*** THE HIGH COURT OF DELHI AT NEW DELHI**

**\+ IA 13192/2009 in C.S (OS) 1943/1998**

**Date of Decision: 15.05.2013**

**SITA KASHYAP THRU LRs.**

**.....….Plaintiff**

Through: Mr.S.K.Puri, Sr. Adv. with Mr.Gaurav Puri, Mr.Nupur Pandey, Ms.Jasmine Sethi, Mr.Praveen Kumar, Advs.

Versus

**HARBANS KASHYAP & ORS.**

**...Defendant**

Through: Mr.H.L.Kapur with Mr.Ashish Kapur, Advs. for D1.

**CORAM:**
**HON'BLE MR. JUSTICE M.L. MEHTA**

**M.L. MEHTA, J.**

1. This application is filed by Ms. Benu Puri seeking her substitution in place of the deceased plaintiff No. 1 Sita Kashyap by

virtue of registered will dated 14.06.2004 in her favour. On 29.01.2010, the following issues were framed:

> *"(i) Whether Benu Puri is the LR of deceased Sita Kashyap in terms of the registered Will dated 14.06.2004, registered on 15.06.2004 and if so, its effect?*
>
> *(ii) Relief".*

2. Subsequently, vide order dated 02.06.2012, the issues were recast as under:

> *"(i) Whether the Will dated 14th June, 2004 was validy executed by Late Smt. Sita Kashyap? OPP.*
>
> *(ii) Relief".*

3. The suit was initially filed by the two sisters namely Sita Kashyap and Leela Puri against their brother Harbans Kashyap and the LRs of their deceased brother Jagdish Chander Kashyap. The preliminary decree of partition of property No. 5A, Guru Gobind Singh Marg, New Rohtak Road, Karol Bagh, New Delhi was passed by this court on 10.05.2007, holding each party having one-fourth undivided share in this property. Subsequently, a final decree of partition was passed on 19.11.2007, whereby the said property was directed to be

sold by public auction, and the parties entitled to bid therein to the exclusion of their shares. After the final decree, Sita Kashyap died and the applicant Benu Puri, who is the daughter of Leela Kashyap has sought substitution in her place on the basis of a Will dated 14.06.2004. The said Will is disputed by the defendants. The applicant Benu Puri has examined herself as PW1 and witness Vaneeta Kapoor as PW2. Mr. Naveen Kumar Jaggi, who allegedly drafted the said Will is also examined as PW3. The defendant No. 1 Harbans Kashyap has examined himself as D1W1. No evidence has been led by the defendants No. 2 and 3 (LRs of deceased brother Jagdish Chander Kashyap).

4. I have heard learned senior counsel for the applicant and the learned counsel for the defendants.

5. Since by execution of Will, a person intends to alter the rule of succession or desires a particular form of inheritance, it is upon the propounder of a Will to prove the execution and validity thereof to the satisfaction of the judicial conscience. Thereafter, the onus would shift to the defendant, who intends to assail the execution or the validity of

the Will. Creation of suspicious circumstances by the defendant assailing the Will would cast further onus upon the propounder to remove those suspicious circumstances. There cannot be any dispute that registration of the Will itself is no assurance that the same is genuine and validly executed. It is also settled proposition that each and every circumstance would not be a suspicious circumstance. What is alleged by the defendant, would have to be judged in facts and circumstances of each case.

6. This court in the case of **Pratap Singh & Another Vs. State & Anr., 2010 VII AD (Delhi) 490** analyzed the law as regard to the proving of a Will and observed thus:

> *"6. The principles to be applied by a Court for grant of probate have been succinctly laid down by the Hon'ble Supreme Court in* ***Shashi Kumar Banerjee & Others v. Subodh Kumar Banerjee AIR 1964 SC 529*** *wherein their Lordships held:-*
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> > *"4. The principles which govern the proving of a will are well settled; (see H. Venkatachala Iyengar v. B. N. Thimmajamma, AIR 1959 SC 443 and Rani Purnima Devi v. Khagendra Narayan Dev, : (1962) 3 SCR 195 : (AIR 1962 SC 567). The mode of proving a will does not ordinarily differ from that of proving any other document except as to the special requirement of attestation prescribed in the case of a will by Section 63 of the Indian Succession Act. The*

