

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

+ **FAO No.577/2002**

% **10th March, 2014**

ROHTAS SINGH

..... Appellant

Through: Mr. Ravinder Mohan Aggarwal,
Advocate.

Versus

STATE AND ORS.

..... Respondents

Through: Mr. Deepak Sabharwal, Advocate
with Ms. Puja Sabharwal, Advocate
for respondent Nos.2 and 4.
Mr. Y.D. Nagar, Advocate for
respondent No.3.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This first appeal is filed impugning the judgment of the probate court dated 24.8.2002 by which the probate petition filed by the petitioner has been dismissed. Petitioner/appellant/Sh. Rohtas Singh is one of the sons of the deceased testator Sh. Than Singh, and he seeks probate of the Will dated 6.10.1989 of his father who died at Delhi on 15.1.1991.

2. Before the probate court, the appellant/petitioner proved the Will dated 6.10.1989 of late Sh. Than Singh testator as Ex.P1 as per the

testimonies of both the attesting witnesses. Both these attesting witnesses deposed to the due execution and attestation of the Will. Both the attesting witnesses to the Will namely Sh. Devender Kumar Sharma, Advocate (PW-1) and Sh. Naresh Kumar Verma (PW-2) were cross-examined. Nothing material was elicited in the cross-examination as regards the execution and attesting of the Will as also the mental soundness of the deceased testator to execute the Will. Witness from the office of the sub Registrar also appeared as PW-3, and he proved the registration of the Will as document no.3408 in Book no.3, Volume 1017 at pages 128 to 133 on 6.10.1989. PW-5 Ravi Kumar Aggarwal, was the Advocate who had defended the deceased Sh. Than Singh in the suit no.166/1998 filed by Sh. Baljeet Singh- the brother of the wife of one objector Sri Bhagwan/one son of deceased Sh. Than Singh.

3. In spite of the fact that the Will as required in law stood duly proved as stated above, and the same was also proved to be duly registered, the court below has disbelieved the Will holding that there existed suspicious circumstances and hence the Will cannot be probated. It be noted that the reasons given by the trial court do not very much touch upon the actual execution, attestation and registration of the Will. The reasons given by the trial court are as under:-

“(a) The testator had three sons. By virtue of Will Ex.OW-4/1, dated 21.8.1986, (which has not been disputed by the petitioner himself, as it also finds mention in the subsequent Will Ex.p1 dated 6.10.1989); the testator had bequeathed his properties almost equally in favour of the three sons. Generally speaking, objector of making a Will is to deprive of heir wholly or partly. If the testator prefers a particular heir, the other cannot have any grievance provided it is on account of free volition of the testator. In this particular case, in the Will/codicil Ex.P1 dated 6.10.1989, by virtue of which the earlier Will OW4/1 dated 21.8.1996 was revoked, gives a reason for revocation of the earlier Will. The reason is that the behavior of other two sons i.e. Sri Bhagwan and Jaswant Singh is cruel towards the testator, his wife, his eldest son Rohtash, as also good behavior of Rohtash towards the testator and his wife. In the Will Ex.P1, the testator has also mentioned that in the month of September, 1989, his sons Sri Bhagwan and Jaswant Singh had threatened him to handover the properties alongwith residential flat bearing No.28, Block-FD, Pitampura Residential Scheme and had also forged some documents in order to grab the property during his life time in order to exclude his eldest son Rohtash Singh. It is further mentioned that the two sons Sri Bhagwan and Jaswant Singh alongwith their wives had also given beatings to him. A perusal of DD entry No.39-B, dated 13.9.1987, Ex.R1, purported to be lodged by testator Than Singh at police station Saraswati Vihar, is to the effect that at about 1:45 PM, six persons had come to his house. Two persons caught hold of his arms whereas one person obtained his thumb impression on one paper. It is further mentioned in the DD entry that one of persons was Ramphal, who was the brother of the wife of his son Sri Bhagwan. In fact, a suit for mandatory injunction was also filed by Baljeet Singh against testator Than Singh wherein a defence was taken in the written-statement that certain persons, as mentioned in the police report, had obtained his thumb impression on some blank papers. There is no mention about Jaswant Singh or his role in the said incident by the testator either in the DD entry or in the written statement, filed in the civil suit preferred by Baljeet Singh against the testator. Grounds for exclusion of Jaswant are not borne out from the documents.

