



IN THE HIGH COURT OF DELHI AT NEW DELHI

+ RFA 375/2010
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Judgment Delivered on: July 15, 2011

Jai Gopal Wadhwa Appellant
Through: Ms. Madhulika Sareen, Advocate

versus

Laj Handa Respondent
Through: Mr. V.K. Tandon, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

G.S. SISTANI, J.

CM No. 8742/2011 (Application for Additional evidence)

1. After counsel for the parties had advanced substantial arguments, counsel for appellant has preferred the present application for adducing additional evidence before this court.
2. However, from a reading of the application, I find that no cogent reason or sufficient cause has been established by the counsel for appellant as to why the application has been filed at such a belated stage. In the absence of sufficient reason pleaded by the appellant, the present application cannot be entertained. I also find force in the submission of counsel for the respondent that the

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'applicant by filing the present application is trying to delay the matter.

3. Accordingly, the application is dismissed.

RFA No.375/2010

4. The present appeal is directed against judgment and decree dated 17.03.2010 passed by learned Additional District Judge whereby the suit for recovery of possession filed by the respondent was decreed.
5. The brief facts necessary to be noticed for disposal of the present appeal are that the respondent claims herself to be the owner of property bearing no. 1-59B, Malviya Nagar, New Delhi - 110017 (hereinafter referred to as "*suit property*") by virtue of a Will dated 20.02.1973 left behind by the father of the parties late Sh. Sharn Dass who expired on 18.1.1978. Appellant and respondent are brother and sister. As per the averments in the plaint, the appellant approached the respondent in the year 1978 and requested her to permit the appellant to stay in the suit property as the appellant was facing scarcity of accommodation. Accordingly, the respondent allowed the appellant to occupy one room in the suit property and also permitted him to use common kitchen, latrine and bathroom w.e.f September, 1988. No license fees was either agreed upon or demanded by the respondent but the appellant was required to pay the electricity and water charges directly to the authorities concerned. As per the plaint, the

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respondent called upon the appellant to vacate the suit property in the year 1989 but the appellant avoided to do so on one pretext or the other. Despite protest by the respondent, the appellant also made illegal encroachment in the back lane of the suit property and converted the same into a store room on the pretext of raising the height of the back wall in order to prevent theft. The respondent issued a legal notice dated 11.03.1999 calling upon the appellant to vacate the suit property. Despite service of notice, the appellant failed to vacate the suit property which compelled the respondent to file a suit being Suit no. 395/2004 for recovery of possession.

6. Before the trial court, the respondent, plaintiff examined eleven witnesses whereas the appellant has examined seven witnesses.
7. That after taking into account the entire evidence placed on record, the trial court, vide its judgment and decree dated 17.03.2010, decreed the said suit in favour of the respondent and the appellant was directed to handover the possession of the suit property to the respondent. This has led to the filing of the present appeal.
8. It is pertinent to mention here that the appellant had also filed a suit being Suit No. 396/2004 against the respondent for declaration and permanent injunction which was dismissed by the trial court vide judgment and decree dated 17.03.2010. However, no appeal was filed against the said judgement and only the judgment and decree passed in Suit No. 395/2004 is under challenge.

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9. It is contended by counsel for appellant that the impugned judgment and decree is bad in law as well as in facts and thus, is liable to be set aside. The counsel for appellants submits that the learned trial court has failed to appreciate the fact that there are various circumstances which clearly establish that the execution, production and registration of the alleged Will dated 20.02.1973 which is the primary document relied upon by the respondent to claim her title over the suit property has been executed in suspicious circumstances.
10. The counsel for appellant has strongly urged before this Court that the Will dated 20.02.1973 is forged and fabricated and has been executed in suspicious circumstances. The counsel contends that on the date of execution of the Will, Late Sh. Sham Dass was bed-ridden and was not in a sound deposing mind and thus he could not have executed the alleged Will. The counsel for appellant has drawn the attention of the court to the statement of PW-3, Sh. R D Mahant wherein he has deposed that the testator, Sh. Sham Dass had come to his place to draft the Will and argued that since the Late Sh. Sham Dass was bed ridden on the said date, the statement of PW-3 is false.
11. Elaborating her arguments further that the alleged Will was executed under suspicious circumstances, the counsel for appellant submits that it is unusual that PW-1, Smt Prem Mahendroo, who is the wife of one of the attesting witnesses to the alleged Will, has



deposed that she came to know about the execution of the alleged Will in the year 1978 and she found the Will from one box in the year 1978 before the marriage of the respondent. The counsel for appellant contends that in the light of the fact that the husband of PW-1 was an attesting witness to the alleged Will which was executed in 1973, it is highly improbable that PW-1 was not aware of the contents of the alleged Will prior to the death of late Sh. Sham Dass and that Sh. PC Mahindroo had not disclosed the contents of the alleged Will to PW-1.

12. The counsel next submits that a further doubt is created with regard to the genuineness of the alleged Will as the respondent has failed to place on record a single document to show as to why it took more than ten years to get the alleged Will registered.
13. Ms.Sareen, submits that the appellant has been residing in the suit property since 1953 and the deceased father had partitioned his properties during his lifetime, i.e., in the year 1973 itself and each and every child got his respective share. The counsel submits that in the said partition, the suit property fell in the appellant's share and that the respondent was given some cash from which she purchased a flat in Dehradun. To substantiate the aforementioned contention, the counsel for appellant has drawn the attention of the court to the deposition of PW-1, Smt. Prem Mahindroo, wherein she has admitted that the partition did take place during the lifetime of late Sh. Sham Dass. It is next submitted that when the partition had

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already taken place during the lifetime of late Sh. Sham Dass, there was no question for him to execute the alleged will in favour of the respondent and PW-11, Sh. Baldev Raj Wadhwa.

14. The counsel for appellant next contends that there were some ancestral properties in Pakistan and when partition took place between the deceased father and his paternal uncles, two properties, being L-58 and L-59, Maiviya Nagar, New Delhi came to his share and thus, suit property is an ancestral property. The suit property further fell to share of the appellant when oral partition took place in the year 1973.
15. It is vehemently argued by counsel for appellant that there are material contradictions in the statements of the witnesses of the respondent which itself casts a shadow of doubt on the version of the respondent. Submitting that the testimony of PW-1 is in complete contradiction with the testimony of PW-11, the counsel states that while in her statement, PW-1, Smt. Prem Mahindroo deposes that the alleged Will pertained to only the suit property while PW-11, Sh. Baldev Raj Dhawan alleged himself to be also the beneficiary of some property through the alleged Will.
16. The counsel for appellant contends that PW-1, Smt. Prem Mahindroo and PW-7, Smt. Nandini are interested witnesses, as both these witnesses were not summoned through the process of the court. The counsel has drawn the attention of the Court to the deposition of PW-7 wherein she has deposed that she has neither

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met the counsel who prepared the affidavit and that her affidavit was got prepared by the respondent which was not attested in her presence.

