IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 1202 of 2010

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA sd/-

and
HONOURABLE MR. JUSTICE R. T. VACHHANI sd/-

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Approved for Reporting	Yes	No
	yes	

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PIYUSH GANGASHANKAR VYAS
Versus
JAGDISH GANGASHANKAR VYAS & ANR.

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Appearance:
BIREN J PANCHAL(9300) for the Appellant(s) No. 1
MR PARTH S TOLIA(5617) for the Appellant(s) No. 1
MR RJ GOSWAMI(1102) for the Defendant(s) No. 1
MR SATYEN B RAWAL(1630) for the Defendant(s) No. 2
MRS KANAN R SHAH(3255) for the Defendant(s) No. 2

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CORAM:**HONOURABLE MR. JUSTICE ILESH J. VORA**
and
HONOURABLE MR. JUSTICE R. T. VACHHANI

Date : 18/09/2026

ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE R. T. VACHHANI)

1. The present appeal has been filed under Section 96 of the Code of Civil Procedure, 1908 (for short, 'CPC') by the appellant – the original plaintiff challenging the judgment and decree dated 13.08.2009 passed by the learned City Civil Judge, Court No.21,

Ahmedabad in Civil Suit No.267/2008, whereby the learned Judge was pleased to reject the suit on material particulars.

2. For the sake of brevity and convenience, parties are referred to as per their original status before the learned Trial Court.

3. Brief facts of the case are as under:

3.1 It is the case that the plaintiff and the defendants are the real brothers and sons of Mr. Gangashankar Trikamji Vyas, who was a teacher by profession and having property in Ahmedabad in Paldi area at Bungalow No.10, Pinakin Society. Mr. Gangashankar Trikamji Vyas (for short, 'the deceased') expired on 24.10.1993 and prior to his death, he made a Will dated 08.06.1992 (vide Exh.19) and the said Will was notarized before Notary Advocate Mr. C.D. Ghore. As per the Will, the plaintiff is entitled for half of the share from the immovable property and 1/3rd share from the movable property. In the said Will, the mother - Nirmalaben and the defendants have only right to reside in the premises and that she was not entitled to sell, mortgage, or gift the property. The said Nirmalaben, mother of the plaintiff and the defendants expired on 15.02.2005 and as per the Will, the defendant no.1, the eldest son of the deceased was appointed as an executor and mediator of the Will.

3.2 It is further case that the defendant no.2 had got transferred the property in his own name in collusion with the office bearers of the society and he refused to give anything for the said property. Thereafter, attempt for settlement was

initiated with the family members and procedure was initiated through Gujarat State Legal Services Authority, but defendant no.2 did not give heed to the representation by the plaintiff.

3.3 Thereafter, the plaintiff had filed the suit, *inter alia*, praying to claim for 1/3rd share in movable properties and one-half share in immovable property, left by their father in pursuance to Will dated 08.06.1992 (vide Exh.19). The plaintiff had further prayed for compensation at the rate of Rs.4,000/- per month for utilization of the property by the defendant no.2 and sought permanent injunction seeking to restrain the defendant from selling, alienating, mortgaging, gifting or in any way disposing of the said property.

3.4 On being served with the process before the learned Trial Court, the defendant no.1 appeared and filed a written statement at Exh.5 and conceded the claim of the plaintiff by describing relationship of the parties to the suit, so also sighting estimated value of the property in question, having been assessed at a higher stage.

3.5 The defendant no.2 filed a written statement vide Exh.24 and contested the claim of the plaintiff and denied all the statements and allegations made by the plaintiff against the defendants stating that the claim raised by the plaintiff is barred by misjoinder and non-joinder of necessary parties as the claim is barred by law of limitation while questioning the jurisdiction of the Court to deal with the suit as the same is also barred under the provisions of the Gujarat Co-operative Societies Act, 1961. It is further contended by the defendant no.2 in his written

statement that the plaintiff has never taken care of his parents and that their father had executed will dated 26.11.1987 (vide Exh.104), wherein the nomination runs in the name of Mr. Jagdishbhai – defendant no.1 and subsequently, the said nomination came to be cancelled and replaced by the name of defendant no.2. The defendant no.2 vide pursis/application at Exh.16 dated 18.08.2008 did produce certain documents along with the impugned Will dated 12.06.1986 (vide Exh.85).

