

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ FAO No. 462/2007

% 6th July, 2017

GUR PRASAD GUPTA

.....Appellant

Through: Mr. Anupam Srivastava and
Ms.Shreya Mehta, Advocates.

versus

RAM PRASAD GUPTA

..... Respondent

Through: Mr. Ashwani Kumar, Advocate.

+ FAO No. 463/2007

GUR PRASAD GUPTA

.....Appellant

Through: Mr. Anupam Srivastava and
Ms.Shreya Mehta, Advocates.

versus

RAM PRASAD GUPTA AND ANR.

..... Respondents

Through: Mr. Ashwani Kumar, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? YES

VALMIKI J. MEHTA, J (ORAL)

1. By this judgment two appeals are being disposed of. The two appeals are FAO No. 462/2007 and FAO No. 463/2007. Both the appeals have been filed by the appellant Sh. Gur Prasad Gupta. These

two appeals have been filed against the common judgment dated 1.10.2007. By the impugned common judgment dated 1.10.2007, two probate petitions seeking letters of administration were decided. First case being Probate Case No.88/2006 was filed by the appellant seeking letters of administration with respect to the Will dated 17.4.1987 executed by the mother of the appellant late Smt. Ram Chandri Devi. In this first case seeking letters of administration filed by Sh. Gur Prasad Gupta, the objectors were the father and brother of Sh. Gur Prasad Gupta, namely, Sh. Har Swaroop Gupta and Sh. Ram Prasad Gupta. The second case was a case filed by the father Sh. Har Swaroop Gupta seeking letters of administration with respect to the Will dated 13.5.2002 of his wife Smt. Ram Chandri Devi, that is the mother of the appellant Sh. Gur Prasad Gupta and Sh. Ram Prasad Gupta.

2. By the impugned judgment whereas, the petition seeking letters of administration filed by Sh. Gur Prasad Gupta has been dismissed, the petition filed by Sh. Har Swaroop Gupta has been allowed and letters of administration have been granted with respect to the Will dated 13.5.2002 executed by late Smt. Ram Chandri Devi. I may note that both the Wills relied upon by the respective parties, that

is, the appellant Sh. Gur Prasad Gupta and father/husband/Sh. Har Swaroop Gupta are registered Wills. 21

3. Let me first take up FAO No.463/2007, inasmuch as, by this FAO, appellant Sh. Gur Prasad Gupta is seeking setting aside of the impugned judgment 1.10.2007 dismissing his petition filed for letters of administration of the Will dated 17.4.1987 of late Smt. Ram Chandri Devi.

4. The court below by the impugned judgment has dismissed the petition filed by the appellant Sh. Gur Prasad Gupta seeking letters of administration of the Will dated 17.4.1987, inasmuch as, admittedly, no deposition was recorded of even one out of the three attesting witnesses of the Will. The court below has also held that there is no issue of letters of administration being granted on the alleged admission of Sh. Har Swaroop Gupta and Sh. Ram Prasad Gupta that there did exist a Will dated 17.4.1987 of late Smt. Ram Chandri Devi, inasmuch as, in a probate petition by admission a case cannot be allowed because judgment in a case seeking probate and letters of administration operates as judgment *in rem*.

5. In my opinion, the impugned judgment dismissing the petition filed by the appellant Sh. Gur Prasad Gupta seeking letters of

administration of the Will dated 17.4.1987 of the late Smt. Ram Chandri Devi cannot be faulted with and has to be upheld as per its reasoning, however this appeal can be decided by dismissing the same on a totally independent legal ground i.e on account of the provisions of Sections 70 and 237 of the Indian Succession Act, 1925. These Sections 70 and 237 of the Indian Succession Act show that letters of administration/probate can only be granted on production and proof of the original Will and that a letter of administration/probate can only be granted of a copy of the Will if it is shown that the original Will has not been revoked by destroying the Will such as by tearing of the same or burning of the same etc etc. Sections 70 and 237 of the Indian Succession Act read as under:-

“70. Revocation of unprivileged Will or codicil.—No unprivileged Will or codicil, nor any part thereof, shall be revoked otherwise than by marriage, or by another Will or codicil, or by some writing declaring an intention to revoke the same and executed in the manner in which an unprivileged Will is hereinbefore required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator or by some person in his presence and by his direction with the intention of revoking the same.

237. Probate of copy or draft of lost Will.—When a Will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident and not by any act of the testator, and a copy or the draft of the Will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it is produced.”

