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

Date of decision: 31<sup>st</sup> AUGUST, 2026

IN THE MATTER OF:

# **CNR No.DLHC010847222017**

+ **CS(OS) 108/2017, I.A. 2823/2017**

SARITA JAGGI & ANR.

.....Plaintiffs

Through: Mr. Sankalp Goswami, Advocate.

versus

BHISHAM KUMAR GAIND & ORS

.....Defendants

Through: Mr. Sanjeev Anand, Senior Advocate  
with Mr. Rajneesh Kumar Gaind, Mr.  
Himanshu Gupta, Advocates for D-1  
& D-2.

Mr. Siddhant Kohli & Mr. Kaustabh  
Bhattacharjee, Advocates for the  
Applicant.

Mr. Rajnish, Mr. Rajnish Sinha & Mr.  
Ashutosh Sharma, Advs for D-6.

**CORAM:**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**JUDGMENT**

1. The present suit has been instituted by the Plaintiffs seeking partition and separate possession of the estate of Late Shri Ved Prakash Gaind, who was the father of Plaintiff No. 1 and the maternal grandfather of Plaintiff No.2, Plaintiff no. 2 being the son of the deceased daughter of Late Shri Ved Prakash Gaind. The Defendant no. 1 herein are the Legal Representatives of the deceased son of Late Shri Ved Prakash Gaind, Bhisham Kumar Gaind. Defendant no. 2 is the other son of Late Shri Ved Prakash Gaind and Defendant no. 3 and 4 are the daughters of Late Shri Ved Prakash Gaind.



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2. Shorn of unnecessary details, facts as stated in the Complaint are reiterated below:

- a. That Late Shri Ved Prakash Gaiind passed away intestate on 09.06.2007. His wife, Late Smt. Kamla Rani Gaiind, had predeceased him, and passed away in the year 1997.
- b. It is stated that after the marriage of all his daughters, Late Shri Ved Prakash Gaiind continued to reside with Defendant Nos. 1 and 2 and during his lifetime, Late Shri Ved Prakash Gaiind has, on several occasions, expressed his intention that all his children, including his daughters, would inherit his properties equally.
- c. It is stated that after the demise of Late Shri Ved Prakash Gaiind on 9.06.2007, no dispute initially arose regarding succession to his estate and nearly a decade later, Defendant Nos. 1 and 2 initiated mutation proceedings before the Assistant Collector, Delhi Development Authority, seeking mutation of property bearing No. 61/1, Ramjas Road, New Delhi, exclusively in their name. It is stated that in support of their mutation application, they relied upon a purported Will dated 31.12.1998 (herein referred to as the "*purported will*") allegedly executed by Late Shri Ved Prakash Gaiind.
- d. It is stated by the Plaintiffs that they first became aware of the existence of the said Will upon receipt of a notice dated 9.01.2017 in the mutation proceedings, whereupon they filed their objections before the concerned authority.



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3. Aggrieved by the conduct of the Defendants who are trying to get the property mutated in their name on the basis of a purported will, the Plaintiffs have filed the present suit, with the following prayers:
- Pass a decree of declaration that the plaintiffs are entitled to a 1/6th share each (or a 1/3rd share jointly together) in the estate of the late Shri Ved Prakash Gaiind.
  - Pass a decree of declaration that the registered Will dated 31.12.1998, propounded by the brothers as the last Will of the late Shri Ved Prakash Gaiind, is null and void.
  - Pass a decree of partition and possession of their respective 1/6th shares by metes and bounds in the properties of the deceased. If partition by metes and bounds is not possible, pass a decree to sell the suit property and grant a 1/6th share of the total recovery to each of the plaintiffs.
  - Pass a decree for the cancellation of the purported Will dated 31.12.1998.
  - Pass a decree of permanent injunction restraining Defendants No. 1 and 2 from executing or acting upon the disputed Will dated 31.12.1998.
4. The principal challenge raised by the Learned Counsel for the Plaintiffs in the present suit concerns the validity/authenticity of the purported will. The Learned Counsel for the Plaintiffs contend that the purported will is forged and fabricated and that Plaintiff No. 1, having observed her father sign documents on numerous occasions, is well acquainted with his genuine signatures and immediately noticed that the signatures appearing on the purported will are not that of late Shri Ved Prakash Gaiind.



