Jatin Ishwarbhai Patel Vs Harish Ishwarbhai Patel

Court: Gujarat High Court

Date of Decision: June 30, 2022

Acts Referred: Code Of Civil Procedure, 1908 â€" Section Order 43 Rule 1
Benami Transactions (Prohibition) Act, 1986 â€" Section 3, 4, 4(2), 4(3)
Indian Trusts Act, 1882 â€" Section 88
Evidence Act, 1872 â€" Section 68, 114
Registration Act, 1908 â€" Section 60, 67, 68, 78
Transfer Of Property Act, 1882 â€" Section 52
Indian Succession Act, 1925 â€" Section 34, 35, 45, 47, 58, 59, 63, 63(c)

Hon'ble Judges: Dr. A. P. Thaker, J

Bench: Single Bench

Advocate: Mehul S. Shah, Henil M Shah, Unmesh Shukla, Dhaval Shah

Final Decision: Disposed Of

Judgement

Dr. A. P. Thaker, J

1. Being aggrieved and dissatisfied with the impugned order dated 15.2.2022 passed below Exh-5 by the 6th Additional Senior Civil Judge, Ahmedabad

(Rural), Mirzapur, Ahmedabad in Special Civil Suit No. 256 of 2021, the original defendants have preferred this Appeal from Order under Order 43

Rule 1 of CPC. The appellants are the original defendants and the respondent is the original plaintiff before the trial Court. For the brevity and

convenience, the parties are referred to in this Appeal from Order as per the nomenclature assigned to them in the trial Court.

2. The plaintiff has filed the Suit for setting aside the Will dated 28.5.2018 executed by his father deceased Ishwarbhai Madhavlal Patel bearing

Registration No. 5128 and registered with the Office of Sub-Registrar, Ahmedabad, Memnagar and for declaration that defendants each have 25%

share in the assets of the deceased Ishwarbhai described in Schedule A and B annexed with the Plaint and for passing decree of partition of all the

assets of the deceased Ishwarbhai Madhavlal Patel. The plaintiff has also sought for prayer directing the defendants to disclose the inventory and

accounts of all the movable assets left behind by deceased Ishwarbhai Madhavlal Patel and for declaration that the defendants are not entitled to deal

with, alienate, transfer, mortgage, part with possession or create any third party right, title or interest in the assets of deceased Ishwarbhai Madhavlal

Patel as mentioned in Schedule - A and Schedule - B and also for permanent injunction against the defendants from dealing with the properties in

question. Along with the Plaint, the plaintiff has also filed an application for interim injunction at Exh-5 restraining the defendants from dealing with or

alienating or transferring in any manner the suit properties and also for directing to the defendants to disclose the inventory and accounts of all

movables left behind by deceased Ishwarbhai Madhavlal Patel on his death and also for direction to the defendants to hand over and/ or to pay 25%

share of all such assets to him.

2.1 The defendants have filed the written statement at Exh-15 and resisted the Suit regarding all the reliefs sought by him as well as interim injunction

application.

2.2 It appears that after hearing both the sides and considering the material placed on record, the trial Court has passed the order of status-quo in

respect of all the properties mentioned in the Registered Will till the final disposal of the Suit and also directing the defendants to provide accounts and

list of all movable properties, which were in existence at the time of death of deceased Ishwarbhai Manharlal Patel within 30 days. Against this order,

defendants have filed the present Appeal from Order.

3. The plaintiff has filed the Suit alleging that the properties were of the joint family property and he has right in the properties of his deceased father.

By narrating the list of properties, the plaintiff has contended that all the properties were purchased by his father from the money he has withdrawn

from the partnership firm. It is also contended that the land which was granted to his father due to his Air-Force service, after his death would be a

joint property and, therefore, he has share in all these properties. It is contended that the alleged Will of his deceased father is concocted and

fabricated one whereby he has been deprived his right as heir of the deceased father in all the properties. He has raised many contention regarding

the suspicious condition regarding the alleged Will. The main thrust to his contention is that he has right in all the properties of his deceased father and,

therefore, he should be given his share and till then the defendants may be restrained from dealing with the properties in any manner. Along with the

Suit, he has filed application for interim injunction which came to be allowed by the trial Court.

4. The stand of the defendant is that the properties were of the sole ownership of their deceased father. It is also the stand that the land which his

father got from the Government on the basis of his service in Air-Force, could not be treated as a joint property of the family. It is also contended by

the defendants that other properties were also purchased by their father during his life time and he has executed registered Will relating to his

immovable properties and by virtue of the said registered Will, the defendant is in possession and ownership of the properties bequeathed to him by his

father. It is also contended that plaintiff has already been given property by the deceased father and the registered Will was executed by the deceased

father and, therefore, Will is binding to both the parties. The defendants have denied the allegations of plaintiff regarding fabrication of the Will and

has prayed to dismiss the Suit and even interim injunction application.

5. Heard Mr. Mehul S. Shah, learned Senior Counsel with Mr. Henil M. Shah, learned advocate for the appellants and Mr. Unmesh Shukla, learned

Senior Counsel assisted by Mr. Dhaval Shah, learned advocate for respondent at length. Perused the material placed on record along with the

decisions cited at bar.

6. Mr. Mehul Shah, learned Senior Counsel for the appellants-defendants has submitted that the plaintiff and the defendants are real brothers and the

father of the parties have executed registered Will in favour of the appellants-defendants. He has submitted that the plaintiff has basically filed the Suit

on the ground that while bequeathing various properties, the plaintiff has been discriminated and only one property has been given to him. Mr. Mehul

Shah, learned Senior Counsel has submitted that as per the averment and material placed on record, all the properties were purchased by the father

and, therefore, he was sole owner of the properties and hence has every right to dispose of the same as per his wish. He has also submitted that one

of the properties was allotted to the plaintiffÃ¢â‚¬â„¢s father as he was in Air-Force and, therefore, the Suit property is also of sole ownership of the

plaintiffÃ¢â‚¬â„¢s father. He has submitted that along with the Plaint, the plaintiff has filed an application for interim injunction, which has been allowed by

the trial Court observing that the land granted to the deceased was joint family property. He has also submitted that the trial Court has also observed

that the Will in question is doubtful as there is some different in line-spacing and the font-size in the Will. He has submitted that the trial Court has

committed serious error in observing this fact as Will is registered one and the affidavit of the attesting witness of the Will have been duly produced in

the revenue proceedings, a copy of which has been placed in the Suit proceedings also.

6.1 Mr. Mehul Shah, learned Senior Counsel has also submitted that on reading of the entire Will, it reflects that the description of all the properties

has been narrated and the properties have been given to respective brothers and one property has been given to the plaintiff. He has submitted that

the plaintiff has produced a copy of the Accounts of the partnership firm showing that the deceasedÃ¢â‚¬â„¢s father has withdrawn amount from the

partnership firm and out of that funds, he has purchased the properties in question and, therefore, property is of joint family property and he has equal

right in the same. According to Mr. Shah, learned senior Counsel, if this version of the plaintiff is believed, then it is the case of the plaintiff that the

transaction of the purchase of the properties in name of the deceased is a benami transaction. He has submitted that then the transaction will hit by

benami transaction and the plaintiff cannot rely upon such document. He has also submitted that it is for the plaintiff to show that Will was executed in

a suspicious condition, however, there is no such suspicious condition made out by the plaintiff. He has submitted that while deciding the application for

interim injunction, the conduct of the parties needs to be taken into consideration.

He has submitted that in the present case, there was even delay in filing the Suit by the plaintiff and the properties have been given by the deceased

through Registered Will. He has submitted that even as per the legal presumption, the execution of the Will needs to be believed as it is and it is for the

plaintiff to prove that Will was executed in a suspicious circumstances. He has submitted that the observation of the trial Court that the testator was

not justified in bequeathing the property as per Will and the observation of the trial Court is legally wrong. Mr. Shah, learned senior Counsel has

submitted that since the property was of the sole ownership of the deceased, by virtue of the execution of the registered Will, the plaintiff has no right

or title in the Suit property and, therefore, prima-facie no interim injunction ought to have been granted by the trial Court. He has submitted that the

trial Court has committed error of facts and law in passing the impugned order, which needs to be interfered with by this Appellate Court, as the

observation of the trial Court is perverse one. Mr. Shah has relied upon the following decisions and has prayed to allow the present Appeal:

1. Patel Sulochanaben D/o. Sakalchand Jethalal W/o. Rameshbhai v. Alpaben D/o. Ishwarbhai Atmaramp Patel W/o. Ketanbhai Natvarlal, reported

in 2011 JX (Guj) 1596, wherein Para-8.4 and 8.5 read as under:

Ã¢â‚¬Å“8.4 At this stage it is also required to be noted that section 4 of Benami Transactions (Prohibition) Act, 1986 does not permit cognizance

of any defence based on Benami Transaction i.e. consideration passing from third party and not from the person who purchased the

property.

