Case No: HC2017-000364

Neutral citation number 2018 EWHC 1353 (Ch)

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY, TRUSTS AND PROBATE LIST (ChD)

BEFORE MR CHARLES HOLLANDER QC SITTING AS A DEPUTY JUDGE

IN THE ESTATE OF URMILA RANI GUPTA DECEASED (PROBATE)

BETWEEN

MR RAKESH KUMAR GUPTA

Claimant

and

(1) **MR NARESH KUMAR GUPTA**
(2) **MRS SASHI BALA AGRAWALA**
(3) **MR DEEP GUPTA**
(4) **MS PREETI GUPTA**
(5) **MRS SONYA PREETA DEY**
(6) **MR TARUN AGRAWALA**
(7) **MRS MOHINI SEHDA**
(8) **MR RISHI GUPTA**

Defendants

AND BETWEEN

MR NARESH KUMAR GUPTA

Part 20 Claimant

And

(1) **MR RAKESH KUMAR GUPTA**
(2) **MRS SASHI BALA AGRAWALA**
(3) **MR DEEP GUPTA**
(4) **MS PREETI GUPTA**
(5) **MRS SONYA PREETA DEY**
(6) **MR TARUN AGRAWALA**
(7) **MRS MOHINI SEHDA**
(8) **MR RISHI GUPTA**

Part 20 Defendants

Ms James Weale (instructed by Farrer & Co) appeared on behalf of the Claimant

Ms Constance McDonnell (instructed by Kingsley Napley) appeared on behalf of the First Defendant

Judgment

12 June 2018

Hearing dates: 21-25 May 2018

DEPUTY HIGH COURT JUDGE CHARLES HOLLANDER QC:

A. Introduction

1. By this claim the claimant ("Rakesh") seeks to pronounce against the last will dated 20 November 1998 ("the Will") of the late Urmila Rani Gupta ("Urmila") for want of knowledge and approval.

2. Laxmi Nath Gupta ("Laxmi") was born on 24 May 1924 and died on 6 April 2009. He was married to Urmila, who was born on 30 July 1930 and died on 25 February 2014. They had three children, Sashi Bala Agrawala ("Sashi"), Rakesh Kumar Gupta ("Rakesh") and Naresh Kumar Gupta ("Naresh"). Sashi and her husband Pradeep Agrawala had two children, Sonya Dey ("Sonya") and Tarun ("Tarun"). Rakesh and his wife Sadhana Gupta had two children, Deep ("Deep") and Preeti ("Preeti"). Naresh and his wife Meenakshi Gupta ("Meena") also had two children, Mohini ("Mohini") and Rishi ("Rishi").

3. Urmila did not make any other Will in relation to her English estate. She did make an Indian will, in relation to her Indian estate, which is worth approximately £750,000. That will is not challenged by Rakesh. As a consequence, if the claim in this action is successful Urmila's (English) estate will fall to be administered under intestacy rules resulting in a three-way split of the residuary estate between Urmila's children: Rakesh, Naresh and Sashi.

4. Deep, Preeti, Sonya, Tarun, Mohini and Rishi are, respectively, the children of Rakesh, Sashi and Naresh (the "Grandchildren"). Under the Will each of the Grandchildren receives a modest pecuniary legacy.

5. The only party actively defending the Claim is Naresh. Whilst Naresh's two children Mohini and Rishi stated in their acknowledgments of service that they do not intend to defend this claim, they have each provided a witness statement in support of their father's position.

6. In addition to defending the claim, Naresh issued a Part 20 Claim by which he sought the appointment of an independent administrator for Urmila's estate in the place of Rakesh and Naresh and to prove the Will in solemn form. In relation to that Part 20 Claim, the parties agreed on the appointment of an independent administrator pending the determination of this claim: Ms Stephanie Rose was appointed pursuant to the order of Master Bowles dated 22 August 2017. It is now agreed that Ms Rose should continue as Rakesh accepts that, insofar as the Court is satisfied that the Will is valid, there would be no defence to the claim to pronounce the Will in solemn form.

B. The Gupta family

7. Laxmi and Urmila moved from India to the UK in 1957 following Laxmi's posting to the High Commission in London. They came with their eldest child Sashi (then aged 5) and Naresh (aged 2). Rakesh, the elder boy, remained in India until 1966. Laxmi's memoirs suggest that when his posting came to an end it was Urmila who wanted to remain in the UK and it was her wishes that he followed. In the mid 1960s they established Double Gee Hair Fashions Ltd ("Double Gee") with their friends Mr and Mrs Gilani, a business manufacturing and distributing wigs and hairpieces. Rakesh joined the business in 1972. In 1980 Laxmi and Urmila purchased freehold mixed commercial and residential premises at 122-124 High Road, Willesden, NW10. Also in about 1980 Urmila and Laxmi purchased 75 Oakington Manor Drive, whilst Rakesh and his wife Sadhana continued to live at 114 Crest Road. In 1983 Naresh married Meena and they lived with Urmila and Laxmi at 75 Oakington Manor Drive. Naresh also started working at Double Gee, although he left in 1989.

8. In 1984 Urmila, Laxmi, Naresh and Meena purchased 22 Forty Lane as beneficial joint tenants. They moved in following extension works after a six month period

living in Rakesh and Sadhana's house. In 1991 Naresh and Meena purchased 8 The Dene as an investment property and consented to the removal of their names from the title at 22 Forty Lane, which was re-registered in the name of Laxmi and Urmila only.

9. In 1991 Urmila formally left Double Gee having retired from day to day involvement some years before. Rakesh was appointed a director of Double Gee in 1991 and Sadhana also in 1993.

10. Each of the three children of Laxmi and Urmila had one boy and one girl. The oldest grandchild (Deep) was born in 1979, the youngest (Rishi) in 1989.

11. Naresh and Meena continued to live with Laxmi and Urmila at 22 Forty Lane, and their children lived with them and their grandparents. For a while Mohini and Rishi shared a bedroom with Urmila. Laxmi and Urmila would spend part of the year in India. As the 1990s went on, Urmila's physical health began to deteriorate. She was overweight, and had a number of physical ailments (see below) which restricted her mobility and must have affected her enjoyment of life. I had a picture of a lady perhaps old before her time. After 2000 (the precise date is not common ground) she began to suffer from dementia and in August 2006 suffered a stroke. Her principal carer was Laxmi, who was devoted to her, but also Meena. On 6 April 2009 Laxmi died. Urmila finally passed away on 25 February 2014.

C. The Will: Ms Sheikh

12. Before considering the chronology relating to Urmila's English will, it is relevant to note the feature of this case which is most unusual and striking. The solicitor who advised upon and was responsible for the execution of the will was Ms Anal Sheikh of Ashley & Co., whose office was close to 22 Forty Lane. In any normal case of this nature, the starting point in considering the validity of the will would be to review the solicitor's file and for the solicitor to explain the events evidenced by the letters and notes in the file.

13. Ms Sheikh qualified as a solicitor in 1988. She was at Ashley & Co with another solicitor but by about 1993 she was running the firm as a sole practitioner. She became involved in litigation also involving her mother from which she appears to

have developed a deep grievance against the English justice system. As Turner J put it in *Sheikh v Page:* [1]

> *"Anal Sheikh is no stranger to these courts. For about a decade, she has waged a lonely forensic campaign against an ever expanding cadre of judges, barristers, solicitors and others. In the years prior to and including 2009, the Courts repeatedly found her applications in the context of a highly contentious property dispute to have been totally without merit. In consequence, she was made the subject of a General Civil Restraint Order ("GCRO"). Moreover, in the light of her subsequent conduct the duration of this order has thereafter been extended at regular two year intervals. The most recent of these extensions was made by order of Patterson J and is due shortly to expire."*

14. Thus when Ms Sheikh was asked for assistance in the present case, she responded with an enormously long tirade in writing against the justice system, peppered with individual accusations of corruption and dishonesty against most of the senior judiciary.

15. Nor was that her only problem. She was struck off as a solicitor in 2009 after the Law Society intervened in the practice of Ashley & Co. The SDT found charges of dishonesty, forgery and impropriety proved against her. The SDT said:

> *"The Tribunal took the view that the respondent's arrogant disregard for fundamental requirements of practice led her to adopt a stand where she neither knew nor cared whether she was exercising a proper stewardship of client funds, billing at fair and reasonable levels and achieving full compliance with the Solicitors Accounts Rules "* [2]

16. The file of Ashley & Co for Urmila's will is not available. The Law Society say they do not have it. Ms Sheikh says she does not have it either. There are a handful of documents only now available in relation to her instruction by Laxmi and Urmila, and obvious gaps.

