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

APPEAL NO. 574 OF 2003
IN
TESTAMENTARY SUIT NO. 33 OF 1999

Myra Philomena Collaco ...Appellant
Versus
Lilian Coelho and Ors. ...Respondents

Mr. Karl Tamboly, a/w Mr. Bhavin Shah, Ms. Alisha Lambay i/by Lambay & Co. for Applicant.

Mr. Nigel Quraishy, a/w Mr. Dushyant Krishnan, Snehil Rai, Ms. Shruti Dubey i/by Susmit Phatale, for Respondent Nos. 1 and 2.

CORAM : M.S. Sonak &
Advait M. Sethna, JJ.
RESERVED ON : 27 November 2025
PRONOUNCED ON : 30 December 2025

JUDGMENT: *(Per Advait M. Sethna, J.)*

Prologue :-

1. We are confronted with yet another family saga where the slugfest between the parties, circumference around two Wills of the deceased parents of the Appellant. It is in such context that the contesting parties seek to assert their rival claims and legal rights over the suit property.

2. The curtains open with the Appellant's deceased father's Will creating life interest in the suit property in favour of his wife i.e. late mother of the Appellant along with their sons Victor and Neville. However, the Appellant's mother bequeaths the suit property being the subject matter of the probated Will of her late husband (Appellant's father) to the Appellant and her sons George and Reginald.

3. The Appellant in the present proceedings, desire to have Letters of Administration issued with the Will of her deceased mother which was assailed by the Respondents before the learned Single Judge of this Court. The impugned judgment and order holds that though the Will is formally proved, there are suspicious circumstances shrouding the said Will which ought to be considered to the satisfaction of the Court. Accordingly, the learned Single Judge refused to grant the Letters of Administration along with the Will of the deceased mother of the Appellant as prayed for by the Appellant. The Division Bench of this Court, on Appeal against the impugned judgment set aside the order of the learned Single Judge by an order dated 22 January 2009. Thereafter, pursuant to the directions of the

Supreme Court by its order dated 2 January 2025, the proceedings were remanded to this Court. This is how the parties are before us in the present Appeal assailing the Judgment of a Single Judge of this Court dated 7 March 2003 passed in Testamentary Suit No. 33 of 1999 in Testamentary Petition No. 209 of 1987. (***"Impugned Judgment"*** for short).

Factual Matrix :-

4. The Appellant (Plaintiff) had filed Testamentary Petition No.209 of 1987 for grant of Letters of Administration with the Will dated 7 July 1982 of her late mother Mrs. Maria Francisca Coelho ("**deceased Maria**" for short), who passed away on 24 November 1985. The subject matter for adjudication in these proceedings relates to the legality and correctness of the Appellant's claim in regard to the issuance of Letters of Administration, pursuant to the Will of the deceased Maria.

5. The deceased Maria (mother of the Appellant) got married to Mr. Sonny Rita Coelho ('**Sonny**' for short) in the year 1931-32.

6. The late parents of the Appellant i.e. the deceased Maria and her husband Sonny had six children. The details of whom are as under:-

1. George Coelho, who was born on 17 March 1933 (now deceased).

2. Reginald Coelho, who was born on 14 November 1935 (now deceased).

3. Victor Coelho, who was born on 29 March 1938 (now deceased).

4. Neville Coelho, who was born on 19 March 1940 (now deceased).

5. Myra Philomena Collaco, the Appellant, who was born on 12 April 1946.

6. Anthony Coelho (deceased).

7. It is on 22 August 1971 that Sonny i.e. the father of the Appellant left behind his Will and last Testament. Under the said Will he appointed his wife Maria (mother of the Appellant) and their two sons Victor and Neville as executors and trustees. He desired that income from the said property after paying tax and other expenses shall be enjoyed by his wife Maria (mother of the Appellant) for her lifetime. As per the said Will, the house and plot would devolve on

his two sons Victor and Neville who would be tenants in common. Victor would take the ground floor of the said house and Neville would take the first floor subject to them paying Rs.10,000/- each to Sonny's estate.

8. Out of the said amount of Rs.20,000/-, Rs.5,000/- each were to be paid to the other two children namely George and Reginald and Rs.5,000/- to the Appellant. The remaining Rs.5,000/- was to go to the fifth son Anthony provided that he stops consuming liquor as stated in the Will of Appellant's late father. The deceased Maria (mother of the Appellant) was conferred a life interest by the said Will.

9. In the year December 1971, the Appellant got married to Mr. Saotome Collaco at Goa. He was examined as the second witness before the learned Single Judge at the behest of the Appellant in these proceedings.

10. It was on 26 January 1976 that the father of the Appellant-Sonny, passed away. After him, the deceased Maria along with her two sons Victor and Neville filed a Testamentary Petition No.929 of

1976 for obtaining probate of Sonny's Will dated 22 August 1971. The said Will was probated by this Court on 24 April 1980.

11. On 7 July 1982, the deceased Maria (mother of the Appellant) executed her last Will and Testament. According to the said Will, she bequeathed all her movable and immovable property as she would possess or be entitled to at the time of her death. The execution of the said Will took place at the residence of the attesting witness i.e. Advocate A. E. Lawrence Colaco. He was the first witness to be examined on behalf of the Appellant.

12. The deceased Maria (mother of the Appellant) has filed an affidavit dated 31 December 1982 which is on record of these proceedings whereby she has sought to place on record certain facts concerning her and her husband's Will. The deceased Maria has *inter alia* stated that she had no knowledge of her husband i.e. Sonny's Will and which she feels he would have made in a fit of temper.

13. It was on 24 November 1985 that the Maria (mother of the Appellant) passed away in Mumbai.

14. Pursuant to the above, the Appellant filed Suit No.3245 of 1985 on 11/16 December 1985 against her four brothers namely George, Reginald, Victor and Neville for administration of the estate of her deceased mother.

15. The brother of the Appellant i.e. Victor, now deceased, filed a written statement dated 11 April 1986 in the above Suit No.3245 of 1985. Victor had, stated therein that his mother i.e. deceased Maria did not leave any Will or Testament dated 7 July 1982. Such Will is not probated and is therefore not authentic. It was also averred in the said written statement that although the suit property was joint but, it always belonged exclusively to his late father, Sonny. The land in relation to the suit property was purchased by his late father i.e. Sonny out of his own funds in Salsette Catholic Cooperative Housing Society Ltd., as his mother i.e. deceased Maria was never gainfully employed.

16. The Appellant and her brothers George and Reginald never raised any objection to the grant of probate of their late father's Will.

17. On 1 April 1987, the Appellant filed Testamentary Petition No.209 of 1987 before this Court seeking the grant of Letters of

Administration with the Will of her deceased mother, annexed to the said Will. PW-1 i.e. Advocate Lawrence Colaco sworn an affidavit on 1 April 1987 in his capacity as one of the attesting witnesses.

18. On 26 January 1993, Victor, son of the deceased Maria (mother of the Appellant) passed away. His widow Lilian Coelho and children Conrad and Dylan i.e. Respondent Nos.1 to 3 were Caveators in the Testamentary Petition No.209 of 1987.

19. According to the Appellant during the period 1995-96, she suffered from ischemic heart disease. She underwent surgery on 2 October 1995 for such ailment. Shortly thereafter in 1996, both the husband and the Appellant migrated to Canada. The family did not come to Mumbai since then. There is a reference to a medical certificate issued by Dr. Vispi S. Buhariwalla. Though presented in evidence, copies of the medical records in regard to the above, as stated by the Advocate for the Appellant, are not currently available with them.

20. On 15 April 1999, Mrs. Lilian Coelho, Respondent No.1 i.e. widow of the Appellant's brother Victor filed a Caveat for herself and on behalf of her then minor children i.e. Respondent Nos.2 and 3 to

oppose the grant of Letters of Administration. Consequent to filing of the said Caveat, the Testamentary Petition No.209 of 1987 was converted into Testamentary Suit No.33 of 1999. The said Caveators raised various objections to the proceedings filed by the Appellant for grant of Letters of Administration along with the Will of the deceased Maria, which are set out therein.

