Summary of papers written by Judicial Officers on the subject " What are the suspicious circumstances in considering the validity of "Will".

INTRODUCTION.

1. Section 2(h) of Indian Succession Act 1925 defines "will".

(h) "will" means the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death.

Meaning of the word WILL:-

"Will" means the capacity of conscious choice, decision and intention.

2. Indian Succession Act, 1925 in its part VI envisaged the basic foundation of testamentary succession. Section 63 of the Act provides for disposition of property of a testator after his death by execution of will.

3. 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.

SUSPICIOUS CIRCUMSTANCES IN CONSIDERING THE VALIDITY OF WILL:-

4. It is well settled proposition of law that mode of proving the Will does not differ from that proving any other

document except as to the special requrement of attestation prescribed in the case of a Will by secton 63 of the Indian Succession Act 1925. The onus to prove the Will is on the propounder and in the absence of suspicious circumstances surrounding the execution of the Will, proof of testamentary capacity of and proof of the signature of the testator, as required by law, need to sufficient to discharge the onus. Where there are suspicious circumstances, the onus would again be on the propound to explain them to satisfaction of the court before the will can be accepted as genuine. Proof in either case cannot be mathematically precise and certain and should be one of satisfaction of a prudent mind in such matters. In case the person contesting the Will alleges undue influence, fraud or coercion, the onus will be on him to prove the same. As to what are suspicious circumstances have to be judged in the facts and circumstances of each particular case.

5. The Hon'ble Supreme Court in case of *H. Venkatachala Iyengar vs B.N. Thimmajamma and Ohers IR 1959 SC 443* and in the case of *Bharpur Singh and Others Vs. Shamsher Singh AIR 2009 SC 1766*, have discuss the law in respect of Will at length and made certain observations.

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. Section 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 document in a court of law. Similarly, sections 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 signatre of 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 that is 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 Successsion Act. As in the case of proof of other documents so in the case of proof of wills it could be idle to expect proof with mathematical certainty. The test to be applied woulde be the usual test of the satisfaction of the prudent mind in such matters.

6. 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.

7. 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 ligitimate doubt as to the mental capacity of the testator, the dispositions made 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.

8. 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.

9. 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 circumstances attending the execution of the will and the propounder is required to remove the said suspicion by clear and satisfactory evidence.

10. 17. <u>Suspicious circumstances like the followiong may be found to be surrounded in the executon of the Will</u>.

(i). The signature of the testator may be very shaky

and doubtful or not appear to be his usual signature.

(ii). The condition of the testator's mind may be very feeble and debilitated at the relevant time.

(iii). The disposition may be unnatural, improbable or unfair in the light of relevant circumstances like exclusion of or absence of adequate provisions for the natural heirs without any reason.

(iv). The dispositions may not appear to be the result of the testator's free will and mind.

(v). The propounder takes a prominent part in the execution of the Will.

(vi) The testator used to sign blank papers.

(vii) The Will did not see the light of the day for long.

(viii) Incorrect recitals of essential facts.

Will under Mohmeddan Law.

11. A Will under Mohammedan Law is called as Wasiyat, which means a moral exhortation or a declaration in compliance with moral duty of every Muslim to make arrangements for the distribution of his estate or property. The Mohammedan Law restricts a Muslim person to bequeath his whole property in a will and allows him to bequeath 1/3rd of his estate by writing will, which will take effect after his death. A will may be in the form of oral or written if the will is in writing need not be signed if signed need not be attested. *Acc to Shia* Law if served bequests are made through a will, priority should be given to

determination by the order in which they are mentioned a bequest by way of will. A Will can be made by a person who is of sound mind, major and possessing a absolute title, in favour of a person who is capable of holding property except unborn persons and heirs. The revocation of will is possible only if the subsequent Will is made by the testator. A Muslim person who is allowed to bequeath 1/3rd of his estate, he can exceed its limit on testamentary power of 1/3rd to 1/4th in case where heirs gives consent or only heir is husband or wife.

Provisions under Registration Act in respect of Will.

12. According to the Section 18 of the "Registration Act, 1908' the registration of a Will is not compulsory. Once a Will is registered, it is a strong legal evidence that the proper parties had appeared before the registering officers and the latter had attested the same after. The process of registration begins when a Will instrument is deposited to the registrar or sub-registrar of jurisdictional area by the testator himself or his authorised agent. Once the scrutiny of Will instrument is done by the registrar and registrar is satisfied with all the documents then registrar will make the entry in the Registrar-Book by writing year, month, day and hour of such presentation of the document
and will issue a certified copy to the testator.

13. In the latest case of ***Leela Rajagopal & Ors-vs-Kamla Memon Cocharan & Ors***. *AIR 2015 Supreme Court*

107, our hon'ble Apex Court observed that, a will may have certain features and may have been executed in certain circumstances which may appear to be somewhat unnatural. Such unusual features appearing in a Will or the unnatural circumstances surrounding its execution will definitely justify a close scrutiny before the same can be accepted. It is overall assessment of the Court on the basis of such scrutiny the cumulative effect of the unusual features and circumstances which would weigh with the Court in the determination required to be made by it. The judicial verdict, in the last resort, will be on the basis of a consideration of all the unusual features and suspicious circumstqances put together and not on the impact of any single feature that may be found in a Will or a singular circumstance that may appear from the process leading to its execution or registration. This, is the essence of the repeated pronouncements made by this Court on the subject including the decisions referred to and relied upon before us.

14. In Case of **Rajeev Kumar V. State of U.P.,** 1979 ALL LR 151:1979 ALL CJ 78, it is observed by the Hon'ble Apex Court that - "*The registration of will being optional, an earlier registered will can, thus, be revoked by a subsequent unregistered will*."

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