17. The counsel contends that the appropriate remedy for the respondent was to seek Probate/Letters of Administration impleading all the L.Rs of deceased Sh. Sham Dass but instead the respondent has filed the present suit against the appellant only on the basis of disturbance of her possession in the suit property on the basis of the alleged Will dated 20.02.1973 under which she claims to be the beneficiary of the suit property. It is further contended by counsel for appellant that until and unless the respondent had made all the LRs as necessary parties or witness in support of her case, the registration of the alleged Will in favour of the respondent was not possible. The counsel contends that the learned trial court has failed to take into consideration the fact that the respondent in her statement has herself admitted that she never obtained the NOCs of remaining LRS for getting the suit property registered in her name.

18. The counsel for appellant next contends that the learned trial court has failed to appreciate that evidence led by the appellant before the trial court. The counsel submits that the appellant has produced documents as well as witnesses to the effect that he was in possession of the suit property much prior to the year 1988. Attention of the Court is drawn to the statement of DW-2, Sh.Kishan

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Singh, who deposed that gas connection at the suit premises was in the name of the appellant since 1983. Further, DW-3, Naresh Wadhwa and DW-6, Dalip Wadhwa who are family members have also deposed that they have no knowledge of the execution of the alleged Will and that the appellant has been residing in the suit property since long.

19. The counsel also contends that the trial court has failed to appreciate the documents placed on record by the appellant to the effect of proving his possession over the suit property in the form of election card, gas connection, electricity and telephone bills all of which bear the address of the suit property as the address of the appellant.
20. Per contra, it is contended by counsel for respondent that there is no infirmity in the judgement and decree passed by the learned trial court as the same is in accordance with law and that the appeal filed by the appellant is without any merit in the light of the fact that said Will is duly registered and has also been proved beyond any reasonable doubt by the respondent.
21. It is the case of the respondent that the suit property has been bequeathed to her by her deceased father late Sh. Sham Dass, who had executed a Will dated 20.02.1973 and the said Will was handed over to her at the time of her Kanyadaan. The counsel for respondent submits that in September, 1988 the appellant, after his marriage, had requested the respondent to allow him to live in

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the suit property for a period of one year which was allowed by the respondent. it was only after one year when the respondent asked the appellant to vacate the suit property that the appellant started claiming himself to be the absolute owner of the suit property and started harassing and torturing the respondent and her daughter. The counsel next submits that various criminal cases have also been registered against the appellant to this effect.

22. Refuting the contention of the counsel for appellant that the said Will dated 20.02.1973 is forged and fabricated since the testator was not in good health, the counsel for respondent vehemently argued that nothing has been placed on record by the appellant to show that the testator was not of sound mind or that the will was executed in suspicious circumstances. It is next contended by the counsel for respondent that the Will dated 20.02.1973 has been duly proved in the light of the statement of PW-3, Sh. RD Mahant who is the scribe of the Will as well as one of the two attesting witnesses.

23. It is next contended that the issue that whether the said Will is a forged and fabricated document has already been decided in favour of the respondent vide judgment dated 17.03.2010 passed in Suit No. 95/09/1999 titled as Jai Gopal v. Laj Handa and since the said judgement has not been challenged by the appellant, it has attained finality and the appellant now cannot dispute the authenticity of the Will nor can he dispute the ownership of the



respondent over the suit property. Thus, the status of the appellant over the suit property is merely that of a trespasser.

24. The counsel for respondent submits that the appellant owns a house being G-87, Mahngir, Dakshin Puri, Ambedkar Nagar, New Delhi and also owns a shop being Shop No. 4&5, Near F- Block Nala, Dakshin Puri, Ambedkar Nagar, New Delhi from which he has sufficient income for taking alternative accommodation for himself.

25. I have heard the counsel for the parties and have also perused the entire evidence placed on record. The main thrust of the arguments of the counsel for appellant is that the Will dated 20.02.1973 is forged and fabricated and its execution is shrouded under suspicious circumstances. Ms.Sareen, has contended that since family partition had already taken place during the lifetime of the father late Sh. Sham Dass and the suit property fell to the share of the appellant, there was no question of the deceased father executing a Will bequeathing the suit property in favour of the respondent since at the time of partition, the suit property had fallen in the share of the appellant.

26. The law with regard to the proof and execution of Wills has been dilated upon by the Apex Court in a number of cases. In **Balathandayutham and Another v. Ezhilarasan** reported at (2010)5 SCC 770, the Apex Court observed as under:

“16. Insofar as the execution of the will is concerned, under Section 63 of the Succession Act, 1925 it has to be attested by two or more witnesses, each of whom has seen the



testator sign or affix his mark to the will or has seen some other person sign the will, in the presence, and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

17. Section 68 of the Evidence Act, 1872 further provides that if a document is required by law to be attested it shall not be used as an evidence until one attesting witness at least has been called for the purpose of proving its execution if there be an attesting witness alive, and subject to the process of the court is capable of giving evidence. There is a proviso under Section 68 but we are not concerned with the proviso here.

18. Commenting on these provisions, this Court in *H. Venkatachala*¹ laid down that Section 68 deals with the proof of the execution of the document required by law to be attested; and it provides that such a document shall not be used as an evidence until one attesting witness at least has been called for the purpose of proving its execution. These provisions prescribe the requirements and the nature of proof which must be satisfied by the party who relies on a document in a court of law. It was further held that Section 63 of the Succession Act requires that the testator shall sign or affix his mark to the will or it shall be signed by some other person in his presence and by his direction and that the signature or mark shall be so made that it shall appear that it was intended thereby to give effect to the writing as a will. This section also requires that the will shall be attested by two or more witnesses as prescribed. Thus the question as to whether the will set up by the propounder is proved to be the last will of the testator has to be decided in the light of these provisions. (See AIR p. 451, para 18.)"

