IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 29th OF APRIL, 2024

WRIT PETITION No. 9885 of 2024

BETWEEN:-

DEEPAK DUBEY S/O LATE GANGA PRASAD DUBEY, AGED ABOUT 38 YEARS, OCCUPATION: GOVT SERVANT R/O H NO 270 NANAK NAGAR MANEGOAN RANJHI DISTRICT JABALPUR MP PRESENTLY R/O 1829 NEAR SAGAR TENT NEW SHOBHAPUR JABALPUR (MADHYA PRADESH)

.....PETITIONER

(BY SHRI PRAHLAD CHOUDHARY - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THROUGH POLICE STATION RMPUR BAGHELAN DISTRICT SATNA (MADHYA PRADESH)**

2. **PRAKASH DUBEY S/O LATE GANGA PRASAD DUBEY R/O HOUSE NO 270 NANAK NAGAR MANEGAON RANJHI JABALPUR (MADHYA PRADESH)**

3. **SMT GEETA DEVI MISHRA W/O SHRI RAVENDRA MISHRA R/O VILLAGE GANESHA KPOST GADA P.S. RAMPUR BAGHELAN DISTRICT SATNA (MADHYA PRADESH)**

4. **SMT SUNITA CHATURVEDI W/O SHRI ARUN KUMAR CHATURVEDI R/O VILLAGE BHATIGAWAN POLICE STATION SEMARIYA POST SEMARIYA DISTRICT REWA (MADHYA PRADESH)**

5. SMT SANGEETA PATHAK W/O SHRI RAJNEESH PATHAK R/O E 130 LUVKUSH AWAS VIHAR SUKHALIA M.R.10 INDORE (MADHYA PRADESH)

.....RESPONDENTS

(RESPONDENT NO.1/STATE BY SHRI MOHAN SAUSARKAR – GOVERNMENT ADVOCATE)

This petition coming on for admission this day, the court passed the following:

ORDER

This petition under Article 226 of Constitution of India has been filed seeking following relief(s):-

> *"(i) Issue a writ in the nature of mandamus for directing the learned subordinate court to comply the Hon'ble High Courts order in toto and in full letter and spirit passed in M.Cr.C.No.8938/2023, M.Cr.C.No. 6966/2023, M. Cr. C.No.8943/2023 dt. 27/04/2023 with respect to furnishing of undertaking in pursuance of mediation proceedings which resulted order dated 27/04/2023 passed in said M.Cr.C.No.8938/2023, M.Cr.C.No 6966/2023, M.Cr.C. No.8943/2023 dt 27/04/2023.*
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> *(ii) Further appropriate writ/direction be also issued directing the enforcement of mediation proceeding conclusion as directed by this Hon'ble Court.*
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> *(iii) Appropriate order/directions be issued for directing accused/private respondents for furnishing fresh bail bond in compliance of order dated 27/04/2023 in full letter & sprit.*
>
> *(iv) To direct the learned trial court JMFC Rampur Baghelan to execute an order passed by this Hon'ble*

Court in M.Cr.C.No.8938/2023, M.Cr. C.No. 6966/2023, M.Cr.C.No.8943/2023 dt. 27/04/2023 as the condition specified in para 2, para 5/6 of the said orders are mandatory.

(v) To grant any other relief, which this Hon'ble Court may deems fit and proper in the facts and circumstances of the case including cost of the litigation in favour of the petitioner."

2. By this petition, the petitioner has challenged the order of the Magistrate by which the bail bonds furnished by the respondents No.2 to 5 in compliance of anticipatory bail order passed by Coordinate Bench of this Court have been accepted.

3. It is submitted by counsel for petitioner that father of the petitioner namely late Shri Ganga Prasad executed a will dated 15.08.2015 in favour of the petitioner-Deepak Dubey and respondent No.2-Prakash Dubey. However after the death of his father, the respondent No.2 by suppressing the factum of will moved an application for mutation of names of all the legal representatives of late Shri Ganga Prasad Dubey by forging the signatures of the petitioner and accordingly the names of all the legal representatives of late Shri Ganga Prasad Dubey were mutated in the revenue records. As soon as, the applicant came to know about the said fact, he approached the Collector pointing out the manipulation and forgery committed by respondent No.2, who directed the Tahsildar to conduct an inquiry and it was found by Tahsildar that the complaint is correct and the mutation order was passed on incorrect facts. Later on, the petitioner filed a criminal complaint before the Court of JMFC, Rampur Baghelan, District Satna against the

respondent No.2, Smt. Geeta Devi Mishra, Smt. Sunita Chaturvedi and Smt. Sangeeta Pathak as well as Shri Ravi Tiwari, Patwari and Sharda Sharan Agnihotri, Notary. After the process was issued, Prakash Dubey filed M.Cr.C. No.8938/2023, Geeta Devi Mishra filed M.Cr.C.No.6966/2023 and Smt. Sunita Chatruvedi and Sangeeta Pathak filed M.Cr.C.No.8943/2023 for grant of anticipatory bail.

4. Since, it was a family dispute, therefore the Coordinate Bench of this Court directed the parties to explore the possibility of mediation and the matter was referred to Mediator. In the mediation, the respondents agreed to give up their share and accordingly all of them were granted anticipatory bail by separate orders passed on 27.04.2023. By referring to the anticipatory bail order granted in favour of the respondent No.2, it is submitted that petitioner who was present in the Court, specifically submitted that he has no objection in receiving the whole ancestral property and he further submitted that he has no objection if one month time is given to respondent No.2/ Shri Prakash Dubey to vacate house No.270, Nanak Nagar, Manegaon, Ranjhi, District Jabalpur.

5. It is submitted by counsel for petitioner that on 03.05.2023 the respondent No.2 filed I.A.No.10091/2023 for modification of order dated 27.04.2023 passed in M.Cr.C.No.8938/2023 and the said application was withdrawn on 06.03.2024. However without informing the trial Magistrate with regard to the pendency of I.A.No.10091/2023, the respondents No.2 to 5 appeared before the concerning Magistrate and furnished the bail bonds on 29.05.2023 in compliance of order dated 27.04.2023 passed in M.Cr.C.No.8938/2023,

M.Cr.C.No.6966/2023 and M.Cr.C.No.8943/2023, therefore they have played fraud on the Court. Thereafter, the respondent No.2 has not fulfilled his part of undertaking and has not vacated the premises. Accordingly, the petitioner filed an application under Section 439 (2) of Cr.P.C., which was registered as M.Cr.C.No.8938/2023 and without seeking any liberty the said application was withdrawn. It is submitted by counsel for petitioner that in the light of provisions of Section 27 of the Mediation Act, 2023, this petition under Article 226 of Constitution of India has been filed for execution of the mediation order.

6. Considered the submissions made by counsel for petitioner.

Whether any fraud was played by respondents No.2 to 5 or not ?

7. The respondent No.2 had moved an I.A.No.10091/2023 whereas the respondents No. 3 to 5 had never moved an application for modification of order dated 27.04.2023. Since, the order dated 27.04.2023 was not modified and the respondents No.2 to 5 were under obligation to surrender before the concerning Court, therefore if they decided to surrender and furnish the bail, then it cannot be said that they had played any fraud on this Court or the Magistrate by suppressing any fact. Furthermore, it is well established principle of law, every suppression of fact will not disentitle the litigant from the relief unless and until the suppression is a material fact, the litigant cannot be non-suited.

