2-TS-74-2006

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
TESTAMENTARY SUIT NO. 74 OF 2006

BASAVRAJ GURAPPA PATIL
Digitally signed by BASAVRAJ GURAPPA PATIL
Date: 2026.09.17 17:38:28 +0530

Rajkumar Assudomal Gurbani …Plaintiff

Versus

Vijay Gulab Gurbani & Anr. …Defendants

Mr. Rahul Soman, Ms. Dhanashree Gaikaiwari, i/b. Bilawala and Co. for the Plaintiff.

Mr. S.H. Mishra, i/b. Mr. Nahar Mahala for Defendants.

CORAM : ARIF S. DOCTOR J.
RESERVED ON : 18th AUGUST 2026.
PRONOUNCED ON : 17th SEPTEMBER 2026.

JUDGMENT:

1. The Plaintiff in the captioned Testamentary Suit seeks probate of a Will dated 30th November 2004 (the "said Will"), which is stated to be the last Will and Testament of one Mr. Gulab Hukumatrai Gurbani (the "Deceased") who passed away on 16th April 2005.

2. The Plaintiff is the nephew of the Deceased, being the son of the brother of the Deceased, namely, Mr. Assudomal Hukumatrai Gurbani. The Deceased also left behind him his wife, i.e., Mrs. Savitri Gulab Gurbani

Uploaded on - 17/09/2026 Downloaded on - 06/10/2026 10:40:02

and two sons, i.e., Mr. Vijay Gulab Gurbani (Defendant No. 1) and Mr. Ram Gulab Gurbani (Defendant No. 2).

3. The said Will names the Plaintiff as the sole executor and also the principal beneficiary. One of the primary bequests made in favour of the Plaintiff is the share of the Deceased in an immovable property situated at Jaipur ("**Jaipur Property**"). The Plaintiff has also been bequeathed with the residue of the estate of the Deceased.

4. Following the death of the Deceased, the Plaintiff filed Testamentary Petition No. 619 of 2005 on 30th June 2005, seeking Probate of the said Will. The Testamentary Petition was opposed by the sons of the Deceased, both of whom filed their respective Caveats, which were identical in terms. In view of the opposition raised by the Defendants, the Testamentary Petition was converted into the captioned Testamentary Suit.

5. This Court, vide an Order dated 18th November 2009, framed the following Issues, viz.

Uploaded on - 17/09/2026 **Downloaded on - 06/10/2026 10:40:02**

ISSUES

i. Whether the Plaintiff is entitled to the Probate of the last Will and Testament of the Deceased?

ii. Whether the Plaintiff proves that the Deceased had left a duly executed Will dated 30.11.2004?

iii. Whether the Defendants/Caveators prove that the Deceased had not signed the Will?

iv. What order?

6. The parties examined the following witnesses:

Plaintiff's Witnesses	Defendants' Witnesses
PW-1: Mr. Rajkumar A. Gurbani (Plaintiff)	DW-1: Mr. Vijay Gulab Gurbani (Defendant No. 1)
PW-2: Dr. Sumitlal M. Shaha (Attesting Witness)	DW-2: Mr. Ram Gulab Gurbani (Defendant No. 2)
PW-3: Mr. Uddhav Baldev Gurbani (Attesting Witness)	DW-3: Ms. Hiral A. Mehta (Handwriting Expert)

Submissions on behalf of the Plaintiff:

7. Mr. Soman, learned Counsel appearing for the Plaintiff, at the outset, submitted that the Deceased had been residing with his brother, Assudomal, i.e., the Plaintiff's father, and the Plaintiff's family since prior

Uploaded on - 17/09/2026 Downloaded on - 06/10/2026 10:40:02

to 1960. He submitted that the Deceased had, even after his retirement as a Partner of the family Partnership Firm in July 1994, continued to reside with the Plaintiff and his family in Mumbai. This, he submitted, was an admitted position, as was evident from the following answers given by DW-1 in cross-examination, viz.

> *"(Attention of the Witness is drawn to the document previously marked "Exhibit Commissioner - 4" tendered by PW1 on 23rd February 2011)*
>
> *Q. 25) Can you tell me what this document is?*
>
> *Ans. After reading this document, I say that it is a Deed of Retirement dated 14th July 1994 of a partner viz. Gulabrai Hukumatri Gurbani from the partnership firm of M/s. Hukumatri Assudomal Bros.*
>
> *(Attention of the Witness is drawn to his answer to Question No. 15)*
>
> *Q. 26) Can you answer this question now?*
>
> *Ans. After seeing this document today, I say that my father retired from the partnership firm of M/s. Hukumatri Assudomal Bros. by thus document on 14th July 1994. However, I cannot say whether this document is correct or not.*
>
> *Q. 27) After 14th July 1994, did your father reside with you at Jaipur?*
>
> *Ans. Permanently he was not residing. He used to come and go.*
>
> *Q. 28) After 14th July 1994, where was your father permanently residing?*
>
> *Ans. He used to stay in Mumbai also. He used to stay in Jaipur also."*
>
> (emphasis supplied)

Uploaded on - 17/09/2026 **Downloaded on - 06/10/2026 10:40:02**

8. Mr. Soman then submitted that the Deceased had strained relations with the Defendants, i.e., his sons as well as his wife. He pointed out that this was evident from the fact that the Defendants and the wife of the Deceased had opposed the Suit for partition of the Jaipur property ("Jaipur Suit") filed by the Deceased. In support of his contention, he placed reliance upon an Affidavit dated 20th October 1994, filed by DW-1, and also an Affidavit dated 19th September 1994, filed by the wife of the Deceased in the Jaipur Suit. Mr. Soman pointed out that both these Affidavits had been duly marked in evidence.

9. Mr. Soman then submitted that the Plaintiff had led the evidence of (i) himself (**PW-1**), (ii) Dr. Sumitlal M. Shaha (**PW-2**) and (iii) Mr. Uddhav Baldev Gurbani (**PW-3**) to support due execution of the said Will. He submitted that PW-2 had been the physician of the deceased for approximately 35 years, whereas PW-3 was a family acquaintance of the Deceased for approximately 50 years.

10. From the Affidavit of Evidence of PW-2, Mr. Soman pointed out that the deceased had read out aloud the said Will in the presence of the Plaintiff

Uploaded on - 17/09/2026 **Downloaded on - 06/10/2026 10:40:02**

(PW-1), PW-2, and PW-3 and the father of the Plaintiff, i.e., Mr. Assudomal Gurbani. He also, from the examination in chief of PW-2, pointed out that PW-2 had asked the Deceased whether the deceased had understood the contents of the said Will and was executing the same of his own free will, to which the Deceased answered in the affirmative, viz.

> *"6. I say that after having signed and executed the Will the deceased requested me to sign the said Will. I asked the deceased as to whether he had made the will and that he had understood its contents to which the deceased answered in the affirmative."*

11. Mr. Soman submitted that the evidence of PW-2 further established that the Deceased had signed the Will on pages 1 and 2, as well as at the foot thereof. Thereafter, PW-2 signed the Will as an attesting witness in the presence of the Deceased, PW-3, the Plaintiff and Assudomal. PW-3, in turn, signed the Will as an attesting witness in the presence of the Deceased, PW-2, the Plaintiff and Assudomal. According to Mr. Soman, this evidence clearly established that the Will had been duly executed and attested in accordance with the requirements of Section 63(c) of the Indian Succession Act, 1925 ("Succession Act").

Uploaded on - 17/09/2026 **Downloaded on - 06/10/2026 10:40:02**

12. Mr. Soman submitted that although the Deceased was suffering from prostate cancer, the illness had affected only the physical movements of the Deceased from below the waist and had not, in any manner, impaired the mental faculties of the Deceased. He pointed out that PW-2, on the strength of 47 years of general medical practice and having treated the Deceased for approximately 35 years, specifically deposed to the fact that the cancer had not affected the Deceased's mental faculties and that, at the time of execution of the Will, the Deceased was in a sound and disposing state of mind. In support of his contention, he invited my attention to the following deposition of PW-2, viz.

> *"10. I say that at the time when the deceased subscribed his signature to the said Will as aforesaid he was in sound disposing mind, memory and understanding and to the best of my belief and knowledge made and published the same out of his own freewill and pleasure and without any coercion or force or pressure from any person."*

13. Mr. Soman then also placed reliance upon the evidence of PW-3, which he pointed out had independently corroborated that the deceased was in a

Uploaded on - 17/09/2026 **Downloaded on - 06/10/2026 10:40:02**

sound and disposing state of mind at the time of execution of the said Will, viz.

"Q.124) On what basis are you saying the Will shown to you just now is the same Will, which was signed by Mr. Gulab Hukumatrai Gurbani?

Ans: Because I have also signed the said Will. I can identify my signature. Mr. Gulab Hukumatrai Gurbani has also signed the said Will in my presence, Hence, I am saying that this is the same Will.