17. Ms Sheikh signed a witness statement setting out what she said was her recollection of this matter. In cross-examination she refused to acknowledge that Henderson J, who held that 12 consecutive applications made by her were applications totally without merit, was actually a judge, (and said much the same about a number of his colleagues) and equally refused to accept the jurisdiction of the SDT over her

[1] [2017] EWHC 1772 (QB)
[2] [216]

activities as a solicitor. Other parts of her evidence were equally eccentric. She claimed to have acted on 100,000 conveyancing transactions, which seems unlikely for a sole practitioner: this requires about 15 new instructions 365 days a year throughout her career.

18. Ms Sheikh said in her witness statement in relation to the execution of the will:

> *"34. I understand that Rakesh Gupta claims that Mrs. Gupta's will is invalid because Mrs. Gupta's understanding of and ability to communicate in English was such that she would not have understood the contents of the Will. I simply never would have prepared and witnessed a will for a client who could not speak and/or understand English unless an interpreter had been present. The suggestion that I could have had dealings with a client for over the course of four months and not realised that the person in front of me could not follow and understand what I was saying in English, or that we were unable to communicate during that time is absurd.*
>
> *35. If I had any concerns about Mrs. Gupta's ability to understand the key provisions of the will as a result of any language (or other) difficulties, then I would have arranged for the will to be translated to her and for an interpreter to be present at the execution of the will. I do not recall an interpreter being present at the execution of Mrs. Gupta's will, and therefore it must have been the case that one was not needed. I would not rely solely on a family member to act as an interpreter in these situations, as I understand the importance of impartiality when it comes to making a will.*
>
> *36. I do not speak Hindi so if Mrs. Gupta had not been able to speak or understand English I would have certain employed the services of an interpreter. Given the demographic of my client base, which included a large proportion of Asian clients who lived in the Wembley area, I regularly employed the services of local interpreters when needed. Of my staff, at any time at least four could speak Gujarati and/or Hindi so I could have called upon them for assistance if required (albeit not formally as interpreters). If any interpreter had been required for Mrs. Gupta at any stage, this would have been recorded in the file and certainly recorded in the attestation clause of the Will. The fact that the attestation clause says "The testatrix being able to read but unable to write her name" reinforces my strong belief that Mrs. Gupta was fully able to read and understand the terms of the Will herself."*

19. However, I take the view that I cannot safely rely on her evidence in this case unless there is material which supports or corroborates it. I formed the view that she would

often say the first thing that came into her head without reflecting on whether it was correct.

D. The Will: Chronology

20. The first information available as to the process of signing the will is the letter dated 26 August 1998 to Ms Sheikh which reads as follows:

> *"Mr. & Mrs L.N. Gupta*
> *22 Forty Lane*
> *Wembley*
> *Middlesex*
> *HA9 9HA*
>
> *Date: 26th August 1998*
>
> *Ms Anal Sheikh*
> *Ashley & Co*
> *47/51 Blackbird Hill*
> *London NW9 8RS*
>
> ***RE: AMENDMENT IN WILLS OF MR. & MRS L.N. GUTA***
>
> *Dear Madam,*
>
> *At our last meeting we discussed some Inheritance tax aspects. I shall be grateful if you would let me have your comments/clarification on the following issues*
>
> *a. Transfer of two commercial properties to our two sons as gift*
> *I understood that there is no difficulty to transfer the two properties as gift to our two sons. There is no tax liability on our sons if we live upto seven years from the date of transfer. Please clarify whether we Mr & Mrs Gupta will be liable to pay any capital gain tax once the properties are given to their sons as a gift.*
>
> *b. Domicile*
> *I understand that a person keeps his "Domicile of Origin" until such time a "Domicile" of choice is acquired. At our last meeting I got the impression that acquiring British Citizenship was acquiring British Domicile. We still consider ourselves to be domiciled in India and have over the past few years spent a substantial time in India with our relatives.*
>
> *c. Tenants Incommon*
> *I understand that owning the private residence as "Tenants in Common" is beneficial for Inheritance Tax purposes. The idea being that the share owned by the first to die can be passed to the next*

generation, with the wish expressed in the will that surviving spouse should occupy the property for as long as he/she wishes.

If I have not expressed my views on the above points correctly please advise me accordingly. I shall be grateful if you please let me have your reply on the points stated above quickly. On receipt of your reply I will pass the name and address of our Bank and accountants to proceed the matter further.

I thank you once again for taking time to speak to me personally.

Thanking you

Yours sincerely,

L.N. GUPTA"

21. The next available letter is from Ms Sheikh dated 21 September 1998, addressed to Mr and Mrs Gupta, which responds to the points made in the previous letter. There is then some correspondence missing, and a letter from Mr Gupta (as always headed "Mr and Mrs LN Gupta") with the title "Re: Making new wills". A short response dated 2 October from Ms Sheikh indicates she will now draft the wills as requested. A further letter from Mr Gupta dated 7 October is concerned with fees, and Ms Sheikh writes on 16 October in that regard referring to a recent phone conversation. The only other letter is dated 17 November 1998 in which Ms Sheikh states, enclosing a bill:

"Dear Mr and Mrs Gupta,

RE: YOUR WILLS

Please find enclosed your draft Wills. As discussed yesterday with Mr. Gupta the effect will be to give Naresh a far higher share than his brother. This is achieved in the following way:

1. By the gift of the cash equivalent of the nil rate band (£230,000) in any event.

2. By the gift of the property at 22 Forty Lane free of tax but subject to a mortgage if take effect if you die a widow/widower.

I have made an amendment to clause 6 which now provides that the small legacies are to increase, by what is effectively the RPI Index, until they are vested.

I look forward to meeting you both to sign the Wills. In the meantime I enclose a note of my fee."

22. On 20 November 1998 Laxmi and Urmila executed mirror wills. Urmila's will provides, so far as material, as follows:

> ***THIS IS THE LAST WILL AND TESTAMENT*** *of me* ***URMILA NATH GUPTA*** *of 22 Forty Lane Wembley Middlesex HA9 9HA*
>
> *1.* ***I REVOKE*** *all former testamentary dispositions made by me and* ***I DECLARE*** *that this will is to take effect and be construed in accordance with English Law*
>
> *2.* *(a)* ***I APPOINT*** *my sons* ***RAKESH KUMAR GUPTA*** *of 64 Bowrons Avenue Wembley Middlesex and* ***NARESH KUMAR GUPTA*** *of 8 The Dene Wembley aforesaid to be the Executors and Trustees of this will*
>
> *(b)* *The expression of "my Trustees" shall where the context admits include such person or persons as shall become an executor or trustee by virtue of this clause and the trustees or trustee for the time being of his Will whether original additional or substituted*
>
> *3.* ***I GIVE*** *to my son the said* ***NARESH KUMAR GUPTA*** *a cash sum (if any) as shall equal the maximum sum as a transfer of value without causing inheritance tax to be exigible on my death*
>
> *4.* ***I GIVE*** *all my property both movable and immovable whatsoever and wheresoever and all property over which I shall have at my death any general power of appointment or disposition except property otherwise disposed of by this Will or any Codicil hereto to my Trustees upon trust:*
>
> *(a)* *to sell call in and convert the same or such part thereof as shall not consist of money with full power at their discretion to postpone such sale calling in and conversion without being responsible for loss*
>
> *(b)* *to pay or provide for out of such property and the proceeds of sale thereof:*
>
> *(i)* *my funeral testamentary and administration expenses and debts*
>
> *(ii)* *except as otherwise provided by this Will or any Codicil hereto all Inheritance Tax estate duties or other imposts payable on or by reason of my death which are leviable*

in any part of the world in respect of my estate (whether movable or immovable) passing under this Will or any Codicil hereto (in exoneration of all legacies annuities and specific gifts from liability to pay or bear the same

