



FAMILY LAW

Burden of Proof in Question: Gujarat High Court Invalidates Probate in Suspicious Will Case

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Introduction

The Gujarat High Court, in *Harishchandra R. Pednekar v. Bhaskar R. Pednekar*¹, has delivered a nuanced ruling reinforcing that the validity of a Will extends beyond mere procedural compliance. In testamentary matters, where the testator is no longer available to clarify intent, courts are required to subject the document to heightened scrutiny particularly when surrounding circumstances raise legitimate suspicion. The judgment reiterates that the burden on the propounder is not discharged by proving execution alone, but by satisfactorily dispelling all doubts that may cloud the genuineness of the Will.

Background

The dispute emanates from a family arrangement between two brothers concerning the estate of their deceased father, Shri Ramchandra, who passed away on 26 July 1981. The plaintiff asserted that shortly prior to his demise, the deceased had executed a Will dated 18 July 1981, bequeathing a residential property situated at Arvindnagar, Ahmedabad, exclusively in his favour. Relying on the said testamentary instrument, the plaintiff initiated probate proceedings to secure formal recognition of his rights over the property.

The defendant, being the other son, contested the proceedings in entirety, denying execution of any such Will and alleging that the document was fabricated with an intent to usurp the property. It was further contended that the deceased, at the relevant time, was suffering from advanced cancer affecting his jaw and tongue, thereby casting serious doubt on his testamentary capacity. The defendant also relied on his status as nominee in the housing society records and asserted possession and financial contribution towards the property, disputing the plaintiff's claim of exclusive entitlement.

Owing to the contentious nature of the dispute, the probate proceedings were treated as a regular civil suit, culminating in a judgment of the trial court granting probate in favour of the plaintiff. Aggrieved by such determination, the defendant preferred an appeal before the Gujarat High Court, challenging both the procedural approach and the substantive findings of the trial court.

Issues Before the Court

The High Court considered the following core questions:

- Whether the Will was duly executed in compliance with law;
- Whether the propounder discharged the burden of removing suspicious circumstances;
- Whether the trial court erred in granting probate.

Legal Framework

The controversy was examined within the settled statutory framework governing execution and proof of Wills under the Indian Succession Act, 1925 and the Indian Evidence Act, 1872. Section 63 of the Succession Act prescribes the mandatory requirements for a valid Will, including execution by the testator and attestation by at least two witnesses, each of whom must have witnessed the execution or received acknowledgment thereof. Complementing this, Section 68 of the Evidence Act requires that at least one attesting witness be examined to prove due execution, where available. These provisions collectively establish that proof of a Will is not a matter of mere formality but of strict statutory compliance.

Beyond procedural compliance, the Court reiterated the well-settled principles evolved through judicial precedent, particularly that the propounder must satisfy a dual requirement: first, that the Will was duly executed in accordance with law; and second, that it represents the free and conscious act of a testator in a sound disposing state of mind. Where circumstances surrounding the execution appear unnatural, improbable, or raise legitimate doubt, the evidentiary burden on the propounder becomes significantly heightened, requiring cogent and convincing explanation to dispel such suspicion.

The Court further emphasised that testamentary adjudication is not confined to a mechanical application of statutory provisions but involves the application of the “test of judicial conscience.” In such cases, the Court must undertake a holistic assessment of the surrounding circumstances, including the condition of the testator, the nature of the bequest, and the consistency of evidence, to determine whether the document truly reflects the last valid testament of the deceased.

Arguments Advanced

The appellant–defendant assailed the validity of the Will by placing reliance on a series of circumstances which, according to him, collectively rendered the document highly suspicious. It was contended that the alleged Will was executed merely a week prior to the testator’s death, at a time when he was suffering from advanced cancer affecting his jaw and tongue, thereby raising serious doubts as to his mental and physical capacity to comprehend and execute such a document. The appellant further argued that the Will made an unnatural disposition by bequeathing only a single immovable property to one son while remaining conspicuously silent on other assets and legal heirs, without furnishing any explanation for such exclusion. Attention was also drawn to inconsistencies in the testimonies of the propounder, attesting witness, and scribe regarding the manner and sequence of execution, as well as the presence of parties at the relevant time. The appellant additionally questioned the credibility of the attesting witnesses, the posthumous registration of the Will, and the existence of prior disputes relating to the property, contending that these factors cumulatively indicated fabrication and an attempt to usurp the estate.

