Patna High Court
Smt. Bimla Devi @ Bimal Devi vs Uma Devi on 3 March, 2016

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.145 of 2013

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1. Smt. Bimla Devi @ Bimal Devi W/O Rabindra Singh Alive, R/O Villge- Bishambharpur, P.S.- Gurkha, Dist.- Saran .... Appellant/s Versus

1. Uma Devi W/O Mrityunjay Kumar R/O Village- Mukrera, P.S.- Ravilganj, Distt.- Saran .... Respondent/s

========== Appearance :

For the Appellant/s : Mr. Nagendra Rai, Mr. Navin Nikunj, Advocates.

For the Respondent/s : Mr. Amit Srivastava, Mr. Girish Pandey, Advocates.

========== CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY CAV JUDGMENT Date: 03.03.2016 Heard learned counsel for the appellant and learned counsel for the respondent.

2. In the present appeal the appellant is challenging the judgment and order dated 8.1.2013 passed by the Additional District Judge I, Chapra in Probate Case No.38 of 2007 by which the court below has refused to grant probate in favour of the appellant.

3. In the present appeal the testator, late Jagdish Singh, has executed a Will in favour of the appellant on 13.11.2003.

Claim has been made that the appellant and her husband looking after Jagdish Singh and he out of love and affection looking to the service rendered to him executed the Will and in Patna High Court MA No.145 of 2013 terms of the Will the right of Jagdish Singh will be deemed to have been transferred in favour of the legatee, Bimla Devi. At the time of execution of the Will Sudama Pandit and Ashok Singh were the attesting witnesses. The Will was scribed by Shiv Dayal Prasad and the testator, namely, Jagdish Singh, died on 10.6.2004. The appellant filed a probate case which was registered as Probate Case No.38 of 2007.

4. When the recitals were published, Uma Devi, has filed a caveat and objection, there the plea was taken that Uma Devi is daughter of late Jagdish Singh. After the death of her mother she was living along with her father and looking after him and was rendering all sorts of service and love to her father. It has further been said that after the death of Jagdish Singh she came in possession of the land and mutation was also done. Uma Devi has claimed that the said Will is fraudulent and manufactured document confer no right and seriously objected granting probate in favour of the appellant.

5. During the trial seven witnesses were examined on behalf of the appellant, namely, A.W.1, Ashok Singh, and A.W.2, Sudama Pandi, are attesting witnesses. A.W.3, Surendra Singh is cousin brother-in-law of Jagdish Singh nephew of Veer Nath Singh, father-in-law of Jagdish Singh. Patna High Court MA No.145 of 2013 A.W.4, Sukhnandan Singh, resident of the same village.

A.W.5, Md. Khalil is co-villager. A.W.6, Bimla Devi, is legatee. A.W.7, Dhirendra Singh, is co-villager who produced mortgaged deed with the conditional sale deed.

6. The respondent, Uma Devi, has also produced ten witnesses, namely, O.P.W.No.1, Ganesh Singh, co-villager of Bimla Devi. O.P.W.No.2, Bindu Devi, is cousin mother-in-

law of Bimla Devi, O.P.W.No.3 Sarsawati Devi, mother-in-

law of Bimla Devi, O.P.W.No.4, Lal Babu Rai is co-villager.

O.P.W.No. 5, Anandi Rai- formal witness, ex-Mukhiya of same Panchayat. O.P.W.No. 6, Kameshwar Rai - a formal witness who has proved doctors prescription. O.P.W.No. 7 Ram Niawash Tiwary, also proved doctors prescription.

O.P.W.No. 8 Binay Kumar Singh- formal witness who has proved rent receipt. O.P.W.No.9 Haribansh Singh- son-in-law of Sarsawati Devi (O.P.3). O.P.W.No. 10, Uma Devi-

Objector.

7. From the side of the appellant deed of Will has been marked as Ext.1 and from the side of the respondent, certificate of Mukhiya dated 6.8.2005 has been marked as Annexure A certifying that Uma Devi is the daughter of Jagdish Singh, Doctors prescription of Jagdish Singh dated 12.7.2003 has Patna High Court MA No.145 of 2013 been marked as Ext. B, prescription dated 5.2.2002 of Jagdish Singh has been marked as Exhibit B/1. Rent receipt issued in the name of Uma Devi has been marked as Exhibits C and C/1. Order dated 24.3.2008 passed in Mutation Case No. 3 of 2008 recording the name of Uma Devi by the Revenue Officer has been marked as Ext. D. Genealogical table issued on 19.12.2007 by the Circle Officer has been marked as Exhibit E. Certified copy of registered deed of Will dated 15.1.1974 by Veernath Singh, father-in-law of Jagdish Singh executed the Will in favour of Uma Devi and other co-sharers has been marked as Exhibit F. Show-cause filed in the proceeding under section 107 of the Code of Criminal Procedure by Sudish Singh, father-in-law of Bimla Devi has been marked as Exhibit G. Police report in the proceeding under Section 107 of the Code of Criminal Procedure has been marked as Exhibit H.

8. One thing is also important in the present case that in the recital portion in the deed of Will it has specifically stated that Jagdish Singh has died issue less as at the time of his death he had no son or daughter at no time the appellant has come forward to show who is father of Uma Devi when Uma Devi from the beginning has take specific plea of being daughter of late Jagdish Singh.

Patna High Court MA No.145 of 2013

9. In the present case one of the very important issue is to be decided as to whether Uma Devi was daughter of Jagdish Singh or not, as in the recital portion of the Will, it has specifically been stated that Jagdish Singh died issue less having no son and daughter. So much so this issue has hotly been contested by both sides as in the reply to the objection filed by the appellant, he has specifically taken a plea that claim made by Uma Devi is daughter completely wrong whereas Jagdish Singh was not the father of Uma Devi. So it is one of the issue which this Court is to decide whether silence and later on denial of relationship of Uma Devi with Jagdish Singh creates a suspicious circumstance in the manner it has been created even though the deed of Will has been executed in terms of Section 63 of the Indian Succession Act and Section 68 of the Evidence Act. If the finding is recorded in favour of the appellant that Uma Devi is not the daughter then the question of suspicious circumstance would not arise but in contrary finding goes against the appellant then certainly in the manner of silence and later on objection of relationship creates a strong suspicious circumstance with regard to execution of Will in a situation when Jagdish Singh was an illiterate person having no capacity to understand the contents of the Will. Patna High Court MA No.145 of 2013

10. During argument learned counsel for the appellant has raised following points for consideration: (1) The suspicious circumstances relied upon by court below cannot be treated as suspicious circumstance even though the Will executed in favour of other person deviating the line of succession. 2. Any wrong recital in the Will can not affect the validity of Will unless it creates any vagueness in the disposition and does not satisfy the condition laid down in Section 63 of Indian Succession Act and 68 of the Evidence Act. 3. If due execution is proved and objector fails to prove the plea of fraud misrepresentation and undue influence, the will has to be probated and he has challenged that finding recorded by the court below that the appellant could not remove the suspicious circumstance is completely against the fact and provision of law. He has further submitted that the court below has wrongly recorded that Sudama Pandit was not an attesting witness but was an identifier is completely de hors to provision of the law and attending circumstances and further wrongly held that an identifier cannot be an attesting witness.

11. What would be the test of attestation has been dealt with in the following judgments as relied upon by the appellant Patna High Court MA No.145 of 2013 in the case of Rameshwar Pandey and another V. Suresh Pandey, reported in 2007 (2) PLJR 594, paragraph 17, M..L. Abdul Jabhar Sahib V. H.V. Venkata Sastri & Sons and others, reported in AIR 1969 SC 1147= (1969) 1 SCC

573. He has further submitted that creation of Will is basically an act diverting line of succession ipso facto does not create a suspicious circumstance. Reliance has been placed on the following judgments:

12. Rabindra Nath Mukherjee and another V.

Panchanan Banerjee and others, AIR 1995 SC 1684, paras 3, 4 and 6. Ramabai Padmakar Patil and others v.

Rukminibai Vishnu Vekhande and others , reported in (2003) 8 SCC 537, para 8. Savithri and others v.

Karthyayani Amma and others, reported in 2008(1) PLJR 61 SC paras 11, 13, 14, 15, 19 and 20. H. Venkata Sastri and sons and others v. Rahilna Bi and others, reported in AIR 1962 Madras 111. He has further placed reliance on the judgment in the case of Dhruba Sahu and another V.

Paramananda Sahu, reported in AIR 1983 Orissa 24 paragraph 8. He has further submitted that if due execution is proved and objector has failed to prove that in wrong manner the document came into existence, the Will has to be given Patna High Court MA No.145 of 2013 effect to. In support of his submission he has drawn the attention to the recital of Will. He has pointed out that Sudama Pandit has specifically made recital in page 1 which satisfy all the conditions of attestation as he has written that Will was read over to Jagdish Singh, thereafter he put his five finger prints and on his direction Sudama Pandit himself has put his signature. He has also stated the impression of five fingers over the first page no.1 and also in back page the impression of all fingers of testator is there. In rest of pages it contains thumb impression of Jagdish Singh (testator). At second page Ashok Singh has put his signature with the contents and date.

Sudama Pandit has also put his signature not only as attesting witness but also as an identifier before the Registrar. At the end it bears the thumb impression of Jagdish Singh so much so the scribe has also made his statement that he read out contents of Will which the testator understood also gave certificate that testator put his all five finger prints in his presence and submits that all the conditions which are required for valid will as provided under Section 63 of the Indian Succession Act are satisfied, merely the silence of relationship of Uma Devi does not make the Will as a fraudulent or fabricated because in fact Jagdish Singh had appeared before the Registrar, only Patna High Court MA No.145 of 2013 thereafter the deed of Will was registered so it will be treated that Jagdish Singh was a person of good health and sound mind, understanding the recital of Will had put his thumb impression knowingly well that he had executed the Will in favour of the appellant.

13. On the contrary learned counsel for the respondent has submitted that notwithstanding the Will is a registered document, it is the duty of propounder to prove the registered Will in terms of Section 63 of the Indian Succession Act and Section 68 of the Evidence Act, if any suspicion is existing, it is the duty of propounder to dispel all suspicious circumstance.

He has further submitted that in terms of Section 63 of the Indian Succession Act and Section 68 of the Evidence Act identifier witnesses are not to be treated attesting witnesses of the Will. He has further submitted that in absence of two attesting witnesses Will is not valid but is null and void in the eyes of law as per Section 63© of the Indian Succession Act which is mandatorily required to be followed. He has further submitted that Ashok Singh may be an identifier who was working in the office of the Registrar is not an attesting witness for the reason that he has not made recital in the Will in terms of Section 63 of the Succession Act. Being an Patna High Court MA No.145 of 2013 attesting witness there should be a specific recital that the testator has executed the Will after understanding contents in his presence and on the instruction testator has signed the Will. He has relied on the judgment in the case of Girja Datt Singh V. Gangotri Datt Singh, AIR 1955 SC 346, para 7, 8, 9, 11 to 15, N. Kamalam and another v. Ayyasamy and another, 2001(4) PLJR 147 (SC), para 1 to 6, 23, 25 to 30, 32, 34, 35. It can be said that Sudama Pandit was an attesting witness but not Ashok Singh. He has further submitted that if desired recital in the Will is missing satisfying the

condition of the attestation, the oral evidence cannot fill up the lacuna of Will. He has further submitted that the scribe was alive but was not examined because propounder was apprehending, exposing the condition of health and mind of testator and would explain, why the testator had not put his LTI at the foot of the recital of Will. He has further pointed out from the record that thumb impression of Jagdish Singh has been taken in the corner of the right side of the sheet of paper but no such thumb impression at the foot of the Will itself creates a serious doubt about the genuineness of the Will. He has further submitted that the recital of the attestation should not only be made at the first page but it also requires such statement should be made at foot of Patna High Court MA No.145 of 2013 the last page showing his intention by the two witnesses. In absence of such recital it is not proper attestation and does not qualify the test provided under Section 63 of the Indian Succession Act as well as Section 68 of the Evidence Act.

