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IN THE HIGH COURT OF DELHI AT NEW DELHI
TEST.CAS. 8/2001

Reserved on : March 27, 2008
Pronounced on : April 23, 2008

MRS PUSHPA MAINI

..... Petitioner

Through Ms. Kajal Chandra, Advocate.

versus

STATE

..... Respondent

Through Mr. Bapurao Pakhiddey, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

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| 1. Whether reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

Mr. Justice S. Ravindra Bhat:

1. In these proceedings, under Section 276 of the Indian Succession Act, 1925 (hereafter "the Act") the petitioners seek probate of the will of late Shri Divan Chand Chadha (hereafter called "the testator").

2. The three petitioners are children (daughters) of late Shri Divan Chand Chadha. He was a permanent resident of F-62, East of Kailash, New Delhi. He died at New Delhi on January 8, 1989. The testator died leaving behind a Will dated 1.8.1985 which was executed in the presence of two witnesses.

3. It is alleged that the testator left behind the following other near legal representatives

besides the petitioners:

- a) Mr. Ravinder Kumar Chadha (now deceased)
- b) Neeta Chadha : Wife
- c) Viraj Chadha : Grand Son
- d) Pooja Chadha : Grand Daughter

(all residents of 102 Malaya Giri Apartments, Kasumbai, Ghaziabad)

- e) Ms. Manjula }
- f) Virat @ Vikkay } Claim to be second wife and son,
respectively of late Shri Ravinder Kumar Chadha both C/o F-62, East of
Kailash, (Back portion) New Delhi.

4. According to the petitioners, the estate of the testator, their father devolved according to dispositions in the Will 1.8.1985 comprises property No. F-62, East of Kailash, New Delhi. In addition to it the petitioners also claim entitlement to :

- (a) House No. F-62, East of Kailash, New Delhi-65 comprising one storey.
- (b) One shop, part of Chadha Building, Durgiana Mandir, Amritsar. The said shop is under occupation of a tenant for last 50 years. The rent was Rs. 50/-. No rent has been paid by the tenant for the last 5 years. The market value is nil.
- (c) One pucca house Municipal No. 1309, situated in the Abadi of Narain Garh, Ambala (Haryana). The said House is the tenancy of Shri Raman Dutta on a rent of Rs. 40/- per month for past 20 years. The market value is nil.

5. It is claimed that apart from the above properties the testator left behind household goods which were in custody of his widow. Those goods were distributed and divided during the life

time of the petitioners' mother. By the Will the testator bequeathed his assets as follows, in terms of the Will:

"A. That after the death of Shri Dewan Chand Chadha all the properties both movable and immovable will go in possession and in management and control of my wife Smt. Krishna Wanti Chadha i.e. The properties detailed in Clauses (A) to (H). Moreover she shall be entitled to all Bank, post office, companies deposits except those fixed deposits which stand jointly with any of my legal heir or such amount for which nomination is made by me in favour of any of my legal heirs. She shall be fully entitled exclusively to continue to put up her residence in the properties (A) and enjoy the rents and interest of these properties. She may permit any of her legal heir to stay with her if she so desires. As stated above all the properties from (A) to (E) will go in possession of my wife Smt. Krishna Wanti Chadha but, she shall remain as custodian till her life and shall have no right to sell or transfer or mortgage in any manner.

B. Whereas after the death of my wife Smt. Krishna Wanti all the properties detailed above will go in the ownership of the other legal heirs as such as mentioned below:

(a) That the property house bearing No. F-62, East of Kailash, New Delhi mentioned above in clause (A) is a single storey building and its ground floor is constructed so far by me. But I want its built-up ground floor and unbuilt-up 1st and 2nd Floors to be divided among all my said four legal heirs, as detailed below.

