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

APPEAL NO.112 OF 2011
IN
TESTAMENTARY SUIT NO.48 OF 1990
IN
TESTAMENTARY PETITION NO.424 OF 1990

Meena Vasant Patel .....Appellant
Versus
Prithviraj Ambalal Patel, since deceased
through L.Rs. 1a. Suhasini Prithviraj Patel
and others .....Respondents

Mr. Gaurav Joshi, Senior Advocate a/w. Sharad Bansal, Akash Chandran, Vasim Shaikh, Mihir Boghani, i/b. Pravin Mehta and Mithi Co. for the Appellant.
Mr. Bhupesh Dhumatkar, Advocate a/w. Rijul Khandare for the Respondents.

CORAM : SARANG V. KOTWAL &
RANJITSINHA RAJA BHONSALE, JJ.

RESERVED ON : 26th OCTOBER, 2026
PRONOUNCED ON : 04th NOVEMBER, 2026

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

1. This Appeal is preferred against the judgment and decree dated 21.9.2010 passed by a learned Single Judge of this Court in Testamentary Suit No.48/1990 in Testamentary Petition No.424/1990. The Testamentary Petition was filed by the Appellant against her brother Prithviraj Patel. For the sake of convenience, the Appellant is described as the 'Plaintiff' and Prithviraj Patel is referred to as the 'Defendant' as per their status in the Testamentary Suit No.48/1990. During pendency of the Appeal, Prithviraj passed away and he is represented by his legal

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heirs who are the Respondent Nos.1a to 1d in the present Appeal.

2. Vide the impugned judgment and decree, the Plaintiff's suit was dismissed. The probate of the Will of her mother propounded by the Plaintiff was not granted. The learned Single Judge decided another Suit i.e. Testamentary Suit No.12/1991 in Testamentary Petition No.647/1990 preferred by Prithviraj Patel seeking probate of another Will of his mother. Both the Suits were dismissed by a common judgment and decree.

3. Heard Mr. Gaurav Joshi, the learned Senior Counsel for the Appellant and Mr. Bhupesh Dhumatkar, the learned counsel for the Respondents.

4. The Testamentary Suit filed by the Plaintiff Meena was in respect of the probate of the Will executed by her mother Shantaben Ambalal Patel on 24.5.1989. Shantaben died on 14.7.1990 at Mumbai. In the Probate Petition, the Plaintiff stated that, at the time of her death, the deceased had a fixed place of residence at Mumbai and she had left property within Greater Mumbai, in the State of Maharashtra and even outside Maharashtra in India. The Will dated 24.5.1989 was her last Will and Testament. The Plaintiff was the sole executrix named in the Will. According to the Plaintiff, all the properties and credit which the

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deceased possessed or was entitled to at the time of her death, would come to the Plaintiff's share as bequeathed under the Will. The Plaintiff and the Defendant were the only children of the deceased. With these averments, a prayer was made by the Plaintiff in her Petition that probate be granted to her having effect throughout the Union of India.

5. The Will mentioned that the properties which Shantaben owned and possessed were all her separate and self-acquired properties. Through the Will, she directed her executrix to take charge of her estate, both movable and immovable, to which she was entitled. In paragraph-5 of the Will, it was mentioned that Shantaben had 50% share in the Partnership Firm of A.P. Patel & Company which she had inherited from her late husband Shri A.P. Patel. The main office of the Partnership Firm was in Jalna with branches at Aurangabad, Mumbai, Parbhani, Nanded and Hingoli in Maharashtra and in Nizamabad in Andhra Pradesh. Her son Prithviraj had 50% share in the said firm. The Will mentions that she bequeathed her 50% share in the said Partnership Firm of A.P Patel & Company to the Plaintiff. Paragraph-6 mentions as to why she was not giving anything to her son Prithviraj. According to that paragraph, as mentioned by her, he had received sufficient estate under the Will of her late husband. It is further mentioned that her son had mismanaged the

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Firm and had sold various immovable properties without giving her share to her. It is further mentioned that she had directed the Plaintiff to demand an explanation and account from Prithviraj and if possible recover the estate. Paragraph-7 mentions that she had bequeathed the rest and residue of her real and personal estate of whatsoever nature and wheresoever to the Plaintiff. Besides Shantaben, the Will was signed by the two attesting witnesses (1) M.S. Shah and (2) Rekha Brahmbhat. The Schedule to the Will mentioned the properties that were referred to in the Schedule-I of the Will.

AVERMENTS IN THE AFFIDAVIT OF THE CAVEATOR :

6. The Defendant Prithviraj contested the Probate Petition by filing Caveat and submitting an affidavit in support of his caveat. He has mentioned in the affidavit that he was the son of the deceased and in the event of the deceased dying intestate, he was entitled to have share and / or right, title and interest in the estate of the deceased Shantaben as per the provisions of the Hindu Succession Act. This was stated without prejudice to his other statements. According to him, the Plaintiff had made several statements and allegations which were false to her own knowledge. He raised doubts about the bonafides of the witnesses and expressed that they were acting in conspiracy and in collusion with the Plaintiff to defeat his rights in the estate of the deceased. He did not

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admit the execution or due execution according to the law, of the said Will dated 24.5.1989. He did not admit that the Will was signed and/or executed by the deceased. The signature on the Will was not her usual signature. It differed materially from her signatures on several other documents. According to him, the Will was neither signed nor executed by the deceased and that the Will was forged. The Will was bogus and fabricated.

7. Without prejudice to these submissions, the Defendant made further averments in the affidavit that the deceased had executed her last Will and Testament dated 9.3.1990 by which her Will dated 24.5.1989 stood revoked. He further stated that the properties claimed to be belonging to the deceased did not belong to her absolutely and, therefore, she could not have bequeathed the same by the Will dated 24.5.1989. She had no legal right of disposition of these properties.