14. For the proposition onus of the propounder to dispel of suspicious circumstance he has placed reliance on the following judgments: Rani Purnima Debi and another v.

Kumar Khagendra Narayan Deb and another, AIR 1962 SC 567, AIR 1990 SC 396 paras 18 to 22, Bharpur Singh & Others v. Shamsher Singh, AIR 2009 SC 1766, paras 11 to 17= (2009)3 SCC 687 para 23. It has been submitted that recital of incorrect fact itself creates strong suspicious circumstance strongly show the intention to deprive the right of genuine heir who is the daughter of Jagdish Singh. He has also placed reliance on the judgment Rani Purnima Debi (supra) where the Honble Supreme Court has specifically stated that even if the Will is registered still the propounder has to dispel all suspicious circumstance. He has further submitted that the recital of Ext. F is the execution of Will dated 15.7.1974 by Veernath Singh, father-in-law of Jagdish Singh where it has been mentioned that Uma Devi present respondent is daughter of Jagdish Singh and has granted some property in Patna High Court MA No.145 of 2013 her favour. He has further relied on the Ext. G is a show cause where the appellant in Misc. Case No. 409 of 2007 in paragraph 2 has stated that Jagdish Singh was suffering from illness. Ext.H is also report related to Misc. Case No.409 of 2007 shows Jagdish Singh is father of Uma Devi.

15. Learned counsel for the respondent in turn has distinguished the judgment in the case of Rabindra Nath Mukherjee (supra) submitting that this judgment does not apply to the facts of this case and similarly he has also submitted that the judgment Ramabai Padmakar Patil (supra) also does not apply to the fact where out of three daughters the Will was executed in favour of widow daughter in such way married daughters were excluded. Reliance has been placed on the judgment in the case of Savithri and others v.

Karthyayani Amma and others, reported in 2008(1) PLJR 61(SC) where the son was not looking after, the fathers sister was looking after the ailing brother and as such major benefit of the Will was given to the sister but some benefit was also given to the son. He has further submitted that the judgment has been given in peculiar facts and circumstances will not be read dehors to the fact. The appellant placed reliance on Ext. G where at one place Jagdish Singh has been shown to be ill but Patna High Court MA No.145 of 2013 in another place he has been shown that he has executed the Will in favour of Bimla Devi and as such Ext.G has to be taken it entirety not in truncated manner. He has further submitted that there is no illegality in execution of the registration of the Will. So

much so the respondent has not shown any vagueness in the recital of the Will in as much as the photograph annexed to the Will itself shows that Jagdish Singh was at the time of execution of the Will was of sound health and mind and executed the Will in favour of Bimla Devi on consideration of service rendered by Bimla Devi to Jagdish Singh.

16. For deciding the issue of genuineness of the Will first it has to be seen as to whether the Will has been testamented in terms of Section 63 of the Indian Succession Act as well as Section 68 of the Evidence Act. Onus probandi and animo attestandi are two basic features for deciding the issue of valid testamentation of the Will. Onus probandi lies in every case upon the propounder the Will and animo attestandi is the principle emplies animus to attest. The attesting witness must subscribe with the intent that the subscription of the signature made stands by way of a complete attestation of the Will. The evidence is admissible to show the intention for attestation of the document. For analysis of different facet of attestation of Patna High Court MA No.145 of 2013 the Will. It will be relevant to quote Section 63 of the Indian Succession Act and Section 68 of the Evidence Act:

> "63. Execution of unprivileged Wills.- 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 acknowledgement of his signature or mark, or 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."
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> Section 68 of the Indian Evidence Act:
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> "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 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 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 Patna High Court MA No.145 of 2013 of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.]

17. A attestation plays a very important role in execution of a document it will be relevant to quote Section 3 of the Transfer of Property Act which runs as follows:

> "It is to be noticed that the word "attested", the thing to be defined, occurs as part of the definition itself. To attest is to bear witness to a fact. Briefly put, the essential conditions of a valid attestation under s.3 are : (1) two or more witnesses have seen the executant sign the instrument or have received from him a personal acknowledgement of his signature; (2) with a view to attest or to bear witness to this fact each of them has signed the instrument in the presence of the executant. It is essential that the witness should have put his signature amino attestandi, that is, for the purpose of attesting that he has seen the executant sign or has received from him a personal acknowledgement of his signature. If a person puts his signature on the document for some other purpose, e.g. to certify that he is a scribe or an identifier or a registering officer, he is not an attesting witness."

18. In the case of Girja Datt Singh (supra) in paragraph 15 the Honble Supreme Court has held that mere signature of witnesses at the foot of the endorsement of registration cannot be treated as attesting witnesses as Section 68 of the Indian evidence Act requires an attesting witness to be called as a witness to prove the due execution and attestation of the Will. Patna High Court MA No.145 of 2013 So the test is whoever has put over his signature must show animo atttestandi to attest the testament. A person who had put his name under the word "scribe" or identifier cannot be attesting witness as he has put his signature only for the purposes, the bequeath that he has scribed or identified the document. The scribe or identifier can be a scribe or identifier as well as can be an attesting witness subject to the condition that it must appear from the testament that he has scribed the document as well as he has attested the document as an attesting witness, meaning thereby it must appear that he has intention to attest the document.

19. As per definition of Law Lexicon "attested" means where an instrument is required to be attested, the meaning is, that a witness shall be present at its execution and shall testify on it that it has been executed by the proper person.

20. The issue of attestation has been dealt with in the case of M.L. Abdul Jabhar Sahib (supra). While dealing with Section 3 of the Transfer of Property Act which defines the attestation, the Honble Supreme Court has said as follows:

> ".....It is to be noticed that the word "attested", the thing to be defined, occurs as part of the definition itself. To attest is to bear witness to a fact. Briefly put, the essential conditions of a valid attestation under s.3 are : (1) two or more witnesses have seen the executant sign the Patna High Court MA No.145 of 2013 instrument or have received from him a personal acknowledgement of his signature; (2) with a view

to attest or to bear witness to this fact each of them has signed the instrument in the presence of the executant. It is essential that the witness should have put his signature amino attestandi, that is, for the purpose of attesting that he has seen the executant sign or has received from him a personal acknowledgement of his signature. If a person puts his signature on the document for some other purpose, e.g. to certify that he is a scribe or an identifier or a registering officer, he is not an attesting witness.

For proper appreciation of the view of Honble Supreme Court in Venkata Sastris case (supra), Section 3 of the Transfer of Property Act, in particular, the meaning attributed to the work "attested" ought to be noticed and the same reads as below:

"attested", in relation to an instrument, means and shall be deemed always to have meant attested by two or more witnesses each of whom has seen the executant sign or affix his mark to the instrument, or has seen some other person sign the instrument in the presence and by the direction of the executant, or has received from the executant a personal acknowledgement of his signature or mark, or of the signature of such other person, and each of whom has signed the instrument in the presence of the executant; but it shall not be necessary that more than one of such witnesses shall have been present at the same time, and no particular form of attestation shall be necessary."

21. The requirement of law for the attestation is the Will shall be attested by two or more witnesses each of whom has seen the testifier sign or affix the mark to the Will or has seen some other person sign the Will in the presence and on the Patna High Court MA No.145 of 2013 direction of the testifier or has received from the testifier a personal acknowledgement of his signature or mark or the marks or signature of such other person. It further requires that each of the witnesses shall sign the Will in presence of testifier and witnesses have also on the direction of testifier has put their signature in presence of testifier.

22. The question of attestation has come for consideration before this Court in the case of Ram Avadh Upadhaya v.

Jamuna Pandey, reported in AIR 1954 Patna 360 where the Court has considered old judgments on the issue, what are essential ingredients for proving the attestation of the document or the Will. The Court was of the view that the person shall be present and see what passes, and shall, when required bear witnesses to the facts is treated to have been "attested". The attested means that the witnesses should be present as witnesses and see it signed by the testator. The party who sees the Will executed is in fact a witness to it; if the subscribes as a witness, he is then attesting witness. The Court has held that if any persons who was present and witnessed the execution and whose name appears on the document is to be regarded as a witness competent for proving the execution.

The attesting witness should either have seen the signing or the Patna High Court MA No.145 of 2013 affixing of the mark by the testator or some other person signing the will on his behalf, if the

execution is complete as soon as the testator has signed or affixed his mark, the person who claims to have witnessed such execution of the deed by the testator has to be regarded as a competent attesting witness.

If the scribe of a deed authenticates the mark made by the executant and thus vouches the execution by him he is to be regard as a competent attesting witness. In case of illiterate executant his mark was his signature and that it was independent of any writing by which the mark might be explained. Section 3, Clause 52 of General Clauses Act explains the word "sign" with reference to a person who is unable to write his own name and it is no where laid down as essential that an attesting witness must be formally described as such on the face of the document. When the scribe or identifier signed his own name under the description of the mark, his object in so doing presumably was to authenticate the mark that is to say to vouch the execution. The last signature made by the scribe not in the capacity of scribe but in the capacity of attesting witness. It will be relevant to quote paragraph nos. 5, 6 and 7 of the aforesaid judgment:

"5.The first contention is, no doubt, a bit more substantial. The learned Counsel has submitted Patna High Court MA No.145 of 2013 that because Ramnagina has signed the will on behalf of the executant Jhagru, he cannot be regarded as a competent attesting witness under the law. The requirement of the law is that 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. It is further required that each of the witnesses shall sign the will in the presence of the testator, and, according to my finding, it must be deemed to have been established that if Ramnagina is to be regarded as an attesting witness, he had signed the will in the presence of the testator.

The real question, therefore, is whether Ramnagina, who is no other person than the person who had signed the will on behalf of the testator, can be regarded as a competent attesting witness, and Mr. Tarkeshwar Nath has relied on the words " or has seen some other person sign the Will" in S. 63 ©, Succession Act. Undoubtedly, Ramnagina is the same person who had signed the will on behalf of the executant or the testator, and because he is no other person than the man who has signed the will on behalf of the testator, the learned counsel has submitted that an attestation by him or the affixing of a signature by him will not make him a competent attesting witness.

6. The word "attest" has been the subject matter of discussion and construction in several decisions, and in - Bryan v. White, (1850) 163 ER 1330 (B), Dr. Lushington had said that "attest" means that the persons shall be present and see what passes, and shall, when required, bear witness to the facts. This decision was referred to with approval by the Judicial Committee in - Shamu Patter v. Abdul Kadir, 35 Mad 607 (C). I should like to quote the following passage from the judgment of Ameer Ali J. in this case:

"The later cases are still more direct in the interpretation of the words "attestation" and Patna High Court MA No.145 of 2013 "attested". IN- "(1850) 163 ER 1330 (B)", Dr. Lushington in 1850 laid down that "attest" means the persons shall be present and see what passes, and shall, when

required, bear witness to the facts. In 1855, Lord Campbell, C.J., in - "Roberts v. Phillips", (1855) 4 El & Bl 450 (D), enunciated the same rule as regards the word "attested", that the witnesses should be present as witnesses and see it signed by the testator. And the principle was given effect to in the House of Lords in - "Burdett v. Spilsbury" (1842-43) 10 Cl & F 340 (E). The Lord Chancellor summed up the conclusion in these words: The party who sees the will executed is in fact a witness to it; if he subscribers as a witness, he is then attesting witness". The meaning of the words "attest" and "attestation" has also been before the Courts under the Bills of Sale Act of 1878 (41 & 42 Vict. C.31, Ss. 8 & 14) and the interpretation put on them in - (1855) 4 El & Bl 450 (D) and - (1950 163 ER 1330 (B) has invariably been followed."

