

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment reserved on: 12.12.2012

Judgment pronounced on: 17.12.2012

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+ **CS(OS) 1371/2002**

RAGNI CHOPRA

..... Plaintiff

Through: Mr Sudhir Nandrajog, Sr Adv with
Mr Jasmeet Singh, Adv.

versus

RAJESH & ORS.

..... Defendants

Through: Ms Roma Bhagat, Adv for Ds 1,3 and
5.

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

V.K. JAIN, J.

1. The plaintiff before this Court is the sister of defendant No. 1 Rajesh Malhotra and defendant No. 2 Rakesh Malhotra. Defendant No. 3 is the wife and defendants 4 and 5 are the children of defendant No. 1.

Property No. E-59, Vasant Marg, Vasant Vihar, New Delhi, was owned by late Shri R.M. Malhotra and late Smt. Veera Malhotra, parents of plaintiff and defendants 1 and 2. Both of them held half undivided share each in the said property. Vide Will dated 29.06.1988, Smt. Veera Malhotra bequeathed her half share in the suit property to her husband Late Shri R.M. Malhotra. Vide Will dated 03.10.1993, she bequeathed her share in the said property to defendant No.1 and 3

to 5 in the ratio of 40:30:20:10 respectively. Vide Will dated 13.08.1995, she maintained the above-referred bequest as far as the suit property is concerned. The case of the plaintiff is that vide Will dated 14.05.2001, Smt Veera Malhotra, bequeathed her half share in the suit property to her. Since late Shri R.M. Malhotra, had bequeathed his share in the suit property to defendants 1 and 3 to 5 in the ratio of 40:30:20:10 respectively, the plaintiff claims half share in the said property by virtue of the Will purporting to be executed in her favour on 14.05.2001. In CS(OS) No. 1371/2002 filed by the plaintiff, defendant No. 1 propounded a Will dated 07.06.2002, alleged to have been executed by late Smt. Veera Malhotra to defendants 1 and 3 to 5 in the ratio of 40:30:20:10 respectively. The case of the plaintiff is that the Will propounded by defendant No. 1 is a forged and fabricated document executed under threat, pressure and coercion. The plaintiff also alleges that defendant No. 1, on the pretext of handling income-tax and other matters of his mother, had obtained her signature on blank papers which were used to type the Will dated 07.06.2002 after her death. Smt. Veera Malhotra expired on 16.08.2002. The Will dated 07.06.2002 was got registered by defendant No. 1 on 09.07.2003. The plaintiff is now seeking partition of the suit property along with the possession of the partitioned share.

2. In his written statement, defendant No. 1 has denied the execution, validity and genuineness of the Will dated 14.05.2001 set up by the plaintiff and has claimed the same to be unnatural and improbable. It is also alleged that the Will dated 14.05.2001 was got executed by the plaintiff by use of undue influence and coercion. It is also alleged in the written statement that on or around 14.05.2001, Smt. Veera Malhotra was suffering from cancer of lymph nodes and undergoing intensive infusional chemotherapy and, therefore, not in a position to execute the Will dated 14.05.2001. It is also alleged that Smt. Veera Malhotra had also executed a Relinquishment Deed dated 03.04.2001, whereby she relinquished her share in the suit property in favour of defendants 1 and 3 to 5 in the ratio of 40:30:20:10 respectively. It is also stated in the written statement that there was no logical or valid reason for Smt. Veera Malhotra to bequeath her entire estate to the plaintiff, thereby disinheriting defendant No. 1, who was the only child looking her after.

3. In his written statement, defendant No. 2 Rakesh Malhotra, has disputed the Wills set up by the plaintiff and defendant No. 1 and has alleged that these Wills were got executed by the plaintiff and defendant No. 1 by exercising undue influence and coercion. According to him, the suit property is equally owned by him, the plaintiff and defendant No. 1. It is also alleged that Smt. Veera Malhotra

was an illiterate person and did not have any education though she had learnt to read and write Hindi. According to defendant No. 2, the ability of Smt. Veera Malhotra to read and write in English is extremely limited and she knew only to sign. Thus, according to this defendant, Smt. Veera Malhotra had died intestate.

4. The following issues were framed on the pleading of the parties:-

- i. Whether the suit has not been properly valued for purposes of Court fees and jurisdiction? OPD-1
- ii. Whether Late Smt. Veera Malhotra executed valid, legal and enforceable Will dated 29.06.1988, 3.10.1993, 13.08.1995 and 07.06.2002, if so, to what effect? OPD-1
- iii. Whether Late Smt. Veera Malhotra executed legal, valid and enforceable Will dated 14.05.2001, if so, its effect? OPD-1
- iv. Whether the plaintiff is entitled to partition and possession in the property No. E-59, Vasant Marg, Vasant Vihar, New Delhi? OPP
- v. Relief

5. Issue No. 1

The plaintiff has valued the suit at Rs 1 crore and paid *ad valorem* Court fee on that valuation. During the course of arguments, the learned counsel for the defendant No. 1 pointed out that in the Valuation Report filed by the plaintiff, her own valuer M/s Knight Frank had valued the land underneath the suit property at

Rs 85,000/- per square yards on 01.04.2004. It was also opined in the said Valuation Report that there has been appreciation of about 10% in last about 6-9 months. This suit has been instituted on 12.12.2002, i.e., in the Financial Year 2002-03. If 20% of the valuation given by the valuer of the plaintiff as on 01.04.2004 is deducted from the said valuation, the market value of the land itself alone in the year 2002-03 comes to about Rs 68,000/- per square yards. Since the plaintiff is claiming half share in the said property, the value of her share in the land calculated at the rate of Rs 68,000/- per square yards comes to Rs 4,08,00,000/-. The report of the valuer of the plaintiff Knight Frank shows that this property has built up area measuring 4044 square feet in the main building and 980 square feet in the servant quarters. The total built up area, therefore, comes to Rs 5,024/- square feet. No separate value of the superstructure has been given by the valuer of the plaintiff. While giving value of some other properties in the locality, the valuer of the plaintiff valued them only on the basis of land price, on the ground that they were old properties. Therefore, I am not adding the value of the superstructure to the land value given by the expert. The plaintiff, therefore, is required to pay Court fee on the valuation of Rs 4,08,00,000/-. The plaintiff is granted four weeks to file the deficient Court fee in terms of this judgment within four weeks.

The issue is decided accordingly.

6. Issue Nos. 2 and 3

The burden of proving that the Will was validly executed and is a genuine document is on the propounder of the Will. He is required to prove that the Testator had signed the Will and had put his signature out of his own free Will. He is also required to prove that the Testator, at the time of execution of the Will, had a sound disposition of mind and was in a position to understand the nature and effect of what he was doing. If sufficient evidence in this behalf is produced by the propounder of the Will, the onus cast on him stands duly discharged.