8.5 In the present case there is no dispute that the property was purchased in the name of the respondents no.1 and 2 and therefore the

issue whether or not consideration has been paid from the funds of respondent no.3 is not relevant and necessary for the decision of the

suit. It is wholly irrelevant whether the respondent no.3 has paid the sale consideration from his own funds or not. If that issue is allowed to

remain, it would obviously mean that the trial court is taking cognizance of defence not permitted under section 4 of the Benami

Transactions (Prohibition) Act, 1986Ã¢â‚¬â€‹.

2. Vishram @Prasad Govekar v. Sudesh Govekar, reported in (2017) 11 SCC 345, Para-18 reads as under:

Ã¢â‚¬Å“18) In this context, the question of benami ownership also surfaced. There is no dispute that in the revenue records property stood in

the name of Vassudev Govekar and not Jagannath Govekar. The first appellate court rightly held that the plea with regard to the real

owner of the property being Jagannath Govekar could not be gone into as it was barred by the provisions of Section 4(2) of the Benami

Act. Though we do not find any merit in the arguments of the appellants that the Benami Act is not applicable, in any case there is hardly

any material produced by the defendants to support that real owner was Jagannath Govekar. This claim is made only on the ground that it

is Jagannath Govekar who had got the suit property acquired in the name of his son Vassudev Govekar. That by itself would not make

Jagannath Govekar as the owner of the suit property.

3. Ramanbhai Parsottambhai Patel v. Parsottambhai Kuberbhai Patelo Deed Through Heirs Gangaben, reported in 2013 (3) GLH 540, paras 25, 40,

41 42, 44, 45, 46 and 50 read as under:

Ã¢â‚¬Å“25. What is discernible from the various decisions referred to above is that the property cannot be presumed to be a joint family

property merely because of existence of a joint family, if any. The burden to prove the property to be the joint, lies on the person who

asserts so. In the present case, the respondents herein, the original plaintiffs are asserting that the suit properties are joint family

properties. If they are able to prove that the family possessed sufficient nucleus with the aid of which joint family property could be

acquired, then presumption would be that the property is joint, and the onus would be shifted on the person, (here in the present case the

appellant) claiming it to be self-acquired property, and in failure to establish the nucleus, the burden of proof would remain on the person

who asserts the property to be the joint family property. The Supreme Court also took the view that if the party fails to prove that the

property was joint family property, then in such circumstances, the party who asserts that the property is self-acquired property need not

lead any evidence to establish his separate income. In the absence of such evidence of separate income, the other party cannot claim a

property to be a joint family property. Therefore, the initial burden is on the original plaintiffs i.e. the respondents herein to establish the

existence of some joint family property, capable of being the nucleus from which new property or asset could have been acquired. It is also

not sufficient to show that the joint family possessed some assets but it is necessary to prove that the assets of the joint family may have

formed the nucleus from which the disputed assets were acquired. Whether the joint family assets could have formed the nucleus, again

depends upon there nature and relative value. The existence of such joint family property even if believed that it could have formed the

nucleus for the acquisition of the new assets, by itself would not lead one to believe that the new assets acquired by any member of the

family would be joint family property, because, such a member may not have control or command over the joint family assets.

40. Section 3 forbids benami transaction while sub-section

(2) thereof excludes such a transaction enumerated therein from the said provision. Section 4 of the Act may be extracted in extenso:

[""Section 4. Prohibition of the right to recover property held benami.-]

[(1) No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is

held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.]

[(2) No defence based on any right in respect of any property held benami, whether against the person in whose name the property is held

or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such

property.]

[(3) Nothing in this section shall apply,-]

Ã, [(a) where the person in whose name the property is held is a coparcener in a Hindu undivided family and the property is held for the

benefit of the coparceners in the family;

or]

[(b) where the person in whose name the property is held is a trustee or other person standing in a fiduciary capacity, and the property is

held for the benefit of another person for whom he is a trustee or towards whom he stands in such capacity.""]

41. A plain reading of the above would show that no Suit, claim or action to enforce a right in respect of any property held benami shall lie

against the person in whose name the property is held or against any other person at the instance of a person claiming to be the real owner

of such property. The question for our consideration is whether the prohibition contained in Section 4 would, therefore, apply to the present

Suit, subject to the satisfaction of other conditions stipulated therein. In other words, unless the conditions contained in Section 4 clause

(1) are held to be inapplicable by reason of anything contained in sub-section (3) thereof, the Suit filed by the plaintiffs herein would fall

within the mischief of Section 4 of the Act.

42. In the present case, late Parsottambhai is said to have acquired the properties in the names of his sons and daughters. We have tried to

examine the question whether the sons and the daughters could be said to have stood in a fiduciary capacity and whether the property was

held for the benefit of late Parsottambhai. If the plaintiffs and the defendants could be said to be holding the properties in their fiduciary

capacity, then probably Section 4, clause (3) would save the situation and the suit would not be hit by the provisions of the Act, 1988.

44. Fiduciary relationship: [i) As Waker defines it: -]

[""A 'fiduciary' is a person in a position of trust, or occupying a position of power and confidence with respect to another such that he is

obliged by various rules of law to act solely in the interest of the other, whose rights he has to protect. He may not make any profit or

advantage from the relationship without full disclosure. The category includes trustees, Company promoters and directors, guardians,

solicitors and clients and other similarly placed."" [Oxford Companion to Law, 1980 p. 469]]

[ii) ""A fiduciary relationship"", may arise in the context of a jural relationship. Where confidence is reposed by one in another and that

leads to a transaction in which there is a conflict of interest and duty in the person in whom such confidence is reposed, fiduciary

relationship immediately springs into existence."" [see Mrs.Nellie Wapshare v. Pierce Lasha and Co. Ltd. (AIR 1960 Mad 410)]]

[iii) In Lyell v. Kennedy, (1889) 14 AC 437, the Court explained that whenever two persons stand in such a situation that confidence is

necessarily reposed by one in the other, there arises a presumption as to fiduciary relationship which grows naturally out of that

confidence. Such a confidential situation may arise from a contract or by some gratuitous undertaking, or it may be upon previous request

or undertaken without any Authority.]

[iv) In Dale and Carrington Invt. (P) Ltd. v. P.K. Prathaphan, (2005) 1 SCC 212 : (AIR 2005 SC 1624) and Needle Industries (India) Ltd. v.

Needle Industries Newey (India) Holding Ltd., (1981) 3 SCC 333 : (AIR 1981 SC 1298), the Court held that the directors of the company

owe fiduciary duty to its shareholders. In P.V. Sankara Kurup v. Leelavathy Nambier, (1994) 6 SCC 68 : (AIR 1994 SC 2694), the Court

held that an agent and power of attorney can be said to owe a fiduciary relationship to the principal.

45. We are of the opinion that only by reason of relations, the property acquired by the father in the benami name of his sons and

daughters, such sons or daughters could not be said to be acting in a fiduciary capacity vis-a-vis their father. The children would have no

legal obligation to perform while holding such properties purchased in their names by their father.

46. At this stage, it will be profitable to even look into the provisions of Section 88 of the Trusts Act. That section recites:-

[""Where a trustee, executor, partner, agent, director of a company, legal adviser or other person bound in a fiduciary character to protect,

the interests of another person, by availing himself of his character, gains for himself any pecuniary advantage, or where any person so

bound enters into any dealings under circumstances in which his own interests, are, or may be, adverse to those of such other person and

thereby gains for himself a pecuniary advantage, he must hold for the benefit of such other person the advantage so gained.""]

