

Neutral Citation Number: [2017] EWHC 133 (Ch)

IN THE HIGH COURT OF JUSTICE  
CHANCERY DIVISION  
PROBATE

Claim No HC-2015-002485

IN THE ESTATE of PRABHAVATI DAHYABHAI PATEL

Rolls Building, 7 Rolls Building  
Fetter Lane, London EC4A 1NL

Date: 10<sup>th</sup> February 2017

Before:

ANDREW SIMMONDS QC  
(Sitting as a Deputy Judge of the High Court)

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Between:

GIRISH DAHYABHAI PATEL

Claimant

and

YASHWANT DAHYABHAI PATEL

Defendant

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Jonathan Russen QC and Laurie Scher (instructed by Stevens & Bolton LLP) for the Claimant  
Alexander Learmonth (instructed by Gardner Leader LLP) for the Defendant

Hearing dates: 21, 22, 23, 24 and 25 November and 1 December 2016



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**APPROVED JUDGMENT**

I direct that pursuant to CPR PD 39A para.6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

**Andrew Simmonds QC:**

**Introduction**

1. In these proceedings the Claimant, Girish Patel (“Girish”), asks the Court to grant probate in solemn form of the alleged last will dated 23 June 2005 (“the Will”) of his mother Prabhavati Dahyabhai Patel (“the Deceased”), who died on 29 September 2011. Under the Will, Girish is named as sole executor and sole beneficiary. The Defendant, Yashwant Patel (“Yashwant”), is Girish’s brother. In 2012 he obtained a grant in respect of an earlier will of the Deceased dated 18 June 1986. Under that earlier will, Yashwant was named as sole executor and sole beneficiary. Accordingly, Girish also seeks revocation of that grant on the basis that the earlier will was revoked by the (later) Will.
2. The principal issue in the case is whether, as Yashwant alleges, Girish forged the Will. There is a subsidiary issue as to whether, if the Will is genuine, the Deceased knew and approved of its contents.
3. This litigation has played out against the background of (and, according to Yashwant, forms part of) a long-running and acrimonious dispute litigated across multiple jurisdictions between Girish, Yashwant and their other two brothers over control of the family business empire, an undertaking which might be worth in the region of US\$200m.
4. I must begin this Judgment by explaining the family background, including the other litigation between its members, before turning to the parties’ respective cases as to the execution of the Will.

**Family background**

5. The Deceased was born in 1923 and hence was aged 88 when she died. She married Mr D. P. Patel and they had four sons: Rajnikant (born in 1945), Yashwant (born in 1947), Girish (born in 1952) and Suresh (born in 1953).
6. The family lived initially in Gujarat, India, in a small town called Ode. D. P. Patel was involved in farming and agriculture. In the early 1950s (after the birth of Yashwant but before Girish was born), the family relocated to Singapore where Girish and Suresh were both born. In Singapore,

D. P. Patel started a commodities business with financial help from his father-in-law, Manilal Amin, who also lived there.

7. In 1957, D. P. Patel suffered a stroke and was partly paralysed. He and the Deceased returned to live in India for six years with Girish and Suresh. Rajnikant and Yashwant remained in Singapore to continue their education.
8. Despite these difficulties, the family business prospered. On reaching working age, each of Rajnikant, Girish and Suresh became involved in it. The business now operates on a global scale through various corporate vehicles, the "jewel in the crown" being the Aumkar palm oil plantation in Malaysia. These three brothers in due course dispersed across the world and took operational control of family business affairs in the region where they lived. Rajnikant lives in Australia, Girish lives in London and Suresh remained in Singapore. The family also has a sideline in commercial property development.
9. Yashwant followed a different path. He trained as a medical doctor in Singapore, London and Newcastle. He is a Fellow of the Royal College of Radiologists. He emigrated to New York in 1979 and has lived there ever since. He has had no operational involvement in the family business and has no financial stake in it. That was Yashwant's explanation for the Deceased's 1986 will which named him as her sole beneficiary.
10. There was broad agreement between the parties about the Deceased's character. She was a woman of great moral strength and determination who had to make considerable sacrifices to bring up her four sons, especially when her husband was incapacitated. She was an astute and devout lady with a "no nonsense" approach who commanded great respect amongst friends and relatives. She had a limited formal education and spent her life as a housewife and mother. She spoke and read in Gujarati, her mother tongue, and she learned to speak Malay fluently. However, she had limited spoken English and could not read or write in that language. She always spoke to her sons in Gujarati.
11. Throughout the period of about 40 years leading up to her death, the Deceased lived in Singapore with Suresh and (following his marriage) with his wife Shila and their family. D. P. Patel died in 1992. From her base in Singapore, the Deceased made regular, and in some

instances prolonged, visits to stay with her other sons in the USA, Australia and the UK. Her last visit to the UK to stay with Girish was in May/June 2005.

12. The various corporate vehicles through which the Patel family businesses were owned and/or run, included the following:
  - (1) Agromin (Aust) Pty Ltd ("Agromin") which is an Australian company trading pulses and grains;
  - (2) Aumkar Plantations Sdn Bhd ("Aumkar") which is a company owning the valuable palm oil plantations in Malaysia;
  - (3) Barrington Development Ltd ("Barrington") which is a Seychelles company owning 30% of the shares in Aumkar;
  - (4) Barrowfen Properties Ltd ("Barrowfen") which is a UK company with a large commercial property in Tooting, London; and
  - (5) Makita Corporation Ltd ("Makita") which is a Cayman Islands company owning another commercial property in Alperton, London.
13. I should mention at this stage that shares in Barrington, Agromin and Makita were registered in the name of the Deceased and also that, in 1997, Girish set up a Guernsey trust (the P. D. Patel Discretionary Trust) for the benefit of his two children and of which the original trustees were Yashwant and Suresh. The beneficial ownership of some of the companies referred to is in issue in other proceedings and I make no findings in that regard.
14. It is Yashwant's case that in the 1990s (before email or scanners were so widely available) family members adopted a practice of exchanging blank pre-signed letters, often on corporate headed note-paper, to facilitate the completion of business instructions and formalities within the Patel group. Yashwant claims that this practice extended to letters pre-signed by the Deceased in view of her shareholdings in, and directorships of, various family companies.

15. Relations between the four brothers began to break down in around 2009. Generally speaking, this seems to have resulted in Girish being at odds with some, or all, of his other brothers and certain of their children. In the present proceedings, Suresh has actively supported Yashwant's case, whilst Rajnikant has played no part at all.
16. I will now give a brief overview of some of the other litigation between the brothers. As will appear, aspects of it are said to support Yashwant's case that Girish forged the Will.
17. In September 2014 Girish issued proceedings in New South Wales, Australia against Agromin seeking an order for preliminary discovery to support an intended claim that Agromin did not pay consideration to the trustees of the P. D. Patel Discretionary Trust in relation to a share buy-back. The directors of Agromin are Rajnikant and his son Prashant. Girish sued as sole trustee of the Discretionary Trust, his case being that the Agromin shares registered in the Deceased's name were not held by her beneficially but on behalf of the Discretionary Trust and that Yashwant and Suresh had resigned as trustees and appointed Girish in their place by a Resolution dated 2 December 2013. The authenticity of that Resolution was in issue in threatened proceedings in Guernsey. In that connection, Yashwant and Suresh obtained a report from a forensic document examiner, one Maurice Rodé (since deceased), which cast doubt on the authenticity of the Resolution. Girish disputed the suggestion that he had forged it. The threatened Guernsey proceedings were ultimately unnecessary and that issue has not been determined.
18. Also in September 2014, Yashwant issued proceedings in the Cayman Islands seeking rectification of the share register of Makita so as to transfer one share registered in the name of the Deceased to Yashwant in his capacity as executor and beneficiary of the 1986 will. In those proceedings, Girish contends *inter alia* that the share in question was registered in the Deceased's name in error and should be registered in the names of the trustees of the P. D. Patel Discretionary Trust.
19. In October 2014, Girish issued proceedings in the Seychelles against Yashwant and Odra (Seychelles) Ltd, the resident agent of Barrington. He alleged that the Deceased had executed a transfer of her Barrington shares to him and had signed a letter resigning as a director of that

company. In those proceedings, Girish relies on a stock transfer form and resignation letter each dated 3 January 2011 and purportedly signed by the Deceased, and also on a letter dated 5 March 2011 purportedly from Yashwant confirming that the Deceased had executed those documents. Yashwant alleges that all three documents were forged by Girish. These proceedings are due to be tried in March 2017.

