

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

+ **FAO No. 20/2008**

% **Reserved on: 3rd August, 2017**
Pronounced on: 10th August, 2017

NAVEEN BHATIA (SINCE DECEASED) THROUGH HIS LRs

..... Appellants

Through: Ms. Amrit Kaur Oberoi,
Advocate with Mr. D.S. Vohra,
Advocate and Ms. Priyanka,
Advocate.

versus

RAJ KUMARI BHATIA AND ORS.

..... Respondents

Through: Mr. Arvind Kumar Gupta,
Advocate with Ms. Arpana
Malik, Advocate.

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 under Section 299 of the Indian Succession Act, 1925 is filed challenging the judgment of the probate court below dated 20.8.2007. By the impugned judgment, the probate court has allowed the petition and granted probate of the Will dated 12.1.2000 executed by late Sh. Baldev Raj Bhatia. In the court below, there were three petitioners. Petitioner no.1 was the widow of the

testator late Sh. Baldev Raj Bhatia, petitioner nos. 2 and 3 were two of the four sons of late Sh. Baldev Raj Bhatia. These petitioners of the probate petition have been arrayed as respondents to this appeal which is filed by the objector/respondent no.1 before the court below namely Sh. Naveen Bhatia and who is the one other son of late Sh. Baldev Raj Bhatia. In the court below, there were two respondents one being the present appellant and the second being fourth son Sh. Anil Bhatia who had filed objections but who thereafter filed his application dated 3.9.2004 and withdrew the objections which were filed by him on 17.1.2003 to the subject Will dated 12.1.2000 of late Sh. Baldev Raj Bhatia.

I may note that the objector, respondent no. 1 in the trial court, and the appellant herein, namely Sh. Naveen Bhatia, expired during the pendency of this appeal and he is now represented by his legal representatives. Reference, therefore, to the appellant/objector will wherever the context so requires will mean and include reference to Sh. Naveen Bhatia or his legal representatives who are the present appellants.

2. The issues which call for decision are as regards the due execution, attestation and soundness of mind of the deceased Sh. Baldev Raj Bhatia at the time of making of the subject Will dated 12.1.2000. One more issue which arises between the parties is with regard to whether there were suspicious circumstances in the execution of the subject Will.

3.(i) Before the court below, the petitioners/respondents herein examined a total of six witnesses. Respondents in this appeal deposed as PW-5, PW-2 and PW-1 respectively. PW-3 and PW-4 were Sh. Hardeep Singh and Sh. Amarjeet Singh Kohli being the two attesting witnesses to the Will. Sixth witness was also examined being the record keeper of the concerned Sub-Registrar inasmuch as the subject Will was registered before the Sub-Registrar.

(ii) The attesting witnesses have proved the due execution and attestation of the Will. They have stood the test of cross-examination. In the cross-examination nothing has been elicited from the attesting witnesses that the Will was not duly executed and attested. Also, the attesting witnesses have stood up to the test of cross-examination conducted as regards alleged unsoundness of mind of the deceased

testator and which was so alleged by the present appellant. The attesting witnesses also proved the registration of the Will before the concerned Sub-Registrar and the factum of registration was proved through Sh. Sher Singh (referred to as witness PW-3 and which is a repetition because even one attesting witness Sh. Harpreet Singh is designated as PW-3). Sh. Sher Singh, record keeper from the office of the Sub-Registrar at Mehrauli, New Delhi had brought the summoned record and proved the factum of registration of the Will at no. 148 Book no. III, Volume 842 at pages 45-46 on 12.1.2000. There cannot be any dispute to the identity of the executant of the Will i.e deceased testator inasmuch as in the record of the Sub-Registrar where the duplicate copy of the Will is found there existed the photograph of the deceased testator as the executant of the Will.

4. In my opinion, once the attesting witnesses have proved the due execution and attestation of the Will and it was also proved through the record keeper of the concerned Sub-Registrar that the Will was duly registered, then in my opinion the trial court has rightly held that the Will stood duly proved as Ex.P-1.

5.(i) Learned counsel for the appellant argued that the attesting witnesses were known to the petitioners of the probate petition, and were not the close confidantes of the testator, and this shows according to the appellant that there are suspicious circumstances in execution and attestation of the subject Will.