“(b) In the Will Ex.OW4/1, plot No.WZ-60 is shown to be in possession of Rohtash and Sri Bhagwan and was bequeathed to both

of them in equal shares; whereas in the Will Ex.P1, the possession in respect of this plot is shown to be of Rohtash and some other tenants. Of course, the testator could have changed his Will, but the mentioning of the facts against the record, goes against the free volition or at least to show that the testator was not aware of the contents.

(c). In the will Ex.OW4/1, plot No.6 is given to all the three sons. It is mentioned that the portions, marked as A, B and C, are in possession of Sri Bhagwan, Rohtash and Jaswant Singh and the said portions were bequeathed to them. However, by virtue of the will Ex. P1, the entire plot was bequeathed to Rohtash and his wife.

(d). In the will Ex. OW4/1, it is mentioned that the properties were inherited in succession from the ancestors which in fact, is admitted by the petitioner in his cross-examination. This is the plea of the testator in the written statement PW5/RX-2 in suit No. 166/88. However, in the will Ex. P1, the testator claims himself to be the absolute owner of the property, sought to be bequeathed which would again show that the testator was not aware of the contents of the will.

(e). PW1 Shri D.K. Sharma Advocate, who is the author of the will Ex.P1, had stated in his examination in-chief as well as in his cross-examination that there were 2 or 3 sittings with the testator before drafting of the will. He stated that he did not remember as to when the first, second or the third sitting was held. PW1 had further stated in his cross-examination that he might have prepared one or two drafts of the will before giving a final shape to the will. This also creates some doubt as to whether the testator was really aware of the contents of the final draft which was accepted by him, particularly, when in the civil suit, instituted by Baljeet singh, brother-in-law of Sri Bhagwan, against the testator and which was being defended by petitioner Rohtash Singh on behalf of the testator, an application under Order 32 CPC had been moved by the petitioner Rohtash singh for his appointment as a guardian of the testator. Though the said application is not on record, but its reply, given by Baljeet singh, was placed on record by the petitioner in order to support his plea that testator was of sound mind. In fact in the application, moved by Rohtash Singh and testator, it had been

pleaded that the defendant was suffering from paralysis and was mental very weak.

(f) PW2 Shri Naresh Kumar Verma Advocate stated during his cross-examination that he did know that Than singh had given a copy of the earlier will to his Senior, Shri Gehlot Advocate. This means that Shri Gehlot was also associated in the preparation of the will, but it is no where the case of the petitioner.

(g) It was stated by OW-2 Jaswant Singh in his examination-in-chief that certain court cases were pending by and against Than Singh in the year 1998-89 and the same were being looked after by his elder brother Shri Rohtash. No suggestion was given to OW-2 Jaswant Singh that Rohtash was not attending to the cases; rather moving of the application Under Order 32 of the CPC for appointment as guardian/attorney of testator Than Singh, by petitioner Rohtash, would strengthened the plea of the objector that the testator was not in such a mental state as to form free will for disposition of the properties. Then there is a contradiction regarding presence of the persons at the time of drafting of the will Ex.P1. it was stated by PW1 Shri D.K. Sharma Advocate that it was only Than Singh – testator, Sri Naresh Kumar Advocate and he – himself, who were present; whereas it was stated by PW2 Shri Naresh Kumar Advocate that wife or Than Singh was also present. Than Singh was aged about 80 years (his age is mentioned as 82 years on 15.1.1991, i.e at the time of death in the death certificate Ex. PW1/4) on the date of making the will Ex.P1. He had already suffered two paralytic strokes and it is quite doubtful that he would be going of his own to Advocate Shri D.K. Sharma alongwith his aged wife.