3.6 It is further case that on the demise of their father, the defendant no.2 became the occupier and full owner of the suit premises in question. It is contended that the defendant no.1 was residing at Baroda and in around 1985, the deceased – father helped defendant no.1 so as to purchase the flat at Baroda. It is further contended that their mother had also executed Will on 20.06.1987 and contended that the entire Will dated 08.06.1992 (vide Exh.19) has been got up and concocted and thereby contended the execution thereof is in-proper form. It is further contended that the said will does not bear the signature of the deceased – father. More so, efforts have been made by defendant no.2 while calling upon the plaintiff to accept the amount towards the share fall in his favour, but the plaintiff refused the same and approached the Legal Services Authority ventilating his grievances, where the efforts for conciliation have been made between the parties, which ultimately turned into futile exercise.

3.7 The Will in question was dated 08.06.1992 and the same was notarized before the Notary Advocate Mr. C.D. Ghore, who

was examined on oath. However, the learned Judge came to the conclusion that since the plaintiff has not examined any of the attesting witnesses, the said notarized Will dated 08.06.1992 is held not proved in accordance with law and the Will dated 12.06.1986 is the only Will, which is executed in accordance with law and is proved as the attesting witness is examined. Accordingly, the learned Trial Court Judge rejected the suit of the plaintiff.

3.8 Being aggrieved, the plaintiff has preferred this appeal praying to quash and set aside the impugned judgment and decree dated 13.08.2009 passed by the learned City Civil Judge, Court No.21, Ahmedabad in Civil Suit No.267 of 2008.

4. We have heard the Learned Counsels for the respective parties and carefully examined the material documentary evidence adduced before the learned Civil Court.

5. Submissions made by learned Counsel for the appellant are as under:

5.1 It is submitted by learned Counsel for the appellant that the learned Trial Court Judge has grossly erred in coming to the conclusion that the Will dated 08.06.1992 (vide Exh.19) is not found proved as either of the witnesses have not been examined despite the Will dated 08.06.1992 being duly produced and executed by the attesting witnesses as also notarized before the notary advocate Mr. C.D. Ghore, who also has been examined. In support thereof, the notary advocate has also produced the original register of the year 1992 and submitted photo-copy of

the same and the notary has specifically deposed that late Shree Gangashankar Trikamji Vyas has duly signed the Will before him. Therefore, the learned Trial Court ought to have accepted the Will dated 08.06.1992.

5.2 It is further contended by learned Counsel for the appellant that the Will dated 12.06.1986 (vide Exh.85) produced by the defendant no.2 does not fulfill the required criteria and submitted that the Will dated 12.06.1986 is utterly a doubtful Will as neither the names of the witnesses have been stated in its proper form nor does the document bears the signatures of the said witnesses. More so, the said Will dated 12.06.1986 has neither been notarized nor been registered before the competent authority and that the last page of the said Will appears to bear the signature of the deceased – father, instead at every page of the said Will which is required to be signed by the concerned deceased – father. Not only that, the said aspect has also been duly confirmed by the defendant no.2 in his written statement by way of pursis vide Exh.24 that the Will dated 26.11.1987 (vide Exh.104) is the only Will signed and executed by the father, however, the said stance had promptly been changed by the defendant no.2 by producing the Will dated 12.06.1986 (vide Exh.85), after realizing that some illegality had been committed and therefore, to absolve from the said liability, the Will dated 12.06.1986 had been submitted after delayed period of 11 months. It is further submitted that even several correspondence have been made during the lifetime of the father so as to fulfill his last wish as described in the Will dated 08.06.1992 (Exh.19).