20. In February 2015, Suresh issued proceedings in the Chancery Division relating to his directorship of Barrowfen. Girish claimed to have received a resignation letter from Suresh dated 11 November 2013, leaving Girish as sole director of Barrowfen. Suresh denied that the letter was authentic. In June 2015, Dr Audrey Giles (on behalf of Girish) and Mr Robert Radley (on behalf of Suresh), two leading forensic document examiners, prepared a joint report concluding that there was strong evidence that the purported resignation letter was not authentic. Girish consented to an Order made by Proudman J declaring that the resignation letter was not authentic but he has always maintained that he did not forge it. He says that he received the letter by post, assumed that it was genuine and relied on it. I note that the joint expert report, having referred to various typographical features in the purported letter, stated this:

“However, these features do not positively identify Girish Patel as having produced the letter as these features are used by a significant percentage of the population as a whole”.

21. It will be noted that common features of the litigation involving the brothers are (a) that it centres on control of the various corporate vehicles through which the family businesses are owned and/or run, and (b) on three occasions Girish has been directly accused of, or is said to be implicated in, the forgery of documents supporting his case, viz (i) the Barrington documents in January 2011 (allegedly signed by the Deceased and/or Yashwant), (ii) the Barrowfen resignation letter of November 2013 (allegedly signed by Suresh) and (iii) the P. D. Patel Discretionary Trust documents of December 2013 (allegedly signed by Yashwant and Suresh).

### **The execution of the Will**

#### **Girish's case**

22. Girish's account of the circumstances surrounding the execution of the Will was first set out in his second witness statement dated 18 June 2015 and was supplemented in his eighth witness statement dated 28 July 2016. His version of events is as follows.

23. The Deceased visited Girish in London in May/June 2005, on her way to the United States to attend the wedding of Yashwant's daughter. The Deceased stayed with Girish and his family who live at 2 Highfields Grove, Highgate, London N6. Girish also has office premises at 57 Gorst Road, London NW10 ("Gorst Road") which form part of the Park Royal light industrial estate, about 30 minutes drive from Girish's home.
24. During this visit, the Deceased went to see her sister, Ranjanben, who lived in Edgware. Ranjanben suggested that the Deceased make a financial donation to the local Swaminarayan Temple, Swaminarayan being a Hindu sect of which Ranjanben was a devotee. The Deceased was a devotee of a different sect, the Shiva sect, and did not wish to support the Swaminarayan sect. Suresh had joined the Swaminarayan sect and the Deceased told Girish that she feared that, on her death, Suresh would give her money to that sect, which she did not want to happen.
25. This incident prompted the Deceased to think about making a will. She repeatedly raised the subject with Girish. She said that she would leave everything to Girish so that he could make charitable donations in her name. Girish's view was that a will was unnecessary: the Deceased had limited assets and it would be simpler for the brothers to liquidate her assets and agree on which charities should benefit after her death. Girish estimated the value of his mother's assets to be approximately US\$200,000 comprising cash, investments, the family home in Ode and jewellery.
26. Girish hoped his mother would let the subject drop, but she didn't. Eventually, he agreed to draft a will for her. For reasons which do not matter, Girish had in his possession a copy of the will of his deceased neighbour, Alexandros Michael, and he used this as a sort of precedent to enable him to draft a simple will for his mother in manuscript. Girish had no intention of benefiting personally; the intention was that he would donate the Deceased's estate to charities selected by the Deceased during the remainder of her lifetime. The manuscript will (which does not survive) was drafted in English. The Deceased did not mention to Girish that she had made a will in Yashwant's favour in 1986. Girish simply assumed that she had never made a will before.

27. The Deceased executed the Will at the Gorst Road offices the next day, which was 23 June 2005. The Deceased had arranged a shopping trip to Wembley with two friends, namely Ranjanbala Patel ("Ranjanbala"), not a member of this Patel family but a former employee of Girish, and Saryubala Patel, whose daughter Jayshree Patel ("Jayshree") had been married to Girish's brother-in-law. The Deceased arranged to meet her friends at Gorst Road before going shopping nearby in Wembley. Taking advantage of this, Girish got his administrative assistant/ secretary, Nirja Shah (now Nirja Jain, "Nirja"), to type up the manuscript draft of the Will. Girish drove the Deceased to Gorst Road at about 10.00 am. A little later, Ranjanbala arrived and, sometime after that, so did Saryubala, who was dropped off by Jayshree. Girish asked Ranjanbala and Jayshree to witness the Will and they agreed to do so.
28. The party went up to Girish's offices on the first floor. As the Will was in English and the Deceased did not read or write in that language, Girish read out each clause, translating it into Gujarati, and gave his mother a brief oral explanation in Gujarati of the effect of each of them. The Deceased indicated her assent. This occurred in the presence of the two witnesses, Ranjanbala and Jayshree, who are fluent in both English and Gujarati. Also present at a desk in the corner of the room was Nirja.
29. The Deceased then signed the Will in Gujarati in the presence of Ranjanbala and Jayshree who then signed as witnesses. Girish put the completed Will in an envelope and filed it in his personal filing cabinet in his office. The Deceased then left with Ranjanbala, Saryubala and Jayshree.
30. The Deceased did not ask for, and was not given, a copy of the Will. Girish did not tell his brothers about it.
31. The four clauses of the Will were in the following terms:
- "1. I revoke all my earlier Wills and Testamentary dispositions and declare this to be my last true Will and Testament.
  2. I appoint my son Girish Dahyabhai Patel to be the sole Executor and Trustee of this my Will.



3. I make the pecuniary bequest that my total estate both real and personal less expenses and taxes to my said son Girish Dahyabhai Patel for his own benefit.
4. My estate is to include my spouse's assets who died intestate and not transferred into my name".

#### Yashwant's case

32. Yashwant's case is that Girish fabricated the Will at some time in late 2014 or early 2015 and has suborned Ranjanbala, Jayshree and Nirja to give false evidence to bolster his own account of the execution of the Will.
33. It is said that Girish's motive was to secure control of assets, in particular shares in family companies which were registered in the Deceased's name, and this would also enable him to gain an advantage in the ongoing litigation with his brothers over the valuable Patel businesses.
34. In terms of *modus operandi*, Yashwant's case is that Girish utilised a piece of blank company stationery pre-signed by the Deceased (as to which see paragraph 14 above), cut off the top and bottom to remove references to family companies, had the form of will drafted by him printed onto the pre-signed piece of paper so that it would "fit round" the Deceased's pre-existing signature in the bottom right-hand corner, and then procured Ranjanbala and Jayshree to sign it, falsely representing that they had witnessed the Deceased's signature.
35. In fact it was common ground (a) that the thick, yellowish Conqueror paper on which the Will was printed was old stock dating from the early 1990s, and (b) that it was old Patel company stationery which had had its top and bottom cut off. Girish says that there is nothing suspicious about this: a number of Patel companies ceased to operate after the recession of the 1990s and there was a practice in his office of re-using stationery in this way to avoid waste. Girish denies that he had a supply of letters pre-signed by his mother, or indeed by any member of the family.
36. Yashwant's case also relies on what his Counsel described as "similar fact evidence" indicating Girish's propensity to forge documents by the very means alleged in relation to the Will. He says that Suresh's purported resignation letter in the Barrowfen proceedings, the P. D. Patel Discretionary Trust documents in issue in the Guernsey proceedings and certain of the

Barrington documents purportedly signed by the Deceased were all fabricated by Girish by using pre-signed papers.

