

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

+ **Test. Case No.38/2000 & CS(OS) No.140/1997**

% **Reserved on: 19th April, 2018**
Pronounced on: 25th April, 2018

1. **Test. Case No.38/2000**

SURINDER KUMAR GROVER Petitioner

Through: Ms. Kajal Chandra, Advocate
with Ms. Perna Chopra,
Advocate and Ms. Viren
Kapur, Advocate.

versus

STATE Respondent

Through: Mr. Rajiv Bahl, Advocate with
Mr. S.P. Srivastava, Advocate
for objector.

2. **CS(OS) No.140/1997**

SATISH KUMAR & ORS. Plaintiffs

Through: Mr. Rajiv Bahl, Advocate with
Mr. S.P. Srivastava, Advocate.

versus

SURINDER KUMAR GROVER & ANR. Defendants

Through: Ms. Kajal Chandra, Advocate
with Ms. Perna Chopra,
Advocate and Mr. Viren
Kapur, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1.(i) By this judgment, two cases are being disposed of. Both the matters are consolidated in terms of the order dated 1.2.2005 passed in the suit. Disputes are between siblings of late Smt. Sheelawati Grover. First case is Testamentary Case 38/2000 filed by Sh. Surinder Kumar Grover son of Smt. Sheelawati Grover. On one side is ranged the petitioner Sh. Surinder Kumar Grover, one son of Smt. Sheelawati Grover and Sh. Krishan Kumar Grover, and the other side is ranged by all the other siblings being the other sons and daughters of late Smt. Sheelawati Grover. Testamentary case 38/2000 filed by Sh. Surinder Kumar Grover is with respect to the Will dated 10.5.1989 said to have been executed in his favour by the mother Smt. Sheelawati Grover. The propounded Will is a one page Will in the handwriting of Smt. Veena Grover who is the wife of the petitioner. The second case is the suit for partition CS(OS) No. 140/1997 filed by five children; one son and four daughters; of late Smt. Sheelawati Grover namely Sh. Satish Kumar Grover (son), Smt.

Kanchan Ahuja (daughter), Smt. Indu Gulati (daughter), Smt. Shashi Kalra (daughter) and Smt. Madhu Narang (daughter). One more son of Smt. Sheelawati Grover is Sh. Ravinder Kumar Grover, the defendant no.2 in the suit, and who though has remained *ex-parte* in the proceedings but he has opposed the petitioner Sh. Surinder Kumar Grover, as Sh. Ravinder Kumar Grover has appeared as a witness on behalf of the respondents in the testamentary case against the petitioner Sh. Surinder Kumar Grover by deposing against the Will dated 10.5.1989. The property subject matter of dispute, both in the testamentary case and the partition suit, is H-4/5, Model Town, Delhi owned by the mother Smt. Sheelawati Grover.

(ii) Since the basic aspect to be decided is whether or not Smt. Sheelawati Grover died leaving behind her Will dated 10.5.1989, hence the testamentary case is first taken up for discussion and judgment.

Test Cas. No.38/2000

2. By this testamentary case, the petitioner Sh. Surinder Kumar Grover seeks Letters of Administration with respect to the Will dated 10.5.1989 of his mother Smt. Sheelawati Grover. The

Will in question is an unregistered Will. Smt. Sheelawati Grover died on 23.5.1989.

3. In this testamentary case, the following issues were framed:-

- “1. Whether the alleged Will dated 10-5-89 purported to be executed by the deceased Smt. Sheelawati Grover is a valid Will and was executed by her while she was possessed of sound disposing mind?
2. Whether the petitioner is entitled to probate/or letter of administration to administer the estate of late Smt. Sheelawati Grover?
3. Relief.”

4. Right at the outset, let me reproduce the scanned copy of the subject Will inasmuch as quite a few issues will turn with respect to the form and formatting of this propounded Will including of the adjustment of the contents being only on one page, strange places of appearing of the signatures of the deceased testatrix Smt. Sheelawati Grover, the unusual placement of the signatures of the attesting witnesses etc etc. The subject Will is scanned and reproduced below:-