5.3 It is further submitted by learned Counsel for the appellant that though the Will dated 26.11.1987 (Exh.104) was executed after a short span of the Will dated 12.06.1986 (Exh.85), which was produced by the defendant no.2, not a single reference has been made of the previous Will dated 12.06.1986. Therefore, it is submitted that in view of the aforesaid and considering the issues pertinent to the family of the parties to the proceedings, the deceased - father had been constrained to execute the Will dated 08.06.1992 (Exh.19), which came to be duly notarized before the notary advocate and that the learned Judge of the Trial Court has committed grave error by discarding and not believing the questioned Will 08.06.1992, despite the same having been duly proved.

5.4 It is further submitted by learned Counsel for the appellant that even the defendant no.1, on whose custody the Will in question dated 08.06.1992 (Exh.19) has been produced, has also admitted the factum of the execution of the Will by the father and that the learned Trial Court Judge has committed error in not believing the version of the defendant no.1. Thus, it is submitted that instead of calling upon the plaintiff to prove the execution of the Will dated 08.06.1992 by examining the attesting witnesses, the learned Judge of the Trial Court has committed an error by straightaway rejecting the claim of the plaintiff and accepting the Will dated 12.06.1986 (vide Exh.85) followed by the directions to give effect to the same.

5.5 Learned Counsel for the appellant has placed reliance upon the judgment of the Hon'ble Tripura High Court which

reads as under:

> *(A) Dulal Baidya vs. Anil Sarkar (Dey); Jagadish Sarkar (Dey); Parimal Sarkar (Dey)@ Bishweshar Sarkar (Dey), reported in 2024 LawSuit(TR) 338.*

5.6 Upon aforesaid submissions, learned Counsel for the appellant submitted to allow this appeal.

6. Submissions made by learned Counsels for the respondent are as under:

6.1 Per contra, learned Counsels for the respondents submitted that though subsequent to the disposal of the suit, several grounds have been agitated by the appellant herein, one of which has been raised so as to show his readiness and willingness to examine the attesting witnesses, however, it is made clear that the said contentions seems to have been raised solely for the purpose of raising the same instead of producing any such material with regard to availability of the said attesting witnesses. Not only that, no such efforts have been made by the appellant before the learned Judge of the Trial Court to get the said attesting witnesses examined to get the signatures of the propounder deceased – father identified. Therefore, the same appears to be mere efforts without their being any substance.

6.2 Further, learned Advocates for the respondents while citing written statement at Exh.24 has contended that the suit filed by the plaintiff is barred by mis-joinder and non-joinder of parties and hit by law of limitation and provisions under the Gujarat Co-operative Societies Act. It is contended that there is no cause of

action and the Court lacks the jurisdiction to try the suit. It is contended by the defendant no.2 that the deceased – father executed a valid Will on 26.11.1987 (vide Exh.104) and that the nomination for the property was originally by the name of Jagdishbhai and the mother, but was later canceled by inserting defendant no.2's name, who upon the father's death, became the full owner and lawful occupier. He also contended that their mother had executed a Will dated 20.07.1997 and he denied the validity of the deceased – father's alleged Will dated 08.07.1992 (vide Exh.19), stating that it does not bear the deceased – father's signature and must be referred for an expert opinion.

6.3 It is the further contention of the defendant no.2 that he had called upon the plaintiff for acceptance of the amount of share, but the plaintiff refused before filing an application with the Legal Services Authority and that defendant no.2 remains ready and willing to pay that amount to the plaintiff.

6.4 In support of their submissions, learned Counsels for the respondents have placed reliance on the following judgments:

(A) Lilian Coelho & Ors. vs. Myra Philomean Coalho, reported in 2025 (0) AIR(SC) 518;

(B) Beni Chand (Since Dead) now by L.Rs., vs. Smt. Kamla Kunwar and Others., reported in AIR 1977 SC 63;

(C) Shashi Kumar Banerjee and Others, vs. Subodh Kumar Banerjee since deceased and after him his legal representatives and others, reported in 1964 (0) AIR (SC) 529;

(D) Yumnam Ongbi Tampha Ibemma Dev vs. Yumnam

Joykumar Singh & Others, reported in 2009 76 AIC 25;

(E) Janki Narayan Bhoir vs. Narayan Namdeo Kadam, reported in 2003 (1) SCC 297;

(F) Vijyaben Vashram vs. State of Gujarat & Ors., reported in (1988) 2 GLR 1412.