6. Counsel for the appellant could not dispute that the original Will dated 17.4.1987 has not seen the light of the day and the

original will dated 17.4.1987 was not filed and proved before the court below. Further, it is conceded that neither in the petition filed seeking letters of administration of the Will dated 17.4.1987 of late Smt. Ram Chandri Devi the appellant had mentioned and nor the appellant has led any evidence that the Will has not been destroyed deliberately but by a mistake or an unintentional wrong. Therefore, in terms of the language of Sections 70 and 237 of the Indian Succession Act, since probate/letters of administration of a copy of the Will could only have been granted if it was pleaded and proved that the original Will was not destroyed deliberately but by a mistake/wrong or unintentional destruction, and which has not been done, thus the petition of the appellant Sh. Gur Prasad Gupta seeking letters of administration was bound to be dismissed and accordingly it is, inasmuch as, non-existence of the original Will leads to the conclusion that the Will had been revoked by the testator by destruction of the same and no letters of administration can be granted of a copy in the absence of establishing the ingredients of Section 237 of the Indian Succession Act.

7. Accordingly, by not only accepting the reasoning contained in the impugned judgment that the Will dated 17.4.1987 was

not proved by summoning of at least one attesting witness, and which ²⁴ was required in view of Section 68 of the Indian Evidence Act, 1872 the petition of letters of administration filed by the appellant Sh. Gur Prasad Gupta being case Probate Case No. 88/2006 will stand dismissed and additionally so by also applying the provisions of Section 70 and 237 of the Indian Succession Act. FAO No. 463/2007 will accordingly stand dismissed.

8. That takes us to the FAO No. 462/2007 and which has been filed against that portion of the impugned judgment dated 1.10.2007 by which the court below has granted letters of administration to the husband Sh. Har Swaroop Gupta with respect to the Will dated 13.5.2002 of his late wife Smt. Ram Chandri Devi.

9. It is noted that the respondent no. 1/Sh. Ram Prasad Gupta being the son and legal heir of Sh. Har Swaroop Gupta was substituted in place of Sh. Har Swaroop Gupta who had expired during the pendency of the judicial proceedings. One other person Sh. Inder Sen, who was the son of Sh. Har Swaroop Gupta from the first marriage, was also added as a respondent, but he has in any case not contested the case by appearing.

10. The petitioner in the case Sh. Har Swaroop Gupta led evidence of five witnesses to prove the Will dated 13.5.2002. Sh. Har Swaroop Gupta himself deposed as PW-1. The son Sh. Ram Prasad Gupta deposed as PW-2. One attesting witness Sh. Ajit Singh deposed as PW-3 and the second attesting witness Sh. Amar Nath deposed as PW-4. Sh. M.S. Dagar, the Sub-Registrar who registered the Will dated 13.5.2002 deposed as PW-5. 95

11. The first issue which is argued on behalf of the appellant for setting aside the impugned judgment granting letters of administration of the Will dated 13.5.2002 and that the probate petition had to be dismissed is that one attesting witness PW-3 Sh. Ajit Singh has in his deposition admitted that the Will was not signed by the testatrix in his presence and nor did the two attesting witnesses being Sh. Ajit Singh himself/PW-3 and the other attesting witness Sh. Amar Nath/PW-4 sign in the presence of the testatrix. It is argued that in view of the admissions in the cross examination of the attesting witness Sh. Ajit Singh that the Will dated 13.5.2002 is to be held to be not proved to be duly executed and attested.

12. In order to appreciate the arguments urged on behalf of the appellant at this stage, let me reproduce the examination-in-chief

and cross-examination of PW-3 Sh. Ajit Singh and this examination-
in-chief and cross-examination reads as under:-

“PW-3 Shri Ajit Singh son of Shri Bansi Lal r/o 2261, Shora Kothi, Subzi Mandi, Delhi.

Ex.PW1/1 is the certified copy of the Will which bears my signature at point A. I did not know Smt. Ramchandri Devi. The document Ex.PW1/1 when came for my signature, it had already signed by Smt. Ramchandri Devi and it was given to me by her husband. I was present before the Registrar at the time of registration of the document. Smt. Ram Chandri Devi was ahead of me before the Registrar. I did not see Smt. Ramchandri Devi signing before the Sub Registrar. The dealing clerk might have got her signature before him. I had not read the document. I cannot say if she knew Hindi. I cannot say what was the state of health of Smt. Ramchandri Devi when she presented herself before the Sub Registrar. It is correct that she was walking her own. I did not get to speak to her. Smt. Ramchandri Devi was of good health at the time of signature before the dealing clerk of the Registrar. It is correct that Amar Nath signed in my presence. Sh. Amar Nath signed at his seat which is about 15 seats away from my seat. Sh. Amar Nath Advocate signed before the Registrar in my presence on the Will dated 13.5.2002.

xxxxxxxxxxxxxxxxx by counsel for petitioner.

