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01/04/26

Hon'ble Court's Order dated 26th March, 2026 in Testamentary
Suit No.59 of 2008

ctcourt-
mum

< ctcourt-
mum@nic.in >

Testamentary Department < testa-bhc@nic.in >

Wed, 01 Apr 2026 11:02:18 AM +0530



To "CITY CIVIL AND SESSIONS COURT MUMBAI"<ctcourt-mum@nic.in>,"scc-
mumbai"<scc-mumbai@bhc.gov.in>,"scc-bandra"<scc-
bandra@bhc.gov.in>,"cmm-mummh"<cmm-mum.mh@bhc.gov.in>

Sir/ Madam,

I have the honour to forward herewith copy of Order dated 26th Mach, 2026 passed by this
Hon'ble Court with a request to take note of the same and act as per para 108 (ii) of said
Order.

Testamentary Registrar
High Court (O.S), Bombay

1 Attachment(s)

TS-59-2008.pdf

295.7 KB

सदर एम्मां सोचित 53 पानांयि Attachment ओरि

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Pls
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ASJ.

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Priyanka

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

TESTAMENTARY SUIT NO.59 OF 2008

Madhavi alias Madhaviben
Dhirajlal Sagar

... Deceased

Mahesh Mithalal Trivedi
Hindu Inhabitant of Mumbai
residing at Room No.23, A Block,
1st Floor, 202-D, Prekh Wadi, V.P.
Road, Mumbai - 400 004,
being the sole Beneficiary named
under the Will of the deceased

... Petitioner/Plaintiff

v/s.

1. Dinesh Jethalal Soni,
Age - 63 years, Indian Inhabitant,
residing at E-804, Sumer Castle,
Castle Mill Compound, Near
Vikas Complex, Thane (W) - 400 601.

2(a). Kishor Kantilal Vaya
Age : 58 years, of Mumbai, Indian Inhabitant,
Residing at 501-A, Parimal Co-op. Housing
Society Ltd., Juhu Lane, Andheri (West),
Mumabi - 400 058.

2(b). Suresh Kantilal Vaya
Age : 57 years, of Mumbai, Indian Inhabitant,
Residing at Plot NO.7 & 8, Hem Colony,
Tulsidham Building, 3rd Floor,
S.V. Road, Vile Parle (West),
Mumbai - 400 056.

2(c). Pradeep Kantilal Vaya
Age : 53 years, of Mumbai, Indian Inhabitant,
Residing at Flat No.17, 5th Floor,
153/ Shri Krupa Prasad Housing

Society Ltd., Behding Sony Mony,
S.V. Road, Vile Parle (West),
Mumbai - 400 056.

...! Caveators/Defendants

WITH
CAVEAT NO.139 OF 2015
IN
TESTAMENTARY SUIT NO.59 OF 2008
WITH
INTERIM APPLICATION NO.8117 OF 2025
IN
TESTAMENTARY SUIT NO.59 OF 2008
WITH
INTERIM APPLICATION NO.8118 OF 2025
IN
TESTAMENTARY SUIT NO.59 OF 2008
WITH
COURT RECEIVER'S REPORT NO.66 OF 2023
IN
TESTAMENTARY SUIT NO.94 OF 2011
WITH
TESTAMENTARY SUIT NO.94 OF 2011
IN
TESTAMENTARY PETITION NO.401 OF 2011

Mr. Aum J. Kini i/by Ms. Sapna Krishnappa for the Plaintiff in
TS/94/2011.

Mr. T.A. Vora a/w. N.R. Gandhi for the Plaintiff in TS/59/2008.

Mr. Udayan Shah i/by Tulsi Shah for Defendant Nos.2A to 2C in
TS/59/2008 and TS/94/2011.

Mr. K.K.Trivedi, Court Administrator.

Mrs. Nandini Deshpande, 1st Asst. to Court Receiver.

CORAM : KAMAL KHATA, J.
RESERVED ON : 28TH JANUARY 2026.
PRONOUNCED ON : 26TH MARCH 2026.

JUDGMENT:

- 1) By this Testamentary Petition, the Petitioner, Mahesh

Mithalal Trivedi (Mahesh) seeks Letters of Administration with the Will annexed in respect of the estate and credits of one late Madhaviben Dhirajlal Sagar. Mahesh claims to be the sole beneficiary under the said Will.

2) Upon a Caveat being filed by Dinesh Jethalal Soni, the nephew of Madhaviben, opposing the grant of probate, the Petition stood converted into Suit No. 59 of 2008.

Petitioner/Plaintiff's Case:

3) Madhaviben Dhirajlal Sagar (Madhaviben) died in Bombay on 27th August 2007. At the time of her demise she was residing at 31/A Madhav Bhuvan, (Sagarsamarat), 2nd floor, Maharshi Karve Road, (Queen's Road) Opposite Charni Road Railway Station, Mumbai - 400 004.

4) Madhaviben executed her last Will and testament dated 29th December 2006 at Mumbai.

5) Madhaviben's husband pre-deceased her; the couple was issueless; and that the parents of both Madhaviben and her husband had also pre-deceased them.

6) The Petition further states that the deceased left no heirs in Class I to Class IV and (Entries 1 to 8) and that the Petitioner has no knowledge of any person claiming to be an heir of the deceased or her

husband. On this basis, the Petitioner seeks grant of Letters Of Administration in his favour. This Petition was instituted on 19th November 2007. Two attesting witnesses filed their affidavits in support of the said petition. One is filed by Ramswaroop Jethmalji Soni and the other by Paresh Sitaram Brahmabhatt both dated 3rd November 2007.

7) On 17th June 2008, Dinesh Jethalal Soni, the nephew of Madhaviben, claiming to be a Trustee under Madhaviben's Will dated 17th May 2004, lodged a caveat along with an affidavit in support thereof. The Caveator asserts being in possession of a Will dated 17th May 2004 and alleges that the Will propounded by the Petitioner is fabricated.

8) It is further contended that the Petitioner has no relationship whatsoever with Madhaviben and is seeking to appropriate the entire estate on the basis of certain documents. According to the Caveator, the Will dated 17th May 2004 is a genuine and operative testament, under which he has been appointed as a trustee of the estate.

9) The Caveator further alleges that the nephews were neither disclosed in the Petition nor furnished with a copy of the alleged Will of 2006.

10) It is alleged that the Plaintiff lodged criminal complaints on

24th April 2010 at the local police station and subsequently before the learned Metropolitan Magistrate against the executors of the earlier Will dated 17th May 2004, as well as against the nephews, attesting witnesses and their Advocate. Pursuant to these proceedings, the Caveator states that he was arrested on 27th October 2010 and remained in custody until his release on 11th November 2010, during which period he and his family were subjected to considerable physical and mental distress. According to the Caveator, these proceedings were initiated with the ulterior motive of intimidating him into withdrawing his Caveat.

11) On 25th January 2011, the Caveator, who is a Defendant in the present Suit, filed an Affidavit dated 11th January 2011, withdrawing his Caveat to the grant of probate in favour of the Plaintiff.

12) In the said Affidavit, the Caveator states that he is unaware of the origin or execution of the alleged Will dated 17th May 2004, and that he had filed the Caveat solely on account of being named as a trustee therein.

13) The Caveator also made a statement that upon making inquiries with the purported attesting witnesses to the said Will, he was informed that their signatures had been obtained in the year 2008 at the instance of one Deepak Sagar, the nephew of Madhaviben.

14) In the aforesaid backdrop, an Order dated 16th April 2012 came to be passed whereby this Court, by consent of the parties, permitted the heirs of the deceased in Testamentary Suit No. 94 of 2011 to be treated as Caveators in the present Suit and to cross-examine the Plaintiff and his witnesses. By the same Order, and having regard to the pleadings on record, this Court framed the following issues:

- i) Whether the Will of the deceased Madhaviben Dhirajlal Sagar dated 29th December 2006 was validly executed?
- ii) Whether the said Will was forged or fabricated?
- iii) Whether the Will of Madhaviben D Sagar dated 17th May 2004 was validly executed?
- iv) Whether the said will was forged and fabricated?
- v) What relief if any other parties entitled to?