Another requirement of law is that if there are suspicious circumstances surrounding the execution of a Will, the onus is on the propounder to explain those circumstances to the satisfaction of the Court, before the Will is accepted as a genuine document. The suspicious circumstances may be many such as (i) the signature of the Testator may be shaky and doubtful or different from his usual signatures; (ii) the mental condition of the Testator may be feeble and debilitated at the time of the execution of the Will; (iii) the disposition may be such as is found to be unnatural, improbable or unfair in the light of relevant circumstances, such as exclusion of natural heirs without any reason (iv) the propounder may take a prominent part in the execution of the Will; (v) the Will may not see the light of the day for long time; (vi) the Will may contain incorrect recital of essential facts.

Of course, the suspicious circumstances, alleged by a person who disputes the genuineness of the Will, ought to be real and germane and not the imagination of a doubting mind amounting to conjecture or mistrust.

It is also a settled proposition of law, fraud, coercion or undue influence is alleged in execution of a Will, the burden of proving the same would be on the person by whom such a plea is set up. (**Madhukar D. Shende v. Tarabai Aba Shedage (2002) 2 SCC 85, Sridevi and Ors. v. Jayaraja Shetty and Ors., (2005) 2 SCC 784.**)

It was observed by Supreme Court in **Bharpur Singh and Ors. v. Shamsher Singh, (2009) 3 SCC 687**, that though deprivation of due share to the natural heirs by itself may not be a suspicious circumstance, it is one of the factors which is taken into consideration by the Courts before granting probate of a Will.

It was held by Supreme Court in **Rani Purnima Debi vs. Khagendra Narayan Deb & Anr. AIR 1962 SC 567 and Gurdial Kaur & Ors. vs. Kartar Kaur & Ors. 119 PLR 524 (SC)** registration of a Will would be prima facie evidence of its genuineness though that by itself is not sufficient to dispel all suspicious circumstances surrounding execution of the Will,.

In **Rani Purnimadebi & Another vs. Khagendra Narayan Deb (supra)**, the Supreme Court was of the view that if the evidence as to registration shows that it had been done in a perfunctory manner, the Officer who had registered the Will

did not read it over to the Testator or did not bring home to him that he was admitting the execution of the Will or did not satisfy himself in some other way that the Testator knew that it was a Will, execution of which he was admitting, the registration by itself would not be of much value.

7. The Wills executed on 29.06.1988, 03.10.1993 and 13.08.1995 have been admitted by the plaintiff as well as defendants No.1 and 3 to 5 who are the only contesting parties. Defendant No.2, who disputed all these Wills was proceeded ex-parte and did not lead any evidence. The dispute between the parties is now confined to execution of the Will dated 14.05.2001 set up by the plaintiff and the Will dated 07.06.2002 set up by defendant No.1.

It is an admitted position, as far as the contesting parties are concerned that the Will dated 29.06.1988, 03.10.1993 and 13.08.1995 were got duly registered by their parents. Under the Will dated 03.10.1993, Smt. Veera Malhotra bequeathed her half share in the suit property to defendants 1 and 3 to 5 in the ratio of 40:30:20:10 respectively. The same was the disposition made by late Shri R.M. Malhotra as far as the suit property is concerned. Vide Will dated 13.08.1995, the same disposition was maintained by Smt. Veera Malhotra and Shri R.M. Malhotra as far as the suit property is concerned. It is also an admitted fact that for quite some time before her death late Smt. Veera Malhotra was suffering from cancer. It

is also an admitted position that after death of her husband late Smt. Veera Malhotra had shifted to the flat where defendant No. 1 was residing with his family and she continued to live there, till her death. As far as the contesting siblings are concerned, both of them admit that the relations of late Smt. Veera Malhotra and her husband with their second son, defendant No. 2 were far from cordial. The Will dated 14.05.2001, therefore, needs to be viewed in the background of the disposition made in the admitted Wills dated 03.10.1993 and 13.08.1995.

8. The Will dated 14.05.2001 purports to have been executed in the presence of two witnesses, namely, Dr. A.J.S. Juneja and Shri Rakesh Mathur. Shri Rakesh Mathur has come in the witness box as PW-3, whereas Dr.A.J.S. Juneja has been examined as PW-2. In his affidavit by way of evidence, the attesting witness of the Will dated 14.05.2001, Shri Rakesh Mathur has stated that he knew late Smt. Veera Malhotra and her husband since his marriage to Reynoo Mathur, daughter of Shri Ram Prakash Saroj and late Smt. Kaushal Saroj in 1976. According to him, Malhotras were very close to his parents-in-law and they used to go together for vacation. According to the witness Mrs. Veera Malhotra had on one of her visits to their house, told him that she wanted him to help her in making a Will and introduced her to a Medical Practitioner who could also, in view of her advanced age, certify her capability to make and also be a witness to her Will. He has further

stated that he had given his consent for the same to Mrs. Veera Malhotra and had also passed on the contact number of his family doctor Dr. A.J.S. Juneja to her. He has stated that Mrs. Veera Malhotra had thereafter rung up him and asked him if it was convenient for him to accompany her to the Registrar for the purpose of execution and registration of her Will. He accordingly reached the office of the Sub-Registrar at INA in the morning of 14.05.2001. Mrs. Veera Malhotra was already there when he reached the office of Sub-Registrar. Thereafter they were joined by Dr. A.J.S. Juneja. Mrs. Veera Malhotra read the Will and signed first, thereafter Dr. A.J.S. Juneja signed the Will. According to the witness, he was the last person to sign the Will.

9. In his deposition, Dr. A.J.S. Juneja has stated that sometime in the year 2001, Mr. Rakesh Mathur had called him up and said that he was sending a close family friend to him. Subsequently, Mrs. Veera Malhotra spoke to him and informed that she intended to make a Will and wanted him to attest the same. She requested him whether it would be convenient for him to be present before the Sub-Registrar on 14.05.2001 to certify her physical and mental condition, Mrs. Veera Malhotra came to his clinic at Sarvapriya Vihar at about 9 am, where he examined her and found her physically and mentally fit. He then reached the office of Sub-Registrar at about 10 AM, where Mrs. Veera Malhotra read the Will and thereafter

signed each and every page. He then signed it as a witness and Mr. Rakesh Mathur signed thereafter.

10. It is not in dispute that the Will dated 14.05.2001 bears signatures as well as the photograph of late Smt. Veera Malhotra. This Will is a registered document and therefore, some authenticity is certainly attached to the document on account of its being registered though the registration itself is not conclusive evidence of due execution of a Will. Due execution of the Will, implies not only that the testatrix was in a sound and disposing state of health and mind but also that either the contents of the documents were read and understood by her or the same were read over and explained to her by someone else, before she appended her signature to it.

