(2024) 12 SC CK 0081

Supreme Court

Case No: Civil Appeal No. Of 2024 (@Slp (C) No. 23721/2022)

Chinu Rani Ghosh — APPELLANT

Vs

Subhash Ghosh And Others — RESPONDENT

Date of Decision: Dec. 11, 2024

Acts Referred:

- Indian Succession Act 1925 - Section 59, 63, 63(c)
- Evidence Act 1872 -Section 45, 47, 67, 68

Hon'ble Judges: B.V. Nagarathna, J; Nongmeikapam Kotiswar Singh, J

Bench: Division Bench

Advocate: Aditi Anil Dani, Pijush K. Roy, Kakali Roy, Dr. Linto K B, Rajan K. Chourasia

Final Decision: Allowed

Judgement

1. Leave granted.

2. Being aggrieved by the judgment dated 28.04.2022 passed in Regular First Appeal No. 5/2021 by the High Court of Judicature at Tripura by which the First Appeal arising out of a preliminary judgment and preliminary decree dated 20.02.2021 and 23.02.2021 respectively, in TS(Partition) 13 of 2018 passed by the Court of the Civil Judge(Senior Division), Udaipur, Gomati District, Tripura holding that the execution of the Will (Ext.C) had not been proved and thus the plaintiffs and defendants were equally entitled to 1/6th share of the subject matter of Schedules B(i) and B(ii) land has been reversed by the High Court and the said Regular First Appeal has been allowed, plaintiff No. 3/appellant in the said suit has preferred this appeal.

3. Briefly stated the facts of the case are that one Kariram Ghosh had two sons namely, Tarani Ghosh and Nabin Chandra Ghosh. Tarini Ghosh, Nabin Chandra Ghosh and Kanaki Bala Ghosh (wife of Nabin Chandra Ghosh) were allotted certain land by the State Government which was divided by way of a compromise as Schedule A, Schedule B (i), and Schedule B(ii) respectively. One of the brothers, Nabin Chandra Ghose, who was the sole owner of the schedule B(i) property passed away on 20.01.1982 leaving behind his widow-Kanaki Bala Ghosh as the sole legal heir. The other brother-Tarani Ghosh was the sole owner of schedule A property and he passed away on

15.01.1991 leaving behind his widow-Bindu Ghosh, four daughters and two sons as legal heirs. Three out of the four daughters are the plaintiffs including the appellant herein whereas the other daughter and two sons are the defendants who are the respondents herein. After the death of Tarani Ghosh on 15.01.1991, he left behind the Schedule ‘A’ land, which his four daughters and two sons inherited. Consequently, the land was recorded in their names. Kanaki Bala Ghosh passed away on 01.07.2001, issueless, leaving behind the plaintiffs and defendants as her sole legal heirs under the Hindu Succession Act, 1956. Thus, the plaintiffs and defendants became joint owners of the entire Schedule ‘A’, ‘B(i)’, and ‘B(ii)’ lands in equal shares, without any formal partition.

4. The plaintiffs made several requests to the defendants for partition of the suit land. However, the defendants repeatedly delayed the matter, and on 15.03.2013, they finally refused plaintiffs' request for partition. Consequently, the plaintiffs instituted Suit No. TS(P) 16 of 2013 seeking partition of the suit land. The said suit was decreed on contest on 16.06.2014. Pursuant to this, RFA 7 of 2014 was filed by Defendant No. 2, and the plaintiffs filed RFA 10 of 2014 before the High Court. By a common judgment dated 05.06.2017, the High Court set aside the judgment and decree passed by the trial court, directing the parties to file a fresh suit after addressing the defects pointed out. Accordingly, the plaintiffs instituted the suit in T.S.(P) No. 13 of 2018 in the Court Civil Judge Senior Division, Gomati Udaipur, seeking a decree for the partition of the suit land into equal shares.