(h) Petitioner Rohtash Singh, when entered the witness box as PW4, was questioned about the earlier will He showed his ignorance if his father had executed any earlier will dated 21.8.1986. The conduct of the petitioner Rohtash singh is un-natural because earlier will dated 21.8.1986, finds mention in the will Ex.P1, propounded by the petitioner. Showing ignorance about the earlier will by the petitioner would mean that he is trying to hide something.

(i) Testator had given certain reasons for execution of the will Ex.P1 in the said document itself. The same were the bad behavior of his two sons Sri Bhagwan and Jaswant Singh and good behavior of third son i.e Petitioner Rohtash. When petitioner Rahtosh Singh was questioned about. The same, he denied that his father had executed the will in his favour because he and his wife served his father well similarly, petitioner Rohtash Singh was also telling a lie when he denied the suggestion during his cross-examination by saying that his father was not living with him in the year, 1989 when the present will (Ex.P1) was executed by him. He added, at time his father used to reside with him and at times with his other sons. This is against the contents of the will Ex.P1, which raises doubt regarding genuineness of the will. PW5 Shri Ravi Kumar Agarwal Advocate was produced in the court to prove sound-state of mind of testator Than Singh. PW5 Shri Ravi Kumar Aggarwal Advocate stated during cross-examination that testator used to come to him of his own to give instructions in the case. Admittedly, Than Singh was aged about 80 years in the year 1988-89 and as stated by me, he had already suffered two paralytic strokes. It is not believable that petitioner Rohtash Singh would allow his aged father to move of his own, particularly in view of DD No.39-B dated 13.9.87 recorded in police station Saraswati Vihar (Ex.R1) when the testator could be over-powered in his house itself by certain persons. This shows that the anxiety of PW5 Shri Ravi Kumar Aggarwal to support the petitioner that the testator was having a free volition. A person, aged about 80 years, having already suffered two paralytic strokes, may be having a fragile mind as the case being set- up by the petitioner himself, by moving and application under Section 32 of the code of Civil Procedure. As held **Abhoy Charan Nath Mazumdar vs Smt. Raimya Devi and others**, (supra) that imbecility arising from the advance age or caused by illness, may destroy testamentary capacity.”

4. In my opinion, the trial court has fallen into a clear error in dismissing the probate petition. Before I turn to the reasons given by the probate court for holding that allegedly there are suspicious circumstances

for discarding the subject Will, an extremely important aspect needs to be noted is that the mother of the petitioner and the wife of the deceased Sh. Than Singh testator was alive when the probate petition was filed. She was indubitably living with the petitioner not only during the lifetime of her husband Than Singh, but even thereafter when the probate petition was filed. The mother (widow of the testator) thus would be the best person to object if at all there existed suspicious circumstances surrounding the Will. The fact of the matter however is that she did not file any objections to the probate petition. Therefore, the very fact that the widow of the deceased Sh. Than Singh, and the mother of the petitioner as also the respondents/objectors/two sons namely Sri Bhagwan and Sh. Jaswant Singh, did not object to the Will, this aspect is indeed a very strong factor to hold that really there are no suspicious circumstances with respect to the Will Ex.P1 dated 6.10.1989. This most important aspect, the court below has failed to consider.

5. Let me now turn to the each ground given by the court below for holding that the probate petition be dismissed. Before going to the grounds, it is also necessary to state that the courts do not sit in the armchair of the testator to decide whether what he actually bequeathed by the Will ought to have been or ought not to have been done i.e whether certain heirs should not be wholly or partially disinherited. Courts do not go into the

moral aspects of the matter as to whether the deceased testator was or was not justified for his reasons in favouring one or more legal heirs as compared to other legal heirs. If the court is otherwise satisfied that there is due execution and attestation of the Will by a person of sound disposing mind and there are found no suspicious/unnatural circumstances, probate of the Will is to be granted, inasmuch as, a Will is proved like any other document. As already stated above, in the present case the Will is duly proved, both by the attesting witnesses and with a notable point that the Will is a registered Will.