11. The following facts and circumstances, in my view, clearly indicate that the Will dated 14.05.2001 though it bears signature of late Mrs. Veera Malhotra could not have been executed by her as her Will

- (i) According to the attesting witnesses namely Shri Rakesh Mathur and Dr. A.J.S. Juneja, Mrs. Veera Malhotra herself had read the Will before she signed the same in their presence. On the other hand, as per the endorsement made on the Will, the document was read over and explained to the testatrix and she admitted that the contents were

the same as she had willed. This is a material contradiction which creates serious doubt on the authenticity of the Will set up by the plaintiff. The testatrix herself reading the Will typed in English is altogether different from someone reading it out and explaining its contents to her. The endorsement to the effect that the Will was read out and explained to Mrs. Veera Malhotra implies that she did not have sufficient knowledge of English language and that is why someone else had to explain its contents to her, in the language she understood. Neither Dr. A.J.S. Juneja nor Mr. Rakesh Mathur claims to have read over the contents of the Will dated 14.10.2005 to Mrs. Veera Malhotra. The case of defendant No.1 is that though Mrs. Veera Malhotra could sign in English, she was not capable of reading and understanding the contents of a document written in English. It would be pertinent, at this stage, to take note of the fact that the Will dated 03.10.1993 and 13.08.1995 have an endorsement identical to the endorsement made on the Will dated 14.05.2001. The endorsement that the Will had been read over and explained to the testator finds incorporation only in the Wills executed by late Smt. Veera Malhotra and not in the Wills executed by her husband late Shri R.M.Malhotra on the same date on which these Wills were executed by Mrs. Veera

Malhotra. This clearly shows that the contents of the Will dated 13.08.1995 were actually read over and explained to Mrs. Veera Malhotra and the endorsement to this effect in her Will cannot be said to be merely a standard statement in a Will. Had it been a standard clause, it would have been made not only in the Wills executed by her but also in the Wills executed by her husband particularly when the Wills by the wife and the husband were executed and got registered on the same date and at the same place.

- (ii) Ex.DW-2/2 is the letter written by Mrs. Veera Malhotra to defendant No.2 – Rakesh Malhotra on 26.11.1994. This letter has been written purely in Hindi with no word of English having been inserted therein. Admittedly, defendant No.2 is a well-educated person who is settled out of India and who knew English very well. Had Mrs. Veera Malhotra been fully conversant with English language, she would have at least used some words of English language while writing to her son who was settled abroad even at the time this letter was written.

Ex.PW-1/D-1 is the letter written by defendant No.2 – Rakesh Malhotra to late Smr. Veera Malhotra on 24th April, 1997. The letter has been written primarily in Hindi though a few words in English, such as Dolly, Delhi, leave sanction, Company, Muscat, stay extend,

A-Block, Friday, Gulf Air and Flight have been used in the document. The English words used in this letter have been written in capital letters which indicates that late Smt. Veera Malhotra had very limited knowledge of English and that is why even the English words used in the letter were written in capital letters.

Had Mrs. Veera Malhotra been fully conversant with English language, defendant No.2 was likely to write to her in fluent English instead of writing in Hindi and inserting only a few easily readable and understandable words of English, in capital letters. Ex.PW-1/4 is the letter written by Shri Rakesh Malhotra to the plaintiff on 27th November, 1996. This letter has been written fully in English. This is clearly indicative of the fact that Shri Rakesh Malhotra used to write in English, to the family members who are fully conversant with English language and in Hindi to the person who was not well conversant with English. The Wills dated 29.06.1988, 03.10.1993 and 13.08.1995 executed by late Smt. Veera Malhotra and Shri R.M. Malhotra were witnessed by Shri H.S. Serna, who was a colleague and had been a neighbour of Malhotras. In his affidavit by way of evidence, he has stated that to the best of his knowledge and belief, he had no recollection of Smt. Veera Malhotra speaking English in his

presence and that she used to converse with him in Punjabi. The deposition of this witness indicates that late Smt. Veera Malhotra was not well versed with English and that is why the witness despite being quite close to the family never saw her speaking in English. It, therefore, appears that though Mrs. Veera Malhotra knew some English, she was not fully conversant with English language. If Mrs. Veera Malhotra was not fully conversant with English language and was not in a position to herself read and understand all the contents of a document written in English, it would be difficult to accept that she herself had read the Will dated 14.05.2001 before she appended her signature to the document. It would be pertinent to note here that the Will dated 14.05.2001 runs into as many as 11 typed pages and the contents of the document could have been understood and their true import realized only by a person who was fully conversant with English language and not a person who knew only a little bit of English. Another material circumstances in this regard that there is no evidence of Mrs. Veera Malhotra having taken any formal education. No School or College certificate of Mrs. Veera Malhotra has been produced by the plaintiff, and the case of defendant No.1 is that she did not have formal education though with the passage of time she had

learnt a few commonly used words of English and had also learned how to sign in English. Considering the fact that defendant No.1 had taken a specific plea that late Mrs. Veera Malhotra did not have proper education, it was imperative for the plaintiff to produce record which would have evidenced her having studied to the extent that she could have understood the contents of a typed Will running into as many as 11 pages.

- (iii) The most material circumstance which, in my view, creates serious doubt with respect to genuineness and authenticity of the Will dated 14.05.2001 is the absence of any reason for Mrs. Veera Malhotra to change the disposition made by her in her last admitted Will dated 13.08.1995. Admittedly, in the said Will, she had bequeathed her entire share in the suit property to defendant No.1 and his family members. To my mind, there could be two possible reasons which could have persuaded Mrs. Veera Malhotra to change the said disposition. The first reason could have been the behaviour of defendant No.1 towards her. Had defendant No.1 started maltreating Mrs. Veera Malhotra or misbehaving with her after she had executed the Will dated 13.08.1995 that could have made her change the disposition made earlier by her. However, the facts and circumstances

of the case clearly indicate that Mrs. Veera Malhotra had no complaint against the behavior of defendant No.1 or any member of his family. It is an admitted fact that soon after the death of her husband, late Mrs. Veera Malhotra shifted from the suit property to the Flat in Alaknanda where defendant No.1 and his family members were residing. It is also an admitted position that Mrs. Veera Malhotra continued to live with defendant No.1 till she breathed her last. It is also not in dispute that Mrs. Veera Malhotra was suffering from cancer and it was defendant No.1 who had been taking her to Hospital and incurring the expenditure related to her treatment. This is also evident from the medical record Ex.DW2/30A to DW2/30H, DW11/1 and DW10/1 to DW10/18. Had the behaviour of defendant No.1 or any member of his family towards Mrs. Veera Malhotra been offensive, she, instead of continuing to live with him would either have shifted to a portion of the suit property or to the place of the plaintiff, to live with her. Mrs. Veera Malhotra and her husband came from an affluent section of the Society as would be evident from the movable and immovable properties which they owned at the time of their death. An affluent woman such as Mrs. Veera Malhotra would, instead of suffering misbehaviour at the hands of defendant No.1 or any member of his

family, would rather have shifted to the place of her daughter since the relations between the mother and daughter, according to the plaintiff were very cordial and the mother loved the daughter a lot. Had Mrs. Veera Malhotra been maltreated by defendant No.1 or members of his family, nothing prevented her from just calling her daughter and requesting her to take her along instead of continuing to live in the house of defendant No.1, and suffer indignities at their hands.