(i) Built-up Floor of the said House No. F-62, mentioned above in Column (A) shall be divided in two portions as under between my elder daughter Pushpa Kumari and my only son Ravinder Kumar. But both of them shall have no right to sell, transfer or mortgage them. Pushpa Kumari is married but her legal heirs or her husband shall have absolutely no right and shall not be entitled to her said share in the said house No. F-62 or her other shares in my other properties, movable or immovable. As regards the division of the built-up ground floor of the said house No. F-62, between Pushpa Kumari and Ravinder Kumar, Pushpa Kumari shall be in possession and control of the front portion of the House, comprising front courtyard, one drawing and Dining Room alongwith a store, adjacent Kitchen and half Bath room-Latrine and the middle courtyard. The staircase shall be common to both and the other said two legal heirs to my third daughter Chander Kanta and Sushil

Kumari, 2nd daughter. Both of them could have their water tank on the terrace of the first or second floor as the case may be. For the repair of the water tank, they could use the common facility of the staircase.

Ravinder Kumar, shall be in possession and control of the back portion of the Ground Floor comprising half bath room, both the bed rooms, one back courtyard where he could have a make shift kitchen and latrine-bathroom, equally funded by Pushpa Kumari and Ravinder Kumar.

As mentoined above, both Pushpa Kumari and Ravinder Kumar shall have no right to sell, transfer or mortgage their respective portions of the Ground Floor. After the death of Pushpa Kumari the whole ground floor shall pass into the possession and control of my son Ravinder Kumar. After the death of Ravinder Kumar the said property shall pass in the hands of his legal heirs, who shall have no right to sell, transfer or mortgage any portion or all the ground floor. If Pushpa Kumari or Ravinder Kumar are both so desire, a wall can be constructed to separate the front and back portion of the said house No. F-62, East of Kailash, New Delhi.

(ii) As regards ownership of unbuilt Ist Floor of the said house F-62 it shall go into possession and control of my third daughter Chander Kanta, who shall have every right to construct it but she shall have no right to sell, transfer or mortgage any portion or all of unbuilt or builtup first floor. She shall have all the rights to construct and live in the first floor and she shall have the right to use the common facility of the staircase and also can construct water tank on the terrace of the second floor.

(iii) As regards, ownership of unbuilt 2nd floor of the said House No. F-62 it shall go into the possession and control of my 3rd daughter Sushil Kumari. She shall have all the rights to construct the second floor and live in it. She shall also have the rights to use the common facility of the staircase and construct a water tank on the terrace of the 2nd floor, but Shushil Kumar shall have no right also to sell, transfer or mortgage any portion or all unbuilt or builtup 2nd floor.

Note: There could not be constructed any other structure by any owner except the said three water tanks.

(iv) That the property mentioned in clause (H) i.e. House-hold things articles

belongings found in the house after my wife's death shall be equally and gracefully divided between my eldest daughter Pushpa Kumari and my only son Ravinder Kumar only. None of my other heirs shall have any claim to them.

(v) That the cash in the shape of fixed deposits or cash certificates in any bank, post office or any firm or company or in any other institution or with some individual shall be divided into equal four shares to be given to all my four legal heirs mentioned above after the death of my wife Mrs. Krishna Wanti Chadha.

(vi) That my land or residential or commercial properties situated at Amritsar and Narain Garh including (Bungalow) should be disposed of and its proceeds should be deposited in banks in the name of three said daughters, Pushpa Kumari, Sushil Kumari, Chandra Kanta. The banks and its interest should be given by my daughters to my son Ravinder Kumar after every six months, during his life.

After his death the said amount deposited in the bank should be equally divided into four shares to be given to all my legal heirs or their successors. If my immediate legal heirs do not survive at that time. That the said procedure shall take place after my death and my wife's death."

6. The mother of the petitioners and widow of the testator died on 18.12.1994. Shri Ravinder Kumar Chadha, died on 10.9.1995. Photocopies of their death certificates have been enclosed. The Petitioners filed a suit for declaration, permanent and mandatory Injunction against the deceased defendant Shri Ravinder Kumar Chadha during his life time; it is still pending. The petitioners claim that the Will was signed in the presence of Shri Sham Lal Bhasin and Shri Gurbachan Singh Bhatia who had also appended their signatures to it.