5. Defendant No. 3 did not contest the suit and defendant No. 2 supported the case of the plaintiffs. Contesting the suit, defendant No. 1/respondent No. 1 filed a written statement contending that plaintiff No. 1/appellant/Charu Bala Ghosh, and defendant No. 3/Smt. Parul Ghosh, are not the daughters of Tarani Ghosh and, therefore, are not entitled to any share in the suit property. It was further pleaded that the survival certificates concerning Tarani Ghosh, Nabin Chandra Ghosh, and Kanaki Bala Ghosh, which identify plaintiff No. 1 and defendant No. 3 as their heirs, are incorrect and were obtained through collusion. However, while admitting that the Schedule ‘B(i)’ and ‘B(ii)’ lands are the selfacquired properties of Nabin Chandra Ghosh and his wife Kanaki Bala Ghosh, respectively, defendant No. 1 contended that upon the death of Nabin Chandra Ghosh, his property Schedule ‘B(i)’ devolved upon his wife, Kanaki Bala Ghosh. Upon her death, her properties Schedules ‘B(i)’ and ‘B(ii)’ devolved upon her heirs from her parental side, namely : a) Shri Makhan Chandra Ghosh, b) Shri Chitta Ghosh, and c) Shri Jagyaswar Ghosh, who are the sons of her deceased brother, Sital Ghosh, and not upon the heirs from her husband's side, as claimed by the plaintiffs. Thus, according to defendant No. 1, Shri Makhan Chandra Ghosh, Shri Chitta Ghosh, and Shri Jagyaswar Ghosh are necessary parties to this suit.

6. Further, defendant No. 1 claims that he and Defendant No. 2 are the owners in possession of the Schedule ‘A’ and ‘B’ lands. During her lifetime, Kanaki Bala Ghosh executed an unregistered Will (Ext.C) and a Nadabi Patra (deed of relinquishment) in favour of defendant No. 1 on 15.05.1995 with respect to the ‘B(i)’ and ‘B(ii)’ lands. Consequently, upon her death, defendant No. 1 became the owner in possession of these lands and has been residing there with his family.

7. By judgment dated 20.02.2021, the Trial Court decreed the suit declaring that the plaintiffs and the defendants were entitled to 1/6th share in Schedule A and B properties and directed partition the suit property by metes and bounds. The Trial Court observed that all the Schedule properties

were the self-acquired properties as they were allotted by the State Government and upon the death of Kanaki Bala Ghosi on 01.07.2001 issueless, the plaintiffs and defendants were their sole legal heirs. The Trial Court further held that defendant No. 1 failed to discharge his burden to prove the Will dated 15.05.1995 in terms of Section 68 of the Evidence Act, 1872 (for short “Evidence Act”) read with Section 63 of the Indian Succession Act, 1925 (for short “Succession Act”).

8. Being aggrieved, defendant No. 1 approached the High Court of Tripura and filed a first appeal RFA No. 5 of 2021 challenging the judgment and decree dated 20.02.2021. By judgment dated 28.04.2022, the High Court allowed the first appeal and set aside the judgment and decree passed by the Trial Cout dated 20.02.2021 holding that the plaintiffs were entitled to partition of the suit land described in Schedule A alone and not Schedule B(i) and B(ii). The High Court held that the Will dated 15.05.1995 (Ext.C) was valid in the eyes of the law. Hence the instant appeal.

9. We have heard learned counsel, Ms. Aditi Anil Dani for the appellant and learned senior counsel, Shri Pijush K. Roy, for the respondents and perused the material on record.

10. Learned counsel for the appellant at the outset submitted that the High Court was not justified in reversing the findings arrived at by the Trial Court with regard to the proof of execution of the Will (Ext.C); that the Trial Court held that there had been no proper proof of the execution of the said Will in the context of Section 63 of the Succession Act, and Section 68 of the Evidence Act. Pointing out to those provisions, learned counsel for the appellant submitted that clause (c) of Section 63 of Succession Act, to submit that every testament has to be attested by two or more witnesses, each of whom must have seen the testator signing or affixing his mark to the Will or has seen some other persons signing the Will, in the presence and by the direction of the testator, or as received from the testator's personal acknowledgment of his signature or mark, or the signature of such other person; and each of the witnesses must sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary. She contended that in the instant case although Will (Ext.C) notes that there were as many as three attesting witnesses, the evidence of only one attesting witness has been let in and on a consideration of the said evidence, it becomes clear that there is no proper proof of execution of the Will in accordance with Section 68 of the Evidence Act. In this regard, she submitted that the Will is a document which requires attestation of not less than two witnesses and there has to be proof of the execution of the Will in accordance with law, i.e., Section 68 of the Evidence Act inasmuch as at least one attesting witness must step into the box to prove that there was execution of the Will and there has been attestation thereof in accordance with clause (c) of Section 63 of the Succession Act.