15) The Court held that since the Will dated 29th December 2006 is the later testament propounded by the Plaintiff, the burden lies upon him to prove its due execution in the first instance and was directed to file his Affidavit of Examination in Chief as the propounder of the later Will dated 29th December 2006.

16) On 23rd June 2015, Smt. Champaben Kantilal Vaya (now

deceased), sister of Late Dhirajlal Prabhudas Sagar, filed a Caveat raising objections to grant of probate to the Plaintiff. Consequently, she was arrayed as Defendant No.2. After her death her legal heirs 2(a) to 2 (c) were brought on record by an order dated 25th July 2017.

Rival Submissions:

17) Mr. Vora, learned Advocate for the Plaintiff, submitted that the Will dated 29th December 2006 was duly executed by the testatrix in the presence of two attesting witnesses and Dr. Sudhir Shah, all of whom were present at the same time and place. He contended that the attesting witnesses identified the document as the Will dated 29th December 2006 and proved the signatures of the testatrix as well as their own signatures appearing thereon. It was further submitted that Dr. Sudhir Shah had issued a medical certificate dated 29th December 2006 certifying that the testatrix was of sound and disposing mind, which certificate forms part of the original Will.

18) In support of these submissions, reliance was placed on the deposition of Mr. Ramswaroop Soni recorded before the learned Commissioner, particularly answers to Question Nos. 111 to 117 (pages 46-47), Question Nos. 118-119 and 135 (pages 47-50), and Question Nos. 265-266 (pages 82-83) of the Commissioner's Report. Mr. Vora further relied upon portions of the cross-examination of Mr. Ramswaroop Soni, particularly Question Nos. 66-71 (pages 138-139),

Question Nos. 90 and 91 (page 142), Question Nos. 112 and 114 (pages 147-148) of the Commissioner's report, to submit that the presence of Dr. Sudhir Shah at the time of execution, as well as the sound condition of the testatrix, stood duly established.

19) Mr. Vora next relied upon the evidence of the second attesting witness, Mr. Paresh Brahmabhatt, particularly answers to Question No. 62 (page 178), Question Nos. 97, 99, 103 and 104 (pages 186-187), Question Nos. 109, 110, 119, 120, 122, 133 and 134 (page 191), Question Nos. 125, 137 and 141 (pages 198-199), and Question Nos. 175 and 176 (page 208) of the Commissioner's Report. It was submitted that the testimony of both attesting witnesses remained consistent and unshaken despite extensive cross-examination, and that due execution and attestation stood proved in accordance with law.

20) Mr. Vora further relied upon the evidence of Mr. Jonathan Solomon Raymond, learned Advocate for the deceased. It was submitted that Mr. Raymond had been in practice for over four decades in this Court and had represented Madhaviben and her husband since 1992 in various litigations. After the demise of Dhirajlal Sagar, Madhaviben instructed him to continue conducting her matters and informed him that Mr. Mahesh Trivedi would follow up the proceedings on her behalf. For that purpose, a Power of Attorney came

to be executed in favour of Mr. Trivedi in December 2004.

21) It was further submitted that in May 2006, Madhaviben called Mr. Raymond to her residence and gave detailed instructions for preparation of her Will. According to the witness, she clearly expressed her intention to bequeath her entire estate to Mr. Mahesh Trivedi and specifically instructed that none of her relatives should receive any part thereof. The draft Will was prepared accordingly and discussed on more than one occasion. In December 2006, she informed Mr. Raymond that she was ready to execute the Will. The names of the attesting witnesses were inserted on 28th December 2006. She had also informed him that she had requested Dr. Sudhir Shah to issue a medical certificate regarding her health condition.

22) Mr. Raymond deposed that on 29th December 2006, Madhaviben collected the draft Will from his office in the morning and returned later that evening with the duly executed Will together with the medical certificate. At her specific request, the Will was stitched with red thread instead of the usual green thread. In January 2007, she handed over to him two sealed envelopes containing the original Will and a photocopy thereof, with instructions that the same be opened 10 to 15 days after her demise in the presence of Mr. Mukesh Shah and Mr. Mahesh Trivedi. After her death, meetings were held on 26th and 28th September 2007, at which the Will was opened and read

out in the presence of the persons named. Reliance was also placed on the Minutes of Meeting dated 28th September 2007.

23) Mr. Vora submitted that minor inconsistencies elicited in cross-examination of Mr. Raymond do not detract from the core of his testimony, which clearly establishes that the Will was drafted strictly in accordance with the instructions of the testatrix.

24) Mr. Vora also relied upon the evidence of the propounder, Mr. Mahesh Trivedi. It was submitted that he had longstanding business dealings and close personal association with the deceased and her husband. During the illness of Dhirajlal Sagar in 2003, and thereafter during Madhaviben's hospitalization in 2004, Mr. Trivedi assisted them and claims to have borne certain medical expenses. A tenancy agreement dated 21st July 2004 was executed in his favour in respect of Flat No. 6 in the building. He was also appointed as constituted attorney in December 2004 in respect of pending litigations.

25) It was further submitted that upon the demise of Madhaviben on 27th August 2007, Mr. Trivedi informed the concerned authorities, organised the funeral rites, and bore related expenses. Meetings were subsequently held in September 2007, when the Will was opened and read. The present Petition was filed on 19th November 2007. Correspondence thereafter ensued with the nephews, who

claimed possession of an earlier Will dated 17th May 2004. It was also pointed out that a suit subsequently filed by the nephews in the City Civil Court came to be dismissed on 13th December 2012, the Court holding that there was no cogent evidence of trespass or encroachment by Mr. Trivedi.

26) Mr. Vora invited attention to the cross-examination of Mr. Mahesh Trivedi to emphasise certain aspects of his conduct and association with the deceased. In relation to the tenancy agreement dated 21st July 2004, it was submitted that the same was executed in the office of the Advocate for Madhaviben, with two witnesses arranged by her and two by Mr. Trivedi (answers to Question Nos. 73 and 74, page 389). It was further submitted that on that date Madhaviben was ambulatory with the support of a stick and was not physically incapacitated (answers to Question Nos. 76 to 79 and 90).

27) Mr. Vora also referred to correspondence received from Advocate Bhavesh Parmar enclosing a photocopy copy of the alleged Will dated 17th May 2004, under which Mukesh Shah, Dinesh Soni and Narendra Shah were shown as beneficiaries (answers to Question Nos. 82 to 86, pages 390-391). Reference was further made to answers to Question Nos. 93 to 96 (page 392) to show that Advocate Raymond had been introduced to Mr. Trivedi by Dhirajlal Sagar in 1997 and that Mr. Gandhi was first introduced at the time of opening

of the Will on 28th September 2007.

28) It was also submitted that under the Power of Attorney executed in December 2004, Mr. Trivedi had deposed on behalf of Madhaviben in two proceedings before the Small Causes Court (answers to Question Nos. 112 and 120). Hospital records were relied upon to demonstrate that he had admitted Madhaviben to Bhatia Hospital on 17th May 2004 and had borne the hospital, ambulance and funeral expenses (answers to Question Nos. 121, 123, 125, 131 and 132). It was further contended that on 26th August 2007 she was in stable condition (answers to Question Nos. 71 and 72), and that the present Petition was filed on legal advice (answer to Question No. 80, page 432).

Issue-wise submissions of Mr. Vora

29) Issue No. 1: Whether the Will dated 29th December 2006 of deceased Madhaviben Dhirajlal Sagar was validly executed?

- i. Mr. Vora submitted that the Will dated 29th December 2006 was validly executed by Madhaviben at her residence, Flat Nos. 4 and 5, Madhav Bhuvan, Opposite Charni Road Railway Station, Mumbai - 400 004, in the presence of two attesting witnesses, namely Mr. Ramswaroop Soni and Mr. Paresh Brahmabhatt, and also in the presence of Dr. Sudhir Shah. It was

contended that the execution and attestation were carried out in the simultaneous presence of all concerned.