It is correct that Smt. Ramchandri Devi had already signed the Will before it came to me for my signature. It is correct that she did not sign on the will in my presence at point A to L. The thumb impressions on all the six pages of the will were also not put in my presence by Smt. Ramchandri Devi. Smt. Ramchandri Devi was not present when affixed my signatures at point A. I took the will for signatures to Sh. Amar Nath. Smt. Ramchandri Devi was not present when Sh. Amar Nath signed the will. Vol. She was later called by the husband of late Smt. Ram Chandri Devi. The signatures of late Smt. Ramchandri Devi before the Registrar are at point X & Y. I did not see Ramchandri Devi signing at point X & Y as I was standing behind her when she was signing before the dealing clerk of the Registrar. It is correct that no signatures were made by Smt. Ramchandri Devi on the body of the will before the dealing clerk of the Registrar.”

13. The argument/issue to be addressed is as to whether in light of the attesting witness Sh. Ajit Singh turning hostile and conceding that the Will is not duly executed and attested, should it be held that the letters of administration filed with respect to the Will

dated 13.5.2002 of late Smt. Ram Chandri Devi should not be granted. 27

For this purpose, at this stage, it is also required to reproduce the examination-in-chief and cross-examination of the second attesting witness Sh. Amar Nath, and the same reads as under:-

"I, Amar Nath (Advocate), S/o Late Shri Harnam Dass, R/o A-25/F, DDA Flats, Munirka, New Delhi-110067 do hereby solemnly affirm and declare as under:-

1. That Smt. Ram Chandri Devi alongwith Mr. Ajit Kumar came to me on 13.5.2002 at my Chamber No.3, Old court Complex, Kashmeri Gate, Delhi and requested me to get the said Will duly executed and registered. Smt. Ram Chandri Devi was accompanied by her husband and her son.
2. That as the Will was already signed when it was brought to me by her on all pages, I got the said Will again signed and thumb mark on all the pages by Smt. Ram Chandri Devi in my presence and Shri Ajit Kumar was also present. Thereafter, Shri Ajit Kumar and myself both signed the said Will as attesting witnesses in the presence of Smt. Ram Chandri Devi.
3. Thereafter the said Will was presented for the registration before the Sub-Registrar, Delhi on the same day and Smt. Ram Chandri Devi signed on the back of the said will in the office of the Sub-Registrar, Kashmeri Gate, Delhi. Sh. Ajit Kumar and myself again signed the Will before the Sub-Registrar as attesting Witness."

"PW-4 Sh. Amarnath, Advocate, son of late Sh. Harnam Dass, Age-69 years, R/o A-25-F, DDA Flats, Munirka, New Delhi on S.A.

I tender my evidence by way of my duly sworn affidavit. Ex.PW-4/A, which bears my signatures at points A & B respectively.

xxxxxxx by Sh. Anupam Srivastava advocate for objector.

It is correct that Ram Chandari Devi had already signed once on the Will before it came to me for signature. The testator had signed the Will second time in my presence only thereafter I attested the Will. I did not know the testatrix from before. It is wrong to suggest that Ajit Kumar had already signed when the Will came to me for signature. It is wrong to suggest that Ram Chandari Devi did not sign in my presence. It is wrong to suggest that I was engaged only for the purposes of registration of the Will. I did not make this Will. Ram Chandari Devi was accompanied by her husband and her son whom identify namely Ram Prasad Gupta, present in court today. It is wrong to suggest that Smt. Ram Chandari Devi was under pressure from her husband and her son. It is wrong to suggest that Ajit Kumar did not sign in my presence. It is wrong to suggest that I am deposing falsely."

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14. In my opinion, the Court below has very exhaustively and convincingly dealt with this issue and held that since in terms of Section 68 of the Indian Evidence Act, a Will is proved even through the deposition of but one attesting witness, accordingly, the court below has held the Will dated 13.5.2002 as proved on account of the clear cut deposition of PW-4 Sh. Amar Nath and whose deposition clearly shows due execution and attestation of the Will. The second attesting witness PW-4 Sh. Amar Nath in his deposition has clearly stated that the testatrix signed in presence of both the attesting witnesses Sh. Ajit Singh and Sh. Amar Nath and that both the attesting witnesses signed in the presence of testatrix. PW-4 Sh. Amar Nath also deposed that the Will was duly registered and he and the other attesting witness Sh. Ajit Singh were present at the time of registration of the Will and the testatrix as also the other attesting witness once again signed in presence of the Sub-Registrar. The relevant portion of the impugned judgment, which this court accepts, which discusses this aspect and holds in favour of respondent no. 1 Sh. Ram Prasad Gupta and Sh. Har Swaroop Gupta, is contained in paras 20 to 25 and these paras read as under:-