6(i) The first ground given by the trial court for holding that there are suspicious circumstances for the probate petition to be dismissed is that the facts with respect to criminal action of assaulting the deceased testator proved by virtue of the DD entry Ex.R1 dated 13.9.1987 is attributed only to Sh. Baljeet Singh who is relative of Sri Bhagwan (one objector) and nothing has been asserted against Jaswant Singh (the other objector) and therefore, there was no reason to disinherit the son Sh. Jaswant Singh by the subject Will.

(ii) In my opinion, no doubt as per Ex.R1 the troubled relations are only shown as between the deceased and Sri Bhagwan (who has worked through his brother in law Sh. Baljeet Singh), however, this circumstance

will at least establish the bad relationship of the deceased testator with Sri Bhagwan. With respect to disinheriting of this son, there is thus sufficient evidence to hold that he did not have good relations with the deceased testator and his wife. To disinherit both the objectors, there have been proved to exist good/better relations of the deceased testator and his wife with the petitioner/appellant, and with whom both had lived till both of them passed away. Once both the parents are found to have been living with the petitioner till the time of their deaths, and that the mother of the petitioner i.e widow of the deceased testator had not objected to the Will which was propounded, in my opinion, there exists good enough reason for giving most benefit under the Will only to the petitioner and his family, because, having better relations is one good reason to legally give less to other sons who are the objectors to the Will. It demands reiteration, and as held by the Supreme Court in various judgments, that the object of making of a Will in many cases is to alter the normal line of succession and the mere fact that normal line of succession is altered by giving less to one or more of the legal heirs itself cannot be a ground to hold that there are suspicious circumstances. It also bears note that the Will shows that testator stated therein of the bad behaviour of both the objectors Sh. Jaswant Singh and Sri Bhagwan, and thus there is hence no reason to disbelieve this reason of not goods relations

with the objectors for giving major part of the estate to the petitioner/appellant and his family. Unless there exists strong evidence to hold that there existed excellent relations between Sh. Jaswant Singh and the deceased testator for Jaswant Singh/son/objector, as also Sri Bhagwan, not to be partially disinherited by the subject Will it cannot be held that Will is shrouded in suspicion simply because the natural line of succession is altered to an extent. And, it is not that objectors have been completely disinherited because as per the Will they are bequeathed those residential portions in one residential property where they are living.

(iii) At this stage, I would also like to note that though a controversy was raised by the objectors that the DD entry dated 13.9.1987 Ex.R1 was not at the instance of the deceased testator, I however find that there is no reason to hold that the DD entry was not at the instance of the deceased testator inasmuch as incident of 13.9.1987 is mentioned by the deceased testator in his written statement filed to the suit plaint in suit No.166/1998 by Sh. Baljeet Singh.

(iv) Hence I hold that the first ground relied upon by the trial court is an inadequate reason for holding existence of suspicious circumstances.

7(i) The second reason which is given by the court below is that in the earlier Will dated 21.8.1986, Ex.OW4/1, the plot bearing No.WZ-6
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owned by the testator is shown to be in possession of Sh. Rohtash Singh and Sri Bhagwan and which was bequeathed to them in equal shares, but that in the subject Will Ex.P1 of the year 1989 possession of the plot is shown to be of Sh. Rohtash Singh not with Sri Bhagwan but of Rohtash Singh/petitioner with some other tenants.

(ii) In my opinion, this conclusion drawn by the trial court to hold that there are suspicious circumstances is without any basis because surely between the year 1986 to 1989 circumstances with respect to plot no.WZ-60 could have changed and instead of Sri Bhagwan, tenants could have been in possession. The objector Sri Bhagwan has not led any evidence to show that he was in physical possession of the plot in June, 1989 when the subject Will was executed, and therefore, it cannot be held by relying upon the different contents of the two Wills, that this aspect amounts to a suspicious circumstance for disbelieving the Will Ex.P1.