(Attention of the Witness is drawn to paragraph 9 of his Affidavit in lieu of Examination-in-Chief)

Q.125) What do you mean by the phrase "good disposing mind"?

Ans: It means that the deceased appeared to be okay to me at the time of execution of the said Will.

***Per Commissioner**: The witness answered this question in Hindi as under. I am reproducing the exact sentence so as to avoid any controversy that may arise whilst translating the same.*

"Woh dimaag se theek lag rahe the"

Q.126) Save and except reading the said Will before the persons present at the time of its execution on 30th November 2004, did any discussion took place between the persons present at that time and the deceased?

Ans: No.

Witness adds: I have said earlier also that Dr. Shaha had asked the deceased whether he had prepared the Will according to his wishes, to which the deceased had replied 'Yes'.

Q.127) Do you know about any property which the deceased had in Jaipur?

Uploaded on - 17/09/2026 Downloaded on - 06/10/2026 10:40:02

Ans:Yes, I know that the deceased has 1/3rd share in the some property in Jaipur. This fact is also mentioned in the said Will.

Q.128) When did you come to know about the 1/3rd share of the deceased in the Jaipur property?

Ans: At the time of execution of the Will, I came to know. Not prior thereto.

(Attention of the Witness is drawn to paragraph 9 of his Affidavit in lieu of Examination-in-Chief)

Q.129) What do you mean by the phrase "sound memory"?

Ans: His memory power appeared normal to me.

Q.130) On what basis do you say so?

Ans: The deceased read the Will to me, upon which I gathered this fact.

Q.131) What do you mean by the word "understanding"?

Ans: The deceased knew what he was saying.

Q.132) What do you mean by the phrase "out of his own free will"

Ans: When Dr. Shaha had asked him, the deceased had replied that he was making the said Will after understanding its contents. It appeared to me that no one was pressurising him into making the said Will.

Q.133) Did you make any enquiries or investigation before coming to the conclusion that when the deceased executed the Will, he was in good disposing mind, of sound memory and understanding and prepared the Will out of his own free will and pleasure and without any coercion or force or pressure from any person?

Ans: I did not make any enquiries or investigation because I did not feel the need to do so.

Uploaded on - 17/09/2026 **Downloaded on - 06/10/2026 10:40:02**

Q.134) What do you mean by the phrase "pleasure and without any coercion or force or pressure from any person"?

Ans: The deceased made the will out of "khushi". It did not appear to me that the deceased was executing the said will out of any force but was doing so out of his own pleasure. The deceased did not appear to me "lachar".” (emphasis supplied)

Also that PW-3 had answered that the memory of the deceased appeared normal, and he knew what he was saying, and that he made the Will of his own “*khushi*”. PW-3 also stated that the deceased did not appear to be “*lachar*” or acting under any compulsion or helplessness.

Basis the above, Mr. Soman submitted that this evidence materially corroborated the evidence of PW-2 with regard to the testamentary capacity of the Deceased and the fact that the Deceased had voluntarily executed the said Will.

14. Mr. Soman then submitted that the disposition made under the Will could not be characterised as unexplained or unnatural merely because the Deceased had excluded his wife and sons and had bequeathed his estate essentially in favour of the Plaintiff. He pointed out that the Will itself expressly recorded the reasons why the Deceased had chosen to disinherit

Uploaded on - 17/09/2026 **Downloaded on - 06/10/2026 10:40:02**

his wife and sons and also explained the reasons why the Deceased had made a bequest in favour of the Plaintiff. Mr. Soman submitted that the reasons for disinheriting the Defendants and the wife of the Deceased were clearly borne out by the surrounding circumstances and the evidence which was led by the Parties which established the fact that the Deceased had a strained relationship with the Defendants and his wife.

15. Mr. Soman then submitted that the evidence on record fully supported the Plaintiff's case that it was the Plaintiff and his family who had both personally and financially cared for the Deceased during his illness. In support of his contention, he placed reliance upon the answers given in cross-examination by DW-1 to Question Nos. 96 to 120, which showed that DW-1 had admitted that he had not attended the Deceased's chemotherapy sessions, was unaware of the doctors treating the Deceased, and was not present when the Deceased underwent surgery. He also pointed out that DW-1 had, in Answer to Question Nos. 63 to 68 of the cross-examination, admitted as follows, viz.

"Q.63) Who informed you that he was suffering from Cancer?

Ans. I was informed by my father himself.

Uploaded on - 17/09/2026 Downloaded on - 06/10/2026 10:40:02

Q.64) What was the approximate expenditure that was incurred in respect of the treatment of your father?

Ans. I do not exactly know how much money was spent. I had not spoken with my father in connection with this topic.

Q.65) Would it be correct to say that your father had no source of income after he was diagnosed with cancer?

Ans. I do not agree.

Q.66) What was his source of income at that time?

Ans. He had his personal accounts and income from interest and also income from his business.

Q.67) What business?

Ans. Though he was not legally a partner in his brother's (Shri Assudomal's) business of trading in oil, oil seeds, grains, etc. and other commodities, he was working with him and doing business with him.

Q.68) What personal accounts are you talking about in your answer to Q.66?

Ans. Savings Accounts, Life Insurance Policies, his ornaments, HUF."

(emphasis supplied)

Basis the above, he submitted that it was clear that the relations between the Deceased and the Defendants were strained, and it was the Plaintiff and his family member who actually attended to and cared for the Deceased.

Uploaded on - 17/09/2026 **Downloaded on - 06/10/2026 10:40:02**

16. Mr. Soman submitted that it was the Plaintiff who had performed the last rites of the Deceased, and neither of the Defendants had even attended the funeral of the Deceased. This, he pointed out, was admitted by DW-1 in answer to Question Nos. 44, 137 and 138 put to DW-1 in cross-examination, viz.

> *"Q.44) Who performed the last rites in your absence?*
>
> *Ans. When I arrived in Mumbai I was informed that my cousin Shri Rajkumar Gurbani had performed the last rites.*
>
> *...*
>
> *Q.137) Would it be correct to say that your cousin Shri Rajkumar Gurbani lit the pyre of your father?*
>
> *Ans. When I arrived in Mumbai, I was informed that my cousin Shri Rajkumar Gurbani lit the pyre of my father.*
>
> *Q.138) I put it to you that your answer to Q.137 is false as your father was electronically cremated.*
>
> *Ans. I do not know whether my father was cremated electronically or by lighting the pyre.*
>
> *Witness adds: On the day of my father's cremation, I was not in Mumbai. When I arrived, I was told that Shri Rajkumar Gurbani had performed the last rites of my father. I do not know how the last rites were performed."* (emphasis supplied)

Uploaded on - 17/09/2026 **Downloaded on - 06/10/2026 10:40:02**

Mr. Soman, therefore, submitted that the aforesaid admission supported the Plaintiff's case that the Deceased did not have any relationship with the Defendants, so to speak.

17. Mr. Soman then invited my attention to the answer given by DW-1 to Question No. 56, viz.

> *"Q.56) Do you agree with the contentions taken by your father in the said case?*
>
> *Ans. Individually I do not believe that my father has a share in the said house/bungalow."* (emphasis supplied)

18. Mr. Soman was then at pains to point out that DW-1 had specifically challenged the entitlement of the deceased to the Jaipur House and was therefore asserting a title which was contrary to that of the Deceased. He submitted that this, apart from showing how strained the relationship between the Deceased and the Defendants was, would also disentitle DW-1 to claim the Jaipur property as being that of the Deceased. Moreover, DW-1 has, in answers given to Question Nos. 8 to 39, admitted that

Uploaded on - 17/09/2026 **Downloaded on - 06/10/2026 10:40:02**

Defendant No. 1 was not in a professional capacity to depose qua the soundness of the testator's mind at time of the making of the said Will.

19. Mr. Soman therefore submitted that the evidence led by the Plaintiff when read together with the contemporaneous documentary evidence and the material admissions elicited from DW-1 in cross-examination clearly established the Plaintiff's case that (**i**) the said Will was duly executed by the Deceased; (**ii**) the Deceased had strained relations with the Defendants and their mother, i.e., the wife of the Deceased; **(iii)** the Deceased had in the said Will explained the reasons why the Defendants and the wife of the Deceased had been excluded; and (**iv**) it was the Plaintiff who was looking after the deceased, both financially and physically.

20. Mr. Soman also submitted that DW-1, in answer to Question No. 1, stated that he is not well conversant with the English language and crucially, in answer to Question No. 40, mentioned that the contents of his Evidence Affidavit were not explained to him in Hindi. Moreover, he submitted that in answers to Question Nos. 49 and 50, DW-1 has admitted that he does not understand the meaning of the word "attestation". It is thus that Mr.

