

Regular Civil Appeal No.	27 of 2018
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Exhibit	17	
Filed on	22/02/2016	
Registered on	19/03/2018	
Decided on	06/07/2026	
Duration	Y 02 M 04 D 14	

**IN THE COURT OF THE PRINCIPAL DISTRICT
JUDGE, AT : JAMNAGAR.**

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Appellant/Original Plaintiff :-

1. Pravinchandra Manishankar Joshi,
Age : 67 years, Occupation : Service,
Resident of Patangiya Fali,
Behind Mandvi Tower, Jamnagar.

V E R S U S

Respondents/ Defendants :-

Legal Heirs of deceased Manjulaben D/o. Manishankar Joshi,

W/o. Chandrasinh Chatrabhuj Joshi

- 1.1 Jasmin W/o. Snehal Harendra Trivedi,
Age : 39 years, Occupation : Homemaker,
Resident of Satyam / society,
Vyayamshala Road,
Behind Rajmahal Bungalow,
Anand.
- 1.2 Sonal @ Mona Chandrasinh Joshi,
Age : 32 years, Occupation : Homemaker,

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C/o. Chandrasinh Chatrabhuj Joshi,
A-B/39, Bhanushalinagar,
Behind Jube lee Ground,
Bhuj- Kachchh.

1.3 Nirav Chandrasinh Joshi,
Age : 28 years, Occupation : Service,
C/o. Euro Multivision Limited,
Survey No.508/509,
Bhachau- Dudhai Road,
Bhachau, Kachchh.

1.4. Chandrasinh Chatrabhuj Joshi,
Age : 70, Occupation : Retired,
Resident of B/39, Bhanushalinagar,
Behind Jube lee Ground,
Bhuj- Kachchh.

2. Suresh Manishankar Joshi,
Age : 55, Occupation : Service,
Resident of Patangiya Fali,
Behind Mandvi Tower, Jamnagar.

Subject : - Appeal Under Section 96 read with Order XLI of the Code of Civil Procedure to set aside judgment and decree passed in Regular Civil Suit No.356 of 2010 on 13/01/2016 passed by the Court of 6th Additional Senior Civil Judge, Jamnagar by which suit of the plaintiffs was dismissed.

Appearance:-

Mr.H.I.Bhatt, Learned Advocate for the Appellant.

Mr.S.P.Gosai, Learned Advocate for the Respondent No.2.

None for Respondent No.1/1 to 1/4

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:-: J U D G M E N T :-:

1. Present Regular Civil Appeal has been preferred by appellant under Section 96 read with order XLI of Code of Civil Procedure, 1908 being aggrieved and dissatisfied by the judgment and decree dated 13/01/2016 passed by the Court of 6th Additional Senior Civil Judge, Jamnagar in Regular Civil Suit No.356 of 2010 by which suit of the plaintiffs for letter of Administration in respect of Will of deceased Lilavantiben Naranji (W/o. Manishankar Ranchhod) was rejected.

2. For the sake of brevity and convenience, the parties are hereinafter referred by their original nomenclature. i.e. appellant shall be referred as “plaintiff” and respondents shall be referred as “defendants”. Brief facts of the plaintiffs’ suit are as under ;

3. The Plaintiff had previously filed an application, registered as C.M.A. No. 108 of 2008, seeking letter of administration in respect of the Will executed by the deceased, Lilavantiben Naranji, wife of Manishanker Ranchhod. However, Defendant No.2 contested the said application by filing objections against the Will. Consequently, said C.M.A. be tried as a Regular Civil Suit bearing No. 356 of 2010.

It is further say of the plaintiff that the deceased, Lilavantiben Naranji, wife of Manishanker Ranchhod, duly executed her last Will and testament in the presence of attesting witnesses in favour of the plaintiff herein. The testator subsequently passed away on 06/02/2002 at Jamnagar. The assets of the deceased estate are valued at approximately Rs.1,50,000/- , which are described in the Schedule annexed. Defendant Nos. 1-A to 1-C are the daughters and son of Manjulaben, the predeceased daughter of the deceased testator, Lilavantiben Naranji. Save and except the individuals mentioned herein, there are no other surviving legal heirs of the deceased. The plaintiff came to know about the existence of the said Will only in the month of May 2008, upon receiving an intimation from the concerned advocate's office. In light of the aforesaid facts and circumstances, plaintiff has filed the suit for grant of Letters of Administration.

4. In response to the plaint, Defendant Nos. 1-A, 1-C, and 1-D appeared and filed their reply, stating that they have no objection to the grant of the Letters of Administration as prayed for by the plaintiff. Furthermore, despite being duly served with notice, Defendant No. 1-B has chosen to remain absent, and no written statement has been filed on her behalf in the records of these proceedings.