27. A similar view has been expressed in ***Bharpur Singh v. Shamsher Singh*** reported in (2009)3 SCC 687 wherein the Apex Court elaborately discussed the law relating to proof and execution

¹ AIR 1959 SC 443

of Wills with reference to its earlier decisions. The relevant portion of the judgment reads as under:

“14. The legal principles in regard to proof of a will are no longer res integra. A will must be proved having regard to the provisions contained in clause (c) of Section 63 of the Succession Act, 1925 and Section 68 of the Evidence Act, 1872, in terms whereof the propounder of a will must prove its execution by examining one or more attesting witnesses. Where, however, the validity of the will is challenged on the ground of fraud, coercion or undue influence, the burden of proof would be on the caveator. In a case where the will is surrounded by suspicious circumstances, it would not be treated as the last testamentary disposition of the testator.

15. This Court in *H. Venkatachala Iyengar v. B.N. Thimmajamma*² opined that the fact that the propounder took interest in execution of the will is one of the factors which should be taken into consideration for determination of due execution of the will. It was also held that: (AIR p. 451, para 19)

“One of the important features which distinguishes a will from other documents is that the will speaks from the date of death of the testator, and so, when it is propounded or produced before a court, the testator who has already departed the world cannot say whether it is his will or not; and this aspect naturally introduces an element of solemnity in the decision of the question as to whether the document propounded is proved to be the last will and testament of the departed testator.

16. In *H. Venkatachala* case, it was also held that the propounder of a will must prove:

- (i) that the will was signed by the testator in a sound and disposing state of mind duly understanding the nature and effect of disposition and he put his signature on the document of his own free will, and
- (ii) when the evidence adduced in support of the will is disinterested, satisfactory and sufficient to prove the sound and disposing state of the testator's mind and his signature as required by law, courts would be justified in making a finding in favour of propounder, and
- (iii) if a will is challenged as surrounded by suspicious circumstances, all such legitimate doubts have to be

² AIR 1959 SC 443

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removed by cogent, satisfactory and sufficient evidence to dispel suspicion. In other words, the onus on the propounder can be taken to be discharged on proof of the essential facts indicated therein.

It was moreover held: (*H. Venkatachala case*, AIR p. 452, para 20)

"20. There may, however, be cases in which the execution of the will may be surrounded by suspicious circumstances. The alleged signature of the testator may be very shaky and doubtful and evidence in support of the propounder's case that the signature in question is the signature of the testator may not remove the doubt created by the appearance of the signature; the condition of the testator's mind may appear to be very feeble and debilitated; and evidence adduced may not succeed in removing the legitimate doubt as to the mental capacity of the testator; the dispositions made in the will may appear to be unnatural, improbable or unfair in the light of relevant circumstances; or, the will may otherwise indicate that the said dispositions may not be the result of the testator's free will and mind. In such cases the court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last will of the testator. The presence of such suspicious circumstances naturally tends to make the initial onus very heavy; and, unless it is satisfactorily discharged, courts would be reluctant to treat the document as the last will of the testator. It is true that, if a caveat is filed alleging the exercise of undue influence, fraud or coercion in respect of the execution of the will propounded, such pleas may have to be proved by the caveators; but, even without such pleas circumstances may raise a doubt as to whether the testator was acting of his own free will in executing the will, and in such circumstances, it would be a part of the initial onus to remove any such legitimate doubts in the matter."

17. This Court in *Niranjan Umeshchandra Joshi v. Mrudula Jyoti Rao*³ held: (SCC pp. 447-48, paras 33-34)

"33. The burden of proof that the will has been validly executed and is a genuine document is on the propounder. The propounder is also required to prove that the testator has signed the will and that he had

³ (2006)13 SCC 433; (2006) 14 SCALE 186

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put his signature out of his own free will having a sound disposition of mind and understood the nature and effect thereof. If sufficient evidence in this behalf is brought on record, the onus of the propounder may be held to have been discharged. But, the onus would be on the applicant to remove the suspicion by leading sufficient and cogent evidence if there exists any. In the case of proof of will, a signature of a testator alone would not prove the execution thereof, if his mind may appear to be very feeble and debilitated. However, if a defence of fraud, coercion or undue influence is raised, the burden would be on the caveator. (See *Madhukar D. Shende v. Tarabai Aba Shedage*⁴ and *Sridevi v. Jayaraja Shetty*⁵.) Subject to above, proof of a will does not ordinarily differ from that of proving any other document.

34. There are several circumstances which would have been held to be described (sic) by this Court as suspicious circumstances:

- (i) when a doubt is created in regard to the condition of mind of the testator despite his signature on the will;
- (ii) when the disposition appears to be unnatural or wholly unfair in the light of the relevant circumstances;
- (iii) where propounder himself takes prominent part in the execution of will which confers on him substantial benefit.

(See *H. Venkatachala Iyengar v. B.N. Thimmajamma and T.K. Ghosh's Academy v. T.C. Palit*⁶.)"

19. The provisions of Section 90 of the Evidence Act, 1872 keeping in view the nature of proof required for proving a will have no application. A will must be proved in terms of the provisions of Section 63(c) of the Succession Act, 1925 and Section 68 of the Evidence Act, 1872. In the event the provisions thereof cannot be complied with, the other provisions contained therein, namely, Sections 69 and 70 of the Evidence Act providing for exceptions in relation thereto would be attracted. Compliance with statutory requirements for proving an ordinary document is not sufficient, as Section 68 of the Evidence Act postulates that execution must be proved by at least one of the attesting witnesses, if an attesting witness is alive and subject to the process of the

⁴ (2002)2 SCC 85

⁵ (2005)2 SCC 784

⁶ (1974)2 SCC 354 : AIR 1974 SC 1495

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court and capable of giving evidence. (See *B. Venkatamuni v. C.J. Ayodhya Ram Singh*⁷, SCC p. 458, para 19.)

20. This Court in *Anil Kak v. Sharada Raje*⁸ opined that the court is required to adopt a rational approach and is furthermore required to satisfy its conscience as existence of suspicious circumstances plays an important role, holding: (SCC p. 714, paras 52-55)

"52. Whereas execution of any other document can be proved by proving the writings of the document or the contents of it as also the execution thereof, in the event there exists suspicious circumstances the party seeking to obtain probate and/or letters of administration with a copy of the will annexed must also adduce evidence to the satisfaction of the court before it can be accepted as genuine.

53. As an order granting probate is a judgment in rem, the court must also satisfy its conscience before it passes an order.

