



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

TESTAMENTARY SUIT NO. 14 OF 2004
IN
PETITION NO. 80 OF 2004

Shonali Kedar Dighe

Commissioner for taking accounts appointed
as per Order dated 17.08.2023

Administrator

.. (Petitioner / Plaintiff)

Versus

1. Ashita Tham

Residing at 11-A, Jolly Maker-1,
Cuffe Parade, Mumbai – 400 005.

2. Monika Uberoi

Residing at Primrose Building,
1st Floor, 104-A,
Lokhandwala, Andheri (W),
Mumbai – 400 068.

3. Pooja Bedi

Defendants /

.. Caveators

.....

- Dr. Sneha Goyal, Advocate for the Plaintiff / Administrator.
- Mr. Archit Jayakar a/w Ms. Bhoomi Upadhya i/by Jayakar and Partners for Defendants.

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CORAM : MILIND N. JADHAV, J.

RESERVED ON : AUGUST 19, 2023

PRONOUNCED ON : NOVEMBER 28, 2023

P.C.:

1. What is before me is adjudication of Testamentary Suit No. 14 of 2004 originally filed as Testamentary Petition No. 80 of 2004. Petition was originally filed by one Mr. Vasant Sardal (executor of the Will) of Bipin Gupta (the deceased - testator). There is a history to the proceedings which I will briefly touch upon

in the facts narrated hereinafter. Suffice to mention that by order dated 03.05.2018, Mr. Vasant Sardal was removed as executor by this Court and in his place Mr. Ketan Trivedi, an Officer of this Court was appointed as Administrator to represent the interest of testator Mr. Bipin Gupta's estate. By order dated 16.06.2022, Mr. Ketan Trivedi was replaced by another Officer of this Court i.e. Ms. Kanchan Rane as Administrator and by subsequent order dated 22.06.2023, pursuant to superannuation / retirement of Ms. Kanchan Rane, she was replaced by Ms. Shonali K. Dighe, office of this Court as Administrator. Hence, Plaintiff before me is the Administrator appointed by this Court to prosecute the case for seeking probate of the last Will of the deceased. By order dated 21.07.2022, this Court permitted Plaintiff to appoint Dr. Sneha Goyal, learned Advocate and Counsel practicing in this Court to espouse and plead the Plaintiff's case. Defendants are Ms. Ashita Tham (sister of deceased), Ms. Monica Uberoi (sister of deceased) and Ms. Pooja Bedi (niece of deceased i.e. daughter of pre-deceased sister Mrs. Protima Bedi). Ms. Pooja Bedi was allowed to be impleaded as Defendant by order dated 15.02.2018. Defendants are represented by Mr. Jayakar.

2. Briefly stated dispute pertains to the Will of the deceased – Mr. Bipin Gupta who expired on 04.09.2003. The Will is

executed on 20.06.2003 according to Plaintiff. It is attested by two witnesses namely Mr. Santosh Raje, Advocate and Mr. Anil Sardal, a Police Officer. There are two Executors named in the Will viz. Mr. Behram Ardeshir and Mr. Vasant Sardal (father of Mr. Anil Sardal).

3. The detailed relevant facts and timeline of dates and events which are absolute necessary for adjudication of the present Suit are as under:-

3.1. One Mr. Laxmichand Gupta, (father of deceased and Defendant Nos.1 and 2) was a monthly tenant of Flat No. 2, Firdaus Building, Marine Drive, Mumbai from which he carried on business of Norman's Guest House. This flat was a tenanted premises. On 09.03.1969, Mr. Laxmichand Gupta expired leaving behind his wife Ms. Reba Gupta, son Mr. Bipin Gupta (deceased) and three daughters viz. Ms. Ashita Tham (Defendant No. 1), Ms. Monica Uberoi (Defendant No. 2) and Ms. Protima Bedi (pre-deceased) as his legal heirs. These legal heirs stepped into Mr. Laxmichand Gupta's shoes and continued as tenants of Flat No. 2. Thereafter, Ms. Reba Gupta expired and left behind a Will dated 25.01.1994. On 04.04.1996, Testamentary Petition No. 60 of 1995 was filed by Mr. Henry Tham (husband of Defendant No. 1) to obtain a Probate of the Will of Ms. Reba Gupta in his capacity as Executor therein. This was opposed by deceased Mr. Bipin Gupta (her son) by filing a

caveat. On 04.09.1996, Testamentary Petition No. 60 of 1995 was converted to Testamentary Suit.

3.2. On 20.06.2003, Mr. Bipin Gupta executed the Will while undergoing treatment for renal failure and hip fracture in Bombay Hospital which is the subject matter of the present suit proceedings. The two Executors named in the Will were Mr. Vasant Sardal and Mr. Behram Ardeshir whereas Will was attested by Mr. Santosh Raje and Mr. Anil Sardal as attesting witnesses. By this Will, Mr. Bipin Gupta bequeathed his entire estate to charity to the exclusion of his family members / legal heirs and indirectly to the Executors. On 04.09.2003, Mr. Bipin Gupta expired in Flat No. 2, Firdaus Building. The Executors and attesting witnesses without informing any of his family members took his body for cremation. Neighbours informed the Defendants about demise of Mr. Bipin Gupta. That apart, there was another residential / immovable flat belonging to the deceased at Mahim. Keys of Flat No. 2 were handed over to Marine Drive Police Station by the Executors. Defendant No. 1 addressed a letter to Marine Drive Police Station to prevent entry of the Executors into Flat No. 2 and also from taking over the residential flat at Mahim belonging to deceased. On 11.09.2003, Defendants filed RAD Suit in the Small Causes Court at Mumbai being RAD Suit No. 2326 of 2003 to declare them as

monthly tenants of Flat No. 2, Firdaus Building. In September 2003, Defendants filed Administration Suit No. 4060 of 2003 in this Court for administration of the estate of the deceased Mr. Bipin Gupta. On 28.10.2003, Behram Ardeshir (one of the Executors') sought to renounce his executorship by stating so in the affidavit-in-reply to the Notice of Motion in the Administration Suit and on 28.10.2003, he renounced his executorship. It is pertinent to note that deceased Mr. Bipin Gupta expired on 04.09.2003 at 10:30 p.m. and was cremated on 05.09.2003 at 12:30 p.m. and only after persuasion by the Defendants, Mr. Santosh Raje, Advocate gave a copy of the Will to Marine Drive Police Station under cover of his letter dated 11.09.2003 which was handed over to Defendants. On 08.12.2003, present Testamentary Petition was filed by Mr. Vasant Sardal for seeking probate of the Will of the deceased. Defendant Nos. 1 and 2 filed their caveats. On 01.07.2004, Mr. Vasant Sardal filed a Notice of Motion No. 1551 of 2004 for appointment of the Court Receiver in respect of Flat No. 2, Firdaus Building (Norman's Guest House). At the same time, Vasant Sardal and the Defendants entered into Consent Terms agreeing to the Court Receiver calling for bids to appoint an Agent to run Norman's Guest House (Flat No. 2, Firdaus building) and for disclosure of the terms and conditions for letting out Flat No. 25, Neel Tarang Building, Mahim belonging to Bipin Gupta (deceased). On 22.11.2005, further Consent Terms were

executed between Mr. Vasant Sardal and Defendants agreeing to withdraw the caveats, to surrender tenancy of Flat No. 2, Firdaus Building to the landlords and share the proceeds received from such surrender between themselves equally. These Consent Terms were taken on record by this Court and by order dated 22.02.2006 Testamentary Suit was disposed. Further Consent Terms were filed in the year 2006 between parties which were also signed by one of the landlord of Firdaus Building and filed in the pending Administration Suit in this Court. On 24.04.2006, these Consent Terms were taken on record and the Administration Suit No. 4060 of 2003 was disposed.

3.3. Since nothing materialized and the Consent Terms were not acted upon, on 18.06.2009 after three years, the landlord of Firdaus Building filed eviction Suit against Defendants to evict them from Flat No. 2, Firdaus building. On 17.07.2009, Mr. Behram Ardeshir (Executor who had renounced his executorship) filed Application for his reinstatement as Executor. On 30.07.2009 this Court reinstated Mr. Behram Ardeshir as Executor. There was correspondence exchanged by Mr. Behram Ardeshir with the Advocate for Executor that Mr. Vasant Sardal had a sinister motive of dealing with the estate of the deceased and had vested interest to grab the same and was guided by his son Mr. Anil Sardal, a Police

Officer who was one of the attesting witnesses to the Will of the deceased. On 15.10.2009, Review Petition was filed by Mr. Vasant Sardal seeking to review the order of reinstatement of Mr. Behram Ardeshir as Executor. On 25.06.2010, Defendants addressed a letter to the two Executors seeking their consent to accept the landlord's offer to surrender tenancy of Flat No. 2, Firdaus building i.e. Norman's Guest House. On 12.10.2010, the Review Petition was dismissed for default. Notice of Motion No. 138 of 2010 was filed by Mr. Vasant Sardal to set aside the order of dismissal of Review Petition. Accordingly, Notice of Motion No. 105 of 2010 was filed seeking implementation of the Consent Terms dated 02.11.2005 for surrender of tenancy of Flat No. 2 to the landlord. By order dated 09.03.2011, Notice of Motion No. 105 of 2010 was dismissed by this Court being contrary to the wishes of the deceased as per the Will. Mr. Vasant Sardal then filed Notice of Motion No. 74 of 2015 to recall the order dated 30.07.2009 allowing reinstatement of Mr. Behram Ardeshir as Executor on various grounds stated therein. On 29.11.2017, the Division Bench of this Court in Appeal No. 296 of 2011 accepted Minutes of Order filed by parties permitting them to file execution proceedings or such other proceedings for implementation of the Consent Terms and setting aside the order dated 09.03.2011. On 05.04.2018, Defendants filed Notice of Motion No. 689 of 2018 in Administration Suit No. 4060 of 2003 to

challenge the validity of the Consent Terms entered into in the said Suit.