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5. It is further alleged that the signatures appearing on the different pages of the Will are inconsistent and do not resemble one another. According to the Plaintiffs, these signatures also materially differ from the admitted signatures of the deceased appearing on an original House Tax Property Notice in their possession.

6. The Plaintiffs further rely upon the opinion of a handwriting expert, who, after comparing the admitted signatures of Late Shri Ved Prakash Gaiind with those appearing on the purported Will, concluded that they were not authored by the same person. The Plaintiffs have placed on record the handwriting expert's report, the original House Tax Property Notice containing the admitted signatures of the deceased, and a certified copy of the purported will.

7. It is the Plaintiffs' case that Defendant Nos. 1 and 2 have fabricated the purported will with the sole intention of depriving the Plaintiffs of their lawful inheritance after their father's demise. It is alleged that not only are the signatures of the testator forged, but that the date of execution mentioned on the last page of the Will has also been tampered with. It is stated that there is apprehension that Defendant Nos. 1 and 2 intends to use the purported will to defeat the rights of the Plaintiffs in the property left by their father.

8. It is stated that the only immovable property of the deceased presently known to the Plaintiffs is property bearing No. 61/1, Ramjas Road, New Delhi, which is currently in the possession of Defendant Nos. 1 and 2. According to the Plaintiffs, the said property is capable of partition by metes and bounds, and they are each entitled to one-sixth share therein along with separate possession. In the alternative, it is pleaded that if physical partition is not feasible, the property ought to be sold under the directions of the



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Court and the sale proceeds distributed amongst the legal heirs in accordance with their respective shares.

9. It is the case of the Plaintiffs that the suit property is ancestral in nature and that even assuming the existence of the purported will, Late Shri Ved Prakash Gaind could not have bequeathed the property exclusively in favour of any particular heirs, and the Plaintiffs would nevertheless remain entitled to their respective shares in the property.

10. Vide Order dated 19.01.2018, this Court, after the perusal of the record, framed the following issues:

*“(i) Whether the plaintiffs are entitled to partition of the suit property bearing no. 61/1, Ramjas Road, New Delhi? If partition is to be granted, then, what are the shares to be granted to the parties to the suit? OPP*

*(ii) Whether the deceased late Sh. Ved Prakash did not die intestate but died leaving behind his last Will and testament dated 13.12.1998? OPD-1 and 2.*

*(iii) Relief.”*

### **ANALYSIS**

11. The Plaintiffs’ challenge to the purported Will is on the ground that the execution of the same is surrounded by suspicious circumstances and the purported Will is forged and fabricated by the Defendants.

12. Before this Court proceeds to analyse the merits of the case, it is apposite to first delineate the parameters this Court would have to be mindful of while assessing the validity of a will. The Apex Court in Meena Pradhan v. Kamla Pradhan, (2023) 9 SCC 734, has elaboratively discussed this scope. Relevant observations are enumerated hereunder:

*“7.1. Section 63 of the Succession Act, 1925:*



*“63. Execution of unprivileged wills.—Every testator, not being a soldier employed in an expedition or engaged in actual warfare, or an airman so employed or engaged, or a mariner at sea, shall execute his will according to the following rules—*

*(a) The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.*

*(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.*

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

#### **7.2. Section 68 of the Evidence Act, 1872:**

*“68. Proof of execution of document required by law to be attested.—If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence.”*



8. Thus, a bare reading of the abovementioned provisions would show that the requirements enshrined under Section 63 of the Succession Act have to be categorially complied with for the execution of the will to be proven in terms of Section 68 of the Evidence Act.

9. A will is an instrument of testamentary disposition of property. It is a legally acknowledged mode of bequeathing a testator's property during his lifetime to be acted upon on his/her death and carries with it an element of sanctity. It speaks from the death of the testator. Since the testator/testatrix, at the time of testing the document for its validity, would not be available for deposing as to the circumstances in which the will came to be executed, stringent requisites for the proof thereof have been statutorily enjoined to rule out the possibility of any manipulation.