50. In the case before us, it is the definite case of the plaintiffs that their predecessor, viz. Parsottambhai, purchased the Suit property by his

own money in the names of the defendants for the purpose of avoiding the rigour of Land Ceiling law. Thus, even on the basis of the case

made out by the plaintiffs, the Suit is barred by Section 4 of the Act of 1988. We are of the opinion that the Suit filed by the plaintiffs should

also fail on the ground that the same is hit by the provisions of Section 4 of the Act, 1988.Ã¢â‚¬â€‹

4. Patel Ramanbhai Mathurbhai v. Govindbhai Chhotabhai Patel and Others, reported in (2020) 16 SCC 255, Para-74 onwards , 94 and 95:

Ã¢â‚¬Å“74. I fail to understand what is so unconscionable or unusual about the gift deed in favour of the defendant. There have been instances

wherein gift deeds have been executed or the properties have been bequeathed by a 'will' to a servant of the house. This is possible out of

sheer gratitude, love or affection for an individual. All through out, both the Courts kept on putting a question to themselves as to what was

the reason for the father of the plaintiffs to execute the gift deed in favour of the defendant, who happens to be his neighbour. After putting

such a question, the entire burden has been thrown upon the defendant to show that the execution of the gift deed is not tainted with fraud

undue influence or misrepresentation. More importantly, there is no finding recorded by the Courts below that the transaction of the gift

deed is sham or fraudulent.

75. In the aforesaid context, I may refer to and rely upon a decision of the Supreme Court in the case of Pantakota Satyanarayana vs.

Pentakota Seetharatnam reported in 2005 (8) SCC 67. The relevant observations of the Supreme Court are as under:

Ã¢â‚¬Å“22...It is true that registration of the Will does not dispense with the need of proving, execution and attestation of a document which is

required by law to be proved in the manner as provided in Section 68 of the Evidence Act. The Registrar has made the following particulars

on Ex.B9 which was admitted to registration, namely, the date, hour and place of presentation of document for registration, the signature of

the person admitting the execution of the Will and the signature of the identifying witnesses. The document also contains the signatures of

the attesting witnesses and the scribe. Such particulars are required to be endorsed by the Registrar along with his signature and date of

document. A presumption by a reference to Section 114 of the Evidence Act shall arise to the effect that particulars contained in the

endorsement of registration were regularly and duly performed and are correctly recorded. In our opinion, the burden of proof to prove

the Will has been duly and satisfactorily discharged by the appellants. The onus is discharged by the propounder adducing prima facie

evidence proving the competence of the testator and execution of the Will in the manner contemplated by law. In such circumstances, the

onus shifts to the contestant opposing the Will to bring material on record meeting such prima facie case in which event the onus shifts back

on the propounder to satisfy the Court affirmatively that the testator did know well the contents of the Will and in sound disposing capacity

executed the same.

23. It is settled by a catena of decisions that any and every circumstance is not a suspicious circumstance. Even in a case where active

participation and execution of the Will by the propounders/beneficiaries was there, it has been held that that by itself is not sufficient to

create any doubt either about the testamentary capacity or the genuineness of the Will. It has been held that the mere presence of the

beneficiary at the time of execution would not prove that the beneficiary had taken prominent part in the execution of the Will. This is the

view taken by this Court in Sridevi and Ors. v. Jayaraja Shetty and Ors., (2005) 2 SCC 784. In the said case, it has been held that the onus

to prove 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 proof of signature of the testator as required by law not be sufficient to discharge the onus. In case, the

person attesting the Will alleges undue influence, fraud or coercion, the onus will be on him to prove the same and that as to what

suspicious circumstances which have to be judged in the facts and circumstances of each particular case.

24. Mr. Narsimha, learned counsel for the respondents, submitted that the natural heirs were excluded and legally wedded wife was given a

lesser share and, therefore, it has to be held to be a suspicious circumstance. We are unable to countenance the said submission. The

circumstances of depriving the natural heirs should not raise any suspicion because the whole idea behind the execution of the Will is to be

interfered in the normal line of succession and so natural heirs would be debarred in every case of the Will. It may be that in some cases

they are fully debarred and some cases partly. This is the view taken by this Court in Uma Devi Nambiar and Others v. T.C. Sidhan (dead)

(2004) 2 SCC 321.

25. We have already referred to the findings of the High Court and the trial Court about the alleged suspicious circumstances which, in our

opinion, are palpably erroneous. In fact, the circumstances are not suspicious at all. As far as the High Court is concerned, it has only gone

by the exclusion of Krishna Bhagavan in the Will and the bequethal of major portion to the appellant. This is legally no ground to negate

the Will. Further, once the Will is duly proved, the Will has to be given effect to.Ã¢â‚¬â€¹

77. The Supreme Court in the case of Prem Singh and others vs. Birbal and others reported in (2006) 5 SCC 353 observed in para 27 as

under:

Ã¢â‚¬Å“There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in

law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent No.1 has

not been able to rebut the said presumption.Ã¢â‚¬â€¹

78 Section 60 of the Registration Act, 1908 states:

(1) After such of the provisions of Sections 34, 35, 58 and 59 as apply to any document presented for registration have been complied

with, the registering officer shall endorse thereon a certificate containing the word 'registered' together with the number and page of the

book in which the document has been copied.

(2) Such certificate shall be signed, sealed and dated by the registering officer, and shall then be admissible for the purpose of proving that

the document has been duly registered in manner provided by this Act, and that the facts mentioned in the endorsement referred to in Sec.

59 have occurred as therein mentioned.

79. The Privy Council said in Gangamoy Debi vs. Troilukhya Nath, (1906) 33 Ind App 60 = (ILR 33 Cal 537) (PC)-

The registration is a solemn act, to be performed in the presence of a competent official appointed to act as registrar, whose duty it is to

attend the parties during the registration and see that the proper persons are present and are competent to act, and are identified to his

satisfaction; and all things done before him in his official capacity and verified by his signature will be presumed to be duly and in order.

80. On the strength of this observation of the Privy Council and on a consideration of Section 60 of the Registration Act, the Lahore High

Court held in Piara vs. Fatnu (AIR 1929 Lah 711) that the certificate endorsed on a registered deed by the registering officer is a relevant

piece of evidence for proving its execution.

81. In regard to a document executed by a pardanashin lady, a Division Bench of the Allahabad High Court in Kulsummunnisa vs. Ahmadi

Begum (AIR 1972 All 219) said that the endorsement of the Sub-Registrar on a sale deed to the effect that the pardanashin lady the

executant of the document was identified by inspection from behind pardah and that after hearing and understanding the nature and

contents of the deed she admitted the execution of the deed, is admissible in evidence. An earlier decision of the Court in Misri Lal v.

Bhagwati Prasad (AIR 1955 All 573) is referred to thereinÃ¢â‚¬â€‹.

Ã¢â‚¬Å“94. In my view, it will be an error on the part of this Court to understand and interpret the decision of the Supreme Court in Rosammal

(supra) the way the Trial Court has understood. In Rosammal (supra), there was evidence on record to show that the gift deed was brought

into existence fraudulently, as on the date of the execution, the donor was confined to bed due to paralysis. While the donor was confined to

bed due to paralysis, the gift deed came to be executed, and that too, by forging the signature of the donor after influencing the Sub

Registrar. In such circumstances, it was proved or rather established as regards the fraudulent gift deed. In such circumstances, the

Supreme Court held that once there is a denial by the plaintiff as regards the genuineness of the gift deed, then the proviso to Section 68 of

the Evidence Act will not be attracted, and the main part of Section 68 of the Evidence Act would put an obligation on the party tendering

the gift deed to atleast examine one attesting witness. In my view, the decision of Rosammal (supra) has something to do with the term

Ã¢â‚¬Å“specific denialÃ¢â‚¬â€‹, as contained in the proviso to Section 68 of the Evidence Act. Rosammal (supra) should not be understood or

interpreted as laying down as a principles of law or a proposition of law that once the plaintiff denies the execution of a document, then

even if the plaintiff has not been able to establish or prove fraud or forgery, the entire onus would shift on the defendant to prove and

establish the genuineness of the document.

95. Once again, at the cost of repetition, I state that Section 68 of the Evidence Act has been thoroughly misconstrued by the Courts below.

The occasion for applying the rule of exclusion from evidence in Section 68 arises when a party seeking to rely upon a document requiring

attestation, fails to prove it in a given manner. As observed by me earlier, the party will then not be able to use it as evidence. But this

procedural disability against use of a document as evidence cannot by any stretch be regarded as an affirmative finding that the grounds of

attack for avoidance of the deed as claimed in the original relief or cancellation subsisted. The plaintiff cannot succeed relying upon the

weakness or a flaw in the case set up by the defendant. The law is that the plaintiff can succeed in the suit only on the strength of his own

caseÃ¢â‚¬â€‹.

5. Ved Mitra Verma v. Dharam Deo Verma, reported in (2014) 15 SCC 578, Para- 7 reads as under:

Ã¢â‚¬Å“7. The exclusion of the other children of the Testator and the execution of the Will for the sole benefit of one of the sons i.e. the

Respondent, by itself, is not a suspicious circumstance. The property being self-acquired, it is the will of the Testator that has to prevail.