वसीयत

मैं शीला बती शीवर 10/0 जी वृष्ण कुमार शीवर आज दिनांक 10-5-89 को यह अंगवस्ती वसीयत करती हूँ और अगर कोई पुरानी वसीयत मेरे पास की वृष्ण कुमार शीवर व मेरे लड़के सतीश शीवर व रविन्द्र शीवर जी कि मेरे अंगवस्ती की रहे हैं और अलखुन में मेरे वसयत करी लिए हो वो सब इस वसीयत से खोकार हो जायेंगे। यह मेरी अंगवस्ती वसीयत है। यह वसीयत मैं अपने पुरा होश व वाक में बिना किसी दबाव के अपने पाले पंचज शीवर के पान्थ कि मे दिना दिनांक 10-5-89 समय 6:30 शाम बुधवार को कर रही हूँ। सतीश कुमार अपने पिता के साथ उन्हा खास कामार कर रहा है और रविन्द्र शीवर को पास अपना मकान और दिल्ली है। और अपने पिता से स्वयं लेबर निदेश में अपना कामार कर रहा है। सुरेन्द्र को कि सबसे छोटा बेटा है उसका कामार कीव नहीं है और अपने घर का रक्बा भी जीव जग से नहीं चला पा रहा है इसलिए मैं यह अंगवस्ती न 11 म/5 मडल राजन निम्नी में खुद सांखी है। यह सतीश अंगवस्ती और मोची की दुपाने सुरेन्द्र शीवर को देती हूँ। जो कि मिलहाल यह पहली मंजिल और दूसरी मंजिल पर रह रहा है और नीचे की दो दुपाने भी उसके पास है। यह वसीयत बहु वेना से लिखवाई है यह के समय करके अपने होश व वाक में और गवाही ने भी मेरे सामने वसयत मिले हैं।

P.V. Gopal.

B-30, Gali No 5

Mogli Park Delhi 33.

दिनांक 10 मई 1989 बुधवार में गवाही के सामने उपर लिखी वसीयत पर अपने वसयत करती हूँ।

शीला बती

Mar 6 1989

10.6.89

At Delhi

10/5/89

5. The issue is that whether the subject Will dated 10.5.1989 can be held to be the duly executed Will of late Smt. Sheelawati Grover.

6. To prove the due execution of the Will and soundness of mind of the deceased testatrix Smt. Sheelawati Grover, petitioner has led the evidence of both the attesting witnesses Sh. S.V. Goel and Sh. Harbans Lal Saini as PW-4 and PW-6. Petitioner has also stepped into the witness box as PW-1. Petitioner's wife Smt. Veena Grover, in whose handwriting the Will has been made, has deposed as PW-5. The depositions of both the attesting witnesses as examination-in-chief is almost identical and therefore one affidavit by way of evidence of the attesting witness Sh. S.V. Goel is reproduced as under:-

“

EVIDENCE BY WAY OF AFFIDAVIT

I, S.V. Goel son of Shri Satya Prakash Goel, aged 53 years, resident of H. No.G-5/8, Sector-15, Delhi-110085, do hereby solemnly affirm and declare as under:-

1. That the deponent attended the birthday ceremony of Pankaj Grover son of Surinder Kumar Grover on 10.5.1989 at H-4/5, Model Town, Delhi. In the said ceremony, Shri Harbans Lal Saini was also present.

2. That on 10.5.1989, Smt. Sheelawati Grover, mother of Satish Kumar Grover and Surinder Kumar Grover, who was known to the deponent, called the deponent and Harbans Lal Saini in the room. She

also called Smt. Veena Grover wife of Shri Surinder Kumar Grover and expressed her desire to execute the Will. She dictated her Will to Smt. Veena Grover on 10.5.1989 in the presence of the deponent and Harbans Lal Saini. Smt. Veena Grover scribed the Will at her instance and the instructions of Sheelawati Grover. The said Will so executed by the deceased is Ext. DW-1/3.

2. That Smt. Sheelawati Grover signed the Will in the presence of the deponent at Point A and deponent signed at Point B and Harbans Lal Saini signed at Point C. She read and understood the Will and signed the Will in full senses and sound disposing mind in the presence of the deponent, Harbans Lal Saini and Smt. Veena Grover. The deponent and Harbans Lal Saini signed at the instance of Smt. Sheelawati Grover on the Will at Point B & C.

3. That Smt. Sheelawati Grover was of sound disposing mind and in full senses and she has executed the Will of her own.

4. That before the Will was signed by the deceased, she read over the Will, Ext.DW-1/3, and explained to the deponent and Harbans Lal Saini.”

7. Both the attesting witnesses have been cross-examined and in their cross-examination they have reiterated what is stated by them in their affidavits by way of evidence and they have denied that they are not the attesting witnesses to the Will or that the subject Will was not duly executed by the deceased testatrix Smt. Sheelawati Grover. Both the attesting witnesses have further deposed that the Will was dictated by the deceased testatrix to Smt. Veena Grover wife of the petitioner on the day when the birthday of Sh. Pankaj Grover, the son of petitioner and Smt. Veena Grover was celebrated at the residence of petitioner in the suit property and which function was attended by the attesting witnesses. Both the attesting witnesses

have also deposed that there were about 15 to 20 other guests at the birthday function but none of the other siblings of the petitioner Sh. Surinder Kumar Grover and their family members were called. The attesting witnesses have deposed that the testatrix called them and Smt. Veena Grover to one room inside the house and where she dictated the Will to Smt. Veena Grover in one go i.e no draft was prepared and also that the subject Will was dictated by the testatrix without first preparing any notes. Relevant to this aspect of Will having been dictated without first making any notes and by a single dictation, admittedly Smt. Sheelawati Grover had studied only upto Class II. Evidence has also been led on behalf of the petitioner with respect to the Will being admitted by the legal heirs of Smt. Sheelawati Grover in certain judicial proceedings.