10. Relying on *H. Venkatachala Iyengar v. B.N. Thimmajamma* [*H. Venkatachala Iyengar v. B.N. Thimmajamma*, 1958 SCC OnLine SC 31 : 1959 Supp (1) SCR 426 : AIR 1959 SC 443] (three-Judge Bench), *Bhagwan Kaur v. Kartar Kaur* [*Bhagwan Kaur v. Kartar Kaur*, (1994) 5 SCC 135] (three-Judge Bench), *Janki Narayan Bhoir v. Narayan Namdeo Kadam* [*Janki Narayan Bhoir v. Narayan Namdeo Kadam*, (2003) 2 SCC 91] (two-Judge Bench), *Yumnam Ongbi Tampha Ibema Devi v. Yumnam Joykumar Singh* [*Yumnam Ongbi Tampha Ibema Devi v. Yumnam Joykumar Singh*, (2009) 4 SCC 780 : (2009) 2 SCC (Civ) 348] (three-Judge Bench) and *Shivakumar v. Sharanabasappa* [*Shivakumar v. Sharanabasappa*, (2021) 11 SCC 277] (three-Judge Bench), we can deduce/infer the following principles required for proving the validity and execution of the will:

10.1. The court has to consider two aspects : firstly, that the will is executed by the testator, and secondly, that it was the last will executed by him;



10.2. *It is not required to be proved with mathematical accuracy, but the test of satisfaction of the prudent mind has to be applied.*

10.3. *A will is required to fulfil all the formalities required under Section 63 of the Succession Act, that is to say:*

*(a) The testator shall sign or affix his mark to the will or it shall be signed by some other person in his presence and by his direction and the said signature or affixation shall show that it was intended to give effect to the writing as a will;*

*(b) It is mandatory to get it attested by two or more witnesses, though no particular form of attestation is necessary;*

*(c) Each of the attesting witnesses must have seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of such signatures;*

*(d) Each of the attesting witnesses shall sign the will in the presence of the testator, however, the presence of all witnesses at the same time is not required;*

10.4. *For the purpose of proving the execution of the will, at least one of the attesting witnesses, who is alive, subject to the process of court, and capable of giving evidence, shall be examined;*

10.5. *The attesting witness should speak not only about the testator's signatures but also that each of the witnesses had signed the will in the presence of the testator;*



10.6. *If one attesting witness can prove the execution of the will, the examination of other attesting witnesses can be dispensed with;*

10.7. *Where one attesting witness examined to prove the will fails to prove its due execution, then the other available attesting witness has to be called to supplement his evidence;*

10.8. *Whenever there exists any suspicion as to the execution of the will, it is the responsibility of the propounder to remove all legitimate suspicions before it can be accepted as the testator's last will. In such cases, the initial onus on the propounder becomes heavier.*

10.9. *The test of judicial conscience has been evolved for dealing with those cases where the execution of the will is surrounded by suspicious circumstances. It requires to consider factors such as awareness of the testator as to the content as well as the consequences, nature and effect of the dispositions in the will; sound, certain and disposing state of mind and memory of the testator at the time of execution; testator executed the will while acting on his own free will;*

10.10. *One who alleges fraud, fabrication, undue influence et cetera has to prove the same. However, even in the absence of such allegations, if there are circumstances giving rise to doubt, then it becomes the duty of the propounder to dispel such suspicious circumstances by giving a cogent and convincing explanation.*

10.11. *Suspicious circumstances must be “real, germane and valid” and not merely “the fantasy of the doubting mind [Shivakumar v. Sharanabasappa, (2021) 11 SCC 277] ”. Whether a particular feature would qualify as “suspicious” would depend on the facts and circumstances of each case. Any*



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*circumstance raising suspicion legitimate in nature would qualify as a suspicious circumstance, for example, a shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the will under which he receives a substantial benefit, etc.”*

13. In view of the aforesaid legal position, the alleged suspicious circumstances must be real, substantial and supported by cogent material, and must not be founded upon conjectures, fanciful assumptions or idealistic notions as to how a testator ought to have conducted his affairs. The Court is required to undertake a holistic and cumulative assessment of the evidence surrounding the execution of the will, rather than scrutinising isolated circumstances in a piecemeal manner, before arriving at a conclusion regarding its due execution, validity and genuineness.