(ii) In my opinion, the trial court has rightly rejected this argument by observing that no doubt the attesting witnesses were the friends of the sons of the testator, and who were the petitioner nos.2 and 3 in the court below, however, merely because the attesting witnesses were friends of the sons of the testator would not mean that their testimonies would have to be discarded only for that reason. It is noted that it has been proved on record that the testator was living with his two sons (and his widow/petitioner no. 1 in the court below) being the petitioner nos.2 and 3 in the court below since 1989 and till he expired on 5.12.2000. Trial court also has rightly observed that admittedly the appellant had separated from his father and was running his own business and that he had shifted from the house where the petitioners were living with the deceased testator by constructing his own house, and therefore, the depositions of the attesting witnesses

could not be rejected simply on the ground that the attesting witnesses were friends of the sons of the deceased testator.

6. It was also argued before the trial court that there are suspicious circumstances with respect to registration of the Will, however, in my opinion, trial court has rightly rejected this by observing that the photograph of the deceased testator was affixed on the original Will and the photograph is also found in the copy of the Will before the Sub-Registrar. Trial court therefore rightly observed that strong evidence is required to set aside the Will and that the testator did not appear before the Sub-Registrar or that allegedly the Will was executed by the testator under coercion, pressure and threat. Trial court was justified in raising the presumption of due execution and registration of the Will against the present appellant, and which is in view of Section 114(e) of the Indian Evidence Act, 1872 and which provides that there is presumption with respect to official and judicial acts being properly performed, and therefore the factum of registration being an official act and proved through attesting witnesses and the record keeper of the Sub-Registrar Sh. Sher Singh, hence it has to be presumed that the Sub-Registrar had duly identified the deceased

testator with respect to the fact that he was executant of the Will, and that Sub-Registrar also had questioned the testator in terms of the Registration Act with respect to his executing the Will and that the attesting witnesses had duly attested the Will. I therefore reject the argument urged on behalf of the appellant with respect to the alleged deficiency in registration of the Will or that the depositions of the attesting witnesses have to be rejected.

7.(i) No doubt it is an admitted fact on record that the deceased testator had suffered a heart attack in December, 1999 and he also had a kidney problem and therefore was undergoing dialyses, however, the trial court has in my opinion, rightly held that the deceased testator was of sound disposing mind when he executed and registered the Will in terms of the depositions of the attesting witnesses inasmuch as a heart disease or a kidney treatment unless it is shown to have caused loss of mental faculties of the deceased testator, such ailments cannot be a reason for the courts holding lack of soundness of mind once not only the attesting witnesses have deposed to the soundness of the mind of the testator but also it is found that the Will is duly registered before the Sub-Registrar.

(ii) Learned counsel for the appellant argued that onus of proof with respect to the fact that the testator was of sound disposing mind was upon the respondents herein and in this they have failed because no medical record was filed by the respondents, but, in my opinion, this argument has no legs to stand upon. Issue of soundness of mind is an onus on both the parties. A person who alleges a particular aspect has to prove the same once onus is on both the parties. Whether the deceased testator was of sound disposing mind at the time of execution of the Will is no doubt upon the petitioners of the probate petition, respondents herein, however, once the respondents herein have proved the soundness of the mind through the depositions of the attesting witnesses as also registration of the Will, then, onus shifted upon the present appellant to show lack of mental capacity of the deceased testator in executing the subject Will. The appellant has only verbally deposed with respect to lack of sound disposing mind of the testator and which oral deposition in my opinion cannot be such evidence for the trial court or this Court to hold that on this oral evidence itself the deceased testator should be held not to have sound disposing mind at the time of execution, attestation and registration of

the Will. In case of a registered Will, onus of proof is most strongly upon the objector once the Will is proved to be duly executed, attested and registered in terms of the unimpeachable depositions of the attesting witnesses as also the record of the Sub-Registrar. In my opinion therefore since onus of proof had shifted upon the appellant to show lack of sound disposing mind of the deceased testator and the appellant only deposed orally without any medical record with respect to lack of soundness of mind of the testator, therefore, in my opinion, it cannot be held that the deceased testator was not of sound disposing mind at the time of execution, attestation and registration of the subject Will. Also as stated above having a heart ailment or getting kidney treatment done does not mean that this Court has to hold only for such reasons that the deceased was not of sound disposing mind inasmuch as otherwise it has come in evidence of the respondents that the deceased testator was not in such a condition that he was completely immobile being confined to bed and which aspect has to be taken with the fact that the Will is made in January, 2000 and the deceased testator expired after around 12 months in December, 2000. Accordingly, it is held that the deceased testator was of sound

disposing mind at the time of due execution and attestation of the Will.