The Will dated 14.05.2001 contains no such recital as would indicate any maltreatment of Mrs. Veera Malhotra at the hands of defendant No.1 or any member of his family, though it does record the misbehaviour of defendant No.2 and his wife towards the testatrix. The only reason indicated in the Will dated 14.05.2001 for not giving any share in the suit property to defendant No.1 is that he was well-settled in life and had already inherited substantial assets of late Shri R.M.Malhotra including his half share in the suit property. Therefore, the plea that defendant No.1 was maltreating late Smt. Veera Malhotra has absolutely no substance in it.

In support of her contention that defendant No. 1 was ill-treating Smt. Veera Malhotra, the plaintiff has relied upon Ex.PW-1/9 which is a typed letter alleged to have been written by late Smt. Veera Malhotra

to the plaintiff on 27.07.2002. This letter makes a reference to the Will dated 14.05.2001 and terms defendant No. 1 as a greedy person having no love and regard for Smt. Veera Malhotra and other family members. However, the facts and circumstances of the case indicate that this letter could not have been written by late Smt. Veera Malhotra. The letter has been typed on the letterhead of late Shri R.M. Malhotra who had died about 06 years this letter purports to be written. During the course of arguments, it was pointed out by the learned counsel for the defendant No. 1 that this letterhead carries the same mistake in the spelling of Commissioner as would be seen in the letterheads which Shri R.M. Malhotra was using in his lifetime. The spelling of Commissioner in this letter is COMMISSIONAR which is also the spelling in the other letterhead Ex.PW-1/D-2 which was used by late Shri R.M. Malhotra on 08.09.1975. This is an indication that the signature of late Smt. Veera Malhotra available with the plaintiff on a blank letterhead of her father has been used to prepare this letter. Considering the fact that the plaintiff had joint financial transactions such as investment in shares and bank account with late Smt. Veera Malhotra, coupled with the fact that late Smt. Veera Malhotra did not have much education, it is quite possible that she had signed on blank

letterheads of her husband and that letterhead was misused to prepare the letter Ex.PW-1/9, which is relied upon by the plaintiff. Another important circumstance in this regard is that Ex.PW-1/9 is a typed letter and not a handwritten letter. In ordinary course of human conduct, late Smt. Veera Malhotra would have herself written a letter instead of directing someone else to type out a letter of this nature for her. Admittely, Smt. Veera Malhotra was living with defendant No. 1 and his family members, on the date the letter Ex.PW-1/9 purports to have been signed by her. No evidence has been led by the plaintiff to prove as to who typed the letter Ex.PW-1/9 on the instructions of Smt. Veera Malhotra. The accuracy of the language used in this letter indicates that it was authored by a person who was very well-versed with English language. As noted earlier, there is no evidence of Smt. Veera Malhotra being a well conversant with English language and the facts and circumstances of the case indicate that she knew only a little bit of English. Since late Smt. Veera Malhotra was suffering from cancer at the time the letter Ex.PW-1/9 purports to have been signed by her on 27.07.2002, she was unlikely to go out to get such a letter typed from a typist and no one in the house of defendant No. 1 would have typed a letter of this nature for her. The case of the plaintiff is

that Ex.PW-1/9 was delivered by late Smt. Veera Malhotra to her husband at the time he visited her in the house of defendant No. 1. The husband of the plaintiff has not come in the witness box to corroborate the version of the plaintiff in this regard. Even otherwise, it would be quite unnatural for a mother to get a letter of this nature typed and then hand it over to her son-in-law for being passed on to her daughter. Instead of expressing her grievance by way of a typed letter, a mother would rather verbally express her grievance to her son-in-law and request him to bring it to the knowledge of her daughter. In fact, she would herself speak to her daughter on telephone and complain against the son instead of taking the trouble of getting a letter typed from outside for this purpose. In her deposition, the plaintiff has stated that late Smt. Veera Malhotra had already spoken to her about the contents of the letter and her intention to make such a letter. I fail to appreciate why late Smt. Veera Malhotra would like to prepare a record evidencing the ill-treatment of her son and still continue to reside with him. As noted earlier, instead of continuing to suffer indignities in the house of defendant No. 1, she would have preferred to shift to the place of the plaintiff. In fact, the letter dated 27.07.2002 does not appear to be in sync with the contents of the Will dated

14.05.2001 which contains absolutely no allegation of misbehavior or maltreatment of late Smt. Veera Malhotra at the hands of defendant No. 1 or his family members.

- (iv) The second reason which, in my view, could have impelled late Mrs. Veera Malhotra to change the disposition made vide Will dated 13.08.1995 was the financial condition of her daughter. Had there been substantial impairment in the financial condition of the plaintiff between 13.08.1995 to 14.05.2001 that could have been a valid reason for late Mrs. Veera Malhotra to change the disposition dated 13.08.1995, however, there is no evidence of any such impairment in the financial condition of the plaintiff. The plaintiff filed an Income Tax Return of Rs.7,45,000/- in 1997-98. It has also come in evidence that she owns flat at posh Napean Sea Road in Mumbai and flat in Worli (Mumbai). Her husband is the only son of his mother, who owns a house No.E-6/7, Vasant Vihar, her children study abroad, and she took her parents abroad for holidaying. She was bequeathed half share in a flat in Alaknanda, besides substantial number of shares /debentures etc.
- (v) It has been recorded in the Will dated 14.05.2001 that defendant No.1 was well-settled in life and had already inherited substantial assets of

late Shri R.M.Malhotra, but, this was also the position when she executed the admitted Wills dated 03.10.1993 and 13.08.1995. Even at the time of execution of the Will dated 03.10.1993 and 13.08.1995, she knew that her husband had bequeathed his estate including his share in the suit property to defendant No.1 and his family members. Despite that, she chose to bequeath her share in the suit property to defendant No.1 and his family members. Therefore, the reason given in the Will dated 14.05.2001, to alter the disposition made on 03.10.1993 and 13.08.1995 does not appear to be true and correct. This is also not the case of the plaintiff that between 13.08.1995 to 14.05.2001, defendant No.1 had become so wealthy that he needed no share in the property of his mother and that is why late Smt. Veera Malhotra decided to bequeath her entire share in the suit property to the plaintiff, to the complete exclusion of defendant No.1 and his family members.