3.4. Accordingly on 06.04.2018, Defendants filed Notice of Motion (L) No. 101 of 2018 seeking discharge of Mr. Vasant Sardal and Mr. Behram Ardeshir from acting as Executors of the Will of the deceased. On 03.05.2018 by a detailed order, Mr. Vasant Sardal was removed as Executor and a statement was recorded on behalf of Mr. Behram Ardeshir that he did not wish to continue as an Executor. This Court in the said order noted that all acts of Mr. Vasant Sardal as Executor were directed entirely by his son Mr. Anil Sardal. By this order, Mr. Ketan Trivedi, an officer of this Court was appointed as Administrator of the estate of the deceased. On the same date i.e. 03.05.2018, another order was passed wherein the first Consent Terms dated 22.11.2005 were set aside on the ground that they were contrary to the wishes of the deceased; the caveats filed by the Defendants were revived; the Testamentary Petition originally filed was converted into Testamentary Suit for Letters of Administration.

3.5. By order dated 03.05.2018, directions were given for commencement of witness action. On 30.07.2018, Dr. Santosh Raje (formerly Mr. Santosh Raje), Advocate, attesting witness i.e. PW-1 filed his affidavit of evidence. PW-1's examination-in-chief and

cross-examination was conducted in Court.

3.6. On 10.07.2019, order was passed in Revision Application filed by Defendants directing the Administrator to handover keys of Flat No. 2, Firdaus Building to Defendants on the basis of Consent Terms executed between Defendants and the landlords of Firdaus Building.

3.7. On 22.12.2021 PW-1's cross-examination was concluded. DW-1 then stepped into the witness box and completed her witness action by 19.11.2022. Court Commissioner filed his report in respect of witness action of DW-1.

3.8. Thereafter Administrator filed two reports; one relating to certain repairs required to Flat No. 2, Firdaus Building since it was in a dilapidated condition and a further report seeking directions with respect to inventory lying in the Administrator's office. Both these reports were considered and by order dated 30.01.2023, Administrator was directed to carry out certain repairs in the tenanted premises and by a further order dated 24.04.2023, Administrator was directed to deposit the inventory lying in her office with the Azad Maidan Police Station as it contained some weapons and live ammunition belonging to the deceased.

3.9. The Administrator Ms. Kanchan Rane retired from service and hence was discharged on 13.06.2023 by this Court. She was

succeeded by Ms. Shonali K. Dighe as Administrator on 22.06.2023.

4. In view of the above timeline and orders passed by this Court in various proceedings between the parties, it would be appropriate to make the following observations for consideration. In so far as the estate of the deceased is concerned, it is Defendant No. 1 – Ms. Ashita Tham, Defendant No. 2 – Ms. Monica Uberoi and Defendant No. 3 – Ms. Pooja Bedi who are his legal heirs and now claim entitlement thereto. It is not in dispute that deceased lived in and used Flat No.2, Firdaus building during his life time along with his wife Ms. Pushpa Gupta who had pre-deceased him on 22.10.2002. In so far as Flat No.2, Firdaus building is concerned, Mr. Laxmichand Gupta was its monthly tenant and he expired on 09.03.1969 leaving behind his wife (widow) – Ms. Reba, son – Mr. Bipin (deceased) and three daughters Ms. Ashita, Ms. Monica and Ms. Protima. Tenancy of Firdaus flat thus devolved upon Ms. Reba, Mr. Bipin (deceased) and the three daughters. It is seen that on 20.06.2003, Mr. Bipin Gupta executed a document described as his last Will and Testament. The two attesting witnesses to this document are Mr. Santosh D. Raje, Advocate and Mr. Anil Vasant Sardal. In the Will, Mr. Vasant Sardal i.e. Anil Sardal's father and one Mr. Behram Ardeshir are appointed as Executors. The Will describes 7 immovable / movable properties being part of his estate.

The first is Flat No. 25 in a building called Neel Tarang, Mahim. The second is land situated at Panchgani admeasuring 2 acres and 4 gunthas and the third is Flat No.2 in Firdaus building which is described as deceased's share of business and premises in the name and firm of "Norman Hotel" linked to bank of Baroda, Marine Drive Branch Current A/c No. 3654. The remaining four movable properties are described as; (i) Saving Bank A/c No. 8376, (ii) Investment in various shares, bonds and deposits etc. with various companies and institutions, (iii) Various other bank accounts and (iv) all his possessions including watches, furniture and fixtures i.e. all movables. Unnumbered recital No. 2 and Clause 3 of the Will is relevant in the context of the above facts and the present case and reads thus:-

"AND WHEREAS I have no legal heirs or any close relatives being my legal heir/s or representatives."

I do not wish any of my relatives blood or otherwise to inherit any part of my estate as I do not have a good relationship with any of them and some of them are responsible for murdering my wife and attempting to murder me."

4.1. The Will then directs the Executors to form a charitable Trust in the name of his wife namely "Pushpa Gupta Charitable Trust" as his wish and bequeaths his entire property in favour of the charitable trust exclusively. It names the Executors to be the Trustees of the proposed Charitable Trust.

5. Mr. Bipin Gupta (deceased) and Mrs. Pushpa Gupta (wife of deceased) had no children of their own, hence when Mr. Bipin Gupta expired on 04.09.2003, he had no legal heirs in Class - I category and hence his heirs as per Hindu law of succession are Ms. Ashita Tham, Ms. Monica Uberoi and Ms. Pooja Bedi (Protima's daughter) i.e. Defendant Nos.1, 2 and 3.

6. It is seen that a few days after Mr. Bipin Gupta expired, Ms. Ashita Tham, Ms. Monica Uberoi and Ms. Pooja Bedi filed RAD Suit (L) No. 2326 of 2003 in the Court of Small Causes, Mumbai claiming monthly tenancy of Flat No. 2 in Firdaus Building. It was stated by Defendants that Bipin Gupta died intestate and they suspected that Mr. Vasant Sardal might put up a Will. On 20.10.2003 Mr. Behram Ardeshir, the co-executor formally renounced his executorship. Due to this turn of events, on 21.10.2003, Defendants filed a substantive Administration Suit being Suit No. 4060 of 2003 in this Court for administration of Mr. Bipin Gupta's estate on the premise that he died intestate and it is only pursuant thereto i.e. on 08.12.2003 Mr. Vasant Sardal filed Testamentary Petition No. 80 of 2004 seeking probate of the Will dated 20.06.2003. Due to caveats filed by Defendant Nos. 1 and 2, Testamentary Petition was renumbered as Testamentary Suit No. 14 of 2004.

7. It is seen that on 22.11.2005, Consent Terms were filed which were signed by Mr. Vasant Sardal, Ms. Ashita Tham and Ms. Monica Uberoi in the Testamentary Suit agreeing to withdraw their caveats and purporting to record an agreement that Flat No. 2, in Firdaus building would be surrendered to the landlord for monetary consideration and the consideration would be apportioned equally between Mr. Sardal on the one hand and Defendant Nos. 1 and 2 on the other hand. On 22.02.2006, these Consent Terms are taken on record and order in terms of Consent Terms was passed and Probate Petition was no longer contested. Simultaneously in February 2006, a second set of Consent Terms were executed between Mr. Vasant Sardal and Defendant Nos. 1 to 3 on one hand and Mr. Priyam Zaveri (one of the two landlords of Firdaus Building) on the other hand and filed in the Administration Suit pending in this Court. On 24.04.2006 this Court took the said Consent Terms on record and passed order in terms of the second Consent Terms and the Administration Suit was disposed of on that basis.

8. In the above background, after a hiatus of three years, on 17.07.2019 Mr. Behram Ardeshir, one of the co-executor suddenly filed an Application in the Testamentary Suit seeking revocation of his renunciation and reinstatement as Executor. This Application

came to be allowed on 30.07.2009 on the principal ground that Mr. Vasant Sardal was old, infirm and could not continue unassisted. It is seen that admittedly the order does not refer to the provisions of Section 213 of the Indian Succession Act, 1925 which states that renunciation when made precludes the renouncing Executor from applying thereafter for appointing him as Executor again for seeking probate of the Will. On 15.10.2009, Mr. Vasant Sardal filed Review Petition to challenge the order of reinstatement of Mr. Behram Ardeshir as Executor.

9. In the meanwhile, since Mr. Vasant Sardal did not act upon the Consent Terms, Defendant Nos. 1 and 2 i.e. Ms. Ashita Tham and Ms. Monica Uberoi filed Notice of Motion No. 105 of 2010 to implement the Consent Terms dated 22.11.2005 and the order passed thereon on 22.02.2006. On 09.03.2011, Notice of Motion was dismissed as not maintainable and *status quo ante* was restored. Defendant Nos. 1 and 2 filed Appeal No. 296 of 2011 against the said order. This appeal was disposed of by Minutes of Order on 29.11.2017.