Uploaded on - 17/09/2026 **Downloaded on - 06/10/2026 10:40:02**

Soman submitted that the credibility of the Affidavit of Evidence of Defendant No. 1 was seriously under suspicion. He also submitted that DW-2, i.e., Mr. Ram Gulab Gurbani, who is the Defendant No. 2, in spite of having filed an Affidavit of Evidence, did not subject himself to cross-examination, and therefore, his evidence shall accordingly be entirely disregarded.

21. Mr. Soman then placed reliance upon the decision of the Hon'ble Supreme Court in ***Sridevi v. Jayaraja Shetty***[1], to submit that the propounder of a Will is required to establish that (**a**) the testator signed the Will; (**b**) at the relevant time, the testator was in a sound disposing state of mind; (**c**) the testator understood the nature and effect of the dispositions; (**d**) the testator signed the Will of his own free will; and (**e**) the attesting witnesses attested the Will in the presence of the testator and in the presence of each other.

22. Mr. Soman then submitted that each of the aforesaid requirements stood established in the present case. He submitted that the evidence of PW-2 and PW-3 was consistent, unimpeached and wholly corroborative of the

[1] (2005) 2 SCC 784.

Uploaded on - 17/09/2026 **Downloaded on - 06/10/2026 10:40:02**

Plaintiff's case. He submitted that the Defendants had not, in cross-examination, elicited anything from PW-2 or PW-3 that would, in any manner, discredit the testimonies of Plaintiff's witnesses or cast any doubt on the due execution and attestation of the Will.

23. He thus submitted that Issue Nos. 1 and 2 were required to be answered in the affirmative.

Submissions on behalf of the Defendants:

24. Mr. Mishra, the Learned Counsel appearing on behalf of the Defendants, submitted that the said Will was not the genuine last Will and testament of the deceased. He submitted that the signatures appearing on the said Will were not those of the Deceased and that the said Will was a forged and fabricated document. In support of this contention, he placed reliance upon the Report dated 20th March 2011 of DW-3, i.e., the handwriting expert.

25. Mr. Mishra then submitted that, quite apart from the challenge to the signatures of the Deceased, the evidence on record also raised serious and grave doubts as to whether the Deceased was in a sound and disposing state of mind and physically capable of executing the Will at the relevant time.

Uploaded on - 17/09/2026 Downloaded on - 06/10/2026 10:40:02

In support of his contention, he placed reliance upon the Affidavit of Evidence of DW-1 to point out that the Deceased was suffering from prostate cancer and was paralysed from the waist down. Mr. Mishra therefore submitted that the evidence of PW-2 concerning the testamentary capacity of the Deceased ought not to be accepted since the physical condition of the Deceased was, in his submission, such as to cast serious doubt upon the ability of the Deceased to comprehend the contents and effect of the Will as also to the execution of the same of the Deceased's own free volition. Relying upon the evidence of DW-1, he submitted that the purported Will was obtained by coercion and by taking advantage of the severely compromised physical condition of the Deceased.

26. Mr. Mishra then submitted that the Plaintiff's contention that the Deceased was estranged from the Defendants and his wife was belied by the statements made by the Deceased before the Jaipur District Court during the trial of the Suit filed by the deceased against his brothers, viz. Birjomal and Assudomal Gurbani. He pointed out that, on 8th and 9th January 2005, the Deceased had stated that whenever he visited Jaipur, he used to hand

Uploaded on - 17/09/2026 **Downloaded on - 06/10/2026 10:40:02**

over monies to his wife. He therefore submitted that it was wholly incorrect for the Plaintiff to suggest that the wife and children of the Deceased were not members of the Deceased's family or that their relations were strained. Mr. Mishra submitted that the evidence of the Deceased before the Jaipur Court demonstrated that the relations between the Deceased, the Defendants and the wife of the Deceased were cordial and were inconsistent with the case of estrangement pleaded by the Plaintiff.

27. Learned Counsel also relied upon the statement dated 18th September 2004, in which the Deceased stated that he had made a Will but had cancelled it, and that only about 8% to 10% of the estate was in favour of the sons of Assudomal, i.e., the Plaintiff. Mr. Mishra submitted that this statement materially undermined the genuineness of the Will propounded by the Plaintiff and was inconsistent with the testamentary disposition reflected therein.

28. He then further submitted that the execution of the said Will was also surrounded by several suspicious circumstances, which the Plaintiff, as the propounder, had failed to provide an explanation, despite being required

Uploaded on - 17/09/2026 **Downloaded on - 06/10/2026 10:40:02**

by law to do so. He pointed out that the Plaintiff was the nephew of the Deceased and, effectively, the sole beneficiary under the said Will, which completely excluded the wife and sons of the Deceased. He then also pointed out that the Plaintiff was also actively involved in the preparation and execution of the Will. Learned Counsel submitted that all these factors constitute grave suspicious circumstances surrounding the Will which the Plaintiff had failed to explain.

29. Mr. Mishra then submitted that the Deceased had executed a subsequent Will. In support of this contention, he placed reliance upon a letter dated 27th January 2005, which he pointed out was addressed by the Plaintiff to the Deceased and contains a reference to a subsequent Will of the Deceased. He submitted that the existence of such a subsequent Will would render the said Will ineffective. Alternatively, he submitted that reference to a subsequent Will was yet another circumstance casting serious doubt upon the genuineness and validity of the said Will of which probate was being sought.

Uploaded on - 17/09/2026 **Downloaded on - 06/10/2026 10:40:02**

30. As regards the evidence of the attesting witnesses, i.e., PW-2 and PW-3, Mr. Mishra submitted that their evidence did not satisfactorily establish that the Deceased was of sound and disposing state of mind. He submitted that the attesting witnesses had not genuinely or independently satisfied themselves that the Deceased was in a sound and disposing state of mind at the time of execution of the said Will. Learned Counsel pointed out that PW-3 had made no independent enquiry or attempt to satisfy himself as to the mental condition and testamentary capacity of the Deceased.

31. Mr. Mishra further submitted that the Plaintiff and PW-2 had also suppressed a material circumstance, namely, that the Deceased was undergoing chemotherapy prior to and around the time of the execution of the said Will. He then, from the cross-examination of PW-2, pointed out that PW-2 had, in answer to Question No. 13, stated that Dr. Phadke had suggested a chemotherapy tablet for bringing the PSA levels of the Deceased to normal. He also placed reliance upon the answers given by DW-1 to Question Nos. 99, 103, 105 and 120 to point out that the Deceased had become very weak and bedridden and had experienced changes in the

Uploaded on - 17/09/2026 **Downloaded on - 06/10/2026 10:40:02**

colour of his skin and loss of hair some six to eight months prior to his death, which period preceded the date of the Will. Learned Counsel submitted that the nature and effect of such medication and treatment had a direct bearing upon both the physical and mental condition of the Deceased at the relevant time.

32. Mr. Mishra then additionally relied upon the answer given by PW-2 to Question No. 69 to highlight that no scientific examination had been carried out to ascertain whether the mental faculties of the Deceased had been affected. He also relied upon the answer given by PW-2 to Question No. 75, wherein it was stated that advanced prostate cancer could lead to paraplegia, with the cancer penetrating the pelvis, affecting the nerves and causing damage to the lower spinal cord. Mr. Mishra submitted that this evidence assumed significance while considering whether the Deceased possessed the requisite physical and mental capacity to execute the Will.

33. Mr. Mishra also relied upon the answers of PW-1 to Question Nos. 234 to 243 and 250 to 260. He submitted that these answers demonstrate that the Plaintiff was largely unaware of the circumstances relating to the

Uploaded on - 17/09/2026 **Downloaded on - 06/10/2026 10:40:02**

preparation and drafting of the Will. At the same time, the Deceased was bedridden and substantially dependent upon the Plaintiff. All of this only heightened the suspicious circumstances surrounding the preparation and execution of the Will.

34. Mr. Mishra then submitted that even the registration of the said Will was suspect. He submitted that the entire process surrounding registration of the said Will was suspicious and that that PW-1 had failed to satisfactorily explain the formalities and procedure followed for the said registration. Mr. Mishra submitted that there was also no satisfactory explanation for the delay in the registration of the Will. All these factors he submitted, when viewed together, gave rise to grave suspicion surrounding even the registration.

35. Mr. Mishra then, from the cross-examination of PW-2, pointed out that PW-2 had, in answer to Question Nos. 79 to 87, stated as follows, viz.

> *"Q.79) Who had prepared the draft of the said Affidavit?*
> *Ans: M/s. Bilawala & Co.*
> *Q.80) Which person in M/s. Bilawala & Co. gave you the said draft?*
> *Ans: I do not remember the person's name.*
> *Q.81) Can you find out even today, the person from M/s. Bilawala & Co. who had given you the said draft?*

Uploaded on - 17/09/2026 Downloaded on - 06/10/2026 10:40:02

Ans: No

Q.82) Where was the draft of the said Affidavit delivered to you?

Ans: I do not remember.

Q.83) Can you name the person to whom gave instructions for drafting the said Affidavit?