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

*7. It is not for the Court to consider whether the disposition of the property was good or bad. The duty of the Probate Court is to see whether prima facie, the document constitutes a Will and if so whether the propounder has been able to satisfy the*

> *conscience of the Court that the Will was a validly executed and genuine document, signed out of free will, propounded in a sound disposition of mind, after having understood the nature and effect thereof. The Privy Council in* ***Motibai Hormusjee Kanga v. Jamsetjee Hormusjee Kanga, AIR 1924 PC 28*** *observed "a man may act foolishly and even heartlessly; if he acts with full comprehension of what he is doing the Court will not interfere with the exercise of his volition."*

7. Similarly, this court in **Vidya Sagar Soni Vs. State & Ors., decision dated 28.08.2006, Probate Case No. 39/1985** also had the occasion to deal with similar matter as to what would constitute suspicious circumstances and what form of affirmative proof would be required to satisfy the judicial conscience that the document propounded is the last legal and valid testament. The principles culled out on these aspects are as under:

> *"5. Section 2(h) of the Indian Succession Act, 1925 defines a will to mean the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death.*
>
> *6. The legal burden to prove due execution always lies upon the person propounding a will. The propounder must satisfy the judicial conscience of the court that the instrument so propounded is the last will of a free and capable testator.*

*7. A will is a solemn document, being written by a person who is dead and who cannot be called in evidence to testify about the due execution of the will. It is the living who have to establish the will. It naturally throws a heavy burden on the court to satisfy its judicial conscience that the burden of proof of due execution is fully discharged and every suspicious circumstance explained.*

*8. No specific standard of proof can be enunciated which must be applicable to all the cases. Every case depends upon its own circumstances. Apart from other proof, conduct of parties is very material and has considerable bearing on evidence as to the genuineness of the will which is propounded. Courts have to be vigilant and zealous in examining evidence. Rules relating to proof of wills are not rules of Laws but are rules of prudence. Normally, a will is executed by a person where he desirous, to either alter the normal rule of succession, or where he desirous to settle his estate in a particular manner amongst the legal heirs. Therefore, though to be kept in mind, as to what is the nature of bequest too much importance cannot be attached to the disproportionate nature of a bequest. However, as observed in , Rabindra Nath Mukherjee and Anr. v. Panchanan Banerjee (dead) by LRs, disproportionate nature of a bequest is no doubt a suspicious circumstance to be kept in mind, but, being a mere suspicion, it is capable of being dispelled by other evidence to show voluntary character of the document.*

*9. Therefore, the first rule to appreciate evidence is to peruse the will. Normally, if there is rationality in a will, a presumption arises about due execution. Of course, being a presumption, it is rebuttable.*

*10. As observed in Smt. Kamla Devi v. Kishori Lal Labhu Ram and Ors., the omission of a close relation from the bounty of a testator raises a presumption in favor of some undue influence. The probative force of such a testament rises and falls in inverse ratio to its unreasonableness.*

*11. The more unreasonable an instrument is, the less probative value it carries. Where the terms of a will are unusual and the evidence of testamentary capacity doubtful, or due execution doubtful, the vigilance of the Court will be roused and before pronouncing in favor of the will, the court would microscopically examine the evidence to be satisfied beyond all reasonable doubt that the testator was fully conversant of the contents and executed the will fully aware of what he was doing.*

*12. Expanding on the care and caution to be adopted by courts, and presumptions to be raised, in the decision reported as (1864) 3 Sw & Tr. 431 In The Goods of Geale, it was opined that where a person is illiterate or semi literate or the will is in a language not spoken or understood by the executor, the court would require evidence to affirmatively establish that the testator understood and approved all the contents of the will.*

*13. This affirmative proof of the testator's knowledge and approval must be strong enough to satisfy the court, in the particular circumstances, that the will was duly executed.*

*14. One form of affirmative proof is to establish that the will was read over by, or to, the testator when he executed it. If a testator merely cats his eye over the will,*

*this may not be sufficient. [see 1971 P.62 Re Moris). In the report published as (1867) 1 P.D.359 Goodacr v. Smith, it was held that another form of affirmative proof is to establish that the testator gave instructions for his will and that the will was drafted in accordance with those instructions.*

*15. Courts have to evaluate evidence pertaining to the circumstances under which the will was prepared. If a will is prepared and executed under circumstances which raise a well grounded suspicion that the executor did not express his mind under the will, probate would not be granted unless that suspicion is removed.*