8(i) The third ground which is relied upon by the court below to hold existence of suspicious circumstance is that the natural line of succession is altered by the subject will by disinheriting all the sons except petitioner/appellant/Rohtas Singh and his wife.

(ii) Though this aspect has been dealt with while dealing with the first ground given by the trial court, it is reiterated that one object of a Will

is to alter the natural line of succession. A probate Court cannot sit and decide for the testator as to what according to him he thought was right or wrong/fair or unfair. If according to the testator, he felt more comfortable by giving a lion's share of his properties to only one son and his family with whom the testator as also his wife was found to be living, then in my opinion, such factor cannot be taken as amounting to existence of suspicious circumstances. At this stage, I note that counsel for the respondent had very vehemently argued that the appellant/petitioner in his cross-examination admitted that the deceased testator used to live not only with the appellant/petitioner but also with his other sons and therefore besides this contradiction showing the lack of credibility of the petitioner/propounder who had pleaded that the deceased testator only lived with him, this also is a circumstance to hold that there was no reason to substantially disinherit Sri Bhagwan and more particularly Sh. Jaswant Singh with whom bad relations are not proved. In this regard, I have already dilated upon the fact that even if the relations with a particular son i.e objector/Jaswant Singh may not be bad relations, however, the relations of the deceased can be far far better with the prime beneficiary, and which existed in the facts of the present case as both the deceased testator and his widow lived with the petitioner/appellant, and hence there is sufficient reason for giving the

benefit of most of the estate only to the petitioner/appellant and his family by the deceased testator. Therefore, even taking the fact that there is contradiction in the deposition of the petitioner/appellant, however, since the deceased Sh. Than Singh as well as his widow have been found to have been residing most of the time with the petitioner/appellant, the same gives adequate reason to give the prime estate to the petitioner/appellant Sh. Rohtash Singh and his wife.

(iii) The third ground therefore relied upon by the trial court is also incorrect/illegal and is accordingly set aside.

9(i) The fourth ground which is relied upon by the trial court for holding that the subject Will is a suspicious document is because in the earlier Will of the year 1986 (Ex.Ow4/1), the testator wrote that the properties were inherited by succession from his ancestors whereas in the subsequent/subject Will of the year 1989, Ex.P1 it is mentioned that the testator is the absolute owner of the properties. Trial court concluded therefore that such contradiction leads to invalidity of the Will.

(ii) In my opinion, even this contradiction is of no substance because inherited properties are in fact owned properties after passing of the Hindu Succession Act, 1956 and so held in the judgments of the Supreme Court in the cases of *Commissioner of Wealth Tax, Kanpur etc. & Ors. Vs. FAO No.577 /2002*

Chander Sen & Ors. AIR 1986 SC 1753 and Yudhishter Vs. Ashok Kumar AIR 1987 SC 558. There is therefore nothing inconsistent in an ancestral property being taken as a self-owned property and this the testator could have done unless the case of the objectors/respondents was that the properties were inherited by the testator before 1956 or that there had existed a hindu undivided family and whose existence was proved by the objectors, but that is not so. In my opinion, therefore there is really no inconsistency in the earlier Will Ex.OW4/1 and the subject/later Will Ex.P1 with respect to which probate has been prayed.

(iii) It is also relevant to note that Wills are drafted by the Advocates. The language of the Wills are thus necessarily as per the knowledge of the Advocates drafting the same. When the earlier Will Ex.OW4/1 was drafted the deceased may have been informed that the inherited properties were ancestral properties and it accordingly would have been stated in the earlier 1986 Will, however, it cannot be ruled out that the Advocate when drafting the later/subject Will Ex.P1 could have explained the legal position that the ancestral properties in fact become self-owned properties in view of the law as laid down by the Supreme Court in the aforesaid judgments, and therefore, in the subsequent subject Will Ex.P1 the deceased testator would have mentioned that he was the absolute owner of

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the properties. Also this aspect has to be taken with the fact that in the Will the deceased testator talks of rebuilding and renovating the properties from his own funds and therefore his reasoning for calling them self-acquired/owned. I therefore set aside the fourth reason given by the court below to hold that there exist suspicious circumstances.