Ans: I gave instructions to one Mr. Raju Assudomal Gurbani.

Q.84) Is Raju Assudomal Gurbani the same as Rajkumar Assudomal Gurbani?

Ans: Yes.

Q.85) Is it true that Rajkumar Assudomal Gurbani is the Plaintiff in the present suit?

Ans: Yes.

Q.86) Where did you give instructions to Mr. Rajkumar Assudomal Gurbani?

Ans. On the phone.

Q.87) After receiving the draft of the said Affidavit, did you add or delete anything from the said draft?

Ans: No."

Mr. Mishra submitted that these answers materially affected the authenticity, independence and reliability of PW-2's Affidavit of Evidence and demonstrated that the Affidavit in Chief of PW-2 could not be treated as PW-2's own independent account.

36. Learned Counsel then also placed reliance upon the answers given by PW-2 to Question Nos. 171 and 172 to point out that PW-2 had stated that he

Uploaded on - 17/09/2026 **Downloaded on - 06/10/2026 10:40:02**

had neither seen nor read the contents of the Will before its execution. According to Mr. Mishra, this admission was crucial, particularly in evaluating the credibility of PW-2's account concerning the circumstances in which the Will came to be executed.

37. On the question of the alleged estrangement of the Deceased from his wife and sons, i.e., the Defendants, Mr. Mishra reiterated that the documents forming part of the Jaipur Court proceedings demonstrate that there was no such estrangement. According to learned Counsel, those proceedings and the statements attributed to the Deceased therein indicate that the Deceased continued to maintain good relations with his wife and sons. He therefore submitted that the complete exclusion of the wife and sons of the Deceased under the said Will were, therefore, not satisfactorily explained and constituted an additional suspicious circumstance.

38. Mr. Mishra also objected to the reliance placed by the Plaintiff upon the Affidavit dated 20th October 1994 of DW-1 filed before the Jaipur Court in which DW-1 had opposed the Deceased in the Suit for Partition and also in the Affidavit dated 19th September 1994 filed by the wife of the

Uploaded on - 17/09/2026 **Downloaded on - 06/10/2026 10:40:02**

Deceased before the Jaipur Court, similarly opposing the Deceased. Learned Counsel submitted that the signatures appearing on those Affidavits had not been duly proved. He submitted that the mere marking of a document as an Exhibit does not dispense with proof of its execution or of the truth of its contents. Consequently, according to Mr. Mishra, both the said Affidavits cannot be relied upon to establish estrangement between the Deceased and the Defendants.

39. Mr. Mishra further submitted that the evidence of PW-1 and PW-2 concerning the physical movements of the Deceased renders the Plaintiff's account of the execution of the Will inherently improbable. He submitted that the evidence showed that the Deceased had extremely restricted movement below the waist and required assistance to move. Learned Counsel therefore submitted that it was difficult to accept the version that, notwithstanding this condition, the Deceased was able to sit up unaided, place the Will upon a table positioned before the bed and sign each of its three pages without assistance. To support this contention, he placed reliance upon the answers given by PW-2 to Question Nos. 174 to 182, viz.

Uploaded on - 17/09/2026 **Downloaded on - 06/10/2026 10:40:02**

"Q.174) Was the deceased in a sitting position or sleeping position at the time of affixing his signature on the Will?

Ans: The deceased was in a sitting position.

Q.175) Was the signature affixed by the deceased whilst he was sitting on his bed?

Ans: Yes.

Q.176) Where were you positioned at the time when the deceased affixed his signature on the Will?

Ans: I was sitting next to the deceased on his bed. I do not remember whether it was to his right or to his left.

Q.177) Who else was present in the room when the deceased affixed his signature on the Will?

Ans: Assudomal Gurbani, Rajkumar Gurbani, Uddhav Gurbani and myself.

Q.178) Where were Assudomal Gurbani, Rajkumar Gurbani and Uddhav Gurbani positioned when the deceased affixed his signature on the Will?

Ans: They were standing around the deceased.

Q.179) Apart from the bed, what other furniture was in the bedroom at that time?

Ans: I think in his bedroom at that time, there was one chair and one small table.

Q.180) Who was sitting on the chair at the time of when the deceased affixed his signature on the Will?

Ans: I do not remember.

Q.181) How was the table positioned from the bed?

Ans: The table was in front of the bed. The deceased affixed his signature on the Will whilst sitting on the bed and using the table.

Q.182) Is it correct to say that Mr. Assudomal Gurbani, Mr. Rajkumar Gurbani and Mr. Uddhav Gurbani were around the table when the deceased affixed his signature on the Will?

Ans: I do not remember exactly."

Uploaded on - 17/09/2026 **Downloaded on - 06/10/2026 10:40:02**

40. As regards the objection that the Affidavit of Evidence of DW-1 travels beyond the pleadings contained in the Affidavit in support of the Caveat, Mr. Mishra submitted that there is no substance in the said objection. According to the Learned Counsel, the matters set out in the Affidavit of Evidence are merely an elaboration of the case already pleaded in the Affidavit in support of the Caveat and do not constitute a new or inconsistent case.

41. Mr. Mishra submitted that the aforesaid circumstances cannot be considered in isolation. The challenge to the signatures of the Deceased, his grave physical condition, the evidence concerning his medical treatment, the alleged lack of independent satisfaction regarding his testamentary capacity, the Plaintiff's involvement and position as a beneficiary, the complete exclusion of the Deceased's wife and sons, the evidence concerning the Deceased's relationship with his family, the circumstances surrounding registration, the evidence of the attesting witnesses and the reference to a subsequent Will are, according to the Learned Counsel, circumstances which cumulatively create grave and

Uploaded on - 17/09/2026 Downloaded on - 06/10/2026 10:40:02

substantial suspicion regarding the said Will which the Plaintiff, as propounder of the Will, had failed to remove or satisfactorily explain.

42. Mr. Mishra also submitted that the evidence of the handwriting expert, i.e., DW-3, was of utmost importance since the expert had opined on 20th March 2011 that the purported signature of the Deceased on the Will is, in fact, not of the Deceased. He submitted that the expert compared the signature on the Will with the signatures of the Deceased on the Court records, which were filed by the Deceased and his brother, Mr. Assudomal Gurbani. He submitted that the evidence of the expert holds a certain level of gravitas, and since the same clarifies that the signature of the Deceased on the Will does not match with the signature of the Deceased from the other records, the genuineness of the said Will comes under suspicion.

43. Mr. Mishra accordingly submitted that the Plaintiff has failed to establish the due execution, genuineness and validity of the said Will and accordingly prayed that the Suit be dismissed with compensatory costs.

Uploaded on - 17/09/2026 **Downloaded on - 06/10/2026 10:40:02**

Submissions on behalf of the Plaintiff in Rejoinder:

44. Mr. Soman submitted that none of the contentions advanced by the Defendants displaced the evidence establishing the due execution and attestation of the said Will, nor had the Defendants established any suspicious circumstance which remained unexplained.

45. He submitted that the allegations concerning the alleged unsoundness of mind of the Deceased, as well as coercion and undue influence, had never been raised in the Caveat or the Affidavit in Support thereof. He pointed out that DW-1 raised all these contentions only for the first time in the Affidavit of Evidence. He then submitted that, in answer to Question Nos. 20 to 24 of the cross-examination, DW-1 expressly admitted that the contentions of unsoundness of mind and coercion were not raised in the Affidavit in Support of the Caveat.

46. Mr. Soman pointed out that, under Rule 403 of the Bombay High Court (Original Side) Rules, an Affidavit in Support of a Caveat is to be treated as the Caveator's Written Statement. Placing reliance upon the decision of

Uploaded on - 17/09/2026 Downloaded on - 06/10/2026 10:40:02

this Court in ***Purushottam Vishandas Raheja v. Asha Shrichand Raheja***[2], he submitted that any ground objecting to the grant of Probate must be taken and set out in the Affidavit in support of the Caveat and averments in the subsequent Affidavits cannot be considered as a ground of challenge towards execution of the Will. He further submitted that, since the Defendants had not raised any plea of unsoundness of mind, coercion, or undue influence in their Affidavit in Support of the Caveat, it was not open to them to subsequently raise such contentions in evidence. In support of this submission, Mr. Soman also relied upon the decision of the Hon'ble Supreme Court in ***Kattinokkula Murali Krishna v. Veeramalla Koteswara Rao & Ors***.[3]. Mr. Soman submitted that infact, DW-1 had admitted, while answering the Question Nos. 20 to 24, that the Affidavit in Support of the Caveat did not take the plea of unsoundness of mind and coercion.

47. Mr. Soman then, without prejudice to the above, submitted that the allegations concerning the alleged testamentary incapacity of the Deceased were wholly unsupported by the evidence on record. He submitted that the

[2] Order passed by Bombay High Court on 26th July 2016 in Appeal No. 598 of 2011.
[3] (2010) 1 SCC 466.