- ii. It was further submitted that at the time of execution, Madhaviben was in a sound and disposing state of mind, fully conscious, and acting of her own free will, without any coercion or undue influence. The attesting witnesses have deposed that the testatrix signed first, followed by Mr. Ramswaroop Soni and thereafter Mr. Paresh Brahmabhatt. Dr. Sudhir Shah issued a certificate certifying her to be of sound mind and disposing capacity, and his presence at the time of execution was identified in the cross-examination of Mr. Brahmabhatt.
- iii. Mr. Vora submitted that although Dr. Sudhir Shah expired on 5th August 2009 before his evidence could be recorded in Testamentary Suit No. 59 of 2008, the essential facts regarding execution and mental capacity remain unrebutted. It was contended that the Defendants have failed to elicit anything in cross-examination to discredit the testimony of the Plaintiff's witnesses, nor have they led any independent evidence to establish that the Will is false or fabricated.

iv. It was further submitted that the Defendants have failed to substantiate their allegations that the Will dated 29th December 2006 was forged, fabricated, or brought about by undue influence.

v. On the basis of the evidence of the five witnesses examined by the Plaintiff, it was contended that the Will stands proved in accordance with Sections 59 and 63 of the Indian Succession Act, 1925. According to Mr. Vora, the due execution and attestation of the Will have remained uncontroverted and stand duly established.

30) Issue No. 2: Whether the Will dated 29th December 2006 was forged and fabricated?

i) Mr. Vora submitted that Mr. Mukesh Shah, who is stated to be the propounder of the earlier Will dated 17th May 2004, has neither filed a caveat opposing the grant of probate in respect of the Will dated 29th December 2006 nor offered himself for cross-examination.

ii) It was further submitted that the only witnesses examined on behalf of the Defendants were Mr. Kamlesh Ginandra and Mr. Deepak Sagar. According to Mr. Vora, neither witness was able to controvert

the Plaintiff's case regarding the execution of the subsequent Will. It was contended that no cogent evidence has been produced to establish that the Will dated 29th December 2006 is forged or fabricated, and that the Defendants have failed to discharge the burden of proving such allegation.

- iii) Lastly, Mr. Vora submitted that the Will dated 29th December 2006 presently stands uncontested. He pointed out that, by Consent Terms dated 11th July 2025 executed between the Plaintiff and Defendant Nos. 2(a), 2(b) and 2(c), the said Defendants have withdrawn their caveats in the present Suit. He further submitted that Defendant No. 1, Mr. Dinesh Soni, had earlier withdrawn his caveat by an Affidavit dated 14th January 2011.

31) In these circumstances, it was contended that there is no subsisting opposition to the grant of probate and, consequently, the Plaintiff is entitled to probate of the said Will in accordance with Section 276 of the Indian Succession Act, 1925.

32) Reliance is placed on the following judgements in support of his aforesaid contentions.

- i. Iswarbhai C. Patel Alias Bachubhai Patel Vs. Harihar

Behera and Anr¹

- ii. Madhukar D. Shende Vs. Tarubai Shende²
- iii. Meenakshi Ammal (Dead) through LRs & Ors. Vs. Chandrasekaran & Anr.³
- iv. Daulatram & Ors. Vs. Sodha & Ors.⁴
- v. Pentakota Satyanarayana. & Ors. Vs. Pentakota Seetharatnam & Ors.⁵
- vi. Savithri & Ors. Vs. Karthyayani Amma & Ors.⁶
- vii. Man Kaur Vs. Hartar Singh Sangha⁷
- viii. Mahesh Kumar (Dead) by LRs Vs. Vinod Kumar & Ors.⁸
- ix. Rustom Minoo Seth Vs. Freddy Dinshaw Birdy⁹
- x. Iqbal Basith & Ors Vs. N.Subbalakshmi & Ors.¹⁰
- xi. Saroj Kumar Chatterjee¹¹
- xii. Derek AC Lobo Vs. Ulric MA Lobo¹²
- xiii. Shonali Kedar Dighe Vs. Ashita Tham¹³
- xiv. Leela and Ors. Vs. Muruganantham and Ors.¹⁴

33) *Per contra*, Mr. Kini, learned Advocate for the Defendants,

¹ 1999 3 Supreme Court Cases 457
² (2002) 2 SCC 85
³ (2005) 1 SCC 280
⁴ (2005) 1 SCC 40
⁵ (2005) 8 SCC 67
⁶ (2007) 11 SCC 621
⁷ (2010) 10 SCC 512
⁸ (2012) 4 SCC 387
⁹ TS No.225 of 2015 dated 21.12.2026 BHC
¹⁰ (2021) 2 SCC 718
¹¹ 2021 AIR CC 3097
¹² 2023 SCC Online SC 1893
¹³ AIR 2024 (NOC) 242 BOM
¹⁴ (2025) 4 SCC 289

being the heirs of Madhaviben, vehemently opposed the grant of Letters of Administration along with the Will dated 29th December 2006 on the grounds of suspicious circumstances surrounding its execution.

34) It submitted that the estate of the deceased comprises three buildings situated opposite Charni Road Railway Station, Mumbai, namely: (i) *Varsha* (ground plus three upper floors), (ii) *Roshni* (ground plus one upper floor), and (iii) *Sagarsamrat* (ground, mezzanine and five upper floors). According to him, the estate is of considerable value, running into several crores of rupees. He submitted that Dhirajlal Sagar and Madhaviben Sagar, a childless couple, were the admitted owners. Dhirajlal Sagar expired on 20th April 2004 and Madhaviben on 27th August 2007.

Issue-wise submissions by Mr. Kini Defendant's Advocate.

35) With regard to the first issue: whether the Will dated 29th December 2006 was validly executed, Mr. Kini submitted that two Wills are in question. The first is a ten-page handwritten Will dated 17th May 2004, signed on each page in Gujarati and English, by which the estate is bequeathed largely to charitable purposes. It is attested by Dilip Suru and Kamlesh Ginandra and appoints trustees, namely Mukesh Shah, Dilip Soni and Narendra Shah (Ramban), with discretion to utilise the funds for the purposes stated therein. The

second is a six-page typed Will in English dated 29th December 2006, signed only on the last page, under which Mr. Mahesh Trivedi is the sole beneficiary. It was emphasised that Mr. Trivedi is not a relative but claims to have acted as a constituted attorney of the deceased.

36) Mr. Kini invited attention to paragraph 8 of the Petition, wherein it is stated that the deceased had no heirs falling within Class I to Class IV and that the Petitioner had no knowledge of any such persons. He submitted that this assertion stands contradicted by the Plaintiff's own admission in cross-examination, particularly in answer to Question No. 86, wherein he acknowledged that Bharat Sagar and Deepak Sagar are nephews of Dhirajlal Sagar. On this basis, it was contended that the Petitioner had prior knowledge of the existence of heirs and that the statement made in the Petition is demonstrably incorrect.

37) Mr. Kini identified several suspicious circumstances surrounding the Will dated 29th December 2006, namely:

- i. The entire estate being bequeathed to a non-relative who was at best a constituted attorney;
- ii. The Will being typed in English, though the deceased was accustomed to signing documents on each page, including the earlier Will and the Power of Attorney;
- iii. Signature appearing only on the last page of six loose

sheets;

- iv. Incorrect recitals regarding possession of portions of Sagarsamrat, despite existing tenancy agreements and receipt of substantial consideration;
- v. Inaccurate description of several flats as being in possession of the deceased;
- vi. Discrepancy in the date of birth stated in the Will as compared to income tax records;
- vii. The alleged visit of the deceased to the office of Advocate Raymond on 29th December 2006 despite her physical condition;
- viii. The limited acquaintance of the attesting witnesses with the deceased;
- ix. The absence of any apparent reason for disinheriting relatives and charities, if the earlier Will were genuine.

38) It was further submitted that if the Will dated 29th December 2006 were genuine, there would have been no occasion for the series of criminal proceedings and complaints initiated thereafter. According to Mr. Kini, these circumstances cumulatively give rise to grave suspicion regarding the genuineness of the Will.