7. I say with respect that if the Courts in India have on the basis of this dictum laid down that any person who was present and witnessed the execution and whose name appears on the document is to be regarded as a witness competent for proving the execution, that view should be regarded as sound. Though the language of S.63 © shows that the attesting witnesses should either have seen the signing or the affixing of the mark by the testator or some other person signing the will on his behalf, if the execution is complete as soon as the testator has signed or affixed his mark, the person who claims to have witnessed such execution of the deed by the testator has to be regarded as a competent attesting witness.

It was ruled in - Govind Bhikaji v. Bhau Gopal, AIR 1916 Bom 123 (F), that if the scribe of a deed authenticates the mark made by the executant and thus vouches the execution by him he is to be regarded as a competent attesting witness. Though in the particular deeds which were the subject of consideration by their Lordships there might have been, on the face of the documents, certain more attesting witnesses at the trial the deeds were sought Patna High Court MA No.145 of 2013 to be proved by the testimony of one of the witnesses and the scribe. The executant of these documents had made the mark of a dagger which was being represented as his signature, and this mark had been described by the scribe of the deed. What the scribe had actually written was as follows:

"The mark of a dagger representing the signature of Gopal Bapu Lad made by him with his own hands. The handwriting of Keshav Chintaman Vaishampayan."

This Keshav Chintaman was the scribe, and he had deposed in the case that he had witnesses the execution of the bond by Gopal, inasmuch as he had seen the affixing of the mark by Gopal. The Court below had taken the view that the mere making of the mark was not the signature of the executant and that it was the description given by the scribe which had completed the signature or the execution by the executant. This view was held by their Lordships to be erroneous and they pointed out that in the case of an illiterate executant his mark was his signature and that it was independent of any writing by which the mark might be explained. Their Lordships referred to S. 3, Cl 52 General Clauses Act, which explains the word "sign" with reference to a person who is unable to write his own name. And their Lordship further observed that it is no where laid down as essential that an attesting witness must be formally described as such on the face of the document. While discussion the nature of the signature made by the scribe their Lordships pointed out that when the scribe or identifier signed his own name under the description of the mark, his object is so doing presumably was to authenticate the mark that is to say to vouch the execution. In other words,

the last signature made by the scribe was taken to be a signature made by the scribe not in the capacity of a scribe but in the capacity of an attesting witness."

23. This Court had again occasion to consider, when an instrument to be treated to have been executed legally and Patna High Court MA No.145 of 2013 properly in Dulhin Ful Kueri and another v. Moti Jharo Kuer, AIR 1972 Pat, 214 and this Court was of the view that signature of attesting witness at the end or some where on the instrument are sufficient to show that they had seen the document executed, not required to recite with regard to attestation and also recite that they had put their signature in presence of testator. It will be relevant to quote the relevant portion of the aforesaid judgment:

> "....Dealing with attestation of a mortgage in Abinash Chandra Bidyanidhi Bhattacharjee v. Dasarath Malo, AIR 1929 Cal 123, Rankin, C.J., said:
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> "Now, the word "attested" is the word to be defined because that word when it is used in the Statute with reference to an instrument is really a shorthand expression and the meaning of it is given at length in this Act- Act 27 of 1926. The word "attested" occurs not merely as the thing to be defined but as a part of the definition or explanation and it remains, therefore, to enquire in cases such as the present., what is meant by saying that a document has been attested or that its execution has been attested. In my judgment, the matter is reasonably clear. A person may be a witness to the execution of a mortgage or a will and yet may not have written his name at the time by way of saying that he was a witness., it is quite clear that in India no formal attestation clause is necessary. Ordinarily a string of signatures towards the end of an instrument or somewhere on the instrument without any explanation will be quite sufficient to show that the persons put their signatures by way of saying that they had seen the document executed or has received an acknowledgment."
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> Both Section 63© of the Indian Patna High Court MA No.145 of 2013 Succession act and Section 3 of the Transfer of Property Act say that no particular form of attestation is necessary. If I may say so with respect, Rankin, C.J. is right in observing that mere signature towards the end of an instrument or somewhere on an instrument without any explanation are quite sufficient to show that the persons put their signature by way of saying that they had seen the document being executed or had received an acknowledgement. Such signatures, in my opinion, are also sufficient to show that they were put in the presence of the testator. However, as required by Section 68 of the Indian Evidence Act, at least one of the attesting witnesses should be examined in proof of the execution of the will. What is required is that in order to prove the due attestation of the will, the propounder of the will has to prove that two witnesses saw the testator signing the will and they themselves signed the will in presence of the testator. In the instant case, one of the attesting witnesses Siujag Tewari has proved it. The appeal, accordingly, fails and is dismissed but in the circumstances, without costs."

24. In view of the aforesaid discussion, it is very much clear, a person who puts his signature either at the end of instrument or some where on the instrument, itself would suggest that he is witness to the execution of the document and there is no necessity to make such statement in the document.

25. In such view of the matter, the contentions of respondent, that for valid proof of proper attestation, recital of attesting witness in the document is essential ingredients to indicate "animus attestandi" is not correct proposition of law Patna High Court MA No.145 of 2013 and this proposition is rejected.

26. Another question onus probandi is a principle which has already been settled, the same lies in every case upon the party propounding the Will and may satisfy the courts conscious that the instrument as propounded is the last will of a free and capable testator, meaning thereby that testator at the time when he subscribed his signature on to the Will had a sound and disposing state of mind and memory and the onus is discharged as regards the due execution of the Will if the propounder leads evidence to show that the Will bears the signature and mark of the testator and that the Will is duly attested. This attestation should be in accordance with Section 68 of the Evidence Act which requires that if a document is required by law to be attested, it shall not be used as evidence until at least one attesting witness has been called for the purpose of proving its execution and the same is so, however, in the event of there being an attesting witness alive and capable of giving the evidence. In the event of there being circumstances surrounding the execution of the Will, shrouded in suspicion, it is the duty paramount on the part of the propounder to remove that suspicion by leading satisfactory Patna High Court MA No.145 of 2013 evidence.

27. In the case of H. Venkatachala Iyengar v. B.N.

Thimmajamma, reported in AIR 1959 SC 443 while deciding the question of genuinenity of the Will the Honble Supreme Court has said that 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, reference must inevitably be made to the statutory provisions which govern the proof of document. Sections 67 and 68 of the Evidence Act are relevant for this purpose. 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 the said handwriting under Section 45 and 47 of the Evidence Act opinions of the 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 which 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 a document in a Court of law. The Patna High Court MA No.145 of 2013 will has to be proved like any other document. The test to be applied would be the usual test of the satisfaction of the prudent mind in such matters. The Will is another document which speaks on the death of the testator and so when it is 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. In such situation, the propounder would be obliged to show by satisfactory

evidence that the Will was signed by the testator and the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the dispositions and only thereafter he put the signature on the document of his own free will. In a case of execution of Will, the Will may be surrounded by suspicious circumstances, such as signature of the testator may be very shaky and doubtful and evidence in support of the propounders 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 testators mind may appear to be very feeble and debilitated and Patna High Court MA No.145 of 2013 evidence adduced may not succeed in removing the legitimate doubt as to the mental capacity of the testator. In case of dispositions made in the Will may appear to be unnatural, improbable or unfair in the light of relevant circumstances or the Will may otherwise indicate that the said dispositions may not be the result of the testators free will and mind. In such cases the Court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last Will of the testator. The presence of such suspicious circumstances naturally tends to make the initial onus very heavy and unless it is satisfactorily discharged, Courts would be reluctant to treat the document as the last Will of the testator. If a caveat is filed alleging the exercise of undue influence, fraud or coercion in respect of therein 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 and in such circumstances it would be a part of the initial onus to remove any such legitimate doubts in the matter. In some cases the Wills propounded disclose another infirmity as propounders have taken a prominent part in the execution of the Wills Patna High Court MA No.145 of 2013 which confer on them substantial benefits which itself creates a suspicious circumstance attending the execution of the Will in that circumstances the propounder is required to remove the said suspicion by clear and satisfactory evidence. The Court also considered the principle of onus probandi and held that the same lies in every case upon the party propounding the Will and he satisfied the courts conscious that the instrument as propounded is the last will or a free and capable testator. It will be relevant to quote paragraph nos. 18 to 23 of the aforesaid judgment:

> "18. 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. Sections 67 and 68, Evidence Act are relevant for this purpose.

Under S. 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 Ss. 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 Patna High Court MA No.145 of 2013 nature of proof

which must be satisfied by the party who relies on a document in a Court of law. Similarly, Ss. 59 and 63 of the Indian Succession Act are also relevant. Section 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 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. 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 what it 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 prescribe by S. 63 of the Indian Succession Act. As in the case of proof of other documents so in the case of proof of wills it would be idle to expect proof with mathematical certainty. The test to be applied would be the usual test of the satisfaction of the prudent mind in such matters.

19. However, there is one important feature which distinguishes wills from other documents. 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 Patna High Court MA No.145 of 2013 is proved to be the last will and testament of the departed testator. Even so, in dealing with the proof of wills the Court will start on the same enquiry as in the case of the proof of documents. The propounder would be called upon to show by satisfactory evidence that the will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the dispositions and put his signature to the document of his own free will. Ordinarily when the evidence adduced in support of the will is disinterested, satisfactory and sufficient to prove the sound and disposing state of the testator's mind and his signature as required by law, Courts would be justified in making a finding in favour of the propounder. In other words, the onus on the propounder can be taken to be discharged on proof of the essential facts just indicated.

20. There may, however, be cases in which the execution of the will may be surrounded by suspicions 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 legitimate doubt as to the mental capacity of the testator; the dispositions made in the will may appear to be unnatural, improbable or unfair 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. In such cases the Court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last will of the testator. The presence

of such suspicious circumstances naturally tends to make the initial onus very heavy; and, unless it is satisfactorily discharged, Courts would be reluctant to treat the document as the last will of the testator. It is true Patna High Court MA No.145 of 2013 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, and in such circumstances, it would be a part of the initial onus to remove any such legitimate doubts in the matter.

21. Apart from the suspicious circumstances to which we have just referred in some cases the wills propounded disclose another infirmity. Propounders themselves take a prominent part in the execution of the wills which confer on them substantial benefits. If 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 circumstance attending the execution of the will and the propounder is required to remove the said suspicion by clear and satisfactory evidence. It is in connection with wills that present such suspicious circumstances that decisions of English Courts often mention the test of the satisfaction of judicial conscience. It may be that the reference to judicial conscience in this connection is a heritage from similar observations made by ecclesiastical Courts in England when they exercised jurisdiction with reference to wills; but any objection to the use of the word 'conscience' in this context would, in our opinion, be purely technical and academic, if not pedantic. The test merely emphasizes that, in determining the question as to whether an instrument produced before the Court is the last will of the testator, the Court is deciding a solemn question and it must be fully satisfied that it had been validly executed by the testator who is no longer alive.

22. It is obvious that for deciding material questions of fact which arise in applications for probate or in actions on wills, no hard and fast or inflexible rules can be laid down for the appreciation of the evidence. It may, however, be stated generally that a propounder of the will has Patna High Court MA No.145 of 2013 to prove the due and valid execution of the will and that it there are any suspicious circumstances surrounding the execution of the will the propounder must remove the said suspicions from the mind of the Court by cogent and satisfactory evidence. It is hardly necessary to add that the result of the application of these two general and broad principles would always depend upon the facts and circumstances of each case and on the nature and quality of the evidence adduced by the parties. It is quite true that, as observed by Lord Du Parcq in Harmes v. Hinkson, 50 Cal W N 895 : (A I R 1946 P C 156) "where a will is charged with suspicion, the rules enjoin a reasonable scepticism, not an obdurate persistence in disbelief. They do not demand from the Judge, even in circumstances of grave suspicion, a resolute and impenetrable incredulity. He is never required to close his mind to the truth," It would sound platitudinous to say so, but it is nevertheless true that in discovering truth even in such cases the judicial mind must always be open though vigilent, cautious and circumspect.