Therefore, the question as to whether the Will is a genuine and acceptable document will depend on a consideration of the other

circumstances surrounding its execution.Ã¢â‚¬â€‹

6. Mahesh Kumar (Dead) By Lrs. v. Vinod Kumar and Others, reported in (2012) 4 SCC 387, it is held as under:

Ã, Ã¢â‚¬Å“D. Family and Personal Laws- Succession and Inheritance Ã¢â‚¬" Will- Suspicious circumstances Ã¢â‚¬" Onus on propounder to dispel

suspicious circumstances Ã¢â‚¬" Two wills Ã¢â‚¬" Subsequent will exluding all sons but appellant propounder son, superseding earlier will -

Alleged suspicious circumstances relating to execution of subsequent will based on conjectures and surmises or having no bearing on

question of validity of will Ã¢â‚¬" Fact that testator was in sound physical and mental healthÃ¢â‚¬â€‹.

7. Kashi Math Samsthan and Another v. Shrimad Sudhindra Thirtha Swamy and Another, repoted in (2010) 1 SCC 689, Para 16 reads as under:

Ã¢â‚¬Å“16. It is well settled that in order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that he

has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and

injury if injunction is not granted. But it is equally well settled that when a party fails to prove prima facie case to go for trial, question of

considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if

that party fails to prove prima facie case to go for trial, it is not open to the Court to grant injunction in his favour even if, he has made out

a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted.

Therefore, keeping this principle in mind, let us now see, whether the appellant has been able to prove prima facie case to get an order of

injunction during the pendency of the two appeals in the High CourtÃ¢â‚¬â€‹.

8. Dalpat Kumar and Another v. Prahlad Singh and others, reported in (1992) 1 SCC 719, Paras- 5 and 6 read as under:

Ã¢â‚¬Å“5. Therefore, the burden is on the plaintiff by evidence aliunde by affidavit or otherwise that there is ""a prima facie case"" in his favour

which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a

condition for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established, on

evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits.

Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-

interference by the Court would result in ""irreparable injury"" to the party seeking relief and that there is no other remedy available to the

party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable

injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a

material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that ""the balance of

convenience"" must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound

judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused

and compare it with that it is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or

probabilities of likelihood of injury and if the Court considers that pending the suit, the subject-matter should be maintained in status quo,

an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim

injunction pending the suit.

6. Undoubtedly, in a suit seeking to set aside the decree, the subject-matter in the earlier suit, though became final, the Court would in an

appropriate case grant ad interim injunction when the party seeks to set aside the decree on the ground of fraud pleaded in the suit or for

want of jurisdiction in the Court which passed the decree. But the Court would be circumspect before granting the injunction and look to

the conduct of the party, the probable injuries to either party and whether the plaintiff could be adequately compensated if injunction is

refused. This case demonstrates (we are not expressing any opinion on the plea of fraud or their relative merits in the case or the validity of

the decree impugned), suffice to state that the conduct of the respondent militates against the bona fides. At present there is a sale deed

executed by the Court in favour of the first appellant. If ultimately the respondent succeeds at the trial. They can be adequately

compensated by awarding damages for use and occupation from the date of dispossession till date of restitution. Repeatedly the Civil Court

and the High Court refused injunction pending proceedings. For any acts of damage, if attempted to make, to the property, or done,

appropriate direction could be taken in the suit. If any alienation is made it would be subject to doctrine of lis pendence under Section 52

of the Transfer of Property Act. The High Court without adverting to any of these material circumstances held that balance of convenience

lies in favour of granting injunction with the following observations, ""keeping in mind the history, various facts which have been brought to

my notice, and looking to the balance of convenience and irreparable loss, I think it will be in the interest of justice to allow these appeals

and grant temporary injunction that the appellants may not be dispossessed from the suit property"". The phrases ""prima facie case"";

balance of convenience"" and ""irreparable loss"" are not rhetoric phrases for incantation, but words of width and elasticity, to meet myriad

situations presented by man's ingenuity in given facts and circumstances, but always is hedged with sound exercise of judicial discretion to

meet the ends of justice. The facts are eloquent and speak for themselves. It is well nigh impossible to find from facts prima facie case and

balance of convenience. The respondents can be adequately compensated on their success.

9. Ambalal Sarabhia Enterprise Limited v. KS Infraspace LLP Limited and Another, reported in (2020) 5 SCC 410, Para Ã¢â‚¬" 19 read as under:

Ã¢â‚¬Å“19. In a matter concerning grant of injunction, apart from the existence of a prima facie case, balance of convenience, irreparable

injury, the conduct of the party seeking the equitable relief of injunction is also very essential to be considered as observed in Motilal Jain

(supra) holding as follows :

Ã¢â‚¬Å“6. The first ground which the High Court took note of is the delay in filing the suit. It may be apt to bear in mind the following aspects

of delay which are relevant in a case of specific performance of contract for sale of immovable property:

(i) delay running beyond the period prescribed under the Limitation Act;

(ii) delay in cases where though the suit is within the period of limitation, yet:

(a) due to delay the third parties have acquired rights in the subject-matter of the suit;

(b) in the facts and circumstances of the case, delay may give rise to plea of waiver or otherwise it will be inequitable to grant a

discretionary relief.Ã¢â‚¬â€‹

10. Veetrag Holdings Pvt. Ltd v. Gujarat State Textile Corporation Ltd, reported in (1996) 1 GLH 179: (1996) 37 (3) GLR 536, Para-9 reads as under:

Ã¢â‚¬Å“9. Even so, in any case, inasmuch as this contract was terminated on 6th December 1993, it was expected of the appellant to move for

specific performance at the earliest, if they were serious about the same. The appellants certainly cannot be non-suited on the ground of

limitation inasmuch as their suit is within time. However, when it comes to grant of equitable relief when the suit is filed after such a lapse of

time, it cannot be said that the remedy of interim injunction was the necessary remedy and there was no other remedy available to the party

concerned in this behalf. Shri Gupta relied upon the Apex Court judgment rendered in Dalpat Kumar and Anr. v. Prahlad Singh and Ors.

thereof the Courts are cautioned and required to exercise sound judicial discretion. They are required to find out that no other remedy is

available to the party concerned and then as stated by the Honourable Supreme Court (and again relied upon by Shri Gupta) in para 20 of

the judgment of the Apex Court rendered in State of Maharashtra v. Digambar ; for approaching a Court of equity, the blameworthy

conduct of a person approaching a Court of equity, for obtaining discretionary relief disentitles him for grant of such relief. Para 20 of the

above judgment reads as under:

Ã¢â‚¬Å“Laches or undue delay, the blameworthy conduct of a person in approaching a Court of equity in England for obtaining discretionary

relief which disentitled him for grant of such relief was explained succinctly by Sir Barnes Peacock, long ago, in Lindsay Petroleum Co. v.

Hurd, thus:

Ã¢â‚¬Å“Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a

remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by

his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation, in which it would not be

reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But

in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting

to a bar by any statute or limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances,

always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either

party and cause a balance of justice or injustice in taking the one course or the other, so far as it relates to the remedyÃ¢â‚¬â€‹.

7. Per contra, Mr. Unmesh Shukla, learned Senior Counsel for the original plaintiff-respondent herein has submitted that as per the defence of the

Appellant-defendants, they got the Will from one Mr. Mehta, however, no affidavit of Mr. Mehta is filed. He has submitted that the original Will came

to this witness from deceased Ishwarbhai, however, it is not believable and it creates doubt of execution of Will. He has also submitted that no

affidavit of the attesting witness of the Will has been filed before the trial Court and what the defendants have produced is a copy of the affidavit filed

before the revenue authority and, therefore, those affidavits cannot be used in a Civil Court.

7.1 He has also submitted that the specific averment made in the plaint regarding the suspicious condition and attempt by the defendants to frustrate

the right of the plaintiff, has not been specifically denied by the defendant in his Written Statement and denial is evasive and bald one. He has also

submitted that the defendants have not given any explanation as to whey two pages in the alleged Registered Will is different from the other one. He

has submitted that change of size of the fonts and line-spacing in the two pages are the circumstances which creates suspicion as to execution of the

alleged Will. While referring to the narration made in those two pages, Mr. Shukla, learned Senior Counsel submitted that this averment is made to

show that the deceased has some dissatisfaction with the plaintiff and thereby picture is created to the effect that due to that fact, deceased has not

given equal share to the plaintiff. Mr. Shukla, learned Senior Counsel has also submitted that there is unequal distribution of the assets and no asset

has been given to the grand-son and inadequacy in the distribution of the assets is one of the suspicious conditions.