Uploaded on - 17/09/2026 Downloaded on - 06/10/2026 10:40:02

fact that the Deceased suffered from prostate cancer and had restricted movement below the waist did not establish any impairment of his mental faculties or testamentary capacity. On the contrary, PW-2 had deposed that the Deceased was of sound and disposing mind, memory and understanding at the time of execution of the Will and that his illness affected only his physical movement from the waist down.

48. Mr. Soman emphasised that physical infirmity could not, by itself, give rise to an inference of lack of testamentary capacity. He pointed out that the evidence of PW-2 and PW-3 established that the Deceased sat up on his bed, read the Will aloud and thereafter signed it on a small table placed on the bed. This evidence, according to him, remained unshaken in cross-examination. Relying upon the decision of this Court in ***Ganpatrao Khandero v. Vasantrao***[4], he submitted that the law does not require a testator to be in perfect physical health. What must be established, he submitted, is that the testator possesses the mental capacity to understand

[4] AIR 1932 Bom 588.

Uploaded on - 17/09/2026 Downloaded on - 06/10/2026 10:40:02

the nature and effect of the testamentary act and that his instructions have, in substance, been carried out.

49. Mr. Soman further submitted that the Defendants had not examined any doctor, medical expert or psychiatrist to rebut the positive evidence concerning the mental capacity of the Deceased. He submitted that no medical evidence in particular had been led to establish that the chemotherapy or other treatment undergone by the Deceased was capable of impairing his testamentary capacity. He pointed out that DW-1 had admitted, in answer to Question No. 99, that he had never attended a single chemotherapy session and, in answer to Question 103, that he had learnt of the treatment from the Deceased himself. According to Mr. Soman, the latter admission was itself inconsistent with the suggestion that the Deceased was mentally incapacitated or incapable of understanding his affairs.

50. Mr. Soman also submitted that DW-1 was neither present at the execution of the Will nor involved in the medical treatment of the Deceased. He further pointed out that DW-1 admittedly had strained relations with the

Uploaded on - 17/09/2026 **Downloaded on - 06/10/2026 10:40:02**

Deceased and was not even aware of the identity of the doctors treating him. In these circumstances, Mr. Soman submitted that the bare assertion of DW-1 could not displace the direct evidence of PW-2, a physician of 47 years' standing who had attended upon the Deceased for approximately 35 years, which evidence was corroborated by PW-3.

51. As regards the contention that no scientific examination had been undertaken to determine the mental capacity of the Deceased Mr. Soman submitted that the law does not require a testator to undergo any scientific or a medical test as a condition precedent to the making of a valid Will. He submitted that proof of the testator's sound and disposing mind at the time of execution was required. According to him, that requirement was fully satisfied by the evidence of PW-2 and PW-3, read with the terms and tenor of the Will itself.

52. Mr. Soman submitted that the contents of the said Will made clear that the Deceased was of sound and disposing state of mind. He pointed out that the Will contained cogently explained the specific reasons for the dispositions made thereunder, including the reasons for excluding the

Uploaded on - 17/09/2026 **Downloaded on - 06/10/2026 10:40:02**

Defendants and the wife of the Deceased. The detailed and intelligible nature of the dispositions and the reasons recorded for the same, according to him, were wholly inconsistent with the allegation that the Deceased lacked testamentary capacity.

53. Mr. Soman also pointed to what he described as an inherent inconsistency in the Defendants' case. The Defendants had relied upon the letter dated 27th January 2005 in support of their allegation that the Deceased had made a subsequent Will. According to Mr. Soman, that case necessarily proceeded on the footing that the Deceased possessed testamentary capacity in or about January 2005, nearly two months after the execution of the Will propounded in the present proceedings. He therefore submitted that the Defendants could not, on the one hand, contend that the Deceased lacked testamentary capacity on 30th November 2004 and, on the other, assert that he had made another Will approximately two months thereafter.

54. Mr. Soman next dealt with the Defendants' reliance upon purported statements made by the Deceased during his deposition before the Court Commissioner at Jaipur on 18th September 2004, 8th January 2005 and 9th

Uploaded on - 17/09/2026 Downloaded on - 06/10/2026 10:40:02

January 2005. The Defendants sought to rely upon those statements to contend that they were inconsistent with the recitals in the Will and demonstrated that the Deceased had cordial relations with the Defendants and his wife. Mr. Soman submitted that such reliance was impermissible since, by an Order dated 31st January 2013 (Roshan Dalvi, J.), this Court had expressly declined to mark the certified photocopy of the deposition in evidence. He pointed out that the Court had held that the deposition related to questions of title arising in the Jaipur partition proceedings, which could not be adjudicated upon by a Probate Court, and had consequently held the document to be irrelevant to the Probate proceedings.

55. Mr. Soman further pointed out that, following the filing of an Additional Affidavit of Evidence by DW-1 in March 2013, the Defendants made a second attempt to bring the same material on record. That attempt was rejected by an Order dated 24th June 2013 (R.D. Dhanuka, J.). The Division Bench, by its Order dated 28th October 2013, did not entertain the Appeal against that Order, while observing that it would be open to the Appellant to raise all permissible challenges against the final decree. Mr. Soman

Uploaded on - 17/09/2026 **Downloaded on - 06/10/2026 10:40:02**

therefore submitted that the purported statements made by the Deceased in the Jaipur proceedings were not part of the evidentiary record and could neither be relied upon nor considered in deciding the present Suit.

56. In contrast, as regards the Affidavits filed by DW-1 and the wife of the Deceased before the Jaipur Court in opposition to the Deceased in the partition proceedings, Mr. Soman submitted that those Affidavits had been marked in evidence by an Order dated 23rd November 2010. He submitted that the Defendants had an opportunity to lead evidence in rebuttal thereof but chose not to do so.

57. Mr. Soman then dealt with the contention that the Will was suspicious because it excluded the Defendants and the wife of the Deceased. He submitted that the very object of a testamentary disposition is to enable a testator to depart from the ordinary course of intestate succession. The mere exclusion of a natural heir or the reduction of the share which such heir would otherwise have received on intestacy could not, by itself, constitute a suspicious circumstance. He further submitted that the reasons for the dispositions in the present case had been expressly recorded by the

Uploaded on - 17/09/2026 **Downloaded on - 06/10/2026 10:40:02**

Deceased in the Will and that it was not for the Probate Court to sit in Judgment over the wisdom or fairness of those dispositions. In support of these submissions, he relied upon the decisions of the Hon'ble Supreme Court in ***Ramabai Padmakar Patil v. Rukminibai Vekhande***[5] and ***Pentakota Satyanarayana v. Pentakota Seetharatnam***[6].

58. Mr. Soman also relied upon the decision of the Hon'ble Supreme Court in ***Leela Rajagopal v. Kamala Menon Cocharan***[7] to submit that the mere participation of a beneficiary in the process leading to the execution of a Will does not, by itself, constitute a suspicious circumstance. In any event, he pointed out that PW-1 had specifically denied having actively participated in the preparation or execution of the Will.

59. As regards the registration of the Will, Mr. Soman submitted that registration is not compulsory and that the validity of a Will does not depend upon its registration. In the facts of the present case, however, he submitted that the registration of the Will during the lifetime of the

[5] (2003) 8 SCC 537.
[6] (2005) 8 SCC 67.
[7] (2014) 15 SCC 570.

Uploaded on - 17/09/2026 Downloaded on - 06/10/2026 10:40:02

Deceased, pursuant to his application dated 17th January 2005, constituted an additional circumstance supporting its genuineness. He further pointed out that the Defendants had not examined any officer from the office of the Sub-Registrar to establish the alleged irregularities in the registration record. According to him, minor discrepancies in PW-1's recollection as to the precise time of registration, when the witness was deposing several years after the event, could not outweigh the substantive evidence establishing the execution and attestation of the Will.

60. Mr. Soman also dealt with the challenge to the reliability of the Affidavit of Evidence of PW-2. He submitted that there was nothing unusual in an Affidavit of Evidence being prepared by Advocates on the instructions of a witness. What was material was that PW-2 had affirmed the Affidavit, entered the witness box and subjected himself to extensive cross-examination. According to Mr. Soman, PW-2's substantive testimony concerning the reading of the Will, the question put by him to the Deceased, the answer given by the Deceased and the subsequent execution and attestation of the Will remained unshaken in cross-examination.

Uploaded on - 17/09/2026 **Downloaded on - 06/10/2026 10:40:02**

61. Mr. Soman then, in dealing with the opinion of the handwriting expert first submitted, that DW-3 lacked the requisite qualifications and experience. He pointed out that, in answer to Question Nos. 1 and 2 in cross-examination, DW-3 admitted that she had not undertaken any formal study in forensic document examination. He further relied upon her answers to Question Nos. 4 and 19 to point out that, when she prepared her Report dated 20th March 2011, she had only one year of training and approximately one year and five months of independent practice. On this basis, Mr. Soman submitted that DW-3 did not possess the requisite expertise to qualify as an expert within the meaning of Section 45 of the Indian Evidence Act, 1872.