8. The Defendant further stated that the contents of the Will were unnatural. The Plaintiff had been living in London permanently since the past several years and the deceased was residing with him and his family members; and as such, she would not have excluded all of them from inheriting any property. Her last Will dated 9.3.1990 shows that she had bequeathed various properties to almost all the family

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members, including the Plaintiff and her daughters. It was the distribution of the properties which a person of ordinary prudence is expected to do. The Will dated 9.3.1990 is normal and natural. The Defendant then referred to the Plaintiff's marital status and her children. During the lifetime of the deceased Shantaben, the Defendant and his family members looked after her well-being in Mumbai and the deceased used to come with them at Nanded whenever they went there. The affidavit further mentions that the Plaintiff never looked after the well-being of the deceased. He further stated that Flat No.4 situated in Kailash Niketan at L.D. Ruparel Marg, Mumbai was acquired in joint names of the Defendant and the deceased during the lifetime of the Defendant's father. The Defendant, his family and his parents used to reside in that flat. The Plaintiff and her daughters used to stay with them on their trip to Mumbai. He further stated that Shantaben died in Mumbai on 14.7.1990. The Plaintiff was immediately informed about the same in London. Only after arrival of the Plaintiff, the body was cremated. The Plaintiff and the Defendant's father Ambalal died on 14.9.1978. He had left his last Will and Testament dated 22.3.1978. The Defendant was told that Shantaben had filed a Probate Petition for grant of probate of that Will, which according to him was pending disposal. The affidavit then refers to the opening of the safe deposit

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lockers. However, that is not really the subject matter of the Testamentary Suit. He further stated that the Will dated 24.5.1989 did not appear to have been executed by the deceased on account of her free Will or voluntary consent. In the concluding paragraph, he prayed that the last Will and Testament of Smt. Shantaben was dated 9.3.1990 and the probate be granted in respect of that Will in his favour. A copy of the Will dated 9.3.1990 was annexed to his affidavit.

9. It would not be out of place here to mention that the defendant Prithviraj had filed his Testamentary Petition No.647/1990 resulting in Testamentary Suit No.12/1991 for probate of the Will dated 9.3.1990. By the same judgment and decree the learned Judge did not grant probate of the said Will dated 9.3.1990. There were clear findings that he had not examined either of the attesting witnesses or other witnesses to prove attestation of the Will and, therefore, the requirements of Sections 68 & 69 of the Indian Evidence Act, 1872 were not satisfied. In paragraph-19 of the impugned judgment, it is specifically held that the Will propounded by the son i.e. the Defendant was not proved and the probate cannot be issued of the Will of the deceased dated 9.3.1990. The said judgment and decree and this finding is not challenged by the Defendant and hence have attained

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finality.

EVIDENCE ON BEHALF OF THE PLAINTIFF :

10. The Plaintiff examined herself as PW-1. In her affidavit in evidence, she gave the background of her family. She had passed B.A. (Hons.) from K.C. College, Mumbai and LL.B from Government Law College, Mumbai. Since 1980, she was residing in London. She was married to her first husband in 1978 and had a daughter from that marriage. She got divorced and got married to Vasant Patel. Her second daughter was born from this marriage. The second marriage also ended in divorce. She pursued her further studies in London. She was appointed as a Magistrate (Justice of Peace) for North East, London Branch as well as Crown Court and employed as local Government Officer in the Borough of Middlesex. She stated that her relationship with her mother was very cordial and warm. Her father passed away on 14.9.1978 leaving behind her mother Shantaben and brother Prithviraj as well as her step-sister Vimlaben Patel. Her mother Shantaben passed away on 14.7.1990. At that time, Shantaben was residing in Flat No.4 in Kailash Niketan CHS Ltd., L.D. Ruparel Marg, Mumbai. It was Shantaben's matrimonial home. Shantaben was a joint co-owner of the said flat and garage No.8 along with the Defendant. Though the Plaintiff was residing in the U.K. she used to communicate with her mother regularly on phone at least

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twice a week. Her mother was suffering from diabetes and high blood pressure, but, she was of sound mental health. The Plaintiff's father used to look after the business of the firm 'A.P. Patel & Company' and after his death, the Defendant Prithviraj used to look after the business; but due to his personal debts, the Defendant sold various properties which belonged to the estate of her father. The estate included the share of her mother and for said purpose he used to obtain her signature by exerting undue influence and coercion including emotional threats. Her mother was vulnerable as she had no other family support in Mumbai and did not know English that well. Because of these reasons, her mother used to consult her and reposed complete trust and faith in her. The Plaintiff thereafter mentioned different instances of suspicious disposal of the property by her brother - the defendant.

11. During various telephonic discussions, the Plaintiff realized that her mother was not being well looked after by her brother and his family. His family consisted of wife and three children. As she became aware of her brother ill-treating her mother, she came down to Mumbai in April, 1989 to look after her mother's well-being. When she came to Mumbai she had brought bathing soaps, almonds, music cassettes of bhajans, 20 sarees, diamonds, gold bangles, talcum powder, perfumes

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etc., as her brother had not even cared to look after the deceased's daily necessities. The Plaintiff had brought various gifts for her sister-in-law i.e. the Defendant's wife, her mother and the children. The Plaintiff's mother told her that the Defendant did not provide medical treatment through their family physician as according to the Defendant the medical treatment with the family physician was expensive, instead he gave some powder from a *Sadhu* to treat her mother's illness. The Plaintiff took her mother to their family doctor for medical checkup and treatment for diabetes and high B.P. The doctor prescribed medicine and the Plaintiff's mother continued that medication. The Plaintiff was convinced that the Defendant was not looking after the well-being of their mother.