**Alleged implausibility of Girish's account**

37. Yashwant contends that Girish's account of how the Will was drafted and executed is wholly implausible.
38. He relies on a number of features of the case but the most significant seem to me to be as follows:
  - (1) Girish makes much of the fact that he was not intended to benefit personally under the Will: the Deceased's intention was that he would distribute her estate by way of charitable donations. This might be thought to make Girish's involvement in drafting and procuring the execution of the Will less deserving of close scrutiny. However, the Will as drafted simply does not reflect the Deceased's alleged intentions. There is no mention of charity. The Will provides for the Deceased's estate to pass to Girish "for his own benefit".
  - (2) The Will is very short and Girish confirmed in evidence that it was only intended to contain the bare essentials. Yet Clause 1 provided for revocation of earlier wills even though Girish says he had no knowledge of the 1986 will and assumed his mother had made no previous will.
  - (3) Girish's account (see paragraph 24 above) of the genesis of the proposal that the Deceased make a will, namely the Deceased's conversation with her sister about the Swaminarayan sect, does not stand up to analysis. The Deceased would have known that Suresh had no power to deal with her estate on her death: her executor under the 1986 will was Yashwant and not Suresh. In any event, in an email dated 16 October 2014 to Yashwant ("the October 2014 email"), Girish referred to a discussion between the four brothers in 2013 about donating US\$100,000 from the Deceased's funds to the Swaminarayan Temple in Singapore. This could hardly have happened if, as Girish suggests, the Deceased had an antipathy to that sect.

- (4) Given Girish's view that the Will was unnecessary and his initial disinclination to do anything about it and given the Deceased's inability to read and write English, it is curious that Girish went to the trouble of organising the entire episode rather than simply arranging for his mother to see a local Gujarati-speaking solicitor.
- (5) It is very odd that Girish arranged for the Will to be printed on a cut-down, old company letterhead. Even if there was a practice of using redundant stationery in the office to avoid waste, it was a strange choice to use it for such a formal, and potentially significant, document. The evidence of Ranjanbala and Nirja was to the effect that the old stationery was used as scrap paper or compliments slips.
- (6) Girish's evidence was that, having drafted and arranged execution of the Will, he totally forgot about it until reminded of its existence by Ranjanbala when talking to her at a family gathering at Christmas 2014. So, according to Girish, he had no recollection of the Will even when the Deceased died in 2011. Girish himself described this in his second witness statement as "very odd".
- (7) Even when Ranjanbala allegedly reminded him of the Will, and despite its obvious significance in the ongoing litigation between the brothers, Girish waited a couple of weeks before searching for it. He said in cross-examination that it took him several weeks to search for the Will in a number of filing cabinets at Gorst Road and he only found it in late January 2015. He says that this explains why he did not disclose the existence of the Will to his Solicitors until 16 February 2015. However, Girish's second witness statement refers only to a single personal filing cabinet at Gorst Road so it is difficult to see how the search can have taken that long.
- (8) Even after Girish disclosed the Will to his Solicitors, its existence was not disclosed to any of the other parties to the ongoing litigation until 8 June 2015 (shortly before the present proceedings were issued) when Girish referred to it, briefly and parenthetically, in a witness statement in the Barrowfen proceedings. By this time, Girish had Affidavits supporting his case from Ranjanbala and Jayshree and he had spoken to Nirja who by this time had emigrated to Australia. Yashwant suggests that it is unlikely that Girish

would have been so reticent if the Will was genuine. He would have disclosed its existence as soon as possible and obtained supporting evidence thereafter.

39. In my judgment, all of these points have force. None of them means that the Will cannot be genuine. However, their individual and cumulative weight lead me to approach the evidence of Girish, Ranjanbala, Jayshree and Nirja as to what happened on 23 June 2005 with a degree of scepticism. I deal with the oral evidence of those witnesses in paragraphs 52-76 below.

#### The documentary record

40. Before turning to the oral evidence, I have found it helpful to examine whether the documentary record contains any firm indication of whether Girish's account is or is not true.
41. In the October 2014 email to Yashwant, Girish stated this:

"During your visit to London in January 2013 you did not mention the grant of probate or that you had instructed solicitors in London to make an application for the Grant of Probate the previous year. I raised the issue of whether our mother had a Will in a letter dated 11 December 2013 to your Singapore solicitors Haridass Ho & Partners. Neither you or Haridass Ho & Partners replied to my letter.

Our mother never once over the 25 years prior to her death spoke of having executed a Will. On the contrary, at all times maintained that her jewellery and the funds held at JP Morgan would pass to her 4 children to be divided equally".

The earlier letter dated 11 December 2013 to which this passage refers stated relevantly as follows:

"Kindly arrange to let the writer have copies of all documents that are lodged with the Honourable High Courts or Subordinate Courts of the Republic of Singapore so as to enable the writer's Solicitors in Singapore to make appropriate representations on behalf of the writer and bring attention to the Honourable Courts all relevant matters and facts within the knowledge of the writer that pertains to the application of the Probate for the Honourable Courts consideration".

42. So, the December 2013 letter indicated an intention to "make appropriate representations" on Girish's behalf in relation to Yashwant's application for a grant of probate in Singapore in respect of the Deceased's estate but failed to mention what one might have thought was the single most important fact, namely that the Deceased had made a will naming Girish as sole executor.

43. More significantly, Girish's statement in the October 2014 email that "our mother never once over the 25 years prior to her death spoke of having executed a Will" is wholly inconsistent with his case that the Deceased, under his supervision, executed a will in June 2005. It was, rightly, not suggested on Girish's behalf that this statement could be justified on the specious grounds that the Deceased had executed a will in 2005 but not "spoken of" it thereafter. In any event, the Will is impossible to reconcile with the subsequent statement that the Deceased intended her assets to be divided equally between her four children.
44. Girish's only explanation for these striking inconsistencies is that he was suffering from memory loss when he wrote the October 2014 email. In his ninth witness statement, made in October 2016, he suggested for the first time that this loss of memory may have been caused by prescribed medication, namely simvastatin, which he was taking between 2007 and early 2015. I was referred to the patient leaflet produced by the manufacturers of simvastatin which list possible side effects as including
- "Memory loss (may affect up to 1 in 1,000 people)"
- but also (confusingly)
- "Poor memory (may affect up to 1 in 10,000 people)".
45. I am unable to accept this explanation. It was not supported by any expert medical evidence. Girish had at no stage reported to his GP that he was suffering memory-loss symptoms. On the basis of the patient leaflet, the risk of adverse impact on memory was either remote (1 in 1,000) or extremely remote (1 in 10,000). Nor was I given any assistance in understanding whether any memory loss which might be attributable to simvastatin concerned short-term or long-term memory. Moreover, I consider it significant that the October 2014 email does not just omit a detail; it positively avers that the Deceased had not made a will and wanted her estate to be divided between her four sons. I remain unpersuaded that, when he wrote the October 2014 email, Girish would not have remembered the Will, if it then existed.
46. There are other instances, arising in the litigation between the brothers, where Girish failed to mention the Will when it would have been advantageous for him to do so and one would have expected that he would have done so, if it then existed. They are not as compelling as the