7.2 Mr. Unmesh Shukla, learned Senior Counsel has also submitted that even there is no mention in the Will that Will will lie in the custody of Mr.

Mehta. He has submitted that there is no recital regarding the custody of Will from 2018-2021 and this is also one of the suspicious conditions.

7.3 Mr. Unmesh Shukla, learned Senior Counsel has also submitted that on reading of the two pages of the Will, which is different from the other

pages, it reveals that there is purported justification mentioned therein to discard the right of the plaintiff in the property of the deceased. According to

him, this is a suspicious condition creating doubt over the alleged Will. He has also submitted that though there is a averment in the Will regarding

movable property of the deceased, but there is no description of any of the movable properties in the Will. He has also submitted that there is incorrect

recital regarding HarishÃ¢â‚¬â„¢s stand regarding partnership. According to him, the partnership is still in existence and the deceased has been shown as

one of the partners. He has also submitted the Mr. Jatin was not partner of the Firm in 2001, which is reflected from the various documentary

evidence produced from Page-207 and onwards, which are the Statement of Account of the partnership firm and the balance-sheet.

7.4 Mr. Shukla, learned Senior Counsel has also submitted that contemporaneous conduct of the father needs to be taken into consideration and had

there be non-payment of the amount by the plaintiff to the deceased father who was partner of the Firm, then, why father did not dissolved the firm

and why no action was taken against Harish. He has submitted that Harish being elder son and as there was no space to live together, he resided

separately and, therefore, that fact does no reflect that there was constrained relationships between the deceased and Harish.

7.5 While referring to the Whatsapp messages produced in the matter, learned Senior Counsel Mr. Shukla has submitted that all these messages

suggest that the plaintiff Harish was taking care of his father and he was constantly in touch with his father when he was ill. Mr. Shukla, learned

Senior Counsel has referred to the Photographs for his submission that the deceased was very happy with the plaintiff and his family. He has

submitted that these photographs and messages clearly suggest that there was no ill-feeling between father and son and these messages are from

2017 and onwards, which are prior in time of disputed registered Will. He has also submitted that as per the Account of the partnership firm, father

has withdrawn amount for the partnership and has purchased property therefrom and, therefore, the properties are of partnership firm and not

individual property of the father. He has also submitted that there is no question of application of benami transaction. He has submitted that such plea

was not raised in the trial Court and even not averred in the written statement by the defendants. He has also submitted that the property which the

plaintiffÃ¢â‚¬â„¢s father has received due to his service as Air-Force service, would also be a joint property. He has also submitted that there is

contradiction in the Will and the affidavit of the witness to the effect that in the Will the father has alleged to have disclosed misconduct of the plaintiff

with him, whereas, in the affidavit of the witness it has been averred that deceased was suffering from the bad impression of his son, which he was

not able to express his displeasure and share the same with anybody and yet he disclosed this fact to the witness. Mr. Shukla submitted that all these

circumstances create serious doubt regarding the description of the registered Will and there is a concoction of the two pages in the alleged Will to

defeat the right of the plaintiff in relation to the suit property. He has submitted that the trial Court has properly appreciated all these fact and has

passed impugned order which is discretionary one and this Court having limited jurisdiction to interfere in such order even if second view of the matter

is possible, this Court may not substitute the said view of the trial Court which is plausible one. He has also submitted that there is no question of delay

in the initiation of the proceedings as, as soon as the plaintiff came to know regarding the alleged Will and the proposed action of the defendants to

deal with the Suit land, the plaintiff has immediately filed the Suit for his share in the property. He has submitted to dismiss the present Appeal from

Order. He has relied upon the following decisions in respect thereof:

1. Murthy and others v. C. Saradambal and Others, reported in 2021 SCC OnLine SC 1219, para-30 reads as under:

Ã¢â‚¬Å“30. Before considering the correctness of the impugned judgment of the Division Bench of the High Court, it would be useful to refer to

the following judgments of this Court on proof of wills:

(a) One of the celebrated decisions of this Court on proof of a will, reported in AIR 1959 SC 443 is in the case of H.Venkatachala Iyenger

vs. B.N.Thimmajamma, wherein this Court has clearly distinguished the nature of proof required for a testament as opposed to any other

document. The relevant portion of the said judgment reads as under:-

18. The party propounding a will or otherwise making a claim under a will is no doubt seeking to prove a document and, in deciding how

it is to be proved, we must inevitably refer to the statutory provisions which govern the proof of documents.

Sections 67 and 68, Evidence Act are relevant for this purpose. Under Section 67, if a document is alleged to be signed by any person, the

signature of the said person must be proved to be in his handwriting, and for proving such a handwriting under Sections 45 and 47 of the

Act the opinions of experts and of persons acquainted with the handwriting of the person concerned are made relevant. Section 68 deals

with the proof of the execution of the document required by law to be attested; and it provides that such a document shall not be used as

evidence until one attesting witness at least has been called for the purpose of proving its execution.

These provisions prescribe the requirements and the nature of proof which must be satisfied by the party who relies on a document in a

court of law. Similarly, Sections 59 and 63 of the Indian Succession Act are also relevant.

Section 59 provides that every person of sound mind, not being a minor, may dispose of his property by will and the three illustrations to

this section indicate what is meant by the expression ""a person of sound mind"" in the context.

Section 63 requires that 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 direction and that the signature or mark shall be so made that it shall appear that it was intended thereby to give effect to the writing as

a will. This section also requires that the will shall be attested by two or more witnesses as prescribed. Thus the question as to whether the

will set up by the propounder is proved to be the last will of the testator has to be decided in the light of these provisions. Has the testator

signed the will? Did he understand the nature and effect of the dispositions in the will? Did he put his signature to the will knowing what it

contained? Stated broadly it is the decision of these questions which determines the nature of the finding on the question of the proof of

wills. It would prima facie be true to say that the will has to be proved like any other document except as to the special requirements of

attestation prescribed by Section 63 of the Indian Succession Act. As in the case of proof of other documents so in the case of proof of wills

it would be idle to expect proof with mathematical certainty.

The test to be applied would be the usual\ test of the satisfaction of the prudent mind in such matters.

In fact, the legal principles with regard to the proof of a will are no longer res integra. Section 63 of the Indian Succession Act, 1925 and

Section 68 of the Evidence Act, 1872, are relevant in this regard. The propounder of the will must examine one or more attesting witnesses

and the onus is placed on the propounder to remove all suspicious circumstances with regard to the execution of the will. In the above noted

case, this Court has stated that the following three aspects must be proved by a propounder:-

(i) that the will was signed by the testator in a sound and disposing state of mind duly understanding the nature and effect of disposition

and he put his signature on the document of his own free will, and

(ii) when the evidence adduced in support of the will is disinterested, satisfactory and sufficient to prove the sound and disposing state of

the testator's mind and his signature as required by law, courts would be justified in making a finding in favour of propounder, and

(iii) if a will is challenged as surrounded by suspicious circumstances, all such legitimate doubts have to be removed by cogent, satisfactory

and sufficient evidence to dispel suspicion. In other words, the onus on the propounded can be taken to be discharged on proof of the

essential facts indicated therein.

(b) In Jaswant Kaur v. Amrit Kaur and others [1977 1 SCC 369], this Court pointed out that when a will is allegedly shrouded in suspicion,

its proof ceases to be a simple lis between the plaintiff and the defendant. What generally is an adversarial proceeding, becomes in such

cases, a matter of the Court's conscience and then, the true question which arises for consideration is, whether, the evidence let in by the

propounder of the will is such as would satisfy the conscience of the Court that the will was duly executed by the testator. It is impossible to

reach such a satisfaction unless the party which sets up the will offers cogent and convincing explanation with regard to any suspicious

circumstance surrounding the making of the will.

(c) In Bharpur Singh and others v. Shamsher Singh [2009 (3) SCC 687], at Para 23, this Court has narrated a few suspicious circumstance,

as being illustrative but not exhaustive, in the following manner:-

23. Suspicious circumstances like the following may be found to be surrounded in the execution of the will:

(i) The signature of the testator may be very shaky and doubtful or not appear to be his usual signature.

(ii) The condition of the testator's mind may be very feeble and debilitated at the relevant time.

(iii) The disposition may be unnatural, improbable or unfair in the light of relevant circumstances like exclusion of or absence of adequate

provisions for the natural heirs without any reason.

(iv) The dispositions may not appear to be the result of the testator's free will and mind.