Defendant No. 2 filed an objection contending that the plaintiff's application is neither tenable in law nor *bonafide*, and that the plaintiff has no cause of action to institute the present suit. It is further submitted that the suit is not maintainable as the

plaintiff has failed to comply with the mandatory provisions of the Indian Succession Act. The Defendant further objects on the grounds that the deceased, Lilavantiben, did not execute any Will in the presence of witnesses in favour of the plaintiff. It is submitted that the deceased possessed various movable and immovable properties, including a bank balance of Rs. 5 Lakhs, and that the plaintiff has intentionally undervalued the suit properties. Furthermore, it is contended that the properties described in the Schedule are ancestral in nature; hence, the deceased, Lilavantiben, had no right, title, or interest to execute a Will in respect of the same. The Defendant asserts that the signature on the alleged Will is not that of the deceased, Lilavantiben, and that the document is fabricated, having not been executed of her own free will and volition. Additionally, the Defendant points out that the plaintiff, in an application before the City Survey Office to mutate his name in the records for Survey No.229, falsely declared that Manjulaben was alive, despite her demise on 14/08/2002. The plaintiff has thereby filed a false affidavit before the City Survey Office. The Defendant also objects to the present application on the grounds that the plaintiff has suppressed and failed to disclose the cash amounts and ornaments left by the deceased. Lastly, it is submitted that the deceased was not in a sound state of mind and body at the alleged time of the execution of the Will.

5. That Trial Court framed following issues and gave findings thereon as mentioned below vide Exh.27.

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Sr.No.	<u>ISSUES</u>	<u>FINDINGS</u>
1	Whether the plaintiff proves that Lilavantiben Naranji (W/O. Manishanker Ranchod) has executed registered Will of the suit properties in his favour ?	In Negative
2	Whether the plaintiff proves that he is the sole owner of the suit properties as per the Will dated 06/02/2002 executed by the deceased ?	In Negative
3	Whether the plaintiff proves that Will is executed without “undue influence”, “free consent” and “free will” of the deceased ?	In Negative
4	Whether the plaintiff proves that the suit properties are the self acquired properties of the testator ?	In Affirmative
5	Whether the plaintiff is entitled to get relief as prayed for ?	In Negative
6	What order and decree ?	As per final order

6. Plaintiffs in support of their case have examined following witnesses and relied upon the following documentary evidences.

6(A) :-: ORAL EVIDENCE :-:

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Sr. No.	Name of Witness	Exhibit
1	Affidavit of chief-examination of plaintiff Pravinchandra Manishanker Joshi	41
2	Affidavit of chief-examination of PW-2 Jayantbhai Mavjibhai Parmar	50
3	Affidavit of chief-examination of PW-3 Ashokbhai Suryakantbhai Gandhi	53

6(B) :- DOCUMENTARY EVIDENCE :-

Sr. No.	Document	Exh.
1	Public Notice published in daily newspaper “ Aajkal”, dated 08/10/2008	6
2	Gift-deed in respect of property bearing City Survey No.C/6/229	43
3	Sale-deed in respect of property bearing City Survey No.C/6/263	44
4	Relinquished- deed (Fargati-deed) by defendant No.2 in respect of properties bearing Survey Nos..C/6/229 & C/6/263.	45
5	Original Registered Will	56

7. Defendant No.2 has not adduced oral or documentary evidence before the trial Court.

8. Being aggrieved and dissatisfied by the impugned judgment and decree, original plaintiff has preferred present appeal on the various grounds set out in the memo of appeal.

9. The notice was issued and served upon respondents and respondent Nos.1/1 to 1/4 neither appeared nor contested the appeal in any manner. Whereas respondent No.2 appeared through his learned advocate Mr.S.P.Gosai.

10. The learned advocate for the appellant submitted that the Trial Court erred in passing the impugned judgment and decree, which is illegal, invalid, and contrary to the law, evidence on record, and the underlying proceedings. It was contended that the Trial Court drew improper inferences and failed to appreciate the contents of the Will in its true perspective, in accordance with Section 63, 68 and 71 of the Indian Evidence Act. The Trial Court ought to have held that the appellant herein is the rightful beneficiary of the Will. Furthermore, the Trial Court erred in not passing decree in favour of the appellant, though witness Jayantbhai had deposed in favour of plaintiff at Exh.50.

It is further submitted that, pursuant to the provisions of the Indian Succession Act, 1925, governing the attestation of a Will, the examination of a single attesting witness is sufficient to prove its contents, and the examination of a second witness is not mandatory. The Will in question is a registered document. The learned Advocate, Mr. Ashok Gandhi, examined at Exhibit 53, has duly proved the registration of the Will and has conclusively

identified the signatures of both attesting witnesses, including that of witness Jayant Parmar.

It is further submitted that the Trial Court observed suspicious circumstances surrounding the execution of the Will without any justification or factual basis. Consequently, the findings of the Trial Court are erroneous and warrant interference by this Court.

It is further submitted that the testator was in sound disposing capacity of mind, that the no suspicious circumstance has been proved on record, that there is no evidence not to believe the Will/testament in question, that there is no pleading or proof on the part of party challenging the Will as regards its being false or fabricated one, that this is how, the impugned judgment and decree is passed and drawn without application of mind by Trial Court, that the learned Trial Court has not properly appreciated oral evidence on the record and proceedings of the suit, and consequently, the impugned judgment and decree is required to be quashed and set-aside by allowing present appeal.

11. Learned advocate for the respondent No.2 has submitted written submission vide Exh.16. Crux of the argument is that the Plaintiff has failed to prove before the trial court that the Will in question was executed by the deceased. Consequently, the trial court dismissed the suit, against which the present appeal has been preferred. The primary point of contention in this suit is "whether the Will of Lilavatiben Narayan, dated 21/12/1999, has been legally proven or not." The said Will has been produced and

marked as Exhibit-53, which reflects that (1) J. M. Parmar, (2) Hasmukh Chauhan, and (3) A. S. Gandhi signed the document as attesting witnesses, and that the Will was subsequently registered on 27/12/1999.