62. Mr. Soman submitted that the very foundation of the comparison undertaken by DW-3 was defective, since it was based upon documents and signatures which were neither admitted nor proved and did not form part of the evidentiary record of the Suit. He submitted that Section 73 of the Indian Evidence Act, 1872, contemplates comparison with signatures which are admitted or proved to the satisfaction of the Court. He pointed

Uploaded on - 17/09/2026 **Downloaded on - 06/10/2026 10:40:02**

out that, in answer to Question 90, DW-3 admitted that the signatures supplied to her for comparison had merely been represented to her as signatures admitted by both parties. According to Mr. Soman, this admission undermined the foundational basis of her Reports.

63. Mr. Soman also submitted that DW-3 had not examined the original Will and that her analysis was based entirely upon scanned copies of photocopies. Relying on her answers to Question Nos. 101 to 109, he pointed out that DW-3 had stated that the documents annexed to her Report "may not be" the same documents that she had actually analysed. He further relied upon her answers to Question Nos. 46 to 49 and 70 to 73 to submit that the images used for comparison had been digitally enlarged and altered. Mr. Soman therefore submitted that the opinion of DW-3 was based upon secondary and unreliable material and could not displace the direct evidence of witnesses who were present at the execution of the Will.

64. In the aforesaid context, Mr. Soman relied upon the decision of this Court in ***Hoshang Pesi Hodiwala v. Bonny Behramshah Bhathena***[8] to submit

[8] (2014) 6 Mah LJ 656.

Uploaded on - 17/09/2026 Downloaded on - 06/10/2026 10:40:02

that handwriting expert evidence is inherently susceptible to error and must be approached with caution, with the Court independently examining the original signatures wherever appropriate.

65. As regards the second Report of DW-3 concerning whether the signature appearing on the letter dated 27th January 2005 was that of the Plaintiff, Mr. Soman submitted that the Report had no bearing on any issue arising for determination in the present Suit. He pointed out that the Defendants had neither produced the alleged subsequent Will nor sought to frame any issue in relation to such a Will. He therefore submitted that the second Report was liable to be disregarded.

66. Mr. Soman next submitted that the Defendants' challenge was also liable to be rejected insofar as they had themselves denied the Deceased's title to the Jaipur Property. Relying upon the decision of the Hon'ble Supreme Court in ***Krishna Kumar Birla v. Rajendra Singh Lodha***[9], he submitted that a person claiming an interest adverse to the testator or his estate cannot

[9] (2010) 1 SCC 466.

Uploaded on - 17/09/2026 Downloaded on - 06/10/2026 10:40:02

maintain a caveatable interest which would have the effect of destroying the estate of the testator itself.

67. Mr. Soman did not dispute that a Probate Court does not adjudicate questions of title. His submission, however, was that the Defendants, by denying the Deceased's title to the Jaipur Property, had adopted a position that was adverse to that of the Deceased. In this regard, he relied on paragraph 8 of the Affidavit in Support of the Caveat, in which the Defendants specifically stated that the Deceased "did not have power of disposition regarding the Jaipur Property". According to Mr. Soman, this constituted a stand plainly adverse to the Will.

68. As regards the Plaintiff's conduct subsequent to the execution of the Will, Mr. Soman submitted that the extent of the Plaintiff's involvement in the Jaipur litigation had no bearing upon the due execution or attestation of the Will. He also submitted that Defendant No. 1 himself had admitted in his cross-examination, in particular, his answers to Question Nos. 130 to 133, that no steps were taken by the Defendants in furtherance of the alleged subsequent Will dated 25th January 2005, itself speaks volumes. He

Uploaded on - 17/09/2026 **Downloaded on - 06/10/2026 10:40:02**

submitted that this, coupled with the fact that the Defendants had failed to even produce the subsequent Will before this Court. He also submitted that by raising this contention, the Defendants can be said to have assumed that the Deceased retained the capacity to make a Will nearly two months after making the said Will in November 2004.

69. He further submitted that the evidence concerning the care taken of the Deceased by the Plaintiff and members of his family during the Deceased's illness remained uncontroverted. He pointed out that DW-1 had himself admitted, in answer to Question Nos. 63 to 68, that he was unaware of the expenses incurred towards the treatment of the Deceased.

70. Mr. Soman concluded by submitting that the direct and positive evidence of PW-1, PW-2 and PW-3, who were personally present at the relevant time and had deposed to the execution and attestation of the Will had to prevail over the opinion evidence of DW-3. According to him, the latter stood materially discredited by her admissions in cross-examination and was, in any event, founded upon scanned photocopies, unproved comparison material and digitally altered images. The Defendants had led

Uploaded on - 17/09/2026 **Downloaded on - 06/10/2026 10:40:02**

no cogent positive evidence to establish that the Deceased had not signed the Will. Their challenge to the signature of the Deceased rested substantially upon the Reports of DW-3, which, according to Mr. Soman, were incapable of displacing the direct evidence of the Plaintiff's witnesses.

71. Mr. Soman therefore submitted that the evidence, viewed as a whole, established the due execution and attestation of the Will and the sound and disposing state of mind of the Deceased at the relevant time. According to him, none of the circumstances relied upon by the Defendants constituted an unexplained suspicious circumstance sufficient to displace the positive evidence led by the Plaintiff or to deny the grant of probate.

72. Mr. Soman submitted that the arguments advanced by the Defendants against the attesting witnesses are only peripheral and do not go to the root of the matter since the arguments that PW-2 did not read the Will before its execution, or that neither witness knew who typed it, or that PW-3 put no question after the Will was read out, and that neither of them was present at the registration, do not in any manner dispel the fact of the Will having

Uploaded on - 17/09/2026 **Downloaded on - 06/10/2026 10:40:02**

been executed and attested in the manner deposed to by those witnesses. He submitted that an attesting witness is not required by law to know the contents of the Will, and is not expected to interrogate the testator upon the wisdom of his dispositions.

73. He also submitted that the Advocates drawing Affidavit on the telephonic instructions of the Plaintiff does not detract from the oral testimony given upon oath and tested in cross-examination, which is also corroborated by PW-1 and PW-3 and he thus submitted that Issue No. 2 is required to be answered in the affirmative.

74. Mr. Soman also submitted that the circumstances pressed by the Defendants such as the identity of the scribe, the hour recorded upon the registration receipt, the manner in which the original Will came to be found, and the recitals as to family relations, do not have any bearing either on the proof of proper execution of the Will, or the Issue No. 3 which the Defendants were required to prove.

75. Mr. Soman submitted that the onus in respect of Issue No. 3 lies upon the Defendants, as is also recorded by this Hon'ble Court in the Order dated

Uploaded on - 17/09/2026 **Downloaded on - 06/10/2026 10:40:02**

19th March 2025. He submitted that it is the admitted position that the Defendants were not present at the time of execution of the said Will. He also submitted that the only attempt made by Defendants towards discharging the burden was the evidence tendered in the Report of DW-3 and her oral evidence, wherein DW-3 has admitted to the fact that DW-3 (**i**) had not taken any course in forensic document examination from any university; (**ii**) at the time of preparing the First Report, DW-3 had only one year of training and one year and five months of independent practice; (**iii**) the signatures used for comparison were only purported to her to have been admitted by the parties; (**iv**) the analysis proceeded upon scanned copies of photocopies, that the documents analysed do not form part of the record, and that the documents annexed to the Report may not be the same as those analysed; (**v**) the images used for comparison were digitally enlarged.

76. He thus submitted that the testimony of DW-3 stands defeated against the testimonies of the Plaintiff's Witnesses who were actually present at the time of execution of the said Will.

Uploaded on - 17/09/2026 **Downloaded on - 06/10/2026 10:40:02**

77. He thus submitted that Issue No. 3 is therefore required to be answered in the negative, and it ought to be held that the Defendants have failed to prove that the Deceased had not signed the Will.

78. Mr. Soman submitted that in view of the submissions on Issue Nos. 2 and 3, and there being no other impediment to the grant, it is submitted that the Plaintiff, being the executor named in the Will, is entitled to the grant of Probate, and therefore, Issue No. 1 be decided in the affirmative.

79. Mr. Soman thus prayed that the Testamentary Suit No. 74 of 2006 be decreed and the Prothonotary and Senior Master be directed to issue the grant of Probate of the Will dated 30th November 2004 of the Deceased Gulab Hukumatrai Gurbani in favour of the Plaintiff expeditiously.

80. Mr. Soman further submitted that since this Court had, in paragraph 1 of Order dated 19th March 2025, recorded as follows, viz.