23. It is in the light of these general considerations that we must decide whether the appellant is justified in contending that the finding of the High Court against him on the question of the valid execution of the will is justified or not. It may be conceded in favour of the appellant that his

allegation that Lakshmamma has put her signatures on the will at five places is proved,; that no doubt is a point in his favour. It may also be taken as proved that respondent 1 has failed to prove that Lakshmamma was unconscious at the time when the will is alleged to have been executed. It is true she was an old woman of 64 years and had been ailing for some time before the will was executed. She was not able to get up and leave the bed. In fact she could sit up in bed with some difficulty and was so weak that she had to pass stools in bed. However, the appellant is entitled to argue that, on the evidence, the sound and disposing state of mind of Lakshmamma is proved. Mr. Iyengar, for the appellant, has strongly urged before us that, Patna High Court MA No.145 of 2013 since these facts are established, the Court must presume the valid execution of the will and in support of his contention he has invited our attention to the relevant statements on the point in the text books dealing with the subject. Jarman on "Wills" (Jarman on "Wills"-Vol. I, 8th Ed., p. 50) says that "the general rule is 'that the onus probandi lies in every case upon the party propounding a will and he must satisfy the conscience of the Court that the instrument so propounded is the last will of a free and capable testator'." He adds that, "if a will is rational on the face of it, and appears to be duly executed, it is presumed, in the absence of evidence to the contrary, to be valid." Similarly, Williams on "Executors and Administrators" (Williams on "Executors and Administrators" - Vol. I, 13th Ed., p. 92) has observed that, "generally speaking, where there is proof of signature, everything else is implied till the contrary is proved; and evidence of the will having been read over to the testator or of instructions having been given is not necessary." On the other hand, Mr. Viswanatha Sastri, for respondent No. 1, contends that the statements on which the appellant has relied refer to wills which are free from any suspicions and they cannot be invoked where the execution of the will is surrounded by suspicious circumstances. In this connection, it may be pertinent to point out that, in the same text books, we find another rule specifically mentioned. "Although the rule of Roman Law", it is observed in Williams, "that 'Qui se scripsit haeredem' could take no benefit under a will does not prevail in the law of England, yet, where the person who prepares the instrument, or conducts its execution, is himself benefited by its dispositions, that is a circumstance which ought generally to excite the suspicion of the Court, and calls on it to be vigilent and zealous in examining the evidence in support of the instrument in favour of which it ought not to pronounce, unless the suspicion is removed, and it is judicially satisfied that the paper does express the true will of the deceased" (Williams on " Executors and Patna High Court MA No.145 of 2013 Administrators", Vol. I. 13th Ed., p. 93.)"

28. The following judgment, considered the issue of mere registration of document infers solemnity of genuineness of document and all suspicious circumstance, will be treated to have been removed as the same is registered document was the core issue before the Honble Corut to have deliberated in the case of Rani Purnima Debi (supra). To understand the contour of the aforesaid judgment it will be relevant to narrate some essential facts. One Chandra Narayan Deb testator of Will died in the year 1946. Kumar Khagendra Narayan filed a test case in August 1946 before the District Court, Gauhati claiming that Kumar Chandra Narayan Deb had executed a Will in his favour whereby he has given entire property to the propounder of Will. Objection was raised by wife and daughter raising the genuineness of the Will claiming that the Will was not duly, legally and attested, the testator had no sound disposing state of mind at the time of execution of Will and the Will was the outcome of undue influence and coercion exercised by the respondent, Khagendra Narayan Deb who succeeded all through, the matter reached to the Honble Supreme Court., The Court has considered

the validity of the registered will itself sufficient to dispel all suspicious Patna High Court MA No.145 of 2013 circumstances arising in context of execution of Will The Court was of the view that mere fact that a Will is registered will not be itself be sufficient to dispel all suspicion circumstances where suspicion exists without submitting the proper evidence and on close examination of the document. If the evidence as to registration on a close examination reveals that the registration was made in such a manner that the document of which he was admitting execution was a Will disposing of his property and thereafter he admitted its execution and signed it in token thereof the registration will dispel the doubt as to the genuineness of the Will. But if the evidence as to registration shows that it was done in a perfunctory manner, that the officer registering the Will did not read it over to the testator or did not bring home to him that he was admitting the execution of a Will or did not satisfy himself in some other way that the testator knew that it was a will the execution of which he was admitting, the fact that the will was registered would not be of much value. It is also to be seen the nature and conduct of the testator and the document which is claimed to be last Will of the testator is natural. It will be relevant to quote paragraph nos. 5 and 23 of the aforesaid judgment:

Patna High Court MA No.145 of 2013 "5. Before we consider the facts of this case it is well to set out the principles which govern the proving of a will. This was considered by this Court in H. Venkatachala Iyengar v. B. N.

Thimmajamma, (1959) Supp (1) SCR 426: (AIR 1959 SC 443). It was observed in that case that the made of proving a will did not ordinarily differ from that of proving any other document except as to the special requirement of attestation prescribed in the case of a will by S. 63 of the Indian Succession Act. The onus of proving the will was on the propounder and in the absence of suspicious circumstances surrounding the execution of the will proof of testamentary capacity and signature of the testator as required by law was sufficient to discharge the onus. Where, however, there were suspicious circumstances, the onus would be on the propounder to explain them to the satisfaction of the Court before the will could be accepted as genuine. If the caveator alleged undue influence, fraud or coercion, the onus would be on him to prove the same. Even where there were no such pleas but the circumstances gave rise to doubts, it was for the propounder to satisfy the conscience of the Court. Further, what are suspicious circumstances was also considered in this case. The alleged signature of the testator might be very shaky and doubtful and evidence in support of the propounder's case that the signature in question was the signature of the testator might not remove the doubt created by the appearance of the signature. The condition of the testator's mind might appear to be very feeble and debilitated and evidence adduced might not succeed in removing the legitimate doubt as to the mental capacity of the testator; the dispositions made in the will might appear to be unnatural, improbable or unfair in the light of relevant circumstances; or the will might otherwise indicate that the said dispositions might not be the result of the testator's free will and mind. In such cases, the Court would naturally expect that all legitimate suspicions should be completely removed before the document was accepted as the last will of the testator. Further, a propounder Patna High Court MA No.145 of 2013 himself might take a prominent part in the execution of the will which conferred on him substantial benefits. If this was so it was generally treated as a suspicious circumstance attending the execution of the will and the propounder was required to remove the doubts by clear and satisfactory evidence. But even where there were

suspicious circumstances and the propounder succeeded in removing them, the Court would grant probate, though the will might be unnatural and might cut off wholly or in part near relations.

23. There is no doubt that if a will has been registered, that is a circumstance which may, having regard to the circumstances, prove its genuineness. But the mere fact that a will is registered will not by itself be sufficient to dispel all suspicion regarding it where suspicion exists, without submitting the evidence of registration to a close examination. If the evidence as to registration on a close examination reveals that the registration was made in such a manner that it was brought home to the testator that the document of which he was admitting execution was a Will disposing of his property and thereafter he admitted its execution and signed it in token thereof, the registration Will dispel the doubt as to the genuineness of the will. But if the evidence as to registration shows that it was done in a perfunctory manner, that the officer registering the will did not read it over to the testator or did not bring home to him that he was admitting the execution of a will or did not satisfy himself in some other way (as, for example, by seeing the testator reading the Will) that the testator knew that it was a Will the execution of which he was admitting, the fact that the Will was registered would not be of much value. It is not unknown that registration may take place without the executant really knowing what he was registering. Law reports are full of cases in which registered Wills have not been acted upon : (see, for example, Vellaswamy Servai v. Sivaraman Servai, ILR 8 Rang 179: (AIR 1930 PC 24), Surendra Nath v. Jnanendra Nath, AIR 1932 Cal 574 and Girja Datt Patna High Court MA No.145 of 2013 Singh v. Gangotri Datt Singh, (S) AIR 1955 SC

346. Therefore, the mere fact of registration may not by itself be enough to dispel all suspicion that may attach to the execution and attestation of a Will; though the fact that there has been registration would be an important circumstance in favour of the will being genuine if the evidence as to registration establishes that the testator admitted the execution of the will after knowing that it was a Will the execution of which he was admitting."

29. For testing the genuineness of the Will the Honble Supreme Court in the case of Kalyan Singh v. Smt. Chhoti and others, reported in AIR 1990 SC 396 where the Court has said that executant of the Will cannot be called to deny the execution or to explain the circumstances in which it was executed. It is, therefore essential that trustworthy and unimpeachable evidence should be produced before the court to establish genuineness and authenticity of the Will. It must be stated that the factum of execution and validity of the Will cannot be determined merely by considering the evidence produced by the propounder. In order to judge the credibility of witnesses and disengage the truth from falsehood the court is not confined only to their testimony and demeanor. It would be open to the court to consider circumstances brought out in the evidence or which appear from the nature and contents of the documents itself. It would be also open to the court to look Patna High Court MA No.145 of 2013 into surrounding circumstances as well as inherent improbabilities of the case to reach a proper conclusion on the nature of the evidence adduced by the party. It will be relevant to quote paragraph 20 and 21 of the aforesaid judgment:

> "20. It has been said almost too frequently to require repetition that a will is one of the most solemn documents known to law. The' executant of the will cannot be called to deny the execution or to explain the circumstances in which it was executed. It is,

> therefore, essential that trustworthy and unimpeachable evidence should be produced before the court to establish genuineness and authenticity of the will. It must be stated that the factum of execution and validity of the will cannot be determined merely by considering the evidence produced by the propounder. In order or judge the credibility of witnesses and disengage the truth from falsehood the court is not confined only to their testimony and demeanour. It would be open to the court to consider circumstances brought out in the evidence or which appear from the nature and contents of the documents itself. it would be also open to the court to look into surrounding circumstances as well as inherent improbabilities; of the case to reach a proper conclusion on the nature of the evidence adduced by the party.
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> 21. In H. Venkatachala Iyengar v. B. N. Thimmajamma, (1959) Supp (1) SCR 426 :

(AIR 1959 SC 443) Gajendragadkar, J., as he then was, has observed that although the mode of proving a will did not ordinarily differ from that of proving any other document, nonetheless it requires an element of solemnity in the decision on the question as to whether the document propounded is proved as the last will and testament of departed testator. Where there are suspicious circumstances, the onus Patna High Court MA No.145 of 2013 would be on the propounder to explain them to the satisfaction of the court before the will could be accepted as genuine. Where there are suspicious circumstances, the Court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last will of the testator. These principles have been reiterated in the subsequent decisions of this Court in Rani Purnima Devi v.. Kumar Khagendra Narayan Dev, (1962) 3 SCR 195: (AIR 1962 SC 567) and Smt. Indu Bala Bose v. Manindra Chandra Bose, (1982) 1 SCC 20: (AIR 1982 SC 133)."

30. In the case of Ram Piari v. Bhagwant and others, reported in AIR 1990 SC 1742 the Honble Supreme Court was dealing with the situation of testamentation whereby the father had executed a Will one day before his death bequeathing all his property in favour of sons of one daughter and disinherited the other daughter when no finding recorded she had bad relationship with testator. The Court has taken into consideration about the dispute arises between heir of same degree and beneficiaries even choose to deny the blood ties and that to unsuccessfully then Courts responsibility of performing its duties carefully and painstakingly multiplies. It is no doubt that there cannot be embargo to bequeath his own property amongst the persons both in extent and person including the stranger, yet to have testamentary capacity or a disposing state of mind of testator is requirement of Patna High Court MA No.145 of 2013 propounder to establish that the testator at time of disposition, knew and understood the property he was disposing and persons who were to be beneficiaries of his disposition.