8. The Supreme Court in the case of **Arunima Baruah v. Union of India,** reported in **(2007) 6 SCC 120** has held as under:

> **"10.** On the one hand, judicial review is a basic feature of the Constitution, on the other, it provides for a

discretionary remedy. Access to justice is a human right. (See Dwarka Prasad Agarwal v. B.D. Agarwal [(2003) 6 SCC 230] and Bhagubhai Dhanabhai Khalasi v. State of Gujarat [(2007) 4 SCC 241 : (2007) 2 SCC (Cri) 260 : (2007) 5 Scale 357] .) A person who has a grievance against a State, a forum must be provided for redressal thereof. (See Hatton v. United Kingdom [15 BHRC 259] . For reference see also Zee Telefilms Ltd. v. Union of India [(2005) 4 SCC 649] .)

11. The court's jurisdiction to determine the lis between the parties, therefore, may be viewed from the human rights concept of access to justice. The same, however, would not mean that the court will have no jurisdiction to deny equitable relief when the complainant does not approach the court with a pair of clean hands; but to what extent such relief should be denied is the question.

12. It is trite law that so as to enable the court to refuse to exercise its discretionary jurisdiction suppression must be of material fact. What would be a material fact, suppression whereof would disentitle the appellant to obtain a discretionary relief, would depend upon the facts and circumstances of each case. Material fact would mean material for the purpose of determination of the lis, the logical corollary whereof would be that whether the same was material for grant or denial of the relief. If the fact suppressed is not material for determination of the lis between the parties, the court may not refuse to exercise its discretionary jurisdiction. It is also trite that a person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands. But even if the said dirt is removed and the hands become clean, whether the relief would still be denied is the question."

9. The Supreme Court in the case of **K.D. Sharma v. SAIL** reported in **(2008) 12 SCC 481** has held as under:

"38. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play "hide and seek" or to "pick and choose" the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because "the court knows law but not facts".

39. If the primary object as highlighted in *Kensington Income Tax Commrs.* [(1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (CA)] is kept in mind, an applicant who does not come with candid facts and "clean breast" cannot hold a writ of the court with "soiled hands". Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court."

10. The Supreme Court in the case of **Bhaskar Laxman Jadhav and others v. Karamveer Kakasaheb Wagh Education Society and others** reported in **(2013) 11 SCC 531** has held as under:

> "**44.** It is not for a litigant to decide what fact is material for adjudicating a case and what is not material. It is the obligation of a litigant to disclose all the facts of a case and leave the decision-making to the court. True, there is a mention of the order dated 2-5-2003 in the order dated 24-7-2006 passed by the JCC, but that is not enough disclosure. The petitioners have not clearly disclosed the facts and circumstances in which the order dated 2-5-2003 was passed or that it has attained finality.
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> **45.** We may only refer to two cases on this subject. In Hari Narain v. Badri Das [AIR 1963 SC 1558] stress was laid on litigants eschewing inaccurate, untrue or misleading statements, otherwise leave granted to an appellant may be revoked. It was observed as follows: (AIR p. 1560, para 9)
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> > "9. … It is of utmost importance that in making material statements and setting forth grounds in applications for special leave care must be taken not to make any statements which are inaccurate, untrue or misleading. In dealing with applications for special leave, the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading. That is why we have come to the conclusion that in the present case, special leave granted to the appellant ought to be revoked. Accordingly, special leave is revoked and the appeal is dismissed. The appellant will pay the costs of the respondent."

46. More recently, in Ramjas Foundation v. Union of India [(2010) 14 SCC 38 : (2011) 4 SCC (Civ) 889] the case law on the subject was discussed. It was held that if a litigant does not come to the court with clean hands, he is not entitled to be heard and indeed, such a person is not entitled to any relief from any judicial forum. It was said: (SCC p. 51, para 21)

> "21. The principle that a person who does not come to the court with clean hands is not entitled to be heard on the merits of his grievance and, in any case, such person is not entitled to any relief is applicable not only to the petitions filed under Articles 32, 226 and 136 of the Constitution but also to the cases instituted in others courts and judicial forums. The object underlying the principle is that every court is not only entitled but is duty-bound to protect itself from unscrupulous litigants who do not have any respect for truth and who try to pollute the stream of justice by resorting to falsehood or by making misstatement or by suppressing facts which have a bearing on adjudication of the issue(s) arising in the case."

47. A mere reference to the order dated 2-5-2003, en passant, in the order dated 24-7-2006 does not serve the requirement of disclosure. It is not for the court to look into every word of the pleadings, documents and annexures to fish out a fact. It is for the litigant to come upfront and clean with all material facts and then, on the basis of the submissions made by the learned counsel, leave it to the court to determine whether or not a particular fact is relevant for arriving at a decision. Unfortunately, the petitioners have not done this and must suffer the consequence thereof."

11. The Supreme Court in the case of **Dalip Singh v. State of Uttar Pradesh and others** reported in **(2010) 2 SCC 114** has held as under:

> **"1.** For many centuries Indian society cherished two basic values of life i.e. "satya" (truth) and "ahimsa" (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.
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> **2.** In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.
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> **3.** In *Hari Narain v. Badri Das [AIR 1963 SC 1558]* this Court adverted to the aforesaid rule and revoked the leave granted to the appellant by making the following observations: (AIR p. 1558)
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> > "It is of utmost importance that in making material statements and setting forth grounds in applications for special leave

> made under Article 136 of the Constitution, care must be taken not to make any statements which are inaccurate, untrue or misleading. In dealing with applications for special leave, the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading. Thus, if at the hearing of the appeal the Supreme Court is satisfied that the material statements made by the appellant in his application for special leave are inaccurate and misleading, and the respondent is entitled to contend that the appellant may have obtained special leave from the Supreme Court on the strength of what he characterises as misrepresentations of facts contained in the petition for special leave, the Supreme Court may come to the conclusion that in such a case special leave granted to the appellant ought to be revoked."

4. In *Welcom Hotel* v. *State of A.P.* [(1983) 4 SCC 575 : 1983 SCC (Cri) 872 : AIR 1983 SC 1015] the Court held that a party which has misled the Court in passing an order in its favour is not entitled to be heard on the merits of the case.

5. In *G. Narayanaswamy Reddy v. Govt. of Karnataka [(1991) 3 SCC 261 : AIR 1991 SC 1726]* the Court denied relief to the appellant who had concealed the fact that the award was not made by the Land Acquisition Officer within the time specified in Section 11-A of the Land Acquisition Act because of the stay order passed by the High Court. While

dismissing the special leave petition, the Court observed: (SCC p. 263, para 2)

> "2. … Curiously enough, there is no reference in the special leave petitions to any of the stay orders and we came to know about these orders only when the respondents appeared in response to the notice and filed their counter-affidavit. In our view, the said interim orders have a direct bearing on the question raised and the non-disclosure of the same certainly amounts to suppression of material facts. On this ground alone, the special leave petitions are liable to be rejected. It is well settled in law that the relief under Article 136 of the Constitution is discretionary and a petitioner who approaches this Court for such relief must come with frank and full disclosure of facts. If he fails to do so and suppresses material facts, his application is liable to be dismissed. We accordingly dismiss the special leave petitions."

6. In *S.P. Chengalvaraya Naidu* v. *Jagannath [(1994) 1 SCC 1 : JT (1993) 6 SC 331]* the Court held that where a preliminary decree was obtained by withholding an important document from the court, the party concerned deserves to be thrown out at any stage of the litigation.