October 2014 email but they go to reinforce the same point. They may be summarised as follows:

- (1) In the Agromin proceedings (see paragraph 17 above), Girish sued purportedly as sole trustee of the P. D. Patel Discretionary Trust. But, since the relevant shares were registered in the name of the Deceased, it would have been open to Girish to claim in the alternative as the Deceased's executor. His Affidavit sworn on 22 September 2014 makes no mention of the Will or his status as the Deceased's executor.
- (2) In the Cayman Islands proceedings (see paragraph 18 above), it would have been open to Girish to contest Yashwant's claim on the footing that the 1986 will had been revoked by the Will. But Girish made no mention of the Will, either in his first Affidavit sworn on 5 November 2014 or in his second Affidavit sworn on 6 February 2015.
- (3) Similarly, in the Seychelles proceedings (see paragraph 19 above), Girish could have sought rectification of the share register on the alternative ground that he was the Deceased's executor. He did not do so. Indeed, in his Affidavit sworn on 24 October 2014 he positively asserted that Yashwant was the Deceased's executor under the 1986 will (mistakenly referred to as a will dated 18 June 1996).

47. This is all in marked contrast with the fact that, according to Girish, Ranjanbala, a mere witness, immediately remembered the execution of the Will when she spoke to Girish at the Christmas 2014 gathering.

#### **Similar fact evidence**

48. I have mentioned that Yashwant relies on so-called similar fact evidence, viz that Girish forged documents in 2011 and 2013 in a manner similar to that alleged in relation to the Will. I have explained the allegations made in respect of those documents at paragraphs 17-21 above.

49. I have concluded that it would not be appropriate for me to make any findings in relation to these serious allegations. They all remain hotly disputed by Girish – even in relation to the Barrowfen resignation letter which it is agreed was not authentic. In contrast with Yashwant's

allegation in relation to the Will, which is fully pleaded and in relation to which all available evidence, both factual and expert, has been adduced, the so-called similar fact allegations have not received the same intense focus. Yashwant's Defence does not positively allege that Girish fabricated any of these documents and the pleading does not refer to the P. D. Patel Discretionary Trust documents at all. There is no expert evidence to support an allegation of forgery against Girish: Dr Giles and Mr Radley were not able to attribute the fabrication of the Barrowfen resignation letter to Girish; Maurice Rodé's report on the Discretionary Trust documents was not admitted in the present proceedings as evidence of the facts or opinions stated in it; Mr Radley could not draw any conclusions in relation to the Barrington documents because only photocopies were available. Moreover, I am conscious that the forgery allegation in relation to the Barrington documents remains a live issue in the Seychelles proceedings which are due to be tried shortly. There would accordingly be a risk of inconsistent judicial decisions if I were also to determine that issue.

50. All in all, I consider that to attempt to determine the similar fact allegations would be an inappropriate, and unwise, distraction from my principal task which is to determine the authenticity of the Will.

**Factual witnesses**

51. The following individuals made witness statements and/or affidavits in these proceedings:

- (1) Girish
- (2) Ranjanbala
- (3) Jayshree
- (4) Nirja
- (5) Rakesh Patel (a nephew of the Deceased)
- (6) Sarah Murray (a partner in Stevens & Bolton LLP, Girish's Solicitors)

(7) Yashwant

(8) Suresh

(9) Christopher Felton (a partner in Gardner Leader LLP, Yashwant's Solicitors).

All except Mrs Murray and Mr Felton were cross-examined before me.

52. As will be evident from what I have said already, the credibility of Girish's own evidence and that of Ranjanbala, Jayshree and Nirja are critical to my decision.
53. Before giving my assessment of the critical witnesses individually, I should refer at the outset to a matter which first emerged towards the end of Jayshree's cross-examination on day 4 of the trial.
54. Yashwant's legal team had been concerned about the risk of collusion between Girish and those giving evidence on his behalf. Prior to the trial, it was agreed that, when each witness gave oral evidence, all other witnesses who had yet to give their evidence would be excluded from Court, that no contact would be made with upcoming witnesses to alert them to lines of questioning and similarly such witnesses would not be shown transcripts of the evidence given by earlier witnesses.
55. In the same vein, Mr Learmonth (for Yashwant) cross-examined a number of the critical witnesses as to whether they had met together in the period immediately preceding the trial. I consider that it would have been obvious to all these witnesses that these questions were directed to whether Girish and his supporting witnesses had rehearsed their evidence together so as to present a coherent and consistent account of the execution of the Will. On day 2, Girish confirmed that he had last spoken to Jayshree in October 2016 at a family gathering for Diwali and had last spoken to Ranjanbala at his daughter's wedding in July 2016. Similarly, on day 3, Ranjanbala confirmed that she had last met and spoken with Girish at his daughter's wedding in July 2016 and, on day 4, Jayshree confirmed that she had last met Girish in October for Diwali and had last met Ranjanbala at the July wedding.



56. What then occurred during Jayshree's cross-examination is best set out in full from the transcript [*day 4/48-50*]:

"Q. Can I just remind you that you are on oath in this court?

A. I am aware, my Lord.

Q. And are you quite sure you have not spoken to Girish since Diwali?

A. I haven't spoken with Girish, no.

Q. Or Ranjanbala?

A. I haven't spoken.

Q. Do you know that perjury, telling lies in court, is a criminal offence?

A. I totally understand, my Lord.

Q. I will ask one last time. Have you met Girish since Diwali?

A. I haven't, no, my Lord.

Q. Can you tell me what you did on Sunday evening, 20th November, this last Sunday just gone?

A. I went to my mother's house.

Q. In your white BMW?

A. Yes.

Q. With registration number SY14 XXJ?

A. Yes, that's right.

Q. You visited your mother in Greenford – Kingsbury?

A. I did.

Q. And after you left your mother's house that evening, where did you go?

A. Back home.

- Q. You parked your car on Whitton Avenue East, didn't you?
- A. I don't recall, my Lord.
- Q. You don't recall what you did on Sunday. You just told the court –
- A. I went to my mother's I said.
- Q. Then after you left your mother you don't recall what you did, or did you go home?
- A. I went home, my Lord.
- Q. You did not park your car on Whitton Avenue East on that evening?
- A. No, I did not, my Lord.
- Q. At 5.50 pm?
- A. I don't recall, my Lord, no.
- Q. You don't recall?
- A. No, I did not, my Lord.
- Q. Or you didn't?
- A. I did not, my Lord.
- Q. You went into 200 Whitton Avenue East, didn't you, after you parked your car there?
- A. I don't recall, my Lord.
- Q. Who lives at 200 Whitton Avenue East, Ms Patel?
- A. I have no idea.
- Q. You have no idea?
- A. No, my Lord.
- Q. That's Ranjanbala Patel's address, isn't it?
- A. I'm not sure, my Lord.

Q. You are not sure, but you didn't go in there?

A. No, I did not, my Lord.

Q. You are on oath, Mrs Patel. You are committing a criminal offence if you tell lies to the Judge. Think hard about your next answer, please. Did you go into 200 Whitton Avenue East?

A. I did, my Lord, yes.

Q. And who lives at 200 Whitton Avenue East?

A. Ranjan.

DEPUTY JUDGE SIMMONDS: And you told me a couple of minutes ago that you didn't?