- (vi) At the time she executed the Wills dated 03.10.1993 and 13.08.1995, late Smt. Veera Malhotra was residing in the suit property with her husband. At that time, the defendant No. 1 and his family members were not residing with them. Despite that, she chose to bequeath her entire share in the suit property to defendant No. 1 and his family

members. Therefore, when shifted to the place of defendant No. 1, after the death of her husband, she would have come rather closer to defendant No. 1 and was unlikely to change her previous dispositions so as to wholly exclude defendant No. 1 and his family members from her share in the suit property.

- (vii) In the normal course of human conduct, a person seeking to execute a Will would like to associate a relative or a close friend in execution of the said Will by requesting him to be a witness to the execution. PW3 Shri Rakesh Mathur, admittedly, was not related to Late Smt.Veera Malhotra. He claims that late Smt.Veera Malhotra used to frequently visit his house and during one of such visits, she had expressed desire to make a Will and sought his help in this regard. Admittedly, he was also not a neighbour of Late Smt.Veera Malhotra. As noted earlier, Late Smt.Veera Malhotra was suffering from cancer at the time the Will dated 14.5.2001 is alleged to have been executed by her. Considering her critical illness, it is quite unlikely that Late Smt.Veera Malhotra would be a frequent visitor to the house of this witness as is claimed by him. In his cross examination, Shri Rakesh Mathur has admitted that from 1996 till the death of Smt.Veera Malhotra in the year 2002, he never visited her nor was he invited to the place where

she was living with defendant No.1 and his family members. Had this witness been so close to Late Smt.Veera Malhotra that not only she confided in him about her intention to execute a Will but she also asked him to arrange a doctor to certify her fitness and witness the Will she was seeking to execute, it is unlikely that he would not have bothered to visit her even once in last six years of her death. According to Mr. Rakesh Mathur, he had advance intimation that he would be witnessing the execution of the Will by late Smt. Veera Malhotra. Had that been the position, late Smt. Veera Malhotra would have got his name typed as a witness in the document itself. This is yet another indicator that he did not witness the execution of the Will by late Smt. Veera Malhotra.

- (viii) As far as the other attesting witness Dr.A.J.S.Juneja is concerned, his testimony does not inspire any confidence at all. In the ordinary course of human conduct, a person seeking certification of her fitness to execute a Will, if he/she is already under treatment of doctors, would request one of his/her treating doctors to certify the state of her health and, if possible, also witness the execution of the Will he/she is seeking to execute. Another alternative course of conduct could be to request a nearby doctor to certify the state of health of the testator and

witness the execution of his Will. Dr. A.J.S. Juneja was not the treating doctor of Late Smt. Veera Malhotra, though she being a patient of cancer was getting treatment from various other doctors. He was also not a doctor in the neighbourhood of Late Smt. Veera Malhotra. It is most unlikely that instead of requesting a treating doctor or a doctor in the neighborhood to certify her health and witness the execution of her Will, Late Smt. Veera Malhotra would have requested Shri Rakesh Mathur to arrange a doctor for this purpose.

In his affidavit by way of evidence, Dr. A.J.S. Juneja has stated that the elder son of Late Smt. Veera Malhotra (defendant No.1) loved her money whereas daughter (plaintiff) loved her. Since in the Will alleged to have been executed by Late Smt. Veera Malhotra on 14.5.2001, there is no such recital as would indicate that defendant No.1 was after the wealth of Late Smt. Veera Malhotra, there seems to be no basis of this witness making such a statement in his affidavit. Therefore, it appears to me that he was trying to help the plaintiff by making this kind of statement. In para 4 of his affidavit by way of evidence, this witness stated that on reaching the Office of Sub-Registrar, he signed as an attesting witness as well as on his certificate on the Will and, thereafter the Will was signed by Shri Rakesh Mathur

and Late Smt.Veera Malhotra. He further stated that thereafter they went before some official who took their signature and thumb marks after putting some questions to them. On the other hand, in his cross-examination, he stated that he had put the rubber stamp and signature on the medical certificate as well as the signature as attesting witness in the physical presence of the Sub-Registrar. This is a material contradiction in the testimony of the witness and thereby erodes his credibility. As per this witness, he had examined Late Smt.Veera Malhotra in his clinic. If that was the position, the certificate would have been signed and stamped by him in the clinic and not in the Office of the Sub-Registrar. According to this witness, he had been informed in advance that Late Smt.Veera Malhotra wanted him to attest her Will. However, the Will dated 14.5.2001 does not have the name of the witness typed on it. Had Late Smt.Veera Malhotra chosen him to attest her Will, she would have got his name typed as an attesting witness, when the Will was got prepared by her.

- (ix) It has come in the deposition of Shri Rakesh Mathur and Dr.A.J.S. Juneja that Late Smt.Veera Malhotra had read aloud, the Will while sitting on a parapet outside the Office of the Sub-Registrar. The conduct attributed to the testatrix, by the witnesses, appears to be

unnatural because if the Will was prepared on the instructions of Late Smt.Veera Malhotra, there could be no reason for her to read it again outside the Office of the Sub-Registrar and that too aloud, in the presence of the witnesses. According to the witnesses, she read aloud both the copies of the Will. This, again, would not be in conformity with normal human conduct.

- (x) In the endorsement made on the top of the Will dated 14.5.2001, the date of expiry of the passport of Late Smt.Veera Malhotra has been recorded as 26.4.2002 though the correct date of expiry of her passport is 26.4.2004. No doubt, a mistake could have been possible while writing the date of expiry of the passport but what is material in this regard is that the very same mistake also appears on the Will dated 13.8.1995 executed by Late Smt.Veera Malhotra. It was submitted by learned senior counsel for the plaintiff that there was no mistake in writing the date of expiry of the passport in the Will dated 13.8.1995. The contention, however, is incorrect. It is quite evident from a perusal of Ex.DW1/P1 and Ex.DX1 that the date of expiry of the passport of Late Smt.Veera Malhotra noted at the time of registration of the Will dated 13.8.1995 was 26.4.2002 and not 26.4.2004. In these circumstances, the contention of learned counsel for defendant

No.1 that the date of expiry of the passport was lifted by the plaintiff from the Will dated 13.8.1995 cannot be said to be wholly unfounded.