(iii) *any legacies and annuities given by this Will or any Codicil hereto*

(c) *subject as aforesaid to hold such property and proceeds of sale (with power at their discretion to invest all moneys in investments for or into others of a like nature) and the assets from time to time representing the same (hereinafter together referred to as "my residuary estate") and the income thereof upon the trusts and with and subject to the powers and provisions herein declared*

5. ***MY TRUSTEES*** *shall hold my residuary estate and the income thereof upon trust for my husband* ***LAXMI NATH GUPTA*** *absolutely if he shall be living twenty eight days after my death*

6. *If my husband the said* ***LAXMI NATH GUPTA*** *shall not be so living then* ***I GIVE*** *to each of the legatees named in this clause the sum specified or such larger sum as my Trustees circulate to have the same value at my death the specified figure had at the date of this Will:*

(a) *To each of my grandchildren when they shall reach the age of eighteen years the sum of* ***FIVE THOUSAND POUNDS*** *(£5000.00) absolutely*

(b) *To my daughter* ***SASHI BALA AGGRAWALA*** *the sum of* ***FIVE THOUSAND POUNDS*** *£5000.00) absolutely*

(c) *For such charitable object or objects or for such charitable purposes in any part of the world as my Trustees may in their absolute discretion select the sum of* ***FIVE THOUSAND POUNDS*** *(£5,000.00) absolutely* ***AND I DECLARE THAT*** *the receipt of a person who purports to be the Treasurer or other proper officer of any charity to which my Trustees may allocate any sum hereunder be concerned about the application of the same.*

7. *I GIVE my son the said* ***NARESH KUMAR GUPTA*** *free of tax but subject to any mortgage which may subsist thereon all my property at 22 Forty Lane aforesaid and the grounds occupied therewith*

8. ***SUBJECT THERETO*** *my Trustees shall hold my residuary estate and the income thereof upon trust for such of my sons the said* ***RAKESH KUMAR GUPTA*** *and the said* ***NARESH KUMAR GUPTA*** *as shall be living at my death and if more than one in equal shares absolutely* ***PROVIDED THAT*** *if they shall predecease my leaving a child or*

children living at my death who shall reach the age of eighteen years such child or children shall take (if more than one in equal shares) the interest in my residuary estate which his her or their parent would have ;taken had such parent survived me

9. ***SECTION 32*** *(relating to payment or application or capital) of the Trustee Act 1925 shall apply to my estate in all respects as if the words "one-half of" were omitted from proviso (a) to sub-section (1) thereof*

...

The attestation reads as follows:

AS WITNESS *my hand this 20th day of November 1998*

The testatrix being able to read but)
Unable to write her name as a result)
Of her suffering from tremor this)
Will was signed by her making her)
Thumb print thereon in our presence)
And attested by us in the presence)
And in the presence of each other)"

24. Urmila had a tremor in her hand and thus had since the 1980s signed documents with a thumbprint. Both the wills of Laxmi and Urmila were witnessed by Ashley & Co's receptionist, Ms Varsani. The attestation part of Urmila's will is different from that of Laxmi, which is in the usual form.

25. Ms Varsani gave evidence. She worked for Ashley & Co for 8-9 years until 2000 as a receptionist. She said many clients of the firm did not speak English. An unqualified legal assistant at the firm spoke Gujarati and Hindi and would often act as a translator for clients. Sometimes outside interpreters would be brought in. As to her witnessing of the will she said the following in cross-exam[3]:

Q And, so far as the will was concerned, you were merely a witness, weren't you?

A. I was a witness but whilst I'm the witness, the whole will would be explained while in my presence.

Q. I'll ask another question. Did you have confidence in Ms Sheikh's ability as a solicitor?

A. Oh, definitely.

[3] T2/183-4

Q. So, on that basis, if Ms Sheikh was asking you to witness a document, you would have assumed, would you not, that it had been properly explained to the testate?

A. No.

Q. You wouldn't have done?

A. No, if -- she would have had -- she would have explained it to the clients in my presence and I would -- I think I've got a reasonable good instincts of knowing people and seeing if they can understand and if I had believed, you know, then I wouldn't have and I know my role in witnessing wills, of me actually putting my --

Q. What is your role as a witness of a will?

A. Well, basically I'm witnessing it saying that they're in their true minds, they understand what they are saying and what has been said and I'm witnessing their signature.

And then in answer to a question from the court: [4]

"I would be present when it was being going -- it's gone through and it would have been gone through step-by-step each paragraph.

JUDGE: Sorry, who would go --

A. Ms Sheikh would then explain that, "This is what you're signing, this paragraph will mean this, the second paragraph would mean this", and so on, in my presence."

26. At para 40 of Meena's witness statement she says as follows:

"I remember driving Laxmi and Urmila to Ashley & Co, a local law firm, on two occasions. I cannot remember precisely when this was, but it was some time after 1995 because Laxmi asked me to drive them there because he did not drive himself any longer. On one occasion I drove them to Ashley & Co and dropped them off. I parked in a side road next to Ashley & Co and waited in the car for them to return then I drove them back home. On another occasion not long after the first time I drove them to Ashley & Co I took them again and Laxmi asked me to come in with them where I waited inside the reception area. Laxmi asked me to wait in the reception and Urmila whilst he saw a solicitor and when he had finished I waited for Laxmi whilst Urmila saw the same solicitor. I remember this because it is the only time I have ever seen inside Ashley & Co and when the solicitor came out of the office I remember thinking that she looked young. ..."

[4] T2/185-6

27. In 2002 Urmila gave a Power of Attorney to Laxmi. The signature part, which was before Ms Peramunagamg, a different solicitor, provided as follows:

> *"SIGNED by the said URMILA RANI GUPTA }*
> *By placing her left thumb print as her Power of }*
> *Attorney after it had been read to her and she }*
> *Appeared perfectly to understand and approve it }*
> *In the presence of }"*

Ms Peramunagamg's witness statement, which was not challenged, stated as follows;

> 5. *The Power of Attorney looks like the kind of document our firm might have prepared during the course of our practice at that time. My normal practice when a document is executed in front of me (both in 2002 and now) is to satisfy myself that the client understands the contents prior to executing it. I do not speak Hindi, and if Mrs Gupta had not been able to either read and understand the document by reading it herself, or alternatively had not been able to understand the contents when read out to her in English, then I would have employed the assistance of an interpreter. If an interpreter had been required, and engaged for that purpose that would have been noted on the face of the document itself.*
>
> 6. *I would have assessed Mrs. Gupta's ability to understand the contents of the document before I proceeded with the formalities of having her sign the Power of Attorney in front of me. In order to satisfy myself that a client was able to understand the contents of a document, I would start with a usual conversation to greet him or her, and would then discuss the nature of the document, and the significance of signing the document and what it would entail. With certain clients, I may also read the document over to them slowly and would satisfy myself that he or she understands the contents."*

28. Laxmi and Urmila continued to visit India for months at a time until 2003/4, which was their last visit. On 15 January 2004 they executed wills in India in relation to their Indian estate. Laxmi left his Indian estate to Urmila. Urmila's Indian will stated, so far as material, as follows;

> *" I have my husband Shri Laxmi Nath Gupta and we have one daughter and two sons namely:-*
>
> *(1) Sashi Bala Aggarwal aged 51 years - Daughter*
> *W/o Shri Pradeep Kumar Aggarwal*
> *R/o 32 Littleton Crescent, Harron,*
> *Middlesex, U.K.*

(2) *Rakesh Kumar Gupta aged 50 years* - *Son*
R/o 64, Bowrens Avenue, Wembley
Middlesex, U.K.

(3) *Naresh Kumar Gupta aged 48 years* - *Son*
R/o 22, Forty Lane, Wembley
Middlesex, U.K

Our above named daughter, Shashi Bala Aggarwal and both our sons Rakesh Kumar Gupta and Naresh Kumar Gupta are married and well settled in the U.K.

I own movable and immovable property in India detailed below.

IMMOVABLE PROPERTY

I am the sole and exclusive owner of immovable property known as D-59 Panchsheel Enclave, New Delhi-110 017. It is 2 ½ storey building which I got constructed on a plot of land measuring 216 square metres purchased by me in auction from the Delhi Development Authority on Perpetual Lease.

MOVABLE PROPERTY

I own movable property in the shape of money in banks, fixed deposits in banks, household good, furniture, electrical appliances, jewellery and wearing apparel.