Prudence, however, requires reason for denying benefit to those who too were entitled bounty of testator as they had similar claims on him. Absence of it may not invalidate a Will but it shrouds the disposition with suspicion as it does not give any inkling to the mind of testator to enable the Court to judge the disposition was voluntary act. Taking active effort by propounder in execution of Will raises another strong suspicion. Mere execution of Will, thus, by producing scribe or attesting witness or proving genuineness of testators thumb impressions by themselves was not sufficient to

establish validity of Will unless suspicious circumstances, usual or special are rules out and the Courts conscience is satisfied not only on execution but about its authenticity. It has further been held that there cannot be hard and fast rule when disinheritance is amongst heirs of equal degree and no reason for exclusion is disclosed, then the standard of scrutiny is not the same and if the Courts below failed to be alive to it then their orders cannot be said to be beyond review. It will be relevant to quote paragraph nos. 2 and 4 of the aforesaid judgment: Patna High Court MA No.145 of 2013 "2. Soft corner for grandchildren or like ability for a son or daughter or their issues is not uncommon to our society. Rather at times it becomes necessary either to provide for the lesser fortunate or to avoid the property from passing out of the family. But when dispute arises between heirs of same degree, and the beneficiary even chooses to deny the blood ties, and that too unsuccessfully, then Court's responsibility of performing its duties carefully and painstakingly multiplies. Unfortunately it was not properly comprehended by any of the Courts, including the High Court which was swayed more by happy marriage of appellant, a consideration which may have been relevant for testator but wholly irrelevant for Courts as their function is to judge not to speculate. Although freedom to bequeath one's own property amongst Hindus is absolute both in extent and person, including rank stranger, yet to have testamentary capacity or a disposable mind what is required of propounder to establish is that the testator at time of disposition knew and understood the property he was disposing and persons who were to be beneficiaries of his disposition.Prudence, however, requires reason for denying benefit to those who too were entitled to bounty of testator as they had similar claims on him. Absence of it may not invalidate a will but it shrouds the disposition with suspicion as it does not give any inkling to the mind of testator to enable the Court to judge if the disposition was voluntary act. Taking active interest by propounder in execution of Will raises another strong suspicion. In H.

Venkatachala v. B. N. Thimmajamma AIR1959 SC 443, it was held to render the Will infirm unless the propounder cleared the suspicion with clear and satisfactory evidence. Mere execution of Will, thus, by producing scribe or attesting witness or proving genuineness of testator's thumb impressions by themselves was not sufficient to establish validity of Will unless suspicious circumstances, usual or special, are Patna High Court MA No.145 of 2013 ruled out and the Courts conscience is satisfied not only on execution but about its authenticity. See Kalyan Singh v.,Smt. Chhoti, (1989) 4 JT 439 (AIR 1990 SC 396).

4. Ratio in Malkani v. Jamadar, AIR 1987 SC 767 was relied on to dissuade this Court from interfering, both, because the finding that Will was genuine, was a finding of fact and omission to mention reason for disinheriting the daughter or taking prominent part by beneficiary by itself was not sufficient to create any doubt about the testamentary capacity was because of misunderstanding of the correct import of the decision and the circumstances in which it was rendered. Property in Malkani's case was land. Beneficiary was nephew as against married daughter. Anxiety in village to protect landed property or agricultural holdings from going out of family is well-known. Even though it cannot be said to be hard and fast rule yet when disinheritance is amongst heirs of equal degree and no reason for exclusion is disclosed, then the standard of scrutiny is not the same and if the Courts below failed to be alive to it as is clear from their orders then their orders cannot be said to be beyond review. Although this Court does not normally interfere with findings of fact recorded by Courts below, but if the finding is recorded by erroneous application of principle of law, and is

apt to result in miscarriage of justice then this Court will be justified in interfering under Article 136."

31. In the case of Ramabai Padmakar Patil (supra) question was raised that the Will was testamended in favour of only one daughter, who became widow at an early days, living with her parents disinheriting other daughter the Honble Court has said that the Will is executed to alter the mode of Patna High Court MA No.145 of 2013 succession and by very nature of things it is bound to result in either reducing or depriving the share of a natural heir. If a person intends his property to pass to his natural heirs, there is no necessity at all of executing a Will. It is true that a propounder of the Will has to remove all suspicious circumstances. Suspicion means doubt, conjecture or mistrust.

But the fact that natural heirs have either been excluded or a lesser share has been given to them, by itself without anything more, cannot be held to be a suspicious circumstance, especially in a case where the bequest has been made in favour of an offspring Though it is the duty of the propounder of the Will to remove all the suspected feature, but it must be real, germane and valid suspicious features and not fantasy of the doubting mind. It will be relevant to quote paragraph nos. 5 and 8 of the aforesaid judgment:

> "5. Before we advert to the submissions made by the learned counsel for the parties, it will be useful to briefly notice the legal position regarding acceptance and proof of a Will. Section 63 of the Indian Succession Act deals with execution of unprivileged Wills. It lays down that 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. It further lays down that the Will shall be attested by two or more witness, each of whom has seen the testator signing or affixing his mark to the Will or has seen some other person sign the Will, in the presence and on the direction of the testator and Patna High Court MA No.145 of 2013 each of the witnesses shall sign the Will in the presence of the testator. Section 68 of the Evidence Act mandates examination of one attesting witness in proof of a Will, whether registered or not. The law relating to the manner and onus of proof and also the duty cast upon the court while dealing with a case based upon a Will has been examined in considerable detail in several decisions of this Court viz. H.

Venkatachala Iyengar v. B.N. Thimmajamma, Rani Purnima Debi v Kumar Khagendra Narayan Deb and Shashi Kumar Banerjee v. Subodh Kumar Banerjee. It will be useful to reproduce the relevant part of the observations made by this Court in the Constitution Bench decision in Shashi Kumar Banerjee which are as under (AIRp531 para 4) "The mode of proving a will does not ordinarily differ from that of proving any other document except as to the special requirement of attestation prescribed in the case of a will by Section 63 of the Indian Succession Act. The Onus of proving the will is on the propounder and in the absence of suspicious circumstances surrounding the execution of the will, proof of testamentary capacity and the signature of the testator as required by law is sufficient to discharge the onus. Where however there are suspicious circumstances, the onus is on the propounder to explain them to the satisfaction of the court before the court accepts the will as

genuine. Where the caveator alleged undue influence, fraud and coercion the onus is on him to prove the same. Even where there are no such pleas but the circumstances give rise to doubts, it is for the propounder to satisfy the conscience of the court. The suspicious circumstances may be as to the genuineness of the signature of the testator, the condition of the testators mind, the dispositions made in the will being unnatural improbable or unfair in the light of relevant circumstances or there might be other indications in the will to show that the testators mind was not free. In such a case the court would naturally Patna High Court MA No.145 of 2013 expect that all legitimate suspicion should be completely removed before the document is accepted as the last will of the testator. If the propounder himself takes part in the execution of the will which confers a substantial benefit on him, that is also a circumstance to be taken into account, and the propounder is required to remove the doubts by clear and satisfactory evidence. If the propounder succeeds in removing the suspicious circumstances the court would grant probate, even if the will might be unnatural and might cut off wholly or in part near relations."

8. A will is executed to alter the mode of succession and by the very nature of things it is bound to result in either reducing or depriving the share of a natural heir. If a person intends his property to pass to his natural heirs, there is no necessity at all of executing a Will. It is true that a propounder of the Will has to remove all suspicious circumstances. Suspicion means doubt, conjecture or mistrust. But the fact that natural heirs have either been excluded or a lesser share has been given to them, by itself without anything more, cannot be held to be a suspicious circumstance, especially in a case where the bequest has been made in favour of an offspring. In P.P.K. Gopalam Nambiar v. P.P.K.

Balakrishnan Nambiar it has been held that it is the duty of the propounder of the Will to remove all the suspected features, but there must be real, germane and valid suspicious features and not fantasy of the doubting mind. In this case, the fact that the whole estate was given to the son under the Will depriving two daughters was held to be not a suspicious circumstance and the finding to the contrary recorded by the District Court and the High Court was reversed. In Pushpavathi v. Chandraraja Kadamba it has been held that if the propounder succeeds in removing the suspicious circumstance, the court would have to give effect to the Will, even if the Will might be unnatural in the sense that it has cut off wholly or in part the near relations In Rabindra Nath Mukherjee v. Panchanan Banerjee it was observed that the Patna High Court MA No.145 of 2013 circumstance of deprivation of natural heirs should not raise any suspicion because the whole idea behind execution of the Will is to interfere with the normal line of succession and so, natural heirs would be debarred in every case of Will. Of course, it may be that in some cases they are fully debarred and in some cases partly. The concurrent finding recorded by the District Court and the High Court for doubting the genuineness of the Will on the aforesaid ground was reversed."

32. In the case of Pentakota Satyanarayana and others v. Pentakota Seetharatnam and others, reported in AIR 2005 SC 4362 and (2005)8 SCC 67 the Honble Supreme Court was considering the question of execution of Will when the husband after some time has started living with another lady and from that wedlock they were blessed with children.

The testator has executed the Will and made provision for first wife for decent living and rest property was given to the lady who lived with the person as husband and wife and society recognized them. Challenge of the Will went up to the Supreme Court. The Court has considered the issue of execution of Will and found that witnesses have seen the executor sign or affix his mark to the instrument. According to the definition attesting witness must state that each of the two witnesses has seen the executor sign or affix his mark to the instrument or has been some other persons sign the instrument Patna High Court MA No.145 of 2013 in the presence and by the direction of the executant. The witness should further state that each of the attesting witnesses signed the instrument in the presence of the execution. The signature of Registration Officer and identifying witness affixed to the registration endorcement is sufficient attestation under the Act. The endorsement by the sub-registrar that the executant has acknowledged before him execution did also amount to attestation. In the original document the executants signature was taken by the sub-registrar. The signature and thumb impression of the identifying witnesses were also taken in the document and sub-registrar has put the signature of the deed. In paragraph 26 the Court has said that even in a case where active participation and execution of the Will by the propounders/beneficiaries was there, it has held that that by itself is not sufficient to create any doubt either about the testamentary capacity or the genuineness of the Will Even mere presence of the beneficiary at the time of execution would not prove that the beneficiary had taken prominent part in the execution of the Will. Reliance has been placed on the judgment in the case of Sridevi & others v. Jayaraja Shetty & others, (2005) 2 SCC 784 where the Court has said that the onus to prove the Will is on the propounder and in the absence Patna High Court MA No.145 of 2013 of suspicious circumstances surrounding the execution of the Will proof of testamentary capacity and the proof of signature of the testator as required by law not be sufficient to discharge the onus. In case the person attesting the Will alleges undue influence, fraud or coercion, the onus will be on him to prove the same and that as to what suspicious circumstances which have been to be judged in the facts and circumstances of each particular case. The Honble Apex Court approved the Will.

33. In the case of Rabindra Nath Mukherjee and another v. Panchanan Banerjee and others, reported in AIR 1995 SC 1684= (1995)4 SCC 459 the Honble Supreme Court has said that active participation of close relatives in getting the execution of Will creates suspicious circumstance but proper repulsion removes the suspicion. The Court has said that execution of Will is to interfere with the normal line of succession. So natural heirs are debarred in every case of Will.

In some cases they are fully debarred in another case partly.