6.5 Upon aforesaid submissions, learned Advocates for the respondents submitted to reject this appeal.

7. The relevancy of the law and proposition laid down in aforesaid decisions relied upon by the learned Counsels appearing for the respective parties would be dealt at appropriate stage.

8. Having heard learned Counsels for the respective parties and having considered the materials placed on record so also the conclusions arrived at by the learned Judge of the Trial Court, the entire crux of the case solely rests on the disputed Will dated 08.06.1992 (vide Exh.19) as claimed to have been executed by the father of the parties to the suit, namely, Mr. Gangashankar Trikamji Vyas. Therefore, the relevancy of the same is required to be examined on the touchstone are on the preponderance of probabilities.

9. It is to be noted that apart from the disputed Will dated 08.06.1992 (vide Exh.19), three other Wills i.e. Will dated 26.11.1987 (vide Exh.104), Will dated 12.06.1986 (vide Exh.85) and Will dated 01.03.1980 (vide Exh.84), have been produced and reference of which has been made by the parties and has been dealt with by the learned Judge of the Trial Court, however,

considering the claim of the plaintiff which otherwise rests on the Will dated 08.06.1992 (vide Exh.19), **the moot question which requires to be considered is whether the Will dated 08.06.1992 has been duly executed rather proved by the plaintiff in consonance with the provisions of Section 63 of the Indian Succession Act, 1925 as well as Section 68 of the Indian Evidence Act, 1872?**

10. To deal with the aforesaid issue, the said provisions for the sake of brevity and convenience are required to be reproduced, which are as follows :

> ***"Section 63 in The Indian Succession Act, 1925:***
>
> ***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 acknowledgment 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.*
>
> ***Section 68 in The Indian Evidence Act, 1872:***
>
> ***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 of the Indian Registration Act, 1908 (XVI of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.] [Inserted by Act 31 of 1926, Section 2.]"...*

11. While applying the aforesaid provisions to the facts of the case on hand, the proof of execution of the Will is a former factor required to be considered beyond suspicious circumstances before coming to the conclusion that the Will is genuine. It is also pertinent to note that while considering the Will in question, if a Will is found not legally executed owing to the failure to

follow the prescribed procedure, then there would not be need to look into the question whether it is shrouded with the suspicious circumstances. It is also pertinent to note that even if the Will is genuine, it rests upon the jurisdiction of the Court to hold that it is not worthy to act upon as being shrouded with the suspicious circumstances, when propounder failed to remove such circumstances to the satisfaction of the Court.

12. To say differently, the execution of the Will is formerly required to be proved beyond a shadow of doubt and to establish the factum rather the genuineness of the Will, the following criteria are required to be proved:

> *"1) To establish and prove the will to be valid, it should be attested by two or more witnesses;*
>
> *2) And propounder thereof, atleast should examine one attesting witness to prove the Will;*
>
> *3) The attesting witness should not only speak about the testator's signatures having been affixed to the Will, but also has to speak that each of the attesting witnesses had signed the Will in presence of the testator."*

13. Since the provision of Section 68 of the Indian Evidence Act, 1872 speaks of as to how a document required by law to be attested can be proved, a document required by law to be attested shall not be used as evidence until one attesting witness atleast has been examined for proving its execution. It is also pertinent to note that if any witness is alive and is capable of

giving evidence, is to be examined before the documents required in law to be attested can be used as evidence.

14. Thus, the combined reading of provision of Section 63 of the Indian Succession Act, 1925 read with Section 68 of the Indian Evidence Act, 1871 makes it abundantly clear that a person propounding the Will has to get it proved that the Will was duly and validly executed and the same cannot be done by simply proving the signatures on the Will, that was of the testator, but must also be proved that attestations were also made properly as per the requirement of provision of Section 63 of the Indian Succession Act, 1925.

15. While applying the aforesaid propositions to the facts of case on hand, it is not in dispute that not a single attesting witness has been examined by the plaintiff. Simply by examining the notary advocate, who only notarized document in question, cannot be equated with the attesting witnesses, who are to be examined to prove execution of the valid Will. It is also required to be placed on record that notary advocate – person can at the most depose as to the notarization of the documents, and not with regard to the attestations of the execution of the documents in question by the testator.