A. I am so sorry, yes, my Lord, yes.

DEPUTY JUDGE SIMMONDS: Well, I think you need to explain very carefully what this is all about.

A. Yes, she was very, very worried and I went to see her but I can assure you that we did not discuss the case or anything – or anything like that but she was worried. She was shaking and she was kind of just worried. She came through my mother's – she contacted my mother that she was very upset and that she needed to speak with me and I did and I was wrong. I was wrong".

57. As appears from this passage, Jayshree confirmed on three further occasions that she had not spoken to Girish or Ranjanbala since the dates she had mentioned; she then denied three times that she had visited Ranjanbala's home on the night of Sunday 20 November 2016 (the day before the trial started); but she then admitted that she did visit Ranjanbala that evening. Her explanation was that Ranjanbala was nervous and needed reassurance and the case itself was not discussed.

58. Mr Learmonth then asked Jayshree whether Girish attended on the same occasion. I quote again from the transcript [*day 4/51-53*]:

"Q. Was anyone else there on that occasion?

A. No, my Lord.

Q. At 6.20 pm Girish and his wife arrived in their Lexus, didn't they, and went into that address also?

A. No, my Lord.

Q. Are you quite sure about that?

A. Yes, yes.

Q. You discussed the case with Girish and Nina and Ranjan Patel on Sunday night, didn't you?

A. We didn't discuss the case, my Lord, no.

Q. Are you quite sure that Girish did not go into the house while you were there at 6.20 pm on Sunday, 20th November 2016?

A. Yes, my Lord."

Then a little later:

"Q. And you are continuing to lie about seeing Girish that night on Sunday, aren't you?

A. Yes. Girish did come, yes, but nothing was –

Q. Girish did come?

A. But not – no. Yes, he was there, but we did not – I can assure you, I can swear on my children's life we did not discuss –

DEPUTY JUDGE SIMMONDS: I am sorry but you told me two minutes ago quite firmly that he was not there and you were asked about five times. So you are now saying that he was there.

A. Yes, he was there."

59. So, Jayshree denied on four occasions that Girish also attended before admitting that in fact he did.

60. I required Girish and Ranjanbala to be recalled to deal with this revelation. Girish immediately accepted that he had lied about when he had last met with Ranjanbala and Jayshree. I am bound to say that, even at this juncture, I was left with the unsettling impression that Girish did not consider this to be a particularly serious matter. When Ranjanbala was recalled, she immediately referred to the meeting on the Sunday evening (even though she had yet to be asked about it by Mr Learmonth) and tried to explain away her previous answers on the basis

that Mr Learmonth had not specifically asked her about her state of health. Both Girish and Ranjanbala maintained, as Jayshree had done, that the purpose of the Sunday meeting was only to reassure Ranjanbala and that their proposed evidence was not discussed.

61. In his closing submissions, Mr Russen QC, on behalf of Girish, understandably tried to play down the importance of this incident. He (rightly) accepted that the witnesses in question had been extremely foolish and that the reliability of their evidence had been damaged to some extent but he submitted that the Sunday meeting was merely for the purpose of calming Ranjanbala's nerves and not for rehearsing their oral evidence and that I should still accept their account of the execution of the Will.
62. I shall return to the wider question of the witnesses' accounts of the execution of the Will, but I do not accept that the Sunday meeting had the entirely innocent purpose of reassuring a nervous witness. None of the three witnesses was able to give a satisfactory explanation of why they had thought it necessary to conceal, and lie about, this meeting if its purpose was entirely innocent. Moreover, the inescapable inference is that the three of them agreed, either at or after the Sunday meeting, that, if asked, they would not reveal it. In other words, in this respect at least, they conspired to mislead the Court. I also consider that Girish, at least, knowing of the concerns expressed by Yashwant's team about collusion, would, if acting innocently, have ensured that any concerns about Ranjanbala's state of mind were dealt with by his Solicitors and not by himself directly, without telling them. I should make it clear that I am completely satisfied that Stevens & Bolton knew nothing of the Sunday meeting until it came out in evidence and they were shocked by what emerged.
63. In my judgment, the most obvious and likely explanation for the Sunday meeting is that it was arranged by Girish as a last-minute joint revision session before the trial so as to ensure that the witnesses' evidence was as consistent as possible. I so find.
64. Girish is a chartered accountant and sits as an arbitrator. I would, in the normal course of events, expect such a witness to be reliable and trustworthy. However, Girish is a self-confessed liar and, as I have mentioned, even when accepting that he had lied to the Court, there was a

certain insouciance in his responses which increased, rather than allayed, my concerns as to his reliability generally.

65. Nor was the Sunday meeting the only matter in relation to which his evidence was demonstrably unsatisfactory. In particular:

- (1) In relation to the simvastatin and alleged memory loss, paragraph 62 of his ninth witness statement indicated that in October 2016 he was still taking 40mg a day when in fact he switched to a different drug in 2015.
- (2) Girish confirmed to the Court at the outset of his cross-examination that he spends the majority of his time in London (confirming a statement made by his Solicitors in correspondence with a view to warding off an application for security for costs) but in certain Malaysian proceedings concerning Aumkar he made a witness statement stating that, since 2010, the bulk of his residence had been in the United Arab Emirates. When this was put to him, he said that he spent equal time in London and Dubai (suggesting that neither of the earlier statements was in fact true) and sought to explain the discrepancy away as a "clerical mistake".
- (3) In October 2012, Girish arranged for a property transfer by Yashwant to be falsely witnessed by a family friend, one Mr Yip, to make it appear that Yashwant was in Singapore when he was in fact in New York. As Girish put it in his letter to Yashwant:

"To keep the status of yourself as a Singapore resident I have arranged KK Yip who was in London this week to witness your signature with Singapore address and who had kindly agreed to do the same in advance of your signature."

It may be said that no harm came of this (the transfer was between family members) and of course Yashwant should not have agreed to this proposal either, but I find it significant in that it shows Girish to be cavalier about proper procedures for the execution of formal documents.

- (4) On another occasion, Girish transferred a property in Hornsey to Yashwant and Suresh. Ranjanbala purported to witness the signatures of both Yashwant and Suresh although

she accepted in her evidence that neither of them signed in her presence. She said Suresh asked her to do this. Suresh denied this and suggested that Girish organised it. Whatever the truth is as to that, Ranjanbala confirmed that she falsely witnessed the document at Girish's offices in Gorst Road in his presence. Girish again seems to have had no qualms about his former employee doing this.

66. Regrettably, I have reached the conclusion that, despite his professional and business achievements, the truth is a flexible concept for Girish, to be fashioned according to his own interests and requirements. In those circumstances, and given the general implausibility of Girish's case (see paragraph 38 above) and its inconsistency with the documentary record (see paragraphs 41-46 above), I am unable to rely on his account of the execution of the Will on 23 June 2005 except insofar as it is reliably corroborated by other evidence.
67. Ranjanbala presented as an anxious witness who would rather have been anywhere but in the witness box. In other circumstances, that might have been attributable simply to her age and her unfamiliarity with a formal court setting. However, I have also to take into account the fact that she lied about when she had last met with Girish before the trial; and, unlike Girish and Jayshree, she was not even prepared to admit frankly that she had lied. Her suggestion that her false answer was a result of Mr Learmonth not asking her directly about her state of health leading up to the trial was nonsense and did her no credit.
68. I have already mentioned the fact that Ranjanbala agreed falsely to witness the signature of a property transfer – whether that was at Girish's or Suresh's instigation makes little difference so far as her credibility is concerned. My concerns in relation to Ranjanbala were hardly alleviated by the following exchange with Mr Learmonth [*day 3/147-148*]:

"MR LEARMONTH: So when a member of the Patel family asks you to sign something as a witness, you just agree to do it.