10. It is seen that on 03.05.2018, a detailed order was passed disposing of Notice of Motion (L) No. 689 of 2018 in Suit No. 4060 of 2003 and Consent Terms of February 2006 filed in Suit No. 4060 of 2003 were set aside and order dated 24.04.2006 taking

those Consent Terms was recalled and the Administration Suit was restored to file. By the said order, Consent Terms in Testamentary Suit No. 14 of 2004 were also set aside and the order dated 22.02.2006 was recalled and Testamentary Suit No. 14 of 2004 was restored to file along with the caveats filed therein. By the same order, Notice of Motion (L) No. 85 of 2018 was disposed of allowing the said Notice of Motion which prayed for setting aside of the Consent Terms filed in Testamentary Suit No. 14 of 2004. After the above order was passed disposing of all three Notices of Motion, this Court framed the following issues for trial in Testamentary Suit No. 14 of 2004 :-

- “1. Whether the Plaintiff proves that the writing dated 20.06.2003 was duly and validly executed and attested in accordance with law as the last Will and Testament of the deceased, Bipin Gupta?*
- 2. Whether the Plaintiff proves that at the time of the said alleged Will, the deceased was of sound and disposing state of mind, memory and understanding?*
- 3. Whether the Defendants prove that the alleged Will is sham and bogus?*
- 4. What reliefs and what orders?*

11. It will be pertinent to also reproduce the order passed by this Court on 03.05.2018 in this context:-

- “1. In view of the order separately passed in Notice of Motion (L) No. 85 of 2018, the surviving executor named in the Will, Mr. Vasant Narayan Sardal has been removed.*
- 2. The Petition will now be converted to one for Letters of Administration with Will annexed. Mr Ketan Trivedi will ensure that necessary amendments are being carried out to that effect. There is*

no need of re-verification.

3. The Plaintiff will now be substituted with Mr Ketan K Trivedi, Commissioner for Taking Accounts, as an Officer of the Court to serve as an Administrator under Section 254 of the Indian Succession Act 1925 to apply for Letters of Administration with Will annexed.

4. The original Will is lodged with the Registry. The death certificate will be accepted. The evidence of the attesting witnesses will be taken directly in Court followed by the cross-examination.

5. Mr Anil Sardal is the first attesting witness. The second attesting witness is Dr Santosh Raje, an Advocate of this Court (Mobile No. 98197 19457). Mr Trivedi will contact Mr Raje to find out when he is available to give evidence.

6. I am making it clear that in a situation like this, we will begin with the evidence of Dr Santosh Raje. The question of whether to call Mr Anil Sardal as a witness will be revisited at a later date.

7. Heard. Issues are framed in the Testamentary Suit and these are appended to this order. List the matter for further directions on 25th June 2018.”

12. Dr. Goyal, learned Advocate appearing on behalf of the Plaintiff, based on the above facts has made the following submissions:-

12.1. that Consent Terms dated 22.11.2005 executed between Mr. Vasant Sardal and Defendant Nos. 1 and 2 wherein Defendant Nos. 1 and 2 had agreed to withdraw their caveats and agreed for surrender of Flat No.2, Firdaus Building to the landlord for monetary consideration clearly stated that the Will of Mr. Bipin Gupta was valid and hence Defendant Nos. 1 and 2 had admitted that the Will was valid and therefore now cannot oppose grant of letters of administration with Will annexed;

12.2. that on 22.02.2006 when this Court took on record

Consent Terms and passed order in terms of the Consent Terms, the probate Petition came to an end and was no longer contested between the parties;

12.3. that in the present Suit, evidence of Mr. Santosh Raje, one of the attesting witness has been led by Plaintiff which proves execution of the Will by Mr. Bipin Gupta in his presence and in accordance with law;

12.4. that Mr. Santosh Raje the attesting witness is a practicing Advocate in this Court for the last 20 years; that in his evidence he has stated that sometime in the third week of June 2003, Mr. Anil V. Sardal, son of Mr. Vasant Sardal requested him to be an attesting witness along with him to the Will to be executed by his friend Mr. Bipin Gupta who was at the then time undergoing treatment in Bombay Hospital as he desired to give his entire property to charity. Hence in that view of the matter considering the intention of Mr. Bipin Gupta as a noble cause he acceded to the request made by Mr. Anil Sardal. Accordingly on 20.06.2003, Mr. Anil Sardal introduced him to Mr. Bipin Gupta in Bombay Hospital. It is stated in evidence of PW-1 that the Will was prepared by Mr. Bipin Gupta and was shown by him in the hospital and after going through the same he inquired as to whether he indeed was Mr. Bipin Laxmichand Gupta. After it was confirmed, he asked Mr. Bipin Gupta to put his

signature on the Will in the presence of him and Anil Sardal after which Mr. Bipin Gupta put his signature on each page. That thereafter in his presence, PW-1 and Anil Sardal put their names and signatures on the Will as attesting witnesses. Hence, Dr. Goyal would submit that it was the case of PW-1 that he had gone through the Will in the presence of Mr. Bipin Gupta and only thereafter executed the same as attesting witness in his presence by following the due process of law. She would submit that PW-1's evidence is direct evidence which establishes execution of the Will. She has then taken me through the cross-examination of Mr. Santosh Raje wherein he has deposed to 102 questions and would submit that if one goes through the said evidence, then the deposition of PW-1 needs to be accepted as credible. According to her PW-1 has deposed and answered each and every question precisely about his association with Mr. Anil Sardal, about his visit to the hospital on 20.06.2003 and details of the incident of execution of the Will by Mr. Bipin Gupta in his presence. She has particularly drawn my attention to answers given by PW-1 to two specific questions namely question Nos. 1 and 12 wherein the witness was asked as to whether he had knowledge about who had prepared or drafted the Will and who had brought the Will to Bombay Hospital on 20.06.2003 to which PW-1 has answered in the negative and thereafter the Court put a question to PW-1 as to between Bipin Gupta (deceased) or Mr.

Anil Sardal who had put the Will in his hands and he had answered that it was Mr. Bipin Gupta himself. Next she would submit that PW-1 has deposed that Mr. Bipin Gupta had kept the Will under his pillow and after removing it from there, had handed it over to him for reading. She would submit that PW-1 has stated in his deposition that he knew Mr. Anil Sardal as he lived in his neighbourhood and Mr. Anil Sardal had informed him that Bipin Gupta (deceased) was his family friend. She would submit that PW-1 also answered the precise time of his visit to Bombay Hospital which was between 10.30 a.m. to 11.00 a.m. in the morning. She has drawn my attention to answers given by PW-1 to question Nos. 29 and 30 when he was asked whether he had obtained the entry pass to enter Bombay Hospital to which his answer was that he did not recollect and thereafter deposed that Mr. Anil Sardal was waiting for him at the entrance of Bombay Hospital and he accompanied him and took him inside the hospital. She would submit that PW-1 has deposed that Bipin Gupta was admitted in a private room. She has also fairly pointed the answer to question No. 39 when PW-1 was asked that after entering the hospital room, whether he asked Mr. Bipin Gupta for any proof of his identity to which he replied that he only asked him his name and thereafter in answer to question No. 40, PW-1 has stated that it was correct to say that there was no document from which he could verify whether the

person in the room was in fact the testator Mr. Bipin Gupta. Next she would submit that PW-1 has deposed that the Will comprised of 2-3 pages and he was present at the time of attestation of the Will for a total of 35-40 minutes and was dropped back upto the lift by Mr. Anil Sardal.

12.5. On overall reading of the evidence and answers given by PW-1, she would submit that on the strength of the direct evidence of PW-1 that Mr. Bipin Gupta had given the Will to him for his attestation, it cannot be disputed that Bipin Gupta was not in the hospital on 20.06.2003 and since the Will was signed / attested and executed in his presence, it has to be believed that there is direct evidence of execution and attestation of the Will by the testator and the co-attesting witness of having set and subscribed their respective signatures thereon.

12.6. Dr. Goyal would submit that Plaintiff has thus adequately proved that the writing dated 20.6.2003 was duly executed and attested in accordance with law and most importantly at the time of execution of the Will, deceased was of a sound mind and understanding as he interacted with PW-1 normally and hence, the Suit deserved to be decreed. She would submit that in so far as the burden of proof on the Defendants to prove that the alleged Will is sham and bogus is concerned, the Defendants have not discharged

the burden adequately and in that context, she has drawn my attention to the affidavit of evidence of DW-1 - Ms. Ashita Tham (Defendant No.1) dated 31.03.2021 and more specifically paragraph Nos. 31 and 32 and 46 and 47 thereof wherein the sisters (namely Defendant Nos. 1 and 2) of Mr. Bipin Gupta have claimed to have nurtured good relations with him but in fact have deposed that Mr. Bipin Gupta was short tempered, had violent encounters and always associated himself with bad company. She has drawn my attention to some of the answers given by DW-1 to question Nos. 16 to 24 wherein she has deposed that Mr. Bipin Gupta was a good, loving, caring and protective brother. Next, she has drawn my attention to answer given to question Nos. 100 to 105 by DW-1 wherein she has deposed that Mr. Bipin Gupta performed his duty as elder brother towards his sisters and incurred expenditure for her Indian wedding ceremony and gifted her jewelry and Rs. 70,000/- cash in the year 1981. My attention is next drawn to the answer given to question No. 353 wherein DW-1 has deposed that Mr. Bipin Gupta was bedridden for a period of six months after his wife Pushpa's demise in October 2002 which implies that he was bedridden upto April 2003 and was mobile only thereafter. She would submit that on an overall reading of the deposition of DW-1, it would show that Defendant Nos. 1 and 2 – sisters, save and except for visiting Mr. Bipin Gupta at Norman Guest House in Firdaus Building and in the

hospital, did not really care for him. In fact she would submit that even in respect of their visits, there is no evidence to establish the same. She would submit that in the affidavit dated 15.11.2018 filed in support of the caveat by Defendant No. 3 Ms. Pooja Bedi, daughter of Ms. Protima Bedi (pre-deceased sister of Bipin Gupta) it is stated that wife of Bipin Gupta (deceased) died in October 2002 under very tragic circumstances. It is stated that infact she was murdered and after the said incident, Bipin Gupta's health deteriorated significantly. She would submit that Defendant No. 3 has confirmed in her affidavit that Mr. Bipin Gupta was suffering from renal and liver problems and was in and out of hospital and in fact had to undergo dialysis frequently in Bombay Hospital and was hospitalized for a considerable length of time in June 2003. She would submit that Defendant No. 3 has further confirmed the fact that around 24.06.2003 Mr. Bipin Gupta underwent an operation in connection with his kidneys which confirms that when the Will was executed, Mr. Bipin Gupta was indeed in the hospital. She would submit that evidence given by PW-1 of execution of the Will dated 20.06.2003 is therefore absolutely credible and proves the execution of the Will and in that view of the matter Plaintiff has proved that the said Will was duly and validly executed and attested in accordance with law as the last Will and Testament of the deceased Mr. Bipin Gupta and should be accepted by the Court for issuance of

Letters of Administration with Will annexed.

