of the standard signatures. Under the letter dated 15.4.2013, the Plaintiff's Solicitors sent him certified true copy of the Will dated 21.3.1989 for his opinion regarding signature of late Tarapada Chatterjee. Since the copy of the Will was a poor photocopy, he requested the Solicitors to provide good quality photo-copies or else request the Prothonotary & Senior Master of this Court to permit him as an expert to take photographs of signature from the original Will before the concerned authority. After following the process, on 26.2.2014, he along with an Advocate from the Solicitor Firm of M/s Rustamji & Ginwala attended the Testamentary Department and took digital photographs of the questioned signature of late Tarapada Chatterjee. He examined the signatures in question and made a report on 25.5.2014. The report also mentioned the manner in which he carried the preliminary examination and final examination of the questioned signature and comparison with standard signature. The report is produced on record at Exhibit-P. The report was in favour of the Plaintiff showing that the signature on the Will matched with the signatures examined by him on the documents given to him. The standard documents in the nature of signature of return of Wealth Taxes, income tax documents, nomination form and Member's signature of Automobile



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Association of Mumbai the documents at N-1 to N-6 which matched with the 'Q-1' that was the questioned document on the signature of the Will.

He was cross-examined on behalf of the Defendants on various aspects including his credentials as an expert witness.

**8.** The evidence on behalf of the Defendant :-

The Caveator – Defendant Avijit Chatterjee examined himself as the first witness. He mentioned in his affidavit submitted in lieu of examination-in-chief that the Probate Petition was filed on 30.6.1995 as a counter to his suit for administration of their father's estate. He had filed Suit No.852/1995 in February, 1995 and had moved for urgent ad-interim relief for appointing Court Receiver, injunction etc.. The Plaintiff at that time did not mention any Will of their father when she opposed his application for ad-interim reliefs. He stated that his father died intestate and never made a Will. The document relied on by the Plaintiff was not their father's Will nor does it bear their father's signature. The document was set up only to counter his suit, that too after 5.4.1995 when the Court appointed the Court Receiver for the said flat. It was *ex facie* a bogus document. The Plaintiff was the sole beneficiary under that document. His name was not even mentioned as



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if the Plaintiff was the only child. The Plaintiff was spreading canards about his strained relationship with their father deliberately to fabricate the alleged Will. He had been staying away from Mumbai because of his job. He stayed at different places like Kolkata, Chennai and Hyderabad. His relationship with his father was extremely cordial. Their father and the Plaintiff had stayed with him in Hyderabad and Chennai. Their father died in August, 1990 in Mumbai when the Plaintiff was abroad. He cremated his father and performed the obsequial rites at Chennai. He had performed the tenth day rites of his mother in Mumbai. In January, 1992 he had spoken to the Plaintiff about the division of the estate of their father. In that conversation, the Plaintiff did not mention any Will. She did not mention any Will till she filed and served the Probate Petition in 1996-97. In May, 1992 the Plaintiff got married. He performed 'Kanyadaan'. His father was ailing from 1988 onwards. He was suffering from the said disease from a long time. He had difficulty in signing. His father had told him several times that the Plaintiff used to put his signature. The signature on the Will is not of their father but that of the Plaintiff. He produced the letters written by the Plaintiff. His father had spent more time with his family than with the Plaintiff in Mumbai. The Plaintiff had emotionally blackmailed their father. The Defendant then made reference to the Plaintiff's close friendship with



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one Sushil Chander. He died on 17.2.1991. He was residing in their flat periodically. He then referred to the affidavit dated 16.6.2005 made by Shri Sushil Chander's wife Smt. Leela Chander claiming that the Plaintiff had coerced Shri Sushil Chander to sign a Will. In January 1989, their father had frantically called him in Chennai and told him that he wanted to stay with them in Chennai as he was scared of the Plaintiff. He produced the letters dated 11.11.1983, 4.9.1983, 2.4.1993, 14.1.1999 and 2.9.1982 written by the Plaintiff to him and also a letter dated 1.9.1983 written by his father to him. He further stated that his wife Aruna was a witness to this situation of their father. Aruna died on 29.7.2011. She had made some notes regarding those instances in writing. He produced those notes. According to him, their father had told him that he wanted to divide his estate in three parts – one to the Plaintiff, one to the Defendant and one to the grand-children. The Will produced by the Plaintiff is not their father's Will.