39) Mr. Kini submitted that the Plaintiff has sought to prove

the execution of the Will dated 29th December 2006 on the basis of the oral evidence of four witnesses. According to him, the evidence on record, far from supporting the Plaintiff's case, exposes its falsity. He contended that the depositions are replete with glaring inconsistencies and material contradictions which, taken cumulatively, establish that the Will is forged and fabricated and, consequently, not validly executed.

40) Mr. Kini refers to the evidence of Mr. Ramswaroop Jethmalji Soni (PW-1), the first attesting witness, and particularly to his responses given to the following questions during his cross-examination: Q.3 & Q.158 (pages 13 and 58), Q.28 & Q.71 to 74 (pages 23, 38 & 39), Q.39, Q.51 to Q.54 (pages 25 to 28), Q.80 (page 40), Q.102, Q.104-105 (pages 44 & 45), Q.114 and Q.197 to 199 (pages 46, 67 & 68), Q.132 & 137 (pages 49 & 50), Q 195 (page 67), Q 202 (page 68), Q 233 (page 76), and Q 322 (page 93) of the Commissioner's Report.

41) He submitted that the witness claims to have been acquainted with the deceased couple and to have visited the residence of Madhaviben Sagar on 29th December 2006 between 4:00 p.m. and 4:30 p.m., where he allegedly witnessed her signing the Will. However, according to Mr. Kini, the testimony of this witness is wholly unreliable, being riddled with material contradictions and inherent

improbabilities. It was pointed out that, while the witness initially denied any knowledge of an FIR in relation to the Will, he subsequently admitted to having filed an Anticipatory Bail Application merely six days prior to such denial, thereby seriously undermining his credibility.

42) It was further submitted that the witness gave inconsistent answers regarding his knowledge of the contents of the Will. While he initially claimed ignorance as to the identity of the beneficiary, he later admitted that the Plaintiff was the beneficiary, and further stated that he became aware that all properties were bequeathed to the Plaintiff on 29th December 2006. According to Mr. Kini, this raises serious doubt as to whether the witness had, in fact, witnessed the execution of the Will or understood the nature of the document he purportedly attested. It was also pointed out that the witness admitted that Madhaviben Sagar had a servant, which stands in contradiction to the testimony of Mr. Brahmabhatt.

43) Mr. Kini further submitted that the witness admitted to having visited the residence of Mr. Mahesh Trivedi at Parekhwadi both prior and subsequent to the death of Madhaviben Sagar, and to having business dealings and cordial relations with him, including meeting him on several occasions. It was therefore contended that the witness cannot be regarded as an independent witness, but is closely connected

with the sole beneficiary under the Will.

44) It was also submitted that the witness stated that he became aware of Madhaviben Sagar's ownership of three buildings only 12 to 15 days prior to his deposition, which casts doubt on the extent of his familiarity with the deceased and her affairs. Further, his claim that Madhaviben Sagar herself opened the door to admit him was described as inherently improbable, particularly in light of his own admission that she was physically handicapped, required the support of a walking stick, and had limited mobility. According to Mr. Kini, it is unlikely that a person in such condition would open the door herself, especially when she had a servant. It was also pointed out that the witness was unaware whether the Will was executed on stamp paper or ordinary paper.

45) Lastly, Mr. Kini submitted that the witness admitted that the Will was not read out aloud either to the testatrix or to the attesting witnesses prior to its execution, and that he did not notice any other signatures on the document at the time when he signed it. These admissions, it was contended, further weaken the credibility of the witness and the case of due execution.

46) Mr. Kini referred to the evidence of Mr. Paresh Sitarambhai Brahmabhatt, the second attesting witness, and in particular his answers in cross-examination to Question Nos. 1 and 25

(pages 164 and 168), Question No. 22 (page 167), Question No. 30 (page 168), Question Nos. 100 to 102 (pages 186-187), Question Nos. 106 and 107 (page 188), Question No. 120 (page 193), Question No. 127 (page 195), Question No. 143 (page 201), Question No. 168 (page 206), and Question No. 177 (page 209) of the Commissioner's Report.

47) Referring to the aforesaid testimony, Mr. Kini submitted that the evidence of this witness suffers from serious infirmities and raises grave suspicion regarding the genuineness of the alleged execution of the Will. It was pointed out that the witness admitted to having visited the residence of Madhaviben Sagar only once in his lifetime, namely on 29th December 2006, and to having met her only on that single occasion.

48) Mr. Kini further submitted that the witness admitted his inability to properly read or comprehend English, and yet purported to attest a Will drafted in English. It was also contended that the witness is not independent, having admitted to being connected with the Plaintiff. Additionally, his testimony was stated to be inconsistent with that of PW-1 in material particulars, including with regard to the presence of a servant in the room and the physical condition of the testatrix, particularly whether she required the assistance of a walking stick or walker.

49) It was further submitted that the witness admitted that Dr.

Sudhir Shah issued the medical certificate to the testatrix only after the execution of the Will dated 29th December 2006. According to Mr. Kini, this circumstance further casts doubt on the due execution of the Will and the mental condition of the testatrix at the relevant time.

50) Mr. Kini referred to the evidence of Mr. Jonathan Solomon Raymond (PW-3), learned Advocate for the deceased, and in particular his answers in cross-examination to Question No. 10 (page 275), Question Nos. 19, 20 and 25 (pages 276-277), Question No. 38 (page 279), Question Nos. 54, 59, 60 and 63 (pages 282-284), Question Nos. 78 to 80 (pages 287-288), Question No. 95 (page 290), Question No. 100 (page 291), Question Nos. 144 to 146 (page 302), Question No. 157 (page 305), and Question Nos. 164 and 165 (page 308) of the Commissioner's Report.

51) Referring to the aforesaid testimony, Mr. Kini submitted that, although the witness claims to have been in practice for over four decades in this Court and to have represented Madhaviben Sagar and her husband since 1992, his evidence is marred by material contradictions and suspicious circumstances which undermine his credibility. It was contended that his account of the drafting of the alleged Will, including when instructions were given and the sequence of events leading to its preparation, is inconsistent and unreliable.

52) Mr. Kini further submitted that the witness has given

contradictory versions regarding the instructions allegedly received from Madhaviben Sagar in relation to the disposition of her estate. In particular, his account of when and how she expressed an intention to bequeath her entire estate to Mr. Mahesh Trivedi, while excluding all relatives and charities, was described as inherently improbable and inconsistent with other evidence on record. According to Mr. Kini, these contradictions go to the root of the matter and cast serious doubt on whether the events occurred in the manner alleged.

53) It was also submitted that the documentary evidence demonstrates that Mr. Raymond cannot be regarded as an independent witness. In this regard, reliance was placed on a letter dated 28th October 2008 addressed on behalf of the Plaintiff to Deepak Sagar and others, which indicates that Mr. Raymond was acting in the interest of, and at the behest of, the Plaintiff. Further reliance was placed on a notice dated 16th May 2012 issued by Mr. Raymond, evidencing his continued role as counsel for the Plaintiff. It was therefore contended that his testimony is not independent and is liable to be viewed with caution.

54) Mr. Kini further submitted that the witness admitted that he does not maintain any books of account or records of fees and that he had not seen any earlier Will. He was also unable to satisfactorily explain why the Will in question was signed only on the last page,

whereas other documents, such as the Power of Attorney, were signed on every page. According to Mr. Kini, these inconsistencies and omissions further erode the credibility of the witness and cast serious doubt on the genuineness of the Will.

55) Mr. Kini referred to the evidence of Mr. Mahesh Mithalal Trivedi (PW-4), the Plaintiff and sole beneficiary, and in particular his answers in cross-examination to Question Nos. 14 to 19 (page 374), Question Nos. 31 and 39 (pages 376 and 378), Question No. 47 (page 381), Question Nos. 53 and 56 (page 384), Question Nos. 59 to 62 (page 385), Question Nos. 66, 67 and 71 (pages 387-388), Question Nos. 84 and 86 (pages 390-391), Question No. 99 (page 393), Question No. 105 (page 394), Question No. 118 (page 396), Question No. 132 (page 399), Question Nos. 165 to 177 (pages 406-407), and Question No. 182 (page 410) of the Commissioner's Report.