12. During her visit, she had taken her mother on a pilgrimage in April, 1989 to Ambaji at Ahmedabad. During that visit to Mumbai, her mother requested the Plaintiff to take her to their family Solicitors M/s. Shantilal & Co. to make her last Will. After fixing an appointment with Mr.Mrunal Shah on 24.5.1989 at around 10.30 a.m., the Plaintiff along with her two daughters and her mother as well as her friend Ms. Rekha Brahmabhat attended the office of M/s. Shantilal & Co. Her mother on her own free will and volition gave instructions to Mr. Mrunal Shah to

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prepare her will as she desired to sign the same on the same day. Mr. Mrunal Shah requested her to come after lunch at around 3.00 p.m.. After taking lunch, they again went to Mr. Mrunal Shah. He had kept the Will ready for execution. It was read out to the Plaintiff's mother by Mr. Mrunal Shah and explained to her in Gujarati. Ms. Rekha Brahmabhat also explained the Will to her mother in Gujarati. After understanding the Will, the Plaintiff's mother on her free will and volition executed the same. Mr. Mrunal Shah and Ms. Rekha Brahmabhat attested the said Will. The Plaintiff along with her two daughters were present in the office of Mr. Mrunal Shah at the time of execution of the Will. The Plaintiff further stated that her mother was of sound mind and health. Her mother always had soft corner for her. The Plaintiff then referred to the death of her father on 14.9.1978 and the Will that he had executed. After her visit to Mumbai in 1989, the Plaintiff was in regular touch with her mother over telephone. Her mother never told her about the second Will. The Plaintiff's mother passed away on 14.7.1990. On the earlier day, the Plaintiff had a telephonic conversation with her. Her mother passed away in the same flat. Her mother had informed her that she had purchased the said flat in the year 1961 and in February, 1962 the Plaintiff's father had made a declaration of gift of Rs.35,000/- which was given to her mother and her brother who was a minor at that time. The

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share certificate of the flat was in the joint name of the Plaintiff's mother and the Defendant. After the demise of her mother, the Defendant and his wife had taken away keys of the cupboard and had opened the cupboard. The Plaintiff believed that the Defendant managed to keep the alleged Will dated 9.3.1990 in the cupboard of his deceased mother prior to the Plaintiff's arrival in Mumbai. After the death of her mother, the Defendant tried to severe all relations with her. She has stated in her affidavit that the Defendant got married in 1972 to her sister-in-law Suhasini but their relations with the Plaintiff's parents were strained. Suhasini's parents used to interfere. Therefore, the Plaintiff's father told the Defendant to reside in Jalna with his family and to look after the business from Jalna. However, the Defendant's three children used to stay in Mumbai and her mother used to take care of them. She further stated that she had taken opinion of two handwriting experts who had opined that the signature on the alleged Will dated 9.3.1990 was not the correct signature.

She was cross-examined on behalf of the Defendant. She was cross-examined extensively. Some of the questions were in respect of her marriage. However, the cross-examination in that behalf is irrelevant. Then she was cross-examined as to how she was informed about her

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mother's death. At her request, her mother's body was preserved till she came down to Mumbai. She requested to one Kikumama to preserve the body till she reached Mumbai. She denied the suggestion that she was not happy with the brother because her father had made his Will in the Defendant's favour. Then, she was cross-examined about the disposition of the property by her brother – the Defendant. That part of cross-examination is also not very relevant.

13. She was asked whether she planned to take her mother to London and, therefore, she had applied for passport. In response to that question, she stated that she had planned to take her mother to London sometime in future, but, she was not sure when her mother would have liked to come with her. She stated that she met her brother and the brother's wife at their family residence in Mumbai when she came down to Mumbai in April, 1989. She was specifically asked a question as to how were her mother's relations with her brother, brother's wife and their children. In response to that question she answered that the relations were very painful, mentally disturbing, depressed and unhealthy. The Plaintiff herself was not on talking terms with her brother and his wife. In further cross-examination, she stated that her mother had told her that her brother did not provide money for

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expenses. She did not remember exactly when her mother expressed her desire to take her to their family Solicitors; whether it was before, after or during the pilgrimage. When her mother made a request to take her to the family Solicitors for making a Will, her brother and his family were in Mumbai; but she did not remember whether that request could be heard by her brother and brother's wife. Her mother passed away on 24.7.1990 and she filed the Petition for probate on 14.8.1990. She had given original Will to her Solicitors M/s. Kapadia & Company.

EVIDENCE OF PW-2 MR. MRUNAL SHAH:

14. Mr. Mrunal Shah, the attesting witness deposed important facts as follows :

He was practicing as an Advocate in the High Court since 1976/77. He was Partner of M/s. Shantilal & Company, the Advocates & Solicitors. During his tenure, he had prepared Wills for several clients. He knew and was well acquainted with the deceased Shantaben. He also knew the Plaintiff who was daughter of Shantaben. After fixing an appointment with him on 24.5.1989, at around 10.30 a.m., Shantaben Patel accompanied by the Plaintiff and the Plaintiff's two daughters, as well as the Plaintiff's friend Rekha Brahmabhat attended his office. Shantaben out of her own free will and volition gave him instructions to prepare her last Will and she desired to sign the same on the same day.

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After taking instructions, he requested Shantaben to come after lunch at around 3.00 p.m. for execution of the Will. He kept the original Will ready for execution. It was read out to Shantaben and explained to her in Gujarati. Rekha Brahmabhat also explained the contents of the Will in Gujarati to Shantaben. After understanding the same, Shantaben Patel, out of her own free will and volition, executed the same. He himself along with Rekha Brahmabhat saw Shantaben Patel subscribing her name at the foot of the testamentary paper in Gujarati language and character. He along with Rekha Brahmabhat, at the request of Shantaben and in her presence and in the presence of each other, both being present at the same time, set and subscribed their names and signatures at the foot of the said testamentary paper as witnesses thereto. The Plaintiff and her two daughters were also present in their office at the time of execution of the Will. They were sitting outside his Chambers as he did not allow the persons accompanying the person intending to make a Will to remain present at the time of taking instructions or executing the same. He identified the signature of the testatrix, Rekha Brahmabhat and his own signature on the Will. He further stated that at the time of subscribing her name and signature on the Will, Shantaben was of sound and disposing mind, memory and understanding. She took away the original Will with her.