I hereby leave, give, devise and bequeath to my husband, Shri Laxmi Nath Gupta for his use and benefit absolutely and for ever all my property, assets and credits, both movable and immovable of whatever character and wherever situated in India including my property D-59, Panchsheel Enclave, New Delhi-110 017 mentioned herein above and also including all revisions, expectancy and future assets, if any, acquired by me.

AND I hereby appoint by husband Shri Laxmi Nath Gupta, sole executor of this my WILL.

In case if my husband Shri Laxmi Nath Gupta predeceases me then after my death all my property and assets situated in India will go as under :-

IMMOVABLE PROPERTY

As already mentioned herein above I own property No. D-59, Panchsheel Enclave, New Delhi a 2 ½ storey building comprising of Ground Floor, First Floor and Second Floor.

Whenever we are in India I stay on the First Floor of my said House. I have provided all necessary amenities of life on this floor such as various items of furniture such as Sofa Set, Dining Table and Chairs, Wooden & Steel Almirahas, Carpets, Beds, Electric fittings, Fridge, Fancy fittings, Air-Conditioner, Room heaters, Geysers, Kitchen utensils, Crockery, Cutlery, LPG Cylinder, Micro-wave, Washing Machine and various kinds of artifacts and other movable items.

I hereby give, leave, devise and bequeath my said residential house D-59 Panchsheel Enclave, New Dcelhi-110 017 to our three children, Shashi Bala Aggawal, Rakesh Kumar Gupta and Naresh Kumar Gupta as detailed below:

(a) The entire ground floor including front and back courtyards and all the electric and bathroom fittings will go to our daughter Shashi Bala Aggarwal absolutely and forever her use and benefit as full owner.

(b) The entire First Floor with all the movable lying in the said floor as mentioned herein above and those that may be added later will go to our younger son Naresh Kumar Gupta for his use and benefit absolutely and forever as full owner.

(c) The entire Second Floor will go to our elder son Rakesh Kumar Gupta for his use and benefit, absolutely and forever as full owner. In case he wants to make some or make additional construction on the Second Floor our daughter and/or our younger son will not raise any objection provided he does so without causing any damage to the First Floor and Ground Floor and provided he is lawfully allowed to do so.

The entrance to the building from road in front and the staircase of the said building shall be for common use for all the floors of the building and shall be jointly maintained.

I have got a bore well with jet pump installed in the front lawn of the building and boosted at rare, water storage tanks on the top terrace for the benefit of all the floors. The owners of all the three floors shall maintain the water supply jointly.

As already mentioned the plot of land on which the building was constructed is on lease. All the three owners of the floors shall pay the annual ground rent to the DDA in equal shares. If at any time they jointly decided to get the plot converted from Lease-hold to free-hold they may do so and equally share the expenses involved.

...

Their respective shares as per terms of this WILL and any one of them wants to let out or sell his or her portion, he/she will first make an offer to the other two.

LIQUID ASSETS

Whatever money I have in the shape of deposits in Indian Banks, Fixed Deposits in Indian Bank Companies, Savings Bank our Post Office in India. The total liquid Assets will go as under :-

(a) 50% to our younger son namely Naresh Kumar Gupta
(b) 40% to our elder son namely Rakesh Kumar Gupta
(c) 10% to our daughter Shashi Bala Aggarwal

AND I hereby appoint our sons Rakesh Kumar Gupta & Naresh Kumar Gupta as executors of this my WILL. They may execute this WILL jointly or severally as the case may be

The contents of the WILL. Have been explained to me in Hindi and these are according to my desire and instructions."

29. In 2006 Laxmi and Urmila executed codicils to their wills appointing Sashi as an additional executor. Ashley & Co continued to act through Ms Sheikh. Laxmi executed the codicil at the offices of Ashley & Co., Urmila executed hers at home.

30. Copies of the mirror wills were found by Rakesh and Naresh in Laxmi's desk after his death in 2009. The original wills were held in a safety deposit box at Nat West who declined to permit the children to read their mother's will because she was still alive. But it is inconceivable that they did not read Urmila's will when found in the desk. Both Rakesh and Sashi denied that they understood after 2009 what Urmila's testamentary intentions were. However, it is apparent from a number of comments in subsequent correspondence that they were so aware and I do not accept their evidence on this. On 27 January 2012 Rakesh wrote to Naresh:

"... You are deliberately not disclosing and sitting tight on all correspondence addressed to mum and dad received at 22 Forty Lane since you have occupied mums house under false pretence and withholding information from the Executors. You have made alterations to mums house without consulting the Executors since this is not your property yet."

31. Similarly on 10 May 2013 in relation to proceedings seeking appointment of a deputy. Sashi said:

"22. I believe that my late father and my mother had mirror wills. My father had told me this in a conversation we had in 2007 when he was preparing his Enduring Power of Attorney that was to be given me."

And later in the same witness statement:

> *"36. I would, and do, object to either Mr Naresh Kumar Gupta or any member of his family, being appointed as a Deputy as I firmly believe they would be unable to discharge their duty correctly, for the reasons mentioned above. In addition, I believe my youngest brother and his family are major beneficiaries of my mother's mirror Will and Last Testament (after all the relevant legal and HMRC tax formalities have been completed) and it is very probable that this will, if it has not already, cause a conflict of interest when managing the property and affairs of my mother, and what is in her best interests."*

Even if he had not been otherwise aware, Rakesh would have seen this witness statement.

E. The will dispute

32. This was fundamentally a very close family. As with most families, there were tensions at times. As Naresh and Meena lived with Laxmi and Urmila, they were inevitably close. Whilst Rakesh, Sadhana and their children visited regularly, and Rakesh would discuss Double Gee with his father, they obviously saw less of them. There have been increasing tensions between Rakesh and Naresh in more recent years. After Laxmi's death, Rakesh seems to have been deeply hurt by the imbalance in the provisions in the mirror wills as between himself and his brother, and there was an increasing hostility. Sashi has sided with Rakesh.

33. In 2013 an application was made to the Court of Protection for a deputy to be appointed in relation to Urmila's property and affairs. Naresh's witness statement exhibited a copy of Urmila's will. Also in 2013 Naresh applied to have Rakesh removed as executor of Laxmi's will due to his conflict of interest. In the event a third party was appointed administrator of Laxmi's estate.

34. After Urmila's death on 25 February 2014, Prince Evans were originally instructed as executors and, at first, both brothers dealt with Prince Evans. Sashi renounced probate on 17 July 2015. Rakesh and Naresh both signed the Inheritance Tax form in February 2015, the premise of which was that Urmila's English will was valid. On 25 August 2015, Rakesh swore the executor's oath (as did Naresh) for the purpose of obtaining probate of Urmila's will (which again assumes its validity). On 17

December 2015, Rakesh wrote to Prince Evans alleging that Urmila lacked testamentary capacity and said he was trying to obtain her medical records. In the light of this, Prince Evans ceased to act.

35. In June 2016, Rakesh alleged for the first time that Urmila's will was invalid for lack of knowledge and approval and issued a claim on 6 February 2017. On 22 August 2017 Master Bowles appointed Stephanie Rose of Clifton Ingram LLP as administrator pending suit.

F. The issues.

36. There is only one issue, whether Urmila's will is invalid due to lack of knowledge and approval.

37. It is said on behalf of Rakesh there are, in particular, four background matters which ought properly to excite the suspicion and vigilance of the court and which otherwise bear on the inherent probabilities in determining whether the will was executed with Urmila's knowledge and approval:

37.1 The dominance of Laxmi;

37.2 Urmila's limited understanding and her inability to comprehend written/spoken English;

37.3 The physical and mental health conditions which Urmila suffered from; and

37.4 The absence of any good reason as to why Urmila would want to create such a disparity in the benefits received by her three children under the will.

G. The law

38. Theobald on Wills states:[5]

> "*A testator must know and approve the contents of his will. This is because a will must be the result of the testator's own intelligence and volition, though its contents need not originate from the testator provided he understands and approves them. But a will is invalid if its contents originate from another person and the testator executes it in ignorance of its contents.*"

[5] 18th edition, 2016 at 3-016.