14. Before proceeding to examine the Plaintiff's contention that the execution of the purported will is surrounded by suspicious circumstances, this Court must first satisfy itself whether the statutory requirements governing the valid execution and attestation of an unprivileged Will, as prescribed under Section 63 of the Indian Succession Act, 1925, have been duly complied with. It is only upon recording such satisfaction regarding the due execution of the Will that the Court can appropriately consider whether any alleged suspicious circumstances exist so as to cast doubt upon its genuineness.

15. DW-2 and DW-3 are the two attesting witnesses to the disputed Will. This Court has gone through the testimony and according to this Court, the testimony of both these witnesses is consistent on the material particulars concerning the execution and attestation of the purported will. Both have unequivocally deposed that they accompanied the testator to the office of the



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Sub-Registrar, that the testator executed the Will in their presence, and that they, in turn, affixed their signatures as attesting witnesses in the presence of the testator as well as in the presence of each other. Their depositions satisfy the essential requirements of attestation contemplated under Section 63 of the Indian Succession Act, 1925.

16. With respect to the requirements of Section 63(c) of the Indian Succession Act, 1925, a perusal of the affidavits by way of evidence as well as the oral depositions of DW-2 and DW-3 reveals that both witnesses have unequivocally admitted that they affixed their signatures on the purported will as attesting witnesses. They have further deposed that they signed the purported will in the presence of the testator and in the presence of each other, after witnessing the testator execute the document. Their evidence, therefore, establishes due attestation of the purported will in accordance with the mandate of Section 63(c) of the Indian Succession Act, 1925.

17. This Court has perused the evidence/ statements made by DW2 and DW3, who were the main attesting witnesses to the purported will of the Testator, and it is opined that there is nothing available to show that the will was not signed by the concerned testator or there is any contradiction in the statements made by the attesting witnesses. It is admitted that both witnesses were present at the Sub-Registrar's office on 31.12.1998 and saw Late Shri Ved Prakash Gaiind sign the purported will in their presence. In addition to this, this Court has also perused the testimony of DW1, Kamal Gaiind, who was the son of Late Shri Ved Prakash Gaiind. DW1, has produced original business records, such as Provident Fund challans and letters which he identifies as bearing his father's genuine signatures for comparison.

18. It is the case of the Plaintiffs that the signatures appearing on the purported will are not those of Late Shri Ved Prakash Gaiind. In support of



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this contention, the Plaintiffs have placed reliance upon the opinion of a handwriting expert, who has opined that the disputed signatures do not tally with the admitted signatures of Late Shri Ved Prakash Gaiind. The Defendants, on the other hand, have produced the report of another handwriting expert, whose conclusions are diametrically opposed and who has opined that the signatures on the disputed Will are genuine. The Plaintiffs have sought to assail the credibility of the Defendants' expert report by contending that it is founded upon documents which, according to them, have not been duly proved in evidence, including certain Provident Fund challans and other business records.

19. The Apex Court in Dayal Singh & Ors. v. State of Uttaranchal, **AIR 2012 SC 3046**, while dealing with expert opinion, has made the following observations:

*“40. We really need not reiterate various judgments which have taken the view that the purpose of an expert opinion is primarily to assist the court in arriving at a final conclusion. Such report is not binding upon the court. The court is expected to analyse the report, read it in conjunction with the other evidence on record and then form its final opinion as to whether such report is worthy of reliance or not. Just to illustrate this point of view, in a given case, there may be two diametrically contradictory opinions of handwriting experts and both the opinions may be well reasoned. In such case, the court has to critically examine the basis, reasoning, approach and experience of the expert to come to a conclusion as to which of the two reports can be safely relied upon by the court. The assistance and value of expert opinion is indisputable, but there can be reports which are, ex facie, incorrect or deliberately so distorted as to render the entire prosecution case unbelievable. But if such eyewitnesses and other prosecution evidence are trustworthy, have credence and are consistent with the eye-version given by the*