DW-1 Avijit Chatterjee was cross-examined on behalf of the Plaintiff. In the cross-examination, he stated that between 1965-69, he was a student at a college in Delhi. In 1970 he started working from Thane. After that, he was transferred to Chennai around 1974 till 1979 and then from 1979 he was transferred to Gomia in Bihar till 1984.



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From there he was transferred to Hyderabad till 1987. After that till 1990 he was in Chennai. He got married in 1970 in Mumbai. Interestingly, he stated that his sister (Plaintiff) and their parents were aware that his marriage was impending. He further deposed that they were not present at the ceremony but were present in spirit. He explained that they were not physically present at the marriage ceremony. He could not comment whether they were aware of the date or place of his marriage. According to him, his father had discussed purchase of the flat from a builder called M/s. Advani or his agent. He deposed that he got information of his mother's death several days after she passed away as the Plaintiff could not pass on the communication, because the communications 35 years ago were poor. According to him, his father was seriously not well for about 3 to 4 years prior to his death. When his father died, he was in Madras.

**9.** The defendant's son Ashim Chatterjee was examined as defense witness No.2. He stated in his affidavit in lieu of examination-in-chief that he was close to his grandfather Tarapada Chatterjee. His grandfather had stayed with them in Hyderabad in 1985 and in Chennai in 1988. He stayed for around one and half months to two months each time on those occasions. Thereafter his health started failing. He



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remembered that his grandfather's hands used to shake and he walked slowly. In Madras, in 1988, his tremors were quite severe and he had problems even holding a cup and saucer. He also identified his mother's handwriting on her notes. He had seen his grandfather making signature in Madras Club in 1988. It was a shaky signature. His grandfather used to make phone calls to his father even after 1988 and the calls used to last for about an hour. He was in Madras when his grandfather passed away in 1990. The Plaintiff was abroad at the time when his grandfather passed away. His father performed the cremation in Mumbai and the tenth day rituals were performed by his father in Madras.

In the cross-examination, he stated that he was not aware of the status of his grandfather's membership in any club. He did not recollect who informed his father about his grandfather's death. The Plaintiff did not attend the final rituals.

**10.** The next witness examined on behalf of the Defendant was Hiral Mehta. In her affidavit of evidence, she has deposed that she was requested by the Defendant to examine the signature on a purported Will dated 21.3.1989. She was permitted to examine the document in this Court on 23.5.2017. She took photographs. She was given some



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documents produced by the Plaintiff for comparison. She examined those documents and gave opinion vide her letter dated 26.5.2017. The report was produced by her. According to the report, the document purported to be the Will dated 21.3.1989 was not written by the writer of the comparative signatures marked C-1 to C-12 which were purported to be that of Tarapada Chatterjee.

She was cross-examined on behalf of the Plaintiff. According to her, she had deposed in 80 to 100 cases as an expert witness before different Courts i.e. Sessions Court, Metropolitan Courts, Courts at Kalyan, Nashik, Surat Etc..

**11.** DW-4 was Vijaysudha Talwar. She was the sister of Aruna Chatterjee. Aruna was the wife of the original Defendant. She had passed away on 29.7.2011. In her affidavit of evidence, she deposed that she was very close to Aruna who used to confide in her regarding the family. According to her, Shri Tarapada Chatterjee was fond of the Defendant's family and had visited them in Hyderabad and Madras. He enjoyed being with his grand-children Ashim and Anouk. Aruna had told this witness that her father-in-law was extremely stressed and under great mental tension regarding the Plaintiff. Aruna had made notes in her own handwriting. She identified her handwriting on those notes.



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She then deposed about Aruna telling her regarding Susheel Chander.

She was also cross-examined by the Plaintiff's Advocate. In her cross-examination she deposed that whenever the Plaintiff was required to go abroad, her father was staying with the Defendant wherever he was posted.

**OBSERVATIONS OF THE LEARNED SINGLE JUDGE** :

**12.** After considering the material on record and after hearing the learned counsel for the parties, the learned Single Judge passed the impugned judgment and order. In his discussion, the learned Judge observed that it could not be disputed that the Plaintiff was the only person who was available at hand for assisting the testator, as the Plaintiff was his daughter. She was unmarried for a large part of the time and a bequest by a father to his only daughter who had lived with him for all these long years cannot be termed as suspicious in the face of a few allegations. There was little or no evidence that the son lived with his parents or vice versa. There was no evidence to suggest that he looked after his parents for a substantial long time. It was not in dispute that the parents did not attend his marriage and were reportedly unaware of his marriage. There was no evidence that the parents visited him though he stayed in close proximity to his parents house. He did not ask them to stay with him in Thane.