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15. He was cross-examined on behalf of the Defendant. In the cross-examination, he deposed that Shantaben was his neighbour since 1960 and he also knew the Defendant Prithviraj. He knew Shantaben's husband Ambalal Patel, but he did not recollect whether their firm attended the legal work of Ambalal Patel. As a procedure followed by their firm, they used to have discussion with the client and took instructions as to who were the heirs, what were his properties and how the client wished to distribute the property amongst the heirs and then the Will used to be prepared accordingly. There was a general format used for making the Wills. Therefore, Shantaben Patel's Will and Ambalal Patel's Will had similarities. His affidavit of evidence was drafted by M/s. Pravin Mehta & Mithi & Company. The draft was sent for his approval. He made necessary corrections and sent back the same to the Solicitors.

16. Shantaben herself had telephoned him for fixing an appointment and told him that she proposed to make her Will and for that purpose she needed appointment. All the people came together in his chamber. When Shantaben stated that she desired to make a Will, he asked others to leave the cabin and wait outside. In answer to question No.42, he replied that he noticed that Shantaben appeared to be

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disturbed and she stated that after the death of her husband, her son was not looking after her and hence she desired to make her Will favouring her daughter. She accordingly gave instructions and information relating to her properties and assets and told him that she wanted to make a Will on that very day. He, therefore, advised her to come after lunch hours so that in the meanwhile he could keep the draft of the proposed Will ready. This was the entire conversation at the first instance. When the draft was read out to Shantaben, all the people, who had accompanied her, were present. He not only read out the draft but also explained the contents thereof in Gujarati. The final document was explained by Rekha Brahmabhatt to Shantaben, in his presence, in Gujarati. To a further question, he answered that the draft Will was not explained but the final Will was explained on the same day when the Will was executed. It took two hours between the time the Testatrix came back from lunch and the execution of the Will. During that period, all of them were sitting in his cabin. Since Shantaben gave him proper instructions and answers to his questions with regard to disposition of her estate, he came to the conclusion that she was in disposing mind. At the time of giving instructions, Shantaben had told him that her relationship with her son was not cordial.

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THE DEFENDANT'S EVIDENCE :

17. The Defendant Prithviraj examined himself. He deposed that his father Ambalal Patel died on 14.9.1978 leaving behind his step sister Vimalaben, himself and the Plaintiff as his heirs and Shantaben Patel as his widow. Shantaben died at Mumbai on 14.7.1990. According to him, his mother Shantaben had left a Will dated 9.3.1990 and for that he had filed a Petition No.647/1990 for obtaining probate of that Will. The Plaintiff herein had filed a caveat in that Petition. That Petition was converted into Suit No.12/1991. He stated that the Will dated 24.5.1989 propounded by the Plaintiff Meena was not signed by Shantaben; and was hence, not executed by the deceased Shantaben. The purported signature on the Will was not the usual signature of Shantaben and the Will dated 24.5.1989 is bogus and fabricated. In any case, according to him, the Will was procured by the Plaintiff Meena by undue influence, coercion and/or fraud practiced upon the deceased by the Plaintiff. The Will was unnatural. The deceased had been living with him and his family and was looked after by him. He had two sons and a daughter. The deceased had love and affection for his children and was very fond of them. His wife was also looking after the deceased Shantaben who had affection for his wife and, therefore, it was highly unnatural that the deceased would not give anything to him, his wife or to his children.

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The Plaintiff was residing permanently in London. Then he stated about the Plaintiff's matrimonial issues. His affidavit makes a reference to Suit No.2980/1992 filed by his step sister Vimalaben for administration of the estate of the Ambalal Patel against himself and the Plaintiff Meena.

18. His father was carrying on business in the Partnership with the Defendant in the firm named and styled as M/s. A.P. Patel and Company. It had business at Jalna, Aurangabad, Mumbai, Parbhani, Nanded and Hingoli and also in Nizamabad. After his father's death, his mother Shantaben became Partner in the said firm having 50% share. His own share became 50% in the Partnership. During her lifetime Shantaben was managing and looking after the business and affairs of the firm. During her lifetime, Shantaben used to withdraw monies required for the business of the said firm. The monies were withdrawn either from Bombay Branch or from Jalna Branch. His father had left high tax liability and other debts. To meet those liabilities, some property was sold with the consent of Shantaben.

He was cross-examined mainly in respect of execution of the Will dated 9.3.1990. He was extensively cross-examined on the attesting witnesses. He came to know about the Will dated 24.5.1989 from a Public Notice issued by the Plaintiff. He stated that he got married on

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14.12.1966. He shifted to Jalna in the year 1969-70. His parents were residing in Mumbai. Though he stated that Shantaben was looking after the business, he accepted that she was educated in Gujarati and she did not know English language.

REASONING OF THE LEARNED JUDGE:

19. The learned Judge has considered the question of validity of the Will propounded by the Defendant Prithviraj. The learned Judge observed that if the Will propounded by the Defendant Prithviraj is proved to have been validly executed then the Will made in favour of the Plaintiff daughter earlier in point of time would be of no consequence. If that Will propounded by the Defendant is not proved, the execution of the Will in favour of the daughter would be considered. The learned Judge then discussed about the validity of the Will propounded by the Defendant-son. The learned Judge observed that the Defendant–son had not examined either of the attesting witnesses or any other witnesses to prove attestation of the Will. The learned Judge then referred to Sections 68 & 69 of the Indian Evidence Act, 1872, which read thus :

> "**68. Proof of execution of document required by law to be attested** :- If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an

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attesting witness alive, and subject to the process of the Court and capable of giving evidence:

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.

"**69. Proof where no attesting witness found**:- If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the documents is in the handwriting of that person."