It is further submitted that to prove the Will, the plaintiff has to prove the following things ;

- (i) Must prove the genuine signature of the person making the Will (the testator).
- (ii) Must prove that the person making the Will was in a sound state of mind at the time of making it.
- (iii) Must prove that the witnesses have signed the Will.
- (iv) Must prove that the person making the Will signed it in the presence of the witnesses, or must provide an admission from the person making the Will that they signed it in the presence of the witnesses.
- (v) There should be no suspicious circumstances surrounding the Will.

Taking into account the mandate of Section 63 of the Indian Succession Act, 1925, read with Sections 68 and 71 of the Indian Evidence Act, 1872, the Plaintiff has failed to prove the execution of the alleged Will. It is a settled principle of law that the signature of the testator must be strictly proven. In the present case, the Plaintiff, Pravinchandra Manishankar Joshi, has filed his examination-in-chief by way of an affidavit vide Exh.41, wherein he has failed to depose that the signature appearing on

the Will is that of the deceased, Lilavantiben. Furthermore, during his cross-examination, the Plaintiff specifically admitted that he possesses no information regarding the execution of the Will, and that his late mother had never handed over the original Will to him. Consequently, the record is entirely devoid of any evidence to establish how the Plaintiff came into possession of the Will, the timeline of its execution, or the identity of its signatories. Thus, the Plaintiff has failed to discharge the burden of proving the Will in accordance with the law.

It is further submitted that the burden of proof lies upon the plaintiff to establish that the testator was of sound mind and disposing memory at the time of executing the Will. In the present case, since the plaintiff was not personally present at the time of execution, the assertion that the Will was executed in a sound state of mind remains unproven.

Consequently, the attesting witnesses to the alleged Will have failed to admit the execution of their respective signatures thereon. A bare perusal of the original Will reveals that the purported signatures of the witnesses do not appear to be genuine signatures, rather, the names of all three individuals seem to have been written by the same hand using the same pen.

It is further submitted that a mandatory legal requirement for proving a Will is to establish that the Testator executed the document in the presence of the attesting witnesses. However, in the present case, none of the witnesses examined have deposed

that the Testator signed the Will in their presence. Consequently, the due execution of the Will remains unproven.

It is further submitted that the mere registration of a Will does not create a presumption of its valid execution. The propounder must strictly prove that the signatures of both the Testator and the attesting witnesses were duly executed in accordance with law, a burden that the plaintiff has failed to discharge in the present case.

In last, it is submitted that Judgment & decree of Trial Court is in accordance with provisions of law and considering oral and documentary evidence produced by both the parties, Trial Court has not committed any error in allowing suit of the plaintiff and hence prayed to dismiss the impugned appeal with costs.

12. Having, gone through the pleading of appellant, grounds of appeal and submission advanced on behalf of appellants as well as respondents, following points emerges for the consideration.

Sr.No.	P O I N T S
1	Whether appellant herein proves that Will in question lawfully and validly executed and attested ?
2	Whether the appellants prove that the impugned Judgment and decree passed in Regular Civil Suit No.356 of 2010 by the Court of 6 th Additional Senior Civil Judge, Jamnagar on 13/01/2016 is bad in law and against the provisions of law and requires to be quashed & set

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	aside ?
3	What order ?

13. My findings on the above points are as under for the following reasons:-

Sr.No.	P O I N T S
1	In the Negative.
2	In the Negative.
3	As per final order.

∴∴ R E A S O N S ∴∴

POINT NOS.1 to 3 :-

14. I have considered the submissions made on behalf of the appellant as well as respondents and also carefully scrutinized the records and proceedings of the Trial Court.

15. To substantiate its case, original plaintiff has examined himself as well as also examined witnesses. The plaintiff has relied upon certain documents. The reference of those documents would be taken at the relevant time of discussion.

16. In light of the facts and issues framed, the burden of proof rests upon the plaintiff to establish that the late Lilavantiben Naranji (W/O. Manishanker Ranchod) has executed registered Will of the suit properties in favour of him and he is become

sole owner of the suit properties as per the Will dated 06/02/2002 and said Will is executed without “undue influence”, “free consent” and “free will” of the deceased ?

17. The Plaintiff, Pravinchandra Manishankar Joshi, filed his examination-in-chief by way of affidavit at Exh.41, wherein he reiterated the facts averred in the plaint. He further deposed that the City Survey property bearing No. C/6/229 devolved upon him, his mother, and his brother by virtue of a Gift Deed dated 11/09/1963. Additionally, he stated that the property bearing Survey No. C/6/263 was jointly purchased by him alongside his mother and brother. He further deposed that the late Lilavantiben, being in a sound and disposing state of mind and free from any undue influence, executed and registered the said Will in his favour in the presence of attesting witnesses.

Plaintiff has stated following things in his cross-examination ;

- I. It is true that he has no personal knowledge regarding the Will, as his mother did not handover the said Will to him during her lifetime.
- II. Following the demise of his mother, he received a postcard from Advocate Ashokbhai, who subsequently handed over the Will to him.
- III. At the time of her demise, his mother was approximately 86 to 88 years of age.

IV. His mother was literate and having the ability to read and write.

V. He has preferred an application before the City Survey Office to mutate his name in the record of rights concerning the suit property.

VI. The house in which they reside was acquired by way of a gift, whereas the rented property was purchased by his mother.