21. Pursuant to the above, on conversion of the Testamentary Petition into Testamentary Suit No.33 of 1999, the following Issues were framed:-

> *"1. Does the plaintiff prove the due execution and attestation of the will dated 7.7.1982 of the deceased Mrs. Maria Francesca Coelho?*
>
> *2. Does the plaintiff prove that the said deceased was of sound and disposing state of mind and had testamentary capacity at the time of execution of the Will dated 7.7.1982?*
>
> *2(a). Whether the defendants prove that the deceased was not in a disposing state of mind and did not have testamentary capacity at the time of execution of the Will?*
>
> *3. Do the defendants prove that the signature of the deceased on the Will dated 7.7.1982 was forged?*

4. Do the defendants prove that the Will dated 7.7.1982 was executed by the deceased under undue influence, coercion and threats and fraud was played on the deceased by the Plaintiff?

5. Whether the plaintiff is entitled to the letters of administration as prayed?"

22. During the hearing of the Suit, the Appellant examined two witnesses between 9 November 2000 and 1 February 2001. The first witness on behalf of the Appellant was Advocate Lawrence Colaco (PW-1). He was the lawyer who drafted the Will of the deceased Maria (mother of the Appellant). The second witness of the Appellant was her husband-Mr. Saotome Collaco (PW-2).

23. Between 26 July 2001 and 30 August 2001, the Respondents examined only one witness i.e. Respondent No.1 herself. It was on 30 August 2001 that the Appellant's husband (PW-2) was permitted to lead evidence in rebuttal, to refute the testimony of DW-1 (Respondent No.1).

24. The learned Single Judge of this Court passed his judgment dated 7 March 2003 in the said Testamentary Suit disposing of the same. By the impugned judgment, the learned Single Judge answered the Issues relating to the formal attestation, execution of

the said Will, testamentary capacity of the deceased and issues pertaining to coercion and undue influence, in favour of the Appellant.

25. This Court, however, found existence of three suspicious circumstances surrounding the execution of the Will of the deceased Maria. These being (a) the Will is cryptic and it does not mention the property of the deceased; (b) the Plaintiff (Appellant) took prominent part in the execution of the Will; (c) the Will does not contain any explanation as to why the other two sons of the deceased Maria i.e. Victor and Neville were excluded from the said Will. Therefore, notwithstanding the findings on the issues noted above in favour of the Appellant, the learned Single Judge dismissed the Testamentary Suit. The Court held that the Appellant had failed to explain the said alleged suspicious circumstances, resulting in the dismissal of the Suit of the Appellant.

26. The Appellant, aggrieved by the order of the learned Single Judge (supra) preferred an Appeal before the Division Bench of this Court. The Division Bench by an order dated 22 January 2009, set

aside the impugned judgment of the learned Single Judge, holding in favour of the Appellant.

27. The Respondents, aggrieved by such judgment and order of the Division Bench (supra) preferred a Civil Appeal No.7198 of 2009 before the Supreme Court.

28. The Supreme Court by its order dated 2 January 2025, *inter alia*, set aside the judgment of the Division Bench dated 22 January 2009. It observed that the approach of the Division Bench was not correct and that the reasoned judgment of a Single Judge cannot be interfered with without deep consideration. For such reasons, the proceedings were remanded to the Division Bench of this Court for fresh consideration in accordance with law.

Rival Contentions : -

Submissions of the Appellant :-

29. Mr. Karl Tamboly, learned counsel for the appellant, in support of the appeal has made elaborate submissions. Referring to the factual matrix in the given case, he would submit that the appellant has proved the due execution of the Will of the deceased Maria

through PW-1 and PW-2. In fact, the learned Single Judge in the impugned judgment and order has found that the appellant has proved the due execution of the Will of deceased Maria dated 7 July 1982.

30. Mr. Tamboly would urge that the learned Single Judge has disbelieved the stands of the respondents and accepted appellant's evidence regarding execution and attention of the deceased Maria's Will. So also, the learned Single Judge has accepted the appellant's case in regard to the soundness of mind and testamentary capacity of the deceased.

31. Mr. Tamboly would then submit that there are no cross objections preferred by the Respondents, to the extent the impugned judgment was in favour of the Appellant. Accordingly, the findings in this regard become final and binding. The Appellant has thus proved the due execution and attestation of the Will along with the testamentary capacity of the deceased.

32. In the above context, Mr. Tamboly would urge the Court to consider the principles as have been propounded by judicial

principles to apply in contentious cases, relating to proof of Wills, which are set out below:-

a) A Will is proved if it meets the requirements of Section 59, 61 and 63 of the Indian Succession Act, 1925. Proof of a Will means proof in its solemn form i.e. in accordance with the requirements of Section 59, 61 and 63 of the said Act. In this regard, Mr. Tamboly would place reliance on the decision of ***Shirish Popatlal Shah Vs. Arun Popatlal Shah***[1].

b) Mr. Tamboly would then submit that the Will must be proved not only in accordance with Section 63 of the Indian Succession Act but also Section 68 of the Indian Evidence Act. In this regard he would rely on the decision of the Hon'ble Supreme Court in ***Niranjan Umeshchandra Joshi Vs. Mrudula Joshi Rao and Ors***[2]; ***H. Venkatachala Iyengar Vs. B. N. Thimmajamma and Ors*** [3]; ***Uma Devi Nambiar and Ors Vs. T. C. Sidhan (Dead)***[4] and the decision of a coordinate Bench of this Court in ***Shirish Popatlal Shah (Supra)*** .

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1. (2016 (6) (Mh.L.J) 257)
2. (2006) 13 SCC 433
3. 1958 SCC Online SC 31
4. (2004) 2 SCC 321

c) The propounder of a Will is required to lead satisfactory evidence that the testator put his/her signature to the Will, out of his or her freewill and that he/she were in sound and disposing state of mind at the relevant time. The onus on the propounder is discharged on the proof of these essential facts, as held by the Supreme Court in ***H. Venkatachala Iyengar (Supra)*** .

33. Mr. Tamboly would then urge that the learned Single Judge has found in favour of the appellant, qua the execution and attestation of the Will, soundness of mind of the testator at the relevant time, absence of any fraud, collusion and undue influence in the execution of the Will. This being the case, there was no question of the existence of any suspicious circumstances surrounding the making of such Will of the deceased.

34. Mr. Tamboly would then contend on the findings in the impugned judgment with regard to the three suspicious circumstances as noted in the said judgment. In this regard, Mr. Tamboly would submit that none of these actually exist in the given facts and circumstances and therefore a serious error both on facts

and in law has crept in the impugned judgment and order of the learned Single Judge, which ought to be set aside.

35. Mr. Tamboly would contend that the jurisdiction of testamentary court is not of suspicion, skepticism, but of circumspection and caution. He would once again place reliance ***Shirish Popatlal Shah (Supra)***. Such suspicious circumstance must either appear from document itself or must be shown to exist by cogent evidence and must be such that they are real, germane and not fantasy of the doubting mind.

36. Mr. Tamboly would urge that a Will is not required to be in any particular form and there is no particular format under the Indian Succession Act for a Will to be specifically worded as held in ***Hari Narayan Khedkar (deceased) and Ors Vs. Pandurang through LRs Dwarkabai wd/o Pandurang Khedkar and Ors***[5]. In such view of the matter, the findings of the learned Single Judge in the impugned judgment qua the absence of any particulars of the properties by the deceased in her Will, owned by her, cannot be a suspicious circumstance. According to Mr. Tamboly, the probate Court is

[5]. (2003) 4 Mh.L.J. 277)

concerned only with the due execution of the Will. As the learned Single Judge had otherwise held in favour of the appellant on all Issues pertaining to the execution of the Will, the ground of suspicion circumstances could have never disentitle the Appellant from claiming the reliefs in terms of issuance of the Letters of Administration, with her deceased mother's Will.

37. Mr. Tamboly would urge that the only evidence which has come on record regarding the participation of the Appellant in the Will of the deceased, which according to the Appellant, would be clear from the following facts :- (a) the Appellant was present when the deceased Maria executed the Will at the residence of PW-1 and the same was attested by PW-1 and his wife attesting witnesses; (b) PW-1 drafted the Will as per the instructions of the deceased Maria, once the same was ready, he telephoned the Appellant to bring the deceased Maria to his residence; (c) the Appellant accompanied the deceased Maria to the residence of PW-1 for making her Will.