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**13.** The learned Judge discussed the evidence of PW-1 Sandeep Dave and observed that merely because his mother was an Advocate representing the Plaintiff, it cannot lead to the conclusion that he was an interested witness.

**14.** In the affidavit in support of the caveat and in the affidavit of evidence of the Defendant, there were no allegations of forgery of the Will at all. According to the learned Judge, the allegations of surreptitious transfer of the flat and properties would indicate exercise of undue influence and then the burden shifted on the Defendant. The correspondence initiated by the Defendant did not contain any allegations of fraud or forgery or exercise of undue influence. The learned Judge held that as far as the legal requirements were concerned, the execution of the Will was proved and there was no reason to doubt the veracity of the deposition by Sandeep Dave. The learned Judge observed that the Defendant ought to have cross-examined PW-1 Sandeep Dave on mental faculties of the testator when the other attesting witness Dr. Kriplani was not being examined. That omission to cross-examine on that aspect was fatal to the Defendant's case. The Defendant had not proved that the Will was not validly executed. The learned Judge observed that the Defendant did not summon Dr. Kriplani



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at the appropriate time, if Dr. Kriplani was so aware of the state of health of the deceased.

**15.** The learned Judge observed that the Defendant's wife Aruna had passed away on 29.7.2011 and that there was no explanation as to why she had not deposed in the matter and had not given evidence as to her notes. From 1997, the Defendant was well aware of the impending of the trial and it was expected that the Defendant's wife could have deposed rather than the Defendant's son subsequently attempting to prove her writings. The learned Judge rejected the contention of the Defendant that the testator was seriously ill, was consulting neurophysicians and hence was not of sound and disposing mind and was therefore incapable of executing a Will. The letters at Exhibit D1/3, D1/6, D1/7, D1/8, D1/9 and D1/11 indicated that it was the Plaintiff who was keeping the Defendant informed of the developments. The learned Judge observed that since the Plaintiff led evidence of the attesting witness, the execution of the Will has been proved beyond all doubts.

**16.** The learned Judge then referred to the contention of the Defendant that the Will was not disclosed even after the suit was filed by the Defendant. The learned Judge observed that it did seem a little odd



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that the Will at that point was not disclosed; but, according to the learned Judge, the delay in disclosing the will could not be fatal to the Plaintiff's case.

**17.** The learned Judge observed that the writings of Aruna i.e. wife of the Defendant were not proved. There was nothing to indicate that it was in her handwriting when they were made. The contents of those writing did not refer to the facts that were relevant.

**18.** The learned Judge observed that it was for the Defendant to establish that the deceased was not of sound and disposing mind. It was open to the Defendant to lead evidence of the doctors who had treated the deceased from time to time. The Defendant could not establish that the consultation with the neurophysician was occasioned due to the deceased not being fully possessed of his mental faculties to such an extent that he was incapable of executing a Will. In conclusion, the learned Judge observed that the Court's conscience was satisfied to hold that the Will was valid. The defendant had failed to establish that the will was not validly executed and that the Plaintiff had established that the Will was validly executed by the deceased Testator. The caveat was dismissed. The Probate of the last Will and testament of Tarapada Chatterjee was granted. The issues which were framed were answered



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accordingly.

**SUBMISSIONS OF SHRI KAMDAR LEARNED SENIOR COUNSEL FOR THE APPELLANTS (DEFENDANTS) :**

**19.** Shri Kamdar appearing for the Appellants made various submissions and in support of his submissions referred to a few judgments. Those judgments would be discussed at the appropriate place in this judgment. Shri Kamdar submitted that the basic requirements for grant of a probate as per Section 68 of the Indian Evidence Act, 1872 and Section 63 of the Indian Succession Act, 1925, was the proof of sound and disposing mind of the testator. That onus was on the propounder of the Will. However, mere statutory compliance of these provisions were never sufficient to grant Probate. The order granting probate is a judgment in rem. It is not a mere adversarial litigation between the two parties. Shri Kamdar submitted that there are certain suspicious circumstances in this case and, therefore, those circumstances lead to the conclusion that the Will was not validly executed. Those circumstances are as follows :

i. Shaky signature of the testator.

ii. Total disinheritance of the son (original Defendant). His existence is not even mentioned in the Will.

iii. The Plaintiff who was the propounder of the Will taking lead in



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making of the Will and getting the entire benefit.

iv. No evidence of soundness of mind.

v. The testator was suffering from Parkinson disease. He was hospitalized for 45 days and was under treatment by the neurophysicians.

vi. The Plaintiff did not examine herself.