(v) The propounder takes a prominent part in the execution of the will.

(vi) The testator used to sign blank papers.

(vii) The will did not see the light of the day for long.

(viii) Incorrect recitals of essential facts.

It was further observed that the circumstances narrated hereinbefore are not exhaustive. Subject to offering of a reasonable explanation,

existence thereof must be taken into consideration for the purpose of arriving at a finding as to whether the execution of the will had been

duly proved or not. It may be true that the Will was a registered one, but the same by itself would not mean that the statutory requirements of

proving the will need not be complied with.

(d) In Naranjan Umeshchandra Joshi v. Mrudula Jyoti Rao, [(2006) 13 SCC 433], in Paras 34 to 37, this Court has observed as under:-

Ã¢â‚¬Å“34. There are several circumstances which would have been held to be described by this Court as suspicious circumstances:

(i) when a doubt is created in regard to the condition of mind of the testator despite his signature on the will;

(ii) When the disposition appears to be unnatural or wholly unfair in the light of the relevant circumstances;

(iii)where propounder himself takes prominent part in the execution of will which confers on him substantial benefit.

35. We may not delve deep into the decisions cited at the Bar as the question has recently been considered by this Courts in B.Venkatamuni

v. C.J. Ayodhya Ram Singh [(2006) 13 SCC 449], wherein this Court has held that the court must satisfy its conscience as regards due

execution of the will by the testator and the court would not refuse to probe deeper into the matter only because the signature of the

propounder on the will is otherwise proved.

36. The proof of a will is required not as a ground of reading the document but to afford the Judge reasonable assurance of it as being

what it purports to be.

37. We may, however, hasten to add that there exists a distinction where suspicions are well founded and the cases where there are only

suspicions alone. Existence of suspicious circumstances alone may not be sufficient. The court may not start with a suspicion and it should

not close its mind to find the truth. A resolute and impenetrable incredulity is not demanded from the Judge even if there exist circumstances

of grave suspicion.Ã¢â‚¬â€‹

(e) This Court in Anil Kak v. Sharada Raje, [(2008) 7 SCC 695], held as under:-

Ã¢â‚¬Å“20. This Court in Anil Kak v. Sharada Raje opined that the court is required to adopt a rational approach and is furthermore required

to satisfy its conscience as existence of suspicious circumstances plays an important role, holding:

52. Whereas execution of any other document can be proved by proving the writings of the document or the contents of it as also the

execution thereof, in the event there exists suspicious circumstances the party seeking to obtain probate and/or letters of administration with

a copy of the will annexed must also adduce evidence to the satisfaction of the court before it can be accepted as genuine.

53. As an order granting probate is a judgment in rem, the court must also satisfy its conscience before it passes an order.

54. It may be true that deprivation of a due share by (sic to) the natural heir by itself may not be held to be a suspicious circumstance but it

is one of the factors which is taken into consideration by the courts before granting probate of a will.

55. Unlike other documents, even animus attestandiis a necessary ingredient for proving the attestation.Ã¢â‚¬‹

(f) Similarly, in Leela Rajagopal and others v. Kamala Menon Cocharan and others, [(2014) 15 SCC 570], this Court opined as under:-

Ã¢â‚¬Å“13. A will may have certain features and may have been executed in certain circumstances which may appear to be somewhat unnatural.

Such unusual features appearing in a will or the unnatural circumstances surrounding its execution will definitely justify a close scrutiny

before the same can be accepted. It is the overall assessment of the court on the basis of such scrutiny; the cumulative effect of the unusual

features and circumstances which would weigh with the court in the determination required to be made by it. The judicial verdict, in the last

resort, will be on the basis of a consideration of all the unusual features and suspicious circumstances put together and not on the impact of

any single feature that may be found in a will or a singular circumstance that may appear from the process leading to its execution or

registration. This, is the essence of the repeated pronouncements made by this Court on the subject including the decisions referred to and

relied upon before us.

2. Kavita Kanwar v. Pamela Mehta and Others, reported in 2020 SCC OnLine SC 464, Paras-24.1, 24.2 and 24.8 read as under:

24.1. In the case of H. Venkatachala Iyengar (supra), a 3-Judge Bench of this Court traversed through the vistas of the issues related with

execution and proof of Will and enunciated a few fundamental guiding principles that have consistently been followed and applied in

almost all the cases involving such issues. The synthesis and exposition by this Court in paragraphs 18 to 22 of the said decision could be

usefully reproduced as under:-

Ã¢â‚¬Å“18. What is the true legal position in the matter of proof of wills? It is well known that the proof of wills presents a recurring topic for

decision in courts and there are a large number of judicial pronouncements on the subject. The party propounding a will or otherwise

making a claim under a will is no doubt seeking to prove a document and, in deciding how it is to be proved, we must inevitably refer to the

statutory provisions which govern the proof of documents. S. 67 and 68, Evidence Act are relevant for this purpose. Under S. 67, if a

document is alleged to be signed by any person, the signature of the said person must be proved to be in his handwriting, and for proving

such a handwriting under Ss. 45 and 47 of the Act the opinions of experts and of persons acquainted with the handwriting of the person

concerned are made relevant. Section 68 deals with the proof of the execution of the document required by law to be attested; and it

provides that such a document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving

its execution. These provisions prescribe the requirements and the nature of proof which must be satisfied by the party who relies on a

document in a Court of law. Similarly, Ss. 59 and 63 of the Indian Succession Act are also relevant. Section 59 provides that every person

of sound mind, not being a minor, may dispose of his property by will and the three illustrations to this section indicate what is meant by the

expression ""a person of sound mind"" in the context. Section 63 requires that 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 direction and that the signature or mark shall be so made that it shall appear that it

was intended thereby to give effect to the writing as a will. This section also requires that the will shall be attested by two or more witnesses

as prescribed. Thus the question as to whether the will set up by the propounder is proved to be the last will of the testator has to be decided

in the light of these provisions. Has the testator signed the will? Did he understand the nature and effect of the dispositions in the will? Did

he put his signature to the will knowing what it contained?Stated broadly it is the decision of these questions which determines the nature of

the finding on the question of the proof of wills. It would prima facie be true to say that the will has to be proved like any other document

except as to the special requirements of attestation prescribed by S. 63 of the Indian Succession Act. As in the case of proof of other

documents so in the case of proof of wills it would be idle to expect proof with mathematical certainty. The test to be applied would be the

usual test of the satisfaction of the prudent mind in such matters.

19. However, there is one important feature which distinguishes wills from other documents. Unlike other documents the will speaks from

the death of the testator, and so, when it is propounded or produced before a Court, the testator who has already departed the world

cannot say whether it is his will or not; and this aspect naturally introduces an element of solemnity in the decision of the question as to

whether the document propounded is proved to be the last will and testament of the departed testator. Even so, in dealing with the proof of

wills the Court will start on the same enquiry as in the case of the proof of documents. The propounder would be called upon to show by

satisfactory evidence that the will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of

mind, that he understood the nature and effect of the dispositions and put his signature to the document of his own free will. Ordinarily

when the evidence adduced in support of the will is disinterested, satisfactory and sufficient to prove the sound and disposing state of the

testator's mind and his signature as required by law, Courts would be justified in making a finding in favour of the propounder. In other

words, the onus on the propounder can be taken to be discharged on proof of the essential facts just indicated.

20. There may, however, be cases in which the execution of the will may be surrounded by suspicious circumstances. The alleged signature

of the testator may be very shaky and doubtful and evidence in support of the propounder's case that the signature in question is the

signature of the testator may not remove the doubt created by the appearance of the signature; the condition of the testator's mind may

appear to be very feeble and debilitated; and evidence adduced may not succeed in removing the legitimate doubt as to the mental capacity

of the testator; the dispositions made in the will may appear to be unnatural, improbable or unfair in the light of relevant circumstances; or,

the will may otherwise indicate that the said dispositions may not be the result of the testator's free will and mind. In such cases the Court

would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last will of the

testator. The presence of such suspicious circumstances naturally tends to make the initial onus very heavy; and, unless it is satisfactorily

discharged, Courts would be reluctant to treat the document as the last will of the testator. It is true that, if a caveat is filed alleging the

exercise of undue influence, fraud or coercion in respect of the execution of the will propounded, such pleas may have to be proved by the

caveators; but, even without such pleas circumstances may raise a doubt as to whether the testator was acting of his own free will in

executing the will, and in such circumstances, it would be a part of the initial onus to remove any such legitimate doubts in the matter.