20. In paragraph-15 of the impugned judgment, the learned Judge observed that the requirement of proof of execution of the Will required to be attested when no attesting witness was found is seen not to have been complied at all. The Defendant – son was unable to prove that the signature of one of the attesting witness at least was in his handwriting and that the signature of the person executing the document was in her handwriting.

21. In paragraph-19, there was a clear finding that the Will propounded by the son was, therefore, not proved and the probate could

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not be issued of the Will of the deceased Shantaben dated 9.3.1990.

22. Having observed thus, the learned Judge went on to consider the validity of the Will propounded by the Plaintiff-daughter. The learned Judge observed that the Plaintiff, who was otherwise residing in London, had visited India about a month prior to the execution of the Will. She had brought various gifts for her mother, including jewellery stated to be worth about 5000 pound sterling/Rs.5 Lakhs, gold and diamond jewellery and other articles. Soon before the execution of the Will, the Plaintiff and her mother had gone on a pilgrimage. The learned Judge also observed that the details of the two marriages of the Plaintiff brought out in the verbose cross-examination did not merit a reference.

23. The learned Judge further observed that in those circumstances, execution of the Will by the mother in the Attorney's office was to be appreciated. The Attorney was her neighbour. The Attorney has also given evidence of execution of the Will. The other attesting witness was a close friend of the Plaintiff and an Advocate. She was not examined. According to the learned Judge, complete exclusion of the son as well as his children i.e. children of the son, would justify raising of suspicion.

24. The learned Judge further observed that the basic rule of

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construction and appreciation of the Will that the Court must sit in the armchair of the testator or the testatrix. The Court must ascertain from the evidence whether the testator or the testatrix could have executed a Will such as the one which is sought to be propounded and is challenged.

25. The learned Judge enumerated certain circumstances, such as :-

i. the Plaintiff-daughter had taken her mother on pilgrimage,

ii. the Plaintiff had brought gift items for her mother,

iii. the Plaintiff had planned to take her mother sometime in future with her to London,

iv. the Plaintiff had helped the mother procuring a passport,

v. her mother had resided at Jalna with the Defendant and his family, the mother used to reside in Mumbai as well as in Jalna,

vi. the expenses of part-time cook, driver and servant were made by the Defendant in 1989,

vii. the mother had made complaints to the Plaintiff about the Defendant orally as well as in writing, but the complaints in writing were never produced,

viii. there were no physical threats by the Defendant or his wife.

All these points were brought out in the cross-examination of the Plaintiff.

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26. In paragraph-28, the learned Judge termed certain portions of the evidence as most appropriate and material parts brought out in evidence. The learned Judge referred to the evidence that the Plaintiff took an active part in the execution of the Will. She was present all throughout. She had gifted her mother various gifts and had taken her on a pilgrimage just prior to the execution of the Will. The Plaintiff had the Will in her custody. She corresponded on the strength of the Will and produced the Will immediately after her mother's death for obtaining probate. Her mother's relations with her brother and sister-in-law were cordial. She lived in the house whenever she was in Jalna. The Defendant – brother lived with the mother whenever he was in Mumbai. The Defendant cared for his mother and appointed cook, driver and servant for her. The Plaintiff did not produce any evidence to show that the Defendant – brother had mismanaged the property and she admitted that the accounts of the Partnership Firm were duly made and audited.

27. The learned Judge further observed in paragraphs-32, 33 and 34 that the Plaintiff tactfully and artfully succeeded in getting the mother to sign the writing in the office of the Solicitor known to both of them upon the Plaintiff winning her over by her gifts, accompanying at the pilgrimage which was the mother's most cherished wish and offered

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to get a passport for her which could have well been the ultimate bait. The learned Judge further observed that sitting in the armchair of the testatrix, it is impossible to conceive that the mother, who had made the Will propounded by the Plaintiff-daughter, disinherited her only son as well as her grandchildren therefrom.

28. Finally, the learned Judge observed that the Defendant-brother had not proved the valid execution of the Will and the Plaintiff-daughter's evidence was completely unworthy of acceptance and has to be wholly rejected. The Will propounded by the Plaintiff – daughter is not only unnatural but was seen to be such as could never have been executed by her mother. With these observations, both the Suits were dismissed.

SUBMISSIONS ON BEHALF OF THE APPELLANT :

29. The learned counsel for the Appellant submitted that the learned Judge has specifically declined to grant probate of the Will dated 9.3.1990 propounded by the Defendant – Prithviraj. The main reasons given while declining to grant probate to the said Will was that neither of the attesting witnesses nor someone who knew the attesting witnesses was examined to prove the signatures on the said Will. No Appeal is preferred against that particular order which is a part of the same impugned judgment and hence that finding has attained finality. On the

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other hand, the Plaintiff has challenged the dismissal of her Suit in the Petition asking for probate of the Will dated 24.5.1989 executed by the Plaintiff's mother.

30. He submitted that the main reason for the learned Judge turning down the prayer for grant of probate is that according to the learned Judge, the Plaintiff had come to Mumbai only a month prior to the execution of the Will and had showered her mother with expensive gifts, had promised to take her to London, had taken steps to obtain passport and had taken her on pilgrimage. In other words, according to the learned Judge the Plaintiff had tried to unduly influence her mother in executing the Will. Shri Joshi submitted that, this can never be a ground for denying grant of probate of the Will. It cannot be assumed or even held that if the daughter brings gifts for her mother, she is exerting undue influence on the mother.

