

“CAN A WILL SHROUDED BY SUSPICIOUS CIRCUMSTANCES” BE A VALID WILL!!

Kavita Kanwar “Appellant”	Mrs Pamela Mehta & Others “Respondent”
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FACTS

1. The property in question came to the mother i.e. Smt. Amarjeet Mamik through the Will of his husband i.e. Mr. D. S. Mamik, who was the original owner of the property;
2. During his lifetime, he had already gifted a **portion** of the original property to the Appellant by way of a registered Gift Deed and remaining portion was given to Smt. Amarjeet Mamik through registered Will;
3. After death of the Mr. D. S. Mamik, mother of the contesting parties became owner of the property excluding the portion already gifted to the Appellant;
4. In the Will made by the mother of the contesting parties, the Appellant was the **major beneficiary** of the estate of the testator / Mother to the exclusion of other legal heirs, including Respondent. The Will of mother was for the other remaining portions of the same property that the disputed Will was formulated.
5. The matter was that the Will was partly handwritten i.e. first and the last portions of the Will were hand written by hand by the testator and the rest of the portions, which actually dealt with the devolvement of the property, ***were typed and printed.***

EVIDENCE

- The relations between the testator mother and the Respondent were friendly as Respondent has taken good care of her.
- The testator mother could not complete her education beyond Class X and was not computer literate.
- The Will had certain sections containing technical and legal terminology that could not be understood by a layperson.
- The Appellant could not explain why only certain portions were handwritten, while certain parts were typed out.
- The Declaration of the Appellant stating that she had not participated in the execution of the Will was wrong and contradictory.
- There was no credibility in the testimony of the attesting witnesses, as the daughter of one witness had borrowed money from the Appellant and the other was utterly unknown to the testator.

SO MUCH SUSPICION AS PER ABOVE FACTS AND EVIDENCE!!!

A circumstance is considered suspicious-

- i. when it is not normal or**
- ii. Is ‘not normally expected in a normal situation’**

iii. Or is ‘not expected of a normal person’.

Illustrative instances of suspicious circumstances

- ❖ A shaky or doubtful signature of the testator;
- ❖ 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.

Such suspicion should be real and valid, and not merely a fantasy of a doubting mind.

JUDGEMENT

The **Apex Court**, after meticulously analysing the evidence led by the parties and the law on the subject, dismissed the appeal as it found that *“thick clouds of suspicious circumstances are hovering over the Will in question”*.

The **Hon’ble Supreme Court** dismissed the appeal particularly for the reason that the Appellant played an active part in the execution of the Will and arranging the witnesses. Further by observing that Will in question does not answer the description of a holographic Will directly because, except for the opening and concluding paragraphs, *the entire Will is in electronic print*.

It was observed that even the handwritten portion is not in the diction of the testator and contains typical legal words like “testament, codicil, give, devise and bequeath” which cannot be understood by the layperson.

There was a curious flip-flop of the alleged third page of the Will by the Appellant to proof of Will. It ultimately held that in the totality of circumstances, there appears to be no reason for the testator *to bestow all property to appellant and to exclude other legal heirs*.

Therefore, it cannot be said that mother executed and signed the alleged Will after having understood the meaning, effect and purport thereof.

IT’S BETTER TO MAKE YOUR OWN WILL AND GET IT REGISTERED BEFORE IT’S

TOO LATE... Although *the registration of a Will is optional but is advisable for added security.*

Moreover, this classic case showcase that how important it is to draft your Will wisely.

Please feel free to reach out to us!!!

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Thanks and Regards
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