16. Though during the course of appeal, one of the grounds has been agitated by the appellant that he may be permitted to adduce the additional evidence by calling upon the attesting witnesses to prove the execution of the Will, it is required to be made clear that the said contention appears to have been raised only for the purpose of raising it. As such, nothing sort of any

material substance has been placed on record as to the particulars of the attesting witnesses nor any such efforts ever since have been made by the appellant – plaintiff before the learned Trial Court, who in-turn, was constrained to hold that despite the repeated opportunities, the plaintiff failed to examine the attesting witnesses and by merely examining itself and notary advocate, it would not conclude the execution of the valid Will.

17. In context to the aforesaid issues, the provisions of Section 71 of the Indian Evidence Act, 1872, which are in the nature of extending safeguards to the mandatory provisions of Section 68 of the Indian Evidence Act and to meet with the situations where it is not possible to prove the execution of the Will by calling attesting witnesses, though alive and if the attesting witnesses denies or does not recollect the execution of the Will, the execution of the Will is to be proved by other cogent evidence. Therefore, provision of Section 71 of the Indian Evidence Act comes to the aid to meet with such claims. Thus, if the attesting witness does not turn-up then also execution of the Will can be proved by other evidence, however, as discussed herein-above, no efforts appears to have been made by the appellant and even in absence thereof, the execution of the Will as required in Clause (c) of Section 63 of the Indian Succession Act, 1925, cannot be said that Will is proved as per provision of Section 68 of the Indian Evidence Act, 1872, which in-fact lacks in claim raised by the appellant.

18. At this juncture, it would be relevant to refer to Section 71 of the Indian Evidence Act, 1872, which reads as under:

> ***Section 71 in The Indian Evidence Act, 1872 :***
>
> *..."71. Proof when attesting witness denies the execution.- If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence."*
>
> *To say will has been duly executed the requirements mentioned in clauses (a), (b) and (c) of Section 63 of the Succession Act are to be complied with i.e., (a) the testator has to sign or affix his mark to the will, or it has got to be signed by some other person in his presence and by his direction; (b) that the signature or mark of the testator, or the signature of the person signing at his direction, has to appear at a place from which it could appear that by that mark or signature the document is intended to have effect as a will; (c) the most important point with which we are presently concerned in this appeal, is that the will has to be attested by two or more witnesses and each of these witnesses must have seen the testator sign or affix his mark to the Will, or must have seen some other person sign the Will in the presence and by the direction of the testator, or must have received from the testator a personal acknowledgment of signature or mark, or of the signature of such other person, and each of the witnesses has to sign the Will in the presence of the testator."...*

19. It is pertinent to note that the whole case of the plaintiff, as discussed in aforesaid, rests solely on the Will dated 08.06.1992

(vide Exh.19), however, some other Wills alleged to have been executed by the deceased having been placed on record and the learned Judge of the Trial Court has also placed its findings on the aforesaid issue, which has no nexus so far as relief as sought by the plaintiff is concerned. Two of the Wills i.e. Will dated 01.03.1980 (vide Exh.84) and Will dated 26.11.1987 (vide Exh.104), have not been considered to be duly proved by either of the parties to the proceedings, and the Will dated 12.06.1986 (vide Exh.85) has been considered to be duly proved by the learned Judge of the Civil Court, while partly allowing the suit of the plaintiff.

20. The Will dated 12.06.1986 (vide Exh.85) having been held to be duly proved as original signatures of the testator and of the two witnesses have been held to be proved in compliance of the provision of Section 63 of the Indian Succession Act, 1925, and also found to have support of one of the attesting witness – Mr. Dinesh Manilal Patel, who deposed at Exh.103. Though this witness has been extensively cross-examined by the plaintiff, however, nothing sort of any such adverse or contrary could be carved out. On the contrary, as held by the learned Judge of the Civil Court, that this witness has specifically stated that the deceased had signed and affixed the date with his own handwriting and thereby, holding that the said Will has been duly proved in conformity with the legislative intent as contained in the aforesaid provisions of Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872.