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

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

21. Unfortunately, the first appellate court as also the High Court did not advert to these aspects of the matter.

22. We may notice that in *Jaswant Kaur v. Amrit Kaur*⁹, this Court pointed out that when the will is allegedly shrouded in suspicion, its proof ceases to be a simple lis between the plaintiff and the defendant. An adversarial proceeding in such cases becomes a matter of court's conscience and propounder of the will has to remove all suspicious circumstances to satisfy that the will was duly executed by the testator wherefor cogent and convincing explanation of suspicious circumstances shrouding the making of will must be offered.

23. Suspicious circumstances like the following may be found to be surrounded in the execution of the will:

(i) The signature of the testator may be very shaky and doubtful or not appear to be his usual signature.

⁷ (2006)13 SCC 449

⁸ (2008)7 SCC 695

⁹ (1977)1 SCC 369



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

24. The circumstances narrated hereinbefore are not exhaustive. Subject to offer of reasonable explanation, existence thereof must be taken into consideration for the purpose of arriving at a finding as to whether the execution of the will had been duly proved or not. It may be true that the will was a registered one, but the same by itself would not mean that the statutory requirements of proving the will need not be complied with."

28. Thus, to prove the execution of a Will, the propounder must bring in evidence at least one of the attesting witnesses to the said Will and must also remove all suspicious circumstances surrounding the execution of a Will. I have carefully perused the Will dated 20.02.1973 exhibited Ex. PW-3/1. The testator late Sh. Sham Dass has stated that he has six sons, namely Sh. Om Prakash, Sh. Hem Raj, Sh. Krishen Lal, Sh. Baldev Raj, Sh. Prem Prakash, Sh. Jai Gopal, and two daughters, namely Smt. Bagwanti and Kumari Laj Handa. Out of the six sons, four are married and well settled in their life and out of the two daughters; one is married whereas the respondent who is the younger daughter is unmarried. In the said Will, it has been categorically stated although Sh. Prem Prakash and the appellant, Sh. Jai Gopal are not married, but since the

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testator has spent much, even beyond his capacity, for their welfare and settlement in life and both of them are well settled with the nucleus received from the testator, they are not in need any further assistance from the testator. The Will further states that the since, respondent, Smt. Laj Handa is unmarried and is in need of handsome assistance and also that son Hem Raj has also not received adequately in comparison to his other brothers and sister, it is only these who are the real liability and responsibility of the testator. Therefore, the testator has bequeathed the suit property exclusively in favour of the respondent and the tenancy rights in shop bearing no. 197, Lajpat Rai market, Delhi would be inherited by Sh. Baldev Raj exclusively. However, the said bequest is the condition that the respondent would pay a sum of Rs. 5000/- to Smt. Bhagwanti @ Smt. Prem Mahindru and Sh. Baldev Raj would pay a sum of Rs. 5000/- on the marriage of Kumari Ravi Prabha d/o Shri Keshav Das (sister's daughter of the executor's wife) who is residing with the testator since childhood.

29. The said Will has been signed by one Sh. PC Mahindru, who was the brother-in-law of respondent and the appellant, and Mr. RD Mahant as the attesting witnesses. The respondent, in order to prove the execution of the said Will, has examined PW-3, Sh. RD Mahant, who is the scribe of the Will as well as the attesting witness to the said Will. It would be useful to reproduce the evidence of PW-3, Sh. RD Mahant, one of the attesting witnesses to the Will:

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"I have seen the Will Mark-X. This Will was drafted by me on the instructions of Shri Sham Dass. Shri Sham Dass was my client. Shri Sham Dass had requested 2-3 days prior to the drafting of the Will, to draft this Will. On 20.2.73, Shri Sham Dass accompanied by another person, had come to my residence. The Will already drafted was available with me. I read over and explained the contents of the Will to the testator Shri Sham Dass and the person, who had come at my residence with Sham Dass. Shri Sham Dass admitted the contents of the Will to be correct and put his signatures and left thumb impression at points A, B and C. The person, who was accompanied Sham Dass signed as an attesting witness, at point-D. I signed as an attesting witness at point -E. I put my signatures at point-F as scribe of the Will. Shri Sham Dass was in good health and sound disposing mind at the time of giving me instructions and then at the time of execution of the Will. The Will was made by Shri Sham Dass voluntarily. The Will is Ex.PW/3/1.

Shri Sham Dass was having business in Lajpat Rai Market. I knew Shri Sham Dass since the year 1970."

In his cross-examination by counsel for appellant, PW-3 deposed as under:

"I had drafted the Will as a Lawyer. I do not now recollect the contents of the Will. I did not make any enquiry from the person accompanying the testator, if he was related to him or not. Shri Sham Dass had not stated to me that he wanted to get this Will registered.

It is correct that Shri Sham Dass could not read English. I had, therefore, explained the contents of the Will in Punjabi. After I had explained the contents of the Will, he admitted the same and signed it. After the Will was executed, the Will was taken away by Shri Sham Dass. It is wrong to suggest that on 20.2.1973 Shri Sham Dass was bed-ridden. It is wrong to suggest that he was not in disposing state of mind to execute the Will. I never noticed Shri Sham Dass suffering from any ailment. It is wrong to suggest that Shri Sham Dass had never come to my office. It is wrong to suggest that the Will was never executed in my office. It is wrong to suggest that I have deposed falsely."

PW-3, Sh. RD Mahant has deposed in his examination-in-chief that the said Will dated 20.02.29173 was drafted by him on the

instructions of Late Sh. Sham Dass who had requested him to draft the said Will 2-3 days prior to the drafting of the Will. He further deposed that on 20.02.1973, late Sh. Sham Dass, accompanied by one another person, had come to his residence and the Will was already drafted by him. PW-3 read over and explained the contents of the said Will to the Late Sh. Sham Dass and the person who accompanied him. After admitting the contents of the Will to be correct, the testator Sh. Sham Dass had put his signatures and left thumb impression at points A, B and C on the said Will and the person accompanying him signed as an attesting witness at point D. He further stated that he himself signed the Will at point E as an attesting witness and at point F as the scribe of the Will. It is further deposed by him that the testator was in good health and sound disposing mind at the time of giving him instructions and at the time of execution of the said Will. In his cross-examination by counsel for appellant, PW-3 deposed that he had drafted the said Will as a lawyer and since late Sh. Sham Dass could not read English, the content of the Will were explained to him in Punjabi and after the Will was executed; it was taken away by the testator. PW-3 categorically negated the suggestion that on 20.02.1973, the testator was bed-ridden or was not in a disposing mind to execute the Will. PW-3 also deposed that the testator late Sh. Sham Dass did not suffer from any ailment.