38. It is thus clear that, the Appellant apart from accompanying her deceased mother, who was 70 years old at the relevant time, played no active role in making of the Will in question. This being the case,

it can hardly be said to be suspicious circumstance disentitling the grant of relief, as prayed for, to the Appellant. It is well settled that mere presence of propounder of Will at the time of execution is, by itself, insufficient to create any doubt regarding the testamentary capacity of the testator, or the genuineness of the Will as also observed by the Supreme Court in ***Smt. Malkani Vs. Jamadar and Ors***[6] and ***Pentakota Satyanarayana & Ors Vs. Pentakota Seetharatnam & Ors***[7]***.***

39. Mr. Tamboly would contend that even the other two sons of the deceased Maria i.e. George and Reginald are equal (1/3) beneficiaries under the Will of the deceased along with the Appellant. It is nobody's case that they had any role to play in the making of the Will. As beneficiaries, they are equally entitled in law to apply for Letters of Administration with the Will annexed. Had they done so, the grant of Letters of Administration would not have been refused on the ground that the Appellant allegedly participated in making of the Will.

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[6]. (1987 1 SCC 610)

[7]. (2005 8 SCC 67)

40. Mr. Tamboly would contend that exclusion of a natural legal heir by a Will in itself can never be a suspicious circumstance disentitling the grant of probate or Letters of Administration with the Will annexed as observed by the Supreme Court in ***Ved Mitra Verma Vs. Dharam Deo Verma***[8]***, Rabindra Nath Mukherjee and Anr Vs. Panchanan Banerjee (Dead) By Lrs and Ors***[9] and decision of a coordinate Bench of this Court in ***Shirish Popatlal Shah (Supra).***

41. According to Mr. Tamboly, the learned Single Judge in the impugned judgment has, inappositely, drawn an adverse inference against the Appellant. The learned Single Judge failed to appreciate that even though the Appellant did not examine herself, her husband – PW-2 was orally examined. He was competent to answer the question regarding the life of the deceased as he has known her well since his childhood. None of this was at all tested in his cross examination by the respondent, therefore, it can be deemed that the respondents accepted the testimony of PW-2 as observed by the Supreme Court in ***Muddasani Venkata Narsaiah (Dead) Through Legal Representatives Vs. Muddasani Sarojana***[10]. That apart, the

[8]. (2014) 15 SCC 578
[9]. (1995) 4 SCC 459
[10]. (2016) 12 SCC 288

learned Single Judge in his impugned judgment failed to appreciate the evidence which had come on record, to justify the reason for the Appellant who could not travel from Canada to India because of illness, heart issues followed by surgery in the year 1995.

42. The learned Single Judge seems to have accepted the oral submissions made on behalf of the respondents at the time of final hearing regarding the alleged suspicious circumstances and drew an adverse inference against the Appellant. In any event, drawing an adverse inference, Mr. Tamboly would submit, is the discretionary power of the Court. This is evidenced by use of the word "may" in Section 114 of the Indian Evidence Act, 1872. Therefore, such discretion in light of the overall findings in the impugned judgment ought not to have been exercised against the Appellant, by the learned Single Judge.

43. Mr. Tamboly would emphatically urge that the core issues in the said case have been held in favour of the Appellant. It is well settled that the respondent may defend herself without taking recourse to filing cross-objections, to the extent that the decree stands in her favour. But, when the Respondent intends to assail any

part of the decree, it is obligatory on her part to file a cross objections, as observed by the Supreme Court in ***Hardevinder Singh Vs. Paramjit Singh and Ors***[11]. Thus, in the absence of any appeal or cross objections by the respondents, it was not open for respondents to assail the findings on the core issue answer in favour of the Appellant, in the given facts.

Case of the Respondents :-

44. Mr. Quraishy, learned counsel for the Respondents has vehemently refuted all the submissions made on behalf of the appellant. In sum and substance, he would contend that the impugned judgment, warrants no interference in Appeal. This is because the learned Single Judge has considered all factual and legal nuances on record resulting in a reasoned judgment.

45. Mr. Quraishy would premise his submission on provisions of the Indian Succession Act namely Section 89, 81 and 180. He would submit that considering these provisions in-totality, there is no justification in law to grant Letters of Administration in favour of the

[11]. 2013 9 SCC 261

appellant with respect to the Will of the deceased Maria by interfering with the impugned judgment.

46. Mr. Quraishy would at the outset submit that the Will of the deceased Maria falls foul of Section 89 of the Succession Act and is void on the account of uncertainty. This is in as much as the extract of the Will would reveal that deceased Maria purportedly bequeathed all movable and immovable properties which she may be possessed of or entitled to at the time of her death, to three out of five children. However, the said Will neither describes any property, nor does it offer any explanation as to why the two children i.e. Neville and Victor have been disinherited from the estate.

47. Mr. Quraishy would submit that in the above context, there is no explanation forthcoming from PW-1 i.e. the lawyer who drafted the Will, for not setting out the particulars/details of the subject property.

48. Further to the above, Mr. Quraishy submitted that the explanation so offered by PW-1 would fall foul of Section 81 of the Indian Succession Act. Mr. Quraishy would rely on the illustrations under Section 81 read with Section 89 of the said legislation. Mr.

Quraishy would then submit that the Will of the deceased Maria, in terms of the property set out therein, read as a residuary clause which is, no doubt, permitted under Section 103 of the Indian Successions Act. However, such a provision would apply only for the property in respect of which the testator has not made any other testamentary disposition which is capable taking effect.

49. A perusal of schedule of property to the said Will of the deceased Maria makes it evident that a Will is silent on the said statutory requirement, under Section 89 of the Act. In such circumstances, considering the clear ambiguity or deficiency apparent on the face of the Will, no extrinsic evidence can be admitted to ascertain the intention of the testator, deceased Maria, in the present case.

50. Mr. Quraishy would submit that the schedule of the property in the said Will describes a property in Bandra, ordinarily as a plot of land with a building standing thereon, drawing the Court's attention to the affidavit in respect of the Caveat (at Page-28 of Paperbook). Mr. Quraishy would contend that such property at Bandra was the

subject matter of Testamentary Petition No. 929 of 1976, filed for probating Will of the deceased father of the Appellant.

51. Mr. Quraishy contended that this petition was filed by none other than the deceased, Maria, for the probate of the last Will and testament of her late husband, Sonny Coelho, which was duly probated, a fact which is not disputed. Further to the above, Mr. Quraishy would next contend that having applied for and obtained probate of the last Will and testament of her husband, it is pertinent to note that the same treated the property at Bandra as being under his Sole ownership. Thus, the deceased Maria had exercised her right to elect as stipulated under Section 180 of the Indian Succession Act, giving up any right to bequeath the same property being the subject matter of her late husband's probate Will. Mr. Quraishy would place due reliance on Section 180 of the Indian Succession Act to make good his submissions.

52. He would further contend that the above aspect in the matter has been duly considered and reasoned findings have been arrived at in paragraph 15 to 18 of the impugned judgment of the learned Single Judge. These would make it clear that the deceased Maria

having propounded the Will, her late husband and was aware and conscious of the fact that the said Bandra property was solely owned by her husband. There is no reason, much less justification to stray away and or defer from such findings in the impugned judgment.

53. Mr. Quraishy would then submit that the suspicious circumstances surrounding the Will are succinctly enumerated in the impugned judgment (Page-115 of paperbook). The detailed and cogent findings on these crucial aspect of the matter, in the given facts, warrant no interference.

54. Mr. Quraishy would place reliance on the judgment of the Supreme Court in the case of ***Kavita Kanwar Vs. Mrs. Pamela Mehta & Ors***[12]**. (Para 23.2)** where the Supreme Court has held that when a Will is surrounded by suspicious circumstances, the Court would expect that the legitimate suspicion should be removed before the document in question, is accepted as the last Will of the testator. Further in the said case, the Court has also relied upon the definition of 'suspicious circumstance' as held in ***Shivakumar and Ors Vs. Sharanabasppa and Ors***[13]**,** where the Court held that, "A circumstance

[12]. Civil Appeal No. 3688 of 2017 decided on 19 May 2020.
[13]. Civil Appeal No. 6076 of 2009 decided on 24 April 2020.

is “suspicious” when it is not normal or is ‘not normally expected in a normal situation or is not expected of a normal person’. As put by this Court, the suspicious features must be ‘real, germane and valid’ and not merely the ‘fantasy of the doubting mind”.

55. Mr. Quraishy in the above context would refer to the said decision in ***Kavita Kanwar (supra),*** where the Supreme Court has also referred to the decision in ***H. Venkatachala Iyengar (supra),*** wherein the Court held that the where the propounder of a Will has taken a prominent part in its execution and has received substantial benefit under it, such circumstances are generally treated as suspicious.