56) Referring to the aforesaid evidence, Mr. Kini submitted that the testimony of the Plaintiff discloses several inconsistencies and improbabilities. It was pointed out that, as per his Income Tax records up to Assessment Year 2011-2012, his residential address continued to be shown as 202, V.P. Road, whereas he claims to have been residing with his family in the suit premises only since 2010. It was further submitted that he admitted to not having paid professional tax or sales tax.

57) Mr. Kini further submitted that the witness admitted that Madhaviben Sagar had a domestic helper, namely Dilip Yadav, and also acknowledged the existence of her relatives, albeit stating that relations were not close. It was also pointed out that he admitted that his Advocate, Mr. J.S. Raymond, had issued notices to Bharat Sagar and Deepak Sagar alleging defamation.

58) It was further contended that the witness claimed to have paid a sum of Rs. 36,00,000/- in cash to Madhaviben Sagar in 2004, which amount was not reflected in his Income Tax returns and remained unexplained. It was also submitted that the electricity connection in respect of the premises occupied by him stood in the name of one B.D. Chopra, despite his claim of usage since 2004. According to Mr. Kini, the witness's explanation that an application for transfer of the electricity connection to his name had been forged is wholly implausible.

59) Mr. Kini submitted that the witness admitted that Bharat Sagar and Deepak Sagar are nephews of Dhirajlal Sagar, thereby demonstrating that the statement made in the Petition that the deceased had no heirs was false and misleading.

60) It was further submitted that the witness admitted that factually incorrect statements had been made in respect of three premises, including his own, in the Will dated 29th December 2006. He

also admitted to having visited the residence of Madhaviben Sagar after her death, prior to the premises being sealed by the police.

61) Mr. Kini further submitted that the witness stated that, as per ICU records, Madhaviben Sagar regained consciousness late at night on 17th May 2004. He also stated that the funeral pyre of Madhaviben Sagar was lit by himself along with others whose identities he did not know, which is inconsistent with his earlier assertion in his affidavit in lieu of examination-in-chief that he alone had performed the last rites. It was also pointed out that the witness admitted that certain hospital payments in 2004 had been made by Kishore Yadav, thereby contradicting his own version regarding the admission of Madhaviben Sagar to Bhatia Hospital on 17th May 2004.

62) Mr. Kini further submitted that the suggestions put to the witness indicate that the Plaintiff had instituted multiple litigations against trustees, attesting witnesses, and even the Advocate, with a view to dissuade them from supporting or propounding the Will dated 17th May 2004.

63) Lastly, Mr. Kini submitted that these circumstances, taken individually and cumulatively, give rise to grave and compelling suspicion regarding the genuineness of the Will dated 29th December 2006. It was contended that in the presence of such suspicious circumstances, the burden on the propounder becomes onerous,

requiring him to dispel all legitimate doubts by clear, cogent and satisfactory evidence. According to Mr. Kini, the Plaintiff has failed to discharge this burden.

64) Mr Kini also submitted that meetings were convened by Advocate J.S. Raymond on 26th and 28th September 2007 to disclose the Will, but requests for copies of the Will addressed to Mr. Raymond, Mr. Gandhi and Mr. Trivedi were not complied with.

65) Mr. Kini submitted that the alleged bequest of the entire estate of Madhaviben Sagar in favour of the Plaintiff is inherently improbable and contrary to normal human conduct.

66) It was further submitted that the Will is surrounded by suspicious circumstances. According to Mr. Kini, Madhaviben Sagar would not have executed a Will in English, nor would she have signed only the last page of the document, particularly when it was neither stitched nor stapled in the usual manner.

67) Mr. Kini submitted that the Will contains demonstrably incorrect statements regarding the properties of the deceased. In particular, it was contended that the first floor of Sagar Samrat was wrongly shown as being in her possession despite tenancy arrangements with Hindustan Security Force and the receipt of a substantial amount of Rs. 70 lakhs by cheque. Similarly, notwithstanding agreements with Capt. Sharma and Diwan Jaffer

Adamali, the Will incorrectly records that the properties continued to be in her possession. These inconsistencies, it was submitted, strike at the authenticity of the document.

68) It was further contended that Madhaviben Sagar could not have visited the office of her Advocate, Mr. J.S. Raymond, on 29th December 2006, as alleged, given her physical condition. Reliance was placed on a letter dated 16th December 2007 (which ought to be read as 16th December 2006 as the acknowledgment at the foot of the letter bears the date 16th January 2007) of the addressed by Mr. Raymond to the Commissioner of Police, which indicates that she was bedridden shortly prior to the alleged execution.

69) Mr. Kini submitted that the choice of attesting witnesses is itself suspicious. It was contended that Madhaviben Sagar would not have called upon witnesses who were either strangers to her or incapable of properly understanding the document. In particular, reliance was placed on the evidence of PW-2, Mr. Paresh Brahmabhatt, who admitted that he had met the deceased only once and had visited her residence only on that occasion.

70) It was further submitted that while the Power of Attorney executed by Madhaviben Sagar bears her signature on every page, the Will is purportedly signed only on the last page, which is an unusual and unexplained deviation.

- 71) Mr. Kini also relied upon Income Tax records found at the residence of the deceased, which reflect her date of birth as 28th July 1940. It was submitted that the age mentioned in the Will as 60 years as on 29th December 2006 is therefore incorrect, further casting doubt on the genuineness of the document.
- 72) Mr. Kini submitted that the conduct of the Plaintiff is also indicative of fabrication. It was contended that the Plaintiff initiated multiple proceedings and complaints, including complaints filed in 2010 against Deepak Sagar and others, not for bona fide purposes but to dissuade persons from supporting or propounding the earlier Will dated 17th May 2004. It was submitted that, as a result, certain trustees and an attesting witness declined to assist in the probate of the earlier Will.
- 73) It was further submitted that the last page of the Will dated 29th December 2006 appears to be in a different font from the rest of the document, which raises further suspicion as to its authenticity.
- 74) Mr. Kini also submitted that the Plaintiff's case—that the Will dated 17th May 2004 surfaced only after the disclosure of the Will dated 29th December 2006—is inherently implausible and contrary to the normal course of events.
- 75) Reliance was also placed on a letter dated 4th April 2007 addressed by Madhaviben Sagar to M/s Hindustan Security Force,

authorising them to take charge of security of the building, which, according to Mr. Kini, demonstrates her continuing relationship with Capt. Sharma and is inconsistent with the narrative in the Will.

76) Lastly, Mr. Kini relied upon a letter dated 28th October 2008 issued by Mr. J.S. Raymond under instructions from the Plaintiff to Deepak Sagar and others, to submit that Mr. Raymond was acting as Advocate for the Plaintiff and, therefore, his evidence cannot be regarded as independent.

77) On the basis of the aforesaid circumstances, considered both individually and cumulatively, Mr. Kini submitted that the Will dated 29th December 2006 is forged and fabricated, and that it has been propounded by the Plaintiff with full knowledge of its falsity. It was further contended that the Petition has been filed with unclean hands, including by making false statements regarding the absence of heirs.

78) Accordingly, Mr. Kini submitted that Testamentary Suit No. 59 of 2008 deserves to be dismissed with exemplary costs.

79) In relation to the Will dated 17th May 2004, Mr. Kini submitted that it is a handwritten document signed on all pages and that the handwriting corresponds with documents recovered by the Administrator. It bequeaths the estate to charitable purposes and appoints trustees. He submitted that if a subsequent Will truly existed,

there would have been no necessity to fabricate an earlier one of a prior date. He accordingly submitted that the Will dated 29th December 2006 ought to be rejected.

Reasons and conclusion:

80) I have heard the learned Counsel for the parties at length and have carefully perused the pleadings, evidence, and the material on record. The issues framed are required to be considered in light of the settled principles governing proof of testamentary instruments.