10(i) The fifth reason which is given by the trial court for holding that there are suspicious circumstances is that Sh. D.K. Sharma who drafted the Will, and who appeared as PW-1, since he made different drafts of the Will and in different sittings, that by itself creates a suspicious circumstance because as per the trial court creating of different drafts creates doubt as to whether testator was really aware of the contents of the final draft. Trial court has buttressed this reasoning with the aspect of unsoundness of mind of the testator by referring to the application under Order 32 CPC moved by the petitioner for his appointment as a guardian of the deceased testator in the suit filed by Sh. Baljit Singh.

(ii) The reasoning of the trial court in this regard is clearly fallacious. The reasoning of the trial court that preparing of different drafts shows that the testator would not know which was the final draft that amounts to turning logic on its head. The fact that various drafts are created,

on the contrary, will show the application of mind of the testator for

deciding a final draft being prepared and therefore to say that the deceased testator would not know which was the final draft is a finding/conclusion which is based not on facts but merely on unacceptable/illegal presumption of the trial court. Presumptions cannot substitute actual facts, more so when the subject Will is in fact a registered Will. One really fails to understand that how a conclusion can be drawn of the last draft not being read by the testator merely because various earlier drafts of the Will were prepared. Such a conclusion as arrived at by the trial court cannot be drawn either in the facts of the case or in law.

(iii) So far as the argument that an application under Order 32 CPC was filed by the petitioner himself for appointment as a guardian of the testator, it bears note that the Will in question was executed in the year 1989 and this application under Order 32 CPC was moved at a subsequent point of time on 9.10.1990. Therefore, a subsequent position of October, 1990 cannot be taken as a circumstance existing in October, 1989 when the Will was executed. Therefore, even this reasoning of the trial court is not correct. In my opinion, if a period other than the period of making of the Will is to be considered for deciding the soundness of the mind then the period prior to making of the Will is relevant and in such a case the conclusion of the trial court that the deceased was not of a sound mind in October, 1989 when the

Will was executed is negated from the earlier record of judicial proceedings being the land acquisition proceedings and where the appearances of the deceased testator is noted in the order sheets of different dates. The relevant record in this regard has been filed and proved by the petitioner as Ex.P4 to Ex.P6 and which are court orders dated 18.4.1990, 4.5.1990 and 3.1.1991. Other documents in this regard are Ex.P1 to Ex.P3 and which are also the record of the proceedings in the land acquisition case bearing No.49/1993, which documents are the orders passed by the court and the statement made by the testator himself on 5.12.1988. In a case of Will, one is really concerned with the soundness of mind in and around the time of the execution of the Will and not much earlier or later because it is perfectly possible that after the execution of the Will, and at a subsequent point of time, the petitioner may be taken not to be of sound mind, however, later facts would not be a reflection of the soundness of mind for execution of the Will around at least 12 months prior to the document showing unsoundness of mind.

11. So far as the next circumstance of Sh. Gahlot Advocate, the senior of Sh. Naresh Kumar Verma, Advocate being involved in the preparation of the Will, but the same not being the case of the petitioner, all that needs to be stated is that this Court fails to understand that how that can

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be a suspicious circumstance with respect to execution of the Will because it is not as if a petitioner to a probate petition has to prove each and every fact with respect to all earlier acts of the drafting of the Will.