- (xi) In the Will dated 14.5.2001, the HUF of which Late Smt.Veera Malhotra was a member, has been described as R.M.Malhotra and Sons(HUF) though Shri R.M.Malhotra had expired in the year 1996. Para 7 of the Will dated 14.5.2001 contains a recital that the testatrix had $\frac{1}{4}$ share in the assets of the HUF R.M.Malhotra and Sons. This recital is factually incorrect since, defendant No.2 Shri Rakesh Mathur, had already separated from the HUF on 17.3.2000 as would be evident from Ex.DW2/8(colly) which, *inter alia*, comprise the agreement executed on 17.3.2000 whereby, it was agreed that the share of Mr.Rakesh Mathur in the ownership and rental of commercial Flat No.705 in Prakash Deep Building, Tolstoy Marg, New Delhi which was owned by the HUF, was determined at 25%. In fact, page 1 of this document incorporates a specific recital that by a separate deed of partition of even date, a partition of all assets of the HUF barring immovable assets had already been affected, as regards the share of Mr.Rakesh Mathur and his only remaining interest in the HUF was as regards the above-referred immovable property of the HUF. As stated by Mulla in Hindu Law(18th Edition), intention being the real test, an

agreement between the members of a joint family to hold and enjoy the property in defined shares, as separate owners, operates as partition, although there may have been no actual position by metes and bounds. Thus, there was a partition of the HUF as far as defendant No.2 Shri Rakesh Mathur is concerned and therefore the recital to the effect that Late Smt.Veera Malhotra had $\frac{1}{4}$ share in the HUF on 14.5.2001 was factually incorrect.

(xii) Para 8 of the Will dated 14.5.2001 contains a recital that defendant No.2 Shri Rakesh Mathur and his wife do not deserve any share in the immovable assets of the testatrix. However, vide Para 7 of the document, undivided interest of the testatrix in the assets of the HUF stands bequeathed to Shri Rakesh Mathur as an absolute individual owner. Therefore, the recital contained in para 8 of the Will runs counter to the bequest made in Para 7 thereof.

(xiii) Another unnatural aspect of the Will set up by the plaintiff is that it purports to bequeath even the household articles such as TV, VCR, Music System, furniture, carpet, refrigerator and Air Conditioners to the plaintiff, though admittedly all these articles were being shared by her with defendant No.1 and the members of his family. It is quite unnatural for a mother to bequeath such articles solely to the daughter

who is not living with her, when those articles are already being used by the son with whom she is living at the time of bequest, and against whom she has no complaint.

- (xiv) The Will dated 14.5.2001 is silent as regards the jewellery of late Smt. Veera Malhotra. The case of the plaintiff in this regard is that since the jewellery had already been distributed by late Smt. Veera Malhotra, before the execution of the Will, it was not required to be referred in the Will. However, in another suit filed by her, the plaintiff specifically alleged that the defendant no.1 had misappropriated the jewellery of the mother, after her death. Certified copy of the plaint in that suit is Ex.PW1/D6. It would, therefore, not be correct to say that the jewellery had been distributed by late Smt. Veera Malhotra before 14.5.2001. The omission to make any reference to the jewellery, therefore, becomes significant. It has been stated by the plaintiff that she had left her jewellery with her mother in safe custody. This, however, does not appear to be logical since late Smt. Veera Malhotra being an old lady suffering from cancer and living with her son was certainly not in a position to keep the jewellery in safe custody. The plaintiff on the other hand could have no problem in keeping the

jewellery in her own custody instead of leaving the same with her old and ailing mother.

(xv) Ex.DW2/31 is the Gift/Relinquishment Deed purporting to have been executed by late Smt. Veera Malhotra on 3.4.2001, thereby conveying half of her share in the suit property to defendant no.1 and 3 to 5. The stamp paper of this document purports to have been purchased on 12.3.2011 in the name of late Smt. Veera Malhotra, for the purpose of execution of the Relinquishment Deed, as would be evident from the endorsement made on the back of the stamp paper. The execution of this document has been duly proved by two witnesses namely Shri T.S. Ramji and Anil Kumar Upadhyay. However, there is no reference to this document in the Will dated 14.5.2001. Had the Will propounded by the plaintiff been genuinely executed by late Smt. Veera Malhotra, this important document would certainly have found mention in the Will. This is yet another circumstance which indicates that the Will dated 14.5.2001 was not executed by late Smt. Veera Malhotra.

(xvi) It would be seen from the Will dated 14.5.2001 that it bears the address of the Textatrix as B-303, Rishi Apartment, Alaknanda whereas in documents such as income tax return (Ex.DW2/11),

invoice of purchase of fridge (Ex.PW1/15), club bills (Ex.DW2/55) and the record of the hospitals, her address has been given as B-304, Rishi Apartments, Alaknanda. Same is the address given by her in her bank account with HDFC bank (Ex.DW7/20 and DW7/64). This is yet another circumstance creating doubts on the authenticity of the Will propounded by the plaintiff.

12. The plaintiff had placed reliance upon Ex.PW1/D7 which purports to be a letter written to her by the former Ambassador of Tunisia in India. It would be pertinent to note here that this person was the Lessee in respect of the suit property. This letter contains a reference to an understanding that on account of her advance age and attachment with the suit property, late Smt. Veera Malhotra had pressed for division of the entire property between the plaintiff and defendant no.1. However, neither the original letter has been produced by the plaintiff nor has she examined the author of the letter or any other person conversant with his signatures to prove the document. Therefore, no reliance can be placed upon this unproved document.

Ex.PW1/D8 is the photocopy of the purported lease/ lease agreement filed by the plaintiff. No signature appears on the first and second page of this document. More importantly, neither the original document has been produced nor has the

Lessee been produced to prove the document. Therefore, no reliance can be placed upon this document as well.

13. During the course of arguments, it was vehemently contended by the learned counsel for the defendant no.1 that considering the ill state of health of late Smt. Veera Malhotra at that time, she could not have put as many as 26 signatures on the Will, sitting on a parapet and holding a briefcase on her lap as is claimed by the witnesses of the plaintiff. She submitted that the Testatrix was suffering from third stage cancer which had spread both below and above diaphragm; her hands/fingers/feet were bent and twisted. She had suffered multiple joint destruction by arthropathy and was undergoing chemotherapy and, therefore, unfit to adopt such postures. She also submitted that the plaintiff had admitted in the other suit that the Textatrix was suffering from arthritis and was using special magnetic key. The learned counsel for the defendant no.1 referred to a number of documents on record with respect to the serious illness from which late Smt. Veera Malhotra was suffering. It was also pointed out by the learned counsel for the defendant no.1 that according to the expert from FSL, the signatures on the Will dated 14.5.2001 were freely written showing smooth line quality and matching the general signatures of the Textatrix on the Will dated 13.8.1995 both, in the general and individual writing characteristics and has further opined that in case of an old infirm person writing in uncomfortable position, the smooth line quality and general

characteristics will change. She also pointed out that when it was suggested to him that it was impossible for the Textatrix to adopt the posture narrated by him, he did not deny the suggestion and merely stated that he had no comment on this. However, I need not go into this aspect of the matter since in my view various other circumstances discussed hereinbefore clearly indicate that the Will dated 14.5.2001 could not have been executed by late Smt. Veera Malhotra.