7. The near relatives mentioned in the petition, were served in these proceedings. The late Ravinder Kumar Chadha's heirs, claiming to be his second wife and his son, through her, were represented through counsel. They preferred objections. They allege that during the lifetime of the testator, neither he nor his wife nor his only son Shri Ravinder Kumar Chadha had mentioned

anything about his having executed any Will. Even after the testator's death on 8th January,
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1989, neither his wife nor his children, including the petitioners before this Court, ever mentioned about the alleged Will dated 1.8.1985. The will is therefore impeached as not a genuine one, for which no probate be granted. The manner of execution of the will, too, has been denied.

8. The objectors Mrs. Manjula Chadha and Shri Virat Chadha claim to be the only surviving legal heirs of late Shri Ravinder Kumar Chadha being his wife and son. They say that the testator left behind only them and the petitioners as near legal representatives. The objectors deny the petitioners any share in the estate of the testator, since the Will alleged to have been executed by him and propounded by them is not a genuine document. The petitioners' entitlement to immovable properties and assets mentioned in the Will, is also denied.

9. The objectors also deny that the Will was signed in the presence of Shri Shyam Lal Bhasin and Shri Gurbachan Singh Bhatia and that they have appended their signatures to the alleged Will.

10. Parties led oral evidence in support of their contentions. The petitioners relied on the testimony of one of them, as well as Shyam Lal Bhasin, one of the attesting witnesses. The respondents also relied on their witnesses, including the deposition of Manjula Chadha

11. It was submitted by Mr. Kajal Chandra, learned counsel that the deposition of Sh. Shyam Lal Bhasin (PW 2) contained in his affidavit dated 12.2.2005 as well as the statement recorded in cross-examination have conclusively established the genuineness of the Will of Late Diwan Chand Chaddha. With these the essential requirements of proving valid execution of a Will had been complied with. Learned counsel submitted that since the petitioners, the daughters of the testator were unaware of the existence of the will, they had filed a suit of permanent and mandatory injunction against the deceased defendant, Sh. Ravinder Kumar Chadha during his

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life time. The said suit is still pending. Counsel contended that the objections raised on behalf of Ms. Manjula Chadha and Sh. Virat @ Vikkey Chadha are unworthy of acceptance.

13. It was contended that under Section 63 of the Indian Succession Act, the execution of a Will requires that the testator should sign or affix his mark on the Will or permit someone to sign it on his behalf in his presence and by his direction. The further requirement is that the Will should be attested in accordance with Section 63 (c) i.e. that it should be attested by two or more witnesses each of whom has seen the testator sign or fix his mark upon the Will or asked someone else to sign the Will according to his directions. Each such witness should also sign in the presence of the testator. Counsel contended that the primary question that needs consideration is whether the document dated 1.8.1985 was executed by the testator, Diwan Chand Chadha and whether it was executed by him in accordance with law. It was contended that the evidence led have established that the requirements of a valid Will, in accordance with Section 63 of the Indian Succession Act and Sections 67 and 68 of the Evidence Act were duly complied with. Counsel contended that if an objection is raised as to the effect of the Will and that it was not executed under normal circumstances but was forged or obtained under suspicious circumstances, the onus of proving such allegation is upon the person making it.

14. Learned counsel relied upon the judgment reported as *Mathew Oommen Vs. Suseela Mathew* AIR 2006 SC 786 and *Ramabai Padmakar Patil (dead) by Lrs and others Vs. Rukminibai Vishnu Vekhande and others* AIR 2003 SC 3109. Learned counsel relied upon the deposition of Ms. Sushil Mehta (PW 1), who is also one of the petitioners. It was contended that the said witness was cross-examined. She categorically stated that late Smt. Krishnawanti Chadha had informed them about execution of the Will by late Diwan Chand Chadha, though its contents were unknown and the will was discovered under a mattress wrapped in a newspaper, later, when the petitioners were searching for other documents.