11. In the above context, learned counsel for the appellant drew our attention to the evidence of DW-3, the affidavit by way of examination-in-chief of Shri Nilmohan Sarkar(DW-3) who is one of the attesting witnesses to contend that in his affidavit, he has stated that he has attested the Will in presence of witnesses and at the time of execution of said Will by the testator, Smt. Kanaki Bala Ghosh. However, there are no details of who the other witnesses who were also present when DW-3 had attested the said will, even in his cross-examination, the above details in respect of which he was cross-examined are not elicited.

12. Learned counsel for the appellant also drew our attention to the evidence of DW-1, the propounder of the Will who, in his examination-in-chief by way of affidavit filed in lieu of his examination-in-chief, has stated that the Will dated 15.05.1995 executed by Smt. Kanaki Bala Ghosh was in the presence of "attesting witness", he also does not state who the witnesses were, who attested the Will dated 15.05.1995. Even in the crossexamination, there are no details made available by DW-1 in order to prove that there were at least two attesting witnesses who had attested the Will.

13. Learned counsel for the appellant therefore submitted that there has been no proof of the Will (Ext.C) in accordance with Section 68 of the Evidence Act read with Section 63(c) of the Succession Act. Learned counsel for the appellant therefore, submitted that the High Court was not right in reversing the findings of the Trial Court which had not believed the Will and consequently had granted 1/6th share in both A and B scheduled properties to the parties. Learned counsel for the appellant submitted that the reversal of the findings regarding the proof of Will by the High Court is not in accordance with law and hence, that portion of the impugned judgment may be set aside and relief claimed by the plaintiff(s) seeking 1/6th share in both A as well as in B scheduled properties may be granted.

14. Per contra, learned senior counsel appearing for respondent No. 1/contesting respondent drew our attention to Will (Ext.C) which is the Will of Smt. Kanaki Bala Ghosh executed on 15.09.1995 wherein the names of the witnesses have been clearly mentioned as Shri Gopal Debnath, Nilmohan Sarkar(DW-3) and Maran Debnath; that there are as many as three witnesses who had attested the said Will. Further there was Shri Subajit Roy who was also a scribe and the witness to the said document. He also drew our attention to the evidence of DW-2 being the affidavit filed in lieu of examinationin-chief wherein he has stated that he had written the Will of Smt. Kanaki Bala Ghosh and he read over the contents of the Will to her and after admitting the contents of the Will being true, she put her thumb impression on the said Will on every page of the Will and he put his signature as he had prepared the said Will as a witness. He therefore, submitted that DW-2 could be construed as an attesting witness and therefore there is proof of the Will in accordance with Section 63 of the Succession Act read with Section 68 of the Evidence Act. He submitted that there is no merit in this appeal, the same may be dismissed.

15. We have considered the arguments advanced at the bar in light of the material on record including Will (Ext.C) and the evidence let in by the parties.

16. On a perusal of Will (Ext.C), which is a testament of Smt. Kanaki Bala Ghosh dated 15.05.1995, it is no doubt clear that in the insofar as the witnesses columns are concerned, the names of the Shri Gopal Devnath, Shri Nilmohan Sarkar and Shri Maran Dev Nath have been noted. As far as the scribe of the said testament is concerned, the name of Shri Subajit Roy has been noted. We may at this stage itself state that the object and purpose by which a Will is attested by a witness is quite distinct from the object and purpose by which a scribe would attest a Will; an attesting witness would attest a Will on the request made by the testator for the purpose of due execution of the Will and in accordance with Section 63 of the Succession Act. But the object and purpose with which a scribe or for that matter, a draftsman of the Will would attest the Will is not the same. Therefore, in the instant case, the evidence of Shri Subajit Roy (DW-2) cannot be

construed as that of an attesting witness.