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30. Since the other attesting witness Sh. P C Mahindroo had passed away before tendering his statement in the court, the respondent has brought in the witness box PW-1, Smt. Prem Mahindroo, who is the wife of Sh. PC Mahindroo and also real sister of both the parties to the appeal. In her evidence by way of affidavit, PW-1 has stated that she stayed in the suit property upto April, 1985 and thereafter vacated the suit property at the request of the respondent since the said property was willed in favour of the respondent by her father who expired on 18.01.1978. It is further stated by PW-1 that the last Will and testament of her father, late Sh. Sham Dass came to her knowledge after the death of the testator and the said Will was handed over to the respondent at the time of her marriage in Kanydaan on 11.10.1978 since the Will was in her favour. PW-1 has further categorically stated in her affidavit by way of evidence that the appellant had never resided in the suit property during her stay in the suit property and that the suit property belongs to the respondent and neither she nor any of her brothers, including the appellant, have any claim in the said property. In her cross-examination by counsel for appellant, PW-1 deposed that the Will dated 20.02.1973 came to her knowledge after the death of the testator. It was when she was checking the papers of her deceased father that she found an envelope bearing the name of the respondent. The envelope contained the Will dated 20.02.1973 and that the execution of said Will was not disclosed by the testator



during his lifetime. PW-1 further deposed that she disclosed the said Will to all the relations at the time of marriage of the respondent and handed over the said Will to the respondent in her Kanyadaan. Narrating the contents of the Will, PW-1 stated that as per the Will, the suit property belonged to the testator during his lifetime and after his death, it would belong to the respondent. PW-1 further stated in her cross-examination by counsel for appellant that late Sh. Sham Dass had given some share to all of his legal heirs; House No. L-58A was given to brother Om Prakash, L-58B was given to brother Hem Raj, L-59B was given to respondent as she was unmarried, the sale proceeds of L-59A were distributed between brothers, Krishen Lal and appellant Jai Bhagwan and a shop was given to brother BR Wadhwa. Some cash was also given to brother Prem who left for USA. She has categorically deposed that the appellant is in possession of only one room in the suit property.

31. It would be relevant to reproduce the evidence of some of the material witnesses. PW-1, Smt. Prem Mahindru, sister of the parties has deposed as under:

"That I had stayed in the aforesaid house of my father upto April, 1985. I had left the said house of my father at the request of plaintiff as the said house had been willed in favour of plaintiff by my father. My father had expired on 18.01.1978. I continued to stay in the said house after the expiry of my father. After the death of my father, his last Will & Testament came to our knowledge and the present Will dated 20.2.1973 was handed over to the plaintiff at the time of her marriage (Kanyadan) on 11.10.1978 as the same was in her favour.

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That I say that during my stay in the aforesaid house the defendant never resided in the said property No.L-59-B, Malviya Nagar, New Delhi. The said property belongs to the plaintiff as per the wishes of my father and I have no claim in the said house nor any of my brother have any share in the said house including the defendant."

32. In her cross-examination by counsel for appellant, PW-1, Smt. Prem

Mahindru deposed as under:

"My father owned four houses and a shop, which are 58A & 58B, Malviya Nagar, and 59A & 59B, Malviya Nagar. The shop is in Lajpat Rai Market and its number is probably 197. The plaintiff was married on 11.10.78. The Will dated 20.02.73 came to my knowledge after the death of my father. When I was checking the papers of my father after his death I found an envelope bearing the name of the plaintiff. I opened that envelope and found the Will dated 20.2.73. At that time the plaintiff was also present. My father has not disclosed about the execution of this Will to me during his life time. When I had opened the box of my father I myself, and my sister the plaintiff, were only present.

The plaintiff was married after the death of my father. Laj Handa was married after discovery of the Will. I disclosed about the Will dtd. 20.2.73 to all the relations at the time of marriage of the plaintiff and I also handed over the Will to the plaintiff at that time of Kanyadaan. The Will was registered after it was discovered. The Will was not registered till the marriage of the plaintiff. I am aware of the contents of the Will. As per the Will, house no.L-59B, Malviya Nagar, would belong to the testator during his life time and after his death it was bequeathed to the plaintiff. These are the only contents of the Will. I cannot tell the date of registration of the Will.

Question: Who are the attesting witnesses to the Will Ex.PW3/1?

Answer: All the brothers and sisters are the attesting to the Will Ex.PW3/1.

It is correct to say that my late father had given some or the other property to every one of his legal heirs. House L-58A was given to brother Om Prakash, L-58B was given to Hem Raj Verma, 59B was given to the pltf. as she was unmarried. Out of the sale proceeds of house no.59A some amount was given to my brother Krishan Lal and some amount was given

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to Jai Bhagwan. As far as I recollect the total sale consideration was Rs.33,000/- and Rs.17,000/- was given to Kishan Lal and Rs.16,000/- was given to deft.

A shop was given to our brother B.R.wadhwa by our father. Some cash was given to our brother Prem by our father. It is wrong that I have not stayed in the suit property from 1974 to 1985. The deft was not residing in the suit property from 1971 to 1988. One nandani was tenant in the suit property from 1985 to 1988. The deft is in possession of only one room out of the suit property. The plaintiff is in possession since 1987."

33. The respondent herself has deposed as PW-10. In her affidavit by way of evidence, PW-10, Smt. Laj Handa, has reiterated the contents of the plaint.

34. In her cross-examination by counsel for appellant, PW-10, Smt Laj Handa deposed as under:

"My father has two properties vis : 197, Lajpat Rai Market, Delhi and second property is the suit property i.e. L-58, L-59, Malviya Nagar, New Delhi. My father was owner of the aforementioned properties. I am not aware whether my father was occupying and using property, other than the properties aforementioned. It is correct that Will (Ex.PW-3/1) is of the year 1973.

It is correct that property No.L-58 Malviya Nagar and property No.L-59, Malviya Nagar are two different property, each having area of 200 sq. yards. It is correct that as on today these properties have been divisioned and also known by L-58A, L-58B, L-59A and L-59B, each having 100 sq. yards area. It is correct that the properties are known by such names/numbers i.e. L-58A, L-58B, L-59A and L-59B from the lifetime of my father; as such numbers were assigned during his lifetime. L-58A is in the possession of Shri Om Prakash Wadhwa. It is correct that property known by number L-58A was given to Shri Om Prakash Wadhwa by my father. It is correct that L-58B was given to Shri Hem Raj by my father, as his share in the property. It is correct that property No.L-59A was disposed off by my father.