In response, the respondent–plaintiff supported the trial court’s findings and maintained that the Will had been duly executed in accordance with statutory requirements. It was argued that the propounder had discharged his burden by examining an attesting witness and the scribe, thereby satisfying the requirements under law for proof of execution. The respondent contended that the mere existence of illness does not ipso facto negate testamentary capacity, nor does the exclusion of other heirs render the Will invalid, as a testator is entitled to dispose of his property in any manner he deems fit. It was further submitted that the alleged suspicious circumstances were neither substantial nor legally sustainable, but merely speculative doubts raised by the defendant. The respondent emphasised that unless allegations of fraud, coercion, or undue influence are substantiated, the Will ought to be given effect as the last expression of the testator’s intent.

Judicial Reasoning

The Gujarat High Court undertook a holistic and evidence-centric scrutiny of the Will, emphasising that in testamentary matters, the Court must move beyond mere technical compliance and assess whether the document inspires confidence. The Court reiterated that while execution in terms of law is a foundational requirement, the presence of suspicious circumstances shifts a heavier burden on the propounder to dispel such doubts through cogent and convincing evidence.

Applying this principle, the Court found that the surrounding circumstances raised legitimate and substantial suspicion. A key factor was the medical condition of the testator, who was suffering from advanced cancer affecting his jaw and tongue shortly before executing the Will. In such a situation, the Court expected clear evidence demonstrating that the testator was in a sound disposing state of mind and physically capable of understanding and executing the document. The absence of any independent or medical evidence to substantiate this aspect weighed heavily against the propounder.

The Court further noted material inconsistencies in the testimonies of the propounder, attesting witness, and scribe, particularly regarding the sequence of execution and the presence of parties. These contradictions were not treated as minor discrepancies but as going to the root of the validity of the Will, thereby undermining its credibility.

In addition, the Court considered the unnatural features of the Will, including the selective bequest of a single property, absence of reference to other assets, and exclusion of legal heirs without explanation. While such factors are not inherently invalid, the Court held that in the absence of a plausible explanation, they contribute to the overall suspicion surrounding the document.

The Court also attached significance to procedural and documentary anomalies, such as handwritten dates in an otherwise typed Will and its posthumous registration, observing that these aspects further dented the genuineness of the instrument. Importantly, the Court clarified that registration by itself does not cure suspicious circumstances, nor does it automatically establish authenticity.

On a cumulative assessment of these factors, the Court concluded that the propounder had failed to discharge the heightened burden of proof. The suspicious circumstances were neither adequately explained nor dispelled, and therefore, the Will could not be accepted as a genuine testamentary instrument. Consequently, the trial court was found to have erred in granting probate by focusing primarily on formal execution rather than addressing the substantive doubts surrounding the Will.

Key Findings

- Suspicious circumstances must be real, germane, and supported by evidence;
- Once such circumstances exist, the burden on the propounder becomes stringent;
- Mere formal proof under Section 63 and Section 68 is not sufficient;

- Registration of a Will does not cure inherent defects;
- Courts must satisfy their judicial conscience, not merely procedural compliance.

Decision

In light of the cumulative deficiencies and unresolved suspicious circumstances, the Gujarat High Court allowed the appeal and set aside the judgment of the trial court granting probate. The Court held that the propounder had failed to discharge the heightened burden cast upon him in the presence of legitimate doubts surrounding the execution of the Will. Consequently, the probate proceedings erroneously treated and adjudicated as a civil suit were dismissed in entirety.

Conclusion

This ruling reinforces the settled position that testamentary adjudication is not a mechanical exercise confined to proving signatures and attestation. Where the execution of a Will is clouded by suspicious circumstances, the Court must insist on a higher standard of proof and a credible, consistent evidentiary narrative. The judgment serves as a reminder that the sanctity of a Will lies not merely in its formal compliance but in its ability to withstand judicial scrutiny on authenticity and intent. In the absence of a satisfactory explanation dispelling legitimate suspicion, courts will be justified in refusing to give effect to the purported last wishes of the testator.

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1. R/FIRST APPEAL NO. 1320 of 1995 ??

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