8. On behalf of the siblings of the petitioner who have contested the testamentary case, evidence is led of two witnesses Sh. Kamal Kumar Grover (son of late Sh. Satish Kumar Grover the son of Smt. Sheelawati Grover) as RW-1 and Sh. Ravinder Kumar Grover as RW-2. It has already been stated above that Sh. Ravinder Kumar Grover is defendant no.2 in the suit for partition who remained *ex-*

parte in the suit and he also did not file any objections/written statement in the Testamentary Case, however he has appeared as a witness on behalf of the contesting siblings of the petitioner Sh. Surinder Kumar Grover to deny that the subject Will is the valid Will of his mother Smt. Sheelawati Grover. I may note that counsel for the petitioner had feebly sought to argue that deposition of Sh. Ravinder Kumar Grover/RW-2 has no meaning and effect in the absence of written objections filed by him, however this argument urged on behalf of the petitioner is rejected inasmuch as merely because a person has not filed written objections cannot mean that he cannot depose as a witness in a case in support of the other contesting parties/siblings to oppose the allowing of the testamentary case. If a person has not filed any written objections/written statement then such a person cannot lead evidence pertaining to his own objections/written statement/pleadings, however in law such a person can always depose as a witness with respect to the written statement/objections filed by the objectors to the testamentary case.

9. A reading of the examination-in chiefs of RW-1 and RW-2 shows that they have deposed that no photographs have been

filed by the petitioner of the alleged birthday celebration, and that no other documentary evidence is at all filed to establish that in fact the birthday ceremony of Sh. Pankaj Grover (the son of the petitioner) was celebrated on 10.5.1989. Both RW-1 and RW-2 have deposed with respect to the subject Will being a false and fabricated document and signatures having been taken of the testatrix on a blank paper. It has also been deposed that there are great doubts of the validity of the propounded Will on account of the testatrix signing not once but twice on the single page Will with the fact that second signatures very mysteriously and strangely appear on the bottom left half of the single page Will. It is also deposed by the witnesses of the objectors that the petitioner Sh. Surinder Kumar Grover had shifted to live separately, way back in the year 1980, from his parents, and petitioner with his family was living separately in the suit property no.H-4/5, Model Town, Delhi which was owned by Smt. Sheelawati Grover and that the Will was not executed by the testatrix at her own residence at 65, Tagore Park, Delhi and which/where she would have done so if testatrix had really to execute her Will. The shifting of the petitioner and his wife away from the parents and other family

members is *inter alia* deposed to for the reason that the petitioner and his wife were misbehaving and harassing the testatrix and other family members whose lives were made a hell. It is further deposed that the deceased testatrix had sent a legal notice dated 19.9.1987 terminating the licence of the petitioner Sh. Surinder Kumar Grover to stay in the suit property no. H-4/5, Model Town, Delhi. This legal notice has been proved by the RW-1 as Ex.RW1/6 and the registered AD and UPC receipts are proved as Ex.RW1/7. It is noted that in any case this legal notice otherwise stands proved because petitioner in his cross-examination conducted on 6.10.2005 admitted that he had received a notice dated 19.9.1987 from Sh. M.D. Sharma, Advocate said to have been issued on behalf of Smt. Sheelawati Grover terminating the lease of the petitioner with respect to the three rooms on the first floor of the suit property. As already stated above the testatrix was living not with the petitioner but with her other children at 65, Tagore Park, Delhi.

10. In the light of the aforesaid evidence, besides the other evidence which is led, this Court has to determine as to whether the testatrix Smt. Sheelawati Grover died leaving behind her validly

executed Will dated 10.5.1989. As regards the unsoundness of mind, in my opinion, this aspect has not been seriously contested before this Court and with the fact that there is no evidence led of lack of soundness of mind of the deceased testatrix on 10.5.1989, and therefore it is held that the testatrix was of sound mind on 10.5.1989.