15. Learned counsel contended that the objections preferred by Ms. Manjula Chadha, based on her allegation of being married to Ravinder Kumar Chadha on 19.5.1980 are without any factual basis. The said objector deposed that she was not aware of any legal heirs of the deceased Ravinder Kumar Chadha. Counsel contended that yet, in her reply to IA No. 978/1996 in suit No. 586/1996 pending before Learned Additional District Judge she had stated that Ravinder Kumar Chadha was a divorcee and that she was his lawfully wedded wife. It was also contended that in the same affidavit the objector had stated that Ravinder Kumar Chadha settled everything, including maintenance etc. at the time of settling/divorcing his first wife along with any other legal heir. This reply was admitted by the objector during the course of her cross-examination. Counsel contended that the falsity of objector's stand can be seen by the fact that she claimed to be the wife of Ravinder Kumar Chadha, yet she admitted that his address was not known to her. Counsel also drew attention of the Court to the fact that the said objector though claiming to be Ravinder Kumar Chadha's wife was never with him at the time of his death and instead he was cared for by his friends at that stage.

16. Learned counsel contended that in the absence of any, much less meaningful, cross-examination, of the petitioner, about the circumstances regarding due execution of the Will, the objectors have failed to prove existence of any suspicious circumstances surrounding it. Therefore, this court has to conclude that there was no suspicious circumstances surrounding the Will which was otherwise duly executed and proved in accordance with law. She relied upon the judgments in *Mathew Oommen and Joyce Primrose Prestor (Mrs.) (Nee Vas) Vs. Vera Marie Vas (Ms) and others* (1996) 9 SCC 324 .

17. Mr. Bapurao Pakhiddey, learned counsel contended that Manjula Chadha and Virat @ Vikky Chadha were the only surviving heirs of late Ravinder Kumar Chadha, being his wife and son. Late Diwan Chand Chadha left behind them as near legal representatives. He

contended that other than these two objectors, there were no legal representatives. Relying on the averments in the objections, he urged that the petitioners cannot claim any rights under the will. According to learned counsel within three months of the death of the petitioner's mother, a suit was filed against Ravinder Kumar Chadha. He relied on the said circumstance to submit that no will was ever set up or propounded at that stage. Smt. Krishnawanti Chadha expired on 18.12.1994, yet the petitioners approach this Court much later i.e. after seven years. This itself was a most suspicious circumstance, pointing to the unnatural nature of the Will as well as the claim of the petitioners. Learned counsel relied upon the judgment reported as *John Francis Anthony Vs. Mrs. Agnes Mary Conception Rebello* AIR 2001 Bom 372.

18. Learned counsel submitted that the petitioners had filed a suit in 1995 during the life time of Ravinder Kumar Chadha. In that case they never sought to produce the will; instead they had filed an affidavit Ex. PW 1/D1. That was signed by Late Smt. Krishnawanti Chadha and Ravinder Kumar Chadha. It adverted to a Will whereby Mrs. Sushil Mehta and Ms. Chander Kanta Varma could build on the first floor and second floor of the property whenever they wanted during the life time of Krishnawanti Chadha or after her death. However, that affidavit also did not indicate about any Will of late Diwan Chand Chadha. These, taken together, constituted suspicious circumstances which should dissuade the Court from granting probate in the case.

19. Learned counsel denied that the objectors had no *locus* to oppose the grant of probate. He relied upon the application for substitution IA No. 20/1996 filed in the pending suit and the order dated 1.8.1997 passed in that case. In all five persons were substituted as legal representatives of Ravinder Kumar Chadha. Counsel contended that in these circumstances, the objector could not be treated as a stranger as she was a legally wedded wife of Ravinder Kumar Chadha. Since the petitioners were unable to establish that the Will propounded by them was

valid and not created under suspicious circumstances, the testator is deemed to have died intestate. As Ravinder Kumar Chadha was admittedly his son, he was also legal heir and therefore entitled to the property. Learned counsel lastly submitted that there were discrepancies in the Will and that the manner of its discovery cast grave doubts about its validity and genuineness, which the petitioners were unable to shake off or dispel. As a consequence, the court should not grant probate in the case.