**20.** Shri Kamdar submitted that the only attesting witness examined for proving the signature on the Will was Advocate Sandeep Dave whose mother had appeared for the Plaintiff in the partition Suit No.852/1995 filed by the Defendant.

**21.** Shri Kamdar submitted that the onus of proving the Will is on the propounder of the Will and this burden was not discharged. In probate proceedings, the specific pleadings were not necessary and that the affidavit in support of the caveat in this case had sufficient pleadings. It was not necessary to take even the plea of forgery, if the signature is shaky / improper. If suspicious circumstances existed, there was burden on the propounder to dispel the circumstances by leading cogent evidence. Disinheritance of the natural heir must be explained since in this case existence of the Will was not pointed at the first available opportunity, when the Court Receiver was appointed.



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**SUBMISSIONS OF SHRI TULZAPURKAR LEARNED SENIOR COUNSEL FOR THE RESPONDENT (PLAINTIFF) :**

**22.** Shri Tulzapurkar submitted that the caveator had taken the only ground regarding the valid execution of the Will. That was the only issue framed and, therefore, the Plaintiff was only required to prove the valid execution. The Plaintiff was required to prove that the Will was executed by the Testator and was attested by two attesting witnesses and that he was in a sound and disposing state of mind. All the other contentions that the Will was unnatural, it was brought about by undue influence and that there were other suspicious circumstances were required to be proved by evidence of the caveator / original Defendant. The arguments are required to be confined to the pleadings and the enquiry that the Court makes, is for answering the issues for the Court on the basis of the pleadings. The Appellant – Defendant cannot go beyond the pleadings.

**23.** Shri Tulzapurkar then referred to the evidence led by the Plaintiff to support his contention on the merits of the matter. He submitted that the circumstances which are termed as suspicious by the Defendant were not suspicious at all. The exclusion of the Defendant was not a suspicious circumstance. The testator was suffering from Parkinson disease is not a suspicious circumstance. The Will was not



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produced earlier is also not a suspicious circumstance. The examination-in-chief of the Plaintiff was not compulsory; and her non-examination is also not a suspicious circumstance.

**24.** The Plaintiff had taken care of the deceased for a number of years. The original Defendant never stayed with him even in his illness.

**25.** The evidence of the attesting witness would prevail over the contrary evidence of the expert witness examined on behalf of the Defendant in respect of the signature of Shri Tarapada Chatterjee on the Will. In any case, even the Plaintiff has examined PW-4 Dilip Ahiwale who has supported the Plaintiff's case. If the execution was proved, then late production of the Will cannot be termed as a suspicious circumstance. The letters produced by the Defendant himself showed the strained relationship between the testator and the Defendant.

**26.** Based on these evidence and the submissions, following points arise for our determination. They are as follows :

i. Whether the Will was validly executed ?
ii. Whether in the absence of specific plea in the affidavit in support of the caveat, this Court can test the suspicious circumstances ?
iii. Whether there were suspicious circumstances surrounding the Will which required rejection of the Probate ?
iv. Whether there is any reason to interfere with the impugned judgment and order ?
v. What order ?



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**REASONS AND CONCLUSION** :

**Necessity of specific pleadings** :

**27.** Shri Kamdar relied on the suspicious circumstances surrounding the Will. As we have referred to hereinabove, Shri Tulzapurkar, the learned Senior Counsel submitted that the Respondent could not have enlarged the scope of pleadings and consideration of evidence in the absence of the specific pleadings. According to him, the pleadings in support of the caveat were restricted to disputing the testator's signature on the Will and the circumstances of not mentioning existence of the Will by the Plaintiff at the earliest opportunity. Apart from that, there were no pleadings in the affidavit in support of the caveat and, therefore, there was no question of considering the evidence led by the Defendant in respect of the suspicious circumstances alleged by the learned Senior Counsel Shri Kamdar.