17. In this context, we find that only Shri Nilmohan Sarkar who is one of the attesting witnesses has let in his evidence as DW-3. On a reading of the said evidence, it becomes apparent that he has not mentioned in his examination-in-chief as to who the other attesting witnesses of the said testament was, whether they were present at the time when he attested the Will or it was done in their absence and no other details with regard to the attestation of the Will has been mentioned by the said witness in the course of his examination-in-chief. In his cross-examination also, he has demonstrated his ignorance about the date of execution of the Will; the place of his drafting and other such crucial details. He has however, denied that there was a collusion between defendant No. 1 and the advocate's clerk and the Will was prepared giving a retrospective date.

18. Insofar as DW-1, who is the propounder of the Will, is concerned in his examination-in-chief also, there are no details as to the names of the attesting witnesses. In fact the expression used in ‘paragraph 3’ of his affidavit in lieu of examination-in-chief is that the Will was executed in his favour “in presence of attesting witness”. There is no reference to the attesting witnesses who had attested the said testament. Even though only one attesting witnesses was called to let in evidence in the matter, at least the propounder of the Will ought to have testified with regard to the proper execution of the Will inasmuch as details regarding the presence of the attesting witnesses at the time of the execution of the will and other crucial details are conspicuous by their absence. In the circumstances, we find that the evidence let in by the propounder of the Will is lacking in material particulars so as to come to a conclusion that there has been proof of the Will.

19. As opposed to the aforesaid evidence, we have also perused the evidence of DW-2, the scribe of the Will and have noted as to what he has stated in his affidavit, which is in lieu of examination-in-chief. His cross-examination is extracted as under:

“I never visited chamber of Advocate M.L. Saha. It is true that till 2008 A.D. I used to deliver goods to different purchasers on contract. It is true that in 2009 I joined as Advocate's clerk under Advocate Manik Biswas. Prior to that I did not come to Court to work as clerk. It is not a fact that Exbt.C deed was not written by me as per direction of Kanaki Bala Ghosh. I do not know Kanaki Bala Ghosh personally. The executant identified herself as kanaki Bala Ghosh and no other persons. I did not mention the date of taking thumb impression of the executant. It is not a fact that in collusion with defendant No. 1 Subash Ghosh and others I prepared Exbt.C deed giving back date, or that Kanaki Bala did not execute the deed.”

20. We find that in the cross-examination, DW-2 has clearly indicated that he was earlier engaged in delivery of goods purchased on contract, he joined as an advocate's clerk in the year 2009 prior to that he did not come to Court to work as a clerk; that he does not know the testator, Smt. Kanaki Bala Ghosh personally but he has prepared the Will (Ext.C) and he has denied the suggestions that there was any collusion with defendant No. 1 and others in the preparation of Will (Ext. C.). On a reading of the said evidence, it is clear that he was not an advocate's clerk till 2009, but he was engaged in delivery of goods to different purchasers on contract. He was nowhere connected with any advocate's office. It is strange as how he knew the testator, Smt. Kanaki Bala Ghosh personally and as to how he was summoned to draft the Will (Ext.C), if he was nowhere associated as an advocate's clerk. This clearly indicates that evidence of DW-2 who is stated to be the scribe

of the Will does not inspire any confidence and therefore cannot be believe at all. He is also a stranger to the testator as there are no details as to how he is ever acquainted with her let alone being called to draft her testament.

21. In the matter of proof of Wills, it is necessary to rely on the dictum of this Court speaking through Gajendragadker, J. in *H. Venkatachala Iyengar v. B.N. Thimmajamma,* AIR 1959 SC 443 of which Paragraphs 18 to 23 can be usefully extracted as under:

"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. Sections 67 and 68 of the 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.