*16. As held in the report published as (1838) 2 Moo P.C. 480 Barry v. Butlin, a classic instance of suspicious circumstances is where the will was prepared by a person who took a substantial benefit under it. Another instance is as opined in the report published as (1890) 63 LT 465 Brown v. Fisher where a person taking benefit under the will has an active role to play in the execution of the will.*

*17. A word of caution. Circumstances can only raise a suspicion if they are circumstances attending, or at least relevant to the preparation and execution of the will itself.*

*18. How the legal heirs acted and how and when a will was propounded after the death of the executor are also relevant to decide upon, where the will is genuine or a created or a procured document.*

*19. Another point that has to be considered is about the improbability in the manner in which the instrument is scripted. As observed in the report published as H.Venkatachala Iyengar V. B.N. Thimmajamma and Ors., instance of suspicious circumstances would be alleged signatures of the testator being shaky and doubtful, condition of the testator's mind being feeble and debilitated, bequest being unnatural, improbable or unfair. Apart from these infirmities, propounder taking a prominent part in the execution of the will, more so when substantial benefits flow to them are all presumptive of the will not being duly executed and or of suspicious circumstances.*

*20. Suspicious circumstances are a presumption to hold against the will. Greater is the suspicion more heavy would be the onus to be discharged by he who propounds the will.*

*21. Reference to satisfaction of judicial conscience is a heritage inherited by court's since time immemorial for the reason, as noted above, a will is a solemn declaration as per which the living have to carry out the wishes of a dead person".*

8. Section 68 of the Indian Evidence Act deals with the proof of execution of a document required by law to be attested. This Section lays down that if the deed sought to be proved is a document required by law to be attested and if there be an attesting witness alive and

subject to process of the court and capable of giving evidence, he must be called to prove execution. Execution consists in signing a document written out, read over and understood and to go through the formalities necessary for the validity of legal act. Section 63 of the Succession Act gives the meaning of attestation as under:

> *"63. Execution of unprivileged Wills.—Every testator, not being a solider employed in an expedition or engaged in actual warfare, or an airman so employed or engaged, or a mariner at sea, shall execute his Will according to the following rules:*
>
> *(a) The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.*
>
> *(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as will.*
>
> *(c) The will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary."*

It is clear from the definition that the attesting witness must state that each of the two witnesses has seen the executor sign or affix his mark to the instrument or has seen some other persons sign the instrument in the presence and by the direction of the executant. The witness should further state that each of the attesting witnesses signed the instrument in the presence of the executant. These are the ingredients of attestation and they have to be proved by the witnesses. The word 'execution' in Section 68 includes attestation as required by law.

9. While referring to the Will, the learned counsel for the defendant urged that many facts mentioned therein were incorrect and so, it could not be said to have been drafted at her instance by Mr. Naveen Kumar Jaggi (PW3) or read over to her by him or the witnesses. It is also his submission that Ms. Sita Kashyap was not in sound state of mind and was also at the advanced stage of cataract and thus, could not understand the contents of the Will or read the same. It is his submission that the Will has been procured and manipulated by Ms. Benu Puri and since Ms. Sita Kashyap was aged and dependent upon her, she was under her constant undue influence. The learned counsel

submits that place of birth of Sita Kashyap mentioned in Will as Sialkot was incorrect, as she was born at Kandansian, and not at Sialkot. Further, the chronology of her brothers and sister as given in the Will was incorrect in that her sister Leela was next to her and not to her brother Harbans Kashyap as is mentioned in the Will. Further, not only her age is wrongly mentioned as 76 years as against of 82, but the ages of her brothers and sister as mentioned were also incorrect. Learned counsel also submits that the suit filed by the defendants against the plaintiffs in respect of shop No. 2378 was decreed in the year 2001 to her knowledge, the bequeathing of the tenancy rights in respect of the said shop in the Will, was apparently incorrect. Further, Sita Kashyap also knew that the probate case (42/98) filed by her in respect of the Will of her mother Kartar Devi was dismissed much before 2004, and thus, the mention of this in the Will was also incorrect. Further, he submits that Will mentions of bequeathing a plot measuring 200 sq. yds., which she never owned or possessed. There was no number, description or identity of this plot mentioned in the Will. Learned counsel further submits that there was no bank account

or locker possessed by Ms. Kashyap and the mention thereof in the Will was also incorrect.