**28.** In support of this submission, Shri Tulzapurkar relied on the observations of a learned Single Judge Bench of the High Court of Delhi in the case of **Budh Singh Vs. Raghubir Singh and others**[1]**.** Paragraph-21 of the said judgment reads thus :

1 2015 SCC OnLine Del 14528



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> "21. I am of the view that though the onus to prove the Will may be on the propounder thereof but a challenger to the Will is required to, in the pleadings, specifically plead the grounds on which a challenge is sought to be made to the Will so as to let the propounder of the Will know the grounds on which the Will is contested, to be in a position to lead evidence to dispel such grounds. A challenger to the Will cannot be allowed to, without taking any pleading or any specific grounds of challenge, spring surprises and at the stage of arguments contend that this has not been proved or that has not been proved."

**29.** Shri Tulzapurkar submitted that unless the allegations are pleaded in the caveat, the Plaintiff need not respond to those allegations. The burden is on the Defendant to plead and prove those allegations. Once the Testamentary Petition is converted into a Suit, the law of pleadings apply.

**30.** Shri Kamdar countered these submissions by relying on the judgment of the Hon'ble Supreme Court in the case of **Kavita Kanwar Vs. Pamela Mehta and others**[2]**.** Paragraph-25.1 of the said judgment reads thus:

> "25.1. The objection on behalf of the Appellant does not stand in conformity with the law declared in H. Venkatachala Iyengar Vs. B.N. Thimmajamma and others, AIR 1959 SC 443 and Rani Purnima Debi and others Vs. Kumar Khagendra Narayan Dev and others AIR 1962 SC 567 and

2 AIR 2020 SC 2614



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> scores of other decisions where this Court has consistently held that the probate proceeding is ultimately a matter of conscience of the Court; and irrespective of whether any plea in opposition is taken or not, a propounder of Will is required to satisfy the conscience of the Court with removal of all the suspicious circumstances. By the very nature and consequence of this proceeding, filing or non-filing of written statement or objections by any party pales into insignificance and is of no effect. The probate proceeding is not merely inter-partes proceeding but leads to judgment in rem and, therefore, even when no one contests, it does not ipso facto lead to grant of probate. The probate is granted only on proof of Will as also on removal of suspicious circumstances, if there be any, to the final satisfaction of the conscience of the Court."

**31.** Thus from the observations of the Hon'ble Supreme Court, it is clear that irrespective of whether any plea in opposition is taken or not, the Plaintiff in this case who was the propounder of the Will was required to satisfy the conscience of the Court with removal of suspicion surrounding the execution of the Will. Therefore, in that behalf we agree with Shri Kamdar, the learned Senior counsel for the Defendants that it was for the Plaintiff to satisfy the conscience of the Court by removing the suspicion regarding the circumstances pointed out on behalf of the Defendant.



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Exclusion of the Original Defendant from the Will :

**32.** According to Shri Kamdar, one important suspicious circumstance was the exclusion of the original Defendant, who was the son of the Testator. There is not even a reference to his name in the Will. This was quite unnatural. In support of this contention, he relied on the judgment of the Hon'ble Supreme Court in the case of **Ram Piari Vs. Bhagwant and others**[3]**.** In paragraph-4 of the said judgment it was observed that even though it cannot be said to be hard and fast rule, yet when disinheritance is amongst heirs of equal degree and no reason for exclusion is disclosed; then the standard of scrutiny is not the same and if the Courts failed to be alive to it as was clear from their orders then their orders cannot be said to be beyond review.

The same view was approved by the Hon'ble Supreme Court in the case of **Gurdial Singh (Dead) Through Lr. Vs. Jagir Kaur (Dead) and another**[4]**.**

**33.** In answer to this submission, Shri Tulzapurkar relied on the observations of the Hon'ble Supreme Court in the case of **Uma Devi Nambiar and others Vs. T.C. Sidhan (Dead)**[5]**.** Paragraph-16 thereof reads thus:

3 AIR 1990 SC 1742
4 AIR Online 2025 SC 592
5 (2004) 2 SCC 321



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"16. A Will is executed to alter the ordinary mode of succession and by the very nature of things it is bound to result in earlier reducing or depriving the share of natural heirs. If a person intends his property to pass to his natural heirs, there is no necessity at all of executing a Will. It is true that a propounder of the Will has to remove all suspicious circumstances. Suspicion means doubt, conjecture or mistrust. But the fact that natural heirs have either been excluded or a lesser share has been given to them, by itself without anything more, cannot be held to be a suspicious circumstance especially in a case where the bequest has been made in favour of an offspring. As held in PPK Gopalan Nambiar v. PPK Balakrishnan Nambiar and Ors. : [1995] 2 SCR 585 it is the duty of the propounder of the Will to remove all the suspected features, but there must be real, germane and valid suspicious features and not fantasy of the doubting mind. It has been held that if the propounder succeeds in removing the suspicious circumstances, the Court has to give effect to the Will, even if the Will might be unnatural in the sense that it has cut off wholly or in part near relations (See Puspavati and Ors. v. Chandraja Kadamba and Ors. : AIR 1972 SC 2492. In Rabindra Nath Mukherjee and Anr. v. Panchanan Banerjee (dead) by LRs. and Ors. : (1995) 4 SCC 459), it was observed that the circumstance of deprivation of natural heirs should not raise any suspicion because the whole idea behind execution of the Will is to interfere with the normal line of succession and so, natural heirs would be debarred in every case of Will. Of



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course, it may be that in some cases they are fully debarred and in some cases partly."

**34.** Thus, from the above discussion it is clear that if the natural heirs have either been excluded or a lesser share has been given to them, that by itself without anything more, cannot be held to be a suspicious circumstances specially in a case where the bequest has been made in favour of an offspring.

**The Plaintiff being the major beneficiary** :

**35.** The next suspicious circumstance raised by Shri Kamdar was the fact that the Plaintiff was the major or the only beneficiary who had taken major steps and prominent part in preparing the Will. In support of this proposition that it is a suspicious circumstance, Shri Kamdar relied on the observations of the Hon'ble Supreme Court in the case of **Kavita Kanwar Vs. Pamela Mehta** (supra). Paragraphs-27 & 28 in that context read thus:

"27. As noticed, there has not been any question on the testamentary capacity and soundness of mind of the testatrix; and her handwriting as also signatures on the Will in question are also beyond controversy. However, the Trial Court and the High Court have concurrently found some such suspicious circumstances which are of material bearing and which have remained unexplained. Put in a nutshell, the unexplained suspicious circumstances so found are: (a) that



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Appellant, the major beneficiary, played an active role in execution of the Will in question and attempted to conceal this fact before the Court; (b) that there had not been any plausible reason for non-inclusion of the only son and other daughter of the testatrix in the process of execution of the Will and for excluding them from the major part of the estate in question; (c) that there was no clarity about the construction supposed to be carried out by the Appellant; (d) that the manner of writing and execution of the Will with technical and legal words was highly doubtful; and (e) that the attesting witnesses were unreliable and there were contradictions in the statements of the witnesses. Because of these major circumstances coupled with various supplemental factors, the Trial Court and the High Court felt dissatisfied on the root question as to whether the testatrix duly executed the Will in question after understanding its contents.

28. There is no doubt that any of the factors taken into account by the Trial Court and the High Court, by itself and standing alone, cannot operate against the validity of the propounded Will. That is to say that, the Will in question cannot be viewed with suspicion only because the Appellant had played an active role in execution thereof though she is the major beneficiary; or only because the Respondents were not included in the process of execution of the Will; or only because of unequal distribution of assets; or only because there is want of clarity about the construction to be carried out by the Appellant; or only because one of the attesting witnesses being acquaintance of the Appellant; or only because there is no evidence as to who drafted the printed



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> part of the Will and the note for writing the opening and concluding passages by the testatrix in her own hand; or only because there is some discrepancy in the oral evidence led by the Appellant; or only because of any other factor taken into account by the Courts or relied upon by the Respondents. The relevant consideration would be about the quality and nature of each of these factors and then, the cumulative effect and impact of all of them upon making of the Will with free agency of the testatrix. In other words, an individual factor may not be decisive but, if after taking all the factors together, conscience of the Court is not satisfied that the Will in question truly represents the last wish and propositions of the testator, the Will cannot get the approval of the Court; and, other way round, if on a holistic view of the matter, the Court feels satisfied that the document propounded as Will indeed signifies the last free wish and desire of the testator and is duly executed in accordance with law, the Will shall not be disapproved merely for one doubtful circumstance here or another factor there."