18. Plaintiff has produced documentary evidence in the shape of Gift-deed in respect of property bearing City Survey No.C/6/229 at Exh.43, from which it appears that said property was gifted to late Lilawantiben, minor Pravinchandra and minor Sureshchandra by way of registered Gift-deed executed on 11/09/1963. Sale-deed in respect of property bearing City Survey No.C/6/263 is produced vide Exh.44, from which it appears that said property was jointly purchased by Lilawantiben, Pravinchandra and Sureshchandra by way of registered sale-deed on 25/07/1973.

Relinquished- deed was executed by plaintiff and defendant No.2 in respect of properties bearing Survey Nos..C/6/229 & C/6/263 vide Exh.45 in favour of late Lilawantiben and said deed was executed on 20/12/1991. Original Registered Will at Exh.56, from which it appears that Will was executed by late Lilawantiben.

19. Thereafter, the plaintiff examined an attesting witness, namely Jayantbhai Mavjibhai Parmar, who deposed at Exh. 50.

The witness stated that he had been practicing as an advocate at the District Court, Jamnagar, since 1995, and was practicing with his senior advocate Mr. Ashokbhai Gandhi in the year 1996. He stated that he did not recollect affixing his signature to any document, nor did he recall the event of execution of a Will by the late Lilawantiben Naranjibhai, wherein it appears that he stood as an attesting witness. He further stated that he might be able to identify his signature if the document is shown to him.

Upon being shown the Will marked Mark 32/1 (Exh. 56), the said witness stated that the signature on page three (3) of the said Will might be his. He does not know the other attesting witness, Hasmukh Chauhan. Furthermore, he has no knowledge as to who went to register the Will at the office of the Sub-Registrar, for registration of Will, nor does he know who drafted or typed the document. Finally, he is unable to state whether the late Lilawantiben executed the Will by affixing her signature, in his presence.

He identified the signature of his senior advocate, Mr. Ashok Gandhi, on page four of the Will, but has no personal knowledge regarding the execution of the document itself.

20. Thereafter, the Plaintiff examined Advocate Mr. Ashok Suryakant Gandhi as Exh. 53. The witness deposed that he has been a practicing advocate at the District Court, Jamnagar, since 1994. Upon being shown the Will marked as Mark 32/1 (Exh. 56), he testified that he had drafted the said Will in accordance with the instructions of the late Lilawantiben, and that the same

was subsequently registered before the Sub-Registrar. He further stated that the testatrix affixed her signature to the Will in his presence as well as in the presence of the Sub-Registrar. The witness identified his own signature as the identifier of signatures on page 4 of the Will. Regarding page No.3 of the Will, he clarified that it contains three signatures, the first belongs to his junior, Advocate Mr. Jayant Parmar, the second belongs to Hasmukhbhai Chauhan, and the third signature reads "A.S. Gandhi," which he expressly clarified that it was not his signature. He reiterated that the Will was prepared by him strictly as per the wishes and volition of the late Lilawantiben, following which it was duly registered before the Sub-Registrar. Lastly, the witness stated that he had no knowledge as to who subsequently collected the registered Will.

In cross-examination, witness has stated as follows ;

- A. It is true that in the year 1994, he was working as a junior to advocate Mr. N.P. Sarviya.
- B. At present, he could not recall whether the executant came alone for the preparation of the Will, or if someone had accompanied her.
- C. At present, he could not recall whether the executant gave instructions to him or to his senior, Mr. N.P. Sarviya, regarding the preparation of the Will.
- D. He prepared the draft of the Will.

E. Prior to drafting the Will, he verified the ownership documents of the executant.

F. He could not recall as to who typed the Will.

G. It is true that after the Will was typed, it was brought to him for registration before the Sub-Registrar.

21. It is required to note that according to the contentions raised in the plaint, the executrix Lilavantiben Naranji, passed away on 06.02.2002, having executed a Will in favour of the plaintiff. The plaintiff is the sole legatee named in the said Will. The plaintiff reiterated these facts in his examination-in-chief at Exh.41. Furthermore, during his cross-examination, the plaintiff stated that he had received the said Will from Advocate Ashokbhai.

On the other side, defendant No.2 has contested the contention of the plaintiff by stating that it is a settled principle of law that when a plaintiff approaches the Court asserting that the testator executed a Will in his favour regarding the suit properties, the primary burden of proof rests on the plaintiff. The plaintiff must prove his case on its own merits, rather than relying on the weaknesses of the defense. Regarding the proof of a Will, the law demands a higher standard of proof and stricter scrutiny compared to ordinary documents. Since the plaintiff has approached this Court seeking a Letter of Administration, it remains his paramount duty to independently establish the due execution and validity of the Will.

At this juncture, it is required to be referred the judgment in case of **Nirmal Kumar Saha & Anr vs Dipankar Saha & Ors., reported in 2018 SSC Online Cal 6417, wherein Hon'ble Calcutta High Court has observed as follows ;**

“(37) Learned Counsel for the defendants referred to the Apex Court's decision in the case of K.Laxmanan-vs.-Thekkayil Padmini (supra). In that case the Apex Court observed that the onus of proving the Will is on the propounder. The propounder has to prove the legality of the execution and genuineness of the Will by proving absence of suspicious circumstances surrounding the Will and also by proving the testamentary capacity and the signature of the testator. When there are suspicious circumstances regarding the execution of the Will, the onus is on the propounder to explain them to the satisfaction of the Court and only when such responsibility is discharged, the Court would accept the Will as genuine. Even where there are no such pleas, but circumstances give rise to doubt, it is for the propounder to satisfy the conscience of the Court. Suspicious circumstances arise due to several reasons such as with regard to the genuineness of the signature of the testator, the condition of the testator's mind, the dispositions made in the Will being unnatural, improbable or unfair in the light of the relevant circumstances or there might be other indications in the Will to show that the testator's mind was not free. In such a case, the Court would expect that all legitimate suspicion should be completely removed before the document in question is accepted as the last Will of the testator.

