2025 INSC 7

Non-Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. 7198 of 2009

Lilian Coelho & Ors.

.... Appellant(s)

Versus

Myra Philomena Coalho

...Respondent(s)

J U D G M E N T

C.T. RAVIKUMAR, J.

1. Judgment dated 22.01.2009 passed by the Division Bench of the High Court of Bombay in Appeal No.574 of 2003 as per which it reversed the judgment dated 07.03.2003 of a learned Single Judge of the High Court in Testamentary Suit No.33 of 1999 is under challenge in this appeal.

2. Heard the learned Senior Counsel appearing for the appellants and the learned counsel appearing for the respondent.

3. To avoid convolution and to confine the consideration only within the scope of the Testamentary

Suit which was decided by the learned Single Judge of the High Court, we refer to the facts succinctly only for the disposal of this appeal in terms of what is observed hereinbefore.

4. Myra Philomena Coalho/respondent-plaintiff filed a petition for grant of Letters of Administration (for short, 'LoA') with the Will annexed of the property and credits of her deceased mother Mrs. Maria Francisca Coelho who died on 24.11.1985. Will dated 07.07.1982 said to be her last Will was propounded whereunder the testatrix bequeathed properties in favour of her two sons namely George and Reginald and the daughter who was the plaintiff, in equal shares. Caveat was filed by another son Mr. Victor. However, during the pendency of the proceedings he died and, therefore, the proceedings were continued by his widow. In view of the filing of the caveat, raising objections, the petition was converted into a suit. The subject matter of controversy is essentially about the Will dated 07.07.1982 in respect of which LoA is prayed for.

5. After framing the issues, the learned Single Judge found that the Will in question was duly executed at the same time, it was further found that the Will is shrouded with suspicious circumstances and the plaintiff could not

satisfy the conscious of the court by removing such suspicious circumstances. Resultantly, the suit was dismissed. In the appeal, the Division Bench did not formulate points for consideration and at the same time on re-appreciation of the evidence, found that the learned Single Judge had correctly come to the conclusion that the Will in question was validly executed. The Division Bench held that the learned Single Judge had recorded a finding that the Will is validly executed and it is genuine and observed and held that suspicious circumstances, if any have to be taken into consideration by a Court before recording a finding that the Will is genuine and not after recording a finding that the Will is genuine. In that view of the matter, the findings recorded by the learned Single Judge that the Will is shrouded with suspicious circumstances is set aside and consequently, held that the plaintiff is entitled to grant of LoA. Accordingly, Testamentary Suit No.33 is decreed in terms of the prayer clause of the suit.

6. In the contextual situation, firstly, it is to be found out whether the learned Single Judge had arrived at a finding that the Will is genuine. No doubt, the exposition of law by the Division Bench that suspicious circumstances, if any, have to be taken into

consideration before recording the finding that the Will is genuine and not after recording a finding that the Will is genuine is the correct enunciation of law. But then the question is whether the learned Single Judge in the Testamentary Suit had arrived at a finding that the Will is genuine. In this context, we cannot lose sight of the fact that holding that a 'Will is validly executed' and a 'Will is genuine' cannot be said to be the same. If a Will is found not validly executed, in other words invalid owing to the failure to follow the prescribed procedures, then there would be no need to look into the question whether it is shrouded with suspicious circumstances. Therefore, it can be said that even after the propounder is able to establish that the Will was executed in accordance with the law, that will only lead to the presumption that it is validly executed but that by itself is no reason to canvass the position that it would amount to a finding with respect to the genuineness of the same. In other words, even after holding that a Will is genuine, it is within the jurisdiction of the Court to hold that it is not worthy to act upon as being shrouded with suspicious circumstances when the propounder failed to remove such suspicious circumstances to the satisfaction of the Court.

7. Bearing in mind, we will proceed to consider the case on hand.

8. We have found that the learned Single Judge and the Division Bench are *ad idem* on the question as to whether the Will was validly executed. As noticed hereinbefore, they are at issue only as to the question whether after the findings returned in respect of issues Nos.1 to 4 framed in the Testamentary Suit, whether the prayer for grant of LoA should have been rejected.

9. A scanning of the judgment of the learned Single Judge that after holding the Will dated 07.07.1982 as validly executed on the following three grounds, taken as suspicious circumstances surrounding the will in question, the learned Single Judge declined to grant the LoA holding that the plaintiff had failed to explain the suspicious circumstances surrounding the execution of the Will. The clause 'failed to explain suspicious circumstances surrounding the execution of the Will', if taken only as a finding that it was validly executed but still it is surrounded with suspicious circumstances, then it can only be said that the learned Single Judge was justified or correct in proceeding with the matter further. At the same time, if it is taken that the learned Single Judge had only recorded that the plaintiff had succeeded

in proving the execution in terms of the provisions under Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872 in the light of the well-neigh settled position of law, it would be open to the Court to consider, rather, it is the irrecusable duty of the Court in case the objector raises suspicious circumstances, to call upon the propounder to remove such suspicious circumstances to satisfy its conscious. This position is well settled. (See the decision of this Court in ***Kavita Kanwar v. Pamela Mehta & Ors.***[1] and the decision in ***Derek A.C. Lobo & Ors. v. Ulric M.A. Lobo (Dead) by LRS.***[2]*),* In paragraph 9 in Derek Lobo's case, this Court held thus: -

> *"9. For a proper consideration of the case on hand it is apposite to refer to the decision of this Court in "Moturu Nalini Kanth v. Gainedi Kaliprasad (Dead, Through LRs.)" rendered after referring to and relying on various previous authorities on the legal requirements to prove a Will. This Court had elaborately considered the essential legal requirements to prove a Will and ultimately held that mere registration of a Will would not attach to it a stamp of validity and it must still be proved in*

[1] 2021 11 SCC 209
[2] 2023 SCC OnLine 1893; 2023 INSC 1093

terms of the legal mandates under the said provisions of Section 63 of the Succession Act and Section 68 of the Evidence Act."