11. In my opinion it has to be held that the Will is a false and fabricated document and the same is accordingly rejected for the reasons as are stated hereinafter. The detailed reasons given below clearly show not only the existence of too many suspicious circumstances showing that the Will is not a duly executed Will of the testatrix and actually the propounded Will is a fabricated document written on a blank paper which already had the signatures of the deceased testatrix Smt. Sheelawati Grover. The reasons are:-

(i) The first set of suspicious circumstances to reject the Will is the total format of the Will as stated herein. One suspicious aspect is of the curious placing on the Will of the two signatures of the testatrix Smt. Sheelawati Grover. One signatures appears at the left hand bottom half of the Will with the signatures of one attesting witness namely Sh. S.V. Goel appearing above this signatures at

point A-1 and the signatures of the other attesting witness Sh. Harbans Lal Saini appearing below the signatures of Smt. Sheelawati Grover at point A-1. Next aspect is that besides the fact that one signatures at point A-1 on the left hand bottom part of the Will has no reason to exist where it exists, the same is taken with the fact that the signatures of one attesting witness Sh. S.V. Goel appear just above the signatures at point A-1 and the signatures of the second attesting witness Sh. Harbans Lal Saini exist below, and this curious placement of signatures is because it is seen that below the portion signed at point A-2 by testatrix there did not exist enough space for signatures and address of both the attesting witnesses. It is for this reason that the signatures of one attesting witness has been got adjusted in the portion above the signatures of Smt. Sheelawati Grover at point A-1. The fact is that there is no reason existing or explanation given by the petitioner or his witnesses as to why signatures of testatrix would strangely exist/appear on bottom left half of the single page Will. Further it is seen that the written portion of the Will mentioning the *factum* of testatrix mentioning the date of execution of the Will is in comparative smaller letters (portion above signatures of testatrix at

point A-2) and these smaller size letters is to adjust the subject content of the portion above point A-2 signatures because there was only one blank signed document of testatrix available with the petitioner. All in all, the sum and substance effect of the above stated facts is that the Will is a fabricated document adjusted by its contents, placement of writing, difference in size of letters, placement of signatures etc on a blank signed document as of Smt. Sheelawati Grover.

(ii) Neither the petitioner who deposed as PW-1, nor his wife Smt. Veena Grover who deposed as PW-5 and none of the two attesting witnesses who have deposed as to why the testatrix signed not once but twice and why the second signatures have been placed at the bottom of the left half of the subject Will. Once there is no explanation forthcoming from any of the attesting witnesses, or the petitioner or his wife who scribed the Will, as to the reason for existence of the signatures of the testatrix at point A-1 on the Will in the left hand bottom half of the Will, this fact is a suspicious circumstance clearly showing that the document being the subject

Will was blank when it was signed by the testatrix Smt. Sheelawati Grover.

(iii) In addition to the above facts showing that the Will is a fabricated document on a blank paper containing signatures of testatrix, it is required to be noted that the subject Will Ex.RW1/P1 is a folded document. Normally a Will if it is executed the same being a very very important document would have been carefully preserved and it would not be folded. Even if the paper of the Will was to be folded, then at best it would have been folded once in the middle from top to the bottom. It is however seen that the Will is folded as many as four times with three folds appearing from left to right and one fold appearing from top to bottom in the middle. The subject Will was admittedly in possession of the wife of the petitioner namely Smt. Veena Grover inasmuch as admittedly Smt. Veena Grover has stated that the testatrix gave this Will to Smt. Veena Grover for safe keeping on the next date when Smt. Sheelawati Grover left the house of the petitioner to go back to her own house at Tagore Park, Delhi. Along with the aforesaid facts of folding of the Will four times, the most important aspect is that the signatures appearing at point A-2 on

the right hand bottom portion of the Will appears on the third fold from the left to the right and as a result of the folding the signatures of testatrix have been considerably effaced. It is clearly a suspicious circumstance that if really the subject document propounded as a Will was executed as a Will with the signatures of the testatrix, then there is absolutely no reason why the main signatures (at point A-2) which appear at the ordinary/normal place of execution of the Will, would be got effaced/mutilated as a result of the folding of the Will at the very place where the main signatures appear on the Will.

(iv) It is completely unbelievable that a person who is only Class II passed would at one go dictate and prepare the subject Will. Even a legally well versed person would take time and prepare notes before making of a Will. It cannot be believed that the testatrix was a veteran in dictation, that too veteran in legal contents of a Will, that the subject Will was dictated in one go to her daughter-in-law Smt. Veena Grover, the wife of the petitioner, and that too admittedly without making notes or a draft.

(v) In the year 1989, surely photography was order of the day with respect to functions, and if there was really a birthday function

organized at the house of the petitioner on 10.5.1989 when the subject Will is said to have been dictated, executed and attested, then it does not stand to reason as to why there would not have existed even a single photograph of the birthday function. This aspect has to be taken with the fact that admittedly none of the siblings of the petitioner with their family members were invited, and who ordinarily ought to have been invited in the birthday function, especially when as many as 15 to 20 strangers admittedly attended the birthday function. Also, no independent evidence of any of the so called 15 to 20 guests who attended the birthday function has been led that there was indeed such a birthday function celebration of Sh. Pankaj Grover son of the petitioner Sh. Surinder Kumar Grover on 10.5.1989.