56. Mr. Quraishy would contend that in the present case, it has come on record that the said Will of the deceased Maria was drafted by PW-1, i.e. the lawyer i.e. Collaco who was known to the Appellant. Referring to the evidence on record he contended that it was the appellant who brought the said deceased Maria to the house of the said lawyer for the execution of the Will, and she was present at the time of signing of the said Will; The said lawyer, PW-1, and his wife were witness to the Will; The said lawyer PW-1 had also advised

the appellant by giving a written opinion on the said Bandra property.

57. Mr. Quraishy in his submissions would rely on the findings of the learned Single Judge in the impugned judgment, where it is rightly noted and considered the fact that the Will has been drafted by a lawyer who charged fees for the same, it remains cryptic and mentions neither any property nor the name of an executor. Not just that but also the said Will drafted by the said lawyer excludes two children, without any explanation, which comes within the realm of a suspicious circumstances.

58. As regards the exclusion of Victor and Neville from the said Will, there is no explanation forthwith therefrom neither the evidence of PW-1 and PW-2 throw any light in this regard. During arguments, an explanation was sought to be put forward by the Appellant to the effect that they were already beneficiaries of the Will of their late father-Sonny. However, the said explanation was not accepted, as it was not born out of the evidence of PW-1 or PW-2.

59. Mr. Quraishy would rely on the recent Supreme Court judgment in ***Gurdial Singh (Dead) through LR Vs. Jagir Kaur (Dead)***

and Anr. Etc [14], where the Hon'ble Supreme Court summarized the legal principles regarding the proof of a Will and clearly held that the onus lies on the propounder to dispel any suspicious circumstances surrounding the Will, to the satisfaction of the conscience of the Court. The Court further relied on the decision in ***H. Venkatachala Iyengar (Supra)*** wherein it was held that even in the absence of any plea of fraud, collusion, coercion or undue influence by the caveator or where suspicious circumstance exist, it is the duty of the propounder of the Will to remove all dues to the satisfaction of the Court. He would urge that the decision of the Hon'ble Supreme in ***Gurdial Singh (Supra)*** and ***Kavita Kanwar (Supra)*** negate the contention of the Appellant that having decided on Issue Nos. 1 to 4 in favour of the appellant, the learned Single Judge could not have declined to grant Letters of Administration with the Will of the deceased Maria (mother of the Appellant).

60. Mr. Quraishy would then urge that the learned Judge, in the impugned judgment and order has rightly drawn an adverse inference as regards the failure of the appellant to examine herself,

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[14]. Civil Appeal No(s). 3509-3510 of 2010 decided on 17 July 2025.

which was essential to dispel the suspicious circumstances surrounding the said Will. According to him, the learned Single Judge thus had rightly contended that PW-2 (husband of the Appellant) had no personal knowledge regarding the circumstances surrounding the execution of the Will. PW-2 failed to prove that the Appellant was unable to come to India to record evidence in the year 2000-2001, despite the plea of her ill health that pertained to the year 1995-1996. Mr. Quraishy would further submit that PW-2 (Husband of the Appellant) admitted that he did not personally know PW-1 and was not present at the time of execution of the Will. Accordingly, his testimony does not take the case of the Appellant any further.

61. For all the above reasons, Mr. Quraishy would urge that the appeal is completely devoid of merits and should be accordingly dismissed.

Rejoinder Submissions of the Appellant :-

62. Mr. Tamboly in his rejoinder submission would first respond to the contention of the respondent that the deceased Maria (mother of the Appellant) had not set out or itemized her property in her Will.

He submits that this contention is not relevant, primarily because it is well settled that the probate Court is not concerned with the title to the estate. In this regard, Mr. Tamboly places reliance on the ***Krishna Kumar Birla Vs. Rajendra Singh Lodha & Ors***[15] and ***Kanwarjit Singh Dhillon Vs. Hardyal Singh Dhillon and Ors***[16]**.**

63. Mr. Tamboly would next contend that the reliance of the respondent on Section 180 of the Indian Succession Act is completely inapposite. During her lifetime, and after the death of her late husband the deceased Maria had always treated the subject Bandra property, as her very own. She had in her lifetime got share certificate issued by Salsette Catholic Co- operative Housing Ltd Society transferred in her own sole name. In this context, it is submitted that the deceased Maria and her late husband-Sonny had taken assignment in respect of the subject Bandra property under the lease dated 20 February 1956 as joint tenants for the said property and not as tenants in common.

64. According to Mr. Tamboly it is well settled that in the case of joint tenancy, upon the death of one joint holder, his or her name in

[15]. (2008) 4 SCC 300.

[16]. (2007) 11 SCC 357

the property devolves upon the remaining joint holders by survivorship and is not governed by law of succession. Thus, the deceased Maria (mother of the Appellant) in her lifetime has always treated the suit property at Bandra as her own property pursuant to the death of her husband-Sonny, therefore, being the sole owner of the property upon death of her husband. Thus, reliance of Mr. Quraishy on Section 180 of the Indian Succession Act is misconstrued. He would, to the contrary, submit that the Hon'ble Supreme Court had the occasion to address similar situation in ***Valliammai Achi Vs. Nagappa Chettiar& Anr***[17] to negate the submission of Mr. Quraishy on Section 180 of the Indian Succession Act.

65. Mr. Tamboly would further submit that the submissions of the Respondents that the legal effect of the deceased Maria's Will has nullified the dispositions in her late husband-Sonny's Will can hardly be stated as suspicious circumstance. Mr. Tamboly would submit that the law of joint tenancy vis a vis tenancy in common would necessarily impact the bequests made under Sonny's Will. There is no prohibition to probate such Will, under law.

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[17]. 1967 2 SCR 448.

66. Mr. Tamboly would next contend that the Appellant would be entitled to get an equal share in the estate of the deceased, as her brothers i.e. George and Reginald, as per the said Will. Referring to Section 218 of the Indian Succession Act,1925 he would submit that both George and Reginald were both competent in law, to apply for Letters of Administration annexed with the said Will, there is no fetter in this regard.

67. According to Mr. Tamboly it is not the respondent's case that George and Reginald had any role to play in making of the said will. Had they been the propounders of the said Will in question, the suspicious circumstances allegedly existent would not be said to exist, in which case the grant of Letters of Administration would have to be allowed, given the other findings in the impugned judgment. This, according to Mr. Tamboly, is not considered by the learned Single Judge in the impugned judgment.

68. This Court ought to consider that making of the Will of the deceased Maria was not vitiated by exercising of alleged undue influence, fraud or coercion upon her. The respondents have not even admitted to address this issue, despite being raised by the appellant.

69. Mr. Tamboly would submit that the order passed by this Court on 18 April 1990 in Testamentary Petition No. 209 of 1987 filed by the Appellant would show that Victor was represented before this Court and was fully aware of the Testamentary Petition filed by the Appellant. Victor passed away on 26 January 1993 without filing a Caveat and/or challenging the Will of deceased Maria. Whereas, Neville, the other son who despite being excluded from estate of the deceased never objected to the grant of Letters of Administration in favour of the Appellant.

70. Mr. Tamboly would thus submit that this Court be pleased to test the alleged suspicious circumstances also on the above parameters coupled with the findings against the respondent regarding the allegations of undue influence, fraud, coercion, forgery and the testamentary capacity of the deceased. In doing so, this Court may consider the fact that Respondent No. 1 at the time of her oral evidence herself admitted that Victor and the respondent did not visit the deceased after 1981-1982.

71. For all of the above reasons Mr. Tamboly would submit that impugned judgment and order dated 7 March 2003 passed by the

learned Single Judge deserves to be interfered with and ought to be set aside in the present proceedings by allowing the appeal of the Appellant.

Analysis & Conclusion :-

72. At the threshold, a perusal of the impugned judgment, answering the issues framed by the learned Single Judge vide the impugned order dated 7 March 2003, the Appellant has formally proved the Will of the deceased Maria. This is in terms of the parameters, *inter alia*, laid down under Section 68 of the Indian Evidence Act, coupled with the settled legal principles set out in the impugned judgment.

73. The impugned judgment was challenged before the Division Bench of this Court by the Appellant in Appeal. By an order dated 22 January 2009, the impugned judgment of the learned Single Judge was set aside. The Respondents carried the said decision on appeal to the Supreme Court. By an order dated 2 January 2025, the Supreme Court remanded the proceedings to this Court. This was primarily on the ground that a further probe is required as to whether suspicious circumstances surround the Will in question.