A. No, not always.

Q. Sometimes you put your foot down?

A. No, when the person says something, I take their order and do it".

Since it is Yashwant's case that Ranjanbala (and Jayshree) have agreed to state falsely that they witnessed the Deceased signing the Will, the relevance of this evidence is obvious.

69. One other striking feature of Ranjanbala's evidence was that she received a lump sum of £50,000 from Girish in 2008. Ranjanbala had worked as a clerical and administrative assistant to Girish from 1990 to 1994. Thereafter, she did office work for him on an occasional, temporary basis. From 2005 until 2011, Nirja was Girish's administrative assistant at Gorst Road so, after 2005, Ranjanbala can have had little to do on that score. So, why did Girish pay her £50,000 in 2008? The only reason she could give in her evidence was that she did shopping in London for items which Patel family members in Singapore could not get hold of there, such as certain vegetables and herbal medicines. These items were then sent to Singapore. This does not sound plausible. What really lay behind this payment may not matter. What does matter is that Ranjanbala received what, by her standards, must have been a large sum of money from Girish, to whom she would very probably have felt beholden. This may well explain why, as she herself put it, she followed orders when asked to do something by someone in the Patel family.
70. Throughout most of her oral evidence, Jayshree presented herself as an intelligent, confident and reliable witness. Unfortunately, this impression was misleading. As appears from the extracts which I have quoted in paragraphs 56-59 above, she lied repeatedly to the Court. It is also significant, in my judgment, that having admitted lying over her presence at the Sunday meeting, she then lied again repeatedly in order to conceal the fact that Girish (and his wife) also attended. This suggests to me that Girish has some hold over her, although I am in the dark as to precisely what that is.
71. For these reasons, I am unable to attach any weight to the accounts given by Ranjanbala and Jayshree of the events of 23 June 2005, except insofar as they are reliably corroborated by other evidence. Given the dynamics of their relationships with Girish, I consider it plausible that they gave false evidence at his request.
72. I have given anxious consideration to the evidence given by Nirja. She now lives in Canberra, Australia and she flew to London to give evidence on Girish's behalf. She gave her evidence immediately after Girish and had, I believe, boarded a flight back to Australia before Jayshree's



evidence about the Sunday meeting emerged. In any event, she had not been asked questions about when she last met with Girish and nobody suggested that she should be recalled to give further evidence on the subject. There was no reliable evidence that she attended the Sunday meeting, either in person or by phone. Moreover, Nirja gave a polished performance in the witness box, responding to questions openly and without prevarication.

73. Yet I have a nagging doubt about why she came to give evidence in person at all. Given the relatively minor role which she played in events – she was not one of the witnesses to the Deceased’s signature – it would have been perfectly acceptable for her to give evidence by videolink from Australia. I was told that Girish paid her airfare. That, in itself, is not an indication of impropriety. However, I was also shown a letter sent shortly before the trial from Stevens & Bolton to Gardner Leader, stating this:

“As you will know and has been the subject of previous correspondence, one of the witnesses, Nirja Jain, is flying to England from Australia to give evidence. Ms Jain has recently informed us that she is in the very early stages of pregnancy, being five weeks pregnant. Furthermore Ms Jain’s pregnancy is as a result of fertility treatment and she is taking a number of medicines in relation to the pregnancy. Amongst other medication Ms Jain is taking a daily dose of Progesterone which has a tendency to make her feel light-headed and dizzy”.

74. I would not have included this very personal information about Nirja in a public judgment unless I thought it necessary to do so. My concern is that it is difficult to understand why Nirja would have chosen to fly to England to give evidence when

- (1) she had no personal interest in the outcome of the proceedings;
- (2) she had not worked for Girish for five years and their relationship was only ever that of employer and employee;
- (3) she was in the early stages of a hard-won pregnancy following fertility treatment and would very naturally be fearful of doing anything that jeopardised that pregnancy;
- (4) she was on medication which must have made travel, and the stress of attending a formal court hearing, even more unpalatable;

(5) there was, and could have been, no objection to her giving evidence by videolink; and

(6) she had not been *subpoenaed* by Girish.

In the light of those considerations, and particularly in the light of my conclusions about Girish's influence over Ranjanbala and Jayshree, I have a lurking doubt as to whether Nirja may have had a greater incentive to attend trial than she was prepared to admit.

75. Another curious, and unexplained, feature is that in their first written accounts of what happened on 23 June 2005 (Affidavits sworn, respectively, on 28 May and 1 June 2015), neither Jayshree nor Ranjanbala made any mention of Nirja's presence on that day.

76. My remaining concern with Nirja's evidence is one that applies equally to all four witnesses on Girish's side. The degree of minute detail which they purported to remember about the events of 23 June 2005 was, to my mind, quite incredible. Each of Ranjanbala, Jayshree and Nirja were giving evidence about an event which supposedly occurred ten years before they were first asked to provide a witness statement and it was an event of no personal significance to any of them. Even Girish said he thought the Will was unnecessary and he instantly forgot all about it until Christmas 2014, despite the Deceased's death in 2011. In those circumstances, I would have expected the witnesses to have, at best, a vague and outline recollection of what had occurred. Yet, one or more of them purported to remember (a) exactly who stood or sat where in the office at Gorst Road; (b) what day of the week it was; (c) who drank tea and who didn't and when; (d) which pen each of them used to sign and what the Deceased did with her pen after signing; (e) that Jayshree asked what the date was and was told by Nirja (although neither mentioned this in their witness statements); (f) what colour sari the Deceased was wearing; and (g) what the Deceased had to eat after the shopping trip. This did not, in my judgment, have the ring of truth.

#### **Expert evidence**

77. I received experts' reports, and heard oral evidence, from three expert witnesses:

- (1) Mr Robert Radley (to whom I have already referred in paragraph 20 above), a forensic document examiner and handwriting expert, who was called on behalf of Yashwant;
- (2) Dr Valery Aginsky, a forensic chemist and document analyst, again called on behalf of Yashwant; and
- (3) Mr Gerald LaPorte, an expert in ink-testing, called on behalf of Girish.

78. Mr Radley's evidence was relied on by Yashwant as establishing two important matters:

- (1) Handwriting: the Deceased's signature on the Will was genuine but did not date from 2005.
- (2) ESDA: by employing electrostatic detection apparatus ("ESDA") tests, there was revealed the impression of another signature of the Deceased above her signature on the Will. This was consistent with Yashwant's theory that Girish had used a paper pre-signed by the Deceased which was one of a number she had signed (one on top of the other) on the same occasion.

79. Dr Aginsky's evidence was relied on by Yashwant for two principal purposes:

- (1) Thin-layer chromatography ("TLC"): a chemical analysis of the component dyes in the inks of the Deceased's signature and those of Ranjanbala and Jayshree showed that the Deceased's signature had faded to a greater extent than those of Ranjanbala and Jayshree, which was inconsistent with the Will having been signed by all three of them at the same time.
- (2) Sequence of toner and ink: Dr Aginsky subjected the Will to microscopic analysis showing that 14 specks of printer toner were to be found on top of the ink of the Deceased's signature and none underneath. This suggested that the Deceased's signature was on the paper before the text of the Will was printed.