10. By pointing out the contents in the Will as noted above, the learned counsel submits that the Will was a fabricated and procured document at the instance of Benu Puri, who had got prepared the same. It is his submission that if the Will would have been drafted at the instance of Ms. Kashyap or read over to her or even read by her, there would not have been these incorrect facts which were personal to her. Predicated on all this, it is submitted that these suspicious circumstances go to the root of the execution of a free and voluntary Will. Further, the learned counsel also submits that the Will has not been properly attested as per law in that the two attesting witnesses Rajesh Puri and Neeraj Puri have not been examined and none of the witnesses examined has stated Ms. Kashyap signed the same in their presence and they signed the Will in her presence and all signed the same in the presence of each other.

11. As various suspicious circumstances have been urged by the learned counsel for the defendant, the testimony of the propounder Ms.

Benu Puri and the attesting witness Vaneeta Kapoor as also of Mr. Jaggi would have to be looked into from that perspective. Admittedly, Ms. Kashyap had been living at Jaipur residence of her sister Leela Puri where Benu Puri had also been residing along with them. It is also admitted that Ms. Benu had been looking after Ms. Kashyap and accompanying her whenever and wherever she desired. It is also admitted that Ms. Kashyap had been having advanced cataract of eyes since 2002 and was operated upon in July, 2002.

12. A look at the Will apparently substantiates the submissions of the learned counsel for the defendant that it has various incorrect facts and this was, in fact, not controverted by the learned senior counsel for the applicant, who tried to justify the same by submitting that all these facts were as per the information given by Ms. Kashyap.

13. Though Benu had stated that on not being permitted to enter the suit premises by her brother, Ms. Kashyap stayed in the property of an acquaintance at E-44, Jangpura on her visit to Delhi; Ms. Vaneeta Kapoor had categorically stated and admitted that Benu was her close friend and they had family relations and further stated that Ms.

Kashyap had desired that on her visit to Delhi, she would be staying with her for few days. In answer to a question, Benu had stated that it was after the last rites of Ms. Kashyap that she found the Will in her almirah on being informed by one Mr. Jaggi. However, she admitted in cross examination that Mr. Jaggi was their family friend and known to her. When confronted about the age of Ms. Kashyap to be 82 years, Ms. Benu could not deny the same, but stated that from her appearance, she looked younger. It was put to her that she had got stated the ages of all by guess in the Will. It was put to her that Ms. Kashyap was bed-ridden and otherwise indisposed since 2002 and was physically as well as mentally dependent, being not able to move without the help and further that because of cataract of both the eyes, was not able to read or write from 2002 till her death in 2004, and further that the Will was got drafted or prepared at her instructions. It was specifically put to her that because of old age and cataract, Ms. Kashyap could not see clearly and understand, and that she had not seen the contents of the Will or the nature of the document and she got her signature by ruse/deception.

14. Further, at one place, she stated that after the last rites of Ms. Kashyap, Mr. Jaggi informed her about the Will lying in her almirah; whereas in her cross examination, she had stated about her counsel having informed the court about the Will on the very next day of her death.

15. Initially, Ms. Benu had stated that she had been teaching at Jaipur since 1989 and visiting Delhi, but, then she stated staying at Panchsheel Park, Delhi since September, 2010.

16. From the above, it would be seen that Ms. Kashyap had advanced stage of cataract of both eyes at the time of execution of Will. She had been living at Jaipur and had come to Delhi only for the purpose of Will. She had no vehicle of her own and was dependent upon Ms. Benu, who had been living with her at Jaipur at the residence of her mother. May be, at the relevant time, Ms. Benu was living at Delhi, but, from all this, it appears that Ms. Kashyap was brought to Delhi by Ms. Benu. There does not appear to be any good reason for Ms. Kashyap to stay with Vaneeta Kapoor when there was house of Ms. Benu in Delhi. May be that Ms. Kashyap had stayed with Vaneeta

Kapoor, but, having regard to her physical condition, it could not be believed that she was left alone or in the exclusive care of Vaneeta Kapoor by Ms. Benu. This all suggests that she had been also actively associated with Ms. Kashyap during all this period of her stay at Delhi.