7. In *Prestige Lights Ltd.* v. *SBI [(2007) 8 SCC 449]* it was held that in exercising power under Article 226 of the Constitution of India the High Court is not just a court of law, but is also a court of equity and a person who invokes the High Court's jurisdiction under Article 226 of the Constitution is duty-bound to place all the facts before the Court without any reservation. If there is suppression of material facts or twisted facts have been placed before the High Court then it will be

> fully justified in refusing to entertain a petition filed under Article 226 of the Constitution. This Court referred to the judgment of Scrutton, L.J. in *R.* v. *Kensington Income Tax Commissioners* [(1917) 1 KB 486 (CA)] , and observed: (*Prestige Lights Ltd. case* [(2007) 8 SCC 449] , SCC p. 462, para 35)
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> > In exercising jurisdiction under Article 226 of the Constitution, the High Court will always keep in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the court, then the Court may dismiss the action without adjudicating the matter on merits. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible."

12. The Supreme Court in the case of **Shri K. Jayaram and others Vs. Bangalore Development Authority and others** decided on **08.12.2021** in **Civil Appeal No.7550-7553 of 2021** has held as under:

> "15. In **K.D. Sharma v. Steel Authority of India Limited and Others**, it was held thus:
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> > "34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is,

therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim.

35. The underlying object has been succinctly stated by Scrutton, L.J., in the leading case of R. v. Kensington Income Tax Commrs.- (1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (CA) in the following words: (KB p. 514) "…

> "…… it has been for many years the rule of the court, and one which it is of the greatest importance to maintain, that when an applicant comes to the court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts—it says facts, not law. He must not misstate the law if he can help it—the court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts; and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the court will set aside any action which it has taken on the faith of the imperfect statement."
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> (emphasis supplied)

36. A prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the court, the court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating, "We will not listen to your application because of what you have done." The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it.

37. In Kensington Income Tax Commrs.(supra), Viscount Reading, C.J. observed: (KB pp. 495-96)

> "… Where an ex parte application has been made to this Court for a rule nisi or other process, if the Court comes to the conclusion that the affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived. Before coming to this conclusion a careful examination will be made of the facts as they are and

> as they have been stated in the applicant's affidavit, and everything will be heard that can be urged to influence the view of the Court when it reads the affidavit and knows the true facts. But if the result of this examination and hearing is to leave no doubt that the Court has been deceived, then it will refuse to hear anything further from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit."
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> (emphasis supplied)

38. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play "hide and seek" or to "pick and choose" the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because "the court knows law but not facts".

39. If the primary object as highlighted in *Kensington Income Tax Commrs. (supra)* is

> kept in mind, an applicant who does not come with candid facts and "clean breast" cannot hold a writ of the court with "soiled hands". Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court."

16. It is necessary for us to state here that in order to check multiplicity of proceedings pertaining to the same subject-matter and more importantly to stop the menace of soliciting inconsistent orders through different judicial forums by suppressing material facts either by remaining silent or by making misleading statements in the pleadings in order to escape the liability of making a false statement, we are of the view that the parties have to disclose the details of all legal proceedings and litigations either past or present concerning any part of the subject-matter of dispute which is within their knowledge. In case, according to the parties to the dispute, no legal proceedings or court litigations was or is pending, they have to mandatorily state so in their pleadings in order to resolve the dispute between the parties in accordance with law."

13. Thus, it is clear that in order to refuse to exercise the power, a Court must come to a conclusion as to whether the suppression was of a material fact or not. Suppression of material fact means that had it been disclosed at the earliest, then Court would not have exercised its discretion in favour of petitioner.

14. Once, the order dated 27.04.2023 passed in M.Cr.C.No.8938/2023 was not modified and if the respondents No.2 decided to surrender and furnish bail in compliance of order dated 27.04.2023 passed in M.Cr.C.No.8938/2023, then it cannot be said that they had played any fraud either on the trial Court or on this Court.

15. Furthermore, the petitioner is aggrieved by the order dated 29.05.2023, by which bail bonds furnished by the respondents No.2 to 5 were accepted.

16. Once, the petitioner has already withdrawn his application under Section 439(2) of Cr.P.C., then he cannot say that this application for the similar relief is maintainable.

Whether the respondents No.2 to 5 have relinquished their share in the property or not ?

17. The petitioner has neither filed copy of the will nor has filed the copy of the mediation report. However by relying upon Paragraph-2 of the order dated 27.04.2023 passed in M.Cr.C.No.8938/2023, it is submitted that respondent No.2 had made a submission that he does not want any share in the ancestral property and he has no objection if his share of ancestral property goes to the petitioner Deepak Dubey.

18. Thus, it is submitted that once, the respondent No.2 had relinquished his share in property, then this petition is maintainable. It

is further submitted that so far as the sisters of the petitioner Smt. Geeta Devi Mishra, Smt. Sunita Chaturvedi and Smt. Sangeeta Pathak are concerned, they had also voluntarily relinquished their share in the property and thus the petitioner is entitled for entire property as mentioned in the will however on account of non-compliance of their own undertaking, the order passed by the Magistrate is liable to be modified.

19. Considered the submissions made by counsel for the petitioner.

20. The undisputed facts are that according to the petitioner, his late father Ganga Prasad Dubey had executed a will in respect of Aaraji No.64/3, 65/3, 66/3, 168/2, 168/405/2, 170/2, 218/3, 219/3, 220/2, 221/3 and 222/3 situated in village Feefir, Patwari Halka Ram Nagar, Circle Chhibora and Aaraji No.513/1, 793/809/2 situated in village Ram Nagar. The said property was bequeathed by his father late Ganga Prasad Dubey in favour of the petitioner and respondent No.2 Prakash Dubey. However, in spite of the fact that his sisters were aware of the said will, Prakash Dubey got the names of all the legal representatives of late Ganga Prasad Dubey mutated in the revenue records whereas by virtue of will the sisters were not entitled for any share. It is further submitted that the order of mutation was obtained by playing fraud by forging the signatures of the petitioner Deepak Dubey.

21. The moot question for consideration is as to whether revenue authorities have a jurisdiction to mutate the names of beneficiaries on the basis of will or not.

22. The Supreme Court in the case of **Jitendra Singh v. State of Madhya Pradesh** by order dated **06.09.2021** passed in **SLP (civil) No.13146/2021** has held as under:

> **"6.** Right from 1997, the law is very clear. In the case of Balwant Singh v. Daulat Singh (D) By Lrs., reported in (1997) 7 SCC 137, this Court had an occasion to consider the effect of mutation and it is observed and held that mutation of property in revenue records neither creates nor extinguishes title to the property nor has it any presumptive value on title. Such entries are relevant only for the purpose of collecting land revenue. Similar view has been expressed in the series of decisions thereafter.
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> **6.1** In the case of Suraj Bhan v. Financial Commissioner, (2007) 6 SCC 186, it is observed and held by this Court that an entry in revenue records does not confer title on a person whose name appears in record-of-rights. Entries in the revenue records or jamabandi have only "fiscal purpose", i.e., payment of land revenue, and no ownership is conferred on the basis of such entries. It is further observed that so far as the title of the property is concerned, it can only be decided by a competent civil court. Similar view has been expressed in the cases of Suman Verma v. Union of India, (2004) 12 SCC 58; Faqruddin v. Tajuddin (2008) 8 SCC 12; Rajinder Singh v. State of J&K, (2008) 9 SCC 368; Municipal Corporation, Aurangabad v. State of Maharashtra, (2015) 16 SCC 689; T. Ravi v. B. Chinna Narasimha, (2017) 7 SCC 342; Bhimabai Mahadeo Kambekar v. Arthur Import & Export Co., (2019) 3 SCC 191; Prahlad

> Pradhan v. Sonu Kumhar, (2019) 10 SCC 259; and Ajit Kaur v. Darshan Singh, (2019) 13 SCC 70."