The Court has further said that in case where a Will is registered and the Sub Registrar certifies that the same had been read over to the executor who, on doing so, admitted the contents, the fact that the witnesses to the document are interested loses significance.

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34. The Honble Supreme Court in the case of N.

Kamalam (supra) has considered very elaborately the test and ingredients for a valid and genuine Will. There the Court has considered onus probandi and animo attestandi. The Court has also considered the meaning of attestation. The onus probandi has to prove the Will in case of suspicious circumstance, he has to remove all the suspicion attached to testamount. The Court has held scribe having subscribed his signature, does not mean that requirement of attestation under law is satisfied quoted extensor of paragraph 23 and 24 from Halsbury's Laws of England. The Court in paragraph 25 has said that there is no special form of attestation. He has placed reliance a judgment in the case of Indian Dental Works v. K.

Dhanakoti Naidu and another, reported in AIR 1962 Madras 127 and quoted the same for affirmance. In paragraph 28 the Court has held that from the material on record it must appear that there was intention to attest the document in compliance of the requirement of law. It will be relevant to quote paragraph nos. 1 to 6, 23, 25 to 30, 32, 34 and 35 of the aforesaid judgment reported in the case of N. Kamalam (Supra):

"1. The latin expressions 'onus probandi' and 'animo attestandi' are the two basic features in the Patna High Court MA No.145 of 2013 matter of civil Court's exercise of testamentary jurisdiction : Whereas 'onus probandi' lies in every case upon the party propounding a Will - the expression 'animo attestandi' means and implies animus to attest : to put it differently and in common parlance it means intent to attest. As regards the latter maxim, the attesting witness must subscribe with the intent that the subscription of the signature made stands by way of a complete attestation of the Will and the evidence is admissible to show whether such was the intention or not (see in this context Theobald on Wills 12th Ed. Page 129). This Court in the case of Girija Datt v. Gangotri Datt (AIR 1955 SC 346) held that two persons who had identified testator at the time of registration of the Will and had appended their signatures at the foot of the endorsement by the Sub-Registrar, were not attesting witnesses as their signatures were not put "animo attestandi". In an earlier decision of the Calcutta High Court in Abinash Chandra Bidvanidhi Bhattacharya v. Dasarath Malo (1929) ILR 56 Cal 598 : (AIR 1929 Cal 123), it was held that a person who had put his name under the word "scribe" was not an attesting witness as he had put his signature only for the purpose of authenticating that he was a "scribe". In the similar vein, the Privy Council in Shiam Sunder Singh v. Jagannath Singh (1928) 54 Mad LJ 43 : (AIR 1927 PC 248) held that the legatees who had put their signatures on the Will in token of their consent to its execution were not attesting witnesses and were not disqualified from taking as legatee. In this context, reference may be made to the decision of this Court in M. L. Abdul Jabbar Sahib v. H. V. Venkata Sastri and Sons (1969) 3 SCR 513 : (AIR 1969 SC 1147) wherein this Court upon reference to S. 3 of the Transfer of Property Act has the following to state (Para 8 of AIR) :

"It is to be noticed that the word "attested", the thing to be defined, occurs as part of the definition itself. To attest is to bear witness to a fact, Briefly put, the essential conditions of valid attestation under S. 3 are : (1) two or more witnesses have seen the executant sign the instrument or have received Patna High Court MA No.145 of 2013 from him a personal acknowledgement of his signature; (2) with a view to attest or to bear witness to this fact each of them has signed the instrument in the presence of the executant. It is essential that the witness should have put his signature animo attestandi, that is, for the purpose of attesting that he has seen the executant sign

or has received from him a personal acknowledgement of his signature. If a person puts his signature on the document for some other purpose, e.g., to certify that he is as scribe or an identifier or a registering officer, he is not an attesting witness.

2. For proper appreciation of the observations of this Court in Venkata Sastri's case (AIR 1969 SC 1147) (supra), S. 3 of the Transfer of Property Act, in particular, the meaning attributed to the word "attested" ought to be noticed and the same reads as below (para 8 of AIR) :

"attested", in relation to an instrument, means and shall be deemed always to have meant attested by two or more witnesses each of whom has seen the executant sign or affix his mark to the instrument, or has seen some other person sign the instrument in the presence and by the direction of the executant, or has received from the executant a personal acknowledgment of his signature or mark, or of the signature of such other person, and each of whom has signed the instrument in the presence of the executant; but it shall not be necessary that more than one of such witnesses shall have been present at the same time, and no particular form of attestation shall be necessary;"

3. Turning on to the former expression 'onus probandi', it is now fairly well-settled principle that the same lies in every case upon the party propounding the Will and may satisfy the Court's conscious that the instrument as propounded is the last Will of a free and capable testator, meaning thereby obviously, that the testator at the time when he subscribed his signature on to the Will had a sound and disposing state of mind and memory and ordinarily, however, the onus is discharged as regards the due execution of the Will if the propounder leads evidence to show that the Will Patna High Court MA No.145 of 2013 bears the signature and mark of the testator and that the Will is duly attested. This attestation however, shall have to be in accordance with S. 68 of the Evidence Act which requires that if a document is required by law to be attested, it shall not be used as evidence until at least one attesting witness has been called for the purpose of proving its execution and the same is so however, in the event of there being an attesting witness alive and capable of giving the evidence. The law is also equally well settled that in the event of there being circumstances surrounding the execution of the Will, shrouded in suspicion, it is the duty paramount on the part of the propounder to remove that suspicion by leading satisfactory evidence.

4. In this context, reference may be made to a decision of this Court in Seth Beni Chand (since dead) by LRs. v. Smt. Kamla Kunwar (1976) 4 SCC 554 : (AIR 1977 SC 63).

5. As regards the true legal position in the matter of proof of Wills, we rather feel it tempted to incorporate the succinct expression of law, in extenso, even though rather longish in nature, by Gajendragadkar, J. in the case of H. Venkatachala Iyengar v. B. N. Thimmajamma 1959 Supp (1) SCR 426 : (AIR 1959 SC 443). The learned Judge had the following to state (Para 18 of AIR) : "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 the documents, Sections 67 and 68 of the Evidence Act are relevant for this purpose. Under S. 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 Ss. 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 Patna High Court MA No.145 of 2013 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 a document in a Court of law. Similarly, Ss. 59 and 63 of the Indian Succession Act are also relevant. Sec. 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 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. 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 what it contained? Stated broadly it is the decision of these questions which determines the nature of the finding on the question of the proof of the 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 S. 63 of the Indian Succession Act. As in the case of proof of other documents so in the case of proof of Wills it would be idle to expect proof with mathematical certainty. The test to be applied would be the usual test of the satisfaction of the prudent mind in such matters.

6. Having discussed the basic law on the subject as above and before however adverting to the contextual facts we also deem it fit to record the statutory provision as engrafted in the Indian Succession Act as regards the execution of the Patna High Court MA No.145 of 2013 Wills. Section 63 of the Act of 1925 has three several requirements as regards the execution of Will viz.

(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."

23 As regards the requirement of attestation, Halsbury's Laws of England has the following to state :

"The testator's signature must be made or acknowledged by him in the presence of two or more witnesses present at the same time. Each witness must then either attest and sign the Will or acknowledge his signature, in the testator's presence. The testator's complete signature must be made or acknowledged when both the attesting witnesses are actually present at the same time and each witness must attest and sign, or acknowledge, his signature after the testator's signature has been so made or acknowledged. Although it is not essential for the attesting witnesses to sign in the presence of each other, it is usual for them to do so. Each witness should be able to say with truth that he knew that the testator had signed the document but it is not necessary that the witness should know that it is the testator's Will. There is, however, no sufficient acknowledgment unless the witnesses Patna High Court MA No.145 of 2013 either saw or had the opportunity of seeing the signature, even though the testator expressly states that the paper to be attested is his Will or that his signature is inside the Will." (Halsbury's Laws of England : 4th Edn. Vol. 50 para. 312)

25. Incidentally, be it noted that though no special form of the attestation clause is essential, there are two well-recognised forms of this clause showing that the requirement of the statute have been complied with and one of them should always be used to avoid any difficulty in securing a grant.

26. The requirement of attestation presently in the country is statutory in nature, as noticed herein before and cannot as such be done away with under any circumstances. While it is true that in a testamentary disposition, the intent of the attestor shall have to be assessed in its proper perspective but that does not however mean and imply non- compliance of a statutory requirement. The intention of the attestor and its paramount importance cannot thwart the statutory requirement. No doubt the scribe has subscribed his signature but scribe in accordance with common English parlance means and implies the person who writes the document. Significantly, however, in England the King's Secretary is popularly known as Scribaregis. Be that as it may, in common parlance an attribute of scribe as a mere writer as noted above, does not stretch the matter further. In the contextual facts, while the writer did, in fact, subscribe his signature but the same does not under-rate the statutory requirement of attestation as more fully described hereinbefore. True it is, that strenuous submissions have been made in support of the appeal that "attesting witnesses" have no other role to play but to subscribe their signatures in order to prove the genuineness of the Will and that in fact, when the scribe signs the Will, the same can be read as attestation. Needless to record however that the scribe Arunachalam was examined and it is on this score the learned advocate contended that the evidence of an attestor thus can be said to be on record so as to make the document namely the 'will' Patna High Court MA No.145 of 2013 in the instant case thus otherwise in accordance with law.

27. The effect of subscribing a signature on the part of the scribe cannot in our view be identified to be of same status as that of the attesting witnesses. The signature of the attesting witness as noticed above on a document, required attestation (admittedly in the case of a will the same is required), is a requirement of the statute thus cannot be equated with that of the scribe. The Full Bench judgment of the Madras High Court in H. Venkata Sastri and Sons v. Rahilna Bi, AIR 1962 Mad 111, wherein Ramchandra Iyer, J. speaking for the full bench in his inimitable style and upon reliance on Lord Cambell's observation in Burdett v. Spilsbory (1842-43 (10) Cl and F 340 : 59 RR 105) has the following to state pertaining to the meaning to be attributed to the word 'attestation' (paras 3 and 4

of AIR) :

". . . . . The definition of the term "attested" which is almost identical with that contained in S. 63(c) of the Indian Succession Act, has been the result of an amendment introduced by Act 27 of 1926. Prior to that amendment it was held by this Court that the word 'attested' was used only in the narrow sense of the attesting witness being present at the time of execution. In Shamu Pattar v. Abdul Kadir (1912) ILR 35 Mad 607 (PC), the Privy Council accepted the view of this Court that attestation of a mortgage deed must be made by the witnesses signing his name after seeing the actual execution of the deed and that a mere acknowledgment of his signature by the executant to the attesting witness would not be sufficient. The amending Act 27 of 1926 modified the definition of the term in the Transfer of Property Act so as to make a person who merely obtains an acknowledgment of execution and affixed his signature to the document as a witness, an attestor. It will be noticed that although S. 3 purports to define the word "attested" it has not really done so. The effect of the definition is only to give an extended meaning of the term for the purpose of the Act; the word 'attest' is used as a part of the Patna High Court MA No.145 of 2013 definition itself. It is, therefore, necessary first to ascertain the meaning of the word "attest" independent of the statute and adopt it in the light of the extended or qualified meaning given therein. The word "attest" means according to the Shorter Oxford Dictionary "to bear witness to, to affirm the truth or genuineness of, testify, certify." In Burdet v. Spilsbury, (1842-43) 10 Cl and F 340, Lord Cambell observed at page 417, "What is the meaning of an attesting witness to a deed? Why, it is, a witness who has seen the deed executed, and who signs it as a witness." The Lord Chancellor stated, "the party who sees the will executed is in fact a witness to it, if he subscribes as a witness, he is then an attesting witness."