20. Section 63 of the Indian Succession Act provides as follows:

"63. Execution of unprivileged wills.

* * *

a) the testator shall sign or shall affix his mark to 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 a 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."

21. In one of its earlier judgments, the Supreme Court had indicated the standards of evidence necessary to prove a will, in the decision reported as *R. Venkatachala Iyengar v. B.N. Thimmajamma and Ors.* [1959] Supp. 1 S.C.R. 426. The Court, laid down in the

following guiding principles, which are valid even now, after almost half a century:-

“1. Stated generally, a will has to be proved like any other document, the test to be applied being the usual test of the satisfaction of the prudent mind in such matters. As in the case of proof of other documents, so in the case of proof of wills, one cannot insist on proof with mathematical certainty.

2. Since Section 63 of the Succession Act requires a will to be attested, it cannot be used as evidence until, as required by Section 63 of the Evidence Act, one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive and subject to the process of the court and capable of giving evidence.

3. Unlike other documents, the will speaks from the death of the testator and therefore the maker of the will is never available for deposing as to the circumstances in which the will came to be executed. This aspect introduces an element of solemnity in the decision of the question whether the document propounded is proved to be the last will and testament of the testator. Normally, the onus which lies on the propounder can be taken to be is charged on proof of the essential facts which go into the making of the will.

4. Cases in which the execution of the will is surrounded by suspicious circumstances stand on a different footing. A shaky signature, a feeble mind, an unfair and unjust disposition of property, the pro-pounder himself taking a leading part in the making of the will under which he receives a substantial benefit and such other circumstances raise suspicion about the execution of the will. That suspicion cannot be removed by the mere assertion of the pro-pounder that the will bears the signature of the testator or that the testator was in a sound and disposing state of mind and memory at the time when the will was made, or that those like the wife and children of the testator who would normally receive their due share in his estate were disinherited because the testator might have had his own reasons for excluding them. The presence of suspicious circumstances makes the initial onus heavier and therefore, in cases where the

circumstances attendant upon the execution of the will excite the suspicion of the court, the propounder must remove all legitimate suspicions before the document can be accepted as the last will of the testator.

5. It is in connection with wills, the execution of which is surrounded by suspicious circumstances that the test of satisfaction of the judicial conscience has been evolved. That test emphasises that in determining the question as to whether an instrument produced before the court is the last will of the testator, the court is called upon to decide a solemn question and by reason of suspicious circumstances the court has to be satisfied fully that the will has been validly executed by the testator.

6. If a caveator alleges fraud, undue influence, coercion etc. in regard to the execution of the will, such pleas have to be proved by surrounding the execution of the will may raise a doubt as to whether the testator was acting of his own free will.”

22. The above principles were reiterated and followed by a five judge Bench decision in *Shashi Kumar Banerjee v. Subodh Kumar Banerjee*, [AIR 1964 SC 529]. The Supreme Court held that:

“The principles which govern the proving of a Will are well settled; (see H. Venkatachala Iyengar v. B.N. Thimmajamma [AIR 1959 SC 443 : 1959 Supp (1) SCR 426] and Rani Pumima Debi v. Khagendra Narayan Debi. [AIR 1962 SC 567 : (1962) 3 SCR 195 : (1962) 2 MLJ (SC) 27] 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 High 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 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 a probate, even if the will might be unnatural and might cut off wholly or in part near relations..."