(39) In Benga Behara-vs.-Braja Kishore Nanda, (2007) 9 SCC 728, the Apex Court observed that while granting probate the court must satisfy itself not only about the genuineness of the Will but also satisfy itself that it is not fraught with any suspicious circumstances. Existence of suspicious circumstances itself might be held to be sufficient to arrive at a conclusion that execution of the Will has not been duly proved.”

22. It is required to note that the Plaintiff examined the attesting witness of the Will (Exh.56), Jayantbhai Parmar. In his deposition, the witness denied his own signature and stated that he did not know the testator, Lilavantiben Naranji. Furthermore, he denied his signature on the Will (Exh.56) and denied the signature of the other attesting witness, Hasmukhbhai Chauhan.

He only identified the signature of his senior, Ashokbhai Gandhi, on page No.4 of the Will (Exh.56).

Evaluating the testimony of this witness in light of Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act, it is evident that the attesting witness has denied his signature and lacks any knowledge regarding the execution of the Will. Furthermore, it is undisputed that the Plaintiff failed to examine the second attesting witness, Hasmukhbhai Chauhan, before the Court. Although the Court issued a summons to Hasmukhbhai Chauhan, which was duly served upon him, he failed to appear. Subsequently, the Plaintiff filed a pursis at Exh.57 to close his evidence, explicitly stating therein that he could not trace the second attesting witness, Hasmukhbhai Chauhan, and would not be examining him. Consequently, the Plaintiff has examined only one attesting witness, Jayantbhai Parmar, who possesses no knowledge regarding the execution of the Will (Exhibit 56). Appreciating this deposition under Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act reveals a critical failure in proving the attestation of Will. As per the provisions of Section 63 of the Indian Succession Act, to validly execute a Will, the testator must sign or affix his mark to it in presence of witness.

23. At this juncture, it is required to refer the provision of Section 63 of the of the Indian Succession Act and Sections 68 and 71 of the Indian Evidence Act as follows ;

INDIAN SUCCESSION ACT :-

SECTION 63- Execution of unprivileged Will :- “ *Every testator, not being a soldier employed in an expedition or engaged in actual warfare, [or an airman so employed or engaged,] or a mariner at sea, shall execute his will according to the following rules:-*

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

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.

(c) The will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.”

INDIAN EVIDENCE ACT :-

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

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specially denied. ”

SECTION 71- Proof when attesting witness denies the execution :- “ *If the attesting witness denies or does not recollect the execution of the document its execution may be proved by other evidence. ”*

24. It is required to note that Section 63 of the Indian Succession Act mandates the solemnities required for the valid execution of an unprivileged Will. The statutory provisions are inflexible, and strict adherence is a condition precedent for

admitting a Will to probate. Two or more witnesses must attest the Will and witnesses must sign in the presence of the testator.

It is pertinent to note that the propounder bears the onus to prove due execution under Section 63 of the Indian Succession Act. This must be read alongside Section 68 of the Indian Evidence Act, 1872. At least one attesting witness must be examined to prove execution. It is not legally required for both attesting witnesses to sign simultaneously. However, each must see the testator sign, or receive a personal acknowledgment of the signature from the testator. If the Will is surrounded by suspicious circumstances, the propounder must offer a cogent, satisfactory explanation to remove all legitimate doubts before the court can grant probate.

25. In the present case, none of the witnesses have stated that the executrix, Lilawantiben, affixed her signature in their presence. Furthermore, attesting witness Jayantbhai Parmar at Exh.50 and he specifically denied identifying his signature on the Will and further denied being present when the executrix, Lilawantiben, affixed her signature to the Will. Moreover, the witness-advocate, Mr. Ashok Gandhi, also denied his signature on relevant part of the Will, propounding context of Will.

On perusal of the Will marked as Exhibit 56, it appears that on page No.3, after the signature of the executrix, Lilawantiben, the names of three individuals are inscribed in the vernacular language, specifically “ જી.એમ.પરમાર, હસમુખ ચૌહાન એ.એસ. ગાંધી ” (J.M.Parmar, Hasmukh Chauhan, A.S.Gandhi).

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Mr.J.M.Parmar and A.S.Gandhi have denied that they signed as witnesses, and Hasmukh Chauhan has not been examined. Though Mr.Gandhi stated that not on page No.3, but on page No.4, he has put his signature as person who identified signatures.

26. It is required to note that the pivotal question for determination is whether the last Will and Testament dated 27/12/1996 executed by the Testator, has been duly proved in accordance with Section 63(c) of the Indian Succession Act, 1925, read with Section 68 of the Indian Evidence Act, 1872, despite the hostile testimony of Attesting Witness No.1 (PW-2), who has categorically denied his signature on the execution draft.

At this juncture, it is required to refer the case law of **Lalitaben Jayantilal Popat vs Pragnaben Jamnadas Kataria & Ors, reported in (2008) 15 Supreme Court Cases-365**, wherein Hon'ble Apex Court has observed as under ;

"22. The question which, thus, arises for consideration is as to whether execution of the Will has been proved. In our opinion, it has not been. The requirements for proving a Will have been laid down in a large number of decisions. We would, however, refer to only a few of them.