“20. The objectors have relied upon the subsequent Will dated 13.05.2002. This Will is bearing the signatures of Sh. Ajit Kumar, Stamp Agent and Sh. Amar Nath, advocate as witnesses. Obviously, the onus to

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prove this Will was on the objectors. In order to prove this Will, the objectors produced both the witnesses. Sh. Ajit Kumar, in his deposition has admitted his signatures at point A on the Will dated 13.05.2002 but stated that the Will when came for his signatures, was already bearing the signatures of Smt. Ram Chandri Devi. According to him, Will was given to him by her husband. He has stated that he did not see Smt. Ram Chandri Devi signing before the Sub Registrar. He could not say as to what was the state of her health. He has further stated that the second witness Sh. Amar Nath, advocate had signed the Will in his presence at his seat, which is about 15 seats away from his seat. The second attesting witness Sh. Amar Nath, advocate has filed his affidavit stating that on 13.05.2002, Smt. Ram Chandri Devi along with Sh. Ajit Kumar came to him in his Chamber No. 3, Old Court Complex, Kashmere Gate and requested him to get the Will executed and registered Smt. Ram Chandri Devi was accompanied by her husband and her son. He has further stated that the Will was already signed when it was brought to him by her, on all the pages. He got the said Will signed with thumb marks on all the pages by Smt. Ram Chandri Devi in his presence and also in the presence of Sh. Ajit Kumar. Thereafter, he and Sh. Ajit Kumar both signed the Will as attesting witnesses in the presence of Smt. Ram Chandri Devi. He has further stated in the affidavit that the Will was then presented for registration on the same day. Smt. Ram Chandri Devi signed on the back of the Will in the office of Sub Registrar. He and Sh. Ajit Kumar again signed the Will before the Sub Registrar as attesting witnesses. The objectors have also examined Sh. M.S. Dagar, Sub Registrar, Kashmere Gate. He has been examined to prove the registration of the Will. However, he stated that the signatures were made by the testatrix in the presence of the Reader.

21. It has been argued by the learned counsel of petitioner that Sh. Ajit Kumar has not supported the objectors. There are contradictions between the testimonies of both the attesting witnesses which makes the Will doubtful. It is argued that the testimony of Sh. M.S. Dagar, Sub Registrar is also of no help to the objectors because the signatures were not made by the testatrix and the attesting witnesses in his presence. It is thus submitted that the objectors have failed to discharge the heavy onus of proving the Will dated 13.05.2002. The argument of learned counsel of objectors is that PW-3 has turned hostile as he had been won over by the petitioner. It is argued that the second attesting witness Sh. Amar Nath, advocate has proved the due execution and attestation of the Will. There is no reason to disbelieve his testimony. Nothing has come out in his cross examination which can help the petitioner and therefore, Will dated 13.05.2002 stands proved in view of the testimony of the second attesting witness Sh. Amar Nath, advocate.

22. I have carefully gone through the testimonies of the witnesses. Admittedly, Sh. Ajit Kumar, one of the attesting witnesses to the Will has not supported the objectors. In as much as, he has stated that the Will was already bearing the signatures of Smt. Ram Chandri Devi when it was given to him for his signatures. In cross examination, he has admitted that testatrix

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did not sign the Will in his presence at point A to L and similarly, the thumb impressions on all the six pages were not put in his presence.

23. Section 71 of the Indian Evidence Act is one of the exceptions to the stringent rule of proof of an attested document in Section 68. The fate of an attested document is not necessarily at the mercy of the attesting witnesses. In the event of an attesting witness denying the execution of the Will the propounder can rely upon the other evidence to prove the proper execution and attestation.

24. The Will dated 13.05.2002 is bearing the signatures of the testatrix Smt. Ram Chandri Devi at two places on each of the six pages of the Will and is also bearing the thumb marks of the testatrix on each page. This is consistent with the affidavit of Sh. Amar Nath, advocate, who has stated that the Will was already signed when it was brought to him, on all the pages but he again got it signed with thumb marks of Smt. Ram Chandri Devi in his presence and in the presence of Sh. Ajit Kumar and thereafter he and Ajit Kumar signed the Will at attesting witnesses. It explains why the signatures of Smt. Ram Chandri Devi are present at two places on each page of the Will, otherwise, there is no reason why she would put her signatures at two places on each page of the Will. The testimony of Sh. Amar Nath, advocate finds corroboration from the testimonies/affidavits of objectors Sh. Har Swarup Gupta and Sh. Ram Prasad Gupta, in as much as, Sh. Har Swarup Gupta, in his cross examination, has stated that the testatrix had signed the Will in his presence and in the presence of her son Sh. Ram Prasad Gupta and the attesting witnesses. Similarly, Sh. Ram Prasad Gupta has stated in his affidavit that he had accompanied his mother and father to the Sub Registrar's office where his mother executed the Will and got it registered in the presence of witnesses Sh. Ajit Kumar and Sh. Amar Nath, advocate. There is no cross examination of both these witnesses about their presence at Sub Registrar's office at the time of execution of the Will. As already discussed, one attesting witness can prove the execution of the Will in terms of the Clause (c) of Section 63 viz attestation by two attesting witnesses in the manner contemplated there that shall be sufficient. In my view, objectors have been able to prove the Will dated 13.05.2002 despite the fact that the first attesting witness Sh. Ajit Kumar has not supported the objectors.