81) The law relating to proof of Wills is well settled. In *H. Venkatachala Iyengar v. B.N. Thimmajamma*¹⁵, the Supreme Court authoritatively held that although the propounder must ordinarily prove due execution and testamentary capacity in terms of Section 63 of the Indian Succession Act read with Section 68 of the Evidence Act, where suspicious circumstances surround the execution of the Will, the burden becomes proportionately heavier and such suspicion must be removed by clear, cogent and satisfactory evidence. This principle has been consistently reiterated in *Jaswant Kaur v. Amrit Kaur*¹⁶ and *Bharpur Singh v. Shamsher Singh*¹⁷, where it has been held that circumstances such as unnatural exclusion of natural heirs, incorrect or improbable recitals, active involvement of the principal beneficiary, and dispositions which do not accord with the normal course of human

¹⁵ 1958 SCC OnLine SC 31

¹⁶ (1977) 1 SCC 369

¹⁷ (2009) 3 SCC 687

conduct constitute suspicious circumstances requiring strict scrutiny.

82) The following circumstances give rise to grave suspicion, although the signature on the Will stands proved.

Inherent Improbabilities and Suspicious Circumstances

83) If the Will dated 29th December 2006 were genuine, several questions remain unanswered:

- i) Why would a person propounding a genuine Will make a false statement that the deceased had no heirs? Paragraph 8 of the Petition states that the deceased had no heirs from Class 1 to Class 4 (Entry 1 to 8) and that the Petitioner was unaware of any such family member. In stark contradiction to the above solemn statement in Petition, in answer to question 86 of his cross examination he states that Bharat Sagar and Deepak Sagar are nephews of Dhirajlal Sagar the testatrix's husband.
- ii) Why would he file criminal complaints and attempt to coerce interested persons in filing affidavits contrary to their interest? A complaint under section 156(3) and under section 500 of the Indian Penal Code (IPC) were filed against Mr. Bharat Sagar and others; these were dismissed after a full-fledged trial. No appeal was filed therefrom and consequently attained finality.

iii) A complaint was also filed against Mr. Mukesh Shah, a trustee under the previous Will, Dinesh Soni and Deepak Sagar and others. In addition, a complaint was lodged against the counsel and learned Senior Counsel before the Bar Council, which was subsequently withdrawn.

84) These actions of the Petitioner create grave suspicion especially because he claims to be the only beneficiary under the alleged Will dated 29th December 2006.

85) Questions that give rise to suspicion regarding the contents of the Will:

- i) How could her own date of birth be wrongly stated?
- ii) Why would a lady who was independently managing her self-acquired properties make an incorrect statement that a flat was in her possession, when in fact a tenancy agreement had been executed for valuable consideration received by cheque?
- iii) Why would the Will contain an incorrect description of properties as being in her possession?
- iv) Why would the testatrix bequeath her entire estate to a person who was merely assisting her in litigation against tenants or who had assisted her during hospitalization?

86) Assuming for the sake of argument that there exists only a hand written document whereby the testatrix proposes to bequeath her properties to some relatives and a substantial part to charitable institutions, why would the testatrix abruptly change the same so drastically so as to bequeath her entire estate to a single individual, excluding charity altogether? While excluding relatives is understandable or logical on the basis of her hospitalization, excluding charities which she proposed to give in the name of her family in totality certainly raises a suspicion. Because it is not the case of Mahesh that her day to day requirements were being looked after by him. Moreover, the testatrix was a monied lady and also independent. A perusal of the Will of 2004 indicates that it bequeathed certain property to:

- i) Laljibhai Doshi a friend of her husband Dhirajlal Sagar;
- ii) Her husband's niece Indiraben Girishkumar Pat;
- iii) Her husband's brother Bhaskar Prabhudas Sagar and his three children;
- iv) Her brother Jethalal Damodardas Soni and her sister-in-law Shardaben; and
- v) Charity, in memory of late Labhuben Ratilal Suru, a sum of of ₹ 6,00,000/- to be kept in fixed deposit and 50% of its interest be used towards financial aid and 50% for

educational funds at the hands of Madhaviben.

- vi) Similarly charity in memory of late Jethalal Damodardas Suru in the sum of ₹ 9,00,000/- to be kept in fixed deposit and interest used in equal proportion for financial aid, medical aid, educational expenses at the hands of Madhaviben.

87) Even assuming that the Will dated 17th May 2004, propounded by M. B. Shah, is forged and fabricated with a view to defeat or undermine the Will of 2006 propounded by the Petitioner, it would be inherently improbable for any person to fabricate a document bearing an earlier date and then undertake the burden of disproving a subsequently executed Will.

88) Be that as it may, the genuineness or otherwise of the said Will dated 17th May 2004 is a matter which shall be determined independently at the appropriate stage when it is taken up for adjudication.

Credibility of Attesting Witnesses

89) The evidence of Mr. Ramswaroop Jethmalji Soni (PW-1) also evinces contradictions. Amongst other contradictions the remarkable one is where the witness has made false statements regarding his knowledge about the entire estate being bequeathed to

Mahesh Trivedi. The question nos 28, and 71 to 74 are reproduced for ready reference.

"Q.28 Please tell the court as to whether you are aware as to who is the only beneficiary of the will allegedly execute on 29.12. 2006 ?

Ans: I am not aware.

Q.71: Do I take it that even on today 30.8.2012 you are not aware of the contents of will dated 29.12.2006?

Ans: I am aware of contents of the Will which I was shown through Mr. Paresh Brahambhatt who told that everything will be going to Mahesh Trivedi.

Q.72:-Please tell the court when did you ask Paresh Brahambhatt this question ?

Ans: When we went together to the residence of Madhaviben Sagar.

Q'73: When did you go to the house of Late Madhaviben Sagar house, Year, Month and date if you remember ?

Ans: On 29.12.2006.

Q.74: Do I therefore take it that you have been aware always that the Will dated 29.12.2006 gave away all properties to Mahesh Trivedi?

Ans: Yes."

90) PW-1 is admittedly closely associated with Mr. Mahesh Trivedi. His evidence indicates that he initially suppressed material facts and attempted to portray himself as an innocent bystander who had merely witnessed the execution of the Will. Such conduct strikes at

the very root of his credibility. It is well settled that a witness who is found to have made false statements on oath cannot be regarded as a reliable witness. In my view when a witness departs from truth he cannot command the confidence of the Court. The testimony of PW-1, therefore, deserves to be approached with considerable circumspection.

91) PW-2 is also closely associated with Mr. Mahesh Trivedi. His proximity to the sole beneficiary, coupled with his admitted knowledge at the time of execution that the entire estate was being bequeathed to the beneficiary, gives rise to serious suspicion. In *H. Venkatachala Iyengar (supra)*, the Supreme Court held that where suspicious circumstances surround the execution of a Will, the burden lies heavily on the propounder to dispel such suspicion. The relationship of attesting witnesses with the beneficiary is itself a relevant suspicious circumstance requiring strict scrutiny.

92) A cumulative analysis of the depositions of both attesting witnesses reveals that each had a close association with the sole beneficiary, yet there is no plausible explanation as to why they were chosen to attest the Will when the testatrix was barely acquainted with them. This unexplained selection of attesting witnesses reinforces the suspicion surrounding the execution of the Will. Further, the inconsistencies in their evidence regarding whether the Will was

stapled or secured with a U-pin constitute material contradictions, which cast doubt on the authenticity of the document. The law is well settled that where such suspicious circumstances exist, they must be satisfactorily explained before probate can be granted, as reiterated in *Jaswant Kaur (supra)* and *S.R. Srinivasa v. S. Padmavathamma (supra)*.

93) It is well settled that a party who approaches the Court with unclean hands is not entitled to relief. The false statement made in the Petition itself casts doubt on the Petitioner's bona fides. In *Vijay Syal v. State of Punjab*¹⁸ the supreme Court held as under:

"24. In order to sustain and maintain the sanctity and solemnity of the proceedings in law courts it is necessary that parties should not make false or knowingly, inaccurate statements or misrepresentation and/or should not conceal material facts with a design to gain some advantage or benefit at the hands of the court, when a court is considered as a place where truth and justice are the solemn pursuits. **If any party attempts to pollute such a place by adopting recourse to make misrepresentation and is concealing material facts it does so at its risk and cost. Such party must be ready to take the consequences that follow on account of its own making.** At times lenient or liberal or generous treatment by courts in dealing with such matters is either mistaken or lightly taken instead of learning a proper lesson. Hence there is a compelling need to take a serious view in such matters to ensure expected purity and grace in the administration of justice."