23. In Janki Narayan Bhoir (supra), while dealing with the question elaborately, this Court held :

"8. To say will has been duly executed the requirement mentioned in Clauses (a), (b) and (c) of Section 63 of the Succession Act are to be complied with i.e., (a) the testator has to sign or affix his mark to the will, or it has got to be signed by some other person in his presence and by his direction; (b) that the signature or mark of the testator, or the signature of the person signing at his direction, has to appear at a place from which it could appear that by that mark or signature the document is intended to have effect as a will; (c) the most important point with which we are presently concerned in this appeal, is that the will has to be attested by two or more witnesses and each of these witnesses must have seen the testator sign or affix his mark to the Will, or must have seen some other person sign

the Will in the presence and by the direction of the testator, or must have received from the testator a personal acknowledgement of signature or mark, or of the signature of such other person, and each of the witnesses has to sign the Will in the presence of the testator.

9. It is thus clear that one of the requirements of due execution of will is its attestation by two or more witnesses which is mandatory.

10. Section 68 of the Evidence Act speaks of as to now a document required by law to be attested can be proved. According to the said Section, a document required by law to be attested shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving an evidence. It flows from this Section that if there be an attesting witness alive capable of giving evidence and subject to the process of the Court, has to be necessarily examined before the document required by law to be attested can be used in an evidence. On a combined reading of Section 63 of the Succession Act with Section 68 of the Evidence Act, it appears that a person propounding the will has got to prove that the will was duly and validly executed. That cannot be done by simply proving that the signature on the will was that of the testator but must also prove that attestations were also made properly as required by Clause (c) of Section 63 of the Succession Act. It is true that Section 68 of Evidence Act does not say that both or all the attesting witnesses must be examined. But at least one attesting witness has to be called for proving due execution of the Will as envisaged in Section 63. Although Section 63 of the Succession Act requires that a will has to be attested at least by two witnesses, Section 68 of the Evidence Act provides that a document, which is required by law to be attested, shall not be used as evidence until one attesting witness at least has been examined for the purpose of proving its due execution if such witness is alive and capable of giving evidence and subject to the process of the Court. In a way, Section 68 gives a concession to those who want to prove and establish a will in a Court of law by examining at least one attesting witness even though will has to be attested at least by two witnesses mandatorily under Section 63 of the Succession Act. But what is significant and to be noted is that that one attesting witness examined should be in a position to prove the execution of a will. to put in other words, if one attesting witness can prove execution of the will in terms of Clause (c) of Section 63, viz., attestation by two attesting witnesses in the manner contemplated therein, the examination of other attesting witness can be dispensed with. The one attesting witness examined, in his evidence has to satisfy the attestation of a will by him and the other attesting witness in order to prove there was due execution of the will. If the attesting witness examined besides his attestation does not, in his evidence, satisfy the requirements of attention of the will by other witness also it falls short of attestation of will at least by two witnesses for the simple reason that the execution of the will does not merely mean the signing of it by the testator but it means fulfilling and proof of all the formalities required under Section 63 of the Succession Act. Where one attesting witness examined to prove the

will under Section 68 of the Evidence Act fails to prove the due execution of the will then the other available attesting witness has to be called to supplement his evidence to make it complete in all respects. Where one attesting witness is examined and he fails to prove the attestation of the will by the other witness there will be deficiency in meeting the mandatory requirements of Section 68 of the Evidence Act. (Emphasis supplied)

Following the said decision, as also the other decisions in Benga Behera (Supra), this Court held:

"21. It was also not necessary for the appellants to confront him with his signature in the Xeroxed copy of the Will, inasmuch as the same had not appeared in the certified copy. Execution of a Will must conform to the requirement of Section 63 of the Succession Act, in terms whereof a Will must be attested by two or more witnesses. Execution of a Will, therefore, can only be proved in terms of clause (c) of Section 63 when at least one of the two witnesses proves the attestation. A Will is required to be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will. Section 68 of the Evidence Act provides for the requirements for proof of execution of the Will. In terms of said provision, at least one attesting witness has to be examined to prove execution of a Will.

24. Yet again, recently in Anil Kak v. Kumari Sharada Raje & Ors. [(2008) 6 SCALE 597], it was opined :

"40. 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. 41. As an order granting probate is a judgment in rem, the court must also satisfy its conscience before it passes an order. It may be true that deprivation of a due share by 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. Unlike other documents, even animus attestandi is a necessary ingredient for proving the attestation."

27. When a witness denies his signature or fails to recollect execution, the strict rigor of Section 68 of the Indian Evidence Act is mitigated by Section 71 of the Indian Evidence Act. Section 71 is a permissive and curative provision, enacted to safeguard testaments from witness recalcitrance. It dictates that if the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.

Thereafter, the onus shifts heavily onto the plaintiff to lead secondary evidence to prove the handwriting and signatures of both the Testator and the witness. The aforementioned facts indicate about the suspicious circumstances and the party seeking to obtain Probate of Letters of Administration must adduce evidence to the satisfaction of the Court that Will in question is genuine.

28. As per Section 63 of the Indian Succession Act, Will is required to be mandatorily attested by two or more witnesses, each of whom is required to have seen the testator sign or affix his or her mark on the Will or has seen some other person sign the will, in the presence and by the direction of the testator and each of witnesses is required to sign the Will in the presence of the testator.