> *"After hearing Learned Counsel for the Plaintiff, it was pointed out to Learned Counsel for the Defendant that the only issue, onus of which was upon the Defendant to prove was issue No.3. It was put to Learned Counsel for the Defendant that in the event it is found that the opposition to the grant of probate is frivolous, an order of costs would follow. He*

Uploaded on - 17/09/2026 **Downloaded on - 06/10/2026 10:40:02**

submitted that he would like to take instructions from the Defendant before proceeding further"

81. Mr. Soman submitted that thereafter the Court observed, vide the Order dated 26th March 2025, as follows:

"Today, Learned Counsel for the Defendant submitted that, despite the orders passed previously, he has instructions to oppose. However, he seeks leave to amend the written submissions by incorporating the relevant page numbers and cross-references to the pleadings. He is permitted to do so."

He thus submitted that Defendants have failed to discharge the onus pertaining to Issue No. 3, and thus it is submitted that the objection to the grant of Probate is wholly frivolous and vexatious and has materially contributed to the delay in the grant of probate since 2006.

82. Mr. Soman submitted that the Plaintiff in the present case is entitled to an Order of costs, and in support of this claim, he placed reliance upon the decision of this Court in the case of ***Dileep Cheema v. Jehangir Tehmas***

Uploaded on - 17/09/2026 **Downloaded on - 06/10/2026 10:40:02**

Patel[10] to submit that this Court had decreed the Testamentary Suit with costs quantified at Rs. 5,00,000/- to be paid by each Defendant, on account of the Defendants therein having frivolously stalled the grant for several years. He thus submitted that the present case is a fit case for the grant of exemplary costs, given the manner in which the Defendants have prolonged this litigation despite the orders dated 19th March and 26th March 2025.

Mr. Soman therefore finally submitted that the Suit be decreed and the Plaintiff be granted the Probate in respect of the Will dated 30th November 2004, and the Order of costs may also be passed against the Defendants.

Reasons and Conclusion:

83. After having heard Learned Counsel for the Parties and on an appreciation of evidence and the case law upon which reliance has been placed, I proceed to answer the issues as follows, viz.

[10] Order dated 25th February 2025 passed by Bombay High Court in Testamentary Suit No. 65 of 2012.

Uploaded on - 17/09/2026 Downloaded on - 06/10/2026 10:40:02

Issue No. 2:

84. The principles governing proof of a Will are well settled. The propounder of a Will is required to establish that the said Will of which Probate is being sought was duly executed by the testator; that, at the relevant time, the testator was in a sound and disposing state of mind; that the testator understood the nature and effect of the dispositions made by him; and that the testator executed the Will of his own free volition. In cases where there are suspicious circumstances surrounding the execution of the Will in question, the burden lies upon the propounder to satisfactorily disprove these suspicious circumstances, as held by the Hon'ble Supreme Court in the case of ***Sridevi v. Jayaraja Shetty***.

85. In the present case, the Plaintiff has examined both the attesting witnesses to the said Will, namely Dr. Sumitlal M. Shaha (PW-2) and Mr. Uddhav Baldev Gurbani (PW-3). From the evidence on record, it can be discerned that PW-2 was the physician of the Deceased for approximately 35 years, whereas PW-3 was a family acquaintance who had known the Deceased for approximately 50 years. Therefore, evidence of PW-2 and PW-3

Uploaded on - 17/09/2026 Downloaded on - 06/10/2026 10:40:02

assumes significance not merely because they were examined as attesting witnesses, but also because they both had known the Deceased closely for a considerable period of time. There was not even a suggestion to shake this evidence, let alone discredit the same.

86. From the evidence led by the Plaintiff, it is clear that the Deceased read the Will; the evidence of PW-2 shows that the Deceased was specifically asked whether he had read and understood its contents and whether he was executing it of his own free will, to which the Deceased had answered in the affirmative. The attesting witnesses have further deposed that the Deceased subsequently signed the said Will in their presence, and that each of them then signed the said Will as an attesting witness in the presence of the Deceased and in the presence of each other. More importantly, the evidence of PW-2 and PW-3 on these material aspects has not been displaced during cross-examination. Crucially, DW-1 was not even present at the time of the execution of the said Will. Therefore, the evidence of the attesting witnesses clearly establishes that the requirement of Section 63(c)

Uploaded on - 17/09/2026 **Downloaded on - 06/10/2026 10:40:02**

of the Succession Act read with Section 68 of the Indian Evidence Act, 1872, has been satisfied.

87. Considerable emphasis was placed by the Defendants upon the fact that PW-2 had not read the Will before its execution; that neither of the attesting witnesses knew who had typed the Will; that PW-3 did not put any question to the Deceased after the Will was read; and that neither witness was present when the Will was subsequently registered. In my view, none of these circumstances would in any manner displace the factum of due execution, which has been established by the evidence of PW-2 and PW-3, as already noted above.

88. Furthermore, and crucially, an attesting witness is required to prove due execution in the manner required under Section 63 of the Succession Act 1925. The law does not require an attesting witness to know who drafted or typed the Will, nor does it require an attesting witness to independently examine the wisdom or propriety of the dispositions made by the testator under the Will which is being attested or proved. Equally, an attesting witness's absence during the subsequent registration of the Will is a factor

Uploaded on - 17/09/2026 **Downloaded on - 06/10/2026 10:40:02**

which is wholly irrelevant to proving due execution of the Will in question. These objections raised by the Defendants, therefore, would not in any manner take away from or discredit the evidence of PW-2 and PW-3 on the factum of the due execution and attestation of the said Will.

89. Also, the Defendants sought to make capital the manner in which the Affidavit of Evidence of PW-2 was prepared. However, even accepting the case of the Defendants, that would not *ipso facto* render the evidence of PW-2 to be unreliable or liable to be discarded. It cannot be lost sight of that PW-2 entered the witness box, affirmed his evidence on oath and subjected himself to cross-examination. The evidence of PW-2 on the aspect of execution and attestation of the said Will has remained unscathed and is also consistent with the evidence of PW-1 and PW-3. In the facts of the present case, I am therefore not inclined to discard the evidence in chief of PW-2.

90. The Defendants have also sought to question the testamentary capacity of the Deceased. However, the Caveat and Affidavit in Support thereof do not even remotely raise the plea that the Deceased lacked the testamentary

Uploaded on - 17/09/2026 **Downloaded on - 06/10/2026 10:40:02**

capacity to make the said Will, was of unsound mind, or was coerced into making the said Will. It is well settled that evidence which travels beyond the pleadings cannot be considered. In the present case, admittedly no such pleas were taken in the Affidavit in Support of the Caveat, nor was any Issue on this aspect even framed. Thus, the questions of the Defendants proving contentions pertaining to the Deceased's unsoundness of mind, coercion in executing the said Will or the lack of disposing capacity of the testator in evidence does not arise. In these admitted facts the Plaintiff's reliance upon the decisions in the case of ***Purushottam Vishandas Raheja v. Asha Shrichand Raheja*** as well as ***Kattinokkula Murali Krishna v. Veeramalla Koteswara Rao*** is entirely apposite.

91. On the contrary, from the evidence on record, it is quite apparent that the Deceased was in a sound and disposing state of mind and did not in any manner lack testamentary capacity at the time when the said Will was executed, i.e., on 30th November 2004. PW-2, who had attended upon the Deceased as his physician for about 35 years, has specifically spoken to his mental condition of the Deceased. The record shows that this is

Uploaded on - 17/09/2026 Downloaded on - 06/10/2026 10:40:02

corroborated by PW-3, who has similarly deposed that the Deceased appeared mentally sound at the time when the said Will was executed. This evidence is consistent with the contents of the said Will, which specifically explains the reasons as to why the Deceased made the bequests made in the manner more particularly stated in the said Will.

92. Although it is an admitted position that the Deceased was suffering from prostate cancer, it is clear that this condition affected only the Deceased's movements below the waist and did not in any manner affect the mental capabilities of the Deceased. It is well settled that physical infirmity and testamentary incapacity are distinct matters, and the law does not require a testator to be in perfect physical health at the time of execution of a Will. What is required is that the testator has the requisite mental capacity to understand the nature and effect of the dispositions being made. Therefore, in the facts of the present case, and in light of the evidence which has been led by the Plaintiff, the decision in the case ***Ganpatrao Khandero v. Vasantrao***, upon which reliance was placed by the Plaintiff, would squarely apply.