The ordinary meaning of the word would show that an attesting witness should be present and see the document signed by the executant, as he could then alone vouch for the execution of the document. In other words, the attesting witness must see the execution and sign. Further, attestation being an act of a witness, i.e. to testify to the genuineness of the signature of the executant, it is obvious that he should have the necessary intention to vouch it. The ordinary meaning of the word is thus in conformity with the definition thereof under the Transfer of Property Act before it was amended by Act 27 of 1926. Before that amendment, admission of execution by the executant to a witness who thereupon puts his signature cannot make him an attestor properly so called, as he not being present at the execution, cannot bear witness to it; a mere mental satisfaction that the deed was executed cannot mean that he bore witness to execution. (4) After the amendment of S. 3 by Act 27 of 1926, a person can be said to have validly attested an instrument, if he has actually seen the executant sign, and in a case where he had not personally witnessed execution, if he has received from the executant a personal, acknowledgment of his signature, mark, etc. Thus of the two significant requirements of the term "attest", namely (1) that the attestor should witness the execution, which Patna High Court MA No.145 of 2013 implies his presence, then, and (2) he should certify or vouch for the execution by subscribing his name as a witness; which implies a consciousness and an intention to attest, the Amending Act modified only the first, the result is that a person can be an attesting witness, even if he had not witnessed the actual execution, by merely receiving personal acknowledgment from the executant of having executed the document and putting his signature. But the amendment did not affect in any way the necessity for the latter requirement, namely, certifying execution which implies that the attesting witness had the animus

to attest."

28. It was next contended that in the event of there being an intent to attest, that itself should be sufficient compliance of the requirement of law. While the introduction of the concept of animus to attest cannot be doubted in any way whatsoever and also do feel it relevant in the matter of proof of a document requiring attestation by relevant statutes but the same is dependant on the fact situation. The learned Judge as noticed above has himself recorded that two significant requirements of the term 'attest' viz., that the attestor should witness the execution thereby thus implying his presence on the occasion and secondly that he should certify for execution by subscribing his name as a witness which implies consciousness and intention to attest. Unfortunately, however, the factual score presently available does not but depict otherwise. The scribe's presence cannot be doubted but the issue is not what it is being said to be in support of the appeal that the scribe having subscribed his signature, question of further attestation would not arise - this issue unfortunately we are not in a position to lend concurrence with. The will as produced, records the following at page 4 thereof (page 106 of the P. Book) :

"Witnesses L. T. I. of Masanae Gowder
1. (Sd/- T. Subbiya)
S/o Verai Gowder
25-298, Thomas
Street Coimbatore.
2. (Sd/-) B. Govindaraju
Patna High Court MA No.145 of 2013

S/o S. Balagurumurthy
Chettiar, 25/250, Rangai
Gowder Street, Coimbatore.
Sd/- Arunachalam"

29. The animus to attest, thus, is not available so far as the scribe is concerned. He is not a witness to the will but a mere writer of the will. The statutory requirement as noticed above cannot thus be transposed in favour of the writer rather goes against the propounder since both the witnesses are named therein with detailed address and no attempt has been made to bring them or to produce them before the Court so as to satisfy the judicial conscience. Presence of scribe and his signature appearing on the document does not by itself be taken to be proof of due attestation unless the situation is so expressed in the document itself. This is again however not the situation existing presently in the matter under consideration. Some grievance was made before this Court that sufficient opportunity was not being made available, we are however, unable to record our concurrence therewith. No attempt whatsoever has been made to bring the attesting witnesses who are obviously available.

30. It is on this count that the learned advocate in support of the appeal very strongly contended that there is existing a responsibility on to the law courts to deal with the matter having due regard to the concept of justice. Technicalities, it has been contended there may be many - but would that subserve the ends of justice; one needs to ponder over the same. Justice oriented approach cannot be decried in the present day society as opposed to strict rigours of law; Law courts existence is dependent upon the present day social approach and thus cannot and ought not to be administered on sheer technicalities. The discussion of the law as above, definitely makes us ponder over the legal aspects once more since the tenor of the observations contained therein obviously looked into being in favour of the technicality rather a justice oriented approach and in that perspective let Patna High Court MA No.145 of 2013 us now have a review of the whole situation on the factual context. Masaney Gowder executed a will said to have been written by one Arunachalam and attested by Subayya and Govindaraju. The two attesting witnesses were not called to give evidence neither there was even any attempt to issue the process against them - why it has not been done? The explanation has been that both the attesting witnesses were inimical towards appellant and as such there was a refusal on their part to come to court and prove the document - how far however the same is an acceptable evidence! We will have to examine; but before so doing the factum of non- availability of the attesting witnesses cannot be discarded and if so, what would be its consequences. The application for additional evidence as dealt with hereinbefore, was made after a lapse of about 10 years after the appeal was filed and the learned judges thought it fit to reject such a prayer and we also do lend our concurrence thereof without taking any exception - but then what is the effect? We have thus existing on recrod a document said to be will of one Masaney Gowder whose signatures stand accepted and two attesting witnesses though named in the body of the document were not made available but the writer of the will or the scribe came forward and deposed as to the state of affairs on the date of signing of the will. It would be convenient thus to note the evidence of the scribe and see for ourselves as to whether even a justice oriented approach would be able to save the will in the absence of the attesting witnesses. Arunachalam stated in his examination in Chief as below :

"I have written Ex. A1. 'THE WILL'. I have written the WILL Ex. A1. for the sake of Masane Gowder. The said Masane Gowder has been introduced to me by the advocate G. M. Nathan who was formerly have. During the execution of the WILL, Advocate G. M. Nathan was residing at Thomas Street. At that time Masane Gowder was residing at the same place after one house of Advocate's home. Before the preparation of the 'WILL' I had been to his house and discussed wiht him about the details Patna High Court MA No.145 of 2013 and he has stated the details. At that time Massane Gowder's Mental and Physical status was found good. After writing the Ex. A. 1. the Will, I have read out the same to him, and he had stated that all were correct. Then in my presence Masane Gowder had affixed his thumb impression in each page. The affixing of thumb impression by Masane Gowder in Ex. A1 WILL had been witnessed by attestor Subbaiah, Govindaraju and myself. The signing of signature for witness by us, was eyewitnessed by Masane Gowder. After the Ex. A1. Will had been prepared and signed I handed over the 'WILL' to Masane Gowder."

32. On the basis of the aforesaid, strong reliance was placed on an earlier judgment of the Calcutta High Court in the case of Jagannath Khan v. Bajrang Das Agarwala, AIR 1921 Calcutta 208 wherein a Bench decision of the Calcutta High Court was pleased to record as below :

"According to the plaintiff's case, there were two attesting witnesses Hawai Bashunia and Kali Nath Sircar. As to Hawai Bashunia, there is no dispute. He was present when the document was executed and signed as an attesting witness. Kali Nath Sircar was the writer of the bond. He signed the bond in two places but not in the place set apart for the signature of witnesses. It is found by the lower appellate Court that he wrote his name as a writer and not as an attesting witness but that he was present at the time of execution of the deed and actually saw it. Whether this amounted to attestation within the meaning of Section 59 of the Transfer of Property Act, is a point on which different High Courts have held differently. There are decisions of the Allahabad High Court and the Patna High Court in favour of the appellant in Badri Prasad v. Abdul Karim (1913) ILR 35 All 254 and Ram Bahadur Singh v. Ajodhya Singh (1916) 20 Cal WN 699 : (AIR 1916 Patna 210). But this Court has held in the case of Rai Narain Ghose v. Abdur Rahim (1901) 5 Cal WN 454, that a person who is present and witnesses the execution of a deed and whose name appears on the Patna High Court MA No.145 of 2013 document, though he is therein described merely as the writer of the deed, is a competent witness to prove the execution of the deed. This case was followed in Dinamoye Devi v. Ban Behari Kupur (1903) 7 Cal WN 160.

It is contended on behalf of the appellant that these cases of the Calcutta High Court have in effect been overruled by the decision of the Privy Council in Shamu Patter v. Abdul Kadir Ravuthan (1912) ILR 35 Mad 607.

But in that case the present question did not arise. The Privy Council case turns on the question whether a person could attest a document on an acknowledgment by the executant that the signature on the document was his.

It is also contended that the Calcutta cases can be distinguished because they turn on the interpretation of Section 68 of the Evidence Act and not on the interpretation of Section 59 of the Transfer of Property Act.

But the "attesting witness" referred to in Section 68 of the Evidence Act when the question is, as to proof of a mortgage, must have the same meaning as an attesting witness in Section 59 of the Transfer of Property Act. If he be not an attesting witness in accordance with the provisions of Section 59 of the Transfer of Property Act, he cannot be a competent witness under Section 68 of the Evidence Act. We can find nothing in the present case to make this case distinguishable from the Calcutta cases cited above and we follow that decision.

The result is that this appeal fails and is dismissed with costs."

34 While it is true that Arunachalam, in the facts of the matter under consideration did write the Will and has also signed it but it is of utmost requirement that the document ought to be signed by the witnesses in order to have the statutory requirement fulfilled. Arunachalam has signed the document as a scribe not as a witness, if there were no signatures available as witness, probably we would have to specifically deal with such situation and consider that aspect of the matter but presently in the facts situation of the matter under Patna High Court MA No.145 of 2013 consideration, we have the advantage of two attesting witnesses, none of whom have been examined

and the factum of their non-availability also has not satisfactorily been proved. The evidence of one person namely Arunachalam, cannot displace the requirement of the statute when Arunachalam himself has specifically identified himself as Writer and not as a witness though in his evidence, he tried to improve the situation, but this improvement however, cannot be said to be accepted. The Will thus fails to have its full impact and its effect stands out to be non est.

35. On the wake of the aforesaid, we do find any reason to interfere with the order of the High Court. The Appeal, therefore, fails and is dismissed. No order however as to costs. The judgment pronounced as above, also covers Civil Appeals Nos. 3165 and 3166 of 1997. All I. As. stand disposed of without any further order thereon."

35. This Court in the case of Rameshwar Pandey (supra) in paragraph 17 while dealing with question of attestation this Court has held that Section 123 of the Transfer of Property Act deals with the gift deed which stipulates attestation of two witnesses and mere putting of their signatures on the gift deed by the witnesses in presence of the executant is enough to satisfy the requirement of law.

36. In the case of Savithri (supra) the Honble Supreme Court has held that Will is like any other document is to be proved in terms of the provision of Indian Succession Act and Evidence Act. The onus of proving the Will is on the Patna High Court MA No.145 of 2013 propounder and the testamentary capacity of the testator must also be established. The execution of the Will by testator has to be proved and at least one attesting witness is required to be examined for the purpose of proving the execution of the Will.

It is also required to establish that he has signed the Will in the presence of two witnesses who attested his signature in his presence and in the presence of each other. Only when there exist suspicious circumstances, the onus would be on the propounder to explain them to the satisfaction of the court before it can be accepted as genuine.