(vi) There is no reason why the subject Will would not be written, executed and attested by that testatrix at her own residence at Tagore Park instead of preparing, executing and getting attested the same at the residence of the petitioner. It is not the case of the petitioner that the testatrix Smt. Sheelawati Grover wanted to deliberately keep the Will secret from her husband or other children. There is therefore no reason for holding that testatrix Smt. Sheelawati Grover would have

got written, executed and attested the Will at the residence of the petitioner instead of her own residence.

(vii) There are no reasons pleaded, and nor have any reason been deposed to on behalf of any of the witnesses of the petitioner, that the testatrix Smt. Sheelawati Grover had bad relations with her daughters or there were other reasons why the daughters were disinherited by the testatrix. Admittedly in the Will reference is only made to the sons of the testatrix Smt. Sheelawati Grover by giving reasons for not bequeathing the Model Town property to them, and in the Will even the existence of the daughters has not been mentioned, what to talk of reasons being given for disinheriting the daughters. It is rightly argued by the objectors that this was so because only one blank signed paper of Smt. Sheelawati Grover existed with the petitioner and therefore not all contents as ordinarily and generally would be found in a Will could be adjusted/mentioned in the subject Will. Also, there is an earlier two page typed Will of Smt. Sheelawati Grover dated 6.2.1989 and it is very strange that why by the subject Will dated 10.5.1989 the testatrix Smt. Sheelawati Grover disinherited even her own husband in whose favour she had made her

earlier Will Ex.RW3/1 dated 6.2.1989 and which is only because of lack of space in the subject one page Will which is propounded. I may note that it is not in dispute between any of the parties that the testatrix Smt. Sheelawati Grover had indeed made her earlier Will dated 6.2.1989 bequeathing the Model Town property in favour of her husband Sh. Krishan Kumar Grover.

(viii) No reasons have been proffered on behalf of the petitioner or his witnesses as to why the subject Will was not mentioned by Smt. Sheelawati Grover even to her husband Sh. Krishan Kumar Grover although allegedly on the next date of executing the Will the testatrix went back to her home in Tagore Park. There is no reason why if the testatrix Smt. Sheelawati Grover had made a Will she would not have informed this *factum* to her husband Sh. Krishan Kumar Grover and with whom she was living in the Tagore Park property along with her children. In fact the petitioner cannot even contend that his father, i.e the husband of the deceased testatrix Smt. Sheelawati Grover, was aware and had knowledge of the subject Will inasmuch as admittedly the husband of Smt. Sheelawati Grover Sh. Krishan Kumar Grover had filed a probate petition in the District Court with respect to the

earlier Will dated 6.2.1989 executed by Smt. Sheelawati Grover in favour of her husband Sh. Krishan Kumar Grover and which action by Sh. Krishna Kumar Grover would not have been taken if he knew that his wife had executed the subject Will in favor of the petitioner. The argument urged on behalf of the petitioner is a misconceived argument that Sh. Krishan Kumar Grover thereafter withdrew his probate petition and did not oppose to the grant of Letters of Administration in favour of the petitioner, because the subsequent withdrawal of the probate case by Sh. Krishan Kumar Grover will not take away the fact that Sh. Krishan Kumar Grover many many months after the death of testatrix in May, 1989, being not aware of the subject Will had therefore filed in November, 1990 the probate case with respect to the earlier Will dated 6.2.1989 executed by Smt. Sheelawati Grover in his favour.

(ix) As per Para 4 of the affidavit by way of evidence of the petitioner Sh. Surinder Kumar Grover, he has deposed that it was his mother Smt. Sheelawati Grover who had celebrated the birthday of his son Sh. Pankaj Grover. If therefore it is the mother Smt. Sheelawati Grover who had celebrated the birthday of her grandson

Sh. Pankaj Grover son of Sh. Surinder Kumar Grover, then the celebration since it was by the mother, would have been at the residence of the mother at Tagore Park and not at the residence of the petitioner at Model Town and where testatrix would have visited her family members. It is only if the birthday was celebrated by the parents of Sh. Pankaj Grover, being the petitioner Sh. Surinder Kumar Grover and Smt. Veena Grover, then the celebration would have been at the residence of the parents of Sh. Pankaj Grover but when admittedly the birthday celebration was by Smt. Sheelawati Grover then the birthday function would have been celebrated at the residence of Smt. Sheelawati Grover at Tagore Park, New Delhi.

12. At this stage, it is required to be noted that petitioner Sh. Surinder Kumar Grover admittedly had filed a probate case propounding a Will dated 13.9.1993 of his father Sh. Krishan Kumar Grover. This probate case 131/2006 was filed by Sh. Surinder Kumar Grover in the year 1995. This probate petition was admittedly dismissed by a detailed judgment dated 29.7.2006 running into 40 pages by Smt. Bimla Makin, ADJ, Delhi, and certified copy of this judgment (being a public document under Section 74 of the Indian

Evidence Act, 1872) is on the record of this case. Admittedly the challenge by Sh. Surinder Kumar Grover against this judgment dated 29.7.2006 has been dismissed right till the Supreme Court and certified copy of this order dated 12.9.2011 of the Supreme Court is on record. In my opinion, therefore this fact also can be taken note of by this Court that the petitioner propounds Wills which are not genuine.