39. In recent years the attitude of the courts has been to move away from moral judgments and to take a more objective approach. Peter Gibson LJ said in *Fuller v Strum* [2002] 1 WLR 1097 at 1107B:

> *'32. .. The doctrine of 'the righteousness of the transaction' whereby the law places a burden on the propounder of the will, in circumstances where the suspicion of the court is aroused, to prove affirmatively that the deceased knew and approved of the will which he was executing, is a salutary one which enables the court in an appropriate case properly to hold that the burden has not been discharged.*
>
> *33. But "the righteousness of the transaction" is perhaps an unfortunate term, suggestive as it is that some moral judgment by the court is required. What is involved is simply the satisfaction of the test of knowledge and approval, but the court insists that, given that suspicion, it must be the more clearly shown that the deceased knew and approved the contents of the will so that the suspicion is dispelled. Suspicion may be aroused in varying degrees, depending on the circumstances, and what is needed to dispel the suspicion will vary accordingly. In the ordinary probate case knowledge and approval are established by the propounder of the will proving the testamentary capacity of the deceased and the due execution of the will, from which the court will infer that knowledge and approval. But in a case where the circumstances are such as to arouse the suspicion of the court the propounder must prove affirmatively that knowledge and approval so as to satisfy the court that the will represents the wishes of the deceased. All the relevant circumstances will be scrutinised by the court which will be "vigilant and jealous" in examining the evidence in support of the will: Barry v Butlin (1838) 2 Moo PC 480, 483 per Parke B.'*

40. Peter Gibson LJ went on to observe at 1107F that the '*properly objective*' approach of the court was illustrated by Lloyd J's decision in *Hart v Dabbs* [2001] WTLR 527, a case in which the will was declared valid despite numerous suspicious circumstances including that its propounder was alleged to have killed the deceased unlawfully.

41. In *Sherrington v Sherrington* [2005] WTLR 587 Peter Gibson LJ (giving the judgment of the Court of Appeal, which included Waller and Neuberger LJJ) stated at 611B:

'Although in Fulton v Andrew (1875) LR 7 HL 448 at 472, Lord Hatherley referred to 'the onus of shewing the righteousness of the transaction', the court is not required to make some moral judgment nor is it given some licence to refuse probate to a document of which it disapproves (see Fuller v Strum [2001] EWCA Civ 1879 at [33] and [65]...). As Chadwick LJ said in that case at para [65]:

'The question is not whether the court approves of the circumstances in which the document was executed or of its contents. The question is whether the court is satisfied that the contents do truly represent the testator's testamentary intentions.''

42. In the same judgment, Peter Gibson LJ stated at 618D:

'The judge appears to have thought that unless [the Defendant] produced evidence, which the judge found credible, that the deceased read the will before signing it, the burden of proof on her to dispel the suspicion roused by her involvement in the preparation of the will and being the beneficiary under it was not discharged. That is not correct. The court must consider the inherent probabilities and in so doing it must look at all the relevant evidence, including the evidence of what happened after the will was executed.'

43. In the authorities cited above, the Court of Appeal followed the long line of authority that there should be a 'two stage' approach to knowledge and approval claims:. that there was a presumption in favour of knowledge and approval so that (1) it was for the challenger to a will to raise suspicious circumstances, and (2) (and only if the burden of proof had thus been passed to him) for the propounder of the will to discharge the burden of showing that the testator did in fact know and approve of his will.

44. However, this two stage approach was not followed in *Gill v Woodall*.[6] This is an important decision of the Court of Appeal which requires detailed consideration as it is heavily relied upon by Rakesh.

45. In *Gill* Mr and Mrs Gill made mirror wills leaving their property to each other but the survivor left the estate to the RSPCA. In a very lengthy judgment, the Deputy Judge found that although there were facts alleged which aroused the suspicion of the court, those suspicions had been allayed by the evidence and held that the wife had

[6] [2011] Ch. 380 at §22.

sufficient knowledge and approval of the contents of the will. However, he held the will was invalid because her approval had been obtained through the undue influence of the husband. The Court of Appeal did not decide the undue influence issue, but held that the wife did not have sufficient knowledge and approval, reversing that finding of the judge but reaching the same result.

46. In *Gill* the two predominant features of the evidence were the domineering influence of the husband and the mental health problems of the wife. She suffered from agoraphobia, and thus feared leaving the farm which was her home, of being left alone at the farm and of social contact with strangers. There was expert medical evidence that away from the farm, and in the presence of strangers, the degree of anxiety suffered by Mrs Gill could be severe and when so, it was likely to have inhibited her ability to concentrate and absorb information. Mrs Gill developed a shy and timid personality whereas Mr Gill was exceptionally opinionated and aggressive and found it difficult to brook disagreement.

47. Lord Neuberger MR referred to the two-stage test in previous authorities and rejected it, holding that:

> *"the correct approach when considering knowledge and approval [is] to ask a single question, namely had the testator understood: (a) what was in the will when she signed it; and (b) what its effect would be".*[7]

48. He continued:

> *'Where a judge has heard evidence of fact and expert opinion over a period of many days relating to the character and state of mind and likely desires of the testatrix and the circumstances in which the will was drafted and executed, and other relevant matters, the value of such a two-stage approach to deciding the issue of the testatrix's knowledge and approval appears to me to be questionable. In my view, the approach which it would, at least generally, be better to adopt is that summarised by Sachs J in the unreported case of Crerar v Crerar, cited and followed by Latey J in Morris [1971] P 62, 78E-G, namely that the court should:*
>
> *"... consider all the relevant evidence available and then, drawing such inferences as it can from the totality of that material, it has to come to a conclusion whether or not those propounding the will have discharged the burden of establishing that the testatrix knew and approved the contents of the document which is put forward as a valid testamentary disposition. The fact*

[7] Williams, Mortimer & Sunnucks on Executors, Administrator and Probate, 21st edition, 2018 at 10-29.

that the testatrix read the document, and the fact that she executed it, must be given the full weight apposite in the circumstances, but in law those facts are not conclusive, nor do they raise a presumption." "

49. However, Lord Neuberger MR put the position in rather different terms at [14]-[15]:

> *'As a matter of common sense and authority, the fact that a will has been properly executed, after being prepared by a solicitor and read over to the testatrix, raises a very strong presumption that it represents the testatrix's intentions at the relevant time, namely the moment she executes the will.'*

50. These two statements may be reconciled if Lord Neuberger MR is taken as stating that whilst there is no legal presumption in favour of knowledge and approval in such circumstances, there is a very strong evidential presumption in favour of knowledge and approval where the will has been prepared by a solicitor and read over to the testator. This is the position taken in *Theobald on Wills* (18th ed, 2016) at 3–020–3–021.

51. The facts of *Gill* certainly bear at least a superficial similarity to the present. But its importance lies in the statements of principle not in its factual findings. Moreover, the Court of Appeal were at pains to point out that they regarded the case as a one-off on the facts. Lord Neuberger MR said at [65]:

> *65 Judging from some submissions made during the hearing of the appeal, there may be a danger of this decision being be seen as something of a green light to disappointed beneficiaries, and in particular to close relatives of a testatrix who have not benefited from her will, to challenge the will even where it has been read over to the testatrix, or to appeal a full and careful first instance decision upholding a will's validity. It is therefore right to emphasise that the facts of this case are quite exceptional, and that we are differing from the judge on an unusual basis. The facts are exceptional because, as the two highly qualified expert witnesses agreed, the testatrix suffered from what the judge held to be a fairly extreme version of a relatively unusual mental condition, which very severely affected her understanding, and which would not even have been appreciated by most doctors, let alone a solicitor reading a draft will to her, especially if he had not met her before. I would reverse the judge on the facts, but only because, having correctly found a prima facie case of lack of knowledge and approval, he then identified three matters which he*

held undermined that prima facie case, and I am of the view that none of those matters were open to him on the evidence."

So too Lloyd LJ at [69]:

"As Lord Neuberger of Abbotsbury MR has said, this is an altogether extraordinary case on the facts, above all because of the severity of Mrs Gill's agoraphobia and panic disorder."

52. At [47]- [48] Lord Neuberger MR considered, in a section of his judgment which proceeds on the assumption that there was no undue influence, the husband's dominance over Mrs Gill meant that she tended to defer to his wishes, whatever her own preference. It notable that Lord Neuberger MR treats this as a point *in favour* of the validity of the will. In other words, in the absence of undue influence, the fact that the wills are mirror wills and reflect the wishes of the husband is not a fact that will suggest lack of knowledge and approval.