23. This Court in the case of **Anand Kumar Jain And Another Vs. Chandra Kumar Jain and Others** passed in **M.P. No.4458/2023** decided on **16th of February, 2024** has held as under:

> **"16.** There is no doubt that a title can be acquired by virtue of Will and once the title can be acquired, then the name can also be mutated in the revenue records irrespective of fact as to whether there is any rule in that regard or not? Even otherwise as per Niyam, 2018, the names can be mutated on the basis of Will.
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> **17.** It is the case of petitioner that in case if somebody is aggrieved by Will, then he has to file a civil suit challenging the Will. The aforesaid submission made by counsel for applicant cannot be accepted. If somebody wants to take advantage of a document, then first of all, he has to prove the same in accordance with law. Sections 67 and 68 of Evidence Act prescribe the requirements and nature of proof which must be satisfied by the parties, who relies on a document in the Court of law.
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> **18.** It is well established principle of law that party propounding a Will or otherwise making a claim under a Will is under obligation to prove the document. Unlike other document Will is a document which speaks from the death of testator and the testator, who has already migrated to the other world cannot appear and depose as to whether he has executed such document or not? The propounder is required to show by satisfactory evidence that Will was signed by testator, that testator at the relevant time was in a sound and disposing state of mind, that he understood the

nature and effect of dispositions and had put his signature on the document of his own volition.

19. Furthermore, Will may be surrounded by suspicious circumstances and burden is on the propounder of the Will not only to prove the document but to remove all the suspicious circumstances. The Supreme Court in the case of **H. Venkatachala Iyengar v. B.N. Thimmajamma and others** reported in **AIR 1959 SC 443** has held as under:

> "**18.** What is the true legal position in the matter of proof of wills? It is well-known that the proof of wills presents a recurring topic for decision in courts and there are a large number of judicial pronouncements on the subject. The party propounding a will or otherwise making a claim under a will is no doubt seeking to prove a document and, in deciding how it is to be proved, we must inevitably refer to the statutory provisions which govern the proof of documents. Sections 67 and 68 of the Evidence Act are relevant for this purpose. Under Section 67, if a document is alleged to be signed by any person, the signature of the said person must be proved to be in his handwriting, and for proving such a handwriting under Sections 45 and 47 of the Act the opinions of experts and of persons acquainted with the handwriting of the person concerned are made relevant. Section 68 deals with the proof of the execution of the document required by law to be attested; and it provides that such a document shall not be used as evidence

until one attesting witness at least has been called for the purpose of proving its execution. These provisions prescribe the requirements and the nature of proof which must be satisfied by the party who relies on a document in a court of law. Similarly, Sections 59 and 63 of the Indian Succession Act are also relevant. Section 59 provides that every person of sound mind, not being a minor, may dispose of his property by will and the three illustrations to this section indicate what is meant by the expression "a person of sound mind" in the context. Section 63 requires that the testator shall sign or affix his mark to the will or it shall be signed by some other person in his presence and by his direction and that the signature or mark shall be so made that it shall appear that it was intended thereby to give effect to the writing as a will. This section also requires that the will shall be attested by two or more witnesses as prescribed. Thus the question as to whether the will set up by the propounder is proved to be the last will of the testator has to be decided in the light of these provisions. Has the testator signed the will? Did he understand the nature and effect of the dispositions in the will? Did he put his signature to the will knowing what it contained? Stated broadly it is the decision of these questions which determines the nature of the finding on the question of the proof of wills. It would prima facie be true to say that the will has to be proved like any other

document except as to the special requirements of attestation prescribed by Section 63 of the Indian Succession Act. As in the case of proof of other documents so in the case of proof of wills it would be idle to expect proof with mathematical certainty. The test to be applied would be the usual test of the satisfaction of the prudent mind in such matters.

19. However, there is one important feature which distinguishes wills from other documents. Unlike other documents the will speaks from the death of the testator, and so, when it is propounded or produced before a court, the testator who has already departed the world cannot say whether it is his will or not; and this aspect naturally introduces an element of solemnity in the decision of the question as to whether the document propounded is proved to be the last will and testament of the departed testator. Even so, in dealing with the proof of wills the court will start on the same enquiry as in the case of the proof of documents. The propounder would be called upon to show by satisfactory evidence that the will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the dispositions and put his signature to the document of his own free will. Ordinarily when the evidence adduced in support of the will is disinterested, satisfactory and sufficient to prove the

sound and disposing state of the testator's mind and his signature as required by law, courts would be justified in making a finding in favour of the propounder. In other words, the onus on the propounder can be taken to be discharged on proof of the essential facts just indicated.

20. There may, however, be cases in which the execution of the will may be surrounded by suspicious circumstances. The alleged signature of the testator may be very shaky and doubtful and evidence in support of the propounder's case that the signature, in question is the signature of the testator may not remove the doubt created by the appearance of the signature; the condition of the testator's mind may appear to be very feeble and debilitated; and evidence adduced may not succeed in removing the legitimate doubt as to the mental capacity of the testator; the dispositions made in the will may appear to be unnatural, improbable or unfair in the light of relevant circumstances; or, the will may otherwise indicate that the said dispositions may not be the result of the testator's free will and mind. In such cases the court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last will of the testator. The presence of such suspicious circumstances naturally tends to make the initial onus very heavy; and, unless it is satisfactorily

discharged, courts would be reluctant to treat the document as the last will of the testator. It is true that, if a caveat is filed alleging the exercise of undue influence, fraud or coercion in respect of the execution of the will propounded, such pleas may have to be proved by the caveators; but, even without such pleas circumstances may raise a doubt as to whether the testator was acting of his own free will in executing the will, and in such circumstances, it would be a part of the initial onus to remove any such legitimate doubts in the matter.

21. Apart from the suspicious circumstances to which we have just referred, in some cases the wills propounded disclose another infirmity. Propounders themselves take a prominent part in the execution of the wills which confer on them substantial benefits. If it is shown that the propounder has taken a prominent part in the execution of the will and has received substantial benefit under it, that itself is generally treated as a suspicious circumstance attending the execution of the will and the propounder is required to remove the said suspicion by clear and satisfactory evidence. It is in connection with wills that present such suspicious circumstances that decisions of English courts often mention the test of the satisfaction of judicial conscience. It may be that the reference to judicial conscience in this connection is a heritage from similar observations

made by ecclesiastical courts in England when they exercised jurisdiction with reference to wills; but any objection to the use of the word "conscience" in this context would, in our opinion, be purely technical and academic, if not pedantic. The test merely emphasizes that, in determining the question as to whether an instrument produced before the court is the last will of the testator, the court is deciding a solemn question and it must be fully satisfied that it had been validly executed by the testator who is no longer alive.

22. It is obvious that for deciding material questions of fact which arise in applications for probate or in actions on wills, no hard and fast or inflexible rules can be laid down for the appreciation of the evidence. It may, however, be stated generally that a propounder of the will has to prove the due and valid execution of the will and that if there are any suspicious circumstances surrounding the execution of the will the propounder must remove the said suspicions from the mind of the court by cogent and satisfactory evidence. It is hardly necessary to add that the result of the application of these two general and broad principles would always depend upon the facts and circumstances of each case and on the nature and quality of the evidence adduced by the parties. It is quite true that, as observed by Lord Du Parcq in *Harmes* v. *Hinkson* [(1946)

50 CWN 895] "where a will is charged with suspicion, the rules enjoin a reasonable scepticism, not an obdurate persistence in disbelief. They do not demand from the Judge, even in circumstances of grave suspicion, a resolute and impenetrable incredulity. He is never required to close his mind to the truth". It would sound platitudinous to say so, but it is nevertheless true that in discovering truth even in such cases the judicial mind must always be open though vigilant, cautious and circumspect.