74. Apropos the above, our endeavor in the present factual situation is to analyze and adjudicate upon the findings in the impugned judgment, primarily, on the issue of existence of suspicious circumstances. The learned Single Judge on such premise concluded that the relief to the Appellant (Plaintiff) ought not to be granted, in terms of the issuance of the Letters of Administration. By our order dated 27 November 2025, during arguments, we had suggested to the parties, through their counsel, to see whether any settlement could be explored, for which we had granted the parties four weeks' time. However, we were subsequently informed that the same is not possible. It is in such a backdrop that we proceed to examine the Issues and rival contentions placed before us.

75. We are conscious that the idea behind the execution of a Will is to interfere with the normal line of succession, held in ***Rabindra Nath Mukherjee (Supra)***. This has been the thrust of Mr. Tamboly's submission.

76. Mr. Tamboly has strenuously urged that once the execution of the Will is duly proved in favour of the Appellant (Plaintiff) then the mere existence of the alleged suspicious circumstances ought not to

act as a deterrence for issuance of the Letters of Administration in favour of the Appellant (Plaintiff). We shall test the correctness, legality or otherwise of this submission in the discussions in the paragraphs hereinafter.

77. What appears from the contentions of Mr. Tamboly is that when a Will is formally proved, relying upon the impugned judgment there can be no ground of interference in as much as the intention of the testator is reflected in such Will.

78. It appears that the learned Single Judge, in the impugned judgment, has held in favour of the Respondents mainly on three grounds viz. (a) Will is cryptic and it does not mention the property of the deceased; (b) the Appellant took prominent part in the execution of the Will; (c) the Will does not contain any explanation as to why the other two sons of the deceased Maria namely Victor and Neville, were excluded from any benefits. These alleged circumstances, branded as suspicious, according to Mr. Tamboly cannot invalidate a Will of the deceased Maria which is otherwise formally proved.

79. Merely because the Respondent (Defendant) has contended existence of some suspicious circumstances that would not *per se* result in refusing the grant of Letters of Administration with the Will of the deceased Maria. Merely because two of the legal heirs i.e. Neville and Victor have been consciously disinherited from the Will that alone is not a suspicious circumstance, in the given factual matrix. On a first blush, such submissions/ contentions appear to be attractive. However, when one delves into the details and nuances in the unique and peculiar factual complexion this may not be the correct position.

80. Examining the first suspicious circumstance, namely that the said Will is bereft of necessary particulars/details, we may first advert to the Will of the deceased Maria, which is reproduced below:-

"LAST WILL AND TESTAMENT

I. Mrs. MARIA FRANCICA COELHO wife of the late Sonny Rita Coelho residing at Casa Maria". 44, St. Paul's Road, Bandra, Bombay 400050 do hereby make and declare this as my last will and testament hereby I have bequeath and give to my children (1) George Patrick Coelho (2) Reginnald Christopher Coelho and (2) Mrs, Myan Philomena Collaco (nee Coelho), to each of them

in equal shares, all my property movable and immovable which I may be possessed of or be entitled to at the time of my death.

IN WITNESS WHEREOF I, the said Mrs. MARIA FRANCISCA COELHO, have hereunto signed at Bombay this the 7th day of July, 1982.

Sd/- 7.7.1982.

Mrs. Maria Fransieca Coelho.

Signed by the said Mrs.MARIA FRANCISCA COEHO as her last will and testament in the presence of us, present at the same time, who is her presence and is the presence of each other, sign as witnesses hereto.

1. Signature	*Sd/-*
Name	*L.A. Collaco, 49 Nova Rose, Society.*
Address	*St. Dominic Road, Bandra, Bombay 400050.*
2) Signature	*Sd/-*
Name	*Zita Calhco.*
Address	*42, Nova Rose Society, St. Dominic Road, Bandra,Bombay 400050."*

A perusal of the above Will of the deceased Maria clearly brings out the fact that the details of the property sought to be bequeathed are not mentioned therein. This becomes relevant as there is nothing on

record of the proceedings to show that the deceased Maria stated in her probate petition that she possessed half of share in the subject property though her deceased husband – Sonny.

81. Under his Will, he clearly intended to dispose of the entire subject property in favour of his two sons Victor and Neville conferring only a life interest in favour of the deceased Maria.

82. The above facts, along with a bare perusal of the deceased Sonny's Will, clearly demonstrate that he always treated the subject property as his own and never as joint property with his deceased wife, Maria. The said Will was duly probated on 24 April 1980, which the Appellant does not assail. Further, there is nothing on record to demonstrate that the Appellant, Myra, opposed the grant of such probate of her late father's Will. Such objection becomes relevant, given that, according to the Appellant, her deceased father, under his Will, could not have disposed of the entire property, which was joint property of both her parents.

83. The fact that intrigues us is that the Appellant, Myra, remained silent for about 6 years after the probate of her deceased father's Will, granted on 24 April 1980. It was only around 16 December

1985 that she filed Suit No. 3245 of 1985 against her four brothers for the administration of her mother's estate, seeking a declaration of her share therein. The Appellant has, *inter alia,* stated that her deceased father's Will was probated in April 1980 in the said Suit preferred by the Appellant.

84. The Will of the deceased Maria, sought to be propounded by the Appellant, came into existence on 7 July 1982, i.e. after about 21 months, pursuant to the grant of the probate to the Will of her father, which was probated on 24 April 1980. Noting the material and relevant fact that the subject properties sought to be bequeathed are common under the Wills of both the deceased parents of the Appellant, the said Wills are interlinked. This fact thus assumes significance.

85. When the deceased Maria was very much aware that only a life interest in the property in question was created in her favour, under her deceased husband's Will, it is natural that the details of the property ought to have been specified. This is more so when the said Will of the deceased Maria was drafted by a lawyer i.e. PW-1. Describing the property of the deceased Maria which she intended to

bequeath, in the given factual complexion, would have lent certainty and predictability.

86. Contextually, Section 89 of the Indian Succession Act reads thus:-

> *"**89. Will or bequest void for uncertainty**.—A will or bequest not expressive of any definite intention is void for uncertainty."*

In light of the above, we find that the Will of the deceased Maria only refers to the expression 'my property'. However, it lacks the necessary details and/or particulars.

87. As noted earlier, the fact that Will was drafted/made by a lawyer engaged for this purpose gives rise to a reasonable expectation that the Will would bear the necessary particulars regarding the property sought to be bequeathed thereunder. In this context, the evidence of PW-1 becomes pertinent and relevant. He, in his cross-examination, has *inter alia* deposed that:

a) The deceased, Maria, i.e., the testator herself, gave him oral instructions and general information about the property without specifying what the property was.
b) He did not ask for the details of the said property. He prepared the draft of the Will, which was executed at his

residence on 7 July 1982, and even charged fees for drafting the said Will.

c) After the Testator, i.e. deceased Maria, read the draft and approved the same, there were corrections in the draft in respect to the spellings, name and addresses of the children.

d) He was not sure whether such corrections were made by the Testator i.e. Maria herself. However, in the affidavit dated 1 April 1987, sworn by him in the capacity of attesting witness, he, *inter alia,* stated that the deceased, in her own handwriting, corrected the name of Myra before the execution of the Will.

e) PW-1 had suggested to the deceased Maria to appoint an executor to the said Will, to which she disagreed.

88. On perusal of the deposition of PW-1 i.e. one of the attesting witnesses to the deceased Maria's Will, being unimpeached/unassailed, in the factual matrix, necessitated the details of the bequeathed property to be specified, to overcome the vice of uncertainty. In this context, we now refer to the decisions cited by Mr. Tamboly in ***Kanwarjit Singh Dhillon (Supra)*** and ***Krishna Kumar Birla (Supra).*** These stand for the proposition, *inter alia*, that the probate Court is not competent to determine the question of title to the suit properties nor will it go into the question whether the suit

properties bequeathed by the Will were joint ancestral properties or self-acquired by the Testator.

89. In the given facts, this is not the issue for consideration before this Court. We are called upon to examine the Will of the deceased Maria, more particularly and specifically, in the context of the suspicious circumstances (supra) allegedly surrounding the Will. These ought to be repelled to the satisfaction of the Court, which is trite law. It is therefore incumbent upon us to holistically consider and examine all relevant and material facts. We ought not to focus on a single factor like the title of the property as sought to be contended by Mr Tamboly in support of the judgments cited by him (supra).