8.(i) The next argument urged by the appellant is by placing reliance upon some contents of the subject Will dated 12.1.2000, and it is argued by the appellant that the Will is liable to be ignored because the Will makes uncalled frequent and false remarks against the appellant/son Sh. Naveen Bhatia. It is also argued that the contents of the Will show that the Will is shrouded by suspicious circumstances on account of the fact that the Will states that there are litigations between the deceased testator and Sh. Naveen Bhatia though there are no litigations and also that the Will mentions about a revolver which no longer was maintained by the deceased testator on the date of his death. Will is argued to be hit by suspicious circumstances and it is argued that contents of the Will show that the Will would have been got prepared by the present respondents and not the deceased testator. It is argued that the Will is liable to be set aside as beneficiaries have taken active part in the making of the Will and thus there are suspicious circumstances attending the execution and attestation of the Will.

(ii) In order to appreciate the aforesaid arguments urged on behalf of the appellant it will be necessary actually to reproduce the entire Will which runs into seven pages, and therefore this Will in its entirety is reproduced as under:-

“Will

1. I, B.R. Bhatia, son of Late Shri Lal Chand Bhatia aged about 81 years, resident of W-41, Greater Kailash Part-I, New Delhi-110048, declare this to be my last will and Testament which I made on 12th Day of January, 2000 at New Delhi and hereby revoke all other wills, Testaments and codicils heretofore made by me.
2. My family consists of my wife, Smt. Raj Kumari Bhatia, and four sons Naveen Bhatia, Praveen Bhatia, Anil Bhatia and Sunil Bhatia.
3. I have acquired movable and immovable properties. The entire properties standing in my name are self acquired, and no part of these have been acquired with any money other than that earned by me.
4. I bequeath, give and devise all my movable and immovable properties whatsoever and wheresoever, (except W-41, Greater Kailash, Part-I, New Delhi-110048, which I bequest as per paras No. 6,7& 8 below) standing in my name this day, and those that may come to me during my life time, or after my death, to my wife Smt. Raj Kumari Bhatia absolutely, and no one else shall have any right, claim or interest in my property/properties, left after my death. If anyone else except my aforesaid wife shall make any claim to the whole or part of the property/properties, left by me after my death, the said claim shall be null and void against my said wife, who shall after my death inherit my entire property/properties, movable and immovable absolutely.
5. I re-iterate that I bequeath, give and devise all the shares held in my name in M/s Bhatia Properties Pvt. Ltd. and Bhatia Apartments Pvt. Ltd., to my wife Smt. Raj Kumari Bhatia, and the same shall be deemed to have been transferred to her as I have transferred the same during my life time, and no one else shall have any right claim or interest in the said shares.
6. I am the joint owner of 50% undivided share, with my wife Smt. Raj Kumari Bhatia, of a 3-storey house bearing No. W-41, Greater Kailash Part-I, New Delhi-110 048. The Ground Floor comprising of 3 bed rooms, 3 bathrooms, one drawing-cum-dining, one lounge, one kitchen, front lawn, rear set back, side set back, one garage with common servants bath room and one servant quarter at the back of the garage and one servant quarter in Mezzanine annexe block, (As per plan attached herewith marked as Annexure ‘A’ and shaded green) fully furnished is in possession of both of us i.e myself and my wife, Raj Kumari Bhatia and the same shall after

my death go to my wife, Smt. Raj Kumari Bhatia, who shall be free to sell, mortgage, rent, transfer, part possession or deal with it in any manner she likes but, she shall have absolutely no right whatsoever to give, gift, transfer exchange or part with its possession in any manner to my 2 sons Naveen Bhatia his wife and children and Anil Bhatia, his wife and children as they have already taken more than their rightful share of movable and immovable properties and assts by unscrupulous and fraudulent means. They both have, during my lifetime, caused me immense harm and mental torture by sending me lawyers' notices, dragging me to the police station, making threatening phone calls and forcibly preventing me from entering my own house and office (for which I had to seek police intervention).