This decision was followed by the Supreme Court in its judgement in *K.D. Sharma v. SAIL*¹⁹.

¹⁸ [(2003) 9 SCC 401]

¹⁹ (2008) 12 SCC 481)

Conduct of the Petitioner

94) In the present case the Petitioner has suppressed material facts in order to obtain a Letters of Administration. In his pursuit thereof, he chose to threaten and initiate criminal proceedings against trustees, attesting witnesses and even the Advocate supporting the earlier Will dated 17th May 2004, further reinforces this conclusion that it was a blatant attempt to eliminate opposition. The dismissal of those proceedings reinforces the inference that they were devoid of substance.

95) The submissions of the Court appointed administrator also weigh heavily against the Petitioner. Mr. Raymond, Advocate for the testatrix, who was aware of the Will of 29th December 2006, could not have lawfully prosecuted proceedings on behalf of the Petitioner on the basis of a Power of Attorney executed by the testatrix prior to her death. It is trite that a Power of Attorney stands terminated upon death of the executant. Upon the demise of the testatrix, therefore, no authority survived in favour of the Petitioner under the said instrument.

96) Even assuming the Petitioner was the sole beneficiary under the Will of 2006, he could not have claimed to be the owner of the property in absence of Probate or Letters of Administration. Section 213 of the India Succession Act, 1925 expressly mandates that

no right as executor or legatee can be established in a Court of law unless Probate or Letters of Administration have been obtained. Until such grant, the legatee acquires no enforceable right in respect of the estate in a Court of law. Despite this clear statutory bar, in paragraph 8 of CRA No. 882 of 2012, the Petitioner described himself as the owner of the property, despite the fact that his application for Letters of Administration was still pending adjudication.

97) Such a conduct, in my view, amounts to a serious misrepresentation before the Court. The proceedings were continued in the name of the Petitioner without any subsisting authority in law. The conduct of both the Petitioner and the Advocate Mr. Jonathan Solomon Raymond, in persisting with such representation, cannot be countenanced and further reinforces the doubts surrounding the bona fides of the Petitioner.

Evidence of Advocate and Contemporaneous Record

98) Mr. Raymond admitted in his testimony, in answer to Question Nos. 88, 89 and 149 that the letter dated 16th December 2006 (erroneously typed as 16 December 2007) addressed to the Commissioner of Police was written by him under the instructions of the testatrix, Madhaviben Sagar. A plain reading of the said letter, written barely 13 days prior to the alleged execution of the Will dated 29th December 2006, reveals that the testatrix was bedridden and was

constrained to seek police intervention to prevent interference with with her possession of one of her properties. This contemporaneous document materially contradicts the version of the attesting witnesses, Mr. Ramswaroop Soni and Mr. Paresh Brahmabhatt, who deposed that on 29th December 2006, the testatrix had herself opened the door and received them at her residence. It also renders wholly doubtful Advocate Mr. Raymonds, version that the testatrix was physically capable of visiting his office twice on the same day i.e. on 29th December 2006, once in the morning to collect the draft Will and thereafter in the evening to return with the executed document. Significantly, there is nothing on record to displace or contradict the contents of the said letter, nor is there any evidence of any material improvement in the physical condition of the testatrix during the short intervening period between 16th December 2006 and 29th December 2006. The said contemporaneous document, emanating from the testatrix herself through her Advocate, therefore constitutes cogent evidence of her physical incapacity at the relevant time and casts a serious and legitimate doubt on the propounded circumstances surrounding the alleged execution of the Will.

99) The question numbers 87 and 149 and responses thereto are reproduced hereunder of ready reference.

Q:88: I put it to you that a letter dated 16.12.2007 addressed by you to the police commissioner stating that Madhaviben

Sagar was bedridden and handicapped was found in the inspections taken by the Administration appointed by the High Court.

[Witness is shown a Xerox copy of said documents]

Can you identified by the same?

Ans: It looks like my letter.

Q:89: Are the contents of this letter, according to you, true and correct or they false and incorrect?

Ans: I may not be in a position to answer this question unless I see the original of this letter.

Q: 149: In answer to question No.89 you have stated that unless you see the original letter dated 16.12.2007, you will not be able to tell whether the contents of this later are true and correct or false and incorrect, please see the letter and inform us.

SHOWN LETTER DATED 16.12.2007 RECEIVED FROM THE RECORDS OF LD. ADMINISTRATION.. XEROX COPY OF THE SAID LETTER IS COMPARED WITH THE ORIGINAL AND ORIGWAL RETURNS TO LD. ADMINISTRATOR. ZEROX COPY HAS ALREADY BEEN MARKED.

Ans: The contents of this letter are as per the instructions of Madhavi Sagar, at ale relevant time.

100) The reliance placed on the decisions in *Iswarbhair C. Patel alias Bachubhai Patel* (supra), *Man Kaur* (supra), and *Iqbal Basith & Ors.* (supra) is misplaced. All three judgments concern procedural and evidentiary principles arising in ordinary civil suits. The decision in *Iswarbhair C. Patel* deals with joinder of parties and causes of action, and the maintainability of an appeal against a party against whom the suit had been dismissed, notwithstanding that a decree had been

passed against another defendant. Similarly, *Man Kaur* deals with evidentiary principles relating to the competence of parties to depose in suits for specific performance, and the manner in which transactions may be proved in civil proceedings. The common thread running through these decisions is that they govern procedural and evidentiary rules applicable to civil proceedings generally. The present case, however, arises out of probate proceedings concerning the proof of a Will, where the Court is required to examine the genuineness of the testamentary instrument and determine whether the propounder has satisfactorily dispelled the suspicious circumstances surrounding it. The principles laid down in the aforesaid judgments, therefore, have no application to the controversy before this Court.

101) The reliance placed on the judgments in *Madhukar D. Shende* (supra), *Meenakshi Ammal* (supra), *Daulatram* (supra), *Pentakota Satyanarayana* (supra), *Savithri* (supra), and *Mahesh Kumar* (supra) is equally misplaced. These judgments reiterate the settled principles governing proof of a Will, namely, that the propounder must establish due execution in accordance with Section 63 of the Indian Succession Act and Section 68 of the Evidence Act, and must also satisfactorily explain any suspicious circumstances so as to satisfy the conscience of the Court as to the genuineness of the testamentary document. In the present case, however, the record

discloses several circumstances giving rise to grave and legitimate suspicion, including incorrect statements in the Petition regarding the non-existence of heirs, as well as inconsistencies surrounding the contents of, and circumstances attending, the alleged Will. The Petitioner has failed to remove or satisfactorily explain these suspicious circumstances. Consequently, the principles laid down in the aforesaid judgments do not assist the Plaintiff; on the contrary, they operate against him.

102) The reliance placed on the judgment of this Court in *Rustom Minoo Seth* (supra) is equally misconceived. In that decision, this Court reiterated the very same principles laid down in *Madhukar D. Shende*, *Meenakshi Ammal*, *Daulatram*, *Pentakota Satyanarayana*, *Savithri*, and *Mahesh Kumar* (supra), and emphasized that the propounder must dispel all suspicious circumstances surrounding the Will before probate can be granted. Applying that very principle to the facts of the present case, the Petitioner has clearly failed to discharge the burden cast upon him, since the suspicious circumstances surrounding the alleged Will remain unexplained.

103) The reliance placed on *Saroj Kumar Chatterjee* (supra), *Derek A.C. Lobo* (supra), *Shonali Kedar Dighe* (supra), and *Leela* (supra) is likewise of no assistance to the Plaintiff. These judgments also reiterate the settled legal position that the propounder of a Will

must prove its due execution and satisfactorily explain any suspicious circumstances surrounding the document. In the present case, the suspicious circumstances arising from the pleadings and conduct of the Petitioner remain wholly unexplained. The principles laid down in the aforesaid judgments, therefore, do not advance the Plaintiff's case.