17. This is further substantiated from the fact that if Ms. Benu had not accompanied Ms. Kashyap to the office of Sub-Registrar for registration of the Will, how could she state that Ms. Kashyap & Ms. Vaneeta Kapoor as also Mr. Deepak Kohli signed on the back of the Will before the Sub-Registrar.

18. On the other hand, Vaneeta Kapoor had categorically stated that before leaving her house on 16th June, 2004 Ms. Kashyap informed her that she had informed her lawyer Mr. Navin Kumar Jaggi that the original Will would be found lying in her almirah and after her death, Mr. Jaggi would inform Ms. Benu of the same. She candidly admitted that she also informed Ms. Benu that there was a Will left by Ms. Kashyap. Inconsistent stands as regard to knowing about the Will simply suggests that Ms. Benu was well aware of the Will right from the time of its execution.

19. According to Vaneeta Kapoor (PW2), she had taken Ms. Kashyap to the residence of her nephew Neeraj Puri on 14.06.2004 where her other nephew Rajesh Puri also came for witnessing the Will. She kept waiting in her car for transporting her to the office of Mr. Jaggi. She stated that Ms. Kashyap brought the Will duly signed and also requested her to attest as third witness. Since there was no table for signing, she signed the Will in the office of Mr. Jaggi. Beside her, one Mr. Deepak Kohli, a junior of Mr. Jaggi also signed the Will. Now, from this part of the statement, it comes out to be that the Will was already signed by Ms. Kashyap and Mr. Neeraj Puri and Rajesh Puri when Ms. Kashyap came out of the residence of Neeraj, and that Ms. Vaneeta Kapoor signed the same only in the office of Mr. Jaggi. It is not understandable that when the Will had already been signed by the two witnesses Neeraj and Rajesh, what was the necessity of signatures of Vaneeta Kapoor and then of Deepak Kohli. In any case, the Will had already been attested by Neeraj Puri and Rajesh Puri at their residence before it was signed by Vaneeta Kapoor and Deepak Kohli. None of those attesting witnesses Neeraj and Rajesh have been examined. The signatures of Vaneeta Kapoor and Deepak Kohli on the

Will, at the most, could be said to be just for the sake of formality. It is nowhere stated by Vaneeta Kapoor that the Will was read by or over to Ms. Kashyap in her presence at any point of time. In fact, from the advanced stage of cataract of both eyes, Ms. Kashyap was certainly unable to read of her own. There was nothing on record to suggest that at any point of time, the Will was ever read over to her by anyone. Having regard to the large number of inaccurate facts as noted above, this suspicion gets strengthened that Ms. Kashyap did not know the contents of the Will and had simply signed the same.

20. From the testimony of Vaneeta Kapoor, it is evidenced that the Will had already been signed by Ms. Kashyap on 14.06.2004 at the residence of Rajesh Puri, and that she only signed the same in the office of Mr. Jaggi. Ms. Vaneeta Kapoor also admitted that the Will was not dictated by Ms. Kashyap or read over to her in her presence. That being the admitted position, she was not the witness to the signatures of any of the two attesting witnesses namely Rajesh and Neeraj Puri, nor that of Ms. Kashyap. As is noted above, it is the requirement of law of execution of Wills as enunciated in Section 63 of

the Succession Act that the attesting witness must state that each of the two witnesses has seen the executor sign or affix his mark to the instrument, and further, that each of the attesting witnesses signed the instrument in the presence of the executant. These are the basic ingredients of attestation which have not been established. The suggestions given to Vaneeta Kapoor that she had signed the Will on the asking of Benu Puri to help her, further gains importance in view of the fact that the Will was neither signed by Ms. Kashyap in her presence nor it was read over by her or in her presence. It is also surprising, if to the knowledge of Ms. Vaneeta Kapoor, Ms. Kashyap was about 84 years in the year 2004, then, how come that her age was mentioned as 76 years in the Will, and also that when Benu Puri was living in Delhi and had throughout been helping and looking after Ms. Kashyap, the latter in advanced stage of cataract would chose to stay with Vaneeta and not Benu Puri. Further, according to her, she had taken Ms. Kashyap to the office of Mr. Jaggi on 10th June and 14th June, 2004, whereas Mr. Jaggi had stated Ms. Kashyap having visited his office on 10th, 13th and 14th June, 2004. According to Mr. Jaggi, she had given the instructions on 10th June and had collected the Will on

13th June and returned the same on 14th June, 2004. He had also stated that on the first visit, Ms. Kashyap was alone, whereas, on subsequent visit, she was accompanied with Vaneeta Kapoor. If Vaneeta Kapoor had not taken her to Mr. Jaggi's office on 13th June, 2004, then who else might have taken, is another suspicious circumstance.