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*eyewitnesses, the court will be well within its jurisdiction to discard the expert opinion. An expert report, duly proved, has its evidentiary value but such appreciation has to be within the limitations prescribed and with careful examination by the court. A complete contradiction or inconsistency between the medical evidence and the ocular evidence on the one hand and the statement of the prosecution witnesses between themselves on the other, may result in seriously denting the case of the prosecution in its entirety but not otherwise.”*

20. Before the Local Commissioner, handwriting experts of both the parties were examined by one another. This Court has perused the testimony of both the handwriting experts. It is true that scope of inquiry done by the handwriting expert of the Defendant is much wider than the scope of inquiry done by the handwriting expert of the Plaintiffs. The handwriting expert of the Plaintiffs has relied on a singular document i.e. the house tax notice which was issued 23 years ago. Conversely, the handwriting expert of the Defendant has relied on more contemporary documents, one of which even dates back to few months prior to the execution of the will. It is pertinent at this juncture to note that while the testimonies of both the handwriting experts are conflicting and Court is not bound by such expert opinion, however, read along with the evidence, both documentary and oral along with the totality of material on record, and documents relied on by the handwriting experts, this Court is of the opinion that the testimony of the handwriting expert of the Defendant has more persuasive value than the testimony of the handwriting expert of the Plaintiffs. In fact, the handwriting expert of the Plaintiffs in his testimony has stated that though it is not mandatory, it is always preferred to have a contemporary period material for the purpose of comparing signatures. In addition, this Court has perused the



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evidence of the handwriting expert examined by the Plaintiffs. In the opinion of this Court, the Plaintiffs have not been able to demolish the creditworthiness of testimony of the handwriting expert produced by the Defendants.

21. The testimony of Naveen Gandas, DW-4, a Record Lifter from the Delhi Archives, also assumes relevance. DW-4 produced the official register maintained in the office of the Sub-Registrar containing the office copy of the registered Will and deposed that, upon comparing the same with the original Will available on the judicial record, both documents appeared to be identical. He further stated that the signatures appearing on the office copy appeared to be original signatures and not photocopied reproductions. This lends a measure of corroboration to the Defendants' case by demonstrating that the copy preserved in the official records corresponds with the original document produced before this Court.

22. Apart from that, another question which is of material consideration for this Court is whether the testator was of sound mind and capable of understanding the nature and effect of the testamentary disposition as per Section 59 of the Indian Succession Act. The section is reproduced hereunder:

*“59. Person capable of making Wills.—  
Every person of sound mind not being a minor may  
dispose of his property by Will.*

*Explanation 1.—A married woman may dispose by Will  
of any property which she could alienate by her own  
act during her life.*

*Explanation 2.—Persons who are deaf or dumb or  
blind are not thereby incapacitated for making a Will if  
they are able to know what they do by it.*



*Explanation 3.—A person who is ordinarily insane may make a Will during interval in which he is of sound mind.*

*Explanation 4.—No person can make a Will while he, is in such a state of mind, whether arising from intoxication or from illness or from any other cause, that he does not know what he is doing.*

*Illustrations*

*(i) A can perceive what is going on in his immediate neighbourhood, and can answer familiar questions, but has not a competent understanding as to the nature of his property, or the persons who are of kindred to him, or in whose favour it would be proper that he should make his Will. A cannot make a valid Will.*

*(ii) A executes an instrument purporting to be his Will, but he does not understand the nature of the instrument, nor the effect of its provisions. This instrument is not a valid Will.*

*(iii) A, being very feeble and debilitated, but capable of exercising a judgment as to the proper mode of disposing of his property makes a Will. This is a valid Will.”*

23. Both DW-2 and DW-3 have categorically deposed in their respective affidavits by way of evidence that, at the time Late Shri Ved Prakash Gaind executed the purported will, he was in a sound state of mind, possessed a clear memory, and was in good health. Their testimony on this material aspect has remained substantially unchallenged. Neither the Plaintiffs nor Defendant No. 3 confronted these witnesses with any suggestion in cross-examination that the testator lacked the requisite mental capacity to understand the nature and effect of the testamentary disposition. In the absence of any medical evidence or other cogent material indicating otherwise, and there being nothing on record to suggest that the testator was



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suffering from any mental infirmity at the relevant time, this Court finds no reason to doubt his testamentary capacity. Accordingly, this Court is of the opinion that the testator was of sound disposing mind at the time of executing the purported will.