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29. According to the decisions in *Fulton* v. *Andrew* [(1875) LR 7 HL 448] "those who take a benefit under a will, and have been instrumental in preparing or obtaining it, have thrown upon them the onus of showing the righteousness of the transaction". "There is however no unyielding rule of law (especially where the ingredient of fraud enters into the case) that, when it has been proved that a testator, competent in mind, has had a will read over to him, and has thereupon executed it, all further enquiry is shut out". In this case, the Lord Chancellor, Lord Cairns, has cited with approval the well-known observations of Baron Parke in the case of *Barry* v. *Butlin* [(1838) 2 Moo PC 480, 482] . The two rules of law set out by Baron Parke are:"first, that the *onus probandi* lies in every case upon the

party propounding a will; and he must satisfy the conscience of the court that the instrument so propounded is the last will of a free and capable testator"; "the second is, that, if a party writes or prepares a will under which he takes a benefit, that is a circumstance that ought generally to excite the suspicion of the court and calls upon it to be vigilant and zealous in examining the evidence in support of the instrument in favour of which it ought not to pronounce unless the suspicion is removed, and it is judicially satisfied that the paper propounded does express the true will of the deceased". It is hardly necessary to add that the statement of these two rules has now attained the status of a classic on the subject and it is cited by all text books on wills. The will propounded in this case was directed to be tried at the Assizes by the Court of Probate. It was tried on six issues. The first four issues referred to the sound and disposing state of the testator's mind and the fifth to his knowledge and approval of the contents of the will. The sixth was whether the testator knew and approved of the residuary clause; and by this last clause the propounders of the will were made the residuary legatees and were appointed executors. Evidence was led at the trial and the Judge asked the opinion of the jurors on every one of the issues. The jurors found in favour of the propounders on the first five issues and in favour of the opponents on the

sixth. It appears that no leave to set aside the verdict and enter judgment for the propounders notwithstanding the verdict on the sixth issue was reserved; but when the case came before the Court of Probate a rule was obtained to set aside the verdict generally and have a new trial or to set aside the verdict on the sixth issue for misdirection. It was in dealing with the merits of the finding on the sixth issue that the true legal position came to be considered by the House of Lords. The result of the decision was that the rule obtained for a new trial was discharged, the order of the Court of Probate of the whole will was reversed and the matter was remitted to the Court of Probate to do what was right with regard to the qualified probate of the will.

30. The same principle was emphasized by the Privy Council in *Vellasawmy Servai* v. *Sivaraman Servai* [(1929) LR 57 IA 96] where it was held that, where a will is propounded by the chief beneficiary under it, who has taken a leading part in giving instructions for its preparation and in procuring its execution, probate should not be granted unless the evidence removes suspicion and clearly proves that the testator approved the will.

31. In *Sarat Kumari Bibi* v. *Sakhi Chand* [(1928) LR 56 IA 62] the Privy Council made it clear that "the principle which requires the propounder to remove suspicions from the mind of the

Court is not confined only to cases where the propounder takes part in the execution of the will and receives benefit under it. There may be other suspicious circumstances attending on the execution of the will and even in such cases it is the duty of the propounder to remove all clouds and satisfy the conscience of the court that the instrument propounded is the last will of the testator". This view is supported by the observations made by Lindley and Davey, L. JJ., in *Tyrrell* v. *Painton* [(1894) P 151, 157, 159]. "The rule in *Barry* v. *Butlin* [(1838) 2 Moo PC 480, 482] , *Fulton* v. *Andrew* [(1875) LR 7 HL 448] and *Brown* v. *Fisher* [(1890) 63 LT 465] , said Lindley, L.J., "is not in my mind confined to the single case in which the will is prepared by or on the instructions of the person taking large benefits under it but extends to all cases in which circumstances exist which excite the suspicions of the court".

32. In *Rash Mohini Dasi* v. *Umesh Chunder Biswas* [(1898) LR 25 IA 109] it appeared that though the will was fairly simple and not very long the making of it was from first to last the doing of Khetter, the manager and trusted adviser of the alleged testator. No previous or independent intention of making a will was shown and the evidence that the testator understood the business in which his adviser engaged him was not sufficient to justify the

grant of probate. In this case the application for probate made by the widow of Mohim Chunder Biswas was opposed on the ground that the testator was not in a sound and disposing state of mind at the material time and he could not have understood the nature and effect of its contents. The will had been admitted to the probate by the District Judge but the High Court had reversed the said order. In confirming the view of the High Court the Privy Council made the observations to which we have just referred.

33. The case of *Shama Charn Kundu* v. *Khettromoni Dasi* [(1899) ILR 27 Cal 522] on the other hand, was the case of a will the execution of which was held to be not surrounded by any suspicious circumstances. Shama Charn, the propounder of the will, claimed to be the adopted son of the testator. He and three others were appointed executors of the will. The testator left no natural son but two daughters and his widow. By his will the adopted son obtained substantial benefit. The probate of the will with the exception of the last paragraph was granted to Shama Charn by the trial Judge; but, on appeal the application for probate was dismissed by the High Court on the ground that the suspicions attending on the execution of the will had not been satisfactorily removed by Shama Charn. The matter was then taken before the Privy Council; and Their Lordships held that, since the

adoption of Shama Charn was proved, the fact that he took part in the execution of the will and obtained benefit under it cannot be regarded as a suspicious circumstance so as to attract the rule laid down by Lindley, L.J., in *Tyrrell* v. *Painton* [(1894) P 151, 157, 159] . In *Bai Gungabai* v. *Bhugwandas Valji* [(1905) ILR 29 Bom 530] the Privy Council had to deal with a will which was admitted to probate by the first court, but on appeal the order was varied by excluding therefrom certain passages which referred to the deed-poll executed on the same day by the testator and to the remuneration of the solicitor who prepared the will and was appointed an executor and trustee thereof. The Privy Council held that "the onus was on the solicitor to satisfy the court that the passages omitted expressed the true will of the deceased and that the court should be diligent and zealous in examining the evidence in its support, but that on a consideration of the whole of the evidence (as to which no rule of law prescribed the particular kind required) and of the circumstances of the case the onus was discharged". In dealing with the question as to whether the testator was aware that the passages excluded by the appeal court from the probate formed part of the instrument, the Privy Council examined the evidence bearing on the point and the probabilities. In conclusion Their Lordships differed from the view of the

> appeal court that there had been a complete failure of the proof that the deed-poll correctly represented the intentions of the testator or that he understood or approved of its contents and so they thought that there were no grounds for excluding from the probate the passages in the will which referred to that deed. They, however, observed that it would no doubt have been more prudent and business-like to have obtained the services of some independent witnesses who might have been trusted to see that the testator fully understood what he was doing and to have secured independent evidence that clause 26 in particular was called to the testator's attention. Even so, Their Lordships expressly added that in coming to the conclusion which they had done they must not be understood as throwing the slightest doubt on the principles laid down in *Fulton* v. *Andrew* [(1875) LR 7 HL 448] and other similar cases referred to in the argument."