90. It is apposite to refer to a decision of the Privy Council in ***Hames Vs. Hinkson***[18]. The Privy Council observed that where a Will is charged with suspicion, the rules enjoin a reasonable skepticism, and as Judges we cannot close our minds to the truth. Therefore, we are afraid the decisions cited by Mr Tamboly (supra) do not assist him.

[18]. AIR 1946 PC 156

91. The *second* suspicious circumstance alleged is that the Appellant had taken a prominent part in the execution of the Will of her deceased mother, Maria, which the Appellant seeks to propound. In this regard, we firstly refer to the evidence of PW-1. He, in his cross-examination, has *inter alia* deposed that;

(a) PW-1 did not know the deceased Maria directly. He was introduced to her through the Appellant.

(b) PW-1 was consulted by the Appellant on private legal matters, not about the disputed property.

(c) The Appellant had brought the deceased Maria to his house for the purpose of executing the Will, after which he did not give any notice in respect of the property of the deceased Maria.

(d) PW-1 has also referred to a legal opinion given by him to the Appellant in respect of a property.

92. The evidence of PW-2 i.e. Saotome Collaco i.e. husband of the Appellant, more particularly in his cross-examination, demonstrates that:

(a) He, along with the Appellant, migrated to Canada in 1996. Thereafter, his family did not come to Bombay. He came to Bombay 4

to 5 times in connection with the case.

(b) He was not personally present at the residence of PW-1 along with the Appellant and the deceased Maria at the time of execution of the said Will of the deceased Maria.

(c) He had only spoken to PW-1 over the telephone.

(d) The deceased Maria did not have good relations with one of her sons, Victor, but had good relations with the other son, Neville, who did reside with the deceased Maria.

93. Such evidence as noted above has remained unassailed on the part of the Appellant. It is thus evident that PW-1, being the attesting witness, came on the scene through the Appellant and did not know the deceased Maria personally at any given point in time. It was PW-2 who deposed as a witness on behalf of the Appellant when, in the given factual complexion, it is apparent that he was not directly concerned and/or possessed knowledge of the facts surrounding the deceased Maria's Will, nor was he present at the time of its execution before PW-1.

94. The Appellant admittedly chose not to be a witness and/or offer herself for examination and cross-examination. It was the

Appellant who sought to propound the Will of her deceased mother, who was personally aware of all the facts relevant and necessary surrounding the property sought to be bequeathed under her deceased mother's Will. It is trite that as the propounder of her deceased mother's Will, it was the bounden duty of the Appellant to remove all suspected features.

95. Mr. Tamboly has urged that it is well settled that mere presence of the propounder of the Will at the time of execution is insufficient to create any doubt regarding the testamentary capacity or genuineness of the Will. In this regard he would rely on the decision in ***Smt. Malkani (Supra)*** and ***Pentakota Satyanarayana (Supra)***. These observations were made in the peculiar facts and circumstances of those situations. However, in our view, the Appellant being in the know of all the relevant facts and circumstances surrounding the Will, would be relevant and significant. Therefore, taking recourse to what happens ordinarily, as contended by Mr Tamboly, would not in itself be enough. However, this was observed in those peculiar facts and circumstances.

96. We now examine the aspect of the Appellant choosing not to lead evidence in the given proceedings. According to the Appellant, she was taken ill and was suffering from ischemic heart disease when migrated to Canada sometime in the year 1995-96, *inter alia* for her surgery. However, pertinent it is to note that the medical certificates produced on record by PW-2 speak about her health condition as of September/October 1995. It is undisputed that recording of the evidence in this case began after about 7 years i.e. on 9 November 2002. There is nothing brought on record by the Appellant to demonstrate that the Appellant's health condition did not permit her to travel to India for the purpose of giving evidence.

97. On a careful perusal of the record, we find that the evidence of PW-2 i.e. the Appellant's husband came to be recorded in January 2001. However, there is no explanation regards the Appellant's health, in the form of material/documents/evidence in respect of such period to justify her absence.

98. In the above context, we do not advert to the submission of Mr. Quraishy in the context of Section 81 of the Succession Act, which reads thus:-

> *"81. Extrinsic evidence inadmissible in case of patent ambiguity or deficiency.—Where there is an ambiguity or deficiency on the face of a will, no extrinsic evidence as to the intentions of the testator shall be admitted.*

Apropos the above, we advert to the given fact situation, when there is an ambiguity or deficiency in the description of the property sought to be bequeathed under the deceased Maria's Will. The same, as noted above, cannot be cured by extrinsic evidence of the Appellant, by going behind the intent of the Will of the testator. This is not what the law would mandate. The stand of the Appellant if accepted would lead to the contrary and thereby run contrary to Section 81 (supra). In the context of Section 81 of the Succession Act we may add that this is not a case, where the extrinsic evidence can be read into unoccupied interstices of the statute when there are none.

99. From a careful perusal of the Will of the deceased Maria, we gather that it describes a property in Bandra essentially a plot of land with building standing thereon. There is an *ex facie* ambiguity in this regard. For the reasons narrated above and the common property sought to be bequeathed under both the said Wills of the Appellant's deceased parents, silence as to its description/particulars in the

deceased Maria's Will, raises doubts. This, we are afraid, is not dispelled by the Appellant to the Court's satisfaction.

100. We find substance in the contention of Mr. Quraishy to the effect that it was the Respondent No.1 who chose to be examined and cross-examined personally, unlike the Appellant, though it is the Appellant who seeks to propound the said Will. During her testimony the said Respondent had *inter alia* deposed that her father-in-law i.e. the deceased father of the Appellant-Sonny had bequeathed equal share in the subject property to his sons Victor and Neville with life interest to his deceased wife Maria. Such Will was probated by the said two sons and the deceased Maria. She also deposed that the deceased Maria had told Victor how the deceased could divide her property and give a share to the Appellant when her husband had made the Will and divided the property.

101. The Evidence Act under Section 106 cast a burden of proving a fact especially within the knowledge on such person. In the present factual complexion, such person is none other than the Appellant herself. It is she who desires to propound her deceased mother's Will and the law casts upon her an obligation to dispel any circumstances

even bordering around suspicion, to dispel the same to the satisfaction of the Court.

102. Mr. Tamboly, in our view, cannot dispute the settled position that when the Appellant who seeks to propound her deceased mother's Will she is legally obligated to dispel any unnatural, unusual circumstances surrounding it.

103. We are not impressed with the grounds of her health in not leading evidence for the reasons indicated by us above. We are not persuaded by Mr Tamboly when he submits that PW-2, i.e. husband of the Appellant, had knowledge of all the facts and circumstances surrounding the execution of the Will for the reasons noted by us above. It is apposite at this juncture to refer to a decision of the Supreme Court in ***Vidyadhar Vs. Manikrao and Anr.***[19], paragraph 17 of which reads thus: -

> *"17. Where a party to the suit does not appear into the witness box and states his own case on oath and does not offer himself to be cross examined by the other side, a presumption would arise that the case set up by him is not correct as has been held in a series of decisions passed by various High Courts and the Privy Council beginning from the decision in Sardar Gurbakhsh Singh v. Gurdial Singh (AIR 1927 PC 230). This was followed by the*

[19]. 1999 AIR SC 1441

Lahore High Court in Kirpa Singh v. Ajaipal Singh (AIR 1930 Lah 1) and the Bombay High Court in Martand Pandharinath Chaudhari v. Radhabai Krishnarao Deshmukh (AIR 1931 Bom 97). The Madhya Pradesh High Court in Gulla Kharagjit Carpenter v. Narsingh Nandkishore Rawat (AIR 1970 MP 225, 1970 MPLJ 586) also followed the Privy Council decision in Sardar Gurbakhsh Singh's case (supra). The Allahabad High Court in Arjun Singh v. Virender Nath (AIR 1971 ALL 29) held that if a party abstains from entering the witness box, it would give rise to an inference adverse against him. Similarly, a Division Bench of the Punjab & Haryana High Court in Bhagwan Dass v. Bhishan Chand (AIR 1974 P&H 7), drew a presumption under Section 114 of the Evidence Act against a party who did not enter into the witness box."