21. Apart from the suspicious circumstances to which we have just referred in some cases the wills propounded disclose another infirmity.

Propounders themselves take a prominent part in the execution of the wills which confer on them substantial benefits. If it is shown that the

propounder has taken a prominent part in the execution of the will and has received substantial benefit under it, that itself is generally

treated as a suspicious circumstance attending the execution of the will and the propounder is required to remove the said suspicion by

clear and satisfactory evidence. It is in connection with wills that present such suspicious circumstances that decisions of English Courts

often mention the test of the satisfaction of judicial conscience. It may be that the reference to judicial conscience in this connection is a

heritage from similar observations made by ecclesiastical Courts in England when they exercised jurisdiction with reference to wills; but

any objection to the use of the word Ã¢â‚¬Ëœconscience Ã¢â‚¬â„¢ in this context would, in our opinion, be purely technical and academic, if not

pedantic. The test merely emphasizes that, in determining the question as to whether an instrument produced before the Court is the last will

of the testator, the Court is deciding a solemn question and it must be fully satisfied that it had been validly executed by the testator who is

no longer alive.

22. It is obvious that for deciding material questions of fact which arise in applications for probate or in actions on wills, no hard and fast

or inflexible rules can be laid down for the appreciation of the evidence. It may, however, be stated generally that a propounder of the will

has to prove the due and valid execution of the will and that if there are any suspicious circumstances surrounding the execution of the will

the propounder must remove the said suspicions from the mind of the Court by cogent and satisfactory evidence. It is hardly necessary to

add that the result of the application of these two general and broad principles would always depend upon the facts and circumstances of

each case and on the nature and quality of the evidence adduced by the parties. It is quite true that, as observed by Lord Du Parcq in

Harmes v. Hinkson, 50 Cal W N 895 : (AIR 1946 PC 156), ""where a will is charged with suspicion, the rules enjoin a reasonable scepticism,

not an obdurate persistence in disbelief. They do not demand from the Judge, even in circumstances of grave suspicion, a resolute and

impenetrable incredulity. He is never required to close his mind to the truth"". It would sound platitudinous to say so, but it is nevertheless

true that in discovering truth even in such cases the judicial mind must always be open though vigilant, cautious and circumspect.Ã¢â‚¬

(emphasis supplied)

24.2. In Rani Purnima Debi (supra), this Court referred to the aforementioned decision in H. Venkatachala Iyengar and further explained

the principles which govern the proving of a Will as follows:-

Ã¢â‚¬Å“5. Before we consider the facts of this case it is well to set out the principles which govern the proving of a will. This was considered by

this Court in H. Venkatachala Iyengar v. B. N. Thimmajamma, (1959) Supp (1) SCR 426: AIR 1959 SC 443.

It was observed in that case that the mode of proving a will did 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 S. 63 of the Indian Succession Act. The onus of proving the will was

on the propounder and in the absence of suspicious circumstances surrounding the execution of the will proof of testamentary capacity and

signature of the testator as required by law was sufficient to discharge the onus. Where, however, there were suspicious circumstances, the

onus would be on the propounder to explain them to the satisfaction of the Court before the will could be accepted as genuine. If the

caveator alleged undue influence, fraud or coercion, the onus would be on him to prove the same. Even where there were no such pleas but

the circumstances gave rise to doubts, it was for the propounder to satisfy the conscience of the Court. Further, what are suspicious

circumstances was also considered in this case. The alleged signature of the testator might be very shaky and doubtful and evidence in

support of the propounder's case that the signature in question was the signature of the testator might not remove the doubt created by the

appearance of the signature. The condition of the testator's mind might appear to be very feeble and debilitated and evidence adduced

might not succeed in removing the legitimate doubt as to the mental capacity of the testator; the dispositions made in the will might appear to

be unnatural, improbable or unfair in the light of relevant circumstances; or the will might otherwise indicate that the said dispositions

might not be the result of the testator's free will and mind. In such cases, the Court would naturally expect that all legitimate suspicions

should be completely removed before the document was accepted as the last will of the testator. Further, a propounder himself might take a

prominent part in the execution of the will which conferred on him substantial benefits. If this was so it was generally treated as a suspicious

circumstance attending the execution of the will and the propounder was required to remove the doubts by clear and satisfactory evidence.

But even when where there suspicious circumstances and the propounder succeeded in removing them, the Court would grant probate,

though the will might be unnatural and might cut off wholly or in part near relations.

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 Civil Appeal

No. 6076 of 2009: Shivakumar & Ors. v. Sharanabasppa & Ors., decided on 24.04.2020, this Court, after traversing through the relevant

decisions, has summarised the principles governing the adjudicatory process concerning proof of a Will as follows:Ã¢â‚¬

Ã¢â‚¬Å“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 Will too, the proof with mathematical accuracy is

not to be insisted upon.

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

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.

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.

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, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the

Will may give rise to the doubt or as to whether the Will had 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.

6. A circumstance is Ã¢â‚¬Å“suspiciousÃ¢â‚¬ when it is not normal or is Ã¢â‚¬Ëœnot normally expected in a normal situation or is not expected of a

normal personÃ¢â‚¬â„¢. As put by this Court, the suspicious features must be Ã¢â‚¬Ëœreal, germane and validÃ¢â‚¬â„¢ and not merely the Ã¢â‚¬Ëœfantasy of

the doubting mind.Ã¢â‚¬â„¢

7. As to whether any particular feature or a set of features qualify as Ã¢â‚¬Å“suspiciousÃ¢â‚¬ would depend on the facts and circumstances of

each case. A shaky or doubtful signature; a 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 circumstance 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.

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 had signed the Will while being aware of its contents and after understanding the nature and effect of the dispositions in the Will?

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.Ã¢â‚¬â€‹

3. Bhagat Ram and Another v. Suresh and others, reported in (2003) 12 SCC 35, it is observed that:

D. Evidence Act, 1872- S.68 & proviso thereto and S. 114 III, (e) Ã¢â‚¬" Proof of execution of document required to be attested by law Ã¢â‚¬

Registration of a document does not obviate the need therefor- Presumption under S. 114 III.

(e)- Relevancy in this regard- Succession Act, 1925, Ss. 63, 64 & 70- Registration Act, 1908 Ã¢â‚¬" Ss. 52, 58 & 59 Ã¢â‚¬" Relevance of

endorsements made thereunder to matters other than the registration.

Ã¢â‚¬Å“Registration of a document does not dispense with the need of proving the execution and attestation of a document which is required by

law to be proved in the manner as provided in Section 68 of the Evidence Act.

A presumption by reference to Section 114 [Illustration (e)] of the Evidence Act shall arise to the effect that the events contained in the

endorsement of registration, were regularly and duly performed and are correctly recorded. None of the endorsements, require to be made

by the Registrar of Deeds under the Registration Act, contemplates the factum of attestation within the meaning of Section 63(c) of the

Succession Act or Section 68 of the Evidence Act being endorsed or certified by the Registrar of Deeds in respect thereof. The endorsements

made at the time of registration are relevant to the matters of the registration only. On account of registration of a document, including a

will or codicil, a presumption as to correctness or regularity of attestation cannot be drawn.

4. Wander Ltd. and Another v. Antox India P. Ltd, reported in 1990 (Supp) SCC 727, Para-9 reads as under:

Ã¢â‚¬Å“Usually, the prayer for grant of an interlocutory injunction is at a stage when the existence of the legal right asserted by the plaintiff

and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. The court,

at this stage, acts on certain well settled principles of administration of this form of interlocutory remedy which is both temporary and

discretionary. The object of the interlocutory injucntion, it is stated Ã¢â‚¬Å“....is to protect the plaintiff against injury by violation of his rights

for which he could not adequately be compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the

trial. The need for such protection must be weighed against the corresponding need of the defendant to be protected against injury

resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court

must weigh one need against another and determine where the ""balance of convenience lies"".

The interlocutory remedy is intended to preserve in status quo, the rights of parties which may appear on a prima facie. The court also, in

restraining a defendant from exercising what he considers his legal right but what the plaintiff would like to be prevented, puts into the

scales, as a relevant consideration whether the defendant has yet to commence his enterprise or whether he has already been doing so in

which latter case considerations somewhat different from those that apply to a case where the defendant is yet to commence his enterprise,

are attracted.