Q: What was given to the other two brothers and two sisters by your father, as their share in the property?

A:Shri Baldev Raj Wadhwa used to do business with father at Lajpat Rai Market, shop was given to him as his share. Shri

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Prem Prakash Wadhwa was going aboard, he was given cash as his share, cash amount is not known to me. I was given property No.L-59B, Malviya Nagar, Delhi in the form of Will that the property will come to me after demise of my father, it was given to me as Kanyadan in my marriage. A flat measuring 50 sq. yards known by number 151, Gali No.7, Janta Flat, Madangir was given to Smt. Prem Mehendru, was given by me to her on the request of my father.

It is correct that I have my own house in Dehradun i.e. House No.244, Doon Vihar, Dehradun. At the time of my marriage the Will dated 20.02.1973 was handed over to me as Kanyadan by my elder sister named Prem Mahindru. The marriage ceremony was attended by my all brothers and sisters. It is correct that the above mentioned Will was unregistered at the time of its handing over to me. Jai Gopal is residing in the suit property since 04.9.1988. It is incorrect to suggest that the Will in question was not in the knowledge of family members at the time of my marriage. Since 1988 Jai Gopal is in continuous possession of the portion marked as red in Ex.PW10/1. It is incorrect to suggest that the entire portion except one room of the suit property is in possession of Jai Gopal.

The Will has been executed on 20.02.1973. My father died on 18.01.78. Before the death of my father I was not aware of the Will. It is wrong to suggest that my father was ill before his death. It is wrong to suggest that the mutation was not done on the basis of Will. It is wrong to suggest that the mutation of the property was done in favour of plaintiff (Ms. Laj Handa) on the basis of her possession of her property. I came to know about the will at the time of marriage in the year 1978. It is correct that my brother Baldev Raj is also the beneficiary of this will."

35. PW-11, Sh. BR Wadhwa, brother of the parties, stated in his affidavit by way of evidence as under:

2. "That I say that my sister Smt. Laj Handa is the exclusive owner of property bearing No.L-59 B, Malviya Nagar, New Delhi. The said property was bequeathed to Laj Handa by our late father Shri Sham Dass under a Will executed by him on 20.02.1973 and the same is Ex.PW11/1. This property was self acquired by my late father. My father expired on 18.01.1978. The said Will came to my knowledge after the death of my father and more particularly before the marriage of my sister Smt. Laj Handa.

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3. That I say that my brother Shri Jai Gopal was not residing in the aforesaid property prior to the year 1988. He was permitted to reside in the said property by my sister Smt. Laj Handa in the year 1988 for one year only after the marriage of Shri Jai Gopal.

4. That my sister Smt. Laj Handa has been in possession of house No.L-59 B, Malviya Nagar, New Delhi since 1952 along with other members of the family and singly after the death of our father with document like MTNL Phone No.6446625.

5. That Shri Jai Gopal Wadhwa had been residing in Madangir since the year 1973 till 1988. I have also not issued any NOC as well as rent receipt to Jai Gopal. In fact, he had fabricated the NOC and rent receipts for which I along with my sister Laj Handa have filed a complaint with P.S. Hauz Khas."

36. In his cross-examination by counsel for appellant, PW-11 deposed as under:

"It is incorrect that Will of my father was registered after his death. The Will was registered after all the brothers and sisters consented to the same. No documents in this regard have been filed at the time of registration before sub-registrar. Sh. Jai Gopal had been residing in Madangiri, Delhi from 1973 to 1988 and had both commercial and residential property in his possession. Three to five khokhas on the respective plots were constructed by Jai Gopal. Jai Gopal had a residential property G087, Madangiri, Dakshin Puri, where he used to live and had also constructed a store according to his statement before SEM."

37. It is also relevant to reproduce the statement of appellant Sh. Jai Gopal who deposed as PW-3 in Suit no. 396/2004 titled as "Jai Gopal v. Laj Handa". In his examination-in-chief, Sh. Jai Gopal stated as under:

"I am residing in property L-59B, Malviya Nagar, New Delhi since the year 1953. The property No.L-59B measured 100 sq. yards. It is only residential purposes. I have also opened a shop therein. There was an oral partition of the property in the year 1973 when my father was bed-ridden on account of illness. At the time of partition, in 1973 Bhagwanti and Kirhsn Lal had already been given compensation by payments of money out of the sale proceeds of house No.L-59A. Then said, Bhagwati was given a flat No.7/151, Madangir out of the sale proceeds, whereas Kishan Lal was paid cash. Shop at Lajpat Rai Market was given to Baldev Raj and Prem Prakash. Om Prakash was given a house measuring 100 sq. yards,

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bearing No.L-58-A, whereas Hem Raj was given House NO.L-58-B. A sum of Rs.1 or 1.5 lacs were paid to defendant No.1 (sic. respondent herein) out of which she built up a house at Dehradun. I was given house No.L-59/B. I am residing in this house since the time of the partition from 1973. I am running a shop for the last about 35 years.

The defendant No.1 started putting up in Dehradun after her marriage. She came to Delhi in the year, 1988. On request of defendant No.1, I gave her one room on the front side of the house. The said room has been shown red in the site plan of the property L-59/B, Ex.PW3/1. Initially the room was given for the residence of daughter of defendant No.1. Subsequently, defendant No.1 also started residing there and brought her luggage. I had not permitted defendant no.1 to stay in the room of the suit premises.

I do not know as where from defendant no.1 has brought the Will and wanted to get the house mutated in her name on the basis of said Will. I came to know of the existence of the Will propounded by the defendant No.1, in the year 1998 when I received a notice from the MCD for giving my no objection to the mutation. I talked to my other brothers and sisters. They showed ignorance of the Will propounded by defendant No.1. I am not very much aware of the contents of the Will propounded by defendant No.1. There is mention of one Baldev Raj in the said Will. The defendant no.1 had shown me the Will which was executed in the year 1973. It was not a registered Will. I have seen the Will Ex.PW3/1 in the Civil Suit Laj Handa v. Jai Gopal. Ex.PW3/1 is not the said Will. I do not know if defendant No.1 has filed in the court registered Will."