104. A perusal of the above would categorically drive home the point that this is a case where adverse inference ought to be drawn against the Appellant under Section 114 of the Evidence Act, under the canopy of the above decision. The Section employs the word 'may' as a prefix to 'presumption of existence of fact'. We find that the learned Single Judge has correctly applied the said provision in the given factual complexion. We are therefore not inclined to upset the findings dovetailed with the reasons, grounded in law, which manifest in the impugned judgment.

105. Adverting to these submissions and the decisions relied on by Mr. Tamboly more particularly in ***Muddasani Venkata Narsaiah***

(Dead) through Legal Representatives (Supra) and ***Hardevinder Singh (Supra)*** does not in any manner apply to the given facts and circumstances. For the reasons indicated above as also is evident from the record, it is PW-2 who was cross-examined and despite such opportunity his deposition does not support, much less, lend any credence to the case sought to be espoused by the Appellant.

106. At this stage, it is pertinent to refer to the decision of the Privy Council in ***Sardar Gurbakhsh Singh Vs. Gurdial Singh and Anr*** [20] and the telling words of the Privy Council in the said case, which read thus:-

> *"The true object to be achieved by a Court of justice can only be furthered with propriety by the testimony of the party who personally knowing the whole circumstances of the case can dispel the suspicious attaching to it. The story can then be subjected in all its particulars to cross-examination."*

107. We may now advert to the submission of Mr. Quraishy when he relies on Section 180 of the Indian Succession Act which reads thus:-

> *"**180. Circumstances in which election takes place.**—Where a person, by his will, professes to dispose of some thing which he has no right to dispose of, the person to whom the thing belongs shall elect either to confirm such disposition or to dissent from*

[20]. 1927 AIR Privy Council 230

it, and, in the latter case, he shall give up any benefits which may have been provided for him by the will."

108. In terms of the above, the Appellant cannot escape from the fact that her deceased mother Maria had not challenged the probate of the Will of her deceased husband. In fact, she, along with her two sons, Neville and Victor, who were the named executors in the said Will, had applied for probate of the said Will, which treated the subject property at Bandra, being of his sole ownership. Therefore, there is substance in the submission of Mr. Quraishy that the deceased Maria had exercised her right to elect and considering the clear and unambiguous language and purport under Section 180 of the Succession Act, the deceased Maria gave up any right to bequeath the same property, which, undisputedly, formed the nerve center of the Appellant's deceased father's Will. It may be apposite to refer to the definition of the expression life interest as defined under the Black's Law Dictionary (7th Edition) as "*an interest in real or personal property measured by the duration of the holder's or another named person's life*". The same definition is found in Mitra's Legal and Commercial Dictionary. Juxtaposing this to the given facts such life interest created in favour of the deceased Maria under her

deceased husband's Will excluded the power of absolute transfer. The life interest created in her favour under her deceased husband's Will would extinguish on her death.

109. In the above context, we have equally noted the rebuttal of Mr Tamboly in this regard, who would submit that reliance on Section 180 is misconstrued inasmuch as the deceased Maria, in her lifetime, had the share certificate transferred in her sole name. Therefore, being the sole owner of the property upon the death of her husband, there was no question of election to be made by her in terms of Section 180 (supra).

110. Accepting the above contention of Mr. Tamboly would completely turn the facts on its head as also the meaning and purport of Section 180. In fact, having applied for and obtained probate of the Will of her deceased husband which treated the property at Bandra under his sole ownership, the deceased Maria had exercised her right to elect as conferred under Section 180 of the Succession Act. She, therefore, relinquished her right to bequeath the very same property under her deceased husband's Will which, undisputedly, conferred only a life interest in her favour. Subsequently, even her

daughter i.e. the Appellant has not opposed the probate to her deceased father's Will when, undisputedly, the Bandra property sought to be bequeathed is common.

111. We find that reliance of Mr. Tamboly on the decision in ***Valliammai Achi (Supra)*** is of no assistance to the Appellant as the fact situation in that case cannot simply be interpolated to this case under consideration. In the given facts and as discussed above, the distinction between joint tenant and tenants in common as sought to be canvassed by Mr Tamboly pales insignificance. For such reasons, we find that the reliance of Mr. Tamboly on the decision in ***Suresh Kumar Kohli Vs. Rakesh Jain & Anr.***[21] on this issue, in the given factual matrix, is misplaced.

112. We may now advert to the *third* suspicious circumstance, namely the exclusion of the two sons, namely Victor and Neville, from the Will of the deceased Maria. In this context, the case of the Appellant is that under the Appellant's deceased father's Will, the said two sons were already made beneficiaries. Therefore, there is

[21]. AIR 2018 SC 2708

nothing unnatural and/or suspicious in this regard. However, the given facts and the record narrate a different story.

113. There is not even an iota of explanation to be found in the Will of the deceased Maria in this regard. Nor has the Appellant, the propounder of her late mother Maria's Will stepped into the witness box to explain the circumstances in regard to exclusion of her brothers Victor and Neville from the said Will. The evidence of PW-2 who has sought to replace the Appellant does not throw any light on this vital aspect which could have been best explained by the propounder of the said Will i.e. the Appellant herself. Moreover, referring to Section 106 of the Evidence Act, the evidence of PW-1 brings out nothing to justify the exclusion of Victor and Neville, in the manner as the law would mandate.

114. It is a fact that the other two brothers George and Reginald for reasons best known to them have not contested the Will of their deceased mother which is sought to be propounded only by the Appellant, making her the *de facto* and *de jure* sole beneficiary under the said Will. Mr. Tamboly in his rejoinder/additional submissions has referred to an order dated 18 April 1990 passed in these

proceedings, to buttress that Victor was at all times aware of the Testamentary Petition preferred by the Appellant. He therefore cannot plead ignorance in regard to the Will of the deceased Maria. However, written statement dated 11 April 1986 filed by Victor referred to (supra) belies this. Victor has categorically denied the fact that the deceased Maria left any Will dated 7 July 1982, putting the Appellant to its strict proof.

115. In the above context, the decision cited by Mr. Quraishy in ***H. Venkatachala Iyengar (Supra)*** is apposite in the present factual matrix. The Supreme Court has held that when the propounder of a Will has received a substantial benefit under the same by taking a prominent part, in its execution, that itself is generally treated as a suspicious circumstance. In fact the findings of the Supreme Court in the said decision, *inter alia*, in regard to the existence of suspicious circumstances demonstrate that the findings in the impugned order have duly considered such position.

116. Now, on a careful perusal of the impugned judgment we find that this Court has relied upon the affidavit of the deceased Maria

dated 31 December 1982 which is on record in the proceedings. The Affidavit reads as under:-

"AFFIDAVIT

I, MRS MARIA FRANCISCA COELHO, wife of the Late Mr. Santa Rita de Spirito Santo Coelho, residing at 44-A, St. Paul Road, "Casa Maria, Bandra, Bombay 400050, do hereby state as follows:

1. Immediately after my husband's death, my son, Victor Coelho informed me that he had to carry out certain formalities concerning my and my husband's property. I was not able to understand, and having implicit faith in my son, as I have in all my children, I signed whatever he wanted me to sign and gave my oath wherever he wanted me to do so. Later on, I learnt that this concerned my husband's will of which I had no knowledge and which I feel he might have made in a fit of temper. My husband loved me very much and I cannot believe he would have made such a will.

2. I trusted my daughter Myra Philomena Collaco (nee Coelho) and my son Neville Cyril Coelho, and with these two children, I have left certain unwritten objectives, which they will carry out if they love me.

3. My daughter Myra and my son, Neville funded me from time to time to pay my electricity bills, water bills, municipal taxes. Wherever possible, my daughter, Myra went into appeal to reduce or to do away with the tax burdens which were unnecessarily levied on the property.

4. I approached my son, Victor Coelho for a family settlement and equal distribution of the property, but he refused to agree.

5. I left a will and asked my daughter to work hard to bring justice and peace in the family.

6. I suffered immensely at the hands of my tenant Mr. Roger D'Rego who has deceived my husband and me and taken

shelter on my property. He is the heir to immense wealth and despite this wants to deprive my children of their rights.

7. I have full right to my husband's property and I do not see how my son, Victor can assume the responsibility of executor and trustee.

In June 1946, I opened an account (savings) with Bank of India, Bandra Branch and I saved money in it given to me by my father from time to time, money given to me by my husband as presents and also money I earned from the sale of sweets, embroidery and masalas. Igave from this money for the purchase of land when my husband was carrying out negotiations with the Catholic co-operative Society in the year 1950. I also disbursed from this account from time to time towards the property. I sold my gold jewellery which was given to me by my parents at the time of my marriage and realised a sum of approximately Rs. 14,000/= which I gave to my husband for the property.