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 “conscience” 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* [(1945-46) 50 CWN 895] “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.

23. It is in the light of these general considerations that we must decide whether the appellant is justified in contending that the finding of the High Court against him on the question of the valid execution of the will is justified or not. It may be conceded in favour of the appellant that his allegation that Lakshmamma has put her signatures on the will at five places is proved; that no doubt is a point in his favour. It may also be taken as proved that Respondent 1 has failed

to prove that Lakshmamma was unconscious at the time when the will is alleged to have been executed. It is true she was an old woman of 64 years and had been ailing for some time before the will was executed. She was not able to get up and leave the bed. In fact she could sit up in bed with some difficulty and was so weak that she had to pass stools in bed. However, the appellant is entitled to argue that, on the evidence, the sound and disposing state of mind of Lakshmamma is proved. Mr Iyengar, for the appellant, has strongly urged before us that, since these facts are established, the court must presume the valid execution of the will and in support of his contention he has invited our attention to the relevant statements on the point in the text books dealing with the subject. Jarman on Wills [Jarman on Wills - Vol. I, 8th Edn., p. 50] says that "the general rule is 'that the onus probandi lies in every case upon the party propounding a will and he must satisfy the conscience of the court that the instrument so propounded is the last will of a free and capable testator'". He adds that, "if a will is rational on the face of it, and appears to be duly executed, it is presumed, in the absence of evidence to the contrary, to be valid". Similarly, Williams on Executors and Administrators [Williams on Executors and Administors- Vol. I, 13th Edn., p. 92] has observed that, "generally speaking, where there is proof of signature, everything else is implied till the contrary is proved; and evidence of the will having been read over to the testator or of instructions having been given is not necessary". On the other hand, Mr Viswanatha Sastri, for Respondent 1, contends that the statements on which the appellant has relied refer to wills which are free from any suspicions and they cannot be invoked where the execution of the will is surrounded by suspicious circumstances. In this connection, it may be pertinent to point out that, in the same text books, we find another rule specifically mentioned. "Although the rule of Roman Law", it is observed in Williams, "that 'Qui se scripsit haeredem' could take no benefit under a will does not prevail in the law of England, yet, where the person who prepares the instrument, or conducts its execution, is himself benefited by its dispositions, that is a circumstance which ought generally to excite the suspicion of the court, and calls on it to be vigilant and zealous in examining the evidence in support of the instrument in favour of which it ought not to pronounce, unless the suspicion is removed, and it is judicially satisfied that the paper does express the true will of the deceased" [Williams on Executors and Administrators, Vol. I, 13th Edn., p. 93].

22. This Court has clearly indicated as to how a testament or a Will has to be proved by a propounder and in what manner the approach of the Court should be while considering such a document. The aforesaid observations of this Court when considered in light of the evidence on record which we have discussed in detail in light of the arguments advanced at the bar clearly indicate that there has been no proof of the Will (Ext. C) in accordance with what is mandated in law in the instant case.

23. In the circumstances, we hold that Will (Ext.C) has not been proved in accordance with Section 63 of the Succession Act read with Section 68 of the Evidence Act. Moreover on a reading of the evidence of DW-2 the so-called scribe of the Will (Ext.C), we have already noted that it does not inspire any confidence and cannot be believed. The evidence in support of the propounder of the Will/respondent herein lacking in material particulars so as to conclude that there is proof of the Will in accordance with law. Therefore, we find that the very execution of the Will is surrounded by suspicious circumstances which have not been erased by DW-1, the propounder of the Will. Hence, in our view, the High Court was not right in holding that the Will had been proved in accordance with law and thereby modifying the judgment and decree of the Trial Court which had in fact discarded the Will (Ext.C).

24. Consequently, the impugned judgment of the High Court is set aside and the judgment of the Trial Court is restored. The plaintiffs are entitled to 1/6th share in both A and B scheduled properties.

25. The appeal is allowed in the aforesaid terms.

26. Parties to bear their respective costs.

Pending application(s), if any, shall stand disposed of.