24. Another circumstance which merits due consideration is that the purported will in question is a registered document. Although registration of a Will is not mandatory under the law, where a testator chooses to have the Will registered, the procedure prescribed under Section 35 of the Registration Act, 1908 assumes significance. The said provision requires the registering authority to satisfy itself regarding the execution of the document by the executant before admitting it to registration. The relevant provisions of Section 35 are reproduced hereunder:

*“35. Procedure on admission and denial of execution respectively.*

*(1) (a) If all the persons executing the document appear personally before the registering officer and are personally known to him, or if he be otherwise satisfied that they are the persons they represent themselves to be, and if they all admit the execution of the document, or*

*(b) if in the case of any person appearing by a representative, assign or agent, such representative, assign or agent admits the execution, or*

*(c) if the person executing the document is dead, and his representative or assign appears before the registering officer and admits the execution, the registering officer shall register the document as directed in sections 58 to 61, inclusive.*

*(2) The registering officer may, in order to satisfy himself that the persons appearing before him are the*



*persons they represent themselves to be, or for any other purpose contemplated by this Act, examine any one present in his office.*

*(3)(a) If any person by whom the document purports to be executed denies its execution, or*

*(b) if any such person appears to the registering officer to be a minor, an idiot or a lunatic, or*

*(c) if any person by whom the document purports to be executed is dead, and his representative or assign denies its execution,  
the registering officer shall refuse to register the document as to the person so denying, appearing or dead:*

*Provided that, where such officer is a Registrar, he shall follow the procedure prescribed in Part XII:*

*[Provide further that the [State Government] [Added by Act 13 of 1926, Section 2.] may, by notification in the [Official Gazette] [Substituted by A.O.1937, for "Local Official Gazette" .], declare that any Sub-Registrar named in the notification shall, in respect of documents the execution of which is denied, be deemed to be a Registrar for the purposes of this sub-section and of Part XII.]”*

25. Though, the mere fact that a will is registered does not, by itself, dispense with the requirement of proving its due execution in accordance with law, and neither would it conclusively establish its genuineness, nevertheless, registration constitutes a relevant circumstance which may, at the end of the day lend some credibility to the authenticity of a will particularly where there is no material to indicate any procedural irregularity in the registration process. In the present case, there is nothing on record to suggest that the Sub-Registrar failed to follow the statutory procedure or that



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the testator was incapable of admitting the execution of the Will at the time of its registration. Viewed in conjunction with the evidence of the attesting witnesses and the absence of any material casting doubt upon the testator's testamentary capacity, the registration of the purported will lends additional support to the conclusion that the document was executed by the testator while he was in a sound and disposing state of mind.

26. Another circumstance alleged by the Plaintiffs to cast suspicion on the genuineness of the purported will is that the attesting witnesses, namely DW-2 and DW-3, were close friends of Defendant Nos. 1 and 2. According to the Plaintiffs, the proximity of the attesting witnesses to the beneficiaries under the purported will renders their testimony marred with interest and, consequently, the execution of the purported will itself becomes suspicious. The Plaintiffs have next contended that the attesting witnesses were closely associated with Defendant Nos. 1 and 2 and shared longstanding business and social relations with them. On this basis, it is argued that DW-2 and DW-3 are interested witnesses whose testimony ought to be viewed with caution and cannot be accepted at face value.

27. A holistic reading of the aforesaid statements, together with the depositions of DW-2 and DW-3 in their entirety, indicates that the relationship between the attesting witnesses and Defendant Nos. 1 and 2 was primarily of a business or commercial nature. Merely because the witnesses had professional dealings or were acquainted with the Defendants through business circles does not, by itself, render them interested witnesses or justify the rejection of their testimony. Significantly, no material has been brought on record to demonstrate that the alleged business relationship was of such a nature as to create a personal stake in the outcome of the present proceedings or to motivate the witnesses to depose falsely. Equally, there is



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no evidence to substantiate the Plaintiffs' assertion that the attesting witnesses were close personal friends of Defendant Nos. 1 and 2 or that any such friendship influenced their testimony in support of the Defendants' case. In the absence of any material establishing bias, collusion or ulterior motive, this Court is unable to infer that the evidence of DW-2 and DW-3 is unreliable merely on account of their commercial association with the Defendants. Their testimony must, therefore, be assessed on its own intrinsic merit and not discarded solely because of their acquaintance with Defendant Nos. 1 and 2.