13.(i) Learned counsel for the petitioner argued that Sh. Krishan Kumar Grover was a defendant in the present suit, and he withdrew his objections as noted in the order in this testamentary case passed on 17.5.1993, and therefore it should be held that Smt. Sheelawati Grover died leaving behind her subject Will dated 10.5.1989.

(ii) In my opinion, however this argument has no merits and is liable to be rejected. Merely because of Sh. Krishan Kumar Grover withdrawing his objections to the subject Will will not mean that the Will is proved inasmuch as the Will is opposed by all the other children of Smt. Sheelawati Grover, and therefore, the subject Will has otherwise to be proved in accordance with law and the Will

cannot be held to be proved merely because Sh. Krishan Kumar Grover has accepted the same. After all it cannot be overlooked that Sh. Krishan Kumar Grover had in fact filed in November 1990 his own testamentary case for grant of probate/Letters of Administration for the earlier admitted Will dated 6.2.1989 of Smt. Sheelawati Grover, and therefore obviously Sh. Krishan Kumar Grover the husband of Smt. Sheelawati Grover was definitely not aware till November 1990 of the existence of the subject Will dated 10.5.1989. A subsequent withdrawal of the objections on 17.5.1993 by Sh. Krishan Kumar Grover cannot take away the fact that Sh. Krishan Kumar Grover himself was not aware of the existence of the Will dated 10.5.1989 till November 1990. Therefore the admission of Sh. Krishan Kumar Grover at best would operate in his favour and would not operate against all other children of Smt. Sheelawati Grover and Sh. Krishan Kumar Grover for taking the Will as proved, much less in a probate case in which the judgment will be a judgment in *rem* and not in *personam*.

14.(i) Learned counsel for the petitioner then argued that RW-1 Sh. Kamal Kumar Grover (son of Sh. Satish Kumar Grover son of

Smt. Sheelawati Grover) who deposed on behalf of the contesting respondents/objectors is not competent to depose because Sh. Kamal Kumar Grover had filed his suit for declaration claiming rights in the property of Smt. Sheelawati Grover, but Sh. Kamal Kumar Grover had accepted the Will executed by Smt. Sheelawati Grover in terms of his application Ex.RW1/P2 dated 23.1.1990 for withdrawing his suit filed against Sh. Surinder Kumar Grover.

(ii) This argument of the petitioner is however liable to be rejected, because as observed above with respect to the admission of Sh. Krishan Kumar Grover, an admission made by Sh. Kamal Kumar Grover would only bind himself and not other siblings of Sh. Surinder Kumar Grover. It is also noted that Sh. Kamal Kumar Grover in his application Ex.RW1/P2 dated 23.1.1990 for withdrawing the suit had only mentioned that he was withdrawing the suit because the mother of the petitioner had executed a Will in petitioner's favour, but this application is completely silent as to which is this Will ie. what is the date of this Will.

(iii) Therefore in my opinion merely because Sh. Kamal Kumar Grover had admitted to one Will of Smt. Sheelawati Grover by his

application Ex. RW1/P2, would not mean that the subject Will stands proved in spite of the opposition thereto by as many as five other children (being sons and daughters) of Smt. Sheelawati Grover.

15.(i) Learned counsel for the petitioner then argued that the subject Will should be held to be proved because an eviction petition was filed before the Rent Controller against a tenant of the ground floor of the Model Town property, and that in these proceedings on the basis of the subject Will, the petitioner Sh. Surinder Kumar Grover was allowed to continue the petition as the legal heir of Smt. Sheelawati Grover by dismissing the application filed by the objectors herein for being impleaded as legal heirs of Smt. Sheelawati Grover. All these aspects are recorded in the order dated 21.8.1996 (Ex.RW1/P5) passed by learned Single Judge of this Court in SAO No. 25/1994 titled as ***Sh. Surinder Kumar Grover and Sh. Krishan Kumar Grover Vs. Ravinder Kumar Grover, Sh. Nawal Kishore Jain (tenant), Sh. Satish Grover, Smt. Kanchan Ahuja, Smt. Indu Grover, Smt. Shashi Kalra and Smt. Madhu.*** It is argued that this order dated 21.8.1996 is final that therefore all the legal heirs of Smt.

Sheelawati Grover have held to have accepted the validity of the subject Will dated 10.5.1989.