80. Mr LaPorte, on Girish's behalf, disputed Dr Aginsky's conclusions in relation to both TLC and toner/ink sequencing.
81. Dr Audrey Giles (also referred to in paragraph 20 above) was instructed on behalf of Girish to carry out a similar examination to that performed by Mr Radley. In the event, however, no report from Dr Giles was filed.
82. There was no expert evidence which went positively to support Girish's account of the execution of the Will in 2005.
83. In relation to handwriting, Mr Radley compared the disputed signature with over 20 signatures of the Deceased which were agreed to be genuine and were made during the period 1966 to 2009. He would have liked there to have been a larger number of comparables and he acknowledged that there was a dearth of comparables relating to the period from 2002 to 2005. Nevertheless, the conclusion in his report was as follows:

"In summary, the quality of penmanship ability and control of the questioned Will signature (2005) coupled with subtle variations of letterforms is not, in my opinion, in keeping with this date when this accumulation of evidence is considered relative to the signatures generally written after the 2001/2002 period. Consequently, I am of the opinion that there is moderate, approaching strong, evidence to support the proposition that the Will signature in question was not executed, as indicated on the document, in 2005 but originates from an earlier time period, possibly 2001/2002, or even earlier".

84. Mr Radley was questioned in some detail about the formulation "moderate, approaching strong, evidence". It was clear, in my judgment, that this terminology indicated, in Mr Radley's opinion, a degree of likelihood very substantially higher than 50%. As he put it [Day 5/52-53]:

"So by expressing "approaching strong", what I am saying is just that: it is at the very top end of the broad "moderate" band, which is, itself, substantially over the balance of probability".

85. In relation to the ESDA lifts, Mr Radley carried out the test five times. He expressed the conclusion in his report thus:

"...I have revealed the remnants of another signature apparently in the style of [*the Deceased*] situated in an almost identical position on the paper as the current signature i.e. the impression signature is approximately 4mm higher than the signature in question. It commences in approximately the same position and runs parallel to the inked signature. Consequently, another document has been signed in the style of [*the Deceased*] whilst the

sheet of paper being written upon was resting on top of the sheet of paper used for the production of the Will”.

He was asked with what degree of confidence he expressed the view in the final sentence of that extract. His answer was [Day 5/67]:

“It’s a fairly high level of confidence, because you are looking at a combination of 13 elements which appear to correspond structurally. I mean, I have a translation of what the letterforms represent, and it is a large chunk of the name of Mrs Patel. So I am confident – I can’t say whether it is a genuine signature of hers, but what I am saying is, it is in the style of hers and there are clearly impressions in the paper”.

86. Mr Russen criticised Mr Radley’s evidence in a number of respects. In particular, he said that
- (1) since Mr Radley had been instructed to consider allegations of forgery by Girish on other occasions (in particular, the Barrowfen resignation letter), there was a real risk of cognitive bias, i.e. a predisposition to reach a conclusion adverse to Girish;
  - (2) there was insufficient peer review of his work;
  - (3) there were insufficient comparables for the critical period to justify his conclusions on handwriting; and
  - (4) his conclusion from the ESDA lifts was not justified by the remnant impressions revealed and his approach was that of an advocate rather than an independent expert.
87. In my judgment, none of these criticisms is valid. Mr Radley is an extremely experienced practitioner with an enviable reputation in the field. I found him to be an impressive witness who carefully considered the criticisms put to him by Mr Russen and responded in a measured and helpful way. He was well aware of the dangers of cognitive bias: his training and experience enables him to assess each matter on which he is instructed to give an opinion separately and divorced from other background material known to him. The fact that his work was peer-reviewed by his own daughter, whom he trained and now works with, does not seem to me to constitute a valid objection. His degree of confidence in the view expressed on handwriting specifically took into account the relative dearth of comparables from the period in question. I am content to accept Mr Radley’s conclusion on the ESDA lifts: he performs between 300 and

500 of these a year and, when giving oral evidence, he produced an enlarged version of the impression signature which, even to a non-expert, appeared to exhibit significant points of correlation with the Deceased's actual signature.

88. But, there is an additional point of some importance. All the criticisms made of Mr Radley's evidence, could, if valid, have been made by Dr Giles. Yet no report from her was adduced. Indeed, Mr Russen realistically accepted that I was entitled to infer that Dr Giles did not materially disagree with Mr Radley's conclusions.

89. I accept Mr Radley's conclusions in relation to both handwriting and the ESDA lifts.

90. Dr Aginsky's TLC analysis focused on the photodegradation of a particular dye, known as Crystal Violet ("CV"), found in both the blue ballpoint ink in which the Deceased's signature was written and in the black ballpoint ink in which the signatures of Ranjanbala and Jayshree were written. The effect of exposure to light is that CV progressively degrades, via the loss of methyl groups, into tetra-methyl pararosaniline ("TMR"). By means of the TLC analysis, Dr Aginsky could compare the ratio of CV to TMR in samples taken from all three signatures. His tests indicated that the ratio of CV to TMR was significantly higher in the case of the signatures of Ranjanbala and Jayshree than in the case of the Deceased's signature. That, in turn, suggested that the Deceased's signature had been exposed to light to a greater extent than had been the signatures of Ranjanbala and Jayshree.

91. Dr Aginsky concluded in his report that:

"There is moderate to strong evidence to support the proposition that the signature in the name of [the Deceased] had been written significantly before the signatures of both witnesses were written on [the Will]".

92. Dr Aginsky's conclusions based on his TLC analysis were criticised by Mr LaPorte principally on the basis that he was using the CV/TMR dye ratio method to draw conclusions about the relative ages of two different inks (blue and black ballpoint) when the scientific community considers this to be unsound.

93. Whilst the manner in which Dr Aginsky expressed the conclusion which I have quoted above (“...written significantly before...”) might appear to justify Mr LaPorte’s criticism, I do not think it does when understood in the context of the particular facts of this case and the parties’ respective versions of events.

94. Dr Aginsky was careful to distinguish between two different chemical processes, viz (1) aging and (2) photodegradation. The latter has nothing to do, intrinsically, with the passage of time; it is concerned only with exposure to light, i.e. photon bombardment. This appears from the following exchange in cross-examination between Mr Russen and Dr Aginsky [Day 5/90-91]:

“Q. No. You are, however, asking the Judge to conclude – make conclusions about the respective ages of S1 and S2, aren’t you?”

A. I said respective level of fading. So in my – what I am saying, that the damage that has been done to the blue signature is substantial, and there is no damage that I can see based on the chemical analysis that has been done to the black signatures. So it means that they have different histories. What happened to the right-hand side of the document and left-hand side of the document, I don’t know, but something – it’s either consistent with the ink being much older, a blue ink, and, therefore, during that period of time the document was handled, it was subjected to some, deliberately or accidental, it doesn’t matter, subjected to some exposure to light, and as a result of that the blue signature faded, and we have this change in the relative content between TMR and CV.

But this doesn’t happen to the black signature, to the witnesses’ signature, and therefore I am saying that the – if I could say “age” in quotation marks, so I am not determining the age of any of these two inks, I am just saying that the blue ink has been damaged to a much greater degree than the black ink. In that respect, they have different history”.

95. So, Dr Aginsky’s tests establish, in his opinion, that the Deceased’s signature has been exposed to light significantly more than the signatures of Ranjanbala and Jayshree. That “different history” might be the consequence of one signature being older (i.e. written earlier) than the others, because that might mean it had been exposed to light for longer, but other explanations are possible, for example the section of the document containing one signature might have been exposed to light whilst that containing the others was covered up.

96. At this point, it is necessary to remind oneself of Girish’s case as to what was done with the Will after the Deceased executed it. He says that he put it immediately into an envelope and placed it in his personal filing cabinet at Gorst Road where it remained untouched until late January

2015. This account is not consistent with the Deceased's signature and those of Ranjanbala and Jayshree being exposed to light for differing periods.