At this stage, it is required to refer the judgment in case of **Benga Behera & Anr vs Braja Kishore Nanda & Ors. Reported in (2007) 9 Supreme Court Cases 728**, wherein Hon'ble Apex Court has observed as follows ;

“40. It is now well settled that requirement of the proof of execution of a Will is the same as in case of certain other documents, for example Gift or Mortgage. The law requires that the proof of execution of a Will has to be attested at least by two witnesses. At least one attesting witness has to be examined to prove execution and attestation of the Will. Further, it is to be proved that the executant had signed and/or given his thumb impression in presence of at least two attesting witnesses and the attesting witnesses had put their signatures in presence of the executant.

41. The Court granting Letters of Administration with a copy of the Will annexed, or probate must satisfy itself not only about the genuineness of the Will but also satisfy itself that it is not fraught with any suspicious circumstances.

46. Existence of suspicious circumstances itself may be held to be sufficient to arrive at a conclusion that execution of the Will has not duly been proved.”

It is required to note that the attesting witness, Jayantbhai Mavjibhai Parmar examined at Exh.50, specifically denied his signature on the Will and failed to depose that the testatrix affixed her signature in his presence. Furthermore, he failed to identify the other attesting witness, Hashmukh Chauhan. Additionally, the plaintiff filed a pursis at Exh. 57, stating that although the summons was duly served upon Advocate Hashmukh Chauhan, he was not the actual attesting witness. Mr.Gandhi has stated that executant signed Will in his presence, he could not recollect who was given instruction, whether him or his senior Mr.Saraiya, for preparing the Will.

It is required to note that though one witness can support the Will by giving deposition before the Court, however, the person who propose to prove the Will must prove that at least two witnesses have put their signatures as attesting witnesses. Here, Mr.Gandhi and Mr.Parmar denied putting their signature as attesting witness, this Will is not proved.

29. The learned advocate for the plaintiff/appellant submits that the Will marked as Exh.56 is a registered document, executed before the competent Sub-Registrar. It is contended that

the instrument was drafted exactly in accordance with the true intent, free volition, and testamentary capacity of the late Lilawantiben, thereby establishing its absolute genuineness.

It is further submitted that the late Lilawantiben was in a sound and disposing state of mind at the time of executing the said Will. The contents of Exh. 56 explicitly reflect her distinct wishes, desires, and conscious volition regarding the distribution of her estate. The meticulous nature of the bequeathals within the Will demonstrates that the testatrix was fully aware of the nature and extent of her properties, as well as the identities of the beneficiaries. There is no evidence on record to suggest that any coercion, fraud, or undue influence was exercised upon the late Lilawantiben at the time of its drafting or registration.

It is required to note that it is a well-settled principle of law that the mere registration of a Will does not possess any inherent curative effect to establish its genuineness, validity, or execution. Registration under the Registration Act, 1908, is a solemn contemporaneous act that provides a presumption of due execution. That mere registration of the Will would not be sufficient to prove its validity, as its lawful execution necessarily had to be proved in accordance with Section 68 of the Indian Evidence Act, 1872 as well as Section 63 of the Indian Succession Act, 1925.

At this juncture it is required to refer the case of **Derek A C Lobo vs Ulric M A Lobo(Dead) By Legal Representatives,**

reported in (2024) Supreme Court Cases -202, wherein Hon'ble Apex Court has observed as follow ;

“12. 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.)1” 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 2023 SCC Online SC 1488 ultimately held that mere registration of a Will would not attach to it a stamp of validity and it must still be proved in terms of the legal mandates under the said provisions of Section 63 of the Succession Act and Section 68 of the Evidence Act.

.....

19. Now, we will refer to the cited suspicious circumstances. In the light of the decision in Gurdial Kaur & Ors. v. Kartar Kaur & Ors. there can be no doubt with respect to the position that when suspicious circumstances exist about the valid execution of a Will, it is the duty of the person seeking declaration about the validity of the Will to dispel such suspicious circumstances.

20. In this context, we think it not inappropriate to refer to a decision of the High Court of Madhya Pradesh, in Nathia Bai and Ors. v. Gangaram and Ors., with which we agree, rendered relying on the decisions of this Court in Meenakshiammal (1998) 4 SCC 384 (2010) 1 MPLJ 140 (Dead) through Lrs. And others v. Chandrasekharan and Another and in P.P.K. Gopalan Nambiar v. P.P.K. Balakrishnan Nambiar, that a party challenging the execution of a Will as suspicious must plead the suspicious circumstances and then only the propounder would legally be bound to remove these suspicious circumstances.

21. In Nathia Bai's case it was held thus:-

“11. The Will is required to be proved just like any other document by adducing the additional evidence to prove the ingredients as envisaged under Section 63(c) of the Succession Act by examining the attesting witness according to Section 68 of the Evidence Act. It is also well settled that the propounder of the Will is required to prove the Will by removing all suspicious circumstances. Thus, if suspicious circumstances would have been pleaded by the defendants, then only the plaintiffs, who are the propounder of the Will, were legally bound to remove those suspicious circumstances. The contestant opposing the Will, according to me, was required to bring the material on record so that the Will can be said to be a suspicious document and in that event the onus would shift back on the propounder of the Will to satisfy the Court by adducing positive evidence that the Will is not suspicious. (Emphasis supplied)

22. In the decision in *Meenakshiammal's case (supra)*, it was held in paragraphs 19 and 20 thus:-

"19. In the case of Chinmoyee Saha v. Debendra Lal Saha it has been held that if the propounder takes a prominent part in the execution of the will, which confers a substantial benefit on him, the propounder is required to remove the doubts by clear and satisfactory evidence. Once the propounder proves that the will was signed by the testator, that he was at the relevant time in a sound disposing state of mind, that he understood the nature and effect of the disposition and put his signature out of his own free will, and that he signed it in presence of the witnesses who attested it in his presence, the onus, which rests on the propounder, is discharged and when allegation of undue influence, fraud or coercion is made by the caveator, the onus is on the caveator to prove the same.