8. This affidavit is being deposed by me with a view to establish the correct facts regarding my children, the property and other related matters.

SOLEMNLY AFFIRMED AT BOMBAY

this twenty-ninth 31st day of December 1982 Deponent"

117. A perusal of the above affidavit does indicate an element of suppression of facts which remains to be explained and/or justified by the Appellant. It is not for this Court to read into and/or fill in the gaps, as that would tantamount to conjecturing, which cannot be countenanced. This is more particularly when the deceased Maria clearly deposed in the said affidavit that she left "certain unwritten objectives which they will carry out if they love me". Thus, it is only

the Appellant and/or Neville who can throw light and/or explain as to what such unwritten instructions were. In the absence of evidence, more particularly led by the Appellant and/or Neville, we are not expected to assume and/or presume situations. It is not for this Court to undertake such an exercise.

118. We find that there is nothing on record which would help and/or assist Mr. Tamboly in his submissions in support of the Appellant's case, *inter alia*, as far as the above aspect is concerned. The Notary who notarized the said affidavit was cross-examined. However, a perusal of the evidence of the said Notary is of no assistance insofar as the above-referred affidavit of deceased Maria and the averments therein are concerned. We are unable to decipher the missing links as noted above which bother our conscience more particularly in the absence of cogent reasoning and convincing explanation on the part of the Appellants to dispel the existence of the alleged suspicious circumstances.

119. The definition of the expression 'suspicious circumstance' is found in the Supreme Court's decision in ***Shivakumar & Ors. Vs.***

Sharanabasppa & Ors.[22]***,*** where the Supreme Court held "A circumstance is 'suspicious' when it is not normal or is 'not normally expected in a normal situation or is not expected of a normal person'. As put by this Court, the suspicious features must be 'real, germane and valid' and not merely the 'fantasy of the doubting mind".

120. The Supreme Court propounding the principles relating to proof of Will in ***Smt. Jaswant Kaur v. Smt. Amrit Kaur & Ors.***[23] gainfully referred to its earlier decision in ***H. Venkatachala Iyengar (Supra)***. For the present, paragraph 9 of the said decision is apposite which reads thus:-

> *"9. In cases where the execution of a will is shrouded in suspicion, its proof ceases to be a simple lis between the plaintiff and the defendant. What, generally, is an adversary proceeding becomes in such cases a matter of the court's conscience and then the true question which arises for consideration is whether the evidence led by the propounder of the will is such as to satisfy the conscience of the court that the will was duly executed by the testator. It is impossible to reach such satisfaction unless the party which sets up the will offers a cogent and convincing explanation of the suspicious circumstances surrounding the making of the will."*

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[22]. Civil Appeal No.6076 of 2009 decided on 24 April 2020.

[23]. (1977) 1 SCC 369

121. Similarly, in ***Ram Piari vs. Bhagwant & Ors.***[24]; in paragraph 23, the Supreme Court held that when suspicious circumstances exist, the Court should not be swayed by due execution of the Will alone. In ***Indu Bala Bose & Ors. vs. Manindra Chandra Bose & Anr.***[25] the Supreme Court held that every circumstance is not a suspicious circumstance. Paragraph 8 of the said judgment reads thus: -

> *8. Needless to say that any and every circumstance is not a "suspicious" circumstance. A circumstance would be "suspicious" when it is not normal or is not normally expected in a normal situation or is not expected of a normal person."*

122. The Supreme Court in the Privy Council's decision in ***Hames v. Hinkson*** (supra) is now referred to, the relevant portion of which reads thus:-

> *17.....where a Will is charged with suspicion, the rules enjoin a reasonable scepticism, not an obdurate persistence in disbelief. They do not demand from the Judge, even in circumstances of grave suspicion, a resolute and impenetrable incredulity. He is never required to close his mind to the truth."*

123. It was again reiterated in ***PPK Gopalan Nambier vs. PPK Balakrishnan Nambiar & Ors.***[26] that suspected features should not be

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[24]. (1993) 3 SCC 364

[25]. (1982) 1 SCC 20

[26]. 1995 Supp (2) SCC 664

mere fantasies of a doubted mind, but they must be real, germane and valid suspicious features.

124. The above decisions find reiteration in the recent most decision of the Supreme Court on the issue of suspicious circumstance is in ***Gurdial Singh (Dead) through LR*** (supra) where the Supreme Court has summarized the legal principles regarding proof of a Will. The Court has held that the onus is on the propounder to dispel such suspicious circumstances surrounding the Will to the satisfaction of the conscience of the Court.

125. Having examined the existence of the alleged suspicious circumstances in totality, as narrated above, in our view, suspicious, doubtful circumstances surrounding the said Will of the deceased Maria do exist in the given facts and circumstances. The Appellant, despite being the propounder of the Will, has not fully satisfied the conscience of this Court in dispelling the same, despite that being a legal obligation to do so. For such reasons, the decision cited by Mr Tamboly in ***Surendra Pal & Ors. Vs. Dr Mrs. Saraswati Arora & Anr***.[27] for the proposition that suspicious circumstances, if any, must appear

[27]. (1974) 2 SCC 600.

from the document itself/cogent evidence, will not apply to the given facts.

126. We now advert to the reliance placed by Mr. Tamboly on the decisions in ***Shirish Popatlal Shah***, ***Niranjan Umeshchandra Joshi***, ***Hari Narayan Khedkar (supra)*** in support of the proposition on the validity and legality of the Will which is formally proved. In this regard, there can be no quarrel to the principles/parameters for formally proving a Will as laid down in the said judicial pronouncements. We have also perused the additional compilation tendered by Mr. Tamboly. We may hasten to add that as a catena of judgments have been relied on by parties, to avoid prolix, we may not have referred to each, separately more so when they deal with the same proposition.

127. We do not find any irregularity much less illegality in the impugned judgment and order dated 7 March 2003 which is assailed in the present proceedings. We therefore are not inclined to interfere and/or disturb the findings recorded in the said impugned judgment, which in our view, does not pass the muster of legal parameters, to interfere in appellate jurisdiction.

128. Referring to the decision cited by Mr. Tamboly on the issue of suspicious circumstances, we think, it may be apposite to refer to the celebrated decision in ***Quinn Vs. Leathem***[28], where it is held that a case is only an authority for what it itself actually decides. It cannot be quoted for a proposition that follows logically from it. The Earl of Halsbury L. C. observed that every judgment must be read as applicable to the particular facts, since the generality of the expressions which are found there are not intended to be the exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides. Such a dictum was approved and followed by the Supreme Court in several decisions, including ***Sarv Shramik Sangh vs. State of Maharashtra***[29] and ***Bihar School Examination Board vs. Suresh Prasad Sinha***[30]**.**

129. Before parting we may observe that ordinarily we would have chartered the usual course and walked the common path i.e. where the Will is formally proved, in the absence of allegations of fraud, undue influence and the like, relief could be granted. However, the

[28]. 1901 AC 495
[29]. (2008) 1 SCC 494
[30]. (2009) 8 SCC 483

law mandates that the obligation cast upon us does not end here. In a given case, when there are allegations of the existence of suspicious or unusual circumstances, peculiar and unique to the factual complexion, the same ought to be examined and taken to its logical conclusion. The yardstick to be scrupulously applied in such cases is that the alleged existence of the same are to be dispelled by the propounder of a Will, to the satisfaction of the court's conscience. In the words of Justice M. C. Chagla in ***The State of Bombay v/s Morarji Cooverji***[31]**,** though in a Writ Petition, the observations are all pervasive that the party must satisfy the court that making an order will do justice and that justice lies on his side. In the given complexion, we are guided by these time-tested legal principles.

130. In contemporary times, we often hear the famous phrase "*Vasudhaiva Kutumbakam*," meaning that the world is one family. However, cases such as the present one are classic examples of stark differences: disputes within families over property that show no end in sight and ultimately result in delayed litigation. This is a tendency

[31]. 1958 SCC Online Bom 188

that ought to be curtailed in larger societal interest. We conclude with this solemn and optimistic hope.

131. For all the above reasons, we find no merit in the Appeal, and it is therefore dismissed.

132. No Costs.

(Advait M. Sethna, J) **(M.S. Sonak, J)**