25. It has been argued by the learned counsel for the petitioner that the Will dated 13.05.2002 was signed twice by the testatrix and admittedly as per evidence of the objectors, signatures were put by the testatrix first time in the absence of the attesting witnesses. According to the learned counsel, the execution of the Will was complete the moment the testatrix signed for the first time and therefore, that being so, the Will could not have been signed second time and got attested. I am unable to accept this argument because the execution of the Will includes its attestation. The act of putting signatures by the testatrix did not complete the execution of the Will. Obviously, the execution of the Will is complete when it is signed by the testator and attesting witnesses and therefore, it cannot be said that execution of the Will was complete when the testatrix signed the Will for the first time.”

(underlining added)

15. I completely agree with the aforesaid conclusions of the court below, inasmuch as, merely because one attesting witness turns hostile does not mean that the deposition of the other attesting witness is not good enough to prove the Will dated 13.5.2002. In fact the law is that even if both the attesting witnesses turn hostile a Will can be always be proved by independent evidence vide Section 71 of the Indian Evidence Act. This Section 71 of the Indian Evidence Act reads as under:-

“71. Proof when attesting witness denies the execution.—If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.”

16. Therefore, I accept the reasoning and conclusions of the court below and it is held that the court below has rightly held that the Will dated 13.5.2002 of late Smt. Ram Chandri Devi is proved to have been duly executed and attested in view of the deposition of PW-4 Sh. Amar Nath and who stood the test of cross-examination by confirming the due execution and attestation of the Will.

17. Learned counsel for the appellant, has next, very passionately argued that the Will in question dated 13.5.2002 should be held not to have been duly executed and attested with the fact that there

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were too many suspicious circumstances surrounding the execution of the Will. It has been argued that there are contradictions which have come out in the cross-examinations of Sh. Har Swaroop Gupta PW-1 and Sh. Ram Prasad Gupta/respondent no. 1 as PW-2, when compared with their own evidence given as examination-in-chief as also other facts existing on record, and therefore it is argued that FAO No. 462/2007 be allowed and the impugned judgment be set aside which has granted letters of administration to Sh. Har Swaroop Gupta with respect to the Will dated 13.5.2002 of late Smt. Ram Chandri Devi.

18. Before I turn to the alleged 'contradictions' urged on behalf of the appellant for setting aside of the impugned judgment granting letters of administration of Will dated 13.5.2002 two aspects need to be stressed. The first aspect to be noted is that the doctrine of *Falsus in uno, Falsus in omnibus* has no application in this country i.e just because a person is found not to be speaking truth on some aspects does not mean that the said person has to be completely disbelieved as regards his evidence on all other aspects. This is the law in this country inasmuch as almost in no case it can be found that each and everything stated by the main witnesses is one hundred percent truthful and correct. The second aspect is that in view of the fact that the doctrine

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of *Falsus in uno, Falsus in omnibus* does not apply to this country because civil cases are decided on preponderance/balance of probabilities i.e evidences which are led by all the parties are taken together and thereafter on preponderance of probabilities it is decided that which party has been able to prove his/her case and discharge his/her onus of proof. Issue of discharge of onus of proof is thus examined on taking of the evidence as a whole including any contradictions or lack of proof on certain aspects in the depositions of the witnesses of the respective parties. With these initial aspects of law noted, let us examine the arguments which have been urged on behalf of the appellant.

19. The first argument as regards contradiction which is urged on behalf of the appellant is with reference to the statement of Sh. Har Swaroop Gupta as PW-1. In this statement, 'contradictions/lies' of Sh. Har Swaroop Gupta have been pointed out to this Court and accordingly it is argued that on account of such contradictions/lies the deposition of Sh. Har Swaroop Gupta should be disbelieved, and the petition seeking letters of administration filed by him should be dismissed:-

“(i) I do not know whether my wife had executed a Will dated 17.4.1987.