20. The Supreme Court in the case of **Surendra Pal and others v. Dr. (Mrs.) Saraswati Arora and another**, reported in **(1974) 2 SCC 600** has held that propounder has to show that the Will was signed by testator, that he was at the relevant time in a sound disposing state of mind, that he understood the nature and effect of the dispositions, that he put his signature to the testament of his own free Will, that he has signed it in the presence of the two witnesses who attested it in his presence and in the presence of each other. Once these elements are established, the onus which rests on the propounder

is discharged. Furthermore, there may be cases in which the execution of the Will itself is surrounded by suspicious circumstances, such as, where the signature is doubtful, the testator is of feeble mind or is overawed by powerful minds interested in getting his property, or where in the light of relevant circumstances the dispositions appears to be the unnatural, improbable and unfair, or where there are other reasons for doubting that the dispositions of the Will are not the result of testator's free Will and mind. It has also been held that in all such cases where there may be legitimate suspicious circumstances those must be reviewed and satisfactorily explained before the Will is accepted and the onus is always on the propounder to explain them to the satisfaction of the Court before it could be accepted as genuine.

21. The Supreme Court in the case of **Gorantla Thataiah v. Thotakura Venkata Subbaiah and others**, reported in **AIR 1968 SC 1332** has held as it is for those who propound the Will to prove the same.

22. The Supreme Court in the case of **Murthy and others v. C. Saradambal and others**, reported in **(2022) 3 SCC 209** has held that intention of testator to make testament must be proved, and propounder of Will must examine one or more attesting witnesses and remove all suspicious circumstances with regard to execution of Will. It has been held as under:

> **"31.** One of the celebrated decisions of this Court on proof of a will, in *H. Venkatachala Iyengar* v. *B.N. Thimmajamma* [*H. Venkatachala Iyengar* v. *B.N. Thimmajamma*, AIR 1959 SC 443] is in *H. Venkatachala Iyengar* v. *B.N. Thimmajamma*, wherein

this Court has clearly distinguished the nature of proof required for a testament as opposed to any other document. The relevant portion of the said judgment reads as under: (AIR p. 451, para 18)

> "*18*. … The party propounding a will or otherwise making a claim under a will is no doubt seeking to prove a document and, in deciding how it is to be proved, we must inevitably refer to the statutory provisions which govern the proof of documents. Sections 67 and 68 of the Evidence Act are relevant for this purpose. Under Section 67, if a document is alleged to be signed by any person, the signature of the said person must be proved to be in his handwriting, and for proving such a handwriting under Sections 45 and 47 of the Act the opinions of experts and of persons acquainted with the handwriting of the person concerned are made relevant. Section 68 deals with the proof of the execution of the document required by law to be attested; and it provides that such a document shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution. These provisions prescribe the requirements and the nature of proof which must be satisfied by the party who relies on a document in a court of law. Similarly, Sections 59 and 63 of

the Succession Act are also relevant. Section 59 provides that every person of sound mind, not being a minor, may dispose of his property by will and the three illustrations to this section indicate what is meant by the expression "a person of sound mind" in the context. Section 63 requires that the testator shall sign or affix his mark to the will or it shall be signed by some other person in his presence and by his direction and that the signature or mark shall be so made that it shall appear that it was intended thereby to give effect to the writing as a will. This section also requires that the will shall be attested by two or more witnesses as prescribed. Thus, the question as to whether the will set up by the propounder is proved to be the last will of the testator has to be decided in the light of these provisions. Has the testator signed the will? Did he understand the nature and effect of the dispositions in the will? Did he put his signature to the will knowing what it contained? Stated broadly it is the decision of these questions which determines the nature of the finding on the question of the proof of wills. It would prima facie be true to say that the will has to be proved like any other document except as to the special requirements of attestation

> prescribed by Section 63 of the Indian Succession Act. As in the case of proof of other documents so in the case of proof of wills it would be idle to expect proof with mathematical certainty. The test to be applied would be the usual test of the satisfaction of the prudent mind in such matters."

32. In fact, the legal principles with regard to the proof of a will are no longer res integra. Section 63 of the Succession Act, 1925 and Section 68 of the Evidence Act, 1872, are relevant in this regard. The propounder of the will must examine one or more attesting witnesses and the onus is placed on the propounder to remove all suspicious circumstances with regard to the execution of the will.

33. In the abovenoted case, this Court has stated that the following three aspects must be proved by a propounder: (*Bharpur Singh case* [*Bharpur Singh* v. *Shamsher Singh*, (2009) 3 SCC 687 : (2009) 1 SCC (Civ) 934] , SCC p. 696, para 16)

> "*16*. … (*i*) that the will was signed by the testator in a sound and disposing state of mind duly understanding the nature and effect of disposition and he put his signature on the document of his own free will, and
>
> (*ii*) when the evidence adduced in support of the will is

> disinterested, satisfactory and sufficient to prove the sound and disposing state of the testator's mind and his signature as required by law, courts would be justified in making a finding in favour of propounder, and
>
> (*iii*) if a will is challenged as surrounded by suspicious circumstances, all such legitimate doubts have to be removed by cogent, satisfactory and sufficient evidence to dispel suspicion. In other words, the onus on the propounder can be taken to be discharged on proof of the essential facts indicated therein."

34. In *Jaswant Kaur* v. *Amrit Kaur* [*Jaswant Kaur* v. *Amrit Kaur*, (1977) 1 SCC 369] , this Court pointed out that when a will is allegedly shrouded in suspicion, its proof ceases to be a simple lis between the plaintiff and the defendant. What generally is an adversarial proceeding, becomes in such cases, a matter of the court's conscience and then, the true question which arises for consideration is, whether, the evidence let in by the propounder of the will is such as would satisfy the conscience of the court that the will was duly executed by the testator. It is impossible to reach such a satisfaction unless the party which sets up the will offers cogent and convincing explanation with regard to any suspicious circumstance surrounding the making of the will.

35. In *Bharpur Singh* v. *Shamsher Singh* [*Bharpur Singh* v. *Shamsher Singh*, (2009) 3 SCC 687 : (2009) 1 SCC (Civ) 934] , this Court has narrated a few suspicious circumstance, as being illustrative but not exhaustive, in the following manner: (SCC p. 699, para 23)

> "*23*. Suspicious circumstances like the following may be found to be surrounded in the execution of the will:
>
> (*i*) The signature of the testator may be very shaky and doubtful or not appear to be his usual signature.
>
> (*ii*) The condition of the testator's mind may be very feeble and debilitated at the relevant time.
>
> (*iii*) The disposition may be unnatural, improbable or unfair in the light of relevant circumstances like exclusion of or absence of adequate provisions for the natural heirs without any reason.
>
> (*iv*) The dispositions may not appear to be the result of the testator's free will and mind.
>
> (*v*) The propounder takes a prominent part in the execution of the will.
>
> (*vi*) The testator used to sign blank papers.
>
> (*vii*) The will did not see the light of the day for long.
>
> (*viii*) Incorrect recitals of essential facts."

36. It was further observed in *Shamsher Singh case* [*Bharpur Singh* v. *Shamsher Singh*, (2009) 3 SCC 687 : (2009) 1 SCC (Civ) 934] that the circumstances narrated hereinbefore are not exhaustive. Subject to offering of a reasonable explanation, existence thereof must be taken into consideration for the purpose of arriving at a finding as to whether the execution of the will had been duly proved or not. It may be true that the will was a registered one, but the same by itself would not mean that the statutory requirements of proving the will need not be complied with.

37. In *Niranjan Umeshchandra Joshi* v. *Mrudula Jyoti Rao* [*Niranjan Umeshchandra Joshi* v. *Mrudula Jyoti Rao*, (2006) 13 SCC 433] , in paras 34 to 37, this Court has observed as under: (SCC pp. 447-48)

> "*34*. There are several circumstances which would have been held to be described by this Court as suspicious circumstances:
>
> (*i*) when a doubt is created in regard to the condition of mind of the testator despite his signature on the will;
>
> (*ii*) When the disposition appears to be unnatural or wholly unfair in the light of the relevant circumstances;
>
> (*iii*) where propounder himself takes prominent part in the execution of will which confers on him substantial benefit.