28. It is an undisputed position that Defendant Nos. 1 and 2 resided with Late Shri Ved Prakash Gaiind in the suit property and shared cordial relations with him during his lifetime. The evidence on record further indicates that Defendant No. 2 was actively involved in assisting Late Shri Ved Prakash Gaiind in the family business, thereby maintaining a close and continuous association with him. Equally, there is nothing on record to suggest that the relationship between the testator and his children was strained or acrimonious during his lifetime, or that any serious discord existed amongst the siblings prior to the demise of Late Shri Ved Prakash Gaiind. The evidence rather indicates that the deterioration in the relationship between the parties occurred only after the existence and contents of the Will came to light. In these circumstances, the close association of Defendant Nos. 1 and 2 with the testator cannot, by itself, be regarded as a suspicious circumstance surrounding the execution of the Will.

29. The Plaintiffs have further contended that the testimony of the attesting witnesses does not inspire confidence on account of certain alleged inconsistencies. It is argued that both DW-2 and DW-3 deposed that, during meetings held in early 2018, Kamal Gaiind i.e. Defendant No. 2 had shown



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them the original Will for the purpose of enabling them to identify their signatures. According to the Plaintiffs, since the original Will had already been filed before this Court in a sealed cover in the year 2017, it would have been impossible for Defendant No. 2 to have produced the original document before the witnesses in 2018. The Plaintiffs, therefore, submit that either the witnesses have deposed falsely or that they were shown a document other than the original Will, thereby casting serious doubt upon the credibility of their testimony. The Plaintiffs have also pointed out that the affidavits by way of evidence of DW-2 and DW-3 are substantially identical, almost word for word. On this basis, it is contended that the affidavits do not reflect the independent version of the respective witnesses but were prepared by a third person, allegedly Kamal Gaiind, Defendant No. 2, with the object of creating evidence in support of the Defendants' case. According to the Plaintiffs, these circumstances collectively constitute suspicious features surrounding the evidence of the attesting witnesses and warrant a cautious evaluation of their testimony.

30. A careful reading of the aforesaid depositions reveal that DW-1 and DW-3 are consistent in stating that the meeting during which the Will was shown to the attesting witnesses took place sometime around February/March 2017, i.e., prior to the institution of the present suit and before the original Will was produced before this Court in a sealed cover. It is true that DW-2, in the course of his deposition, stated that he was shown the original Will around February 2018. However, in the considered opinion of this Court, this isolated inconsistency, viewed in the context of the evidence as a whole, is not of such a nature as to undermine the genuineness of the Will or to render its execution suspicious. In fact, merely because an exact date cannot be recalled cannot be a ground enough to cast a doubt on



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the validity of a Will. The Apex Court in Kavita Kanwar v. Pamela Mehta, (2021) 11 SCC 209, has made the following observations to this effect:

*“27. As noticed, there has not been any question on the testamentary capacity and soundness of mind of the testatrix; and her handwriting as also signatures on the will in question are also beyond controversy. However, the trial court and the High Court have concurrently found some such suspicious circumstances which are of material bearing and which have remained unexplained. Put in a nutshell, the unexplained suspicious circumstances so found are:*

*(a) that appellant, the major beneficiary, played an active role in execution of the will in question and attempted to conceal this fact before the court;*

*(b) that there had not been any plausible reason for non-inclusion of the only son and other daughter of the testatrix in the process of execution of the will and for excluding them from the major part of the estate in question;*

*(c) that there was no clarity about the construction supposed to be carried out by the appellant;*

*(d) that the manner of writing and execution of the will with technical and legal words was highly doubtful; and*

*(e) that the attesting witnesses were unreliable and there were contradictions in the statements of the witnesses.*