20. In the case of Ryali Kameswara Rao v. Bendapudi Suryaprakasarao this Court while discussing the provisions of Section 63 of the Succession Act, 1925, has held that the suspicion alleged must be one inherent in the transaction itself and not the doubt that may arise from conflict of testimony which becomes apparent on an investigation of the transaction. That suspicious circumstances cannot be defined precisely. They cannot be enumerated exhaustively. They must depend upon the facts of each case. When a question arises as to whether a will is genuine or forged, normally the fact that nothing can be said against the reasonable nature of its provisions will be a strong and material element in favour of the probabilities of the will. Whether a will has been executed by the testator in a sound AIR 1962 AP 178 and disposing state of mind is purely a question of fact, which will have to be decided in each case on the circumstances disclosed and the nature and quality of the evidence adduced. When the will is alleged to have been executed under undue influence, the onus of proving undue influence is upon the person making such allegation and mere presence of motive and opportunity are not enough. (Emphasis supplied)

.....

25. In the light of the aforesaid decisions, it can be safely said that once the burden to prove is discharged by the propounder in terms of Section 63 of the Succession Act and Section 68 of the Evidence Act, and by adducing prima facie evidence proving the competence of the testator, the onus is on the contestant opposing to show prima facie the existence of suspicious circumstances so as to shift the onus on the propounder to dispel them. Without knowing the circumstances, which according to the contestant opposing are suspicious, how will the propounder be able to dispel them and to convince the court about its genuineness and validity. We are saying that the contestant opposing the Will has to raise surrounding suspicious circumstances specifically and not vaguely or in a general manner. A case of well-founded suspicion has to exist to cause shifting of onus back to the propounder once he discharged his burden to prove the execution of the Will. We may hasten to add that we shall not be understood to have held

that failure of the party/parties to plead suspicious circumstances would automatically make the court to take a Will as validly proved even where the circumstance(s) raising doubt is inherent in the document. Certainly, in such circumstances the propounder has to convince the court and dispel such suspicious circumstances.”

Thus, as per above authority, merely registration of Will would not amount to proof of it, and document would still be required to be proved by Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act. And when it is pleaded by the defendant and Will is doubted on basis of any suspicious circumstances, then, plaintiff will be legally bound to remove suspiciousness. Herein this case, defendant has in written statement raised doubt over execution of Will. It is not disputed that mother was old-aged, but it has not been brought on record by defendant that mother was mentally not fit to execute the Will. However, it is required to note as per ratio of above authority, suspicious circumstances can not be enumerated exhaustively. Because, even, if any contesting party has not pleaded regarding suspicious circumstances, then also the Court will not be bound to automatically accept the Will as validly proved when the circumstances raising doubt over Will is there.

30. Under these circumstances, contention raised by the plaintiff/appellant the trial Court has drawn improper inferences and failed to appreciate the contents of the Will in its true perspective is not tenable. Under the provisions of the Indian Succession Act, 1925, governing the attestation of a Will, the examination of a single attesting witness is sufficient to prove its contents, nowhere, the signatures of two witnesses is required to proved.

As discussed above, attesting witness has no personal knowledge about the execution of Will by testatrix or signature affixing by her or even drafter has refused his signature on the Will at page No.3 and that he did not know who gave instructions regarding contents of Will. Therefore, contentions raised by the appellant herein is not tenable.

31. In view of the aforementioned discussions, and having regard to the facts and circumstances of the case, the reasoning of the trial court appears well-founded. The trial court correctly held that the attested witness has not identified his signature and the drafter of the Will has only identified the testatrix before the Registrar and he has also not prove the content of the Will. So, plaintiff has not proved his case with cogent and reliable evidence. The aforesaid findings accord with the governing law and fall squarely within its legal parameters; as such, they warrant no interference by this Court. Consequently, Point No. 1 is answered accordingly, and in respect of Point No. 2, the following final order is passed ;

FINAL -- ORDER

1. The present Regular Civil Appeal is hereby **dismissed**.
2. The impugned judgment and decree dated 13/01/2016 passed by the Court of 6th Additional Senior Civil Judge, Jamnagar in Regular Civil Suit No.356 of 2010 is hereby **confirmed**.
3. Both the party shall bear their own costs.
4. Decree to be drawn up accordingly.

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5. The Record and proceedings of the Regular Civil Suit No.356 of 2010 be sent back to the Trial Court along with one true copy of judgment and decree.

This order is pronounced and signed in the open Court on this 06th day of July-2026 under my hand and seal.

Date: -06/07/2026
Place: - Jamnagar.
A J RAVAL/PS

(Nehalkumar Rajeshbhai Joshi)
Principal District Judge, Jamnagar
Code No.: GJ01318