21. Mr. Jaggi stated having signed the Will only as he had drafted the same. He is not a witness to the signatures of the Will by Ms. Kashyap. According to him also, the Will was already signed by her and two witnesses when she came to his office. It was put to him that the Will was not drafted by him on the instructions of Ms. Kashyap, but, at the instance of Ms. Benu Puri. He also stated that Ms. Kashyap had claimed her age to be 83-84 years in 2004. If that was so, how he wrote her age as 76 years in the Will, has not been explained. He also could not explain the chronology of the siblings of Ms. Kashyap. If it was so, then how he could write the incorrect chronology as also the years of births of Ms. Kashyap and her sister and brothers. Regarding other incorrect facts such as mention of bank account and locker, a plot measuring 200 sq. yds., the answers given by Mr. Jaggi are that it

was on the information given by Ms. Kashyap. This all leads to suggest that the Will was not drafted on the instructions of Ms. Kashyap or she was unable to understand the contents thereof or the Will was not read over to her, but, was got signed from her either under some influence or on some pretext. If it was otherwise, she would have corrected the Will if read over or if it was with her from 13th to 14th June, 2004.

22. The Will is seen to have been signed by the witnesses Neeraj Puri and Rajesh Puri on 14th June, whereas, it bears the date of execution at two places as 15th June, 2004. It was stated by Mr. Jaggi that his clerk had filled up the dates as 15th June instead of 14th June when submitting to the office of Sub-Registrar. According to him, Deepak Kohli and Ms. Kashyap had informed him about this. This was nothing but hearsay. Deepak Kohli has not been examined and Vaneeta Kapoor did not say anything in this regard. This discrepancy has remained unexplained. Further, from the glaring discrepancy as to who informed Benu Puri and when about the Will, also further suggests of not only her knowing about the Will, but, actively involved

and associated in its execution. Though, that factor alone may not constitute a suspicious circumstance, but, given the facts as discussed above, this would only inform that the Will seems to have been prepared only at the instance of Ms. Benu Puri. As is noted above, she had stated that Mr. Jaggi had informed her after the last rites of Ms. Kashyap. Mr. Jaggi had also stated almost on similar lines, but, Ms.Benu Puri, at another place, stated that her counsel had informed the court immediately on the next day of death of Ms. Kashyap about the execution of the Will. Ms. Vaneeta Kapoor had also stated that she had informed Benu about the Will after its execution. It would not appeal to any reason that Benu, who was at Delhi and had been looking after Ms. Kashyap and also accompanying her outside, would not be knowing about her visit to Delhi and staying with her close friend Vaneeta Kapoor for several days and visiting the office of Mr. Jaggi and executing a Will favouring her.

23. The suspicious circumstances which have been highlighted by the learned counsel for the defendant have not been satisfactory explained by the applicant and her witnesses, appealing to the

conscience of the court. While being conscious of the proposition of law settled in catena of decisions, reference being made to **Pentakota Satyanarayana and Ors. Vs. Pentakota Seetharatnam and Ors., (2005) 8 SCC 67** that any and every circumstance is not a suspicious circumstance, and that active participation of the beneficiary as also exclusion of natural heirs, may themselves be not suspicious circumstances, I am of the considered view that the Will is surrounded by various suspicions as discussed above, and which have not been satisfactorily removed by the applicant. Thus, the peculiar facts of the case have led me to conclude that at the relevant time, Ms. Kashyap was either not in a sound state of mind that she could understand the nature and effect of the dis-position or did not consciously put her signatures thereon of her own free will, or the Will was not prepared on her instructions and/or was not read over to her and was got signed by her under some extraneous factor.

24. From the above discussion, it comes out to be that the findings on the issue need to be recorded against the applicant and that being so, she is held to be not entitled to the relief claimed by her on the basis of

the said Will. Consequently, the applicant would be entitled to inherit the share of Sita Kashyap in the suit property as per law of succession along with other legal heirs including the defendants.

25. Application stands disposed of accordingly.

**M.L. MEHTA, J.**

**MAY 15, 2013**
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