13. *PER CONTRA*, Mr. Jayakar, learned Advocate for Defendant Nos. 1 to 3 has at the outset drawn my attention to the original Will in Court record and would submit that if the Will is seen by the Court, then it is evident that there is no date stated in the Will and therefore, evidence given by the attesting witness PW-1 that the Will was executed on 20.06.2003 is not only suspicious but unbelievable and not credible. He would submit that it has come on record that Mr. Bipin Gupta was admitted to Bombay Hospital for renal failure and hip fracture and was undergoing treatment from Dr. Kripalani whose name appears not only in the Will but also in various hospital records which have been brought on record, but the said Dr. Kripalani is not examined as a witness nor is one of the attesting witnesses to the Will nor has he given his endorsement that the testator was of a sound mind and disposition on the date of execution of the said Will. According to Mr. Jayakar, Dr. Kripalani would be the best person to testify the status of soundness of mind and disposition of the testator Mr. Bipin Gupta at the time of execution of the Will. He would submit that it is extremely suspicious that Dr. Kripalani was not even called as witness to prove the sound mind and disposition of Mr. Bipin Gupta at the time of execution. Next he would submit that the Executor in the will is one

Mr. Vasant Sardal who is the father of one of the attesting witness Mr. Anil Sardal who arranged for bringing PW-1 for attestation. He has urged me to peruse the Will and drawn my attention to an obscure bequest made therein to charity in the name of a charitable Trust called "Pushpa Gupta Charitable Trust" which would otherwise be an indirect bequest to benefit the Executors and one of the attesting witnesses named therein to the complete exclusion of the family members / legal heirs. He would submit that Mr. Vasant Sardal is a retired Police Officer whereas Mr. Anil Sardal (attesting witness) is a serving police officer and claim to be friends of Mr. Bipin Gupta. at the then time. He has drawn my attention to the order dated 03.05.2018 passed by the learned Single Judge of this Court (Coram : Gautam Patel J.) wherein Mr. Vasant Sardal was removed as Executor by this Court and would submit that until his removal, the Executors had never even constituted the Trust stated in the Will.

13.1. He has next drawn my attention to page No.3 of the Will and would submit that the Will is a typed copy on the first page and cover half portion of the second page. He would submit that the remaining half on the second page is completely blank and execution is on the third page. He would submit that this is extremely unusual wherein the execution page is a completely

separate and different page rather than being in continuity with the original Will when there is adequate space on page No. 2 itself. He would submit that the large blank space on page No. 2 of the Will stares on the face of record which is not explained by PW-1 despite specific questions being put to him nor by any of the Executor in any of the affidavits filed by them for seeking probate, despite the fact that PW-1 is a practising Advocate in this Court.

13.2. He would submit that when PW-1 was asked specific questions in cross-examination as to whether he had knowledge of the Will, he answered that he did not have any knowledge of the Will and preparation thereof but it is ironical that the said Will post execution has emanated from his custody after the demise of Mr. Bipin Gupta. The copy of the Will was given to the Defendants by PW-1 after much persuasion and intervention by the Police. In this context he has drawn my attention to the affidavit-in-support of the caveat filed by Defendant No. 3 and more specifically paragraph Nos. 6(f) to 6(j) and would submit that on a conjoint reading of the facts stated therein, it is evident that a conspiracy was hatched by Mr. Vasant Sardal in conjunction with his son Mr. Anil Sardal, Dr. Santosh Raje and Mr. Behram Ardeshir to usurp the property of Mr. Bipin Gupta after his demise. He would submit that since it is Plaintiff's case that execution of the Will took place in the hospital

room where Mr. Bipin Gupta was undergoing treatment, then there was no reason as to why the treating Doctor / Doctor on duty or the nurse was not requested to be the attesting witness and certify the sound mind and disposition of Mr. Bipin Gupta which would be utmost essential in the facts and circumstances necessitated in the present case. He would submit that Defendant No. 3 has stated in the affidavit in support of her caveat that none of the Defendants ever knew Mr. Vasant Sardal, Mr. Behram Ardeshir, Mr. Santosh Raje or Mr. Anil Sardal and they met these persons for the first time just outside the crematorium at around 12.00 noon on 05.09.2003. He would submit that the aforesaid persons i.e. Mr. Vasant Sardal, Mr. Anil Sardal and Mr. Santosh Raje (PW-1) and some others had on their own without even informing the family members of Mr. Bipin Gupta had taken his dead body for cremation. That it was only after the cremation, Defendants were informed by Mr. Vasant Sardal and Mr. Behram Ardeshir that Mr. Bipin Gupta had made a purported Will and Mr. Santosh Raje was the Advocate and one of the attesting witnesses to the purported Will. It is Defendants' case that they were introduced to Mr. Santosh Raje on 05.09.2003 who was incidentally for reasons best known to him present in the crematorium. That on being asked to provide a copy of the purported Will, PW-1 Mr. Santosh Raje declined to give the copy to the Defendants and it was only after much persuasion and

intervention of the Police and after Defendants approached the Commissioner of Police with a specific Complaint, that Mr. Santosh Raje eventually handed over a copy of the purported Will to them much later. He would submit that there is no evidence brought on record by Plaintiff as to how the typed copy of the Will reached Bombay Hospital on 04.09.2003 where the deceased was undergoing treatment for renal failure, diabetes and hip fracture and who had prepared the same. He has led emphasis on the fact that the Will is not only poorly drafted but contains several grammatical mistakes; that dispositions in the Will are unusual and unnatural; that propounder of the Will has a direct benefit from the Will and benefit in the legacy and estate of the deceased to the exclusion of all family members / legal heirs. He has fortified the above submissions by drawing my attention to the affidavit dated 09.02.2018 of the co-executor Mr. Behram Ardeshir wherein he has stated that the other co-executor Mr. Vasant Sardal and the attesting witness Mr. Anil Sardal had a clear intention of usurping the estate of the deceased and Mr. Anil Sardal, the Police Officer had told him that he wanted to get the flat in Firdaus building at Marine Drive for himself.

13.3. In support of Defendants' case, Mr. Jayakar has drawn my attention to the affidavit-in-lieu of examination-in-chief filed by

Defendant No. 1 - Ms. Ashita Tham. He would submit that DW-1 i.e. Defendant No. 1 has deposed about growing up with her brother Mr. Bipin Gupta and other family members. She has deposed that on 04.09.2003, she was travelling to Shirdi along with her husband Mr. Henry Tham and in the morning at around 11.00 a.m. she got a phone call from Defendant Nos. 2 and 3 that they were informed by neighbours that Mr. Bipin Gupta had passed away. He has drawn my attention particularly to the deposition of DW-1 in paragraph No. 74 wherein she has deposed that she personally visited Mr. Bipin Gupta when he was admitted to Bombay Hospital and that he was not found to be in a sound state of mind. She has deposed that he was completely incoherent and his words were disjunctive and that during her visits to Bombay Hospital, Mr. Bipin Gupta relied upon her for mental and emotional support. She has deposed that Mr. Bipin Gupta was never known to make any benevolent donations throughout his life time to charity and had not made a single such donation. Hence, he would submit that the evidence of DW-1 which is direct evidence deserves to be accepted by this Court. He would submit that in cross-examination of DW-1, a total number of 567 Questions have been asked to her by the learned Advocate of the Plaintiff / Administrator appointed by this Court to which Defendant No. 1 has deposed coherently to each and every question. He would submit DW-1 has deposed in answer to question No.

375 that Mr. Santosh Raje gave the Will to Mr. Behram Ardeshir after three weeks after the death of Mr. Bipin Gupta. He would submit that *prima facie* looking at the Will and considering the evidence of the attesting witness, the Will cannot inspire any confidence of this Court to be treated as a valid and genuine Will. He would submit that the stark large blank place on page No. 2 of the Will disjuncts itself from the execution clause of the Will which is on page No. 3 thereof. He has urged the Court to have a close scrutiny of the signatures of the deceased Mr. Bipin Gupta on page Nos. 1, 2 and 3 of the Will and would submit that all three signatures clearly defer as appearing to the naked eye. Next he would submit that especially in view of the fact that it is alleged that the Will was executed in the hospital and it does not bear the attestation / signature of the treating Doctor where admittedly Mr. Bipin Gupta was admitted for undergoing treatment for renal failure and hip fracture, it cannot be fathomed that the alleged Will was executed by Mr. Bipin Gupta (deceased) on 20.06.2003 and in view thereof Defendants have proved beyond doubt that that the alleged Will is sham and bogus. He has therefore urged the Court to dismiss the Testamentary Suit.

14. In support of his above submissions and propositions, Mr. Jayakar has referred to and relied upon the following decisions of

the Supreme Court:-

1. *Niranjan Umeshchandra Joshi Vs. Mrudula Jyoti Rao & Ors.*¹,
2. *Yumnam Ongbi Tampha Ibema Devi Vs. Yumnam Joykumar Singh & Ors.*²,
3. *Kavita Kanwar Vs. Pamela Mehta & Ors.*³,
4. *State of Haryana Vs. Harnam Singh (dead) through legal representatives & Ors.*⁴,
5. *Murthy & Ors. Vs. C. Saradambal & Ors.*⁵

15. I have heard Dr. Goyal, learned Advocate for Plaintiff and Mr. Jayakar, learned Advocate for Defendants and length and with their able assistance perused the record and pleadings in the present case. Submissions made by them have been noted and received due consideration of the Court.