14. It was contended by the learned senior counsel for the plaintiff that execution of the Will dated 14.5.2001 has been admitted by the defendant no.1 in para 4 of his amended written statement dated 5.8.2003. The above referred paragraph, *inter alia*, reads as under:

“4. That even otherwise, the alleged Will dated 14.5.2001 has been got executed by the plaintiff by use of undue influence and coercion against the Testator which is evident from the contents of the alleged Will read in relation with the Wills dated 29.6.1988, 3.10.1993 and 13.8.1995, which fact also finds mention in the Testator’s last and final Will dated 7.6.2002. In fact, the Testator has even mentioned in her last Will dated 7.6.2002 that her nephew and some other interested persons had unduly influenced her to write a Will “differently”, which has been duly regretted by her...”

To read a particular passage in a document is not a correct method of its interpretation. The document is to be read as a whole to gather its true import. In

my view, if the written statement is read as a whole, the above referred paragraph cannot be said to be an admission of due execution of the Will dated 14.5.2001.

15. It was next contended by the learned senior counsel for the plaintiff that the husband of late Smt. Veera Malhotra having already bequeathed his half share in the suit property to defendants no.1 and 3 to 5, it was quite natural that she (late Smt. Veera Malhotra) wanted to bring the plaintiff at par with defendant no.1 by bequeathing her half share in the said property to her. This argument would have been valid, had late Smt. Veera Malhotra in her previous Wills dated 3.10.1993 and 13.8.1995 not bequeathed whole of her share in the suit property to defendants no.1 and 3 to 5. If she decided, in the year 1993 and 1995 to bequeath whole of her share in the suit property to defendants no.1 and 3 to 5, despite her husband already bequeathed his share in the said property to them, it required strong reasons for her to change the previous bequest and bequeath whole of her share in the suit property to the plaintiff, to the complete exclusion of defendant no.1, who was the only child serving her in her old age, after the death of her husband.

16. It was next contended by the learned senior counsel for the plaintiff that the parents of the plaintiff wanted to give a flat in 2, Tilak Marg, New Delhi to the

plaintiff, but since that project never took off, late Smt. Veera Malhotra decided to bequeath her share in the suit property to her.

In his cross examination, defendant no.1 has admitted that in goods times when there was no acrimony amongst the siblings, he and his brother had desired to relinquish their half share each in the flat at Tilak Marg to the plaintiff and they had handed over the booking papers with considerable deposit to the plaintiff. In my view, this could not have been a reason for late Smt. Veera Malhotra to change the bequest which she had made in favour of defendant no.1 and his family members. Firstly, there is no such statement in the Will dated 14.5.2001 and secondly, had the project in Tilak Marg taken off, the plaintiff would have been required to meet the costs of that flat except for the booking amount which had been paid by her brothers. Considering the value of half share in the suit property, which is constructed in the land measuring 1200 sq yards, this could not have been a reason to bequeath the whole of the share of late Smt. Veera Malhotra in the suit property, to the plaintiff.

17. It was contended by the learned senior counsel for the plaintiff that various lease agreements signed by late Smt. Veera Malhotra in English do not contain an endorsement that the same had been read over and explained to her, which is an indicator that she was well conversant with English language. I, however, do not

find merits in the contention. Late Smt. Veera Malhotra was not the only signatory to the lease documents, her husband and/or sons also having executed the same. On the other hand, she is the sole executor of the Will and more importantly there would be no necessity of endorsement that the Will was read over and explained to the Testatrix, if late Smt. Veera Malhotra was well conversant in English and was in a position to read and fully understanding the contents of the Will dated 14.5.2001.

18. The learned senior counsel for the plaintiff has relied upon **Rajendra Shanker v. Devendra Shanker** [2012 V AD(Delhi) 394], **L Chamanlal (dead) by his legal representatives v Smt. Ram Katori and another** [AIR 1972 SC 2296], **Gulshan Kumar Anand v State** [2011(7) AD (Delhi) 539], **Naresh Charan Das Gupta v. Paresh Charan Das Gupta** [AIR 1955 SC 363], **Madhwi Sharma Ahluwalia v. State** [175(2010) DLT 52] and decision of this Court dated 8.3.2011 in **Smt. Lalita Sharma v. Smt. Sumitra Sharma** [RFA No.361/2004]. I have considered the proposition of law enunciated and followed in these cases. However, in the facts and circumstances of this case, there is no escape from the conclusion that due execution of the Will dated 14.5.2001 has not been proved by the plaintiff. In **L.Chamanlal(supra)**, the Court was of the view that where the proper execution of a Will was not in dispute and there is evidence to show that the

Testator (an illiterate lady) had intelligently understood the contents of the Will when it was read over to her and thereafter directed some changes in it, it could not be said that the Will was not intelligently executed. However, in the present case, there is no evidence that the Will dated 14.5.2001 having been read over and explained to the Textatrix and the evidence on record clearly indicates that she was not well versed in English language in which the said Will has been written. Besides this, there are various other facts and circumstances as discussed in the preceding paragraphs which clearly indicate that this Will could not have been executed by late Smt. Veera Malhotra. In ***Naresh Charan Das Gupta (supra)***, the Court held that the burden of proof of undue influence is on the person who alleges the same. There is no quarrel with the proposition of law that undue influence is required to be proved by the person who pleads such an allegation. However, in the case before this Court, though there is no evidence of any undue influence having been exercised by the plaintiff or her mother, the due execution of the Will dated 14.5.2001 has not been proved by the plaintiff. The decision in ***Madhwi Sharma (supra)***. ***Rajendra Shanker (supra)*** and ***Gulshan Kumar Anand (supra)*** are the judgments written by me. Applying the proposition of law, which I followed in the above referred cases, I am of the view that the plaintiff has failed to prove due execution of the will propounded by her. In ***Lalita Sharma(supra)***, this Court referred to the decisions of Apex Court in ***Pushpavathi v. Chandraraja Kadamba***

[(1973) 3 SCC 291] holding therein that where the signatures of the Testator was challenged as a forged signatures and the Will does not come from the custody of a public authority or a family solicitor, the fact that the depositions made in the Will were unnatural, improbable or unfair, would undoubtedly create some doubt about the Will, especially, when the document is unregistered and comes from the custody of a person who is major beneficiary under the Will. This judgment is also relevant with respect to the Will dated 7.6.2002 propounded by the defendant no.1. I have taken a view that due execution of the Will dated 7.6.2002 could not be proved by the defendant no.1. It would, however, be pertinent to note here that not only the Will dated 7.6.2002 relied upon by the defendant no.1 but also the Will dated 14.5.2001 relied upon by the plaintiff comes from the custody of the major beneficiary under the Will.