(ii) In order to appreciate this argument reference will have to be made to the order dated 21.8.1996 passed in SAO No. 25/1994 along with the memo of parties in the said SAO and this order with the Memo of Parties reads as under:-

“Memo of Parties

1. Surinder Kumar Grover
Son of Shri Krishan Kumar Grover,
2. Krishan Kumar Grover
Son of Shri (Late) Mukand Lal Grover
Both residents of Property No.H-4/5,
Model Town, Delhi:110009.

.....Appellants

VERSUS

1. Ravinder Kumar Grover,
Son of Shri Krishan Kumar Grover,
Resident of 65, Ground Floor
Tagore Park, Delhi:110009
2. Nawal Kishore Jain (tenant)
Son of Not Known
Resident of Ground Floor
H-4/5, Model Town, Delhi:9.
3. Satish Kumar Grover
Son of Shri Krishan Kumar Grover,
Resident of: 65, First Floor,
Tagore Park, Delhi:110009.
4. Smt. Kanchan Ahuja,
Wife of Shri K.L. Ahuja,
5. Smt. Indu Gulati
Wife of Vijay Gulati
6. Smt. Shashi Kalra,
Wife of Shri Surinder Nath Kalra
7. Smt. Madhu Narang,
Wife of P. Paul Narang,
All residents of House No.65,

First Floor, Tagore Park,
Delhi.

.....Respondents

Order dated 21.8.1996

Present: Mr. R.K. Jain, for the appellant.

Mr. M.D. Sharma for respondent No.3.

SAO 25/94 & CM 1935/95

Counsel for the L.Rs has conceded that under the latest Will of Mrs. Shielawati, only the petitioner has acquired interest in the property in dispute and no other L.R. including Mr. K.K. Grover or anyone claiming under him or anyone claiming under the deceased Shielawati had any right, interest or title in the property in dispute. The earlier Will, which was set up by Late K.K. Grover in a Court, while attempting to seek probate of that Will, was also withdrawn by him by concealing that the Will set up by the petitioner happens to be subsequent and valid and the earlier Will was of no consequence. In that view of the matter, there is no doubt that none of the L.Rs of Late K.K. Grover except for the petitioner, Surender Kumar Grover himself can be considered to be necessary party to the petition.

In view of the above position, I am of the opinion that the impugned order of the Rent Control Tribunal dated 15.7.1994 cannot be sustained and is hereby set aside. The persons who were added as respondents Nos.2 to 8 to the Eviction Petition are struck off the record, particularly in view of the fact that these L.Rs are not challenging the Will of Late Shielawati in favour of Mr. Surender Kumar Grover. This appeal and the application are disposed of in the above terms.

August 21, 1996

Aks

sd/-

J.K. Mehra

Judge”

(iii) Though on the first blush this argument urged on behalf of the petitioner seemed to have substance, however on a deeper examination of the same it is found that the same is without any merit and therefore is rejected for reasons given hereinafter.

(iv) No doubt the contents of the order refer to the legal heirs of Smt. Sheelawati Grover having accepted the Will but on 21.8.1996

when the order was passed in the SAO there was only representation on behalf of Sh. Satish Kumar Grover who was the respondent no.3 in the SAO 25/1994. No other legal heirs of Smt. Sheelawati Grover were represented, either in person or through Advocate. I have asked the counsel for the petitioner that if really all the legal heirs of Smt. Sheelawati Grover besides Sh. Satish Kumar Grover the respondent no.3 in the SAO had consented to the validity of the subject Will, then all that petitioner had to do was to file the certified copy of the Vakalatnama in SAO of Sh. M.D. Sharma, Advocate if the Vakalatnama was on behalf of all the respondents in SAO who are the legal heirs of Smt. Sheelawati Grover, but admittedly this has not been done. Also, if the legal heirs had not objected to the Will of Smt. Sheelawati Grover, then there would otherwise have been filed some NOCs or some other pleadings or document on record in the SAO for not objecting to the Will, but admittedly no such NOCs or pleading or documents allegedly filed in the SAO have been filed and proved in this case. Really therefore the only No Objection in the SAO to the subject Will of Smt. Sheelawati Grover was only and only on behalf of Sh. Satish Kumar Grover, and that too which was

limited with respect only to the case filed before the Rent Controller under the Delhi Rent Control Act, 1958 against the tenant Sh. Nawal Kishore Jain, and which will not have the effect of *res judicata* on the question of title as immediately discussed hereinafter.

(v) A judgment or order which is passed in the Delhi Rent Control Act proceedings does not determine the question of title of a property. This is so made clear in Section 50 of the Delhi Rent Control Act and which reads as under:-

“Section 50. Jurisdiction of civil courts barred in respect of certain matters.-

(1) Save as otherwise expressly provided in this Act, no civil court shall entertain any suit or proceeding in so far as it relates to the fixation of standard rent in relation to any premises to which this Act applies or to eviction of any tenant therefrom or to any other matter which the Controller is empowered by or under this Act to decide, and no injunction in respect of any action taken or to be taken by the Controller under this Act shall be granted by any civil court or other authority.