16. At the outset, it is seen that the entire foundation of the present case is based upon the alleged purported Will dated 20.06.2003 of Mr. Bipin Gupta (deceased) and the evidence / deposition of Mr. Santosh Raje PW-1 i.e. one of the attesting witnesses thereto. During the course of hearing, I called for the original Will and perused the same and my observations and

1 (2006) 13 SCC 433

2 (2009) SCC 780

3 (2021) 11 SCC 209

4 (2022) 2 SCC 238

5 (2022) 3 SCC 209

findings after perusal of the said Will are as follows:-

16.1. The Will is running into 3 pages. Page No. 1 of the Will is fully typed and has 6 paragraphs. The 6th paragraph has 7 sub-paragraphs. The date stated in the 1st paragraph is “20.06.2003”. Paragraph No. 2 of the Will is relevant and important and reads thus:

“AND WHEREAS I am suffering from Renal Failure & Fractured Hip and under treatment of A. Kripalani at Bombay Hospital at Mumbai.”

16.2. Reference to A. Kripalani is Dr. A. Kripalani of Bombay Hospital as is borne out from various medical reports placed on record bearing his name and Mr. Bipin Gupta (deceased) was admittedly under his treatment. What is pertinent to note is the fact that a person suffering from renal failure and fractured hip admitted to the hospital would never be met and seen in a sitting position on the hospital bed. However PW-1 has deposed that Mr. Bipin Gupta was seen in a sitting position when he met him. Another crucial aspect which needs attention is that Plaintiff has failed to prove as to how and who has / had prepared and typed the purported Will in the first place since according to PW-1 he was not instrumental at all in preparation of the Will and that he was introduced to Mr. Bipin Gupta (deceased) for the first time by his co-attesting witness Mr. Anil Sardal in the hospital who had called him for attestation only.

PW-1 has deposed that Mr. Bipin Gupta (deceased) handed over the Will to him from under the pillow for the first time in the hospital. Considering that the said Will is a typed Will, undoubtedly somebody or some entity or some person must have prepared the same. By preparation, I mean somebody had got it typed and engrossed in the form and manner in which it has been done. All this has not been proved by Plaintiff at all.

16.3. Para 3 of the Will is a recital which is also relevant and reads as under:-

“AND WHEREAS I have no legal heirs or any close relatives being my legal heir/s or representative.”

16.4. *Prima facie*, facts stated in this clause on the face of record are not only false but also incorrect. Considering deposition of DW-1 and the substantive evidence given by her, such a clause could never have found place in the Will at all. In the compilation of documents referred to and relied upon by DW-1 and marked as evidence by this Court, there is ample material evidence to show coherence of relationship between Mr. Bipin Gupta (deceased) and his sisters and niece (Defendants herein). There is documentary evidence placed on record to prove that Mr. Bipin Gupta had always assisted and helped his sisters by giving them marriage gifts, incurring expenditure on their marriage or for that matter advancing

cash gifts to them. Documentary evidence placed on record bears testimony to these facts. With such overwhelming evidence, inclusion of paragraph No. 3 wherein Mr. Bipin Gupta (deceased) has stated that he has no legal heirs or any close relatives being his legal heirs is not only suspicious but appears to be fraudulently stated with ulterior motive. In a recital, a Testator is expected to state a true and correct fact. It may be a different thing for the Testator to disown his legal heirs and exclude them from inheritance, but what I find is that in the recital clause itself a factually incorrect statement has been recorded in the Will and this can only be with the intention, rather malicious or fraudulent intention to usurp the property of the deceased. Why I say so, is due to the fact that there is a controversy with respect to bequeathal of his legacy and disputes between the Executors and the attesting witnesses in the present case itself.

16.5. Another striking feature on page No. 1 of the Will is the fact that the disposition of the estate / legacy is contrived and factitious in the facts and circumstances of the present case. The name of Mr. Vasant Narayan Sardal appearing as one of the Executor is linked to the attesting witness Mr. Anil Sardal who has played a prominent role in the alleged execution of the purported Will according to Plaintiff's case. Clause 3 of unnumbered

paragraph No. 6 of page No. 1 refers to “blood relatives” of the deceased and if that be the case then recital in unnumbered paragraph 3 of the Will is definitely an incorrect statement and draws immediate suspicion of this Court. It is seen that on page No. 1 of the Will, there are 41 lines which are typed excluding the title “Will”. Page 1 at the bottom in the center bears the signature of Mr. Bipin Gupta (deceased).

16.6. Next I come to page No. 2 of the Will and what I find is that there are 3 sub-clauses which are continuation of the 7 sub-clauses of unnumbered paragraph No. 6 from page No. 1. On page No. 2, I find that there are 12 lines typed and the Will ends over there itself leaving the rest of the page completely “blank”. The rest of the page in comparison to page 1 is blank in respect of 29 lines on that page. After the 12th typed line on page No. 2, signature of Bipin Gupta appears and the rest of the page i.e. page No. 2 is thereafter completely blank.

16.7. Next, I come to page No. 3. On this page signature of the testator Mr. Bipin Laxmichand Gupta appears, below which the word “Witness” appears and below the said word, two names namely “Santosh D. Raje” along with his address and signature appear. Immediately thereafter the name of “Anil V. Sardal” along with his address and signature appears. The names and address of

these two witnesses are in handwriting. Below the names of these two witnesses, names and addresses of “Vasant Narayan Sardal” and “Behram Ardeshir” appear in typed format. The above execution clause covers around 50% of page No. 3 and to be more specific between 20 to 24 lines of the entire page.

16.8. On juxtaposing all three pages of the original Will before me, what I find is one striking feature namely that the signature of the deponent / testator Mr. Bipin Laxmichand Gupta as appearing to my naked eye on page No.1 is clearly different and incongruous with the signature appearing on page No. 2 and page No. 3 of the Will. The signature on page No. 3 is completely different in terms of the strokes, curvature of articles, placement of articles than the signature on page Nos. 1 and 2. I find that all three signatures are distinctly dissimilar on the face of record, do not match with each other and I have no doubt in mind that they are fabricated and forged. I say this with conviction because what I find is that there is no conjunction of page No. 3 that is the execution clause page with having any continuity with page Nos. 1 and 2 of the Will. Mr. Santosh D. Raje is an advocate practicing in this Court. Before I advert to the evidence of Mr. Santosh D. Raje qua the alleged Will, there are other glaring issues which are required to be deciphered. Considering that Mr. Bipin Gupta (deceased) was admitted in

hospital for undertaking treatment for renal failure and hip fracture under Dr. Kripalani, there is no explanation given by Plaintiff nor proved as to why the said Doctor / treating Doctor / Doctor on duty / Nurse on duty was not made one of the attesting witnesses who would had been in a position to testify the sound disposition and sound mind of Mr. Bipin Gupta (deceased) at the time of execution of the Will. Further considering the fact that attestation and execution of the Will was done in the hospital room, it is all the more evident that the treating Doctor / Doctor on duty should have been made as one of the attesting witness. But that is not the case here. Be that as it may, even otherwise it was upto the Plaintiff to summon Dr. Kripalani as a witness to prove that Mr. Bipin Gupta was indeed in a sound and disposable state of mind at the time of execution of the Will. Plaintiff failed to do that. Another question which begs an answer in the facts and circumstances of the present case is that if Mr. Santosh D. Raje was not instrumental in preparing the Will, then how did the Will come into his hands after its execution on 20.06.2003. Deposition of PW-1 - Mr. Santosh D. Raje is precisely to the point that he was called by his friend Mr. Anil Sardal to attest the Will which he did. He has deposed that he did not prepare the Will; that he was given the Will by Mr. Bipin Gupta to read for the first time in the hospital and after reading it he was asked to attest the same which he did after it was executed in the

presence of himself and Mr. Anil Sardal. He has deposed that the Will was kept below the pillow by Mr. Bipin Gupta and thereafter he left the hospital premises. Evidence however has been placed on record to show that the said Will was always in the custody of Mr. Santosh D. Raje as it was only after the family members of Mr. Bipin Gupta approached the Commissioner of Police with a compliant that a copy of the said Will was given to the Police by Mr. Santosh D. Raje. Hence a strong doubt and suspicion arises that the alleged Will was prepared by Mr. Santosh D. Raje himself but his deposition to that effect is to the contrary and therefore his credibility as an attesting witness stands severally eroded. There is no explanation placed on record as to how and who prepared the Will, rather the typed copy of the Will or whether the testator gave instructions to somebody to prepare the Will and how it reached Bombay Hospital where the deceased was undergoing treatment for renal failure and hip fracture. Mr. Anil Sardal, the second attesting witness who summoned Mr. Santosh Raje did not step into the witness box. It is further seen that this Court also needs to take into cognizance the contents of the affidavit filed by one of the co-executor namely Mr. Behram Ardeshir who has stated on oath that the other co-executor Mr. Vasant Sardal and one of the attesting witness Mr. Anil Sardal had the intention of usurping the estate of the deceased, though I must admit that save and except the said

affidavit there is no direct evidence on record to that effect. Hence, Mr. Anil Sardal's omission to give evidence further fortifies the shadow of doubt on the genuineness of the execution of the Will.