8. In rejoinder, Mr. Mehul Shah, learned Senior Counsel has submitted that the affidavit of the attesting witness which was filed before the revenue

authority can be looked into by the Civil Court at the stage of interlocutory application. He has also submitted that there is no need to make recital in

the Will that Will will be kept with somebody else. He has also submitted that if there is no description of the movable property, it is not unusual,

because it may happen that at the time of execution of Will, movable property may be available and at the time of death, such property may not be

available and, therefore, if no description of the movable property is made in the Will, that fact does not indicate that the Will is suspicious one. He has

submitted that the decision relied upon by the other side are factually not applicable to the present case as in the present case, the Will is registered

one and the suit is at interim stage, whereas in the decisions relied upon by the other side are concerned, there the Will was not registered one and the

trial was completed. He has also submitted that there is no contradiction in the affidavit and the Will, as submitted by the learned advocate for the

plaintiff. He has submitted that considering the fact that Will is registered one, prima-facie, its genuineness is to be believed and the person challenging

the same has to show the suspicious condition and, therefore, according to him, the trial Court ought not to have passed the impugned order restraining

the true owner from dealing with the property. He has submitted that even if the plaintiff succeeds, he may be compensated in terms of money for his

share in the property. He has prayed to allow the present Appeal from order.

9. Having considered the submission made on behalf of both the sides coupled with the material placed on record and the decisions cited at bar, it

appears that there is no dispute regarding the relationship between the parties. It is also admitted fact that the deceased was father of the parties. It is

also well settled law that the Appellate Court may not interfere with the exercise of discretion of the Court of first instance and substitute its own

discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the Court had ignored

the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on

principle. The Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the Court below if the

one reached by the court was reasonably possible on the material. The appellate Court would normally not be justified in interfering with the exercise

of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion.

10. Considering the submissions and the averments made before the trial Court it reveals that the plaintiff has filed the suit alleging that the registered

Will, which was executed by his father, is suspicious and fabricated one. This allegation is mainly based upon the fact that there is difference of line-

spacing as well as font-size in the two pages of the Will wherein the justification of excluding the plaintiff from properties of the deceased has been

reflected by the deceased in his Will. The trial Court has heavily placed reliance upon this allegation and has observed that the Will is suspicious one

and on that basis has passed the impugned order. Now, admittedly the Will is registered one. It also reveals from the record that one of the attesting

witnesses of the Will, has filed affidavit supporting the version of the defendant that the deceased has executed the alleged Will, which is registered

one. Of course, this affidavit has been filed before revenue authority in a revenue proceedings. But the fact remains that attesting witness has filed

affidavit before revenue authority. If any affidavit is filed before the revenue authority, which is also authority in the eyes of law, such affidavit can be

looked into by the Civil Court while deciding the interlocutory application. It is not always necessary that attesting witness must separately file affidavit

before the Civil Court. Further, though it appears from the copy of the Will, which is produced with paper-book from Page-1 to 23, that there is some

difference of line-spacing in page Nos. 11, 12 and other pages of the Will, on perusal of the entire Will, it reveals that the registering authority has

given consecutive number on each page of the Will on the top-right of each page and in all these pages, the serial number is consecutive number and

this number has been shown in a Stamp form. Therefore, it prima-facie appears that the Will produced in the matter which is registered one having

Stamp of registering authority with consecutive page numbers, prima-facie appears to be a true. A person can change page number, but, he cannot be

in a possession of official Stamp of the authority. Therefore, the presumption of the law regarding official act being done officially, is prima-facie

applicable at this stage. Further, the entire document has to be read as a whole and it cannot be read piece-meal for discarding certain portion thereof

on the ground that there is some discrepancy in the line-spacing between two pages. Prima-facie reading, the alleged Will, it appears that the recital of

the Will on the other pages clearly flow in continuous manner till the end. Therefore, the observation of the trial Court based upon difference in line-

spacing is legally not proper.

11. Further, the Will which is registered one cannot be prima-facie believed to be concocted one only because the fact that there is mention of

movable property but there is no description of movable property. It is quite common that when a person prepares a Will, on that day, he might be in

possession of some movable property and at the time of his death no movable property might be available for disposal at his hand. Non mentioning of

movable property in a Will is not a ground to be treated as suspicious ground in a registered Will. Moreover, from the Will, it appears that registering

authority has specifically put an endorsement on the receipt that the original has been handed over back to the executor of the Will. Further, there is

no need of making any averments in the Will that the Will will be kept with some named person. It is for the propounder of the Will to decide whether

to keep the Will. The wish of the propounder needs to be accepted and acted upon by all the persons concerned.

12. Further, it also reveals from the averments of the plaintiff that basically he is claiming his right over the property on the ground that his deceased

father was partner in the partnership firm till he died and, therefore, the averment made in the Will is false one. Further, it is his case that his father

had withdrawn amount from the partnership firm and has purchased the property and, therefore, these are properties of partnership firm. To

substantiate this allegation, the plaintiff has heavily relief upon the Statement of Account of the partnership Firm showing that his father had capital in

the partnership and has withdrawn amount from the partnership firm. At this juncture it is pertinent to note that had really been property purchased on

behalf of partnership firm then that fact must have reflected in the balance-sheet of the partnership firm showing the property of the Firm. Further, on

perusal of the Statement of Account produced by the plaintiff regarding the partnership firm, it clealry reveals that nowhere there is mentioned of all

these properties to be a partnership firmÃ¢â‚¬â„¢s properties. Further, it is admitted fact that deceased was in Air-Force service, and therefore, he has got

land in question from Government due to his service in Air-Force and, therefore, the said land would not become a joint family, but, it will be only

personal property of the deceased in which the other members of the family have no right in respect of the property and for disposal of such property,

the deceased has absolute right and if he has executed Will in favour of one of his son or in favour of third party, his other son or real family member

could not make any grievance in respect thereof.

13. In present case, the plaintiff has also heavily relied upon the so-called Whatsapp messages, which were exchanged between the deceased and the

plaintiff when the deceased was ill and admitted in the hospital that too in 2017. At this stage it needs to be observed that generally, no person would

bother to record such Whatsapp messages and keep it for his record when it is occurred between father and son. In normal course of life, the

conversation between father and son or between father and grand-son or even between two brothers and near relative, there is no need of recording

of such messages. Generally, nobody bothers to record such messages. The conduct of the plaintiff in recording and keeping those messages, reflects

upon his conduct to create documentary evidence for any future action. It appears that this conduct of the plaintiff is in somewhat manner, reflects the

situation of some dispute between father and son, which has been narrated by father in his Will. The plaintiff has also heavily relied upon the

Photographs to show that his father was enjoying life with his family members. But, mere Photograph does not prove the fact that his father was

happy with him. The conduct of the plaintiff in keeping Whatsapp messages for evidence purpose, that too in 2017, which he has tried to use in the

present suit, which has been filed in the year 2021, clearly suggest his intention and his relationship with his father. This very conduct of the plaintiff is

reflected by the deceased in the registered Will.

14. Considering the aforesaid facts and circumstances, it prima-facie appears that the trial Court has committed serious error of law in making

observation regarding the registered Will and has not properly appreciated the averments and the evidence produced in the matter and has misdirected

itself especially when the Suit property was, prima-facie, of the self-acquired property of the deceased and he has disposed of such property by way

of registered Will and considering the conduct of the plaintiff, no interim order was required to be passed in favour of the plaintiff. The order of the

trial Court clearly appears to be arbitrary and capricious, which needs to be interfered with by this Court. Further, since all the properties are self-

acquired property of the deceased, ultimately if the plaintiff succeeds in proving his allegation that properties were joint family property, even in that

case, he can be compensated in terms of money regarding his share in the property. Therefore, considering the facts and circumstances of the case,

impugned order of trial Court deserves to be quashed and set-aside.

15. In view of the above, the Appeal from Order is allowed. The impugned order dated 15.2.2022 passed below Exh-5 by the 6th Additional Senior

Civil Judge, Ahmedabad (Rural), Mirzapur, Ahmedabad in Special Civil Suit No. 256 of 2021 is hereby quashed and set-aside.

16. As the observations made hereinabove are prima-facie made only for deciding the impugned order passed below interlocutory injunction

application, the trial Court shall decide the Suit in accordance with law and on the basis of the evidence, which may be produced by both the parties

before it, without being influenced by any of the observations made by this Court, as above. The trial Court is also directed to expedite the hearing of

the Suit and see to it that the suit is disposed of as early as possible, preferably within 6 months from the date of receipt of this order. The parties are

directed to cooperate in early disposal of the suit.

No order as to costs.

The Civil Application also stands disposed of accordingly.

(DR. A. P. THAKER, J)

FURTHER ORDER

Learned advocate for the respondent requests to stay this order.

Considering the observations made in the order, the request is decline.