97. In that context, it seems to me that Dr Aginsky's conclusion is justified because it is the only way of explaining the "different histories" to which he refers.
98. I accept Dr Aginsky's conclusion based on his TLC analysis.
99. Dr Aginsky's conclusion in relation to toner/ink sequencing was probably the most contentious area of the expert evidence. This technique required interpretation of images of toner specks measuring only several microns in size at high degrees of magnification.
100. Dr Aginsky's work was criticised in a number of respects by Mr LaPorte. He cast doubt on the extent to which the technique had been validated in the scientific literature, although I do not accept that this objection was made out. Also, he drew attention to the risk of external contamination and queried whether a stereomicroscope rather than a compound microscope should have been used. Dr Aginsky had answers to these criticisms. But I understood Mr LaPorte's principal concern to be that the technique is too subjective, depending as it does on impression rather than measurement. Mr LaPorte disagreed with Dr Aginsky's interpretation in a number of respects and he demonstrated why by reference to a number of slides.
101. I have found this a difficult area. Although I was not persuaded by a number of the arguments advanced by Mr LaPorte, I do agree with him that the subjective nature of the interpretative exercise makes firm conclusions problematic and I am not prepared to disregard totally Mr LaPorte's doubts about Dr Aginsky's conclusions in this regard.
102. I also had some sympathy with Mr LaPorte's suggestion that Dr Aginsky's conclusions on toner/ink sequencing would have been more persuasive if he had conducted a comparison test on the signatures of Ranjanbala and Jayshree to show that there were no toner specks over those signatures, thus pointing up the contrast with the Deceased's signature. Mr Learmonth's response to this, in closing submissions, was that such a comparison test would have been irrelevant because it was not critical to Yashwant's theory of how Girish forged the Will that Ranjanbala and Jayshree signed after the Will was printed: they might, like the Deceased, have



signed a blank page with the text being printed afterwards. But I do not consider that to be a plausible scenario. Mr Learmonth's explanation for the clumsy layout of the printed text of the Will was that Girish had had to fit it round the pre-existing signature of the Deceased; that he may have had only one or two pre-signed papers so he had to get it right first time; and so he could not risk ending up with a document on which the print overlapped the pre-existing signature. That may well be so. But it makes it vanishingly unlikely that Girish would have organised matters, quite unnecessarily, so that he had to fit the printed text round not one but three pre-existing signatures.

103. In all the circumstances, I prefer to treat the evidence on toner/ink sequencing as inconclusive.

### Findings

104. Mr Learmonth accepted that the onus of proof in relation to the forgery allegation lay on Yashwant.

105. The standard of proof is the normal civil standard of the balance of probabilities. However, I was referred to the well-known guidance provided by Lord Nicholls of Birkenhead in **Re: H (Minors)** [1996] AC 563, 586 D-G:

"The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence. Deliberate physical injury is usually less likely than accidental physical injury. A stepfather is usually less likely to have repeatedly raped and had non-consensual oral sex with his underage stepdaughter than on some occasion to have lost his temper and slapped her. Built into the preponderance of probability standard is a generous degree of flexibility in respect of the seriousness of the allegation.

Although the result is much the same, this does not mean that where a serious allegation is in issue the standard of proof required is higher. It means only that the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established".

So I must take into account the fact that people do not normally forge wills and, it may be said, it is even less likely that forgery would be perpetrated by a man who is both a chartered accountant and an accredited arbitrator.

106. Nevertheless, having carefully and anxiously considered all the evidence, both factual and expert, and having the guidance in Re H well in mind, I am satisfied that Girish did forge the Will.

107. My principal reasons for reaching this conclusion are as follows:

- (1) For the reasons set out in paragraphs 38-39 above, I consider Girish's account of the genesis and execution of the Will to be implausible.
- (2) For the reasons set out in paragraphs 41-46 above, I consider that Girish's account is contradicted by the documentary record.
- (3) For reasons which I have summarised in paragraphs 53-71 and 76 above, I am not able to attach any weight to the account of events given by Girish, Ranjanbala and Jayshree except to the extent that they are reliably corroborated by other evidence. Each of them lied brazenly to the Court.
- (4) The evidence of Nirja falls into a different category. She was not shown to be a liar. But, for the reasons set out in paragraphs 72-76 above, I am not able to rely on her account.
- (5) It is a striking fact that, if one looks outside the evidence of Ranjanbala, Jayshree and Nirja, there is nothing which independently corroborates Girish's case that the Deceased made the Will in 2005. She told nobody about it. Girish told nobody about it. No copy of it was taken at the time. There is no documentary reference to it before February 2015. One valuable source of corroboration might have been the metadata to be extracted from Girish's office computer which, he says, was used to type up the Will. However, according to Girish, this computer was stolen in the course of a burglary in January 2014, before these proceedings commenced. I accept Girish's evidence about that (contrary to Mr Learmonth's submission, I think it is consistent with the

contemporaneous statements and police reports) but it goes to highlight the lack of independent support for Girish's case.

- (6) I accept Yashwant's contention that Girish had a strong motive for forging the Will. It provided him, via Barrington, with control over a \$50m stake in Aumkar as well as a number of tactical advantages in the bitterly-fought litigation with his brothers.
- (7) As indicated in paragraphs 69-71 above, I reached the view that Girish exercised influence over both Ranjanbala and Jayshree. I consider that this would have enabled him to persuade them both falsely to witness the Will.
- (8) I find that there were available to Girish blank papers pre-signed by the Deceased which enabled him to forge the Will, utilising a genuine but old signature of the Deceased. The Court bundle contains such a pre-signed blank [4B/480] and the Deceased's signature on this paper appears in a position virtually matching that of the Deceased's signature on the Will, taking into account the fact that the paper used for the Will had been cut down top and bottom. This paper emanated from Rajnikant but Girish did not challenge the authenticity of the Deceased's signature on it. It seems plausible to me that similar papers would have been in Girish's possession given (a) the Deceased's co-directorships with Girish of certain Patel family companies, and (b) the fact that, as he claimed, Girish managed the Deceased's finances. My findings in this regard are reinforced by two further matters. First, it is hard to account for the peculiar layout of the text of the Will (a large gap between Clause 4 and the attestation rubric; the attesting witnesses signing on the left and the Deceased on the right, rather than those witnesses signing below the Deceased's signature) unless it was necessary to fit round the Deceased's pre-existing signature. But for that, there seems no reason why Nirja, who was employed as a secretary/typist, would not have typed the Will in a more conventional and less awkward format. Secondly, I have accepted Mr Radley's conclusions based on the ESDA lifts. The impression of another signature of the Deceased on the same paper in close proximity to her actual signature is consistent with the Deceased having pre-signed a number of blank sheets one on top of the other.

(9) As Mr Russen accepted, there is no explanation of the impression signature revealed by the ESDA lifts which is consistent with Girish's case.

(10) I have also accepted Mr Radley's conclusion as to the dating of the Deceased's signature on the Will. Self-evidently, that conclusion is wholly inconsistent with Girish's case.

(11) I have also accepted Dr Aginsky's conclusions in relation to photodegradation and CV/TMR ratios. As I have explained in paragraphs 95-96 above, it is not possible on Girish's case for the Deceased's signature on the one hand and those of Ranjanbala and Jayshree on the other to have experienced different histories so far as exposure to light is concerned. However, Dr Aginsky's conclusions are consistent with the Will having been forged in the manner alleged by Yashwant.

108. Since I have found that the Will was forged, the subsidiary issue in the case, viz want of knowledge and approval, does not arise.

#### **Disposal**

109. Girish's claim must be dismissed.