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35. We may not delve deep into the decisions cited at the Bar as the question has recently been considered by this Court in *B. Venkatamuni* v. *C.J. Ayodhya Ram Singh* [*B. Venkatamuni* v. *C.J. Ayodhya Ram Singh*, (2006) 13 SCC 449] , wherein this Court has held that the court must satisfy its conscience as regards due execution of the will by the testator and the court would not refuse to probe deeper into the matter only because the signature of the propounder on the will is otherwise proved.

36. The proof of a will is required not as a ground of reading the document but to afford the Judge reasonable assurance of it as being what it purports to be.

37. We may, however, hasten to add that there exists a distinction where suspicions are well founded and the cases where there are only suspicions alone. Existence of suspicious circumstances alone may not be sufficient. The court may not start with a suspicion and it should not close its mind to find the truth. A resolute and impenetrable incredulity is not demanded from the Judge even if there exist circumstances of grave suspicion."

38. This Court in *Anil Kak* v. *Sharada Raje* [*Anil Kak* v. *Sharada Raje*, (2008) 7 SCC 695] , held as under: (*Bharpur Singh case* [*Bharpur Singh* v. *Shamsher Singh*, (2009) 3 SCC 687 : (2009) 1 SCC (Civ) 934] , SCC p. 698, para 20)

> "*20*. This Court in *Anil Kak* v. *Sharada Raje* [*Anil Kak* v. *Sharada Raje*, (2008) 7 SCC 695] opined that the court is required to adopt a rational approach and is furthermore required to satisfy its conscience as existence of suspicious circumstances plays an important role, holding: (SCC p. 714, paras 52-55)
>
> > '*52*. Whereas execution of any other document can be proved by proving the writings of the document or the contents of it as also the execution thereof, in the event there exists suspicious circumstances the party seeking to obtain probate and/or letters of administration with a copy of the will annexed must also adduce evidence to the satisfaction of the court before it can be accepted as genuine.
> >
> > *53*. As an order granting probate is a judgment in rem, the court must also satisfy its

conscience before it passes an order.

54. It may be true that deprivation of a due share by (*sic* to) the natural heir by itself may not be held to be a suspicious circumstance but it is one of the factors which is taken into consideration by the courts before granting probate of a will.

55. Unlike other documents, even animus attestandi is a necessary ingredient for proving the attestation.' "

39. Similarly, in *Leela Rajagopal* v. *Kamala Menon Cocharan* [*Leela Rajagopal* v. *Kamala Menon Cocharan*, (2014) 15 SCC 570 : (2015) 4 SCC (Civ) 267] , this Court opined as under: (SCC p. 576, para 13)

"*13*. A will may have certain features and may have been executed in certain circumstances which may appear to be somewhat unnatural. Such unusual features appearing in a will or the unnatural circumstances surrounding its execution will definitely justify a close scrutiny before the same can be accepted. It is the overall assessment of the court on the basis of such scrutiny; the cumulative effect of the unusual features and circumstances which would weigh with the court in the determination required to be made

> by it. The judicial verdict, in the last resort, will be on the basis of a consideration of all the unusual features and suspicious circumstances put together and not on the impact of any single feature that may be found in a will or a singular circumstance that may appear from the process leading to its execution or registration. This, is the essence of the repeated pronouncements made by this Court on the subject including the decisions referred to and relied upon before us."

23. Similar law has been laid down by Supreme Court in the case of **Dhanpat v. Sheo Ram (Deceased) through legal representatives and others**, reported in **(2020) 16 SCC 209** and in the case of **V. Kalyanaswamy (Dead) by legal representatives and another v. L. Bakthavatsalam (Dead) by legal representatives and others**, reported in **(2021) 16 SCC 543**.

24. The Supreme Court in the case of **Bharpur Singh and others v. Shamsher Singh**, reported in **(2009) 3 SCC 687** has held that it may be true that Will was a registered one, but the same by itself would not mean that the statutory requirements of proving the Will need not be complied with. In terms of Section 63(c), Succession Act, 1925 and Section 68, Evidence Act, 1872, the propounder of a Will must prove its execution by examining one or more attesting witnesses and propounder of Will must prove that the Will was signed by the testator in a sound and disposing state of mind duly understanding the nature and effect of disposition and he put his signature on the document of his own free Will.

25. The Supreme Court in the case of **Niranjan Umeshchandra Joshi v. Mrudula Jyoti Rao and others**, reported in **(2006) 13 SCC 433** has held that mere proof that testator had signed the Will is not enough. It has also to be proved that testator has signed out of his free will having a sound disposition of mind and not a feeble and debilitated mind, understanding well the nature and effect thereof. The Court will also not refuse to probe deeper in the matter merely because propounder's signature on the Will is proved. Similar law has been laid down by Supreme Court in the cases of **Savithri and others v. Karthyayani Amma and others**, reported in **(2007) 11 SCC 621**, **Balathandayutham and another v. Ezhilarasan**, reported in **(2010) 5 SCC 770**, **Pentakota Satyanarayana and others v. Pentakota Seetharatnam and others,** reported in **(2005) 8 SCC 67** and **Meenakshiammal (Dead) through legal representatives and others v. Chandrasekaran and another**, reported in **(2005) 1 SCC 280**.

26. Therefore, in order to take advantage of Will for getting his name mutated in the revenue records, beneficiary must prove that Will was a genuine one and must remove all suspicious circumstances which are attached to it by examining at least one of the attesting witnesses as well as by proving the mental status of testator, willingness of testator, understanding of testator etc. All these findings cannot be given by revenue authorities.

27. The Supreme Court in the case of **Jitendra Singh v. State of Madhya Pradesh** by order dated 06.09.2021 passed in **SLP (civil) No.13146/2021** has held as under:

> **"6.** Right from 1997, the law is very clear. In the case of Balwant Singh v. Daulat Singh (D) By Lrs., reported in

(1997) 7 SCC 137, this Court had an occasion to consider the effect of mutation and it is observed and held that mutation of property in revenue records neither creates nor extinguishes title to the property nor has it any presumptive value on title. Such entries are relevant only for the purpose of collecting land revenue. Similar view has been expressed in the series of decisions thereafter.

6.1 In the case of Suraj Bhan v. Financial Commissioner, (2007) 6 SCC 186, it is observed and held by this Court that an entry in revenue records does not confer title on a person whose name appears in record-of-rights. Entries in the revenue records or jamabandi have only "fiscal purpose", i.e., payment of land revenue, and no ownership is conferred on the basis of such entries. It is further observed that so far as the title of the property is concerned, it can only be decided by a competent civil court. Similar view has been expressed in the cases of Suman Verma v. Union of India, (2004) 12 SCC 58; Faqruddin v. Tajuddin (2008) 8 SCC 12; Rajinder Singh v. State of J&K, (2008) 9 SCC 368; Municipal Corporation, Aurangabad v. State of Maharashtra, (2015) 16 SCC 689; T. Ravi v. B. Chinna Narasimha, (2017) 7 SCC 342; Bhimabai Mahadeo Kambekar v. Arthur Import & Export Co., (2019) 3 SCC 191; Prahlad Pradhan v. Sonu Kumhar, (2019) 10 SCC 259; and Ajit Kaur v. Darshan

Singh, (2019) 13 SCC 70."