Uploaded on - 17/09/2026 **Downloaded on - 06/10/2026 10:40:02**

93. Much emphasis was also placed by the Defendants on the fact that, under the said Will, the Deceased had effectively disinherited both the Defendants and his wife. While such a circumstance could, in an appropriate case, be considered a suspicious circumstance, I do not find it to be so in the present case. *Firstly*, it is well settled that a testamentary disposition, by its very nature, permits a testator to depart from the natural course of intestate succession. Therefore, an unequal or exclusionary disposition would not *ipso facto* constitute a suspicious circumstance so as to invalidate a Will that is otherwise duly proved and where the reasons for exclusion are explained and also borne out by evidence. The decisions in the case of ***Ramabai Padmakar Patil v. Rukminibai Vekhande*** and ***Pentakota Satyanarayana v. Pentakota Seetharatnam,*** upon which reliance has been placed by the Plaintiff would squarely apply. *Secondly* and crucially, the Deceased has in the said Will specifically explained the reasons for the bequests in favour of the Plaintiff and for excluding his wife and sons. This also is explained by the evidence led by the Plaintiff, which clearly shows that the Defendants and the wife of the deceased had strained

Uploaded on - 17/09/2026 Downloaded on - 06/10/2026 10:40:02

relations with the deceased and were in fact making claims which were adverse to the deceased in respect of the Jaipur property. The reliance placed by the Plaintiff, on the decision of ***Krishna Kumar Birla v. Rajendra Singh Lodha,*** is thus apposite.

94. Equally, as held by the Hon'ble Supreme Court in the case of ***Leela Rajagopal v. Kamala Menon Cocharan,*** mere participation of a beneficiary in matters surrounding the execution of a Will does not *ipso facto* establish undue influence, coercion, or a suspicious circumstance sufficient to displace an otherwise duly proved Will. The other circumstances relied upon by the Defendants as being suspicious include the identity of the scribe, the time reflected on the registration receipt, the circumstances in which the original Will was subsequently found, and certain recitals concerning family relationships. In the facts of the present case, these circumstances, either individually or cumulatively, do not cast such suspicion upon the execution of the said Will so as to displace the direct evidence of both the attesting witnesses. In my view, none of these circumstances, even if correct, would materially affect the fact that the said

Uploaded on - 17/09/2026 **Downloaded on - 06/10/2026 10:40:02**

Will was duly executed by the Deceased as required under the provisions of Section 63 of the Succession Act and Section 68 of the Indian Evidence Act, 1872, in the facts of the present case. Also, the registration of the Will is not mandatory under any law, and the same was registered within the lifetime of the deceased.

95. Another factor which, in my view, is crucial and entirely cuts against the contention of the Defendants that the Deceased was not in a sound and disposing state of mind or the fact that the cognitive abilities of the Deceased were afflicted because the Deceased was suffering from prostate cancer is belied by the fact that it was the Defendants' own contention that the Deceased had executed a subsequent Will on or about 25th January 2005. This contention is entirely founded upon a letter dated 27th January 2005 and the Second Report of DW-3. However, this alleged subsequent Will has never been produced before the Court, and DW-1 has admitted in answer to Question Nos. 130 to 133 that no steps were taken by the Defendants in furtherance of this alleged subsequent Will. Thus, the case of the Defendants is as perplexing as it is self-contradictory. The

Uploaded on - 17/09/2026 **Downloaded on - 06/10/2026 10:40:02**

Defendants, though having contended that the Deceased was not in a sound and disposing state of mind on 30th November 2004, i.e., the date on which the said Will was executed, have in the very next breath asserted that the Deceased has executed a subsequent Will as mentioned by him in the Letter dated 27th January 2005.

96. Therefore, upon an overall consideration of the evidence on record, I am satisfied that the Plaintiff has proved the due execution and attestation of the said Will as required under the provisions of Section 63(c) of the Succession Act and Section 68 of the Indian Evidence Act, 1872. In my view, the Plaintiff has adequately explained what the Defendants have claimed as suspicious circumstances. The so-called suspicious circumstances in the present case would not, in my view, disentitle the Plaintiff to the grant of probate of the said Will.

Issue No. 2 is, therefore, accordingly, answered in the affirmative.

Issue No. 3:

97. The burden of proving this issue was entirely upon the Defendants, as specifically recorded in the Order dated 19th March 2025. The question is

Uploaded on - 17/09/2026 Downloaded on - 06/10/2026 10:40:02

therefore whether the Defendants have discharged the burden of establishing that the signature appearing upon the Will is not that of the Deceased. Admittedly, none of the Defendants were present when the Will was executed. The challenge to the signature of the Deceased rests principally on the Report dated 20th March 2011 prepared by DW-3 and on the oral evidence of DW-3.

98. The evidentiary value of the opinion of DW-3 must be examined in light of the admissions made by DW-3 in cross-examination. DW-3 has, in cross-examination, answered Question Nos. 1 to 4, as follows, viz.

"Q.1) Is there any error that you have noticed in your Observation Report?

A. Yes. The date of the Will is 30th November 2004. It has as inadvertently been mentioned 30th November 2005 in the first paragraph on page 1 of 28 and in the last paragraph under the heading "Opinion" on page 6 of 28 of my Observation Report. This may please be corrected.

Mr. Mahala has no further questions for the witness.

[Cross-examination of DW-2 by Ms. Mahek Bookwala Shetty on behalf of the Plaintiff]

Q.2) What are your educational qualifications?

A. I am a Certified Forensic Document Examiner. I have also done my M.Com. I have been trained by Mr. V.C. Misra in the field of forensic document examination for one year and have been certified thereto by him.

Uploaded on - 17/09/2026 Downloaded on - 06/10/2026 10:40:02

Mr. Misra is a Forensic Expert himself with over 20 years of experience and apart from his independent practice, he is also a Member of the faculty at Amity University.

Q.3) Would it be correct to say that you have not done your forensic document examination from any university?

A. It is correct.

Q.4) How many years of experience do you have in this field?

A. Four years post certification." (emphasis supplied)

99. Significantly, DW-3 has also, in answer to Question No. 90 in cross-examination, admitted that the signatures used by her for comparison were merely represented to her as being the admitted signatures of the Deceased. DW-3 had also admitted that she had not independently established that the signatures which form the basis of the comparison carried out by DW-3 of the signature of the Deceased on the said Will were admitted or proved signatures.

100. Additionally, there are also further difficulties in accepting the evidence of DW-3. The material on which DW-3's expert opinion is based on the fact that DW-3's analysis was carried out on scanned copies of photocopies of the signatures and that such documents analysed by DW-3 do not form part

Uploaded on - 17/09/2026 Downloaded on - 06/10/2026 10:40:02

of the record before the Court, and that the documents annexed to DW-3's Report may not be the very documents analysed by DW-3, as shown by DW-3's answers to Question Nos. 101 to 109. DW-3 has also admitted that the images used for analysis were digitally enlarged.

101. All of the above admissions substantially diminish the evidentiary value of the Report filed by DW-3. Even otherwise, this Court has noted the fallibility of handwriting expert evidence and the caution needed in evaluating a handwriting expert's opinion in the case of ***Hoshang Pesi Hodiwala v. Bonny Behramshah Bhathena***. In the facts of the present case, therefore, the evidence of DW-3 is not worth the paper it is written on.

102. Also, in my view, the Second Report of DW-3 does not advance the Defendants' case any further. That Report concerns the signature of the Plaintiff on the letter dated 27th January 2005 and is relied upon in connection with the alleged subsequent Will. The alleged subsequent Will itself has not been produced or proved. The Second Report, therefore, does

Uploaded on - 17/09/2026 **Downloaded on - 06/10/2026 10:40:02**

not establish that the signature appearing on the Will dated 30th November 2004 is not that of the Deceased.

103. DW-2, though having filed an Affidavit of Evidence, has not offered himself for cross-examination. The evidence of DW-2, therefore, cannot be relied upon. Also, DW-1 was admittedly not present at the time of the execution of the Will. Thus, the Defendants have not established any material basis, let alone any evidence, to prove that the Deceased did not execute the said Will or that the signature on the said Will was not that of the Deceased. Thus, on the one hand, there is the direct and consistent evidence of the Plaintiff regarding the due execution of the said Will, and on the other is the expert opinion based on material whose provenance and evidentiary foundation have not been satisfactorily established. Hence, in my view, the Defendants have failed to discharge the burden cast upon them of proving that the Deceased did not sign the Will.

Accordingly, I answer Issue No. 3 in the negative.

104. Hence, for the reasons set out in paragraphs 84 to 105 above, I find that the Plaintiff has duly proved Issue No. 1.

Uploaded on - 17/09/2026 Downloaded on - 06/10/2026 10:40:02

Issue No. 1 is accordingly answered in the affirmative.

105. For the reasons mentioned in the paragraphs hereinabove, I pass the following Order:

ORDER

(i)Testamentary Suit No. 74 of 2006 is decreed.

(ii) The Prothonotary and Senior Master is directed to issue Probate of the last Will and Testament dated 30th November 2004 of Mr. Gulab Hukumatrai Gurbani, in favour of the Plaintiff, upon compliance with the requisite formalities.

(iii) The grant shall be issued expeditiously.

(iv) There shall be no orders as to costs.

[ARIF S. DOCTOR, J.]

Uploaded on - 17/09/2026 **Downloaded on - 06/10/2026 10:40:02**