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- (ii) My wife put the signatures in the presence of the Registrar and witnesses and me and my son Sh. Ram Prasad Gupta.
 - (iii) It is correct to say that Sh. G.P. Gupta used to stay at 3-B B.D. Estate, in May, 2002. The terms with Sh. G.P. Gupta and my wife and me were cordial during the period May, 2002.
 - (iv) The Will has been drafted by a professional draftsman.
 - (v) During the year 2002 Mr. G.P. Gupta and his family members used to take care of me and my wife."

20. As already stated above, assuming there are contradictions and lies, yet, even if such aspects exists, however in my opinion the aforesaid contradictions are not such that on account of which the due execution and attestation of Will dated 13.5.2002 which has been otherwise duly proved through the attesting witness Sh. Amar Nath PW-4, should be ignored, and which evidence led has resulted in the proof of due execution and attestation of Will dated 13.5.2002. Let me now take up each of the argument as regards the different contradictions/untruthful statements mentioned above of Sh. Har Swaroop Gupta and examine whether they at all are such to accept the arguments for setting aside of the impugned judgment.

21. The first argument is that whereas in the examination-in-chief Sh. Har Swaroop Gupta admitted to the execution of the Will dated 17.4.1987 but in the cross-examination on point (i) above he has said that he does not know that his wife had executed Will dated 17.4.1987 and therefore it should be held that the witness is lying. As

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already stated above, assuming that the witness Sh. Har Swaroop Gupta was avoiding telling the truth, in any case, at best the statement at point (i) above would only mean that there does exist a Will dated 17.4.1987 of late Smt. Ram Chandri Devi. However, even if Smt. Ram Chandri Devi had executed and attested her Will dated 17.4.1987, yet, as already stated above, that will not make any difference because the original Will dated 17.4.1987 has not been filed, and reasons have already been given above for dismissing FAO No. 463/2007 by which the appellant had sought grant of letters of administration with respect to the Will dated 17.4.1987. Another reason for rejecting this argument is that admittedly the Will dated 17.4.1987 is the earlier Will, and once a subsequent and later Will dated 13.5.2002 of late Sh. Ram Chandri Devi stands proved, the earlier Will dated 17.4.1987 thus cannot create rights between the parties because the earlier Will stands revoked by the subsequent Will dated 13.5.2002.

22. The second argument of contradiction based on point no. (ii) is as regards the volunteered deposition of Sh. Har Swaroop Gupta being point no. (ii). I however do not find any 'contradiction' because all that this volunteered portion shows is that in addition to due execution and attestation of the Will dated 13.5.2002, and which was

earlier proved to be done, the testatrix had also further put her signatures before and in the presence of the Sub-Registrar as also two attesting witnesses (as also Sh. Har Swaroop Gupa and Sh. Ram Prasad Gupta at the time of registration before the Sub-Registrar). No valid argument thus can be urged on behalf of the appellant as regards point no. (ii) and therefore this argument is rejected.

23. (i) The other aspects urged with respect to point nos. (iii) and (v) are with respect to good relations of the appellant with the deceased Smt. Ram Chandri Devi and father Sh. Har Swaroop Gupta and hence the reason for their not being disinherited. It is argued that once good relations existed between the appellant and his parents Smt. Ram Chandri Devi and Sh. Har Swaroop Gupta, the same shows that the Will dated 13.5.2002 would not have been executed.

(ii) This argument in my opinion is also without any substance because it is not at all that the appellant has been in any manner disinherited. In fact, the court below has rightly given a comparison of the contents of and the bequeathing under the earlier Will dated 17.4.1987 as compared to the later Will dated 13.5.2002 showing thereby that mostly the bequests under the Wills was substantially the same save and except for certain aspects and which were required

because of change of circumstances including sale of some portion of the Rajouri Garden property as also the appellant receiving an amount of Rs.16,00,000/- from the sale consideration of this property. Two other reasons for change of some of the portions of the earlier bequest in terms of the Will dated 17.4.1987 as compared to the bequest in the later Will dated 13.5.2002 was on account of directions for doing of certain charity as also the fact that in the first Will Smt. Ram Chandri Devi had only given moveable properties (including jewellery and moneys) to her husband Sh. Har Swaroop Gupta and Smt. Ram Chandri Devi would have realized that if her husband Sh. Har Swaroop Gupta was not given immovable property then in his old age Sh. Har Swaroop Gupta would be without a roof on his head. Therefore, Sh. Har Swaroop Gupta was given the property at Banarsi Dass Estate at Delhi and which was earlier divided between the two sons i.e appellant and Sh. Ram Prasad Gupta in terms of the earlier Will dated 17.4.1987. In view of the above the argument urged on behalf of the appellant on account of the point nos. (iii) and (v) is also rejected.