From the above discussion, the Hon'ble Supreme Court considered certain suspicious circumstances surrounding the Will which were canvassed before us in the present case by Shri Kamdar. The Hon'ble Supreme Court observed that the relevant consideration would be about the quality and nature of each of those circumstances and the cumulative effect and impact of all of them upon making of the Will with free agency of the testator. An individual factor may not be decisive but,



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after taking all the factors together, the Courts should decide whether the Will in question truly represents the last wish and propositions of the testator.

**Signature on the Will** :

**36.** Shri Kamdar raised another suspicious circumstance regarding the signature of the testator on the Will. He relied on the evidence of DW-3 who was examined as a handwriting expert. That report indicates that the signature on the Will may not be that of the testator when it is compared with his signatures on his earlier documents. As against this submission, Shri Tulzapurkar submitted that there was competing evidence of the expert examined on behalf of the Plaintiff i.e. PW-4 Dilip Ahiwale. Apart from that, Shri Tulzapurkar heavily relied on the evidence of PW-1 Sandeep Dave, who was an attesting witness. He submitted that the evidence of the attesting witness prevails over the expert's evidence. In that context, he relied on the judgment of the Hon'ble Supreme Court in the case of **Shashi Kumar Banerjee and others Vs. Subodh Kumar Banerjee since deceased through LRs. and others[6].** The Hon'ble Supreme Court observed that, in the circumstances of the case before the Hon'ble Supreme Court they did not consider the evidence of the expert as conclusive. It did not falsify the

6 1963 SCC OnLine SC 114



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evidence of the attesting witness. It was observed that the expert's evidence as to the handwriting is opinion evidence and it can rarely, if ever, take the place of substantive evidence. Before acting on such evidence it is usual to see if it is corroborated either by clear direct evidence or by circumstantial evidence.

**37.** Shri Tulzapurkar relied on the another judgment of the Hon'ble Supreme Court in this context in the case of **Chennadi Jalapathi Reddy Vs. Baddam Pratapa Reddy (dead) through L.Rs. and another**[7]**.** In paragraphs-10 & 13 thereof it was observed that it is well-settled that the Court must be cautious while evaluating expert evidence, which is a weak type of evidence and not substantive in nature. It is also settled that it may not be safe to solely rely upon such evidence, and the Court may seek independent and reliable corroboration in the facts of a given case. Generally, mere expert evidence as to a fact is not regarded as conclusive proof of it. The evidence of a handwriting expert can rarely be given precedence over substantive evidence. Shri Tulzapurkar, therefore, submitted that firstly, the evidence of PW-1 Sandeep Dave would prevail over the expert's opinion and in any case the Plaintiff has led evidence of the handwriting expert's opinion in the form of PW-4 Dilip Ahiwale in support of her case.

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7 (2019) 14 SCC 220



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**38.** In this backdrop of the legal principles and the arguments advanced before us, the evidence led by the parties will have to be tested. PW-1 Sandeep Dave is an important witness in this case. He was not knowing the testator or the Plaintiff before the Will was executed. He was directed by his senior to go to the house of the testator and attest the Will. He deposed that he had gone to the house of the testator and had seen him signing the Will. He had also seen the other attesting witness Dr. N.M. Kriplani making signatures as the other attesting witness on the Will. We have reproduced the relevant passages from his deposition. In our opinion, he is a reliable witness. He has deposed the facts which he had actually seen. Though it was tried to be shown that his mother had appeared for the Plaintiff, but that was subsequent to the execution of the Will and in any case there is nothing wrong if the attesting witness is brought by the propounder of the Will. In this case the testator was residing with the Plaintiff i.e. his daughter. She was looking after him and, therefore, it was not unnatural for her to take steps to help her father in completing the process of executing the Will. The other attesting witness could not be examined as he had passed away. PW-1 has stood firm in the extensive cross-examination conducted on behalf of the Defendants. He had identified the signature of the testator on the Will. Therefore, in our opinion, his evidence prevails and



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we see no reason to disbelieve him.

**39.** In this view of the matter, based on the above legal principles his evidence prevails over the other points contended by Shri Kamdar in respect of the signature of the testator on the said Will.

**40.** Once it is held that PW-1 is a reliable witness and his evidence that the testator has put his signature on the Will is accepted, then late production of the Will by the Plaintiff does not remain a suspicious circumstance. In any case though it was not produced at the first instance when the ad-interim relief was obtained by the Defendant in a separate Suit filed by him, shortly thereafter, the Plaintiff had filed the Probate Petition and had come out with the case of existence of the Will. Therefore, we do not find that to be a suspicious circumstance in the present case.