17. Next, I would like to turn to the evidence of PW-1 i.e. Mr. Santosh D. Raje. In his affidavit-in-lieu of evidence, he as stated as under:-

“ I say that, in the third week of June 2003 my friend Mr. Anil V. Sardal requested me to be an attesting witness along with him to the will to be executed by one Mr. Bipin Gupta who was taking a treatment in Bombay hospital as he wish to give his entire property to the charity. Considering the intention of the testator as Nobel cause I acceded to the request of Mr. Anil Sardal. Accordingly, on 20th June 2003 he took me to the Bombay hospital in the morning. I further say that, Mr. Anil Sardal introduced me to Mr. Bipin Gupta, who was sitting on the bed and also told him the purpose of my visit. I further say that thereafter a will which was prepared by Mr. Bipin Gupta was shown to me by him, after going to the same I asked him whether he is Mr. Bipin Laxmichand Gupta, when he accept the same I asked him to put his signature in presence of me and Mr. Anil Sardal, he put his signature on every page in our presence and thereafter in his presence myself and Anil Sardal have put their names and signed being attesting witness.”

17.1.1. In the affidavit of evidence filed by PW-1, there is no deposition to the effect that Bipin Gupta (deceased) was in a sound state of mind or disposing capacity at the time of execution of the Will. Next there is no explanation as to the disjunctive character of the Will between page Nos. 2 and 3 of the Will. Considering that Mr. Santosh Raje is a practicing Advocate of this Court, he ought to have filed an appropriate affidavit if he had indeed appended his signature on page No. 3 which according to him happened to be in

conjunction with page 2 of the Will. Unfortunately there is no explanation given to that effect. The blank space on page No.2 of the Will has not been explained at all by PW-1. If the aforesaid is to be accepted then the deposition of Mr. Santosh Raje in paragraph No. 2 of his affidavit-in-lieu of examination in chief that he had gone through the Will appears to be incorrect. The fact that Mr. Raje had met Mr. Anil Sardal on 19.06.2003 is also not stated in his affidavit of evidence but he has deposed to that effect categorically in answer to question No. 2 that he had met Anil Sardal on 19.06.2003. Mr. Raje has in answer to question Nos. 7 and 8 in his cross-examination has stated that prior to 20.06.2003, he had never met Mr. Bipin Gupta (deceased) and he had seen him for the first time on 20.06.2003 in Bombay hospital. This is however a false answer in view of the fact that Mr. Behram Ardeshir in his affidavit dated 09.02.2018 has stated that Mr. Santosh Raje was the Advocate of Mr. Bipin Gupta (deceased). The said affidavit of Mr. Behram Ardeshir is part of pleadings in the Administration Suit which is in fact annexed by Mr. Vasant Sardal to his affidavit-in-reply in Notice of Motion No. 74 of 2015. In answer to question No. 11, Mr. Raje has admitted that he did not know who had drafted the Will whereas in his affidavit of evidence, he has deposed that the Will was prepared by Mr. Bipin Gupta. Once again the answer to question No. 11 is contradictory to his deposition in his affidavit of

evidence. Next in answer to question No. 14, Mr. Raje has admitted that he was aware that Mr. Bipin Gupta was administered medicines for kidney problems and was undergoing dialysis and therefore he was not able to justify about the soundness of the mind of the testator Mr. Bipin Gupta. Mr. Raje in answer to question Nos. 15, 19 and 20 has stated that the Will was prepared on white paper but the original Will is infact transcribed on ledger paper i.e. green paper which is of A3 size and hence once again Mr. Raje has given false answers. Mr. Raje has deposed in his cross-examination that he was with Bipin Gupta in his room for 30-40 minutes during the entire exercise of execution and attestation of the Will and therefore it is not only ironical but highly suspicious that no nurse or doctor or any other hospital staff was requested or directed to remain present in the room when the Will was executed / attested. In answer to question Nos. 22, 23 and 24, Mr. Raje has stated that after the Will was executed and attested, Bipin Gupta (deceased) kept it under his pillow and he did not know the whereabouts of the Will thereafter. However, both Executors viz. Mr. Vasant Sardal and Mr. Behram Ardeshir have in their statements recorded before the Marine Drive Police Station on 11.09.2003 and 05.09.2003 admitted the fact that the Will was in fact handed over to Mr. Raje. If that be the case, then there is no explanation coming from Mr. Raje in his examination-in-chief as to how he got custody and possession of the

original Will. It is a case admitted on record that only after the family members of Bipin Gupta (deceased) approached the Commissioner of Police with a complaint that Mr. Raje was compelled to give to them a copy of the original Will. Hence, Mr. Raje's deposition including his statements are clouded by suspicion, are untrustworthy, false on the face of record and do not deserve acceptance or appreciation by this Court. In fact, Mr. Raje's witness action is of no credence at all in view of the above observations and cannot be believed due to some inconsistencies and contradictions.

17.1.2. In answer to question Nos. 28 and 31, Mr. Raje has deposed that he visited Bombay Hospital at around 10:30 and 11:00 a.m. in the morning during visiting hours. In answer to question Nos. 41 and 42, he has deposed that he did not enquire with any doctor or nurse about the health of the testator Mr. Bipin Gupta and did not enquire if he was in a sound mind or disposing capacity which was rather unusual and strange. The next striking feature of Mr. Raje's deposition are his answers to question Nos. 55 to 57. For convenience, the same are reproduced in verbatim as under:-

“Q. 55 Who gave you will to sign?

Ans. The testator gave me the will to sign.

Q. 56 Had the testator signed the will before the will was given to you?

Ans. It was not signed.

Q. 57 Is it correct to say that you have signed the will first?

Ans. Yes.”

17.1.3. Juxtaposing with the above answers given by Mr. Raje, statement in paragraph No. 2 of his affidavit dated 30.07.2018 reads thus:-

“..... I further say that thereafter a Will which was prepared by Mr. Bipin Gupta was shown to me by him, after going to the same I asked him whether he is Mr. Bipin Laxmichand Gupta, when he accept the same I asked him to put his signature in presence of me and Mr. Anil Sardal, he put his signature on every page in our presence and thereafter in his presence myself and Anil Sardal put their name and signed being attesting witness.”

17.1.4. The answers to question Nos. 55 to 57 are completely contradictory to the deposition of Mr. Raje in his own affidavit-in-lieu of examination-in-chief. Nothing more needs to be explained or derivated from the above, save and except to conclude that deposition of Mr. Santosh Raje is not credible at all and cannot be believed or accepted by this Court at all. In fact, Mr. Santosh Raje has repeatedly given false answers and contradicted himself on record. Mr. Raje has given false answers and stated them to be material facts which are disbelievable. It can only be categorized as fraudulence misrepresentation.

17.1.5. Next in answer to question Nos.58, 65 and 66, Mr. Raje has clearly in unequivocal words admitted that he did not see the

attesting witness attesting or signing the Will and he did not even ask him to see if the other attesting witness had signed the Will. In response to a question with respect to the sound and disposing capacity of the testator Mr. Bipin Gupta, a question was put to Mr. Raje. The said question No. 76 and answer thereto is reproduced hereunder:-

“Q. 76 Did you ask the testator when he had prepared the Will considering that he was in hospital when you attested the Will?”

Ans. I did not ask.

17.1.6. Perusal of the above shows that when Mr. Santosh Raje was confronted with the statement of Mr. Anil Sardal in his affidavit appended to the probate Petition that the deceased was of sound mind and disposing capacity, he has categorically answered that in his presence , Mr Anil Sardal did not mention whether the testator Bipin Gupta was of a sound mind or had a disposing capacity.

17.1.7. Mr. Raje in answer to question No. 89 when asked as to whether he knew about how many pages did the Will comprise of and he answered that it comprised of 2 to 3 pages. This answer itself shows that as an attesting witness, he was not even sure of the number of pages of the Will.

17.1.8. Next Mr. Raje in answer to question No. 96 when asked as to whether he was aware there was any bequest made to any Trust,

he categorically answered that he was not aware of the same. This question was asked in view of the fact that Mr. Raje in his affidavit of evidence stated that he had gone through the Will given to him by the testator Mr. Bipin Gupta in the hospital, that Anil Sardal had told him to be an attesting witness due to the benevolent nature of disposition by the testator to charity and because of that reason he agreed to become the attesting witness and only thereafter.

17.1.9. In this context, I would like to refer to the affidavit-in-reply dated 17.12.2009 filed by Mr. Behram Ardeshir to the Review Petition on reading of which it is evident that Mr. Behram Ardeshir took Mr. Bipin Gupta to Bombay hospital and Bacha Nursing Home for Dialysis and for his treatment of fractured hip surgery and post operative case for six months till his demise; that due to the conduct of Mr. Vasant Sardal, Mr. Behram Ardeshir became aware that everything was pre-planned; Mr. Behram Ardeshir realized that Mr. Vasant Sardal did not have any intention to administer the estate but wanted to usurp it for himself and his son Mr. Anil Sardal; that Mr. Behram Ardeshir lost confidence in Mr. Vasant Sardal and realized that he was not an honest person; that the bequest in the Will was for a charitable purpose but Mr. Vasant Sardal and his son Mr. Anil Sardal wanted to make personal gain from the estate for themselves; that conduct of the original Petitioner (Mr. Vasant

Sardal) indicated that he had bad motives to make personal gain for himself and his son and cause loss to the charity / estate; that he had strong reasons to believe that Mr. Vasant Sardal would do any act to cause loss to the charity and it is only when he objected to any personal gain being obtained by Mr. Vasant Sardal and Mr. Anil Sardal, that Mr. Vasant Sardal levelled false allegations against him.

18. In the above facts and evidence before the Court, it will be worthwhile and necessary to consider the relevant statutory provisions dealing with the validity and execution of a Will. Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1861 are relevant and reproduced herein under:-

“Section 63 of the Indian Succession Act, 1925:

63. Execution of unprivileged Wills- Every testator, not being a soldier 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 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 direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or 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.