These principles find mention in numerous subsequent decisions, viz *Smt Jaswant Kaur v Smt Amrit Kaur* AIR 1977 SC 74; *Daulat Ram & Ors. vs. Sodha & Ors.* 2005(1) SCC 40; *Meenakshiammal (Dead) Through & Ors. vs. Chandrasekaran & Anr* 2005 (1) SCC 280; *Sridevi & Ors. vs. Jayaraja Shetty & Ors.* (2005) 8 SCC 784; and *Pentakota Satyanarayana & Ors. vs. Pentakota Seetharatnam & Ors.* (2005) 8 SCC 67, etc.

23. In *Gurdial Kaur And Others, Appellants V. Kartar Kaur* 1998-(4)-SCC -384 the Supreme Court had defined the role of the court determining the validity of the will, in the following words:

"The law is well settled that the conscience of the court must be satisfied that the Will in question was not only executed and attested in the manner required under the Indian Succession Act, 1925 but it should also be found that the said Will was the product of the free volition of the executant who had voluntarily executed the same after knowing and understanding the contents of the Will. Therefore, whenever there is any suspicious circumstance, the obligation is cast on the propounder of the Will to dispel the suspicious circumstance.

24. If the various requirements of a valid will are established, then as observed by the Privy

Council in *Motibai Hormusjee Kanga's* case AIR 1924 PC 28:

"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."

In a similar vein, the Supreme Court held, in *Rabindra Nath Mukherjee and another v. Panchanan Banerjee (dead) by LRs. and others* (1995) 4 SCC 459 that that the circumstance of deprivation of natural heirs should not raise any suspicion because the whole idea behind execution of a Will is to interfere with the normal line of succession and so, natural heirs could be debarred in every case of execution of Wills. Of course, it may be that in some cases they are fully debarred and in some cases partly.

25. The above narrative shows that the testator died on 8th January, 1989. His widow, Krishna Wanti died on 18th December, 1994. Ravinder Chadha, the only son of the testator, died on 10.9.1995. The petitioners were admittedly the testators' daughters. They, as well as their mother, had filed a suit for injunction against Ravinder Chadha, through whom the objector claims locus.

26. The first question is whether the petitioners have proved the will according to law. Here, the petitioners rely on the deposition of Shyamlal Bhatia. The said witness filed an affidavit, and was extensively cross examined. He deposed to having signed the will in the presence of the testator, as a witness, sometime in August, 1985. The witness was the paternal nephew of the testator's wife. He denied suggestions that the testator had signed the will, contrary to his claim. The other witness PW-1, Ms. Sushil Mehta, is one of the petitioners as well as beneficiary under the Will. She mentioned about not being aware of the will initially, and denied the suggestion that the contents of the will were within the knowledge of the petitioners, and correctly reflected

in an affidavit dated 5th July 1990, i.e ExPW-1/D-1. She also stated during cross examination that the petitioners got hold of the will in 2000. She mentioned that her father, the testator, was hale and hearty, except for some urine problem. She denied all suggestions that the testator was not well at the time of his death. She admitted that in the suit filed and pending before the civil court, all the children of the testator had claimed an equal one fourth share in his estate. Later, however, in cross examination, she mentioned that when the suit was filed, the petitioners were unaware of the will. She disclosed that Ravinder Chadha had married Nita Chadha on 27th November, 1968 and that they were divorced in proceedings being SMA 19/1989.

27. The above materials on record reveal that the petitioners were unaware of the will at the time of death of the testator, or at the time of death of his widow. They claim to have got hold of the will during a search in the year 2000. The testator admittedly died in 1989. The requirement of proving due execution of a will was spelt out in the first two propositions in *H. Venkatachala Iyengar's case* (supra). Here, the petitioners have been able to show that the will though presented in 2001 for probate, was unknown to them. They have produced one of the attesting witness, i.e PW-2. The deposition of that witness has a ring of credibility. He is, to start with, not a beneficiary. He was also not directly related to the testator; he was the nephew of the latter's wife. More importantly, in his cross examination, the objectors were unable to elicit any significant admission or fact undermining the claim of due execution of the will. In these circumstances, the court concludes that the petitioners have discharged the burden of proving that the will was indeed executed by the testator.