(2) If, immediately before the commencement of this Act, there is any suit or proceeding pending in any civil court for the eviction of any tenant from any premises to which this Act applies and the construction of which has been completed after the 1st day of June, 1951, but before the 9th day of June, 1955, such suit or proceeding shall, on such commencement, abate.

(3) If, in pursuance of any decree or order made by a court, any tenant has been evicted after the 16th day of August, 1958, from any premises to which this Act applies and the construction of which has been completed after the 1st day of June, 1951, but before the 9th day of June, 1955, then, notwithstanding anything contained in any other law, the Controller may, on an application made to him in this behalf by such evicted tenant within six months from the date of eviction, direct the landlord to put the tenant in possession of the premises or to pay him such compensation as the Controller thinks fit.

(4) Nothing in sub-section (1) shall be construed as preventing a civil court from entertaining any suit or proceeding for the decision of any

question of title to any premises to which this Act applies or any question as to the person or persons who are entitled to receive the rent of such premises.” (underlining added)

(vi) Obviously the issue of representation in a rent control proceedings is limited to the extent of relief in the rent control proceedings case which is filed against the tenant, and therefore representation by means of allowing an application under Order XXII CPC under the Delhi Rent Control Act is really limited to pursuing of the rent control case and nothing further. It is therefore held that because of Section 50 of the Delhi Rent Control Act with the fact that there was no representation on behalf of the legal heirs at the time of passing of the order dated 21.8.1996 in SAO No.25/1994, it cannot held that the subject Will was admitted by all the legal heirs of Smt. Sheelawati Grover (except Sh. Satish Kumar Grover) and who are contesting this probate case and have also filed the connected suit for partition of the Model Town property of Smt. Sheelawati Grover.

16. In view of the aforesaid discussion, it is held that petitioner has failed to prove that the deceased testatrix Smt. Sheelawati Grover died leaving behind her last valid Will dated 10.5.1989. Probate petition is accordingly dismissed with costs.

Objectors will file their affidavits with respect to legal costs incurred by them in these proceedings, and which affidavits be filed supported by the certificates of the lawyers having received the fees, within a period of four weeks from today, and these costs will be the costs payable by the petitioner to the contesting respondents. Costs be paid within a period of eight weeks from today.

CS(OS) No.140/1997

17. This is a suit seeking for partition of the property No.H-4/5, Model Town, Delhi. The suit, as already stated in the aforesaid judgment in Testamentary case 38/2000, is filed by the five plaintiffs who are the five children, being sons and daughters, of Smt. Sheelawati Grover and Sh. Krishan Kumar Grover. The contesting defendant in the suit is defendant no.1 Sh. Surinder Kumar Grover – the petitioner in the Testamentary Case. Defendant no.2 is Sh. Ravinder Kumar Grover who though is *ex-parte* in the present suit, but if the suit is decreed by holding that the suit property has to be partitioned on account of Smt. Sheelawati Grover dying intestate, then Sh. Ravinder Kumar Grover will also have an equal share in the suit property as will be given to other legal heirs. As discussed in

detail in the judgment in Testamentary Case 38/2000, the defendant no.2 has in fact deposed in support of the objectors for dismissing the testamentary case and therefore for rejection of the Will dated 10.5.1989 allegedly executed by Smt. Sheelawati Grover.

18. In this suit, the following issues were framed on 1.2.2005:-

- “1. Whether the Will dated 10.5.1989 is the last legal and valid testament of late Smt. Sheelawanti Grover? OPD
2. If issue No.1 is decided against the defendant, to what share are the plaintiffs entitled to in House No.H-4/5, Model Town, Delhi? OPP
3. Relief.”

Issue No.1

19. Issue No.1 will stand decided against defendant no.1 in this suit Sh. Surinder Kumar Grover in view of the detailed discussion, reasoning and conclusion given while dismissing the Testamentary Case 38/2000.

Issue No.2

20. Issue No.2 will therefore be answered in favour of the plaintiffs and consequently a preliminary decree is passed with respect to property no. H-4/5, Model Town, Delhi by giving 1/7th share each to:-

- (i) Sh. Satish Kumar Grover
- (ii) Sh. Ravinder Kumar Grover
- (iii) Sh. Surinder Kumar Grover
- (iv) Smt. Kanchan Ahuja
- (v) Smt. Indu Gulati
- (vi) Smt. Shashi Kalra
- (vii) Smt. Madhu Narang

Relief

21. Suit of the plaintiffs is decreed. Let a preliminary decree be drawn up in terms of shares of the parties as stated above.

22. List on 10th August, 2018 for further proceedings with respect to the final decree in the suit.

APRIL 25, 2018

VALMIKI J. MEHTA, J