

SUPREME COURT CLARIFIES THAT REGISTRATION OF A WILL IS NOT A MANDATORY REQUIREMENT

I. BACKGROUND AND CONTEXT

The Supreme Court, in a decision concerning the validity and execution of a Will, has reiterated that registration of a Will is not a mandatory requirement for it to be enforceable. The Court reaffirmed the settled legal position that a Will does not derive its validity from registration but from its valid execution under Section 63 of the Indian Succession Act, 1925 (“**Succession Act**”) which provides for the attestation by two witnesses.

The dispute arose from the estate of B. Sheena Nairi, who owned immovable properties in Karnataka. Prior to his death in 1983, he executed a Will dated 15.05.1983 for his properties (“**Property**”) in favour of his sister, Laxmi Nairthy (“**Respondent**”) and excluded his wife and children (“**Appellants**”) from the Will, which was attested by two witnesses. After his death, the Appellants obtained mutation of the Property in their favour. The Respondent thereafter instituted a civil suit in 1990 before the Trial Court seeking declaration of ownership in her favour on the basis of the said Will. In response, the Appellants filed a written statement along with an affidavit of the attesting witnesses denying that they signed the Will.

Upon hearing the contentions, the Trial Court held that as per Will, the Respondent is the owner of the Property and ordered the transfer of possession in her favour. The Trial Court further noted that the Respondent also produced the attesting witness to the Will before the Trial Court, who testified the valid execution of the Will.

Aggrieved by the judgment of the Trial Court, the Appellants approached the District and Session Judge, Udupi but the same was transferred to the First Appellate Court. The First Appellate Court affirmed the findings of the Trial Court and upheld the validity of the Will.

The Appellants further preferred a second appeal before the High Court of Karnataka. The High Court stated that the Trial Court has already given detailed reasons on all the grounds mentioned in the appeal. Further, the High Court rejected the claim that the Appellants were removed from the Will without any reason, while stating that the Will itself clearly recited that the testator had already given sufficient properties to his wife and children. Therefore, the appeal was dismissed.

Being aggrieved by the Judgment of the High Court, the Appellants approached the Supreme Court.

II. LEGAL FRAMEWORK

The dispute involved interpretation of the following important provisions which govern the validity and execution of a Will:

- i. Section 63 of the Succession Act, which prescribes the formalities required for a valid Will;
- ii. Section 68 of the Indian Evidence Act, 1872 (**“Evidence Act”**), which mandates examination of at least one attesting witness to prove execution of a Will before a court;
- iii. Section 3 of the Evidence Act which states that an affidavit cannot be used as ‘evidence’; and
- iv. The settled principle that registration of a Will is not a statutory requirement and no adverse inference can be drawn against its genuineness on the ground of non-registration.

III. ISSUE BEFORE THE COURT

The principal issues to be adjudicated before the Supreme Court were:

- i. Whether the Will was validly executed in compliance with the statutory requirements under Section 63 of the Succession Act.
- ii. Whether the exclusion of the natural heirs of the testator from the Will constituted a suspicious circumstance warranting its invalidation.
- iii. Whether the affidavits filed by the attesting witnesses denying execution of the Will could be relied upon to invalidate it.
- iv. Whether non-registration of the Will had any bearing on its validity.

IV. JUDICIAL ANALYSIS

Reaffirming the settled principles, while placing reliance on *Ishwardeo Narain Singh v. Kamta Devi and Ors.*, the Supreme Court held that no adverse inference can be drawn merely because a Will remains unregistered. It was observed that the law only requires compliance with the statutory formalities prescribed for due execution and attestation of a Will.

The Supreme Court undertook a detailed examination of the statutory requirements governing execution and proof of Will under Sections 63 of the Succession Act and 68 of the Evidence Act. Interpreting Section 63 of the Succession Act, the Supreme Court clarified that a valid Will must be signed by the testator/executant in the presence of at least two attesting witnesses, each of whom must also sign the Will in the presence of the testator/executant.

The Apex Court further analysed the evidentiary requirement under Section 68 of the Evidence Act and reiterated that examination of even one attesting witness is sufficient to prove execution of a Will. In the present case, since examination of the first witness successfully proved execution and attestation, the Court held that examination of the remaining attesting witnesses was unnecessary. The Court held that once the due execution of the Will is established, the onus shifts to the party alleging fraud, fabrication, forgery, or coercion to substantiate such allegations with evidences.

It was further noted that exclusion of legal heirs of the testator/executant from the Will does not amount to “suspicious circumstances”. Suspicion must be founded upon real and legally sustainable circumstances and not on mere doubts. The Court held that disinheritance of family members cannot invalidate a Will unless accompanied by circumstances casting genuine doubt upon its authenticity or due execution.

While examining the evidentiary value of affidavits by a witness denying execution of the Will, it was held that affidavits do not constitute “evidence” within the meaning of Section 3 of the Evidence Act unless an order is passed under Order XIX of CPC wherein the deponent enters the witness box and is subjected to cross-examination. Consequently, the affidavits produced by the Appellant were held incapable of discrediting the validity of the Will.

Lastly, the Court reiterated the settled position that mutation entries in revenue records are maintained solely for fiscal purposes and do not confer title upon the person whose name is entered therein. Accordingly, mutation records could not override or diminish the evidentiary value of a duly proved legal document.

V. CORE LEGAL PRINCIPLES

The Supreme Court established the following principles:

- i. A Will must be executed by the testator, and it was the last will executed by him.
- ii. Registration of a Will is not a mandatory requirement and non-registration does not affect its validity or enforceability.

- iii. A Will must comply with Section 63 of the Succession Act i.e., the testator shall sign or affix his mark to the Will in the presence of at least two witnesses, who must also sign the Will in the testator's presence.
- iv. At least one attesting witness, subject to the process of court, and capable of giving evidence, shall be examined under Section 68 of the Evidence Act to prove due execution.
- v. Mere exclusion of natural heirs does not constitute a suspicious circumstance warranting invalidation of a Will. Suspicious circumstances must be real and valid. Whether a circumstance qualifies as suspicious is determined on the facts of each case.
- vi. One who alleges fraud, fabrication, undue influence, etc. has to prove the same.
- vii. Affidavit is not an “evidence” within the meaning of Section 3 of the Evidence Act and the same can be used as evidence only if the court passes an order under Order XIX of CPC.
- vii. Mutation entries in revenue records do not confer title.

Applying the above principles, the Supreme Court dismissed the appeal and affirmed the concurrent findings of the Trial Court, the First Appellate Court, and the High Court of Karnataka, upholding the validity of the Will executed by the testator.