7. My 50% undivided share in First Floor of house No. W-41, Greater Kailash, Part-I, New Delhi-110048 which is presently occupied by my son Praveen Bhatia for the last 15 years, comprising of 3 bedrooms, 3 toilets, one drawing-cum-dining room, one kitchen, one passage, front balcony, side balcony, one servant quarter with toilet (As per plan attached herewith marked as Annexure 'B' and shaded blue) shall after my death go to my son Praveen Bhatia who shall be free to sell, mortgage, rent, transfer, encumber, lease gift or deal with it in any manner he may deem fit but forbid him to give, gift, transfer or part with possession of any portion of the said floor i.e. 50% first floor of No. W-41, Greater Kailash, Part-I, New Delhi to either Naveen Kumar Bhatia, his wife and children or to Anil Bhatia, his wife and children, my two sons have ill-treated and humiliated me and not been obedient to me at all during my lifetime.

8. My 50% undivided share in Second Floor of house No. No. W-41, Greater Kailash, Part-I, New Delhi-110048 alongwith 50% undivided share in the terrace above the Second Floor, which is presently occupied by my son Sunil Bhatia for the last ten years, comprising of two bedrooms, two bathrooms, one drawing-cum-dining room, one kitchen, front balcony, annexe room with toilet (As per plan attached herewith marked as Annexure 'C' and shaded Red) shall after my death go to my son Sunil Bhatia who shall be free to sell, mortgage, rent, transfer encumber, gift, lease, part possession with or deal with it in any manner he deems fit but again, I forbid him to given, gift, transfer or part with possession of any portion of the Second Floor to either Naveen Kumar Bhatia, his wife and children or to Anil Bhatia, his wife and children, my two sons who have caused me immense agony and mental torture during my lifetime.

9. That my sons Praveen and Sunil Bhatia can get the First floor and Second Floor respectively mutated in their names as owners in the records of the M.C.D. or any other concerned authority on the basis of this Will after my death.

10. That the stairs alongwith right to ingress and outgress has been conveyed jointly to my both sons Praveen Bhatia and Sunil Bhatia.

11. That all the floors i.e. ground, first and second floors have independent three-phase electric connections and the occupant of each floor shall be liable to pay the electric bill for his respective portion.

12. The building also has a submersible jet-pump which shall be for common use for all the occupants of the building.

13. That my son Praveen Bhatia shall have the right to install TV antenna on the roof as well as the right to inspect the water tank on the roof for its repair, cleaning or maintenance or put an additional tank for his water requirements. However, I specifically state that in case of increase in FAR or floor construction being allowed on the terrace above the second floor by the concerned authority, only my son Sunil Bhatia, exclusively, shall be entitled to raise such construction and Praveen Bhatia shall have no interest or raise any objection to Sunil Bhatia constructing on the terrace. However, in case of such construction Sunil Bhatia shall shift the water tank and TV antenna at his own cost to the terrace of the new construction.

14. My son Naveen Bhatia, his wife and children and Anil Bhatia, his wife and children shall get absolutely no share at all from either my movable or immovable assets and properties as they have deceitfully and fraudulently amassed more than as due to them during my lifetime. To be specific, my son Naveen Bhatia, in whom I reposed complete trust in handling business matters connived with my chartered accountant Mr. Rajest Mehta then i.e. late 1980s and got majority of the shares in B.R. Towers Ltd. (A public company I had floated in 1989) in his own name. Naveen had systematically been manipulating transactions to by most of the properties in the name of B.R.Towers Ltd. e.g.

a) X-22, Hauz Khas, New Delhi measuring 504 sq. yds.

b) E-2, Local cum Commercial Shopping Centre, Alaknanda, New Delhi

c) 180, sq. ms. Commercial plot in Nangal Rai, Janakpuri

He also acquired a substantial portion of residential plot No. C-7, Greater Kailash Enclave-I, New Delhi where he is currently residing with his family after building a palatial building.

Naveen Bhatia acquired all these properties in a mala-fide fashion and without my knowledge. He subsequently reaped huge profits from their sale thereby depriving me of a substantial portion of my hard earned money. As if all this was not enough he abused me in front of my wife and sons Praveen and Sunil Bhatia.

In view of all this I debar Naveen Bhatia from getting anything from either any moveable or immovable assets and properties as he has not only already got enough but has treated me like no father can ever imagine from his son. His wife too, Mrs. Asha Bhatia was very harsh and merciless in her treatment to me.

My other son Anil Bhatia has been no less cruel and manipulative. Though shrewd cunning and intimidation he has acquired a sizable portion

in property No.A-18, Kailash Colony, New Delhi through illegal and fraudulent means. He also siphoned out vast amount of money from my business to build for himself a huge hotel by the name of "The Hermitage" in the hills of Kanatal, Near Khanolli, Chamba, ahead of Mussorie, Uttar Pradesh. That hotel alone is worth over a crore of rupees. Therefore, I debar Anil Bhatia, his wife and children from all of my movable and immovable assets and properties. He and his wife too have humiliated me and mentally tortured me solely for material gain during my lifetime.