28. Counsel for applicant also conceded that revenue authorities have no jurisdiction to decide the question of title but only contention is that since mutation can also be done on the basis of Will, therefore, the revenue authorities are well within their rights to mutate the name of a person on the basis of Will. Unfortunately this general proposition of law which is being suggested by counsel for applicant cannot be accepted unless and until Will is duly proved, it cannot be acted upon and the revenue authorities have no jurisdiction to decide the authenticity, correctness, genuineness of a Will which can only be done by Civil Court. Thus, in the light of fact that revenue authorities cannot decide the genuineness of the Will, the rule which permits the mutation of name of a beneficiary on the basis of Will has to be interpreted that the name of a beneficiary can be mutated provided the Will is duly proved and for that purposes the beneficiary has to approach the Civil Court for declaration of his title. Even otherwise in none of the previous judgments it has been held that in spite of a declaration by Civil Court the name of a beneficiary of a Will cannot be mutated. The word "Will" as mentioned in Rules, 2018 necessarily means a valid and genuine Will and not any piece of paper. Therefore, even in the light of Niyam, 2018 it cannot be said that there is any material change in the law.

29. It is submitted by counsel for petitioners that a Coordinate Bench of this Court by order dated 07.10.2023 passed in W.P.No.3499/2022 has already referred the question as to whether revenue authorities have a jurisdiction to mutate the names of the beneficiaries of a will or not. However, it is submitted that High Court cannot held as to whether

> judgment passed by Supreme Court is *per incuriam* or not?
> **30.** It is submitted by counsel for respondents that since, the aforesaid question is already under reference, therefore the hearing of this case may be deferred awaiting outcome of W.P.No.3499/2022.
> **31.** Considered the submission made by counsel for parties.
> **32.** It is well established principle of law that even if an order has been referred to a Larger Bench but still it would hold the field unless and until the same is set aside. The prayer for deferment of hearing of this case is hereby rejected."

24. Therefore, the petitioner was not entitled to get his name mutated in the revenue records on the basis of will and thus, the Tahsildar, did not commit any mistake by mutating the names of all the legal representatives of late Ganga Prasad Dubey.

25. Now, the next question for consideration is as to whether the statement made by respondents No.2 to 5 before the Coordinate Bench of this Court in M.Cr.C.No.8938/2023, M.Cr.C.No.6966/2023 and M.Cr.C.No.8943/2023 on 27.04.2023 will create any right or title in favour of the petitioner?

26. In M.Cr.C.No.8943/2023, it was observed by Coordinate Bench of this Court that Smt. Geeta Devi Mishra is ready to relinquish her share in ancestral property, if both brothers in the case share ancestral property to the extent of 50% each. Similarly, in M.Cr.C.No.8943/2023, a statement was made by Smt. Sunita Chaturvedi and Smt. Sangeeta Pathak that they are ready to relinquish

their share of ancestral property, in case if both brothers share the ancestral property to the extent of 50% each.

27. Thus, it is the case of the petitioner that since his sisters Smt. Sunita Chaturvedi, Smt. Sangeeta Pathak and Smt. Geeta Devi Mishra had relinquished their share in the ancestral property, therefore their names were not liable to be mutated in the revenue records and they have lost their share by virtue of the said statement.

28. Now, the next question for consideration is as to whether a person who otherwise has a share in the property can relinquish his or her share without registered relinquishment deed or not.

29. It is not the case of the petitioner that the mediation report was got registered. If any statement was made by the sisters either before Mediator or before the Court, then it would not result in relinquishment of their share unless and until, a registered relinquishment deed is executed. Therefore by virtue of the statement made by Smt. Geeta Devi Mishra in M.Cr.C.No.6966/2023 and Smt. Sunita Chaturvedi and Smt. Sangeeta Pathak in M.Cr.C.No.8943/2023, it is held that their share in the property would not automatically stand relinquished and therefore, they are still having equal share in the property.

30. So far as the statement made by respondent No.2 in M.Cr.C.No.8938/2023 is concerned, the same is reproduced in Paragraph-2 of the order dated 27.04.2023.

> "2. At the outset learned counsel for the applicant submits that he does not want any share in ancestral property and he has no objection if his share of ancestral property goes to respondent No.2 Deepak

> Dubey. He is aggrieved by the allegations levelled against him by respondent No.2. He further seeks a month's time to vacate the premises (House No.270, Nanak Nagar, Manegaon, Ranjhi, Jabalpur) so that meanwhile, he can make necessary alternative arrangement and, thereafter, he will shift to the said place."

31. From the plain reading of this statement, it is clear that the respondent No.2 had agreed to give all his share in the ancestral property to the petitioner. Even according to the petitioner, his father had executed a will in favour of the petitioner and the respondent No.2. Therefore, even if will is relied upon still the respondent No.2 had equal share in the property.

32. Similarly, since the genuineness of the will has not been declared by any Court of civil jurisdiction, therefore merely on the basis of mutation entry, the petitioner cannot claim that he has acquired his title in the property in question.

33. Furthermore, if the statement made by respondent No.2 as mentioned in Paragraph-2 by order dated 27.04.2023 passed in M.Cr.C.No.8938/2023 is considered on its face value, then it is clear that he had relinquished his share in the property. As already pointed out, in the light of Section 17 of Registration Act, the registration of relinquishment deed is necessary and in absence of registered relinquishment deed, it cannot be said that a person has relinquished his right or title in the property.

34. Under these circumstances, this Court is of considered opinion that statements made by respondent No.2 to 5 in the bail

application would not deprive them of their share in the property. Furthermore, it is not the case of the petitioner that the order of Tahsildar by which the names of the legal representatives of late Ganga Prasad Dubey were mutated in the revenue records has been set aside. So long as the order passed by the Tahsildar by which the names of all the legal representatives of late Ganga Prasad Dubey is intact, the petitioner cannot claim exclusive title in the property.

35. Furthermore, the petitioner has not clarified that under what provision of law, the Collector had directed the Tahsildar to conduct an enquiry. Even otherwise, there is nothing on record to show that said enquiry report submitted by Tahsildar was ever accepted by Collector. Further, no appeal was filed against the order of Tahsildar. Therefore, the enquiry report relied upon by the petitioner has no sanctity in the eye of law.

36. Now, the only question for consideration is as to whether this Court while entertaining this petition can give the aforesaid findings or not.

37. As already pointed out, the petitioner has already withdrawn his application filed under Section 439(2) of Cr.P.C. without any liberty, therefore in order to claim that this petition is maintainable, the petitioner is trying to take advantage of the mediation report and the statements made by the respondents No.2 to 5 either before Mediator or before the Coordinate Bench of this Court.

38. Under these circumstances, this Court can always consider the effect of the said mediation report or statements made before this Court. This Court had granted anticipatory bail. While granting

anticipatory bail, this Court had not adjudicated the rights of the parties. It has not been held by the Coordinate Bench of this Court that by virtue of the mediation report or the statements before the Court, petitioner has become the exclusive owner of the property left by his father. Since, the petitioner himself has invited the trouble by submitting that this Court can entertain the writ petition in the light of Section 27 of Mediation Act, 2023, therefore, this Court can always consider the legality of the mediation report as well as the statement made by the respondents No.2 to 5 in the proceeding under Section 438 of Cr.P.C. Once, no right had accrued in favorur of the petitioner except to the extent of his share being the legal representative of late Shri Ganga Prasad Dubey, therefore no case is made out warranting interference.

39. If the petitioner is so advised, then he can file a civil suit for declaration of his title on the basis of will.

40. With aforesaid liberty, the petition is **dismissed**.

(G.S. AHLUWALIA)
JUDGE

VB*