53. The single-stage approach advocated in *Gill v Woodall* was followed by Morgan J in *Cowderoy v Cranfield* [2011] WTLR 1699, and was also followed by Vos J (as he then was) in *Jeffery v Jeffery* [2013] WTLR 1509.

54. The principles set out in *Gill,* and in particular the nature of the burden of proof on the person seeking to propound a will, were subsequently considered by Norris J in *Wharton v Bancroft* [2012] W.T.L.R. 693. At [28]:

"(a) The assertion that Mr Wharton did not "know and approve" of the 2008 Will requires the Court, before admitting it to proof, to be satisfied that Mr Wharton understood what he was doing and its effect (that is to say that he was making a will containing certain dispositive provisions) so that the document represents his testamentary intentions.

(b) The burden lies on Maureen to show that Mr Wharton knew and approved of the 2008 Will in that sense.

(c) The Court can infer knowledge and approval from proof of capacity and proof of due execution (neither of which the Daughters now dispute).

(d) It is not in issue that the 2008 Will was read over to Mr Wharton. The Court of Appeal observed in Gill v Woodall at paragraph [14], that, as a matter of common sense and authority, the fact that a will has been

properly executed, after being prepared by a solicitor and read over to the testator, raises a very strong presumption that it represents the testator's intentions at the relevant time.

(e) *But proof of the reading over of a will does not* necessarily *establish "knowledge and approval". Whether more is required in a particular case depends upon the circumstances in which the vigilance of the Court is aroused and the terms (including the complexity) of the Will itself.*

(f) *So the Daughters must produce evidence of circumstances which arouse the suspicion of the Court as to whether the usual strong inference arising from the manner of signature may properly be drawn.*

(g) *It is not for them positively to prove that he had some other specific testamentary intention: but only to lead such evidence as leaves the court not satisfied on the balance of probabilities that the testator understood the nature and effect of and sanctioned the dispositions in the will he actually made. But this evidence itself must usually be of weight, because in general the Court is cautious about accepting a contention that a will executed in the circumstances described is open to challenge.*

(h) *Attention to the legal and evidential burden can be decisive where the evidence is in short supply. But in other circumstances identifying the legal and evidential burden is simply a tool to enable the probate judge to identify and weigh the relevant elements within the evidence, the ultimate task being to consider all the relevant evidence available and, drawing such inferences as the judge can from the totality of that material, to come to a conclusion as to whether or not those propounding the will have discharged the burden of establishing that the document represents the testamentary intentions of the testator.*

29 *A challenge on the grounds of want of knowledge and approval is not precluded by the Daughter's admission of testamentary capacity. There are plainly cases in which the Court will accept that the testator was* able *to understand what he was doing and its effect at the time when he signed the document but needs to be satisfied (by something other than inference from the fact of capacity and due execution of the will) that he did* in fact *know and approve the contents, i.e. understand what he was doing and its effect: see at [64]."*

55. In *Brennan v Prior* [2013] WTLR 1701 [71] Mark Herbert QC observed that

"... the law does not require a testator to be shown to have knowledge and approval of every effect and consequence of his will. All that is required is satisfactory evidence that he knew and approved the contents of his will".

The deputy judge applied *Wharton v Bancroft*, and found that it did not matter whether or not the testator truly appreciated the financial effect the will would have upon the claimant, who would otherwise have inherited his entire estate under the intestacy rules.

H. The construction issue

56. It is Rakesh's contention that clause 3 of the will should not be construed as giving Naresh a cash sum equivalent to the available nil rate band in any event (the construction adopted by Prince Evans, the solicitors who originally dealt with the administration of the estate). Instead, Rakesh contends, clause 3 should be construed as giving Naresh a sum equivalent to the nil rate band less the value of the other property passing under the will. Naresh has made it clear that he does not accept Rakesh's construction (as has the Administrator, Stephanie Rose). Rakesh relies on the decision of the Court of Appeal in *RSPCA v Sharp*[8].

57. I am not asked to decide this issue. However, while a testatrix must know and approve of the contents of the will, she need not understand their legal effect: *Theobald on Wills* at para 3–018[9]. It follows that a testatrix may know and approve of a will even if she is mistaken as to its meaning: see *Beech v Public Trustee* [1923] P 46 at 53 per Salter J.[10]

> *"The contention is that if a will does not have the effect intended, the testator cannot be said to have known and approved of its contents. I think this contention is fallacious, and based on a confusion between the terms and effect of the document [...] if, knowing the words intended to be used, he approves them and executes the will, then he knows and approves of the contents of the will [...] even though such approval may be due to a mistaken belief of his own, or to honestly mistaken advice from others, as to their true meaning and effect".*

58. The principle in *Beech* was applied most recently in *Re Hayward* [2017] 4 WLR 32. The defendant had contended that a clause in the will was ineffective to deal with an asset as the testator intended, and therefore that he could not have known and

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[8] [2010] EWCA Civ 1474.

[9] The passage from Theobald was approved by the High Court in *Brennan v Prior* [2013] WTLR 1701 and is also reflected in Williams, Mortimer & Sunnucks (21st ed, 2018) at para 10–48: '*If a testator approves the words used in his will those words must stand, even if they do not have the legal effect that the testator intends.*'

[10] *Beech* was upheld on appeal, although this point was not appealed: *Beech v Public Trustee* [1923] P 46 at 58.

approved of the will. Mr Recorder Klein sitting as a High Court judge held at para 114 that:

> "*it is not a requirement of the plea* [knowledge and approval] *in all cases, that it must be established that the testator must have appreciated the legal effect of the words used in the document in issue.* "

He also observed that '*a probate court is not a court of documentary construction*' so it would be inappropriate to express a concluded view on the construction of the clause, but in any event even if the defendant's construction were correct this would not prevent knowledge and approval being made out (at para 147).

59. A finding of knowledge and approval does not require that a testatrix has a lawyer's grasp of technical language; it is sufficient if the solicitor has explained the meaning of the will to her (although, as stated above, the solicitor may be mistaken). As Newey J stated in *Greaves v Stolkin* at para 73:

> *'.. a testator need not have a full understanding of legal terminology used to give effect to his wishes.'*

I. The witnesses

60. I heard oral evidence from no less than ten members of the Gupta family, including all six grandchildren, currently aged between 39 and 29.

61. I have to say that I found all six grandchildren excellent witnesses. In each case, they were seeking to recall their memories of their grandmother, how much English she understood, and her physical and mental abilities in the 1990s when they were all young. Their evidence was in each case compelling, affectionate and articulate and their respective parents are entitled to be proud of a team of high-achieving children. Although their evidence was by no means to the same effect (on the contrary, a point I come back to below) I am satisfied that each of the six was seeking to give helpful and truthful evidence.

62. I also accept the evidence of Naresh's wife Meena. Inevitably, Meena had a closer knowledge of Urmila because she lived with her.

63. For the most part, I recognise that all of Rakesh, Naresh and Sashi were helpful witnesses who gave their evidence in moderate and accurate terms. But I have already indicated that I do not accept the evidence of Sashi and Rakesh that they did not know the contents of their mother's will after 2009 and I think that Rakesh's objectivity was a little coloured by his unhappiness with the contents of the will.

64. It is notable that Rakesh has sought to look for ways to overturn the will. He first asked whether it could be invalid because Urmila's middle name had been wrongly stated, then (22 months after Urmila's death) indicated he would seek to set it aside on grounds of lack of capacity, before finally settling on a contention of lack of knowledge and approval. Yet after Urmila's death he had been willing to sign an oath as executor and an IHT form which relied on the will as valid. Thus, although I recognise that his evidence was largely accurate, where necessary I would prefer Naresh's evidence.

65. I should however make one point before leaving Rakesh. Naresh obtained a handwriting expert's report to the effect that a letter from Laxmi which Rakesh had obtained had been forged to the extent that strokes had been added to a sentence written by Laxmi referring to Urmila's mental health in "04 05" to make the numerals look like "94 95". It was said this had been forged by Rakesh to support his case (which he was putting forward at the time the letter surfaced) that Urmila lacked testamentary capacity in 1998 and the obvious person to have forged the document was Rakesh. The evidence was wholly inadequate to support this serious allegation against Rakesh and I reject it.