I also possess area measuring about 550 sq. ft. on the Ground Floor in the annexe block of A-18, Kailash Colony, New Delhi, which has been under my tenancy since 1959. The same I bequeath after my death to my son Sunil Bhatia who will set into my shoes in all respects and will enjoy all its benefits and is free to use it and deal with it in any manner he likes. Sunil Bhatia my son exclusively shall inherit all money rights of this space after my death and no other son of mine shall have any right or claim on this property.

If by a quirk of fate me and my wife shall die at the same moment then Praveen Bhatia and Sunil Bhatia shall divide equally all our moveable and immovable assets and properties.

15. All my movable and immovable assets in various firms and private limited companies. Fixed Deposit Receipts in various banks, Vikas Patras in different post offices, one Armenius Licenced revolver, cars that stand in my name, at the time of my death, shall go to my wife only, who can deal with them as she wishes, but again I repeat, I forbid her to gift and give any thing to my two arrogant sons namely, Naveen Kumar Bhatia, his wife and children and Anil Bhatia his wife and children.

16. Property No. A-26A, Kailash Colony, New Delhi was purchased with my funds but, the agreement to sell was made in favour of my son, Naveen Bhatia who gave an irrevocable power to attorney to me for all purposes in return for other assets which I gave him at the time separation in 1989. The case is now being tried in the Delhi High Court. After my death my sons Sunil Bhatia & Praveen Bhatia will step into my shoes and shall pursue the case as the clauses of the General Power Attorney and reap whatever benefit may arise, equally between them.

17. My sons Naveen Bhatia, his wife and children and Anil Bhatia, his wife and children shall get absolutely no share at all from either my movable or immovable assets and properties.

18. My sons Naveen Bhatia and Anil Bhatia have fraudulently got my signatures on blank pieces of paper and have also forged certain documents in my name. Consequently, if they make a claim on any of my movable or immovable assets and properties, after my death, it should be dismissed as null and void bearing on truth to reality.

19. As far as Anil Bhatia is concerned, I have disowned him as my son vide Public Notice in National Herald newspaper in their issue dated

27/08/97 under classified No. DC-1516, the contents of which are reproduced below:-

This is to inform the public at large that my clients Sh.B.R.Bhatia, son of Late Shri Lal Chand and Smt. Raj Kumari Bhatia, wife of Sh.B.R.Bhatia, both R/o No. W-41, Greater Kailash-I, New Delhi hereby deprive their son Shri Anil Bhatia, R/o A-18, Kailash Colony, New Delhi from all their movable and immovable properties including case in banks, shares etc. as he is not behaving properly with my aforesaid clients. Any one whosoever may deal with the said Shri Anil Bhatia with respect of any loan or any type of transaction regarding business shall be doing so at his own cost and risk and my aforesaid clients shall not be responsible for the same in any manner whatsoever.

Sd/-

(Satish Chand Sharma)"

Advocate

20. I appoint Smt. Raj Kumari Bhatia to be the sole executrix of this my will.

21. Anil and Naveen Bhatia, I have learnt have already made up their minds to challenge and contest my Will. I therefore, clearly state that if Anil and Naveen Bhatia have an alleged will and claim it to have been executed by me it shall be deemed and considered as forged one, they having obtained it through fraudulent and forged and unscrupulous ways.

22. Any will of mine that is not registered should be considered as forged one having been made in an illegal and fraudulent manner.

23. In witness, I the said B.R.Bhatia has hereunto set my hand and signature to this Will dated ____ day of _____ 2000 in presence of the following witnesses at New Delhi.

Signed by the aforesaid Shri B.R.Bhatia and acknowledged by him to be his last will and Testament in presence of us present at the same time and in the presence of each other have hereunto set our hand and signatures as attesting witnesses.