24. So far as point (iv) as stated above is concerned, I do not find anything at all in it for dislodging the impugned judgment which

has held that there is due execution and attestation of the Will dated 13.5.2002. The argument so raised is thus rejected.

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25. The next set of 'contradictions' and 'lies' which are urged on behalf of the appellant is for ignoring the deposition of PW-2 Sh. Ram Prasad Gupta/respondent no. 1 and for setting aside of the impugned judgment and these are the statements in the cross-examination of PW-2, and which statements read as under:-

- “(i) It is correct that Gurprasad and his family is living on the ground floor of premises No. 3-B, B.D. Estate New Delhi till Sept. 04. Vol. They were staying in the premises till Oct. 2003. It is correct that I and my family was living on the first and 2nd floor of the said property. It is correct that my late mother lived on the ground floor of the suit premises till her death. It is also correct that my father also lived on the ground floor and still lives on the ground floor. It is incorrect to suggest that I have a separate kitchen since last 25 years. Vol. I was having a separate kitchen last 5 years. I do not remember since what year I have been living separately. It is incorrect to suggest that I was having my separate kitchen only 5-6 years. It is correct that the kitchen of Sh. Gurprasad was common with my parents.
- (ii) I cannot say if my father alone used to take all decisions of the business.
- (iii) I do not know if my mother had executed a Will dt. 17.4.89.
- (iv) I cannot say that the will was typed and brought to my mother. I cannot say if the handwritten date on the Will at page 6 is in the hand of my father. I do not know where this date was filled.
- (v) My mother has signed the will before the Sub Registrar.”

26. In my opinion, once again all the aforesaid alleged contradictions or lies are similar to the arguments urged with respect to the deposition of PW-1 Sh. Har Swaroop Gupta, and have already been dealt with hereinabove and, adopting the reasons as stated above, the arguments urged for rejecting the testimony of PW-2 Sh. Ram Prasad

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Gupta/respondent no.1 are accordingly rejected. As regards the point (iv) the trial court has correctly given reasons in para 32 of the impugned judgment and I accept the same. Trial court has rightly held that the appellant has failed to prove this aspect and his argument had to be rejected.

27.(i) Learned counsel for the appellant finally argued that the Will dated 13.5.2002 talks of ownership of Dilshad Garden property by the mother, although this Dilshad Garden property way back in the year 1999 was sold to the appellant in terms of a sale deed dated 14.10.1999 proved as Ex.PW-1/R-1 during the cross-examination of the appellant and hence the contents of the Will are false and hence the Will dated 13.5.2002 has to be rejected.

(ii) I have examined the arguments as also the deposition of appellant Sh. Gur Prasad Gupta dated 18.11.2005 and it is found that firstly there is no pleading whatsoever of the appellant in the form of objections to the grant of letters of administration of the Will dated 13.5.2002 that the Will dated 13.5.2002 should be disbelieved because it contains a false statement of fact as regards the ownership of Dilshad Garden property by Smt. Ram Chandri Devi. Beside the fact that there is no pleading, I put a query to the counsel for the appellant that if the

Dilshad Garden property was of the appellant way back from the year 1999, whether appellant had led any evidence or it was a case of the appellant that with respect to the Dilshad Garden property, that the same was got mutated in favour of the appellant after the year 1999 during the life time of the mother, and till the death of the mother and also whether the appellant has ever paid any property tax or had ever received any rent from the tenant of the property and which is received as Rs.25,000/- per month and which is stated in the Will dated 13.5.2002. In response, the learned counsel for the appellant could not point out to me any pleading or any evidence led to show any of the above aspects of the mutation or payment of property tax or collection of rent by the appellant with respect to the Dilshad Garden property. In fact, learned counsel for the respondent no.1 has vehemently argued that deliberately the original sale deed Ex.PW-1/R-1 has not been produced, inasmuch as the appellant has fraudulently executed the sale deed himself and in favour of himself. I however do not have to go into depth with respect to such an aspect inasmuch as, in my opinion, once there is no pleading of the appellant with respect to lack of correctness of the contents of Will dated 13.5.2002, this argument of the appellant has to be necessarily rejected. At this stage, I would like

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to reproduce certain very important and relevant portions of the impugned judgment which show that the appellant has never challenged the contents and has, in fact, accepted all the factual contents stated in the Will dated 13.5.2002. These observations of the court below, which I accept and adopt, are contained in paras 30 to 31 of the impugned judgment and which read as under:-