104) It is a settled position of law that where suspicious circumstances surrounding the execution of a Will remain unexplained, the Court would be justified in refusing probate or Letters of Administration. In the present case, when the evidence is assessed in the backdrop of these well-established principles, it is evident that several material and suspicious circumstances arise, none of which have been satisfactorily dispelled by the Petitioner. The contentions advanced by Mr. Kini, as recorded hereinabove, are not only plausible but find substantial support in the evidence on record and clearly give rise to grave suspicion regarding the genuineness of the alleged Will. In such circumstances, where the propounder has failed to remove the legitimate doubts surrounding the execution of the Will, the Court would be justified in declining to grant probate or Letters of Administration. Consequently, the Petition/Suit deserves to be dismissed.

105) In light of the decision in *RBANMS Educational Institution v. B. Gunashekar*²⁰, and having regard to the fact that a

²⁰ (2025) SCC OnLine 793

cash transaction exceeding Rs. 2,00,000/- has surfaced during the course of the present proceedings, this Court cannot remain a silent spectator. Such a transaction, prima facie, attracts scrutiny under the provisions of the Income Tax Act, 1961.

106) Accordingly, the Registry is directed to forward a copy of this judgement along with the relevant material on record to the jurisdictional Income Tax Authority for appropriate action in accordance with law. It shall be open to the said authority to conduct such inquiry, investigation, or proceedings as may be warranted.

107) Further, I find that Mr. Mahesh Mithalal Trivedi has made statements on oath in the Petition to the effect that the deceased had no heirs or legal representatives, which, on the material presently on record, are demonstrably false and appear to have been made with a view to mislead the Court and secure an order on an erroneous premise. Such statements, having a direct bearing on the jurisdictional foundation of the present proceedings, prima facie indicate an attempt to mislead the Court. Conduct of this nature cannot be countenanced. In the circumstances, this is a fit case for the Court to consider initiating proceedings in accordance with law under Section 379 of the Bharatiya Nagarik Suraksha Sanhita, 2023 for appropriate inquiry into the making of false statements on oath.

108) In view of the above, the following order is passed.

Order

- i) Testamentary Petition No.1030 of 2007/Testamentary Suit No.59 of 2008 is dismissed.
- ii) The Registry shall inform all Courts including the Small Causes Court about the dismissal of the Petition/Suit and forthwith delete the name of the Petitioner in his capacity as executor/beneficiary of the deceased Mrs. Madhaviben Dhirajlal Sagar from the proceeding/(s).
- iii) The Prothonotary and Senior Master through his representative shall lodge an appropriate Complaint before the jurisdictional Magistrate in respect of the offences punishable under Indian Penal Code, 1860 including under Sections 196, 199, 200, 463 and 471 of the Indian Penal Code, 1860, alleged to have been committed by the Petitioner Mr. Mahesh Mithalal Trivedi. Such Complaint shall be filed in accordance with Section 379(1)(b) and (c) read with Section 379 (3) (a) of the Bharatiya Nyaya Suraksha Sanhita.
- iv) The Prothonotary and Senior Master to report compliance and status of the Complaint every three months to this Court.
- v) The Registry as well as the Court appointed Administrator

Mr. Trivedi to intimate the Income Tax Authority and investigate the transaction between the Petitioner- Mr. Mahesh Trivedi and the deceased Smt. Madhaviben Dhirajlal Sagar of payment of ₹ 36,00,000/- lakhs claimed to be paid to purchase of the Tenancy rights in the building Sagar Samrat Queens Road, Opposite Charni Road, Station, Mumbai 400004. If the Petitioner is found guilty, to take appropriate action against all concerned in accordance with law preferably within a period of six months from the date of uploading of this Order on the website of the Bombay High Court. The Income Tax Authority is directed to file a compliance cum status report on or before 30th September 2026 to this Hon'ble Court.

- vi) Mr. Trivedi, the Court-appointed Administrator, shall continue to function as the Administrator until the final disposal of Testamentary Suit No. 94 of 2011.
- vii) The Court-appointed Administrator, Mr. Trivedi, is granted liberty to apply to this Court for such further directions, order(s) or clarifications as may be necessary.
- viii) The learned Administrator is permitted to file a report in respect of any pending issues, if any, pertaining to the Plaintiff in Testamentary Suit No. 59 of 2008.

- ix) In view of the dismissal of the Suit, the Court Receiver shall take vacant and peaceful possession of the testatrix's property from the Petitioner within a period of four weeks from today.
- x) The Petitioner shall continue to pay rent as an agent of the Court Receiver until vacant and peaceful possession is handed over to the Receiver.
- xi) In the event the Petitioner fails or refuses to hand over possession, the Court Receiver shall be entitled to take forcible possession with the assistance of the local police.
- xii) The local police authorities are directed to extend all necessary assistance to the Court Receiver in taking possession of the said property from the Petitioner.
- xiii) The Petitioner is restrained from creating any third-party rights, title or interest in the properties of the testatrix, or in any manner alienating, selling, assigning or otherwise dealing with the said properties until possession is handed over to the Court Receiver.
- xiv) The Court Receiver shall file a report on or before the next date of hearing
- xv) List Testamentary Suit 94 of 2011 for hearing on 6th April 2026.

- xvi) In view of the dismissal of the Testamentary Suit No.59 of 2008, all connected Interim Applications, Caveat Applications and any other Applications are disposed off.
- xvii) All concerned to act on an authenticated copy of this Order.

(KAMAL KHATA, J.)

109) At this stage, Mr. T.A. Vora, learned Advocate for the Petitioner/Plaintiff, seeks a stay of the present order for a period of eight weeks to enable the Petitioner to challenge the same. In view of the reasons recorded hereinabove, the request for stay is rejected.

(KAMAL KHATA, J.)

List of Authorities cited:

1. *Iswarbai C. Patel alias Bachubhai Patel vs Harihar Behera & Anr.* [(1999) 3 SCC 457]
2. *Madhukar D. Shende vs Tarubai Shende* [(2002) 2 SCC 85]
3. *Meenakshi Ammal (Dead) through LRs & Ors. vs Chandrasekaran & Anr.* [(2005) 1 SCC 280]
4. *Daulatram & Ors. vs Sodha & Ors.* [(2005) 1 SCC 40]
5. *Pentakota Satyanarayana & Ors. vs Pentakota Seetharatnam & Ors.* [(2005) 8 SCC 67]
6. *Savithri & Ors. vs Karthyayani Amma & Ors.* [(2007) 11 SCC 621]
7. *Man Kaur vs Hartar Singh Sangha* [(2010) 10 SCC 512]
8. *Mahesh Kumar (Dead) by LRs vs Vinod Kumar & Ors.* [(2012) 4 SCC 387]
9. *Rustom Minoo Seth vs Freddy Dinshaw Birdy* [TS No. 225 of 2015, Bombay High Court, decided on 21.12.2026]

10. *Iqbal Basith & Ors. vs N. Subbalakshmi & Ors.* [(2021) 2 SCC 718]
11. *Saroj Kumar Chatterjee* [2021 AIR CC 3097]
12. *Derek A.C. Lobo vs Ulric M.A. Lobo* [2023 SCC OnLine SC 1893]
13. *Shonali Kedar Dighe vs Ashita Tham* [AIR 2024 (NOC) 242 (Bom)]
14. *Leela & Ors. vs Muruganantham & Ors.* [(2025) 4 SCC 289]
15. *H. Venkatachala Iyengar vs B.N. Thimmajamma* [1958 SCC OnLine SC 31]
16. *Jaswant Kaur vs Amrit Kaur* [(1977) 1 SCC 369]
17. *Bharpur Singh vs Shamsheer Singh* [(2009) 3 SCC 687]
18. *Vijay Syal vs State of Punjab* [(2003) 9 SCC 401]
19. *K.D. Sharma vs Steel Authority of India Ltd.* [(2008) 12 SCC 481]
20. *RBANMS Educational Institution vs B. Gunashekar* [2025 SCC OnLine SC 793]