38. In his cross-examination by counsel for respondent, Sh. Jai Gopal, the appellant herein deposed as under:

"It is correct that the suit property was allotted to my father in the year 1953 as a refugee from Pakistan. I am not aware if in the year 1969 the rehabilitation department of Government of India had executed a lease deed in favour of my father in respect of the suit property including the other portions of L-59A. I can neither admit nor deny if Mark-Z1 is the certified copy of the said lease deed. It is correct that the amount of lease money was paid by my father out of his personal earnings. My father must be the exclusive owner of property no.L-59. None else was the owner of this property along with my father. My father expired in the year 1978.

Laj Handa got married in the year 1978 or 1979. I was residing in the suit property after the marriage of Laj Handa. I cannot produce any document to show that I was residing in

the suit property before marriage of Laj Handa or after the marriage of Laj Handa or any time till the year 1988. It is wrong to suggest that no oral partition had taken place in the year 1973.

I was operating the said shop in property No.L-59B, Malviya Nagar, New Delhi for the last about 35 years. I was operating this shop in the front portion of property L-59B, Malviya Nagar, New Delhi. There was a room got constructed at the place, about 35 years back where the shop was in operation. It is correct that the said portion/ shop was demolished by MCD being illegal structure.

It is correct that on 22.03.1999 I had received a letter from MCD asking me furnish documents of ownership in respect of the suit property within three days failing which the suit property would be mutated in the name of Smt. Laj Handa. It is correct that on 25.03.1999 I had written a letter to MCD asking them not to mutate the property in the name of Smt.Laj Handa as I have obtained stay from the Court. The document Ex.PW-3/D-4 was written by me to the MCD. I had written the letter Ex.PW-3/D4 after I had obtained the stay from Court. It is wrong to suggest that I had written a false letter to MCD on 25.03.1999 as the suit was filed on 30.03.1999.

It is incorrect to suggest that at the time of marriage of Smt. Laj Handa in 1978 my elder sister Smt. Bhagwanti (sic. Prem Mahindru) had disclosed about the same to all the family members and it was then when I first came to know of the Will. It is wrong to suggest that as per the said Will the shop in Lajpat Rai Market was to be taken over by Sh.Baldev Raj and property No.L-59-B was to go in favour of Smt. Laj Handa. Vol. No such Will exists.

It is correct that I had carried out some illegal construction at the back of house i.e. Suit property which has been demolished by the MCD. The room in the front side, as stated by me earlier in my statement was demolished after some time of the demolition on the backside. The 'Malba' of the illegal construction which was demolished by the MCD has been removed."

39. The version of the respondent is further supported by the evidence of PW-11, Sh. BR Wadhwa, who is also the real brother of the appellant and the respondent. PW-11 has stated in his affidavit by way of evidence that the respondent , Smt. Laj Handa (respondent)

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is the exclusive owner of the suit property as the said property was bequeathed to her by their father late Sh. Sham Dass under a Will executed by him on 20.02.1973. It is stated that the Will came to their knowledge after the death of the father and more particularly before the marriage of the respondent. It is further stated in his affidavit that the appellant was permitted to reside in the suit property by the respondent in the year 1988 for one year only after the marriage of the appellant and that the respondent has been in possession of the suit property since 1952 along with other family members and singly since the death of the father. In his cross-examination by counsel for appellant, PW-11 reiterated that the Will dated 20.02.1978 was registered after the death of the testator after all the brothers and sisters consented to the same. He further deposed that the appellant had been residing in Madangiri, Delhi from 1973 to 1988 and had both commercial and residential property in his possession.

40. To further prove the registration of the said Will, the respondent has summoned Mr. J. Narain, UDC, Office of Sub-Registrar-I, Kashmere Gate, with the summoned record, i.e., the Will dated 20.02.1973 of Shri Sham Dass.
41. PW-1, Mr. J. Narain, from the office of Sub-Registrar deposed in his examination in chief as under:

"I have brought the summoned record i.e. the will dated 20.2.1973 of Shri Shyam Das registered with Sub registrar office bearing registration no.4594 addl. Book no.3, vol. no.585, pages 183 to 185 registered on 25.3.88. Photocopy

on record Ex.PW1/A is the true copy of the registered will in our record. I cannot tell when this will was presented for registration as I have joined the deptt on July 2003."

In his cross-examination by counsel for appellant, PW-1, deposed as under:

"From the record brought by me today I cannot say as to when the Will was presented for registration. I can simply say that this Will was registered on 25.3.88."

42. Contending that the Will dated 20.02.1973 has been executed under suspicious circumstances, the counsel for appellant has strongly urged before this court that the Will dated 20.02.1973 has been registered after a lapse of ten years and the respondent has failed to explain the cause of such a long delay. Admittedly, the Will dated 20.02.1973 was registered in the year 1988 after a long lapse of ten years. PW-10, Smt. Laj Handa who is the respondent in the present appeal, has stated in her evidence that she applied for the registration of the Will dated 20.02.1973 on 12.10.1979 but before the Will could be registered, the officials of the office of Sub-Registrar, Delhi misplaced it. She further states that since she was married in Dehradun, she could not pursue the matter with the office of Sub-Registrar and it was in the year 1988 that PW-10 pursued the matter with office of the Sub-Registrar and the Will was found thereafter. The counsel for appellant contends that the respondent has failed to bring on record any document in furtherance of her averment that the Will was misplaced by the officials of the Sub-registrar and further states that why no steps were taken by the respondent to locate the said Will. The aforesaid



argument of the counsel for appellant is without any merit since the Will stands duly registered and even otherwise a Will is not a compulsory registered document and nothing material turns on this submission.

43. The next limb of the arguments of counsel for appellant is that the testator late Sh. Sham Dass was not in sound disposing state of mind at the time of the execution of the alleged Will. He contends that in 1973, the testator was suffering from ill-health and was bed-ridden. However, no evidence has been led by the appellant to show that the medical condition of the testator was such that he was not in a position to execute the Will and the medical reports have also not been placed on record or procured by the appellant in order to substantiate the aforesaid contention.

44. The counsel for appellant has further sought to contend that the suit property is an ancestral property and thus, it cannot be bequeathed in favour of the respondent by execution of any Will whereas the counsel for respondent contends that the suit property is the self acquired property of the testator late Sh. Sham Dass. The appellant contends that the suit property was allotted to his father late Sh. Sham Dass in the year 1953 as a refugee from Pakistan in lieu of the ancestral properties left by him in Pakistan. I do not find any merit in the aforementioned contention of the counsel for appellant in the light of the fact that while one hand, the appellant has denied any knowledge of the fact that a lease deed in respect

of the suit property was executed by the rehabilitation department of Government of India in favour of late Sh. Sham Dass whereas on the other hand, the appellant himself has deposed in his cross-examination before the trial court that the lease money for the suit property was paid by the father Late Sh. Sham Dass out of his personal earnings. He has further deposed that late Sh. Sham Dass was the exclusive owner of the suit property and no one else was the owner along with his father. Further, the respondent has also placed on record the lease deed in respect of the suit property which is duly exhibited as Ex. PW-3/2. PW-1, Smt. Prem Mahindru, in her cross-examination by counsel for appellant, has categorically negated the suggestion that the suit property was purchased by late Sh. Sham Dass out of the sale proceeds of ancestral properties left in Pakistan. Accordingly, the aforesaid contention of the counsel for appellant is without any merit.