Section 68 of the Indian Evidence Act, 1872:

68. Proof of Execution of Document required by law to be attested- If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, subject to the process of the Court and capable of giving evidence:xxx”

19. Reading of the above mentioned provisions would show that the fundamental requirements stipulated under Section 63 of the Indian Succession Act, 1925 have to be categorically complied with for execution of the Will which has to be proven in terms of Section 68 of the Evidence Act. A Will is an instrument of testamentary disposition of property. It is a legally acknowledged mode of bequeathing a testator’s property during his lifetime to be acted upon his / her death and carries with it an element of sanctity. It speaks from the death of the testator. Since the testator / testatrix, at the time of testing the document for its validity would not be available for deposing as to the circumstances in which the Will was executed, stringent requisites for the proof thereof have been statutorily enjoined to rule out the possibility of any manipulation / fraud being committed to deal with the estate of the deceased.

20. In the case of *Murthy & Ors. (fifth supra)* relied upon by Mr. Jayakar, it was held that, if a suspicion about the thinking capacity and physical / mental faculties of the testator arises, then it has to be necessarily rebutted by evidence to be adduced by the

propounder of the Will. In the present case, it is seen that due to the medical ailment suffered by the testator Mr. Bipin Gupta i.e. deceased which are alluded to herein above, suspicion has arisen about the soundness of the mind of the testator at the time of execution of the Will. This suspicion has not been rebutted by any evidence whatsoever. It is seen that signatures of the Testator as appearing on Page Nos.1, 2 and 3 of the Will also clearly differ from each other. Thus a clear doubt is created as to whether the testator i.e. Mr. Bipin Gupta was in a sound and disposing state of mind at the time of making and executing the Will. This is more so evident because the Will is executed in the hospital room and no attestation / endorsement of the Doctor who treating the testator namely Dr. A. Kripalani of Bombay Hospital or the Doctor on duty is placed on record to prove that Mr. Bipin Gupta was in a sound and disposing state of mind at the time of execution of the Will. Further, the scribe of the Will has also not been examined nor it is proved by the Planitiff. It is also not known as to whether the assistance of an Advocate or any other trustworthy person was taken by the testator Mr. Bipin Gupta to prepare / draft the Will and bequeath the properties to charity to the exclusion of his immediate family members namely the Defendants. Provisions of Section 63 of the Indian Succession Act, 1925 envisage that genuineness of the Will must be proven by proving the intention of the testator to have

made the Will and all steps required to be taken for making a valid Will must be proved by placing concrete evidence before the Court. The mandatory requirements of Section 63 (c) of the Indian Succession Act, 1925 have to be undoubtedly complied with for a Will to be held as valid and genuine from the point of view of its execution. In the present case, the first condition itself does not stand complied with. Mr. Raje - PW-1 has deposed that he received a copy of the Will from the testator Mr. Bipin Gupta and appended his signature first but did not see the testator appending his signature on each page of the Will. This deposition does not prove the execution of the Will under the statutory provisions. There is a question mark regarding the custody of the Will after its execution and / or after the demise of the testator. The Will has emanated from Mr. Raje's custody despite he giving specific evidence to the effect that after his attestation, he gave the Will back to the testator and thereafter had nothing to do with it. This clearly shows that Mr. Raje was clearly aware about the execution of the Will and its custody thereafter. In the entire evidence placed before the Court there is no mention or evidence about the scribe of the Will. Hence the evidence of Mr. Raje - PW-1 has failed to inspire confidence of this Court.

21. In the decision of the Supreme Court in the case of *Kavita*

Kanwar (third supra) relied upon by Mr. Jayakar, the Supreme Court has in paragraph Nos. 22 and 23 thereof analysed the provisions of Sections 61 and 63 of the Indian Succession Act, 1925 and while referring to the decisions in the case of *H. Venkatachala Iyengar Vs. B. N. Thimmajamma*⁶ (3 Judge Bench); *Purnima Debi Vs Kumar Khagendra Narayan Deb*⁷ ; *Indu Bala Bose Vs. Manindra Chandra Bose*⁸ ; *Umadevi Nambiar Vs. T. C. Sidhan*⁹ ; *Mahesh Kumar Vs. Vinod Kumar*¹⁰ and *Shivakumar Vs. Sharanabassapa*¹¹ has referred to the summarized principles governing the adjudicatory process for proving the Will as enumerated by the Supreme Court in the case of *Shivakumar (eleventh supra)* in paragraph No. 24.8 of the judgment which is relevant and reproduced herein under:

“24.8 We need not multiply the references to all and other decisions cited at the Bar, which essentially proceed on the aforesaid principles while applying the same in the given set of facts and circumstances. Suffice would be to point out that in a recent decision in Shivakumar v. Sharanabasappa, this Court, after traversing through the relevant decisions, has summarized the principles governing the adjudicatory process concerning proof of a Will as follows: (SCC pp. 309-10, para 12)

“12.12.1. Ordinarily, 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. Alike the principles governing the proof of other documents, in the case of a Will too, the proof with mathematical accuracy is not to be insisted upon.

12.2. Since as per Section 63 of the Succession Act, a Will

6 AIR 1959 SC 443

7 AIR 1962 SC 567

8 (1982) 1 SCC 20

9 (2004) 2 SCC 321

10 (2012) 4 SCC 387

11 (2021) 11 SCC 277

is required to be attested, it cannot be used as evidence until at least one attesting witness has been called for the purpose of proving its execution, if there be an attesting witness alive and capable of giving evidence.

12.3. The unique feature of a Will is that it speaks from the death of the testator and, therefore, the maker thereof is not available for deposing about the circumstances in which the same was executed. This introduces an element of solemnity in the decision of the question as to whether the document propounded is the last Will of the testator. The initial onus, naturally, lies on the propounder but the same can be taken to have been primarily discharged on proof of the essential facts which go into the making of a Will.

12.4. The case in which the execution of the Will is surrounded by suspicious circumstances stands on a different footing. The presence of suspicious circumstances makes the onus heavier on the propounder and therefore, in cases where the circumstances attendant upon the execution of the document give rise to suspicion, the propounder must remove all legitimate suspicions before the document can be accepted as the last Will of the testator.

12.5. If a person challenging the Will alleges fabrication or alleges fraud, undue influence, coercion et cetera in regard to the execution of the will, the very circumstances surrounding the execution of the Will may give rise to the doubt or as whether the Will has indeed been executed by the testator and/or as to whether the testator was acting of his own free will. In such eventuality, it is again a part of the initial onus of the propounder to remove all reasonable doubts in the matter.

12.6. 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".

12.7. As to whether any particular feature or a set of features qualify as "suspicious" would depend on the facts and circumstances of each case. A shaky or doubtful signature; feeble or uncertain mind of the testator; an unfair disposition of property; an unjust exclusion of the legal heirs and particularly the dependants; an active or leading part in making of the Will by the beneficiary thereunder et cetera are some of the circumstances which may give rise to suspicion. The circumstances above noted are only illustrative and by no means exhaustive because there could be any circumstance or set of circumstances which may give rise to legitimate suspicion about the execution of the Will. On the other hand, any of the circumstances qualifying as being suspicious could be legitimately explained by the propounder. However, such suspicion or suspicions cannot be removed by mere proof of

sound and disposing state of mind of the testator and his signature coupled with the proof of attestation.

12.8. The test of satisfaction of the judicial conscience comes into operation when a document propounded as the Will of the testator is surrounded by suspicious circumstance(s). While applying such test, the Court would address itself to the solemn questions as to whether the testator has signed the Will while being aware of its contents and after understanding the nature of effect of the disposition in the Will.

12.9. In the ultimate analysis, where the execution of a Will is shrouded in suspicion, it is a matter essentially of the judicial conscience of the Court and the party which sets up the Will has to offer cogent and convincing explanation of the suspicious circumstances surrounding the Will.”

22. Next, it would be also worthwhile to reproduce the findings in a recent decision of the Supreme Court decided on 21.09.2023 in the case of ***Meena Pradhan & Ors. Vs. Kamla Pradhan & Anr.***¹² wherein relying on *H. Venkatachala Iyengar (sixth supra)*, ***Bhagwan Kaur Vs. Kartar Kaur***¹³ (3 Judge Bench), ***Janki Narayan Bhoir Vs. Narayan Namdeo Kadam***¹⁴ (Division Bench), *Yumnam Ongbi Tampha Ibema Devi (second supra)* and *Shivakumar (eleventh supra)*, the following principles required for proving the validity and execution of the Will have been deduced:-

“ i. The Court has to consider two aspects: firstly, that the Will is executed by the testator, and secondly, that it was the last Will executed by him;

ii. It is not required to be proved with the mathematical accuracy, but the test of satisfaction of the prudent mind has to be applied.

iii. A Will is required to fulfill all the formalities required under Section 63 of the Succession Act, that is to say:

(a) The testator shall sign or affix his mark to the Will or it shall be signed by some other person in his presence and by his

12 Civil Appeal No. 3351 of 2014 decided on 21.09.2023

13 (1994) 5 SCC 135

14 (2003) 2 SCC 91

direction and the said signature or affixation shall show that it was intended to give effect to the writing as a Will;

(b) It is mandatory to get it attested by two or more witnesses, though no particular form of attestation is necessary;

(c) Each of the attesting witnesses must have 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 personal acknowledgment of such signatures;