“30. It has been argued by the learned counsel of petitioner there was no change in circumstances due to which testatrix would execute a second Will dated 13.05.2002. Although, technically speaking, this argument should not be available to the petitioner once it is held that the first Will is not proved but I would deal with this argument assuming that the testatrix had executed the first Will dated 17.04.1987. By virtue of the Will dated 17.04.1987, the testatrix bequeathed her $\frac{1}{4}$ share in her Rajouri Garden plot to her son Ram Prasad and bequeathed a godown situated at Dilshad Garden to the petitioner Gur Prasad and his family. She bequeathed the ground floor and Miani between the ground floor and the first floor to petitioner Gur Prasad and whereas, the first floor and its roof has been bequeathed to Ram Prasad. She gave her deposits, cash and jewellery to her husband Sh. Har Sarup Gupta. By virtue of the Will dated 13.05.2002, she has bequeathed the roof and terrace of Rajouri Garden property to her son Ram Prasad and her grandson Sachin. The godown situated at Dilshad Garden has been bequeathed to Gur Prasad and his family and property situated at Banarsi Dass Estate to her husband Har Sarup Gupta. The roof over the first floor and the second floor of the property situated at Banarsi Dass Estate has been given to Ram Prasad and his son Sachin. The reasons for executing the second Will are mentioned in the recitals of Will itself. One reason for execution of the second Will, as mentioned in the recitals, is that $\frac{1}{4}$ share in the Rajouri Garden property, which the testatrix was having, was sold out and therefore, only roof and terrace were left with the testatrix. The second reason which prompted the testatrix to execute the second Will is that she wanted to give certain properties in charity. She has directed her son Ram Prasad and her grandson Sachin to devote 10% of their income for charitable purpose. She allowed the use of ground floor of the property at Banarsi Dass Estate by Gur Prasad Gupta on payment of Rs.6000/- every month for charitable purpose. The third reason for the execution of the Will as per recitals is that her husband had given Rs.16 lakhs to Gur Prasad after selling Rajouri Garden property. Gur Prasad Gupta has nowhere alleged that the assertions made in the recitals of the Will are incorrect. He has not disputed the fact that Rs.16 lakhs were given to him by objector Har Sarup Gupta after the sale of Rajouri Garden

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property. In addition to the aforesaid, she might have executed the second Will to protect the interest of her husband Har Sarup Gupta so that he may not become shelterless, after her death.

31. The learned counsel of petitioner has argued that the Will dated 13.05.2002 is not natural as the petitioner has been excluded from inheritance of property bearing No.3-B, Banarsi Dass Estate. Deprivation of the natural heir by the testatrix should not normally raise any suspicion because the whole idea behind the execution of the Will is to interfere with the normal line of succession. But it is natural to expect the reasons for disinheritance of the natural heirs. At the outset, I may state that petitioner Gur Prasad Gupta has not been totally disinherited. He has been bequeathed a godown situated at Damodar Park, Dilshad Garden, which was fetching the rent of Rs.25,000/- per month. It is, therefore, not one of those cases where, one of the legal heirs have been disinherited completely. It has come in the recitals of the Will that in the year 1970, objector Har Sarup Gupta had purchased 34000 sq. yards of Industrial Area at G.T. Karnal Road, Bahalgarh, Sonapat for Gur Prasad Gupta and had got allotted an industrial plot measuring 1200 sq. yards at S.M.A. Society, Azadpur, Delhi. In addition, he was given Rs.16 lakhs by objector Har Sarup Gupta after the sale of Rajouri Garden flat. Thus, the petitioner had been suitably compensated by the testatrix and her husband during the lifetime of testatrix itself and therefore, this might have been the reason that testatrix who by her earlier Will, had given ground floor and Miani of the property to the petitioner, changed her mind and executed the second Will, thereby giving the property situated at 3-B. Banarsi Dass Estate to her husband. In my view, the Will dated 13.05.2002 is more natural and equitable if it is compared with the earlier Will dated 17.04.1987."

28. All in all it is seen that the factual contents of the Will dated 13.5.2002 are correct and have never been challenged by the appellant. Also, it is seen that there is not too much difference between the bequests in terms of the earlier Will dated 17.4.1987 and subsequent will dated 13.5.2002 except with respect to certain aspects of the Rajouri Garden property, and for charities to be done, and bequest to the husband Sh. Har Swaroop Gupta so as not to be left without a roof on his head by bequeathing to him Banarsi Dass Estate

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property, hence, the court below has rightly held that the Will dated 13.5.2002 is duly proved on account of valid contents of the same.

29. In view of the above discussion, both the appeals, that is FAO No. 462/2007 and FAO No. 463/2007 will stand dismissed. The appeals are accordingly dismissed and disposed of leaving the parties to bear their own costs.

JULY 06, 2017
AK/ib/srb


VALMIKI J. MEHTA, J