45. The counsel for appellant has not denied the signatures or the thumb impression of late Sh. Sham Dass nor has he made any request to the trial court or to this Court to compare the signatures or the handwriting of the attesting witnesses or the testator.
46. I find that the appellant filed suit being Suit no. 17/2000 for declaration that the Will dated 20.02.1973 is forged and fabricated and further sought permanent injunction against the respondent and her daughter restraining her from dispossessing the appellant from the suit property but the said suit was dismissed in default for

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non-appearance of the appellant on 04.02.1999. Subsequently another suit being Suit No. 52/1999 was filed by the appellant seeking the same relief which was also dismissed in default for non-appearance of the appellant on 26.02.1999.

47. Even Otherwise, the counsel for respondent has contended that the issue that whether the Will dated 20.02.1973 is forged and fabricated has already been decided in favour of the respondent vide judgement and decree dated 17.03.2010 in another suit CS No. 95/09/99 titled "*Sh. Jai Gopal Wadhwa v. Smt. Laj Handa and Others*" and since the said judgement has not been challenged by the appellant, it has attained finality. The appellant thus, cannot now in subsequent proceedings dispute the authenticity of the said Will. A perusal of the judgement dated 17.03.2010 passed by the Additional District Judge makes it clear that the trial court while pronouncing the said judgment has dealt with the genuineness of the execution of the Will dated 20.02.1973. Issue no. 1 was framed as "*Whether the Will dated 20.02.1973 of late Sh. Sham Dass is a forged and fabricated documents. If so, its effects?.*" After considering the evidence led by both the parties, the learned trial court decided the said issue in favour of the respondent herein thereby holding that the said Will is a genuine document. Accordingly, I find force in the contention of the counsel for respondent that the appellant cannot challenge the authenticity of the Will in another subsequent proceeding.

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48. PW-11, Sh. Baldev Raj has also deposed that the Will dated 20.02.1973 has also been accepted as a valid Will in Suit No. 377/1999 titled as "*Sh. Baldev Raj Wadhwa v. Union of India*" filed by PW-11 seeking declaration and mandatory injunction against the Union of India who continued to issue rent receipts in respect of shop no. 197, Lajpat Rai market in the name of Late Sh. Sham Dass. A copy of the judgment dated 11.08.2008 passed in the aforementioned suit is exhibited as Ex. PW-11/2 wherein accepting the Will dated 20.02.1973, the trial court passed a decree declaring Baldev Raj as the lessee of the said shop and directed the Union of India to execute all necessary documents for transfer of the tenancy rights in favour of Sh. Baldev Raj.
49. PW-6, Sh. Kaushal Kumar, LDC, Legal Cell, House Tax Department, New Delhi has brought the summoned records before the trial court. A perusal of the summoned record exhibited as Ex. PW6/1 (Colly) makes it evident that the respondent Laj Handa had applied for the mutation of the suit property in her name to the MCD on 15.10.1998 and submitted a registered copy of the Will dated 20.02.1973, death certificate of late Sh. Sham Dass and also No Objection Certificates from six out of eight legal heirs. I have perused the letter dated 25.03.1999 exhibited as EX. PW-3/D4 written by the appellant to the MCD office thereby stating that the appellant has approached the competent court seeking a stay order against the said Will. The counsel for respondent contends that the

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appellant was successful in obtaining a stay order from the court on the basis of a license obtained by the appellant from the MCD in respect of his shop. However, the said license was forged and was cancelled subsequently. This fact is corroborated by the judgement dated 08.06.2009 and order of sentence dated 12.06.2009 wherein the appellant was convicted under section 420/468/471 IPC for forging documents in order to obtain a trade license from the MCD for running his shop in the name of Laxmi Electric Works at the suit property. An appeal was filed against the conviction of the appellant which was dismissed vide judgement dated 27.10.2009. further, PW-4, Mr. Rajbir Singh Chauhan, Record Clerk, MCD has deposed in his examination-in-chief that the license issued to the appellant was only an ad hoc license which was subsequently cancelled vide order dated 12.01.2000.

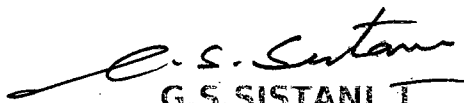
50. It is next contended by counsel for appellant that the appellant has been in possession of the suit property since birth. In order to substantiate its arguments, the appellant has placed on record documents pertaining to gas and electricity connections at the suit property, election card, ration card, LIC Policy , and the like, all of which bear the address of the appellant as L-59B, Malviya Nagar. The counsel for appellant has examined DW-4, Sh. Ashok Kumar Sharma, UDC from the Electoral office, Malviya Nagar; DW-5, Sh. BN Dua , Inspector, Food and Civil Supply Department, Circle 43, Sheikh Sarai and DW-7, Sh. Karam Chand, Officer from BSES, Saket,

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Delhi to prove his possession of the suit property. As far as the aforementioned contention is concerned, I concur with the view of the trial court that the possession of the suit property by the appellant is no relevance since the Will dated 20.02.1973 has been duly proved and as per the said Will, the suit property has been bequeathed in favour the respondent. Accordingly, the appellant cannot assert his right to stay in the suit property.

51. It is pertinent to mention that in order to substantiate his claim; the counsel for appellant has examined DW-3, Sh. Naresh Wadhwa s/o late Sh. Hem Raj Wadhwa and DW-6, Sh. Dilip Wadhwa s/o Late Sh. OP Wadhwa. A perusal of the statements of the DW-3 and DW-6 would reveal that nothing material has been brought forth from their statements.

52. Thus, in view of the observations made above, I do not find any infirmity in the judgement and decree dated 17.03.2010 passed by the learned trial court. Accordingly, the appeal is dismissed.


G.S.SISTANI, J.

July 15, 2011
'ssn/msr'