31. Shri Joshi relied on certain provisions. Section 59 of the Indian Succession Act, 1925 provides that every person of sound mind not being a minor may dispose of his property by a Will. The relevant provision would be under Section 61. Shri Joshi specifically relied on the illustrations (vii) & (viii) mentioned under the said Section. Section 61 reads thus :

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> **"61. Will obtained by fraud, coercion or importunity:-** A Will or any part of a Will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator, is void.
>
> ***Illustrations***
>
> xxxxxxx
>
> xxxxxxx
>
> xxxxxxx
>
> (vii) *A* being in such a state of health as to be capable of exercising his own judgment and volition, *B* uses urgent intercession and persuasion with him to induce him to make a Will of a certain purport. *A*, in consequence of the intercession and persuasion, but in the free exercise of his judgment and volition makes his Will in the manner recommended by *B*. The Will is not rendered invalid by the intercession and persuasion of *B*.
>
> (viii) *A* with a view to obtaining a legacy from *B*, pays him attention and flatters him and thereby produces in him a capricious partiality to *A*. *B*, in consequence of such attention and flattery makes his Will, by which he leaves a legacy to *A*. The bequest is not rendered invalid by the attention and flattery of *A*."

32. Shri Joshi, in particular, relied on the illustrations (vii) & (viii) which runs directly contrary to the view taken by the learned Judge. Shri Joshi submitted that, firstly, there was nothing unusual for a daughter to bring gifts from abroad for her mother. It would not mean

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that she tried to influence her mother into executing the Will and in any case, these two illustrations clearly lay down that such conduct would not render the Will invalid if the Will is executed in the free exercise of the testatrix's judgment and volition.

33. Shri Joshi submitted that the Plaintiff has proved the valid execution of the Will by examining the attesting witness PW-2. It satisfies the requirement of Section 68 of the Indian Evidence Act.

34. The evidence of PW-2 is important in this case and there is no reason to disbelieve him. PW-2 was a reputed Solicitor. He was also knowing the family since many years. The testatrix knew him very well. He had given evidence giving details of execution of the Will. He had taken care to understand the desire of the testatrix. He had taken some time to draft the Will. He had explained the Will in Gujarati to the Testatrix. He has taken precaution at every stage. The execution of the Will is proved beyond any doubt. In this view of the matter, the execution of the Will is duly proved.

35. Shri Joshi submitted that there was no suspicious circumstance surrounding the Will including the execution of the Will. Leaving out the testatrix's son and his children cannot be termed as a suspicious circumstance because the very purpose of executing a Will is

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to deviate from the normal line of succession and entitlement as legal heirs of those persons. In support of this contention, he relied on the observations of the Hon'ble Supreme Court in the case of **Parvathi Nairthi (Dead) & others Vs. Laxmi Nairthy (Dead) through L.Rs. & others**[1]**.**

36. Shri Joshi further relied on the observations of the Hon'ble Supreme Court in the case of **K.S. Dinachandran Vs. Shyla Joseph and others**[2]**.** In that case, the propounders of the Will were the siblings of the one who was excluded. The Hon'ble Supreme Court observed that there was a reason stated for such exclusion, the acceptability of which to the Court's mind, was not what the rule of prudence dictated. It was held that the Court could not put the testator in its shoes and the Court should step into the testator's shoes. The Court cannot substitute its opinion in place of that of the testator; his desire prompted by his own justifications. As was trite, the Court would only ensure that, sitting in the arm-chair of the testator, the rule of prudence is satisfied for the exclusion.

37. Shri Joshi further relied on the observations of the Hon'ble Supreme Court in the case of **Naresh Charan Das Gupta Vs. Paresh Charan Das Gupta**[3] wherein the Hon'ble Supreme Court had discussed effect of

1 2026 SCC OnLine SC 911

2 2025 SCC OnLine SC 2848

3 (1954) 2 SCC 800

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alleged ‘undue influence’.

38. Shri Joshi submitted that in the present case Shantaben had given reasons as to why she was excluding the Defendant Prithviraj from benefit of her property. These reasons were not vague or unreasonable. They were reasons in the mind of the testatrix. They cannot be termed as a suspicious circumstance.

SUBMISSIONS ON BEHALF OF THE DEFENDANT :

39. On the other hand, Shri Dhumatkar, the learned counsel for the Respondent submitted that execution of the Will itself is surrounded with suspicious circumstances. Exclusion of the Defendant i.e. the son of the testatrix was a glaring suspicious circumstance. According to him, the evidence of the Plaintiff and the attesting witness PW-2 was contradictory. The presence of the Plaintiff in the office and in the cabin of PW-2 raises suspicion. There was contradictory evidence of PW-2 himself as to whether the Plaintiff was present in the cabin or outside the cabin at the time of execution of the Will. The language of the Will was in technical language and, therefore, it could not have been a reflection of the desire of the testatrix. The Plaintiff failed to prove that Prithviraj had mismanaged the business and, therefore, the reason mentioned in the Will for exclusion of the Defendant - son raises suspicion. The evidence shows that the business of the firm was

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properly managed. There were regular audits and there was no mismanagement on the part of the Defendant Prithviraj. Exclusion of the grand-children from the benefit of the property raises even more suspicion regarding the execution of the Will. PW-1 failed to prove that the relationship between the testatrix and her son i.e. the Defendant and his children were strained.

40. The learned counsel submitted that the Plaintiff had failed to establish that there was cordial relationship between the Plaintiff and her mother and she had failed to prove that the Defendant Prithviraj and his wife ill-treated Shantaben. There is evidence to show that Shantaben lived with her son and his family, whenever she was in Jalna. The Defendant's children used to reside in Mumbai in the same flat with the testatrix and therefore it was more suspicious that Shantaben did not give them any property in her Will.

41. Shri Dhumatkar relied on the observations of the Hon'ble Supreme Court in the case of **Kavita Kanwar Vs. Pamela Mehta and others**[4] to contend that 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.

4 (2021) 11 SCC 209

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42. Shri Dhumatkar also relied on the observations of the Madras High Court in the case of **D. Kausalya w/o. late Durai Vs. S. Sankaran**[5] wherein it was observed that even if it is established that the Will was executed by the testator without any undue influence by the beneficiary or the legatee still it is for the court to consider whether the Will is a natural one or unnatural. The unnatural Will is the one whereunder the undue preference is given to any one of the legal heirs or the bequeathment is in favour of a third person. Undoubtedly giving preference to one of the heirs and excluding the other from inheritance will be a suspicious circumstance which must be got over by the propounder.