21. In context to the case of ***Vijyaben Vashram vs. State of Gujarat & Ors.***, (supra) wherein it is held by the Division Bench of the Hon'ble Gujarat High Court that burden of proof rests on the propounder of the Will to establish its execution and attestation. It must be proved that the testator was in a sound disposing state of mind, that he signed the document believing it to be his Will and if suspicious circumstances surround the Will, those suspicions must be removed. However, the said is not an issue so far as the case on hand is concerned. Both the parties duly endorsed the propositions laid down in the aforesaid case, however, the same is not applicable to the facts of the case on hand.

22. In the case of ***Lilian Coelho & Ors. vs. Myra Philomean Coalho,*** (supra) wherein the Hon'ble Supreme Court has established that suspicious circumstances have to be taken into consideration before declaring a Will genuine, clarifying that if a Will fails to follow prescribed procedures, examining suspicious circumstances becomes unnecessary altogether. Further, it is held that even if a Will appears to be genuine, the Court retains full jurisdiction to reject it, if it remains shrouded in suspicious circumstances when propounder failed to remove such suspicious circumstances to satisfaction of Court.

23. Similar findings are observed in the case of ***Beni Chand (Since Dead) now by L.Rs., vs. Smt. Kamla Kunwar and Others.,*** (supra) and in the case of ***Shashi Kumar Banerjee and Others, vs. Subodh Kumar Banerjee since deceased and after him his legal representatives and others,*** (supra).

24. Further, in the case of ***Yumnam Ongbi Tampha Ibemma Dev vs. Yumnam Joykumar Singh & Others,*** (supra) wherein it is held by the Hon'ble Supreme Court that a Will to be valid should be attested by two or more witnesses and Propounder thereof should examine one attesting witness to prove a Will and that the attesting witness should speak not only about testator's signature of affixing his mark to Will, but also that each of witnesses had signed the Will in presence of testator. Relevant findings of the judgment in para nos. 7 and 9 are as under:

> *..."7. The attestation of the Will in the manner stated above is not an empty formality. It means signing a document for the purpose of testifying of the signatures of the executant. The attested witness should put his signature on the Will animo attestandi. It is not necessary that more than one witness be present at the same time and no particular form of attestation is necessary.*
>
> *Since a Will is required by law to be attested, execution has to be proved in the manner laid down in section and the Evidence Act which requires that at least one attesting witness has to be examined for the purpose of proving the execution of such a document. Therefore, having regards to the provisions of Section 68 of the Evidence Act and Section 63 of the Succession Act, a Will to be valid should be attested by two or more witnesses in the manner provided therein and the propounder thereof should examine one attesting witness to prove the will. The attesting witness should speak not only about the testator's signature or affixing his mark to the will but also that each of*

the witnesses had signed the will in the presence of the testator.

....

9. In B. Venkatamuni v. C.J. Ayodhya Ram Singh [2006(13) SCC 449], it was observed as follows:

"15. It is, however, well settled that compliance with statutory requirements itself is not sufficient as would appear from the discussions hereinafter made.

16. The approach of the Division Bench of the High Court did not address itself the right question. It took an erroneous approach to the issue as would appear from the decision of this Court in Surendra Pal v. Dr. Saraswati Arora [1974(2) SCC 600] whereupon again Mr V. Balachandran himself placed reliance, wherein the law was stated in the following terms: (SCC p. 605, para 7) "7. The propounder has to show that the will was signed by the testator; that he was at the relevant time in a sound disposing state of mind, that he understood the nature and effect of the dispositions, that he put his signature to the testament of his own free will and that he has signed it in the presence of the two witnesses who attested it in his presence and in the presence of each other. Once these elements are established, the onus which rests on the propounder is discharged. But there may be cases in which the execution of the will itself is surrounded by suspicious circumstances, such as, where the signature is doubtful, the testator is of feeble mind or is overawed by powerful minds interested in getting his property, or where in the light of the relevant circumstances the