(d) Each of the attesting witnesses shall sign the Will in the presence of the testator, however, the presence of all witnesses at the same time is not required;

iv. For the purpose of proving the execution of the Will, at least one of the attesting witnesses, who is alive, subject to the process of Court, and capable of giving evidence, shall be examined;

v. The attesting witness should speak not only about the testator's signatures but also that each of the witnesses had signed the Will in the presence of the testator;

vi. If one attesting witness can prove the execution of the Will, the examination of other attesting witnesses can be dispensed with;

vii. Where one attesting witness examined to prove the Will fails to prove its due execution, then the other available attesting witness has to be called to supplement his evidence;

viii. Whenever there exists any suspicion as to the execution of the Will, it is the responsibility of the propounder to remove all legitimate suspicions before it can be accepted as the testator's last Will. In such cases, the initial onus on the propounder becomes heavier;

ix. The test of judicial conscience has been evolved for dealing with those cases where the execution of the Will is surrounded by suspicious circumstances. It requires to consider factors such as awareness of the testator as to the content as well as the consequences, nature and effect of the dispositions in the Will; sound, certain and disposing state of mind and memory of the testator at the time of execution; testator executed the Will while acting on his own free will;

x. One who alleges fraud, fabrication, undue influence et cetera has to prove the same. However, even in the absence of such allegations, if there are circumstances giving rise to doubt, then it becomes the duty of the propounder to dispel such suspicious circumstances by giving a cogent and convincing explanation.

xi. Suspicious circumstances must be 'real, germane and valid' and not merely 'the fantasy of the doubting mind'. Whether a particular feature would qualify as 'suspicious' would depend on the facts and circumstances of each case. Any circumstance raising suspicion legitimate in nature would qualify as a suspicious circumstance for example, a shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in

the making of the Will under which he receives a substantial benefit, etc.”

23. From the above it is seen that apart from the statutory compliance, broadly it has to be proved that (a) the testator signed the Will out of his own free Will, (b) at the time of execution he had a sound state of mind, (c) he was aware of the nature and effect thereof and (d) the Will was not executed under any suspicious circumstances.

24. In the present case, it is seen that the Will does not bear any date and from the evidence of Mr. Raje - PW-1, there is a serious doubt and suspicion whether the purported Will was even executed on 20.06.2003. The testator Mr. Bipin Gupta was admitted in hospital for renal failure and hip fracture treatment and PW-1 has deposed that when he met the testator in his room he was sitting on the bed and interacted with him . The Will itself records that the testator was undergoing treatment from Dr. Kripalani, but the said Doctor is not one of the attesting witness nor has any other Doctor signed as an attesting witness. Dr. Kripalani was not even called as a witness to prove the soundness of mind of the testator Mr. Bipin Gupta. Most importantly it is seen that, in the Will an obscure bequest is made to charity in the name of a charitable Trust to be controlled by the two Executors who are complete strangers

and third parties and not even closely related to the testator Mr. Bipin Gupta. Thus there is an indirect bequest in favour of the Executors and one of the attesting witnesses namely Mr. Anil Sardal, a police officer, who appears to be the master mind of this entire conspiracy. This court in one of its order referred to herein above has clearly noted that one of the Executor namely Mr. Vasant Sardal with whom the Court had interacted in Court was a retired police officer and he was too old, feeble and infirm to act as Executor and it was in fact his son Mr. Anil Sardal who was instrumental in taking all decisions. This is so because, it is Mr. Anil Sardal who introduced Mr. Santosh Raje as attesting witness in this case.

25. There is no evidence whatsoever as to how a typed Will reached the hospital where the testator Mr. Bipin Gupta was undergoing treatment. The disposition in the Will are on the face of record unnatural and obscure and what is seen is that the original Petitioner and his son who is one of the attesting witness are direct beneficiaries from the Will. This suspicion is fortified in view of the second executor who has renounced his executorship not once but twice and has stated on affidavit that the other executor Mr. Vasant Sardal and the second attesting witness Mr. Anil Sardal, both Police Officers, one retired and another serving had a clear intention of usurping the estate of the testator Mr. Bipin Gupta. Mr. Raje (PW-1)

has given evidence that it was Mr. Anil Sardal who requested him to be the attesting witness alongwith him as the testator Bipin Gupta desired to give his entire property to charity and considering the intention of the testator to be a noble cause, he acceded to his request. This clearly shows that Mr. Anil Sardal, the attesting witness knew the contents of the alleged Will before hand, but there is no evidence placed on record to show and prove as to who prepared / drafted and got the said Will typed before it reached the testator Mr. Bipin Gupta at Bombay Hospital.

26. In view of the above, serious doubts and suspicions have arisen with respect to the genuineness and the validity of the alleged Will. This a clear case where serious doubt is created with regard to the condition of sound mind of the testator at the time of execution; that the signature of the testator as appearing to the naked eye is not identical and does not tally with each other on all three pages of the Will; that the disposition of the estate in the Will appears to be unnatural and wholly unfair in the light of the facts and circumstances of the present case and most importantly the propounder himself (original Petitioner) having played a prominent role in execution of the Will through his son (Mr. Anil Sardal) which confers a substantial benefit on them.

27. In view of the above it is held that the 3 page Will which

has been discussed *in extenso* herein above, when perused is clearly disjunctive. The execution clause of the Will on page No.3 is completely cut off and disjunctive from the first 2 pages of the Will. The second page of the Will is only partially written / transcribed leaving a huge blank space on page No.2 itself. The suspicion arising because of the above facts and factors noticed herein above including the unnatural exclusion of the Defendants from the estate; active role played by the propounder of the Will in execution of the Will and being a direct beneficiary through his son; the evidence led by DW-1 i.e. Defendant No. 1 (sister of Mr. Bipin Gupta) the Plaintiff's witness namely PW-1 having contradicted himself and his own deposition on material particulars / evidence have not only gone unexplained but are confounded beyond repair, rather every suspicious circumstance is confounded by another and as such it completely demolishes the case of the Plaintiff (original Petitioner) to prove the Will as valid and genuine.

28. In view of the above observations and findings, the issues framed in the Suit are answered as follows:

Sr. No.	Issues	Findings
1.	Whether the Plaintiff proves that the writing dated 20.06.2003 was duly and validly executed and attested in accordance with law as the	In the negative.

	last Will and Testament of the deceased, Bipin Gupta?	
2.	Whether the Plaintiff proves that at the time of the said alleged Will, the deceased was of sound and disposing state of mind, memory and understanding?	In the negative.
3.	Whether the Defendants prove that the alleged Will is sham and bogus?	In the affirmative
4.	What reliefs and what orders?	As per final order.

29. It is directed that in so far as the movables items of the testator i.e. Bipin Gupta (deceased) which are in police custody are concerned, the same may be returned to the Defendants by the police authorities who are in possession of the same, on they furnishing a valid undertaking in respect thereof as required by law. For recovery of remaining movables, legal heirs of Mr. Bipin Gupta shall take steps as available to them in law. In so far as the three immovable properties of the Mr. Bipin Gupta (deceased) are concerned, the legal heirs shall be free to take appropriate steps as available to them in law for dealing with / disposition of the said immovable properties.

30. In view of the above observations and findings, the alleged Will dated 20.06.2003 cannot be accepted as a valid and genuine

Will executed by the testator i.e. Mr. Bipin Gupta (deceased) and the original Testamentary Petition / Suit stands dismissed.

31. The learned Administrator, an Officer of this Court who has been appointed as Administrator under Section 254 of the Indian Succession Act, 1925 on 03.05.2018 has filed a Report dated 31.08.2023 for release of fees to the learned Advocate Dr. Sneha Goyal who has appeared on behalf of the Plaintiff / Administrator in the entire trial after been appointed by order of this Court. I have perused the said Report. I have seen the genuine efforts taken by Dr. Sneha Goyal, learned Advocate for the Plaintiff while conducting the hearings and final arguments before me in the present suit proceedings. From the particulars of the total quantum of fees which is at Annexure 'B' to the Report as claimed by the learned Advocate Dr. Sneha Goyal it is seen that the quantum of fees has been claimed upto 18.07.2023 and thereafter this case was heard on 17.08.2023 and 19.08.2023 and thereafter closed for pronouncement of judgment. I see no reason as to why the fees claimed by Dr. Sneha Goyal, learned Advocate should not be permitted and directed to be paid her for the genuine efforts taken by her to prosecute the present Suit proceedings. Considering the efforts put in by Dr. Sneha Goyal, the fees claimed by her are extremely reasonable. In that view of the matter, the Report dated 31.08.2023 filed by the learned

Administrator stands allowed in terms of the directions sought in paragraph No. 3 (C) and in addition thereto a further sum of Rs. 30,000/- @ Rs.15,000/- per appearance also stands allowed in favour of Dr. Sneha Goyal, learned Advocate. In addition to the above, Commissioner charges to all Administrators stand allowed @ Rs.60,000/- (Rs. 20,000/- each to the 3 Administrators) whereas charges payable to Mr. Dharendra Chaudhari, Assistant Section Officer who has been instrumental with his assistance in the present proceedings since inception is determined at Rs. 40,000/- lumpsum to be paid to her directly.

32. The aforesaid charges shall be chargeable to the estate of the testator i.e. Mr. Bipin Gupta (deceased) and shall be payable from the Suit Account or in the alternative by the Defendants within a period of 4 weeks from the date of uploading of this judgment.

33. In the event if the Defendants do not pay the above amounts as directed by this Court, the same shall be recovered from the estate of the testator Mr. Bipin Gupta (deceased) by the Collector as arrears of land revenue and paid over to the learned Advocate, Administrators and Assistant Section Officer as directed herein above along with interest thereon at the rate of 9% per annum after the due date until it is actually paid.

34. Testamentary Suit No. 14 of 2004 is dismissed with the above directions. Pending Interim Applications / Notice of Motion, if any, accordingly stand disposed. Testamentary Suit No. 14 of 2004 is disposed.

[MILIND N. JADHAV, J.]

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signed by
RAVINDRA
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