43. Shri Dhumatkar submitted that the Plaintiff failed to show that the Plaintiff's brother had failed to take care of their mother or mismanaged the business as alleged in the Will.

POINTS FOR DETERMINATION :

44. Based on these submissions and the evidence, the following points arise for our determination :

[I] Whether the circumstances surrounding the execution of the Will are suspicious circumstances ?

[II] Whether the Will is validly executed ?

5 2002 SCC OnLine Mad 91

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[III] Whether the Plaintiff had exerted undue influence or coercion or had played fraud in getting the Will executed by her mother ?

[IV] Whether exclusion of the Defendant Prithviraj and his family from the benefit of the Will raises suspicion to conclude that execution of the Will was unnatural ?

[V] Whether the impugned judgment and decree challenged by the Plaintiff requires interference ?

[VI] What order ?

REASONS AND CONCLUSION :

45. At the outset it must be mentioned that the Defendant himself had propounded the purported Will dated 9.3.1990. The learned Judge by the same impugned judgment had discarded the Defendant's case and the probate was not granted for that Will. The Defendant did not challenge that part of the impugned judgment in an Appeal and hence that finding has attained finality. In any case, the learned Judge has given acceptable reasons as to why the probate of that particular Will could not be granted. Neither any of the attesting witnesses could be produced before the Court nor anyone else who could have recognized their signatures on the said Will were examined on behalf of the Defendant to prove execution of that Will and, therefore, the prayer to grant probate of that Will was not allowed. As a result, the

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consideration before us is regarding validity of the Will dated 24.5.1989.

46. As far as execution of the Will is concerned, the evidence of PW-2 Mr. Mrunal Shah, who was the attesting witness, is extremely important. He was well acquainted with the deceased Shantaben. He had practised for at least 14-15 years in the High Court. At the time of execution of the Will on 24.5.1989, Shantaben met him and gave instructions out of her free will and volition. PW-2 asked them to come after lunch. In the meantime, he kept the original Will ready for execution. The final draft was explained to Shantaben in Gujarati. Even the other attesting witness Rekha Brahmbhat explained contents of the Will in Gujarati and only after understanding the same, Shantaben signed that Will. PW-2 Mrunal Shah saw Shantaben making her signature and also saw the other attesting witness Rekha Brahmbhat ascribing her signature at the foot of the Will. Thus execution of the Will is proved through this evidence. All requirements of valid execution of the Will are proved by him.

47. We do not see any reason to disbelieve this witness PW-2 Mrunal Shah or to discard his evidence. Nothing was shown through the cross-examination that PW-2 was won over by the Plaintiff or he acted in

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collusion with the Plaintiff. Nothing is shown as to what personal interest PW-2 would have in giving false evidence or stating falsely in his evidence regarding execution of the Will.

48. The learned counsel for the Defendant laid much emphasis on the evidence regarding whether the Plaintiff and her daughters were in the office or outside the office at the time of execution of the Will. PW-2 has stated that he had taken precaution that at the time of execution of the Will only the testatrix Shantaben was inside. It is understandable that though the Plaintiff and her daughters had accompanied Shantaben to the office of PW-2, but that does not necessarily mean that they were present inside the cabin when Shantaben made her signature on the Will.

49. Therefore, we do not find any suspicious circumstance in execution of the Will.

50. The next question is whether presence of the Plaintiff in the office of the Solicitor (PW-2) could be treated as a suspicious circumstance to make the Will unacceptable. PW-2 was known to the family. The testatrix had gone to his office accompanied by the Plaintiff and her daughters. We do not see any reason to hold that the testatrix ought to have attended the office of PW-2 alone for execution of the

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Will. If Shantaben wanted to bequeath everything to her daughter then it was not unusual for her to take her daughter with her to the Solicitor's office. That by itself cannot be termed as a suspicious circumstance. There is nothing to show or it is not even brought in the evidence that the Plaintiff exerted some pressure or coercion in the office of PW-2 before Shantaben executed the Will. There is no evidence to show that the Plaintiff interfered and made some suggestions while the Will was being drafted. The evidence shows that after taking instructions from Shantaben, PW-2 asked them to come after lunch. In the meantime, he prepared the draft of the Will. He kept it ready and then in the afternoon the Will was executed. At no point of time, the Plaintiff had interfered in preparation of the Will. Therefore, her presence along with her daughters in the office of the Solicitor at the time of execution of the Will cannot be termed as a suspicious circumstance.

51. The main reason which weighed with the learned Judge in rejecting the validity of the Will is regarding the Plaintiff showering her mother with expensive gifts, taking her on pilgrimage and helping her for procuring passport for her possible visit to the Plaintiff's place. Again we do not see anything unnatural in the conduct of the Plaintiff. She was residing in U.K. and financially well-off. Therefore, when she came back

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to Mumbai naturally she would bring some gifts for her mother. It would be too much to hold that the mother would be influenced by these gifts to such an extent to give her daughter entire property to the exclusion of her only son and his family. There were reasons for excluding the Defendant son from the benefit of the Will as is mentioned in the Will itself. The illustrations (vii) and (viii) under Section 61 of the Indian Succession Act specifically deal with this particular aspect. We have already reproduced those illustrations in the earlier part of our judgment. Those illustrations are applicable in the facts of the present case. . In view of the specific provisions illustrated therein, it can safely be held that the Will it not rendered invalid by affection, flattering and showering expensive gifts by the Plaintiff on her mother. Neither it would become invalid if there was persuasion; in the present case there is no direct evidence to show that the Plaintiff persuaded her mother to execute this Will.