10. Now, we will consider the issues framed in the Testamentary Suit based on the rival pleadings. The following issues were framed in the Testamentary Suit: -

1. *Does the plaintiff prove the due execution and attestation of the will dated 7.7.1982 of the deceased Mrs. Maria Francesca Coelho?*
2. *Does the plaintiff prove that the said deceased was of sound and disposing state of mind and has testamentary capacity at the time of execution of the will dated 7.7.1982?*

2(a) *Whether the defendants prove that deceased was not in a disposing state of mind and did not have testamentary capacity at the time of execution of the will ?*

3. *Do the defendants prove that the signature of the deceased on the will dated 7.7.1982 was forged ?*
4. *Do the defendants prove that the Will dated 7.7.1982 was executed by the deceased under undue influence, coercion and threats and fraud was played on the deceased by the plaintiff?*
5. *Whether the plaintiff is entitled to letters of administration as prayed?*
6. *What order and decree?*

11. A scanning of the judgment of the learned Single Judge in the Testamentary Suit would reveal that issues No.1 and 2 were answered in the affirmative and thereby in favour of the plaintiff. Issues 2(a) to 4 were answered in the negative and thereby, virtually in favour of the plaintiff. It is thereafter that the learned Single Judge considered the findings against issue Nos.5 and 6 and held that the plaintiff is not entitled to grant of LoA as prayed for. A perusal of the impugned judgment of the Division Bench would reveal that the findings returned by the learned Single Judge against issues 1 to 4 were taken by the Division Bench as findings tantamount to a finding regarding the genuineness of the Will in question. The question is whether the said conclusion arrived at by the Division Bench that the learned Single Judge had concluded thereby on the genuineness of the Will, is the correct understanding of the said findings? Needless to say, that if the answer is in the affirmative, certainly the impugned judgment invites no interference.

12. As relates issue No.1, the finding in the affirmative can only be taken as the finding of the learned Single Judge that the plaintiff had succeeded in proving the due execution and attestation of the Will dated 07.07.1982 of

the deceased Mrs. Maria Francisca Coelho. The finding returned as against issue No.2 in the affirmative could only mean that the plaintiff had succeeded to prove that the deceased was of sound and disposing state of mind and had testamentary capacity at the time of execution of the Will dated 07.07.1982. Needless to say, that once the same is answered in the affirmative, the answer to issue No.2(a) could only be in the negative and hence it was answered in the negative.

13. Issue No.3 was answered in the negative. Certainly, it would mean that the defendants could not prove that the signatures of the deceased on the Will dated 07.07.1982 was forged, as alleged. Issue No.4 was also answered in the negative by the learned Single Judge, meaning thereby that it was held that the defendants could not prove that the Will dated 07.07.1982 was executed by the deceased under undue influence, coercion, threats and fraud was played on the deceased by the plaintiffs, as alleged. What is the impact of the said findings returned by the learned Single Judge in the Testamentary Suit. Certainly, the question is whether it is the conclusion of the learned Single Judge regarding the genuineness of the Will. The real purport and meaning of the word are not seen to be

considered with reference to the findings returned by the learned Single Judge against issue Nos.1 to 4 by the Division Bench. On a careful scanning of the impugned judgment, it is evident that the question whether such findings returned by the learned Single Judge would amount to a finding on the genuineness of the Will in question in the affirmative and thereby taking a further consideration with respect to the question whether the Will is surrounded by suspicious circumstances beyond further scope, were also not seen appropriately considered by the Division Bench. On a perusal of the judgment of the learned Single Judge, what is discernible is that there is conspicuous absence of any specific finding regarding the genuineness of the Will thereunder. It is to be noted that the Division Bench had not held that there is such a specific finding by the learned Single Judge in the Testamentary Suit. Thus, it is evident that it was without making such an endeavour and exercise that the Division Bench held that in view of the finding with respect to the genuineness of the Will, the learned Single Judge could not have proceeded with the consideration whether the Will in question is shrouded with suspicious circumstances.

14. The question in the aforesaid circumstances is that in the absence of a definite finding regarding the genuineness of the Will by the learned Single Judge in the Testamentary Suit whether the Division Bench was justified in holding that the learned Single Judge had made a specific finding regarding the genuineness of the Will without considering the question whether the cumulative effect of the findings returned by the learned Single Judge could be taken as a finding on the genuineness of the Will in question in the affirmative and thereby making a further probe as to whether the Will in question is surrounded by suspicious circumstances beyond further consideration. We are of the considered view that the said approach of the Division Bench cannot be said to be correct. A reasoned judgment of a Single Judge cannot be interfered with without a deep consideration.

15. In that view of the matter, the impugned judgment is set aside and the matter is remanded for fresh consideration by the Division Bench in accordance with law. We make it clear that we have not made any observation touching the merits of the matter and the parties would be at liberty to argue all legal and factual questions emerging from the evidence on record before

the Division Bench. To enable the Division Bench to have such a consideration upon setting aside the impugned judgment, the appeal is restored into its original number. We request the High Court to consider the appeal as expeditiously as possible, preferably within a period of six months from the date of receipt of the copy of this judgment.

16. The Registry is directed to send a copy of this judgment to the High Court of Judicature at Bombay to enable such consideration.

17. The appeal is allowed as above.

......, J.
(C.T. Ravikumar)

......, J.
(Sudhanshu Dhulia)

New Delhi;
January 02, 2025.