66. As for Naresh, it was said that he had confirmed through his solicitors that he had disclosed all video evidence in his possession (of family gatherings) whereas in fact he said he had selected video evidence which he thought was helpful to his case. Six and a half hours of video evidence was disclosed which, to the extent it assisted anyone's case, assisted Rakesh because it did not show Urmila speaking English at any stage. I was asked to draw adverse inferences against Naresh as a result of his failure to disclose other video material, which I decline to do. Further video evidence could logically either have shown Urmila speaking English (in which case it would have assisted Naresh's own case) or it would have shown her not speaking English (in which case it would not have added to what was already available).

67. As for the other witnesses, the most important was Ms Varsani. At this distance in time, her evidence was about her practice rather than a specific recollection. I accept it..

68. Mr Parmar, a family friend, gave evidence as to his dealings with Mr and Mrs Gupta, which I also accept, so far as the evidence goes. The two carers gave evidence as to Urmila's knowledge of English and also gave helpful evidence which I accept as far as it went. I also took note of the hearsay statements put before me and the unchallenged witness evidence.

J. The suspicious circumstances alleged by Rakesh

69. It is relevant to identify in some detail the suspicious circumstances alleged by Rakesh in relation to the execution of Urmila's will.

a. Laxmi's dominance

70. It is Rakesh's case that Laxmi was the head of a traditional, male-centred family. That does not detract from the fact that the relationship between Laxmi and Urmila was a close and loving one. However, it is said to bear on the question of whether it is more likely than not that the Will was drafted simply on the basis of instructions from Laxmi with little or no involvement on the part of Urmila. A clear indication of Laxmi's propensity to make unilateral decisions and of his willingness to act on behalf of Urmila may be discerned, it is said, from the contemporaneous documents. Thus Laxmi would correspond with third parties (including banks and accountants on behalf of the Deceased) and he would complete documents/letters for Urmila to sign by way of a mechanical process.

b. Urmila's limited ability to understand English

71. There is a striking divergence in the evidence submitted on behalf of, respectively, Rakesh and Naresh as to Urmila's ability to understand written and spoken English. It is Rakesh's case that Urmila only had a very basic understanding of English which was limited to simple words, greetings and short phrases. Whilst this may well have enabled Urmila to communicate (at a basic level) with members of the family and her carers it is said that it is a long way away from the level of comprehension needed to

understand the terms and effect of any will, still less the terms of the Will (whether written or spoken in English). As to Urmila's ability to understand written English, the 2006 Codicil records that she *"has an imperfect knowledge and cannot read the English language"*. In the circumstances, Rakesh submits that the burden falls upon Naresh to establish that the Will was in fact communicated orally to Urmila in a way that she could understand (insofar as she would have been capable of understanding it). There is before the court video footage of Urmila from 1987 onward (including, in particular, footage of family gatherings). Notwithstanding that it extends to around 6.5 hours, there is not a single example of a meaningful conversation in English involving Urmila. Indeed, from the entirety of that footage, Rakesh's solicitors have identified just a handful words spoken by Urmila in English.

c. Urmila's physical/mental illnesses

72. Rakesh does not seek to impugn the Will on the ground that Urmila lacked testamentary capacity. Nevertheless, *"[t]he testator's feebleness of body or mind may be relevant to knowledge and approval"*.[11] In this case, the physical and mental illnesses afflicting Urmila are of relevance to: (i) whether she could have understood the terms of the Will; (ii) the steps that would need to have been taken in order properly to convey the meaning of the Will to Urmila; and (iii) Urmila's reliance on Laxmi; and (iv) the likelihood of Urmila having had little or no active involvement in the preparation of the Will.

73. The medical evidence suggests, according to Rakesh, that, at the time of the Will, Urmila was frail, dependent on others (in particular Laxmi), and susceptible to confusion. A brief summary of what Rakesh says were certain of Urmila's medical conditions is as follows:

(i) Deafness

73.1 Urmila was diagnosed with "chronic deafness" in 1967 and bilateral perceptive deafness in 1976. This was followed by a further diagnosis of deafness in 1984. Notwithstanding the above diagnoses, it is common ground that Urmila did not use her hearing aid.

[11] Williams Mortimer and Sunnucks at 10-36.

(ii) Cerebellar Ataxia

73.2 Urmila was diagnosed in 1985 (following a CT scan) with tremor symptoms in her hands, head and body as a result of "general atrophy". This was followed with a diagnosis in June 1993 of Cerebellar Ataxia – a disease of the brain which affects balance, gait and eye movements. In fact, it appears that Urmila suffered from Cerebellar Ataxia from well before then.

(iii) Impaired Vision

73.3 In 1973, Urmila had experienced a slight blurring of vision for the last two years. In 1991, she was diagnosed with optic atrophy and retinal pigmentation.

(iv) Obesity / Immobility

73.4 Urmila was morbidly obese for the majority of her adult life. A letter from Northwick Park Hospital in 1974 recorded that she was a *"markedly obese woman"*. She was wheelchair bound by (at least) 2001. From (at the latest) 2004 she was reliant on a bath lift and from (at the latest 2006) she was reliant on a bed hoist. Urmila's impaired mobility was compounded by incontinence, which she developed during the 1980s.

(v) Mental health

73.5 Urmila was treated for anxiety in 1982. It is said by Rakesh that her mental health declined in the 1990s. On 10 July 2000 (18 months after the Will was executed), a specialist geriatric registrar wrote the following letter to Urmila's GP:

> *"Essentially she has longstanding medical problems which are irreversible, she suffers from quite advanced cerebellar syndrome and I suspect she has some early dementia coupled with this."*

73.6 In June 2004, Rakesh says Laxmi noted that over the last few months, Urmila was *"increasingly confused"* and her *"short term memory is now very poor"*. A mental assessment in March 2005 recorded that *"it was not possible to use the Mini Mental State Examination as a tool to assess her cognitive functions because of her difference [in] cultural and educational background"*.

Nevertheless: *"She did not know of her date of birth or age... could not give me her address... and she could not remember who [the psychiatrist] was at the end of the interview"*. This was a year before the 2006 Codicil was prepared and executed. In June 2006 Laxmi stated to the Brent Primary Care Trust as follows: *"My wife Mrs Urmila Gupta is suffering from dementia and is bed ridden"*. Her hospital notes in August 2006 (which followed a stroke on 2 August 2006) record that Urmila : *"suffers from severe dementia"*.

74. In summary, it is said by Rakesh that it is obvious from her medical records that Urmila was afflicted with a number of serious conditions which materially impacted on her independence, her willingness to allow Laxmi to act on her behalf and her ability to read/understand what was spoken to her.

d. No reason to give Naresh the vast majority of the estate

75. Rakesh says there is no evidence of any animosity or disagreement between Urmila and Rakesh (or Sashi) up to and including the date on which the Will was executed. On the contrary the evidence suggests that she had a close relationship with all of her children. Even if there were (which there is not) evidence of a general wish to give more to Naresh, this does not explain the convoluted provisions through which such benefit was to be conferred including clause 3.

K. Suspicions: my Conclusions

76. I have set out Rakesh's case as to suspicious circumstances in considerable detail because it is important that I do justice to his case. However, I do not accept that in this case Rakesh has in fact shown any suspicious circumstances at all in relation to Urmila's knowledge and approval of the will. I deal with each of the four heads alleged individually.

a. Laxmi's dominance

77. There was evidence that Laxmi saw himself as head of a traditional Indian family. Several of the grandchildren indicated that what he said went, and he did not brook disagreement.

78. On the other hand, it was apparent that in some spheres, Urmila had real influence over him. In Laxmi's memoirs he makes clear that it was Urmila who was behind the decision to stay in England when his stint at the High Commission ended in the 1960s. What is important from this is that Laxmi himself recognised the significant role of his wife in decision-making. The Grandchildren's evidence recognised that Urmila had much more of a say on matters in relation to the family.

79. I accept that on business matters, investment, finance and the like, Laxmi would make the decisions. It is possible to see in the correspondence with Ms Sheikh, it is Laxmi that is discussing inheritance tax and similar matters in detail. Probably the mirror wills reflected what Laxmi wanted. But, as pointed out in relation to *Gill v Woodall*, the fact that one partner is accustomed to go along with the wishes of the other is not, in a case where there is no undue influence, a suspicious circumstance. On the contrary, it provides an explanation for the terms of the will.