52. In any case it is an admitted position that the Plaintiff was residing in U.K.. Even after execution of the Will by her mother, the Plaintiff had gone to U.K.. She was still in U.K. when her mother passed away. If the Will was executed under some pressure, coercion or for any other reason against the wish of Shantaben, it was quite easy for

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Shantaben to approach PW-2 who was their Solicitor for a long duration and to cancel the Will by executing a fresh document. But, in this case there is no evidence to show Shantaben either attempted to approach the Solicitor and made any efforts to get the Will cancelled by executing any other document.

53. If the Will was executed against Shantaben's wish, as claimed by the Defendant, Shantaben could have easily informed the Defendant about the execution of that Will particularly when as claimed by the Defendant and according to the Defendant, their relations were cordial. The record shows that the Defendant was not even aware of execution of the Will by his mother i.e. Shantaben till the Plaintiff filed it for probate.

54. We are of the opinion that merely because the Plaintiff took her mother Shantaben to the Solicitor, gave her expensive gifts and assisted her in obtaining a passport, it cannot be inferred that she thereby influenced the testatrix to execute the Will, as mentioned earlier.

55. In this case, we find substance in the reliance of Shri Joshi on the observations of the Hon'ble Supreme Court in the case of **Naresh Charan Das Gupta** (supra). In that judgment, the Hon'ble Supreme Court observed that it was not every influence which was brought to bear on a testator that can be characterised as "undue". It was open to a person to

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plead his case before the testator and to persuade him to make a disposition in his favour. And if the testator retains his mental capacity, and there is no element of fraud or coercion, the will cannot be attacked on the ground of undue influence.

56. The next circumstance which is termed by the Defendant as a suspicious circumstance is exclusion of the Defendant and his family from the property of the testatrix. In this context, the Hon'ble Supreme Court in the case of **Parvathi Nairthi** (supra) observed that mere exclusion of the natural heirs from the property of the testator, by itself, cannot be construed as a suspicious circumstance so as to invalidate a Will outrightly. A testator is legally entitled to dispose of his property according to his own wishes, and unless the exclusion is accompanied by suspicious circumstances affecting the genuineness or due execution of a Will, such exclusion alone can not render a Will invalid.

57. In this context, the observations of the Hon'ble Supreme Court in the case of **Uma Devi Nambiar and others Vs. T.C. Sidhan (Dead)**[6] are important. Paragraph-16 of the said judgment reads thus :

> "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

6 (2004) 2 SCC 321

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

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58. Thus, exclusion of the Defendant by itself cannot be a suspicious circumstance. In the present case, the testatrix has given specific reasons for excluding the Defendant. She has given specific reason in paragraph-6 of her Will, as follows :

> "6. I am not giving anything to my son Prithviraj in this Will as he has received sufficient estate under the Will of my late husband Ambalal Patel. My son has mismanaged the affairs and he has sold away various immovable properties without giving me my share in the same, for which he is accountable to me. I direct my executrix to demand an explanation and account from my son Prithviraj and if possible recover the estate if she so desires."

. These are the reasons given by the testatrix.

59. Shri Dhumatkar submitted that the Plaintiff failed to prove that the Defendant Prithviraj mismanaged the business as alleged in the Will and that the Plaintiff failed to provide proper explanation for exclusion of the Defendant and his family from the estate. In this case, it is not possible to substitute or even supplement the reasons given by the Testatrix in her Will for exclusion of the Defendant and his family. It was her perception and her reasons. It was not for the Plaintiff to substantiate or prove the reasons given by the testatrix. Once we hold that the Will was validly executed through Shantaben's own volition, then the reasons given by her in the Will are to be accepted as her own

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reasons. Those reasons cannot be proved or disproved through any other external evidence of any other witness. Only if it could be termed as a suspicious circumstance, the Plaintiff was required to dispel the suspicion raised regarding that circumstance. But in this case, since we hold that the execution of the Will was valid, was made through Shantaben's own volition and was made in the state of sound mind, we do not find the reasons given by Shantaben in the Will as a suspicious circumstance.

60. The learned counsel for the Defendant raised suspicion on another ground that Shantaben had excluded even her grand-children i.e. the Defendant's children from the Will. According to Shri Dhumatkar, the Defendant's children were residing in Mumbai in the same flat with Shantaben. However Shantaben had given reasons that the Defendant's family had received sufficient estate through the Will of her husband; that was one of the reasons for exclusion of the Defendant's family from the benefit of her own Will. Such reasons cannot be termed as suspicious or unnatural.

61. Observations of the Hon'ble Supreme Court in the case of **Kavita Kanwar** (supra) are important. Paragraph-28 of the said judgment reads thus :

> "28. There is no doubt that any of the factors taken into account by the Trial Court and the High Court, by itself and

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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 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.”

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62. In the present case, after taking all the factors together we do not find anything suspicious about the said Will executed by Shantaben on 24.5.1989.

63. Thus, from the above reasoning, we find that the learned Judge erred in not granting probate of the Will dated 24.5.1989 executed by Shantaben Ambalal Patel. Hence, we answer the questions arising for our consideration as follows :

[I] The circumstances surrounding the execution of the Will are not suspicious circumstances.

[II] The Will is validly executed.

[III] The Plaintiff had not exerted undue influence or coercion or had not played fraud in getting the Will executed by her mother.

[IV] Exclusion of the Defendant Prithviraj and his family from the benefit of the Will does not raise suspicion to conclude that execution of the Will was unnatural.

[V] The impugned judgment and decree challenged by the Plaintiff is required to be set aside.

[VI] The Appeal deserves to be allowed.

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64. Hence, the following order :

:: O R D E R ::

i. The Appeal is allowed.

ii. The judgment and decree dated 21.9.2010 passed by a learned Single Judge of this Court in Testamentary Suit No.48/1990 in Testamentary Petition No.424/1990, is set aside.

iii. The probate of the Will of Shantaben Ambalal Patel dated 24.5.1989 is granted.

iv. Decree be drawn accordingly.

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

Deshmane (PS)

PRADIPKUMAR PRAKASHRAO DESHMANE

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