> *dispositions appear to be unnatural, improbable and unfair, or where there are other reasons for doubting that the dispositions of the will are not the result of the testator's free will and mind. In all such cases where there may be legitimate suspicious circumstances those must be reviewed and satisfactorily explained before the will is accepted. Again in cases where the propounder has himself taken a prominent part in the execution of the will which confers on him substantial benefit that is itself one of the suspicious circumstances which he must remove by clear and satisfactory evidence. After all, ultimately it is the conscience of the court that has to be satisfied, as such the nature and quality of proof must be commensurate with the need to satisfy that conscience and remove any suspicion which a reasonable man may, in the relevant circumstances of the case, entertain." ...*

25. Most recently, in ***Pazhanathal (Dead) through LRs & Ors. v. Alamathal (Dead) through LRs & Ors., 2026 LiveLaw (SC) 813***, the Hon'ble Supreme Court has authoritatively reiterated that Section 69 of the Evidence Act is not a route of convenience available to a propounder who simply prefers not to produce the attesting witnesses; it is a narrow statutory exception that is triggered only once the propounder has satisfactorily demonstrated that no attesting witness can be produced to prove the Will under Section 68 – whether by reason of death, untraceability despite diligent search, or being beyond the process of the Court. The Hon'ble Apex Court held that mere non-production of an attesting witness, without proof of genuine unavailability, does not shift the mode of proof away from

Section 68, and that even where Section 69 is properly attracted, proof of handwriting alone does not resolve the distinct inquiry into testamentary validity, which must still be assessed cumulatively rather than by examining each circumstance in isolation.

26. The proposition laid down in ***Pazhanathal (supra)*** applies with full force to the case on hand, and indeed forecloses the plaintiff's case more emphatically than even the law as it stood at the time of the impugned judgment. The plaintiff has neither examined any attesting witness under Section 68, nor has he placed on record any death certificate, evidence of untraceability, or record of a genuine attempt at service so as to invoke Section 69, nor has he shown that an attesting witness, once called, denied or failed to recollect execution so as to invoke Section 71. The bare assertion, raised for the first time in appeal, that the appellant is 'ready and willing' to examine attesting witnesses if permitted, is precisely the kind of unsubstantiated assertion that the Hon'ble Supreme Court has cautioned against treating as a substitute for the statutory gateway of proof. Examination of the notary advocate alone, as held by the Hon'ble Supreme Court does not meet the requirement, since a notary, like a scribe or a sub-registrar, is not an attesting witness in the absence of independent proof of animus attestandi.

27. Thus, in a nutshell, the claims raised by the plaintiff – appellant which solely rests on the Will dated 08.06.1992 (vide Exh.19), however, the learned Judge of the Trial Court, while discussing other Wills as produced before it, considered the Will

dated 12.06.1986 (vide Exh.85), and thereby partly allowed the suit of the plaintiff – appellant, irrespective of the claim having not been raised qua the Will duly proved in conformity with the provisions of Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872 does not warrant any interference. It is also pertinent to note that the said relief has not been confronted or contested by the respondents, instead thereof having been duly conceded, as reflects from the submissions advanced by the respondents so also by not challenging the aforesaid order.

28. For the foregoing reasons, and in light of the settled law as reiterated and fortified by the latest decisions of the Hon'ble Supreme Court noticed hereinabove, this Court finds no infirmity in the finding of the learned Trial Court that the Will dated 08.06.1992 (vide Exh.19) was not proved in accordance with law, for want of examination of any attesting witness and for want of any material establishing genuine unavailability of such witnesses so as to invoke Section 69 or Section 71 of the Indian Evidence Act, 1872.

29. In view of the foregoing discussion, the present appeal stands ***dismissed***. Interim relief granted earlier, if any, stands vacated.

30. The impugned judgment and decree dated 13.08.2009 passed by the learned City Civil Judge, Court No.21, Ahmedabad in Civil Suit No.267/2008 stands confirmed.

31. Record and proceeding be sent back to the concerned Court forthwith.

sd/-
(ILESH J. VORA,J)

sd/-
(R. T. VACHHANI, J)

PARMAR KRISH

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: PARMAR KRISH(HC02348), ENGLISH STENO GRADE-II\, at High Court of Gujarat on 18/09/2026 15:10:42