19. Coming to the Will dated 7.6.2002 propounded by the defendant no.1, I find that the plaintiff has examined DW5 Ms. Deepika Bhardwaj and DW6 Shri Rajesh Trehan who claims to have witnessed execution of the said Will. The case of the plaintiff is that the signatures of late Smt. Veera Malhotra on this document have been forged and in this regard the plaintiff has relied upon the testimony of Shri Anurag Sharma, a handwriting expert from CFSL, who in his report Ex.PW4/1 has opined that the person who wrote the admitted signatures mark A1 to A21 did not

write the questioned signatures mark Q1 to Q4 (on the Will dated 7.6.2002). The report was challenged by the learned counsel for the defendant no.1, on a number of grounds including that the original photographs taken by the expert were not sent to him. However, in my view, the opinion of the handwriting expert apart, there are various other facts and circumstances as stated hereinbelow, which create serious doubts on the authenticity of the Will dated 7.6.2002 and indicate that this document was not executed by late Smt. Veera Malhotra:

- (i) The previous Will dated 29.6.1988, 3.10.1993 and 13.8.1995 were got duly registered by late Smt. Veera Malhotra. Same was the position with respect to the Wills executed by her husband on the same dates. However, the Will dated 7.6.2002 was not got registered though late Smt. Veera Malhotra was alive for more than two months after this document is alleged to have been executed by her.

It was contended by the learned counsel for the defendant no.1 that being extremely unwell, late Smt. Veera Malhotra was not in a position to go to the Sub-Registrar's office for registration of this document. In her written arguments, the plaintiff has stated that late Smt. Veera Malhotra had several times gone to Batra Hospital by car, which indicates that she was in a position to attend the office of the Sub Registrar. That apart, the Sub Registrar could have been requested

by the defendant no.1 to visit their house for the purpose of registration of the Will dated 7.6.2002, since this is not his case that he was not aware of execution of the said Will.

- (ii) The Will dated 7.6.2002 does not bear any photograph or thumb impression of late Smt. Veera Malhotra, though the previous Wills executed by her were not only signed but also thumb marked by her and bear her photograph.
- (iii) The case of the defendant no.1 is that vide Gift/Relinquishment Deed dated 3.4.2001, late Smt. Veera Malhotra had gifted /relinquished 50% of her share in the suit property to defendant no.1 and his family members. However, para 1 of the Will dated 7.6.2002 states that *“In case of any reason my share in the aforesaid flat is restored to original one half due to my earlier Gift/Relinquishment Deed not having been accepted by the beneficiaries”*. Since late Smt. Veera Malhotra was residing with defendant no.1, she could not have been unaware as to whether the Gift/Relinquishment Deed dated 3.4.2001 had been accepted by the beneficiaries or not. Moreover, the Gift/Relinquishment Deed contains an endorsement of acceptance by the beneficiaries and the endorsement has been duly signed by them. Therefore, there could be no question of donees denying the

Gift/Relinquishment Deed. The said recital, therefore, creates serious doubt about the authenticity of the Will set up by defendant no.1.

- (iv) The Will dated 7.6.2002 purports to have been attested by the witnesses Ms. Deepika Bhardwaj and Shri Rajesh Trehan. According to defendant no.1, though late Smt. Veera Malhotra had executed the Will dated 3.10.1993 and 13.8.1995 bequeathing whole of her share in the suit property to defendant no.1 and 3 to 5, she chose to make the Will dated 7.6.2002 because she wanted to give her half share in Flat No.B-403, Rishi Apartment, Alaknanda, New Delhi to defendant no.2 Mr. Rakesh Malhotra. This is also an admitted fact that the relations between late Smt. Veera Malhotra and defendant no.2 Shri Rakesh Malhotra were far from being cordial. There is no evidence of any improvement in the relations of late Smt. Veera Malhotra with defendant no.2 Mr. Rakesh Malhotra by the time the Will dated 7.6.2002 is alleged to have been executed. The Will contained absolutely no reason for late Smt. Veera Malhotra changing the earlier bequest made by her, as far as her share in Flat No.403, Rishi Apartments, Alaknanda, New Delhi was concerned. Under the Will dated 13.8.1995, she had bequeathed her half share in the said flat to

the plaintiff Smt. Ragni Chopra. Also, the Will contained no reference to the previous Wills dated 29.6.1988, 3.10.1993 and 13.8.1995.

- (v) It has been recorded in this document that persuasive powers were used by the nephew of the Textatrix and other interested persons including Mrs. Usha Singh to make her write the Will differently and she regretted their role. However, there is no evidence of nephew Mr. K.L. Sahni or any other person namely Mrs. Usha Singh being involved in the Textatrix writing some other Will.
- (vi) It has been claimed by the witness of defendant no.1 namely Mrs. Deepika Bhardwaj that the Will dated 7.6.2002 was read over and explained by her to late Smt. Veera Malhotra. However, the Will contains no endorsement to this effect.
- (vii) The Will dated 7.6.2002 is a typed document. This is defendant no.1's own case that late Smt. Veera Malhotra being extremely sick, she was not in a position to move out of the house. Therefore, it was not possible for her to visit the Deed Writer to draft the Will for her. According to Mrs. Deepika Bhardwaj, she had prepared the outlines of the Will as per the instructions of late Smt. Veera Malhotra, though she did not prepare the final Will. There is no evidence as to who prepared the final Will dated 7.6.2002. According to Mrs. Deepika

Bhardwaj, Ex.DW2/1 (the Will dated 7.6.2002) was not the document which she had given to late Smt. Veera Malhotra since that was a point-wise document. When her attention was drawn to the portion C to C of the Will dated 7.6.2002, she stated that the same was not prepared by her. Same was the position when the attention of the witness was drawn to portion D to D1, E to E1 and F to F1. This becomes important since being extremely sick and immobile, late Smt. Veera Malhotra was not in a position to get the Will prepared of her own and Mrs. Deepika Bhardwaj does not claim to have got the final Will prepared and typed for late Smt. Veera Malhotra. According to the witness, late Smt. Veera Malhotra had told her that she would take the help of a resident of Rishi Apartment. However, the name of that person has not been given by the witness.

20. For the reasons stated hereinabove, I hold that the Will dated 14.5.2001, though signed by late Smt. Veera Malhotra, was not executed by her. I also hold that there are suspicious circumstances surrounding execution of the Will dated 7.6.2002 which defendant no.1 has failed to explain to the satisfaction of the Court and, therefore, due execution of the said Will is also doubtful. The issues are decided accordingly.

21. **Issues No.4 and 5:** In view my findings on Issues no.2 and 3, the plaintiff is not entitled to partition or possession of the suit property. The Issues are decided accordingly.

ORDER

In view of my findings on the Issues, the suit is hereby dismissed. However, in the facts and circumstances of the case, there shall be no orders as to costs. Decree sheet be drawn accordingly.

V.K.JAIN, J

DECEMBER 17, 2012

BG, 'sn'/rd/ks