WITNESSES:

Sd/-

(B.R.Bhatia)

Executor"

(underlining added)

9. In my opinion, the arguments urged on behalf of the appellant that the Will is shrouded in suspicious circumstances and false facts have been stated in the Will and arguments which are liable

to be rejected for the reasons given hereinafter. I also do not find any such circumstances and facts as mentioned in the Will which will make the Will shrouded in suspicious circumstances. In law the aspect that beneficiaries have taken part in making of the Will is not an absolute statement in itself for holding that the Will is to be held to be shrouded in suspicious circumstances, inasmuch as, if assuming beneficiaries are shown to have participated in making of the Will then unless it is also pleaded and proved that the same caused loss of rationale and reasonable thinking of the testator and thus the thinking is shrouded so as to cause making of the Will which otherwise would have been made, it cannot be held that the Court should set aside the Will.

10. Appellant places reliance upon the statement made by the testator in para 14 of the Will and it is argued that no such facts have taken place and also that the Will wrongly mentions various properties to be of the testator and clearly therefore the Will is shrouded by suspicious circumstances and therefore is liable to be ignored. I however cannot agree with the argument urged on behalf of the appellant because repeated expressions of anguish and angst by the

testator in his Will, and unless the same are shown to be absolutely and completely false by leading of the evidence by the person who alleges that the same are false, the strong statements made in the Will cannot lead for holding that the Will is surrounded by suspicious circumstances. In fact 'anguish' of the testator is one of the indicators of the Will having been validly made. Also, I would like to note the fact that the Will is a very detailed Will containing exhaustive and minute details of various properties, both movable and immovable shows that the Will was made by the testator by applying his mind and thus the testator was in sound disposing mind when the subject Will was executed and attested. The argument of the appellant that beneficiaries have made the Will is an argument to be rejected because if the beneficiaries had influenced making of the Will because the Will contains false statements, then on the contrary the beneficiaries would have definitively avoided making of 'false' statements which would have prejudiced their case subsequently by setting up and proving the Will.

11. The appellant in my opinion cannot make capital from the fact that the Will mentions of a revolver and which was not owned by

the deceased testator on the date of his death, inasmuch as, even if it is true yet such a minor aspect will not lead to setting aside of the Will. In fact the statement in the Will that the testator had a revolver would only show that the Will is genuine because the testator admittedly once did have a revolver and which as per the appellant only did not exist at the time of the death of the testator. In any case, in my opinion, these minor and irrelevant arguments cannot in any manner help the appellant to challenge the subject Will and the argument is therefore rejected.

12. I would also like to observe that Sh. Naveen Bhatia objector/appellant has not deposed in his evidence by way of affidavit that there were no disputes and litigations between him and his father/testator. Once there is no positive evidence led by Sh. Naveen Bhatia with respect to there not being any litigations of the father/testator that Sh. Naveen Bhatia, then in my opinion Sh. Naveen Bhatia is to be taken to have failed to discharge his onus of proof of there not existing litigations between him and his father/testator as stated in the Will and for this reason also it cannot be held that the

Will contains false facts with respect to litigations existing between the father/testator and the objector/son/Sh. Naveen Bhatia.

13. An important fact to be noted is that the only other son/objector Sh. Anil Bhatia has already withdrawn his objections to the Will. In my opinion, therefore, this is an additional reason for this Court to hold that there cannot be any valid challenge to the subject Will, inasmuch as, other son of the testator Sh. Anil Bhatia who has been disinherited by the Will and against whom statements have been recorded in the Will, would have objected to grant of probate to the subject Will in case the Will was forged or the Will contained 'false' statements.

14. Last but not the least, it is required to be observed that as per the impugned judgment trial court has committed a legal error by going into the issues of title of the properties. This in law could not have been done by the probate court because a probate court only decides upon the validity or invalidity of the execution of the Will. Whether or not the testator did or did not have title to the properties which were subject of bequests under the Will or that actually someone else had title or that the testator had title only of some of the

properties and not all of the properties or that testator had only part interest and not full interest in the bequeathed properties etc etc are all issues which have to be decided by a civil court in a civil suit between the parties whenever and where ever disputes will arise with respect to title of a particular property, and therefore, all observations made by the probate court below with respect to ownership or otherwise of the immovable properties which are the subject matter of the Will dated 12.1.2000 executed by late Sh. Baldev Raj Bhatia are set aside and the said observations will not be taken in any manner to be a reflection on any title/ownership interest of the properties which are subject matter of the Will dated 12.1.2000 executed by late Sh. Baldev Raj Bhatia.

15. In view of the above discussion, I do not find any merit in the appeal and which is thus dismissed. The impugned judgment of the trial court dated 20.8.2007 granting probate is upheld. Parties are left to bear their own costs.

AUGUST 10, 2017
Ne/AR/godara

VALMIKI J. MEHTA, J