37. The Court has further held that the court must be satisfied that the Will in question was not only executed and attested under the Indian Succession Act and it should also be found that the said Will was the product of the free volition of the executant who had voluntarily executed the same after knowing and understanding the contents of the Will. Whenever there is any suspicious circumstance, the obligation is cast on the propounder of the Will to dispel the suspicious circumstance. Deprivation of a due share to the natural heirs itself is not a factor which would lead to the conclusion that there exist suspicious circumstances. But while testing the deviation and deprivation of due share the factual background Patna High Court MA No.145 of 2013 is to be taken into consideration while deciding the issue of genuineness of the Will. While deciding the deviation there should a reasonable explanation and attending circumstances why the executant has deprived the natural heir partly or fully and has bequeathed interest to a person who does not fall in the line of succession. But while deciding the issue it should be kept in mind the Indian situation, in a normal circumstance a testator does not deprive his heir and successor unless there is a strong reason and circumstances to deprive the natural heir. It will be relevant to quote paragraph nos. 14 and 19 of the aforesaid judgment:

> "14. The legal requirements in terms of the said provisions are now well-settled. A Will like any other document is to be proved in terms of the provisions of the Indian Succession Act and the Indian Evidence Act. The onus of proving the Will is on the propounder. The testamentary capacity of the propounder must also be established. Execution of the Will by the testator has to be proved. At least one attesting witness is required to be examined for the purpose of proving the execution of the Will. It is required to be shown that the Will has been signed by the testator with his free Will and that at the relevant time he was in sound disposing state of mind and understood the nature and effect of the disposition. It is also required to be established that he has signed the Will in the presence of two witnesses who attested his signature in his presence or in the presence of each other. Only when there exist suspicious circumstance, the onus would be on the propounder to explain Patna High Court MA No.145 of 2013 them to the satisfaction of the court before it can be accepted as genuine.
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> 19. Deprivation of a due share by the natural heirs itself is not a factor which would lead to the conclusion that there exist suspicious circumstances. For the said purpose, as noticed hereinbefore, the background facts should also be taken into consideration. The son was not meeting his father. He had not been attending to him, he was not even meeting the expenses for his treatment from 1959, when he lost his job till his death in 1978. The testator was living with his sister and her children. If in that situation, if he executed a Will in their favour, no exception thereto can be taken. Even then, something was left for the appellant."

38. In the case of Bharpur Singh (supra) the Court was considering the ingredients, requirements and tests of proper, valid and legal Will. The Court has approved the view that Will has to be proved by the propounder and if there is suspicious circumstance, it is duty of propounder to remove the same when a challenge is made by caveator on the ground of fraud, coercion or undue influence onus lies on the objector to prove the same unless suspicious circumstances is dispelled it would not be treated as the last tenstamentary disposition of the testator. It will be relevant to quote paragraph 11 of the aforesaid judgment:

> 11. The legal principles in regard to proof of a will are no longer res integra. A will must be proved having regard to the provisions contained Patna High Court MA No.145 of 2013 in clause (c) of Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence-Act, 1872, in terms whereof the propounder of a will must prove its execution by examining one or more attesting witnesses. Where, however, the validity of the Will is challenged on the ground of fraud, coercion or undue influence, the burden of proof would be on the caveator. In a case where the Will is surrounded by suspicious circumstances, it would not be treated as the last testamentary disposition of the testator.

39. In Jagdish Chandra Sharma v. Narain Singh Saini, reported in (2015) 8 SCC 615 considered all previous judgments and reiterated the same principle of law.

40. In view of the aforesaid discussion, it is culled out the probate of Will, it requires proper execution in terms of Section 63 of Indian Succession Act and Section 68 of Evidence Act, it is duty of the propounder to show that testator of Will has executed in the sound state of mind after understanding contents made thereunder which may infuse solemnity in the document. Testamentation of Will interfere with line of succession which may creates suspicious circumstances in normal situation but testator executes the Will either depriving natural heir or reducing share creates suspicious circumstance, it will be duty of propounder of Will to dispel all doubt surrounding the Will to the satisfaction of Patna High Court MA No.145 of 2013 court. If the caveator takes the plea of fraud, misrepresentation, coercion, in the event, onus lies upon objector to prove the same. Mere registration of Will ipso facto does not dispel all suspicious circumstance, it is duty of propounder to remove all suspicious circumstances around the Will.

41. Let us examine first whether execution has been done by the testator in terms of Section 63 of the Indian Succession Act and Section 68 of the Evidence Act. For that we will have to examine the Will as well as the evidence that has been brought in the present case. From the execution of the Will, it appears that Jagdish Singh has executed the Will in favour of Bimla Devi, who happens to be the daughter-in-law and wife of one Ravindra Singh being a nephew of distant degree mentioning in the Will, that as Jagdish Singh has no male or female heir, Ravindra Singh and his wife was looking after Jagdish Singh and being pleased with the service rendered by them, the Will was executed. As has been claimed that Jagdish Singh was sound state of mind, one Sudama Pandit and Ashok Singh have purportedly attested the Will. Uma Devi filed a caveat and raised objection that she is the daughter of Jagdish Singh. After the marriage she remained with her father and served her and Bimla Devi and her husband never looked after Patna High Court MA No.145 of 2013 him whenever Jagdish Singh had fallen ill, it is the Uma Devi and her husband were treating him either at Chapra or at Hazipur. It has further been said that she had gone to her Sasural, taking advantage of her absence, Jagdish Singh had fallen ill, Bimla Devi and her husband in the name of treatment took him and got a thumb impression on the plain paper obtained the registration by fraudulent manner with the help of Ashok Singh one of the attesting witness, who was working in the Registry Office. Serious objection was raised by the respondent if the testament does not satisfy with the requirement of animo attestandi as nowhere Ashok Singh has said that the Will was read over to Jagdish Singh and on his direction, he had put his signature as well as he has also pointed out the manner the thumb impression has been taken at the right hand side of each paper, which suggests that they obtained thumb impression of Jagdish Singh, who was not in a sound and disposing state of mind and created the Will.

Otherwise, if there would have been proper attestation there would have been a thumb impression of Jagdish Singh at the foot of the last page, but thumb impression is in such manner, it gives a strong suspicion that Jagdish Singh was not in a sound state of mind, Bimla Devi and her husband mischiefly Patna High Court MA No.145 of 2013 obtained the thumb impression. It is well settled that there is no particular form of attestation and if the witnesses come to the dock by a formal evidence give details of facts satisfy the test of attestation. Merely absence of statement in the Will of putting signature after being read and explained and on whose direction the attesting witness have put there signature can not be a ground or basis to hold that the attestation has not been made properly and cannot be said having no intention of the attesting witness to attest the document. As

has been held by the Honble Supreme Court the identifier as well as scribe can be attesting witness provided he attested the document in accordance with law.

42. In the present case Sudama Pandit has acted as an identifier and attesting witness as well as Ashok Singh, who has also put his signature and has come to the dock where he has stated that Jagdish Singh having found the Will as per his direction put his finger print of all the fingers and on the direction of the Jagdish Singh Sudama Pandit had put his signature and on the request of the Jagdish Singh he had also put his signature. So it is very hard to accept that Sudama Pandit and Ashok Singh were not the attesting witnesses as Sudama Pandit as well as Ashok Singh came to the dock and Patna High Court MA No.145 of 2013 have stated about execution and registration of the Will. So merely because Jagdish Singh had not put his finger at the foot of the Will will not ipso facto will be a factor to hold that the attestation has not been made in accordance with law. So much so the deed of Will has been executed as registered so this Court cannot hold that Will has not been executed in accordance with law. But it is not end of the matter as in the Will it has been specifically stated that Jagdish Singh has no male or female issue and they were serving Jagdish Singh to his satisfaction led to execution of the Will. So much so while filing testamentary suit they have specifically stated that Siya Devi wife of Jagdish Singh pre-deceased and Jagdish Singh has no male or female children. Uma Devi filed an objection and she brought the oral and documentary evidence to show that Uma Devi is the daughter of Jagdish Singh. This Court finds that number of close relatives such as O.P.W.1, 2 and 3 are aunts of Uma Devi, they have specifically stated that Uma Devi is daughter of Jagdish Singh. Babulal Yadav, who used to cultivate the land of Jagdish Singh has also stated this fact. Ex-

Mukhiya has also stated that the name of Uma Devi is in the Voter list. O.P.W.2 is also aunt of Uma Devi specifically stated that she is daughter of Jagdish Singh, she used to stay with her Patna High Court MA No.145 of 2013 father and on illness daughter and son-in-law were making arrangement for his treatment so much so a Will has been brought, which has been marked and Ext.-F there Veernath Singh, maternal grandfather and father of Siya Devi has specifically stated that from first wife, he was blessed with daughter namely, Siya Devi and he had entered into second marriage, but it proved unsuccessful in term of male issue, on account of death of second wife and Siya Devi having one daughter namely, Uma Devi, made some provision in the Will for Uma Devi, apart from family members of his agnate side.

Bimla Devi brought the close relatives as witness that could satisfy the fact that Uma Devi is daughter of late Jagdish Singh in term of Section 50 of the Evidence Act. On weighing the evidence of both sides, this Court comes to a conclusion that Uma Devi is the daughter of Jagdish Singh and with the wrongful and mala fide purposes, in the Will or as well as in the probate petition, appellant made a wrong averment that Jagdish Singh died issueless, that itself creates a very strong circumstance against the execution of Will. So, it is the duty of the propounder to remove all suspicious circumstances surrounding the said Will. It has to be seen whether the appellant propounder could dispel the suspicious Patna High Court MA No.145 of 2013 circumstances or not. While dealing with issue, it is necessary to closely examine the nature of Will. Absence of thumb impression at the foot of Will may not hold the Will illegal but the manner the thumb impression at the top on the right side of every page creates serious suspicion in the manner document of Will has

been created. It appears from the evidence of Bimla Devi, itself suggests that she was all through with Jagdish Singh at the time of execution of Will. Another witness, namely, Ashok Singh, A.W.1 he himself stated that Bimla Devi had gone along with Jagdish Singh for the purposes of execution of Will and it is apparent from cross examination that Sudama Pandit in cross-examination has stated that he along with Jagdish Singh, Bimla Devi, Ashok Singh had gone to the office of the registration.

43. A.W.2, Sudama Pandit, has also stated in cross-

examination that Ashok Singh, Bimla Devi and he were present at the time of execution of deed of will. Which itself indicate the active participation of the propounder. It has also come in the evidence that Jagdish Singh was not keeping a good health as well as he was illiterate was not in a position to understand the nature of document, which was put for registration though Bimla Devi, Ashok Singh and Sudama Patna High Court MA No.145 of 2013 Pandit are claiming that Jagdish Singh at the time of execution of Will was keeping sound and disposing state of mind, but on the contrary Bindu Devi, O.P.W.2, Saraswati O.P.W.3, O.P.W.1 Ganesh Singh and Uma Devi daughter of the Jagdish Singh O.P.W.10 have specifically that Jagdish Singh was ill, suffering from blood pressure, Sugar and time to time he became senseless, his treatment was done at Chhapra as well as Hazipur. They have also brought and proved the prescription of Doctors at Chhapra and Hazipur. Being a person of illiterate in the present case, the Registrar has not been examined to say that the contents of the Will was explained to Jagdish Singh and who after understanding the contents thereof has executed the Will. It does not stand to the reason why he will write that he has no male and female issue and why he would disinherit his own daughter without proper and reasonable ground having no explanation in the deed of Will and also in evidence when no material has been brought by the propounder of the Will that they were keeping a bitter relationship rather he has chosen a path of denial of relationship of father and daughter with Uma Devi. One thing come to mind of this Court, at the time of execution of Will if they were fair enough then in that circumstances ought have Patna High Court MA No.145 of 2013 approached any family member to be an attesting witness but for the reason best known to her she did not bring any person who is near to the family to be an attesting witness rather Ashok Singh who is working in the Registry Office related to Bimla Devi from his parents side become the attesting witness.

The alleged Will does not appear to be natural conduct of testator, this Court is of the view that contents of the Will was not read over him and he put his thumb impression without understanding the nature of document. The transaction in creation of document does not inspire confidence. In view of aforesaid discussion, this Court is of the view, the Will in consideration has no probate value.

44. In view of the aforesaid discussions, this Court is of the view that Bimla Devi failed to remove the suspicious circumstance as explained hereinabove.

45. In such view of the matter, the present appeal is dismissed.

46. Office is directed to remit back the lower court records forthwith.

Vinay/-
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(Shivaji Pandey, J)