*Because of these major circumstances coupled with various supplemental factors, the trial court and the High Court felt dissatisfied on the root question as to whether the testatrix duly executed the will in question after understanding its contents.*



28. *There is no doubt that any of the factors taken into account by the trial court and the High Court, by itself and standing alone, cannot operate against the validity of the propounded will. That is to say that, the will in question cannot be viewed with suspicion only because the appellant had played an active role in execution thereof though she is the major beneficiary; or only because the respondents were not included in the process of execution of the will; or only because of unequal distribution of assets; or only because there is want of clarity about the construction to be carried out by the appellant; or only because one of the attesting witnesses being acquaintance of the appellant; or only because there is no evidence as to who drafted the printed part of the will and the note for writing the opening and concluding passages by the testatrix in her own hand; or only because there is some discrepancy in the oral evidence led by the appellant; or only because of any other factor taken into account by the courts or relied upon by the respondents. The relevant consideration would be about the quality and nature of each of these factors and then, the cumulative effect and impact of all of them upon making of the will with free agency of the testatrix. In other words, an individual factor may not be decisive but, if after taking all the factors together, conscience of the court is not satisfied that the will in question truly represents the last wish and propositions of the testator, the will cannot get the approval of the court; and, other way round, if on a holistic view of the matter, the court feels satisfied that the document propounded as will indeed signifies the last free wish and desire of the testator and is duly executed in accordance with law, the will shall not be disapproved merely for one doubtful circumstance here or another factor there.”*

31. Minor discrepancies in the testimony of witnesses, particularly with respect to the recollection of dates or the timing of events occurring several years earlier, are not uncommon and, by themselves, cannot be elevated to



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the status of suspicious circumstances unless they strike at the core of the case. The alleged inconsistency neither relates to the execution or attestation of the Will nor does it detract from the consistent testimony of the attesting witnesses regarding the material facts constituting due execution. As repeatedly emphasised by the settled principles governing proof of Wills, the evidence must be appreciated in a holistic and cumulative manner, and not by isolating stray inconsistencies divorced from the overall factual matrix. Viewed in its entirety, the evidence on record does not persuade this Court to hold that the aforesaid discrepancy gives rise to any legitimate suspicion surrounding the execution of the Will.

32. During the course of the proceedings, learned counsel for the Plaintiffs also contended that there was an unexplained delay on the part of the Defendants in propounding the Will. According to the Plaintiffs, the Will remained concealed for nearly nine years after the death of Late Shri Ved Prakash Gaiind and they became aware of its existence only upon receiving a notice from the DDA in connection with mutation proceedings in the year 2017. It is, therefore, argued that such prolonged non-disclosure constitutes a suspicious circumstance casting doubt upon the genuineness of the Will. This contention does not merit acceptance. Delay alone does not create an irrebuttable presumption that the will is forged or invalid. While delay, in certain cases may raise reasonable doubts, it cannot be a standalone rule invalidating the will. The court must evaluate the cumulative effect of all circumstances and must be satisfied that the will represents the free and informed testamentary intention of the deceased.

33. In view of the settled principles governing the proving of wills and upon an overall appreciation of the oral and documentary evidence on record, this Court is satisfied that the Will dated 31.12.1998 has been duly



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proved in accordance with law. The Defendants have successfully established its due execution and attestation as contemplated under Section 63 of the Indian Succession Act, 1925, read with the applicable provisions of the Indian Evidence Act. The various circumstances relied upon by the Plaintiffs as giving rise to suspicion have either not been satisfactorily explained or are, in the opinion of this Court, too tenuous to cast any legitimate doubt upon the genuineness of the testamentary instrument, when read holistically or in entirety. Consequently, this Court finds no material to hold that the execution of the Will is vitiated by suspicious circumstances. The Will dated 31.12.1998 is, therefore, held to be a validly executed and genuine testamentary document and the devolution of the estate of the testator must be effected accordingly.

34. In view of the fact that the Defendants have successfully established that there is a Will in their favour, the present Suit for partition cannot be sustained and is accordingly dismissed, along with pending applications, if any.

**SUBRAMONIUM PRASAD, J**

**AUGUST 31, 2026**

VG/SZ