80. Moreover, it is one thing for Urmila broadly to go along with Laxmi's wishes. It would be quite another for Laxmi not to discuss the terms of the mirror wills before they both signed them. All the witnesses spoke of a close and loving relationship. It would be astonishing, in the context of the evidence I heard as to their relationship, for Laxmi not to have discussed with Urmila the contents of their mirror wills before their execution even if the driving force was Laxmi. And I note that in relation to their Indian wills the two wills were not identical at all.

(b) Urmila's limited understanding and her inability to comprehend written/spoken English;

81. Here there was a contrast between the evidence of the Grandchildren, as well as their parents. Rakesh and Sashi, and their children gave evidence that Urmila's English was limited to a few words. The six and a half hours of video of family gatherings show Urmila speaking no English beyond "OK" and "Happy Diwali".

82. Others gave evidence of Urmila conversing in English. One of the abiding memories of this case is Rishi vividly explaining his grandmother's practice in taking him, as a young child, for a Happy Meal at McDonalds. Both he and Mohini explained that as young children they had happy and memorable conversations with Urmila in English.

83. As I have said, I formed the view that all the Grandchildren were excellent witnesses. How, therefore does one reconcile these differing versions? In my judgment, they can be reconciled. Urmila's Hindi was obviously much better than her English. Speaking a language which you speak poorly is partly a matter of confidence. It is not surprising that in later life, she conversed in Hindi when she was with people who could understand Hindi, and did not have the confidence to express herself in English in a group. But in other circumstances, such as when she was alone with grandchildren who could not speak Hindi, she did not have much choice and would probably feel more willing to express herself in English. And after all, it was Mohini and Rishi who lived with her and saw much more of her. It is worth citing Rishi's evidence[12]:

> *". Could you turn to paragraph 15 of your witness statement.*
>
> *A. Yeah.*
>
> *Q. There you say: "... she communicated with me in English ..."*
>
> *A. Yes.*
>
> *Q. Then you go on to say: "She would say things like, 'Shayam, get up, you have to go to school', or 'Shayam, drink your milk' or 'Do you homework' or 'Don't trouble your sister' ... 'Get out of the tub'."*
>
> *A. Yeah.*
>
> *Q. So your recollection is of your grandmother speaking in short phrases, isn't it?*
>
> *A. No, those are just sentences that I remember off the top of my head, because she said it repeatedly to me almost every single day. If you want a more sort of in-depth conversation I had with my grandmother, it was more when she was telling me when she came to this country, or when the extension took place between '97 to '99 and I spoke to my grandmother about which room I should stay in. I remember her talking to the builders with regards to the works that are going to happen in the house, and she was a big dynamic of the extension because I remember her telling my grandfather, "Look, we need to make this house bigger. Rishi is getting older. He can't share a room with me anymore. He needs his own space." And then she was going to go live on the other side of the extension, but she said to my grandfather, "No, I don't want to be far away from you." I remember it so clearly, because I remember thinking, "Oh, that's so cute," but I*

[12] T4/11-12

was just really excited about having my own room and having by own bathroom which -- I couldn't wait. So, yeah --

Q. You have just recounted a conversation, or a number of conversations, between your grandmother and your grandfather.

A. And me; I was part of these conversations. It wasn't just between my grandmother and my grandfather. I was there. I was nine/ten years old. I was speaking to them about the house, the extension. I remember speaking to them about the flooring, where my grandfather's office is going to be, the guest room downstairs. Where my mum and my grandmother would do the ironing upstairs, or where they could have a little place for themselves. I remember that my room was painted blue because I support Chelsea. I remember having all these conversations with them, with my grandparents, and talking to them about it, because it was a very exciting time in our lives between '97 and '99."

84. The evidence from the two carers, albeit limited in value as it deals with a later period, indicates at least a modest understanding of the English language on the part of Urmila.

(c) *Urmila's physical/mental illnesses*

85. Although Urmila suffered from a variety of mental and physical conditions in later life, and was slowing down significantly by 1998, I do not accept that by 1998 her physical or mental condition was impaired in any way which would really have impaired her ability to have knowledge and approval of her will. It is important to remember that until 2003/4 she and Laxmi travelled every year to India, which in my judgment is an indication of her physical and mental state. Indeed, bearing in mind that her condition was gradually worsening as she reached old age, it is notable that she travelled to India for five years after executing her will.

86. It is also worth seeing her frailties in perspective. For example, there is a reference in a single sentence in an extract from a medical record in 1967 to "chronic deafness" but none of the witnesses from whom I heard supported that diagnosis at that time. It is impossible to know what that referred to. It may have been a specific temporary problem, it is impossible to know. It is entirely unreliable evidence to suggest that she suffered chronic deafness from 1967 onwards and contrary to the evidence before me.

That indicates one must exercise a measure of care in relation to the documents where they were not supported by oral evidence.

87. Some of the documents evidencing her frailties postdate 1998. Although it is not clear when her dementia started, I do not accept that there were any real signs of dementia until at least 2000. I do not accept that any physical or mental frailty in 1998 had any material effect on her ability to have knowledge and approval of the contents of her will. The evidence I heard is not consistent with such a conclusion.

(b) The absence of any good reason as to why Urmila would want to create such a disparity in the benefits received by her three children under the will.

88. I do not consider there is anything in this point. Firstly, it is inescapable that Laxmi sought to create such a disparity in benefits between his children. His reasons are a matter of speculation, but it is apparent from Ms Sheikh's letter of 17 November 1998 (which flags the point up to him) that what he did was deliberate. Secondly, he was the head of the family and it was not surprising that Urmila went along with his wishes. Thirdly, if one looks at Urmila's Indian will, whilst one can debate the exact value of the shares, it is apparent that she did not treat her children equally.

L. The process of execution of the will

89. I have set out above the principal evidence relevant to the execution. Whilst in the absence of a file and in the absence of being able to rely on Ms Sheikh's evidence what happened is a matter of inference, I make the following factual findings.

90. Firstly, in closing submissions, Ms McDonnell referred me to the passage from the judgment of Peter Gibson LJ in *Fuller v Strum*[13] and submitted that it was apposite here:

> *"39. In the circumstances there are only three possibilities, as Chadwick LJ pointed out in the course of this argument before us: (1) Michael told the truth and the will was made with the knowledge and approval of the testator (2) Michael deceived the testator as to the contents of the will save for the legacy to Mrs Griffin; (3) the testator did not care what Michael put in the Will, save for the legacy of Mrs. Griffin."*

[13] [2002] 2WLR 1097 at [39}

91. Applied to the present, the logical possibilities are:

(i) Ms Sheikh and Ms Varsani's evidence is correct, and that Ms Sheikh explained the material terms of the will to Urmila and/or Laxmi did so.

(ii) No explanation was given to Urmila and she executed a will she did not understand or approve and Laxmi stood by and permitted her to do so.

(iii) Urmila executed her will not caring what its contents were.

92. This seemed to me a helpful way of testing the position. In the light of the evidence before me, I have no doubt that Urmila would not have executed a will if she did not understand and approve its terms, and I also have no doubt that Laxmi as a fundamentally decent loving husband would not have permitted her to do so. Nor would Ms Varsani have agreed to witness a will if she thought the deponent did not approve or understand it, and, whatever may be said about Ms Sheikh, I do not think in 1998 she would have done so either. Indeed, the correspondence we have from Ms Sheikh suggests she was anxious that her clients should understand the contents of the will. So, notwithstanding my misgivings about Ms Sheikh, I think her evidence in this regard is consistent with the other evidence I heard.

93. The evidence of Meena is also important in this regard. I accept her recollection that she took both Laxmi and Urmila to Ashley & Co twice at around the time of the execution of the will. That is significant because the second visit by both Laxmi and Urmila is not clear from the available correspondence and it suggests a degree of involvement on the part of Urmila in the pre-execution dealings with Ms Sheikh and not merely Urmila turning up to sign the will. Moreover, it is apparent from the available correspondence that there were at least two drafts of the will sent to Laxmi and Urmila prior to execution.

94. In these circumstances I am satisfied that the will was executed with the knowledge and approval of Urmila. I do not consider there are any suspicious circumstances shown concerning the execution of the will.

M. Disposition

95. In all the circumstances this claim fails.