28. The next question is whether the objectors have been able to prove that the execution of the will was shrouded in suspicion or doubt to disentitle the petitioners to probate. The will, as is evident from its tenor, made elaborate dispositions concerning the immovable property, E-62,

Kailash Colony, New Delhi. In these dispositions, the testator bequeathed defined portions to Ravinder Kumar Chadha, and the right to construct on the existing structures, by constructing floors, to the other daughters, i.e the other two petitioners. These dispositions nowhere indicate anything out of the ordinary; in fact all the children of the testator have been provided for. Even otherwise, the mere circumstance that the normal line of succession is disturbed cannot itself amount to a suspicious factor.

29. The objectors' submissions were that the will was disclosed after considerable delay. In support of this argument, reliance has been placed on a decision of the Bombay High Court, in *John Francis Anthony* (supra). However, in *Pamela Manmohan Singh v. State*, ILR (2000) 1 Del 289 the view expressed by this court was that Article 137 of the Limitation Act would apply to probate proceedings, but the legatee or executor should apply for probate within 3 years of date of knowledge. The court held:

“The period of three years would surely commence at least from the date on which a legatee under a Will could be justifiably ascribed with the knowledge that the Will on which his claim is founded is likely to be disputed by other persons especially the natural heirs of the Testatrix.”

As regards the delay in approaching the court, PW-1 deposed that though her mother had mentioned about existence of the will, during her lifetime, it was not found; it was discovered in some papers after her death, sometime in 2000.

The objectors were unable to elicit anything contrary during her cross examination. In these circumstances, the court is unpersuaded by their submission that probate cannot be granted due to delay and laches.

30. The last, serious objection to probating the will was the seeming contradiction in the stand of the petitioners. It was urged that the petitioners, on the one hand, mentioned in the affidavit dated 5th July 1990, i.e ExPW-1/D-1, about the manner of dividing property; yet they

filed a suit for injunction against the late Ravinder Kumar Chadha. That suit is pending on the file of the civil court; yet they have sought probate of a will which they did not even advert to in the suit. Therefore, the will is not a genuine document; they are also estopped from relying on it.

31. There is no doubt, about a facial contradiction between the pleadings in the suit (a certified copy of which has been produced in these proceedings) on the one hand, and the pleadings in the probate petition, on the other. Yet, the petitioners have, interestingly, in the suit, not claimed exclusive rights. A certified copy of the suit is Ex. PW-1/D-2. In para 7 of the suit, the plaintiffs clearly state that the testator left behind a will, the original of which was untraceable and that the late Ravinder Kumar Chadha was bequeathed restricted rights in respect of the Kailash Colony property, which was not acceptable to him. The suit has also adverted to acts of alleged cruelty against the first petitioner and her late mother by the deceased Ravinder Kumar Chadha; it even mentions about the objector Manjula allegedly harassing the late mother and widow of the testator. An overall conspectus of these documents with the testimony on behalf of the petitioners leaves no doubt that even if some initial contradictions are discerned in their positions, they are not of such nature as to constitute suspicious circumstances.

32. During the course of hearing, the petitioners had questioned that the objector Manjula Chadha was not married to Ravinder Kumar Chadha, and that Virat Chadha was not his son. The truth or falsity of such claims are clearly beyond the scope of jurisdiction of this court, under Section 276; the court has to be satisfied about the genuineness of the will and that it was not procured under suspicious circumstances.

33. In view of the above discussion, the petition deserves to be allowed. Since the testator did not name an executor under the will, the court would have to appoint someone under Section 234 of the Indian Succession Act, to administer the estate, in accordance with it. The first two

Petitioners No.2 & 3 are accordingly appointed as joint administrators.

34. The petition is allowed, subject to valuation report of the property, payment of requisite court fee according to valuation, and furnishing of administration bond by the first two Petitioners No.2 & 3. In the circumstances, there shall be no order about costs.

DATED:23rd April, 2008

(S. RAVINDRA BHAT)
JUDGE