12(i) The next ground which has been found in favour of the objectors by the trial court is that there is lack of soundness of mind of the deceased testator on account of the fact that the petitioner/appellant Sh. Rohtash Singh was looking after court cases and which conclusion is buttressed by referring to moving of an application under Order 32 CPC by Sh. Rohtash Singh/petitioner for representing the testator. Trial court also concludes that there is inconsistency with respect to age of the deceased testator and the fact that deceased testator had suffered two paralytic strokes, hence showing that it would be doubtful that he would be going on his own to the Advocate Sh. D.K.Sharma alongwith his aged wife.

(ii) In this regard, in the present case, when the issue is of soundness of mind, it was necessary that there must be proved such medical record by the objectors with respect to alleged lack of mental capacity for making of the Will at the time when the Will Ex.P-1 was made. After all, it is the common case that the deceased testator was of an advanced age of around 80 years when he made the Will, (77 years when the earlier 1986 Will relied by objectors was executed), and therefore, illness or lack of good

health is natural at that age, however, unless the physical health is proved to cause such deterioration in mental health so as to become lack of soundness of mind, it cannot be held that the deceased testator was lacking mental capacity especially more so in the facts of the present case where the Will is a registered Will and the sub-Registrar acting under the provisions of the Registration Act, 1908(read with Section 114 of the Evidence Act, 1872) would have put appropriate questions to the deceased testator at the time of registration of the Will i.e questions pertaining to due execution and attestation of the Will. Also, in the facts of the present case pertaining to the documentary evidence discussed earlier, there is a passage of time after making of the Will Ex.P1 and when bad health is shown of the testator at the later point of time. Thus merely because the deceased testator suffered from bad health later than execution of the Will, the same is not enough to hold that when Will Ex.P-1 was executed, deceased testator suffered from unsoundness of mind. At the cost of repetition, unsoundness of mind has to be proved and buttressed by some medical evidence as to lack of mental capacity, and in my opinion self serving oral testimonies of the objectors cannot be believed in the facts of the present case to hold lack of mental capacity of the deceased testator while making the Will Ex.P-1.

13. So far as the next ground of the petitioner-Sh. Rohtash Singh showing ignorance with respect to the Will dated 21.8.1986, although, the earlier Will finds mention in the subject Will Ex.P-1, all that I can say is that on minor contradictions, issues with respect to execution and attestation of a Will, much less existence of suspicious circumstances can be decided. Therefore, in my opinion, this ground taken by the trial court is a very slim ground to arrive at a conclusion of existence of suspicious circumstances for holding lack of validity of the Will Ex.P-1.

14. A reading of the impugned judgment has left this Court with an impression that the court below has taken small small aspects, and small small contradictions, to create an illusory larger picture for holding existence of suspicious circumstances. Also the reasoning of the trial court, and which has been reproduced extensively above, one is left with the feeling that the trial court has placed unnecessary importance on the conclusions drawn by it and has totally ignored important facts of both the attesting witnesses appearing and proving the execution and attestation of the Will, mother of the parties not objecting to the Will and the fact that the Will was registered. These aspects taken with the fact that no medical record was produced by the objectors to show lack of mental capacity, in my opinion, is sufficient in the facts of the present case to hold that Will Ex.P-1 has been duly proved to

have been executed by the testator, duly attested by the attesting witnesses and having been executed when the testator had mental capacity to execute the Will Ex.P-1 and that there are no suspicious circumstances to discard the Will. It also bears repetition that the objectors have not been totally disinherited by the subject Will Ex.P-1 inasmuch as, in the house where they are staying i.e WZ-49, Shakurpur, Delhi, and of which they are already in possession and residing, the ownership rights of those portions have been given to the objectors.

15. In view of the above, the appeal is allowed. The impugned judgment of the trial court dated 24.8.2002 is set aside. Petitioner, now represented by his legal heirs, will be entitled to probate of the Will Ex.P-1 dated 6.10.1989 executed by the deceased testator Sh. Than Singh, subject to completion of requisite formalities before the trial court.

MARCH 10, 2014
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VALMIKI J. MEHTA, J.