**41.** Shri Kamdar argued that the signature on the Will was shaky, which would indicate that the Testator was neither physically fit nor possessed soundness of mind while executing the Will. In support of his contention, he relied on the fact that soon after the execution of the Will, the Testator was admitted in the hospital periodically for prolonged periods. We are unable to accept this submission that merely because he was subsequently admitted to a hospital periodically, it would not



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indicate that in March, 1989 he did not have soundness of mind for executing the Will. The evidence shows that the testator was suffering from Parkinson disease and, therefore, it explained the shaky signature. But that does not mean that he was unable to make his signature. PW-1's evidence is clear enough that the testator himself had made his signature on his Will.

**42.** The other suspicious circumstance raised by Shri Kamdar was the exclusion of the original Defendant and not mentioning of his name in the Will. In this context, if the evidence is perused, it shows the strained relationship between the original Defendant and his father. The testator i.e. father of the original Defendant, the Defendant's mother and his sister – the Plaintiff not only did not attend his wedding which had taken place in the same city but they were not even aware of the date and place of the Defendant's wedding. This is a strong proof of strained relationship between the original Defendant and his father.

**43.** Another strong indication about their strained relationship is that the Defendant was not even aware about the death of his own mother. The Plaintiff being his sister had to write a letter to inform him about their mother's illness and death. This situation definitely does not show that the relationship between the Defendant and his parents was



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cordial.

**44.** The letters produced on record at Exhibits-D1/3, D1/6, D1/7, D1/8, D1/9 and D1/11 show that the Plaintiff was constantly informing the original Defendant regarding the health of their father. On one occasion, the original Defendant was in Calcutta, so was his father and sister; and yet, the original Defendant had not chosen to meet them. When the testator passed away, the Plaintiff was not in India but then even the Defendant was not with him. The testator had passed away in the hospital. Though the Defendant had attended the cremation, he did not look after his father when his father was in the hospital. The evidence of PW-3 Jatindar Kumar Sethi who was a resident of the same building as that of the testator, has deposed that he had never seen the original Defendant until the Plaintiff got married after the death of the testator. There is no reason to disbelieve his evidence. The evidence shows that it was the Plaintiff who was taking care of her deceased father and the original Defendant had not done anything to support his father or to take his care. Therefore, non inclusion of the original Defendant's name in the Will cannot be termed as a suspicious circumstance. Similarly, the Plaintiff having been given the entire property of the testator is also not a suspicious circumstance.



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**45.** The original Defendant tried to rely on the purported notes made by his wife. However, contents of those notes are not proved. When the recording of evidence in the Suit had started, the original Defendant's wife was very much alive, but, she has not filed her affidavit of evidence. There was no occasion for her to make notes regarding the situation and keep those notes with herself. They served no purpose. Therefore, we are not relying on those notes while considering the case before us.

**46.** As a result of the above discussion, we answer the points for determination as follows :

i] The Will is validly executed.

ii] In the absence of specific plea in the affidavit in support of the caveat, this Court can test the suspicious circumstances.

iii] There were no suspicious circumstances surrounding the Will which requires rejection of the Probate.

iv] We see no reason to interfere with the impugned judgment and order.

v] The Appeal deserves to be dismissed.



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**47.** Hence, the following order :

**:: O R D E R ::**

i. The Appeal is dismissed.

ii. The probate of the last will and testament of Tarapada Chatterjee granted by the learned Single Judge is upheld.

iii. Interim Application No.2251/2020 is also disposed of.

iv. No order as to costs.

**(RANJITSINHA RAJA BHONSALE, J.)** **(SARANG V. KOTWAL, J.)**

**48.** At this stage, the learned counsel for the Appellants prayed for stay on the grant of Probate for a period of eight weeks. The learned counsel for the Respondent objects to passing such order. In our opinion, since we had decided the Appeal by this judgment, it is not possible to accede to the request made by Shri Sanglikar, the learned counsel for the Appellants.

**(RANJITSINHA RAJA BHONSALE, J.)** **(SARANG V. KOTWAL, J.)**

Deshmane (PS)

PRADIPKUMAR PRAKASHRAO DESHMANE
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